

Thoughts on Redomiciling to Russia's New Offshore Zones and Impact on Legal Relations

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September 27, 2018



- A true redomiciliation involves the transfer of a company's domicile while maintaining the same legal identity.
- Not all jurisdictions permit redomiciliation of companies in or out of the jurisdiction.
- “Redomicling” may be effectively achieved through other transactions (e.g. merger), but the corporate identity generally is not preserved under such transactions.

- In August 2018, a series of laws were published that permit redomiciliation of companies to two offshore administrative centers located in the Kaliningrad Region and Primorsky Territory.
- While reported to be a response to international sanctions, particularly US sanctions, the law does not limit redomiciliation to sanctioned entities and was being developed prior to the change in geo-politics.

Redomicile Requirements

- Must locate to one of the two offshore financial centers.
- Company must conduct business in more than one jurisdiction, including Russia.
- Commit to invest RUB 50 million in RF by special investment, concession, or PPP contract within 6 months of registration, either directly or through affiliates, included in redomicile application.
- Company must redomicile from FATCA or Moneyval jurisdiction.

- Russian law governs affairs from moment entity is registered as an international company.
- Law specifically provides that:
 - shareholders preserve the same rights they enjoyed prior to redomicile;
 - redomicile cannot trigger acceleration of obligations, does not constitute degradation of financial position, material change of circumstances from those agreed at the time of contracting, trigger payment of fines, losses, transfer of assets, which may be triggered by bankruptcy.

- While the law says rights attributable to shares must be preserved, it also provides that if the securities grant rights to their holders to require additional issuance of shares or conversion that do not accord with Russian law, they are prohibited.
- Status quo is preserved, but unexercised rights inconsistent with Russian law cannot be enforced (e.g. disparate voting rights).

Consequences of Redomicile

- Nominal value of securities must be redenominated in Russian rubles.
- Preference shares can exceed 25% of the charter capital.
- Bonds previously issued are unaffected.
- The company is recognized as a foreign organization (non-resident), and at the same time as a Russian tax agent (resident).
- Tax regime is intended to retain benefits of other offshore jurisdictions, at least initially.

Termination of Status

- A company may cease to be an international company if it fails to meet its obligations under contract with management company charged with administering the relevant offshore administrative centers
- The company may voluntarily convert to a Russian joint stock company or limited liability company.
- The company may petition to redomicile outside of the offshore administrative center and the Russian Federation.

- Does the current jurisdiction of the Company permit re-domiciling or continuation outside the jurisdiction?
 - BVI and Cyprus do.
- BVI law permits continuation outside of BVI if:
 - Articles permit
 - Publicly registered security interest does not expressly prohibit
 - Company is in good standing

“Subject to its memorandum and articles, a company for which the Registrar has issued a certificate of good standing...may, by resolution of directors or by a resolution of members, continue as a company incorporated under the laws of a jurisdiction outside the Virgin islands in the manner provided under those laws.”

Section 184(1).

- The company “continues to be liable for all its claims, debts, liabilities and obligations that existed prior to its continuation”.
- “[N]o conviction, judgement, ruling, order, claim, debt, liability or obligation...is released or impaired by its continuation”.
- “[N]o proceedings, whether civil or criminal, are abated or discontinued by its continuation.., but the proceedings may be enforced, prosecuted, settled or compromised by or against the company, or against the member, director....

- Service can be effected until decertification.
- The authorities do not make any judgement as to whether the new jurisdiction is compatible with the rights of the shareholders.
- Shareholders protection lies in overcoming high hurdle of business judgment, if decision of the board, or even higher bar of minority oppression if decision of shareholders.
- Best protection is if veto is clearly provided for in the Articles, but see above.

- Will courts honor arbitration agreements in SHAs?
- What if technical requirements of SHA rights do not fit within prescriptions of Russian law?
- Can a minority shareholder block the redomiciliation?
- Can contractual provisions be included in contracts to protect against redomiciliation of partners?