



CHANGES TO THE PROCEDURE FOR PERSONS TO BE ACKNOWLEDGED TO BE QUALIFIED INVESTORS

FAO heads of legal departments in financial institutions and other organisations

Pepeliaev Group advises that 26 June 2015 saw the entry into force of the Bank of Russia's Instruction No. 3629-U dated 29 April 2015 'On recognising persons to be qualified investors and on the procedure for keeping a register of persons acknowledged to be qualified investors'

The Bank of Russia's Instruction No. 3629-U dated 29 April 2015 'On recognising persons to be qualified investors and on the procedure for keeping a register of persons acknowledged to be qualified investors' (the "Instruction") has amended various criteria for applicants to be recognised as qualified investors. New opportunities have been introduced for applications to be filed for qualified status and provision is made for new duties on the part of bodies certified to decide on applications for recognition as a qualified investor.

The Instruction provides that, to be recognised as a qualified investor, an individual or legal entity must meet one of the listed criteria. Further, the current criteria have been amended and added to.

I. The current criteria for an individual to be recognised as a qualified investor have been amended, while new criteria have been specified.

1. The criterion of holding securities.

The total value of the securities must be a minimum of RUB 6 million (the figure was RUB 3 million under the requirements previously in force). Now, when the value is calculated, the following will be taken into account: foreign depositary receipts, mortgage participation certificates, as well as contracts entered into through organised competitive tendering that are derivative contracts (other forms of financial instruments for which clause 2.3 of the Instruction provides).

2. The criterion of experience of work relating directly to completing operations with financial instruments.

An individual must have, within a 5-year period, before the date on which he/she files an application to be acknowledged as a qualified investor, two years' experience of working in an organisation that has undertaken transactions with securities and/or entered into contracts that are derivative contracts, if the organisation in question is a qualified investor by virtue of the law. Previously, one year's experience was needed. The possibility has been ruled out of qualification based on experience of work over a 3-month period if, at the date of qualification, the qualified person is an employee of a qualified investor.

In other cases, the requirement is to have a minimum of three years' experience (as opposed to two years' experience previously) of working in an organisation that has undertaken transactions with securities and/or has entered into contracts that are derivative contracts.

3. The criterion of undertaking transactions with securities.

The aggregate price for such transactions must be a minimum of RUB 6 million (as opposed to RUB 300,000 previously) for the past four quarters on average no less frequently than ten times per quarter. A condition has been added that such transactions must be carried out no less frequently than once a month. The possibility has been ruled out of acquiring the status of a qualified investor when transactions are consummated with securities over a three-year period to a minimum value of RUB 3 million.

4. A new criterion is the amount of property belonging to an individual.

The amount of such property must be at least RUB 6 million. The following property counts towards the calculation:

- funds held on accounts or deposits with Russian credit institutions or foreign credit institutions established in Member States of the OECD, FATF, MONEYVAL, the Common Economic Space, or states with whose competent authorities the Bank of Russia signed an agreement on a procedure for cooperation. Also taken into account are amounts of accrued interest;
- claims against a credit institution that it pay the monetary equivalent of a precious metal at the official value of the precious metal in question.
- the securities stipulated in clause 2.3 of the Instruction.

5. A new criterion is that an individual has been trained or certified.

To be recognised as a qualified investor, the individual must:

- either have a degree in economics confirmed by a document in a form officially recognised in the Russian Federation in relation to higher education

and issued by an educational establishment which offers higher vocational training and which, when the relevant document was issued, handled the certification of individuals in the area of professional activity on the securities market,

- or have one of the following accreditations or certificates: (i) an accredited qualification as a financial markets specialist, (ii) an accredited qualification as an auditor, (iii) an accredited qualification as an insurance actuary, (iv) a Chartered Financial Analyst (CFA) certificate, (v) a Certified International Investment Analyst (CIIA) certificate, or (vi) a Financial Risk Manager (FRM) certificate.

II. The current criteria for a legal entity to be acknowledged as a qualified investor have been amended.

1. The criterion of the amount of its own capital. This must be at least RUB 200 million (previously, the figure was RUB 100 million).
2. The criterion of transactions with securities. It is provided that the aggregate price of transactions for the last four quarters (the transactions must have been carried out no less frequently than five times a quarter and no less frequently than once a month) will be RUB 50 million (as opposed to RUB 3 million previously).
3. The criterion of turnover (revenues) from the sale of goods (work, services). This must be a minimum of RUB 2 billion for the last complete reporting year (the previous figure was RUB 1 billion for the last reporting year).
4. The criterion of asset value according to the latest accounting balance sheet. The value of assets must be a minimum of RUB 2 billion. When assets are calculated, a completed financial year is taken into consideration.

