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The review provides a detailed analysis of main trends in Russian economy in 2016. The paper contains 6 big sections that highlight single aspects of Russia's economic development: the socio-political context; the monetary and budget spheres; financial markets; the real sector; social sphere; institutional challenges. The paper employs a huge mass of statistical data that forms the basis of original computation and numerous charts.

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6.3. Financial market regulation 2013–2016: new subjects and new requirements[1]

Russia's modern financial market, which emerged in the early 1990s, is nearing its 30th anniversary. Its development history may be conventionally divided into several phases.

Phase I: 1990–1998.

The 1990s were the period of radical transformation of the entire economy, it began to be destatized and switched over to market economics. While previously there had been no financial sector at all (as understood in accordance with its market definition), now there appeared a foreign currency market and a stock market, and the money market became more sophisticated and developed. The corresponding primary normative base was created. However, the inadequate starting conditions for this grandiose reform coupled with the 1998 economic crisis that was a mighty setback for financial market development, have seriously affected the quality of its subsequent formation.[2]

Phase II: 1999–2008.

Over the period 1999–2002, the economy was gradually recovering, and output plunge gave way to output growth, largely due to soaring prices of mineral resources. At the same time, the latter phenomenon alongside the effects of several institutional factors conduced to the emergence of a variant of rent capitalism[3] with government expansion as property owner and a slowdown in the implementation of market and institutional reforms. Because of the newly emerged trend towards deprivatization of the national economy, the financial market was developing at an inadequately slow rate. Even now, the comparison of the Russian financial market's indices with the marker parameters in the developed countries points to the low scale of the former.

The lack of proper attention to the needs of the developing market institutions produced many negative consequences: a legal vacuum; delayed implementation of best practices of hi-tech bidding and centralized clearing by stock exchanges; absence of a central depository; serious constraints on the growth of collective investment institutions, etc. As a result, Russia's financial market was very sensitive to the effects of external factor, which became vividly manifest during the unfolding of the global financial crisis in 2008.[4]

Phase III: 2009–2012.

Over that period, there was no qualitative improvement in the competitive potential of the Russian financial market. Nevertheless, after the financial crisis had exacerbated the issues associated with the existence of systemic risks and the less than perfect systems of financial market regulation and supervision, regulation in that sphere began to be the focus of reform. A plan of measures designed to set up an international financial center in Russia was devised, one of its priority directions being the toughening of control over systemic risks in the financial market sphere through the creation of a megaregulator.

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[1] Author of chapter: N. Polezhaeva – RANEPA.

[2] See Krinichanskii, K.V. The current state and the problems of development of the financial market in Russia. *Journal of economics theory* (in Russian). 2007, No 6, pp. 28-44.

[3] For further details, see: Abramov, A., Radygin A. Russia's financial market under conditions of state capitalism. *Voprosy ekonomiki* (in Russian). 2007, No 6, pp. 28–44.

[4] See: Ye. T. Gaidar (ed.). The financial crisis in Russia and the world. Moscow: *Prospekt,* 2009; Igonina L.L. The global financial crisis and its impact on the Russian financial market. *The Economic Herald of Rostov State University* (in Russian). 2008, V. 6, No 4, pp. 62-69.

The introduction of a single regulator was necessitated by the weak competitive potential of the Russian financial market, its development having been adversely influenced by the low efficiency of regulating subjects. The numerous regulators (the Federal Financial Markets Service (FFMS), the RF Ministry of Finance, the Russian Federal Financial Monitoring Service, and many other institutions) were responsible each for the control of a separate market sphere, and these frequently overlapped; so, they were unable to get timely, complete and reliable information and promptly make necessary decisions, or properly assess the situation on the market. Some financial market segments, for example the forex market, had for a long time been existing outside of the sphere of regulation.

The pace of development of the financial market, which largely moved ahead of its legal backing, necessitated a unification of financial legislation and elimination of the numerous controversies, underdeveloped fields and legal gaps.

The advantages to be gained by the introduction of the new financial market regulation and supervision system were to be as follows: the creation of a single legal system; qualitative monitoring of the situation in the financial markets; prompt identification of potential systemic risks and elaboration of solutions to a broad range of problems; smooth and well-coordinated implementation of the financial development policy; expansion and perfection of financial services.

In spite of these advantages, megaregulation is also fraught with some risks: low quality of the results of reform due to its sheer scale; a deepening conflict of interests and functions inside the megaregulator, the main candidate for this role being the Bank of Russia; the risks associated with excessively authoritarian approaches practiced by the regulator (including the loss of their autonomy by self-regulatory organizations) and the unification of regulation of financial institutions of different types on the basis of the approaches practiced by banks in their relations with other banks; disregard of the interests of non-bank financial institutions.[1] The existence of all these adverse features gave rise to many opponents of the reform in the scientific research and professional community.

However, the presence of risks does not mean that they must necessarily be materialized. Foreign experience can offer both best practices of a megaregulator's functioning (in Canada, Germany, Japan, Singapore, Switzerland[2]) and its failures (in the UK). It is impossible to estimate the feasibility of introducing this regulation system in the Russian financial market before it begins to actually function.

