

## THE REVIEW OF MEETINGS OF THE RF GOVERNMENT OF THE RUSSIAN FEDERATION IN SEPTEMBER 2015

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*In September, among other things the following issues were discussed at the meetings of the Government of the Russian Federation: draft laws introducing criminal and administrative responsibility for organization and operation of the so-called “financial pyramids”; draft law amending the provisions of the Civil Code of the Russian Federation as regards the rules of order of debiting cash funds in case of insufficiency of funds in a banking account.*

**On 2 September 2015**, at the meeting of the Government of the Russian Federation draft federal laws introducing criminal and administrative responsibility for organization of “financial pyramids” were introduced.

By the above draft laws, new constituent elements are introduced into the Criminal Code of the Russian Federation (CCRF) and the Administrative Offences Code of the Russian Federation (AOCRF): Article 172<sup>2</sup> of the CCRF and Article 14.61 of the AOCRF. It is to be noted that both the elements are fairly similar. However, unlike the elements of the offence described in the draft law for the CCRF the proposed elements of an administrative offence are broader in their content.

In the Criminal Code of the Russian Federation, responsibility will be provided for *organization* of activities aimed at attracting cash funds and (or) other property of individuals and (or) legal entities in *large amounts (particularly large amounts)* where payment of income and (or) other profit to persons whose funds and (or) other property were attracted earlier is carried out at the expense of the attracted funds and (or) other property of other individuals and (or) legal entities with no investment and (or) other legal business activities related to utilization of the attracted funds and (or) other property in volumes comparable with those of the attracted funds and (or) other property carried out.

In draft amendments to the AOCRF, persons are brought to responsibility for the same activities if they acted both as organizers and performers (*the person carried out activities related to attraction of funds (property)*). It means that draft amendments to the AOCRF already include the two alternative essential elements of offence. It is to be noted that activities specified in amendments to the AOCRF are not to include essential elements of offence.

In other words, the difference in qualifying an administrative offence and criminal offense consists in the category of “a large amount” of funds (property) – set in amendments to the Criminal Code of the RF –

attracted to the “financial pyramid”. As Article 172<sup>2</sup> is to be introduced into Chapter 22 of the Criminal Code of the RF, the size of a large amount is determined on the basis of the rules of that chapter.

So, the lower limit for qualification of a criminal offense – organization of a “financial pyramid” – is the amount of Rb 1,500,000, while that for qualification of a criminal offense committed in a particularly large amount, Rb 6,000,000.

In amendments to the AOCRF, the composition of the set of elements of an administrative offence has some disadvantages which may result in future in problems related to application of Article 14.61 of the AOCRF.

1. There is a lack of a well-defined line between “organization of activities related to attraction of funds (property)” and “fulfilment of activities aimed at attraction of funds”. It is important to determine such a division as according to amendments to the Criminal Code of the RF the criminal responsibility is provided only for organizers.

2. The disposition of the proposed articles includes in substance instructions how to conceal the above offenses. In other words, in order to conceal their activities the organizers of “financial pyramids” will be carrying out fictitious business activities. It is to be noted that to complicate detection of administrative offenses fictitious business activities will be alternating with deals and transactions related to real movement of capital and property.

It is to be noted that the disposition of the article in the proposed amendments to the AOCRF includes another set of elements of an offense, that is, public dissemination of the information, including by means of the mass media and (or) information and telecommunication networks, including the Internet, in which information there is data on attractiveness of participation in such “financial pyramids” and (or) a call to participate in those activities.

According to the proposed amendments to the AOCRF, commitment of an administrative offense involves the following administrative fines:

- for individuals: in the amount of from Rb 5,000 to Rb 50,000;
- for officials: from Rb 20,000 to Rb 100,000.;
- for legal entities: from Rb 500,000 to Rb 1,000,000.

According to the proposed amendments to the Criminal Code of the RF, commitment of a criminal offense entails the following:

- imposition of a fine in the amount up to Rb 1,000,000 or in the size of a salary or other income of the convicted person for the period of up to two years;
- or compulsory labor for the period of up to four years,
- or imprisonment for the same period with limitation of freedom for the period of a year or without that.

Both the draft laws were approved at the meeting of the Government of the Russian Federation and submitted to the State Duma of the Russian Federation.

On **17 September 2015**, at the meeting of the Government of the Russian Federation draft federal law on Amendment of Article 855 of the Civil Code of the Russian Federation was considered. According to amendments the order of debiting of funds to a bank account in case of insufficiency of funds is to be changed.

According to the existing version of Article 866. 2. (4) of the Civil Code of the Russian Federation, payment

documents on remuneration of labor of persons working on the basis of a labor contract and instructions of tax authorities and authorities supervising payment of insurance contributions on debiting and transferring of tax arrears and insurance contributions to budgets of the Russian Federation and extra-budgetary funds, respectively, are carried out on a third-priority basis.

It is to be noted that according to Article 51 of the Budget Code of the RF customs duties are attributed to non-tax revenues of the federal budget. So, according to Article 550.2 (5) of the Civil Code of the RF despite the fact that liabilities to pay customs duties are public obligations of a fiscal nature, instructions of customs authorities on debiting of funds to the payer's banking account for payment of arrears on customs duties and special, antidumping and compensation duties are attributed to the category of "other cash claims", that is, they are to be fulfilled on a fourth-priority basis.

The draft law provides for elimination of that fault by means of amending Article 855.2 (4) of the Civil Code of the Russian Federation. Thus, collection orders of customs authorities on debiting and transferring of arrears on customs payments and special, antidumping and compensation duties to the federal budget in case of insufficiency of funds on the banking account are carried out on a third-priority basis.

The draft law was approved at the meeting of the Government and submitted for consideration to the State Duma of the Russian Federation. ●