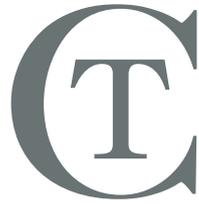


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## EXECUTIVE SEARCH

 ENGLISH VERSION



## NEWSLETTER INTERNATIONAL

RUSSIA

INTERVIEW | RUSSIA 2014/2015: IDENTIFYING AND EXPLOITING ENTRY  
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IN RUSSIAN LAW | ANNOUNCEMENT

## “DURING CRISIS THE STRONG BECOME STRONGER AND THE WEAK BECOME WEAKER”

### **What role does Russia play for the Otto Group?**

Russia is one of the most important growth markets and plays, given its size, an important role for the Otto Group due to the development in recent years and its status as emerging market.

The Otto Group has been active as a separate company in Russia since 2006 and has subsequently evolved into a group of undertakings with seven legal entities and more than 2,000 employees. This makes the Otto Group one of the leading multi-channel retailers in Russia.

Our brands Otto, Bonprix, Quelle, Witt, Nadom Group, Lascana and Domalina have met the needs of our customers throughout Russia as well as across the border to Kazakhstan, achieving a turnover in 2013 of approximately €550m. My main task is to lead management of the operating units and further develop of our activities in this exciting and challenging market.

### **How is business going in 2014 compared to 2013?**

2014 is, of course, not the easiest year and I am glad to have already been through the crisis in the years 2008/2009 so that I am able to use that experience in the current situation. On the one hand, we see that most of our business' in roubles can still achieve a very solid growth compared to the previous year. In other business units it is, of course, difficult to provide the results of the previous year. We can sense the same during discussions with market competitors and as the old saying goes: during crisis the strong become stronger and the weak become weaker. We are very pleased that the majority of our activities in Russia have already been well-established and, even in this situation, show stable development of business.

But, of course, we are not unaffected by the currently difficult political and economic situation. Our biggest problem is the rouble exchange rate which has made things difficult ever since the fourth quarter of 2013. Since both our products and many services are settled in euros, we are put under great pressure in terms of costs, which we counteract with a range of measures. For this reason, we already developed and quickly implemented a comprehensive package of measures at the beginning of this year, whose positive results can already be seen in the current year.

### **How do the sanctions affect the business?**

The sanctions do not directly affect our business at this stage. However, the price increases pushed by the sanctions reduce the purchasing power of our customers, which will have a negative impact on consumer behaviour. ►



**Martin Schierer**

CEO Otto Group Russia

Martin Schierer is responsible for the activities of the Otto Group in Russia. The Otto Group is a globally active company working in more than 20 countries with over 120 companies in the fields of multi-channel retail, financial services and logistics. Schierer has been residing in Moscow for six years. The native Bavarian is married and has two children.

I still firmly believe in consumer spending in Russia. However, their financial scope could be restrained in the foreseeable future. This makes it all the more important to remain in the market with strong business concepts, but also to make all processes and cost issues in the companies as efficient as possible.

### **What is the perspective for the coming years?**

This is one of today's most difficult questions. I am confident that Russia will continue on its path in the long-term. Nothing has changed on the fundamental topics: the market is large with more than 140m inhabitants and it is not yet saturated. There is a growing middle class and a great affinity for Europe. That is why I am optimistic about the future.

However, the foreseeable future will not be easy and it is crucial to manage the business as well as possible in this difficult time. On the one hand, this requires the persistence on decisions taken with respect to business strategy and, on the other hand, a high degree of flexibility in order to be able to think through all non-strategic business fields and explore new avenues. Management must be able to endure this balancing act in such a situation. Let us be honest: that is what makes emerging markets so exciting.

### **What differentiates the Russian consumer from the German consumer?**

When referring to the Otto customers, we talk first and foremost about women, and importantly, women account for a good 80% of the customers. Textiles are in fact a large component of our product range.

