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Major Russian legislation changes for 2013

Banking and Finance

If there were a contest for adopting the most banking and finance regulations, then the State Duma would undoubtedly have won in 2013. At times it even seemed like the Russian Parliament missed vacations and New Year's parties: work on draft laws carried on through the summer and right up to the last readings of the year, when most of the new laws were adopted.

The laws are impressive not only for their quantity but for their breadth of application: the changes affect general provisions on financial transactions, special rules on derivatives, the primary consumer credit market, and mortgage securitization issues.[1] Russia's highest courts also contributed, although they are soon to be abolished and replaced with a single Supreme Court. We present our top changes for the year below.

1. Most of the reforms enacted through the State Duma in 2013 take effect from July 1, 2014, making that a red-letter day for Russian market participants.

Banking and financial transactions in general

The State Duma worked on the first package of civil legislation reform throughout 2013. By the end of the year, some 20 laws had been adopted affecting all four parts of the RF Civil Code ("**RF CC**"). New rules were added to Russian civil law with respect to general principles of civil law, international private law and IP protection. Below are the RF CC amendments most applicable to banking and financial transactions.

Challenging transactions, third party claims and statutes of limitation

The RF CC gained new rules on the ability to challenge transactions and third party rights.[2] The main risk in a financial transaction – the risk it being invalidated and reversed – was reduced. Now, in particular:

- the presumption that any transaction which violates the law and/or any other legal acts is deemed void has been abolished and reversed (Art. 168 RF CC);
- the ability of third parties to file claims for application of consequences of invalidity of void transactions and/or for recognition of void transactions as invalid has been materially restricted;
- various rules aimed at preventing invalidation of transactions on formal grounds and/or by parties acting in bad faith have been introduced;
- statutes of limitations have been materially revised; notably, a new 10-year statute of limitations calculated from the moment of commencement of performance of the transaction or infringement of rights[3] has been introduced.

New rules on powers of attorney

New rules on irrevocable and unlimited-term powers of attorney have been added to the RF CC, which represent a major change in Russian civil law after decades of practice.

Irrevocable powers of attorney can be quite useful in security transactions and are widely used in other jurisdictions with security instruments (pledges, assignments) – for example, for the purposes of a creditor enforcing a pledge without requiring the borrower's cooperation.

A person who issues an irrevocable power of attorney (i.e., the principal) may provide that the power of attorney cannot be revoked. If the power of attorney is for a fixed term, it cannot be revoked until the end of that term, while if it is for an unlimited period it can only be revoked in the cases expressly stated in the power of attorney. Irrevocable powers of attorney can only be issued for commercial obligations, that is, for obligations relating to entrepreneurial activities. An irrevocable power of attorney is not valid without notarization.

Moreover, the new amendments to the RF CC now permit unlimited-term powers of attorney. Previously, the maximum term for any power of attorney was three years.

The new rules on powers of attorney came into force on September 1, 2013.

New forms of transaction: nominee account and escrow account

Last year's changes introduced two forms of agreement not previously recognized by Russian law: the nominee account agreement and the escrow account agreement.[4]

A nominee account agreement may be concluded to carry out transactions for one or more beneficiaries using funds belonging to the beneficiary(ies). The agreement must be made in writing and contain a reference to the basis for the beneficiary's(ies') participation. The law or nominee account agreement may limit the way in which funds in the account may be used by, *inter alia*, identifying specific persons which may receive monetary funds or at whose order the transaction may be made, or by setting forth the list of documents which must be presented to make transfers as well as any other circumstances which will allow the bank to control the use of the account.

Funds in the account cannot be seized in connection with the obligations of the person who opened the account and may be seized under the beneficiary's obligations by court order only. A nominee account agreement can be concluded without the beneficiary but can only be amended or terminated with his/her consent (unless otherwise provided by the agreement).

