



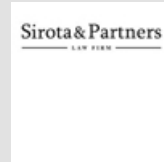
# The Legal 500 Country Comparative Guides

## Russia: Construction

This country-specific Q&A provides an overview to construction laws and regulations that may occur in Russia.

For a full list of jurisdictional Q&As visit [here](#)

### Contributing Firm



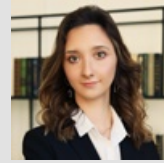
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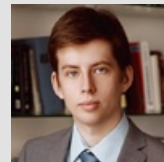
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## 1. Is your jurisdiction a common law or civil law jurisdiction?

Russia is a civil law jurisdiction and Russian law is to a large extent codified. The Land Code, Town Planning Code and Civil Code are the main codes in the area of construction. Although the system of precedents is not known in Russia, state courts play an important role in the interpretation of statutory rules. From time to time, the Russian Supreme Court issues guidelines for the lower courts that have significant practical legal value. For example, Information Letter of the Supreme Commercial Court No. 51 dated 24.01.2000 is a major source of legal authority for construction contracts and construction disputes.

## 2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

The area of construction is highly regulated by statutes, which create public law duties for all participants of the construction process. These statutory duties are specified in numerous regulations issued by Russian supervision authorities. Although these statutory duties affect contract performance, they are rarely incorporated into design, engineering or construction contracts. Therefore, special care is advisable to identify duties relevant to the specific project in addition to contractual obligations.

A key statute is the Town Planning Code, which covers public law duties of the construction owner to obtain the necessary permits and approvals prior to and during the construction process. In addition, Chapter 37 of the Russian Civil Code contains default contract law rules (implied terms) for design, engineering and construction contracts. The Russian Land Code specifies rules of land plot permitted use and other restrictions on the land use that are important for the implementation of construction projects. Also, the Land Code outlines the procedures that must be followed to acquire publicly owned land plots for construction purposes (one of them is public auction applied as a default rule). The Environmental Protection Act 2002 imposes obligations to ensure environmental safety during construction. The Industrial Safety Act 1997 outlines various compliance procedures relevant for the construction of industrial objects.

## 3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.

Health and safety

In Russia, the rules in the area of health and safety at construction sites are covered by separate provisions of different laws and regulations. Key statutes are the Labor Code and the Industrial Safety Act 1997.

The labor legislation lays down requirements related to ensuring the safety of workers during construction. Employers are obliged to assess working conditions at each workplace. Based

on the type of each worker's activity and the results of this assessment, employers have to ensure the safety of workers' health (regular medical examinations, providing personal protective equipment, payment of additional monetary compensations to workers, etc.). In addition to the Labor Code, there are a number of subsidiary regulations issued by the Ministry of Labor stipulating special provisions of labor protection for individual categories of workers (for example, works at heights, certain types of construction works, etc.).

The Industrial Safety Act 1997 sets out special requirements that are mandatory for companies engaged in works at hazardous production facilities (as a matter of practice, this is relevant for all complex construction projects). In particular, the legislation on industrial safety requires that construction companies develop special instructions for the performance of specific works, and these instructions are subject to industrial safety review and registration with the supervisory state authority. There are also a number of mandatory regulations and safety rules applicable to select types of works (for instance, underground work, work with explosives, etc.) issued by supervisory state authorities.

Non-compliance with these rules creates a risk of severe fines that may be imposed on both the construction company and its employees or the company's activities can be temporary suspended.

#### Environmental issues

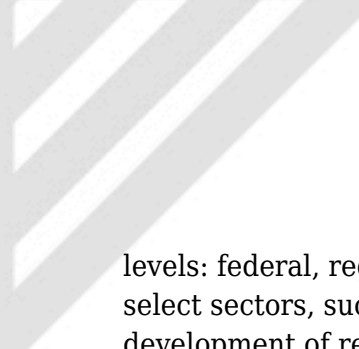
Legislative provisions concerning environmental issues are scattered across many statutes in Russia. The most significant legislation is the Environmental Protection Act 2002. Certain aspects of environmental protection, such as the protection of certain types of natural resources (water, land), pollution protection, construction waste utilization, remediation of natural resources, are covered by separate statutes (Water Code, Land Code, the Subsoil Act 1992 and the Production Waste Act 1998).

