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International companies: a new way of doing business in Russia

The Federal Law dated 03 August 2018 No. 290-FZ “On International Companies” (“Law No. 290-FZ”) defines the legal status of international companies - an economic organisation with the status of an international company registered in the Unified State Register of Legal Entities (USRLE) in connection with the change of a personal law by a foreign legal entity by way of redomiciliation, specific features of its activities, reorganisation and liquidation, as well as the recording and exercising of rights to its securities.

1. The legal status of international companies

A foreign legal entity which is a commercial corporate organisation and which has decided to change its personal law in accordance with the procedure established by such personal law may become an international company.

Specific features of the legal status of an international company are as follows:

- 1) the place of location of an international company is within the territory of a special administrative district which is determined in accordance with the Federal law “Regarding special administrative districts in the territory of the Kaliningrad region and Primorsky territory” (hereinafter referred to as an “administrative district”);
- 2) the status of an international company is provided simultaneously with the state registration in the USRLE to a foreign legal entity that:
 - a) is registered (established) in a state which is a member or spectator of The Financial Action Task Force on Money Laundering (FATF) and (or) Committee of Experts of the Council of Europe on Measures to Combat Money Laundering and the Financing of Terrorism (Manivel);
 - b) through its direct or indirect controlled entities either through affiliates or representatives (other separate subdivisions) carrying out business activities on the territory of several states including the Russian Federation;
 - c) applied for entering into a contract for carrying out of activities as a participant of the administrative district;
 - d) has undertaken to invest in the territory of the Russian Federation in the amount of no less than RUB 50 million during the period of no less than 6 (six) months from the date of state registration of the international company;
- 3) an international company pays an annual registration fee in the amount and order established by the Tax Code of the Russian Federation;
- 4) an international company has the right to place securities as well as to organise the circulation of securities, including by placing securities of foreign issuers in accordance with the foreign law, certifying rights in respect to securities of an international company, outside the Russian Federation without receiving a permission from the Central Bank of the Russian Federation (Bank of Russia);
- 5) the Russian legislation regarding limited liability companies, joint stock companies, the securities market is applied to international companies in the part, not contradicting the Law No. 290-FZ and the essence of relations arising from it.

An international company is deemed established from the date of registration (establishment) of the foreign legal entity. At the same time, in connection with the state registration of an international company, a relationship of succession does not arise between the foreign legal entity and the international company.

The personal law of the international company from the moment of its state registration in the Russian Federation will become Russian law.

An international company upon approval of the Government of the Russian Federation has the right to alter its personal law through registering in a foreign state whose legislation allows for such registration and subject to the absence of indebtedness on taxes, dues and other indebtedness of the international company to the budget of the Russian Federation.

Such registration of an international company in a foreign state by way of redomiciliation does not alter the title of the international company to its property, as well as the rights and obligations of the international company and persons having the rights and (or) duties in relation to such company which arose before the registration of the international company in the foreign state by way of redomiciliation.

2. State registration of an international company

The Law No. 290-FZ provides expressly that for the state registration of an international company it is not required to obtain preliminary approvals provided by the Federal Law “On the Protection of Competition” and the Federal Law “On the Procedure for Making Foreign Investments in an Economic Company of Strategic Importance to Ensure the Country’s Defence and Security”, which significantly simplifies the process, in particular, in the event when the authorised capital of the relevant company is paid for by shares or interests of another commercial organization.

The procedure of state registration of an international company by way of redomiciliation has its own specifics: a foreign legal entity shall submit to a management company whose status is determined in accordance with the Federal Law “On the Special Administrative Districts in the territory of the Kaliningrad region and Primorsky territory” (hereinafter referred to as the “management company”):

- application for state registration in the prescribed form;
- information about the beneficial owners of the foreign legal entity;
- representation of a foreign legal entity on the absence of circumstances hindering the state registration of an international company;
- documents confirming compliance with the requirements provided for by Law No. 290-FZ;
- documents necessary for the registration of the issue of shares of an international company which is registered in the legal form of a joint-stock company;
- if the firm name of the international company contains an indication that it is a public joint-stock company, documents confirming compliance with the conditions provided for by the Law No. 290-FZ, and documents necessary to register the prospectus of shares of the international company;
- the approved charter of the international company and other necessary documents.

The management company considers the submitted documents within no more than 2 (two) business days and makes a decision to forward them on to a registering authority or the transfer of documents is refused. If an application is submitted for

the state registration of an international company in the form of a joint-stock exchange company, the documents are forwarded on to the Bank of Russia.

Within no later than one business day following the day of the adoption of the relevant decision, the management company:

- 1) sends documents for the state registration to the registering authority, in the form of electronic documents signed by an enhanced qualified electronic signature; or
- 2) in the event that an application for state registration of an international company in the legal form of a joint-stock company is submitted, transfers the documents to the Bank of Russia and not later than within one business day following the day of receipt of the document from the Bank of Russia for the registration of the share issue of the international company, the documents are sent on to the registering authority; or
- 3) in the event that the firm name of the international company contains an indication that it is a public joint-stock company, transfers the documents necessary for registration of the prospectus of shares of the international company and others documents stipulated by the Law No. 290-FZ, transfers them to the Bank of Russia, and not later than the business day following the day of receipt from the Bank of Russia of the document on registration of the prospectus of shares of the international company, transfers the documents to the registering authority.

