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If the director of a foreign holding company does not act in the interests of the business, the company can change its personal law. Redomiciliation will allow to preserve property, obtain the right to judicial protection, conduct foreign exchange transactions and pay taxes under special conditions. Senior associate of corporate law practice and M&A transactions "Tomashevskaya & Partners" **Yulia Berezina** together with a colleague, we talked about the nuances and risks that need to be taken into account when choosing a method for changing personal law.

20

The company changes the personal law. Analyzing the features of the procedure

Under sanctions, foreign directors can hinder the company's operations. They can only be replaced with the consent of the shareholders, which is often a difficult task. In order to maintain freedom of action, protect the assets and rights of the company, its participants and investors, a reasonable step may be to change its personal law. Personal law determines the order in which the company acquires rights and obligations, regulates the relationships that bind its participants. After changing the personal law, the company will be able to be guided by the law of another jurisdiction, while corporate legal relations and connections to property will remain.

The change in the personal law will allow the company not to follow a special procedure for paying dividends related to currency restrictions. According to the current regulation, foreign persons can receive profit in an amount that does not exceed

their investments in the Russian economy (extract from the minutes of the meeting of the subcommittee of the Government Commission for Control over the Implementation of Foreign Investments in the Russian Federation dated 09.08.2023 No. 182/5).

International companies have the status of currency non-residents, which allows them to keep funds in accounts in foreign banks. In addition, they can transfer rubles and foreign currency between their foreign accounts and accounts in Russian authorized banks without restrictions (subparagraph "e.1" of paragraph 7 of part 1 of article 1 of the Federal Law of 10.12.2003 No. 173-FZ "On currency regulation and currency control").

An international company has the right to maintain confidentiality for certain categories of information consumers. For example, not to disclose information about its directors and participants in the Unified State Register of Legal Entities. At the same time, government agencies have access to this information.

In this article, we will discuss the differences between the methods of changing the personal law as well as the risks that businesses need to take into account in this context. We will explain how to deal with the assets and charter of an international company in the context of redomiciliation. We will consider the benefits and privileges that Russian legislation provides to international companies. In addition, we will outline the obligations that businesses undertake when changing their personal law.

The legislator proposes different ways of changing personal law

Classic redomiciliation means changing the legal address: excluding the company from the register of companies in one jurisdiction and registering it in another one. The company itself remains unchanged - there is no need to renew contracts with counterparties or employees, and the composition of its participants does not change. Another method is redomiciliation in the form of incorporation - the foreign legal entity remains in the previous jurisdiction, and a duplicate company is created in the Russian one.

Sometimes one may call the suspension of the corporate rights of a holding company of an economically significant organization - a "forced redomiciliation", but from a legal point of view this is not considered a change in personal law, since it is not the jurisdiction of the holding that changes, but the holding itself in the chain of ownership.

The classic mechanism of redomiciliation was initially created in the Russian Federation as part of deoffshorization. During the sanctions, its "efficiency" was once again confirmed. In practice, two scenarios for its implementation have emerged. The first is longer, but is carried out in compliance with all deadlines required by the laws of both the original and target jurisdictions. In this scenario, the move takes from six months to several years. The company applies for exclusion from the foreign register, then registers in the Russian jurisdiction, after which it receives a certificate of exclusion from the foreign register.

Applicants have the right to apply to the Government Commission with a request to provide additional time to leave the foreign register. The procedure for making such decisions was approved in Government Resolution No. 470 of 13.04.2024 "On Amendments to Certain Acts of the Government of the Russian Federation".

Leading IT and fintech companies have already changed the personal law

For example, MKPAO TKS Holding, known as T-bank (rbc.ru), MKPAO VK (interfax.ru), and Headhunter (interfax.ru) have undergone the process of changing their personal law. Ozon is planning to redomicile in the near future (interfax.ru).

The government commission is overloaded, and the application can be submitted no earlier than two months before the expiration of the statutory deadline. If the decision cannot be received in time, the opportunity to use the benefit is lost.

Russian administrators of special administrative regions check whether a company has been excluded from a foreign register only two years after its move, during an audit. Therefore, the practice of so-called "cowboy redomiciliation" has developed, in which companies are registered in Russian jurisdictions without coordinating the move with a foreign registrar.

With the help of "cowboy" redomiciliation, companies managed to move in two or three weeks, but in the end a number of risks arose: a "clone" remained in the foreign jurisdiction, after which the ownership of assets became disputed. The solution was, as a rule, the liquidation of companies in the foreign registry outside the framework of redomiciliation.

