

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

Bulletin May 2008



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1. Insurance and Pension Funds

Improvement of the Bank Assurance Situation

In October, the Federal Antimonopoly Service (hereinafter – the “FAS”) sent a draft regulation to the government that will help insurers and banks to conduct joint business without violating anti-monopoly legislation¹. The Financial Markets Department of the FAS reports that the antitrust office will prepare a draft of a government regulation on the admissibility of agreements between banks and insurers. The possibility of creating such regulation is provided for in Art. 13 of the Federal Law "On Competition Protection", which states that the government may determine the cases in which agreements are not prohibited. The project will be prepared jointly with the Central Bank of the Russian Federation (hereinafter – the “CB RF”), FSSN and Ministry of Finance and is expected to be sent to the Government in October of this year.

In the development of the draft resolution, the FAS will take into consideration the court practice of initiating cases against banks and insurers. For example, they intend to consider as illegal such actions as financial organizations' colluding in relation to insurance tariffs, the imposing by a bank of an insurer to a client, as well as a refusal of a bank to cooperate with an insurer who complies with all relevant requirements prescribed. The FAS also considers cases in which insurers apply higher rates to property held on credit than to owned property to be inadmissible.

New Law on Additional Insurance Contributions to Labour Pensions

The new Federal Law “On Additional Insurance Contributions to the Funded Part of Labour Pension and State Support of Pension Accruals

¹ www.bankir.ru

Formation”, No.56-FZ dated 30.04.2008, provides for the possibility and the procedure of voluntary payment of additional insurance contributions to the funded part of labour pensions (hereinafter- “insurance contributions”) as well as for the procedure of co-financing from the federal budget funds of such contributions. The new Law is aimed at pension accrual formation incentives and higher levels of pension benefits. A person who voluntarily engages in obligatory pension insurance relations will be entitled to determine the amount of insurance contributions paid, the time of the payments and to make such contributions either by themselves through credit organizations or through their employer. The law specifies the cases where such persons will be entitled to state support in the form of insurance contribution co-financing and sets limits on the amounts and periods thereof. It also contains provisions on the procedure of transferring insurance contributions and the income from the investment thereof to management companies and non-state pension funds.

The new Law will enter into force on 01.10.2008, except for certain provisions which will come into effect starting from 01.01.2009.

New Regulations on Activity of a Non-state Pension Fund Specialized Depository

The Government of the Russian Federation approved new Regulations on the Activity of a Non-state Pension Fund Specialized Depository² which replaced the previously valid Regulations³. The new Regulations specify in more detail the rights and obligations of specialized depositories of non-state pension funds. In particular, they clarify the procedure of recording the rights on securities and other property in which pension reserves are invested as well as the procedure of exercising control over the activities of non-state pension funds and asset management companies. The Regulations also set forth requirements with regard to document storage and document control.

New Requirements on Document Storage

The changes⁴ introduced in the Rules on Non-

² Government Regulations of April 16, 2008 No.269

³ Government Regulations of April 28, 2000 No.383

⁴ Government Regulations of April 16, 2008 No.270

state Pension Fund Pension Reserves Investment and Control over the Investment⁵ stipulate the list of documents to be stored by non-state pension funds and management companies of non-state pension funds. Such documents include: primary documents concerning the rights on the property in which the pension reserves are invested and documents on the transfer of such property; agreements on the basis of which the investment of pension reserves is performed; documents confirming the rights on the real estate in which the pension reserves are invested as well as evaluation reports; documents determining the accounting policy of the non-state pension fund and any changes therein. The non-state pension funds and management companies are obligated to transfer the duly certified copies of the above-mentioned documents to a special depository in cases provided for under Russian legislation.

2. Capital Market and Securitization

New in the Regulation of the Securities Market

Shareholder's Notification in respect of Acquisition or Change of the Share In its Letter No. 08-VM-03/4874⁶, the Federal Financial Markets Service (hereinafter – the “FFMS”) approved the form that it recommends for the use of notification about an acquisition or change of the shareholding. The notification shall contain information concerning the name of the shareholder, the name of the issuer, the state registration number of the share issue (additional share issue) and the amount of the shares belonging to the shareholder. Also, the process of filing a notification to the FFMS is specified therein.

Issuers who own ordinary shares shall disclose the above-mentioned information in the form of a notification about the information which may have a material effect in respect of the value of the shares. In this case, there is no need to deliver any other notifications.

