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# CIS LEGAL NEWSWIRE

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## RUSSIA

### Government Moves to Support Russian Banking Sector

The Prime Minister of the Russian Federation (the "RF") has declared a policy of support for affected sectors of the economy during the world financial crisis. Since mid-September 2008, the RF Government and the RF Central Bank (the "CBR") have adopted approximately thirty acts to support the Russian market, and the government and major Russian industrial companies have taken measures to invest in the most affected banks and financial organizations.

Several laws have been passed or amended to provide funds for financing and investment.

#### *Federal Law "On Additional Measures to Support the RF Financial System".<sup>1</sup>*

Under this law, the Bank for Development and Foreign Relations of the Russian Federation ("VEB") may grant foreign currency loans to companies. These loans can be granted until December 31, 2009. The VEB loans must be used to refinance or repay loans from foreign lenders

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## UKRAINE

### Ukraine Obtains US\$16.4 Billion Stand-By Arrangement from IMF

As is well known, on November 5, 2008, the Executive Board of the International Monetary Fund (the "IMF") approved a two-year Stand-By Arrangement (the "SBA") for approximately US\$16.4 billion to assist the Ukrainian government to restore stability and strengthen confidence in Ukraine's financial system and economy. The approval enabled the first tranche of

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## KAZAKHSTAN

### New Bank Regulatory Measures Adopted to Respond to Crisis in Kazakhstan

Amendments to Kazakhstan's Law on Banks and Banking Activities, aimed primarily at responding to the financial crisis, were approved by the President on October 23, 2008. The new provisions relate mainly to the state acquisition of troubled banks, early reaction measures, bank ownership and licensing.

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<sup>1</sup> Federal Law No. 173-FZ "On Additional Measures to Support the RF Financial System", dated October 13, 2008.

under loan/credit facility agreements which were concluded before September 25, 2008. The minimum interest rate on the VEB loans under such program must be US Dollar LIBOR (determined for a one-year period) plus five percent. The supervisory board of VEB shall determine the requirements of potential borrowers as well as the conditions and procedures for granting such loans. However, Article 3 of the Law on Additional Measures allows VEB to require that borrowers receive VEB's preliminary consent if the borrowers intend to conclude any facility agreements with third parties.

The CBR will deposit up to 50 billion rubles (approximately US\$1.86 billion) in VEB accounts for a one-year period in order to provide funding under the program.

*Federal Law No. 171-FZ "On Making Amendments to Article 46 of Federal Law on the CBR", dated October 13, 2008.<sup>2</sup>*

To stabilize the Russian financial system, the CBR has been empowered to grant unsecured loans in Rubles to any Russian credit institution having a positive rating (as determined by the CBR Board of Directors) with a maturity period not exceeding six months. The CBR clarified this amendment in a regulation,<sup>3</sup> which includes a standard form agreement for concluding such transactions. These loans are to be granted by tenders arranged via electronic trade in the CJSC "Moscow Inter-Banking Stock Exchange".

The CBR has issued several directives as additional measures to try to prevent negative consequences arising out of the financial crisis. Most of these were passed to bring the banking regulations in line with updated federal laws. Under the amendments, the CBR has (i) stated that bonds that have already been issued may be pledged to secure the loans to be granted by the CBR to Russian companies; (ii) stated that the issuers of promissory notes to be pledged in favor of the CBR may be state-owned enterprises as well as private Russian companies;<sup>4</sup> and (iii) established the procedure under which the CBR has the right to demand that banks decrease their charter capital to the value of assets (capital) they own. On November 12, 2008, the CBR changed the refinancing rate from 11 percent to 12 percent per annum for

<sup>2</sup> Federal Law No. 171-FZ "On Making Amendments to Article 46 of Federal Law on the CBR", dated October 13, 2008.

<sup>3</sup> CBR Regulation No. 323-II "On Granting of Unsecured Loans by the CBR to Russian Credit Institutions", dated October 16, 2008.

<sup>4</sup> Directive issued by the CBR No. 2084-V "On Amendments to CBR Regulation No. 312-II "On Procedure of Granting by the CBR Secured Loans to Companies", dated October 3, 2008.

finance transactions, and on December 1, 2008, raised it again to 13 percent.

Although these measures have come into force, many Russian companies have proposed an alternative plan for receiving loans from the government whereby they would have the option of taking out a 5-year loan instead of a 1-year loan. They argue that the 1-year loan plan is unrealistic considering that the financial recovery will likely take at least two to three years. Under this proposal, the CBR would grant loans to other banks which, in their turn, would make loans to companies for a longer period with a higher interest rate. This proposal is under discussion in the RF Government.

In practice, several major Russian banks having financial problems were purchased by Russian state-owned organizations: Russian Railways and Alrosa each purchased a 45 percent stake in Kit-Finance Bank; the CBR supported the National Reserve Bank to bail out Russian Capital Bank; VEB purchased a 100 percent stake in Svyaz-Bank and Globeks; and Gazprombank purchased Sobinbank. In terms of foreign investors, we note that the Bank of Cyprus acquired an 80 per cent stake in Uniastrum Bank.

In summary, the RF Government, the CBR, and other state authorities and institutions have moved quickly to support the Russian banking sector by implementing different protective measures and providing funds from the Russian Reserve Fund. It is hoped that as a result, the funds will eventually find their way into the real economy to support companies and individuals at the grassroots level. //

*Handz, A. Gasparyan*

## Mandatory Offers Involving Strategic Companies

Under Russian law, when a shareholder acquires certain threshold amounts of shares in an open joint stock company (more than 30%/50%/75%), it is required to carry out a mandatory tender offer ("MTO") to purchase the remaining shares in such company. In May of this year, the MTO rules were amended to take into account the new law "On the Procedure for Foreign Investment in Business Entities Having Strategic Importance to National Defense

and Security" (the "Strategic Sectors Law").

As a general rule, under the Strategic Sectors Law, an acquisition of more than 50% of the voting shares in a "strategic company", or an even lower threshold in a subsoil strategic company, is subject to the approval of the Government Commission for the Control over Foreign Investment in the Russian Federation (the "Commission").<sup>1</sup>

Thus, corresponding amendments were made to the Law on Joint Stock Companies (the "JSC Law") to prevent a shareholder from acquiring more than 50 percent of the shares in a strategic company (or a lower threshold in subsoil strategic companies) without seeking the prior approval from the Commission.

These new rules have already been put to test in a dispute involving a controversial decision by the Russian government to designate TGK-4, the territorial generating company, a natural monopoly (and, thus, a strategic company) during the mandatory offer process being carried out by a "foreign" company for the shares in TGK-4.

This brief note will discuss the recent TGK-4 dispute and the interaction between the Strategic Sectors Law and the MTO rules.

