



C L I F F O R D  
C H A N C E

Russia Update: Legal and  
market developments in Russia  
Winter / Spring Issue 2013

The **Russia Update** is a periodic publication of Clifford Chance Moscow which aims to summarise significant legal and market news relating to the Russian Federation which have taken place during the relevant period. You can access our key client briefings, alerters and other recent publications from the electronic version of this publication.

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# Russia Update: Legal and market developments in Russia

Winter / Spring 2013



## Macro Updates

### **Inaugural National Oil and Gas Forum and new Russia China agreements**

On 20-22 March 2013, Russia hosted the inaugural National Oil and Gas Forum organised by the Russian Ministry of Energy in cooperation with Russian oil and energy majors. Representatives of the Ministry stressed that the dialogue between the government authorities and business is a positive example of a private public partnership.

On 22 March, the Russian Ministry of Energy and the State Energy Committee of China signed an agreement on cooperation in respect of oil exploration, extraction and trading. State owned petrochemical majors from both countries signed a number of agreements setting

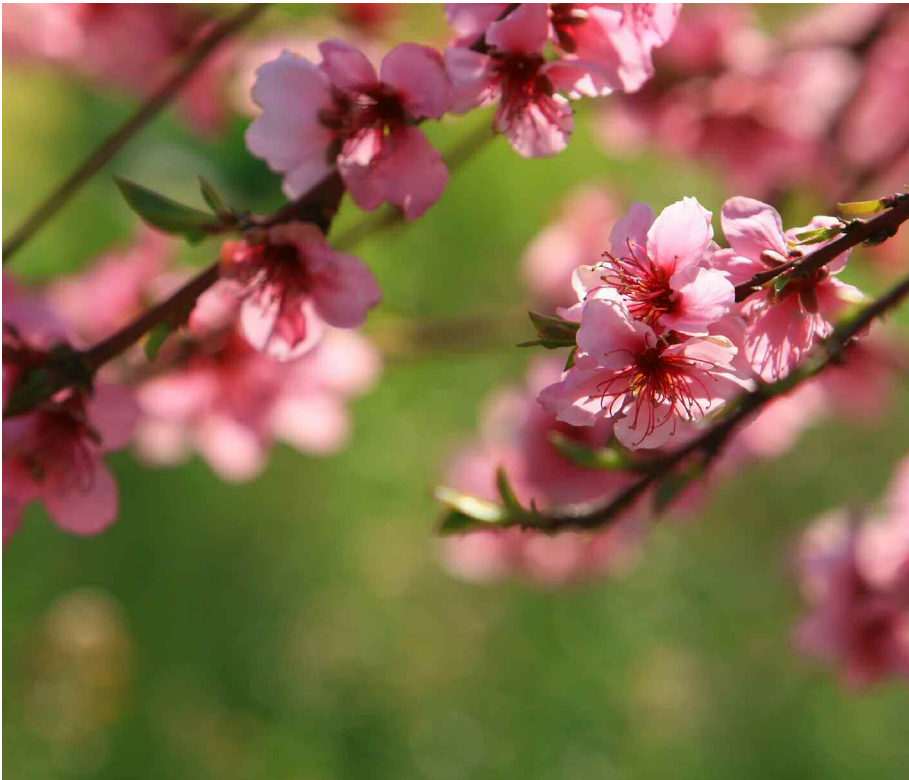
out detailed terms of future cooperation. Rosneft will also annually supply over 9 million tonnes of crude oil to the petrochemical plant in Tientsin operated by Vostok-Neftekhimiya (the China Russia Eastern Petrochemical Company), a JV established by Rosneft (49%) and CNPC, the state owned Chinese petrochemical major. Rosneft further signed a cooperation protocol with Sinopec, the Chinese petrochemical corporation, with respect to exploration and extraction of hydrocarbons, petrochemicals, processing LPG and supplies of Russian crude oil and oil products to China. In addition, Rosneft will also borrow \$2 billion from China Development Bank Corp. as part of a new arrangement expected to be signed by the companies in the near future.

### **Prime Minister suggests considering creation of a national offshore zone**

In light of the anxiety caused by Cyprus' closely escaped sovereign default, Prime Minister Dmitry Medvedev suggested at a government's meeting in March 2013 that a new offshore zone be created in Russia's Far East. No further details have since been provided.

### **Russia's exit from Kyoto Protocol**

Along with Canada and Japan, Russia has opted out of the second phase of the Kyoto Protocol which started on 1 January 2013. Parties to the Kyoto Protocol discussed the future of emission targets at a conference held in Doha, Qatar, in December 2012. Out of nearly 200 countries which participated in the



discussion and in the first commitment period, only 37, including Australia, Belarus and members of the European Union, supported the new agreement which provides for further reduction of emission targets in the second commitment period (2013 to 2020) from 5% to at least 18% of the 1990 emission levels.

#### **World Bank lowers forecast for Russia's GDP**

The World Bank has downgraded its forecast for Russia's GDP growth in 2013 from 3.6% to 3.3% in its latest report 'Russian Economic Report: Recovery and Beyond'.

#### **Former Minister for Economic Development to head Russian Central Bank**

In March 2013, President Vladimir Putin nominated Elvira Nabiullina as a

candidate to become the chairman of the Central Bank of Russia ("CBR"). In April, the candidacy of Mrs Nabiullina was approved by the State Duma in accordance with the Russian Constitution. She will officially take over the position after appointment of the current CBR head Sergey Ignatiev expires on 24 June 2013.

#### **CBR keeps refinancing rate unchanged**

In March 2013, the CBR confirmed the refinancing rate at 8.25%. After an increase by 0.25% in September 2012, the current decision was made on the basis of CBR's evaluation of inflation risks and economic growth prospects.

#### **Update on privatisation plans**

According to Andrey Belousov, Russian Minister for Economic Development, the

majority of Russian privatisation deals scheduled for 2013 are currently expected to happen in the second half of the year, which should allow the state to increase its commercial gain. Mr Belousov stressed the importance of using domestic stock exchanges as part of the privatisation programme to promote domestic capital markets.

#### **Russia participates in BRICS summit**

Establishment of the BRICS bank was among the top items on the agenda of the fifth BRICS summit held in Durban, South Africa, in March 2013. Leaders of the BRICS countries agreed in principle that a new infrastructure-oriented development institution needed to be set up and be funded by the five participating countries. Particular terms would need to be further discussed by representatives of all BRICS countries.

