



## Legal alert

# The Government has prepared a draft law on appointing external administration for managing companies with foreign capital from hostile countries

1.1. The Russian Government has developed a draft law (“**Draft Law**”) whereby an external administration (“**External Administration**”) may be appointed to manage companies that meet all of the following criteria:

- A foreign person (or foreign persons, including a number of persons that are not affiliated with each other) connected with hostile countries that have introduced sanctions against Russia (the “**Restricted Persons**”), is/are controlling the company or own in aggregate, directly or indirectly, at least 25% of voting shares or participatory interests in the company (the “**Foreign Members**”);
- The balance sheet value of the company’s assets as of the latest reporting date preceding the date on which the application was filed to appoint External Administration exceeds RUB 1 billion and/or the average staff headcount of the company per month is more than 100 employees.

1.2. According to the Draft Law the External Administration will be **appointed if one of the following grounds is present:**

- The company’s CEO, other management bodies and/or members (shareholders) have de facto ceased managing the company in breach of Russian legislation. Under such circumstances the External Administration is appointed for up to 3 months without the right for an early termination of powers.

For instance, if after 24 February 2022, the above persons left Russia and in doing so failed to exercise their powers and left the company without any management, which is contrary to the company’s interests, or their actions (omissions) have resulted in a significant devaluation of the company’s assets and/or its inability to perform its obligations, or termination of company’s activity in breach of Russian legislation.

- The above management bodies perform actions which can lead to unsubstantiated termination of activities, liquidation or bankruptcy of the company. In such a case the External Administration is appointed for up to 6 months with the right for an early termination of powers.

For instance, if after 24 February 2022, the above persons publicly announced that the company had terminated its activities in absence of obvious economic reasons to do so, terminated the company’s contracts that were significant for the company’s business, or handed down redundancy notices to more than one-third of its employees.

The Government is vested with the power to establish other circumstances proving that there are grounds for appointing an External Administration.

1.3. The court will decide whether to accept the application for an appointment of External Administration. Based on the relevant applicant’s petition the court may, along with commencement of the case, grant interim measures whereby the following actions will be prohibited:

- executing transactions connected with the acquisition, disposal or potential disposal, directly or indirectly, of the company’s assets accounting for more than 5% of the balance sheet value of the company’s assets based on the financial statements as of the latest reporting date preceding the date when the interim measures were granted (except for the sale of end products, works, services provided by the company in the course of ordinary



business, the acquisition of raw materials, the payment of mandatory charges, operating fees, execution of other transactions within the company's ordinary course of business);

- dismissing employees at the employer's initiative;
- terminating the company's contracts that are significant for the company's business;
- disposing of the shares (participatory interests) of the company.

These interim measures are lifted by the court when the External Administration is appointed.

- 1.4. Before the date of the court hearing of the application for appointing an external administration the CEO or shareholders of the company holding more than 50% of voting shares (participatory interests ) may file a petition with the court for a cancellation of appointment of the External Administration in connection with the refusal to terminate the company's activities and the commitment to resume and/or continue the company's business in Russia, including in connection with the anticipated disposal or placement of shares or participatory interest under trust management of persons that are not Foreign Members. If the court cancels the appointment of external administration in connection with such anticipated disposal or placement , the respective transaction involving the disposal or placement under trust management must be executed within 3 months after the relevant court decision.
- 1.5. Once the External Administration is appointed, it will be assigned the powers of the company's CEO, including the right to dispose of the company's assets, such as funds in bank accounts, file lawsuits on behalf of the company, engage other persons to perform managerial functions, taking account of the nature of the company's business, request the necessary information about the company, members of the company's management bodies, persons controlling the company, property that such persons own (including property rights), the company's business partners and obligations towards any third parties.
- 1.6. According to the draft law the external administration functions will be performed by VEB.RF (a state development enterprise). If the company is a financial institution, it will be externally administered by the state enterprise Deposit Insurance Agency («Агентство по страхованию вкладов»). Once appointed, the external administration will proceed to forming the register of creditors and taking inventory of the company's assets.
- 1.7. After the external administration is appointed, it maintains (does not allow for the termination of) the company's exclusive rights to intellectual property, as well as rights for using intellectual property (including those provided under a licence agreement or commercial concession agreement) that are held exclusively by the Restricted Persons. In case of early termination of such IP rights after 24 February 2022, these rights will be resumed. That being said, no remuneration will be paid (including under a license agreement or a commercial concession agreement) for granting the right to use intellectual property until the authorities of the External Administration expire.
- 1.8. To ensure the company's continued operation its assets are replaced by way of a split-off carried out pursuant to Federal Law No. 127-FZ *On Insolvency (Bankruptcy)* dated 26 October 2002 with account being taken of the specifics envisaged in the Draft Law: when the assets of the company are replaced, one business entity is created on the basis of the company's property, and the company becomes the sole member (shareholder) of such business entity.
- 1.9. All the property and property rights of the company (including licences) are assigned under a transfer certificate to the above business entity by way of universal succession. The External Administration adopts the decision on the split-off and approves the transfer certificate. Interest (shares) in the new business entity created on the basis of the company's property is included in the company's property and may be sold at an auction.
- 1.10. The External Administration will be the organiser of the bidding process. The starting price of the shares or interests is set at the liquidation value determined during the evaluation. The pre-emptive right for purchasing the shares or interests will belong to the persons whose principal business coincides with the company's.



- 1.11. Members (shareholders) of the company and their affiliated parties are not admitted to the bidding process. By way of a prerequisite for participating in the auction the candidate undertakes, in case of winning, to maintain at least two thirds of workplaces and pursue the activities carried out by the company in Russia for at least one year. The external administration enters into a contract with the winner of the auction where these conditions are set out. **If the shares (participatory interests) of the company have not been sold at the auction for the minimum price, they are to be acquired by the Russian Federation at the specified price.**
- 1.12. The draft law also provides for an involuntary liquidation or bankruptcy of the company (if the company has signs of bankruptcy). If the court decides in favour of an involuntary liquidation or bankruptcy of the company, it assigns to the External Administration the functions of the liquidator or bankruptcy supervisor with the prolongation of its powers for the period of the liquidation or bankruptcy proceedings. At the same time, the court approves the procedure, timeframes and conditions for the sale of shares (participatory interests) of the business entity that will be created further to the replacement of the company's assets.
- 1.13. As of the date of this legal alert the Draft Law has not yet been introduced to the State Duma, therefore we cannot not rule out any amendments that may be made to the provisions of the draft law in the course of its review and approval. We will keep you informed about further developments with respect to the Draft Law.
- 1.14. We also note that a meeting of the sub-commission of the Governmental Commission for Foreign Investments was held on 9 March 2022. It resolved to permit Russian credit institutions to grant loans to residents that are controlled by Restricted Persons carrying out activities in the Russian Federation, provided that the newly borrowed funds are used to conduct production and business activities in Russia.

This material is provided for information purposes and is not to be construed as an advice or a legal opinion. Should you have any questions on this alert, please contact us at [alerts@rgd.legal](mailto:alerts@rgd.legal).

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