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The International Comparative Legal Guide to:

Private Client 2016

5th Edition

A practical cross-border insight into private client work

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EDITORIAL

Welcome to the fifth edition of *The International Comparative Legal Guide to: Private Client*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of private client work.

It is divided into two main sections:

Eight general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting private client work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in private client laws and regulations in 29 jurisdictions.

All chapters are written by leading private client lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jonathan Conder and Robin Vos of Macfarlanes LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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A Few Words about Currency Control: What You Should Know Before Moving to Russia

Ivanyan & Partners

Yulia Chekmareva



Introduction

Under normal circumstances, when a person intends to immigrate to a foreign country, his or her pre-entry, pre-immigration planning focuses primarily upon tax planning. This may well be sufficient when moving to a number of countries, but falls short of requirements when immigrating to Russia or considering doing business there. Though, Russia has taken significant strides toward embracing free market principles, some market controls still remain. These control mechanisms (in tandem with other factors) include currency control (hereinafter referred to as “CC”). Interestingly, not only current or former planned economies have CC. For example, the UK actively used CC from 1939 up to 1965 under economic rebuilding policies. Also, just a few years ago, some opponents of FATCA¹ in the U.S. considered the new reporting system analogous to CC requirements.

Furthermore, Russian CC often catches those foreigners unawares, who do not plan to move to Russia permanently but only intend to travel around Russia or temporarily work there. So, the purpose of this article is to explain the basics of CC in Russia: (1) what CC is; (2) the purpose of CC as it is seen by the government; (3) what the current legal framework for CC is; (4) who is responsible for CC implementation; (5) what restrictions on individuals’ transactions are imposed by law; (6) what transactions are allowed under CC; (7) what reporting obligations there are for currency residents; and (8) what penalties exist for non-compliance with CC regulation. The article focuses only on the CC issues, often encountered by individuals, who are currency residents or non-residents. And, though, the article cannot be used as legal advice, and so serves as a legal opinion, it may help to start or further your research on the topic.

A Few Terms and Definitions

Before we proceed to an overview of the current CC legal framework, it is necessary to explain the following terms, which are used in Russian CC regulation: currency control; Russian and foreign currency; currency residents and non-residents; and currency transactions. Let us start with the term “CC”. Interestingly, this term is not directly defined in the Russian legislation, however, it is common to regard CC as state control over currency transactions and over the compliance of these transactions with currency regulation.²

Russian currency consists of rubles on bank accounts, coins and banknotes. Foreign currency is the money issued by foreign governments. It may be in the form of coins and banknotes, or electronic money on bank accounts.

Currency residents (hereinafter referred to as “currency residents/residents”) are: (a) Russian citizens, except those who permanently

reside abroad; (b) foreign citizens, who have obtained a permanent resident status in Russia; (c) legal entities registered in Russia; and (d) their branch offices located abroad. Currency residency is not to be confused with tax residency. In contrast with currency residency, tax residency does not depend on Russian citizenship.

What does it mean to be a Russian currency resident? A currency resident has to comply with all the requirements and restrictions imposed by currency control regulation regardless of the person’s place of abode and where he/she is engaged in transactions.

Currency non-residents (hereinafter referred to as “non-residents”) are: (a) foreign citizens, except those who permanently reside in Russia; (b) legal entities registered in foreign countries; (c) their offices operating in Russia; and (d) Russian citizens, who reside abroad for one year or longer and have permanent resident status or a work/student visa.

Notably, currency regulation does not give a clear definition as to what should be considered a one year long term when explaining the residency status. Russian courts also have not provided any clarification so far. That is why it is recommended for individuals with dual or multiple citizenships, one of which is Russian, to be aware of this circumstance. If Russian courts uphold the idea that every visit to Russia terminates the “one year” term, any short visit to Russia will make Russian citizens, permanently living abroad, Russian currency residents for another year.

Currency transactions are transactions: (a) between currency residents and non-residents; (b) between residents where they transfer foreign currency or buy/sell foreign securities; and (c) between non-residents where they buy/sell or use Russian currency and other types of transactions listed in §1(9) of Federal Law No 173–FZ on Currency Regulation and Control, dated December 10, 2003.

The Purpose of Currency Control

Why does CC still exist in Russia? The government uses CC to protect the Russian currency from adverse fluctuation and to ensure stability. CC and currency regulation are intended to facilitate the development of a sustainable internal currency market and to contribute to Russian economy in a positive manner.³

Currency Control Regulations

The primary law which regulates CC in Russia is Federal Law No 173–FZ on Currency Regulation and Control, dated December 10, 2003, with numerous amendments (hereinafter referred to as “CCL”). In order to fully comply with CC, it is necessary to also become acquainted with the regulations issued by the Central Bank

of Russia. The most important one is Instruction N138-I of June 4, 2012, regarding Currency Transactions to the Authorized Banks, Processing Passports of Currency Transactions, and Recording Currency Transactions and Control over them by the Authorized Banks. Penalties for the violation of CC requirements are stipulated by Section 15 of the Code on Administrative Offences and Criminal Code of the Russian Federation (hereinafter referred to as “CAO” and “Criminal Code” respectively).

