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BANKING COMMITTEE

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CRITICAL INFORMATION INFRASTRUCTURE SECURITY

Federal Law No. 187-FZ "On the Security of Critical Information Infrastructure of the Russian Federation" was adopted in mid-2017. Concurrently, criminal liability was introduced for unlawful tampering with the critical information infrastructure of the Russian Federation. However, despite the obvious importance of this legislation, the law and respective bylaws have a rather vague wording. Therefore, the law is not specific as to the subjects regulated thereby and the scope of its application.

In particular, the subjects of the law are, literally, Russian legal entities that possess 'critical information infrastructure objects', i.e. information systems, information and telecommunication networks, and automated management systems used in banking and other financial market segments. Therefore, formally any Russian bank is a 'critical information infrastructure object', which does not seem to be the exact purpose of the regulation. Logically, financial organizations should be deemed as 'critical objects' only if a dysfunction in their IT system affects a large number of individuals and companies.

Moreover, it is difficult to understand how the law should apply. Financial institutions must create a list of critical information infrastructure objects they use and categorize those objects. But the very creation of the list is problematic. The scope of objects includes 'information systems, information and telecommunication networks, and automated management systems'. These definitions are excessively broad. For example, an information system could even mean a text editor the bank uses. Hence, any auxiliary programme, together with the computer it is installed on, may be deemed to be a critical information infrastructure object and will, as such, be included in special reporting.

These problems were not resolved in 2018-2020, and the situation remains the same in principle.

RECOMMENDATIONS

- To suggest to the Bank of Russia and the Russian Government that they officially clarify how the law applies to banks and financial institutions. If possible, the Russian Government should be asked to clarify the bylaws detailing the application of the law.

LAWS ON SPECIAL ECONOMIC MEASURES

Russian executive authorities have implemented sanctions against certain foreign parties (e.g. the Government Decree of 1 November 2018). The sanctions include freezing funds and prohibiting capital transfer outside Russia. Sanctions of this kind are, presumably, to be implemented by credit institutions. However, the exact content of the sanctions, the procedure for implementation thereof by the banks, and application of the sanctions to Russian companies controlled by the foreign sanctioned parties have not been specified. In practice that may lead to rather surreal situations. For example, the rules in question may be formally interpreted as a prohibition on the banks to execute tax transfers to the Russian budget if the payment is initiated by a Russian organization controlled by a sanctioned party. As there is no executive body designated to grant regulatory advice on the matter and no procedure for such advice, no means are available to the parties involved for timely resolution of unclear issues.

RECOMMENDATIONS

› The government must be asked to specify the procedure for implementation of the special economic measures by the banks and provide a procedure allowing for resolution of unclear issues on the application of these economic measures, analogous to similar procedures existing in other jurisdictions.

LIABILITY OF CREDIT INSTITUTIONS

There is currently no detailed legislation on fines against banks applied by the Bank of Russia. Current laws (Article 74 of the Federal Law "On the Central Bank of the Russian Federation [the Bank of Russia]") allows the Bank of Russia to fine credit institutions for any breach of federal laws and regulations. Specific content of the breaches is not specified, and there are no procedural rules governing either application of the sanctions or appeal against them.

Russian authorities together with public foundations are now extensively working on reviewing the laws concerning administrative sanctions.

So that fines against the banks are more effective, the regulation of banking is more specific and reasonable, and good participants of the financial markets are protected, we deem a major restatement of the approach to this matter necessary so that fines are not applied for abstract breaches of law and regulations.

Review of the Administrative Offences Code (KoAP) may allow for implementation of two concepts for banks' liability.

KoAP may be supplemented with provisions addressing banking offences and detailing specific scopes thereof, and the Bank of Russia may be authorized to judge the respective cases. The fines shall be differentiated according to gravity of the breaches. Prosecution and appeals will be based on KoAP's respective procedural rules.

Alternatively, provisions covering banking offences may be moved from KoAP to banking laws, which will then be supplemented with a separate concept of a 'banking offence' detailing the corresponding scopes and applicable fines, as well as the procedure for addressing the imposition of fines and appeals to the Bank of Russia, by analogy to the 'tax offence' concept of the tax law.

RECOMMENDATIONS

› The Bank of Russia and the government shall be asked to determine the approach to liability of the banks and initiate amendments to the law, including as part of a KoAP review exercise.

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