## **Legal and Regulatory Update**

### **General**

#### **Update on Civil Code**

As reported in our previous issues, the Civil Code is undergoing extensive amendments. After a number of postponements of the hearings in the Parliament, it was decided in November 2012 that the large set of amendments that passed the first hearing in the State Duma in April 2012 be split into several drafts of smaller sizes. The official rationale was that this would facilitate the Duma's review process.

To date, two of such smaller drafts have been signed into law (which occurred at the end of December 2012 and end of April 2013, accordingly). The first one concerns general civil law provisions, legal status of individuals and status of

private (peasant) farms – it entered into force on 1 March 2013. In addition, texts of three further ‘smaller’ drafts have been published, these relate to other general provisions of the civil law, namely:

- general provisions regarding types and main features of legal entities;
- provisions relating to types of objects of civil law rights; and
- provisions regarding transactions, invalidity of transactions, conditional transactions and options, powers of attorney, and limitation periods.

The second set of amendments addresses, among others, general rules on transactions (including conceptual review of grounds for setting them aside and respective consequences), statutory limitation periods for challenging transactions and rules on powers of attorney. Subject to ratification by the Federation Council and signing by the President, these amendments are to become effective on 1 September.

One of the major changes relates to introduction of the concept of a bad faith counterparty whose ability to invalidate the transaction may be restricted and by amplifying the grounds for challenging transactions. The background of this and some other changes was the court practice which has been developing the basic principles of the Civil Code ever since their original adoption in mid-1990s.

Some other of these smaller draft laws are currently scheduled for hearings in the State Duma for spring 2013, although a few postponements have already occurred. Our client briefing relating to the second set of amendments will provide further details (‘Russian Civil Code: Spring Rolls’).

#### Update on insolvency databases

As at the date of this update, updates on bankruptcy proceedings of Russian legal

entities continue to be published in the Saturday issues of the business daily *Kommersant*. However, a new governmental decree appointing *Rossiyskaya Gazeta* an official printing source for such notices is expected to be issued shortly. We reported in our previous issue that *Kommersant*’s contract expired on 2 August 2012. *Rossiyskaya Gazeta* was pronounced winner of the tender arranged by the Ministry for Economic Development for a new 4-year term of publications, despite ongoing litigation claims filed by *Kommersant* and other participants of the state tender seeking to challenge appointment of *Rossiyskaya Gazeta*.

### Corporate

#### HAC practices: Offshore companies in Russian courts

In certain circumstances Russian courts may refuse to grant protection for legal entities registered in offshore jurisdictions. On 9 January 2013, the High Arbitrazh Court of Russia (the ‘HAC’) refused to grant protection to a legal entity registered in the Commonwealth of Dominica. The argument of VAS was that non-disclosure of the company’s beneficiaries might be used to abuse rights of the company and therefore prevent the court from rendering a fair decision in the case. The HAC issued a similar decision recently but the legal rationale has not been published yet.

### Real Estate

#### New pieces of real estate regulation in force from 1 January 2013

The following amendments to Russian real estate regulations entered into force effective 1 January 2013:

- Liability for failure to convert the right of permanent use of a land plot to lease or ownership

With the enactment of the Russian Land Code back in 2001, legal entities holding permanent use right

to state owned land were required to convert the title into either lease or ownership. To incentivise the conversion process, a restriction has been introduced on use of land held on the permanent use title prohibiting disposal of such land title until it is converted. With the statutory deadline for conversion expiring in July 2012, those in breach may now be subjected to administrative fines of RUB 20,000 to 100,000 (approx. EUR 500 – 2,500).

- Town Planning Code clarified on property management issues and certain liability aspects

Amendments state clearly that the duty to ensure safe operation of buildings and other structures rests with the building owner, the tenant (or a person possessing the building on other grounds) or the entity providing property management services. The parties may now decide at their own discretion which of them shall bear the liability, failing which the owner will bear the liability. Failure to comply with the technical regulations and design documentation may lead to suspension of use of the building.

#### Roadmap for reforms of cadastral record-keeping and property rights registration approved

The roadmap is part of the initiative to improve the investment climate in Russia announced in 2012 and aimed at reducing red tape and streamlining existing procedures. The new roadmap focuses on the state system for formalising property rights. The steps proposed for gradual launch during 2014-2018 include (i) merger of the currently separate systems of cadastral record-keeping and registers of property rights; (ii) reduction of time required to formalise property rights to 5-7 days by 2018; and (iii) a range of measures to make the information in the register more comprehensive (including information on property transaction prices, protection zones, etc.).

### **New law on expropriation of land plots to facilitate development of the 'New Moscow' area**

Both chambers of the Russian Parliament, the State Duma and the Counsel of Federation, have adopted the draft law simplifying paid expropriation of land plots located within the territory of so-called 'New Moscow'.

As reported in our previous issue, a large area south-west of Moscow was annexed to the city of Moscow effective 1 July 2012, which resulted in an expansion of Moscow's territory by nearly 2.5 times. The new law is expected to speed up paid expropriation of land plots in the 'New Moscow' area to facilitate the large-scale infrastructure development planned for the annexed territories and provides *inter alia* that the land withdrawal procedure be reduced from one year to up to one/three months.

## **Regulatory**

### **Introduction of Basel III**

On 1 March 2013, a directive of the Central Bank of Russia implementing Basel III principles with respect to composition and assessment of sufficiency of bank regulatory capital ("**Basel III Directive**") entered into force in Russia.

During the test period, which is expected to last from April 2013 until tentatively 1 October 2013, banks will need to calculate their capital and assess capital adequacy in accordance with the new methodology set out in the Basel III Directive and report to the CBR on the basis of the new standards. The purpose of the test mode is for the CBR to assess whether the Russian banking system is prepared for a fully-fledged introduction of the Basel III Directive. At the same time, some of the changes envisaged by the Basel III Directive, such as treatment of subordinated debt, are likely to have immediate effect.

Our client briefing on this matter should become available soon. We will continue monitoring further developments.

### **Government approves roadmap for simplifying registration procedures**

The Russian Government has approved the roadmap for simplifying the cumbersome procedure for registering new companies in Russia. The steps suggested by the roadmap include, among others, decreasing the period of time required to register an entity from 30 to 5 business days, decreasing incidental costs, limiting the number of registration steps and allowing use of online registration procedures. The Government's resolution dated 7 March 2013 suggests that the relevant changes will be introduced between 2013 and 2018.

### **Regulatory consent for acquisition of a Russian bank**

The Federal Law "On Banks and Banking Activities" was amended effective 2 January 2013 to extend prior CBR clearance requirements to indirect acquisition of a Russian bank, i.e. acquisition of control over a bank's shareholder holding more than 20% of the bank's shares.

