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# CIS AND CENTRAL EUROPE LEGAL NEWSWIRE

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## RUSSIA

### Life Finally Gets a Little Easier for Majority Shareholders

On January 5, 2006, President Putin signed into law amendments to the joint stock company law (the "Amended JSC Law"), loosening the chains that have bound majority shareholders in Russian companies.

The 1990's in Russia were famous for, among other things, persistent violations of minority shareholders' rights. Changes made to adjust the situation resulted in the opposite extreme - new legal provisions made it very difficult for majority shareholders to operate a company.

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## UKRAINE

### Ukraine's Constitutional Amendments Take Effect on January 1, 2006

On December 8, 2004, the Verkhovna Rada (Parliament) of Ukraine passed the controversial "Law on Amendments to the Constitution of Ukraine" (the "Constitutional Amendments"). The Constitutional Amendments were adopted as part of an all-vote compromise in the midst of Ukraine's controversial 2004 presidential election and "Orange Revolution". While the Constitutional Amendments became effective as of January 1, 2006, as a practical matter, the new law will become fully enforceable only after the March 26, 2006 parliamentary election. The Constitutional Amendments significantly redistribute authority among the President, the

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## KAZAKHSTAN

### Changes to Fiscal Regime of Subsurface Use in Kazakhstan in 2006

As of January 1, 2006, additional amendments to the taxation regime of subsurface users came into effect. The amendments, although not very significant in nature, represent a step forward for potential investors in the subsurface use sector. Set forth herein is a brief summary of the latest amendments and a general outline of the 2006 fiscal regime of subsurface use in Kazakhstan. The summary is not meant to be exhaustive, but rather highlights some major developments impacting on investors.

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The so-called "interested party transaction rules" have made it difficult for a majority shareholder owning 95% or more of a company to take major decisions, such as lending money needed as working capital to the company if minority shareholders having as little as .1% of the shares do not approve the decision to obtain the loan. Minority shareholders could bring business to a standstill simply by not attending a shareholders' meeting. The fact that some companies that formed during privatization "inherited" hundreds of individual shareholders, sometimes with only one share each, made life for majority shareholders even more complicated as they were held hostage by such minority shareholders on major decisions.

These individual shareholders are very often referred to as "Dead Souls", in reference to the famous novel by Nikolai Gogol. Such individual shareholders usually do not participate in the company's activities - they do not attend meetings, and in some cases may have died, with their one share still listed in the shareholder's registry. Sometimes such "Dead Souls" are used by a company's rivals to challenge in court a transaction concluded in violation of the interested party transaction rules. Until now, Russian law generally did not allow a "buy-out" (or squeeze-out) of such minority shareholders, forcing companies to find other ways (sometimes in the grey area) to resolve minority shareholder problems.

In the midst of the Russian New Year holidays, on January 5, 2006, Putin signed the Law "On Amendments to the Joint Stock Company Law and Other Normative Acts" (the "Amended JSC Law"). The Amended JSC Law addresses, among other things, mandatory redemption of the remaining shares by an owner of more than 95% of an open joint stock company. The amendments outline the procedure and certain requirements for the redemption - for instance, the price for a share must be determined by an independent appraiser unless the shares have been traded on a stock exchange for more than 6 months; the price may not be lower than that paid for the shares during the redemption by which the shareholder obtained more than 95% of the shares; and the shares may only be paid for in cash. The Amended JSC Law also specifies that the right to request a mandatory redemption may be exercised by the owner of more than 95% of the shares within six months of the notice issued by such a shareholder in the course of its initially purchasing more than 30% of the shares. Thus, the 5% redemption must be preceded by a 30% redemption and by no more than six months.

Article 7 of the Amended JSC Law sets forth rules for shareholders that, as of July 1, 2006, own more than 95% of the shares. Such shareholders are exempt from the six-month rule and have the right to request mandatory redemption of the remaining shares within one year from the date when Article 7 comes into force. Minority shareholders, on the other hand, also have the right to request mandatory redemption of their shares by a shareholder owning more than 95% of the shares, within the same time period. Only an independent appraiser can determine the redemption price for such shares.

Additionally, corporate executives may now be liable for damages for a violation of the procedure for acquisition of more than 30% of shares of a joint stock company. A claim for damages may be brought by either the company or an individual shareholder. Corporate executives who vote against a decision resulting in loss to a company or a shareholder, however, would not be liable for such decision.

The Amended JSC Law comes into force on July 1, 2006, except for Article 7, which will come into force on the same date as the law on mandatory insurance of an appraiser's liability comes into effect. It is still not clear when this law will be approved. /S. Sineva

## Restricted Rules for NGOs

In our December 2005 CIS and Central Europe Newswire, we described the initiative of the Russian authorities to strengthen regulations for all types of civil society organizations that may potentially be engaged in political activity, specifically for non-governmental "social unions" ("SU") and "noncommercial organizations" ("NCOs").<sup>1</sup>

Notwithstanding harsh criticism from the international community and Russian human rights activists, on December 23, 2005, the Russian State Duma approved the draft Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation" (the "Law on Amendments"), introducing changes to Federal Law No. 82-FZ "On Social Unions", dated May 19, 1995, as amended (the "SU Law") and Federal Law No. 7-FZ "On Noncommercial Organizations", dated January 12, 1996, as amended (the "NCO Law").

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<sup>1</sup> *Russia Plans Further Restrictions for NGOs* (CIS and Central Europe Newswire, December 23, 2005).

On December 27, 2005, the Law on Amendments was approved by the Council of Federation and on January 10, 2006, was signed by President Putin. The Law on Amendments provides that corresponding changes in the SU Law and the NCO Law will come into effect on April 17, 2006.

The final version of the Law on Amendments softened some of the more highly criticized provisions, but still contains a number of objectionable provisions. For example, the Law on Amendments no longer requires foreign SU/NCOs to register as Russian entities, as was stipulated in the draft, but still provides for certain state control over the sources and use of finances originating abroad.

Specifically, Article 29 of the SU Law requires SUs to inform the Federal Registration Service (the "FRS") "of the amount of funds and other assets received from international and foreign organizations, foreign citizens and individuals without citizenship". Article 32 of the NCO Law now requires that each NCO "provide documents with a report on its activity, including information on funds and assets received from international and foreign organizations, foreign citizens and individuals without citizenship" to the FRS.

Moreover, Section 4 of Article 32 of the NCO Law now imposes similar obligations even on Russian branches of international NCOs, requiring them to inform the FRS of funds received and other assets, proposed allocation of such funds, the purpose for which they will be used, and the actual expenditures and use of such funds. The NCO Law charges the Government with implementing regulations stipulating deadlines and the forms to be used for such reporting.

After reviewing an organization's financial reports, the federal authorities may forbid branches of foreign NCOs from carrying out all or part of a proposed program in Russia and even prohibit the "expenditure of funds and other assets to specific recipients of such funds and assets", in order to protect "constitutional order, morality, health, rights and lawful interests of other parties, and national security and defense". However, such a prohibition may be challenged in court.

