

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

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1. Insurance and Pension Funds

Agreements between Insurance Companies and Credit Organizations New Regulation “On the Permissibility of Agreements between Credit Organizations and Insurance Companies” No. 386 was approved by the Russian Government on April 30, 2009. The Regulation specifies the requirements agreements must fulfill for cooperation between credit organizations and insurance companies concluded for the insurance of borrowers’ risks (if the insurance of a borrower’s risks is obligatory under Russian law and(or) under an agreement between the credit organization and the borrower). These requirements will be in force during next 5 years.

The Regulation, *inter alia*, stipulates that agreements shall not contain any provision according to which credit organizations can not accept an insurance policy issued by an insurance company which complies with the requirements of the credit organization, and the bank’s requirements can not include requirements stipulating the amount of the charter capital, own funds held by the insurance company, its experience, etc.

Agreements shall not contain provisions preventing the parties from concluding analogous agreements, except for agreements in which the credit organization is an insurance agent and the provisions direct that the borrower should insure risks with the same insurance company for the term of the loan, etc.

The Regulation provides credit organizations and insurance companies with the possibility to provide drafts of agreements for the consideration of the antimonopoly authority to assess their compliance with the legal requirements.

New Procedure on Formation of Life Insurance Reserves In its Order No.32n, dated April 9, 2009, the Ministry of Finance of the Russian Federation approved the new Procedure for the formation of insurance reserves on life insur-

ance. The Procedure sets forth requirements with regard to the structure of insurance reserves and the basis and methods for the calculation of insurance reserves. The Order also stipulates that the formation of life insurance reserves shall be performed in accordance with the respective regulation which shall be elaborated by insurers and submitted to the insurance supervising authority, and it shall set forth the requirements of the content of such regulation. It should be noted that insurers shall bring the regulation in compliance with the new requirements by December 31, 2009 and shall organize the formation of insurance reserves in accordance with the new Procedure starting from January, 2010.

Anti-money Laundering Activity of the Federal Insurance Supervisory Authority (“FISA”) On December 31, 2008, the Ministry of Finance of the Russian Federation approved Administrative regulations¹ on FISA’s supervisory activity in respect of the anti-money laundering legislation observance by the insurance companies. The mentioned Administrative regulations govern the supervisory terms, consistency of administrative procedures, approval of the anti-money laundering rules of insurance companies by FISA, carrying out of inspections of insurers, etc. The document came into force on June 21, 2009.

Development of Legislative Provisions in respect of Non-state Pension Funds and Investment of Pension Savings New amendments to legislative provisions with regard to the activity of non-state pension funds and the investment of pension savings have been introduced as of July 18, 2009.² New amendments, *inter alia*, extend the structure of pension reserves and pension savings: it is stipulated that pension reserves/savings may also include a part of the property ensuring the charter activity of a non-state pension fund in cases of a decision to use this property to cover the negative results of a pension savings investment/pension reserves placement. The amendments also clar-

¹ Order No 156n of December 31, 2008

² Federal Law On Changes to Federal Law on Non-State Pension Funds and Federal Law on Investment of Funds for Financing the Funded Part of Labour Pension in the Russian Federation No. 182-FZ as of July 18, 2009

ify the procedure for the transfer of pension savings from a non-state pension fund to the Pension Fund of the Russian Federation (hereinafter “**PF RF**”) with regard to the choice of investment portfolio; set forth certain additional obligations of a non-state pension fund carrying out activity in obligatory pension insurance; specify the structure of the investment portfolio; and clarify the procedure of the payment of consideration to management companies and specialized depositaries.

We also would like to draw your attention to the fact that a new definition of an asset management company carrying out the activity on pension savings investment has been introduced – now there are two types of such companies: an asset management company chosen at auction and a state asset management company.

Additional Control over Compliance with Requirements of Legislation on the Investment of Funds for Financing the Funded Part of Labor Pensions In its Letter No.09-VM-01/8962, the Federal Financial Markets Service (hereinafter the “**FFMS**”) recommends that specialized depositaries strengthen their control over compliance with the legislation on the investment of funds for financing the funded part of labor pensions and notify the FFMS, PF RF and respective management company in the event of a disclosure of any breaches. The FFMS also stipulated that asset management companies carrying out activity in pension savings investment and brokers performing operations with pension savings must provide the specialized depositaries with all of the documents necessary to exercise such control.

2. Capital Markets and Securitization

New in the Regulation of the Securities Market

Clarification of the Position of the Federal Financial Markets Service with Respect to the Execution and Securing of Bond Obligations The FFMS introduced its official position

with respect to the execution and securing of bond obligations³.

