The Business of Leaving:

How multinationals can responsibly exit Russia

B4Ukraine

EXECUTIVE SUMMARY

This report is a joint product of the B4Ukraine Coalition, Kyiv School of Economics, Business and Human Rights Resource Centre and the Investor Alliance for Human Rights. It draws on our collective experience in company outreach and investor engagement, gathered through surveys, company dialogue and open-source information, to analyse the legitimacy of the most common company justifications for their continued presence in Russia and provides recommendations for responsibly exiting the market.

Key findings:

- 18 months into the full-scale invasion, and nine years since the annexation of Crimea, 56% of companies monitored by the Kyiv School of Economics are still committed to staying in Russia. Those companies remaining in the Russian market, including Western household brand names, are contributing billions of tax dollars to the Kremlin, financing the Russian government, and enabling Russia's war of aggression against Ukraine.[1]
- The majority of these businesses point to the following six categories as 'complexities' that prevent a clean exit from the Russian market: 1) the provision of essential goods and services, 2) employee safety, 3) benefiting Russia, 4) nationalisation and expropriation, 5) finding a responsible buyer, and 6) legal barriers.
- After more than 100,000 recorded war crimes in Ukraine, citing complexity is a wholly inadequate response under internationally accepted standards on business and human rights. Current company justifications, and their corresponding actions, demonstrate a dismissal or misunderstanding of their responsibilities under these frameworks and a failure to recognise the risks associated with operating in an aggressor state, as defined by international law.
- Businesses are not adequately undertaking heightened human rights due diligence (hHRDD), which should be the first and most crucial step in assessing companies' human rights risks and identifying potential ways to mitigate harm. This failure is evident not only since the full-scale invasion of Ukraine on February 24th, 2022, but also since the illegal annexation of Crimea in 2014. Had companies conducted hHRDD prior to entering the Russian market or reacted in a timely fashion to the annexation and invasion by assessing human rights impacts, as well as financial, reputational, operational and legal risks, they would have been poised to make more responsible decisions and would have avoided the costly state of uncertainty in which they find themselves now.
- While challenges exist, it is possible to responsibly exit the Russian market in line with hHRDD under the United Nations Guiding Principles on Business and Human Rights - an approach which walks the line between reducing the negative human rights impacts of exiting while avoiding complicity or complacency in Russia's war of aggression and war crimes in Ukraine.

1. As described in the OHCHR's recent briefing, Business and Human Rights in Challenging Contexts: Considerations for Remaining and Existing, the payment of taxes to a government actor alone is not sufficient to "make a business "involved with" the violations of a government regime, even an illegitimate one (apart from exceptional circumstances where a business is a very significant tax contributor to a government that is involved in gross violations of human rights)." Following this guidance, the majority of the analysis in this report surrounding tax payments to the Russian state is applicable to companies providing significant tax contributions.

INTRODUCTION

On February 24th, 2022, Russia invaded Ukraine in an act that is widely considered aggression, as defined in international criminal law, and a clear violation of the Charter of the United Nations. In response to the illegal invasion, many businesses decided to cut ties with the Russian market. However, what was initially predicted to be a 'mass exodus', eventually slowed to a trickle, with many companies claiming they are 'stuck in Russia' - powerless to leave when faced with barriers imposed by the Russian State and the complexity of the situation.

According to the Kyiv School of Economics, only 262[2] companies with a local Russian subsidiary at the start of the war have successfully liquidated or sold their Russian business. A further 482 are in the process of leaving and 722 have temporarily suspended operations. As of July 16, 2023, 1,912 multinational companies were continuing some form of operations in Russia - paying taxes to the Kremlin, enabling its war of aggression against Ukraine and turning a blind eye to their responsibilities to protect human rights.

This report digs beneath the headlines on complexity, analysing the implications for companies remaining in Russia, including the human rights risks associated with their justifications and actions. It explores whether companies truly are powerless bystanders, held hostage to fortune, or if other options for responsible exit exist.

Part I of the report looks at what international human rights frameworks tell us about responsible business conduct and the reality of current company practice.

Part II examines the most common justifications put forward by companies on why they must continue doing business in Russia and provides alternative practices and options.

Part III deals specifically with the legal barriers to exit and explores options for arbitration and other legal recourse.

2. Accurate as of 28th July, 2023.

PART I: INTERNATIONAL STANDARDS - GUIDANCE FOR RESPONSIBLE BUSINESS CONDUCT VS THE REALITY OF COMPANY PRACTICE

What should companies do?

The United Nations Guiding Principles on Business and Human Rights (UNGPs) acknowledge that all businesses, regardless of industry or context, bear a responsibility to respect human rights. These principles are widely accepted and considered the benchmark for responsible business conduct, applying both within and outside conflict-affected areas.

Under the UNGPs, companies are expected to conduct ongoing human rights due diligence to identify and address the human rights impacts associated with their business activities. When operating in conflict-affected areas, companies are expected to implement heightened human rights due diligence (hHRDD) that considers the company's impact on rights-holders, the geopolitical context of the conflict itself and adherence to international humanitarian law. This conflict analysis supports companies in identifying additional, conflict-related risks and human rights impacts in their operations and value chains.

The hHRDD process entails four key steps:

1. Identifying and assessing actual or potential adverse conflict and human rights impacts,

2. Acting on the findings from impact assessments to mitigate risks or remediate impacts across relevant functions and company processes,

3. Tracking the effectiveness of measures and processes to address adverse conflict and human rights risks or impacts,

4. Communicating how risks or impacts are being addressed and showing proof of adequate policies and practices.

In conducting hHRDD, businesses operating in the Russian market must recognize Russia's role as an aggressor state. According to a recent guide interpreting the UNGPs (Principle 23):

> "If the use of force – the war – is deemed unlawful under international law, in addition to respecting human rights and international humanitarian law, at a minimum, business should assess, and avoid or mitigate its connection to the war efforts of the aggressor country to 'ensure that they do not exacerbate the situation'."

The UNGPs specify that businesses that cause (or may cause) and contribute (or may contribute) to harm should cease or prevent adverse human rights impacts. If businesses are directly linked to harms associated with Russia's war effort, they have a responsibility to use or increase their leverage to mitigate the impacts to the greatest extent possible. Where the use of leverage is impossible or where human rights impacts are particularly severe or unmitigable, such as gross violations of international humanitarian and human rights law committed by Russia in Ukraine, the UNGPs direct businesses to consider terminating relationships or operations and exiting the market to ensure they do not contribute to harm, "taking into account credible assessments of potential adverse human rights impacts of doing so." [3]

If hHRDD leads to a decision to suspend or terminate activities, companies still have a responsibility to disengage in a rights-respecting manner. "A business contemplating exiting or suspending its operations in a conflict-affected context should consider whether, a) exiting/suspending could exacerbate tensions: and b) whether harms to people outweigh the benefits." In "carefully weighing the human rights implications of withdrawing versus the human rights implications of staying," companies should engage in the following steps: identifying consequences of leaving; remaining sensitive to rights; conducting meaningful stakeholder consultation; preventing or lessening negative impacts on human rights; monitoring and following up the human rights situation in the region; and disclosing due diligence and conclusions publicly.

3. The OHCHR's recent briefing specifically highlights how companies often have little leverage over government actors involved in egregious violations and makes clear that "where a business enterprise is unable to obtain and exercise sufficient leverage to prevent or mitigate adverse impacts through a business relationship, it should consider ending the relationship." However, the briefing adds that the decision to shut down operations or end a business relationship will be context-specific and dependent upon each company's assessment.

Best Practice for businesses operating in Conflict-affected and High-risk Areas:

- **Engage in hHRDD:** Firstly, prior to entering conflict-affected and high-risk areas, businesses should conduct hHRDD to understand the human rights and conflict-related risks of the proposed activities. After market entry, companies should continue to assess these risks on an ongoing basis, as directed and described by the UNDP, UNGPs, OECD Guidelines.
- **Conduct human rights impact assessment:** As part of their hHRDD, businesses should conduct a human rights impact assessment (HRIA) to identify and assess the potential and actual human rights risks, including any company impacts on the dynamics of the conflict. This assessment should include a thorough analysis of the local context, including the political, social, and economic factors that may be contributing to the conflict, as well as the specific human rights risks associated with the continued production, investment, import, and sale of the company's particular products or services. HRIA should be conducted on an ongoing basis as dynamics of the conflict change and evolve.
- **Engage with stakeholders:** Businesses should consult with various stakeholders, including civil society organisations and experts to understand the local context, conflict dynamics and the human rights risks and impacts of their operations. Given how quickly situations in conflict-affected areas can evolve, this engagement should be ongoing and should involve regular communication and collaboration with stakeholders to identify and address human rights and conflict risks.

What are companies doing in practice?

Russia's military aggression against Ukraine has exposed significant shortcomings in companies' understanding and processes of HRDD.

In March 2022, the Business and Human Rights Resource Centre (BHRRC) sent a comprehensive human rights due diligence survey to 400 companies with investments or operations in Russia and/or Ukraine. The BHRRC received 115 company responses and only 43 full or partial responses to the questions. These results reveal a widespread lack of public disclosures and imply there is a systemic failure to conduct concrete due diligence. The survey also evidenced that many companies operating in the region had failed to conduct adequate human rights due diligence in the years leading up to the invasion of Ukraine.

The systemic failure to have adequate policies and procedures in place to identify salient human rights and conflict-related risks associated with the high-risk Russian market is concerning, especially considering Ukraine has been engaged in a conflict with Russia for the past nine years. Had companies consistently conducted HRDD, they would have recognized the emerging security risk as early as August 2014. This early identification should have prompted companies to conduct hHRDD, leading to better preparation and risk mitigation measures and quicker responses when the 'unthinkable' invasion occurred in February 2022.

