

A Port and a Coal Mine to Boot

In 2018, a client of the company, a large private equity fund with a number of diversified assets in Russia, faced a choice: to continue managing and owning assets from abroad based on English-law governed documentation or to relocate management and update the transaction documentation based on novelties introduced into the Civil Code of the Russian Federation allowing for a legal regime similar to that existing under English law. A decision was made to kick start the redomiciliation process with respect to two assets – a port in the Far East and a coal mine in Eastern Siberia. The task was non-trivial – it involved more than 20 transactional documents and their approval among project partners, one of which included a large corporation.

The Historical Role of English Law

In many international projects involving Russian money, especially in the field of business and investments, documentation, including share purchase agreements, shareholder agreements, and joint venture agreements, has historically been governed by English law. This was due to the fact that English law had until recently enjoyed international recognition and widespread use in Russian deals, including among international companies and lawyers.

One of the main reasons for the use of English law in international transactions is its sophistication and stability. The English legal system has developed over several hundred years and includes an extensive regulatory framework and a large number of court cases on various legal aspects of contract law. Until 2014, this gave the parties to the deal confidence that the documentation would be subject to clear and well-thought-out rules facilitating the settlement of disputes and the resolution of disagreements.

Another reason for the use of English law is its wide application in international transactions. Large international companies and lawyers working on cross border transactions often have experience working with English law and are familiar with its peculiarities. This facilitates the process of concluding deals and settling disputes between parties from different countries.

However, despite all its advantages, the use of English law in international transactions may also have its drawbacks. For example, different countries may have different legal requirements and norms that may contradict English law. In addition, the use of English law often leads to additional expenses for translating documentation and for the services of lawyers who specialize in English law. The main reason for the reduction in the share of the use of English law in deals involving Russian money was the concern about the involvement and increased politicization of the English judicial system.

The Increasing Role of Russian Law

In 2015, a number of changes and additions were introduced to the Civil Code of the Russian Federation, which essentially incorporated into Russian contractual law a number of branches of English law. In particular, civil law introduced norms regulating representations of circumstances, indemnity, option agreements, and several others. There were several reasons for these changes. One of them was the legislator's attempt to win for Russia the cross-border transaction market involving Russian assets and money. Another reason pertains to geopolitical changes that began in the spring of 2014 – the use of English law gradually became and by March 2022 became completely unsafe for Russian individuals due to the increasing bias of English courts and arbitration courts. Gradually, lawyers started recommending the use of

Hong Kong law, which is very close in nature and content to English law.

The Firm's Expertise and Project Completion

Our firm's in-depth knowledge and understanding of the basic institutions of English contract law helped us advise our client in preparing share purchase agreements, shareholder agreements, joint venture agreements, option agreements, and a few others under Russian law. The project had taken a year and a half from start to finish and then some for various ancillary work. We were deeply touched by the praise of our client's major counterparty for our efforts in making this project completed.