

ClientInsight

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Russian Legislation Update

Banking/National Payment System

On 15 September 2011 the Central Bank issued Directive No. 2698-U amending its Instruction No. 135-I “On the Procedure for the Approval by the Bank of Russia of Resolutions on the State Registration of Lending Organizations and on the Issue of Banking Licenses.”

The Directive was registered with the Ministry of Justice on 22 September 2011.

The Directive introduces rules for the registration and licensing of a new type of non-banking lending organizations – a non-banking lending organization entitled to perform cash transfers without the opening of bank accounts and related banking operations. Such lending organizations will be able to act as operators of electronic money in accordance with the Law “On the National Payment System”.

The Directive also introduces rules on the obtaining of a Central Bank permit for the establishment of a bank’s branch abroad. These rules replace those previously set in Central Bank Instruction No. 76-I dated 24 August 1998.

The Directive entered into force on 29 September 2011, save for a few provisions which enter into force on a later date.

On 15 September 2011 the Central Bank issued Instruction No. 137-I “On Mandatory Economic Ratios for Non-Banking Lending Organizations Entitled to Perform Cash Transfers without the Opening of Bank Accounts and Related Banking Operations [...]”

The Instruction was registered with the Ministry of Justice on 23 September 2011.

The Instruction establishes two types of mandatory economic ratios for non-banking lending organizations entitled to perform cash transfers without the opening of bank accounts and related banking operations: i) net value (capital) ratio (N1.1) of at least 2% and ii) liquidity ratio (N.15.1) of at least 100%. Both ratios are to be complied with on a daily basis. The Central Bank’s territorial departments will oversee compliance with the ratios based on reporting forms and inspections.

The Instruction entered into force on 29 September 2011.

On 15 September 2011 the Central Bank issued Directive No. 2699-U regarding replacement of banking licenses due to a change in the name of certain banking operations.

The Directive was registered with the Ministry of Justice on 26 September 2011.

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According to Federal Law No. 162-FZ amending a number of laws following the adoption of the Law on the National Payment System, the names of some banking operations are being changed: e.g., "payment settlements on instructions from individuals and legal entities" becomes "cash transfers on instructions from individuals and legal entities," and "cash transfers on instructions of individuals without the opening of bank accounts" becomes "cash transfers without the opening of bank accounts, including cash e-remittances."

According to the Directive, lending organizations will need to replace their banking licenses due to the change in the name of those banking operations. The Central Bank has reported in its press release regarding the adoption of this Directive that there is no statutory term for lending organizations to apply for such replacement, so it may be done at any time in due course. There are no limits on the performance of banking operations under the licenses containing previous names of the banking operations.

The Directive entered into force on 29 September 2011, save for a few provisions which enter into force on a later date.

On 14 September 2011 the Central Bank issued Directive No. 2693-U "On the Procedure for the Operators of Cash Transfers Being Lending Organizations Exercising Control over Banking Payment Agents' Activities."

The Directive was registered with the Ministry of Justice on 21 September 2011.

According to the Law on the National Payment System, operators of cash transfers being lending organizations may engage banking payment agents for the acceptance and withdrawal of cash from/ to individuals, as well as for providing clients with electronic means of payment. Operators of cash transfers must be to monitor compliance by banking payment agents with the Law and the relevant agreement among them.

The Directive requires operators of cash transfers to develop internal documents describing, among others, the means of internal control (e.g. inspections, reports), the procedure for maintaining a list of banking payment agents engaged and the techniques to be used for to bring banking payment agents' operation into conformity with the Law and the relevant agreement.

Such internal documents are to be developed by operators of cash transfers being lending organizations within one month of the effective date of the Directive (i.e. 29 September 2011).

The Directive entered into force on 29 September 2011.

On 14 September 2011 the Central Bank issued Directive No. 2694-U "On the Procedure for Notifying the Bank of Russia by Operators of Electronic Cash of the Commencement of Making of Cash E-Transfers."

The Directive was registered with the Ministry of Justice on 21 September 2011.

According to the Law on the National Payment System, operators of electronic cash (i.e., lending organizations performing transfers of electronic cash without the opening of bank accounts) are to notify the Bank of Russia of the commencement of making transfers of e-cash. Such notice is to be given no later than 10 business days from the date of the first transfer.

The Directive sets forth the form of such notice and the procedure for its completion.

The Directive entered into force on 29 September 2011.

On 14 September 2011 the Central Bank issued Directive No. 2695-U "On the Requirements for Ensuring Uninterrupted Transfer of Electronic Cash."

The Directive was registered with the Ministry of Justice on 23 September 2011.

According to the Law on the National Payment System, operators of electronic cash are to ensure uninterrupted transfer of electronic cash.

The Directive requires operators of electronic cash to develop internal documents describing, among others, an action plan in case the operational and technological facilities and information systems required for the transfers fail to operate properly and for backup and storage of data on the transfers made.

Such internal documents are to be developed by operators of electronic cash within one month of the effective date of the Directive (i.e., 29 September 2011).

The Directive entered into force on 29 September 2011.

Court Practice

Loan Agreements

On 13 September 2011 the Presidium of the Supreme Commercial Court issued Information Letter No. 146 approving the overview of court practice regarding loan agreements between banks and individual consumers.

The Letter clarifies whether certain terms widely included by banks in their loan agreements with consumers (i.e., individuals obtaining loans for non-business purposes) are legal or not in the context of consumer protection laws. Banks are subject to an administrative fine if the terms of a loan agreement impair consumer rights.

In particular, the following terms are considered legal:

- the bank's right to accelerate the loan in full if the borrower defaults on the repayment of an installment;
- accrual of twofold interest on an overdue portion of the principal;
- accrual of interest consisting of a fixed rate and a floating rate (e.g., MosPrime);
- the borrower's obligation to insure his/her life and health (the term is legal provided the borrower has an opportunity to obtain a loan without such insurance).

In particular, the following terms are considered illegal:

- accrual of compound interest (i.e., interest on interest);
- the bank's right to accelerate the loan solely due to a deterioration of the borrower's financial standing;
- the bank's claim to the borrower to be considered by the court at the location of the bank;
- the borrower is to pay a fine if he/she refuses to accept the loan;
- ban on early repayment of the loan within a certain term, fees for early repayment;
- fees for the bank's services determined at rates that may be changed by the bank unilaterally from time to time;

- a statement of the amount of the borrower's loan indebtedness issued for a fee;
- the borrower, upon repayment of a mortgage loan, bears all the expenses on the deregistration of the mortgage.

In addition, the Court clarified that banks may assign loan receivables due from individuals to a non-bank entity. Such assignment is not in conflict with the law and does not require the borrower's consent.

The Information Letter will serve as a guideline for lower commercial courts when they consider similar cases.