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Russia

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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

Under Russian law, sale of goods or services between two legal entities or between a legal entity and a private individual shall be performed in a plain written form. Breach of the plain written form requirement deprives the transaction's parties of the ability to refer to the proof of witness in order to confirm the transaction in case of a potential dispute. In certain cases stipulated by law or agreements between the parties, non-compliance with the plain written form requirement may trigger a transaction's invalidity.

Plain written form requirements are generally observed via signing a formal receivables agreement. However, in practice, formalising, for example, consignment bills or similar documents, may be treated as sufficient evidence of an agreement's execution.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

Consumer protection of retail lenders is regulated mainly by the Federal Law No. 353-FZ "On Consumer Loan" dated 21 December 2013 (the "Consumer Loan Law").

According to the Consumer Loan Law the overall cost of credit (loan), including all types of the interest payments, commissions, etc. shall be communicated to the consumer by the retail bank. Such overall cost may not exceed an average market cost of the respective category of consumer credit by more than one third.

Average market costs of consumer credit (loan) per category are calculated and published by the Central Bank of Russia (CBR) on a quarterly basis.

The Consumer Loan Law also sets forth a maximum default interest rate which shall not exceed 20% *per annum* or, with respect to interest-free loans, 0.1% of the loan principal for each day the default is ongoing.

The obligor has the right to cancel the loan within 14 days (or 30 days if the loan was extended for a specific purpose) after a consumer loan was granted without any prior notice to the lender.

The obligor is also entitled to repay the consumer loan in full at any time during its term, although in this case the obligor shall give 30 days' prior notice to the creditor.

If a consumer loan is cancelled or repaid in full or in part earlier than agreed, the obligor shall pay the creditor the interest accrued on the loan principal up to the date of the factual return of the respective loan amount, inclusive.

The creditor under a consumer loan is also required to provide the obligor with, or enable access to, information on:

- the outstanding loan amount;
- the dates and amount of the effected and upcoming payments;
- the amount of overdue debt; and
- any other data specified in the consumer loan agreement.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

In general, under Russian law the assignment of receivables under agreements on sale of goods or services with the Russian government and municipalities ("government contract") is prohibited unless the executor's obligations under the government contract are fully discharged.

Starting from 1 June 2015, a contractor that entered into an agreement as a result of auction or tender is not allowed to transfer rights or obligations under such agreement to third parties. This provision is applicable to most government contracts as such contracts are generally entered into via auctions or tenders.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

Under Russian conflict of laws rules, with certain limited exceptions, in the absence of an explicit choice of law, the agreement will be governed by the law of the state where the party providing a characteristic performance under such agreement is domiciled. This

principle is applicable to all consumer loans, other loans granted by Russian banks, etc.

There are certain exemptions from this rule in relation to certain types of contracts.

In particular, if it is clear from the law, the terms of the agreement or the circumstances of the case that the agreement is closely tied to a different jurisdiction, the law of such jurisdiction shall be applied.

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

In this case, a Russian court will invariably give effect to a choice of Russian law.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

Generally, a Russian court would recognise the choice of law and apply the foreign governing law to the agreement. There is a positive court practice illustrating the recognition of contractual choice of foreign law as the governing law by the Russian courts. However, foreign law would not be applied to the extent that it conflicts with Russian public policy or the mandatory rules of law.

In order to apply provisions of foreign law, Russian courts should receive satisfactory proof of the existence and meaning of the relevant provisions of the applicable foreign law. If a dispute arises through commercial relations, a court may impose a duty to provide such evidence on the parties. Should a Russian court fail to receive such evidence, it may apply Russian law instead.

2.4 CISG. Is the United Nations Convention on the International Sale of Goods in effect in your jurisdiction?

The Soviet Union joined the UN Convention on Contracts for the International Sale of Goods (CISG) on 1 September 1988. The Russian Federation, which became the successor of the Soviet Union in the UN, took over its rights and obligations under the CISG with effect from 24 December 1991.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

The parties to a receivables purchase agreement are free to choose the law governing their contract, irrespective of the law governing the receivables transferred. However, the possibility of the receivables assignment, the relationship between the new creditor and the obligor and the terms for discharge of obligations shall be governed by the law applicable to the transferred receivables.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

Yes, in this case the sale will be recognised by a Russian court.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

Yes, in this case the sale will be recognised by a Russian court.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

Generally, in such circumstances a sale governed by foreign law would be recognised by the Russian court.