## Background to the TGK-4 Dispute

According to publicly available information:

- on May 13, 2008, Onexim Holdings Limited, a Cyprus company ("Onexim Cyprus") acquired a stake in TGK-4 in excess of 30% of TGK-4's voting shares;
- on July 30, 2008, TGK-4 received the MTO to acquire the shares in TGK-4 from Onexim Cyprus owned by the remaining shareholders of TGK-4;
- on October 8, 2008, the Federal Tariff Service included TGK-4 in the Register of Natural Monopolies subject to governmental regulation and control (the "Register");
- on October 9, 2008, Onexim Cyprus stated on its website that it could not acquire the shares in accordance with the MTO, as TGK-4 had been included in the Register and had, therefore, become a "strategic company;"

<sup>1</sup> Article 4 of the Strategic Investment Law provides that transactions with shares (participatory interests) of a strategic company do not require prior approval if, prior to entering into such transactions, a foreign investor or group of persons directly or indirectly controlled more than fifty percent (50%) of the total number of votes attributed to the voting shares (interests) forming the charter capital of such a strategic company.

- on October 17, 2008, the term for acceptance of the MTO by the minority shareholders expired.

Under Russian law, the price of the shares to be acquired under a MTO cannot be lower than their weighted average price for the six months preceding the date of the MTO. As a result, as at the date of acceptance of the MTO by many of TGK-4's minority shareholders, Onexim Cyprus was notionally obliged to pay for the shares at a market price significantly higher than the market value of the shares at the proposed time of payment under the MTO. In the context of the global financial crisis, the change in market value would have had a major impact on Onexim Cyprus, requiring it to buy shares at a higher price than the market value. The minority shareholders have alleged that the change in market value and Onexim's inability to pay the full price led it to seek a way in which to avoid fulfilling its obligations under the terms of the MTO.

## TGK-4: a Strategic Company

As mentioned above, on October 8, 2008 (i.e., fewer than ten days before the MTO expired), Federal Tariff Service Order No. 366-e was issued listing TGK-4 in the Register as a monopoly company engaged in gas pipeline transportation activity. The mere fact that TGK-4 was listed in the Register would not be particularly noteworthy but for the provisions of the Strategic Sectors Law. In accordance with Article 6 of the Strategic Sectors Law, any business entity included in the Register in connection with its gas pipeline transportation activity shall be considered a natural monopoly and therefore a business entity of strategic importance to national defense and security (i.e., a "strategic company").

TGK-4's revenues from gas pipeline transportation operations are reportedly less than 0.01 percent of its total revenues and apparently the pipeline serves only a subsidiary of TGK-4. However, the amount of revenue/profits that a natural monopoly generates from the operations for which such entity is included in the Register is irrelevant for the purposes of both the Strategic Sectors Law and Federal Law No. 147-FZ "On Natural Monopolies" dated August 17, 1995.

Thus, the listing of TGK-4 in the Register at that particular time during the MTO struck investors as suspicious. These suspicions were further fueled by the fact that, according to a copy of the MTO published on TGK-4's website, as of October 1, 2008, Onexim Cyprus owned 50.41% of the

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voting shares in TKG-4, which would have made it exempt from the requirements of the Strategic Sectors Law (see footnote 1 on page 3). However, according to Onexim Group's website, as of the date of the Federal Tariff Service's decision to include TKG-4 in the Register (October 8, 2008), Onexim Cyprus owned precisely 50% of the voting shares in TKG-4.

### Inconsistencies Between the Strategic Sectors Law and the JSC Law

The dispute over TKG-4 has illuminated a number of inconsistencies between the Strategic Sectors Law and the JSC Law, as described below.

- (1) The JSC Law establishes the obligation of a shareholder who has acquired more than 30% of the shares in a joint stock company to make an MTO to the remaining shareholders to acquire their shares. The Strategic Sectors Law sets out the requirement for a foreign investor intending to acquire more than a certain percentage of shares in a strategic company to apply for the Commission's approval. However, there is no liability for failing to apply for the Commission's approval when making an MTO. This is particularly important as, by law, the approval is a condition precedent to the closing of the transaction. The lack of mechanics as to how these laws (Strategic Sectors Law and the MTO rules) should work together will likely have a negative impact on all of the participants involved - offerors, minority shareholders, guaranteeing banks, and the joint stock company itself.
- (2) Formally speaking, a MTO is a transaction in itself (i. e., an act aimed at the creation of civil rights and obligations) pursuant to Article 7 of the Strategic Sectors Law, i.e., a transaction as a result of which a foreign person or group of persons acquires (if the offer is accepted) the right to control, directly or indirectly, more than 50% of the total number of voting shares in a strategic company. Accordingly, the current versions of the JSC Law and the Strategic Sectors Law offer no answer as to whether the Commission's approval must be obtained prior to making an MTO, or whether such approval may be obtained after delivery but before the acceptance of the MTO (or before the transfer of shares in the strategic company). The same inconsistency arises with respect to the MTO and the application to the Federal Antimonopoly Service for prior antimonopoly clearance. As the MTO rules and Russian

competition laws are structured today, it is not clear what would happen if, for instance, the Federal Antimonopoly Service allowed an investor to purchase up to 50% out of 100% of the shares which are subject to an MTO.

- (3) According to the JSC Law, the term for acceptance of an MTO may not be less than 70 days or more than 80 days from the moment the open joint stock company receives the MTO. The process of obtaining the Commission's approval, however, may take six months or more. If regulatory authorities and courts decide to construe that the Commission's approval should be obtained after making the MTO but prior to the conclusion of the relevant share purchase agreement (prior to the acceptance by the minority shareholders of the MTO) or prior to the transfer of the shares to the shareholder who has made the MTO, a paradox may occur if Commission approval is not received and the shareholder is legally required to perform its obligation to purchase the tendered shares.
- (4) In addition, the JSC Law and the Strategic Sectors Law do not cover the situation where the obligation to obtain the Commission's approval arises between the date the MTO was made and the date the shares were actually debited from a minority shareholder's account. For instance, if the Strategic Sectors Law does not apply to a joint stock company when the MTO is made, but does apply after the MTO is accepted by a minority shareholder and prior to the actual transfer of the shares to the offeror, then, under Article 433 and Article 440 of the RF Civil Code and the JSC Law (Paragraph 5 of Article 84.3), the agreement shall be deemed to be concluded on the last day of validity of the MTO, whereas under the Strategic Sectors Law the agreement is deemed to be null and void.

