

# CIS LEGAL NEWSWIRE

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RUSSIA

## State Arbitration Procedures Overhauled

On September 1, 2002, the long-awaited new version of the Russian Federation ("RF") Arbitration Procedure Code (the "New APC") came into effect. The New APC is the third version in the last decade, after the 1992 and 1995 versions, and contains significant improvements over the previous versions.

The New APC eliminates the existing procedural gaps which permitted various courts (both arbitration courts and courts of common jurisdiction) in different regions of Russia to exercise jurisdiction over lawsuits on the same subject and against the same company, resulting in contradictory decisions that the parties would then try to enforce. In accordance with the New APC, the arbitration courts for the jurisdiction in which a joint stock company or a limited liability company is located will have exclusive jurisdiction over all claims related to such company's activity, including claims brought by individuals in their capacity as shareholders (participants), which previously could be litigated in a court of common jurisdiction located at their place of residence.

The New APC provides for an introductory phase when proceedings are commenced, which will allow the court to focus its attention on the merits of the dispute, since all of the evidence must now be submitted to the court at an initial hearing. In particular, parties are no longer able to surprise the opposing side during a hearing with previously-unseen documents, as the New APC directly prohibits making any arguments based on evidence not previously disclosed to the other party.

Other changes include an extension from one month to two months for the submission of an appeal to the third appellate instance (*i.e.*, at the cassation level). Also, the New APC fully reorganizes the fourth stage of the proceedings – appeals to the RF Supreme Arbitration Court. Importantly, the New APC eliminates the previously undefined and unmonitored right of the Chairman of the RF Supreme Arbitration Court (and his Deputies), as well as the RF General Prosecutor (and his Deputies), to lodge so-called "protests" against lower court decisions. Now the parties themselves must submit appeals directly to the RF Supreme Arbitration Court, which should then decide on the admissibility of an appeal within one month after such filing.

The New APC alters the range of participants in arbitration proceedings by limiting the rights of public prosecutors and enabling third parties to join a litigation proceeding. Prosecutors are now prohibited from participating in a dispute between commercial entities unless the state has an interest (such as a shareholding) in one of the entities. This is a significant improvement, as prosecutors would often become involved in disputes between commercial entities for political reasons, in some cases, distorting the course of justice. Additionally, parties that did not participate in the litigation of the dispute in the court of the first instance are now allowed to appeal against decisions if they can show

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that their rights or interests were affected.

The New APC limits the ability of lawyers not registered as "advocates" (*i.e.*, members of a recognized Bar association) to appear in court. Under the New APC, only advocates and employees of the parties to a dispute may represent a litigating party in court proceedings. Although litigants are now restricted in their choice of attorneys, the New APC allows the winning party to collect the costs of legal representation from the losing party. Previous legislation expressly permitted only the recovery of the state duty (court fees) and the cost of a judicial (forensic) examination.

Steps have also been taken under the New APC to protect courts from undue bias and influence, as well as to impart more independence to judges considering high-profile cases by prohibiting courts from accepting and considering any applications from the authorities in support of the litigants, a tactic previously used by well-connected parties. */S. Volfson*

## Supreme Arbitration Court Clarifies Disputed Issue Regarding Pledges of Goods in Circulation

The RF Supreme Arbitration Court recently considered an appeal of certain lower court decisions regarding the invalidation of an agreement on a pledge of railroad rails (an agreement with respect to a pledge of goods in circulation), which was entered into by two Russian companies: OJSC "Kouznetsk Metallurgical Complex" and CJSC "BMT Trust." The lower arbitration courts invalidated the pledge agreement on the grounds that the pledge agreement did not sufficiently identify the pledged property, as required by law.

In particular, although this agreement provided for the quantity and value of rails to be pledged, it did not contain any information regarding the size and model of the pledged rails, nor an indication of the state standards under which the rails were manufactured. Therefore, the lower arbitration courts held that the agreement contradicted Article 339 of the RF Civil Code, which requires specific identification of pledged property in a pledge agreement.

