

 modern
ambitious
creative

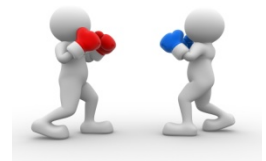
A&Tlawyers
Alimirzoev
& Trofimov

Asset Protection for Russian Clients: Key Challenges in 2015

Ilya Aleshchev, Partner, Alimirzoev & Trofimov law firm, Moscow

Key Challenges for Russian Family Offices in 2015

- Government : CFC, currency regulation, compliance;
- Creditors: Economy situation and increased risk of default under business debts may endanger personal assets as well;
- Matrimonial: Divorce proceedings and protection of assets from former spouses' claims;
- Succession: Safely transferring assets to the next generation.



Government

Challenges in Tax, Currency Regulation and Compliance

- CFC Rules – taxation, self-reporting and disclosure;
- Real estate held by companies – UBO self-disclosure;
- New approach of tax residence – Russian tax authority aims for “centre of life interests”;
- Russia in the international tax information exchange network – ratification of the OECD Convention on Mutual Administrative Assistance in Tax Cases;
- Currency control – natural persons obliged to self-report all transactions on accounts with foreign banks;
- Anticorruption compliance: a bill to protect whistleblowers was tabled.

In the Spotlight: Russian Business Response to CFC Rules



Mother & Child
Mark Kurtser
Cyprus holding
company to
become Russian tax
resident



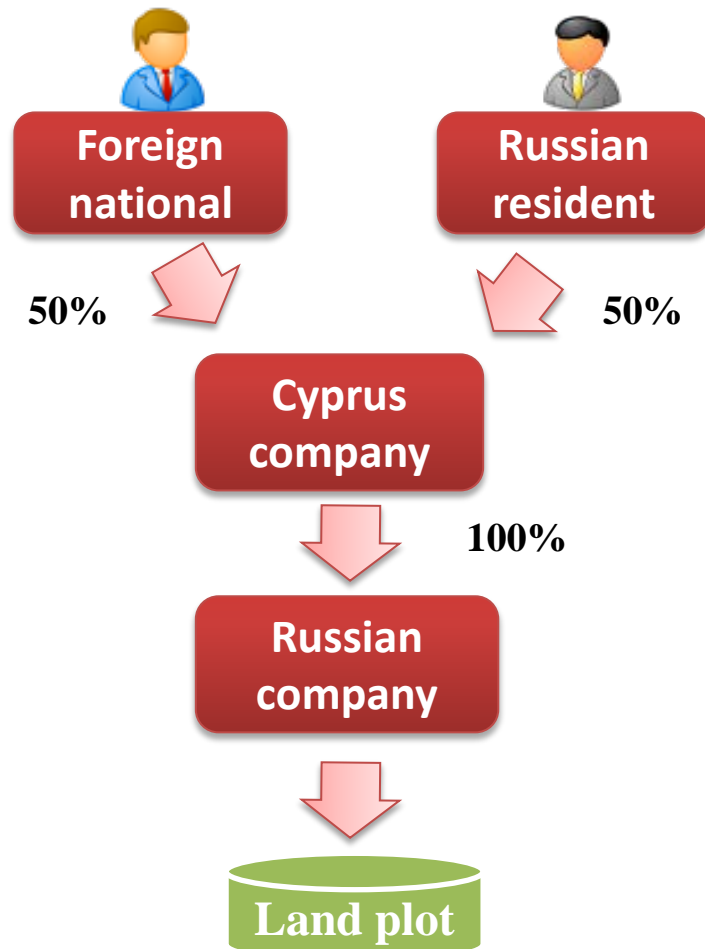
Sedmoy Kontinent
Alexander Zanadvorov
Shares in Russian
Companies transferred
to a Russian Hold Co



MegaFon,
Metalloinvest
Alisher Usmanov
Shares in Russian
Companies
transferred to a
Russian Hold Co

Case Study

When Offshore Companies Are No Longer Efficient



Before:

