



## A new procedure for approving transactions to dispose of intellectual property is to be put in place

On 14 December 2023, a draft decree has been submitted for approval to the Russian Ministry of Justice (the “**Decree**”) that provides for amendments to the Presidential Decree No. 81 dated 1 March 2022 introducing a new procedure for approving transactions to dispose of or pledge exclusive rights of right holders from the so-called “unfriendly” countries. The Decree was prepared by the Russian Ministry of Industry and Trade.

In case of approval of the Decree those right holders from the countries included in Government List No. 430-r dated 5 March 2022 who intend to sell or pledge their rights to trademarks, patents, software or other intellectual property, will have to obtain a prior approval of such a transaction from the Government Commission for Control over Foreign Investment of the Russian Ministry of Finance (the “**Government Commission**”). The restrictions will also apply to right holders from other countries (including Russia) that are under the control of right holders from a so-called “unfriendly” country.

A similar procedure is currently in place for entering into corporate transactions (Presidential Decree No. 81 dated 1 March 2022 and Presidential Decree No. 737 dated 15 October 2022). The procedure for issuing permits and the list of documents to be submitted are specified in Government Decree No. 295 dated 6 March 2022.

Specifically, the application shall be accompanied by constituent documents in respect of the applicant company and financial statements. We expect that in case of approval of the Decree the relevant list will be supplemented with the documentation to be submitted in respect of intellectual property to be disposed of. In particular, when making its decision, the Government Commission will need to assess whether the contract price is commensurate with the fair value of the intellectual property to be disposed of.

A prerequisite for expanding the scope of transactions subject to approval has been the practice where foreign right holders leaving the Russian market disposed of their exclusive rights to trademarks and patents to other foreign companies instead of Russian ones. According to the Ministry of Industry and Trade, such practice is unfair and hinders the development of localisation and import substitution. With this in mind, we expect that with the introduction of the new procedure, the number of transactions to dispose of intellectual property rights to third countries will significantly decrease.

We remind that Presidential Decree No. 322, which provides for a special procedure for payments under contracts on using intellectual properties of right holders from the so-called “unfriendly” countries, has also been in force since 27 May 2022.

In case of adoption, the requirements of the Decree will come into force from the date of its publication. Foreign right holders are recommended to monitor adoption of the Decree and take the new requirements into account when deciding on the disposal of their exclusive rights in Russia.

\* *In Russian*

For further information, please email the authors or your usual contact at our firm.

## Authors



**Anton Bankovskiy**  
Partner  
Head of Intellectual Property  
E [anton.bankovskiy@seamless.legal](mailto:anton.bankovskiy@seamless.legal)



**Alisa Mikheeva**  
Associate  
Intellectual Property  
E [alisa.mikheeva@seamless.legal](mailto:alisa.mikheeva@seamless.legal)

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