

**FEDERAL LAW**  
**NO. 40-FZ OF FEBRUARY 25, 1999**  
**ON INSOLVENCY (BANKRUPTCY) OF CREDIT INSTITUTIONS**  
**(with the Amendments and Additions of January 2, 2000, June 19,**  
**August 7, 2001, March 21, 2002, December 8, 2003)**

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by the State Duma

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### **Chapter I. General Provisions**

#### **Article 1. Relations Governed by the Present Federal Law**

**1.** The present Federal Law shall establish measures to prevent insolvency (bankruptcy) of credit institutions as well as the peculiarities of grounds and procedures for declaring credit institutions insolvent (bankrupt) and their liquidation through competitive proceedings.

**2.** Relations associated with measures involved in the prevention of insolvency (bankruptcy) of credit institutions which are not governed by the present Federal Law shall be regulated by other federal laws and regulatory acts of the Central Bank of the Russian Federation (hereafter referred to as the Bank of Russia).

**3.** Relations associated with insolvency (bankruptcy) of credit institutions which are not governed by the present Federal Law shall be regulated by the Federal Law on Insolvency (Bankruptcy) and in cases specified by the present Federal Law, by regulatory acts of the Bank of Russia

*See [Instructions of the Central Bank of Russia No. 84-I of July 12, 1999 on the Procedure for the Implementation of Measures on Preventing the Insolvency \(Bankruptcy\) of the Credit Institutions](#)*

#### **Article 2. Insolvency (Bankruptcy) of a Credit Institution**

**1.** Insolvency (bankruptcy) of a credit institution is deemed to be its inability as recognized by an Arbitration Court to satisfy in full creditors' claims with respect to monetary obligations and/or to

perform its obligation to make mandatory payments (hereinafter referred to as bankruptcy).

[Federal Law No. 86-FZ of June 19, 2001 amended Item 2 of Article 2 of this Federal Law](#)  
[See the previous text of the Item](#)

2. A credit institution shall be deemed unable to satisfy creditors' claims with respect to monetary obligations and/or to meet an obligation to make mandatory payments if it fails to meet the corresponding obligations within one month from their due date and/or if the value of the organisation's property (assets) after its banking transaction license has been revoked is insufficient for the credit organisation to discharge its liabilities owing creditors.

### **Article 3.** Measures on Prevention of Insolvency (Bankruptcy) of Credit Institutions

1. In keeping with the present Federal Law the following credit institutions bankruptcy prevention measures shall be implemented:

- 1) [financial rehabilitation](#) of the credit institution;
- 2) [appointment of a provisional administration](#) to manage the credit institution (hereafter referred to as the provisional administration);
- 3) [reorganisation of the credit institution](#).

2. Credit institution bankruptcy prevention measures shall be implemented subject to the existence of the grounds stipulated by [Article 4](#) of the present Federal Law.

If the aforementioned grounds arise, the credit institution, its founders (participants) shall take the necessary and timely steps to achieve financial rehabilitation and/or reorganisation of the credit institution.

If the above grounds arise, the Bank of Russia shall have the right to demand that the credit institution implements measures to achieve its financial rehabilitation and/or reorganisation, and the former shall have the right to institute a provisional administration.

*On the standard drawbacks in the organization of work aimed at prevention of insolvency (bankruptcy) see [Letter of the Central Bank of Russia No. 134-T of October 2, 2002](#)*

*On the peculiarities of application of financial rehabilitation or re-organisation measures to credit organisations which have raised one or several subordinated credits (deposits, loans) in foreign currency, see [Direction of the Central Bank of Russia No. 872-U of December 21, 2000](#)*

### **Article 4.** Grounds for Performing Measures on the Prevention of Insolvency (Bankruptcy) of Credit Institutions

Unless otherwise follows from the present Federal Law the credit institution bankruptcy prevention measures set out in [Article 3](#) of the present Federal Law shall be carried out if the credit institution:

has repeatedly failed over the last six months to meet claims of individual creditors with respect to monetary obligations and/or fails to meet its obligation to make mandatory payments within three days from their due date owing to the non-availability or lack of funds in correspondent accounts of the credit institution;

fails to meet claims of individual creditors with respect to monetary obligations and/or fails to meet its obligation to make mandatory payments within a period of three days from their satisfaction date and/or their discharge date due to the non-availability of or lack of funds in correspondent accounts of the credit institution;

was not able to prevent a more than 20 per cent absolute reduction with respect to its own resources (capital) compared to its maximal amount achieved over the last 12 months and at the same time violates a mandatory standard established by the Bank of Russia;

violates the standard of sufficiency of own resources (capital) as established by the Bank of Russia;

has been violating by more than 10 per cent over the last month the standard of current liquidity

for a credit institution as established by the Bank of Russia.

Federal Law No. 86-FZ of June 19, 2001 supplemented Article 4 of this Federal Law with paragraph 7

permits a decrease in the amount of own resources (capital) according to the results of the accounting month below the authorised capital amount determined by the credit organisation's constituent documents registered in the manner established by federal laws and by the regulatory acts of the Bank of Russia adopted pursuant to such laws.

#### **Article 5.** Procedures in the Case of Bankruptcy of Credit Institutions

1. The following procedures shall be used by the Arbitration Court when examining credit institution bankruptcy cases:

1) observation procedure;

*In accordance with Information Letter of the Presidium of the Higher Arbitration Court of the Russian Federation No. 74 of August 15, 2003, after the putting into effect of the Federal Law on Insolvency (Bankruptcy) (December 3, 2002) the supervision procedure, established in the effective wording of the Federal Law on Insolvency (Bankruptcy) of Credit Organizations, shall not be subject to application in the consideration of cases involving the bankruptcy of credit organizations*

2) competitive procedure.

Federal Law No. 86-FZ of June 19, 2001 amended Item 2 of Article 5 of this Federal Law  
See the previous text of the Item

2. External management and amicable agreement provided for by the Federal Law on Insolvency (Bankruptcy) shall not be applicable when a credit organisation goes bankrupt.

Federal Law No. 86-FZ of June 19, 2001 amended Article 6 of this Federal Law  
See the previous text of the Article

#### **Article 6.** Attestation of Arbitration Managers in the Case of Credit Institution Bankruptcy

1. In the case of credit institution bankruptcy an arbitration manager must hold an arbitration manager license issued by the state agency of the Russian Federation for the Cases of Insolvency and Financial Rehabilitation and meet the corresponding qualification requirements of the Bank of Russia, as well as hold a certificate issued by the Bank of Russia.

The functions of an arbitration manager in the case of bankruptcy of an absent credit organisation may be performed by an employee of the Bank of Russia, irrespective of his/her holding an arbitration managers license and a certificate of an arbitration manager in the case of bankruptcy of a credit organisation.

*On explanation of provisions of paragraph 2 of Item 2 of Article 6 of the present Federal Law, see Information Letter of the Presidium of the Higher Arbitration Court of the Russian Federation No. 74 of August 15, 2003*

2. The qualification requirements of the Bank of Russia, the procedure and terms for performing the attestation, including the grounds and procedure for issuing and annulling certificates shall be determined by regulatory acts of the Bank of Russia.

*About the procedure for issue, registration, prolongation and termination of terms of validity and annulling by the Bank of Russia of certificates of the head of the provisional management body of a*

*credit organisation and the arbitration manager in case of bankruptcy of the credit organisation see Regulations of the Central Bank of Russia [No. 146-P of August 7, 2001](#) and [No. 79-P of July 13, 1999](#)*

*On the Verification of Arbitration Managers' Activities by the Bank of Russia in the Case of Credit Organisations' Bankruptcy, see [Regulations](#) of the Central Bank of the Russian Federation No. 132-P of January 17, 2001*

*See [Letter](#) of the Central Bank of Russia No. 108-T of March 25, 1999 that is binding in the course of implementing credit organisation bankruptcy proceedings*

## **Chapter II. Financial Rehabilitation of Credit Institutions**

### **Article 7. Measures of Financial Rehabilitation of Credit Institutions**

The following measures may be undertaken to achieve financial rehabilitation of a credit institution:

- rendering of financial assistance to the credit institution by its founders (participants) and other persons;
- change of the structure of assets and the structure of liabilities of the credit institution;

*[Federal Law](#) No. 86-FZ of June 19, 2001 supplemented Article 7 of this Federal Law with paragraph 5 of the new wording:*

bringing into line the [amount of authorised capital](#) of the credit organisation and its own resources (capital);

- change of the credit institution's organisational structure;
- other measures undertaken in keeping with federal statutes.

