



Composing analysis of regulatory framework of microfinance institutions in CIS countries.

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Abstract

After the collapse of the Soviet Union in 1991 and the Declaration of state sovereignty by the former Soviet republics, a similar situation prevailed. These circumstances determined the formation of the market of microfinance services, but the legislator is much late with the legal regulation of social relations in this area. These circumstances determine the relevance of the topic of this work. In this work, public relations related to the provision of microfinance services in the Russian Federation, as well as in a number of CIS countries are examined. As well as to analyze the norms of the Russian legislation and legislation of the CIS on the legal regulation of activities of microfinance organizations. The purpose of this work was to conduct a comparative analysis of the legal framework of microfinance institutions in the Russian Federation and the CIS countries. With set purpose the author analyzes the concept of microfinance, is characterized by a legal and regulatory framework for microfinance activities in Russia and the CIS, comparative analysis of legal regulation of microfinance institutions in Russia and the CIS.

Keywords: co-permanent analysis, regulatory framework, microfinance, CIS, Russia.

1. Introduction

The proclamation of the Constitution of the Russian Federation, adopted in 1993, by the Russian Federation as a legal democratic state, its recognition of the rights and freedoms of man and citizen as the highest value and the inclusion among the fundamental rights and freedoms of man and citizen the right to free exercise of entrepreneurial or other economic activities not prohibited by law have become a significant step towards the formation in the Russian Federation of a market model of economic activity and the development of private entrepreneurship. These circumstances, in turn, led to an increase in demand for credit services, but the lack of development of banking institutions at an early stage of the formation of the market economy in the Russian Federation did not allow credit services to cover a significant part of citizens characterized by the lack of permanent income and collateral. It should be noted that after the collapse of the Soviet Union in 1991 and the Declaration of

state sovereignty by the former Soviet republics, a similar situation prevailed. These circumstances determined the formation of the market of microfinance services, but the legislator is much late with the legal regulation of public relations in this area, and the relevant legal acts were adopted in the Russian Federation only in the early 2010s. These circumstances determine the relevance of the topic of this work.

The object of this work is public relations related to the provision of microfinance services in the Russian Federation, as well as in a number of CIS countries.

The subject of this work is the norms of Russian legislation and CIS legislation on the legal regulation of microfinance organizations.

The purpose of this work is to conduct a comparative analysis of the legal framework of microfinance institutions in the Russian Federation and the CIS countries.

The achievement of this goal is ensured by solving

the following tasks:

- Analyze the concept of microfinance activities-
- Describe the legal framework of microfinance activities in Russia and CIS countries
- To conduct a comparative analysis of the legal regulation of microfinance institutions in Russia and CIS countries.

The achievement of the goal and the solution of the tasks is provided through the use of a number of scientific methods of cognition, including methods of comparative legal and system-structural analysis.

The normative basis for this work is the norms of the legislation of the Russian Federation and a number of CIS countries on the legal regulation of microfinance institutions.

The theoretical basis for this work is the work of a number of authors devoted to the study of the issues under consideration, including E. E. Belov, E. A. Grishin and N. H. Melnikov.

The structure of this work is based on the goal and objectives and includes in its content introduction, three chapters on the consistent solution of the tasks, conclusion and list of sources used.

2. The concept and features of microfinance organization

Initially, the category of microfinance was used to refer to financing services on the basis of the principle of return of small businesses on terms that are more affordable than those offered in the framework of business lending by large banks and banking organizations. Microfinance was considered as the methodology of the financing using the effective ways of repayment for the granting and rising of short-term loans among small businesses. Due to objective socio-economic circumstances, microfinance services have become an important component of the financial and credit system of the Russian Federation for several years, acting as an alternative to the Institute of consumer lending.¹

However, it should be noted that to date, the microcredit provided by microfinance institutions in the Russian Federation has lost its original contents, which is caused by the provision of microfinance organizations of its services primarily to individuals in that time, as these organizations provide microloans received the name of micro-loans and do not include the financial analysis of the borrower, in connection with which include almost all categories of citizens.²

In common parlance, the category of microfinance and microcredit are discussed as

identical, but objectively these are different concepts with different contents. Under the microcredit should be understood microfinance service associated with micro-credit or micro loans, whereas microfinance is to understand the activities undertaken by the entities providing microfinance services. Category of microfinance, therefore, has a broader content and includes the provision of microfinance services to subjects of small entrepreneurship, physical persons of the least financially secure segments of the population.

