

## UPDATE: FOREIGN INVESTMENTS SAFETY ALERT

### *Overview of limitations of foreign investments and consequences for foreign companies in Russia*

6 April 2022

Due to the significant changes of the investment climate in Russia, the Russian Government has introduced a number of extraordinary measures to prevent foreign investor and capital flight, some of them directly targeting multinationals operating in Russia.

**On March 7**, the Government approved [the list of countries](#), exercising unfriendly actions in relation to Russia (“unfriendly nations”). The list includes the US, all EU member-states, UK, Canada, Australia, Japan, Republic of Korea and other nations which imposed sanctions on Russia and serves a key tool of Russia’s counter-sanctions measures, including those targeting foreign investors.

**On March 10**, the Government disclosed details of the procedure for appointing external administration to foreign companies that have decided to stop their activities in Russia, as well as the criteria for introducing external management. The preparation of the respective draft law is still stalled.

**On March 15**, “United Russia” party (the dominant party in the State Duma) proposed to impose criminal liability for companies that comply with sanctions against Russia inside the country.

**On March 18**, Russia’s General Prosecutor’s Office reported on audits held in companies in order to prevent price increases for socially important goods, including foods, hygiene, household chemicals and goods for pets. Regional prosecutors are assigned to inspect largest manufacturers and suppliers.

**On March 28**, the Government [introduced](#) a moratorium on the bankruptcy of individuals and legal entities. The moratorium will be in effect from April 1 to October 1, 2022. During this time, lenders will not be able to apply to the court for bankruptcy.

**On March 29**, the Government adopted a [decree](#) that effectively allows parallel imports and removes liability for importing original foreign-made goods without the consent of the right holders. The preliminary list of allowed parallel imports includes a wide range of industrial and consumer goods, except for agricultural products.

**On April 4**, the Chairman of the State Duma Committee for State Building and Legislation [announced the submission of the draft law](#) introducing criminal liability for the implementation of Western sanctions on Russian territory was submitted to the State Duma. The announced changes will affect the management of entities of any form of ownership including subsidiaries of foreign companies, whose decisions lead to the implementation of sanctions.

Accumulated FDI in Russia constitutes almost 700 billion USD (the majority originating from European Union countries), and their future in Russia represents a significant issue both for the Russian and European economies.



As part of our ongoing efforts to protect and support multinational investments in Russia, Kesarev has prepared a brief guide on the measures introduced by the Government of Russia that affect operations of international companies in the country.

Information will be updated in response to major developments throughout the crisis, with the most recent information highlighted.

**This brief covers the following:**

<b>ADOPTED LEGISLATION / REGULATIONS .....</b>	<b>2</b>
<b>Capital flow prevention .....</b>	<b>2</b>
<b>Counter-sanctions .....</b>	<b>3</b>
<b>Economic policy and crisis bailout measures .....</b>	<b>7</b>
<b>Tax Policy.....</b>	<b>8</b>
<b>LEGISLATION AND INITIATIVES BEING UNDER DISCUSSION.....</b>	<b>8</b>
<b>Risks to assets of foreign investors leaving Russia .....</b>	<b>8</b>
<b>Import regulation .....</b>	<b>10</b>
<b>Price regulation .....</b>	<b>14</b>
<b>PUBLIC COMMENTS AND DISCUSSIONS .....</b>	<b>15</b>

## Adopted Legislation / Regulations

### Capital flow prevention

Measures to prevent capital control and ensure financial stability are among the top priorities for the Government and the Central Bank. The measures in this area are among the first ones being imposed over the crisis period.

On **February 28**, President Putin signed an [executive order](#) introducing several “response measures” – mainly several capital flow control policies to be enforced since March 1, which will negatively impact Russian investment climate, but may ensure mid-term financial stability, namely:

- Commitment for Russian resident companies to sell 80% of foreign exchange earnings credited from 1 January 2022.
  - The procedure for selling foreign currency will be established by the Central Bank.
- Prohibition for Russian residents to provide foreign loans in foreign currency and credit foreign currency to bank accounts outside of Russia.
- Prohibition of money transfers without opening an electronic payment account provided by foreign suppliers.

Similar measures were previously established by the directive of the Central Bank, however, from a legal point of view, the Presidential Order makes their implementation imperative.



The Central Bank issued [clarifications](#) on implementing that order, saying, among other things, that making foreign currency payments from residents to non-residents to pay for goods or services is not prohibited.

**On March 1**, President Putin [signed an order on additional temporary measures to ensure financial stability of Russia](#). Key provisions:

- Starting from **March 2**, the following operations of residents with foreign entities linked to “unfriendly states” can be conducted only under a special procedure, i.e., upon a special authorisation: loans and credit operations in roubles, as well as operations with securities and immovable property.
- Starting from March 2, it is prohibited to export foreign currency cash and foreign currency instruments over 10000 USD.

