

**GCPMED 2018**  
**International Scientific Conference "Global Challenges and  
Prospects of the Modern Economic Development"**

**IMPROVING THE EFFICIENCY OF LEGAL REGULATION OF  
THE FINANCIAL MARKET**

S.G. Abramov (a)\*

\*Corresponding author

(a) Department of Legal Regulation of Economic Activity, Financial University under the Government of the Russian Federation, 109 456, 4th Veshnyakovsky passage, 4, r. 515, Moscow, Russian Federation, SGAbramov@fa.ru

*Abstract*

The article deals with the creation of inclusive institutions in the financial market (non-state pension funds, professional participants of the securities market, different management companies). Administrative, economic and institutional measures of public authority (Government of the Russian Federation, the Bank of Russia) influence on financial markets, the sector of non-bank financial organizations are considered here. The author offers some new approaches, directions of reforms in the implementation of state legal policy in the sector of non-state pension funds, professional participants of the securities market and management companies. It is proposed to assume that the main direction of such work in the field of law is to ensure a reduction in transaction costs in the financial market through new efficient mechanisms and norms. The author of the paper analyzes the techniques and methods of public regulation of the financial sector, current regulatory legal acts in the studied sphere of public relations. The impact of public institutions has been studied in relation to the sector of non-bank financial organizations (non-state pension funds, professional participants in the securities market, management companies). The issue related to the efficiency of management of cash, assets (pension savings and reserves) of non-bank financial organizations has been investigated.

© 2019 Published by Future Academy [www.FutureAcademy.org.UK](http://www.FutureAcademy.org.UK)

**Keywords:** Legal regulation, non-state pension funds.



## 1. Introduction

In the new cycle of development of the world economy, issues of improving the functioning of public institutions become topical (Mullings, 2018). The states, due to changes in functions, competencies, norms of legal regulation of social relations, expect to gain competitive advantages in the international division of labor, in the financial and other markets (Tirole, 2015; Medvedev, 2018). For example, improving the functioning of the banking system in the financial and insurance market can bring large investment funds that can be redistributed to various sectors of the economy through the mechanism provided for. In the future, such government spending should lead to an increase in the level of the country's economic development (Kudrin & Knobel', 2017), the achievement of the political goals of the state (Tirole, 1994). The objectives of the development of European political (parliament for the eurozone), banking, currency (European Monetary Fund), insurance (unified deposit insurance system) systems are discussed at the highest political level between France and Germany. States seek to gain priorities in the development of the national socio-political and economic system within the EU.

The regulatory regulation of the domestic credit and financial sector depends on the legal and economic policy of public authority in the EU, lobbying the interests of European banks, transnational corporations in the Basel Committee on Banking Supervision (adoption of regulations in the EU). In this regard, it should be noted the impact of European policy on the domestic financial sector (implementation of Basel standards and principles).

In modern Russia, the World Bank Doing Business rating, indicators of the competitive environment OECD PMR and indicators of entrepreneurial activity of New Business Density were chosen as target indicators for economic development. The goal of such an economic policy is to join the leading economic powers, achieve economic growth, ensure permanent employment of the population (Tirole, 1994), economic efficiency of the economy (McConnell & Brue, 2014).

## 2. Problem Statement

The author analyzed the documents, regulations and monographic literature. And he discovered the following trends in the development of state regulation of financial and other sectors of the economy:

- building in the states a mechanism of a single supervisory and controlling body in the field of finance (Seidler, 2018);
- creation of institutions and mechanisms at the supranational level to prevent crisis phenomena in the sphere of finance and financial regulation, to assist in the implementation of monetary policy, the development of regulatory regulation in the states (Nurbayev, 2018);
- creation of informal institutions and rules for market development (Ostrom, 2010; Cole, 2017; Voigt, 2018).