Considerations for Responsibly Remaining

If a robust hHRDD process determines the human rights impacts of a company suspending operations in or exiting the Russian market outweigh the human rights and conflict-related risks of remaining, it is crucial for the company to ensure its decision to remain in, or connected to, the Russian market continues to align with the standards of responsible business conduct. International frameworks, such as the OHCHR's recent guidance on considerations for remaining and exiting challenging contexts, call on companies remaining in the Russian market to conduct ongoing hHRDD regarding connection to human rights and conflict-related impacts and to foster transparency about those ongoing efforts with relevant stakeholders. Companies remaining in the Russian market should also be prepared to accept the associated consequences, including preparing for material, legal, regulatory, operational and financial risks. Over time and depending on circumstances, companies may find that the nature of their involvement with impacts may move from being directly linked to harms through business relationships to contributing to harms.

Effective hHRDD requires companies to continually weigh the human rights impacts of remaining in the Russian market as compared to withdrawing, utilise its leverage to mitigate and remediate human rights harms, consult with affected rights-holders, and develop an exit strategy should disengagement be required. This analysis should include a continuous assessment of the geopolitical context giving rise to the salient human rights and conflict-related risks, the potential impacts associated with the specific aspects of the business model and the company's justifications for continued operations. For example, companies that have a legitimate justification for continuing to supply essential goods and services to the Russian population should engage in an ongoing analysis of the local needs of the market, including whether the goods can be provided by a humanitarian organisation, government agency or domestic competitor.

This hHRDD process should also include efforts by the company to mitigate and remediate its human rights impacts. In the context of the Russian market, companies choosing to remain should seek to utilise their leverage to minimise their financial and other indirect contributions to the Russian state, and address the human rights harms associated with continued operations. Furthermore, a critical component of responsible hHRDD in a high-risk market, such as Russia, is consultation with affected and potentially affected stakeholders, credible proxies, and/or human rights experts to provide feedback on the "effectiveness of leverage to date, on the potential consequences of remaining and exiting, and on additional steps that could be taken in the situation." Finally companies should also develop, update and maintain policies and procedures outlining a responsible exit strategy should withdrawal be subsequently required.

Ongoing hHRDD required by remaining in a high-risk market, such as Russia, should prioritise transparent communication with relevant stakeholders as much as possible. Disclosures should include the company's assessment of the human rights and conflict-related risks associated with remaining and exiting, the criteria underlying this analysis and its efforts to mitigate and remediate its impacts. Such transparency may reassure stakeholders that the company is fulfilling its obligations under international frameworks and mitigating associated risks and may increase opportunities for collective leverage as well as contribute to peer learning and other companies' efforts towards responsible conduct.

PART II: BARRIERS TO EXIT - LEGITIMATE REASONS TO STAY OR EXCUSES FOR MAINTAINING MARKET SHARE?

Companies that failed to engage in hHRDD and establish proper policies and procedures prior to entering the Russian market were left with few options to mitigate their human rights and conflict-related risks after the 2022 invasion. In response to the growing legal, regulatory, operational, reputational and human rights risks associated with activities linked to Russia, many Western multinational companies exited the market. However, the companies that remained justify their continued presence in the market with the alleged human rights impacts of leaving, without actually undertaking sufficient hHRDD to back those claims. This section analyses the legitimacy of the most common justifications put forward by companies.

ESSENTIAL GOODS AND SERVICES

Since the full-scale invasion of Ukraine, many companies have used an 'essentiality' argument – the claim that they are providing essential goods and services to the local population – to justify their presence and continue their operations in Russia, even as the war caused significant loss of life and damage in Ukraine. Six of the top 20 revenue generators in Russia in 2022 use this justification to continue their operations (PepsiCo, Auchan, METRO AG, Danone, Mars, Procter & Gamble). While it is true that certain companies and their products align with the notion of essential goods necessary for the well-being and survival of the local population, a considerable portion of these companies continuing to operate in Russia fall well below a reasonable standard of essentiality.

For example, despite Mondelez and Unilever, manufacturers of consumer products including confectionery goods, relying on this argument to justify their continued operations in Russia, both companies saw a significant increase in profit in their Russian business segment compared to 2021. The same claims were made by numerous other companies in the sector, including Mars, Nestle, Auchan, Bonduelle, PepsiCo, Cargill and Procter & Gamble.[4] Pharmaceutical companies that have similarly utilised this argument include Bayer, Johnson & Johnson, Pfizer, Kimberly-Clarke, GE Healthcare, and others. In contrast, other food and beverage companies that had a physical presence in Russia, such as Arla (which sold or wrote off "everything in Russia"), Dr. Oetker, and McCain, have exited the market rather than use the essentiality argument to justify their continued operations.

4. Some companies have refrained from using the term 'essential goods' and opt for utilising euphemistic language that bears the same sentiment, such as 'basic foodstuff' or referring to the 'responsibility to the food/agricultural supply chain'.

By remaining in the Russian market, these companies are providing support to the Russian government through significant tax contributions and must comply with Russian legislation that obliges companies to aid in the war efforts in various ways. Consequently they can be linked with facilitating the Russian government's actions and the suffering of the Ukrainian people. To mitigate the human rights impacts associated with Russia's unlawful war efforts, it is crucial to block access to the resources that are enabling the aggression, while maintaining basic needs of affected Russians (such as life-saving medicine), for example through tax-exempt humanitarian aid if possible.

There is no single, universally accepted definition of essential goods and services, leading to lack of clarity and consistency in how this term is defined and applied across different countries and contexts. Different international governmental organisations, legal regimes, and humanitarian and civil society organisations utilise their own definitions of what constitutes an essential good because essentiality is highly contingent on the needs, vulnerability, and culture of different countries and populations. This creates challenges for various stakeholders, particularly in conflict-affected areas, as it can be difficult to determine which goods and services are truly essential, how to ensure that they are accessible to those who need them, and how to prevent the misuse of the term. For example, while the World Trade Organization (WTO) acknowledges the importance of ensuring access to essential goods during crises like COVID-19, it has not established a comprehensive list of essential foodstuffs, agricultural goods, and hygiene products beyond those related to the pandemic.

However, the different standards and definitions of essentiality can be summarised as encompassing vital necessities such as drinking water, food, healthcare, medicines, electricity, sanitation, garbage collection, communications, banking services and transport, which are fundamental for sustaining life and ensuring respect of basic human rights.

When determining the scope and meaning of essential goods and services, it is crucial to apply a contextual, conflict-sensitive approach. In the context of the war in Ukraine and ongoing operations in Russia, the concept of essentiality should prioritise items such as life-saving medicines that are not already manufactured in Russia, while excluding goods such as food and hygiene items that are readily available locally. The continued production, distribution, and import of goods that are available/easily substituted locally and non-essential, and whose absence would not be life-threatening to the local population, indirectly perpetuates the conflict by sustaining the resources that enable Russian aggression.

The lack of guidance defining essential goods and services has enabled companies to exploit the justification, stretching the definition beyond common sense to prioritise profits and hold onto market share, rather than taking a more responsible approach to business operations. Furthermore, companies claiming their goods are essential to the rights of Russian citizens often fail to publicly disclose the hHRDD process that led to this conclusion. The use of this argument and lack of public disclosure makes it difficult for civil society organisations, policymakers and governments to hold companies accountable for their actions, and without comprehensive and authoritative guidelines and regulations defining essentiality, they have no definitive source to reference to demonstrate to companies that their broadened usage of essentiality is incorrect.

Establishing clear guidelines and standards for defining essential goods and services in times of conflict would ensure resources are distributed fairly and efficiently and prevent companies operating in aggressor countries from using essentiality as an excuse to continue business as usual in a way that undermines sanctions and international efforts to prevent financing of the war. It is important to consider context in determining what truly qualifies as essential within a specific situation and requires close collaboration and coordination among policymakers, international organisations, civil society and subject matter experts. Creating further guidance would provide greater clarity, consistency, transparency and accountability and increase the likelihood of correctly determining what constitutes essential goods and ensuring they are effectively provided to those in need without perpetuating further harm.

Recommendations:

- **Conduct hHRDD to determine essentiality:** When operating in conflict-affected and high-risk areas, businesses should conduct hHRDD to determine what goods and services are essential to its local market segment and disclose this analysis and conclusions in comprehensive and detailed lists.
- **Consider all guidelines and factors:** When determining what goods and services are essential, businesses should consider a number of factors, including the needs of the affected population and their ability to have their basic human rights met, the availability of other sources of goods and services, and the potential and actual human rights and conflict impacts associated with continued operations. While no comprehensive standards have been universally accepted, businesses can consider existing guidance that applies essentiality to specific contexts or issues, such as the WHO list of essential medicines and other WHO guidance on medicine and nutrition, the Sphere Handbook, or FAO guidelines for seed security and agriculture. Businesses should also answer guiding questions when making decisions.
- **Consult with stakeholders:** In making decisions about which goods and services are essential, businesses should consult with affected stakeholders, local communities, civil society organisations, such as those with security, human rights, humanitarian law, and peace-building expertise, and experts in specific sectors.
- **Continuous and transparent review:** Businesses should disclose what goods and services the company continues to produce and provide, as well as those that have been halted due to the circumstances of the conflict. These lists should go beyond mere inventory and disclose the company's due diligence analysis for each item's classification as essential and should be regularly reviewed and updated based on the evolving needs and continuous engagement with relevant stakeholders.