As indicated above, however, foreign law would not be applied to the extent it conflicts with Russian public policy or the mandatory rules of law, which could, at least theoretically, hinder the recognition of the sale.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

The answer to this question is the same as the answer to question 3.4 above.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

Generally, the answer to this question is the same as the answer to question 3.4 above. As indicated in our answer to question 3.1, the possibility of the receivables assignment, the relationship between the new creditor and the obligor and the terms for discharge of obligations shall be governed by the law applicable to the transferred receivables. In particular, in this case, Russian perfection and the notice requirements as described in our answers to questions 4.1 to 4.5 will apply.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

In terms of terminology, when the Russian Civil Code and court practice mention a transfer of receivables (including by way of sale, donation or compensation for release from obligations), they are usually referring to an agreement on the voluntary transfer of rights or assignment (cession/tsessiya). An agreement on the cession of rights may be signed or otherwise entered into separately from the agreement of sale, donation of such rights, etc.; however, in practice this is usually not the case.

Agreements on the sale of rights are subject to the civil law provisions on assignment or transfer of rights and on sale of goods.

Receivables may also be transferred under a factoring agreement, which is, in practice, less common for securitisation purposes.

In cases of both sale and factoring it is possible to transfer existing receivables and receivables which may arise in the future.

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

Generally, Russian law does not require any formalities to be observed for perfecting a sale of receivables apart from the observation of the form of the respective agreement (please refer to question 1.1 above) and the notification of the obligor (please refer to question 4.4 below).

If a receivables agreement is in plain written form, is notarised or state registered, then the sale agreement shall also be concluded in the same form.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

Assignment of promissory notes shall be done in a written form on a promissory note or an additional sheet attached to it. Alternatively this can be done by way of executing a separate assignment contract.

In order to facilitate transfers of mortgage loans a mortgage certificate may be issued. Mortgage certificates are commonly used in Russian securitisation. Generally, such certificates are assigned similarly to promissory notes. Furthermore, mortgage certificates may be put into custody of a depository or "immobilised". Assignment of "immobilised" mortgage certificates shall be carried out by making entries in the books of the particular depository.

Mass issue debt securities are generally issued in documentary form with mandatory centralised custody of their certificates with a depository. Such securities may be assigned only by way of making entries in the books of depositories on the basis of the instructions of their holders.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

Notice to the obligor on the transfer of the receivables is not required for the perfection of such transfer. However, in cases where no such notice is given, the purchaser of the rights bears the risk of unfavourable consequences. In particular, until transfer notice is given, the obligor may perform the obligation in favour of the seller which will constitute due discharge of its respective obligation. The obligor is also entitled to raise objections against the claims of the purchaser that result from relations between the obligor and the seller until the receipt of the relevant transfer notice.

Sale of receivables where the identity of the creditor has substantial importance to the obligor (e.g. obligations out of simple partnership agreement) or sale of non-monetary receivables which may significantly increase the burden of the obligor is not permissible without the consent of such obligor.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

To be effective, the notice has to be made in plain written form. The notice can be delivered after the sale. There is no time limit beyond which notice is ineffective.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

A breach of a contractual restriction prohibiting the transfer of monetary receivables does not lead to invalidity of the transfer of such receivables. Sale of non-monetary contractual rights in breach of contractual prohibition on transfer may be declared void by a court if it is proven that the purchaser knew, or should have known, of the prohibition.

According to Russian court practice, a sale of rights out of an agreement does not lead to the transfer of obligations under such an agreement, unless the contrary is indicated by the terms of the sale. Hence, each language indicated above has a similar effect in relation to the sale of rights.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

The seller of monetary receivables acting in breach of a contractual prohibition will bear contractual liability before the obligor for such a breach.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

According to Russian court practice, in order for the transfer of rights to be effective, the particular transferred rights should be identified by the agreement of the parties or, at least, be identifiable from the context of such agreement and relations of the parties. In cases where all of the receivables of a seller are sold, each of them should still be identified to exclude risks related to such court practice.

In relation to the identification of future receivables, please refer to question 4.11 below.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

A court, while considering a dispute in relation to a sale of receivables, might inquire into the economic characteristics of the transaction, the intent of the parties, etc. However, in the absence of bankruptcy, this will not normally lead to substantial risks to a sale of receivables in the course of securitisation.

