

## New Counter-Sanctions FDI regime in Russia

March 15th, 2022

Dear Ladies and Gentlemen,

In the light of the current geopolitical situation, we would like to inform you on a new procedure of the Counter-Sanctions FDI regime, the corresponding legal basis and the connected matters which could be of importance for your business.

- Legal background

A new Counter-Sanctions FDI regime, in Russia, was established by the Presidential Decree No. 81, dated March 1st, 2022 "On Additional Temporary Economic Measures to Ensure the Financial Stability of the Russian Federation" ("Decree No. 81"), which came into force on March 1st, 2022. The procedure of the Counter-Sanctions FDI regime was adopted on March 6th, 2022 by the Governmental Decree No. 295 ("Rules No. 295").

- Regulated actions

Pursuant to the provisions of the Decree No. 81, the Russian Ministry of Finance and a special Subcommission of the Government Commission on Monitoring Foreign Investments<sup>1</sup>, chaired by the Russian Finance Minister (the "Subcommission"), are authorized to exercise control over the following transactions (operations):

1. transactions (operations) for the provision by Russian residents<sup>2</sup> of credits and loans (in Rubles) to persons related<sup>3</sup> to foreign states which are conducting/unfriendly actions, or entities under their control ("persons related to "Unfriendly States"<sup>4</sup>"), except for cases where the provision of credits and loans is prohibited, in accordance with the Russian law;
2. transactions (operations) between Russian residents and persons related to "Unfriendly States", if they lead to the acquisition of securities / real property;
3. transactions (operations), mentioned in points 1 and 2 above, between Russian residents and persons not related to "Unfriendly States", but purchased securities / real property from persons related to "Unfriendly States" after February 22nd, 2022;
4. foreign exchange operations, where Russian residents provide foreign currency, to the benefit of any non-residents, under loan agreements;
5. foreign currency transfers, by Russian residents to their accounts (and/or deposits), opened with banks and other financial institutions located outside of Russia;
6. money transfers without opening a bank account, using electronic means of payment, provided by foreign suppliers of payment services (e.g. foreign e-wallets).

Thus, the above transactions (operations) should be implemented only after obtaining a consent of the Subcommission, which shall decide on granting clearance, or not. The Ministry of Finance shall act as an intermediary between the applicant and the Subcommission.

For M&A transactions, points 2-3 might be of particular relevance.

<sup>1</sup> The same FDI Commission which is responsible for the FDI review.

<sup>2</sup> "Russian resident" means "currency resident of the Russian Federation", i.e. individuals - Russian citizens, foreign citizens and stateless persons, with a residence permit in Russia, Russian legal entities, foreign divisions of Russian legal entities.

<sup>3</sup> "Related" means registered therein, has a citizenship of this State, conducts the main activity therein, etc.

<sup>4</sup> List of "Unfriendly States" was adopted by the Russian Government - <http://government.ru/news/44745/>. The list includes United Kingdom, Member States of the European Union, Canada, the USA, Ukraine, Japan etc.

- Overview of new procedure for obtaining Counter-Sanctions FDI clearance



### Authority

Ministry of Finance of Russia  
+  
Subcommission of Government  
Commission for Control over  
Foreign Investments \*



### Applicant

Russian resident, or  
"person related to  
"Unfriendly States"



### \* Subcommission of Government Commission for Control over Foreign Investments

one representative each from:

1. Administration of the President
2. Ministry of Economic Development of Russia
3. Central Bank of Russia
4. Chair: Head of the Ministry of Finance of Russia



### Application

#### Application should include:

- Information on the purpose, subject, content and essential conditions of the transaction (operation)
- Information on the planned duration of the clearance decision
- In the case of acquisition of voting shares (participatory interest) - number of acquired shares (participatory interest)
- Notarized and apostilled (if applicable) constituent documents of the Applicant
- Beneficiaries, beneficial owners, controlling persons of "person related to "Unfriendly States" ("UBO disclosure")
- Balance sheet – in case of acquisition of the Russian resident's real estate
- Power of attorney (if applicable)

\*\* If it is impossible for the applicant to submit information and documents in full, they are submitted to the extent available, with indication of reasons for such impossibility and place, where they may be requested



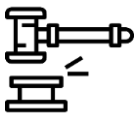
#### Form of application:

- in paper OR
- in electronic format (using digital signature)



#### Decision-making:

- unanimously
- 2 options: 1) Considerations in absentia  
2) Meetings in presence



#### Final decision:

- clearance of the Government Commission
- clearance of the Government Commission containing conditions/prescriptions
- refusal to issue clearance by the Government Commission
- might by addressed to any number of unspecified persons
- the Subcommittee has the right to determine the period of validity of the clearance



#### Timing:

No legal deadlines for statutory review term

Based on the above, it seems that the Governmental Commission has received additional powers to review other transactions, in addition to those which already fall under the FDI regimes in Russia. The provisions of the Decrees are quite vague and might be interpreted broadly. We will inform you accordingly, once there are further 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.*

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

Sincerely,

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