### **Article 8. Rendering of Financial Assistance to a Credit Institution by its Founders (Participants) and Other Persons**

**1.** A credit institution may receive financial assistance from its founders (participants) and other persons in the following forms:

- 1) placement of cash on deposit at the credit institution with a repayment period of no less than six months and at interest rate not exceeding the refinancing interest rate (discount rate) of the Bank of Russia;
- 2) extension of sureties (bank guarantees) for credits for the credit institution;
- 3) extension of a deferral and/or installment plan on the payment;
- 4) transfer of the credit institution's debt with the consent of its creditors;
- 5) waiving of the distribution of the credit institution's profit in the form of dividends and allocating it to implement financial rehabilitation measures of the credit institution;
- 6) making an additional contribution to the authorized capital of the credit institution;
- 7) remitting the credit institution's debt;
- 8) novations, as well as other forms which will help eliminate causes which necessitated the implementation of measures to achieve financial rehabilitation of the credit institution in question.

**2.** Monetary resources held in bank accounts and on deposits of the credit institution may be used by its creditors to increase the authorized capital of the credit institution in the manner laid down by the Bank of Russia.

**3.** The credit institution in question and the person rendering the financial assistance shall take the decision as to forms and conditions of the financial assistance to be extended to the credit institution.

### **Article 9. Change of the Structure of Assets and the Structure of Liabilities of a Credit Institution**

1. Change of the structure of assets and the structure of liabilities of a credit institution may include the following measures:

1) improving the of quality of its credit portfolio, including replacement of non-liquid assets with liquid assets;

2) harmonization of the structure of assets per their terms with the terms of liabilities that secure their performance;

3) reduction of outlays of the credit institution, including those for servicing the credit institution's debt, and its management expenses;

4) sale of assets yielding no profits, and of assets the sale of which will not impair the credit institution's ability to perform banking operations;

5) other measures to change the structure of its assets.

2. Change of the structure of the credit institution's liabilities may include the following measures:

1) increasing its own resources (capital);

2) reducing the amount and/or ratio of current and short-term liabilities in the overall liabilities structure;

3) increasing the ratio of medium-term and long-term liabilities in the overall liabilities structure;

4) other measures to change the structure of its liabilities.

*Federal Law No. 86-FZ of June 19, 2001 excluded Item 3 from Article 9 of this Federal Law*

~~3. In keeping with the civil legislation the credit institution shall be obliged to reduce its authorized capital to the level of its net assets (ownership capital) if the amount of net assets (ownership capital) turns out to be below the credit institution's authorized capital.~~

*Federal Law No. 86-FZ of June 19, 2001 supplemented this Federal Law with Article 9.1:*

**Article 9.1.** Bringing into Line the Amount of Authorised Capital of the Credit Organisation and the Amount of Its Own Resources (Capital)

1. If the amount of own resources (capital) of a credit organisation according to the results of the accounting month turns out to be below the amount of its authorised capital the credit organisation shall bring into line the amount of authorised capital and the amount of own resources (capital).

2. The credit organisation shall make a decision to liquidate itself if the amount of its own resources (capital) at the close of the second and any subsequent financial year is below the minimum amount of authorised capital established by the Federal Law on Joint-Stock Companies or the Federal Law on Limited Liability Companies.

*On the procedure for bringing the amount of the authorised capital into balance with that of the credit institutions' own funds (capital), see Direction of the Central Bank of Russia No. 1260-U of March 24, 2003*

**Article 10.** Change of the Credit Institution's Organizational Structure

Change of the credit institution's organisational structure may be achieved through:

changes in the composition and number of staff members of the credit institution;

changes in the structure, scaling down and elimination of isolated and other structural divisions of the credit institution, as well as in other ways which can eliminate the reasons which necessitated the implementation of measures to achieve financial rehabilitation of the credit institution.

**Article 11.** Request of the Sole Executive Body of the Credit Institution to Implement Measures to Prevent Bankruptcy of the Credit Institution

1. If circumstances occur that are specified in Article 4 of the present Federal Law, within 10 days of their occurrence the sole executive body of the credit institution (hereafter referred to as head of the credit institution) shall be obliged to present to the board of directors (supervisory council) of the credit institution, or, if its founding documents do not provide for such bodies, to the general

meeting of founders (participants) of the credit institution, his requests to implement measures for financial rehabilitation of the credit institution or his request to reorganize the credit institution, provided the causes of the aforementioned circumstances can not be eliminated by the executive bodies of the credit institution.

**2.** A request of the head of a credit institution to implement measures of financial rehabilitation of the credit institution or his request to reorganize the credit institution shall contain recommendations on the forms, type and time framework for their implementation.

**3.** Management bodies of the credit institution to which, in keeping with Item 1 of the present Article, the request to implement measures of financial rehabilitation of the credit institution or the request to reorganize the credit institution is forwarded are to take a decision on such a request within 10 days from the time of its dispatch and inform the Bank of Russia on their decision.

**4.** The head of the credit institution shall be obligated to submit to the Bank of Russia his request to implement measures to prevent bankruptcy of the credit institution if its founders (participants) refused to participate in the implementation of financial rehabilitation measures of the credit institution or its reorganisation, or failed to take a corresponding decision within the period laid down by Item 3 of the present Article.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 12 of this Federal Law](#)  
[See the previous text of the Article](#)

#### **Article 12.** Implementation of Measures of Financial Rehabilitation of a Credit Institution as Demanded by the Bank of Russia

**1.** The Bank of Russia shall have the right to forward to a credit institution its demand to implement measures for its financial rehabilitation, provided there are grounds as stipulated in [Article 4](#) (except the grounds stipulated in Paragraph 7 of said article) of the present Federal Law and [Article 75](#) of the Federal Law on the Central Bank of the Russian Federation ( the Bank of Russia). The aforementioned demand of the Bank of Russia must contain a list of reasons constituting the grounds for such a demand and also recommendations concerning the forms and time frame for the implementation of measures of financial rehabilitation of the credit institution.

*At present [Federal Law No. 86-FZ of July 10, 2002 on the Central Bank of the Russian Federation \(the Bank of Russia\)](#) is valid*

**2.** Having received the demand of the Bank of Russia to implement measures of financial rehabilitation of the credit institution head of the credit institution, within five days from the date of receipt of such a demand, shall be obligated to submit to management bodies of the credit institution as specified in [Item 1, Article 11](#) of the present Federal Law his request to implement financial rehabilitation measures for the credit institution, or his request to reorganize the credit institution.

**3.** The Bank of Russia shall serve the credit organisation with a demand for bringing into line its [authorised capital amount](#) and its own resources (capital) amount if according to the credit organisation's reports and/or according to a check conducted in compliance with the provisions of the [Federal Law](#) on the Central Bank of the Russian Federation (Bank of Russia) its own resources (capital) have been discovered to be below its authorised capital amount.

If within the last 12 months preceding the time when under the present article the Bank of Russia must serve the credit organisation with a demand for bringing into line its authorised capital amount and its own resources (capital) amount the Bank of Russia had changed the methodology for calculation of a credit organisation's own resources (capital) the methodology whereby the credit organisation's own resources (capital) amount is greater shall be applicable.

If it is impossible to increase the amount of own resources (capital) to make it equal to the [authorised capital amount](#) the credit organisation shall, within 45 days after the receipt of the said demand from the Bank of Russia, reduce the amount of authorised capital to a value not exceeding the amount of own resources (capital) and amend its constituent documents accordingly.

The creditors of the credit organisation shall not be entitled to claim a termination or early discharge of its liabilities because of the decrease in the amount of its authorised capital

accomplished in keeping with the present article. In this case the provisions of the [legislation](#) of the Russian Federation under which the creditors must be notified of their right to claim a termination or early discharge of the credit organisation's liabilities and reimbursement of losses incurred in connection therewith shall not be applicable.

