Fintech

Contributing editors
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GETTING THE DEAL THROUGH

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Third edition

Getting the Deal Through is delighted to publish the third edition of *Fintech*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Angus McLean and Penny Miller of Simmons & Simmons, for their continued assistance with this volume.

GETTING THE DEAL THROUGH

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Russia

Anastasia Didenko, Anton Didenko, Valeria Ivasikh and Svetlana London

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Financial services regulation

1 Which activities trigger a licensing requirement in your jurisdiction?

Lending may be a licensable activity, depending on the type of loan facility (see question 2). Whereas 'credits' may only be provided by credit institutions, ordinary loans can be provided by any entity. However, there is a risk that the activity of issuing ordinary loans on a regular basis may be characterised as a professional activity requiring a credit institution licence or registration as a microfinance organisation.

Deposit-taking is a licensable activity which requires a credit institution licence.

Foreign exchange trading and foreign exchange dealing are licensable activities which require a credit institution licence and a professional securities market participant licence, respectively.

Certain payment services are licensable in Russia (eg, money transfer and settlement centre operations).

Dealing in investments may require a licence when the relevant operations can only be performed by a broker, dealer or another professional securities market participant.

2 Is consumer lending regulated in your jurisdiction? Describe the general regulatory regime.

Yes. Russian law distinguishes between two types of loan facilities: (i) 'credits', which can be provided exclusively by credit institutions; and (ii) loans, which can be provided by all entities generally.

Consumer credits and loans in the jurisdiction are credits and loans granted by credit institutions and non-credit financial organisations to individuals on a regular basis for purposes not connected with entrepreneurial activities. Consumer credits and loans are deemed to be provided on a regular basis if issued no less than four times during a calendar year (paragraph 5, section 3.1, Federal Law on Consumer Credit (Loans)). However, most provisions of the Federal Law on Consumer Credit (Loans) do not apply to consumer credits or loans secured by mortgage of immovable property: the latter are regulated by mortgage-specific legislation. The law sets out particular requirements relating to the terms of a consumer credit or loan agreement (eg, the requirement to state the full cost of a consumer credit or loan to the borrower) and its form (eg, the requirement to present certain terms of the agreement in a consumer-friendly table format).

3 Are there restrictions on trading loans in the secondary market in your jurisdiction?

No.

4 Describe the general regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would generally fall within the scope of any such regime.

Collective investment schemes under Russian law

Russian law recognises a number of collective investment schemes regulated by dedicated laws. The key vehicles used for the purposes of collective investment are: unit investment funds, joint-stock investment funds (both are regulated by the Federal Law on Investment Funds), non-state pension funds (regulated by the Federal Law on Non-State Pension Funds), and investment partnerships (regulated by the Federal Law on Investment Partnership).

Joint-stock investment funds and non-state pension funds are legal entities organised in the form of a joint-stock company. Both of these types of funds require a special licence issued by the regulator (Bank of Russia). The law specifies, among other things, the minimum amount of capital such funds must possess.

Unlike joint-stock investment funds and non-state pension funds, a unit investment fund is not a legal entity and consists of an isolated group of assets contributed by the founding parties.

An investment partnership is not a legal entity, but rather a joint undertaking by several organisations (not exceeding 50 in number) to combine their contributions and conduct agreed investment activities. Individuals cannot be parties to an investment partnership. Recent changes to the Federal Law on Investment Partnership added extra flexibility to this form of collective investment (inter alia, by extending the range of permissible investment activities) to increase its attractiveness among prospective investors.

Unit investment funds and joint-stock investment funds must at all times utilise a separate entity (manager) to manage the assets of the fund. Non-state pension funds must utilise a separate entity to act as the manager when investing in certain types of assets. The investment of funds contributed by the partners of an investment partnership is carried out by the managing partner.

Unit investment funds, joint-stock investment funds and non-state pension funds are subject to mandatory information disclosure and annual audit obligations.

Whether or not a fintech company falls under any of the above categories would depend on the particular company: for example, a legal entity will not qualify as a unit investment fund; similarly, a legal entity that is not organised as a joint-stock company under Russian law will not qualify as a joint-stock investment fund or a non-state pension fund.

