

Russian counter-sanctions

New measures targeting ‘unfriendly’ foreign investors in Russia (II)

JULY 16, 2024

Over two years since the full-scale invasion of Ukraine triggered the imposition of worldwide sanctions against Russia, Moscow has continued to respond in the form of new counter-sanctions.

We have [previously summarized](#) some of the existing measures targeting “unfriendly” foreign investors in Russia that Moscow has taken in response to international sanctions. The more recent measures signal a further tightening of this increasingly complex web, in which more than 2,000 foreign companies present in Russia remain caught. Our summary of the latest developments follows below.

KEY TAKEAWAYS

- ◆ An increasing number of “unfriendly” foreign investors have had their Russian assets placed under external management. While stated to be “temporary,” the measure can be terminated only by the decision of the Russian President.
- ◆ A new decree provides for the tit-for-tat confiscation of U.S.-owned or controlled assets in Russia following any use of Russian sovereign assets by the U.S. authorities to provide assistance to Ukraine.
- ◆ The announcement by the European Union and G7 member countries of similar plans to use amounts generated by Russian sovereign assets to support Ukraine has likewise been met with threats by Moscow of further counter-sanctions.
- ◆ Meanwhile, Moscow has steadily tightened requirements for foreign investors exiting Russia, imposing additional regulatory hurdles and increasing the amount payable to the Russian budget from any disposal of assets to 15% of the assets’ market value. A mandatory 50% discount from market value has been retained.
- ◆ Additionally, the use of buy-back options has been severely restricted. Such options must generally now be exercised within two years of exit, at full market value.
- ◆ There have been changes to the regime for so-called “Type C” accounts, including to ensure that funds and securities held in such accounts remain (exclusively) available to the Russian State.
- ◆ The purported suspension by Russia of key provisions of its double taxation conventions with “unfriendly” countries has further exposed investors from these jurisdictions to increased tax burdens, including as regards dividend distributions and other income payments derived from Russia. On June 17, 2024, the U.S. Treasury Department confirmed the suspension, by mutual consent, of the relevant provisions of the 1992 U.S.-Russia double taxation convention. The suspension will take effect both for taxes withheld at source and for other taxes on August 16, 2024.
- ◆ A prohibition on the sale of certain categories of intellectual property rights by “unfriendly” foreign parties to Russian buyers without government approval has been introduced. Payments for such transactions are to be made into a restricted “Type O” account.
- ◆ Underscoring the eye-for-an-eye nature of Russian counter-sanctions, on June 25, 2024, Russia announced that it was blocking access for dozens of European media outlets, one month after the European Council decided to suspend the broadcasting activities of four additional Russian media outlets.

- ◆ Foreign investors impacted by Russian counter-sanctions should consider whether they have recourse to international arbitration against Russia under international investment agreements.

MEASURES PAVING THE WAY FOR THE EXPROPRIATION OF FOREIGN ASSETS IN RUSSIA

Decree No. 302 of April 25, 2023

To recall, on April 25, 2023, Russian President Putin enacted [Decree No. 302](#), authorizing the Russian authorities to seize and place under external management the Russian assets of investors from any country included in an official list of “unfriendly” countries—including all EU Member States, the United Kingdom, the United States, Australia, Canada, Japan, Singapore, and Switzerland, among others with a Russian sanctions program.¹

The Decree is stated to apply (i) in case of threats to Russia’s national security, or (ii) in the event that Russia or Russian persons are deprived of their property rights abroad by way of “actions contrary to international law.”

Assets that can be seized pursuant to the Decree include moveable and immovable property, securities, and stock in Russian companies, among other property rights. Responsibility for managing seized assets is vested in Russia’s Federal Agency for State Property Management, Rosimushchestvo, or such other person as appointed by the Russian President.

While stated to be “temporary,” the external management can be terminated only by decision of President Putin.

The first targets under the Decree were two state-owned energy companies: Germany’s Uniper and Finland’s Fortum, in what appeared to be targeted acts following, notably, Berlin’s decision to place the German assets of Russian oil giant Rosneft under trusteeship, and Finland’s joining NATO—a move strongly opposed by Moscow.