**4.** From the time of receipt of the Bank of Russia's demand for the implementation of financial rehabilitation measures in respect of the credit organisation and until the time of receipt of the relevant permission from the Bank of Russia the credit organisation shall not be entitled to make decisions as to profit distribution among its founders (stake-holders), the disbursement (announcement) of dividends, to distribute profit among the founders (stake-holders) and disburse the dividends and also to meet founders' (stake-holders') claims for a stake (a part of a stake) being allocated thereto or for its actual value being disbursed for their benefit or for share buy-out.

The Bank of Russia shall forward permission to the credit organisation for distributing profit among its founders (stake-holders), disbursing (announcing) dividends and also meeting the claims of founders (stake-holders), allocating a stake (a part of a stake) for them or disbursing the actual value of the stake or buying out shares if the grounds which have served as the reason for the Bank of Russia to forward the demand for the implementation of financial rehabilitation measures in respect of the credit organisation have been eliminated.

#### **Article 13.** Plan of Measures for Financial Rehabilitation of a Credit Institution

**1.** The Bank of Russia shall have the right to demand that the credit institution drafts and implements a program of its financial rehabilitation measures.

**2.** A program of measures for financial rehabilitation of the credit institution must contain the following provisions:

- assessment of financial standing of the credit institution;
- specific data on the forms and amounts of participation of the credit institution's founders (participants) and other persons in its financial rehabilitation;
- measures to reduce the credit institution maintenance expenses;
- measures to raise additional incomes;
- measures to secure repayment of overdue accounts receivable;
- measures to change the organisational structure of the credit institution;
- the deadline for attaining the level of sufficiency of own resources (capital) and the current liability of the credit institution. The form of the program of measures for financial rehabilitation of the credit institution is laid down by a regulatory act of the Bank of Russia.

**3.** A program of measures for financial rehabilitation of the credit institution shall be submitted to the Bank of Russia within the period established by the latter.

The Bank of Russia shall supervise execution of the program of financial rehabilitation measures of the credit institution.

#### **Article 14.** Liability of the Head of a Credit Institution

In the case of failure to take measures to ensure financial rehabilitation of a credit institution, and in case of violation of requirements laid down by [Articles 11](#) and [12](#) of the present Federal Law head of a credit institution may be held liable pursuant to federal statutes.

#### **Article 15.** Consequences of Non-fulfillment of the Requirements of the Present Federal Law

Non-fulfillment of the requirements stipulated by [Item 3, Article 9](#), by [Items 3 and 4](#), Article 11, by [Item 2, Article 12](#), and by [Item 3, Article 13](#) of the present Federal Law shall constitute grounds for the Bank of Russia to take supervisory measures as established by federal statutes.

### **Chapter III. Provisional Administration**

#### **Article 16.** Provisional Administration

**1.** The provisional administration is a special management body of the credit institution which is appointed by the Bank of Russia in the manner laid down by the present Federal Law and regulatory

acts of the Bank of Russia.

**2.** The provisional administration shall operate in compliance with the present Federal Law, other federal statutes and regulatory acts of the Bank of Russia.

*See [Regulations of the Central Bank of Russia No. 241-P of November 26, 2003 on the Provisional Administration for Managing a Credit Organization](#), [Regulations of the Central Bank of the Russian Federation No. 87-P of August 20, 1999](#)*

**3.** For the period of operation of the provisional administration the powers of executive bodies of the credit institution shall be either limited or suspended by the act of the Bank of Russia appointing the provisional administration in the manner and subject to conditions laid down by the present Federal Law.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 17 of this Federal Law](#)  
[See the previous text of the Article](#)

#### **Article 17.** Grounds for Appointing a Provisional Administration

**1.** The Bank of Russia shall have the right to appoint a provisional administration if:

1) the credit institution fails to satisfy claims of individual creditors under monetary obligations and/or fails to satisfy liabilities to perform obligatory payments for over seven days or more from their satisfaction and/or performance date due to the non-availability or lack of cash in correspondent accounts of the credit institution;

2) the credit institution was not able to prevent a more than 30 per cent absolute reduction with respect to its own resources (capital) compared to its maximal amount achieved over the last 12 months and at the same time violates a mandatory standard established by the Bank of Russia;

3) over the last month the credit institution has violated by more than 20 per cent the current liquidity standard as established by the Bank of Russia;

4) the credit institution fails to comply with the requirements of the Bank of Russia to replace the head of the credit institution or to implement financial rehabilitation measures for the credit institution or measures to reorganize the credit institution within an established period;

5) there are grounds to revoke the credit institution's license to perform banking operation in accordance with the [Federal Law](#) on Banks and Banking Activities.

**2.** The Bank of Russia shall appoint the credit organisation's interim management not later than the day following the day of revocation of the credit organisation's banking transaction license.

*On Specifics of Activities of the Provisional Administration Appointed by the Bank of Russia after Withdrawing a Credit Organization's License, see [Regulations of the Central Bank of Russia No. 241-P of November 26, 2003](#)*

**3.** The act of the Bank of Russia on appointment of the provisional administration shall be published in the "Vestnik Banka Rossii" journal within 10 days after such a decision is approved.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 18 of this Federal Law](#)  
[See the previous text of the Article](#)

#### **Article 18.** Period of Operation of the Provisional Administration

**1.** The provisional administration shall be appointed by the Bank of Russia for a period of not more than nine months.

**2.** The Bank of Russia has the right to extend the term of office of the interim management by a term not exceeding three months. The present item does not extend to cases when an interim management is appointed under Item 4 of the present article.

**3.** If as of the time of expiration of the term of office of the interim management established under the present Federal Law there are still grounds for the appointment of an interim management under the present Federal Law the interim management shall file a petition with the Bank of Russia for the



revocation of the credit organisation's banking transaction license.

4. An interim management appointed by the Bank of Russia after the revocation of a credit organisation's banking transaction license shall pursue its activities in the credit organisation from the time when it was appointed until the time when a liquidator or competition manager is appointed.

#### **Article 19.** Head of the Provisional Administration

[Federal Law No. 86-FZ of June 19, 2001 amended Item 1 of Article 19 of this Federal Law](#)  
[See the previous text of the Item](#)

1. The position of head of the interim management shall be filled by appointing an employee of the Bank of Russia, or in the cases specified in the [Federal Law](#) on Restructuring Credit Organisations, an employee of the State Corporation "Credit Organisation Restructuring Agency".

2. The head of the provisional administration shall form the provisional administration bodies and he shall be responsible for their performance.

3. The head of the provisional administration shall act on behalf of the credit institution without a power of attorney if the powers of executive bodies of the credit institution are suspended.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 20 of this Federal Law](#)  
[See the previous text of the Item](#)

#### **Article 20.** The Responsibility of the Head of an Interim Management for Failing to Perform, or Improper Performance of His Duties

If the head of an interim management fails to perform, or improperly performs, his duties he/she shall be answerable under federal laws.

#### **Article 21.** Functions of the Provisional Administration in the Case of Restriction of the Powers of the Credit Institution's Executive Bodies

1. If the powers of the credit institution's executive bodies are restricted the provisional administration shall have the following functions:

[Federal Law No. 86-FZ of June 19, 2001 supplemented Item 1 of Article 21 of this Federal Law with new paragraphs 2 and 3 of the following wording:](#)

perform examination and verification in respect of the credit organisation;

establish the availability of the grounds for revoking the banking transaction license of specified in [Article 20](#) of the Federal Law on Banks and Banking Activities;

- participation in the drafting of the credit institution's financial rehabilitation measures and control over their implementation;

- control over the disposal of the credit institution's property within the limits set by the present Article;

- other functions in keeping with federal statutes.

2. When performing the functions listed in Item 1 of the present Article the provisional administration shall:

- receive from the credit institution's executive bodies the necessary information and documents concerning operations of the credit institution;

- give its consent for the credit institution's executive bodies to execute the transactions specified in Item 3 of the present Article;

- file requests with the Bank of Russia to suspend powers of the credit institution's executive bodies if they hinder the activities of the provisional administration, or if it is necessary in order to implement measures to prevent bankruptcy of the credit institution.

