

Legal Newsletter – „Financial and Capital Market Developments in Russia“

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1. Insurance and Pension Funds

New FISA Reglament In its Order No.95n of August 19, 2009, the Ministry of Finance of the Russian Federation approved a new Administrative Reglament of the Federal Insurance Supervisory Service (“FISA”) which clarifies FISA’s activity in the performance of its state function of making decisions on the issuance, rejection or cancellation of licenses for insurance activity (save for insurance actuaries).

The Reglament, *inter alia*, stipulates the requirements of the performance of the state function and the procedure of control over it, clarifies the administrative procedures and specifies the procedure for appealing actions/omissions or decisions taken by FISA in the course of the performance of this state function.

The document will enter into force upon expiration of 10 days following the date of its official publication¹.

Changes in Pension Reserves Placement New amendments to the Rules on Pension Reserves Placement have been introduced by the Government of the Russian Federation². The amendments mainly concern the structure of the pension reserves of non-state pension funds: it now stipulates that no possible share of unit investment funds may exceed 70% of the pension reserves; the possible share of state securities in the constituent entities of the Russian Federation has been increased from 70 to 80%, the same applies to municipal bonds and bonds of Russian business entities; the possible aggregate share of bank deposits and deposit certificates of Russian banks has been increased from 50 to 80%, while the possible share of bank deposits or deposit certificates of the same bank

¹ The document has not been published yet

² Government Regulation No.702 as of August 28, 2009, entered into force on September 15, 2009

has been increased from 10 to 25%. The procedure for the investment into units of unit investment funds has also been clarified.

It should be noted that non-state pension funds must bring the formation and structure of their pension reserves into compliance with the new requirements by February 1st, 2012.

2. Capital Markets and Securitization

A Legal Framework for Securitization – Draft Laws

On October 21, 2009, the State Duma of the Russian Federation (“SD RF”) adopted in the first reading Draft Laws No. 249606-5 "On Amendments to Certain Legislative Acts of the Russian Federation" (with regard to the Regulation of the Securitization of Financial Assets) and No. 249609-5 "On the Peculiarities of Security for the Performance of Financial Obligations". The purpose of the Draft Laws is to establish a legal framework for the securitization of financial assets in the Russian market and establish an effective mechanism for securing financial obligations.

Please note that the provisions of the Drafts will apply if the Drafts are adopted by the SD RF within three readings, approved by the Federation Council, signed by the President, and officially published.

The Draft Laws concern, *inter alia*, the following issues:

A special financial entity. Draft Law No. 249606-5 introduces the concept of special financial entities which may be established to attract financing through the issuance of bonds secured by a pledge of monetary claims and (or) securities. Agreements on financing under the condition of the assignment of monetary claims are to be used for the acquisition of monetary claims by the special financial entity. Special financial entities can be established solely in the form of joint-stock companies or limited liability companies. This Draft Law provides special limitations on the special financial entities. These special financial entities can not enter into labor agreements or pass decisions on the decrease of their charter capital, including via an acquisition of their issued securities. Moreover, the management of these entities cannot consist of a Board of Directors (Supervisory

Board) and Collegial Executive Board. The powers of the sole executive should be transferred to a management company which meets certain criteria. Draft Law No. 249606-5 establishes that the nominal value of all issued bonds of such entity cannot exceed twenty-fold its charter capital. The legislative requirement with regard to major interested party transactions as well as the acquisition and redemption of securities by joint stock companies shall not apply to special financial entities.

Proposed amendments to the regulation of factoring agreements. Draft Law No. 249609-5 provides for the possibility of the registration of the assignment of a monetary claim per the consent of the parties. The registration confirms the right of the financial agent to the monetary claim. Draft Law No. 249609-5 clarifies the subject of agreements on financing under the condition of the assignment of monetary claims (factoring agreement) - the subject of the agreement can be an existing monetary claim (a monetary claim which arose at the moment or after the moment of the conclusion of an agreement on assignment) as well as a future monetary claim (a monetary claim which arises after the moment of the conclusion of an agreement on assignment). Draft Law No. 249609-5 clarifies the procedure for the assignment of a monetary claim by a debtor to a financial agent, the return of sums obtained by the financial agent to the debtor as well as the limits of the client's rights to dispose of monetary funds on the account.

A nominal bank account. Draft Law No. 249606-5 provides for the possibility of opening a nominal bank account for the purposes of conducting operations with monetary funds which do not belong to the holder of the account. Draft Law No. 249606-5 provides for the regime of nominal bank accounts.