Phase IV: 2013 – present time

As of September 1, 2013 the Bank of Russia was granted the powers to regulate, control and supervise the activities of a variety of non-credit financial institutions, from brokers to pawnbrokers.[3] It became the megaregulator of financial markets, which heralded the onset of

[1] See Rozhdestvenskaya, T. E. The creation of a megaregulator in Russia: its goals, tasks, problems and prospects for development. *Banking Law* (in Russian). 2013, No 5, pp. 10-17; Snezhko Yu. N. The formation of a megaregulator and its consequences for the creation of an international financial center in Russia. *Statistics and Economics* (in Russian). 2014, No 5, pp. 90-94; Veselova, A. S., Volodin, S. N. The Central Bank of the Russian Federation as an integrated financial regulator. Stock market: its current state, tools and development trends. *The XII Inter-High Educational Establishments' Conference*, Moscow, April 14, 2015. National Research University Higher School of Economics, Moscow State Institute of International Relations (University), G. V. Plekhanov Russian University of Economics, Financial University under the Government of the Russian Federation; N. I. Berzon, S. N. Volodin (eds). Moscow: *KURS*, 2015, pp. 191-202 (in Russian).

[2] See Suchkova, E. O., Masterovenko, K. V. The megaregulator of the financial market: an overview of methodologies and their practical implementation in Russia and abroad. *Finance and Credit* (in Russian). 2015, No 38 (662), pp. 20–30.

[3] See Federal Law dated July 23, 2013 No 251-FZ 'On the introduction of alterations to some legislative acts of the Russian Federation in connection with the transfer, to the Central Bank of the Russian Federation, the powers

largest institutional reform of this country's financial sector. The Bank of Russia, while relying on its experience of banking regulation in dealing with the organizations that had been added to its sphere of control, initiated a number of changes that were formalized over the period 2013–2016 as laws addressing the financial market sphere. *The three main directions of changes* may be defined as follows.

1. *Identification and subsequent legal regulation of the activities of all the entities acting as financial market participants, legal consolidation of the new types of market players and infrastructure institutions*

The new securities market participants are *specialized societies* (SO) – the specialized financial societies (SFS) and the specialized project financing societies (SPFS). Previously, Russian legislation envisaged the possibility of creating special-purpose companies of one type only – a housing mortgage agent[1].

By Federal Law No 379-FZ, dated December 21, 2013 'On the introduction of alterations into some legislative acts of the Russian Federation', Federal Law No 39-FZ, dated April 22, 1996 'On the securities market' was amended, whereby the specific features of the legal status of a SO were established, and special provisions concerning an asset manager and the replacement of a SO that has issued bonds secured by a pledge in the event of its bankruptcy (Article 15.1–15.4) introduced. Thus, in an event of the issuance, by an arbitration court, of a ruling that a SO should be deemed to be bankrupt, and a proceeding in bankruptcy be initiated, all its liabilities relative to the issued bonds may be transferred to another SO; this is, undoubtedly, a positive development.

The two types of SOs differ by their goals and subject of activity. For SFSs, these are to be as follows:

- acquisition of property rights whereby it is entitled to demand that the debtors pay their debts owed under credit agreements, lending agreements, and other obligations, including the rights that may arise in the future pending the already existing or future liabilities;
- acquisition of other property in connection with the newly acquired monetary claims, including under leasing contracts and lease agreements;
- issuance of bonds secured by a pledge of monetary claims.

The goals and subject of the activity of a SPFS are to be as follows:

- financing of a long-term investment project by way of acquiring:

a) monetary claims against the liabilities that will arise as a result of the sale of property created in the course of implementing such a project, the rendering of services, the manufacturing of goods, and the performance of work associated with the use of property thus created;

b) other property needed for or associated with the implementation of such a project;

- issuance of bonds secured by a pledge of monetary claims or other property.

The emergence of SPFSs was necessary because the market needed a mechanism whereby the cash flows could be directed from the financial sector to the real sector in the framework of project implementation. From a practical point of view, the sphere of application for a SPFS is very broad - the funding of major infrastructure projects (for example, road-building and the construction of bridges or other big structures) and projects of local importance. The use of SPFSs as a mechanism for project financing has several unquestionable advantages, including investor base expansion and tax exemptions. A SPFS may be involved only in the project being

of regulation, control and supervision in the sphere of financial markets'. *The Russian Gazette* (in Russian), No 166, July 31, 2013; Article 76.1 Federal Law dated July 10, 2002 No 86-FZ 'On the Central Bank of the Russian Federation (Bank of Russia).' *The Russian Gazette* (in Russian), No 127, July 13, 2002.

[1] See Filatova, V. F. The securitization of financial assets in Russia: how will this mechanism work? *Legal Work at a Lending Institution* (in Russian). 2014, No 3, pp. 13–20.

financed, i.e., there are restrictions on its legal capacity. A SPFS has no right to close deals unrelated to project implementation, including the issuance of additional debt instruments, and so a SPFS cannot have creditors other than those that acquire their creditor status under the project financing agreement[1].

