

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

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1. Insurance and Pension Funds

Mutual Insurance Companies – Newly Adopted Legislation

The new Law “On Mutual Insurance Companies”¹ has settled the procedure of performing the mutual insurance of property interests by the association of legal entities and natural persons’ into Mutual Insurance Companies.

This Law provides for certain mechanisms for the realization of mutual insurance, defines the objects of the insurance and requirements of the Mutual Insurance Companies (such as legal form, constitutive documents, execution bodies, licensing, reorganization, winding up, etc.).

The Law also settles the principles of the allocation of insurance reserves and adjusts the procedure of the Mutual Insurance Companies’ reimbursement risk reinsurance.

Furthermore, the insurance legislation was amended by being supplemented with the mutual insurance provisions. Thus, the Law “On Introduction of amendments to the Federal Law of the Russian Federation “On Insurance Organization” and relevant legislation of the Russian Federation”² specifies that Mutual Insurance Companies are no longer subject to certain legal requirements on minimal charter capital. Certain stipulations on non-profit organizations’ control (regarding, in particular, those specifying the rights of the authorized state authorities to request executive documentation and to carry out examinations of a Society’s activity) are not applied to Mutual Insurance Companies.

¹ Federal Law of November 29, 2007 № 286-FZ “On Mutual Insurance Companies”

² Federal Law of November 29, 2007 № 287-FZ “On Introduction of amendments to the Federal Law of the Russian Federation “On Insurance Organization” and relevant legislation of the Russian Federation”

Payment of Pension Accruals to Successors of the Deceased Insured Person

New Rules on payment by the Pension Fund of the Russian Federation of pension accruals from a special part of the individual personal account to successors of deceased insured persons were adopted by the Government³. The Rules settle the procedure for the application for the pension accruals, the calculation of the amount to be paid as well as the term and periods of such payments to the successor of deceased insured persons.

Changes in the Law on Non-state Pension Funds

The amendments to the Federal Law “On Non-state Pension Funds”⁴ introduce significant changes made to the regulation of the activity of non-state pension funds. The new legislative provisions, *inter alia*, concern the following:

- change of the qualification requirements and restrictions in relation to sole executive body, members of the executive body and the chief accountant of a non-state pension fund;
- introduction of new requirements and procedures for the obtaining of licenses as well as the grounds and procedure for the cancellation of licenses;
- changes to the rules concerning the management of pension reserves and investment of pension accruals;
- introduction of new obligations of a non-state pension fund,
- changes in provisions on state regulation and control: extension of powers of state authorities exercising control over non-state pension funds, in particular, clarification of powers with regard to control procedures and application of sanctions in the case of the non-fulfillment of the legislation provisions;
- introduction of provisions in relation to obligatory information disclosure;
- tightening of the requirements for non-state pension funds in relation to the performance of obligatory pension insurance, in particular,

³ Government Regulations of November 3, 2007 No.741

⁴ Federal Law of December 6, 2007 No.334-FZ “On Amending the Federal Law on Investment Funds and Other Legislation Acts of the Russian Federation”

starting from January 1, 2009, an increase of the minimum amount of the shareholders contribution and monetary value of the property securing the fund's charter activity up to RUR 100 million.

In addition, the new Law sets forth new obligations on non-state pension funds, including the following:

- to arrange obligatory internal controls and register the rules of such internal control with the authorized authority;
- to notify the relevant state authorities about a change of the management bodies;
- to conclude an agreement with a special depository prior to the conclusion of a pension provision agreement on obligatory pension insurance;
- to notify the authorized authority about any concluded/changed/terminated agreements with a special depository, managing companies, auditor, actuary;
- to use an electronic digital signature on documents submitted to authorized state authorities⁵;
- to have a web-site.

The new Law binds non-state pension funds to put into force the documents subject to registration in the federal authority on the securities market within one year from the date of the official publication of the Law⁶.

2. Capital Market and Securitization

Qualified Investor on the Capital Market

⁵ This provision will enter into force within one year from the date of the official publication of the Federal Law of December 6, 2007 No.334-FZ. (The Law was published in the journal "Sobranie zakonodatelstva" on 10.12.2007, in the "Russian newspaper" on 12.12.2007, in "Parliament newspaper" on 14.12.2007)

⁶ Federal Law of December 6, 2007 No.334-FZ "On Amending the Federal Law on Investment Funds and Other Legislation Acts of the Russian Federation" was published in the journal "Sobranie zakonodatelstva" on 10.12.2007, in the "Russian newspaper" on 12.12.2007, in "Parliament newspaper" on 14.12.2007

The amendments to the Law "On Capital Market"⁷ introduce the concept of "qualified investor" and provide for the provisions for the acquiring of this status by legal entities and natural persons. Thus, it states that brokers, dealers, credit and insurance organizations and the Bank of Russia are qualified investors according to the law. Other entities (as well as natural persons) may be acknowledged as qualified investors if they meet the criteria provided for in the Law. Any entity may be acknowledged as a qualified investor in one or more types of security and other financial instruments, as well as one or more type of financial services intended for qualified investors.

