

SECURITIES THAT ARE IMPACTED BY SANCTIONS AGAINST RUSSIA



SANCTIONS

LEGAL AND PRACTICAL IMPLICATIONS FOR NOTEHOLDERS

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On 3 June 2022 National Settlement Depository ('NSD') in Russia was designated as a sanctioned entity by the EU. European clearing systems Euroclear (registered in Belgium) and Clearstream (registered in Luxembourg) that used to work closely with NSD stopped taking instructions from NSD. This has in turn led to the inability of the people and organisations who held securities through NSD to carry out any international transactions with these securities, including coupon payments and redemption of securities. This has had an effect not only on Russian security holders but on international investors who hold securities (Eurobonds or Credit Notes) issued by European holdings or SPVs of Russian companies. NSD recognized the sanctions against itself as an emergency, but did not impose additional restrictions against customers, except for the suspension of settlements in Euro.

Russian companies often issued Eurobonds or Credit Notes through connected issuers registered in the EU, i.e. the issuer would be a company registered in one of the EU countries. Russian companies often acted as

guarantors in respect of such securities. English law was very often the governing law of such securities, with either an arbitration clause or clause stipulating dispute resolution in the courts of England and Wales.

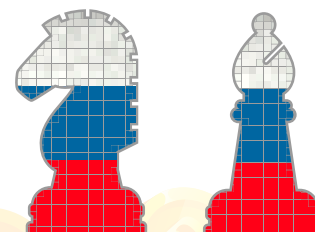
The problems with European clearing systems started even before NSD was designated as a sanctioned entity: on 17 March 2022 NSD informed everyone that Euroclear stopped carrying out any instructions received from NSD. A week later it became known that Clearstream had blocked NSD's account.

As a result of sanctions against NSD, millions of investors who held securities through NSD cannot dispose of those securities. In order to overcome this, brokers, depositories and private investors sent requests for authorisation and derogation to corresponding competent authorities, namely, the General Administration of Treasury of the Federal Public Service Finance in Belgium ('the Belgian Treasury') (in relation to Euroclear) and the Ministry of Finance of Luxembourg (in relation to Clearstream).

In accordance with Article 6 of the Council Regulation (EU) №269/2014 ('Regulation 269') the competent

authorities of Member States may in certain cases authorise the release of certain frozen funds or economic resources if these assets shall be used for payment by a sanctioned person. On October 6, 2022, paragraph 5 of article 6b was added to Regulation 269 according to which the competent authorities of a Member State were allowed to authorise the release of certain frozen assets held through NSD if it is necessary for termination by 7 January 2023 of operations, contracts or other agreements concluded with, or otherwise involving NSD, before 3 June 2022.

On 20 December 2022 the Ministry of Finance of Luxembourg issued the General authorisation pursuant to article 6b paragraph 5 of Regulation 269. On 22 December 2022 the Belgian Treasury issued General conditions for the application of Article 6b (5) of Regulation 269.



However, at the moment, not a single operation has been carried out in connection with the General authorisation of the Ministry of Finance of Luxembourg. Similarly, the Belgian Treasury has not yet issued any authorisations. It remains to be seen whether any authorisations will be issued in the future.

In addition to the problems with the European clearing systems, Council Regulation (EU) 2022/576 amending Regulation (EU) No 833/2014 ('Regulation 576') introduced prohibitions on the provision of services to trust arrangements involving Russian or Russian connected nationals or entities from 10 May 2022. In response to Regulation 576, a lot of Europe-based trustees and paying agents notified the holders of the securities of their inability to continue acting as trustees/paying agents from 10 May 2022. As a result, a lot of securities issued by Russian companies, or connected issuers registered in the EU ended up not having an acting trustee/paying agent.

Following this, Russian Government introduced counter sanctions, i.e. legislative measures in response to the EU/US/UK sanctions.

According to the Order of the President of the Russian Federation No 95 dated 5 March 2022 ('Order No 95'), coupon and dividend payments and/or operations with financial instruments (including securities) exceeding RUB 10 million (or equivalent in foreign

currency) per month are allowed to non-residents from the so-called 'unfriendly countries'¹ (defined by Russian legislation) only if such payments are made to a designated type 'C' account in a Russian bank and the payments are made in rouble. Payments in rouble or foreign currency to a normal (not type 'C') account are allowed only by permission obtained from the Central Bank of the Russian Federation or the Ministry of Finance of the Russian Federation.