The expert opinion that the professional activities of SFSs and SPFSs overlap, from which it follows that the existence of both types of SOs is not really necessary, is noteworthy. However, it should be added that a SFS enjoys a broader legal capacity, but is restricted in its ability to adjust the regime of its activity on the basis of its charter. A SPFS has narrow specialization, but its charter can most advantageously reflect the interests of its founders. The goals of its activity, as stipulated in the existing norms, enable a SFS to exercise the full scope of activities assigned to a SPFS (with the exception of issuance of bonds secured by a pledge of other property, which does not correspond to the priority goal of securitization)[2].

In 2016,[3] yet another newly created securities market participant became a *repository*, licensed to collect and store information on certain types of agreements and to keep a register of those agreements (off-floor repo agreements; agreements representing derivative financial instruments, etc.) (Article 15.5–15.9, Article 39.3, 39.4).

Forex dealer is another new professional securities market participant (Article 4.1). Prior to 2015,[4] their activity had not been subject to legal regulation.[5]

The new rules for operating in the forex market are designed to make it more transparent and better understandable for its clients, and caution them against rash investment decisions by alerting them to the existing money loss risks. At the same time, the significant limitations and gaps in newly adopted legislation (the requirements that a financial institution's equity should amount to not less than RUB 100bn; the requirements to computer technologies, managerial bodies and nominal accounts of organizations; mandatory membership in a SRO, etc.[6]) resulted in a situation where, as of December 16, 2016, only 6 organizations were licensed as forex dealers,[7] whereas as of the data of introducing the provisions concerning a forex dealer's status (October 1, 2015) there had been approximately 100 financial institutions operating in Russia's forex market.

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[1] See Ushakov, O., Filchukov A. Special-purpose companies. The new possibilities for project financing envisaged by Russian legislation. *The Financial Gazette* (in Russian). 2016. No 11. Pp. 9, 12–13; Nuriev, A. H. Regulation of project financing: on the way to international standards. *International Banking Operations* (in Russian). 2014, No 1, pp. 8–21.

[2] See Suslov, R. Non-housing mortgage securitization in Russia: does it have any future? *The Banking Review*. The supplement *Bank Supervision* (in Russian). 2015, No 1, pp. 20–24.

[3] See Federal Law No 430-FZ, dated December 30, 2015 'On the introduction of alterations to the Federal Law 'On the securities market' and some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 1, January 11, 2016.

[4] See Federal Law No 460-FZ, dated December 29, 2014 'On the introduction of alterations to some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 299, December 31, 2014.

[5] Forex dealing is understood as a licensed activity involving the conclusion with individuals who are not individual entrepreneurs, by a dealer in its own name and at its own expense, off-floor deals that are not financial derivatives, where the mutual obligations of the parties depend on the fluctuation of a foreign currency or currency pair, and (or) two or more deals involving a foreign currency or a currency pair with the same period of execution, the creditor under one of these agreements being the debtor against a similar obligation under the other agreement. In both cases, the agreement is concluded on condition that the forex dealer provides the said individual with opportunities to assume obligations to the value in excess of the value of security offered by that individual to the forex dealer.

[6] See Polezhaeva, N. A. Self-regulatory organization of forex dealers. *Banking Law* (in Russian). 2016, No 6, pp. 53–57.

[7] The securities market and commodity market. See http://www.cbr.ru/finmarkets/?PrtId=sv_secur.

The Federal Law 'On the securities market' has also been augmented by articles concerning self-regulatory organizations (SRO) for forex-dealers (Article 50.1, 50.2). A forex dealer must become a member of a SRO and pay an entrance fee to its compensation fund.

The duty to create a compensation fund for covering the losses of individuals who are not individual entrepreneurs, incurred by them through insolvency (bankruptcy) of forex dealers, is the distinctive feature of SROs of forex dealers (the compensation funds of other self-regulatory organizations are generally created in order to secure the responsibilities of their members to the consumers of their services and third parties), and the Federal Law particularly specifies the necessity to separate the monies kept in the compensation fund from the other assets held by the organization, as well as their safekeeping, the procedure of creating the fund, and the procedure of and conditions for compensatory payments.

The Federal Law on SROs operating in the financial market sphere [1] sets a cap on the entrance membership fee at RUB 100,000 (Article 18). On the one hand, the cap on the entrance fee is designed to prevent a SRO from setting entrance barriers, and thus to protect honest professional market participants, in this particular case – the participants of the forex market. On the other hand, the amount of RUB 2bn – the entrance fee of a forex dealer required to be paid to the compensation fund of a SRO in accordance with the Federal Law 'On the securities market' - appears to be more appropriate from the point of view of investor protection, considering the huge turnover on the forex market and the losses that investors may incur in the event of a forex dealer's insolvency (bankruptcy), and further considering the fact that the equity of the latter must be not less than RUB 100bn, a sum that makes the RUB 2m entrance fee appear to be adequate.

Organizers of trade in the securities market, including the exchange, were struck off the list of professional market participant categories introduced by the Federal Law 'On the securities market' in 2014.[2] Today, their activity is regulated by the Federal Law 'On organized trade.'[3]

The new participants in insurance relations[4] are *reinsurance organizations* (previously, these were mentioned in the law but were not treated as participants); *insurance agent associations; associations of insurers*, *related parties*, *beneficiaries*; *the specialized depository* (Article 4.1).

