



**MAJOR CHANGES TO THE RUSSIAN CIVIL CODE FROM 1 JUNE 2018:  
FINANCIAL AND SECURITY TRANSACTIONS**



On 1 June 2018, changes to the Civil Code of the Russian Federation (hereinafter - the 'Civil Code') and certain other federal laws will come into force in terms of regulation of certain types of obligations and contracts, and foreclosure on certain types of assets, introduced by Federal Law No. 212-FZ dated 26 July 2017.

In particular, new types of contracts are introduced in the Civil Code: precious metals bank deposit contract, precious metals bank account contract, public deposit account contract, escrow contract.

This review highlights the most significant novelties.

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## **1 Loan Contract**

The lender under a loan contract may transfer or undertake to transfer to the borrower not only money, things defined generic characteristics, but also securities.

As the general rule, a loan contract shall no longer be deemed concluded from the moment of transfer of the loan amount or other subject matter of the loan to the borrower. However, this rule is still applicable to loan contracts entered into by natural persons as lenders.

In case a loan contract as consensual (when the lender is obligated to provide a loan), the following options for unilateral termination by the parties are provided:

- the lender may refuse to perform the contract in whole or in part, if there are circumstances that clearly indicate that the loan will not be repaid on time;
- the borrower generally may refuse to receive the loan in whole or in part, having notified the lender thereof before the transfer of the subject matter of loan, and if such a period is not established, at any time before the loan is received.

The loan amount under a loan contract between natural persons, upon exceeding which the contract must be concluded in writing, is set as 10,000 roubles (currently - 10 minimum statutory monthly wage).

If the loan contract does not explicitly provide that the borrower shall not pay interests for using the loan and the amount of such interests, the interest rate shall be determined by the key rate of the Bank of Russia as effective in the relevant periods (rather than the bank interest rate (refinancing rate) at the place of residence or location of the lender, as currently provided).

The interest rate for using the loan can be specified in the contract as (a) a fixed rate in percent per annum, (b) a rate in percent per annum, which amount may vary depending on the conditions stipulated in the contract, or (c) in any other way allowing to determine the interest rate as of the time of payment.

A loan contract is assumed to be interest-free, unless otherwise is expressly provided therein, if it is concluded between natural persons, including individual businessmen, for an amount not exceeding 100 thousand roubles.

In the event under the loan contract is concluded between (a) natural persons or (b) a legal entity that does not perform professional activities for the provision of consumer loans, and a natural person as the borrower, the interest rate is two or more times higher than the interest usually charged (usurious interest), a court may reduce the interest rate for using the loan to the interest rate usually charged in comparable circumstances.

## **2 Credit Facility Contract**

In the credit contract, in addition to interest for using the credit facility, it will be possible to provide for other payments, including those related to the provision of the facility. In this case, if the credit is granted to a natural person for purposes not related to business activities, restrictions, cases and features of charging such other payments shall be determined by the law on consumer credit (loan).

If a credit facility is granted to a legal entity or an individual businessman, the lender shall have the right to demand early repayment of the credit facility in cases provided for not only by the legislation, but by the credit facility contract as well.

It is clarified that if the credit facility is used by the borrower in whole or in part to perform obligations under the previously granted credit facility granted by the same creditor without

crediting to the bank account of the borrower, the credit facility shall be considered received upon receipt by the borrower of information about repayment of previously granted credit facility from the creditor.

### **3 Factoring Contract**

The subject matter of a factoring contract is supplemented with the obligations of the client: it not only assigns to the financial agent (factor) monetary claims to a third party (debtor), but also is also undertakes to pay for the services rendered. The financial agent (factor) on its part shall be obliged to perform at least two of the following:

- 1) to transfer money to the client against monetary claims, including in the form of a loan or advance payment (prepayment);
- 2) to account for the client's monetary claims to third parties (debtors);
- 3) to exercise the rights under the client's monetary claims, including making filing monetary claims to debtors, receiving payments from debtors and making settlements related to the monetary claims;
- 4) to exercise the rights under contracts securing performance of the debtors' obligations.

At the same time, parties to civil transactions are also entitled to conclude other contracts, which provides for the assignment of monetary claims and the obligation of one of the parties to perform one or more of the above mentioned acts that are part of the factor's duties.

