

# Legal status and registration of international companies in the cross-border regions of the Russian Federation

E Anichkin<sup>1</sup>, Ulvi Aliyev<sup>1</sup>, and D Pyatkov<sup>1\*</sup>

<sup>1</sup> Altai State University, 61 Lenina prospekt, Barnaul 656049 Russia

E-mail: pitkov@yandex.ru

**Abstract.** The article is devoted to one of the topical and poorly studied issues of private international law, which is the redomiciliation (changes in personal law) of foreign legal entities in the Russian Federation. In the light of the new Federal Law on International Companies, the article examines the procedure for the redomiciliation of foreign legal entities, reveals formal legal defects of its legislative regulation, and makes proposals for improving legislation. Foreign legal experience in the redomiciliation of legal entities is actively used.

**Keywords:** registration, international companies, redomiciliation, legal entities, legislation

## 1. Introduction

Not the first year, we have a discussion that the tool to change the personal law of legal entities is necessary. In particular, we note that “to harmonize the tax and corporate legislation of Russia, the corporate relocation of the company to Russia, it would be right to envisage the change of its personal law to the legislation of Russia” [1]. The adoption of the Federal Law of August 3, 2018 No. 290-FL “*On International Companies*” (hereinafter, the Federal Law on International Companies) was the answer of the legislator to this practice request, which was reinforced by the pressure of international sanctions on the Russian economy [2]. In connection with the adoption of this Law, the possibility of redomiciliation (“importing”) of legal entities (changes in their individual law) appeared.

International companies can be created in the order of redomiciliation only in the two transboundary regions of Russia – the *Oktyabrskiy* and *Russkiy* islands, which are located in the Kaliningrad region and Primorsky region, respectively. The islands were called the special administrative districts. And a change of jurisdiction is possible only for commercial corporate organizations. Despite the fact that the process of redomiciliation is legally secured, the issues and risks associated with it are not completely excluded:

- Is an international company a new legal form of a legal entity or is it a specific way to use previously existing legal forms?
- What is the legal significance of the organization’s acquiring the status of an international company and the loss of this status? To what extent is it able to influence the existence of a legal entity?
- Does the company (international, by the name and nature of its activities) maintain a single personal law or acquire a hybrid legal status?

These questions, as well as the claims to the text of the Federal Law on International Companies, have caused this article.

## 2. Materials and Methods

The main research material is the Russian Federal Law consists of the Civil Code [3], the Federal Law on International Companies, Federal Law of August 3, 2018 No. 291-FZ “On Special Administrative Districts on the Territory of the Kaliningrad region and the Primorsky region” [4], and other regulatory legal acts. Analysis of the practice of this legislation is still difficult or impossible at all, due to extremely limited empirical material. Today, from open sources, only two companies that have received the status of international companies in the cross-border regions are known [5]. The lack of the Russian law enforcement practice is compensated by the analysis of foreign and international practices of redomiciliation, mainly in Europe. And the few publications of Russian authors on redomiciliations have not been ignored.

Investigation of various aspects of the legal status of international companies is advisable on the basis of a combination of several methods, combined with a great synergetic potential. The diversity of social and legal reality, the complexity of the object of study require the synthesis of methodological techniques inherent in several sciences. In addition to such methods widely used in legal research as formal legal, formal logical, axiological, comparative legal, methods characteristic of other humanities were used. These include the systematic method, as well as methods of content analysis and synergetic.

## 3. Results

An international company is a status that a foreign legal entity can receive if its personal law changes to Russian law in the manner prescribed by the Federal Law on International Companies. The legal form available to international companies is a limited liability company, a non-public joint-stock company, or a public joint-stock company. The redomiciliation is the process of changing the personal law of a legal entity while maintaining the legal entity itself.

An interesting fact is that the explanatory note to the draft law provided for the possibility of “assigning to legal entities (to Russian economic companies in the form of limited liability companies and public and non-public joint-stock companies or redomiciled foreign legal entities) the special status of an international company in special administrative districts on the islands of *Russkiy* and *Oktyabrskiy*” [6]. However, in the final version, the possibility of obtaining the status of an international company remained only with foreign legal entities.

