

Joint Ventures

Contributing editors

Gavin Williams and James Farrell



2018

**GETTING THE
DEAL THROUGH** 

GETTING THE
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Joint Ventures 2018

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Published by
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First published 2017
First edition
ISSN 2515-3765

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Form

1 What are the key types of joint venture in your jurisdiction? Is the 'joint venture' recognised as a distinct legal concept?

Historically, a typical joint venture structure for holding a Russian investment involved an offshore company (often located in Cyprus, Luxembourg or the Netherlands) holding interests in Russian operating companies, with a shareholders agreement (SHA) governed by English law. The popularity of offshore vehicles was owing to the greater flexibility in structuring the relationship between investors (typical in international joint ventures) and the benefit of double tax treaties and bilateral investment treaties offered by other jurisdictions.

Reforms to Russian law in recent years have increased the availability of Western-style structuring options for onshore joint venture entities. For example, Russian law now expressly recognises several key mechanisms commonly used in English law SHAs, such as put and call options, and drag- and tag-along rights. As such, in our view, an onshore joint venture regulated by Russian law is now a viable (if infrequently chosen) joint venture structure.

Typically, an onshore joint venture involves a Russian law SHA concerning a Russian joint venture entity supported by an English law agreement containing anti-dilution and shareholder information provisions, and an English law deed of indemnity. The two most commonly used Russian joint venture entities are a limited liability company (LLC) (shareholders in LLCs are called 'participants' and participants' stakes are called 'participatory interests') and a non-public joint-stock company (non-public JSC).

While unincorporated joint ventures are recognised by Russian law, they are not commonly used by foreign investors.

2 In what sectors are joint ventures most commonly used in your jurisdiction?

The energy and natural resources sectors account for a significant portion of joint venture activity in Russia. This is likely to continue, given Russia's abundant oil and gas reserves and the complexity and expense involved in their development. Recently, market statistics indicate that there has been a relatively high level of joint venture activity in the transport and infrastructure, real estate, pharmaceutical and construction sectors. Looking forward, market commentators suggest that joint venture activity is likely to increase in the retail, e-commerce, transport services, manufacturing and agriculture sectors, in line with the recovery of the Russian economy. In this regard, the recently announced joint venture between Yandex and Sberbank to develop the 'Yandex. Market' e-commerce ecosystem might be an early sign of more e-commerce joint ventures to come.

Venture parties

3 Are there rules that relate specifically to foreign joint venture parties?

Foreign investors are generally not subject to additional regulation above that which is applicable to other businesses operating in Russia; however, foreign investors do require additional governmental approvals in certain circumstances, such as when investing in strategic business sectors (see question 13).

That said, foreign investors are subject to a number of specific rules. For example, a maximum foreign ownership cap of 20 per cent applies to mass media companies and foreign ownership caps also apply to insurance companies. Recently, a draft law was proposed, which, if adopted, will set foreign ownership caps on 'traffic-exchange points', which may include telecommunications companies. Foreign investors engaged in exploration and production of subsoil fields are also subject to specific rules.

4 What requirements are there to disclose the ultimate beneficial ownership of a joint venture entity?

There is no general obligation to disclose the ultimate beneficial ownership of a joint venture entity, subject to the following exceptions:

- if the joint venture requires anti-monopoly approval, the regulatory filing must disclose the ultimate beneficial owners with more than a 5 per cent shareholding;
- under Russian anti-money laundering legislation, Russian entities must take measures to identify persons who have a more than a 25 per cent shareholding (direct or indirect) or otherwise control it;
- the ultimate beneficial ownership may need to be disclosed if the joint venture participates in tenders (especially public procurement tenders); and
- Russian residents holding shares in or controlling foreign companies or non-corporate entities must notify Russian tax authorities of such shareholding or control, subject to certain thresholds.

Setting up and operating a joint venture

5 Are there any particular drivers in your jurisdiction that will determine how a joint venture is structured?

As with any jurisdiction, a number of factors drive joint venture structuring. Typical factors include:

- increasingly complex regulation;
- marrying the requirements of Russian law with the governing law of the transaction;
- international sanctions;
- the rapidly evolving tax regime;
- the lack of established market practice to benchmark transactions against; and
- satisfying the requirements of Russian regulators, particularly if the transaction concerns a strategic business sector.