In late February - early March, the Central Bank of Russia banned Russian brokers from fulfilling orders from foreign residents to sell shares of Russian companies. Additionally, foreign individuals and legal entities are prohibited from accruing coupons and dividends of Russian issuers.

**On March 9**, the Central Bank established a temporary procedure (until September 9) for the money withdrawal from foreign currency deposits or accounts of citizens. It is allowed to cash out up to \$10,000 in foreign currency (any other currency than dollars must be converted into USD at the rate of the Central Bank). Amounts over \$10,000 can be cashed out only in rubles at the rate of the Central Bank on the day of withdrawal.

**On March 18**, President Putin [signed](#) an executive order on additional temporary measures in the field of currency regulation.

The executive order affects a number of transactions related to payments of foreign individuals and legal entities. It provides the following:

- The Central Bank of Russia has received a right to determine the amount of payment in favor of foreign legal entities and individuals, as well as the transfer of funds from accounts opened in Russian credit institutions of foreign persons.
- The Bank also will have a right to issue permits to exporters not to sell foreign exchange earnings.
- Until December 31, Russian residents will not be able (only with the decision of Central Bank) to carry out an operation to pay a resident for a share, deposit, or share in the property of a foreign company. These restrictions do not apply to the purchase of securities of foreign companies on the stock exchange.
- Until September 1, obligations in foreign currency under contracts between sanctioned banks and Russian legal entities, are considered to be fulfilled for cases of equivalent payment in rubles at official exchange rate of the Central Bank on the day of fulfillment of obligations.

These measures are intended, on the one hand, to make it easier for Russian companies to meet their international obligations and, on the other hand, to impose additional restrictions on non-residents engaged in foreign exchange transactions.



## Counter-sanctions

**On March 7**, the Government approved [the list of nations](#), exercising unfriendly actions in relation to Russia (“unfriendly nations”). The list currently includes:

- G7 nations
- All EU member-states
- South Korea
- Taiwan
- Switzerland
- Ukraine,
- Etc.

The Government decree was signed to implement a [presidential executive order](#), according to which Russian individuals and legal entities that have foreign currency obligations to foreign lenders from “unfriendly jurisdictions” will be able to pay them in rubles rather than in foreign currency.

At the same time, the list of unfriendly nations will become one of the key tools of law enforcement practice in the context of counter-sanction measures, including import / export restrictions, selective waiver of IP rights, etc.

**On March 4** the Russian Parliament adopted [the law](#) to “improve the mechanisms that ensure sustainable economic development in the face of sanctions pressure from foreign states” (*the law was signed by the President on 8 March*). Among other things, this includes (mostly for 2022):

- A possibility of a moratorium on scheduled inspections of SMEs for 2022. Special conditions for conducting state control (oversight) may be introduced by the Government in 2022.
- The Government by a separate legal act may authorize carrying out activities without renewing a license/permit; obtaining licenses/permits and renewing them without obligatory conformity assessment procedures, without paying state fees, without paying for necessary public services; not undergoing conformity assessment procedures for perpetual licenses/permits.
- In terms of public procurement, a possibility to change the essential terms of the contract (subject, price, term, payment procedure, etc.) by decision of the Government, region or municipality is provided. Besides, until December 31, 2022, additional procurement opportunities from a single supplier are provided, while additional cases of cancellation of fines for non-fulfilment of contracts are provided.
- Medical organizations will be able to purchase more products they need according to a simplified procedure (medicines, consumables, and medical products).
- Medicines and medical devices that do not have a Russian analogue can be purchased from a single supplier (if the only manufacturer is not from the country that imposed the sanctions).
- A special registration procedure is provided in case of medicines deficit due to economic restrictions imposed by other countries.
- The Government may also ban export of medical devices from Russia, previously imported from the countries that imposed economic restrictions.



- To stimulate medicines and medical devices production in Russia, the Government may approve special procedures for the pharmaceutical activity and production licensing.
- Special procedures may be introduced for conformity assessment with technical regulations.
- **The Government is authorized to set a list of products to which IP rights protection cannot be applied.** The list could be approved by a separate Government Decree and poses significant threat to IP rights holders.

**On March 6**, the Government approved a [decree](#) to amend the methodology for determining the amount of compensation paid to a patent owner when deciding to use an invention, industrial design or utility model without his consent. In relation to patent holders from “unfriendly nations”, the amount of compensation will be set at 0% of the actual proceeds of the person who used the result of intellectual activity (*instead of 0,5% in general*).

The aim of the amendments is to prevent market shortages in the face of foreign companies exits and disruption of supply chains. These measures are intended to mitigate the negative impact on sectors of the economy and enterprises that are largely dependent on foreign technologies, software, etc.

