



Export of precious metals from Russia. A legal overview by mid-2022



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INTELLECTUAL PROPERTY, RUSSIA

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General Overview

The general regulatory framework of the precious metals and stones industry in Russia is primarily supplied by Federal Law “On precious metal and precious stones” no. 41-FZ of 26.03.1998. It covers their production, sale, state control and reserves, as well as international operations of the Russian Federation in that area. However, that of precious metals is historically a politically sensitive industry in Russia, which is addressed by a variety of concurrent sources, producing a complex legislative landscape. The inherent complexity and importance of the industry are presently enhanced by the adverse geopolitical circumstances. In this article, we will address certain features and provisions that are likely to be of interest in the international perspective.

Section 6 of Law no. 41-FZ consists of only two articles, and generally allows international agreements for gold mining, production and use, and trade in precious metals and stones. Drafts of agreements, where a party is the

Russian Federation or a territorial entity thereof, must be submitted to the Russian Government for prior examination and overcome a mandatory legal and economy assessment, and furthermore need to be ratified and registered after their conclusion.

The industry production sharing agreements are subject to special rules and procedures supplied by Federal Law “On agreements on production sharing” no. 225-FZ of 30 December 1995, with the exception of rough diamonds, which cannot be the object of product sharing.

There are also other relevant instruments in existence addressing the export of precious metals.

Based on the principles of freedom of movement of goods, capital and labor force of the Eurasian Economic Union (EAEU), which comprises a common customs territory including Russia, Armenia, Belarus, Kazakhstan and Kyrgyzstan, certain aspects of gold export transactions fall under the regional level, whilst other aspects are governed by Russian law at the national level.



Import and Export

The import into and export from the EAEU countries of precious metals need to comply with an authorization-based procedure set out in Decision of the Eurasian Economic Commission no. 30 "On non-tariff regulatory measures" dated 21 April 2015 (EAEU Decision no. 30) Attachment no.2, which besides other goods applies to precious metals and raw materials containing precious metals. Attachment no.14 of EAEU Decision no.30 lays down the procedure of import into and export from the EAEU of such precious metals and raw materials.

The general rules of Decision no. 30 are not applicable, if the EAEU Member State adopts specific rules at the national level in the following excepted matters:

- radio and stable isotopes of precious metals and goods made thereof;
- import or export of precious metals or raw materials containing the same for holding by the State treasury;
- import or export of precious metals or raw materials containing the same by national (central) banks;
- import or export of coins made of precious metals that constitute a lawful mean of payment.

Besides, valuable cultural artifacts and goods for private use made of gold and precious metals are not subject to the special EAEU procedure.

Licenses, Customs Controls, Administration

General rules on license issuance are provided for in the Attachment to Attachment no.7 to the Agreement on the Eurasian Economic Union signed in Astana on 29 May 2014, and relevant Instructions on the filing of applications for export or import license grant were approved by Decision of the Board of the Eurasian Economic Commission no. 199 dated 06 November 2014.

Single-use export licenses are granted for a certain deal or contract in accordance with its terms and conditions, lasting for a term not exceeding 1 year. General licenses cannot exceed the 1

year term either, whilst the term of exclusive licenses is established on a case-by-case basis.

Customs control of raw materials containing precious metals and goods made thereof is carried out at special purpose customs terminals/stations (which are ad hoc customs checkpoints of the Central Excise Customs of the Russian Federation) upon production of an export license duly granted by the relevant national authority of the EAEU Member State of registration of the exporter.

The detailed regulation of import from and export to foreign countries outside of the EAEU of precious metals, raw material containing them, and precious stones is moreover to be found in Order of the President of the Russian Federation no.1137 dated 20 September 2010 (as amended on 01 July 2021), whose main contents may be summarized as follows:

- The issuance of export licenses for precious metals falls under the competence of the Ministry of Industry and Trade, which reviews applications and issues licenses (in accordance with the Administrative Procedure on license issuance adopted by Order of the Ministry of Industry and Trade no. 3624 dated 18 October 2017);
- The Russian Government sets the quantity limits for export of precious metals (except gold), and precious stones from the State Fund (Reserve) of precious metals and stones of the Russian Federation;
- The Russian President may approve gold exports from the State Fund of Russia, as well as of other precious metals, which are in excess of the planned quantities/values set by the Russian Government, as well as natural rough diamonds of 10,8 karats and above in weight, and unique natural rough diamonds;
- The approval of the sale of part of the gold reserves stored at the Central Bank of Russia falls within the competence of the Central Bank itself in accordance with a special procedure agreed with the Russian Government;
- The State Authority on building up the State Fund of precious metals and

precious stones of the Russian Federation, on storage, release and use of precious metals and precious stones (Gohran of Russia), the Federal Assay Chamber and the Russian Customs are the state bodies authorized to control production, internal sales, import and export of gold and other precious metals.

