

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

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1. Insurance and Pension Funds

New in Bank Assurance In the beginning of March 2009, the Federal Antimonopoly Service (“FAS”) submitted a draft of regulations regarding the cooperation of banks and insurers for the consideration of the government of the Russian Federation. In accordance with the draft, banks will have to accept insurance agreements concluded for the purposes of the granting of a loan by borrowers from insurers, which may have no cooperation with the bank, but which comply with financial requirements required by the bank. For its estimation of the financial strength of an insurance company, banks are allowed to use indexes of the authorized capital, amount of insurance premium received, insurance reserves and capital held by the insurer.¹

Clarification on the Procedure of Actuarial Assessment of Non-state Pension Funds Activity on Pension Provision Pursuant to the Regulation of the Russian Government No.95 of February 4, 2009, the obligations of a non-state pension fund towards its contributors and participants as well as the actuarial value of the assets into which the pension reserves are placed are subject to actuarial assessment. An actuarial assessment shall be performed separately on each of the pension schemes applied by the fund. The mentioned Regulation also sets forth some requirements with regard to the contents and the procedure of the execution of such actuarial report to be prepared as a result of the actuarial assessment of a non-state pension fund’s activity.

¹ www.bankir.ru

2. Capital Markets and Securitization

New in the Regulation of the Securities Market

Strengthening of the Responsibility for Violations on the Securities Market The Federal Law No.9-FZ of February 09, 2009 introduced amendments to the Federal law No.39-FZ of April 22, 1996 “On Securities Market” in respect of the clarification of the definition of price manipulation on the securities market and the Administrative Offense Code (“KoAP”) regarding additional responsibility for breaches of the legislation on the securities market and investment funds. The new edition of the Law on the Securities Market describes the actions which can be deemed as price manipulation on the securities market and specifies their types, such as the provision of false or misleading information in respect of securities, performance of certain transactions, etc. The new provisions of KoAP specify that the limitation period for bringing parties breaching the legislation on securities market and investment funds to administrative responsibility is 1 year from the day of breach. Also the amended KoAP clarifies the responsibility for price manipulation on the securities market, breaches of legislation regarding document storage, unfair issue and illegal deals with securities, breaches of legislation regulating the activity of professional market participants, joint-stock investment funds, non-state pension funds, asset managers and specialized depositaries of joint-stock investment funds, unit investment funds or non-state pension funds, etc.

New Equity Calculation Requirements for Professional Market Participants and Asset Managers on Collective Investments Market

A new Federal Financial Markets Service (“FFMS”) Order² came into force in February 2009: it sets forth the unified requirements on the procedure of equity calculation both for the professional market participants and for asset managers of investment funds, unit investment funds and non-state pension funds, which will be effective starting from July 1, 2009. Professional market participants and asset managers

² FFMS Order №08-41/ПЗ-Н dated 23.10.2008

of investment funds, unit investment funds and non-state pension funds shall ensure the compliance with the equity amount calculated on the basis of the new requirements with the capital adequacy requirements by July 1, 2009.

In addition to that, pursuant to FFMS Order No. 04-8-40/ПЗ-Н of October 23, 2008, professional market participants and asset managers of investment funds, unit investment funds and non-state pension funds will be obliged to disclose the information on the equity calculation on the Internet. The mentioned Order will come into force on July 1, 2009.

Clarification on the Procedure of Compensation Payment to Holders of Investment Units of Open or Interval Unit Investment Funds FFMS Order No.09-7/ПЗ-Н³ of March 5th, 2009 specifies that the monetary compensation payment upon the redemption of investment units of open or interval unit investment funds shall be made by wire transfer to the bank account of a person in favor of whom the investment unit is redeemed. In the event that the record of rights for the investment units redeemed was performed on the nominee holder's account, the payment of compensation may also be effected to a special depository account of such nominee holder.