The Russian operations of the following companies were also subsequently seized:

- ◆ French food company Danone (in July 2023, subsequently removed in June 2024);²
- ◆ Danish brewer Carlsberg (also in July 2023);³
- ◆ Norwegian media company Amedia (in September 2023);⁴
- ◆ Cypriot company Delance Limited (in December 2023),⁵ which held the shares of Russia’s largest car dealership, Rolf, owned by exiled former lawmaker Sergey Petrov;⁶
- ◆ German company Gildemeister Beteiligungen, a subsidiary of Japanese-German machine tool manufacturer DMG Mori and owner of the Ulyanovsk Machine Tool Plant (under external management as of February 2024);⁷

¹ [Russian Government Directive No. 430-r of March 5, 2022](#) (as amended by [Russian Government Directive No. 2018-r of July 23, 2022](#) and [Russian Government Directive No. 3216-r of October 29, 2022](#)). The list presently includes Albania, Andorra, Australia, Bahama, Canada, the EU Member States, Great Britain (including the Crown Dependencies and the British Overseas Territories), Iceland, Japan, Liechtenstein, Micronesia, Monaco, Montenegro, New Zealand, North Macedonia, Norway, Singapore, San Marino, South Korea, Switzerland, Taiwan, Ukraine, and the United States.

² [Presidential Decree No. 520](#), “On amendments to the list of movable and immovable property, securities [and] shares in the authorized (share) capital of Russian legal entities and property rights in respect of which temporary management is introduced,” July 16, 2023. After being removed from the list, Danone successfully obtained the necessary regulatory approvals for the sale of its Russian business to a Russian dairy company, Vamin Tatarstan. The reported sale price was USD191.5m—representing a 56% discount to market value. As discussed below, Moscow has mandated a reduction of at least 50% for foreign asset sales, based on a government-approved valuation.

³ [Presidential Decree No. 520](#), “On amendments to the list of movable and immovable property, securities [and] shares in the authorized (share) capital of Russian legal entities and property rights in respect of which temporary management is introduced,” July 16, 2023.

⁴ [Presidential Decree No. 686](#), “On amendments to the list of movable and immovable property, securities [and] shares in the authorized (share) capital of Russian legal entities and property rights in respect of which temporary management is introduced,” September 18, 2023.

⁵ [Presidential Decree No. 982](#), “On amendments to the list of movable and immovable property, securities [and] shares in the authorized (share) capital of Russian legal entities and property rights in respect of which temporary management is introduced,” December 22, 2023.

⁶ In February 2024, a Russian court ordered that the Rolf shares be handed over to the Russian State, effectively nationalizing the company.

⁷ [Presidential Decree No. 133](#), “On amendments to the list of movable and immovable property, securities [and] shares in the authorized (share) capital of Russian legal entities and property rights in respect of which temporary management is introduced,” February 19, 2024.

- ♦ agricultural holdings company AgroTerra (in April 2024).⁸ The seized assets included Russian companies owned by Dutch-registered investment firms;
- ♦ Italian water heating and heating products company Ariston and German appliance maker BSH Hausgeraete (also in April 2024);⁹ and
- ♦ two Austrian subsidiaries of the U.S.-based food packaging manufacturer Silgan Holdings (in July 2024).¹⁰

Decree No. 442 of May 23, 2024

On May 23, 2024, Russian President Putin enacted [Decree No. 442](#), providing for the seizure of private U.S. assets in Russia as compensation for any confiscation of Russian sovereign assets by the United States.

The measure notably followed U.S. President Biden signing into law the [Rebuilding Economic Prosperity and Opportunity for Ukrainians Act](#), allowing for the use of seized Russian sovereign assets to support Ukraine.

