In Focus

Breaking down key legislative developments

Tax & Legal

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Russian Supreme Court reviews enforcement of anti-sanction measures

To ensure the uniformity of judicial practice, the Russian Supreme Court published a thematic review outlining legal positions on the application of legislation on special economic measures introduced in response to unfriendly actions of foreign states.

Read on to learn more in our new LT in Focus.

Voidness of real estate transactions lacking required approval

Real estate sale and purchase agreements entered into by Russian entities controlled by structures from unfriendly states without the approval of the Russian Government Commission for Control over Foreign Investments (hereinafter, the "Government Commission") **are void**.

By way of **mutual restitution**, the defendant shall return to the plaintiff the property received under the agreement, and the plaintiff shall return the funds received as payment for the property sold.

Transactions establishing foreign control over strategic enterprises

A similar approach applies to **transactions aimed at establishing foreign control over strategic enterprises** (specifically, port infrastructure) without prior approval from the Government Commission.

Furthermore, in such cases, **courts are empowered to forfeit the acquired assets/shares to the state**.

Voidness of payments made in violation of anti-sanction measures

Actions to execute payments in violation of the temporary procedure established by Presidential Decree No. 95 of 5 March 2022 (in particular, without using special C-type accounts) **are void**.

In this regard, **the artificial splitting of payments into amounts below RUB 10 million** to circumvent restrictions qualifies as an abuse of rights.

Voidness of the assignment of rights

An assignment agreement of claim for debt collection under an obligation subject to the temporary procedure established by Presidential Decrees is void.

Courts have the right to assess the validity of such agreements even if the parties have not raised relevant arguments.

A refusal to approve settlement agreements aimed at circumventing the special procedure shall also be deemed justified.

Circumstances indicating a violation of legislation on special economic measures by the participants in the proceedings, which are of material importance to the case but were not subject to judicial review, may be recognized by courts as newly discovered circumstances.

Intellectual property restrictive measures

The temporary procedure for the performance of obligations to right holders applies to all obligations related to the use of intellectual property, regardless of the grounds on which they arise (including contractual or tort obligations, as well as compensation for the infringement of exclusive rights).

The mere registration of a right holder in an unfriendly country does not constitute an abuse of rights; the restrictions do not apply to foreign right holders from unfriendly states who duly perform their contractual obligations with Russian residents and continue their business operations within the territory of the Russian Federation.

However, the burden of proof for these circumstances rests with the right holder.

Such circumstances may be evidenced by effective agreements, as well as the facts of supply, sales of goods in the Russian market, etc.

Compulsory licensing

Compulsory licensing **is an exceptional measure**.

It may be applied, inter alia, in cases where a patent holder from an unfriendly jurisdiction fails to ensure sufficient supply of specific products to the Russian market.

Liability of professional market participants amid sanctions

Under the pressure of sanctions, brokers and banks may be exempted from liability for non-performance of obligations if such non-performance is caused by the imposition of restrictive measures that they could not prevent.

In particular, sanctions against an exchange and the blocking of transfers by intermediary banks due to sanctions may be recognized as an event of force majeure, exempting them from liability for damages and payment of penalties until the circumstance preventing performance ceases to exist.

Russian court jurisdiction in the context of sanctions

The Russian Supreme Court provided a broad interpretation of the rules on exclusive jurisdiction of Russian courts:

- Barriers to access to justice may encompass not only an absolute impossibility of participating in the proceedings, but also the burdensome nature of dispute resolution in a foreign jurisdiction (financial, time, and reputational costs, difficulties with border crossing, obtaining visas, etc.).
- Entry bans/restrictions imposed on Russian citizens regarding the territory of an unfriendly state preventing from attending a court hearing (including the suspension of visa application processing) qualify as restrictive measures applied to such persons, even if they are not subject to personal sanctions.
- The presence of an arbitration clause does not preclude the Russian court from hearing the dispute if the dispute arose in connection with the introduction of restrictive measures or if one of the parties faces obstacles to access to justice.
- An application for an injunction to restrain foreign proceedings cannot be left without consideration.

