

## CIS LEGAL NEWSWIRE

COMMONWEALTH OF INDEPENDENT STATES

August 2, 2001

## RUSSIA

## Federation Council Passes Amendments to Joint Stock Company Law

On July 20, 2001, the Federation Council (the upper chamber of the Russian Parliament) approved the draft law on amendments to the Federal Law "On Joint Stock Companies" (the "Draft Law"), finally resolving a long history of disagreements between the two chambers of the Russian Parliament on this issue. The Draft Law had passed its third and final reading in the State Duma (the lower chamber of the Russian Parliament) on June 2, 2000, and was then subject to review by the Federation Council for more than a year, during which time the Federation Council twice remanded the Draft Law back to the State Duma for revision. Now President Putin must sign the bill in order for it to become law, which is widely expected to happen this autumn.

As described in detail in the Spring 2001 issue of Chadbourne & Parke's *"The Bottom Line,"* the Draft Law is intended to clarify issues of corporate governance, strengthen minority shareholders' rights and eliminate certain inconsistencies with other recently enacted legislation, and has to a certain extent succeeded. The Draft Law is not without drawbacks, however, in that it eliminates the ability to use set-offs against debts owed by a company as consideration for shares, and also limits debt for equity swaps of other kinds as well. Although some confusing provisions of the law were not addressed by the Draft Law, it is a welcome improvement, and represents the first serious attempt by the legislative branch to deal with legal inconsistencies which hinder good corporate governance in Russia. /S. DeBeer

## Forward Contracts May Become Enforceable

On July 10, 2001, the Russian Federation ("RF") Government adopted Regulation No. 910-r approving "The Program for Social and Economic Development of the Russian Federation for 2002-2004" (the "Program"). The capital markets section of the Program envisages amendments to the RF Civil Code that would legalize forward contracts.

Current Russian law looks on non-deliverable forward contracts (*i.e.*, contracts which do not presume delivery of the contract base) as "bets," and thus unenforceable as a form of gambling. Prior to the 1998 financial crisis, many investors used forward contracts to hedge the risk of currency and securities devaluation. Yet, during and after the crisis many Russian banks and exchanges refused to make payments on forward contracts. Subsequent court rulings upheld their unenforceability, although a / continued page 2

later Moscow Arbitration Court decision allowed for the enforceability of certain types of forward contracts, in limited circumstances. */P. Gloushkov*

## Appraisal Services to be Subject to Licensing Requirements

In an effort to raise professional standards for the appraisal of real estate, the RF Government recently approved Decision No. 285, establishing a new procedure for the licensing of appraisal activities. Real estate appraisal is regulated by RF Federal Law No. 135, enacted in 1998, which provides that the Government must establish the procedure for issuing licenses to appraisers. Prior to the issuance of this Decision, the Government had not yet done so. As a result, licenses for appraisers were granted by regional authorities pursuant to their own rules, which could potentially create different sets of standards for appraisers, allow for licenses of appraisers from one region not to be accepted by other regions, or allow similar property in different regions to be appraised according to different standards. Due to these potential problems, professional appraisers have been expecting a standardized procedure for the RF to be adopted for over two years.

The new federal rules, which came into effect on July 16, 2001, establish that the RF Ministry for Property Relations will be the only body eligible to consider applications for an appraiser's license. However, it is expected that the Ministry will delegate the processing of applications to its regional agencies for practical reasons. The Russian Society of Appraisers welcomed the new licensing rules and announced plans to draw up its own regulatory standards in order to increase the professional reputation of Russian appraisers. */S. Volfson*

### KAZAKHSTAN

## National Bank Enacts New Currency Rules

In what it says is an effort to obtain a more timely and accurate accounting of its business community's debts to foreign persons

and legal entities, the National Bank of Kazakhstan has enacted a set of rules for registering currency operations connected with the movement of capital. Beginning on July 9, 2001, any movement of capital exceeding US \$100,000 is subject to registration in Kazakhstan if it relates to one of the following:

- Receipt of funds from a nonresident with a repayment period exceeding 120 days;
- Nonresident funds for import/export transactions;
- Direct or portfolio nonresident investment in Kazakhstan;
- Nonresident transfers to residents for intellectual property rights; and
- Nonresident transfer payments for property rights in real estate.

Branches of the National Bank of Kazakhstan servicing the location of the Kazakh resident receiving the currency are charged with registration of operations connected with capital movement. However, currency operations of government authorized organs to obtain government deposits and to buy government bonds at an initial offering to international capital markets must be registered directly with the National Bank of Kazakhstan.

The new rules stipulate that residents (individuals and legal entities) obtaining such capital must make quarterly reports detailing that the operations with such capital are being carried out as envisaged by the original agreement. Residents will also be required to report deviations and additions to the terms as long as the capital agreement remains registered with the government. The underlying agreement must be re-registered if there is a change in terms affecting the sum, length, participants or object of the registered agreement, or if there is a change in the place of residence of the Kazakh resident. */Y. Zhussupov*

### KYRGYZSTAN

## Sweeping Tax Reforms Enacted

On July 14, 2001, Kyrgyzstan adopted a series of tax laws which are seen as the beginning of a new era in government

and taxpayer relations. The new laws, set to take effect January 1, 2002, and collectively known as “On Amending and Supplementing the Tax Code of the Kyrgyz Republic,” will introduce a 10% flat tax rate on both individuals and legal entities. Formerly, individuals were taxed at 33% and legal entities at 30%.

