

Agency Q&A: Russian Federation

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Country Q&A | [Law stated as at 30-Sep-2017](#) | Russian Federation

Russian Federation-specific information concerning the key legal and commercial issues to be considered when appointing an agent.

This Q&A provides country-specific commentary on [Practice note, Agency: Cross-border overview](#), and forms part of [Cross-border commercial transactions](#).

Definition and authority

1. How is the relationship between agent and principal defined under national law?

Agency relationships are regulated by Chapter 52 of the Civil Code of the Russian Federation (Russian Civil Code). According to Article 1005 of the Russian Civil Code:

"Under an agency agreement, one party (the agent) has the duty for remuneration to take, on delegation from the other party (the principal), legal or other actions in his own name, but at the expense of the principal or in the name and at the expense of the principal."

Therefore, the agency comprises two kinds of relationships:

- When the agent performs legal and other actions in its own name, but at the expense of the principal.
- When the agent performs legal and other actions in the name and at the expense of the principal.

2. What authority under national law does an agent have to bind the principal by its acts? How far can an agent bind its principal to third parties, when it does not have express authority from the principal to do so?

The agent's authority depends on what type of relationship is established between the principal and the agent (in other words, whether the agent acts in its own name or in the name of the principal).

"Under a transaction concluded by the agent with a third person in his own name and at the expense of the principal, the agent acquires rights and becomes obliged even though the principal was named in the transaction or entered into direct relations with the third person for the performance of the transaction.

Under a transaction performed by the agent with a third person in the name and at the expense of the principal, rights and duties arise directly with the principal."

(§§2-3 Clause 1, Article 1005, Civil Code.)

Therefore, it is possible for the agent to be a "marketing agent" only, that is, to perform promotional activities and solicit orders acting in the name of the principal, but not to enter into transactions in its own name.

Under Russian law, if the agency agreement provides general powers for the agent to enter into transactions in the name of the principal, the principal does not have the right to refer to the agent's lack of the necessary authority, unless it can prove that the third person knew or should have known of the limitation of the agent's powers.

It must be noted, however, that if it is proved that the agent did not have enough power to enter into a specific transaction or exceeded the power granted to it, such a transaction will be considered as concluded by the agent, not by the principal (if the principal does not approve the transaction later on) (*Article 183, Civil Code*).

Before the principal approves such a deal, the other party may unilaterally repudiate it, except when it had been aware that the agent entered into the deal without the necessary powers.

Unless the principal approves the deal or replies to the request to approve it within a reasonable time, the other party may claim that the agent complies with the deal, or may repudiate it and claim damages from the agent (unless the other party was aware of the lack of powers of the agent).

In practice, it may be quite difficult to prove that the agent did not have authority if the agency agreement grants general powers to the agent.

Regulation and legal formalities

3. Are agencies specifically regulated by national law? Is any legislation pending, which is likely to affect agency arrangements? Are there any formalities that a principal must comply with when appointing an agent, for example, any registration or disclosure requirements?

Agency is regulated by Chapter 52 of the Russian Civil Code. The rules of delegation (Chapter 49 of the Russian Civil Code) will also apply to the agency relationship if the agent acts on behalf and at the expense of the principal. If the agent acts on its own behalf but at the expense of the principal, the rules of commission (Chapter 51 of the Russian Civil Code) will apply to the agency relationship. A number of significant changes have recently been introduced into the Russian Civil Code, but these do not directly affect the agency rules.

There are no formalities under Russian law for the principal to comply with when appointing the agent.

No particular form is required for the agency agreement. The agency relationship may be established either by written contract, or by oral agreement between the principal and the agent.

In practice, in addition to the agency agreement the principal also issues a power of attorney to the agent, empowering the agent to act on behalf of the principal.

Competition law

4. Are there any national laws or regulations that would affect the following business practices:

- Grant of exclusive territory?
- Tied selling?
- Territorial restrictions?
- Customer restrictions?
- Resale price maintenance?
- Refusal to deal?
- Imposition of minimum or maximum prices?
- Imposition of minimum sales targets?

Competition issues are regulated by Federal Law No. 135-FZ "On the Protection of Competition" of 26 July 2006 (the Russian Competition Law) which has undergone significant changes over the past few years.

