

# Newsletter

## *Russian counter-sanctions: new restrictions on transactions with securities*

March 7, 2023

Dear Ladies and Gentlemen,

In the course of regular updates on Russian counter-sanctions, we would like to provide you with information on Decree of the President of the Russian Federation dated March 3, 2023 No. 138 "On Additional Temporary Economic Measures Related to Circulation of Securities" ("**Decree No. 138**").

Decree No. 138 entered into force on March 3, 2023, providing for a special procedure for transactions with the following **Russian securities** ("**Securities**"):

1. shares of Russian JSCs (*including those received upon redemption of depositary receipts*);
2. federal bonds;
3. Russian issuer's bonds;
4. investment units of Russian investment funds.

Transactions entailing transfer of title to the Securities or creating trust or pledge over them ("**Transactions**"), fall under Decree No. 138 and **require approval** of the Bank of Russia ("**CB RF**") (for banks and non-credit financial organizations) or the Governmental Commission (for other applicants).

However, Transactions require such approval only **in case** the Securities or the depositary receipts certifying title to the Securities were acquired after March 01, 2022 from persons from the "unfriendly" states<sup>1</sup>.

The approval is required for transferring the Securities to:

1. residents;
2. controlled foreign companies (or CFCs);
3. non-residents from "friendly" foreign states.

**NB1!** Transfer of the Securities requires approval even if a promissory contract or a foreign financial instrument (including physically settled derivatives) providing for transfer of the Securities was entered into before March 1, 2022 (inclusively).

**NB2!** The introduced procedure applies to transactions with shares of Russian issuers obtained through redemption of depositary receipts, providing such receipts were acquired by the respective person after March 1, 2022<sup>2</sup>.

All **subsequent transactions** with the Securities transferred in accordance with Decree No. 138 shall also be carried out in accordance with the Decree. The number and volume of such subsequent transactions may be established by a decision of the Board of the CB RF.

**NB3!** Literal interpretation of Decree No. 138 implies that the approval is required only for the Transactions with the Securities that were acquired from persons from the "unfriendly" states and "localized" through a sale transaction in Russia. For example, the Securities sold by an "unfriendly" person were transferred from a foreign registrar to a Russian depositary/registrar, withdrawn from the foreign nominee holder chain, etc. It is as yet unclear whether an exemption from restrictions for the transactions with the Securities that were kept/accounted in Russian infrastructure at the moment of their sale from an "unfriendly" investor to a Russian resident is intentional (earlier such transactions also were subject to the restrictions set by cl. 1 of Decree of the President of the Russian Federation dated March 1, 2022 No. 81, though subsequent transactions for selling the securities acquired from "unfriendly" persons became "toxic" and required an approval). We will monitor the situation and inform you of the emerging

<sup>1</sup> The definition of persons from the "unfriendly" states is similar to that used in the previous decrees, and includes both persons from the "unfriendly" states and persons controlled by them (except for

Russian residents). Besides, it is directly mentioned that CFCs are not treated as such persons.

<sup>2</sup> We recommend referring to the Settlement Date of acquisition of the Securities.

regulatory practice and opinions of the competent authorities.

Decree No. 138 **does not apply** to:

1. transactions/operations with shares acquired at converting/redemption of depositary receipts **in case** the person acquired the title to the depositary receipts before March 1, 2022 inclusively;
2. conversion, repurchase, and redemption of the Securities by their issuer;
3. repurchase of shares and securities convertible into shares of PJSC in cases provided for by the Law on JSC;
4. redemption of investment fund units upon resolution of the management company or at dissolution of the investment fund;
5. performance of obligations under the securities loan agreement and obligations under the second part of a repurchase agreement **in case** a securities loan agreement and a repurchase agreement were entered into before March 1, 2022 inclusively;
6. particular cases of mandatory transfer of the Securities;
7. transfer of the Securities within universal legal succession.

Therefore, the investors will need the approval for **any Transactions with the Securities** that

were acquired from owners from “unfriendly” states after March 1, 2022.

Decree No. 138 contains certain provisions elaborating on the previous “counter-sanctions” decrees:

1. Decree of the President of the Russian Federation dated March 1, 2022 No. 81 is extended to transactions with **Russian securities and Eurobonds** between a resident (or its controlled person) and a person from an “unfriendly” state in case the security in question is accounted/stored in a specialized foreign organization (e.g. a depositary), and the settlements are performed through a foreign bank;
2. **payments under federal bonds transferred within a mandatory transfer procedure** (in accordance with Federal Law dated July 14, 2022 No. 319-FZ) into the Russian infrastructure that are made in favor of CFCs, residents, or persons not being “unfriendly” non-residents, are allowed to be made without complying with the procedure provided in Decree of the President of the Russian Federation dated March 05, 2022 No. 95, that is, without using a C-type account.

It should be noted that Decree N. 138 provides for certain derogations for Russian credit organization targeted by foreign sanctions.

## Conclusions

Before Decree No. 138 the securities market has already been subject to certain restrictions that should be kept in mind in system construction of Decree No. 138:

1. general restriction on transactions aimed at transferring title to the securities (both internal and foreign) in case the transaction was made between a resident and an “unfriendly” non-resident (Decree No. 81, with certain exemptions);
2. general restriction on transactions aimed at transferring title to securities (both internal and foreign) between a resident and a person not from an “unfriendly” state, in case the securities were acquired after February 22, 2022 from a person from an “unfriendly” state;
3. “freezing” operations with and separate accounting of securities transferred through mandatory transfer and at deconversion of depositary receipts (Instruction of the CB RF dated December 28, 2022).

The said measures continue to apply, while Decree No. 138 specifies the counter-sanctions regime in respect of transactions with **Russian** securities: if the Securities were sold after March 01, 2022 by a person from an “unfriendly” state to any purchaser, they become “toxic” for an undefined term, and the Transactions therewith become subject to the approval regime. Therefore, when entering into Transactions with the Securities, the history of previous transactions should be closely scrutinized.

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 send them the link to complete a [Subscription Form](#). If you would like to learn more about our [Crisis Management, Economic Sanctions and Compliance Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

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Sincerely,

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