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RUSSIA

Ruble Deposit Requirements for Importers Reduced

On December 17, 2002, the Central Bank of Russia (the "CBR") adopted Directive No. 1223-U "On the Particularities of the Purchase by Resident Legal Entities on the Domestic Currency Market of Foreign Currency for Payments under Contracts to Import Goods into the Russian Federation" (the "Directive"), which became effective on February 9, 2003. The adoption of the Directive should prove a boon for Russian importers, and represents yet another step by the Russian Federation ("RF") Government towards liberalization of currency regulations.

The notable change for Russian importers is the reduction of an unpopular 100% Ruble deposit requirement applicable when making advance payments under import contracts. The deposit requirement, originally adopted by the CBR in March 1999 to help combat capital flight, mandated that Russian importers deposit an amount equivalent to 100% of the purchase price to be paid in advance in a Russian bank, which amount would then be returned to the importer after the goods were delivered to Russia.

Under the Directive, the deposit requirement has been reduced to 20% of the advance purchase price. In addition, the Directive specifically provides that the Russian bank may pay interest on the 20% deposit, thereby potentially compensating the importer for a portion of any losses resulting from a devaluation of the Ruble. The Directive also abolishes the deposit requirement for Russian importers if the purchase price under the import contract does not exceed US \$10,000.

The 100% deposit requirement was truly draconian since, at the time a Russian importer would purchase convertible currency in order to make an advance payment under an import contract, the importer would be forced to put down double the price for the goods (*i.e.*, once to the foreign partner, and once to a Russian bank). Additionally, given the fear of a sharp Ruble devaluation after the August 1998 financial crisis, a 100% deposit requirement made importing foreign goods with payment due in advance a rather undesirable option for Russian companies.

The Directive also states clearly for the first time that the deposit may be returned to the importer if the goods are destroyed, damaged or lost in route upon confirmation by competent authorities, and further that the servicing bank must return the deposit if the foreign partner becomes insolvent (bankrupt), if confirmed by a court decision (or by some other competent authority). The deposit must also be returned if the Russian importer presents documents confirming that a foreign court (or other competent authority) has issued a decision obligating the foreign partner to import goods under a contract with the Russian importer, or terminating the contract (in whole or in part). /E. Kuryatnikova

Major Revamp of Securities Law

On January 4, 2003, RF Law No. 185-FZ "On the Introduction of Amendments to the Federal Law 'On the Securities Market' and the Federal Law 'On Noncommercial Entities,'" dated November 29, 2002 (the "Amendments"), became effective, with the exception of certain provisions. The changes to the RF Law "On the Securities Market" (the "Securities Law") introduced by the Amendments touch upon a wide variety of areas and represent the first major set of changes to this law since its enactment in 1996. Certain areas regulated by the Securities Law have been revised entirely by the Amendments. These areas primarily relate to the definitions of the terms used in the Securities Law, the types and forms of securities, trading in securities of foreign issuers, the statute of limitations for claims related to an issuance of securities, disclosure requirements and certain other areas.

Types and Forms of Securities

In addition to revising the definitions of shares and bonds, for the first time, the Amendments define a stock option as a specific type of security and lay out a set of rules related to the issuance of, or trading in, stock options. While the Federal Commission for the Securities Market of Russia (the "FCSM") previously attempted to regulate the issuance of options, due to the lack of sufficiently precise regulations, this type of instrument has remained a rarity on the Russian securities market. The Amendments restrict the aggregate number of options a Russian company may have issued and outstanding at any one time to no more than 5% of the issued and outstanding shares of the class of stock which the options entitle their holders to acquire.

