



REGULATING DEALER ACTIVITIES ON THE FOREX MARKET AND FOREIGN ORGANISATIONS OPERATING ON THE SECURITIES MARKET

For the attention of heads of legal departments in lending institutions and other financial organisations

Pepeliaev Group advises that on 1 October 2015 Federal Law No. 39-FZ dated 22 April 1996 "On the securities market" (the "Law") will be amended. The amendments concern activities of foreign financial institutions on the securities market in Russia and regulating dealer operations on the over-the-counter Forex market.

We will address below the most important provisions of Federal Law No. 460-FZ dated 29 December 2014 "On amending certain items of the legislation of the Russian Federation", which has made the corresponding amendments.

1. Amendments to the legal regulation of foreign financial institutions on the securities market in Russia

In accordance with the new version of the Law only those legal entities that have been established under Russian laws will be treated as professional players on the securities market.

Moreover, under the general rule a **representative office of a foreign company** performing regulated activities on the financial markets under its personal law **may now perform its activities within Russia starting from the date on which it is accredited by the Bank of Russia**. This does not apply to representative offices of foreign lending institutions.

No foreign companies, their representative offices or branches **may operate as non-lending financial institutions**, including as **professional players on the securities market**. **Neither may they offer services of foreign organisations operating on financial markets to the public** within Russia or distribute the information about such organisations and/or their activities to the public within Russia.

***PG's comment:** Therefore, starting from 1 October 2015, the activities of foreign companies and their employees on the Russian financial markets will be substantially restricted. These rules also apply to foreign companies that are members of the same group as Russian companies.*

2. Legal regulation of dealer activities on the OTC Forex market

An organisation is treated as a Forex dealer if it performs activities on its own behalf and at its own expense to enter into certain contracts with individuals who are not individual entrepreneurs, other than as a part of organised trading. This includes the following cases:

- **if contracts are derivatives** which provide for parties to have an obligation that depends on changes in the exchange rate(s) of a relevant currency and/or currency pairs and **which are entered into on the condition that a Forex dealer allows an individual to assume obligations which exceed the**

amount of the collateral that the individual has provided to such Forex dealer;

- **if there are two or more contracts** based on any currency or a currency pair as the subject matter, **which have similar term set for discharging obligations**, and if the creditor under one of such contracts is the debtor under another contract in respect of a similar liability, and **such contracts are entered into on the condition that a Forex dealer allow an individual to assume an obligation which exceeds the amount of the collateral that the individual has provided to the Forex dealer.**

However, according to article 4.1(27) of the Law, 'classical' transactions which are aimed at purchasing and selling foreign currency in cash or in a non-cash form and are effected under Russian legislation regarding banks and banking activities, as well as laws on currency regulation and currency control, are not treated as a Forex dealer's activities (and, accordingly, the amendments in question do not apply to such activities).

The ratio of the amount of collateral provided by an individual to a Forex dealer to the amount of his/her obligations **may not be less than 1 to 50**. The Bank of Russia may increase this ratio but such increase may not be more than twofold (in other words, up to the ratio of 1 to 100).

The legislation sets a number of requirements in respect of performing a Forex dealer's activities, and these are as follows:

1. **A Forex dealer's activities are to be exclusive.** A Forex dealer may not combine its activities either with any other professional activities on the securities market or any other activities. Besides, it may not issue loans to individuals. Neither may it enter into similar independent contracts with different contracting parties on different conditions at one and the same time;
2. A Forex dealer **must have its own funds** of no less than **one million roubles**. If individuals' monetary funds which the Forex dealer holds on its nominal account exceed one hundred and fifty million roubles, such Forex dealer must increase its own funds;
3. After 1 October 2015 such activities may be performed only if **a dealer has a relevant licence and is a member of a self-regulating organisation of Forex dealers** (the "self-

¹ Organisations that perform the relevant activities as at 1 October 2015 are obliged to obtain a licence and to join the self-regulating organisation before 1 January 2016

regulating organisation"). When joining such organisation, the dealer must pay a fee of two million roubles.

- Article 10.4 of the Law determines requirements with regard to the founders (members) of a Forex dealer company;
- A Forex dealer must have a website where it should disclose the information stipulated in article 4.1(23) of the Law.

In addition to the legislation, relationships between a client and a Forex dealer are regulated by a **framework contract**. **The parties make the terms and conditions of such contract more specific by entering into individual contracts**. To do this, a Forex dealer issues quotations and the individuals submit applications based on, and in pursuance of, the framework contract.

The framework contract must comply with laws and the model terms and conditions of a framework contract as approved by the self-regulating organisation. The framework contract **should be registered with the self-regulating organisation and should, compulsorily specify the minimum ratio of the collateral** provided by an individual to the amount of his/her obligations. If such ratio is reached, the deadline for the parties to discharge their obligations is deemed to have fallen due. Before entering into a contract, a Forex dealer must obtain from an individual a

confirmation that he/she is aware of the risks a list of which is established by the Bank of Russia.

Money provided to a Forex dealer is registered in a special section of the nominal account which is to be opened with a bank located within Russia. If an individual's funds registered in the special section of the nominal account are not enough to satisfy the Forex dealer's claims, such Forex dealer's claims **that have not been satisfied with the above money are regarded as discharged**.

A Forex dealer may issue an order that an operation be performed in the nominal account without an individual's relevant instructions only in order to perform a particular contract entered into with such individual, or in cases where grounds have emerged for all obligations under independent contracts entered into with such individual to be terminated. When overseeing how restrictions that have been set are complied with when operations are performed on the nominal account, the bank may not require the Forex dealer to confirm that a particular contract was signed or that grounds have emerged for obligations under particular contracts to be terminated, unless a contract regarding a nominal account provides otherwise.

Lawsuits arising out of contacts entered into between Forex dealers and individuals are filed in accordance with Russian

Conclusions and recommendations

Rules regulating foreign entities' activities on the Russian financial market have become tighter. This should be borne in mind by those doing business that involves employees of such foreign companies dealing with Russian clients within Russia.

Lending institutions have to take into account the provisions concerning a Forex dealer combining its activities with any other activities.

Based on the current provisions, no Forex dealer's activities may be performed even if a separate structural business unit has been created in a lending institution. For this reason, a separate legal entity may need to be established for such activities to be performed.

Help from your adviser

Pepeliaev Group's lawyers are ready to provide comprehensive support with any issues relating to drafting framework contracts and other documents and making these compliant with existing legislative requirements. They will also advise on tax matters relating to the activities of professional players on the securities market and on any other matters which may arise when financial organisations carry out their business.

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² The requirement concerning the location of the bank takes effect on 1 January 2016.