3. Only with the consent of the provisional administration shall the credit institution's executive bodies have the right to execute those transactions that:

- involve the transfer of the credit institution's real estate in lease, rent, offering it as a

contribution to the authorized capital of third persons as well as the disposal of such property in another manner;

- involve the disposal of other property of the credit institution with a balance sheet value over 1 per cent of balance sheet value of the credit institution's assets including the property involving the receipt and issue of credits and loans, issue of guarantees and sureties, assignment of claims, transfer and remittance of debts, novations, indemnity as well as the introduction of trust management;

- are concluded with interested persons as regards the credit institution as determined in keeping with the [Federal Law](#) on Insolvency (Bankruptcy).

**Article 22.** Functions of the Provisional Administration in the Case of Suspension of Powers of the Credit Institution Executive Bodies

**1.** If powers of the credit institution's executive bodies are suspended the provisional administration shall perform the following functions:

- to act within the powers of the credit institution's executive bodies;

*[Federal Law No. 86-FZ of June 19, 2001 supplemented Item 1 of Article 22 of this Federal Law with new paragraphs 3 and 4 of the following wording:](#)*

perform examination and verification in respect of the credit organisation;

establish the availability of grounds for revoking the banking transaction license specified in [Article 20](#) of the Federal Law on Banks and Banking Activities;

- to draft the credit institution financial rehabilitation measures and control their implementation;
- to take measures to safeguard property and documentation of the credit institution;
- to identify creditors of the credit institution and the amounts of their claims on monetary liabilities;
- to take steps to collect debts owned to the credit institution;
- to petition the Bank of Russia to introduce a moratorium on the satisfaction of creditors of the credit institution;
- other functions in keeping with federal statutes.

**2.** When performing functions listed in Item 1 of the present Article the provisional administration shall:

- receive from the credit institution's executive bodies the necessary information and documents concerning operations of the credit institution;
- file, on behalf of the credit institution, claims with courts of general jurisdiction, arbitration courts and arbitration tribunals;
- appoint provisional administration representatives to branches of the credit institution, as well as to the management bodies of its subsidiary organisations;
- approve decisions of the board of directors (supervisory council) of the credit institution or the general meeting of its founders (participants) apart from decisions on the execution of transactions covered by Item 3 of the present Article;
- have the right to remove members of the credit institution executive bodies (dismiss them from their positions) and suspend payment of their salaries.

*[Federal Law No. 86-FZ of June 19, 2001 supplemented Item 1 of Article 22 of this Federal Law with a new paragraphs of the following wording:](#)*

is entitled to convene a meeting of the founders (stake-holders) of the credit organisation in compliance with the procedure established by federal laws;

is entitled, on behalf of the credit organisation, to sue members of the board of directors (supervisory board) of the credit organisation, the sole executive body of the credit organisation (director, director general) and/or the members of the collective executive body of the credit organisation (governing body, directorate) if damage is inflicted on the credit organisation through

their fault (action, omission), for the amount of the damage so inflicted, unless other grounds and scope of liability are provided by federal laws;

file a complaint with a court or arbitration court on behalf of the credit organisation claiming the recognition as null and void of deals made by the credit organisation within three years prior to the date when the interim management was appointed if these deals meet the deal invalidity criteria specified in [Article 28](#) of the present Federal Law.

**3.** Only subject to consent of the board of directors (supervisory council) of the credit institution or the general meeting of its founders (participants) within their competence laid down by federal statutes and the founding documents of the credit institution shall the provisional administration have the right to execute those transactions that:

- involve the transfer of the credit institution's real estate in lease, rent, offering it as a contribution to the authorized capital of third persons as well as the disposal of such property in another manner;

- involve the disposal of other property of the credit institution with a balance sheet value over 5 per cent of the balance sheet value of the credit institution's assets including the property involving the receipt and issue of credits and loans, issue of guarantees and sureties, assignment of claims, transfer and remittance of debts, novations, indemnity as well as the introduction of trust management;

**4.** The board of directors (supervisory council) of the credit institution or the general meeting of its founders (participants) within their competence laid down by federal statutes and the founding documents of the credit institution shall have the right to expand the powers of the provisional administration in the disposal of the credit institution's property.

*Federal Law No. 86-FZ of June 19, 2001 supplemented this Federal Law with Article 22.1 of the following wording:*

**Article 22.1.** The Functions of an Interim Management Appointed after the Revocation of a Credit Organisation's Banking Transaction License

**1.** An interim management appointed by the Bank of Russia after the revocation of a credit organisation's banking transaction license shall perform the same functions and have the powers conferred on the interim management by [Article 22](#) of the present Federal Law, except the function of elaborating financial rehabilitation measures for the credit organisation, arranging for the implementation thereof and monitoring their implementation.

**2.** An interim management appointed by the Bank of Russia after the revocation of the credit organisation's banking transaction license shall file a petition with the Bank of Russia for the Bank of Russia to file an application with an arbitration court claiming the recognition of the credit organisation as bankrupt.

**Article 23.** Consequences of Suspension of Powers of the Credit Institution's Executive Bodies for the Duration of the Provisional Administration

**1.** If the powers of the credit institution's executive bodies are suspended for the duration of the provisional administration:

- the credit institution's executive bodies shall have no right to take any decisions on matters falling within their competence by virtue of federal statutes and the founding documents of the credit institution;

- decisions of other executive bodies of the credit institution shall enter into force upon approval by the provisional administration.

**2.** If the powers of the credit institution's executive bodies are suspended for the duration of the provisional administration the former shall be obliged to hand over stamps and seals of the credit institution not later than on the day the provisional administration is appointed, and also the accounting and other documents, tangibles and other assets of the credit institution shall be handed over within the period coordinated with the provisional administration.

**3.** Any opposition put up by members of executive bodies of the credit institution and other

members of the credit institution to the provisional administration shall entail liability in accordance with federal statutes.

**Article 24.** Request by the Head of the Provisional Administration to Revoke the License to Perform Banking Operations

If grounds are discovered to revoke the credit institution's license to perform banking operations as specified in [Article 20](#) of the Federal Law on Banks and Banking Activities the head of the provisional administration must submit to the Bank of Russia a request to revoke such license.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 25 of this Federal Law](#)  
[See the previous text of the Article](#)

**Article 25.** Disputes Concerning the Activities of the Provisional Administration

**1.** A credit institution shall have the right to appeal against the decision of the Bank of Russia to appoint a provisional administration in an Arbitration Court in the manner laid down by federal statutes.

An appeal against a decision of the Bank of Russia concerning the appointment of an interim management and also the application of measures for providing security for claims addressed to the credit organisation shall not suspend the activities of the interim management.

**2.** Founders (participants) of the credit institution who hold overall no less than 1 per cent of the authorized capital of the credit institution shall have the right to file a claim with the Arbitration Court against the Bank of Russia to compensate the credit institution for the real damage if it was caused by unjustified institution of a provisional administration.

**Article 26.** Moratorium on the Satisfaction of Claims Filed by Creditors of a Credit Institution

[Decision of the Constitutional Court of the Russian Federation No. 10-P of July 3, 2001 recognized of the Constitution of the Russian Federation, the provisions of Items 1 and 2 of Article 26 of this Federal Law as not complying with \[Articles 35\]\(#\) \(Part 1, 2 and 3\), \[46\]\(#\) \(Part 1\) and \[55\]\(#\) \(Part 3\),, to the extent to which they do not provide for the body authorised to impose a moratorium on the satisfaction of demands of depositing citizens in respect of a credit organisation being restructured, for the reasons to extend such a moratorium, and excessively limit the rights of depositing citizens and encroach upon the right to judicial protection](#)

**1.** If the powers of the credit institution's executive bodies are suspended and if there are grounds as listed by [Subitem 1 of Item 1, Article 17](#) of the present Federal Law the Bank of Russia shall have the right to introduce a moratorium on the satisfaction of claims of the credit institution's creditors (hereafter referred to as a moratorium) for no more than three months.

