

# Russian counter-sanctions – new restrictions and how they will work

Russian authorities remain continue to seek ways to respond to international sanctions pressures on its economy, which intensified at the end of February 2022. Dentons has already reported<sup>1</sup> on the array of special measures adopted by the RF President under the following edicts:

- (a) Edict No. 79, On Special Economic Measures in Connection with Adverse Actions of the United States and Foreign States and International Organizations That Have Joined Them, dated February 28, 2022 (**Edict 79**);
- (b) Edict No. 81 On Additional Temporary Economic Measures to Ensure Financial Stability in the Russian Federation, dated March 1, 2022 (**Edict 81**); and
- (c) Edict No. 95, On Temporary Procedures for Discharging Obligations to Certain Foreign Creditors, dated March 5, 2022 (**Edict 95**).

On March 18, 2022, further new measures were established by RF President Edict No. 126, On Additional Temporary Economic Measures to Ensure Financial Stability in the Russian Federation in the Sphere of Currency Regulation (**Edict 126**). Edict 126 entered into immediate effect. It includes several clarifying provisions on the application of earlier restrictions.

## 1 Russian investments in foreign projects and joint ventures

Through December 31, 2022, Russian residents must obtain approval from the Central Bank of the Russian Federation (the **CBR**)<sup>2</sup> to carry out the following transactions:

- (a) A resident's payment for any interest, investment or share (in authorized or joint-stock capital, or in a cooperative investment fund) in a corporate non-resident; and
- (b) A resident's contribution to a non-resident as part of performance of a simple partnership agreement with investment in the form of capital contributions (joint venture agreement).

At the same time, the CBR clarified<sup>3</sup> that approval is only required for direct payment for a resident's participation in a cooperative or LLC (in equity or property). The new restriction does not apply to exchange-traded securities of non-residents.

<sup>1</sup> Please refer to our previous publications dated 3 and 15 March 2022.

<sup>2</sup> The CBR established the procedure for issuing permits by the Decision of the Board of Directors of the CBR on

establishing the amount of individual transactions of residents and non-residents dated March 25, 2022.

<sup>3</sup> Answer to question, posted on the regulator's website on March 18, 2022 under the Investments section.

## 2 Additional restrictions on foreign currency transactions

According to Edict 126, the CBR Board of Directors is entitled to set limits on the amounts of:

- (a) Prepayments / advance payments by residents to non-residents under certain types of contracts<sup>4</sup> (with no restrictions being established for transactions of natural persons, credit institutions and VEB.RF);
- (b) Transfers by corporate non-residents associated with unfriendly states<sup>5</sup> (**Unfriendly Corporate Non-Residents**) of money from their accounts with Russian credit institutions to the accounts of other corporate non-residents that *are not* categorized non-residents from Unfriendly States (**Other Corporate Non-Residents**);
- (c) Transfers by other Corporate Non-Residents of money from their accounts with Russian credit institutions to accounts held in Unfriendly States;
- (d) Transfers or receipt (as the case may be) by other Corporate Non-Residents of:
  - (i) Money (including e-money) to financial market institutions from Unfriendly States; and
  - (ii) Money (including e-money) from Unfriendly Corporate Non-Residents,

without opening an account;

- (e) Purchases by corporate non-residents of currency in Russia.

If any above transaction is in an amount exceeding the limit set by the CBR Board of Directors, then that transaction may only be carried out with the approval of the Government Commission on Control for Effectuation of Foreign Investments (the **Government Commission**). In any case, the new requirements limiting the amount of the above transactions will be applicable from the date of publication of the corresponding decision of the CBR Board of Directors.

Notably, the limits on transaction amounts do not apply to foreign currency being credited to the accounts of organizations implementing LNG production in the Russian Arctic (**Arctic LNG Project Participants**),<sup>6</sup> in connection with the implementation of those projects.

Edict 126 specifies (similarly to Edict 95) that the new restrictions on foreign currency transactions and the other requirements in Edict 126 do not apply to non-residents associated with Unfriendly States whose ultimate beneficiaries are Russian residents (even if they are controlled<sup>7</sup> through foreign legal entities), provided information on control has been duly disclosed to Russian tax authorities.

## 3 Mandatory sales of foreign currency proceeds – exceptions

Recall that, in accordance with Edict 79, Russian residents involved in foreign trade operations must sell 80% of their foreign currency proceeds received from foreign trade operations with foreign counterparties within three business days of the currency being credited to an account.

Subject to the evolving enforcement practice, Edict 126 stipulates that a resident involved in foreign trade operations can also otherwise

<sup>4</sup> Specified in the Decision of the Board of Directors of the CBR dated March 25, 2022.

<sup>5</sup> Edict 126 does not specify the list of such unfriendly states, but we assume that they should include the states previously listed in Russian Government Order No. 430-r of March 5, 2022 (**Unfriendly States**).

