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## **BANK DEPOSIT CONTRACT: CURRENT STATUS OF LEGISLATION AND LAW ENFORCEMENT**

The relevance of the study is determined by the debates around legal rules devoted to the contract of bank deposit, as well as an extensive judicial practice, revealing the problems of existing legislation. Purpose: to systematize the main problems of enforcement related to the bank deposit contract and to suggest ways of improving the current legislation. Methods: general and special scientific methods (systemic, comparative, formal-logical and other) are used. Results: on the basis of the comparative experience of Belarus, Kazakhstan and other foreign countries, analysis of judicial practice proposals to improve existing legislation are presented (including types of contract, investigation of deposits, bail-in).

The authors conclude, it is necessary to supplement Chapter 44 of Russian Civil Code by rules on types of bank deposit agreement, establish the order of registration of the deposit and deposited funds with the remote technology, by list of requirements as to the form of deposit and savings certificates, by details and peculiarities of treatment, as well as consolidate the definition of "interest capitalization" and establish the list of cases of restriction of the rights of depositors for disposal of deposits. Procedural rules on the investigation of the deposits, determining the jurisdiction of cases on the protection of investors, are also should be improved.

*Keywords: the contract of bank deposit, types of deposit accounts, deposit insurance, bail-in, capitalization of interest, investigation of deposits.*

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### **Introduction.**

Bringing cash into deposits is one of the banking activities, allowing to generate working capital. The bank deposit contract often serves as the object of studies. Many scholars made researches of bank deposit contract, for example, V.V. Vitryansky [1], E.I. Danilkina [2], V.F. Lazarenko [3], M.M. Moldavanova [4], V.N. Novitskaya [5], A.V. Turbanov [6], E.A. Zavoda [7], I.G. Malasaeva [8], A.A. Vishnevsky [9], D.V. Kravchenko [10], V.I. Brileva, I.V. Yusupova [11, 12]. Despite a sufficient number of researches the interest of the topic is determined by a large number of legal disputes arising from the contract of bank deposit. In addition, the development of techniques and technology brings new questions to legislators and enforcers.

The purpose of this article is to systematize the most urgent problems of law enforcement related to the bank deposit contract.

### **Normative regulation of bank deposit contract**

Relationships associated with the involvement of bank deposits, as well as with the implementation of the rights of depositors are currently ruled by the rules of various branches of law, using both

mandatory and the disposition methods. Chapter 44 of the Civil Code of the Russian Federation (hereinafter the Civil Code) contains the basic requirements for the procedure of conclusion of the contract of bank deposit and its forms. The normative regulation is also represented by the Federal Law "On banks and banking activity", the Federal Law "On insurance of individual deposits in banks of the Russian Federation", the Federal Law "On counteraction to legalization (laundering) of proceeds from crime and financing of terrorism", the Tax Code the Russian Federation and some other federal laws and regulations.

An alternative approach is represented in Belarus, where the Banking Code is adopted. Russian scholars raised the issue of codification of the banking legislation repeatedly [13, 14], but did not receive the support of the legislator. It seems that the current version of the Civil Code should be supplemented by reference provisions to federal laws. For example, Art. 765 of the Civil Code of the Republic of Kazakhstan clearly indicates that the issuance of a bank deposit may be suspended on the grounds and in the manner prescribed by the law of the Republic of Kazakhstan "On counteraction to legalization (laundering) of proceeds from crime and terrorist financing."

#### Parties of the bank deposit contract

The parties of the contract are the bank and the investor [15, c. 644]. The current edition of the Civil Code does not provide a clear division of deposits. In banking practice deposits are divided into deposits for natural person and deposits for legal entities or individual entrepreneurs. It seems appropriate to make similar changes to the Civil Code.

If the bank deposit contract is concluded with a natural person the contract is recognized as a public one and consequently the provisions of Art. 426 of the Civil Code are used. The conditions of a public contract can not be established on the basis of the advantages of individual consumers. The current banking practices suggest the conclusion of a bank deposit agreements by joining to the already developed bank standard terms of the agreement. These terms are equally accessible from the position of bringing information about the conditions of the contribution for each individual (judgement of the Supreme Court from 17.03.2015 № 305-ES14-5119 the case number A40-172055 / 2013). Such a position seems flawed and contrary to banking practice to the extent that the deposit contract terms are often graded according to size or terms of seasonal stocks.