The Federal Assay Chamber is a control body of the Ministry of Finance. It performs control of product quality and entities that comply with special requirements and are allowed to produce and sell gold. The Chamber issues special authorizations (grants license) to such entities and maintains the relevant list of gold producers and sellers.

As mentioned above, the Russian Central Bank exercise discretionary control, including export deals, over gold reserves in its possession. The right to perform a certain gold export deal by other entities (license) is granted by the Ministry of Industry and Trade in accordance with orders of the Russian Government.

Quantitative and Market Highlights

The Russian Central Bank has been carrying out extensive purchases of gold in the internal market for state reserves since 2014, and by the end of 2019 the gold stocks of Russian international reserves had reached US \$ 120 bln. by April 2020, which was close to cap 21% of total state reserves of the Russian Federation¹.

During 2019 the Central Bank reduced the volume of gold purchases from Russian producers and announced discounts for procurement of gold on the internal market². Discounts were aimed to stimulate internal purchases of precious metals by Russian commercial banks to fill the gap between produced

volumes (supply) and needs of the internal market (demand, without considering state purchase).

Alongside with procurement measures from Russian producers, the Government liberalized and simplified procedures for export by financial institutions and producers, which lead to an increase of exports overall after 2019. For example, during January-April 2020, 71,9 tons of gold were exported from Russia, which was 7,9 times the export volume during the same period in 2019.

Decisions on license issuance or rejection are made by the Ministry of Industry and Trade within 15 working days (10 working days in case of filing the application online) subject to providing all necessary documents. The rejection can be challenged in court in accordance with the general rules of section 22 of the Russian Code of Administrative Judicial Proceedings (no. 21-FZ of 08 March 2015) within 3 months from the date of the decision.

The existing legislative framework furthermore permits other State authorities to issue specific regulatory acts allowing the export of precious metals, including gold. The following are recent examples worthwhile recalling.

On 17 April 2020 the Russian Government issued Regulation no. 539 instructing the Ministry of Industry and Trade to issue general licenses for the export of refined gold and silver in bars (bullions) to mining and producing companies in accordance with their applications approved by the Ministry of Finance.

Based on the new regulations, gold producers sold most of precious metal in bullions to Russian banks, which extended gold exports upon withdrawal

¹ Media group RBC (2020) "Central Bank announced cease of purchases of gold for state reserves". Available at: <https://www.rbc.ru/finances/30/03/2020/5e820d8a9a7947d0dfd2fb0f> (Accessed: 07 November 2022).

² The Central Bank of the Russian Federation (2022) Press release dated 11 February 2022 "On changes of pricing policy of the Central Bank of

Russia on the internal market of precious stones". Available at: http://www.cbr.ru/press/pr/?file=11022019_180500if2019-02-11t18_00_01.htm#highlight=2019%7C%D0%BF%D0%BE%D0%BA%D1%83%D0%BF%D0%BA%D0%B8%7C%D0%B7%D0%BE%D0%BB%D0%BE%D1%82%D0%B0 (Accessed: 07 November 2022).

of regulatory restrictions. The Russian Central Bank held the largest stock of gold of more than 2,000 tons³ and released some gold for export in 2020. Russian commercial banks, including major banks Sberbank, GazpromBank, VneshtorgBank, PromSvyazBank, Otkrytie, were increasing gold stocks since May 2020 and reported to own about 121 tons of gold by September 2020⁴, and then were actively exporting it in 2020-2021 following world market gold price increase.

The main country of destination of Russian gold was the United Kingdom reaching as much as 93%⁵ in 2019-2020 and 84% in 2021. Switzerland, Turkey, Kazakhstan and China were the other main importers in 2019-2020. In 2021 the UK was also the leading gold importer. Switzerland, UAE, Germany, Italy and India had smaller but close volumes of import share, and China imported twice less. The Russian gold export in April-May 2020 overtopped the export value of gas and amounted to US \$ 3.58 bln⁶.

