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**IN THE RUSSIAN FEDERATION LEGAL ASPECTS OF DIVERSITY OF CREDIT ORGANIZATIONS**

**Annotation:** The article covers the general issues of legal diversity of credit organizations’ types in Russia. The question of criteria for their differentiating is examined thoroughly.

**Keywords**: credit organization, types of credit organizations, a bank, nonbank credit organization.

According to the international experience, the credit institutions play a significant role in the economic development of a country, and with the proper functioning and legal regulation they may lead to an essential advance.

Therefore, the issues related to the activity of credit institutions and the banking system in general, not only in Russia but also in other countries, are now the most pressing challenges. In fact, this kind of system is designed to ensure the financial component of any economy. Especially it is much more acute in the global financial and economic crisis.

So ... since the end of 2008 – 2009 the unresolved problems in the activity of the Russian credit organizations have become especially apparent. Among the key unsettled questions of Russian credit organizations it should be mentioned: 1) the poor state management, including as a corporate dimension and risk management (as a result, as a rule, it is typical for Russian banks orientation to service business owner / owners, and 2) the use of different manipulative schemes (which entails inaccuracy in accounting of particular banks, misrepresentation of information about their work, the so-called “non-transparency” of their activity, evaluation and analysis of which is difficult for the supervisory and regulatory authorities and market participants); 3) the low level of responsibility of the owners and management for the quality of decision-making process, the pursuit of profit at the expense of financial stability, and 4) the involvement of credit institutions in the illegal activity and other problems. Typically, the above mentioned problems are specific to the extensive model of the banking sector. And as noted in the Strategy for the Development of the Banking Sector of the Russian Federation for the period up to 2015 [1] (hereinafter - the Strategy of development), the problem of the transition from the extensive model of the banking sector to the intensive one should be a priority for both the Government and the Bank of Russia, as well as for credit organizations. One way to overcome this obstacle is the modernization of the system, its further improvement. Russia has undertaken various, including legal, means to tackle this issue.

Hence the question about the types of credit institutions is not a question of theoretical but practical orientation. Since the law doesn’t focus on the diversity of credit institutions but sets out specific rules for the activity of credit institutions - depending on their types.

The issues concerning a legal analysis of the types of credit organizations in Russia, the criteria for their distinction from the resulting specific legal status of credit institutions were examined by various authors. The most prominent are L. Efimova, S. Zhilinsky, A. Kurabatov, E. Lauts, O.Tarasenko, I. Shitkina etc. Under the changing economic conditions, both national and international issues and the adoption of new and modernization of existing legislation, the search of effective regulatory mechanisms of similar entities in other countries, including Ukraine - require further study and comparative legal research.

The examination of Art. 1 of the Federal Law of December 2, 1990 № 395-1 «On the banks and banking activity" [2] (hereinafter - the Law on Banks) allows to set at least four criteria for the classification of credit institutions. The first criterion is a permitted enumeration of banking operations which is provided by laws and regulations of the Bank of Russia. The second one is a variety of forms of property under which the credit institutions can be formed. The third criterion is a business entity types, which are credit institutions. The fourth one is " a nationality" ("personal law", "personal status") of a legal entity, concerning the rule of its registration [3, p. 224].

Therefore, examining the first criterion in Art. 1 of the Law on Banks the following types of credit institutions are foreseen: banks, non-bank credit organization, in the form of: 1) a credit institution authorized to conduct banking activities exclusively specified in clauses 3 and 4 ( concerning the bank accounts of legal entities in connection with the transfer of funds without bank accounts), as well as in section 5 (only in connection with transfers of funds without bank accounts) and p. 9 part 1 art. 5 of the Law on Banks (hereinafter - the non-bank credit institution that has a right to money transfers without opening bank accounts and other related banking transactions), and 2) a credit institution that has the right to perform certain banking operations provided by the Law on Banks. The Bank of Russia sets the admissible combinations of banking operations for a non-bank credit organizations. Therefore, the criterion of the division of credit institutions also requires to take into account the provisions of Art. 5 of Law on Banks, especially concerning the enumeration of banking operations. Moreover, in accordance with Art. 7 of the Law on Banks a name of the credit institution must indicate the nature of its activity by using a word "bank" or "banking credit organization."

 If we compare the art. 1 of the Law on Banks which states that a credit institution is established on the basis of any form of ownership, with the content of art. 8 of the Constitution of the Russian Federation [4] and the relevant provisions of the Civil Code of the Russian Federation [5] (hereinafter - Civil Code), we can conclude that the form of ownership of credit institutions may be private, state, municipal and other. However, this issue must also be guided by other statutory provisions, in particular Articles 11, 11[[1]](#footnote-1) of the Law on Banks.

In the midterm, as specified in the Development Strategy, it is expected to reduce a state participation in the capital of credit organizations, while maintaining state control over the activities of Sberbank of Russia, VTB Bank and OJSC Russian Agricultural Bank in the next 2-3 years, providing, at the same time, to reduce government shareholding in the capital stock of credit institutions to the level of 50% plus one voting share. A variant to reduce the Bank's share in the authorized capital of the Russian Sberbank of Russia to 50% plus one voting share should be viewed after the steady decline in the share of Sberbank of Russia market deposits below 50%. With the creation of appropriate conditions in respect of Sberbank of Russia, VTB Bank and OJSC Russian Agricultural Bank and other lending institutions with stakes in the authorized capital of the state, will be undertaken to attract strategic investors and placement of minority shares of state-owned capital in the open markets [ 1].

