



## Cancelling requirements on repatriation under foreign trade contracts and loan agreements.

### New reality?

#### In brief

A number of extraordinary Presidential Decrees have been recently adopted that cancel “traditional” requirements on repatriation for residents.

Below are our detailed comments on this issue.

#### In detail

Starting from 2020, requirements on repatriation of funds by residents under foreign trade contracts provided for by art. 19 of Federal Law No. 173-FZ of 10 December 2003 “On Currency Regulation and Currency Control” (“**Law No. 173-FZ**”) were gradually cancelled.

Until recently, repatriation requirements were in full force for:

- 1) Advance payments made by residents to non-residents under foreign trade contracts (for goods, services or work). If a resident made an advance payment to a non-resident, but the non-resident failed to supply goods/ did not render services, the resident was still obliged to ensure return of the advance payment within the deadline set by the contract;
- 2) Foreign trade contracts on transfer by non-residents of specific commodities under certain Customs Commodity Codes (TN VED);
- 3) Loan agreements under which a resident provided cash denominated in Russian roubles or foreign currency to a non-resident.

Presidential Decree No. 529 of 8 August 2022 “On the Temporary Procedure for Discharging Obligations under Bank Account (Deposit) Contracts Denominated in Foreign Currency and Obligations on Bonds Issued by Foreign Organisations” (“**Presidential Decree No. 529**”) appears to almost fully cancel the requirements on repatriation for legal entities and individual entrepreneurs. In accordance with Presidential Decree No. 529, requirements of the first paragraph, part 2, art. 14 (in part related to compliance with the requirements on the mandatory form of settlements), parts 1 and 2, art. 19 of said Federal Law are not applied in performance of foreign trade activities and/or issue and repayment of loans by Russian legal entities and individual entrepreneurs.

Please note that provisions of Presidential Decree No. 529 on cancelling repatriation are not applied to individuals.

In addition, Presidential Decree No 529 allows Russian legal entities and individual entrepreneurs to set off their claims and obligations to non-residents arising from foreign trade contracts and loan agreements, as well as to replace non-residents’ obligations with new obligations, except for cases stipulated by the Russian Government, as agreed with the Bank of Russia. Currently, the list of such cases is not determined.

Before adoption of Presidential Decree No. 529, application of repatriation requirements (obligation to physically return cash) to loan agreements and foreign trade contracts providing for the transfer of certain goods under TN VED precluded all other means of terminating non-resident’s obligations.

As for contracts under which residents were exempt from repatriation requirements in 2020 (under Russian rouble denominated foreign trade contracts) and in 2021 (under foreign currency denominated foreign trade contracts, see above), other execution or termination of non-resident’s obligations was available even before adoption of Presidential Decree No. 529.

#### Takeaways

On the one hand, we understand that based on the provisions of Presidential Decree No. 529 we can conclude that repatriation requirements are actually cancelled for all contracts with non-residents. It means that residents may credit funds received from non-residents under foreign trade contracts and loan agreements to their foreign

accounts without fear of violating repatriation requirements, as well as terminate obligations in any other permitted way – using offset or novation.

At the same time, it is necessary to consider that provisions of art. 19 of Law No. 173-FZ (on setting repatriation requirements) and art. 15.25 of the Russian Code of Administrative Offences (stipulating liability for non-repatriation) formally remain in effect now. In addition, it is unclear how provisions of Presidential Decree No. 529 on cancelling repatriation relate to requirements of art. 24 of Law No. 173-FZ which obliges residents to ensure appropriate execution or termination of obligations under foreign trade contracts, for which repatriation requirements are cancelled, by receiving funds from non-residents on their bank accounts with authorised banks that are payable under said contracts, or by other means permitted by Russia law.

To ensure consistent legal regulation of the repatriation issue (or its cancellation), it is necessary to make relevant changes to Law No. 173-FZ and the Code of Administrative Offences.

We continue to carefully monitor changes in Russian counter-sanctions and currency law and will keep you informed of all important developments.

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We are a team of experienced lawyers of the TeDo foreign currency law practice. We would be glad to help you, provide professional legal support in foreign currency and counter-sanctions law, minimise the risk of penalties, and to reduce or abolish penalties if you are held liable.

In particular, we can help you with the following:

- abolishing/reducing penalties and terminating court and administrative proceedings if already initiated;
- conducting diagnostics of transactions already performed by you on foreign accounts if you have any doubts (e.g., for further use of such instrument as capital amnesty).

We would be happy to answer any questions you may have.

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