

Rödl & Partner

NEWSLETTER BELARUS

BUILDING BRIDGES

August
2022

Restrictive measures | Disposal of shares
in Belarusian companies

www.roedl.de/belarus | www.roedl.com/belarus



Content of this issue:

- Background
- Restricted entities
- Disposal restriction
- Practical implications
- To-do steps

→ Background

On 14 March 2022, as a counter reaction to EU sanctions the President of Belarus signed its Edict No. 93, which became the primary “countersanctions law” in the Republic of Belarus. The Edict provides for several restrictions for persons from so called “unfriendly countries”.

“Unfriendly countries”	
EU member states, UK	USA
Norway	Canada
Switzerland	Australia
New Zealand	Iceland
Albania	North Macedonia
Montenegro	Lichtenstein

Up to now the restrictions set forth in the Edict No. 93 have been of rather declarative nature, and the Edict No. 93 required further clarifications when it comes to its applicability - in particular, the list of companies affected by the measures.

One of such measures implies the following:

- Foreign shareholders from “unfriendly countries” shall be restricted from disposal of shares held in Belarusian companies as per the list to be adopted by the Belarusian Government (Council of Ministers).

More than three months had passed since the adoption of Edict No. 93 without any public discussion or announcement of the list of these Belarusian companies at the official level.

In the meantime, on the 1 July the Belarusian Government adopted its Resolution No. 436, which was published on 4 July 2022. The Resolution No. 436 envisages the list of 190 Belarusian entities (“**Restricted entities**”) and their shareholders from “unfriendly countries”. Such shareholders are no longer allowed to dispose shares in the Restricted entities they hold.

Below please find the overview of key implications, connected with newly adopted restrictions.



→ Restricted entities

The ongoing list of Restricted entities includes many prominent representatives of German, Austrian and Swiss businesses, some of which are presented below.

Restricted entity	Shareholder
Vitarautomotiv OOO	Fenox Automotive GmbH
Lucoil Belarus IOOO	Lucoil International GmbH
NEP ECO OOO	NEP ECO GmbH
Refralit OOO	ECF Consulting GmbH
Steklograd OOO	BSD Handels GmbH

Restricted entity	Shareholder
Energotechprom OAO	Awos Bigl Beteiligung und Finanzierung GmbH
Becker-system OOO	Becker GmbH
Zeiss-Belomo OOO	Carl Zeiss Iena GmbH
Transrail BCh OOO	Interrail Holding AG
Bibus SOOO	Bibus AG
Remondis SOOO	Remondis International GmbH

We will be happy to provide you with the full list in Russian or conduct a check to see if a specific company is included in the list. The inclusion in the

list of Restricted entities was carried out according to criteria that are not completely rationally comprehensible in all cases. As a matter of course, some of the large-scale foreign investment

projects are included. However, many well-known EU companies, falling into such category, remain unaffected.

→ Disposal restriction

The only restriction envisaged in the Resolution No. 436 **prohibits disposal of shares** in the Restricted entities by the “shareholders from unfriendly countries”.

It shall be noted, that the Resolution No. 436 is drafted in an utterly generalized way, namely:

- to assign the Ministry of Justice and the Ministry of Finance to adopt the measures required for implementation of the said Resolution.
- to define the list of Belarusian legal entities, which shareholders, being the persons from “unfriendly countries”, are restricted from disposal of shares in legal entities they hold as per the list indicated in the annex.

The actual scope of the restrictions is therefore currently still unclear.

The following consequences can derive from the wording of the Resolution No. 436:

- when it comes to stock Restricted entities (OAO/ZAO), the stocks held by “unfriendly” shareholders are already blocked;
- when it comes to limited Restricted entities (OOO/ODO), it is more than likely, that Belarusian State Registrars will deny

recording of accomplished change of shareholders.

In Belarus the change of shareholders in limited companies (OOO/ODO), which comprise the majority in the list of Restricted entities, is registered in rather simplified way. By default the course of procedure is as follows:

Change of shareholders in OOO/ODO	
1	The parties conclude a share purchase agreement (“SPA”) and formalize a transfer of shares in a Belarusian limited company (a simple written form by default suffices);
2	New shareholders procure modifications to the Articles of Association of such Belarusian company (“Articles”), reflecting new composition of shareholders;
3	The company submits Articles to the State Registrar, whilst the latter registers them and reflects the data on new shareholders in the Belarusian business register (EGR). No involvement of the seller under the SPA is required. Thereupon, the change of shareholders takes effect for third parties.

Therefore, in case modifications to the Articles of Restricted entities reflect the change of an “unfriendly shareholder”, the State Registrar shall deny registration.

