

**C L I F F O R D**  
**C H A N C E**

**RUSSIAN COUNTER-MEASURES: OVERVIEW OF THE EXISTING RESTRICTIONS**  
**18 MARCH 2022**

# LEGAL FRAMEWORK FOR RUSSIAN COUNTERSANCTIONS

- Federal Law on Special Economic Measures dated 30.12.2006 & Federal Law #127-FZ On Countermeasures Against Unfriendly Actions of the U.S. and Other Foreign States
- **In 2018:** Presidential Decree №592 On Special Economic Measures In Connection With Unfriendly Actions of the Ukraine
- **In 2022:**
  - Presidential Decree No. 79 dated 28 February 2022
  - Presidential Decree No. 81 dated 1 March 2022
  - Presidential Decree No. 95 dated 5 March 2022
  - Presidential Decree No. 100 dated 8 March 2022
  - Governmental Decree No. 299 dated 6 March 2022
  - Non-public circulars of the Central Bank of Russia addressed to financial institutions restricting transactions of non-resident clients

# RUSSIAN COUNTER-MEASURES: OVERVIEW

## ➤ PRESIDENTIAL DECREES NO. 79 & 81

### a) an obligation of Russian residents:

- to sell 80% of foreign currency export proceeds which were credited after 1 January 2022 to their Russian bank accounts under foreign trade contracts – not later than 3 business days following 28 February 2022 (i.e. not later than 3 March 2022);
- to sell 80% of foreign currency export proceeds which are/will be credited on 28 February 2022 and onwards to their Russian bank accounts under foreign trade contracts – not later than 3 business days following receipt of such foreign currency;

### b) a prohibition for Russian residents without the consent of Governmental Commission:

- to provide **foreign currency** loans to **any** non-residents;
- to provide loans in any currencies to “unfriendly foreigners”
- to **credit** foreign currency to their foreign accounts with foreign banks and other foreign financial institutions and to their foreign e-wallets;
- To perform obligations under transactions with “unfriendly foreigners” resulting in transfer of title to real estate or securities

### c) simplified procedure for shares buy-back by Russian public joint-stock companies – starting from 28 February 2022 and until 31 December 2022.

# **RUSSIAN COUNTER-MEASURES: OVERVIEW**

## **➤ PRESIDENTIAL DECREES NO. 79 & 81 (cont'd)**

- The Government has issued general licenses allowing:
  - Russian banks to provide loans to Russian subsidiaries of entities/persons from unfriendly jurisdictions provided that the loan is provided for the purposes of financing its Russian business (N.B.: earlier the CBR has confirmed possibility to provide interbank loans to subsidiaries of foreign banks in Russia);
  - Russian resident legal entities to transfer foreign currency to their foreign bank accounts of their foreign branches/representative offices (provided amount of such financing does not exceed financing provided in 2021);
  - Russian resident individuals:
    - to receive to their foreign bank accounts foreign currency received from non-residents in lieu of salaries, leases, coupons and dividends on securities, and other interest payments;
    - to transfer foreign currency from their foreign accounts opened before 1 March 2022 into their other foreign accounts provided that such accounts have been disclosed to Russian tax authorities.

# RUSSIAN COUNTER-MEASURES: OVERVIEW

## ➤ PRESIDENTIAL DECREE NO. 95

- introduced temporary regime for discharge by Russian resident obligors of their obligations under credits, loans and “financial instruments”, providing that:
  - if a Russian obligor has a liability towards a foreign creditor from a jurisdiction taking unfriendly steps towards Russia (“creditor from unfriendly jurisdiction”), then Russian obligor can discharge this liability in Russian Roubles into special “Type C” account opened with a Russian bank in the name of such “creditor from unfriendly jurisdiction” (or, if the liability arises under securities held with a Russian custodian through a foreign nominee holder (i.e., through a foreign custodian), such “Type C” account shall be opened in the name of such foreign nominee holder);
  - Russian obligor shall be deemed to have duly discharged its payment liability:
    - towards foreign creditors from “friendly” jurisdictions - by paying Russian Roubles at the CBR exchange rate as at the date of payment (and it is unclear from the Decree No. 95, if the same regime applies to payments towards Russian-resident creditors, or liabilities towards Russian-resident creditors under bilateral arrangements (as opposed to securities) may continue to be paid in contractually agreed currency);
    - towards Russian resident holders of the securities issued by the Russian obligor - by paying Russian Roubles at the CBR exchange rate as at the date of payment;
    - towards holders of securities of the Russian obligor held through a foreign nominee holder (i.e., foreign custodian) – by paying Russian Roubles into the special “Type C” account opened in Russia for such foreign nominee holder; or
    - by discharging the obligations in accordance with the rules yet to be established by (i) the CBR for Russian obligors that are financial institutions, and (ii) by the Ministry of Finance of Russia (“MinFin”) for obligors that are non-financial institutions (and until the relevant special regimes are introduced the CBR and MinFin respectively, they will have powers to grant individual permissions for Russian obligors to discharge their obligations in deviation from the regime established by the Decree No. 95 itself).

