

Newsletter

New Russian counter-sanctions and related legal and financial issues

March 2, 2022

Dear Ladies and Gentlemen,

In the light of the current geopolitical situation, we would like to inform you of and turn your attention to the new counter-sanctions measures introduced in Russia within the last few days, the corresponding legal basis, and the related matters which could be of importance for your business.

Counter-sanctions

As of the current date the Russian authorities have only started to introduce new economic measures as response to recent foreign sanctions being implemented against Russia.

On February 28, 2022, the President of the Russian Federation signed the [Decree No. 79 "On Application of Special Economic Measures in Connection with Unfriendly Actions of the United States of America and Foreign States and International Organizations Joining Them"](#)¹ ("**Decree No. 79**").

Despite the fact that the Decree No. 79 is adopted in the development of the provisions of the legislation devoted to the so-called "special economic and other coercive measures" (in other words sanctions), the nature of the measures could potentially lead to the support for the Russian economy and financial system.

The Decree No. 79 sets forth the following restrictions which Russian residents are subject to:

(A) Foreign exchange earnings

Within 3 (three) business days starting from February 28, 2022, the local exporters should sell 80% of foreign currency received under foreign trade contracts concluded with non-residents since January 1, 2022.

The similar rule applies to foreign exchange earnings credited to the resident's account after February 28, 2022. The deadline for the sale of foreign currency is 3 (three) business days from the date

of crediting of foreign currency to the resident's account.

The procedure for the mandatory sale of foreign exchange earnings should be defined by the Central Bank soon.

(B) Foreign exchange transactions

Since March 1, 2022, the following transactions are prohibited:

- foreign exchange transactions involving provision of foreign currency by residents in favor of non-residents under loan agreements;
- foreign currency transfers by residents to their accounts (deposits) opened with banks and other financial institutions located outside of Russia;
- money transfers without opening a bank account using electronic means of payment provided by foreign suppliers of payment services (e.g. foreign e-wallets).

Please refer to exception in para. 1.1.1(A) below.

(C) Buy-back

Further, the Decree No. 79 entitles the public joint-stock companies incorporated under the Russian laws to buy back their publicly traded shares subject to the pull of conditions (including in case of 20% and more decrease in the average share price and the stock-exchange primary index).

The Decree No. 79 came into force on [February 28, 2022](#).

On March 1, 2022, the Russian President adopted the second package of measures by issuing the [Decree No. 81 "On Additional Temporary Economic Measures to Ensure the Financial Stability of the Russian Federation"](#) ("**Decree No. 81**").

¹ Available in Russian via <http://www.kremlin.ru/acts/news/67881>.

The new set of measures includes:

(A) Transactions procedure

Starting from March 2, 2022, the new procedure between the residents and (i) foreign persons² associated with foreign states committing unfriendly actions against Russian legal entities and individuals (“**Unfriendly States**”) or (ii) with persons who are under the control of these foreign persons, regardless of the place of their registration or the place of their predominant economic activity for the following types of transactions exists:

- (i) provision of credits and loans (in rubles) to the persons from the Unfriendly States;
- (ii) transactions resulted in ownership title to securities and real estate executed with the persons from the Unfriendly States;
- (iii) foreign exchange transactions mentioned in this Newsletter above.

Now the listed types of transactions are performed on the basis of permits issued by the Government Commission for the Control of Foreign Investments in the Russian Federation (“**Government Commission**”). The Government is to elaborate the procedure for issuing permits by the Government Commission by the end of this week.

In case the transactions indicated in para. (ii) are carried out on the stock-exchange, the parties shall obtain a permit from the Central Bank approved by the Ministry of Finance of the Russian Federation. Such a permit would contain the conditions for execution of such transactions.

It is noteworthy that the Decree No. 81 also affects the transactions mentioned in para. (ii) above implying acquisition of securities or real estate from a foreign person not being a person from the Unfriendly State, but one who obtained such assets from a person from the Unfriendly State after February 22, 2022. Therefore, the similar rules apply to them.

It is however not clear yet whether the above measures will apply to the transactions with participatory interest with Russian LLCs, as formally they are not considered securities. **UPDATED March 03:** The approach that participatory interests in the LLC’s charter capital shall not be considered as securities has been recently confirmed

by the Federal Notarial Chamber which instructed the notaries to proceed with the transactions concerning participatory interests in Russian LLC in a usual way without necessity to obtain permits from Government Commission. However, in our view, the change of the approach or amendments to the existing regulations, may still be anticipated.

(B) Foreign currency export in cash

Since March 2, 2022, it is prohibited to export cash foreign currency in bank notes and (or) monetary instruments denominated in foreign currency in an amount exceeding the equivalent of USD 10,000. For the calculation purposes the exchange rate of the Central Bank as of the date of export is to be used.

Please note that the new procedures for transactions implemented by the Decree No. 81 do not apply to ones made by the Central Bank and Russian public authorities.

The Decree No. 81 came into force on **March 1, 2022**.

Further expected restrictions for foreign investors

(A) Exit from Russian companies

On March 1, 2022, the Prime Minister Mikhail Mishustin announced the elaboration of new measures aimed to limit the exit of foreign investors from the Russian companies by the temporary ban.

It was declared that the draft decree is already prepared, but as of now we can only refer to Mr. Mishustin’s speech to understand the content of suggested measures:

“In order to enable businesses to make well-considered decisions, a draft presidential decree on the introduction of temporary restrictions on the exit from Russian assets has been prepared.”

(B) Moratorium on transactions with the securities and payment of dividends

On February 28, 2022, the Central Bank declared the two following measures to be applied for the limited period of time:

- temporary prohibition for Russian brokers to proceed with the transactions for the sale of securities on behalf of non-residents³; and

² Please note that the rules apply among other things to (i) the foreign persons with the citizenship of such Unfriendly States, persons with (ii) a place of registration, (iii) a place of primary

business activity or (iv) a place of primary profit extraction from activity in the Unfriendly States.

³ Available in Russian via https://www.cbr.ru/press/pr/?file=28022022_072328SUP_MEAS28022_022_072619.htm.

- Russian depositories and registrars are instructed to suspend the payments of distributions on securities of Russian issuers to foreign individuals and legal entities⁴.

The mass media also reported⁵ that it is expected that a ban will be imposed on transfers abroad by foreign subsidiaries.

Liability

As of the current date there is no statutory liability in the sphere related to foreign or local sanctions.

A while ago the Russian legislators tried to criminalize the following activities by making respected **Draft Law No. 464757-7**:

- activities performed with the purpose of compliance with the foreign sanctions if

such activities resulted in limitations in Russian entities etc. to conduct their normal business activities;

- intended facilitation of introduction by the foreign states or international organizations of new sanctions against Russian entities etc.

Status: Draft Law No. 464757-7 was adopted in first reading in 2018. It was announced in February 2022 that it is likely that the amended version of respected Draft Law can be adopted in the second reading in spring 2022.

All in all, we expect that the described measures have marked the beginning of counter-sanctions process in Russia, so we will monitor the development and will aim to keep you updated of key changes.

We hope that the information provided herein will be useful for you. If any of your colleagues would like to receive our newsletters, please send them the link to complete a **Subscription Form**.

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If you have any questions, please, do not hesitate to contact ALRUD team.

Sincerely,

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⁴ Available in Russian via <https://www.interfax.ru/business/825275>. Please note that the Central Bank has not published any official details on this measure.

⁵ Available in Russian via <https://www.vedomosti.ru/economics/articles/2022/02/28/911373-tsb-zapretit-perevodit-dividendi>.