

CHINA BUSINESS 商 LAW JOURNAL 法

February 2013 | Volume 4, Issue 2

2013年2月 | 第4辑第2期

仰首展望新一年

蛇年公司法务的希冀与担忧



What's up in 2013?

Hopes and fears of in-house counsel in the Year of the Snake



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重温昔日兄弟情 Old comrades

对热情洋溢的中国投资者而言，俄罗斯这片土地机遇良多，但风险也不容小觑，而且中俄之间还横亘着文化的鸿沟。作者李俊辰为您探路。

The opportunities are many, but so are the risks for keen Chinese investors. Richard Li explores both, along with the cultural chasm that still exists between China and Russia

在所谓的铁幕与竹幕年代结下革命兄弟情谊的中俄两国如今的关系早已不同于当年。近年来，中国在大踏步前进；相比之下，俄罗斯在苏联解体之后的发展步伐则沉重而缓慢。不过，由于俄国加入了世贸组织并大力开发远东地区，这片土地正召唤着中国商人前去一展身手。

中国海关总署于1月10日举办的新闻发布会上称，2012年中俄两国贸易总额比2011年上升11.2%，达881.6亿美元。中俄交易中的参与主体也更加多样化。除了从事原材料和矿产资源交易的大型企业之外，在过去12个月中，“小型公司、企业家个人之间

China and Russia's relationship has come a long way from comrades of old in the days of the iron and bamboo curtains. While China has bounded ahead in recent years, Russia has plodded by comparison since the breakup of the Soviet Union. Yet its accession to the World Trade Organisation (WTO) and the now rapid development of its Far East has been beckoning Chinese businesses westwards.

Compared to 2011, trade between the two neighbours grew 11.2% in 2012, to US\$88.16 billion, China's General Administration of Customs reported in a press conference on 10 January. And parties involved in the deals have become more diversified.

也开始踊跃建立更密切的商业合作关系,尤其是在中俄两国的研究开发和高新技术领域”, Zorin Law Office 莫斯科办公室管理合伙人 Nikolay Zorin 表示。

不过,惯于同西方世界打交道的中国商人常常发现,俄国对他们而言十分陌生。此外,俄罗斯经济快速发展背后的一些阴暗面也常常让中国公司望而却步。Zorin 指出,“腐败问题、不公平的贸易与竞争、企业劫掠 (corporate raiding)、内幕交易” 等是中国投资者前行之路上的一些主要障碍。与之呼应的是,由世界银行和国际金融公司联手出版的《2013 年营商环境报告》根据在俄罗斯的经商难易程度,将俄国列在第 112 位的靠后位置。

最近,由于俄罗斯在上述《报告》中的排名不佳,俄国总统普京公开宣称俄罗斯必须在 2018 年之前上升至该排名的第 20 位。“这就需要大力改善投资环境。” 德普律师事务所莫斯科办公室合伙人 Alan Kartashkin 指出。

“今年,两国将就向 [中国] 供应粮食事宜签署合作备忘录……在不久的将来,两国将签署一份政府间合作协议,共同预防、制止、杜绝那些未见公开、游离于监管之外的非法捕杀海洋生物资源的行为。” Jurinflot International 律师事务所莫斯科办公室合伙人 Valery Mandriouc 说。“对我的客户来说,所有这些举措都大大降低了他们开展商业活动的难度,业务前景更光明,利润空间也更大。”

Besides large companies trading raw materials and mineral resources, in the past 12 months “closer business connections started to spread intensively among minor enterprises and individual entrepreneurs, especially engaged in R&D and high-tech sectors of both jurisdictions,” says Nikolay Zorin, the managing partner at Zorin Law Office in Moscow.

But the Chinese, all too used to trading with the West, often discover they are totally unfamiliar with Russia. What’s more, some of the darker aspects associated with Russia’s rapid development have also scared off Chinese companies. Zorin points to “corruption, unfair trade and competition, corporate raiding, insider trading activities” as some of the major roadblocks. Accordingly, Russia is ranked 112th by Doing Business 2013, a report co-published by the World Bank and the International Finance Corporation, in terms of the ease of doing business in the country.