Foreign collective investment schemes in Russia

While there is no specific regulation applicable to foreign collective investment schemes, non-Russian fintech companies should note the following general restrictions that might become relevant in accessing the local market:

- Foreign financial instruments may not be offered to the public (ie, to an unlimited number of persons), as well as to persons not falling into the category of qualified investors (as defined in Russian law), unless they meet the criteria for public placement or public distribution in the jurisdiction (section 51.1, Federal Law on the Securities Market).
- There is a general prohibition on non-Russian organisations (as well as their representative offices and branches in Russia) marketing the services of foreign financial organisations and/or distributing information about such organisations and their activities to the public in Russia (paragraph 6.1, section 51, Federal Law on the Securities Market). In the absence of statutory clarification, counsel are of the view that the term 'to the public' should cover all instances when information is made available in a manner that permits any person to access such information.

5 Are managers of alternative investment funds regulated?

Managers of Russian collective investment schemes are regulated: they must obtain a special licence issued by the regulator (Bank of Russia) and comply with additional requirements (eg, maintain a minimum capital). Managing partners of an investment partnership do not require a special licence to run the joint business of the partnership.

There is no specific regulation of managers of foreign collective investment schemes. Nonetheless, managers should note the general prohibition on the offering of financial services and distribution of corresponding information to the public by foreign organisations (see question 4). In addition, foreign organisations may not engage in activities of non-credit financial institutions (eg, discretionary investment management or management of Russian investment funds) on the territory of Russia (paragraph 6.1, section 51, Federal Law on the Securities Market).

6 May regulated activities be passported into your jurisdiction?

No.

7 May fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

No. The law does not specify criteria for cross-border provision of financial services.

8 Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

There is no specific peer-to-peer (P2P) or marketplace lending regulation in the jurisdiction. Standard provisions regulating lending activities should apply.

9 Describe any specific regulation of crowdfunding in your jurisdiction.

There is no bespoke regulation of crowdfunding in the jurisdiction. However, a draft bill, On Attracting Investments Using Investment Platforms, was approved by the Russian parliament during its first reading in May 2018. This document aims to establish dedicated crowdfunding rules in the jurisdiction, but is still in a draft stage.

Currently, crowdfunding activities may be subject to a wide range of rules, depending on the crowdfunding model used. These rules may include, but are not limited to, lending and securities legislation, company law, as well as data protection regulations. The following provisions may impact crowdfunding activities in the jurisdiction:

- Equity-based crowdfunding may be problematic due to the limited maximum number of participants in a limited liability company (50) and limited partners in a limited partnership (20), as well as other limitations and statutory obligations relating to various types of legal entities (eg, public disclosure rules).
- While there are no instruments specific to reward-based crowdfunding, parties may rely on the principle of freedom of contract (section 421, Civil Code), the newly introduced concept of conditional performance of obligations (section 327.1, Civil Code), as well as existing legal constructs, such as loan agreement, purchase and sale agreement and services agreement.
- Donation-based crowdfunding can use the concept of donation contract (sections 572 to 582, Civil Code). Among other things, the law prohibits donations exceeding 3,000 roubles when such donations: (i) are made by persons under 14 years old or persons lacking legal capacity; or (ii) are between commercial legal entities.

10 Describe any specific regulation of automated investment advice in your jurisdiction.

There is no bespoke regulation of automated investment advice in Russia.

11 Describe any specific regulation of invoice trading in your jurisdiction.

There is no specific regulation of invoice trading in Russia. Parties may rely on the general provisions of the Civil Code governing factoring transactions, which may be conducted either on a recourse or non-recourse basis (paragraph 3, section 827, Civil Code), and the principle of freedom of contract (section 421, Civil Code).

12 Are payment services a regulated activity in your jurisdiction?

Yes. The primary source of regulation is the Federal Law on the National Payment System.

13 Do fintech companies that wish to sell or market insurance products in your jurisdiction need to be regulated?

Insurance activities in Russia can be carried out only by licensed companies.

The term 'marketing' is not defined by Russian law, which instead uses the term 'advertising', defined as information, distributed in any way, form and by any means, which is addressed to the general public and designed to attract attention to an object of advertising, to form or maintain an interest in it or to promote it on the market.

Advertisement of banking, insurance and other financial services without a requisite licence, permission or accreditation for carrying out these activities is prohibited. Therefore, fintech companies that want to market insurance products must hold the appropriate licence.

14 Are there any legal or regulatory rules in your jurisdiction regarding the provision of credit references or credit information services?