With respect to escrow agreements, the new RF CC provisions follow general international custom: a depositor enters an escrow account agreement with a bank (the escrow agent) for the purpose of transferring funds to another person (the beneficiary). Disposal of the funds held in the escrow account is significantly restricted: during the term of the agreement neither the depositor nor the beneficiary may dispose of the funds in the account. Escrow accounts are exempt from general rules on freezing accounts. Therefore, neither tax authorities nor court bailiffs services have

2. Federal Law No. 100-FZ on Amendments to Subsections 4 and 5 of Section I and Article 1153 of Part III of the RF Civil Code of May 7, 2013.
3. Although it is not sufficiently clear that such 10-year statute of limitations should also apply to voidable transactions, a strong argument can be made that it should.
4. Federal Law No. 379-FZ on Amendments to Certain Legislative Acts of the Russian Federation of December 21, 2013.

access to them. Following the introduction of the escrow agreement provisions to the RF CC, we expect the use of letters of credit in domestic settlements to start to fall out of favor.

The rules on these new types of accounts enter into force on July 1, 2014.

Changes to pledge rules

Reform of the general provisions of civil law on pledges

For the legal community, the adoption of a law on the legal principles of pledges was a long-awaited event but also a pleasant surprise. At the end of December 2013, the State Duma adopted a law that entirely transformed paragraph 3 of Chapter 23 RF CC.[5]

The new RF CC rules largely reflect standard practices used in international finance, including project finance and syndicated lending. In particular, the revised RF CC will contain the following new rules:

- The law significantly expands the list of collateral which may be pledged (now, the law specifically allows the pledge of contractual rights, rights under a bank account agreement, securities and rights of participants in legal entities);
- The law adds a new kind of pledge – a *judgment lien (pledge)*, which may be created in favor of a an unsecured creditor on the basis of a court decision and which will thus have priority over subsequent pledges and over claims of unsecured creditors;[6]
- It is now possible to pledge all property of the pledgor to secure all and/or any future obligations to a creditor, up to a specified monetary amount (this rule enters into force on January 1, 2015 and only applies to commercial (entrepreneurial) relations);
- It is now possible to conclude an agreement among pledgees (co-pledgees) and an agreement on the "management of pledged property", i.e., effectively creating a security agent structure for syndications of creditors;
- Rules have been adopted on "preliminary pledges", that is, pledges securing a future obligation;[7]
- The parties to a pledge agreement may now provide that the assignment and assumption of the underlying debt does not terminate the pledge (previously, the pledgor's consent was always required separately in the event of an assignment and assumption of the debt).

Particularly noteworthy is the introduction of a new basis for termination of pledges. A pledge may be terminated if the pledged property has passed to a bona fide acquirer, i.e., a person who did not and should not have known that the property had been pledged. Termination of a pledge in this manner will most likely only be possible with respect to property for which pledges are not recorded in special registers and for which the relevant information is not generally available. However, with new rules on registration of movable property (see next section), this gap should be narrowed considerably.

The revised RF CC also provides certain rules on the subsidiary application of certain suretyship rules (Art. 335.1 RF CC) in cases where the pledgor is a third party.

The new rules on pledge enter into force on July 1, 2014.

Registration system for pledges of movable property

In parallel with the reform of civil legislation, the RF Government has been working with the State Duma to introduce a system for registration of pledges of movable property (the Pledge Register). At the end of 2012, the State Duma adopted a law amending legislation on notaries and creating a Pledge Register,[8] which should have entered force at the beginning of 2014. However, it was cancelled at the end of 2013, and its provisions were moved into the draft of another new law. Nevertheless, upon the entry into force of the respective RF CC provisions and the new law (Law No. 379),[9] the Pledge

