

Newsletter

Corporate and Regulatory Issues for Foreign Shareholders in Russia: Key Issues to Consider in 2024

21 February 2024

Dear Ladies and Gentlemen,

Special economic measures introduced in 2022 due to “unfriendly” actions of certain foreign states against the Russian Federation have been subject to development and clarification during 2023. We have already highlighted some key aspects of 2023 countersanctions regulation in another [newsletter](#), and here we would like to pay more attention to the corporate and some other regulatory issues.

1. Corporate transactions approval procedure

As a reminder, the transactions aimed directly or indirectly at disposal of shares/participatory interests in Russian companies, entered into with persons of “unfriendly” foreign states, as well as payments in favor of “unfriendly” participants/shareholders in case of charter capital decrease or liquidation of a Russian company without using a type ‘C’ account (provided that the payment exceeds RUB 10 mln threshold per month) require clearance in accordance with several countersanctions decrees of the Russian President.

However, before an application for granting permission for a transaction/operation is passed to the Sub-Commission of the Government Commission for Control over Foreign Investments (the “**Sub-Commission**”), it must first receive the support of the “industry-specific” federal executive authority in charge of the area of the target activity (the list is limited to eleven ministries) and the Ministry of Finance.

The procedure for obtaining approvals from the Sub-Commission has become clearer: the consideration process has become more transparent, and approval criteria have been established that must be met in order to obtain a positive decision. The most crucial and ordinary criteria are obligation to transfer to the federal budget a contribution in amount equal to at least 15% of the market value of the respective assets, as well as payments under the transactions (operations) to foreign accounts (regardless of the account currency) in installments. Please note that the final schedule of payments is established by the Sub-Commission, taking into account the position of the Bank of Russia.

2. Liability for non-compliance

As of now, there is no specific liability for conducting transactions/operations in breach of the procedure stipulated by the counter-sanctions decrees (the relevant draft law of the Ministry of Finance introducing special administrative liability has not yet been adopted).

However, execution of transactions/operations without the Sub-Commission approval may entail the following consequences:

- (A) Transaction/operation may be held null and void and formally result in mutual restitution under the general civil law provisions (the prosecutors were given the powers to initiate and participate in relevant judicial proceedings);
- (B) Deprivation of direct participants/shareholders of Russian companies from their voting rights;
- (C) Refusal of Russian banks to conduct payments and refusal of registrars/notaries to register the transfer of title to the shares/participatory interests in Russian companies.

3. Interim administration and related risks

Decree No. 302 of the Russian President provided for introducing interim management in respect of Russian assets of “unfriendly” companies as a response to the deprivation of Russian persons of the title to the property in “unfriendly” countries, or to a threat to Russian security and defense capability.

The interim administration is carried out by Rosimushchestvo/Government of Moscow, that exercises the rights of the owner (except for disposal) and appoints new management bodies. In addition, the interim administration is introduced for an unlimited term and is terminated by a new order of the Russian President.

At present, interim administration is carried out in respect of several major companies significantly influencing the Russian economy in respective areas (Unipro, Fortum, Danone, Baltika (Carlsberg), etc.).

Introduction of the interim management mechanism and the possibility of it being applied to all foreign assets of “unfriendly” non-residents without any particular criteria creates significant additional risks affecting the activity of foreign companies in Russia.

4. Payment of dividends

Payment of dividends to foreign creditors in the amount exceeding RUB 10 mln per calendar month is also restricted. When considering the respective application for making such payment without using a type ‘C’ account, the Sub-Commission pays attention to the number of criteria, especially to the retrospective analysis of payments for the previous periods. In case the company never paid any dividends earlier and accumulated the significant amount of non-distributed moneys, the payment in question may be regarded as siphoning money out of Russia, thus reducing the chances of obtaining the Sub-Commission approval.

However, the distribution of dividends to the foreign creditors may be allowed regardless of compliance with the requirements established by the Sub-Commission, providing that the amount of dividends to be paid does not exceed the amount of investments in Russia. Here, investments made by foreign creditors in the Russian economy since April 01, 2023, including the expansion of production in Russia and the development of new technologies, shall be taken into account. In this case, investments are understood to be new investments in Russia (including through loans, construction of factories, and so on). If a Russian subsidiary invests its profits earned in the Russian Federation, then such an investment is considered an ordinary business activity.

5. Financial transactions

Restrictions on granting and repaying loans to foreign creditors also continue to apply. In particular, it is prohibited to perform the following operations without a special approval:

- foreign currency operations related to providing loans in foreign currency to both “unfriendly” and “friendly” non-residents;
- transactions related to granting loans in Rubles to “unfriendly” non-residents;
- performing obligations under loans in favor of “unfriendly” non-residents in the amounts exceeding RUB 10 mln per month without using a type ‘C’ account.

The regime of type ‘C’ accounts significantly limits the available operations with funds. The allowed operations include, inter alia, transferring of funds to other type ‘C’ accounts, payment of the debtor’s own taxes and duties in Russia, acquisition of federal loan bonds in auctions. Moreover, currently it is not allowed to transfer money from a type ‘C’ account to ordinary accounts, including with an approval of any kind.

Please also note that according to the non-public clarifications of the Bank of Russia, performing set-offs under loans or other claims (e.g., payment of dividends) with participation of “unfriendly” non-residents, in case payment under such obligations would be subject to counter-sanctions restrictions (i.e. the amounts are to be paid to a type ‘C’ account), constitutes violation of counter-sanctions restrictions.

6. Liquidation of subsidiaries and branches

Currently, it is possible to liquidate companies without any Sub-Commission approval and we dealt with multiple successful cases in our practice. However, according to some notaries, the liquidation itself should also be cleared by the Sub-Commission. In the absence of official clarifications on the necessity for the relevant approval, this issue might be interpreted differently.

Distribution of the liquidation proceeds exceeding RUB 10 mln threshold requires clearance with the Sub-Commission. However, it is quite complicated to obtain approval for such operations as it entails the withdrawal of funds abroad without continuing operations in Russia (i.e. there is no positive effect on socio-economic development of Russia).

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our [Crisis Management, Economic sanctions and Compliance Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

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