

Easing of repatriation requirements for exporters and changes to servicing procedures for syndicated and Eurobond loans

July 2022

On 5 July 2022, the President of the Russian Federation signed edict No. 430 (**Edict 430**),¹ enacted to supplement the special measures adopted in the spring of 2022 under RF President edicts No. 79 of 28 February 2022 (**Edict 79**), No. 81 of 1 March 2022 (**Edict 81**), and No. 95 of 5 March 2022 (**Edict 95**).²

Edict 430 changes the previous procedure for Russian borrowers to discharge accounts payable under financial obligations to foreign creditors, including persons from so-called "unfriendly countries".³ It also bars residents from placing dividends from Russian joint-stock companies and profit distributed by Russian limited liability companies in accounts (on deposit) outside Russia.

Edict 430 also establishes a new approach to the currency law requirements for residents to repatriate FX proceeds from foreign trade operations.

We examine these developments more deeply below.

1 No more currency repatriation for exporters?

Under Edict 430, residents involved in foreign trade operations must comply with repatriation requirements⁴ in an amount defined by the Government Commission on Control for Effectuation of Foreign Investments in the Russian Federation (the **Government Commission**) for mandatory sales of FX proceeds from foreign trade operations.

Edict 79 had set a level for mandatory FX sales at 80%. This was one of a number of measures coordinated by the Bank of Russia to protect the country's currency and local economy. Others included prohibitions on residents' lending to non-residents, restriction of FX transfers from Russia to abroad, and the like.

¹ RF President Edict No. 430 On Repatriation of Foreign Currency and Russian Federation Currency by Residents Involved in Foreign Trade Operations dated 5 July 2022.

² Please see Dentons' previous publications dated 3 and 15 March 2022.

³ The list of these states was established by RF Government Order No. 430-r dated 5 March 2022 (**Unfriendly Countries**).

⁴ According to Article 19 of the Federal Law No. 173-FZ On Currency Regulation and Currency Control dated 17 December 2003 (the **CRC Law**), residents must deposit in their accounts with an authorized Russian bank all payments received from non-resident counterparties under foreign trade export contracts (or the amounts of advance payments made by resident importers, if a non-resident has failed to perform its obligations). There is a similar requirement in relation to loans granted by residents to foreign borrowers.

Together the measures have succeeded in maintaining a strong ruble despite the impact of historically unprecedented international sanctions.

As pressure on the ruble has reduced, the level for mandatory sales of FX was correspondingly reduced – first to 50%,⁵ then all the way down to 0%.⁶ Thus, according to the Bank of Russia clarifications,⁷ from 10 June 2022, exporters are no longer required to sell FX, including FX deposited between 28 February 2022, and 9 June 2022 and which remains unsold.

By zeroing out the rate for mandatory FX sales, Edict 430 **effectively eliminates the need for residents to repatriate any FX proceeds whatsoever** in their accounts with Russian authorized banks. The measures reflect the discourse emanating from Russian financial authorities, in the last month pointing to the need to relax currency restrictions.⁸

Under the current conditions, residents have been encountering major difficulties conducting banking transactions in FX (due to sanctions restrictions and enhanced internal compliance requirements from banks). As a result, it has become increasingly difficult to repatriate FX to Russia. In this regard, the liberalization of FX repatriation requirements would seem timely and logical. No doubt this change will be a welcome relief to residents involved in foreign trade (and first and foremost fossil fuel exporters), since for many years the FX, repatriation requirement has been the most severe restriction under Russian currency legislation.

At the same time, there are still many questions about the application of the

provisions in Edict 430. For example, it is not entirely clear whether resident exporters depositing FX proceeds under foreign trade contracts to their accounts with foreign banks or to third-party accounts will result in a violation of other provisions of the currency legislation (e.g., Article 24(4) (*Rights and obligations of residents and non-residents*) of the CRC Law). For this reason, we await further clarifications on the application of the new provisions.

Notably, the repatriation requirement has not been formally removed from the law. Indeed, the proposed language authorizes the Government Commission re-introduce it.

2 **Ban on taking dividends from Russian companies out of Russia**

As we previously reported, Edict 79 and Edict 81 imposed severe restrictions on residents depositing FX proceeds in their accounts with foreign banks and other financial market institutions. Subsequently, a whole series of exemptions and exceptions were instituted, without which the normal use of foreign accounts would have been unimaginable (especially for residents permanently residing abroad).