The Federal Law on Credit Histories regulates the formation and contents of credit histories in Russia, as well as the business of specialised entities authorised to form, process, store and provide access to credit histories – credit history bureaus. A credit history comprises information on individuals and legal entities relating to the performance of various obligations, such as loan repayments, communal and tenancy debts. The Bank of Russia maintains a registry of all credit history bureaus. The latter cannot operate unless included in such registry.

15 Are there any legal or regulatory rules in your jurisdiction that oblige financial institutions to make customer or product data available to third parties?

None.

16 Does the regulator in your jurisdiction make any specific provision to encourage the launch of new banks?

No.

17 Describe any specific rules relating to notification or consent requirements if a regulated business changes control.

Prior or subsequent consent of the Bank of Russia is required in the following cases:

- in an acquisition of, or initiation of trust management over, more than 10 per cent of shares (or participatory interests) of a financial institutions (ie, a credit institution or a non-credit financial institution) by a legal entity or an individual or a group of persons (as defined in section 9 of the Federal Law On the Protection of Competition); and
- in obtaining control (directly or indirectly) over persons holding more than 10 per cent of shares (or participatory interests) of a financial institution.

Bank of Russia has issued a detailed list of specific criteria triggering the notification requirement (such as reorganisation, increase of share capital or certain changes of the corresponding group of persons).

In a limited number of cases, a preliminary consent or notification of the Federal Antimonopoly Service is also required.

18 Does the regulator in your jurisdiction make any specific provision for fintech services and companies? If so, what benefits do those provisions offer?

In April 2018, the Bank of Russia announced the establishment of a regulatory sandbox inviting innovators to submit applications using the template published on the regulator's website.

19 Does the regulator in your jurisdiction have formal relationships or arrangements with foreign regulators in relation to fintech activities?

The Bank of Russia has held a number of meetings with foreign regulators involving, among other things, fintech activities. However, we are

not aware of any formal fintech-specific arrangements similar to the 'fintech bridges' introduced by the UK's Financial Conduct Authority.

20 Are there any local marketing rules applicable with respect to marketing materials for financial services in your jurisdiction?

There is an advertising prohibition in Russia applicable to all financial products and services the production or distribution of which requires a licence. If no licence is obtained for the production or distribution of such products or services, then no advertising of such products or services is allowed (paragraph 14, section 28, Federal Law on Advertising).

In addition, there is a general prohibition on non-Russian organisations marketing the services of foreign financial organisations or distributing information about such organisations and their activities to the public in Russia (paragraph 6.1, section 51, Federal Law on the Securities Market). In the absence of statutory clarification, the term 'to the public' should cover all instances when information is made available in a manner that permits any person to access such information.

21 If a potential investor or client makes an unsolicited approach either from inside the provider's jurisdiction or from another jurisdiction, is the provider carrying out a regulated activity requiring a licence in your jurisdiction?

Russian legislation does not currently recognise the concept of 'unsolicited approach'. Therefore, if the relevant activity is licensable, then the provider of such activity will require a licence regardless of whether the potential investor or client approaches such provider first.

22 If the investor or client is outside the provider's jurisdiction and the activities take place outside the jurisdiction, is the provider carrying out an activity that requires licensing in its jurisdiction?

In this scenario, the provider should not be deemed to be carrying out a licensable activity in the jurisdiction if each of the investor, the client and the provider is located outside the jurisdiction.

23 Are there continuing obligations that fintech companies must comply with when carrying out cross-border activities?

Fintech companies must comply with the marketing requirements (see question 20).

Distributed ledger technology

24 Are there any legal or regulatory rules or guidelines in relation to the use of distributed ledger (including blockchain) technology in your jurisdiction?

No. However, a draft bill, On Digital Financial Assets, was approved by the Russian parliament during its first reading in May 2018. The current version of the document, which is not final and is likely to be revised, contains a definition of 'distributed ledger of digital transactions' that is used to define other terms, such as 'cryptocurrency' and 'smart contracts'.

Digital currencies

25 Are there any legal or regulatory rules or guidelines applicable to the use of digital currencies or digital wallets, including e-money, in your jurisdiction?

There are dedicated provisions in the legislation regulating transfer of money. Russian law uses the term 'electronic means of payment' to cover all methods of money transfer via electronic communication networks, electronic data storage devices (including payment cards) and other technical devices. This definition should cover mobile wallets.

