

RUSSIA ENACTS REGULATIONS NECESSARY FOR RECOGNITION OF FOREIGN REGULATORY INITIAL MARGIN IN INSOLVENCY

With effect from 2 July 2021, Federal Law No. 127-FZ "On Insolvency (Bankruptcy)" dated 26 October 2002 (as amended) provides for recognition of regulatory security interest collateral arrangements (initial margin) in the insolvency of a Russian collateral provider subject to certain conditions being met (for more information, please refer to [our client briefing of 22 June 2021 "New Russian Legislation on Financial Collateral: Impact on Netting and Initial Margin"](#)). However, in order for the new regime to become fully effective, the Central Bank of Russia ("CBR") was required to:

- (a) determine the list of jurisdictions whose regulatory security interest collateral requirements are recognised in Russian insolvency. If a security interest collateral has been provided by a Russian counterparty in order to comply with a requirement established by a foreign state or a union of foreign states that does not fall within the CBR list (or outside any legislative requirement), the collateral taker's rights under security interest collateral arrangements will not be recognised in the insolvency of the collateral provider; and
- (b) establish eligibility criteria for a third party that (i) stores a security interest collateral, (ii) holds a security interest collateral in the interests of the parties to the agreement governing the provision of the security interest collateral, or (iii) keeps records of rights to securities comprising a security interest collateral, in each case acting in the interests of other persons ("Custodian"). If a security interest collateral provided by a Russian counterparty is held in custody with a Custodian that does not comply with the eligibility criteria, the collateral taker's rights under security interest collateral arrangements will not be recognised in the insolvency of the collateral provider.

With regard to item (a) above, on 8 September 2021, the CBR adopted Regulation No. 5914-U "On List of Foreign States and Their Unions Composed in Order to Apply Article 51.8 of Federal Law No. 39-FZ "On the Securities Market" dated 22 April 1996". The Regulation is in effect from 6 November 2021. The list of eligible jurisdictions includes Australia, the European Union, Canada, Saudi Arabia, South Korea, Singapore, the United Kingdom, the United States of America, Brazil, Switzerland, South Africa and Japan.

With regard to item (b) above, on 22 November 2021, the CBR adopted Regulation No. 5997-U "On Establishing Requirements to Person That Stores

Collateral Or That Holds Collateral in Interests of Parties to Agreement Or Keeps Records of Rights to Securities Comprising Collateral, Acting in Interests of Other Persons, in Order to Apply Article 51.8 of Federal Law No. 39-FZ "On the Securities Market" dated 22 April 1996". The Regulation came into effect on 10 January 2022. According to the Regulation, a Custodian needs to meet all of the following criteria:

- (i) it is (A) a Russian credit institution having a credit rating assigned by a credit rating agency, or (B) a non-Russian bank (non-Russian credit institution) having a long-term credit rating assigned by a non-Russian credit rating agency, or (C) a Russian custodian or a non-Russian institution authorised under its personal law to keep records of rights to securities and of transfers of rights to securities (if collateral comprises securities); and
- (ii) it is not an "affiliate" (as defined in Article 4 of Law of the Russian Soviet Federative Socialist Republic No. 948-1 "On Competition and Restriction of Monopolistic Activity on Commodity Markets" dated 22 March 1991 (as amended)) of any party to the agreement governing the provision of the security interest collateral.

CONTACTS



Alexander Anichkin
Partner

T + 7 495 258 5089
E alexander.anichkin
@cliffordchance.com



Olga Zakharova
Senior Associate

T + 7 495 258 5094
E olga.zakharova
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, Ul. Gasheka 6, 125047
Moscow, Russia

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