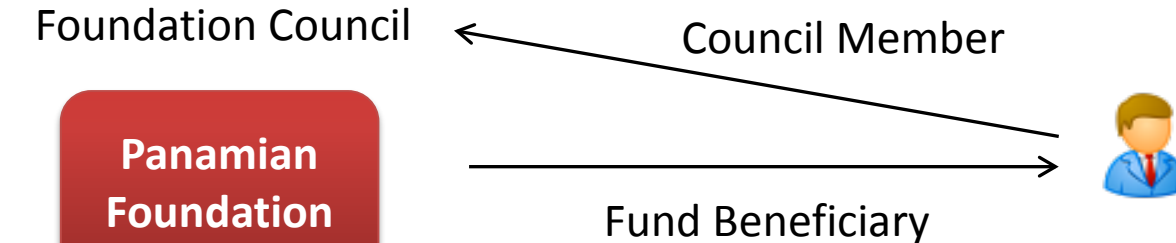
- The structure was initially established to hold a land plot as investment;
- Provided confidentiality, allowed saving tax on disposal and up streaming rent income;

Now:

- Eventually tax advantages were removed;
- CFC rules imposed taxation of undistributed income at Russian beneficiary and self-reporting obligations;
- Currently 50% threshold is not triggered, but this will change in 2016;
- Structure maintenance costs.

Outcome: the Client wishes to dispose of Cyprus company.

Case Study: Is There a Way Around CFC Rules?



Beneficiaries are seeking ways to enjoy assets via structures which would not fall within the CFC requirements.

But will these options work?..

Case Study: The Ostrich Solution

- “How will they find out?..”
- “These rules are for the ‘big fish’ only”
- “I’m fine with paying fines”
- “It’s an isolated company”



Summary

- Transparency of offshore structures to the Russian tax authorities is already a reality;
- Most Russian clients understand the necessity to adapt;
- Typical responses include compliance, switching to Russian structures, attempt to dodge new rules, and sadly the “ostrich solution” as well;
- In any case, the rules of the game on the assets structuring market have changed.

Creditors

Challenges in Debtor-Creditor Area

- Economy situation, exchange rate fluctuations and sanctions increase business loans default risks;
- In many cases Russian clients issue personal sureties;
- Personal liability of a business beneficiary (including de-facto) was introduced to the RF Civil Code, and the courts are apparently ready to “lift the veil”;
- Similar rules are in place for pre-bankruptcy cases;
- The beneficiaries may face risks of losing personal assets on business debts unless watertight insulated;
- Structures holding personal assets may expect a stability test soon.

Key Amendments in the Russian Legislation and Case Law

- Liability of a company director and the beneficiary over the company's debts – now statutory;
- Beneficiary's liability cannot be limited;
- Russian courts already demonstrated readiness to "pierce the corporate veil";
- Russian courts demand that an offshore company litigant shall disclose its beneficiary if there are grounds to suspect bad faith.



In the Spotlight: Distressed Banks and their Owners



СВЯЗНОЙ БАНК

- **Svyaznoy Bank (Maksim Nogotkov)**
- Cyprus HoldCo defaulted under Oneksim credit, secured by 51% stake
- Oneksim assigned the debt to Oleg Malis
- Mr Malis initiated foreclosure on shares
- Mr Nogotkov prevented share transfer
- Mr Malis obtained Cyprus court decision to enforce foreclosure.



