New Banking Legislation in Russia: Theoretial Adequacy, Practical Difficulties, and Potential Solutions

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INTRODUCTION

A key element to the successful realization of economic perestroika (restructuring) in a former socialistic state such as Russia is an effective financial system. The main step in achieving this goal is the creation of a well-functioning two-tier competitive banking system wherein a central bank focuses on regulating overall credit and interest rates, while newly established commercial banks assume the responsibility of deposit and loan transactions with businesses and households. Russia attempted to create such a banking system through the introduction of new banking legislation in 1990. Due to the difficulties of the present economic and political situation in Russia, however, even a well-written law does not ensure a productive and efficient system.

This Note explores in detail the new Russian banking legislation and its impact upon the Russian economy. Part I examines the adequacy of these new banking laws in creating, in theory, a foundation for an efficient banking system. Part II outlines the practical challenges that face the new banking legislation. Part III offers possible solutions to these problems. This Note concludes that Russia must put into practice the proffered solutions to the problems encountered with the practical application of the new banking laws if it is to achieve a banking system capable of sustaining steady economic growth.

I. THE THEORETICAL ADEQUACY OF THE NEW RUSSIAN BANKING LEGISLATION

Creation of a new legal banking framework is the most important task in creating a well-functioning competitive banking system in Russia. The legal foundation of the old Soviet banking system was traditionally very weak. The former Soviet regime did not restrict itself by legal rules and used banks for its own political purposes. The introduction of the Central Bank Law and the new Commercial Banking Law (collectively the

1. See V. Sundararajan, Central Banking Reforms in Formerly Planned Economies, Fin. & Dev., Mar. 1992, at 10, 11. Russia has only a national banking system, unlike the United States, which has a co-existent national and state banking system.
4. On Banks and Banking in the RSFSR (1990) (Committee on Foreign and Com-
“laws” or the “new legislation”) on December 2, 1990, marked the beginning of Russia’s market-based financial system. These laws created a two-tier banking system by separating the Central Bank’s operations from commercial banking functions. The new legislation has two objectives: (i) to establish a genuinely independent central bank; and (ii) to provide this central bank with the means both to supervise and regulate newly created commercial banks and to conduct monetary and credit policy.

A. Establishment of an Independent Central Bank

The proclaimed independence of the Central Bank of Russia is one of the principal features of the new legislation. The laws hold the Bank of Russia accountable to the Russian Supreme Soviet, but independent of the executive and administrative bodies of the Russian government. This provision, though comparatively less drastic than Germany’s Bundesbank Act, for example, is a major innovation for Russia. The Central Bank has become independent from the executive government’s control for the first time since the establishment of a state bank 130 years ago.

Prior to the enactment of the new banking legislation, existent laws defined the Gosbank as a “subordinate body” of the government. The Minister of Finance had the power to give directives to the Gosbank’s Chairman of the Board on behalf of the government. Furthermore, the old rules prescribed the selection of the Chairman of the Board of the Gosbank from among the former vice-ministers of finance.

To ensure the independence of the Central Bank and to do away with the old order, the new legislation requires the Supreme Soviet, not the executive branch, to nominate the Central Bank’s Chairman of the Board of Directors. This nomination is for a term of five years, while the

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5. There were no legislative acts of such kind throughout the whole Soviet history. See Kazmin, supra note 2, at 114.
6. This Note shall refer to the Central Bank of Russia as the Bank of Russia or the Central Bank.
8. See Central Bank Law, supra note 3, art. 1.
10. See Kazmin, supra note 2, at 114.
11. The Gosbank performed the functions of a central bank in the former Soviet Union.
12. See Kazmin, supra note 2, at 114.
13. See id.
parliament and the President of Russia are elected for four years. Indeed, the exclusive rights of the Supreme Soviet to appoint and to dismiss the Chairman of the Board of Directors have already safeguarded the top bankers during and after the August 1991 coup. When the provisional government dismissed the Chairman of the Central Bank as part of the coup, the action was rapidly acknowledged to be illegal; shortly thereafter, the Chairman returned to his duties.

For the first time, the laws distinctly define the functions of the Central Bank as the fiscal agent of the government. Before 1991, the Central Bank frequently financed the budget deficit through direct loans to the Ministry of Finance. These loans were given "without any kind of collateral, at zero-interest rates and with unlimited period of repayment." In contrast, the new legislation establishes a maximum allowable debt limit for the Ministry of Finance. Moreover, the laws mandate that the Bank of Russia extend loans to the Ministry only on general terms, the same as for all other borrowers, thereby removing all of the Ministry's former privileges in obtaining credit. Such loans may be extended for a maximum of six months and require appropriate collateral, such as state bonds, promissory notes, and other securities.

In an effort to prevent the traditional Soviet government practice of financing budget deficits by printing money and appropriating savings from the state banking system, the laws expressly prohibit the emission of money for the purpose of directly financing Russia's deficit. Furthermore, the Central Bank must draw up an annual directive on money supply for the Supreme Soviet's approval. Through these requirements, then, the laws create, at least in theory, a truly independent Bank of Russia.

B. Organization, Regulation, and Supervision of the Commercial Banks in Russia under the New Banking Laws

Although the foregoing measures are very important, they alone cannot ensure the Central Bank's actual independence. In order to safeguard its newly acquired status, the Bank of Russia must promote an independent monetary and credit policy. Such a policy had been impos-

15. See id.
16. See Kazmin, supra note 2, at 114.
17. The Supreme Soviet may dismiss the Chairman of the Board of Directors only in the event of retirement, serious illness, or inability to execute his duties. See id. at 114-15.
18. See id.
19. See Central Bank Law, supra note 3, art. 17.
20. Kazmin, supra note 2, at 115.
22. See id.
23. See id.
24. See id.
25. See id. art. 11.
26. See id. art. 13.
sible to implement under the prior relationships between the Central Bank and commercial banks. "The whole banking framework has to be replaced by a new one, where traditional administrative pressure on banks would be replaced by the skilled regulation of the banking business, based on world-wide accepted methods and instruments."\textsuperscript{27} In an effort to create such "skilled regulation," the laws deal extensively with the relationship between the Bank of Russia and commercial banks.

