



# Construction

in 35 jurisdictions worldwide

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# 2014



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## CONTENTS

<b>Introduction</b> Robert S Peckar <i>Peckar &amp; Abramson, PC</i>	<b>3</b>
<b>Brazil</b> Júlio César Bueno <i>Pinheiro Neto Advogados</i>	<b>4</b>
<b>Canada</b> Bruce Reynolds, Sharon Vogel and Yvan Houle <i>Borden Ladner Gervais LLP</i>	<b>16</b>
<b>Chile</b> José Manuel Larraín <i>Larraín Rencoret &amp; Urzúa Abogados</i>	<b>24</b>
<b>China</b> Wang Jihong, Lin Li, Jiang Jie, Miao Juan and Ma Yuhong <i>Grandway Law Offices</i>	<b>31</b>
<b>Colombia</b> Santiago Jaramillo-Caro <i>Gómez-Pinzón Zuleta Abogados</i>	<b>38</b>
<b>Czech Republic</b> Gabriel Achour and Jakub Záměsly <i>Achour &amp; Hájek sro</i>	<b>44</b>
<b>Denmark</b> Henrik Puggaard, Lene Lange and Kristian Skovgård Larsen <i>Lett Law Firm</i>	<b>51</b>
<b>Dominican Republic</b> Laura Troncoso Ariza and Mairéní Silvestre Ramírez <i>OMG</i>	<b>58</b>
<b>Egypt</b> Ahmed Amin and Farah El Nahas <i>Shalakany Law Office</i>	<b>64</b>
<b>Finland</b> Aimo Halonen <i>Mäkitalo Rantanen &amp; Co Ltd</i>	<b>69</b>
<b>France</b> Isabelle Smith Monnerville and Julien Maire du Poset <i>Smith Violet</i>	<b>74</b>
<b>Germany</b> Jörg Gardemann and Alexander Herbert <i>Buse Heberer Fromm</i>	<b>83</b>
<b>Ghana</b> David Ofosu-Dorte, Isabel Boaten and Ferdinand Adadzi <i>AB &amp; David</i>	<b>89</b>
<b>India</b> Sunil Seth and Vasanth Rajasekaran <i>Seth Dua &amp; Associates</i>	<b>94</b>
<b>Japan</b> Miho Niunoya <i>Atsumi &amp; Sakai</i>	<b>101</b>
<b>Lebanon</b> Rana Kahwagi and Karim Khalaf <i>Alem &amp; Associates</i>	<b>106</b>
<b>Lithuania</b> Jovitas Elzbergas, Valentas Mitrauskas and Donatas Lapinskas <i>Motieka &amp; Audzevičius</i>	<b>112</b>
<b>Luxembourg</b> François Collot Kleyr <i>Grasso Associés</i>	<b>118</b>
<b>Mexico</b> Roberto Hernández-García <i>Comad, SC</i>	<b>125</b>
<b>Netherlands</b> Leendert C van den Berg <i>Severijn Hulshof advocaten</i>	<b>130</b>
<b>New Zealand</b> Garth Sinclair and Michael Gartshore <i>Webb Henderson</i>	<b>135</b>
<b>Nigeria</b> George Etomi, Efeomo Olotu and Ivie Ehanmo <i>George Etomi &amp; Partners</i>	<b>143</b>
<b>Poland</b> Andrzej Tokaj and Przemysław Kastyak <i>Magnusson Kancelaria Prawnicza</i>	<b>148</b>
<b>Qatar</b> Marcus Boeglin, Veijo Heiskanen, Marc Sukkar, Matthias Scherer and Domifille Baizeau <i>Lalive in Qatar LLC</i>	<b>154</b>
<b>Russia</b> Vladimir Lipavsky <i>Ost Legal</i>	<b>160</b>
<b>Saudi Arabia</b> Hani Al Qurashi, Rami Al Qulaiti and Saeed Basuhil <i>Hani Qurashi Law Firm in cooperation with Kilpatrick Townsend</i>	<b>166</b>
<b>Singapore</b> Christopher Chuah and Tay Peng Cheng <i>WongPartnership LLP</i>	<b>171</b>
<b>Sweden</b> Andreas Magnusson, Charlotta Wälsäter and Per Vestman <i>Foyen Advokatfirma AB</i>	<b>178</b>
<b>Switzerland</b> Michael E Schneider, Matthias Scherer, Bernd Ehle and Sam Moss <i>Lalive</i>	<b>184</b>
<b>Taiwan</b> Helena H C Chen <i>Formosan Brothers, Attorneys-at-Law</i>	<b>190</b>
<b>Turkey</b> Ziya Akıncı and Cemile Demir Gökyayla <i>Akıncı Law Office</i>	<b>196</b>
<b>Ukraine</b> Timur Bondaryev, Svitlana Teush and Volodymyr Grabchak <i>Arzinger</i>	<b>203</b>
<b>United Arab Emirates</b> Thomas Philip Wilson, Rabih Tabbara and Scott Hutton <i>Kilpatrick Townsend Legal Consultancy</i>	<b>211</b>
<b>United Kingdom</b> Stacy Sinclair <i>Fenwick Elliott LLP</i>	<b>217</b>
<b>United States</b> Robert S Peckar and Michael S Zicherman <i>Peckar &amp; Abramson, PC</i>	<b>226</b>