An important precondition for obtaining a construction permit for many major construction projects is the state ecological expert review. The Russian Government is responsible for determining specific criteria for construction projects subject to this review.

In the recent years, the Russian Government has also paid special attention to waste utilization issues. This area is becoming highly regulated and the Government increases environmental impact fees (the "polluter pays" principle) and fines for non-compliance with waste utilization rules. As a matter of practice, the construction owner needs to engage specialized companies for waste utilization.

#### Planning

Planning is mainly regulated by the Town Planning Code, which contains basic provisions for the approval and planning of construction projects. Planning documents are adopted at three



levels: federal, regional and local. The federal government adopts planning documents in select sectors, such as transport and energy. Regional governments are involved in the development of regional infrastructure and adopt their own planning documents, which must comply with the federal ones. Based on the federal and regional planning documents, the local authorities work out planning and zoning documents for local needs. The local authorities adopt the “land use rules,” which include zoning maps whereby certain areas are designated for residential, commercial and industrial use and usage restrictions are imposed.

The construction owner is supposed to be aware of the requirements at all three levels. For this purpose, prior to commencing construction, the project owner is obliged to obtain a city development plan for its land plot (also known in Russia as “GPZU”) at the local state architect’s office. This plan (GPZU) contains excerpts from the principal planning and zoning requirements applicable to the relevant land plot. However, the information contained in this GPZU may be incomplete. Thus, in practice, we recommend independent due diligence and analysis of applicable planning requirements prior to the commencement of a construction project, since they can prohibit the construction in the specific area or establish specific requirements therefor. The breach of planning requirements can lead to fines or demolition of the constructed object as an unauthorized construction.

## Employment

Employment issues are governed by the Labor Code, which sets substantial guarantees for workers, such as minimum wage, working hours, leave and dismissal procedures.

Considering the need to secure uninterrupted construction, special attention is to be paid to the special mandatory requirements of the Labor Code regarding working hours (work per shifts, work at night, during holidays or overtime). Since construction workers usually work in a hazardous environment, they may also be subject to additional protection, including mandatory medical checks, trainings, individual protection means, increased compensation.

Additional guarantees and benefits are also stipulated for employees working in select Russian regions (such as the northern territories).

When implementing international construction projects, it is advisable to pay attention to migration rules, as well as to restrictions and quotas for the employment of foreign personnel that are established by the Russian Government.

## Anti-corruption and bribery

The main legislative act in this field is the Anti-Corruption Act 2008. It is primarily applicable to public officials, and therefore this statute may be relevant in cases where a public client participates in construction projects. For private companies this statute is important in the sense that it contains a general rule of business responsibility for corruption and bribery,

although the specific penalties and

liabilities on this matter are set out in the Administrative Offences Code and the Criminal Code.

As a matter of practice, major construction contracts usually include an anti-corruption clause, which allows the adverse party to recover damages and terminate the contract if it identifies bribery or other corrupt practices. Where the contract does not expressly provide so, the same effect is significantly harder to achieve as there are no express statutory provisions on this matter.

In Russia, only individuals and not legal entities are subject to criminal prosecution. However, companies may be subject to administrative fines if a public official or a manager of a private company is bribed in the interest or on behalf of the company (Article 19.28 of the Administrative Offences Code).

Penalties for bribery can range from 3x to 100x the amount of the bribe depending on the severity of the offence.

Further, individual officers of the company that are involved in corrupt practices may be subject to criminal prosecution. Detailed rules on punishments for corruption and bribery can be found in the Criminal Code. Criminal liability may include, depending on the circumstances, imprisonment (up to 15 years), fine (up to 100x the bribe amount), and prohibition to occupy certain positions or engage in certain activities. Both receiving and offering a bribe can lead to criminal prosecution.

Administrative and criminal liability applies to bribery of both government officials and officers of private businesses.

#### **4. What permits/licences and other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?**

Before:

Prior to the commencement of construction works, the construction owner must obtain the city development plan for land (GPZU) at the local state architect's office. This document contains detailed planning requirements in respect of the land plot on which the construction project is anticipated. After obtaining the GPZU, it is possible to begin engineering surveys and start developing the design documentation for the project. The design documentation is subject to expert approval. The expert approval for select (usually hazardous) construction projects must be performed by the state expert authorities, but for other projects this can be done by private accredited expert organisations. Upon obtaining an expert approval of the design documentation, the construction owner must obtain a construction permit, after which

construction works can begin. The time limits for the public authorities to issue planning consents generally do not exceed 30 days. However, preparation of the supporting documentation in order to apply for the planning consents is generally time-consuming.

