



Countersanctions:
Annual Overview of
Major Trends and Law
Enforcement Practices,
2024

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Dear Ladies and Gentlemen,

Over the past few years, there has been a clear trend of Russia strengthening and expanding its countersanctions restrictions in response to sanctions of the regulatory authorities of the US, EU, UK and certain other jurisdictions. The countersanctions measures, introduced, in particular, to limit the withdrawal of foreign investors' capital from Russia and to maintain the financial stability of the state.

In addition to the evolving regulatory landscape, the regulator has demonstrated greater clarity over the past year in its methodology for analyzing transactions and in defining the criteria for implementation of the countersanctions regime.

Our annual overview of observations regarding countersanctions regulations and enforcement practices in 2024 along with other significant developments in this field could be seen below.



Regulatory approach to transaction analysis and corporate trends in transaction structuring

Even though Russia **still remains attractive** for foreign investment as a sales market or due to its available purchasing capacity, comfortable tax regime and other benefits, as a result of the overall tightening of sanctions and countersanctions regimes, certain companies with a global presence have decided to **restructure their business** processes and **leave Russia**.

During the analysis of contemplated transactions, for which an approval of the Sub-Commission of the Government Commission for Control over Foreign Investment in the Russian Federation ("**Sub-Commission**") under countersanctions rules is required, much attention is still paid to the **financial aspects of the transaction** itself, the **financial standing** of the divested business and the **potential buyer**. Meanwhile, in practice we see that the approach of the case team herein has become even more thorough.

In addition to a closer analysis of the valuation reports, the approach applied by the appraiser to calculations of market values of assets and factors affecting such calculations, the authorities also started conducting their own **retrospective analysis** of past transactions/operations of the target companies, including those made with the parties under the proposed transactions and started to request **detailed business** plans and **justification** of achievement of planned financial targets as well as to inspect existence of intra-group debts in force

(they may even require forgiveness of the considered debts as one of the conditions for supporting the planned deal).

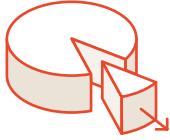
Moreover, great attention is paid to the issue of settlements within the planned transactions. As we have noticed, in few cases the Sub-Commission approved payments under transactions only into a "C"-type bank accounts¹. While such cases are still **exceptional**, they do represent a potential **emerging trend**, worth monitoring for signs of future tightening of regulations, should there be a shift in the country's economic and political landscape.

As for the corporate trends in transaction structuring, apart from management buyouts or sales to third-party local acquirer, which were still quite common, **more complex structures** have been used more frequently. In particular, due to the inapplicability of certain requirements², a **greater number of intra-group restructurings** have been implemented.

Another practical observation from our side is that, given current regulation and the criteria that a transaction should fulfill in order to increase a likelihood of its approval by the Sub-Commission (*e.g. purchase price discount*), it will most probably be **impossible** for foreign shareholders to **exercise put options** and sell shares in Russian companies on original terms agreed by the parties **prior** to the introduction of the countersanctions measures.

1. As a reminder, funds paid to the "C"-type bank account are subject to restrictions on their further use. Namely, the funds credited to such bank accounts can only be used, for instance, for payment of taxes, duties, fees and other mandatory payments payable to the budget; transfers for the purchase of federal loan bonds; payment of commissions to the authorized bank servicing the account etc. In other words, these funds are blocked in Russia unless the proper authorization from the Russian Government is received.
2. Since early 2024 it has been no longer needed to provide an independent valuation report on the market value of the acquired shares, as well as information on KPIs set for the new owners with respect to intragroup transactions. The requirement to pay a voluntary contribution to the Russian federal budget ("exit tax") is still in question, as the amount of the exit tax is calculated based on the market value of the asset as stated in the valuation report. However, the decision on exit tax payment vests totally with the Sub-Commission depending on the general political and economic course and global goals set.

