1. Currency Exchange and Regulations

At the outset, it should be noted that, since December 1991, the currency of Russia has been the rouble (RUB). For a period of almost two years, i.e. until September 1993, the Soviet rouble and the Russian rouble were both accepted as means of payment.

The exchange and monetary policy with respect to the rouble is decided by the Central Bank of the Russian Federation (CBR) based in Moscow. The CBR's primary responsibility is to protect the stability of the national currency.

While the rouble is the only legal tender in Russia, companies and individuals generally face no significant difficulty in obtaining foreign exchange. Only authorised banks may carry out foreign currency transactions, but finding a licensed bank is not difficult. The Central Bank of Russia retains the right to impose restrictions on the purchase of foreign currency, including the requirement that the transaction be completed through a special account, according to Russia's currency control laws. The CBR does not require security deposits on foreign exchange purchases.

Currency control legislation has been liberalised considerably in the last few years. For payments related to the import of goods, there are no significant restrictions. However, the bank of the Russian importer is obliged to ensure compliance of payments with currency regulations. Therefore, the Russian importer and its bank have to set up a transaction passport for each contract (this is explained further below). The foreign exporter is not directly involved, but may be affected due to the need for the Russian importer to obtain documents and information from the exporter.

Russia's foreign exchange control is exercised by the Government of the Russian Federation. Under Russian law, there is no restriction on execution of money transfers in cash (whether in domestic or foreign currency) between individuals and their counterparties (whether legal entities or other individuals). However, a threshold of RUB 100,000 or an equivalent sum in foreign currency applies to cash transfers between legal entities.

Transactions between residents and non-residents involving payments in roubles and foreign currency can be conducted without limitation, although there are procedural requirements for such operations. For instance, residents must document currency operations with non-residents with a transaction passport if the sum of the contract exceeds US dollars (USD) 50,000. No special restrictions apply to the repatriation of accrued profits.

As regards the permitted amount of cash entering the country, there are no restrictions, but whoever enters or leaves Russia and carries cash of a value of US$10,000 or more shall declare that sum to the Russian customs agency.[1]

Commercial banks can carry out foreign exchange transactions. Major foreign currencies such as USD, EUR and pound sterling (GBP) may be exchanged at banks, exchange offices, authorised tourist offices and hotels. Major credit cards are accepted with proper identification, and automated teller machines (ATMs) are easily available.

It should be noted that travellers' cheques cannot be used to pay directly for goods, and exchanging them in a bank is subject to high fees. Moreover, only major bank branches may exchange the cheques for cash.

In July 2017, the Russian Government introduced new legislation[2] to prevent VAT fraud. As a result, tax inspectors pay greater attention to shell companies and simulated transactions. More particularly, they check whether tax fraud could be the sole reason for the transaction and whether the entity has chosen its counterparty responsibly.

Violation of Russian currency control requirements may entail civil, administrative or criminal liability. Administrative penalties for violation of Russia's currency control requirements include various fines, which may be imposed on individuals, legal entities and company executives. The amount of a fine may be as high as the entire value of the transaction performed in violation of the currency control requirements. Other sanctions include the revocation of licences (primarily applicable to banks) and imprisonment.

[1] Art. 260, para. 1(7) of the Customs Code of the Eurasian Economic Union of 11 April 2017.

[2] Federal Law No 163-FZ dated from 18 July 2017

2. Common Payment Methods

Payments for trade in goods or services, *e.g.*, such as those from Hong Kong, are normally carried out in US dollars. It should be noted that currency controls exist on all transactions that require customs clearance, which, in Russia, applies to both import and export transactions, and certain loans. A business must open a deal passport with the authorised Russian bank through which it will receive and service the transaction or loan. A deal passport is a set of documents that importers and exporters provide to an authorised bank, which enables the bank to monitor payments with respect to the transaction or loan and to report the corporation's compliance with currency control regulations to the CBR. Russia's regulations regarding deal passports are prescribed under Instructions of the Central Bank of Russia No. 117-I of June 15, 2004.

Payment methods and terms may vary depending upon the Hong Kong company's business model and its relationship with its Russian trading partner. For new-to-market companies, requesting advance payment for goods and services from a Russian customer may be prudent until both parties establish a positive record of payment. Once a Hong Kong firm has established a strong relationship with a Russian trading partner, the Hong Kong firm may consider extending short and eventually longer term credit as a way to bolster sales volume. This should be done with caution and only after careful evaluation and establishment of successful payments. One of the more commonly used payment terms for international transactions in Russia is 30/70, meaning 30% due at the time of order/invoice and 70% due upon shipment. Customary terms of sale in Russia are as follows:

- cash, i.e. payment before, on or after delivery. Payment after delivery is normally granted only to solvent and long-standing customers;
- letters of credit. Since more and more Russian importers are not able to meet their payment obligations, letters of credit have become more important;
- T/T, i.e. payments by telegraphic transfers via banks. Such payments are usually treated as cash payments;

- net, i.e. payment in full at the end of the specified period (one, two, three or four months) from date of invoice. The length of the period depends on the commodity involved and the creditworthiness of the purchaser. Long credit payment terms may be used as a way to bolster sales volume;

- delivery terms are, normally, cost, insurance and freight (CIF) Russian port. At the same time, EXW, DDP and FOB terms are also used extensively in Russia.

For some large transactions, advance payment from a Russian buyer may be impractical. In such cases, financing may be provided by a bank, export credit agency or venture fund.

Leasing has become increasingly attractive for both sides because of its economic effectiveness, flexibility and accessibility in comparison to bank financing. Most large Russian banks have leasing programs that they offer their clients, and there is a growing list of foreign leasing companies operating in Russia that offer Russian clients leasing terms for imported equipment. Equipment for the aviation, energy, mining, construction, transportation, pharmaceutical, forestry and fishing industries which may be too expensive for Russian customers to purchase are often leased.

3. Appointment of Sales Agents/ Representatives

3.1 Recruitment of Agents and Representatives

Agency contracts are governed by the Civil Code of the Russian Federation.[3] While Hong Kong traders are recommended to seek specific legal advice when recruiting an agent for particular purposes, the following general comments will be of relevance:

- in an agency contract, the principal appoints an agent as its sole agent for the territory concerned;
- the agent has to act permanently for and on behalf of the principal in promoting the execution of contracts;
- agency contracts may or may not provide for exclusivity arrangements;
- the agent may or may not be granted a special power of attorney to execute contracts on behalf of the principal. In such a case, the agent will be authorised to execute contracts only on behalf of the principal and the relevant contracts will be deemed to be concluded between the principal and the third party;
- agency contracts may be concluded in writing or orally. When a contract is concluded in writing and provides for a power of an agent to execute contracts on behalf of the principal, the latter cannot claim the lack of agent's power while dealing with third parties;
- agency contracts should provide for the marketing area;
- as regards termination, agency contracts may provide for a definite or indefinite term. Agency contracts with a definite term will terminate on the expiration date agreed upon by the parties. Pursuant to Article 1010 of the Civil Code of the Russian Federation, the agency agreement may

[3] Chapter 52 (Art. 1005-1011) of the Civil Code of the Russian Federation, No. 14-FZ dated from 26.01.1996

be terminated without a notice period by either of the parties, if the contract provides for an indefinite term.

3.2 Commissions and Other Compensations

Pursuant to Russian law, agents are remunerated by commission. If conditions of payment are not specified in the contract, the principal shall make payment within 7 days of the date of the submission of the last agent's report.

If the contract does not provide for the rate of remuneration, it shall be determined based on general provisions, *i.e.* an average price charged in similar circumstances for provision of similar services.

The principal shall reimburse the agent for all costs incurred in the course of performance of the contract.

4. Establishment of Sales Offices/ Subsidiaries

The Russian legislation provides for different types of business presence for foreign companies operating in Russia. These are:

- Branches and representative offices
- Legal entities
- Joint activity agreements, also known as simple partnerships

This section covers procedural and substantive elements of the first category, i.e. registration and functioning of branches and representative offices.

4.1 Procedure

The registration, functioning and termination of foreign legal entities (FLE) are governed by the Federal Law "On foreign investments in the Russian Federation"[4] and the Civil Code of the Russian Federation[5]. Branches and representative offices are subdivisions of an FLE that are located at a place other than the legal entity's head office.

Representative offices and branches are required by law to be accredited by an appropriate government organisation. This organisation is generally the Federal Tax Service, but it can differ depending on the nature of the activities carried out by the head office. For example, representative offices of foreign banks are accredited by the Central Bank of Russia.

Regardless of the state body involved, branches and representative offices must also be added to the State Register of Accredited Foreign Representative Offices/Branches that is maintained by the Federal Tax Service. The registration process for both branches and representative offices involves the following stages:

[4] Art. 21 of The Federal Law dated 9 July 1999 No 160-FZ "On foreign investments in the Russian Federation"

[5] Art. 1204 of the Civil Code of the Russian Federation, No. 14-FZ dated 26 January 1996

- Approval of the number of foreign employees by the Chamber of Commerce and Industry;

- Accreditation and incorporation into the State Register of Accredited Foreign Representative Offices/Branches and registration with the tax authorities;

- Registration with the State Statistics Committee and registration with social insurance funds.

The entire process typically takes approximately two to three months from the date that the documents are submitted to the state authorities.

4.2 Branches and Representative Offices – Substantive Elements

Branches and representative offices may be allocated assets by their parent legal entity and act on the basis of regulations approved by that legal entity.

According to Russian legislation, the difference between a branch and a representative office lies in the nature of the activities they are entitled to perform. A representative office can only represent the interests of a legal entity, and this normally limits its activities to those of a non-commercial nature, such as marketing or the gathering of information. Thus, most representative offices are not subject to a profits tax, unless their activities give rise to a "permanent establishment" for tax purposes, i.e., when a foreign legal entity engages in regular commercial activity through its representative office (for example, the sale of goods or the provision of services) without establishing a branch.

Unlike a representative office, a branch may engage in any functions in which the parent company engages pursuant to its corporate documents, so long as this is provided for in the branch's regulations and permitted under Russian law. This broad spectrum of permitted activities is the primary advantage of forming a branch in Russia.

In contrast, a representative office that engages in commercial activities would technically be violating the terms of its accreditation. From a purely

legal perspective, violation of Russian law is a ground for the termination of accreditation of the representative offices upon the decision of the accreditation authority (i.e., Inter-district Tax Inspectorate No. 47 of the Federal Tax Service located in Moscow). In practice, however, violations by representative offices of permitted activities may be more likely to cause difficulties when seeking the renewal of accreditation in Russia.

5. Incorporation of a Business

5.1 Types of Business Organisations

a) Introduction

The two most common types of commercial legal entities in Russia are joint stock companies (JSCs) and limited liability companies (LLCs). Such entities are regulated by the Civil Code of the Russian Federation[6] in conjunction with the law on joint stock companies (the JSC Law)[7] and the law on limited liability companies (the LLC Law)[8], respectively. Only JSCs are able to issue shares, which therefore renders them subject to Russian laws on securities[9].

Neither the shareholders of JSCs nor the participants in LLCs are liable for the obligations of the company, and they bear the risk of losses only to the extent of the value of their contributions (i.e. incurring a limited liability). However, there are situations in which a parent company may be held liable for the obligations of its subsidiary, for example, when a parent company that has the right to give directions that are binding on its subsidiary is jointly liable with the subsidiary for transactions concluded by the latter when following such directions. This liability exists regardless of whether the form of the commercial legal entity is an LLC or a JSC. A similar concept applies in the event of the insolvency of a subsidiary, whether it is an LLC or a JSC. If the parent company determined the subsidiary's actions knowing that this would result in its subsequent insolvency, the parent company bears the liability for the subsidiary's debts if the subsidiary's assets are insufficient to cover its liabilities.

A Russian company cannot be owned 100% by another corporate entity (wherever it is incorporated), which is itself a 100% subsidiary of

[6] The Civil Code of the Russian Federation, No. 14-FZ dated from 26.01.1996

[7] Federal Law dated from 26 December 1995 No 208-FZ "On Joint-Stock Companies"

[8] Federal Law dated from 8 February 1998 No 14-FZ "On Limited Liability Companies"

[9] Federal Law dated from 22 April 1996 No 39-FZ "On the equity market"

another shareholder. In other words, a 100% holding company of a Russian company must have more than one shareholder or participant.

b) Joint stock companies

In accordance with the current Russian legislation, joint stock companies are subdivided into “public” and “non-public” companies. A public joint stock company is an entity with shares and securities that are publicly listed (i.e. placed through open subscription) or publicly circulated in accordance with the legislation on securities.

The rules regarding public entities also apply to joint stock companies that do not meet the requirements for a public entity, but whose charter and legal name indicate that the entity is public.

c) Public joint stock company (PAO)

The main features of a public joint stock company are the following:

- The legal name of the company must indicate that the entity is public,
- The company may conduct an open subscription of shares to an unlimited group of persons,
- There are no limits on the number of shareholders,
- The minimum charter capital is set at RUB 100,000,
- The company shall establish a board of at least five directors,
- The functions of the registrar and the counting commission are performed by an independent organisation that has an appropriate licence,
- The number of shares and votes that belong to one shareholder as well as the nominal value of shares cannot be restricted,
- None of the shareholders shall have pre-emptive rights over any

shares offered for sale by a withdrawing shareholder (except for additionally issued shares or other securities that can be converted into shares),

- The company charter cannot assign functions to the general meeting of shareholders that are not listed by the Civil Code and the JSC Law.

d) Non-public joint stock company

The main features of a non-public joint stock company are the following:

- The shares and securities of a non-public joint stock company are not publicly listed (no open subscription),
- The company has no obligation to establish a board of directors, unless the number of shareholders is 50 or more,
- The number of shares and votes that belong to one shareholder as well as the nominal value of shares can be restricted,
- The minimum charter capital is set at RUB 10,000,
- The company charter can assign functions to the general meeting of shareholders that are not listed by the Civil Code and the JSC Law.

Shares of a non-public joint stock company are deemed securities for the purposes of Russian securities regulations. In addition to registration with the tax authorities, JSCs are subject to various additional procedural requirements and must register their shares with the Russian securities market regulator, the Central Bank of Russia. These will apply upon the initial registration of a JSC and on an ongoing basis, particularly in the event of a share capital increase.

It should be noted that a shareholder of a non-public JSC has no right to withdraw from the company (except by selling its shares). Transfer of shares is not limited by law, but may be limited by the charter and shareholders' agreement.

The charter of a non-public JSC may provide for the pre-emptive right of shareholders and non-public JSC to purchase shares offered for sale by other shareholders to third parties.

In addition, the charter of a non-public JSC may provide for the prior consent of shareholders with respect to the transfer of shares to third parties. The term of such limitation shall be stipulated in the charter and may not exceed 5 years from the date of incorporation of the non- public JSC or state registration of relevant changes to the charter providing for such limitation.

e) Limited liability company (OOO)

An LLC is the most flexible type of company with the least burdensome statutory obligations.

It tends to be the entity of choice for wholly-owned subsidiaries, including those owned by foreign investors.

The equity participation of the owners is determined by their capital contribution. An LLC's capital is divided into "units" (technically not shares, thus falling outside the scope of the Russian law on securities).

The main features of an LLC are the following:

- An LLC does not issue shares,
- An LLC's "participants" contribute to its charter capital, although financing is also possible in the form of contributions to the company's property,
- The charter capital of an LLC may not be less than RUB 10,000,
- Participants enjoy pre-emptive rights over any participatory units offered for sale by a withdrawing participant,
- The number of participants may not exceed 50.

The sole founding document of an LLC is its charter.

The charter of an LLC may provide for the optional right of any participant to withdraw from the LLC without the consent of the other participants. In this case, the share of the withdrawing participant is transferred to the LLC, which shall pay the "actual value" of the share to the withdrawing participant. The "actual value" is calculated as the part of the LLC's net assets proportional to the share of the withdrawing participant.

An LLC may be required to pay the "actual value" of shares to a participant leaving the company in other limited cases specified in the LLC Law.

f) Simple partnership or joint activity agreement (JAA)

Foreign companies may enter into a JAA with another party, normally a local partner. A JAA is not a legal entity in itself but represents the pooling of assets for the purposes of conducting a common business. One of the partners is usually assigned the responsibility for bookkeeping and statutory reporting.

Depending on the activities of a foreign company in a JAA, the foreign company may still need to register separately with the Russian authorities, for example as a branch or representative office.

5.2 Procedure for Setting up a Business

a) Registration

The registration procedure for legal entities is made up of the following stages:

- State and tax registration,
- Registration with the State Statistics Committee,
- Registration with the social insurance fund.

The entire process typically takes three to four weeks from the date that the documents are submitted to the registration authorities.

In addition, joint stock companies are required to register their share issue with the Central Bank of Russia, which increases the time required for registration by one to two months.

b) Anti-monopoly approval

In some specific cases, depending on the procedure of charter capital payment, the assets or sales revenue of the founder(s), and a number of other factors, prior approval of the Federal Antimonopoly Service may be required before a company can be established in Russia. Getting preliminary approval from this body normally takes about two months.

6. Taxes

6.1 Profit Tax

a) Introduction

Profit tax applies to both Russian and foreign legal entities carrying out activities in Russia through a permanent establishment or receiving income from Russian sources. As of 1 January 2015, foreign legal entities may also become Russian tax residents if they are managed from Russia in accordance with the criteria set forth in the Russian Tax Code.[10] The place of effective management of the foreign company is deemed to be in Russia if at least one of the following conditions is met:

- Executive body activities are regularly exercised in Russia; or
- Top-management functions are exercised by key organisation officials from Russia.

A Russian legal entity must be registered with the office of the tax inspectorate that corresponds to the location of the company's registered address, as well as at the offices corresponding to any branch or subdivision of the entity. The company is liable for profit tax at each of these locations.

b) Tax rates

The maximum profit tax rate is 20%, of which:

- 2 percentage points (3 percentage points for the period 2017-2020) are payable to the federal budget, and
- 18 percentage points (17 percentage points for the period 2017-2020) are payable to the regional budget.

[10] Article 246.2 of Tax Code of the Russian Federation, 177-FZ dated 5 August 2000

c) Principles for the calculation of profit tax

i) Tax base

The tax base is defined as total income received by a taxpayer minus related expenses and allowable deductions.

Income includes sales income, i.e. the total proceeds from the sale of goods, work, services, and property rights, and non-sales income. Income received in a foreign currency must be converted into roubles using the official exchange rate set by the Central Bank of Russia at the date of income recognition.

Non-sales income includes goods, work, services and property rights received free of charge, based on their market value, except in the case of property received by a Russian company from its parent or subsidiary, where the parent owns more than 50% of the subsidiary. This exemption is lost if the property (other than cash) is transferred to a third party within one year. Non-taxable income also includes property and property rights received as a capital contribution, leasehold improvements made by a lessee to the lessor's property, and interest received on overpaid tax. An exhaustive list of non-taxable income is provided by the legislation.

Deductible expenses are subdivided into sales expenses (related to the core business activity of a taxpayer) and non-sales expenses.

Income from the sale of unlisted shares and participation in Russian companies and of listed shares in high-tech Russian companies acquired after 1 January 2011 and held for at least five years, are exempt from profit tax.

Assets and liabilities denominated in a foreign currency must be converted into roubles. The revaluation profit or loss is included in non-sales income/expenses on the earliest of the last day of the reporting (tax) period or the date of disposal/settlement.

ii) Recognition of income and expenses

There are two alternative methods for recognising income and expenses depending on the level of income: the accrual basis and the cash basis. The accrual basis must be used by taxpayers with an average income exceeding RUB 1 million per quarter for the previous four quarters, while taxpayers falling short of this threshold may select either the accrual or cash basis.

iii) General criteria for deducting expenses

Expenses are considered deductible for profit tax purposes if they meet three general criteria:

- they must be incurred in the course of a taxpayer's income-generating activity;
- be economically justifiable; and
- be supported by relevant documentation, including documents specified by legislation (agreements, statements, invoices and VAT invoices), and other supporting materials.

They also must not be listed as one of the specifically non-deductible expenses listed in the law. Additional deductibility criteria applying to certain types of expenses are noted below.

iv) Depreciation

Depreciable property is property, both tangible and intangible, that is used for income-generating activities and has:

- A useful life of at least 12 months
- A value of more than RUB 100,000

If the property does not meet those criteria, it is treated as an expense and should be included in the cost of sales, assuming that general deductibility criteria are met. Land cannot be depreciated.

All depreciable fixed assets fall within one of 10 groups, and the taxpayer should determine the useful life of its fixed assets based on these classifications. The useful life of an intangible asset is based on the utilisation period stated in any agreement or the validity period, in the case of a patent. In any other case, the useful life is 10 years (excluding such intangible assets as exclusive rights for software, trademarks, know-how, etc. which have a minimum period of two years).

A depreciation charge can be deducted when calculating the profit tax liability, starting from the first day of the month following the month when an asset is put into operation.

d) Non-resident companies

A foreign legal entity that is not a Russian tax resident receiving income from a source in Russia not connected with the activities of a permanent establishment is subject to withholding tax. “Passive” income (dividends, interest, and royalties) is the most common type of Russian-sourced non-business income. Withholding tax is applied to the following types of Russian-sourced income:

- Dividends;
- Income relating to the distribution of profit or property, including distribution upon liquidation;
- Interest on debt instruments, including profit-sharing debt and convertible bonds, although within Eurobond-like structures, and if certain conditions are met, Russian companies are exempt from the obligation to withhold income tax from the Russian- sourced income of foreign legal entities;
- Royalties;
- Income from the sale of shares (participatory rights) in a company, if more than 50% of its assets directly or indirectly consist of real estate located in Russia, or from the sale of financial instruments

that are derived from such shares (excluding most sales on a foreign stock exchange);

- Income from the sale of real estate located in Russia;
- Income from the disposal (including redemption) of units in closed-end investment funds falling into the category of rental or real-estate funds;
- Income from the lease and sub-lease of property used in Russia (including ships and aircraft);
- Income from international freight transportation, including demurrage and other related payments;
- Fines and penalties due from Russian parties for breaking contractual obligations;
- Other similar types of income.