Secured Bonds

As the domestic bond market has grown over the past two years, Russian companies have actively issued bonds secured in a variety of ways. However, the legal framework for the issuance of secured bonds was not clear and limited to single provisions in each of the RF Law "On Joint Stock Companies," dated December 26, 1995 (as amended) (the "JSC Law") and the RF Law "On Limited Liability Companies," dated January 14, 1998 (as amended). The Amendments introduce a set of regulations with respect to the issuance of secured bonds which should make the legal framework governing these investments clearer. The types of security now expressly permitted include pledges of securities and real property, sureties, bank

guarantees, and State or municipal guarantees. However, the exclusion of the possibility of pledging rights as security for bonds makes the issuance of receivables-backed securities more complicated and forces issuers to follow a pattern whereby bonds are secured by a surety which, in turn, is secured by a pledge of receivables. Also, the Amendments mandate that sureties provide for joint and several obligations of a surety. Agreements governing security provided by foreign persons on behalf of Russian issuers are expressly required to be governed by Russian law and subject to the jurisdiction of Russian courts.

Like the JSC Law, the Amendments provide that shares may be issued only in the form of registered securities. The Amendments further provide that, unless otherwise provided by federal law, registered securities (such as shares) may be issued in non-documentary form, while bearer securities must be issued in documentary form.

Reporting Requirements

The Amendments change the definition of a "reporting company." As was previously the case, any company which has issued securities requiring registration of a prospectus is defined as a reporting company for purposes of the Securities Law. The Amendments ease the requirements for registration of a prospectus by eliminating the "aggregate nominal value" threshold. Now, only public issuances of securities or private placements of securities involving more than 500 potential purchasers are subject to the prospectus registration requirement. As the JSC Law restricts the number of shareholders in closed joint stock companies to fifty, this revision effectively exempts such companies from prospectus registration requirements, unless they issue bonds through private placement to more than 500 purchasers.

In keeping with the worldwide trend of increasing accountability for the information contained in a prospectus, the Amendments require that a prospectus for securities to be issued through a public placement, as well as for securities listed on a stock exchange, be signed by an independent "financial consultant" (who should be a licensed broker/dealer) of the issuer, which is intended to certify the accuracy of the information in the prospectus (in addition to a certification provided by the issuer's auditor).

The Amendments also impose liability on persons who have signed the prospectus for damages caused by inaccurate or misleading information confirmed by such signatories. Such liability is secondary to the liability of the issuer for such dam-

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ages, but joint among the signatories. The practical implication of this rule is that auditors would be jointly liable with the executive officer of the issuer who signed the prospectus in the event that accounting information confirmed by the auditor proves to be misleading or incorrect (since the auditor confirms accounting information only, while the executive officer of the issuer confirms the accuracy of all information contained in the prospectus).

Statute of Limitations

The Amendments also establish a new statute of limitations of three months for claims seeking to declare void any of the following: (i) a securities issuance (or any additional issuance), (ii) transactions carried out in the course of distribution of securities, or (iii) a report on the results of an issuance. The statute of limitations begins to run from the moment of registration of the report on issuance of securities. In the past, this statute of limitations was three years.

Foreign Issuers

Under the Amendments, securities of foreign issuers, except for the securities of international financial organizations, are permitted to be distributed and traded in Russia only pursuant to an international agreement to which Russia is a party, or an agreement concluded by a federal executive body charged with regulating the securities market by the RF Government, if such agreement is entered into with the corresponding governmental body in the relevant foreign country. A list of international financial organizations whose securities may be distributed and traded within Russia has yet to be approved by the RF Government. The registration of rights to the securities of foreign issuers, including international financial organizations, should be carried out by a licensed Russia-based depository. General registration and disclosure rules provided for by the Securities Law are likewise applicable to foreign issuers, provided that the FCSM is granted the power to establish certain exemptions from these rules with respect to foreign issuers.

The Amendments generally abolish the requirement that the FCSM be notified of any transactions in which foreign parties are to acquire shares in a Russian issuer, except in cases where Russian legislation restricts foreign shareholdings in the relevant Russian company. */E. Kuryatnikova, K. Konstantinov, A. Kelina*

Deposit Insurance Bill Introduced

After a series of delays, the RF Government has finally submitted a bill to the State Duma that would establish a deposit insurance system guaranteeing individual bank deposits up to 95,000 Rubles (currently, approximately US \$3,300). Once adopted, all banks receiving individual deposits will be required to participate in the deposit insurance system.