In 2014,[5] the specialized depository became an absolute novelty in the sphere of insurance activities (Article 26.2). The depository, on the basis of depository agreements, holds and safeguards securities placed there by insurers specializing in life insurance, pension insurance, and other forms of insurance (i.e., all big insurance organizations) as their insurance reserves and equity (capital). The specialized depository maintains daily control over the insurers' compliance with the established rules for their own money, which displeases them and may ultimately result in higher prices of their services.

The establishment of the specialized depository institution for insurance companies should be viewed as one of the consecutive phases in the process of unification of the control

[1] Federal Law No 223-FZ, dated July 13, 2015 'On self-regulatory organizations in the sphere of financial market'. *The Russian Gazette* (in Russian), No 157, July 20, 2015.

[2] See Federal Law No 327-FZ, dated November 21, 2011 'On the introduction of alterations to some legislative acts of the Russian Federation in connection with the adoption of the Federal Law 'On organized trading.' *The Russian Gazette* (in Russian), No 266s, November 26, 2011.

[3] Federal Law No 325-FZ, dated November 21, 2011 'On organized trading.' *The Russian Gazette* (in Russian), No 266c, November 26, 2011.

[4] See Federal Law No 4015-1, dated November 27, 1992 'On the organization of insurance business in the Russian Federation'. *The Russian Gazette* (in Russian), No 6, January 12, 1993.

[5] See Federal Law No 234-FZ, dated July 23, 2013 'On the introduction of alterations to the Law of the Russian Federation 'On the organization of insurance business in the Russian Federation.' *The Russian Gazette* (in Russian), No 163, July 6, 2013.

procedures implemented in various segments of the collective investment market. The ongoing changes are expected to improve the consumer right protection mechanisms applied to insurance services and to increase the responsibility of subjects operating in that sphere, as well as to make their activity more transparent.[1]

Prior to the enactment, in 2015, of the Federal Law 'On actuary activity'[2] (to be understood as professional assessment of financials risk and the resulting financial liabilities), some norms on actuary activities had been stipulated in insurance legislation and the legislative acts regulating pension provision and provision insurance; however, there had been no mechanism for dealing with actuaries. There had been no definition of the subject and object of the actuary activity, no established requirements to such services, or to the control over such services. There had been no precisely delineated system of risk assessment criteria: experts used to rely only on their own judgment. Although actuaries did exercise control over solvency of the organizations involved in socially important activities and risk-taking, there had been no legislative norms whereby an actuary was to be made responsible for the outcome of its work.[3]

Thus, the adoption of the Federal Law 'On actuary activity in the Russian Federation' was necessitated by the need for efficient systemic regulation of this activity, and for higher transparency and better performance of the collective investment market.

The new law has several drawbacks. One example of these drawbacks is the duty, imposed on private pension funds, insurance organizations and mutual insurance societies, to order actuarial assessment of their activities and to pay for it with their own money, which may translate into higher prices of their own services.

The adoption, in 2015, of the Federal Law 'On the activities of credit rating agencies,'[4] whereby the legal framework for the implementation and supervision of these activities was for the first time established, was a major hallmark in the development of that sector. The qualitative assessment of the abilities of rated legal entities to meet their financial obligations is beneficial for investors and conduces to capital inflow into this country. In some cases, the necessity for a securities issuer or issue to be assigned a rating category not lower than a certain level may be enforced by the financial regulator as a mandatory requirement, and entail certain preferential rights.[5]

Self-regulatory organizations are by no means a new phenomenon for the financial market as a whole. Financial institutions were granted the right to unite in SROs in accordance with general rules (see the Federal Law on SROs[6]). This right was also stipulated in a number of

[1] See Zakharova, N. A., Bevziuk, E. A., Kabantseva, N. G., Larionova, V. A., Slesarev, S. A. Commentary to RF Law No 4015-1, dated November 27, 1992 'On the organization of insurance business in the Russian Federation' (article-by-article).' *The Consultant Plus Reference and Legal System* (in Russian), 2014; Petrova, N. F. The interaction between insurers and special depositories. *Insurance Organizations: Accounting and Taxation* (in Russian). 2015, No 4, pp. 10–20.

[2] Federal Law No 293-FZ, dated November 2, 2013 'On actuary activity in the Russian Federation.' *The Russian Gazette* (in Russian), No 249, November 6, 2013.

[3] See Zobova, E. P. The new law on actuaries. *Insurance Organizations: Accounting and Taxation* (in Russian). 2014, No 2, pp. 10-20; Shestakova, E. Actuary activity. *EJ Jurist*, 2013, No 45, p. 2.

[4] Federal Law No 222-FZ, dated July 13, 2015 'On the activities of credit rating agencies in the Russian Federation. *The Russian Gazette* (in Russian), No 156, July 17, 2015.

[5] See E. Khudko. Rating in law. *EJ Jurist*, 2016, No 6-7, pp. 1, 4–5 (in Russian).