Disclosure of information by credit organizations. Draft Law No. 249606-5 obliges credit organizations to provide third parties with information on the factoring agreements concluded by such credit organizations. The Draft Law lists the information to be disclosed.

Securing financial obligations. Financial obligations can be secured by means of a pledge of monetary claims or rights arisen from an agreement on a bank account. Financial obligations are deemed to be obligations in which one of the parties is a financial organization and the obligations are secured by securities or con-

nected with the execution of securities obligations. Draft Law No. 249609-5 details the regulation of the concept of the pledge of monetary claims in the financial market which have arisen from such obligations. For example, a future monetary claim can be pledged, including a monetary claim which will arise from the current obligation or which will arise from the future obligation. Draft Law No. 249609-5 provides requirements for the content and accounting of agreements on the pledge of monetary claims, clarifies the moment of the formation of the pledge of the monetary claims as well as provides for the rights and duties of the pledger and pledgee. Draft Law No. 249609-5 provides special rules with respect to an assignment by a pledger of pledged monetary claims to a pledgee and the assignment to the pledgee by the debtor of the pledger of its duties, specifies certain peculiarities of the enforcement and realization of the pledged monetary claims.

New in the Regulation of the Securities Market

New Requirements and Procedures for the Issuance by the FFMS of Permits for the Placement and (or) Arrangement of a Circulation of Shares of Russian Issuers Outside Russia Order No. 09-21/pz-n of the Federal Financial Markets Service ("FFMS"), dated June 10, 2009, approved the Regulation on the Issuance of a Permit by the FFMS for the Placement and (or) Arrangement of a Circulation of Securities of Russian Issuers Outside the Russian Federation. The Order entered into force on 1 January 2010, replacing the current Regulation on the same matter. The Order concerns, *inter alia*, the following issues:

New thresholds for the number of shares admitted to placement and (or) circulation outside Russia. According to the Order, the maximum number of shares to be placed and (or) circulated outside Russia, including those by way of placement and circulation of depository receipts, must not exceed 25% of the total number of the issuer's shares if, including but not limited to, the shares are included in the quotation list "A" (either the first, or the second tier) of a Russian stock exchange. In other cases, the number of shares must not exceed either: 15% of the total number of the issuer's shares if the shares are included in the quotation list "B" of a Russian stock exchange OR 5% of the total

number of the issuer's shares if, including but not limited to, the shares are included in the quotation lists "B" or "И" of a Russian stock exchange. The Order also establishes the exhaustive list of other grounds according to which the placement and (or) circulation of shares are permitted outside Russia subject to the respective thresholds (25%, 15%, 5%). Please note that only 50% (previously 70%) of the total number of shares of a respective issue can be placed outside Russia.

The list of documents to be provided to obtain the FFMS permit. The Order extends the list of documents to be provided by the applicant to obtain the FFMS permit for placement and (or) circulation of shares outside Russia.

Additional obligations. The Order establishes an obligation of the issuer or the issuer's shareholder to notify the FFMS of the results of an offer to purchase securities within and outside Russia.

Cases of the invalidation of an FFMS permit. The Order stipulates cases when the FFMS permit becomes invalid, in particular: (a) a failure to place and (or) arrange for the circulation of the issuance securities outside Russia within one year of obtaining the FFMS Permit; (b) a failure to provide the FFMS with a notification of the results of an offer to purchase securities within and outside Russia when due; and (c) the cancellation (invalidation) of the issuance securities with respect to which the FFMS Permit was issued. Please note that the FFMS Permit becomes invalid as of the date a respective FFMS decision is adopted.

New Category of Investment Funds – Art Value Funds The Order of the FFMS No. 09-30/pz-n of August 6, 2009 amends the Regulation of the composition and structure of the assets of corporate investment funds and the assets of unit investment funds³ and certain acts of the FFMS. The Order came into force on January 1, 2010.

The Order provides for the possibility of setting up a corporate investment fund and closed unit investment fund referred to as category "art value fund". The assets of these art value funds can include the value of objects of art and monetary funds (not less than 40 % of the assets' value), the list of which is specified in the

Regulation. The Order also provides for limitations and specifics for the art value funds.

The Change of the Requirement of the Amount of Equity Funds in Corporate Investment Funds

The Order of the FFMS No. 09-32/pz-n of August 13, 2009 "On the Approval of the Requirements of the Amount and the Procedure of the Calculation of Equity Funds in Corporate Investment Funds" has changed the requirements of the amount of equity funds in corporate investment funds. The Order comes into force on January 10, 2010.