Unsatisfied with the country’s current ranking in the report, Russia’s President Vladimir Putin recently proclaimed that Russia must reach the top 20 by 2018. “This should require profound improvements in the investment climate,” says Alan Kartashkin, a partner at Debevoise & Plimpton in Moscow.

“This year, the two countries are to conclude a memorandum of co-operation in the supply of grain [to China] ... In the near future there will be signed an intergovernmental agreement on co-operation to prevent, deter and eliminate illegal, unreported and unregulated fishing of living marine resources,” says Valery Mandriouc, a partner at Jurinflot International Law Firm in Moscow. “For our clients, all those events will make their business significantly simpler – also promising and profitable.”

Russia’s aspiration to boost its economy can be also seen in the country’s efforts to lead the establishment of a regional intergovernmental network, with former Soviet countries as the main pillar. At the beginning of 2010, Russia launched the Customs Union together with Kazakhstan and Belarus to remove the custom borders between the members. In November 2011, the three founders of the Customs Union further proposed to form a political and economic alliance named Eurasian Union by 2015, which, when set up, is likely to include Kyrgyzstan and Tajikistan.

The rising Far East

“Russian authorities declare the development of economic relations with China as one of its priorities. In this regard, we expect further progress in establishing partnership contacts between Russian and Chinese border regions,” says Dmitriy Glazounov, the managing partner at Liniya Prava in Moscow.

One of the most hectic border regions is probably Russia’s Far East. Abundant in natural resources and well positioned as a shipping hub, it’s now rising as a new engine for trade and investment in Asia. China and Russia have signed a 2009-2018 Programme of Co-operation between Russia’s Far East and Eastern Siberia regions, and China’s northeast region.

“Development of the Russian Far East is one of the national priorities,” says Pavel Karpunin, a partner at Capital Legal Services in St Petersburg. “To this end, new institutions are established and considerable efforts are invested.”

Once neglected, the region is craving infrastructure development, and such projects can be structured under the public-private partnership (PPP) model. “The Russian government has been actively working on adopting legislation that can attract investors in PPP projects,” Karpunin says.



俄罗斯领导人普京希望俄国的营商环境排名在 2018 年上升至第 20 位。
Russian leader Vladimir Putin wants Russia’s Doing Business ranking to improve.

关于这些组织在规 定方面的冲突，目前已经有大量的相关报道

A considerable amount of contradiction among legal acts of these organisations has been reported



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俄罗斯远东区也向高新技术投资抛出了绣球。“在远东区投资超过 4 亿卢布 (1330 万美元) 的新设立公司将享有税收优惠，这项规定即将生效。” Quinn Emanuel Urquhart & Sullivan 莫斯科办公室合伙人 Vasily Kuznetsov 说。“由于这项措施，中国投资人若在远东区设立高新技术企业，投资的收效周期会大大缩短。”

加入世贸

2012 年 8 月 22 日，俄罗斯获准成为世贸组织的第 156 个成员国。加入世贸组织之后，“[俄国] 承诺对本国法律作出重大修订，尤其是税务领域和外贸方面的法规。” Quinn Emanuel Urquhart & Sullivan 莫斯科办公室合伙人 Ivan Marisin 介绍说。俄国经济发展部部长 Andrey Belousov 称，俄国加入世贸组织之后，该国的海关关税至 2015 年将平均下降 3.5%。

关税负担的减轻意味着“向俄罗斯出口采矿机械和设备的中国企业将拥有价格竞争优势”，Marisin 表示。关税的下降还将惠及自中国进口的服装、纺织品、鞋类、家用电器等产品。“欧债危机爆发之后，俄罗斯成为中国最青睐的产品销售市场。” Kuznetsov 认为。

但是外国投资者也需要留意一些问题。关税同盟以及正在组建中的欧亚联盟的相关规定与世贸组织的规定并未做到无缝对接。

“关于这些组织在规 定方面的冲突，目前已经有大量的相关报道。” Marisin 说。如果关税同盟和欧亚联盟不能使其规定与世贸组织规则保持一致，“海关和税务领域的‘规章混乱’状态足以妨碍俄国与中国等合作伙伴之间的贸易往来。” Kuznetsov 补充道。

好在欧亚联盟和关税同盟的成员国已经在积极采取措施消除这些问题。Marisin 举例说，关税同盟已于去年八月对其共同关税规定作出了一项新修订。

除了税务，俄国加入世贸组织还为其他领域带来了变化。例如，俄国于去年八月从其国家知识产权法中删去了关于“居民”和“非居民”的定义。因此，“俄国居民和非俄国居民之间需就知识产权向国家缴纳的费用不再有差别”，Karpunin 说。

says. If the two unions fail to make their regulations consistent with WTO rules, “international trade with China and other partners would be sufficiently hampered by a ‘regulation mess’ in customs and taxation fields,” Kuznetsov adds.

