

NEW RULES ON MONITORING OF CURRENCY OPERATIONS IN RUSSIA. ABOLITION OF DEAL PASSPORTS

On 1 March 2018¹ Instruction No. 181-I of the Central Bank of Russia of 16 August 2017 (the "**Instruction**") enters into force, bringing notable changes to the treatment of currency operations. One of the main aims of the new regulation is to simplify the currency control requirements for persons performing currency operations, particularly as regards the monitoring ("*uchet*") of currency operations. This briefing presents an overview of the key changes in the regulatory requirements and addresses certain practical aspects we believe are deserving of attention.

ABOLITION OF DEAL PASSPORTS

According to the regulatory requirements in effect prior to 1 March 2018, when a resident and a non-resident entered into a foreign trade contract, loan agreement or other agreement providing for payment of the equivalent of at least USD 50,000 through a resident's account ("**Agreements**")², the resident had to open a deal passport ("*passport sdelki*") with an authorised Russian bank, a process whereby the resident completed the deal passport form and submitted it to the authorised bank. The requirement that a deal passport be opened is now being abolished with the enactment of the Instruction, which stipulates that instead of opening a deal passport:

- import and loan Agreements, the obligations under which equal to or exceed the equivalent of RUB 3 million; and
- export Agreements, the value of which equals to or exceeds the equivalent of RUB 6 million,

are to be registered with an authorised bank. Similarly to the regulatory requirements in effect prior to 1 March 2018, the Instruction provides that it is the obligation of the residents to register Agreements with an authorised bank. A resident must submit the Agreement in question (or an extract from it) to the bank together with other information enabling the bank to monitor and keep records of the resident's currency operations under the Agreement (by

¹ On the same date Central Bank of Russia Instruction No. 138-I of 4 June 2012, which is currently in force, will cease to be effective.

² In the Instruction the list of contracts (agreements) that are subject to regulation remains unchanged.

maintaining bank control records ("*vedomost' bankovskogo kontrolya*"). Upon registering an Agreement the bank assigns it a unique identification number.

REGISTRATION

Unlike the opening of deal passports, which took three business days, the Instruction requires the Agreements to be registered by authorised banks by the end of the next business day after the necessary documents are submitted by the resident. Within one business day after registering an Agreement the authorised bank must provide the resident with the unique identification number assigned to that Agreement.

Prior to 1 March 2018, when performing currency operations that involved the debiting or crediting of funds under an Agreement for which a deal passport had been opened, a resident had to submit a currency operation certificate for each currency operation to the authorised bank. In the currency operation certificate the resident had to indicate, among other things, a special code denoting the type of currency operation. The requirement that the currency operation certificate be submitted is abolished with effect from 1 March 2018. However, authorised banks will still have to be provided with the documents³ constituting the grounds for a currency operation and which are needed by the authorised bank to maintain its bank control records, including documents enabling the bank to determine itself the relevant code denoting the type of currency operation.

Similarly to the requirements on payments under Agreements for which a deal passport has been opened, once an Agreement is registered all payments under it, according to the general rule, must be made only through the authorised bank that accepted the Agreement for registration (except in cases where the currency legislation permits payments under an Agreement to be made through an account held by a resident in a non-resident bank). As used to be the case with deal passports, where payments under Agreements are to be made through a resident's account in a non-resident bank, those Agreements must be registered with an authorised bank.

TRANSITIONAL PERIOD

Agreements for which a deal passport has been opened must be registered by the respective authorised bank automatically, and the bank control records must be amended accordingly. Effective 1 March 2018 previous deal passports will be deemed closed, and the number of each deal passport will be treated as the unique identification number of the Agreement that has been registered. Authorised banks will further service such Agreements in accordance with the Instruction.

PRACTICAL ASPECTS

In connection with the requirements of Central Bank of Russia Instruction No. 138-I, deals involving Russian borrowers would usually include an undertaking to comply with the applicable currency control requirements, and specifically to open and maintain a valid deal passport for the entire term of the loan.

³ The registration procedures for export and import contracts differ somewhat. For example, when registering an export contract exporters are permitted to provide only certain information about the contract and to submit the contract itself at a later date. This option is not available to importers.

When preparing new loan documentation or amending existing documentation the relevant undertaking will need to be replaced with an undertaking to register the respective Agreement with an authorised bank and to procure that such registration continues to be maintained. Other provisions containing references to the deal passport will also need to be amended accordingly (e.g. so as to require submission of confirmation that a unique identification number has been assigned as a condition precedent or subsequent to provision of the loan).

CONTACTS



Victoria Bortkevicha
Office Managing
Partner, Head of
Banking and Finance
practice

T +7 495 725 6406
E Victoria.Bortkevicha
@cliffordchance.com



Vladimir Barbolin
Counsel,
Banking and Finance
practice

T +7 495 258 5071
E Vladimir.Barbolin
@cliffordchance.com



Marina Kizenkova
Senior Associate,
Banking and Finance
practice

T +7 495 725 6401
E Marina.Kizenkova
@cliffordchance.com



Nikolay Kosminskiy
Associate,
Banking and Finance
practice

T +7 495 258 5098
E Nikolay.Kosminskiy
@cliffordchance.com

This client briefing does not cover all aspects of the new rules on registration of currency operations. It is not intended to provide legal or any other advice.

www.cliffordchance.com

Clifford Chance, Ul. Gasheka 6, 125047
Moscow, Russia

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