

Client Update

Amendments to Russian Civil Code Will Change Regulation of Financial Contracts

On July 14, 2017, the Russian State Duma adopted a set of amendments (the “Amendments”) to the Russian Civil Code and other statutes and rules that will significantly change the regulation of financial contracts. The Amendments were approved by the Federation Council on July 19, 2017 and signed into law by the President of the Russian Federation on July 26, 2017.

They are effective from June 1, 2018.

The Amendments include the following most significant changes:

- The default regime of loan contracts will be switched from “real” to “consensual.” Such contracts will be created by, and become binding upon, the mere consent between a lender and a borrower. By contrast, loan contracts currently require a transfer of funds or other assets to establish the obligation.
- The Amendments will expressly allow a loan of securities between any parties (rather than only Russian licensed brokers and their clients under margin transactions, as now permitted by the Federal Law on the Securities Market). Some Russian courts previously invalidated Russian law governed securities lending arrangements based on the plain reading of the effective rules of the Russian Civil Code limiting the assets that may be borrowed under loan contracts to fungible goods. This ambiguity will now be eliminated.
- Unless otherwise provided by law or a loan contract an interest rate under such contract will be deemed to be the key rate of the Bank of Russia. Usurious interest rates under loans to individuals may be decreased at Russian courts’ discretion.
- The provisions of the Russian Civil Code governing factoring contracts will be made consistent with the UNIDROIT Convention on International Factoring ratified by Russia in 2014. The Amendments will also allow arrangements (other than factoring contracts) for financing of a debtor upon a sale of its accounts receivable. The new regulation is expected to facilitate the Russian securitization practice.

- The Amendments will introduce various new types of bank accounts, e.g., precious metal accounts, joint accounts (only for individuals) and public deposit accounts (for notaries public, bailiffs and judicial and governmental agencies). The Amendments will also change the general rules governing opening and maintenance of bank accounts. In particular, a set of bank accounts may be established by a bank account agreement, including among multiple clients.
- The Amendments will significantly change the settlements instruments. In particular, the rules on letters of credit will be aligned with the Uniform Customs and Practice for Documentary Credits standardized by the International Chamber of Commerce (the UCP600, 2007).
- The Amendments will introduce escrow (“conditional deposit”) arrangements. As opposed to escrow account instruments legally available from July 1, 2014, general escrow arrangements may have any party (rather than exclusively a banking institution) as an escrow agent and may have any movable property, uncertified securities and cash (rather than funds only) deposited and transferred under such arrangements.

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Please do not hesitate to contact us with any questions.

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