[6] Federal Law No 315-FZ, dated December 1, 2007 'On self-regulatory organizations.' *The Russian Gazette* (in Russian), No 273, December 6, 2007.

specialized laws.[1] There were only two cases when membership in a SRO was mandatory.[2] After the entry into force, in 2016, of the Federal Law on SROs in the financial market sphere,[3] membership in SROs became mandatory for the majority of participants in various financial markets. Thus, the Federal Law 'On self-regulatory organizations in the financial market sphere' not only consolidated new types of SROs, but also altered the market self-regulation system.[4]

It should be noted that the law on financial SROs does not apply to the SROs of actuaries, where membership is also mandatory, and the activity of the latter is regulated by the Federal Law 'On actuary activities' and the Federal Law on SROs.

Thus, the clear delineation of the categories of subjects to be controlled by the Bank of Russia, and the systematization and improvement of legal regulation of their activities, conduce to sustainable development of the financial market, efficient risk management, including prompt identification and prevention of crisis situations, and the protection of rights and lawful interests of the consumers of financial services.

2. *Toughening of the requirements to financial market participants, endowment of the Bank of Russia with broader powers to exercise control over market participants*

Over three recent years, after the categories of financial market subjects to be controlled by the Bank of Russia were defined, the relevant laws have been amended, so that the requirements to market participants have become tougher and more precisely defined, and the scope of their obligations has been broadened. The functions and powers of the Bank of Russia relative to financial market participants have likewise been broadened, which is reflected in special normative acts.

The Federal Law 'On the securities market', after the introduction of numerous alterations since late 2013,[5] in addition to regulating the activity of new market participants, stipulates as follows:

a) the requirements to the other participants have been broadened. The articles concerning the securities register (Article 8), the nominal securities holder (Article 8.3), the keeping of records of rights of foreign organizations acting in the interests of third parties to hold securities (Article 8.4), of the specificities of the execution of their right to hold securities by the persons whose rights are registered by the nominal holder, a foreign nominal holder, or a foreign

[1] See Federal Law No 39-FZ, dated April 22, 1996 'On the securities market.' *The Russian Gazette* (in Russian), No 79, April 25, 1996; Federal Law No 75-FZ, dated May 7, 1998 'On private pension funds.' *The Russian Gazette* (in Russian), No 90, May 13, 1998; Federal Law No 156-FZ, dated November 29, 2001 'On investment funds.' *The Russian Gazette* (in Russian), No 237-238, December 4, 2001; Federal Law No 215-FZ, dated December 30, 2004 'On accumulative housing cooperatives.' *The Russian Gazette* (in Russian), No 292, December 31, 2004.

[2] See Federal Law No 193-FZ, dated December 8, 1995 'On agricultural cooperation.' *The Russian Gazette* (in Russian), No 242, December 16, 1995; Federal Law No 190-FZ, dated July 18, 2009 'On credit cooperation.' *The Russian Gazette* (in Russian), No 136, 24 July 2009.

[3] Federal Law No 223-FZ, dated July 13, 2015 'On self-regulatory organizations in the financial market sphere. *The Russian Gazette* (in Russian), No 157, July 20, 2015.

[4] For further details, see Polezhaeva, N. A. Self-regulatory organizations related to the financial market. *Russian Economic Development*, 2015, No 12, pp. 116–121.

[5] See Federal Law No 379-FZ, dated December 21, 2013 'On the introduction of alterations to some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 291, December 25, 2013; Federal Law No 218-FZ, dated July 21, 2014 'On the introduction of alterations to some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 169, July 30, 2014; Federal Law No 210-FZ, dated June 29, 2015 'On the introduction of alterations to some legislative acts of the Russian Federation and the invalidation of certain provisions of legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 147, July 8, 2015; Federal Law No 292-FZ, dated July 3, 2016 'On the introduction of alterations to some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 151, July 12, 2016, etc.

organization (Article 8.9), have been significantly altered and augmented by some new provisions. A number of new articles have been introduced, including those stipulating the requirements to representatives of foreign organizations, professional securities market participants; and those regulating the disclosure of information to the central depository (Articles 9.1, 10.1-1, 30.3);

b) the functions of the Bank of Russia (Article 42) have been broadened, and the grounds for and procedure of revoking a license by the Bank of Russia introduced (Article 39.1, 39.2);

c) the norms directly applying to the issuance of securities have been further elaborated. Some new articles have been introduced, including a large chapter concerning representatives of bond holders and their general meeting (Article 29.1–29.11). The articles concerning bonds secured by a pledge (Article 27.3), the specific features of the issuance and circulation of exchange-traded and commercial bonds (Article 27.5-2), and the specific features of the placement and circulation in Russia of foreign securities (Article 51.1) have been revised.

The Federal Law 'On clearing'[1] was augmented, in 2015,[2] by a chapter on an asset pool – a separately held portfolio of securities and other assets, created by a clearing institution from the assets contributed by its participants (Article 24.1–24.5). The requirements to clearing rules and the list of information items subject to compulsory disclosure have been broadened (Article 4, 19).

The principal innovation are the norms concerning the central contractor, whereby its status has been made more uniform, and the organizations performing these functions have likewise been endowed with uniform rights and duties. The Bank of Russia has set the goal of ensuring continuity in the central contractor's activity in its capacity of an important financial institution, including centralized distribution of liquidity among all financial market participants. The prudential regime, including the supervision and surveillance of the central contractor, will be comprehensive and constant, thus making it possible to eliminate the precedents necessitating a recovery of its financial sustainability. On the whole, these amendments have resulted in Russia's national legislation being harmonized in compliance with international standards.[3]

In accordance with the *Federal Laws 'On organized trade*' [4] (Article 14) and *'On the central depository*'[5] (Article 7),[6] organizers of trade and the central depository have been obliged, from 2015 onwards, to organize and conduct internal audits.