[On the rules for the Bank of Russia when considering a petition to impose the mentioned moratorium see \[Regulations of the Bank of Russia No. 81-P of July 14, 1999\]\(#\)](#)

The above moratorium shall cover monetary liabilities and obligations in the performance of obligatory payments which occurred prior to the appointment of the provisional administration.

**2.** For the period of the moratorium:

- no forfeits (fines, penalties) and other financial (economic) sanctions for the non-fulfillment or improper fulfillment of monetary liabilities and liabilities in the performance of obligatory payments, as well as payable interest shall be incurred;
- recovery under documents of execution and other documents by which recovery is conducted in a compulsory (not requiring acceptance) manner shall not be permitted;
- the execution of documents of execution for property recoveries shall be suspended, apart

from documents of execution issued on the basis of decisions for the recovery of due wages, due payment of royalties under copyright agreements, compensation for harm to life or health and moral damages, provided such decisions have entered into legal force before the provisional administration was instituted;

*On the discharge of the execution documents relating to property collection from credit organisations whose license for the pursuance of banking transactions has been revoked see [Letter of the Central Bank of the Russian Federation No. 93-T of March 15, 1999](#)*

- it is prohibited to satisfy the claims of a founder (participant) of the credit institution to allocate to him a stake (contribution) in the authorized capital of the credit institution due to his withdrawal from the group of founders (participants).

*[Federal Law No. 86-FZ of June 19, 2001 amended paragraph 6 of Item 2 of Article 26 of this Federal Law](#)*

*[See the previous text of the paragraph](#)*

Interest shall be accrued at the rate of two thirds of the [refinancing rate](#) of the Bank of Russia on the sum of a creditor's claims relating to money liabilities and/or compulsory payments in the amount established as of the time of moratorium (with no account being taken of the interest accrued) and also on the sum of imposed forfeit money (fines, penalties). The interest so accrued shall be disburseable after the expiration of the effective term of the moratorium.

**3.** Moratorium shall not cover:

- claims of citizens to whom the credit institution is liable for harm caused to life or health;
- claims of citizens to payment of severance allowance, and labour remuneration of citizens working under a labour agreement (a contract) and to payment of royalties under copyright agreements;
- claims to payments of organisational and management expenses essential for operations of the credit institution.

#### **Article 27.** Refusal to Execute a Contract of the Credit Institution

If the powers of the credit institution executive bodies are suspended, the head of the provisional administration shall have the right from the time of appointment of the provisional administration to refuse to execute a credit institution's contract in the manner stipulated by the [Federal Law](#) on Insolvency (Bankruptcy).

*[Federal Law No. 86-FZ of June 19, 2001 reworded Article 28 of this Federal Law](#)*

*[See the previous text of the Article](#)*

#### **Article 28.** The Invalidity of Deals of a Credit Organisation

**1.** A deal of a credit organisation executed by it prior to the appointment of an interim management may be recognised as invalid by an arbitration court at the application of the head of the interim management on the grounds specified in the [civil legislation](#) of the Russian Federation and the [Federal Law](#) on Insolvency (Bankruptcy).

**2.** A deal concluded or executed by a credit organisation within the three years preceding the appointment of an interim management may be recognised as invalid by a court at the application of the interim management or a creditor of the credit organisation in cases when the price of the deal and other terms significantly differ, unfavourably for the credit organisation, from the price and other terms with which similar deals are made under comparable circumstances or if the parties to the deal knew or should have known as of the time when the deal was made that this deal was going to result in the credit organisation's having the indications of insolvency (bankruptcy) specified in [Article 2](#) of the present Federal Law or the deal was concluded with persons directly or indirectly controlling the credit organisation, or directly or indirectly controlled by it or both of them are under the same control.

**Article 29.** Expenses of the Provisional Administration

The expenses of the provisional administration, including outlays for labour remuneration of the provisional administration members related to its activities shall be charged to the credit institution. The budget of the provisional administration shall be approved by the Bank of Russia.

**Article 30.** Report of the Provisional Administration

The provisional administration shall report to the Bank of Russia in the manner established by regulatory acts of the Bank of Russia.

**Article 31.** Termination of Provisional Administration

1. The Bank of Russia shall decide to terminate activities of the provisional administration:
  - if the reasons which led to its appointment have been eliminated;
  - when handing over the case to the arbitration manager;
  - on other grounds envisaged by the present Federal Law and regulatory acts of the Bank of Russia.
2. Regulatory acts of the Bank of Russia shall lay down the procedure for terminating the activities of the provisional administration.
3. Termination of the provisional administration upon elimination of reasons that caused its institution shall result in the reinstatement of powers of the executive bodies of the credit institution.
4. Notice on termination of the provisional administration shall be published in the "Vestnik Banka Rossii" journal.

**Chapter IV. Reorganisation of a Credit Institution**

**Article 32.** Demand of the Bank of Russia to Reorganize a Credit Institution

1. The Bank of Russia shall have the right to demand that a credit institution is reorganized in the cases stipulated by [Subitems 1-3 of Item 1, Article 17](#) of the present Federal Law. [Item 1, Article 12](#) of the present Federal Law sets out the manner for forwarding the demand of the Bank of Russia to reorganize a credit institution.
2. A credit institution shall be reorganized in the form of merger or take-over in the procedure established by federal statutes and regulatory acts of the Bank of Russia adopted pursuant thereto.

*On the Reorganization of Credit Institutions in the Form of Merger and of Affiliation, see [Regulations of the Central Bank of Russia No. 230-P of June 4, 2003](#)*

**Article 33.** The Actions of a Credit Institution Having Received the Demand of the Bank of Russia to Reorganize the Credit Institution

1. Within 5 days of the receipt of the demand of the Bank of Russia to reorganize the credit institution its head shall be obligated to submit to the credit institution's management bodies stipulated in [Item 1, Article 11](#) of the present Federal Law his request to reorganize the credit institution.  
The credit institution management bodies stipulated in [Item 1, Article 11](#) of the present Federal Law shall be obligated within 10 days upon receipt from the Bank of Russia of the reorganisation demand to inform the Bank of Russia on their decision.
2. Regulatory acts of the Bank of Russia shall lay down the requirements for the stability of credit institutions being set up through merger of credit institutions.

**Chapter V. Peculiarities of Bankruptcy Case Proceedings in the Arbitration Court**

**Article 34.** Procedure for Examination of Bankruptcy Cases

Bankruptcy cases shall be examined by an Arbitration Court pursuant the to rules envisaged by the [Arbitration Procedural Code](#) of the Russian Federation and the [Federal Law](#) on Insolvency (Bankruptcy) with due regard to peculiarities laid down by the present Federal Law.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 35 of this Federal Law](#)  
[See the previous text of the Article](#)

**Article 35.** Appeals to the Arbitration Court

1. The following shall have the right to file applications to recognize a credit institution as bankrupt with an Arbitration Court:

- 1) a debtor credit institution (hereafter referred to as the credit institution);
- 2) a credit institution's creditor, including individual citizens who have the right of claim against the credit institution under a bank deposit contract and/or bank account contract;
- 3) the Bank of Russia (including in cases when the Bank of Russia is not a creditor of the credit organisation);
- 4) procurator - in cases envisaged by the [Federal Law](#) on Insolvency (Bankruptcy);
- 5) tax agency or another agency authorized by federal statute as regards cases of payment of mandatory payments to the budget and to extra-budgetary funds.

2. If the credit organisation shows the evidence of insolvency (bankruptcy) specified in the present Federal Law as of the time when its banking transaction license is revoked the Bank of Russia shall, within five days after the publication in Vestnik Banka Rossii of the decision whereby the credit organisation's banking transaction license was revoked, file an application with an arbitration court claiming the recognition of the credit organisation as bankrupt. If the Bank of Russia forwards an application claiming the recognition of a credit organisation as bankrupt it shall within 15 days after the date when the arbitration court accepted the application inform the court of its nominee for the position of arbitration manager.