From 1 July 2022, individual residents may transfer up to US\$1 million or its equivalent from their account with a Russian bank to their account abroad or to another person during the calendar year.⁹

Nevertheless, Edict 430 does introduce a new express prohibition against residents' transferring to their foreign accounts FX resulting from the conversion of funds they have received as dividends on shares in

⁵ RF President Edict, No. 303 On Amending Edict of the President of the Russian Federation No. 79 dated 28 February 2022 On Special Economic Measures in Connection with Adverse Actions of the United States and Foreign States and International Organizations That Have Joined Them dated 23 May 2022.

⁶ RF President Edict No. 360 dated 9 June 2022, minutes of the meeting of the Government Commission subcommittee No. 61 dated 9 June 2022 (excerpt given in Russian Finance Ministry advisory No. 05-06-05/VN-29704 dated 10 June 2022).

⁷ Official Bank of Russia clarification No. 7-OR On the Application of Certain Provisions of Edict 79 dated 27 June 2022.

⁸ "Siluanov announces the authorities' readiness for the effective end of the repatriation of FX proceeds" (<https://www.interfax.ru/business/849447>).

⁹ Information from the Bank of Russia dated 30 June 2022 (Bank of Russia continues to remove previously introduced currency restrictions).

Russian joint-stock companies or distribution of profit from Russian LLCs, business partnerships and production cooperatives.

Obviously, this rule is designed to combat possible capital flight from Russian business, which has become more of a reality considering the increase in the limit on FX deposits in individual residents' foreign accounts to US\$1 million.

Meanwhile, Edict 430 does not expressly restrict transfers of such dividends or profit *in rubles* to residents' accounts with banks and other financial market institutions located outside of Russia. The Bank of Russia, which is authorized to provide official clarifications on the application of Edict 430, may be expected to focus attention here.

Edict 430 grants the Government Commission the authority to impose other restrictions on (i) residents depositing FX in their accounts with foreign banks, and (ii) non-account-based funds transfers using electronic payment facilities provided by foreign payment service providers.

3 Procedure for the discharge of obligations under Eurobonds

Edict 430 stipulates that obligations to Eurobond holders are deemed to have been properly performed if:

- (a) Russian legal entities, with Eurobond-related obligations to the Eurobond holders, place bonds:
 - (i) on terms (with respect to coupon, interest payment dates, tenor and notional amount) meeting the same criteria as the Eurobonds; and
 - (ii) that are paid for at the time of their placement in Eurobonds (including in case of the transfer (assignment) of all

property and other rights under the Eurobonds to Russian legal entities);

- (b) Russian legal entities acquire the Eurobonds with money received from the placement of bonds.

Thus, Edict 430 expressly provides for the discharge of obligations under Eurobonds by way of issuing so-called "substitute bonds," which were previously referred to in separate bills.¹⁰

Edict 430 also provides that Russian legal entities with Eurobond-related obligations are required to ensure the performance of obligations to Eurobond holders, whose rights are recorded by Russian depositories, by way of a funds transfer in the manner defined by the Board of Directors of the Central Bank of the Russian Federation,¹¹ or transfer of the outstanding bonds to those holders.

Edict 430 specifically stipulates that the authorizations contemplated by Edict 95 for making payments in the original currency of the instrument (e.g., by a Russian borrower to a special purpose vehicle that is a Eurobond issuer) are granted subject to compliance with the aforesaid requirement or otherwise pursuant to a decision of the Government of the Russian Federation.

The requirement for the unconditional discharge of obligations to accountholders of Russian depositories as a condition for granting the authorization contemplated by Edict 95 conforms to the established practice for granting these authorizations and is in line with the position expressed previously by the regulator,¹² and is now established as a mandatory rule.

4 Residents' repayment of syndicated loan debt

Edict 430 establishes a special procedure for Russian corporate debtors' performance of

¹⁰ <https://sozd.duma.gov.ru/bill/140807-8> and <https://sozd.duma.gov.ru/bill/116264-8>.

¹¹ This procedure was approved by the Board of Directors of the Bank of Russia on 8 July 2022: (http://cbr.ru/about_br/dir/rsd_2022-07-08_2/).

¹² Minutes of the meeting of the Government Commission subcommittee No. 28 dated 8 April 2022.

obligations to Russian creditors under syndicated loan agreements (**SLAs**) for which the paying agent is a person from an Unfriendly Country or other person controlled by the latter (**Agent in an Unfriendly Country**).