5. Federal Law No. 367-FZ on Amendments to Part I of the Russian Federation Civil Code and the Rescinding of Certain Legislative Acts (Provisions of Legislative Acts) of the Russian Federation of December 21, 2013. The amendments fully enter into force as of July 1, 2014 (unless otherwise noted in this section). References in this section are to the RF CC as amended.
6. The new concept is be reflected in Para. 5 of Art. 334 which will read as follows: *"Unless the essence of pledge relations requires otherwise, the creditor or other authorized person in whose interest an prohibition on alienation of property was ordered (Article 174.1), shall have rights and obligations over such property from the moment of entering into force of court's decision according to which the claims of such creditor or other authorized person were satisfied. The priority of satisfaction of the said claims shall be made in accordance with provisions of Article 342.1 of the Russian Civil Code on date whereon the respective injunction was ordered"*. It remains to be seen how the courts will interpret and enforce judgment liens in practice, in the context of insolvencies. Possibly, such liens may be treated the same as other pledges, if created during the relevant hardening period for preferences (one month for ordinary preferences or six months for certain preferences)
7. The parties to a pledge agreement may now provide that the assignment and assumption of the underlying debt does not terminate the pledge (previously, the pledgor's consent was always required separately in the event of an assignment and assumption of the debt).
8. Federal Law No. 166-FZ on Amendments to the Fundamental Legislation of the Russian Federation on Notaries and Certain Legislative Acts of the Russian Federation of October 2, 2012.
9. Federal Law No. 379-FZ on Amendments to Certain Legislative Acts of the Russian Federation of December 21, 2013.

Register will become almost fully operational.[10] This is the third package of pledge-law reform since 2008.

The Pledge Register will reflect information including the details of a pledge agreement, a description of collateral and information on the pledgee and pledgor. The Pledge Register will be maintained jointly by the Federal Notary Chamber and the RF Justice Ministry and will be publicly available online.

To register a pledge in the Pledge Register, either the pledgor or the pledgee must send a written notice to a notary, which may be done by email. If several parties are acting as pledgee or pledgor, only one of them need send the notice. The notary may also submit the information received to the Pledge Register in electronic form, which should significantly streamline the registration procedure.

Unfortunately, with the adoption of this law, Russian notaries will not demand the provision of the pledgor's consent to the registration of a pledge notice, or verify the information in the notice. Therefore, market participants may bear some risk of inaccurate information in the Pledge Register. This should hopefully not prevent the Pledge Register from working well in practice, though conceivably it could provide a pretext for certain pledgers to claim that information given in notices is incorrect.

Factoring: new assignment rules

Regulation of factoring has taken a significant step forward with the adoption of a law amending general rules on assignment ("**Law No. 367**").[11] Before the adoption of Law No. 367, neither the RF CC nor judicial practice provided a clear answer as to whether a *future* claim (a right of claim to arise in the future) could be assigned, or the point at which the assignment was effected. The uncertainty over these issues was an obstacle to exporters and importers entering into factoring agreements on favorable terms: the cost of factoring largely depends on the risks associated with the validity of the agreement, which were subject to the vague RF CC assignment rules.

10. During the period From July 1, 2014 to February 1, 2015 the Pledge Register the Pledge Register will operate only for informational purposes: a person who acquires pledged property and who did not know or could not have known of the existence of such pledge (acquirer in good faith) may rely on the information in Pledge Register and therefore will have more chance to protect his interest in the pledged property. From February 1, 2015 the rights of the pledgees over the property registered in the Pledge Register will have priority over any other pledgees not reflected in the Register.

11. Federal Law No. 367-FZ on Amendments to Part I of the Russian Federation Civil Code and the Rescinding of Certain Legislative Acts (provisions of Legislative Acts) of the Russian Federation of December 21, 2013.

The new Law No. 367 has resolved these issues. The main amendments introduced by Law No. 367 include the following:

- The law now expressly provides for the assignment of future claims;[12]
- The debtor must be given notice in written form only (at the same time a notice will be valid, irrespective of whether sent by the initial creditor or the new one);
- An agreement on the assignment of commercial monetary claims (claims under monetary obligations relating to the entrepreneurial activities conducted by the parties) is deemed valid even if the assignment is prohibited by the initial agreement;[13]
- Special conditions are now provided for the entry into force of the assignment (analogous to representations), breach of which entitles the new creditor to claim reimbursement of losses from the initial creditor; and
- A new rule on delivery of the agreement has been introduced.

These amendments to the assignment rules represent an overall improvement for factoring in Russia. The rules enter into force together with other amendments on July 1, 2014.

Tighter rules for consumer credit

Consumer Credit (Loans) Law

Laws adopted at the end of 2013 substantially amended consumer lending law.[14] The reform of consumer lending was one of the most thoroughly developed and substantiated reforms the Government introduced in the State Duma last year. Along with relevant court practice, its sponsors applied the experience of foreign legislation (in particular, EU Directive 2002/65/EC on the unification of consumer lending legislation, as well as UK and US laws).

