

**RUSSIAN  
COUNTER-SANCTIONS REGULATIONS:  
NEW DEVELOPMENTS**

2023

The end of March 2023 was marked by the following three developments in Russian counter-sanctions regulations.

## 10% VOLUNTARY CONTRIBUTION

The Russian Ministry of Finance published an excerpt from the minutes of a meeting of the Sub-Commission of the Government Commission for Control over Foreign Investments in the Russian Federation (the ultimate decision maker in many matters concerning the counter-sanctions regime), which introduced some changes to the rules regarding the 10% contribution.

Previously, the factors which the Government Commission took into account when deciding whether to approve a transaction requiring counter-sanctions clearance could include an undertaking (if the Government Commission thought fit to impose one in its discretion) to voluntarily pay 10% of the purchase price to the state budget. Obviously, if the price was minimal, next to nothing was to be paid. Now, the contribution, if imposed, will be calculated with reference to the fair market value of the asset to be sold, rather than its (contractually agreed) purchase price. The new requirements are:

- as a general rule, the contribution should be not less than 10% of 50% of the fair market value as set out in a valuation report prepared by an independent appraiser;
- if, however, the purchase price is less than 10% of the fair market value of the asset, the contribution should be not less than 10% of 100% of the fair market value.

The excerpt refers to an “obligation” to pay the contribution, and it is not clear whether the purchase price payment deferral/its payment in instalments may still serve as a valid alternative to the contribution.

Furthermore, it is now recommended that the accuracy of the valuation report be confirmed by an expert opinion from an association of appraisers, submitted as part of the counter-sanctions filing together with the valuation report. Previously, the submission of such an opinion was also recommended, but not officially. Now, the recommendation is official and it would be prudent to perceive it as a must.

## UPDATED APPLICATION FORM

The recommended application form for counter-sanctions filings published on the website of the Ministry of Finance was updated to include four additional items addressing:

- whether the purchase price will be paid in instalments in a deferred manner and whether the 10% contribution is proposed to be paid;
- the share purchase agreement underlying the transaction;
- key performance indicators for the new owners of the asset; and
- whether the parties to the transaction are affiliated.

The changes to the application form are of a technical nature as all these items need to be dealt with in a counter-sanctions filing in any case (and the SPA should be submitted as its part – if not, the authorities would request it). Nevertheless, the development is important: using an outdated form may result in complications and delays in the review process.

## LIABILITY FOR NON-COMPLIANCE

The Ministry of Finance issued a draft law that introduces administrative liability for failure to comply with Russian counter-sanctions measures.

Under the draft law, it is proposed that a new Article 15.25(1) “Failure to comply with counter-sanctions measures aimed at ensuring the financial stability of the Russian Federation” be included in the Russian Code of Administrative Offences. The Article establishes administrative fines for legal entities, private entrepreneurs and individuals for failure to:

- comply with counter-sanctions measures; or
- carry out a transaction (operation) in accordance with applicable counter-sanctions requirements.

The fines provided for by the draft law range from 20% to 40% of the transaction value (purchase price). The same fines apply to corporate officers, but the maximum amount of the fine is limited to 30 thousand roubles.

If there is no purchase price (e.g., in the case of a donation), the proposed fines range from 4 thousand to 5 thousand roubles for individuals, from 40 thousand to 50 thousand roubles for company officers and from 800 thousand to 1 million roubles for legal entities.

It is proposed that the fines be imposed starting from 1 January 2024 and that the Russian Federal Tax Service and the Russian Federal Customs Service enforce compliance with the counter-sanctions regulations.

The fines provided for by the draft law would not apply to Russian banks or insurance companies, which is because their regulatory compliance falls within the jurisdiction of the Central Bank of Russia.

Currently, the draft law is at an early stage of its approval process, and it is not clear when (and whether) it will be enacted and in what form. In any event, the draft law only deals with the administrative aspect of non-compliance with the counter-sanctions regime, whilst the civil law consequences of such non-compliance may be more severe, e.g., invalidation, by a court, of non-compliant transactions.



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