

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

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1. Insurance and Pension Funds

Extension of List of Assets Allowed for Coverage of Equity Funds of Insurer and Insurance Reserves Pursuant to the Order of the Ministry of Finance of the Russian Federation (hereinafter - the “Minfin”) No.129n of November 14, 2008 the list of assets allowed for coverage of the equity funds of the insurer has been extended by inclusion therein the insurers’ receivables from the settlements on direct indemnification of damages in accordance with the legislation of the Russian Federation on obligatory insurance of motor third-party liability.

The respective changes were introduced¹ into the Rules on Insurance Reserves Placement stipulating that the insurers’ receivables from the settlements on direct indemnification of damages in accordance with the legislation of the Russian Federation on obligatory insurance of motor third-party liability, decreased by the amount of liabilities from the same settlements, may be used for coverage of the insurance reserves formed by insurers in the amount of up to 100% of the amount of stabilization reserve on obligatory insurance of motor third-party liability.

The changes mentioned above will enter into force on 01.03.2009.

New in Regulation of Activity of Mutual Insurance Societies The Minfin issued the Order² on amending its Order №51n “On Approval of Rules on Insurance Reserves Formation for Insurance Activity Not Related to Life Insurance”. Starting from January 01, 2009 the above mentioned Order also regulates the activ-

ity of mutual insurance societies with certain peculiarities. It is specified that the mutual insurance societies are obliged to calculate insurance reserves starting from the moment of obtaining of a license for mutual insurance activity. In accordance with the Order the mutual insurance societies are to form the following reserves: unearned premium; claimed but not regulated losses; occurred but not claimed losses. In addition to that, such societies are entitled to form stabilization reserves in accordance with the resolution of the general meeting of members.

Also the amendments³ are introduced into Minfin’s Order containing the Rules on Insurance Reserves Placement, pursuant to which the above mentioned Rules shall apply to mutual insurance societies as well.

2. Capital Markets and Securitization

New in the Regulation of the Securities Market

Enhancement of Mortgage Papers Effectiveness Significant amendments⁴ have been introduced into the Federal Law “On Mortgage”. In particular, the changes are aimed at enhancing the role of the mortgage paper (*zakladnaya*) and improving procedure of its circulation, securing more safety and reducing the time required for transfer of large pulls of mortgage papers.

The new edition of the Law provides for the possibility to specify in the agreement, under which the mortgage paper is issued, that the mortgage agreement as well as the agreement secured by mortgage shall terminate from the moment of receipt of the mortgage paper from the competent state authority and all the rights and obligations of the pledger, the debtor and the pledgee shall be regulated by the mortgage paper.

The amendments provide for the depositary recording of rights to the mortgage paper. Thus, the mortgage paper may be transferred to the

¹ Order of the Ministry of Finance of the Russian Federation No.130n of November 14, 2008

² Order of the Ministry of Finance of the Russian Federation No.114n of October 20, 2008

³ Order of the Ministry of Finance of the Russian Federation No.115n of October 20, 2008

⁴ Federal Law No.264-FZ of December 22, 2008

depository which has a respective license for depository recording. Such recording may be temporary (with the possibility to stop recording) or obligatory (with the possibility to transfer the mortgage paper to another depositories or state bodies only). In case of depository recording of the mortgage paper, the rights of its owner are confirmed by the book entry in the system of the depository recording. Depository performs book entry in respect of the transactions performed with the mortgage paper, including transfer for a trust management, pledge; also the record may indicate that the right of the pledgee to sale the mortgage paper upon expiration of a certain period of time. In case of termination of the depository recording the depository endorses on the mortgage paper the information on the relevant encumbrances and transactions performed with regard to this mortgage paper. The amendments also clarify the procedure of restoration of rights for the mortgage paper lost in case it was recorded by the depository.

New amendments also clarify the content of the mortgage paper. In particular, the mortgage paper shall contain information on the identification document of the pledger, initial pledgee and the debtor. It is also provided that the specified in the mortgage paper monetary value of the mortgaged property shall always be confirmed by the appraiser's conclusion.

The law does not prohibit to include additional conditions in the mortgage paper. Some additional conditions of the mortgage paper may be provided by model rules, specially elaborated for the mortgage papers and officially published. Moreover, it may be specified in the mortgage paper that partial performance of the obligations under that mortgage paper is not subject to indication therein. In such a case the creditor shall prove the non-performance of the debtor's obligations.

New amendments clarify the procedure of issuer of the mortgage paper to the pledgee. In particular, it is stipulated that the mortgage paper may be prepared and issued to the pledgee any time before the termination of the obligation secured by the mortgage provided that the collective application is filed by the pledgee and pledger.

Besides, the new law contains a range of the other provisions in relation to the registration of the mortgage of the private premises, insurance of the mortgaged property, etc.