Although the Law on Amendments does not require re-registration of existing Russian SUs and NCOs, its closing provisions mandate that all "structural divisions - branches and representative offices - of foreign non-commercial non-governmental organizations must file a notification" with the federal authorities and "bring their charters into compliance with the law" within six months of the date when the Law on Amendments comes into effect. As a result, those SUs/NCOs

which have not "notified" the FRS and have not amended their charters by October 17, 2006, will be under threat of having their accreditations revoked. /L. Brank

## Kyoto Protocol: Lack of Legislation Affects CO2 Emissions Trading Program in Russia

One year after the Kyoto Treaty came into force, the Russian Federation ("RF") has yet to enact relevant legislation to facilitate business' compliance with the treaty's terms. This lack of legislation has consequently hindered business development of carbon trading in the country.

The Kyoto Treaty<sup>1</sup>, which came into force on February 16 2005, requires its signatories to either reduce their emissions of carbon dioxide (CO2) and other greenhouse gasses or engage in a CO2 emissions trading program (the "Program"). Under the Program, countries that exceed their treaty-imposed limits of CO2 emissions may comply with the Protocol by buying credits from other countries who have produced less than their CO2 thresholds. The buyer must then invest in projects that reduce greenhouse gas emissions in the credit-selling country. The European Union has already launched the Program, while in the RF, a precise mechanism does not yet exist. Without the Program in place, practically speaking, Russian companies have little opportunity to attract such foreign investment.

The RF government bears the responsibility for regulating such activities - among other things, each contract that involves CO2 emissions trading must receive state approval. In the absence of any legislation on the matter, no credit trading can be carried out.

Consequently, one of the first potential business deals in Russia involving the trade of CO2 credits, between Unified Energy Systems (UES), Russia's largest producer of greenhouse gases, and Denmark's Environmental Protection Agency, fell through because UES was not legally allowed to

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<sup>1</sup> For background, please see *Environmental Update on the Kyoto Protocol on Climate Change* (Chadbourne & Parke LLP Project Finance Newswire, February, 2005).

execute the contract without government consent. Under the contract, the Danish government would have received 1.2 million CO2 credits, and in return would have made efficiency improving investments in the Amurskaya Power Plant in the Khabarovsk Region and a natural gas plant in the Orenburg Region. UES losses from the deal falling through are purported to amount to EUR 20 million. By far, UES is not the only Russian company negatively impacted by the inability to trade credits.

### Draft Legislation

The Ministry of Economic Development and Trade (the "Economic Ministry") is responsible for drafting legislation on trading CO2 credits with foreign countries. The Economic Ministry drafted legislation (the "Draft Legislation") during the period of July through November 2005, then sent it to other ministries (the Ministry of Natural Resources, the Federal Agency of Hydrometeorology, the Ministry of External Affairs and the Ministry of Industry and Energy) for approval. Thus far, only the Ministry of Natural Resources and the Federal Agency of Hydrometeorology have approved the Draft. Once all of the foregoing ministries have concurred, it can then be considered by the Prime Minister, Mikhail Fradkov, for final approval.

The Draft Legislation would establish rules for registration, evaluation and realization of investment projects concerning the prevention of climate change in the RF. The Draft Legislation requires that any company wishing to enter into a contract for the purpose of CO2 credit trading receive prior approval of its business plan by the Ministry of Economy.

Both Gazprom and UES have issued statements urging the Russian government to approve the Draft Legislation as quickly as possible. /N. Stenina

## Rights of Legal Entities to the Land Beneath Them — Extension of Deadline...Again

On December 27, 2005, Federal Law No. 192-FZ "On Amendments to Article 3 of the Federal Law "On Implementing the Land Code of the RF" extended the deadline for conversion of land rights by legal entities until January 1, 2008.

During the privatizations of 1991, legal entities gained the right to own their own buildings, while the land underneath such buildings remained government property. The entities were granted "perpetual use rights" allowing them to use and develop the land, provided that they paid a land use tax. They could not, however, divide or sell the land without selling the buildings situated on it or by selling the legal entity itself.

Future land reform was planned, and a date for capitalization finalized; the land was to be either purchased or acquired through a long-term lease from the government by 2004. Absent a valuation system for determining the purchase or lease price, however, this deadline was again extended to January 1, 2006. By December 2005, a means for determining purchase or lease price had yet to be set. Thus, on December 27, 2005, the deadline was again extended for two years, by Federal Law No. 192-FZ "On Amendments to Article 3 of the Federal Law "On Implementing the Land Code of the RF". The extension of the deadline benefits those businesses that are situated on what is essentially land they did not have to pay for. However, the lack of valuation system and uncertainty about the future valuation system has unnerved businesses. /E. Gaysinskaya

## New IPO Rules Aimed At Limiting Russian Equity Outflow

In recent years, Russian companies have increased their presence on foreign stock markets. The most significant players in the Russian market, such as AFK Sistema, Vimpelcom and Pyatorochka, have already undergone initial public offerings on the New York Stock Exchange and London Stock Exchange. It seems likely that the number of Russia-based companies listing on both foreign and Russian exchanges will continue to increase in the near future. Even the state oil company Rosneft recently announced the possibility of a global IPO this fall.

The Federal Financial Markets Service (FFMS), however, has long been struggling against the Russian stock outflow abroad. Russian companies succeeded in raising over USD 4 billion in IPOs on foreign markets in the last couple of years, as opposed to only USD 500 million domestically during that same period. Apparently, and despite the fact that all of

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those companies are also listed on Russian stock exchanges (a requirement of law), almost no equity was purchased locally.<sup>1</sup>

In response to the continuous equity outflow, on January 17, 2006, FFMS announced newly promulgated amendments to several Russian statutes dealing with securities and stock markets. The new rules, recently signed into effect by the head of FFMS, Mr. Oleg Vyugin, are aimed, for the most part, at limiting the outflow of Russian equity. At the same time, the legislation simplified some procedural requirements for Russian companies wishing to list on a foreign stock exchange.

The most significant change facing dual stock market players is the further capping of securities allowed on a foreign market from the current 40 to 35 percent of the overall issued shares in the company. This provision, however, will not affect the existing American Depository Receipt (ADR) and Global Depository Receipt (GDR) programs, and will not apply to companies that had submitted all the relevant documents to FFMS before the amendments came into effect, as was the case with Gazprom, which filed its application at the end of 2005. Under the new rules, however, only 70 percent of the shares in each particular issue can now be offered publicly on a foreign stock exchange. The remaining 30 percent must be traded on the Russian stock market. According to some sources, the FFMS regulations will boost the capacity and the liquidity of the Russian stock market and will serve the interests of both domestic and foreign investors, who henceforth can choose where to purchase Russian securities.

The amendments also introduce new procedural requirements aimed at bringing the aforementioned rules in line with international standards. In particular, a company is no longer required to register a report of its IPO. Instead, it may file a simple notification of the IPO with the FFMS. Such notification must be filed in a form prescribed by FFMS. The procedural changes are not only limited to the notification, but also cover other, rather technical requirements (e.g. the shortening of the term for the registration of the report of issuance with FFMS from 30 to 14 days).

At the same time, there are drawbacks. The FFMS disclosure requirements are greater - in particular, companies wishing to list on a foreign market are now required to make public the same information that would be necessary under the foreign law (i.e., the law of the country in which the IPO takes place), in addition to that which is required by Russian law. The disclosure of this information must now be made by publishing all relevant documents on the Internet on the same day that the information must be made public under the respective foreign law. Additionally, the new disclosure

rules modify prospectus requirements. Specifically, the prospectus must now disclose not only who advised and assisted in the offer, but also their fees for doing so.