In relation to effects of bankruptcy, please refer to questions 6.3 and 6.5 below.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

There are no specific provisions of Russian law in relation to the continuous sale of receivables. In our view, an agreement on the sale of receivables, as and when they arise, will be likely treated as an agreement on the sale of future receivables. As indicated in our answer to question 4.11 below, the future rights should be identifiable under the terms of the sale agreement. The latter may hinder or pose risks to some arrangements on continuous sale of receivables.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to versus after the seller's insolvency?

Russian law allows for the sale of future receivables. However, the terms of sale should allow for identification of the receivables at the moment of their acquisition by the seller.

The operation of the sale of future receivables in bankruptcy remains untested. In relation to general claw-back risks under Russian bankruptcy law, please refer to question 6.3.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Security, in relation to receivables in the form of pledge of receivables and movables, is generally transferred concurrently with the sale of such receivables. It should be noted, however, that a pledge of movables or receivables is not effective against third parties until it is recorded in a public registry of such pledges. Thus, it is necessarily for a purchaser of secured receivables to submit a notification on the transfer of a pledge or a charge of movables to a notary in order for the transfer to be recorded in the registry.

Transfer of mortgages over immovables, as well as ships, aircrafts and other types of property which is treated similarly to immovables requires state registration to become effective. The transfer of a pledge over securities has to be recorded in the books of a registrar or depository that maintains custody of such securities.

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

Assuming that a set-off right against due claims of seller of receivables has occurred before a sale of receivables, such set-off right does not terminate on the grounds of a sale of receivables or receipt of the notice of such sale.

It is worth noting that, once insolvency proceedings are initiated, a set-off that violates statutory priority of insolvency creditors is not permitted.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

In most cases, the so called junior tranche (or junior debt) is used to extract excess spread from the purchaser. This junior tranche is normally structured as a contractually subordinated loan or a junior class of notes. It should be noted that in some transactions, among other things, preferred shares are used.

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

It is not customary to provide for a "back-up" security interest in Russia, unless a special credit enhancement is provided in the transaction structure, though even in the latter case a back-up security would be an exotic option.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

Back-up security is not customary in Russian law. Please refer to question 5.1.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

If the purchaser plans to grant security over all of its assets (including purchased receivables) in favour of a third party (pledgee) the purchaser and the pledgee shall enter into a pledge agreement providing for a pledge over all assets of the purchaser in favour of the pledgee. In this case, no additional formalities would apply in order for a pledge of the newly purchased receivables to arise.

However, as indicated in our answer to question 4.12, a pledge of movables or receivables is not effective against third parties until it is recorded in a public registry of such pledges.

Please note that a pledge of all assets of a pledgor is quite new and remains untested in Russian courts.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

If the purchaser grants a security interest in receivables, and that security interest is valid and perfected under the laws of the country where the purchaser is located, it will be generally treated as valid and perfected under Russian law as well.

There may be exceptions in cases where this conflicts with the mandatory rules of Russian law or Russian public policy.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

Security interests in insurance policies and promissory notes are not customary in Russia. Russian law does not provide for any specific requirements applying to such security interests.

Requirements applying to a pledge of marketable debt securities vary depending on the type of securities: for instance, a pledge of non-documentary securities becomes effective after entry on such pledge has been made into the account where the rights of the owner of the securities are registered.

There are no additional requirements for a pledge of rights under mortgage loans. However, if the rights under such loans are certified by mortgage certificates the requirements on a pledge of securities will apply.

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

Russian law does not recognise trusts.

Cash proceeds received by the seller from obligors in respect of sold receivables may be held in a separate bank account of the seller pledged in favour of the purchaser until turned over to the purchaser.

However, in practice, separation of the proceeds out of the sold receivables from the seller's assets is usually achieved via instructing the obligors to make payments under the respective receivables directly to the purchaser's account.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security (for example, an English law debenture) taken over a bank account located in your jurisdiction?

Yes, Russian law recognises escrow accounts. However, the regulation of escrow accounts is quite new and experience of using this concept remains limited to date.

Under Russian law, security over a bank account is taken via entering into a pledge agreement with the holder of such account. It should be noted that for the pledge to become effective the bank account has to be specifically designated as a "pledge account" in the bank's books. The bank also has to be notified on creation of a pledge.

Notably, Russian law directly prescribes that the receivables serving as collateral under the bonds (issued in the course of a non-mortgage securitisation, repack or similar transaction) must be credited to a bank account pledged in favour of the bondholders.

