C&G INSIGHTS

Build to Exit:
Why the Time to Plan Your Escape Is Before You Need One

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In February 2022, hundreds of multinational companies operating in Russia faced a decision that their corporate structures weren't designed to handle: exit, immediately, from a jurisdiction which became the target of the most massive international sanctions ever. Most importantly, they had to do it quickly, without triggering unintended consequences across the rest of their global operations.

The majority could not make a clean break, not because they lacked the will, but because they had never built the architecture to make it possible.

The companies that struggled the most were the ones that had combined their Russian operations with other businesses inside shared holding structures. These arrangements made perfect organizational sense in a stable environment, but made a quick exit nearly impossible. While the companies had done nothing wrong, unwinding those structures under sanction pressures and the collapse of important relationships was some of the most complex and costly corporate legal work I have seen in my career.

Now, looking back at a more than four-year history of "exits" from the Russian market, there are a few lessons learned which would be useful today, particularly as geopolitical risks continue to rise.

Structural Problems Aren't the Risk. The Assumption of Stability is.

Most corporate holding structures are designed for efficiency, including consolidated reporting, intercompany financing, taxes, and protection of foreign investments, among others. These legitimate objectives, under normal conditions, serve companies well. The problem arises when companies assume that the regulatory and political environment will remain broadly stable.

When an administration or people in authority become subject to sanctions or sudden regulatory hostility, the question is no longer how to optimize the structure. It is whether the structure permits a clean separation at all. If a company's at-risk jurisdiction is embedded within a broader regional holding vehicle alongside other markets, the answer is frequently: not without significant cost, delay, and collateral disruption to operations that were never the source of the problem.

The companies I advise that navigated Russian exits most effectively were the ones that moved fastest and that had, years earlier, made a deliberate choice to maintain structural separation between their Russian operations and the rest of their portfolio.

The most efficient structures proved to be the ones in which there was an intermediary offshore holding company between the Russian asset and the international group, which did not hold assets other than the Russian ones and could have been divested quickly at the offshore level without triggering the Russian transfer formalities. Structured correctly, a transfer at the offshore holding level to a related party could have been completed without the requirement to obtain Russian government consents.

In the case of Russia, a bonus point was if the offshore holding company was set up in a jurisdiction which Russia considers "friendly", i.e. GCC, Turkey, China (including Hong Kong), and CIS countries. Historically, most international groups held their Russian assets through European sub-holdings registered in Cyprus, the Netherlands, Germany, and Luxembourg, among others. When Russia responded with "counter-measures" to the international sanctions, these jurisdictions were cut from receiving funds from Russia, leading to massive amounts of "trapped" cash held in domestic accounts of Russian subsidiaries of international groups. Where the immediate holding companies were based in friendly jurisdictions, the divestment to another "friendly" party allowed to solve some of the issues with cash repatriation.

Moving Quickly and Understanding Jurisdictions Are Key

Naturally, all of the above solutions proved to be helpful only when the companies moved quickly in their divestment process, because Russia quickly enacted legislation closing the gaps for those offshore holding entities which were ultimately controlled by "unfriendly" groups. Still, if you are a General Counsel looking at your international group structure from a perspective of potential exit from a given market, you may wish to consider which jurisdictions would be best positioned to execute an exit, with minimum regulatory and administrative burden on the group.

Another solution allowing divest control (if not entire shareholding), which proved particularly instrumental in cases where the international group had a local JV partner, was to enter into an option agreement with the local partner allowing such partner to buy the international group's stake. Although this still required consents from the government, the presence of a clearly identified buyer allowed to reduce the pressure from the need to run a tender process and find a buyer.

In some circumstances, divestment of control was achieved as easily as through waiver of controlling rights available to the international group through the JV SHA, without even the actual transfer of shares. This solution allowed the local partner to take control of the Russian subsidiary and the international group – to de-consolidate the Russian business. Further structuring options available in some jurisdictions include automatic redemption of shares by the company, depositing shares in escrow or fund. All of this could allow the international group to quickly divest its control over the problematic asset, should the need arise at any point.

Needless to say, all of these options require complicated legal analysis and structuring in order to comply with the relevant merger control, FDI, sanctions and compliance rules. As the Russian example has demonstrated, the government enacted a great deal of "emergency" legislation imposing severe prohibitions almost immediately. This, on top of all the customary approvals (e.g., merger control), meant the parties divesting assets had to obtain separate approvals from the Russian government for each exit, and the framework for such approvals was not elaborate and the approval process was politically driven.

Which Markets Require This Thinking Now

Russia was a defining event, but not a unique one. The same structural logic applies to any market where the probability of sudden disruption, even a marginal one, exists, and particularly on emerging and frontier markets.

China is the most significant current example. Companies with Chinese operations that are integrated with the rest of their Asia-Pacific or global holdings face precisely the scenario that materialized in Russia: a potential need for rapid divestiture or operational separation in an environment where the legal and regulatory mechanisms for doing so may be constrained or adversarial. The time to examine that structural exposure is not when tensions escalate. It is now, when there is time to act thoughtfully without pressure.

CIS countries other than Russia present a similar challenge. Companies from these countries have used European and Middle Eastern holding structures to access international capital markets and establish governance credibility. While those structures were built for accessing international capital markets purposes, the same exit vulnerabilities exist.

What Structuring for Disruption Actually Looks Like

The practical framework is not complicated in principle, though it requires focused attention during the deal rather than as a retrospective exercise.

The core principle is that at-risk markets should not share holding structures with stable ones. Exit from one should not require legal action in the other. Intercompany financing arrangements, IP ownership, and employment models should all be examined through the lens of what an exit would require, not just what is most efficient. Companies operating within at-risk markets should maintain IT, operational, supply and in some cases even decision-making independence, so that they could be divested from the main group and continue operating independently without the need for any transition services.

Equally important is ensuring that the decision-making authority and the contractual rights necessary to effect a divestiture are clear and exercisable without consent from counterparties in the at-risk jurisdiction, and not inadvertently constrained by local law provisions that may become inaccessible in a disrupted environment.

This isn't about market pessimism, but rather a risk management aspect which has become common in the current geopolitical environment. It simply requires the same discipline good corporate lawyers bring to any challenge:

- **Identify the exposure**
- **Understand the mechanics of resolution**
- **Build options before you actually need them**

The companies that win in global markets today are not the ones that avoid difficult geographies. They are the ones that entered them with the structure to exit cleanly if they ever had to.

Why This Matters, and How Cohen & Gresser Can Help

Operating across borders has always been complex. What has changed is the speed and unpredictability with which the legal and political ground can shift beneath a company's operations. Cohen & Gresser's corporate practice is built around the kind of cross-border transactional experience and geopolitical awareness that helps clients structure for the world as it is, not as it was when the holding company was formed.

Whether you are a General Counsel reassessing your company's exposure in light of current geopolitical conditions, a multinational evaluating a new market, or a private equity sponsor with portfolio exposure, the time to examine your structural optionality is before a disruption makes the question urgent.

We would welcome the opportunity to work through that analysis with you.

Olga Ponomarenko is a Partner in Cohen & Gresser's London office, advising clients on complex cross-border mergers and acquisitions, equity capital markets transactions, and corporate matters. She has particular expertise in multi-jurisdictional deals, sanctions compliance, and complex corporate reorganizations.