Electronic means of payment can be used only on the basis of an agreement between the money transfer operator (a credit institution) and the client or an agreement between several money-transfer operators.

Russian law sets out detailed provisions regulating the usage of electronic means of payment.

26 Are there any rules or guidelines relating to the operation of digital currency exchanges or brokerages in your jurisdiction?

No. However, a draft bill, On Digital Financial Assets, was approved by the Russian parliament during its first reading in May 2018. The current version of the document, which is not final and is likely to be revised, allows exchanges of 'digital financial assets' (a term that includes cryptocurrencies and digital tokens) to be operated only by legal entities established in Russia that hold one of the required (eg, broker or dealer) licences.

27 Are there legal or regulatory rules or guidelines in relation to initial coin offerings (ICOs) or token generating events in your jurisdiction?

No. However, a draft bill, On Digital Financial Assets, was approved by the Russian parliament during its first reading in May 2018. The current version of the document, which is not final and is likely to be revised, establishes detailed rules for the issuance of digital tokens, including the corresponding disclosure requirements and mandatory documentation that includes, among other things, an investment memorandum and a public offer.

Securitisation

28 What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

Russian law distinguishes between two types of loan facilities: (i) 'credits', which can be provided exclusively by credit institutions; and (ii) loans, which can be provided by all entities generally.

The key requirements for executing credit agreements are: (i) written form (section 820, Civil Code); (ii) credit amount (paragraph 1, section 819, Civil Code); and (iii) term and manner of repayment (paragraph 1, sections 810 and 819, Civil Code). The key requirements for executing loan agreements are: (i) written form, when such agreements are made between individuals and the loan amount exceeds 10,000 roubles, or when loans are provided by legal entities; and (ii) term and manner of repayment (paragraph 1, section 810, Civil Code). If a credit or a loan is provided to a consumer, they must comply with additional detailed requirements, such as the layout of certain provisions and the stipulation of full price of the credit or loan (sections 5 and 6, Federal Law on Consumer Credit (Loans)).

Russian law recognises several types of security instruments, including but not limited to pledge (sections 334 to 358.18, Civil Code), suretyship (sections 361 to 367, Civil Code), independent guarantee (sections 368 to 379, Civil Code), down payment (sections 380 to 381, Civil Code), and agreed and liquidated damages (sections 330 to 333, Civil Code). All of these types of security instruments must be concluded in writing.

Failure to meet the above key requirements may result in such agreements and instruments (whether entered on a P2P or marketplace lending platform) being unenforceable. To comply with the written form requirement, parties may exchange electronic documents; however, such exchange must be made through lines of communication that allow the party from which such documents originate to be reliably identified (section 434, Civil Code). The law does not currently provide clear guidance as to which means of communication meet such criteria.

29 What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? May these loans be assigned without informing the borrower?

Assignment of loans (and credits) provided under a written contract must be made in writing (paragraph 1, section 389, Civil Code). In order to perform assignment, the assignor must ensure that: (i) the assigned claim has come into existence at the moment of its assignment, unless it is an assignment of a future claim; (ii) the assignor has the right to perform the assignment; (iii) the assigned claim has not been previously assigned to another person; and (iv) the assignor has not done and shall not do anything that can serve as a basis of the debtor's objection against the assigned claim (paragraph 2, section 390, Civil Code).

Parties are free to agree to additional requirements for assignment of the relevant claims (paragraph 2, section 390, Civil Code).

Failure to comply with the written form of assignment does not invalidate the assignment as such, but does not allow parties, in case of dispute, to rely on witness evidence. In case of failure to meet the additional requirements listed in the previous paragraph the assignee has the right to claim from the assignor everything that has been transferred under the assignment agreement, as well as the right to claim the corresponding damages (paragraph 3, section 390, Civil Code).

The borrower does not have to be informed about the assignment (section 385, Civil Code). The assignor does not require the debtor's consent to perform the assignment, unless the obligation to obtain such consent is provided for by the relevant agreement (paragraph 2, section 382, Civil Code). However, the debtor's consent is mandatory when it is substantially significant to the debtor that a particular person acts as the creditor (paragraph 2, section 388, Civil Code).

30 Will the securitisation be subject to risk retention requirements?

Russian law does not contain bespoke rules governing securitisation transactions and corresponding risk retention requirements.

