

ClientAlert

Russia/International Trade

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Russia's WTO Commitments on Banking Services—Opportunities for Foreign Investors

Introduction

In its accession to the World Trade Organization (WTO), Russia undertook important and far-reaching commitments on the regulation of banking services. These commitments create rights and legal security for current and potential suppliers of banking services to Russia. The commitments are set out in Russia's Schedule of Commitments under the WTO General Agreement on Trade in Services (GATS). Russia's trading partners can enforce the rights of foreign banks to supply these services to the Russian market through the dispute settlement system of the WTO.

Background: The GATS

The GATS is a comprehensive multilateral agreement, covering all governmental measures, including domestic regulation affecting trade in services. It applies at both the national and sub-national levels of government. It also covers every means by which services, including banking, can be supplied internationally. It defines trade in services through four "modes of supply":

- **Cross-border supply** (Mode 1), as when a bank located abroad makes a loan to a resident of a foreign country
- **Consumption abroad** (Mode 2), as when a resident opens a bank account with a bank located abroad
- **Commercial presence** (Mode 3), as when a foreign bank establishes a commercial presence in Russia, such as by opening a representative office or buying a local bank (foreign investment)
- **Presence of natural persons in the foreign market** (Mode 4), as when a bank posts executives or managers to work in Russia

In committed sectors, WTO members are bound by the "national treatment" obligation. They must "accord to services and service suppliers of any other [WTO] member, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers." In committed sectors, members may also not maintain restrictions on market access, such as the type of legal entity or foreign equity limits, unless they have scheduled limitations to that effect in their Schedule of Commitments.

All OECD countries and a number of developing countries have made particularly comprehensive financial services commitments on the basis of the "Understanding on Commitments in Financial Services." This is the "world-class" agreement on financial



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services which was the prime objective of the United States and others in negotiating the GATS. The Understanding guarantees the right to supply, and the right of residents to purchase abroad, the entire range of banking and other financial services.

Russia's Schedule of Commitments

Russia has not adopted commitments on the basis of the Understanding and its commitments are more limited than those of OECD members. We summarize below Russia's main commitments.¹

- With regard to **cross-border supply** (Mode 1), Russia grants full market access and national treatment only on three of the 15 banking services listed in the GATS. These are (i) financial leasing; (ii) provision and transfer of financial information; and (iii) advisory, intermediation and other auxiliary financial services. On all other banking services, the right to supply from abroad is not guaranteed.
- With regard to **consumption abroad** (Mode 2), by contrast, Russia guarantees the right of Russian residents, both corporate and individual, to acquire the full range of banking services from external suppliers.
- With regard to **commercial presence** (Mode 3), the commitments cover all banking services, but commercial presence is allowed only in the form of a "juridical person of the Russian Federation" (a legal entity such as a company) and in the form of a representative office of a foreign bank. Russia made no commitment on branching by foreign banks. From the perspective of Russia's trading partners, this is arguably the most important limitation on Russia's commitments on banking. Although under Russia's existing law, branches of foreign banks could be part of Russia's banking system, there are currently no branches of foreign banks in Russia. The current lack of branches is about to be formalized by changes in the relevant federal legislation.² Branches of foreign banks would no longer be listed among the entities that are part of the Russian banking system, so that in effect the establishment of branches of foreign banks will be officially banned.

There are no caps on foreign equity in individual banks, but overall foreign capital participation in the banking system of the Russian Federation is limited to 50 percent—a relatively high proportion by international standards. This threshold applies only to new direct investment from abroad: It will not apply to the expansion of a foreign-owned Russian juridical person already established in the market.

- Regarding the **presence of natural persons** (Mode 4), Russia allows intra-corporate transfers of small numbers of key personnel, defined as persons working in senior positions or having high-level qualifications, for up to three years (the time period may be extended).

These GATS commitments prescribe the minimum level of treatment that must be afforded. Nothing prevents Russia from granting more generous treatment of foreign services and service suppliers. The absence of a commitment on a particular service does not necessarily mean that foreign supply of the service is not permitted, but it does mean that there is no guarantee that the right to supply, or the conditions attached to it, will be maintained.

Russia's General GATS Obligations

In addition to its specific commitments, Russia has general obligations under the GATS which underpin the rights of foreign suppliers to serve the Russian market. The most important of these is the **Most-Favored Nation** (MFN) obligation, which requires the "immediate and unconditional" extension to all WTO Members of treatment no less favorable than that accorded to any other country. The MFN obligation applies to all services, not merely those on which commitments are made. An obligation on **Transparency** requires Russia to publish promptly all measures and changes in existing measures, which affect the operation of the GATS or its own commitments.

With respect to **measures of domestic regulation** of banking services, nothing in the GATS prevents WTO members including Russia from taking measures for prudential reasons, "including for protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial services supplier, or to ensure the integrity or stability of the financial system." This "prudential carve-out" permits members to take any action that is necessary for prudential reasons, including actions which would otherwise breach their own commitments.

White & Case would be pleased to provide more detailed information on Russia's banking commitments upon request.

1. This is a brief, general summary. If a question arises regarding the rights of foreign suppliers, a detailed examination of Russia's GATS schedule would be necessary.
2. Specifically the Federal Laws "On Bank and Bank Activities," "On the Central Bank of Russia" and "On Currency Regulation and Control."

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