As mentioned under question 1, concerns about the enforceability of certain provisions of SHAs under Russian law have historically resulted in offshore joint venture structures.

6 When establishing a joint venture, what tax considerations arise for the joint venture parties and the joint venture entity? How can tax charges be lawfully mitigated?

Russian legislation dealing with controlled foreign corporations (CFCs), which came into force in 2015, continued to develop in 2016 and 2017. Although broadly consistent with the EU's and Organisation for Economic Co-operation and Development's (OECD) approaches, these rules remain widely untested in the Russian legal framework, especially in courts.

The Russian legislation concerning CFCs sets out rules in four areas of tax structuring. First, it addresses the taxation of profits received by CFCs of Russian residents but not yet received by the Russian residents themselves. Second, it requires Russian residents holding shares in, or controlling, foreign companies or non-corporate entities to notify the Russian tax authorities of such shareholding or control. Third, it lays down the test for determining the tax residency of legal entities; and lastly, it introduces the concept of beneficial ownership of income for the purposes of double tax treaties.

The Russian government's aim is to restrict the availability of double tax treaty benefits for recipients of passive income from Russian sources where offshore structures are deliberately established to obtain tax treaty benefits for the ultimate beneficial owners of such income.

Within the same trend, interest taxation rules have been heavily amended, with specific transfer pricing regulations introduced concerning interest in 2016 and thin capitalisation rules revised with effect from 2017. Amendments to thin capitalisation rules restrict deductibility of interest under loans extended by foreign sister companies. Finally, earlier this year, general anti-abuse rules were introduced into Russian tax legislation.

These developments illustrate the continuing trend of Russian tax legislation becoming significantly more complex and nuanced. In tandem, Russian tax authorities are adopting increasingly sophisticated and rigorous approaches to assessing applications for double tax treaty relief. In the last 18 months, there has been a closer examination of the substance of ownership structures and the nature of the relationship between, and the functions of, the different entities in these structures. Where foreign companies or non-corporate entities are found to be acting as mere conduits or agents for the 'true' beneficial owners of income, they may be disregarded for tax treaty purposes. Investors need to be aware of this issue and seek detailed legal advice accordingly. It is also quite common for foreign partners to request indemnities regarding tax matters when buying into Russian joint venture companies.

7 Are there any restrictions on the contribution of assets to a joint venture entity?

Russian law establishes minimum charter capital requirements for LLCs and joint-stock companies (JSCs) and that their net asset value must be equal to or exceed their charter capital. Non-cash consideration for shares or participatory interests may be satisfied by securities, property, shares, participatory interests, state or municipal bonds and exclusive rights.

There are now recently implemented restrictions on how proprietary rights can be contributed. Restrictions on non-cash consideration may be imposed by a company's constitutional documents. The value of non-cash contributions paid for shares or participatory interests at the incorporation of a company must be determined by an independent appraiser. Contributions of assets from shareholders are tax-free for the receiving Russian company.

8 What is the interaction between the constitution of the joint venture entity and the agreement between the joint venture parties?

Shareholders of LLCs and JSCs are permitted under Russian law to enter into SHAs to regulate the exercise of their corporate rights. Creditors and other third parties may also be party to such SHAs. As a general rule, the provisions of an SHA are valid and enforceable between the parties even if they conflict with the company's constitutional documents. That said, this rule has not been extensively tested in Russian courts.

Decisions of a company's management bodies may be invalidated if they breach the SHA, provided that all shareholders were parties to the SHA at the relevant time. Further, transactions by a party or the company's management that breach the SHA or the company's charter (respectively) may be invalidated if the other party to the transaction was, or should have been, aware of the relevant restrictions in the SHA or charter (as applicable).

Russian law requires that any disproportionate voting or profit distribution arrangements be disclosed in the state register. Otherwise, there is no requirement to register or publish SHAs relating to LLCs and non-public JSCs (save for a requirement to notify the company itself).

