



ASSOCIATION OF EUROPEAN BUSINESSES

Real Estate Committee Open Event

BANKS AS OWNERS OF REAL ESTATE ASSETS: RISKS, CHALLENGES, AND WAYS TO MOVE FORWARD

November 25, 2010



**ASSOCIATION OF EUROPEAN BUSINESSES
IN THE RUSSIAN FEDERATION**

Session 1

Banks: view from the inside

**Speakers: Vladimir Lopatin (Association of Russian Banks),
Olga Enkova (Alfa-bank)**

November 25, 2010



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IN THE RUSSIAN FEDERATION**

Session 1

**“Non-core pledged assets: everything is still
ahead”**

**Vladimir Lopatin
Association of Russian Banks**

November 25, 2010



***Выявление Банками проблемных сделок/активов.
Мероприятия по улучшению структуры сделок
и качества активов***

*Identification of toxic assets/deals by banks.
Actions to improve deal structure and assets quality*

***Енькова Ольга,
Начальник Управления финансирования
строительства и операций с недвижимостью
ОАО «Альфа-Банк»***

*Enkova Olga,
Head of Financing of construction and operations with real estate
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Зоны повышенного внимания банков при мониторинге сделок с риском на объекты коммерческой недвижимости.
Focal points for banks while monitoring transactions with risky commercial real estate.

Валютные риски
Currency risks

- Арендный поток в валюте отличной от валюты кредита/
Rent income in the currency different from loan currency
Отсутствие хеджей / no hedge

Баллон по кредиту
Credit balloon

- Риски непогашения кредита в случае наличия баллона в конце срока погашения кредита / risk of non payment in case of balloon in the end of pay back period

Краткосрочные договоры аренды
Short-term lease contracts

- В случае превышения срока кредитования над действующими сроками договоров аренды / in case period of loan is longer than actual lease agreement terms
- Риск снижения арендного потока из-за незаключения новых договоров, снижения арендных ставок / risk of rent income reduction due to lack of new leasing agreements, rent rate decrease

Риски арендаторов
Tenants risks

- Низкая диверсификация арендаторов, ухудшение финансового состояния и снижение платежеспособности крупнейших арендаторов / low diversity of tenants, deterioration of financial situation and solvency of key tenants

Долговая нагрузка
Debt load

- Наличие нескольких крупных банков-кредиторов, неконтролируемая кредиторская задолженность / several large lending banks, uncontrolled accounts payable



Сигналы ухудшения текущего состояния объектов, ведущие к риску получения «Проблемного» кредита/актива.

Категория «Предпроблемных» сделок/активов.

Alarm signals of deterioration of the current object condition, which may lead to toxic loan/asset risk.

“Pretoxic” transactions/assets.



Снижение оборотов по счетам в Банке /
Decline in turnover on the bank accounts in a bank



Физическое отсутствие арендаторов во время мониторинга объекта /
Physical absence of tenants during the object monitoring



Резкий рост кредиторской и дебиторской задолженности /
Sharp increase of accounts payable and accounts receivable



Негативная динамика развития бизнеса основных арендаторов /
Negative business trends of the core tenants



Усиление конкуренции (стр-во новых похожих объектов, «оттягивание» доли рынка)
Competition increase (construction of new similar projects, market share decrease)

Мероприятия по предотвращению дефолта по кредитам и получению банком «Проблемного» кредита
Actions to be taken in order to prevent default and toxic loans

- Реструктуризация долга (увеличение срока кредита + изменение процентных платежей + пересмотр графика погашения ОД + дополнительное обеспечение и т.д.)

