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Changes in the Russian currency legislation: repatriation of funds granted to non-residents under loan agreements

On 14 April 2018, the changes to the Federal Law 'On Currency Regulation and Currency Control' (the 'Currency Regulation Law') and the Code of the Russian Federation 'On Administrative Offenses' introduced by Federal Law No. 64-FZ dated 3 April 2018 became effective, which provide for the obligation of Russian residents to repatriate to their accounts in Russian banks funds granted to non-residents under loan agreements and liability for a failure to perform this obligation.

It is established that when residents grant to non-residents foreign currency or currency of the Russian Federation (roubles) under loan agreements (unless otherwise provided by the Currency Law), the residents shall:

- within the terms established by the loan agreements, ensure the receipt from non-residents foreign currency or currency of the Russian Federation due under the loan agreements to their bank accounts in authorised banks;
- provide authorised banks with information on the expected terms for performance by non-residents of the obligation under the loan agreement to return loans granted by the residents.

At the same time, the list of cases in which residents are exempt from the obligation to credit foreign currency or the currency of the Russian Federation to their bank accounts in authorised banks is supplemented with the following:

- 1) foreign currency or currency of the Russian Federation is granted by a resident to a non-resident under a loan agreement in connection with financing of geological exploration, exploration and(or) extraction of minerals [1], if such a loan agreement provides that the repayment of the funds is contingent on the fact and the volume of minerals extraction and(or) amount of revenue from the sale thereof, and upon certain conditions specified in the loan agreement the funds are not returned;
- 2) homogeneous counter-claims under loan agreements between a resident and a non-resident are offset, provided that the counter-claim of the non-resident arose as a result of granting a loan to the resident by crediting funds to the resident's account with authorised bank;
- 3) foreign currency or currency of the Russian Federation is granted by a resident to a non-resident under a loan agreement in connection with financing of investment and(or) innovation activities, if upon certain conditions specified in the loan agreement the funds are not returned in the amount of the resident's contribution to the charter capital, securities or purchase of debt obligations of the same non-resident, or if the funds are not returned due to insolvency (bankruptcy) of the non-resident.

In order to enjoy the last exemption, the resident must be:

- a) a legal entity included in the list of legal entities that provide state support for innovative activities in the forms established by Federal Law No. 127-FZ, dated 23 August 1996 'On Science and State Science and Technology Policy'; or
- b) an economic entity at least 50% of shares (interests) in the charter capital of which are owned by legal entities specified in p. "a", or an economic entity in the charter capital of which legal entities specified in p. "a" have the right to dispose directly and(or) indirectly of not less than 50% of the votes attributable to voting shares (interests); or
- c) a managing partner of the investment partnership in which the share of legal entities indicated in p. "a" in the ownership of the

common property of the partners is at least 50%; or

d) a management company of the investment fund at least 50% of shares (investment units) of which are owned by the legal entities specified in p. "a".

It is also clarified that a resident will be deemed as having performed the obligation to receive from non-residents foreign currency or the currency of the Russian Federation to its bank account with authorised banks, if such a resident has ensured the receipt of the insurance coverage under the insurance contract for the risks of failure of a non-resident to perform obligations under a foreign trade agreement (contract), loan agreement, concluded with such a non-resident, according to the procedure and within the terms specified by the respective insurance contract (a) to its bank accounts with authorised banks, and (or) (b) to bank accounts opened with authorised banks of a resident which is the beneficiary under such an insurance contract, subject to the insured event provided for in the procedure for insurance of export credit and investment against business and (or) political risks [2].

Besides, part 4 of Article 15.25 of the Code of Administrative Offenses of the Russian Federation ('Administrative Code') that provides for the administrative liability for violation of currency legislation and acts of currency regulation authorities is supplemented with a new administrative offense: a failure by a resident to receive foreign currency or currency of the Russian Federation due from a non-resident in accordance with the terms of the loan agreement to its bank accounts with authorised banks within the terms established by the contract. This offense shall involve an administrative fine on officials and legal entities in the amount of 1/150 of the refinancing rate of the Bank of Russia of the amount of funds credited to the accounts with authorised banks in violation of the deadline for each day of delay, and/or in the amount of 1/4 to 1 of the amount not credited to the accounts with authorised banks.

The above changes in the Currency Regulation Law and the Administrative Code do not apply to the loan agreements entered into before the effective date of the changes, except for the agreements the material conditions of which have been amended after the entry into force of the changes.

[1] The list of minerals is provided in Article 337 of the Tax Code of the Russian Federation.

[2] The procedure established by the Government of the Russian Federation in accordance with Federal Law No. 82-FZ, dated 17 May 2004 'On the Development Bank'. Thereat, there is the condition that the value of the ratio of the insured amount and the insured value (the level of insurance compensation) determined by the insurance contract shall be equal to or exceeds the value specified by the procedure.

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Contacts:

Yana Dianova

Director of the Corporate and Commercial Law Department, GRATA International (Moscow)

T.: +7 (495) 660 11 84

E.: ydianova@gratanet.com

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Key contacts



Yana Dianova

Counsel

 Moscow, Russia

 +7 495 660 1184

 +7 906 734 6817

 ydianova@gratanet.com