

New restrictions for companies controlled by „non-friendly“ countries

Legal News
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New restrictions for companies controlled by „non-friendly“ countries in Russia

In December 2022 the Subcommission of the Government Commission for Control of Foreign Investments in the Russian Federation (Subcommission) has issued a protocol¹ (Protocol) determining important criteria of approval of transactions with regard to Russian legal entities controlled by persons from “non-friendly countries”² (in particular, sale of shares, payment of dividends and liquidation).

Practical aspects of interaction with the Subcommission

Let us recall that the requirement to obtain a consent of the Sub-Commission for certain transactions and operations was first introduced in March 2022³, and then the restrictions were expanded throughout the past year. Formally, the term for consideration of an application for approval of a transaction / operation by the Subcommission has not yet been set, but in most cases it actually takes 2-3 months, and sometimes longer, depending on the significance of the company for the Russian market. Practically, the process of obtaining an approval from the Subcommission is complicated by the need for the applicant to first apply to the relevant ministry of the Russian Federation. Without a positive opinion of the ministry the risk of refusal in approving the transaction by the Subcommission is extremely high. Please note that, as a rule, the Subcommission expects to receive a written opinion on the admissibility of the transaction / operation directly from the relevant ministry, and not from the applicant.

The application for an approval, inter alia, must indicate the consequences of refusal for the socio-economic development of the Russian Federation. In this part, the applicants often refer to the involvement of their clients / customers in significant economic processes in Russia.

In cases when one applies for approval of a dividend payment, the Subcommission generally expects the applicant to provide representations regarding intention to continue business in Russia.

Sale of assets / shares

According to the Protocol, the Subcommission should apply the following approaches when deciding on granting the approval for the sale of assets / shares in Russian companies controlled by persons from “non-friendly” states:

- Provision of independent appraisal of assets’ market value;
- Determination of the price with minimum 50% discount from the market value indicated in the independent appraisal report;
- Determination of the KPI to be achieved by the new shareholders;
- Sales price must be paid as deferred payment within 1-2 years and (or) 10% of the sales price must be paid as voluntary donation to the state budget (practically many companies choose the second option to close the deal faster).

Dividends distribution

The Subcommittee should apply the following approaches when deciding on granting the approval for the distribution of dividends / profit in the mentioned Russian companies (the approval is needed only for distribution of more than 10 Mio. RUB per month):

- Amount of dividends to be distributed cannot exceed 50% of the total amount of the company's net profit of the previous year;
- The retrospective analysis of dividends' payments for previous years shall be taken into account;
- Foreign owners must commit to continue their commercial activities in Russia;
- The opinion of federal authorities regarding significance of the respective company's activities and their impact on technological and industrial sovereignty of Russia shall be taken into account;
- Federal authorities must determine quarterly KPIs for the companies; and
- Dividends distribution on a quarterly basis by such companies shall be subject to meeting the determined KPIs.

¹ Protocol of the meeting of the Subcommittee of the Government Commission for Control of Foreign Investments in the Russian Federation dated December 22, 2022 No. 118/1

² The list of „non-friendly“ countries includes: all EU states, Australia, Canada, Liechtenstein, Norway, New Zealand, Albania, Iceland, North Macedonia, the United Kingdom, the USA, Montenegro, Switzerland, Andorra, the Bahamas, Micronesia, Monaco, the Republic of Korea, San Marino, Singapore, Taiwan, Ukraine, and Japan.

³ Decrees of the President of the Russian Federation No. 81 of March 1, 2022, No. 618 of September 8, 2022, No. 95 of March 5, 2022, and No. 254 of May 4, 2022.

How can SCHNEIDER GROUP help?

Our company has already gained experience in obtaining approvals from the Subcommittee. We will be glad to provide you with a detailed advice regarding practical application of the Subcommittee's new guidelines and to support sale of assets / shares of your Russian subsidiary, as well as payment of dividends and obtaining necessary approvals of the Subcommittee.



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