

Valeriy Musin,

Honorable Professor of Law at St. Petersburg State University, Head of the Civil Procedure Department of the Faculty of Law, St. Petersburg State University, Corresponding Member of the Russian Academy of Sciences, Director of the St. Petersburg branch of the Institute of State and Law of the Russian Academy of Sciences, Adviser to the Constitutional Court of the Russian Federation, Chairman of the Presidium of the Dispute Resolution Centre of the Economic Court of the Commonwealth of Independent States, Member of the Scientific — Consultative Council of the Supreme State Arbitration Court of the Russian Federation Member of the Scientific-Consultative Council of the Federal State Arbitration Court of the North-West Circuit, Arbitrator of the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation, Chairman of the Arbitration Court of the St. Petersburg Chamber of Commerce and Industry, Substitute Member of the Commission for Democracy through Law (Venice Commission) of the Council of Europe (2006–2009), Ad Hoc Judge of the European Court of Human Rights (2006–2009). Member of the Board of Directors of the OJSC “Gazprom”, and Senior Partner of the Russian-British law firm “Musin, Ibragimov & Partners” associated with LLP “Clyde & Co” of London:

Chapter 1, Chapter 2, Chapter 3, § 1 (Section 1.1, 1.4), § 2 (Section 2.1), § 3, Chapter 4, Chapter 5, Chapter 6, § 2 and § 3, Chapter 7, Chapter 8, Chapter 9, Chapter 10.

Nikolai Kropachev,

Professor of Law at St. Petersburg State University, Rector of St. Petersburg State University, Vice-Chairman of the Commission on Education, Science and Technologies before the President of the Russian Federation, and Chairman in Retirement of the Charter Court of the City of St. Petersburg:

Chapter 3, § 1 (Sections 1.2, 1.3), § 2 (Sections 2.2, 2.3), Chapter 6, § 1.

Edited by **Jane M. Picker,**

Professor Emerita, Cleveland State University, USA; Professor Honoris Causa, St. Petersburg State University, Russia

Musin V. A., Kropachev N. M.

Russian law in brief: Digest for foreign investors. Fifth (revised) edition. — St. Petersburg University Press, 2015. — 718 p. ISBN 978-5-288-05608-6

The Edition provides foreigners with a comprehensive review of the Russian Legal System, court system, legislative rules referred to business with foreign investors, encompasses the major changes and development in law, examines in detail renewed Russian legislation. The prospective foreign investor, as well as his or her lawyer, should find this Handbook a helpful distillation of the various legal issues that could arise within the context of an investment decision.

Published by St. Petersburg University Press,
V. I., 6th line, 11, St. Petersburg, 199004, Russia
info@lawpress.ru; info@unipress.ru
www.unipress.ru; www.lawpress.ru
Tel./fax 7 812 3284422

All Rights Reserved
© St. Petersburg University Press, 2014

CONTENTS

PREFACE OF THE PRESIDENT OF THE RUSSIAN FEDERATION TO THE FIRST EDITION	4
EDITOR'S PREFACE	5
AUTHOR'S PREFACE	13
CHAPTER 1. LEGAL SYSTEM OF THE RUSSIAN FEDERATION: A GENERAL OVERVIEW	14
§ 1. Introductory notes	14
1.1 Russia's Civil Codes	14
1.2 The role of precedent in Russian law (general overview)	16
1.3. Precedent functions of the Constitutional Court of the Russian Federation	17
1.4. Precedents of the European Court of Human Rights	18
1.5. Gradual convergence of the Continental European and Anglo-American legal systems	22
§ 2. The Sources and hierarchy of Russian law	22
2.1. Kinds of normative legal acts	22
2.2. When a normative act becomes effective	24
2.3. Retroactive effect of law	26
2.4. The Russian Federation and its Subjects	29
§ 3. Relationship between the RF Civil Code and other federal statutes containing civil law norms	32
3.1. Historical overview	32
3.2. Current situation	33
3.3. Analogy of lex and analogy of jus	36
CHAPTER 2. RUSSIA'S COURT SYSTEM	37
§ 1. General provisions	37
1.1. The Constitutional Court of the Russian Federation; Constitutional and Charter Courts of Subjects of the Russian Federation	37
1.2. Courts of general jurisdiction	39
1.3. State arbitration courts	42
1.4. The problem of court supervision	47
1.5. Review of court judgments due to new or newly-discovered evidence	52
§ 2. Basic rules of Russian civil procedure	54
2.1. General overview	54
2.2. Filing a statement of claim	60
2.3. Security of a claim	65
2.4. Trial Court Proceedings	70
2.5. Proceedings in an appellate court	82
2.6. Proceedings in a cassation court	85
2.7. Proceedings in a supervisory court	87