2



New criteria and exit tax payment issues + 2024 statistics

One of the key conditions for receiving approval for the disposal of assets is the voluntary transfer/contribution of funds to the federal budget. Previously, the amount of such transfer had to be at least 15% of the market value of the divested assets, while in October 2024 the contribution rate was increased up to 35%. In addition, installment payments have been established: 25% of the market value is paid within the first month from the date of the transaction closing, 5% – within one year, 5% – within two years³.

It is worth noting that the payer of the voluntary contribution is not formally established, whereby in practice the one who undertakes such an obligation is determined according to the commercial arrangements of the parties. From our experience, in vast majority of transactions with a third-party buyer (approx. 65%⁴) the voluntary contribution was paid by the buyer, as the seller has already financial

strains and bears consequences of applying the 60% purchase price discount and may even face the risk of having the funds credited into a “C”-type bank account. However, in some cases, the actual burden was vested between both parties under the transaction by proportional reduction of the purchase price.

It should be also noted that in 2024 the Accounts Chamber of the Russian Federation (“AC”), a state control body, initiated audits regarding fulfilment of key performance indicators (KPIs) and other conditions set for transactions for which approval was obtained in 2023 and 2022. It seems that such detailed audits of the conditions/exit tax payment issues/KPIs enforceability will continue and shall be carried out by the AC and other regulatory authorities (for instance, ministries advocating in favor of a particular deal) on a regular basis.

3



Obligations under loans and similar financial agreements/ instruments (including dividends/profit distribution)

Regarding dividend/profit distribution and loan repayments in the amount exceeding RUB 10 mln limit per calendar month in favor of “unfriendly” creditors to a regular bank account, we observe a rather negative trend. Such operations are rarely approved by the authority, as the withdrawal of funds is regarded as a capital outflow and, thus, requires strong justification of the positive effect on the Russian business and socio-economic development of the state.

Approvals, if granted, in most cases stipulate that the payments shall be made into a “C”-type bank account, which actually means block of these financial sources in Russia unless the proper authorization from the Sub-Commission is received.

Moreover, rules of obtaining approvals for the fulfillment of obligations under loans and similar financial instruments were adjusted: currently, approvals in respect of debtors that are non-credit institutions

or non-credit financial institutions are issued by the Sub-Commission and not by the Ministry of Finance of the Russian Federation, as it was prior to the changes introduced in September 2024⁵.

In addition, it should be noted that on March 22, 2024 the Bank of Russia issued its Official Clarifications No. 1-OR, according to which countersanctions approval is also required for a resident to unilaterally or on the basis of an agreement with a person of an “unfriendly” foreign state to execute actions (transactions), as a result of which:

- resident’s obligation to a person of an “unfriendly” foreign state will be terminated without crediting the due performance to the “C”-type bank account, AND
- at the same time, the resident will be obliged to provide other consideration to “unfriendly” non-resident (including termination of counterclaims).

3. For more information: <https://www.alrud.com/publications/672fda2c6f26782b4f029ac2/>, Extract from the minutes of the Sub-Commission No. 268/1 as of October 15, 2024 - https://minfin.gov.ru/common/upload/library/2024/10/main/Vypiska_Protokol_N_268_1.pdf

4. Based on internal statistics and our experience since clearance decisions of the Sub-Commission are not publicly available.

5. President Decree No. 767 as of September 09, 2024 “On Amendments to Certain Decrees of the President of the Russian Federation”; <http://publication.pravo.gov.ru/document/0001202409090008?index=3>

In other words, the Bank of Russia explicitly clarified that **set-offs** (as well as substitutions with another consideration, fulfilment of obligations occurred due to novation) are also **subject to countersanctions**

restrictions if related to an obligation that can be fulfilled only by crediting funds into the “C”-type bank account.



4



Extensive powers of prosecutors

The trend over the past year has been the **strengthening of prosecutorial oversight**. As reported by the Russian Prosecutor General's Office in June 2024, first comprehensive inspections were conducted in relation to strategic companies. These inspections revealed that the ultimate owners of enterprises have “*systematically harmed the country's interests by carrying out targeted actions to reduce the production potential of companies, diminish their activities and sell valuable equipment to circumvent the existing countersanctions law*”⁶. According to the Prosecutor General, revenues generated from operations in Russia might have been used to **modernize and develop production facilities and fulfil existing social obligations**, however, companies managed by foreign investors **failed to act in good faith**. Considering the above, it is not excluded that similar inspections could be carried out in respect of other companies with foreign participation depending on their current standing and industry where the companies operated earlier.

