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FIVE ADVANTAGES OF DOING BUSINESS IN...

FOR PRIVATE CLIENTS
AND CORPORATE ENTITIES



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5 reasons not to be afraid of doing business in Russia

Russia is the world's largest country, rich in natural resources and talented people. Businesses from all over the world have always been interested in its market and territory. At the same time, historically, Russia's political system has always had a great effect on its economy and other spheres, which sometimes have caused risks for foreign investors.

Nowadays, in the year 2019, Russia faces the same situation, when one may say that it is not the most popular jurisdiction to invest in. However, we would like to give the potential foreign investors some good reasons not to be afraid of Russia as a partner and a place to do business in.

1. Legal System

Since the collapse of the Soviet Union Russia has turned back to the private law-oriented Civil Law system. Now Russian legal system overall is quite within the general framework of Continental European law approach, in many respects conceptually quite understandable to most foreign lawyers familiar with European civil law systems, although still transforming.

Russian law is codified in the form of codes and statutes (laws). Although the courts' jurisprudence is also important for the understanding of how the courts interpret the law, legal precedents are not among the official sources of law.

The system of law is traditionally divided into substantial and procedural law, private and public law.

The main branches of law are codified into the codes. The key codes currently in force are the following:

- Civil Code;
- Civil Procedure Code;
- Commercial Procedure Code;
- Code of Administrative Offences;
- Code of Administrative Judicial Procedure;
- Criminal Code;
- Criminal Procedure Code;
- Tax Code;
- Land Code;
- Family Code;
- Customs Code of Eurasian Economic Union (which is actually an international treaty adopted

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by the member states of the union);
 - Merchant Shipping Code and others.

There is also a number of specialized laws on certain subjects (e.g., the federal laws 'On Enforcement Proceedings', 'On Insolvency (Bankruptcy)', etc.).

All in all, the sources of Russian law are quite well-systemized, which makes it easier to apply and research them.

It is also worth mentioning that most of the laws are federal, which means they are effective throughout the territory of the Russian Federation. Russia's regions also have some regional law, however, they cover only some certain issues: land law (primarily in terms of land taxes and lease payments), some local tax issues, municipal issues and some others.

Importantly, Russia is a party to many international treaties and conventions important for international commercial relations. Among most notable ones are Convention on the International Sale of Goods (1980), the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention, 1961), the Washington Convention On The Settlement Of Investment Disputes Between States And Nationals Of Other States (establishing ICSID, 1965), the European Convention on Human Rights and many others. Since 2012, Russia is also a member of WTO.

Russia also participates in various regional and bilateral international treaties. First of all, it is a member of the Eurasian Economic Union (together with Armenia, Belarus, Kazakhstan and Kyrgyzstan). The union member states have an integrated single market with single customs territory and other common policies. Russia is a party to a good number of bilateral investment treaties, double taxation agreements and mutual legal assistance treaties with countries all over the world. Under Russian Constitution international treaties to which Russia is a party take precedence over national laws. As a result, international lawyers knowledgeable about the relevant treaties and conventions are de facto quite familiar with some fundamental provisions of the Russian legal system.

Nowadays, Russian law is evolving to factor in the unstoppable digitalization of different spheres of modern society. Various matters of e-commerce have gained legislative regulation; electronic documents and internet technologies are being implemented in dealings with various

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state authorities (including courts). Recently a new law has been enacted, proposed to regulate crowdfunding, peer-to-peer lending and other new forms of crowd-investing (the Federal Law dated August 02, 2019, No. 259-FZ).

Thus, the modern Russian Law System is quite logical and westernized, which is absolutely a plus when you are considering doing business in this jurisdiction.

2. Corporate forms and procedures

In Russia, there is quite a straightforward and easy procedure for setting up a new commercial entity, which is a good advantage for foreign investors.

Russian corporate laws provide for all commonly known corporate forms of commercial entities: limited liability companies, public and private joint-stock companies. A sole proprietorship (or registered individual entrepreneurship) is quite popular as well, especially among small businesses. A foreign investor has three basic options to start doing business in Russia: (1) setting up a new company fully or partly owned by the foreign shareholder; (2) buying active business with a share in active company; (3) setting up a representative or a branch of foreign company in Russia.

The most straightforward way to set up a business entity in Russia is registering a limited **liability company** – LLC (Russian abbreviation is **ООО**).

