

ClientInsight

Combating illegal financial operations

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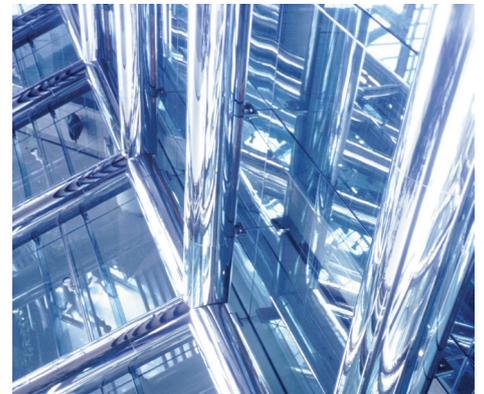
Special Alert

On 28 June 2013 the Russian President signed Federal Law No. 134-FZ amending a number of laws in relation to combating illegal financial operations.

The Law amended, in particular, the Law on Banks and Banking Activity, the Anti-Money Laundering Law, the Criminal Code and the Code of Administrative Offenses, the Law on State Registration of Legal Entities, the Bankruptcy Law, laws regarding certain financial organizations, and the Tax Code. Below is a summary of the key changes (save for those made to the Tax Code).

Expansion of the scope of controlling persons and measures aimed at combating money laundering

- The list of controlling organizations bearing a number of anti-money laundering duties was expanded to include non-state pension funds and cellular operators.
- Controlling organizations are now also obliged to:
 - take care to find out the purposes of business, financial standing and business reputation of their clients – legal entities;
 - take care to find out the “beneficial owners” of their clients (i.e., individuals who ultimately, directly or indirectly, own the client (or have a major stake of more than 25% in its charter capital) or may control its actions) and provide the data on these persons to the Federal Service for Financial Monitoring (**FSFM**) upon request;
 - update the data on clients, beneficiaries and “beneficial owners” no less than once a year, or, if doubts arise – within the following seven working days;
 - take care to freeze (block) money and property of clients involved in terrorist activity based on a relevant decision of an authorized body (no later than one working day upon placement of that decision on the FSFM website) and promptly inform the FSFM of doing this;
 - no less than once in three months check whether there are clients in relation to whom the blocking measures were applied or should apply and inform the FSFM on the results of such checking.



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- Lending organizations are entitled to:
 - refuse to open bank accounts and conduct operations as per their internal control rules if they suspect that the account or the operation is intended for money laundering purposes;
 - close clients' bank accounts if two or more decisions on the refusal to conduct their operations were taken within a year (it is necessary to inform the FSFM about the refusal to open a bank account or conduct an operation, or the closure of the account).

Tightening of criminal and administrative liability for breach of currency and anti-money laundering regulations

- Breach of the statutory requirements on freezing money and property, as well as failure to inform the FSFM on the instances of refusal to open an account or conduct an operation may entail an administrative suspension of a controlling organization's activity for up to 60 days.
- Non-repatriation of money due under a foreign trade contract in an amount exceeding six million rubles may entail the criminal liability of a company's director (in particular, he may be imprisoned for up to three years, and, if non-repatriated funds exceed 30 million rubles, for up to five years).
- Movement of cash funds and monetary instruments (i.e., securities) without declaring it at customs may entail the criminal liability of an individual if the amount (cost) of illegally moved funds (securities) exceeds twice the amount allowed to be moved without a declaration (e.g., currently it is allowable to export/import no more than the equivalent of US\$ 10,000 without declaring it).
- Repeated within one year breach of the procedures for submission of documents related to currency operations and overseas accounts and the procedures for filing transaction passports may entail an administrative fine for a company for up to 600,000 rubles.
- Transfer of money to non-residents' accounts with the use of false documents may entail the criminal liability (in particular, the imprisonment for up to three years and, if the relevant sum exceeds 30 million rubles, for up to ten years).
- Money laundering may entail tougher criminal liability (in particular, money laundering of more than six million rubles may entail the imprisonment for up to seven years).

Restrictions on shareholding and taking management positions in financial organizations

- Individuals who have a non-discharged record of conviction for economic crimes or crimes related to the state powers, are not entitled to obtain direct or indirect rights to dispose of (or to actually dispose of) more than ten percent of votes attributing to voting shares (participation interests) of insurance companies, professional participants in the securities' market and management companies of investment funds.
- Persons who acquire more than ten percent of votes attributing to voting shares (participation interests) of the above companies must notify the relevant authorized state body and the company itself about the acquisition; if the company has not received the notice, the person is only entitled to dispose of no more than ten percent of votes (the rest of shares/participation interests shall not be counted for a quorum of a shareholders'/ participants' meeting).
- Individuals who have a non-discharged record of conviction for economic crimes or crimes related to the state powers, or who were managing a financial organization at the time of the breach underlying the revocation of its license (if the license was revoked less than three years ago), as well as individuals subject to disqualification penalty, are not entitled to hold managerial positions in insurance companies, professional participants in the securities market, non-state pension funds, management companies of investment funds; acting members of the board of directors are deemed to have left immediately after the relevant court decision or the decision of an authorized body enters into force.

Obtaining data on bank accounts (deposits)

- Lending organizations are obliged to inform tax authorities of the opening of bank accounts and deposits of individuals (non-entrepreneurs) and, upon request, provide tax authorities with the data on the balance and operations in individuals' bank accounts and deposits.
- The data regarding operations, bank accounts and deposits of legal entities and individuals have to be provided to state authorities conducting criminal investigations based on a court decision.

Elaboration of procedures for state registration of legal entities to prevent creation of “day-fly” companies

- The registration authority must publish a notice on its website informing that it has been approached for the state registration of a legal entity, amendments to the charter or entering other data in the Unified State Register of Legal Entities (“**Register**”) (the information must be published no later than the next day after the relevant documents were submitted).
- Individuals are entitled to provide written objections to the registration authority as to the entry of data about them in the Register (their passport details have to be indicated).
- The list of grounds for refusal in the state registration was expanded to include, in particular, the following: the passport details indicated in an application for the state registration do not correspond to those obtained from authorities that issue passports; there is an individual’s objection; it is known that the address of the executive body of the legal entity which was indicated is false; or the legal entity’s director is a person subject to disqualification penalty (it is planned to create a public register of persons being disqualified).
- Legal entities are not entitled to refer to the data which is not included in the Register or the false data contained in the Register in their relations with third parties, and are liable for losses caused to third parties due to the non-submission or untimely submission of the data or submission of the false data about them in the Register.

Elaboration of rules on subsidiary liability of the company’s controlling persons in bankruptcy

- The company’s controlling persons (in particular, its director and a shareholder (participant) owning more than 50% of votes) shall bear subsidiary liability for the company’s debts if it was found bankrupt as a result of their actions (inaction), in particular, if they entered into or approved a transaction which impaired interests of the company’s creditors; the controlling persons shall not be liable if they prove that the company’s bankruptcy is not their fault.
- The liability extends, among others, to the creditors’ claims submitted after the register of creditors’ claims was closed and to the claims for current payments.
- The creditors are able on their own to submit a claim for subsidiary liability; the term for submitting the claim is limited.
- It is also possible to submit not only a claim for subsidiary liability, but also a claim for compensation of losses (caused to the company by its participants and management bodies) within a bankruptcy case.

The Law entered into force on 30 June 2013 (save for certain provisions that enter into force on different dates).