The market has responded favorably thus far, and even the right of an issuer to independently solicit an investor has not been viewed as discriminatory. The new requirements were registered with the Ministry of Justice and published on February 17, 2006 and came into force 10 days later. /A. Volnov

## Six New Special Economic Zones Created

On January 18, 2006, RF Minister of Economic Development and Trade, German Gref, signed agreements with the heads of six RF regions to create new Special Economic Zones (SEZs) with extensive tax benefits.<sup>2</sup>

The agreements were signed pursuant to the federal law on Special Economic Zones in the Russian Federation, which came into force on January 1, 2006. This new law outlines the SEZ regime and the process for the establishment of the zones. A SEZ may be established for a maximum 20-year period based on the results of a tender, held by the Russian Government. RF Regions and municipalities interested in establishing a SEZ must submit an application with a business plan for the SEZ. Based on results of the tender, the Federal Government issues a decree establishing the SEZ and signs an agreement with the executive authorities of the relevant Region. The agreement, among other things, will specify the amount and terms of financing of the SEZ from Federal and Regional budgets, the plans for the development of the area, the amount of shares and interest owned by the State in SEZ assets, how the assets may be used both during and after the SEZ's 20-year term, the tax benefits, and the formation of the SEZ Supervisory Board.

Based on the tender held at the end of last year, the following SEZs will be established: two technical-manufacturing SEZs - Lipetsk and Elabuga, and four technical-implementation

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1 Sebastian Kontsyn and Edaterina Derbilova, "Stocks for Russia", *Vedomosti*, 18 January 2006, No. 6.

2 All previously established SEZs lost their status as special economic zones, except for the Kaliningrad and Magadan SEZs, which were established and governed respectively by the federal law on the Special Economic Zone in the Kaliningrad Region (1996), and the federal law on the Special Economic Zone in the Magadan Region (1999). The new law does not apply to the Kaliningrad and Magadan SEZs.

SEZs - in St. Petersburg, Tomsk and the two Moscow Region towns of Zelenograd and Dubna.

Lipetsk plans to host plants producing consumer electronics and furniture, and Elabuga is set to become an auto-parts production center, with reported participation from Hyundai and General Motors, among others. The technical-implementation zone in St. Petersburg will be specified for IT and analytical instrument research and development. Microelectronics will be developed in Zelenograd, and new material development is to take place in Tomsk. Dubna has been picked to become a Russian "Silicon Valley", where high-end technologies are to be developed and a special town will be built for programmers and scientists from different parts of the world.

The main tax benefit for SEZ residents is exemption from all local assessments including land tax, property tax, transport tax and regional income tax for the term of five years. The relevant local acts must be adopted by the authorities within two months. However, Yury Zhdanov, head of the new Federal Agency on SEZ Administration (established in July 2005) announced that he will press for the cancelation of all taxes for SEZ residents, including federal, and for the extension of tax holidays.

Financing of the newly created SEZs will come from both the federal and regional budgets. According to Mr. Gref, about RUR 8 billion has been allocated in the 2006 federal budget for developing SEZ infrastructure and transportation, with approximately the same amount coming from the relevant regional budgets. At least 80,000 jobs are expected to be created over the 20-year SEZ term. /S.Sineva

## UKRAINE

### Ukraine's Constitutional Amendments Take Effect on January 1, 2006

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Parliament and the Cabinet of Ministers (the Government). As a result of such redistribution, Ukraine's form of government will change from a presidential-parliamentary model to a parliamentary-presidential model.

### General Provisions

According to the Constitutional Amendments, the Parliament will now be elected for five years, rather than four and will operate under a so-called "imperative mandate". The members of the Parliament must now remain with the same political faction or party to which they belonged at the time of their election to the Parliament. If a parliamentary member leaves his faction or bloc or becomes a member of a different political bloc, he or she may be stripped of his or her deputy mandate.

In addition, the parliamentary members may not occupy other state posts, paid positions, or engage in any entrepreneurial activity (except for academic, scientific, or artistic activity) or be a member of the management or supervisory body of a company or organization, except for a non-profit organization.

### The Parliament's Extended Authority

The Constitutional Amendments provide that the Cabinet of Ministers will now be accountable not only to the President, as it was prior to 2006, but also to the Parliament, and must thus be guided in its activity not only by the Constitution, federal law and presidential decrees, but also by the resolutions of Parliament. Furthermore, the Cabinet of Ministers must now seek dismissal from the Parliament rather than the President.

Going forward, the Parliament, instead of the President, will decide on the appointment of Ukraine's Prime Minister, and based on the Prime Minister's proposal, other members of the Cabinet. The new procedure to appoint the Prime Minister will occur as follows. First, a coalition of the parliamentary factions, i.e., the so-called majority, must be formed within one month from the opening date of the first session after the parliamentary election. Second, the coalition of the factions must propose the candidates for the post of Prime Minister. Then, the President must choose from among the candidates and within fifteen days, submit a proposal on the selected candidate for Parliament's consideration. Finally, the Parliament must vote on the appointment of the Prime Minister. Under the previous wording of the Constitution, the President had sole power and discretion to appoint the Prime Minister, provided that a majority of members (226) of Parliament consented.

Additionally, the Parliament acquired the authority to appoint, based on the President's recommendation, the Minister of Defense, the Minister of Foreign Affairs, the Head

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of the Security Council of Ukraine and the Prosecutor General, as well as independently appoint the heads of the Antimonopoly Committee, the State Television and Radio Committee and the State Property Fund. In addition, the Parliament is now empowered to request the resignation of such appointed persons. Other Ministers (with the exception of the Defense and Foreign Affairs Ministers, whose candidacies are put forth by the President) are appointed by the Parliament based on the recommendation of the Prime Minister. Before the Constitutional Amendments took effect, the President appointed all of the Ministers at the Prime Minister's request.

In the event that the President's authority is terminated before his elected term of office expires, his or her obligations are delegated to the Head of the Parliament, rather than to the Prime Minister, as was the case under the previous Constitution.

The Parliament may also raise the issue of accountability of the Cabinet of Ministers, either at the request of the President or by a motion made by not less than 1/3 (150 members) of the Parliament. By a majority vote (226 votes), the Parliament may pass a motion of no-confidence with respect to the Government's activities. However, the issue of the Government's accountability may only be considered once during the same parliamentary session and may not be considered during the last session of Parliament before an election.

### The Cabinet of Ministers' New Authority

As a result of the Constitutional Amendments, the Cabinet of Ministers will now interact more closely and directly with the Parliament to whom it is now immediately accountable. The Prime Minister's position will become stronger than ever before since, as a representative of the parliamentary majority, he or she will have a guaranteed opportunity to cooperate constructively with the Parliament without the intermediacy of the President and therefore, will have the chance to become a significant political figure who may influence a majority of economic and political matters in Ukraine.

In addition, the Cabinet of Ministers was delegated new powers previously held by the President, such as: the creation, reorganization and liquidation of the ministries and other central bodies of the executive branch and the appointment and discharge, at the behest of the Prime Minister, of the chiefs of the central executive bodies, other than the Cabinet. The Prime Minister will be able to directly

propose the candidacies of all of the Ministers, with the exception of the Defense and Foreign Affairs Ministers, for approval by the Parliament.

### Presidential Authority Weakened

The Constitutional Amendments also reduced the President's influence on the legislative process. In particular, if the President does not sign a law approved by two-thirds of the members of Parliament after the second reading, that law is deemed to be immediately enacted, is signed by the Head of the Parliament and then published in the official newspaper.

