

RUSSIA

# Investment rules of the world

## About

At DLA Piper, we have one of the largest finance and projects teams in the world with more than 600 dedicated lawyers and an established local law firm network. We share knowledge and skills in debt instruments, debt securities, funds, derivatives and portfolios, as well as energy, infrastructure and other projects, across Europe, the Middle East, Africa, Asia Pacific and the Americas.

When and wherever we work for you on finance and investment deals and projects, you can rely on our international platform; we are backed by the network and resources of one the largest and most-connected business law firms in the world.

We enjoy being part of your team, bringing experience across sectors, borders and financial products, supporting you on first-of-a-kind deals, in new markets and to grow.

With global perspective, we can help you to realize your financial strategy in whichever markets you do business.

## Investment Rules of the World

With input from across our global network, this guide covers key legal topics for different financial activities and projects and gives you an overview of the points you may consider when initially looking at financing or investing in particular jurisdictions. Please [contact us](#) if you would like to discuss any legal issues or solutions for your business. We also welcome your feedback about this guide via [investmentrules@dlapiper.com](mailto:investmentrules@dlapiper.com).



# Russia

*Last modified 05 December 2019*

## Capital markets and structured investments

### Issuing and investing in debt securities

#### *Are there any restrictions on issuing debt securities?*

There are restrictions on issuing debt securities in Russia which differ for Russian and foreign securities.

For Russian debt securities issued by Russian issuers, the general regulation for securities offerings must apply with special requirements established for each type of debt securities (bonds, depository receipts and etc.).

Foreign financial instruments may only be placed (sold for a first time to the first holder) in Russia if the following conditions are met:

- an international securities identification number (ICIN) and a Classification of Financial Instruments (CFI) are assigned to the instrument; and
- the instrument is qualified as security in accordance with the procedure established by the CBR,

provided that in each case the financial instrument is issued by a foreign issuer that complies with the requirements stated in the law (such as foreign organizations established in states that are members of the Organization for Economic Cooperation and Development (OECD), foreign organizations established in states whose relevant regulators (other authorized institutions) have entered into cooperation agreements with the CBR, and foreign organizations whose securities are listed on foreign exchanges included in the special list approved by the CBR).

Generally, in addition to the conditions set out above, foreign securities will be admitted for placement (initial sale to initial investors) in Russia provided that the prospectus describing such securities is registered by the CBR and such securities are registered with (held through) a depository established in accordance with Russian law. A filing of a notice to the CBR with the results of the initial placement in the Russian territory and disclosure of this information are required, without which any subsequent trading/transacting in Russia is prohibited.

In certain cases, a decision to admit foreign securities to public circulation in Russia may be made by the Russian exchange if a listing procedure is started or finished by the foreign exchange and which is included in the list specified by the CBR.

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#### *What are common issuing methods and types of debt securities?*

It should be noted that Russian regulation of the securities market is rather conservative. Russian issuers can only issue the types of securities that are directly specified in the law and in accordance with the requirements stated in the law.

The most common types of Russian debt securities are bonds issued on a stand-alone basis. Recently, it also became possible to issue bonds under a program.

The various types of Russian debt securities include:

- bonds characterized by the type of interest or payment such as fixed-rate bonds, floating-rate bonds and discount bonds;
- secured bonds such as bonds secured by the pledge, bonds secured by surety and bonds secured by bank or state guarantee;
- subordinated bonds and perpetual bonds (ie bonds that have no specified redemption date);
- exchange-traded bonds;
- commercial bonds;
- structural bonds;
- Russian depository receipts (securities issued by a Russian depository evidencing the right of its holder to a certain amount of securities of a foreign issuer);
- warrants (securities giving its holder the option to purchase equity of the issuer under the terms specified in it); and
- convertible securities (securities convertible into other types of securities such as shares or bonds).

Foreign financial instruments can only be admitted to public placement/circulation if, among other requirements, they are qualified as securities under the procedure established by the Central Bank of the Russian Federation (CBR). Thus, the types of such securities are limited to those recognized by the CBR.

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### ***What are the differences between offering debt securities to institutional / professional or other investors?***

In some cases, securities can only be offered to qualified investors. Such offerings are possible without a prospectus and disclosure of information (but it is still required for listing by an exchange).

Securities for qualified investors can only be acquired or sold through a broker in some cases.

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### ***When is it necessary to prepare a prospectus?***

Under Russian law, a prospectus must be prepared in all cases, unless one of the following exemptions apply:

- securities are placed with qualified investors or the persons that can exercise a preemptive right in respect of such shares or securities (convertible into shares);
- shares or securities convertible into shares are placed with persons that, as on a certain date, are or were shareholders of the issuer;
- securities are offered to a maximum of 150 persons (qualified investors and persons that can exercise a preemptive right in respect of such securities not counted);
- funds raised by the securities offerings during a year do not exceed RUB 4 billion for a credit organization or RUB 1 billion for all other issuers;
- funds paid by each potential purchaser (apart from the persons exercising their preemptive right) are not less than RUB 1 million 400 thousand ; or
- registration of separate terms and conditions of bonds under a program where a prospectus has been registered simultaneously with registration of the program within one year from the date of registration of the prospectus.

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### ***What are the main exchanges available?***

The Moscow Exchange has two principle markets on which debt securities are traded subject to its rules:

- the Equity Capital Market which offers trading in shares, depository receipts, fund shares, mortgage participation certificates and exchange traded funds; and
- the Debt Capital Market which offers trading in state bonds, corporate bonds, and corporate and sovereign Eurobonds.

Another active exchange in Russia is the Saint-Petersburg Exchange where shares, options and commodities are traded. It is notable that, for the first time on the Russian market, the Saint-Petersburg Exchange has introduced an opportunity to trade foreign securities within the Russian jurisdiction.

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## ***Is there a private placement market?***

Russia has a moderately active private placement market.

As a matter of Russian law, securities cannot be placed (including private placements through private offering to specified potential buyers) until:

- the securities offering and (in relevant cases) the prospectus are registered with the Central Bank of the Russian Federation; or
- issuing of the securities (at the time of incorporation of the issuer or through private offering) is registered by a licensed registrar, an exchange or a depository.

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## ***Are there any other notable risks or issues around issuing or investing in debt securities?***

Generally, it should be noted that issuing or investing in securities in emerging markets such as the Russian Federation is subject to greater economic, political and legal risks when compared with more mature markets.

Potential legal risks are connected with the fact that regulation of the securities market in Russia is rather new and undeveloped in some spheres. The relevant laws tend to change rapidly and their practical implementation may be inconsistent or unclear. Some important areas of the securities market are not regulated in Russia, while in other areas the law imposes obligations on the Russian issuers which are not common in other markets. The approach of the Russian regulator and interpretations of the applicable legislation are unstable, not well developed and, at times, can be unpredictable and selective.

## **Issuing debt securities**

Failure to comply with the stated requirements of proper information disclosure including misleading statements in, or omissions from, a prospectus can lead to civil, administrative or criminal liability. Federal Law 'On Protection of Rights and Legitimate Interest of Investors on Securities Market' provides various measures for the protection of investors.

## **Investing in debt securities**

The concept of a bonds trustee (which is not a trustee in common law terms but a representative that acts on behalf of, and in the interests of, the bond holders) was recently introduced to the Russian securities market. The law provides the bonds trustee with significant discretion, while being in some parts vague and not widely tested in practice. Some bonds trustees on the market may interpret the law differently leading to uncertainty among investors.

The law also introduced a concept of investors meetings which consider matters affecting the investors interests. The decision of any such meeting is binding upon all investors including investors who did not attend and vote at the relevant meeting and investors who voted against the decision.

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## Establishing and investing in debt / hedge funds

### *Are there any restrictions on establishing a fund?*

Generally, under Russian law, a fund may be established in one of the following ways:

- as an investment fund in the form of a Russian joint-stock company (JSC Investment Fund); or
- as a mutual fund being a separate portfolio of assets which does not hold the status of a legal entity (Mutual Fund).

To perform its investment activities, a JSC Investment Fund must obtain a special license from the Central Bank of the Russian Federation (CBR) and meet certain other criteria established by Russian law, such as keeping a certain level of its own funds, holding a separate bank account for all its operations connected with trust management or meeting specific corporate governance requirements. Furthermore, it is worth noting that the JSC Investment Fund is not allowed to place any securities, except for its ordinary shares.

Although a Mutual Fund itself is not a legal entity, the law requires that its assets portfolio be managed under a trust management agreement by a special management company holding a CBR license. The law contains specific rules that apply to such management companies and trust management agreements, for instance a management company is required to register the rules of trust property management with the CBR or maintain certain financial levels.

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### *What are common fund structures?*

Russian law recognizes the following categories of mutual funds:

- opened mutual funds (investment units may be purchased or sold at any time);
- exchange traded mutual funds (investment units can be sold at an exchange or to the person authorized by the fund itself);
- interval mutual funds (investors may sell their investment units only in specified time periods); and
- closed mutual funds (investors cannot sell their investment units until the time period for which a fund was established expires).

An investment declaration of a joint-stock investment fund, an interval mutual fund or a closed mutual fund may also provide (or must provide in cases established by the Central Bank of the Russian Federation) that the shares/ investment units of such fund are designated for qualified investors.