EMPLOYEE WELFARE

A significant proportion of companies remaining in the Russian market are relying on the argument of "employee wellbeing" as a justification for their continued operations in Russia and reluctance to leave. Many claim that their Russian employees should not be held accountable for the crimes of the Putin regime and emphasise the necessity of making a distinction between the two.

Nevertheless, this perspective does not encompass the entirety of companies' responsibilities towards their employees, and it is important for them to explore alternative measures in order to ensure the safety and protection of their workforce. Options such as offering relocation packages or incorporating contractual clauses that ensure the ongoing safety and employment of employees have been successfully implemented by other international companies. For example, the French Publicis Groupe remained committed to exiting the Russian market while "securing a future path for our colleagues while immediately stopping all of our operations, engagement and investment in Russia". Similarly, Deutsche Telekom or Google, have "given [its Russian] employees the opportunity to work outside Russia. Many employees have taken that opportunity and have left the country." While these choices are understandably difficult for the employees on the ground, businesses should proactively consider and utilise such strategies before deciding to continue operations in conflict-affected regions, particularly aggressor states.

Companies do have obligations towards their employees under the UNGPs and the wider landscape of international and national business and human rights normative, legal and regulatory frameworks. As part of the company's conflict-sensitive hHRDD process, it should understand how its operations affect the human rights of its employees, consulting employees, unions or other organisations that represent relevant stakeholders throughout this process. Given the challenging nature of operating in conflict-affected and high-risk areas, including aggressor states, the company may have to weigh its responsibilities to its employees against potential complicity in wider human rights abuses and humanitarian law violations linked to the conflict.

As part of this analysis, hHRDD requires a comprehensive understanding of the local legal framework and its potential impact on employees. Businesses are undoubtedly aware that new Russian legislation mandates all organisations, including international businesses that are currently operating in Russia, to conduct military registration of the staff if at least one of the employees is eligible for military service. They must also assist with delivering the military summons to their employees, ensure the delivery of equipment to assembly points or military units, and provide information, buildings, communications, land plots, transport, and other material means of support to the war effort. Many companies who continue operating in Russia have confirmed that they have delivered summons to their Russian employees. Knauf, despite emphasising its concern for 4,000 local employees, confirmed complying with the Russian law with regards to conscription, while a Raiffeisen Bank International employee was killed on the battlefield, despite the company's request for an exemption. As a result of this legislation, companies "cannot avoid contributing to Russian war efforts and cannot deny the increased risk of being directly linked to an army implicated in war crimes," and are ultimately potentially contributing to compromising their employees' safety.

Russian law that criminalises intentional bankruptcy poses concerns for companies and their employees. Heineken and Pernod Ricard emphasised this issue when explaining their continued presence in Russia. Intentional bankruptcy, also known as premeditated bankruptcy, is a crime in Russian legislation that can result in fines and deprivation of liberty. Under the Russian Criminal Code, intentional bankruptcy is defined as the deliberate actions of a company's management or shareholders to bring about the company's insolvency or bankruptcy through illegal means. However, the prosecution must prove that the individual acted intentionally and that their actions led to the company's insolvency or bankruptcy. In addition, the prosecution must show that the individual had a motive for committing the crime, such as personal financial gain or revenge against business partners. Between 2009 and 2022, Russian courts handed down between 15 and 34 sentences each year under Article 196 of the Criminal Code for intentional bankruptcy. However, a recent joint publication by the Kyiv School of Economic and Yale University states with regards to the risk to employees: "To date, there have been no reports of any employees of foreign companies who have been imprisoned. There are no detention centres that are large enough to hold tens of millions of detained employees of global multinational companies. Their arrest and detention would only trigger mass societal unrest." Therefore, despite some sentences for intentional bankruptcy carried out in Russia, it is unlikely that this would be used against employees of foreign businesses.

Commentary analysing the UNGPs instructs companies to include consultation with their employees as part of the hHRDD analysis to determine whether to exit or remain in a market. Many companies, including Mondelez and Metro AG, have employees who have actively called on their employers to leave the Russian market. Mondelez's employees have put forward two global petitions to the company's management, urging them to "do what's right." The latest petition is estimated to have been signed by 1,300 employees globally. Companies must consider the voices of their employees, including those in Ukraine, who are concerned that the continued presence in Russia is allowing the Kremlin to continue a war that is directly harming their Ukrainian employees. By actively listening to their employees, companies can uphold their corporate values and demonstrate their commitment to responsible business conduct, human rights, and employee well-being. Such a decision would not only showcase the company's dedication to responsible business practices and respect for human rights, but also enhance its reputation, improve stakeholder perception and solidify its position as a socially responsible organisation.

Recommendations:

- **Consider alternative options:** As part of an exit strategy, companies should provide employees with relocation packages or contractual clauses ensuring their continued employment and safety. Relocation as an option may involve assisting with visa processes, housing arrangements and necessary logistical support. Companies should also effectively communicate these options to employees and provide necessary resources for the transition. Companies should ensure that their support of and communications with employees do not inadvertently put them at risk of retaliation.

- **Minimise risk of complicity in the war:** By removing themselves from the jurisdiction, companies can mitigate the heightened risk of being directly linked to the conflict by being outside the scope of laws that compel companies to deliver military summons to employees or to provide the materials for the war, thus avoiding the legal and reputational consequences associated with potential complicity.
- **Develop a clear exit strategy:** Companies should create a precise plan that outlines the steps and timelines for exiting the Russian market. This includes notifying relevant stakeholders, terminating contracts, divesting assets, transferring operations, and winding down activities in a responsible manner. Furthermore, companies should develop a clear communication strategy to inform employees, clients, suppliers and partners about the company's decision to leave the market and the steps being taken to ensure a smooth transition.
- **Capitalise on alternative opportunities:** Exiting Russia can present an opportunity for businesses to redirect their resources and investments towards regions that align with their ethical values and offer more favourable business conditions in which companies are not forced to contribute to the war in Ukraine.

BENEFITING RUSSIA

Many companies, like UniCredit, Unilever, or Rockwool, have decided to continue their operations in Russia because their exit would benefit the Russian state. Unilever claims that the company has "not been able to find a solution which avoids the Russian state potentially gaining further benefit," while Rockwool states that "it will not benefit Ukraine to send value in the amount of between US $722m and US $877m into the hands of Russia."

Businesses expressing concerns that leaving the Russian market would benefit Russia should incorporate a broader set of factors in their due diligence that considers how the value of an enterprise encompasses much more than just physical assets. For example, in weighing the impact of remaining or exiting, a robust due diligence process should consider other aspects of a company, including technology, management, expertise, intellectual property and many other intangible assets that are critical to its success.

For example, the sale or transfer of assets in Russia and exiting the market may initially seem to benefit the Russian economy. However, a closer examination of long-term implications and potential drawbacks show that this does not always hold true. Without the guidance, expertise and support provided by the exiting company, its Russian plants could face significant challenges and could likely experience a decline in value. The loss of access to innovative technologies, specialised management practices and intellectual property could severely hinder the performance and innovation capabilities of these plants.

The transfer of assets to another entity in Russia does not guarantee that the Russian economy will benefit in the long run. The departure of a company that has established itself in the Russian market may result in a gap that is not easily filled by other players. The new owner may not possess the same level of expertise, resources or global networks that the exiting company had. This could result in a decline in productivity, reduced competitiveness and missed opportunities for growth and expansion. In some cases, companies who have left the Russian market have gone as far as to withhold their patented technology from the buyer of their Russian business, causing further disruption to the market.[5] This means that Russia has missed out on the benefits of years of research, development and technology, ultimately hampering the country's progress and development. Therefore, the sale or takeover of a company's assets in Russia would not necessarily benefit the Russian economy in the long run and could in fact be detrimental to its overall growth and prosperity. Furthermore, the exit of a well-established company could also have a negative impact on the overall investment climate and investor confidence in the country.

Some of the largest tax-paying companies continuing operations in Russia boast impressive portfolios of globally recognized and beloved brands. By choosing to continue operating in Russia, these companies indirectly express support for the regime's actions, grant the regime a sense of legitimacy and approval and send a message that could be interpreted as condoning the war and its violations of international humanitarian law. Moreover, this perceived association between companies' widely known brands and the Russian government may not align with the values of its customers and could potentially damage the company's reputation among consumers who value respect for human rights, social responsibility and ethical practices. Furthermore, remaining connected to such severe human rights impacts and violations of international humanitarian law can overshadow the positive contributions or philanthropic efforts the company may engage in elsewhere, including in Ukraine. As consumers become more informed and engaged, they may voice their concerns and opinions through boycotts, public pressure campaigns or choosing alternative brands that better align with their values, as demonstrated by the recent boycott of Mondelez products in Nordic states.

Furthermore, as outlined in the section on expropriation, the Russian government already de facto controls assets of businesses staying in Russia. Therefore, companies should try to maximise any benefits of writing off assets, like many other companies who have already exited, rather than risk human rights and financial material risks, including legal, regulatory, operational and reputational, of continuing to operate in the country.

5. This was highlighted by at least one company in B4Ukraine's business engagement meetings.

Recommendations:

- **Review company values and reputation:** Companies should reflect on their internal policies, values and responsibilities under the UNGPs and consider whether these align with continued operations in an aggressor state. Companies should also consider the potential reputational risks associated with staying in Russia and the impact on their brand image. If the company's values and reputation could be compromised by remaining in Russia, it may be wiser to exit the market and align actions with stated principles.
- **Conducting a thorough risk assessment and analysis:** Prior to divesting, companies should conduct robust due diligence to assess direct and indirect potential economic benefits the exit would bring to Russia and steps to mitigate and minimise those contributions. The due diligence process should include engagement of relevant stakeholders.
- **Minimise any potential benefits that the Russian government may derive from the exit:** This could involve strategically withholding proprietary technologies, ceasing collaborations or partnerships with Russian entities and taking steps to impede the transfer of knowledge and intellectual property. Apart from an immediate economic impact, companies should consider reduced employment opportunities, decreased tax contributions, disruption to supply chains, and the potential loss of specialised expertise and technology.

