Banking industry
The Russian banking industry is still characterised by a large number of credit institutions (836 as of 1 January 2020) and by a high level of concentration of capital.

In 2018-2019 the Central Bank of Russia (the “CBR”) continued its policy of reducing the number of credit institutions, aiming for their consolidation and the closer supervision of their activities in the current economic climate. Consequently, a noticeable number of banking licences were revoked in the last two years.

As of 1 January 2020, 60.43% of the banking sector’s total assets were held by the top five Russian banks². State-owned banks³ continue to play a significant role in the stabilisation and development of the Russian banking sector.

Legislative and regulatory framework
The legislative framework regulating the Russian banking sector is provided under Federal Law No. 395-1 “On Banks and Banking Activities” dated 2 December 1990 (the “Banking Law”) and Federal Law No. 86-FZ “On the Central Bank of the Russian Federation” dated 10 July 2002 (the “CBR Law”). Credit institutions’ bankruptcy is regulated by Federal Law No. 127-FZ “On Insolvency (Bankruptcy)” dated 26 October 2002, which now governs the relevant procedures instead of the special bankruptcy procedures that were previously in force in the banking sector. These laws and related regulations:

— define what is a credit institution⁴;
— set out the list of banking operations and other transactions that may be performed by credit institutions;

2. As of 1 January 2020, the top five Russian banks in terms of net assets are Sberbank (RUB 28.9bn, i.e. EUR 412.9m); VTB (RUB 14.3bn, i.e. EUR 204.3m); Gazprombank (RUB 6.5bn, i.e. EUR 92.9m); National Clearing Centre Bank (RUB 4bn, i.e. EUR 57.2m); and Alfa-Bank (RUB 3.8bn, i.e. EUR 54.3m); www.banks.ru/banks/ratings/ (all conversions are based on a notional rate of RUB 70 = EUR 1, as used for convenience throughout this guide).
3. Such as Sberbank, VTB, Gazprombank, etc.
4. Here and further, banks and non-banking credit institutions.
— establish the framework for the registration and licensing of credit institutions; and
— determine the regime governing bankruptcy proceedings and the protection of credit institutions.

The CBR is Russia’s sole financial markets regulator. It is legally and financially independent from the Russian Government. The CBR consists of a Moscow-based Head Office, which includes its Board of Directors, the National Banking Council and central administrative departments, a number of regional branches in the various regions of the Russian Federation (which are called “National Banks” in certain republics), and its local departments.

Under the CBR Law and the Banking Law, the CBR is responsible for regulating banking activities and is authorised to adopt mandatory regulations concerning banking and currency operations. The CBR actively uses its powers and has created a detailed and extensive body of regulation on key areas, including:

Licensing and operations
Licensing
A credit institution must be licensed by the CBR in order to conduct “banking activities”, as defined in the Banking Law. Credit institutions may be incorporated either as joint-stock or limited liability companies.

Since 1 June 2017, the Banking Law provides for the two types of banking licences:
— universal banking licences; and
— basic banking licences. The basic banking licence restricts the operations that the bank can carry out in relation to foreign clients and counterparties. Its holder is also prohibited from opening correspondent accounts with foreign banks (except for correspondent accounts required to participate in a foreign payment system) and can invest only in a limited range of securities. On the other hand, a bank with a basic licence enjoys lower capital and other regulatory requirements and limited disclosure obligations.

If a bank intends to carry out particular banking operations (e.g. operations with a foreign currency, with funds of individual clients or with precious metals), they must be expressly indicated in the universal banking licence or the

---

5 Since 1 June 2018 the capital of a bank with a universal banking licence should be not less than RUB 1bn (EUR 14.3m), while that of a bank with a basic banking licence should be not less than RUB 300m (EUR 4.3m) (subject to some exceptions).
basic banking licence or be permitted in a specific licence to carry out operations with precious metals issued by the CBR to the bank.

The CBR may **deny the issuance** of a banking licence in the event of: (i) the non-compliance of application documents with Russian law requirements; (ii) the unsatisfactory financial standing of the founders and their controlling persons; (iii) the non-compliance with the qualification requirements of the managers; or (iv) a member of the supervisory board (board of directors), a founder with more than 10% of shares (participatory interests) or its controlling persons having an unsatisfactory business reputation as defined by the law. The CBR may **revoke** a banking licence, for example, in cases of capital inadequacy, breach of banking and other Russian law requirements (including breach of anti-money laundering regulations), for carrying out banking operations that are not authorised by the relevant banking licence, or the insolvency of a bank.

Apart from banking licences, there are also special licences issued to non-banking credit institutions enabling them to conduct certain types of banking operations with respect to settlement and payment transactions, deposit and investment of funds of legal entities and clearing operations.

**Acquisitions**

Acquisitions in the banking sector are subject to specific banking and anti-monopoly rules.

