



# Developments in the Russian Legislation on Securitisation and Project Finance

In the future, 1 July 2014 will be considered as the starting point of a completely new stage in development of the Russian financial market. A number of federal laws come into effect on this, introducing fundamental changes into the existing legal framework on the financial market and opening up innovative possibilities for market players. The Russian legislation will finally have the institutions Russian investors have so far sought in foreign jurisdictions. The most significant are:

- Federal Law No 379-FZ, dated 21 December 2013, 'On Amending Certain Legislative Acts of the Russian Federation' (the 'Law' or 'Law No 379-FZ'), which was known as the Securitisation Bill at the development stage;
- Federal Law No 367-FZ, dated 21 December 2013, 'On Amending Part 1 of the Civil Code of the Russian Federation and Invalidating Certain Legislative Acts (Legislative Provisions) of the Russian Legislation' ('Law No 367-FZ'); and

## RUSSIA

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- Federal Law No 210-FZ, dated 23 July 2013, ‘On Amending the Federal Law “On the Securities Market” and Certain Legislative Acts of the Russian Federation’ (‘Law No 210-FZ’).

This review summarises the most important developments introduced by the above legislative acts.

### Special purpose vehicles

Law No 379-FZ provides for an opportunity to create new types of special purpose vehicle (SPV). So far, the Russian legislation has envisaged only establishment of a mortgage agent as the only type of SPV. This instrument has been used for the purpose of what is called ‘off-balance’ securitisation of mortgage assets. Since the Russian legislation did not provide for pledging under bonds claims not backed by a mortgage in order to secure, say, consumer loans, the originating banks had to establish SPVs in foreign jurisdictions.

Law No 379-FZ provides an opportunity to secure non-mortgage assets within the Russian jurisdiction. For the above purposes, the Russian legislation introduces two new types of SPV: a special purpose financial vehicle (SPFV) and a special purpose project finance vehicle (SPPFV). Just like a mortgage agent, these vehicles will be created for bond issue purposes. However, unlike mortgage agents, such bonds will be collateralised not with a mortgage but with monetary claims that might arise in the future as well. The activities performed by SPFVs are, in general, very similar to those of a mortgage agent. SPPFV, in turn, will be established to finance long-term (at least three-year) investment projects.

### Mortgage agent/SPV bankruptcy

The Law provides for special regulation of bankruptcy proceedings for a mortgage agent and a SPV. For instance, the general rule is that a bankruptcy petition from a mortgage agent or a SPV will be filed through a bondholders’ representative appointed by the general bondholder meeting as per the Russian legislation on securities. Law No 379-FZ will, however, also grant an opportunity to limit the bankruptcy creditor’s right to file a claim with an arbitration (commercial) court seeking to declare a mortgage agent/SPV bankrupt prior to the due date and/or to certain circumstances occurring as per the contract entered into with the mortgage agent/SPV.

Law No 210-FZ will introduce the institutions of general bondholder meetings and bondholder’s representative (ie, a person acting on behalf of and for the benefit of bondholders). This Law establishes the principle of bondholders not being, in general, able to exercise individually the rights arising from the bondholding.<sup>1</sup> Yet a resolution to issue securities may entitle bondholders to exercise their rights on their own.

The right to nominate (elect) a bondholder’s representative will arise starting from 1 July 2014, and an issuer’s obligation to nominate a bondholders’ representative will arise starting from 1 July 2016, but only if: (i) bonds are issued through a public offering or through a private offering among no more than 500 parties, exclusive of qualified investors; and (ii) bonds are admitted to auction, other than those meant for qualified investors.

### Limited recourse

As per the provisions of Law No 379-FZ, an agreement entered into by a lender and an SPV or the terms and conditions of an SPV bond issue may provide for the lender’s or bondholder’s claims not to be settled with the funds obtained from the sale of the pledged monetary claims when execution is levied or with new collateral, if such collateral is provided, which will be deemed discharged.

The said provision enables additional financial guarantees for SPV lenders. For instance, certain obligations of an SPV may be separated from one another, with separate collaterals for each of them. Should such an instrument be applied, the SPV’s lender under the relevant obligations will be entitled to take recourse against a clearly identified asset pool. Yet each lender may be sure that the others will not be able to affect the SPV’s financial position to an extent exceeding the collateral provided by them. The holders of bonds of a particular issue will not, for example, be able to claim other property of the SPV should the funds obtained from selling the pledged monetary claims be insufficient, so they will not have any detrimental effect on the holder of other bond issues. It should be noted that this provision will not be applicable to mortgage agents.

### Non-mortgage securitisation

As already mentioned, Law No 379-FZ provides for securitisation of non-mortgage assets by extending the list of properties that may be pledged against collateralised bonds.<sup>2</sup> Thus, while section 27.3 of the currently effective version of Federal Law No 39-FZ dated 22 April 1996 'On the Securities Market' provides for pledging only securities and real estate as collateral for the said bonds, starting from 1 July 2014, this list will be supplemented with monetary claims under obligations, including ones that might arise in the future out of current or future obligations.<sup>3</sup>

The provision of Law No 379-FZ establishing the procedure and terms for substituting the pledged item for secured bonds in the issue conditions is of particular importance for non-mortgage securitisation purposes. Since long-term finance is raised within the scope of non-mortgage securitisation transactions, the secured asset (eg, consumer and car loans) has a much shorter 'lifetime' than that of the bonds and the 'revolvency' of such an asset (ie, the opportunity to renew (substitute) such an asset continuously) contributes to the successful implementation of such transaction through an opportunity to maintain the required amount of collateral for bonds until the securities are paid off.

### Transaction structure

On the whole, the structure of a mortgage securitisation structure is very similar to that of a non-mortgage one, apart from such a transaction does not envisage the special depository that controls the mortgage cover under mortgage securitisation transactions and fulfils various administrative functions. For non-mortgage securitisation purposes, it is the bondholder's representative or, alternatively, a security trustee that exercises control over the collateral and manages the mortgage.

### Collateral account

Another development included in Law No 367-FZ is the establishment of regulation over the institution of the collateral account providing for pledging monetary funds in a bank account. Under the relevant provisions of Law No 379-FZ, amounts received by the pledger from debtors in performance of their obligations – the monetary claims under which constitute bond collateral – are to be credited to the collateral account. The collateral account details are to be specified in the terms and conditions of a collateralised bond issue.

Should a SPV fail to perform its obligations to the bondholders, execution will be levied not only on the monetary claims securing performance of the obligations under such bonds, but all monetary funds on the collateral account. Law No 367-FZ stipulates a particular procedure for exercising rights under a bank account agreement. Thus, when execution is to be levied on the pledged rights under a bank account agreement, either in or out of court, the pledgeholder's claims will be settled by the bank debiting funds from the pledgee's collateral account on the pledgeholder's instructions and remitting them to the pledgeholder or crediting them to the account specified thereby.

#### Notes

- 1 In addition to the right to file a petition seeking to have a SPV and a mortgage agent declared bankrupt, a bondholder's representative will also exercise powers to perform any other proceedings in an arbitration (commercial) court, to exercise the rights of a pledgeholder, a beneficiary or a lender under a guarantee if secured bonds are issued.
- 2 Under Law No 379-FZ, s 27.3 and s 27.3-1 of the Federal Law 'On the Securities Market' regulating the legal status of collateralised bonds are not applicable to mortgage securities.
- 3 As regards securities that may be used to collateralise bonds, Law No 379-FZ specifies that only uncertified securities and lock-up certified securities may be used as collateral in this case.