**On March 11**, it also became known (with reference to the latest version of the Government’s anti-crisis plan) about the possibility of developing and applying a “compulsory licensing” mechanism to some categories of products. The mechanism, first of all, may concern software, as well as other scarce technologies, the list of which must be approved by the Government:

- The mechanism of "compulsory licensing" involves granting the right to use the results of intellectual activity without granting from IP right holder.
- Currently, the Civil Code provides for the possibility of "compulsory licensing" in extreme cases, while providing for compensation to the right holder. The updated mechanism will probably allow not to pay such compensation to right holders from "unfriendly countries".

**On March 28**, it became known that the Federal Service for Technical and Export Control (FSTEK) would revoke the certificates of more than 50 products of foreign software vendors that stopped work in Russia. The certificates will be revoked if the companies do not guarantee technical support for their solutions within 90 days.

In particular, the regulator's register refers to a temporary suspension of certificates for software products from IBM, Microsoft, Oracle, SAP and others. According to the requirements of the regulator, certificate holders are required to provide technical support for information protection tools, including fixing identified vulnerabilities. This is relevant, first of all, for government information systems that use software solutions from foreign companies.

**On March 6**, [the Government imposed a temporary ban](#) on the export of medical devices from Russia manufactured in states that “have decided to introduce economic restrictive measures against Russia.” Since there is no list of countries that have imposed sanctions on Russia at the legislative level, the list of «unfriendly countries» will probably be used in law enforcement practice.

**On March 8**, a Presidential [order](#) to approve special economic measures for external trade was published. The order is of framework nature and authorizes the Government to impose a ban on the



import and export of certain products or raw materials (*except for goods imported or exported for personal use*). The measures are valid until December 31, 2022.

**On March 10**, the Government announced the preparation of a list (not yet available publicly) of goods and equipment which is temporarily prohibited from being exported from the country:

- The list includes more than 200 categories of goods affecting the main areas of production - industry, medicine, telecommunications, agriculture, etc.
- The export of these goods is temporarily restricted to all foreign countries, with the exception of the member states of the Eurasian Economic Union (EAEU), Abkhazia and South Ossetia.
- A permissive export procedure for these countries will be approved by a special government decree and relevant ministries.

The decision will be valid until the end of 2022.

Also, **on March 11**, the State Duma passed in the first reading a draft law to regulate turnover of medicines and medical devices in Russia.

- The draft law allows the Government to establish a special order (until December 31, 2022) for importing registered medicines into Russia in the packaging used for other countries' markets under the condition of full compliance of medicines with Russian regulation and the presence of labeling (sticker) in Russian language.
- Besides, it sets that manufacturer of medical devices cannot suspend or stop in full import of medical devices into Russia without making a prior 6-month notification.

**On March 21**, the Tverskoy Court of Moscow recognized Meta Platforms, Inc. as an extremist organization and banned all activities of the company on territory of Russia. The company-owned social platforms Instagram and Facebook were effectively blocked by Roskomnadzor's decision on March 11 and March 4 respectively.

The decision will take full legal effect once Meta Platforms is added to the Register of extremist entities of the Ministry of Justice (*this is expected following the appellate instance ruling in approx. 2 months*).

After that, ordering paid services (including advertising) and making any payments in favor of Meta and subsidiaries may be considered as financing of an extremist organization (Art. 282.3 of the Criminal Code). Public display the logos of Meta Platforms Inc., Facebook and Instagram may be qualified as an administrative offense (Art. 20.3 and 20.29 of the Code of Administrative Offenses).

Please note that in a basic scenario, the platforms' users and legal entities will not be prosecuted for using Facebook and Instagram in Russia, if their content if this does not contradict the legislation.



**On March 23**, President Putin announced that Russia would sell gas to "unfriendly" countries in rubles. The statement came against the backdrop of discussions at the EU and US level about the possibility of imposing an embargo on Russian oil (and restricting energy purchases in Russia in general):

- Putin instructed the Bank of Russia within a week to determine the procedure for purchasing rubles on the domestic market of Russia by buyers of Russian gas. Gazprom was instructed to submit the relevant gas contracts within a week.
- It should be noted that some gas contracts (for example, with Serbia and Bulgaria) provide for the possibility of settlements in rubles, while most of the contracts do not provide for this possibility. In this regard, uncertainty with payments and gas supplies should be expected in the near future.

**On March 29**, the Government adopted a decree that effectively allows parallel imports and removes liability for importing original foreign-made goods without the consent of the right holders.

This decision was made taking into account external sanctions in order to avoid deficit of certain foreign goods on the domestic market:

- The list of goods for parallel imports must be approved by the Ministry of Industry and Trade on the basis of suggestions of other federal executive bodies. In relation to the goods from the list, all necessary customs and control procedures will be carried out, and the products will be subject to warranty service.
- The preliminary list of allowed parallel imports includes a wide range of industrial and consumer goods, except for agricultural products.