Debt restructuring (loan term increase + interest rate correction + review of the main credit repayment schedule + additional collateral, etc)

- Предоставление дополнительного финансирования в случае, если это может повысить качество/потоки объекта

Additional financing in case it will increase object quality / income flows

- Участие в продаже актива, в т.ч. Частичное финансирование сделки купли-продажи актива

Participating in the asset sales, including partial financing of the asset sale



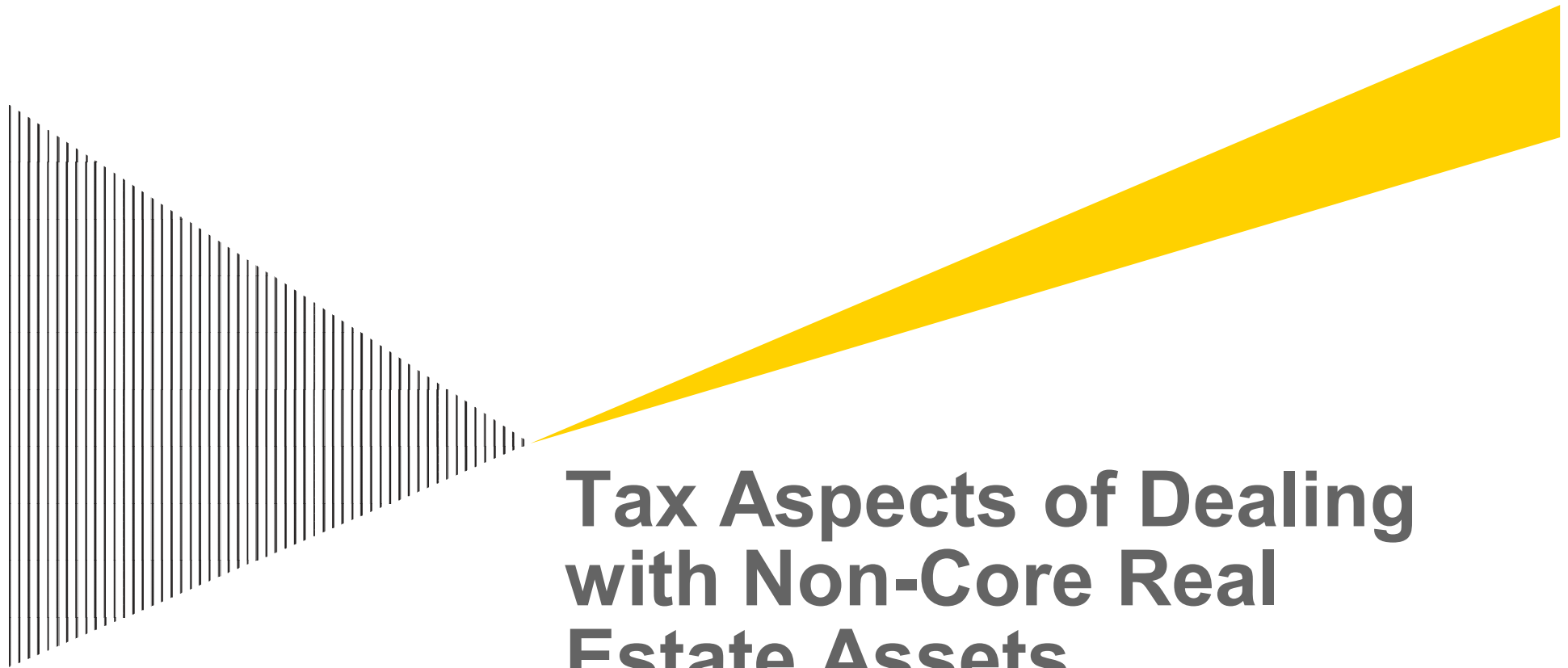
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Session 2

Existing approaches and current tax & legal aspects

Speakers: Mikhail Urinson (ALUR), Yulia Timonina and Irina Bykhovskaya
(Ernst and Young), Alena Kucher (Debevoise & Plimpton LLP)

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Tax Aspects of Dealing with Non-Core Real Estate Assets

25 november 2010
Yulia Timonina, Irina Bykhovskaya

Loan Restructuring



- ▶ **Possible mechanisms:**
 - ▶ Change of currency;
 - ▶ Change in payment schedule / prolongation;
 - ▶ Additional collateral;
 - ▶ Change in interest rate;
 - ▶ Provision of equity kickers;
 - ▶ Waiver of some of the obligations.

