

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

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1. Insurance and Pension Funds

New in the Regulation of Additional Insurance Contributions to Labour Pensions

Following the issuance of the Government Regulation № 627 of August 18, 2008 the **Ministry of Health and Social Development of Russia approved the Rules for the submission of application for voluntary engagement in obligatory pension insurance relations**¹. The document specifies the procedure of application submission, in particular, it stipulates the list of documents that are to be filed to the Pension Fund of Russia (hereinafter – the “**PF RF**”) along with the application for voluntary engagement in obligatory pension insurance relations; clarifies the procedure of submitting and accepting relevant documents; sets forth the form of the application along with the instructions on the filling thereof.

Amendments to Model Agreement on Mutual Verification of Signatures The Ministry of Finance introduced amendments² to the Model Agreement on Mutual Verification of Signatures concluded between the Pension Fund of Russia and organizations³ entitled to submit to the PF RF electronic applications on choice of investment portfolio (asset management company), on transfer of pension accruals from the PF RF to a non-state pension fund or from one non-state pension fund to another, etc. The amendments concern the procedure of

¹ Order of the Ministry of Health and Social Development of Russia № 476H of September 10, 2008

² Order of the Ministry of Finance of Russia № 96H of September 16, 2008

³ Such organizations include, inter alia, credit organizations, non-state pension funds, employers, etc.

submitting to the PF RF the applications of insured persons for voluntary engagement in obligatory pension insurance relations for the purpose of payment additional insurance contributions to labour pensions, which from now on will be governed by the Model Agreement along with the procedure of submission applications mentioned above.

2. Capital Markets and Securitization

New in the Regulation of the Securities Market

A new procedure for bankruptcy of financial organizations⁴ At the end of September a draft of a law containing amendments to insurance, insolvency, non-state pension legislation, Criminal code and Code of administrative violations was directed to the State Duma of the Russian Federation. The document shall affect the process of bankruptcy of insurance companies, professional participants of the securities market, non-state pension funds, specialized depositories, management companies of investment trusts and mutual funds. The draft provides for a possibility of a financial organization to prepare and execute plan of measures for its stabilization in case of financial problems. If an organization is unable to overcome the crisis itself, the state authority establishes a provisional administration that should recover the organization within the period of up to 6 months or give a conclusion on reasonability of its bankruptcy. The draft also provides for the possibility to take actions to prevent bankruptcy if a financial organization does not have monetary assets on the bank accounts or if such organization refuses repeatedly to fulfill its obligations before creditors etc. The law stipules the obligation of the state authority to participate in the bankruptcy process.

Companies will be able to pay debts by shares – capitalization of receivables is to be permitted The Federal Financial Markets Service (hereinafter – the “**FFMS**”) has prepared

⁴<http://www.rbcdaily.ru/2008/09/23/finance/381459>;
<http://www.bankir.ru/news/newsline/30.09.2008/1111302>

and directed to the Government of Russia a draft of law allowing the option to form the charter capital by setting off of claims towards joint-stock companies and limited liability companies. Experts say that removal of a prohibition which is stipulated by the Russian legislation will allow the companies to repay debts by shares and equity shares. This amendment will thus introduce the concept of capitalization of a receivable against a company.

Clarification on Documents for License Obtainment The Russian Government approved⁵ the lists of documents confirming the compliance with the license requirements that are to be provided in order to obtain the licenses for carrying out the following activities:

- activity of investment funds;
- activity on management of investment funds, unit investment funds and non-state pension funds;
- activity of specialized depositaries of investment funds, unit investment funds and non-state pension funds;
- activity on pension provision and pension insurance.

Such documents, inter alia, include copies of balance sheet, profit and loss statement, auditor's report, etc.

Changes in License Requirements The amendments⁶ introduced in the Procedure of licensing of professional activity on securities market set forth as additional license requirement the provision of complete information on the ownership structure of the licensee within 15 business days following the reporting quarter. Such complete information shall mean disclosure of information on person or group of persons, which either directly or indirectly have at least 5% share in the charter capital of the licensee. The form of such information provision is attached to the document.

In addition, it is stipulated that the licensee may establish separate subdivisions out of the place

⁵ Government Regulation № 744 of October 6, 2008

⁶ FFMS Order No 08-39/ПЗ-Н of October 7, 2008

of its location in the form of branches or representative offices only.

