

CIS LEGAL NEWSWIRE

COMMONWEALTH OF INDEPENDENT STATES

October 8, 2001

RUSSIA

Russian Central Bank Eases Currency Rules

Until recently, almost every loan from a non-resident of Russia to a resident of Russia (except for authorized banks) required the permission (a license) of the Russian Central Bank (the "CBR"). Applying for a license required filing numerous documents and it could take up to several months for the CBR to issue permission. However, CBR regulations provided several exceptions for certain loans, which required only registration with an authorized bank and a territorial division of the CBR, including loans below US \$100 million, prolonged short-term loans, loans not providing for a guarantee of a third party, loans guaranteed by the Russian Government, and small EBRD loans (up to US \$1 million) under the small and medium business support program.

On September 26, 2001, the CBR published Regulation No. 1030-U ("Regulation No. 1030-U"), which abolishes CBR Instruction No. 527, dated October 6, 1997, and partially abolishes CBR Regulation No. 129-P, dated December 21, 2000, which governed the procedure for Russian entities to obtain foreign loans. Although only dealing with a single instruction and a single regulation, Regulation No. 1030-U, which became effective on October 1, represents the most significant departure from Russian policy on convertible currency since Soviet times.

Regulation No. 1030-U provides that residents may now, without restriction, receive and repay loans (including penalties, fines, commission fees, reimbursement of expenses and other obligations) received in convertible currency from non-residents provided that such loans are provided to and repaid from the accounts of the borrowers opened with authorized banks (i.e., banks which have a convertible currency license from the CBR). This category includes foreign currency to be received from/repaid to non-residents to discharge a borrower's obligations under agreements securing the fulfillment of credit agreements and obligations of third parties.

Some restrictions remain since Regulation No. 1030-U does not apply to: (1) obtaining and repaying loans in connection with the issuance, placement and redemption of securities (debt securities) denominated in foreign currency; (2) loans to authorized banks; and (3) obtaining and repaying foreign loans which, by their terms, do not provide for the transfer of the loan proceeds to residents' accounts with authorized banks (e.g., where proceeds are paid to off-shore accounts of residents). / *continued page 2*

We note that the implementation procedure for Regulation No. 1030-U is still unclear. So far, the CBR also has adopted Instruction No. 101-I, dated September 10, 2001 (“Instruction No. 101-I”), which likewise became effective on October 1, 2001.

Instruction No. 101-I establishes a procedure for the registration and control of certain currency transactions related to receipt and repayment of loans in foreign currency by Russian residents (except for loans that are not subject to Regulation 1030-U and loans where federal and local governmental agencies are the parties). Russian authorized banks, which by virtue of Russian currency control legislation, act as agents of currency control, are required by Instruction No. 101-I to register and control loan transactions.

Pursuant to Instruction No. 101-I, a borrower must submit to its bank certain documents related to the loan (e.g., a copy of the loan agreement, CBR permission if required, etc.). The bank must then create and keep a special file containing information regarding the currency transactions of the borrower (its client). Most importantly, a borrower must submit to its bank the “Loan Information List” in the form attached to Instruction No. 101-I. The bank must make a notation on the Loan Information List certifying that the bank has accepted the Loan Information List and that the included information is correct. The number assigned by the bank to the Loan Information List must be used by the borrower to purchase the foreign currency to be used for payments under the loan. However, Instruction No. 101-U does not expressly regulate the procedures to be followed in case of repayment of an outstanding loan by a third-party resident. Further, CBR regulations applicable to the purchase of foreign currency by Russian residents have not yet been amended to reflect the new requirements of Instruction 101-U. It is believed that the CBR may issue explanatory guidelines to Regulation No. 1030-U in the near future.

/L. Brank, S. DeBeer, K. Konstantinov, and P. Gloushkov

Duma Passes Land Code

On September 20, 2001, the State Duma passed in its third and final reading the new Land Code. The long-awaited Land Code will replace numerous existing contradictory local and federal regulations and is expected to bring clarity to many land-related issues. The major achievement of the Land Code is that it allows both Russian and foreign citizens to buy and sell commercial and residential land. However, foreigners are not permitted to own land plots in areas considered to be of strategic importance, such as near state borders. In addition, as we reported in the July 17, 2001 issue of the CIS Legal Newswire, under the Land Code, foreign entities are also free to lease land in Russia. Foreign legal entities which own factories or construction sites located on land plots that are not their property are now granted the right of first refusal to purchase or lease such land plots.