The amount of equity funds in corporate investment funds should constitute not less than 35 mio Rubles (previously 5 mio Rubles) at the date of the submission of the documents for obtaining of a license. The calculation of the equity funds in the corporate investment fund is executed in the order approved by the FFMS for the calculation of the net assets in accordance with the Law On Investment Funds.

The Change of the Requirements for the Sufficiency of Equity Funds of Professional Market Participants

The Order of the FFMS No. 09-29/pz-n of July 30, 2009 has changed the requirements for the sufficiency of equity funds of professional market participants and asset managers of investment funds, unit investment funds and non-state pension funds. The requirements were previously adopted by the Order of the FFMS No. 07-50/pz-n of April 24, 2007. The Order comes into force on July 1, 2010.

In general, the Order provides the following requirements, in particular:

- for dealer, brokerage activities and(or) management of securities activity - 35 mio Rubles, as of July 1, 2011, - 50 mio Rubles;
- for depositary activity - 60 mio Rubles, as of July 1, 2011, - 80 mio Rubles;
- for clearing and(or) arrangement of the trading on securities market activity - 80 mio Rubles, as of July 1, 2011, - 100 mio Rubles;
- for maintenance of the register of the holders of the registered securities activity on - 100 mio Rubles, as of July 1, 2011, - 150 mio Rubles;
- for asset managers of investment funds, unit investment funds and non-state pension funds - 60 mio Rubles, as of July 1, 2011, - mio Rubles.

³ Approved by the Order of the FFMS No. №08-19/pz-n of 20.05.2008

3. Banking Law

New in the Regulation of Bank Activity

CB RF Recommendations regarding Websites of Credit Organizations The CB RF issued a Letter on October 10, 2009 No. 128-T with regard to the information published on web-sites of credit organizations. It is recommended to specify general (company name, license information, payment requisites, founders' (participants') information, etc.), functional information (drafts of agreements, borrower's memo text, list of bank transactions performed by the credit organization, etc.), accounting and financial reports and other information. Also, the recommendations address the organizational management of the web-site - its security, document flow between the organization and its clients, etc.

CB RF Continues to Control Deposit Interest Rates Federal Law No. 280-FZ of November 25, 2009 has prolonged the authority of the CB RF to limit the interest rates specified by credit organizations in deposit agreements if such credit organizations fail to fulfill the orders of the CB RF regarding the elimination of breaches in due time as well as if such breaches or banking operations or transactions performed by a credit organization created a real danger for its creditors' (depositors') interests. Also the CB RF issued Letter No. 133-T of October 28, 2009 with an instruction for the territorial authority bodies of the CB RF to use supervisory functions provided by applicable legislation including a limitation of any deposit interest rates which will be applied to banks keeping high deposit interest rates.

Previously, the CB RF already recommended⁴ to its territorial authority bodies to perform permanent analysis of information regarding interest rates, including analysis of the economic justification for the attractiveness of deposits' under high rates as well as to perform other actions for the protection of depositors' rights.

Disclosure of Information on Persons Significantly Influencing the Decisions Taken by

Management Bodies of Banks In accordance with the Instruction of CB RF No. 2312-U of October 27, 2009, if a bank intends to participate in the system of insurance of individual deposits it is, *inter alia*, obliged to disclose certain information about the persons significantly influencing the decisions taken by the management bodies of the bank. In addition to the Instruction, on December 27, 2009, the CB RF approved the Regulations specifying the disclosure order of such information to the official informational sources of the CB RF on the Internet. Particularly, it contains the order, terms, information transmission rules, sample of the scheme explaining the relations of the bank and the specified persons, etc.

The Instruction of CB RF requiring the disclosure of the correspondent information came into force on December 27, 2009.

The accounts Opening/Closing Order has been Amended

The Instruction of CB RF No. 2342-U of November 25, 2009 amended the Instruction of CB RF No. 28-I of September 14, 2006 "On Opening and Closing of Bank Accounts, Deposit Accounts (Deposits)". The amendments specify the list of accounts in respect of which the Instruction's provisions are applied; define that a number of bank and deposit accounts (deposits) maybe opened upon a single agreement; clarify the list of documents necessary for the opening of accounts as well as the order of client case formation, etc.

The amendments came into force on January 03, 2010.

Also, the Federal Tax Service of Russia has approved new forms for the notifications sent by banks in respect of information about bank accounts being opened or closed (requisites changing) of legal entities and individual entrepreneurs maintaining accounts in these banks. Banks are obliged to use new forms starting from December 27, 2009.

