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TÍTULO: Condición legal de ciertos tipos de organizaciones financieras en la Federación Rusa.

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RESUMEN: El documento analiza el desarrollo de la legislación sobre las organizaciones financieras hasta la etapa actual, revelando problemas del estado legal de algunos tipos de organizaciones crediticias y no crediticias, así como de protección de los derechos de los acreedores de dichas entidades legales; a saber, el problema de proteger los derechos de los acreedores de organizaciones intermediarias que no son organizaciones crediticias, pero que prestan servicios financieros, el estado legal de las organizaciones participantes del sistema financiero y del sistema nacional de pagos de Rusia, la incertidumbre sobre el estado legal de una sociedad de responsabilidad limitada, y cambiar el enfoque de las empresas financieras y tecnológicas hacia la creación de vínculos de cooperación con los bancos y otras instituciones financieras, etc.

PALABRAS CLAVES: entidad legal, organización financiera, organizaciones crediticias y no crediticias, estabilidad y recuperación financiera, protección de los derechos de los acreedores.

TITLE: Legal status of certain types of financial organizations in the Russian Federation.

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ABSTRACT: The document analyzes the development of legislation on financial organizations up to the current stage, revealing problems of the legal status of some types of credit and non-credit organizations, as well as protection of the rights of the creditors of such legal entities; namely, the problem of protecting the rights of the creditors of intermediary organizations that are not credit organizations, but that provide financial services, the legal status of the participating organizations of the financial system and the Russian national payment system, the uncertainty about the legal status of a limited liability company, and change the focus of financial and technology companies towards the creation of cooperative links with banks and other financial institutions, etc.

KEY WORDS: legal entity, financial organization, credit and non-credit organizations, financial stability and recovery, protection of creditors' rights.

INTRODUCTION.

The list of financial organizations is contained in the Civil Code of the Russian Federation and federal laws “On the Central Bank of the Russian Federation (Bank of Russia) [1], “On the Protection of Competition” [2], “On Failure (Bankruptcy) (article 180) [3], “On Organized Trading” (Article 2) [4]. These include credit, insurance, clearing organizations, specialized financial companies, specialized project finance societies, professional participants of the securities market, equity investment funds, investment fund management companies, mutual investment funds and non-state pension funds, and other non-credit financial institutions (microfinance organizations, pawnshops, consumer credit cooperatives).

The financial services provided by the above organizations are specific: firstly, they are associated with the attraction and placement of funds of individuals and legal entities; secondly, they do not require physical movement or consumption of values, based on the storage and accounting of information, which is easily transformed, accumulated and processed using computer technology.

The rapidly growing processes of financial market digitalization increase the availability and ease of use of a financial service, and reduce its price [5].

DEVELOPMENT.

The weak side of the Russian financial market, that was identified by experts of its control body, the Central Bank of Russia, is an insignificant share of the assets of non-credit organizations compared to the credit ones [6]. The assets of credit institutions constituting 85.2 trillion rubles at the end of 2017 dominate over the assets of the non-banking financial sector. For comparison, the assets of 3 main groups of non-credit financial organizations make the following amount: non-state pension funds - 3.7 trillion rubles (4% of GDP), the insurance sector subjects - 2.3 trillion rubles (2, 5% of GDP), the net asset value of mutual investment funds - 2.9 trillion rubles (3, 2% of GDP). Competition risks are also represented by a high share of state participation in organizations of the banking and insurance sector, and in infrastructure organizations.

In addition, it is noted that the total number of financial organizations in Russia is decreasing (for example, the number of professional participants in the securities market decreased by 347 organizations, the number of insurance organizations - by 124, non-state pension funds - by 32; the number of credit organizations decreased by 350) [7].

This distinguishes the domestic financial market from the financial markets of most developed countries where bank credit institutions and capital markets effectively interact complementing each other. This indicates the instability of the financial system of Russia.

Methods.