In particular, the FFMS clarifies situations of the early termination of a bond loan agreement due to its material breach. In addition to a delay in the payment of interest on bonds for more than 7 calendar days, in cases of a delay in the payment of a bond’s nominal value for more than 30 calendar days or a refusal to pay the interest’s/bond’s nominal value, the FFMS suggests considering to block the bond issuer from acquire bonds under the holders’ request as a material breach of the bond loan agreement. In an event of a material breach of the bond loan agreement, an application to the court may be made to change or terminate an agreement solely if a bond issuer has refused to terminate a bond loan agreement or a bond holder has not received an answer from the bond issuer.

The FFMS sets down that in a case of the non-performance by the bond issuer of its obligation with respect to the payment of the bond’s nominal value, interest is charged on the nominal value unless provided for otherwise in the bond loan agreement.

According to the current legislation, a bond loan agreement may be recognized as a major and (or) interested-party transaction under certain conditions and, therefore, needs special approval by the authorized corporate bodies. In the conflict of the shareholder’s decision on the transaction approval with the current legislation as well as with the charter, it can be challenged in court by a shareholder who did not participate in the shareholders’ meeting which passed the relevant decision or who was present and voted against the decision. The shareholder can apply to the court within six months starting from the moment when the shareholder discovered or should have discovered the fact of the shareholders’ approval of the transaction. The FFMS clarifies the moment when the shareholder discovered or should have discovered the fact of the approval of the bond loan agreement. Due to the fact that joint-stock companies have to publicly disclose information on shareholder decisions, the moment means the date of the public information disclosure.

However, this letter has not been published yet.

³ Information Letter of July 2, 2009 No. 09-VM-03/14905 “On Some Issues of the Securing And Execution of the Bond Obligations”

The Procedure for the Placement and Circulation of Foreign Securities on the Russian Market New amendments to the law “On Securities Market” No. 39-FZ of April 22, 1996 (hereinafter the “**Law On Securities Market**”), with respect to the placement and circulation of foreign securities on the Russian market, have been introduced as of April 28, 2009.⁴

According to the previous version of the Law On Securities Market, the placement and circulation of foreign securities was allowed only if there is an international treaty or there is an agreement between the state executive authority for the securities market and the respective and appropriate state authority (organization) of the foreign issuer’s jurisdiction. There were no international treaties/agreements mentioned above. Thus, generally, foreign issuers were not entitled to place and publicly circulate their securities in Russian. New amendments simplify the access of foreign securities to the Russian financial market.

According to the new version of the Law On Securities Market, the circulation of foreign securities in Russia is permitted under certain conditions, the basics of which are the following:

- foreign securities must have an international identification code of securities and international qualification code of financial instruments; and
- foreign financial instruments are qualified as securities in accordance with the order established by the FFMS.

The new version of the Law On Securities Market provides requirements and a due procedure for issuers whose securities are planned for placement and circulation on the Russian market. In general, the issuers should be international financial organizations or should be registered in countries which are FATF and OECD members and observers, etc., or which have an agreement on cooperation with the respective Russian authorities.

The new version of the Law On Securities Market simplifies the procedure for gaining access to the Russian market for securities listed on foreign stock exchanges.

The amendments came into force on May 16, 2009.

⁴ Federal Law No.74-FZ as of April 28, 2009

Additional Regulation over the Placement of Securities for Qualified Investors New amendments⁵ provide special provisions with respect to the placement and circulation of securities for qualified investors. Placement and circulation of securities for qualified investors are not recognized as public placements and circulations in the context of the Law On Securities Market. The information on securities for qualified investors can not be disclosed to third parties.

3. Banking Law

New in the Regulation of Bank Activity

New Procedure and Criteria for the Assessment of the Financial Standing of a Credit Organization’s Founders In accordance with the Federal law “On Banks and Banking Activity”, the new procedure and criteria for the assessment of the financial standing of a company-founder of a credit organization were introduced as of June 19, 2009⁶.

Under certain conditions, the financial standing of resident and non-resident-founders of credit organizations is assessed by the territorial division of the Central Bank of the Russian Federation (“**CB RF**”), the Department of Licensing and Financial rehabilitation of the Credit Organization of the Central Bank of the Russian Federation or a given credit organization itself. The procedure establishes the possibility of the assessments of the financial standing of such persons in the case of the establishment of a credit organization, acquisition of its shares, etc.

Generally, to recognize the financial standing of a company as satisfactory, it must not have financial difficulties which may influence its ability to perform its obligations properly. The assessment of financial standing is executed, in particular, on the basis of an analysis of the financial stability, creditworthiness, effective

⁵ Federal Law No.74-FZ as of April 28, 2009

⁶ Regulation of the Central Bank of the Russian Federation On Procedure and Criteria for the Assessment of the Financial Standing of Legal Entities - Bank’s Founders of Credit Organization No. 337-P as of June 19, 2009 (hereinafter „**Regulation No. 337-P**“).

use of working capital, profitability and financial results.