In addition, the amendments make it possible to apply for CBR's post-closing clearance in the event that shares are acquired through a public offering. Another important change is that if the clearance procedure was not complied with at the time of the acquisition the errors can be cured through a post-acquisition clearance. Disposal of shares that were acquired without CBR's consent will also cure the issue provided that proper clearance is obtained by new purchases.

### **Procurement Law Update**

Effective 30 December 2012, Federal Law "On Procurement of Goods, Works and Services by Certain Types of Legal

Entities" (the "**Procurement Law**") was amended to exempt certain natural monopolies and utility companies from the scope of the Procurement Law. Exemption covers entities and certain of their subsidiaries (i) which are more than 50% owned by the State and (ii) where not more than 10% of their revenue for the previous calendar year is derived from activities that represent natural monopoly or utility services. See '*Russian Law Focus*' for more on Procurement Law.

### **New Sanctions for Currency Control Violations**

Despite the trend of loosening currency control restrictions in the past years, respective provisions of the Code on Administrative Offences regarding unlawful currency control transactions were tightened effective 13 February 2013. The amendments did not introduce any additional restrictions but are aimed at tackling loopholes in the regulation that allowed sanctions to be avoided for violation of currency control legislation. For instance, sanctions cover crediting offshore accounts of Russian residents for currency control purposes in cases not directly permitted by currency control regulations. The new sanctions became of particular concern for international financial institutions and other multinationals. In certain cases, the amounts of the fines may reach the full amount transferred if such transfer constitutes a violation of currency control rules.

### **Tightening of anti money laundering regulation**

With effect from 1 January 2013, Russian anti-corruption law requires companies operating in Russia to implement anti-corruption measures. The list of such measures is not exhaustive and includes, among others, (i) appointing a specific department or an official to be responsible for preventing corruption; (ii) co-operating with enforcement authorities; (iii) introducing internal standards of ethical business practices

and an ethical code of conduct for employees; (v) preventing conflicts of interest; and (vi) preventing filing of false or off-the-record reports and use of forged documents.

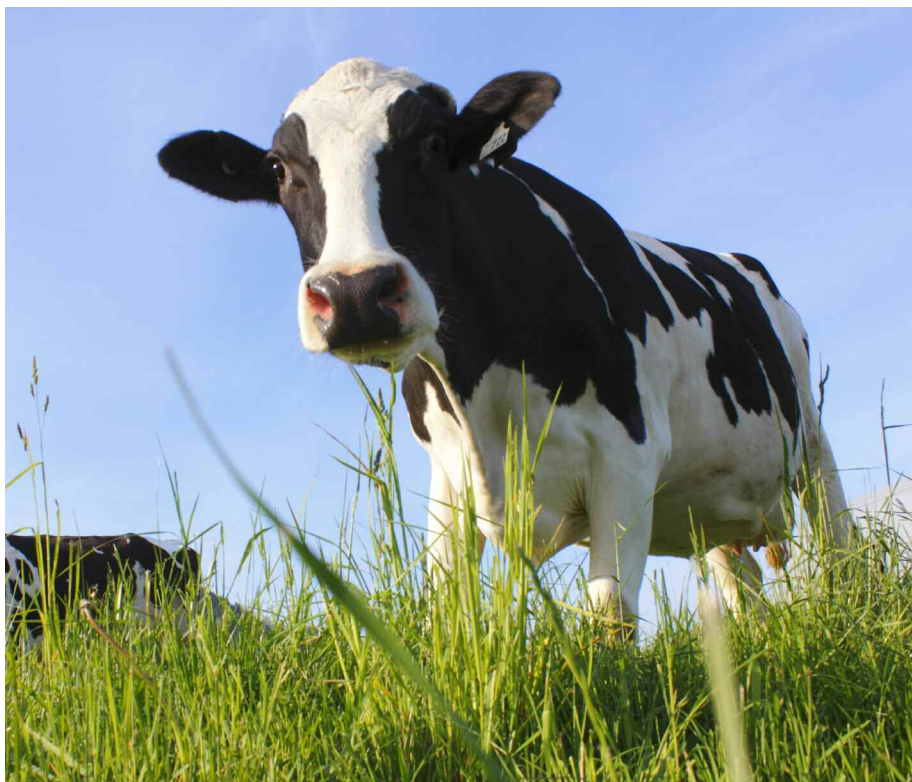
For more detailed analysis, please refer to our client briefing: '[Russia enacts new law on anti-corruption](#)'.

## Capital Markets and Securities

### Important developments in securities issue regulations

A set of amendments to Russian laws governing securities issuances was adopted at the very end of 2012. Some of the notable changes include the following:

- streamlining of the rules applicable to issue of bonds convertible into shares: the law expressly allows the issuer to provide in the issuance documents that bonds may be redeemed by cash or shares. Although not expressly interlinked, the amendments suggest that the issuance documents for the bonds and shares into which the bonds can be converted be prepared and filed for registration simultaneously to facilitate the possible conversion. However, the share issuance documents would only be valid for up to three years from the registration date.
- distribution of dividends: the requirement to fix the list of persons entitled to receive dividends on the same date as the list of shareholders entitled to participate in the shareholders' meeting has been abolished. Instead, the list of dividend payees will need to be fixed at a date falling not earlier than the date when the shareholders meeting resolves to pay dividends and no later than 20 days after such decision was made, and no sooner than 10 days and no later than 20 from the date of such decision with respect to publicly traded companies.
- Removal of restrictions for issue of unsecured bonds by issuers whose corporate history extends back over less than three years and/or which do not have proper financials for at least two complete financial years and removal of the general restriction for bond issuers where the aggregate nominal value of bonds exceeds the total share capital of the issuer and value of the security (if any);
- attempt to synchronise the prospectus regulations to the EU standards: a prospectus will now be required to be prepared and registered for any securities that are to be placed by subscription unless any of the following criteria is met:
  - securities are to be placed by closed subscription to qualified institutional buyers (as defined under Russian law) provided that the total number of such investors does not exceed 500;
  - securities are to be placed to persons that were shareholders of the issuer as at a particular date provided that the total number of such investors does not exceed 500 (without taking into account qualified institutional buyers);
  - securities are placed to no more than 150 investors (without taking into account qualified institutional buyers and persons described in the foregoing item of which there shall be no more than 500);
  - total amount of proceeds raised by the issuer during one year from issue of securities (whether one or several) does not exceed 200 million Roubles or, for credit institutions, 4 billion Roubles;
  - purchase price for the securities payable by each of the investors (other than persons using the pre-emptive right to acquire securities) does not exceed



4 million Roubles provided that the total number of persons entitled to use the pre-emptive right (excluding those qualifying for qualified institutional buyers) does not exceed 500.