# Russia

**Vladimir Lipavsky**

Ost Legal

## 1 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

The Russian construction industry is significantly different from the Western construction industry, and foreign contractors who enter the market for the first time must be prepared for a different environment. The key concerns are:

### Licensing

In most cases it is mandatory to have a permit from a self-regulating organisation in order to enter into and perform construction contracts.

### Design

The scope, contents and structure of design in Russia differs substantially from that in Western countries. Design consists of two major parts: 'project documentation' and 'working documentation'. These are often translated as 'basic design' and 'detailed design', but they differ from what is understood by those terms in Europe or the United States. The structure and content of project documentation is established by Government Resolution No. 87 of 16 February 2008 on the structure of project documentation and requirements regarding its contents. After having been developed by the contractor, the project documentation must be approved by the customer and then filed for the review of the state expert authority. Only when a positive expert review is granted may the customer apply for a construction permit. It is highly advisable that a foreign contractor entering the market for the first time liaise with the Russian design institute for a better understanding of the scope of design work and its requirements.

### Budget estimates, unitary rates and acceptance

The mechanism of price calculation and acceptance has its origins in the Soviet era and hasn't changed much since then. When a construction project is financed by state funds it is mandatory that all the pricing is based upon unitary rates that are published by the authorities. Those unitary rates have a base year (for example 2001, 2004, 2007) and in order to be used in a certain project they have to be multiplied by a coefficient, which could be either a published one or one agreed by the parties. Based on unitary rates and quantities provided by the design documentation, a budget estimate must be composed. Acceptance of works is formalised by specific forms of acceptance certificates (KS-2 and KS-3), which were designed to be used together with unitary rates. These pricing and acceptance mechanisms do not work well when lump sum prices are negotiated and in the case of EPC contracts (ie, when the price is agreed before the design is developed). Also, the levels of established unitary rates are usually quite low and often do not reflect the labour costs of foreign contractors. Although from a legal standpoint using unitary rates and budget estimates is only mandatory when the project is financed by the state, many customers require them even in private projects.

## Permits

It should be noted that in Russia more permits have to be obtained for the construction of a certain project than would be required for the same project in Europe or the United States. Many different types of permits are required to commence and proceed with the works, transport, deliver, install and commission technological equipment, and put the facility into operation. Permit issues cause delay and disputes during project implementation. A contract should provide for an explicit distribution of responsibilities in respect of obtaining permits.

## Communication with Russian customers, subcontractors and authorities

Our experience shows that foreign contractors who enter the Russian market for the first time face serious difficulties, starting from the contract negotiation phase, due to the fact that the Russian approach to construction is very specific and unusual in many aspects. It could be helpful to have local specialists in the team who have experience of implementing projects in Russia.