The main methods used in the course of writing this work are: comparative legal method, method of complex analysis, method of interpretation, law sociological method, system analysis method, and intersectoral approach method.

Results and Discussion.

The development of technology also leads to that that non-bank legal entities are also begin to provide financial services. According to the Law “On the National Payment System” [8], legal entities that are not credit institutions can participate in the payment system in the status of: payment system operators, payment infrastructure service operators (such as an operating center, payment clearing center and clearing center), and bank payment agents.

Examples of non-credit organizations that have the status of a payment system operator include the following organizations: Yandex Money, international payment system operators Visa, MasterCard, and other large payment systems.

Bank payment agent is a legal entity that is not a credit institution or individual entrepreneur, who is engaged by a credit institution in order to carry out certain banking operations (Article 3 of the Law of the Russian Federation "On the National Payment System"). At present, these organizations are intermediaries and have the right to combine their activities with the activities of receiving payments from individuals in accordance with the rules established by para.4.1 of Article 14 of the said law.

These organizations must comply with the requirements to open a special bank account, to identify taxpayers, and with requirements to cash register equipment. In order to protect the rights of consumers of financial services, it is necessary to create a system of regulation and supervision of financial agents that represent financial institutions.

The peculiarities of the legal status of financial organizations, the specifics of their creation and reorganization are determined by special regulatory acts in accordance with which:

- Financial services are carried out only on the basis of a license issued by the Bank of Russia (credit and insurance organizations, non-state pension funds), or membership in self-regulatory organizations (consumer credit cooperatives), or entering into the register (microfinance organizations).
- The minimum size of the authorized capital of a newly registered financial organization and its own capital is established by law.
- Special requirements for the types of financial organizations, namely: features of accounting, methods for determining own funds, and criteria for determining the financial position of the organization.
- Accountability to the Central Bank of Russia which is entitled to accept by-laws establishing requirements for such structures.

The Federal Law dated July 29, 2017 No. 281-FZ “On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Improvement of Mandatory Requirements to Founders (Participants), Management Bodies and Officials of Financial Organizations” [9] unified the mandatory requirements for governing bodies and officials of financial organizations. A person noted in violation of the activities of a certain organization will no longer be able to occupy certain positions in other financial organizations.

The aforementioned law dated 29.07.2017 No. 281-FZ also unified the mandatory requirements for the founders of financial organizations. In accordance with the established requirements, the prior consent of the Bank of Russia is also required for the establishment by a legal entity or an individual as a result of a single transaction or several direct or indirect transactions (through third parties) to control shareholders (participants) of a credit institution owning more than 10 percent of

shares (stocks). These requirements apply to the case of establishing control over the participants of a financial organization by a group of persons.

In the period of 2019-2021, the Bank of Russia plans to expand the use of the business reputation institution in regulating the legal status of financial organizations and public companies, and to increase the personal responsibility of managers of financial organizations. The measures having taken will also be aimed at preventing unscrupulous persons from joining management bodies. Management issues in financial organizations are related to the problems on management of conflicts of interest and their disclosure.

The Bank of Russia intends to impose a requirement on exclusion, and if it is impossible to exclude, on the disclosure of conflicts of interest that can cause damage to customers [10], for example, professional judgment (instead of standards) by the Central Bank of Russia is applied in relation to credit organizations to determine the tie-up of the parties.

In accordance with the latest amendments to the Law "On Banks and Banking Activities" [11], banks can change their status with a decrease in the amount of own funds. If a bank with a universal license or basic license does not comply with the requirements for the minimum amount of own funds (1 billion rubles and 300 million rubles, respectively), it can receive the status of a microfinance organization while simultaneously terminating the status of a credit organization and canceling its banking license.

The status of a bank with a basic license or a non-bank credit organization can also be obtained by a microfinance organization (Article 23.6 of the Law "On Banks and Banking Activities"). However, the right to attract deposits in the form of citizens' money from a bank with a basic license; in this case, can be granted no earlier than after expiration of two years since the date of state registration of changes made to the charter of a microfinance organization in connection with its receipt of bank status with base license.