Tax treaties may exempt some of the above categories of income, especially dividends, interest and royalties, from all or part of the Russian tax.

e) Permanent establishment

The Tax Code defines the term “permanent establishment” (PE) as a branch, representative office, division, bureau, office, agency, or any other separate fixed place of activity, through which a foreign company regularly engages in business activities in Russia. The term is used exclusively for tax purposes and does not affect the legal status of an entity.

The following areas of activity are expressly listed as giving rise to the creation of a PE:

- Exploration for, or extraction of, natural resources;
- Construction, installation, assembly, adjustment, maintenance and

operation of machinery and equipment, including gambling equipment;

- Sales from warehouses owned or rented by a foreign legal entity in Russia;

- Provision of services or performance of any other activity, apart from “preparatory and auxiliary” activities or activities explicitly defined as not creating a PE.

A foreign legal entity may also be considered as having a PE if it conducts certain activities through a dependent agent. A dependent agent represents an FLE in Russia under a contract, acts on its behalf, and has, as well as regularly exercises, the right to sign contracts on behalf of the FLE, or negotiates significant terms on its behalf.

Russian tax law specifically stipulates that the gathering and distribution of information, marketing, advertising, market research, and the import and export of goods by a foreign company should not themselves lead to the creation of a PE. Russia’s double tax treaties, which prevail over Russian domestic law, also include a definition of a PE. If an FLE qualifies as a resident of a country with which Russia has a tax treaty in force, then the definition of a PE in that treaty will prevail.

In this regard, it should be noted that the double tax treaty between the Government of Russia and the Government of Hong Kong was signed on 18 January 2016, thus eliminating double taxation. As the basis for the Treaty, Russia and Hong Kong used the current version of the OECD Model Convention for Taxes on Income and Capital. However, there are some differences triggered by the specific features of Hong Kong domestic law. In particular, since there is no property tax in Hong Kong, although a tax on property is mentioned in the Treaty among Hong Kong taxes, it is in fact levied not on property as such, but on income from the use or alienation of property. Further, the Treaty provides different criteria for Russia and Hong Kong for the recognition of an individual as a tax resident. For Hong Kong, a resident is an individual who generally resides in Hong Kong SAR, or who resides in

Hong Kong SAR for more than 180 days during a particular tax year or more than 300 days during two tax years, one of which is the reporting tax year. For Russia, a resident is an individual who is liable to taxation on the basis of Russian law and his/her residence in Russia. Therefore, an individual is not recognised as a Russian resident for treaty purposes if he/she is subject to tax in Russia in respect of Russian source income exclusively.

Finally, Hong Kong traders should take into account that any document received in the process of information exchange or a certificate of residence issued by the competent authority of Hong Kong or its authorised representative does not require legalisation or any apostille for the purpose of its application in Russia.

Moreover, on 31 January 2016 President Putin signed a law ratifying the double tax treaty with mainland China and related protocols.

PEs and Russian legal entities use similar rules for determining taxable profits and for calculating taxes due. The rules on filing tax returns and maintaining tax registers are also similar. The only major difference between a foreign entity with a PE and a Russian legal entity relates to the monthly advance payment of profit tax. PEs are exempt from this requirement and are thus not obliged to pay profit tax on a monthly basis.

Generally, PEs should calculate their profit tax using the direct method (i.e. gross income net of allowable deductions) to arrive at their taxable income. However, when a foreign entity has a PE because it conducts preparatory and auxiliary activities in Russia in favour of third parties on a free-of-charge basis, the PE will be deemed to have taxable income equal to 20% of the expenses of the PE.

In addition, Russian tax law allows an FLE to allocate income and expenses to its Russian PE. In particular, where all income from activities in Russia earned through a PE is received by the head office of the FLE, the income of the Russian PE is determined through reference to the FLE's accounting policy. In cases set out in double tax

treaties, Russian tax law also allows the PE to deduct overhead expenses incurred by the head office, but relating to the PE, e.g. management and administrative costs. The tax authorities may require documentary support and justification of any amounts allocated.

Nevertheless, the allocation of income and expenses between an FLE and its Russian PE should take into account the functions carried out in Russia, the assets used, and the commercial risks borne.

Finally, Russia does not impose a “branch profit” tax on profits repatriated by a PE to its head office.

6.2 Value Added Tax

a) Taxpayers

VAT applies to companies (including representative offices and branches of foreign companies), entrepreneurs and any person importing goods into the customs territory of the Eurasian Economic Union (of which Russia is a Member State).

Companies and entrepreneurs may apply for exemption from VAT if their aggregate revenues for three consecutive months, excluding VAT, are below RUB 2 million.

In addition, businesses that apply certain special tax regimes, such as the simplified tax system (available only to relatively small businesses) and the unified agricultural tax regime, are outside the scope of VAT unless they import goods into Russia.

Russian legislation does not provide for separate VAT registration. Therefore, when foreign companies with a presence in Russia register with the Russian tax authorities, they register for all taxes, including VAT.

b) Taxable supplies

VAT is charged on the majority of sales of goods, work, and services

supplied in Russia, including those supplied free-of-charge. VAT is also imposed on most imports into Russia. The transfer of property rights and certain supplies to oneself, such as the internal consumption of goods and services produced by a taxpayer, where the associated costs are not deductible for profit tax purposes, as well as construction for personal use, are also subject to VAT.

It should be noted that, under the Russian Tax Code, foreign companies that supply 'electronic services' to customers located in Russia must pay Russian VAT. 'Electronic services' include sale of online products such as software, video games, e-books, music, films as well as other services provided online such as domain name registration, hosting, cloud storage, providing access to online search systems, advertising and certain other services. A customer is deemed to be located in Russia if any of the following criteria are met:

- the customer resides in Russia;
- the customer pays through a bank or electronic payment system located in Russia;
- the customer's IP address is in Russia; or
- the telephone number used for the purchase has the Russian country code (+7).

Foreign companies providing electronic services must register for VAT within 30 calendar days from the date when they started providing electronic services to customers located in Russia. Companies that provided electronic services to customers located in Russia before 1 January 2017 should have registered for VAT purposes before 1 February 2017. It is possible to register online through the designated portal of the Russian Federal Tax Service: https://lkioreg.nalog.ru/en. Domestic internet sales are taxed the same as offline sales.

c) VAT rates

There are three main VAT rates, depending on the nature of the product

supplied. A zero rate applies to the sale of goods exported outside the Russian Federation. The zero rate also applies to the following list of services:

- Transportation of passengers and baggage, where either the point of departure or destination is outside Russia;
- International transportation of goods, where either the point of departure or destination is located outside Russia, including certain freight forwarding services;
- Certain pipeline transportation services with respect to exported and/or imported goods, as well as certain services relating to the arrangement of pipeline transportation;
- Certain cross-border railway transportation services and services relating to such transportation, including some types of provision of railway rolling stock and/or containers;
- Certain services rendered at sea and river ports relating to the trans-shipment and storage of goods moved across the Russian border, as well as certain services rendered by inland waterway transportation companies with respect to exported goods;
- Processing services rendered with respect to goods placed under the inward processing customs procedure;
- Transportation of exported or imported goods by sea vessels and mixed navigation vessels performed on the basis of time charter agreements.

The 10% rate applies to certain food products, children's goods, medical and pharmaceutical products, pedigree livestock, and certain books and periodicals.

The 18% rate applies to all other taxable sales of goods, work, and services.

There are also computed VAT rates (10/110 and 18/118), which apply

to certain transactions, such as the receipt of advance payments and other payments connected with settlements for supplies, as well as to certain types of transfer of property rights.

d) VAT exemptions

Activities that are exempt from VAT include:

- Lease of office space and accommodation to accredited foreign representative offices and foreign individuals;
- Medical services and the sale of certain medical equipment;
- Banking and insurance services;
- Sales of “FITTs” (financial instruments for term transaction – broadly, financial derivatives);
- Stock lending (including interest) and repo transactions;
- Interest on monetary loans;
- Warranty services, including the cost of spare parts;
- Gambling;
- Licensing or assignment of certain intellectual property rights;
- Assignment of claims arising from loan agreements;
- sale of land, residential buildings, and commercial premises, or any interest in such property;
- Certain research and development activities;
- Services rendered in the stock, commodity, and currency markets by registrars, depositaries, dealers, brokers, etc.

It is possible to obtain further information about the Russian VAT system from:

Federal Tax Service of Russia

Neglinnaya str., 23,
27381, Moscow,

Russian Federation.
Tel: +7 (495) 913-00-09
Fax: +7 (495) 913-00-05
Web: https://www.nalog.ru/eng/

6.3 Other Relevant Taxes

a) Land tax

Land tax is a local tax, so its application is governed by local regulations as well as the Tax Code. The land tax applies to legal entities and individuals who own land or have a permanent right to use it. Legal entities and individuals who use land free of charge or under lease agreements are not subject to land tax.

b) Transport tax

Transport tax is a regional tax, therefore its application is governed by regional regulations as well as the Tax Code. A region may impose this tax only if its legislation contains transport tax provisions that are in line with the Tax Code. Entities and individuals who are registered vehicle owners are subject to transport tax. For the purposes of Russian legislation, vehicles are not limited to cars, motorcycles, motor scooters or buses, but include other means of transport, such as aircraft, helicopters, yachts, snowmobiles, etc. However, aircraft, ships, and river vessels owned by companies whose main activity is the transportation of passengers or freight are exempt, as are vehicles used in agricultural production.

c) Trade duty

Starting from 1 July 2015, a trade duty may be levied on legal entities and individual entrepreneurs performing trade activities using movable

or immovable property. The trade duty has to be introduced separately at a local level (municipal district or a federal city, e.g. Moscow, St. Petersburg or Sevastopol).

d) Stamp duty

The Tax Code provides an exhaustive list of situations when a stamp duty is charged. The main ones applicable to legal entities include:

- Initiation of court action;
- State registration of a legal entity and the accreditation of branches and representative offices of a foreign legal entity;
- State registration of issues of shares, including certain other securities placed through subscription;
- State registration of a mutual investment fund;
- Obtaining of a licence to conduct certain activities;
- Notarial services;
- Vehicle registration.

7. Employment

7.1 Russian Employment Law

a) Introduction

Russian employment law applies to all employment relationships in Russia, including those involving Russian nationals, foreign nationals, stateless persons, international organisations, and Russian and foreign legal entities.

An employment relationship is defined in the Russian Labour Code[11] as the personal performance of an employment function by an individual in return for remuneration. Employment relationships are distinguished from civil law service agreements.

The Russian Labour Code also sets minimum employment standards that cannot be overridden by agreement between the parties. Accordingly, any provision in an employment agreement that negatively affects an employee's entitlement to these minimum employment standards is not enforceable. In addition to this, labour relations are regulated by the 1996 Russian Federal Law on Professional Unions, Their Rights and Guarantees of Activity, Russian legislation on the minimum wage and labour safety, and other related laws. Many aspects of labour relations are also regulated by regulations of the Government of the Russian Federation and orders of the Ministry of Labour.

Russian labour law applies equally to regular employees and top managers, including the CEOs of Russian companies and heads of representative offices and branch offices of foreign companies accredited in Russia. Russian labour law also applies to foreign nationals employed by Russian or foreign businesses in Russia. All employers should comply with special immigration law requirements for foreign employees.

[11] The Labor Code of the Russia Federation dated from 30 December 2001, N 197-FZ.

If a civil law service agreement includes aspects that can be construed as an employment relationship, the mandatory provisions of Russian employment law will apply.

b) Employment contracts

i) Overview

As a general rule, an employment relationship is based on a contract entered into between an employer and an employee. An employment contract must contain certain obligatory provisions set out in the Labour Code, which are essentially designed to protect the rights of employees.

The general power to sign an employment contract lies with the general director of the employer. Employment contracts with employees of branches and representative offices of foreign companies are usually signed by the head of the branch or representative office acting under a power of attorney granted by the foreign head office.

The contracts may cover the following essential elements of employment:

ii) Duration of an employment contract

Employment contracts may be concluded for either an indefinite or fixed term, although fixed-term agreements are only permitted in specific situations provided for in the Labour Code. An employment contract is deemed to be entered into for an indefinite term if no time period is indicated in the agreement. Employees are entitled to enter into employment contracts with several different employers.

iii) Probation

The probation period under a contract cannot exceed three months. For company heads and their deputies, chief accountants and their deputies, and heads of branches, representative offices, and other

subdivisions of legal entities, a longer probation period may be established, but should not in any event exceed six months. Certain categories of employees, for example mothers with children under 18 months old, cannot be subject to a probationary period.

The imposition of a probationary period must be specifically stated in both the employment agreement and the order on hiring. If during the probationary period the employer determines that the employee does not meet the criteria established for the position for which they were hired, the employee can be dismissed by the employer without severance pay and with three days' written notice before the expiry of the probationary period. Such notice to the employee must state the reasons why the employee is deemed to have failed the probationary period. The employee is also entitled to resign during the probationary period, without stating any reason, with three days' written notice to the employer**.**

7.2 Health and Safety Issues

An employer must comply with state standards of labour protection. The legislation in force is aimed at prevention of harm. In particular, employers must:

- Ensure safety in the course of the operation of buildings and equipment, the conduct of technical processes, and the use of tools, raw materials and products;
- Create and maintain a management system for labour protection;
- Use certified individual and collective means of protection;
- Purchase and provide special clothing and footwear;
- Train its employees in relation to work safety and first aid, and conduct relevant knowledge tests;
- Arrange medical checks, including at the request of employees.

Non-compliance with these standards can result in administrative liability consisting of a fine of up to RUB 150,000 (for the employer) and up to RUB 30,000 (for its officers).

7.3 Workers' Compensation and Social Insurance

a) Wage rates

The monthly salary of an employee may not be set below the minimum wage established under federal law (currently RUB 7,500), although higher limits may apply at a regional level. Salaries must be paid locally in monetary form, in roubles, and in no fewer than two monthly instalments on the dates established by the employer's internal polices or the employment contract.

b) Sick leave

As of 1 January 2007, sick leave and maternity leave compensations are regulated by Federal Law No. 255-FZ "On the Provision of Sick Leave and Maternity Leave Compensation to Citizens Eligible for Mandatory Social Insurance," dated 29 December 2006 (the "Sick Leave Law").

In case of sickness, employees are required to provide an employer with a medical certificate after their recovery and return to work.

An employer is obliged to pay an employee sick leave compensation only for the first three days of sick leave. Compensation for further sick leave is payable out of the Russian State Social Insurance Fund, which is funded by the employer's mandatory social security contributions and paid as a percentage of each employee's salary.

Sick pay paid by an employer in addition to statutory sick pay cannot be recovered from the state. According to the Sick Leave Law, sick leave compensation must be paid, inter alia, to an employee in the event of his/her illness, injury, and when an employee is caring for a sick family member. The amount of sick leave compensation and the period of time

for which such compensation is payable will vary according to the grounds for the sick leave.

c) Maternity leave

Women are entitled to maternity leave of 70 days before the birth (84 days in the event of a multiple pregnancy) and 70 days after the birth (86 days in the event of a birth with complications and 110 days in the event of the birth of two or more children). During maternity leave, women receive an allowance from the Social Insurance Fund out of insurance payments made by the employer. The allowance corresponds to 100% of the employee's average salary over the previous two years. A maximum amount is determined every year.

Pregnant employees can make a request, and employers must provide them the opportunity, to work part-time.

In addition, women are entitled to leave from employment until the child reaches the age of three years, and during this period, the employee is entitled to resume her job.

Pregnant women also benefit from additional guarantees (for example, they cannot be instructed to work overtime, during nights, on weekends and on public holidays).

A child's care provider (the employee who has given birth or who is the father, grandmother, grandfather or other relative who is taking care of the child) may request paid childcare leave until the child is three years old. The employee retains the right to return to his/her job during the entire period of childcare leave, and the full childcare leave period is included when calculating the employee's length of service.

Payment during periods of sickness and maternity leave is calculated based on the employee's average salary.

d) Working hours and time off

Regular working hours may not exceed 40 hours per week. Overtime work should not exceed four hours in two consecutive days and is limited to 120 hours per year. The minimum annual paid vacation is 28 calendar days. An employee is entitled to receive pay during periods of sickness, and the employer is compensated for this with a reduction in its social insurance liability.

e) Shift workers

Shift workers enjoy the same guarantees as other employees in respect of working hours and rest periods. Certain categories of employees benefit from guarantees regarding the maximum duration of a shift (for example, the duration of a shift is limited to five hours for employees between 15 and 16 years of age, and to seven hours for employees between 16 and 18 years of age). Employees cannot work two consecutive shifts.

f) Nightshifts

Nightshifts are deemed to be between 10 p.m. and 6 a.m. and are one hour shorter than day shifts, unless otherwise specifically established by Russian law. Night work for pregnant women and workers under eighteen years of age is prohibited.

g) Part-time contracts

An employee may agree with an employer, either during the hiring process or at any other time after that, to work on a part-time basis. Further, under the Labour Code the employer must establish a part-time working regime upon the request of certain individuals, including, among others, pregnant women and parents of a child who is less than 14 years old.

Part-time employees are paid *pro rata* for the hours they work or for the amount of work completed. Part-time employees enjoy the same rights

and benefits as full-time employees, including the rights relating to the length of annual paid leave.

h) Temporary employment

Employment contracts can be concluded for a fixed term not exceeding five years. Fixed-term employees have the same rights as employees who are hired for an indefinite term. If an employer does not terminate a fixed-term employment contract by notifying the employee in writing three days before the expiration of the contract, and the employee continues working, the employment relationship will be renewed for an indefinite term.

A definite term contract (fixed-term contract) can be entered into for a term of up to five years, and it may only be executed under the circumstances set out in the Labour Code (for instance, for replacement of a temporarily absent employee who is legally entitled to retain the position during his/her absence; for the performance of temporary (up to two months) work and seasonal work, when the work can only be performed during a certain period of time (or season) due to natural conditions, and some other scenarios). These situations usually occur when the nature or conditions of work make it impossible for the parties to enter into an indefinite term contract.

Similarly, fixed-term employment agreements with foreign workers may only be executed in the circumstances specifically provided for in the Labour Code.

If a fixed-term employment contract was concluded unlawfully, the employee can request a court to reclassify the contract as an employment contract for an indefinite term. The same applies if an employer concludes a fixed-term contract to avoid hiring an employee for an indefinite term.

i) Secondment

From 1 January 2016, secondment arrangements are generally prohibited under Russian legislation, except in cases specifically

provided for by the law. Such exemptions include the provision of personnel ("secondment") by:

- Duly accredited private employment agencies (special requirements for agencies and the accreditation procedure for them are set by law);
- Other companies in cases stipulated by law, including affiliated companies within the Group or companies that are a party to a shareholders' agreement (special requirements are expected to be set out in forthcoming legislation).

The provision of personnel shall meet a set of requirements established by law:

- A secondee (employee) can be sent to another employer only upon his/her consent;
- The entry into a relevant addendum to the existing employment agreement supporting secondment in compliance with Russian legislation;
- Work under secondment arrangements shall be performed in the interests and under the control of a person that is not the employer of the secondee (i.e. by the "recipient" of the personnel under the secondment arrangement);
- As a general rule, the work of a secondee should be of a temporary nature (for example, to replace a temporarily absent employee, in connection with the expansion of production, etc.);
- The secondee shall be engaged according to his/her qualifications and job description;
- The payment conditions of the secondee shall not be worse than those of the employees in the receiving company that perform the same work functions;
- The "recipient" of the personnel under the secondment

arrangement shall be obliged to meet the labour protection requirements in accordance with the Russian legislation in respect of secondees.

Although the new regulations on secondment that took effect on 1 January 2016 provided for an option to establish a specific procedure for obtaining work permits for foreign nationals working under secondment arrangements, as of today such a procedure has not been adopted.

In practice, the Russian migration authorities do not issue work permits based on secondment agreements; only a direct labour contract between a foreign national and employer in Russia may serve as the legal basis for obtaining a work permit.

j) Individual dismissal procedure

The Russian Labour Code envisages various grounds for termination. The following grounds are the most frequently used:

- With the mutual consent of the employer and the employee;
- At the employee's initiative;
- At the employer's initiative.

k) Overview

Mutual consent agreement is the most commonly used ground for termination, as it enables termination of the agreement at any agreed date and on conditions agreed by both parties. Such type of termination is also considered the most favourable option by employers, as it helps to mitigate the risks of subsequent disputes with a former employee.

l) Employee's initiative

An employee may terminate the employment relationship on their own initiative at any time with two weeks' prior written notice to the employer.

m) Employer's initiative

The specific grounds for termination by an employer are listed in the Labour Code, and some of these are described below.

- In the event that an employment contract is terminated due to staff redundancy or the liquidation of the employing company, the employee must be personally notified in writing at least two months in advance. In the event of staff redundancy, the employer must offer the employee another position that corresponds with that employee's qualifications, assuming a vacancy exists.

- If employment is terminated due to the employee's unsuitability for the job, this must be confirmed by an internal review committee formed specifically for this purpose. However, this option should be approached with caution since it is often successfully contested in court.

- If an employee is unsuitable for his or her employment due to his or her poor health, the employer should transfer the employee (subject to his or her consent) to another position within the company that is more suitable in terms of the employee's health requirements. If the employee rejects the transfer, or if there is no such position available, the employment agreement can be terminated.

- During the probation period, employment can be terminated due to an employee's unsatisfactory performance. Three days' written notice describing the nature of the unsatisfactory performance must be given. The employee has the right to challenge this decision in court. The employee is also entitled to terminate the contract during the probationary period by providing three days' written notice.

There is no possibility of 'termination-at-will' under the Labour Code. The only exception applies to dismissal of a CEO, who is the only employee of a Russian company who can be dismissed without his or her consent at any time (subject to certain corporate formalities).

n) Collective dismissal procedure

The Labour Code requires that additional specific procedural requirements be complied with in the case of collective (mass) dismissals. The criteria for a collective dismissal are established by territorial and industrial agreements, and generally are based on the number of employees dismissed and the period during which the dismissals occur.

When an employer proposes a collective dismissal, a consultation with the employee representative body or trade union may be required. An employer must also serve notice on the state employment agency and trade union organisations no later than three months before the commencement of the dismissal. Collective bargaining agreements (which generally regulate social and employment relations between the employer and the employees, and provide for a higher level of protection of employees than applicable legislation) and territorial and industrial agreements (which generally regulate relations between employees and employers in certain regions or industries) may contain specific provisions relating to collective dismissals.

o) Redundancy

Redundancy must be based on some valid managerial or economic reasons and should not be aimed at terminating the employment of a particular employee.