## 2 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

Starting from 1 January 2010 state-issued licences were substituted by the mechanism of self-regulating organisations (SROs). According to section 55.5 of the Town-Building Code of Russia, in order to conduct their professional activities, designers, civil engineers and builders have to obtain membership of their respective SROs.

Obtaining SRO membership requires having a certain number of qualified workers and a certain amount of construction equipment (for builders) in place. Becoming and being a member of an SRO entails expenses: an admission fee, regular membership fee and contribution to the compensation fund of the SRO, which is founded to cover the liability of SRO members.

In order to perform works that influence the safety of capital construction, being a member of an SRO is not enough – a certain permit needs to be obtained from the SRO, which confirms that a company is competent to perform the respective works. Certain requirements have to be observed by an applicant when applying for such a permit – a set of minimum requirements is established by the Town-Building Code (section 55.5) but SROs can set stricter requirements. A list of works subject to a permit issued by an SRO is set out by Order No. 624 of the Ministry for Regional Development of the Russian Federation, 30 December 2009 (in force from 26 of May 2011).

Working without a permit from an SRO, when such a permit is required, is regarded as an administrative offence under the Code of Administrative Offences (section 9.5.1). The offender will be charged a fine ranging from 40,000 to 50,000 roubles. Failure to comply with the requirements to be met when obtaining the permit constitutes a

separate offence, which could attract a fine ranging from 30,000 to 40,000 roubles. Repeated violation (within a year) may entail administrative suspension of the company activities for a period of up to 90 days.

### 3 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

Russian laws do not provide any specific advantages to local contractors. However, in order to conduct business activities, to become a member of an SRO and to obtain permits, a foreign contractor has to establish a legal presence in Russia, which could be either a subsidiary company, a branch or a representative office.

### 4 Bribery

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?

A contract that has been awarded through bribery can be declared void under section 179 of the Civil Code. In such a case the violating party must return to an injured party all the monies and property received from the injured party. Also, the injured party is entitled to reimbursement of damages. The property received by the injured party from the violating party is confiscated by the state. If it is impossible to deliver such property, the monetary funds equal to the price of such property are collected from the violating party.

It should be noted that before section 179 of the Civil Code can be applied bribery must be established in criminal proceedings. Both bribe-givers and bribe-takers can be prosecuted in accordance with the Criminal Code of Russia. No facilitation payments to any officials are allowed by law.

### 5 Political contributions

Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

There are no formal legal restrictions in this regard.

### 6 Other international legal considerations

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

The considerable number of permits and approvals required is certainly a surprise for a newcomer to the market. Another big issue is misunderstandings with Russian customers as to the scope, structure and formalisation of design. Pricing, payments and acceptance procedure are also points that need attention. We would recommend using international arbitration as a dispute resolution venue rather than state economic (arbitrazh) courts. Although customers often insist on economic courts, we believe they are not well prepared enough for such specific issues as construction disputes.

### 7 Construction contracts

What standard contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

At present, there are no legal requirements as to the forms of the contracts. Also, we are not aware of any industry standards in this regard.

For smaller and medium-sized projects executed by and between Russian companies, very simple (10 to 20 pages) contract forms are usually used. For bigger projects FIDIC forms are sometimes used. However, it should be noted that each FIDIC form has to be revised substantially in order to be adapted to Russian law and the peculiarities of the Russian construction process. Therefore a better alternative would be to develop a 'custom-made' contract for a certain project.

The rules for choice of law and dispute resolution are pretty standard in Russian law and do not differ much from other jurisdictions. When a contract is entered into with a foreign contractor usually a neutral applicable law and international arbitration are selected.