Мой Банк

- **My Bank (Gleb Fetisov)**
- License revoked, bankruptcy initiated
- Criminal prosecution on asset stripping, Mr. Fetisov's arrested
- Claims of certain prominent clients reportedly bought off by Mr. Fetisov's companies
- In February Mr. Fetisov's CyCo transferred to the bank funds to repay creditors



- **Mezhprombank (Sergei Pugachev)**
- Bank license revoked, bankruptcy, criminal case on asset stripping
- Russian DIA obtained UK and France freezing orders
- Mr Pugachev appealed claiming to be only discretionary beneficiary
- UK Court of appeals upheld freezing orders Mr Pugachev de-facto uses trust assets

Case Study: a Locked Up Structure



Dissolution of an obsolete corporate structure which was neglected and locked up

- For investment in Russian real estate elaborate corporate structure Russian, Cyprus and Jersey companies was installed;
- Top level shareholders in Jersey company were funds, individuals, trusts, public companies;
- The investment was unsuccessful and written off;
- The corporate structure was neglected, fees unpaid, Jersey company struck off the register;
- A purchaser was willing to acquire underlying assets for the debt repayment;
- Corporate approvals cannot be obtained.



Case Study: a Stop in the Airport



Restriction on leaving Russia due to personal debt and enforcement procedures

- An expat working and living in Russia had a personal debt confirmed by a court decision;
- He was willing to repay when officially demanded by bailiff service (not earlier);
- No notification arrived but he was stopped at the airport when leaving for New Year trip;
- The claimant secured restriction to leave Russia as enforcement procedure measure and bailiff service never send out notices;
- It took three weeks to remove the restriction.



Summary

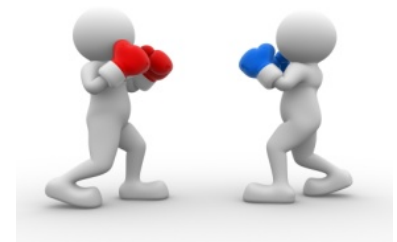
- Transparency of the corporate structures increases, both for foreign and for Russian courts alike;
- Russian law takes more steps to holding liable a UBO and a de-facto director for business debts;
- Russian authorities (e.g. DIA) are ready to litigate in foreign courts and seek international assistance;
- Structures traditionally used to conceal a UBO, such as discretionary trusts, no longer offer full protection.



Matrimonial

Key Challenges in Matrimonial Disputes for Russian Clients

- Most Clients were married before amassing bulk of their wealth, making it matrimonial property;
- Very few have a pre-nuptial agreement;
- Asset structuring rarely focuses on matrimonial risks, or, alternatively, is very aggressive if not abusive;
- The Client strongly wishes to exercise direct control over assets, event those held in trusts.



Recent Amendments in Russian Legislation

- Amendments to RF Civil Code expanded statutory framework for spousal consent on transaction with matrimonial property;
- A bill was tabled enabling a bailiff to challenge transactions made within one year before enforcement proceedings;
- CFC Rules, self-reporting and international exchange of tax information may provide a spouse with additional information on marital property.

In the Spotlight: Russian Divorces Making Headlines



Vladimir and Natalia Potaniny

- Divorce and division of property by Russian courts;
- Court declared that the marriage de-facto broke up in 2007, before most of the assets were acquired;
- Natalia appealed, began discovery in US courts (ongoing), sought freezing injunction in Cyprus (refused);
- Russian court of appeal reversed reference to 2007 as date of marriage termination.



Elena and Dmitry Rybolovlev

- May 2014: the Swiss court of first instance awarded Elena with CHF 4 billion in marital property division;
- Key assets were held in Cyprus trusts;
- Appeal is pending;
- Litigation in US continues over other property, including NYC apartments, alleging use of trusts to disguise waste of marital assets.



Shalva Chigirinsky

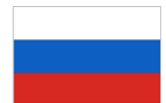
- June 2014: Mr Chigirinsky filed a lawsuit in the US court, accusing his former wife, Tatiana Panchenkova, in wasting of his art collection, jewellery, library, worth \$120 mil.;
- Mr Chigirinsky claimed that assets were held by her in trust for him;
- Media suggest that leaving assets to ex-wife was a trick to dodge creditors.

Case Study: a US-Russian Prenuptial Agreement



Prenuptial agreement made to be valid under both Russian and US law

- A US groom and Russian bride considered a prenuptial agreement on the eve of marriage
- Each has acquired wealth before marriage;
- The groom's assets included securities held in various jurisdictions and US real estate;
- The bride's assets were mostly real estate, including her parents' family home;
- Parties wished to take cautious approach and only pass to joint property regime after marriage proves stable over certain time;
- A US counsel ensured validity under US law.