Analysis of the activities of the Government of the Russian Federation and the Central Bank of the Russian Federation in recent years leads to the conclusion that the purpose of administrative and legal reform, economic policy was to create inclusive institutions (North, 1990; Ostrom, 2005) that will play a significant role in the socio-economic and political development of the country (Chang, 2011; Acemoglu

& Robinson, 2012). Also, in modern science issues of globalization of financial institutions and its influence on future political, international economic relations are discussed (Dincer & Hacıoğlu, 2014). Such a direction of development of the state is the centralization of political and economic power (Acemoglu, Robinson, & Torvik, 2016), the creation of vertical control mechanisms in the form of megaregulators of financial and other markets (Buklemishev, Danilov, & Kokorev, 2015), studied in foreign and domestic literature.

The task that we set is to propose approaches, directions for reforms in the field of regulation of the financial sector (financial markets, the sector of non-bank financial organizations) (Stolbov, Goloshchapova, Solntsev, Akhmetov, Pankova, & Tsepilova, 2018). The main direction of such work in the field of law is to ensure the reduction of transaction costs in the financial market through new efficient mechanisms and norms, to create formal and informal norms and institutions (Hindriks & Guala, 2015).

The analysis of statistical data convincingly demonstrates that modern management approaches do not fulfill the solution of general economic problems, the most important macroeconomic function of transforming savings into investments (Teplova, & Stolyarov, 2017). This task is defined in the Decree of the President of the Russian Federation of 07.05.2018 No. 204 “On the national goals and strategic objectives of the development of the Russian Federation for the period up to 2024”.

### **3. Research Questions**

In order to achieve such a target result, it is necessary to consistently analyze the techniques and methods of public regulation of the financial sector, legal acts. The author comprehensively examines administrative measures, economic measures, and institutional measures that are applied by the public authorities, the Bank of Russia.

As a measure of influence on the problem situation, we chose the following direction of research – reduction of transaction costs in the market. This can be achieved by ensuring the protection of the rights of investors (Ménard, 2017), the development of the judicial system and legislation. It is necessary to solve the issues of reducing price and competitive barriers to entering the market (in cases of lack of government guarantees), since this entails a rise in the cost of borrowed funds for business entities. Revise approaches to regulatory regulation of public relations in the insurance industry – to improve the effectiveness of prudential regulation, law enforcement and supervision. As foreign experts on the basis of statistical data convincingly show that ineffective legislation in the insurance market (comprehensive norms of the deposit insurance system) inhibits the growth of the securities market, non-banking institutions, and the banking sector (Bergbrant, Campbell, & Hunter, 2016). The new study will help develop economic policies in relation to the various components of the financial sector.

We will apply these measures to the sector of non-bank financial organizations (non-state pension funds, professional participants of the securities market) (Teplova, & Stolyarov, 2017). In this sector, it is possible to note the insufficiency of indicators of the volume of the financial market (10.5% of Russia's GDP) (Danilov, 2018). Such low macroeconomic indicators result in a shortage of long-term investment resources in the economy, a decrease in the standard of living of citizens and can disorganize political campaigns in the territory of the Russian Federation (constitutional rights of citizens provided for by Articles 41, 43 of the Constitution of the Russian Federation).

It is proposed to analyze the legal problems of the pension sector. The issue of management of cash, assets (pension savings and reserves) of non-bank financial institutions requires resolution. At the present stage of development of regulation, the right to determine investment strategies, determine the subject of the contract, the investment object has the state (state management company – the state corporation “Bank for Development and Foreign Economic Affairs”). The freezing of the pension savings system leads to an imbalance within the financial sector, since such assets were financed by investing the stock market. Non-state pension funds could accumulate assets (long investments) and make a profit through intermediaries – management companies. As a result of market mechanisms, institutional development of the sector took place, institutional investors were supported, market capacity was ensured.

At present, there is an inefficient redistribution of assets through NPFs, low return on investment, low responsibility for the results of savings management, a budget deficit of the Pension Fund of Russia (lack of market instruments with profitability). These facts lead to a decrease in the share of such an important investor (NPF) in the financial market and its low efficiency.

A task that requires attention is the creation of a mechanism for private management in Russia. We will analyze the current legislation in this area and try to identify legal gaps and conflicts.