### 8 Payment methods

How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

A typical payments structure in a construction contract in Russia differs from the one used in Western countries. In Europe or the United States one would expect to see a 'milestone payment' or 'payment schedule structure' in a construction contract – a system where a portion of contract price is allocated to achievement of a milestone or calendar date. Russian customers and contractors are more used to the 'progress payment system', which is a combination of one or several advance payments and 'progress' payments for the physical quantities or packages of work actually completed. There are two types of progress payments. If a contract price is based upon unit rates and not a fixed sum then the customer may pay a contractor a monthly payment based upon a bill of quantities (KS-2), which reflects the actual quantities completed during the reported month. When a price is a fixed sum it can be broken down into work packages (each of the work packages should represent at least a complete unit. It cannot be 3 metres of a pipe or 5 cubic metres of soil) indicating the price of each work package. The contractor is paid a price of a work package when such a work package is complete. If advance payment has been paid it is usually deducted on a pro-rata basis from either monthly payments or work package payments. The reasons for such a structure are in the fact that according to Russian accountancy rules all the amounts that are paid prior to actual acceptance of work or complete package of work are deemed to be advance payments. Consequently, due to the internal treasury policies of most of the Russian large companies all the advance payments must be backed up with an advance payment bond. No contractor is willing to provide an advance payment bond equal to 100 per cent of the contract price.

The contract price is usually paid by electronic payment (through wire transfer or by means of a letter of credit).

### 9 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

Although it is difficult to outline a single typical contractual matrix, most major projects are implemented on an EPC or EPC(M) basis, when a general contractor is employed by the customer and subcontractors are employed by the general contractor on its own behalf. The construction manager's own engineers are usually employed for consultancy services. However, in some of the large projects that we know of, the design, main equipment, construction and installation works were procured separately by the customer directly. This approach involves more risks and can be handled only when a customer has a good project management team in place. In some of the projects that consisted of many facilities (for example, a power plant that included a main building and infrastructure around it), a foreign EPC contractor was responsible for the main building and other contractors were hired by the customer for infrastructure objects.

**10 PPP and PFI**

Is there a formal statutory and regulatory framework for PPP and PFI contracts?

There are very few laws for PPP, which makes it difficult to structure such projects. The cornerstone act is the Federal Law No. 115-FZ of 21 July 2005 'on Concession Agreements'. A concession is an agreement between federal, regional or local authorities and a private party, according to which the private party undertakes to erect or refurbish, maintain and operate an immovable object that is or shall become state, regional or local property and the other party grants to such private party a right of use. It should be noted that such law does not provide for enough flexibility – it establishes the forms of concession agreements, which are mandatory – thus, it is very difficult to adjust them to the needs of the particular project.

The term private finance initiative (PFI), being a predecessor to the concept of a PPP, has no separate legal or regulatory framework in Russia.

**11 Joint ventures**

Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

Unless otherwise provided for in the contract, all members of consortia are jointly and severally liable to the customer. However, it is allowed by law for a construction contract to provide for the allocation of liability between consortia members (ie, each member is liable only for his or her own share of obligations). It is also possible to allocate the responsibilities, describing exactly which works are to be performed by each consortia member, but at the same time having them jointly and severally liable for breach of the contract.

**12 Tort claims and indemnity**

Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

Russian law does not recognise the mechanism of indemnities. Provisions on indemnities often appear in the contracts that are concluded with foreign contractors but Russian courts can either claim such provisions are null and void or construe them as a reimbursement-of-damages clause. Court practice has not settled on this issue and judgments of different courts can vary. If the damages were caused by negligence of the first party it is unlikely that the first party would be indemnified in full and the amount of damages awarded by the court can be reduced.

**13 Liability to third parties**

Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

The contractor does bear responsibility to the third parties under a general tort concept, which is established by chapter 59 of the Civil Code of Russia. Such liability has to be insured, a requirement of SROs. Third parties are entitled to raise and pursue a direct claim against the contractor.

**14 Insurance**

To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards. Does the local law limit contractors' liability for damages?

According to section 932 of the Civil Code of Russia, contractual liability can be insured in cases specifically set out by the law. Russian laws contain no provision on the insurance of contractual liability in

construction, which means that such insurance is not allowed. Delay damages potentially could be insured as 'entrepreneurial risk' under section 933 of the Civil Code; however, to our knowledge there is no such insurance product available on the market. All types of third-party liability, both injury and damage to the property (including adjacent buildings), and environmental hazards can be insured. The law limits neither contractual nor extra-contractual liability of the contractors.