R.V. Grib defines microfinance as a specific financial and credit relations arising between financial institutions subject to territorial accessibility and direct contact in connection with accumulation of financial resources and their simplified provision on the principles of payment, short-term, repayment and targeted use for the development of the economy.³

In world practice, microfinance is seen as an activity whose content is a wide range of services, including:

- Micro-credit, implying the provision of a small amount of money in the form of a loan by a Bank or other credit institution. Microcredit can be secured, and without it, in both individual and group forms
- Micro savings, representing a Deposit, allowing the subject to save a small amount of money for further use
- Micro insurance, which means the system of insurance of risks of small businesses associated with their property, health or ability to work. Microlensing. The content of microlensing consists of services for leasing to small enterprises and small entrepreneurs of means of production, the possibility of acquisition of which for the full cost of these entities is not available.⁴

At the same time, micro-credit and microlensing should be considered exclusively as a form of business financing in the list of microfinance services.

The regulatory definition of microfinance in the Russian Federation established by the Federal Law of the Russian Federation of 02.07.2010 151-FZ "About microfinance performance and microfinance organizations", according to which microfinance refers to the activity of organizations having the status of microfinance organizations and other legal entities entitled to the implementation of the microfinance activity in providing micro-loans, which, in turn, refers to loans in the amount of 1,000,000 rubles.⁵

Article 3 of the Federal Law stipulates that the right to exercise of microfinance is microfinance

organizations founded and operating in accordance with this Federal law, as well as credit institutions, credit cooperatives, pawnbrokers, housing savings cooperatives and other legal entities engaged in microfinance activities in accordance with the legislation of the Russian Federation regulating the activities of these entities.

R. G., Nabih defines a microfinance organization as an institution granting to subjects of small entrepreneurship and to individuals whose access to traditional banking services limited, financial and complementary services, including counseling and training, aimed at smoothing social tensions in society, increase of level of welfare and financial support of business.⁶

The foregoing allows to conclude various existing scientific approaches to the definition of the concept and nature of microfinance and microfinance activities, in which under mikrofinansirovaniya is understood as activity on issue of credits to small size and broader in its content activities, including, along with lending, the provision of other financial, insurance and consulting services.

2. Regulatory and legal basis of microfinance activity in the Russian federation and CIS countries

The regulatory framework for the activities carried out by microfinance organizations in the Russian Federation is as follows:

Ene civil code of the Russian Federation

- Federal law of the Russian Federation of 01.12.2007 ¹315-FZ “on self-regulatory organizations»⁷

- Federal law of the Russian Federation of 02.07.2010 ¹151-FZ “on microfinance activities and microfinance organizations»⁸

- Federal law of the Russian Federation of 21.12.2013 ¹ 353-FZ “on consumer credit (loan) »⁹

- The Federal law of the Russian Federation of 13.07.2015 ¹223-FZ “ on self-regulatory organizations in the financial market»¹⁰

Bank of Russia Instructions

- Other normative act¹¹

In accordance with the Federal Law of the Russian Federation of 02.07.2010 ¹151-FZ “About microfinance performance and microfinance organizations”, the microfinance organization may be recognized as a legal entity registered in the legal form of Fund, Autonomous non-commercial organizations, except for budgetary, non-profit partnership, an

Association or an economic society.¹²

29 Dec 2015 was adopted the Federal Law of the Russian Federation from 29.12.2015 No. 407-FZ “On amendments to certain legislative acts of the Russian Federation and the annulment of certain legislative acts of the Russian Federation”, which provided for the differentiation of microfinance organizations in accordance with their level on micro-credit company and microfinance companies, as well as those that have set limits on interest accrual on short-term consumer loans to prevent borrowers from falling into debt dependence.¹³

Micro financial institution has the right to carry out micro financial activity only after entering of data on itself into the state register of micro financial organizations. The status of a microfinance organization grants its subject the following rights:

- To provide the borrowers, which may be small businesses, individual entrepreneurs and citizens of microloans in the amount of not more than 1,000,000 rubles?