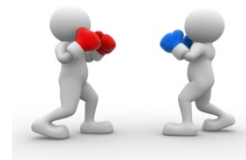


Case Study: Alimony Set as a Share of Business Income



Russian Court has awarded child support set as a certain share of ex-husband's business income

- A Russian couple divorced and divided their marital property by Russian court decisions;
- Court set child support payments for minor children as certain share of the ex-husband's income, which came from business;
- Ex-husband's business is structured via complex network of offshore companies;
- Due to economy situation, the business income genuinely decreased;
- Ex-wife alleged fraud and non-compliance with the court decision.



Summary

- Structures being typical for Russian clients proved insufficient to safeguard from matrimonial risks;
- Prenuptial agreements are still rare, but when they are used, they prove themselves efficient tool;
- Ex-spouses (usually wives) have more taste for litigation and are ready to litigate abroad as well;
- General rule for marital assets division is still 50/50 and there are exceptions for ‘big money cases’;
- There is no ban for third party litigation funding;
- CFC rules add to transparency and increase risk.

Succession

Key Challenges in the Succession Planning

- There is very often no will or only Russian law will;
- Russian Clients' views on succession are very straightforward – no long term planning or trusts;
- Successors rarely know how assets are structured;
- Personal input in business valued above capital, and successors are often squeezed out by business partners of the deceased;
- Success stories showing safe transition of business to the next generation are still rare.



Recent Amendments in Succession Planning

- The RF Supreme Court expanded the grounds for reinstating a deadline for claiming a share in estate for underage successors if missed on guardian's fault;
- Changes in the UK intestacy succession rules - may be important for Russian clients whose (young) adult children live in the UK and hold property in their names;
- CFC Rules shall be observed when installing structures which provide entitlement for successors – even deferred or contingent entitlement may trigger “controlling person” rules.

In the Spotlight: Russian Succession Cases



Inna Gudavadze - widow of Badri Patarkatsishvili and his other successors have entered into a settlement agreement with Vasily Anisimov in respect to dispute re 20% of shares of Metalloinvest, 7 years after his demise;



Dmitry Orlov – founder and owner of Vozrozhdeniye Bank, deceased in December 2014. The successors have appointed a trustee (fiduciary manager) for holding and voting shares in the bank to procure that during estate administration period the business would not be deadlocked;



Igor Rudinskiy – owner of SIA International, deceased in October 2014, during termsheet stage of sale of business transaction. Although successors confirmed their consent to complete the transaction, it will be delayed for at least six months estate administration period and new antitrust approval shall be obtained.

Case Study: Doing What a Will Should Have Done



Post-death
 structuring
 for holding
 estate assets
 by young
 successors

- The business founder have died leaving no will, but numerous children from 3 wives;
- Some shares in the business HoldCo have passed to his sons, young but formally major;
- Other shareholders agreed to buy them out on fair market value, but absolute entitlement to lump sum cash proceeds would not be long term beneficial for them;
- Structuring of proceeds holding and investment was required, but as shares have already passed, settlor-interested issues would arise, as well as tax and CFC issues.

Summary

- It is difficult to achieve transmission of complex structured assets and businesses to future generations by means of only Russian law;
- Inheritance aspect is still rarely taken into account properly during structuring of assets ownership;
- New CFC rules and transparency growth create additional complexity of correct establishment of these relations.



Questions?





M. Kharitonievsky per.,
9/13, bld. 4 Moscow,
Russia 107078

Tel.: +7 (495) 956 1551
Fax: +7 (495) 956 4114

www.atlawyers.com
info@atlawyers.com

Thank You For Attention!

Ilya Aleshchev
Alimirzoev & Trofimov law firm, Moscow
i_aleshev@atlawyers.com