

Since 2003 subsoil plot development under the PSA Law has been available only if such subsoil plot was put out to auction and the auction failed. That is, only those plots that are not interesting to subsoil users on standard license terms and conditions may be developed under a PSA. Therefore, the best deposits are distributed under subsoil licenses and the PSA regime is not very attractive to subsoil users.

Due to the above and to the PSA tax regime established at the same time (see section 6.9 below), PSAs have, in practice, become largely ineffective in terms of attracting foreign investment into Russia.

## **17. BANKING**

### **17.1 Legal Framework**

The foundations of the Russian banking system are provided in Federal Law No. 395-1 *On Banks and Banking Activities*, dated 2 December 1990 (the “Banking Law”), and Federal Law No.86-FZ *On the Central Bank of the Russian Federation*, dated 10 July 2002 (the “CBR Law”). Bank insolvency is regulated by Federal Law No. 40-FZ *On Insolvency (Bankruptcy) of Credit Organizations*, dated 25 February 1999. The Central Bank of the Russian Federation (the “CBR”) is responsible for regulating banking activities. Through its instructions, regulations, and other acts, the CBR establishes rules, standards, and obligatory requirements for banks and non-banking credit organizations throughout the territory of the Russian Federation.

### **17.2 Regulatory Bodies**

The primary regulatory body governing the banking sector of the Russian Federation is the CBR. The CBR is one of the few institutions under the control of the Russian legislative (rather than executive) branch. The State Duma must not only approve the nomination of the chairman of the CBR, but also approve the resignation of the chairman. However, the CBR Law provides for the establishment of a specific body within the structure of the CBR, the National Banking Council (the “NBC”), comprised of representatives of various executive and legislative bodies. The NBC exercises control over the CBR’s board of directors, and participates in establishing the basic principles of Russian banking and financial policy.

The CBR and the Government share authority over monetary policy. The CBR is responsible for circulating monetary funds and ensuring the stability of the Russian

ruble. As part of its general oversight role, the CBR establishes state registration and licensing rules, determines minimum reserve requirements, and also approves the appointment of the senior management of all credit organizations. The CBR maintains regional offices throughout the Russian Federation.

Several associations of Russian banks, among which the Association of Russian Banks (the “ARB”) is the largest, are also important standard-setting bodies.

### **17.3 Credit Organizations in the Russian Market**

Pursuant to the Banking Law, there are two main groups of credit organizations: banks and non-banking credit organizations. A bank is a credit organization which has the right to carry out such banking operations as opening and maintaining bank accounts of legal entities and individuals, attracting deposits of monetary funds from legal entities and individuals and placement of those funds in its own name and at its own cost and expense. Conversely, a non-banking credit organization is an entity which is allowed to perform a limited number of specified banking operations.

Both banks and non-banking credit organizations are entitled to carry out respective banking operations from the moment of receipt of a banking license issued by the CBR. Both types of credit organizations may participate in banking groups (when the controlling company is a credit organization) and banking holdings (when the controlling company is a non-credit organization).

Currently, foreign banks may not establish branch offices in the Russian Federation but may set up Russian banking subsidiaries. The participation of foreign banks in the Russian market is subject to certain restrictions. However, at the end of 2006 the regulatory regime in this area was significantly liberalized. In particular, non-residents now need the CBR’s prior approval only if they acquire 20% or more of a Russian bank’s shares. When a non-resident acquires more than 1% but less than 20%, the CBR need only be notified. This is similar to the regulation which applies to Russian residents. Also, the CBR may not establish additional requirements for the subsidiaries of foreign banks related to mandatory ratios and minimal charter capital. However, additional requirements in respect of reporting procedures, approval of management bodies and permitted operations of the representative offices and subsidiaries of foreign banks may still be introduced.

