

24.09.2024

Asset freeze and exchange: mind the doors, closing for good.

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The war of sanctions is in full swing. The block of sanctions, related to frozen assets, has several processes, running simultaneously: on the one hand, Western and Russian investors keep on trying to unfreeze some of their resources through reciprocal exchange of securities, on the other hand, unfriendly countries keep on searching for remaining unfrozen Russian assets to freeze them. Russia is responding to this by tightening its policy framework in relation to those foreign investors that wish to exit the country.

Today there are 1558 Russians and 685 legal entities under individual sanctions imposed by the European Union**. Their assets in Europe are frozen. The USA has its own pool of corporations on the SDN List. At the same time there is an ongoing hunt for unaccounted assets of Russian representatives to be blocked consequently**. “Neutral” Switzerland has also joined the blocking process. This August Bern blocked yet another $1,5 billion in assets, related to the RF. Thus, as of August **13, 2024 the country froze assets for SWF7,1 billion ($8,2 billion), 17 real estate assets, sports cars and**

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luxury automobiles, works of art, furniture and other.

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Simultaneously, investors from the currently unfriendly countries are continuing their exit from Russia. In the first half of this year such major corporations as Danone, HP, Hyundai, Caterpillar completed all transaction procedures. The Russian Government is trying to get its benefits from the process. In December 2022 the government introduced a fee for selling Russian businesses in the amount of 10% of the market value of assets for exiting investors. In the fall of 2023 the required fee for exiting the RF market was raised up to 15%. And this fee has to be paid no later than in one month from the date of deal execution, when previously this term was set at 90 days.

According to “Electronic Budget” data, only over January – June 2024 the treasury received ₽84 billion from Russian asset sale deals by foreign companies, when the financial plan’s target was only ₽2 billion. Overall, the receipts by results of the six months of 2024 turned out to be 2,5 times higher than the last year’s value for the same period (₽33,6 billion).

Moreover, now exiting businesses have to provide at least 50% asset sale discount from the value, determined by independent assessors. These deals must be approved by the government commission for foreign investments, which is monitoring compliance with all exit conditions.

The introduction of tougher rules has had an impact on corporate merger statistics. Over the first 6 months of 2024 the number of relevant deals due to mergers went down by 21%. **For instance, in January — June there were 219 mergers and acquisitions, and over the same period of the last year there were 277 such deals.** In the first half of 2023 such deals amounted to $24,55 billion, and in 2024 — to $21,39 billion. Experts explain the market contraction by completion of the active process of foreign companies exiting from Russian assets**.**

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It should also be taken into account that many assets of Western companies were handed over for temporary management without any actual execution of mergers or acquisitions. Moreover, to avoid any hostile acts in organizations, economically significant for Russia, rights of those foreign investors which remain asset owners of record, are now limited by new regulations. The law allows to apply to a court for suspension of corporate rights of a foreign company, limiting its ability to vote at meetings, dispose of shares or stakes and receive dividend. The law aims to protect rights of controlling shareholders, facing restrictions due to Western sanctions. Following the new rules, the Ministry of Industry and Trade of Russia has filed a suit to suspend corporate rights of Arctech Helsinki Shipyard Oy, a Finnish shipbuilding company, owning 49% of OOO Nevsky Shipyard, in relation to the Russian plant.

Due to a string of the aforementioned issues, remaining foreign investors cannot close their Russian asset sale deals. For instance, Swedish H&M still cannot get out of Russia. A Russian court attached its bank accounts due to its □76 million debt, blocking its exit process. The company suspended its operations in the country way back in 2022, but reported of its intention to liquidate its Russian structures only in June 2024.

Russian courts have started taking a more active part in resolution of issues with foreign investors. It is important to point out that the international sanctions against Russia are illegitimate, because they lack approval by the UN Security Council – the only organization which is authorized to impose such restrictions on countries. This is why activities of Russian courts to protect interests of Russian private persons and legal entities, picking up momentum, are justified both morally and legally.

One of the cases of protection of Russian entity interests happened this May. At the time the Moscow Arbitration court in a lawsuit filed by Transcapitalbank seized Russian assets and entities, owned by JPMorgan (USA) and Commerzbank (Germany) global investment banks. The lawsuit involves the restrictions on Transcapitalbank transactions in Commerzbank and JPMorgan entities due to inclusion of the Russian credit institution into the American **SDN List. The Russian court ultimately blocked money in the accounts of the abovementioned companies** (other than “S” and “I” type accounts), their real estate and securities. The total amount of frozen funds amounted to **€12,35 million or □1,2 billion. It is noteworthy that a bit earlier the Saint-Petersburg and Leningrad Region Arbitration Court had withdrawn an attachment of money at “S” type accounts of J.P. Morgan Bank International bank** (a subsidiary of American JPMorgan), seized under a similar lawsuit by VTB (at the time the court blocked monetary funds, securities, movable and immovable property, claims). This was related to the ban by Russian President Vladimir Putin, issued in early January of the year, on attachment, seizure and any other injunctive relief of assets in accounts of “S” and “I” types.

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However, the situation could change now. On July 16 it was reported that the country's leadership could lift the ban of attachment and blocking of money, held at such special rouble accounts. Subsequent solutions are a response to continuing unfriendly acts by the opponents. The ban will be eased in those situations when it is necessary to protect the rights of Russia or of the Central Bank to the property, seized by another state. Claims under such lawsuits will be referred to arbitration courts, where the Central Bank or the RF, acting as claimants, will be represented by the Federal Agency for State Property Management (Rosimushestvo).

Earlier the European authorities made their next moves in the sanction war. On June 27 it was reported that the European Union, under the 14th sanctions package, would set up an institution for interim management and seizure of foreign assets. Now EU private persons or corporations can go to court to claim recovery of damages, caused by third country courts acting upon lawsuits of persons, included into sanctions list. This means that if their property was handed over to third parties in Russia for management, they could claim recovery of damages in their home countries. A formal condition for such claims is lack of access to a fair judicial hearing. Damages could be recovered for the account of assets of Russian companies, which in some way benefitted from the RF Presidential Decree "Interim Management of Some Property". Along with this, the EU prohibited making any deals with such entities, with some exclusions like contracts, required for purchase and import of pharmaceutical, medical, agricultural and food products to the European Union.

As observers point out, there is ongoing preparation for mutual asset seizure. The arrangement, which allowed Russian investors to exchange frozen Western securities for funds of unfriendly investors in our country, blocked at "S" type accounts, proposed by the Russian side, was finally rejected by Western regulators: on July 25, 2024 the European Commission banned participation on any exchange of frozen assets with investors from the RF, explaining this by the presence of the sanctioned National Settlement Depository in the arrangement. Any violation by European of the EC ban will be viewed as a criminal offence.

Losses and yet another redivision of the markets will affect all participants of the standoff. But for Russia this will mean not only losses, but new opportunities to change the rules of the game, but this time in line with our interests.

As for foreign investments, the situation requires new approaches, and there is reason to be optimistic, since our global world operates under the principle of communicating vessels in a closed system: a decrease will cause an increase; some players will be replaced by others; if some doors close, then new doors will open. Isolation of 1/8 of the world's land mass with its natural resources is perilous for the rest of the world.

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