Since the agent must act at the expense and for the benefit of the principal, it does not purchase any goods from the principal, and depends on the principal's decisions. The agent is therefore not a separate market participant, and the provisions of the Russian Competition Law will not directly apply to the agency relationship.

As stated in Explanations N2 of the Presidium of the Federal Antimonopoly Service, agency agreements do not fall within the meaning of "vertical agreements". Please note however that if an agent concludes a supply agreement or a resale agreement on behalf of the Principal, such a supply or resale agreement may be considered as a "vertical agreement".

However, agency relationships are regulated by the Russian Civil Code, which allows the parties to introduce some restrictions on competition into the agency agreement (see [Question 5](#)).

5. Are there any laws or regulations relating to restrictive covenants or covenants not to compete during the agency agreement? To what extent is it possible to continue the restrictions after the agreement has expired? In particular, to what extent does the geographical extent and or the length of time of the restriction affect its enforceability?

Agency agreements can include some specific restrictions relating to competition. In particular, under Article 1007 of the Russian Civil Code:

"An agency agreement may provide for an obligation of the principal not to conclude similar agency agreements with other agents acting on the territory defined in the agreement or to refrain from the independent activity on this territory, which is analogous to the activity that makes up the subject of the agency agreement.

The agency agreement may provide for an obligation of the agent not to make with other principals analogous agency agreements that must be performed on a territory coinciding in full or in part with the territory indicated in the contract."

Restrictions of competition must not, however, affect customers. Therefore, the Russian Civil Code states that:

"Terms of the agency agreement, by virtue of which the agent shall have the right to sell goods, perform work, or render services exclusively for a defined category of buyers (customers) or exclusively for buyers (customers) having a place of location or a place of residence in a territory defined in the agreement are void".

(Clause 3, Article 1007.)

Russian law does not provide for a continuation of the restrictions after the agency agreement has expired. In practice, however, parties to agency agreements quite often set out restrictions on competition for a certain period after the expiry of the agreement.

The above mentioned restrictions apply to any activity relevant in an agency arrangement (including, but not limited to, sales and marketing, development and manufacturing).

Employment issues

6. Is there a risk that an agent may be treated as an employee of the principal?

When the agent is an individual, there is a possibility that the agency agreement will be considered an employment agreement. The Russian courts have held in a number of cases that the terms of the agreement concluded by the parties corresponded to those of an employment agreement.

The agreement will be interpreted as an agency or employment agreement after determining the actual meaning of its terms by comparison with the other terms and the substance of the agreement as a whole.

As opposed to an employment agreement which regulates the labour relationship and its terms, the agency agreement presumes that a certain result will be achieved (for example, the conclusion of a transaction).

There are a number of factors which may determine whether an agent would be deemed to be an employee of the principal. First, an agreement is very likely to be considered an employment agreement if it provides for:

- Fixed working hours.
- Firm disciplinary rules with which the agent must comply.
- Duty regulations (for example, in a document describing the main duties of the "agent", usually called a "job description") within which the agent acts.
- A working place for the agent.

Second, an agent under an agency agreement (as opposed to an employment agreement) receives remuneration which, as a rule, is a percentage of the value of the transactions made by the agent. However, even if an agreement provides a percentage remuneration, it can still be deemed an employment agreement if an agent receives a minimum unconditional pay on a monthly basis in addition to the percentage. Therefore, it is not advisable to foresee such a minimum unconditional pay in an agency agreement.

The risk of an agency agreement being treated as an employment agreement may increase if the principal has a number of "agents" (individuals) performing their duties on the basis of agency agreements made in the same form and with the same terms.

If the agency agreement is deemed to be an employment agreement, the Social Security Fund may charge the supplier who recently qualified as employer security fees for the whole period of the agency agreement.

Tax

7. Will a foreign principal that appoints an agent directly in the national territory be regarded as carrying on business for tax purposes in that territory?

There is a risk that a foreign principal could be regarded as having a permanent representation (permanent establishment) in Russia for tax purposes. Permanent establishments bear the same tax burden as Russian legal entities.

If the agent performs its actions in the name of the foreign company, has and regularly uses powers to conclude contracts or to agree essential terms of contracts in the name of the foreign company, thereby creating legal consequences for that foreign company (dependent agent), then the foreign company will be considered to have a permanent establishment in Russia.

