

## INFORMATION MEMORANDUM

### New reality of Russian business law

Below we discuss the landscape of the most important emergency laws and regulations introduced over past two years in Russia. We concentrate on select risks which foreign business currently faces in Russia.

First, we will look at key new terms that have proliferated in Russian law (**section 1**). Then we will focus on some of the key novelties of Russian business law:

- corporate restrictions and restrictions on the sale of companies in Russia (**section 2**);
- restrictions on payments to foreign counterparties and set-offs (**section 3**);
- restrictions on payment of dividends and royalties to foreign persons (**section 4**);
- new grounds for introducing external administration over foreign companies in Russia (**section 5**);
- restrictions on the export of goods and relaxation of the import regime for certain foreign goods (**section 6**);
- new approach to parallel import (**section 7**);
- criminalization of the calls to introduce sanctions against Russia and the risks of liability for complying with foreign sanctions (**section 8**);
- new grounds to transfer disputes with a foreign element to Russian courts by reference to sanctions (**section 9**);
- possibility of opening bankruptcy proceedings against foreign companies by Russian courts (**section 10**).

This information letter is drawn up for illustration purposes only. Specific business decisions require individualized legal assessment of the circumstances.

## **1. New labels**

### **1.1. Persons from unfriendly states**

In March 2022, the term “persons from unfriendly states” became widespread in the Russian legislation. Such persons are subject to a number of Russian restrictive measures.

The list of “unfriendly” states is envisaged in the Decree of the Russian Government No. 430-r dated March 5, 2022, and currently covers 49 states, including EU countries, the UK and the US.

A person is considered a resident of an “unfriendly” state in one of the following cases:

- a person has citizenship of an “unfriendly” state;
- an “unfriendly” state is a place of registration of a person;
- an “unfriendly” state is a center of business activities of a person;
- an “unfriendly” state is a center of business profits of a person;
- a person is controlled by any person indicated above.

These persons can be vulnerable when defending their rights in Russian courts and law enforcement agencies. We discuss this in detail below.

### **1.2. Sanctioned parties**

This term stands for Russian persons subjected to the sanctions of “unfriendly” states.

Starting from 2014, the US, the EU and a number of other countries started imposing personal sanctions on Russian individuals and legal entities. For example, by this moment the EU has imposed blocking sanctions on 1646 individuals and 337 legal entities. EU persons are prohibited from carrying out transactions with the sanctioned parties. In addition, the new EU sanctions restrictions provide for secondary sanctions, which may be imposed on parties that contribute to the circumvention of previously imposed restrictions or otherwise materially violate these sanctions regimes. A similar list of the sanctioned parties also exists in the US (SDN List).

In response to these sanctions, the Russian state introduced certain privileges to the sanctioned parties when accessing Russian courts and law enforcement agencies. We discuss these privileges in more detail below.

## 2. Restrictions on exercise of voting rights and sale of shares and assets in companies

Since March 2022, a number of measures have been taken to prevent investors from “unfriendly” countries from leaving the Russian market.

For example, according to the new rules, the following transactions require approval by a special Government Commission if the transaction is between a Russian resident and (i) a person from an “unfriendly” state or (ii) a person who acquired the relevant property from a person from an “unfriendly” state after February 22, 2022:

- provision of loans and credits,
- transactions with securities or shares of limited liability companies,
- real estate transactions.

These restrictions may be interpreted broadly by law enforcement agencies. In particular, although liquidation is not expressly designated as requiring approval by the Governmental Commission, there is a view that approval is still required because liquidation leads to termination of rights to shares in a legal entity and is thus a “transaction with securities and shares.”

An application for the approval of these transactions must be submitted to the Ministry of Finance. The rules for obtaining approvals are specified in Decree of the Russian Government No. 295 dated March 6, 2022.

Decree of the Russian President No. 520 dated August 5, 2022 (“**Decree No. 520**”) also introduced restrictions on deals with shares of certain categories of Russian legal entities, including strategic enterprises, fuel and energy companies and credit organizations. These deals now require a special permission of the Russian President. Pursuant to Decree No. 520, the Russian President also approved a list of companies that (i) manufacture and/or provide maintenance services for equipment necessary for the fuel and energy sector produce, (ii) supply heat and (or) electric energy, or are (iii) engaged in the processing of oil and petroleum raw materials and the production of refined products. Deals with shares of such companies involving persons from “unfriendly” states are prohibited at the moment.

