ON THE STRUCTURE OF THE SYSTEM OF LEGAL INCENTIVES AND
RESTRICTIONS ON BUSINESS ACTIVITIES IN THE BANKING
SECTOR

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ABSTRACT
This article is devoted to studying the problematic of the structure of the system of legal incentives and
restrictions on business activities in the banking sector. We formulated the idea of a system of legal
incentives and restrictions on business activities in the banking sector. The analysis carried out enabled to
define the elements and structure of the system of legal incentives and restrictions on business activities in
the banking sector. We identified three subsystems of the system of legal incentives and restrictions on
business activities in the banking sector.

Keywords: system; legal incentives; legal restrictions; business activities; banking sector; system of legal
incentives and restrictions.

INTRODUCTION
At present, the public relations that develop in connection with the implementation of business activities
in the banking sector have become widely spread in practice. Business activities in the banking sector are
essentially aimed at systematic profit-making (Article 2 of the Civil Code of the Russian Federation) [1].
Credit organizations, in order to achieve this goal, can significantly restrict, and sometimes even ignore,
the rights of others (their counterparties - consumers, other customers), not timely comply and sometimes
even fail to comply with the statutory requirements, in particular the requirements for insurance of
customer deposits, formation of reserves, timely payment of the authorized capital, compliance with the
antimonopoly legislation, payment of taxes, principles of reasonableness and good faith in the
performance of business activities in the banking sector, etc.

Taking into account the specifics of business activities in the banking sector (the importance of this sector
for the normal development of the economy, the need to protect private and public rights and interests,
etc.), it should be emphasized that the latter requires close attention from the state. There is an objective
need to protect the "weak side" of banking business - the consumer (customer) and the implementation of
measures, on the one hand, to control the newly established credit institutions with foreign investment,
and, on the other hand, to support domestic credit institutions, etc. These problems can be resolved and
their negative consequences can be leveled by improving the existing system of legal incentives and
restrictions on business activities in the banking sector.

Economic development and civil society formation require the use of all means of civil law to ensure the
conscientious and proper exercise of civil rights and the performance of civil duties. In this regard, it
seems that the effective application of the system of legal incentives and restrictions fixed in the law and
the strict observance of its requirements by the participants will lead to the achievement of goals specified
by the legislator, the direction of relations resulting into a positive "law abiding channel" in connection with the implementation of business activities in the banking sector.

MATERIALS AND METHODS

The article has a theoretical, comparatively legal nature. We included the observations in it, gave the definitions, and disclosed the structure of legal incentives and restrictions on business activities in the banking sector.

We also used the following general scientific methods: logical, analysis, synthesis.

We based our study on the normative legal acts of Russia and European countries, as well as the positions of leading civilians and scientists in the field of business and banking law.

RESULTS

Initially, it seems necessary to specify a conceptual research apparatus and formulate a definition of the concepts of "legal incentive", "legal restriction", "system" category. According to the dictionary definition, the incentive means: "motivation, motive force, stimulus; an incentive to action, an interest in doing something" [2].

The word "restriction" is disclosed in dictionaries as "a border, a boundary, a limit; a rule that restricts any rights, actions, constraint by certain conditions, putting in some frameworks, boundaries; constraint by any conditions, rule, setting, norm, defining some boundaries, frameworks, conditions" [3]. However, the above definitions of incentive and restriction do not give an idea of their legal nature. In order to subsequently correctly use the concepts of legal incentive and legal restriction, it is necessary to understand their essence.

The word "system" comes from the Greek "systema", which means something composed of parts, connected [4]. In the Russian language, the concept of a system is defined as follows: 1) the form of organizing something; 2) something whole, representing a unity of naturally located and mutually connected parts.

In order to clarify the question of what is the system of legal incentives and restrictions on business activities in the banking sector, it is necessary to answer at least three questions: 1) what parts does the system consist of; 2) how are these parts related; 3) what is the purpose of establishment (existence) of the given system and the role it fulfills. The answers to these questions contain an idea of the internal structure (organization) of the system and, in fact, express its essence.

In view of the above definitions, it is possible to formulate a definition of the system of legal incentives and restrictions on business activities in the banking sector, which is understood as a set of mutually supportive and mutually complementary legal incentives and restrictions interconnected within a single mechanism through which the public relations are regulated in the creation of a credit institution, while it carries out the business activities and terminates it. At the same time, the legal incentives and restrictions under consideration are mutually supportive and mutually reinforcing, which can be characterized as forms of their interconnection.