Additional important provisions of the Land Code include, among others, the possibility to contribute leasehold rights to the charter capital of a legal entity (for a term not exceeding the lease) without the consent of the owner of the land plot, unless the lease agreement provides otherwise. At the same time, the draft federal law “On Introducing the RF Land Code into Force” prohibits the contribution of the right of permanent (unlimited) use of land to the charter capital of legal entities; provided, however, that a legal entity may re-register such rights as other types of rights (e.g., lease rights).

The Land Code must be further approved by the Federation Council, the higher chamber of the Russian Parliament, and signed by President Putin. It will become effective on the date of its publication. It is expected that the Federation Council will vote on the Land Code within the coming weeks.

/D. Taktashova

Restriction on Purchase of UES Shares by Foreigners May Be Lifted

Recent press reports indicated that the RF Ministry for Economic Development and Trade has prepared a draft law which would eliminate restrictions imposed by Federal Law No. 74-FZ, passed in May 1998 (the “Law”), limiting ownership by foreign states, companies and individuals of shares in RAO UES, Russia’s power monopoly, to 25% of all types of shares. The Law established that 51% of UES shares must remain federal property and may not be sold, pledged or otherwise disposed of without passage of a special law. Although compliance with the Law has been lax (currently, foreign ownership of UES is estimated at 30%), this formal restriction prevents an increase in the market capitalization of the company. Moreover, the restriction has been cited as one of the factors holding back reform of UES.

Currently, the restructuring plan for UES, which was approved by an RF Government Decision, dated July 11, 2001 (see the July 17, 2001 issue of the CIS Legal Newswire), provides that UES shares should be swapped for shares of the Federal Grid Company. Under the current Law, this plan will require adoption of a separate special law. Therefore, the proposed draft law seeks not only to remove an awkward restriction, and thereby help the capitalization of UES, but also generally to move forward the reform of Russia’s energy sector.

/P. Gloushkov

Nuclear Power Companies to be Consolidated

On September 8, 2001, the Russian Government adopted Regulation No. 1207-r, which mandates the reorganization of the nuclear power sector. As established by an RF Government Decision, dated July 11, 2001, governing the reform of the Russian electricity market, all nuclear power companies must be merged into a single generating

company (for more information, please see the July 17, 2001 issue of the CIS Legal Newswire). Regulation No. 1207-r provides that the state enterprise “Russian State Concern for the Production of Electric and Thermal Power at Nuclear Power Stations” (“Rosenergoatom”) will be reorganized through a merger with nine state-owned operating nuclear power stations, six nuclear power stations under construction, and six support enterprises.

The RF Ministry of Nuclear Power and the RF Ministry of Property Relations must complete the restructuring and approve the charter of the new entity within a six-month period. Analysts expect that the plan will ease the operation and management of nuclear power generation after the energy sector is restructured. */P. Gloushkov*

Moscow City Duma Approves Draft Law on Work Permits for Foreigners

The Moscow City Duma recently has approved a draft law that would change the current procedure for receiving approval to be employed (i.e., a work permit) in the City of Moscow for certain categories of foreign employees. According to current regulations, foreign citizens considered “highly-qualified” specialists (including company directors, their deputies and department directors) and working for companies with foreign investment located within the City of Moscow, as well as employees of representative offices of foreign companies, must obtain a work permit.

The current procedure for hiring “highly-qualified” foreign specialists for employment in Moscow, including receipt of the relevant work permit, was established by the Moscow Regional Branch of the RF Ministry of Federal Affairs, National Policy, and Migration Policy (the “Migration Service”). This procedure establishes the only way for foreign employees to receive a work permit for the City of Moscow. According to this procedure, even accreditation */ continued page 4*

(for example, with the Ministry of Justice, Ministry of the Press, or the RF Chamber of Commerce) does not relieve a foreign employee of the responsibility of obtaining a work permit.

The draft law allows a representative office of a foreign company in Moscow to hire up to five foreign employees without obtaining the relevant work permits, provided that an annual fee of US \$2,500 is paid per employee. This regulation is intended to simplify the procedure for hiring foreign employees to work in the representative offices of foreign companies.