9 How may the joint venture parties interact with the joint venture entity? Are there any restrictions?

The traditional governance arrangement between joint venture parties is that the directors of the offshore holding company take all principal decisions regarding the joint venture, except for those decisions reserved to the shareholders by the SHA or company's constitutional documents. This arrangement is traditionally mirrored at the Russian operating company level through equivalent provisions in the company's constitutional documents. However, the recent reforms to Russian law have increasingly enabled parties to structure such governance arrangements in Russian companies.

Governance arrangements usually include an information-sharing regime. In addition, public disclosure rules apply to public JSCs and other companies must disclose prescribed information to shareholders upon request (for example, general meeting minutes and statutory audit reports). That said, these statutory information rights were recently significantly narrowed, making it increasingly important that minority shareholders negotiate contractual rights to company information.

10 How may the joint venture parties exercise control over the joint venture entity's decision-making?

As with any jurisdiction, the SHA and company's constitutional documents may contain provisions protecting minority investors and regulating joint venture decision-making.

Decision-making can be regulated at the shareholder (for example, requiring unanimous shareholder consent for certain decisions) or board level (for example, giving minority shareholders the right to appoint directors with specified veto rights). Limits may also be placed on the authority of the joint venture's corporate officers. While these provisions are typically included in an English law SHA, it is increasingly viable to place such restrictions in the constitutional documents of a Russian company and Russian law SHA.

As stated above, information rights are commonly negotiated to support minority investor participation in decision-making. Representation on company committees can also be an effective tool to ensure access to information.

11 What are the most common governance issues that arise in connection with joint ventures? How are these dealt with?

The most common governance issues arising in Russian joint ventures are broadly the same as with any jurisdiction – for example, dividend policy, approval of business plans and budgets, board appointments, veto rights and deadlock provisions. These matters are generally dealt with in the SHA or the company's constitutional documents. Other current areas of focus include compliance with sanctions, the rapidly evolving tax regime, and anti-money laundering and bribery standards.

12 With an incorporated joint venture, what controls exist in your jurisdiction in relation to nominee directors? How should a nominee director balance the potentially conflicting interests of the joint venture company and the appointing shareholder?

Russian law requires directors of Russian companies to act in the company's best interests and to exercise their rights and discharge their duties reasonably and in good faith. Directors may also be liable for damage they cause to the company by acting outside the ordinary course of business. Russian law also regulates interested-party transactions and conflicts of interest.

Russian law does not recognise nominee directors and directors are not considered representatives of a particular shareholder, even if appointed at their request. It is quite common in Russian joint ventures for shareholder procurement obligations to include actions by their nominated directors subject to directors' legal duties. Where there is a concern that directors' abilities to exercise their rights may be limited by their legal duties, this is often addressed by giving such rights to the shareholders instead of the directors.

Although Russian law prohibits companies from indemnifying directors for actions that cause the company to breach its legal obligations, it is quite common for shareholders to indemnify directors or require that a portfolio company obtain directors' and officers' liability insurance.

13 What competition law considerations are engaged by the formation and operation of the joint venture? Is approval needed?

Subject to certain exemptions, the acquisition of 'control' of Russian companies operating in 'strategic business sectors' by foreign investors requires governmental consent. Strategic business sectors include the development of significant subsoil fields, major telecommunications and print media, and the nuclear, military and aviation industries. Companies incorporated in Russia and operating in any of these sectors are within the remit of the Strategic Investment Law. 'Control' is broadly defined and includes controlling the majority of the votes at a shareholders' meeting, having the power to appoint the majority of the directors and being entitled to appoint the CEO. The control thresholds for companies engaged in 'strategic business sectors' are stricter than those applicable to other strategic companies. Foreign sovereign investors are generally prohibited from acquiring control of strategic companies.

Since very recently, the Russian government may escalate any transaction involving a foreign investor to a lengthy and complicated strategic review process, not merely those where the target is a strategic business.

Separately, the consent of the Federal Anti-Monopoly Service (FAS) is required for transactions that meet prescribed thresholds. As the thresholds are relatively low, it is often necessary to approach the FAS for their consent to transactions.

The merger-control regime and the regime under the Strategic Investments Law is suspensory, meaning that closing cannot proceed unless the clearance is in place. Gun-jumping is penalised. It is possible to sign transactions and make them conditional upon the receipt of FAS consent or the Strategic Investments Law approval. Because the regulator is entitled to impose remedies, it is quite common to provide, as a condition precedent, the receipt of regulatory approvals to the reasonable satisfaction of the acquirer or parties jointly.