Funds from type 'C' account cannot be disposed of in the normal way, they can be spent only on the territory of the Russian Federation in certain prescribed ways.

Effectively, investors from 'unfriendly countries' currently cannot obtain coupon or dividend payments or payments in redemption of securities from companies registered in Russia or connected issuers registered in the EU.

Additionally, pursuant to the Order of the President of the Russian Federation No 85 dated 1 March 2022 ('Order No 81') there are restrictions on transactions entailing the establishment, change or termination of rights to own, use and/or dispose of securities of Russian joint stock companies involving a non-resident from an 'unfriendly country'. The execution of such transactions requires permission from the Government Commission on the Monitoring of Foreign Investment of the Russian Federation. According to Order No 81, operations with the shares of Russian public companies is also restricted for non-residents from 'unfriendly countries' – permission from the Central Bank of the Russian Federation is required.

Federal Law No 292-FZ dated 14 July 2022 allows Russian companies to issue replacement securities to replace the Eurobonds (or other securities) issued by them or connected issuers registered in the EU. The aim of such replacement securities is to resolve the issues with payments that used to be processed by Euroclear and Clearstream. Replacement securities are issued by Russian companies (i.e. not through European issuers), they are

governed by Russian law and payments under such replacement securities are made in rouble. Replacement securities have already been issued by several large Russian companies, such as Gazprom, Lukoil, Sovkomflot, Metalloinvest, PIK Holding.

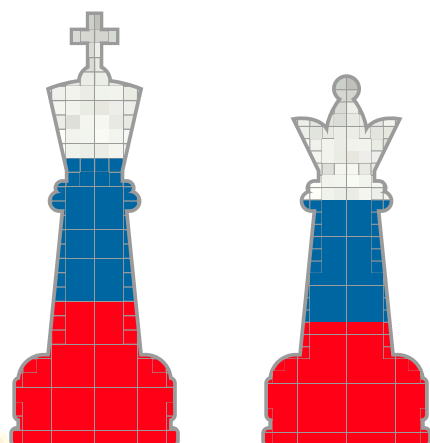
However, the issue of replacement securities is aimed primarily at Russian investors and does not resolve the problems faced by foreign investors.

Currently, for a lot of securities that are subject to sanctions against Russia, events of default have occurred and are continuing. Every case is, of course, unique and needs to be analysed carefully from the point of view of the governing law of the securities (which is often English law) and bearing in mind the current geopolitical situation, its practical impact, continuing changes to sanctions against Russia as well as Russian counter sanctions.

There may be an option of issuing either court proceedings or arbitration proceedings against the issuers and/or guarantors of the securities. However, enforcement may prove tricky since the European issuers are unlikely to have significant assets and enforcement in Russia against Russian-registered guarantors may currently be impossible. Still, there is a possibility of certain funds being blocked in European/UK/US banks due to sanctions that can be targeted by freezing orders in anticipation of enforcement.

In some cases, there may be certain additional issues regarding mis-selling of the securities and/or unfair prejudice against minority security holders. In *Assenagon Asset management SA v Irish Bank Resolution Corp Ltd* (formerly *Anglo Irish Bank Corp Ltd*) it was held that the majority of security holders could not abuse their voting majority to vote for a resolution which expropriated the minority's rights under their bonds for a nominal consideration.

We expect that in the near future the issues briefly addressed above are likely to be explored in more detail in court and/or arbitration proceedings in England and Wales.



¹ 'Unfriendly countries' include all of the EU countries as well as Australia, Albania, Andorra, the UK (including Jersey), Anguilla, BVI, Gibraltar, Iceland, Canada, Lichtenstein, Micronesia, Monaco, New Zealand, Norway, Republic of Korea, San-Marino, North Macedonia, Singapore, the US, Taiwan (China), Ukraine, Montenegro, Switzerland and Japan (according to the Order of the Government of the Russian Federation dated 5 March 2022 No 430-p).