In the condition of an employer-terminated agreement as a result of redundancy, two months' notice is given to the employee along with a severance payment equivalent to two months' salary.

As Russian employment laws on compensation tend to favour the employee, Russian employers prefer to negotiate a settlement amount usually from two to three months' salary for regular employees and up to six months for senior executives.

p) Social security system

Social contributions in Russia are the sole responsibility of the employer. There are no “matching” employee contributions. Employer contributions cover obligatory pension, medical and social insurance. On a voluntary basis, additional pension contributions may be paid by individuals or by their employers (e.g., as part of a social package) to non-state funds or insurance companies.

Social contributions include contributions to the:

- Pension Fund,
- Social Insurance Fund,
- Federal Fund of Compulsory Medical Insurance.

Social contributions must be accrued on remuneration provided to individuals in the context of employment relations and civil-legal agreements on performance of work or rendering of services (except for individual entrepreneurs), and copyright agreements. Generally, the tax base includes remuneration as well as most benefits provided to employees.

8. Visas and Immigration Procedures

8.1 Entry Procedures

At the outset, it should be noted that special rules apply to Hong Kong residents having an “HKSAR” passport, issued by the Government of the Hong Kong Special Administrative Region, as regards entry visas. According to the bilateral intergovernmental agreements, holders of HKSAR passports who do not intend to be employed, study or reside in the Russian Federation enjoy visa-free entry to the Russian Federation.

Duration of the visa-free stay in the Russian Federation for HK SAR passport holders is limited to 14 calendar days, starting from the day of crossing the border of Russia. Under the above terms, the cumulative duration of stay in Russia cannot exceed 90 days within any period of 180 days, and the number of entries is unlimited. Passport must be valid for at least six months after intended date of departure from Russia. if HKSAR passport holders intend to stay for more than 7 days after arrival, they should approach the local branch of the Federal Migration Service within 7 days of arrival for registration formalities. Most major hotels will register for their guests.

The remaining entry procedures established by Russian law are the same for Hong Kong residents and for other Chinese nationals. The same procedure is thus applicable to HKSAR passport holders who wish to stay in the Russian Federation for more than 14 days (or for purposes other than tourism or business), as well as to Hong Kong and Chinese mainland residents who do not hold an HKSAR passport.

In particular, Chinese nationals and Hong Kong residents who wish to enter Russia must obtain the relevant visa. The visa will be issued upon submission of the required documentation, which varies depending on the intended activity to be carried out in Russia and which is revised from time to time. The relevant information can be collected at the Russian Embassy in mainland China (www.russia.org.cn/en/) or at the General Consulate in Hong Kong (https://hongkong.mid.ru/web/hongkong-en/home).

8.2 Working Permits

Before a foreign national can work in Russia as an employee, both a work visa and a work permit must be obtained (except for foreign nationals from countries that have a "visa-free" regime with Russia). A work visa differs from a business visa in that a work visa allows a foreign national to be employed in Russia for one year (or up to three in the case of Highly Qualified Specialists — see below), while a business visa merely confers the right to visit Russia for business purposes. Work permits for foreign employees are issued through the employer by the Russian Ministry of Internal Affairs (MIA).

The process of obtaining permission to hire foreign nationals, individual work permits and work visas in Moscow involves several consecutive steps and may take from four to six months to complete. In other regions of the Russian Federation, this period may differ. Generally, a work permit and work visa are issued for a one-year period. Renewal of a work permit involves the same procedure and takes the same amount of time as obtaining the first work permit.

a) Work permits – usual procedure

A Russian company, or the branch or representative office of a foreign company, can employ a foreign "visa national" (i.e. a foreign national requiring a visa) only if:

- The employer has obtained a corporate permit to employ foreign nationals; and
- The employer has obtained an individual work permit for the employee.

These requirements do not apply to certain limited categories of foreign employees, for example, employees of foreign equipment manufacturers who perform installation services in Russia, journalists, and some others. Furthermore, these requirements do not apply to employees from Kazakhstan and Belarus.

The work permit process for a visa national is often bureaucratic and time-consuming, and includes the following stages:

- Obtaining quota positions for employing foreign nationals (although some work positions, such as the head of a representative office, fall outside of the quota requirement);
- Obtaining confirmation from the local employment centre;
- Obtaining a corporate permit to employ foreign nationals from the MIA;
- Obtaining an individual work permit for each foreign national.

Visa-free nationals may work in Russia on the basis of a special so-called 'patent' obtained from the Russian migration authorities. Such a patent should be obtained within one month of arrival in Russia. Patents are granted for a period from one month to one year. During this period, an individual may legally stay and work in Russia (but only in the area/region named in the patent) and no additional documents need to be obtained.

A further bureaucratic requirement is that foreign nationals must be registered with the migration authorities within seven working days of arrival in Russia (or arrival at a new location within Russia for a stay of more than seven days). Employers risk heavy fines in the event of a default. Deregistration is performed by the MIA when the foreign national crosses the Russian border, or registers in a new location in Russia.

Most foreign employees are obliged to confirm their knowledge of the Russian language, history, and the basics of the law to obtain or renew a work permit. A foreign employee has to submit either a Russian school or high-school diploma to the migration authorities, or a current special certificate confirming the required knowledge (such certificates are valid for five years). This must be done within 30 days after the work permit is issued, or the permit will be cancelled. This requirement does not apply to highly qualified specialists and some other limited categories of foreign nationals.

b) Work permits – highly-qualified specialists (HQS)

There is a simplified system for HQS. HQS are defined as foreign nationals with experience, skills, or achievements in a particular area who receive remuneration from their local employment of no less than RUB 167,000 per month. A reduced minimum salary requirement applies to certain limited categories of foreign nationals; no minimum salary requirement applies to foreign nationals working in the Skolkovo Innovation Center.

Eligible employers include Russian commercial legal entities, registered branches and representative offices of foreign legal entities, and some categories of non-profit organisations.

The benefits of the HQS procedure include:

- No quota restrictions;
- No requirement to obtain approval from the local employment centre or corporate permits to employ foreign nationals;
- 14 working days for the approval/rejection of an application;
- Work permit validity for up to three years (and possible extension for a further three years);
- Work permits may be valid in more than one region of Russia;
- Eligible dependents include children's and parents' spouses, grandparents and grandchildren;
- Exemption from the registration requirement on arrival in Russia for up to 90 days (or up to 30 days in other location(s) within Russia).

The employer of the HQS should notify the Russian migration authorities of payments made to the HQS on a quarterly basis. Such reports may be used to verify the employer's compliance with the salary payment obligations.

8.3 Liability for Violating Immigration Legislation

Violations of immigration law may result in significant penalties. When the employer lacks the necessary corporate permit to employ foreign nationals and/or employs them without a work permit or fails to submit certain notifications to the MIA, the employer risks fines of up to RUB 800,000 or the suspension of its activities for up to 90 days.

The employer's officials may face fines of up to RUB 50,000. A foreign national can also be fined up to RUB 5,000, depending on the type of offence, and may be deported from the Russian Federation. In case of deportation, the foreign national will not be allowed to enter Russia for a period of five years.

If violations of migration law were committed in Moscow, Moscow Region, St. Petersburg or Leningrad Region, more severe sanctions may apply. In particular, the amount of the administrative fines for the employer may be up to RUB 1,000,000 and up to RUB 70,000 for the employer's officials. Personal fines imposed on foreign nationals may be up to RUB 7,000, and an automatic deportation from the Russian Federation may follow.

The administrative fines imposed on the employer are applied with respect to each foreign national individually, i.e. if a violation is committed with respect to several foreign nationals, the fine will be multiplied by the number of foreign nationals who worked without a work permit or in violation of another provision of the immigration legislation.

Thus, employing a foreign national in Russia requires advance planning to allow sufficient time for all the procedures to be respected. Russian migration legislation is still undergoing significant amendments, and so the procedures involved could be modified at any time. It is highly recommended to verify the procedures and documentary requirements on a case-by-case basis in advance.

9. Sales Promotion

9.1 Legal Framework

The foundation of advertising business regulation in Russia is to be found in provisions of the Constitution of the Russian Federation. Article 29 of the Constitution guarantees the freedom of thought and speech, and ensures the right to freely look for, receive, transmit, produce and distribute information by any legal means.

There is no specific legislation on sales promotion in Russia. There are, however, laws that govern certain areas of sales promotion. The Advertising Act sets out general requirements for advertising. Special restrictions are included with respect to certain types of goods and services, such as (Articles 21-30.1):

- tobacco products;
- alcohol and products containing alcohol;
- medicinal products and services;
- biologically active supplements, food additives and infant food;
- military goods and weapons;
- betting;
- financial services, including services provided by banks, fiduciary management companies and investment funds;
- shared-equity construction services; and
- mediation services.

There are the following legal acts that are relevant to sales promotions in Russia:

- The Consumer Protection Act requires that a manufacturer (seller,

contractor) must provide consumers with essential and fair information about its products (Article 10).

- The Civil Code lists the main principles and regulations on contract conclusion and performance.
- The Law on the Fundamentals of State Regulation of Trade includes some specific requirements for foodstuff sales promotion.
- The Personal Data Act specifies that the processing of personal data for the purposes of sales promotion is only allowed with consent of the personal data owner (Article 15).
- The Lottery Act regulates the organisation of public lotteries.
- The Administrative Offence Code, among other rules, provides sanctions for breaches of advertising rules.
- The Competition Protection Act provides requirements with respect to price determination and restrictions for companies in a dominant position.

Advertising on the internet is governed by the same rules that apply to other advertising channels, though rules specific to internet advertising may be applicable to particular products, e.g., limitation of gambling, tobacco, alcohol and other advertising via the internet.

If Russian consumers are targeted, advertisers and/or advertising distributors must follow the following principals when distributing their adverts:

i) obtain prior consent from a consumer before showing an advert via electronic communication channels (including via the internet); and

ii) allow a consumer to opt out from receiving the advertising.

Advertising is regulated by the state as well as by industrial institutions and self-regulatory bodies.

9.2 Regulation by Public Institutions

The Federal Antimonopoly Service (FAS Russia) is a federal-level executive governmental body, which adopts regulatory legal acts and controls the execution of legislation in various areas, including advertising and competition law.

As a state authority, FAS Russia monitors the execution of the legislation of the Russian Federation on advertising, and particularly:

- prevents, reveals and precludes violation of Russian legislation on advertising by individuals and legal entities;
- initiates and holds proceedings on violation of Russian legislation on advertising.

The competition body is entitled to:

- issue binding directions to advertisers, advertising producers and advertising distributors aimed at stopping the violation of Russian legislation on advertising;
- issue binding directions to federal executive bodies of state authority, executive bodies of all of the subjects of the Russian Federation, local self-government bodies aimed at repeal or amendment of acts adopted by them which are contrary to Russian legislation on advertising;
- bring an action before courts and commercial courts to prohibit advertising distribution where such a distribution violates Russian legislation on advertising;
- bring an action before courts and commercial courts to publicly disclaim unreliable advertisements (counter-advertising) pursuant to section 38 para. 3 of the Law on Advertising;
- apply to the commercial court to hold invalid in full or in part non-regulatory legal acts of federal executive bodies of state authority, non-regulatory legal acts of executive bodies of all of the subjects of the Russian Federation and non-regulatory legal acts of local self-

government bodies that contradict Russian legislation on advertising;

- apply to the commercial court to hold invalid in full or in part regulatory legal acts of federal executive bodies of state authority, regulatory legal acts of executive bodies of all of the subjects of the Russian Federation and regulatory legal acts of local self-government bodies that contradict Russian legislation on advertising;

- impose administrative sanctions in accordance with the law on administrative offences of the Russian Federation;

- apply to the commercial court to hold invalid in full or in part permission to install advertising structures in case of section 19 para. 20 subpara. 1 of the Law on Advertising;

- issue binding directions to local self-government bodies of a municipal region and local self-government bodies of a state district on cancellation of permission on erection of advertising structures;

- issue directions on termination of contracts for provision of TV advertising dissemination services concluded contrary to section 14 paras. 3.1, 3.3 of the Law on Advertising.

Federal executive bodies of state authority, executive bodies of all of the subjects of the Russian Federation, local self-government bodies and their officials as well as sole proprietorships, legal entities and their directors must provide the competition body with information required to fulfil state control duties over the execution of Russian law on advertising and provide access to such information to authorised persons.

Failure to fulfil the requirements results in liability attaching to the offending parties in accordance with the administrative offences law of the Russian Federation.

FAS Russia monitors compliance with the Law on Advertising and publishes its results annually.

9.3 Regulation by Industrial Institutions

a) Association of Russian Communication Agencies (AKAR)

The Association of Russian Communication Agencies is one of the main industrial regulatory institutions of the advertising business. The body was founded to consolidate members of the Association, including advertising market participants.

AKAR is a leading professional union within the advertising and communications market. It currently has 165 national and local members.

AKAR as a group of members, experienced in their respective fields, represents the industry before state bodies and takes part in law-creating processes related to the advertising market.

b) Association of Branded Goods Manufacturers in Russia (RusBrand)

RusBrand is said to be the largest association of fast moving consumer goods (FMCG) manufacturers in Russia.

It unites more than 50 leading Russian and international companies. RusBrand includes the leading Russian media market of television advertisers representing the following industry segments: food, tobacco and alcohol industry manufacturers, beauty products and health care products manufacturers, home care products manufacturers, clothes and footwear manufacturers, household appliances manufacturers, and pharmaceuticals manufacturers.

RusBrand's priorities are found in the IPR protection field, promoting competitive media market development, contributing to constructive collaboration between representatives of the industry and commerce, and providing for advantageous business development. Much attention is paid to the establishment of positive relationships with all of the market participants and state bodies.

c) Association of Advertisers

The major tasks of this Association include: developing and strengthening the system of solid advertising freedoms in Russia, and promoting the establishment and development of an effective system of advertising business self-regulation in Russia. With the help of the Association a number of agreements were prepared and signed during an advertising self-regulation process. These include the “Obligation of FMGG market participants to limit advertising aimed at minors”. The Association of Advertisers is one of the core unions advocating self-regulation of the industry.

10. Investment Rules and Regulations

10.1 Legal Framework

Foreign investments are regulated by Federal Law No. 160-FZ "On Foreign Investments in the Russian Federation" dated 9 July 1999 (the "Foreign Investments Law").

The Foreign Investments Law guarantees foreign investors the right to invest and to receive revenues and profits from such investments, and sets forth the general terms for foreign investors' business activity in Russia. By virtue of this law, foreign investors shall be treated no less favourably than domestic investors, with certain exceptions. These exceptions may be introduced to protect the Russian constitutional system, public morals, health and rights of persons, or for state security and defence purposes.

Foreign investors are protected against nationalisation or expropriation, unless subject to a federal law. In such cases, foreign investors are entitled to compensation.

The Foreign Investments Law permits foreign investment in most sectors of the Russian economy: government securities, stocks and bonds, direct investment in new businesses, the acquisition of existing Russian-owned enterprises, joint ventures, etc. Importantly, the Foreign Investments Law does not apply to the investment of foreign capital in banks and other credit organisations, insurance companies, mass media outlets, broadcasting organisations, air carriers, as well as non-commercial organisations. Foreign investments in these entities are subject to specific Russian legislation.

Certain restrictions on foreign investments are imposed by Federal Law No. 57-FZ "On the Procedures for Foreign Investments in Companies of Strategic Significance for National Defence and Security," dated 29 April 2008 (the "Strategic Companies Law"). The Strategic Companies Law is designed to regulate the acquisition of control over Russian strategic companies by foreign investors or "groups of persons" that include a foreign investor. In addition, Russia is a member of the World Trade Organization and, thus, has committed to implementing its treaties and regulations.

10.2 Restrictions and Limitations on Foreign Investment

As a general rule, foreign investors are subject to the same legal regime as local Russian companies and most sectors of the Russian economy are open to foreign investments. However, there are certain restrictions on foreign investors acquiring control over companies that are of strategic value to Russia (so-called "strategic companies"). Furthermore, foreign investments in certain industries, including banking, insurance and mass media, are also subject to certain limitations and restrictions. There are also some restrictions on foreign investors acquiring land plots in areas adjoining the borders of Russia, land plots located within the boundaries of seaports, as well as agricultural lands.

Whenever a foreign investor intends to acquire "control" over a Russian company engaged in a strategic activity, the acquisition, depending on the level of such control, requires preliminary approval from the Russian government and/or post-transaction notification of the Federal Antimonopoly Service of the Russian Federation. Importantly, the notion of "control" for these purposes implies not only a certain minimum shareholding, but also rights to appoint governing bodies and otherwise determine the target company's activity.

10.3 Participation in Public Tenders

a) Legal framework

The key law regulating procurement involving public authorities and some related entities (contracting authorities) is Federal Law No. 44-FZ 'On the Contract System in State and Municipal Procurement of Goods, Works and Services' dated 5 April 2013 (Law No. 44-FZ).

There are also numerous subordinate legal acts adopted in accordance with federal procurement legislation. The government and the Ministry of Economic Development are the key bodies responsible for setting government purchasing or procurement policy and guidelines. The control function in the area of compliance with procurement legislation is

mainly within the Federal Anti-monopoly Service of Russia, which investigates different violations in this area, challenges procurement proceedings, brings suits, etc. Similar control powers are vested in the Federal Service for Defence Contracts with respect to government defence procurements.

With respect to procurement involving public entities (as opposed to public authorities), the main law in this area is Federal Law No. 223-FZ 'On the Purchase of Goods, Works and Services by Certain Types of Legal Entities' dated 18 July 2011, which provides for a more liberalised procurement mechanism in comparison with Law No. 44-FZ. The following entities fall within the scope of this law:

- state corporations and state-owned companies;
- natural monopolies;
- companies engaged in regulated activities in the fields of electric power, gas, heat, water, etc.;
- state and municipal unitary enterprises;
- autonomous institutions;
- legal entities where the Russian Federation holds a stake exceeding 50%;
- subsidiaries where the entities listed above hold a stake exceeding 50%;
- subsidiaries where the above-mentioned subsidiaries hold a stake exceeding 50%; and
- budget financed institutions (in certain cases).

Law No. 223-FZ leaves determination of the appropriate procurement procedure to the discretion of the contracting entity (and in this respect is more flexible than Law No. 44-FZ). Thus, contracting entities should adopt their own procurement policy, including the procedure for

preparing for and carrying out procurement as well as conditions for its application, the procedure for the conclusion and execution of contracts, and other related provisions.

Generally, contracting authorities can accept bids from foreign suppliers provided that they comply with the qualification criteria. There is no requirement to set up a representative office or a subsidiary in the territory of Russia for the purpose of bidding. However, the participation of foreign suppliers may be restricted in a procurement if the procurement involves state secrecy.

b) Government procurement restrictions applicable to foreign companies

Government procurement restrictions began in earnest in 2014 when Russia established a 15% preference for a variety of goods (including, inter alia, certain food products, pharmaceuticals, steel, machinery, and medical products) produced in the EAEU in purchases for government use. In addition, Russia banned states and municipalities from purchasing foreign-made automobiles, other vehicles, and machinery, and banned procurement of a broad array of consumer goods produced outside the EAEU. On 31 December 2014, President Putin signed the Industrial Policy Law, which specifically promotes import substitution and restricts government procurement and SOE purchases of foreign-made products. The law entered into effect on 30 June 2015, and provides a framework for the support of innovative product manufacturing, research and development subsidies, and infrastructure projects as well as implementation of the "Buy Russia" law. The law also includes provisions for financial and material support for Russian companies to boost their export potential.

To implement the Industrial Policy Law, Russia has established "local content" requirements for a variety of industrial product sectors, including machine tools, automotive, special mechanical engineering, photonics and lighting, electrical-technical, cable, and heavy machinery. As a consequence, for example, some types of metalworking equipment must contain from 20 to 50% domestic parts, with increasing targets

each subsequent year. In 2015, Russia reaffirmed the ban on government procurement of a wide range of foreign-made machinery (e.g., machinery used in the construction and raw material extraction industries) and certain vehicles (e.g., emergency service vehicles, bulldozers, and excavators). In addition, Russia banned government procurement of numerous foreign-made medical devices and health-related disposable goods if fewer than two companies from the EAEU submitted a bid; as noted above, the list of covered medical devices was expanded in 2016. In August 2016, the Russian government also established a ban on a list of certain food and dairy products from non-EAEU Member States for government and municipal procurement including, fresh and frozen fish, fish products, canned fish, salt, beef, pork, veal, poultry, cheese, cottage cheese, rice, butter and sugar.

Similarly, pursuant to amendments to Russia's national procurement law, in 2016, Russia created a registry of Russian software; foreign-made software not on the list will no longer routinely qualify for government and municipal procurement, unless there is no similar domestically produced software available. In July 2016, the Russian government went a step further and issued an order that approved a three-year plan to switch government agencies to Russian office software. In late September 2016, Russia imposed a ban on the procurement of a range of over 100 types of foreign-made radio-electronic products and components for state and municipal needs when there are at least two bids for similar items manufactured in Russia or an EAEU Member State. In addition, Russia has created a Government Commission on Import Substitution with the mandate to support the production of priority goods, works, and services that are not currently produced in Russia.

11. Sanctions Against the Russian Federation

International sanctions against Russia include the set of restrictive measures that were first introduced by the US, EU, Canada, Australia, Switzerland, Norway and Japan (the "implementing countries") in the course of 2014. The sanctions target certain Russian and Ukrainian entities and individuals as a result of the political situation in Ukraine. The sanctions were primarily adopted by the US and EU, while other countries followed them by introducing similar sanctions. The sanctions target specially designated nationals (persons) as well as key sectors of the Russian economy.

In addition to the sanctions imposed relating to the situation in Ukraine, the implementing countries also apply other sanctions programs (e.g., US cyber-related sanctions; US and EU sanctions with respect to Syria, Iran, North Korea, etc.), which may impose certain restrictions on doing business with Russian individuals and companies.

In order to comply with the EU's sanctions against Russia, it is important to (i) determine whether or not a particular transaction may be affected by the sanctions (e.g., whether it involves persons and/or products that fall under the sanctions) and (ii) analyse the relevant sanctions from the perspective of the EU. A general overview is provided below. Legal advice should be sought for any specifically planned projects.

