

## CIS LEGAL NEWSWIRE

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## RUSSIA

## Central Bank Issues Explanatory Letter on Ruble Accounts of Non-Residents

Last year, the Central Bank of Russia (the “CBR”) issued Instruction No. 93-i (the “Instruction”), which governs the Ruble accounts of non-residents opened with Russian banks. The Instruction was unclear as to several important issues, and recently, the CBR issued a letter designed to further elaborate on these matters (the “Letter”). Although the Letter is primarily explanatory in nature, it is likely that Russian banks will refer to it to deal with certain loopholes in the Instruction.

The Instruction establishes special conversion and repatriation rules for Rubles held in a non-resident’s non-convertible account (“N-account”). The Instruction provides that a bank in which a non-resident maintains an N-account is allowed to convert Rubles into foreign currency 365 days after the bank receives a conversion instruction from the non-resident. It was unclear under the Instruction whether a non-resident could change the amount indicated in the conversion instruction during the 365-day period (*i.e.*, after the conversion instruction was submitted to the bank). The Letter explains that it is permissible both to reduce and increase the amount in the conversion instruction. In the case of a reduction, the 365-day period is not interrupted and is considered to begin on the date on which the initial instruction was submitted to the bank. In the case of an increase, the 365-day period for the additional amount begins on the date on which the new conversion instruction for the increased amount is submitted.

The Letter also addresses the possibility of the CBR changing the regime of an N-account on an individual basis. In the past, the CBR issued separate permissions to non-residents to change the regime of a Ruble account. As a result, many non-residents sought special individual permissions from the CBR allowing the conversion of Rubles in an N-account prior to expiration of the 365-day period. In the Letter, the CBR establishes that a non-resident may not convert and repatriate Rubles in an N-account in violation of the procedures established by the Instruction, even if the CBR issues a special permission.

Because it may be rather complex and time-consuming to open Ruble bank accounts in Russia, many non-residents prefer not to maintain Ruble accounts with Russian banks directly, and instead to use correspondent Ruble accounts opened by non-Russian banks in Russia. The Letter confirms that non-Russian banks may operate Ruble accounts on their own behalf and on behalf of their non-resident clients. /E. *Kuryatnikova*

## Part III of RF Civil Code Enacted

On November 26, 2001, Part III of the RF Civil Code (“Part III”) and the RF Law “On Introduction into Force of Part III of the RF Civil Code” (the “Law”) were enacted. Part III consists of two chapters: Chapter Five – “Inheritance” (“Chapter Five”); and Chapter Six – “International Private Law” (“Chapter Six”). In accordance with the Law, Part III will become effective on March 1, 2002 and will replace the respective sections of the 1991 “Fundamental Principles of Civil Legislation of the USSR” (the “Fundamentals”) and the Civil Code originally enacted in 1964.

Chapter Six regulates the rules on conflicts of law, as well as certain aspects of the legal status of foreign entities and individuals, property rights and torts. Chapter Six also regulates in greater detail issues covered in current international private law, and introduces a significant number of new terms and provisions. Interestingly, the “renvoi” doctrine, which is generally not a part of Russian rules on conflicts of law, applies with respect to the choice of Russian law in connection with the determination of the legal status of an individual.

Chapter Six (as in the Fundamentals) provides that the period of any statute of limitations will correspond to the law chosen in accordance with the rules on conflicts of law. Chapter Six also permits the parties to an agreement to choose governing law not only with respect to an entire agreement, but also with respect to certain provisions of an agreement.

Chapter Six establishes a significant number of new rules on conflicts of law. It provides for rules on conflicts of law with respect to consumer protection laws pursuant to which the choice of foreign law for a contract entered into with a consumer does not alter the rights of the consumer granted by Russian law. With respect to torts, Chapter Six establishes a set of rules applicable to damages caused by defective goods or services. Such rules entitle a consumer who has suffered damage as a result of defective goods or services to choose the applicable law from among the law of his place of residence, the law of the location of the producer of the defective product or service provider, or the law of the location where such product or service was obtained or rendered.

One of the most important features of Chapter Six, which is described in Article 1192, is that the choice of foreign law does not affect the application of preemptory rules of Russian law if: (i) such rules so provide; or (ii) such rules are of material significance in securing the rights and interests of persons in legal relations regulated by civil law. Clearly, as it is the courts who must determine whether such rules are of material significance, they now have broader discretion not to apply foreign law, notwithstanding the express choice of foreign law by the parties to an agreement. Previously, the inconsistency between Russian and foreign law could be interpreted by Russian courts as a violation of “the public order,” until the RF Supreme Court outlawed such practice. It remains to be seen how this provision in Chapter Six will be interpreted and enforced by Russian courts. /K. Konstantinov and D. Taktashova

## Method for Evaluation of Major Transactions Clarified

In October 2001, the RF Federal Commission for the Securities Market (the “FCSM”) issued Informational Letter No. IK-07/7003, which clarifies the method for calculating the value of the assets of a joint stock company in order to comply with the rules for approval of major transactions pursuant to the Federal Law “On Joint Stock Companies” (“JSC Law”). The JSC Law requires that companies obtain certain corporate approvals for transactions involving property with a value in excess of 25% of the company’s assets.