In case a company is acknowledged as a qualified investor it acquires the right to make transactions with the securities, which are restricted. In general, this law limits the rights of participants of the capital market in case they are not acknowledged as qualified investor.

Securitization of Mortgage Loans

Tax Issues In accordance with the Russian legislation, a credit organization may assign its receivables under mortgage loans by the transferring of mortgage paper (*zakladnaya*). Such mortgage paper certifies the right of its owner to receivables from mortgage loans and rights to pledged property. In accordance with Russian law, mortgage paper is recognized as a security. The legislation does not contain an explicit indication about the disposal of mortgage paper – it could be interpreted as an assignment of receivables from a mortgage loan or as a sale of a security. Each interpretation has different tax consequences (in relation to income tax and VAT). These tax issues were resolved by the adoption of amendments to the Tax Code of the Russian Federation.

Income tax Starting in 2007, all transactions involving mortgage securities are interpreted as assignments of rights for tax purposes.⁸

⁷ Federal Law of December 6, 2007 No.334-FZ "On Amending the Federal Law on Investment Funds and Other Legislation Acts of the Russian Federation"

⁸ Federal Law of July 24, 2007 No.216-FZ "On Amending Part Two of the Tax Code of the Russian Federation and Certain Other Legislative Acts of the Russian Federation"

VAT Starting from January 01, 2008 all transactions connected with the assignment of receivables from loan agreements are released from VAT.⁹ Consequently, transactions connected with transfers of mortgage papers are released from VAT as well.

Mortgage-Backed Securities In accordance with Russian law, two types of mortgage-backed securities may be issued: mortgage-backed bonds (MBB, may be issued by a bank or mortgage agents) and mortgage participation certificates (MPC, may be issued by a bank, private pension funds or other named entities). MBB, being an issuable security, must be registered with the Federal Service on Financial Markets. MPC is not an issuable security; it must record its holders right of ownership in the mortgage pool.

The Central Bank of the Russian Federation (hereinafter – “CB RF”) cancelled the specifics of the calculation of obligatory normative standard requirements for banks issuing MBB and kept only an additional obligatory normative standard.¹⁰

3. Banking Law

Consumer Lending

Disclosure of Real Loan Value Pursuant to the amendments to the Federal Law “On Consumers’ Rights Protection”,¹¹ the banks, upon the provision of a loan, shall provide the customer with complete information regarding the amount of the loan, the full repayment amount as well as the repayment schedule. Further to these amendments, the CB RF in its letter¹² clarified that the new rules shall be applied not only to the provision of loans, but also to over-

⁹ Federal Law of July 19, 2007 No.195-FZ “On Amending Certain Legislative Acts of the Russian Federation in Relation to the Forming of Comfortable Tax Conditions for the Financing of Innovation”

¹⁰ Directive of the CB RF of June 01, 2007 No. 1831-Y “On the Amending of the Instruction of the CB RF of March 31, 2004 No. 112-II “On Obligatory Normative Requirements for Credit Organizations Issuing Mortgage-Backed Bonds”

¹¹ Federal Law of October 25, 2007 No.234-FZ “On Amending the Law of the Russian Federation “On Consumers’ Rights Protection” and Part Two of the Civil Code of the Russian Federation”

¹² The Letter of the CB RF No. 228-T of December 29, 2007

draft facilities (including overdrafts on credit cards).

Draft Law on Consumer Lending The State Duma of the Russian Federation intends to consider a Draft Law “On Consumer Lending” in September 2008.

The concept of the draft law is to allow not only credit organizations but also legal entities to provide consumer loans. This draft law expresses requirements of the legal entities intending to process consumer lending, the essential elements of a consumer loan agreement. It contains a list of information which shall be disclosed to a potential/existing borrower. The draft law provides for a different way to examine the creditworthiness of potential borrowers for the credit organizations and legal entities.

New in the Regulation of Bank Activity

New Requirements for Non-resident Clients Acceptance Procedure

In its Letter of October 30 No.170-T the CB RF recommends that credit organizations pay special attention to foreign companies – non-taxpayers in the RF¹³ - as well as to the operations with such clients. In particular, it recommends requesting, prior to the conclusion of a bank account agreement, in addition to the information required for the identification of a client, information on the name and address of foreign credit organizations with which such client has or had legal relationship. A Russian bank should also request details regarding the type and duration of such relationship, information on the main contractors, volumes and types of operations planned to be performed using the account opened in a Russian credit organization. It also suggests that the banks require reference letters from Russian or foreign credit organizations with which the foreign company - non-taxpayer in the RF - has legal relations with regard to the bank account agreement to be concluded.