#### Types of contracts of bank deposit

Art. 837 of the Civil Code provides for two main types of bank deposit agreement - a demand deposit and time deposit. At the same time introduction of deposits on other conditions is allowed. The experience of other countries seems to be more successful. For example, Art. 182 of the Banking Code of the Republic of Belarus, in addition to similar types of contracts allocated to the Civil Code, mentions a third independent type which is a conditional bank deposit agreement. This is an agreement, according to which the recipient of a deposit shall be obliged to return the contribution (deposit) and pay accrued interest upon the occurrence (non-occurrence) specified in the contract conditions (events). A similar provision is contained in the Civil Code of the Republic of Kazakhstan. It seems that such a rule would be reflected in the Russian legislation.

Another kind of contributions can be contributed to the precious metals. The level of the law has not settled relations on bank deposits of precious metals and metal account. The main act regulating such relations is the act of the Bank of Russia "On fulfillment of credit organizations operations with precious metals in the territory of the Russian Federation and the procedure of holding precious metals banking".

Relations on deposit of precious metals and metal account require legislative regulation. The Russian Civil Code should have secured legal regime of banking deposit of precious metals and metal accounts, the essential terms of the contract of depersonalized metal accounts, types of unallocated metal accounts, conduct of banking transactions with precious metals. For example,

Art. 191 of the Banking Code of the Republic of Belarus provides a definition of the contract of bank deposit in the precious metals and the order of payment of interest.

One of the most pressing issues is the introduction of so-called irrevocable deposits for individuals by modifying para. 2, Art. 837 of the Civil Code, para. 1, Art. 36 of the Banking Act. Proposals to introduce these contributions are actual for a long time [16], but they are made particularly relevant to emerging economic crisis. The introduction of irrevocable deposits may contribute to the growth of the banking system stability but this solution requires a systemic and deep processing and legal norms and banking practices.

Article 836 of the Civil Code refers to a simple written form for contracts of bank deposit. The written form of contract of bank deposit is considered to be observed if contributing is certified by a deposit certificate or other document issued by the bank to the depositor which meets the requirements stipulated for such documents, established in accordance with banking rules and applied in the banking business practices. Failure to comply with the written form of contract of bank deposit shall entail the invalidity of the contract.

At present, a fairly common situation is when a customer enters into a contract of bank deposit by transferring funds via Internet. This is possible in a case where the client has opened an account, and the bank has identified his identity. Article 836 of the Civil Code can be stated as follows: "The contract of bank deposit shall be concluded in written form, including through using of remote banking systems".

Analysis of judicial practice shows that a single contract is not sufficient for insurance compensation or remedy for contributors. The Supreme Court has repeatedly pointed out that the contract of bank deposit is real, so the investor must not only have the deposit agreement, but also the evidence of making money. If the investor does not constitute such evidence, and the court refuses to pay the insurance indemnity, and the inclusion of investor first creditors. Most often such a situation has arisen among depositors of "Master-Bank". All decisions made by the Supreme Court, were not in favor of depositors (judgements of the Supreme Court from 13.5.2015 № 305-ES14-5119 in the case number A40-172055/2013; of 10.28.2015 № 305-ES14-5119 in the case number A40-172055/2013).

#### Calculation and capitalization of interest

The procedure of calculation of interest is determined by Article 838 and 839 of the Civil Code and Art. 29 of the Law "On banks and banking activity". It should be noted that the norms of Article 29 of the Law "On banks and banking activity" are not fully reflected in the Civil Code (in terms of the ban on the change of the contract period, as well as of the increase or establishment of a commission). Presented example confirms the thesis on the lack of structuring and ordering of the legislation. Lack of existing legislation is also in the fact that it does not contain the concept of the capitalization of interest. Adding to this term in Article 839 of the Civil Code will contribute to a better understanding of the interest calculation among investors.

#### Provision of recoveries under the contract of bank deposit

One of the most acute problems in an unstable situation of recent years and mass withdrawal of licenses of banks is the problem of repayment of deposits. It should be noted that in the foreign literature, the problem of repayment of deposits is often seen through the prism of the concept of «market discipline» [17]. Proponents of this approach believe that the investors should assess the risks of their investments on their own. The introduction of insurance coverage system takes responsibility for the evaluation of the results of their behavior [18, 189]. In the Russian Federation, this view has supporters in the banking community. As noted by A.V. Tourbanov, this argument is the most often used by criticisms of the existing deposit insurance system [6].