11.1 EU Sanctions Against Russia

Since March 2014, the EU has progressively imposed different types of restrictive measures against

Russia. These comprise diplomatic measures; individual restrictive measures (asset freezes and travel restrictions); restrictions on economic relations with Crimea and Sevastopol; economic sanctions; and restrictions on economic cooperation.

There follow measures which could concern a restriction on European investments entering Russia. To different extents, all these cover European

investments which would normally be made in Russia, and anyone wishing to invest is advised to tread very carefully indeed, and always to seek specific legal advice for any investments in particular that are or may be planned, as the scope of each can be interpreted broadly by EU and Member State authorities.

a) Individual restrictive measures

i) Asset freeze and travel restrictions

150 people and 38 entities are subject to an asset freeze and a travel ban because their actions are believed to have undermined Ukraine's territorial integrity, sovereignty and independence. The measures were introduced in March 2014. They were last extended in March 2018 until 15 September 2018.

ii) Misappropriation of Ukrainian state funds

In March 2014, the EU Council decided to freeze the assets of individuals responsible for the misappropriation of Ukrainian state funds. These measures were last extended in March 2018 to last until 6 March 2019.

b) Restrictions on economic relations with Crimea and Sevastopol

The EU Council has adopted restrictive measures in response to what it considers the illegal annexation of Crimea and Sevastopol by the Russian Federation. The measures apply to EU persons and EU based companies. They are limited to the territory of Crimea and Sevastopol. These measures include:

- an import ban on goods from Crimea and Sevastopol,
- restrictions on trade and investment related to certain economic sectors and infrastructure projects,
- a prohibition to supply tourism services in Crimea or Sevastopol,
- an export ban for certain goods and technologies.

On 19 June 2017, the Council extended these measures until 23 June 2018.

Restrictions for Crimea and Sevastopol in more detail:

As part of the EU's non-recognition policy of the illegal annexation of Crimea and Sevastopol, the EU has imposed substantial restrictions on economic exchanges with the territory. These include:

- A ban on imports of goods originating in Crimea or Sevastopol unless they have Ukrainian certificates;

- A prohibition on investing in Crimea. Europeans and EU-based companies can no longer buy real estate or entities in Crimea, finance Crimean companies or supply related services. In addition, they may not invest in infrastructure projects in the following sectors: transport; telecommunications; energy and the prospection, exploration and production of oil, gas and mineral resources;

- A ban on providing tourism services in Crimea or Sevastopol. European cruise ships may not call at the following ports in the Crimean peninsula, except in case of emergency: Sevastopol, Kerch, Yalta, Feodosia, Evpatoria, Chernomorsk and Kamysh-Burun. This applies to all ships owned or controlled by a European or flying the flag of an EU Member State;

- In addition, European operators are – irrespective of the type of ship – banned from making any payments to the Port Authority of Kerch and the Port Authority of Sevastopol. This provision is part of the EU’s restrictive measures in respect of actions which it feels are undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;

- Goods and technology for the transport, telecommunications and energy sectors or the exploration of oil, gas and mineral resources may not be exported to Crimean companies or for use in Crimea;

- Technical assistance, brokering, construction or engineering services related to infrastructure in the same sectors must not be provided.

To facilitate compliance with these restrictive measures and other elements of the non-recognition policy, the EU has compiled an Information Note to EU business operating and/or investing in Crimea/Sevastopol[12].

c) Economic sanctions targeting exchanges with Russia in specific economic sectors

In July and September 2014, the EU imposed economic sanctions targeting exchanges with Russia in specific economic sectors. The Council extended economic sanctions until 31 July 2016. The economic sanctions were prolonged for successive periods of 6 months on 1 July 2016, 19 December 2016, 28 June 2017, and 21 December 2017. The economic sanctions are currently extended until 31 July 2018. These restrictive measures:

- limit access to EU primary and secondary capital markets for certain Russian banks and companies,
- impose an export and import ban on trade in arms,
- establish an export ban for dual-use goods for military use or military end users in Russia,
- curtail Russian access to certain sensitive technologies and services that can be used for oil production and exploration.

Measures concerning economic cooperation

Restrictions on economic cooperation were introduced by EU leaders in July 2014.

[12] https://eeas.europa.eu/sites/eeas/files/information_note_to_eu_business_on_operating_and_or_investing_in_crimea-sevastopol.pdf

- The European Investment Bank (EIB) was requested to suspend the signature of new financing operations in the Russian Federation.

- EU Member States agreed to coordinate their positions within the European Bank for Reconstruction and Development (EBRD) Board of Directors with a view to also suspend the financing of new operations.

- the implementation of EU bilateral and regional cooperation programmes with Russia was re-assessed and certain programmes suspended.

For any investment that individuals or companies are planning or may wish to make in Russia, it will be necessary to carefully examine the EU Decisions and Regulations which set out the restrictions. See, for example, the EU measures targeting Russia on the one hand, and Ukraine on the other hand, under each of the respective countries.[13]

d) Impact on Asian investors in both Russia and Europe

The application of the restrictive measures is to be interpreted broadly. For example, the following two Regulations have virtually the same wording concerning the persons to whom the Regulations apply:

COUNCIL REGULATION (EU) No 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol

"This Regulation shall apply:

(a) within the territory of the EU, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a EU Member State;

[13] http://ec.europa.eu/dgs/fpi/documents/Restrictive_measures-2017-08-04-clean_en.pdf

(c) to any person inside or outside the territory of the Union who is a national of a Member State;

(d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the Union."

COUNCIL REGULATION (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

This Regulation shall apply:

(a) within the territory of the Union;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Union who is a national of a Member State;

(d) to any legal person, entity or body, inside or outside the territory of the Union, which is Incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Hong Kong traders are advised to undertake a set of precautionary measures in order to comply with international sanctions and determine whether a particular transaction involving Russian counterparties or assets falls under the established sanctions. Such measures may involve the following:

- comprehensive analysis of the supply model, including all third parties and intermediaries;

- screening of the ownership structure of the counterparties, including any financial institutions (banks) involved;
- possible adoption and implementation of corporate sanctions compliance policies;
- possible special sanctions/export control compliance clauses to become standard conditions for Russian contracts; and
- paying particular attention to the origin, classification, designation and end-users of supplied goods, technology and/or services, payment terms and currency of payment.

In certain cases, controlling authorities of the implementing countries may authorise certain activities that would otherwise be prohibited under the sanctions. This authorisation usually comes in the form of a licence or other type of authorisation document. To receive a specific licence/permit, the legal entity or individual should file an application with the respective controlling authorities.

11.2 Counter-sanctions of the Russian Federation

On 6 August 2014, Russia banned imports of certain agricultural products, raw materials and foodstuffs from the US, the EU, Canada, Australia, Norway, Ukraine (effective from 1 January 2016), Albania, Montenegro, Iceland and Liechtenstein in response to the economic sanctions in connection with events in Ukraine in 2014. The list of banned imports covers all kinds of meat and meat products (including sausages and similar products, and offal, fish and other seafood), milk and dairy products (cheeses, cottage cheese, etc), vegetables, fruits and nuts, but excluding Atlantic salmon and trout juveniles, lactose-free milk, seed potatoes and onion, hybrid sweetcorn and seed peas, food supplements, vitamin mineral complexes, food flavourings or additives and protein concentrates. Baby food was explicitly excluded from the above prohibitions.

Initially, the measures were imposed for a one-year period subject to prolongation or amendments in scope. On 27 May 2016, the Russian

government relaxed import restrictions on beef, poultry meat and vegetables intended for the production of baby food in Russia. The most recent extension took place on 30 June 2017, when Russia prolonged the measures until 31 December 2018.

In addition, in response to the incident with a Russian military aircraft on 24 November 2015, Russia introduced a package of economic sanctions against Turkey taking full effect from 1 January 2016. By summer 2017, most of the restrictive measures had been lifted.

Other EAEU Member States did not join the restrictive measures imposed by Russia. Although EAEU members formally respect and comply with the above Russian restrictions, there are numerous media reports of instances of circumvention.

12. Useful Contacts

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Trade Representation of the Russian Federation in the People's Republic of China
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Fax: +86 10 6532 5398
Email: info@russchinatrade.ru
Web: http://china.ved.gov.ru/ru/contact_details

Representation of Chamber of Commerce of the Russian Federation in the People's Republic of China
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Web: https://hongkong.mid.ru/web/hongkong-en/home

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The Chamber of Commerce and Industry of the Russian Federation (CCI of Russia)
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Web: http://minpromtorg.gov.ru/en/

Ministry of Finance of the Russian Federation
9 Ilinka Str.
109097 Moscow
Russia
Tel: +7 495 987 91 0
Web: http://old.minfin.ru/en/

Shanghai – General Consulate
20 Huang Pu Rd.,
200080 Shanghai
China
Tel.: +86 21 632 42 682; 632 48 383
Fax: +86 21 630 69 982
Email: gkshanghai@mail.ru
Web: https://rusconshanghai.mid.ru/en_GB/

Representative of customs service of the Russian Federation in the People's Republic of China
4, Dongzhimen Beizhongjie
100600 Beijing
China
Tel: + 86 10 6532 4788
Fax: +86 10 6532 4851
Email: rus.customs.cn@mail.ru

13. Web Resources

Russian National SWIFT Association
www.rosswift.ru/en/

Association of Russian Communication Agencies
www.akarussia.ru

Federal Customs Service
www.eng.customs.ru

Russian Agency for Export Credit and Investment Insurance
www.exiar.ru/en/

National Association of Customs Brokers
www.natb.ru

National Association of Exporters of Agricultural Products
www.naesp.ru/en/

Association of Russian Banks
www.arb.ru/en/

Russian Franchising Association
www.rusfranch.ru

Russian Government
www.government.ru/en/

The Federation Council
www.council.gov.ru

The State Duma
www.duma.gov.ru

Ministry of Economic Development of the Russian Federation
http://economy.gov.ru/en/home

Ministry of Healthcare
www.rosminzdrav.ru

Association of Internet Trade Companies
www.en.akit.ru

Pensions Authority
www.pfrf.ru/en/

Major Russian Search Engines:

www.yandex.ru

www.google.ru

www.mail.ru

www.rambler.ru

www.bing.ru

14. Overview of Russia's Trade Policy

14.1 Russia as a Member State of the Eurasian Economic Union

The Russian Federation is a Member State of the Eurasian Economic Union (the EAEU), together with the Republic of Belarus, Kazakhstan, Armenia and the Kyrgyz Republic. Consequently, the EAEU trade policy comprises the basis for Russia's national trade-related legislation, especially in the spheres of general interest to Hong Kong businesses wishing to export to that region. Such is the case in substantially all matters concerning international trade with third countries (*e.g.*, the full body of EAEU customs law including the rules of origin, the common customs tariff and the trade defence measures – such as anti-dumping measures – that must be applied by the Russian customs authorities), but also in the case of regulatory measures vis-à-vis international trade: those concerning, among others, product safety and standards, labelling requirements and environmental regulations.

The primary external trade policy objectives of the EAEU members have been to liberalise regional trade and promote deeper economic integration among the Commonwealth of Independent States (CIS) countries. Those goals were pursued with the creation of a Customs Union (CU) between Russia, Kazakhstan and Belarus, in 2010, and more recently, with a more comprehensive regime of economic integration within the EAEU as of 1 January 2015. The new EAEU has the legal status of an international organisation vested with legal personality, which was not the case of the CU.

The Customs Code of the Eurasian Economic Union (CC EAEU) entered into force on 1 January 2018, replacing the Customs Code of the Customs Union that had been effective since 27 November 2009. The new Code significantly simplifies the customs formalities and will enhance cooperation between the customs authorities of the EAEU Member States thanks to electronic document flow and the implementation of unified customs regulations. At the same time, a closer cooperation between the customs authorities of the EAEU Member States will allow them to analyse the available information (e.g. on customs values for identical/similar goods

imported into different EAEU Member States) and to increase control over the intra-EAEU transactions.

The EAEU is open to accession by other countries. Armenia and Kyrgyzstan became new Member States of the EAEU on 2 January 2015 and 12 August 2015, respectively. In this respect, there are certain transitional arrangements that apply in the areas of import tariffs and foreign trade regulation. No other EAEU accession negotiations are currently ongoing.

14.2 Russia's National Trade Policy

In principle, trade policy competence has been transferred to the EAEU and its Commission by all the EAEU Member States, including Russia. However, it should be noted that the competence is occasionally ignored by Russia in practice, especially when important foreign policy issues are concerned. In particular, many unilateral decisions have been taken and applied only by Russia without any coordination with the other EAEU Member States and the EAEU superior bodies:

- Import bans on wine/spirits/meat/fruits from Moldova (2013/2014);
- Import ban on selected foodstuffs from countries imposing sanctions on Russia (2014);
- Suspension, in part, of the free trade agreement with Moldova (2014);
- Suspension of the free trade agreement with Ukraine (2016).

Therefore, the EAEU trade competence is accepted by Russia only in so far as its own important foreign policy priorities are not affected.

14.3 Russia as a WTO Member

On 22 August 2012, Russia acceded to the World Trade Organization (WTO). This is considered to be the beginning of a process of gradual liberalisation, particularly with regard to import tariffs, of the CU/EAEU's trade with the rest of the world in accordance with WTO rules. In joining the WTO as a member of the CU, Russia committed to ensuring compliance of

the CU (and its successor, the EAEU) TDI regimes with Russia's WTO obligations and commitments. A number of Russian industries have regularly expressed concerns regarding the potential negative effects of Russia's WTO accession and have asked for increased protection of their trade interests. Since accession to the WTO, Russia has been involved in a number of disputes, both as complainant and respondent.

In September 2016, for the first time since its accession, Russia went through the WTO Trade Policy Review Mechanism; other WTO members had an opportunity to examine in detail Russia's trade and trade-related policies, pose questions and express views.

Russia received over 700 questions and comments from over 50 WTO members. Many welcomed the significant liberalisation efforts and remarkable improvements in Russia's trade policy, while others noted that there is still much to be done. Many WTO members demonstrated great interest in Russia's investment regime and EAEU developments, and raised new concerns in the areas of sanitary/phytosanitary measures and technical barriers to trade, local content requirements, customs control, and import restrictions, as well as the transparency of certain policies.

It should be noted that the EAEU itself is not a WTO member.

15. Tariff Classification

The importer is legally responsible for the correct tariff classification of the goods at the time of importation.

The normal (most-favored nation – MFN) customs duty rates on import of goods into the common customs territory of the EAEU are listed in the Unified Customs Tariff of the Eurasian Economic Union (ETT). The ETT is revised annually[14] in accordance with the Eurasian Economic Union's Single Commodity Nomenclature of Foreign Economic Activities, which in turn is based on the Harmonized System of the World Customs Organization. It should be noted that import customs duties, contained in the unified customs tariff, are now set in accordance with the obligations outlined in Russia's WTO Accession Protocol. The authority empowered to adopt and amend the ETT and the Single Commodity Nomenclature of Foreign Economic Activities (TN VED) is the Eurasian Economic Commission (EEC) Board.

The Harmonised Commodity System adopted by the World Customs Organisation[15] determines the commodity codes at the level of 6 digits. That is the basis for the adoption of the TN VED of the EAEU which is divided at the level of 9 digits. The TN VED of the EAEU is characterised by the principle of unambiguous classification of goods by groups. The six basic rules of interpretation define the classification of certain goods under the relevant commodity item, then under the sub-item and, lastly, under the sub-sub-item.

Failure to comply with the above algorithm may lead to errors during the declaration of imported and exported goods. Both the customs officials and participants of the foreign economic activity must be aware of the basics of the TN VED, including the procedure for development of the product code, since declaration of goods using an incorrect TN VED code may lead to a charge of extra payments and imposition of penalties.

The classification code of goods according to the TN VED of the EAEU

[14] www.eurasiancommission.org/ru/act/trade/catr/ett/Pages/default.aspx.

[15] www.wcoomd.org

defines the rate of import/export duties and, therefore, the rate of customs duties, non-tariff measures, prohibitions and restrictions applied with respect to goods and vehicles. Determination of the classification code of goods according to the TN VED of the EAEU often requires special technical expertise and additional examinations related to definition of technical specifications of goods, manufacturing processes, etc.

While importers must classify their goods under the Combined Nomenclature which contains sub-divisions to the level of the nine-digit code, there is a ten-digit code designed for detailing goods at national level. The ten-digit code of the TN VED of the EAEU is based on the decimal system and includes the code of the group, commodity item, sub-item and sub-sub-item.

Consequently, the tariff classification requires the determination of the relevant code within the Single Commodity Nomenclature of Foreign Economic Activities, which will then be used for the application of the EAEU tariff measures. These can include tariff suspensions, tariff preferences, anti-dumping duties or the application of non-tariff measures such as import quotas or export refunds.

The general principle is that goods must be classified according to their objective characteristics and properties at the time of their presentation for customs clearance. However, there are other elements that may be taken into account such as, for example, the intended use of the product when this can be assessed on the basis of the objective characteristics of the goods. A case by case analysis will need to be made.

Classifying goods within the TN VED is not always obvious. Importers should take into account additional instruments adopted by the World Customs Organisation and the EAEU. These measures contribute to clarifying the correct classification of goods and ensure the uniform application of the Harmonised System and the TN VED.

The World Customs Organisation adopts Classification Opinions that determine the classification of specific goods under a certain sub-heading. It also adopts Explanatory Notes that help clarify the interpretation of the

relevant headings and sub-headings. These measures are not binding on Russia and the other EAEU Member States, but they are an important tool of interpretation taken into account by the EAEU's and Russia's national customs authorities.

There are several legal instruments that may be used in order to determine the classification of goods correctly:

a) Preliminary classification decisions

Customs authorities of EAEU Member States have a system of issuing preliminary customs classification decisions that may affect the customs duty rate applicable to a product for which such a decision has been requested (similar to the systems of issuing binding tariff information practised in other jurisdictions, such as the EU and the U.S.). Preliminary decisions taken at the national level are reported to the EEC (also referred to as the Commission) and listed in the special database, which is available in Russian at the website of the Commission.[16] Importers must also take into account the case law of the Court of the Eurasian Union.

In order to obtain a preliminary classification decision, a Russian importer of record should prepare a standard set of documents that normally includes an application form, purchase and sale contract for the products, documents outlining the goods' characteristics and features, other constituent documents and documents confirming the payment of state duty. Information and documents provided by applicants for the preliminary classification (such as technical descriptions, pictures, samples, etc.) should be exhaustive and should contain all the data required for proper determination of an HS classification code. Preliminary classification decisions are issued in the name of the applicants (i.e., importers of record) and may only be used by them. The timing for issuance of a preliminary classification decision is 90 calendar days from the date of filing an application, which may be extended for a number of reasons provided by law. Preliminary

[16] www.eurasiancommission.org/ru/docs/Lists/List/AllItems.aspx

classification decisions are valid for three years and are mandatory for all Russian customs authorities with respect to the classified goods.

b) General Rules of Interpretation

Importers can also rely on a number of General Rules of Interpretation (GRI) of the TN VED which help to determine the correct classification of goods. These rules can be found under the Common Customs Tariff of the Eurasian Economic Union.

According to GRI 1, importers must look first at the terms of the heading and any relative section or chapter notes. If classification according to those criteria cannot be determined, importers must look at the other GRI. Some of the criteria contained in those GRI are outlined below.

According to GRI 2(a), a product which is imported in an incomplete or unfinished state will be classified under the heading applicable to the finished or complete product, provided that, as presented, it has the essential character of the complete or finished product. Similarly, a product which is imported unassembled or disassembled will be classified under the heading applicable to the finished product.

GRI 3 applies in cases when several headings are *prima facie* applicable. GRI 3(a) requires classification according to the heading with the most specific description. If the previous GRI is not applicable, GRI 3(b) clarifies that mixtures, composite goods consisting of different material or made up of different components, and goods put up in sets for retail sale will be classified according to the material or component which gives them their essential character. Finally, if the previous GRI is not applicable, GRI 3(c) states that goods will be classified under the heading which occurs last in numerical order among those which equally merit consideration for the classification of goods that can be classifiable under two or more headings.

16. Valuation

Customs duty rates are normally expressed as a percentage of the value of the imported goods, known as *"ad valorem"* duties. However, they may also be expressed as a set monetary amount per unit or kilogram, i.e., as "specific" duties. Finally, they may be expressed as the greater of the sum of the two, i.e., as "combined" duties. Several "ad valorem" rates for import customs duties apply in Russia – in the majority of cases, they are 5%, 10%, and 15%. Certain goods are exempt from import customs duties. The rate of the import customs duty depends on the exact nature of the goods being imported.

Ad valorem duties are imposed on the customs value of the goods which must be determined according to the rules contained in the Customs Code of the EAEU. Importers must therefore take into account specific rules to determine the customs value on which the import duty will be applied.

As a general rule, the Russian customs authorities impose import duties on the CIF value of the imported goods. For this purpose, the general rule is that the customs value will be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the EAEU. The use of the transaction value is, however, subject to the fulfilment of several conditions.[17] Amongst others, the buyer and the seller may not be related parties and their relationship may not influence the price.

However, as demonstrated below, a number of additions must be made to the price paid or payable if those elements have not already been taken into account when setting the price. Similarly, certain costs must not be part of the customs value and must be excluded if necessary before applying the customs duty.

The following should be added to the price actually paid or payable for the imported goods:

- to the extent that they are incurred by the buyer but are not included in

[17] Article 39.1 of the Customs Code of the Eurasian Economic Union

the price actually paid or payable for the goods: commissions and brokerage, except buying commissions; the cost of containers which are treated as being one, for customs purposes, with the goods in question; and the cost of packing, whether for labour or materials;

- the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable: materials, components, parts and similar items incorporated in the imported goods; tools, dies, moulds and similar items used in the production of the imported goods; materials consumed in the production of the imported goods; and engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the EAEU and necessary for the production of the imported goods;

- royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

- the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller; and

- the cost of transport and insurance of the imported goods, and loading and handling charges associated with the transport of the imported goods to the place where the goods are brought into the customs territory of the EAEU.