1. The Organization of a Commercial Bank under the New Legislation

Under the new legislation, a commercial bank may operate only in accordance with an appropriate license issued by the Central Bank, which lists the services that a bank may perform.\textsuperscript{28} This provision is in accordance with Western practice, particularly Swiss banking law.\textsuperscript{29}

The laws provide for a relatively simple application process. The Bank of Russia processes applications for bank licenses and must act on them within three months of receipt of all the necessary documents.\textsuperscript{30} Founders of a commercial bank must furnish the Central Bank with a license application, constituent documents, an economic substantiation, and personal data about the bank’s management.\textsuperscript{31}

For the first time, anyone, including foreigners, may set up a commercial bank. To create a foreign bank,\textsuperscript{32} the following additional documents must be submitted:

\begin{enumerate}
\item [(1)] a resolution by the relevant authority of the foreign founder (partner) on participation in the establishment of a bank within [Russia] or on the opening of a subsidiary; 
\item [(2)] the statutes or some other document confirming the status of the legal entity and its published balance sheets for the past three years; and 
\item [(3)] a written approval issued by a supervisory authority of the home country of the founder (partner) regarding participation in the establishment of a bank within [Russia] or the opening of a subsidiary.\textsuperscript{33}
\end{enumerate}

\begin{footnotes}
\item 27. Kazmin, supra note 2, at 115.
\item 28. See Central Bank Law, supra note 3, art. 23; Commercial Banking Law, supra note 4, art. 11.
\item 29. See Peter Nobel, Rules of Conduct for Swiss Banks, in Trends and Forces in International Banking Law 83, 87 (Boston University ed., 1990).
\item 30. See Commercial Banking Law, supra note 4, art. 16.
\item 31. See id. art. 12. The concept "constituent documents" includes "articles of incorporation, the bank’s statutes, resolution of the approval of the statutes and designation of the bank’s administrative bodies." Id. "Economic substantiation" means "the statement of an independent auditing firm assuring the solvency of the members of the bank’s charter . . . ." Kazmin, supra note 2, at 116. "Personal data about the bank’s management" means "the confirmation of professional skills of the members of the board of directors of the new bank." Id.
\item 32. The concept of a “foreign bank” includes “a bank with the involvement of Soviet and foreign capital, a foreign bank, or a subsidiary of a non-resident bank.” Commercial Banking Law, supra note 4, art. 13.
\item 33. Id.
\end{footnotes}
The Central Bank requires license applicants to provide these documents in order to ensure: (1) that the bank's articles of incorporation and statutes do not violate any Russian laws; and (2) that the bank's founders have adequate financial standing.\(^{34}\) The Bank of Russia may refuse to grant a banking license if one or both of these requirements are not satisfied.\(^{35}\)

Russia appears ready to open its financial markets to the rest of the world. The new laws do not restrict foreign ownership of banks in any way other than the Central Bank's right to establish additional requirements regarding the minimum and maximum amount of required statutory capital.\(^{36}\)

The laws require that the funds of at least three founders of a bank, regardless of whether they are individuals or corporate entities, form the statutory capital of a bank.\(^{37}\) Read expansively, this provision would allow money to flow from the state budget, political groups, or public charity funds into the starting capital of a newly founded bank, thus undermining the declared independence of banks from government.\(^{38}\) To guard against this risk, the laws expressly prohibit the use of these financial sources in the establishment of a bank's capital.\(^{39}\) Furthermore, to ensure a commercial bank's newly-acquired political independence, the laws prohibit government and state officials from working as part of a bank's management.\(^{40}\)

In addition to issuing general banking licenses, the Bank of Russia may issue special licenses that allow commercial banks to carry out foreign exchange transactions.\(^{41}\) The Central Bank also has the right to withdraw a banking license when a commercial bank: (1) provides false information; (2) fails to commence activities within one year following the issuance of the license; (3) conducts operations not authorized by the license; (4) otherwise breaches a trust as stipulated by the law; (5) breaches anti-monopoly regulations; or (6) declares bankruptcy.\(^{42}\)

Thus, in theory at least, the new legislation provides the Central Bank with sufficient power to ensure that commercial banks are organized in accordance with the new legislation and the laws of the Russian Federation.

2. Regulation and Supervision of a Commercial Bank

The new legislation defines the principles governing the Bank of Rus-

\(^{34}\) See id. art. 17.
\(^{35}\) See id.
\(^{36}\) See id. art. 14.
\(^{37}\) See id. art. 10.
\(^{38}\) See Kazmin, supra note 2, at 116.
\(^{39}\) See Commercial Banking Law, supra note 4, art. 10.
\(^{40}\) See id. art. 8.
\(^{41}\) See id. art. 35; Central Bank Law, supra note 3, art. 21.
\(^{42}\) See Commercial Banking Law, supra note 4, art. 18.
Russia's relations with commercial banks. The laws require the Central Bank to promote the creation of favorable conditions for stable performances by banks but prohibit the Bank of Russia from interfering in banks' daily operations.\footnote{See Central Bank Law, supra note 3, art. 22.} The independence from such interference greatly contrasts with Russia's prior tradition of regulating every aspect of banks' activities. The new legislation also maintains that "the Bank of Russia shall . . . exercise regulatory functions with regard to and supervision of banks with the aim of maintaining stability of [the] monetary and loan system."\footnote{Id.}

Moreover, the laws now provide for equality of legal rights between resident and non-resident banks, which the Bank of Russia must ensure.\footnote{See id. art. 18.} This provision is rather controversial in light of the different approaches to this issue taken by Western banking laws: some countries have similar provisions, while others heavily restrict activities by foreign banks.\footnote{46. The Korean, Swiss, American, and German banking laws have similar provisions; however, Mexico, Canada, and Japan greatly restrict the activities of foreign banks. See Wendt, The Role of Foreign Banks in International Banking, in Michael P. Malloy, The Regulation of Banking: Cases and Materials on Depository Institutions and Their Regulators 821, 821-28 (1992).}

Similar to the existing banking regulations of many developed countries,\footnote{Countries where the central bank sets the economic norms for commercial banks include Italy, Japan, Korea, and Venezuela. See Wendt, supra note 46, at 823-25, 829.} the Russian banking laws prescribe certain financial norms which have to be fulfilled by every commercial bank.\footnote{See Central Bank Law, supra note 3, art. 24; Commercial Banking Law, supra note 4, art. 24.} The norms include: (1) a minimum statutory capital requirement; (2) a maximum equity ratio with due assessment of risks; (3) liquidity rates; (4) a minimum amount of statutory reserves to be deposited with the Bank of Russia; (5) maximum risks allowable for one borrower; (6) limitations of hard currency and exchange rate risks; and (7) restrictions on the use of borrowed deposits for the purchase of shares belonging to legal persons.\footnote{See Central Bank Law, supra note 3, art. 24.}

The laws also provide, if Russia's economic situation so requires, that "[t]he Supreme Soviet . . . upon representation by the Bank of Russia, may establish other economic norms and rates . . . ."\footnote{Id.} This provision gives the Bank of Russia flexibility to conform its regulations to Russia's rapidly changing economic conditions.