Furthermore, depending on the type of investment, common fund structures also include share funds, bond funds, commingled funds, index funds and real estate funds.

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### *What are the differences between offering fund securities to professional / institutional or other investors?*

Russian law establishes that certain types of securities may be offered to qualified investors only. There is also a general prohibition on offering foreign securities and foreign financial instruments that are not admitted for public placement/circulation in Russia by the exchange, or, in certain cases – the CBR to an unlimited group of persons, or to persons who are not qualified investors.

The term 'offering/offer' is understood very broadly. According to informal opinions of the predecessor of the current regulator (the Federal Service for Financial Markets which is the predecessor of the Central Bank of the Russian Federation in the sphere of financial market regulation), an 'offer' is in essence 'advertising or proposing' and 'it is not allowed to disseminate within the Russian Federation in any way, in any form and by any means, information that (i) is addressed to an unlimited number of persons or to persons that are not qualified investors and (ii) is aimed at (a) drawing attention to foreign financial instruments that are not admitted for public placement and /or public circulation in Russia, (b) creating and supporting interest in such securities and (c) promoting them in the market'.

Considering the above, active marketing/distribution of foreign financial products is possible only if such financial instruments have obtained appropriate authorization for public placement/circulation in Russia by the exchange, or, in certain cases – the CBR. If a financial instrument has not been authorized for public placement/circulation in Russia, it may only be offered to qualified investors.

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## ***Are there any other notable risks or issues around establishing and investing in funds?***

### **Establishing funds**

Establishing a fund requires a special license (for the fund itself in case of a joint-stock company investment fund or its management company in case of a mutual fund), meeting license rules and complying with certain reporting and public disclosure requirements throughout the operation of the fund. For more information, see [Establishing and investing in debt and hedge funds – establishment](#).

### **Investing in funds**

Before investing in a fund, it is essential to check for specific requirements which may apply to investment in the fund by virtue of law or in accordance with rules of the specific fund, for instance to verify whether investment units are designated for qualified investors only or may be offered to general public.

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## **Managing and marketing debt / hedge funds**

### ***Are there any restrictions on marketing a fund?***

Federal Law 'On Advertising' sets requirements for the advertising (that is, the distribution of information addressed to the general public and intended to draw attention to an object of advertising, to form or keep up an interest to it or to market it in any form) of financial services or financial activities of a fund or the advertising of securities, such as a prohibition on the inclusion of information about the assets management that is not supported with documentary evidence, as well as the guarantees of future stability and / or profitability of the investments, unless it can be clearly defined at the time of agreement for using such financial services.

Russian law also prohibits offering foreign securities and foreign financial instruments that are not admitted for public placement /circulation in Russia to an unlimited group of persons, or to persons who are not qualified investors.

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### ***Are there any restrictions on managing a fund?***

Activities of joint-stock investment funds, and management of joint-stock investment funds or mutual funds, require a license issued by the Central Bank of the Russian Federation.

Since the activities of funds are heavily regulated in Russia, there are various restrictions on the management of funds. For example, a management company cannot acquire assets which are not listed in the law and the investment declaration of an investment fund. Compensation of the management company cannot exceed 10% average annual net asset value of the investment fund.

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## **Entering into derivatives contracts**

### ***Are there any restrictions on entering into derivatives contracts?***

A person entering into a derivative contract by way of business must have a license for banking operations or a license of a professional participant on the securities market (in particular, for brokerage or forex dealer activities) whereas entering into derivatives contract intended for qualified investors is possible only through such persons. Entering into such contracts on an organized exchange is possible where the other party to the agreement is a central counterparty.

The Civil Code of the Russian Federation also regulates deals where there is an obligation on a party to pay monetary amounts depending on the changing price of:

- goods;
- securities;
- exchange rates;
- interest rates;
- inflation rates;
- parameters calculated as an aggregate of the indicators specified above; or
- an occurrence of any other event provided by the law where it is not known whether such event will happen or not.

The claims in respect of such deals are only subject to court protection if at least one of the parties is a legal entity with a license for the banking operations or professional activities on the securities market or, if the deal is made on an authorized exchange, at least one party is a legal entity with a license authorizing it to make deals on an organized exchange. If an individual is a party to such deal, court protection will only be provided if such deal has been made on an organized exchange or in other cases directly stated in the law.

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## *What are common types of derivatives?*

Derivatives may be traded over-the-counter or on an organized exchange.

All of the main types of derivative contract are used in Russia:

- forwards;
- futures (most wide-spread and popular);
- swaps; and
- options (call options and put options).

The value of the derivative contract is based on the value of the underlying assets which, among others, may be:

- securities;
- commodities;
- foreign currency;
- interest rates;
- inflation rate; or
- credit events.

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## *Are there any other notable risks or issues around entering into derivatives contracts?*



Over-the-counter derivative contracts, unlike those made on an organized exchange, do not have any system of centralized control, guarantees of performance, risk-management system or requirements on the participants. This risk analysis is carried out by the market player itself.

However, at the moment the Central Bank of the Russian Federation is developing amendments to the relevant laws in order to mitigate the mentioned risks and improve the infrastructure of the over-the-counter derivatives market, including centralized clearing, accreditation of price centers and repository activities. In particular, in 2019 the CBR introduced its new approach to further enactment of the new rules for variation margin for non-exchange traded derivatives that should be put into effect in several stages. This area of law is therefore subject to possible changes.

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## Debt finance

### Lending and borrowing

#### *Are there any restrictions on lending and borrowing?*

##### Lending

A credit agreement in Russia can take two forms:

- a credit facility agreement (the creditor can only be a bank or other credit organization, and the subject matter of such agreement can only be monies); or
- a loan agreement (the creditor can be any other non-credit organizations, including individuals, and the subject matter of such agreement can be monies or other things of general description or securities).

A loan agreement where a creditor is an individual is considered concluded only after monies or other things of general description are transferred to the other party, not after its execution. In other cases such contracts shall be deemed to be concluded on their execution date.

Not all forms of lending activities are regulated, such as loans between individuals.

However, in order to perform operations related to lending activities, the banks and non-banking credit organizations are required to obtain a license from the Central Bank of the Russian Federation (CBR).

Professional consumer lending is only allowed for credit organizations and a number of non-credit financial organizations specified in the law (microfinance organizations, credit cooperatives and pawnshops) and included in a relevant list by the CBR. There are also regulatory requirements stated in the Federal Law 'On Consumer Credit (Loan)' that apply to such professional consumer lenders.

Federal Law 'On Consumer Credit (Loan)' sets out restrictions on credit agreements secured by mortgage which are entered into by a borrower with a non-business related purpose, such as restrictions on the maximum amount of penalties and the amount of the total charges for the credit agreement.

##### Borrowing

While borrowing is generally not regulated, it is advisable for borrowers to consider whether either the consumer lending or mortgage regimes apply to their activities, in which case they will benefit from the protections mentioned above.

However, the law states some specific restrictions in respect of borrowing, such as:

- an individual declared bankrupt cannot borrow without indicating this fact to the counterparty for five years; and
- there is a general prohibition on borrowing for management companies of investment funds.

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## *What are common lending structures?*

A credit agreement in Russia can take the form of a credit facility agreement or a loan agreement. For more information, see [Lending and borrowing – restrictions](#).

A credit facility agreement, being the most common lending instrument in Russia, may be structured in a number of ways to include a variety of features depending on the commercial needs of the parties. A loan agreement is used between individuals or non-credit organizations that only occasionally (not on a regular basis) lend their funds to other parties.

A credit facility agreement is usually provided on a bilateral basis (a single lender providing the entire facility); however, syndicated facility agreements with multiple lenders providing parts of an overall facility are also used on the basis of Federal Law 'On Syndicated Credit (Loan) and Amendments to Certain Legislative Acts of the Russian Federation'. It should be noted that Russian law does not recognize the concept of a trust, thus alternative structures, such as a credit agent (*kreditnyj upravlyayushiy*), are used in syndicated secured transactions.

### **Loan durations**

There are no particular requirements as to the duration of credit agreements.

Depending on the commercial needs of the parties, the credit agreements may take the form of a term agreement (provided for an agreed period of time), revolving agreement (provided for an agreed period of time with an availability period to extend nearer to maturity of the agreement and which may be redrawn if repaid), etc.

### **Loan security**

A credit agreement can be either secured or unsecured. For more information, see [Giving and taking guarantees and security](#).

### **Loan commitment**

In the case of a credit facility agreement a lender cannot refuse to provide the loan unless there are circumstances evidencing that the loan will not be repaid in the due time. However, in accordance with the long-standing position of Russian courts, a breach of the respective obligation by a creditor will not give rise to the remedy of specific performance; ie a debtor will not have an enforceable right against the creditor to demand the provision of a loan but will have to resort to the remedies of rescission and damages. It is also possible to formulate conditions precedent for such refusal in the credit facility agreement itself.

A lender under the loan agreement is obliged to provide the loan unless there are circumstances evidencing that the loan will not be repaid in the due time with the exception of cases where a lender is an individual (please see [Lending and borrowing – restrictions](#)).

### **Loan repayment**

A credit facility or a loan can be repayable on demand, on an amortizing basis (in installments over the life of the loan) or scheduled (usually meaning the facility or loan is repayable in full at maturity).