These inconsistencies allow a party to circumvent the MTO rules, and, in particular, to avoid the obligation to buy shares from minority shareholders as required under the JSC Law, and should be revised as soon as possible. The apparent use of the Strategic Sectors Law to circumvent the MTO rules may be perceived by foreign investors who have been concerned about its potential impact on their investments in Russia as an abuse of the Strategic Sectors Law. The fact that it is being used in an opposite manner than anticipated (i.e., to ensure foreign investors retain their shares) does not give comfort to foreign investors as it

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merely shows how vague provisions in the law can be exploited in favor of the home team. /L. Brank, A. Volnov, O. Watson

## Implementation of Subsoil Law Amendments Problematic under New Strategic Sectors Law

Following the enactment in May 2008 of the "Law on Foreign Investment in Companies with Strategic Significance for National Security and Defense" (the "Strategic Sectors Law") and related amendments to the "Law on Subsoil" (the "Subsoil Law"), the Government of the Russian Federation (the "RF Government") has adopted a number of resolutions further elaborating on new provisions of the Subsoil Law. These resolutions, however, have not fully clarified the application of the law to various entities and have created even greater concern among investors.

### New Subsoil Developments

Resolution No. 697, which came into effect on October 7, 2008, established the procedure for terminating the right to use a subsoil plot of "federal significance" ("Strategic Deposit") discovered during a geological survey performed under a combined license. It also reinstates the provisions of the Subsoil Law such that the RF Government may terminate the right to use a subsoil plot if the newly discovered deposit meets the criteria of a Strategic Deposit. However, these provisions do not apply if the geological survey was completed, and prospecting and mining operations commenced, prior to May 7, 2008.

According to Resolution No. 697, after completion of a state expertise of reserves confirming that the deposit satisfies the criteria of a Strategic Deposit, the licensee must apply to the Federal Agency on Subsoil Use (the "Rosnedra") for a permit for further prospecting and mining of mineral resources at such deposit. The Resolution No. 697 procedure for considering an application is rather complex. Prior to the RF Government issuing a final decision, an application must be considered by Rosnedra, the Federal Antimonopoly Service (the "FAS"), the Ministry of Defense, the Federal

Service of Security and the Ministry of Natural Resources and Ecology. Further, Resolution No. 697 does not specify the maximum timeline for this process, allowing for long delays and potential abuse of the process by state authorities.

It is also important to note that, while the procedure for terminating the combined licenses (i.e., geological survey, exploration and extraction) has already come into legal effect, the procedure for reimbursing expenses incurred by a subsoil user, as well as the license fee, has not yet been approved, although the requirement to reimburse such expenses and the license fee is stated in the Subsoil Law.

In addition, there is still no final clarity as to which subsoil companies will be considered strategic for purposes of the law. The law does not state when exactly the list of Strategic Deposits shall be approved, but only requires such list to be officially published by the authorized body managing subsoil use. To this end, Resolution No. 823, which came into force on November 22, 2008, sets forth the procedure for official publication of the list of Strategic Deposits. It provides that Rosnedra must publish such list in "Rossiyiskaya Gazeta", an official publication where legislative acts of the Russian Federation are published. Under the Strategic Sectors Law, the companies conducting geological survey and/or exploration and mining activities on Strategic Deposits will be deemed to be strategic companies and will be subject to the requirements of the Strategic Sectors Law.

### Impact of Strategic Sectors Law Developments

The Strategic Sectors Law requires any foreign investor which held on May 7, 2008 an interest (direct or indirect) of 5% or more of the voting shares or participation interest in a strategic company to notify the FAS regarding such interest within 180 days from the date the Strategic Sectors Law came into legal effect (i.e., by November 7, 2008).

While it is still unclear when the list of Strategic Deposits will be finalized and made public, the 180-day period that the Strategic Sectors Law established to notify the FAS of existing foreign shareholdings in strategic companies has already lapsed. Further, Resolution No. 795, adopted by the RF Government on October 27, 2008, and setting forth the appropriate procedure for such notification, came into effect on November 11, 2008, i.e., after the expiration of the notice period. As a result, the shareholders of potentially

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strategic companies in the subsoil sector are still unable to fulfill their obligation to notify the FAS, as required by law.

## Conclusion

Unfortunately, six months after the enactment of the new laws on subsoil use, the RF Government has yet to establish all of the procedures required under the laws. The list of subsoil areas of federal significance has not yet been approved. While the Russian state has legitimate reasons to protect its national security, it also needs to reassure foreign investors that the investment climate is transparent and that they will be given protection over their investments, particularly in light of global economic conditions. /L.Brank, D. Litvinova, K. Skopchevskiy

# Higher Arbitration Court Comments on Competition Law Practice

The Higher Arbitration Court of the Russian Federation recently adopted a resolution to resolve variations in court practice concerning the application of Federal Law No. 135-FZ "On the Protection of Competition", dated July 26, 2006, as amended (the "Competition Law"). The Resolution of the Plenary Session of the Higher Arbitration Court of the Russian Federation No. 30 "On Some Issues Raised In Connection With Application of Antimonopoly Legislation", dated June 30, 2008, (the "Competition Resolution") provides guidance regarding certain unclear substantive and procedural matters.

According to the Competition Resolution, the antimonopoly authorities and the court may determine without any documentary evidence of an agreement on such actions whether concerted actions of legal entities on the commodities market occurred. Concerted actions of legal entities may be proven based on factual circumstances, such as different legal entities acting relatively uniformly and simultaneously without any objective causes for such uniformity and simultaneous action.

The Competition Resolution provides that administrative fines, set forth in the Administrative Violations Code of the Russian Federation, and forfeiture of income gained due to a violation of antimonopoly law to the state budget, under the Competition Law, may not be applied concurrently for the same violation of antimonopoly law. Income gained due to a

violation of antimonopoly law is forfeited only if it is impossible to define the amount of administrative fines provided in the Administrative Violations Code of the Russian Federation. Also, the application of administrative fines and forfeiture of income do not prevent a person harmed due to a violation of antimonopoly legislation from claiming damages from the violator in court.

The Competition Resolution clarifies the term "group of persons" with respect to the application of different provisions of the Competition Law:

- (1) a group of persons may include legal entities in which the members of the group of persons, due to participation in the capital of such legal entity or in accordance with powers obtained from other persons, hold more than 50% of the total votes in the legal entity;
- (2) a group of persons is included in the Register of Economic Entities of the Russian Federation if it possesses more than thirty five percent (35%) of the Russian market for a particular commodity based on the aggregate share of the members of the group of persons on the commodity market;
- (3) any member of a group of persons that gains income due to a violation of antimonopoly law may be subject to administrative fines, provided by the Administrative Violations Code of the Russian Federation, and forfeiture to the state of any income gained due to a violation of antimonopoly law; and
- (4) if one of the members of the group of persons violates antimonopoly law, the antimonopoly authorities may send an order aimed at curing the violation of such law to other members of the same group of persons if such members are able to cure the violation.

