

Russia bans foreigners from alienating intellectual property without the consent of the Government Commission



Russian version

Decree No. 430^[1] of the President of the Russian Federation (the "**Decree**"), which introduces a ban on the alienation of intellectual property by certain categories of foreigners without the consent of the Government Commission for the Control over Foreign Investments (the "**Government Commission**"), entered into force on 20 May 2024.

Transactions covered by the Decree

From this date, the consent of the Government Commission will be required:

a) to conclude transactions on the acquisition of exclusive rights to intellectual property or means of individualisation.

In other words, agreements on the alienation of the exclusive right (Article 1234 of the Russian Civil Code) to a wide range of intellectual property, for example:

- trademarks,
- items covered by patent law (inventions, utility models, industrial prototypes),
- results of selective breeding (types of plants, animal breeds),
- etc.

b) to perform these transactions,

c) to ensure the performance of these transactions.

Persons and entities subject to the ban

The ban covers transactions with certain parties on the side of the rights holder and the purchaser.

On the side of the rights holder:

1) individuals and legal entities from so-called "unfriendly" foreign countries. The Decree gives special classification criteria based on the close contacts of these parties with a so-called "unfriendly" country:

- citizenship,
- place of registration,
- principal place of business,
- principal profit centre of the business.

2) persons controlled by these foreigners. The classification criteria do not apply here, meaning that any individual or entity can be recognised as a controlled party regardless of their place of registration or primary place of business. These parties may be Russian individuals and entities. For example: the subsidiary of a company from the USA or Germany.

On the side of the purchaser:

- 1) residents of Russia;
- 2) the Russian Federation itself, its constituent entities and municipalities.

On the side of the creditor:

- 1) foreign guarantors (counter-guarantors) from so-called "unfriendly" countries under an independent guarantee (counter-guarantee),
- 2) foreign sureties from so-called "unfriendly" countries.

In this regard, the beneficiaries under the independent guarantees and the creditors under the principal obligations secured by the surety agreement must be the rights holders from so-called "unfriendly" countries.

Consent of the Government Commission

The transactions covered by the ban established in the Decree may only be performed with the consent of the Government Commission.

Consent may be given based on an application submitted by the rights holder, the purchaser, or persons acting on their behalf under a power of attorney, for example consultants.

According to Clause 3 of the Decree, a consent to be issued by the Government Commission "may, if necessary, contain" certain conditions. The Decree does not clarify who is responsible for determining whether any specific condition needs to be included in the consent. These conditions in the consent may include the following:

- terms on payment to a special O-type rouble account of remuneration and other payments (including forfeitures (fines, penalties) and other financial penalties) related to the acquisition of exclusive rights to intellectual property under the transactions indicated above,
- other conditions on the performance of these transactions.

Considering that the list of conditions that can be included in a consent is *numerus apertus*, i.e. open-ended, it would appear that the Government Commission can interfere significantly in the private legal relations of parties when alienating intellectual property and can *de facto* dictate its conditions on the performance of these transactions.

From a legal standpoint this interference is speculative as, based on Part 3 of Article 55 of the Russian Constitution, human and civil rights and freedoms can only be restricted by a federal law (*and not a decision of the Government Commission – ed. note*) and only to the extent necessary to protect the foundations of the constitutional system, public morality, and the health, rights, and legal interests of other parties; as well as to ensure national defence and state security.

Special O-type rouble account

Monetary funds under the transactions covered by the new rules must be deposited in a special O-type rouble account to be opened in the rights holder's name by the purchaser of the exclusive right.

The payments made under independent guarantees (counter-guarantees) and sureties must also be deposited in the O-type account.

Monetary funds can only be transferred from the O-type account to a settlement account, including in a foreign bank, with the consent of the Government Commission.

Duration of the ban

The new ban will apply to all the aforementioned transactions concluded before 20 May 2024 if the monetary obligations under the transactions have not been performed by this date, including in breach of the contractual terms, as well as to transactions concluded on or after 20 May 2024.

Exceptions

The above bans and restrictions are not applicable to some transactions:

1) transactions under which the amount of the purchaser's obligations does not exceed RUB 15 million (around EUR 150,000),

2) transactions on the acquisition of exclusive rights to:

- scientific, literary, and artistic works,
- the results of the performing arts (performances),
- audio recordings,
- the transmissions of over-the-air or cable broadcasters.

ADVANT Beiten provides comprehensive legal support for transactions involving the alienation of exclusive rights to intellectual property and assistance in receiving consents and permissions from the Government Commission.

[1] Decree No. 430 of the President of the Russian Federation dated 20 May 2024 "On the Temporary Procedure for Acquiring the Exclusive Rights of Certain Rights Holders and Performing Monetary Obligations to Certain Foreign Creditors and the Entities Controlled by Them".

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