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## *What are the differences between lending to institutional / professional or other borrowers?*

Lending to individuals for non-business related purposes, including mortgage lending, is subject to regulatory restrictions under Federal Law 'On Consumer Credit (Loan)', which are not applicable to institutional and professional borrowers. For more information, see [Lending and borrowing – restrictions](#).

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## *Do the laws recognize the principles of agency and trusts?*

The principles of agency are recognized in Russia. For instance, it is possible to appoint an agent to act on behalf of other parties.

The concept of trust, on the other hand, is not recognized under the Russian law, thus alternative structures (such as a credit agent (*kreditnyj upravlyayushiy*)) are used in syndicated secured transactions.

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## *Are there any other notable risks or issues around lending?*

### Generally

Credit agreements are subject to general contractual principles. For example, parties must agree on all the essential terms of the relevant type of agreement specified in the law, otherwise the agreement will be deemed unconcluded.

It should be noted that a penalty stated in the agreement may be lowered by the court where it is evidently disproportionate to the consequences of the breach.

Under Russian law a pledge cannot be enforced if the breach of the secured obligation is insignificant and the amount of the claim as a result of this is evidently disproportionate to the value of the pledged property. It is presumed that the breach is insignificant if (i) the overdue amount is less than 5% of the value of the pledged property and (ii) the late payment period is less than three months. In addition, in some cases the court may postpone the enforcement of the pledge.

In case of the pledgor's bankruptcy the pledgee receives only 70% (or 80% for claims under the credit facility agreement) of the funds derived from the enforcement of the pledge in priority. Any remaining claims will be satisfied in the general order.

### Specific types of lending

In respect of credits for non-business related purposes, there is more legal protection for the borrower than in the case of corporate credits. The law includes some restrictions specific to consumer lending and mortgage lending to individuals for non-business related purposes. For example, the maximum amount of total charges for credit and the maximum amount of penalties for non-performance or breach of the borrower's obligations are regulated by law, while some services are provided to individuals free of charge.

### Standard form documentation

In 2015 the Association of Russian Banks has developed and [published](#) a standard Russian-law governed syndicated credit facility agreement which does not include the newer requirements of Federal Law 'On Syndicated Credit (Loan) and Amendments to Certain Legislative Acts of the Russian Federation', however in any case such syndicated facilities are rare. For transactions with a foreign counterparty it is common to choose English law as the governing law and to use Loan Market Association standard forms.

Bilateral finance transactions are more likely to be documented on bank standard form documentation.

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## *Are there any other notable risks or issues around borrowing?*

No other notable risks.

It should be noted that there are special types of crimes in respect of borrowing stated in the Criminal Code of the Russian Federation, such as:

- fraud in the sphere of lending;
- unlawful receiving of a credit; and
- malicious avoidance of credit repayment.

The type of punishment varies in respect of each crime. The maximum prison sentence is ten years.

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## Giving and taking guarantees and security

### *Are there any restrictions on giving and taking guarantees and security?*

As a matter of Russian law, a guarantee is not regulated separately – it is one form of security which shares common features with other forms of security.

Some of the key areas affecting the giving of security are as follows.

#### Form of a contract

Granting security that breaches certain mandatory form requirements specified by the law will lead to its invalidity. The requirements differ depending on the type of the security. For example, a pledge of a participation interest must be notarized, while agreement on penalty must be in writing regardless the form of the primary obligation.

#### Insolvency

For a period after a new security interest has been granted (known as the hardening period), security may be at risk of being set aside under Russian insolvency laws if the security was granted within a certain time period prior to the insolvency of a company and a company received considerably less consideration for it or if a deal was made with the purpose of prejudicing the property rights of the creditors. Another ground for setting security aside is where the court qualifies the deal as leading to preference of one creditor over the other creditors.

#### Subsequent pledge

Pursuant to recent changes to the law, a subsequent pledge cannot be prohibited by the first ranking pledge agreement. However, if a first ranking pledge agreement specifies the terms on which a subsequent pledge is to be concluded, the breach of such terms entitles the first ranking pledgee to claim from the pledgor compensation of any losses incurred by such breach.

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### *What are common types of guarantees and security?*

There are various methods of securing performance of obligations under the Russian law.

The common types of security interest include:

- pledge (including mortgage);
- surety (note that the surety and the debtor shall be jointly liable to the creditor unless the surety agreement or law provides for secondary liability);
- independent guarantee (a written guarantee issued by a bank or other legal entity to pay the creditor a certain amount of money irrespective of the validity of the obligation secured by this guarantee);
- security payment (a sum of money paid by one party to another party to secure a monetary obligation, including the obligation to pay a penalty for breach of contract and certain other specific types of obligations);
- penalty (a sum of money which the debtor is obliged to pay to the creditor in the event of its failure to discharge its obligations); and
- retention (a creditor has the right to retain tangible property in its custody in the event that the debtor fails to discharge its payment obligations relating to the property).

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### *Are there any other notable risks or issues around giving and taking guarantees and security?*

To be valid, security shall comply with the following form requirements:

- An agreement on a penalty must be in writing regardless the form of the primary obligation.
- A pledge can be created by a written agreement or by operation of law (in this case the parties may conclude a written agreement regulating their relationship). The pledge of participation interest must also be notarized.
- A surety agreement must be in writing (in some cases it can be created by operation of law).
- An independent guarantee must be granted in a written form that allows for the identification of the terms of a guarantee and to ascertain its authenticity.

The law also states compulsory registration requirements for certain types of pledge that are not created until such registration is made:

- A pledge of participation interest must be registered in the official single register of the legal entities.
- A mortgage (pledge of immovable property) as an encumbrance over the real estate must be registered in the unified state register of real estate.
- For a share pledge, a transfer record must be made on the account on which the rights of the shares owner are recorded.

There is also a register of notifications on the pledge of movable property which is maintained by the notary public. Registration of the pledge is not compulsory but the pledgee is only entitled to refer to the pledge in its relations with the third parties if registration is made. Moreover, regardless of the time the pledge was created, priority will be given to the claim under a pledge which has been registered first.

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## Financial regulation

### Law and regulation

#### *What are the main laws and regulations that apply to entities that are involved in finance and investments generally?*

##### Generally

Civil Code of the Russian Federation, Part I ( 1) (general provisions of civil law)

Civil Code of the Russian Federation, Part II ( 2) (distinct types of obligations)

Civil Code of the Russian Federation, Part III ( 3) (succession law and international private law)

Federal Law 'On Securities Market' ( ' ) (securities market)

Federal law 'On Banks and Banking Activities' ( ' ) (banks and banking activities)

Federal law 'On Foreign Investments in the Russian Federation' ( ' ) (foreign investments)

Federal Law 'On the Procedure of Foreign Investment in Business Undertakings Strategically Important for National Defense and State Security of the Russian Federation' ( ' , ) (foreign investments into certain undertakings)

Federal Law 'On the Central Bank of the Russian Federation (Bank of Russia)' ( ' ( )) (status of the Central Bank of the Russian Federation)

##### Consumer credit

Federal Law 'On Consumer Credit (Loan)' ( ' /) (consumer lending)

Federal Law 'On Microfinance Activities and Microfinance Organizations' ( ' ') (micro financing)

Federal Law 'On Credit Histories' ( ' ') (credit histories)

Federal Law 'On Protection of Rights and Legitimate Interests of Individuals In Activities of Collection of Overdue Repayment of Debts and Amendments to Federal Law 'On Microfinance Activities and Microfinance Organizations' ( ' ') (collection activities)

## Mortgages

Federal Law 'On the Mortgage (Pledge of Immovable Property)' ( ' /') (mortgages)

## Corporations

Federal Law 'On Joint-Stock Companies' ( ' ') (joint-stock companies)

Federal Law 'On Limited Liability Companies' ( ' ') (limited liability companies)

Federal Law 'On International Companies and International Funds' (redomiciliation opportunities)

## Funds and platforms

Federal Law 'On Investment Funds' ( ' ') (investment funds)

Federal Law 'On Investment Partnership' ( ' ') (investment partnerships)

Federal Law 'On Encouragement of Investment by Investment Platforms and Amendments to Certain Legislative Acts of the Russian Federation' (investment platforms)

## Other key market legislation

Federal Law 'On Currency Regulation and Currency Control' ( ' ') (currency regulation and control)

Federal Law 'On Concession Agreements' ( ' ') (concession agreements)

Federal Law 'On Public Private Partnership, Municipal Private Partnership in the Russian Federation and Amendments to Certain Legal Acts of the Russian Federation' ( ' - , - ') (public private partnership)

Federal Law 'On Anti-money Laundering and Counter-Terrorism Financing Measures' ( ' /), , ') (AML and CTF rules)

Federal Law 'On Amendments to Certain Legislative Acts of the Russian Federation for the Purpose of Countering the Financing of the Spread of Weapons of Mass Destruction' (WMD rules)

Law of the Russian Federation 'On Organization of Insurance Activities in the Russian Federation' ( ' ') (insurance)

Federal Law 'On the Non-governmental Pension Funds' ( ' ') (non-governmental pension funds)

Federal Law 'On Syndicated Credit (Loan) and Amendments to Certain Legislative Acts of the Russian Federation' (syndicated loans)

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## Regulatory authorization

### *Who are the regulators?*

The Central Bank of the Russian Federation is the main regulator of the financial and investment market. Its functions, among others, include:

- banking supervision;
- regulating activities of non-banking credit organizations;

- supervision of corporate relations by joint-stock companies;
- regulation and supervision of the securities market and activities of the professional participants on the securities market;
- organization and performance of currency regulation and control;
- organization and methodological support of official statistical recording of direct investments;
- control of compliance with the requirements of the insider trading regulation;
- protection of rights and legitimate interests of shareholders and investors on the financial markets; and
- regulation, control and supervision of insurance activities;
- control over the activities of investment platforms operators.

