

Russia Adopts Law on Financial Platforms

July 27, 2020

On July 20, 2020, the law¹ setting forth the status and procedure for operation of financial platforms—online platforms for financial transactions—came into force along with the amendments to certain legislation related to the Law.² It is anticipated that the Law will improve the availability and competitiveness of banking, insurance and other financial market services for individuals.³

FINANCIAL PLATFORM

A financial platform is an information system⁴ facilitating financial transactions through online interaction between financial institutions or issuers and consumers of financial services.

Financial institutions that may execute financial transactions on a financial platform include credit and non-credit financial institutions (e.g., insurance companies).

The Law provides that the following financial transactions can be executed on a financial platform:

- transactions for the provision of banking, insurance and securities market services;

¹ Federal Law No. 211-FZ on Execution of Financial Transactions on Financial Platforms dated July 20, 2020 (the “Law”).

² Federal Law No. 212-FZ on Amendments to Certain Legislative Acts of the Russian Federation Related to Execution of Financial Transactions on Financial Platforms dated July 20, 2020.

³ See, e.g., the Central Bank of Russia’s press release on the Marketplace System dated July 9, 2020 (available in Russian at: <https://cbr.ru/press/event/?id=6903>).

⁴ An information system comprises information contained in the databases, information technologies and technical facilities procuring its processing (see Article 2(3) of Federal Law No. 149-FZ on Information, Information Technologies and Protection of Information dated July 27, 2006).

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- transactions with financial instruments (including the acquisition, redemption and exchange of investment units in accordance with the amendments introduced to Federal Law No. 156-FZ on Investment Funds dated November 29, 2001); and
 - transactions for the provision of other financial services which may be provided by the rules of the financial platform,

and further establishes that such financial transactions do not include bank account and deposit agreements entered into for business purposes.

The financial services provided on a financial platform are available only to individuals.⁵

OPERATOR OF FINANCIAL PLATFORM

Access to the financial platform is provided by its operator. The operator of the financial platform:

- must be a non-credit financial institution;
- must be established as a joint stock company and have its own funds of at least RUB 100 million;
- must be included by the Central Bank of Russia in the register of operators of the financial platforms;
- may not also act as a credit or another non-credit financial institution, but may act as a trading institution, depository (including specialised depository), registrar or investment platform operator;⁶
- must have ownership or other legal title over its principal and back-up hard and software facilities located in Russia securing its smooth operation and safety of data (including by making back-up copies); and
- must comply with the Central Bank of Russia's requirements for the protection of information and inform the Central Bank of Russia of any occurrence and/or

⁵ The financial institutions, issuers and consumers of financial services are hereinafter referred to as the financial platform participants.

⁶ We analyzed in detail a recent law on raising investments via investment platforms in our *Debevoise In Depth* of September 4, 2019, available at: <https://www.debevoise.com/-/media/files/insights/publications/2019/09/20190904-russia-adopts-crowdfunding-law-eng.pdf>.

attempts to execute transactions on the financial platform without an expression of will by the financial platform participants.

The Law establishes certain qualification requirements for the management bodies and certain employees of the operator (*e.g.*, higher education or respective experience and certain other requirements set forth in the AML Law⁷) and imposes restrictions that prevent those individuals from performing the functions of management bodies or from holding certain offices (*e.g.*, being held liable for an administrative offence two or more times during the three preceding years for wilful misconduct upon bankruptcy of a legal entity or for having an outstanding conviction for an intentional crime). The Central Bank of Russia must approve a potential CEO of the operator of the financial platform prior to his/her election or appointment.

In addition, an owner (direct or indirect) of 10 percent or more of the votes in a financial platform may not be:

- a company registered in, or under the control of another company registered in, an offshore zone;
- an entity that has been removed from the register of non-credit financial institutions or whose license has been revoked for violation of federal laws; or
- a person that fails to meet the requirements for business reputation provided by the Law.

EXECUTION OF FINANCIAL TRANSACTIONS

The operator of the financial platform acts in accordance with the rules registered by the Central Bank of Russia. The rules must contain requirements for the financial platform participants, types of possible transactions, terms and conditions of the services agreement and other terms of business. The consumer and the financial institution enter into the services agreement which is an “adhesion contract” and its terms and conditions are determined by the rules of the financial platform.