- preliminary clearance of issue documents: drafts of issuance documents can be filed with FSFM for preliminary clearance. The regulator will need to review these within 30 calendar days and decide whether they are in compliance with existing legislation;
- registration terms: for issues without prospectuses the registration term is decreased to 20 calendar days and 30 calendar days where there is a prospectus; the term is further decreased to 10 business days if the documents obtained preliminary clearance from FSFM in accordance with the procedure described above;
- abolishment of the two week hold period between the registration of the prospectus and start of placement (this was applicable to issues that envisaged a prospectus);
- the amendments allow to split the prospectus into base and supplement parts, statutory requirements as to the contents of a prospectus are adjusted accordingly and supplemental prospectuses can be registered within one year from the registration of the base prospectus;
- partial payment of the purchase price at placement is allowed in certain cases where a broker is engaged to facilitate placement; and
- to qualify for filing a notice on the results of a placement (instead of filing a report on the results of placement which also requires registration by FSFM), securities need to be (i) placed by way of open subscription, (ii) paid for with cash or securities traded at a stock exchange and (iii) be admitted to trading on a stock exchange.



Most of the amendments enter into force during the first half of 2013. Market participants will require further guidance from FSFM in order to be able to apply these new provisions in practice. The FSFM is currently working on a new version of its issuance standards which provides supporting regulation for the rules envisaged in the laws. The existing uncertainties may be eliminated or clarified through these issuance procedures.

#### **Launch of repository and central depository operations**

On 6 February 2013, upon filing of the respective notification with the Federal Service for Financial Markets (“**FSFM**”) and FSFM’s publishing it on the official web-site, National Settlements Depository (“**NSD**”) started operating as repository with respect to repo and currency swap transactions and set up the register of contracts entered into on the basis of master agreements.

After NSD was granted the status of the central depository on 6 November 2012,

it started preparing for requalification of nominee accounts that it holds with respect to eligible public issuers’ securities into central depository nominee accounts. Working in cooperation with the issuers’ registrars, NSD completed the requalification and started operations as central depository for most of eligible securities issues by 1 April 2013. After a central depository nominee account has been created in the share register of an issuer, no further shares can be credited to accounts of other nominee holders in the same share register, with the final aim being to eliminate other nominee holders in share registers of public issuers.

For further considerations on trade reporting operations, please see our client briefing ‘[Netting in Russia: NSD Commences Trade Reporting Operations](#)’.

#### **Improvements to MBS Law follow market needs**

The Mortgage Backed Securities Law (the MBS Law) was amended at the end of 2012 to reflect the practice of domestic securitisation deals completed



over the past few years. Among other things, the changes include elimination of the requirement to pay interest annually (mostly applicable to mezzanine and junior tranches), eliminating the bondholders' right to claim early redemption upon full rectification by the issuer of the cause of such right and appropriate disclosure of such rectification and introducing the option to release the junior tranche from the mandatory ratios for collateral sufficiency in certain events. The amendments also expressly envisage in the law that voluntary liquidation of a mortgage agent, the issuing vehicle on Russian domestic MBS deals, can only be filed for upon full redemption of all issued and outstanding mortgage backed securities of such issuer. Most of the amendments entered into force on 1 January 2013 and the rest became effective as of 1 April.

#### **Russian Derivatives Documentation Tested in Russian Courts**

Two recent Russian court cases allowed a party to a swap to walk away from the transaction. In both cases, a Russian bank extended loans to Russian corporate borrowers on the condition that the bank and the borrower also enter into a hedging swap transaction documented under the bank's bespoke derivatives master agreement governed by Russian law.

The bank's master agreement included a termination provision stating that the master agreement (and, by extension, the underlying transactions) can be terminated by either party to the extent that the parties do not have any outstanding "obligations" to each other. The terms of the swap transactions provided that the swaps were to be cash settled, with the calculation agent determining the payer and the exact amount to be paid a certain number of days before the payment date.

The borrower prepaid a portion of the loan and expected the bank to adjust the notional amount of the swap accordingly which did not happen. The borrower decided to terminate the swap and the master agreement arguing that the obligation to pay under a cash-settled swap arises (and exists) only during the period from the calculation date until the relevant payment date and that between that payment date and the next calculation date, the parties do not have any obligations to each other and are therefore free to terminate. Surprisingly, the courts upheld the borrower's position in both cases and allowed the borrower to terminate.

For further detail, please see our client [briefing](#).

## **Tax**

### **Taxation of Eurobonds**

As discussed in our previous issue, the Government reserved the right to revisit the terms of the Eurobond exemption that was introduced in 2012 after the attempt of the Ministry of Finance to look through offshore issuance vehicles when determining beneficial owners of income received strong pushback from the market community.

The Ministry has recently come up with certain proposals (although not formalised yet) on taxation of interest payments under Eurobond transactions. According to the Deputy Minister of Finance, the Russian central depository would have to disclose aggregate information on the number of bondholders residing in a particular jurisdiction and Russian interest withholding tax would be applied based on such information. The Deputy Minister of Finance further stated that Euroclear and Clearstream have agreed on a preliminary basis to provide aggregate information with respect to the jurisdiction of particular bondholders.

### **Cyprus' financial crisis**

The immediate impact of the Cypriot crisis resolution plans seems to be limited to the continuing freeze of funds on Cypriot bank accounts and the significant "haircuts" imposed on Bank of Cyprus and Laiki Bank depositors with large account balances as at close of business on 15 March 2013. At this stage, no additional taxation or levies have been formally introduced and double tax treaties which Cyprus has with the Russian Federation, Ukraine and other countries remain intact.

Therefore, businesses using Cypriot companies whose transactions are settled through accounts held with banks outside Cyprus (and do not hold significant deposits with a Cypriot bank) do not seem to be directly impacted by the measures introduced in Cyprus to date but will need to consider the impact of proposed tax changes (and any further changes) on their business.

For more details, please see our client briefing entitled '[The Cypriot Crisis: What does it mean for Cypriot corporate structures?](#)'

### **Property Tax Exemption for Movable Property**

Starting from 1 January 2013, Russia has stopped levying property tax with respect to movable property acquired / reflected on the balance sheet starting from 1 January 2013. It is anticipated that this exemption would decrease the overall tax burden and intensify renewal of machinery and equipment.

### **Cyprus is Excluded from the Russian Offshore List**

Despite the talks about so-called "de-offshorisation" of the Russian economy, starting from 1 January 2013 Cyprus is no longer considered as an offshore jurisdiction for Russian tax purposes. This means that it would be

possible to apply Russian participation exemption with regard to dividends received by Russian companies from their Cypriot subsidiaries. In addition, this means that non-related party transactions with Cypriot entities are excluded from the list of potentially controlled transactions under Russian transfer pricing regulations.