The RF Supreme Arbitration Court cancelled these decisions, holding that it is not mandatory that this type of pledge, *i.e.*, a pledge of goods in circulation, specifically identify the pledged property, since by the nature of such pledge, the pledgor could change the content and form of the pledged goods on the condition that their aggregate value remain the same. This decision is a very positive development in the area of secured financings since it now clarifies an issue that has troubled creditors in Russia. Nonetheless, we would still advise lenders to describe in as much detail as possible goods in circulation being pledged. */J. Romanova, K. Konstantinov and O. Titenko*

## Central Bank Clarifies Anti-Money Laundering Procedures

The Central Bank of Russia (the "CBR") recently issued "Informational Letter No. 1" ("Letter No. 1"), which is intended to remove certain doubts about the breadth of implementation of the RF Law "On Prevention of Legalization (Laundering) of Proceeds Obtained Through Criminal Means", dated as of August 7, 2001, as amended (the "Anti-Money Laundering Law"). According to Letter No. 1, the Anti-Money Laundering Law's reporting requirements apply to all qualifying transactions whether conducted by banks on their own behalf, or by legal entities, including leasing and insurance companies, or individual entrepreneurs, and regardless of the need for such transaction to be otherwise disclosed (*e.g.*, in securities filings). In addition, Letter No. 1 explains that under the Anti-Money Laundering Law, the disclosure requirements regarding any transfer to or from the bank accounts of a legal entity are also applicable to transfers to or from such accounts pursuant to the instructions of third parties (and not only of such legal entities).

Letter No. 1 expressly states that banks must submit disclosure filings with respect to all transactions of a legal entity exceeding 600,000 Rubles (approximately US \$19,500) during the first three months following the entity's state registration. Banks themselves are now required to make their own determination as to the nature of transactions engaged in by a legal entity, and to determine whether such transactions

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are consistent with the nature of the entity's regular business (since these transactions fall within the criteria set forth in the Anti-Money Laundering Law). On the basis of this determination (for which the banks are solely responsible), banks must make the required disclosures.

Evidently, the CBR has taken the position that there will be no exceptions from the requirements set forth in the Anti-Money Laundering Law governing credit organizations regarding the disclosure of information about transactions which meet certain criteria; furthermore, the CBR has indicated that it will broadly interpret such criteria. */J. Romanova and K. Konstantinov*

## Tax Ministry Clarifies the Procedure on Arresting Taxpayer Property

On July 31, 2002, the RF Ministry of Taxes and Charges issued Order No. BG-3-29/404 entitled "Regarding the Procedure for Arresting Taxpayer Property to Secure Performance of Tax Payment Obligations" (the "Order"). The Order clarifies the procedure for implementation of Article 77 of the RF Tax Code. Article 77 authorizes the tax authorities to arrest the property of a taxpayer if the taxpayer fails to pay its taxes on time, and the tax authorities have "reasonable grounds" to believe that such taxpayer may attempt to flee or evade the authorities or conceal assets.

As indicated above, the Order provides that generally the RF tax authorities must have "reasonable grounds" to justify the arrest of any property of a taxpayer that is overdue in paying its taxes. The Order indicates that such reasonable grounds include a showing that (a) the taxpayer has failed to take steps to collect outstanding debts owed to such taxpayer for more than three months, (b) the amount of the taxpayer's tax indebtedness exceeds 50% of the balance sheet value of its assets, or (c) the taxpayer's assets are not located at its registered address.

The Order indicates that a prosecutor competent to oversee the matter must sanction the arrest. Additionally, the Order describes the particulars that must be included in the arrest order and states that it must bear the official stamp of the tax authorities. The Order further provides that the balance sheet

value of property to be arrested must correspond to the amount of the overdue tax payments. If it is impossible to determine the balance sheet value of such property, then the tax authorities may base their calculations on the opinion of certain specialized appraisal organizations. Finally, the Order elaborates on the procedure to have an arrest lifted pursuant to a decision issued by the tax authorities, as soon as the delinquent taxpayer agrees to a settlement. A model form for the arrest decision is attached to the Order. */J. Romanova and K. Konstantinov*

## Filing Fees for Trademark Registration Reduced For Russian Applicants

On July 25, 2002, the Cassation Board of the RF Supreme Court canceled RF Government Resolution No. 8 "On Amendments and Additions to the Regulations on Patent Duties...", dated January 14, 2002 (the "Resolution").

The Resolution increased thirty-fold certain patent and trademark related fees, including those related to the registration of trademarks, due from Russian legal entity applicants. The intent of the Resolution was to bring the level of the fees payable by Russian applicants in line with those paid by foreign applicants. The RF Supreme Court canceled the Resolution as contradictory to the RF Constitution and the RF Tax Code, which provide that state taxes and duties may only be established or altered pursuant to a federal law, and not by an executive act of the RF Government.