The Central Bank of the Russian Federation (hereinafter – the “**CB RF**”) **becomes Stock Exchange Trader** Subject to the respective amendments in the Russian legislation⁷ the CB RF shall be entitled to participate in trading of stock exchanges and (or) other organizers of trade on the securities market. The amendments, inter alia, extend the list of open-market operations of the CB RF, thus allowing the latter, along with the sale and purchase of state securities and bonds of the CB RF, to perform operations on sale and purchase of securities specified by the Board of Directors, provided that such securities are admitted to trading at stock exchanges and (or) other organizers securities trading. Sale and purchase of shares is allowed on condition of further reverse transaction; the shares may be sold in case of failure of the counterparty to fulfill its obligations under such reverse transaction.

New Edition of Standard Trust Management Rules for Open 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, procedures in relation to investment units granting, payment issues.

3. Banking Law

New in the Regulation of Bank Activity

⁷ Federal Law № 176-FZ of October 27, 2008 “On Amending the Federal Law On Central Bank of the Russian Federation and Article 12 of the Federal Law On Securities Market”

⁸ Government Regulation № 790 of October 27, 2008

Insurance compensation increase in respect of individuals' deposits Due to the Federal Law №174-FZ dated October 13, 2008 came into effect on October 14, 2008, the insurance compensation in respect of individuals' deposits in banks was increased up to 700 000 rubles (previously the limit was 400 000 rubles) in case an insurance event took place after October 1, 2008. This applies to all banks regardless their participation in the system of obligatory insurance of individuals' deposits. Moreover, the CB RF is entitled to introduce limitations for the period of up to 1 year in respect of the amount of interest that is set by a credit organization in deposit agreements concluded (prolonged) with individuals during the limitation period as a result of breach of law by the banks during their activity if such breaches have created a real danger to creditors' (depositors') interests.

Procedure of calculation of the compensation for the individuals' deposits in the banks that have been declared bankrupt and did not participate in the system of obligatory insurance of individuals' deposits has been corrected Regulation №2091-U dated October 14, 2008 specifies that payments by the CB RF are effected in amount set by CB RF but not exceeding 700 000 rubles for one individual. The amount of all individual's monetary claims determined under bank deposits and accounts agreements but not exceeding 700,000 rubles shall be reduced by amount of counter claims of bankrupt bank towards the depositor and amount of payments under bank deposit and account agreements. The Regulation came into force on October 17, 2008.

The Federal antimonopoly service ("FAS") plans to make banks inform clients on tariffs change personally In accordance with the information published on the web-site of FAS⁹ in the end of September, the state body had directed to the CB RF a proposal to amend the Federal Law №391-1 dated December 2, 1990 "On banks and bank activity" in relation to notification of clients on coming change of commission amounts for processing of bank account operations (in case a bank is entitled to change tariffs unilaterally). FAS proposes to make banks notify clients not later than 45 days

prior such change by means set in agreement, in particular via registered post, facsimile communication or e-mail. Moreover, publication of such information in mass media, on informational stand of a bank or web-site shall not be deemed personal notification.

The CB RF is entitled to grant loans without security Under the Federal Law №171-FZ dated October 13, 2008 the CB RF is entitled to grant loans to Russian credit organizations complying with the required rating index for a term of less than 6 months without security. The list of rating agencies, minimum rating indices used for defining of creditability, additional requirements for credit organization as well as conditions of credits granting are set by Regulation of the CB RF №323-3 dated 16.10.2008. The specified Federal Law and Regulation came into force on October 14, 2008 and October 17, 2008 respectively.

Legal acts on additional ways of enhancement of stability of the bank system were approved For enhancement of the bank system stability a set of legal acts addressing prevention of bankruptcy of banks which are participants of the system of obligatory insurance of individuals' deposits in the Russian Federation was approved. In accordance with the Federal Law №173-FZ dated October 13, 2008 the CB RF and the State corporation "Deposit Insurance Agency" (hereinafter – the "Agency") are entitled to perform special arrangements to prevent bankruptcy of banks. Agency is entitled to perform the following arrangements: provision of financial aid to persons which are going to acquire shares (equity shares) of a bank, to banks which are going to acquire property and obligations of a bank which is an object of use of the mentioned law, financial aid provision to a bank in case of acquisition of its shares (equity shares) by the Agency and (or) investors, organization of auctions to sell a property which is a security of bank's obligations, etc. The CB RF is entitled to propose to the Agency to participate in prevention of bankruptcy of a bank. Within 10 days from the moment of receipt of the proposal the Agency shall inform the CBRF on its decision to accept or decline the proposal. Coordinated by both authorities the methods of prevention of a bank bankruptcy maybe financed by investors, the Agency, the CB RF as well as the federal budget.

