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July 21, 2023

RE: RBI's business operations in Russia

Dear Mr. Kobza,

We write to you as [B4Ukraine](#), a coalition of Ukrainian and international civil society organizations working to curtail the financial resources enabling the Russian invasion of Ukraine. In the spirit of respect for the fundamental rights of all people, the rules-based international order, and a prosperous global economy, we expect companies to demonstrate public support for the people, democracy, and territorial integrity of Ukraine, opposition to Russia's war of aggression, and alignment with the UN Guiding Principles on Business and Human Rights (UNGPs).

We request an urgent dialogue regarding potential inconsistencies between RBI's responsibilities under international humanitarian and human rights law and the company's ongoing business operations and relationships in Russia that may contribute to, or be linked with, human rights harms. We are also writing to formally notify RBI on the serious and increasing risks the company faces by continuing its operations in Russia that may amount to complicity in human rights abuses committed by Russia and to urge you to:

- Immediately cease operations and presence in Russia and completely exit the Russian market.
- Refrain from any future business, trade, or investment in Russia until Russia ends its war in Ukraine, territorial integrity of Ukraine is restored, and accountability imposed for war crimes and the destruction of Ukrainian infrastructure and property.
- Establish and implement comprehensive human rights due diligence measures for any responsible exit from or re-engagement with Russia.

It has been over one year since Russia invaded Ukraine and the devastating impacts continue to shock the global conscience and shake the global economy. Russia is violating international humanitarian law (IHL), including war crimes and crimes against humanity, through attacks on civilians and civilian infrastructure (e.g., mass executions, sexual violence, torture, forcible transfer of civilians). More than 25,000 Ukrainian civilians have been killed and injured and millions more have been forced to flee their homes, creating one of the largest humanitarian and refugee crises of modern times. In recognition of the severity of abuses, in March 2023 the International Criminal

Court issued an arrest warrant for Vladimir Putin to answer war crimes charges.¹

Moreover, recent developments in Russia point to an expanding universe of financial, legal, and reputational risks facing those left behind.

On September 21, President Vladimir Putin escalated the war by announcing a “partial mobilisation” of the Russian population. The accompanying legislation ([Article 9 of Federal Law No. 31-FZ](#)) mandates all organisations, including the more than 1,500 international companies that are currently operating on a full or limited scale in Russia, to conduct military registration of the staff if at least one of the employees is eligible for military service.² 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.

A new decree issued by President Vladimir Putin on March 3, 2023, enables the Russian government to suspend shareholders' rights and implement external management in companies that don't fulfil state defence contracts under conditions of martial law.³ By specifying the process of appointing Russian government representatives to manage businesses that fail to meet state orders, the latest Decree effectively creates a scenario of "partial nationalization."

With new legislation introducing partial mobilisation, nationalisation, and potentially martial law in Russia, it is highly likely that corporations will be unable to prevent or mitigate negative human rights impacts, an obligation imposed on companies by the United Nations Guiding Principles on Business and Human Rights. As such, continuing to conduct business in Russia entails significant legal risks for companies, including potential civil and criminal liability under comprehensive sanctions regimes and recent international jurisprudence holding corporations and their officers responsible for human rights abuses abroad.⁴ Companies face the rising risk of criminal liability for complicity in

¹ International Criminal Court, “Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova,” March 17, 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (accessed March 22, 2023).

² Federal Law No. 31-FZ of February 26, 1997 "On mobilization training and mobilization in the Russian Federation" (as amended), <https://base.garant.ru/136945/> (accessed November 14, 2022).

³ Decree of the President of the Russian Federation No. 139 dated March 3, 2023 "On Certain Issues of Carrying Out the Activities of Business Companies Participating in the Fulfilment of the State Defense Order", <http://publication.pravo.gov.ru/Document/View/0001202303030004> (accessed March 22, 2023).