The system of legal incentives and restrictions on business activities in the banking sector consists of the appropriate legal incentives and restrictions, fixed in the rules of law, which somehow, directly or indirectly, incite or restrict the discretion of business entities in the banking sector [5].

In turn, this system is one of the constituent elements (subsystem) of the system of legal incentives and restrictions on business activities in general. In addition to this subsystem, the above general system includes also, as its constituent parts, subsystems, (1) a block of general incentives and restrictions that
operate in all sectors of business activities, (2) subsystems combining special incentives and restrictions that function only in separate sectors of business activities (trade, insurance, construction, etc.) [6].

From the standpoint of the theory of legal means, the system of legal incentives and restrictions on business activities in the banking sector is an independent legal instrument through which the regulation of social relations is carried out in the marked sector in order to establish the legal balance desired by the legislator in this area. This tool includes two interrelated components - legal incentives and legal restrictions.

To ensure the stability of the banking system and to protect the weak side of the legal relationship with the participation of the credit organization, the system of legal incentives and restrictions on business activities in the banking sector should have a mixed, private legal nature. This system should also include both the private legal (regulatory requirements for the size of the authorized capital of the credit organization, etc.), and the public legal (imperatively established procedure for the creation and state registration of a credit institution, etc.) incentives and restrictions, which are applied in an integrated manner [7]. Accordingly, the main method of legislative consolidation of this system is the adoption of interbranch legal regulation, the essence of which is that the noted legal incentives and restrictions are fixed by the norms of various branches of law, in particular civil, administrative, tax, etc.

The system of legal incentives and restrictions on business activities in the banking sector is a concentrated expression of the method of legal regulation used in this field. At the same time, the legal incentives mediate the use of such methods as legal assignment (permission), and legal restrictions - enforcement and prohibition [8].

The imperative consolidation of the system of legal incentives and restrictions in the current legislation, which are in effect when establishing a credit institution, ensures the achievement of the following interrelated goals of public and private property:

- formation of an effective mechanism of state control over the banking sector;
- development and strengthening of the banking system;
- protection of interests of the potential clients of the newly created credit organization.

In order to form an integrated view of the system of legal incentives and restrictions on business activities in the banking sector, the classification of these incentives and restrictions can be carried out on the following basic grounds, depending on:

- "life stage" of the credit organization (operating at the stages of creation, implementation of activities, reorganization and liquidation of a credit institution);
- level of their regulatory enactment (stipulated in the Federal Law and by-laws);
organizational and legal form: Bank of Russia, credit organizations (banks and non-bank credit organizations), credit institutions with foreign investment (branches and representative offices of the foreign banks);

- type and scope of business activities (lending, activities to attract funds to deposits, etc.).

CONCLUSIONS
Since banking is one of the varieties of business activities, and the system of legal incentives and restrictions on business activities in the banking sector is generally correlated as part and whole, there are applied two types of legal incentives and restrictions in the banking sector accordingly. Firstly, these are general legal incentives and restrictions applied to any business entities (incentive in the form of the opportunity to engage in business activities, including banking, restriction in the form of a requirement for compulsory state registration procedure, etc.). Secondly, a special group of legal incentives and restrictions is fixed within the framework of special normative acts, with the help of which only regulation of business activities in the banking sector is carried out (a special procedure for registering a newly created credit institution, implementing measures to prevent the bankruptcy of a credit institution, as well as declaration of the credit institution to be insolvent (bankrupt), etc.).

SUMMARY
The system of legal incentives and restrictions on business activities in the banking sector consists of three interconnected subsystems of incentives and restrictions (relatively independent elements) that operate when a credit institution is created and when it carries out the business activities and terminates it. The mentioned interconnection of these subsystems is expressed in that (1) the second subsystem begins to function only when the credit organization has passed the state registration procedure, that is, the implementation of incentives and restrictions within the first subsystem has reached its objectives; (2) the third subsystem begins to act, as a rule, only when, for one reason or another, the second subsystem of incentives and restrictions does not work.

REFERENCES:
For the purpose of writing this article, we analyzed the materials from the website of the Association of American Bankers www.aba.com