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NEWSLETTER

- JULY 2024 -

RUSSIA: RECENT
DEVELOPMENTS



Corporate

1. The list of assets owned by foreign residents put under the external management is expanded

On 25 April 2023, Russian President established cases authorizing him to introduce the regime of external management of certain assets owned by foreign residents (**see** Newsletter dated 27 April 2023).

On **22 November 2023**, **22 December 2023**, **8 April 2024**, **26 April 2024** and **11 July 2024** the Russian President expanded the list of assets put under temporary external management. In particular, assets owned by Carlsberg Sverige Aktiebolag (Sweden), DELANCE LIMITED (Cyprus), AgroTerra Investments B.V. (Netherlands), NAP Finance B.V. (Netherlands), Silgan Holdings Austria GmbH (Austria), Silgan Metal Packaging Mitterdorf GmbH (Austria) and others are put under temporary management of the Federal Agency for State Property Management (the "**Rosimushchestvo**").

Besides, according to amendments dated 26 April 2024, the Russian President put 100% of shares in the authorized capital owned by Ariston Holding N.V. (Italy) and BSH Hausgerate GmbH (Germany) in their Russian subsidiaries under temporary management of Gazprom Household Systems JSC.

2. Russian President authorized asset disposal of certain companies in accordance with the Decree no. 520 dated 5 August 2022

Presidential Decree no. 520 dated 5 August 2022 establishes a temporary ban for certain transactions, until 31 December 2025, unless they are authorized by Russian President (**see** Legal Alert dated 19 August 2022) (as it was prolonged in December 2023).

On 7 May 2024, Russian President **authorized** Lakra Sintez LLC to acquire 100% of the stake owned by BASF Coatings GmbH (Germany) in the charter capital of **BASF Vostok LLC**, which was included in the special **list** of organizations, transactions with which are subject to special regime established by Decree no. 520.

On 22 May 2024, Russian President **authorized American Express Bank LLC**, included in the **list** of credit institutions subject to special regulation under Decree no. 520, to carry out voluntary liquidation measures.

On 29 May 2024, Russian President **authorized** Restream LLC to acquire 49% stake, owned by Nokia Solutions and Networks Oy (Finland) in the charter capital of **RTK Network Technologies LLC**. RTK Network Technologies is a joint venture owned by Nokia Solutions and Networks Oy (49%) and Vestelcom JSC (51%) (100% of Vestelkom's shares belongs to Rostelecom PJSC).

Finance

3. The requirement for the mandatory sale of foreign currency proceeds was amended

On 26 April 2024, the Russian Government **extended** the requirement for mandatory repatriation of foreign currency and sale of foreign currency proceeds under foreign trade contracts.

As a reminder, on 12 October 2023 the Russian Government approved the procedure for mandatory sale of foreign currency by certain Russian exporters listed in the Presidential Decree No. 771. In the original version, this requirement was in effect until 30 April 2024. After the amendments, the requirement was extended until 30 April 2025.

Besides, under the Government Decree of 26 April 2024 the term, within which the foreign currency proceeds shall be credited to the exporters' accounts, was extended from 90 to 120 days from the date of transfer of goods, work and services to non-residents under foreign trade contracts.

Apart from that, on 12 July 2024, the requirements for mandatory repatriation of foreign currency proceeds have been **eased**. Previously (according to **amendments** dated 20 June 2024), listed Russian exporters were obliged to credit to their accounts in authorized banks at least 60% of foreign currency, received under foreign trade contracts. Now this threshold has been reduced to 40%. The amendment enters into force on 21 July 2024.

4. The regime of C- and I-type accounts was changed

On **3 January 2024** and **8 April 2024**, the Russian President amended Decrees **no. 665** and **no. 95** regulating the regime of special accounts of type C and I. According to the amendments, the funds, kept on these accounts, may not be recovered under enforcement documents, may not be seized, may not be subject to a claim for the recovery of mandatory payments, and may not be subject to other interim measures, if court decisions and acts of other authorities are issued after 3 January 2024.

5. The use of digital rights as a means of payment under foreign trade contracts was authorized

On 11 March 2024, the amendments to the regulation of digital financial assets and digital currency were **introduced**.

According to the amendments, digital financial assets and the utility digital rights may be used as consideration under foreign trade contracts concluded between residents and non-residents. It applies to contracts for the transfer of goods, performance of work, rendering of services, transfer of information and results of intellectual activity, including exclusive rights thereto.

The amendments also establish that currency transactions between residents and non-residents on the use of digital rights as a means of payment may be used only under the above-mentioned contracts. These currency transactions shall be carried out in the investment platforms of operators of information systems, in which digital financial assets are issued or in the information systems of such operators.

