

Newsletter

New Presidential Decree No. 442

On compensation of damage from US confiscation of Russian assets

23 May 2024

Dear Ladies and Gentlemen,

Please be informed that, today, as of May 23, 2024, by [Decree No. 442¹](#) ("**Decree No. 442**") the Russian President instructed the Russian Government to take measures aimed at establishing a **special procedure** for compensation of damage caused to the Russian Federation and the Central Bank of Russia ("**Russian rightholders**") from unjustified confiscation of **Russian sovereign assets** in the United States in connection with decisions of state bodies and/or judicial authorities of the United States ("**damage**").

When shall this mechanism start working?

The President instructed the Russian Government to ensure the introduction of amendments to the Russian legislation aimed at implementation this Decree No. 442 **within a 4-month period** (i.e., relevant procedural legal acts of the Russian Government and amendments to the Russian legislation providing for the new mechanism shall be adopted **no later than September 23, 2024**).

General mechanism of compensation

Decree No. 442 defines the general mechanism of compensation for damage:

1. Russian rightholders (i.e. state body² representing Russia or the Central Bank of Russia) whose assets are confiscated in the United States are entitled to **apply to the Russian court** with an application to (1) establish the fact of unjustified confiscation and (2) to compensate for damage. The application shall also contain an assessment of the damage.
2. In case, in the opinion of the court, assets are confiscated without sufficient grounds, the court shall request the Government Commission³ to provide a special list of property of the United States and persons related⁴ to the United States, as well as persons under their control ("**Persons related to U.S.**"), which can be used to compensate for damage ("**Property List for Compensation**")⁵. This Property List for Compensation may include any property of public or private persons/entities related with the United States, and entities under their control.



It means that Property List for Compensation may include any property of private American individuals and companies, as well as their Russian subsidiaries.

3. The Government Commission is obliged to identify property that, considering the principle of proportionality, can be used to compensate for damage. It shall be attributed to:
 - a. movable and immovable property of the USA or Persons related to U.S. located in the territory of the Russian Federation;

¹ [Decree of the President of the Russian Federation dated 23.05.2024 No. 442](#) "On the special procedure for compensation of damage caused to the Russian Federation and the Central Bank of the Russian Federation in connection with the unfriendly actions of the United States of America".

² Under p. 8 Decree No. 442 the relevant state body shall be determined by the Russian Government (it is likely that it will be the Ministry of Finance).

³ The Government Commission for Control of Foreign Investments in the Russian Federation (i.e. the existing Government Commission responsible for FDI, strategic and countersanction filings).

⁴ "Related to the United States" means to be registered in the US, to have a citizenship of the US, to conduct business or main activity therein.

⁵ The procedure for considering the court's request and determining the Property List for Compensation shall be established by the Russian Government.

- b. securities owned by the United States or Persons related to U.S., participatory interests in authorized (pooled) capitals;
 - c. property rights owned by the United States or Persons related to U.S.
4. By court decision, this property may be confiscated and transferred to persons affected by the confiscation of their property in the United States (the Russian Federation or the Central Bank).

Key highlights of Decree No. 442

1. Decree No. 442 establishes the procedure for compensation of damage “caused to the Russian Federation and the Central Bank of the Russian Federation”, in respect of which the term “Russian rightholders” is introduced as stated above (para. 1 of Decree No. 442).

This, in our view, implies that the eligible applicant for compensation must only be a public-law entity, which is also evidenced by para. 8 of the Decree. However, a broader interpretation of Decree No. 442 thereafter cannot be ruled out, which may allow Russian private persons to claim compensation under Decree No. 442 as well.

2. It should be noted that Decree No. 442 sets forth that compensation can only be recovered by a judicium act following court proceedings in which both the fact of damage and the amount of compensation must be established.

However, the nature of these court proceedings is unclear. In particular, Decree No. 442 is silent as to:

- a. Whether these will be standard special court proceedings (since an application is filed to establish a certain fact) or whether these will be sui generis special court proceedings requiring appropriate amendments to Russian procedural law?
- b. Will the persons, at the expense of whose assets the compensation will be made, be involved in the court proceedings?
- c. How will the adopted judicial act be enforced?

Thus, in our view, all that can now be stated with certainty is that the implementation of Decree No. 442 requires further clarifications and appropriate changes in the legislation, on which we will keep you updated.

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