

Newsletter

Counter-Sanctions regime in Russia:

- new Official Clarifications on Decree No. 618
- new Presidential Decree No. 737

October 18, 2022

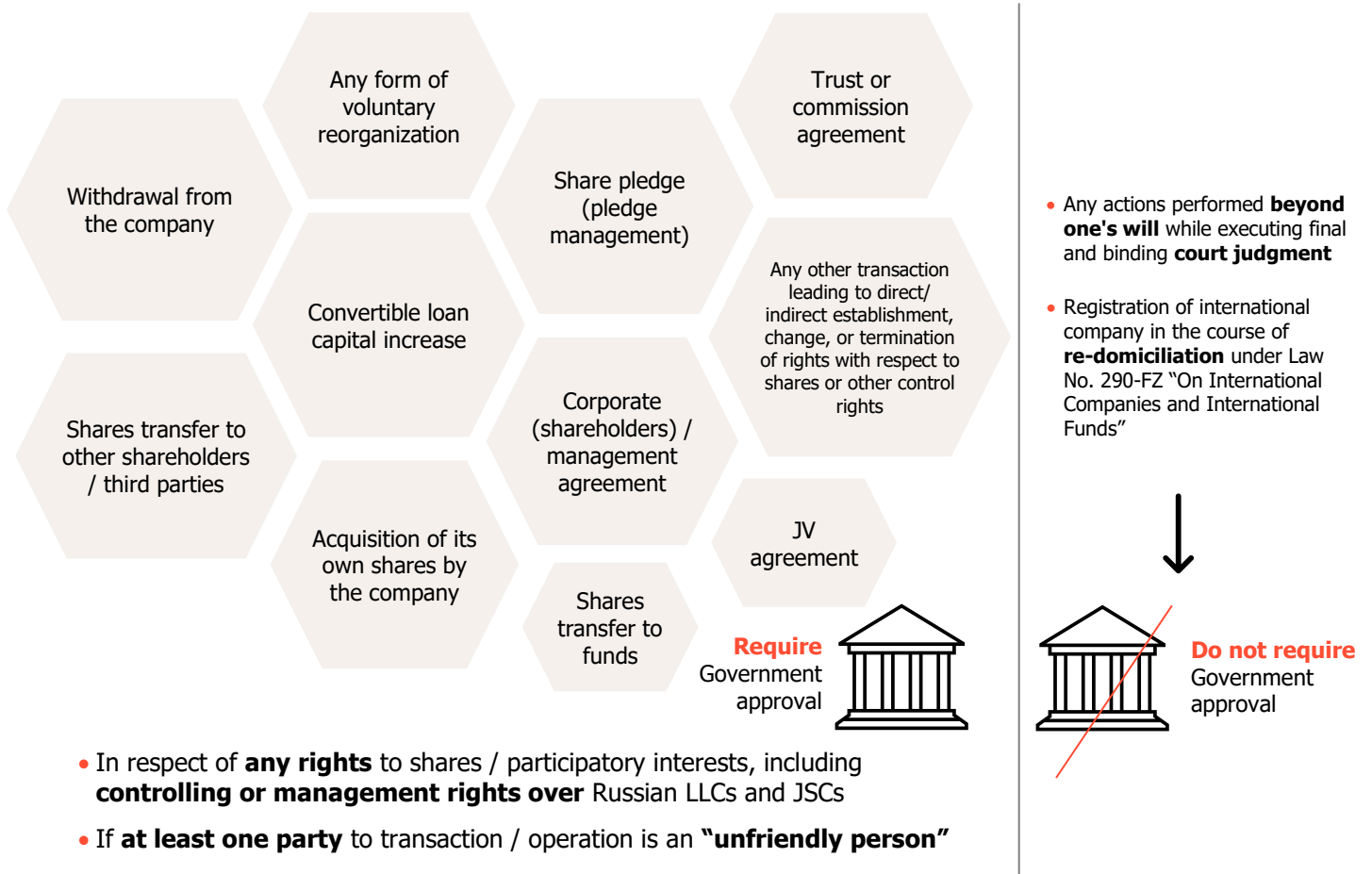
Dear Ladies and Gentlemen,

In the course of regular updates on Russian counter-sanctions measures, we would like to provide you with summarized information on:

- new Official Clarifications published¹ by the Ministry of Finance on **October 14, 2022**; and
- new Presidential Decree No. 737 published on **October 15, 2022**.

New Official Clarifications on Decree No. 618: key answers

It has been officially confirmed that Decree No. 618 dated September 08, 2022 (restricting deals with Russian LLCs and JSCs) applies to the following transactions:



¹ Official text of the Official Clarifications may be found on the [official website](#) of the Ministry of Finance (in Russian).