The system calls for each participating bank to contribute 0.15% of the aggregate amount of individual deposits it holds into a general fund that will be used to insure individual deposits. Sberbank, Russia's largest State-owned bank, will not be required to contribute to the general fund until 2007. Until that time, the RF Government will guarantee the individual depositors of Sberbank.

Each individual deposit will be guaranteed 100% for amounts up to 20,000 Rubles (currently, approximately US \$645) plus 75% for additional amounts, up to the maximum limit of 95,000 Rubles (currently, approximately US \$3,300). */P. Webb*

Currency Law Amended to Allow Foreigners and Russians to Carry Hard Currency Out of Russia

On March 15, 2003, RF Law No. 28-FZ "On the Introduction of Amendments and Additions to Articles 6 and 8 of the RF Law 'On Currency Regulation and Currency Control,'" dated February 7, 2003 (the "Currency Control Amendments"), became effective. The Currency Control Amendments revise the rules governing the rights of individuals to carry foreign currency out of Russia.

Perhaps most importantly, the Amendments grant equal rights to Russian and foreign individuals with respect to taking foreign currency out of Russia. The Currency Control Amendments provide that both residents and non-residents are permitted to carry abroad up to US \$3,000 in foreign currency without completing a customs declaration. Previously, the amount of foreign currency that could be taken out of

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Russia without a declaration was limited to US \$1,500, and until recently, foreign citizens were prohibited from transporting any amount of foreign currency without filling out a declaration. Now, a customs declaration is needed only if the amount exceeds the equivalent of US \$3,000. Importantly, it is no longer necessary to present a document proving that the foreign currency had previously been brought into Russia or purchased in Russia.

At the same time, the Currency Control Amendments prohibit individuals from taking out more than the equivalent of US \$10,000 in foreign currency. An exception may be granted if such foreign currency was previously brought into Russia and if the amount does not exceed the amount indicated in the customs declaration evidencing the import of such foreign currency. Under previous rules, a one-time transport of foreign currency in an amount exceeding the equivalent of US \$10,000 was permitted, but a CBR permit was required.

One of the key reasons for the adoption of the Currency Control Amendments was an informational campaign launched by the American Chamber of Commerce in Russia and the European Business Club, which was supported by various business lobbies, including the Russian Union of Industrialists and Entrepreneurs. It has long been argued by foreigners living in Russia, as well as the domestic business community, that the restriction on foreigners taking currency out of the country was discriminatory, and in this light, the Currency Control Amendments have been greeted as a sign of the continued improvement in relations between foreign business circles and Russian authorities. */A. Kelina*

Government Seeks \$2 Billion in New Privatizations

The RF Government intends to privatize more than 3,000 companies this year, further reducing State involvement in the economy. In a cabinet meeting on February 27, 2003, First Deputy Minister for Property Relations Mr. Yurii Medvedev discussed plans to sell stakes in 2,000 joint stock companies and over 1,000 State unitary companies this year, and the RF Government approved plans to sell off an additional 193 enterprises and share packages in 164 publicly traded companies. The RF Government hopes to receive as much as 70 billion Rubles (currently, approximately US \$2.2 billion) from these transactions and an additional 40 billion Rubles (currently, approximately US \$1.3 billion) in dividends, rent and other payments from the privatized companies.

In his address to the cabinet, Mr. Medvedev noted that the State currently controls over 9,000 enterprises, which account for 30% of Russia's gross domestic product. The RF Government also holds stakes in over 3,000 publicly traded companies. Mr. Medvedev emphasized that privatizations serve primarily as a tool to stimulate economic growth, not as a measure to raise revenue. The privatizations planned for this year will exceed those of 2002 in economic terms, when revenues from privatization sales were only about 34 billion Rubles (currently, approximately US \$1.1 billion).

