

**Disputes under shareholder agreements  
arising from the activities and management  
of a JV**

**Effective court practice and how to take it into  
account**

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**BEITEN BURKHARDT**

# Shareholder agreements in respect of Russian joint ventures

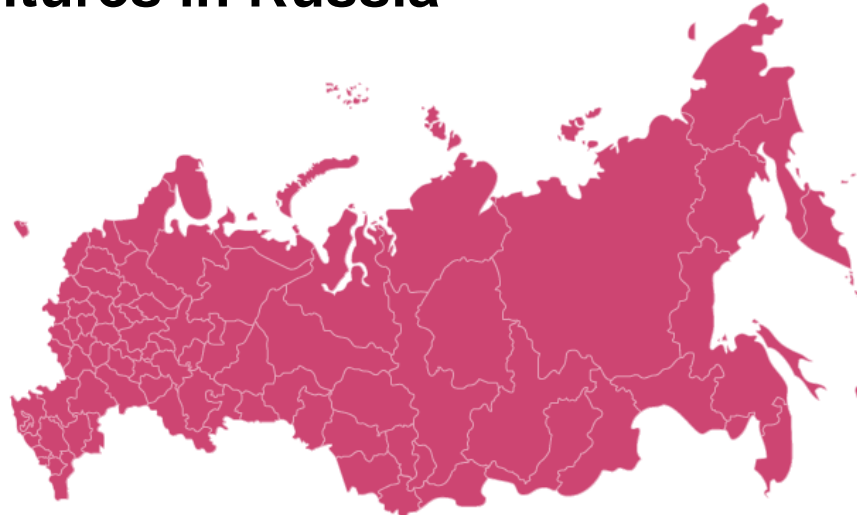
Foreign Entity  
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## Joint ventures in Russia



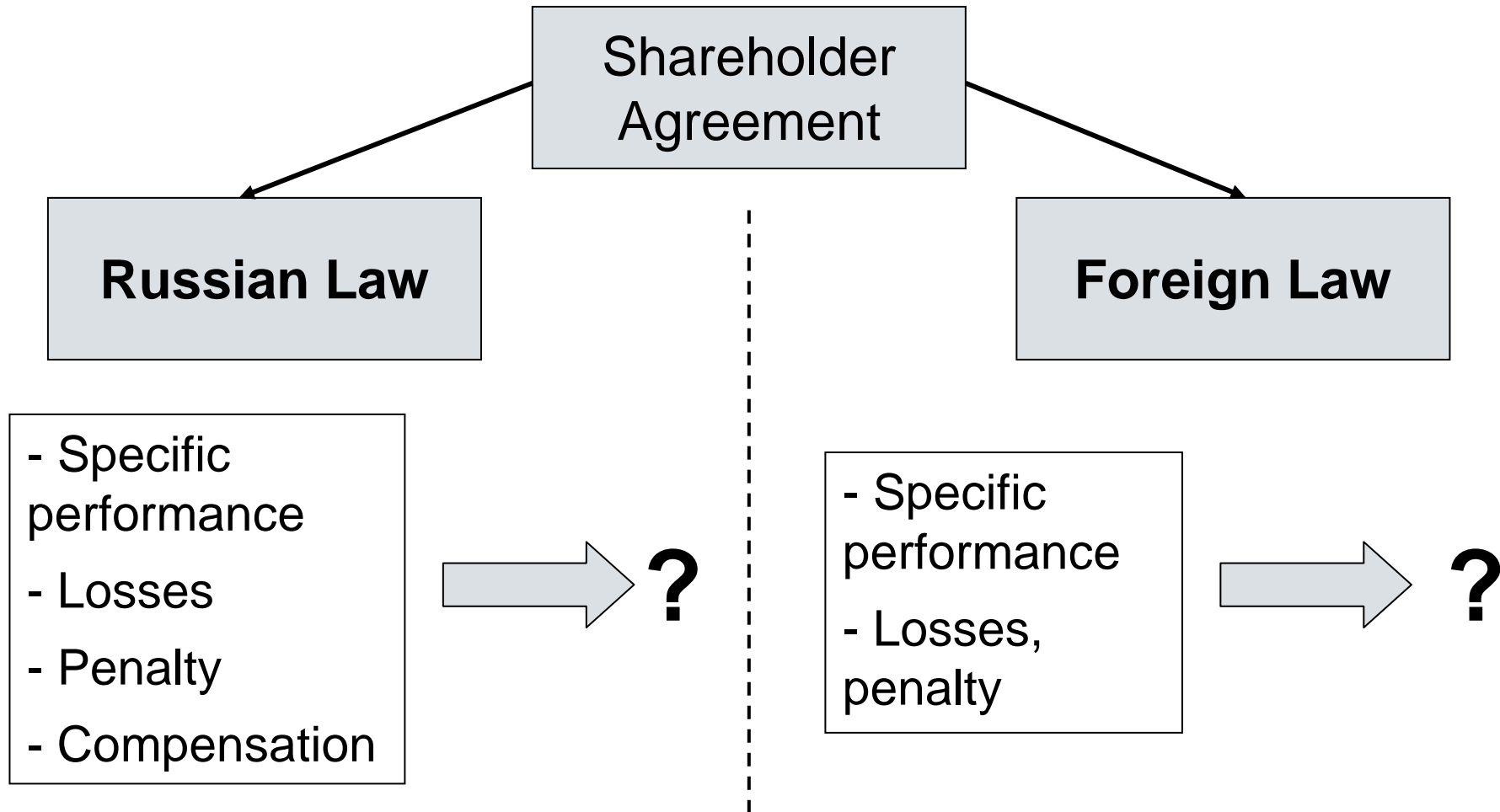
## Shareholder agreements and Contracts on exercising the rights of participants