2.8. Review of effective court judgments and decisions upon new or newly-discovered evidence	89
2.9. Enforcement proceedings	90
2.9.1. General provisions	90
2.9.2. Some aspects of enforcement proceedings in light of European Court of Human Rights case law	93
2.10. Enforcement of foreign court judgments in Russia	96
2.11. Jurisdictional immunity of a foreign state and its property	103
§ 3. International Commercial Arbitration	107
3.1. General provisions	107
3.2. Jurisdiction of international commercial arbitration	109
3.3. Arbitration agreements	112
3.4. Commencement of arbitral proceedings	118
3.5. Formation of an arbitral panel	123
3.6. Substitution of the parties to the dispute and involvement of third persons	127
3.7. Conduct of arbitral proceedings and issuance of an arbitral award	131
3.8. Enforcement of an arbitral award	134
3.9. Appeal of an arbitral award	137
3.9.1. General Provisions	137
3.9.2. Litigants' bases for appealing awards	138
3.9.2.1. Capacity of the parties	138
3.9.2.2. Validity of an arbitration Agreement	139
3.9.2.3. Scope of an arbitral agreement	142
3.9.2.4. Procedure for formation of an arbitral panel	142
3.9.2.5. Procedure for considering a case in voluntary arbitration	143
3.9.2.6. Contentiousness of arbitral proceedings	143
3.9.2.7. Legal force of an arbitral award	144
3.9.3. Appeals independent of a litigant's motion	145
3.9.3.1. Subject matter not capable of settlement under the law	145
3.9.3.2. Awards contrary to public policy	146
§ 4. Mediation	150
4.1. General provisions	150
4.2. Mediation proceedings	151
CHAPTER 3. RESPONSIBILITY UNDER RUSSIAN LAW	154
§ 1. Legal Responsibility: General provisions	154
1.1. Types of responsibility in civil law	157
1.1.1. Contractual responsibility	157
1.1.1.1. Recovery of losses	158
1.1.1.2. Determining the amount of the losses	158
1.1.1.3. Recovery for moral harm	160
1.1.1.4. Penalties	162
1.1.1.5. Payment of interest	164
1.1.2. Non-contractual responsibility	166
1.2. Criminal Responsibility	167
1.2.1. General provisions	167
1.2.2. Crime	167
1.2.3. Punishment and sentencing	172
1.3. Responsibility in administrative law	179
1.3.1. Administrative law violations	179
1.3.2. Administrative punishment	183
1.4. Competence to apply legal responsibility	185
§ 2. Persons who may bear legal responsibility	186
2.1. Responsibility for civil law violations	186

CONTENTS

2.1.1. Citizens (natural persons)	187
2.1.2. Legal entities	190
2.1.3. Civil responsibility of several persons	191
2.1.4. Responsibility for acts of other persons (vicarious liability)	192
2.2. Persons who may bear responsibility in the field of criminal law	193
2.2.1. General provisions	193
2.2.2. Criminal responsibility of several persons	196
2.2.3. Territorial Jurisdiction of the RF Criminal Code. Criminal responsibility of foreign nationals in the territory of the Russian Federation and that of Russian nationals outside the Russian Federation	197
2.2.3.1. Jurisdiction of the RF Criminal Code	197
2.2.3.1.1. In the territory of the Russian Federation	197
2.2.3.1.2. Criminal jurisdiction in relation to sea-going vessels	200
2.2.3.1.3. Criminal jurisdiction relating to aircraft	201
2.2.3.1.4. Jurisdiction over crimes committed by Russian nationals outside Russia	202
2.2.3.1.5. Jurisdiction with regard to crimes committed by foreign nationals within Russian territory	204
2.2.3.1.6. Extradition	205
2.3. Persons who may be held responsible for administrative law violations	207
§ 3. Conditions of responsibility	209
3.1. General provisions	209
3.2. Illegal behavior	209
3.3. Causal connection	212
3.4. Fault (guilt)	215
3.4.1. General provisions	215
3.4.1.1. Forms of fault in criminal law	215
3.4.1.2. Forms of fault in administrative law	216
3.4.1.3. Fault in civil law (general provisions)	216
3.4.1.4. Mixed fault	217
3.4.1.5. Burden of proof with regard to fault	219
3.4.2. Peculiarities of civil responsibility	220
3.4.2.1. Responsibility for the fault of others	220
3.4.2.2. Strict Liability	221
3.4.2.2.1. Strict liability in business transactions	221
3.4.2.2.2. Force majeure	222
3.4.2.2.3. Strict liability with regard to a source of increased danger	224
3.4.2.2.4. Strict liability for nuclear damage	227
3.4.2.2.5. Peculiarities of liability of public agencies	227
CHAPTER 4. TYPES AND ORGANIZATIONAL FORMS OF BUSINESSES WITH FOREIGN INVESTMENTS	233
§ 1. Types of businesses with foreign investments (general overview)	233
§ 2. Legal entities in Russia (general provisions)	238
2.1. Concept of a legal entity	238
2.2. Types of legal entities	240
2.3. Commercial corporations	242
§ 3. Full partnership	245
§ 4. Limited partnership	249
§ 5. Limited liability company	251
5.1. General provisions	251