Russian women have different needs regarding goods, which we try to meet. As far as colours are concerned they are generally bolder and prefer fashionable and figure-accentuating clothing. Russians love natural materials, such as cotton, leather and silk, but synthetics are not as popular. Some of our personal articles are conceived precisely to appeal to Russian taste.

Overall, the Russian consumer is more receptive to sales incentives, such as discounts. Advertising is generally more flashy than in Germany.

### **What are Russian consumer's main reasons for ordering goods by catalogue or online?**

Convenience is always the main reason for choosing this path. The buyer does not depend on the weather, opening times and car parks. He/she can conquer the consumer world from the sofa and try on or try out the goods in a familiar environment. Many smaller Russian towns in particular offer limited shopping facilities, whereas e-commerce gives the consumer access to a huge selection of goods.

### **Internet scene: What is happening, what has changed?**

The Internet has developed extremely rapidly in Russia in recent years. When I started working in Russia in 2008, we generated a 15% Internet share of the turnover in our Otto businesses. Now, it amounts to approx. 60% and over 80% in some of our business units. ►

There was very little competition in 2008 and 2009. Only six years later, we have plenty of Russian competitors and also international companies serving the market on cross-border transactions. The start-up scene has evolved rapidly and e-commerce has become an integral part of the Russian shopping scene. Due to the increasing number of Internet companies, the business environment has also attuned to the fact with regard to delivery services, payment systems, etc. It helps the development of this industry in Russia to take a substantial step forward.

Almost two years ago Russia overtook Germany in terms of the number of Internet connections and it will also show continued growth in e-commerce. However, this calls for consumer confidence in secure shipping and payment transactions. In short: Everything has become more professional, bigger, faster. However, there is still a great deal to be done. Good for us.

## OVERVIEW

## RUSSIA 2014/2015: IDENTIFYING AND EXPLOITING ENTRY OPPORTUNITIES

In light of the Ukrainian crisis and political tensions between Russia and “the West”, the economic situation has changed noticeably in 2014. The rapid development of the Russian economy and the bilateral economic relations have deflated considerably.

This is documented not only by various statistics, the plunging value of the rouble and the collapse of the foreign trade balance. The crisis is also apparent to pedestrians at the St. Petersburg Nevsky Prospect: four empty commercial premises can be found standing vacant on top of 500 metres of prime real estate.

This would have seemed unthinkable over the course of last year, and the situation in Moscow looks similar in some places, for example, on Tverskaya Street. In many areas, office centres where vacancy levels were low for years are now competing for tenants. Landlords report that companies are moving closer together and renting less space, while other companies are closing their offices altogether.

The impact of the Russian ban on the import of “Western” foods is less obvious. Although cheeses manufactured in France and the Netherlands are absent from supermarket shelves, some of the well-known brands are still represented. For example, cheese spread from the Hochland and household brands of international food companies. These companies have production located in Russia, are therefore considered local producers and can consider themselves the winners of the import ban. ►



**Dr. Reinhard Kohleick**  
Senior Advisor  
CT Executive Search

The Finnish dairy company Valio has seized the opportunity in response to the import restrictions and is building a production line in Gatchina, in the Leningrad region. Other European companies involved in the dairy industry are closely monitoring the Russian market and, in part, conduct negotiations regarding their entry as Russian companies.

However, food producers are suffering from the same problem that other branches (such as automotive manufacturers) in Russia also suffering from—the country's low supply depth. The sanctions brought this problem into the foreground.

Although, it is advantageous if the competition is affected by import and export restrictions. At the same time, it is distressing when the raw materials required for production can no longer be imported and cannot be obtained domestically, or only at very high cost. No cheese without milk.

The low quality of the local supply becomes all the more painfully obvious in light of the sanctions in that they can no longer (or hardly) be offset by corresponding imports. The demand for local products springing out of necessity has had quite a stimulating effect on Russian manufacturers of raw materials and components. Russian agriculture is on the rise since the announcement of food sanctions and is investing heavily in the expansion of its capacities.