⁹ http://www.fas.gov.ru/article/a_20441.shtml

For fulfillment of the above-mentioned law the following regulations were approved:

- The order of decision making by the CB RF on direction of proposal to the Agency to participate in prevention of bankruptcy of a bank is regulated by the Regulation №2106-U dated October 29, 2008. The document regulates decision making order, approval of participation plan of the Agency, obligations of the Agency to provide the CB RF with reports, report requirements, etc.
- For making a decision on necessity of participation of the Agency in prevention of bankruptcy of a credit organization the CB RF shall make financial appraisal in accordance with the Regulation №2107-U dated October 29, 2008. The document regulates decision making procedure on initiating of appraisal, appraisal of a credit organization, obligations of a bank during appraisal, preparation of documents, etc.
- Under the Regulation of the CB RF №2108-U dated October 29, 2008 if the CB RF discovers that the value of the equity capital of a bank is less than registered charter capital, the CB RF is entitled to make a decision on decrease of the charter capital of the bank to a value of equity capital. If the equity capital is negative, the charter capital shall be decreased to 1 ruble. The order of decision making and informing of all parties involved about the decision is set as well;
- Performing of duties of provisional administration by the Agency for prevention of bankruptcy as well as its rights and obligations are regulated by amendments¹⁰ to the Regulation of the CB RF №279-P dated November 9, 2005;
- The Regulation of the CB RF №2110-U dated October 29, 2008 amends the Regulation of the CB RF №109-I dated January 14, 2004 in respect of terms of consideration and direction by a bank to the territorial authority of the CB RF of documents for registration of amendments in the charter documents in case of making of decision by provisional administration to make amendments to the charter. Also the territorial authority shall not request information on financial status of a credit organization-acquirer of shares (equity shares) in case of provisional

¹⁰ Regulation of the CB RF №2109-U dated 29.10.2008;

administration's decision to amend the charter¹¹.

- In accordance with the Regulation of the CB RF №2112-U dated 29.10.2008 the CB RF does not direct to a credit organization an order to bring into action a financial restructuring or reorganization if the Bank supervisory committee of the CB RF makes decision to direct to the Agency a proposal to participate in prevention of bankruptcy of a bank. Also the CB RF should cancel an order to bring into action a financial restructuring or reorganization to a bank directed earlier if the CB RF receives consent of the Agency to participate in bankruptcy prevention.
- The Regulation of the CB RF №2113-U dated October 29, 2008 sets that the CB RF shall not prohibit deposit attraction and accounts opening to individuals activities to a bank if Bank supervisory committee makes a decision to direct to the Agency a proposal to participate in prevention of bankruptcy of this bank;
- Regulation of the CB RF №325-3 dated October 29, 2008 sets features of issue (additional issue) and registration of shares of a bank that is a participant of the system of obligatory insurance of individuals' deposits in the Russian Federation if the Agency accepted the CB RF's proposal to participate in prevention of bankruptcy of this bank. The instruction regulates documents requirements, filling of documents, etc.

New in antimonopoly regulation activity The Federal Law №195-FZ dated November 08, 2008 amends antimonopoly regulation activity in respect of deals with property of commercial organizations as well as state and municipal property, cancels some financial organizations' duties which are set for purposes of antimonopoly control.

The law has expanded the list of agreements stipulating transfer of rights of possession and (or) use of state and municipal property that is not set with the rights of operating control or operational administration and which can be concluded without holding tenders and auctions for the right to conclude them, in particular: granting of rights for property based on international treaties of Russia, federal laws which

¹¹ Please see also Regulation №2111-U dated October 29, 2008 regarding this question.

provide for another way of property disposal, providing religious organizations without compensation with cult building and constructions and other property of religious purpose, providing of the said rights for property for a term of not more than 30 calendar days (however, it is prohibited to provide such rights to one person for the aggregate term of more than 30 days within 6 consecutive calendar months without holding a tender or auction). Herewith until July 1, 2010 the law allows to prolong the lease agreements specified in art.17.1 of the Federal Law “On competition protection” and entered into before July 1, 2008 with representatives of small and medium enterprise specified in the law without tenders and auctions. These agreements can be concluded for a period until July 1, 2010.

