

New May 2022 Russian Counter-Sanctions:

Key Points

On 3 and 4 May 2022, the Russian President adopted two key edicts. The edicts clarify the application of certain provisions from prior presidential edicts (Nos. 81 and 95) and introduce new counter-measures against so-called unfriendly states:

- (a) RF Presidential Edict No. 252, On the application of special economic measures in connection with unfriendly actions of certain foreign states and international organizations, dated 3 May 2022 (**Edict 252**); and
- (b) RF Presidential Edict No. 254, On the temporary procedure for fulfillment of financial obligations in the field of corporate relations to certain foreign creditors, dated 4 May 2022 (**Edict 254**)

(together, the **Counter-Sanctions Edicts**). Both Counter-Sanctions Edicts have immediate legal effect but no pre-determined end date.

We briefly describe the Counter-Sanctions Edicts below.

1 **Edict 252**

Edict 252 prohibits Russian residents from:

- (a) entering into transactions (including foreign trade contracts) with legal entities, individuals and entities under their control in respect of whom special economic measures have been adopted (hereinafter, **Sanctioned persons**).

- (b) performing obligations under transactions (including under foreign trade contracts) with Sanctioned persons, if such obligations have not been fulfilled or fully executed; and
- (c) carrying out financial transactions that benefit Sanctioned persons.

Edict 252 also introduces a ban on the export of products and/or raw materials whose production and/or extraction was carried out on Russian territory, where such products and/or raw materials are supplied for the benefit of Sanctioned persons and/or by Sanctioned persons in favour of other persons.

Edict 252 directs the Russian Government of Russia, prior to 13 May 2022, to:

- (a) approve a list of Sanctioned persons; and
- (b) define additional criteria for prohibited transactions.

In line with the Edict's requirements, on May 11, 2022 the Russian Government issued Decree No. 851 "On measures to implement the Decree of the President of the Russian Federation of May 3, 2022 No. 252." The Decree:

- (a) approves a list of Sanctioned persons, mainly represented by Gazprom

Germany,¹ its subsidiaries, Polish company EuRoPol GAZ S.A and Wingas/WIEH/WIEE trading group (the owner of contracts for the supply of Russian gas, and Astora is the largest gas storage operator in Europe);

- (b) confirms prohibitions stated by Edict 252 in relation to the Sanctioned Persons;
- (c) states additional criteria for classifying transactions as transactions, the conclusion and execution of which is prohibited:
 - (i) transactions concluded in favor of the Sanctioned Persons;
 - (ii) transactions involving entry into the ports of the Russian Federation, owned and (or) chartered by the Sanctioned Persons in their interest or on their behalf;
 - (iii) transactions involving making of payments, transactions with securities with the participation and (or) in favor of the Sanctioned Persons.

The imposed sanctions mean a ban on the creation of Russian gas reserves in UGS facilities in Europe and keeps the sanctioned companies away from Russian LNG supplies.

The Ministry of Finance of the Russian Federation will submit proposals to the Government of the Russian Federation for amendments to the list of Sanctioned Persons,

as well as to the provision of temporary permissions for certain transactions with them.

2 Edict 254

This Edict clarifies that the procedure originally established by RF Presidential Edict 95 of 5 March 2022 for certain payments² **also applies** to the performance by Russian resident-issuers of their obligations to pay **dividends on shares and distributions of profits** to shareholders / equity participants from unfriendly foreign states, unless otherwise determined by the RF Ministry of Finance or Central Bank of Russia (**CBR**) (as the case may be).³

It also states that the conditions for performance of obligations under Edict 95 for certain payments **also applies** to obligations arising under **independent guarantees, counter-guarantees, and/or suretyships**, where (1) the beneficiaries thereunder or creditors for the main obligations secured thereby are foreign creditors from unfriendly states, **and** (2) the main obligations arise under credits, loans, or financial instruments (to which Edict 95 expressly applies).⁴