In order to ensure compliance by commercial banks with these financial norms and other Russian laws, the new legislation provides a legal framework for the supervision of the banks by the Bank of Russia. Many other countries give their central banks the power to supervise the banking system. Some, however, invest this responsibility in other agencies or
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make no provision for the supervision of commercial banks.\(^{51}\) The new legislation enables the Central Bank itself to verify commercial banking operations or to entrust this task to auditing organizations.\(^{52}\)

The new legislation contains provisions that require the Bank of Russia to prescribe the types of materials and deadlines for submission of accounting and statistical reports required for supervisory purposes. It also requires the Central Bank to establish a single procedure governing bank accounting, reporting, and business transactions.\(^{53}\)

The Central Bank also may issue binding instructions to banks requiring them to remove violations of either Russian laws or established financial standards.\(^{54}\) The Bank of Russia may impose serious disciplinary measures when banks: (1) fail to fulfill its orders; (2) violate established financial standards that result in losses for banks and their clients; (3) fail to submit reports or submit false or misleading accounting data; (4) present year-end accounting reports that bear evidence of losses and ensuing damage to the interests of depositors and lenders; or (5) commit other regular infringements.\(^{55}\) The Central Bank may take one or more of the following actions to remedy these situations: (1) carry out a reorganization of the bank, including enlargement of its capital and modification of the structure of its assets; (2) restructure the bank; (3) replace the bank's executives; (4) impose fines on the violators; (5) increase the size of statutory reserves for banks that fail to observe established financial standards; (6) appoint a provisional administration to run a bank during the period required for its reorganization; or (7) rescind the banking license, which is tantamount to liquidation of the bank.\(^{56}\)

In general, this close regulation and supervision of Russian banks is similar to the United States' banking system.\(^{57}\)

\(^{51}\) For example, in Spain, the Republic of Korea, Singapore, see Wendt, supra note 46, at 825, 826-27, Czechoslovakia, and Poland, see Bank Restructuring in Central and Eastern Europe: Issues and Strategies, Fin. Market Trends, Feb. 1992, at 15, 25, the central bank or an analogous body supervises the activities of commercial banks. However, in the United Kingdom, the central bank does not formally supervise banks, and in Hong Kong neither the central bank nor any supervision of the banking system exists at all. See Wendt, supra note 46, at 823, 828. Hungary regulates its banking system by the “State Banking Supervision” agency, which is subordinate to the government. See Bank Restructuring in Central and Eastern Europe: Issues and Strategies, Fin. Market Trends, Feb. 1992, at 15, 25.

\(^{52}\) See Central Bank Law, supra note 3, art. 30.

\(^{53}\) See id. arts. 31-32; Commercial Banking Law, supra note 4, arts. 42-43. The purpose of these provisions is purely procedural: they ensure an efficient and smooth-running supervisory system.

\(^{54}\) See Central Bank Law, supra note 3, art. 33.

\(^{55}\) See id.

\(^{56}\) See id.

\(^{57}\) See Michael P. Malloy, The Regulation of Banking: Cases and Materials on Depository Institutions and Their Regulators 830 (1992). In the United States, “the approach has been one of relatively close oversight of the banking system, including maintenance of public confidence and stability by the establishment of stricture on industry structure (e.g., entry, competition, products) and operations (e.g., capital adequacy, lending limits, liquidity, interest rates).” Id.
C. The Central Bank's Regulation of the Monetary and Credit System under the New Banking Laws

One of the most important functions of the Central Bank is the implementation of a single federal monetary and credit policy. The Russian laws, similar to the laws of many other nations,\(^58\) recognize this objective and give the Bank of Russia the legal authority necessary for implementing such a policy.

Under the new banking laws, the Bank of Russia determines its monetary and loan policy and defines it in the Basic Guidelines for Monetary and Credit Regulation.\(^59\) The laws provide that "[t]he Bank of Russia shall be the authority that regulates the monetary and lending activity of the republic, and the volume and the structure of the money mass in circulation."\(^60\)

The new legislation provides a legal framework for the organization of the monetary circulation in the country according to the Central Bank's policy. The Bank of Russia shall "conduct emission and withdrawal of money from circulation [in] the territory of [Russia]."\(^61\) In order to perform this function, the Central Bank has the power (1) to issue currency; (2) to establish rules governing transportation, storage, custody, and collection; (3) to set up reserve funds; and (4) to decide on the principles and procedure for determining the validity, exchange, and destruction of damaged paper currency.\(^62\) The laws also provide other necessary means of conducting monetary policy and loan regulation. These include determining the size of the mandatory reserves and loan interest rates, prescribing economic rates for banks, and effecting transactions with securities.\(^63\)

Formerly, Gosbank arbitrarily set banks' interest rates, which were mostly used for accounting purposes.\(^64\) Under the new legislation, the Central Bank regulates interest rates by changing the rates for loans made to commercial banks in order to encourage investment activities.\(^65\)

In terms of regulating the foreign aspect of the monetary and loan system, the Bank of Russia has the power to: (1) regulate the ruble exchange rate with regard to foreign currencies;\(^66\) (2) license banks to conduct operations in hard currency in Russia and abroad; (3) impose

\(^{58}\) Countries where a central bank regulates the monetary and credit system include Japan, Spain, Singapore, see Wendt, supra note 46, at 824, 826-27, and Czechoslovakia, see C.S.F.R. Central Bank Made Independent of Federal, Republic Governments, BNA, Mar. 5, 1992, available in LEXIS, Nexis Library, BNAIFD File.