## **Economic policy and crisis bailout measures**

**On March 7**, the Government resumed targeted support measures for systemically important companies. The term "systemically important" was introduced in 2020 with the onset of the crisis caused by the spread of the coronavirus, the list included large taxpayers and employers. Subsidiaries of a number of foreign companies are also included in the list of backbone companies. The list of support measures includes state guarantees necessary for restructuring loans and obtaining new ones, as well as subsidies for cost recovery.

Also **on March 8**, the Ministry of Finance allowed Russian state-owned companies that fell under the sanctions of states from the list of «unfriendly countries» not to post information about their purchases on official resources (public procurement website). This measure was taken to protect suppliers of state-owned companies from imposing secondary sanctions for participating in purchases from such companies.

Moreover, **on March 11**, during a meeting of the Government commission on improving the stability of the Russian economy in the face of sanctions, Prime Minister Mikhail Mishustin announced that companies affected by sanctions would have the right not to publish a list of their counterparties in order to save them from unnecessary risks. Also, customers will be able to write off forfeits, penalties and fines regarding suppliers who cannot fulfill their obligations due to sanctions.



## Tax Policy

**On 9 March** [the law](#) that gives additional powers to the Government in terms of tax benefits for the rest of 2022 was signed by the President. The law provides for the following:

- Possibility to suspend, cancel or postpone tax audits.
- Extension of deadlines for payment of taxes, fees and insurance premiums.
- Extension of deadlines for payment of advance payments for regional and local taxes.
- Extension of deadlines for reporting to the tax authorities.

**On March 16**, President Putin signed an [executive order](#) on measures to ensure economic stability and protection of the population in the Russian Federation. Among other things, the executive order the leadership of the Russian regions to take the following measures:

- Conduct operational monitoring of retail prices for essential goods, medicines, medical devices and their availability in retail outlets.
- Monitor the situation on the labor market and take measures to support employment.
- Ensure the uninterrupted functioning of life support facilities, transport, logistics, social infrastructure, educational facilities, healthcare, social services, energy, industry and communications.

These measures can potentially affect not only Russian but also foreign companies. In the context of support measures, the President also [signed](#) an executive order on expanding the powers of governors, who will head the so-called headquarters for supporting the economy.

## Legislation and Initiatives Being Under Discussion

### Risks to assets of foreign investors leaving Russia

**On March 10**, the Government released more details of a draft law governing the procedure for appointing external administration to foreign companies that have decided to stop their activities in Russia, as well as the criteria for introducing external management.

The draft law initiated by the Government may affect enterprises with a foreign participation share of over 25% (direct or indirect ownership by representatives of "unfriendly countries"). External administration can be introduced in two cases:

1. The termination of the entity's economic activity in Russia ("hard mechanism")
2. Actions of management bodies that may lead to termination of activities, liquidation and bankruptcy, for example, termination of contracts that is important to keep operations, dismissal of more than one third of the staff, etc. ("soft mechanism").

Below are the mechanisms for applying the provisions of the draft law in both cases.





### “Hard” mechanism

- The right to apply to the arbitration court with an application for the appointment of an external administration is granted to a member of the Board of Directors or the Federal Tax Service.
- The court takes interim measures to preserve the property and employment of the company.
- The owner (more than 50%) has the right to submit a petition to the court within 5 working days to challenge the appointment of an external administration due to resuming of work or selling of a business. But if an interim administration is appointed, the owner will no longer be able to stop the process.
- If the owner has not submitted a petition, the court appoints an external administration for 3 months. After that, shares of the new organization will be put up for auction by the external administration.
- The buyer is obliged to keep at least 2/3 of the jobs and the continuation of the activities carried out by the organization in the territory of the Russian Federation for at least 1 year.
- The total duration of all procedures is 4 months (*3 months for “rebuilding” and 1 month for sale*).

### “Soft” mechanism

- The mechanism is applicable in case management bodies carry out actions that may lead to unjustified termination of activities, liquidation or bankruptcy of the entity.
- An external administration is appointed for 6 months (not for 3).
- Unlike the first mechanism, the process is reversible for an owner.
- The owner (more than 50%) within 6 months has the right to submit a petition to the court to terminate the activities of the external administration with the intention to resume activity or sell the share.
- If the owner has not filed a petition, after 6 months shares of the company are put up for auction.
- The total duration of the procedure is 7 months (*6 months for external administration and “repackaging” assets, 1 month for sale*).

The state development corporation VEB.RF will act as an external administration in all cases except for financial organizations (for them Deposit Insurance Agency will act as the external administration). The main task of the external administration is to prepare assets for sale (inventory of assets, formation of a list of creditors' claims, valuation, etc.).

