SQUIRE PATTON BOGGS

The cancelled buy-back: Federal Law No. 319-FZ and the departing seller's option:

Compensation at the court's discretion

5 August 2026

Since the Russian Federation's (Russia) invasion of the Republic of Ukraine (Ukraine) in February 2022, foreign companies leaving the country have had to request permission to sell their Russian businesses.

Under this regime, operators are having to sell at steep discounts and are required to make payments into the Russian federal budget. Many sellers took a token price because the sale agreement carried an option to buy the business back at a later date. On 4 August 2026, the president of the Russian Federation signed Federal Law No. 319-FZ, altering such arrangements. The question for a seller that still holds such options is whether they are worth anything at all; the answer is that a Russian court may now take it away.[1]

Background

Russia has controlled these sales from the outset. Since March 2022, an investor from a state Russia designates as unfriendly has needed the permission of the Government Commission on Control of Foreign Investment in the Russian Federation (the Government Commission) before it may dispose of securities, real estate or an interest in a limited liability company. Shareholdings in banks, in strategic enterprises and in the fuel and energy sector are treated more strictly again and may not change hands at all without a decision of the president himself. A government directive lists the unfriendly states.[2]

These terms have only hardened since. A sub-commission of the Government Commission set new ones on 15 October 2024. A seller from an unfriendly state must now take a discount of at least 60% to the market value assessed by an approved appraiser, and pay a contribution of at least 35% of that same undiscounted market value into the federal budget. The two are cumulative and both are calculated on the undiscounted valuation, so a seller nets in the region of 5% of what the business is appraised at.

Now, all sales above RUB50 billion need the president's approval as well, regardless of the sector involved. The state brandishes another weapon: a decree from 25 April 2023, lets it put such investors' Russian assets under temporary external management, and it has used that power against the holdings of such companies as Uniper, Fortum, and Carlsberg's Baltika brewery among others.[3]

Buy-back options were a common feature of the earliest exits, though never a standard term of the permission regime. Nothing in the decrees provided for them; they were negotiated deal by deal and the Government Commission later extended its approval requirements to cover call options, after which they became uncommon. A seller who could not get anything approaching fair market price took a nominal price instead, and negotiated an option to buy the business back if conditions changed.

Analysis

Article 3 of the new law inserts an Article 20.1 into the Federal Law on Foreign Investments in the Russian Federation of 9 July 1999. It comes into play where a foreign owner, called below the departing investor, sold shares, participation interests or other Russian business assets carrying foreign capital. The purchaser must be Russian, or a foreign company that a Russian citizen controls and that sits outside the unfriendly states, and the statute calls that purchaser the acquirer. The two labels are used consistently in what follows: the departing investor is the foreign party that sold, and the acquirer is the Russian party that bought. Article 20.1 reaches a departing investor tied to an unfriendly state by nationality, by where it is registered or by where it trades, together with the entities it controls, wherever they may be. The drafters were aware of how this would read from the outside.

1 Federal Law of 4 August 2026 No. 319-FZ, arts 3 and 6(1), official publication No. 0001202608040061 (4 August 2026); introduced as Bill No. 1206580-8, adopted by the State Duma on 21 July 2026 and approved by the Federation Council on 24 July 2026. Translations of Russian titles and quoted text throughout are the drafter's.

2 Decrees of the President of the Russian Federation No. 81 of 1 March 2022, No. 520 of 5 August 2022 (para 5), and No. 618 of 8 September 2022; Directive of the Government of the Russian Federation No. 430-r of 5 March 2022.

3 Minutes of the sub-commission of the Government Commission on Control of Foreign Investment of 15 October 2024 No. 268/1; "Russian Finance Minister Confirms Hike in "Exit Tax," Sales Discount for Foreign Companies" The Moscow Times (17 October 2024); Decree of the President of the Russian Federation No. 302 of 25 April 2023.