Under the Decree, in the event U.S. authorities “unjustifiably” deprive them of their property rights abroad, the Russian State and the Russian Central Bank may apply to the Russian courts for compensation. If the court is satisfied there is *prima facie* evidence of such a deprivation, it must request the Commission on Monitoring Foreign Investment (the “Commission on Foreign Investment”) to prepare a list of U.S. assets in Russia available for seizure. Such assets may include moveable and immovable property, securities, stocks in Russian companies, and other property rights belonging to:

- ♦ the U.S. or U.S. citizens; or
- ♦ foreign persons “associated with” the U.S., by virtue of (i) being a resident in the U.S., or (ii) carrying out commercial activities in the U.S., where the U.S. is their principal place of business or the place in which they derive most of their profits—along with any other persons “controlled by” such foreign persons.

The Decree does not specify how the existence of “control” is to be determined.

Finally, the court shall proceed to rule on the application for compensation. If the application is granted, property rights over the assets will be transferred to the Russian State or Central Bank. It is unclear whether or how the court is required to ensure equivalence with the value of the property rights taken away by the U.S. authorities.

The Decree requires the Russian Government to pass the necessary regulations to implement the above measures within four months.

Thus, whereas Decree No. 302 authorizes the Russian authorities to place U.S.-owned assets in Russia under temporary administration, Decree No. 442 represents a significant escalation of this existing regime by providing for permanent transfer of ownership of such assets to the Russian State or Central Bank.

Further measures expected

Decree No. 442 notably came just days after the European Council [decided](#) in favor of supporting Ukraine using extraordinary profits generated since February 15, 2024, by Russian Central Bank assets immobilized as a consequence of EU sanctions. This followed an earlier [decision](#) requiring EU Central Securities Depositories holding more than EUR 1 million of Russian sovereign assets to set aside extraordinary cash balances accumulating due to EU sanctions. A spokesperson for President Putin [described](#) the measures as “nothing less than expropriation.”

⁸ Presidential Decree No. 248, “On amendments to the list of movable and immovable property, securities [and] shares in the authorized (share) capital of Russian legal entities and property rights in respect of which temporary management is introduced,” April 8, 2024.

⁹ Presidential Decree No. 294, “On amendments to the list of movable and immovable property, securities [and] shares in the authorized (share) capital of Russian legal entities and property rights in respect of which temporary management is introduced,” April 26, 2024.

¹⁰ Presidential Decree No. 590, “On amendments to the list of movable and immovable property, securities [and] shares in the authorized (share) capital of Russian legal entities and property rights in respect of which temporary management is introduced,” July 11, 2024.

The EU position is in line with that taken by the G7, which, on June 13, 2024—agreed to a USD50billion loan for Ukraine backed by future interest from frozen Russian assets. The loan monies are expected to come primarily from the United States, as well as Canada, the United Kingdom, and Japan (within the limits of its constitutional constraints). President Putin again described the planned move as “theft,” which “would not go unpunished.”

A response by the Russian Government to these latest measures of the EU and the G7, in the form of additional counter-sanctions and potential asset seizures, is therefore to be expected.

Russia has not disclosed the value of the “unfriendly” assets inside Russia that could be targets for reprisal, although it is estimated to be roughly equivalent to the worldwide value of frozen Russian assets, or USD300bn.

MEASURES RAISING THE COST OF EXIT FOR “UNFRIENDLY” INVESTORS

The Commission on Foreign Investment has imposed increasingly more stringent conditions for “unfriendly” investors seeking to sell their Russian assets and exit the country.¹¹ In particular, since our last update:

- ◆ The maximum price investors are able to obtain for their Russian assets continues to be fixed at a 50% discount of the assets’ appraised market value.¹² Now, however, asset appraisals must be carried out by a Government-approved appraiser, and be verified by a Government-approved expert.¹³
- ◆ Payments to foreign currency accounts must now be done in installments.¹⁴ No minimum number of installments is specified, although the adoption of this requirement follows the announcement that the purchase of foreign currency by Russian residents for the settlement of international transactions is now capped at USD1bn monthly—meaning the aggregate value of all such installments cannot exceed this threshold in any given month.¹⁵ The maintenance of this cap was most recently confirmed in April 2024.¹⁶
- ◆ Payments in Russian rubles may be made to a standard Russian bank account or a special “Type C” account (as described below). In either case, the funds cannot be transferred outside Russia.¹⁷
- ◆ Whereas 10% of the assets’ discounted value (i.e., 10% of 50% of the appraised market value) was previously forfeited by way of a “voluntary contribution” to the federal budget,¹⁸ this amount has now increased to 15% of the assets’ full market value (as appraised).¹⁹ Further, whereas previously the deadline for payment was three months after closing, it has now been shortened to one month after closing.
- ◆ The use of buy-back options—relied on by many companies which exited the Russian market in the wake of the Russian invasion of Ukraine—has been restricted. Any such option must now (i) be exercised within, in general, two years of closing, (ii) be for the full market value of the asset at the time the option is exercised, and (iii) be “economically beneficial” (i.e., entail a profit) for the seller.²⁰