In addition, whereas the President was previously entitled to cancel the acts of the Cabinet of Ministers, now the President may only suspend their enforcement on the grounds of unconstitutionality. To accomplish this, the President must concurrently request a Constitutional Court ruling with respect to the constitutionality of such acts.

Simultaneously, the President has acquired certain additional authorities. The President is currently provided additional grounds pursuant to which he or she may terminate Parliamentary power. Previously, the President could dissolve the Parliament only if plenary meetings did not occur within 30 days of each session. Under the Constitutional Law, in addition to this basis, the President now has the power to terminate the authority of the Parliament, if: (1) within one month after the beginning of a session, a coalition of the parliamentary factions has not been formed; or (2) if within 60 days after the Cabinet of Ministers' resignation, a new Cabinet has not been formed. Therefore, while the Constitutional Amendments weaken the influence of the President within the executive branch, at the same time, they noticeably increase the President's control over the Ukrainian Parliament by providing additional grounds for disbanding the Parliament.

Nevertheless, the decision to dissolve Parliament must be made by the President after consultation with the Head and Deputy Heads of the Parliament and the heads of the parliamentary factions. In addition, the President is not allowed to terminate the powers of the Parliament during the last six months of either the President's or the Parliament's term.

The President also retains full authority over foreign affairs, national security and the appointment of heads of the oblast and regional state administrations.

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## Prosecutor's Additional Authority

Under the Constitutional Amendments, the supervisory functions of the prosecutor's office have been extended. In particular, the monitoring of compliance with human rights and freedom has been added to the prosecutor's existing responsibilities. The prosecutor's office will now have the authority to determine whether an individual's rights and freedom have been violated, whether human rights' laws have been complied with, and whether state officials have acted in accordance with such laws. These additional prosecutorial powers are controversial. According to the Conclusions on the Changes to the Ukrainian Constitution of the European Commission for Democracy through Law, better known as the Venice Commission, dated December 8, 2003, this supervisory function does not comply with the European Council's rule of law standards and should be brought to a vote in a national referendum.

## Reform Controversy

The Constitutional Amendments have generated controversy in Ukraine. Many believe that the Parliament considered and adopted the constitutional changes too hastily. Opponents of this constitutional reform say that the new confrontation between the President and Parliament and between the President and Prime Minister (now a creature of Parliament) will send the country into a political crisis. Ukraine President Victor Yushchenko, who opposes these constitutional changes, has already announced that after the March parliamentary elections, he plans to call for a national referendum on constitutional reform. It is difficult to predict, however, whether a referendum will actually take place, since to our knowledge no practical steps have been made in furtherance thereof. If a referendum does take place, significant procedural and substantive issues will be raised since the Constitutional Amendments have already become effective and will be fully implemented after the March 26, 2006 parliamentary election. /A. Putintseva

## Tell Me Your Name and I will Tell You Your Story — Provisions for Credit Histories Established

On January 30, 2006, Law No. 2704-IV "On Organization of

Formation and Circulation of Credit Histories" (the "Credit Histories Law") came into effect. The Credit Histories Law was passed by Ukraine's Verkhovna Rada ("Parliament") on June 23, 2005, to address the lack of available information on a borrower's credit history, which has limited the development of the banking sector in Ukraine. The Credit Histories Law should increase access to financing for both businesses and individuals.

The Credit Histories Law will introduce changes to the following laws: (i) Law No.1775-III "On Licensing of Certain Types of Commercial Activity", dated June 1, 2000 (as amended) (the "Law on Licensing"); (ii) Law No. 755-IV "On the State Registration of Legal Entities and Persons - Entrepreneurs", dated May 15, 2003 (as amended); (iii) Law No. 2908-III "On Credit Unions", dated December 20, 2001 (as amended); (iv) Law No. 1952-IV "On the State Registration of Property Rights on Immovables and Limitations thereto", dated July 1, 2004 (as amended); and (v) Law No. 1255-IV "On the Securing of Creditors' Claims and Registration of Liens", dated November 18, 2003 (as amended).

According to the amendments introduced to Article 9 of the Law on Licensing, credit bureaus must be licensed. Regulation No. 1174 of the Cabinet of Ministers "On the Authorized Body for the State Regulation of Activity of Bureaus of Credit Histories", dated December 7, 2005, authorizes the Ministry of Justice to issue licenses to credit bureaus, to compile a General Register of Bureaus, to enforce the laws applicable to the bureaus, and ensure the proper use of information (credit histories) during a bureau's reorganization or liquidation.

In addition, the Law on Credit Histories establishes penalties for not operating in accordance with the law, which include a range of fines (UAH 8,500 - 85,000), license termination and possible liquidation of the company. /A. Chernov

## Law on State Notary Duties Amended

On January 17, 2006, Ukraine's Verkhovna Rada (Parliament) amended the Decree of the Cabinet Ministers "On State Duties", dated January 21, 1993 (the "State Duty Amendments"), to decrease the rate of the state duty on notarization of all long-term real estate leases and all

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pledge agreements. The State Duty Amendments lower the duty on real estate leases from 1% to 0.01% of the value of the agreement, but not less than 5 and not more than 50 non-taxable minimum personal incomes<sup>1</sup> ("MPIs"), currently UAH 85.00 - 850.00 (USD 17.00 - 170.00). The duty on pledge agreements falls from 0.1% (but not more than 100 non-taxable MPIs), to 0.01% of the pledge value (but not less than 5 and not more than 50 MPIs). If signed into law by the President, the State Duty Amendments will take effect on January 1, 2007.

The State Duty Amendments, long-awaited by businesses and private entrepreneurs, would abolish the unjustifiably high state duty on the notarization of long-term real property leases and are expected to eliminate the common practice of intentional underestimation of pledge amounts in agreements. /A. Putintseva

## Securitization of Mortgage Loans Under Way

Ukraine's mortgage market has been rapidly developing during the past few years following adoption of the Law of Ukraine "On Mortgages," which took effect on January 1, 2004. Despite steady and continuous growth, however, Ukraine's mortgage market still lacks the legal infrastructure and regulatory framework necessary for its proper operation and further development. One of the main factors that continues to inhibit such development is the shortage of mortgage capital. Since a secondary market for mortgages is almost non-existent in Ukraine and Ukrainian banks are not able to effectively sell mortgages to attract additional resources for new mortgage financing, Ukrainian banks primarily use bank deposits, which are in short supply, for funding new mortgages.

The new law of Ukraine "On Mortgage Bonds", adopted by the Verkhovna Rada (Parliament) on December 22, 2005 (the "Mortgage Bonds Law"), sets out the legal regime for the issuance of mortgage bonds. This new regime could channel more funds into the mortgage system through the securitization of mortgage loans. Securitization involves the creation of a pool or portfolio of mortgage loans which is used to support the issuance of mortgage-backed securities. Such securities should generate cash flow, which could then be used to issue additional loans.

The Mortgage Bonds Law introduces two types of mortgage

bonds: regular mortgage bonds and structured mortgage bonds.

Under the Mortgage Bonds Law, regular mortgage bonds may be issued by a financial institution, other than a specialized mortgage institution, which has issued mortgage loans or acquired the rights under loans secured by mortgages. The structured mortgage bonds may only be issued by a specialized mortgage institution whose exclusive business is the purchase of mortgage assets and the issuance of structured mortgage bonds. The main difference between regular and structured mortgage bonds is that the issuer of structured mortgage bonds would only be liable to the extent of the mortgaged assets specified in the respective offering circular for the specific issue (the so-called "mortgage coverage"), while the liability of the issuer of regular mortgage bonds extends, in addition to mortgage coverage, to all of its property.

