

# CONTRACTING WITH RUSSIAN PARTNERS: Things to Remember



## Contracts with a Russian Company: What a Foreign Counterparty Should Keep in Mind

Memo

13 May 2016

Foreign companies working with Russian partners often face unexpected problems. Russian partners sometimes challenge even those transactions that have been partly performed, deny the fact of supply or of rendering of services, and refuse to discharge their debts.

Following the standard recommendations below may help you avoid conflicts and unforeseen expenses:

- ▶ **Checking the reliability of the Russian partner:**
  - a. before doing business with the Russian partner;
  - b. while doing business with the Russian partner.
  
- ▶ **Checking compliance with legal formalities before executing a contract:**
  - a. the powers of the signatory of the other party;
  - b. the form of the transaction;
  - c. certain specific details of particular contracts.
  
- ▶ **Due execution of documents during the performance of the contract.**

Below, you can find more details and our recommendations.

### 1. CHECKING THE RELIABILITY OF THE RUSSIAN PARTNER

When beginning to work with a Russian partner on a long-term or a one-time, but still a big and expensive project, it is always advisable to conduct full due diligence.



**Always check the counterparty before entering into business relations.  
Do not forget about further checks: even trustworthy companies may become bankrupt, undergo ownership changes or be liquidated.**

If such a due diligence is for some reason impossible or impracticable, a brief check of reliability of the Russian partner may be carried out with the use of the following **free** public resources (unfortunately, these are in Russian only):

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| <p>▶ <a href="https://egrul.nalog.ru/">https://egrul.nalog.ru/</a></p>   | <p>this resource allows obtaining an extract from the Unified State Register of Legal Entities (a Russian <b>trade register</b>), checking whether the Russian partner is registered as a legal entity, specifying its address, the identity of the person authorized to enter into contracts without a Power of Attorney (CEO), etc.</p> |
| <p>▶ <a href="https://service.nalog.ru/uwsfind.do">https://service.nalog.ru/uwsfind.do</a></p>   | <p>this resource contains information on the initiated registrations (of changes in the location, sole executive body, etc.), not yet reflected in the extract from the trade register</p>  |
| <p>▶ <a href="http://www.vestnik-gosreg.ru/">http://www.vestnik-gosreg.ru/</a></p>   | <p>this resource contains information on decisions on liquidation, reorganization, reduction of the charter capital of the Russian partner, etc.</p>  |
| <p>▶ <a href="https://service.nalog.ru/disqualified.do">https://service.nalog.ru/disqualified.do</a><br/> <a href="https://service.nalog.ru/disfind.do">https://service.nalog.ru/disfind.do</a><br/> <a href="https://service.nalog.ru/svl.do">https://service.nalog.ru/svl.do</a></p> | <p>here, you can check whether the CEO of the Russian company has been disqualified (divested of the right to occupy such a position for the offenses committed), and whether there are any disqualified persons in the management</p>  |
| <p>▶ <a href="https://service.nalog.ru/addrfind.do">https://service.nalog.ru/addrfind.do</a><br/> <a href="https://service.nalog.ru/baddr.do">https://service.nalog.ru/baddr.do</a></p>  | <p>this resource contains information on the addresses of mass registration, often used by short-lived companies</p>  |
| <p>▶ <a href="https://service.nalog.ru/zd.do">https://service.nalog.ru/zd.do</a></p>   | <p>this resource contains information on the tax indebtedness of companies</p>  |
| <p>▶ <a href="https://service.nalog.ru/mru.do">https://service.nalog.ru/mru.do</a></p>   | <p>this is a service for checking the affiliation between companies by the criterion of same CEOs and individual participants</p>   |
| <p>▶ <a href="http://kad.arbitr.ru/">http://kad.arbitr.ru/</a></p>   | <p>this resource contains information on the completed and pending litigation in state commercial courts involving the Russian partner (you can search by name and/or TIN/PSRN)</p>   |
| <p>▶ <a href="http://www.kommersant.ru/bankruptcy/">http://www.kommersant.ru/bankruptcy/</a></p>   | <p>this resource publishes information on the initiation of bankruptcy of the Russian partner</p>   |

If it is hard to overcome the linguistic barrier, you can approach specialized firms providing aggregated information from the aforementioned resources, including **in English**. Finally, the reliability of the Russian partners can be checked by lawyers. Expenses for a standard due diligence usually stay within EUR 1,000.

## 2. CHECKING THE SIGNATORY'S POWERS

When executing a contract, make sure to check the powers of the signatory. In Russian companies, the power to sign is vested in:

- A. the sole executive body (as a rule, the "General Director");
- B. the person acting under a Power of Attorney signed by the sole executive body.



**Several companies may have similar names. Check the primary state registration number (PSRN, "OGRN") and taxpayer's identification number (TIN, "INN") of your partner to make sure who you are going to make deal with.**

Make sure to request the documents confirming the powers and keep them:

- ▶ the company's constitutive document (the charter);
- ▶ the decision to appoint the signatory to his/her position;
- ▶ an extract from the Russian trade register, received no earlier than 1 month ago.

You may request these documents directly from the Russian partner – this is the common business practice in Russia. The charter and extract from the trade register may be requested from any inspectorate of the Federal Tax Service of Russia. An up-to-date extract can also be uploaded in electronic form at <https://egrul.nalog.ru/>.



**Check the signatory's powers. Request documents. Major transaction? Request the approvals of the shareholders/participants.**

If the document is being signed by a person acting under a Power of Attorney, to check his/her powers, you need to request his/her **Power of Attorney** (the original), as well as all documents mentioned above in order to confirm the powers of the sole executive body who signed the Power of Attorney. If the transaction is indeed one of great importance – you have a full right to ask for a **notarized Power of Attorney** (notarization will cost around EUR 30). If a Power of Attorney is certified by a notary public, its validity can be additionally checked *via* the online register of cancelled Powers of Attorney at <http://reestr-dover.ru/>.

