

Russia introduces a mechanism to take property rights away from the USA and American citizens and legal entities



Russian version

Decree No. 442^[1] of the President of the Russian Federation (the "**Decree**") entered into force on 23 May 2024. This Decree establishes the concept of depriving the USA and its related parties (American citizens and legal entities) of rights to property in Russia.

The USA and American persons cannot be deprived of property on the basis of the Decree, which only sets the general direction and outlines the main features of future regulations to be drafted by the Russian Government. The Government has been given four months to complete this task.

Below we examine in more detail the key elements of the concept for the deprivation of property as proposed by the Russian President.

Core concept

The first element of the concept is "damages". The Decree gives a definition of this term: it is proposed that this be understood as "damages" caused (1) to the Russian Federation or (2) to the Central Bank of the Russian Federation in connection with the decisions of the government authorities or judicial bodies of the United States (*for some reason judicial bodies are considered separately from government authorities – ed. note*). A literal reading of Clause 1 of the Decree allows us to conclude that the decisions of these American authorities should lead to "the unjustified deprivation of Russian rights holders (*i.e. Russia and the Russian Central Bank – ed. note*) of rights to property".

It is worth focussing on the use of the term "damages". Pursuant to Clause 2 of Article 15 of the Civil Code of the Russian Federation (the "**Civil Code**"), (actual) damages constitute one of the elements of loss, along with lost profits. In Clause 2 of Article 15 of the Civil Code, damages are understood to mean the costs that the injured party has incurred or will have to incur to restore its infringed rights and the loss of or harm to its property.

Thus, we can assume that the concept being introduced will not extend to lost profits from the "unjustified" deprivation of Russia or the Russian Central Bank of its property.

Judicial stage

The Decree presumes that in accordance with the rules of jurisdiction established by Russian legislation, Russia or the Russian Central Bank will be entitled to file suit in court:

- to establish the "fact of unjustified deprivation" of their rights to property, and also
- for compensation of damages.

The claimant will be required to present a calculation of damages in its statement of claim filed with the court.

According to the Decree, after a court agrees to consider a statement of claim, it should assess the information provided by the claimant and come to a "well-founded supposition that there are insufficient grounds" to deprive the claimant of its right to property. In other words, the court merely needs to make a "supposition" that there are insufficient grounds for the government (and judicial) authorities of the USA to deprive Russia or the Russian Central Bank of their property.

Once it makes this "supposition", the court must then send a request to the Russian Government Commission for the Control of Foreign Investments in the Russian Federation (the "**Government**

Commission") regarding the property of the USA and related parties which may be used for the "compensation of damages".

After receiving a response, the court will either issue a decision on declaring that Russia or the Russian Central Bank have been unjustifiably deprived of their right to property and on compensation of damages, or issue a decision dismissing the claim.

American property

In response to the request from the court, the Government Commission should provide a list of American property which may consist of the following:

- the property of the USA itself;
- the property of persons related to the USA.

The category of "persons related to the USA " is fairly broad, and includes:

- legal entities whose place of registration is the USA;
- US citizens;
- US residents;
- persons registered in the USA;
- persons for whom the principal place of business or the place where they derive most of their profit is the USA.

The Decree also lists categories of property, which include the following:

- movable and immovable property located in Russia;
- securities and participation interests in the authorised (joint) capital of Russian legal entities;
- property rights.

Legal consequences of a court decision

If the claims of the claimant are granted, the legal consequence of the decision made by the court will be the termination of rights to the property of the USA or its related parties. Rights to this property will then be transferred to Russia or to the Russian Central Bank, respectively.

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[1]. Decree No. 442 of the President of the Russian Federation dated 23 May 2024 "On the Special Procedure for Compensation of Damages Caused to the Russian Federation and the Central Bank of the Russian Federation in Connection with the Unfriendly Actions of the United States of America".

Kind regards,

Alexander Bezborodov

Attorney-at-Law, Partner, LL.M.

Alexander.Bezborodov@advant-beiten.com



Ilya Titov

Associate, LL.M.

Ilya.Titov@advant-beiten.com



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