- At the request of borrowers the documents and information required to resolve issues regarding the provision of a microloan and execution of obligations under the contract of microloan

- Reasoned refusal to conclude the contract of microloan

- To carry out, along with microfinance activities, other activities, taking into account the restrictions established by law, including the issuance of other loans and other services in the manner prescribed by the constituent documents of the organization and the Federal legislation of the Russian Federation

- To attract funds in the form of loans, voluntary contributions and donations, as well as in other forms not prohibited by law, taking into account legal restrictions

S to provide information about borrowers available to microfinance institutions in the credit history Bureau

Supervision of microfinance institutions is carried out by the Central Bank of the Russian Federation, under which the service for the protection of financial consumer rights and minority shareholders, as well as Rospotrebnadzor and Roskomnadzor. Since March 2014, the main Department of microfinance markets has been supervising and regulating microfinance activities in the Russian Federation.

Let us turn to the consideration of the regulatory framework of microfinance organizations in the CIS countries.

It should be noted that for most CIS countries, the concept of microfinance and microfinancial activities are relatively new and not widespread categories, which is why their legal regulation in some cases is also characterized by insufficient elaboration. For example, in Tajikistan, before the adoption of the law “on microfinance organizations” microfinance services were represented exclusively by debt operations, while activities to attract deposits were permitted only to banks. At the same time, the legislation of the Republic of Tajikistan did not contain a normative prohibition on lending by non-profit organizations. This activity was carried out within the framework of a number of international projects, the structural elements of which were micro-loans, but despite the definition of this activity as micro-credit, it should have been more about a loan agreement concluded in accordance with the provisions of articles 827 to 838 of the Civil Code of the Republic of Tajikistan, since article 839 of the Civil Code allows the issuance of loans exclusively by banks or commercial organizations.¹⁴

In turn, in the Republic of Kyrgyzstan in accordance with the law “On microfinance organizations in the Kyrgyz Republic” microfinance refers to the activity of giving microcredits by which in turn refers to money issued by micro-Finance institutions, natural or legal persons in accordance with their Charter. In addition to micro-credit operations, the act also allows for the establishment of a microfinance company with the right to attract deposits. As in the Republic of Tajikistan in the Kyrgyz Republic the legal regulation of microcredit operations depends on the type of microfinance institution. Thus, if a microfinance company, in accordance with Kyrgyz law, issues microcredits, the legal regime of which is determined in accordance with the provisions of the civil legislation of the Republic on the loan agreement, the microcredit company and the microcredit Agency issue loans, the legal regime of which, respectively, is determined in accordance with the provisions of the civil legislation of the Republic on the loan.¹⁵

The most detailed definition and features of microfinance in the legislation of the CIS countries are contained in the legislation of the Republic of Moldova. So, article 3 the law of the Republic of Moldova “on microfinance organizations” defines microfinance as the provision of microfinance services provided for by this law. The detailed definition of microfinance is given by the Moldovan legislator in article 7 of the said law, according to which microfinance is an ongoing

economic activity of a microfinance organization, the content of which is the provision and management of loans, issuance of guarantees for Bank loans and borrowings, investments and equity investments. The legislator has not included savings transactions in the list, but according to article 7, paragraph 3, of the said law, a microfinance organization is entitled to raise funds in the form of investments, loans and loans, donations and grants, as well as sponsorship contributions from individuals and legal entities both in the Republic of Moldova and abroad in order to provide microfinance services.¹⁶