¹¹ See Protocol No. 171/5 of the Subcommittee of the Commission on Monitoring Foreign Investment in the Russian Federation of July 7, 2023 (hereafter, “Protocol No. 171/5 of July 7, 2023”), and Protocol No. 193/4 of the Subcommittee of the Commission on Monitoring Foreign Investment in the Russian Federation of September 26, 2023 (hereafter, “Protocol No. 193/4 of September 26, 2023”).

¹² Protocol No. 171/5 of July 7, 2023, § 1(3).

¹³ Protocol No. 171/5 of July 7, 2023, § 1(1)–(2).

¹⁴ Protocol No. 171/5 of July 7, 2023, § 1(9).

¹⁵ See List of assignments from the meeting on economic issues of the President of Russian Federation of May 18, 2023, Pr-1011, item 2(a).

¹⁶ See Interfax, *The Ministry of Finance sees no need to change the limit of currency purchases for non-residents’ exit transactions*, April 11, 2024.

¹⁷ Since March 31, 2022, a ban on transfers outside Russia from Russian bank accounts held by legal or natural persons from “unfriendly” countries has been in place. See Bank of Russia Directive No. 03-1 2-4/2559 dated March 31, 2022. The initial ban was for a period of six months, which period has been continuously renewed, including most recently on March 29, 2024. Protocol No. 171/5 of July 7, 2023, makes clear that any payments made into “Type C” accounts likewise shall not be transferred outside Russia (Protocol No. 171/5 of July 7, 2023, § 1(9)).

¹⁸ Protocol No. 171/5 of July 7, 2023, § 1(4).

¹⁹ Protocol No. 193/4 of September 26, 2023.

²⁰ Protocol No. 171/5 of July 7, 2023, § 1(8).

Additional conditions are also now placed on the buyer and/or target entity, likely impacting the pool of interested parties. They include:

- ◆ Where the target entity is a public joint-stock company, a requirement that up to 20% of the shares must be publicly listed within one to four years upon completion of the sale.²¹
- ◆ The imposition of mandatory Key Performance Indicators (KPIs) to ensure, e.g., the continued operation by the entity of its core business, the preservation of its technical capabilities, the maintenance of its workforce, and the ongoing performance of its contractual obligations.²²

Notably, the Commission on Foreign Investment retains ultimate discretion as to whether to permit any exit transaction. As before, no timeframe is indicated for the clearance process, which is expected to remain protracted.

Last, pursuant to [Decree No. 585](#), enacted by President Putin on August 8, 2023, Russia purported to suspend certain provisions of its double taxation conventions with “unfriendly” countries (discussed further below). As a result, investors from these jurisdictions are exposed to a 20% withholding tax on income derived from the sale of shares in Russian companies, the assets of which include over 50% of real estate located in Russia.

A ban on divestments for “strategic” enterprises and companies in the financial and energy sectors remains in place until December 31, 2025.²³

OTHER MEASURES IMPACTING “UNFRIENDLY” INVESTORS

Changes to the “Type C” account regime

To recall, “Type C” accounts were established pursuant to [Decree No. 95](#) of March 5, 2022, to handle payments by Russian debtors to “unfriendly” foreign creditors. Following a series of amendments, the regime presently applies to payments exceeding, in aggregate, RUB10m (roughly USD100,000) per month in connection with:

- ◆ the performance of obligations arising under loans, credit facilities, or other financial instruments, and/or the performance of guarantees and sureties securing such obligations;²⁴
- ◆ dividend distributions;²⁵ and
- ◆ the bankruptcy or liquidation of Russian entities, or any decrease in the charter capital of such entities.²⁶

All such payments must be made into a Type C account, save with the pre-authorization of the Russian Central Bank (in the case of financial organizations) or Finance Ministry (in the case of other debtors).

