

Newsletter

Risks for foreign shareholders of breaching management duties in Russia

May 14, 2024

Dear Ladies and Gentlemen!

As we have learned from publicly available acts and news, sanctions imposed in the EU, UK and certain other jurisdictions include, inter alia, restrictions on providing business and management consulting services to persons connected with Russia (including subsidiaries of foreign companies active in our jurisdiction), while the scope and exposure of such restrictions is not yet well defined.

In the meantime, we would like to caution you that current Russian civil and corporate legislation contains a number of obligations for shareholders of Russian companies that they must observe while being present in Russia regardless of their jurisdictions and foreign law restrictions in place. Generally, all shareholders of Russian companies hold basic fiduciary duties to the companies that require shareholders to restrain themselves from any actions that may impede the companies' further activities.

One of the core examples of this fiduciary duty is the shareholder's participation in the management of the company by attending shareholders' meetings and adopting corporate resolutions on issues that are mandatory under Russian law or crucial for the company's further operations. Such issues may include:

1. Approval of the annual balance sheet and financial results for the previous year

In accordance with Russian corporate legislation, all companies must hold a general meeting of shareholders at least once a year (annual meeting) at which shareholders approve the company's financial results for the previous year.

2. Election of governing bodies

No Russian entity may function without a CEO, which is the main body authorized to act on the company's behalf when interacting with state bodies as well as any third parties while performing its day-to-day business activities. Apart from the CEO, the company may have other corporate bodies, such as a board of directors, supervisory board, etc., that influence its business operations as well.

If the term of current officers expires or they resign, new persons must be appointed to hold the respective positions, otherwise the company's normal operation is at risk.

3. Consent for transactions and actions

In accordance with Russian legislation, a number of transactions (e.g., major or related-party transactions, other transactions and actions stipulated in a company's charter) may require corporate approval from the company's shareholders. Without the necessary management decisions and approval of transactions, their execution might be unlawful or virtually impossible.

According to the provisions of Russian law and existing practice, if the foreign shareholders of Russian companies fail to fulfil their obligations to the company, they may face the following key risks:

1. Interim administration

Failure to properly manage a company's operations may entail the risk of external management being imposed on an asset in accordance with Russian counter-sanction laws currently in place. In other words, in such a scenario, the original shareholders would be temporarily deprived of their rights to possess and use the affected assets, but would maintain the legal ownership title to them without the ability to distribute dividends or profit generated from the company's operations in Russia. See more about the interim administration mechanism [here](#).

2. Forced exclusion from the company

If a shareholder grossly violates its obligations to the company and this leads to material harm to the entity or impedes its activities, other shareholders may file a lawsuit to exclude such a shareholder from the company with compensation for the real value of the shareholder's stake.

3. Subsidiary liability

If the actions (inaction) of foreign shareholders lead to a company's bankruptcy in Russia, such shareholders may be subject to subsidiary liability for the company's debts as part of the bankruptcy procedure.

Thus, when determining their further strategy and actions in relation to Russian subsidiaries in light of the existing sanctions and restrictions, foreign shareholders should pay close attention to the requirements of Russian law assessing the potential harm and possible risks as well. Our firm has extensive experience in properly identifying risks and preparing mitigation strategies depending on the circumstances of a particular case. We would be happy to be of further assistance, should any questions arise.

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 send them the link to complete a [Subscription Form](#). If you would like to learn more about our [Crisis Management, Economic sanctions and Compliance](#), please let us know by replying to this email. We will be glad to provide you with our materials.

Note: Please be aware that all information provided in this letter was based on our understanding and interpretation of the legislation and law enforcement practice. Neither ALRUD Law Firm, authors of this letter bear any liability for consequences of any decisions made in reliance upon this information.

Sincerely,
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