The consumer lending law contains detailed rules, among other things, on the following:

- The law's application to both banking and micro-finance institutions;
- General and special (individual) conditions of consumer loan agreements and interest on such agreements;
- The formula for calculating the total cost of the loan;[15]
- The procedure for concluding a consumer loan agreement;[16]
- Information which must be provided to the borrower after the loan is given to the borrower (this must cover, *inter alia,* the amount of outstanding debt, forthcoming payments under the loan agreement and repayment dates);
- The right of a borrower to reject the loan and to make early repayment;[17]
- Assignment of consumer loan agreements;[18] and
- Dispute resolution.

The new rules provide detailed guidance on the conclusion and documentation of consumer loans for banks and borrowers and third parties (such as collection agencies).

Notably, not all the rules of the Consumer Credit Law apply to the consumer mortgage industry. Only the rules on furnishing of information on lending terms, statement of the full cost of the loan, and the prohibition on lenders charging certain fees will still apply to

12. At the same time, such an assignment is only possible in commercial relations (Art. 388.1(1) RF CC). Notably, upon this article coming into force, an agreement on assignment by default will be effective upon closing, or later if provided by the parties (Art. 388.1(2) RF CC).
13. Nevertheless, we note that according to general rules, an assignment may be deemed invalid if it is proven that the new creditor acted in bad faith, that is, that the new creditor knew or should have known that the assignment was prohibited (Art. 382.2 RF CC). We assume that the rule with respect to commercial monetary claims will be *lex specialis*. However, it is possible that the courts will apply Art. 382.2 RF CC to any assignment agreement.
14. Federal Law No. 353-FZ on Consumer Credit (Loans) of December 21, 2013 ("**Consumer Credit Law**"); Federal Law No. 363-FZ on Amendments to Certain Legislative Acts of the Russian Federation and the Rescinding of Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Consumer Credit (Loans) Law of etc. of December 21, 2013. The latter law amends numerous regulatory acts, including: the Law on Protection of Consumer Rights, Law on Agricultural Cooperatives, RF CC, Law on Mortgages, the Administrative Penal Code (APeC), Law on Credit History, Law on Personal Data, Law on Pawnshops, Law on Credit Cooperation, Law on Microfinance Activities, and the Law on Banking Activity.
15. I.e., the total charge for the loan (TCL), which is defined as per a formula specifically set out in the Consumer Credit Law. The TCL includes, *inter alia*, repayment of the loan, accrued interest, payments of the borrower in favor of the lender and third parties (if such is provided by the loan agreement), payments for the issue of an electronic payment facility and payments under an insurance contract.
16. Under Art. 6 of a Consumer Credit Law the consumer *credit* agreement is deemed concluded at the moment when the parties have agreed all the special (individual) conditions of the loan and a consumer loan agreement is deemed concluded when the borrower actually received the loan.
17. E.g., the borrower is entitled to repay the loan without notification within 14 days after receipt of the loan (subject to repayment of all the interest accrued). We note that this 14-day-period is similar to the "*cooling period*", which exists in some jurisdictions, i.e., a special statutory period (generally, more than one week) within which the borrower cannot drawdown the loan, but may cancel the loan without being liable for interest accrued. The "cooling period" aims to prevent impulsive and, as a consequence, risky buys.
18. The Consumer Credit Law now directly allows assignment of rights in consumer loans to non-banking institutions (e.g., collection agencies) and sets forth special rules on communication with borrowers: for example, meetings and telephone communications (including SMS) with the borrower are not allowed during night hours (22 pm to 8 am) or on weekends and holidays (from 20 pm to 9 am).

consumer mortgages. Furthermore, the new version of the Mortgage Law[19] contains special requirements for the assignment of mortgage rights (which are of particular interest for the securitization market).

These laws also introduce additional fines for failure to comply with consumer lending rules. The fines on legal entities for unlawful entrepreneurship in this area can reach 500,000 rubles, or 100,000 rubles for a violation of the loan repayment procedure (art. 14.56 and 14.57 APeC, respectively).