Members of the Eurasian Union and Customs Union have been making efforts to eliminate these problems. Marisin says the Customs Union adopted a new revision of its common customs tariff in August last year.

Russia’s WTO entry brings changes to other areas besides taxation. In the national intellectual property law, the definitions of “resident” and “non-resident” were deleted last August. As a result, “there is no difference in the amount of the state fee payable by Russian residents and non-residents for intellectual property”, Karpunin says.

In the pharmaceutical industry, a new regulation was issued in August last year to protect information provided when applying for state registration of medicines. “There is a prohibition of the disclosure and use for commercial purposes of such information. The period of this prohibition is six years from the date of the state registration of a medicine,” Karpunin says.

Before taking any ambitious forays, businesspeople from China should know some common pitfalls that may catch them unawares, as well as the benefits Russia can offer.

Different styles

Chinese and Russian lawyers pinpoint mutual cultural misunderstandings, the language barrier and lack of knowledge of Russian law as the common stumbling blocks for Chinese businesspeople.

“Public and business administrations of both jurisdictions should work together to eliminate difficulties arising from differences in their business cultures,” notes Zorin.

Sergei Alimirzoev, a partner at Alimirzoev & Trofimov Law Firm in Moscow, worked for seven years with a Chinese company doing business in Russia. “During years of close relationship with my Chinese colleagues and best Chinese friends, I have witnessed many problems arising from cultural misunderstanding,” he says. “Chinese companies are more familiar with the cultures in East Asia, Europe and North America, but not with Russia, a country

中国公司可以在俄罗斯开展广泛的商业活动……而没有纳税负担

Chinese companies can execute a wide range of commercial activity in Russia ... without taxation



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贸然进军俄国市场，往往导致不利的后果

Hasty entry into the Russian market can often lead to harmful consequences



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在制药行业，政府也在去年八月颁布了一项新规定，对药品申请国家注册过程中所提供的信息给予保护。“[新规定]禁止为商业目的的披露或使用这些信息。这项禁令在药品完成国家注册之日起的六年时间内有效。” Karpunin 说。

in the Orthodox cultural circle,” says Li Yunlong, a lawyer at AllBright Law Offices in Shanghai. “They often easily believe some rumours, and fail to do in Russia as the Russians do.”

“[Russia] is a federal country, and the business environment varies significantly from place to place. Hasty entry into the Russian market can often lead to harmful consequences,” Li adds, and suggests that Chinese companies hire those who know well Russia’s culture and business landscape.

Although it has achieved legal development, “Russia hasn’t moved as far as China on their departure from their previous Soviet Union-like legal system,” says Lawrence Shu, a partner at Hylands Law Firm in Beijing.

This legal difference causes some divergent business customs, for example with drafting contracts. “We tend to draft share or asset purchase contracts according to the Western style. Such a contract is relatively long, gives very detailed and clear definitions to many concepts, and has complex and comprehensive clauses of representations and warranties, covenants and indemnification.

“We think such contracts can be applied universally in international M&A deals,” Shu continues. “But in fact, we find it’s hard for Russians to accept such contracts. They tend to draft contract clauses on the basis of certain laws or regulations in a concise and short way. They aren’t very used to those complicated and all-round contracts commonly used in the West.” Shu says that unlike Europeans or North Americans, Russians



Based in Moscow, Russia, the law firm of Alimirzoev & Trofimov (AT Lawyers) provides comprehensive legal and tax advice to a large and medium-size, publicly and privately held business entities.

AT Lawyers fosters an internal family atmosphere built on the mutual assistance and participation of partners in the firm’s matters. Our staff consists of a highly-qualified and cohesive team of specialists with deep professional and practical knowledge in the following areas:

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