# SINO-RUSSIAN BUSINESS: FIVE TIPS ON RUSSIAN BANKING LAW

In order to carry out any banking transactions with Russian banks, Russian legal entities or individuals, it is necessary to consider the information below which describes some lending issues, with particular focus on foreign currency and secured lending.

## Tip 1: Lending documents and governing law

Russian principles of contractual law are generally permissive, allowing parties the freedom to negotiate terms of credit agreements to suit their commercial requirements. In addition, under Russian conflicts of laws principles, parties to a credit agreement may generally choose a relevant foreign law as the governing law of the agreement. It is usual for credit agreements to be governed by a commonly used international law, for example English law or the law of the lending entity. However, each case should be carefully analysed to determine if there are particular enforceability issues which might arise.

## Tip 2: Security

Significant amendments to Russian security legislation have recently come into force (the "**Security Amendments**"). The Security Amendments have introduced a number of legal developments, in particular, on the subject of the possibility of a pledge of funds being credited to the pledgor's bank accounts. The Security Amendments have also introduced changes that affect secured creditors' rights, as well as a "security agent" concept and the following legislative changes: the concept of co-pledgees, regulations in relation to the register of movable property pledges and new regulations and rules regarding subsequent pledges and the concept of pledge management agreements.

In Russia, the principal form of security is a pledge. In the case of competing pledges, the first by creation time generally has priority. The Security Amendments introduce the possibility of changing the priority of pledges by entering into an agreement that is either between the pledgees or between the pledgees and the respective pledgor.

The Security Amendments provide for the creation of a register of notices of pledges over movable property. A pledgee and a pledgor may register a pledge in this register through a notary. Although registration is not obligatory for the parties, if they do so, they will be awarded various benefits.

A pledge of shares held directly in a joint-stock company must be registered in the joint-stock company's register (which must be held by an independent licensed company). For participatory interests in limited liability companies, pledges must be notarised and recorded on the public Unified State Register of Legal Entities.

Under Russian law, interests in land (e.g. freehold and leasehold interests) are considered "immovable property" and must be registered in the Unified State Register of Rights to Immovable Property and Transactions Therewith. A mortgage does not come into effect until it is registered by the relevant land registration authority.

For more detailed information in relation to amendments to the Russian security legislation, please use the following link: http://www.cmslegal.ru/Russian-Civil-Code-reform--A-new-pledge-regime-30-06-2014.

**Tip 3: Enforcement**

Enforcement is traditionally carried out by way of public auction through the Russian courts. Changes to the law in 2009 introduced a wider range of out-of-court enforcement options which may be included in an agreement. These measures include (i) the possibility of a direct or commission sale of the assets; or (ii) a creditor appropriating title to the secured assets.

To allow out-of-court enforcement the relevant pledge agreement must be notarised, unless the pledged asset is to be held by the pledgee. However, in the case of a dispute between a pledgor and a pledgee, it is likely that any provision for out-of-court enforcement would nevertheless be referred to the court.

**Tip 4: Currency control**

Federal Law No. 173-FZ "On Currency Regulation and Currency Control" dated 10 December 2003 (the "**Currency Law**") regulates currency transactions. Most currency transactions can be conducted without limitation. However, the Currency Law still contains a number of restrictions which should be considered (i) when dealing with transactions between residents and non-residents; and (ii) when importing and exporting foreign currency in cash.

Under the Currency Law, persons are categorized as either "residents" or "non-residents". Generally, foreign currency operations between residents are prohibited, although there are some exceptions.

Certain transfers of foreign currency and roubles are now deemed to be currency operations. This creates certain limitations for residents when transferring funds from their accounts, whether held in Russia or abroad, to either accounts they hold abroad or to those held by third parties.

Payments in any currency are permitted without restriction between non-residents, provided that any such payments in Russian roubles in the territory of the Russian Federation are made to and from those non-residents' accounts opened with Russian authorised banks.

Generally, foreign currency transactions between residents and non-residents are also permitted without any restrictions. However, "transaction passports", which record foreign currency flows through Russian authorised banks, are required to be filed and maintained with an authorised bank for all transactions involving the import or export of goods, loans, the provision of services and intellectual property between residents and non-residents.

Breaching the currency control rules can result in administrative and criminal sanctions. It depends on the degree of damage caused by the offense.

**Tip 5: The anti-money laundering law**

Federal Law No. 115-FZ "On Combating Money Laundering and the Financing of Terrorism" (the "**Anti-Money Laundering Law**") is the primary legislative act in the Russian Federation aimed at preventing money laundering activities and the financing of terrorism, and is supported by numerous recommendations, binding instructions and regulations of the Central Bank of the Russian Federation (the "**CBR**") and other authorities.

The Anti-Money Laundering Law applies to individuals and legal entities engaged in transactions with assets in Russia, as well as so-called "regulated entities" and the state authorities responsible for monitoring money laundering activities in Russia. It provides for mandatory internal procedures and reporting requirements in the event of any suspicious or otherwise monitored transactions.

Financial institutions, such as banks and non-banking credit organisations, professional participants of the securities market, insurance and leasing companies and other non-credit organisations that deal with the transmission of money (the "**Regulated Entities**") are required, with limited exceptions, to perform due diligence by ascertaining the identity of a customer (and beneficiary) and monitoring transactions for suspicious activity.

The Regulated Entities must identify and report transactions of a suspicious nature to the Federal Financial Monitoring Service, a designated monitoring authority. These transactions, among others, include cash or non-cash transactions of at least RUB 600,000 (EUR 12,765) and immovable property transactions of at least RUB 3 million (EUR 63,830), or the equivalent of these amounts in foreign currency. If one of the parties to a transaction is suspected of being related to terrorist activity, the transaction is subject to mandatory control regardless of the amounts involved.

According to the Anti-Money Laundering Law the CBR may undertake preventative and/or enforcement measures. Enforcement measures may also include the imposition of a penalty and withdrawal of the banking licence. The Russian Criminal Code provides for criminal liability for breaches of the legislation on anti-money laundering, including individual penalties and imprisonment of the bank's management.

For further information, please contact:

**Konstantin Baranov**
Partner

CMS, Russia
Gogolevsky Boulevard, 11
119019 Moscow, Russia

**T:** +7 495 786 40 00
**F:** +7 495 786 40 01
**E:** konstantin.barabov@cmslegal.ru