# Russia's Sanctions (Capital Controls) Countermeasures:

## Key Points

On February 28, 2022 and March 1, 2022, the Russian Federation President adopted the following edicts setting out economic measures aimed at responding to recent international sanctions pressure on the Russian ruble due to the current situation in Ukraine:

(a) RF President Edict No. 79, On Special Economic Measures in Connection with Adverse Actions of the United States and Foreign States and International Organizations That Have Joined Them, dated 28 February 2022 (**Edict 79**); and

(b) RF President Edict No. 81, On Additional Temporary Economic Measures to Ensure Financial Stability in the Russian Federation, dated 1 March 2022 (**Edict 81**).

Both Edict 79 and Edict 81 (together, the **Counter-Sanctions Edicts**) have immediate legal effect. They have no pre-determined termination date.

We briefly describe the Counter-Sanctions Edicts below.

### 1 Edict 79 countersanctions

#### 1.1 Mandatory sales of 80% of foreign currency proceeds

From February 28, 2022, Russian residents must sell 80 percent of all foreign currency proceeds received from foreign trade operations with foreign counterparties.

Each Russian resident generating foreign currency proceeds from the sale of goods, the rendering of services, the performance of works, and/or the transfer of intellectual property to non-residents must exchange for Russian rubles 80 percent of such proceeds within three business days of the currency's crediting to account.

This requirement has a *retroactive* effect, applying to all foreign currency proceeds credited to the accounts of such Russian residents since January 1, 2022.

It applies to all Russian residents who are parties to foreign trade contracts, whether or not the contracts were registered (i.e., recorded by the Russian account bank of the Russian counterparty) under Russian currency control procedures.

The Central Bank of the Russian Federation (**CBR**) has been ordered to adopt (but the effective date has not yet been published) secondary legislation on the formal procedure for these mandatory foreign currency sales. However, the CBR has already provided guidance relating to the key provisions of Edict 79 on its website (https://www.cbr.ru/explan/support_measures_fin/).

#### 1.2 Restriction of certain cross-border currency operations

Effective from March 1, 2022, Edict 79 prohibits the following currency operations of Russian residents:

(a) Any disbursements in foreign currency to non-residents under both current and new loan agreements (please note that the CBR has specifically clarified there are no restrictions for Russian borrowers on performance of their obligations to foreign lenders under FX loans);

(b) *Transfers* of foreign currency to the residents' *own accounts* with banks and similar financial institutions abroad;

(c) *Transfers* of own funds without opening a bank account by *electronic means of payment* provided by foreign financial services providers (including e-money transfers).

Edict 81 has clarified that residents *may* carry out such transactions subject to prior approval by the

Government Commission on Control for Effectuation of Foreign Investments (the **Government Commission**), which, as noted below, may be granted conditionally.

### 1.3 Share buy backs by public joint stock companies

In addition to the above capital control restrictions, Edict 79 allows Russian public joint stock companies (**PJSC**) to consummate a share buy back through December 31, 2022, provided that all of the following conditions are met:

(a) The shares have been admitted to trading on a stock exchange;

(b) Both the weighted average price of the PJSC's shares and the benchmark stock index of the stock exchange have decreased by 20% or more for any three-month period starting on February 1, 2022 as compared to the three-month period starting on January 1, 2021;

(c) Shares are purchased through the stock exchange trades pursuant to the orders addressed to an unlimited number of market participants;

(d) The PJSC instructs a broker to conduct the buyback; and

(e) The board of directors (supervisory board) of the PJSC has adopted a decision to buy back a particular type (class) and number of the PJSC's shares, where the period of the buyback shall not extend beyond December 31, 2022 (such decision may specify that the information on share buyback shall not be subject to mandatory disclosure or specify the period for such disclosure).

The PJSC must notify the CBR about the share buyback and provide documentation confirming that the buyback exercise complies with the above requirements.

The foregoing conditions do not apply to any share buybacks undertaken for the purpose of cancelling the purchased shares.

### 1.4 Relaxation of KYC requirements for new accounts.

Should a prospective individual client of a bank (credit institution):

(a) Have an existing account with another credit institution; but

(b) Be willing to open a new account with a different bank (credit institution) and transfer funds from his/her existing account in one bank to such newly opened account in another bank; and

(c) Consent to the transfer of KYC information from one bank (credit institution) to another,

there will be no need for *in-person* identification of the new retail customer by a new bank (credit institution) that received KYC information from the incumbent bank (credit institution). The transfer of moneys on account is, however, subject to the prior written consent of the individual. Thus, remote opening of bank accounts is simplified for retail clients, with no need for personal verification of KYC details (including manual demonstration of passports) to the new bank (credit institution).

## 2 Edict 81 countersanctions

### 2.1 Government Commission approval necessary for equity, real estate and certain other transactions

From March 2, 2022, a number of transactions between Russian residents and persons associated with foreign states that have imposed sanctions against Russia (**Sanctioned Persons**), as well as certain other transactions with foreign currency, will be subject to prior approval by the Government Commission.

Sanctioned Persons include persons who have their citizenship or are registered in the foreign states that have imposed Russian sanctions, conduct their primary business activities in, or receive their profit primarily from, activities in such states, as well as persons under their control.

Transactions subject to prior approval by the Government Commission include:

(a) All transactions relating to the transfer of title to securities and real estate involving Sanctioned Persons;

(b) Extension of rouble-denominated loans to Sanctioned Persons;

(c) Transactions relating to the transfer of title in securities and real estate between Russian residents and non-Sanctioned Persons where such securities and real estate were acquired by a non-Sanctioned Person from a Sanctioned Person after 22 February 2022; and

(d) Transactions referred to in paragraph 1.2 above.

The Government Commission may issue its approval subject to certain terms and conditions being met. The Government is due adopt the procedure for issuing approvals by the Government Commission by March 6, 2022.

### 2.2 Securities transactions consummated through a stock exchange

Edict 81 provides that the securities transactions specified in paragraph 2.1(a) consummated through a stock exchange may be executed on the basis of CBR permits. Such permits will also need to be approved by the Russian Ministry of Finance and are expressed to contain conditions for consummation of such transactions.

### 2.3 Ban on export of cash and money market in excess of US$10,000

From March 2, 2022, it is prohibited to export foreign currency in cash and/or foreign currency money market instruments in an amount exceeding US$10,000 (or its equivalent at the official CBR exchange rate on the date of export).

The limitations set out in the Countersanctions Edicts apply to *both natural persons and legal entities*. However, Edict 81 does not apply to the transactions with the CBR and the Russian state bodies.

## 3 Applicability to foreign banks and financial institutions

The Countersanctions Edicts do not themselves explicitly provide for any specific liability for the breach of the new restrictions and capital control requirements by foreign banks or financial institutions. At the same time, foreign banks and financial institutions should bear in mind the regulatory implications under their own respective legal systems and possible compliance concerns, which could arise from being seen to assist Russian natural persons and legal entities to circumvent Russian law. Moreover, for foreign banks with Russian affiliates (e.g., Russian subsidiaries and/or representative offices) there may be reputational or knock-on concerns.

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