Timely detection, prevention and suppression of financial problems of financial organizations that threaten the funds of creditors are the foundation of confidence in them from the participants in civil transactions [12].

According to the Federal Law dated May 1, 2017 No. 84- FZ, the Bank of Russia has established a limited liability company “Management Company of the Banking Sector Consolidation Fund” (FKBS), which will operate under the control of the Central Bank of the Russian Federation in order to implement measures for the financial rehabilitation of credit or insurance organizations. Since the Fund does not have the status of a legal entity, measures to rehabilitate troubled banks are carried out by the “Management Company of the Banking Sector Consolidation Fund” LLC, which is a new type of financial institution.

According to Article 1 of the Federal Law dated November 29, 2001 No. 156-FZ “On Investment Funds”, the specifics of the legal status of the “Management Company of the Banking Sector Consolidation Fund” LLC and the procedure for carrying out activities, including trust management, are determined by federal laws according to Article 76.10 of the Federal Law "On the Central Bank" and Federal Law dated April 22, 1996 No. 39-FZ "On the Securities Market", with features established by the Federal Law "On the Central Bank of the Russian Federation (Bank of Russia) and the Federal Law" on insolvency (bankruptcy)". The management company is involved in the implementation of measures to prevent the bankruptcy of credit or insurance organizations and uses the funds that make up the banking sector consolidation fund or the insurance sector consolidation fund.

It is permissible to present the financial rehabilitation carried out by the “Management Company of the Banking Sector Consolidation Fund” in the form of a legal (judicial) design [13], intended to implement the algorithm of sequential actions by the Central Bank of the Russian Federation and aimed at achieving financial sustainability of a credit and insurance organization [14].

As it is noted, in the main directions of development of the financial market of the Russian Federation for the period 2019-2021, “The use of a new mechanism for financial recovery of credit institutions allows in 2017 for prevention of the losses of economic entities, significantly exceeding the amount of funds allocated from the Banking Sector Consolidation Fund, to ensure the rapid recovery of the financial condition of banks and their compliance with regulatory requirements”.

The adoption of a new law dated May 1, 2017 as a matter of urgency, and the creation of a new financial structure of the “Management Company of the Banking Sector Consolidation Fund” which legal status is not clearly defined, testifies to the ineffectiveness of previously adopted insolvency regulations and the systemic crisis in the banking industry. In addition, the law should define the criteria for the introduction of a procedure for recovery under the new rules under which violations of financial stability the Central Bank introduces a recovery procedure, and in which cases the “mega-regulator” revokes the license.

As Hannah Ellis rightly notes, company law in England is developing more slowly, while preserving the country's age-old traditions. The national features of the English law on companies prevail in the general legal system due to its inherent conservatism [15].

In Russia, it is also necessary to improve legislation on credit institutions, based on the traditions existing in the country.

In summary, the legislation on financial organizations, in which the corresponding legal constructions are enshrined, is inherently complex. Separate inclusions of norms of administrative and budgetary law do not change the assessment of this legislation, as having, first of all, a private-law and civil nature [16]. It is important to note that the financial recovery procedure should ensure a balance of the rights and legitimate interests of such persons as shareholders (participants) of financial organizations, creditors of these financial organizations, including citizens-consumers and all other participants of this activity [17].

The application of the financial rehabilitation procedure to credit and insurance organizations on the basis of the law of 2017 is a vivid example of interaction between private and public law due to its occurrence between legally unequal subjects of power and subordination (between the Central Bank and credit and insurance organizations) to restore solvency or financial sustainability. This is one of the cases of inter-sectoral relations in which the civil law institution is widely used in the sphere of public law [18].

In the event of a bankruptcy of a financial organization, one of the ways to satisfy the claims of creditors is the bringing to subsidiary liability of the company's founders (participants) who were able to determine their actions in one way or another. Information about the actual owners of the financial organization should be disclosed.