<sup>6</sup> For example, the NOVATEK projects with a substantial share of foreign investors (Yamal LNG and Arctic LNG 2).

<sup>7</sup> Control is determined based on the criteria specified in Article 5 of the Federal Law on Procedures for Foreign Investments in Business Companies of Strategic Importance for National Defense and Security (No. 57-FZ of April 29, 2008).

comply with the above requirement with regulatory approval. To wit, the RF President has authorized:

- (a) The CBR to issue approvals<sup>8</sup> for:
  - (i) Deferred sale of foreign currency proceeds; and
  - (ii) Exemption from the mandatory sale of foreign currency proceeds in the amount going toward repayment of foreign currency debt under credit facilities with Russian banks (including repayment of credit and payment of interest and/or penalties); and
- (b) The Government Commission to issue approvals<sup>9</sup> for the sale of foreign currency proceeds in an amount other than 80%.

Edict 126 also makes a specific exception to the rule on the mandatory sale of foreign currency proceeds for Arctic LNG Project Participants, to which the rule does not apply.

## 4 Clarification of procedures for discharge of monetary obligations

### 4.1 Ruble payments on foreign currency accounts / deposits with sanctioned banks

Edict 126 simplifies the procedure for credit institutions that have been sanctioned by Unfriendly States to discharge their obligations under bank account (deposit) agreements with Russian corporate clients.

Until September 1, 2022, these obligations denominated in a foreign currency may be discharged in rubles in an amount calculated according to the CBR exchange rate as of the date of payment, if they arose prior to the sanctions being imposed on the credit institution.

<sup>8</sup> The authorization procedure set forth in the [Decision of the Board of Directors of the CBR of March 25, 2022](#) shall apply.

## 4.2 Authorization given for loans in rubles to residents controlled by persons from Unfriendly States

Under Edict 81, Russian residents may only extend ruble-denominated loans to persons associated with Unfriendly States and to persons under their control with the prior approval of the Government Commission.

Edict 126 has clarified that residents *do not need such approval* to grant ruble-denominated loans to another resident, even if the latter is controlled by a person associated with an Unfriendly State.

## 5 Permitted transfers to residents' foreign accounts

From the outset, Edict 79 and Edict 81 imposed severe restrictions on residents' transfers of any foreign currency earnings to their accounts with foreign banks and other financial market institutions.

Meanwhile, over time, regulators have advised of certain exceptions whereby a resident does not have to obtain approval from the Government Commission to transfer foreign currency to an account it has abroad. Among others, these exceptions include:

- (a) As per the CBR:<sup>10</sup>
  - (i) Russian credit institutions adding funds to their correspondent accounts with foreign banks;
  - (ii) Crediting of funds as a result of settlements following clearing of transactions made using national payment instruments, carried out by Russian credit institutions using their correspondent accounts with foreign banks, as well as those of foreign

<sup>9</sup> The Russian Government is instructed to define the procedure for making these decisions by 28 March 2022.

<sup>10</sup> CBR Clarification 2-OR (see below).

banks with Russian credit institutions;

- (b) As per the Ministry of Finance of Russia:<sup>11</sup>
- (i) Foreign currency transfers by residents to their foreign accounts to fund current operations of their branches and representative offices in an amount not exceeding the extent of that funding for the previous year;
  - (ii) Transfers to individuals' foreign bank accounts of foreign currency received from non-residents as wages, rent, coupons and dividends on securities and other interest payments;
  - (iii) Funds transfers in foreign currency by individuals from their foreign bank accounts opened prior to March 1, 2022 to their other foreign accounts, information on which has been properly disclosed to Russian tax authorities.

Edict 126 additionally specifies that no further approval from the Government Commission is required for the transfer of foreign currency to accounts (deposits) held in foreign banks by the following residents:

- (a) Russian diplomatic missions and consulates and permanent missions of Russia to international (interstate, intergovernmental) organizations;
- (b) Other official delegations of the state and federal executive agencies;
- (c) Foreign representative offices and/or branches of corporate residents; and
- (d) Employees of such organizations.

Moreover, it appears residents will also be able to use their accounts with foreign banks

and other financial market institutions to carry out transactions with the securities and real estate described in sections 6.3 and 6.6, respectively.

## 6 CBR clarifications on the application of restrictions

Owing to the rapid adoption of new restrictions and the possible differing interpretations thereof, the RF President has authorized the CBR to provide official clarifications on matters of the application of not only the previously issued Edict 79, Edict 81 and Edict 95, but also the recently adopted Edict 126. Within this competence, the CBR has issued Official Clarification No. 2-OR of March 18, 2022 (**CBR Clarification 2-OR**).

