



Participating in SARs is becoming easier

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In brief

Draft Federal Law amending the Federal Law "On International Companies and International Funds" (hereinafter - the "Draft" and the "Law") was published on the Federal Draft Legislation Portal (<https://regulation.gov.ru/>) on 25 August 2020.

The Draft aims to clarify the current regulation of international companies, as well as to expand the list of potential participants of special administrative regions (hereinafter – the "SAR") and provides, inter alia:

- the right to acquire the status of international companies for foreign companies that do not do business in the Russian Federation;
- the procedure for the "transit" re-domiciliation, i.e. multi-stage re-domiciliation to Russia in case the foreign company is re-domiciled from one foreign jurisdiction to another;
- the possibility to keep the status of an international company after reorganizations; and
- the right to obtain information on an international company, access to which has been restricted, for a person acting on behalf of the international company based on a notarized power of attorney.

The Draft is currently undergoing the anti-corruption review, and in case of its successful completion, the Draft will be submitted for consideration to the State Duma in September.

Please find below more detailed information regarding the Draft.

In detail

Acquisition of the status of an international company for foreign companies that do not do business in the Russian Federation

In accordance with the current version of subclause 1 of clause 3 of article 2 of the Law, the right to acquire the status of an international company through state registration in a SAR is granted to foreign companies that as of 1 January 2018 do business in several jurisdictions, including the Russian Federation, whether directly or indirectly (through its controlled entities or persons).

In the wording of this subclause proposed by the Draft the condition regarding the obligation of a foreign company to do business in the Russian Federation is excluded.

All the other requirements for foreign companies intending to register in a SAR (namely, the conclusion of an agreement with the management of the SAR, making investments in Russia in the amount of at least RUB 50 million and registration in a state that is either a member or an observer of FATF and/or Moneyval) will remain unchanged.

"Transit" re-domiciliation

The Draft also provides for several amendments to the Law, which, if adopted, will allow international companies to carry out so-called "transit" re-domiciliation, i.e. multi-stage re-domiciliation, when a foreign company re-domiciles into Russia after re-domiciliation to other foreign jurisdiction(s).

Such a multi-stage re-domiciliation is necessary when the laws of the state in which the foreign company is registered prohibits it from being directly re-domiciled to the Russian Federation. In this case, it is necessary such a foreign company first to "re-register" to a third state, the laws of which allow direct re-domiciliation to Russia.

Currently legislation can be read as prohibiting the multi-stage re-domiciliation to Russia, since subclause 1 of clause 3 of Article 2 of the Law allows to acquire the status of an international company only to foreign companies registered prior to 1 January 2018 and therefore, a foreign company loses the right to re-domicile to Russia from the moment of its registration in a "transit" jurisdiction.

If the Draft is adopted, this obstacle will be removed, since in accordance with the proposed version of subclause 1 of clause 2 of Article 4 of the Law, the date of the initial incorporation of the foreign company will be considered the date of establishment of the international company (including the cases when the foreign legal entity had been re-domiciled one or more times prior to its registration as an international company in Russia), and not the date of incorporation of the foreign company that directly applied for the status of an international company in the Russian Federation.

Reorganizations of international companies

In accordance with the current version of clauses 9 and 10 of Article 10 of the Law, an international company loses its status in the event of its participation in a merger or spin-off, or if it is split up into several companies. An international company also loses its status in the event of its consolidation with a legal entity not being an international company.

Thus, the current version of the Law allows an international company to maintain its status only if the international company consolidates with another international company.

The Draft expands the list of cases when international companies can keep their status after reorganization. The amendments to clause 2 of Article 5 of the Law provide that upon reorganization of an international company in the form of a merger with another international company, the newly created legal entity receives the status of an international company.

In addition, the Draft eliminates the gap in the regulation of the reorganization of international companies in the form of transformation and provides for the possibility of transformation of an international company of one legal form into another (i.e. reorganization of an international limited liability company into an international joint stock company and vice versa).

It should be noted that the Draft does not provide for an international company's right to transfer its status to a newly created company(-ies) in the event of a spin-off or split-up.

The right to obtain information on an international company

Article 6 of the Law grants international companies the right to restrict access to information on its shareholders and CEO contained in the Unified State Register of Legal Entities.

In accordance with clause 3 of Article 6 of the Law in the current version, the information on an international company, access to which has been restricted, can be provided exclusively to:

- state or local authorities;
- state extra-budgetary funds;
- the Central Bank of the Russian Federation;
- courts; and
- the CEO of an international company.

The proposed amendment to clause 3 of Article 6 of the Law expands the list of persons who can access the information, access to which has been restricted, by granting such a right also to a person (individual or legal entity) acting on behalf of an international company on the basis of a notarized power of attorney, if such a power of attorney provides for the right to obtain the restricted information.

Annual registration fee for international companies



In addition to the above amendments, the Draft also provides for an amendment to Article 12 of the Law, according to which the amount of the annual registration fee for international companies shall be established by the Government of the Russian Federation, and not by the Tax Code of the Russian Federation.

Thus, if the Project is adopted, the procedure for changing the amount of the specified registration fee will be simplified, since the adoption of a resolution of the Government of the Russian Federation requires significantly less time compared to amending the Tax Code of the Russian Federation. It should be noted that such a fee exists in a number of foreign jurisdictions, but usually does not exceed the amount of USD 1,000. As we understand, such a fee will not be significant in Russia either.

Should you have any questions, please contact:

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