

# Newsletter

## *Latest developments related to approval of transactions with real estate in Russia*

22 February 2024

Dear Ladies and Gentlemen!

Since 1 March 2022, a Presidential Decree<sup>1</sup> has introduced a special procedure for certain transactions in the Russian Federation.

### General rule for real estate

---

In particular, **transactions** that result in the **transfer of ownership title to real estate**<sup>2</sup> between Russian **Residents**<sup>3</sup> and persons from **'Unfriendly' states**<sup>4</sup> (or controlled by persons from 'Unfriendly' states, including Russian entities) require prior **approval by a Sub-commission**<sup>5</sup>.

It may be worth reminding that there are conditions that need to be met in order to apply for approval. Both alienation of shares and real estate fall under generally same regulations, though real estate transactions are regulated in less detail allowing Sub-commission more flexibility in its decisions. Say, if for corporate transactions it is required to (1) confirm that the sale price is discounted (at least 50% of the market price) and also to (2) pay the "exit tax", for real estate deals paying exit tax is up to decision of the Sub-commission. We are aware of cases, when payment of exit tax was not required.

Further clarifications by the Central Bank of the Russian Federation and the Sub-commission have introduced a number of exceptions in which a transaction may be carried out without applying to the Sub-commission for approval. Case law has also established certain positions.

In this newsletter we are providing the most commonly used exceptions and applicable case law precedents in 2023.

### Exceptions

---

**(A) General.** As it comes from the general rule section above, transactions between foreign entities (not involving Residents) are not regulated by the new regulations and thus are not restricted.

**(B) Sub-commission.** As regards transactions involving Residents, among other exceptions, approval of Sub-commission is not required for:

---

<sup>1</sup> Presidential Decree No. 81 of 01.03.2022 "On Additional Temporary Economic Measures to Ensure Financial Stability of the Russian Federation" ("**Decree 81**").

<sup>2</sup> Sale and purchase agreements, gift agreements and other transactions providing for transfer of ownership title with regards to real estate.

<sup>3</sup> **Residents** – (i) Russian citizens; (ii) foreign citizens and stateless individuals permanently residing in Russia based on a residence permit; (iii) legal entities established in Russia (except for foreign legal entities registered in accordance with the Federal Law "On International Companies and International Funds"), branches, representative offices and other subdivisions of such legal entities located outside Russia. **NB!** Russian citizen who also has other citizenship is considered as Resident.

<sup>4</sup> **'Unfriendly' states** – the USA, the member states of the European Union, Canada, the UK and other foreign states based on a list of countries (Order of the Government of the Russian Federation of 05.03.2022 N 430-r). 'Friendly' states in this context refer to countries that are not listed as 'Unfriendly' ones.

<sup>5</sup> **Sub-commission** – Sub-commission of the Government Commission for the Control of Foreign Investments in the Russian Federation.

- **Transfer** of real estate objects **to persons** from 'Unfriendly' states (so, for instance, approval is not required to purchase real estate, if the buyer is the foreign person from 'Unfriendly' states or Russian person under control of such person);
- **Purchase** of real estate from person from 'Unfriendly' states with payment **through a 'C'-type account**<sup>6</sup>;
- Transactions with real estate **located outside Russia** if:
  - Payment for the transaction is made using accounts opened by Residents at **foreign financial organization**, and
  - Information on the **account is disclosed** to the Russian tax authorities.

It is important to note that if real estate was acquired after 22 February 2022 by a foreign person from a 'Friendly' state from a person from an 'Unfriendly' state, the further alienation of this property will be subject to the same restrictions as described above.

**(C) Case law.** We would also like to note that case law has developed specific approach to interpreting the exceptions. Among other cases, we outlined the following ones:

### **1. Sale of real estate to persons associated with 'Unfriendly' states**

As early as September 2022, the Sub-commission permitted as a general exception the sale of real estate **in favour of persons connected with 'Unfriendly' states**<sup>7</sup>. There have been attempts to apply this rule in practice where both the seller and the buyer were persons connected with 'Unfriendly' states.

However, the practice of interpreting the above permission of the Sub-commission has developed in a restrictive manner. The courts take the position<sup>8</sup> that **transactions between Residents both being controlled by 'Unfriendly' persons still require the approval** of the Sub-commission for the transaction.

### **2. Consequences of the execution of a transaction in violation of Decree 81**

There are cases when **transaction in breach of Decree 81** has been carried out and the transfer of rights has been registered in the Unified State Register of Rights.

