

“Practical application of sanctions on Russia: Case studies”

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SWIFT disconnected and sanctioned Russian banks

Seven Russian banks are currently disconnected from SWIFT:

- VEB (Vneshekonombank)
- VTB (Vneshtorgbank)
- Novikombank
- Promsvyazbank
- Sovcombank
- Otkritie
- AKB Rossiya

Russian banks under sanctions:

- Sberbank
- Alfa Bank
- Bank Otkritie
- AKB Rossiya
- Promsvyazbank
- Credit Bank of Moscow
- Gazprombank
- Rosselkhozbank
- Sovcombank
- Transkapitalbank
- VEB (Vneshekonombank)
- VTB (Vneshtorgbank)

The sanctions corresponding to the banking sector are aimed at the destabilisation of ruble. Any international payments in euros, dollars and pounds were stopped by Sberbank. Other sanctioned banks have problems with international payments via credit cards (VISA and Master Card); so far the payments are possible within Russia.

Measures on ruble stabilisation and respective recommendations

From February 28, 2022, 80 % of all earnings in foreign currency must be converted into rubles. That means that the companies which have foreign trade activity must convert 80 % of their earnings in rubles, including for the period from January 1, 2022. Besides, many economic operations aiming at the transfer of foreign currency from Russia abroad, including payments of dividends, selling of shares and securities to non-residents or under their guarantee, are restricted. Sale or transfer of ownership of real estate objects to foreign companies originating from the states, which applied the sanctions against Russia, require approval by the Russian government. Provision of loans in foreign currency is prohibited; physical export of cash is limited by US\$ 10,000 dollars per each exit.

New account in a non-sanctioned bank

The foreign companies are recommended to open a new account in a non-sanctioned bank, ideally in any of the subsidiaries of the international banks operating in Russia. As regards selling currency on the accounts up to 80 %, the advice is to follow general legislation and the corresponding decree. Currently, there are no penalties or fines introduced. However, the banks record such violations, and the tax authorities may come up with respective questions in the near future.

Paying dividends to non-residents

The procedure of paying dividends is the area which is not fully clear at the moment. In principle, there is no prohibition for a Russian legal entity to pay dividends to its non-Russian headquarter. At the same time, the dividends are something going out from a Russian legal entity to a foreign legal entity in euros, dollars or pounds, that might be sanctioned. Certain Russian banks are reluctant to support such payments.

Temporary restriction vs. payments abroad

The foreign companies are recommended to take into account special regulation for non-residents and representation offices and branches of the companies originating from the countries, which applied sanctions against Russia: they are not able to make any payments abroad starting March 1, 2022. Hopefully, this restriction will last only one month. Vice versa, the payments from respective countries can go to Russia and there should not be any problem on the side of the Russian bank.

If your business partner is a sanctioned party

Please, assess what kind of sanctions are applied: local, sectoral etc. For example, if the sanctions are sectoral, the situation is not dramatic, as sectoral sanctions are a concern for financial institutions, but not for routine operations. In addition, in case of the contracts for imports of some spare parts, some technologies from the EU to Russia, that could be under sanctions, it is still possible to fulfill the obligations within such contracts for a certain period of time. The EU also needs some space for maneuver towards Russian entities. In general, many aspects should be assessed besides the type of sanctions and the type of the deal.

Termination of agreement due to the sanctions applied by EU, US, UK, or other countries

The way out is rather difficult, because the Western law has another vision on the agreement in this case, than the Russian law. The Russian law will never allow you to terminate agreement due to its prohibition by the US or EU sanctions. The foreign companies are recommended to discuss with its business partners, how to continue and what to do in detail, to check the list of designated persons, to review the scope of sanctions, to apply to local specialists or lawyers in the country of jurisdictions of exports in the EU, USA, or UK. Force-majeure is always not an easy subject. If you want to refer to a force-majeure, you have to review in detail the agreement and the obligations under this agreement: Usually, the procedure of the liquidation of a company takes 6-9 months. Whether the procedure might be delayed or not in the current circumstances, is unclear.

Transfer of shares of the company to another legal entity

Transfer of shares in LLC is possible and technically doable: currently, there are no restrictions or prohibitions for that. Transfer of shares/securities ("tsennye bumagi") in JSC are prohibited.

Salary payments

Whether it is possible to pay salary from the mother company's bank account abroad: From practical perspective, foreign companies are not recommended to do this. If the use of a Russian bank account is not possible for this purpose, the recommendation is to make the procedure clear and transparent, to issue an order on paying salary from foreign bank account as temporary measure. The order is to specify, that

the money is not from any third party and the company is acting as an agent for its employees for paying salary in current circumstances.

In general, foreign companies are recommended to pay salaries in rubles, in accordance with current Russian legislation. To pay in cash may be one of the feasible options, but it is workable only in case the company has enough cash. The company may also use its foreign account in rubles. If a company doesn't have a bank account in rubles abroad, it may approach some Russian company to act as its agent for paying salaries on its behalf (services agreement). Besides, a Western bank can make a payment order in rubles through sending euros from an EU bank account to a Russian bank account, by converting the amount from euros to rubles. The individual will receive the amount in rubles to its ruble account.

Reduction of salaries

Any unilateral changes in salaries are sensitive from physiological perspective, and are risky from legal perspective. The conflict in Ukraine is not a reason from legal perspective in this case. What might be workable is to agree with the employees on a temporary reduction of salaries. In order to save the company, the employees might be willing to do their contribution, to accept temporary reduction of their salaries on a voluntary basis, according to agreed terms and for agreed period of time.

Another option is the reduction of staff/ reduction of salaries due to the changes in organisational structure of the company, in technological and technical ways of doing business. In practice, the employer will have to formulate and clearly articulate the specific grounds for the changes, to formalise the procedure, and to do a lot of paper work. The notification period for such changes is two months, which is a lot.

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