The following provisions are abrogated:

- the monetary claim being the subject of assignment is deemed valid, if the client has the right to assign such a claim and at the time of the assignment is not aware of any circumstances under which the debtor is entitled to not fulfil the claim;
- the debtor which is entitled to receive directly from the client the amounts paid to the financial agent as a result of the assignment, may claim for the refund of these amounts by the financial agent if it proves that the latter did not perform the obligation to make the promised payment related to the assignment of the claim or made such a payment, having known about the client's breach of this obligation to the debtor.

It is specified that the assignment of the monetary claim in favour of the financial agent is valid even if the contract prohibiting or restricting such an assignment exists not only between the client and the debtor, but also between the client and a person, who has assigned the claim.

The changes also clarify and supplement provisions on the subsequent assignment of a monetary claim by a financial agent (the factoring contract may provide for otherwise):

- if the assignment of a monetary claim to a financial agent has been made in order to acquire such a claim, a subsequent assignment is permitted;
- subsequent assignment is not permitted, if the assignment of a monetary claim to a financial agent has been made in order to secure the performance of the client's obligation to the financial agent or to render services to the client by the financial agent related to the assigned monetary claims.

If the monetary claim is assigned to secure the performance of the client's obligation, the client's obligation to the financial agent is deemed duly performed to the extent that the debtor has fulfilled its obligation to the financial agent when the financial agent receives money from the debtor under the assigned monetary claim.

If the monetary claim is assigned for the purpose of rendering services related to the monetary claims by the financial agent to a client, the financial agent shall submit a report to the client and transfer all amounts received in performance of the assigned monetary claims, and the client shall pay for the services rendered.

In this case, the financial agent may, when transferring funds to the client, claim for set-off of the monetary claims under the factoring contract.

#### **4 Bank Deposit Contract**

As the general rule legal entities will not be entitled to transfer money held in deposits to other persons (currently this restriction also applies to individuals).

It is clarified that under any bank deposit contract concluded with a natural person the bank in any case must repay to the depositor at his/her first demand, the deposit amount or a part thereof and interest accrued (except for the deposits certified by a savings certificate, which does not provide for the depositor's right to receive a deposit on demand).

In this case, the provision on the natural person's waiver of the right to receive on demand a fixed term deposit or call deposit is void (unless the deposit is certified by a savings certificate).

##### **4.1 Savings and Deposit Certificates**

The provisions on savings and deposit certificates are introduced.

These certificates are deemed certificated registered securities that confirm the fact of the depositor making deposits with the bank on the conditions specified in the relevant certificate. The bank that issued the certificate establishes and pays interest thereon on the terms and conditions approved by the bank and within the terms determined by the relevant certificate.

The savings certificate holder can be only an individual, including an individual businessman, while the deposit certificate holder - only a legal entity.

The deposit amount certified by the savings certificate must be insured in accordance with the law on the insurance of deposits of individuals.

A savings or deposit certificate may provide that the depositor does not have the right to receive before term the call deposit on demand.

Savings or deposit certificates may be issued subject to immobilisation (i.e. on the condition of transferring them to a person who, in accordance with the law, has the right to store registered securities and(or) record rights to securities), including by storing them in the issuing bank. The rights of the holders of such certificates shall be specified in one certificate, which details are set by the Bank of Russia, and certificates shall not be issued to their holders.

If making a deposit is certified with a savings or deposit certificate, all rights under the bank deposit contract belong to the holder of the corresponding certificate. The interest rate under such a deposit contract cannot be changed unilaterally by the bank.

##### **4.2 Precious Metal Deposit**

The specific features of the precious metals bank deposit contract are introduced.

The subject of such bank deposit contract shall a certain precious metal. Essential conditions of the bank deposit contract shall be: name of a precious metal, interest rate on the deposit and form of their receipt by the depositor, procedure for calculating the amount of money given instead of the metal (if such an option is provided for in the contract).

At the same time, the rules on securing the return of deposits of citizens through insurance of deposits of citizens do not apply to relations under the precious metals bank deposit contract, on which the bank must notify individuals in writing before entering into the relevant contract.

## **5 Bank Account**

It is provided that in cases of delay in crediting of funds by the bank to the client's account or unjustified debiting thereof from the account, as well as failure to perform or delay in performance of the client's instructions to transfer funds from the account or to debit them from the account, the bank shall pay interest on this amount according to Article 395 of the Civil Code (that is, at the key account established by the Central Bank of the Russian Federation), regardless of the payment of interest at the rate determined by the bank account contract.

A bank account contract may provide for the restriction on disposal of funds in the account.

The prohibition is established to block the funds in a joint account for the obligations of one of the account holders in the amount exceeding the share of funds belonging to this holder under the contract or law.