Such additions to the price actually paid or payable shall only be made on the basis of objective and quantifiable data, and no other additions shall be made to the price actually paid or payable in determining the customs value.

The following elements should not be included in the customs value:

- the cost of transport of the imported goods after their entry into the

customs territory of the EAEU;

- charges for construction, erection, assembly, maintenance or technical assistance, undertaken after the entry into the customs territory of the EAEU of imported goods such as industrial plant, machinery or equipment;

- charges for the right to reproduce imported goods in the EAEU;

- import duties or other charges payable in the EAEU by reason of the import or sale of the goods;

- payments made by the buyer for the right to distribute or resell the imported goods, if such payments are not a condition of the sale for export to the Union of the goods.

When the transaction value cannot be used, the importer must rely on the following alternatives in the order specified below, except that the last two options can be reversed at the request of the declarant:

- the transaction value of identical goods sold for export to the customs territory of the EAEU and exported at or about the same time as the goods being valued;

- the transaction value of similar goods sold for export to the customs territory of the Union and exported at or about the same time as the goods being valued;

- the deductive method: the value based on the unit price at which the imported goods, or identical or similar imported goods, are sold within the customs territory of the EAEU in the greatest aggregate quantity to buyers which are not related to the sellers; or

- the computed value, consisting of the sum of three main elements. First, there is the cost or value of materials and fabrication or other processing employed in producing the imported goods. Second, there is an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being

valued which are made by producers in the country of export for export to the Union. Third, there is the cost or value of transport and insurance of the imported goods and loading and handling charges associated with the transport of the imported goods to the place where the goods are brought into the customs territory of the EAEU.

Determining the customs value of the goods concerned can sometimes be a difficult task. Importers should take into account the provisions contained in the CC EAEU. This is complemented by the “Customs Valuation Compendium” published by the World Customs Organisation.

The Russian customs authorities often increase the customs value of imported goods and importers of record have the right to challenge such adjustments in court. Court practice shows that in the majority of cases the courts have supported importers of record.

17. Origin and Preferences

Determining the origin of goods is important, as trade-related measures often depend on the country in which the goods originate. In certain cases, importers must clarify the origin of their goods to determine if certain trade-related measures are applicable.

The country of origin is traditionally determined according to the following methods:

- the technical or industrial criteria: This defines, with regard to specific types of products, the processes or operations which must have taken place in the country concerned to confer origin. This can also determine certain operations or processes which are considered as being insufficient for conferring origin.

- added value or other economic criteria: Here, for example, the value of the imported materials may not exceed a certain percentage of the ex-works price.

- a change of tariff heading or other customs classification criteria: The goods would be classified under a different heading as a result of the work conducted in the originating country of the imported materials.

- the last “substantial processing or working” method: The origin will be determined by the country where the last substantial processing or working has taken place, provided it is economically justified and results in a new product or represents an important stage of manufacture.

Importers must distinguish between preferential and non-preferential origin.

17.1 Non-preferential Rules of Origin

The non-preferential rules of origin are used for determining the origin of products subject to all kinds of commercial policy measures (such as anti-dumping measures and countervailing duties, retaliatory duties, quantitative restrictions and import restrictions, surveillance of imports, export refunds and trade statistics). Other provisions, such as those related to public

tenders or origin marking, are also linked with the non-preferential origin of the products.

The basic rules on non-preferential origin state that the goods originating in a country or territory shall be those wholly obtained or produced in that country or territory. When goods originate in more than one country or territory, the origin will be determined on the basis of the substantial transformation test: goods whose production involves more than one country or territory shall be deemed to originate in the country or territory where they underwent their last, substantial, economically-justified processing or working, in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture.

The general residual rule to determine the non-preferential origin for goods in cases where the last processing is not substantial and/or economically-justified is that the country where the major portion of the materials originated from, on the basis of the value of the materials, determines the non-preferential origin.

17.2 Preferential Rules of Origin

Preferential origin confers certain benefits on goods traded between particular countries, namely entry at a reduced or zero rate of duty. Importers should refer to the rules laid down in the specific relevant legislation. The preferential rules of origin are regulated by the Regulation “On Approval of the Regulation on the Terms and Procedure for Application of the Unified System of Tariff Preferences of the Eurasian Economic Union”, which entered into force on 10 October 2016[18]. However, importers should also look into the specific preferential trade agreements concluded between the EAEU and its trade partners for other preferential origin rules. In order to facilitate the interpretation of the Unified System of Tariff Preferences (USTP) rules, Russia’s customs authorities, upon the importer’s request,

[18] Regulation “On Approval of the Regulation on the Terms and Procedure for Application of the Unified System of Tariff Preferences of the Eurasian Economic Union”, approved by the Eurasian Economic Commission Council Decision No. 47 dated from 12 July 2016.

shall take the preliminary decisions on origin of goods that determine whether or not goods produced in the beneficiary countries are eligible for preferential tariff treatment under the EAEU's USTP rules for developing countries.[19]

There is no single database at EAEU level that lists duty rates applicable under preferential arrangements or preferential trade agreements.

The EAEU applies the abovementioned Unified System of Tariff Preferences (USTP, analogous to the Generalised System of Preferences) to promote economic growth and welfare in developing and least developed countries. Articles 36 and 37 of the EAEU Treaty specify tariff preferences granted to developing countries (75% and 0% of the most-favored nation rate, for developing and least developed countries, respectively) and refers to preferential rules of origin applied to such imports.

Additionally, developing countries classified by the World Bank as countries with upper middle income and high income are not eligible for the EAEU tariff preferences.

Hong Kong exports to the EAEU customs territory, including Russia, are subject to USTP granted to developing countries. In fact, Hong Kong is included in the USTP list, as published on the EEC's website.

The USTP preferences apply to goods included in a special list of goods and a list of countries eligible for such preferences. These lists are established by the Commission. The respective lists, as well as the relevant legislation, are available on the Commission's website (www.eurasiancommission.org/ru/act/trade/dotp/commonSytem/Pages/normatBaza.aspx).

According to Articles 36 and 45 of the EAEU Treaty, the Commission administers the USTP and is responsible for maintaining and updating the following lists:

- the last substantial processing or working: The origin will be determined

[19] Articles 32-36 of the Customs Code of the Eurasian Economic Union

by the country where the last substantial processing or working has taken place, provided it is economically justified and results in a new product or represents an important stage of manufacture.

- a list of eligible developing countries entitled to the general tariff preference (currently 102 countries);
- a list of eligible least developed countries entitled to the special tariff preference (currently 49 countries); and
- a list of the eligible goods originating from developing countries and least developed countries that fall within the scope of the USTP.

Products wholly obtained in a beneficiary country are considered as originating in that beneficiary country. For other products, the working or processing required to be carried out on non-originating materials is generally set out in the relevant regulatory text. It usually relies on the technical/industrial criteria, the added value or the economic criteria, or the change of tariff heading. However, the abstract criterion based on the substantial processing is not usually taken into account for preferential origin.

The USTP tariff preferences may be suspended in respect of products of a USTP section originating in a USTP beneficiary country which are believed to have achieved sufficient competitiveness. Such suspension will occur where the EAEU's imports of products, that exceed 3% in the value or volume indicators of imports of like products to the EAEU, from that USTP beneficiary country, increased by more than 50% over one year and, as a result, caused the reduction of production or market share of domestic producers.

The USTP Regulation also provides for temporary withdrawal of preferences in the event of certain circumstances arising. These include – amongst others – serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors) or failure to comply with international conventions on anti-terrorism and money laundering.

18. Tariff Suspension

The Eurasian Economic Commission is empowered to adopt decisions on tariff suspensions upon requests from the EAEU Member States.

Tariff suspensions are adopted on the basis of Article 43 and Annex 6 of the EAEU Treaty (i.e. the Protocol on Common Customs Tariff Regulation). Suspensions permit the total (total suspension) or partial waiver (partial suspension) of the normal duties applicable to imported goods for an unlimited quantity (anti-dumping duties are not affected by these suspensions). If the suspension is for a limited quantity, the suspension will be a quota.

Given the recent delegation of powers related to such suspensions from the EAEU Member States, including Russia, to the Commission, there is not yet an established formal procedure for requesting tariff suspensions. Therefore, economic operators may be advised to address substantiated requests for tariff suspensions to their national competent ministries, which in turn would be able to refer the request to the Commission.

Goods imported under the suspension arrangements are in free circulation and enjoy freedom of movement throughout the EAEU. Furthermore, once a suspension is granted, normally any operator in any EAEU Member State is eligible to benefit from it.

The main purpose of tariff suspensions is to enable EAEU enterprises to use raw materials, semi-finished goods or components without being required to pay the normal duties laid down in the common customs tariff.

18.1 Tariff Quotas

Tariff rate quotas (TRQ) may be adopted for agricultural products originating in third countries and imported into the EAEU. The volume of quotas cannot exceed the difference between consumption of such goods in the EAEU and the volume of production of like products in the EAEU. Application of tariff quotas is subject to several requirements:

- The tariff quota shall be adopted for a fixed term;

- The third countries shall be duly notified of the volume of allocated quotas;

- Publication of information on adoption of the quotas, its volume and duration, as well as applicable import duty rates within the scope of quotas shall be published.

Imports entering the market within the quota would enjoy lower tariffs, but higher tariffs would be applied to imports outside of the quota. Some of the tariff rate quotas could also be subject to member-specific allocations. The current in-quota and out-of-quota rates are listed below:

- Beef: 15% duty in-quota, 55% duty out-of-quota;

- Pork: 0% duty in-quota, 65% duty out-of-quota (The TRQ for pork will be replaced with a flat top rate of 25% as of January 1, 2020);

- Selected poultry products: 25% duty in-quota, 80% duty out-of-quota;

- Selected whey products: 10% duty in-quota, 15% duty out-of-quota.

The volume of tariff rate quotas for 2018, as well as previous decisions for 2012-2017, are available on the website of the EEC in Russian at the following web address:

www.eurasiancommission.org/ru/act/trade/catr/ttr/Pages/quotas.aspx.

18.2 Preferences under Free Trade Agreements/Partnership Agreements

There is no official list or unified database for the existing preferential trade agreements of the EAEU Member States with third countries. The agreements are numerous; however, the most noteworthy is the multilateral Agreement on a Free Trade Area of the CIS Countries (FTA CIS), which has been in force among the majority of the CIS countries since 2012. The FTA CIS has been suspended between Russia and Ukraine since 1 January 2016 due to exceptional national security reasons.

Most CIS countries continue to maintain a network of bilateral free trade

agreements (FTAs) between themselves.

In addition to the above multilateral FTA CIS, Russia currently maintains bilateral preferential trade agreements with Azerbaijan, Georgia, Serbia, Tajikistan, Turkmenistan and Uzbekistan. Many of these agreements have specific product exclusions.

The Commission is currently taking steps to encourage the EAEU Member States to renegotiate existing bilateral trade agreements and conclude new ones so that the EAEU may become a party to more of them.

Notably, in its capacity of an international organisation vested with legal personality, the EAEU and the Socialist Republic of Vietnam signed an FTA, including a protocol on investment facilitation. This is the first ever FTA established between the EAEU and a third country, and it entered into force on 5 October 2016. Moreover, the Eurasian Economic Commission established the tariff quota volumes for imports of long-grain rice from Vietnam to the Member States of the Eurasian Economic Union in 2016, following the entry into force of the FTA, effective from the date of complete ratification by the EAEU Member States. It provides for a tariff quota for imports of this kind of rice from Vietnam to the EAEU at a zero rate of import duty in the volume of 10,000 tonnes per year.

The EAEU is currently considering FTAs with Israel, Iran, India and some other trading partners.

19. Customs Clearance

The introduction of the Eurasian Economic Union has not affected the internal structure of the Russian customs service, which continues to be comprised of the Federal Customs Service, regional customs administrations, customs-houses, and customs posts. Goods that are moved into Russia through other EAEU member countries are placed under the transit customs regime at the external border of the EAEU and are finally released for free circulation by the Russian customs authorities, through electronic notification.

Customs clearance is normally completed by the importer of record (or a customs agent acting on its behalf) filing the customs declaration along with the required set of supporting documents.

19.1 Customs Declaration

a) What is a customs declaration?

A customs declaration is the act by which a person indicates in the prescribed form and manner a wish to place goods under a given customs procedure with an indication, where appropriate, of any specific arrangements to be applied.

According to the Federal law № 311 dated 27 November 2010 “On customs regulation in the Russian Federation”, as of 1 January 2014, the electronic declaration of goods became compulsory. Customs declarations in paper form may be used only in special cases defined by the Government of the Russian Federation.

The transition to full e-documentation was completed in January 2017, equipping all the customs posts with e-docflow. More particularly, customs posts are equipped with the technical facilities for performing “electronic declarations,” which makes it possible to: (i) inform the customs authorities in advance over the internet; (ii) file a customs declaration and other supporting documents in electronic form; and (iii) electronically release the goods. An e-declaration also makes it possible

for importers located far from clearing customs posts to perform customs clearance formalities and release goods at the Russian border remotely, i.e., without being physically present and without the need to provide documents in hard copy.

b) Import of goods into the Russian Federation – procedural rules

While customs clearance is normally completed by the importer of record (or a customs agent acting on its behalf) filing the customs declaration along with the required set of supporting documents, customs brokers provide the full outsourcing for customs clearance. In many cases brokers let the companies outsource their import operations without being a party to the international transaction.

Only companies that are local residents of any EAEU Member State may act as importers of record before the customs authorities. The declaring importer of record must have a direct interest in goods imported under a foreign trade transaction (i.e. the right to own, possess, or dispose of the imported goods.). Alternatively, a declarant may clear goods through a customs broker/agent, as long as the broker/agent is registered on the official list maintained by the Eurasian Economic Commission. As a general rule, foreign entities may not act as importers of record, except for a limited number of cases when goods may be imported by representative offices or branches of foreign legal entities accredited in Russia.

Hong Kong traders should take into account that all goods imported into the EAEU are subject to the prior notification procedure; however, only part of the information, namely that which relates to risk assessment and choice of customs control form, is mandatory for prior submission, while other information remains optional at time of prior submission. Prior notification may be done electronically at the websites of national customs authorities of the EAEU Member States.

The timing for the customs clearance procedure is usually one business day after the declaration is registered by the Russian customs authorities, provided that all documentation is in order. However,

legislation does provide a customs inspector with the right to extend the term by up to 10 business days at the discretion of the chief of a customs terminal.

c) Must the customs declaration be accompanied by any documentation?

Importers are required to complete a Russian customs freight declaration for every item imported. A declaration must be supported by the following documents (when applicable): contracts, commercial documents such as commercial invoices and packing lists, transport documents, import licences, technical regulation of technical safety (TR TS) certificates, certificates of origin, sanitary certificates, import permission and licences (e.g. for products containing encryption technology), and documents confirming legitimacy of declarants/brokers/importers. All customs import declarations are submitted electronically. The website of Russia's Federal Customs Service contains the link to the portal for electronic declarations.[20]

As of 2014, Russian customs authorities should no longer require a separate submission of certificates or declarations of technical compliance as part of the clearance process, as the information should merely be stated within field 31 of the electronic import customs declaration. However, it has been reported that in practice customs officials may in fact require separate submission of these documents, especially for controlled items.

In addition, currency control regulations require issuance of a transaction passport for both exports and imports to ensure that hard currency earnings are repatriated to Russia. The regulations also ensure that transfers of hard currency payments for imports are for goods actually received and properly valued.

[20] http://eng.customs.ru

d) Authorised economic operators

Pursuant to the Customs Code of the EAEU[21], special simplifications may be granted to an Authorised Economic Operator (hereinafter the AEO), i.e. a legal entity which:

- is established in accordance with the legislation of a Member State of the EAEU;
- meets certain requirements; and
- is included in a special register.

Pursuant to the Customs Code, the AEO status will be granted by customs authorities to a legal entity through its inclusion in the Register of Authorised Economic Operators. There are certain requirements for companies applying for AEO status (e.g. performing foreign trade operations for not less than one year).

The procedure for acquiring AEO status is stipulated in the national legislation of each Member State of the Customs Union including Russia.

As regards Russia, the Federal Law On Customs Regulation in the Russian Federation dated 27 November 2010, № 311-FZ, (which entered into legal force on 29 December 2010) stipulates that foreign trade participants shall apply to a respective customs authority for inclusion in the Register of Authorised Economic Operators. The customs authority will be obliged to review the application within 90 days (which matches the deadline set in the EU legislation).

The list of special simplifications granted to an Authorised Economic Operator generally complies with the list of special simplified customs clearance procedures established in the Russian legislation before 1 July 2010. It should be noted, however, that the above-mentioned Federal Law (unlike the Customs Code of the Russian Federation which

[21] Chapter 61 of the Customs Code of the Eurasian Economic Union

was previously applicable) includes a detailed description of such simplification as it relates to the delivery of imported goods to an AEO warehouse without the intervention of an internal customs authority.

It should also be mentioned that Authorised Economic Operators will not be entitled to apply the special simplifications during the importation of certain goods which have been specified by the Decision of the Eurasian Economic Commission. The list of such goods includes excisable goods which are subject to special marking (e.g. cars, alcoholic beverages).

19.2 Customs Regimes

The new Customs Code of the EAEU provides for 17 customs regimes.[22]

It should be noted that the legal status of the importer of record (i.e., "declarant") has been revised with respect to foreign legal entities and their local branches and representative offices, allowing them to use various customs procedures that so far have not been practically applied within the EAEU (for example, the customs procedure of customs warehousing).

Placing goods under a customs procedure generally requires the lodging of a customs declaration to that effect indicating the wish to place the goods under a given customs procedure. The procedure for doing this has been outlined above. The documents under the relevant customs procedure must be submitted, if required, and the goods presented to customs.

The customs procedures are discussed in more detail below.

i) Release for domestic consumption[23]

This procedure is applicable to goods of foreign origin, according to which the goods are located and used in the customs territory of the EAEU without restriction on possession, use and/or disposition thereof, provided for by international treaties and acts in the field of customs

[22] Section 4 of the Customs Code of the Eurasian Economic Union

[23] Chapter 20 of the Customs Code of the Eurasian Economic Union; Chapter 27 of the Federal law № 311 dated November 27, 2010 "On customs regulation in the Russian Federation".

regulation with respect to foreign goods, unless otherwise specified by the Customs Code of the EAEU.

ii) Transit[24]

This procedure allows transportation of goods from the customs body in the exporting country to the customs body in the importing country with a suspension of duties, taxes and commercial policy measures that are applicable at import, thereby allowing customs clearance formalities to take place at the destination rather than at the point of entry into the customs territory.

There are transit conventions which allow movements between and through the territories of the contracting parties without applying import duties, other taxes or commercial policy measures.

A primary example is the TIR ("Transports Internationaux Routiers") currently regulated by the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets in 1975 (TIR Convention 1975). In the Russian Federation, the TIR Convention 1975 was approved by Federal Customs Service (FCS) decree No 2568 of 18 December 2015. The TIR system is an international customs transit system. As with other customs transit procedures, the TIR procedure enables goods to move under customs control across international borders without the payment of the duties and taxes that would normally be due at importation (or exportation). A condition of the TIR procedure is that the movement of the goods must include transport by road. Goods move from a customs office of departure in one country to a customs office of destination in another country under cover of an internationally accepted customs transit document, the TIR carnet, which also provides a financial guarantee for the payment of the suspended duties and taxes. The guarantee system is managed by the International Road Transport Union, which is an international organisation. In total, there are 72 Contracting Parties to the TIR Convention. All 5 Member States of the EAEU are Contracting Parties;

[24] Chapter 22 of the Customs Code of the Eurasian Economic Union; Chapter 29 of the Federal law № 311 dated November 27, 2010 "On customs regulation in the Russian Federation".

however, the territory of the EAEU is not seen as one territory for the purposes of the TIR procedure, unlike the territory of, for instance, the European Union.

iii) Customs warehousing[25]

This procedure allows the owner to hold imported goods of non-EAEU origin in the EAEU and choose when he pays the duties or other commercial policy measures or re-exports the goods.

The warehouse procedure is intended primarily for storage purposes. The customs authorities may permit the goods to undergo treatment to keep them preserved, improve their appearance or marketable quality or prepare them for distribution or resale. In addition, it is possible to process goods under inward processing on the premises of a customs warehouse.

Importers can rely on warehousing for the following purposes:

- to suspend the payment of customs duties for imported goods until they are released for free circulation or undergo further processing (e.g. under the inward processing procedure);
- to suspend the application of commercial policy measures (such as an import licence) for imported goods until they are released for free circulation (and the missing import licence has been granted) or the goods are assigned to another customs-approved treatment or use;
- to store imported goods in transit until they are re-exported (thus avoiding the payment and subsequent refund of import duties as well as the application of commercial policy measures);
- to store and prepare the goods for the subsequent marketing stage (e.g. repackaging, affixing of labels).

[25] Chapter 22 of the Customs Code of the Eurasian Economic Union; Chapter 29 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.

If requested, the goods may be placed in a location other than the customs warehouse, subject to authorisation of the customs body.

The Eurasian Commission may establish that certain types of goods cannot be placed under the customs procedure of customs warehousing.

iv) Inward processing[26]

Inward processing allows goods to be imported into the EAEU for processing without payment of duties and VAT, anti-dumping, safeguard and anti-subsidy duties, provided the products which result from the processing are re-exported.

It should be noted that the goods subject to inward processing remain the goods of foreign origin. Therefore, the goods obtained as a result of processing acquire a foreign origin.

The Eurasian Commission may establish that certain types of goods cannot be placed under the customs procedure of inward processing.

v) Processing for internal consumption[27]

Processing for internal consumption allows goods to be imported into the EAEU for processing without payment of duties and VAT, anti-dumping, safeguard and anti-subsidy duties, provided the products which result from the processing are released for internal consumption.

The Eurasian Commission may establish that certain types of goods cannot be placed under the customs procedure of processing for internal consumption.

[26] Chapter 24 of the Customs Code of the Eurasian Economic Union; Chapter 31 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.

[27] Chapter 26 of the Customs Code of the Eurasian Economic Union.

vi) Temporary admission/importation[28]

Temporary importation means that goods may be used in the EAEU 1) with partial payment of customs duty and without payment of anti-dumping, safeguard and anti-subsidy duties; or 2) without payment of customs duty, anti-dumping, safeguard and anti-subsidy duties under certain conditions and re-exported or placed under a different customs procedure.