- ▶ **Tax & Regulatory matters relevant for Banks**
- ▶ **Extra tax costs for the borrowers?**

Where to Park?

- ▶ **In the Bank which is the lender:**
 - ▶ liquidity and other prudential ratios;
 - ▶ transfer pricing implications;
 - ▶ market value of the asset received: profit & loss;
 - ▶ VAT
- ▶ **Loan assignments**
 - ▶ Russian vs. non-Russian entity;
 - ▶ Russian unit investment fund;
 - ▶ Foreign fund structures
- ▶ **Certain structural & tax issues:**
 - ▶ Funding of an affiliated company;
 - ▶ Loan loss provisions / provision for doubtful debts;
 - ▶ Deductibility of losses



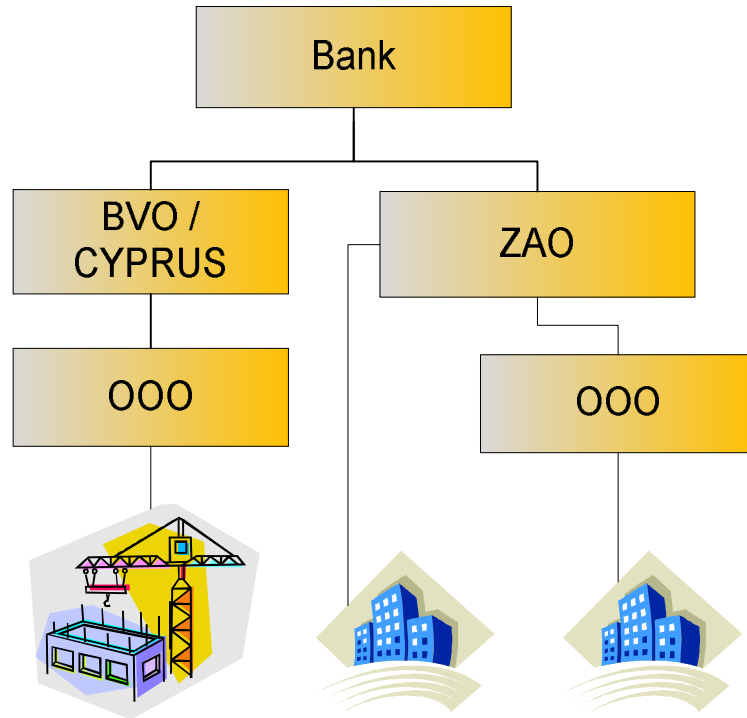
Foreclosure

▶ **Tax & Regulatory issues**

- ▶ Deductibility of losses;
- ▶ VAT



What have we got there?



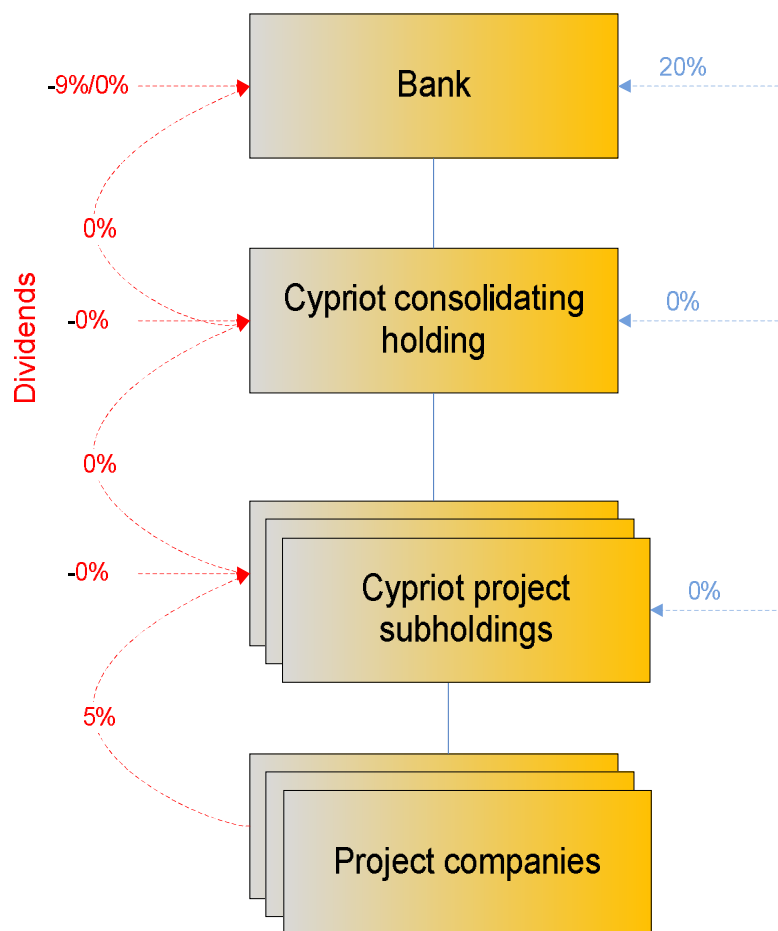
▶ Typical problems:

- ▶ Lack of holding structure
- ▶ Inefficient project structure
- ▶ Thin capitalization problem
- ▶ Lack of unified accounting and tax methodology

▶ Implications:

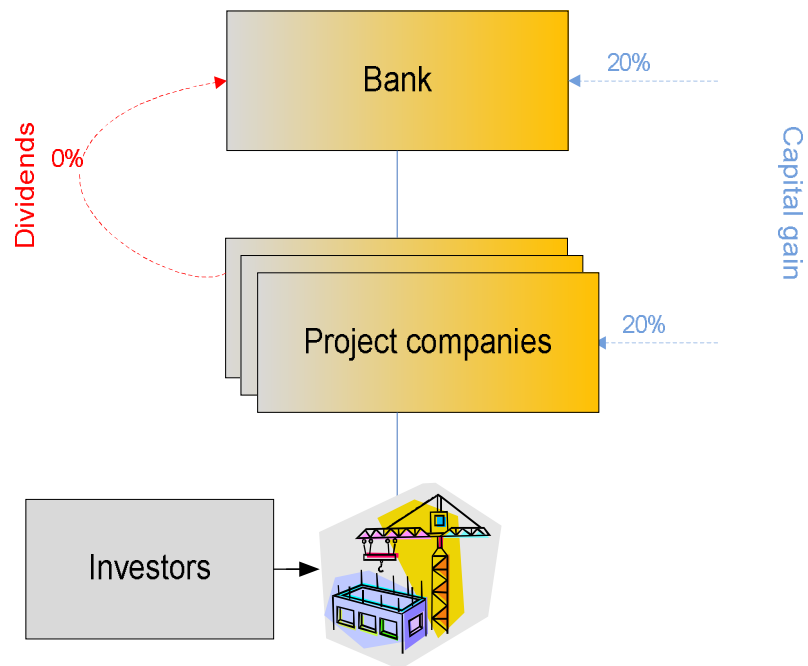
- ▶ Structure is “not investable”
- ▶ Current and future tax costs
- ▶ Spread of risks between projects
- ▶ Complexity of management and control

Structure: commercial real estate



- ▶ Expectations of investors
- ▶ Pros and cons of foreign structure
- ▶ Cyprus vs. other jurisdictions
- ▶ Interest deductibility