PART III: HOW TO LEAVE - OPTIONS FOR SALE OR WRITEDOWNS

FINDING APPROPRIATE BUYERS

Some 482 companies are in the process of terminating operations in Russia. Yet 18 months into the war, many companies justify being 'stuck' in the country due to the difficulties of finding an appropriate buyer. For instance, some Western companies, such as Renault and British energy giant Shell, in an attempt to comply with Russian laws and sanctions, have agreed to sell their operations to Russian investors or state affiliated enterprises, prompting some companies to express concern that Russian companies and institutions are "snapping up assets at bargain prices."

As an alternative, some companies, including the food and beverage company Mondelez and Raiffeisen Bank International, are looking at "spin-off" or "stand-alone" options, which includes making the Russian subsidiary independent from the parent company and "self-sufficient" in its value chains, but nonetheless does not constitute a complete business exit.

Despite the many companies relying on often questionable justifications for staying, a few leaders have stood out as benchmarks of responsible exit practices. For example, Clifford Chance, the renowned UK-based law firm, closed its Russia operations in May 2022. Charles Adams, one of the Global Managing Partners of Clifford Chance stated that, "Ensuring the winding down of our services is consistent with our legal and professional responsibilities to our clients and our responsible business principles and values." Interestingly, the firm chose to transfer ownership of the entity to a new law firm led by their Moscow office partner, which ensures that the firm remains independent, in trusted hands, and does not fall to state control. Clifford Chance was also working on relocating employees from the Moscow office to their other offices across Europe.

When selling assets to facilitate a responsible exit, companies should carefully weigh the human rights implications of staying and leaving by implementing robust due diligence and decision-making processes. As with all steps in a responsible exit, this analysis should include identifying consequences of leaving, including the human rights and conflict-related risks associated with the proposed buyer and its value chain; meaningful consultation with stakeholders and issue experts; mitigating the human rights impacts of withdrawing; monitoring and following up on the situation of human rights in the region; and providing robust public disclosure of all due diligence and decision-making.

A CASE STUDY OF TELENOR'S EXIT FROM MYANMAR

Telenor ASA's (Telenor) exit from Myanmar provides an interesting case study that sheds light on the importance of responsible vetting and buyer selection processes. Since the military coup in 2021, Myanmar has been embroiled in a severe state of conflict. This case study is particularly relevant given the concerns raised by several companies with business operations in Russia regarding the difficulty in identifying buyers and complying with international legal standards. Telenor's exit from Myanmar highlights key challenges associated with finding a suitable buyer to divest from a high-risk market. Telenor's sale of its subsidiary, Telenor Myanmar, to M1 Group demonstrates the necessity of:

- Performing adequate HRDD that encompasses not only the potential buyer's human rights and conflict-related risks but also those of all its value chain partners;
- Engaging local stakeholders and civil society organisations prior to finalising a purchase agreement; and
- Mitigating risks and remediating impacts associated with the transfer of ownership.

Background

In February 2021, the Myanmar military launched a coup against the democratic government, and has since committed widespread human rights violations, war crimes, and crimes against humanity on local populations. To facilitate these abuses, the military junta has consistently required telecommunication companies to shut down customers' access to the internet, provide location data of specific individuals, and integrate spyware technology for the purpose of facilitating the unlawful surveillance and oppression of users. At the time of the military takeover, Telenor was one of the top two telecommunications providers in the country, controlling roughly 30% of the market and serving around 18 million users.

In response to the military regime's exploitative requests, Telenor conducted a "comprehensive" risk assessment which found that remaining in the Myanmar market presented irremediable risks and that selling "Telenor Myanmar was considered as the least detrimental solution."

Without engaging stakeholders or disclosing its intent to exit, in July 2021 Telenor announced it was selling its Myanmar subsidiary to the Lebanese-based M1 Group. Notably, the transaction also included the transfer of Telenor's historic user data.

Local stakeholders and civil society organisations immediately began criticising the sale, alleging M1 Group presented significant human rights and conflict-related risks. Relying on these allegations, several civil society organisations filed complaints to the Norwegian National Contact Point (NCP) and Data Protection Authority. In its defence, Telenor claims it conducted HRDD prior to the sale, which determined M1 Group's subsequent operation of its assets "would secure access to service for 18 million subscribers, hospitals and banks, a fourth operator independent of the military regime and continued employment for the employees of Telenor Myanmar."

In their complaint to the NCP, civil society organisations accuse M1 Group of ties to oppressive state actors in several conflict-affected areas including Syria, Yemen and Sudan and link M1 Group to MTN Group Limited's alleged facilitation of the Taliban in Afghanistan. The M1 Group founding family has also been accused of corruption, and the conglomerate's leadership has demonstrated a cavalier attitude for the company's human rights impacts. M1 Group's value chain partners associated with this specific transaction also present significant human rights and conflict-related risks for transferring ownership of Telenor's operations. Shortly after the sale closed, M1 Group effectively transferred 80% of Telenor Myanmar to its local partner, Shwe Byain Phyu Telecom Company Limited. Through a complicated corporate structure, Shwe Byain Phyu Telecom Company Limited holds a significant share of the military-controlled telecommunications company, Mytel. The sanctioned state entity, Myanmar Economic Corporation, is a significant shareholder of Mytel, providing the Myanmar military with a significant source of revenue and direct access to the telecoms platform.

A Responsible Exit Calls for Robust Due Diligence and Should Consider the Potential Buyer and its Value Chain Relationships

While divesting Telenor Myanmar may have been the appropriate outcome of robust hHRDD and Telenor's risk based crisis management approach, Telenor failed to identify the most significant potential human rights and conflict-related risks associated with its potential buyer, M1 Group, assuming ownership and control over its operations. Determining if an entity is a suitable buyer to facilitate divestment requires analysing the purchasing entity's track record for causing, contributing to, or being linked with human rights and conflict-related risks, and the potential impact of the entity's value chain relationships, including local partners, affiliated entities, and their ultimate beneficial ownership. Companies should refrain from looking broadly at companies who could acquire their assets, and instead incorporate a comprehensive risk assessment for each proposed buyer as part of the sales process. Companies should also review their standard processes for entering new markets and build guidelines for business continuity and responsible exits.

Telenor failed to adequately identify and consider the human rights and conflict-related risks associated with M1 Group, and its local partner, Shwe Byain Phyu Telecom Company Limited. Robust hHRDD surrounding the transaction should have flagged M1 Group's alleged financing of oppressive regimes, corruption, and disregard for human rights as significant risks suggesting the company was not a suitable buyer. However, it did not identify Shew Byain Phyu Telecom's stake in the military telecommunications company Mytel, nor did it consider Mytel's ownership structure, with the sanctioned state entity, Myanmar Economic Corporation, serving as a significant shareholder. Despite identifying the importance of transferring its operations to an independent mobile provider, Telenor failed to apply this analysis to M1 Group's partners and their direct links to the military. The salient human rights and conflict-related risks associated with M1 Group and Shwe Byain Phyu Telecom Company Limited places Telenor's 18 million users at risk of the regime accessing historic and future personal data, tracking individuals' locations, and using the telecommunications infrastructure to facilitate its oppression of human rights defenders, dissidents, and vulnerable groups.

Stakeholder Engagement Should Contribute to Company Due Diligence with Relevant Expertise and Information Regarding on the Ground Impacts

Another crucial component to responsible divestment is adequate stakeholder engagement prior to entering into any sales agreement. Telenor admits that throughout the due diligence process surrounding its exit from Myanmar, the company failed to consult any relevant stakeholders. Had Telenor engaged local community members or regional experts, it likely would have identified the severe risks associated with selling its subsidiary to M1 Group. In its response to civil society's criticism and complaint, Telenor states that it was precluded by stock exchange regulations from divulging any information regarding the potential sale of its assets.

While jurisdictional regulations may limit a company's ability to disclose publicly information regarding the sale of its assets, it should not hinder its ability to leverage outside experts to identify the entire suite of risks associated with a transaction. Interestingly, Telenor also noted that while it conducted a 360 degree risk assessment which included human rights impact assessments, the lack of a standalone human rights risk assessment which could be shared with external parties precluded it from sharing the outcomes with stakeholders. Companies considering a responsible exit should develop alternative solutions to address confidentiality/regulatory limitations and ensure a fulsome stakeholder engagement process, such as utilising non-disclosure agreements for engaging local stakeholders, employing experts with professional confidentiality obligations, standalone human rights risk assessments (fit for external consumption), developing effective external communication policies, or deploying contractual mechanisms to prevent the sale, should unmitigable human rights or conflict-related risks arise. Telenor has itself stated that going forward it will strive to share as much information as possible with its internal teams to engage in more meaningful dialogues with stakeholders. These alternatives can mirror the types of mechanisms companies use to consult legal and financial risk experts when engaging in traditional financial due diligence regarding a transaction, and would also address Telenor's concerns of sharing information with only select stakeholders.

A Responsible Exit Includes Remediating Impacts

While Telenor's exit from Myanmar demonstrates the severe human rights impacts that can occur when a company divests its assets to an unsuitable buyer, the company is providing a positive example of engaging with and providing remediation to impacted rights-holders. As part of the NCP complaint process, Telenor has engaged civil society organisations representing rights-holders impacted by Telenor's exit. Though still unresolved, the parties have committed to on-going dialogue with regular meetings outside of the mediation.