# RUSSIAN COUNTER-MEASURES: OVERVIEW

## Measures taken by the Central Bank of Russia:

- a) There is a non-public circular sent by the CBR to Russian banks requesting them with effect from 1 March 2022 until 31 March 2022 in relation to cross-border payments:
- to suspend any payments from Russian bank accounts of "foreigners from hostile jurisdictions" to any bank accounts outside of Russia;
  - to limit the permitted cross-border payments of non-resident individuals residing in other (i.e., "non-hostile") jurisdictions by the amount of USD 5k per month (or its equivalent in other currencies).

## **RUSSIAN COUNTERMEASURES: OTHER MEASURES**

- **Presidential Decree No. 100 Instructed the Government to Establish Bans and Restrictions on Exports from Russia**
- **Governmental Decree No. 299 dated 6 March 2022**
  - Allows to use patents owned by patent holders from unfriendly jurisdictions without their consent and without paying any royalties
- **Draft Legislation on External Administration of Foreign Controlled Businesses**
  - If a foreign investor takes steps suggesting intention to abandon, wind-down, liquidate its Russian subsidiary, or terminate its operations, Russian authorities will have the right to introduce external administration and eventually transfer the business to a Russian investor
  - The prosecutors announced intention to closely scrutinise compliance with Russian laws of foreign businesses that have announced plans for exiting Russia
- **Criminal Liability for Calls for Introduction of New Sanctions and Fake News about Russian Army**
- **Draft Law on Criminal Liability for Sanctions Compliance**
  - On 27 February 2022 the Attorney General in Russia issued a statement "reminding" everyone that assistance to entities from hostile states in their actions detrimental to the safety of the Russian Federation constitutes "high treason"

# **RUSSIAN COUNTERMEASURES: JURISDICTIONAL MEASURES**

## **➤ Exclusive Jurisdiction of Russian courts over sanctions-affected disputes:**

- Russian court may accept jurisdiction over a dispute despite the contractually agreed foreign venue, if as a result of foreign law restrictions “access to justice” in foreign jurisdiction is restricted;
- Russian Supreme Court: it does not matter, if a Russian counter-party is sanctioned or not, the mere fact of a foreign jurisdiction administering the sanctions may be sufficient (see Uralvagonzavod vs. Pesa)

## **➤ “Piggy Peppa” case (#A28-11930/2021 dated 3 March 2022)**

- Foreign brand owner denied protection because of being a resident of an unfriendly jurisdiction



# **RUSSIAN COUNTERSANCTIONS: POLITICAL AND DIPLOMATIC RESTRICTIONS**

## ➤ **Travel Bans**

- Since October 2020, Russia has been applying travel bans against certain EU, UK and Canadian officials introduced by Belarus (lists of banned individuals are not disclosed) under its alliance obligations
- Since November 2020, Russia has been applying travel bans against certain EU officials in response to sanctions for the alleged assassination attempt on Alexey Navalny
- In April 2021, Russia barred certain US officials (including Attorney General and the FBI Director, among others) from entering Russia
- In March 2022 a range of foreign politicians, including Joe Biden, have been sanctioned by Russia

## ➤ **Diplomatic restrictions**

- In May 2021, Russia listed the US and the Czech Republic as "unfriendly states." As a result of this designation, US diplomatic missions in Russia cannot hire local staff, while Czech diplomatic missions can only hire up to 19 people. In addition, 10 US diplomats were expelled from Russia

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