\(^{59}\) See Central Bank Law, supra note 3, art. 13.

\(^{60}\) Id.

\(^{61}\) Id. art. 11.

\(^{62}\) See id. art. 12.

\(^{63}\) See id. art. 13.


\(^{65}\) See id.

\(^{66}\) See Central Bank Law, supra note 3, art. 19.
limitations on the volume of loans attracted by banks from foreign sources; and (4) restrict interest rates within the framework of a single federal monetary and loan policy.67

Thus, the new banking laws recognize the paramount role of the Central Bank as a regulator of the monetary and loan system and provide the legal framework to carry out this function.

D. Protection of Bank Customers

The drafters of the new legislation recognized the need to sufficiently protect customers.68 The Bank of Russia achieves this objective by establishing statutory reserve requirements, which act as a guarantee of commercial banks' obligations.69 The Central Bank also may create insurance funds for each bank to compensate customers for possible losses attributable to the bank.70 The incomes of the appropriate banks establish these insurance funds.71 The laws expressly require the banks to maintain their insurance and statutory reserves.72

The new legislation, recognizing the importance of protecting bank customers, introduces this goal into the Bank of Russia's powers as a licensor of the commercial banks. The Central Bank may refuse to grant a banking license in case of "inadequate financial standing of the founders . . . which poses a threat to the interests of the bank's depositors and creditors."73 The Central Bank also may withdraw a banking license where the bank's year-end accounting report shows losses and damage to the interests of bank customers.74

In addition to providing protection against losses, the new legislation protects customers' legal rights. Banks have an obligation "to keep confidential all information pertaining to operations, accounts and deposits of the bank, its clients and correspondents."75 The laws provide only limited exceptions to the duty of confidentiality and authorize bank officials to disclose information solely to courts of law and arbitration, investigatory bodies, and organizations that are authorized by law to receive confidential information.76 They also establish a special procedure which must be followed when monies and other property of bank customers are seized or levied upon.77

The new legislation concentrates specifically on the protection of personal deposits and provides that "depositors shall be free to choose at

67. See id. art. 21.
68. See id. art. 5.
69. See Commercial Banking Law, supra note 4, art. 10.
70. See Central Bank Law, supra note 3, art. 29.
71. See id.
72. See Commercial Banking Law, supra note 4, art 24.
73. Id. art. 17.
74. See Central Bank Law, supra note 3, art. 33.
75. Commercial Banking Law, supra note 4, art. 25.
76. See id.
77. See id. art. 26.
their discretion a bank to keep their money and may have savings deposits at one or several banks.”78 In addition, banks must provide depositors with documentary confirmation of a receipt of a deposit.79 According to the laws, “banks shall be obliged to ensure” the safety of the money accepted from individuals and “timely fulfillment of obligations toward their depositors.”80

In summary, the laws have created a two-tier banking system by separating the operations of the Central Bank from commercial bank functions. The laws provide the legal foundation to support the Central Bank’s independent status. Under the new legislation, the Central Bank has sufficient powers to regulate and supervise the commercial banks and to ensure compliance with this legislation and other Russian laws. The new legislation also creates a legal mechanism for regulating the monetary and loan system and gives the Central Bank the power to conduct this important function.

This new legislation also recognizes the importance of protecting the interests of commercial bank customers and provides the legal means to effect this protection. Thus, the new Russian banking laws appear adequate, at least in theory, to create a well-regulated competitive banking system. In the present economic and political situation in Russia, however, the new legislation does not work well in practice.

II. Problems With the Practical Application of the New Banking Laws

Even though the new banking laws are adequate in theory, major practical problems exist. These practical difficulties must be addressed and overcome in order for Russia to build an effective banking system.

A. Independence and Accountability of the Central Bank

The new banking laws provide a legal basis for the independent status of the Bank of Russia.81 Under the laws, the Bank of Russia is accountable to the Supreme Soviet and is independent of the executive and administrative bodies of state power.82 In reality, however, external pressures influence the Central Bank’s independence. Political pressure from the executive branch and especially the President of the Republic, which collectively hold the greatest amount of power in the Russian government, often dictates the actions of the Central Bank; sometimes this pressure even causes the Central Bank to act in direct conflict with its stated purposes.83 For example, the new legislation seeks to stop the traditional

78. Id. art. 38.
79. See id.
80. Id. art. 39.
81. See supra notes 6-26 and accompanying text.
82. See Central Bank Law, supra note 3, art. 1.
practice of financing the budget deficit through direct loans from the Central Bank. The Bank of Russia, however, continues to finance government deficits. In addition, in December 1992, President Yeltsin issued a decree that made the Chairman of the Bank of Russia a member of the government. This edict directly contradicts the provisions of the banking laws and makes the Central Bank even more susceptible to pressure by the executive branch.

Influence from the executive branch is also the reason for the difficult relations between the Central Bank and the Supreme Soviet. In Russia's present political situation, the executive and legislative branches often conflict, and each possesses different views on the conduct of the country's financial policy. Due to executive pressure, the Bank of Russia ignores the directives of the Supreme Soviet even though it is required to act in accordance with such decisions: "the leadership of the Bank of Russia systematically refuses to fulfill the decisions of the ... Supreme Soviet and its Presidium. The latest example is the resolution of the Presidium of the Supreme Soviet on providing credits for shipments of goods to regions of the Far North ...." The Central Bank has ignored this decision refusing to provide the credits.

The Bank of Russia also consistently violates the procedural provisions of the laws, which were to give the Supreme Soviet power to control the activities of the Bank. The laws, for example, stipulate that the Bank of Russia shall prepare an annual report containing an analysis of the state of the republic's financial system and a review of the Bank's transactions, including profits and losses. The report is especially important as a way of checking the efficiency of the Bank of Russia, which is completely exempt from taxation. The Central Bank, however, did not present the 1990 report for the Supreme Soviet's confirmation. It also failed to comply with the statutory requirement to publish its

84. See Central Bank Law, supra note 3, art. 1; see also supra notes 25-26 and accompanying text.
85. See The New Central Banks, supra note 83, at 20.
87. For example, the Supreme Soviet tries to prevent the invasion of foreign capital into Russia, while the executive actively encourages this process. See Valeri Vizutovich, Visa d'a Dollar: Kto Zashitit Inostrannie Kapitali v Rossii [Visa for Dollar: Who Will Protect Foreign Capitals in Russia], Novoye Russkoye Slovo, Dec. 22, 1992, at 5.
89. See id.
90. See Central Bank Law, supra note 3, art. 8.
91. See id. art. 9.
The Central Bank's noncompliance with the procedural provisions of the banking laws represents a clear unwillingness to be controlled by the Supreme Soviet in its financial and management operations. This is so because, as a result of the executive branch's influence, the Bank's activities may run counter to the policies of the Supreme Soviet. Thus, despite the new legislation's establishment of an adequate legal basis for independence and accountability of the Central Bank, the Bank is constantly pressured by political power and far from independent. It systematically refuses to fulfill the decisions of the Supreme Soviet and to comply with procedural provisions of the laws, thereby destroying the Bank's accountability as envisioned by the banking legislation.

