

Newsletter

New Counter-Sanctions Regime of Making Payments in IP-Related Agreements in Russia

May 31st, 2022

Dear Ladies and Gentlemen,

Please be informed that a new Counter-Sanctions Regime of Making Payments in IP-Related Agreements in Russia was established by the Presidential Decree No. 322 dated May 27th, 2022 "On the temporary procedure for fulfilling obligations in respect of certain right holders" ("Decree No. 322"). It came into force on the date of signing.

Application of the Decree No. 322

Under the provisions of the Decree No. 322, Russian residents (as well as the Russian Federation, its constituent entities and municipalities) shall pay debts in Roubles into a Special O-type account for their use of intellectual property ("IP"), the exclusive rights to which belong to the following categories of right holders, which:

- are foreign persons connected with "unfriendly" states (including if the right holders are registered in an "unfriendly" state, or mainly receive profits in these countries, or if these countries are their place of primary business);
Please note this rule shall not apply in respect of right holders, which duly fulfill their obligations under IP-related agreements, concluded with Russian counterparts.
- supported economic, or political, sanctions against Russia, Russian citizens, or legal entities, or who have publicly called for the implementation of such measures;
- prohibited the use of their IP in Russia, or established a ban on such use for one, or more, legal entities and individuals after February 23rd, 2022, due to sanctions, or other reasons not related to economic feasibility;
- stopped, suspended, or significantly limited the production (supply) of goods, the provision of services and/or the performance of work in the territory of Russia, after February 23rd, 2022, due to sanctions, or other reasons not related to economic feasibility;
- committed public actions aimed at discrediting the use of the Russian army and/or the exercise of the authorities by Russian government agencies outside of Russia, in order to protect

the interests of Russia and its citizens, maintaining international peace and security, or spread fake news related to the Russian army, or government agencies;

- disseminated information expressing in an indecent form that offends human dignity and public morality, a clear disrespect for society, the State, official State symbols of Russia, the Constitution of Russia, and/or bodies exercising State authority in Russia.

Opening the Special O-type account

The Special O-type account is opened on the basis of an application, sent by the debtor to an authorized bank, determined to be authorized by the Russian Government.

If the right holder does not give written consent to making a payment to the Special O-type account, the debtor has the right not to make payments until such consent is received. The debtor will not be considered as a defaulting party which has failed to fulfill its obligation, including those related to the payment of penalties and other financial sanctions.

If the activity of the right holder involves the conclusion of agreements with any person who has contacted him and/or making payments in favor of the right holder by any person using IP, the exclusive rights to which belong to the right holder, such person is obliged to publish information about the details of the Special O-type account on his website on the Internet and ensure the technical possibility of making payments by debtors to the Special O-type account. Such publication will be considered as the consent of the right holder to the payments.

The right holders, the debtors, or their representatives, are entitled to apply to the Government Commission for Control over Foreign Investments in the Russian Federation ("Government Commission") for permission to transfer funds from the Special O-type account to another account of the right holder. The Russian Government will approve the procedure for issuing permits by the Government Commission within 10 days.

Exceptions from the Decree No. 322

The provisions of the Decree No. 322 **do not apply to:**

- agreements providing the right to use IP required for:
 - importing into Russia and/or producing **medicines, medical devices, industrial and agricultural products, food products** in the territory of Russia;
 - providing **communication services** (including services for data transmission, provision of access to the Internet) and services for traffic transmission;
 - creating and/or using **software, databases, information systems and data processing centers**;

- payments **not exceeding RUB 100, 000 (approx. USD 1, 600 or EUR 1, 550)** or an amount in foreign currency equivalent to RUB 100, 000, made by an individual to satisfy personal needs that is not related to entrepreneurial activity;
- the right holders from “unfriendly” states which **duly fulfill their obligations under agreements concluded with Russian counterparties.**

Conclusions

Making payment under IP-related agreement can be significantly restricted by the Decree No. 322. Currently, the provisions of the published Decree No. 322 are quite vague. Therefore, we recommend double-checking the applicability of Decree No. 322 to your transactions, as well as monitoring further clarifications of State authorities and law enforcement practice.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please use [this form](#) to subscribe. If you would like to learn more about our [Intellectual Property Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

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If you have any questions, please, do not hesitate to contact ALRUD partner



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Sincerely,
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