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### ***What are the authorization requirements and process?***

There are several types of authorization. Depending on the nature of the business a person may be required:

- to obtain a license from the Central Bank of the Russian Federation (CBR);
- to obtain a permission from the CBR;
- to obtain accreditation from the CBR;
- to be added to a register by the CBR; and
- to be a member of a self-regulated organization.

The process and application fees vary depending on the type of authorization.

The CBR maintains and publishes lists of licenses and authorized persons on its [official website](#).

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### ***What are the main ongoing compliance requirements?***

Threshold conditions (such as a requirement as to the amount of funds held, meeting liquidity ratios and disclosure of information) are an ongoing compliance requirement for most types of authorized persons.

Failure to comply with the threshold conditions and other regulatory rules can result in sanctions being imposed, including loss of authorization.

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### ***What are the penalties for failure to be authorized?***

Undertaking regulated activities without appropriate authorization can lead to an administrative fine for individuals or legal entities. It can also constitute a criminal offence resulting in a criminal fine, compulsory community service, compulsory labor, arrest for up to six months or imprisonment for up to five years. Performing banking operations without a license is a separate criminal offence with a maximum punishment of seven years' imprisonment.

In addition, a legal entity acting without authorization may be liquidated by the court and/or have the proceeds of its activities confiscated by the state.

*Last modified 5 Dec 2019*

## **Regulated activities**

## *What finance and investment activities require authorization?*

### Generally

Certain types of activities are subject to licensing by the Central Bank of Russian Federation (CBR), including:

- performance of banking operations;
- organization of an exchange;
- professional activities on the securities market (brokerage activity, dealer activity, forex-dealer activity, depository activity, repository activity, securities management and maintenance of a securities owners register);
- activities of joint-stock investment funds and non-governmental pension funds; management of joint-stock investment funds, mutual funds and non-governmental pension funds; special depository of joint-stock investment funds, mutual funds and non-governmental pension funds; and
- clearing and insurance activities.

CBR's permission must be obtained, for example, in order to establish a credit organization with foreign investments in Russia, for a Russian credit organization to establish a branch or subsidiary abroad, or for Russian issuers to issue securities abroad.

Accreditation by the CBR is required for representative offices of foreign credit organizations, informational agencies that disclose information on the securities markets, and others.

Some types of activities can only be performed after a firm is added to the official register by the CBR (such as microfinance organizations, credit rating agencies or investment platforms operators) or after it enters into a self-regulated organization on a financial market.

### Consumer credit

Consumer credit activities are generally performed by credit organizations (which include banks and non-banking credit organizations that are only allowed to perform a limited number of banking operations). Consumer credit activities can also be performed by some non-credit financial organizations, such as microfinance organizations, credit cooperatives or pawnshops.

The performance of banking operations by credit organizations requires a license from the CBR, while non-credit financial organizations must be added to a register of authorized organizations maintained by the CBR.

Federal Law 'On Consumer Credit (Loan)' sets out the framework for consumer credit and contains restrictions and implied terms which protect an individual.

*Last modified 5 Dec 2019*

## *Are there any possible exemptions?*

If regulated activities are performed in the territory of Russia, they require an appropriate form of authorization with no exemptions.

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## *Do any exchange controls or other restrictions on payments apply?*

Cross-border transfers and the use of foreign currency in the territory of Russia is allowed only in the cases specified in the Federal Law 'On Currency Regulation and Currency Control'.

In general, currency operations between residents are prohibited unless expressly allowed by law. Currency operations between residents and non-residents may be performed subject to certain requirements (payments must be settled through an authorized bank and registrations of cross-border trade and loan/credit contracts by such a bank must take place).



The law also obliges residents to 'repatriate' the currency earnings, meaning that they as a general rule must facilitate the full return by non-residents of foreign currency or Russian currency due under the terms of the relevant foreign trade or loan contract to the resident's bank account opened with the authorized bank. Non-compliance with this rule can lead to an administrative or criminal liability.

Non-residents may open accounts with Russian banks and transfer funds to and from such accounts without restriction. Residents are also allowed to open accounts with foreign banks but generally there is a requirement to report this to the tax authorities. Operations under such accounts are subject to certain restrictions stated in the law.

There may also be anti-money laundering and tax considerations to take into account.

*Last modified 5 Dec 2019*

## *What are the rules around financial promotions?*

### Rules

Russian law does not specifically define financial promotions. However, there are relevant provisions in legislation regarding advertising, the issuance and operations of financial instruments and the provision of financial services.

Under Federal Law 'On Advertising', any advertising (that is, the distribution of information addressed to the general public and intended to draw attention to an object of advertising, to form or keep up an interest to it or to market it in any form) of financial services or financial activities that requires authorization can only be done by an authorized person.

It is also unlawful to advertise and/or offer to the general public the securities of issuers who have not disclosed information in the order and scope specified by law. Russian law also stipulates that certain types of securities may be offered to qualified investors only.

Foreign securities which are not admitted to public placement/circulation in Russia and foreign financial instruments which are not qualified as securities under Russian law cannot be offered in any form or by any means (including advertising) to the general public or to persons who are not qualified investors. The term 'offering/offer' is understood very broadly. According to informal opinions of the predecessor of the current regulator (the Federal Service for Financial Markets which is the predecessor of the Central Bank of the Russian Federation in the sphere of financial market regulation), an 'offer' is in essence 'advertising or proposing' and 'it is not allowed to disseminate within the Russian Federation in any way, in any form and by any means, information that (i) is addressed to an unlimited number of persons or to persons that are not qualified investors and (ii) is aimed at (a) drawing attention to foreign financial instruments that are not admitted for public placement and/or public circulation in Russia, (b) creating and supporting interest in such securities and (c) promoting them in the market'.

Generally, foreign securities may be admitted for placement (initial sale to initial investors) in Russia provided that the prospectus describing such securities is registered by the Central Bank of the Russian Federation (CBR) and such securities are registered with (held through) a depository established in accordance with Russian law. A filing of a notice to CBR with the results of the initial placement in the Russian territory and disclosure of this information are required, without which any subsequent trading/transacting in Russia is prohibited.

Foreign legal entities and their representative offices and branches cannot perform activities of non-credit finance organizations including activities of professional participants on the securities market, offer services of foreign legal entities on the financial markets or distribute information about such entities and their activities to the general public in the territory of Russia.

Violations of the stated requirements can lead to a civil and administrative liability or loss of authorization.

### Exemptions

Public placement (initial sale to initial investors) of Russian securities is generally allowed after the registered prospectus is made available to the public. If securities are designated for qualified investors, then in some cases it is possible to place them without a prospectus. Public circulation, including offering to the general public, of Russian securities also requires compliance with the disclosure of information requirements. These rules may not be applicable to securities for qualified investors.

Foreign securities which are not admitted to public placement/circulation in Russia and foreign financial instruments which are not qualified as securities under Russian law can only be offered to qualified investors.

*Last modified 5 Dec 2019*

## Entity establishment

### *What types of legal entity are generally used to undertake financial or investment activity?*

#### Generally

The most common types of legal entities are joint-stock companies (JSC) and limited liability companies (LLC), both of which are body corporates with separate legal personality.

The charter capital of a JSC is divided into shares and the liability of each shareholder is limited by value of its shares. The charter capital of an LLC is comprised of participation interests, the value of which also limits the liability of a participant. JSCs and LLCs are similar in many ways but differ in that LLCs are easier to establish and maintain, and are more flexible with respect to corporate governance.

Companies can either be public (where the shares of a JSC or other securities convertible into shares are placed through a public offering or are traded on a stock exchange) or private (all other JSCs and LLCs). Some activities require a particular type of legal entity to be used, such as the public offering of shares or other securities convertible into shares which can only be done by public JSCs.

#### Funds

Generally, under Russian law a fund may be established in one of the following ways:

- as an investment fund in a form of a Russian joint-stock company; or
- as a mutual fund being a separate portfolio of assets which does not hold the status of a legal entity.

Management companies of investment funds can be Russian JSCs or LLCs only.

*Last modified 5 Dec 2019*

### *Is it possible to conduct lending or investment business through a branch or establishment?*

In Russia it is possible to establish a representative office or a branch. Both are separate divisions of a legal entity and do not create a separate legal personality.

Representative offices are not allowed to undertake commercial activity under the Civil Code of the Russian Federation. Instead, their main purpose is generally to promote commercial relations between the legal entity which they represent and Russian enterprises, and to gather information about the Russian market. Branches may undertake commercial activity, including lending or investment business, and fulfil all or part of the functions of its founding legal entity, provided the founding legal entity is authorized to carry out such activities.