#### **4. Purpose of the Study**

The need for changes in the sphere of state regulation of financial markets and the non-banking financial sector is convincingly justified by statistical data (Danilov, Buklemishev, & Abramov, 2017). The current inefficient structure of the financial sector does not provide opportunities for economic growth. It should be noted that due to the underdevelopment of the non-banking financial sector, it is impossible to carry out the function of providing long-term investment resources and carry out strategic planning in the state. There is an imbalance between the intensive growth of the banking sector and financial markets, which adversely affects the development of the country's economy.

In connection with these circumstances, it is proposed to consider administrative, economic and institutional measures of the impact of public authorities (Government of the Russian Federation, Bank of Russia) on financial markets, the sector of non-bank financial organizations, to identify possible legal problems, to find recommendations for their elimination.

The position of these public institutions is based on the theoretical assumptions of the work of Hamilton (1919).

#### **5. Research Methods**

Content analysis, extrapolation, systematizing and generalization methods, assessment of the trends in retrospective and prospective plans.

Special legal methods were also used: formal legal method, methods of interpretation of law (grammatical, systematic, functional, logical), legal modeling, legal forecast.

## 6. Findings

The author justifies the proposal to introduce into the contractual accessory legal relations (obligation) the construction between the non-state pension fund (NPF) and the management company (MC) – “the level of expected profitability”. The purpose of this design is to ensure the economic investment attractiveness of the tools and the legal fulfillment of the main obligation (the measure of proper execution is the payment of the funded part of the labor pension in the future). This fact is justified on the basis of the provisions of the Federal Law No. 173 “On labor pensions in the Russian Federation”. Since the placement of funds is carried out solely for the purpose of preserving and increasing the funds of pension reserves in the interests of the participants of the funds (Article 2 of the Decree of the Government of the RF No. 63 “On approval of the Rules for the placement of pension reserve funds of non-state pension funds and control over their placement”). This approach was studied in the monographic literature. “Ancillary transactions are always made for the implementation of another, already existing relationship between the parties, for the fulfillment of obligations arising from the law, from an administrative act, from a previously completed transaction” (Fleyshtits, 1951, p. 217). An earlier completed transaction is an agreement with an individual on the transfer of funds to the NPF under p. 4 of Art. 36.7 and p. 3 of Art. 36.11 of the “On Non-State Pension Funds” Federal Law No. 75. Changes have already been considered and formulated at the level of legal principles (Federal Law No. 49 “On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of the Activity of Non-State Pension Funds”). The current legislation operates with other legal categories: due care and prudence; the best conditions available to the fund at the time of the conclusion of the transaction (Article 25 “Management of pension reserves and investment of pension savings funds” of the Law).

Such linguistic units can be preserved, since they are based on the principles of civil law (it is possible to form a contractual investment strategy) and established judicial practice.

To address the issues of future payments to this legal norm can apply the provisions of Art. 1022 (p. 1) of the Civil Code of the Russian Federation. Under a trust management agreement, a trustee who has not shown due diligence about the interests of the beneficiary or the founder of the management reimburses the beneficiary for lost profits during the trust management of the property, and the founder of the management for losses caused by loss or damage to property, taking into account its normal wear and tear, as well as lost profits. The trustee is liable for the losses incurred if he does not prove that these losses occurred as a result of force majeure or the actions of the beneficiary or the founder of the management. Such an approach is provided for and duplicated by public positive law. In paragraph 15 Art. 25 Federal Law “On Non-State Pension Funds” provides: “If, as a result of a violation of the conditions for managing pension funds and organizing investment of pension accumulations as provided by subparagraph 2 of paragraph 2.1 of this article, pension funds or funds pension savings decreased (hereinafter referred to as a decrease in funds), or the fund received less income from pension reserve funds or pension savings funds that it would have received if these conditions were met (hereinafter – the lost profit), the Fund is obliged to compensate for the amount of pension reserves or pension funds to reduce the amount of funds or the value of the fund lost revenue from its own funds”.

The author suggests a mechanism for improving the content of such a legal relationship. We would like to draw attention to a number of circumstances that reduce the executive discipline of the contract and increase the burden on the judiciary, and in the future may disrupt this market.