At the same time, it is provided that termination of the bank account contract shall not be a basis for lifting of the seizure in respect of the funds in the account, or cancellation of the suspended operations on the account.

A bank account contract may provide for the bank's waiver of the right to unilaterally refuse to perform the contract, if there are no operations on the client's account during two years or another agreed term. In this case, if the client is a legal entity or an individual businessman, such term cannot be less than 6 months.

In case of termination of a bank account contract where an account is in foreign currency or precious metals, the bank shall sell the foreign currency or precious metals, respectively, at a rate established by the bank on the day of the sale, and transfer the proceeds in the currency of the Russian Federation to the specified account with the Bank of Russia.

### **5.1 Precious Metal Account**

The specific features of the precious metals bank account contract are established.

Under such contract the bank undertakes to accept and credit precious metal to the account opened to the client (the account holder) and to perform the client's instructions to transfer the precious metal to the account, to debit the precious metal of the same name and the same mass from the account, or to debit cash in an amount equivalent to the value of this metal, on the terms and in the procedure specified by the contract.

Essential terms and conditions of the precious metals bank account contract shall be the definition of the precious metal and the procedure for calculating the amount of money to be withdrawn from the account (if such an option is provided for in the contract).

Any types of bank accounts provided for by Russian law, including a joint account, a nominal account, a public deposit account, may be opened as precious metals accounts.

The rules on securing the return of deposits of citizens through insurance of the deposits of citizens do not apply to relations under the precious metals bank account contract, on which the bank must notify the citizen in writing before entering into the relevant contract.

Federal Law No. 229-FZ dated 2 October 2007 'On Enforcement Proceedings' (hereinafter - the 'Enforcement Proceedings Law') is supplemented with provisions that foreclosure on

precious metals held in the accounts and in the deposits of the debtor is only possible in the absence or insufficiency of the debtor's cash in roubles or foreign currency.

In case of foreclosure, the precious metals are sold by the bank or other credit institution that is entitled to sell and purchase precious metals on the precious metals and precious stones market in Russia at a rate established by that bank/credit institution on the day of sale, and in its absence - by the Bank of Russia.

In case of blocking of precious metals on accounts and deposits, the credit institution shall immediately upon receipt of the decision on blocking stop the debit transactions on this account (deposit) with the precious metals that are blocked (the relevant changes were made to Federal Law No. 395-1, dated 2 December 1990 'On Banks and Banking Activities').

## **6 Escrow Account**

The date of the transfer of rights to the funds held in the escrow account is determined: such rights shall belong to the depositor until the occurrence of the grounds for transferring funds to the beneficiary, and after that date the rights shall vest with the beneficiary.

A prohibition is established on the crediting to the escrow account of the depositor's funds other than the deposited amount specified in the escrow contract (currently, otherwise can be stipulated by the escrow account contract).

## **7 Escrow Contract**

Unlike the escrow account contract, the object of the escrow contract shall be property - movable assets (including cash, certificated securities and documents), non-cash funds, uncertificated securities - deposited with an escrow agent for the purposes of performance of the depositor's obligations to transfer the property to another person (the beneficiary).

An escrow contract can be entered into, in particular, to secure the obligations of sellers to transfer shares and has been successfully used in M&A transactions under English law.

When depositing uncertificated securities, the encumbrance of such securities is recorded on the depositor's account in the register of rights of the securities' holders.

An escrow contract is entered between the depositor, the beneficiary and the escrow agent and must provide for the period of deposit of the property, which cannot exceed 5 years.

The parties may enter into a mutual escrow contract, under which the escrow agent shall deposit property that is subject to transfer by the parties to the mutual escrow contract to each other.

An escrow contract is subject to notarial certification and, accordingly, is considered concluded provided such notarial certification, except for the cases when the object of the escrow contract is non-cash funds and(or) uncertificated securities.

An escrow agent shall transfer the deposited property to the beneficiary provided that the grounds specified in the escrow contract, including performance by the beneficiary or a third party of the actions provided by the contract (for instance, payment by the buyer of the shares price) occurred or the term lapsed or other events specified in the contract occurred (for instance, the antitrust authority approval for the transaction is obtained).

If such grounds for the transfer of property to the beneficiary do not arise during the escrow contract term, the escrow agent shall return the deposited property to the depositor.