However, foreign legal entities and their representative offices and branches cannot perform activities of non-credit finance organizations including activities of professional participants on the securities market, offer services of foreign legal entities on the financial markets or distribute information about such entities and their activities to the general public in the territory of Russia.

In relation to foreign credit organizations, in Russia it is only possible to establish representative offices of such foreign credit organizations (including banks); branches are not allowed. As mentioned above, representative offices cannot perform commercial activities.

*Last modified 5 Dec 2019*

## FinTech

## FinTech products and uses

### *What are the most common technology products and FinTech applications used or being developed in the finance and investment marketplace?*

#### General

According to the latest reports, Russia is one of the leading and fast-growing FinTech markets with approximately 82% of major cities' populations actively using, or at least being familiar with the most common technology products (EY, 'Global FinTech Adoption Index 2019'). Core FinTech products in Russia currently include online payments, mobile transfers, electronic banking, insurance utilizing telematics and automatic financial planning.

The following is an overview of the developing FinTech products based in Russia and their prospects in the near future.

#### Online wallets, payments and money transfers

Digital currency is a non-bank form of electronic payments and money transfers, which provides a prompt, simple and cost-efficient way of conducting monetary transactions without relying on the intermediary of a bank. Account ('wallet') services, as well as the other parts of infrastructure are provided by the issuer of the currency, with the latter generally not being limited to inter-user operations, but allowing the transfer to either another wallet or a bank account. While digital currencies are capable of performing most traditional bank account functions, their most prominent areas of application are online currency exchange and cross-border transfers, where banks' fees for the respective services are significantly higher.

#### Peer-to-peer funding platforms and marketplace lending

There is no strict definition for marketplace lending given the wide variety of entrants and financing techniques involved. The principal characteristics of new marketplace lenders, however, would include:

- operating from or through a non-bank lending platform established as a specialist corporate or special purpose vehicle (SPV) based structure;
- applying technology to leverage and optimize the lending platform and user experience; and
- connecting borrowers and lenders through the platform rather than applying funding arising from a wider deposit-based relationship.

#### HOW ARE MARKETPLACE LENDING PLATFORMS FUNDING THEMSELVES?

Marketplace lending includes peer-to-peer (P2P)-type structures, often operated through an electronic platform provider as well as crowdfunding and also direct-to-retail financing mechanisms. The increase in demand for credit through these marketplace platforms has also been appealing to larger pools of available capital, such as private equity and venture capital funds, as well as institutional sponsors. Funding platforms will now often be backed by institutional finance in addition to, or rather than, individual investors on a traditional P2P basis.

#### THE CURRENT POSITION OF PEER-TO-PEER FUNDING AND ITS PERSPECTIVES

Marketplace lending is available to address most forms of traditional bank funding products. Recent products have included:

- consumer loans;
- small and medium-sized enterprises (SME) lending; and
- debt refinancing.

It is likely that the volume of lending in these and additional product areas, will significantly increase over the coming years, as financing becomes more readily available to support the marketplace lending sector and lawmakers become increasingly more motivated to create a legal framework for the sector. To date, the further development of the market is currently hindered by the lack of certainty regarding the different platforms' legal standing and unavailability of uniform credit history and rating. It may be expected that in light of recent adoption of Federal Law "On Raising Investments via Investment Platforms and on the Amendments to Certain Legislative Acts of

the Russian Federation" (Crowdfunding Law) that uncertainty will decrease to some extent and market players will become more open to the growing peer-to-peer sector.

## Blockchain, smart contracts and cryptocurrencies

### WHAT IS BLOCKCHAIN?

Blockchain provides a new approach to holding and authenticating data. It is a database operating through distributed ledger technology in which data is recorded on computers, by way of a P2P mechanism, based on pre-agreed consensus algorithms in the applicable participating network. It is a form of database where data is stored in the chain in either fixed structures called 'blocks' or algorithm functions called 'hashes'.

Each block includes unique features such as its unique block reference number, the time the block was created and a link back to the previous block. Each block is reviewed by a number of nodes and the block is only added to the database if the node reaches consensus that the block only contains valid transactions. Content includes digital assets and instructions, which reflect the transactions and parties to those transactions. The ability to track previous blocks in the chain makes it possible to identify transactions back to the first ever transaction completed, enabling parties to verify and establish the authenticity of the assets in the latest block. This makes blockchain exceptionally accurate and secure.

Specialist users on the system, apply advanced computing software to identify time stamped blocks, verify the accuracy of the block using sophisticated algorithms and add the verified block to the chain. As the number of participants increases, the replication of the data over a wider base makes it harder for any person to alter the data in the chain. Any attempted addition or modification to the information on a block needs to be approved by all users in the network and verification of any block can only happen through a 'proof of work' process. This process requires vast amounts of computing power, making it practically impossible to insert fake transactions into a block.

As a result, the data is identified and authenticated in near real-time, providing a permanent and incorruptible database sufficiently robust to operate as a store of value (eg in the case of cryptocurrencies such as bitcoin) or providing an indisputable record for example relating to securities transfer.

Blockchain is a decentralized system, created and maintained by users of the network rather than being dependent on any central or third party intermediary. It may be public and open ('permissionless' or 'unpermissioned') or structured within a private group ('permissioned').

Permissionless blockchains include bitcoin and ethereum, in which anyone can set up a node that once authorized can validate, observe and submit transactions. The identities of the participants are not known (other than the unique and random identities known as an 'address'). Permissioned ledgers restrict participation in the network and only the specific participants are given access and are known within the network. The network is private, and only organizations that have been authorized can participate and view transactions.

### WHAT ARE SMART CONTRACTS AND DECENTRALIZED AUTONOMOUS ORGANIZATIONS (DAOS)?

Developments in blockchain are also providing an ability to transfer and rely on instructions verified within the electronic system in the form of so called 'smart contracts'. These contracts have been converted into code and are then executed and enforced by the blockchain network on the occurrence of an event. This reduces the need for intermediaries to collect, store and act on communicated information.

Smart contracts are essentially pre-written computer codes which are stored and replicated on distributed ledger platforms such as blockchain. Execution takes place over the network, eliminating the need for intermediary parties to confirm the transaction, leading to self-executing contractual provisions. These contracts can be as simple as moving a balance from one account to another or advanced, more-complex interactions with the outside world using so called 'Oracles'. With Oracles the contract code consults with a service outside of the blockchain network to make a decision. This may entail receiving a confirmation that an event has occurred, such as payment, which automatically executes a further step in the contract, such as the transfer of an asset, which might be in digital form or by delivering instructions to a person or warehouse to release the asset for delivery.

DAOs are essentially online, digital entities that operate through the implementation of pre-coded rules. These entities often need minimal to zero input into their operation and they are used to execute smart contracts, recording activity on the blockchain. DAOs can be particularly challenging to regulate, depending on their software engine, the nature of transactions they are completing or other unique features. Questions of ownership and responsibility for resulting acts of DAOs can also be brought to question if any technical issues arise with their operation.

One of the pilot uses of smart contracts and blockchain in Russia included the documentary letter of credit transactions made between a leading private bank and an airline. The use of smart contracts is now becoming more widespread, owing, at least partially, to recognition of smart contracts and digital rights by the Civil Code of the Russian Federation (the relevant amendments came into force on 1 October 2019). One recent example of their use includes establishment of infrastructure for payment for utilities – a smart-contract solution allowed for speedy exchange of electricity consumption data between consumers, generating companies and distributors.

#### **WHAT IS A CRYPTOCURRENCY?**

One of widely accepted definitions of a cryptocurrency is that it is a digital representation of value that is neither issued by a central bank or public authority nor necessarily attached to a fiat currency, but is issued by natural or legal persons as a means of exchange and can be transferred, shared or traded economically. The oldest and best-known cryptocurrency is bitcoin (itself based on the bitcoin platform) although many other cryptocurrencies now exist. For example, the most widely-known alternatives to bitcoin include ether based on the ethereum platform and litecoin (these cryptocurrencies are now actively traded with a large developing infrastructure for holding, pricing and exchanging currency). The legal framework regulating this new form of virtual money is yet to be developed.

### **Initial coin offerings and token-based products**

#### **WHAT IS AN INITIAL COIN OFFERING (ICO)?**

ICOs are a form of digital currency or token using blockchain technology. ICOs are often a means by which funds are raised for a new blockchain or cryptocurrency venture (the market for ICOs is currently booming). ICOs come in a wide variety of forms and may be used for a wide range of purposes. Some forms of ICOs may be directed at customers or suppliers as a form of loyalty program or a form of access or purchasing power (preferential or otherwise) in respect of assets of the issuer's business. Other forms may be more focused on raising initial funding. It is essential to examine the legal and regulatory basis for any ICO, as an unauthorized offering of securities is illegal and may result in criminal sanctions in a number of jurisdictions. Legal analysis of the underlying token will determine if it should be treated as a specified investment or form of regulated security or is more appropriately a form of asset that is not itself subject to the regulatory regime.

Typical attributes provided by tokens will include:

- access to the assets or features of a particular project;
- the ability to earn rewards for various forms of participation on the platform; and
- prospective return on the investment.