B. Organization, Supervision, and Activities of Commercial Banks

The new banking legislation authorizes the Central Bank to supervise the organization and activity of the commercial banks "with the aim of maintaining stability of the monetary and loan system." Due to the limited technology available in present-day Russia, however, the Bank of Russia has tremendous difficulty performing this function.

The introduction of new equipment and technology has not kept pace with either rapid developments in the banking system or the rapid growth in the number of banks. Few commercial banks have computerized accounts or services. Often, banks display facsimile machines and computers strictly for show. Due to the lack of training, "it's not uncommon for technical employees to while away the day muddling unaided through data base and spreadsheet applications, trying to get the software to work." A realistic accounting and bookkeeping system does not exist in Russia. There are not enough people working in banks because "the accountant/bookkeeper has little prestige and earns less than half the salary of an engineer or economist." Additionally, most of the bankers have no adequate training or education: "[Russian]
accounting is really no more than a bookkeeping system managed by low-level retired women and [i]nexperienced new graduates of technical schools.”¹⁰¹

The effect of these problems on the practical application of the new legislation is enormous. For example, the laws require the Bank of Russia to process applications for banking licenses.¹⁰² In practice, “there are neither the staff nor the computers to more than rubber stamp the applications.”¹⁰³ The Bank of Russia is also unable to ensure that banks’ statutes and articles of incorporation do not contradict the laws of the country and that the founders’ financial standing does not pose a threat to the banks’ future customers as required by the laws.¹⁰⁴ As a result, banks violating the laws or having inadequate financial resources are likely to receive licenses. This may damage the legitimacy of the banking system and harm customers who stand to lose their life-savings due to the banks’ insufficient capital and improper activities.

The Central Bank also has a problem adequately supervising commercial banks’ activities as required by the banking laws.¹⁰⁵ The Bank of Russia has neither sufficient regulators to deal with the large number of new banks nor computers and experience to process and analyze the information given to it by the banks.¹⁰⁶ The same problems exist at the commercial banking level and, as a result, the banks are unable to provide the Central Bank with the required statistics.¹⁰⁷ Consequently, the Bank of Russia cannot verify commercial banking operations.

The Central Bank’s inability to give binding instructions to the commercial banks, despite its apparent power under the new banking legislation, further complicates the situation.¹⁰⁸ “[F]ew people know what is permitted and what is not because of the speed at which new decrees on banking and currency regulation are passed.”¹⁰⁹ Moreover, the shortage of resources and information prevents the Central Bank from knowing whether banks have transgressed any regulations. Even if the Bank of Russia notices violations, it cannot adequately prevent them. “Bankers have adopted a ‘Go on then, arrest me’ attitude [with] the regulators.”¹¹⁰ Arrests have only occurred in cases where banks grossly violated tax or foreign exchange laws.¹¹¹

As a result of the Bank of Russia’s inability to verify bank operations

¹⁰¹. Id. at 115.
¹⁰². See Commercial Banking Law, supra note 4, arts. 15-17.
¹⁰⁴. See Commercial Banking Law, supra note 4, art. 17.
¹⁰⁵. See Central Bank Law, supra note 3, art. 30; see also supra notes 43-57 and accompanying text.
¹⁰⁶. See Brady, supra note 103, at 20.
¹⁰⁸. See Central Bank Law, supra note 3, art. 33.
¹⁰⁹. Brady, supra note 103, at 20.
¹¹⁰. Id.
¹¹¹. See id. “One example reported in the Russian media involved a co-operative bank trying to sell for dollars more rubles than theoretically existed in circulation.” Id.
and to issue appropriate binding instructions, the adequate supervisory system so well framed in the banking laws does not exist in practice. This undermines the Bank of Russia's ability to achieve the laws' goal of maintaining stability of the monetary and loan system.\footnote{112. See Central Bank Law, supra note 3, art. 22.}

Another important problem facing the Russian banking system is the inability of commercial banks to determine adequately the creditworthiness of their potential borrowers. While the laws allow banks to extend credit,\footnote{113. See Commercial Banking Law, supra note 4, art. 5.} this activity is very risky in practice because of technological limitations. Businesses have no records showing their creditworthiness.\footnote{114. See Russian Banks: Overgrown and Underfinanced, Economist, July 18-25, 1992, at 84, 85.} Due to inexperience, many new companies overestimate their future earnings.\footnote{115. See Barbanel & Mailliet, supra note 64, at 156.} In addition, the banks have no experience in evaluating the vitality of businesses.\footnote{116. Id.} Monitoring a loan's performance, once it is made, also becomes difficult. The combination of these factors makes the lending activities of the commercial banks very risky. The ownership structure of the banks increases this risk. Many non-financial businesses set up banks in order to provide loans to themselves.\footnote{117. See id.} Thus, the potential for insider lending abuse is tremendous.