Generally, there are no specific requirements or limitations for foreign investors willing to set up a limited liability company in Russia. The foreign shareholders may fully own the company in Russia, or it may be a joint venture with Russian shareholders.

A standard list of the documents required for the registration of LLC includes the following:

- resolution of the general meeting of shareholders regarding the company formation;
- articles of incorporation of the future company;
- application form (shareholders' signatures are to be notarized);
- documents of the foreign shareholder (excerpt from the trade register for a foreign company).

The shareholders are also required to pay the state registration fee, which is 4,000 Rubles for LLC.

Registration of commercial companies is carried out by the tax authority. The registration procedure usually takes 3 business days.

Since the application form for the registration has to be notarized, there are two practical options available for the foreign shareholders: (1) come to Russia and sign the application form in front of a Russian notary; (2) sign the application form abroad, at the shareholder's place of business, and then such a form, apostilled and translated, may be presented to the Russian registration body.

Another option is to buy a share in an active (or a newly registered) company in Russia. The

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relevant procedure for the share transfer from the Russian owner to the foreign one is much easier than that of the registration, so this may also be a useful tool to simplify the arrangements.

All the procedures with the registration body may be carried out in an electronic form. All in all, **electronic means of communication** are quite well-developed. For instance, almost any information about a Russian company is publicly available in electronic form at the website of the Russian tax authority ([nalog.ru](#)).

Russian corporate laws have been quite modernized recently. As a result, many corporate transactions and shareholders deals may be structured and tailored quite well under Russian law, although just few years ago the English law had an absolute monopoly in this sphere.

3. Taxation

The Russian tax system consists of three levels: the federal, regional and municipal taxes.

As a general rule, **commercial companies** may be subject to the following taxes:

(1) federal taxes:

- VAT;
- corporate income tax;

(2) regional taxes:

- transport tax;
- tax for immovable property (corporate assets tax);

(3) municipal taxes:

- land tax;
- trade fee (only for certain regions, including Moscow and Saint Petersburg).

General **VAT** rate is **20 %**, although some industries may be entitled to apply a lower rate or even tax exemption.

Corporate income tax rate is generally **20 %**, but in certain cases, a company may be subject to a lower rate or exemption.

Russia applies both “at source” and “resident” methods for corporate income tax. Thus, the dividends paid to a foreign company, the shareholder of a Russian company are generally subject to corporate income tax “at source” at the rate of **15 %**. A lower rate may be applied in accordance with a bilateral double taxation agreement: e.g., 10 % or 5 % in accordance with the agreement between Russia and the Republic of Cyprus.

There are also rules for transfer pricing and thin capitalization in the context of the corporate income tax. For instance, Russian tax law indicates certain maximum and minimum loan interest

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rates for the loans between related companies, as well as the total interest amount for the cases of thin capitalization.

Small businesses may also apply specific tax regime, the so-called **simplified taxation system (STS)**. STS is actually a unified tax applied instead of the three taxes: VAT, corporate income tax and corporate assets tax. STS may be applied either to the gross revenue with the rate of 1-6 %, or to the difference between the gross revenue and expenses with the rate of 5-15 %. Certain STS rates differ from region to region and are determined by the regional authorities (for example, in Moscow, general STS rates are 6 % and 15 %, accordingly).

STS may not be applied by a company 25% or more of which is owned by another company or companies (including a foreign company) as shareholder(s) or participants. In order to address this limitation, in order to apply STS by the Russian subsidiary, the share capital may be distributed among foreign individuals.

Taxes for individuals are generally the following:

- **individual income tax** (only 13 % for Russian tax residents and 30 % for non-residents, although a lower rate may be applied in accordance with the double taxation agreement);
- transport tax;
- land tax;
- immovable property tax.

The Russian tax law contains specific rules for **controlled foreign companies (CFC)** – the case when a Russian person owns more than 25 % of the share capital of the foreign company. As a general rule, the income of CFC may, under certain circumstances, be subject to corporate income tax in Russia, as a part of the income of the controlling person (either a company or an individual).

In general, the Russian tax law is compliant with the actual practices of international taxation and OECD practices. However, tax rules should always be taken into consideration when planning the business in Russia, since forewarned is forearmed.

4. Real Estate

Land and other immovable property are among the most valuable assets in almost any country or region. If a physical presence is needed for a certain business (e.g., retail, production, logistics), then the legislation of real estate matters is particularly important.