The Federal Law 'On the organization of insurance activity in the Russian Federation'[7] as last amended in late 2016 is the product of a three-year-long period of adjustments and upgrading,[8] and so, in the part regulating voluntary insurance rules, the list of grounds for

[1] Federal Law No 7-FZ, dated February 7, 2011 'On clearing, clearing activity and the central contractor'. *The Russian Gazette* (in Russian), No 29, February 11, 2011.

[2] See Federal Law No 210-FZ, dated June 29, 2015; Federal Law No 403-FZ, dated December 29, 2015 'On the introduction of alterations to some legislative acts of the Russian Federation.' *The Russian Gazett*e (in Russian), No 297, December 31, 2015.

[3] See Tarasenko, O. A. Central contractor: new legal status. *Law and Economics* (in Russian), 2016, No 3, pp. 67–73.

[4] Federal Law No 325-FZ, dated November 21, 2011 'On organized trading.' *The Russian Gazette* (in Russian), No 266, November 26, 2011.

[5] Federal Law No 414-FZ, dated December 7, 2011 'On the central depository.' *The Russian Gazette* (in Russian), No 278, December 9, 2011.

[6] See Federal Law No 210-FZ, dated June 29, 2015.

[7] Federal Law No 4015-1, dated November 27, 1992 'On the organization of insurance activity in the Russian Federation.' *The Russian Gazette* (in Russian), No 6, January 12, 1993.

[8] See Federal Law No 234-FZ, dated July 23, 2013 'On the introduction of alterations to the Federal Law "On the organization of insurance business in the Russian Federation."' *The Russian Gazette* (in Russian), No 163, July 26, 2013; Federal Law No 231-FZ, dated July 13, 2015 'On the introduction of alterations to some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 157, July 20, 2015; Federal Law No 363-FZ, dated

declining insurance compensation should by now be complete. The Bank of Russia is endowed with the right to establish the minimum (standards) requirements to the conditions and procedure for each form of voluntary insurance. The Bank of Russia also establishes the procedure for the creation and running of the information system created in order to serve the purposes of information sharing between the participants in insurance activities and fraud prevention (Article 3). For the timely identification of insolvency risks among the market players operating in the insurance sector, the Bank of Russia monitors their activity on the basis of financial indices (coefficients) (Article 30).

The article concerning insurance agents and brokers has been significantly reworded and augmented by some new provisions (Article 8). The brokers receiving money from insurers under insurance agreements must produce a guarantee of fulfillment of their obligations in the form of a bank guarantee to the value of not less than RUB 3bn, or equity to the value of not less than RUB 3bn, in the form of money deposits. Restrictions are imposed on the appointment of an agent or broker by the beneficiaries of insurance policies in favor of third parties. The commission paid by an insurer to an agent or broker in the framework of mandatory insurance cannot exceed 10% of the amount of insurance premium.

Besides, the notions of an insurance group and a franchise (Article 6 and 10 respectively), and special articles concerning a national reinsurance company have been introduced (Article 13.1–13.3); the provisions concerning insured objects and the requirements to insurance tariffs have been stipulated more precisely (Article 4, 11); the articles concerning reinsurance and insurance pools have been significantly augmented by adding special provisions on reinsurance pools (Article 13, 14.1).

In order to ensure the financial sustainability and solvency of insurers, some relevant transformations were introduced, including several new articles, among them the articles on internal control and audit (Article 28.1, 28.2), on compulsory audit and publication of an insurer's annual accounting (financial) documentation (Article 29). The obligations of market players engaged in insurance activities were expanded (Article 30), and the articles regulating the licensing of their activities (Article 32), their qualification and other requirements (Article 32.1) have been further elaborated. All these changes are aimed at preventing insurers from developing serious problems to the detriment of their numerous clients. At the same time, by no means all insurers are capable to comply with such requirements promptly and without effort, which inevitably translates into delays and higher prices of their services.

As far as the non-bank professional lending market is concerned,[1] several important alterations have been introduced in the *Federal Law regulating microfinancial activity and microfinancial institutions*.[2] These innovations are aimed at removing dishonest creditors from the microlending market.

Microfinancial institutions (MI) are subdivided into microfinancial and microcredit companies. A microfinancial company operates with due regard to the established restrictions

July 3, 2016 'On the introduction of alterations into the Federal Law of the Russian Federation 'On the organization of insurance business in the Russian Federation.' *The Russian Gazette* (in Russian), No 151, July 12, 2016, etc.

[1] See Federal Law No 407-FZ, dated December 29, 2015 'On the introduction of alterations to some legislative acts of the Russian Federation and the invalidation of certain provisions of legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 297, December 31, 2015; Federal Law No 230-FZ, dated July 3, 2016 'On the protection of the rights and lawful interests of individuals relating to activities involving outstanding debt repayment, and on the introduction of alterations to the Federal Law 'On microfinancial activity and microfinancial institutions.' *The Russian Gazette* (in Russian), No 146, July 6, 2016; Federal Law No 231-FZ, dated July 13, 2015.

