

New procedure for approving IP transactions

On 20 May 2024, Presidential [Decree](#)* No. 430 "On the Temporary Procedure for Acquisition of Exclusive Rights from Certain Right Holders and Meeting Monetary Obligations to Certain Foreign Creditors or Persons under their Control" was signed by the President and entered into force (the "**Decree**").

Now, within the framework of counter-sanction regulations, transactions on assignment of intellectual property owned by right holders from "unfriendly" states or entities controlled by them shall be approved by the Government Commission for Control over Foreign Investment in the Russian Federation (the "**Commission**"). The approval is needed when assignment is made from a right holder from an "unfriendly" state to a Russian acquirer.

The procedure provides for submitting a request to the Commission for a permission to be issued. It can be submitted by the right holder or the purchaser under the transaction. The Government will elaborate and detail the procedure and the required documents.

There are several exceptions. New requirements shall not apply to transactions:

- on assignment of rights to scientific, literary or artistic works, performance records, phonograms, messages by broadcasting organisations;
- not exceeding RUB 15m.

Upon decision of the Commission, the funds payable (including fines and other payments) may be subject to crediting to a special type "O" account. The funds may be transferred from a type "O" account to other accounts, including those abroad, only by permission of the Commission. This [procedure](#) for making payments under agreements on the use of intellectual property of right holders from "unfriendly" states has applied since 27 May 2022 according to Presidential [Decree](#)* No. 322.

It is essential that the requirement on making payments to a type "O" account retroactively applies to payments under deals concluded before 20 May 2024 which remain effective on the Decree effective date.

A special payment procedure through a type "O" account also covers the acquirers' payments in favour of creditors from "unfriendly" states or entities controlled by them made under independent guarantees and suretyships issued to secure the relevant assignment transaction.

A possible prerequisite for implementing a new transaction approval procedure was the practice of assignment of trademarks and patents to foreign companies instead of Russian ones which was performed by foreign right holders leaving the Russian market, as well as control over the withdrawal of funds from the Russian territory.

Beside a detailed procedure of the Commission's transaction approval to be adopted by the Government, we are also expecting amendments to Government Resolutions regulating the state registration procedure for assignment of rights to trademarks, patents, and registered software by Rospatent (the Russian Federal Service for Intellectual Property). We suppose that now to register such an agreement it will be necessary to provide Rospatent with an extract from the agreement containing the transaction value or a copy of the whole agreement, in each case certified by a notary public. A requirement to disclose the transaction value to Rospatent did not exist before, but considering the exception for transactions not exceeding RUB 15m, such a requirement appears reasonable.

Taking into account the new regulation, the companies that are currently negotiating IP transactions or are planning to conclude those in the future, need to keep in mind the new requirements and abide by the Commission's transaction approval procedure.

* *In Russian*

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