

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

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## 1. Insurance and Pension Funds

### Legislative Initiatives in the Field of Insurance

**The Ministry of Finance of the Russian Federation, in conjunction with the All-Russian Insurers Union (the Union) have developed amendments to the Criminal Code, imposing penalties for crimes in insurance area** According to the report of the head of the Union's Committee on insurance fraud counteraction, the draft law of Ministry of Finance proposes to amend Articles 172 and 182 of the Criminal Code, adding the definition of the "illegal insurance activities" (that is, working without a license), the "falsification of an insurance event" (namely - receiving payments on forged documents), the "misrepresentation in the process of insurance" (deception of an insurer by a client in the form of providing false information or insurer's misrepresentation towards a client), as well as the "non-fulfillment of obligations after the termination of insurance activity."

In the meantime, the Union proposes to consider as an offence not only receipt of the reimbursement upon fraudulent documents, but also an attempt of such, i.e. submission of fraudulent documents to an insurer<sup>1</sup>.

**Penalties for Applying Average Insurance Tariff** The Federal Antimonopoly Service of Russia (FAS) and the Federal Insurance Supervision Service (FISS) plan to punish insurers for the application of an average insurance rate to the risks of banking borrowers regardless to the tariffs approved by the regulating authority. As was explained by the representatives of FISS, in such cases of applying incorrect tariffs an insurer would receive a respective prescription. We note that insurance is stipulated as

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<sup>1</sup> [www.bankir.ru](http://www.bankir.ru)

being mandatory in mortgages and automobile landing<sup>2</sup>.

**Regulation of Foreign Investments into Russian Insurance Companies** The Order of the Ministry of Finance of the Russian Federation approving the administrative reglament of FISS<sup>3</sup> was registered with the Ministry of Justice of the Russian Federation. The Administrative reglament defines the order and the forms of control on calculation of quota settled for participation of foreign capital in the authorized capitals of insurance companies, the issuance of preliminary permits to increase authorized capital of insurance organizations by means of foreign investors; for entering with the participation of foreign investors into transactions on the alienation of shares of insurance organizations; for the establishment of representative offices of foreign insurance, reinsurance, broker and other organizations that conduct activities in the field of insurance, as well as for the establishment of branches of insurers with foreign investments.

#### New in the Regulation of Mutual Insurance

The Regulation "On requirements for application, information and documents to be submitted to obtain an insurance license"<sup>4</sup> has been completed with the requirements to the documents submitted for obtaining a license for mutual insurance activity. A form of application for the mutual insurance license is provided as well.

#### Control over the Insurance Brokerage Activity

In its Order of June 18, 2008 the Ministry of Finance of the Russian Federation approved the form of presentation of information in relation to insurance brokerage activity and the order of providing such information. The Order is registered with the Ministry of Justice and has effect starting with information on insurance brokerage activity for 2006.

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<sup>2</sup> [www.bankir.ru](http://www.bankir.ru)

<sup>3</sup> The Order of the Ministry of Finance of the Russian Federation of April 15, 2008 No. 44H. The document will enter into force after 10 days as of the date of its official publication.

<sup>4</sup> The Order of the Ministry of Finance of the Russian Federation of June 18, 2008 No. 61H

## New in the Regulation of Non-state Pension Funds Activity

### Internal Control in Non-state Pension Funds

The Federal Financial Markets Service (FFMS) approved the Requirements<sup>5</sup> to the rules of organization of internal control in non-state pension funds. The internal control measures include, inter alia, the following: control over the in-time fulfillment of the fund's obligations, the due and in-time preparation of reports, control over the placement of pension reserves, control over the fulfillment of the fund's obligations under obligatory pension insurance agreements. The head and other employees of the fund's internal control department shall be independent in their activity of executive bodies of the fund and shall be supervised by the fund board.

## 2. Capital Market and Securitization

### New in the Regulation of the Securities Market

**Banks will Have the Opportunity to Exchange Facilities Claims for Liquidity** The FFMS will allow Russian investors to have the opportunity to invest into a new type of funds – credit funds.

According to the new version of the FFMS Decree<sup>6</sup>, the assets of the credit funds may include monetary claims upon credit agreements, secured by pledge, surety or bank guarantee. The remaining assets of credit funds may compose cash and debt instruments. Besides, managers of credit funds will be allowed to use derivatives. Moreover, the law specifies requirements for the asset structure of credit, as well as mortgage funds, funds of funds and hedge funds. More precisely the structure of the above-mentioned funds' assets will be described in the Decree on risks, which now is being elaborated by the FFMS.

<sup>5</sup> The FFMS Order of June 3, 2008 No.08-23/ПЗ-Н

<sup>6</sup> The FFMS Order of May 20, 2008 No. 08-19/ПЗ-Н

This document enters into force after 10 days after its official publication, except for the certain provisions which come into force along with the above-mentioned Decree on risks. Managers should ensure compliance of the trust management rules which are to be in line with the new requirements before December 12, 2008.