→ Practical implications

Scope of restrictions

It shall be noted that the Resolution No. 436 only restricts “**unfriendly shareholders**” from **disposal of shares** in the Restricted entities they hold. Thus, the Resolution No. 436 has nothing to do with:

- Expropriation or other share withdrawal whatsoever;
- Restriction on payment of dividends by Restricted entities;

- Restriction of corporate governance at the Restricted entities (e.g. voting at general shareholders' meeting) whatsoever.

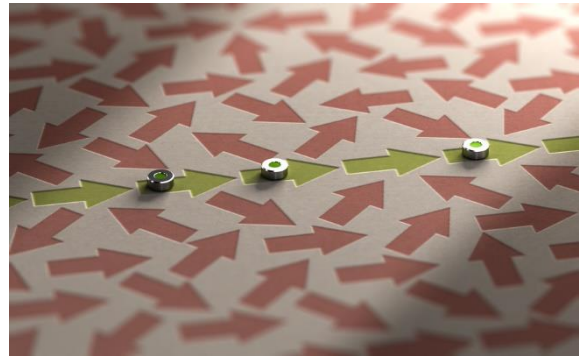
Therefore, the Resolution No. 436 shall not affect the business processes within the Restricted entities.

On the other hand it clearly impedes any planned exit or restructuring measures - such as an MBO.

Outstanding issues

As of now there are no official clarifications available with respect to the Resolution No. 436. The following issues remain unclear:

- The Resolution No. 436 provides for no clarifications whether any alternative ways of shares disposal (e.g. reorganization, withdrawal) are possible;
- The Resolution has no exceptions out of a general prohibition concerning the Restricted entities;
- It remains open whether indirect disposal of the shares (e.g. via the sale of shares in a foreign holding company) is also prohibited, whereby the questions of possible consequences in Belarus in the event of a violation arise.



- Is the present list conclusive or should it be expected that further companies and shareholders will be added to the list or that the ban on disposal of the shares will be extended in general?
- In Belarus the conclusion of SPAs by default is allowed in a simple written form. In the light of the Resolution No. 436 such SPAs to be concluded by "unfriendly shareholders" with respect to the Restricted entities stand chance of being treated as void;
- The UBOs of some of the Restricted entities are Belarusian nationals, who exercise control over them indirectly via foreign enterprises (SPVs). Thus, for some businesses the Resolution No. 436 has become a "friendly fire" and affected Belarusian entrepreneurs.

→ To-do steps

1. Any restructuring measures and transactions involving Restricted entities should be carefully considered.
2. It should be noted, that the list of Restricted entities could be supplemented - up to a general restriction on disposal for all shares held by shareholders from "unfriendly countries".

Companies with foreign shareholding that are likely to be affected should therefore examine at short notice which measures should be taken to avoid eventual restrictions.

3. We recommend to continuously follow the clarifications, comments as well as the practical application of new restrictions by the state authorities. We will be happy to keep you informed.

Contacts for further information



Yuriy Kazakevitch
Associate Partner
Head of legal services
T +375 17 2424 284
M +375 29 6218 974
yuriy.kazakevitch@roedl.com



Tobias Kohler
Partner
Head of offices
Lithuania and Belarus
T +370 5 2123 590
M +370 687 33 288
tobias.kohler@roedl.com

Sign up for our LinkedIn page for news and updates: [Rödl & Partner Belarus »](#)

Imprint

Publisher:
Rödl & Partner
Ul. Rakovskaya, 16B-5H
220004 Minsk, Belarus
T +375 17 2424 284
minsk@roedl.com
www.roedl.de/belarus
www.roedl.com/belarus

Responsible for the content:
Yuriy Kazakevitch
yuriy.kazakevitch@roedl.com

Layout/Type:
Yuriy Kazakevitch
yuriy.kazakevitch@roedl.com

This article is a non-binding information offer and serves general information purposes. It does not constitute legal, tax or business advice, nor can it replace individual advice. Rödl & Partner always endeavours to exercise the greatest possible care in the preparation of the article and the information contained therein, but Rödl & Partner is not liable for the correctness, up-to-dateness and completeness of the information. The information contained herein does not refer to any specific circumstances of an individual or legal entity, therefore professional advice should always be sought in a specific individual case. Rödl & Partner accepts no responsibility for decisions made by the reader on the basis of this articles. Our contact persons will be happy to assist you.

The entire content of the article and the technical information on the Internet is the intellectual property of Rödl & Partner and is protected by copyright. Users may download, print or copy the contents of the guide only for their own use. Any changes, duplication, distribution or public disclosure of the content or parts thereof, whether online or offline, require the prior written consent of Rödl & Partner.