As a result of these problems, banks often lose the money they have lent. Banking laws provide some measures that can be used against insolvent debtors,\footnote{118. See Brady, supra note 103, at 19.} but since bankruptcy concepts are so new and vague in Russia, it is almost impossible to sue defaulters.\footnote{119. See Commercial Banking Law, supra note 4, art. 34.}

The fact that many banks fund their loans through the interbank market further complicates the situation.\footnote{120. See Russian Banks: Overgrown and Underfinanced, supra note 114, at 85.} Thus, "[a] collapse at one institution would rapidly spread through other banks' balance sheets—30% of which comprise interbank loans."\footnote{121. Id.} This, in turn, could cause serious political problems because part of the banks' funds are deposits "from Russian mattresses" or loans from Sberbank (the old state savings bank), where most people still keep their money.\footnote{122. Id.} Citizens from former command economies do not immediately understand the concept of risk/reward.\footnote{123. See id.} "[T]he equation of free markets with the loss of their life savings could alter [the Russian people's] views of reformers. A widespread banking crisis [brought about by the technical problems in a credit system.] could be the catalyst for a crackdown."\footnote{124. Id.}

The new banking legislation creates many new banking instruments
and activities necessary for a successful banking system. For example, the laws introduce for the first time the use of checks and other payment instruments for banking purposes in Russia.\textsuperscript{125} Due to the lack of experience and equipment, however, "[t]here is only the must [sic] rudimentary payment system in place. There are . . . virtually no checks, and wire transfers take four to six weeks to complete."\textsuperscript{126} The laws also allow the banks to "provide broker and consultancy services,"\textsuperscript{127} but, for the same reasons, the commercial banks are unable to engage in these businesses.

Russia's technological limitations make it almost impossible to implement successfully the provisions of the new banking legislation that deal with organization, supervision, and activities of the commercial banks. As a result, great difficulties in achieving a successful financial system threaten to break down Russia's whole process of reform.

C. The Independence of Commercial Banks

The new banking legislation has given commercial banks political independence from the government and working independence from the Central Bank.\textsuperscript{128} In practice, however, neither goal has been achieved.

1. The Independence of Commercial Banks from the Political Power of the Government

The laws proclaim the independence of commercial banks from governmental influence when making their decisions with regard to banking operations. To this end, the laws prohibit the use of funds from political and state organizations in the formation of a bank's capital.\textsuperscript{129} Many such organizations, however, violate this law. For example, several ministries have formed their own banks. Menatep, which is a very active new financial group, has been set up by members of the Young Communist League.\textsuperscript{130} The largest Russian bank, the Rosselkhoz Bank, is the former state agricultural bank that merely changed its name.\textsuperscript{131} In addition, four-fifths of the Russian commercial banks are owned by state-run enterprises.\textsuperscript{132} For example, the state company that makes Lada cars has provided the founding capital and holds shares of the AvtoVAZ Bank, the country's third largest bank.\textsuperscript{133} Banks without political ties, therefore, are difficult to find.

In addition, many banks are run by "the old communist elites, who

\begin{footnotesize}
\textsuperscript{125} See Commercial Banking Law, supra note 4, art. 5.
\textsuperscript{127} See Commercial Banking Law, supra note 4, art. 5.
\textsuperscript{128} See id. art. 8; Central Bank Law, supra note 3, art. 22.
\textsuperscript{129} See Commercial Banking Law, supra note 4, art. 8.
\textsuperscript{130} See Russian Banks: Overgrown and Underfinanced, supra note 114, at 84.
\textsuperscript{131} See id.
\textsuperscript{132} See id.
\textsuperscript{133} See id. at 85.
\end{footnotesize}
have found a new way to exercise power,"\textsuperscript{134} despite prohibitions against employment of government and state officials in a bank's management.\textsuperscript{135} This occurs because the old system is not yet broken. The communists have all the money and connections necessary to establish a bank while it is very difficult for ordinary people to do the same. The All-Russia Exchange Bank, for example, has a former Soviet parliamentary spokesman on its board and conducts its board meetings in the country house owned by Stalin's police chief.\textsuperscript{136}

The banks, therefore, may not be able to operate commercially. Given current practices, there is a grave danger that political interests will influence interest rates and loan decisions, thus making the declared governmental independence of the banks a myth.

2. The Independence of Commercial Banks from the Interference of the Central Bank

The laws require the Central Bank to create favorable conditions for the stable performance of commercial banks.\textsuperscript{137} They also prohibit the Bank of Russia from interfering in banks' current operations,\textsuperscript{138} making the banks legally independent in their day-to-day activities. This independence, however, is often limited because of heavy dependence on funds that the Bank of Russia loans to the banks at low interest rates.\textsuperscript{139} This dependence results from the shortage of other sources from which banks can get cash for transactions and withdrawals on a reliable basis.

Deposits, for example, are scarce. People prefer to keep their money at the old state savings bank, Sberbank.\textsuperscript{140} There are several reasons for this: (1) commercial banks cannot provide their customers with the same security guarantees as Sberbank;\textsuperscript{141} (2) the people are used to keeping their money with Sberbank and this tradition is very difficult to change;\textsuperscript{142} and (3) Sberbank has better office facilities and a greater abil-

\begin{itemize}
  \item \textsuperscript{134} Id. at 84.
  \item \textsuperscript{135} See Commercial Banking Law, supra note 4, art. 8.
  \item \textsuperscript{136} See Russian Banks: Overgrown and Underfinanced, supra note 114, at 84.
  \item \textsuperscript{137} See supra note 43 and accompanying text.
  \item \textsuperscript{138} See Central Bank Law, supra note 3, art. 22.
  \item \textsuperscript{139} See Sundararajan, supra note 1, at 12; see also Rosett, supra note 86, at A7 ("[B]anks [that receive low interest rate loans] serve as conduits for bargain-price credit to sectors with strong lobbies in Parliament. So, in effect, the central bank has been playing middleman for a Parliament-driven industrial policy.").
  \item \textsuperscript{140} See Russian Banks: Overgrown and Underfinanced, supra note 114, at 85.
  \item \textsuperscript{141} See id. The commercial banks hold only about four percent of household deposits, while Sberbank holds the rest. See Sberbank: Into the Fray, Economist, May 29-June 4, 1993, at 86, 86.
  \item \textsuperscript{142} "No government-sponsored deposit insurance system exists in Russia other than for deposits in Sberbank, for which the state guarantees repayment of deposits on demand." Melanie L. Fein, Emerging Russian Banking System is Unique; but Changes to Law May Adopt Western Standards, Russia & Commonwealth Bus. L. Rep., Jan. 11, 1993, available in LEXIS, Nexis Library, Int'l File.
  \item \textsuperscript{143} See Kazmin, supra note 2, at 120.
\end{itemize}
ity to advertise than the majority of the commercial banks. Thus, insufficient household deposits prevent commercial banks from functioning normally and fail to free them from dependence on the Central Bank.