Moreover, we cannot overlook the case towards well-known seller of furniture and home accessories⁷, which demonstrates the possible consequences that may occur if, in the opinion of the competent authorities, there has been **non-compliance / circumvention of countersanctions measures**. As it follows from the judicial acts, background of the case was the following: in 2016 foreign lender from Ireland issued a loan in favor of

Russian company - borrower. In 2022, following the adoption of President Decree No. 95 as of March 05, 2022 “On the Temporary Procedure for the Execution of Obligations to Certain Foreign Creditors” which introduced restrictions on **fulfilment of obligations** under loans and similar financial agreements/instruments, the **repayment of the borrower's debt** in a lump sum without using a “C”-type bank account became subject to countersanctions approval. Following that, the Parties agreed to defer payment subject to the borrower issuing a **pledge** in favor of the lender. Then the borrower entered into a supply agreement for the sale of inventories with a third party and pledged in favor of the lender its rights to receive payments under this agreement. Subsequently, the third party involved into the scheme, under the instructions of the borrower, transferred the payment for the purchased goods to the lender. The scheme has raised concerns with the tax authority, which resulted in **prosecutor's** check of the activity of the companies involved.

Finally, the Arbitrazh Court of the Moscow region, on the grounds of a claim by the tax authority, **invalidated a transaction** on the transfer of funds from the borrower to the lender (*companies from the group of the seller of furniture and home accessories*) and ruled **to seize these funds** from the borrower **as income** for the Russian Federation due to the circumvention of countersanctions restrictions.

6. <https://www.rbc.ru/politics/07/06/2024/6662ac429a7947d23cdd7efb>

7. Ruling dated April 25, 2024, Case No. A41-6043/2024



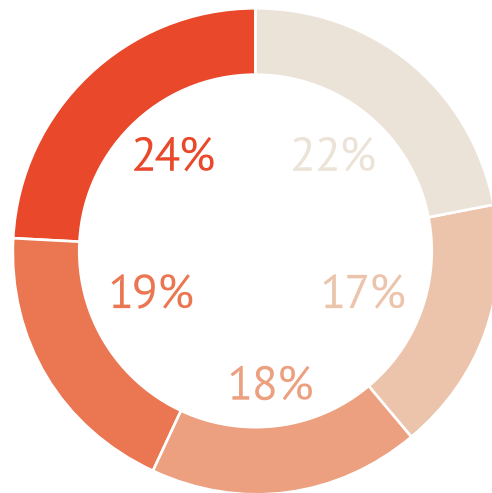
Executive Order No. 520, the transactions and the industries in which they were approved

Certain transactions may require an **approval of the Russian President** under the requirements of President Decree No. 520 “On the Application of Special Economic Measures in the Financial, Fuel and Energy Sectors due to the “Unfriendly” Actions of Certain Foreign States and International Organizations” (“**Decree No. 520**”) if such are implemented, for instance, with respect to the following types of companies:

- companies of **strategic importance** for Russia included in the special list⁸;
- **credit institutions** included in the special list⁹;
- entities participating in production sharing agreements for the **Sakhalin-1 project**;
- manufacturers that produce **equipment for the fuel and energy industry** and provide **services** in this regard included in the special list¹⁰.

Since the beginning of 2024, the Russian President has issued **26 decisions** under provisions of the Decree No. 520. For instance, the President approved transactions in respect of shares (participatory interests) in the companies HSBC Bank (RR), OZON HOLDINGS PLC, HAILAND GOLD etc.

The diagram below reflects information on transactions (operations), approval for which has been obtained up to 2024 (inclusive), as well as on business areas and industries within the perimeter of interest of state authorities under the Decree No. 520.