⁴ International companies remaining in Russia are now at a greater risk of violating sanctions regimes as implementation of the legislation will likely involve transacting with sanctioned individuals or entities. Furthermore, new domestic civil and criminal cases against companies involved in violations of international law demonstrate the risk of significant liability for facilitating state-sponsored human rights abuses abroad (e.g., Lafarge case, Lundin case, Castel Group indictment, Nevsun holding, and Dassault Aviation, Thales, and MBDA France criminal complaint.) Victoria Riello and Larissa Furtwengler, “Corporate Criminal Liability for International Crimes: France and Sweden Are Poised To Take Historic Steps Forward,” *Just Security*, September 6, 2021, <https://www.justsecurity.org/78097/corporate-criminal-liability-for-human-rights-violations-france-and-sweden-are-poised-to-take-historic-steps-forward/> (accessed November 14, 2022); The Sentry, “Breaking: France Opens War Crimes Inquiry Focused on Iconic Food and Beverage Conglomerate,” July 1, 2022, <https://thesentry.org/2022/07/01/7216/breaking-france-opens-war-crimes-inquiry-focused-iconic-food-beverage-conglomerate/> (accessed November 14, 2022); *Rfi*, “French technology firm charged over Libya cyber-spying,” July 2, 2022, <https://www.rfi.fr/en/business-and-tech/20210701-french-tech-firm-charged-over-libya-cyber-spying> (accessed November 14, 2022); Preston Lim, “Canadian Supreme Court Allows Corporate Liability for International Law Violations,” *Lawfare*, March 12, 2022, <https://www.lawfareblog.com/canadian-supreme-court-allows-corporate-liability-international-law-violations> (accessed November 14, 2022); Sherpa, “Aiding and abetting war crimes in Yemen: Criminal complaint

international crimes, which can be prosecuted by domestic courts outside Russia under the doctrine of "universal jurisdiction."⁵

On 24 February 2023, The Financial Action Task Force (FATF) suspended Russia's membership as a result of the war, calling on all actors in the international financial system to exercise extreme caution in all dealings with Russia.⁶ In practice, the decision means that all international banks will scrutinise all Russian payments, making financial transactions more expensive, lengthy, with no guarantee that the transaction will occur at all.⁷ Although FATF has not yet blacklisted Russia, it highlighted the consensus among its 36 member countries that "the Russian federation's actions represent a gross violation of the commitment to international cooperation upon which FATF Members have agreed to implement and support the FATF Standards."⁸ Previous practice shows that noncooperative behaviour is one of the reasons for FATF blacklisting. As a result, companies should examine and mitigate the high levels of risk attached to financial transactions with Russia and based on that risk, companies should reconsider all ongoing business operations related to Russia.

A recent report shows that Russia poses a "real threat to global financial integrity, as well as to national security more broadly."⁹ Additionally, the revelation by the Russian president confirming that the transnational criminal organization known as the "Wagner Group" is funded by the Russian government has brought to light a range of alarming risks related to money laundering, terrorist financing, and other financial crimes for businesses involved in or working with Russia.¹⁰ It is now a distinct possibility that businesses continuing their operations and paying taxes in Russia may be providing financial support to the Wagner Group, a notorious paramilitary organization.

Companies may also be exposed to financially material risks through operational restrictions, such as limitations of future government contracts.¹¹

submitted against French arms companies," June 2, 2022, <https://www.asso-sherpa.org/aiding-and-abetting-war-crimes-in-yemen-criminal-complaint-submitted-against-french-arms-companies> (accessed November 14, 2022).

⁵ For example, ongoing proceedings in the US and France against the French multinational Lafarge for complicity in human rights violations in Syria. The Paris Court of Appeal, "La Cour d'appel de Paris confirme la mise en état de la multinationale française Lafarge pour complicité de crimes contre l'humanité commis par l'Etat islamique," May 18, 2022, <https://www.doughtystreet.co.uk/sites/default/files/media/document/Press%20release%20french%20version.pdf> (accessed March 22, 2023); United States Attorney's Office, Eastern District of New York, "Lafarge Pleads Guilty to Conspiring to Provide Material Support to Foreign Terrorist Organizations," October 18, 2022, <https://www.justice.gov/usao-edny/pr/lafarge-pleads-guilty-conspiring-provide-material-support-foreign-terroris> (accessed March 22, 2023).