The definition of fixed production-related assets, transactions with which shall be approved by FAS no longer refers to land plots and non-industrial buildings, premises and parts thereof, objects under construction.

With the law coming into force, financial organizations will not have to notify FAS about agreements reached between them and state authorities, in particular, about the agreements between financial organizations that are not connected with providing of financial services to the third parties, agreements on cancellation of previously reached agreements, preliminary agreements, etc. Herewith financial organizations which did not notify the FAS on the agreements which have been reached and are to be notified about under item 9 of article 35 in previous edition of the Federal law On competition protection shall notify the FAS on such agreements within 9 months from the date when the Federal Law №195-FZ dated November 08, 2008 comes into force if the obligation on notification is still set by the Federal Law №195-FZ dated November 08, 2008. In this case notifications shall be deemed made in a proper time.

The law also specifies that in case of consideration of petitions for consent to enter into an agreement FAS is entitled to prolong this consideration term if the agreement is a subject to approval in accordance with the Federal Law №57-FZ dated April 29, 2008 “On order of making of foreign investments in business entities which have strategic status for national defense and state security”, or to refuse to approve the agreement if the same decision has been taken under the law mentioned above.

Clarification on Issue of Banking Cards and Operations with Payment Cards Subject to the amendments introduced to the CB RF Regulation On Banking Cards Issue and Operations with Payment Cards¹² credit organizations - issuers shall determine the maximum amount within which they undertake their obligations under one prepaid card – “prepaid card limit”. The CB RF recommends determining such limit in the amount of 5,000 RUR or its foreign currency equivalent. Banks shall also set forth the maximum amount of cash funds which may be provided to their clients – legal entities and individual entrepreneurs within one operational day, the recommended amount – not more than 100,000 RUR. The document also provides for the obligation of banks on clients identification, clarifies the procedure of credit repayments.

The Russian Government approved the Procedure of how foreign investors are to provide information on transactions with shares of Russian companies of strategic importance¹³. The document stipulates the procedure of filing to the competent authority notifications on acquisition of 5 and more percent of share in the charter capital of Russian business entities of strategic importance defined in accordance with the Federal Law “On Strategic Investments”.

4. Anti-money Laundering Legislation

Prolongation of Moratorium on Applying Sanctions for Non-compliance with the New Requirements of the Anti-money laundering Law In its Letter № 123-T of September 30, 2008, 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 pro-

¹² Regulation of the CB RF № 2073-U of September 23, 2008

¹³ Government Regulation № 795 of October 27, 2008

vided by the Federal Law № 275-FZ of November 28, 2007¹⁴ up to April 1, 2009.

Additional Control over Operations on Import of Goods¹⁵ In the course of its supervisory activity and cooperation with the Federal Customs Service of Russia (hereinafter – the “FCS,”) the CB RF highlighted the increase of execution of deals passports under foreign trade contracts on import of goods on the customs territory of Russia, under which the price for goods indicated in banking records on the basis of supporting documents, such as customs entries, is much higher in comparison with the one contained in FCS database. Such operations may be noted, inter alia, for the following: their transit nature, with no taxes paid from the accounts used for such transfers; the amount of funds transferred significantly exceeds the amount of charter capital of payers- Russian legal entities; the counterparties are foreign companies the country of domicile of which differs from the country of domicile of their banks. In its Letter № 137-T of November 1, 2008, the CB RF recommends that banks pay special attention to such operations as well as to customs entries provided as supporting documents in relation therewith. Should the operation be considered suspicious, banks shall apply to the FCS with the request on verification of information contained in submitted documents. In case of negative opinion of FCS banks shall notify Rosfinmonitoring of such operations in accordance with the anti-money laundering legislation.

¹⁴ Please see also our previous Bulletins (January 2008; March 2008; May 2008) in this respect.

¹⁵ Please note that in its Regulation № 2080-U the CB RF clarifies the procedure of provision to authorized banks supporting documents and information in relation to currency operations performed between residents and non-residents under foreign trade transactions and of exercising by authorized banks control over such operations.

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