

Physical Presence Requirements for Foreign Tech Companies in Russia: How to Respond

FAQ

1. What is the benefit for Russia of requiring local representatives?

The Landing Law offers a toolkit to enable Russian authorities, courts and law-enforcement agencies to exert greater control over overseas tech giants doing business in Russia ("**Landing Law**"). The authorities require access to the local office in Russia to have a dialog with local users in order successfully enforce the current IT regulation. If the dialog is unsuccessful (as could be believed), they will follow the enforcing measures provided by the Landing Law.

2. Does the new law only apply to the actual owners of information resources (for example, administrators of the corresponding domain names of websites), or if the information resource is owned by a subsidiary, would the parent company also be subject to the new regulation?

The new law applies to those foreign companies that own information resources aimed at Russian users and that meet the criteria established by the Landing Law. If the parent company is not the formal and *de facto* owner of the information resource, it should not be subject to the new regulation. However, in this case, the actual owner of the information resource should be fully responsible for its activities.

3. How can we determine whether the new requirements of the Russian IT regulation apply specifically to our company?

The Landing Law applies to two groups of targeted multinationals.

The first group includes multinationals that meet the following criteria:

- 1) They own a website (or a webpage), an "information system" or a "computer program" (jointly called an "information resource" in the Landing Law).
- 2) Such information resource is accessed by more than 500,000 users located in Russia per day.
- 3) **Any** of the following conditions is met:
 - The information resource is in the Russian language or in any local language of the Russian Federation.
 - The information resource contains advertising targeting Russian users.
 - The multinational processes Russian users' data.
 - The multinational receives money from Russian individuals or legal entities.

The second group of targeted multinationals includes:

- 1) foreign hosting providers or other entities involved in maintaining information resources on the internet that are accessed by Russian users
- 2) businesses involved in internet advertising if the ads target Russian users
- 3) operators of online communications platforms accessed by Russian users

Importantly, the Russian internet watchdog ("**Roskomnadzor**") decides which multinationals from the second group will be subject to this law — but in accordance with methodology still to be approved by the Russian government.

Roskomnadzor will also maintain a public register of multinationals that will be subject to the Landing Law. If the number of their Russian users falls below 500,000 per day for three months, they may be removed from this register.

4. In practice, how will Russia's authorities decide who is under scrutiny?

The key targets of the new law are social networks, video platforms, messengers, email services, search engines, hosting providers, online stores, etc. Based on the list of 20 target companies mentioned informally by the Landing Law's stakeholders, the country of incorporation is not part of the essential criteria — all IT giants are the potential targets of the new regulation.

5. Are certain industries excluded from the new regulation, (say, medical device makers, car manufacturers and fashion companies)?

No industries are directly excluded from the Landing Law regulation.

6. Is the "views" threshold on a daily, weekly, monthly or cumulative basis?

The threshold is more than 500,000 users, located in Russia, **per day**. However, RKN will monitor the companies on a regular basis, and if within three months a company has less than 500,000 users per day on average, it should be excluded from the scope.

7. How are views counted: only separate devices (per device ID) or every click counts?

The methodology of counting views is currently under discussion. The draft methodology indicates that Roskomnadzor determines the number of users by counting users' one-time access to each information resource or program designed to access an information resource.

8. How can the Russian government determine clicks?

Users are counted based on the data provided by the owners of information resources themselves. If the number of users cannot be determined based on the data provided by the owner of the information resource, Roskomnadzor calculates the number of users based on its resources and open data.

The draft "view counting" methodology indicates that the Russian government will determine clicks based on, first of all, information provided by companies. There is a list of data that companies have to transfer to the Russian authorities. The list contains data allowing determination of the number of users. This data includes detailed technical information about users' equipment, users' identifiers and other information. Such requirements are established to prevent companies from calculating the number of their audience themselves. Companies are required to transfer raw data, and the authorities will independently interpret it.

9. How can foreign companies satisfy the requirements of the Landing Law?

In general, to satisfy the requirements of the Landing Law, foreign companies should take three steps: publish a feedback form, create an account on Roskomnadzor's website for official communications and establish a branch or representative office or incorporate a legal entity.

10. If a company fulfills the three obligations under the Landing Law, would it be enough for its compliance with Russian IT regulation?

No; if a company has physical presence in Russia, the Russian authorities (mainly Roskomnadzor) have an opportunity to require the company to fully comply with other requirements of Russian IT legislation, in particular, laws on the moderation of prohibited content and on the protection of personal data. Russian IT regulation is not limited to the new Landing Law only.

11. Should a local office be opened physically in Russia? Should its staff include real workers living in Russia?

To establish such local presence, you will have to choose one of the local corporate set up options envisaged by the Landing Law: (i) incorporate a Russian subsidiary or (ii) register a representative office or a branch in Russia.

A local subsidiary can be established in the form of a joint stock company (JSC) or a limited liability company (LLC). LLC is the most common choice, because it is easier to establish and cheaper to

maintain. Under the general rule, a foreign parent company is not liable for the obligations of its Russian subsidiary.

Branches and representative offices of a foreign company are not considered Russian legal entities but are, rather, subdivisions of a foreign parent company. Thus, all obligations/liabilities of a representative office or a branch are deemed to be the direct obligations/liabilities of a foreign company.

