



## NEW REGULATION OF FACTORING TRANSACTIONS UNDER FOREIGN TRADE CONTRACTS

*FAO heads of legal departments in financial institutions and other organisations.*

**Pepeliaev Group advises that a Federal Law<sup>1</sup> has been enacted, enabling Russian banks and factoring companies to offer Russian clients financing services involving the assignment of receivables (factoring) under foreign trade contracts.**

The amendments will come into effect starting from 28 December 2015.

Russian currency legislation imposed certain restrictions on international factoring services being granted to Russian companies, including in particular:

a ban on currency transactions between residents (currency transactions between Russian factoring companies and resident exporters were not classed as permitted transactions);

a resident exporter could not meet the legal requirement that currency proceeds be repatriated, because in such a case the exporter would obtain money from the financial agent (the factor) and the money could not be classified as export proceeds.

The amendments that have been adopted enable Russian banks and factoring companies to offer financing to Russian exporters under factoring agreements.

**π<sup>g</sup>** | *This is especially relevant given the current economic situation, when exporters often find themselves in a situation when they need liquidity, the only source of which may be receivables from non-residents. The receivables from non-residents may be used as a financial asset in relationships with Russian banks and factoring companies.*

The amendments provide that settlements under factoring agreements will not be banned as currency transactions between residents, where a Russian resident assigns to the financial agent receivables under a foreign trade contract.

When a factoring agreement is made, an obligation to repatriate the proceeds remains imposed on the resident exporter. However, the resident exporter is deemed to have discharged the obligation provided that it has ensured that foreign or Russian currency had been obtained from the non-resident under the foreign trade contract within the time limits set in the contract and such currency has been credited to the bank account of the financial agent (factor) with the authorised bank or to the

correspondent account with the authorised bank (if the financial agent (factor) is the bank itself).

**π<sup>g</sup>** | *Resident exporters still need to oversee that the deadlines for currency proceeds to be repatriated have been met and undertake measures to recover the payment from the non-resident or extend the term of the contract. An administrative fine may be imposed on the resident exporter for failing to meet the repatriation requirement, and the amount of the fine may be: 1/150 of the refinancing rate of the Russian Central Bank applied to the money credited with the authorised banks in violation of the established deadline may be imposed for each day of the delay in crediting the money; and/or 3/4 of the money that has not been credited with the authorised banks.*

The financial agent, in turn, must notify the resident exporter within the time frame set by law as to whether the non-resident has discharged (failed to discharge) the obligations stipulated in a foreign trade contract (or that the receivables have been assigned under the foreign trade contract) and attach the documents required. If failing to do so (failing to send a notice or deliver the documents needed), the financial agent may have a fine of RUB 40,000 to 50,000 imposed on it.

### Civil law regulation of factoring agreements

Earlier, the Russian Federation joined the UNIDROIT Convention on International Factoring<sup>2</sup>. This allows Russian legislation to be brought into line with international factoring standards. This, in turn, creates the conditions under which Russian exporters may fully benefit from utilising export and pre-export financing tools. Yet, the amendments to the currency legislation are compulsory for international factoring transactions to be used.

<sup>1</sup> Federal Law No. 181-FZ dated 29 June 2015 "On amending Federal Law "On currency regulation and currency control" and article 15.25 of the Russian Code of Administrative Offences".

<sup>2</sup> Federal Law No. 86-FZ dated 5 May 2014 "On Russian Federation's joining the UNIDROIT Convention on international factoring".

In addition to the Laws adopted, a draft Federal Law is also pending "On amending the Civil Code of the Russian Federation and certain items of the legislation of the Russian Federation with regard to factoring transactions"<sup>1</sup>. This draft law is expected to make significant changes in the Russian Civil Code in terms of regulating factoring agreements.

### What to think about and what to do

If a decision is made that a factoring agreement is to be concluded under foreign trade contracts, the parties should take account of the above legal implications of entering into the contractual relationships. Specifically, each party should comply with currency legislation. When the corresponding agreements and supply contracts are entered into, care should be taken in drafting the terms and conditions of such agreements and contracts and, especially, the obligations imposed on the parties.

### Help from your adviser

Pepeliaev Group's lawyers are ready to provide full-fledged support regarding the issues which may arise when suppliers and financial agents use factoring in their operations. We may assess the risks of factoring tools being used in company operations, assist with drafting and concluding the corresponding contracts, and ensuring that currency legislation is complied with when factoring is used.

### Contact details



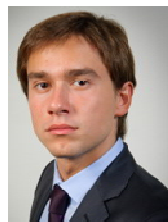
**Igor Marmalidi**  
Partner  
Pepeliaev Group  
Tel.: +7 (495) 967 00 07  
[i.marmalidi@pgplaw.ru](mailto:i.marmalidi@pgplaw.ru)



**Ivan Khamenushko**  
Senior Partner,  
Head of Tax Practice  
Pepeliaev Group  
Tel.: +7 (495) 967 00 07  
[I.Khamenushko@pgplaw.ru](mailto:I.Khamenushko@pgplaw.ru)



**Lidia Gorshkova**  
Head of Practice  
Pepeliaev Group  
Tel.: +7 (495) 967 00 07  
[l.gorshkova@pgplaw.ru](mailto:l.gorshkova@pgplaw.ru)



**Vladislav Korablin**  
Associate  
Pepeliaev Group  
Tel.: +7 (495) 967 00 07  
[v.korablin@pgplaw.ru](mailto:v.korablin@pgplaw.ru)



**Lyubov Romaschenko**  
Senior Associate  
Pepeliaev Group  
Tel.: +7 (495) 967 00 07  
[L.Romaschenko@pgplaw.ru](mailto:L.Romaschenko@pgplaw.ru)



**Sergey Spasenov**  
Partner (St Petersburg)  
Pepeliaev Group  
T.: +7 (812) 640-60-10  
[s.spasenov@pgplaw.ru](mailto:s.spasenov@pgplaw.ru)



**Egor Lysenko**  
Head of Pepeliaev Group's  
Siberian Office in Krasnoyarsk  
T.: +7 (391) 277-73-00  
[E.Lysenko@pgplaw.ru](mailto:E.Lysenko@pgplaw.ru)

<sup>1</sup> The draft Federal Law "On amending the Civil Code of the Russian Federation with regard to factoring transactions" has not been put before the State Duma of the Russian Federal Assembly as at the date on which this alert is published. It may be seen at: <http://regulation.gov.ru/Projects/List>