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RUSSIA

New Tariffs for Monopolies Approved

On December 6, 2001, the RF Government approved in principle increases in tariff rates for Russia's natural monopolies for 2002. On average, RAO UES, Gazprom and the Railroad Ministry were limited to a maximum of a 35% increase over the 2001 tariff rates. This number represented a less significant increase than originally requested by the monopolies, which varied between 37% and 66% depending upon the monopoly.

Some analysts believe that the increase in tariffs will likely contribute to inflation in 2002, and as a consequence, the RF Government will be unable to keep inflation within the 13%-14% level in 2002, as currently provided for in the federal budget, and further that the overall inflation rate will most likely reach 18%. However, the RF Government was optimistic about its ability to control inflation and claimed that the contribution of each monopoly to overall price increases in 2002 will not be significant. Nonetheless, after an initial decision to increase railroad tariffs by 14% over the previous year, the RF Government reversed its decision in mid-January, apparently due to concerns about the possible inflationary impact of such an increase. On January 24, 2002, the RF Government is expected to finalize the schedule of tariff increases. /M. Goldman

Government Approves Code of Corporate Conduct

The RF Government has recently approved a long-awaited Code of Corporate Conduct (the "Code"), which was originally drafted by the Federal Commission on the Securities Market (the "FCSM"). The Code was prepared by the FCSM in close consultation with the investment community and financial analysts. It is designed to introduce a set of corporate governance norms for participants in the Russian market reflecting internationally accepted corporate governance concepts and to foster confidence in Russian companies. Prime Minister Mikhail Kasyanov noted that "implementation of the norms of the Code will increase the transparency of Russian companies and should make them more attractive to foreign investors."

The Code consists of ten chapters addressing numerous aspects of the activity of joint stock companies. These chapters set forth, among other things, norms governing: (i) the holding of a shareholders' meeting; (ii) the activities of the Board of Directors; (iii) the responsibilities and conduct of internal audit committees; (iv) dividend policy; and (v) disclosure of corporate information. The Code also outlines suggested standards for handling conflict of interest situations.

On several occasions, the FCSM has stated that the provisions of the Code should only be viewed as suggested guidelines, and that the Code will not be mandatory for Russian companies. There-

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fore, even though the Government has approved the Code, there are currently no plans to give the provisions of the Code the force of law.

As the FCSM was largely responsible for the creation of the Code, much of the emphasis is on governance of joint stock companies with publicly traded securities. However, nothing in the Code prohibits its adoption by closed joint stock companies or limited liability companies as well.

In the view of the FCSM, the need for additional capital and the desire to attract foreign investors and partners will prompt Russian companies to adopt the norms and rules of the Code without legislative measures. According to the FCSM, a majority of Russian issuers of securities have already declared their readiness to comply with the standards set forth in the Code. /M. Goldman

Duma Considers Changes in Court Procedure

A new draft of the 1964 Civil Procedure Code ("CPC") is currently under consideration in the State Duma. The draft has already passed the first of the three required readings. A key change introduced by the draft CPC, as well as draft amendments to the Arbitration Procedural Code ("APC") also currently under review, is that all disputes related to a company's commercial activity may only be considered by Russian arbitration (state commercial) courts.

Since under the 1964 CPC, judges in courts of common jurisdiction may hear a limited scope of commercial disputes, in which they have little competence, it has been common practice for competing shareholders or aggressive investors acting against the company's management or other shareholders to orchestrate the filing of claims by individual minority shareholders (often holding only one or two shares) in courts of common jurisdiction. In such cases, judges have often issued injunctions prohibiting certain shareholders from voting at general shareholders' meetings or from holding general shareholders' meetings at all, canceling share issuances, arresting a company's assets, or otherwise restricting the actions of the company's management. These judicial decisions have hindered or even paralyzed the activity of numerous Russian corporate giants, including Gazprom, LUKOIL and RAO UES. Indeed, the prevalence of such methods in Russian corporate wars led to the issuance of guidelines in October 2001 by the Presidium of the RF

Supreme Court to lower courts of common jurisdiction, recommending that they cease issuing injunctions in response to lawsuits filed by individual shareholders seeking to prohibit a company from holding a general shareholders' meeting.