**Banking rules**

According to the Banking Law, the CBR must:

— give its **prior consent** to any acquisition relating to (i) more than 10%, more than 25%, more than 50%, more than 75% or 100% of the voting shares; or (ii) more than 10%, more than 1/3, more than 50%, more than 2/3 or 100% of participatory interests, in a credit institution;

— give its **prior consent** when a company, group of companies or individual acquires direct or indirect control of a shareholder(s) of a credit institution holding more than 10% of the voting shares or participation interests in the respective credit institution; and

— be **notified** of an acquisition of more than 1% (but less than 10%) of the voting shares or participatory interests in a credit institution.

**Anti-monopoly rules**

**Prior approval** by the Russian Federal Anti-monopoly Service is required if the proposed acquisition relates to:

— more than 25%, more than 50% or more than 75% of the voting shares, or more than 1/3, more than 50% or more than 2/3 of participatory interests, in a credit institution, or more than 10% of the assets of a credit institution; and

— the target is a credit institution whose assets exceed RUB 33bn (EUR 471.9m).
Operations
Banks may carry out a wide range of banking operations and provide various services. Non-banking credit institutions may only conduct a limited number of banking operations, such as maintaining accounts and processing payments on behalf of various entities.

The Banking Law provides that the following services qualify as “banking operations” and are subject to obtaining an appropriate CBR licence:
— taking deposits from individuals and legal entities (both demand and fixed-term deposits);
— investing the deposited funds as a principal, and opening and maintaining bank accounts for individuals and legal entities;
— performing settlements in accordance with the instructions of individuals and legal entities, including correspondent banks, from/to their bank accounts;
— providing cash, cheque, promissory note, payment document handling services and over-the-counter services to individuals and legal entities;
— selling and purchasing foreign currency (including banknotes and coins);
— taking deposits in precious metals and investing them, opening precious metal accounts and conducting operations on precious metal accounts; and
— processing payments of funds (including e-money transfers) in accordance with the instructions of individuals without opening bank accounts (excluding payments by post).

In addition to banking operations, credit institutions are permitted to: (i) give suretyships for the obligations of third parties contemplating payment in cash; (ii) accept assignments of rights to demand payment in monetary form; (iii) perform trust management of monetary funds and other assets for individuals and legal entities; (iv) engage in operations with precious metals and coins made of precious metals; (v) lease out special premises and safe deposit boxes to individuals and legal entities for document and valuables storage; (vi) effect leasing operations; (vii) engage in factoring operations; (viii) provide consulting and information services; and (ix) issue bank guarantees.

A credit institution may enter into any other transaction in compliance with the relevant Russian legislation.

Under the Banking Law, a credit institution cannot engage in manufacturing, commodities trading (excluding precious metals) or insurance activities. However, these restrictions do not extend to any cash-settled commodity derivative transactions.

Deposit insurance
Under the Deposit Insurance Law, a bank may only attract deposits from or open accounts for individuals, entrepreneurs and small business enterprises (“SBEs”) if the bank is a member of the deposit insurance system.
Failure to satisfy these requirements or choosing not to participate in the deposit insurance system will result in the bank being unable to attract deposits from or open accounts for individuals, entrepreneurs and SBEs.

Member banks pay a contribution into a deposit insurance fund. These contributions are calculated as a percentage of the average daily balance of relevant deposits maintained with a particular bank, subject to an established cap. All individual depositors, entrepreneurs and SBEs with deposits in member banks are entitled to 100% compensation for aggregate amounts up to RUB 1.4m (EUR 20,000).

The anti-money laundering law
Federal Law No. 115-FZ “On Combating Money Laundering and the Financing of Terrorism” (the “AML Law”) came into force on 1 February 2002, and has been revised a number of times to reflect the global developments in this area. It is the primary legislative act in the Russian Federation aimed at preventing money laundering activities and the financing of terrorism, and is supported by numerous recommendations, binding instructions and regulations of the CBR and other authorities.

Participation in the deposit insurance system is subject to a number of requirements:
— The CBR must be satisfied that the bank’s financial accounts and reports are true and accurate.
— The bank must be in full compliance with the CBR’s stringently monitored mandatory economic ratios (capital adequacy, liquidity, etc.).
— The bank must fully comply with the CBR ratios for the assessment of the quality of the bank’s capital and assets, profitability and liquidity, in addition to the CBR’s requirements for the transparency of its ownership structure, risk management system and internal control.
— The CBR must not be conducting any enforcement actions in respect of the bank, nor must any grounds for these enforcement actions have arisen during the CBR’s review of the bank’s application.

7 On the basis of a licence to carry out operations with precious metals.
The AML Law applies to individuals and legal entities engaged in transactions with monies (and other assets) in Russia, as well as so-called “regulated entities” and the state authorities responsible for monitoring money laundering activities in Russia. It provides for mandatory internal procedures and reporting requirements in the event of any suspicious or otherwise monitored transactions.