In accordance with Art. 1 of the Law on Banks a credit institution is established ... as a business entity. Article 10 of the Law on Banks details this issue by pointing out that the credit institution has a statutory documents required by federal law for the legal entity of relevant organizational and legal form. Civil Code, as we know, states that the joint stock companies, limited liability companies or supplementary liability belong to the business entities (Article 66). Thus, they are divided: a credit institution-joint stock company, limited liability company and a credit institution of supplementary liability. The draft amendments to Sections I, II, III, VI, VII of the Civil Code provides that business entities may be established in the legal form of the company, or a limited liability company. Such type of companies, as of supplementary liability in accordance with the draft should be abolished. [6]

The fourth criterion can provide a general category of such kind of bank credit organizations as a foreign bank - the bank shall be established under the laws of a foreign country, in which it is registered (Article 1 of the Law on Banks).

 The question about the types of credit institutions was raised repeatedly in the literature. S. Zhilinsky analyzing diversity of credit institutions, noted that: a) commercial banks, which have the exclusive right to exercise as a whole... banking ... and b) non-bank credit organizations, which may exercise particular banking operations. The Bank of Russia sets the permissible combinations for them. There is no comprehensive list of types of non-bank credit organizations in the law. They include for example, pawn shops, credit unions and associations, mutual credit entities, clearing centers.

The legislation has a strict division between banking and non-banking credit organizations. A trade name of the credit institution must indicate the nature of the activities of the entity by using the words "bank" or "non-bank credit institution" and an indication of its legal form. No legal entity in the Russian Federation, with the exception of the Bank of Russia without obtaining a license to conduct banking operations, can not use in its name the word "bank", "credit institution" or otherwise indicate that the legal person is entitled to exercise banking [7, pp. 314, 315]. Credit institutions are ... extensive network of legal entities ... Predominate among credit institutions ... are banks. They also obtain the total operations of banking [7, pp. 320].

Credit institutions which have appeared in the Russian Federation at various times after the banking reform 90s of the last century, can be divided into three unequal groups. First, the Bank of Russia is not formally considered to be credit institutions, although performs banking transactions, including extending loans to, and constitutes the first level of the banking system. Second, we must identify those lenders that are part of the banking system of the Russian Federation, making it the second level. They are supervised by the Bank of Russia, they are subject to the Law on Banks and the regulations of the Bank of Russia, they are recognized by lenders. Thirdly, there are a fairly large number of different organizations, which are business entities, but are outside the banking system of the Russian Federation. In terms of its legal status ... they are not regulated by the Law on Banks and other general and special regulations, they are not under the control of the Bank of Russia and are not officially considered by the legislator as credit. This group may include, for example, credit cooperatives ... It is also necessary to include pawn shops, which are known to specialize in providing loans to citizens under pledge of movable property belonging to them, foundations, etc. ... It is clear why only part of the organizations involved in banking recognized by the state to have an official right to carry out a specific set of banking operations. The state is interested in supervising these organizations [8, p. 56, 9, p. 291].

A. Kurbatov distinguishes two types of credit institutions: banks and non-banking credit organizations. Regarding the types of banks the scientist points out that there is no legally significant division of banks into categories of the Russian Federation. The scholar names such non-bank credit organizations as non-bank deposit-credit organizations (NDCO) and accounting non-bank credit organizations (ANKO), with reference to the provision on the peculiarities of the prudential regulation of non-bank credit organizations, managing deposit and lending operations, approved by the Central Bank of the Russian Federation of 21.09.2001 № 153 – П[10], as well as the instructions of the Central Bank of the Russian Federation of 26.04.2006 № 129 - and "on banking operations and other transactions of account non-bank credit institutions, mandatory ratios calculated non-bank credit organizations, and especially the implementation of the Bank of Russia supervision on compliance with them "[11, 12, pp. 74, 75][[2]](#footnote-2).

L. Efimova as the basis of separation of credit institutions indicates the types of operations they perform. According to this criterion, credit organizations are divided into banks: universal and specialized, unit and high-street banks, stock and mutual, government (municipal) and private banks, banks with foreign investments. Among the non-bank credit organizations there are settlement bank credit organizations, and non-deposit lending institutions [9, p. 284 - 312].

In Russia the law provides only two types of credit institutions: banks and non-banking credit organizations. Types of non-bank credit institutions are not fixed by law. Currently, according to the regulations of the Bank of Russia, there are three types of non-bank credit institutions:

1) ANKO. The largest ANKO in Russia are clearinghouses exchanges RTS and MICEX;

2) NDCO;

3) NGOs entitled to the money transfers without opening bank accounts and other related banking transactions.