During:

Only construction contractors that are admitted to a self-governing organisation (so-called "SRO") in the area of construction can be engaged to perform construction works. In some cases, when the construction object is hazardous, additional licences and permits may be necessary for this object and certain construction equipment. During the construction process, the client must perform construction supervision and may be penalized for certain construction offences if they are a result of poor supervision. For this purpose, in practice, clients may wish to hire a professional technical advisor to supervise construction. In some cases, designer supervision is necessary. Governmental supervision is carried out either by regional authorities or (in case of construction of a large or hazardous industrial object) by a special federal supervisory authority Rostekhnadzor.

Completion:

After completion of construction works, the construction owner must formally commission the construction object. Commissioning is carried out with the involvement of the authority that issued the construction permit. Furthermore, the authorities that supervised the construction works have to participate as well. This procedure is generally time-consuming, as all defects and deviations discovered by the state authorities should be rectified (or legalized by formally amending the design documentation) prior to signing the completion certificate. If hazardous industrial equipment was installed, an additional permit may be necessary to operate the hazardous facility. This permit is issued by the federal supervisory authority Rostekhnadzor.

Liability for non-compliance:

Non-compliance with the procedure of obtaining authorizations may entail severe consequences. The newly constructed building may be declared unauthorized construction if the owner or leaseholder of the land plot fails to prove that the building complies with planning and construction regulations. Moreover, according to established court practice, in this regard the owner or the leaseholder must prove that it took proper steps to obtain the required permits. If the object is deemed unauthorized construction, this may lead to administrative fines (up to one million rubles for legal entities), administrative suspension of activities, or in the worst case scenario forcible demolition of the construction and compensation of losses to the affected parties.

## **5. Is tort law or a law of extra contractual obligations recognised in your jurisdiction?**

Russian law operates a doctrine of civil law delict, which can be roughly compared to the

English concept of tort. Unlike English law that provides for specific torts (such as nuisance, trespass, etc.), Art. 1064 of the Russian Civil Code establishes a general obligation to compensate harm culpably caused to others. This rule is applied in cases when the wrong is committed by a person who does not have a direct contractual relationship with the suffering party.

Russian law clearly distinguishes between contract breach and civil law delict. Generally, in case a party has a contract with the wrongdoer, only contract-based

remedies are available. Delict-based claims against a party breaching the contract are not allowed as an alternative claim (unlike English law).

The practical difference between a contract-based claim and delict-based claim is huge. In case of contract-based claims, the amount of damages cannot exceed contractual limits. In a typical construction project, the parties will agree to exclude liability for any lost profits/indirect losses, and the contractor's liability is usually limited to actual losses as well as defined liquidated damages. Further, contract-based claims are usually based on strict liability. However, in case of delict-based claims, the recoverable amount of losses is unlimited, but applies only in case of intentional or negligent conduct (exceptions are made for hazardous activities, where harm is also compensated based on strict liability).

As a matter of practice, this difference between contract-based claims and delict-based claims incentivizes affected parties (mostly project owners) to file delict-based claims and seek unlimited recovery of losses. For example, an outbreak of fire may cause substantial damages which may by far exceed the contractual liability cap. In this case, the affected party may wish to claim damages in full without regard to contractual limitations. However, the Supreme Commercial Court has condemned this approach, stating that in case a contract is concluded between project owner and contractor, a delict-based claim cannot be used (Resolution No. 1399/13 of 2013).

Apart from the law of delicts, Russian law also recognizes unjust enrichment as a general source of extra-contractual obligations in order to ensure restitution of valuables received at the expense of others without proper legal grounds (Art. 1102 of the Russian Civil Code). As applied to construction projects, this doctrine is applied in practice to recover unearned advance payments, and at times payment for additional works performed without a contract or a formal variation order.

## **6. Who are the typical parties to a construction and engineering project?**

As a rule, the parties to a construction and engineering project are client (project owner), contractor and designer.