However, the foreign company will not be regarded as having a permanent establishment in Russia if it performs business operations in Russia through a:

- Broker.
- Commission agent.
- Professional participant of the Russian securities market.
- Any other person acting within its main (usual) scope of business.

(Clause 9, Article 306, Russian Tax Code.)

The Russian Tax Code considers such a person to be an independent agent of the foreign company. Therefore, the agent will be able to prove that it acts within its main (usual) scope of business and only has powers to conclude transactions, but not to negotiate their essential terms with customers in Russia. In this case, the permanent establishment of the foreign principal will not have been established.

It would be easier for the agent to prove that actions under the agency agreement with the foreign principal fall within its main and usual scope of business if it has concluded agency agreements with several principals.

It must be noted that treaties on the avoidance of double taxation may provide other criteria for deeming that a foreign company has a permanent representation in Russia.

8. Are any withholding or other taxes levied in the territory on remittance monies? When and by whom are they payable?

If the agent is regarded as a dependent agent, the principal will have to pay all applicable taxes in Russia, including, among other things, corporate profit tax and corporate property tax.

Currently, the profit tax rate is 20% of the revenue of the permanent establishment less its documented deductible expenses, taking into account its functions, assets used and commercial risks taken.

Profit tax must be paid directly by the permanent establishment. The reporting period for corporate profit tax can be a quarter, half a year or nine months, and the tax period is one year. Tax returns are to be filed with the tax authority on or before the 28th day following each accounting period, and on or before 28 March of the year following the respective tax period.

The corporate property tax rate is established regionally, but it cannot be higher than 2.2% of the average annual book value of the taxable fixed assets. The reporting period for corporate property tax can be a quarter, half a year or nine months, and the tax period is one year. Tax calculations on the corporate property tax are to be filed on or before 30 calendar days upon expiry of each reporting period, and tax returns must be submitted on or before the 30th of March of the year following the tax period.

9. Will there be any difficulties in a domestic agent making payment to a foreign principal, either in local currency or in the currency of the principal's country? Are there any exchange controls in operation?

The agency agreement may provide for payment either in Russian roubles, or in a foreign currency. To make a payment in roubles, the foreign principal must have a bank account in Russian roubles.

If payments are provided in a foreign currency, the Russian rules on foreign exchange regulation and control (see *Federal Law No. 173-FZ "On the Foreign Exchange Regulation and Control" of 10 December 2003* and the relevant regulations of the Central Bank of Russia) require that the Russian agent have a transaction passport issued by his bank.

As evidence that the payment is lawful, local banks may require a copy of the signed agency agreement. The agent must also provide documents confirming the transaction and performance of services for the principal. In accordance with the Instructions of the Bank of Russia No. 138-I of 4 June 2012 (as updated on 30 November 2015), certain details of the procedure for obtaining a transaction passport have been altered (for example, requirements for certain documents to be submitted to obtain the transaction passport).

A transaction passport is not required if the total amount payable under the agreement does not exceed US\$50,000 at the exchange rate of the Central Bank of Russia as of the date of signing the agreement, or as of the date of introducing the latest amendments to the agreement if the agreement has been amended.

Duties of the agent

10. What duties does national law impose upon an agent?

Under Russian law, the agency agreement can only provide a list of general duties of the agent, but not details of specific tasks. The reason is that agency relationships are of a continuing nature, and at the moment of signing the agreement the parties may not be aware of the range of transactions to be performed by the agent.

Therefore, the main duty of the agent is to perform actions (legal and actual) for the benefit and at the expense of the principal.

The agent also has a duty to provide the principal with reports on its actions within the time periods set out by the agreement. In the absence of relevant terms in the contract, the reports must be presented by the agent in the course of performing the agreement, or at the conclusion of the agreement (*Article 1008 (2), Civil Code*). The agent's reports must also be accompanied by proof of all expenses incurred by the agent, which must be reimbursed by the principal, unless the agreement provides otherwise.

Duties of the principal

11. What obligations does national law impose on a principal?

The main obligation of the principal is to provide the agent with necessary powers and resources so that the agent can perform its duties.

