

# BIRCH LEGAL

## Legal Alert

Foreign shareholders of large companies may be restricted in their corporate rights

# An interim procedure for large companies with participants from “unfriendly” countries to adopt corporate resolutions

The President signed Decree No. 16 dated 17 January 2023, “On an interim procedure for the governing bodies of certain Russian companies to adopt resolutions” (the “**Decree**”), which established an interim procedure for Russian companies in whose share capital and governing bodies participate both foreign persons from “unfriendly” states and Russian persons who are subject to sanctions’ restrictions (or such Russian persons are the ultimate beneficiaries of such companies).

In accordance with said interim procedure, Russian companies may opt not to count the votes of persons from “unfriendly” states when determining the results of voting on issues on the agenda of the general meeting of participants (shareholders), board of directors or the collegial executive body of the company.

The abovementioned procedure is exclusively applicable under the simultaneous concurrence of the following conditions:

- 1) The Russian company engages in activities in energy (including, electrical power), mechanical engineering or trade
- 2) The “unfriendly” countries have imposed restrictive measures upon the controlling person (owns more than 50% of shares) and/or the beneficial owner (owns more than 25% of shares) of the relevant Russian company
- 3) The foreign person associated with “unfriendly” states does not own more than 50% of shares or participatory interest of the Russian company
- 4) The revenue of the company (group of persons of which the company is a member) from product sales within the year preceding the year in which the company adopted the resolution exceeds RUB 100bn

## **BIRCH LEGAL’s opinion:**

The procedure in question aimed at protecting sanctioned Russian assets could significantly limit the rights of the active participants of a company with foreign participation. Moreover, the Decree is rather straightforward and doesn’t provide a clear algorithm for how restrictions will affect edge cases. The established maximum threshold for foreign ownership (50%) exempts companies controlled by “unfriendly” foreigners from the restrictions. However, it neither takes into account public companies with foreign participation nor, for example, specifies the procedure for foreign minority shareholders with an insignificant stake..

( RUB 100bn ~ USD 1.3bn



Further to the Decree a corporate resolution in this instance is adopted by a majority of votes from the total number votes belonging to Russian persons. Furthermore, provisions in founding documents, corporate agreements, as well as legal norms applicable to the relevant corporate agreements, which contradict the Decree are not applied in such relevant part.

**BIRCH LEGAL's opinion:**

The restrictions imposed by the Order have been established in relation to large companies taking into account yearly revenue indicators exceeding RUB 100bn as well as in relation to an indeterminate amount of companies in the relevant industries: energy, mechanical engineering and especially trade. These categories are considerably broad.

A direct reference to the priority of restrictions on the provisions of the articles of association and corporate agreements could potentially bring instability to corporate relations for the affected companies, as it will require prompt adaptation to new conditions taking into account the general meetings of participants scheduled for early 2023.

**The interim procedure  
is valid until 31 December 2023**

**The Decree came into force  
17 January 2023**

# For further information please contact



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