## 17.4 Banking Activities

According to the Banking Law, the list of banking operations includes the following: attraction of monetary funds for on-call and term deposits and placement of such funds in the own name and at the own cost and expense of the relevant credit organizations; depositing precious metals; opening and maintaining bank accounts for individuals and legal entities; collecting money, promissory notes and bills of exchange, payment and settlement documents; cash servicing of individuals and legal entities; exchanging foreign currency; issuing bank guarantees; and transferring money on the instructions of individuals without the opening of bank accounts. Banks are also entitled to perform certain non-banking operations, inter alia: providing financial suretyship; trust management; performing operations with precious metals and stones; renting out safe deposit boxes; participating in financial leasing operations; and providing consultancy and other informational services. Credit organizations are prohibited from engaging in any industrial, trade, or insurance activities.

## 17.5 Licensing

A credit organization must be licensed by the CBR in order to conduct “banking activities” as defined in the Banking Law, and must be registered in the Russian Federation. License applicants must submit a feasibility report, detailed information on senior management and their compliance with qualification requirements, and documents certifying the source of funds contributed to the charter capital of the credit organization, to the CBR. Newly established banks can receive the following licenses:

- A license to carry out banking operations with monetary funds in rubles only (without the right to attract deposits from individuals);
- A license to carry out banking operations with monetary funds in rubles and in foreign currency (without the right to attract deposits from individuals);
- A license to deal with precious metals.

A registered bank that has held a license for a period of two years or more is entitled to obtain the following additional licenses:

- A license to attract deposits from individuals in rubles;
- A license to attract deposits from individuals in rubles and in foreign currency;
- A general license, which covers all of the above activities (except for operations with precious metals).

The above licenses to attract deposits from individuals may also be available to newly registered banks or banks which are less than two years old, if their capital exceeds 3.6 billion rubles, provided certain additional disclosure requirements are complied with.

The CBR may refuse to issue a banking license in the event of the following: non-compliance of the application documents with Russian legal requirements; the unsatisfactory financial standing of the founders of the credit organization, or their failure to perform their respective obligations before the federal budget, the budgets of constituent entities of the Russian Federation or local budgets; the failure of the nominee chief executive officer and chief accountant of the credit organization (or their deputies) to meet the qualification requirements; or an unsatisfactory business reputation of nominee members of the board of directors of the credit organization.

## **17.6 Deposit Insurance**

Federal Law No. 177-FZ *On Insurance of Deposits of Individuals in the Banks of the Russian Federation*, dated 23 December 2003 (the “Deposit Insurance Law”), came into effect at the end of December 2003 and established an insurance system for the deposits of individuals. The Deposit Insurance Law is intended to protect the interests of individual depositors. It stipulates that all banks accepting individual deposits become members of the deposit insurance system. The Agency for Deposit Insurance (the “Agency”) is responsible for supervising the bank deposit insurance system. Banks that have been issued a retail banking license are entered into the Agency’s register. Banks that hold a valid retail banking license will need to apply to the CBR to become registered as a participant in the mandatory deposit insurance system. A bank is expected to pass a number of tests before it can be admitted. The CBR must be assured that: the bank’s financial accounts and reports are accurate; the bank is in full compliance with the CBR’s mandatory ratios (capital adequacy, liquidity, etc.); the bank’s solvency position is sufficient; and that the CBR has not cancelled such bank’s banking license. If a bank fails the above tests or chooses not to participate in the deposits insurance system, it will not be able to attract deposits from, or open accounts for, individuals. Member banks have to make contributions to the special deposit insurance fund. These contributions are calculated as a percentage of the average daily balance of individual deposits maintained with a particular bank, and beginning from the 4th quarter of the year 2008 are subject to an upper limit of 0.1%. All individual depositors with deposits in member banks are entitled to 100% compensation for aggregate amounts up to 700,000 rubles (approximately 22,500 USD).

