



"FREEZING" TRANSACTIONS (OPERATIONS) WITH THE SECURITIES AND REAL ESTATE IN RUSSIA

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VEGAS LEX

In response to the sanctions imposed by the United States and its allies (including foreign states and international organizations) Russia has adopted several counter-measures to protect the national interests of Russia and stabilize the Russian financial system. Thus, Mr. Vladimir Putin, the President of Russia, has adopted the Decree No. 81 dated March 1, 2022 "On additional temporary measures of economic character on ensuring a financial stability of the Russian Federation" (hereinafter – the "**Decree No. 81**"), which introduces a special regime in respect of the transactions (operations) implemented by the residents.

In absence of official clarifications, we suppose that the residents shall mean persons recognized as residents within the meaning established by the applicable currency regulation and currency control of the Russian Federation.

1. Types of Transactions (Operations) to Be Temporarily "Frozen"

1.1. The Decree No. 81 establishes a special regime for the following transactions (operations) concluded by the residents with (1) the foreign persons related to the foreign states, which make unfriendly actions against Russian companies and individuals, (hereinafter – the "**Unfriendly States**"), in particular, if these foreign persons have a citizenship of the Unfriendly States; the Unfriendly States are the states of their registration, the place of their primary business activity or the place of their primary profit (the list of the Unfriendly States shall be adopted separately); or (2) the persons, which are under their control, regardless the place of the registration or primary business activities (hereinafter together referred to as the "**Unfriendly Persons**"):

1) the transactions (operations) on providing credits and loans (in Russian Rubles), except for the cases if providing

these credits and loans is prohibited by the laws of the Russian Federation;

2) the transactions (operations) leading to emergence of the title to securities;

3) the transactions (operations) leading to emergence of the title to real estate.

Please note that following the direct interpretation of the text the Decree No. 81 operates **the term "securities"**, therefore, shall cover shares of joint stock companies and mutual investment funds, bonds and other securities. Thus, the regulation shall not be applied, for example, to the transactions (operations) with participatory shares of the Russian limited liability companies – the Letter of the Federal Notary Chamber of the Russian Federation dated March 3, 2022 No. 1176/03-16-3 to the Presidents of the Notary Chamber of the subjects of the Russian Federation (hereinafter – the "Letter of the Federal Notary Chamber") has confirmed this approach.

As for **the term "real estate"**, Article 130 of the Civil Code of the Russian Federation provides that it includes **(1)** the land and subsoil plots, as well as the objects, which are closely connected with the land, i.e. the objects, which cannot be shifted without disproportionate damage to their purpose, including buildings, structures, objects of uncompleted construction; **(2)** aircraft, sea and inland navigation vessels, which are subject to state registration, as well as **(3)** other properties that the law refers as real estate (e.g., residential and non-residential premises, enterprises, property complexes, etc.).

1.2. Moreover, a special regime might be also applied to **the above-mentioned transactions (operations) concluded with the foreign persons, which shall not be considered as the Unfriendly Persons.** However, the subject of such transactions (operations) shall be securities and real estate, which have been acquired from the Unfriendly States after February 22, 2022.

2. Exceptions from the "Freezing" Regime: Clearance Procedure and Organized Auctions

2.1. The transactions (operations) concluded by the residents with the Unfriendly Persons and the foreign persons, which shall not be considered as the Unfriendly Persons, (please see point 1 above), as well as the transactions prohibited under Point 3 of the Decree of the President of the Russian Federation No. 79 dated February 28, 2022 "On the application of special economic measures related to the unfriendly actions of the United States of America and the foreign states and international organizations that have joined them" (hereinafter – the "**Decree No. 79**") **might be implemented, if such transactions (operations) are cleared** by the Government Commission on Control over Foreign Investments in the Russian Federation (hereinafter – the "**Government Commission**"). The Decree No. 79 has come into force on March 1, 2022. The result of such clearance is granting a consent of the Government Commission, which might contain, if necessarily, special commitments (conditions) for implementation of the transaction (operation). The Government of the Russian Federation shall establish the procedure of granting a consent of the Government Commission during 5-day period from the date of coming the Decree No. 81 into force (i.e. from March 1, 2022).

In its turn, Point 3 of the Decree No. 79 provides a prohibition of making by the residents the following actions for the benefit of non-residents: **(1)** implementing exchange transactions related to providing a foreign currency under loan agreements, **(2)** crediting foreign currency to their accounts (deposits) opened at banks and other financial organizations located outside the territory of the Russian Federation, as well as **(3)** transferring money without opening a bank account by using electronic means of payment, which are provided by foreign

payment service providers. This prohibition has come into force on March 1, 2022.

According to the Letter of the Federal Notary Chamber of the Russian Federation, the abovementioned clearance procedure doesn't applied to the cases of succession with a foreign element, transactions on sale of participatory shares in the shared capital of the limited liability companies, as well as issuing powers of attorney with an authorization powers to implement the transactions (operations), which are required granting the Government Commission's consent.

2.2. The transactions (operations), which lead to emergence of the title on securities, might be implemented through **organized auctions according to a consent contained the commitments (conditions)** for implementation of the transaction granted by the Central Bank of the Russian Federation in consultation with the Ministry of Finance of the Russian Federation.

2.3. If the **Central Bank of the Russian Federation** is a party of the transaction (operation), the above-mentioned "freezing" regime shall not be applied to such transactions.

VEGAS LEX specialists have extensive experience in advising on antitrust and regulatory legal matters and are recognized in Russian and international ratings, such as Chambers and Partners, The Legal 500, IFLR1000, Pravo.Ru-300, etc.

Should you have any questions, we will be glad to assist you.

1. The Decree of the President of the Russian Federation dated March 1, 2022 No. 81 "On additional temporary measures of economic character on ensuring a financial stability of the Russian Federation" is officially pub-

lished and available in Russian at the following link: <https://rg.ru/2022/03/01/prezident-ukaz81-site-dok.html>

2. The Decree of the President of the Russian Federation dated February 28, 2022 No. 79 “On the application of special economic measures related to the unfriendly actions of the United States of America and the foreign states and international organizations that have joined them” is officially published and available in Russian at the following link: <https://rg.ru/2022/02/28/prezident-ukaz79-site-dok.html>.
3. The Letter of the Federal Notary Chamber of the Russian Federation dated

March 3, 2022 No. 1176/03-16-3 to the Presidents of the Notary Chamber of the subjects of the Russian Federation

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