For example, in one of the court cases<sup>9</sup>, the seller itself challenged the validity of a sale and purchase agreement executed in violation of Decree 81. This was because the transaction was carried out on behalf of the seller by its former general director. At the time of the transaction, 100% of the shares of the seller's authorised capital belonged to a foreign legal entity.

The courts satisfied the claim to declare the **transaction invalid** and ordered the seller to **return the property and the buyer** to return the money paid.

The courts, inter alia, point out that the circumvention of the provisions of the law by participants in civil transactions for unlawful purposes in connection with the execution of illegal financial transactions may constitute grounds for concluding that a transaction is void<sup>10</sup>.

### **3. Acquisition of real estate as a result of reorganization of a legal entity**

A legal entity, the founder of which is a Cypriot company, acquired title to real estate as a result of a **reorganization in the form of a spin-off**, but the state registration of the rights to the acquired real estate was refused.

<sup>6</sup> **'C'-type account** – a special purpose account that is opened by the paying party (Russian resident) for the counterparty and that has a very limited range of operations that are permitted.

<sup>7</sup> Extract from the minutes of the meeting of the Sub-commission of the Government Commission for Control over Foreign Investments in the Russian Federation dated 7 September 2022 No. 85 (communicated by the Ministry of Finance of Russia on 13.09.2022 No. 05-06-10/VN-46769).

<sup>8</sup> Decision of the Arbitration Court of the North-Western District of 30.11.2023 № F07-18352/2023 in case № A21-4482/2023.

<sup>9</sup> Decision of the Moscow District Arbitration Court of 23.10.2023 № F05-22512/2023 in case № A41-101031/2022.

<sup>10</sup> Decision of the Seventh Arbitration Appeal Court of 28.09.2023 N 07AP-7056/2023(1), 07AP-7056/2023(2) in the case N A27-4095/2023.

The courts<sup>11</sup> have **upheld the refusal** referring that approval of a Sub-commission was not obtained.

Thus, despite the fact that corporate reorganization was complete and the application for registration of the right took place prior to the entry into force of Decree 81, the court took a conservative position<sup>12</sup>.

#### 4. Confirmation of interpretation

In 2023, the courts of cassation considered cases in which the existing positions of the state authorities were confirmed:

- The lease is not a transaction that gives rise to ownership of immovable property. Decree 81 does not apply to the disputed legal relationships<sup>13</sup>.
- A **developer** controlled by 'Unfriendly' persons is entitled to carry out transactions that result in the right of ownership of immovable property<sup>14</sup>.
- The restrictions of Decree 81 do not apply to **mortgage agreements**<sup>15</sup>.
- When **disclosing beneficial owners**, the information must be current and dated after the implementation of Decree 81. Ultimate beneficiary information must be confirmed annually<sup>16</sup>

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our [Real Estate Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

*Note: Please be aware that all information provided in this letter was taken from open sources. Neither ALRUD Law Firm, nor the author of this letter bear any liability for the consequences of any decisions made based on this information.*



**Andrey  
Zharskiy**

Partner, PhD, Advocate,  
Solicitor in England and Wales  
Real Estate, Corporate / M&A,  
Crisis Management, Economic  
sanctions and Compliance,  
Foreign Direct Investments  
Commercial

E: [andreyzharskiy@alrud.com](mailto:andreyzharskiy@alrud.com)



**Stanislav  
Veselov**

Of Counsel  
Real Estate

E: [sveselov@alrud.com](mailto:sveselov@alrud.com)

<sup>11</sup> Decision of the Moscow District Arbitration Court of 30.10.2023 № F05-26401/2023 in case № A40-237551/2022.

<sup>12</sup> Please note that a cassation appeal has been filed with the Supreme Court of the Russian Federation against the court's decision.

<sup>13</sup> Decision of the Arbitration Court of the North-Western District of 18.10.2023 № F07-13491/2023 in case № A26-5119/2022.

<sup>14</sup> Decision of the Arbitration Court of the North-Western District of 15.06.2023 № F07-6303/2023 in case № A56-79745/2022.

<sup>15</sup> Decision of the Moscow District Arbitration Court dated 16.11.2023 No. F05-28681/2023 in case No. A40-63082/2023; Decision of the Moscow District Arbitration Court dated 14.09.2023 No. F05-21932/2023 in case No. A40-97644/2022.

<sup>16</sup> Decision of the Arbitration Court of the Moscow District of 08.06.2023 № F05-4235/2023 in case № A40-101226/2022.