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## ■ EXPERT BRIEFING June 2022

# Russia strikes back – countersanctions

BY JUDITH ALISON LEE, NIKITA MALEVANNY AND CLAIRE YI

Russia has imposed significant ‘countersanctions’ against ‘unfriendly countries’ and companies that are trying to comply with the US, UK, EU and other sanctions regimes imposed against Russia and Belarus. These countersanctions can place companies that operate globally and that are committed to complying with all applicable laws in a very difficult position and may end up hastening the withdrawal of more companies from Russia.

This article discusses the most significant measures Russia has taken to counter international sanctions imposed against it.

### Measures against so-called ‘unfriendly states’

Accurately described as countersanctions in the narrow sense, a significant number of the Russian measures are directly related to the sanctions against Russia imposed by other countries. The Russian government adopted a list of such ‘unfriendly states’, which currently includes the US, all EU member states, the UK, Canada, Australia, New Zealand, Switzerland, Norway, Japan, South Korea, Taiwan, Singapore, Ukraine, Albania, Andorra, Iceland, Liechtenstein, Micronesia, Monaco, San Marino, North Macedonia and Montenegro.

A number of measures have been adopted by Russia against so-called ‘unfriendly states’. First, Russian debtors are allowed to pay off their large debts (debts exceeding 10 million roubles or approximately \$80,000 in value) to non-Russian creditors based in ‘unfriendly states’ in Russian roubles, instead of otherwise applicable currency, according to the official exchange rate of the Bank of Russia as of the first day of the respective month.

Second, buyers of Russian natural gas based in ‘unfriendly states’ (or in cases when gas is supplied to an ‘unfriendly state’) are obliged to pay for gas in Russian roubles. Non-compliance with this requirement could lead to a halt to further supplies. The requirement is somewhat mitigated by the special payment procedure, according to which buyers of gas must open accounts in both Russian roubles and non-rouble currency at Gazprombank and initially pay for gas in non-rouble currency, which is then sold by Gazprombank on the Moscow Exchange against Russian roubles credited to the buyer’s rouble account and subsequently paid to the seller of gas.

Third, Russian residents are prohibited, without prior clearance by the Government Commission for Control over Foreign Investments, from conducting the following transactions with foreigners based in

‘unfriendly states’ and persons controlled by such foreigners: providing loans in roubles, transferring ownership of securities and transferring ownership of real estate.

Fourth, the compensation to be paid to rightsholders from ‘unfriendly states’ for the use of an invention, utility model or industrial design without their consent shall amount to 0 percent of the actual proceeds from the production and sale of goods, performance of works or rendering of services for which the respective invention, utility model or industrial design has been used.

Fifth, any money transfers from Russian accounts of non-residents, either companies or individuals, from countries that have imposed sanctions against Russia to their accounts outside of Russia are suspended for six months.

Sixth, companies from ‘unfriendly states’ are prohibited from buying any non-rouble currency in Russia.

Seventh, Russian state companies subject to sanctions by ‘unfriendly states’ are allowed to refrain from publishing information on their public procurement activities and their suppliers.

Eighth, until 31 December 2022, Russian banks are allowed to refrain from publishing certain information in order to avoid sanctions of ‘unfriendly states’, specifically

with regard to their ownership and control structure, members of management bodies and other officers, as well as corporate restructuring.

Ninth, until 31 December 2022, Russian insurance companies are prohibited from entering into contracts with insurance and reinsurance companies and insurance brokers from ‘unfriendly states’.

Finally, without directly mentioning the ‘unfriendly state’ status, Russia has banned several top officials of the US, EU, UK and other countries with ‘unfriendly state’ status from entering Russia.

#### Other countermeasures

In addition to the countersanctions in the narrow sense as described above, Russia has taken numerous further measures which do not specifically target countries that have imposed sanctions against Russia. Such countersanctions, in the broad sense, include measures generally taken to mitigate the effects of international sanctions on the Russian economy as well as to stifle free expression and limit media coverage that is critical of the government.