Commenting on this provision, it should be noted that in this legal relationship the debtor (trustee in Art. 22, 25 of the FL No. 111 “On investing funds to finance funded pension in the Russian Federation”) is not obliged to provide a report to the counterparty (NPF) about the market research. This obligation does not directly follow from the provisions of the Order of the Ministry of Finance of the Russian Federation No. 107n, paragraphs 1.6 and 1.9. Directives of the Bank of Russia No. 4332-U, paragraph 16 of Art. 12, Art. 31 of the FL “On investing funds to finance a funded pension in the Russian Federation”. The reporting form is provided for public supervisory relations with the Central Bank (Directive of the Bank of Russia No. 4715-U “On the Forms, Procedure and Deadlines for Compiling and Submitting Reports to the Bank of Russia by Joint-Stock Investment Funds, Management Companies of Investment Funds, Share Investment Funds and Non-State Pension Funds”). In the arbitration practice, it is noted that the burden of proving the circumstances, relieving the trustee from liability (the fact of lack of carelessness, lack of care, the fact of investing in the worst, but not the usual conditions), is placed on the trustee (Resolution of the Arbitration Court of the Moscow District of July 30, 2015 No. F05-2293 / 14 in case No. A40-37402 / 2013).

In this regard, we believe that it is more expedient for individuals (the founder of management) to indicate in the contract using formulas the level of future return on investments (for this, the lender must understand the economic situation in the market). Such data can be checked and assessed the possibility of improper performance of the contract, other possible risks. To do this, they can be compared with the rates of return on investment (p. d; p. zh; p.zh.1 Article 24 of the Disclosure Standards on investing pension savings), which are calculated using the formulas and submitted to the management company in the form of reports to the Bank of Russia. You can also compare the absolute values at the end of the trust management agreement. In this case, there is no need to make other wording in the section of the agreement on the rights and obligations of the parties, which will have to be proved in the event of a dispute with the help of a variety of documentary data.

In the responsibility section in this case, the parties may include a penalty clause for improper performance of the contract, since under clause 15. Art. 25 of the Federal Law “On Non-State Pension Funds” NPF is responsible to an individual at its own expense.

## **7. Conclusion**

Conducting such a legal policy will help create informal institutions and rules, increase the effectiveness of law enforcement and reduce transaction costs in the market, which will help achieve the set political goals.

Amendments to the legislation will help improve the efficiency of economic transactions between non-state pension funds and the management company, the stability of the financial market, as well as an increase the level of additional pension coverage for citizens of the Russian Federation.