The amendments also grant the Russian Central Bank with the powers to establish, upon agreement with the relevant federal executive body, conditions for and prohibitions on certain types of currency transactions related to the acquisition and alienation of digital rights.

Finance

6. Amendments to the currency regulation and control were introduced

➤ On 25 December 2023, the federal law introducing amendments to the currency regulation and control was **promulgated**.

According to the amendments, legal entities – residents ("Residents") who form one international group of companies with legal entities – non-residents ("Non-residents") are obliged:

- to notify the Russian tax authorities about the opening (closing) of accounts and changes in the details of accounts of Non-residents in banks and other financial organizations located outside the territory of the Russian Federation. The notification must be performed within one month after the mentioned actions.

- to submit to the Russian tax authorities:
  - reports on the movement of funds and other financial assets on accounts of Non-residents in banks and other financial organizations located outside the territory of the Russian Federation and
  - reports on transfers of funds by Non-residents without opening a bank account using electronic means of payment furnished by foreign payment service providers (together with confirmation documents).

Residents are not obliged to file notification/submit reports:

- if such notifications/reports are submitted by parent company of the Group (or by another company of the Group authorized to make such reports on behalf of the Group), and
- in cases established by the Government of the Russian Federation.

➤ The amendments to the law on currency control and currency regulation dated 11 March 2024 introduced currency control in respect of digital rights. In particular, it **established**:

- the definitions of digital rights that are regarded (and not regarded) as currency valuables,
- added various transactions with digital rights into the list of currency transactions,
- granted to the Russian Central bank the powers and authorities:
  - to introduce ban and/or limitations to perform various transactions with the digital rights,
  - to establish specifics of submission of documents, exchange of information in case of transaction with the digital rights.

The amendments also introduced obligation of Russian companies (and their foreign subsidiaries), included into a special list formed by the Central Bank, to submit to the authorities the information about:

- receipt of foreign currency,
- assets and obligations nominated in foreign currencies and/or Russian rubles,
- digital currencies and digital rights at disposal of Russian companies,
- obligations to transfer such digital currencies and digital rights;

The amendments entered into force on 11 March 2024.

Taxation

7. A number of double tax treaties are suspended

On 19 December 2023, the Russian President **signed** Federal law suspending certain provisions of double tax treaties with states, considered by Russia as unfriendly (EU member states, Switzerland, UK, Japan, Canada, etc.), which prolongated suspension of the double tax treaties, established earlier by the **Decree** of the Russian President no. 585.

8. Amendments to the Russian Tax Code were introduced

On 27 November 2023, the federal law amending Russian Tax Code was **signed** by the Russian President. Below are the most significant changes concerning foreign persons.

- **Amendments to transfer pricing rules**

The law introduces provisions that expand the list of related persons, specify the list of controlled transactions, define taxation peculiarities for certain foreign trade transactions with related persons and establish the obligation to prepare transfer pricing documentation on new grounds.

In particular, the following persons will be considered as related:

- a foreign company recognized as a controlled foreign company and its controlling person;
- foreign companies recognized as a controlled foreign company that have the same controlling person.

The Law changes the liability for non-compliance with transfer pricing rules, in particular, liability for non-submission to tax authorities national and/or global TP documentation was increased in 10 times (from 100 000 rubles to 1 million rubles), non-submission of documents about particular transaction (set of similar transactions) result in fine of 500 000 rubles. It also states that fine for non-payment of tax due to violation of TP rules results in fine in the amount of 40 % of non-paid tax (but in any case not less than 30 000 rubles).

➤ **New rules for taxation of remuneration for work (services) by foreign related organizations to Russian taxpayers are established**

Starting from 1 January 2024, remuneration for work (services) performed (rendered) by foreign related companies to Russian taxpayers is subject to Russian withholding tax at a rate of 15%.

Before 1 January 2024 income of foreign companies from performance of works (services) was subject to taxation in the Russian Federation only if it was derived through permanent establishment located in the Russian Federation. However, after amendments entered into force, such activities are charged taxes in rate of 15% if it is derived by foreign related company and unless active double tax treaty between Russia and country of residence of such foreign related company establishes otherwise.

Court Practice

➤ The Supreme Court admitted the possibility of bankruptcy of a foreign company in Russia

AMN COMMERCIAL PROPERTY ADVISORS LTD has filed a claim for bankruptcy of WESTWALK PROJECTS LTD (both registered in Cyprus).

The court has terminated the proceedings for the lack of jurisdiction of Russia in the case. The appellate and cassation courts have agreed with such decision.

However, on 8 February 2024, the Supreme Court of the Russian Federation **overruled** these acts and remanded the case for a new trial on the merits.

