



Servicing Debt Towards Foreigners: Anti-Crisis Measure

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On March 5, 2022, as another in a series of economic measures to protect Russian national interests, the President of the Russian Federation established a temporary procedure for servicing debts owed to certain categories of foreign creditors¹.

The main purpose of these measures is to prevent technical defaults on foreign debt. In order to carry this out, a concrete mechanism was created that will allow for the fulfillment of such obligations under the current state of sanctions, with special regard for cases when foreign states restrict settlements with certain Russian borrowers and issuers of debt securities.

The parameters and consequences of these instruments, created for both Russian borrowers and their foreign counterparts, are briefly detailed below.

Which types of obligations are affected by the special measures?

These measures only concern obligations of a certain type and size².

Type of obligations: liabilities on credits, loans and financial instruments such as Eurobonds.

Size of obligations: obligations whose payment sum is at or over 10 million rubles per month or the equivalent sum in foreign currency at the exchange rate of the Bank of Russia on the first day of each month.

Which debtors are the special measures designed for?

The special measures have been established for the debt obligations of the following classes of debtors:

a/ Russian public entities: the legal entity known as the Russian Federation and its constituent sub entities and municipalities.

b/ Residents: Individuals and bodies whose status is determined in accordance with existing Russian legislation on foreign exchange regulation as being Residents, including³:

- ▶ all Russian citizens, regardless of place of residence, as well as foreign citizens permanently residing in the Russian Federation by virtue of a residence permit,
- ▶ Russian companies and their foreign representative offices,
- ▶ public entities engaged in currency operations, as well as foreign representative offices of the Russian Federation and its federal executive bodies.

What are exact special measures directed at servicing debts?

The fulfillment of obligations is now allowed to be carried out in Russian rubles regardless of the currency in which the obligation was initially carried out.

In order to do so, according to the new official procedures, debtors have the right (**but not the obligation**) to file an application with a Russian credit institution in order to open a type "C" ruble account in the name of a foreign creditor or a foreign nominal holder. In order to fulfill obligations under debt securities, the debtor has the right to make the same application to the central securities depository, namely the JSC "National Settlement Depository"⁴.

A type "C" bank account comes under the category of so-called "special accounts" on

¹ See the Decree of the President of the Russian Federation No 95, dated March 05, 2022 "On the Temporary Order of Discharge of Obligations Towards Certain Foreign Creditors" (hereinafter – **Decree No 95 dated March 05, 2022**).

² See paragraphs 1 and 2 of Decree No 95 dated March 05, 2022.

³ See paragraph 6 of part 1 of article 1 of Federal Law No 173-FZ of December 10, 2003 "On Currency Regulation and Currency Control".

⁴ See paragraph 3 of Decree No 95 dated March 05, 2022.

which regulatory acts⁵ may limit the range of permitted operations. On March 8th of this year, an exhaustive list of payments that can be made through such accounts was established by the Bank of Russia⁶.

Currently **crediting** such accounts is now allowed to be carried out only with the funds of residents in order to fulfill current obligations existing under credits, loans and/or financial instruments. In addition, such accounts can only be credited through the use of funds from accounts of the same type, as well as from erroneously debited funds.

The **debit** of funds from bank accounts of type "C" is only allowed in the following cases:

- ▶ by virtue of special permission
- ▶ to carry out obligatory payments (for example, taxes)
- ▶ to purchase Federal Loan Bonds issued by the Russian Ministry of Finance at auctions.

Moreover debiting funds is only allowed for "technical" payments: to transfer funds to other type "C" accounts, to pay commissions to the bank servicing the accounts, to transfer funds to a resident when paying a penalty on debt obligations and finally to refund erroneously credited funds.

Similar restrictions have been established for deposit accounts, special brokerage accounts and clearing accounts of type "C".

Debtors will be deemed to have duly fulfilled the following obligations, regardless of the nominal currency of the debt⁷:

a/ obligations payable and due to **Russian residents**, whose securities are accounted for on Russian deposit accounts if the debtor transfers funds in rubles at the exchange rate of the Bank of Russia on the date of payment through a Russian depository (note: there is no obligation to use a type "C" account for this purpose)

b/ obligations payable and due to **foreign nationals and entities from countries that have not imposed sanctions against Russia**, if the debtor transfers funds in rubles at the exchange rate of the Bank of Russia on the day of payment

c/ obligations payable and due to **foreigners of "unfriendly" countries**⁸, if the debtor transfers funds in rubles at the exchange rate of the Bank of Russia on the day of payment to a type "C" account of a foreign nominal holder in a Russian depository.

In addition to the aforementioned cases, the debtor will not be deemed to have breached an obligation in the case of its fulfillment by virtue of a special permission received from the Bank of Russia or the

Ministry of Finance of the Russian Federation, or in another manner determined and agreed upon by the bodies involved within their respective competences⁹.

What are the consequences for debtors and creditors?

These temporary debt servicing measures will provide **debtors** with the real and legal framework providing the opportunity to settle existing debt while overcoming the ban on settlements that "unfriendly" states

⁵ See paragraph 2.8 of the Instruction of the Central Bank of the Russian Federation No. 153-I of May 30, 2014 "Opening and Closing of Bank Accounts, Accounts on Deposits (deposits) and Deposit Accounts".

⁶ See the decision of the Board of Directors of the Central Bank of the Russian Federation dated March 08, 2022 "On the Establishment of a Type "C" Account Regime for the Purposes of Fulfilling the Obligations of a Resident Towards a Non-Resident Entity, established in the Decree of the President of the Russian Federation No 95 dated March 05, 2022 "On the Temporary Order of Discharge of Obligations Towards Certain Foreign Creditors".

⁷ See paragraph 6 of the Decree No 95 dated March 05, 2022.

⁸ The list of "unfriendly" countries is defined in "the Order of the Government of the Russian Federation No. 430-p" dated March 5, 2022.

⁹ See paragraphs 10 and 11 of Decree No 95 dated March 05, 2022.

have established with regard to foreign creditors.

If the debtor uses the procedure that have been outlined herein for fulfilling obligations, then creditors will not be able to collect debt in the Russian Federation at the expense of Russian assets. It is also highly likely that foreign judgments and arbitration awards to recover debt from such a debtor will not be recognized and/or enforced in the Russian Federation or on its territories or jurisdictions.

Foreign assets located abroad will still be subject to risks with their fate depending on the relevant rules and laws existent in their jurisdiction, as well as the applicable foreign and international laws applying to debt obligations.

The new rules will [allow creditors](#) to receive funds that are legally due to them. However

unfortunately with the existence of a number of restrictions dependent mainly on the country and jurisdiction with which the creditor and debt is associated.

The Bank of Russia has already clarified that Russian residents, as well as foreigners from countries that have not imposed sanctions against Russia, will be able to receive payments on debts in rubles, and with the issuance of a special permit, in the original currency of the debt in question. Moreover, these categories of creditors will not face limitation in the usage of the funds received nor be under any obligation when converting rubles into foreign currencies.

In summary: obligations due to creditors from "unfriendly" countries will be serviced through a type "C" account, the operations on which, as indicated above, are limited and controlled by the Bank of Russia of the Russian Federation.

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