The principal is also under a duty to pay the agent's remuneration in the amount and following the procedure set out in the agency agreement.

Remuneration

12. How does national law regulate remuneration to the agent? Does national law contain any compulsory provisions concerning the level of remuneration?

The amount and details of payment of the agent's remuneration will be defined in the agency agreement.

If the amount of the agent's remuneration is not provided in the agreement, and cannot be determined from the terms of the agreement, it will be the amount usually payable for this type of services in comparable circumstances (*clause 3, Article 424, Civil Code*).

If the agreement does not include the procedure for payment of the agent's remuneration, the principal pays, within a week of the time of presentation by the agent of a report covering the preceding period, unless another procedure for payment can be inferred from the nature of the agreement or commercial practice (*paragraph 3, Article 1006, Civil Code*).

13. How does local law regulate corrupt gifts and secret commissions?

Under Russian law, receiving and giving bribes may constitute a crime (*Articles 290 and 291, Russian Criminal Code*). If a corrupt gift is given to a management body of a commercial or other legal entity, the person who gave such a gift can be held criminally liable for commercial bribery (*Article 204, Russian Criminal Code*).

If the actions of the person giving the bribe do not constitute a crime, it can bear administrative liability in accordance with Article 19.28 ("Unlawful Remuneration on behalf of a Legal Entity") of the Russian Code of Administrative Offences.

Duration

14. What term is commonly agreed for an agency? Does national law regulate the length of notice periods to terminate an agency agreement?

An agency agreement can be entered into for either a defined term, or indefinitely (*Article 1005 (3), Civil Code*). Therefore, the parties are free to decide on the term of the agreement. In practice, agency agreements are often concluded for an indefinite period, so that the parties have the right to unilaterally terminate the agreement.

The parties are free to determine the length of a notice period to terminate the agency agreement, provided that it is not less than 30 calendar days (*Article 977 (3), Article 1004 (1), Civil Code*).

Rights of ownership

15. Where the agent holds stock or money or other property belonging to the principal:

- Can the principal assert its rights of ownership against third parties, in the event of insolvency of the agent and in the event that the agent has dishonestly disposed of them to third parties?
- To what extent do these rights extend to enable the principal to take the proceeds of sale of that property disposed of by the agent, where the sale was authorised by the principal and where the sale was not authorised by the principal?
- Where the agreement states that the agent shall not become the owner of any goods supplied by the principal, are there any local laws which might override this provision?

If an agent performs a transaction in its own name but at the expense of the principal, all goods acquired by the agent as a result of such transaction are considered to be owned by the principal. In addition, the agent bears liability to the principal for loss of, shortage of, or harm to property of the principal which has been transferred to the agent's possession.

The issue of returning any property belonging to the principal but transferred to the agent is not expressly regulated by the Russian Civil Code. The general rules on property returns also apply to agency agreements.

In the event of insolvency of the agent, the principal will have the right to claim the agent's property. In particular, Russian case law has confirmed that in such a case monetary claims of the principal will be included in the register of creditors' claims. In relation to claims in property, the procedure for claiming it will depend on the particulars of the specific case.

If the agent has dishonestly disposed of the principal's property to a third party, the principal has the right to bring a lawsuit against such third party under the general rules of vindication (*Article 301, Civil Code*), which also apply to agency relationships.

However, it can be difficult in practice for the principal to claim property back from a third party in the event that such third party is a bona fide acquirer.

If the property is recovered from a third party who knew or should have known that its possession was illegal (a *mala fide* acquirer) the principal will also have the right to compensation for all income that this third party acquired or should have acquired during the whole time of its illegal possession. The principal will have the right to claim from a bona fide acquirer the return of or compensation for all income acquired when it knew or should have known of the unlawfulness of its possession, or was put on notice of the owner's claim for the return of the property (*Article 303, Civil Code*).

The principal has a right to the return of the proceeds of sale of property disposed of by the agent in accordance with general rules of compensation (*Article 303, Civil Code*).

The Russian Civil Code does not directly regulate the issue of whether the agent can retain goods belonging to the principal. However, when the agent acts in its own name but at the expense of the principal, provisions related to commission will apply (*Article 1011, Civil Code*).