**Strengthening of the Responsibility of Financial Market Participants, including Prices Manipulation on the Securities Market** The draft law is aimed at strengthening the administrative responsibility for offences committed in the area of legislation regarding joint-stock companies, limited liability companies, securities market and investment funds (including establishment of the responsibility for breaches of the law on the procedure for the preparation and holding of general meetings of shareholders, participants of limited liability companies and mutual funds investors).

The document amends the number of laws, including the Code on Administrative Offences. Now the definition of manipulation defined in the Law "On Securities Market" only in general terms.

Also the law expands the list of liable persons by stock investment funds and non-state pension funds and special subjects - members of boards of directors, counting and audit commissions. The project also increases the period of limitation for bringing to responsibility from two months to one year<sup>7</sup>.

### Russian Ministry of Justice Has Registered Amendments to the FFMS Securities Issue Standards<sup>8</sup>

The document introduces a number of changes into the rules of securities issue. Also particular adjustments are introduced in relation to the Securities Issue Report. In particular, a list of information that must be contained in the decision on placement (issuance) of additional shares, as well as bonds, in the case of payment of such securities by non-monetary means concerning information on the appraiser.

A new rule is introduced regarding the indication in the decision on issue of securities of an

<sup>7</sup> [www.bankir.ru](http://www.bankir.ru)

<sup>8</sup> The FFMS Order of June 3, 2008 No. 08-22/ПЗ-Н. The document will enter into force after 10 days as of the date of its official publication.

order of the conclusion of preliminary agreements or order of the filing of preliminary applications.

The document clarifies the situation, concerned with the issuance of mortgage securities and details regarding early repayment of stock-traded bonds.

**FFMS Reduces the Quota of Russian Companies' Shares Placement Abroad** From now on issuers will be able to offer outside of Russia maximum of 30% of the total number of issued shares of Russian issuer of the same category. Earlier quota was equal to 35%.

In addition, the special restrictions on the issuance abroad of securities of companies which have the strategic status are imposed, such companies may place abroad up to 25% of the shares.

If the issuer exercises geological study, exploration and extraction of minerals at the sites of federal status, the maximum 5% of its shares may be traded on foreign trading venues<sup>9</sup>.

**Creation of Government Commission for Controlling Foreign Investments in Companies of Strategic Importance for Defense and Security of the Country**<sup>10</sup> The Commission is to be headed by the Chairman of the Russian Government. The main tasks of the Commission are: preliminary approval of the transactions resulting in the control of a foreign investor or group of persons of this foreign investor, over the companies of strategic importance; coordination of establishment of control of a foreign investor (or group of persons) over the above-mentioned companies or refusal in such approvals.

### 3. Banking Law

#### New in the Regulation of Bank Activity

**New Procedure of Banks Economic Status Appraisal** In accordance with the newly estab-

lished procedure<sup>11</sup> the general assessment of bank's status will be performed on the basis of appraisal results of capital, assets, profitability, liquidity, obligatory normative standards, management quality and transparency of shareholding structure. The appraisal shall be exercised by territorial authorities of the Central Bank of the Russian Federation (CB RF) at least one time per quarter. On the basis of appraisal results the bank will be included into one of five classification groups. The territorial authority of the CB RF, which is responsible for the appraisal, shall send the information obtained to both the CB RF and the executive body of a bank. Such information shall not be disclosed to third parties.

**FAS is Going to Check Reasonableness of Banks' Services Prices** Project of methods of determination of unreasonably high and low prices for the services of banks having dominant position on the market and order of detecting of such banks has been placed by FAS on the WEB. The representatives of FAS concern that the price shall be considered as unreasonably high or low if it is more or less than 10% of the average price on the market. As a penalty for setting such high or low prices FAS proposes to confiscate unreasonably earned revenues or to impose fines on banks. The document elaborated in accordance with anti-trust legislation prohibiting the abuse by market participants of their dominant position has been presented to the CB RF for the consideration<sup>12</sup>.

**The CB RF Clarifies the Procedure of Information Transfer about Breach of Currency Law Requirements** In its Informational Letter of May 30, 2008 No.37 the CB RF clarifies the procedure of transfer of the information about breach of certain provisions of the Federal Law "On Currency Regulation and Currency Control" in case when upon the request of the appropriate bank a client didn't provide it with the documents and information on performance of currency operations or provided it out of time set in the request; or in case of non-receipt of funds on a resident's bank account from a non-resident for delivered goods (works,

<sup>9</sup> The FFMS Order of June 5, 2008 No. 08-24/ПЗ-Н

<sup>10</sup> Government Regulations of July 6, 2008 No. 510

<sup>11</sup> Instruction of the CB RF of April 30, 2008 No. 2005-U

<sup>12</sup> [www.bankir.ru](http://www.bankir.ru)

services) in terms provided for by foreign trade contracts.