The changes envisioned by the draft law will become effective only after it is signed by Moscow Mayor Yuri Luzhkov, and until that time, the current procedure will remain in place. However, according to some analysts, it is possible that Mayor Luzhkov may introduce certain amendments to the current draft, including possible elimination of the option to pay the above-mentioned fees, thereby retaining the current requirement to obtain work permits. Furthermore, until the draft law is signed, analysts say that the Moscow City Government will intensify enforcement of the current regulations and clamp down on violations. For example, according to information received from sources within the Migration Service, it is expected that the coming months could see large-scale inspections of organizations employing foreign specialists, with the objective of verifying whether such employees have the necessary work permits. /A. Lebedev

AZERBAIJAN

Azerbaijan and Georgia Agree on Construction of Gas Pipeline

On September 29, 2001, Azerbaijan and Georgia concluded the long-awaited agreement to construct the Baku-Tbilisi-Erzurum gas pipeline, with President Aliyev and Energy and Fuel Minister Majid Karimov signing on behalf of Azerbaijan and President Shevardnadze and Georgian International Oil

Corporation President Georgiy Chanturiya signing on behalf of Georgia at a ceremony in Baku. This agreement is the first step in the construction of a pipeline from the offshore Shah Deniz field, estimated to contain 1 trillion cubic meters of natural gas, to Turkey. BP and Norway's Statoil jointly own 51% of the Shah Deniz gas field and are its operators.

It is expected that the pipeline will ultimately carry an annual capacity of 6.6 billion cubic meters of gas. Construction of the US \$1 billion pipeline was originally scheduled to begin in late 2001, but it may be delayed to mid-2002. Gas transit through the pipeline is expected to begin in 2004. The agreement was facilitated by resolution of the disputed issue of Georgia's transit fees from the pipeline. According to the trade press, Georgia will receive US \$2.50 per 1,000 cubic meters of gas, to be increased gradually to US \$5 over a period of 20 years. The agreement originally contemplated that Georgia would receive US \$2 per 1,000 cubic meters to be increased to US \$4.50. Georgia will also receive some payment in kind (gas), but this will not exceed 5% of the pipeline's total annual capacity. In addition, after 2004, Georgia will be entitled to purchase 500 million cubic meters of gas annually at US \$55/cubic meter for the following 20 years. The price for additional volumes of gas (if any) will be determined with each purchase. /F. Huseynova

UZBEKISTAN

Uzbekistan to Adopt Production Sharing Law

During its August 2001 session, Uzbekistan's Parliament reviewed and passed in its first reading a draft of a new Law "On Production Sharing Agreements" (the "Draft Law"). Pursuant to the Draft Law, foreign investors can obtain exclusive rights to explore and produce mineral resources in Uzbekistan at their expense and risk by entering into a production sharing agreement ("PSA").

According to the Draft Law, the parties to the PSA must include a foreign investor and the Republic of Uzbekistan (the "State"), represented either by the / continued page 5

Government or an authorized state agency. The Government can also authorize an Uzbek legal entity with more than 51% of its charter capital owned by the State to represent Uzbekistan in a PSA. Upon execution of the PSA, the investor will receive exploration and mining licenses for the entire term of the PSA. The investor would also be entitled to a limited reimbursement of certain expenses as provided by the PSA. Such reimbursement will come from the compensating portion of the investor's production. Such reimbursable expenses should be included in the annual budget for the project, and the maximum amount of such expenses must be set forth in the PSA. However, the Government will have the right to establish the structure and composition of such reimbursable expenses. Also, the annual budget for the project must be confirmed by a management committee consisting of an equal number of representatives from each party to the PSA.

The Draft Law provides that the State will transfer a portion of the goods under the PSA to the investor (as established in the PSA). The initial version of the Draft Law submitted for Parliament's review contained a provision that all goods produced under the PSA will be considered the property of the State. The investor will have the right to export its portion of the goods without restriction; however, in the event of a state of emergency, the State is entitled to purchase the investor's portion of the goods upon a 30-day prior notice to the investor. It will be the State's obligation to give such 30-day prior notice of its intention to purchase produced goods, in which case all output allocated to the investor after the 30-day period must be sold to the State.

The Draft Law anticipates that investors will be exempt from certain taxes, but they will be required to pay profit, royalty, land and water use taxes. Investors may be exempt from import customs duties on items agreed to in the PSA. The Draft Law requires that investors keep accounting books in accordance with Uzbek accounting standards; however, a foreign investor may use foreign currency as its accounting currency. The Draft Law also provides that investors must obtain the consent of the State to assign their rights and obligations under the PSA or to grant a security interest on the property affected by the PSA.

The Draft Law is intended to provide certainty to investors if Uzbek legislation changes. Pursuant to the Draft Law, if during the term of the PSA, new norms of Uzbek law that may adversely affect "the commercial results of the investor's activity" are adopted, then the terms of the PSA will prevail over such new norms. However, this stabilization clause is not applicable to new norms concerning occupational safety, public health, or legislation governing protection of the environment or subsoil. Currently, it is expected that this law will be adopted at the end of December 2001. */J. Askarov*

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