Payments for the sale and purchase of Russian assets (including shares in Russian companies) may also be made into Type C accounts, as discussed above.

²¹ Protocol No. 171/5 of July 7, 2023, § 1(5).

²² Protocol No. 171/5 of July 7, 2023, § 1(7).

²³ Presidential Decree No. 520 “On the Application of Special Economic Measures in the Financial and Fuel and Energy Sectors in Connection with the Unfriendly Actions of Certain Foreign States and International Organizations,” August 5, 2022, as most recently amended by Presidential Decree No. 958, “On amendments to some decrees of the President of the Russian Federation,” December 18, 2023.

²⁴ Presidential Decree No. 95, “On the temporary procedure for the fulfillment of financial obligations to certain foreign creditors,” March 5, 2022; Presidential Decree No. 254, “On the temporary procedure for the fulfillment of financial obligations to certain foreign creditors,” May 4, 2022.

²⁵ Presidential Decree No. 254, “On the temporary procedure for the fulfillment of financial obligations in the field of corporate relations to certain foreign investors,” May 4, 2022.

²⁶ Presidential Decree No. 737, “On certain issues of execution of certain types of transactions (operations),” October 15, 2022.

Funds paid into Type C accounts are effectively frozen unless special authorization for their use is obtained (including, e.g., for the payment of taxes and other amounts payable in accordance with Russian law).²⁷ Funds held in such accounts likely fall within the definition of assets that may be seized under Decree No. 442, described above.

In recent months, the Russian Government has taken measures designed to prevent circumvention of the Type-C account regime and, seemingly, to ensure that funds and securities held in such accounts remain (exclusively) available to the Russian State:

- ♦ On January 3, 2024, President Putin issued [Decree No. 8](#), providing that funds and securities held by “unfriendly” investors in Type C accounts can no longer be the target of applications for attachment by private parties (for example, to enforce debts owed by these investors to such parties). Russian courts have, subsequently, [canceled](#) previous orders for the seizure of foreign assets held in such accounts.
- ♦ On March 22, 2024, the Russian Central Bank issued an [Official Clarification](#) effectively prohibiting the use of set-off to satisfy debts owed to “unfriendly” foreign creditors (e.g., through termination of a counterclaim or otherwise). Going forward, no Russian debtor can satisfy an obligation owed to such a creditor without a corresponding transfer of funds into a Type C account—unless with a permit to be obtained from the Central Bank (in the case of financial organizations) or Finance Ministry (in the case of other debtors). While referring to the payment of debts under loans, credit facilities, or other financial instruments, the clarification is seemingly broad enough to capture other kinds of payment obligations subject to the Type-C account regime.

Meanwhile, on November 8, 2023, President Putin issued [Decree No. 844](#), introducing an “investment exchange mechanism” by which funds held in Type C accounts could be used as consideration for the purchase of blocked foreign securities held by Russian retail investors. The procedure and conditions for such asset swaps were subsequently outlined by the Bank of Russia²⁸ and the Commission on Foreign Investment.²⁹ On June 3, 2024, Investitsionnaya Palata, the Russian broker appointed by the Russian Finance Ministry to administer the scheme, [announced](#) that it was accepting bids from investors wishing to exchange their frozen assets for blocked foreign securities.

More than 3.5m Russian retail investors are [estimated](#) to have frozen securities abroad, worth around RUB1.5trillion (approximately USD16.2bn).