⁶ FATF, "FATF Statement on the Russian Federation," February 24, 2023, <https://www.fatf-gafi.org/en/publications/Fatfgeneral/fatf-statement-russian-federation.html> (accessed March 14, 2023).

⁷ Liudmyla Sliptsova, "Russia's membership in the FATF suspended. What does this mean and how ruinous is this for the aggressor's economy?," *Mind*, February 27, 2023, <https://mind.ua/en/publications/20253993-russias-membership-in-the-fatf-suspended-what-does-this-mean-and-how-ruinous-is-this-for-the-aggre> (accessed March 14, 2023).

⁸ FATF (n 6).

⁹ Themis, "Russia; Country Risk Report," June 2023, <https://themisservices.co.uk/country-risk-report-russia> (accessed June 26, 2023).

¹⁰ Telegram, "Встреча Путина с военными и его заявления по поводу ЧВК "Вагнер," June 27, 2023, https://t.me/rian_ru/207202 (accessed July 3, 2023).

¹¹ Venable LLP, "Do You Contract with State Governments? If So, Beware of Emerging State Sanctions' Obligations Related to Russia and Belarus," *JD Supra*, June 3, 2022, <https://www.jdsupra.com/legalnews/do-you-contract-with-state-governments-6537229/> (accessed November 14, 2022).

Additionally, the Ukrainian government's [National Agency on Corruption Prevention](#) (NACP) is creating a list of "foreign companies that, despite the international recognition of Russia as the aggressor state and the introduced sanctions restrictions, continue to cooperate with it."¹² These companies are recognised as international sponsors of war. The listed entities will be included into the World-Check database to protect the global financial sector from Russian sponsors of war. Since banks and insurance companies use World-check to assess risks, companies on the list will be limited in freely accessing personal and corporate finances. So far there are 31 companies on the list, but the NACP notes that it will be expanded with "international companies that provide the public and private sector with goods and services of critical purpose, as well as [those that] contribute to the Russian budget."¹³

Companies that maintain business relationships with Russia risk being perceived as supporting Russia's war effort. This could have a negative long-term impact on sales in other countries and attract investor scrutiny over adherence to ESG principles. The longer it takes for brands to extricate themselves from the situation, the more damaging it will be for their reputation.

In response to this unprovoked and unjustified war¹⁴ many other companies have already left Russia. According to the Kyiv School of Economics Institute's #LeaveRussia [company tracker](#), Burger King, whose parent company is RBI, has decided to pause investments, while continuing other operations in Russia.

These activities in Russia risk enabling and financing Russia's violations of IHL and human rights law during the ongoing invasion and occupation of Ukraine.

On March 17, 2022, RBI announced that it "started the process to dispose our ownership stake in the business, [...] demanded the suspension of Burger King restaurant operations in Russia, [...] suspended all corporate support for the Russian market, including operations, marketing, and supply chain support in addition to refusing approvals for new investment and expansion, [...] committed to redirecting any profits we receive from the business."¹⁵

We understand that, as is noted in the statement, exiting the joint venture partnership is a complicated legal process. However, we are concerned to learn that Burger King is one of the companies with the highest revenue increase in Russia in 2022. The company's revenue grew by \$317mn, from \$688mn in 2021 to \$1.01bn in 2022.¹⁶ Considering its significant position in the Russian economy, Burger King is also a significant taxpayer in Russia. This could make the company indirectly involved in financing Russian aggression since corporate taxes make up a significant proportion of Russia's GDP. Therefore, taxes paid by companies who stay in Russia indirectly contribute to the war. How much tax has Burger King paid in Russia in 2022 and 2023? How does RBI

¹² NACP, "International Sponsors of War," <https://sanctions.nazk.gov.ua/en/boycott/> (accessed February 6, 2023).

