

Newsletter

General overview of the new legislative initiative and unpublished draft law "On External Administration for Company Management"

March 14, 2022

Dear Ladies and Gentlemen,

By this newsletter, we just wanted to give you a very important update on a draft law re. mandatory sale of enterprises (including their assets) that refused to continue their business in Russia and that are owned/controlled by persons from foreign countries that imposed sanctions against Russia. We expect this draft law to be considered by legislative bodies in Russia in coming days.

It may be helpful to consider it in case you or your Clients or counterparties still have Russian assets, and they publicly announced that they will discontinue their work in Russia because of the situation in Ukraine.

Please note that at this point, this is meant only for consideration purposes, and the draft is not yet introduced into the Russian legislative body, so if this matter may be of interest for you, we will inform you about this separately in case that takes place.

Note that the summary below and this newsletter is based on our assessment and review of the unpublished draft law. As soon as it is published, it may be revoked, amended, or varied.

1. Eligible organizations.

1.1. Pursuant to the draft law, the eligible organizations ("**Eligible organizations**") are organizations that meet all of the following criteria:

- A. Foreign persons from "unfriendly" states are controlling persons of the company or own in aggregate, directly or indirectly, at least 25% of voting shares in the charter capital of the company.

The list of "unfriendly" states was approved by the Russian Government on March 05, 2022. It includes Australia, Albania, Andorra, the UK, the EU, Canada, Iceland, Monaco, New Zealand, the Republic of Korea, the U.S., Ukraine, Switzerland, Taiwan, Japan, Liechtenstein, Micronesia, Norway, San Marino, North Macedonia, and Singapore.

- B. The book value of the company's assets as of the last reporting date is more than 1 billion rubles and/or the average number of employees of the organization a month before the filing of application for the appointment of external administration exceeds 100 persons.

1.2. External Administration can be introduced in a compulsory manner in respect of any Eligible organization if any (not all) of the following criteria apply to such Eligible organization:

- A. Eligible organization management bodies and (or) shareholders actually terminated the management of the Eligible organization.

This may be evidenced, in particular, by the fact that after 24 February 2022 the company's management and (or) shareholders left the territory of the Russian Federation, leaving the

company without management, committed actions that led to a significant decrease in assets, insolvency, or termination of the company's activity.

If the External Administration is imposed on this ground, the External Administration will be introduced for up to 3 months, and it may not be terminated even if the Eligible organization reconsiders its decision to terminate business in Russia (see below).

- B. Company management bodies and (or) shareholders take actions that may lead to unjustified termination of activities, liquidation, or bankruptcy of the company.

This may be evidenced, in particular, by the fact that after 24 February 2022, these persons publicly announced the termination of the company's activities in the absence of obvious economic grounds for this, terminated the company's contracts that are essential for its activities, or sent a notice to more than one third of employees about the staff reduction.

If the External Administration is imposed on this ground, the term of External Administration will be up to 6 months, and it may be terminated if the Eligible organization reconsiders its decision to terminate business in Russia (see below).

2. External Administration

- 2.1. For all non-financial organizations (recognized as Eligible organization), state corporation VEB.RF will be appointed as External Administration. Please note that VEB.RF is included into SDN List by the U.S. and is under severe sanctions imposed by EU.
- 2.2. For all financial organizations (recognized as Eligible organization), state corporation Deposit Insurance Agency (DIA) will be appointed as External Administration.
- 2.3. Application for appointment of the External Administration can be filed by:
 - A. The member of the Board of Directors of the Eligible organization.
 - B. the Federal Tax Service (on the basis of a decision of a special interdepartmental commission, which can be made based on an appeal filed by the (i) highest officials of the respective federal subject (constituent entity) of the Russian Federation, (ii) the head of the federal executive body for the relevant sector of the economy, (iii) the head of the federal executive body responsible for compliance with labor laws, (iv) the prosecutor of the federal subject of the Russian Federation where the company is registered, or (v) the authorized body).
 - C. in certain circumstances by VEB.RF and/or DIA.
- 2.4. The application for appointment of External Administration is filed with and considered by a Russian arbitrazh (state commercial) court. If the court proceeds with the application, it will adopt restrictive measures with respect to the Eligible organization that will generally freeze all its assets (including shares and employees).
- 2.5. Reconsidering termination of the Eligible organization business in Russia. Before the court hearing on considering the application, the company's CEO or a shareholder holding more than 50% of voting shares is entitled to file a motion for refusal to appoint external administration and give an obligation to resume the company's activities in Russia, including in connection with the planned alienation or transfer of the company's shares in trust management to persons not from the "unfriendly" states that have undertaken such obligation.

If the shareholders / controlling persons of the Eligible organization commit to selling or transferring the Eligible organization shares to a third person (as part of the withdrawal process described in this paragraph), the process has to be completed within 3 months. Filing such motion cannot be repeated.

3. Powers of the External Administration, spin-off of the Eligible organization, and sale of the Eligible organization assets

- 3.1. As the first step, External Administration receives all powers to manage the Eligible organization with a purpose to create a new company (via spin-off) with all assets and employees being transferred to the new company from the original Eligible organization and sell this new company via public auction.
- 3.2. Please note that the External Administration shall have an extremely broad scope of rights, similar to those provided during the bankruptcy procedures. Among others, the External Administration shall have a right to search, identify, and enforce all actions to return (as we understand, via claw-back action) all assets that were transferred by the Eligible organization or by its shareholders or controlling persons to third parties prior to the date of the External Administration appointment.
- 3.3. A new owner will be obliged to retain at least 2/3 of the employees and continue the companies' activities for at least a year.

Please note that: 1) ex-participants / shareholders or their affiliates are not entitled to participate in the public auction and acquire the Eligible organization; and 2) purchasers having similar type of business to the Eligible organization will have pre-emptive rights to acquire the Eligible organization as compared to other auction participants who propose the same price.

- 3.4. If there are no purchasers for the new company, it will be purchased by the Russian Federation at the minimal price established during public auction.

The potential draft law does not have an express provision on the destiny of the proceeds generated by the auction. Unless otherwise will be expressly provided in the law, such proceeds would be remitted to the owners of the Eligible organization at the end of its liquidation pursuant to the general rules of the applicable legislation.

- 3.5. The initial Eligible organization will be mandatorily liquidated.
- 3.6. The law provides retroactive effect and, as we understand, it is presumed to cover all relationships starting from 24 February 2022.

We hope that the information provided herein will be useful for you. If any of your colleagues would like to receive our newsletters, please send them the link to complete a [Subscription Form](#).

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Sincerely,

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