# Managing Legal, Communications & GR Risks for International Businesses in Russia in 2022

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# Western business in Russia: quo vadis?

#### Tadzio Scilling, CEO, AEB



Association of European Businesses

# Legal risks in new environment?

German Zakharov, Partner



# Main strategies for foreign investors: overview of possible choices

#### MAIN STRATEGIES FOR FOREIGN INVESTORS

- Termination of activities: temporary suspension, liquidation
- Keeping business in Russia. Ownership and financing structure of the Russian business
- Exiting from Russian business through a sale:
  - Management buy-out with or without buy-back right
  - ✓ Market sale: sale of the company to market players with or without buy-back right
  - Disposal of shares to the company itself (applicable for JV structures)



For each group of requests, we have successfully developed and implemented various solutions (!)



Mitigating legal and criminal risks for shareholders and Russian management

**Possible risks for shareholders and management** 

**Criminal liability** 

- Non-payment of salaries
- Non-payment of taxes > EUR 150,000
- Deliberate / fictitious bankruptcy
- Termination of contracts
- Liability for compliance with sanctions

**Other types of liability** 

- Civil liability
- Administrative liability
- Subsidiary liability

# Criminal liability for compliance with anti-Russian sanctions

- Compliance with sanctions itself does not entail direct criminal or administrative liability of its management
- Public proposals to use Art. 201 of CC RF Abuse of authority for termination of business in Russia
- The Bill proposes adding aggravating factor of abuse of authority with the purpose of compliance with anti-Russian sanctions

Open list of persons within a company who can be prosecuted, including foreign persons

#### The Bill Nº 155680-8

Additional measures to ensure "special military operations" :

**Additional Powers** 

The Government may introduce additional measures and powers to support SMO

#### Labor Law amendments

The Government has right to establish special regimes for employment relationships State procurement

No right to refuse from state procurement to support SMO. Unilateral amendments of the contract by proposal of state authorities

#### ALRUD

### Practical aspects of mitigating the risks

- Preparation of **anti-crisis business plan**
- **Preparation of financial reserves** in the accounting for payments to the employees / counterparties
- Seeking **alternative** economic justification, not related to sanctions
- Legal and economic justification for the significant decisions
- Pre- and post-audit of assets in the event of a major transaction
- **Upgrading the compliance procedures** introduced in the company





#### WHAT COULD BE DONE WITH THE GR RISKS ASSOCIATED WITH BUSINESS RESTRUCTURING PLANS IN RUSSIA?

Eugeny Roshkov, Managing partner

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#### Prospects for the Development of the Situation in Russia: What Does It Mean For the Western Business?

Scenarios for the development of the political and economic situation in Russia in a mid-term (2-5 years): no normalization – business will leave

- The protracted nature of the military conflict in Ukraine and the sanctions confrontation with the West
- The lack of interest in a peaceful settlement, recognition by the West of the impossibility of normalizing relations with the current leadership of Russia in many spheres, such as trade and investment
- The significant decline in Russian economy and the reduction of certain economic segments up to 30-50% or more (so-called "deindustrialization")
- The probability of political destabilization in Russia, including "extreme" scenarios

Headquarters of Western companies in Russia are faced up to choices from a narrow set of scenarios



#### What is the Role and Functions of GR in This Crisis Situation?

Short-term priorities: the role of GR at the stage of leaving the market or reducing presence in Russia

A company's exit from the market is a **complex multi-level procedure**, which implies intensive work with stakeholders and bears critical risks in case of an incorrect exit strategy or improper communications with stakeholders (*e.g., external management option, criminal prosecution of top management, judicial proceedings, seizure of accounts, etc.*)

Headquarters could have limited expertise and resources for managing the market exit procedure, and tend to underestimate its complexity, time frames and the level of possible risks in case of a crisis scenario (for company's assets, employees, etc.)