⁵ Approved by Government Regulations of February 1, 2007 No.63

⁶ The Letter of FFMS of 18 March 2008 No. 08-BM-03/4874

Amendments to the Federal Financial Markets Service Competence The FFMS competence was amended by the Government Regulations approving changes to the Regulations on the Federal Financial Markets Service. The list of powers is extended mainly in respect of licensing and accreditation issues. The document came into force on 20.05.2008⁷

Draft Law regarding Changes to the Securities Market Regulations It was announced by the FFMS that the Service has agreed with the CB RF to cancel the necessity to register the Issue Reports of banks. Instead, banks are obligated only to notify the CB RF about the results of placements and this will shorten the time lag between the share placement and the beginning of the secondary market floating. Amendments to the Federal Law „On Securities Markets“ regarding such notification may be passed during this year.

The FFMS agreed with the CB RF on the amendments to the draft law according to which, in cases of a public offering of additional issue shares with an exchange and conducted through a broker, banks shall be allowed not to register the report of the results of the issue, instead they are allowed only to notify the CB RF about the completion of the placement. Moreover, according to these amendments, the approval of the CB RF to acquire (purchase) more than 20% of the shares of the credit organisation might be obtained after the completion of a given transaction.

Coming Amendments to the Qualified Investors Regulation The Regulation „On the Order of Recognition of Qualified Investors“⁸ which is approved in accordance with the Federal Law „On Securities Markets“, defines the terms and the order of recognition of legal or natural persons as qualified investors which are entitled to conduct certain operations with securities and other financial instruments. The recognition of a person as a qualified investor can be executed by a broker, an asset manager, an asset management company of the unit investment fund or other persons in cases specified by law. The person is recognized as a qualified investor

⁷ Government Regulations of May, 6 2008 N 360

⁸ The FFMS Order of 18 March 2008 N 08-12/ПЗ-Н

from the moment their entry into the register is made to that effect. The register is to be kept by the person who executes such recognition. The new Regulation will come into force upon the expiry of 10 days from the moment of its official publication, except for the provisions of Clause 4.6 of the Regulations regarding submitting information to the FFMS in respect of the qualified investors which will come into force on 01.01.2009.

3. Banking Law

Consumer Lending

Disclosure of Real Loan Value Pursuant to the amendments to the Federal Law “On Banks and Banking Activity”,⁹ the banks, prior to the conclusion of a loan agreement or introduction changes affecting the loan value thereto, shall provide the customer with complete information regarding the total amount of the loan, as well as the amount of payments for the non-fulfillment of the loan agreement. The calculation of the total loan value shall include payments in relation to the conclusion and fulfillment of the agreement and payments in favor of third parties- if such parties are specified in the respective loan agreement. Should the real loan value not be determined at the moment of the conclusion of, or introduction of changes to, it shall be calculated on the basis of the maximum limit of the loan amount and the term of the loan.

Draft Law on the Insolvency of Individuals

A new draft Law on the Insolvency of Individuals was presented by the Ministry of Economic Development and Trade of the Russian Federation (hereinafter – the “MEDT”) for the consideration of the Government of Russia¹⁰. The representatives of MEDT expect that it will protect rights both of creditors and debtors. The

⁹ Federal Law of April 8, 2008 No.46-FZ “On Amending Article 30 of the Federal Law “On Banks and Banking Activity” will enter into force within 60 days from the date of its official publication (The Law was published in the “Russian newspaper” on 12.04.2008)

¹⁰ www.bankir.ru

proposed draft law aims to promote consumer lending by the decrease of the volume of the non-repayments of loans.

According to the draft law, the insolvency procedure may be initiated either by a creditor or a debtor. The following grounds for the initiation of the insolvency procedure are provided: the amount of the claim shall be not less than 100.000 RUB and the period of payment delay shall exceed 6 months. The procedure of insolvency starts with the filing of an application in arbitration court. The court appoints a bankruptcy commissioner, if applicable, which, within 3 months, helps the debtor in the preparation of a plan for debt restructuring which should be approved by the majority of the creditors (during this period no new claims are allowed). Should such plan be approved, the debtor is to pay all claims within 5 years, otherwise they will be recognized as insolvent. In cases of insolvency in accordance with the court’s resolution, the debtor’s property is assigned among the creditors proportionally. With a status of insolvent, an individual will not be able to take new loans due to the obligation of the provision of financial insolvency information, become an entrepreneur or incorporator within one year following the insolvency. Should all the claims be satisfied, there would be no negative financial or social consequences for a debtor. The new draft law is expected to enter into force on January 1, 2009.

