Chapter 1 provides an overview of the Russian legal system. This chapter explains the hierarchy and sources of Russian laws and describes the Russian court system, including the Arbitrazh (commercial) courts, the courts of general jurisdiction and the Constitutional Court.

1 Overview of Legal System

Introduction

The Russian legal system functions as one of the pillars of the Russian Federation1 ("RF," "РФ," or "Russia"), facilitating modernization of the country and promoting and developing a market economy for the past 20 years. In this brief period of time, there has been steady progress in drafting and implementing laws and regulations, as well as in developing “legal positions” or judicial interpretations (akin to precedents), which provide the foundation for the stability and reliability of the Russian judicial and legal systems.

Fundamental to the Russian legal system are the universal due process principles, which are embedded in the core of Russian jurisprudence. The Constitution of the

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1. Russian Federation: in Russian, Российская Федерация; transliteration, Rossiyskaya Federatsiya, also referred to in this Chapter as the “RF,” “РФ,” or “Russia.”
Russian Federation (the “Constitution”), along with various other legislative acts, provides for principles of democracy, due process, the rule of law, transparency, the recognition of universal human rights and freedoms, the rejection of retroactive (ex post facto) laws, legal equality, freedom of contract, and the separation of powers.

**Historical Context**

The legal system of the Russian Federation is a product of the economic and political reforms enacted after the dissolution of the Soviet Union ("CCCP" and "USSR") in 1991. In general, the Russian legal system is a continental legal system based upon civil law, as provided in the Russian Civil Code (the “Civil Code,” “ГК РФ” or “ГК РФ”). In this manner, the Russian legal system is similar to the European civil law tradition. However, Russia also has other civil law approaches and has been influenced by other jurisdictions with regards to certain areas of law. For example, the Russian securities law was significantly influenced by the United States of America model, while the bankruptcy law was based on German statutory law. A number of Russian statutory laws and legal instruments that regulate economic relations are derived from modern analogues in other countries using comparative-jurisprudence methods.

Because many of the Russian legislative acts were promulgated quite recently, they are subject to ongoing review and revision. For example, the statutes regulating joint stock companies, limited liability companies, and the state registration of legal entities were revised as recently as 2016.

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4. Russia is a federation comprised of 22 Republics (respublika), nine Territories (krai), 46 Regions (oblast’), three federal cities (Moscow, St. Petersburg, and Sevastopol), one Autonomous Region (avtonomnaya oblast’), and four Autonomous Circuits (avtonomnii okrug)—a total of eighty-five identifiable units which are commonly referred to as Subjects or as Constituent Entities of the Russian Federation.

5. Russian Civil Code: in Russian, Гражданский кодекс Российской Федерации; transliteration, Grazhdanskij kodeks Rossijskoi Federatsii RF ("ГК РФ").


Hierarchy of Laws

The Constitution is the supreme law of the land and has the highest legal force. Even though federal constitutional laws, federal laws, presidential decrees, government acts, and executive legislation by ministries, state agencies, and other federal bodies regulate principal matters of societal life, they must not contravene the Constitution.

In addition to the Constitution and the decrees, acts, and ministerial legislation, there are generally recognized principles and norms of international law, customary international law, and international treaties of Russia that are an integral part of the Russian legal system, although they also must conform to the Constitution. However, with regard to an international treaty of Russia that establishes rules different from those embedded in Russian federal law, the rules of the international treaty will apply and take precedence over the Russian federal law (though not the Constitution).

As a result, an entity must consider a wide range of regulations that may affect a particular transaction or activity, including laws implemented on a federal, regional, or even ministerial level.

Sources of Law

The Russian legal system follows the civil law system rather than the common law system; therefore, statutory law is generally more important than judicial precedents. However, a gradual convergence has been observed over time and precedents are given increasingly more weight. Currently, judicial precedent is becoming an increasingly important source of jurisprudence along with the more usual legislative sources.