While the scheme is pitched at foreign investors as a way to utilize their frozen funds, once sold, the foreign securities will continue to be held by the National Settlement Depository (NSD), Russia’s key intermediary with the international markets. As the NSD is subject to EU and Swiss—and, since June 2024, [U.K.](#) and [U.S.](#)—sanctions, foreign investors will need to obtain a license from the relevant authorities to unblock the securities.

Clarifications re. dividends and other payments

The Commission on Foreign Investment has clarified conditions for dividend payments to “unfriendly” foreign shareholders. As before, Russian companies must obtain approval for such distributions totaling RUB10m (roughly USD100,000) or more per month in aggregate. Approval continues to be determined on a quarterly basis and conditioned on the following:

- ♦ the amount to be distributed must not exceed 50% of the company’s net profit for the previous year, and should correspond with the amount of previous distributions;

²⁷ Permitted uses in respect of funds and securities held in Type C accounts are elaborated in the Decisions of the Board of Directors of the Bank of Russia of [March 8, 2022](#) and [November 21, 2022](#) (as amended most recently on [April 26, 2024](#)).

²⁸ [Resolution of the Board of Directors of the Bank of Russia, “On establishing the procedure and terms of the interaction between professional securities market participants and their clients, as well as with the trading organizer for the purpose of carrying out transactions \(operations\) with foreign securities and transactions \(operations\) necessary for their completion,” dated December 8, 2023.](#)

²⁹ [See Ministry of Finance of the Russian Federation, Press Release, March 11, 2024.](#)

- ♦ the foreign creditor(s) must have shown a readiness to continue to do business in Russia; and
- ♦ the company must have met all KPIs determined for it by the federal authorities (failing which approval will be revoked and it will no longer be possible to pay dividends for the relevant quarter).³⁰

The Commission has also confirmed it will continue to take into account the position of the federal executive authorities and the Russian Central Bank on the significance of the company's activities to Russia's "technological and industrial sovereignty" and "socio-economic development."³¹

The Commission has since announced, however, that it would overlook the foregoing conditions if it can be demonstrated (i) that the foreign creditor(s) made investments in the Russian economy (including the expansion of production in Russia and/or the development of new technologies) after April 1, 2023, and (ii) that the distributions do not exceed the amount of such investments.³²

As noted above, barring formal authorization, all within-scope dividend payments to "unfriendly" investors must be paid into a Type C account.

Last, Russia's purported suspension of certain provisions of its double taxation conventions with "unfriendly" countries, mentioned above, also impacts the payment of dividends, interest, and royalties. Russian domestic withholding tax rates now apply to such payments, as follows:

- ♦ 15% for dividends (compared to 5–10% previously); and
- ♦ 20% for interest payments and royalties (whereas previously such payments were taxable only in the country of residence of the person deriving the gain).

The purported suspension does not, however, extend to the provisions on relief from double taxation, meaning that foreign investors may be able to seek to offset taxes paid in Russia against taxes payable in a foreign jurisdiction.

As a matter of international law, the operation of a treaty can only be suspended (i) in conformity with the provisions of the treaty, or (ii) by consent of all the parties.³³ The United Kingdom has **indicated** that it does not accept Russia's purported unilateral suspension of the 1994 U.K.-Russia double taxation convention, and that it considers the agreement to remain in force. More recently, on June 17, 2024, the U.S. Treasury Department **announced** that it had, in response to Russia's notification of August 8, 2023, confirmed the suspension, by mutual consent, of the relevant provisions of the 1992 U.S.-Russia double taxation convention. The suspension will take effect both for taxes withheld at source and in respect of other taxes on August 16, 2024.

New measures regarding intellectual property rights

On May 20, 2024, President Putin enacted **Decree No. 430**, concerning the sale and purchase of intellectual property (IP) rights by "unfriendly" foreign parties to Russian buyers. Any such acquisition now requires the approval of the Commission on Foreign Investment.

The Decree provides that approval may be subject to conditions, including that payments be made into a "Type O" account. All payments due to such "unfriendly" parties under existing IP agreements must also now be made to Type O accounts. The transfer of funds from such accounts will require separate approval.