Areas of activity for GR at the stage of the market exit

- Working with stakeholders to receive the necessary approvals for a deal
  - Coordination with the FAS
  - Coordination with the sub-Commission of the Government Commission for the Control of Foreign Investments (chaired by the Ministry of Finance) for joint-stock companies in case of transfer of funds to an "unfriendly country"
  - Informal approval from the industry regulator
  - Informing regional stakeholders

- Mitigation of possible risks during the "exit"
  - Interactions with supervision agencies (increased attention during the period of business sale)
  - Interactions with the law enforcement agencies (in case of involvement of the Prosecutor's Office, the Ministry of Internal Affairs, etc.)
  - Protection of intellectual property and trademark rights (Rospatent)
  - Proactive communication with regional stakeholders (if there are assets in particular regions)
  - Assessment of internal and external communications for GR risks and perception by government agencies in coordination with Legal and commcs units

#### Key Risks in the Process of Seeking Government Approval – 1

- Prospective changes in the approval procedure to expand the approval by the Government's sub-Commission to limited liability companies (LLC). According to our sources, the Government and Presidential Administration are currently preparing significant amendments to extend the requirements to get approval of the sub-Commission to transactions involving Russian assets structured as limited liability companies (currently, only applicable to shares in JSCs). The expansion to LLCs will affect much broader range of foreign investors compared to the existing procedure. The new wording of the Presidential Order and the Government decree could be released by approx. mid-July.
- Risks that the sub-Commission for Foreign Investment Control or potentially other regulators could **set a price limit as a behavioral condition for foreign investor selling assets in Russia**, as this happened in the sale of Kinross assets to Highland Gold Mining and subsequently Polyus Gold.

#### Key Risks in the Process of Seeking Government Approval – 2

- **Risks of competitor interference**. The Russian buyers try to use their administrative and political resource to take control over the foreign assets by interfering in the approval process and trying to improve the transaction's conditions. The risks are especially high when the Russian investors cannot participate in the bid officially (e.g., due to sanctions imposed on them) and could try to disrupt the transaction.
- Interference of stakeholders not directly involved in the approval process. For most significant assets (related to strategic industries or significant in terms of the price and profitability) the approval becomes a politically complicated process with a high probability of interference by stakeholders not directly authorized to make decisions within the formal procedure. The decision to approve such transactions, including selection of the buyer, could be made by the political decisions-makers up to the highest levels of the Presidential Administration.
- **Risks related to payment conditions**. While most of Western investors try to sell assets for foreign currency and secure money transfer directly to an "unfriendly jurisdiction", the Russian authorities are unwelcoming to this scenario. It also increases chances that the Government could request a discount. We have heard about this from the Ministry of Industry and Trade; while the Ministry of Finance does not support this approach.

#### **Other Risks**

- **Risks of external administration appointment** in case the respective legislation is adopted.
- **Pressure by law enforcement bodies**, including upon the request of the industry regulators and regional administrations.
- **Pressure by supervisory bodies** (*e.g., consumer watchdog or labor inspection*) in case of uncertainty around production, jobs, taxes and contracts with key suppliers.
- Pressure by the regional authorities.
- Risks of **a company to be subject to pressure by public campaigning initiatives** by NGOs organizing campaigns against multinational companies which suspended services in Russia.
- **External communications risks** in case external statements of the Company are improperly understood by the authorities and cause concerns about the future of business.
- **Internal communication risks** non-transparent internal communication or the lack of coordination of external and internal messaging on the company's future in Russia could create uncertainty among employees and motivate them to appeal to supervisory bodies.

#### What Companies Should Do to Minimize Policy Risks?

The basic guidelines to minimise policy risks after decisions taken on the future of Russian business are as follows:

- 1. Ensure transparent communication between the local and global offices any HQ announcement regarding the future of the Russian business should not come unexpectedly for the local team. The local management needs to understand the sequence of steps to be taken, once there is sufficient clarity.
- 2. It is also vital to establish clear communication with employees of the Russian office and production facilities and update the staff throughout the process. That should help avert the lack of transparency about the future of their jobs.
- 3. Restructuring of stakeholder maps and risk monitoring process to pay higher attention to activities of stakeholders playing key role in "managing" the foreign business exit is important. This includes higher attention to the law enforcement bodies, regional administration, labour and consumer protection authorities, etc.
- 4. Elaborate positions on issues critical for the stakeholders employment, business continuity, contracts with suppliers and buyers and integrate these positions in a public statement.
- 5. Whatever business decision is made, substantiate it with economic rather than political grounds.
- 6. Maintain close contact with relevant government bodies to avoid the situation when officials only follow the mass media information and do not have contact with the company while making efforts to avoid any confusion and manage stakeholder expectations.



#### Contacts



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How to maintain a certain level of coverage in Russian media to support operations and at the same time to minimize local exposure in the public eye outside Russia?

Denis Denisov, Partner



## Which topics of upcoming webinars would you be most interested in?



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