The new consumer lending rules, as with most of last year's reforms, enter into force on July 1, 2014.

Survey of court practice on consumer lending

Ahead of the new reforms, the RF Supreme Court ("**RF SC**") decided to state its opinion on certain matters relating to consumer lending. On May 22, 2013, the RF SC published a survey ("**Survey**")[20] summarizing court practice on consumer lending. The Survey covers aspects of consumer lending such as insurance, penalties, security, dispute resolution and statutes of limitation. Following entry into force of the new Consumer Credit Law, a large part of the Survey will lose its relevance, as in most areas the legislation now goes further and regulates issues that had not been touched on by the Survey.

Derivatives and off-exchange trading

The off-exchange derivatives market received a new boost in 2013 when the National Settlements Depositary ("NSD") assumed the power to register transactions. Under Art. 51.5(6) of the Law on the Securities Market,[21] repo and off-exchange agreements must be registered with a self-regulating organization of professional securities market participants, a clearing organization or an exchange. However, until recently none of the eligible Russian organizations actually carried out registration of all such transactions. In September 2013, the NSD officially began performing registrations of all forms of transaction referred to in Art. 51.5(6) of the Law on the Securities Market.

Although regulation of the Russian financial derivatives market remains new and untested (including in court), the new functions of the NSD and the creation of a single super-regulator at the Central Bank are major steps forward toward the realization of the attractive opportunities provided by the Russian derivatives market.

Capital markets and bonds

Russia is continuing to reform the legal framework for its capital markets. Alongside amendments to the general provisions on securities in the RF CC,[22] the State Duma adopted a law introducing several new, generally-recognized institutions from the international bond market ("**Law No. 210**").[23] Law No. 210 introduces institutions which are effectively new to Russian law, such as the general meeting of bondholders, bondholder representation, and certain rules on early repayment of bonds.

The rules on the general meeting of bondholders are similar to the general principles of the general meeting of participants/shareholders in Russian companies, although with specific rules to be subsequently determined by the Central Bank. The general meeting of bondholders has competence to make amendments to the issuance prospectus, waive certain rights, agree to the termination/set off of bond obligations and appoint new representation.

Bondholder representation is similar in spirit to the Anglo-Saxon institution of the trustee: the bondholder representative is obligated to act strictly in accordance with the instructions of the bondholders, to act in their interests reasonably and in good faith, and to represent their interests in relations with third parties. Bondholder representatives are required to maintain a special account for all payments to the benefit of the bondholders. There are also certain requirements for potential bondholder representatives: representatives must be registered as professional securities market participants, or be Russian legal entities which have existed in the Russian market for at least three years.

The Law provides new requirements for early repayment of bonds, which may take place either at the choice of the issuer, or upon demand of the bondholder, if the appropriate provision is in the issuance prospectus. However, the law introduces imperative grounds on which the issuer must repay the bonds upon demand of the bondholders. Bonds must be repaid upon a material breach of the bond obligations, namely:

- A regular interest payment on the bond is made more than 10 business days late, unless a shorter period is provided in the bond issuance prospectus;
- Payment of a portion of the bond principal is made

19. Federal Law of July 16, 1998 No. 102-FZ on Mortgages.
20. Survey of Judicial Practice in Civil Cases Concerning Disputes Involving the Performance of Loan Obligations, approved by the RF SC Presidium on May 22, 2013.
21. Federal Law of April 22, 1996 No. 39-FZ on the Securities Market.
22. Federal Law No. 142-FZ on Amendments to Subsection 3 of Section I, Part I of the Russian Federation Civil Code.
23. Federal Law No. 210-FZ on Amendments to the Federal Law on the Securities Market and Certain Legislative Acts of the Russian Federation of July 23, 2013.

more than 10 business days late, unless a shorter period is provided in the bond issuance conditions, if the bond principal is paid in installments;

- Performance of the obligation to purchase the bonds is more than 10 days late, unless a shorter period is provided in the bond issuance conditions, if the issuance conditions oblige the issuer to purchase the bonds;
- The security for the bonds is lost or materially impaired.

