



Russia: Banking & Finance
Annual Report 2018

/ Contents

Contents	2
Introduction	3
Legislative Developments in 2018	4
Court Practice in 2018	7
Upcoming Legislative Developments and Trends in 2019	8
Our Team	10

/ Introduction

In 2018 a number of changes were made to the Russian Civil Code, facilitating certain **transactional aspects**. This includes rules on loans made available under agreements governed by Russian law, bank accounts, escrow arrangements, etc. and evidences the continued endeavour to make transaction-related rules more business-friendly.

Changes were also made to the Russian **currency control** laws. Rules for mandatory repatriation were tightened by extending them to loans. Additional requirements for contracts with non-residents were introduced. The so-called “transaction passport” was replaced with a registration of contracts, however, not resulting in easing the administrative burden for bank customers in connection with cross-border payments.

The general **market environment** for financing transactions remains difficult. The number of new cross-border projects is low, and lending activity is often limited to refinancings or domestic rouble financings. As of 1 December 2018 the volume of loans provided to legal entities and individual entrepreneurs amounted to RUB 35.4 trillion (as of 1 December 2017 comprised RUB 30.5 trillion). More than 600 companies placed bonds at the Moscow Exchange, however, the largest placements were made by state bodies such as the Bank of Russia (approx. RUB 4.9 billion) and the Ministry of Finance (more than RUB 2.1 billion).

Licenses of more than 60 banks were revoked by the Bank of Russia in the course of 2018, which is evidence of the continuing tough policy of the regulator in the banking sector.

On the regulatory side, the increased **use of technology** is visible both in the market place and with respect to legislative proposals. The number of payments via Apple Pay, Samsung Pay and Android Pay has materially increased, and according to mass media¹ Russia is now number one in the world on this respect. Draft federal laws relating to crowd funding and crypto currencies are in the parliamentary process.

¹ <https://news.rambler.ru/other/39580205-rossiya-okazalas-na-pervom-meste-po-populyarnosti-apple-pay/>

/ Legislative Developments in 2018

Amendments to the Civil Code regarding financial transactions

Material amendments to the Russian Civil Code entered into legal effect from 1 June 2018, aiming at making the legal environment more business-friendly. In particular, such amendments include changes in regulation of loans, factoring, letter of credit and escrow relations.

Loan and Facility

The Civil Code now provides for the possibility of committed financing through conclusion of the “consensual” loan where a lender, other than an individual, **may be obliged** to grant a loan to the borrower. If the lender is an individual, the loan agreement shall be regarded as concluded only upon the actual drawdown of the loan, which was the general rule for all types of lenders under a Russian law loan prior to the amendments.

The amendments introduced so-called “usurious” interest in consumer loans. The interest should be considered “usurious” if it exceeds the interest usually charged in similar circumstances two times or more. In such a case the “usurious” interest may be decreased by court.

The Civil Code now reflects the existing practice and explicitly envisages fees, separately from interest, under a facility agreement (including those to be charged for drawdown).

Bank Account and Deposit

The parties to a bank account agreement may now agree on circumstances when disposal of money on the account may be restricted. In our experience Russian banks have begun actively using this opportunity and frequently include limitations on the disposal of funds in, for instance, Russian law pledge agreements over bank accounts.

The amended Civil Code regulates the use of a **joint account**, i.e. account to be opened for several persons. The account may be opened only for individuals. The clients may determine their shares by agreement, or otherwise such shares will be determined in proportion to the amounts credited by each client.

The failure to comply with the form of the **nominal account** agreement shall result in recognition of the agreement as void.

The **public deposit account** has been introduced by the amendments. This account shall be opened for notary, bailiffs’ service or court. The account may be used, in particular, for performance of contracts or court decisions.

The liability of a bank for untimely crediting the bank account or unreasoned debiting has been tightened: now the bank shall pay punitive interest under Article 395 and interest under Article 852(1) of the Civil Code (previously it had to pay only punitive interest).

The amendments also provide for a new form of deposit and bank account in **precious metals**. However, this type of deposit is not subject to the mandatory deposit insurance.

Escrow Agreement

The escrow agreement has been introduced: a deponent may transfer to an escrow agent property for its further transfer to a beneficiary. The property may include movable assets, non-cash money and/or undocumented securities. The escrow agreement must be notarised and be concluded for a term of not more than 5 years.

Factoring

The subject of the factoring has been changed. Now a factor must perform at least two of the following actions:

- (i) transfer to a client of money towards monetary claims, including in form of loans or advance;
- (ii) record keeping with respect to monetary claims of a client against third parties;
- (iii) exercising of rights under monetary claims of a client;
- (iv) exercising rights under security agreements with respect to obligations of debtors.

Additionally the Civil Code explicitly states that the rules of assignment shall apply to the factoring agreement, putting an end to previous disputes in this respect.

Letter of Credit

It is now assumed by law that the letter of credit shall be irrevocable, unless otherwise provided for by the letter of credit.