## Sector Update

### Metals and Mining

#### Announced Deals

##### PhosAgro completes SPO

In April 2013, PhosAgro, a leading global vertically integrated phosphate-based fertiliser producer, completed an approximately \$467 million placement of its ordinary shares to institutional investors and a related open

subscription offering of newly issued ordinary shares by PhosAgro to existing shareholders. PhosAgro intends to use the bulk of net proceeds from the issuance of its new ordinary shares for consolidation of ownership at its principal mining subsidiaries.

Earlier this year, PhosAgro also completed its debut issuance of \$500 million Eurobonds due 2018.

## Russian Law Focus: Procurement Law

The Federal Law “On procurement of goods, works and services by certain types of legal entities” (the “**Procurement Law**”) (No. 223-ФЗ dated 18 July 2011) entered into force on 1 January 2012, with a 4-month grace period for Procuring Entities to bring their practices into line with the new requirements. It sets out rules for procurement by a wide range of public sector legal entities (e.g. state-controlled companies and their subsidiaries) and changes the procurement rules and the scope of their application for natural monopolies. To ensure transparency and cost efficiency of procurement, the Procurement Law requires that suppliers of goods, works and services (with limited exceptions) to affected entities must be selected through a publicly disclosed procedure.

The list of exemptions from the new requirements is exhaustive and includes: (i) sale and purchase of securities and foreign currency, (ii) purchase of commodities on a commodity exchange, (iii) purchase of military products, and (iv) purchase of goods, works or services in accordance with an international treaty which provides for a different method of procurement.

### Companies qualifying for the restrictions

The range of legal entities which fall within the scope of the Procurement Law (“**Procuring Entities**”) includes:

- utility companies (i.e. companies carrying out regulated activities in the area of electricity, gas, heat or water supply and/or household waste, sewage or water disposal);
- companies engaged in natural monopoly activity (e.g. all Russian airports and ports, OJSC Russian Railways, OJSC Transneft);
- state companies and state corporations (e.g. VEB, Rosatom, Olympstroy);
- state and municipal unitary enterprises and autonomous institutions;
- companies in which the Russian Federation, its constituents and/or municipalities own more than 50% of the share capital (individually or in aggregate); and
- subsidiaries which are more than 50% owned by one or more companies referred to above and their respective 50% or more owned subsidiaries.

### New supplier selection rules

Each Procuring Entity must select suppliers of goods, works and services on the basis of a tender, auction or other selection procedure provided for in the internal procurement regulation which shall be adopted by each Procuring Entity. The Procuring Entity may develop its own procurement procedure as long as it complies with the following key principles:

- transparency of the procurement process;
- equal eligibility criteria and the absence of arbitrary requirements or discriminatory restrictions for potential suppliers; and
- value for money and minimisation of cost to the Procuring Entity.

Some of these principles are rather general in nature and lacking objective criteria. As a result, the law leaves space for different interpretations, including those of the courts and FAS.

### Steps of the procurement process

To ensure maximum transparency, information about the process must be published on the official website for public procurement [www.zakupki.gov.ru](http://www.zakupki.gov.ru) (the “**Official Website**”). In addition to disclosure of specific bids, Procuring Entities must publish their annual procurement plans and some additional statistical information.

The procurement process begins with publication on the Official Website of (i) a notice of procurement together with draft contractual documentation, (ii) an invitation to participate in the supplier selection process setting forth the requirements to be met by potential suppliers and (iii) description of the selection procedure. It is not clear from the Procurement Law whether these rules should be followed where a company has chosen a selection method other than a tender or auction.

The procurement ends with publication of the results of the selection and conclusion of a contract with the supplier selected from the applicants who submitted their bids within the set timeframe.

The Procurement Law exempts the following cases from mandatory disclosure:

- information which constitutes state secrets;
- contract bids with a value less than RUB 100,000 (ca. \$ 3,000) and RUB 5 billion (ca. \$ 170 million) for Procuring Entities with annual revenues of over RUB 5 billion (ca. \$ 170 million); and
- procurement of specific goods, works and services if the Government determines that information on the purchase is not required to be posted on the Official Website.

### Consequences of non-compliance

The consequences of non-compliance with the Procurement Law include:

- (i) any ‘procurement participant’ (i.e. arguably any potential supplier) affected by a Procuring Entity’s failure to comply with the Procurement Law can challenge this failure in court (although it is unclear whether upon successful challenge a court can render a contract invalid and what the consequences of such invalidity would be);
- (ii) there are no administrative penalties so far but a draft law introducing administrative fines for non-compliance with the Procurement Law is expected to be considered soon by the State Duma. If adopted, it would introduce a fine of up to RUB 500,000 for the Procuring Entity and up to RUB 15,000 for its officers for, among other things, breach of internal procurement regulations or the Procurement Law, failure to disclose information and violations of the procurement procedure; and
- (iii) in certain cases, aggrieved tender participants may file a complaint with the FAS, upon reviewing which the FAS can issue a binding order to the affected Procuring Entity (including obliging it to rectify the relevant violations) or cancel the results of the procurement.

Many provisions of the Procurement Law require further clarification from the authorities and it is recommended that separate advice be sought to take into account all the circumstances of each particular case.

### Prokhorov sells share in Russia’s major gold business for \$3.6 billion

Russian billionaire Mikhail Prokhorov is quitting the gold business as the price falls and becomes less appealing to international investors. He has completed the sale of 37.78% in Polyus Gold International for \$3.6 billion. Prokhorov sold 18.5% of Polyus Gold to Zelimhan Mutsoev’s affiliated company Lizarazu Limited. Another 19.28% was sold to Receza Limited