The legislation of a number of CIS countries also imposes certain restrictions on the amount of credit or loan provided under microfinance. Thus, article 1 of the law of the Republic of Tajikistan “on microfinance organizations” provides that the maximum amount of micro-loan or micro-loan provided may not exceed a certain limit, but the law does not provide for a body whose subject matter of competence is the establishment of these restrictions. In practice, limit the maximum size of microloans and microcredits, shall be determined in accordance with the Instructions of the National Bank of Tajikistan No. 135 and the provisions of the National Bank of Tajikistan No. 136 and No. 137, approved by the Resolution of the National Bank of Tajikistan dated March 28, 2005, in accordance with which the maximum size provided by the borrower of microcredit or microloan may not exceed US \$ 20,000. In the case of micro lenders provide for additional requirements in accordance with which the maximum amount of credit cannot exceed 1% of total regulatory capital of the microcredit organization.

In turn, in accordance with article 1 Of the law of the Republic of Kazakhstan “on microcredit organizations” microcredit is defined as the funds provided to the borrower in the amount and in the manner determined in accordance with the said law, on the terms of urgency, repayment and payment. Article 3 of the act sets the maximum amount of a credit that cannot exceed 1,000 monthly calculation indexes, established by the legislation of the Republic of Kazakhstan on Republican budget for corresponding financial year and 25% the size of own capital of microcredit organization.¹⁷

In the Republic of Uzbekistan, the normative definition of microfinance is enshrined in the decree of the government of Uzbekistan dated 30.08.2002 1390 “on measures for the development of microfinance in the Republic of Uzbekistan”, according to which microfinance refers to the activities to provide

loans, the maximum amount of which can not exceed 3,000 us dollars. This normative act also establishes that the right to conduct microfinance activities is granted to non-profit organizations.

Restrictions on the amount of loans granted also apply to credit unions of the Republic of Uzbekistan, the procedure for the provision of financial services is determined in accordance with the Resolution of the Board of the Central Bank of the Republic of Uzbekistan ^{121-a/2} of 14.11.2002 “on approval Of the rules of credit unions of financial transactions.” According to the specified document the size of the credit provided to one borrower cannot exceed 25% of the capital of credit Union. For unsecured loans this amount is 10% of the capital of the credit Union.

Similar provisions are also contained in the legislation of the Republic of Azerbaijan. Article 20 of the law of the Republic of Azerbaijan “on credit unions” provides that the amount of the provided credit may not exceed 10 times the size of the unit and 10% of the own funds of the mutual credit Fund.

In accordance with the above, it is possible to formulate the following main conclusions.

Legal regulation of microfinance activities in the CIS in similar legal regulation of microfinance activities in the Russian Federation, however, there are some differences. First of all, attention is drawn to the different approach of the legislator to determining the maximum amount of a loan or a loan provided under microfinance — if in the Russian Federation this amount is expressed in a firm amount, then a number of CIS countries define it as a certain percentage of equity microfinance or microcredit organizations.

The approach of the legislator to the definition of microfinance activity in the CIS countries as a whole is similar to that typical for Russian legislation. At the same time, a number of CIS countries do not provide for the participation of commercial organizations in microfinance activities.

Finally, noteworthy is the fact that the legislation on microfinance the majority of CIS countries, defines microfinance activities exclusively as the activity of giving loans, not including in its definition the raising of Finance. The only exception is the legislation of the Republic of Moldova.

3. Comparative analysis of the regulatory framework for microfinance activities in the Russian federation and CIS countries

The above discussed the basics of legal regulation of microfinance institutions in the Russian Federation

and a number of CIS countries. The analysis of approaches to regulatory and legal regulation of microfinance services in the framework of their study allowed to formulate the following main conclusions.¹⁸

In most of the States CIS members, the microfinance activity is defined as the provision of services. Thus, article 1 of the law of the Republic of Kyrgyzstan “on credit unions” establishes the right of the credit Union to provide financial services without, however, revealing their content. In the Republic of Tajikistan, in turn, the Tax Code refers to financial services as credit transactions, Deposit and account management, transactions related to the circulation of currency and other legal means of payment and transactions related to the circulation of shares. The literal interpretation of the given norm allows to formulate a conclusion that in Tajikistan the legislator considers banking services as a structural element of financial services, without referring to financial services activities of microfinance institutions .