31 Would a special purpose company for purchasing and securitising peer-to-peer or marketplace loans be subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

Yes. Foreign operators of personal data that engage in activities directed at the territory of Russia are required, in the process of gathering personal data of Russian nationals, to ensure that the recording, systematisation, accumulation, storage, adjustment (updating, amending, etc) and extraction of such data is carried out through databases located in Russia, with certain exemptions (paragraph 5, section 18, Federal Law on Personal Data). In addition, all operators of personal data must comply with the confidentiality obligations in respect of personal data (section 7, Federal Law on Personal Data).

Intellectual property rights

32 Which intellectual property rights are available to protect software, and how do you obtain those rights?

Software, including source and object code, as well as user interface generated by the software, is generally protected on the same terms as literary works; however, a number of differences do exist.

For instance, while both software and other literary works are protected from their creation without the need to comply with any formalities, software developers enjoy the option of discretionary state registration of their creation, unless the product in question contains a state secret. Any transfer of IP rights in registered software is subject to registration with Russia's IP office, Rospatent (section 1262, Civil Code). Software can be licensed under a simplified licence, essentially a standard form contract (contract of adhesion), which are by default treated as free-of-charge licences (paragraph 5, section 1286, Civil Code).

Among the limitations that apply to software as compared with other literary works are the absence of the right of withdrawal (paragraph 2, section 1269, Civil Code) and, in case of an open licence, a different default licence term: the entire term of copyright protection as opposed to five years for other literary works (paragraph 3, section 1286.1, Civil Code).

One other difference that is particularly worth mentioning is that software licensees enjoy the statutory rights of decompilation and back-engineering of the software, though these are limited in scope (paragraphs 2–3, section 1280, Civil Code).

33 Is patent protection available for software-implemented inventions or business methods?

Both software and business methods are specifically excluded from the definition of 'invention'. However, if the software is not in itself the main object of a patent, it can be patented as part of an invention or utility model (paragraph 5, section 1350 and paragraph 5, section 1351, Civil Code). Rospatent has complex guidance in place for determining whether a piece of software is patentable, and each case should be considered on its own merits.

34 Who owns new intellectual property developed by an employee during the course of employment?

The default rule is that the employer owns new intellectual property developed by an employee during the course of employment, provided that the creation of intellectual property falls within the ambit of the employee's duties and there is no agreement to the contrary. If, within three years, the employer makes no use of the intellectual property, does not transfer the right in the intellectual property or does not notify the author that the intellectual property is to be kept secret, the title reverts to the employee (section 1295, Civil Code).

In case of patentable inventions, the term during which the employer is expected to apply for a patent, transfer the right to apply for a patent or notify the inventor that the invention will be kept in secret, is four months. After four months, the right to apply for a patent reverts to the employee (paragraph 4, section 1370, Civil Code).

35 Do the same rules apply to new intellectual property developed by contractors or consultants? If not, who owns such intellectual property rights?

For software commissioned before 1 October 2014, the default rule was that the title in the software vested in the client.

The current default rule, unless the parties have agreed otherwise, is that whenever a third party is commissioned specifically to create a piece of intellectual property (including, but not limited to, software), the right in that property only vests in the client provided that the contractor or consultant is not him or herself the author of the work (section 1296, Civil Code). If an individual author is engaged directly, the agreement has to specify who owns the intellectual property (section 1288, Civil Code).

The default rule applicable to contracts where the software is not the primary object but merely a by-product of the commission is that the right in such intellectual property vests in the contractor (section 1297, Civil Code).

36 Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

Unless the joint owners have agreed otherwise, every joint owner enjoys the freedom to use intellectual property, however, any disposition of the same (including licence, charge or assignment) must be consented to by all of the joint owners.

37 How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

Two main concepts are applied in the protection of sensitive information: trade secrets and know-how. These are closely intertwined and often appear indistinguishable.

'Trade secret' is the name of a confidentiality regime comprising a set of measures that a business can implement to protect qualifying sensitive information. To make use of the regime, the owner of a trade secret must keep a register of information under the trade secrets regime, regulate the access to and handling of such information by its employees and agents, and add an inscription in prescribed form onto information carriers containing qualifying sensitive information (paragraph 1, section 10, Federal Law on Trade Secrets).

Under the law, certain information does not qualify for trade secret protection. In order to qualify, the information must have an actual or potential commercial value by virtue of not being known to third parties (qualifying information) (paragraph 1, section 1, Federal Law on Trade Secrets). Qualifying information in respect of which the trade secret regime has been implemented is almost a verbatim definition of know-how.