- Where an international agreement or the decisions of the EEC stipulate duty exemption, total duty relief is granted.
- in the other cases, only partial duty relief is granted. 3% of the normal import duty is charged for every month, or part thereof, that the goods remain in the EAEU.

The state of the goods placed under the procedure must remain the same. However, repairs and maintenance, including overhaul and adjustments or measures to preserve the goods or to ensure their compliance with the technical requirements for their use under the procedure are admissible.

vii) Outward processing[29]

Outward processing allows goods to be exported outside the EAEU for processing or repair and then be re-imported into the EAEU with relief granted from import duties on the basis of the content of EAEU goods in the final product. It allows businesses to take advantage of cheaper labour costs outside the EAEU.

Without such a system, duty would have to be paid on the goods as produced in the EAEU as well as on the value added abroad.

Total duty relief is granted where the goods are repaired free of charge

[28] Chapter 29 of the Customs Code of the Eurasian Economic Union; Chapter 34 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.

[29] Chapter 25 of the Customs Code of the Eurasian Economic Union; Chapter 32 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.

or the value added to the processed goods outside the EAEU is equal to the value of the temporarily exported goods.

The Eurasian Commission may establish that certain types of goods cannot be placed under the customs procedure of inward processing.

viii) Exportation[30]

The exportation procedure concerns the exit of EAEU goods from the EAEU customs territory. As a consequence, such goods change their status to non-EAEU goods. This entails the application of all exit formalities, including, where applicable, the payment of export duties, or export refunds, and the presentation of export licences.

In general, all goods intended for export are to be placed under the export procedure with the exception of goods placed under the outward processing procedure.

The export declaration shall be submitted to the customs checkpoint in 4 copies. The first one will be lodged at the Chamber of Commerce. The second declaration is submitted to the customs checkpoint at the place of departure of goods. The third one shall be returned to the declarant. Finally, the fourth declaration remains at the customs office.

ix) Free warehouse[31]

Goods entering a free zone or free warehouse are treated as if they were outside the EAEU customs territory. Therefore, no import duties and commercial policy measures are applied to those non-Union goods, and Union goods can already benefit from measures attached to export, such as export refunds.

[30] Chapter 21 of the Customs Code of the Eurasian Economic Union; Chapter 28 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.

[31] Chapter 28 of the Customs Code of the Eurasian Economic Union.

x) Free trade[32]

Non-Union goods are located and traded in duty-free shops without payment of taxes, customs duty, anti-dumping, safeguard and anti-subsidy duties.

xi) Free customs zone[33]

Under the free customs zone procedure, non-Union goods may be used within the territory of the Free Economic Area without payment of taxes, customs duty, anti-dumping, safeguard and anti-subsidy duties. It should be noted that the Commission is authorised to limit the scope of goods eligible to be placed under the customs procedure of a free customs zone.

xii) Temporary export[34]

The EAEU-origin goods may be exported to another State for temporary storage and/or use without payment of taxes, customs duty, anti-dumping, safeguard and anti-subsidy duties.

xiii) Re-exportation[35]

Non-Union goods are exported from the customs territory of the EAEU without payment of taxes, customs duty, anti-dumping, safeguard and anti-subsidy duties or with reimbursement of such taxes and duties and without payment of export duties.

xiv) Re-importation[36]

Non-Union goods, previously exported from the customs territory of the

[32] Chapter 33 of the Customs Code of the Eurasian Economic Union; Chapter 38 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.
[33] Chapter 27 of the Customs Code of the Eurasian Economic Union.
[34] Chapter 30 of the Customs Code of the Eurasian Economic Union; Chapter 35 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.
[35] Chapter 32 of the Customs Code of the Eurasian Economic Union; Chapter 37 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.
[36] Chapter 31 of the Customs Code of the Eurasian Economic Union; Chapter 36 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.

EAEU, may be repetitively imported without payment of taxes, customs duty, anti-dumping, safeguard and anti-subsidy duties.

xv) Destruction of goods[37]

Products having the status of foreign goods can be declared for destruction before the customs authorities, which would imply that such destruction must be completed under customs control and the importer would not be subject to import customs duties and taxes with respect to such destroyed products. However, the cost of destruction must be fully covered by the importer. Moreover, the waste generated as a result of such destruction would be subject to customs clearance requirements and import customs duties and taxes under general rules. Customs clearance requirements do not apply to waste that cannot be further used for commercial purposes or is subject to landfill, neutralization, utilization or removal in another way. Such waste has the status of goods of the EAEU and is not subject to customs control.

xvi) Abandonment of non-Union goods to the State[38]

Foreign goods imported into Russia may be abandoned to the Russian state, which is a special customs regime that can be selected by the importer of record. Under this regime, the title to the imported goods is gratuitously transferred to the state without an obligation of the importer to pay any import customs duties and taxes, including the customs processing fee. Imported products may be cleared under this regime with a permit from the customs authorities. This regime may be a convenient way to avoid unreasonable customs clearance costs if they become applicable to goods for any reason (e.g., customs have classified the goods under a code entailing a substantially higher import duty than the importer is ready to pay, or customs request a permit/licence that the importer does not possess, and it is too costly/burdensome to ship the goods back from Russia).

[37] Chapter 34 of the Customs Code of the Eurasian Economic Union; Chapter 39 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.

[38] Chapter 35 of the Customs Code of the Eurasian Economic Union; Chapter 40 of the Federal law № 311 dated November 27, 2010 “On customs regulation in the Russian Federation”.

xvii) Special customs procedure

The special customs procedure may apply to certain types of goods entering or leaving the territory of the Eurasian Economic Union. When applicable, the special customs procedure provides for non-payment of customs duties, anti-dumping, safeguard and anti-subsidy duties.

19.3 Tax Payment (Customs Tariff & VAT)

Once the duty amount has been determined and communicated to the debtor, it must be paid within the following time limits:

- where no payment facilities have been granted, then on the day when goods cross the border;
- up to 1 month (6 months in specific cases), in case of deferred payment following the release for domestic consumption.

The possibility to make payment within 6 months may be granted in the following situations:

- a taxpayer is bearing losses due to acts of God;
- delayed financing from the federal (state, republican) budget or performance of a government order;
- performance of an international contract to which an EAEU Member State is a party;
- importation of agricultural equipment or seed material by an agricultural enterprise or in favour of such an enterprise;
- other instances established by the Commission.

Interest shall be paid for every day of deferred payment until the fulfilment of the obligation to pay customs duties. The interest rate amounts to 1/360 of the refinancing rate (policy rate). In the Russian Federation, the refinancing rate is established by the Central Bank and amounts to 7.5% starting from 12 February 2018.

It should be noted that VAT tax is not chargeable for goods that are or are intended to be:

- produced to customs and where applicable placed in temporary storage;
- placed in a free zone or in a free warehouse;
- placed under customs warehousing arrangements or inward processing arrangements; or
- placed under the customs procedure of re-exportation, destruction, abandonment in favour of the State, transit, and free economic zone.

20. Regulations on Postal and Sample Shipments

20.1 Postal Shipments

The post has traditionally been one of the most widely used methods of sending not only information but also other goods from one person to another. Customs are necessarily involved in international postal traffic since, just as in the case of goods imported and exported by other means, they have to ensure that the appropriate duties and taxes are collected, enforce import and export prohibitions and restrictions, and in general ensure compliance with the laws and regulations which they are responsible for enforcing.

Because of the special nature of postal traffic, however, the customs formalities in the EAEU with respect to items delivered by post are somewhat different to those applied to goods transported by other means. While individual postal items may be restricted in size, their numbers are enormous and, to avoid creating unacceptable delays, special administrative arrangements are necessary to deal with them. For instance, the customs authorities are not obliged to examine all postal items but should confine themselves to carrying out examinations on a selective or random basis. In any event, all non-EAEU shipments on arrival at the depot are to be subject to either an external examination or, where necessary, an internal examination of the goods and documents by customs.

Postal consignments are considered to have been declared to customs for release for free circulation at the time when they are introduced into the customs territory of the EAEU. Consignments sent by letter or parcel post must be accompanied by a CN22 and/or CN23 declaration at the time when they are presented to customs. The CN22 declaration, which should be used for letter post items, including small packets (packages weighing up to 2 kg) with a value less than SDR 300 (approximately €350), has to be affixed to the package indicating the quantity, description of contents, weight and value. The CN23 declaration, for shipments with a value higher than SDR 300, has to be placed outside the package, preferably in an adhesive

transparent envelope. It has to include a detailed description of contents, quantity, weight of each article and its value. In addition, if the parcel is sent for commercial purposes, the country of origin of goods and the HS tariff number (TN VED) must be added. Finally, the CN23 declaration needs to be presented together with all the accompanying documents (*i.e.* any necessary certificates of origin, commercial invoices and so forth).

Senders are responsible for ensuring correct completion of customs declarations. The consignee is considered to be the declarant and the debtor. Therefore, customs duties and VAT are payable by the recipient. Goods not liable to customs duties are considered to have been presented to customs, the customs declaration to have been accepted and release granted when the goods are delivered to the consignee.

As for the sale over the Internet of physically deliverable goods by Hong Kong businesses, there is, in principle, no obligation on the Hong Kong business to register for VAT yet. This is because the payment of VAT is incumbent on the consumer.

However, it should be noted that a bill has been drafted that requires foreign online shops to pay Russian VAT. If the companies, who would be obliged to pay new tax, will not pay this tax, the access to their websites, i.e. online trading platforms, will be restricted in Russia by the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor) at the request of the Russian tax service. For internet outlets which provide cross-border delivery of goods the tax rate would be 15.25% on the end-price of good. If the price is set in a currency other than Russian, the price is to be recalculated into Russian roubles in accordance with the exchange rate set by the Russian Central Bank on the last day of the tax period when the payment for the goods was made.

Moreover, as of 7 December 2015, Russian consumers have to specify their tax reference numbers when placing orders in foreign online shops. This requirement, implemented by the Russian Tax Service, is considered to be a preparatory step for amendments of the Tax Code and imposition of a VAT obligation on all foreign online shops.

EAEU Member States maintain a duty-exemption regime for low-value shipments, including for e-commerce, under the Agreement on the Rules for Movement of Goods by Physical Persons for Personal Use through the Customs Border of the Customs Union and the Customs Operations related to their Release into Free Circulation. According to the current thresholds in Russia, the duty-free regime is granted to shipments with a value below €1,000 and weight of 31 kg per address and per month. If the value of parcels received in the course of the month exceeds 1,000 euro and/or their cumulative weight exceeds 31 kg, a 30% customs duty is payable on the exceeded sum but no less than €4 per kilogram.

EAEU Member States are allowed to apply stricter thresholds. There is political agreement among all EAEU member states that the thresholds shall be gradually lowered to the level of approximately €200 per address per month. The Council of the EAEU has proposed to set the threshold at the level of €500 starting from 1 January 2019, and to lower it to €200 starting from 1 January 2020.

Where applicable, the procedure for the collection of the customs duties is fairly complex. First, the consumer receives a notification from the customs office stating that the parcel is subject to the customs duties. Second, the consumer provides the customs authorities with a set of documents during a personal visit. The documents include a copy of the consumer's national passport, bank certificate confirming the payment for the parcel, and a shipping list or a print-screen of the order. In addition, the customs authority may request additional documents, such as a print-screen of the product page indicating its characteristics. The package would have to be accompanied by an appropriate declaration filled in by the sender. The amount of customs duty is calculated after the above-mentioned steps are completed.

The national authorities will base the amount of duty to be calculated on the information contained in the customs declaration/declaration accompanying postal consignment. The authorities have the right to amend the declaration where it is deemed appropriate. Also, if the declaration is not done correctly, the customs authorities have the right to examine the package: to open it, repack and reseal. Once the duty amount has been determined and

communicated to the consumer, it must then be paid up by the consumer. The consumer has a right to collect the parcel immediately at the customs office.

Where postal items are not delivered to or are refused by the addressee, repayment or remission of import duties and taxes shall be granted upon request in respect of goods contained therein provided that the goods are: (a) re-exported, or (b) destroyed or abandoned without expense to the customs authorities.

It is to be noted that any information left off customs declarations forms can lead to delays within customs, and may result in the item being returned to the sender. Also, false declarations are deemed to be a breach of EAEU law.

20.2 Sample Shipments

Hong Kong traders are allowed to send samples of their products to potential buyers in the EAEU without the imposition of import duties or VAT under certain circumstances. In particular, samples qualify for duty free entry into the EAEU if:

- they are imported in reasonable quantities (up to 5 units of each item);
- their aggregate volume does not exceed 50 kg; and
- it is explicitly stated that samples are not intended for trade.

The shipper's documents, preferably the commercial invoice, should state that the articles are intended for use as samples (*i.e.* not for resale or other use).

When the value of imported samples exceeds EUR 200, the declaration shall be submitted to the customs authority and the respective customs duty shall be paid, according to the customs commodity code.

Apparel manufacturers importing samples of apparel for the manufacturing of similar goods into the EAEU may bring one sample of each style duty free. A shipment may contain several different samples, as long as there is

only one sample of each kind. In order to enforce this condition, customs requires that the style number of each sample appears on the commercial documents. The commercial invoice must contain in the product description the intent of the shipper that the goods are intended as samples. Failing to provide this information clearly will result entry for normal consumption with duty and taxes assessed accordingly.

Samples may be exempted from the obligation to lodge the documentation on conformity with mandatory requirements if they have been mutilated. Mutilated goods must be rendered permanently unusable by being torn, perforated, or clearly and indelibly marked, or by any other process, provided such operation does not destroy their character as samples. Cutting a sleeve off a shirt, a hole in the front of the garment, or a hole in the sole of a single shoe so as to make it permanently unusable is recommended.

Where the samples are imported through the post, the customs declaration (*i.e.* CN22 or CN23) must indicate that the package contains samples.

21. Packing, Shipping and Insurance (Air/Ocean)

21.1 Entry and Warehousing

a) Entry of goods

From the moment that goods enter into the customs territory of the EAEU, they are subject to the supervision of the customs authorities and may be subject to customs control. In general, goods which are brought into the customs territory must be conveyed without delay to the customs office designated by the customs authorities.

Immediately upon their arrival at the customs office or other designated place, the goods are to be presented to customs by the person who brought the goods into the customs territory of the EAEU, the person in whose name or on whose behalf the person who brought the goods into that territory acts, or the person who assumed responsibility for carriage of the goods after they were brought into the customs territory of the EAEU. Generally, the goods are to be unloaded solely with the authorisation of the customs authorities and only in places designated or approved by those authorities.

During the period between the presentation of non-Union goods to customs and their placing under a customs procedure or re-export, the goods are referred to as *"goods in temporary storage"*. Goods are placed in storage on the basis of the registration by the customs authorities following the submission of shipping, commercial and/or customs documentation containing information about the goods, consignor, consignee, country of origin and country of destination. Non-Union goods in temporary storage shall be placed under a customs procedure or re-exported within 4 months. The exception applies to international parcels stored at international postal exchange offices where such goods can be kept for up to 6 months. Except where otherwise provided, the declarant shall be free to choose the customs procedure under which to place the goods, under the conditions for that procedure, irrespective of their nature or quantity, or their country of

origin, consignment or destination.

b) Customs warehousing

Warehousing allows the owner to hold imported non-EAEU goods in the EAEU and choose when he pays the duties or re-exports the goods.

Customs warehouses are places that were approved by and are under the supervision of the customs authorities and may be either public or private. Public warehouses are available for the use of any person for the warehousing of goods, whereas private warehouses are reserved for the storage of goods by the holder of an authorisation for customs warehousing.

While imported goods are stored in a customs warehouse, they may, subject to authorisation, undergo usual forms of handling intended to preserve them or prepare them for distribution or resale.

The duration of the customs procedure of customs warehousing cannot exceed 3 years starting from the date when goods have been placed under such a procedure. It should be noted that the goods with an expiry date shall be placed under another customs procedure at least 180 days before the shelf life expiration.

21.2 Shipping Requirements

a) Packing

International shipping puts high demands on the packing of goods. Hong Kong traders should be aware of the risk of damage that might be caused by breakage, moisture, excess weight or pilferage. Therefore, it is recommended that the following requirements should be respected when packing:

- provide for strong and adequately sealed containers,
- distribute the weight of the goods evenly,
- use moisture-resistant materials, and

- respect product-specific hazardous materials packing requirements, if applicable.

If Hong Kong traders decide to use wood packaging material or wood to wedge or support non-wood cargo, they should keep in mind that "International Standards for Phytosanitary Measures No. 15 – Regulation of wood packaging material in international trade"[39] are applicable in the Russian Federation. According to the above-mentioned standards, the wood packaging material may only be made from debarked round wood.

Furthermore, Hong Kong traders should be aware of the fact that, pursuant to EAEU customs law, both "*the cost of containers*", and "*the cost of packing, whether for labour or materials*", must be added to the price actually paid or payable for the imported goods to determine their customs value. In other words, the higher the expenses for packing, the higher the customs value of the imported goods. Obviously, this provision only applies if the costs for packing are not already included in the price paid or payable for the imported goods.

Hong Kong traders should also note that packing materials and packing containers presented with the goods therein have to be classified with the goods "*if they are of a kind normally used for packing such goods*".[40] This classification is binding as long as the packing materials or packing containers are not clearly suitable for repetitive use.

b) Shipping

The cost of shipment, the delivery schedule and the accessibility to the product by the purchaser are important factors to be considered when determining the method of shipping. In this regard, Hong Kong traders may find it useful to consult with their freight forwarders. Freight forwarders may also assist Hong Kong traders in preparing price quotations by advising on freight costs, port charges, costs of special documentation, etc.

[39] https://www.ippc.int/static/media/files/publication/en/2016/06/ISPM_15_2013_En_2016-06-07.pdf

[40] Rule 5(a) of the General rules for the interpretation of the TN VED.

In general, shipment by air carrier will be more expensive than shipment by sea carrier. However, an air carrier's additional costs may be offset by quicker delivery times and lower domestic shipping costs, if a local airport is nearer to the final destination than coastal seaports.

Goods that are imported into the EAEU have to be accompanied by a valid transport document (*e.g.* a bill of lading or an airway bill). Additional documentation might be required depending on the specific nature of the imported goods. Given that carriers are often used for large and bulky shipments, Hong Kong traders should furthermore keep in mind the need to reserve space well before the actual shipment date. Inexperienced traders should consult with their freight forwarders in this respect.

21.3 Marine and Air Insurance

The continuing growth in world trade is resulting in unprecedented levels of goods moving across borders. This rise in trade volumes has increased the potential for companies' goods to be lost or damaged in transit. To guard against this risk, Hong Kong traders should arrange adequate insurance for their goods.

Export shipments are usually insured against loss, damage and delay in transit by cargo insurance. If the sales agreement makes a Hong Kong trader responsible for insurance, he should either obtain his own policy or insure the cargo under a freight forwarder's policy for a fee. If, pursuant to the terms of sale, it is the buyer who is responsible to insure the goods to be imported, Hong Kong traders should not automatically assume that the buyer will have obtained adequate insurance. In fact, a Hong Kong trader may still have to bear the financial loss in case a buyer neglects to provide for adequate coverage and the goods are damaged.

Shipments by sea should be covered by marine cargo insurance. Marine insurance compensates the owner of goods transported overseas in the event of loss that cannot be recovered from the carrier such as losses and damage sustained from shipwreck, fire, etc. Air shipments may also be covered by marine cargo insurance or it may be purchased from the air carrier.

The cost of protection, i.e. the insurance premium, for the same consignment carried between the same two points will not be the same for sea and air transportation. In fact, the costs will generally be lower for goods moved by air. This is because insurers assume that the risk of damage or loss during air transportation is likely to be less.

22. EAEU Import Regulation

All Members of the EAEU have adopted a common trade policy towards imports from third countries. The EAEU has a relatively liberal import regime; however, foreign traders should be aware of certain restrictions and obstacles to trade in the EAEU.

22.1 Non-tariff Regulation

The EAEU Treaty provides for a harmonised system of non-tariff trade regulation on the basis of Annex No. 7 of the EAEU Treaty (Protocol on Measures of Non-Tariff Regulation Applicable to Third Countries) as well as on the basis of other EAEU Treaty provisions and Annexes relating to specific types of non-tariff measures (e.g., technical regulations, sanitary and hygienic measures, veterinary and phytosanitary surveillance and export control measures).

The above Protocol stipulates general rules and principles for the adoption, imposition and use of specific types of non-tariff measures. While the adoption of each non-tariff measure and management of the respective unified lists of the measures are done by the EEC, administration and enforcement of the measures remain within the competence of the EAEU Member States and are governed by their national laws. According to the Protocol, the EAEU may introduce the following non-tariff measures on imports and exports:

- bans and quantitative restrictions;
- exclusive rights;
- automatic licensing; and
- authorisations (non-automatic licensing; see also Rules on Issuance of licences and authorisations on exports and imports of goods, in the Addendum to Annex No 7 of the EAEU Treaty).

The unified regularly updated lists of goods and respective non-tariff measures of the EAEU are available at the EEC website:

www.eurasiancommission.org/ru/act/trade/catr/nontariff/Pages/ed-perechen_title.aspx.

Other non-tariff measures, such as for export controls, technical regulations and sanitary (or veterinary and phytosanitary) (SPS) measures, including plant quarantine measures, are routinely applied by the EAEU and its Member States. They are subject to Chapter XI and Annexes 9–12 of the EAEU Treaty as well as national implementing legislation. The most notable trade restrictions in Russia and the EAEU are traditionally of an SPS nature, including bans on the import of poultry and meat from the US owing to a bird flu epidemic or because of a zero-tolerance policy on residues of antibiotics and steroids (such as ractopamine, which is banned in Russia and also in other jurisdictions, such as the European Union and China). Other goods subject to extensive safety controls and requirements in Russia and the EAEU include pork and other meat products from the EU due to alleged African swine fever outbreaks (the latter restrictions were recently found to be inconsistent with Russia's obligations under the WTO, and the compliance procedure is ongoing), cheese, certain detergents and confectionery from Ukraine, and other items. Parallel to this, all EAEU members make extensive use of stringent import licensing regimes for alcohol and pharmaceuticals.

a) Technical Regulations

It should be noted that Technical Regulations (TRs) are especially important for foreign traders, and non-compliance with them may lead to a refusal to release the goods for free circulation.