Under Russian law, parties are free to choose a foreign law grant of security unless it conflicts with public order and/or the mandatory laws of Russia. However security of bank accounts under foreign legislation is still untested in Russian courts. It is also possible that enforcement of such a pledge in Russia may be more challenging compared to the use of Russian law to govern such pledge.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

Enforcement over pledged bank accounts is carried out in court unless an agreement between the pledgor and the pledgee stipulates for an out-of-court enforcement procedure.

Russian law provides for a number of instances when enforcement is only possible upon court decision.

The claims of the pledgee are satisfied by debiting the pledged account of the pledgor upon written request of the pledgee and further payment/transfer of funds to the pledgee.

The claims of the pledgee enjoy priority over the claims of other creditors to be satisfied out of the value of the security.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

Yes, the owner of the pledged account is free to manage funds in the pledge account unless otherwise stipulated by the pledge agreement or the law.

Under the Russian law, the owner has no access to the funds in the pledged account in the following instances:

- the pledge agreement contains a provision on a fixed amount, and the amount of funds in the account would fall below the defined amount as a result of the pledgor's actions; or
- the bank has received a written notification on non-performance/inappropriate performance of the secured obligations by the pledgor and the amount of funds on the pledge account would fall below an amount equivalent to the obligations secured by the account.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

The imposition of bankruptcy procedures against the seller does not prohibit the seller from collecting, transferring or otherwise exercising ownership rights over the purchased receivables.

To the contrary, under Russian law, the insolvency estate of a bankrupt debtor may consist only of the assets owned by such debtor. After the purchase of receivables is effected, such receivables are no longer owned by their seller, hence, the imposition of bankruptcy against the seller would not restrict the ownership rights of their purchaser, unless the sale of receivables is challenged and declared

void. In relation to general claw-back risks under Russian bankruptcy law please refer to question 6.3.

Under Russian law, a transaction that intends to have an effect of receivables sale or a similar effect, generally, would not be structured so that the purchaser of receivables is deemed to be only a secured party rather than owner of the receivables.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

An insolvency official does not have the power to prohibit the purchaser's exercise of rights. However an insolvency administrator is entitled to challenge the insolvent debtor's transactions, including sales of receivables (please refer to question 6.3).

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

Assets that were disposed of by the insolvent debtor may be returned into its insolvency estate as a result of challenging "suspect" or "preference" transactions of the debtor before a respective bankruptcy court.

Such transactions may be challenged by an insolvency administrator acting on behalf of the insolvent debtor at the administrator's own discretion or under a decision of a general assembly or committee of creditors.

"Suspect" transactions include:

- transactions that do not envisage equal consideration from the insolvent debtor's counter-agent ("suspect" period: one year before the proper receipt of a bankruptcy application by the bankruptcy court); and
- transactions entered into with a purpose of harming property rights of creditors ("suspect" period: three years before the proper receipt of a bankruptcy application by the bankruptcy court).

A "preference" transaction means a transaction that may lead to one creditor being privileged as compared to other creditors in relation to satisfaction of its claims. In general a "preference" period is one month before the receipt of a bankruptcy application.

However, a "preference" period is prolonged to six months before the above-mentioned date in relation to transactions that:

- are aimed at securing an obligation before a particular creditor of the insolvent debtor and effectively lead to a change to the creditors' order of priority; or
- were entered into when a counterparty to such transaction knew of the insolvency or insufficiency of assets.

In each case the "suspect" and "preference" periods continue from receipt of a bankruptcy application until liquidation of the insolvent debtor or dismantling of the bankruptcy proceedings.

Whether the parties to "suspect" or "preference" transactions are affiliated does not, in itself, influence treatment of such transactions.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

As indicated in our response to question 6.1, the insolvency estate of an insolvent debtor consists only of the assets owned by such debtor.

Hence, the insolvency administrator or bankruptcy court cannot consolidate the assets and liabilities of the insolvency official with those of any other person, including a seller of receivables or its affiliates.

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) on sales of receivables that only come into existence after the commencement of such proceedings?

Commencement of bankruptcy proceedings does not, in itself, have any effect on the sales of receivables that would otherwise occur after the commencement of such proceedings or receivables that only come into existence after the commencement of such proceedings.

However, a bankruptcy administrator may terminate (accelerate) agreements (including agreements on sales of receivables) entered into by the insolvent debtor in the cases similar to "executory contract" of English law.

The Russian law provisions on executory contracts apply to transactions which: (i) have not been performed in full or in part; and (ii) preclude the reinstatement of the debtor's solvency; or (iii) would result in damages to the debtor when compared to analogous transactions concluded in similar circumstances.