Banks Are Now Entitled to Choose the Place of Litigation with Individuals

The Supreme Court of the Russian Federation has clarified⁵ that credit facility agreements concluded between credit organizations and individuals may contain a provision that all disputes arising between the parties can be solved in court at the

⁴ Letter of CB RF No. 93-T of July 29, 2009

⁵ Letter of the Supreme Court of Russian No. 8/obsh1936 of July 20, 2009

place of the bank's location (territorial jurisdiction of the court in relation to the bank). In this case, a claim raised by a credit organization against a counterparty-individual for the reclaiming of debts under a credit facility agreement shall be solved by the court specified in the agreement i.e. in a court situated in the place of the bank's location.

Less Regulation Regarding Compliance with Requirements for Participation in the Deposits Insurance System For the purposes of maintaining the Russian banking system's stability, Federal Law No. 227-FZ of September 27, 2009 suspends some of the provisions of Federal Law No. 177-FZ of December 23, 2003 "On Insurance of Deposits of Individuals Held by Banks of the Russian Federation" valid until December 31, 2010. Until this date, the following situations were not recognized as breaches of the requirements of the possibility to participate in the deposits insurance system: a) bank does not comply with normative set by the CB RF for 6 consecutive months; b) successively has a "low grade" in respect of one and the same group of indexes provided by the Federal Law for 6 monthly reporting dates or at 2 quarterly reporting dates, etc.

Amendments to the Order of Decision Making in respect of the Registration of Credit Organizations Corresponding amendments to the Instruction of CB RF No. 109-I of January 14, 2003 have been made⁶. The amendments concern the list of documents to be provided to the CB RF for the registration of a credit organization and procedural formalities, a credit organization's reorganization procedure, amendments of charter procedures, the opening and closing of subdivisions, etc. Herewith, the mentioned instruction shall be applied in accordance with the Instruction of CB RF No. 2333-U of November 12, 2009 "On the granting of CB RF's decision making power in respect of the state registration of amendments to the charter of a bank and on the requirement of the CB RF's prior consent being received by banks for the acquisition of privileged shares from the Russian Federation in order to increase its capitalization".

⁶ Instruction of the CB RF No. 2277-U of August 14, 2009

The mentioned amendments came into force on October 25, 2009.

Regulation of the Introduction of a Prohibition on Deposit Attraction The CB RF has approved the Order⁷ on the Introduction of a Prohibition for the Attraction of Deposits and the Opening of Bank Accounts in respect of Individuals. The document regulates the procedures of the CB RF when it is obliged to prohibit a bank from attracting deposits and opening bank accounts for individuals due to the non-compliance of the bank with the requirements of the deposit insurance system provided for in the Federal Law "On Insurance of Deposits of Individuals in Banks of the Russian Federation".

Cancellation of the License due to the Significant Unreliability of Reports The CB RF has adopted the mandate⁸ of canceling credit organization's banking licenses if the reports provided by such credit organization are significantly unreliable. The document contains situations in which a credit organization's reports are considered significantly unreliable, i.e. the information on the appraisal of assets was performed in a manner which differs from the one provided by the CB RF, etc. Also, it contains a list of documents confirming the factors of significant unreliable report preparation. The new order came into force on November 22, 2009.

Clarification of the Requirement for the Application of the Cancellation of Deposit Attraction The CB RF has approved⁹ the requirement for banks to submit an application for the cancellation of its right for deposit attraction on the basis of the CB RF's order issued for cases of a bank's non-compliance with the requirements for their participation in the deposit insurance system or certain other legislative requirements. The document regulates the sequence of operations of banks, the CB RF and its territorial authority bodies and internal struc-

⁷ Instruction of the CB RF No. 2330-U of November 11, 2009

⁸ Instruction of the CB RF No. 2293-U of September 17, 2009

⁹ Instruction of CB RF No. 2296-U of September 21, 2009

tural subdivision in cases of the termination of a bank's right to attract deposits upon the request of the CB RF.

CB RF Has Generalized Experience with Regard to the Issuance of Banking Cards and Operations with Them¹⁰ In particular, the CB RF has specified that neither the federal laws nor regulations of the CB RF contain prohibitions on accepting documents from a client-individual for the purposes of their identification by a credit organization officer or authorized credit organization person not being its employee outside of a credit organization. Also, for the purposes of the identification of a client-individual, a credit organization shall identify the information stipulated in the anti-money laundering legislation as well as collect information and documents required per the Instruction of CB RF No. 262-P of August 19, 2004 "On Identification of Clients and Beneficiary Parties by Credit Organization for Anti-money Laundering Purposes".