In particular, Russian legal entities that are:

- (a) borrowers under SLAs; or
- (b) providers of credit support for a borrower's obligations under an SLA,

are required to discharge their obligations to resident creditors by repaying the debt directly to those Russian creditors, bypassing the Agents in Unfriendly Countries that are authorized to receive such payments under the SLAs.

Residents can effect such performance to a Russian participant lender either in the currency of payment set by the SLA, or in rubles (at the creditor's request) or another currency as agreed with the relevant creditor.

Previously, a similar approach had only been *recommended* by the Government Commission.¹³ However, if these recommendations were not followed, the resident borrower was prevented from obtaining authorization for the discharge of obligations to creditors from Unfriendly Countries" under an SLA in FX. This authorization allows borrowers to disregard the temporary procedure established by Edict 95 for the discharge of financial obligations to creditors from Unfriendly Countries.

Given the sanctions restrictions and considering the payment risks for Russian borrowers associated with Agents in Unfriendly Countries failing to perform their obligations to distribute the money received from a borrower to all the creditors (including

Russian banks), this decision was a no-brainer. At the same time, these kinds of direct payments to Russian creditors under SLAs could result in a breach of the SLA provisions on the procedures for making payments to creditors, with the latter being able to demand prepayment of a Russian borrower's entire debt under the SLA in connection with the occurrence of an event of default.

In this regard, the parties to SLAs in which an Agent in an Unfriendly Country is serving as the paying agent and with Russian banks among the creditors must find a solution. The borrower will no longer be able to transfer all payments to Russian creditors directly to the Agent in an Unfriendly Country, and the latter will be at risk of violating sanctions restrictions if it approves a new SLA payment distribution mechanism that conforms to the new requirements in Edict 430.

Notably, according to clarifications from the Bank of Russia,¹⁴ Russian obligors also must make payments in a similar manner to Russian creditors that are not direct participant lenders, but which have entered into a loan participation financing agreement (comparable to a sub-participation agreement) with a non-resident creditor (**Co-financing Agreement**). Such creditors (so-called external participants¹⁵ in the syndicate) will be able to receive direct payments from Russian obligors as repayment of the debt thereto if they provide the obligor with:

- (a) a Co-Financing Agreement with a provision on the transfer of funds to the Russian co-financing lender by the participant lender that received performance from the borrower under the SLA; and
- (b) confirmation of the actual amount owed by the non-resident creditor to

¹³ Minutes of the meeting of the Government Commission subcommittee No. 49 dated 18 May 2022 (excerpt provided in Russian Finance Ministry advisory No. 05-06-10/VN-27466 dated 30 May 2022).

¹⁴ Official Bank of Russia clarification No. 8-OR On the Application of Clause 5 of Edict of the President of the Russian Federation No. 430 of 5 July 2022 On Repatriation of Foreign Currency and Russian Federation Currency by Residents Involved in Foreign Trade Operations dated 8 July 2022.

¹⁵ As this term is defined in Article 10.1 of Federal Law No. 486-FZ On Syndicated Loans and Amending Certain Legislative Acts of the Russian Federation dated 31 December 2017.

the external participant under the Co-financing Agreement.

Russian obligors must make payments to such external participants bypassing the paying agents under the SLA and non-resident creditors under the Co-financing Agreement where the latter was entered into on or before 28 February 2022.

The finance community will be keeping a close eye on regulatory and enforcement developments in this area, as many Russian corporations and banks have traditionally secured syndicated loan financing from abroad, and Russian banks have been actively involved in those syndicates.

5 Prepayment of debt to foreign creditors

Several days after the publication of Edict 430, word came out that the Government Commission had given¹⁶ resident borrowers until 1 September 2022, to prepay FX debt under loans issued by foreign banks. Credit obligations under which the borrower and foreign lender are related parties are exceptions.

Despite the lack of clarifications, we believe that this literally means that prepayments can be made to any foreign creditors in the currency of the debt under the terms of the relevant agreements and without complying with the temporary procedure for the discharge of financial obligations established by Edict 95.¹⁷

The authorization is effective provided that the borrower (or any third party acting for the borrower) is repaying at least 20% of its debt.

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¹⁶ Advisory message from the Russian Finance Ministry – companies will be able to prepay loans in FX to foreign banks.

¹⁷ Edict 95 only allows residents to discharge financial obligations to foreign creditors in rubles. That being said, creditors from Unfriendly Countries can only receive such payments in special type "S" accounts, which have limited modes of use.