In addition to the introduction of the flat tax, other tax reforms are underway. In May, the Kyrgyz Federal Government submitted for consideration by the Kyrgyz Parliament new concepts for future tax law development. The reforms call for the abolition of the road tax and mandatory payments to the general emergency fund, both changes to be phased in gradually over the next three to four years. During the same period, new, more traditional taxes such as a property tax and a tax on subsoil usage will be enacted along with a corresponding increase in the land tax.

The proposed changes are generally seen as progressive. The flat tax system gives Kyrgyzstan one of the most liberal tax regimes in the CIS. The government believes that this, along with the yet to be implemented proposals, will foster a more favorable business climate, as well as encourage small and medium businesses to place themselves voluntarily on government tax rolls. */G. Kalikova*

#### AZERBAIJAN

## Tax Relief Granted to Foreign Investors

Azerbaijan’s Parliamentary Committee on Economic Policy (the “Committee”) has recently produced a Draft Law “On Promotion of Foreign Investments” (the “Bill”), aiming to spur investment in the country by granting tax relief to certain foreign investors.

Under the Bill, foreign investors investing in certain underdeveloped geographical regions of the Azerbaijan Republic (namely, Baku, Sumgait, Gyanja, Ali-Bayramli, Minghechavir, Nakhchivan, Sheki, Yevlakh, Lenkoran and Naftalan) would be entitled to incentives in the form of tax breaks proportional to the size of their investment. As the Bill currently stands, the smallest level of tax relief is a 40% reduction in the preferential rate of income and social taxes, with a repayment grace period of 6 years; the largest is a 70% reduction in the above

rate, with a 12-year repayment grace period. Notably, the exact level of investment necessary to trigger the tax reductions will be set by Azerbaijan’s Cabinet of Ministers only after the law’s adoption.

The Committee submitted the Bill to the Milli Mejlis, the National Parliament of Azerbaijan. Most experts expect that a version of this novel initiative will be enacted early next year. */S. Sultanov*

#### UZBEKISTAN

## Convertible Currency Regulations To Be Relaxed

On July 10, 2001, the Cabinet of Ministers of the Republic of Uzbekistan (the “Cabinet”) adopted Decree No. 294 “On Measures to Organize the Operations of the Over-the-Counter Foreign Exchange Market” (“Decree 294”), designed to improve the cumbersome process of changing Uzbek Soums into convertible currency. Decree 294 implements the Cabinet’s Decree No. 263 “On Measures for Further Liberalization of the Foreign Exchange Market,” dated June 22, 2001 (“Decree 263” – for details on Decree 263, see the July 2, 2001 issue of the *CIS Legal Newswire*).

Decree 294 implements a procedure for purchasing and selling convertible currency on the over-the-counter market and establishes new rules on the conversion of local currency into convertible currency. Upon receipt of a standardized application and evidentiary documents from the bank, a claimant’s authorized servicing bank must use the prescribed procedure to review and analyze the claimant’s need for convertible currency. The bank’s approval permits the clients to enter into a conversion agreement, at the exchange rate used in the previous inter-bank trading session. */J. Askarov*

#### BELARUS

## Improvements Seen in Court Practice

The Plenum of the Supreme Economic Court of the Republic of Belarus has issued two new resolutions of importance for

all commercial organizations carrying out entrepreneurial activities in Belarus. One of these resolutions, "On the Procedure for Economic Courts of the Republic of Belarus Considering Cases Involving Foreign Parties," clarifies issues of, among others, the competence of economic courts with respect to disputes involving foreign entities, the procedure for legalizing foreign documents, and the steps to be taken by courts in the event that the parties to a dispute enter into an arbitration agreement.

The second resolution concerns the practice for considering disputes relating to the application of the terms and conditions for establishment of legal entities, as well as legislation on the entities carrying out entrepreneurial activities. In this resolution, the Supreme Economic Court clarified certain provisions of the law relating to the possibility of, and the procedure for, terminating the foundation agreement of a limited liability company, the procedures for declaring invalid a decision of a company's participants' meeting and for the expulsion of a participant from a limited liability company. Also addressed were the procedures for the participants of a limited liability company to alienate a participatory interest and for shareholders of a closed joint stock company to alienate shares. */V. Salei*

## Conflict Surrounds Belarusian Automobile Plant

Recent events involving the automotive plant operated by the joint venture "CJSC Unison" ("Unison") are damaging the reputation of foreign investors in the Republic of Belarus, according to the Belarusian press. The press has reported that the Chairman of the Committee for State Control of the Republic of Belarus recently visited Unison on the instructions of the Belarusian President.

Unison, formerly the joint venture "CJSC Ford Union," was established in 1996. In 2000, the Ford Motor Company sold its controlling stake of shares in Unison to the family-run English company "J&W Sanderson." In order to obtain the consent of the Belarusian partners to the acquisition of the majority stake, J&W Sanderson committed to invest approximately an additional US \$7,000,000 in Unison's manufacturing facilities, to add 500 jobs, and to learn to manufacture components

needed by the Ford Motor Company, as well as by Belarusian automobile and tractor manufacturers. According to press reports, J&W Sanderson instead imported and installed under leasing agreements equipment developed in the 1950's-60's for making plastic, and began manufacturing toothbrushes for sale in small quantities in Western Europe. The majority of employees of the plant were forced into unpaid vacation, and the remainder did not receive salary for three to four months, which led them to send a letter to the President.

It was reported that the Chairman of the Committee for State Control arrived as trucks loaded with the dismantled equipment were leaving the territory of the plant, and that having sensed trouble, J&W Sanderson sought to return its equipment to England. Currently, an audit of the financial and economic activities of Unison and J&W Sanderson in Belarus is underway. */V. Salei*

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