Thus, since the cancellation of the Resolution on July 25, 2002, the regime of trademark and patent fees for Russian applicants has been the same as it was prior to the enactment of the Resolution. Specifically, the trademark registration fee for Russian applicants is now approximately US \$10 at the current exchange rate. Filing duties for foreign applicants remain unchanged at approximately US \$300 at the current exchange rate. */O. Titenko*

UZBEKISTAN

## Conversion Restrictions Eliminated

On September 19, 2002, the Government of Uzbekistan and the Central Bank of Uzbekistan issued an official announcement that all restrictions on the conversion into convertible currency of Soum proceeds from the sale of imported goods have been eliminated. Pursuant to this announcement, Uzbek banks must convert such proceeds within seven working days after the submission of a relevant application and certain required documents (at this time, it remains unclear what will constitute the "required" documents).

Previously, applicants seeking conversion of proceeds were divided into two categories: (a) importers of goods holding Central Bank licenses for priority conversion, and (b) other importers requesting a one-time conversion. Each applicant was required to submit to its servicing Uzbek bank a specific set of documents depending upon the category such applicant. It appears that the Uzbek Government will draft new regulations clarifying and rationalizing the documents required for conversion applicants. However, until new regulations are drafted, it is likely that Uzbek banks will continue to use the previous normative acts specifying the required sets of documents: (1) Section 5 of Attachment 2 to Decree No. 294 of the Cabinet of Ministers of Uzbekistan, dated July 10, 2001, as amended, (2) Attachment 2 to Decree No. 405 of the Cabinet of Ministers of Uzbekistan, dated November 19, 1996, as amended, (3) the "Procedure for the Conversion of Soums into Foreign Currency on the OTC Market by Companies Holding Central Bank Licenses," and (4) the "Provisions on Carrying Out Conversion Operations of Soums into Foreign Currency on the OTC Market," issued by the Republican Commission on Monetary and Credit Policy on July 4, 1998.

One of the required documents described above is a copy of the relevant import contract, which must be duly registered with the Ministry for Foreign Economic Relations and recorded in the files of an importer's servicing Uzbek bank and the local customs office. The Ministry for Foreign Economic Relations registers import contracts in accordance with the "Procedure for Registration of Import and Export Contracts," adopted by the Ministry of Justice under Order No. 988 on

December 2, 2000, as amended. All import contracts must be recorded in the files of servicing Uzbek banks and local customs offices, pursuant to the procedure established by Attachment No. 1 to Decree No. 95 of the Cabinet of Ministers of Uzbekistan, dated March 13, 1996, as amended.

It appears that the Uzbek Government is taking fundamental steps toward full convertibility of the national currency, as was promised in the Government's "Memorandum on Economic and Financial Policies," which was delivered to the IMF on January 31, 2002, and further amended on July 19, 2002. However, apart from conversion of Soum proceeds from the sale of imported goods, restrictions on the conversion of Soums for repayment of off-shore borrowings, repatriation of dividends and profits, payment for imported services and royalty fees, and other purposes, have not been officially eliminated. /J. Askarov

BELARUS

## New Law Aims to Clarify Real Estate Registration Procedure

The Belarusian Parliament recently passed a law entitled "On the State Registration of Real Estate, Rights Thereto and Transactions Therewith" (the "Real Estate Law"), which was officially signed by the President on July 22, 2002. The enactment of the Real Estate Law was necessitated by a number of provisions set forth in the 1998 Belarusian Civil Code. The purpose of the Real Estate Law is to establish a unified procedure for the state registration of real estate in order to: (a) eliminate the current unreasonable number of agencies involved in the registration of real estate transactions; (b) eliminate the confusing division of registration duties among such agencies; and (c) reduce delays in the registration of real estate.

Foremost, the Real Estate Law establishes a single body to oversee real estate registration. Second, it sets forth an exhaustive list of the types of real estate and rights

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thereto that are subject to state registration. Notably, the Real Estate Law establishes so-called "double" registration of certain real estate transactions by requiring the registration not only of the onset, transfer and termination of the rights to real estate (this obligation existed before the adoption of the Real Estate Law), but also requiring the registration of agreements that are, or may become, grounds for the onset, transfer or termination of such rights. For example, agreements subject to state registration now include real property alienation agreements (purchase and sale, exchange, gift, leasehold, etc.), mortgage agreements, real property trust agreements, and land tract lease/sublease agreements, etc. Third, the Real Estate Law introduces time limits for all steps in the registration process and imposes liability on the registration agencies in the event of a violation of these time limits.