Key aspects to consider will include the:

- availability and limitations on the total amount of the tokens;
- decision-making process in relation to the rules or ability to change the rules of the scheme;
- nature of the project to which the tokens relate;
- technical milestones applicable to the project;
- basis and security of underlying technology;
- amount of coin or token that is reserved or available to the issuer and its sponsors and the basis of existing rights;
- quality and experience of management; and
- compliance with law and all regulatory requirements.

The nature of the business and the purpose and structure of the token offering will typically be set out in a white paper available to potential purchasers.

The current ICO sector is developing in Russia. Its future shape will significantly depend on the approach to be taken by the regulators who are working on the legal framework for the cryptocurrencies and ICOs. Recently adopted Crowdfunding Law allows for offering of

certain crypto-assets via "investment platforms", however, comprehensive framework for cryptocurrencies and ICOs is yet to be developed. Russian regulators are expected to develop their approach in the near future following recommendation by the FATF to adopt relevant legislation.

## Artificial intelligence and robo advisory systems

Automated financial advice tools, also known as 'robo advisors' are software tools driven by artificial intelligence (AI) that provide a variety of investment advice services from portfolio selection to personal finance planning. The systems are generally operated on a platform /personal dashboard basis; a user can input a set of personalized data to be processed by the AI algorithms, which produce optimized outcomes around specified parameters. Although generally of application in the asset management sector, AI and automated advice tools also impact in the banking and private wealth advisor sectors; the implications include decreased human involvement, although recent trends have included a growth in popularity of hybrid structures which combine AI and human inputs.

## Data analysis and cloud computing

Cloud computing enables delivery of IT services through internet-based tools and applications, rather than direct connection to a physical server. Cloud-based storage makes it possible to save masses of data to remote servers, accessible through the internet rather than by way of a physical connection. With the vast data processing and storage capabilities offered by cloud computing technology and virtually no infrastructure barriers to entry, there are a number of applications in building and running FinTech businesses and the technology has had a significant impact in recent years.

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## *Are there any restrictions, specific laws, regulations or procedures that apply to FinTech products?*

### General financial regulatory regime

The Central Bank of the Russian Federation (CBR) is the main regulator of the financial and investment market. Its functions, among others, include:

- banking supervision;
- regulating activities of non-banking credit organizations and some non-credit financial organizations;
- regulation and supervision of the securities market and activities of the professional participants on the securities market;
- regulation of payment services;
- organization and performance of currency regulation and control; and
- protection of rights and legitimate interests of investors on the financial markets.

#### GENERAL

A person must not carry on a regulated activity in the Russian Federation unless authorized. Where FinTech products or applications involve financial activity which requires regulatory authorization, the firms providing such products or applications must be authorized by the CBR.

Undertaking regulated activities without appropriate authorization can lead to an administrative fine for individuals or legal entities. It can also constitute a criminal offence resulting in liability ranging from a criminal fine, to imprisonment for up to five years. In addition, a legal entity acting without authorization may be liquidated by the court or have the proceeds of its activities confiscated by the state.

#### INNOVATIONS

In 2016 the CBR set its course on embracing the recent trends in the financial market, starting with the launch of association 'FinTech' (a collaboration of the regulator and major finance and technology players) and creation of the Financial Technologies Department. The purpose of both projects is to encourage further development of the market's technological segment and to monitor significant developments in the sector.

In 2018 the CBR made further steps to embrace FinTech: its "Main Directions of Development of Financial Technologies for 2018 – 2020" envisaged a number of strategies for development of FinTech, RegTech and development of financial infrastructure. The CBR also launched a "regulatory platform" (or "regulatory sandbox") where innovative FinTech projects may be tested and implemented under the CBR's control.

## Regulation of peer-to-peer lenders

### GENERAL

A business carries out a regulated activity (requiring authorization by the CBR) if they provide funding for either individuals or businesses, where the total amount of indebtedness of a borrower does not exceed RUB 1 million and RUB 5 million, respectively (microloans). Such businesses have to be recognized by the CBR as either a microfinance company (an entity allowed to raise funds from high-net worth individuals and companies and through the offering of certain qualifying bonds) or a microcredit company (an entity only allowed to attract the assets of its shareholders or companies). The more detailed regulatory requirements are provided by the Federal Law 'On Microfinance and Microfinance Organizations'.

Any lending activity exceeding the abovementioned thresholds for microloans would require a regular credit institution license.

### CROWDFUNDING LAW

The Crowdfunding Law which came into force on 1 January 2020 established a legal framework for peer-to-peer lending via online "investment platforms". An operator of such a platform needs to be incorporated in Russia and be included in the register of investment platform operators maintained by the CBR.

Subject to certain exceptions, companies are allowed to raise investments through investment platforms in the total amount not exceeding RUB 1 billion in a calendar year. The investments may be raised through borrowing funds, issuing tokens or "digital utility rights" and offering securities.

Certain limitations apply to investors acting on investment platforms: an individual may not make investments in the amount exceeding RUB 600,000 in a calendar year. Certain exemptions apply to this rule: for example, this limit is not applicable to sole entrepreneurs and qualified investors.

## Regulation of payment services

The payment systems (including electronic payment platforms) operating in the Russian Federation have to comply with the provisions of the Federal Law 'On National Payment System'. At present, more than 30 payment systems are functioning in Russia. All participants in a designated payment system will fall under the supervision of the Payment Systems Regulator (CBR), including, amongst others:

- operators that manage or operate the systems;
- the payment service providers using the system; and
- the infrastructure providers to the payment system.

Where a business enterprise provides payment services as a regular occupation or business activity in the Russian Federation, it will have to be recognized as either a bank or an authorized non-banking credit organization, thus requiring the license of the CBR.

### ELECTRONIC PAYMENT PLATFORMS

Electronic money (e-money) is defined as 'monetary funds which are advanced by one person (provider of funds) to another person that records the information on the amount of advanced funds without opening a bank account for the purpose of discharge of payment obligations of the provider of funds to third parties and in respect of which the provider of funds is entitled to give instructions only with the use of electronic means of payments'. Generally, the firms issuing e-money must be licensed by the CBR.

## Application of data protection and consumer laws

### DATA PROTECTION

The Federal Law 'On Personal Data Protection' regulates the processing of personal data within the Russian Federation. Where a business determines the purposes and manner in which any personal data is collected, processed and stored, it will be regulated by the law and will be subject to certain notification and compliance obligations. Among other things, the businesses are required to localize the personal data in Russia and obtain consent for transfer of personal data abroad. The CBR Regulation 'On Data Protection in the course of Money Transfers' and the Government Decree 'On Data Protection in a Payment System' provide more detailed rules on data protection in the financial and investment market.

#### CONSUMER REGULATION

Professional consumer lending is only allowed for credit organizations and a number of non-credit financial organizations specified in the law (microfinance organizations, credit cooperatives and pawnshops) and included in a relevant list by the CBR. There are also regulatory requirements stated in the Federal Law 'On Consumer Credit (Loan)' that apply to such professional consumer lenders.

### Money laundering regulations

The Federal Law 'On Countering the Legalization of Illegal Earnings (Money Laundering) and the Financing of Terrorism' give the Federal Service of Financial Monitoring (RosFinMonitoring) responsibility for supervising the anti-money laundering controls of businesses that offer certain services, such as lending, providing payment services and issuing and administering other means of payment.

Generally, where a firm is authorized and supervised by the CBR it will also be supervised by the RosFinMonitoring for complying with anti-money laundering requirements. Electronic currencies such as bitcoin and cryptocurrencies are yet to fall within the legal framework of money-laundering legislation, however, they are already considered by the Russian regulators to represent a higher risk, mostly due to the anonymous nature of transactions and lack of central control (decentralization).

*Last modified 5 Dec 2019*

## What type of funding arrangements and incentives are available to FinTech businesses?

### Early stage

#### SEED INVESTMENT

Initial investment in FinTech businesses may be provided by family and friends of the founders and other high-net-worth individuals (often known as business angels) in return for an equity stake. Such seed investment is often used to fund the establishment and early growth of the business before larger investment is available. The investing individuals may also provide know-how and expertise to assist in the company's development. The seed investors would typically not require the same controls over the business as, for example, venture capital providers.

#### CROWDFUNDING

Crowdfunding offers a large number of private investors an opportunity to make small-scale investments in early-stage businesses to which they may otherwise not have had access. It involves members of the public investing in a business by pooling their resources through an intermediary platform.

There are two main types of crowdfunding: equity and reward-based.

- Equity crowdfunding (crowd-investing) involves company shares being given in exchange for investment in the business.
- Reward-based crowdfunding provides investors with a tangible benefit, such as early access to a platform or application that the business is developing.

While most of the local crowdfunding platforms (Planeta.ru, Boomstarter) are in the early stage of development, the international sector is well established, and may be attractive for a Russian FinTech business in the early stages.

#### ACCELERATORS

There are several incubators or accelerators in the Russian market, which offer support, facilities and funding for startups, often in return for an equity stake. For example, Skolkovo, Generation S and Ideal Machine, offer both investment and mentoring by industry experts.



## GOVERNMENT GRANTS

Several government grants are available to early stage companies. Grants are given to companies without any obligation to repay, but with some strings attached to the commercialization and transfer of the technology outside of Russia. The most active organizations that currently give out grants to Russian startups are the Skolkovo and Bortnik funds.