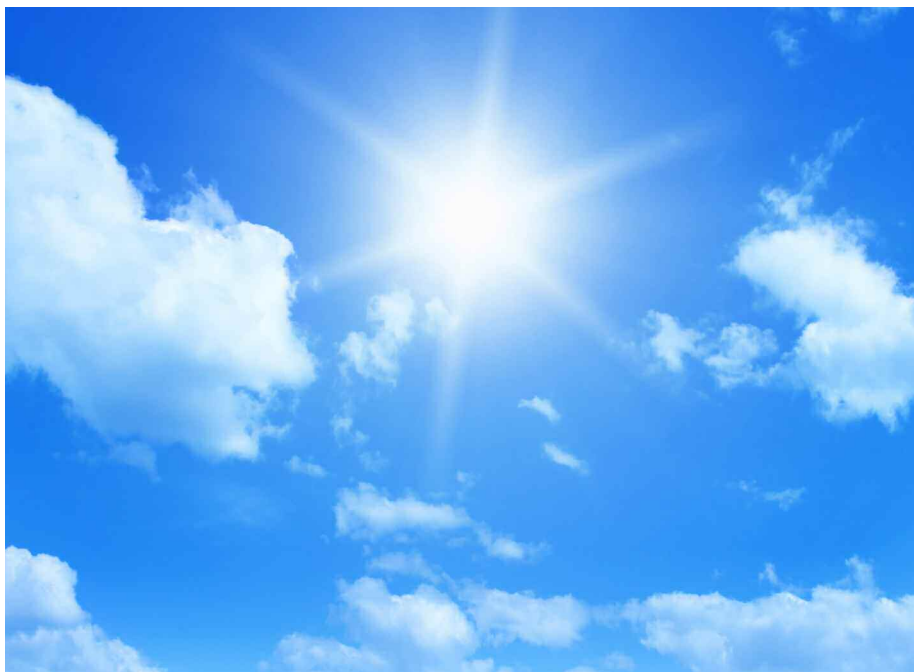
owned by the former owner of dairy and juice-maker Wimm-Bill-Dann, Gavriil Yushvaev.

### Rosatom spares no expense to buy out Canada’s Uranium One

Atomredmetzoloto (ARMZ), controlled by Russia’s state corporation Rosatom, is set to acquire 100% control over Canadian uranium producer, Uranium One, paying 30% above market price to take over completely.

### Russian oligarchs settle \$1.4bn dispute, avoid legal battle in London

Russian billionaires Vladimir Potanin and Oleg Deripaska have reached a new shareholder agreement, bringing to the end a \$1.4bn dispute over rights at Norilsk Nickel before it went to a London court. Under the deal, Potanin was named Norilsk’s General Director replacing Vladimir Strzhalkovsky. The former Norilsk Nickel CEO received a record \$100 million golden handshake.



Roman Abramovich has agreed to buy a 7.3% stake in Norilsk Nickel to help resolve a long-running battle for control between the metal producer's two biggest investors. Millhouse Capital, the investment company owned by Mr Abramovich, will acquire the stake from Norilsk subsidiaries for an undisclosed amount. It will get three seats on the 13-member board of directors, according to a statement issued by Hong Kong-listed Rusal, which owns 25.13% of Norilsk Nickel.

#### **Sector news**

##### **Norilsk Nickel preparing Australian mine Lake Johnston for sale or closure**

Norilsk Nickel is weighing up the options of either closing or selling its only operating mine in Australia, Lake Johnston to focus on larger greenfield projects. Several Australian and international companies interested in Lake Johnston are conducting due diligence on the asset.

## **Energy**

### **Announced Deals**

Rosneft, Russia's state-owned oil major, announced on 21 March 2013 that it had completed the acquisition of TNK-BP. As part of this process, Rosneft acquired BP's 50% share in TNK-BP in exchange for \$16.65 billion in cash and 12.84% of Rosneft shares (increasing BP's stake in Rosneft to 19.75%). In addition, Rosneft acquired the other 50% share in TNK-BP from the AAR, consortium of Alfa Group, Access Industries and Renova, for cash consideration of \$27.73 billion.

As a result, Rosneft has consolidated 100% of TNK-BP and has become the largest publicly traded oil and gas company in the world by hydrocarbon reserves and production, according to its own press release. Rosneft's President Igor Sechin was appointed CEO of TNK-BP.

### **Rosneft and ExxonMobil team up for projects in Siberia and Alaska**

Rosneft and ExxonMobil have agreed on joint exploration of tight oil in the

hard-to-reach fields of Western Siberia. The parties also reached an agreement allowing Rosneft to acquire a 25% stake in the Point Thompson Alaska oil and natural gas field.

#### **Sector news**

##### **Germany's RWE to give up Nabucco project**

Germany's second largest energy company RWE is going to leave the Nabucco gas pipeline project and is reportedly discussing the sale of its 16.1% stake to Austria's OMV.

##### **Gazprom and partners kick off construction of South Stream pipeline**

Russia's state-owned gas major Gazprom and its partners are beginning construction of the EUR 16 billion South Stream pipeline that will run under the Black Sea to Europe and rival the Nabucco project.

##### **Rosneft and Lukoil go for Norwegian shelf**

Russian oil majors Rosneft and Lukoil have applied for the right to develop subsoil oil in the Norwegian continental shelf.

##### **US Senate bill to make Europe less energy dependent on Russia**

The US seeks to lift limitations on its LNG deliveries to Europe, which would strengthen competition in the European energy markets. If agreed, these measures would decrease the EU's dependence on Russian gas.

##### **Russia to grant unprecedented tax cuts on Arctic exploration**

In December 2012, Russian authorities agreed on unprecedented tax breaks for new projects in the Arctic shelf to boost investment in the area. Under the new legislation operators of shelf projects will be exempt from taxes for 5 to 15 years, including tax breaks on export duties as well as import duty and VAT on

purchased equipment. The same tax policy is expected to be applied to oil projects with effect from 2016.

#### **Lukoil turns to Mediterranean**

Russia's Lukoil is considering expanding operations in Lebanon despite the ongoing civil war in neighboring Syria, and potential risks from regional politics.

#### **Rosneft to invest in Venezuela and cooperates with ENI**

Rosneft announced plans to deepen its cooperation with Venezuela and invest \$10 billion into the country's oil and gas projects. Rosneft has also signed a strategic agreement to develop trading and logistics opportunities with Italy's Eni Trading & Shipping (ETS).

### **Financial Services**

#### **Announced Deals**

##### **Onexim buys Renaissance investment and consumer banks**

Russian tycoon Mikhail Prokhorov's Onexim Group will buy 89% of the Russian consumer bank Renaissance Credit and the remaining half of the investment bank Renaissance Capital in addition to the 50% stake that it already owns. As part of the deal, Renaissance Capital's founder Stephen Jennings will be replaced as chief executive by John Hyman. Onexim was granted antimonopoly clearance for the acquisition in February 2013.

##### **Sberbank buys Yandex online payment service**

Sberbank will buy Yandex.Dengi, an online payment service owned by Russian search engine Yandex, for \$60 million. The companies will create a joint venture through the acquisition by Sberbank of a 75% interest in Yandex.Dengi, or Yandex.Money as it is known in English. Evgenia Zavalishina, Yandex.Money's current chief executive officer, will head the JV.