In addition, Decree of the Russian President No. 16 dated January 17, 2023, allowed shareholders of select Russian companies to declare that votes cast by shareholders from “unfriendly” countries are not taken into account for the purposes of taking corporate decisions.

### **3. Restrictions on payments to foreign parties for goods and on set-off**

#### **3.1. Settlements with foreign parties**

Previously, the general rule for settlements with foreign parties was that Russian companies had to transfer all export currency revenue to their Russian bank account (repatriation of currency revenue), subject to certain exceptions.

However, the repatriation requirement is now suspended save for a number of large companies included in the special list. However, it cannot be excluded that in the foreseeable future the rules on repatriation of currency revenue will change again.

Apart from that, the Russian Central Bank now has the power to impose restrictions on the amount of advance payments paid by a Russian resident to a non-resident. During 2022, such a restriction was first introduced and then abolished by the Bank of Russia. The limit on the amount of the advance payment was then 30% of the contract price, but this requirement is not currently in force.

At the same time, a number of restrictions were introduced for financial settlements with persons from “unfriendly” states. For example, if the total amount of credits, loans and other financial instruments originating from transactions with persons from “unfriendly” states exceeds 10 million rubles per month, the money must be paid to a special “type C” bank account where they are effectively frozen. Similarly, payments related to the reduction of authorized capital, liquidation or bankruptcy of legal entities owned by foreign shareholders from “unfriendly” states must be made to a “type C” bank account, which can only be used to transfer funds for a limited number of transactions such as paying taxes.

#### **3.2. Set-off under contracts with foreign parties**

Currently, as a general rule, there are no obstacles to the termination of obligations under foreign trade contracts by set-off. Previously, such transactions could be considered a circumvention of the rules on the mandatory repatriation of currency revenue, which, however, as noted above, have now been suspended.

#### **3.3. Other restrictions on settlements**

Despite some liberalization of Russian currency control regulations in response to foreign sanctions, significant restrictions remain in place at the moment, including inter alia:

- a ban for individuals and legal entities from “unfriendly” states on transferring funds abroad (except for individuals working in Russia in an amount limited to their wage);
- a ban for persons from “unfriendly” states on transferring to their own bank accounts any money that was previously obtained as dividends;

- limitations on monthly amounts of transfers of funds abroad applicable to Russian residents and residents of “friendly” states.

#### **4. Restrictions on payment of dividends to foreign shareholders and royalties to foreign rightsholders**

##### **4.1. Restrictions on payment of dividends to foreign shareholders**

Payment of dividends by Russian legal entities to shareholders from “unfriendly” states in an amount exceeding 10 million rubles per calendar month must now be made to a special account “type C” bank account, the funds in which cannot be freely used. This procedure can be avoided by obtaining a special permission that may be granted by the Government Commission subject to the following conditions:

- the dividends do not exceed 50% of the company’s net profit for the previous year;
- results of retrospective analysis of dividend payout in past financial years should be taken into account;
- shareholders should be willing to continue commercial activities in the Russian Federation;
- the company’s business should be significant for the Russian economy;
- the applicant has to comply with key performance indicators set out by the Russian Central Bank.

Starting from summer 2023, a further exception to these restrictions has been introduced. In particular, the Russian Government may now issue a permission to distribute dividends to a foreign investor if the investor continued to make investments into the Russian economy after April 1, 2023, e.g. to expand production facilities or develop new technologies, and the proposed dividends do not exceed the amount of such investments.

##### **4.2. Restrictions on payment of royalties to foreign rightsholders**

Royalty fees for the use of intellectual property and trademarks must now be made to a special “type O” bank account if the rightsholder, inter alia, (i) is a person from an “unfriendly” state, or (ii) has publicly called for economic sanctions against Russia, or (iii) has terminated, suspended or substantially restricted its activities in Russia in compliance with foreign sanctions or for other “economically unjustified reasons.” Funds credited to such an account may be used only with the special permission of the Government Commission.

The rightsholder may be expected to provide a written consent to receive payments to a “type O” bank account. Otherwise, the debtor may refrain from making payments until such consent is

obtained. If the rightsholder has published the details of its “type O” account, the debtor does not need written consent to make payments.