Unlike the eponymous Russian law, the Real Estate Law does not treat incomplete construction sites such that, by their status, they would constitute real estate. In accordance with the norms of Russian legislation, if a transaction is to be concluded in respect of an unfinished construction site, then the right to such unfinished construction site must be registered prior to the conclusion of such transaction. Belarusian legislation deems an unfinished construction site to be only an "aggregate of construction materials," and, therefore, does not require any registration prior to the conclusion of any related transactions. The Real Estate Law will become effective on February 1, 2003. */V. Salei*

KAZAKHSTAN

## New Rules Adopted on Compliance with Standardization Requirements

On May 17, 2002, the Chairman of the Committee on Standardization, Measurements and Certification under the auspices of the Kazakh Ministry of Economy and Trade issued Order No. 169 approving the "Rules for State Supervision and Control over Compliance with the Mandatory Requirements in Normative Documents on Standardization and Certification, and over Certified Products (Work, Services) in the Re-

public of Kazakhstan" (the "Rules"). The Rules were officially registered with the Kazakh Ministry of Justice on June 20, 2002.

The Rules set out the procedure for State oversight of compliance with regulations on standardization and certification of goods and services with the aim of (a) ensuring that mandatory regulations are being followed, including for products that are subject to special certification or quality control standards, and (b) providing State bodies and other interested organizations with reliable information on compliance with such standardization requirements, certification rules and quality control measures for products manufactured and/or sold, and services provided, in Kazakhstan.

The Rules state that governmental oversight extends to the following: (1) products, production processes and services manufactured or used repeatedly; (2) regulatory, technical and other documentation relating to products or services; and (3) procedures for certification of products by manufacturers (sellers, providers), testing laboratories, and certification bodies.

The Rules provide that State oversight applies to both foreign and domestic legal entities and individuals, at all stages of a product's lifespan, including during development, implementation, manufacture, supply, sale, storage, transportation and utilization.

The State inspectors are to create a regime of regular and selective inspections. Regular inspections should generally not take place more than once per year. Selective inspections will be performed based upon, among other things, public policy priorities as established by State and local authorities, and claims by consumers and other authorities. During an inspection, those subject to the Rules are obligated to provide, among other things, access to their premises for inspection, relevant documentation and information, as well as to appoint a representative authorized to sign various documents on behalf of the company or individual under inspection, and to turn over samples for testing purposes. The cost of any testing should be paid for out of State funds specifically budgeted for such purposes, or if no such funds have been

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set aside, then by the entity or individual under inspection. /Y. Zhussupov

## National Bank Clarifies Rules on Acquisition of Control Over Insurance Companies

On June 3, 2002, the governing body of the National Bank of Kazakhstan issued Resolution No. 207 approving the "Rules for the Issuance of Licenses to Acquire Control over an Insurance (Reinsurance) Organization" (the "Acquisition Rules"). The Acquisition Rules establish the procedure for the issuance of a license by the National Bank granting to the licensee the right to acquire control over an insurance (reinsurance) company.

In accordance with the Acquisition Rules, a legal entity or an individual is deemed to "control" an insurance (reinsurance) company when such entity or individual directly, or through an affiliate, owns or may dispose of more than 25% of the voting shares/interest in an insurance (reinsurance) company. A legal entity or an individual intending to acquire control over an insurance organization should submit an application to the National Bank requesting the issuance of a control license once the acquisition documents have been finalized.

Under the Acquisition Rules, an applicant can be refused a license if, among other things, it is deemed to be "financially unstable", meaning that the applicant's liabilities exceed its assets or such liabilities present a significant risk to the financial health of the insurance company, the overall results of its activities have resulted in losses over the previous two years, or the applicant is significantly indebted to the insurance company. /Y. Zhussupov

## CIS LEGAL NEWSWIRE

For more on the information contained herein or about Chadbourne & Parke LLP and its affiliated offices throughout the CIS, please contact:

In Moscow

Laura Brank – lbrank@chadbourne.com

Mikhail Rozenberg – mrozenberg@chadbourne.com

Shane DeBeer – sdebeer@chadbourne.com

7-095-974-2424 or 1-212-408-1190

In London

Nabil Khodadad – nkhodadad@chadbourne.com

44-20-7337-8000

Or visit our website – [www.chadbourne.com](http://www.chadbourne.com).

To change an address, or to add or remove a recipient from this distribution list, please contact:

Marc Schleifer, Marketing Coordinator

[mschleifer@chadbourne.com](mailto:mschleifer@chadbourne.com)

7-095-974-2424 or 1-212-408-1190

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