The new institutions introduced in the relations among bondholders are more or less in line with standard international practices and are likely intended to encourage market participants to issue bonds on the Russian market. It is hoped that the ideas embodied in the new law will find wide application in practice and that Russian courts will interpret its provisions in line with international standards.

Most of Law No. 210 enters into force on July 1, 2014.

Insurance

The State Duma also targeted the insurance market in 2013: a law was adopted making substantial amendments to the Law on Organization of the Insurance Business ("**Law No. 234**").[24] Law No. 234 amends both general provisions on the forms and rules of insurance, insurance agents, brokers and specialized insurance depositaries and the rules on reinsurance and insurance pools. The amendments made by Law No. 234 provide clearer rules for insurance and are also intended to encourage the development of Russian reinsurance and hedging financial risks.

Of greatest interest are the new rules on insurance companies with foreign participation. The following are among the key changes:

- Simplified requirements for the foreign owners of Russian insurance organizations (a potential participant in a Russian insurer must now have only five years' experience in insurance in its home country [previously, the requirement was 15 years on a foreign market and two years on the Russian market]);
- The information on state prohibitions has become more transparent (information on participation quotas on the Russian insurance market and the issuance of prohibitions on mergers and acquisitions are now officially published online by the Central Bank);
- The threshold for insurers with foreign equity participation eligible to operate in voluntary medical insurance (including life insurance), property insurance, and mandatory civil liability insurance has been raised from 49% to 51%.

Insurers with foreign equity participation of more than 49% are still barred from mandatory medical insurance and participation in state contracts.

The provisions of Law No. 234 enter force at various times between 2013 and 2017.

Banking and currency regulation

Creation of a super-regulator

Plans for the creation of a single super-regulator on the Russian financial market had been discussed since the beginning of 2000. But it was only when the RF Government adopted the concept for creation of an international financial center in 2008 that this work began to take on clearer shape. The initial plans called for the creation of the super-regulator involving the Finance Ministry, the Federal Financial Markets Service (FFMS) or the Central Bank. Many hoped that powers would pass to the FFMS, as it was one of the few government services to enjoy respect among market participants. However, despite lively discussion, oversight of the entire financial market passed to the Central Bank in September 2013. Consequently, the former FFMS staff have moved over to the Central Bank and now comprise various Central Bank departments.[25]

As a result, Russia has a single regulator responsible for the entire financial market, as in a number of other countries, e.g., Britain, Switzerland, Singapore, and Germany. The Central Bank is responsible for the Russian banking and insurance sectors and the securities market. It now has the authority to:

- Supervise non-banking financial institutions (including insurance and clearing companies, microfinance organizations, non-state pension funds and mutual funds), securities issuers, joint stock companies and ratings agencies; and
- Defend the rights and lawful interests of shareholders and investors on the financial market, consumers of insurance services and investors in non-state pension funds.

24. Federal Law No. 234-FZ on Amendments to the Law of the Russian Federation on the Organization of the Insurance Business in the Russian Federation.

25. Federal Law No. 251-FZ on Amendments to Certain Legislative Acts in Connection with the Transfer to the Central Bank of the Russian Federation of Powers to Regulate, Supervise, and Oversee Financial Markets of July 23, 2013.

New rules on M&As in the banking sector

Amendments have been made to the Law on Banks concerning mergers and acquisitions on the Russian banking market. In particular, the new amendments affect the rules for obtaining the prior consent of the Central Bank for acquisitions of shares in Russian banks.

Most importantly, the threshold for obtaining Central Bank consent has been lowered: consent is now required for the acquisition of more than 10% of shares (previously this was 20%). This marks a major tightening of control. Second, a purchaser acquiring more than 10% of shares as a result of a transaction must meet certain reputational requirements (similar requirements already existed for bank management). If a transaction is concluded without prior consent, the Central Bank may issue a decision barring the new owner from voting on the share above the 10% barrier.

The new rules came into force on October 2, 2013.

