11. Currency Regulations

11.1 Introduction

The Civil Code states that the ruble is the national currency of the Russian Federation. Although agreements may refer to the ruble value equivalent of foreign currency, all transactions conducted inside the Russian Federation must, as a general rule, be settled in rubles. The Civil Code, however, permits the use of foreign currency in cases provided for by law. Federal Law No. 173-FZ “On Currency Regulations and Currency Control,” dated 10 December 2003, as amended (the “Currency Law”) establishes the basic rules of currency regulation and control.

11.2 Currency Operations

The Currency Law regulates a broad range of currency operations including:

- Payments made in a foreign currency;
- Transfer of foreign securities;
- Ruble transfers between a Russian resident and a non-resident or between two non-residents;
- Transfer of domestic securities between a resident and a non-resident or between two non-residents;
- The import and export of rubles and securities;
- Transfer of funds and securities from the overseas account of a resident into a domestic account, and vice versa;
- Transfer of rubles and securities between the domestic accounts of a non-resident;
- Clearing settlements;
Settlements between commission agents and principals connected with clearing; and

Settlement under derivative transactions.

11.3 Resident vs. Non-resident Status

The Currency Law divides individuals and legal entities into two classes: residents and non-residents. Residents include: Russian citizens and other individuals whose permanent place of residence is the Russian Federation, except for individuals who permanently live outside Russia for more than one year; legal entities established in accordance with Russian legislation; representative offices (branches) of Russian legal entities outside Russia; and the governments of the Russian Federation, constituent entities of the Russian Federation, and municipal units. Non-residents are defined as individuals whose permanent place of residence is located outside Russia; legal entities incorporated outside Russia; enterprises/organizations that are not legal entities, organized and located outside the Russian Federation; and representative offices (branches) of foreign legal entities in Russia.

11.4 Special Currency Control Rules

As of 1 January 2016 there are no substantive currency control requirements (in the form of “consents, authorizations or permits,” etc.) that apply to foreign transactions.

However, certain requirements still apply to Russian residents:

- Russian companies must remit all foreign currency export proceeds to their Russian bank account(s) (“repatriation of currency proceeds”), subject to certain exceptions;

- “Transaction passports” are required for certain transactions (foreign trade, loans) at Russian banks;
Most Russian residents are prohibited from performing foreign currency transactions with other Russian residents (the Currency Law provides some exceptions);

The purchase and sale of foreign currency may only be performed at authorized Russian banks;

Cash exports are subject to restrictions;

When a Russian company or individual opens an overseas bank account they must notify the Russian tax authorities and present regular reports on the cash flow in such accounts; and

The operation of an overseas bank account by a Russian resident is subject to certain restrictions.

11.5 Repatriation of Currency Proceeds

In accordance with Article 19 of the Currency Law, Russian companies must collect the full amount of payments due under a foreign trade contract on their accounts with Russian banks in accordance with the terms of the relevant foreign trade contract (the so-called “repatriation rule”) with certain exceptions. For example, Russian companies may credit the payments to their accounts with foreign banks if the proceeds will be used for repayment under a loan agreement with an OECD or FATF resident and its term exceeds two years. At the same time certain goods and services should be paid for in rubles in the proportion set by the Russian Government.

Article 19 of the Currency Law does not expressly allow a Russian supplier to assign or set-off its claims against a foreign buyer under a foreign trade contract. There are certain exceptions to this rule.

Offsetting claims is allowed only in limited instances, including for Russian transport and fishing companies as well as under reinsurance contracts. Russian gas exporters may also set off claims under gas sale-purchase contracts and gas transit contracts with non-residents.
Another exception allows Russian suppliers to assign their claims under foreign trade contracts to a Russian factor under a factoring contract. In this case, the supplier should procure that funds payable under such foreign trade contract are transferred to the factor’s account with a Russian bank. The factor must notify the supplier in writing of receipt of such funds or upon further assignment of claims under such foreign trade contract.

### 11.6 Transaction Passport

A Russian counterparty (that is not a bank) must comply with certain requirements in connection with payments to a foreign lender or other counterparty (export/import transactions), including:

- To open a transaction passport with its Russian authorized bank; and
- To file certain information, including a separate “certificate on currency transaction identification”.

The main requirements in relation to transaction passports are listed in the Currency Law and Instruction of the Central Bank of Russia No. 138-I dated 4 June 2012 (“Instruction No. 138-I”). In particular, Instruction No. 138-I stipulates a list of documents that must be submitted to an authorized Russian bank by a Russian company in order to open a transaction passport. The banks generally require all documents to be translated into Russian. The documents to be filed typically include a certified copy of the agreement documenting the transaction. Furthermore, under Article 23 of the Currency Law, banks may request other supporting documents, such as acceptance certificates, bank statements, customs declarations, etc., although, in practice, only the basic documents are usually required. After receipt of the documents the bank reviews them and opens the transaction passport.