**On March 10**, President Putin announced the need to "act decisively in response to the closure of enterprises by foreign owners" and, if necessary, introduce external management. Given Putin's position, the likelihood of the law on “external administration” being passed is high, but this will be preceded by a short but intensive discussion between the advocates of a tougher and softer approach among decision-makers.

Supporters of a softer line include representatives of the business community, as well as a number of representatives of the government's economic bloc. The hardliners are concentrated in the national



security and are to some extent supported by First Deputy PM Andrey Belousov as well as a number of MPs.

#### RSPP and MoED initiatives to soften a draft law in “external administration”

**On March 11**, the Russian Union of Industrialists and Entrepreneurs (*RSPP*, the biggest Russian business association) published amendments to the draft law “On external administration” (*still officially not submitted to the State Duma*).

The RSPP noticed that measures should take into account the different nature and reasons for suspension of business activity (including public and foreign governments’ pressure) and decrease in the investment attractiveness of Russia. The Union proposes the following:

- Increase a foreign participation share from 25% to 50%.
- RSPP suggests that current share does not allow to block the economic activity of the entity and increases risks for Russian entities.
- Introduce the right to postpone the sale of the business of auction and keeping it under the external control for a period of up to 3 years - in order to give foreign investors an opportunity to return.
- Authorize the courts to recognize a part of the company under foreign ownership as non-controlling (if the Russian co-owners are ready to take over full management).
- For cases of an objective economic prerequisite for the termination of the business activities (or in case of firing of more than 1/3 of employees) external administration will not be appointed.
- The procedure of transferring funds remaining after satisfying creditors' claims in cases of bankruptcy or liquidation of the company must also be fixed.

**On March 22**, the head of the RSPP, Alexander Shokhin, sent proposals to the Ministry of Economic Development on restricting the rights of foreign shareholders and shareholders with unidentified citizenship.

Restrictions may affect:

- Shareholders of enterprises included in the list of strategic ones.
- Shareholders of companies with state participation or companies in which state-owned enterprises or strategic enterprises own a stake of 20% or more.

The proposed restrictions include:

- Possibility not to take into account the votes of foreign shareholders at the meeting of shareholders.
- Allow the entity not to accrue or pay dividends on shares owned by non-resident shareholders.
- Do not extend to foreign shareholders the right to demand the repurchase of shares in the event of a reorganization/delisting of the company.
- Etc.

The RSPP sees these restrictions as temporary (until the end of 2022).



Also, to reduce the negative effect of sanctions, the RSPP proposes to introduce the following restrictions for three to five years:

- Lower the threshold for delisting from 95% to 75% of votes.
- Lower the ownership threshold from 95% to 90% for forced share buybacks.
- Change the procedure for determining the market price of shares (including reducing the period for calculating the weighted average price from six to three months).

The RSPP proposals may pursue several goals simultaneously: limit the ability of foreign shareholders to withdraw assets, make it easier for Russian companies to delist and buyback their own shares. In addition, these restrictions can be used by the RSPP in the discussion about the external management of the assets of foreign companies (as an argument in favor of a softer approach).

**On March 14**, Minister of Economic Development Maxim Reshetnikov announced that a significant part of foreign business, including retail chains, would return to Russia. Reshetnikov linked the decision to suspend work in Russia with logistical problems, thereby shifting the focus from voluntary exit from the market, which may provoke the Russian authorities to harsh measures against such companies. However, Reshetnikov is not a key decision-maker in the economic bloc of the Government (compared to the First Deputy PM Andrei Belousov and some others).

**On March 24**, the Moscow prosecutor's office issued a warning to the heads of a number of foreign companies (including Russian subsidiaries of Nike, Coca Cola, British Imperial Tobacco, Mango, etc.), which suspended their activities in Russia. The warning was issued in order to secure compliance with tax laws and labor rights of employees by those companies that have suspended their activities in Russia. Similar actions are taken by prosecutor's offices in other regions.

The actions of the prosecutor's office should be viewed in the context of discussion about the future of assets of foreign investors in Russia. The approach to individual by the authorities and involvement of the law enforcement bodies largely depend on the strategy of companies' behavior (complete withdrawal or the possibility of returning under certain conditions) and their external and internal communication.

Earlier, **on March 25**, Deputy PM Tatyana Golikova announced new recommendations to the regional employment services, implying a proactive approach in cooperation with enterprises.

This approach applies to both Russian and foreign companies and includes:

- Preventive monitoring of employment in enterprises of foreign investors which announced business suspension in Russia.
- Suggestion of support measures.
- Maintaining a register of employees in the risk zone
- Etc.

**On March 29**, Federation Council (*upper house of parliament*) Chairperson Valentina Matvienko spoke out against the nationalization of assets of foreign companies leaving the Russian market. According to her, companies should make a decision: to leave Russia permanently or to resume work. "The authorities are preparing options that would allow the Russian economy to develop independently from foreign companies", Matvienko said.