Telenor has also agreed to commission and finance an independent study to understand the risks to end-users in challenging contexts, including Myanmar, explore establishing a Myanmar-specific digital security relief mechanism to provide support to citizens facing impacts associated with their digital footprint, re-assess risks to employees resulting from the sale, and, if needed, make a safe channel of communication for former employees. It is important to note that some of these remediation efforts could have been deployed earlier as mitigation measures had Telenor properly flagged the risks associated with the transaction and engaged with relevant stakeholders from the start. However, by engaging in the NCP process, Telenor is providing an example of possible methods for remediating its impacts after they have occurred. Telenor's continued engagement and commitment to Myanmar civil society, through local civil society organisations and international initiatives, should be a guiding standard for post-exit company conduct. Telenor commits to these engagements being voluntary and information shared being unattributed and anonymised, ensuring safety of all participating groups.

Recommendations:

- **Undertake robust due diligence:** Companies must analyse the potential human rights and conflict-related risks associated with any potential buyer of assets and its value chain relationships.
- **Conduct meaningful stakeholder engagement:** Companies should engage local stakeholders and civil society organisations to support the due diligence process and fill in knowledge gaps prior to finalising a transaction.
- **Mitigate impacts:** Companies should deploy measures to mitigate impacts on rights-holders prior to divesting assets. However, should this step fail, companies are also expected to remediate the harms to rights-holders that have occurred due to the company's exit.
- **Develop necessary internal policies and procedures:** In particular for ICT companies, develop robust internal data protection policies, including human rights sensitive data protection policies, in compliance with international standards such as the EU General Data Protection Laws and international human rights law, and ensure that data privacy and protection concerns and potential for data infringement and misuse form a part of any human rights impact assessment / hHRDD exercise.

IMPOSSIBILITY OF FINDING A BUYER

Some companies justify their choice to remain in the Russian market by claiming they were unable to find a suitable buyer or the state is creating such obstacles that make it impossible to conduct a responsible sale of the business. For example, Raiffeisen Bank International and UniCredit have claimed that there are a limited number of buyers interested in acquiring Russian assets, and the recent tightening of sanctions by EU and US authorities have dissuaded those remaining. Furthermore, as articulated below, the risk of expropriation of assets, such as the Russian state's recent expropriation of Danone and Carlsberg in July 2023, will have surely narrowed options further.

Even if a buyer can be found, it is now questionable as to whether any value can be recouped from the sale of assets. Russian legislation introduced in December 2022 mandates the sale of companies at a steep discount of at least 50% of market value, additionally the seller must agree to payment deferment for 1-2 years, and/or to commit to voluntarily transfer at least 10% of the transaction value to the federal budget. New legislation introduced in March 2023 erodes recoup value still further - by some calculations to almost nothing in certain cases. According to the amendments, when the asset is being sold with more than 90% discount of the market value, the seller is obligated to make a contribution to the federal budget of at least 10% of the full market value of the asset.

In situations where no credible sale option exists, and in the face of clear direct contributions to harm, companies should write down the loss and/or take the case to international arbitration or seek other legal remedies. As outlined in the section below, companies could rely on investment treaties to pursue damages for their assets.

EXPROPRIATION OF ASSETS: RISK AND REMEDY

Prior to the Russian state's recent expropriation of assets, some companies claimed that despite their intention to exit the Russian market, they were forced to remain to avoid nationalisation of their assets. This concern about nationalisation stems from the Russian government's retaliatory measures in response to the Western sanctions that gave the state the authority to nationalise foreign companies that have left or stopped operations. The July expropriation and gifting of the Russian subsidiaries of Danone and Carlsberg's Baltika to Kremlin cronies has now moved these conversations from the largely theoretical to a red-flag on the risk analysis of any international board of directors.

Indeed, as outlined in the section below, companies have good reason to be concerned. The prospect of expropriation was raised just three months after the full-scale invasion of Ukraine and should have been flagged in any robust due diligence process.

As early as 24 May 2022, a draft Federal Law "On External Administration for the Management of an Organization" was approved by the Russian parliament and was penned to prevent the deliberate departure of foreign companies from the Russian market. The bill allows external administration to be imposed by order of a court over companies that are 25 per cent or more owned by a person with a connection to foreign states that undertake unfriendly actions towards Russia. At the same time, such a company should have a significant role for "the stability of the economy and civil circulation, the protection of the rights and legitimate interests of citizens" of Russia.

The bill very broadly defines persons associated with "unfriendly" states, including foreign citizens and legal entities, their beneficiaries, affiliates and persons controlled by them. It allows external administration of all kinds of assets owned by such persons as of 24 February 2022 and located within Russia, including real estate assets, movable goods and property, cash, bank deposits, securities and equity. The bill directly provides that no compensation will be paid to the owners of the seized assets and vests the power to take decisions on nationalisation in the authorities of Russian regions. To come into effect, the bill needs to go through two more readings in the lower house of the parliament, after which it will go to the parliament's upper chamber, and to the Russian President for his signature. At the time of writing, the law has not yet entered into effect.

Some retaliatory measures introduced by the Russian government that have already come into force are targeting actors in specific sectors. The aviation industry was one of the first sectors that was directly impacted by these measures. On 14 March 2022, Vladimir Putin signed a law (No. 56- ФЗ) on measures to support civil aviation, which makes it possible to register the rights to foreign aircraft leased by Russian companies, as well as issue domestic airworthiness certificates to them. Several aircraft leasing companies incurred losses as they were unable to recover most or all aircrafts leased to Russian airline companies. Since then, disputes have been reported between leasing companies and their insurers over possible insurance coverage for "lost" aircrafts. As of January 2023, foreign lessors have allegedly lost a total of 435 planes in Russia. The Russian government is also considering a bill that would allow airlines to retain leased aircraft when leasing contracts with entities from "unfriendly" states are terminated, as well as a ruling that would subject the decision to return aircraft to lessors to government approval and allow payment in rubles.

On 30 June 2022, the Russian President signed a new decree (No. 416) on special measures in the fuel and energy sector in connection with unfriendly actions of foreign states. The decree seized full control of the Sakhalin-gas and oil project in Russia's far east. It created a new firm to take over all rights and obligations of Sakhalin Energy Investment Co., in which Shell, Mitsui and Mitsubishi held under 50%. Stakeholders had a month to say whether they would take a stake in the new company, and those who chose to exit might not be fully compensated. The decree gave the Russian government authority to decide whether foreign shareholders could retain stakes in the project. Russia approved applications by the two Japanese trading houses seeking to transfer their stakes to a new operator. Shell claimed it had left Russia for good and wrote off its Russian assets as losses.

On 7 October 2022, Putin used a similar strategy in another decree (No. 723) that established a new operator for the Exxon Mobil-led Sakhalin-1 oil and gas project. Exxon had been trying to exit its Russia operations and transfer its role in Sakhalin-1 to a partner since March. However, the Russian government and Exxon have clashed, with the company threatening to take the case to international arbitration. According to this decree, the government was establishing a Russian company, managed by Rosneft subsidiary Sakhalinmorneftegaz-shelf, that will own investors' rights in Sakhalin-1. Exxon Mobil later said it had exited Russia empty-handed with the oil project 'unilaterally terminated', leaving more than $4 billion in assets.

In March 2023, a Russian court froze all Volkswagen assets in Russia in a lawsuit initiated by Russian auto manufacturer GAZ after Volkswagen had terminated the production agreement in August. A year earlier Volkswagen suspended its operations in Russia and has been trying to sell its assets since. In April 2023, the Russian government allegedly approved the sale of Volkswagen's factory in the city of Kaluga to a local company Avilon, which is considered to be the next step in finalising the company's exit from Russia.

On 25 April 2023, Vladimir Putin signed one more decree (No. 302) authorising temporary control over foreign companies' Russia-based assets. This was done in retaliation to the freezing of Russian assets abroad over the military aggression against Ukraine. The decree said Russia needed to take urgent measures to respond to unspecified actions from the United States and others it said were "unfriendly and contrary to international law." Temporary administration of the seized assets under this decree will be handled by Russia's Federal Agency for State Property Management, Rosimushchestvo. The document contains a list of assets placed under external management. Rosimushchestvo was granted temporary management of the 83.73% stake in Unipro (owned by German-based Uniper SE), 69,8807% stake in Fortum (owned by Fortum Russia B. V.) and 28.3488% stake in Fortum belonging to Fortum Holding B. V.

According to Rosimushchestvo, more foreign firms could find their assets under temporary Russian control. The agency points out, however, that "[t]he decree does not concern ownership issues and does not deprive owners of their assets. External management is temporary in nature and means the original owner no longer has the right to make management decisions." Even though the temporary manager exercises the powers of the owner, he does not become the owner, and out of the three constituent elements of the property right (possession, use and disposal), the temporary manager does not have the authority to dispose of property. According to Russia's Deputy Finance Minister Alexei Moiseev, the actual management of foreign assets will be carried out by Russian companies that have suffered from "unfriendly" countries.

The decree does not provide specific explanations of exactly how such temporary management will be implemented. However, it is confirmed that the costs of temporary management are covered by the company in which it is introduced; there are no special conditions for the abolition of temporary management. Finally, a separate decision of the president is needed to terminate the temporary management.

Some experts argue this decree paves the way for nationalisation of foreign assets. In Russia, nationalisation is a legal avenue to terminate property rights by transferring the property to the state with compensation for its value and other losses. The possibility of nationalisation is considered in the Russian Constitution, which establishes that alienation for state needs must be carried out on the basis of prior and equivalent compensation. If a person does not agree with the terms of such compensation, he may apply to the court.

