

RUSSIAN COUNTER-SANCTIONS REGULATIONS: NEW DEVELOPMENTS

6 June 2023

The Central Bank of Russia has issued a formal clarification (No. 3-OR dated 2 June 2023) in which it confirmed, with some elaboration, its previous position as to what constitutes control for the purposes of the counter-sanctions regulations.

Naturally, the matter is of importance as regards the proper application of counter-sanction regulations to subsidiaries and other investees of foreign companies.

In its clarification, the Central Bank confirmed that the applicable tests are those set out in paragraphs 1-2.1 of Article 5 of the Law on Foreign Investments in Strategic Assets (Law No. 57-FZ dated 29 April 2008).

For your convenience, set out below are the applicable indicia.

Company A will be deemed to have control over Company B, if Company A:

- can exercise, directly or indirectly, including by contract, more than 50% of the shareholder votes in Company B;
- has the right, by contract or otherwise, to determine the decisions of Company B, including its terms of business conduct;
- has the right to appoint the CEO or more than 50% of the management board of Company B, or has an unconditional ability to elect more than 50% of its board of directors;
- is the management company of Company B; or
- can exercise, directly or indirectly, including by contract, 50% (or fewer) of the shareholder votes in Company B, but such lower voting block is sufficient, due to the distribution of the votes among the other shareholders, to enable Company A to determine the outcome of the vote.

Noteworthy is the “collective control” rule: if more than 50% of the votes in a Russian company are collectively held by a number of unfriendly foreign parties, the Russian company as a whole is deemed controlled by unfriendly foreign interests. The same principle applies where friendly foreign parties collectively hold more than 50% of the votes.

Another noteworthy point in the clarification is that the mere ability to block the decisions of a company, be it by operation of law, under the Articles of Association or by contract (e.g. contractual veto rights), does not constitute control for counter-sanctions purposes.