



## In brief

In this Legal Flash, we will provide an overview of new Presidential Decree No. 618 of 08 September 2022.

Presidential Decree No. 618 dated 08 September 2022 “On special procedures for the performance (execution) of particular types of deals (transactions) between certain entities (persons)” (Decree No. 618) establishes special procedures to be followed when engaging in transactions with ownership (membership) interests in a limited liability company.

Transactions that directly or indirectly result in the acquisition, modification or termination of member's ownership interests in the company charter capital are generally allowed only with the permission of the Government Commission For Control Over Foreign Investments In Russia (the Commission).

Below we provide details of the above changes.

## In detail

### 1. Introducing special procedures for engaging in transactions with ownership (membership) interests in a limited liability company

Clauses 1 and 2 of Decree No. 618 establish special procedures to be followed when engaging in transactions resulting in the acquisition, modification or termination of ownership interests in charter capitals (**the Capital**) of a limited liability company (**the Company**). Decree No. 618 generally allows to perform such transactions only with the permission of the Commission.

What is important is that restrictions introduced by Decree No. 618 will apply to a wide range of transactions with interests in the Companies.

First of all, not only transactions performed by the residents with entities (persons) from unfriendly states and entities (persons) under control of entities (persons) from unfriendly states but also transactions made by foreign entities (persons) where at least one party to the transaction is represented by an entity (person) from an unfriendly state are subject to the restrictions.

As a reminder, foreign entities (persons) from countries designated as unfriendly include the following:

- Nationals of unfriendly states;
- Entities whose place of registration, place of primary business or place of primary generation of profit from operations is situated in unfriendly states.

Russian Government Resolution No. 430-p of 5 March 2022 established a list of countries designated as unfriendly.

Secondly, restrictions introduced by Decree No. 618 apply to not only transactions directly with interests in the Companies but also to transactions resulting, **directly or indirectly**, in acquisition / termination / modification of rights to own, use and dispose of the Company interests.

Therefore, the restrictions seem to apply to transactions with interests in parent entities of the Companies and other transactions resulting in changes in the Company ownership structure as well.

Such transactions now require the Commission permission.

It remains to be seen whether the Commission will be willing to permit such transactions in practice and on what conditions.

The Russian Ministry of Finance, given their mandate to provide official clarifications with respect to Decree No. 618, might be expected to explain in more detail how transactions with interests in the capital of the Companies are to be executed.

**2. Exception from the general rule: the Commission permission will not be required if an entity (person) from an unfriendly state is under control of Russian persons, friendly foreign persons or friendly foreign states**

There are exceptions to the above general rule. Thus, transactions with interests in the capital of the Companies might be executed *without* the respective permission from the Commission provided one of the following conditions is met:

- An entity (person) from an unfriendly state is under control of Russian physical persons or legal entities and information about such control is disclosed to tax authorities;
- An entity (person) from an unfriendly state is under control of physical persons or legal entities from a friendly foreign state (or under control of a friendly foreign state) and such control was obtained before 01 March 2022.

We would be happy to answer any questions you may have.

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