**15 Labour requirements**

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

There is no legally established requirement to have a minimum amount of local labour on a particular construction project.

**16 Local labour law**

If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

Russian labour law and court practice are employee biased. Employment can be terminated only in accordance with the grounds set out by the Labour Code of Russia. Completion of a construction project is not provided as one of the grounds for termination of employment. However, the Labour Code allows for a fixed-term employment agreement, which terminates upon its expiration. Contractors are advised to take advantage of such fixed-term employment agreements.

**17 Close of operations**

If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

The parties to the construction contract are free to establish the grounds and consequences of termination. Normally construction contracts do not allow the contractor to terminate the contract for convenience. If a contract does allow the contractor to terminate for convenience, it usually provides that the consequences of such termination are equal to the consequences of termination for cause by the customer, which may include, among other things, payment of termination fees.

**18 Payment rights**

How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

The usual means to secure the payment obligations are: commercial and stand-by letters of credit, bank guarantees and corporate guarantees (in Russia corporate guarantees are effected through the mechanism of surety). Also, foreign contractors usually ask for larger advance payments from the customers in order to have positive cash flow and fewer payment risks. Contractors may have liens on the property unless excluded by the contract.

**19 Contracting with government entities**

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

According to section 127 of the Civil Code, the Act on the Immunity of the State and of its Property is supposed to be adopted, which would regulate the specifics of the liability to be borne by Russia or by the subjects of Russia in relations regulated by civil legislation in which foreign legal entities, citizens and states are involved. No such law has been adopted so far, which means that Russia enjoys full sovereign immunity. It is a complicated question whether Russia



could waive its sovereign immunity in a particular contract entered into by Russia with a foreign contractor. We are of the opinion that until adoption of the above-mentioned law, and without a specific law that would clearly state that the waiver is allowed (eg, an Act on Product Sharing Agreements allows for the waiver of sovereign immunity in product sharing agreements), a contract provision on the waiver of sovereign immunity could potentially be declared null and void.

## 20 Statutory payment protection

Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

When the projects are interrupted or cancelled the unpaid contractor who has performed work is entitled to a standard set of claims:

- exercising lien rights on the building under construction as well as on the customer's equipment, materials and other property located at the construction site. However, the courts' practice is quite controversial, some courts say that lien rights can be effected only if the construction contract is terminated;
- exercising rights under a financial security if there was one (bank guarantee, stand-by letter of credit);
- making a general claim on the payment of the contract price and damages against the customer. When the project is terminated by the customer for convenience, the contractor is entitled to a share of the contract price, proportional to the work completed and damages, which, however, cannot exceed the difference between the total contract price and the share of the contract price that has been paid to contractor (section 717 of the Civil Code); or
- initiating insolvency proceedings against the customer. This remedy is not exercised often.

## 21 Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

According to section 401(3) of the Civil Code, a party can be excused from liability if it proves that proper performance was impossible due to an act of God. Failure to perform obligations caused by the failure of subcontractors or by a lack of funds or any goods on the market cannot be regarded as an excusable event. The parties can negotiate in a particular contract a specific list of force majeure and excusable events that would spare one or both parties from liability.

## 22 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

To our knowledge there are no such tribunals at the moment. There have been some attempts to create specialised tribunals by some SROs, but they have never been popular with the rest of the market. Many construction disputes between Russian companies go to the Arbitration Court for Economic Disputes at the Chamber of Commerce and Industry of the Russian Federation

## 23 Dispute review boards

Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

Dispute review boards are not used in Russia.

## 24 Mediation

Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

Mediation has not gained wide acceptance in Russia although a positive trend of the state to encourage the parties to use mediation can be acknowledged. Particularly, the Act on alternative procedure for settling disputes with the participation of an intermediary (mediation procedure) was adopted on 27 July 2010. Article 135 of the Arbitrazh Procedural Code (the law that contains procedural rules for state economic courts) provides that a court, when preparing the case for hearing, has to explain to the parties their rights to appeal for the assistance of a mediator. Should the parties decide to turn to a mediator, the court can delay judicial proceedings upon the motion of both parties.