Despite the fact that some studies provide evidence of the benefits of self-regulation by government regulation in most countries, including Russia, the most important guarantee is the return of the deposit insurance system. As noted by AN Kostjukov, the creation of a deposit insurance system "established industry, which has a trust of the population" [20, c. 41]. However, it is important to maintain the trust. In the context of frequent cases of revocation of licenses the issue of sufficiency of the Deposit Insurance Agency is very important. The responsibility of the Insurance Deposit Insurance Agency in operating banks on January 1, 2016 amounted to 14.9 trillion rubles, and the fund of compulsory insurance is a total of 112 billion rubles. For comparison, on the same date, the amount of deposits in SberBank was 10.6 trillion rub. Each of the banks included in the top 20 save the amount of deposits exceeding 100 billion. rub. Comparing these data we can conclude that in the case of a systemic banking crisis, when faced with the difficulties of several major banks, deposit insurance system will not be able to protect the interests of depositors.

A possible solution could be the «bail-in» procedure [21]. Such measures have been used in Cyprus. Bail in is a conversion of deposits in bonds or in bank stocks. It is believed that the mechanism of bail-in solves the problem of justice and separation of losses as a readjustment between the shareholders and large investors, which are often affiliated with the owners of the bank and must be aware of its financial difficulties. A number of foreign researchers indicates that this procedure is to replace the deposit insurance system [22]. The cornerstone issue is also to ensure the repayment of deposits of legal entities. Ct. 840 of the Civil Code states that the bank deposit bank shall provide depositor information about the security of return of the deposit at the conclusion of contract. This means ensuring the return bank deposits of legal entities defined by the bank deposit contract. In fact, this rule is inactive. The growth of confidence in the banking system could be provided by the insurance deposits of legal entities on a voluntary basis. The existence of this insurance would allow the banks expand its customer base.

#### The search of deposits

In the banking practice cases where heirs face the problem of deposits investigation are quite common. This procedure is not regulated by legislation. More than 500 Russian banks have the license for attracting deposits. Banks are not required to search the owners of the so-called "dormant deposits". In some foreign countries this problem has a practical solution. For example, in Switzerland there is an official organization of Swiss Banking Ombudsman, designed to assist in tracing of the inherited property. This financial institution was created by the Association of Swiss banks in the 1990. The organization is engaged in tracing the so-called "dormant" accounts. In Russia, such powers can be given to the Deposit Insurance Agency.

#### Restricting the rights of depositors under the order of contributions

Chapter 44 of the Civil Code dedicated to bank deposit contract does not contain direct norms defining the limits of the rights of investors on the order of contributions. Paragraph 3 of Article 834 of the Civil Code specifies that the rules of the bank deposit agreement (Chapter 45) shall be applicable to the relations between the bank and the depositor involved in the account on which the deposit has been placed, unless otherwise stipulated by the rules of this Chapter or unless the contrary follows from the substance of the bank deposit agreement.

Article 854 of the Civil Code specifies that Without the client's instructions cash kept on his account may be written off by a court decision, and also in cases, established by the law or envisaged by the agreement between the bank and the client.

We suppose that the rules devoted to limiting the rights of investors on the order of contributions should be explicitly stated in chapter 44. For example, Art. 740 of the Civil Code of the Republic of Kazakhstan determines limits of ordering money held in the bank on the grounds that established by criminal procedure, civil procedure law, the law on enforcement proceedings and countering legalization of proceeds from crime.

## Jurisdiction of disputes under the contract of bank deposit

A significant disadvantage of protecting the rights of individual investors is unclear marked position on the jurisdiction of disputes. Credit institutions find the "convenient judicial authority to deal with disputes with individual investor, determining jurisdiction in the contract. In order to resolve disputes on jurisdiction it is proposed to use the rule in the Civil Code according to which a bank deposit contract adjustment shall be based on the norms of the Law "On Protection of Consumers' Rights. This position has been reflected in law enforcement (judgement of the Supreme Court from 10.05.2011 number 5-V11-46) .

Analysis of law enforcement shows that the existing rules of the Civil Code, as well as of the Law "On banks and banking activities" and of the Law "On insurance of individual deposits in the banks" need to be improved. The chapter 44 of the Civil Code is to be completed by the order of deposit and depositing money with using remote technology, as well as by setting requirements for the form of deposit and savings certificates, their details and features of the treatment.

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