Know-how is a term used by Russian intellectual property legislation and is granted protection as intellectual property, with rules applicable to employee-created intellectual property extending to it with minor exceptions (section 1465, Civil Code).

The protection lasts for as long as the information remains confidential, during which time know-how is capable of being licensed and alienated. Unlawful access to and use of information under the trade secrets regime and know-how may result in liability for civil damages, as well as administrative and criminal liability.

During court proceedings, a party may petition the court to have a closed hearing instead of a public one on the grounds of confidentiality

of subject matter of the case (paragraph 2, section 11, Commercial Procedure Code; and paragraph 2, section 10, Civil Procedure Code).

38 What intellectual property rights are available to protect branding and how do you obtain those rights?

Branding can be protected via various routes, the most common being trademark (service mark) registration. Logos and other forms of corporate identity – provided they satisfy the creativity requirement – can also be protected as images (ie, by copyright).

Russian law extends legal protection to company names. While trademarks are subject to a separate registration, a right in a company names arises once the company is registered with authorities at creation (section 1475, Civil Code). There have been disputes where a company was able to bring – and win – cybersquatting cases based on its entitlement to the company name alone.

Russia also recognises trade names as a separate intellectual property object. Trade names serve to identify enterprises (such as hotels, retail chains and business centres), as opposed to goods or services (section 1538, Civil Code). To qualify for legal protection, a trade name must be known to the public in the respective geographic area. Unlike trademarks, trade names are not registrable and cease to be protected after a year of disuse (paragraph 2, section 1540, Civil Code).

39 How can new businesses ensure they do not infringe existing brands?

There are various authoritative databases that can be searched prior to settling on a brand – most importantly, the trademark database maintained by Rospatent and the company register maintained by Russia's Tax Service.

A number of private agencies offer voluntary copyright registration and their databases may prove useful in case of a dispute.

40 What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Russian legislation offers a range of civil remedies, such as an injunction preventing further use of the piece of intellectual property in question (for infringements on the internet, disabling of access to the website), damages, compensation and the right to challenge the legal protection of a trademark, company or trade name.

Depending on the extent of damages and on whether the act of infringement is, at the same time, that of unfair competition, administrative and criminal penalties are also available.

Copyright infringement in itself can attract criminal penalties too, provided the damage caused by it meets the legislative threshold. In practice, criminal prosecution of copyright infringement occurring online is virtually non-existent. There is no corporate criminal liability in Russia.

41 Are there any legal or regulatory rules or guidelines surrounding the use of open-source software in the financial services industry?

No specific regulatory guidance has been issued to date.

Data protection

42 What are the general legal or regulatory requirements relating to the use or processing of personal data?

The umbrella term for the collection, storage, editing and transferring of personal data is 'processing'. The processing of personal data is permitted in limited number of circumstances, most relevantly when the data subjects' consent has been acquired or when the processing is necessary for the purposes of performing an agreement entered into by the data subject. In any case, the scope of data being processed must be proportionate to the objective of the use (section 6, Federal Law on Personal Data). Entities that collect and make use of personal data must have and make publicly available, a personal data protection policy, and they may have to notify Russia's personal data watchdog, Roskomnadzor, of their intention to collect and use personal data in advance (section 22, Federal Law on Personal Data).

The law outlines personal data security measures to be adopted internally by entities processing personal data, such as the appointment of a personal data officer and restriction of access to the data.

Personal data of Russian citizens must be recorded, systematised, accumulated, stored and altered using databases located in Russia (paragraph 5, section 18, Federal Law on Personal Data).

43 Are there legal requirements or regulatory guidance relating to personal data specifically aimed at fintech companies?

While there is no regulatory guidance issued specifically for fintech companies, there are regulations directly applicable to the field.

Namely, Government Regulation No. 1119, dated 1 November 2012, On the Approval of the Requirements Applicable to the Protection of Personal Data Processed in Information Systems lists data security requirements applicable to the digitalised processing of personal data depending on the level of threat to the safety of the data. Further to this Regulation, in December 2015, the Bank of Russia issued a decree detailing relevant types of threats.

If personal data is being collected via the internet, the personal data protection policy must be available online.