Despite the less encouraging political developments, companies opting for expansion have different fundamental data on their side, which should come into play in the medium-term. Russia is and will remain the most populous country in Europe. The enormous massive resources, which include not only oil and gas, guarantee a certain level of prosperity under which the country can hardly fall behind despite all its problems.

Moreover, in the current debate it is also often forgot that many international companies have made substantial profits in Russia in recent years. With the exception of industries that have been hit particularly hard, the complaints can occasionally be classified as "complaining on a high comfort level".

Due to the promising fundamental data, Russia must continue to play a role in the strategic planning of all companies. Companies wanting to position themselves in expectation of a medium-term recovery have gained more momentum for a number of reasons:

- The strong euro and the lower demand enable the purchase or leasing of real estate at lower prices;
- Lower valuations require favourable entry or acquisition opportunities with regards to Russian target companies;
- The weaker demand for personnel provides good opportunities to attract qualified employees and also keep them in the long-term. ►



**Christian Tegethoff**  
Managing Director  
CT Executive Search

In times when the St. Petersburg Ford plant dismisses 700 employees and Volkswagen tells its Russian colleagues to take leave, the career opportunities for local executives are also low. Consequently, it is easier for expanding companies to recruit good employees and keep their own. This was often difficult during peak times: Opportunities lurked on every corner and salary increases of 20 or 30 per cent upon change of company seemed to have been the rule rather than the exception.

It is great news for companies whose sectors (such as food manufacturers) are more favoured by the sanctions. But companies, whose sales are currently under pressure, can also benefit.

Ultimately, the task of companies today is to balance the short-term challenges versus long-term perspectives of the Russian market. For many, the answer may lie in behaving cautiously, but anti-cyclically, and using the current framework conditions as an opportunity. Only then will one be prepared to continue to grow gradually with the expanding market when the upturn regains momentum.

This is, for example, illustrated in the retail sector, which years ago complained of exorbitant rents with short-term contracts. Now, the situation is much more relaxed and long-term contracts can be negotiated on more favourable terms. In addition, Western retailers are frequently ahead with respect to efficiency and the Russian top dogs have, to some extent, not yet also learned to grow with lower margins and rising credit costs. For that reason, selective market entry can be very useful.

A look at history gives further cause for optimism: the founding of the Russian subsidiary of Siemens in 1855 succumbed to the Russian defeat in the Crimean War in the following year. Soon afterwards, the company was awarded the contract to build the first major telegraph line in the country, of all things between Moscow and the Crimea, and especially because of the lost war. This was the first major international contract for the relatively small Siemens.

Siemens always remained connected to Russia despite revolutions, civil war and two world wars. In recent years, the company was involved in numerous profitable large-scale projects in the energy and infrastructure sectors, and accordingly, based on the ICE, Siemens has built the Sapsan, which today commutes back and forth between Moscow and St. Petersburg.

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## DUAL-CONTROL PRINCIPLE IS NOW ALSO AVAILABLE IN RUSSIAN LAW

On 1 September 2014, amendments of the Civil Code of the Russian Federation (CC RF) came into force, relating to corporate enterprises in some areas, regulating their new foundation, as well as their reorganisation and liquidation in Russia.

The so-called "dual-control principle" is, in particular, important for foreign investors in the context of the representation of legal persons, whose legally effective form is now enabled and thus, in essence, represents an approximation, for example, of the German equivalent.

### 1. IMPLEMENTATION OF THE "DUAL-CONTROL" PRINCIPLE IN RUSSIA

According to the earlier version of the CC RF, a company representing a legal entity only disposed over a single, sole executive body (referred to as Director, CEO, President, etc.). If the actions were carried out by a different person on behalf of the company, this person would only have been recognised as representative of the company, if such person could produce an appropriate power of attorney from the sole executive body.