Members of the Presidential Administration who have been lobbying for the new CPC and the amendments to the APC are optimistic about the prospects for passage in the State Duma, and expect that the new CPC and APC amendments may come into effect as early as the beginning of July 2002. /S. Volfson

BELARUS

New Presidential Decree Seeks to Protect Private Property Rights

On November 13, 2001, President Lukashenko issued a decree invalidating one of the most controversial pieces of Belarusian legislation – Presidential Decree No. 40, dated November 23, 1999, "On Certain Measures for the Reparation of Damages Caused to the Government" ("Decree No. 40"). Decree No. 40 envisioned a non-judicial (*i.e.*, by Presidential decision) procedure for the confiscation of property privately held or used in the course of conducting business activities, both by individuals and legal entities, whether Belarusian or foreign. According to experts, Decree No. 40 violated Article 44 of the Constitution of Belarus, which prohibits the alienation of property without compensation, other than by a court decision. /V. Salei

UKRAINE

Parliament Passes New Civil Code

On November 28, 2001, Ukraine's Parliament – the Supreme Rada – approved a new Civil Code (the "Civil Code"), which will enter into force at the beginning of next year, in January 2003. The Civil Code is divided into eight sections, and its new provisions will affect almost every aspect of civil law relations

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among individuals and legal entities, including in the spheres of family law, individual rights, ownership of property and contractual relationships.

On the commercial side, the Civil Code is intended to revamp the legal framework to address the realities of a modern market economy, which approach represents a break with the pre-existing Soviet command economy model. The Civil Code aims to create an integrated economic environment, to provide for equal protection for all forms of property, and in particular, establishes identical guarantees on the right of ownership, use and disposal of property for all owners.

The first section of the Civil Code, entitled "General Provisions," contains basic regulations establishing the status of individuals and legal entities, the rights and obligations of parties, and the procedures by which a person or entity may be represented by another. In addition, the first section defines and establishes the terms for statutes of limitations. The second section, entitled "Personal Non-Property Rights of Individuals," concerns those fundamental rights particular to individuals, such as the right to life and health care, to personal freedom and inviolability, and to a family and a place of residence. One novelty of the Civil Code is the provision of a second group of individual rights providing for, among others, the right to a name, the inviolability of dignity, honor, individuality and an individual's private life, and the ability to join organizations.

A majority of the remaining sections contain provisions directly impacting the rights of market participants. In the third section, entitled "Proprietary Law," provisions regulating proprietary rights are set forth. In particular, this section defines the concept of proprietary rights, as well as ownership and easement rights, and pledges. The fourth section, entitled "Intellectual Property Rights," contains provisions relating to copyrights and related matters, industrial property rights, and the rights of participants in respect of intellectual property in civil transactions.

The fifth section, entitled "Contractual Obligations Law," contains provisions on obligations and agreements, and sets forth certain rules governing their conclusion, amendment and termination. Finally, the eighth section, entitled "International Private Law," is one of the most important new developments in the Civil Code, as it marks the first time that the Ukrainian Civil Code will reflect such category of legal principles. Among other things, this section defines the principles of conflicts of laws and includes provisions regulating international civil proceedings.