14 What are the key considerations in your jurisdiction in structuring the provision of services to the joint venture entity by joint venture parties?

Separation issues are often important when structuring the provision of services and are particularly relevant when dealing with Russian majors that remain controlling shareholders. For instance, major energy companies commonly use their subsidiaries to provide operatorship and other services to a number of entities. The underlying service contracts may contain provisions that would be common for intragroup arrangements but these may not necessarily work in a joint venture context. Joint venture documents commonly stipulate that services must satisfy arm's length criteria and provide an order of priority to the parties' interests in case of any conflicts. Interested-party transaction rules must also be factored in.

15 What impact do statutory employment rights have in joint ventures?

Employees of Russian joint venture companies enjoy the same statutory employment rights and benefits under Russian law as employees of other Russian companies.

Since 1 January 2016, Russian law prohibits secondment arrangements. There is, however, an exemption for secondment arrangements between parties to SHAs in respect of JSCs which are implemented in accordance with (yet to be adopted) regulations, provided that the secondees have consented.

16 How are intellectual property rights generally dealt with on the creation, operation and termination of a joint venture in your jurisdiction?

Russian law specifies which intellectual property (IP) rights are recognised and protected in Russia and any applicable registration requirements. For example, the protection of inventions, utility models, industrial designs and trademarks depends on registration with Rospatent. Russia is also a signatory to several international IP treaties.

As a general rule, Russian law provides that the author of IP (or the employer, if the IP is created by employees during their employment duties) owns all of the associated IP rights. The owner of IP rights can assign, encumber or license such rights to third parties, provided that

this is only effective (for trademarks, patents and certain other IP) once registered with Rospatent.

Funding the joint venture

17 How are joint ventures generally funded in your jurisdiction? Are there any particular requirements relating to funding and security packages?

Traditional bank financing is the most common source of debt finance for Russian joint ventures. However, sanctions limiting the debt- and capital-raising abilities of many state and state-backed companies have impacted their ability to finance transactions. Further, international nervousness around sanctions has made many foreign banks generally cautious about lending money in Russia.

Equity financing via contributions to assets or increases of the charter capital of the joint venture company are common, although EU sanctions may limit the ability of EU investors to participate in these. Shareholder loans are also commonly used and tend to be unsecured.

18 Are any restrictions on the injection of capital into, or the distribution of profits or the extraction of cash by other means from, the joint venture entity imposed by law or regulation?

Capital may be injected in many ways, with the most commonly used forms being shareholder loans, contributions to assets (in which the charter capital is not increased and therefore shareholder stakes are not affected) and capital contributions (in which capital is increased through the issuance of new shares in JSCs or increase of the charter capital of LLCs). Debt-to-equity swaps are also allowed.

The main considerations include:

- avoiding a breach of sanctions (for instance, EU sanctions prohibit the acquisition of new shares in Russian companies which are subject to EU sanctions); and
- structuring the contribution in a tax-efficient way (for instance, capital contributions and contributions to assets would be tax-neutral for the receiving Russian company, while shareholder loans would be taxed).

Additional restrictions apply to non-cash contributions. Capital contributions increase the tax cost of the company in the event of a future disposal by the shareholder, while contributions to assets do not.

JSCs and LLCs can only pay dividends from their net profits. Dividends in JSCs can be paid as a result of the first quarter, half a year, nine months or full financial year. Net profits in LLCs can be distributed quarterly, semi-annually or annually. Dividends or distributions cannot be declared or paid if the company does not satisfy statutory solvency tests. Disproportionate dividend distribution is generally possible in LLCs subject to being duly approved and reflected in the charter and is possible in JSCs through the use of preferred stock. Cash can also be extracted through other means (eg, loans to shareholders); however, tax authorities may view such distributions as dividend distributions and tax them accordingly. Certain foreign-currency-control and repatriation-of-proceeds rules apply to Russian residents.