Clients are usually private companies or public bodies. They either create their own

construction management departments or hire independent construction managers to solve construction-related issues (in Russia, these managers are at times referred to as “technical clients”). As a matter of practice, many private companies prefer to engage third party construction managers, while public clients predominantly rely on their own construction management departments.

Contractors are usually privately-owned construction companies. Commonly, clients wish to enter a contract with one contractor responsible for the whole scope of works (a so-called “general contractor”). The general contractor is responsible for engaging subcontractors for specific parts of the project but remains responsible before the client for the work result as a whole.

The general contractor is usually also responsible for the procurement of materials and equipment from suppliers. However, in complex projects the clients often

provide at least some materials or equipment to the contractor. Still, the client’s provision of materials and equipment is associated with additional risks, as it may distort the contractor’s responsibility as a “single point of liability” (where this approach is desired).

Sometimes clients choose a foreign designer or architect and then adjust the design documentation to Russian standards. This model is associated with additional risks of price increase and delay, since Russian standards are not always flexible enough to easily entertain foreign design solutions.

## **7. What are the most popular methods of procurement?**

Very often project owners rely on the “traditional method” of procurement, whereby the client first hires a designer to prepare the basic design and only then begins tendering for construction works to engage a separate construction contractor. The design phase sometimes happens years before the construction contractor is selected. However, the construction contractor is often responsible for developing the detailed design (which is the direct basis for works) based on the client’s basic design.

Another popular method of procurement, especially when bank financing is involved, is “design and build” or a turnkey model. This method is also sometimes referred to as an EPC-style arrangement. Under this method, both design and construction are within the responsibility of a single general contractor (who may engage a designer as a subcontractor). One of the major advantages of this arrangement for the client is that the general contractor is fully liable for defects and omissions in the design documentation and generally does not have a claim for additional works due to defects or omissions in the design documentation. However, naturally the client’s decision to shift additional risks to the contractor may result in a substantial risk premium.



EPCM-style arrangements, whereby the construction owner hires a construction manager to supervise construction and enters into direct agreements with several contractors, are uncommon as they are perceived to be associated with significant risks and inconveniences for the client.

**8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?**

Standard forms of construction contracts (like FIDIC or NEC forms) are not common in Russia, often because they are not fit for the Russian legal framework and practice, and thus require significant adjustments.

However, some project owners with an international background may still use FIDIC-based or NEC-based templates. These forms, however, are usually heavily adjusted to Russian law, which normally is applicable to construction contracts concluded for projects in Russia.

Still, in the majority of cases, construction contracts are drafted from scratch in the course of lengthy negotiations. This also has the advantage of ensuring that the contract contains only relevant and tailored rules that fit the needs of a particular project, which are always unique. As the basis for these negotiations, many experienced contractors and construction owners offer their own standard forms.

Still, it is extremely rare that a standard form is used without amendments in private contracts, but this may happen in case of public procurement.

**9. Are there any restrictions or legislative regimes affecting procurement?**

In the area of public procurement, there are serious restrictions that contractors must be aware of before concluding a contract with public clients. The Public Procurement Act 2013 establishes strict procedures for selecting contractors for public procurement purposes (normally a tender must be carried out). The tender documentation includes the client's standard contract, and normally no serious amendments are allowed. These templates normally contain harsh penalties for delay, often even for violation of interim deadlines. There are also restrictions on subsequent changes in the scope of works. The general limitation is up to 30%. There may also be strict requirements to potential tender bidders (e.g. that a bidder must have certain equipment, labor resources, and experience).

**10. Do parties typically engage consultants? What forms are used?**

Private project owners often engage construction managers with a broad scope of responsibilities, including assisting with obtaining construction permits and approvals, holding tenders for the engagement of contractors, procuring materials or equipment, etc. At times, clients engage construction supervisors to monitor the construction process. Public

clients normally have their own designated departments for these tasks.

The major construction projects are also supported by the designer, since usually designer supervision over works is required in such cases. For certain construction objects the designer supervision is mandatory (for instance, for hazardous facilities).

No special forms for the engagement of consultants are available. The contracts are normally drafted based on Russian law service contract templates.

#### **11. Is subcontracting permitted?**

Subcontracting is generally permitted. The contractor remains liable before the client for the subcontractor's performance.

