

Newsletter Russia

The Sub-Commission of the Governmental Commission Publishes Its Official Position on Transactions Involving Participation Interests / Shares and Dividend Payments



On 30 December 2022 an extract from the minutes of the meeting of the Sub-Commission of the Governmental Commission on Control over Foreign Investments in the Russian Federation (hereinafter the "**Sub-Commission**") No. 118/1 dated 22 December 2022 was published, laying out the official position on approving transactions with participation interests/shares in the charter capital of Russian legal entities owned by persons from "unfriendly" countries and the payment of dividends by Russian legal entities to persons from "unfriendly" countries.

1. Transactions with participation interests/shares

Pursuant to clause 1 of the above Extract, when considering whether the Sub-Commission should grant permits to carry out (execute) transactions (operations) aimed at the alienation of shares, participation interests, contributions in/to the charter capital of Russian business entities (hereinafter "**Assets**") by persons from "unfriendly" countries or persons

under their control, regardless of their place of registration or place of primary business activity, it was decided as a rule to proceed from the feasibility of establishing the following conditions on the performance (execution) of such transactions (operations):

- 1) the availability of an independent appraisal of the market value of the Assets;
- 2) the sale of Assets at a discount of at least 50 % of the market value of the relevant Assets as stated in the Asset appraisal report;
- 3) the establishment of key performance indicators for the new shareholders (owners);
- 4) the availability of an installment payment plan for 1-2 years and/or the obligation to make a voluntary contribution to the federal budget of at least 10 % of the amount of the transaction (operation) to be executed (performed).

This officially confirms the information that was previously circulating in the market and which had been expressed unofficially during various interviews, to the effect that there is a requirement that a discount be provided of at least 50 % of the market value of participation interests/shares in the charter capital of Russian legal entities being sold by persons from "unfriendly" countries.

At the same time, we believe that the Sub-Commission assumes that all the aforementioned conditions for the performance (execution) of the relevant transactions must be met simultaneously.

2. Payment of dividends

Clause 2 of the above Extract contains information from the Ministry of Finance of Russia and the Bank of Russia on approaches to deciding whether or not to authorize organisations to pay profits (dividends) to foreign participants (shareholders) in cases provided for by Decrees of the President of the Russian Federation.

As a rule, such permits are granted if the following conditions are met:

- 1) the amount of profits (dividends) payable does not exceed 50 % of the net profit for the preceding year;
- 2) accounting for the results of a retrospective analysis of the payment of profits (dividends) for past periods;

3) the willingness of the entity's foreign participants (shareholders) to continue their business activities in the Russian Federation;

4) taking into account the positions of the federal executive authorities and the Bank of Russia assessing the significance of the entity's activities and the impact of its activities on the technological and production sovereignty of the Russian Federation and the social and economic development of the Russian Federation (constituent entities of the Russian Federation);

5) the establishment of quarterly key performance indicators for entities by the federal executive authorities;

6) the possibility of paying profits (dividends) on a quarterly basis, provided that the entity meets the established key performance indicators.

Again, we assume that all of the above conditions for the payment of dividends must be met simultaneously.

Kind regards,

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