Basel III requirements

On March 1, 2013, the new Basel III requirements entered into force.[26]

The new rules set forth, *inter alia*, certain requirements with regard to subordinated loans and funds received from Russian and certain foreign nongovernmental funds. Now, Russian banks may include in Tier 1 capital subordinated loans which (i) are given to a Russian bank by a nonresident for a period of 50 or more years and (ii) provide a unilateral right of the lender to extend the loan no more than once every 50 years. Besides this, assets received from foreign nongovernmental pension funds are no longer included in a bank's regulatory capital calculation.

State procurement

In the summer of last year, the State Duma adopted a law[27] significantly relaxing the legal procedures applicable to the conclusion of loan agreements with certain state enterprises. The law now no longer covers leasing and interbank transactions concluded between foreign banks and certain enterprises with state participation.

The new rules come into force on July 14, 2014.

Fines for unlawful financial operations

Late in 2012, Russian legislators made an effort to bring radical change to the banking service market by increasing administrative penalties for unlawful currency transactions.[28] The amendments entered into effect on February 13, 2013 and primarily affect residents frequently using foreign bank accounts to receive funds from various sources outside Russia.

The new law imposes certain compliance obligations on residents and a special procedure for such accounts' use, once opened. Upon the entry into force of the amendments to the APeC, violators face a potential fine of 75%-100% of the value of any unlawful currency transaction. A fine may apply, *inter alia*, to:

- Any sale or purchase of foreign currency or checks (including travelers' checks) nominated in foreign currency which bypasses Russian licensed banks; or
- Any settlements under currency operations which bypass accounts (deposits) opened with either Russian licensed banks or foreign banks; or involve funds being credited to accounts (deposits) in banks located outside Russia, when Russian currency legislation does not expressly allow these.

Although restrictions on use of foreign bank accounts had always been on the books, they were seldom observed, and the new law now introduces teeth for their enforcement.

Moratorium on foreign financial transactions by state officials

Last spring, a law [29] ("**Law No. 79**") entered into force barring certain categories of Russian citizens (primarily high-ranking officials and their family members) from conducting certain transactions via foreign banks. Persons covered by Law No. 79 are prohibited from opening or holding bank accounts/deposits, cash or valuables with foreign banks outside Russia and from holding and/or using foreign financial instruments.

Law No. 79 is intended to protect Russian national security and is an important element of the RF President's public campaign against corruption among (and alleged foreign influence on) Russian officials.

26. Regulation 395-P of the Central Bank on Methodology of Determination of the Amount and Assessment of Sufficiency of the Capital of Credit Organizations (Basel III).
27. Federal Law No. 160-FZ on Amendments to Art.1 of the Federal Law on Purchases of Goods, Works and Services of Certain Kinds of Legal Entity of July 2, 2013.
28. Federal Law No. 194-FZ on Amendments to Art. 3.5 and 15.25 APeC of November 12, 2012.
29. Federal Law No. 79-FZ on the Prohibition of Certain Categories of Persons from Opening and Holding Accounts (Deposits), Cash and Valuables with Foreign Banks Outside of the Russian Federation, and Holding and/or Using Foreign Financial Instruments.

Securitization

Law No. 379, which introduces a new system for registration of pledges of movable property (see above), also includes amendments to the Law on the Securities Market.

In particular, Law No. 379 provides for new actors on the secondary mortgage market – specialized companies (finance and project finance). Specialized companies are subject to state registration and have a strictly special-purpose nature: they may be established for acquisition of property rights (for example, for factoring transactions or mortgage lending) or issuance of securities (in this respect they are similar to special purpose vehicles (SPVs) widely used in international bond market practice). The law establishes special requirements for the establishment, restructuring, liquidation and other aspects of the legal status of specialized companies, including bankruptcy. Of course, the provisions on these new company forms raise more questions than they answer and it remains to be seen how they will operate in Russia's legal system or whether their use will become prevalent.

Most of the provisions of Law No. 379 come into force on July 1, 2014.

