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JUDGMENTS UNDER THE LAW OF THE REPUBLIC OF UZBEKISTAN «ON BANKS AND BANK ACTIVITY» IN THE NEW EDITION

NOWELIZACJA USTAWY «O BANKACH I DZIAŁALNOŚCI BANKOWEJ» REPUBLIKI UZBEKISTANU

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Abstract:

This article analyses contents and an entity of the bill of the Republic of Uzbekistan «On banks and banking activity», specifies distinctive features, states proposals and recommendations. Also article analysis the entity and value of legal regulation of foreign bank activity on the basis of the current legislation. Article indicates expediency of adoption of the new law on banks and bank activity. In turn, it is noted that legal regulation is the best way of increase in efficiency of activity of foreign banks. On the basis of the analysis of the bill the author gave the relevant theoretical and practical proposals. Author proposed to use the concept «foreign bank activity», to provide norms concerning a possibility of application of improving measures concerning banks, to specify that the term of accreditation is five years and also to provide them advantages during creation of bank with the foreign capital.


Keywords: commercial bank, bank activity, bill, economy, foreign banks, capital

Streszczenie:

Ten artykuł analizuje treść nowelizacji ustawy Republiki Uzbekistanu "O bankach i działalności bankowej", określa charakterystyczne cechy ustawy, propozycje i zalecenia. W artykule zawarto również analizę innych publikacji dotyczących tematu artykułu oraz regulacji praw-

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nych dotyczących działalności banków zagranicznych na podstawie obowiązującego prawodawstwa. Artykuł wskazuje na celowość przyjęcia nowej ustawy o bankach i działalności banków. Należy zauważyć, że regulacja prawna jest najlepszym sposobem na zwiększenie efektywności działania banków zagranicznych. Na podstawie analizy projektu ustawy autor przedstawił odpowiednie propozycje teoretyczne i praktyczne. Autor zaproponował wykorzystanie pojęcia "działalność banków zagranicznych", aby zapewnić normy dotyczące możliwości zastosowania środków poprawiających działalność banków, określić, że termin akredytacji wynosi pięć lat, a także zapewnić korzyści podczas tworzenia banku opartego o kapitał zagraniczny.

Słowa kluczowe: bank komercyjny, działalność bankowa, rachunek, gospodarka, banki zagraniczne, kapitał

Statement of the problem in general outlook and its connection with important scientific and practical tasks

One of the main institutes of development of economy of any state are commercial banks. Acting as credit institution, banks not only accumulate money, but also provide financing perspective investment and others business of projects. It is known that the commercial bank is a subject of business activity, the enterprise with a special legal status. Such status of commercial bank exists objectively and is caused by the fact that bank activity is an exclusive kind of activity, with special requirements of the state to subjects which carry it out (Alekseyeva D.G., Pykhtin S.V., Yurayt M., 2012, p. 155).


Analysis of latest research where the solution of the problem was initiated

In USA and European countries the research of foreign bank activity was conducted by scientists such as V. Brea (Brea A., 2017, p. 95), A. Rossignollo (Rossignollo A., 2013, p. 37), A. Morrison and W. Wilhelm (Morrison A. and Wilhelm W., 2007, p. 449). These scientists considered an entity of banks as economic category, analyzed importance of foreign bank activity in development of market economy of the country, and pointed that development of foreign bank activity depends on appropriate legal regulation.

In Poland banking activity was analyzed by A. Piotrowska, M. Polasik, D. Piotrowski, (Piotrowska A., Polasik M., Piotrowski D., 2017, p. 501-518), E. Losiewicz-Dniestrzanska (Losiewicz-Dniestrzanska E., 2015, p. 800-805) from economic point of view – efficiency of use biometric technologies in banking sector, compliance of the regulations of business by banks and other financial institutions.

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In Russia the research of essence and concept of banks and its activity was conducted by scientists such as K. Trofimov (Trofimov K., 2009, p. 123), D.G Alekseyeva, S.V. Pykhtin (Alekseyeva D.G., Pykhtin S.V., 2012, p. 155). In work of these authors the legislation on foreign banks is considered from a position of economic development.

Aims of paper. Methods

Research aim is the analysis of the provisions of bill of the Republic of Uzbekistan «On banks and banking activity», studying of distinctive features, legal regulation of foreign banks and their activity, and process making the corresponding recommendations and offers.


This thesis combines legal research methods with tools, insights and frameworks from the economic analysis of the bill of the Republic of Uzbekistan «On banks and banking activity». Article relies on a functional comparative analysis of the main types of legal forms used to organize banking activities in the legislation of the Republic of Uzbekistan. The functional method, which is ubiquitous in comparative legal studies, mainly focuses on the similarities or equivalences between old and new law, essence of banks, especially foreign banks from the point of view their activity and function. Therefore instead of the concept of foreign banks it is necessary to use the concept of foreign bank activity, as which it should be understand «implementation of bank activity by foreign bank by means of establishment of subsidiary bank, participation in authorized capital of banks or opening of the accredited representation in the territory of the Republic of Uzbekistan».