Also from the moment of imposition of bankruptcy proceedings the insolvent debtor is prohibited from disposing of its assets, including receivables, comprising more than 5% of its total assets.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.3 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

Russian law explicitly recognises limited recourse provisions in relation to special purpose entities (SPEs). In relation to this, please refer to question 7.3 below.

Limited recourse provisions in other relationships are not directly recognised by Russian law or court practice.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics?

There is a special law regulating securitisation of mortgage loans – Federal Law, No. 152-FZ, "On Mortgage-Backed Securities", dated 11 November 2003. Since 1 July 2014, Russia has had a special legal framework for non-mortgage securitisation assets, which was introduced by adopting Federal Law, No. 379-FZ, "On introducing amendments into certain legislative acts of the Russian Federation", dated 21 December 2013.

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

Russian laws explicitly provide for the establishment of SPEs for securitisation purposes:

- "mortgage agents" ("MAs") for the purposes of mortgage loans securitisation;
- "special financial organisations" ("SFOs") for non-mortgage securitisations; and
- "special organisations for project finance" ("SOPFs") for the issuance of project finance bonds.

Regulations for all types of SPEs are quite similar.

An SPE of any type shall have a separate management company and a separate accounting company which shall not be affiliated with the SPE and/or the originator. Shareholders of the SFOs and SOPFs cannot be owned by legal entities registered in states or territories where it is not required to disclose information on financial operations.

All types of SPEs are prohibited to have employees and have restrictions on their liquidation.

The above-mentioned requirements are aimed at compliance with the concept of SPE bankruptcy remoteness.

7.3 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

Yes, based on Russian law, a decision on the issuance of bonds or agreement(s) between an SPE and its creditor may contain provisions on the release of such SPE from liabilities under any obligations which remain unsatisfied after enforcement of all available securities.

Provisions on limited-recourse clauses are applicable to all types of SPEs.

It should be noted, however, that the provision of limited-recourse is quite new and remains untested in courts.

7.4 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

Yes, according to Clause 2 of Article 230.1 of the Bankruptcy Law, no creditor of an SPE (except the Bondholders) will be able to claim the SPE's bankruptcy if there is necessary non-petition language in the agreements between such creditor and the SPE. The SPE is not prohibited from entering into agreements that do not contain non-petition language, though it is advisable to include such language in all significant agreements of the SPE.

7.5 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

Russian law explicitly allows creditors to enter into agreements regulating the order of priority of their claims having obligatory effect among such creditors. It should be noted, however, that such agreements have not been tested in a bankruptcy court. There is a risk that a bankruptcy court would not recognise a change in a creditors' order of priority envisaged by the inter-creditor agreements. In this case the creditors would be contractually obliged to compensate one another for losses occurred due to breach of priority arrangements provided by an inter-creditor agreement.

Moreover, Russian law directly allows for the subordination of claims of an SPE's creditors (including bondholders) in relation to a common collateral.

7.6 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

Russian law does not specifically provide for the existence of independent directors for SPEs since they are managed by separate management companies.

We should note that a bonds issuer under current regulations must appoint a bondholders' representative in relation to each secured bond issuance starting from July 1 2016.

A bondholders' representative shall act in the name and interest of the bondholders of a particular bond issue and protect their rights.

In particular, a bondholders' representative may be entitled to give consent to certain actions of an issuer (including an SPE) in the interest of the bondholders.

7.7 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

Given that the demand for securitisation notes originated in Russia

lies presently in the local market, the transactions are mostly structured onshore and use a Russian SPV set up as a mortgage agent or specialised financial entity – in each case as an SPV with the capacity restricted by law and its constitutive documents. In transactions with a foreign SPV, the parties usually choose the Netherlands and Luxembourg.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

No licence or authorisation is required to do business.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

Enforcing and collecting sold receivables does not in itself require a licence according to Russian law.

However, from a practical standpoint, for certain types of securitisations (mainly, consumer loans and credit cards) it is advisable for a servicer to possess a banking or similar licence to service the sold receivables.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

Federal Law, No. 152-FZ, "On Personal Data", dated 27 July 2006 (the "Data Protection Law") restricts the use and dissemination of data about private individuals. As a general rule, to satisfy the requirements of the Data Protection Law a purchaser acquiring the receivables of individuals must receive consent from such individuals to process their data. It is customary to include respective consent into the set of documents signed before extension of a particular retail loan.