[2] Federal Law No 151-FZ, dated July 2, 2010 'On microfinancial activity and microfinancial institutions.' *The Russian Gazette* (in Russian), No 147, July 7, 2010.

(Article 12) and requirements, including the constraints on its equity (capital), and is endowed with the right to attract money placed by individuals, including individuals other than its founders (or participants, or shareholders), and by legal entities. A microcredit company may operate with the monies of individuals who are its founders (or participants, or shareholders).

While previously the cap on the amount of a microloan was set at RUB 1bn, now it must not be higher than the margin for the borrower's obligations to the lender against the outstanding principal amount (RUB 3bn for a legal entity or individual entrepreneur; RUB 500,000 for an individual) (Article 2, 12).

The procedure for granting the status of a MI has been defined more precisely (Article 5). The floor for the equity (capital) of a microfinancial company is set at RUB 70bn. The article on the procedure for striking the information on a legal entity off the State register of MIs has been significantly augmented, with the addition of a longer list of instances when the information on a MI should be struck off by decision of the Bank of Russia; and the instances for a refusal for striking that information off the State register have also been established (Article 7).

The articles concerning enforced liquidation of a MI initiated by the Bank of Russia (Article 7.1) and the specific features of the procedure of charging interest and other payments in an event of delays in the fulfillment of obligations against a loan (Article 12.1) were introduced. The Bank of Russia's functions with regard to a MI were broadened due to the Bank's new prerogative to set economic norms (Article 14). Requirements to the reports and other information that should be submitted by a MI became more definite (Article 15).

Among the amendments to the *Federal Law regulating credit cooperation*,[1] we may point to the introduction of financial norms that a credit cooperative was obliged to comply with from 2016 onwards[2] (Article 6).

It should be noted that credit cooperatives may carry on their professional activity in the form of issuance of consumer loans in the procedure established by the *Federal Law on consumer credits (loans)*, introduced in 2014.[3]

The tougher requirements to financial market players and the endowment of the Bank of Russia with broader powers are aimed primarily at preventing the entry on the market of dishonest market participants and at removing them from the market, and protecting the interests of honest financial institutions and the consumers of their services.

3. *Commercialization of private pension funds*

From 2014 onwards, in according with the alterations[4] introduced in the Federal Law on private pension funds (PPFs),[5] a private pension fund is defined as an organization involved in a single type of licensed activity, namely the provision of private pension plans, including the possibility of taking benefits early from the offered private pension schemes, and compulsory pension insurance. Previously, a PPF had been understood to be a special organizational-legal form of a non-profit welfare organization (Article 2). The incompatibility of that form with the activities of private pension funds, which were clearly entrepreneurial, had become obvious –

[1] Federal Law No 190-FZ, dated July 18, 2009 'On credit cooperation.' *The Russian Gazette* (in Russian), No 136, July 24, 2009.
[2] See Federal Law No 210-FZ, dated June 29, 2015.
[3] Federal Law No 353-FZ, dated December 21, 2013 'On consumer credit (loan).' *The Russian Gazette* (in Russian), No 289, December 23, 2013.
[4] See Federal Law No 218-FZ, dated July 21 2014, 'On the introduction of alterations to some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 169, July 30, 2014.
[5] Federal Law No 75-FZ, dated May 7, 1998 'On private pension funds.' *The Russian Gazette* (in Russian), No 90, May 13, 1998.

the founders of PPFs were denied their legitimate corporate rights to participate in the funds' activities; it was problematic for a fund to attract additional financing.[1]

The Federal Law 'On private pension funds'[2] no longer stipulates that their activities are not entrepreneurial, and instead directly establishes that a fund of this type may be created in the organizational-legal form of a joint-stock company (Article 4, 25). In this connection, the ban on the issuance of securities by a private pension fund has been lifted (Article 14), the law has been augmented by articles stipulating the specific features of transactions involving such securities (Article 7) and the organization of internal control in the funds (Article 6.3).

The floor for the charter capital of a private pension fund is set at RUB 120bn, and from January 1, 2020 it is to be not less than RUB 150bn. The floor for its equity is RUB 150bn, and from January 1, 2020 it is to be not less than RUB 200bn (Article 6.1).

The chapter concerning the managerial bodies of a private pension fund has been revised (Article 28–31). The new article stipulating the requirements for these bodies (Article 6.2), which have to do in the main with reputation and qualification issues, is not a legislative innovation *per se*. Previously, such requirements were stipulated in Article 7. The requirements have been expanded, toughened, and directly linked to specific events. The majority of requirements to business reputation, applied by the Bank of Russia to the candidates to managerial positions in a fund, envisage that their employment history should have no financial violations committed in the course of exercising their duties in their previously held posts. Since the Bank of Russia has begun to assess the activity of private pension funds, it looks primarily on its financial and investment-related aspects, and not on how the fund handles welfare issues, as it used to be previously.

The funds set up as joint-stock companies will be able to become fully-fledged market participants, to switch over to a performance assessment system based on market indices, and to be rated accordingly. The transformation of private pension funds will result in refurbishing of the entire corporate governance system in the private pension provision sector, the funds will be obliged to comply with performance-based corporate governance standards and more specific rules regulating the responsibilities of their CEOs.