Starting 30 June 2018, qualifying banks will be including the personal data of clients that have undergone in-person identification in Russia's Unified Authentication and Identification and Unified Biometric Data systems. This will require the data subject's consent, and the government of Russia is yet to prescribe the form of such consent along with other auxiliary regulations relating to the matter.

44 What legal requirements or regulatory guidance exists in respect of anonymisation and aggregation of personal data for commercial gain?

Russian law permits the processing (including aggregation) of personal data for statistic and research purposes, provided that the data is anonymised.

Roskomnadzor has issued guidance on the subject of personal data anonymisation. The guidance requires that the anonymised data be complete, structured, semantically coherent and matching the requisite level of anonymity (such as k-anonymity). There are also requirements applicable to the method of anonymisation: it must be reversible, capable of securing the requisite level of anonymity and show increased resistance to interference as the amount of data increases.

When personal data is collected for direct marketing purposes (ie, when data subjects are to be contacted about goods and services), the data subject's consent is essential for aggregation and further use of the data (section 15, Federal Law on Personal Data).

Outsourcing, cloud computing and the internet of things

45 Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

There exists a recommended standard, as approved by the Bank of Russia on 6 March 2018, on information security risk management for the purposes of outsourcing. The guidance comes into force on 1 July 2018.

46 How common is the use of cloud computing among financial services companies in your jurisdiction?

Fairly common. The share of cloud services among financial services providers is substantial and increasing. The research conducted by SAP and Forrester Russia suggests that nearly 50 per cent of the business currently relies on a combination of IaaS and SaaS solutions, and this share is expected to increase.

47 Are there specific legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

There are no specific legal requirements or regulatory guidance in this respect. The absence of explicit prohibition implies that the use of cloud services is possible provided the general personal data and information security regulations have been complied with, along with industry-specific rules such as the Rules on Information Security of Payment Systems, as enacted by the Decree by the Government of the Russian Federation dated 13 June 2012 No. 584 and the Rules on the Creation, Maintenance and Storage of Electronic Databases, as enacted by the Bank of Russia on 21 February 2013.

Update and trends

The three bills to watch are the bill On Attracting Investments Using Investment Platforms; the bill On Digital Financial Assets, and the bill Amending Parts 1, 2 and 4 of the Civil Code of Russia. Together the three bills aim to introduce the concept of digital asset ownership to Russian laws, regulate crowdfunding, digital coin offerings and crypto mining. All three bills have cleared the first reading in the lower chamber of the Russian parliament; however, it is expected that the texts will change before the bills become law.

48 Are there specific legal requirements or regulatory guidance with respect to the internet of things?

There are no specific legal requirements or regulatory guidance in this respect.

Tax

49 Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

The are no specific tax incentives for fintech companies in Russia; however, Russian law provides for a range of preferential tax regimes for investors and residents of special economic zones (SEZs).

Regional tax incentives are typically provided in the form of reduction in regional component of profits tax (the maximum reduction is 4.5 per cent; profit tax rate may be reduced to zero in some regions) and property tax reduction or exemption. In some regions, transportation and land tax reductions or exemptions are also available. To qualify for the incentives, the investment project should incorporate the regional business priorities and minimum investment amount determined by regional law. In some regions, the approval process requires the conclusion of the 'investment agreement' with the regional authorities, while in other regions, tax incentives are provided on a declarative basis with no pre-approval.

All currently established SEZs fall into one of four categories: manufacturing; technology and innovation; tourism and recreation; and port and logistics. If the activities of fintech companies qualify as technology and innovation, such companies may potentially benefit from SEZ tax incentives. Only Russian legal entities incorporated within an SEZ with no external branches or representative offices may apply for SEZ resident status. The law may provide for a minimum amount of investment depending on the category of SEZ.

The following tax benefits apply for a technology and innovation SEZ:

- the profit tax rate payable to the federal budget is 3 per cent in 2018;
- a progressive reduced rate of tax payable to the regional budget may be applied;
- property tax exemption for 10 years and land tax exemption for five years;
- 'free customs zone';
- reduced regressive social contributions rates still apply, the applicable rate in 2018 is 21 per cent and 28 per cent in 2019; and
- accelerated depreciation and VAT exemptions are not available for this type of SEZ.