The Technical Regulation of the Eurasian Economic Union is a document, adopted by the Eurasian Economic Commission, that establishes requirements which are legally binding on the territory of the Union to subjects of the technical regulation. Standards are the main instrument for implementing technical regulations, as standards contain, for the purposes of repeated use, the characteristics of the product, rules for implementation and characteristics of design processes (including research works), production, construction, installation, commissioning, operation, storage, transportation, sale and disposal,

performance of work or provision of services, rules and methods (tests) and measurements, sampling rules, requirements for terminology, symbols, packaging, marking or labelling and the rules for affixing thereof.

Technical regulations set minimum requirements for the safety of products. The conformity assessment is demonstrated by EAC certification, EAC declaration or state registration. After a successful conformity assessment, the products shall be marked with the EAC mark of conformity. The EAC conformity mark declares that the product complies with the applicable safety requirements of the technical regulations. Only then can the product be released into the market of the EAEU for free circulation.

b) Sanitary-epidemiologic measures

Unified sanitary measures of the EAEU are applied in order to confirm that goods imported and distributed in the EAEU territory comply with all safety requirements and do not pose any threat to life and health. The unified sanitary rules include the following three lists of controlled goods:

- The list of goods that are subject to sanitary-epidemiologic control (this list includes almost all food products and consumer goods). Goods falling under this list must comply with the established sanitary and safety requirements.

- The list of goods that are subject to state registration, which is required in order to confirm compliance with sanitary-epidemiologic and hygiene requirements and applies to food products, cosmetic and household chemical products, certain clothing items, mineral water, alcoholic beverages, etc. The state registration must be carried out prior to the goods' importation into the EAEU.

- The list of exemptions from state registration (for example, when goods subject to state registration are imported for exhibition purposes).

Sanitary-epidemiologic control is performed at EAEU customs entry points when goods cross the EAEU customs border, as well as within the EAEU territory. State registration certificates for the controlled goods, if any, must be issued prior to the goods' importation into the EAEU territory. Sanitary-epidemiologic control is performed in Russia by regional subdivisions of the Federal Agency for Surveillance over Consumers Rights Protection and Human Wellbeing.

c) Labelling and marking requirements

Labelling and marking requirements have generally been harmonized across the EAEU Member States for products entering the territory, according to specific Technical Regulations applying to product categories. Where required, the official certification mark logo ("EAC") should be applied to each production unit, packaging, or instructions for use (as specified by the appropriate TR), and should be clearly visible throughout the lifetime of the product. The "EAC" mark indicates conformity with TRs established by the EAEU, and should only be used for products which have been formally tested and approved by officially recognized certification authorities.

The Technical Regulation (TR) on Safety of Packaging (TR CU 005/2011) is a key regulation covering standards and requirements for packaging, including that of food products, produced both as a finished product and as part of the products' manufacturing process. The TR was adopted by the CU Commission decision No. 769 of August 16, 2011, and has been in effect since July 1, 2012. It covers the main rules for the packaging of ready goods and regulates the following areas:

- Market Circulation Rules
- Safety Requirements
- Requirements for Marking of Packaging (Closures)

In general, labels on food items must feature the following information in the Russian, Kazakh, and Belarussian languages:

- Type and name of the product;
- Legal address of the producer (may be provided in the Latin alphabet);
- Weight/volume of the product;
- Food contents (name of basic ingredients/additives listed by weight in decreasing order);
- Nutritional value (calories, vitamins if their content is significant or if the product is intended for children, for medical, or for dietary use);
- Conditions of storage;
- Expiration date (or production date and period of storage);
- Directions for preparation of semi-finished goods or children's foodstuffs;
- Warning information with regard to any restrictions and side effects;
- Terms and conditions of use.

Labels on non-food items must include:

- Name of the product;
- Country of origin and name of manufacturer (may be given in Latin letters);
- Usage instructions;
- Main characteristics, rules and conditions for effective and safe use of the product;
- Any other information determined by the state regulation body.

22.2 Import Licensing

The legal basis for the import licensing system is the EAEU legislation on non-tariff measures. The purpose of the licensing measures is to monitor and control imports and exports of goods which are classified as sensitive by the EAEU Member States or by the international community.

Import/export licences are required: (i) in the event of temporary quantitative restrictions on imports of certain types of goods; (ii) to regulate the importation of certain goods for reasons of national security, health, safety or environmental protection; (iii) to grant an exclusive right to import or export certain goods; or (iv) to carry out international obligations.

A unified list of goods to which import and export limitations and prohibitions are applied has been established at the EAEU level, based on which certain categories of goods (e.g., fertilizers; rare animals and plants; goods with a high level of cryptographic protection, hazardous waste, drugs, items of cultural value, precious stones and metals, etc.) require an import or export licence for their movement across the EAEU border. In Russia, licences are issued by the Ministry of Industry and Trade in accordance with the unified licensing rules of the EAEU.

Products containing any cryptographic devices or functions and not requiring an import licence (which covers the majority of IT hardware and software goods, such as electronics; phones; computers; laptops; modems; software, etc.) are subject to mandatory notification with the Russian Federal Security Service. A Russian licensee may import licensed goods into Russia only and has the right to transit such goods through the territory of the other EAEU Member States.

In 2013, the Eurasian Economic Commission issued regulations on the procedure for providing licences and notifications.

In accordance with the WTO requirements on non-discrimination in foreign trade, the import licensing of medicinal preparations was abolished in the Customs Union in 2011. The import licensing of alcohol products was also

abolished automatically in the Customs Union as from the moment when Russia became a member of the WTO.

22.3 Quotas

For a number of products, tariff quotas (TRQs) permit – for the period of validity of the measure and for a limited quantity of imports – a total or partial reduction of the applicable customs duties on imported goods.

A distinction should be made between *preferential* tariff quotas, which the EAEU has bilaterally concluded with third countries and which are provided for a pre-determined volume of goods originating in a specified country, and *autonomous* tariff quotas, which apply to certain sectors as a whole, irrespective of the origin of the goods.

The role of autonomous tariff quotas is to stimulate economic activity in certain EAEU industries, by creating more competition through lower tariffs. Such tariff quotas are normally granted to raw materials, semi-finished goods or components which are available within the EAEU but in insufficient quantities.

On August 21, 2017, the Eurasian Economic Commission (EEC) published Decision 97, “On Establishment of Tariff-Rate Quotas for Import of Certain Agricultural Goods into the Customs Territory of the Eurasian Economic Union in 2018, as well as Volumes of Tariff-Rate Quotas for Import of these Goods in the Territories of the Eurasian Economic Union Member States.” The Russian TRQ volumes for 2018 will be the same as in 2017 (please refer to Section 5.2 for more details), which appear to be consistent with its WTO commitments. As in previous years, the EEC Decision on 2018’s TRQs does not specify country-specific allocations for Russia but rather leaves it up to the country to “ensure distribution of the tariff-rate quotas established by the present Decision among third countries in accordance with Russian legislation and Russia’s commitments within the framework of the World Trade Organization.”

22.4 Restrictions and Prohibitions

The EAEU also has restrictions and prohibitions in place as regards the importation of some products. In particular, Hong Kong traders should be aware of the following restrictions:

a) Pirated or counterfeit goods

Counterfeit and pirated goods cannot be imported into the EAEU. The customs authorities of the EAEU Member States may intervene where goods are suspected of infringing intellectual property rights. The intervention may lead to the destruction of the imported goods as well as the imposition of fines on the importer.

It should be noted that EAEU Member States are beginning to escalate their fight against counterfeit imports coming from the Asian region. More particularly, starting from January 1, 2017, radio-frequency identification (RFID) tags are used to identify all imported medicine. Moreover, authorities are planning to require the labelling of consumer goods, particularly clothes and footwear, as well as aviation components and valuable wood.

This defensive policy of the EAEU is felt not to be without reason: mainland China exports consumer goods to Russia that have an annual value of more than $10 billion, yet Russian customs records the import of goods worth only $5 billion.

In addition, counterfeit goods, including imports, comprise anywhere from 5 to 30% in various sectors of Russia's economy. The biggest sector is in consumer goods, where there is a high level of counterfeit and poor-quality items. Inspections carried out by the Russian Quality Service have identified discrepancies in children's clothes and men's shirts imported from mainland China, Vietnam and Bangladesh: although 80% of the materials were listed as natural, an analysis showed that the materials were 100% synthetic.

b) Restrictions on genetically modified organisms (GMOs)

All EAEU and Russian legislative and regulatory documents use the term GMO (genetically modified organisms) or GMM (genetically modified microorganisms) instead of genetically engineered (GE) organisms/microorganisms.

The EAEU's requirements in terms of GMOs are not prohibitive or even restrictive. According to Technical Regulation 022/2011 On food marking, all GMO-containing products shall be marked with a respective "GMO" marking. This requirement applies only to the products that consist of at least 0.9% of GMO. There are no import restrictions against GMOs.

According to Russia's Federal Law "On amendments to certain legislative acts of the Russian Federation concerning improvement of the state regulation in the sphere of genetic-engineering activities"[41], cultivation of genetically engineered plants and breeding of genetically engineered animals on the territory of the Russian Federation, except for cultivation and breeding of plants and animals required for scientific expertise or research, is prohibited. The amendments provide that controlling bodies of the executive power shall monitor: the effects of GMOs, and products derived from such organisms, not only on the environment but also on the health of human beings; shall conduct state registration of such organisms and products, and in case of violations may ban imports of such products.

Although Russia's national legislation prohibits production of GMOs, the import thereof is not prohibited, unless the authorities impose a temporary import ban. Therefore, GMOs can be legally imported into and sold within Russia's territory. It should be noted that Russia cannot impose a complete ban on GMOs due to its WTO obligations.

[41] Federal Law No 358-FZ "On Amendments to Certain Legislative Acts of the Russian Federation Concerning Improvement of the State Regulation in the Area of Genetic-Engineering Activity"

c) Restrictions on import of live animals and animal products

Imports of live animals and animal products from third countries must comply with certain health and monitoring standards. The details are discussed further below.

The following categories are subject to veterinary control[42]:

- Live animals (all animals, including agricultural, domestic, wild, zoo, sea, commercial fur, circus, laboratory animals, etc.), live birds (all birds, including domestic, wild, ornamental, etc.), semen, and embryos
- All types of meat and meat by-products, including poultry
- Milk and dairy products
- Eggs and processed eggs products
- Materials of animal origin.

In 2017, the EAEU expanded the above list to add leguminous vegetables used for animal feed, citron melons, and some feed additives.

It should be noted that, contrary to Russia's WTO commitment to trim back the listing requirement to exclude select processed products of animal origin, the Federal Veterinary and Phytosanitary Surveillance Service (Rosselkhoznadzor) continues to *de facto* enforce the listing requirement on all such products.

d) Dangerous chemicals

An import ban is in force on goods containing mercury, PCB and PCT[43], as well as CFC and HCFC.[44] The technical regulation of the Eurasian Economic Union TR TS 041/2017 "On safety of chemicals" includes

[42] Customs Union Commission Decision No. 317

[43] Polychlorinated (trichloro- to decachloro) biphenyls (PCB) and Polychlorinated terphenyls (PCT).

[44] Dichlorodifluoromethane and chlorodifluoromethane.

mandatory safety requirements for chemical substances, mixtures and other chemical products and their registration, evaluation, approval, and marking. The new technical regulation is a counterpart to the European Union's REACH Regulation and CLP Regulation.

According to the technical regulation, a uniform chemical register with the data on the chemical substances placed on the market has been provided. The registration in the list of chemicals is a prerequisite for the issue of proof of conformity. The chemical substances are divided into 13 hazard categories: explosives, pressurised gases, combustion gases, self-reactive substances, self-heatable substances, water-reactive substances, etc.

The safety of lubricants, oils and special fluids is subject to the technical regulation TR CU 030/2012 "On safety of lubricants, oils and special fluids".

23. EAEU Export Controls

The majority of goods exported from the customs territory of the EAEU are free from export controls and export taxes and duties. There are, however, exceptions, which often affect certain natural resources, hydrocarbons and energy goods, raw materials (including a number of metals), certain agricultural and forestry products, dual-use goods, etc.

The rules on export controls in the external trade of the Member States are provided in the Agreement on Unified Rules of Export Control of Member States of the Eurasian Economic Community (the Agreement) of 28 October 2003. The Agreement has been in force for EAEU members since 1 January 2010 and is relevant also for internal trade among them. However, on 16 May 2014 Kazakhstan withdrew from the agreement and currently applies its own national rules. Further, Kazakhstan has requested the exclusion of the provisions on export control from the scope of the EAEU Treaty.

The Agreement contains a set of common harmonised rules and procedures with regard to trade in specific raw materials; dual-use goods and equipment; technology and services that might be used in weapons of mass destruction and missile delivery systems; and military goods and equipment. The Agreement establishes a common list of goods and technology subject to export control.

Under the Agreement, the participants are called on to communicate and cooperate among themselves, and coordinate in the enforcement of export controls on goods included in the common list.

However, the Member States retain certain powers and remain responsible for the establishment and management of national competent authorities in charge of administering export controls and issuing export licences for the listed goods. Procedures involving customs declarations, controls and, where relevant, payments of export taxes and duties apply to exports of goods and technologies on the common list outside the territory of the EAEU.

In Russia, the Federal Service for Technical and Export Control (FSTEC) is

in charge of all matters on export control. It acts pursuant to the Federal Law on Export Control No. 183-FZ, of 18 July 1999.

23.1 Export Tariffs

The EAEU Member States have concluded a separate accord concerning export duties. According to this accord, each Member State of the EAEU establishes its own list of certain goods in respect of which export duties may apply, which is communicated to the EEC. On that basis, the EEC maintains a consolidated list of products subject to export duties for all Member States of the EAEU. Member States retain the power to adopt and amend the export duty rates applied on export of goods, contained in the consolidated list and originating in their territories. Similar rules are reflected in the Customs Code of the Eurasian Economic Union. Export duty rates are subject to periodic amendments by decisions of governments of the Member States. There is no single official public database at the EAEU level where up-to-date export duty rates can be consulted.

23.2 Controls for Specific Products

On 21 September 2004, the participants of the EurAsEC, including Russia, Kazakhstan (which withdrew on 16 May 2014), Belarus, Armenia and Kyrgyzstan adopted common lists of goods and technologies subject to export control (Decision of the EurAsEC Interstate Council No. 190 of 21 September 2004). This decision remains in force and operational under the new EAEU regime, excluding Kazakhstan.

Those lists contain six model sub-lists for goods and technology items subject to export controls. The titles of the sub-lists include pathogenic microorganisms and substances and genetically modified organisms; special chemicals suitable for use in chemical weapons; and nuclear materials and non-nuclear materials and respective technologies, dual-use technologies and equipment, including but not limited to those applicable for nuclear uses, for use in military weapons, and for missiles. The specific contents of each sub-list are developed in the national legislation of each participant.

Exports of listed items are subject to non-automatic licences or permissions

(an authorisation with attached conditions) issued by the national export control authorities. There are individual (transaction-specific) and general (long-term) licences. At the EAEU level, the responsible national authorities are required to regularly exchange information on issued licences or permissions and on the conditions attached to such permissions.

Debates between the Member States of the EAEU on the future of export control regulation in the EAEU have continued throughout recent years. At this stage it is difficult to foresee the potential outcomes for the future of common export control regulations.

23.3 Controls for Specific Products

Penalties for violation of export controls are imposed according to the national legislation of the Member States of the EAEU. All countries provide for administrative and criminal liability for individuals found to have violated export control rules. Their actions can also be subject to civil damage claims. Legal entities may be subject to financial penalties or may be prohibited from running foreign economic activities for up to three years, or both. The gravity of the penalties is similar in all EAEU Member States.

In Russia, criminal offences related to export controls are subject to financial penalties up of to RUB500,000, imprisonment for up to three years and a prohibition on engaging in certain activities for up to five years or forced labour for up to three years. However, for violations committed by an organised group of persons or in connection with weapons of mass destruction, the imprisonment period is up to seven years and the financial penalty is up to RUB1 million.

Administrative liability is limited to penalties of up to RUB20,000 for legal entities and RUB2,000 for individuals, with or without confiscation of the goods or property subject to the offence.

24. Trade Defence Measures

The EAEU may adopt trade defence measures or instruments (TDIs) against dumped or subsidised imports from third countries leading to an increase in tariff duties. In addition, the EAEU may decide to protect its industry against a sudden increase in imports of a particular product by means of safeguard measures in the form of import quotas.

TDIs of the Eurasian Economic Union are imposed on imports into the single customs territory of the EAEU. For the purposes of the legal framework of TDIs, the domestic industry of the EAEU is defined by reference to producers in all EAEU Member States.

Final decisions to impose measures following investigations are made by the Board of the EEC, consisting of the EEC Ministers representing all the EAEU Member States (www.eurasiancommission.org/ru/Pages/structure.aspx).

All definitions of terms, procedural requirements and time limits that apply pursuant to the TDI Protocol and that are actually applied by the EEC in TDI investigations aim to follow the respective WTO rules on TDIs.

Under the TDI Protocol all third countries are treated as market economy countries.

24.1 Anti-dumping and Anti-subsidy Measures

In order to combat unfair trade practices which cause or threaten to cause material injury to the EAEU industry, the EAEU may, following certain procedures, increase the import duties on imports of specific products from certain countries for which dumping or subsidisation is found.

The legal basis for trade defence instruments (TDIs) (i.e., anti-dumping (AD), countervailing (CV) and safeguards (SG)) is the founding Treaty on the Eurasian Economic Union of 29 May 2014 between the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation as amended upon accessions of the Republic of Armenia and the Kyrgyz Republic (EAEU Treaty) and, specifically, Annex 8 thereof, which contains Protocol No. 8 on Application of Safeguards, Anti-dumping and Countervailing Measures in

Respect of Third Countries (TDI Protocol).

A number of secondary acts of the Eurasian Economic Commission (EEC or the Commission) regulate specific aspects of TDIs, including confidentiality matters, internal decision-making procedures and methodological materials for domestic producers aiming to facilitate the preparation of complaints. The EAEU Treaty and the secondary acts are available at the EAEU Law Portal (all materials are in Russian, while selected acts are also translated into Armenian, Belarusian, Kazakh and Kyrgyz languages) at https://docs.eaeunion.org/en-us/.

Interested parties (exporting producers, importers, consumer associations and authorities of exporting countries) can participate in the investigation in person or can appoint legal representatives. There are currently no restrictions on foreign attorneys acting as representatives of interested parties before the Commission. All investigations are, however, conducted in Russian and all documents must be submitted in Russian or accompanied by a Russian translation.

a) Anti-dumping

Chapter IV of the TDI Protocol provides the main legal basis for the EAEU's anti-dumping measures. According to this Regulation, anti-dumping duties are to be imposed if three conditions are met: (i) a finding of dumping;[45] (ii) a determination of material injury (or threat thereof) to EAEU industry;[46] and (iii) the adoption of measures is in the interest of the EAEU as a whole.[47]

[45] A product is considered dumped if its export price to the EAEU is less than the comparable price for a like product established in the ordinary course of trade within the exporting country. Computations of the dumping margin may be complicated, as the necessary adjustments for differences in market structure, taxation, time of sales, and range of products considered to be affected have to be taken into account.

[46] The determination of injury requires evidence of: significant increases in the volume of dumped imports, either in absolute terms or relative to production or consumption in the EAEU; price undercutting; and the adverse impact on EAEU industry in relation to production and utilisation of capacity, stocks, sales, market share, price changes, profits, returns on investments, cash flow, and employment. The Regulation stipulates that there must be a causal link between dumping and injury.

[47] The interests of the EAEU include those of the industry and of the users and consumers. The cost of adopting the measures by the EAEU must not be disproportionate to the benefits.

The Eurasian Economic Commission is responsible for investigating complaints and assessing whether they are justified. It can also impose provisional measures.

i) Initiation of the investigation

Proceedings for an investigation can be initiated by written request from the EAEU industry or from an EAEU Member State. Any natural or legal person, or any association not having legal personality, acting on behalf of the EAEU industry (i.e. representing at least 25% of EAEU total production of the product concerned), may submit a written complaint to the EEC. If the complaint contains sufficient *prima facie* evidence of dumping and material injury, the EEC will initiate an anti-dumping proceeding. The Commission decides whether to open an investigation within 30 calendar days from the date when the complaint is deemed to have been submitted. This deadline may be extended where the Commission decides to request additional information or evidence; however, any such extension will not exceed 60 calendar days from the date of the submission of the complaint.

ii) Main steps of the investigation

The investigation is carried out by the EEC (i.e., its Department for Internal Market Defence – the Department). The EEC calculates normal value on the basis of the cost information provided by the exporter.

The notice of initiation of a specific investigation is published on the website of the Commission (www.eurasiancommission.org). The date of publication on the website is the first day of the new investigation.

Notifications are also sent to interested parties identified in the complaint and reasonably known to the investigating authorities. Notifications are also usually sent through diplomatic channels to the respective foreign governments of the affected countries. In

recent practice, written notifications have occasionally reached their addressees with delays, causing difficulties for interested parties to comply with further procedural deadlines.

Within 25 days from the publication on the Commission's website, interested parties must submit a letter to the Commission to be registered as participants in the investigation. Only registered interested parties (namely, participants) may obtain access to the non-confidential files, including a copy of the complaint. Participants must also request public hearings within 45 days and then subsequently submit their memorandum with defensive arguments and data relevant to the investigation within 60 calendar days from the date of initiation. Public hearings are normally scheduled within six to seven months after the initiation. Within 15 days after the hearings interested parties are entitled to submit information in writing as provided orally in the course of the public hearings.

Questionnaires must be answered within 30 days from their receipt (extensions are possible). Upon completion of the investigation and before the final decision, the Commission will send a draft report on the main findings and conclusions of the investigation to the participants for their comments. The EEC Board will decide on the imposition of measures usually within 30 to 45 days from receipt of the report on the investigation and of a draft decision from the investigating authority. The same deadline applies to all information requests in the course of the investigation.