However, nationalisation can be carried out only on the basis of the law. Aside from reference in the Constitution, laws that would establish the procedure for nationalisation and outline the cases in which it is allowed have not yet been adopted. The only legislative provision that provides for mechanisms related to nationalisation is Article 8 of the Federal Law "On Valuation Activities," according to which, when property is nationalised, its valuation is a mandatory condition.

This overview of the retaliatory measures and legislation the Russian government has introduced clearly shows any company that still operates in Russia, but intends to exit or suspend operations, risks having its assets seized by the state. Furthermore, the risks of continuing business in the aggressor state are disproportionately higher and include reputational, financial and legal risks, such as criminal liability for complicity in war crimes. While it is still possible for companies to exit responsibly without losing its assets, it's unclear for how long this will be the case.

Recommendations:

- **Avoid unintentional legal consequences:** Companies considering suspension or exit should make sure this decision cannot be construed as action giving rise to the bankruptcy or liquidation of the company or other actions indicative of the cessation of management of the company. Similarly, companies that plan to divest but have contractual obligations with local companies should carefully follow contractual clauses and local legislation on contract suspension/termination in order to avoid litigation and possible asset freezing.
- **Ask for assistance when necessary:** Companies facing expropriation threats over their decision to exit should ask their national governments and other officials to help with the establishment of a dialogue with Russia to facilitate the process of divestment. EU countries are preparing to help their companies to exit Russia by relaxing some imposed sanctions.
- **Think of alternative avenues or benefits:** Companies whose assets are seized may consider writing off their assets and writing down the loss or taking their case to international courts. Similarly, energy companies may consider seeking relief through the Energy Charter Treaty (ECT), to which there are 53 signatories and contracting parties, including 35 of the "unfriendly" States.
- **Exercise legal recourse:** Investors fully or partially owning companies affected by Russia's retaliatory legislation can initiate investment arbitration proceedings against Russia under an international investment agreement (IIA), typically a bilateral investment treaty (BIT) or a multilateral treaty.

Starting from March 2022, the Russian government moved to adopt legislative amendments aimed at limiting capital outflow and precluding western business from exiting Russia. Such amendments include a ban on bank transfers abroad from accounts of individuals and legal entities from “unfriendly” states; serious restrictions on repayment of FX loans; legal permission to disregard votes of minority shareholders associated with “unfriendly”[6] jurisdictions; restrictions on payment of dividends to foreign investors; provision that any transactions involving foreign investors from “unfriendly” states leading to change of shareholding/ownership structure in Russian entities requires authorization from the Governmental Commission for Foreign Investment Control, and for certain “strategic” companies - authorization from the president of Russian Federation; and imposition of rather onerous requirements for granting permission to close transaction on sale of assets.[7] These regulatory interventions culminated in Presidential Decree No. 302 which introduced a legal framework for imposing outside “temporary” administration in certain companies with foreign investment. As stated above, JSC Fortum, owned by Finland’s majority State-owned Fortum Oyj, Russian energy company Unipro, owned by German state-owned Uniper SE, JSC Danone Russia, and LLC Brewing Company Baltika are the first companies affected by the Decree.

Based on the preliminary analysis, it appears that Russian restrictive measures violate nearly all internationally accepted standards of investment protection, incorporated in the majority of bilateral investment treaties (“BITs”),[8] such as: fair and equitable treatment of investors, protection from unlawful expropriation (direct and gradual), freedom of transfer of capital, national treatment standard, and most-favoured-nation standard.

Below this report provides a general overview of potential claims that can be brought by foreign investors against Russia in the context and practice of investment arbitration tribunals. Since many Russian restrictive regulations simultaneously violate several standards of protection, some claims can be subsumed and the report focuses on the claims arising out of violation of fair and equitable standard of treatment and prohibition of unlawful expropriation.

Fair and Equitable Treatment Standard

Most BITs and multilateral investment agreements, such as the Energy Charter Treaty, contain clauses requiring the states to provide ‘fair and equitable treatment’ (“FET”) to investors and/or investments from the other contracting party/parties. FET standard includes protection from discrimination, transparency requirement, and respect for investors’ legitimate and reasonable expectations.

6. All Russian regulations discussed in this section apply exclusively to the foreign investors affiliated with “unfriendly” states. When we refer to “foreign investors” in the context of Russian regulations, we refer to “foreign investors, affiliated with “unfriendly” states.” The list of “unfriendly” states contains more than 50 states and territories, including the United States, all EU member states, Ukraine, the United Kingdom (including all British Overseas Territories and Crown Dependencies, which were added on 29 October 2022), Australia, Canada, Norway and Switzerland.
7. For a more detailed list of Russian retaliatory laws and regulations please see Annex 1.
8. Russia is a party to over 60 BITs with most EU members (such as Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Lithuania, Italy, Luxembourg, the Netherlands, Norway, Romania, Slovakia, Spain, and Sweden) and other countries including Canada, Japan, Korea, Switzerland, the UK. There is no BIT between Russia and the United States, but US companies may nonetheless initiate investment arbitration if they structured their investments in Russia through a jurisdiction that does have a Russian BIT.

Firstly, all measures discussed below apply exclusively to investors affiliated with so-called “unfriendly” states, which is explicitly stipulated in relevant laws and regulations. Such singling out of a group of investors represents a flagrant violation of non-discrimination requirements. Investment arbitration tribunals often note that the consequences of a state's policy matter more than its intention, and tribunals have found states that did not deliberately discriminate against foreign investors in violation of FET.

For instance, in Occidental v. Ecuador the tribunal observed: “In the present dispute the fact is that OEPC has received treatment less favourable than that accorded to national companies. The Tribunal is convinced that this has not been done with the intent of discriminating against foreign-owned companies… However, the result of the policy enacted and the interpretation followed by the SRI in fact has been a less favourable treatment of OEPC.”[9] In the case of Russian policies we see regulations that are manifestly discriminatory by design, which surpasses the standard outlined in Occidental v. Ecuador and should be sufficient to hold Russia accountable under FET.

Some examples of Russian regulations that appear to violate FET standard:

- According to presidential Decree No. 618 and presidential Decree No. 520 any transactions that would lead to divestment from Russian companies by foreign investors requires authorization from the Governmental Commission for Foreign Investment Control, and for the companies, which are categorised as strategic, authorization of the president of Russia. The list of “strategic” companies can be amended or expanded by presidential decree at any time.
- When it comes to receiving authorizations from Governmental Commission for Foreign Investment Control, investors were initially required to sell the assets with a discount of no less than 50% of the market value, and to agree to payment deferment for 1-2 years, and/or to commit to voluntarily transfer at least 10% of the transaction value to the federal budget. After the March 2023 amendments, foreign investors who apply for authorization must pay a contribution of at least 10% of the half of market value of the assets stated in the asset’s appraisal report. In cases when the assets are sold with more than 90% discount of the market value, mandatory contribution to the budget is set at the level of at least 10% of the full market value. In such cases investors receive zero compensation when selling Russian assets.
- Presidential Decree No. 16 permits the disregarding of votes of minority (not more than 50%) foreign shareholders in Russian companies.
- According to Decision of the Investment Commission, payment of dividends to foreign investors can be done only upon the Commission’s issuance of an authorization. Criteria for such authorization include, among other things, the company’s compliance with key performance indicators set by the federal executive authorities. These requirements apply to payment of dividends in any amount, and authorization is required for the very act of paying dividends to qualified foreign investors.

9. Occidental Exploration v. Ecuador, Final Award, 1 July 2004, para. 177.

- Actual transfer of virtually all possible payments to foreign investors (dividends, repayment of loans and other financial instruments, repatriation of funds as a result of bankruptcy or winding up) in amount exceeding 10 million rubles a month can be made only in rubles and such funds can be credited only toward a type "C" account in Russian banks exclusively. According to the rules applicable to type "C" bank accounts, holders of such accounts cannot transfer funds abroad and can make only very limited transactions within Russia. The Ministry of Finance and the Central Bank of Russia can authorise payments outside the outlined procedure, however, there is no guidance regarding the process for seeking this authorization or the criteria by which such authorization will be granted.

In general, it appears that the Investment Commission enjoys broad discretion when issuing authorizations, be it for the payment of dividends, or for selling shares in Russian companies. The applicable regulations are drafted in a way that evaluation criteria are open to interpretation and manipulation, and compliance with all requirements does not guarantee approval of transactions. When it comes to presidential permits or authorizations, no criteria are indicated at all.

According to investment arbitration practice, even less intrusive and opaque measures were found to be discriminatory and arbitrary, to violate FET standard, and to frustrate investors legitimate expectations. For example, in Lauder v. Czech Republic, the tribunal found that the host state had taken a discriminatory and arbitrary measure when after allowing the investor's direct participation in the company that was the licence holder, it changed its position and required the set up of a separate entity.[10]

In CMS v. Argentina, the claimant was a minority shareholder in the Argentine energy company, which held a long-term licence for the transport of gas. Initially, tariffs payable to the company were to be calculated in dollars, converted into pesos, and adjusted every six months to reflect inflation. Later, the government suspended inflation adjustment and introduced foreign exchange restrictions by emergency law. When evaluating these measures, the tribunal observed: "[t]he measures that are complained of did in fact entirely transform and alter the legal and business environment under which the investment was decided and made"[11] and found Argentina in violation of FET standards.