Setting up of a local presence requires a number of steps, including: (i) registering a branch, representative office or legal entity; (ii) renting premises; (iii) opening Russian bank accounts; and (iv) hiring employees. Also, the local office will then have to regularly file tax and other reports in Russia.

The local office should have a real address and employees to represent the foreign company in interactions with Russian state authorities and nationals.

To hire non-Russian staff, the local office and relevant non-Russian employees must obtain work permits from the Russian authorities. On average, it takes several months to obtain a work permit, but currently the timelines are strongly affected by the pandemic. The first CEO of the local legal entity (or head of the local representative office/branch) must be a Russian citizen.

12. When do we need to start the registration procedures for establishing a local office in order to meet the legal deadline?

The entire process from start to finish takes, on average, around one to two months, and should be fully completed by 1 January 2022. With this in mind, multinationals who fall under the Landing Law are advised to start the process by or around September 2021.

13. Does a local office result in the creation of a permanent establishment or in any other additional tax exposure in Russia?

Mere representational functions of a local office and/or procurement of regulatory compliance per se do not lead to the creation of a PE of the foreign company in Russia or otherwise subject the operations of the latter to Russian taxes. The answer may differ if the local office performs other activities apart from those required by the Landing Law. It cannot be excluded, however, that over time the Russian tax authorities could argue that the local office conducts commercial activity in Russia (e.g. by ensuring required regulatory compliance) and, thus, is deemed to have a PE of the foreign company in Russia.

Also, the local office generally increases the visibility of the foreign company's operations to the Russian tax authorities. The level of such increased visibility would differ and depend on the legal form of the local office and its functional profile. The local office may increase the long-term tax exposure of the foreign company in Russia. Overall, unlike a representative office or a branch, a separate legal entity may provide better protection from such tax exposure.

14. Would the Russian tax authorities and other state authorities have additional means of forced collection of potential assessments, penalties and fines from us if we open a local office?

Generally, the answer is yes. However, forced collection mechanisms available to the Russian state authorities would be broader if a local office is created as a representative office or branch and more limited if a local office is created as a separate legal entity.

15. If we do not agree to establish a physical presence in Russia, when will our resource be blocked?

The Russian authorities understand that resource blocking might not be an effective measure to force IT companies to comply with the new IT legislation, so before they resort to resource blocking they will try to use other tools, for example, advertising bans or bans on money transfers and payments.

16. Does the Landing Law provide the new sanctions for non-compliance?

The Landing Law does not provide any "sanctions" for non-compliance with its requirements — only enforcement measures. If the foreign company fails to meet the requirements of the Landing Law, the authorities may resort to the following enforcement measures: informing users about the breach of

applicable legislation by the company; advertising restrictions; bans on money transfers, and payments; etc.

17. Are you aware of attempts to seek assistance to enforce fines on foreign companies in other countries?

We are not aware of cases where the state bodies tried to seek assistance to enforce previously imposed fines against tech giants.

18. Can the Russian government try to do more than obtain blocking orders against IT companies? Has the government tried to seize trademarks of foreign companies?

Roskomnadzor has previously tested traffic slowdown systems to force a company to comply with content moderation orders. It seems that Roskomnadzor believes its traffic slowdown efforts were successful. Thus, Roskomnadzor and other state authorities are likely to believe that the threat of blocking and other steps can be a motivation for the tech companies.

We are not aware of cases where state bodies tried to seize trademarks of foreign companies.

19. The Landing Law stakeholders followed the Turkish experience; what are the key features of the Turkish case?

The Turkish authorities focused on social network activities. Therefore, the Turkish case provided new definitions and requirements, which were mainly introduced for large social media platforms in Turkey.

The Turkish law introduced the term "social network provider," which is defined as "natural persons or legal entities that provide the means for users to create, view or share content such as text, image, audio or location on the internet for the purposes of social interaction."

When talking about the application of this law to certain industries, it should be noted that there are no specific exemptions from the definition of "social network provider."

The Turkish law provides obligations for social network providers if they meet the criteria of 1 million daily visits from Turkey and the jurisdiction criteria (Turkey or abroad). The concern here is the same as the current concern in Russia: the law does not provide a method for calculating the amount of daily visits.

For a big social media platform with a large audience, the law imposes specific obligations, e.g., appointing a representative.

The most notable feature of the Turkish case is the active usage of fines and advertising bans. For instance, violation of the representative requirement entails the application of sanctions, i.e., fines from USD 1.5 to 4.5 million, an advertising ban and internet bandwidth reduction by 50% or 90%.

The Turkish case is described in detail on the following webpages:

[ICTA Publishes Procedures and Principles for Social Network Providers](#)

[ICTA Issues Advertisement Ban on Certain Social Network Providers](#)

[Social Media Related Amendments to the Internet Law](#)

20. How have companies reacted to the adoption of the new regulation in Turkey?

At first, social media platforms tried to push back against the new social network provider requirements. Some refused to appoint a representative for a few months, resulting in the implementation of the sanctions above. So far, the Turkish government has effectively implemented administrative fines and even imposed an advertising ban on companies refusing to comply with the law. The bandwidth reduction sanction has not yet been implemented as far as we know.

Eventually all the social media platforms notified by the Information and Communication Technologies Authority (BTK) appointed a representative and made public announcements that they would comply with the new law.

In that respect, it can be said that the new Turkish law was effective in bringing large social media companies to the jurisdiction of Turkey and having them establish a local presence.