Among the bigger projects planned for this year is the sale of 25% minus one share of the telecommunications company Svyazinvest, a stake estimated to be worth approximately US \$1 billion.

Also planned for 2003 are sales of a 17.84% stake in one of Russia's largest steelworks companies, Magnitogorsk Iron & Steel Works (MMK), estimated at US \$175 million, 26% minus one share of the insurance company Rossgostrakh, estimated at US \$10 million, a 25.5% interest in Sibir airlines and 21.78% of Moscow's Central Telegraph. The sale of the Rossgostrakh interest would make that company 75% privately owned, following the sale of a 49% interest to Troika Dialog in 2001 for US \$40 million. */P. Webb*

New Requirements Clarify the Procedure for Shareholders' Meetings

On February 7, 2003, the FCSM adopted Resolution No. 03-6/ps (the "Resolution") clarifying the procedures that must be followed for convening and carrying out a shareholders' meeting. The amendments clarify and expand the requirements to be satisfied in order to vote shares that are transferred after the record date for the compilation of the list of shareholders entitled to vote at the shareholders' meeting.

The Resolution restates the provision of the JSC Law whereby a shareholder who transfers any shares to another person after the shareholders' list has been compiled, but before the shareholders' meeting is held, is required to either (a) provide a power of attorney authorizing the transferee to vote the shares or (b) vote the shares itself pursuant to the transferee's instructions. Furthermore, the Resolution addresses the

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situation when the shares are transferred to more than one person after the shareholders' list is established. In this case, each transferred share must be voted according to the procedure described above and pursuant to the instructions of the relevant transferee.

The Resolution requires companies preparing for a shareholders' meeting to follow specific procedures intended to facilitate the voting of shares that were transferred to more than one person after the shareholders' list was compiled. Under the Resolution, the shareholders voting bulletin must include a space opposite each question to be voted on at the shareholders' meeting in which the shareholder of record can enter the number of shares to be voted for each question. In other words, the transferor must be able to vote according to the instructions of each transferee in the case that multiple transferees give different instructions. The shareholders voting bulletin must also contain certain information regarding the voting procedures which is intended to give shareholders relevant information as to how the voting procedures should be followed in the event of a transfer of shares or otherwise. /P. Webb

Precedent Established for Reimbursement of Legal Fees in Civil Suits

On March 4, 2003, the Moscow Arbitration Court issued a judgment in favor of a claimant who sought recovery of legal fees incurred in connection with a long-running dispute with the RF Ministry of Taxes and Duties (the "Tax Ministry"). The Tax Ministry has been ordered to reimburse OAO "Bolshevik" in the amount of 1.1 million Rubles (currently, approximately US \$35,480).

In the past, Russian arbitration courts have refused to award reimbursement of legal fees to successful litigants, as the previous (1995) Arbitration Procedure Code did not grant the courts this authority. On February 20, 2002, the RF Constitutional Court issued a Resolution expressly recognizing the reimbursement of legal costs as a form of compensation for damages suffered by claimants. On June 14, 2002, the new Arbitration Procedure Code was adopted (see the October 9, 2002 issue of the *CIS Legal Newswire*), which provides that the party prevailing in a lawsuit may seek reasonable reimbursement for legal fees incurred in the course of arbitration proceedings.