The opinion of the Supreme Court is the following:

• The jurisdiction of the Russian court may be established if the court finds the existence of the debtor's close connection with the territory of the Russian Federation, which may be confirmed, in particular, by the following circumstances:

- the company conducts non-transitory economic activity on the territory of Russia;
- commercial activities are focused on persons located in the jurisdiction of the Russian Federation;
- the center of main interests of the controlling persons is located in the territory of Russia;
- the management body, branch or representative office of a foreign company is located in the territory of Russia;
- the persons controlling the company have Russian citizenship, a temporary residence permit or a residence permit in Russia or have corporate legal relations with Russian legal entities;
- the controlling persons have been brought to subsidiary liability by a Russian court;
- the company's property assets, including immovable property and lease rights to land plots, are located in the Russian Federation;
- a significant part of creditors are Russian legal entities, Russian citizens or persons whose activities are closely related to the territory of the Russian Federation;
- the company performed a significant number of transactions with the place of execution in the territory of Russia;
- the main evidence in the case is located in the territory of Russia, etc.

At the same time, a change of director and transfer of the company's assets to another person immediately prior to the filing of the application do not exclude consideration of the bankruptcy case by a Russian court.

Court Practice

• After establishing its jurisdiction, the court has two options - to initiate (i) **main** or (ii) **secondary (local) bankruptcy** proceedings depending on whether the debtor's center of main interests is located in the Russian jurisdiction or outside it.

- Main proceedings are introduced when a company is only formally registered outside the Russian jurisdiction, but in reality, the center of its main interests is located in Russia.
Such a proceedings applies to all property of the debtor regardless of the country of its location and to all creditors, including foreign creditors.
The insolvency officer in such proceedings exercises his powers on the basis of a court decision of the court's approval of the insolvency officer. It does not matter whether the foreign debtor is included in the relevant Russian register of legal entities and whether the insolvency officer is included in the relevant register as a legal representative.

- Secondary proceedings are introduced when the center of main interests of a company is located in the jurisdiction of a foreign state, but the debtor has a permanent representation or property in the territory of Russia.
Such proceedings apply only to creditors and property, related to the activities of the legal entity in Russia.
The purpose of such proceedings is to protect the interests of Russian creditors in the absence of effective access to the jurisdiction of the main proceeding, due, for example, to the refusal of a Russian commercial court to recognize a foreign main proceeding, due to international sanctions, disproportionately high cost of applying to foreign jurisdictions to initiate a main proceeding or other circumstances limiting the access to justice.



Court Practice

➤ The courts held a Russian legal entity jointly and severally liable for the debts of its foreign affiliate in favor of a Russian creditor

PJSC "SOVCOMBANK" **filed** a lawsuit against CITIBANK N.A. (registered in the USA) and JSC CB "Citibank" (registered in Russia) for recovery of joint and several damages under the contract, concluded between "SOVCOMBANK" and CITIBANK N.A.

Both CITIBANK N.A. and JSC CB "Citibank" are part of the same group of companies, held by Citigroup Inc.

CITIBANK N.A. has a debt towards SOVCOMBANK. Due to sanctions imposed on SOVCOMBANK by the U.S. Government, CITIBANK N.A. was unable to repay its debt. Therefore, SOVCOMBANK filed a claim against JSC CB "Citibank".

The courts satisfied this claim, despite the fact that JSC CB "Citibank" is an independent Russian legal entity and is not a party to the agreement between SOVCOMBANK and CITIBANK N.A.

On 16 April 2024, the cassation court **supported** this decision.

As the courts point out, it was possible to fulfill CITIBANK N.A.'s obligations to SOVCOMBANK at the expense of its Russian subsidiary, JCS CB "Citibank". According to the courts' reasoning, since CITIBANK N.A. and JSC CB "Citibank" are part of the same group, they are affiliated, act in the same interest and are operated from a single center, the entire group of companies is enriched by the withholding of funds on the U.S. account. In this regard, courts found these persons joint debtors for the harm caused.

At the same time, the claim for damages was qualified by the courts not as a contractual claim, but as a claim for compensation for the harm caused. According to the courts' opinion, there was an unfair blocking of funds, owed to claimant, due sanctions, adopted by "unfriendly" countries. In this respect, the courts, following the Russian conflict of laws rules on obligations, arising out of the infliction of harm, applied Russian legislation to these relations.

➤ The court suspended the corporate rights of foreign holdings in respect of Russian economically significant organizations

• On 1 March 2024, the Russian Government **approved** a list of economically significant organizations, including AB Holding JSC, UNS-Holding LLC, and Corporate Center X 5 LLC.

As a consequence, on the basis of the **Federal Law** dated 04.08.2023 N 470-fz, persons, listed in the law, may apply to the court for suspension of corporate rights of a foreign holding company in respect of economically significant organizations (**see** Newsletter dated 19 September 2023).

