



**A Fistful of Roubles:
What do Swiss Banks, Asset Managers and
Trust Companies Need to Know about Russian
Clients and Russian Assets?**

Russian assets and clients: why banks operate “off-shore” or “across the border”?

- Magnetized by tremendous opportunities presented by dynamic Russian markets
 - Fully aware of possible risks involved
 - Reliance upon “off-shore” or “across the border” structures in an effort to avoid Russian jurisdiction
 - Legal issues involved: possibility of extraterritorial application of Russian law to the transaction
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Opening of foreign banking accounts to Russian persons through a Russian intermediary

- Banking law issues
- * Federal Law No. 395-I “On banks and banking activities”, dated December 2, 1990 (as amended)

Prohibition of opening banking accounts and attracting bank deposits in the territory of the Russian Federation without a license of the Central Bank of the Russian Federation

Possible negative consequences under Swiss law

Opening of foreign banking accounts to Russian persons without a Russian intermediary

- Currency law issues
- I. Foreign accounts opened until June 18, 2005
 - * Federal Law No. 3615-I “On currency regulation and currency control”, dated October 9, 1992 (as amended)
 - * Letter No. 352 of the Central Bank of the USSR “General provisions concerning the regulation of currency transactions in the territory of the USSR”, dated May 24, 1991 (as amended)

Explicit prohibition of opening banking accounts outside the territory of the Russian Federation without a license of the Central Bank of the Russian Federation

Opening of foreign banking accounts to Russian persons without a Russian intermediary

II. Foreign accounts opened from June 18, 2005 until January 1, 2007

- * Federal Law No. 173-FZ “On currency regulation and currency control”, dated December 10, 2003 (entered into effect on June 18, 2004).
 - A. Banks located in OECD and Financial Action Task Force on Money Laundering (FATF) countries:
Notification of Russian tax authorities within 1 (one) month after conclusion (termination) of an agreement with the respective bank
 - B. Banks located outside OECD and Financial Action Task Force on Money Laundering (FATF) countries:
Preliminary registration of the account with Russian tax authorities
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Opening of foreign banking accounts to Russian persons without a Russian intermediary

III. Foreign accounts opened after January 1, 2007

- * Federal Law No. 173-FZ “On currency regulation and currency control”, dated December 10, 2003 (entered into effect on June 18, 2004).

Notification of Russian tax authorities within 1 (one) month after conclusion (termination) of an agreement with the respective bank

Off-shore purchase of Russian assets

- Competition law issues
- * Federal Law No. 135-FZ “On competition”, dated July 26, 2006

Article 3(2): extraterritorial application of the Law to off-shore agreements related to Russian production assets or securities, when the agreement “leads or could lead to the restrictions of competition in the Russian Federation”.

Off-shore purchase of Russian assets

- Currency control law issues
- * Federal Law No. 173-FZ “On currency regulation and currency control”, dated December 10, 2003;
- * Instructions No. 116 of the Central Bank of the Russian Federation “Concerning the types of special accounts of residents and non-residents”, dated June 7, 2004.

When assets have been originally bought prior to July 1, 2006, payment to Russian seller had to be made (i) in Russian rubles; and (ii) to a special ruble account opened in an authorized bank in the Russian Federation.

Financing of concession agreements

- Choice-of-law issues
 - * Federal Law No. 115-FZ “On Concession Agreements”, dated July 21, 2005.
 - * Title VI of Russian Civil Code (“Private International Law”)

Several restrictions imposed on the ability of concessionaire to deliver guarantee in favour of a bank providing loans, namely: (i) impossibility to encumber an object of a concession agreement with a mortgage; and (ii) impossibility to pledge rights under the concession agreement.

Financing of concession agreements

Entering into the mortgage or pledge agreement with a concessionaire, governed by the law of the country which does not prohibit making such encumbrances in favour of a financier

Whether the validity of such choice of law would be recognized by a court ?

Cross-border securitization deals with Russian assets

- Choice-of-law issues
- * Federal Law No. 152-FZ “On mortgage-backed securities”, dated November 11, 2003 (as amended).
- * Chapter 24 of Russian Civil Code (“Change of parties to the obligation”)
- * Title VI of Russian Civil Code (“Private International Law”)

Case law is not yet finally settled

A number of unresolved issues:

- (i) whether partial assignment of rights is possible?
- (ii) whether assignment of future rights (rights to future receivables) is possible?

Cross-border securitization deals with Russian assets

Whether a foreign law could be chosen to govern the deal for the assignment of future receivables between Russian originator and Western SPV ?

Under Article 1216 of Russian Civil Code, the assignability of receivables shall be governed by the same law which governs the respective receivables.

Cross-border trust management of Russian securities

- Securities law issues
 - * Federal Law No. 39-FZ “On securities markets”, dated April 22, 1996 (as amended)

Under Article 5 of the Law, trust management of securities is considered as one of the types of professional activities subject to a mandatory licensing by the Federal Financial Markets Service (FFMS).

License is not required when the trust management involves only the exercise of rights under the respective securities.

Contact

Dr. Dmitry A. Pentsov

Froriep Renggli

4 rue Charles-Bonnet

CH-1211 Geneva 12

Tel.: +41 (22) 839 63 00

Fax: +41 (22) 347 71 59

E-mail: dpentsov@froriep.ch

Website: www.froriep.com