In most CIS countries, microfinance is defined as efforts to provide the borrowed funds. The attraction of financial resources is not part of this concept, which obviously hinders the involvement of the population in microfinance activities and hinders the development of the analyzed sector of the economy.

In most CIS countries, legislation does not contain a complete list of legal tools and methods required for the regulatory framework for microfinance services. In all member States of the CIS regulatory framework of microfinance institutions includes provisions on banks and banking activities, however, in respect of microfinance activities, the legislation of the CIS is characterized by the presence of a significant number of limitations and gaps.

The main problem of the legislation of the CIS on the activities of microfinance institutions should be recognized, first of all, the lack of elaboration of regulations that allow the development of various organizational and legal forms of microfinance organizations, as well as the lack of a regulatory mechanism for some forms of microfinance institutions to others.

Also in the member States of the CIS in different ways the issue concerning the implementation of state control in relation to the activities of microfinance organizations. Despite the existing rules on mandatory licensing of microfinance institutions in a number of States, the licensing procedure, as well as the requirements imposed on the licensee, do not actually differ from those imposed on banks. At the same time, for microfinance institutions, these restrictions are

excessive due to the specific nature of microfinance activities, which also clearly has a negative impact on the development of small and medium-sized microfinance organizations. It seems that in market conditions the main objective of the legislator is to create conditions for the development of the initiative of private economic entities, which involves the introduction of the market of microfinance services of different forms of microfinance institutions, differing in both the list of their operations, and their volume.

Ensuring the financial stability of microfinance institutions, as well as protecting the interests of their depositors, requires the introduction of a system of state control over financial transactions conducted by microfinance organizations. The solution of this problem is provided by introduction of the obligatory standards establishing the corresponding indicators of financial stability of the organization and the order of their calculation. At the same time, as the comparative analysis of the CIS legislation allows us to state, the legislator in different countries applies directly opposite approaches, involving either the establishment of an excessive list of standards similar to those envisaged for banks, or their complete absence, which also seems unreasonable.

Finally, for the majority of the CIS member States, the issue of delineation of banking and microfinance services is relevant. Additional complications arise in practice in the case of legal regulation of microfinance services activities on the basis of provisions applicable to Bank Deposit and loan agreements.

4. Conclusion

In accordance with the results of the comparison and comparison of the legislation of the Russian

Federation and a number of CIS member States on the activities of microfinance institutions, it is possible to formulate the following main conclusions.

Microfinance activities is a broad content category, which would include micro-Finance and microcredit. Microfinancing should be understood as the activities carried out by entities authorized by the law to provide loans in small amounts, as well as other financial, consulting and insurance services. The purpose of microfinance should be recognized as the provision of funds on the terms of urgency, repayment and payment to legal entities, individual entrepreneurs and individuals who, for one reason or another, cannot act as a subject of traditional credit and banking relations.

The regulatory framework for microfinance in the Russian Federation is the Federal Law of the Russian Federation dated 02.07.2010 ¹131-FZ “on microfinance activities and microfinance organizations”, which defines the concept and content of microfinance activities, establishes the legal status of a microfinance organization, establishes the binding nature of its state registration and regulates a number of other social relations arising in connection with the implementation of microfinance activities.

Comparative analysis of legislation of several States-members of CIS on microfinance activity allowed to formulate the conclusion that, owing to the comparative novelty of the category of micro-financing for member States of the CIS, the laws of most CIS countries is characterized by the presence of a significant number of limitations and gaps that negatively affect the development of the microfinance market.

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Footnotes

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