According to norms related to commission, the commission agent shall have a right to retain goods which are otherwise to be transferred to the principal or a person appointed by them, to secure its claims under the commission agreement (*Article 996, Civil Code*).

Therefore, the agent acting in its own name but at the expense of the principal has a right to retain the products to secure its claims under the agency agreement if the agency agreement does not provide otherwise.

Termination

16. What events will be regarded in law as justifying termination of the agency agreement? Do any statutory obligations arise on termination? What provision is usually made in the agreement for termination?

Under the Russian Civil Code, an agency agreement can be terminated for the following reasons:

- One of the parties refuses to continue performing the agreement, if the agreement does not have a defined term and expiry date.
- If the agent dies, or is declared missing, legally incapacitated, or of limited legal capacity.
- If the agent is declared insolvent (bankrupt).

The issue of whether an agency agreement made for a defined term can be unilaterally terminated is not strictly resolved by Russian legislation or the Russian courts. According to the most recent court practice, even if the agency agreement has a defined term, it can be terminated by one of the parties before the expiry date.

The parties may also enter into a termination agreement. In the termination agreement the parties usually state that the agency agreement will be deemed terminated from the moment of signing the termination agreement, or from another specific date.

A further clause which is often used in termination agreements is that the parties confirm they do not have any claims against each other in connection with the agency agreement.

No statutory obligations arise on termination of the agency agreement.

If a power of attorney has been issued (see [Question 3](#)), it must be returned to the principal upon signing the termination agreement.

17. What rights does the agent have to compensation or indemnity upon termination of the agency agreement or discontinuation of supply of the products? How is compensation or indemnity for termination / discontinuation of supply calculated? Are there any formalities which must be complied with for lodging a claim for compensation or indemnity?

When the agent acts in its own name but at the expense of the principal, and the principal unilaterally terminates the agreement, the agent will have a right to claim compensation for damages caused by the termination (*Article 1003, Civil Code*). The damages include actual damage and loss of profit, and will be calculated in accordance with general rules described in Article 15 of the Civil Code.

When the agent acts in the name of and at the expense of the principal, a unilateral termination of the agreement by the principal is not considered a ground for the agent to claim damages, except for cases when the agent acts as a commercial representative (*Article 978, Civil Code*).

The Civil Code does not regulate the issue of a discontinuation of supply without formal termination of the agreement, but does not prohibit it either. Therefore, the parties are free to foresee such compensation in these circumstances in their agreements.

The agency agreement

18. Are any particular formalities required in relation to agency agreements?

There are no particular formalities for the conclusion of an agency agreement. The agency agreement may be entered into either in writing or orally.

Usually, either local legal entities or individuals acts as agents. If a foreign legal entity regularly acts in Russia, it must register its representative or branch office or subsidiary in Russia for taxation purposes. In such a case, the foreign legal entity (or its Russian subsidiary) is considered a taxpayer according to Article 246 of the Tax Code. There are no requirements for a certain percentage of local ownership. When a local registration is required and a foreign company fails to meet this requirement, the Russian tax authorities may impose a fine equal to 20% of the income tax unpaid by the foreign company (*clause 1, Article 122, Tax Code*).

We note that no local registration is needed for a simple signing of contracts on behalf of the foreign parent company (*clause 4, Article 306, Tax Code*).

The principal does not need to provide any formal authorisation to the agent. In practice, however, the principal issues a power of attorney to the agent, empowering the agent to act on behalf of the principal.

It should be noted that some agency activities (if the agent acts in its own name) may require a license under Federal Law No. 99-FZ "On licensing of some activities". This list of licensed activities includes 51 items, including pharmaceutical business, organisation of gambling, and so on.

There are no other formalities which could affect validity and enforceability of the agency agreement under Russian law.

19. Where the agent is required by the principal to enter into a guarantee of the debts to the principal of customers that it finds for the principal (*del credere* guarantee) or that it concludes contracts with on behalf of the principal, what formalities and documentation are required to ensure that the guarantee is legally binding? Is any special set of words required for such a guarantee?

As a general rule, the agent will not be liable to the principal for non-performance of a transaction by a third party.