The Mortgage Bonds Law also sets forth a special regime of mortgage coverage designed to protect the purchasers of mortgage bonds. In particular, the Mortgage Bonds Law provides that a security interest will automatically be created in the mortgage coverage, and holders of the mortgage bonds will be considered first ranking pledgees. The mortgage coverage will be separated from all other assets of the issuer of mortgage bonds and would not be included in the liquidation pool of assets in the case of liquidation of the issuer. The Mortgage Bonds Law prohibits any tax liens against the mortgage coverage until full repayment of the bonds. Furthermore, the law specifically states that foreclosure on the mortgage coverage may be carried out only at the request of the holders of the mortgage bonds. No other creditors of the issuer are entitled to make any claims in respect of the mortgage coverage until the mortgage bonds are repaid in full.

The Mortgage Bonds Law further provides that mortgage bonds are issued in non-certificated (electronic) form by means of public or private placement and are subject to registration with the Ukrainian Securities and Exchange Commission. The Mortgage Bonds Law came into force on January 24, 2006. /D. Fedoruk

<sup>1</sup> Non-taxable minimum personal income was set by the President of Ukraine on September 2, 1996, and amounts to 17.00 Hryvnias (US\$ 3.37) per month. This or a lesser amount earned by an individual is not subject to taxation in Ukraine.

## The First Private Center for the Certification of Electronic Digital Signatures Accredited

The first private center for the certification of electronic signatures (through "Open Key"<sup>1</sup> certification) was recently accredited in Ukraine to further implement the Law of Ukraine "On Electronic Digital Signatures", which became effective as of January 1, 2004 (the "EDS Law") (See the CIS and Central Europe Newswire, February 12, 2004, for more information). The EDS Law and the Law "On Electronic Documents and Electronic Document Circulation" were adopted on the basis of Article 207 of the Ukraine Civil Code, which allows parties to sign contracts by electronic and other technical means.

The EDS Law contemplates the establishment of government entities, such as the Central Certification Agency, and a network of private Key Certification Centers to provide services related to the creation of electronic signatures and Open Key Certificates. To implement the EDS Law, the Cabinet of Ministers in 2004 adopted several resolutions designed to appoint a state body to act as the Central Certification Agency and to establish the procedure for accrediting private Key Certification Centers. In January 2006, the first private Key Certification Center was accredited by the Central Certification Agency, the functions of which are performed by the Ministry of Transport and Communications of Ukraine.

Although electronic documents and electronic signatures have been in use in Ukraine for some time, their use has been mainly limited to the banking system, particularly for money transfers. Now, any business or individual with an Open Key in the form of an electronic file will be able to certify documents and instantly send them via the Internet without being required to obtain a notary signature. Purchasing the necessary Open Key will cost UAH 500.00 (the equivalent of US\$100.00) annually.

Full utilization of the Open Key will only be possible within a few years when both counteragents have access to the Internet. Currently, some state agencies do not have any Internet connection, and thus lack the technical capability to receive electronically signed documents. It is expected that within six months, businesses and entrepreneurs will be able to file tax returns electronically. However, government agencies, such as the tax authorities, may only use the services of an Accredited Key Certification Center, while other

legal entities and individuals may confirm the validity of the Open Key through a non-accredited Key Certification Center. /A. Putintseva

## New Financial Rating Law Restricts Insurance and Pension Funds

On December 15, 2005, the Ukrainian Parliament adopted Law No. 3201-IV "On the Introduction of Changes to Certain Normative Acts" (the "Normative Acts Law") which came into effect on January 25, 2006. The Normative Acts Law introduces amendments to 24 Ukrainian laws, mainly in the sphere of financial services, mortgage financing and other related issues. The Normative Acts Law introduces into Ukrainian law a number of new concepts related to the legal regulation of rating agencies and credit ratings of financial companies, non-banking financial institutions and Ukrainian securities.

Under the Normative Acts Law, rating agencies operating in Ukraine, including international rating agencies, must be included into the State Registry of Authorized Rating Agencies (the "Registry"), to be maintained by the State Commission on the Regulation of Financial Services Markets (the "FSC"). Ukrainian rating agencies are required to use the National Scale for Ratings set by the Ukrainian Government. Under the Normative Acts Law, the main gradings in the National Scale for Ratings will be "investment level" and "speculative level". International rating agencies may use their own ratings scales.

The Normative Acts Law further establishes that the following Ukrainian issuers of securities must obtain credit ratings: issuers with state ownership, enterprises of strategic importance for the Ukrainian economy and companies holding a dominant position (monopoly companies) in a particular market. Ukrainian banks are not required to obtain credit ratings.

(Continued on page 11)

<sup>1</sup>Open Key is a cryptographic algorithm developed by special software used for generation, marking and verification of electronic digital signatures. In order to use the Open Key, the signatory must obtain an Open Key Certificate, a document issued by a Key Certification Center to verify that the Open Key is valid and belongs to that particular signatory.

Financial market participants and professionals are criticizing the Normative Acts Law, however, for its immediate introduction of the requirement that insurance companies and private pension funds place their reserves exclusively in banks having credit ratings and/or in securities with an investment rating. As a practical matter, only one Ukrainian rating agency exists, and its services are not widely used by financial market participants. Accordingly, only a limited number of Ukrainian banks and issuers of securities have obtained ratings from this agency.

Moreover, given that the Normative Acts Law is now in effect, the majority of Ukrainian insurance companies and private pension funds are already in violation of the Normative Acts Law with regard to the placement of their reserves. Thus, the FSC currently has formal grounds to revoke the licenses of such insurance companies and private pension funds. However, it appears that the FSC supports the widespread view that the immediate enforcement of the Normative Acts Law would lead to a collapse of the insurance services market and is reluctant to take any measures on the basis of the Normative Acts Law.

A draft law that would officially postpone the requirements of the Normative Acts Law until 2008 was recently registered in Parliament. Should this draft law be adopted by the Parliament and the reserve requirements introduced by the Normative Acts Law be postponed, the problem should be resolved. While the majority of market participants support the creation of a National Scale for Ratings and wider use of the rating system on the financial market, logic suggests that such system should pass the development stage before it becomes mandatory. As of the date of publication of this Newswire, however, no law on postponement had been adopted. /A. Mycyk

## Ukraine Authorizes Ratification Of UNIDROIT's Financial Leasing And Factoring Conventions

On January 11, 2006, Ukraine's Verkhovna Rada (Parliament) authorized the ratification of the International Institute for the Unification of Private Law ("UNIDROIT") Conventions on International Financial Leasing and International Factoring, which were adopted in Ottawa, Canada on May 28, 1988.<sup>1</sup>

### UNIDROIT Convention on International Financial Leasing (the "Leasing Convention")

The Leasing Convention is aimed at creating a uniform legal regime applicable to the Contracting States.<sup>2</sup> The Leasing Convention describes the principles of international leasing, the rules applicable to leasing contracts and the rights and obligations of the parties to a leasing contract, along with the guarantees of property right protection and the reimbursement of losses.

