



Amendments to Currency Regulations

What you need to know

Instructions No. 181-I of the Central Bank of the Russian Federation dated 16 August 2017 (the "**Instructions No. 181-I**") introduced amendments to the method for residents and nonresidents to provide confirming documents and information to authorized banks when performing currency operations. These changes entered into force on 01 March 2018.

Federal Law No. 64-FZ dated 03 April 2018 ("**Federal Law 64-FZ**"), which amended the Federal Law On Currency Regulation and Currency Control (the "**Federal Law on Currency Regulation**") and Article 15.25 of the Code of Administration Offences of the Russian Federation (the "**Code of Administration Offences**"). In accordance with the indicated changes, loans provided by residents to nonresidents fall directly under the norms of currency legislation concerning repatriation. This law entered into force on 14 April 2018.

Federal Law No. 325-FZ On Amending Articles 19 and 23 of the Federal Law On Currency Regulation and Currency Control and the Code of Administrative Offences of the Russian Federation ("**Law 325-FZ**") added new obligations for residents, as well as amended the provisions concerning liability in the field of currency regulation. These changes will enter into force on 14 May 2018.



The procedure of executing a transaction passport was replaced by the procedure of registering a contract in an authorized bank

In accordance with the new **Instructions 181-I**, the duty for residents to execute and provide transaction passports to an authorized bank has been terminated. This procedure was replaced by the procedure of registering contracts, which in turn is very similar to the method of executing a transaction passport as concerns the provision of information and documents. The primary difference is that the transaction passport form is no longer required to be completed in connection with the fact it is no longer used.

Moreover, the amounts at which a contract must be registered have been changed. The amount of the obligations under the contracts (credit agreements) must be equal to or larger than an equivalent in a foreign currency of the following:

- For import contracts or credit agreements – **RUB 3 million**;
- For export contracts – **RUB 6 million**.

The obligation of repatriation is directly applicable to loans provided by residents in a foreign currency

Law 64-FZ establishes the duty of residents in relation to the receipt of foreign currency or the currency of the Russian Federation owed in accordance with the terms and conditions of loan agreements from nonresidents in the residents' bank accounts in authorized banks.

The corresponding changes were made in Part 4 of Article 15.25 of the **Code of Administrative Offenses**, in accordance with which a breach of the duty to repatriate monetary funds in the amounts of a loan entails administrative liability for residents up to a fine in an amount of three-fourths to one amount of the total amount of monetary funds not deposited to accounts in authorized banks.

It must be noted that uncertainty had previously existed until the present moment in relation to whether the general requirements on ensuring the receipt from nonresidents of counter fulfillment under concluded foreign trade contracts in instances where residents provide loans to nonresidents were applicable. This uncertainty was caused by the fact that loan agreements were not specifically mentioned in the list of instances to which the obligation of repatriation provided for in Article 19 of the **Law on Currency Regulation** applies.

It is worth noting the method concerning the validity of the amendments provided for in **Law 64-FZ** in relation to time. The above-mentioned provisions are not applicable to loan agreements concluded before the law enters into force, with the exception of agreements whose material terms and conditions were amended after the day **Law 64-FZ** enters into force.

The law does not specify how "material terms and conditions" should be understood in this context. Until the formation of a stable practice in relation to this issue, the safest approach will be to assume a maximally wide interpretation of this term.

Additionally, **Law 64-FZ** expanded the list of exceptions when monetary funds are not subject to repatriation and monetary funds owed by a nonresident to a resident may not be deposited to an account in an authorized bank, which includes, in particular, the following instances:

- When offsetting similar mutual claims under loan agreements concluded between a resident and nonresident, provided that the nonresident's counterclaim arose as a result of the provision of a loan to the resident by transferring monetary funds to the resident's account opened in an authorized bank
- When a resident provides a nonresident monetary funds under a loan agreement connected with the financing of a geological study, reconnaissance, and/or extracting mineral resources in those cases defined by law
- When a resident provides a nonresident with foreign currency or currency of the Russian Federation under a loan agreement connected with financing investments and/or innovative activities in those cases defined by law

Article 15.25 of the Code of Administrative Offences has been amended

Law 325-FZ introduced, in particular, the following amendments to Article 15.25 of the **Code of Administrative Offences**, which regulates administrative liability in the area of violations of currency legislation:

- A company's officer became the specific subject of administrative liability under article 15.25 of the **Code of Administrative Offences** in relation to carrying out unlawful currency operations (Part 1 of Article 15.25 of the **Code of Administrative Offences**) and violations of the obligation to repatriate monetary funds (Part 4, 4.1, and 5 of Article 15.25 of the **Code of Administrative Offences**). Previously, in relation to the above violations, an officer was understood to only be an individual who carried out business activities without forming a legal entity. As of 14 May 2018, an officer may be held administratively liable in the form of a fine in an amount from twenty thousand to thirty thousand Russian rubles.
- Liability has been created in the event an officer's repeat commission of the above administrative violations (Parts 1, 4, 4.1, and 5 of Article 15.25 of the **Code of Administrative Offences**) if said officer was previously subject to an administrative penalty for a similar administrative violation. A repeat violation entails disqualification for a period from six months to three years.

New requirements for foreign trade contracts and residents

Law 325-FZ introduced a provision, in accordance with which agreements (contracts) concluded between residents and nonresidents when carrying out foreign trade activities should indicate the terms for the parties' fulfillment of the obligations under such agreements (contracts) for the purposes of fulfilling the requirements to repatriate foreign currency and currency of the Russian Federation.

What do you need to pay attention to?

Companies should pay attention to the amended method for residents and nonresidents to provide authorized banks with confirming documents and information in the event currency operations are carried out.

The field of currency control has always been distinguished by significant fines and severe regulation. The legislature is continuing this trend by introducing clarifying norms, new fines for companies' officers, and adding sanctions in the form of the possibility of officers' disqualification. Therefore, currency regulation remains an area that requires specific attention by the participants in foreign trade activities.



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