In addition, the Competition Resolution provides that the antimonopoly law applies to civil law relations. Thus, a claim of the antimonopoly authorities may not be denied or deemed void solely because the legal relations that a legal entity (defendant under the claim of antimonopoly authorities) is participating in were qualified as civil law regulated. For example, antimonopoly authorities may demand to amend or terminate a contract between two legal entities if the contract restricts competition, even though a party to the contract claims that the contract was entered into based on the "freedom of contract" principle provided by civil law. /V. Andrianov

## Update on Joint Implementation Projects in Russia

Since our last update in June 2008 on Joint Implementation ("JI") projects and the implementation of the Kyoto Protocol in the Russian Federation (the "RF"), there have been some encouraging developments. The RF is and has been taking additional steps towards combating climate change. This mirrors progress made at the recently held Conference of the Parties ("COP") 14 of the United Nations Framework Convention on Climate Change ("UNFCCC") held in Poznań (from 1 to 12 December 2008) and in view of the forthcoming COP 15 of the UNFCCC in Copenhagen in November/December 2009 at which the negotiations on a strengthened international climate change regime are set to conclude. Considering President-elect Obama has indicated that the USA will re-engage in climate change negotiations next year, this is a positive sign for investors interested in JI and Green Investment Scheme ("GIS") projects in Russia.

### JI Commission

After this year's reorganization and structural changes to the RF Government and state bodies, the new members of the commission responsible for approving JI project applications (the "JI Commission") were appointed by the Ministry of Economic Development ("MED") under Order No. 271, on 10 September 2008. The newly assigned chairman of the JI Commission is Mr. Stanislav Sergeevich Voskresenskiy, Deputy Minister of MED. The eleven JI Commission members are representatives of various different RF state bodies, e.g., the RF Ministry of Nature, the RF Ministry of Energy, the RF Ministry of Industry and Trade. On November 5, 2008, the first session of the newly elected members of the JI Commission took place, during which the following decisions were approved: (i) on establishment of the Public Expert Council of the JI Commission for the purpose of consideration of third party's interests whose rights could be affected by a JI Project, and (ii) on forthcoming amendments to the list of independent expert entities (i.e., adding Tüv Rheinland Group to the list).

### JI projects approvals

Nineteen additional JI project applications have been

registered (and two more are in the process of being registered) with the JI Commission since our last update. This brings the number of JI project applications before the JI Commission to twenty nine. However, no JI projects have been approved as of this writing. MED recently commented that seven JI projects (including the application by Core Carbon Group with respect to nitrous oxide (N<sub>2</sub>O) emissions reductions of OAO Kuibyshev Azot) are likely to be approved during the next session of the JI Commission on December 25, 2008 (having been rescheduled from December 5). Although this is a positive sign, sector analyst PointCarbon has stated that the frequent delays in the approval process dampen overall investor confidence in the RF and may have a notable effect on the Russian ERU supply.

### Legislation

MED recently stated that two new Orders are underway: (i) an Order (being prepared by MED), which establishes the procedure to verify and monitor the Emission Reduction Units ("ERUs") on an annual basis, and (ii) an Order on the establishment of the JI project passport, which reportedly has been prepared and sent to the Ministry of Justice for registration.

Furthermore, on September 20, 2008 in Sochi, the RF concluded a bilateral Framework Treaty with France on international cooperation in implementing Article 6 of the Kyoto Protocol. This treaty is aimed at coordinating JI projects and establishing favorable conditions in transactions with ERUs and Removal Units ("RMUs"). MED recently confirmed it is currently negotiating a similar Framework Treaty with Spain.

### RF Registry

The RF Government has opened ten accounts at the RF's Carbon Units Registry ("RF Registry"). The current account balance of all these accounts is approximately 16 billion Assigned Amount Units ("AAUs") (about 10 billion AAUs are reserved and about 6 billion AAUs could be converted to ERUs) for the commitment period of 2008–2012. For the foreseeable future, however, it does not appear that the RF will be signing a law on emissions trading nor with respect to CDM. /F. Mucklow, R. Mikhailov

# Making Green with Green: Biofuels in Russia and Ukraine

## Part II – Legislative Pitfalls

In the last edition of our *CIS Legal NewsWire* (October 7, 2008), we explored biofuels and highlighted the fact that the business, legal and policy environments for any new technology or energy source, such as biofuels, must connect in order for it to develop successfully. In the past few months, the world has witnessed huge changes in the world economy, with oil prices plummeting and the credit crisis rolling into full swing. In these challenging days, however, "green" energy issues surrounding the mitigation of climate change, as well as the promise of the USA re-engaging on the international environmental arena, could signify that new environmentally-friendly fuel sources, such as (second generation) biofuels, offer new and interesting opportunities for investors, as well as other more general benefits, such as the diversification of oil-dependent economies and a switch towards more sustainable energy sources.

There are both international and national laws driving demand for biofuels. International treaties such as the Kyoto Protocol, the EU Biofuels Directive (2003/30/EC) and future treaties or international guidelines (this year, the United Nation's Food and Agriculture Organisation (FAO) called for new international guidelines on biofuels) promise to ensure demand for biofuels. In the EU and the USA, for example, numerous member states and states, respectively, promote and use biofuels extensively. It should, however, be noted that rising food prices, food shortages and doubts about the greenhouse gas reduction value of biofuels, have resulted in sharp criticism of recent proposals to increase the use of biofuels.

### Policy framework

In the Russian Federation ("RF"), Prime Minister Zubkov was reported to have announced in March 2008 that the RF will start its government program to develop biofuels in 2008 and that the RF will eventually produce 2 million tons of ethanol per year (if the program is successful). While RF President Medvedev discussed biofuels production with

Petrobras (the Brazilian oil and gas giant) during his visit to Brazil in November 2008, during the Hokkaido Toyaka G8 Summit (in July 2008), he was reported to have given mixed support for biofuels. President Medvedev emphasized at the press conference to the G8 in Hokkaido that RF agreed to develop above all second-generation biofuels that do not infringe upon food security. So far, however, the RF is focusing on the development of first-generation biofuels, e.g., bio-ethanol (bio-butanol).

Ukraine boasts a national biofuels program dating back to 2005, based upon the "National Program of Diesel Biofuel Production Development until 2010" (Decree No. 576-p of December 28, 2005) and the "Program of Diesel Biofuel Production Development" (Cabinet Decree 1774 of December 22, 2006). Both programs promote the development of first-generation diesel biofuel production for 2007-2010. Ukrainian Prime Minister Yulia Tymoshenko stated during her meeting with Swedish King Carl XVI Gustaf in October 2008, that Ukraine is actively participating in the creation of a European biofuels market.

### Legal framework

While the business and policy environment appear to be favorable towards biofuels in the RF and Ukraine, the domestic legal framework is less so. However, both the RF and Ukrainian governments are developing laws that would support and promote biofuels.