The sixth and seventh sections of the Civil Code not mentioned above deal with family law and inheritance matters, respectively. The Civil Code modifies inheritance rules substantially and contains many new provisions related to wills and inheritance by law, as well as introduces the concept of a "heritage agreement," meaning an agreement whereby one party undertakes certain obligations in favor of another party in expectation of receipt of property from the latter party's estate upon his or her death. /T. Rogach

Parliament Adopts New Commercial Code

On November 29, 2001, Ukraine's Parliament adopted a new Commercial Code, which will enter into force at the beginning of next year, in January 2003. The Commercial Code is intended to provide a comprehensive legal framework governing the activities of commercial enterprises and entrepreneurs in Ukraine. As is the case with certain commercially oriented provisions of the new Ukrainian Civil Code, the introduction of the Commercial Code marks a step in the direction of a market centered economy and away from the old Soviet command economy. Most importantly, the Commercial Code provides concrete rights and protections to commercial enterprises and entrepreneurs, including in the areas of trademarks, business reputation and unfair treatment by state authorities. Additionally, certain protections for consumers are also set forth.

The initial chapters of the Commercial Code define the scope and extent of state regulation of entrepreneurial activities.

Chapter 3 of the Commercial Code specifically addresses anti-trust issues and protection of commercial enterprises and entrepreneurs from unfair competition. In particular, Article 3 of Chapter 3 sets forth detailed regulations on restrictions of monopolies in the economy, natural monopolies, the abuse of monopolistic positions in the market, unlawful agreements between entrepreneurial entities, unfair treatment by state authorities of commercial enterprises, unfair competition, and the abuse of an entity's business property (e.g., pirated products, etc.).

The Commercial Code provides new provisions prohibiting actions that would affect efficient market activity, such as creating obstacles to competition, falsely discrediting a com-

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mercial enterprise, requiring the purchase of unwanted goods by consumers as part of an overall purchase transaction (*i.e.*, bundling of goods), persuading an economic entity into a boycott or discrimination of a consumer, and bribing the employee of a supplier or a consumer.

The Commercial Code also establishes rules of professional ethics governing competitive behavior, which may be used as guidelines when preparing agreements and drafting the constitutive and other documents of entrepreneurial entities. The Commercial Code provides for the organizational forms of commercial enterprises, sets forth general guarantees for entrepreneurs' rights and regulates the activities of foreign entrepreneurs in Ukraine. Finally, the Commercial Code regulates in detail the procedure for the establishment, state registration and termination of the activities of an entrepreneurial entity. /T. Rogach

AZERBAIJAN

Amendments to Tax Code Effective

On January 1, 2002, approximately 79 amendments to the Azerbaijani Tax Code became effective. A key amendment mandates the accrual method for tax accounting for certain enterprises, instead of the current cash basis accounting system. While this transition may create significant challenges for taxpayers, it will also most likely offer opportunities for reducing tax costs or deferring such costs to the next tax period.

It is likely, though, that difficulties in implementation will arise as the provisions in the Tax Code governing the accrual method are relatively broad and often contradict provisions relating to the cash basis accounting method. Furthermore, the accrual method is often poorly understood by the tax authorities and policymakers. It is mainly for this reason, though economic factors do play a role, that many companies in Azerbaijan maintain their books on a cash basis for tax accounting.

Another key amendment to the Tax Code replaces capital investment incentives with a right of accelerated depreciation. Article 106.3 of the old Tax Code allowed those paying profit tax to reduce their taxable income by the amount of capital

investment used for production purposes or by the amount of repayment of bank loans used for such purposes. The incentive was applicable to actual expenses incurred in the current reporting period reduced by the total depreciation expense included in the cost of production for the same period. Manufacturing companies were clearly eligible for this incentive. The tax authorities often argued that this incentive does not apply to service providers.

The amendments to the Tax Code repeal Article 106.3 and amend certain other articles to allow for accelerated depreciation of expenditures incurred in the reporting period and related to capital investment for production. Expenditures related to most categories of fixed assets, except for cattle, intangible assets, geological surveys and preparatory expenses, may be depreciated at two times the applicable rate. Such accelerated depreciation may not apply to entities restricted from production activities or funding capital investments through a sponsor's financial aid or other assistance. /L. Agajanova

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