

# New Law on the Re-Domiciliation of Foreign Companies in Russia

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Federal Law No. 290-FZ on International Companies (the “Law on International Companies”) took effect on August 3, 2018, making Russia one of the first CIS countries to adopt laws on the re-domiciliation of foreign companies.

The Law on International Companies allows foreign companies to be registered in the Russian State Register of Legal Entities (the “Russian Register”) as a Russian legal entity with the status of an international company. Upon registration in the Russian Register, an international company is removed from the register of legal entities in the country where it was initially registered but retains all of the rights and obligations it had when registered in the foreign country.

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The Law on International Companies was adopted as part of a general package of laws that established special administrative zones on Russky Island (Primorsky Region) and Oktyabrsky Island (Kaliningrad Region) as an alternative to foreign offshore zones. The re-registration (re-domiciliation) of foreign companies is only allowed in these two regions.

The first re-domiciliation of a foreign company, initially registered in Cyprus, was announced on September 11, 2018, during the Eastern Economic Forum.

**Key requirements for re-domiciliation of a foreign company.** A foreign company can be registered in Russia with the status of an international company if:

- it is a commercial corporate entity;
- it made a decision on its re-domiciliation (re-registration) in Russia in accordance with the law of the country where it was initially registered;
- it carries out business activities in several countries, including Russia (e.g., through its controlled entities);
- it is registered in a country that is a member or observer of the Financial Action Task Force (FATF) and/or a member of the Council of Europe’s Committee of Experts on

the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL);

- it has filed an application for entering into a contract to domicile in the special administrative zones in the Kaliningrad or Primorsky Region; and
- it has undertaken to invest at least 50 million Russian rubles (approx. \$763,000) within the Russian Federation.

**Applicability of Russian law.** Once an international company is registered in the Russian Register, it will be governed by Russian laws on limited liability companies and joint-stock companies, subject to specifics under the Law on International Companies.

The company's participants retain the corporate rights and obligations they held prior to its re-domiciliation. Given the more conservative stance of Russian corporate law (especially relative to Anglo-American legal systems), a complete transfer of a foreign corporate structure to Russia would likely encounter a number of practical difficulties.

**Legal implications of re-domiciliation.** An international company is deemed to have been established not as of the date of its re-registration in the Russian Register, but from the date of the initial registration in the foreign country. This is a core distinction between (i) the re-domiciliation of a foreign company and (ii) its liquidation in the country of the initial incorporation and the subsequent incorporation of a new company in Russia. In view of the above principle of legal continuity, the international company retains all the rights and obligations that were available to it as a foreign company, including titles to movable and immovable property (both in Russia and abroad), titles to securities, participation rights in other companies, IP rights, and contractual rights and obligations, as well as liability under undertakings of the re-domiciled company. As a general rule, such legal relations are governed by the law that applied to them when they originated.

As expressly provided by the law, re-domiciliation does not constitute:

- legal grounds for early performance of obligations;
- a material adverse change;
- an event negatively affecting the financial position of a re-domiciling company; or
- an event triggering the obligations of the company in the case of its liquidation, reorganization and insolvency (bankruptcy), including payment of penalties or

compensation of losses, transfer of property to creditors or participant of the company, or buyback of participation interests from their participants.

However, despite the above provisions of the law, there still may be the risk of disputes with participants or counterparties of a foreign company if the law of the country of the initial incorporation does not recognize re-domiciliation.

Particular attention should be paid to continuing contractual obligations that are governed by foreign law, since the applicability of the above provisions to such obligations may not be indisputable. Moreover, loans, options, joint venture agreements and other contracts entered into, for example, under English law may contain fairly broad language concerning events of default, material adverse change, reorganization or liquidation, the scope of which may also extend to re-domiciliation. Some agreements may even expressly restrict re-domiciliation or give rise to additional rights or obligations in the event of re-domiciliation, such as the right to sell or buy out shares.

**General procedure for the registration of an international company.** An international company can be registered in the Russian Register as a limited liability company or a joint-stock company.

The location of the international company, which is determined by the location of its sole executive body (as is the case for other business companies under Russian law), must be within the Russky Island or Oktyabrsky Island special administrative zones.

An international company must have a corporate name in Russian and English. The corporate name must include a reference to its organizational form (namely, international joint-stock company/international public joint-stock company or international limited liability company).

Documents for registration as an international company are submitted by the foreign company to the management company of the relevant special administrative zone (the "Management Company"). The Management Company reviews the submitted documents within two business days and, provided all requirements are met, files the documents with the registering body (*i.e.*, a tax office). Within three business days of receiving the documents from the Management Company, the registering body registers the international company in the Russian Register.

After registration of an international company in the Russian Register, the foreign legal entity should be removed from the register of foreign entities in the country of its initial registration within six months, unless a longer period has been established by local law. The company should provide the Management Company with documentation confirming the removal of the company from the foreign register.

The ability of a foreign company to re-domicile will in practice depend not only on the existence of the technical procedure for re-registration in Russia, but also on whether the law of the country of initial registration allows such re-domiciliation. If the local law does not recognize re-domiciliation, a number of risks have the potential to occur, including:

- risks associated with a parallel existence of two companies during the transition period;
- unforeseen obligations (including early performance or termination of existing obligations);
- the loss of rights to assets held by the re-domiciled company;
- the loss of corporate rights by its participants.

**Shares.** Shares of a foreign company are recognized as shares of an international company registered as a joint-stock company.

The issuance of shares of an international company requires the state registration with the Central Bank of the Russian Federation. The documents for the registration of the proposed issuance of shares are filed with the Central Bank of the Russian Federation through the Management Company before the Management Company files the documents for the state registration of the international company with the registering body. No later than sixty days after the state registration of an international company, such company must file a share issuance notification with the Central Bank of the Russian Federation.

An international company may place securities, as well as organize the circulation of securities outside of Russia, without obtaining permission from the Central Bank of the Russian Federation.

**Regulatory and other clearance.** The Law on International Companies expressly states that re-domiciliation does not require antitrust or strategic investments clearance in Russia. However, it might still be necessary for the foreign company to obtain regulatory clearance in other foreign countries.

Re-domiciliation may also require, in particular, approval from participants or other bodies of the re-domiciling company, the consent of banks and other counterparties, and consent of any stock exchange on which the company's securities are traded.

**Foreign exchange regulation.** Even though it is a legal entity registered in Russia, an international company is considered a non-resident for the purposes of currency control regulation.

**Annual registration fee.** The Law on International Companies provides for the Tax Code to levy an annual registration fee on international companies. At the moment, such a fee has not been set.

**Termination of the status of an international company.** If the Management Company determines that the international company does not comply with the requirements of the Law on International Companies, the Management Company may issue a letter requiring the shortcomings to be remedied. If the identified violations are not remedied within six months, the Management Company may send a notification to the registering body requesting the termination of the international company status. The registering body then registers the termination of international company status in the Russian Register. The decision of the Management Company to terminate the status of an international company can be appealed in court.

An international company may at any time terminate its international company status at its sole discretion by filing a voluntary application to the registering body through the Management Company.

International company status is terminated upon the company's merger or division, and in some cases of its reorganization.

Upon termination of international company status, the company will have the rights and obligations under the laws governing limited liability companies and joint-stock companies, in addition to the full suite of rights and obligations that arose before the termination of the international company status.

**Reverse re-domiciliation.** Subject to the prior approval of the Government of the Russian Federation, an international company has the right to re-register back in a foreign country. In this case, after the registration of an international company in a foreign state, the Russian registering body will remove it from the Russian Register.

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Please do not hesitate to contact us with any questions.

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