In Russia, the draft law "On Fundamentals of Development of Bioenergy in the RF" was apparently brought before the RF State Duma in April 2007. As currently drafted, it has been reported that this law would, among other things, practically cancel all excise taxes on bioethanol. However, no RF State Duma hearings on this draft have taken place to date. Furthermore, a representative of the RF Ministry of Agriculture recently stated that the draft law of April 2007 was rejected and that the RF government is now preparing a new concept of the Law "On Fundamentals of Development of Bioenergy in RF" which is likely to be considered by the RF government in the beginning of 2009. Thereafter, a new draft law will be filed with the RF State Duma. According to a recent statement by a representative of the Ministry of Agriculture, this is likely to occur in the third quarter of 2009. In January 2005, the draft law "On Use of

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Alternative Fuels" (reference number 130858-4) was apparently brought before the RF State Duma . After a long process of concordance and harmonization of this draft, it has been scheduled finally for a hearing in the autumn 2009 session of the RF State Duma. This draft law is aimed at the promotion of vehicles using gas and other alternative fuels.

Currently, Ukraine has a draft law "On Promoting the Use of Biological Fuels No.1114". This draft, too, aims to reduce taxes levied on the production of biofuels. The draft has been introduced to the Ukrainian Parliament and had been scheduled for the current plenary session, which terminates on 19 December. However, a representative of the Ukrainian Ministry of Agricultural Policy recently stated that this draft might not be voted on until March 2009. In addition, due to the uncertain political situation resulting from the recent Presidential decree dismissing Parliament and a new coalition (which was formed on 9 December), it is unclear when this draft law will, in fact, be approved.

When and with what provisions such draft legislation will be adopted in the RF and in Ukraine, remains to be seen. Nevertheless, although these draft laws have not been approved yet, the recent movements in addressing the draft biofuels laws, as well as their mere existence, provide encouraging signals that this new energy sector is starting to develop, albeit slowly.

### Biofuels projects in the RF and Ukraine

Despite the legislative delays and uncertainty, as well as questions relating to the cost-effectiveness of biofuels production in the RF, several biofuels projects are underway in the RF and Ukraine. The majority are currently in the planning stages. As a general rule, Ukraine appears to be focusing on the production of biodiesel, while investors in RF focus on bio-butanol.

For example, the RF Krasnyarsk region's government recently signed a cooperation agreement (in October 2008) with Biotechnologies Corporation in order to create, *inter alia*, three biofuels (using butanol) production sites in the Krasnyarsk region. There are at least two bio-ethanol plants currently under construction in the RF, about ten projects for the contribution of bio-ethanol producing facilities in the planning stages, and several biodiesel plants in the planning stages, too. At least one plant in Tulun (Irkutsk Region) apparently started production of

biobutanol as of September 6, 2008. The expected total output of this plant is 30 thousand tons per annum. The Russian Biofuels Association has recently commented that the Biotechnologies Corporation plans to construct 30 plants for the production of biofuels before 2017 (with a total output of 2 million tons). It is unclear if the recent economic downturn has affected this plan.

Ukraine appears to be slightly ahead of the RF in developing its biofuels sector: there are currently various joint ventures in place which aim to produce biofuels involving German and Polish companies. A Ukrainian–German joint venture has already started to produce biodiesel and Ukraine plans to construct at least 20 plants for the production of biodiesel (of a capacity of not less than 623,000 tons per year) by 2010 according to Thomson Financial News and the Russian National Biofuels Association, respectively. It has been reported that the Poltava region has agreed with a Czech investor to construct a biodiesel plant with a capacity of 75,000 tons per year by 2009. Furthermore, the Ukrainian Ministry of Agricultural Policy recently stated that the first plant will be constructed by Harvest Moon East (HME) in June 2009 in Zolotonosha, Cherkassy Region. In addition, a first biofuels station was opened in Chernivtsi (West Ukraine) in April 2008—the first of its kind in Ukraine and Eastern Europe.

### Final remarks

Despite the current legislative pitfalls causing delays and hampering full-scale domestic and foreign investment in biofuels in the RF and Ukraine, the Russian and Ukrainian market is beginning to open up for business and development of this alternative fuel source.

The next issue of the *CIS Legal NewsWire* will review other investment opportunities/pitfalls and points to address from a legal perspective when investing in the RF and Ukraine in this uncertain legislative environment.

*/F. Mucklow, R. Mikhailov, V. Dovhan*

## UKRAINE

## Ukraine Obtains US\$16.4 Billion Stand-By Arrangement from IMF

(Continued from page 1)

approximately US\$4.5 billion to be disbursed immediately to the National Bank of Ukraine (the "NBU").

Although Ukraine's economy has been growing at more than 7% per annum on average since 2000, it has recently been negatively impacted by falling steel prices (accounting for about 40% of its exports) and a lack of access to liquidity caused by the global financial crisis. These events exposed certain weaknesses in Ukraine's overheating economy, such as its high inflation rate, a heavy reliance by its banks on external short-term debt funding, low foreign exchange reserves relative to short-term external debt, a burgeoning current account deficit, and a weak underlying fiscal position.

As precursors to obtaining approval for the SBA, the Ukrainian authorities passed new legislation: *inter alia*, on October 31, 2008, the Ukrainian parliament adopted the Law on Urgent Financial Crisis Preventative Measures and Amendments to Certain Legislative Acts (the "Anti-Crisis Law"); on November 4, 2008, the Cabinet of Ministers of Ukraine issued Resolution No. 960 approving the Procedure for State Participation in Banks' Capitalization and Resolution No. 961 approving the Temporary Procedure for Using the Stabilization Fund to Grant Credits relating to the Repayment and Servicing of Loans Taken Out by Domestic Banks or Businesses from Foreign Creditors before September 15, 2008 (together, the "Anti-Crisis Resolutions"). The Anti-Crisis Law envisages the creation of a stabilization fund (the "Stabilization Fund") to be funded by surplus revenues accrued from the privatization of state property in 2008 and 2009 as well as income from any sales of government bonds. The Anti-Crisis Law prescribes that the Stabilization Fund should be used, *inter alia*, to finance long-term national infrastructure projects, reduce borrowing costs for small and medium-sized businesses, and finance the completion of construction of residential property projects. In addition, the level of deposit insurance (which covers both Ukrainian Hryvnia ("UAH") and foreign exchange deposits) was raised to UAH150,000 from

UAH50,000, and banks are prohibited from distributing their net profits when certain financial indices are negative. The Anti-Crisis Resolutions enable Ukrainian authorities to use state budget funds (including the Stabilization Fund) and internal bonds to recapitalize banks. Such state participation may only be applicable to viable banks whose actual share price is lower than its nominal value, as determined by independent national or foreign experts with relevant banking experience. Two other conditions are that at least 50% + 1 share of the bank's statutory fund be transferred to state property and that there be adequate disclosure of information on such bank's shareholders holding more than a 5% shareholding.

According to the IMF, the precise conditions contained in the final text of the SBA remain confidential until they are published by the Ukrainian authorities; however, the IMF has published a Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding dated October 31, 2008 (together the "Memorandum"). The Memorandum describes the policies that the Ukraine authorities intend to implement in the context of its request for financial support from the IMF.