Financial institutions, such as banks and non-banking credit institutions, professional participants of the securities market, insurance and leasing companies, postal and other non-credit institutions that deal with the transmission of money (the “Regulated Entities”), are required, with limited exceptions, to perform due diligence by ascertaining the identity of a customer (and beneficiary) and monitoring transactions for suspicious activity.

To ensure compliance, most Regulated Entities are obliged to develop and implement sophisticated internal regulations and procedures. They must also maintain a sufficient level of education and training on these matters for relevant employees.

In addition, according to recent amendments to the AML Law, Regulated Entities which are members of a banking group or a banking holding are entitled to exchange client information to identify clients as required by the AML Law (provided that they comply with certain requirements). However, this new rule does not allow the transfer of client information to foreign parent banks or foreign members of a banking group.

The Regulated Entities must identify and report transactions of a suspicious nature to the Federal Financial Monitoring Service, a designated monitoring authority. These transactions, among others, include cash or non-cash transactions of at least RUB 600,000 (EUR 8,580) and immovable property transactions of at least RUB 3m (EUR 42,900), or the equivalent of these amounts in foreign currency. If one of the parties to a transaction is suspected of being related to terrorist activity, the transaction is subject to mandatory control regardless of the amounts involved.

The Russian anti-money laundering legislation is consistent with the relevant international practice and provides for advanced identification and control procedures in respect of foreign politically exposed persons (so-called “PEPs”).

The CBR may undertake preventative and/or enforcement measures in respect of a Regulated Entity involved in transactions that infringe the anti-money laundering legislation. These measures may include:

— informing the entity of the CBR’s concern regarding its activities;
— suggesting that the entity provides the CBR with a programme for improvement; and
— establishing additional monitoring measures.
Enforcement measures may also include the imposition of a penalty and the withdrawal of the banking licence. The Russian Criminal Code provides for criminal liability for breaches of the legislation on anti-money laundering and this includes penalties and imprisonment for the bank’s management.

Bank secrecy
Similar to other jurisdictions, Russia has a set of rules for bank secrecy which are set out in the Banking Law. Accordingly, a Russian licensed bank may disclose information about any of its customers (including the relevant customer’s operations) only to that customer, courts of general jurisdiction, commercial courts, certain governmental bodies and law enforcement agencies. In the event of unauthorised disclosure of any information so received, the respective authorities bear civil (compensation of damages), administrative and criminal liability under Russian law.

In practice, if a third party wishes to gain access to information in relation to the account balance of an account holder, the account holder must expressly authorise their account bank to release the relevant information. However, some banks take the more conservative view that such authorisation is not possible on the basis that it is not specifically provided for in the banking legislation.

FATCA and CRS
Critical provisions of FATCA (i.e. the US Foreign Account Tax Compliance Act 2010, which came into force on 1 July 2014) apply extraterritorially and in order to counteract tax evasion require foreign financial institutions to report to the US Internal Revenue Service (the “IRS”) information on their clients who have US tax residency status.

In the absence of an intergovernmental agreement on a FATCA compliance mechanism between the US and Russian Governments and but for the adoption of Federal Law No. 173-FZ regulating how Russian financial institutions can report to foreign (in particular US) tax authorities, these institutions (or more specifically, their officials), would have faced administrative sanctions and criminal charges for breaching Russian bank secrecy legislation following any transfer of data to the IRS. This law was, to an extent, to the relief of Russian financial institutions, but also imposed certain new reporting obligations on

Please note that Russian authorised banks are also subject to Russian data protection legislation.

---

9 The terms “banking groups” and “banking holdings” are defined in accordance with the Banking Law.
10 Please see the Personal data protection chapter on page 115.
11 A FATCA compliance mechanism was discussed between the US and Russian Governments in early 2014. However, the negotiations of an intergovernmental agreement which would allow Russian financial institutions to comply with extraterritorial FATCA requirements have been suspended.
their new reporting obligations on their officials, including an obligation on them to disclose to the Russian tax authorities that a client is a foreign taxpayer.

Russia also takes part in the OECD’s Common Reporting Standard (the “CRS”) which provides for automatic exchange of taxpayer information between the tax authorities of the participating countries. This means that (i) Russian financial institutions (including banks) are obliged to disclose information on their clients who are tax residents of other CRS participating countries to the Russian tax authorities; and (ii) the Russian tax authorities will engage in further exchange. Russia started to exchange financial information in September 2018. The Russian legal framework for an automatic exchange mechanism is now being developed13. According to the OECD automatic exchange portal14,

as of February 2020, Russia intends to exchange taxpayer information with 68 countries, while 95 countries confirmed that they will provide information on Russian taxpayers to the Russian tax authorities.

---

13 The law on the implementation of CRS requirements into Russian legislation was adopted in November 2017; the Resolution of the Government No. 693 “On the Implementation of the International Automatic Exchange of Financial Information with the Competent Authorities of Foreign States (Territories)” dated 16 June 2018 provides for the procedural details of the automatic exchange mechanism.

14 www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/#.en.345426