

## CIS LEGAL NEWSWIRE

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## RUSSIA

## Law On Leasing is Amended

In a clear sign that leasing is becoming increasingly important to the Russian market, on February 2, 2002, substantial amendments to the Russian Federation ("RF") Law "On Leasing," originally dated October 29, 1998, came into effect. Emphasizing its shift in focus to finance leases, the Law "On Leasing" was renamed to the Law "On Financial Leasing" (the "Leasing Law"). Among other things, the amendments have abandoned the requirement that companies engaging in lease finance transactions obtain licenses from the RF Ministry of Economic Development and Trade, thus removing one of the major bureaucratic obstacles for such transactions. The amendments have also brought the law into compliance with the recent changes to the RF Civil Code, tax regulations and licensing rules.

The number of mandatory terms and conditions that a lease agreement must contain has been reduced. Also, under the amendments, parties to a lease agreement may now defer lease payments as agreed, while the previous law restricted the parties' right to defer lease payments to a term of not more than 180 days. Furthermore, under the Leasing Law, the parties may change the sum of lease payments every three months at their discretion.

In the past, a lessor had the unilateral right (i.e., without a court decision), in the event of a breach of the lease agreement by a lessee, to seize leased property from the lessee and, in certain cases specified in the previous law, to collect amounts due to the lessor from the bank accounts of the lessee. Now, a lessor is no longer entitled to seize leased property without a judicial decree, but the Leasing Law still permits the lessor to collect payments from the bank accounts of the lessee without a court decision. The enforcement of this right was difficult in the past, and still remains problematic, since it contradicts the RF Law "On Banks and Banking Activities," which specifies the cases in which funds may be collected from bank accounts by a third party without a court decision.

The Leasing Law retains a provision providing preferential customs treatment to leased property imported into Russia, whereby customs duties must be paid to the budget in an amount equal to the amount paid as a down payment for the leased property with the right to pay the remaining customs duties in installments. In practice, however, the customs authorities have refused to grant such preferential treatment, since the RF Customs Committee has taken the position that these preferential rules contradict the RF Customs Code. Unfortunately, it seems unlikely that the RF Customs Committee will change its interpretation of such preferential customs treatment in the near future, thus eliminating one of the major advantages of the Leasing Law.

Overall, although the amendments to the Leasing Law have removed some of the contradictions between the Leasing Law and other relevant regulations, and several bureaucratic obstacles have been removed, the law still does not go far enough to remove all ambiguities. /E. Kuryatnikova

## Russian Central Bank Clarifies Rule Regarding Loan Licenses

On February 20, 2002, Regulation No. 1110-u, dated February 14, 2002, of the RF Central Bank ("CBR") came into effect. Regulation 1110-u clarifies certain issues concerning the implementation of an earlier regulation, Regulation No. 1030-u, dated September 10, 2001, described in the CIS Legal Newswire of October 8, 2001. Regulation 1030-u provides that residents may, without restriction, receive and repay loans (including penalties, fines, commission fees, reimbursement of expenses and other obligations) from non-residents, provided that such loans are provided to, and repaid from, the accounts of borrowers opened at authorized banks.

Regulation 1110-u now provides that all CBR permissions (licenses) and registrations of loan agreements issued prior to October 1, 2001, are deemed expired since they are no longer required by Regulation No. 1030-u. Residents are not required to re-file documents (the loan agreement and related documents) with authorized banks, if such documents had been filed prior to October 1, 2001, and if such documents have not been amended since that date. Residents are no longer required to provide authorized banks with copies of CBR permissions in order to purchase convertible currency for repayment of loans. /P. Gloushkov

## New Taxation Regime for Extraction of Minerals

Chapter 26 of the new RF Tax Code, which became effective on January 1, 2002, establishes a new taxation regime for the extraction of minerals. The previous regime included an excise tax on crude oil and gas condensate, royalties for the right to extract mineral reserves, and a minerals replacement tax. Under Chapter 26, the extraction tax will be determined on the basis of the value of the extracted minerals, which, in turn, will be calculated on the basis of the quantity of the extracted minerals and their measurable unit value. In addition, the excise tax on natural gas levied under the previous taxation system will remain in place.

