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Briefing note

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Russia Rolls Out Regulation of Bankers' Remuneration from 2015

Effective 1 January 2014, a requirement was introduced to Russia's banking legislation stipulating that Russian banks' remuneration systems must adequately reflect the nature and scale of the operations carried out by the banks, the risks assumed by the banks and the financial results achieved. The legislation requires the deferral of bonuses, with the possibility of downward adjustments or cancellation. The Central Bank of Russia ("**CBR**") has also been authorised to establish requirements for banks' remuneration systems and to evaluate compliance with such requirements. The CBR recently published Instruction No. 154-I "On the Procedure for Evaluating a Credit Institution's Remuneration System and the Procedure for Sending a Credit Institution a Remuneration System Compliance Order" (the "**Regulation**").

Key issues

- The Regulation provides for the definition of variable and fixed remuneration
- The variable element should not be less than 40% of aggregate remuneration
- An internal bank's documentation should link the variable element to risks
- At least 40% of the variable element of remuneration should be subject to deferral and adjustment
- The CBR would have the right to audit and evaluate a bank's remuneration structures

The Regulation was published on 8 August 2014 and will take effect on 1 January 2015. While in many respects the Regulation is similar to the discussion drafts published in December 2013 and April 2014 (please see our briefing of December 2013), in addition to the provisions that had appeared in the previous drafts there are several new points in the Regulation that are of note:

- **Banks' boards of directors (supervisory boards)** will be required to consider questions connected with the establishment and control of banks' remuneration systems and their compliance with the strategy, scale and character of operations, results of operations and level of risk. In particular, they will need to approve documentation and policies establishing amounts and forms of remuneration, review existing remuneration policies at least once a year, approve total amounts of remuneration, consider suggestions of internal control and risk departments and the results of independent audits of their remuneration systems, and exercise control over major remuneration payments.
- The Regulation **includes definitions of variable and fixed remuneration**. The fixed element is not linked to an employee's performance, whereas the variable element is.

Under the Regulation both elements may include bonuses or other incentive payments payable under Russian employment law. Drafting of new remuneration and incentive policies, option and awards schemes will require thorough consideration of the relevant Russian employment law provisions.

Multinational players with a local presence will also need to consider whether there is any conflict between the definitions of variable and fixed elements of remuneration in their local and global documentation. This may be particularly important for those banks that have employees who are subject to foreign (European) regulations, such as CEOs or board members of Russian subsidiaries and/or banks that implement global incentive schemes, etc.

- For CEOs or other senior executives whose decisions influence the risks undertaken by a bank**, the variable element should not be less than 40% of their aggregate remuneration**, while for employees in internal control and risk management the variable element should not be more than 50% of their aggregate remuneration.
- A **bank's internal documentation should link the variable element to qualitative and quantitative factors and risks and specify all types and forms of remuneration at the bank**, including those not considered part of salary. Questions therefore arise as to whether global incentive schemes and other remuneration-linked payments/awards used by international banks should also be introduced under local acts (such as remuneration policies) when they are payable by the local banks, and whether payments made by a foreign parent could be seen as breaching the regulations, potentially leading to sanctions from the CBR.
- **At least 40% of the variable element of remuneration should be subject to deferral and possible subsequent adjustment**. The deferral period should be linked to determination of the final financial results and should not be less than 3 years, save for operations where the final financial results may be determined earlier. The variable element of remuneration may be decreased or cancelled depending on the bank's results or the results of a particular department.
- The remuneration policy should c**ombine monetary and non-monetary forms of remuneration dependent upon the results of operations and the level of risk taken by a bank** (this may include linking to the share price, where appropriate).
- Russian banks will need to **disclose their remuneration structure and the entire amount paid, including fixed and variable elements**. It is unclear whether bonuses and similar types of payments, even if paid by a parent entity, will be viewed as part of remuneration that must be disclosed, and whether non-disclosure of such payments will be treated as a breach of the local regulation. If such payments from other group entities are disclosed, it will be necessary to consider the further potential impact on tax and social security charges.
- **The CBR will have the right to audit and evaluate a bank's remuneration structures**. In particular, the CBR will be able to request and evaluate agreements under which employees receive remuneration from other members of the banking group. It is possible that the term "banking group" could be interpreted to include the foreign parents of Russian banks which are themselves banking organisations; this in turn could lead to the CBR turning its attention to the remuneration structures used at Russian subsidiaries of foreign banks.

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