Currency Control Changes

Loans subject to Repatriation

Since 14 April 2018 a loan provided by a currency resident to a currency non-resident shall be subject to Russian currency repatriation rules. This means that the Russian resident must ensure that the loan amounts disbursed to a non-resident will be returned within the timeframes envisaged by the loan agreement. Otherwise the resident may be obliged to pay a fine in the amount of up to 100% of the non-returned funds.

Requirements to Conditions of Contracts

External trade contracts between residents and non-residents must contain terms of performance of obligations, including a term for the return of advance payments, as the case may be. This requirement entered into legal effect from 14 May 2018.

Change of Passports of Transaction to Registration of Contract

The Instruction of the Bank of Russia No. 181-I dated 16 August 2017 (the “**Instruction**”) entered into legal effect on 1 March 2018. The Instruction abolished transaction passports which were opened for contracts with non-residents, and replaced them with the obligation to register the contracts with Russian authorised banks. The change, however, does not result in any material easing of the administrative burden for bank customers.

The Instruction provides that contracts with non-residents shall be registered if the value of the contract is at least RUB 3 million (for import and loan agreements) or RUB 6 million (for export agreements).

/ Court Practice in 2018

Decision of the Plenum of the Supreme Court

Decision No. 27 of the Plenum of the Supreme Court of the Russian Federation dated 26 June 2018 is devoted to matters of challenging transactions qualified as “major” or “interested party”–transactions according to the corporate legislation. Certain points of this decision are also relevant for financing transactions, in particular:

- The court re-confirmed that all main conditions of the agreement must be reflected in the approval of the major or interested-party transaction or in the attachment thereto. Any amendments of such approved terms and conditions shall require a new corporate approval. Consequently, in case the whole contract is attached to the corporate resolution, any, even a minor, amendment would require new corporate approval;
- The court also stated that an agreement with periodic payments (e.g. a lease agreement) may be considered a “major” transaction. For this purpose the sum of payments for the whole effective period shall be taken into account. If the effective period is not determined, a period for one year shall be assessed;
- The court clarified the definition of the “beneficiary” for the purposes of the approval of interested-party transactions. In particular, the beneficiary shall include any person that received any profit from the interested-party transaction. It is unclear yet, whether the term of beneficiary includes the shareholders of the parties given that the shareholders may be deemed to have received profit indirectly (via dividend distribution).

/ Upcoming Legislative Developments and Trends in 2019

Regulation of Internet Investment Platforms

On 22 May 2018 a draft law No. 419090-7 was approved in the first reading by the State Duma of the Russian Federation, being the lower chamber of the Russian Federal Parliament. The draft law is devoted to regulation of investments attracted with the use of the so-called “Internet investment platforms” (commercial crowdfunding). It covers relations between legal entities and individual entrepreneurs, investors and operators of an investment platform in the Internet.

According to the draft law, an investment platform shall mean an information system in the Internet to be used for the conclusion, with the use of information technologies or technical means, of agreements on which basis investments are attracted, including systems available as a mobile application. The investments may be attracted through the investment platforms only by legal entities and individual entrepreneurs.

The operator of the investment platform may be a commercial company that is included by the Bank of Russia into the register of operators of investment platforms. The operator shall be subject to disclosure obligations under the draft law. The operator shall act on the basis of agreements concluded with legal entities and individual entrepreneurs and investors.

The investment platform shall function on the basis of rules of the investment platform. The rules of the investment platform shall, in particular, contain (i) a procedure for identification and authentication of participants of the platform and their access to the platform, (ii) requirements to investment projects, (iii) requirements to persons attracting the investments, as well as to their controlling persons and CEOs, (iv) standard forms of agreements to be concluded within the investment platform.

Digital Financial Assets

On 22 May 2018 a draft law No. 419059-7 was also approved by the State Duma in the first reading. The draft law regulates aspects on the creation, issue, keeping and circulation of “digital financial assets” such as crypto currency and tokens.

According to the draft law, a digital financial asset shall mean property in electronic form to be created with the use of cryptographic means. Ownership title to this property shall be certified by way of digital records in the register of digital transactions. It is expressly stated that the digital financial assets shall not be a lawful means of payment within the territory of the Russian Federation.

The draft law also states that mining shall be regarded as commercial activity if the person performing the mining has been exceeding the energy usage limits provided by the Government for three months.

The draft law regulates in detail the matters of issue of tokens that may be issued only by legal entities and individual entrepreneurs for attracting financing.

Establishment of an Independent Payment System

In 2018 talks about creation of a payment system that is independent from USD became more active. It is being argued that Russia needs to establish a payment system where all settlements would be made only in Roubles. Respective negotiations are said to be conducted at a government level between Russia and China. Both countries express their wish to use only Yuans and Roubles in settlements in the mutual international trade, and the Russian payment card “Mir” is intended to be used in the Chinese payment system.

It is not clear yet if and when the respective plans of Russia and China should come to life. However, the Russian Bank “Rossiya” is said to intend to make settlements only in Roubles already now.

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