**Changes in the List of Documents for Obtaining Permission for Establishment of Subsidiaries Abroad** In accordance with the Instruction of the CB RF<sup>13</sup> in the list of documents necessary for the establishment by a credit organization of its subsidiary in the territory of a foreign state have been included written consents of chief executives, chief accountant officer (candidates for chief executives and chief accountant officers), founders (shareholders) of the subsidiary for their personal data processing by the CB RF. Some changes are introduced with regard to the requirements to the content of economic feasibility for subsidiary establishment project.

**The CB RF Wants Auditors to Share Information about their Clients-Banks** On the other hand the CB RF is ready to provide auditors with information obtained in the course of its supervisory activity. The draft law amending the Federal Laws “On Audit Activity” and “On Banks and Banking Activity” (which has been presented to audit companies for the consideration) specifies that auditors without a written consent of their clients shall inform the CB RF upon its request about malpractice of executive bodies or breaches which endanger the interests of bank’s depositors or creditors in a week term<sup>14</sup>.

**Changes in Accounts Opening and Closure Procedure** In accordance with Instruction of the CB RF<sup>15</sup> material changes have been introduced in the procedure of opening and closure of bank and deposit accounts. In particular, the identification requirements have been clarified: for identification of a client which opens an account the requisites of identification documents shall be enough, thus banks are not obliged to demand the copies of such documents. Some changes are introduced in relation to the banking card filling: chief accountant or

another person responsible for accounting of the company may not have the right of first signature, since such persons may only have the right of second signature. It is clarified that the banks may accept only banking cards with examples of signatures which are certified by the same notary. In addition, the new procedure of foreign documents translation is established. Credit organizations shall bring its banking rules in the compliance with the new requirements within three months from the date of their entry into force<sup>16</sup>.

#### 4. Anti-money Laundering Legislation

**Rosfinmonitoring May Be Authorised to Sanction Banking License Revocation** The State Duma of the Russian Federation passed in a first reading amendments to a number of federal laws, according to which the CB RF will be entitled to revoke banking licenses for breach of anti-money laundering legislation only with the preliminary approval of Rosfinmonitoring. The license may be revoked provided that the infringement of anti-money laundering legislation was stated twice. However, the representatives of the CB RF argue against the proposed amendments considering them as delaying the process of license revocation thus allowing the banks within this period to operate their activity in bad faith<sup>17</sup>.

**Extension of Rosfinmonitoring Competence** Rosfinmonitoring approved new Regulation<sup>18</sup> regarding exercising control over the compliance by organizations (their branches) performing operations with cash and other property, which are out of control of regulatory authorities, with anti-money laundering legislation. The above-mentioned organizations include: leasing companies, pawnshops, pari-mutuel and bookmakers organizations and other organizations of such type, organizations performing intermedia-

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<sup>13</sup> Instruction of the CB RF of June 4, 2008 No. 2016-U

<sup>14</sup> [www.bankir.ru](http://www.bankir.ru)

<sup>15</sup> Instruction of the CB RF of May 14, 2008 No. 2009-U

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<sup>16</sup> The document entered into force on June 22, 2008.

<sup>17</sup> [www.bankir.ru](http://www.bankir.ru)

<sup>18</sup> The Order of Rosfinmonitoring of May 23, 2008 No.131

ry services for the sale and purchase of immovable property, non-credit organizations exercising cash acceptance from natural persons in cases provided by banking legislation, commercial organizations entering into factoring agreements as financial agents. In accordance with the new Regulation Rosfinmonitoring is entitled to carry out inspections either at the location of Rosfinmonitoring or its regional offices (cameral inspection) or at the location of the organization the activity of which is to be inspected (field inspection).

In addition to the new Regulation Rosfinmonitoring issued administrative regulation<sup>19</sup> governing the procedure of approval by Rosfinmonitoring the rules of internal control of the above-mentioned organizations.

**Additional Control over Operations with Promissory Notes between Natural Persons and Legal Entities** In the course of its supervisory activity the CB RF highlighted that soon after the acquisition of promissory notes the initial promissory note holders transfer them to other Russian legal entities bearing the marks of “flight-by-night“ companies. Such promissory notes are presented for payment to Russian credit organizations by Russian natural persons acting under power of attorney issued by non-residents being registered in most cases in offshore zones. In its Letter of July 4,2008 No.80-T the CB RF recommends that banks pay special attention to such operations and provide the information thereon to the regulatory authority in accordance with anti-money laundering legislation.

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<sup>19</sup> The Order of Rosfinmonitoring of May 23, 2008 No.130. The document will enter into force within 10 days from the date of its official publication.

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