- **Shareholder agreement (“ShA”)**
  - Joint Stock Company (JSC)
  - Federal Law “On JSC”
  - Court acts on the case of CJSC Agro
- **Contract on exercising the rights of participants (“ShA”)**
  - Limited Liability Company (LLC)
  - Federal Law “On LLC”
  - Court acts on the case of LLC Verny Znak

## Shareholder agreements in law and practice

<b>IN THE LAW</b>	<b>IN PRACTICE</b>
Exercise rights in a specific manner or refrain from said exercise	The inadmissibility of the full or partial waiver of rights ?
Vote in a specific manner	Impossibility of forcing specific performance or recovering losses ?
Exercise actions in a coordinated manner related to the management and activities of the Company	Violation of legislation and the charter ?

# Consequences of the non-performance of a shareholder agreement



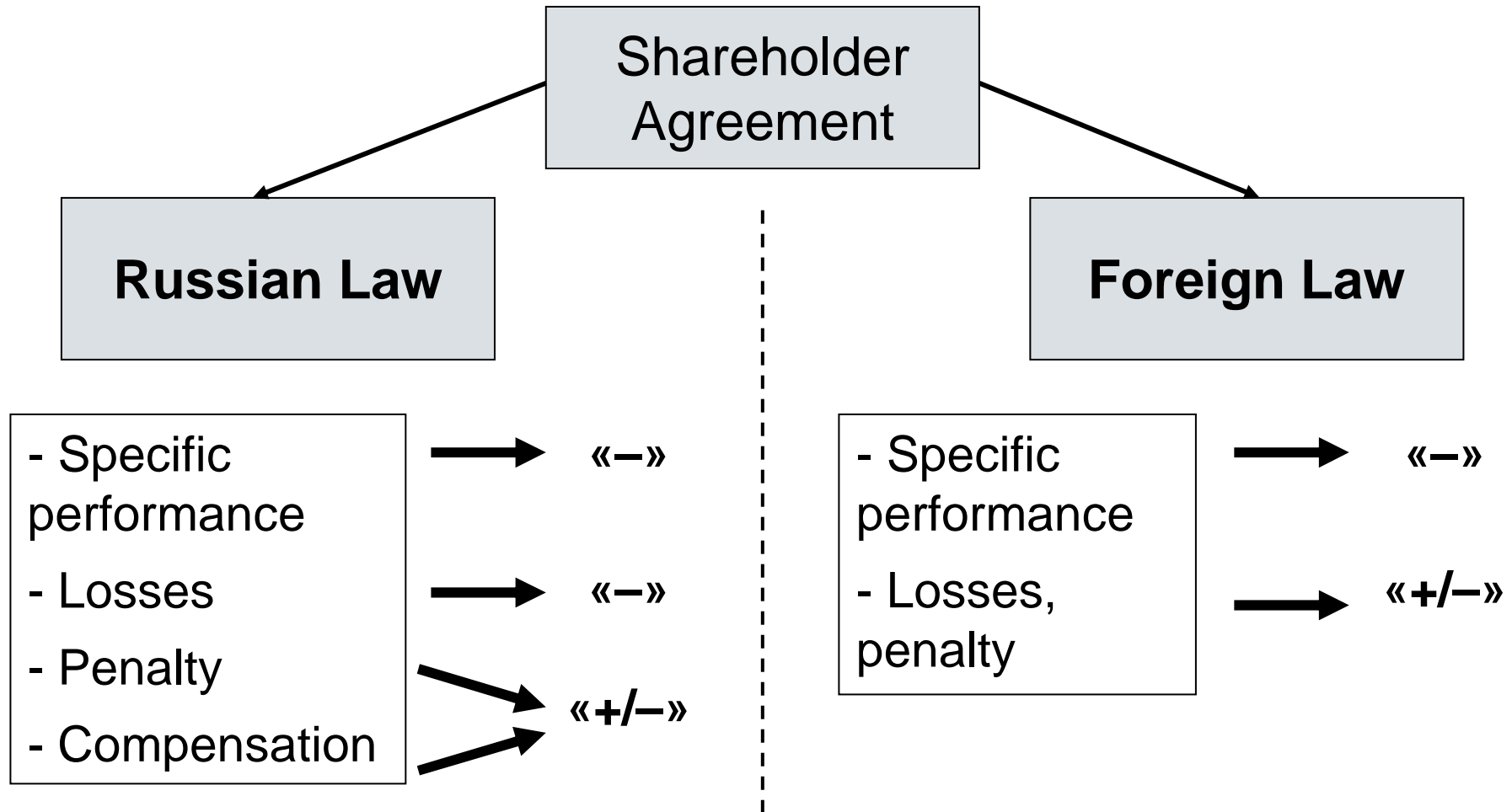
## Consequences of the non-performance of a shareholder agreement under Russian law

<b>Consequences</b>	<b>Enforceability</b>
Specific performance	Lack of regulation/practice – virtually unenforceable in Russia
Losses	Impossibility of proving the existence of actual losses or lost profits
Penalty	Possible, Risk that it may be reduced by a court
Compensation	Possible, Lack of regulation

## Consequences of the non-performance of a shareholder agreement under foreign law

<b>Consequences</b>	<b>Enforceability</b>
Specific performance	Lack of regulation/practice – virtually unenforceable in Russia
Losses, fines, penalties	Possible, Difference between recovery from a Russian entity and from a foreign entity