19 What tax considerations should be taken into account in the operation of the joint venture?

Corporates that are 'Russian residents' are liable for profits tax on their worldwide profits (calculated as gross income minus deductible expenses). Companies incorporated in Russia and foreign companies that have their place of effective management in Russia are treated as Russian residents. Non-resident foreign companies with a permanent establishment in Russia pay profits tax on the taxable profits attributable to that permanent establishment. Generally, the profits tax rate is 20 per cent. VAT is charged on goods, work and services 'supplied' in Russia and imported goods. The standard VAT rate is 18 per cent.

Dividends paid by Russian companies to foreign shareholders are subject to a 15 per cent withholding tax, subject to reduction under applicable double taxation treaties. Interest paid to non-Russian companies is subject to a 20 per cent withholding tax; however, this tax may be reduced (and even eliminated) under relevant double taxation treaties. As stated above, interest-taxation rules have been heavily amended in recent years, with specific transfer pricing regulation introduced for interest in 2016 and thin capitalisation rules revised with effect from 2017.

Update and trends

Market conditions are difficult in Russia, but improving, with foreign direct investment in the first quarter of 2017 at US\$7 billion, the highest since the implementation of sanctions. The currency fluctuations of 2015 and 2016, although stabilising, are still perceived as a risk for investors, making it hard to plan for and value investments, and continuing sanctions have made some overseas players hesitant about Russian joint ventures. However, government policy aimed at maintaining an export-friendly exchange rate, as well as the Central Bank of Russia's efforts to reform the banking and insurance sectors and the lack of escalation of the conflict in Ukraine are increasing investor confidence. Such market conditions, however challenging, present investment opportunities for participants familiar with the market.

For investors localising production in Russia for export, the low relative value of the rouble means that production costs in Russia offer significant competitive advantages, and the economic turbulence of 2015 and 2016 has gone some way to reducing valuation gaps between sellers and investors that have been prevalent in the Russian market. We expect that the energy, natural resources, agriculture, consumer

and technology, and media and telecoms (particularly e-commerce) sectors will continue to be active areas of the Russian economy and provide opportunities for investors in the rest of 2017.

As discussed above, in recent years, the Russian government has embarked on a range of reforms to create a more favourable investment climate. Russian law has been subject to numerous amendments over the years with the aim of enabling investors to implement at the onshore Russian company level, a number of typical Western-style corporate governance and shareholder agreement arrangements. Conversely, the scarcity of court decisions interpreting these new provisions and the uncertainty around which private law rules can be contractually excluded have resulted in market participants remaining cautious about implementing the new legislative framework. Overall, there are signs of increasing momentum for a bigger role for Russian law. Further, the reforms to Russian arbitration law discussed above may see market participants increasingly willing to structure their investments through Russian companies.

As with any jurisdiction, there are a range of other taxes that may be applicable to the operation of a joint venture and specific tax advice should be sought.

20 Are there any noteworthy accounting or reporting issues for the joint venture partners regarding their investment in the joint venture?

As a general rule, private Russian companies prepare their statutory accounting statements in Russian in accordance with the Russian Accounting Standards. The reporting currency is Russian rouble. Certain financial institutions, state-owned entities and public JSCs must prepare accounts in accordance with the International Financial Reporting Standards (IFRS) and perform annual audits. In practice, foreign investors typically require that joint venture companies also prepare financial statements in accordance with the IFRS.

Other notable reporting requirements include:

- foreign investors must notify the FAS if they acquire 5 per cent or more of the shares in strategic companies;
- a person who acquires control of more than 5 per cent (and higher thresholds) of the voting rights in respect of a public JSC pursuant to an SHA must notify the company of such SHA; and
- certain capital injections in Russian mass media companies by foreign investors must be reported to Roskomnadzor.

Deadlock, exit and termination

21 What deadlock provisions are commonly included in joint venture agreements in your jurisdiction?

A wide range of deadlock resolution mechanisms seen in international joint ventures are commonly implemented in both English and Russian law SHAs. For example, it is common in Russia to see deadlock resolution methods that escalate board deadlocks to the shareholder or CEO level, or refer deadlocks to arbitration. Forced buyout procedures are uncommon because of their unpredictable outcomes and difficulties raising financing due to sanctions. In a few high-profile joint ventures, a third party with a very small shareholding was included to avoid deadlocks.