Judicial practice on insolvency and suretyships

Challenging transactions during insolvency cases – corporate benefit

In summer 2013, the RF Supreme Court ("**RF SC**") issued Rulings No. 59 and No. 60[30] concerning judicial practice on challenging transactions during insolvency cases. One of the apparent objectives of Rulings No. 59 and 60 was to do "damage control" to provide certain guidance on the decisions which had been taken earlier in the OAO Perm Hippodrome and OAO Red October cases.[31] Most of the changes are in Ruling No. 59, which deals with transactions concluded before the entry into force of the new Bankruptcy Law rules in 2009. These changes include:

- Confirmation of the link between Art. 61.2 (suspicious transactions) and Art. 61.3 (preference transactions) of the Bankruptcy Law;[32]
- Clarification of the circumstances in which a debtor may be deemed to show signs of insolvency or insufficient property;
- Confirmation that it is possible to refute the presumption contained in Art. 61.2 of the Bankruptcy Law, and of the person on whom the burden of proof lies for refuting the presumption in Art. 61.2(2) of the Bankruptcy Law.

Ruling No. 60 contains provisions that eliminate defects in previous judicial practice. It makes more explicit reference to the notion of corporate benefit per se. Unfortunately, reference to this notion is only made in Ruling No. 60 (which interprets the old rule in Art. 103.2 of the Bankruptcy Law) and not in Ruling No. 59 (which provides an interpretation of Art. 61.2(2) of the Bankruptcy Law, and which therefore applies to all new transactions). It is hoped that the commercial courts will apply this notion to Art. 61.2(2) of the Bankruptcy Law by analogy, although creditors will need to be prepared to persuade courts to draw the analogy.

Taken as a whole, despite the obvious practical benefits of the new rulings, they still leave room for legal uncertainty. It appears that the RF SC is reinforcing practice that does not make the best application of the notion of "interested party" in the context of bankruptcy. Neither ruling provides a full answer to the questions arising in connection with the OAO Perm Hippodrome and OAO Red October cases. Until the courts develop a fuller approach to the notion of corporate benefit and the role it pays in third-party (including intra-group) credit support, creditors will most likely continue to face risks. Specific risk-mitigation measures should be taken at the stages of both structuring and drafting of security and guarantees.

Individual suretyships

In 2013, the RF SC also published a Survey (see above) of practice in cases involving suretyships by individuals. Among other points, the RF SC confirmed that:

- Disputes relating to suretyships provided by individuals are considered by courts of general jurisdiction, even if the suretyship was provided to secure the obligations of a legal entity;
- Unless otherwise provided, a suretyship terminates upon amendment of the loan obligations; and

30. RF VAS Plenum Ruling of July 30, 2013 No. 59 on Amendments and Addenda to Ruling of the Plenum of the Supreme Arbitration Court of the Russian Federation of December 23, 2010 No. 63 on Certain Matters Relating to the Application of Chapter III.1 of the Federal Law on Insolvency (Bankruptcy); RF SC Plenum Ruling of July 30, 2013 No. 60 on Addenda to the Ruling of the Plenum of the Supreme Arbitration Court of the Russian Federation of April 30, 2009 No. 32 on Certain Matters Relating to Challenging Transactions on the Grounds Provided in the Federal Law on Insolvency (Bankruptcy).

31. We previously reported on these cases (see our news update for August 2013), so we make only general comments here. The disputes considered by the RF SC concerned the practice of third-party (including intra-group) credit support. In the OAO Red October case, the RF SC adopted an ambiguous decision that upheld the decisions of lower courts invalidating both upstream and downstream guarantees on the basis that each was intended "to injure the property interests" of the creditors of the person that provided the security – a dubious conclusion from the point of view of corporate benefit.

32. Federal Law No. 127-FZ on Insolvency (Bankruptcy) of November 26, 2002.

- In certain cases, a suretyship remains in force even after the death of the surety.

Plans for this year

Overall, last year was a successful year in terms of the quantity and quality of banking and financial legislation. However, there is still much to be done. In particular, draft laws on amendments to certain provisions of the RF CC on security, loans, and financial transactions, individual bankruptcy, the merging of the high courts and other issues remain to be adopted.

Contacts

Timothy Stubbs
Partner, Head of Russian Banking and Finance Practice

T +7 495 644 05 00
timothy.stubbs@dentons.com

Andrei Strijak
Partner

T +7 495 644 05 00
andrei.strijak@dentons.com

John Stansfield
Partner

T +7 495 644 05 00
john.stansfield@dentons.com