Additional clarifications from the Ministry of Finance:

- Subcommittee's approval is not required if a transaction / operation falls under strategic **Decree No. 520** issued on August 5, 2022, i.e. requires **only Presidential approval**
- If a transaction / operation falls under **both Decree No. 618** and **Decree No. 81**, **two** Subcommittee's approvals are required
- If an individual has a **Russian passport** (even if he/she has other foreign citizenships) – he/she is always considered **Russian resident** and cannot be considered as an "unfriendly person"
- **"Unfriendly person"** means any foreign citizen or foreign legal entity related to "unfriendly states" (*e.g. that has citizenship of at least one of such states, or its place of registration, place of preferential conduct of economic activities, or place of preferential extraction of profits from activities is one of these states*), as well as any other legal entity (Russian or foreign "friendly" entity) that is under control of the above-mentioned foreign citizen or foreign legal entity

List of "unfriendly states" as of October 17, 2022:

Australia	Canada	Monaco	North	European Union Member States
Albania	Liechtenstein	New	Macedonia	The UK, including the islands of Jersey,
Andorra	Micronesia	Zealand	Singapore	Guernsey, Man, and controlled
Bahamas	Montenegro	Norway	Taiwan	overseas territories – Anguilla,
Iceland	Switzerland	Republic	Ukraine	British Virgin Islands, Gibraltar
	San Marino	of Korea	Japan	The USA

Under Orders of the Russian Government of March 05, 2022 No. 430-r and July 23, 2022 No. 2018-r.

- **Exceptions from "unfriendly person"** regime apply to entities that are ultimately controlled by:
 - **Russian citizens or legal entities**, provided that control was **disclosed** to the Russian tax authorities under **Art. 25.14 of the Russian Tax Code** (P. 12 of Decree No. 95), OR
 - **"Friendly"** individuals / legal entities / states (i.e. those whose **personal law** under Art. 1195 and 1202 of Russian Civil Code is that of a "friendly" state, i.e., a state not listed as "unfriendly"), provided that control was established **before March 01, 2022** (P. 4 of Decree No. 254).
- **"Control"** has the meaning provided in Art. 5 of the Russian **FDI law**
- Special regime established by **Decree No. 618** does not apply to conclusion of transactions, that are related to registration of an international company as part of re-domiciliation process under the Russian laws, **as well as** to transactions related to participatory interests of credit organizations and non-credit financial organizations.

Regulated deals with Russian targets **after October 15, 2022:**

Decree No. 737 extended LLCs' regime to JSCs and financial entities

Target	Russian JSCs	Russian LLCs	+ Russian banks, insurance entities, microfinance companies, investment fund management companies
Type	<i>Except for indirect deals with residents not under control of "unfriendly persons"</i>	Direct and indirect acquisitions / transfers / changes / establishments / terminations	
Subject		Any property rights (title, possession, use, profit, alienation, disposal etc.) to shares + any controlling or management rights	Acquisition of at least 1% of share or vote
Parties involved		Between any persons if at least one party is an "unfriendly person" (including foreign-to-foreign deals)	<i>If beneficiary of the deal is "unfriendly person"</i>

Decree No. 737 extended list of types of payments to be paid via a "C"-type account

Types of payments to be paid via a "C"-type account under Decrees No. 95 and No. 254:

Debtor / payer:	Russian residents (i.e. any Russian companies or Russian citizens)
Creditor / payment receiver:	"Unfriendly creditors" (i.e. any foreign citizen or foreign legal entity related to an "unfriendly state" (e.g. that has citizenship of at least one of such states, or its place of registration, place of preferential conduct of economic activities, or place of preferential extraction of profits from activities is one of these states) and any other non-Russian legal entity (e.g. a foreign "friendly" entity) that is under control of the above-mentioned foreign citizen or foreign legal entity) <i>N.B. Not to be confused with "unfriendly persons"</i> <i>The following persons are not regarded as "unfriendly creditors":</i> <ul style="list-style-type: none"> • Russian residents (i.e. any Russian companies or Russian citizens) • Entities that fall under exceptions from "unfriendly person" under P. 12 of Decree No. 95 or P. 4 of Decree No. 254
Amount	Exceeding RUB 10m or its equivalent in foreign currency (USD, EUR, etc.) at the official rates of the Russian Central Bank as of 1st day of each month per month <i>*The limit includes the total amount of all obligations of the debtor to all "unfriendly creditors" for a calendar month, regardless of the amount due to any particular "unfriendly creditor"</i>
Legal ground for payment	<ul style="list-style-type: none"> • Credits / loans (principal payments and repayments) • Financial instruments (payment of dividends from Russian JSCs, coupons / interest on securities, including Eurobonds) • Dividends from Russian LLCs • Guarantees for the abovementioned principal obligations <div style="float: right; text-align: center;"> <p>New types of payments after October 15, 2022:</p> <ul style="list-style-type: none"> • Capital decrease • Liquidation • Bankruptcy </div>

Conclusions

Basing on the above, according to new Decree No. 737 and new Official Clarifications from the Ministry of Finance, the government is currently "tightening the screws" by making the Counter-Sanctions FDI regime more stringent. The provisions of the current counter-sanctions decrees are still quite vague and are prone to broad interpretation. We will inform you once there appear any additional clarifications.

Note: Please be aware that all information provided in this letter was taken from open sources. Neither ALRUD Law Firm, nor the author of this letter bear any liability for consequences of any decisions made in reliance upon this information.

Sincerely,
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