

Potential Seizure of U.S. Assets in Russia

May 29, 2024

On May 23, 2024, Russian Presidential Decree No. 442 (the “Decree”), which establishes the framework that will allow the Russian government to seize any U.S. assets in Russia, was signed.

This comes just weeks after the U.S. Rebuilding Economic Prosperity and Opportunity for Ukrainians (REPO) Act, which authorizes the President of the United States to confiscate any sovereign assets of the Russian Federation that are in the U.S. territory, entered into force on April 24, 2024.¹

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¹ On May 21, 2024, the EU passed Regulation (EU) 2024/1469 and Decision (CFSP) 2024/1470 ordering central securities depositories holding Russian sovereign assets and reserves of more than €1 million to direct 99.7% of the net profits from those assets for the benefit of Ukraine. On May 25, 2024, the G7 top financial officials issued a joint statement mentioning further discussions on the topic.



The Procedure

In accordance with the Decree, within the next four months, the Russian government will establish a procedure that will be used for compensation of damages to the Russian Federation and the Russian Central Bank (the “CBR”) related to “the unjustified deprivation of the Russian Federation or the CBR of their property rights” by the U.S. government. Specifically, the Russian government or the CBR will be able to request competent Russian courts to recognize the fact(s) of unjustified deprivation of property rights and to award damages. If the courts determine that there were no reasonable grounds for the deprivation of property rights, the courts will request that the Russian Governmental Commission for control over foreign investments into the Russian Federation (the “Commission”, being the state body that under the Russian counter-sanctions regulations is charged with the clearance of the sales of assets by exiting investors from unfriendly jurisdictions) provide a list of U.S. assets that may be used for compensation of the damages. The Commission is required to respond to the court’s request by providing a list of assets that may be used for the compensation based on the principles of proportionality. The court must then consider the list and may decide to transfer property rights to the assets to the Russian Federation or the CBR as compensation.

The Decree does not specify what decisions of the U.S. government may trigger the taking of U.S. assets. As a result, it is possible that any decisions would be captured if they are “related to” the taking of the Russian sovereign assets that a Russian court finds to be unjustified. In addition, it is not clear whether the above-referenced authorization of the Commission to create a list of U.S. assets is limited to assets in respect of which applications to the Commission have been submitted (*i.e.*, the assets of U.S. investors that have applied to the Commission for the approval to exit Russia). Further, it is not clear how the principles of

² See “[Suspension of Rights of Foreign Shareholders and Grant of Pre-emptive Rights to the State to Acquire Russian Assets of Foreign Companies Exiting Russia](#),” CLEARY GOTTLIB STEEN & HAMILTON LLP (August 10, 2023).

proportionality of compensation will be executed in practice.

The Scope of Assets

The Decree provides that assets of U.S. persons may be taken as compensation for damages to the Russian Federation and the CBR. U.S. persons are broadly defined to include:

- the United States of America;
- foreign persons connected with the United States, including U.S. citizens and residents, persons registered in the United States, and persons whose principal place of business or principal profit center is the United States; and
- persons controlled by such persons.

The types of assets that may be used as compensation include securities and other equity interests in Russian legal entities, movable and immovable property, and property rights. For example, funds in S-type accounts, as well as O-type accounts that are currently used to freeze the dividends, interest, and royalty payments to persons from so-called “unfriendly jurisdictions,” fall within the scope of the assets that may be taken.

There are already a number of Russian countersanctions regulations (covered in our [previous alerts](#)²) that authorize the Russian President and courts to transfer the assets of investors from unfriendly jurisdictions under external administration and suspend corporate rights of such foreign shareholders. The Decree, however, goes a step further by providing for the permanent transfer of ownership to the Russian Government and the CBR.

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See, “[Nationalization of Russian Assets of Investors From Unfriendly States Continues](#),” CLEARY GOTTLIB STEEN & HAMILTON LLP (July 24, 2023).