In particular, Russia has adopted the following financial measures that are designed to mitigate the effects of international sanctions.

Professional brokers in Russia are prohibited from selling securities on behalf of any non-Russian companies or individuals.

Issuance and trading outside of Russia of depositary receipts representing shares of Russian companies is prohibited, with such Russian companies being obliged to terminate their respective agreements so that the depositary receipts are converted into underlying shares that can be traded only in Russia.

Russian residents are prohibited from depositing non-rouble currency into their accounts in banks abroad, from transferring money using non-Russian electronic payment services without opening an account and transferring non-rouble currency to any non-residents under loan agreements.

Russian residents participating in foreign trade are obliged to sell 80 percent of non-rouble currency received through foreign trade contracts beginning 28 February 2022. Non-rouble currency must be sold within

three working days of receiving each transfer. This obligation also retroactively applies to all funds received since 1 January 2022.

Cash exports of non-rouble currency from Russia in an amount exceeding \$10,000 in value are prohibited.

Until 9 September 2022, individuals may withdraw no more than \$10,000 in cash from their non-rouble accounts in Russian banks. Cash withdrawals exceeding this threshold can be made only in roubles. For resident companies and individual entrepreneurs, this threshold is set to \$5000 to be used only for business trips outside of Russia. For non-resident companies and individual entrepreneurs, cash withdrawals in US dollars, euros, Japanese yen and pounds sterling are completely banned.

Until October 2022, individuals (if they are not associated with ‘unfriendly states’) may transfer no more than \$10,000 in value per month from their bank accounts in Russian banks to their accounts or accounts of other individuals in banks abroad, and no more than \$5000 in value using payment services without opening an account.

Until 31 December 2022, Russian residents are prohibited from paying shares in any non-resident companies or making payments to any non-residents under joint venture agreements, unless they obtain a permit of the Bank of Russia.

For certain types of contracts with any non-residents, Russian residents are prohibited from making advance payments exceeding 30 percent of the sum of their obligations under the contract.

Parallel imports of certain goods protected by certain intellectual property (IP) rights, specifically patents, trademarks, utility models and design patents, are legalised. Lists of such goods are yet to be designated by the Ministry of Industry and Trade.

Additionally, Russia has adopted the following non-financial measures that are designed to suppress free expression. Amendments to the Russian Criminal Code have been enacted, criminalising the following activities: (i) public dissemination of ‘fake news’ about the operations of Russian military or other state bodies abroad (article 207.3 of Russian Criminal Code); (ii) public actions aimed at ‘discrediting’ the use of Russian military or other state bodies

abroad (article 280.3 of Russian Criminal Code); and (iii) calls for the introduction of sanctions against Russia or Russian nationals or companies (article 284.2). In addition, Russian media watchdog Roskomnadzor banned numerous independent Russian media outlets due to their reports on Russia’s war in Ukraine, banned several Russian-language media outlets associated with countries that have imposed sanctions against Russia, in particular Voice of America and Radio Free Europe/Radio Liberty, the BBC and Deutsche Welle, and further banned social networks Facebook, Instagram and Twitter. In the aftermath, a Russian district court declared Meta an ‘extremist organisation’, once more banning its social networks Facebook and Instagram.

#### Outlook

While numerous international companies are exiting the Russian market, we expect that further Russian countermeasures will be imposed. In particular, the Russian Economic Ministry recently presented a draft bill on the ‘external administration’ of companies closing their Russian businesses. Another draft bill stipulates that property of ‘unfriendly states’ and of persons associated with such states located in Russia shall be subject to expropriation without compensation. The same bill also proposes to introduce criminal liability for managers of companies and other entities for ‘abuse of office’ committed in Russia for the purpose of compliance with international sanctions against Russia. According to another draft bill, which has already been passed by the Russian State Duma, Russian banks shall be prohibited from providing information on clients and their transactions upon request of any non-Russian authorities without prior consent of Russian authorities.

The interaction between sanctions and countermeasures are creating and will continue to create difficult questions for companies with global operations, especially with touchpoints in Russia. ■

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