Changes in Securities Market Law The amendments⁵ introduced in the Federal Law "On Securities Market" relate to the procedure of issue and circulation of exchange-traded bonds. Thus, in particular, they extend the list of issuers of such bonds specifying that the following organizations may issue exchange-traded bonds: commercial entity, state corporation or international financial organization provided that the shares and (or) bonds thereof are in the quotation list of the stock-exchange exercising the admittance of exchange-traded bonds to trading. The term of the fulfillment of obligations under exchange-traded bonds is also extended: it shall not exceed three years from the placement thereof. In addition to that, the procedure of declaring the issue (additional issue) of exchange-traded bonds void and the procedure of early redemption of such bonds is clarified.

Another amendments⁶ to the Securities Market Law provide for the extension of the list of qualified investors by including therein: (i) non-commercial organizations in the form of funds being a part of infrastructure of small and medium businesses support subject to respective legislation, the sole founders of which are constituent entities of the Russian Federation, and which are established for the purpose of acquisition of investment units of closed unit investment funds attracting investments of small and medium businesses, - only in respect of the investment units mentioned; (ii) Sate Corporation "Russian Corporation of Nanotechnologies".

Clarification of Types of Property Accepted as Payment for Investment Units of Closed Unit Investment Fund and Formation Period of the Fund In its Order No.08-56/ПЗ-Н of December 9, 2008⁷ the Federal Financial Markets

⁵ Federal Law No.320-FZ of December 30, 2008

⁶ Federal Law No.266-FZ of December 22, 2008

⁷ The document will enter into force after 10 days as of the date of its official publication.

Service (hereinafter – the “FFMS”) clarifies that the following types of property, provided for by the investment declaration, may be accepted as payment for investment units of a closed unit investment fund upon the formation of such fund or in case of issue of additional investment units: (i) securities; (ii) monetary claims under credit agreements secured by mortgage, including the pledgee’s receivables under the mortgage agreements; (iii) participatory shares in the charter capital of limited liability companies; (iv) immovables.

It is also stipulated that the period of fund formation shall not exceed six months if the trust management rules of the fund provide for the possibility of payment for the investment units of the fund upon its formation by the types of property indicated in points (ii)-(iv) above.

New Edition of Standard Trust Management Rules for Interval Unit Investment Funds was approved by the Russian Government⁸. The new edition, inter alia, provides that both full and short names of the fund with indication of the category of the fund are to be specified in the Rules; clarifies the period of fund formation; describes in more details the rights and obligations of management company, restrictions on performance of a number of transactions with securities and other property, procedures in relation to investment units granting, exchange, payment issues.

Clarification on the Procedure of Provision of Extract from the Register of Unit Investment Funds “Regulation on the Procedure of Provision of Extracts from the Register of Unit Investment Funds”⁹ sets forth the form and the content for the extract from the register of unit investment funds as well as the form of the application for the obtainment of such extract. It is stipulated that the extract shall be provided within 5 business days following the day of submission of the application to the respective regional office of the FFMS.

⁸ Government Regulation № 1005 of December 24, 2008

⁹ Approved by FFMS Order No. 08-50/ПЗ-Н of November 11, 2008

3. Banking Law

New in the Regulation of Bank Activity

Changes in Legislation on Deposit Insurance

For enhancement of efficiency of the insurance of deposits the Federal Law “On Insurance of Deposits of Individuals in Banks of the Russian Federation” has been amended¹⁰. The Law now contains a new term “counter claims”, which means financial obligations of a depositor towards the bank when the depositor is the bank’s debtor. It is stipulated that banks shall keep record of bank’s obligations towards depositors and counter claims of the bank to depositor. Banks are to prepare a register of bank’s obligations towards depositors immediately in case of insurance event or upon the demand of the Central Bank of the Russian Federation (hereinafter – the “CB RF”) within 7 business days following the date of receipt of such demand.

It has been clarified that cash on bank accounts (deposits) of attorneys, notaries and other persons if such accounts (deposits) are opened for carrying out the professional activity are not subject to insurance.

The amendments stipulate that inheritors of depositors are entitled to exercise their rights in respect of the deposit obtained after an insurance event provided that no insurance indemnification was paid to the depositor. The inheritor is entitled to exercise ancestor’s rights from the moment of obtainment a respective document confirming the rights for inheritance or the rights to use the monetary funds of the ancestor. It is provided that additional funds credited to the deposit (account) starting from the date when the CB RF forbade to attract funds of individuals in deposits may be transferred upon the request of the individual to his/her account opened with another bank within the system of deposits insurance (previously there was no such possibility on transfer and the funds were to be returned).

The new edition of the Law also sets forth the criteria when (i) the bank does not comply with the requirements of the system of deposits insurance; (ii) the bank’s activity is risky for its creditors and depositors.

¹⁰ Federal Law No.270-FZ of December 22, 2008

Starting from 26.12.2009 banks shall comply with the requirement on disclosure of information on persons that may significantly affect (directly and indirectly) the procedure of management decision-making.

The new edition of the Law comes into force on 26.12.2008 save for the provisions mentioned above.

Additional Requirements for Reorganization of Credit Organizations and Other Legal Entities¹¹ The amendments introduced into the Federal Law “On Banks and Banking Activity,, specify the procedure of notification of the CB RF on the commencement of the reorganization procedure of credit organization; provide for the peculiarities of the credit organization reorganization in the form of merger, accession or transformation: in particular, stipulate the procedure of creditors notification on reorganization; clarify the creditors’ rights as well as the procedure of disclosure of the information on significant facts (events, act) that may affect financial and economic activity of credit organization.