## Venture capital and debt

Venture capital funding is a type of equity investment usually targeted at early stage FinTech companies with an established business and some trading history. Venture capital provides a viable alternative to traditional lending, given that the business is unlikely to have the tangible asset base or long track record needed to attract traditional debt funding from financial institutions.

Corporate venture capital (CVC) is a type of venture capital and involves an equity investment by a corporate fund. The benefit of having a CVC as an investor for a FinTech startup is that the fund is able to share its knowledge and expertise of the FinTech sector with the company and act as an advisor.

An additional funding option is venture debt, which is typically structured as a three-year term loan (or series of loans), secured against a company's assets including an equity element, allowing the debt provider to purchase shares in the company. However, venture debt providers will usually only invest into companies that have already received investment through venture capital.

## Senior bank debt and capital markets funding (late stage)

### SENIOR BANK DEBT

Once a FinTech company is established and has a track record, bank debt becomes a more viable source of funding, either on a secured or unsecured basis, depending on the creditworthiness and asset base of the business. In contrast to capital markets funding which is often covenant-lite, bank funding will generally involve the imposition of financial covenants and controls that will apply over the life of the facility. Bank finance may be particularly important for working capital, overdraft, accounts management and general liquidity purposes.

### CAPITAL MARKETS FUNDING

The Russian Federation has both debt and equity capital markets which are accessible to businesses (usually of a certain size).

## Incentives and reliefs

### STATE INCENTIVES

There are several government measures designed to help small, early-stage companies:

- tax schemes (Simplified Taxation System and Patent Taxation system);
- state investments (financial aid);
- supervision reliefs (eg simplified accounting standards);
- property grants (working facilities); and
- information help.

### IT COMPANIES

Russia-based IT companies engaged in software development and sales activities and/or provision of technical services for developed software, are eligible for reduced rates of mandatory contributions until 2019.

### SKOLKOVO TAX INCENTIVES

Certain tax benefits are available to Russian companies that are residents of Skolkovo Innovation Centre. Generally, Russian companies can become a Skolkovo resident if they conduct qualifying research and development and innovation activities, and comply with certain other requirements. The main benefits are: profits tax exemption for ten years and reduced mandatory contributions.

*Last modified 5 Dec 2019*

## Portfolio sales

### Loan transfers and portfolio sales

#### *What are common ways of buying and selling loans?*

Buying and selling loans is common.

A loan can be sold on an individual basis or packaged up with other loans and sold as a portfolio pursuant to overarching terms.

The most common way of selling loans in Russia is by an assignment of rights. Assignment is allowed unless otherwise stated in law. Generally, it can be done without the consent of the debtor.

Recently the Civil Code of the Russian Federation recognized the concept of an agreement transfer, which allows the transfer of all rights and obligations under an agreement to another party. However, it is not yet widely used in practice.

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#### *What are the main considerations when transferring a loan and related security?*

There are a number of issues to consider before transferring a loan or portfolio of loans. These issues are often covered as part of a due diligence exercise by legal advisors. Some of the key considerations include the following.

#### Contractual prohibition or restriction of assignment

The parties may contractually prohibit or restrict an assignment. This does not invalidate the assignment and cannot be a ground for termination of such agreement, but the assignor is not exempt from liability before the debtor for such breach.

#### Form of assignment

An assignment shall comply with the same form requirements as the main agreement. For more information, see [Giving and taking guarantees and security – other issues](#).

#### Assignment of security interest

Generally, the assignment of rights under the main obligation means simultaneous automatic assignment of rights under the security. However, for the types of pledges that require registration (for more information, see [Giving and taking guarantees and security – other issues](#)) the new creditor will not be able to enforce such security until the registration is made.

#### Data protection

If an assignment requires transfer of the borrower's personal data, there must be consent of the relevant borrower to disclose such personal data to third parties in case of assignment.

#### Transfer mechanics

If a loan agreement specifies a procedure for an assignment, this procedure shall be followed.

#### Notifications

Russian law does not require notifications to be made, but the new creditor bears a risk of any adverse consequences of non-notification. The obligation of a debtor ceases with performance to the original creditor if it is done before a notification has been received. The agreement itself may require notifications to the other parties and any such procedure must be complied with.

## Projects

### Financing / investing in energy / infrastructure

#### *To what extent are energy and infrastructure assets publicly or privately owned?*

##### Generally

The ownership of energy and infrastructure assets in Russia varies according to the asset class. Some publicly owned energy and infrastructure companies are still pending privatization in accordance with the relevant government plans.

Federal Law 'On the Procedure of Foreign Investment in Business Undertakings Strategically Important for National Defense and State Security of the Russian Federation' sets out the conditions and procedures allowing the Russian government to restrict, on a case-by-case basis, the right of foreign investors to take control of, or gain influence over, or acquire assets of companies engaged in some activities deemed strategically important for Russia's national defense or security. Some activities in the sphere of energy and infrastructure may fall into this category.

It should also be noted that in Russia the state owns the mineral resources in subsoil until they are extracted. The right to the extracted natural resources could be in any form of ownership depending on the entity exploring and developing subsoil in Russia under the relevant subsoil license.

##### Energy

As a result of reform, the electricity industry in Russia is partially privatized. The public joint-stock company 'The System Operator of the Unified Energy System', which is owned by the Russian Federation, exclusively performs centralized administration of the Unified Energy System of Russia. The electricity network companies are also owned by the state. However, generation and retail companies are now open to private (including foreign) investors.

The most significant participant of the gas industry in Russia is the public joint-stock company 'Gazprom' which is partially owned by the state. It has a monopoly to export pipeline gas, while the export of liquid gas is also allowed by some other companies.

##### Telecoms infrastructure

Under Federal Law 'On Communications', telecommunication networks and devices may be either public or private. At present, there is no particular law that lists the telecommunication networks and devices that may only be owned by the state although such a law may come into existence. In practice, telecommunication infrastructure is owned by several service providers.

##### Transport infrastructure

###### RAIL

The railroads in Russia are mainly owned and operated by the public joint-stock company 'Russian railroads', which is publicly owned. There are also railroads owned by private companies in remote areas which are used primarily for local cargo transportation.

###### ROADS

The roads (including construction elements placed on or over them, such as bridges or tunnels) in Russia are generally publicly owned. Private ownership is possible if a road is built by individuals or companies using their funds on land plots which have been provided to them specifically for these purposes, or where the roads are otherwise transferred into private ownership in accordance with Russian law.

###### AVIATION

Aviation is (for the most part) privatized.

## PORTS

Certain elements of the ports infrastructure may only be publicly owned, such as approach channels or navigation equipment. Some infrastructure facilities which were produced or acquired using the funds of legal entities or individual entrepreneurs may be privately owned.

## Other infrastructure

### EDUCATION

Ownership of a school's infrastructure depends upon which category of school it belongs to. In respect of state and municipal educational organizations, their educational, production and social infrastructure cannot be privatized.

### DEFENSE

Typically, defense assets are owned by the state.

### WASTE

The waste treatment infrastructure in Russia is mainly privately owned.

### WATER

Water infrastructure in Russia is owned by the state, with limited exceptions for certain types of infrastructure.

*Last modified 5 Dec 2019*

## Are there special rules for investing in energy and infrastructure?

### Generally

In addition to the general methods of investing, there are also two special legal regimes in Russia that may be used for investments in energy and infrastructure.

A significant part of the investment in energy and infrastructure takes the form of public-private partnerships (PPPs). A PPP project is generally achieved through a long-term agreement between the public sector and the private sector to deliver a service traditionally provided by the public sector. Federal Law 'On Public Private Partnership, Municipal Private Partnership in the Russian Federation and Amendments to Certain Legal Acts of the Russian Federation' (PPP Law) applies to numerous types of infrastructure including, among others, roads, railways, pipelines, sea ports, airports, healthcare and education facilities. The PPP Law specifies essential elements of PPP agreements, tender and selection procedure and certain guarantees for the investors.

Another option is a concession agreement under Federal Law 'On Concession Agreements' (Concession Law). The Concession Law applies to various types of infrastructure, which are nearly the same as in the PPP Law (including, among others, roads, railways, pipelines, sea ports, airports, communal services, and various cultural, education, healthcare, sporting and tourism facilities). Generally, The main difference between the regulation provided under the Concession Law and the PPP Law is that in the case of a concession the newly created infrastructure object remains in the state ownership (as opposed to private ownership under the PPP Law), whereas a private partner typically is responsible for its maintenance and operations.

Federal Law 'On the Procedure of Foreign Investment in Business Undertakings Strategically Important for National Defense and State Security of the Russian Federation' sets out the conditions and procedures allowing the Russian government to restrict, on a case-by-case basis, the right of foreign investors to take control of, or gain influence over, or acquire assets of companies engaged in some activities deemed strategically important for Russia's national defense or security. Some activities in the sphere of energy and infrastructure may fall into this category.

In addition, a particular proposed investment may be subject to other legislative or regulatory control (eg merger control rules). As regards the planning and implementation of the underlying energy or infrastructure project (in which investment is to be made), the legal /regulatory position relevant to that project must be considered.

