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Insight

23 July- 5 August 2012

Russian Legislation Update

Bankruptcy

On 28 July 2012 the President signed Federal Law No. 144-FZ amending Federal Law No. 127-FZ "On Insolvency (Bankruptcy)", Federal Law No. 40-FZ "On Insolvency (Bankruptcy) of Lending Organizations", Federal Law No. 395-I "On Banks and Banking Activity", and some other laws.

The amendments aim to streamline the bankruptcy procedures, with a focus on lending organizations. They are expected to allow completing the bankruptcy process quicker and satisfying creditors' claims to a fuller extent.

Amendments relating to insolvency of banks

The amendments, among other things:

- introduce the possibility of transfer of an insolvent bank's assets along with its liabilities (in whole or in part) to another bank(s). The transfer is subject to the Central Bank's consent (needed for the transfer in principle and with respect to particular acquirer(s)) and the consent of the relevant creditors. It is intended to be an alternative to the piecemeal sale of the bank's assets;
- allow transfer of the insolvent bank's assets to its creditors to discharge their claims by way of compensation (*otstupnoe*). Such transfer is subject to the statutory order for the satisfaction of creditors' claims and requires the creditors' consent;

For more information, please contact:

Igor Ostapets
Partner
+ 7 495 787 3019
iostapets@whitecase.com

Irina Dmitrieva
Partner (Tax)
+ 7 495 787 3003
idmitrieva@whitecase.com

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- New Central Bank Instruction No. 138-I on Transaction Passports
- Supreme Commercial Court Practice on Guarantees (Plenum Resolution No. 42 of 21 July 2012)

White & Case LLC
Tel + 7 495 787 3000
Fax + 7 495 787 3001
whitecase.com

- allow not to engage an appraiser to evaluate the assets of the insolvent bank to be sold (the valuation will be required only if the bank's assets are transferred along with its liabilities, as described above);
- require publication of a wide range of data relating to bankruptcy of banks in the Unified Federal Register of Information on Bankruptcy (e.g., an announcement on the selection of banks for the transfer of assets and liabilities, information on the progress of a receivership procedure); and
- establish a procedure for the return by banks being professional participants in the securities market to their clients of securities and other assets (e.g., under depositary and brokerage agreements) when their banking license is revoked.

The amendments also oblige banks to maintain electronic databases containing information on their assets and liabilities and the traffic therein. Banks must record all their operations and transactions in such databases and store such data for at least five years after that. It should be possible to access information recorded in such databases as of each operational day. If there are grounds for revocation of a banking license, the Central Bank will request that a back-up copy of such database be made and transferred to it. Failure to properly maintain such databases may result, among other things, in subsidiary liability of the chief executive of an insolvent bank for its debts.

Amendments relating to insolvency of ordinary companies (non- banks)

The amendments, among other things:

- allow not to engage an appraiser to evaluate the assets of the insolvent company to be sold (the valuation will be required only upon request of creditors whose claims are worth more than 2% of all the creditors' claims);
- claims of the insolvent company's executives as to severance pay and other compensation due to termination of a labor contract, as provided for under the contract, will be satisfied after all the other creditors' claims to the extent that they exceed the minimum amounts established under the law; and
- claims of the insolvent company's executives as to the salaries that were increased within six months before the bankruptcy petition was filed will be satisfied after all the other creditors' claims to the extent of such newly added amounts (if the court so decides upon request of the bankruptcy manager).

The above rules regarding the company executives' claims as to severance pay and salaries will also generally apply in case of insolvency of a bank. However, the above six-month period will be calculated depending on the date when the bank's banking license was revoked.

The Law will enter into force on 30 October 2012 save for certain provisions that will enter into force on different dates (in particular, the rules obliging banks to maintain electronic databases reflecting all their operations will enter into force on 28 January 2013).

Currency Control

On 28 July 2012 the President signed Federal Law No. 140-FZ amending the Administrative Offences Code with respect to residents' liability for failure to notify the tax authorities of the opening of overseas bank accounts.

According to Federal Law No. 173-FZ "On Currency Regulation and Currency Control", Russian residents must notify the tax authorities of the opening and closing of their overseas accounts and change of account details within no more than one month thereafter. The amendments differentiate liability depending on whether (i) notice was not given when due or was given in an improper form, or (ii) was not given at all:

- in the first case, liability remains the same as before, i.e. an administrative fine in an amount of up to RUB 1,500 for individuals, up to RUB 10,000 for officers and up to RUB 100,000 for legal entities (about US$ 50, US$ 310 and US$ 3,110, respectively); and
- in the second case, liability becomes tougher and the fine may constitute up to RUB 5,000 for individuals, RUB 50,000 for officers and RUB 1 million for legal entities (about US$ 155, US$ 1,550, US$ 31,075).

The Law will enter into force on 29 October 2012.

Banking

Reporting

On 18 June 2012 the Central Bank issued Directive No. 2835-U amending its November 2009 Directive No. 2332-U regarding reporting forms of lending organizations.

The Directive was registered with the Ministry of Justice on 10 July 2012.

The Directive amends a number of reporting forms to be submitted by lending organizations to the Central Bank (in particular, data on the quality of assets, data on the mandatory economic ratios, calculation of net worth (capital), data on average-weighted interest rates for loans granted).

The Directive entered into force on 30 July 2012 (save for certain provisions that enter into force on later dates).