The scope of reasonable and legitimate expectation was aptly summarised in Tecmed v. Mexico: "[t]he foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relation with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments, as well as the goals of the relevant policies and administrative practices or directives, to be able to plan its investment and comply with such regulations."[12]

10. Lauder v. Czech Republic, Final Award, 3 September 2001, para. 232
11. CMS v. Argentina, Award, 12 May 2005, para. 275
12. Tecmed S.A. v. Mexico, Award, 29 May 2003, para. 15

Unlawful Expropriation

The international investment protection regime prohibits expropriation of investments except when it is done with prompt and adequate compensation, for a public purpose, in accordance with due process, and on a non-discriminatory basis. According to arbitral practice such prohibition includes not only direct expropriation, but also a broad spectrum of measures, often termed "creeping expropriation".

Firstly, many of the measures described above as a violation of FET standard can be found to amount to expropriation, depending on the impact they had on the economic value of the investment. As articulated by UNCTAD: "[c]ertain governmental measures may not involve an actual physical taking of property, but may still result in the effective loss of management, use or control, or a significant depreciation of the value, of the assets of a foreign investor." This is precisely the effect that aforesaid Russian regulations have.

The most obvious regulation to consider in the context of unlawful expropriation is the Presidential Decree No. 302 of 25 April 2023, which mandates appointment of the Federal Agency for State Property Management as the temporary manager of certain companies and/or assets. According to the decree imposition of a temporary manager can be triggered by any of the following:

- deprivation of the Russian Federation, Russian legal entities or individuals of the right to property located in the foreign states,
- restrictions of their property rights, the event of threat of such deprivation or restrictions of property rights, the event of threats to national, economic, energy, or other types of security of the Russian Federation.

Notably, Russia explicitly frames the decree as a retaliation against western sanctions. Putin's press secretary Peskov commented on the decree: "Actually, the main purpose of the decree is creation of a compensation fund for the possible application of mirror measures in response to the illegal expropriation of Russian assets abroad."

Moreover, all companies subject to Decree 302 at the time of writing announced their plans to exit Russia back in 2021-2022. In March 2022 Fortum announced a suspension of all new investment projects and financing in Russia, and in May 2022 the company announced that it was seeking a controlled exit from the Russian market. Uniper notified the Russian Government of its intention to sell its Unipro stake in 2021, and a contract with a Russian buyer was signed in September 2022. Russian presidential approval for the transaction is still pending. Similarly, Carlsberg and Danone both announced their plans to exit Russia and halted new Russian investments in 2022. Carlsberg Group reportedly signed a contract to sell its stake in Baltika LLC subject to an approval from the Governmental Commission for Foreign Investment Control. Only one of the affected companies, Fortum, formally sent notices of arbitration to the Russian Federation at this point.

13. Further details on Presidential Decree No. 302 can be found in the section "Expropriation of Assets" and in Annex 1.

There is a strong indication that Russia will continue to expand the list of foreign companies subject to this measure. Not only because it falls in line with Russian policy towards foreign investors, but also because several Russian high-ranking officials made relevant announcements. Specifically, Vice Prime Minister and Minister for Trade and Industry Denys Manturov stated that Russia shall "actively invoke temporary management at the entities owned by bad faith investors", he explained that the term "bad faith investors" denotes companies who remained in Russia but suspended further investment projects. Further, head of the VTB Bank Andrey Kostin stated that "... it is only fair: they took our banks, we need to take their banks."

Even though Decree 302 and Russian official commentators allege that the original owners of the assets retain the legal title to such assets, it is rather obvious that foreign shareholders lost any control of such assets. Imposition of temporary external administration was specifically recognized to be a measure amounting to expropriation by international tribunals. In Payne v. Iran[14] the outside managers were appointed on a "provisional" basis but the respective Iranian law "did not prescribe the length of government control and did not provide for judicial or administrative determination of whether the property should be returned to its original owners."[15] The tribunal concluded: "[w]hile one of the purposes of the Law of 16 June 1979 is the appointment of managers on a "provisional" basis, the sum effect in this case was the deprivation of any interest of the original owners in the companies once they were made subject to provisional management by the Government."[16] Of note, the tribunal also determined the date of imposition of "provisional" managers as the date when effective expropriation took place: "if at "the date of the government appointment of "temporary" managers there is no reasonable prospect of return of control, a taking should conclusively be found to have occurred as of that date."[17]

As discussed in the section "Expropriation of Assets" above, on 24 May 2022 Russian Parliament approved in the first reading the draft Federal Law "On External Administration for the Management of an Organization". The bill proposes imposition of external management in companies with at least 25% of foreign investment, which are considered to have "a significant role for the stability of the economy and civil circulation, the protection of the rights and legitimate interests of citizens of Russia." If adopted the bill will further "legitimise" appropriating assets of foreign investors, who seek to exit Russia, since external management could be imposed when there is "actual termination or suspension of operations or, scaling down of operations" or "reduction of company's revenues for three full months by at least 30% compared to the preceding three month and/or compared to the same period of the previous year."

14. Thomas Earl Payne v. The Government of the Islamic Republic of Iran, IUSCT Case No. 335
15. Payne v. Iran, para. 23.
16. Payne v. Iran, para. 20.
17. Payne v. Iran, para. 23.

Recommendations

- **Accelerate the exit:** Foreign investors should consider accelerating their exiting efforts before the draft Federal Law "On External Administration for the Management of an Organization" is enacted;
- **Initiate proceedings:** Companies affected by retaliatory measures should consider initiating investment arbitration proceedings against Russia;
- **Create a consortium:** Companies with similar claims could consider the possibility of creating a "consortium" of claimants at the pre-arbitration stage of a dispute to exert pressure on the Russian government and to demand acceptable exit terms as a part of settlement agreement. This strategy can yield results, especially for smaller companies, because based on the nature and effect of Russian laws and regulations Russia may face an avalanche of investment claims and should be more predisposed to settle.

CONCLUSION

This report presents a critical assessment of some of the most common justifications used by companies to continue their presence in Russia. Businesses have had many opportunities to observe all the risks of operating in Russia since 2014. Even after the full-scale invasion of Ukraine in 2022, many have dragged their feet and continued operating in a high-risk environment, disregarding their responsibilities under internationally recognised standards on business and human rights. In doing so, they have largely failed to conduct hHRDD and apply a conflict-sensitive approach.

With a prolonged presence in the Russian market, many companies have begun to use similar arguments to justify their continued operations, even while other companies were exiting so as not to contribute to the severe violations of humanitarian and human rights law committed in Ukraine. As discussed, when heightened human rights assessments indicate the necessity of exiting, these barriers, while sometimes valid and real, can and must be overcome.

The process of exiting, however, must be conducted with robust due diligence. As highlighted by the UNDP, the process of exiting must include considering "whether exiting could exacerbate tensions within a conflict-affected setting and whether the adverse impacts of the decision to exit or suspend the operations outweigh the benefits relative to human rights."

Despite the many company justifications, in most cases it is more likely that the human rights risks, as well as financial, legal, operational and reputational risks, significantly outweigh the benefits of remaining in the country. Most importantly, companies who decide to remain are contributing to financing the illegal war against Ukraine, thereby becoming complacent and potentially linked to the Kremlin's aggression and war crimes.

B4Ukraine once again urges businesses to undertake hHRDD, including conducting human rights risk assessments, and if the outcome of such processes concludes that leaving the Russian market is the only option in which the company is compliant with the internationally accepted standards on business and human rights, the company should responsibly exit Russia. In doing so, companies must be guided by internationally-recognized business and human rights frameworks and their underlying human rights principles of responsible and ethical business conduct.

Despite the existing barriers, it is possible to undertake a responsible exit that strikes a balance between minimising the negative human rights impacts of leaving while preventing complacency and connection to Russia's war against Ukraine. Companies must navigate these challenges and uphold their responsibilities, ensuring that their actions align with principles of human rights, humanitarian law and responsible business conduct. Such a responsible exit will not only safeguard their reputation and credibility but also contribute to a more just and accountable global business environment.

ANNEX 1.

Chronology of the most relevant Russian restrictive regulations:

- **1 March 2022** - The Russian Central Bank circulated a letter establishing a ban on all bank transfers abroad from bank accounts of individuals and legal entities from “unfriendly” states. The ban was initially to be in force for the time period through 31 March 2022, but later was prolonged until 30 September 2023.
- **5 March 2022** - Governmental Decree No. 430 approved a list of “unfriendly” states containing more than 50 states and territories, including the United States, all EU member states, Ukraine, the United Kingdom (including all British Overseas Territories and Crown Dependencies, which were added on 29 October 2022), Australia, Canada, Norway and Switzerland.
- **5 March 2022** - Presidential Decree No. 95 “On the Temporary Procedure for Complying with Obligations owned to Certain Foreign Creditors” establishes a special procedure for repayment of loans and performance under other financial instruments issued by creditors from “unfriendly” states. Payments under such obligations exceeding 10 million rubles per month can only be made in rubles (regardless of the contractual terms), and to a special type "C" account in Russian banks exclusively. (Type “C” accounts allow for extremely limited list transactions, please see the Decision of the Board of Directors of Bank of Russia of 24 June 2022). The decree also mentions that the Ministry of Finance and the Central Bank of Russia can authorise payments beyond the outlined procedure. However, the Decree provides no guidance regarding the process for seeking this authorization or the criteria by which such authorization will be granted.
- **5 March 2022** - Ministry of Finance issues a clarification, whereby restrictions imposed by Decree No.95 shall apply to payment of dividends to foreign shareholders (affiliated with “unfriendly” states) of Russian joint-stock companies. Meaning that such shareholders can receive dividends exceeding 10 million rubles a month only in rubles and such funds can be credited only toward type "C" accounts in Russian banks exclusively. (Type “C” accounts allow for an extremely limited list of transfers of funds from such accounts, please see the Decision of the Board of Directors of Bank of Russia of 24 June 2022). The decree also mentions that the Ministry of Finance and the Central Bank of Russia can authorise payments beyond the outlined procedure. However, the Decree provides no guidance regarding the process for seeking this authorization or the criteria by which such authorization will be granted.
- **8 April 2022** - The Russian Parliament introduced a draft law N 103072-8 allowing the Russian government to expropriate the property of foreign nationals/companies affiliated with “unfriendly countries” without any compensation. The bill was withdrawn from consideration, but it signalled to foreign investors that a similar law might be adopted in the near term.