The Leasing Convention governs a financial leasing transaction in which one party (the lessor), (a) on the specifications of another party (the lessee), enters into an agreement (the supply agreement) with a third party (the supplier) under which the lessor acquires a plant, capital goods or other equipment (the equipment) on terms approved by the lessee, and (b) enters into an agreement (the leasing agreement) with the lessee, granting to the lessee the right to use the equipment in return for the payment of rent. The Leasing Convention applies to financial leasing transactions in relation to all equipment except for equipment to be used primarily for the lessee's personal, family or household purposes.

At the time when Ukraine ratified the Leasing Convention, there were nineteen Contracting States, including the U.S., France, Italy and the Russian Federation.

### UNIDROIT Convention on International Factoring (the "Factoring Convention")

The Factoring Convention provides a comprehensive and uniform legal framework governing international factoring contracts and assignments of receivables.

Importantly, to the extent that the Factoring Convention would become part of Ukrainian national law once the President signs the accession law, the determination of the minimum functions to be carried out by an entity that falls under the definition of "factor" effectively expands such definition as now set forth under Article 1077(1) of the Civil Code of Ukraine, which currently contemplates that the only function carried out by a factor is "...the transfer of funds to...the client for value." The application of the

(Continued on page 12)

<sup>1</sup>Please note that it is only after the President signs the respective accession laws that the Conventions would be incorporated into Ukraine's national law, which legal experts expect to occur in the near future.

<sup>2</sup>*i.e.*, the entities from those countries which have signed or acceded to the Conventions.

Factoring Convention extends to services, as references to "goods" and the "sale of goods" includes services and the supply of services.

Both the Leasing Convention and the Factoring Convention apply when the contracting parties' places of business are located in different States and (a) those States and the State in which the factor (in the case of a factoring contract) or the supplier (in the case of a financial leasing contract) has its place of business are Contracting States; or (b) both the contract for the sale of goods and the factoring contract (in the case of a factoring contract) or the supply agreement and lease agreement (in the case of a financial leasing agreement) are governed by the law of a Contracting State.

Application of the Leasing Convention may be rejected by any party to the supply and leasing contracts. The application of the Factoring Convention may be rejected (a) by the parties to the factoring contract or (b) by the parties to the contract of the sale of goods with respect to receivables arising at or after the time when the factor has been given notice in writing of such rejection. /Ya. Gregirchak

## New Licensing Conditions for Creditors

On October 18, 2005, the State Commission on the Regulation of Financial Services Markets (the "FSC") issued Regulation No. 4802 "On Approval of License Conditions for Providing Financial Loans by Means of Raised Funds" ("Regulation No. 4802"). Regulation No. 4802 was issued in order to implement the provisions of Article 5 of the Law of Ukraine "On Financial Services and Regulation of the Financial Services Markets" ("Article 5"), which provides that only credit institutions (financial institutions which have the right to provide financial credits with raised funds at their own risk) can provide credit with raised funds. Such credit institutions must possess a license issued by the FSC. Regulation No. 4802 establishes the procedures for obtaining and maintaining such licenses. The rules do not, however, apply to credit unions.

A license enables the license holder (itself or through a branch) to provide credits by using raised funds. Once issued, a license is valid for a period of three years, and may be extended for up to five years, provided that the licensee and/or its branches have committed no violations during the initial term. To extend the license, the licensee must apply to

the FSC no later than 30 days prior to the expiration of the initial license.

If the branches of the credit institution will provide credits, such branches must not only be included in the State Register of Financial Institutions, but also possess an official copy of the license. The licensee must request such copies for each branch either in the initial license application or through a separate application. Licenses are not transferable to third parties.

To apply for a license, the credit institution must be listed in the State Register of Financial Institutions and must not have any outstanding fines imposed by the FSC. Both at the application stage and during the term of the license, the credit institution must, *inter alia*: (i) form capital, reserve funds and develop procedures to ensure the repayment of possible losses in compliance with the requirements of the law; (ii) meet the criteria for liquidity, capital, solvency, quality of assets and risk management established by law; (iii) maintain a register of credit agreements and retain such agreements for a period of five years after termination; (iv) develop and approve its own internal regulations or rules regarding the provision of financial credits which, *inter alia*, must include the terms and procedures for attracting capital and providing financial credits and the procedures for monitoring the performance of credits and for creating and using reserves for possible losses; (v) notify the FSC of any amendments to the licensee's founding documents; and (vi) maintain separate premises with limited access and facilities to store cash and documents.

In addition, both the chief executive and chief accountant of the licensee must meet various professional requirements applicable to such positions as set out in other FSC regulations for credit institutions.

The FSC must rule on an application submitted by a credit institution within 30 days of submission, and notify the applicant of its decision within three business days thereafter. Within five business days after payment of the fee, the license should be issued.

The FSC may reject an application if, *inter alia*: (i) the documents submitted in support of the application contain false information or (ii) the FSC determines, on the basis of the application materials, that the applicant does not meet the licensing conditions (e.g., the charter of the credit institution does not correspond to the requirements in the

(Continued on page 13)

regulation). In the first case, the applicant may re-apply for the license only after three months from the date of rejection of the application. In the second case, the applicant may re-apply at any time after correcting the inconsistencies which served as the basis for rejection. /R. Ostapenko

KAZAKHSTAN

## Fiscal Regime of Subsurface Use in Kazakhstan in 2006

*(Continued from page 1)*

The taxation regime of subsurface use activities in Kazakhstan, including petroleum operations, construction works and operation of underground facilities unrelated to production, is regulated by the Tax Code, dated June 12, 2001, No. 209-II ("the Tax Code"). Our summary is, therefore, based on the Tax Code provisions in effect on January 1, 2006.<sup>1</sup>

There are two taxation models related to subsurface use activities.<sup>2</sup> The first model ("Model 1") envisages payment of taxes and other obligatory payments to the budget in accordance with the tax legislation in effect on the date the relevant payment liabilities arise.

The taxation regime under the second model ("Model 2") can only be stipulated in a production sharing agreement ("PSA") and should be in conformity with the tax legislation in effect on the date the PSA is signed/concluded.

In the event tax legislation changes during the period from the date of the tax review and the date a PSA is signed, the taxation regime should be amended to conform to the legislative changes and another tax review should be conducted.

### Ring-fencing Requirement

A subsurface user is obliged to maintain separate tax accounting for activities conducted under the contract. Tax liabilities related to activities outside the framework of the contract should be accounted for separately. This requirement does not apply to contracts for production of common mineral resources and/or underground water.

Where several taxpayers are engaged in subsurface use under one PSA, the taxation regime set forth in the PSA should be the same for all taxpayers. Additionally, the

taxpayers are obliged to keep consolidated accounts and pay all taxes and payments envisaged by the PSA for activities conducted within its framework.

### Stability of Taxation Regime

Stability of subsurface use contract rights has always been a key issue for foreign investors, particularly in the oil and gas sector. The Tax Code provides that the taxation regime set forth in subsurface use contracts that have undergone an obligatory tax review and were concluded before January 1, 2004, should remain in force for the entire contract validity period and may be adjusted in connection with the change of tax legislation upon agreement of the parties.

With respect to PSAs, the Tax Code provides that the taxation terms set forth in PSAs may be adjusted in connection with the change of tax legislation upon agreement of the parties. In the event such legislative changes benefited a subsurface user, the taxation terms of the PSA should be amended to restore the original economic interests of Kazakhstan. In case certain types of taxes and obligatory payments to the budget, envisaged in the PSA, are cancelled, the subsurface user should continue such payments in the order and amounts stipulated in the PSA, until the relevant amendments are introduced into the PSA.