Earlier, **on March 28**, the presidential spokesperson Dmitry Peskov also said that the nationalization of property of Russian entrepreneurs is nothing more than rumor. The comments of Ms. Matvienko and Mr. Peskov may indicate that radical options regarding external administration and nationalization issues could be off the table.

#### Draft amendments to Criminal Code introducing responsibility for compliance with sanctions in Russia

**On April 4**, the Chairman of the State Duma Committee for Legislation and State-Building Pavel Krasheninnikov announced the submission to the State Duma of a draft law introducing criminal liability for compliance with Western sanctions on the territory of the country.

The draft law was not yet published officially which is quite unusual and could indicate ongoing discussions about the wording and the very need for submission.

According to the publicly available information, compliance with sanctions will be punished by a fine of up to 1 million rubles, up to 5 years of forced labor or up to 10 years of imprisonment for responsible persons.

The wording of the bill seems to be extremely vague and leaves the actual enforcement at the discretion of the law enforcement and national security bodies.

Earlier, on March 15, the Chairman of the General Council of the United Russia party and First Deputy Chairman of the Federation Council Andrey Turchak came up with the initiative to introduce criminal liability for companies that implement sanctions.

The likelihood of the draft law being passed is high. At the same time, it is likely that during the discussion of the draft law with the business community and before its consideration in the second reading, amendments may be made to its wording in order to reduce risks for Russian business.

#### Law on fakes expansion

**On March 18**, the State Duma adopted amendments to the “fake law”, expanding its scope:

- Introduced liability (up to criminal) for the dissemination of false information about government agencies operating abroad (*not only the armed forces, but also embassies, trade missions, etc.*).
- A fine of 0.7-1.5 million rubles is provided for the dissemination of fakes (**about** \$ 7-15 thousand) or imprisonment for up to 3 years (if the violation caused serious consequences - 10-15 years).

The law carries risks equally for Russian and foreign residents who publicly disseminate information that may be considered false about the activities of governmental bodies abroad - specifically entities such as (such as Rosgvardiya and the EMERCOM)



### Draft law authorizing contract termination due to sanctions

**On March 22**, a draft law had been submitted to the State Duma that would allow companies to terminate or suspend contracts, the implementation of which is impossible due to the sanctions of "unfriendly" countries.

The draft law provides for the following forms of restrictions on the obligations of such companies:

- Termination of obligations, if its execution is impossible.
- "Freezing" of obligations and non-application of liability to legal entities.
- Possibility of cancellation of the contract in case of impossibility of its execution.

The new rules are proposed to apply to contracts concluded after February 24, 2022.

**On March 31**, the Federal Antimonopoly Service developed a draft law (not yet published officially) that introduces a ban on linking contract prices to foreign currency and/or stock indicators. The draft law has been submitted for consideration by the Presidential Council for Codification and Improvement of Civil Legislation and the Presidential State-Legal Directorate.

According to available information, the draft law proposes the following:

- To invalidate the terms of contracts that provide for linking prices to foreign currencies, exchange and non-exchange indices. This link is widely used by companies from various sectors (including exporters of raw materials, sellers and lessors in the real estate market, etc.) to reduce the risks of fluctuations in currencies and commodity prices, especially for long-term contracts.
- Agreements already concluded must be amended within 30 days from the official publication of the law. Otherwise, the execution of contracts will be automatically carried out at the exchange rate of the ruble or price indicators on world commodity markets as of January 1, 2022.

The adoption of this draft law remains debatable. The opinion of the Research Center for Private Law under the President (which could be close to approach of the Presidential State Legal Directorate) draw attention to the fact that the draft law was developed as an extraordinary measure. At the same time, the proposed changes are not temporary, but permanent, which does not meet the stated goals of the draft law.

Thus, there is a possibility that the draft law will either be rejected or adopted in a significantly changed wording. In particular, the scope of its application may be limited only to goods produced in Russia to meet domestic demand, but not export supplies.

**On April 1**, it became known that the Ministry of Economic Development had prepared amendments to the law on the legal status of foreign citizens. The [draft law](#) concerns the work of highly qualified specialists and provides for the following:

- Simplifying the issuance of a residence permit (without limitation of validity) to foreigners already working in Russia and paying taxes (now their residence permit is tied to the validity of a work permit). Foreign highly qualified specialists who receive a residence permit for the first time get it, as before, for the duration of the work permit.



- At the same time, the Government intends to increase the requirements for highly qualified specialists. Additionally, to the requirement to possess a certain set of skills (applies to specialties, the list of which is determined by the Government), the salary threshold should be raised (up to 750 thousand rubles per quarter, previously - 167 thousand rubles per month).