Ban on Unilateral Changes of the Interest Rate on Deposits

The amendments to the Fed-

¹³ A foreign company – non-taxpayer in the RF means a foreign legal entity which was assigned by tax authority with the code of foreign organization, but does not have identification tax number and does not have to submit relevant reports

eral Law “On Banks and Banking Activity”¹⁴ introduce the prohibition of unilateral decreases by banks of interest rates under deposit agreements or of the term of the deposit agreement as well as the prohibition of setting forth commissions for deposit operations.

New Requirements for Credit Organizations in Relation to Attraction of Monetary Funds of Natural Persons in the Form of Deposits

According to the amendments to the Federal Law “On Banks and Banking Activity”¹⁵, starting from March 8, 2008, a newly established bank or a bank registered less than two years ago shall have the right to attract monetary funds of natural persons in the form of deposits. Such can be acquired provided that the amount of the charter capital of the newly established bank or the amount of its own assets of the existing bank are not less than the ruble equivalent of 100 million EURO and that the bank fulfills the obligation on the disclosure of information about persons affecting the decisions made by the management bodies of the bank.

In its Letter of December 4, 2007 No.190-T, the **CB RF clarifies specific issues with regard to limits on cash settlements with legal entities and individual entrepreneurs.**

Increase of the Minimum Amount of the Charter Capital of Banks and Non-banking Credit Organizations Pursuant to the Letter of the CB RF of December 29, 2007 No.225-T, the ruble equivalent of the minimum amount of the charter capital for a newly established bank was increased to RUR 179 705 000; for a newly established non-banking credit organization - RUR 17 970 500.

Draft Law on the Insolvency of Credit Organizations

The Association of Regional Banks of Russia prepared a draft law On Amending the Federal Law “On Insolvency (Bankruptcy) of Credit Institutions”. The proposed draft law aims to establish specific features for the legal regula-

tion of securitization transactions originated by credit organizations, loan portfolio servicing transactions, forward (derivative) transactions as well as trust management transactions.

Securitization Transactions The draft law provides for specific features of the legal regulation for deals aimed at the securitization of credit portfolios in cases of the insolvency (bankruptcy) of the bank-originator servicing the assigned receivables. These proposed changes reflect the following:

- the concept of a bank-originator servicing assigned receivables;
- the transfer of servicing obligations in relation to the assigned receivables of a bank-originator in the case of its insolvency;
- reduction of the limitation period for the recognition as void of deals entered into in the course of the securitization of receivables;
- limitation of the reasons for the recognition as void of deals entered into in the course of the securitization of receivables.

Forward (Derivative) Transactions The draft law provides for the definition of a master agreement in the forward market and establishes specific legal framework aspects for such agreements in cases of the insolvency (bankruptcy) of a credit organization provided it is a party to such an agreement. Such a master agreement combines all the transactions performed by the counterparties into a single arrangement under which all obligations are terminated simultaneously once circumstances that hamper the fulfillment of the deals by either of the parties (e.g. insolvency) occur (*close-out netting*). The draft of the law provides for the inclusion in a master agreement of the procedure for the termination of obligations arising from a master agreement. Such procedure shall specify the method of the determination of the amount of a single claim (obligation) of a monetary payment.

Trust Management The draft law provides for the introduction of a special regime for the property transferred to a credit organization for trust management (i.e., property not owned by the credit organization). It defines the functions, rights and obligations for the external administration and the administrator in such part of asset management.

The current bankruptcy legislation contains no explicit indication that the property transferred to a credit organization for trust management purposes does not belong to this credit organization. The draft law excludes the property

¹⁴ Federal Law of November 2, 2007 No.248-FZ “On Amending Article 29 of the Federal Law “On Banks and Banking Activity”

¹⁵ Federal Law of December 4, 2007 No.325-FZ “On Amending Article 36 of the Federal Law “On Banks and Banking Activity”

conveyed to a credit organization for trust management purposes from the “credit organization’s property”. Additionally, the draft law puts restrictions on the provisional administration’s rights for imposing a moratorium in respect of the satisfaction of settlers’ pecuniary claims and repudiation of the trust management agreement.

4. Anti-money Laundering Legislation

Changes in Anti-money Laundering Law

On January 15, 2008, the new Law¹⁶ amending the Federal Law “On Countering Legalization of Income (Money Laundering) Derived from Criminal Activity and Financing of Terrorism” (“Anti-money Laundering Law”) entered into force. The new provisions of the Anti-money Laundering Law, *inter alia*, provide for additional control over the operations of foreign public officials or their spouses and relatives as well as other persons acting on behalf of foreign public officials. In addition, the Law sets forth new requirements in relation to non-cash settlements and money transfers without the opening of an account which concerns the obligation to specify information about the payee in cases of such settlements or transfers. In accordance with mass media information¹⁷, the CB RF will set a moratorium on applying sanctions to credit organizations for non-compliance with the new requirements. However, no official document has yet been adopted in this respect.

¹⁶ 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 Laundering) Derived from Criminal Activity and Financing of Terrorism”.

¹⁷ E.g.: www.bankir.ru

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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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