### Model 1 Contracts

As stated above, these contracts envisage payment by a subsurface user of taxes and other obligatory payments stipulated by the Tax Code, with the exception of the share of the Republic of Kazakhstan.

### Model 2 Contracts (PSAs)

Model 2 type contracts provide for payment by a subsurface user of the Republic of Kazakhstan's share and payment of all taxes and obligatory payments to the budget, stipulated by the Tax Code, except for the following:

- Rent tax on exported crude oil, gas condensate
- Royalty
- Excise tax on crude oil, gas condensate

*(Continued on page 14)*

<sup>1</sup> Customs duties and fees that may be applicable to subsurface use activities in connection with import and export of goods are set forth in other legislative acts.

<sup>2</sup> Subsurface users engaged in production of mineral resources prior to conclusion of a subsurface use contract should pay royalties in the amount established by the Kazakhstan Government and in accordance with the procedure specified in the Tax Code.

- Excess profits tax
- Land tax
- Property tax

### Latest Amendments to the Tax Code

The amendments related to subsurface use taxation, which were introduced into the Tax Code as of January 1, 2006, concern Model 2 contracts only. Moreover, the changes relate to the subsurface user's share in profit production and a top-up tax.

The share of the Republic of Kazakhstan under a PSA is

determined as the total value of profit production to be shared between the Republic of Kazakhstan and a subsurface user, minus the subsurface user's share in profit production.

The share of a subsurface user in profit production is determined as the lesser of the percentage values corresponding to the following 3 triggers:

- 1) the R-factor (profitability indicator) – ratio of the accumulated income of a subsurface user to accumulated project expenses;
- 2) the internal rate of return (IRR) of a contractor –

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### Taxes/Payments Under Model 1 And Model 2 Contracts

Taxes/Payments	Tax on Model 1 Contracts	Tax on Model 2 Contracts
Corporate income tax	Payable	Payable
Branch profits tax (applicable to branches of foreign legal entities)	Payable	Payable
Value added tax	Payable	Payable
Excise tax	Payable	Excise tax on crude oil, gas condensate is not payable
Rent tax on exported crude oil, gas condensate	Payable	Not payable
Signature bonus	Payable	Payable
Commercial discovery bonus	Payable	Payable
Royalty	Payable	Not payable
Excess profits tax	Payable	Not payable
Share of the Republic under a PSA	Not payable	Payable
Top-up tax	Not payable	Payable
Social tax	Payable	Payable
Land tax	Payable	Not payable
Vehicle tax	Payable	Payable
Property tax	Payable	Not payable
Payment for use of a land plot	Payable	Payable
Payment for use of water resources from surface	Payable	Payable
Payment for environmental pollution	Payable	Payable
Payment for use of specially protected natural areas	Payable	Payable
Payment for radio frequency spectrum use	Payable	Payable
Payment for use of navigable waterways	Payable	Payable

discounting rate at which real net discounted income reaches zero; and

- 3) the P-factor (price coefficient) – ratio of the subsurface user's income to the volume of extraction for the reporting period.

The above triggers are determined in accordance with a special methodology. The result obtained from each of the triggers should be compared to the *threshold amounts* specified in a PSA to determine the *percentage value* of a share in profit production which is to be transferred to the subsurface user.

According to the Tax Code amendments enacted as of January 1, 2006, the specific percentage values of a subsurface user's share in profit production, stipulated in the PSA within the limits provided by the Tax Code, are stabilized for the entire PSA term.

The Tax Code amendments also provide that the actual ceiling to apply on the profit oil triggers would be negotiated and fixed in the PSA in the range of 70% to 90%. Previously, such ceiling was capped at 70%.

In addition, based on the Tax Code amendments, during the course of implementation of a PSA, the Republic of Kazakhstan's share of revenue in each tax period, starting from the moment of commencement of production until the moment of return on investment, should not be less than the value set forth in the PSA in the range of 5% to 10% and should not be less than 40% of the volume of production received by the subsurface user in a tax period, in subsequent tax periods. Prior to the latest amendments, the Republic of Kazakhstan's share of revenue<sup>3</sup> was supposed to be not less than 10% during the period preceding the return on investment. /A. Yermekova, K. Mack

## New Currency Legislation in Kazakhstan

The end of 2005 saw a significant change to Kazakhstan's currency control regime, brought about by the enactment on December 18 of the Law On Currency Regulation and Currency Control (the "Currency Law") and Rules for Currency Operations (the "Currency Rules"). The Currency Law and the Currency Rules are aimed at liberalizing the currency regime for both residents and non-residents.

### New Notification Procedures

Previously, Kazakhstan law only provided for either licensing or registration of currency transactions. Both the licensing and the registration regimes stipulate that the participants (residents) to an agreement involving hard currency (the "Currency Agreement") must obtain a license or a certificate of registration from the National Bank of the Republic of Kazakhstan (the "National Bank") prior to carrying out such transaction. Failure to obtain the license or registration may result in the following:

- (a) for a license - rejection by the respective bank of any and all payments under the Currency Agreement, imposition of an administrative fine, invalidation of the Currency Agreement, confiscation of proceeds received under the Currency Agreement, and/or compulsory liquidation of the resident; and
- (b) for registration - rejection by the respective bank of any and all payments under the Currency Agreement and/or imposition of an administrative fine.

The Currency Law now sets forth requirements for a third option in certain cases - notification. The notification process is the most simplified currency regime of the three, and essentially stipulates that participants (residents) that are parties to a Currency Agreement must provide the National Bank with information on the Currency Agreement and quarterly reports. Should the resident fail to notify the National Bank, the respective bank has no authority to reject payments under such agreement. However, an administrative fine could be imposed on the resident for such failure.

The notification requirement applies to the following operations:

- (a) Through December 31, 2006:
  - i) currency transactions between residents and non-residents to be effected as a result of execution of rights and obligations to basic assets (other than goods) of derivative financial instruments.
  - ii) opening by a resident individual of a bank account with a foreign bank;
  - iii) opening by resident legal entities of a special-

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<sup>3</sup> The Republic of Kazakhstan's share of revenue means the tax liabilities fulfilled by a subsurface user in a reporting period, including the Republic's share in production sharing, taxes and other obligatory payments to the budget, but excluding VAT and other taxes where the subsurface user acts as a tax agent.

purpose bank account with a foreign bank; and  
iv) opening by resident legal entities of a bank account with a foreign bank for creating security over such account.

(b) Starting from January 1, 2007:

- i) currency operations connected with the acquisition of securities and investment fund shares; charter capital contributions, except for "direct investments"; transactions between residents and non-residents involving derivatives;
- ii) Residents'/nonresidents' payments of property rights to immovables in favor of non-residents/residents; and
- iii) Opening a bank account with a foreign bank.

The Currency Law also empowers the National Bank to require notification for any and all currency operations that are not subject to any specific currency regime.

### Financial and Commercial Loans

The Currency Law also introduces new terminology to include "Financial" and "Commercial Loans". A "Financial Loan" is defined as any loan in monetary form (except for Commercial Loans); any deposits with banks, made by a bank's subsidiaries, located abroad and established solely for the purposes of obtaining funds from the international capital markets; money transfers for the purpose of establishing security; transfers for the acquisition of goods and services, or the execution of any other transactions made by a third party, as well as execution of a debtor's obligations by any third party, if such execution obliges the debtor to pay back such funds or any other assets either with or without interest accrued on such funds or assets. The Currency Law defines a "Commercial Loan" as a deferred payment for export or prepayment for import of goods or services.