New FFMS Regulation

In its Order No. 09-4/ПЗ-Н of February 10, 2009⁴ the FFMS approved its new Regulation, which stipulates the main principles of organization of the activity of the Federal Financial Markets Service as the governmental body exercising the state function on licensing the activity (a) of investment funds; (b) on management of investment funds, unit investment funds and non-state pension funds; (c) of specialized depositories of investment funds, unit investment funds and non-state pension funds; and (d) on pension provision and pension insurance. The Regulation sets forth the requirements with regard to FFMS' exercising of the licensing activity, in particular, it specifies the requirements as to the set of documents necessary for the obtainment, re-issue or cancellation

³ The document will enter into force after 10 days following the date of its official publication

⁴ The document will enter into force after 10 days following the date of its official publication

of the respective license, the list of the grounds for refusal of a license provision; describes the administrative proceedings, including the procedure for the keeping of the licenses register and contains the forms and samples of the documents required in the course of the licensing procedures.

3. Banking Law

New in the Regulation of Bank Activity

Clarification on the Order of Acquisition of Shares of Weak Banks In accordance with the Federal Law of October 27, 2008 №175-FZ "On Additional Measures for Stabilization of the Banking System for the Period until December 31, 2011", one of the measures for the prevention of the insolvency of a bank participating in the individuals' deposit insurance system is the acquisition of its shares (participatory shares) by investors. In the joint letter of January 28, 2009 №№10-T, AK/1984, the Central Bank of the Russian Federation ("CB RF") and the FAS note that the preliminary approval of the CB RF of the acquisition of shares (participatory shares) and consent of the FAS for the transaction as well as the fulfillment of other legal requirements with regard to the order of acquisition are not required notwithstanding a change of the amount of the authorized capital of a bank.

New Financial Requirements for Credit Organizations The amendments⁵ introduced by the Federal Law of December 2, 1990 No.395-1 "On Banks and Bank Activity" provide for a step-by-step increase of the amount of the bank's equity funds (capital) as well as a determination of ruble equivalents for the authorized capital of banks and non-bank credit organizations. The minimal amount of the authorized capital of a newly established bank as on the day of the filing of its application for a state registration and issuance of a license for a bank activity shall be RUR 180 mil., the minimal amount of the authorized capital of a newly established non-bank credit organization de-

⁵ Federal Law No.28-FZ dated 28.02.2009

pending on its request to obtain a license for the performance of the settlement of accounts under legal entities' requests including banks-correspondents shall be RUR 18 or 90 mio. A general license may be issued to a credit organization if its capital is not less than RUR 900 mil. as on the 1st day of a month when a request for the license is filed with the CB RF. The minimal capital amount of a bank shall be RUR 180 mil., however banks which had a capital amount less than RUR 180 mio as of January 1, 2007 are allowed to carry out their activity if the capital amount will not be less than the amount fixed as of January 1, 2007. However, starting from January 1, 2010, the capital amount of a bank shall be not less than RUR 90 mil. and from January 1, 2012 shall be not less than RUR 180 mil. (including banks whose fixed capital amount on January 1, 2007 was less than RUR 180 mil.).

Also, the amendments specify an order of compliance with the minimal capital amount requirements in the case of its decrease due to the changes in the estimation method by the CB RF.

Now, only credit organizations that have general licenses are allowed to establish representative offices, branches and affiliate companies on the territory of other countries upon approval (notification) of the CB RF. To attract individual deposits, credit organizations must have the authorized capital (for newly-established banks) or a capital amount (for existing banks) of not less than RUR 3 bln 600 mil. A new edition of the law also provides for certain amendments regarding license cancelation for breaches of law in respect of capital amount requirements.

Additional Requirements on Internal Control The Instruction of the CB RF of March 05, 2009 №2194-U introduces amendments to the Regulation "On Organization of Internal Control in Credit Organizations and Banking Groups"⁶ concerning the obligation of credit organizations to ensure continuous activity and (or) its restoration in the event that it is interrupted by unforeseen circumstances. It is provided that a credit organization shall have a plan of action focused on ensuring continuous activity and (or) its restoration in the circumstance that it is interrupted by unforeseen circumstances. The appendix to the Instruction

contains recommendations on the structure and content of the above-mentioned plan.