## References

- Acemoglu, D., & Robinson, J. A. (2012). *Why nations fail: the origins of power, prosperity and poverty*. New York, NY: Crown.
- Acemoglu, D., Robinson, J. A., & Torvik, R. (2016). The political agenda effect and state centralization. *MIT Department of Economics*, 2, 16-04. <https://dx.doi.org/10.2139/ssrn.2783571>
- Bergbrant, M. C., Campbell, K., & Hunter, D. (2016). Does deposit insurance retard the development of financial markets? *Journal of Banking & Finance*, 66, 102-125.
- Buklemishev, O. V., Danilov, YU. A., & Kokorev, R. A. (2015). Megaregulyator kak rezul'tat evolyutsii finansovogo regulirovaniya. *Vestnik Moskovskogo universiteta. Seriya 6: Ekonomika*, 4, 52-74. [in Rus.].
- Chang, H. (2011). Institutions and economic development: Theory, policy and history. *Journal of Institutional Economics*, 7(4), 473-498. <https://dx.doi.org/10.1017/S1744137410000378>
- Cole, D. (2017). Laws, norms, and the institutional analysis and development framework. *Journal of Institutional Economics*, 13(4), 829-847. <https://dx.doi.org/10.1017/S1744137417000030>
- Danilov, YU. (2018). Finansovyy rynek RF v 2017 godu: konstanty i peremennyye. FINAM Logistika. Retrieved from journal URL: <https://www.finam.ru/analysis/forecasts/finansovyy-rynok-rf-v-2017-godu-konstanty-i-peremennyye-20180220-144758/> Accessed: 26.10.2017 [in Rus.].
- Danilov, YU., Buklemishev, O., & Abramov, A. (2017). O neobkhodimosti reformy finansovykh rynkov i nebankovskogo finansovogo sektora. *Voprosy Ekonomiki*, 9, 28-50. [in Rus.].
- Dincer, H., & Hacıoglu, Ü. (2014). *Globalization of Financial Institutions: A Competitive Approach to Finance and Banking*. Cham, Switzerland: Springer International Publishing.
- Federal'nyj zakon "O negosudarstvennykh pensionnykh fondakh" ot 07.05.1998 N 75-FZ. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_18626/](http://www.consultant.ru/document/cons_doc_LAW_18626/) Accessed: 22.10.2018 [in Rus.].
- Federal'nyj zakon "O trudovykh pensiyakh v Rossiyskoy Federatsii" ot 17.12.2001 N 173-FZ. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_34443/](http://www.consultant.ru/document/cons_doc_LAW_34443/) Accessed: 22.10.2018 [in Rus.].
- Federal'nyj zakon "O vnesenii izmeneniy v otdel'nyye zakonodatel'nyye akty Rossiyskoy Federatsii po voprosam regulirovaniya deyatel'nosti negosudarstvennykh pensionnykh fondov" ot 07.03.2018 N 49-FZ. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_292517/](http://www.consultant.ru/document/cons_doc_LAW_292517/) Accessed: 22.10.2018 [in Rus.].
- Federal'nyj zakon "Ob investirovanii sredstv dlya finansirovaniya nakopitel'noy pensii v Rossiyskoy Federatsii" ot 24.07.2002 N 111-FZ. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_37863/](http://www.consultant.ru/document/cons_doc_LAW_37863/) Accessed: 22.10.2018 [in Rus.].
- Fleyshits, Ye. A. (1951). *Obyazatel'stva iz prichineniya vreda i iz neosnovatel'nogo obogashcheniya*. Moscow, M: Gosyurizdat. [in Rus.].
- Grazhdanskiy kodeks Rossiyskoy Federatsii (chast' vtoraya) ot 26.01.1996 N 14-FZ. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_9027/](http://www.consultant.ru/document/cons_doc_LAW_9027/) Accessed: 22.10.2018 [in Rus.].
- Hamilton, W. H. (1919). The institutional approach to economic theory. *The American Economic Review*, 9(1), 309-318.
- Hindriks, F., & Guala, F. (2015). Institutions, rules, and equilibria: A unified theory. *Journal of Institutional Economics*, 11(3), 459-480. <https://dx.doi.org/10.1017/S1744137414000496>
- Konstitutsiya Rossiyskoy Federatsii (prinyata vsenarodnym golosovaniyem 12.12.1993). Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_28399/](http://www.consultant.ru/document/cons_doc_LAW_28399/) Accessed: 22.10.2018 [in Rus.].
- Kudrin, A. L., & Knobel', A. YU. (2017). Byudzhetnaya politika kak istochnik ekonomicheskogo rosta. *Voprosy Ekonomiki*, 10, 5-26. [in Rus.].
- McConnell, C. R., & Brue, S. L. (2014). *Economics: principles, problems, & policies (McGraw-Hill Series in Economics)*. New York, NY: Standalone book.
- Medvedev, D. A. (2018). Rossiya-2024: Strategiya sotsial'no-ekonomicheskogo razvitiya. *Voprosy Ekonomiki*, 10, 5-28. [in Rus.].
- Ménard, C. (2017). What approach to property rights? *Journal of Institutional Economics*, 13(4), 801-807. <https://dx.doi.org/10.1017/S1744137417000145>