³⁰ Ministry of Finance of the Russian Federation, Extract from Minutes of Meeting of the Subcommittee of the Government Commission on Monitoring Foreign Investments in Russia dated December 22, 2022, No. 118/1, as now replaced by Protocol No. 171/5 of July 7, 2023, § 2.

³¹ Ministry of Finance of the Russian Federation, Extract from Minutes of Meeting of the Subcommittee of the Government Commission on Monitoring Foreign Investments in Russia dated December 22, 2022, No. 118/1, as now replaced by Protocol No. 171/5 of July 7, 2023, § 2.

³² Ministry of Finance of the Russian Federation, Extract from Minutes of Meeting of the Subcommittee of the Government Commission on Monitoring Foreign Investments in Russia dated August 9, 2023, No. 182/5.

³³ Vienna Convention on the Law of Treaties, Article 57.

The Decree does not extend to transactions (i) relating to the acquisition of IP rights to scientific, literary, and artistic works, as well as sound recordings, or (ii) not exceeding RUB15m (roughly USD170,000).

The Decree requires the Russian Government to pass the necessary regulations to implement the above measures (no timeframe is specified).

Funds held in Type O accounts also likely fall within the definition of assets that may be seized under Decree No. 442, described above.

Access ban for EU media outlets

On June 25, 2024, the Russian Foreign Ministry announced in a [statement](#) that it was blocking access inside Russia to 81 European media outlets further to the European Council's [decision](#), announced on May 17, 2024, to suspend the broadcasting activities inside the European Union of four Russian media outlets. The Ministry said that it would consider removing the ban if restrictions against Russian media outlets were lifted—underscoring the like-for-like nature of Russian counter-sanctions.

WHAT CAN FOREIGN INVESTORS DO TO RECOVER THEIR LOSSES?

The measures described above form just part of an increasingly complex and hostile regulatory environment for foreign operators in Russia.

As we have [previously outlined](#), foreign investors impacted by Russian counter-sanctions may have recourse to international arbitration against Russia under an international investment agreement to which Russia is a party. Russia notably has more than 60 bilateral investment treaties (BITs) in force, including with many States now designated by Russia to be “unfriendly.”³⁴

The measures described above may constitute an unlawful expropriation of an investor’s investment, or a breach of other substantive treaty protections, such as the guarantee of fair and equitable treatment, or the guarantee of free transfer of investments and investment returns.

Foreign investors are already using international investment treaties to seek to recover their losses arising from Russian counter-sanctions. Companies that have launched arbitrations against Russia include Finland’s Fortum and, reportedly, Denmark’s Carlsberg. According to a [statement](#) by Fortum, its claims have been brought under Russia’s BITs with [the Netherlands](#) and [Sweden](#), while Carlsberg has [reportedly](#) invoked the BITs between Russia and [Denmark](#), [Germany](#), and [Sweden](#). Both companies seek full compensation for the unlawful expropriation of their Russian assets.

While enforcement in Russia is unlikely, parties can seek to enforce an arbitral award against a Russian party by pursuing their worldwide assets. In June 2024, the former majority shareholders of the now defunct Yukos oil company [announced](#) that they had successfully auctioned several Russian State-owned vodka trademarks, marking an important milestone in their ongoing efforts to enforce their historic USD50bn awards against the State.

FURTHER INFORMATION

A&O Shearman’s [sanctions and international trade](#) team has deep expertise in UN, EU, U.S., U.K., and other sanctions and export control regimes as well as foreign investment and national security issues. Members of the team also belong to our market-leading [international arbitration](#) practice, which has an unparalleled track record of

³⁴ Including: Albania, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Japan, Lithuania, Luxembourg, the Netherlands, North Macedonia, Norway, Romania, Singapore, Slovakia, South Korea, Spain, Switzerland, Ukraine, and the United Kingdom.

advising and representing clients in international investment and commercial arbitrations against the Russian Federation and Russian interests. Further bolstering our strategic know-how in Russia-related matters, the firm has a dedicated **CIS Desk** composed of Russian-speaking and Russian-qualified lawyers. Should you have questions about Russian counter-sanctions, please get in touch with the authors or your usual contact at A&O Shearman.

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