The registering authority carries out state registration of an international company within no more than 3 (three) business days from the date of receiving the documents from the management company

An international company might be registered in a legal form of a joint-stock exchange company simultaneously with obtaining the status of a public joint-stock company subject to compliance with the following conditions:

- 1) shares of a foreign legal entity (securities of a foreign issuer certifying the rights to shares of a foreign legal entity) have passed the listing procedure in the Russian stock exchange or foreign stock exchange according to the list prescribed by the Federal Law "On Securities Market" ("Securities Market Law");
- 2) the Bank of Russia decided to register a prospectus of shares of an international company and a foreign legal entity entered into an agreement with the Russian stock exchange on the listing of shares of the international company.

To do this simultaneously with the submission of documents for the state registration of the issue of shares of an international company with the Bank of Russia, it is necessary to submit a prospectus of shares of the international company and a copy of the agreement with the Russian stock exchange on the listing of shares of the international company.

A foreign legal entity is subject to exclusion from the register of foreign legal entities in the state of its original personal law within 6 (six) months from the date of its registration in the USRLE by way redomiciliation, unless a longer period is established by the legislation of the state of the initial personal law of the foreign legal entity.

3. Securities and other financial instruments of an international company

In the event that within one year from the date of adoption of the decision on the state registration of the issue of shares of an international company by the Bank of Russia, the state registration of an international company is not carried out, this decision of the Bank of Russia is annulled.

The nominal value of shares of an international company in the currency of the Russian Federation shall be, as the general rule, equivalent to the nominal value of shares of a foreign legal entity in foreign currency at the official exchange rate of the relevant currency as of the date of the decision to change the personal law of the foreign legal entity (to register as an international

company).

At that, the nominal value of the preferred shares of an international company may exceed 25 per cent of its authorized capital (with is not applicable to ordinary joint stock companies in Russia).

Shares of an international company are owned by persons who, as of the date of state registration of an international company, are shareholders of a foreign legal entity, corresponding to the number of shares of a foreign legal entity owned by them.

The rights granted by shares of an international company must comply with the rights that are granted to its shareholders by the charter (constituent document) of a foreign legal entity or another document that determines the scope of shareholder rights in accordance with the personal law of the foreign legal entity.

Any change in the scope of rights granted by ordinary and preferred shares of an international company that, instead of and (or) in addition to the rights provided for by the legislation of the Russian Federation on joint-stock companies, grant their owners other rights, to bring such rights in compliance with the requirements of Russian legislation on joint-stock companies, may be made under the rules established by the Russian legislation for changing the scope of rights granted by preferred shares.

The performance under bonds and other financial instruments of an international company, with the exception of shares issued by a foreign legal entity, is exercised in accordance with the law under which such instruments are issued.

If a foreign legal entity that became an international company issued certificates of ownership of a certain number of shares, an international company may issue such certificates with respect to shares that are placed and/or circulated outside Russia.

The holder of the register of shareholders of an international company opens the following personal accounts:

- personal account of a foreign nominal holder;
- personal account of a foreign authorized holder;
- personal account of depositary programs.

It is not allowed to levy execution on the securities that are recorded in the personal accounts of the foreign nominal holder, the foreign authorised holder and the personal accounts of the depositary programs under the obligations of the persons who have opened these personal accounts.

4. The termination of the status of an international company without changing the personal law

The management company performs annual inspections of compliance of the international company with the requirements provided for by Law No. 290-FZ, and in case of non-compliance of the company with such requirements, as well as in the event of the company failing to fulfil its investment obligations in Russia, the international company issues a notice to the company on the need to comply with these requirements.

The management company shall notify the registration authority of the termination of the status of an international company in the event of:

- if, after the expiry of 6 (six) months from the date of the submission of a presentation, the international company has not performed such representation,
- the loss by an international company of the status of a participant in a special administrative district.

The registering authority shall, within a period of no more than 5 (five) business days from the date of receipt of this notification, make an entry in the USRLE on the termination of the status of an international company.

The decision of the management company to terminate the status of an international company can be challenged in a court at the place of state registration of an international company (the Arbitrazh Court of the Kaliningrad Region or the Arbitrazh Court of the Primorsky Territory), and in the presence of an arbitration agreement with the management company in an arbitration tribunal administered by a permanent arbitration institution.

An international company has the right to file an application with the management company to voluntarily terminate the status of an international company at any time after the date of its state registration.

In addition, the status of an international company is terminated if a legal entity registered outside the territory of a special administrative district accesses it as a result of the reorganisation.

Law No. 290-FZ came into force from the date of its official publication.

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