Under an escrow contract the escrow agent may be obliged to verify the existence of grounds for transferring the property to the beneficiary, and the beneficiary may be under obligation to

provide documents confirming the grounds for transferring the property thereto. In the latter case, the escrow agent shall check the respective documents on the surface.

Unless otherwise is provided by the escrow contract, the escrow agent shall be paid the fee, and the obligation of the depositor and the beneficiary to pay such a fee is joint.

The escrow agent cannot use and dispose of the property deposited therewith (unless otherwise is provided by the escrow contract or follows from the nature of the obligation), and shall segregate such property from its own assets and to reflect it on a separate balance sheet.

In case movable assets are deposited, the depositor retains the ownership thereto until the date of the grounds for transfer them to the beneficiary, unless otherwise provided by law.

The depositor and the beneficiary may terminate the escrow contract by sending a joint notice to the escrow agent in writing or by other means provided for by the escrow contract.

Upon termination of the escrow contract, the deposited property, unless otherwise provided by the contract between the depositor and the beneficiary, shall be returned to the depositor or transferred to the beneficiary, if there is a ground for this.

The deposited property cannot be subject to the foreclosure, seizure or interim measures for the debts of the escrow agent or the depositor. The foreclosure for the debts of the depositor can be in respect of the right (claim) of the depositor to the beneficiary or to the escrow agent in cases of termination of the escrow contract or violation of obligations thereunder. For the beneficiary's debts, the foreclosure may be on its right (claim) to the escrow agent regarding the transfer of the deposited property.

Pursuant to the changes in the Enforcement Proceedings Law, the foreclosure is not allowed in respect of the funds held in the nominee account of the debtor beneficiary opened for the performance of monetary obligations under the escrow contract.

If an external management procedure or a bankruptcy proceeding is initiated in respect of the depositor, the insolvency officer cannot dispose of the property of the relevant debtor deposited under the escrow contract.

Federal Law No. 127-FZ 'On Insolvency (Bankruptcy)' dated 26 October 2002 is also supplemented with the provisions that in the event a debtor-depositor under the escrow contract is declared bankrupt it does not prevent the escrow agent from performance of the obligation to transfer the deposited property to the beneficiary for the purposes performance of the obligation of the depositor. Deposited property is included in the bankruptcy assets only if within 6 months from the date of commencement of bankruptcy proceedings there are the grounds for transferring the property to the beneficiary specified in the escrow contract do not occur.

## **8 Public Deposit Account**

A public deposit account contract is concluded for the purposes of depositing funds in cases provided for by law.

Under such a contract, the bank accepts and credits funds in favour of the beneficiary received from the debtor or other person specified by the law (depositor) to the account opened to the notary public, bailiff service, court and other authorities or persons that under the law can accept cash in deposit. The bank shall pay interest for the use of funds in a public deposit account, the amount of which is credited to the account.

A public deposit account can be opened with Russian credit institutions the amount of own funds (equity) of which is at least 20 billion roubles.

Only transactions on the transfer or debiting of deposited funds to the beneficiary and return of these funds to the depositor or another person indicated thereby may be performed on a public deposit account on the basis of the account holder instructions.

In this case, the beneficiary cannot demand transactions with funds received in a public deposit account in its favour directly from the bank, but the beneficiary may require the account holder to transfer (debit) funds to the beneficiary from the public deposit account on the grounds and in the procedure provided by law.

Thereat, the bank shall be liable for monitoring the use of funds in a public deposit account and, in case of a breach of this obligation, shall be liable to the beneficiary and the depositor for performing transactions in such account on the basis of the account holder instructions in violation of the rules on depositing established by law.

It is prohibited to block the funds held in a public deposit account, suspend transactions on the account and write off such funds for the obligations of the account holder to its creditors and for obligations of the beneficiary or the depositor. At the same time, the right of claim of the beneficiary or depositor to the account holder can be foreclosed for their obligations. Corresponding changes are also introduced to the Enforcement Proceedings Law.

A specific feature of a public deposit account contract is also that it cannot be terminated by the court at the bank's claim if the amount of funds held on the account becomes below the minimum amount provided for by banking rules or the contract, and such amount is not restored within a month from the day of the respective bank's notice, or, in the absence of transactions on this account - within year.

## **9 Letter of Credit**

It is specified that when making payments under a letter of credit, the issuing bank acting on behalf of the payer may be obliged not only to make payments to the recipient of funds or accept and pay the bill of exchange issued by the funds recipient but to perform also other actions upon provision by the recipient of funds of the documents stipulated in the letter of credit and in accordance with the conditions thereof, or to authorize another bank (the executing bank) to make such payments or perform actions.