The Memorandum sets out the following performance criteria and structural benchmarks applicable to the disbursement of further tranches:

- By December 15, 2008, the government, in conjunction with the NBU and several reputable audit firms, is to complete a diagnostic study and targeted examination of the NBU's Group 1 banks (i.e., the large and systemically important banks comprising 60% of the banking system's assets). The scope of the examination will be clearly defined to include assessment of asset quality, liquidity position, off-balance sheet items, risk management and capital position. By the end of June 2009, the government is to have examined and resolved all problem banks, so that viable banks meet the regulatory minimum capital and non-viable banks are liquidated.
- By the end of January 2009, the NBU is to enhance the disclosure of detailed bank-by-bank financial information to meet international best practices. The financial information, to be produced monthly and quarterly, will include, *inter alia*, detailed balance sheets and income statements and information on bank capitalization and asset quality, with separate information for domestic and foreign currency assets and liabilities.

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- By the end of April 2009, the government is to pass a balanced general government budget for 2009 (excluding bank recapitalization costs).
- By the end of April 2009, Ukraine authorities are to cancel the foreign exchange transactions tax.
- By the end of June 2009, NBU independence is to be strengthened: by reforming the NBU council, transforming it into a narrower technical body in line with best practice; prolonging the term of the governor; and providing the NBU with more financial flexibility (securitize government debt owed to the NBU, centralize all liquidity operations in the NBU, and bring profit transfer arrangements into line with best international practice).

In the Memorandum, Ukraine sets out a number of additional policies to shorten and weaken the anticipated recession. These policies should also provide an opportunity for the government to make some long-overdue structural economic reforms. These reforms should bring opportunities for foreign investors as the country is forced to open up its economy to external scrutiny and financing. The policies include

- creation of a functioning market in agricultural lands. There is currently a moratorium on the sale of agricultural land preventing investors from developing a potentially highly lucrative sector in the Ukrainian economy;
- transparent privatization of a number of state companies in 2009;
- imposition of a flexible exchange rate regime to provide a buffer to the economy against external shocks;
- reduction of the consumer price index ("CPI") inflation rate to 17% by the end of 2009;
- refinancing of bank recapitalization bonds due in 2009 by the NBU and ensuring that this does not affect the overall system-wide level of liquidity;
- government recapitalization of viable banks and legislation to facilitate any necessary bank resolution processes, such as purchase and assumption, sale of part of or a whole bank, and reduction in value of existing shareholders' equity;
- reduction in social-spending—for example, by freezing wages of first-grade public-sector employees until February 2009;
- unification of the price of domestic and imported gas by the end of 2011, with the gradual phasing process starting December 1, 2008; and

- in parallel, price subsidies for imported natural gas consumed by communal heating entities are to be reduced through quarterly tariff adjustments and to be eliminated by July 1, 2010.

Although it is anticipated that the conditions imposed by the SBA will be unpleasant for Ukrainian citizens in the short-term, their fulfillment may prove to be the catalyst that enables the Ukrainian government to carry out more quickly the deep structural reforms required to reinvigorate the economy and attract foreign investment into a more stable, diversified and dynamic investment climate. */J. Dakin, R. Shulyar*

## Ukraine Revamps Joint Stock Company Legislation

On October 22, 2008, President Yushchenko signed into law the Law of Ukraine On Joint Stock Companies (the "JSC Law"), which had been adopted by the Ukrainian parliament on September 17, 2008. The JSC Law becomes effective on April 30, 2009, after which existing joint stock companies (JSCs) will have two years to adopt their charters and corporate governance rules to the new law. The JSC Law primarily seeks to regulate and protect shareholder rights and remove the gaps in current legislation relating to the incorporation, governance, operation and cessation of all JSCs.

Key provisions that aim to protect shareholders include the following:

- A purchaser of a controlling stake (50% or more) in a JSC must, 30 days prior to the purchase date, give written notice to the JSC of its intention to purchase, publish this intention through the State Commission for Securities and the Stock Market, and on any stock exchange on which the JSC is listed, and through the official press. Importantly, such purchaser is also obliged to make an offer to all other existing shareholders of the JSC to purchase their shares at market value. Market value is determined by an independent valuer appointed by the JSC in respect of private JSCs and by the closing price on the last day of trading before the relevant offer is made in respect of public JSCs.

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- Shares in public JSCs (now known as 'open' JSCs), which must be listed on a Ukrainian stock exchange, may only be traded on this exchange and may not be transferred privately (as is permissible under current legislation for open JSCs).
- Minority shareholders (holding less than 10%) may demand that their shares are purchased at market value if a decision is taken which they validly voted against at a GSM and which relates to a change to the authorized share capital, conclusion of a significant contract, or termination of the activity of a JSC (except for liquidation).
- The number of shareholders in a private JSC (now referred to as 'closed' JSCs) is limited to 100—there are currently several thousand 'closed' JSCs in existence that will need to restructure or convert into public JSCs.
- There is new legislation to regulate interested party transactions ("IPTs"). Any shareholder (together with its affiliated entities) holding together 25% or more of a JSC's voting shares is obliged to notify the JSC's board of directors or its supervisory council within three working days of becoming aware of a transaction in respect of which it is deemed to be an interested party. A shareholder is deemed to be an interested party to a transaction if it (i) is a party to the transaction, (ii) is a representative of a party to the transaction, (iii) receives remuneration in connection with the transaction, (iv) as a result of the transaction, purchases property or is otherwise interested in the proceeds of the transaction, or (v) is an affiliated entity of the legal entity which is seeking to participate in the transaction. Within five days of receiving notification of an IPT, the board of directors must provide the supervisory council with the relevant details of the IPT; the supervisory council then has five working days to decide whether or not to approve the IPT or transfer the decision to the GSM.

In addition, the JSC Law shifts the powers belonging to the various management bodies and clarifies how they should interact. Key provisions include the following:

- Certain decisions are transferred from the authority of the GSM to the supervisory council (which may now only consist of individuals), such as decisions regarding board appointments and dismissals, significant contracts and IPTs.
- A supervisory council must be established in a JSC with over ten shareholders, as opposed to the currently effective threshold of 50 shareholders.

- The notice period for convening a GSM has been reduced from 45 to 30 days and only JSCs with over 1000 shareholders must publish such notice in the official press. The GSM cannot vote on items which were not listed in the notice agenda.
- A qualified majority vote will be determined as 75% of the total number of all shareholders' voting shares, as opposed to 75% of the shareholders' voting shares that are present at the GSM (which is the current threshold for a qualified majority vote).
- A JSC which has less than 25 shareholders may approve shareholders' decisions remotely (i.e., there is no longer any requirement to hold an actual meeting of shareholders, since shareholders may now vote by registered mail) for the purposes of the GSM.
- A JSC may only pay dividends in monetary form. Currently, dividends may be paid in monetary form or in kind.

