

28 June 2022

Russia: Temporary regime for the fulfilment of obligations towards specific holders of intellectual property rights

At the end of May 2022, the new Presidential Decree no. 322 on the temporary procedure for the fulfilment of obligations towards certain intellectual property owners was adopted.

The temporary procedure was introduced for the fulfilment of the pecuniary obligations arising from the use of the intellectual property rights and (or) other signs of identification, whose owners are:

- foreign persons from hostile countries (including their Russian subsidiaries);
- persons who publicly supported the foreign sanctions introduced against the Russian Federation;
- persons who, after February 23, 2022, prohibited the use of intellectual property rights or signs of identification in the territory of the Russian Federation as a result of the sanctions introduced against the Russian Federation;
- persons who interrupted, suspended or significantly limited the production (supply) of goods / works / services as a result of the sanctions introduced against the Russian Federation, or for other reasons not related to economic opportunity;
- persons who committed actions to discredit the armed forces of the Russian Federation;
- persons who disseminated information in an indecent form in information and telecommunication networks, including insulting human dignity and state symbols of the Russian Federation.

The Decree applies to:

- payments under license agreements, sub-licenses, agreements on the transfer of rights to manage the intellectual property and other agreements relating to the use by the debtor of the intellectual property and (or) other signs of identification;
- penalties and other pecuniary sanctions provided for in the above mentioned contracts and agreements.

Payments must be made on special “O” type accounts exclusively in Rubles. The account should be opened at the request of the debtor and such opening does not require the participation of the right holder. Only one “O” account can be opened in the name of a right holder. The procedures for opening this account are established by the Central Bank of the Russian Federation which has also provided for a unified interbank tracking system for these accounts.

The right holder must give consent to the debtor to make payments on the “O” type account. In the absence of such consent, the debtor has the right not to make payments, while continuing to use the intellectual property and (or) signs of identification under the same conditions.

The execution of a payment by the debtor is equivalent to the provision of consent by the right holder. The obligation is considered fulfilled if the amount in Rubles calculated on the basis of the official exchange rate of the Central Bank of the Russian Federation is credited on the account “O”.

The debiting of the sums to the “O” account is carried out on the basis of the authorization of a dedicated Government Commission.

The Decree does not apply to agreements on the granting of rights to use the intellectual property and the signs of identification:

- necessary for the import of medicines, medical devices, industrial and agricultural products, food products;
- necessary for the provision of communication and traffic transmission services, the creation and (or) use in Russia of electronic computer programs, databases, information systems and data centers.

Furthermore, the Decree does not apply to:

- payments of up to 100,000 Rubles or other equivalent amount in foreign currency for the use of intellectual property for personal needs and other needs not related to business activity;
- foreign persons from hostile countries who duly fulfil their contract obligations.