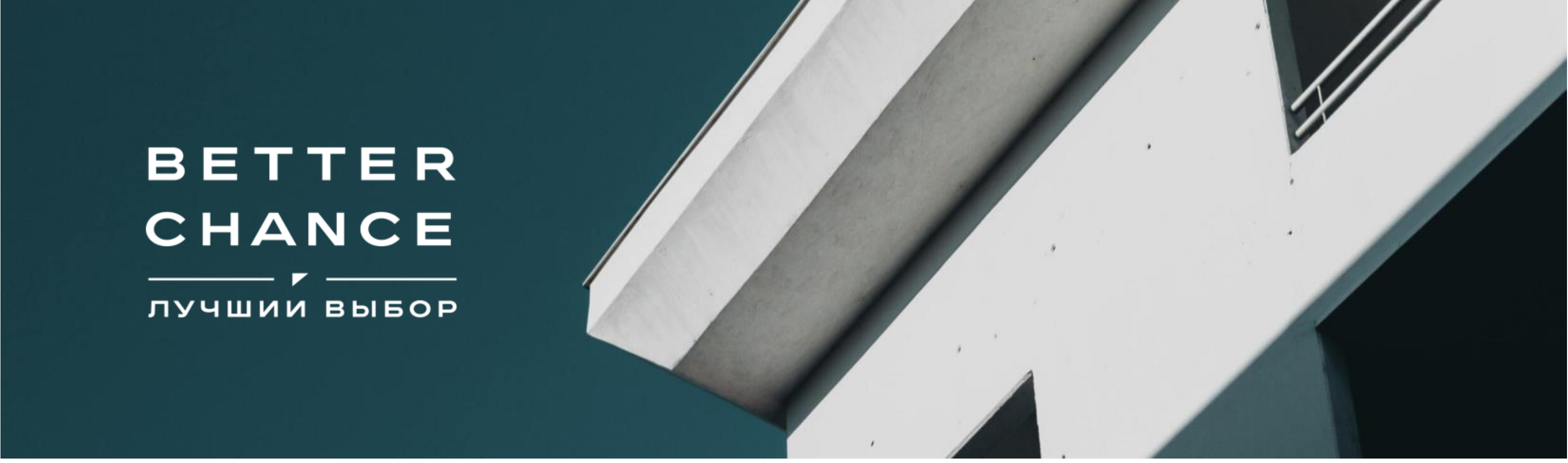

A New Era of Cooperation: Russian Authorities Drawing up Rules for Return of Foreign Businesses to Russia

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Prospects for return of foreign companies to Russia are gaining more and more attention these days. As per the President, Russian authorities are already conducting private negotiations with some Western investors on their potential return to the Russian market.

Artem Tamaev, **Ani Tangyan**, and **Yulia Morozova** put together a summary of what is publicly available at this moment.

Current Background

The core issue is what are the conditions for the foreign businesses to resume their operations in Russia. Under the current regulatory regime, potential conditions depend on two key factors:

1. **Business model**: As a general rule, (a) resumption of imports/supply of products to Russia is not subject to current counter-sanction restrictions, whereas (b) re-establishing a corporate presence in Russia may often require a prior approval, as outlined below.
2. **Affiliation with "Unfriendly" Countries**: This factor would be relevant for companies that intend to re-establish a corporate presence in Russia (e.g., by re-acquiring a previously owned Russian entity or establishing a new one). As of today:
    - "Unfriendly" companies returning to the Russian market are required to obtain prior approval from the Government Commission. Such approval will likely be conditional. Applicable conditions may include setting a price for the transaction, imposing obligations on the "unfriendly" company to make investments in Russia and/or meet certain KPI targets (typically, for 3-5 years), etc.
    - "Friendly" foreign companies may require a prior approval from the Government Commission only if the transaction either (a) relates to a Russian company that is deemed to be of "strategic importance", or (b) may, as per an ad hoc decision of the Prime Minister, affect the national defense and security.

Potential New Rules

On 18 March, during his speech on the plenary session of the Russian Union of Industrialists and Entrepreneurs (the "RSPP") Congress, the President instructed the Government to develop new rules and special conditions for foreign companies that intend to return to Russia. On the next day, the Ministry of Finance announced that work on such rules has already been launched.

Presumably, new requirements may be introduced by supplementing existing guidelines for approval of transactions involving "unfriendly" companies, namely, by elaborating rules adjusted for the return of foreign companies (the current recommendations of the Government Commission focus on approving foreigners' exit from Russia).

Discussions over the new rules cover all foreign players that has left the Russian market since 2022. Therefore, it cannot be excluded that "friendly" investors may also be subject to all or some of the new rules. That said, extending the new rules to "friendly" investors would require enactment of specific regulatory acts (e.g., Presidential decrees). Mere adoption of new recommendations/supplementing current guidelines by the Government Commission will not be enough to encompass investors from "friendly" countries.

Conditions for Return

The main idea, that seems to be supported by all Russian state bodies, is that in parallel with allowing foreign companies to return to Russia it is necessary to take steps to protect the interests of Russian business. In particular, various officials mentioned the following potential conditions for return of foreign companies:

- Establishing joint ventures controlled by a Russian partner;
- Providing guarantees of bona fide business by a foreign company;
- Ensuring return of investments made into the business by its Russian owners since 2022 (some business persons mention that the foreign company that intends to return to Russia shall fully reimburse the Russian party for the entire amount it invested in the business in three years);
- Ensuring that a foreign company conducts operations in Crimea and other regions;
- Creating and/or maintaining certain advantages for Russian business (e.g., maintaining the current practice when Russian companies show growing preference for local manufacturers). It is emphasized that proposed steps to ensure preferences for Russian players shall not be in violation of the WTO rules;
- Acquiring shares in a Russian entity by a foreign company at the market price (even if the respective assets were previously sold by the foreign company at a significant discount). This requirement was already pointed out by the Government Commission previously, in the context of approving call options between a foreign company that exited from Russia and a Russian acquirer of the business.

Some experts suggest considering a number of further conditions for return of foreign businesses, e.g., localization of manufacturing in Russia, investing in R&D, refraining from dumping, providing guarantees of long-term operations in Russia, participating in social and charitable projects, etc.

Case-by-Case Approach

The ongoing work on elaboration of general rules and conditions for return does not exclude the need for an individual approach to each company. This is consistent with the current regulations: although there are general guidelines, the Government Commission still assesses each deal separately and sets individual conditions for approval of each of them.

At the RSPP Congress on 18 March, President noted that foreign businesses took different approaches when leaving Russia:

- some of them "*maintained their staff and technologies, and transferred day-to-day control to their local Russian management teams*",
- while others "*blatantly slammed the door… ceased their operations, thus putting in a vulnerable position their Russian teams, clients, suppliers, and contractors*".

According to the President, the decision of certain companies to effectively continue the operations on the Russian market (e.g., under a different brand) should be appreciated.

Based on the above, in may be expected that the **conditions for return will differ depending on how a particular foreign company acted when leaving the Russian market. Furthermore, one may assume that return conditions are likely to be more stringent in those sectors where local demand is met by local producers due to successful import substitution projects, especially if such projects were implemented with state support**.

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We are monitoring further developments and will keep you posted.

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