Furthermore, because businesses do not traditionally use cash in most of their transactions due to governmental policies, banks have also had difficulty tapping the corporate sector for cash. "The money used by enterprises circulates in two legally separate circuits. Enterprises hold deposits at commercial banks. When one wants to buy something from another, it credits the bank account of the seller and debits its own account."145 If the enterprise needs cash, it has to get the money from an official source. As a result, "the banking system cannot freely convert notes and coin into bank money, and vice versa."146 Thus, the banks cannot receive adequate cash deposits from corporate enterprises.

The only remaining source of capital is the Bank of Russia. The Bank doubled its lending to commercial banks between June and October 1992, and more than half of the total funds used for bank lending in October came from the Central Bank.147 Banks have almost stopped lending their own money to the enterprises, "instead becoming mere channels for central-bank credit .... Far from becoming important financial intermediaries as the economy liberalises [sic], the banks find themselves increasingly marginal to the whole process."148 As a result, even though the commercial banks are theoretically independent from the Central Bank, they depend heavily on it for capital and cheap credit, thereby allowing the Central Bank to regularly interfere in their business.149

D. The Central Bank's Regulation of the Monetary and Credit System

The laws designate a single federal monetary and credit policy as one of the most important functions of the Bank of Russia.150 The Central Bank must carry out this function by regulating cash and non-cash emissions in the country.151 In practice, however, "[t]he Bank of Russia is not ensuring the reliable organization of monetary circulation and cash services, especially the distribution of the money supply throughout the republic, something that is provoking social outbursts in certain regions of Russia."152

144. See id.
145. Russian Banks: Overgrown and Underfinanced, supra note 114, at 85.
146. Id.
148. Id.
150. See Central Bank Law, supra note 3, art. 5; see also supra notes 58-67 and accompanying text.
151. See Central Bank Law, supra note 3, art. 11.
152. Central Bank Scored for Arbitrary Actions, supra note 88. For example, "[the central] bank's June 26 decision to withdraw pre-1993 roubles to support the inflation-hit
The laws require that the Central Bank define its monetary and loan policy in the Basic Guidelines for Monetary and Credit Regulation, which is to be confirmed annually by the Supreme Soviet. In practice, however, the Bank of Russia violates this provision. For example, there were no official Basic Guidelines confirmed by the Supreme Soviet either in 1991 or in 1992. The Bank of Russia presented a draft of Basic Guidelines to the Supreme Soviet’s Standing Committee on the Budget, Plans, Taxes and Prices in March 1992. The Committee examined the draft, then returned it to the Bank for further work and set a two-week deadline. As of May, 1992, however, the Bank of Russia still had not presented the revised Basic Guidelines. As a result, the Central Bank has been free to act unilaterally toward commercial banks and their customers.

Under the laws, the Central Bank regulates credit rates by changing rates for loans it makes to commercial banks. In reality, however, the Bank of Russia uses its interest rates not to conduct monetary and credit policy, but as a means of making the commercial banks dependent on it. By doing so, the Central Bank clearly violates the new banking legislation.

E. Invasion of Foreign Ownership

The new legislation contains no restrictions on foreign ownership of banks. But quite the opposite is true elsewhere. The leading Western countries restrict the opening of foreign-owned banks. For example, Switzerland, Brazil, and some states in the United States allow foreign banks to open only if reciprocal rights are given by the appropriate foreign state. Similarly, "[u]ntil the 1980s, Japan kept its financial market locked, and Spain lifted the ban on banking activity by foreigners economy caused chaos across Russia and nine other ex-Soviet states with which it shares the rouble." Russian Banks Seek Review of Central Bank Powers, Reuters, Aug. 27, 1993, available in LEXIS, Banks Library, Allbank File.

155. See id.
156. See id.
157. See id. For example, it arbitrarily increased the “interest rates on payments into the mandatory reserves deposited in the bank of Russia—from 2% to 20%—[that] has led to a gap at many banks between the volume of credit resources and their actual distribution.” Id. In addition, the Bank of Russia annually fines such banks “in the amount of 100% of the size of the gap (debit balance).” Id.
158. See Barbanel & Maillet, supra note 64, at 152.
159. See supra notes 137-49 and accompanying text.
160. See supra notes 32-36 and accompanying text.
only in February 1992."\textsuperscript{162} These restrictions are justified by a belief that retaining control over the national banking system is a key factor in preserving a country's independence.\textsuperscript{163} In Russia, the situation is further complicated by the inability of commercial banks—which do not have adequate personnel, equipment, or experience—\textsuperscript{164} to compete with foreign banks. As a result, many commercial banks may go bankrupt, which potentially may lead to a widespread banking crisis.\textsuperscript{165} Thus, opening the financial markets to foreigners risks both loss of independence for Russia and a danger of a banking crisis.

In summary, Russia must overcome the shortage of resources, political conflicts, violations of law, and an influx of foreign ownership before a modern, well-regulated banking system, as envisioned by the new legislation, may emerge.

III. POSSIBLE SOLUTIONS TO THE PROBLEMS ENCOUNTERED BY THE NEW BANKING LEGISLATION

A. The Shortage of Resources

To overcome the shortage of resources, Russian commercial banks must look to the West for assistance in establishing their operations. The Western nations have great experience in commercial banking and could help train Russian bankers and technical staff, assist in establishing a computerized banking system, and provide necessary auditing services. Some steps have already been taken in this direction. Russian and American lawyers formed the Soviet-American Banking Law Working Group in July, 1991, in an attempt to resolve the current banking problems.\textsuperscript{166} Americans also participated in the Russian Banking Conference held in Moscow in November, 1992, and presented speakers on personnel problems, training, and marketing.\textsuperscript{167}