Identification of consumers must be carried out as required by the AML Law; however, certain financial institutions may authorise the operator of the financial platform to identify consumers on its own.

⁷ Federal Law No. 115-FZ on Countering the Legalization of Illegal Earnings (Money Laundering) and Financing of Terrorism dated August 7, 2001 (as amended, the “AML Law”).

The financial transactions are executed directly between consumers and financial institutions. The operator of the financial platform is not a party to the financial transactions, but must facilitate the payment through a special operator's account (however, alternatively, payment may be made directly to the accounts of the counterparties) and the exchange of documents required for the execution of financial transactions. The financial platform services agreement and other documents may be signed, among others, by means of a digital signature.

SPECIAL ACCOUNT

The funds of a consumer of financial services may be transferred through a financial platform only to an account of a credit or non-credit financial institution or an issuer who entered into the respective transaction with the consumer, to the consumer's bank or deposit account and to the special account of the operator of the financial platform.

A special account is a nominal account opened by the operator of the financial platform (without involvement of consumers of financial services) only with a credit institution:

- that is a settlement center of a systemically important payment system;⁸ or
- whose credit rating is not lower than established by the Board of Directors of the Central Bank of Russia.

The funds on a special account may be returned to the consumers during a certain period or upon exceeding a certain amount on the account or pursuant to a special instruction of the consumer in accordance with the terms and conditions of the services agreement of the financial platform. The funds on a special account are subject to the deposit insurance.

The funds of the operator of the financial platform must be separated from the funds of the consumers, and such consumers' funds cannot be administered by the operator of the financial platform.

Dividend and bond payments can also be made to the special account of the operator of the financial platform.

⁸ See Articles 3(11) and 22 of Federal Law No. 161-FZ on the National Payment System dated June 27, 2011, as amended.

REGISTRAR OF FINANCIAL TRANSACTIONS

The Law introduces a new financial market participant—a registrar of financial transactions that facilitates the exchange of information between the financial platform participants. The Law sets forth the following requirements for the registrar of financial transactions and its operation:

- the registrar of financial transactions must be a repository,⁹ and its operation must comply with the rules of repository activity;
- the registrar of financial transactions must have a central depository status or be a legal entity whose entire share capital is held by a central depository;
- the registrar of financial transactions is liable for any losses suffered as a result of the violation of its obligation to grant access to information, the provision of inaccurate or misleading information, the unlawful disclosure or provision of information or the misrepresentation of received information.

The operator of the financial platform provides information on financial transactions executed on the financial platform to the registrar of financial transactions, and the registrar of financial transactions, in turn, provides such information to consumers who have been identified by the unified system of identification and authentication and other persons provided by the Law (e.g., to courts, notaries, the State Corporation Deposit Insurance Agency).

The information on financial transactions held by the registrar of financial transactions is deemed to be accurate unless proved otherwise in court. However, if there are any inconsistencies between the information held by the registrar of financial transactions and entries (made in personal or *depo* accounts), then such entries will prevail.

AUTHORITY OF THE CENTRAL BANK OF RUSSIA

The Law authorises the Central Bank of Russia to regulate and oversee the activities of the operators of the financial platforms and registrars of financial transactions. In particular, the Central Bank of Russia:

- registers the rules of financial platforms and amendments to such rules;

⁹ Repository is a legal entity engaged in the provision of services for collecting, recording, processing and storing information on executed repo agreements, derivative contracts and agreements on mutual transfer of title to currency for value. The license for the repository activities is issued by the Central Bank of Russia.

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- maintains a register of the operators of the financial platforms;
 - monitors compliance with Russian legislation by the operators of the financial platforms and registrars of financial transactions;
 - conducts scheduled and unscheduled inspections of the operators of the financial platforms;
 - imposes restrictions on certain operations by the operators of the financial platforms on the grounds set forth by the Law; and
 - maintains a database of occurrence and/or attempts to execute transactions on the financial platform without an expression of will by the financial platform participants.

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Please do not hesitate to contact us with any questions.

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