New in the Regulation of Bank Activity

Extension of List of Grounds for License Revocation The CB RF plans to extend the list of grounds for the revocation of a bank’s licenses. In its draft of the new Instruction “On the Procedure of Revocation of Credit Organization’s License for Bank Operations due to Significant Unreliability of Returns”¹¹, which is supposed to replace the currently valid №1311-U dated 25.07.2003, the CB RF stipulates, as new grounds for license revocation, failure to report operations in amounts equal to or exceeding 600.000 rubles; lack of the respective material valuables or documents for amounts equal to or exceeding 600.000 rubles for the

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http://www.cbr.ru/analytics/standart_acts/projects/

confirmation of such operations. It also clarifies in more detail the other grounds for license revocation based on the material unreliability of report data provided for under the currently valid version of the Instruction. The facts of the material unreliability of returns of a credit organization may be confirmed, *inter alia*, by the relevant returns provided to the CB RF; acts of examination; documents confirming the existence of a transaction - if such was not indicated in the accounting and reports; etc.

Organization of Risk Management for Internet-Banking Operations The CB RF issued new recommendations¹² for the organization of risk management for Internet-banking operations. The following banking risks related to Internet-banking operations are as: operational, legal, strategic, risk of loss of business reputation, risk of liquidity; as well the reasons for the occurrence thereof. The recommendations set forth general principles of risk management and stipulate new requirements with regard to the internal documents of a credit organization regulating to the procedure of risk management of Internet-banking operations. The CB RF also recommends that credit organizations organize and control the process of information support with a view to effective risk management, making reasoned decisions in relation to the application of Internet-banking systems and taking measures on decreases or eliminations of risks factors.

In its Letter of April 2, 2008 No.37-T, **the CB RF sets forth for the second quarter of 2008 ruble equivalents for the minimum amount of charter capital and the minimum amount of owned funds for banks and non-banking credit organizations.**

4. Anti-money Laundering Legislation

The CB RF Generalizes Anti-money Laundering Practice In its Informational Letter No.13 dated 29.02.2008, the CB RF clarifies that the following operations, the amount of which is equal to or exceeds 600.000 RUR (or its equivalent in foreign currency), shall be subject to obligatory control: payments under

financial lease agreements; crediting or debiting the account of a legal entity; sale and purchase of precious metals and gems; provision by a legal entity non-credit organization of interest-free loans to natural or legal persons, as well as receipt of such loan in case the parties are clients of the same bank.

Additional Control over Operations under Import Agreements In accordance with the Letter of the CB RF No.24-T dated 13.03.2008, banks shall exercise control over operations between residents and non-residents under commodity import deals with terms of commercial credit. Objects of control are companies which start to perform such transactions in favor of nonresidents after 3 months of their incorporation, or which make everyday payments in favor of non-residents under import agreements, or collect cash assets from different residents and transfer them in favor of non-residents during one or several operational days. The CB RF also recommends that banks pay special attention to agreements with a long term of delivery conditions or other conditions which are outside of common foreign trade practices.

Rosfinmonitoring will Control Financial Agents. Pursuant to the new Government Regulations¹³ starting from May 13, 2008, all commercial organizations entering into factoring agreements as financial agents shall take all necessary measures in relation to anti-money laundering. In particular, such organizations are to be registered with the Federal Financial Monitoring Service, to approve internal anti-money laundering regulations and to inform about all kinds of jobbery.

Prolongation of Moratorium on Applying Sanctions for Non-compliance with the New Requirements of the Anti-money Laundering Law In its Letter of May 13, 2008 №56-T, the CB RF recommends applying only preventative measures to credit organizations for the non-fulfillment of the new requirements (effective as of January 15, 2008) of the Anti-money Laundering Law¹⁴.up to October 1, 2008.

¹³ Government Regulations No.307 of April 25, 2008

¹⁴ Federal Law of November 28, 2007 No.275-FZ "On Amending Articles 5 and 7 of the Federal Law "On Countering Legalization of Income (Money

¹² The Letter of the CB RF No. 36-T of March 31, 2008

Laundering) Derived from Criminal Activity and Financing of Terrorism”. Please see also our previous Bulletins (January 2008; March 2008) in this respect.

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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 is not, and shall not serve as, legal advice of any kind.

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