What Organisations are in Charge of Currency Control in Russia?

According to CCL, the following organisations are responsible for implementing CC in Russia: the Central Bank of Russia; the Federal Agency on Finance and Budget Monitoring (*Rosfinnadzor*);⁴ the Federal Revenue Service; authorised banks; and professional participants of the securities markets. In most cases, individuals report on currency transactions and only submit the documents required by CC regulations to the authorised Russian banks⁵ where these individuals hold bank accounts. However, the list of documents required for CC is flexible and each bank defines it on case-by-case basis. If an individual complies with all the bank’s requirements, usually CC procedures finish within the bank.

Allowed Currency Transactions

For non-residents. Non-residents may exchange foreign currency for rubles and rubles for another currency in banks without opening accounts. There is no size limitations imposed on exchange transactions. Additionally, non-residents may open accounts in almost any bank in Russia. The sole condition is that the bank must be authorised to commerce with non-residents (this information should be provided on the bank’s website). There is no restriction imposed on transactions between residents and non-residents (CCL §6), except for those specially named in the law. Non-residents may also freely transfer foreign currency among themselves using foreign bank accounts and accounts opened in Russia. Money transfers without using bank accounts are allowed only for transactions conducted within the Russian territory (CCL §10(1.1)). For those purposes, non-residents may use different services, e.g., Western Union or postal transfers. To transfer rubles between non-residents, they are required to use their ruble bank accounts opened in Russian banks (or they can also use postal transfers and/or other similar services) (CCL §10(3)).

For residents. Firstly, residents, except for Russian politically exposed persons,⁶ may open bank accounts in foreign banks. Before 2014, the foreign bank accounts could only be used by Russian residents on a very few occasions. The 2014 amendments to CCL vastly extended the list of transactions allowed (CCL §12). Currently, residents may use their foreign bank accounts for:

- a) Debiting them with interests on account balance, cash, social security payments (e.g., pensions, child and spousal support, scholarship), insurance payments from foreign insurers, foreign court money awards (except for international arbitral awards), one’s funds converted into another currency, salaries and other employment payments from non-resident employers for services performed abroad. No country limitations for such transactions are imposed.
- b) Debiting them with rental income from real estate or moveable property situated in foreign countries, grants from non-resident grantors and income on external securities. These transactions are allowed if they are conducted only through bank accounts opened in OECD or FATF country-members.

Secondly, CCL excludes foreign currency transactions between residents. However, there once again exists a list of exceptions which has been significantly broadened over the last 12 years and now it consists of:

- (a) unlimited foreign currency transfers between residents’ own foreign and Russian bank accounts;
- (b) unlimited foreign currency transfers between close relatives if payments are made from Russian bank accounts to accounts held in Russian or foreign banks;
- (c) unlimited foreign currency transaction between residents if the money is transferred from a foreign bank account to a Russian bank account;
- (d) limited foreign currency transfers between residents-non-relatives if they are made from a Russian bank accounts to accounts held in Russian or foreign banks. The daily limit for such transactions is \$5,000;
- (e) crediting residents’ bank accounts by resident-employers with advance or post-payment to cover expenditures related to business trips abroad; and
- (f) other transactions named in CCL §9(1).

Therefore, in order to comply with currency control requirements, residents and non-residents should revisit the lists of the allowed transactions in CCL §§9-14⁷ every time before transferring or receiving foreign or Russian currency on their accounts.

Both, residents and non-residents, should be aware that they are able to physically transfer cash into or out of the Russian territory without any limitations. If cash in rubles or foreign currency exceeds the equivalent of \$10,000, the whole sum is subject to declaration at the Russian Customs Service (CCL §15; Sec. 3 of the Eurasian Economic Community’s Agreement on Cash Transfers by Individuals of July 5, 2010).

Reporting Obligations for Residents

One of the reporting obligations is to notify the Federal Tax Service regarding any account or deposit opened, altered, amended, or closed in a foreign bank within 30 days of its opening, changing, or closing.

The other obligation is more recent and was imposed by the 2014 amendments to CCL. According to CCL, from 1 January 2015, residents must regularly report on cash movement in their foreign bank accounts (deposits) (CCL §12(7)). Though, the new reporting obligation has been imposed, the reporting procedure, including reporting periods, deadlines, and even a report form, has not been established at the time of writing. After all, the Federal Tax Service added to the residents’ confusion, issuing controversial newsletters and comments. The latest official position is that, until the procedure has been fully designed and is operational, individuals may report in free form but they are not obliged to do it. In addition to a lack of a consistent reporting procedure, there is also no sanction for non-compliance with CCL §12(7) reporting obligation.