## 25 Confidentiality in mediation

Are statements made in mediation confidential?

According to section 5 of the Act on alternative procedure for settling disputes with the participation of an intermediary (mediation procedure), confidentiality of mediation proceedings is presumed, which means that:

- the mediator cannot disclose the information relating to the procedure of mediation or such information that he or she became aware of during mediation, without the prior consent of the parties; and
- the parties, mediator and other parties that were involved in mediation proceedings cannot, unless the parties agreed otherwise, refer during court and arbitration proceedings to:
  - a proposal of one of the parties to use mediation as a means of dispute resolution as well as the readiness of a party to accept mediation;
  - opinions or proposals raised in the course of mediation proceedings;
  - submissions made by a party during mediation proceedings; or
  - the readiness of a party to accept the proposal made by the other party or mediator.

## 26 Arbitration of private disputes

What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

In terms of the number of disputes, litigation in the economic courts is leading by far over arbitration. However, most of the contracts to which foreign contractors are party provide for international arbitration (ICC, LCIA or Stockholm Arbitration Institute Rules, which is quite popular) as a venue. Also, in some bigger contracts (especially EPC and EPC(M) contracts) between Russian companies, the parties sometimes prefer arbitration to litigation. One of the popular arbitration institutions for local (Russian-to-Russian) disputes is the Arbitration Court for Economic Disputes at the Chamber of Commerce and Industry of Russia. It should be noted that Russian state courts for economic disputes are called 'arbitrazh courts', sometimes incorrectly translated into English as 'arbitration courts'.

## 27 Governing law and arbitration providers

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

When construction contracts are entered into with foreign contractors, a neutral jurisdiction is most often chosen by the parties as a governing law, for example, English, Swiss or Swedish law.

The parties cannot choose a law that would apply to the title of real property located in Russia, but otherwise the parties to a construction contract are free to choose the governing law.

The Arbitration Institute of Stockholm Chamber of Commerce is preferred over other international arbitration providers. This institution is used to resolve disputes with many of the Soviet companies. They have the Rules and all the appropriate documentation in Russian and it is cheaper compared to the ICC or LCIA. However, the ICC and LCIA are also used. There is no specific resistance to hearings being held in a particular jurisdiction.

## 28 Dispute resolution with government entities

May government agencies participate in private arbitration and be bound by the arbitrators' award?

Russian government agencies can participate in private arbitration but they remain subject to sovereign immunity.

## 29 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

Russia is a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) and foreign arbitral awards are recognised and enforced in Russia in accordance with the procedure set out by chapter 31 of the Arbitrazh Procedural Code (APC). The procedure of recognition and enforcement lies within the competence of state economic (arbitrazh) courts. The list of grounds under which recognition and enforcement of foreign courts' decisions and foreign arbitral awards can be denied is established by section 244 of the APC. However, with regard to foreign arbitral awards, section 244 of the APC merely contains a reference to international treaties of Russia and to the Act on international commercial arbitration. This list of grounds for rejection is set out in section 36 of this Act. These grounds are fully in line with those provided for in article V of the New York Convention.

Further, it should be noted that according to section 246(2) of the APC, a foreign arbitral award can be enforced only within three years of its being awarded. Effectively, this means an introduction of additional grounds for the rejection of a foreign arbitral award, which is not provided for by the New York Convention. However, according to the Constitution of Russia, international treaties that Russia is a party to form part of the Russian legal system, have a direct effect on and prevail over national laws. It means that an interested party could potentially claim that the respective provision of the APC contradicts the New York Convention and thus should not be applied.

## 30 Limitation periods

Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

There are separate limitations for raising a claim (ie, informing the contractor of a claim) and commencing a law suit.