Notwithstanding recent reforms to Russian law, there is still uncertainty about the enforceability of deadlock resolution procedures under Russian law SHAs because of limited court practice. As such, the use of English law SHAs for deadlock resolution procedures remains popular.

Further, subject to certain criteria, participants in LLCs and shareholders in non-public JSCs have a statutory right to apply to court to expel a participant or shareholder if such participant or shareholder grossly violates their obligations to the company. The company must pay the expelled participant or shareholder the actual value (determined by net assets) of their participation interests or shares. It is not possible to contract out of or limit this statutory right; however, court practice suggests that expulsion claims may not be enforced by courts in the context of corporate disputes in a 50:50 joint venture or where the claim is brought to expel the majority participant.

22 What exit provisions are commonly included? Does the law restrict any forms of mandatory transfer provision or any basis of calculation?

As with any jurisdiction, SHAs typically contain provisions regulating share transfer and exit. Any requirement to obtain regulatory consent to share transfers should also be addressed.

It is common in Russian joint ventures to have a procedure that allows a joint venture partner to exit through the use of a put option (whereby one joint venture partner can require the other to purchase its shares) or a call option (whereby one joint venture partner can require the other to transfer its shares to it). Frequently the non-selling shareholders will have a right of pre-emption. The non-selling shareholders may also have tag-along rights, under which a selling shareholder must procure that the purchaser of his shares acquires the shares of the 'tagging' shareholder on the same terms.

Particularly in circumstances where one shareholder holds a substantial stake, the SHA may contain drag-along provisions, under which the shareholder is able, upon exit, to compel the other (usually minority) shareholders to sell their shares to the proposed purchaser on the same terms.

Exit through an initial public offering (IPO) is rarely used as Russian capital markets are underdeveloped and current market conditions are not favourable.

23 What are the tax considerations on termination of the joint venture?

Russian tax resident companies are subject to 20 per cent tax on capital gains from the disposal of shares, subject to a five-year holding exemption, applicable in limited cases. Foreign tax residents are subject to Russian capital-gains tax only in relation to the disposal of shares in Russian companies rich in real estate. If the joint venture company is liquidated and its assets are distributed to shareholders, Russian tax authorities will tax the difference between the value of the assets and the shareholder's contribution as dividends.

Disputes

24 In your jurisdiction, are there constraints on the choice of law or the method of dispute resolution provided for in joint venture agreements?

Shareholders may choose for foreign law to govern an SHA provided that one party to the SHA is a non-Russian person or there is some other meaningful foreign element. Otherwise, the SHA must be governed by Russian law.

Litigation before Russian state arbitrazh courts and arbitration are the most common dispute resolution options. Foreign investors traditionally prefer arbitration because of its perceived neutrality, efficiency, confidentiality and the enforceability of its awards.

Recent reforms to Russian law have resolved long-standing uncertainty that disputes relating to the creation and management of and participation in Russian companies are arbitrable ('corporate disputes', in Russian terminology), provided that the arbitral institution is licensed

by the Russian government and the seat of arbitration is in Russia. This means that the majority of disputes arising out of SHAs are arbitrable. A narrow range of disputes relating to internal administration and corporate governance of Russian companies are not arbitrable.

Although foreign arbitration institutions can apply for a licence to administer Russian corporate disputes, at the time of writing, no foreign institution has obtained a licence.

25 What mandatory provisions of local law will apply irrespective of the choice of governing law?

It is not always clear if a particular statute can be contractually excluded and there is no exhaustive list of mandatory provisions of Russian law. A few notable examples of mandatory Russian laws include:

- certain corporate governance matters, such as:
 - the competence of the shareholders' meeting of public JSCs;
 - the election of directors in JSCs;
 - the notice period for shareholders' meetings; and
 - mandatory tender offer rules;
- limitations on the distribution of profits by Russian companies;
- requirements to obtain regulatory approvals; and
- the application of Russian law to transactions concerning Russian real estate.

26 Are there any restrictions on the remedies a tribunal can grant that would have a bearing on the arbitration of joint venture disputes? Are there any restrictions on the arbitration of shareholder claims?