According to the recent clarification, calculating the value of a company’s assets to determine whether a transaction qualifies as a major transaction (*i.e.*, whether the value of the transaction in question exceeds the threshold of 25% of the company’s assets), will be based on the company’s balance sheet (as of the most recent reporting date), and such value will be deemed to be equal to the total value of the company’s assets, including future receivables.

Prior to issuance of the Informational Letter, a number of companies calculated the value of a company’s “net assets” in accordance with Order No. 71 of the RF Ministry of Finance, dated August 5, 1996, for purposes of determining whether a transaction is a major transaction. The recent

clarification by the FCSM should reduce the number of transactions that will constitute major transactions for the purposes of the JSC Law. */J. Romanova*

## Changes Introduced on Taxation of Profits

On January 1, 2002, a new chapter of the Tax Code – Chapter 25 – entitled “Profit Tax” (“Chapter 25”), will become effective. Chapter 25 clarifies certain ambiguities under the previous Law “On Profit Tax,” dated December 27, 1991 (as amended), (the “Old Tax Law”), with respect to the taxation of capital formation and taxation of transfers of assets between parents and subsidiaries. In addition, Chapter 25 changes the tax regime for the sale by foreign companies of shares issued by Russian companies. Thus, Chapter 25 effectively affects the entire life cycle of an investment project, as discussed in more detail below.

### Rules Applicable to Taxation of Surplus Capital

Prior to the enactment of Chapter 25, the tax status of surplus capital was dependent upon the corporate form of the income recipient. Under the Old Tax Law, the surplus capital of a joint stock company was not subject to profits tax. However, the tax implications with respect to surplus income incurred by a limited liability company were less clear. The prevailing position of the tax authorities was that such income of a limited liability company was taxable (*i.e.*, a tax was imposed on the difference between the nominal value of the participatory interest and the actual value received for such interest). Article 277 of Chapter 25 clarifies that surplus capital does not constitute taxable income to the issuer upon the issuance of shares by a joint stock company or the sale of participatory interests by a limited liability company. Thus, pursuant to this clarification, investors will have more flexibility to choose the appropriate corporate form of a company for the particular project.

### Transfers Between Parent and Subsidiary

Chapter 25, similar to the Old Tax Law, provides that transfers of assets, including monetary funds, from a parent to a subsidiary without consideration are not taxable transactions for the subsidiary, as the assets transferred do not constitute taxable income under the profits tax law. However, unlike the

Old Tax Law, Chapter 25 restricts this tax treatment: assets transferred to a subsidiary may not be transferred to a third party within one year of such transfer. Failure to comply with such one-year limitation would lead to the re-qualification of the transfer from the parent as a taxable transfer, which would then be deemed as taxable “non-sale” income for the recipient of such assets.

### Sale of Shares by Non-Residents

Chapter 25 changes the profits tax regime for income received by a non-resident from the sale of shares issued by a Russian company (as one type of income received by a foreign company not related to a permanently established presence in Russia). Under the Old Tax Law, such income normally was considered taxable income, with a tax imposed on the difference between the tax base of the shares sold and the purchase price.

Chapter 25 now provides that a foreign company without a permanently established presence in Russia will only be taxed on income from the sale of shares issued by a Russian company if at least 50% of the assets of such Russian company consist of real estate. The resident that is the source of such income is responsible for withholding such tax. */K. Konstantinov*

## BELARUS

## Belarus Accepts IMF Obligations

The Council of Ministers and the National Bank of Belarus have officially informed the International Monetary Fund (IMF) that beginning as of November 5, 2001, Belarus will accept all of its obligations pursuant to Article 8 of the IMF Charter. Such obligations establish that Belarus may not, without the approval of the IMF, introduce limits on making payments and transfers in current international transactions. This will provide for open access for all players on the internal currency market and should help guarantee a unified currency rate. In practice, this step should support the transition to a freely convertible Belarusian currency, which in turn should allow for the use of the Belarusian Ruble in all current payments in any foreign bank. */V. Salei*

## Transformation of Major Fertilizer Producer into a Joint Stock Company Contemplated

President Alexander Lukashenko recently announced that Belarus' largest manufacturer of mineral fertilizers and the chemical additive "caprolactam" – PO "AZOT" in Grodny – may be converted into a joint stock company. Presently, AZOT is a wholly state-owned enterprise. However, President Lukashenko has the authority to order that interests in AZOT be sold off (either in whole or in part), but before this can happen, the corporate form of AZOT must be changed to a joint stock company. The current capacity of AZOT allows it to produce up to 121,600 tons of caprolactam annually, which represents a total of 4.5% of world-wide production, as well as a significant volume of mineral fertilizer, which is in constant demand on the European, Asian and South American markets. The Russian companies Lukoil, Itera and Gazprom have already announced their interest in acquiring AZOT. Pursuant to a recent order of President Lukashenko, a full review of the enterprise is underway in anticipation of AZOT's transformation into a joint stock company. */V. Salei*

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