##### **KBC to sell Russian bank subsidiary for 300 million euros**

Belgian banking and insurance group KBC has struck a deal to sell its Russian banking unit Absolut Bank, one of the final businesses it is divesting to meet conditions agreed with European regulators after it received state aid. KBC said it was selling Absolut for EUR 300 million to a group of Russian companies that manage the assets of Blagosostoyanie, Russia's second-biggest non-state pension fund owned by Russia's rail monopoly. The deal is set to close in the second quarter of 2013.

##### **Moscow bourse raises \$500 million in IPO**

Russia's top stock exchange has raised just under \$500 million after pricing shares for its initial public offering at the bottom of the announced price range. The Moscow Exchange, which began trading on its own platform at noon in Moscow on 15 February 2013, priced shares at 55 Roubles, giving it a total valuation of \$4.2 billion with a free float of 30%.

Shortly before the IPO, Gazprombank sold its 5.37% stake in Moscow Exchange to Shengdong Investment Corporation, a fund controlled by China Investment Corporation.

#### **Sector news**

##### **VTB up for an SPO**

On 26 April, supervisory board of VTB Bank approved a share capital increase in the amount up to 25 billion roubles. In accordance with the Russian statutory procedures, the issue documents now have to be filed with the Federal Service for Financial Markets for registration. Media report that the SPO book includes bids from a number of large institutional investors including Norway's sovereign fund Norges Bank Investment Management and Azerbaijan State Oil Fund.

##### **Sberbank signs \$1 billion cooperation deal with TurkEximbank**

Sberbank has signed a memorandum on cooperation with TurkEximbank envisaging measures to finance commodity flows worth up to \$1 billion from Turkey to Russia and other countries where the group has a presence.

##### **Russian banks hit record \$33.3 billion profit in 2012**

Russia's lenders set a new record for net earnings last year, which was mostly underpinned by fast growth in personal lending.

##### **Russia to sell entire stakes in Sberbank and VTB in 5 to 10 years**

The Russian government plans to sell its entire stakes in VTB and Sberbank within five to 10 years. The state property agency Rosimushchestvo holds a 75.5% stake in VTB. The government's full exit from VTB's capital by 2017 is provided in the privatisation plan. In September 2012, CBR reduced its ownership in Sberbank to 50% plus one share, which is the minimum level allowed by current law.

##### **Russia's Sberbank ranked Europe's fifth most valued bank brand**

Sberbank has been ranked Europe's fifth most valuable bank, with its brand valued at \$14.16 billion.

##### **Qatar hires UBS for possible investment in VTB**

Qatar's sovereign wealth fund has hired UBS to advise on a possible \$3 billion investment in VTB. VTB, Russia's second biggest lender, advised by Citigroup, has been working on a capital increase to support day-to-day operations.

##### **Dmitry Romaev appointed CEO of Nomos-Bank**

Dmitry Romaev has been appointed CEO of NOMOS-BANK. Mr. Romaev will manage the bank's operations and coordinate its integration into Otkritie Financial Corporation whilst continuing

to grow its core business divisions of corporate, retail, and private banking.

## **Transport & Logistics**

### **Announced Deals**

#### **Globaltrans acquires 100% of MMK-Trans**

In February 2013 Globaltrans Investment PLC announced completion of its acquisition of 100% of OOO MMK-Trans, the captive freight rail operator of MMK Group, one of the largest single-site steelmakers in Russia. Consideration included \$250 million in cash and takes into account the target's outstanding debt of about \$84.5 million. As part of the deal, MMK-trans also entered into a five-year services agreement with its previous owner, MMK, to ensure continuous operations. This acquisition follows the successful integration by Globaltrans of captive freight rail operator Ferrotrans (formerly Metalloinvesttrans) acquired earlier in 2012 and marks a further step in the consolidation of the Russian freight rail transportation sector.

#### **Renault-Nissan to take over Russia's Avtovaz by 2014**

Renault-Nissan and the state run Russian Technologies corporation signed an agreement to create a joint venture that will get a majority stake in Russian car maker Avtovaz.

### **Sector news**

#### **Volkswagen to invest another €840mn in Russia by 2015**

German automobile manufacturer Volkswagen plans to invest an additional EUR 840 million in car production in Russia from 2013 to 2015.

## **TM&T**

### **Announced Deals**

#### **Rambler Afisha merges with SUP Media**

Rambler Afisha, which is a part of Vladimir Potanin's Interros group, has merged with Alexander Mamut's SUP

Media. Mamut will be appointed chairman of the board of directors of the new company. The merged business is expected to rank as the third most popular resource on the Russian internet.

#### **MegaFon closes up to \$1.7 billion IPO**

In November 2012, Russia's second-largest mobile-phone operator MegaFon raised \$1.7 billion from its 15% stock sale in the country's biggest London IPO in the last three years. The MegaFon IPO was made as part of a shareholder agreement reached in April 2012 between Alisher Usmanov, the Sweden based telecoms operator TeliaSonera AB and the operator's local owners. As a result of the deal, Usmanov gets a controlling stake of the Moscow-based operator, boosting his stake from 8% to more than 50%.

#### **MegaFon completes acquisition of shares in Euroset**

On 6 December 2012, MegaFon announced completion of the previously announced acquisition of an indirect 25% interest in Euroset, the largest chain of mobile telecom retail outlets in Russia. Under the transaction, Lefbord Investments Limited, owned equally by MegaFon and Garsdale Services Investment Ltd, has acquired 50% of Euroset Holding N.V., the owner of the Russian retail chain, for \$1.07 billion, ascribing an enterprise value of \$2.3 billion (including net debt) to Euroset. An additional payment of up to \$100 million may be made if Euroset meets certain targets in the first half of 2013. One year after closing, MegaFon is expected to buy the Garsdale's 50% stake in Lefbord and, thereby, take control of Lefbord's entire 50% interest in Euroset Holding N.V. The remaining 50% of Euroset Holding N.V. is owned by Vimpelcom, the third largest mobile operator in Russia.

#### **Marshall Capital sells its 10.7% stake in Rostelecom**

Investment fund Marshall Capital, owned by businessman Konstantin Malofeyev, said it had sold its stake in fixed-line

operator Rostelecom to little-known firm Bellared Holdings, a company affiliated with businessman Arkady Rotenberg. Marshall plans to use the funds to finance its current and future projects.

#### **VTB purchases 100% of Tele2**

VTB Group, advised by VTB Capital, is to acquire 100% of Tele2 Russia, the fourth largest mobile operator in Russia with service licences in 43 regions and 22.7 mln subscribers as of the end of 2012, from Tele2 AB as a private equity investment. The underlying contract was signed in Stockholm on 27 March 2013. According to VTB's press release, the acquisition price is \$ 2,4 billion.