In private construction projects, the contractor is entitled to freely engage subcontractors unless the parties have agreed otherwise. In practice clients often insist on the right to approve subcontractors. The client may also limit subcontracting by stipulating the works that can be subcontracted, and by listing potential subcontractors or criteria for their selection in the contract.

Public contracts do not allow subcontracting of the entire scope of works. The price of works performed by the contractor without subcontracting shall be not less than 25% of the public contract price. The tender documentation for public procurement can specify the list of works that shall be fully performed by the contractor without subcontracting.

#### **12. How are projects typically financed?**

There are no general restrictions on the types of financing used in Russia.

Medium-term and long-term bank financing is typical for private construction projects. Usually, this financing takes the form of an interest-based loan. Apart from usual financial covenants, securities and conditions, banks may insist on additional monitoring or control over the construction process, including the choice of contractors, subject to acceleration of debt in case of breaches (see Question 20 below).

Apart from that, equity financing is used. With public-private partnership projects, public funds may be available. In the latter case additional restrictions may apply: in particular, potential problems with referring disputes to arbitration may arise (see Question 23 below), price formation and payment procedure may be subject to stricter rules (see Question 14 below), harsh conditions on liquidated damages may be obligatorily included (see Question 7 and 9 above).

**13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?**

In complex projects, project owners often require a parental guarantee/surety to secure contract performance, which should remain effective throughout the contract life and, often, until end of the warranty period, which normally is 5 years.

To secure advance payments, the client very often asks contractors to provide a bank guarantee to secure return of unearned advance payments in case of contract termination. The bank guarantee usually should remain effective until completion date.

Clients also often insist on a security retention (usually up to 5-10% of contract price) to guarantee the absence of defects during the construction and, at times, the warranty period. Contractors are usually interested in negotiating the option to replace this retention by a bank guarantee or parental guarantee for the same amount during the warranty period or at an earlier stage.

**14. Is there any specific legislation relating to payment in the industry?**

Parties to a private construction contract are free to negotiate a payment procedure. However, for public procurement, the law may establish restrictions on the payment procedure. For example, in some cases it may be unlawful to provide advance payments. In other cases, the maximum amount of advance payments may be capped by legislation, and these advance payments must be fully secured by a bank guarantee.

Further, in publicly funded projects the so-called cost estimate documentation (“smeta”) generally should be used as basis of price formation. Cost estimate documentation is a specification of the price of works, equipment and materials subject to strict state-imposed rules which are updated from time to time.

As a matter of practice, Russian private clients also often request that the contractor draw up smeta estimates. At the same time, the application of smeta rules often contradicts the idea of lump sum arrangements, where a risk element is considered. Therefore, it is generally advisable for a contractor negotiating a lump sum contract to expressly exclude any reference to smeta rules from the contract.

As for the payment procedure, the following payment scheme is generally used in a typical construction contract:

§ opening advance payment (up to 30%),

§ progress payments,

§ final payment/retention (up to 10%).

According to Russian laws, all funds received by contractor prior to acceptance of the objects are advance payments. Following the recent trend in case law, advance payments cannot be recovered in court unless the contract specifically provides the right of the contractor to claim advance payments “in court”. This problem is partly mitigated when the contract divides the work into pre-defined stages, which are separately accepted by the client. However, clients increasingly wish to avoid partial acceptance and insist only on acceptance of works as a whole. In this case, for prolonged contracts it is recommended to include an express provision allowing forcible recovery of advance payments through litigation or arbitration. The other option is to agree with the customer that the advance payments shall be made via L/C. However, as a matter of practice L/C is not a convenient instrument for construction contract and is not quite common.

**15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?**

Prior to the 2015 Russian civil law reform, pay-when-paid clauses were highly debatable. However, after the reform, the Supreme Court allowed pay-when-paid clauses subject to the following qualification. In such a clause, the parties (e.g. contractor and sub-contractor) are expected to specify a “long stop date” by which the payment must be provided notwithstanding the non-payment by the employer. If the parties fail to specify such a deadline, the payment has to be effected notwithstanding non-payment by the employer after a reasonable time of awaiting payment.

**16. Do your contracts contain retention provisions and, if so, how do they operate?**

Retention provisions are quite common in Russia. Normally, the retention amount does not exceed 10% of the contract price. Usually, the retention is accumulated during the contract life until completion by deducting 10% from each progress payment. The payment of retention is delayed until acceptance by the client or, less often, until the end of the

wish to agree to substitute the retention by a bank guarantee upon completion of works.

