

Client Update

Reporting Transactions for Currency Control Purposes – Changes Expected in 2018

Next year is expected to bring a number of changes to the regulation of currency operations in Russia:

- from 1 March 2018,¹ Bank of Russia introduces a new procedure for registration and control over currency operations. In particular, Russian residents will no longer have to open a passport of transaction (“*passport sdelki*”) for a foreign trade contract, instead they will be required to register it; and
- from 14 May 2018,² the rules for currency operations, including repatriation of currency, and the rules of administrative liability for the breach of currency laws will be updated.

Below is a brief summary of key amendments.

CONTRACT REGISTRATION WILL REPLACE PASSPORT OF TRANSACTION

Under current regulations, a Russian resident,³ which has entered into an export contract, an import contract or a facility agreement (the “contract”) with a non-resident for an equivalent of at least USD 50,000, must open a so-called passport of transaction with an authorised Russian bank (the “Bank”).

¹ On 1 March 2018, Instruction of the Bank of Russia No. 181-I (the “New Instruction”) dated 16 August 2017 will become effective and Instruction of the Bank of Russia No. 138-I (the “Instruction”) dated 4 June 2012, governing the existing procedure, will cease to have effect.

² Amendments to Federal Law No. 173-FZ on Currency Regulation and Currency Control dated 10 December 2003 (the “Law”) and the Code of Administrative Offences of the Russian Federation (the “Administrative Offences Code”) will become effective on 14 May 2018, pursuant to Federal Law No. 325-FZ dated 14 November 2017.

³ The list of persons and entities subject to the New Instruction has not changed compared to the Instruction (Paragraphs 1.6-1.7 of the Instruction, Paragraphs 1.5-1.6 of the New Instruction). The regulations apply to residents and non-residents, except for resident lending institutions, Vnesheconombank, individuals not registered as sole entrepreneurs or not engaged in private practice as set forth by law, and non-resident individuals.

With effect from 1 March 2018:

- a Russian resident will no longer have to open a passport of transaction but will be required to register the contract with the Bank if the contract value is equal to or exceeds RUB 3,000,000 (approximately USD 51,000⁴) for import contracts and facility agreements or RUB 6,000,000 (approximately USD 102,000) for export contracts;
- similarly to closing a passport of transaction, residents will be required to de-register their contracts as prescribed by the New Instruction, *e.g.*, upon the performance by the parties of all obligations under the relevant contract;
- resident exporters will be able to provide contract details in a format requested by the Bank instead of providing a copy of the contract or an extract from it;
- residents will no longer be required to provide currency operations reports to the Bank;
- the procedure for registering a contract with the Bank will be quicker than opening a passport of transaction – the registration will be completed within one business day following submission of all required documents and information to the Bank; and
- passports of transactions not closed as of 1 March 2018 will be deemed closed and will remain in the currency control files, and the number assigned to the relevant passport of transaction will be deemed to be the unique number of the registered contract.

The Law and other legislation (*e.g.*, the Administrative Offences Code) will need to be aligned with the New Instruction, in particular, in order to remove the requirement for the passports of transaction. However, a draft law amending the Law and the Administrative Offences Code has not been to date submitted to the State Duma of the Russian Federation.

THE LAW WILL BE AMENDED

The amended Law:

- expands the list of grounds on which the Bank may deny a foreign currency operation: after 14 May 2018, the Bank will have the right to deny a foreign currency operation if it is not consistent with the Russian currency laws or if the documents requested by the currency control agents do not meet the requirements of the Law;⁵
- requires a contract to indicate the precise deadlines by which the parties must perform their obligations under the contract for the purposes of meeting the requirement for repatriation of currency, and further requires residents to inform the Bank of the specific

⁴ In this client update, the relevant amounts are calculated using the exchange rate of USD 1 = RUB 59.

⁵ At present, a foreign currency operation may be denied if (a) the documents requested by the currency control agents have not been provided; (b) the submitted documents are incorrect; or (c) there is a suspicion that the transaction is performed for the purpose of money laundering or financing of terrorism.

dates of receiving foreign currency from non-residents and/or performance by such non-residents of their obligations under the contract;⁶ and

- requires residents to inform the Bank on when advance payments made by residents must be repaid under the contract.

THE ADMINISTRATIVE OFFENCES CODE WILL BE AMENDED

The amended Administrative Offences Code:

- clarifies that members of the boards of directors, members of the collective executive bodies of legal entities, company managers, founders/participants of legal entities and certain other persons must be liable for currency control offences as company officers; and
- provides for new penalties imposed upon company officers for currency control offences (*e.g.*, for illegal currency operations or for failure to timely repatriate currency):
 - a fine of RUB 20,000 to RUB 30,000 (approximately USD 340 to USD 510); and
 - disqualification for a period ranging from six months to three years for a repeated violation.

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Please do not hesitate to contact us with any questions.

⁶ Currently, the applicable laws require residents to report an expected maximum period.

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