*In accordance with [Information Letter](#) of the Presidium of the Higher Arbitration Court of the Russian Federation No. 74 of August 15, 2003, the rule contained in Item 2 of Article 35 of the present Federal Law is of special character with respect to the provisions of [Articles 15, 42 and 45](#) of the Federal Law on Insolvency (Bankruptcy) and means that by the moment of the consideration of an application of the Bank of Russia for declaring a credit organisation bankrupt the candidacy of the bankruptcy commissioner must be proposed by the Bank of Russia at the established time*

If the interim management appointed by the Bank of Russia after the revocation of a credit organisation's banking transaction license discovers evidence of insolvency (bankruptcy) of the credit organisation the Bank of Russia shall within five days after the receipt of the interim management's petition file an application with an arbitration court claiming the recognition of the credit organisation as bankrupt. If the Bank of Russia files an application claiming the recognition of the credit organisation as bankrupt the Bank of Russia shall within 15 days after the acceptance of the said application by the arbitration court inform the arbitration court about its nominee to the position of arbitration manager.

3. Persons indicated in Subitems 1, 2, 4, 5 of the present Article shall have the right to forward to the Bank of Russia their applications to revoke a credit institution's licence to perform banking operations upon occurrence of signs of its bankruptcy as specified by [Article 2](#) of the present Federal Law, enclosing documents to confirm monetary obligations of the credit institution and their amount, as stipulated by [Article 4](#) of the Federal Law on Insolvency (Bankruptcy).

*See the sample of Application on Recognizing a Credit Institution as a Bankrupt ([Appendix No. 2](#) to Letter of the Central Bank of Russia No. 86-T of March 9, 1999)*

4. Persons indicated in Subitems 1, 2, 4, 5 of Item 1 of the present Article who have submitted to the Bank of Russia an application to revoke the credit institution's licence to perform banking operations, provided the Bank of Russia does not reply within two months after the above application has been dispatched, shall have the right to file an application to an Arbitration Court to declare the credit institution bankrupt.

When the Arbitration Court receives an application to declare the credit institution bankrupt the

judge, prior to initiating proceedings on the bankruptcy case, shall offer the Bank of Russia an opportunity to present its opinion on whether it is expedient to revoke the credit institution's licence to perform banking operations or a copy of an order of the Bank of Russia to revoke said license. The Bank of Russia shall be obliged to forward the aforesaid documents to the Arbitration Court within one month upon receipt of the Arbitration Court request.

A copy of an order of the Bank of Russia to recall the credit institution's licence to perform banking operations submitted to the Arbitration Court within the aforementioned time period shall constitute grounds to initiate proceedings in the bankruptcy case.

If within one month the conclusion of the Bank of Russia is received that it is inexpedient to revoke the credit institution's licence to perform banking operations the application to recognize it bankrupt shall be returned to the creditor.

In this case the person who has submitted to the Bank of Russia an application to revoke the credit institution's licence to perform banking operations shall have the right to file a claim to the Arbitration Court demanding the Bank of Russia compensate for losses caused through the failure of the Bank of Russia to take decisions envisaged by the present Federal Law and falling within the competence of the Bank of Russia, to carry out measures to prevent bankruptcy of the credit institution.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 36 of this Federal Law](#)  
[See the previous text of the Article](#)

#### **Article 36.** Initiation of Bankruptcy Cases

Bankruptcy cases may be initiated by the Arbitration Court only after the credit institution's licence to perform banking operations is revoked based on an application of persons specified in [Article 35](#) of the present Federal Law if the overall amount of claims against the credit institution is no less than one thousand times the minimum wage established by federal statute and if such claims have not been satisfied within one month from their date of execution or if after the revocation of the credit organisation's banking transaction license the value of its property (/assets/) is insufficient for discharging the credit organisations liabilities owing its creditors. The value of the credit organisation's property (assets) and liabilities shall be determined by the methods established by regulatory legal acts of the Bank of Russia.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 37 of this Federal Law](#)  
[See the previous text of the Article](#)

#### **Article 37.** Persons Participating in the Bankruptcy Case

The persons participating in the bankruptcy case shall be the persons stipulated by the present [Federal Law](#) as well as the Bank of Russia if bankruptcy proceedings are initiated upon an application filed by the Bank of Russia to recognize the credit institution bankrupt.

*See the sample of Application on Recognizing a Credit Institution as a Bankrupt ([Appendix No. 1](#) to Letter of the Central Bank of Russia No. 86-T of March 9, 1999)*

#### **Article 38.** Persons Participating in the Arbitration Procedure

The persons stipulated by the present [Federal Law](#) shall participate in a bankruptcy case arbitration proceedings, as well as the Bank of Russia when an application to declare the credit institution bankrupt was filed by the another person.

#### **Article 39.** Application to Declare a Credit Institution Bankrupt

**1.** The application of a the credit institution to declare itself bankrupt shall meet the requirements laid down by the [Federal Law](#) on Insolvency (Bankruptcy) for applications filed by debtors.

Other persons' applications to declare the credit institution bankrupt, from those who under the present Federal Law have the right to file such an application, shall meet the requirements laid down by the [Federal Law](#) on Insolvency (Bankruptcy) for applications filed by creditors unless otherwise



follows from the essence of legal relations.

**2.** A copy of the application of the credit institution to declare itself bankrupt shall be forwarded to the Bank of Russia.

Copies of an application filed by persons specified in [Article 35](#) of the present Federal Law to declare the credit institution bankrupt shall be forwarded to the credit institution in question and to the Bank of Russia.

**3.** When filing an application to declare a credit institution bankrupt the Bank of Russia may submit to the arbitration court its candidates for the arbitration manager position.

**Article 40.** Documents Enclosed with the Application to Declare a Credit Institution Bankrupt

In addition to the documents envisaged by the [Arbitration Procedural Code](#) of the Russian Federation and the [Federal Law](#) on Insolvency (Bankruptcy) an application to recognize a credit institution bankrupt shall enclose a copy of the order of the Bank of Russia to revoke the credit institution's licence to perform banking operations as published in the "Vestnik Banka Rossii" journal or a copy of such order certified by the Bank of Russia.

**Article 41.** Acceptance of the Application to Declare the Credit Institution Bankrupt

The ruling of the Arbitration Court on its acceptance of the application to recognize the credit institution bankrupt shall contain a statement on the commencement of the [observation](#) proceedings and the appointment of a provisional manager.

**Article 42.** Refusal to Accept an Application to Declare the Credit Institution Bankrupt

An Arbitration Court judge shall refuse to accept an application to recognize a credit institution bankrupt if there is a violation of even a single condition specified in [Article 36](#) of the present Federal Law.

**Article 43.** Return of the Application to Declare the Credit Institution Bankrupt

An application to declare the credit institution bankrupt that does not meet the requirements of [Articles 39](#) and [40](#) of the present Federal Law shall be returned by the Arbitration Court to the person who had filed the aforesaid application, with relevant documents enclosed to such application.

**Article 44.** Forwarding by the Arbitration Court of Court Rulings on Bankruptcy Cases

The Arbitration Court shall forward court rulings on bankruptcy cases within five days after they have been made to persons participating in the bankruptcy case and in the arbitration proceedings.

**Article 45.** Consequences of Non-fulfillment or Improper Fulfillment of Responsibilities by an Arbitration Manager

**1.** If an arbitration manager fails to fulfill or fulfills improperly his responsibilities the Bank of Russia shall have the right to annul his Bank of Russia qualification certificate in the manner laid down by regulatory acts of the Bank of Russia.

The Decision of the Bank of Russia to annul the above certificate may be appealed by the arbitration manager in an Arbitration Court.

**2.** If an arbitration manager fails to fulfill or fulfills improperly his responsibilities thus causing damage to the credit institution it may constitute grounds for withdrawing the license of the arbitration manager.

If an arbitration manager fails to fulfill or fulfills improperly his responsibilities the Bank of Russia shall have the right to file a request with the state agency of the Russian Federation for Cases of Insolvency and Financial Rehabilitation to revoke his arbitration manager's license.