Research and development (R&D) tax incentives are available for companies from various industries conducting eligible R&D activities included in a government-approved list. Such activities must relate to the development of new products, the improvement of production processes and the development of new services. Companies conducting eligible R&D activities can apply for a 150 per cent super deduction of qualifying costs (eg, labour costs, depreciation of equipment and other costs, subject to certain limitations). Certain tax benefits are available to Russian companies that are residents of the Skolkovo Innovation Centre. Generally, a Russian company can become a Skolkovo resident if it conducts qualifying R&D and innovation activities, and complies with certain other requirements. The main tax benefits are: profits tax exemption for 10 years; social insurance contributions at a reduced rate of 14 per cent on annual remuneration of up to 1,021,000 roubles and exemption for remuneration exceeding that cap; and a VAT exemption. Skolkovo-targeted industries are energy-efficient technologies, nuclear technologies, space technologies and telecommunications, biomedical technologies and information technologies.

Russian law also provides a special tax regime for companies located in the Far East and Siberia (territories of advanced social and economic growth (TASEG)). TASEG residents are eligible for:

- reduced profits tax rate 0 to 5 per cent for the first five years and 12 to 20 per cent for the next five years (depending on region);
- reduced mineral extraction tax for 10 years (not applicable to fintech companies but mentioned for the purpose of completeness);
- reduced regressive social insurance contributions rate for 10 years (7.6 per cent on annual remuneration up to 815,000 roubles, 6.1 per cent on annual remuneration between 815,000 roubles and 1,021,000 roubles, and 0.1 per cent on annual remuneration exceeding 1,021,000 roubles); and
- regions may additionally provide property and land tax exemptions.

However, all the already established TASEGs have production, mineral extraction, tourism, logistics or agricultural specialisation and cannot be used by fintech companies. As of 1 January 2018, TASEGs can be established in all regions across Russia.

Competition

50 Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction or that may become an issue in future?

There is no specific fintech-related competition legislation in Russia; however, certain provisions of the Federal Law on the Protection of Competition listed below might be particularly relevant for fintech businesses.

Agreements with competitors to fix or maintain a certain price on goods or services are generally prohibited. Other agreements, including joint venture agreements with competitors, are also prohibited if they limit or may limit the competition. Whether or not there is (or may occur) a limitation of competition will be determined by the regulator (the Federal Antimonopoly Service) on the basis of a comprehensive analysis of the current market situation for the relevant goods or services.

Certain joint venture agreements operating in Russia can only be entered into after prior approval by the regulator (the Federal Antimonopoly Service). Such approval is necessary if (i) the combined asset value of parties to such agreements (or their respective groups) exceeds 7 billion roubles; or (ii) the total income received from the sale of goods or services by parties to such agreements (or their respective groups) over the preceding calendar year (ie, the year immediately preceding the year in which the relevant agreement is concluded) exceeds 10 billion roubles.

Prospective parties may submit to the Federal Antimonopoly Service a draft of the future agreement for the purposes of verifying compliance with the competition legislation. Following the review of each submitted draft agreement, the regulator prepares an opinion stating whether or not the relevant draft complies with the competition rules. A positive opinion is valid for one calendar year.

In addition, certain transactions involving shares, units and rights in Russian commercial organisations exceeding statutory thresholds can only be entered into with prior approval of the Federal Antimonopoly Service.

Financial crime

51 Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

While there is no specific anti-bribery law for fintech companies, they are subject to the general rules of combating bribery and money laundering pursuant to the Federal Law on Countering Corruption and respective secondary legislation. For instance, all companies have to implement internal counter-bribery measures of their choice.

Companies processing financial transactions face a long list of requirements under the Federal Law on Countering, the Legalisation of Illegal Earnings and respective secondary legislation. Among other things, they must:

- implement internal anti-money laundering measures and keep records of suspicious transactions;

- identify the client and the client's beneficial owner and keep this information up to date;
- notify the regulator of any transactions triggering compulsory control requirement;
- freeze the assets of a client on an official extremist or terrorist watch list; and
- share records with the authorities on demand.

ICOs and digital currency exchanges are expected to be expressly regulated towards the end of the year: the bill On Digital Financial Assets is currently being deliberated in the lower chamber of the Russian parliament. The exact scope of the future regulation and exact rules are to be confirmed.

52 Is there regulatory or industry anti-financial crime guidance for fintech companies?

There is no specific anti-financial crime guidance for fintech companies; however, the Bank of Russia has issued various pieces of industry-specific guidance for financial companies.

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