Businesses are at risk if they do not leave a foreign register

If a company is considering a "cowboy" redomiciliation, it is worth considering the potential negative consequences associated with it. The attitude of foreign regulators towards companies that do not comply with the rules for leaving the jurisdiction has changed over time. Now registrars,

It is possible to manage an international company on special terms

International companies can be managed according to special rules that differ from the generally accepted ones. There is flexibility in decision-making, but at the same time there are certain restrictions related to the legislation of different countries.

International companies may issue multi-voting shares and other types of shares with different rights. This facilitates more flexible management and distribution of share capital in such a way as to attract investors and ensure control over the company. Otherwise, the management of an international company is similar to the management of a Russian legal entity. Employees will interact with tax authorities and other government agencies, preparing documents on standard forms.

When incorporating, there is no need to liquidate the company in a foreign country

The incorporation mechanism has been developed for public companies. In Russia, a duplicate international company is created, while the legal entity remains in the original jurisdiction. For example, Yandex International Public Joint-Stock Company has used this mechanism.

at least the Cypriot ones, they more strictly control how consistently the company follows the procedure.

If the rules are ignored, there is a risk that foreign regulators will attempt to mandatorily liquidate a foreign company, sell its assets, including those located abroad, and distribute the proceeds among foreign creditors. This could result in a dispute over the fate of Russian assets belonging to the relocated company (for example, if a court decision is made abroad on the forced collection of shares or stakes in its subsidiaries or real estate).

The EU Council has approved a new basis on which restrictive measures may be imposed on persons. This will happen if it is established that the beneficiaries of an international company or its director have assisted in the forced relocation of the company from an EU Member State (Article 3(1)(j) of Council Regulation (EU) No 269/2014).

Corporate management of a redomiciled company can be carried out under special conditions. Let's consider them in more detail.

The charter does not need to be changed.

Certain provisions of the charter of a redomiciled company may be governed by foreign rather than Russian law, which allows the charter to remain unchanged after the move. As a general rule, an arbitration clause should be included in the charter for this purpose, but SAR registrars allow the application of foreign legislation even without it.

Foreign law can only be applied to certain relationships. The law establishes the limits of application of foreign law to an international company are established. The first thing to remember is the deadline until which an international company has the right to apply the norms of foreign corporate legislation: until 2039 (Article 12 of the Federal Law of 25.12.2018 No. 485-FZ "On Amendments to Certain Legislative Acts of the Russian Federation").

We believe that the deadline can be extended, since it was approved before the change of the

international situation. The second important circumstance is that there is no clear indication of what specific corporate relations foreign law applies to. The SAR interprets them exclusively as relations between participants, leaving outside the framework the relations of participants with the director or with the international company itself.

Privileges of incorporation.

Redomiciliation in the form of incorporation means that international companies do not move but are created in a new jurisdiction. Therefore, they do not have the opportunity to be guided by foreign law. At the same time, the legislator offers them special conditions for corporate governance. For example, the board of directors can be elected without cumulative voting, individual members can move without re-election of the entire composition, and they are also provided with different terms of office and the ability to distribute roles, including multiple votes and veto rights. Members of the board of directors can also transfer their powers to each other.

Redomiciled companies enjoy tax benefits

Only international companies that were created as a result of redomiciliation can claim tax benefits. In addition, such organizations must meet the criteria of an international holding company, namely:

- a foreign company was created before March 1, 2022, and an international company was registered no less than three years after that;
- persons who directly or indirectly own more than 75 percent of the equity interests and controlled the company as of March 1, 2022;
- the company, within 15 days after redomiciliation, submitted to the tax authorities its latest financial statements with a positive audit opinion and information about the beneficiaries. For such international companies, the legislator reduced the income tax rate on received interest, royalties and dividends to 5 percent. For comparison: the usual income tax rate until the end of 2024

When redomiciliating, there is no need to transfer assets to an international company

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When a company redomiciliates, its assets and liabilities are automatically transferred to the new legal entity. The international company retains its rights to its assets, licenses and corporate agreements. This is the key feature that distinguishes redomiciliation from incorporation. If a company redomiciliates, the international company assumes the obligations and rights of the foreign legal entity from the moment of registration in the destination jurisdiction. These include exclusive

rights, rights from permits issued by government agencies and corporate agreements. That is, the created legal entity automatically receives rights in relation to all assets of the foreign predecessor.

There is no such automatic succession in the case of incorporation. For example, Yandex MKPAO was registered in the SAR in December 2023, and the asset transfer transaction was agreed upon with all interested parties only in May 2024 (yandex.ru).

50 million rubles
is the size investment
company obligations,
who moved to the SAR

for interest and royalties - 20 percent, for dividends - 13 percent.

