

BIRCH LEGAL

Legal Alert

Russia adopts special decree limiting ability of investors to perform transactions with shares in Russian LLCs

President Vladimir Putin issued a decree, “On special procedure for execution of certain types of transactions (operations) between certain persons” on 8 September 2022 (“**Decree 618**” or “**Decree**”), introducing a special procedure for the execution of transactions with shares in Russian Limited Liability Companies (“**LLCs**”) between Russian residents and persons connected with “unfriendly states”.

General prohibition

The Decree applies to transactions entailing, directly or indirectly, the establishment, change or termination of:

1. the rights of ownership, use or disposal of shares in the authorized capital of LLCs in Russia (with the exemption of credit organizations and non-credit financial institutions)
2. other rights that make it possible to determine the conditions for managing such LLCs or the conditions for the performance of entrepreneurial activities between certain persons

and concluded between:

- Russian residents and foreign persons connected with foreign countries committing “unfriendly actions towards Russia, Russian legal entities and individuals” (including foreign persons who have the citizenship of “unfriendly states”, whose place of residence is in an “unfriendly state”, whose place of primary business or place of primary profit is in an “unfriendly state”, or who are located in an “unfriendly state”) or those that are controlled by such foreign persons named above regardless of their place of residence or place of primary business
- persons from “unfriendly states” and foreign persons from any other countries

Please kindly note that as of today unfriendly states inter alia include such countries as the United States, EU members, the United Kingdom, Canada, Switzerland, Japan, and others

It is important to note that scope of the application of Decree 618 shall be interpreted and read together with the previously enacted regulations, namely those clarifying that the following foreign persons shall not be recognized as foreign persons connected with foreign countries committing “unfriendly actions towards Russia, Russian legal entities and individuals”:

- persons under the control of legal entities or individuals whose personal law is the law of a foreign state that is not related to foreign states committing unfriendly acts provided that such control is established before 1 March 2022 (paragraph 4 of the Decree of the President of the Russian Federation of 4 May 2022 No. 254)
- persons under the control of a foreign state that is not related to foreign states that commit unfriendly acts provided that such control is established before 1 March 2022 (paragraph 4 of the Decree of the President of the Russian Federation of 4 May 2022 No. 254)
- persons simultaneously complying with the following requirements:
 - they are controlled by Russian legal entities or individuals (the ultimate beneficiaries are the Russian Federation, Russian legal entities or individuals), including if this control is exercised through foreign legal entities associated with such foreign states
 - information on control over them is disclosed by Russian legal entities or individuals named above to the tax authorities of the Russian Federation in accordance with the requirements of the legislation of the Russian Federation

(paragraph 12 of the Decree of the President of the Russian Federation of 5 March 2022 No. 95)

Exemptions

The Decree contains two limited exemptions from the new approval order for transactions (operations) executed pursuant to:

1. Presidential Decree No. 416 dated 30 June 2022, “On Application of Special Economic Measures in the Fuel and Energy Sector in Connection with Unfriendly Actions of Certain Foreign States and International Organizations”, which regulates changing the operator under Sakhalin-2 PSA to a Russian entity and other related matters
2. Presidential Decree No. 520 dated 5 August 2022, “On Application of Special Economic Measures in the Financial as well as Fuel and Energy Sectors in Connection with Unfriendly Actions of Certain Foreign States and International Organizations”

Specific approval from the government commission

All transactions falling under the description above shall be executed subject to receipt of special permission issued by the Government Commission on Control over Foreign Investment.

Moreover, if it will be deemed necessary, such Commission may establish conditions for the execution of a particular transaction.

Currently, obtaining permission may take anywhere from several weeks to several months, and the maximum period for consideration of applications by the Government Commission is not limited by law.



Impact of Decree 618 on existing transactions

The practical consequences of the newly introduced measures will become clearer after official guidance becomes available.

The President gave the Ministry of Finance the right to give official clarifications on issues related to the signed Decree 618 and instructed the Cabinet of Ministers of the Russian Federation to approve the procedure for issuing permits for transactions regulated by the new document by the Government Commission on Control over Foreign Investment within 10 days.

It may be useful to note that in accordance with the procedure established earlier for transactions with shares in Joint Stock Companies (“JSCs”) (established by the Resolution of the Government of the Russian Federation of 6 March 2022 No. 295), the following procedure and necessary documents applied to the receipt of permission from the Government Commission on Control over Foreign Investment:

- application for a permit shall be drawn up in a free form, shall be submitted to the Ministry of Finance of the Russian Federation and shall contain information about:
 - the purpose, subject, content and essential conditions of the transaction (operation)
 - the planned validity period for the permit
 - the number of votes attributable to such voting shares (in cases when as a result of a transaction the right to dispose of a certain number of votes directly or indirectly is acquired, attributable to the voting shares that make up the authorized capital of the company)
- document confirming the state registration of the applicant – a legal entity or an individual as an individual entrepreneur in accordance with the legislation of the relevant state, or in relation to the applicant – a legal entity, another document confirming the fact of its creation
- the identity document (passport) of the applicant – an individual
- document confirming the fact of the establishment of the applicant – a foreign organization that is not a legal entity, in accordance with the legislation of the state in which it is established
- constituent documents of the applicant – legal entity
- document containing information about the beneficiaries, beneficial owners, a person exercising control over a person of a foreign state who is a party to the transaction (participating in the operation) and committing “unfriendly actions”, and about the indicators of such a person being under control

We will closely monitor the clarifications regarding the application of Decree 618 as well as the potential application in respect to the Decree of previously enacted rules for the issuance of permits and will be ready to assist with the receipt of all required permissions



What else is covered by the decree

In addition to the limitations described above, Decree 618 also allows for sanctioned banks to fulfill foreign exchange obligations to Russian companies in rubles as well as establishes that LLCs whose share of direct or indirect participation in its authorized capital belongs to the legal entities included in the List of strategic enterprises and joint-stock companies in Russia – users of subsoil plots on the territory of the Russian Federation – have the right not to provide information about its activities to its shareholders who qualify as persons of “unfriendly foreign states”.

For further information please contact



Mikhail Timonov
Co-Managing Partner, CEO

+7 921 415 0475
mikhail.timonov@birchlegal.ru



Anton Bakov
Partner, Head of TMT

M: +7 921 300 4126
anton.bakov@birchlegal.ru



Ksenia Petrovets
Senior Associate

M: +7 921 090 8942
ksenia.petrovets@birchlegal.ru

Subscribe to our
Telegram channel



birchlegal.ru

© BIRCH LEGAL 2022. All rights reserved. BIRCH LEGAL LLC's Taxpayer Identification Number (INN) is 7703618107. The information provided in this legal alert may not be considered as professional advice or legal services and is not advice related to a specific situation. This information is intended for the general review of the users in relation to issues that may be of interest to them. BIRCH LEGAL is not liable for incomplete information.