According to international statistics, in 2019 Russia was ranked only 10th among the world gold exporters⁷. However, the value of gold exported from Russia in 2020 increased 222% and reached US \$ 18.7 bln⁸. This increase

achieved the country 6th place in the highest dollar value gold world exporters rating. In 2021 gold export value went down to US \$ 17,4 bln. moving Russia to the 7th place⁹.

Geopolitical changes in 2022, sanctions and countersanctions

The geopolitical storm of 2022 following the Ukrainian crisis did not leave the gold unaffected.

As from March 2022, the Russian gold mining industry was hit by restrictions imposed by the independent precious metals market authority, namely the London Bullion Market Association (LBMA), which excluded six Russian gold refineries from "good delivery" status¹⁰, thereby for practical purposes cutting off sales of Russian bullion sales to London or Zurich. Loss of that status also made impossible gold export to many other foreign countries.

Besides, the usual practice when Russian refineries sold gold to major Russian commercial banks, and the latter exported it, became unfeasible, as these banks were sanctioned by the USA, the UK¹¹ and EU, and could not perform international transactions, including gold export operations.

³ World Gold Council (2022) "Central bank holdings". Available at:

<https://www.gold.org/goldhub/data/gold-reserves-by-country> (Accessed: 08 November 2022).

⁴ Newspaper "Vedomosti" (2020) "Gold stocks in Russian banks reached historical peak", newspaper "Vedomosti" 22 September 2020. Available at: <https://www.vedomosti.ru/finance/news/2020/09/22/840790-zapasi-zolota-v-rossiiskih-bankah-dostigli-istoricheskogo-maksimuma> (Accessed: 08 November 2022).

⁵ Media group RBC (2020) "Russia has sold to UK gold for record-breaking US \$ 5 bln.". Available at: <https://www.rbc.ru/economics/28/02/2020/5e57904a9a79479d2346177a> (Accessed: 07 November 2022).

⁶ Media group RBC (2020) "Gold export income of Russia exceeded gas revenues for the first time". Available at:

<https://www.rbc.ru/business/14/07/2020/5f0c193a9a7947421ec3859d> (Accessed: 07 November 2022).

⁷ World Integrated Trade Solutions (2020) "Trade Stats on gold exports by country in 2019". Available at:

<https://wits.worldbank.org/trade/comtrade/en/country/ALL/year/2019/tradeflow/Exports/partner/WLD/product/710812#> (Accessed: 08 November 2022).

⁸ The Observatory of Economic Complexity (OEC) (2021) statistics. Available at: <https://oec.world/en/profile/bilateral-product/gold/reporter/rus> (Accessed: 07 November 2022).

⁹ Workman D. "Gold Exports by Country Plus Average Prices", *World's Top Exports*. Available at: <https://www.worldstopexports.com/gold-exports-country/> (Accessed: 10 November 2022).

¹⁰ LBMA (2022) "Good Delivery List Update: Gold & Silver Russian Refiners Suspended". Available at: <https://www.lbma.org.uk/articles/good-delivery-list-update-gold-silver-russian-refiners-suspended> (Accessed: 07 November 2022).

¹¹ UK Government (2022) *Press release "UK sanctions Russian gold exports"* 26 June 2022. Available at: <https://www.gov.uk/government/news/uk-sanctions-russian-gold-exports> (Accessed: 07 November 2022).

In March 2022 the Russian Ministry of Finance reported that the amount of gold produced in Russia in 2021 was 346,42 tons¹², but neither monthly, nor quarterly data for 2022 were released. Simultaneously, the Federal Customs Service stopped publishing gold export statistics.

As a remedy to limitations of gold export in bullions, regulation no. 485 was adopted by the Government on 26 March 2022 allowing the issuance of licenses for export of gold and silver in grains, as well as platinum and platinum-group metals in bars, grains and powders.

Conversely, the export of waste and scrap of precious metals or clad with precious metals, other waste and scrap containing precious metals, and waste and scrap of electrotechnical products mainly used for extracting precious metals, was temporarily banned by the Russian Government. In accordance with Regulation no.2401 of 23 December 2021, such items were declared of significant importance for the Russian internal market and could not be exported outside the EAEU starting from 01 February 2022 till 31 July 2022. By the time of expiry of the Regulation, the situation again changed, the ban was not extended, and the export of gold and precious metals is no longer limited by the physical form of the metals.