# Consequences of the non-performance of a shareholder agreement

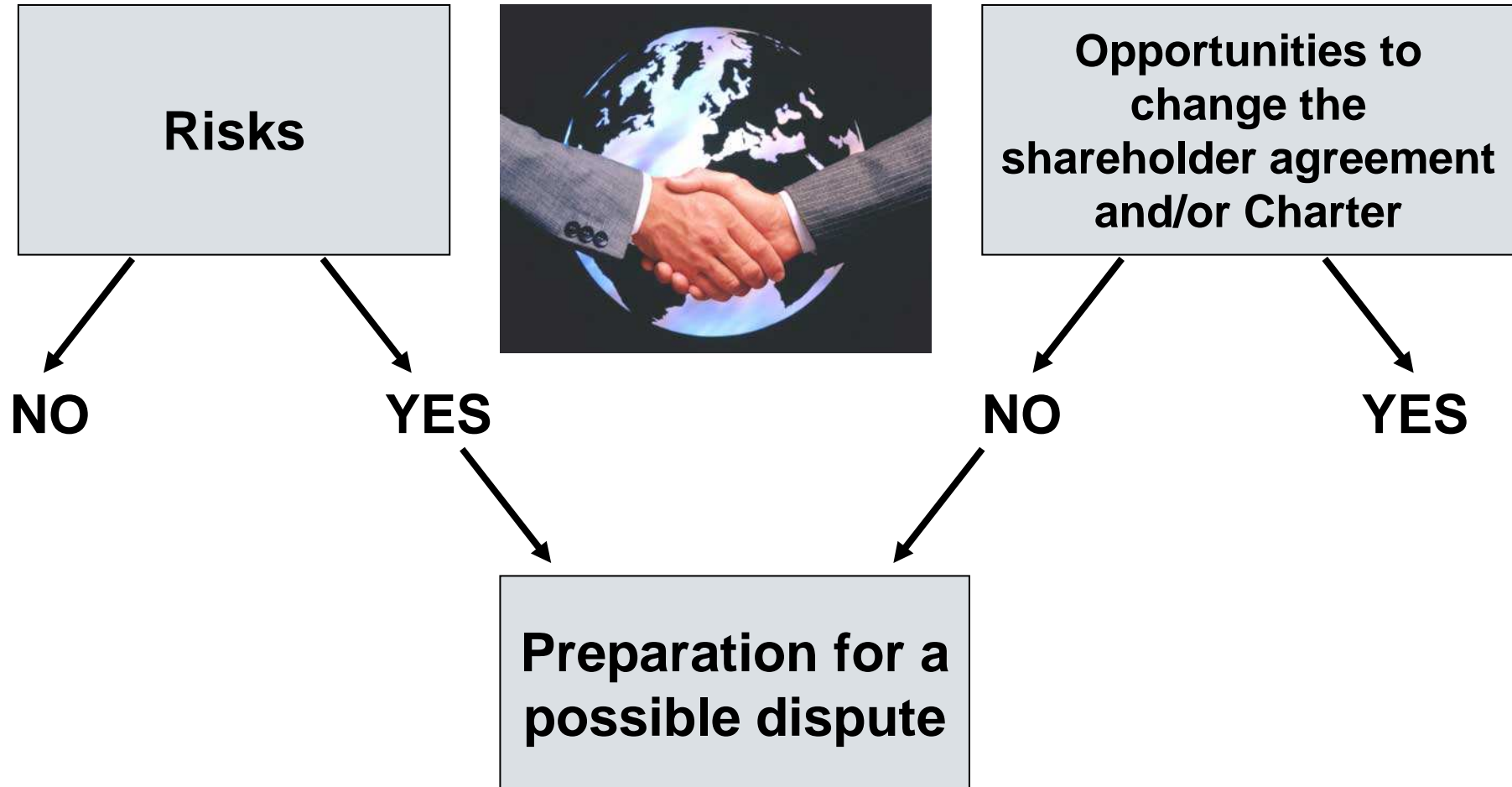




## Ways of securing the performance of obligations under a shareholder agreement

- Clear-cut regulation of a penalty/compensation under Russian Law
- Losses under Foreign Law
- Preliminary agreement
- Corporate approvals
- Resolutions of the corporate bodies of the JV

# What can be done at existing joint ventures



## Conclusion

- Absence of “practical” regulation in Russia
- Need for changes to legislation and the development of court practice
- Due diligence of shareholder agreements and risk assessment

**Thank you for listening!**

**BEITEN BURKHARDT**

## General Corporate Team



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#### **Legal advice in the fields of**

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#### **Professional Experience**

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LL.M. (Master of Laws), 2010-2011;

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