### 6.1 Modification of the terms of loans granted prior to March 1, 2022

Under CBR Clarification 2-OR, Edict 79 and Edict 81 do not prevent residents from entering into an agreement to restructure or modify the terms of loans granted by residents in foreign currency prior to March 1, 2022.

### 6.2 Residents with dual citizenship

As we had previously assumed, for the purposes of Edict 79, Edict 81 and Edict 95 all the new restrictions apply to “residents” within the meaning given in the Federal Law on Currency Control and Regulation (No. 173-FZ of December 10, 2003). First and foremost, residents include citizens of the Russian Federation.

At the same time, a resident that also has citizenship of another state is treated only as a resident and citizen of the Russian Federation. This serves to clear up the questions that arise when classifying natural persons as targets of particular regulation.

### 6.3 Permitted securities transactions with non-residents from Unfriendly States

As we reported previously, according to Edict 81, the purchase/sale and other types of transactions involving the transfer of title to

<sup>11</sup> Information on a Government Commission decision, posted by the Ministry of Finance of the Russian Federation on its Internet site on 14 March 2022.



securities between a resident and a non-resident associated with Unfriendly States are subject to approval by the Government Commission or the CBR.

At the same time, under CBR Clarification 2-OR and other earlier guidelines from the regulator, no such approval by the Government Commission is required for the following transactions (operations) if they are not accompanied by a transfer of funds (transfer of rights to funds):

- (a) Operations conducted when converting depositary receipts for shares of a Russian issuer into shares of the Russian issuer, provided the conversion results in the Russian issuer's shares being credited to the securities account belonging to the holder of these depositary receipts;
- (b) Operations conducted in connection with the transfer of securities by a person from an Unfriendly State that was holding these securities and performing all actions related thereto on behalf of the person to which they are being transferred (e.g., the return of securities from trust or the broker that is the legal owner);
- (c) Operations for the transfer of securities without transferring the rights to those securities;
- (d) Operations being conducted against the will of the person exercising the rights to the securities (execution of court judgments, conversion of securities by the obligor, etc.);
- (e) Operations to debit securities from the nominee holder's securities account and to credit them to another securities account of the nominee holder.

That said, carrying out the above operations still requires that residents discharge their financial obligations (e.g., under financial instruments) according to the special procedure established by Edict 95.

Government Commission / CBR approval is not required for transactions (operations)

subject to Edict 81 and resulting in the creation of title to securities if:

- (a) The securities are in the custody of a foreign depository, foreign bank or other foreign financial market institution recording the rights to and handling the custody of securities outside of Russia; and
- (b) Transactions with those securities are settled on accounts (deposits) held by residents with foreign banks or foreign financial market institutions, for which such residents have properly disclosed information to the Russian tax authorities.

#### **6.4 Non-residents' securities accounts treated as type "S" accounts**

According to CBR Clarification 2-OR, it is not just the securities accounts of non-residents from Unfriendly States and persons under their control that are treated as type "S" accounts, but also the securities accounts of all other non-residents that were opened prior to March 5, 2022.

Any transactions (operations) of non-residents with securities for which rights are recorded in securities accounts are to be completed using type "S" securities accounts.

#### **6.5 Authorization given for netting of derivative contracts**

The adoption of Edict 95 gave rise to the question as to the extent to which the special procedure for discharge of financial obligations applies to obligations arising from derivative contracts.

CBR Clarification 2-OR confirms that the procedure for discharge of financial obligations applies to the discharge of obligations arising from derivative contracts if they meet the criteria established by Edict 95. At the same time, this special procedure *does not prohibit* the discharge of obligations under derivative contracts entered into under a master agreement through *netting*.

## 6.6 Permitted real estate transactions with non-residents from Unfriendly States

Similarly to securities transactions, the CBR clarified the criteria that need to be met in order for residents to complete purchase/sale and other transactions with non-residents from Unfriendly States resulting in the creation of a title to immovable property. These transactions do not require Government Commission approval if:

- (a) The real estate assets (including real estate construction projects) are located outside of Russia; and
- (b) These transactions are settled on accounts (deposits) held by residents with foreign banks or foreign financial market institutions, for which such residents have properly disclosed information to the Russian tax authorities.

At the same time, the Government Commission has already reviewed requests from citizens regarding the application of the requirements for real estate transactions with non-residents from Unfriendly States and has ruled<sup>12</sup> that residents can:

- (a) Sell real estate to a natural person who is a non-resident from an Unfriendly State; and
- (b) Buy real estate from natural persons who are non-residents from an Unfriendly State provided the purchase price is credited to the seller's type "S" account.

We continue to track legislative developments and the application of new restrictions.

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<sup>12</sup> Excerpt from minutes of a meeting of a subcommittee of the Government Commission, No. 12 dated March 17, 2022.