The Russian authorities did not issue other restrictions of gold export so far. However, at the end of June 2022 G7 states agreed to ban the import of Russian gold and the USA¹³, Canada and Japan issued relevant sanctions¹⁴.

The USA enforced the sanctions immediately at the end of June, the UK and EU – on 21st of July (EU as a part of the 7th package)¹⁵ and Switzerland joined the restrictions in August 2022. The EU sanctions apply not only to bullions, but also to gold in other forms, like powders, waste and scrap, coins, articles of jewelry and parts thereof.

In that perspective, the abovementioned Regulation no. 485 can be considered a counter- sanction measure in response to the ban of import of Russian gold in bars, but it does not apply in general to counter restrictions on operations with Russian gold.

In this challenging situation for gold export, after almost 2 years suspension, the Russian Central Bank resumed internal purchases of gold. The state bank buys in gold from the Russian refineries with 15-17% discount from the LBMA quotation.

On 12 July 2022 the Union of Russian Gold Prospectors (Union) published an open letter requesting State support to the industry, which is facing a deep crisis with sales and profitability putting at risk growth and development, and even the existence of small producers. Representatives of the industry explained that the Central Bank used to buy gold from producers with a 5% discount, which is considerable gold being at stake, but in the current situation purchases are made with as much as 15% off market price. The high exchange rate presently applying to the Russian Ruble cuts sale prices for export, whilst

¹² The Ministry of Finance of the Russian Federation "Press release "About production of gold and silver in 2021" dated 16 March 2022". Available at: https://minfin.gov.ru/ru/press-center/?id_4=37810 (Accessed on 07 November 2022).

¹³ Hansler J., Liptak K. (2022) "US unveils new Russia sanctions, implements ban on new imports of Russian gold", *CNN*. Available at: <https://edition.cnn.com/2022/06/28/politics/new-us-sanctions-on-russia/index.html> (Accessed: 07 November 2022).

¹⁴ Madhok D. (2022) "The world's richest nations are banning gold imports from Russia", *CNN*

Business. Available at: <https://edition.cnn.com/2022/06/27/business/russia-gold-import-ban-g7-intl-hnk/index.html> (Accessed: 07 November 2022).

¹⁵ The Council of the EU (2022) "Press release 21 July 2022 "Russia's aggression against Ukraine: EU adopts "maintenance and alignment" package". Available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/07/21/russia-s-aggression-against-ukraine-eu-adopts-maintenance-and-alignment-package/> (Accessed: 07 November 2022).

costs incurred inside the country does not decrease.¹⁶

Against that background, representatives of the Union suggested

- increasing purchases of gold for State reserve purposes at prices economically viable for producers,
- fixing minimum prices for gold on the internal market, and
- offering credits to industry players at the rate of 5%.

Meanwhile, on 12 July 2022 the Petropavlovsk company, a well-known large Russian gold producer registered in the UK, announced the initiation of bankruptcy proceedings, since the amount of its debt reportedly exceeds the value of its assets. Besides, the activity of the company was for practical purposes blocked by foreign sanctions, equity prices at the Moscow stock exchange fell by as much as 80%, and its bank (Gazprombank, which is also placed under foreign sanctions) failed to provide the usual business facilities and

asked for the immediate return of its credit lines.

Russian producers still can sell gold to Middle East and Asia, however, at discounted prices. The Russian press cited industry experts, who said that export of gold in 2022 was shifted into UAE and China, and Russian refineries were selling gold with discounts of 20-30% from stock prices. China significantly increased imports of Russian gold, and according to Chinese customs statistics, the country imported in July 2022 8,6 times more gold than in June 2022.

Finally, Russian refineries faced another constrain to gold export, which materialized in the second half of 2022. Russian press recently reported that gold producers complain that the state authorities refuse to issue relevant authorizations for export of gold at the discounted prices that are below the world market price, so the Russian gold export is under pressure both outside and inside of the country.

¹⁶ E.Zainullin "West rejects Russian gold", newspaper "Kommersant" 26 June 2022. Available

at: <https://www.kommersant.ru/doc/5434232> (Accessed: 18 November 2022).





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