Edict 254 also indicates that the following persons are **not** considered to be foreign creditors associated with unfriendly states:

- (a) persons under the control of foreign legal entities or individuals from a country that is not considered as an unfriendly state (provided that such control was established before 1 March 2022);
- (b) persons under the control of a foreign country other than unfriendly states

¹ In early April, the German Ministry of Economics ordered that the Gazprom Germania GmbH be transferred to the control of the Federal Network Agency (BNetzA). So far, the decision is valid until September 30 of the current year. The voting rights for Gazprom Germania shares have been transferred to BNetzA. The manager has the right to dismiss and reappoint members of the managing board, as well as give instructions to it. The powers to manage the assets of Gazprom Germania GmbH are limited and subject to approval by BNetzA.

² Readers will recall, Edict 95 established *inter alia* a special payment procedure for certain payments by Russian debtors under **credits, loans, and financial instruments** with foreign creditors and counter-parties (including from so-called unfriendly states).

³ The CBR is authorised to make such determinations for issuers which are regulated financial institutions and the Ministry of Finance for other issuers.

⁴ By way of example, a guarantee, counter-guarantee or suretyship given in respect of a credit, loan or financial instrument with a creditor from an unfriendly state captured by Edict 95 will thus now also be treated similarly; by contrast a guarantee, counter-guarantee or suretyship issued in respect of any other form of obligation (e.g., an EPC contract, a supply contract, etc.) by implication will not be treated similarly.

(provided such control was established before 1 March 2022).

Edict 254 also states that the special procedure provided under RF Presidential Edict 81 of 1 March 2022⁵ does not apply to:

- (a) transactions (operations) entailing the emergence of ownership rights to real estate acquired by citizens of unfriendly states;
- (b) transactions for alienation of real estate by citizens of unfriendly states, provided settlement is carried out using a (blocked) "S" type ruble account;
- (c) certain shared construction transactions (under Law No. 214-FZ "On participation in shared construction of apartment buildings and other real estate and on amendments to certain legislative acts of the Russian Federation;" hereafter, **214-FZ**), where the purchasers are foreign persons unfriendly states or Russian legal entities under their control;
- (d) transactions entailing the emergence of ownership of premises in apartment buildings and/or other real estate built (created) and commissioned into operation under 214-FZ, where foreign persons associated with unfriendly states, or Russian legal entities under their control, are parties;
- (e) transactions (operations) entailing the emergence of ownership of additional shares (participatory interests) or bonds of Russian legal entities where the parties are foreign entities associated with unfriendly states and included with Russian legal entities in the same group of entities on the grounds provided for by Russian competition law (clause 1 of part 1 of article 9 of the Federal Law of July 26, 2006 No. 135-FZ "On

Protection of Competition"), provided payment is settled in rubles;

- (f) transactions (operations) entailing the emergence of ownership rights to additional shares (participatory interests) of Russian legal entities by foreign persons associated with unfriendly states, where such foreign persons do not acquire a right (directly or indirectly) to dispose of more than 25% of the shares (participatory interests) in the entity's authorized (share) capital;
- (g) gratuitous transactions entailing the emergence of ownership rights to real estate where the parties are citizens of unfriendly states, provided these are made between spouses or close relatives under the RF Family Code;

Finally, for purposes of application of Presidential Edict No. 179 "On the temporary procedure for fulfilling financial obligations in the field of transport to certain foreign creditors," Edict 254 establishes that the main business companies to whose accounts funds were received in fulfillment of obligations to their subsidiaries that are foreign entities associated with unfriendly states, to pay rental, leasing and other payments as part of the performance of agreements for the lease of aircraft, auxiliary power installations, and aircraft engines, may terminate obligations to such subsidiaries by offsetting claims against them.

⁵ Readers will recall, Edict 81 established *inter alia* certain **limitations on disposals** by persons from foreign states of real estate and securities.

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