The article says of itself that it secures "the economic sovereignty and economic security of the Russian Federation", and that it is "not aimed at the unjustified impairment of the rights and legitimate interests of foreign investors".[4]

Two conditions must be met at once. After 22 February 2022, the departing investor must have done any one of three things: firstly, it may have backed unfriendly actions against Russia in public, or called for them or committed acts aimed, in the statute's terms, at discrediting the use of the Armed Forces of the Russian Federation; secondly, it may have financed terrorism, extremism or the spread of weapons of mass destruction; and finally, it may have announced in public that it was leaving or suspending its Russian business, performed its obligations improperly or acted to restrict contracts that matter to the business (n.b., withdrawing intellectual property counts, and so does the cutting off of supply). A further rule widens this provision, since such acts count where they are not explained by obvious economic reasons, or where there are grounds to believe the investor did them to comply with foreign sanctions.

The second condition is economic, and either of its two provisions will satisfy the condition: firstly, that the price at which the option may be exercised sits 25% or more below the current market value of the business; the second is that the acquirer invest fresh capital, or takes other steps, without which the business would have ceased trading, contracted materially or closed. The first provision is directed at exits agreed at a token price; the second is directed at businesses the acquirer has since recapitalised.

Standing is not the acquirer's alone. Before going to court the acquirer must obtain the position of the ministry that regulates the sector and the conclusion of the Government Commission, and neither body can yet give one, because the government has not made the procedure. The ministry may also bring the claim in its own name, once the Government Commission agrees. The acquirer need not wait to be approached and may sue whether the departing investor has sought to exercise the option or not. One court hears these claims, the Arbitration Court of the Moscow Region, and it hears them even where the parties chose a foreign court or an arbitration seat outside Russia, the statute setting that choice aside where sanctions have closed a party's route to justice.

While compensation is technically available for departing investors, it is neither guaranteed automatically nor calculated by a set formula. Instead of covering the original sale of the business, which was already paid out at the time, any potential money specifically answers for the cancellation of the option itself. To get it, the investor has exactly one year from the date of the judgment to file a claim. Crucially, this claim must be brought directly against the new acquirer, rather than against the state. The exact payout amount is left up to the same court that cancelled the option in the first place.

This court has the power to slash the final sum by weighing the investor's behaviour, evaluating the financial damage their conduct caused and factoring in how much money the new acquirer has pumped into the business since taking over. In fact, the court can refuse to award a single penny if the departing investor or their chief executive is found liable in criminal or administrative proceedings for funding terrorism, backing extremism or spreading weapons of mass destruction. Compounding this uncertainty, the statute is completely silent on how to actually measure the compensation. It fails to clarify whether the payout should mirror the standalone value of the option, cover the gap between the option price and the market value of the business, or reflect a different calculation altogether. Finally, two other articles heavily impact foreign assets: Article 5 pushes the deadline out to 31 December 2028, for Russian courts to suspend a foreign holding company's corporate rights in economically vital organisations, while Article 2 permanently shuts down a loophole that previously allowed ownership stakes to change hands without a declared price.[5]

Cross-border implications

The venue rule drops these disputes into the framework Russia built for sanctions litigation. Articles 248.1 and 248.2 of the Arbitration Procedure Code of the Russian Federation, inserted in June 2020, give Russian courts exclusive jurisdiction over disputes involving sanctioned Russian parties, whatever the parties agreed and lets those courts stop a party from litigating abroad. Article 20.1 never mentions them. Yet it borrows their test, and it names a single forum for the whole class.

The EU has already legislated against recognising what those courts decide, and it has done so in both of its Russia regulations. Council Regulation (EU) 2026/1844 of 23 July 2026, part of the 21st sanctions package, put a new Article 11c into Council Regulation (EU) No 269/2014, and Council Regulation (EU) 2026/1848 of the same date replaced Article 11c(1) of Council Regulation (EU) No 833/2014, which has carried a non-recognition rule since December 2024. The older provision is the one that matters here, because it bars the recognition or enforcement in a member state of any injunction, order, relief, judgment or other decision made pursuant to, or derived from Articles 248.1 or 248.2 of the Arbitration Procedure Code, or from equivalent Russian legislation. Whether Article 20.1 is equivalent legislation for that purpose has not been decided, but the drafting invites the argument, since Article 20.1 borrows the test of those articles without naming them.

4 Federal Law No. 319-FZ, *supra* n 1, art 3, inserting art 20.1(1) into the Federal Law of 9 July 1999 No. 160-FZ 'On Foreign Investments in the Russian Federation'. Russian text of the quoted passages: "обеспечение экономического суверенитета и экономической безопасности Российской Федерации"; "не направлены на необоснованное ущемление прав и законных интересов иностранных инвесторов".