A company may benefit from a zero rate on dividends and income from the sale of shares or stakes if it meets certain conditions:

- the sale of shares or stakes constitutes at least 15 percent of the company's authorized capital and they have belonged to the international company for at least a year;
- real estate in Russia makes up less than 50 percent of the asset structure of the company being sold;
- the shares or stakes being sold must not be contributed to the authorized capital of an international company and must not have been acquired as a result of reorganization within 365 days before or after the company's registration as an international company.

At the same time, the Russian legislator cannot provide businesses with all the advantages that offshore jurisdictions provide. When deciding on redomiciliation, it is necessary to take into account the risk of blocking the company's operating activities and analyze tax costs after moving to the SAR.

International companies will incur additional expenses that the original legal entities did not encounter. Regardless of the form of redomiciliation, they must undertake investment commitments in the territory of the Russian Federation in the amount of at least 50 million rubles. Such an investment may even be a contribution to the authorized capital of an affiliate.

However, this is not always beneficial from a tax point of view and is not always practically feasible: an MC can be created only in order to own some assets, for example, a yacht.

Not only the international company, but also its founders must invest money. They are obliged to transfer property to the created business entity that is worth at least 800 million rubles.

Changing personal law in the Russian Federation takes at least one week

Registration of companies in special administrative regions takes place in the shortest possible time. Let us consider what influences the final period and how to calculate it.

Deadlines in Russia. Redomiciliation period depends on the chosen organizational and legal form of the international company. They can be compared with the period during which a Russian company is established under the federal laws of 08.02.1998 No. 14-FZ "On Limited Liability Companies" and of 26.12.1995 No. 208-FZ "On Joint-Stock Companies". It turns out that for an international company:

- in the form of an LLC (IC LLC) – one week;
- IC JSC - from one month;
- International Public Joint-Stock Company —from one and a half months.

International companies

do not need to obtain preliminary consent for registration within the framework of federal laws of 26.07.2006 No. 135-FZ "On Protection of Competition" and of 09.07.1999 No. 160-FZ "On Foreign Investments in the Russian Federation". However, these terms apply only to the Russian part of the procedure.

Deadlines abroad. There are no guarantees that the foreign registrar will approve the redomiciliation and do it quickly. The foreign part of the procedure, which is similar to liquidation, sometimes takes six months or even longer for the following reasons:

- liquidation of a foreign company is carried out within the timeframes established by the foreign legislator;

- in some jurisdictions, prior to liquidation, creditors must be notified and their consent obtained;
- liquidation requires that shareholders and directors act in a coordinated manner: change the charter, make decisions, and interact with the registrar.

In the process of registration you can use the help of the management company of SAR

In order to successfully carry out the redomiciliation or incorporation procedure, it is necessary to decide on a special administrative region and a management company. Unlike foreign service providers, representatives of domestic management companies assist international companies with registration and management issues, including providing advice on legal issues.

The legislator has assigned the functions of a registrar to only two management companies. They are located in geographically remote

regions: in Kaliningrad and Primorsky Territory. At the same time, offices of international companies must be registered only in these areas, which is why the business will incur additional management costs.

Management companies facilitate the return of organizations to their domestic jurisdiction, but cannot influence foreign registrars or go beyond the law.

Key financial institutions — the National Settlement Depository and the National Clearing Center — have already encountered restrictive measures. Management companies in special administrative regions that facilitate the relocation of foreign companies to Russia might also face sanctions. If sanctions are imposed against them, this will automatically affect all residents of such regions. International companies will be associated with a sanctioned entity, which will be recorded in information databases: for example, World-Check.

Assess the possible risks

During redomiciliation, trading in public companies may be suspended due to the conversion of depositary receipts into shares of the international public joint stock company. This happened, for example, with VK receipts (interfax.ru). After comparing various jurisdictions, some companies, due to the imperfections of Russian legislation, prefer to change one foreign jurisdiction for another. For example, Fix Price changed the BVI to Cyprus and the UAE, and Polymetal changed Jersey to Kazakhstan.

Sometimes, before redomiciliation, foreign shareholders leave the company to avoid ties with the Russian jurisdiction, as happened in the case of Ozon (forbes.ru). This requires mandatory approval of transactions with the Russian regulator, which increases the time frame for the procedure. In addition, after redomiciliation, access of Russian government agencies to the international company's information becomes

easier, confidentiality is reduced. Previously, Russian government agencies sent specialized requests to foreign regulators to obtain information about shareholders, and disclosure of information did not always occur and only in the presence of an international agreement.

An international company remains dependent on foreign law because it “takes over” the rights and obligations of the former foreign company at the time of its deregistration. This may create risks for the beneficiaries, directors and the company itself, since foreign courts may recognize their jurisdiction in disputes over the company's assets. This is especially true if the company was created as a result of incorporation or “cowboy” redomiciliation. All this entails the risk of seizure of property from the beneficiaries, directors and the company itself.