A *del credere* guarantee is only possible if the agent enters into transactions with customers in its own name, but at the expense of the principal (*Article 993 (1), Civil Code*). The Russian Civil Code does not provide any requirements for formalities or documentation for such a guarantee. In practice, it is enough to include a statement into the agency agreement, to the effect that the agent bears liability for performance by the customers of transactions. There is no requirement to enter into a separate guarantee agreement.

In the event of non-performance by a third party of a transaction entered into with the agent, the agent must report without delay to the principal, gather the necessary evidence and, on the principal's request, transfer to the principal the rights under such a transaction. If the third party does not perform its obligations under the transaction, the principal then has the right to claim against the agent.

If the transaction is entered into by the agent on behalf and at the expense of the principal, all rights and obligations are with the principal. The agent does not bear any liability for the actions of the customer with whom the transaction

is concluded. However, the principal and the agent may enter into a surety agreement to protect the rights of the principal in the case of third party non-performance. Such a surety obligation may also be included in the agency agreement.

Sureties are regulated by paragraph 5, Chapter 23 of the Russian Civil Code. Under a surety, the principal has a right to sue both the agent and the third party for non-performance of the latter's obligations. The agent and the third party are jointly liable to the principal. The guarantee agreement (or the guarantee obligation established in the agency agreement) may, however, provide for subsidiary liability of the agent for the actions of the third party.

If the agent performs any of the obligations of the third party, it assumes all rights of the principal and may claim against the third party for the main debt, as well as interest and damages.

The surety agreement has specific grounds for termination, listed in clause 4 Article 367 of the Russian Civil Code.

20. What are the parties called in your jurisdiction?

The parties are usually called "principal" and "agent", or "commitent" (or "client") and "commission agent".

21. In your jurisdiction, would it be standard practice for an agent to be obliged to:

- Store the principal's products and, if so, to store them separately from other goods at the agent's own cost?
- Insure the principal's property at the agent's own cost?
- Give the principal access to the agent's premises to carry out inspections of the agent's books and records or for inspecting or taking stock of the principal's property?
- Contract with customers on the principal's standard terms and conditions? Would the agent receive protection under local law allowing it to deviate from any such requirement?
- Stock adequate volumes of products and to deliver the products to the customer?

It is standard practice in Russia that the principal's goods are required to be stored separately from the other goods. However, there is no such requirement in the Civil Code. Therefore, parties are free to decide whether to have this requirement.

The agent is quite often required to insure the principal's property. The parties shall decide which parties will bear insurance expenses. Generally, the principal reimburses such expenses.

Clauses giving the principal access to the agent's premises are standard for agency agreements in Russia.

It is standard practice to set out the principal's terms and conditions in an agency agreement. The agent has a right to deviate from the principal's instructions when it is in the principal's interests and the agent could not ask for prior approval from the principal or has not received a reply in time (*clause 1, Article 995, Civil Code*).

It is standard practice in Russia to include terms obliging the agent to stock adequate volumes of products and to deliver the products to the customer in an agency agreement.

22. Are there any obligatory statutory requirements in relation to commission payments to agents in your jurisdiction or the time limits when the commission payments must be made to agents by the principal?

The Civil Code does not provide strict rules for commission payments. The parties will determine the volume of commission payments and payment terms in the agreement. If the agreement does not provide terms for commission payments, such payment must be made within one week after the receipt of an agent's report for the latest period.

To effect payments between a foreign principal and a Russian agent, the parties will need to make a transaction passport according to rules set out in Article 20 of Federal Law No.173-FZ "On the Foreign Exchange Regulation and Control". Such a passport is required only for transactions that are equal or more than USD50,000 (see [Question 9](#)).

23. Would it be possible in your jurisdiction to include a clause which:

- Makes commissions only payable by the principal to the agent in respect of contracts concluded during the term of the agreement only?
- Provides for a different (lower) rate of commission to be payable to the agent where the principal makes a direct sale to certain customers in the agent's territory?
- Excludes payment of commissions for product sales made by previous agents but which are concluded after the current agent's appointment?
- Provides for the principal to send a statement of the commission due to the agent in a specific period? If so, please confirm what the period must be under any applicable legislation.

- Provides a right for the agent to retain commission out of the sale proceeds?
- Provides for each party to keep accounts and records of all transactions and allow the other party to inspect such accounts and records and take copies of them?
- Provides that all records held by either party referred to above belong to the principal?