CONCLUSIONS.

Summarizing the above, we note that both the current legislation on financial organizations and the practice of its application require constant study and analysis. Today, there is an acute need for understanding the theoretical and practical problems arising from the recovery of losses to creditors of such organizations. It seems that the creation of a coherent regulatory framework governing the legal status of financial organizations, without violating the existing rational generalization of legal norms on corporate entities, will contribute to the unity of law enforcement.

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BIBLIOGRAPHIC REFERENCES.

1. Federal Law dated July 10, 2002 № 86-FZ "On the Central Bank of the Russian Federation (Bank of Russia) // Consolidated laws of the Russian Federation. - 2002. - № 28. - Page. 2790.

2. Federal Law dated July 26, 2006 № 135-FZ "On Protection of Competition" // Code of Legislation of the Russian Federation. - 2006. - № 31 (part 1). - p.3434.
3. Federal Law dated October 26, 2002 №127-FZ "On insolvency (bankruptcy)" // Code of the Legislation of the Russian Federation dated October 28, 2002, №43, page 4190.
4. Federal Law dated 11/21/2011 No. 325-FZ "On Organized Trading" // Code of Legislation of the Russian Federation. - 2011. - No. 48. - Page 6726.
5. Beyond Fintech: A Pragmatic Assessment of Disruptive Potential in Financial Services. Part of the Future of Financial Services Series. "World Economic Forum in collaboration with Deloitte". August, - 2017.
- 6 M. Stolbov, I. Goloshchapova, O. Solntsev, et al. Comparison of the Russian financial sector model with models of financial sectors in other countries / Series of reports on economic research. M. Bank of Russia. - 2017. - № 23. - August. /// www.cbr.ru
7. The main directions of development of the financial market of the Russian Federation for the period 2019-2021. // www.cbr.ru
8. Federal Law "On the National Payment System" dated June 27, 2011 № 161-FZ // Russian newspaper. - 2011. - 30 June.- № 139.
9. Federal Law dated 29.07. 2017№ 281-FZ // Russian newspaper. -2017 – August, 7.
10. See "The main directions for development of the financial market of the Russian Federation for the period of 2019-2021"// www.cbr.ru August 7; See. Resolution of the 9th Arbitration Court of Appeal dated 24.06.2015 № 09-AP - 24715/2015; 09AP - 22993/2015 on the case № A40-119763 / 10. Case of C.V.Pugachev
11. Federal Law dated December 2, 1990. № 395-1 "On banks and banking activities" // Russian newspaper. - 1996 - February 10. - №27.

12. Demieva A.G. Arslanov K.M. Legislation on Business. The international Experience and the Prospects of Development in Russia // The Turkish Online Journal of Pesign Art and Communication (TOJDAC). November.-2016. - Special Edition. - P.2474-2479.
13. Yu. A. Serkova. The concept of legal construction and its methodological significance in the study of legal systems // Legal World. - 2013. - №7 (199). - P.64-67.
14. Opyhtina E.G., Serkova Ju.A., Khabibullina A.S. Some problems of the legislation on termination of legal entities in Russia // QUID: Investigación, ciencia y tecnología. - 2017. - Special Issue N-1. - pp. 1548-1553.
15. Hannah Ellis. The reality of rights Barriers to accessing remedies when business operates beyond borders. The Corporate Responsibility (CORE) Coalition. March 2009.
16. See more. Arkady Viktorovich Mayfat “Civil instructions for investment // Walters Kluwer, Moscow, 2006.-328 p. - pp.14-56
- 17 See: Opykhtina E.G. The concept and types of legal entities providing financial services // Bulletin of Economics, Law and Sociology. - 2015.- № 3.- p.147-149.
18. Chelyshev M.Yu. On legal constructions in the draft of amendments and additions to the Civil Code of the Russian Federation.// Civil law. - 2013.- № 1.

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