Judgments of the Constitutional Court of the Russian Federation (the “Constitutional Court”) have direct effect in Russia. Additionally, judgments of the European Court of Human Rights (the “ECHR”) have direct effect in Russia. However, according to federal constitutional law, the Constitutional Court has authority...
to annul enforcement of ECHR decisions that contradict the basic principles of the Constitution.15

When the Supreme Court of the Russian Federation16 (the “Supreme Court”) issues a ruling providing an official legal interpretation, the Supreme Court’s ruling is binding on lower courts. Two types of rulings of official legal interpretation by the Supreme Court of Russia are a Ruling of the Plenum17 and a Ruling of the Presidium18. Where a Ruling of the Plenum of the Supreme Court is issued, all courts must base their judgments on that interpretation of law. A Ruling of the Presidium effectively creates a precedent.19 Previously, legal interpretations issued by the Supreme Arbitrazh (Commercial) Court of the Russian Federation20 (the “Supreme Arbitrazh Court”) provided in those types of acts had the same effect. However, in 2014, the Supreme Arbitrazh Court was abolished and its functions were transferred to the Supreme Court.21

Civil Code

The Civil Code consists of four parts that were drafted and implemented over a period of time. The Civil Code will prevail over even subsequent federal laws with respect to private law regulations. Generally, the Civil Code may not be amended by subordinate legislation; the proper route is the introduction of new provisions in the Civil

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15. Articles 104.1-104.4 of Federal’nii konstitucionnii zakon ot 21 iulia 1994 g. N 1-FKZ “O Konstitutsionnom Sude Rossiiskoi Federatsii” (v red. ot 28 dekabrya 2016 g.)
17. The Plenum is a special board of judges that issues opinions on a particular point of law. (Plenum: in Russian, Постановления Пленума; transliteration, Postanovleniya Plenuma.)
18. The Presidium is a special board of judges that reconsider the decisions of subordinate courts and decisions of the Presidium’s constituent court in a supervisory review (nadzor) procedure. (Presidium: in Russian, Постановления Президиума Верховного Суда; translation, Postanovleniya Prezidiuma Verkhovnogo Suda.)
20. Supreme Arbitrazh (Commercial) Court of the Russian Federation: in Russian, Высший Арбитражный суд Российской Федерации; transliteration, Visshij Arbitrazhnyj Sud Rossijskoi Federatsii or Visshij Arbitrazhnyj Sud RF.
The Civil Code regulates almost all private law matters with notable exceptions of domestic relations law, housing law, and transportation law, which are governed by separate codes.

Part 1 of the Civil Code came into effect on January 1, 1995; Part 2 on March 1, 1996; Part 3 on March 1, 2002; and Part 4 on January 1, 2008. These parts have been subject to multiple revisions and amendments, including significant changes that were made in 2012–2015.

The provisions of Parts 1 and 2 of the Civil Code provide regulatory framework for any private transaction in Russia. Part 1 provides regulations for matters relating to property law (ownership and transfer of property), the law governing corporations (definition of entrepreneurial activities, establishment of legal entities, etc.), the general rules and principles of contract law (elements of a contract, rules for entering into a contract, termination, enforcement, etc.) and definitions of fundamental concepts contained in Russian civil law (such as contract, power of attorney, transaction, etc.).

Part 2 of the Civil Code describes specific types of contracts, such as leases, franchise agreements, loan agreements, sale and purchase contracts, etc. Non-contractual obligations, such as product liability, obligations arising on account of unjust enrichment, and unilateral contracts, are also covered in Part 2.

Part 3 of the Civil Code deals, inter alia, with matters of succession, wills and inheritance, and private international law, and it contains conflict of law rules. Part 3 of the Civil Code also regulates transactions involving a foreign element, foreign citizen, or foreign legal entity. The parties to a transaction with a foreign element are free to apply foreign law to govern their transaction, unless the choice of foreign law contravenes the public order for Russia or the imperative norms imposed by Russian law. The default choice of law rules dictate that a transaction be governed by the law of the jurisdiction to which it most closely relates.

Part 4 of the Civil Code is dedicated to intellectual property rights.

**Analogia Legis and Analogia Juris**

If there is no civil law legislative act or executive regulation for regulating a specific relationship that arises in the course of a private law matter, courts are directed to apply the rule that governs a similar relationship (analogia legis). In the absence of

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22. For example, the President issued Ukaz Prezidenta Rossiiskoi Federatsii ot 18 iyulya 2008 g. N 1108 “O sovershenstvovanii Grazhdanskogo kodeksa Rossiiskoi Federatsii” // Sobranie zakonodatel’stva Rossiiskoi Federatsii. 2008. N 29. st. 3482 to ensure that the Civil Code is kept up to date on matters concerning the domestic economy and international trade.

23. P. 4 st. 1 Grazhdanskii protsessual’nii kodeks RF (GPK RF). For example, there is no definition of shared property applicable to gated communities (infrastructure, common roadways, fences, etc.). The meaning of the term is derived from legislation applicable to houses (elevators, stairs, communal areas, etc.).