At the same time, this procedure is not applicable to, inter alia:

- contracts that are necessary to import medicines and food into the Russian Federation, provide communication services or for the creation of computer programs;
- rightsholders from “unfriendly” states that duly perform their obligations under the contracts;
- payments not exceeding 100 thousand rubles made by an individual who uses intellectual property for personal needs.

## **5. New grounds for external administration over foreign owned companies in Russia**

Decree of the Russian President No. 302 dated April 25, 2023 “On Temporary Administration of Certain Assets” has allowed Russian authorities to seize control over Russian assets of foreign companies by introducing a temporary “external administration.”

The Decree does not contain specific criteria to determine which companies may be subject to this external administration. In each case a decision of the Russian President is required to apply the Decree to a company or its assets.

If external administration is introduced, the temporary administrator, which is normally the Russian State Property Agency (Rosimushchestvo), becomes solely entitled to exercise all powers of the relevant assets owner. It also becomes authorized to make all management decisions in the affected companies such as the appointment and removal of directors, approval of transactions, amending the corporate charter, etc. However, the administrator is generally not empowered to dispose of the assets subject to this temporary administration.

Currently, the best-known example of external administration is the Russian assets of Danone and Carlsberg that have been run by the Russian state since July 2023. Since then, several other names have been included in the list of companies that are subject to state administration. For example, in February 2024, Ulyanovsk machine-tool plant, which is owned by the German Gildemeister Beteiligungen GmbH, became subject to the temporary administration of Rosimushchestvo.

## 6. New customs regulations

### 6.1. Export restrictions

On March 8, 2022, Decree of the Russian President No. 100 empowered the Russian Government to take a number of measures aimed at preventing shortages of some of the most essential goods on the Russian market.

For example, Decree of the Russian Government No. 311 (“**Decree 311**”) provided for a list of goods that may not be removed from Russia at this stage. This ban covers several categories of goods, including pharmaceutical products, electrical devices, manufacturing and agricultural equipment, means of transport and some other categories. However, there are a number of exceptions, such as:

- goods produced within the Russian Federation,
- goods exported to other countries of the Eurasian Economic Union,
- goods necessary for implementation of the state policy,
- goods which originally entered Russia temporarily (e.g. aircraft on international flights).

In theory, in addition to the general exceptions, Decree No. 311 leaves the possibility of issuing a special export permit in individual cases. However, such special permits may only be issued by senior officials of the Government on the basis of proposals of federal executive authorities.

Apart from Decree No. 311 which applies to shipments to non-EAEU countries, a separate Decree of the Russian Government No. 312 requires export permits issued by relevant ministries to export certain goods to other members of the Eurasian Economic Union (Armenia, Kazakhstan, Belarus, Kyrgyzstan).

In addition, Decree of the Russian Government No. 313 provides an additional ban on the export of a number of dual-use goods from Russia to “unfriendly” countries.

### 6.2. Simplified procedures to import foreign goods into Russia

Apart from restrictions on the export of vital goods from Russia, in response to sanctions the Russian Government is pursuing policies aimed at simplifying the import of select foreign products into Russia.

For example, on March 12, 2022, the Russian Government adopted Decree No. 353 that suspended certain rules on certification and labeling of products prior to their importation.

According to the new rules, conformity of imported products can be temporarily confirmed by a declaration of conformity issued by the importer on the basis of its own evidence.

Furthermore, under Decree No. 353 products may be imported without the required labeling. Labels may be attached later before the product is sold to the purchaser.

## **7. New approaches to parallel import and trademarks held by foreign parties**

As a general rule, Russia applies the regional principle of exhaustion of exclusive rights (paragraph 16 of Annex No. 26 to the Treaty on the Eurasian Economic Union). This means that Russia does not allow parties to import goods purchased outside the Eurasian Economic Union (Russia, Belarus, Kazakhstan, Armenia, Kyrgyzstan) into Russia without trademark holder's consent (prohibition of parallel import).

However, in response to foreign sanctions, Russia has deviated from this general principle and allowed parallel import of designated goods without requiring consent of the trademark holders. The list of such goods is adopted by Order No. 2701 of the Ministry of Industry and Trade dated July 21, 2023.