4 May 2022 - Presidential Decree No. 254 “On the Temporary Procedure for Performing Financial Obligations Pertaining to Corporate Relations Towards Certain Foreign Creditors” established that dividends payable to foreign (affiliated with “unfriendly” countries) investors in Russian limited liability companies exceeding 10 million rubles per month can only be paid in rubles, and to a special type "C" account in Russian banks exclusively.

24 May 2022 - A draft Federal Law “On External Administration for the Management of an Organization” is approved by the Russian Parliament in the first reading. External administration is designed to prevent foreign companies from exiting Russian markets.

According to the bill, external administration can be imposed based on a court order in companies that meet the following cumulative criteria:

- An entity affiliated with “unfriendly” state holds directly or indirectly at least 25% of shares or participatory interests in a Russian company in question; and
- Such company is considered to have “a significant role for the stability of the economy and civil circulation, the protection of the rights and legitimate interests of citizens of Russia”.

Imposition of external administration can be triggered if any of the following grounds occur:

- Company’s management stops running a company;
- Company engages in actions or omissions, that lead to considerable reduction of company’s assets or company’s failure to perform its obligations;
- Company engages actions leading to “unjustified” termination of operations;
- Actual termination or suspension of operations or, scaling down of operations; and
- Reduction of company’s revenues for three full months by at least 30% compared to the preceding three months and/or compared to the same period of the previous year.

Temporary administration function will be vested in the state-owned corporation “VEB.RF”

24 June 2022 - Decision of the Board of Directors of Bank of Russia on establishing regime of type “C” bank accounts stipulates that non-residents can transfer funds from such accounts for the following exhaustive list of transactions:

- payment of taxes, duties, fees and other obligatory payments payable in accordance with the budget legislation of the Russian Federation;
- transfers for the purchase of federal bonds placed by the Russian Ministry of Finance;
- transfers to bank accounts of type "C";
- transfers to brokerage accounts of type "C" and special brokerage accounts of type "C", trading bank accounts of type "C", clearing bank accounts of type "C";
- payment of commissions to an authorised bank servicing the account;
- transfers to Russian residents in connection with the transfer of securities;
- transfers to Russian residents for payment of a penalties (fines, penalty fees) for certain transaction; and
- return of funds erroneously credited to a type “C” bank account.

5 August 2022 - Presidential Decree No. 520 "On Application of Special Economic Measures in Financial and Fuel and Energy Sectors in Connection with Unfriendly Actions of Certain Foreign States and International Organizations "prohibits execution without approval of the president of Russian Federation of any transactions resulting, directly and/or indirectly, in acquisition, modification, termination, or creation of any encumbrance over the rights to own, use, or dispose of:

- securities issued by Russian legal entities;
- participation interests in the charter capitals of Russian legal entities;
- and participation interests, rights and obligations held by parties to production sharing agreements, joint operating agreements, or other agreements under which investment projects are implemented in Russia.

The prohibition specifically applies to the following assets:

- Shares in the so-called “strategic stock companies” listed in Presidential Decree No. 1009 dated August 4, 2004, "On Approval of the List of Strategic Enterprises and Strategic Stock Companies";
- Shares (participation interests) in entities in which the above strategic stock companies own any shares (participation interests), directly or indirectly;
- Participation interests, rights, and obligations of the participants in the certain production sharing agreements;
- Certain entities in energy sector; and
- Shares (participation interests) in Russian credit organisations (e.g., banks) according to the list approved by the president.

According to the Decree transactions executed without approval of the president shall be null and void. Initially, the restriction was effective until December 31, 2022 with possibility of repeated prolongation. At the time of writing, it applies until December 31, 2023.

8 September 2022 - Presidential Decree No. 618 “On a Special Procedure For The Implementation (Execution) Of Certain Types Of Transactions Between Certain Persons” introduces a restriction, whereby transactions between foreign entities and/or persons connected to “unfriendly” jurisdictions and other foreign entities or Russian residents, that result directly and/or indirectly, in acquisition or other change in title to shares and/or participatory interests in Russian-incorporated entities can be executed only upon approval by the Russian Foreign Investment Commission. The Decree applies to companies that are not subject to Decree No. 520, i.e., transactions with such companies do not require approval from the president of the Russian Federation.

15 October 2022 - Presidential Decree No. 737 “On Certain Aspects of Performing Certain Types of Transactions” imposes restrictions on funds distributions to entities affiliated with “unfriendly” states in relation to the liquidation of Russian-incorporated companies, the reduction of the charter capital of such companies, and in course of procedures related to bankruptcy. Such payments exceeding 10 million rubles a month can only be made in rubles and such funds can be credited only toward type "C" account in Russian banks exclusively. Transfer of funds in any other manner can only be done upon authorization from the Ministry of Finance and Central Bank of Russia.

22 December 2022 – The Governmental Commission for Foreign Investment Control approves a list of criteria for authorising sales of shares and participatory interests in Russian-incorporated entities:

- assets must be sold with a discount of no less than 50% of the market value indicated in the asset appraisal report;
- seller must agree to payment deferment for 1-2 years, and/or
- to commit to voluntarily transfer at least 10% of the transaction value to the federal budget.

Simultaneously the Commission approves a list of criteria, that can be considered when authorising payment of dividends to foreign investors:

- Sum of dividends amounts to no more than 50% of company's net profit for the preceding year;
- Retrospective analysis of payment of dividends in the past;
- Readiness of foreign investors to continue to operate in Russia;
- Opinion of the federal executive authorities and Central Bank of Russia regarding company's "significance for technological and industrial sovereignty of the Russian Federation, social and economic development of the Russian Federation";
- Federal executive authorities establish quarterly key performance indicators for the company in question; and
- Dividends can be payable on a quarterly basis, provided that the company meets the key performance indicators, established by the federal executive authorities.

17 January 2023 – Presidential Decree No. 16 "On the Temporary Procedure for Decision-Making by the Governing Bodies of Certain Russian Business Enterprises" establishes qualified entities are allowed to disregard votes cast by foreign investors (affiliated with "unfriendly" states) or their representatives in board of directors and supervisory boards. The decree applies to companies that meet the following cumulative criteria:

- The company operates in energy (including electricity), engineering, or trade sectors;
- Sanctions have been imposed by "unfriendly" states on the controlling entity and/or beneficial owner.
- Foreign investors affiliated with 'unfriendly' countries do not own more than 50% of the charter capital, and
- Revenue for the preceding year exceeds 100 billion rubles.

2 March 2023 – The Governmental Commission for Foreign Investment Control amended requirements for the companies seeking to divest from Russia:

- Mandatory contribution to the federal budget of at least 10% of the half of market value stated in the asset's appraisal report, and
- Mandatory contribution to the federal budget of at least 10% of the full market value according to the asset's appraisal report, in cases when the assets are being sold with more than 90% discount of the market value stated in the asset's appraisal report.

- **25 April 2023** - Presidential Decree No. 302 "On Temporary Management of Certain Assets, Including Movable and Immovable Assets And Equity Interests In The Capital Of Russian Legal Entities":

  - Establishes the general framework for appointment of the Federal Agency for State Property Management as the temporary manager of qualified assets;
  - Applies to the assets of the companies associated with "unfriendly countries";
  - Purportedly is enacted in response to restrictive measures of sanctioning nations and "in order to protect national interests of the Russian Federation";
  - Imposition of temporary management can be triggered by any of the following:
  - deprivation of the Russian Federation, Russian legal entities or individuals of the right to property located in the foreign states, or
  - restrictions of their property rights, the event of threat of such deprivation or restrictions of property rights, the event of threats to national, economic, energy, or other types of security of the Russian Federation;
  - Authorization of the Federal Property Agency to exercise all the rights of the owner of such assets, except for disposal of the assets;
  - Federal Property Agency to be appointed as a manager ostensibly as a temporary measure, however such appointment can be terminated only by decision of the president of the Russian Federation; and
  - Assets to be placed under temporary management are listed in the annex to the decree and can be expanded at any time.

  After amendments of July 16, 2023, the Decree 203 applies to the following assets:

  - 98.2% of shares in JSC Fortum, owned by Finland's majority State-owned Fortum Oyj. Fortum's Russian assets include seven thermal power plants and a portfolio of wind and solar generation capacities.
  - 83.73% of shares in Russian energy company Unipro, owned by German state-owned Uniper SE. Unipro operates five power plants in Russia.
  - 100% of shares in Danone Russia JSC, 99.99% of which are currently held by Produits Laitiers Frais Est Europe (France) and 0.01% – by Danone Trade LLC (a wholly owned Russian subsidiary of Danone Russia JSC).
  - 100% of participatory interests in Brewing Company Baltika LLC, 98.56% of which are currently held by Carlsberg Sverige Aktiebolag (Sweden), 1.35% by Hoppy Union LLC (wholly owned Russian subsidiary of Carlsberg Sverige Aktiebolag) and 0.09% by Carlsberg Deutschland GmbH (Germany).

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