Reduction of Terms of Documents Review In its Letter of March 19, 2009 №36-T "On Terms of Review of Documents Sent for Legal Expertise" for the purposes of the enhancement of the efficiency of the procedures connected with the increase of a bank's equity (capital) using attracted subordinated loans (deposits, loans, bonded debts), the CB RF recommends to its territorial authorities which exercise control over credit organizations' activity to take steps for reducing the terms for document review. In particular, the CB RF recommends reducing the time spent for the review of documents and that it is necessary to promptly request all of the documents and information which are necessary for a given legal analysis.

Changes in Procedure of the Inspections in Credit Organizations The CB RF introduced amendments to Instruction №105-I of August 25, 2003 "On Inspections in Credit Organizations (branches) by Representatives of the Central Bank of the Russian Federation" and Instruction №108-I of December 1, 2003 "On the Organization of Inspection Activity of the Central Bank of the Russian Federation (the Bank of Russia)". In accordance with new editions of the documents in the inspection order, apart from the head of the inspection team and its members, a deputy head may also be specified, if necessary. An inspection order may be handed over by a head of a team as well as any other member of the team. Also members of the inspection team are allowed to visit any premises of a credit organization (previously, they could have access to office premises only). The amendments also concern the inspection activity of the CB RF, in particular, such issues as the procedure of granting powers to perform inspections, inspection planning, invitation of employees of other inspection divisions of the CB RF and staff of the state corporation "Deposit Insurance Agency" for participation in inspections, presentation of results, etc.

Borrowers May Be Given the Right to make Early Repayment of Mortgage Loans At the beginning of this February, a draft of the amendments to p.2 of Article 821 of the Civil Code of the Russian Federation was presented for the consideration of the State Duma of the

⁶ №242-P of 16.12.2003

Russian Federation. A new edition of the mentioned Article will allow borrowers-individuals to make the early repayment of a loan provided for the purposes of the purchase or building of accommodation. For the protection of banks, it is specified that the debtor shall notify the given bank of its intent to repay the mortgage loan early not later than 30 days prior to such repayment. In accordance with the draft, the conditions of a credit agreement which prohibit early repayment or somehow limit this right will be deemed void. For the present time, the Russian legislation allows banks to include in a loan agreement a condition that the loan can be repaid early only with bank's consent⁷.

4. Anti-money Laundering Legislation

Additional Requirement of Employee Training For the purposes of the exercise of anti-money laundering control, the Federal Financial Monitoring Service (“Rosfinmonitoring”) approved a new Regulation⁸ on staff training in organizations which perform operations with cash funds or other property. These trainings are aimed at providing employees knowledge of the Russian anti-money laundering legislation as well as the internal rules and other organizational and administrative documents applied for the purposes of anti-money laundering control. There are several types of training: introductory, planned and extraordinary briefings, participation in conferences, seminars and other similar events and self-study of the Russian legislation and internal rules. It is specified that the chief executive officer, their deputies, heads of branches, the chief accountant, legal service employees, etc., depending on the type of organization, must have such training (the list of employees is approved by the CEO).

Prolongation of the Moratorium on Applying Sanctions for Non-compliance with the New Requirements of the Anti-money laundering Law In its Letter No. 41-T of March 30, 2009, the CB RF recommends applying only preventative measures to credit organizations for the

non-fulfillment of the new requirements of the anti-money laundering legislation provided by the Federal Law No.275-FZ of November 28, 2007⁹ up to November 1, 2009.

5. Other Significant Changes

Liberalization of Status of Financial Agent The Federal Law No.56-FZ of April 9, 2009 has amended Article 825 of the Russian Civil Code in respect of entities entitled to enter into factoring agreements. In accordance with the new edition of the mentioned article, any commercial organization may be a financial agent with a right to enter into factoring agreements. Previously, the right to conclude such agreements belonged only to banks, other credit organizations and commercial organizations which obtained permission (license) for the carrying out of such activity only.

⁷ www.bankir.ru

⁸ Order No.256 of November 01, 2008

⁹ Please see also our previous Bulletins (January 2008; March 2008; May 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 do not, and shall not, serve as legal advice of any kind.

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