## **8. Criminalization of calls for sanctions and potential liability for the compliance with foreign sanctions**

In March 2022, the Russian Criminal Code was supplemented by Article 284.2, under which individuals may be prosecuted for "calls for the introduction of sanctions against the Russian Federation, citizens of the Russian Federation or Russian legal entities". The maximum penalty for this conduct is imprisonment for up to three years and a fine of up to 200 000 rubles.

However, this offence is only criminal if the offender had already been penalized for the same act by an administrative fine within the preceding year.

In addition, the Russian Parliament (the State Duma) is currently considering a legislative proposal to criminalize compliance with foreign sanctions against Russia. According to this proposal, managers in commercial or non-commercial organization could be prosecuted for taking decisions aimed at complying with foreign sanctions.

At the same time, this legislative proposal was criticized by the business community on the basis that they would face an impossible choice between secondary sanctions abroad and criminal liability in Russia if the bill is adopted. As a result, this legislative proposal has not been adopted to date.

At present, companies that comply with sanctions against Russia primarily face the risk of contractual liability which depend on the provisions of a specific contract. This is because Russian courts are reluctant to recognize foreign sanctions as a proper basis not to perform contractual obligations assumed by foreign companies or their Russian subsidiaries. For instance,



in 2024 the Russian Supreme Court refused to reduce liquidated damages charged from IKEA for its repudiation of a term-based lease agreement in Russia as a result of IKEA's decision to withdraw from the Russian market.

#### **9. New ways for Russian courts to assume jurisdiction over international disputes by reference to sanctions**

In 2020, the Russian Commercial Procedural Code was amended to allow Russian courts to assume jurisdiction over disputes involving sanctioned persons or in connection with foreign sanctions against Russia in light of their potential impact on access to justice abroad.

According to the new Article 248.1 of the Russian Commercial Procedural Code, Russian courts will not enforce the parties' agreement to arbitrate or litigate disputes outside Russia if a party to that agreement is affected by sanctions that impact its access to justice abroad. Instead, that party is entitled to litigate the matter before a Russian commercial court. In addition, the affected party may seek an anti-suit injunction from a Russian court to restrain the other party from litigating or arbitrating the matter abroad.

As follows from recent case law, it appears that Russian courts interpret this provision as saying that foreign sanctions imposed on a Russian party always limit its access to justice, since it is impossible to ensure due process for the sanctioned party in a sanctioning state. As follows from the Russian Supreme Court's Uraltransmash case, a sanctioned Russian party may not need to separately prove that foreign sanctions in fact made it impossible to resolve the dispute abroad for any specific practical reason.

In 2023, the Russian Supreme Court also found that Russian commercial courts may also assume jurisdiction over disputes that do not directly involve a sanctioned party, but which (i) involve Russian parties that are unable to travel to the agreed foreign forum because of general travel restrictions or similar measures and (ii) are closely connected with Russia.

#### **10. Possibility of opening bankruptcy cases in respect of foreign companies by Russian courts**

In one of its recent decisions in 2024, the Russian Supreme Court found that Russian commercial courts may adjudicate bankruptcy cases in respect of foreign companies.

This is possible if the dispute is closely connected with Russia, inter alia, because:

- a foreign company conducts commercial activities in Russia,

- a foreign company's business targets on Russian persons or has a significant number of Russian business partners,
- a foreign company has assets in Russia,
- a foreign company's corporate organs are located in Russia,
- a foreign company's controlling persons have a close connection to the Russian territory.

There are two possible models of a Russian bankruptcy case in respect of a foreign company.

Under the first model, a Russian court can open main bankruptcy proceedings and treat the company as insolvent in all jurisdictions in which it does business. As a result, a Russian court will consider itself competent to dispose of all properties owned by the company and to decide on all claims of its creditors, even if such property or creditors are located abroad. This model is possible if the court finds that the company's center of main interests is in Russia and it was only formally incorporated abroad.

Under the second model, if the center of the main interests of a foreign company is not in Russia, a Russian court may open local proceedings that would target only creditors and property related to the company's activities in Russia. The purpose of such proceedings is to protect Russian creditors in the absence of effective access to foreign justice, including due to foreign sanctions or the high cost of participation in bankruptcy case in a foreign court.

**Sirota & Partners**