Although the JSC Law is not comprehensive in its treatment of JSCs, it is important progress in the sphere of corporate governance in Ukraine. It is expected that the JSC Law will improve Ukraine's investment climate by providing additional protection of shareholders' rights, streamline the decision-making process in JSCs and, in due course, create the conditions for the development of the Ukrainian stock market. */J. Dakin, A. Kirmach*

## Ukraine to Start Carbon Trading

On October 28, 2008, following the adoption of Cabinet of Minister's Resolution No. 1294-p, Ukraine became the latest country to link up to the UN-backed carbon credit registry, known as the international transaction log (ITL), enabling the country to trade carbon credits under the Kyoto Protocol. The linkup is significant for the global carbon market because Ukraine is potentially one the biggest suppliers of UN-backed carbon credits under the Kyoto Protocol's Joint Implementation (JI) mechanism and could be a major seller of governmental carbon credits (known as assigned amount units (AAUs)). On the same day, Ukraine made its first trade by transferring 1.4 million emission reduction units (ERUs) relating to a project involving the

*/continued on page 13*

Zasyadko coal mine in Eastern Ukraine to Japan's national registry.

Ukraine is currently host to around 40 JI projects at various stages of development, which together have the potential to generate around 60 million carbon credits by 2012.<sup>1</sup> In theory, Ukraine could sell several hundred million AAUs, as the country's usage is expected to be considerably below the target set for it by the Kyoto Protocol. However, not all of the surplus AAUs are expected to be sold on the ITL as some are likely to be used to fund efforts aimed at cutting domestic emissions.

In addition, following Ukraine's adoption on August 20, 2008 of legislation to enable participation in Track 1 of the JI mechanism (a more streamlined project-approval process than the Track 2 process used previously), Ukraine is scheduled to become the first JI Track 1 country in the CIS to issue 'late' credits as of January 1, 2013. This is also likely to increase the potential volume of tradable carbon credits in Ukraine.

Although there is currently some uncertainty as to whether trading on the ITL would have any tax implications, the Ukraine-Japan trade occurred with the benefit of a tax exemption specified in the Memorandum signed between the Governments of Ukraine and Japan on July 14, 2008.

Joining the ITL will not only help Ukraine to become a key player in the global carbon credit trading market, it should also help expedite the process of transforming Ukraine's highly energy-inefficient heavy industries. *J.J. Dakin, V. Dovhan*

<sup>1</sup> www.pointcarbon.com.

## KAZAKHSTAN

### New Bank Regulatory Measures Adopted to Respond to Crisis in Kazakhstan

*(Continued from page 1)*

The state now has more flexibility to step in and purchase the shares of banks experiencing financial difficulties. The government or a state holding company may now purchase bank shares, common or preferred, rather than the regulator. The State's right to purchase will be triggered by a bank's failure to comply with its capital adequacy obligations, prudential norms or other requirements. The purchase should be of sufficient shares to improve the bank's financial and regulatory situation and must be of at least 10% of the charter capital of the bank. Upon improvement of the bank's situation, the shares are to be sold either by direct sale or on the stock exchange.

The regulator's powers to implement early reaction measures have also been bolstered, permitting it to test a bank's financial indicators and require the bank and its shareholders to provide a plan of action to address the bank's worsening position. If the regulator does not approve the plan, the bank will be obliged to implement such early reaction measures as the regulator deems fit. A bank's failure to submit a plan or to comply with the steps set out in the plan will result in further sanctions.

For existing bank shareholders, the regulatory framework has been tightened, particularly for bank holding companies and large shareholders, who have direct or indirect shareholdings of 25% or more and 10% respectively or more of shares in a bank. If a shareholding falls below the relevant threshold approved by the regulator, a shareholder will lose its regulatory permission to be a bank holding company or large shareholder. The shareholder-related measures also require foreign bank holding companies, which are financial institutions subject to consolidated supervision, to comply with additional reporting requirements in Kazakhstan. The criteria for receiving a first-year banking license have been considerably augmented. The criteria are far more detailed with particular emphasis on the bank's required internal

*(Continued on page 14)*

bodies and the identity and qualifications of the management and staff.

The amendments are welcome in so far as they promote greater stability in the Kazakhstan finance sector, although the licensing measures for newly-established banks are currently more likely to affect international banks moving into the market than poorly run local banks. */B. Paine, A. Abdalova*

## Regulation of Residential Construction Projects Amended in Kazakhstan

Amendments to the Law on Shared Participation in Residential Construction (the “Shared Residential Construction Law”) are currently before the lower house of Kazakhstan’s Parliament for review. The proposed amendments, if enacted, will strengthen the rights of purchasers (*dolshik*) buying into newly built residential developments in Kazakhstan as well as tightening the regulatory and financial requirements applicable to developers.

The existing Shared Residential Construction Law has been in force since January 2007 and regulates relations between developers and purchasers of premises in residential developments. On September 16, 2008, the lower house of the parliament began considering the proposed draft amendments and is expected to finalize its review by early December.

Under the existing Shared Residential Construction Law, a construction company must hold a license to engage in construction activities, which is usually valid for an unlimited period and covers the whole or a part of the territory of Kazakhstan. If the proposed amendments are adopted, the licensing regime will be tightened such that a developer will be required to obtain a license for each development project. Stronger eligibility criteria will also be introduced requiring developers to have “at least three years of experience in residential construction and to have built at least 100 residential apartments”. The proposed amendments did not clarify whether that wording would in effect bar new entrants to the residential market, as a new

construction company would not have the required experience.

The Shared Residential Construction Law currently requires that by the time a developer signs contracts with prospective purchasers, the developer must have available capital equal to 12% or more of the total amount anticipated to be paid by purchasers. The draft amendments increase this threshold to 20%, with at least 5% of this amount to be retained in a separate account of the developer until construction is completed and the development is commissioned. Developers will also be required to file their annual financial statements and audit reports with the relevant state body.

Although the effect may be to increase the overall cost of construction for developers, the proposed amendments should improve the protections available to purchasers and help to generate greater confidence in an industry destabilized by the current economic climate. */S. Nurgaziyeva*

## RECENT DEVELOPMENTS

### Chadbourne News

#### Chadbourne Expands Corporate, Restructuring and Banking Capabilities in Moscow

Partner Jennifer Handz, who joined Chadbourne & Parke in 2006, has moved from London to the Moscow office where she will focus on bank restructuring work and other banking and finance matters. She was a senior counsel with EBRD's Corporate Recovery Group in the early 2000's and has extensive experience working on multilateral and bilateral debt and equity financings.

