

NEW PRESIDENTIAL DECREE RESTRICTING SECURITIES TRADING

2023

On 3 March 2023, Presidential Decree No. 138 On Further Temporary Economic Measures relating to Securities Trading entered into force (the *Decree*).

The Decree introduces several new restrictions on transactions with Russian securities between residents and non-residents from "unfriendly jurisdictions" (by way of limiting opportunities for Russian residents to dispose of securities acquired from such non-residents), and also changes the regulatory regime established by previous presidential decrees relating to certain categories of transaction.

1. KEY CONSEQUENCES

The Decree triggers the following key consequences for the Russian securities market:

- Sales of Russian securities acquired by residents from non-residents from unfriendly jurisdictions after 1 March 2022 require the consent of the Russian Central Bank or that of the Government Commission (subject to a number of exemptions);
- Such consent is required even for such transactions in respect of Eurobonds executed outside the Russian financial infrastructure. This requirement also applies to persons controlled by Russian residents (i.e., it effectively extends to transactions between non-residents).

2. STRUCTURE AND CONTENT

In the terms of its contents, the Decree can be divided into three parts:

- Clauses 1–8 require that regulatory consent be sought for transactions with Russian securities acquired by Russian owners after 1 March 2022 from non-residents from unfriendly jurisdictions and transferred into the Russian financial infrastructure.
- Clauses 9 and 11 introduce several changes in relation to restrictive measures established earlier by RF Presidential Decrees No. 95 dated 5 March 2022 and No. 81 dated 1 March 2022.
- Clauses 10 and 12–15 contain clarifications with regard to the procedure for the entry into force and application of the Decree.

We note that a number of provisions of the Decree are not clear and would benefit from an official clarification. In particular, this is relevant to the criteria for application of the Decree to certain transactions as set out in Clause 1 thereof. Currently, the Decree may be literally interpreted in such way that it does not apply to those securities which were received by their current Russian holders directly from their previous foreign owners (rather than foreign brokers, depositories or other nominees). However, it is fairly possible that the regulator will construe the Decree in a different manner.

3. NEW REGULATORY REGIME

The Decree applies to transactions with securities listed below in Column **A** which meet the criteria in Column **B** except for those falling under Column **C** :

A <p>THE DECREE APPLIES TO TRANSACTIONS WITH THESE SECURITIES:</p>	B <p>THE DECREE APPLIES WHERE:</p>	C <p>THE DECREE DOES NOT APPLY WHERE:</p>
<ol style="list-style-type: none"> 1. Shares in Russian Joint Stock Companies; 2. Depositary receipts, certifying rights in relation to shares in Russian Joint Stock Companies; 3. Federal treasury notes; 4. Russian corporate bonds, rights to which are registered with Russian depositories; 5. Units in Russian mutual investment funds <i>(Securities)</i> 	<ol style="list-style-type: none"> 1. The Securities were: <ul style="list-style-type: none"> • acquired after 1 March 2022; • credited to a depo account in the Russian depository or in the register of owners; • transferred from an account opened for a foreign person with a Russian depository or registrar; 2. The transactions involve: <ul style="list-style-type: none"> • A transfer of title to the Securities; <i>or</i> • A transfer of the Securities into trust management; <i>or</i> • A pledge of the Securities; 3. The transactions contemplate a transfer of the Securities: <ul style="list-style-type: none"> • to residents; <i>or</i> • to non-residents from friendly jurisdictions; <i>or</i> • to non-residents from unfriendly jurisdictions if they are disclosed Controlled Foreign Corporations 	<ol style="list-style-type: none"> 1. The Securities were acquired from residents; 2. The Securities were acquired from non-residents from friendly jurisdictions; 3. The securities were acquired from non-residents of unfriendly jurisdictions disclosed as Controlled Foreign Corporations; 4. The Securities were transferred from an account of a foreign beneficial owner (rather than a nominee); 5. The Securities (shares) were acquired as a result of conversion of foreign depository receipts obtained before 1 March 2022; 6. Transactions involving the Securities take place by way of: <ul style="list-style-type: none"> • in respect of shares/bonds, their conversion, repurchase or redemption by the Issuer; • in respect of mutual investment fund units, their redemption; • the return of Securities that are the subject of a loan or a repo transaction entered into before 1 March 2022; • the forced conversion of depository receipts; • universal legal succession.

Transactions falling under Columns **A** and **B** , and not falling under Column **C** above (the **Regulated Transactions**) require the prior consent of the Central Bank (for financial organisations) or the Government Commission (for individuals and other legal entities).

Subsequent transactions with Securities acquired as a result of Regulated Transactions are also deemed Regulated Transactions and require the above consents, with the exception of those that meet the following criteria:

SECURITIES:

Securities, with the exception of foreign depository receipts and federal treasury notes

PLEDGE:

The Securities were pledged to secure a loan

REGISTRATION:

The pledge was registered with a Russian registrar or depository before 3 March 2023

PARTY TO THE TRANSACTION:

A sanctioned Russian bank as pledgee

The Central Bank Board may set limits on the quantity and the amount of subsequent transactions with the Securities which are Regulated Transactions.

For the purposes of control over the Regulated Transactions, Russian depositories and registrars should safekeep the Securities acquired through the Regulated Transactions on designated accounts.

4. CHANGES TO PREVIOUSLY INTRODUCED RESTRICTIVE MEASURES

Decree No. 95

Presidential Decree No. 95 dated 5 March 2022 restricted debt service owed to non-residents from unfriendly jurisdictions, requiring the proceeds of such debt service to be blocked in type 'C' accounts, which (Clause 8) also extended to debt service payments to residents and non-residents from friendly jurisdictions if the relevant receivables had been assigned to them after 1 March 2022.

The Decree removes payments in favour of residents, non-residents from friendly jurisdictions and those non-residents from unfriendly jurisdictions which are disclosed Controlled Foreign Corporations from such regime, thereby effectively disapplying Clause 8 of Presidential Decree No. 95 dated 5 March 2022.

Decree No. 81

Decree No. 81 dated 1 March 2022 – one of the earliest pieces of Russian counter-sanctions regulation – introduced a requirement that securities transactions between residents and non-residents from unfriendly jurisdictions could only be performed with the consent of the Government Commission.

The Decree extends this requirement to transactions with Russian securities and Eurobonds (without specifying the issuers of such bonds), cleared through non-Russian financial infrastructure and (b) settled through accounts opened in non-Russian banks. Furthermore, the Decree extends this requirement to transactions between non-residents controlled by residents.

5. MISCELLANEOUS

The Decree grants the Central Bank the right to provide official clarifications with regard to its application. The Decree also establishes a 10-day period within which the Government must adopt a procedure for issuing requisite consents.



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