- Mullings, R. (2018). Do institutions moderate globalization's effect on growth? *Journal of Institutional Economics*, 14(1), 71-102. <https://dx.doi.org/10.1017/S174413741700008X>
- North, D. C. (1990). *Institutions, Institutional change and economic performance (political economy of institutions and decisions)*. Cambridge, CB: Cambridge University Press.
- Nurbayev, D. (2018). The rule of law, central bank independence and price stability. *Journal of Institutional Economics*, 14(4), 659-687. <https://dx.doi.org/10.1017/S1744137417000261>
- Ostrom, E. (2005). *Understanding institutional diversity*. Princeton, NJ: Princeton University Press.
- Ostrom, E. (2010). Beyond markets and states: polycentric governance of complex economic systems. *The American Economic Review*, 100(3), 641-672.
- Postanovleniye Arbitrazhnogo suda Moskovskogo okruga ot 30 iyulya 2015 goda N F05-2293 / 14 po delu N A40-37402 / 2013. Retrieved from: <http://ras.arbitr.ru/> Accessed: 20.10.2018 [in Rus.].
- Postanovleniye Pravitel'stva RF "Ob utverzhdenii Pravil razmeshcheniya sredstv pensionnykh rezervov negosudarstvennykh pensionnykh fondov i kontrolya za ikh razmeshcheniyem" ot 01.02.2007 N 63. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_65876/](http://www.consultant.ru/document/cons_doc_LAW_65876/) Accessed: 22.10.2018 [in Rus.].
- Prikaz Minfina Rossii "Ob utverzhdenii Standartov raskrytiya informatsii ob investirovanii sredstv pensionnykh nakopleniy" ot 22.08.2005 N 107n. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_56035/](http://www.consultant.ru/document/cons_doc_LAW_56035/) Accessed: 22.10.2018 [in Rus.].
- Seidler, V. (2018). Copying informal institutions: The role of British colonial officers during the decolonization of British Africa. *Journal of Institutional Economics*, 14(2), 289-312. <https://dx.doi.org/10.1017/S1744137417000443>
- Stolbov, M. I., Goloshchapova, I. O., Solntsev, O. G., Akhmetov, R. R., Pankova, V. A., & Tsepilova, Ye. A. (2018). Opredeleniye modeley rossiyskogo finansovogo sektora na osnove mezhstranovogo analiza. *Voprosy Ekonomiki*, 5, 1-20. [in Rus.].
- Teplova, T. V., & Stoloyarov, A. I. (2017). Rossiyskiy nebankovskiy finansovyy rynek: tormoz ili impul's dlya ekonomicheskogo rosta? *Vestnik Instituta ekonomiki Rossiyskoy akademii nauk*, 1, 64-80. [in Rus.].
- Tirole, J. (1994). The internal organization of government. *Oxford Economic Papers*, 46(1), 1-29.
- Tirole, J. (2015). *Théorie de l'organisation industrielle*. Paris, P: Economica.
- Ukaz Prezidenta RF "O natsional'nykh tselyakh i strategicheskikh zadachakh razvitiya Rossiyskoy Federatsii na period do 2024 goda" ot 07.05.2018 N 204. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_297432/](http://www.consultant.ru/document/cons_doc_LAW_297432/) Accessed: 22.10.2018 [in Rus.].
- Ukazaniye Banka Rossii "O formakh, poryadke i srokakh sostavleniya i predstavleniya v Bank Rossii otchetov aktsionernymi investitsionnymi fondami, upravlyayushchimi kompaniyami investitsionnykh fondov, payevykh investitsionnykh fondov i negosudarstvennykh pensionnykh fondov" ot 08.02.2018 N 4715-U. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_296532/](http://www.consultant.ru/document/cons_doc_LAW_296532/) Accessed: 22.10.2018 [in Rus.].
- Ukazaniye Banka Rossii "Ob obyazatel'nykh usloviyakh dogovora doveritel'nogo upravleniya sredstvami pensionnykh rezervov i (ili) sredstvami pensionnykh nakopleniy, zaklyuchennym negosudarstvennym pensionnym fondom s upravlyayushchey kompaniyey" ot 29.03.2017 N 4332-U. Retrieved from: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_277314/](http://www.consultant.ru/document/cons_doc_LAW_277314/) Accessed: 22.10.2018 [in Rus.].
- Voigt, S. (2018). How to measure informal institutions. *Journal of Institutional Economics*, 14(1), 1-22. <https://dx.doi.org/10.1017/S1744137417000248>.