

Distribution of dividends – Key practical issues

07 August 2023

Dear Colleagues

The regulatory landscape in Russia has changed significantly since last year. Certain restrictions and counter-sanctions measures were introduced with one of the main goals to limit the withdrawal of funds from Russia by so-called “unfriendly” foreign investors (e.g., payment of dividends).

In the meantime, it is still possible to distribute dividends when complying with certain requirements. We have summarized our practical experience and key corporate, regulatory and tax issues that illustrate potential practical aspects associated with distribution of dividends.

I. Distribution of dividends not exceeding RUB 10 million per month (no formal permission required)

Distribution of dividends not exceeding RUB 10 million (or its equivalent in foreign currency) per month by a Russian company to its so-called “unfriendly” shareholder is not restricted and does not require a formal permission of the Ministry of Finance of Russia.

Russian law allows distribution of the interim dividends during the calendar year without waiting for the end of such year. Therefore, subject to certain preparatory work, in some cases it may be possible to distribute RUB 10 million each month (i.e. RUB 120 million per year).

The net profit available for distribution as interim dividends is calculated as a cumulative net profit as of the last accounting date. This means that there is no legal requirement to indicate the period for which the dividends are distributed.

Although distribution of the interim dividends is a flexible mechanism, it requires careful preparation to make the distribution safe and compliant with the corporate, regulatory and tax provisions. We have prepared the step-by-step check list for the companies preparing for distribution of dividends and will be happy to guide and assistance our clients with smooth payment of dividends.

Tick Box to consider when distributing the dividends:

Tax matters

- Withholding tax from the amount of RUB 10 mln (i.e. RUB 10 mln is a gross amount of dividends, including tax to be deducted by the Russian company)
- Withholding tax rate can be 5%, 10% or 15% depending on the shareholder’s status, tax residency and existence of the Double Tax Treaty
- Tax residency certificate of the shareholder for the year of distribution

- ☑ Written confirmation that shareholder is a beneficial owner of dividends
- ☑ Review of the tax risks for the previous distribution of dividends (if any)

Accounting matters

- ☑ Tax and accounting policy allowing the interim financial statements (to amend if necessary)
- ☑ Interim financial statements for the respective month / quarter (to prepare if necessary)

Corporate matters

- ☑ Charter allowing distribution of interim dividends (to amend if necessary) or resolution on starting interim accounting (to pass if necessary)
- ☑ Charter excluding notarization of the decision on distribution of dividends (to amend if necessary to facilitate process of passing decisions on distribution of dividends)
- ☑ Complying with statutory terms (deadlines) for distribution of dividends

Payment matters

- ☑ Net profit (after taxation) and excess cash available for distribution under the recent financial statements under Russian Accounting Standards
- ☑ Liaising with a Russian bank and confirming transfer of dividends to a foreign bank
- ☑ Liaising with a foreign bank and confirming receipt of dividends from Russian bank
- ☑ Currency of payment (conversion in foreign currency is available under the official exchange rate of the Central Bank of Russia within the limits of RUB 10 mln)

II. Distribution of dividends exceeding RUB 10 million per month (formal permission required) and other allowed cash options / operations

Distribution of dividends exceeding RUB 10 million (or its equivalent in foreign currency) from Russian companies to their "unfriendly" shareholders shall be made to a special "C"-type account (with very limited operations available) opened in the name of shareholder in a Russian bank.

As an alternative option, dividends exceeding RUB 10 million may be distributed directly to a foreign shareholder without using "C"-type account, provided that the formal permission of the Ministry of Finance of Russia in agreement with the Bank of Russia.

On 7 July 2023, the Government Commission for the Control of Foreign Investment in the Russian Federation issued a guidance on the following criteria to be considered while deciding on such formal permission:

Tick Box to consider when applying for the permission:

- ☑ The total amount of dividends to be paid should not exceed 50% of the net company's profit for the previous year (e.g. 2022)
- ☑ The amount of dividends to be paid corresponds to the dividend payments for previous periods (retrospective payment analysis)
- ☑ Willingness of the shareholders of the Russian company to continue business activities in Russia

- ☑ Feedback of the respective federal authorities on the Russian company's business and its role / importance in Russia
- ☑ Confirmation of KPIs performance from the Bank of Russia
- ☑ Opportunity to pay dividends on a quarterly basis subject to meeting KPIs

There have been some positive cases of obtaining the permission, however, such cases are very limited and there is no guarantee for successful outcome of the application process for the distribution of dividends (even if all the above requirements are met).

Another solution may be to consider alternative options / operations for use of cash that are currently allowed by Russian legislation and counter-sanctions regulations and that may be elaborated depending on the nature of the business and potential commercial rationale.

III. About ALRUD Law Firm

Established in 1991 by Senior Partners Maxim Alekseyev and Vassily Rudomino, ALRUD is widely known as one of the most leading and reputable Russian law firms.

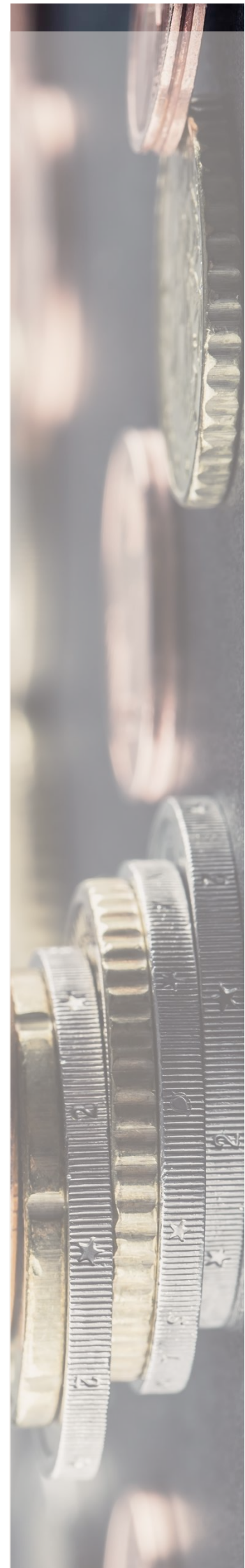
Our team advises Russian and foreign clients across all industries on the most significant and sensitive Russian counter-sanctions, as well as their impact and effect in light of sanctions from the US and EU.

We position ourselves as a business-oriented firm that provides our clients with superb and efficient legal advice that enables them to achieve their business objectives.

As a full services independent law firm, we are uniquely positioned to assist our clients in responding to the most sensitive and significant inquiries from regulators and dive deep into our clients' business (with a full understanding of our clients' business model and the most essential areas of their commercial activities) to provide them with only the most relevant and practical legal advice.

Our practice also encompasses regulatory advice, compliance counseling and other various due diligence issues.

Note: Please be aware that all information provided in this letter was taken from open sources. Neither the author of this letter, nor ALRUD Law Firm bear any liability for consequences of any decisions made in reliance upon this information.



IV. Key contacts:



Sergey Khanaev

Partner
Corporate

E: skhanaev@alrud.com



German Zakharov

Partner
Crisis Management, Economic
sanctions and Compliance,
Foreign Direct Investments

E: gzakharov@alrud.com



Maxim Alekseyev

Senior Partner
Tax

E: malekseyev@alrud.com