Liability for Non-compliance with CC Regulation

As previously noted, non-compliance with CC regulation will usually trigger administrative penalties. In case of severe CC violations, residents may also be subject to criminal charges (Criminal Code §§193, 194). The smallest penalties are set forth for non-observance with reporting obligation. For example, reporting on opening, changing or closing foreign bank accounts after the deadline or failure to comply with the reporting form may

be penalised with a one thousand five hundred ruble fine at worst (CAO §15.25(2)). Non-reporting will amount up to a five thousand ruble fine (CAO §15.25(2.1)).

Considering other non-reporting violations, if residents and non-residents are conducting impermissible transactions, they may be subject to a fine amounting up to 75–100% of the size of the illegal transaction (CAO §15.25(1)).

Failure to declare cash over \$10,000 at Customs, when entering or leaving the Russian territory, may result in a fine of once or twice the size of the non-reported cash sum or with confiscation of the original cash amount (CAO §16.4). If the amount of the non-declared or improperly declared cash exceeds \$30,000, a person is subject to criminal charges (Criminal Code §200.1). The range of criminal charges varies from a sentence to two years in prison or to a fine amounting to 300–1,000% of the amount of the illegal transfer. A range of further alternative sanctions also exist and can be applied by the courts.

Conclusion

Russian currency regulation is complex, but residents and non-residents must comply with it as they observe anti-money laundering and tax laws. Non-compliance with CC may invoke harsh financial penalties and possibly criminal charges. So, it is essential for all concerned to become aware of CC requirements and follow them. Finally, there is a positive tendency to liberalise currency regulation, and much has already been achieved in that sphere over the past few years.

Endnotes

- [1] Foreign Account Tax Compliance Act of March 18, 2010 (26 USC § 6038D).
- [2] N.K. Khimicheva, Finance Law Case Book, 706 (Norma, 5th edition, 2012).
- [3] Introduction to Federal Law No 173–FZ on Currency Regulation and Control, dated December 10, 2003.
- [4] <http://www.rosfinnadzor.ru>.
- [5] According to banking regulation, only legal entities registered in Russia may act as banks and provide bank services. Russian law makes all foreign banks and international bank groups act through their affiliated entities in Russia.
- [6] The list of PEP is set forth in §2(1) of Federal Law No 79–FZ on Ban for Some State and Municipal Officers, and Other Persons to Open Foreign Bank Accounts and Own External Securities of May 7, 2013.
- [7] One should keep in mind that the given sections are as of October 15, 2015, and applicable until CCL is changed or abolished.



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Yulia has a degree in law from the State Academic University for the Humanities (GAUGN) in Moscow. Subsequently, she graduated with a Master's Degree in Business and Finance law at George Washington University Law School (Washington, D.C., USA).

In 2001, she started providing legal advice and support for private charities in Russia. From 2003 to 2008, Yulia worked as a lawyer in the Russian branch of the Charities Aid Foundation Group of Companies (CAF, UK). From 2008 to 2011 she continued working there as the head of the legal department.

From 2004 to 2011, Yulia, as a legal expert, actively participated in drafting bills introducing amendments to laws on charity and non-profit organisations, including preferential tax treatment and endowment. As a legal expert, she also cooperated with a number of state and public initiatives, among those were:

- the Commission for the Development of Philanthropy in Russia of the Public Chamber of the Russian Federation; and
- the working group established by the President of the Russian Federation to deal with the improvement of Russian legislation on non-profit organisations.

At that time, Yulia also lectured and conducted workshops on legal issues in taxation and other aspects of charity in Russia for private and corporate investors.

In 2011, Yulia joined Ivanyan & Partners Law Firm as the Head of Legal Advice and Support for Private Clients. She switched from the narrow philanthropic questions to a wider range of legal issues, including charity, helping high-net-worth individuals to solve them.

IVANYAN & PARTNERS

Ivanyan & Partners was established in 2006 by a group of attorneys-at-law and political advisors. The main aim of this union has always been a determination to optimise our own efforts as consultants and to participate in complex projects that require a combination of our legal expertise with the knowledge of the applicable private interests protection and promotion tactics when dealing with the government authorities.

The legal practice of the firm embraces all major areas of commercial law and international business affairs, with a particular focus on construction and real estate and on dispute resolution. Our public policy experts advise on various issues related to interaction with federal and regional authorities, including advocating interests of corporations before federal and regional decision makers, working out and supporting legislative initiatives, negotiating state contracts and PPPs, and building public alliances of corporate investors to promote interests in particular economic spheres.

In our work we follow the professional requirements of the Federal Bar of the Russian Federation, the Moscow and St. Petersburg Bars, and the Law Society of England and Wales.

Ivanyan & Partners law firm has been recognised by a major European legal guide, *The Legal 500*:

Ivanyan and Partners provides 'excellent advice and is very good value for money'. The practice has worked on litigations of huge value for some of the most powerful interests in Russia. Clients praise the lawyers' 'commercial sensitivity and political pragmatism brought to bear on cases'.

– *The Legal 500 Europe, Middle East & Africa, Dispute Resolution 2010*.

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