III. There is a clarification of the rights and obligations of a certified body.

1. An application to be recognised as a qualified investor must contain:
 - reference to the fact that the applicant undertakes, if recognised as a qualified investor, to notify the person who has recognised the applicant as such of any failure by the applicant to meet the requirements compliance with which is a prerequisite for a person to be recognised as a qualified investor (if the applicant is an individual);
 - a reference to the fact that the applicant as been informed of the increased risks associated with financial instruments, of the restrictions set by Russian legislation in relation to financial instruments intended for qualified investors, and of the specific matters that relate to services being supplied to qualified investors. If the applicant is an individual, it must also be stated that notice has been given that compensation from the federal compensation fund is not paid to individuals who hold securities that are intended for qualified investors.
2. From the time when an application is received from a qualified investor to be excluded from the register (this was previously referred to as 'an application to withdraw from the status of a qualified investor'), a certified body may not, at the qualified investor's expense, conclude transactions with securities and/or derivative contracts in relation to which the person has applied to be excluded from the register.
3. A new requirement has been introduced that certified bodies must disclose on their Internet sites the rules for persons to be recognised as qualified investors.
4. It is directly provided that the regulations determine the method (including whether in electronic form or in hard copy) according to which a person sending a request to be recognised as a qualified investor should submit an application form and the documents confirming that the person meets the requirements which need to be complied with if the person is to be recognised as a qualified investor. There is no provision for the possibility of submitting such an application orally (for instance, by applying over the phone with supporting documents being filed later). However, the reference to the possibility of submitting documents electronically is a major step forward.
5. The Regulations also determine the deadline for supporting documents to be checked.

What else is new?

In comparison with the requirements that were previously in force, the requirements for individuals and legal entities to be recognised as qualified investors have been significantly increased. At the same time, there has been a reduction from two to one in the number of criteria with which compliance is needed for the status of a qualified investor to be obtained. It is directly provided that it will be possible to send an application and documents to obtain the status of a qualified investor in electronic form.

In accordance with clause 5.1 of the Instruction, it came into force starting from 26 June 2015, and from that date onwards, it is the Instruction that will be applied to govern relationships in the area of persons being recognised as qualified investors. At the same time, a certified body must, within three months of the date on which the Instruction came into force, bring their internal documents into compliance with its requirements. Under clause 1.2 of the Instruction, a certified body must draw up and approve regulations in accordance with the requirements of the Instruction. These regulations must include requirements for a person to be recognised as a qualified investor in accordance with the legislation.

π^g | *It follows from the provisions of the Instruction that the criteria contained in the regulations for a person to be recognised as a qualified investor must correspond to the legislation. The regulations must be brought into line with the legislation within three months. Thus, there is a degree of legal uncertainty in terms of whether a certified body can, before the regulations are brought into line with the legislative requirements, be guided by the criteria set out in its own regulations and not by those contained in the Instruction, which came into force on 26 June 2015.*

The Instruction expressly provides that certified bodies are obliged to check - within the timeframe stipulated by their regulations but a minimum of once a year - to check legal entities and the documents they provide in terms of compliance with the requirements that need to be observed for such entities to be recognised as a qualified investor. Such a check must also be carried out in relation to those organisations that have obtained the corresponding status before the Instruction came into force. If the legal entity does not meet the necessary requirements, it is excluded from the register of qualified investors, and (until it obtains the corresponding status) is no longer able to acquire financial instruments intended for qualified investors.

It is not compulsory for a legal entity to dispose of financial instruments in its portfolio, and the entity may continue to hold such instruments. However, any disposal may be effected only through a broker

in accordance with article 27.6 of Federal Law No. 39-FZ dated 22 April 1996 'On the securities market' or without a broker's involvement in the cases provided for by Order No. 11-8/pz-n of Russia's Federal Financial Markets Service 'On approving the Regulations on specific features of the circulation of and accounting for rights to securities intended for foreign investors, and foreign securities.' Undoubtedly, the above checks and the possibility of exclusion from the register of qualified investors do not extend to qualified investors by virtue of the law.

At the same time, in relation to individuals, there is no provision for such compulsory checks by certified bodies. At the same time, it is pointed out that an individual under clause 3.2 of the Instruction is obliged to notify the person that recognised it as a qualified investor of a failure by such qualified investor to comply with requirements that need to be complied with for the person to be recognised as a qualified investor. By virtue of clause 3.9 of the Instruction, this should result in the person being excluded from the register of qualified investors.

π^g | *However, there is no specification of the consequences for an individual if it avoids notifying such a circumstance after having received the status of a qualified investor. Therefore, if an individual fails to comply with the requirements of the Instruction (including where it obtained such status after the Instruction came into force), such individual is alone in bearing the risk that adverse consequences will ensue.*

Help from your adviser

Pepeliaev Group's specialists are ready to provide in-depth assistance on matters that arise in relation to bringing organisations' internal documents into compliance with the requirements of the Bank of Russia's new Instruction. In addition, we will help to gather the necessary documents to obtain the status of a qualified investor.

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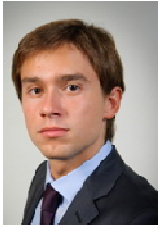
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