In cases where an investigation involves a significant number of exporters, the Commission may resort to sampling (i.e. the selection of representative companies on which to base the calculations of dumping). Normally, exporters wishing to participate in the sample must submit information on their domestic and export sales as well as their production volume within 25 days after initiation.

Commission officials may carry out further verification visits at the exporters' premises (.e.g, in the Chinese mainland where the target

products originate there), in order to ensure that any of the information submitted is accurate. Normally these visits are carried out 6-8 months after the initiation of the investigation.

Main time limits of EAEU's anti-dumping proceedings

From the date of publication of the notice of initiation on the Commission's website	Actions
Within 25 days	Exporters to indicate their interest to be selected for sampling to the Commission and provide the information requested in the Notice of Initiation.
Not later than 15 days	Interested parties not named in the anti-dumping complaint to make themselves known to the Commission and request questionnaires from the Commission.
Within 30 days from the date of notification of being included in the sample	Sampled exporters to submit duly completed questionnaire about their companies' export activities in the EAEU to the Commission.
Not later than 7 months	The Commission may impose provisional anti-dumping duties.
Within 12 months (with a possible extension of up to 6 months)	The Commission must conclude the investigation. The Commission may terminate the proceeding without the imposition of anti-dumping duties; or impose definitive anti-dumping duties; or conclude the investigation by accepting 'price undertakings' from exporters agreeing to revise their prices.

Note: The time limits are for reference only. Different anti-dumping investigations may have different time limits, which are specified in the relevant Notice of Initiation published on the EEC's website.
Source: Protocol No. 8 on Application of Safeguards, Anti-dumping and Countervailing Measures in Respect of Third Countries

iii) Outcome of the investigation

Seven months after initiation, the Eurasian Commission may impose provisional duties, if the existence of dumping and injury to the EAEU industry has been preliminarily established, as well as EAEU interest. The investigation must be concluded within 12 months from initiation. A further six-month period can be granted. The European Commission may terminate the proceeding without the imposition of anti-dumping duties; or impose definitive anti-

dumping duties; or conclude the investigation by accepting undertakings from exporters agreeing to revise their prices. If duties are imposed, they will expire five years after their date of imposition or after the conclusion of the review of the measures concerned. The duties imposed are calculated according to the dumping or injury margin, whichever is lower (the lesser-duty rule).

iv) Undertakings

Hong Kong traders may like to know that, once it becomes clear that the investigation will lead to the imposition of duties, the companies concerned might want to consider price undertakings in order to avoid the imposition of such duties against their exports. Undertakings are a form of anti-dumping measure where an exporting producer undertakes to increase its export prices of the product concerned to the Union to non-dumped or non-injurious levels. Undertakings are negotiated with the Commission late in the anti-dumping investigation, when the duty rates have been calculated on the basis of the cooperating exporting producers' dumping or injury margins. They can be negotiated with respect to both provisional and definitive duties.

The acceptance by the Commission of an undertaking leads to the non-application of provisional or definitive anti-dumping duties to the imports of the product concerned manufactured by the company benefiting from the undertaking. The Commission enjoys wide discretion in accepting or rejecting undertakings offered by exporting producers. As a general rule, the Commission will not accept undertakings from exporters who did not cooperate at all or who did not sufficiently cooperate in the investigation, or who did not produce or export the product concerned during the period of investigation.

While it has already happened in practice (e.g., in 2015, the EEC accepted one minimum price undertaking from cooperating exporting producers in the anti-dumping investigation on Oil Country Tubular Goods (OCTG) from mainland China), in general,

the EEC is often reluctant to accept price undertakings. Where a measure or decision of the Commission in this respect is deemed unlawful, it may be challenged before the EAEU Court.

In light of the above, price undertakings would only be an option for companies that cooperated in the anti-dumping investigation and for which the Commission has found dumping. Each company will have to assess whether a price undertaking is a better solution than paying the duties.

v) Appeal

As from 1 January 2015, the Court of the Eurasian Economic Union (EAEU Court) is the sole competent institution for judicial review of TDI measures adopted by the EEC Board. All acts and actions (or inactions) that allegedly violate provisions of the EAEU Agreements and individual rights provided under those Agreements could be challenged before the EAEU Court. The enhanced rules of procedure now require a report from a specially appointed expert group.

In 2012–2014, the EurAsEC Court (the predecessor of the EAEU Court, but limited to CU matters only) had considered three TDI cases (all three concerned anti-dumping measures). In its practice, the EurAsEC Court demonstrated a reasoned approach and willingness to interpret the rules of the CU in light of specific WTO provisions and, particularly, with due regard to the judicial practice of the Court of Justice of the European Union, including, to a certain extent, the applicability of the relevant WTO rules in the domestic legal order. However, the EurAsEC Court did not uphold any of the above three legal actions lodged against TDI measures.

A WTO Member (including, of course, the Chinese mainland) may have recourse to the WTO dispute settlement system to disprove the conformity of the adopted measures with the WTO Anti-dumping Agreement.

vi) Reviews

The EAEU respects all relevant WTO disciplines on reviews and refunds, and there is a legal possibility to request interim/administrative, newcomer and expiry/sunset reviews, as well as refunds of AD or CV duties paid, in accordance with the TDI Protocol. In 2016, the EEC initiated a number of review proceedings, including interim reviews, expiry reviews and an anti-circumvention inquiry.

Under the TDI Protocol, reviews may be initiated upon the request of an interested party (an exporting producer, complainants). The Commission may also initiate an ex officio interim review, for example, as a result of an amicable out-of-court settlement or implementation of the EAEU Court's rulings. In particular, a similar development took place in the course of one judicial proceeding within the EurAsEC Court, where, as a result of an agreement with the complainant, the judicial proceeding was suspended, and the EEC agreed to initiate an interim review limited to the determination of dumping. The review resulted in a minor revision of the anti-dumping duties imposed. After the reopening of the judicial case on the complainant's initiative, the EurAsEC Court found the revised duties to be consistent with the CU legal order and dismissed the action.

Therefore, interested parties are encouraged to request reviews and refunds where this is warranted by evidence.

EAEU's Anti-dumping measures against Chinese mainland-origin products
(Measures in force as at 3 May 2018)

Definitive duties (8 cases)

Imposition Date		Product	Rate of Duty	Remarks
1.	22.06.2011	Rolling-element bearings (excl. needle roller bearings)	41.5% (except JSC "Rolling-element bearings Oosie" for which the duty is 31.3%	• Duty maintained for five years starting from 17.09.2013 • Expiry review

Imposition Date		Product	Rate of Duty	Remarks
				initiated on 18 September 2017.
2.	01.07.2012	Cold-rolled flat steel products with polymer coating	20.20% (except for three cooperating producers which are subject to duties of 6.98%, 10.34%, and 11.87%)	Duty maintained for five years starting from 22.01.2018
3.	15.05.2013	Cold-worked seamless pipes and tubes of stainless steel	19.15%	• Extended to imports consigned from Malaysia as of 13.12.2017. • Expiry review initiated on 19 January 2018.
4.	10.04.2015	Citric acid	16.97% (except for two cooperating producers which are subject to duties of 4.20%, 6.82%)	
5.	19.06.2015	Stainless steel flatware	27.16% (except for three companies ranging between 15.41% and 24.17%)	
6.	23.09.2015	Seamless steel OCTG	31% (except for some cooperating companies ranging from 12.23% to 25.1%)	Price undertakings were accepted from 5 exporting producers
7.	12.12.2015	Crawler dozers	44.65% (except for three companies ranging between	

Imposition Date		Product	Rate of Duty	Remarks
			9.65% and 13.80%)	
8.	18.12.2015	Commercial vehicle tyres	35.35% (except for some companies ranging between 14.79% and 32.14%)	

Anti-dumping investigations underway Targeting Chinese Mainland-origin Products (1 case, taking into consideration only new anti-dumping investigations) as at 3 May 2018.

Date of Initiation of Anti-dumping Proceedings		Product
1.	2.3.2018	Alloy wheels

Source: The Commission's website

b) Anti-subsidy

Chapter V of the TDI Protocol provides the main legal basis for the EAEU's main legal framework governing the EAEU's countervailing measures. Apart from the provisions on the definitions and calculation of subsidies, [48] this Chapter is similar to that on anti-dumping, particularly with regard to the determination of injury, the definition of EAEU industry, initiation procedures, imposition of provisional and definitive measures, and termination of proceedings.

The three conditions to be satisfied before the imposition of a countervailing measure are that: (i) the subsidy must be specific (*i.e.* an export subsidy, or a subsidy limited to a company, an industry or a group of companies or industries); (ii) a material injury to EAEU industry must exist; and (iii) the interest of the EAEU must be taken into account.

The amount of the countervailing duties is established in accordance with the subsidisation or injury margin, whichever is lower. The margin

[48] A subsidy exists if there is a financial contribution by a government in the country of origin or any form of income or price support, which confers a benefit to the recipient. Examples of measures which may amount to a subsidy are, inter alia, grants, loans at preferential interest rates, tax benefits, provision of goods or services at preferential rates, and provisions of equity capital contrary to the usual investment practice of private investors.

of subsidisation is calculated in terms of the benefit conferred on the subsidised products, whereas the injury margin is set at a level necessary to remove the injury.

Currently, there are no countervailing measures in force against Chinese mainland-origin products, nor any on-going anti-subsidy investigations.

c) Overview of new anti-dumping and anti-subsidy investigations

New anti-dumping and anti-subsidy investigations by the EAEU[49]

	2011	2012	2013	2014	2015	2016	2017	2018
New anti-dumping and anti-subsidy investigations, of which:	**4**	**2**	**1**	**10**	**1**	**1**	**1**	**2**
against Chinese mainland-origin products	2	2	0	6	X	0	0	1
against Ukraine-origin products	1	X	1	4	1	1	0	
against Hong Kong-origin products	1	X	0	1	X	0	0	

New anti-dumping and anti-subsidy investigations by the EAEU by product sectors

Product	2011	2012	2013	2014	2015	2016	2017	2018
Iron and steel	3	0	0	3	1	0	0	0
Chemical and allied products	0	0	0	1	0	0	1	0
Textiles and allied products	0	0	0	0	0	0	0	0
Other mechanical engineering items	0	1	1	2	0	1	0	1
Wood and paper	0	0	0	0	0	0	0	0
Electronics	0	0	0	0	0	0	0	0
Others	1	1	0	3	0	0	0	1
Total new investigations	***4***	***2***	***1***	***10***	***1***	***1***	***1***	***2***
(anti-dumping investigations)	*(4)*	*(2)*	*(1)*	*(9)*	*(1)*	*(1)*	*(1)*	*(2)*

[49] For the source of the data see http://www.eurasiancommission.org/ru/act/trade/podm/investigations/default.aspx. Data updated up to April 2018.

Product	2011	2012	2013	2014	2015	2016	2017	2018
(anti-subsidy investigations)	*(0)*	*(0)*	*(0)*	*(1)*	*(0)*	*(0)*	*(0)*	*(0)*

24.2 Safeguards

In general terms, safeguard measures can be adopted in those cases where there is a sudden increase in imports of a particular product into the EAEU causing or threatening to cause serious injury to the EAEU industry. Chapter III of the TDI Protocol sets out the provisions for the adoption of safeguard measures by the EAEU. Measures adopted through this legal instrument normally take the form of a fixed duty or an import quota imposing limits on the importation of the product concerned regardless of its origin (*erga omnes*).

a) Initiation of a safeguard investigation

For any safeguard action, the EAEU industry (one or more EAEU-based companies) can send a petition to the EEC directly. In this regard, the system is significantly different from the one in the European Union, where the EU industry cannot submit a request to the European Commission directly, but rather a Member State must make a request to the European Commission for safeguard action to be taken. In addition, the Commission can initiate an action in the EAEU on its own initiative

Under the TDI Protocol, before a safeguard measure is applied to particular products, the Eurasian Commission must find “serious injury” or threat thereof. The investigation must examine the trend of imports and serious injury or threat thereof, in relation to factors including the volume of imports, the price of imports, and the consequent impact on EAEU producers as indicated by trends in certain economic factors such as production, capacity utilisation, stocks, sales, market share, profits and employment.

b) Outcome of the investigation

Under Chapter III of the TDI Protocol, provisional safeguard measures may be adopted by the Eurasian Commission in critical circumstances,

for up to 200 days. These measures should be in the form of increased (special) customs duties. Definitive safeguard measures can be adopted (increased customs duties and/or quotas) by the EEC through implementing legislative acts. Safeguard investigations are normally concluded within nine months, with a possible extension of no more than three months.

Any measures, if adopted, would have to apply to imports from all third countries, except developing and least-developed countries whose imports are below a certain threshold. The duration of any of the measures should not exceed four years, but may be extended for four more years.

If the safeguard measure leads to the establishment of a quota, account is taken of the need to maintain traditional trade flows and the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of the safeguard measure. In general, the quota is not to be lower than the average level of imports over the last three representative years for which statistics are available.

24.3 Foreign Trade Barriers

The Commission has not yet received a mandate from the EAEU Member States for handling complaints against trade barriers in third countries, and the fundamental reason is that not all Member States are WTO members yet. The Member States of the EAEU that are WTO members (Armenia, Kazakhstan, Kyrgyzstan and Russia) can use WTO mechanisms to tackle trade barriers affecting their exported goods. However, under Article 39 of the EAEU Treaty the Commission shall monitor trade barriers in third countries and undertake respective consultations with the latter countries together with the EAEU Member States.

Complaints against trade barriers are handled by the competent ministries responsible for the economy and trade of each member state. Russia represents a particular interest in the light of its leading experience as a WTO member and the volume of its export trade. In Russia, the competent authority for handling trade barrier complaints is the Ministry of Economic

Development (MED), which has an experienced team of foreign trade experts who regularly deal with complaints about trade barriers in third countries. The comprehensive and up-to-date list of trade barriers on foreign markets identified by the Russian authorities is published at the MED's Information Portal for Foreign Trade: www.ved.gov.ru/rus_export/torg_exp/ (in Russian).

The national laws of the EAEU Member States do not provide for a specific procedure for the filing of complaints against trade barriers in third countries. However, the competent authorities are generally open to hearing the concerns of domestic businesses. There are no specific time limits. In Russia complaints are submitted in free written form and are considered by the MED.

Economic operators in Russia may submit a complaint based on arguments in line with WTO rules and challenging effective trade barriers against exports of Russian-originating goods and services. Such complaints are handled by the Ministry of Economic Development in Russia, and may be used as a basis for possible consultations or dispute settlement proceedings under WTO rules.

The authorities as a rule recommend to interested parties to collect available relevant data, such as legislative or administrative acts of the third country's authorities that are believed to be the reason for the trade barrier, statistical information on trade flows that have decreased or are expected to decrease as a result of the imposition of the trade barrier, and data on the negative impact of the trade barrier on the business of the complaining company or effect on the economy of the EAEU Member States.

As of 2013, the Commission undertakes monitoring and reporting of foreign trade barriers for goods exported by the EAEU members. The respective reports and lists of foreign trade barriers are published on the Commission's website (www.eurasiancommission.org/ru/act/trade/dotp/Pages/dostup.aspx).

As yet there are no specific rules in the EAEU Member States concerning the establishment of procedures and requirements for the preparation of WTO dispute settlement complaints. The practical support for the

preparation of a WTO case, such as the initiative for relevant research, evidence, translations and expert advice is largely a task for the business community. The competent authorities, such as Russia's Ministry of Economic Development, are able to step in when the business has prepared the groundwork, including reliable WTO legal argumentation, and are then able to ensure effective support.

25. Patents, Copyrights and Use of Trademarks with Respect to Imports

Goods imported into the EAEU must not infringe any intellectual property rights, including patents, copyrights and trademarks, which other operators may hold in the EAEU. Hong Kong traders interested in this subject should inquire into whether the goods they want to export to the EAEU are already subject to a patent, copyright, trademark or any other intellectual property right in any of the EAEU Member States, and obtain, if necessary, an appropriate licence from the right-holder. Otherwise, as explained below, the imported goods could be seized at the time of importation or afterwards.

25.1 Border Measures

a) Most frequent products subject to counterfeiting in the Russian Federation

The Federal Customs Service reports annually on customs enforcement activities. The latest report has shown a decrease in the amount of seized counterfeit goods, with 10.1 million seized items in 2017 having an approximate value of 4.5 billion roubles (a significant decrease from 20.4 million seized counterfeit items with an approximate value of 7.7 billion roubles in 2016 and 18.1 million items with an approximate value of 3.9 billion roubles in 2015). The FCS notes that they have significantly improved and automatised the system ensuring the observance of intellectual property rights.

In 2017, the customs authorities initiated 1,072 administrative offence cases in the area of intellectual property rights protection (1,050 of which concerned the illegal use of trademarks, and 22 cases concerned copyright infringement). The total amount of fines was 167 million roubles. For reference, in 2016, the customs authorities initiated 1,027 administrative offence cases in the area of intellectual property rights protection (996 of which concerned the illegal use of trademarks and 31 cases concerned copyright infringement).

The top categories of counterfeit goods are goods that can typically be

ordered online and shipped via post or courier, namely: clothing, shoes, spare car parts, other textile products, jewellery, merchandise and foodstuffs.

According to the FCS, mainland China remains the main country of provenance from where goods suspected of infringing an IPR are sent to Russia.

b) Customs registers of intellectual property objects

The current difference in the filling of national customs registers of the EAEU Member States (in Russia, there are 4,469 intellectual property objects included in the register) creates a possibility for the goods containing intellectual property objects to easily get into the territory of one of the EAEU and Single Economic Space (SES) Member States, wherein they are not protected by customs authorities and, in view of the absence of internal customs borders, be further distributed in the territory of the EAEU and SES Member States. By all means, this significantly reduces efficiency of the national customs registers.

Therefore, there is an objective necessity for the Single Customs Register to allow for the registration of intellectual property objects, which would in turn allow protection of intellectual property rights simultaneously in the entire EAEU and SES territory, namely exercise customs clearance of the goods containing intellectual property objects included in the Single Customs Register during their crossing of the outer perimeter of the customs border.

Currently, the Federal Customs Service serves as the body authorised to keep the Single Customs Register. However, the Single Customs Register does not contain any registered intellectual property objects. No applications for inclusion of intellectual property objects into the Single Customs Register are accepted by the Federal Customs Service of Russia.

This is caused both by imperfections of the mechanism of registration of intellectual property objects stipulated in the Regulation for Keeping the

Single Customs Register and, in particular, of the procedure for handling applications and making decisions, and by a lack of technical and personnel support for the function of keeping the Register.

Therefore, for the purposes of efficient protection, right holders have to submit five applications for inclusion of intellectual property objects into national customs registers, which entails both temporal and financial costs.

c) Parallel imports

The import of original trademarked goods from outside the EAEU but without the rightholder's consent constitutes a 'parallel import'. Parallel import is a key source of goods for local bazaars, kiosks and illicit Internet stores. Such sales points are, in turn, critical from the perspective of counterfeiting and violating sanitary, trade and tax laws, as well as the law on protection of consumer rights, as they frequently circumvent the control of the inspection authorities.

On 13 February 2018, the Constitutional Court of Russia declared that Russia ought to exercise a much softer stance towards parallel importers.

It is now clear that a regional exhaustion of rights regime that creates a statutory ban on parallel importation does not contravene the Russian Constitution.

Russian courts are entitled to dismiss a trademark infringement claim against a parallel importer, in full or in part, in circumstances where the bad faith conduct of a trademark holder might endanger the life and health of citizens, or other significant public interests.

Based on the Constitutional Court's ruling in a landmark case for the parallel imports issue[50], if a case of trademark infringement by reason of parallel importation can be made out and the claim is not asserted

[50] *Re: Case on Verification of the Constitutionality of Articles 1252.4 etc of the Civil Code in Connection with the Complaint of PAG LLC*, 13 February 2018, № 8-П/2018.

under circumstances of bad faith, the traditional remedies for infringement should nonetheless be toned down. This is because counterfeiters and parallel importers should not be treated in the same way. The Court concluded that the remedies and their amounts are not the same for the importation of grey and counterfeit goods because the amount of damage incurred by the trademark holder is not the same either.

25.2 New Proposed Eurasian Trademark System

On February 2, 2017 Russia announced that it would seek to ratify the draft Agreement on Trademarks, Service Marks and Appellations of Origin that had been proposed by the EAEU. The agreement introduces the concept of the Common Economic Space (CES) trademark. Much like the European trademark, the proposed CES trademark is a regional Eurasian trademark that covers the territories of all EAEU Member States.

The CES Trademark Register will co-exist alongside national registers, which will continue as before. Brand owners will have the option of applying to register a CES trademark, a national trademark, or both.

a) Filling and pre-grant opposition

Under the proposed CES trademark regime, a brand owner may file an application in the national trademark office of any member country where it has an accredited place of business. After receiving an application, the office of filing performs an examination for formalities and notifies the national trademark offices of each Member State. The application is then published on the CES website and there is a three-month window to file a pre-grant opposition. If there is no opposition, the application proceeds to substantive examination in each national office. Each national office, including the office of filing, delivers an examination opinion to the office of filing. If the mark is accepted, the applicant is informed and can pay the final fee. Each registration is valid for 10 years.

b) Examination

Under the proposed regime, if a national trademark office rejects the mark, the applicant can appeal directly to that national office. If it does not appeal or the appeal is rejected, the office of filing will reject the whole CES application. In such case, the applicant has two options:

- If the negative opinion can be overcome by narrowing the list of goods to which the mark applies, the CES application can proceed with this allowance.

- The applicant can choose to nationalise the CES application in the countries that approved it – in such case, the applicant files a notice of conversion and the application continues in those regional offices as a national application.

c) Conversion

The agreement also envisages other options for conversion. For example, a person who has filed a national application in Russia can elect to convert the pending application into a CES application by giving notice and paying the requisite fees (Article 4(5)). Further, Article 14 of the agreement allows the owner of a national registration to request a CES trademark certificate provided that certain circumstances are met and the mark, the named owner and the list of goods and services are unchanged.

The details as to how the process is to be administered will be set out in official guidelines to be released in the future.

d) Grant

If the mark is deemed to be registrable on absolute and relative grounds, the applicant is informed and can pay the final fee. Each registration is valid for 10 years, and this term can be renewed.

e) Enforcement

A CES trademark registration can be enforced or invalidated in each Member State under the local laws of that country.