Under Chapter 26, all legal entities and individual entrepreneurs deemed to be subsoil users in accordance with the RF Law "On Subsoil," dated February 21, 1992, will be subject to minerals extraction tax, obligated to pay tax on any mineral extracted within RF borders from a licensed subsoil plot or from waste from the extraction process. Chapter 26 sets forth a list of minerals constituting "extracted minerals" (i.e., minerals subject to the tax), which includes, among others, crude oil, gas condensate, natural gas, various types of ore, and gas derived as a by-product of the oil extraction process.

Chapter 26 establishes rules for determining the quantity of extracted minerals, as well as for calculating their value per unit. There are alternative methods available to taxpayers, but the Tax Code requires that the method chosen be reflected in the accounting policy of the taxpayer and be consistently applied throughout the entire period of extraction from a specific oil or gas field, unless the technical aspects of extraction significantly change during such period.

New tax rates established by Chapter 26 vary depending on the type of extracted minerals. The highest tax rate (16.5%) is applied to natural gas, gas condensate and crude oil. However, the Tax Code provides for a transitional period for crude oil through December 31, 2004, during which time the tax rate will not be applicable and a rate of 340 rubles per extracted tonne (modified by a special coefficient tied to the world market price for crude oil) will be applied instead. Chapter 26 also provides for a decrease of .5% in the applicable tax rate for minerals extracted under production sharing agreements.

It is expected that the RF Government will issue recommendations with respect to the application of Chapter 26. These recommendations will provide guidelines and explanations as to how local tax inspectorates should interpret various provisions of Chapter 26. However, it should be noted that the recommendations are not legally binding and could be challenged by taxpayers in court in the event of a disagreement with such interpretation. /M. Goldman

## Supreme Arbitration Court Clarifies Important Issues Related to Pledges and Security

On January 21, 2002, the RF Supreme Arbitration Court (the “Court”) issued Informational Letter No. 67, which includes an “Overview of Court Practice in Implementing Norms Regulating Pledge Agreements and Other Security Arrangements Involving Securities” (the “Overview”). Since many lenders insist on obtaining a pledge of securities to protect themselves if a borrower defaults, many of the issues discussed in the Overview will have a direct impact on the creation of financing structures in Russia.

In Section 4 of the Overview, the Court explains that the terms of a pledge agreement involving security may be laid out in several related documents (and not necessarily in just the pledge agreement itself). The recent clarification was made in connection with a claim brought by a pledgee seeking to foreclose on pledged shares. The defendant’s position with respect to this claim was that the pledge agreement lacked a definition of the pledged securities and therefore, by virtue of Article 339 of the RF Civil Code, was invalid (i.e., that the parties failed to agree on the essential terms of the agreement). The Court rejected the defendant’s argument, pointing to Articles 160 and 434 of the RF Civil Code, which suggest that documentation evidencing a transaction may be in the form of a single document or in the form of several related documents. Since a definition of the pledged securities was included in the loan agreement secured by the disputed pledge, the Court held that all of the essential terms of the pledge were contained in two related documents (the loan agreement and the pledge agreement), and therefore, the pledge agreement was valid.

In Section 12 of the Overview, the Court states that all encumbrances on securities kept with a depository must be evidenced in accordance with the terms of the depository agreement. The relevant case was brought by a pledgee seeking to obligate a depository to record the pledgee’s rights with respect to securities pledged in its favor in accordance with the pledge agreement. The Court held that since the law does not

require that a pledge of securities be registered with state authorities, a depository does not have to comply with the terms of the pledge agreement with respect to the registration of a pledge. Therefore, the procedure for reflecting encumbrances over securities kept with a depository must be carried out in accordance with a depository agreement. In this particular case, the depository agreement between the depository and the pledgor provided for a specific procedure for evidencing such encumbrances: a written request must be signed by the pledgor and the pledgee, and a copy of the pledge agreement must be submitted to the depository. The Court ruled that the pledgee did not have the right to require the depository to reflect the pledge over the shares other than in accordance with the terms of the depository agreement.