Joining the Moscow office as counsel is Olga Koniuhova, previously a director (legal practice) at PricewaterhouseCoopers in Moscow. Her experience includes mergers and acquisitions, private equity investments, shareholder and joint venture arrangements, corporate restructuring and reorganization, cross-border and offshore structures, restructuring of companies for listing or the raising of debt on Russian and international capital markets, and corporate governance matters. In addition, Ms. Koniuhova is actively involved with The Vladimir Spivakov International Charity Foundation, a pro bono group.

Also joining Chadbourne's Moscow office is senior banking associate Jeff Browne. Jeff previously worked at Freshfields Bruckhaus Deringer in London and Mallesons Stephen Jaques in Melbourne. His experience includes syndicated lending, project finance, acquisition finance and debt capital market transactions, with particular experience in asset-backed and highly structured cross-border leveraged transactions, derivatives, and structured products.

### Selected Recent Deal Highlights

#### Chadbourne Represented Daimler in Minority Stake Acquisition of KamAZ

Chadbourne represented Daimler AG's truck division in a US\$250 million deal to acquire a 10% stake in Russian truck maker KamAZ.

The deal, signed on December 12, gave Daimler a seat on the KamAZ board and provides for a payment of an additional US\$50 million for the stake in 2012 if the Russian company meets sales and earnings targets.

Leading the deal for Chadbourne were Moscow partners Laura M. Brank and Konstantin Konstantinov. The team also included senior Russian lawyers Evgenia Korotkova and Olga Watson, and associates Evgenia Gaysinskaya, Tatyana Kozlova and a group of other associates in the Firm's Moscow, Kyiv and Almaty offices.

The deal involved a comprehensive due diligence of approximately 150 companies in Russia, Ukraine and Kazakhstan.

Daimler's truck unit is the world's largest producer of commercial vehicles. Russia is Europe's largest truck market and KamAZ is the largest and oldest automotive corporation in Russia. The deal is strategic because of the high production capacity of KamAZ's motor plants, large network of dealers, and its 30% share of Europe's truck market.

#### Chadbourne Represented VimpelCom in Acquisition of Shares in Euroset

Chadbourne recently represented Open Joint Stock Company "Vimpel-Communications" ("VimpelCom") in its approximately US\$226 million acquisition of a 49.9% stake in the Euroset Group, Russia's largest mobile handset retailer. The deal closed on October 27. The transaction gives VimpelCom vital access to retail networks, and involved a thorough and rapid due diligence review of the target's operations in Russia, Ukraine, Kazakhstan, Armenia, Belarus, and Kyrgyzstan. Chadbourne also handled the antimonopoly filings in Ukraine and Kazakhstan. The VimpelCom Group consists of telecommunications operators providing voice and data services through a range of wireless, fixed and broadband technologies. Working on the deal for Chadbourne were Moscow partners Laura Brank, Konstantin Konstantinov, and Shane DeBeer, London partner Charez Golvala, Moscow associates Alexander Volnov, Kevin Withane, Evgeniya Gaysinskaya and a group of attorneys based in Moscow, Kiev, and Almaty.

*(Continued on page 16)*

## RECENT DEVELOPMENTS

### Chadbourne Represented Evrotek in Investment Deal for Ukrainian Food Chain

Chadbourne's Kyiv and London offices represented Evrotek Group PLC in a US\$30 million equity investment in its business by Horizon Capital and International Finance Corporation. The deal closed on November 6.

Evrotek is the holding company for a recently formed Ukrainian food retail chain operating under the brand name Fresh and intends to use the equity investment to expand from eight stores to a planned 58 stores and three logistics centres by 2010. The company entered the retail food market in 2006 and has a solid track record in one of the fastest growing sectors in Ukraine.

The investment came from Horizon Capital, a private equity fund manager that originates and manages investments in mid-cap companies with outstanding growth potential in Ukraine, and IFC, the private sector arm of the World Bank Group. The project's improvement and expansion of local food supply chains will have a positive effect on the development of Ukraine's agribusiness sector, in keeping with IFC's strategy for Ukraine.

Working for Chadbourne on the deal were Kyiv partner Jaroslawa Johnson, London partner Charez Golvala, and associates Ghassan Shuhaibar, Tetyana Dovgan and Olha Prymak.

### Chadbourne Advised Marfin Egnatia Bank on its Financing of Acquisition of a Real Estate Business in Ukraine

Chadbourne advised Marfin Egnatia Bank in connection with its US\$52 million financing of the acquisition of a commercial property portfolio in Kyiv with a total area of approximately 14,000m<sup>2</sup>. Marfin Egnatia Bank is the 95%-owned Greek subsidiary of Marfin Popular Bank, which is the second largest bank on the island of Cyprus.

Working for Chadbourne on the deal were Kyiv managing partner Jaroslawa Johnson and Kyiv international partner Serhiy Onishchenko.

## At the Podium

### Strategic Sectors, Washington, DC

Laura Brank spoke on "The Strategic Sectors Law and Its Impact on Foreign Investment in Russia—Six Months On" during the plenary session on foreign direct investment as part of Doing Business in Russia 2008, which was held on November 20 at The Russian Trade Mission and The George Washington University's Center for International Business Education and Research, Washington, DC.

### World Junior Oil & Gas Congress, London

Shane DeBeer spoke on "SEC Reserve Accounting—Prospects for Change" at The World Junior Oil & Gas Congress, which was held on December 1-3 at the Guoman Tower, London. Charez Golvala participated in an industry panel entitled "Approaching, tackling and championing the M&A and A&D markets" at the same event.

### Bank Consolidation, Kyiv

Chadbourne's Kyiv office held an in-house seminar for invited members of the Ukrainian banking sector entitled: "Bank Consolidation: What Every Ukrainian Banker Should Know" on December 16. It covered the following topics:

- how to survive the difficult times in the banking industry;
- how to avoid pitfalls in corporate restructuring;
- how to obtain the necessary regulatory approvals and licenses when carrying out corporate restructuring; and
- how to minimize tax risks associated with corporate restructuring.

### Association of European Businesses in the Russian Federation CFO Meeting, Moscow

Olga Koniuhova spoke at an in-house seminar in Chadbourne's Moscow office for CFOs of AEB member organizations (comprises over 600 members) entitled

*(Continued on page 17)*

## RECENT DEVELOPMENTS

“Managing Business in Russia in a Downturn”. The seminar was held on December 16 and covered the following areas:

- current trends in cost-cutting methods;
- ways to manage employment relationships in a downturn;
- legal ramifications of employee cost-cutting measures; and
- introducing/adjusting deferred compensation plans in a downturn.

### Due Diligence in Russia

Olga Koniuhova spoke at the Association of European Businesses Finance & Investments Committee’s presentation of its annual publication “How to Invest in Russia in 2009. Guide to theory and practical advice for making an investment in Russia” on Friday, December 19, 2008. Ms. Koniuhova presented her article entitled “How to do Legal DD in Russia”, which covered practical advice on carrying out effective legal due diligence in Russia.

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