5.2. Constituent documents	252
5.3. Chartered capital	254
5.4. Increase of chartered capital	255
5.5. Decrease of chartered capital	257
5.6. Disposal of participant's share	258
5.7. Withdrawal of a participant from the company	261
5.8. Company's bodies	266
5.8.1. General meeting of participants	266
5.8.2. Chief executive officer	271
5.8.3. Management board	274
§ 6. Joint stock company	275
6.1. General provisions	275
6.2. Stocks and chartered capital	278
6.3. Company's bodies	282
6.3.1. General meeting of stockholders	282
6.3.2. Board of directors (supervisory council)	284
6.3.3. Chief executive officer and management board	286
§ 7. Economic partnership	288
7.1. General provisions	288
7.2. Formation of an economic partnership	291
7.3. Management of an economic partnership	292
CHAPTER 5. LEGAL CAPACITY OF BUSINESSES WITH FOREIGN INVESTMENTS: ITS SCOPE, STARTING POINT AND TERMINATION	293
§ 1. Scope of legal capacity of businesses with foreign investments (general overview)	293
1.1. Development of modern Russian civil law rules concerning capacity of commercial organizations	293
1.2. Capacity of businesses with foreign investments	296
§ 2. On privileges for businesses with foreign investments in Russia	298
2.1. General overview	298
2.2. Specific privileges in the sphere of taxation	300
§ 3. State registration of businesses with foreign investments	303
3.1. Historical overview	303
3.2. Current situation	305
§ 4. Reorganization of businesses with foreign investments	309
4.1. Forms of reorganization	310
4.2. Stages of reorganization	311
4.3. Legal consequences of reorganization	316
4.4. Invalidity of reorganization	321
§ 5. Liquidation of businesses with foreign investments	322
5.1. General provisions	322
5.2. Stages of liquidation	324
§ 6. Bankruptcy of businesses with foreign investments	328
6.1. General provisions	328
6.2. Supervisory Proceedings	329
6.3. Financial recovery	332
6.4. External management	334
6.5. Final bankruptcy proceedings	335
CHAPTER 6. TAXATION, CUSTOMS AND CURRENCY RULES WITH SPECIFIC REFERENCE TO BUSINESSES WITH FOREIGN INVESTMENTS	339
§ 1. Taxation rules	339
1.1. General provisions	339

CONTENTS

1.2. Federal Taxes	343
1.2.1. Value added tax (VAT)	343
1.2.2 Excise tax	349
1.2.3. Organizations' profit tax	351
1.2.4. Natural persons' revenue tax	356
1.2.5. A unified social tax	360
1.2.6. State duty	361
1.3. Regional taxes	362
1.3.1. A transport tax	362
1.3.2. Organizations' property tax	363
1.4. Local taxes	364
1.4.1. A land tax	364
1.4.2. Natural persons' property tax	364
§ 2. Customs Rules	366
2.1. General provisions	366
2.2. Customs procedures	371
2.3. Customs payments	375
§ 3. Currency rules	376
3.1. General provisions	376
3.2. Currency operations and payments	381
3.3. Residents' currency accounts in foreign banks	385
3.4. Non-residents' accounts in Russian banks	385
CHAPTER 7. UNUSUAL ASPECTS OF INVESTMENTS IN SOME SPECIFIC FIELDS	387
§ 1. Special economic zones	387
1.1. General provisions	387
1.2. Residents of special economic zones	389
1.3. Residents' investment commitments	390
1.4. Residents' privileges	392
1.5. "Skolkovo" Innovation Centre and some peculiarities of its legal regime	393
§ 2. Production-Sharing agreements	395
2.1. Entering into the agreement	395
2.2. Parties to the agreement	395
2.3. Use of subsoil and distribution of mineral resources	397
2.4. Taxation issues	399
2.5. Measures to ensure stability of the agreement	400
§ 3. Foreigners' rights to property located in Russia	402
3.1. Movable and immovable property	402
3.2. State registration of immovables.	403
3.3. Foreigners' rights to immovable property in Russia	406
CHAPTER 8. FOREIGN TRADE CONTRACTS	409
§ 1. An offer	409
1.1. General indicia	409
1.2. Quantity of goods	411
1.3. Quality of goods	412
1.4. Price of goods	419
1.5. Offeror's intention to be bound	420
1.6. Effectiveness of an offer and its binding effect	421
§ 2. An acceptance	423
2.1. General requirements	423
2.2. Discrepancy between an offer and an acceptance	423
2.3. Effectiveness of an acceptance	424
2.4. Late acceptance	425