The judgment in this case is remarkable not simply because the court satisfied a claim for legal costs against the Tax Ministry, but also in light of the amount awarded. Due to the novelty of this provision in the new Arbitration Procedure Code, there is still a lack of court practice as to what constitutes "reasonable" expenses. As a general rule, arbitration courts tend to decrease sharply the amount requested as reimbursement, usually awarding no more than several thousand Rubles. This is especially true in cases against the tax authorities, because in September of 2002, the Tax Ministry issued a letter urging local tax inspectorates not to reimburse the legal fees of taxpayers, or to reimburse them at a rate of one minimum monthly wage per day (currently, approximately US \$14). /A. Kelina

RF Supreme Arbitration Court Permits Multiple Loans Secured by Single Mortgage Agreement

An important decision of the RF Supreme Arbitration Court, originally issued on December 10, 2002 (the "Decision"), but only recently made publicly available, addresses an issue that has vexed creditors seeking security interests in real property, namely whether obligations under several loan agreements may be secured by a single mortgage over an indivisible item of real property (e.g., a factory building). The Decision should give some comfort to creditors seeking to secure their outstanding obligations through a mortgage.

The Decision cancelled judgments issued at the trial and appellate levels, which supported the view that the registration authorities were acting in compliance with the law when they refused to register a mortgage agreement securing obligations under different loan agreements. The RF Supreme Arbitration Court overruled this interpretation of the law and stated that, based upon general principles of Russian civil law, including the principle of freedom of contract, the parties to a contract may structure the contractual obligations as they deem fit, so long as such arrangements are not contrary to law. The RF Supreme Arbitration Court held that because RF Law No. 102-FZ "On Mortgages (Pledge of Immovable Property)," dated June 24, 1997, does not expressly prohibit a mortgage securing several obligations, a mortgage securing obli-

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gations under several loan agreements is not contrary to law.

According to the Decision, the registration authorities should recognize as valid and proceed to register any mortgage agreement securing separate obligations under several loan agreements. It remains to be seen, however, what the response of the registration authorities in charge of registering mortgages will be to this decision. /K. Konstantinov, E. Kuryatnikova, A. Kelina

BELARUS

Belarusian Parliament Approves Key Acts

Recently, the Belarusian Parliament has approved a number of key legislative acts in the areas of intellectual property, natural monopolies, tax and energy resources. On December 16, 2002, Parliament approved the Law "On Patents for Inventions, Useful Models and Industrial Samples," aimed at specifying the rights of authors and patent holders and establishing detailed rules governing the procedure for issuing patents.

Additionally, on December 16, 2002, the Law "On Natural Monopolies" was approved. According to this law, natural monopolists may be engaged in the following activities:

(a) transportation of oil and oil products through trunk pipelines; (b) gas transportation through trunk and distribution pipelines; (c) the transfer and distribution of electricity and heat; (d) centralized water supply and water drainage; (e) electronic communications and postal services; (f) railroad transportation systems, train dispatching and railroad traffic; (g) transport terminals and airports; and (h) the servicing and operating of air routes and air traffic control. The law sets forth certain restrictions for natural monopolists and specifically restricts their right to establish prices for their products or services. The Ministry of the Economy is designated as the governmental authority responsible for natural monopoly issues.

In another important development, on December 19, 2002, the General Portion of the Belarusian Tax Code was approved, which will become effective on January 1, 2004. The General Portion of the Tax Code establishes the guiding principles of, and specific regimes for, taxation. It also enumerates the rights and obligations of taxpayers, tax agents and tax authorities, and contains numerous provisions governing tax

obligations. It is noteworthy that, after it was approved by Parliament, more than 30 provisions of this act were subsequently rejected by President Alexander Lukashenko. In particular, President Lukashenko rejected a ban on the mid-year issuance of normative acts that could have a detrimental effect on taxpayers and a rule that any contradiction in tax legislation should be interpreted in favor of taxpayers. Parliament plans to review President Lukashenko's comments separately.

Finally, on January 4, 2003, President Lukashenko signed the Law "On Natural Gas Supply," which entered into force on January 22, 2003. This law permits natural gas supply systems and related facilities to be privately owned. Previously, such facilities were the property of the State. Additionally, the law sets forth the powers of State authorities to regulate the natural gas sector and specifies certain regulations relating to the construction of gas supply facilities. /V. Salei

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