

International Business

A RUSSIAN PERSPECTIVE

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THIS ARTICLE FOCUSES ON BROAD ISSUES THAT NEED TO BE CONSIDERED BY AUSTRALIAN COMPANIES LOOKING TO DO BUSINESS IN RUSSIA. WHILST A VERY LUCRATIVE MARKET, RUSSIA IS RIGGED WITH LEGAL, REGULATORY AND BUSINESS SPECIFICS THAT NEED TO BE FULLY UNDERSTOOD AND APPRECIATED PRIOR TO ANY EXPANSION OR DIRECT INVESTMENT.

How can an Australian company establish a commercial presence in Russia?

There are several ways to establish a commercial presence within Russia. One of the options is to open an accredited representative office or branch office in Russia. Under Russian law representative branches and offices are not legal entities, but act on behalf of a foreign company. Accordingly, the foreign company is fully liable for the actions and obligations of such branches or representative offices.

Another option is to establish a Russian incorporated legal entity. The two most commonly used forms of Russian companies are the limited liability companies (LLC) and the closed joint stock company (CJSC). The shareholders / participants of these companies are not liable for actions of the company and the obligations assumed by the company. Both the LLC and CJSC have much in common with respect to corporate governance, and registration procedures, and enjoy the same legal capacity to conduct business, with the LLC, however, being less regulated, more flexible and involving fewer bureaucratic steps.

In our experience, an LLC is particularly appropriate for a wholly-owned Russian subsidiary, mainly because of the simpler regime for its establishment and management and a CJSC is more appropriate vehicle for a joint venture company because of the protection provided to its shareholders by the more rigid formalities in relation to the issuance and transfer of shares.

Can an Australian company wholly own a Company in Russia?

Generally, an Australian company can own a 100 % stake in a Russian company. However, there are certain exceptions from this general rule in specific sectors such as insurance sector and sectors of strategic importance like aviation, where the applicable laws establish a quota for foreign capital.

Do you need local Russian directors as well?

The General Director of a Company is a Russian equivalent of CEO. Russian companies may employ foreign General Directors. There may be exceptions from this rule in cases where a Russian company is granted access to information that amounts to or is connected with State secrets. The General Director of such a company must have Russian citizenship. Russian law does not prohibit a company to have all foreign members on the Board of Directors.

However, Australian directors need to acquire working permits and the Russian company that employs them also needs to acquire a general permit to employ such Australian directors.

Can funds be transferred back to Australia?

Generally, yes. The Federal Law "On Foreign Investments in the Russian Federation" guarantees that foreign investors have a possibility to transfer back the lawful income received from its investment in Russia. However, some transfers may fall within currency control legislation which imposes certain restrictions on transfer of currency out of Russia. There will, of course, also be tax implications on such transfers in Australia.

Can dividends be paid back to Australia?

Yes. After all the relevant taxes in respect to these dividends are paid by the Russian company to the Russian taxation authority, the Russian company can transfer the relevant amounts to its non-resident shareholders / participants. The dividends may be paid to the non-resident in foreign currency. Again, there will be tax implications on such payments in Australia.

Is an import license required to import goods from Australia?

As a general rule (subject to exceptions), no import licenses are required to import products to the territory of the Russian Federation.

What are the tax rates? Is the tax system complicated?

Russian tax system is rather complicated and the tax legislation is very often ambiguously drafted. Generally, Russian companies are subject to the following taxes:

- 18% value added tax on sale proceeds with offset of properly documented input VAT;
- 26% unified social tax;
- 24% profit tax;
- motor vehicle tax (rates depend on the type of the vehicle); and
- 2.2% property tax.

Foreign companies are also subject to Russian withholding income tax payable on interest income, dividends, capital gains, and other passive Russian source income (subject to the applicable double taxation treaty relief, if any).



Hydrocarbon treatment facility at a Lukoil refinery in Siberia

Final Comments

The Russian market is very complicated and each transaction needs to be carefully considered from the legal point of view. The comments contained in this article shall not be regarded as transaction-specific. Please contact the writer for any transaction-specific advice.

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