It is possible to include all such clauses in the agreement.

Statements of the commission due are called agents' reports in Russia, and must be made by the agent and provided to the principal according to terms set in the agreement. The Russian Civil Code does not foresee any strict period for sending such reports.

While it is possible to include a clause providing that documents held by either party belong to the principle, the agent may need to retain invoices and other account documents in their office for tax purposes.

24. In your jurisdiction, would it be permissible to mandate that any dispute on the amount of commission payable must be referred to the principal's auditor for settlement (to the exclusion of the agent having access to the courts)? If so, does the principal's auditor need to be registered in the agent's home jurisdiction?

The parties are free to appoint an arbitrator to resolve their dispute. Such arbitrator must however be impartial and independent (that is, they must not be dependent on the parties). Therefore, the principal's auditor will not be considered as an admissible arbitrator, and the other party will have a right to challenge such an arbitrator (*Article 11, Federal Law No. 102-FZ "On Courts of Arbitration"*).

We also note that such arbitration clause will not however effect the right of any party to appeal to a state court to resolve a dispute. The waiver of this right is void (*clause 3, Article 4, Arbitral Procedure Court*).

25. Does the trust concept and the role of "trustee" exist in your jurisdiction? If not, how should the practical matter of separate bank accounts be reflected in clause wording?

The trust concept is similar to a nominee bank account agreement, as introduced into the Civil Code in 2014. A nominee account will be opened by an account holder to perform operations with monetary funds belonging to another person, called a beneficiary (*clause 1, Article 860.1, Civil Code*). The parties (the agent and bank, the beneficiary's signature is not required) will need to enter into a nominee bank account agreement where the bank may be obliged to control operations with the nominee account.

26. In your jurisdiction, are there competition / anti-trust law implications of an agent agreeing to spend its own money on advertising the principal's products?

The parties are free to decide which party will bear the expenses of advertising the principal's products. No competition / anti-trust implications will arise.

27. Is it common practice in your jurisdiction for the principal to provide the agent with an indemnity in respect of any product liability claim? Does "damage" to property in any indemnity include harm to intangible property such as profits and reputation?

In 2015 the Civil Code was supplemented by indemnity provisions (*Article 406.1, Civil Code*), which allow parties to include in their agreements a list of cases when one party will reimburse material losses of another party. The parties must specify in their agreement the volume of such reimbursement or an order to determine it.

Article 406.1 of the Civil Code does not relate, however, to cases when the loss arises out of a breach of its obligations by one of the parties.

Therefore, it is necessary to distinguish the concept of reimbursement of material losses (*Article 406.1, Civil Code*) and reimbursement of damages (*Article 15, Civil Code*).

The Civil Code does not contain provisions related to indemnification against damages. However, the agent can be indemnified against product liability claims of customers to the extent provided under the relevant agency agreement between the principal and the agent (product liability clauses). In addition, the parties may consider insuring risks associated with possible product liability claims by their customers.

Damages include actual damage and loss of profit (*Article 15, Civil Code*). Therefore, it is advisable to specify precisely in the agent agreement the extent of the indemnity.

We note that in some cases the principal will still need to pay the agent for the loss of profit event if the agent agreement contains an exclusion of liability clause. These are the cases when the principal intentionally breaches the agreement since an agreement made in advance to exclude or restrict liability for intentional breach of obligations is void (*clause 4, Article 401, Civil Code*).

28. What limitations and exclusions of liability might be appropriate?

The Civil Code does not contain provisions related to limitations and exclusion of liability. However, the parties can determine such limitations and exclusion in their agreement. Please note that in case of an intentional breach of the agreement such limitations and exclusions are deemed to be void (see [Question 27](#)).

29. Is the term "exclusive" agency agreement recognised in your jurisdiction? Does local law provide for automatic exclusivity?

The term "exclusive" agency agreement is not directly used in the Civil Code. However, the Civil Code provides two clauses allowing parties of the agent agreement to restrict the right of the principal to make similar agreements with other agents (*clause 1, Article 1007, Civil Code*) and to restrict the right of the agent to make similar agreements with other principals (see [Question 5](#)).