## Energy

The energy market in Russia exists in the form of the Unified Energy System which is exclusively administered by the publicly owned public joint-stock company 'The System Operator of the Unified Energy System' (System Operator). There is a complex system of arrangements between the System Operator and other participants of the energy market which is heavily regulated, including, for example, statutory user fare regulation. Some types of activities would also require a special license.

## Telecoms infrastructure

There is a complex regulatory environment for this sector as specified in Federal Law 'On Communications' as well as in regulations of the Government, the Ministry of Communications and Mass Communications of the Russian Federation and other regulatory bodies.

## Transport infrastructure

Transport infrastructure also has an extensive and complex framework to consider. For example, in relation to rail, this includes understanding the regulatory regime for compulsory certification and declaration of conformity of the railroad infrastructure and user fare regulation. Aviation also has various licensing requirements and regulatory bodies requirements.

## Other infrastructure

The regulation of PPPs and concession agreements in Russia is in many ways imperative. For example, the law restricts possible security instruments that the parties may choose (it is generally forbidden to pledge the project assets or the rights under concession agreement, however, certain exceptions exist in the latter case if the project is funded by external creditors) and the selection process. Russian policy favors the jurisdiction of the Russian court for the resolution of contractual disputes for such cases, which foreign investors may not be comfortable with.

*Last modified 5 Dec 2019*

## *What is the applicable procurement process?*

Public procurement is regulated by the PPP Law and Concession Law. The key principles are that the contracts procured by the public sector shall be awarded fairly, transparently, without discrimination and that all bidders are treated equally.

## Investing in energy and infrastructure

The public sector must publish a tender notice online or send the notifications to potential participants. The selection process differs for the opened and closed procedures.

Bid procedures normally allow the winning bidder to submit mark-ups during post-tender negotiations of key terms (for example the timetable to close the deal); however, to a significant extent, a winning bidder is still bound to the published version of the concession agreement. Potential amendments to the concession agreement cannot include the terms which were conditions of the tender or which were contained in the winning bid.

Apart from public tenders both the PPP Law and Concession Law allow private initiative from an interested investor. In this case the initiative on the project comes from a private partner that suggests the conditions of the concession agreement and key terms of the project implementation, which should comply with the effective laws. If the public partner is interested in the project and has general consent to the conditions it publishes the relevant notification for any other party, which may be willing to implement the project. If any alternative investors are interested in the project, then the tender selection procedures take place.

If an investor seeks to invest in a project that has already been procured and is operational, it should be noted that assignments under the concession agreements are possible only if approved by the public sector.

## Financing energy and infrastructure

On a publicly procured contract, the public sector may prescribe requirements on the funding arrangements.

*Last modified 5 Dec 2019*

## *What are the most common forms of funding / investing in energy and infrastructure?*

### Funding

Common forms of funding in energy and infrastructure include:

- loans made on a corporate finance basis;
- loans made on a project-finance basis (to a special purpose project company);
- bond finance;
- refinancing of debt; and
- asset financing (which is less common).

### Investing

Common forms of investing in energy and infrastructure include:

- 'equity' investment in special purpose vehicles or entities that may have a portfolio of interests; and
- secondary market investment in operational projects (acquisition of 'equity').

*Last modified 5 Dec 2019*

## Restructuring

## Enforcement and sanctions

### *When can there be regulatory investigations?*

The Central Bank of the Russian Federation may launch an audit if it considers that an authorized person may have breached the ongoing compliance requirements. This may result in regulatory sanctions.

*Last modified 5 Dec 2019*

### *What regulatory penalties may apply?*

When a rule breach has taken place, the Central Bank of the Russian Federation (CBR) may impose a financial penalty, withdraw authorization or apply to the court for compulsory liquidation of a legal entity or for confiscation of all proceeds from unauthorized activities by the state. Some of these penalties will be [published](#) by the CBR.

*Last modified 5 Dec 2019*

### *What criminal penalties may apply?*

The regulator itself is not allowed to impose criminal penalties, this can only be done by a court.

Criminal penalties may apply to certain actions specified in the Criminal Code of the Russian Federation, such as:

- performance of commercial activities without registration or a license;
- performance of banking operations without registration or a license;
- malicious avoidance of disclosure or distribution of information under the laws on the securities or distribution of knowingly incomplete or inaccurate information;

- market manipulation or insider dealing;
- fraud in the sphere of lending;
- unlawful receiving of a credit; and
- malicious avoidance of credit repayment.

*Last modified 5 Dec 2019*

## Tax

### Tax issues

#### *Are stamp, registration, transfer or other similar taxes applicable?*

#### **Are there stamp, registration, transfer or other similar taxes payable on the advance, transfer or assignment of a loan?**

No stamp, registration, transfer or other similar taxes are payable on the advance, transfer or assignment of a loan.

#### **Are there stamp, registration, transfer or other similar taxes payable on the taking, transfer or assignment of a mortgage, debenture or other security?**

The notarization of a transaction in connection with mortgage agreements, the subject of which should be certified, is required. The notary charges for notarization depending on the value of the transaction. For transaction values of:

- up to RUB 1 million (approx. USD16,000) – RUB 2,000 (approx. USD31) plus 0.3% of the contract value is payable;
- more than RUB 1 million and up to RUB 10 million (approx. USD150,000) – RUB 5,000 (approx. USD78) plus 0.2% of the contract value above RUB 1 million is payable; and
- more than RUB 10 million – RUB 23,000 (approx. USD360) plus 0.1% of the contract value above RUB 10 million, up to a maximum of RUB 500,000 (approx. USD7,800) is payable.

In addition, notaries usually charge fees for their technical services. The amount charged depends on the particular notary and the complexity of the transaction and may vary (usually no more than USD1,000). All United States Dollars equivalents specified are based on the exchange rate of the Russian Federation Central Bank at the time of writing.

#### **Are there stamp, registration, transfer or other similar taxes payable on the issue, transfer or assignment of a debt security (eg a bond)?**

No stamp, registration, transfer or other similar taxes are payable on the issue, transfer or assignment of a debt security.

*Last modified 5 Dec 2019*

#### *Do tax authorities take priority on enforcement?*

#### **On the enforcement of security, do tax authorities take priority over secured lenders or secured debt security holders (eg secured bond holders)?**

Secured lenders and secured debt holders take priority over the Federal Tax Service of the Russian Federation on enforcement of security.

*Last modified 5 Dec 2019*

#### *Is withholding tax on interest payments applicable?*

## Is there withholding tax on interest payments under a loan?

Withholding taxes are only applicable in the context of cross-border operations, ie in the context of Russian-source income (in particular, interest payments under a loan) paid by a Russian legal entity (RLE) to a foreign legal entity (FLE). Accordingly, tax should be withheld by an RLE paying interest to an FLE.

In relation to domestic loan transactions (ie loans between RLEs), no tax is required to be withheld. Corporate income tax is paid by the lender as part of its total taxable income on the earned interest income as per the standard procedure.

**If so:**

### What is the rate of withholding?

Withholding is applied at the standard 20% corporate income tax rate on any interest income paid to a FLE.

### What are the key exemptions?

The key reliefs and exemptions from withholding tax on interest income are as follows:

- a reduced rate of withholding for certain types of debt obligations (eg certain government securities, municipal securities and mortgage-backed securities);
- exemption or partial exemption under an applicable double tax treaty when interest income is paid to an FLE resident in a country that has concluded a treaty with Russia; and
- irrespective of the terms of a double tax treaty, certain interest payments are exempt from Russian withholding tax (eg interest income payable on certain government securities, municipal securities, and interest income which is paid by Russian organizations on marketable bonds issued in accordance with the legislation of foreign states).

As to application of the exemption under an applicable double tax treaty, the interest income's recipient must be (i) the beneficial owner of the Russian-sourced income and (ii) a tax resident in the corresponding tax treaty country. In particular, the beneficial owner of income is defined as a person who by virtue of (a) having participation interest (directly and/or indirectly) in an organisation; or (b) control over an organisation; or (c) by virtue of other circumstances has the right to independently use and (or) dispose of such income.

The beneficial owner must provide to a Russian company (the "tax agent") certain documents confirming the beneficial ownership status, given that the tax agent pays the Russian-sourced income and is therefore responsible for remitting withholding tax on this income. The tax agent must keep these documents and provide them to the Russian tax authorities when requested. However, neither Russian tax law nor clarifications from competent authorities indicate which documents constitute proof of beneficial ownership status.

The Federal Tax Service and the Ministry of Finance have defined a wide range of criteria which, from a beneficial ownership perspective, should be taken into account when determining a taxpayer's entitlement to double tax treaty benefits. Therefore, a tax agent should analyze whether an FLE, which is a foreign recipient of Russian-source income is indeed the beneficial owner of such income based on such criteria, which are often differ from the OECD approaches.

### Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes.

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## Are foreign lenders and debt security holders subject to tax on interest payments?

**Will the lender be taxed on interest payments under a loan in the jurisdiction of the borrower (other than by way of withholding tax (if any)), assuming the lender is not otherwise resident in that jurisdiction for tax purposes (eg by virtue of incorporation, residence or local branch)?**

No.



## Would the same analysis apply to interest payments under a debt security (eg a bond)?

Yes.

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