Nevertheless, according to the Supreme Court, it would be unfair to let contractor wait for the repayment of retention for an unreasonably long period of time. If retention is withheld until acceptance and this acceptance is delayed due to reasons for which the client is responsible, the contractor may claim the return of retention in court referring to the expiration of a reasonable period of delay. To reduce the risks associated with the courts’ interpretation of this “reasonable period”, it is recommended to stipulate an express

preclusive period, after which the retention should be repaid.

**17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?**

Commonly, parties agree on liquidated damages (“neustoika”) for the delay of payment by the client and for the delayed performance of works by the contractor. Such provisions are enforceable in court, but the courts may reduce the amount payable if the respondent proves that the payable amount is grossly disproportionate to the actual losses (Art. 333 of the Civil Code). In practice, however, the courts tend to overuse this power, reducing the amount of liquidated damages even in sophisticated commercial contracts. As applied to arbitration, an alleged excessiveness of liquidated damages may lead to the unenforceability of arbitral awards, as the proportionality of civil liability is at times deemed to be part of the Russian public policy.

**18. Are the parties able to exclude or limit liability?**

Russian law allows the parties to freely negotiate limitations of liability. The only exception is intentional breach, which mandatorily presupposes unlimited liability. However, a finding of intentional breach is rare since Russian law does not generally equate gross negligence to an intentional breach.

In a typical construction project, the parties will agree to exclude liability for any lost profits/indirect losses. Contractor’s liability is usually limited to actual losses.

Liability caps are also widespread in major projects, especially those where parties with an international background are involved. An overall liability cap for all breaches throughout contract life is generally negotiated as a percentage of the overall contract price. In addition to the overall cap, the parties may also indicate separate caps for certain types of breaches, such as delay of the final construction deadline. For example, the amount of liquidated damages for delay is usually capped at 10% of the contract price.

**19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?**

Generally, the client may terminate the contract for convenience at any time (Art. 717 of the Civil Code). However, this right can be excluded in the contract (this does not usually happen due to practical reasons). Parties are free to limit this right of the employer by inclusion of long termination notice periods or through early termination fee clauses.

The contractor is generally not entitled to terminate the construction contract for convenience. The entitlement to terminate is available only in case of fundamental breach by the client and is often limited in the contract to cases of delayed payments without reason or

material non-cooperation (such as prolonged refusal to provide necessary approvals).

Construction contracts customarily include boilerplate provisions on force majeure. Regardless of such provisions, Russian law provides for a statutory exemption of liability in case of unavoidable and unforeseeable impediments beyond control of the contractor (“force majeure”). The practical application of force majeure, however, remains very limited, being realistic only in cases of military conflicts, natural disasters or events of similar gravity. The parties may also agree on their own list of force majeure circumstances.

Under Russian law the contract may be terminated based on force majeure only if this possibility is provided for by the contract. Otherwise force majeure only leads to an exemption from the duty to pay damages (liability) but does not cure the contract breach as such.

Notably, the risk of international sanctions (which must be considered for Russian projects) is not sufficiently addressed by the doctrine of force majeure. It is advisable, therefore, to include separate provisions on sanctions in international contracts, considering the countries involved.

**20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?**

Although contracts in favor of third parties are permitted in Russia, usually only the client and the contractor have direct rights under a construction contract. Still, at times funders (e.g. banks) attempt to establish control over construction via other means, such as by obliging construction owners to hire a bank-appointed “technical agent” to monitor construction and give approvals to select decisions under the pain of acceleration of debt or other financial incentives.

As for the title to the construction object, the project owner (employer) is generally the only party to obtain title to the work result. After the construction object is completed, the owner may transfer its interest in this object to other persons, with whom it has a contract (for example, an investment contract). No third party interest can be created with regard to the building under construction (the Ruling of the Supreme Commercial Court No. 54 of 2011).

However, this rule is sometimes applied inconsistently in cases where individuals request recognition of their title to apartments in residential buildings prior to their commissioning and handover. The Supreme Court (the Supreme Commercial Court was merged into in 2014) has not taken a proactive stance to stop this practice so far.

