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Bracing for Russian Actions Against Foreign Investments

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March 16, 2022 – The Russian Federation recently implemented measures in retaliation to US and EU sanctions that may violate its obligations under international treaties that protect foreign investment in Russia.¹ These measures include:

- Authorizing Russian companies to use patents without paying compensation to patent holders from specific countries designated as “unfriendly”²
- Imposing restrictions on transfers of foreign currency³
- Requiring Russian companies, including subsidiaries of foreign companies, to sell foreign currency proceeds from export activities to the Russian Central Bank and exchange them into rubles.⁴
- Authorizing Russian nationals to pay foreign currency-denominated debt to foreign debtors from “unfriendly” countries in rubles.⁵
- Restricting foreign holders from selling stocks and bonds in Russian companies.⁶
- Effectively confiscating aircraft owned by foreign lessors by placing leased aircraft on Russia’s aircraft register.⁷

In addition, the Russian government introduced a draft law that contemplates the takeover of assets owned by foreign companies that pull out of the Russian market.⁸

Russia has bilateral investment treaties in force with over 60 countries, including 20 of the 27 member states of the European Union,⁹ Canada, Japan, Korea, Switzerland, the UK, Ukraine, and several Latin American countries.¹⁰

Bilateral investment treaties protect investments in the Russian Federation made by investors from those countries against specific forms of state action. For example, bilateral investment treaties typically protect foreign investors against unlawful expropriation, interference with the free transfer of funds, and unfair and inequitable treatment. In addition, many of the Russian Federation’s bilateral investment treaties contain provisions that allow investors who suffer injury as a result of the Russian Federation’s breaches of the investment treaty’s protections to obtain compensation through international arbitration outside of Russia.

The investment treaty arbitration team at Hughes Hubbard & Reed LLP has brought more treaty claims against the Russian Federation than any other law firm. We were the first to use arbitration under a bilateral investment treaty successfully to obtain an award of compensation against the Russian Federation for its unlawful expropriation of Yukos Oil Company on behalf of a U.K.-based shareholder in Yukos. In 2014, immediately following the Russian Federation's unlawful annexation of Crimea, we established the applicability of the Ukraine-Russia BIT to Russian actions in the Crimean Peninsula in a series of five groundbreaking arbitrations that have held the Russian Federation's expropriation of property following its annexation of Crimea to have breached the BIT. The aggrieved investors in those cases have collectively obtained hundreds of millions of dollars in awards of compensation against the Russian Federation that are enforceable in any of the 169 countries that are party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

If your business in Russia has been or may be impacted by these new measures being considered by the Russian Federation, the members of our international arbitration practice would be happy to advise about what remedies may be available.

References

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- 1 Some of these measures were implemented by the following decrees of the President of the Russian Federation: Decree No. 79 On Special Economic Measures in connection with Unfriendly Actions by the United States of America and the Foreign States and International Organizations that have Joined Them dated February 28, 2022 ("Decree No. 79"); Decree No. 81 On Additional Temporary Economic Measures to Secure the Financial Stability of the Russian Federation dated March 1, 2022 ("Decree No. 81"); Decree No. 95 On the Temporary Procedure for the Performance of Obligations to Certain Foreign Creditors dated March 5, 2022 ("Decree No. 95"); Decree No. 100 On Implementation of Special Economic Measures in the Sphere of Foreign Economic Activity for Security of the Russian Federation dated March 8, 2022 ("Decree No. 100"); Decree No. 299 On amendments to paragraph 2 of the methodology for determining the amount of compensation paid to the patent holder upon making a decision on the use of an invention, useful model or industrial design without his consent, and the procedure for its payment dated March 6, 2022 ("Decree No. 299"). ^
- 2 Decree No. 299; <https://www.washingtonpost.com...> ^
- 3 Decree No. 81; <https://www.wsj.com/livecovera...> ^
- 4 Decree No. 79; <https://www.reuters.com/busine...> ^
- 5 Decree No. 95; <https://www.wsj.com/livecovera...> ^
- 6 <https://www.reuters.com/market...> ^
- 7 Law No 56-FZ Amendments to the Air Code of the Russian Federation and Certain Legislative Acts of the Russian Federation dated March 14, 2022. <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-03-14/card/putin-signs-law-to-seize-foreign-aircraft-redeploy-for-domestic-use-7dG55AU0aMqdgS7HDTKb;> <https://www.irishtimes.com/bus...> ^
- 8 Draft Law on Special External Management; see <https://www.washingtonpost.com...> ^

9 These are Austria, Belgium, Bulgaria, the Czech Republic, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Lithuania, Italy, Luxembourg, the Netherlands, Norway, Romania, Slovakia, Spain, and Sweden.

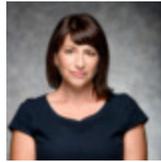
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10 The United Nations Commission on Trade and Development (UNCTAD) maintains a list of bilateral investment treaties to which the Russian Federation is a party. <https://investmentpolicy.unctad.org/international-investment-agreements/countries/175/russian-federation>. That list includes several treaties, like the bilateral investment treaty between the Russian Federation and the United States, that have not entered into force. ^

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