Several other legislative acts of the Russian Federation have also been amended by incorporation therein the provisions clarifying the procedure of provision of information with regard to reorganization of legal entities.

4. Anti-money Laundering Legislation

New Rosfinmonitoring Reglament In its Order No.264 of November 24, 2008 Rosfinmonitoring approved its new Reglament, which stipulates the main principles of organization of the activity of the Federal Financial Monitoring Service as the governmental body exercising anti-money laundering control. The Reglament, inter alia, describes the internal organization of Rosfinmonitoring; the procedure of its cooperation with governmental authorities as well as the principles of dealing with queries and petitions of companies and individuals; provides for the procedure of access to the information regarding its activity.

¹¹ Federal Law No.315-FZ of December 30, 2008

5. Other Significant Changes

Changes in Legislation on Limited Liability Companies (“LLC”) The amendments to the Civil Code of the Russian Federation and the Federal Law “On Limited Liability Companies” introduce significant changes in the regulation of the activity of LLC. We would like to draw your special attention to the following new requirements:

Foundation agreement will no longer be a company’s constitutional document. However, founders shall conclude the agreement on foundation which regulates a procedure of LLC establishment. Such agreement may provide for penalties for founders in case they fail to pay for participatory shares.

Founders/participants will be entitled to conclude a special agreement, a kind of shareholders agreement, stipulating certain rules and restrictions with regard to the rights of the participants.

There will be no requirement to specify a list of participants, size and nominal value of their participatory shares in the charter of the company due to the fact that such information is indicated in the Unified State Register of Legal Entities (the “EGRUL”) in accordance with the legislation on state registration of legal entities.

Any alienation of the equity shares shall be notarized save for the cases stipulated in the Law on LLC. The title to the participatory share shall be deemed transferred to a purchaser from the moment of notarization of the agreement or if such notarization is not required – from the moment of introduction of entry in the EGRUL on the basis of respective documents. Within 3 days from the moment of notarization of the transaction the notary shall provide the state registration authority (or send by registered mail) with the application on amendment to the EGRUL signed by the seller, the transaction documents which confirm the transfer of title to the participatory shares. If the pledge of the participatory share is provided by the transaction, such encumbrance (and any other) is to be stated in the application provided to the state registration authority. Also the participatory share pledge agreement shall be notarized and the information in respect of such pledge is to

be provided by the notary to the state registration authority.

LLC shall maintain a list of participants specifying the information on every participant, participatory shares, facts of payment therefore, etc. The sole executive body shall be responsible for such maintenance unless otherwise is provided by the charter of the company.

The amendments clarify the competence of the board of directors of LLC as well as the procedure of approval of major and interested party transactions.

LLC shall be entitled to transform into a legal entity of other forms, business partnership or production cooperative. Previously the LLC legislation provided less extensive list of the forms into which LLC may be transformed.

The amendments described herein come into force on July 1, 2009. The charters and foundation agreements of the LLC established before July 1, 2009 LLC shall be brought to correspondence with the Civil Code of Russia and the law on LLC until January 1, 2010.

New in Pledge Enforcement The legislation of the Russian Federation regarding the pledge enforcement procedure has been amended¹². In particular, the amendments address the following issues: procedure of enforcement and realization of property pledged; enforcement of such property under the commission contract; specification of the list of documents for purposes of out of court procedure of pledge enforcement; cancelling of the registration entry in case of liquidation of the pledge being a legal entity; grounds for refusal in enforcement procedure, etc.

The amendments set forth the principle of necessity and the procedure of appraisal of the pledged property to be realized in cases stipulated in the legislation. Thus, realization shall be conducted taking into account the market price of the pledged property. The law specifies the possibility to file claim to the court in order to dispute against the estimated price.

The important innovation of the pledge legislation is the limitation of possibilities for realiza-

tion of pledged property in case of minor breach of secured obligation. The criteria of minor breaches are stipulated in the Law "On Pledge".

The Russian Federal Antimonopoly Service Approved¹³ the Form of Business Plan for Companies of Strategic Importance, which is to be provided by a foreign investor in accordance with Article 8 of the Federal Law "On Strategic Investments". Under the Law, in case as a result of transaction foreign investors or group of persons gets the control over the company of strategic importance, the application for obtaining the preliminary consent for such transaction shall contain the relevant business plan of such company. The business plan shall contain the general project description, purposes and intents, project cost estimation, pay-back time, industry analysis, characteristic of competitive environment, description of the produced and (or) sold goods (works, services), general marketing strategy, etc. Besides, a business plan shall include operating and financial plan as well as the estimation of risks and effectiveness of the project. The documents confirming and explaining the information specified in the plan shall be attached thereto.

The document entered into force on November 28, 2008.

¹² Federal Law No.306-FZ of December 30, 2008

¹³ Order of the Federal Antimonopoly Service of the Russian Federation No.308 of August 13, 2008

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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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