**21. Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims?**

## **Does your jurisdiction recognise such notices as conditions precedent?**

Yes, construction contracts normally contain provisions obliging the contractor to promptly inform the employer about any obstacles or additional works and consequently about the need to agree on additional time and money.

This contractor's obligation is also based on the statutory rule of Article 716 of the Civil Code. According to this Article, the contractor is obliged to promptly warn the client and to suspend works pending the client's instructions if it reveals:

§ unsuitability or improper quality of the client's materials, equipment, design documentation;

§ possible adverse impact of following the client's instructions about the works; and

§ other circumstances beyond the contractor's control that endanger fitness or durability of the work result or make it impossible to finish works on time.

In the event the contractor fails to promptly notify the client, the contractor is not entitled to refer to these circumstances in it brings claims to the client or vice versa, including for the purposes of claiming additional time and money.

As a matter of practice, the contractor's failure to notify the client about defects of design documentation provided by the client can prevent the contractor from claiming payment for additional works caused by defective design documentation. However, the outcome of the case can be different depending on the circumstances.

## **22. What insurances are the parties required to hold? And how long for?**

Normally, the contractor is required to obtain a property insurance policy covering damage to the construction object. This is usually within the contractor's own interest as well, since under Russian law the contractor bears the risk of accidental loss or damage to the object until final acceptance. As a rule, the contract specifies the type of insurance company, the insurance sum and risks to be insured. Typically, these are the risks of damage and destruction of the object. The beneficiary is often the client or both the client and the contractor.

Additionally, the parties to a construction or design contract commonly agree on requiring the contractor or designer to furnish professional liability insurance and public liability insurance. Such a professional liability insurance is also required to be admitted to a self-governing organisation (so-called "SRO"). Admittance to SRO is a must both for the contractor and designer. In major projects, a contractor-all-risk insurance for the contractor

is quite widespread.

Employers are generally not under an obligation to insure their risks, but they may wish to insure the risk of damages caused to third parties at their discretion. Project owners constructing residential property and raising funds from individuals

normally have to insure their general liability for non-fulfillment of their obligations in front of the investors.

As a rule, the insurance policies must be valid throughout the duration of the contract.

**23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?**

In practice, litigation or arbitration are the two principal options available to the parties in a construction contract.

Russian state courts are generally overloaded with cases and are relatively unfit for complex business disputes. The process of dispute resolution normally takes around one year (including three instances) but may take longer in case complex technical matters require appointment of an expert.

In this regard, arbitration is the preferred method for dispute resolution in many construction projects, especially those with an international background. In terms of Russian arbitral institutions, the International Commercial Arbitration Court at the Chamber of Commerce and Industry of Russia (also known as "ICAC") has been traditionally popular. According to this ICAC's Rules decision must be rendered within six months since the dispute was initiated. As for international arbitral institutions, the parties are free to refer disputes to traditional institutions, such the ICC, LCIA, SCC, etc. Recently, a trend towards Eastern institutions (such as HKIAC or Singapore) has also materialized due to the Western sanctions.

Certain restrictions regarding arbitrability of disputes apply to public contracts. Disputes may not be capable of arbitration if one of the parties is a public client. For projects financed with public funds (even without direct involvement of state entities), disputes may also be incapable of being resolved through arbitration, although specific criteria have not been developed in practice and the matter remains contentious.

In order to ensure that the project is not stalled by an ongoing dispute, in some cases the parties provide for dispute resolution by an expert or a dispute resolution board (or a conciliation commission), whose decisions are temporarily binding on an interim basis before the dispute is finally resolved by arbitration or litigation. However, there is no case law emanating from Russian state courts to confirm the enforceability of these methods of



dispute resolution at this time.

**24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?**

The recent arbitration law reform was aimed at re-establishing the trust of Russian state courts into arbitral institutions and turning Russia into a more arbitration-friendly jurisdiction.

Nonetheless, over the recent years, the Russian courts have shown a worrying tendency to increasingly rely on the public policy exception to deny enforcement of select arbitral awards (both foreign and domestic). In Russia, the notion of public policy is often expansively interpreted to cover issues relating to the merits of the case. Therefore, enforcement risks associated with the Russian jurisdiction are quite significant. In practice, often complex disputes may have to be essentially re-litigated before the Russian courts to ensure their enforcement. It is advisable to hire local counsel both during arbitral proceedings (even if they are conducted under foreign law) and during enforcement to reduce these risks from the beginning of the dispute.

