



BIRCH LEGAL

Legal alert

New requirements for clearing
share deals and pay dividends

Sub-Commission of the Government Commission on control of foreign investments in Russia (**the GC**) established new rules for clearances. Refreshed set of rules would impact major transactions and payments of dividends to the foreign shareholders.

BIRCH LEGAL summarizes key rules and ponder over ways to adapt to them.

(Deals

Protocol of the meeting of Government Sub-Commission clearing share deals under presidential decrees will be published.

Currently vast majority of share deals with foreign element are subject to clearance by the GC if they concern shares (participatory interests) in Russian companies. The clearance route established over past months is applying to the sectoral government agency that regulates certain industry. This federal authority reviews the application and submits the deal for clearance upwards to the GC

The protocol No. 118/1 dated 22 December 2022 lists additional requirements for clearing the transaction:

1

Obligatory appraisal report on valuation of the target business prepared by independent appraiser

2

Obligatory discount to the purchase price amounting at least to 50% of the valuation of the target business

3

Establishing KPIs for the new owners of the target business

4

Including terms on payment of the purchase price in installments in the course of 1-2 years OR voluntary contribution of 10% of the purchase price to the federal budget

First two requirements are at this point standard ones and are broadly used by the sectoral authorities when they process the applications for clearance. If you are considering a share deal in Russia, it is advisable to commence the appraisal of market valuation in advance.

Latter two requirements are new and indicate vague prospects for the investors.

Establishing business KPIs seems reasonable if it is aimed at preventing the failure of the target business post-transaction. However, at this point it is not clear what KPIs would be proposed by the authorities and the GC or an opportunity to propose them will be given to the investors. The institute of behavioral conditions to clearing transactions is known to Russian competition legislation, however it is not transparent how the KPIs would be designed. Moreso, what would happen if an investor committed to the proposed KPI but does not fulfill it during reporting period. Hopefully, it would be streamlined going forward.

The alternative requirements concerning the payment in installments and 10% contribution is rather unbalanced. One is very restrictive, the other implies long exit for some former shareholders. We may assume that more and more investors would align installments in the payment conditions in the transaction documents. However, it may be so that for some companies paying 10% of purchase price may be an appropriate option.

BIRCH LEGAL review:

while the protocol has been made public only recently, as far as we know the sectoral authorities already take them into account when reviewing submitted applications.

Dividends

The payment of dividends to the foreign shareholders has been significantly limited in the course of the year. Currently the overall number of dividends payable to the foreign shareholders is limited to RUB 10m monthly. The same applies to allocation of profit.

In the protocol GC summarizes additional rules associated with these procedures:

- 1) the amount of profit to be paid should not exceed 50% of the total net profit of the preceding year
- 2) retrospective analysis of dividend payments for previous periods
- 3) willingness of foreign owners to continue their commercial activities in the Russian Federation
- 4) provision by federal authorities of criteria significance of the organization's activities and assessment of its impact on technological and industrial sovereignty of the Russian Federation
- 5) establishment by federal authorities of quarterly key performance indicators for organizations
- 6) the possibility of making dividend payments on a quarterly basis, subject to the achievement of the key performance indicators

The published rules have outlined the evaluation criteria that the Sub-Commission is guided by when reviewing applications, but just as when dealing with transactions with shares (participatory interests), the issue of approaches to establishing key performance indicators and the consequence of non-compliance remains open - we expect that the relevant authorities will fill this gap when interacting with foreign investors.

BIRCH LEGAL review:

law enforcers have explicitly stated that the ability to pay dividends in excess of the established limits depends on investors' willingness not to leave the Russian market, thus turning permits into a kind of incentive tool for foreign business owners continuing their operations in Russia - investors who leave Russia will be left behind.

For further information please contact



Mikhail Timonov
Co-Managing Partner, CEO

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



Nikita Butenko
Partner

M: +7 903 171 7046
nikita.butenko@birchlegal.ru



Timur Akhundov
Counsel

M: +7 926 342 7044
timur.akhundov@birchlegal.ru



Alexander Gavrilov
Principal Associate

M: +7 963 645 1424
alexander.gavrilov@birchlegal.ru



Leyla Ibragimova
Principal Associate

M: +7 921 643 5568
leyla.ibragimova@birchlegal.ru



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