Western accounting firms also have begun to provide consulting and auditing services. Dissatisfied with the obligatory state audit, the focus of which was to ensure balanced books and establish the figures for taxation purposes, the commercial banks want Western auditors to calculate loan/loss provisions and provide other services.\textsuperscript{168} A Western audit, in

\begin{itemize}
\item \textsuperscript{162} Vladimir Gurevich, Banks Ask not to be Buried Alive, Moscow News, Oct. 21, 1992, \textit{available in} LEXIS, Nexis Library, Int'l File.
\item \textsuperscript{163} See id.
\item \textsuperscript{164} See supra notes 95-127 and accompanying text.
\item \textsuperscript{165} See supra notes 118-24 and accompanying text.
\item \textsuperscript{166} See Rice, supra note 126, at 4.
\item \textsuperscript{167} See To Russia with Cash? Not Quite Yet, supra note 95, at 8. Considerable contributions toward the preparation of the conference were made by the Association of American Bankers, the Federal Reserve Bank, and the United States Department of the Treasury. Approximately 150 bankers from many countries, including the United States, Great Britain, Belgium, Switzerland, and Japan, participated in the conference. See Din Inamov, \textit{International Conference on Banking to Open in Moscow}, The Telegraph Agency of the Soviet Union, TASS, Nov. 9, 1992, \textit{available in} LEXIS, Nexis Library, Int'l File.
\item \textsuperscript{168} See David Robinson, \textit{Western CPAs Gain Share of Russian Audit Market},
accordance with international accounting, helps banks administer their activities and possibly attract foreign investors because it enhances their credit status with Western banks.  

Various international and private organizations have stepped in to provide badly-needed training. Although it is difficult for Russian bankers to apply the knowledge gained from attending training courses abroad—since the home environment presently is very different from the training place—younger bankers should be able to use the experience gained by the Western states to make a difference in their own country.

Paying for Western assistance, however, may be difficult due to the shortage of hard currency in Russia. The solution to this funding problem may lie in financial assistance from various aid agencies and development banks. The European Bank for Reconstruction and Development, for example, established special funds to help Russian banks pay for Western assistance. Additionally, Russians may be able to barter for such services.

B. Violations of Laws

Violations of the new laws by the Central Bank and government also have been a problem. In order to deal with this situation, the law enforcement system would have to be strengthened. This remains a difficult task since this system is almost non-existent in Russia. In addition, Russia’s executive branch has traditionally not been held accountable to anyone and has violated laws with impunity. Russia must create a legal basis for law enforcement and apply it evenhandedly notwithstanding the political power a particular person or entity may possess.

C. Dependence on the Central Bank’s Funding

In order to free commercial banks from dependence on the Central Bank’s funding, the Bank must cut its credits to commercial banks and ensure that banks have cash sources other than itself. The Bank of Russia should remove the traditional prohibition on operating with cash so that businesses are able to make cash deposits with commercial banks. In addition, Sberbank’s almost complete monopoly on household deposits must be changed. Sberbank’s deposits and branches must ultimately be turned over to Russian commercial banks, which


169. See id.
170. See The New Central Banks, supra note 83, at 23.
171. See id.
172. See Robinson, supra note 168.
173. See id.
174. See supra notes 145-46 and accompanying text.
175. See Russian Banks: Overgrown and Underfinanced, supra note 114, at 85.
176. See supra notes 141-44 and accompanying text.
177. Sberbank has about 41,000 branches. See Fein, supra note 142. It held 431 bil-
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will perform the deposit-taking. To increase people's trust, the commercial banks have to offer customers some form of deposit insurance, as Sberbank did. Although the Central Bank opposes these reforms because they will weaken its control over banking, such changes are necessary in order to create an independent and efficient modern banking system.

D. Political Conflicts

In order for the independence and accountability provisions of the banking laws to work in practice, the government must remove political pressure from the Bank of Russia and return the control of the Bank to the Supreme Soviet, as envisioned by the banking legislation. This remains difficult because, traditionally, the elected representatives of the Supreme Soviet have had only nominal powers. In fact, the executives and the President, in particular, have made all the decisions in Russia. This tradition must end, if a democratic society in Russia is ever to emerge.

E. Invasion of Foreign Ownership

The issue of foreign ownership invasion into Russia is also controversial. Some authorities advocate imposing a one year moratorium on the licensing of foreign banks and revoking existing licenses. Russian banks need this period to make themselves more competitive. At the same time, domestic needs for investment during this period may be fulfilled by "limited foreign presence through investment projects with Russian banking partners." The revocation of licenses, however, can lead to discrimination against Russian banks abroad and a decrease in investment. In addition, the absence of any competition will undermine the quality of banking services.

These reasons prompted the Central Bank to oppose the proposed moratorium and revocation of licenses.

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178. See Fein, supra note 142.
179. See id.
180. See Russian Banks: Overgrown and Underfinanced, supra note 114, at 85.
181. In July 1993, Parliament passed a law to cancel all previously issued foreign banking licenses by January unless the Central Bank renewed them by January 1, 1994. See Russia's Supreme Soviet Approves Plan to Revoke Licenses for Foreign Banks, BNA Banking Daily, Aug. 3, 1993, available in LEXIS, Banks Library, Allbank File. In addition, the law would prevent branches of foreign banks from serving Russian clients. This law must be signed by President Yeltsin before it becomes effective. See id.
183. See Fein, supra note 142.
184. See Vizutovich, supra note 87, at 5.
185. See Kotov & Nenashev, supra note 182.
186. See Fein, supra note 142.
It did not offer any other solutions, however, and problems remain unresolved.

CONCLUSION

In order to bring about political and economic reforms, Russia must establish an effective, well-regulated banking system. Russia took the first step toward this goal by introducing new banking laws in 1990. This legislation adequately establishes, in theory, an efficient modern banking system. It creates a two-tier banking system and provides a legal basis for an independent central bank, whose main functions include supervising the organization and activities of commercial banks and regulating Russia's monetary and loan system. The laws also introduce certain provisions designed specially to protect the interests of the commercial banks' customers. Despite this new banking legislation, however, practical problems such as political conflicts, the shortage of resources and experience, the lack of funds for banks to operate with, and the unlimited presence of foreign ownership hinder the process of political and economic reform.

In order to overcome the problems related to Russia's political situation, the different bodies of power must resolve their conflicts. The law enforcement system needs strengthening in order to deter the illegal activity undermining the goals and purposes of the new legislation. Moreover, commercial banks must ask the West for help in resolving their staff, equipment, and experience problems. Finally, the traditional cash and credit system must change so as to enable the commercial banks to receive funds from sources other than the Bank of Russia, thereby ensuring their independent operation.

Russia must implement the proffered solutions to the problems encountered with the practical application of the new banking laws if it is to achieve a banking system capable of supporting a new political and economic system.