The procedure for moving a company from one jurisdiction to another differs in various ways of its implementation. Thus, in some national legal systems, emigration was allowed only in certain jurisdictions (for example, the Netherlands to the Netherlands Antilles) [7]. Some host jurisdictions are ready to accept a back-up procedure that allows one to complete the formalities well in advance so that in case of an emergency, the transfer of corporate space can take place as soon as possible (for example, Antigua, British Virginia, Cook Islands, and Turks and Caicos Islands) [7]. The redomiciliation of a foreign company in the Seychelles is considered completed since the issuance of a certificate of continuation (redomiciliation) – Certificate of Continuation [8]. It is important to note that the redomiciliation to the Seychelles occurs before the termination of registration in the original state. In Russia, “a legal entity is not liquidated, but ceases to be a legal entity belonging to the first state, becoming a legal entity of the second state while preserving the succession” [9].

Under the Russian laws, an international company is obliged to make investments in the territory of the Russian Federation, which reminds us of the institution of a temporary registration provided for in Cyprus. Thus, the company has 6 months after entering information into the register of legal entities in Cyprus to provide evidence of termination of registration in the original state (Article 354G of the Cyprus Companies Act) [10]. Otherwise, the Cyprus registrar deletes information from the registry or provides additional 3 months, after which it deletes information from the registry. According to Article 10 of the Federal Law on International Companies, in case of non-fulfillment of investment obligations

by an international company, the management company (organization providing the functioning of a special administrative region) makes an international company an idea of the need to comply with the investment requirements. If after the expiry of six months from the date of the submission, the international company did not perform such a submission, the management company would send to the registering authority a notification of the termination of the status of this particular international company. But, unlike the legislation of the Republic of Cyprus, an international company becomes a common business entity. In other words, the redomiciliation occurs, but a legal entity loses the peculiarity of its legal status, which caused the creation of an international company.

#### **4. Discussion**

The law does not clearly define when a foreign company's status as an international company arises. According to Part 3 of Article 2 of the Federal Law on International Companies, the status of an international company is granted simultaneously with the state registration in the unified state register of legal entities to a foreign legal entity. But in Part 6 of Article 2, it is stipulated that the minimum amount of investment required to obtain the status of an international company is fifty million rubles. In the second norm, investments should precede the granting of the status of an international company, which cannot be acquired at all at the time of state registration of a legal entity in a special administrative region. In order to remove the controversy, we should exclude the mention that investments are required precisely to obtain the status of an international company. Otherwise, risks in connection with a different understanding of the emergence of special rights and obligations of a foreign legal entity are possible.

V. A. Kanashevsky believes that an international company is a company with a double personal law, since in relation to certain issues (rights to property, liability for previous obligations, certificates for shares, which are placed outside of Russia), its legal capacity continues to be regulated by foreign law. Such double subordination to an international company makes it a special kind of legal entity in Russia (with hybrid status) [11]. We cannot agree with this conclusion. First, according to article 4 of the Law on International Companies, the Russian law is the personal law of a legal entity. Reference to the law of a foreign state is not a novelty in the Russian civil law. Moreover, a legal entity operating abroad must comply with the imperative norms of a foreign state. Second, other jurisdictions have identical regulation. For example, in the British Virgin Islands, a company incorporated in the British Virgin Islands may, by decision of its directors or members, continue to operate in a foreign jurisdiction as a company registered in accordance with foreign law [7].

In the text of the Federal Law on International Companies, repetitions are found, they make it difficult to understand the law and must be eliminated. These include: (a) paragraph 4 / Part 4 / Article 4 on the possibility of attracting an international company to civil and criminal liability instead of a foreign legal entity; (b) paragraph 4 / Part 4 / Article 4 on the possibility of bringing claims and other claims against an international company that may have been or have been brought against a foreign legal entity; (c) subparagraph 7 / paragraph 3 / Article 4 on the rights to sue a foreign legal entity prior to the state registration of an international company. All these provisions duplicate paragraph 5 of part 3 on the rights, duties, and responsibilities arising from contracts, including agreements on the creation of legal entities and corporate contracts concluded by a foreign legal entity prior to state registration of an international company, as well as agreements arising from unilateral transactions or as a result of unjust enrichment, injury, or from other grounds not related to the agreement.