According to the new version of the CC RF, several sole executive bodies acting independently or jointly from each other, as well as the transfer of authority of a sole executive body to several persons acting jointly, can be provided by the articles of association (Art. 65.3 of the des CC RF). This means that, from a legal point of view, for example, during a new establishment, two sole executive bodies can already be appointed and they can be granted, for example, a collective power of representation.

It is, however, still unclear at the moment how such a division of powers will be put into practice in the context of the application at the registration authorities (tax office). It is questionable whether this information is registered in the Unified State Register of Legal Entities of the RF or only indicated in the internal documents of the company.

Currently, the respective forms are also missing to submit to the application, for example, two sole or joint signatories authorised to represent sole executive bodies. Should two sole or joint signatories authorised to represent sole executive bodies already emerge now within the framework of business, it is advisable to consider



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in more detail the directors' powers when collaborating with contractual partners in order to avoid disputes. The articles of association and other internal documents of the company (such as the rules of procedure for the CEO) shall be accessible thereto.

## 2. WHAT IS THE LIABILITY OF THE MANAGING DIRECTOR?

Applying the "dual-control principle" is also the criteria by which a liability should be judged. The decision No. 62 can be assessed by the Higher Arbitration Court of the RF of 30 July 2013 ("Decision") "on some questions about payment of damages by persons belonging to the body of a legal entity". This decision declares the conceptual approaches that the arbitration courts must pursue in the settlement of disputes relating to compensation for damage inflicted to a company by members of the administrative bodies of that company.

After the entry into force of the mentioned decision:

- the group of persons entitled to apply for compensation has been expanded. These could also be, among other things, partners having acquired a stake in the company, even after the unlawful act of the director;
- determining the rules of burden of proof regarding the existence or non-existence of the circumstances involving a management liability. So now the director has to establish within the burden of proof that his actions were conscientious and appropriate;
- the criteria determine the care and reasonableness standard for a management activity (see also page 2 of the GBC release No. 23 of December 2013).

It will be interesting to observe how the division of powers of directors and their scope of liability will continue to develop in light of the decision, especially whether the directors will be liable individually or jointly.

## 3. APPLIED CRITERIA

At this stage, Russian courts examine and evaluate how executing the respective action is part of the area of responsibility of the respective sole executive body (or should be part in the ordinary course of business). The scope of activity of a legal entity, the nature of the corresponding action, etc., are thereby taken into account. In this context, it is necessary:

- to develop, establish or improve an effective and transparent internal procedure for taking decisions and approvals of sole signatories;
- to represent an accurate procedure for dividing the powers of the directors in the articles of association and/or other internal guidelines, for example, a management regulation;
- to establish a clear system of governance in the company.

Since the questions at the end are rather complex, we recommend proceeding carefully. Sound technical advice with analysis of the situation in the respective company should be the basis for decisions concerning the company representative.

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ANNOUNCEMENT

## DR. REINHARD KOHLEICK JOINS CT AS SENIOR ADVISOR

**Dr. Reinhard Kohleick** has been continuously working on the Russian investment and technological markets since 1995. He has been working as Director and later Chief Executive Officer and Managing Director at the private equity firm Quadriga Capital Russia for more than 18 years before leaving the firm in late 2013.

Reinhard is one of the most experienced professionals in the Russian private equity industry. He has served on the board of a large number of investee companies in various industries, including e.g. Nizhpharm (pharmaceuticals), Speech Technology Center (Speech Recognition Software), TD Era (chemist retail) and Okil (packaging). He was a member of the Investment Committee of Quadriga Capital Private Equity Funds II and III specializing in leveraged buy-outs in the German market.

Besides his advisory role with CT Executive Search, Reinhard is an investor and serves as Supervisory Board Member at NPO Analitika, a Russian high-tech venture servicing retail operators, and is Board Member at Landco S.A., a company offering proprietary water cleaning technology and biogas engineering services in the countries of the former Soviet Union.

He holds a PhD in Physics and an MBA from Henley Business School.

Reinhard's expertise is of value especially for clients from the financial service, investment and high-tech sectors.

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