Under the Currency Law and Currency Rules, Financial and Commercial Loans must be registered only if:

- (a) the term of the Financial or Commercial Loan exceeds 180 days; and
- (b) the amount of the transaction exceeds the equivalent of US\$300,000 (for imports or transfer of funds to Kazakhstan) or US\$10,000 (for exports or transfer of funds from Kazakhstan).

The Currency Rules also stipulate a number of exceptions, according to which neither Financial nor Commercial Loans must be registered,<sup>1</sup> such as:

- (a) if the actual aggregate amount arising from one

currency agreement does not exceed the equivalent of US\$300,000 or US\$10,000; and/or

- (b) if a loan is provided in parts and each part must be paid back within the period not exceeding 180 days.

### Bank's Operations

The Currency Rules stipulate that a bank's operations (including, but not limited to Commercial and Financial Loans) require notification to the National Bank except where such banks are opening bank accounts with foreign banks. Opening of foreign bank accounts by Kazakhstan banks does not fall under any specific currency control regime.

### Individuals' Currency Operations

The Currency Law amended the previous definition of "resident". Now, any Kazakhstan citizens who have obtained a document on permanent residence in accordance with the laws of any foreign state, shall be considered non-residents. The Currency Law also increased the amount of cash foreign currency that residents and non-residents may take out the Republic of Kazakhstan without supportive documents to US\$10,000. /Ye. Nossova

## RECENT DEVELOPMENTS

### New Counsel Appointments

Two members of our CIS and Central Europe practice group were recently promoted to the position of counsel.

In Moscow, Evgenia Korotkova, who first joined the Moscow office in 1993 as a paralegal after receiving her Law Diploma from Moscow State University, became Counsel on March 1st, 2006. Evgenia's practice concentrates on general corporate matters, real estate, securities, currency regulation, banking, taxation, anti-monopoly and labor issues. Evgenia advises clients in the manufacturing, energy and telecommunications sectors, among others. She has been particularly active in advising clients on acquisitions

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<sup>1</sup> The Currency Law does not specify any exceptions. However, the Currency Law authorizes the National Bank to establish the minimum amount that would necessitate registration of a currency operation, and exceptions from the general rules for registration.

## RECENT DEVELOPMENTS

and joint ventures. She has conducted dozens of due diligence reviews of Russian companies in a variety of sectors, including telecommunications, oil and gas, consumer products and pharmaceuticals.

In Warsaw, R. Adam Kozlowski was promoted to European Counsel. Adam joined the Warsaw office in 1997. He received his Masters of Law from Warsaw University Faculty of Law and Administration in 1997. Adam concentrates his practice in competition, environmental and administrative laws, providing advice and assistance to domestic and foreign entities with respect to real estate investments and mergers and acquisitions. He also handles competition law training and competition compliance programs.

### US\$540 Million Astelit Deal Closes

Chadbourne & Parke represented Astelit, a Ukrainian telecommunications company majority directly controlled by Turkish GSM operator Turkcell, in a US\$540 million financing. The deal marks one of the largest private financings in Ukraine to date.

Astelit, which was recently described as the fastest growing mobile phone operator in the world in terms of numbers of connections, did the financing in two facilities: the first was a senior secured facility of US\$390 million and the second was a junior facility of US\$150 million.

The financing is part of Astelit's efforts to increase its market share in Ukraine. As of September 30, 2005, the company's subscribers represented about 5.1% of the total mobile subscriber market in Ukraine, or about 23.5 million subscribers. It added 1.25 million subscribers in the last quarter of 2005.

Working for Chadbourne on the deal were Laura Brank, Head of the CIS Practice, London office partner Denis Petkovic and Kyiv office international partner Adam Mycyk, as well as London associate Stefan Unna and Kyiv associate Olexiy Soshenko.

Proceeds of the financing will be used for refinancing vendor and bank debt, as well as for up front financing costs and for operating losses and capital expenditures and for continuing to build out the company's mobile network.

ING Bank N.V. and Standard Bank Plc were the lead arrangers on the US\$390 million facility. The Chadbourne team also represented Astelit in respect to the \$US150 million junior facility being provided by a Turkish syndicate lead managed by Turkiye Garanti Bankasi A.S. and Akbank T. A.S. The deal is the second in which Chadbourne has worked for Astelit. The Firm previously represented the company in two vendor equipment purchase financings with Ericsson and Nokia.

### Record-Setting Bank Deal

Chadbourne & Parke LLP recently acted as legal counsel on matters of Ukrainian law to the controlling shareholders of Ukraine's Ukrsootsbank in the sale of 85.4% of the bank's share capital to Banca Intesa. The deal, announced recently, is worth about US\$1.2 billion, making it the largest bank deal in Ukraine to date. The share purchase agreement was signed on February 14, 2006. The transaction will close by the end of the year. As of December 31, 2004, Ukrsootsbank was Ukraine's fourth largest bank, with US\$1.3 billion in total assets. Working on the deal for Chadbourne were Kyiv office international partner Volodymyr Baibarza and associates Valery Fedichin, Artem Chernov and Ruslan Ostapenko.

### *Chambers Global 2006* Recognizes 19 Chadbourne CIS & Central Europe Attorneys

Chadbourne and its lawyers received a number of noteworthy recognitions in the 2006 edition of *The Chambers Global Guide*.

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Each of our CIS & Central Europe offices was recognized in more than one field, with a total of 12 practice areas and 19 attorneys receiving the prized rankings. The practice groups listed were: Corporate and Finance for Central and Eastern Europe; Energy & Natural Resources in Kazakhstan; Corporate/M&A, Energy and Natural Resources, Real Estate and Tax in Poland; Banking & Finance, Corporate/Commercial, Dispute Resolution and Energy & Natural Resources in Russia; Banking & Finance and Corporate/Commercial in Ukraine; and Corporate/Commercial in Uzbekistan. Those CIS and Central Europe lawyers who were recognized include: Laura Brank, Shane DeBeer, Konstantin Konstantinov, Geralina Lyubarskaya, Christopher Owen, and Mikhail Rozenberg (Moscow); Volodymyr Baibarza, Jaroslawa Johnson, Adam Mycyk, and Olexiy Soshenko (Kyiv); Dariusz Michaliski, Igor Muszynski, Włodzimierz Radzikowski, Gabriel Wujek and Dorota Szubielska (Warsaw); Kenneth Mack and Victor Mokrousov (Almaty); Jamol Askarov (Tashkent); and Nabil Kodadad (London).

A firm profile and complete commentary for Chadbourne are available on the Chambers Global website at: <http://www.chambersandpartners.com/global/>.

## Chadbourne Celebrates St. Petersburg Office Opening

On March 1, 2006, Chadbourne held a reception with clients and government officials in St. Petersburg to celebrate the official state registration of our office in the "northern capital" of Russia. The event allowed for a warm public introduction of counsels Alexander Kalinov and Konstantin Osipov, associate Nonna Crane, and the rest of the St. Petersburg team. The team, which joined Chadbourne in November, 2005, brings a wealth of experience to the firm, with particular expertise in the areas of corporate and financial transactions, litigation, oil and gas, telecommunications, manufacturing, and paper and pulp.

## CIS AND CENTRAL EUROPE LEGAL NEWSWIRE

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