The identification certificate requirement is applicable to settlements between Russian residents and non-Russian residents under various
types of financing transactions, including loans. For each payment under the relevant transaction, the resident company has to provide a separate “certificate on currency transaction identification” indicating the transaction passport details (if applicable) and the details of the currency operation, as envisaged by Instruction No. 138-I.

11.7 Foreign Bank Accounts of Russian Residents

When a Russian company or individual opens an overseas bank account they must notify the Russian tax authorities and present regular reports on the cash flow in such accounts.

The Currency Law contains a list of permitted operations that Russian residents can perform using their overseas bank accounts.

11.7.1 General Rules Applicable to Russian Residents

Russian residents may transfer the following funds to their overseas accounts: (i) their funds from Russian or overseas accounts; (ii) Russian rubles from Russian or overseas accounts of another Russian resident; (iii) payments under foreign trade contracts, if the proceeds will be used for repayment under a loan agreement with an OECD or FATF resident and its maturity exceeds two years; (iv) cash; (v) proceeds of foreign exchange transactions performed using funds on the overseas account; and (vi) in other cases set by the Currency Law.

If the overseas account is opened with a foreign bank located in an OECD or FATF country, the Russian resident may transfer the amounts borrowed under a loan agreement with an OECD or FATF resident to such account. The term of such loan should exceed two years.

11.7.2 Rules Applicable to Russian Resident Individuals

Along with what is generally allowed under the Currency Law, Russian resident individuals can receive the following funds on their overseas accounts from non-residents: (i) salary and other employment-related payments; (ii) sums awarded under foreign court
judgments (save for international commercial arbitration); (iii) pensions, scholarships, alimony and other social payments; (iv) insurance payments; and (v) refunds and payments made in error.

If a Russian resident individual opens an account with a foreign bank located in an OECD or FATF country they may also receive the following funds on such overseas accounts from non-residents: (i) lease payments for property located abroad; and (ii) income derived from foreign securities.

The list above was expanded on 28 November 2015 to include the following: (i) income from the sale of foreign securities listed on the Russian stock exchange or one of the foreign stock exchanges on the list provided for by Federal Law No. 39-FZ “On the Securities Market,” dated 22 April 1996, as amended (this will cover transactions (sales) that occur after 1 January 2018); and (ii) income received from the transfer of money and (or) securities into the fiduciary management of a non-resident.

11.8 Liability for Violation of Russian Currency Regulation

The currency control system is supervised by the Bank of Russia, the Government, and the Federal Service of Financial and Budgetary Oversight. Currency control is executed through agents of the currency control regime, including: authorized banks, professional participants of the securities market, and governmental agencies.

Violation of Russian currency control requirements may entail civil, administrative, or criminal liability. Administrative penalties for violation of Russia’s currency control requirements include various fines, which may be imposed on individuals, legal entities, and company executives. The amount of a fine may be as high as the entire value of a transaction performed in violation of the currency control requirements. Other sanctions include the revocation of licenses (primarily applicable to banks), and imprisonment.
Violation of currency control requirements includes non-compliance with the terms for submission of reports on currency operations to a Russian authorized bank. The currency control legislation provides for differential fines up to RUB 3,000 for individuals and up to RUB 50,000 for legal entities depending on the term of the violation. In case of repeated violation the fine may reach up to RUB 10,000 for individuals and up to RUB 150,000 for legal entities. The fine for failure to submit the report on the cash flow in overseas accounts on time for the first time is the same, but for a repeated violation the fine can reach up to RUB 20,000 for individuals and up to RUB 600,000 for legal entities.

Failure to notify the Russian tax authorities of opening, closing or a change of details of an overseas bank account on time entails a fine of up to RUB 1,500 for individuals and up to RUB 100,000 for legal entities. Failure to notify the Russian tax authorities of these actions will result in a fine of up to RUB 5,000 for individuals and up to RUB 1,000,000 for legal entities.

In addition, failure to comply with the repatriation requirements in respect of foreign currency proceeds may result in imposition of fines in the amount of 1/150 of the Bank of Russia refinancing rate (currently 11% p.a.) of the amount of proceeds returned with a delay for each day of such delay. In case of non-return of foreign currency proceeds the fine may be up to 100% of the amount of non-returned proceeds. Failure to return foreign currency proceeds in the amount of more than RUB 6 million may also lead to criminal liability of the company’s senior management.