5 *Ibid.*, art 20.1(2) to (7): conditions at art 20.1(2), sub-paras 1 and 2; standing and venue at art 20.1(3) to (5); compensation at art 20.1(7). See also arts 2 and 5, amending respectively art 21(11) of the Federal Law of 8 February 1998 No. 14-FZ 'On Limited Liability Companies' and art 6(5) of the Federal Law of 4 August 2023 No. 470-FZ.

A judgment cancelling an option works on a right that would be exercised in Russia, over assets in Russia and never needs recognising abroad: it helps a departing investor fighting enforcement in Europe and does nothing for one that wants its business back. Article 11ca of Regulation (EU) No 833/2014, inserted by Council Regulation (EU) 2026/506 in the 20th package, goes further. An EU party may obtain, from a member state court, an order upholding the jurisdiction or arbitration clause the parties agreed and requiring the Russian party to discontinue the Russian proceedings, with financial penalties payable to the EU party in proportion to its loss. That does not return the business either, but it answers the venue rule with something other than silence. How much it is worth remains untested. Article 11ca has been available only since April 2026, and the transaction bans that flank it, which reach those who bring or enforce such claims and those who benefit from Russian temporary-management decisions, depend on Council listings in Annexes XLIII, LIV and LV; said annexes have yet to be populated.

Russia's bilateral investment treaties with the states whose companies left ordinarily forbid expropriation without compensation and require fair and equitable treatment, and a court order cancelling a contractual right, with compensation a court may cut to nothing, arguably engages both standards. The drafting of Article 20.1 suggests its authors saw that coming. Two obstacles stand in the way even so: many of those treaties send only the amount of compensation to arbitration, not liability for it, and an award still has to be enforced against assets. The European Commission has meanwhile asked member states to give the treaties up, its proposal of 3 December 2025 for a reparations loan to Ukraine recording that the member states concerned are to withdraw from, or terminate those treaties and adopt a common attitude to achieve it. An investor weighing a claim must therefore ask whether the instrument it would rely on will still be there when the claim matures.[6]

How can we help?

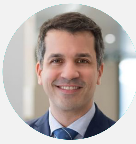
Our International Trade & Foreign Investment Practice Group advises operators, financial institutions and their boards on the Russian counter-sanctions regime and on the EU, US and UK measures it runs alongside. We read exit documentation and option structures for exposure to Article 20.1, test the conduct and pricing limbs against the record of a particular exit, advise on Government Commission applications and on how a Russian judgment would fare in Europe and prepare investment-treaty exposure and ownership-and-control analyses. If you would like to discuss what Federal Law No. 319-FZ means for an option your business still holds, please contact any member of our team.

Contacts

José María Viñals
Partner, Madrid
T +34 91 426 4840
josemaria.vinals@squirepb.com

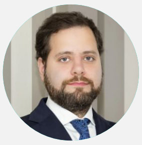
Jeffrey Orenstein
Partner, Washington DC
T +1 202 457 5247
jeffrey.orenstein@squirepb.com

Matthew Kirk
International Affairs Advisor, London
T +44 207 655 1389
matthew.kirk@squirepb.com



Diego Sevilla Pascual
Director, Brussels
T +322 627 7612
diego.sevillapascual@squirepb.com

Arthur Bottles-Browne
Director, London
T +44 207 655 1249
arthur.bottles-browne@squirepb.com



Tigran Piruzyan
Senior Associate, Madrid
T +34 91 520 0772
tigran.piruzyan@squirepb.com

6 Arbitration Procedure Code of the Russian Federation, arts 248.1 and 248.2, inserted by Federal Law of 8 June 2020 No. 171-FZ; Council Regulation (EU) 2026/1844 of 23 July 2026, art 1(4), inserting art 11c into Council Regulation (EU) No 269/2014; Council Regulation (EU) 2026/1848 of 23 July 2026, replacing art 11c(1) of Council Regulation (EU) No 833/2014; Council Regulation (EU) 2026/506 of 23 April 2026, inserting art 11ca into Regulation (EU) No 833/2014; European Commission, COM(2025) 3502 final (3 December 2025), recital (59).

71870/08/26