30. Is the term "sole" agency agreement recognised in your jurisdiction?

The term "sole" agency agreement is not used in the Civil Code. The Civil Code provides two clauses allowing parties of the agent agreement to restrict the right of the principal to make similar agreements with other agents (*clause 1, Article 1007, Civil Code*) and to restrict the right of the agent to make similar agreements with other principals (see [Question 5](#)).

31. Is the term "non-exclusive" agency agreement recognised in your jurisdiction?

The term "non-exclusive" agency agreement is not used in the Civil Code. The parties can still name their agreement as a "non-exclusive" agency agreement where the principal can appoint other agents in a specified territory and the principal can sell to customers directly in that territory.

32. Will any customs duties be payable under the agreement for any products that are received by an agent in your jurisdiction?

If the agent receives products, and such products cross the border of Russia, some customs duties may need to be paid. What customs duties must be paid and their rate will depend on the kind of products and their country of origin.

Usually, the principal pays the customs duties, however the parties may decide otherwise in the agency agreement.

33. Are there any compliance obligations on either party under your local laws?

Such compliance clauses are not common in agreements made under Russian law.

34. In your jurisdiction, to what extent can an agent incur personal liability to a customer?

The agent can be personally liable to a customer if the agent acts in its own name. If the agent acts in the name of the principal, the principal will be liable to a customer.

The agent can obtain insurance to cover such personal liability, but this is not widespread in Russia.

35. Does the law in your jurisdiction dictate which governing law and jurisdiction will apply to the agency agreement?

The parties can choose the governing law and jurisdiction that will apply to the agency agreement (*clause 1, Article 1210, Civil Code*).

If the parties do not specify governing law in the agency agreement, the agent's law will apply (*clause 2, Article 1211, Civil Code*).

36. Does the agreement need to be in a language other than English to be valid and enforceable?

The agency agreement can be made in any language. It is common practice to make bilingual agreements where one of the languages is agreed to prevail.

37. How does this agreement need to be executed to ensure that it is valid and enforceable? Does it need to be registered with any authority in your jurisdiction?

Execution formalities

There are no formal requirements to notarise or apostille the agency agreement.

Registration formalities

There are no formal requirements to register agency agreements with any authority or state body.

38. Are there any clauses in the agency agreement that would not be legally enforceable or not standard practice in your jurisdiction?

It is not standard practice to use compliance clauses in agreements governed by Russian law (see [Question 33](#)).

Furthermore, indemnity and restriction of liability clauses might in some cases be unenforceable (see [Question 27](#) and [Question 28](#)).

39. Are there any other clauses that would be usual to see in an agency agreement and/or that are standard practice in your jurisdiction?

The parties usually also state in the agency agreement whether the agent may enter into sub-agency agreements.

Brexit

40. From the point of view of your jurisdiction, what points do you anticipate might arise in relation to an agency agreement which either: (i) contains an express choice of English law as the governing law; or (ii) has a UK-incorporated principal or agent as a party and is governed by the laws of your jurisdiction, if, during the life of the agreement, the UK were to cease to be a member of the European Union?

At the moment, we do not know the details of Brexit, its terms, results and consequences with respect to business. There might be some issues affecting agency agreements in case of Brexit, since it might involve substantial change in the UK's legislation.

Therefore, if an agency agreement is governed by English law, we suggest inserting into the agreement wording allowing parties to re-negotiate the agreement in good faith. We believe it might also be reasonable to foresee a right of any party to terminate the agreement unilaterally in case of substantial changes in the governing law.

If the agreement is governed by Russian law, some issues might still arise in case of Brexit, since changes in UK legislation might involve revision of UK-based principal or agent's status (however, we do not await any substantial changes in this regard). Therefore, our recommendations related to re-negotiation and unilateral termination of the agreement might still be appropriate.

We do not anticipate that the question of whether the UK will remain a member of the EEA or not will influence agency agreements, since Russia is not a member of the EEA.

41. In relation to any points identified in [Question 40](#), would you recommend that any adjustment should be made now to the standard document if it were to be used as an agreement governed by the law of your jurisdiction, in order to address those points in advance?

We would recommend adjusting the agency agreement to give the parties a right to re-negotiate and unilaterally terminate the agreement (see [Question 40](#)).

END OF DOCUMENT