The new procedure specifies situations in which the assessment of the financial standing is not executed (e.g., increase of the charter capital of a credit organization and distribution of shares among shareholders).

The procedure specifies the list of documents to be provided for the assessment of the financial standing.

The mentioned procedure came into force as of August 10, 2009.

The CB RF also established the Procedure and Criteria for the Assessment of the Financial Standing of Individuals - Founders of Credit Organization (Regulation No. 338-P as of June 19, 2009). In particular, a new procedure clarifies the situations of assessment of individuals as well as enlarges the list of criteria used for assessment.

Mortgage of a Building/Construction and Non-Residential Premises New amendments to the law “On Mortgage” No. 102-FZ as of July 16, 1998 (hereinafter “**Law on Mortgage**”) have been introduced as of July 17, 2009.⁷ A mortgage must be established over a building/construction and a land plot on which the building/construction is situated or over non-residential premises if the building/construction or non-residential premises are acquired entirely or partially by means of credit funds loaned by a bank, other credit organization or from a company and if it is otherwise not provided by a federal law or a mortgage agreement. The building/construction and the land plot or non-residential premises are considered to be mortgaged from the moment of the state registration of the right of ownership to the building/construction, the right of ownership or the right to lease the land plot or the right of ownership to non-residential premises. The amendments came into force on August 2, 2009.

Strengthened Responsibility of Management and Shareholders of Credit Organizations under Bankruptcy The Federal law No. 73-FZ of April 28, 2009 amended the Federal law No. 40-FZ of February 25, 1999 “On Insolvency (bankruptcy) of Credit Organizations”. In ac-

cordance with the amendments, together with the credit organization and its shareholders, the Board of Directors, CEO and collegial executive body shall take measures in case of the reasonable occurrence of insolvency. The amendments have also amended the list of obligations of the management and shareholders of credit organizations in the case of an indication of imminent bankruptcy. The responsibility of the management and shareholders has been strengthened as well. For instance, persons held responsible in accordance with the above-mentioned law are not entitled to acquire more than 5% of the shares of other credit organizations within 10 years of the day of the arbitrage court decision.

The law with amendments came into force on June 5, 2009.

New Reporting Order Possibility With the approval of Instruction No.2234-U of May 13, 2009, the CB RF has amended Instruction No.1375-U of January 16, 2004 in respect of the reporting provision of the CB RF. According to the mentioned amendments, credit organizations are entitled to use centralized procedures for branches reporting through the head office of the credit organization with the consent of the territorial division of the CB RF which supervises credit organizations’ activity. Such option becomes available starting from July 1, 2009.

On Interest Accruals on Credit Facility Agreements Due to questions arising regarding interest accruals on credit facility agreements, the CB RF has issued a letter⁸ with a declaration that the CB RF is not entitled to clarify the Civil legislation of the Russian Federation. At the same time, according to the CB RF, banks must comply with the civil legislation and provisions of agreements on the accrual of interest, even in cases of the early repayment of debt upon a credit organization’s request.

Receipt of Information Contained in the Central Catalogue of Credit Histories In accordance with Federal law No. 218-FZ of December 30, 2004 “On Credit Histories”, the CB RF has issued Instruction No. 2214-U of April 14, 2009 introducing a procedure for the receipt of information contained in the Central Cata-

⁷ Federal Law On Changes into Law On Mortgage No. 166-FZ as of July 17, 2009

⁸ Letter No. 15-2-2-5/3201 of May 21, 2009

logue of Credit Histories. According to the Instruction, both the subject and user of the credit history are entitled to receive necessary information only by transfer via the Central catalogue of the respective request via a notary. The document came into force on July 26, 2009.

4. Anti-money Laundering Legislation

Credit Consumers' Cooperatives Shall Comply with Anti-money Laundering Legislation

In accordance with the amendments⁹ to the Federal law No. 115-FZ of August 7, 2001 “On Counter-acting Legalization of Proceeds from Crime, and Terrorist Financing”, consumer credit cooperatives are included on the list of organizations which carry out operations with monetary funds and other property. As of August 2, 2009, all consumer’ credit cooperatives must start to comply with all of the respective provisions of Federal law No. 115-FZ.

Limitation of the Importation of Foreign Currency into Russia

The customs authorities are considering implementing amendments to Russian legislation. According to the proposed amendments, an amount of currency subject to importation exceeding \$10,000 should be reported and the customs authorities should be informed of the purpose of the currency importation; persons to which the currency will be provided; and documents confirming the receipt of the currency.¹⁰

⁹ Federal law No.163-FZ of July 17, 2009

¹⁰ <http://www.bankir.ru/news/newsline/2277899>

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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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