Exposition of main material of research with complete substantiation of obtained scientific results. Discussion

The Strategy of actions for further development of the Republic of Uzbekistan as the priority direction of development and liberalization of economy are concentrated on deepening of reforming and ensuring stability of a banking system, level of capitalization and a deposit base of banks, strengthening of their financial stability and reliability, further expansion of crediting of perspective investment projects (Decree of the President of the Republic of Uzbekistan, 2017 February 7). Further development of a banking system assumes improvement of legal bases. The Decree of the President of the Republic of Uzbekistan «On measures for radical improvement of activity of the Central bank of the Republic of Uzbekistan» from September 1, 2018 on the basis of deep studying of the best foreign practices, the universally recognized norms

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and standards, expert opinions of profile international financial institutions it was entrusted to Central bank to develop in the new edition and to introduce drafts of laws of the Republic of Uzbekistan «About the Central Bank of the Republic of Uzbekistan» and «On Banks and Bank Activity» to the Cabinet. On the basis of it for discussion the bill of the Republic of Uzbekistan «On Banks and Bank Activity» was exposed on June 29, 2018. The specified bill contains the following distinctive features:

Firstly, the bill provides a number of the new concepts included in the banking legislation:

banking services are the operations of bank made for the purpose of satisfaction of needs of clients;

the bank account – the account opened by bank for the client according to the contract of the bank account under which the bank undertakes to accept and enlist the money arriving into the customer account (the owner of the account), to carry out orders of the client about transfer and delivery of the corresponding sums from the account and carrying out other transactions of the account;

non-bank credit institution - the legal entity which is carrying out separate types of bank operations which admissible combinations are established by the legislation.

In turn, it was specified that bank operations are carried out only by banks.


Secondly, the bill provides what kinds of activity the bank – production, trade, insurance (except for functions of the insurance agent or broker) and other non-core activity cannot be engaged. Also banks are forbidden to participate in authorized capital of the legal entity owning ten or more percent of authorized capital of this bank. Banks have no right to own directly or indirectly (through subsidiaries) more than 26 percent of authorized capital of other legal entity (joint-stock companies).

Thirdly, the bill provides requirements to founders of bank. Founders of bank have to have faultless business and personal reputation while legal entities – founders of bank have to be financially stable. At the same time the legal nonresident persons registered in the state and the territories which are providing preferential tax regime and (or) not providing disclosure and submission of information when carrying out financial transactions and also public associations and the religious organizations, public funds, non-state non-profit organizations cannot be founders of banks.

Fourthly, the bill provides additional requirements to creation and activity of banks with participation of foreign investors (the foreign capital). Participation of foreign investors in the capital of resident bank or creation of bank by them is carried out only after obtaining preliminary permission of the Central bank. With the assistance

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of foreign investors in the capital of resident bank or creation of bank by them the Central bank has the right to request in addition documents on nonresident founders of legal entities and individuals and also other documents determined by the Central bank. In the project the matter has to be in details regulated as the specified norm is not exact, can lead to excessive bureaucratic barriers.

At consideration of the application about creation of bank in the territory of the Republic of Uzbekistan the following factors are considered: finding bank under the supervision of control body for the place of its stay and registration; credit rating of foreign bank; entry into the system of protection of deposits in the country of finding of foreign bank; an economic and political situation in the country of foreign bank (10).

Licensing to bank with founders by nonresident banks is given in case the bank of the foreign state has the right to accept on the terms of recoverability deposits and other values in the country.

Fifthly, the bill contains norms concerning creation of bank holding. The bank holding is a joint-stock company which parts are only banks. The bank holding is created on preliminary permission of the Central bank and is subject to the state registration by entering of the corresponding record into the State register of banks. The order of obtaining permission to creation of bank holding and an order of its state registration are established by the Central bank. Supervision of activity of bank holding is performed on the individual and consolidated basis. The main bank is obliged to represent consolidated – financial and statistical statements of holding. The main bank of bank holding answers for obligations of the participants within the contribution to the capital of each of them if other is not provided by the law.


Conclusions

As it is possible to notice, the bill contains a number of the innovations directed to expansion of the sphere of bank activity. However, despite the available novelty in the bill it should be considered to make the following changes and additions expedient:

1. In article 1 of the bill instead of the concept of foreign bank it is necessary to use the concept of foreign bank activity as which it is necessary to understand «implementation of bank activity by foreign bank by means of establishment of subsidiary bank, participation in authorized capital of banks or opening of the accredited representation in the territory of the Republic of Uzbekistan».

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2. For improvement of activity of foreign banks in the bill it is necessary to specify that the term of accreditation is five years and also to provide them advantages during creation of bank with the foreign capital. In this regard, it is necessary to provide norm according to which «additional requirements to establishment and activity of banks with participation of the foreign capital are not applied to foreign banks which have the accredited representations in the territory of the Republic of Uzbekistan» in the bill. Also it is necessary to regulate in details an order and the bases of request of additional documents during creation of banks with participation of the foreign capital.

3. For increase in efficiency and durability of a banking system it is necessary to provide norms concerning a possibility of application of improving measures concerning banks in the bill. For example, the legislation of a number of the countries provides similar norms. In particular, the Law of the Republic of Kazakhstan of August 31, 1995 No. 2444 «On banks and bank activity in the Republic of Kazakhstan» provides compulsory carrying out according to the decision of authorized body of a complex of administrative, legal, financial, organizational and technical and other actions and procedures concerning bank for improvement of its financial position and improvement of quality of work (preservation of bank) (9). Introduction of this norm will allow to provide stability of a banking system.


In general, adoption of law of the Republic of Uzbekistan «On banks and bank activity» will promote more detailed regulation of activity of banks and increase in efficiency of a banking system.

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