Russian state courts have wide powers to order interim remedies under Russian law – including seizing property – prohibiting a party from performing specified actions and requiring the defendant to perform specified actions. Interim relief may be ordered if there is a risk that the enforcement of a future judgment would be difficult or impossible without it or to support arbitration or foreign court proceedings.

Russian state courts may order a variety of general remedies under Russian law, including recognition of a right, restitution, invalidation of a voidable transaction, specific performance and damages.

As stated above, the arbitration of disputes relating to the creation and management of and participation in Russian companies is subject to compliance with certain statutory conditions. A narrow range of disputes relating to internal administration and corporate governance of Russian companies are not arbitrable.

27 Are there any statutory protections for minority investors that would apply to joint ventures?

Although Russian law does not impose specific duties on majority shareholders towards minority shareholders, several minority protections exist under Russian law, including:

- anti-dilution rights for shareholders and participants of JSCs and LLCs;
- rights to challenge interested-party transactions;

- mandatory tender offer rules for significant acquisitions of shares in public JSCs;
- rights to withdraw and receive a price determined by statute for shares or participation interests (as applicable) for shareholders of JSCs and participants of LLCs following the passing of resolutions regarding certain fundamental matters where the withdrawing party voted against such resolution; and
- cumulative voting for the election of board members in JSCs and LLCs (which may be changed unanimously in non-public JSCs and LLCs).

28 How can joint venture parties have liabilities to each other beyond what is expressly agreed in the joint venture agreement?

Examples of where shareholders may be liable to each other beyond the terms of the SHA include:

- shareholders in non-public JSCs may bring a claim to enforce another shareholder's obligation to provide funds to the company if such obligation is stipulated in the company charter;
- shareholders may challenge interested-party transactions;
- as noted above, shareholder may seek to expel other shareholders; and
- shareholders exercising control of a company will be liable for damage they cause to the company.

29 Are there any particular issues that can arise in joint venture disputes in your jurisdiction concerning disclosure of evidence?

Wide-ranging discovery processes similar to those accepted in common-law jurisdictions are not used in Russia. Although Russian courts are entitled to require the production of any documents from a party to a dispute that are relevant to the proceedings, including legal advice from in-house or external counsel (which is not privileged under Russian law), in practice, requests are limited to a small number of specifically identified documents. Further, it would be unusual for a court to require the production of documents containing legal advice.

In limited circumstances, documents held by Russian advocates (regulated legal practitioners) may be protected by professional privilege. However, this does not preclude a court ordering clients themselves to disclose such documents.

As noted above, the statutory information rights available to shareholders were recently narrowed, making it more difficult for minority shareholders to substantiate claims against other shareholders, the company or management, where the relevant evidence is held by the company.

Market overview

30 What advantages does your jurisdiction offer for parties wishing to set up and operate joint ventures?

The Russian government has, in recent years, introduced subsidies, guarantees, customs and tax benefits aimed at facilitating regional



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development and fostering growth in non-extractive economic sectors. This includes measures targeting specific industries (notably, industrial, research and development, and tourism and ports) and particular regions and cities. According to information available on Russia's Ministry of Economic Development's website, there are over 20 special economic zones in Russia.

Landmark infrastructure projects are typically supported by inter-governmental agreements. For example, in the case of Yamal LNG, the Russian government committed to provide substantial tax and customs benefits pursuant to an inter-governmental treaty between Russia and China and acquired corporate bonds totalling approximately US\$2.3 billion.

Export credit support is available to qualifying Russian exporters and Russian and international financial organisations through the Russian Agency for Export Credit and Investment Insurance (EXIAR).

31 Are there any particular requirements or restrictions relating to joint ventures in your jurisdiction that could deter international investors?

At the time of writing, political events continue to have a considerable impact on the Russian commercial landscape. International sanctions target key sectors of the Russian economy and apply to a number of major Russian entities. The recent further designations by the Office of Foreign Assets Control, targeting sanctions evasion and other activities relating to the conflict in Ukraine, only reinforces the perception of Russia as a risky place to do business. New rules allowing for any foreign investment to be escalated to the level of government review do not increase certainty in deal-making.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
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Joint Ventures
ISSN 2515-3765



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