## Import regulation

During the discussion in the Federation Council (upper house of parliament) of the law on mechanisms to support the sustainability of economic development under sanctions, a statement was made on the legalization of parallel imports (import of goods of original goods without the permission of the copyright holder and usually through third countries). Senator from St. Petersburg Andrey Kutepov announced that "parallel imports are being legalized by exempting from liability those who import and sell goods from the list determined by the Government."

Thus, the mechanisms applied to intellectual property products can be extended to listed goods (to be developed by the Government) of foreign companies. The possibility of parallel imports is likely to be provided for by separate regulations (government decree) in the near future, developing the provisions of the adopted law.

**On March 15**, PM Mikhail Mishustin during a meeting of the Government Commission on improving the sustainability of the Russian economy announced a number of measures to support imports, including:

- Russia will suggest EAEU member-states to increase the customs duties threshold for cross-border e-commerce from EUR 200 to EUR 1000 until October 2022.
- It is also proposed to fix the exchange rate when paying import duties; establish priority for consumer goods during customs clearance (primarily for food and medicine); simplify customs clearance procedures and zero customs duties for the list of critical import goods (to be formed).

**On March 18**, Deputy PM Alexey Overchuk announced that the Council of the Eurasian Economic Commission approved raising the limit for duty-free import for items imported through cross-border e-commerce from EUR 200 to EUR 1 000.

## Price regulation

A draft law to introduce price regulation for food products, medicines, goods for children, household chemicals, etc., has also been drafted by line State Duma committees. The draft law has not been officially submitted to the State Duma.

**On March 16**, the head of the Committee on Industry and Trade of the State Duma, Vladimir Gutenev, proposed introducing state regulation of prices for gasoline and diesel fuel, sending the respective suggestion to the government. According to the initiative, during the period of sanctions, the Government will be able to set marginal wholesale and retail fuel prices, since the cost of socially significant goods and products depends on them.

The introduction of direct price regulation (setting marginal prices) for fuel could become a precedent. In the future, it can be extended to other significant goods (food, medicines, building materials, etc.).



At the moment, the Government is developing tools for softer price regulation. Thus, **on March 14**, it became known that the Ministry of Industrial Policy and Trade proposes to temporarily “untie” prices for metallurgical products and raw materials from the dollar exchange rate, setting the maximum possible prices for certain types of goods on the domestic market. A draft resolution was prepared allowing the ministry to conclude price agreements with manufacturers and sellers of these goods until the end of 2022. It should be noted that in 2020, similar price stabilization agreements were signed with retailers for sugar and sunflower oil.

#### Prosecutor’s office’s inspections of companies over prices increases

**On March 18**, Russia’s General Prosecutor’s Office reported on audits held in companies in order to prevent prices increases for socially important goods, including foods, hygiene household chemicals and goods for pets. Regional prosecutors are assigned to inspect largest manufacturers and suppliers. Audits are being organized upon the assignment of the prosecutor General Igor Krasnov.

Thus, the Prosecutor’s Offices will be authorized to organize audits of virtually any manufacturer or supplier of the above-mentioned categories of goods. Other participants of the supply chain such as cargo carriers could be subject to inspections as well.

Due to geopolitical context, largest multinationals with production facilities in Russia are under a higher risk of action by Prosecutor’s offices.

The audits will be planned under the following mechanism:

- An inter-agency working group for combating economic crimes operates at the level of the Prosecutor General’s Office.
- An anti-cartel expert group functions within this Prosecutor General’s Office working group.
- This group considers information on price increases for products and may, among other things, presume unjustified price increases. Subsequently, this information is forwarded to regional prosecutor’s offices, where the relevant manufacturers and suppliers operate.
- The respective regional offices may conduct inspections to verify price increase legality.

## Public Comments and Discussions

The discussion about a possibility to freeze or even confiscate the Russian assets of companies from the US and EU jurisdictions erupted, with a number of opinions from more moderate to more radical stated by various stakeholders:

- **On Feb. 27**, former President of Russia and currently Deputy Head of the Security Council Dmitry Medvedev stated that Russian could confiscate and nationalize assets of companies from jurisdictions which imposed sanctions. Probably, Medvedev voiced the most radical scenario among a number of options being considered.
- **On March 1**, Prime Minister Mikhail Mishustin made a statement regarding the prospects for the presence of foreign investors in Russia. He confirmed that the Government "considers foreign businesses as potential partners" and is open to dialogue with constructive investors. “Those who will not curtail their projects will win” in Russia, Mishustin said. Thereby, the



Government sends a message that keeping deeply rooted foreign companies in Russia is desirable, especially the companies in the consumer sector (to contain prices and prevent shortages).

