

ClientInsight

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Russian Legislation Update

Bankruptcy

On 12 July 2011 the President signed Federal Law No. 210-FZ “On Amendments to the Bankruptcy Law and Articles 17 and 223 of the Code on Commercial Court Procedure concerning specifics of bankruptcy of developers attracting monetary funds for construction”.

The Law introduces a special bankruptcy procedure for developers (*zastroishik*) - companies attracting monetary funds and/or property from individuals and/or legal entities for the construction of multistory apartment buildings. The Law, in particular, defines types of claims (monetary and property claims) that can be brought in a commercial court by participants (investors) in construction against the developer. Once the court recognizes the claim as legitimate, it is subject to inclusion into the special Register of Claims to Residential Premises (to be formed and maintained by the Federal Bailiffs Service starting 1 January 2012).

The Law sets forth the order of priorities in which creditors' claims in developer bankruptcy procedures will be satisfied, as well as the particularities of payments to creditors in case of the sale of the pledged object during the proceedings. The Law stipulates the possibility for a third party to discharge (pay off) current payments and claims of the first and second priorities against the developer. As a result of such pay off, the third party shall be entitled to receive the relevant object of incomplete construction.

The Law sets forth provisions safeguarding both creditors' claims and debtor's interests. In particular, courts are entitled to prohibit the lease of the land plot beneath the building (incomplete construction object) to any person excluding the developer (as well as the prohibition of the state registration of the lease agreement). Court can also ban the landlord to dispose the land plot in any other way.

The Law will enter into force on 30 August 2011.

Enforcement

On 11 July 2011 the President signed Federal Law No. 196-FZ “On Amending the Law “On Enforcement Proceedings”.

The amendments, among other things, provide for the creation of a publicly available database of pending enforcement proceedings, which will include data on debtors (both individuals and legal entities) and their debts.

The amendments will enter into force on 1 January 2012.

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Insurance of Bank Deposits

On 11 July 2011 the President signed Federal Law No. 171-FZ amending the Federal Law "On the Insurance of Individual Bank Deposits in the Russian Federation."

The Law sets forth the list of circumstances when a bank is deemed ineligible to further participate in the system of mandatory insurance of individual bank deposits. The Central Bank prohibits such banks from attracting individual deposits.

According to these amendments, the bank's unsatisfactory profitability will no longer serve as a sign of the bank's ineligibility so that banks temporarily not enjoying profits, but otherwise functioning properly, could continue attracting bank deposits from individuals.

The Law entered into force on 15 July 2011.

Banking

On 29 June 2011 the Central Bank issued Letter No. 96-T "On Methodological Recommendations on Establishing by Credit Organizations of Internal Procedures for Assessment of Capital Adequacy."

The Recommendations have been prepared in view of the upcoming implementation in Russia of the new document by the Basel Committee on Banking Supervision entitled "International Convergence of Capital Measurement and Capital Standards. A Revised Framework. Comprehensive version" (the Second Pillar - Supervisory Review Process) ("Basel II Second Pillar"). The Recommendations contain the minimum standards for establishing by credit organizations of internal procedures for assessment of capital adequacy to cover existing and potential risks (credit, market, operational, liquidity and other risks).

The Central Bank believes that Basel II Second Pillar implementation will be gradual and take no less than five years, but still expects credit organizations to start developing and applying internal procedures for assessment of capital adequacy now on a voluntary basis.

The Letter was published in the Central Bank Herald on 7 July 2011.

Anti-money laundering

On 17 February 2011 the Federal Service for Financial Monitoring issued Order No. 59 "On Approval of Regulation on Requirements for Identification of Clients and Beneficiaries, Taking into Account the Extent (Level) of Risk of Committing by Clients of Operations with the Purpose of Legalization (Laundering) of Profits Acquired through Crimes, and with the Purpose of Terrorism Financing"

The Order was registered with the Ministry of Justice on 1 July 2011.

The Order establishes the requirements for identification of clients that apply to all companies (except credit institutions) that conduct operations with money or other property of their clients. In particular, it applies to notaries, attorneys and other providers of legal and accounting services. The Order contains a list of documents and information that must be gathered for the identification of individuals and legal entities referring for such services. It also establishes a list of information that companies providing such services are entitled to request from their clients and potential clients for identification purpose. The service providers must consult the information contained in the Uniform State Register of Legal Entities, and databases of lost (invalid) passports and other sources.

The service providers are required to identify all clients – those that make a single transaction and clients that are engaged in long-term relations – as well as clients' representatives and beneficiaries. Each organization has to develop internal procedures for the identification of clients and a programme for the assessment of risks of committing by clients of operations related to money-laundering and terrorism financing.

The Order will enter into force on 22 July 2011.