Under Russian procedural rules, an application for the enforcement of an arbitral award is to be considered by the first-degree court within one month, and the ruling is subject to cassation review and then potentially can be taken to the Supreme Court. In practice, the overall process of enforcement may take up to 1 year or even longer (including cassation review) depending on the circumstances of the case.

**25. Are there any limitation periods for commencing disputes in your jurisdiction?**

Generally, a statutory limitation period for commencing disputes is three years. The length of this period cannot be changed by the parties. Limitation period starts when the claiming party should have learned about a breach. In any case, the claim cannot be brought after 10 years since the breach itself, regardless of when it became known to the claiming party (effective from 01 September 2013).

It is necessary to distinguish between limitation periods that stipulate time-limits for commencing disputes and defects liability periods during which the client may identify defects in construction results or design works. According to the Russian Civil Code, the normal defects liability period under construction contract is 5 years. As for design contract, defects liability period is the whole period of operation of the object. Unlike statutory limitation periods for commencing disputes, these time periods can normally be renegotiated by the parties.

**26. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?**

Apart from the COVID-19 crisis that also significantly impacted Russia in 2020 (the extent of this impact on the construction industry is not yet known, however), there are several longstanding challenges facing the industry in Russia.

First, international sanctions have significantly restricted the access of Russian companies to international financing and generally tampered with the Russian economy. The sanctions risk must be considered when dealing with Russia-related projects, particularly due to the risk of secondary sanctions (which can be applied against any company for extensive dealings with sanctioned persons). Currency volatility resulting from unstable external circumstances must also be taken into account.

Second, the Russian construction sector is largely government oriented. A significant part of construction-related activities occurs within the scope of public procurement, which is often associated with additional risks for investors. For example, these risks include the risk of sanctions, and the potential necessity to enter non-negotiable standard contracts with unfavorable terms.

At the same time, the Russian construction sector remains full of opportunities for foreign investors. The Russian real estate and construction market is one of the largest in Europe, also considering Russia's major role in the oil and gas sector. The residential sector is also promising given the government's plans to continue providing subsidies to residential mortgages.

This is also evident in the Russian government's decision to pursue long-term investment plans, particularly in the area of transportation and railroad construction, with the involvement of foreign investors. In 2016-2020, up to 11 tn USD is reportedly to be invested into transportation projects, including the Moscow-St. Petersburg Highway. Furthermore, several major international projects under the auspices of the One Belt - One Road with China are at an initial stage of planning, including the 21 bn USD Moscow-Kazan high-speed rail line.

Further, Russia has been steadily climbing in the World Bank's Ease of Doing Business Ranking (ranked 28th after starting out at the 124th place), particularly as applied to construction projects. Russia has undertaken substantial efforts in improving the ease of dealing with construction permits (ranked 26th), getting electricity (ranked 7th), registering property (ranked 12th), getting credit (ranked 25th), and enforcing contracts (ranked 21st).

As a result, Russia has attracted both foreign investors and foreign construction companies seeking opportunities in the real estate and construction sector.

**27. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?**

The Russian government is focusing on incentivizing economic activities in the following areas:

- construction of a high-speed rail network;
- construction of residential buildings;
- investment in new power plants;
- construction of gas networks;
- construction of oil refining plants;
- investment in social, cultural and health facilities (construction of hospitals, major renovation of schools, etc.).

**28. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?**

New Russian Prime Minister Mikhail Mishustin actively promotes digitization of sectors of the economy in Russia. He already instructed each ministry to establish a position of deputy for digital transformation, including the Ministry of Construction. The program of digitalization in the construction and engineering industry gives priority to Building Information Modeling (BIM). In 2019, an international forum dedicated to the digitalization of the construction industry was held with the involvement of the Minister of Construction.

At present, the most significant construction permits and approvals (including but not limited to construction permit, operation permit, approval of the design documentation) can be obtained by way of an application in an electronic form. Major cities like Moscow maintain electronic databases where principal supporting documentation of a construction project is available. This database is accessible to the supervisory authorities and individuals.

Therefore, digitalization process is essential and will significantly affect the construction industry in Russia.