In this respect, the Ministry of Finance of the Russian Federation filed a lawsuit demanding suspension of corporate rights of ABH Financial Limited (Cyprus) to AB Holding JSC (the main business entity - **Alfa Bank**) and rights of Alfastrakhovanie Holdings limited (Cyprus) to UNS-Holding LLC (the main business entity - **Alfa Insurance**).

On 13 May 2024, the court **satisfied** the lawsuit. From the date of the court's decision, these Cypriot companies are not able to participate in the management of AB Holding JSC and UNS-Holding LLC, dispose of shares (stakes) in their authorized capitals and receive dividends (profits) on them.

Court Practice

• Earlier, the Ministry of Industry and Trade of the Russian Federation filed a similar lawsuit demanding to suspend the corporate rights of X5 Retail Group N.V. (Netherlands) to its Russian subsidiary **Corporate Center X 5 LLC** ("**Russian Subsidiary**"). On 3 May 2024, the court **satisfied** the lawsuit. The court decision transfers the shares owned by X5 Retail Group N.V. in the Russian Subsidiary to the Russian Subsidiary itself. Also, **according** to X5 Retail Group N.V., non-Russian holders of depositary receipts and beneficiaries of X5 Retail Group N.V. will be able to receive shares in the Russian Subsidiary in proportion to their participation in X5 Retail Group N.V., while Russian holders and ultimate owners of the X5 Retail Group N.V.'s depositary receipts will be obliged to accept such distributed shares.

➢ The court applied the seizure of foreign entities' assets as an interim measure

• Within the **case** on the lawsuit of VTB against the JP Morgan's structures (incorporated in the USA, the UK, Russia), VTB filed an application for interim measures in the form of seizure of respondents' assets within the amount of the claim. On 22 April 2024, the court **partially satisfied** the application, having **partially revoked** it later.

• This kind of interim measure was also applied in the **case** on the **Transcapitalbank** PJSC's lawsuit against **Commerzbank AG** and its Russian subsidiary, **JPMorgan SE (Germany)** and JP Morgan's Russian subsidiary. On 26 April 2024, the court **partially satisfied** the application, seizing the respondent's assets, including funds in accounts, except for "C" and "I" accounts. On 22 May 2024, the court **partially revoked** the imposed seizure.

• **Commerzbank AG** (Germany), **UniCredit Bank AG** (Germany), **Deutsche Bank AG** (Germany) were subject to the seizure of assets as interim measures in cases involving lawsuits filed by **Ruskhimalliance** LLC. The court seized certain assets of German banks, except for funds on "C" and "I" accounts.

➢ The court recovered damages from foreign entity in favor of Russian entities caused by the blocking of funds due to sanctions

• PJSC Russian Agricultural Bank ("Rosselkhozbank") **filed** a lawsuit against **Euroclear Bank S.A./N.V.** (Belgium) for the recovery of damages and loss of profit. As a result of Euroclear Bank's actions in following restrictive measures against Russian persons, funds due to Rosselkhozbank were blocked on the Euroclear Bank account. Thus, Rosselkhozbank suffered losses. On 29 March 2024, the court **partially satisfied** the claim, recovering damages from Euroclear Bank in favor of Rosselkhozbank. Euroclear Bank S.A./N.V. **filed** an appeal, which **upheld** the decision.

• **Rostselmash Combine Plant LLC** also **filed** a lawsuit against **Euroclear Bank SA/NV** (Belgium) for the recovery of funds not received by Rostselmash due to Euroclear Bank following sanctions, imposed against Russian entities. On 2 May 2024, the court **satisfied** the claim.

In both cases the court treated Euroclear Bank SA/NV's actions as an infliction of harm to Russian entity by withholding payments on Euroclear Bank SA/NV's accounts without a legitimate reason, which violates the Russian entities rights to use and dispose of their own property.

Court Practice

Besides, there are other similar lawsuits against Euroclear Bank SA/NV, satisfied (fully or partially) by the courts (for instance, lawsuits filed by **PJSC MTS-BANK**, **PJSC ROSBANK**, **CJSC Leader**, **PJSC UBRIR**, **LLC Management Company Energia-Invest**, **PJSC Transcapitalbank**).

In addition, a number of cases against Euroclear Bank SA/NV is now being heard on lawsuits for the recovery of damages filed by **PJSC Sovcombank** and others, including physical persons.



CONTACT

We are actively following the developments related to those issues and are fully prepared to advise our clients.



David LASFARGUE
Partner

M. dlasfargue@jeantet.org

RANKED IN Chambers Global 2022
David Lasfargue

11 rue Galilée
75116 Paris
+33 (0)1 45 05 80 08
info@jeantet.fr
www.jeantet.fr
in Jeantet-avocats