Paragraph 14 of Article 4 of the Federal Law on International Companies establishes that a foreign legal entity is subject to exclusion from the register of foreign legal entities in the state of its initial personal law. An exception occurs within six months from the date on which information on the registration of an international company is entered into the Unified State Register of Legal Entities in the order of redomiciliation, unless a longer period is established by the legislation of the state of the initial personal law of the legal entity. The extraterritorial nature of this provision is controversial due to the fact that the Russian legislator cannot establish the rules of conduct for a foreign state. Unlike Russia, the Republic of Cyprus establishes legal relations with a legal entity: a foreign company must

provide evidence to the registrar from the competent authority of the country of registration (article 354G of the Cyprus Companies Act) [10].

## 5. Conclusion

The legislator has provided a new way to attract assets to the Russian Federation. The mechanism of redomiciliation in selected transboundary regions is interesting, has a logical structure, but also has without drawbacks, which are considered in the article. Effective, clear, and precise regulation is key to success, but it is not the only component. In addition to developing a procedure for changing personal law, other problems of capital flight from Russia must be comprehensively addressed: increasing guarantees for protecting businesses, reducing the tax burden, and increasing consumer demand.

The rules on emergency procedures in emergency situations (war, revolution, nationalization, the imposition of sanctions), allowing to complete the formalities in advance can be an innovation in the Federal Law on International Companies. Obviously, the goal of the legislator is to reduce the risk of imposing “sanctions, which, as examples show, in some cases blocked the activities of companies, leading to problems in the territories in Russia” [12]. It can protect the rights and interests of individuals, minimize damage and speed up the return of capital.

## 6. Acknowledgments

The authors thank Doctor of Economics, Professor, Head of the Department of Personnel Management and Socio-Economic Relations of Altai State University Svetlana Vladislavlevna Lobova for assistance in publishing this article.

## References

- [1] Shchekin D M, and Barsukova V V 2015 The company’s redomiciliation as a possible mechanism of de-offshorization *Law* **2** pp 59-64
- [2] State Duma of the Russian Federation 2018 *Federal Law “On International Companies”* (April 3, 2018 No. 290-FZ) (Moscow, Russia: Meeting of the Legislation of the Russian Federation)
- [3] *Civil Code of the Russian Federation* (November 30, 1994 No. 51-FZ; November 26, 2001 No. 146-FZ) (Moscow, Russia: Meeting of the Legislation of the Russian Federation)
- [4] State Duma of the Russian Federation 2018 *Federal Law “On Special Administrative Regions on the Territory of the Kaliningrad Region and Primorsky Region”* (September 3, 2018 No. 291-FZ) (Moscow, Russia: Collection of Legislation of the Russian Federation)
- [5] Gurvich E 2019 Challenge of capital *Rossiyskaya Gazeta* **29**(7787) Available at: <https://rg.ru/2019/02/10/gurvich-stoimost-vozvrashchennyh-aktivov-okazhetsia-vesomoj.html> (Accessed 07 02 2019)
- [6] State Duma of the Russian Federation 2018 *Explanatory Note to the draft Federal Law “On International Companies”* (June 15, 2018 No. 488862-7) Available at: <http://sozd.duma.gov.ru/bill/488862-7> (Accessed 15 03 2019)
- [7] Lewis D 1995 Corporate redomicile *Company Lawyer* **16**(10) pp 295-299
- [8] International Business Companies Act 2016 Available at: <https://seylil.org/sc/legislation/act/2016/15> (Accessed 09 01 2019)
- [9] Blinova Yu V 2018 Adaptation of a legal entity in the EU countries *International Public and Private Law* **3** pp 9-12
- [10] Office of the Law Commissioner Nicosia 2012 *The Companies Law of Cyprus Republic* Available at: <https://is.gd/StEVhU> (Accessed 08 02 2019)
- [11] Kanashevsky V A 2018 International company as a special type of legal entity in Russia *Journal of Foreign Legislation and Comparative Law* **6** pp 104-108
- [12] Kopina A A 2018 International companies – the practice of creating the Russian “offshore” *Taxes* **15** pp 1-