*On the Verification of Arbitration Managers' Activities by the Bank of Russia in the Case of Credit*

*Organisations' Bankruptcy, see [Regulations](#) of the Central Bank of the Russian Federation No. 132-P of January 17, 2001*

## **Chapter VI. Peculiarities of Competitive Proceedings of a Credit Institution Recognized Bankrupt**

**Article 46.** Account of a Credit Institution in the Course of Competitive Proceedings

**1.** In the course of competitive proceedings the competitive proceedings manager must use only one correspondent account of the credit institution declared bankrupt which is held at an institution of the Bank of Russia. Regulatory acts of the Bank of Russia determine the procedure for opening the said account and performing settlements on such account.

*According to [Regulations](#) of the Central Bank of Russia No. 75-P of April 26, 1999 in order to accumulate foreign currency funds a credit organisation whose license for banking operations has been revoked, including the license to conduct operations in foreign currency funds, acting in the name of the chairman of the liquidation commission shall have the right to open in the Savings Bank of the Russian Federation or Vneshtorgbank of Russia or, upon approval by the Bank of Russia, in another bank, a foreign currency correspondent account in the required types of foreign currencies*

**2.** Within 10 days after the competitive proceedings manager presents to the Bank of Russia documents to confirm the right of the competitive proceedings manager to perform transactions on the correspondent account of the credit institution declared bankrupt, in the manner stipulated by regulatory acts of the Bank of Russia, the balance of funds shall be transferred to the aforementioned account from correspondent accounts of the credit institution held at other credit institutions, as well as other funds of the credit institution, including its obligatory reserves deposited by the credit institution with the Bank of Russia.

*[Federal Law](#) No. 116-FZ of August 7, 2001 amended [Article 47](#) of this Federal Law  
[See the previous text of the Article](#)*

**Article 47.** Publication of Information About the Bankruptcy of a Credit Institution

**1.** Within 15 days after the competitive proceedings manager presents to the Bank of Russia documents to confirm the right of the competitive proceedings manager to perform transactions on the correspondent account of the credit institution declared bankrupt the competitive proceedings manager shall forward for the publication in the "Vestnik Vysshego Arbitrazhnogo Suda Rossiiskoi Federatsii", "Vestnik Banka Rossii" journals, and also shall publish in the local press at the location of the credit institution at the expense of the latter a notice on the decision to declare the credit institution bankrupt and to initiate competitive proceedings.

**2.** The liquidator shall, within 70 days after the publication of an announcement about the credit organisation's having been recognised as bankrupt and liquidation proceedings having been opened as stipulated by [Article 100](#) of the Federal Law on Insolvency (Bankruptcy) and the present article shall forward an announcement to the "Vestnik Vysshego Arbitrazhnogo Suda Rossiiskoi Federatsii", "Vestnik Banka Rossii" and also a periodical paper at the location of the credit organisation which has been recognised as bankrupt, for publication at the expense of the credit organisation to the effect that the credit organisation effects preliminary disbursements for the benefit of the creditors of the first priority category, with the procedure and terms for such a disbursement being indicated.

**3.** If information concerning a debtor's recognition as bankrupt and the opening of liquidation proceedings were published in the official papers specified in Item 2 of the present article at different times the term for creditor's claims shall be counted from the time of the first of these publications.

*[Federal Law](#) No. 86-FZ of June 19, 2001 supplemented this Federal Law with [Article 47.1](#):*

**Article 47.1.** The Duties of the Permanent Trustee in the Course of Liquidation Proceedings Relating to a Credit Organisation

1. In the case of bankruptcy of a credit organisation the permanent trustee shall perform the functions vested therein in bona fide way with due regard to the rights and lawful interest of all creditors.

2. If during liquidation proceedings relating to a credit organisation deals are discovered which have been accomplished by the credit organisation after the revocation of its banking transaction license (except deals relating to current utility and maintenance payments of the credit organisation and also the disbursement of severance allowances and wages for the benefit of persons working under a labour contract stipulated by [Article 20](#) of the Federal Law on Banks and Banking Activities) the permanent trustee shall file a complaint with the court claiming the results of the deal to be null and void.

3. The permanent trustee shall apply to the court to claim the recognition as invalid of deals executed by the credit organisation within three years preceding the date when the arbitration court recognised the credit organisation as bankrupt if said deals meet the deal invalidity criteria set out in [Article 28](#) of the present Federal Law (except deals in respect of which the committee of creditors has decided that they shall not be brought before the court).

4. The permanent trustee shall file a complaint with the court or arbitration court claiming that the founders (stake-holders), members of the board of directors (supervisory board), the heads of the credit organisation be deemed to have a vicarious liability for the credit organisation's liabilities under [Article 50](#) of the present Federal Law.

*Federal Law No. 116-FZ of August 7, 2001 supplemented this Federal Law with Article 47.2*

**Article 47.2.** The Peculiarities of Effecting Preliminary Disbursements for the Benefit of Creditors of the First Priority Category

1. The liquidator shall keep a register of the claims of creditors of the first priority category for the purposes of the credit organisation's effecting preliminary disbursements for the benefit of first ranking creditors, such a register shall contain information on each creditor of the first priority category and the amount of his claims relating to money liabilities. The said register shall be completed within two months after the publication of information on the recognition of the credit organisation as bankrupt and the opening of liquidation proceedings.

2. Preliminary disbursements for the benefit of creditors of the first priority shall be commenced not later than the third business day after the publication of the first announcement on the procedure and terms of disbursements for the benefit of creditors of the first priority category and they shall be effected within three months of said date.

3. To effect the credit organisation's disbursements for the benefit of creditors of the first priority category 70 per cent of the following funds shall be allocated: the funds available on the correspondent account of the credit organisation that has been recognised as bankrupt which is used in the course of liquidation proceedings as of the date of closing down the register of the claims of creditors of the first priority category for the purposes of the credit organisation's effecting preliminary disbursements. If these funds are insufficient for meeting the claims of the creditors of the first priority category in full they shall be distributed in proportion to the amounts of the claims to be met.

4. The sum of claims of creditors of the first priority category shall be subject to reduction by the amount paid for their benefit when the credit organisation effected preliminary disbursements and it shall be reflected in the register of claims of the creditors of the credit organisation that has been recognised as bankrupt. The liquidator's report on the completion of preliminary disbursements for the benefit of creditors of the first priority category together with the register of claims of creditors of the first priority category shall be filed by the credit organisation that has been recognised as bankrupt with the Bank of Russia, the arbitration court and the creditors' committee.

5. The claims of creditors of the first priority category in an amount exceeding the amount of the preliminary disbursements completed and also the claims filed after the register of the claims of

creditors of the first priority category for preliminary disbursement purposes has been closed shall be met in compliance with the procedure set out in Article 49 of the present Federal Law. In this case arrangements shall be made to meet the claims of all the creditors of the first priority category on a proportional basis.

[Federal Law No. 169-FZ of December 8, 2003 amended Article 48 of this Federal Law](#)  
[See the previous text of the Article](#)

#### **Article 48.** Procedure for Liquidating a Credit Institution

1. The arbitration court that rendered a decision to declare a credit organization bankrupt, shall send this decision to the Bank of Russia, as well as to the federal executive body authorized under [Article 2](#) of the Federal Law on the state registration of juridical persons and individual businessmen (hereinafter referred to as the authorized registering body) which shall make an entry to the effect that the credit organization is being liquidated in the Unified State Register of Legal Entities.

2. Monthly the competitive proceedings manager shall submit to the Bank of Russia accounting and statistical reports of the credit institution being liquidated in accordance with the list and in the manner laid down by the Bank of Russia.

*On the procedure for compiling and submitting information on the performance of liquidation proceedings in credit organisations whose licenses for the pursuance of banking transactions have been revoked see [Direction](#) of the Central Bank of Russia No. 538-U of April 12, 1999*

3. After the completion of the compilation of a register of creditor's claims the liquidator shall, within six months after the date when the liquidation proceedings were opened, draw up an interim liquidation balance sheet comprising information on the composition of the assets of the credit organisation in liquidation, a list of the claims filed by creditors, the results of consideration of these claims and also information on the preliminary disbursements effected for the benefit of creditors of the first priority category. The term for drawing up the register of creditors' claims and the terms for drawing up the interim liquidation balance sheet may be extended by the arbitration court at the petition of the liquidator.