A transaction can be invalidated if it has not been **approved by the participants/shareholders** or the Board of Directors, which may be mandatory under the law or the company's charter. Request the charter and check if the transaction is not a major one (for instance, major transactions include those whose amount exceeds 20% of the counterparty's assets) and whether there are no other restrictions of the director's powers. If there are any – request the corporate approval.

### 3. PRE-CONTRACTUAL LIABILITY

The institute of pre-contractual liability, so familiar to foreign businesses, has appeared in the Russian law only recently – in 2015. The practice of its application in Russia is in the state of formation. If the negotiations with a Russian partner are deadlocked due to the bad faith of the latter, recovering damages from it may not be as easy or effective, as one might expect.



**Pre-contractual liability in Russia is only developing. The law allows recovering damages in case of bad faith negotiations, but it is yet difficult in practice.**

### 4. FORM OF CONTRACT

Under the Russian laws, contracts and other transactions between companies shall be in writing only. Here, the written form can be complied with not only by way of drafting a document signed by both parties, but also by an exchange of letters, telegrams, teletype and fax messages, as well as exchanges of other documents, including in electronic form, delivered by the means of communication that allow to reliably prove that the document originates from the party to the contract.



**It is better to execute a contract in hard copy. Partner's refusal to sign a contract in hard copy should be a warning to you. In case of a framework agreement, do not forget to execute orders under the agreement. This will be useful in case of conflict.**

Partner's refusal to sign a contract in hard copy should be a warning to you. A contract in written form is necessary for a Russian company to execute bank payments and for customs clearance. Working without it may be a sign of under-declaration of customs value by the Russian partner when importing goods. That is why from the practical standpoint, it is better to draft and execute a bilateral document on paper, which will help to:

- ▲ facilitate the procedures within the Russian currency control;
- ▲ avoid disputes;
- ▲ back up your legal position in court.

This recommendation equally applies to separate orders issued under contracts: these are better formalized as appendices to the contract signed by both parties.

### 5. SECURITY

To safeguard oneself from instances of default on the obligations, demand security, especially if the goods are not delivered/services are not rendered/works are not performed simultaneously with the payment therefor:

- ▲ a mortgage (an entry on the mortgage is made in a special register),
- ▲ a pledge of goods (there is also a register for pledges of movables),
- ▲ a pledge of shares/participatory interests in LLCs (if they are of any value to your company),

- pledge of securities,
- ▶ a pledge of receivables (for instance, the rights of your buyer under contracts for supply to end users),
- ▶ a pledge of rights under a bank account agreement (one can “freeze” a certain sum in the buyer’s account),
- ▶ a guarantee (surety) issued by an individual (if the beneficiary holds valuable assets),
- ▶ a guarantee issued by a legal entity (for example, a mother/sister company holding assets, such as real property, equipment),
- ▶ a bank guarantee (an efficient, reliable and quick, but costly type of security).

## 6. PERFORMANCE OF THE CONTRACT

The delivery of goods (rendering of services, performance of works) shall be effected in exchange for a document signed by the partner (an act, a consignment note, etc.), especially where a supply agreement made with a Russian partner provides for deferred payment for the goods supplied or payment on credit. Here, you will need a confirmation:

- ▶ of the fact that the performance took place;
- ▶ of the absence of complaints as regards the quality and quantity.

When delivering the goods, you should **check the powers of the employee receiving the goods**: he/she shall hold a duly executed Power of Attorney. It is advisable that you obtain the original or at least a copy of such a Power of Attorney. It is also useful to approve the list of persons authorized to accept the goods, in advance.

## 7. JURISDICTION OVER DISPUTES

When agreeing on the forum for the disputes in the contract, you may choose between:

- ▶ Russian state courts;
- ▶ international commercial arbitration;
- ▶ foreign state courts.



**If the judgment needs enforcing in Russia, it may be more feasible to choose the Russian court: this would be cheap and fast.**  
**If the contract is complex and case-specific, consider international commercial arbitration – the arbitrators are usually more qualified, but the procedure is more expensive.**

Specifying a foreign state court as the competent one may be inefficient. The dispute won against a Russian partner in such a court will in most cases require enforcement in Russia. According to the Russian law, such a judgment may be enforced only where allowed by an international treaty, to which Russia is party. Such treaties are not numerous: these mostly include treaties with the CIS and developing states. In exceptional circumstances, enforcement is allowed without a treaty, based on the international principle of reciprocity, but that is an extremely rare occasion in the practice.

Awards of international commercial arbitration courts can be in principle recognized and enforced in Russia. Although in order to have such an award recognized and enforced, one will need to submit an application to a Russian court, its powers will be significantly limited.

When choosing between a Russian state court and an international commercial arbitration, you need to take into account the following factors:

- ▶ Duration of the proceedings:  
Russian courts usually work much faster than most arbitrations and foreign state courts; their judgments will also take less time for enforcement in Russia.
- ▶ Costs:  
The state fees are lower in Russian courts (and do not exceed EUR 3,000).
- ▶ Qualifications:  
Arbitrators in international commercial arbitrations are usually more qualified.
- ▶ Convenience:  
The procedure in international commercial arbitration is generally more convenient.

## 8. STATUTE OF LIMITATIONS

The general statute of limitations in Russia is 3 years.



**Control the statute of limitations. The general statute of limitations is 3 years, but there are shorter and longer terms.**

The law also provides for special – longer or shorter – statutes of limitations. You can find a more detailed discussion in our summary on the statute of limitations.

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