## 17.7 Countering Money Laundering

On the basis of recommendations made by the Financial Action Task Force on Money Laundering (the “FATF”), the State Duma adopted Federal Law No. 115-FZ *On Combating Money Laundering and the Financing of Terrorism* (the “Anti-Money Laundering Law”), which came into force on 1 February 2002. The Anti-Money Laundering Law requires banks and a wide range of financial institutions to report to the Federal Financial Monitoring Service any cash or electronic transactions of 600,000 rubles (approximately 19,350 USD) or more (or the equivalent of such amount in a foreign currency), and transactions with real property of 3,000,000 rubles (approximately 97,000 USD) or more (or the equivalent of such amount in a foreign currency). Beginning 15 January 2008 all settlement transactions and transfers of funds carried out without opening an account must be performed with an obligatory indication, either in the payment documents or otherwise, of information on the payers and their respective account numbers (if available) at each stage of the execution of transactions.

The Anti-Money Laundering Law establishes requirements relating to preventing and reporting of suspicious transactions (including internal record-keeping and customer identification procedures) by financial institutions such as banks and non-banking credit organizations, professional participants of securities markets, insurance and leasing companies, postal and other non-credit organizations that deal with the transmission of money. As of 15 January 2008 banks are required to identify foreign public officials serviced by them and sources of their financial means and other property. Banks are required to pay increased attention to transfers of monetary funds and other property between foreign public officials and their close relatives. The rules governing a financial institution’s internal record-keeping and the reporting of suspicious transactions include an obligation to investigate all complex or unusual transaction schemes that have no apparent economic or lawful purpose. Anonymous accounts are prohibited. Financial institutions are exempt from legal responsibility for a breach of any obligatory information disclosure restrictions when such a breach is necessary for compliance with the Anti-Money Laundering Law. The Anti-Money Laundering Law requires financial institutions to ascertain the actual identity of their customers and to disallow the creation and maintenance of anonymously held accounts.

Administrative penalties for violation of Russia’s anti-money laundering requirements include various fines, which may be imposed on officials and legal entities. The fines can be up to 20,000 rubles (approximately 650 USD) for officials, and up to 500,000 rubles (approximately 16,000 USD), for legal entities. Additionally, a legal entity

which carries out operations in monetary funds and other property may be prohibited from carrying out its business activities for a period of up to 90 days. Failure by a credit organization to comply with the requirements of the Anti-Money Laundering Law may serve as a basis for revocation of its banking license, or imposition of a fine in the amount of up to 1 per cent of the minimal statutory amount of charter capital (according to the Banking Law, the minimal statutory amount of the charter capital of a credit organization is 180 mln. rubles), or prohibition to perform certain banking operations for up to twelve months, or entail other administrative law liability. Furthermore, criminal liability is also applicable to persons (including company officers) for failure to comply with some of the requirements of the Anti-Money Laundering Law which, depending on the circumstances, varies from fines in the amount of up to 1 mln. rubles (approximately 35,000 USD), or the other income of the convicted person for up to five years, or imprisonment for up to 15 years (which may be applied together with the fine in the amount of up to 1 mln. rubles or the other income of the convicted person for a period of up to 5 years).

## **18. INSURANCE IN RUSSIA**

### **18.1. Introduction**

The insurance business and distribution of life insurance products in Russia is mainly regulated by Federal Law No. 4015-1 “On the Organization of the Insurance Business in the Russian Federation” dated November 27, 1992, as amended (the **OIB Law**) and the Civil Code of the Russian Federation (the **Civil Code**). In the cases envisaged by the OIB Law, federal executive authorities may adopt further regulatory acts governing insurance procedures. The insurance business is supervised by the Federal Insurance Supervisory Service (**FISS**), which is responsible for issuing insurance licenses and supervising the compliance of insurers with applicable regulations. The RF Ministry of Finance is in charge of developing various regulations in the insurance market.

Conducting insurance activities requires a license in Russia. Pursuant to the OIB Law, insurers must be legal entities incorporated in accordance with Russian legislation and need a license in order to conduct insurance business. Reinsurance services may be provided by foreign reinsurers not licensed locally. Foreign investors may access the Russian market via their Russian subsidiaries.