### **Sector News**

#### **Russia's Yandex overtakes Microsoft in worldwide searching**

Russia's Yandex search engine has pushed Microsoft's Bing aside in global search statistics, climbing to fourth place after Google, Baidu and Yahoo!

## **Real Estate**

### **Announced Deals**

#### **City of Moscow sells Radisson Slavyanskaya**

Moscow authorities sold Radisson Slavyanskaya hotel and the land under it at the starting price of RUB 5.27 billion. The winner of the auction was Otel-Invest owned by businessmen Zakhar Iliyev and God Nisanov, who also owns the neighboring Yevropeisky mall and Ukraina Hotel. Apart from the hotel and the land, Moscow authorities plan to sell their 50% stake in the hotel's managing company.

#### **Morgan Stanley buys a Moscow mall**

Morgan Stanley Real Estate Investing announced the purchase of the large Moscow shopping mall Metropolis located in the northwestern part of the city. The investment fund said in its public statement that the deal was the largest in the history of the Russian commercial real estate market.

### **Olympia Park refinancing**

VTB Capital plc provided an up to \$190 million facility for Flybase Investments Ltd, an O1 Properties group company. The financing relates to a construction loan refinancing in anticipation of the proposed acquisition by Kaspersky Labs Limited of Olympia Park.

### **Consumer Goods and Retail Announced Deals**

#### **Russians ranked second in retail spending around the world**

As Europeans cut their spending due to the crisis, Russians are showing themselves as lavish shoppers, as they spent as much as 2.4bn euro in European stores and have claimed about EUR 1.1 billion in tax refunds, according to a Global Blue report.

#### **Russia's e-market to boom in 2013 – Morgan Stanley**

Russian e-commerce will triple in volume over the next three years from \$12 billion in 2012 to \$36 billion by 2015, Morgan Stanley forecasts in a report.

### **Other**

#### **Russia's richest: Country sees record number of billionaires in 2012**

The Russian capital has more billionaires than any other city in the world, according to a new survey from China. The study by the Hurun Research Institute says there are over 4000 people who have more than \$1 billion in their bank account, and 76 of them reside in Moscow. Russia has 88 billionaires with a combined wealth of \$368 billion.

#### **Half of foreign executives say Russian business 'innovative, competitive and reliable'**

Russian companies have improved their international image, with more foreign executives happy to do

business in the country, a survey conducted by the Economist Intelligence Unit revealed.

## **Forthcoming Events**

The spring months promise to be rather busy with conferences and events in Russia, including the following:

- Treasury Forum – Worldwide Expert (16-17 May 2013, Hilton Leningradskaya, Moscow, Russia);
- Investfunds Forum IV – Cbonds Congress (16-17 May 2013, Holiday Inn Moscow Gates, St.Petersburg, Russia);
- Airport Development: Russia & CIS – Adam Smith Conferences (15-17 May 2013, World Trade Centre Moscow, Russia);
- Investments in Russia – RCB Magazine (21 May 2013, RIA Novosti, Moscow, Russia);
- Public and Corporate Procurement in Russia – C5 Conferences (21 May 2013, Sheraton Palace Hotel, Moscow, Russia);
- Russia: what Strategy in a Changing World – AEB Marriott Grand Hotel (21 May 2013, Moscow, Russia);
- CIS Oil&Gas Summit – The Energy Exchange (21-23 May 2013, Paris, France);
- Russian Pharmaceutical Forum – Adam Smith Conferences (21-23 May 2013, Corinthia Saint-Petersburg Hotel, Russia);
- Annual Syndicated Loans Russia & CIS – Euromoney Seminars (22-23 May 2013, Baltschug Kempinski, Moscow, Russia);
- Venture Investors – Cbonds Congress (22 May 2013, InfoProstranstvo, Moscow, Russia);
- Telecom 2013 – Vedomosti (22 May 2013, Ritz-Carlton, Moscow, Russia);
- Business Partners and Third Parties Due Diligence in Russia and CIS – C5 Conferences (23-24 May 2013, Marriott Tverskaya Hotel, Moscow, Russia);
- Russian Retail Banking Forum – Adam Smith Conferences (28-30 May 2013, Marriott Grand Hotel, Moscow, Russia);
- Subsurface Regulations in Russia and CIS – Marcus Evans Conferences (29-31 May 2013, venue to be confirmed, Moscow, Russia);
- Future Banking – Worldwide Expert (30 May 2013, Ararat Park Hyatt, Moscow, Russia);
- Annual TAX CONGRESS – Infor-media Russia (30-31 May 2013, Marriott Royal Aurora Hotel, Moscow, Russia);
- Aviation IT Forum – ATO Events (30-31 May 2013, InterContinental Moscow Tverskaya, Russia);
- Russian Real Estate and Urban Development Summit – Adam Smith Conferences (3-6 June 2013, Marriott Grand Hotel, Moscow, Russia);
- Russian IPO Forum – Cbonds Congress (6 June 2013, Novotel, Moscow, Russia);
- Project Finance in Russia – Russian Business Forum (7 June 2013, Marriott Tverskaya, Moscow, Russia);
- Public services: e-government – Vedomosti (21 June 2013, tbd, Moscow, Russia);
- FATCA Compliance in Europe – C5 Conferences (26-27 June 2013, Steigenberger Frankfurter Hof, Frankfurt, Germany);

- Air Transport Infrastructure: Airline-Airport Cooperation in Europe and Russia – ATO Events (26 June 2013, Novosibirsk, Russia).

## CC Moscow Update: News and People

### CC awarded Russia Law Firm of the Year by Chambers

The Chambers Europe Awards 2013 held on 25 April in London honoured Clifford Chance as Russia Law Firm of the Year thus recognising the firm's leadership in key practice areas and involvement in market-leading deals.

It was noted that "Clifford Chance has shown positive growth in recent years and is regularly involved in many of the market's most significant transactions. It possesses unparalleled strength in banking and finance, dispute resolution and restructuring and insolvency, and has been extremely active in aviation matters of late. Further areas of note include capital markets, competition and corporate/M&A."

Other awards received include European Law Firm of the Year, Belgium Law Firm of the Year and France Law Firm of the Year. The success follows the Firm's recent recognition from Chambers as International Law Firm of the Year, Middle East Law Firm of the Year, China Law Firm of the Year and Singapore Law Firm of the Year.

### Logan Wright takes over as new Managing Partner

With the hand over officially completed, Logan has officially become new managing partner of Clifford Chance Moscow effective 1 January 2013. Logan has been with Clifford Chance in Russia since 2000, and has been a partner since 2006.