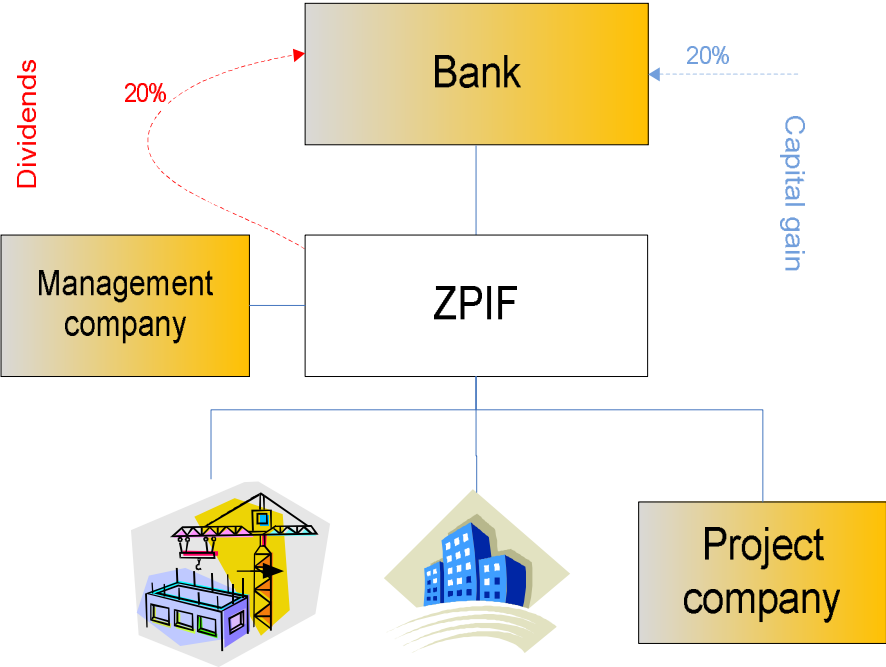
Structure: residential projects



- ▶ Russian structure is preferred?
- ▶ Inherent tax risks
- ▶ Need for unified tax policies

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Structure: real estate investment funds



- ▶ Is PIF a solution?
- ▶ Tax considerations
- ▶ Use of foreign unit holders

Other important matters

- ▶ Unified accounting and tax methodology
- ▶ Automation of accounting and tax systems
- ▶ Control over tax risks and tax efficiency
- ▶ Industry specific tax issues



Questions?

AEB Event: Banks as Owners of Real Estate Assets: Risks, Challenges and Ways to Move Forward

Legal Aspects of Dealing with Non-Core Real Estate Assets

November 25, 2010

Ekaterina Raykevich
Debevoise & Plimpton LLP

Overdue Debt

- Actions after an event of default under a financing agreement
 - taking control over construction (mandatory instructions, assignment of contracts etc.)
 - restructuring of debt
 - acceleration of debt and enforcement of mortgage / pledge / assignment and other security
- Acquisition of real estate assets (including asset under construction if it has been registered as real estate property)/ shares in project company by a bank
 - asset – Russian law, shares – according to market practice, Russian law
 - after recent changes in mortgage law a wider range of mortgage foreclosure methods is available

Banks as Owners of Real Estate Assets

- Bank holds real estate asset
 - directly as owner
 - indirectly by holding shares in a development company
- Restrictions:
 - regulatory: prohibition to undertake industrial, trading and insurance activities
 - management risk
 - expertise
- Bank as owner of real estate asset is a temporary situation

Disposal of Real Estate Assets

- Sale of real estate assets / shares
 - market concerns
 - overvaluation of assets
- Transfer of:
 - real estate asset / shares to a bank's development company
 - real estate asset to a real estate investment fund
- Joint venture
 - management of real estate asset
 - co-investment

Asset Sale

- Sale of real estate asset
 - Russian law applies
 - allowed by Russian law, but lack of substantial practice
 - better protection for a purchaser against defects of the asset
 - time consuming due to state registration requirement
 - transfer of contracts
 - re-execution of lease contracts
 - VAT
- Sale of shares
 - expedite and well developed procedure
 - governing law of SPA – English law / Russian law
 - representations and warranties
 - change of control issue
 - contracts / leases are not affected

Managing Real Estate Assets

- Joint venture with 3rd party investors
 - corporate governance
 - asset management expertise of a JV partner
 - jurisdiction or incorporation
- Real estate investment funds
 - tax benefits
 - management of real estate assets
 - transferability of shares in a fund

Bank's Development Company

- Managing of real estate asset
 - development company's own sources
 - outsourcing to a management company
 - trust management
 - agency contract
 - services contract
- Contribution to charter capital
 - independent appraisal of asset
- Structuring: allocating each asset with a separate subsidiary of the development company
- Existing contracts:
 - leases continue on original terms
 - assignment of contracts requires consent

Contacts



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Questions and answers

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Thank you for your attention!

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