Russia has a registration system regarding real estate rights, which means that any title in the real

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estate must be registered to be recognised (i.e., ownership, as well as any encumbrances, such as pledge, or a lease, or an easement). In accordance with Russian law, title in the real estate is deemed to be transferred at the moment of the relevant record of transfer is made in the Unified State Register of Real Estate. In order for the title to be registered both parties of the transaction need to file an application for the transfer of title to the registration body.

According to Russian law, a purchase agreement for the real estate needs to be in writing in the form of a single document signed by both parties. There is no general requirement for the real estate purchase agreement to be notarized, however, the parties may, upon their mutual agreement, have it notarized.

Russian law provides for the three main types of real estate:

- plots of land;
- buildings and constructions;
- compartments (separate units) in buildings and constructions, as well as parking places.

These types of real estate are considered as separate objects and, therefore, may be owned by different persons.

The Unified State Register of Real Estate contains data about all real estate objects and any titles in it. The information on the register is publicly available and may be obtained in hard copy or in electronic form.

The title's official registration is considered to be a warranty for the potential buyer of a real estate (or a potential creditor, or a tenant) against third parties' claims.

There are just a few restrictions for foreign investors to hold real estate in Russia. Foreign persons are not allowed to hold title in land plots located in the border territories; agricultural-purpose land plots (but they can hold lease of it); and land plots located within the boundaries of sea ports. However, a foreign investor may set up a Russian company in order to own a real estate and, and in that case, some of these restrictions may be overcome.

The potential difficulty of the real estate transactions in Russia is arising from the fact that the legislation in this area is still quite modern. Actually, the laws regulating the immovable property relations have been modified several times during the last 25 years. Due to this reason, a thorough audit of the relevant title should be carried out before any serious transaction regarding real estate is entered into. The required information necessary for such an audit is usually available

and may be obtained. Therefore, a good team of legal professionals may help with this task.

5. Judicial System

Any business sometimes faces conflicts and legal disputes, which need to be decided in court. In Russia, commercial court proceedings usually take less time and money than in many other jurisdictions.

Russian judicial system is vertically structured and contains several subsystems. The two main subsystems are commercial courts and the general jurisdiction courts.

The system of commercial courts (in Russian called 'arbitration' or 'arbitrazh' courts, though these are still state courts and not an arbitration in nature) comprises of three levels: first instance courts (one court for each Russian region); appellate courts (one court for several regions); cassation courts (only 10 courts all over Russia).

The commercial courts resolve all commercial disputes (i.e. almost any disputes with commercial entities, either Russian or foreign), as well as tax and administrative disputes concerning the commercial parties. Commercial Procedure Code is applied by the commercial courts.

Other disputes are resolved by the general jurisdiction courts: civil disputes (disputes with citizens, such as consumer claims, family disputes and others), criminal and administrative cases. The general jurisdiction courts system also comprises of three levels. Procedural laws applied by the general jurisdiction courts are the Civil Procedure Code, Code of Administrative Judicial Procedure, Criminal Procedure Code.

Both the commercial courts and the general jurisdiction courts systems are united at the highest level, in the Supreme Court of the Russian Federation. At the Supreme Court, four separate chambers are set up for administrative, criminal, civil and commercial disputes.

There is also a specialized Court on Intellectual Property Rights. The court considers IP cases as a first instance and a cassation instance court.

A certain advantage of the Russian court system is that the procedure is quite expedient. In civil and commercial cases, within 5 days upon the plaintiff's application filed to the court, the judge is obliged to start the proceedings and schedule the first court hearing. The first hearing is usually held within 2 months. An average term of proceedings in commercial courts is about 6 months for

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the court of the first instance and 2 months for each appellate and cassation courts.

Another advantage is that the trial costs to litigate in Russian (both as far as the court fees and the attorneys' fees are concerned) are quite modest by international standards. And that is one of the reasons of relatively low popularity of the domestic non-state commercial arbitration in Russia.

It is also worth mentioning that Russian courts have adopted latest technologies and electronic means of communication. Required data about court proceedings might be easily found online on official websites: case law is searchable online (texts of all the court decisions and interim injunctions are promptly published online), dates of the court hearings and procedural status are published for public access. All procedural documents may also be filed to the court through the internet. A party to the proceedings may attend the court hearing via video conference from another region of Russia.

Thus, Russia is a modern country actively developing, its legislation is quite up-to-date. A foreign investor looking into Russia may surely consider its legal system as one of the reasons not to be afraid of doing business there.

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