The bank instructing another bank to perform actions under a letter of credit shall pay fees or compensate any expenses to such a bank in connection the implementation of the relevant instructions.

It is established that a letter of credit is irrevocable, unless otherwise expressly provided therein.

The procedure for changing or cancelling an irrevocable letter of credit on behalf of the payer is as follows:

- the issuing bank shall send a notice to the funds recipient;
- a letter of credit is considered cancelled or changed from the receipt by the issuing bank of the consent from the funds recipient;
- if a letter of credit has been confirmed by another bank, such a bank may disagree with the change of the irrevocable letter of credit, and shall immediately notify thereof the issuing bank and recipient of the funds.

The mechanism for performance of a confirmed letter of credit - an irrevocable letter of credit, which is confirmed by another bank (the confirming bank) at the request of the issuing bank, is established. The confirming bank becomes liable to the beneficiary under the letter of credit within the amount confirmed thereby jointly with the issuing bank after sending the notice to

the recipient of funds or the recipient's bank on confirmation of the letter of credit, unless otherwise provided by such a notice.

The funds recipient is prohibited from assignment of all or a part of the right (claim) under the letter of credit. However, otherwise can be provided for by the terms of the letter of credit.

The procedure for performance under the letter of credit is specified as follows:

- the recipient of funds shall submit documents to the executing bank or issuing bank (including in e-form) as specified by the terms of the letter of credit;
- the executing bank or issuing bank that received the documents shall check them on surface within 5 business days after the receipt thereof, and shall pay or refuse to pay.

In the case of issuing by the executing bank of an unpaid (guaranteed) letter of credit, the issuing bank or the confirming bank shall be obliged to compensate the expenses incurred by the executing bank. The confirming bank shall be reimbursed by the issuing bank and the issuing bank - by the payer.

The provisions on liability of banks under letter of credit are supplemented and clarified: the issuing bank and the confirming bank shall be jointly and severally liable to the funds recipient for failure to perform or improper performance of the letter of credit provided that the recipient has complied with the terms and conditions of the letter of credit, including the terms regarding the documents submission.

## **9.1 Transferable Letter of Credit**

The Civil Code is supplemented with the provisions on a transferable letter of credit.

A transferable letter of credit can be performed to a third party indicated by the recipient of funds, provided that the executing bank has given its consent to such performance. The terms and conditions of the transferable letter of credit may provide for, or the recipient of funds may determine the documents that must be submitted by the person specified by the recipient for performance of the transferable letter of credit.

At that, the provisions of the Civil Code on the transfer of creditor's rights to another person shall not apply to the transferable letter of credit.

The recipient of funds may specify in the statement that it submits to the executing bank, one or more persons, to whom a transferable letter of credit will be performed (second recipient of funds) until the submission by the former of the documents that match the conditions of the letters of credit opened in favour of the recipient of funds.

When negotiating the terms and conditions of transferable letters of credit the provisions of the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce publication No. 500) may be applied in the part not regulated by the new provisions of the Civil Code.

## **10 Substitution of Parties in an Obligation**

The obligation is provided of a debtor within a reasonable time upon receipt of a notice of the transfer of rights to the obligation to the new creditor to notify the new creditor of the grounds for objections that the debtor had against the original creditor. Otherwise the debtor shall lose the right to refer to such grounds (in case of refusal to satisfy the claims of the new creditor).

In the event a contract prohibits the assignment of the right to non-monetary performance, an agreement on such assignment may be rendered invalid upon the debtor's claim only if it is proved that the other party to the agreement knew or should have known about such a prohibition.

A contract entered into in connection with performance of business activities by its parties may provide for the assignor's liability to the assignee if the claim transferred thereto under the contract is invalid, provided that such invalidity has been caused by circumstances that the assignor was not aware of or could not be aware of or which he notified the assignee of (unless otherwise is provided by law). Such circumstances may relate to additional claims, including claims for rights that secure the obligation and rights to interest.

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*Best Regards,*

*GRATA International Law Firm (Moscow)*

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What we do:

- structuring and support of transactions on lending, assignment of rights of claim, debt restructuring;
- preparing legal opinions on compliance of transactions with banking law and securities market legislation, law on currency regulation and control etc., and on legal capacity of parties to transactions;
- due diligence of Russian legal entities and other parties to transactions;
- structuring and support of business financing, including contributions to property and charter capital, lending and issue of securities.

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