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ALERT MEMORANDUM

Russian Countermeasures: The Governmental Commission Tightens Conditions for Exits by Investors from Unfriendly Jurisdictions

November 4, 2024

As anticipated by recent media coverage, the Governmental Commission for Control over Foreign Investments (the "Governmental Commission") published its October 15, 2024 decision tightening conditions for exits by investors from "unfriendly" jurisdictions (i.e., those that have imposed sanctions against Russia) (the "Decision"). Prior to the Decision, the Governmental Commission had already imposed various conditions when approving sales of equity in Russian companies by parties from "unfriendly" jurisdictions. Such conditions were typically communicated to the applicants in the excerpts from the minutes of the Governmental Commission meetings. The Decision lists the revised conditions that should generally be imposed by the Governmental Commission when approving such sale transactions:

1. Transactions must provide for a discount of not less than 60% off the market value of the target, as determined by an independent appraiser approved by the Russian government.[1]

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[1] Russian Ministry of Finance has approved the list of those appraisers: https://minfin.gov.ru/ru/permission/79-81?id_57=301496-perechen_otsenshchikov_otsenochnykh_organizatsii_rekomendovannykh_dlya_provedeniya_otsenki_rynochnoi_stoimosti_aktivov

2. There must be a commitment to make a ”voluntary” payment into the Russian federal budget (the “**Exit Tax**”) equal to at least 35% of the undiscounted market value of the target, payable as follows:

    a. 25% -- within one month after the closing of the transaction,
    b. 5% -- within one year after the closing, and
    c. 5% -- within two years after the closing.

3. Any transaction where the market value of the sale assets exceeds 50 billion rubles (approx. US$512 million) now requires approval from the President. Previously, such approval was mandatory only for strategic assets, specifically listed in the Presidential decree.

During 2024 the Exit Tax was equal to 15% and the discount was expected to be at least 50% of the market value, so the amendments introduced by the Decision provide for an overall 30% increase of the discount imposed on exiting “unfriendly” investors. The value of the assets is appraised based on the rules that do not allow for a fire-sale discount and require that the business be assessed as a going concern, to ensure that any discounts negotiated by the parties do not impact the Exit Tax calculation.

The Decision does not specify whether the new conditions will apply only to the filings for clearance made after the date of publication of the Decision, or after it was adopted, or to any applications that are currently pending the review of the Governmental Commission, even if they were filed before October 15, 2024.

The Decision indicates that the Governmental Commission shall apply these new conditions “as a rule” to all clearances, which also could imply that the Governmental Commission retains discretion to make exceptions in individual cases, as it has in the past.

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