Also, the authors of the textbook "Banking Law" edited by D. Alekseeva and S.Pyhtin noted that in addition to the above legislative classifications there are also other divisions of credit institutions, which are used primarily economic criteria. In particular, the release of credit institutions: 1) emissive and commercial 2) general and specialized, and 3) local (municipal, city, regional, etc.), national (operating throughout the country, for example, the Savings Bank of Russia, VTB Bank ), international (whose activities are not limited to the territory of one country, such as the International Bank for Reconstruction and Development, the International Bank for Economic Cooperation), 4) unit and high-street banks 5) national credit organizations with foreign capital, foreign banks, and 6)sector-specific and multi-branch banks, and others [13, pp. 209-215].

E. Lauts notes that credit organizations are of two types: the banks and non-banking credit organizations. In this case, the Russian banking system has traditionally more banks than non-bank credit institutions. There are 1100 banks registered in Russia (operating - 1000), the non-bank credit organizations are only about 50 [14, p. 786].

Development Strategy states that, as the international experience shows, one of the areas ... is the development of non-credit institutions, especially credit cooperatives and microfinance and pawnshops. Credit cooperatives and microfinance institutions, as noted in the Strategy does not carry out banking transactions and are not credit institutions. The aim of these organizations is a non-credit financial support of citizens, individual entrepreneurs and small businesses. The procedures for granting loans and lending exercised by these organizations are less formalized and regulated in comparison with the procedure of bank lending, and are based on direct interaction with the customer's business and social environment, in particular the analysis of the financial needs and capabilities. [1]

The special banking laws demonstrates confusion between the credit institutions and banks while the Civil Code does not contain a definition of a credit institution, the legal definition of credit institutions, as well as other provisions of Art. 1 of the Law on Banks can provide, as stated above, the criteria for distinguishing the types and, therefore, determine the types of credit institutions. However, the establishment of diversity of credit institutions in the context of their legal state is difficult, first of its applicative character. This is explained by the lack of a common legal basis for their activities, and the need to apply for the various legal sources.

It should also be stated methodological inconsistency of legal approaches to the selection of a particular type of financial institution: on the one hand, the need to obtain a special permit, which is required to confer the status of a credit organization, the actual implementation of the other nearby entities functions of credit institutions. A possible way to resolve this situation is to introduce common criteria for differentiating varieties of credit institutions in a special law, with the establishment of uniform for each of these requirements, essentially reflecting the specifics of credit institutions of other commercial entities. This can be done by including a special article on the types of credit institutions, especially taking into consideration that today Art. 2 of the Law on the Banks makes the situation even more complicated, bringing some types of credit institutions in the banking system of the Russian Federation.

Formally established authority list of credit institutions on the basis of general legal definition of the concept should be exhaustive, it is provided by the involuntary specialization of credit institutions. Under these criteria, the diversity can be different, that is determined by a variety of business relations, the subjects of which are the credit organizations. This, in turn, will allow to unify a legislation concerning the legal status of the various types of credit organizations in Russia.

Thus, based on the understanding that the role of credit institutions in any economy is extremely high, the Russian economy has got a special responsibility in this sphere. The significance of credit organizations increases annually and the task becomes more complicated. The development of the banking system is not an easy issue which requires comprehensive solutions. They should include a combination of measures, both economic and legal ones concerning the activity of credit organizations.

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**Мельник С.Б., Костина В.Д. Правовые аспекты видового разнообразия кредитных организаций в Российской Федерации.** – Статья.

**Аннотация.** В статье рассматриваются общие проблемы правового опосредования видов кредитных организаций в России. Освещен вопрос критериев их разграничения на виды.

**Ключевые слова**: кредитные организации, виды кредитных организаций, банк, небанковская кредитная организация.

**Мельник С.Б.,** **Костіна В.Д. Правові аспекти видової різноманітності кредитних організацій в Російській Федерації. –** Стаття.

**Анотація** У статті розглядаються загальні проблеми правового опосередкування видів кредитних організацій в Росії. Освітлено питання критеріїв їх розмежування на види.

**Ключові слова**: кредитні організації, види кредитних організацій, банк, небанківська кредитна організація.

**Melnyk S., Kostina V. – Legal aspects of diversity of credit organizations in the Russian Federation. –** Article.

**Summary** The article covers the general issues of legal diversity of credit organizations’ types in Russia. The question of criteria for their differentiating is examined thoroughly.

**Key words**: credit organization, types of credit organizations, a bank, nonbank credit organization.

1. It should be noted that the analysis is carried out on the basis of existing legislation, in particular the relevant revisions and amendments to the Law on Banks. [↑](#footnote-ref-1)
2. See also: Тарасенко О.А. Небанковские кредитные организации: современное состояние и перспективы развития / Тарасенко О.А. // Предпринимательское право. - 2007. - № 3. - С. 17 – 19; Банки и небанковские кредитные организации и их операции: учебник для студентов вузов, обучающихся по направлению «Экономика» / [Жуков Е.Ф., Эриашвили Н.Д., Литвиненко Л.Т. и др.]; под ред. Е.Ф. Жукова, Н.Д. Эриашвили. - М.: ЮНИТИ-ДАНА, 2012. - 559 с. [↑](#footnote-ref-2)