Russia

Baker & McKenzie

New Currency Control Law

Following the important decision on decreasing the amount of obligatory sale/conversion by residents of their foreign currency proceeds from 50% to 25%, a new, more significant change in Russian currency regulation has been introduced, namely Federal Law No. 173-FZ, On Currency Regulation and Currency Control (the "Currency Law"), dated December 10, 2003. Most of the provisions of the new law will come into force on June 15, 2004. It is envisaged that in the meantime certain implementing regulations would be adopted by the Russian Government (the "Government") and the CBR. The Currency Law is an important step in the process of removing most of the currency control restrictions, which is expected in 2007.

Under the new law, currency regulation will be shared between the CBR and the Government. The CBR is now responsible for currency operations relating to loans and financings, transactions with securities and banking operations. The Government is to regulate currency operations relating to foreign trade, such as export and import of goods, works and services, intellectual property and participation of residents in the charter capital of foreign companies other than joint-stock companies.

The Currency Law substantially limits the authorities of the CBR to restrict currency operations in Russia, which were quite broad under previous regime. Firstly, it provides for an exhaustive list of currency operations subject to administrative regulation and establishes a "free hands" regime with respect to other currency operations between residents and non-residents. Further, it limits the list of regulators to the CBR and the Government and clearly states that the above bodies may not introduce new requirements to the currency regime established by the Law, except for as provided by the Law itself. Finally, the Currency Law explicitly prohibits imposing a requirement to obtain individual permits for a particular type of a currency transaction.

The restrictions imposed on currency operations by the new law may include:

(i) a prohibition to engage in certain currency operations (these relate mostly to domestic transactions between Russian resident, e.g., foreign currency loans);

(ii) mandatory reserving (mostly relate to transactions between residents and nonresidents);

(iii) use of a special bank (depo) account maintained with a Russian authorized bank or a registrar; and (iv) registration of the currency operation with the Russian tax or customs authorities. It is envisaged that most of these restrictions will be removed by January 1, 2007.

The new idea of mandatory reserving is that, with respect to a number of currency operations specified in the law, it will be necessary for residents or non-residents to block a certain amount of money in rubles (up to 100% of the value of the relevant currency operation as may be determined by the CBR or the Government) in a separate non-interest-bearing account with a Russian authorized bank for a certain period of time (e.g., 2, 12 and 24 months). The authorized bank will further reserve an equivalent sum at the CBR. In most cases, such reserving shall be made not later than the day of a currency operation subject to mandatory reserving.

However, in certain cases (e.g., purchase by non-residents of securities issued in Russia, by residents of securities issued abroad, or by residents of participation interest in foreign companies), residents and non-residents may be required to make such reserving in advance.

Along with mandatory reserving, the CBR may require a resident or non-resident to open and use a special account with a Russian authorized bank (or depository/registrar, if the settlement relates to securities) for certain currency operations specified in the Law. Such requirement may, for example, be applicable to the purchase by residents of participation interest in foreign companies, to the attraction by residents of loans in foreign currency from non-residents or to operations of residents with foreign currency denominated securities.

The Currency Law itself presents an important movement towards the "softening" of currency control regulations in Russia. The regime for banking and finance transactions, including loan facilities, security arrangements, bonds and other ecurities placement and trading, direct and port - folio investments, has been substantially relaxed. The possibility of using offshore bank accounts by residents creates additional structuring opportunities in financings to Russian companies.

The new regime is not yet set in stone, as there are still implementing regulations from the Government and the CBR to come, which would determine the final shape of the new regime. □