A general framework of the Russian approach to foreign investors and their assets in Russia was stated on March 4 by First Deputy PM Andrey Belousov during the meeting with the Russian business community. His remarks outlined one of three options the Government will act in relation to foreign investors. They represent the Government's attempt to at least delay a massive outflow of FDI from Russia. Belousov mentioned 3 options for interaction with foreign investors: 1. *business continuity* 2. *transferring a stake to Russian partners for management* 3. *fast-track bankruptcy*. The External Administration draft law provides the legislative framework for the third option. In the near future, it is expected legislative initiatives encouraging foreign companies to remain in the Russian market.

**On March 10**, Andrey Klishas, Chairman of the Committee on Constitutional Legislation of the Federation Council, stated that “in relation to foreign companies from unfriendly countries that leave Russia, not only such measures as nationalization, but also restriction of property rights, a ban on voting by blocks of shares can be applied. in subsidiaries, blocking assets and other measures.” Klishas' statement reflects the authorities' search for various options for influencing foreign companies, depending on the nature of their behavior on the Russian market (from softer to tougher measures up to nationalization).

**On March 10**, during a meeting with members of the Government, President Putin made a number of statements regarding the possibility of limiting the export of Russian goods that are critical for many Western countries, including grain and potash fertilizers. The reason for such restrictions may be the need to prevent a shortage (rising prices) of food in Russia itself.

**On March 11**, the Prosecutor General's Office of the Russian Federation Igor Krasnov instructed to strengthen supervision over compliance with the law by foreign companies that announced the suspension of activities in Russia. We are talking about tighter control over compliance with labor laws, fulfillment of obligations to contractors and obligations to the state.

**On March 28**, the Government introduced a moratorium on the bankruptcy of individuals and legal entities. The moratorium will be in effect from April 1 to October 1, 2022. During this time, creditors will not be able to apply to the court for bankruptcy (only at the request of the debtors themselves). Earlier, on March 21, Economic Development Minister Maxim Reshetnikov announced a plan to introduce a moratorium on bankruptcy. Due to introduction of a moratorium, the State Duma also postponed (until October 1) consideration of the draft law on bankruptcy (the draft law proposed, inter alia, a number of changes with regard to surveillance procedures, financial recovery of the bankrupt).

In 2020-2021, the Government has already introduced a temporary moratorium on the bankruptcy of enterprises and private entrepreneurs from certain segments of the economy due to the spread of the coronavirus. At the same time, most large public companies have didn't use the moratorium to maintain the possibility of paying dividends and holding buybacks. In the current situation, it can be assumed that the interest of companies in the protection provided by the moratorium may increase.

**On March 23**, Moscow Mayor Sergei Sobyenin suggested entitling regional authorities' additional powers to determine the prospects for the assets of foreign companies that have announced their withdrawal or suspension of activities in Russia. He suggests authorizing the regions to apply a flexible





approach to the assets of individual companies. At the same time, the tools of influence on assets must be coordinated with the relevant ministries at the federal level. Sobyenin's initiative has a chance of being supported, as it will, on the one hand, reduce the burden on federal authorities in solving the problems of individual companies, on the other hand, it will make it possible to rollback some decisions taken at a lower, regional level, if necessary.

**On April 1**, Deputy Chairman of the Security Council of Russia Dmitry Medvedev proposed expanding the list of goods prohibited for import and export. In particular, Medvedev proposed to supply food and agricultural products only to "friendly countries." It should be taken into account that Medvedev's latest statements seems to be his attempts to get back to a team of key decision-makers by highlighting his personal loyalty to the President and suggesting "hawkish" decisions both in foreign policy, domestic politics and counter-sanctions.

**On April 5**, President Putin, at a meeting with the Government, made a statement regarding the prospects for the nationalization of Russian assets abroad. In particular, Putin said that nationalization is a "double-edged weapon":

- This statement addressed latest decisions to introduce external management in German subsidiary of Gazprom, Gazprom Germania GmbH.
- Putin's statement should be considered in the context of the discussion on the introduction of external management of the Russian assets of foreign companies that have announced the termination/suspension of activities in Russia.

**On April 6**, the State Council (Parliament) of the Crimea submitted to the State Duma a draft law on the forced nationalization of property from states and persons committing "unfriendly actions" against Russia. According to the draft law, the list of assets and the procedure for their nationalization should be determined by the authorities of each region of Russia.

The initiative is quite populist as the Crimea is internationally disputed territory and none of foreign companies has operations there. In fact, the proposal of the Crimean authorities is a continuation of discussion re providing more powers to the regions to determine the fate of the assets of foreign companies on their territory (earlier, Moscow Government came up with a similar initiative).

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*If you would like to schedule a discussion of this paper and learn more details about the above listed documents, please contact Yury Panasik, Partner, [y.panasik@kesarev.com](mailto:y.panasik@kesarev.com)*



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