- Mineral extraction/subsoil use
- Strategic activities
- Credit organisations/banks
- Fuel and energy sector and provision of maintenance and repair services
- Oil and gas sector and participation in the Sakhalin-1 project



8. President Decree No. 1009 as of August 04, 2004 “On Approval of the List of Strategic Enterprises and Strategic Joint Stock Companies”

9. President Decree No. 357-rp as of October 26, 2022 “On Approval of the List of Russian Credit Institutions in respect of which a Ban on Transactions (Operations) with Shares, Participatory Interests (Contributions) Constituting their Authorized Capital”

10. President Decree No. 372-rp as of November 09, 2022 “On Approval of the List of Companies that are Manufacturers of Equipment for Organizations of the Fuel and Energy Complex and Providing Services for Maintenance and Repair of Such Equipment, Companies that are Producers and Suppliers of Thermal and (or) Electric Energy, Companies Engaged in the Processing of Oil, Petroleum Feedstock and Production of Products of their Processing”

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Interim administration: cases in 2024

In practice, the Russian prosecutor's office has been granted **unlimited powers to investigate any breach** of legislation and **hold** the violators **accountable**. The main measures used to punish violators for the breach of countersanctions rules are as follows: foreign companies that commit violations may be deprived of their voting rights in the companies, their shares may be seized and transferred to the state budget or an interim administration mechanism may be imposed on the company's assets. If a Russian company is of strategic importance and engages in activities that are **essential for the country's defence, economy and security**, the risks of an interim administration mechanism being introduced to manage and maintain its business in Russia are **quite high**.

The possibility of introduction of an interim administration in relation to the Russian assets owned by "unfriendly" foreign companies is established by President Decree No. 302 as of April 25, 2023 "On Interim Administration of Certain Property" ("**Decree No. 302**"). This measure is taken in response to cases, where Russian persons have been **deprived of their ownership rights to property** in "unfriendly" states, as well as in cases of a **threat to the national security**. Interim administrator (*Federal Agency for State Property Management (Rosimushchestvo) or other company/organization*)

receives the ownership rights (*except for the right of disposal*) of the relevant asset and appoints a new executive body and members of the Board of Directors.

Since enactment of the Decree No. 302, interim administrations have been imposed on several dozen companies. At the same time, in 2024 interim administration in respect of two companies was lifted, namely, in March 2024 interim administration was lifted from Danone Russia JSC (*interim administration was introduced in July 2023*), while in December 2024 interim administration was lifted from Baltika Breweries LLC (*interim administration was introduced in November 2023*). In both cases, following the **lifting of the interim administration**, the subsequent **sale of the companies' assets** was carried out at a significant discount.

Another trend in 2024 was more often appointment of companies/organizations other than Rosimushchestvo as interim administrators. For example, GK VMESTE was appointed as an interim administrator in relation to AB InBev Efes and Gazprom Household Systems JSC – as an interim administrator in relation to Ariston Holding N.V. and BSH Hausgerate GmbH.

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Countersanctions outlook 2025: anticipated trends in regulation and practice

1. Although lots of foreign investors have already left the Russian market and given the tightening of the purchase price, voluntary contribution, other requirements for the transactions to be approved by the Sub-Commission, we assume that **transactions for the sale of Russian companies** by foreign shareholders **will continue** to be executed.
2. Schemes for exiting the Russian market will be analyzed by authorities in more detail. In addition, the trend toward **budget replenishment** under current geopolitical circumstances and the **breadth of state resources** in terms of enforcement will remain in place.
3. **Enforcement** in terms of verifying compliance with established **KPIs** and challenging transactions in case of **failure to achieve** the indicators will increase.
4. We also assume that cases of introducing interim administration will continue to appear due to the continued sanctions pressure from foreign countries and, considering the prospects of adoption of the Law on Confiscation of Western Assets in Russia¹¹, **cases of confiscation** of foreign assets may also appear.

11. For more information: <https://alrud.com/publications/6793970ded02fc942f07e3cb/>;
<https://www.alrud.com/publications/664f94e2ca48713da30b2912/>

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