A notable exception to this rule is provided by the Consumer Loan Law which explicitly allows the retail lenders to communicate the personal data of consumer lenders to the purchasers of the consumer loan receivables.

Data Protection Law does not apply to the data of legal entities.

Notably, banks are also subject to regulations on banking secrecy which may apply to the dissemination of information in the course of sale of receivables to non-banking organisations. An issue of application of these regulations to securitisation is still not fully resolved.

Also worth mentioning is that the Consumer Loan Law explicitly obliges the purchasers of consumer loan receivables to protect personal data, information covered by banking secrecy and other confidential information obtained as a result of purchase of such receivables.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

The purchaser of consumer loan receivables will have to comply with the provisions of the Consumer Loan Law applicable to creditors under consumer loans. Most significant provisions of the Consumer Loan Law have already been indicated in our answers to questions 1.2 and 8.3 above.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

Currency exchange operations in Russia may only be carried out with Russian banks.

Under Russian law, payments between Russian residents may only be made in local currency (Russian Roubles – RUB). Foreign currency can be used to determine the price of contracts/instruments but the payment and settlement shall be generally effected in RUB.

Payments in RUB to non-residents are, mostly, unrestricted. It should be noted, however, that payments in RUB between Russian residents from or to accounts outside of Russia are subject to various currency restrictions.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

In general, repayment of principal on receivables by a Russian obligor to a non-resident legal entity should not be subject to Russian withholding tax.

Income in the form of interest, accreted notional and fines or penalties for breach of contractual obligations paid by Russian legal entities (but not private individuals) to non-resident legal entities are generally levied with a withholding tax in accordance with the Russian Tax Code. The tax rate is generally 20% though it may be reduced depending on the sphere of business and territory within Russia where the receivables were originated. The tax rate may also be reduced under an applicable double tax treaty between Russia and the relevant foreign jurisdiction.

There is some risk that income originated due to purchase of the receivables of a legal entity at a discount can be treated as interest income subject to withholding tax.

Payment of the purchase price upon collection of the receivable, i.e. deferred purchase price, should not be requalified as interest payments and, thus, should not lead to withholding tax in Russia.

It is worth noting that income generated by non-resident legal entities that conduct business in Russia via permanent establishment, including income from purchased receivables, is taxed at the level of such permanent establishment and is not subject to withholding tax.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

In accordance with Russian law, there is no specific accounting policy which has to be adopted by the seller or purchaser in the context of a securitisation transaction and in connection to Russian tax law.

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

No stamp duty or other transfer or documentary taxes are imposed on sales of receivables.

9.4 Value Added Taxes. Does your jurisdiction impose value added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

As a general rule, the sale of receivables performed by the seller registered for tax purposes in Russia is subject to Russian value added tax (VAT). VAT exemptions are in place depending on the nature of the receivables, e.g. the sale of receivables arising from monetary loan agreements is VAT exempt along with the sale of securities (shares, bonds, promissory notes, etc.) and certain derivatives.

9.5 Purchaser Liability. If the seller is required to pay value added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

Generally, based on the Russian VAT law, the tax authorities shall not make such claims in respect of VAT unless the purchaser is recognised as liable to act in a capacity of a tax agent. The liability to act as a tax agent arises for the purchaser if it is registered for tax purposes in Russia and purchases goods, works, services or receivables subject to Russian VAT from the seller which is not registered for tax purposes in Russia.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

The purchase of receivables by the purchaser, appointment of the seller as its servicer or collecting agent or enforcement of receivables against the obligors should not, in itself, make the purchaser subject to Russian profits tax, provided the purchaser does not have a permanent establishment in Russia. In order to minimise the risk of permanent establishment the following should, among other things, be observed:

- managerial functions, including making strategic and operational decisions relating to the purchaser's activities, should be performed outside Russia; and
- any party of the transaction should not represent the purchaser's interests in Russia based on contractual agreements, or have, and regularly exercise, the authority to conclude contracts or negotiate material terms of such contracts in the name of the purchaser.

If a purchaser of a receivable does not conduct its business in Russia via a permanent establishment, the proceeds from purchased receivables may be subject to withholding tax (please refer to question 9.1).

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.3 above), is that debt relief liable to tax in your jurisdiction?

Russian SPVs are carved out of income tax. The issue has not been specifically addressed in practice, but we believe that these provisions allow excluding tax consequences associated with debt relief when such debt relief occurs in connection with the SPV's core business activities related to the issuance of notes.

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