2.5. Legal consequences of failure to conclude a contract	427
2.6. Form of a foreign trade contract	428
§ 3. Basic conditions	430
3.1. General provisions	430
3.2. Transfer of goods	431
3.3. Passing or risk	433
3.4. Variations of basic conditions	434
3.4.1. EXW	435
3.4.2. FCA	436
3.4.3. CPT	436
3.4.4. CIP	437
3.4.5. DAT	437
3.4.6. DAP	437
3.4.7. DDP	438
3.4.8. FAS	438
3.4.9. FOB	439
3.4.10. CFR	440
3.4.11. CIF	440
§ 4. Legal consequences of a contract breach	441
4.1. Remedies available to the aggrieved party	441
4.2. Preconditions for recovery of losses	445
4.3. Calculation of losses	447
§ 5. Statutes of limitation	450
5.1. General provisions	450
5.2. Starting point of the time limitation period (general rules)	451
5.3. Specific rules for certain obligations	453
5.4. Final day of the time limitation period	454
5.5. Suspension of the time limitation period	456
5.6. Interruption of the time limitation period	457
5.7. The problem of reinstatement of the time limitation period	462
§ 6. Establishment of governing law	463
6.1. General provisions	463
6.2. Lex voluntatis principle	465
6.3. Exclusions from lex voluntatis principle	467
6.4. Establishment of governing law in the absence of agreement of the litigants	468
6.5. Application of foreign law rules by Russian courts	471
6.6. Super-mandatory norms (norms of direct application)	472
6.7. Public policy	475
CHAPTER 9. SOME ISSUES OF INTELLECTUAL PROPERTY LAW	477
§ 1. General provisions	477
1.1. Intellectual property and its kinds	477
1.2. Alienation of an exclusive right	480
1.3. License contract with regard to the exclusive right	480
§ 2. Some issues of patent law	483
2.1. Patent rights and their objects (general overview)	483
2.2. Right to receipt a patent	485
2.2.1. Rightholders	485
2.2.2. Procedure of a receipt of a patent	486
2.2.3. Legal consequences of the issuance of a patent	489
§ 3. Right to a trade mark	490
3.1. General provisions	490
3.2. State registration of a trade mark	492

CONTENTS

§ 4. Legal protection of certain intellectual rights	494
4.1. General provisions	494
4.2. Disputes to be resolved by administrative agencies	494
4.3. Disputes to be resolved by courts	495
CHAPTER 10. LEGAL ASPECTS OF EMPLOYMENT WITH SPECIFIC REFERENCE TO RECRUITMENT OF FOREIGN MANPOWER	497
§ 1. General provisions	497
1.1. Introduction	497
1.2. Social partnership	498
§ 2. Pre-employment issues	502
2.1. Age requirements	502
2.2. Other specific requirements	503
2.3. Special Characteristics of pre-employment issues concerning foreign manpower	504
§ 3. Contract of employment	510
3.1. General provisions	510
3.2. Duration of work	511
3.3. Rest time	514
3.4. Wages	517
3.5. Amendment of an employment contract	519
3.6. Termination of an employment contract	521
3.7. Labor law principles of financial responsibility	527
3.8. Unusual aspects of employment contracts with certain kinds of employees	529
3.9. Governing law	532
§ 4. Occupational health and safety; social security	533
4.1. Health and safety	533
4.2. Social security	534
§ 5. Investigation of industrial accidents. Compensation for injury and death	535
5.1. Investigation of industrial accidents	535
5.2. Compensation for injury and death	537
§ 6. Labor dispute resolution	538
6.1. Resolution of collective labor disputes	539
6.2. Resolution of individual labor disputes	540
APPENDICES	543
Constitution of the Russian Federation (1993) (extract)	545
Civil Code of the Russian Federation (extract)	547
Arbitration Procedure Code of the Russian Federation (extract)	560
Law on International Commercial Arbitration	565
Criminal Code of the Russian Federation (extract)	577
Code of the Russian Federation of Administrative Violations (extract)	580
On Foreign Investments in the Russian Federation (extract)	582
On Currency Regulation and Currency Control (extract)	586
United Nations Convention on Contracts for the International Sale of Goods (1980)	591
Convention on the Recognition and Enforcement of Foreign Arbitral Awards	626
Unidroit Principles of International Commercial Contracts 2010	631
UNCITRAL Arbitration Rules	675
Rules of the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation	695