The duties of the funds have been expanded. Thus, for example, a private pension fund is obliged to implement its own risk management system (Article 14). A new article concerning a fund's obligations has been introduced (Article 14.1). The need for a precise delineation of the obligations of a fund notwithstanding, these obligations are to be determined on the basis of the data relating to its funded pension saving accounts and private pension plan accounts.

As far as the guarantee of the fulfillment, by a private pension fund, of its obligations, the provisions concerning its reserves for securing mandatory pension insurance have been significantly expanded and formalized as a separate article (Article 20.1). The new article on dividends has been introduced, whereby a fund is not allowed to make a decision (or announcement) concerning the payment of dividends on its shares within five years from the date of its State registration; this provision makes a fund somewhat less attractive for

[1] See *Commentary to legislation of the Russian Federation on pension savings (article-by-article)*. I. A. Aleeva, D. V. Alekseev, N. A. Degtyaryova et al.; ed. Yu. V. Voronin. Moscow: *NORMA*, 2015, 848 p.

[2] See the Federal Law 'On private pension funds' as amended as of July 21, 2014, by Federal Law No 218-FZ; and as amended by Federal Law No 410-FZ, dated December 28, 2013 'On the introduction of alterations to the Federal Law 'On private pension funds' and some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 296, December 31, 2013.

investing in, securing instead the interests of its contributors, participants and insured persons (Article 20.3).

The new feature of the article that regulates the permitted forms of investing pension savings is not its content, but the transfer of the right to regulate that issue to the Bank of Russia (Article 24.1). As a result of its current status of a commercial organization, a private pension fund must now practice a different approach to distributing the income generated by invested pension reserves and accumulated pension savings (not less than 85% of a fund's income must be earmarked as pension reserves and accumulated pension savings; previously, no percentage index was established) (Article 27).

The powers of the Bank of Russia were broadened (Article 34), and in 2015,[1] the article whereby enforced liquidation of a private pension fund on the initiative of the Bank of Russia was to be made possible, was introduced (Article 33.2).

In the framework of the chapter that addresses the specific features of the activities involving the creation and investment of pension savings, the obligations to be assumed by the funds with regard to mandatory pension insurance have been expanded (Article 36.2); the specific features of the procedure of keeping records of funded pension accounts have been defined more precisely (Article 36.19); and several new articles have been introduced (Article 36.2-1, 36.6-1, etc.). A new chapter concerning the requirements to taking benefits early under a private pension scheme and the specific features of the fund's activities relating to early retirement on a private pension plan (Article 36.29–36.37).

Thus, the commercialization of PPFs has allowed them to operate on a new level in the financial market, and to enjoy a greater degree of freedom. At the same time, the fact that the funds have retained the welfare component of their activity, and the resulting conflict of interests between their shareholders and contributors (participants, insured persons), appear to justify the endowment of the Bank of Russia with broader powers to control PPFs.

* * *

By way of summing up, it can be said that after the transfer, in 2013, to the Bank of Russia of the functions of regulation, control and supervision of the activities of non-credit financial institutions, financial legislation began to be actively modified so as to eliminate the existing flaws in the legal regulation system. The alterations designed to define the categories of financial market players to be controlled by the Bank of Russia, to toughen the requirements to their activities by broadening the powers granted to the Bank of Russia, and the commercialization of private pension funds have all primarily pursued the same goal – that of financial market development and financial market stability, and of protection of the rights and lawful interests of the consumers of financial services. In this connection, the interests of financial market participants are oftentimes overlooked.

Thus, the threats that experts had cautioned against before the megaregulator was created were in part justified. So far, the Bank of Russia has not achieved proper balance of its functions aimed at developing the financial market and thus creating new opportunities for its

[1] See Federal Law No 167-FZ, dated June 29, 2015, 'On the introduction of alterations to some legislative acts of the Russian Federation.' *The Russian Gazette* (in Russian), No 144, July 3, 2015.

participants, and the functions that have to do with its regulation and supervision; there is a distortion in favor of the latter, which are aimed at reducing risks for market participants. Besides, the Bank of Russia has acted as a rather authoritarian regulator, which is especially manifest in the restrictions imposed on the activities of SROs. Among other things, this approach was motivated by the necessity to overcome the consequences of the 2008 financial crisis, and then to deal with the 2014 crisis; however, it resulted in tougher requirements to market participants introduced in order to ensure stability in the financial market.

These drawbacks can be gradually minimized. It appears that in order to eliminate the imbalance in market regulation, it will be feasible to act as follows:

(1) to more precisely stipulate in federal laws the functions, rights and duties of the Bank of Russia, as well as the rights of financial market participants and the requirements that they have to comply with, so as to eliminate the possibility of excessive authoritarianism exercised by the megaregulator in the framework of its normative acts;

(2) to consider the possibility of optimizing the Bank of Russia's internal structure, in order to smooth the controversies that may arise from the conflict of interests and functions, and to ensure a more productive interaction of the megaregulator with financial market participants;

(3) to grant more freedom to those market participants that have demonstrated a relatively long honest behavior history (for example, SROs of professional securities market participants).