¹³ NACP, "Companies from the NACP list of "International Sponsors of War" are now in the World-check database, used worldwide for reviewing counterparties," September 7, 2022, <https://nazk.gov.ua/en/news/companies-from-the-nacp-list-of-international-sponsors-of-war-are-now-in-the-world-check-database-used-worldwide-for-reviewing-counterparties/?hilite=sponsor+of+war> (accessed February 6, 2023).

¹⁴ The UN General Assembly condemned Russia's "aggression against Ukraine" and demanded that Moscow "unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders."

¹⁵ Restaurant Brands International, "Actions on Burger King Russia," March 17, 2022, <https://www.rbi.com/English/news/news-details/2022/Actions-on-Burger-King-Russia/default.aspx> (accessed July 21, 2023).

¹⁶ B4Ukraine and Kyiv School of Economics, "The Business of Staying: a closer look at multinational revenues and taxes in Russia in 2022," <https://b4ukraine.org/pdf/BusinessOfStaying.pdf> (accessed July 21, 2023).

reconcile these figures with its statements that it would like to suspend all Burger King operations in Russia immediately?

The increase in revenue shows the significant presence of Burger King in the Russian market, in a time when other companies are withdrawing from it due to the Russian illegal invasion of Ukraine. Has RBI considered all the circumstances and complexities of the Russo-Ukrainian war, including numerous human rights violations and war crimes committed in Ukraine, as well as the fact that Russia is an aggressor state, in determining to continue operating within Russia? Which stakeholders has RBI engaged with in determining its policies and the decision to stay in the market or the best options for a responsible exit?

We understand that RBI has obligations towards its Russian employees. These obligations are laid out under the UNGPs and in the wider international human rights legal and regulatory framework. However, we are concerned about the steps the company has taken to safeguard its Russian partners and employees from the Russian legislation requiring businesses to help conduct military registration, deliver the summons to its employees, and provide resources where required. Can RBI clarify how it has applied due diligence to minimise the risks and impacts of this legislation to its employees? Has Burger King received any such requests, and if so, how has the company responded to them? Have any of your employees been mobilised and, if so, what was the company's role in the process?

By choosing to continue operating in Russia, the company inadvertently grants the regime a sense of legitimacy and approval. By leveraging the power and reputation of its brand, Burger King indirectly expresses support for the regime's actions, which could be interpreted as condoning the war. The continued presence of Burger King and its brands in the Russian market creates a perceived association between the company and its widely known brand and the Russian government, which may not align with the values of its customers. How is RBI ensuring that it does not align itself and the names of its brands with the war and the Putin regime?

Other companies have faced legal, administrative, and ethical challenges and still committed to, and exited, Russia. RBI and Burger King have remained in the country, even after over one year since the start of the war, over 95,000 reported war crimes, over 25,000 Ukrainian civilians killed or injured, and with the head of the Russian state indicted by the International Criminal Court for alleged war crimes, namely the abduction of Ukrainian children.

Considering these developments and the rising number of reported human rights abuses and war crimes, can RBI say, without a doubt, that it has done all in its power, applied the leverage it has over the franchisees, applied heightened human rights due diligence and a conflict-sensitive approach, to adequately distance itself from the Russian market so as not to be even indirectly or remotely associated with these crimes?

We request an urgent dialogue with RBI's relevant senior management and staff to discuss the company's ongoing activities and relationships in Russia and associated risks to the people of Ukraine and the company. Please contact the B4Ukraine Coalition at contact@b4ukraine.org to schedule a call. We kindly ask for your response by 5:00pm CET, August 4th, 2023.

Sincerely,

The B4Ukraine Coalition