When determining jurisdiction, courts should take into account the actual place of performance of the contract.

The conclusion of a partnership agreement within a foreign jurisdiction, the defendant's domicile, or a choice-of-law clause shall not be of decisive significance.

A dispute may be reviewed in the Russian Federation if the legal relationship has a close connection with the territory of the Russian Federation (i.e., a substantial part of the obligations is performed in the Russian Federation, the subject matter of the dispute is closely linked to the Russian Federation, or the primary evidence is located in Russia).

Recognition and enforcement of foreign arbitral awards

When considering applications for the recognition and enforcement of foreign arbitral awards, courts are instructed to verify their compliance with the public policy of the Russian Federation.

The lack of impartiality of arbitrators from unfriendly countries is presumed.

The enforcement of an arbitral award in favor of an organization under the jurisdiction of an unfriendly state may be qualified as a violation of public policy.

Furthermore, the court is entitled to impose court-ordered penalties for non-compliance with an injunction against proceedings in a foreign jurisdiction.

Control over the circulation of counter-sanctioned goods

The movement across the territory of the Russian Federation of goods subject to retaliatory special economic measures is permissible exclusively under the customs transit procedure.

Any attempts to confer EAEU product status upon such goods in order to import them into Russia in circumvention of the ban may be construed as an abuse of rights.

Conclusion

The review of the Russian Supreme Court reaffirms the existing practices regarding the interpretation and application of anti-sanction rules, offering explicit guidance to lower courts aimed at maintaining a consistent legal practice.

Such practices include:

- A presumption of voidness with respect to any transactions, operations or payments executed in violation of restrictive measures; such operations shall be declared void by arbitration courts, triggering mutual restitution or the forfeiture of assets to the state.
- Inadmissibility of abuse: artificial splitting of payments, assignment of claims to friendly parties or entering into settlement agreements in circumvention of special measures — all of the above shall be qualified as actions bypassing the law for an unlawful purpose.
- Priority of the Russian jurisdiction: Russian individuals and entities subject to restrictive measures shall be provided with maximum guarantees of judicial protection.

For businesses, this means that any transactions involving foreign entities from unfriendly jurisdictions—or entities controlled by them—require increased vigilance and comprehensive legal analysis to ensure strict compliance with anti-sanction regulations.

Failure to do so may result in transactions being contested, carrying significant financial and reputational risks.

How we can help

Our team has extensive experience in navigating anti-sanction restrictions.

We have assisted our clients in obtaining approvals from the Government Commission (the President of the Russian Federation, where applicable) for dividend payments, loan repayments to entities from unfriendly states, the sale of shares, and real estate transactions with counterparties from unfriendly states, as well as special permits of the Bank of Russia for residents to pay for shares in foreign companies.

Our services include:

- **Anti-sanctions compliance**: advising on a wide range of matters involving the compliance, interpretation and application of counter-sanctions measures; screening proposed transactions and operations to determine the necessity of complying with anti-sanction restrictions; assessing the requirement to obtain approvals from the Government Commission, Bank of Russia; and developing secure, compliant transaction and payment structures.
- **Support in obtaining approvals from the Government Commission, President of the Russian Federation, Bank of Russia**: assisting in the collection of required documents, preparing and submitting applications for approvals, and liaising with authorized bodies.
- **Litigation support**: preparing legal claims and statements of defence, and representing clients in court.

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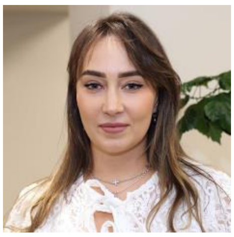
We hope you find this information useful.

If you have any questions, please do not hesitate to contact our experts.

Contacts

Tax & Legal

Anastasia Matveeva
Director
Legal Services
amatveeva@delret.ru



Ekaterina Seryakova
Senior Manager
Legal Services
eseryakova@delret.ru

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