The interim liquidation balance sheet and the liquidation balance sheet shall be compiled and filed with the Bank of Russia in keeping with the regulatory acts of the Bank of Russia.

*On the procedure for making out the interim liquidation balance-sheet and the liquidation balance-sheet of a credit organisation and for their approval by the territorial agencies of the Central Bank of Russia see [Regulations](#) of the Central Bank of Russia No. 125-P of October 4, 2000*

*On the List of Data and Documents Required for the State Registration of a Credit Organization in Connection with the Liquidation Thereof and the Procedure for Their Submission to the Bank of Russia, see [Direction](#) of the Central Bank of Russia No. 1241-U of January 21, 2003*

4. On the basis of a decision of an arbitration court on termination of bankruptcy proceedings, rendered under [Article 119](#) of the Federal Law on Insolvency (Bankruptcy), the Bank of Russia shall direct to the authorized registering body the data and documents with regard to a credit organization required for the exercising by this body of the functions related to keeping the Unified State Register of Legal Entities and for making an entry on liquidation of the legal entity in said Register.

Liquidation of a credit organization shall be regarded as completed and the credit organization shall be regarded as having terminated its activities upon the making of an entry on it in the Unified State Register of Legal Entities by the authorized registering body.

5. Upon the completion of the competitive proceedings procedure and the liquidation of the credit institution the documents shall be handed over to the Archive Fund of the Russian Federation in the procedure and in accordance with the list approved by the state agency in charge of government policy in the area of archives and by the Bank of Russia.

[Federal Law No. 86-FZ of June 19, 2001 amended Article 49 of this Federal Law](#)  
[See the previous text of the Article](#)

**Article 49.** Peculiarities of the Distribution of Bankruptcy Estate

1. To the charge of property of the credit institution making up the bankruptcy estate, first of all shall be satisfied the claims of natural persons who are creditors of the credit institution under banking deposit contracts and bank account contracts concluded with them and claims of individuals to whom the credit institution is liable for harm caused to life or health.

*On the cession of rights (claims) by credit organisations under liquidation, see [Letter of the Central Bank of Russia No. 44-T of March 12, 2001](#)*

2. Creditors' claims relating to subordinated credits (loans) shall be met after complete satisfaction of the claims of the rest of creditors. For the purpose of the present Federal Law "subordinated credits (loans)" means a credit (loan) that simultaneously complies with the following conditions:

- the credit (loan) has been provided for a term of at least five years;
- the terms on which the credit (loan) has been provided did not differ significantly from the market terms for the provision of a similar credit (loan) at the time when it was provided;
- the credit (loan) contract contains a clause whereby in the case of bankruptcy of the credit organisation the claims on the credit (loan) are met after all other creditors' claims are met.

[Federal Law No. 86-FZ of June 19, 2001 reworded Article 50 of this Federal Law](#)  
[See the previous text of the Article](#)

**Article 50.** The Liabilities of the Founders (Stake-Holders), Members of the Board of Directors (Supervisory Board), the Heads of a Credit Organisation for Bringing It to Bankruptcy

1. If a credit organisation goes bankrupt through the fault of its founders (stake-holders), members of the board of directors (supervisory board), its heads which have the right to issue directions which are binding on the credit organisation or are in position to otherwise control its actions these persons may be deemed to have a vicarious liability for the liabilities of the credit organisation under a court decision.

The bankruptcy of a credit organisation shall be deemed due to the fault of its heads who are entitled to issue directions binding on this credit organisation or are in position to otherwise control its actions if the court has established that these persons issued directions which directly or indirectly lead the credit organisation to bankruptcy or if the court has established that these persons did not commit the actions they should have committed under the present Federal Law to avert the bankruptcy of the credit organisation.

The bankruptcy of a credit organisation shall be deemed due to the fault of its founders (stake-holders), members of the board of directors (supervisory board) who have the right to issue directions binding on this credit organisation or are in position to otherwise control its actions if the court has established that these persons issued directions which directly or indirectly lead the credit organisation to bankruptcy.

2. A credit organisation's founders (stake-holders) who have been recognised by the court as guilty for having brought the credit organisation to bankruptcy shall not have the right to acquire shares (stakes) of another credit organisation in an amount exceeding 5 per cent of its authorised capital, within ten years after the date of the arbitration court's decision whereby the credit organisation was recognised as bankrupt.

3. The members of a board of directors (supervisory board), the heads of a credit organisation who have been recognised by the court as guilty for its bankruptcy under [Item 1](#) of the present article shall not have the right to occupy the positions of heads of credit organisations within five years after the date of the arbitration court's decision whereby the credit organisation was recognised as

bankrupt.

4. The "heads of a credit organisation" shall be deemed the persons specified as the heads of a credit organisation in the [Federal Law](#) on Banks and Banking Activities.

## **Chapter VII. Peculiarities of Declaring Bankrupt a Credit Institution Being Liquidated and a Missing Credit Institution**

### **Article 51. Declaring Bankrupt a Credit Institution Being Liquidated**

1. If the value of property of a credit institution being liquidated is not sufficient to satisfy the claims of the credit institution's creditors such credit institution shall be liquidated in the manner stipulated by the [Federal Law](#) on Insolvency (Bankruptcy) with due regard to the peculiarities laid down by the present Federal Law.

2. If the event covered by Item 1 of the present Article occurs, the credit institution's creditors and the Bank of Russia shall have the right to file an application to declare bankrupt the credit institution being liquidated.

3. If the event covered by Item 1 of the present Article occurs, the liquidation commission (the liquidator) of the credit institution being liquidated shall be obligated to file with the Arbitration Court an application to declare bankrupt the credit institution being liquidated.

4. The Arbitration Court shall appoint a court session to declare bankrupt the credit institution being liquidated on the basis of an application filed by persons specified in Items 2 and 3 of the present Article within one month after the Arbitration Court rules to accept the aforementioned application.

*[Federal Law No. 31-FZ of March 21, 2002 reworded Article 52 of this Federal Law. The amendments shall enter into force as of July 1, 2002](#)*

[See the previous text of the Article](#)

### **Article 52. Bankruptcy of a Missing Credit Organization**

A decision of an arbitration court to declare bankrupt a missing credit organization shall be directed to the Bank of Russia, as well as to the authorized registering body, which shall make an entry in the Unified State Register of Legal Entities to the effect that the credit organization is being liquidated. The Bank of Russia in two weeks at the latest as of the date of receiving a decision of an arbitration court to declare bankrupt a missing credit organization, shall present to the arbitration court a candidate for the permanent trustee position.

## **Chapter VIII. Concluding Provisions**

*[Federal Law No. 6-FZ of January 2, 2000 amended Article 53 of this Federal Law](#)*

[See the previous text of the Item](#)

### **Article 53. Entry into force of the present Federal Law**

1. The present Federal Law shall enter into force upon its [official publication](#), apart from those provisions for which the present Federal Law lays down different dates for entry into force.

2. [Article 6](#) of this Federal Law in the part concerning the attestation of arbitration managers shall enter into force as from March 1, 1999. [Article 6](#) and [19](#) of this Federal Law in the part concerning the attestation of the heads of the temporary administrations, and also [Item 2 of Article 25](#) of this Federal Law shall enter into force as from January 1, 2000.

3. Until January 1, 2000 the certificate of the head of a provisional administration may be issued by the Bank of Russia to persons who meet the requirements for a head of a credit institution.

Provisions of [Item 2 of Article 25](#) of the present Federal Law shall not cover heads of provisional administrations who hold certificates of the head of a provisional administration that was issued in accordance with the present Item by the Bank of Russia prior to March 1, 1999.

4. Certificates of the head of the provisional administration issued by the Bank of Russia prior to January 1, 2000 shall be valid for three years from the date the decision was taken to issue it.

5. [Article 52](#) of the present Federal Law shall enter into force as of September 1, 1999.

**Article 54.** Bringing Normative Acts into Line with the Present Federal Law

The government of the Russian Federation and the Bank of Russia are hereby requested to bring their normative acts into line with the present Federal Law.

President of  
the Russian Federation

B.Yeltsin

Moscow, the Kremlin,  
No. 40-FZ  
February 25, 1999