### Raising a claim

According to section 724 of the Civil Code, if the contract does not stipulate the warranty period, the claim can be raised within two years of handover of work, unless the contract provides otherwise. If the warranty period is shorter than two years then the claim can still be raised within two years of handover of work. However, if a claim is raised during the gap between the end of the warranty period and the expiration of two years, the customer must prove that the defects arose before handover of works or due to reasons that took place before such a handover. For capital construction objects

## Update and trends

During 2012 – 2013 there were quite a number of new major projects started or announced. The oil and gas sector is still one of the drivers. Multi billion projects of LNG, gas treatment and gas processing, oil refinery plants and pipelines are in the process of being constructed: Yamal LNG of Novatek/Total and Rospan of TNK-BP/Rosneft are good examples. The electric power sector is still continuing to develop. New power plants, transmission and distribution lines, substations and grid infrastructure are being constructed and commissioned. The public transportation infrastructure sector also looks very promising and although not many projects have been officially started and awarded, we expect that this industry shall become a driver for the next 10 to 15 years. Some of these projects are huge, the high-speed railway link between Moscow and Kazan is an example. It should not be forgotten that Russia will host the Winter Olympics 2014 in Sochi and the Football World Cup in 2018. Although all the facilities in Sochi are now almost complete, there are still many stadiums, airports, hotels and infrastructure to be built for the Football World Cup in 2018, which will take place in several Russian cities.

International contractors have become active in the Russian market and the share of the projects they are getting is gradually increasing. They have been particularly successful against Russian contractors in large-scale projects. However, given the fact that Russian construction laws and industry practices differ in many important aspects from the Western ones, international contractors still need to do much to become successful during the implementation phase.

the above-mentioned two-year limitation period is extended to five years, otherwise the rules are the same.

### Commencing a lawsuit

According to section 725 of the Civil Code, the limitation period for a lawsuit arising from a construction contract constitutes one year. However, for buildings and capital construction objects a limitation period of three years applies. The limitation period starts at the moment of full (final) acceptance of the result of works (even if the contract provides for partial acceptances). However, if a claim is raised during a warranty period, the limitation period starts at the moment of raising such claim. It should be noted that expiration of the limitation period does not prevent the filing of a lawsuit or a court from hearing the matter, it applies only if the defendant makes a statement after the expiration of the warranty period. In such a case, the claim will be denied by the court.

## 31 International environmental law

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Russia is a party to the Stockholm Declaration of 1972. Provisions of this Declaration were implemented into national law by means of the Constitution of Russia as well as a considerable number of laws and by-laws, among which the Act on Environmental Protection No. 7-FZ of 10 January 2002, the Act on Protection of Atmospheric Air, and the Land Code, Water Code and Forest Code could be outlined.

## 32 Local environmental responsibility

What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

Russian environmental legislation is fairly strict and liability for violation thereof may include civil, administrative or criminal liability, depending on the type of violation and its consequences. The requirements of environmental and ecological laws need to be considered in the whole course of the development and construction of a project,

beginning from the planning and reservation of a land plot. A design that is subject to the approval of a state expert must contain a section devoted to environmental protection. In some cases, special ecological expertise has to be sought.

### 33 International treaties

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Russia is a party to investment agreements for the protection of investments with many countries; however, they are all of a generic nature and none of them is devoted specifically to construction or infrastructure. A model agreement for the protection of foreign investments was adopted by Government Resolution No. 456 from 9 June 2001. According to this model agreement, an 'investment' is all property that is invested by the investor of one contracting party on the territory of the other contracting party in accordance with the laws of the latter, and may include:

- moveable and real property;
- shares, participation interest and other forms of participation in the capital of business entities;
- a right of claim on the money invested for the creation of economic merits, or under contracts having economic merits and related to capital investments;
- exclusive rights for intellectual property (copyright, patents, industrial designs, models, trademarks or service marks, technology, information of commercial value and know-how); and

- the rights to perform business activities given on the basis of the laws or a contract, including, in particular, the rights related to the survey, development, mining and operation of natural resources.

### 34 Tax treaties

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Russia is a party to double taxation treaties with most countries. The conditions of these double taxation treaties may vary but in most cases they include provisions that are applicable to contractors.

### 35 Currency controls

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

Russian currency control legislation since the adoption of the Act on currency transactions and currency control from 10 December 2003 is quite liberal and does not impose any significant restrictions on exchange operations or the repatriation of profits.

### 36 Removal of profits and investment

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

See question 35.



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