Clarification on Bank Order Usage Bank order is a settlement document which can be used by a credit organization (branch) for the purposes of settlement operations on a bank account, deposit account (deposit) in rubles or foreign currency of a client opened with this credit organization (branch) if the payer or payee is the same credit organization (branch). The Instruction of CB RF No. 2360-U of December 11, 2009 regulates the requirements to the order, its form, execution, filling, etc. The document mentioned above came into force on January 10, 2010.

ATMs will Become More Talkative On January 29, 2010, the SD RF had the first reading consideration of a draft law¹¹ which will oblige credit organizations to inform clients-users of ATMs of bank fees imposed for cash withdrawal by way of an on-screen warning and corresponding inscription in the receipt after the operation. Within 30 days, the corresponding amendments to the proposed draft must be introduced.

¹⁰ Letter of CB RF No. 117-T of September 25, 2009

¹¹ Draft Law No. 264550-5

Banks will be Forbidden to Unilaterally Increase Interest Rates on Credit Facilities The SD RF has considered in the third reading a draft law¹² aimed at the protection of borrowers' rights under credit facility agreements. In accordance with the proposed draft, credit organizations will not be able to increase interest rates on credit facilities' and change other conditions unilaterally against borrowers, legal entities and entrepreneurs save for the cases stipulated by federal law or credit facility agreement. As to borrowers-individuals, credit organizations will also not be able to increase a credit facilities' interest rates unilaterally for the cases stipulated by federal law. According to the draft law, it will affect credit facility agreements which will be concluded only after the law comes into force. The document has been submitted to the Council of Federation of the Russian Federation for consideration.

4. Anti-money Laundering Legislation

The Russian Federation Has Ratified the Agreement on Anti-money Laundering Concluded Between Countries – Participants of the Commonwealth of Independent States («CIS») The respective Federal Law¹³ has been signed by the President of Russia and officially published. Save for other provisions of the agreement, the countries – participants of CIS are obliged to adopt normative legal acts providing the cooperation of the competent authorities of the countries with regard to anti-money laundering.

Recommendations for the Elaboration of Internal Control Rules The Federal Financial Monitoring Service has adopted the Recommendations for the determination and defining of features of unusual transactions. The Recommendations specify general features of unusual transactions which are recommended for usage during elaboration of the internal control rules. Such control is performed for anti-money laundering purposes by organizations performing transactions with cash or other property

¹² Draft Law No. 257299-5

¹³ Federal Law No. 349-FZ of December 27, 2009

(except for credit organizations) as well as other persons specified in the Russian legislation.

Clarifications of the Central Bank of the Russian Federation (“CB RF”) on Certain Operations

The CB RF has clarified¹⁴ a number of questions arising in the course of fulfilling the requirements of the Federal Law “On Countering Legalization of Income (Money Laundering) Derived from Criminal Activity and Financing of Terrorism”¹⁵ and other legal acts adopted by the CB RF in accordance with the mentioned Law. In particular, the CB RF has clarified that if a client of a credit organization performs regular identical transactions and there is a suspicion that such transactions are performed for money-laundering purposes, the credit organization shall notify the competent state body about such transactions.

5. Other Significant Issues

Cancellation of Term for Bringing Charters in line with the Current Russian Legislation on Limited Liability Companies

Federal Law No. 312-FZ of December 30, 2008 has significantly amended the Federal Law “On Limited Liability Companies”¹⁶ (“**Law on LLC**”). All limited liability companies (“**LLC**”) were obliged to bring their charters into line with the new edition of the Law on LLC and other regulatory acts by January 1, 2010. However, Federal Law No. 310-FZ of December 17, 2009 has cancelled the term mentioned above and specified that LLCs shall bring their charters in line with the applicable legislation as soon as any amendments to the charter are registered. The amendments to the Law on LLC cancelling the above mentioned term came into force on December 22, 2009.

¹⁴ Letter of the CB RF No. 16 of September 01, 2009

¹⁵ Federal Law No. 115-FZ of August 07, 2001

¹⁶ Federal Law No. 14-FZ of February 08, 1998

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This BBH Bulletin is to serve as a general piece of information in respect of certain important news and events taking place in the area of the financial, capital and banking markets. The contents hereof do not, and shall not, serve as legal advice of any kind.

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