In Section 13 of the Overview, the Court explains that a pledge of non-documentary securities is deemed effective as of the moment of its reflection in the register or depository. In the case at issue, a commercial bank brought a claim seeking to obligate a pledgor (who also performed the functions of the registrar) to reflect a pledge of non-documentary shares in the register. The claim was based on a provision of the RF Law “On the Securities Market,” dated April 22, 1996, as amended, which establishes that the rights to non-documentary securities arise at the moment such securities are recorded in the register or depository. The lower court had dismissed the case on the theory that, under Article 314 of the RF Civil Code, a pledge arises on the date of execution of the pledge agreement, and since, in this case, the pledge agreement had been already executed, the pledge already existed. The cassation court overturned this decision and ruled that the provision of Article 314 of the RF Civil Code was not applicable to non-documentary shares and the provisions of the RF Law “On the Securities Market,” which establishes that the rights (including pledge rights) in respect of non-documentary securities arise at the moment of their reflection with the registrar or depository, should apply in this case. Thus, the cassation court held that the pledge was invalid. /J. Romanova

## UZBEKISTAN

## Has Uzbekistan Tightened Its Fiscal Stance?

According to a Memorandum on Economic and Financial Policies” (the “Memorandum”) delivered to the IMF on January 31, 2002, Uzbekistan is currently in the process of adjusting its macroeconomic policy to correspond to the requirements of the International Monetary Fund (the “IMF”). The Memorandum, which was agreed to with President Islam Karimov, lays out structural changes in the economic, monetary, fiscal and financial policies of the Uzbek Government for the period until June 30, 2002, and thereafter.

Section 14 of the Memorandum affirms that the Government is “strongly committed to maintaining an operative fiscal and budgetary policy in 2002.” In doing so, the Government has decided to continue the fiscal policy pursued in previous years and to maintain the existing tax structure. However, several recent adjustments made to the tax system have generally softened the tax burden on taxpayers.

Pursuant to Uzbekistan’s Tax Code, amended as of December 7, 2001 (published on January 9, 2002), Uzbekistan’s tax system consists of seven “national” taxes and eight “local” taxes. Businesses, depending on their nature, may be subject to between 3 and 13 taxes. Additionally, businesses are subject to mandatory payments to “special” funds (the Road Fund, the Pension Fund, the Employment Facilitation Fund, and the Professional Unions Fund).

Decree No. 490 of the Cabinet of Ministers of Uzbekistan, dated December 31, 2001 (“Decree No. 490”), introduced tax rates for 2002 and provided certain guidelines on the adjusted fiscal and budgetary policies of the Government. The Government generally maintained previous year’s rates for the majority of taxes and mandatory payments, with the exception that, effective as of January 1, 2002, the standard rate for income (profit) tax was lowered from 26% to 24%, the standard rate for property tax on legal entities was lowered from 5% on the annual average historic cost of the property to 2% on the annual average net book value of the property, and the standard rate for land tax was increased by approximately 10% to 15% from the land tax rates for 2001.

Companies with foreign investment should take into account the new position of the Government in order to take advantage of various tax benefits granted under Uzbek law. Section 11 of Decree No. 490 provides that any company with foreign investment that has not paid its charter capital before the deadline established by law must pay in full, from July 1, 2002, all taxes for the entire period of its activities without the benefit of any tax concessions. Thus, if an annual official tax audit determines that a company with foreign investment has not paid its charter capital, regardless of the date of its incorporation, such company would be subject to all past (allegedly unpaid, plus penalties) and future taxes, and would no longer benefit from tax concessions. /J. Askarov

## BELARUS

## Consumer Rights Law Signed

On January 9, 2002, President Alexander Lukashenko signed a new version of the Law “On Protection of Consumers’ Rights,” which was passed by the Belarusian Parliament in December 2001 (the “Law”). The Law will become effective on July 26, 2002. The legislature took a more detailed approach to regulating the responsibilities of producers and/or sellers of goods, work, and services. In place of the previous 20 articles, the Law contains 51 articles.

The Law introduces additional requirements concerning information about various groups and types of goods. For example, with respect to foodstuffs, information must include details about the contents and nutritional value of the product. A separate article of the Law covers categories of required information about the producer or seller of the product. As a general requirement for information about goods, such information must be provided in either the Russian or Belarusian language. Otherwise, it is considered that the required information has not been provided. Under the Law, a seller who does not provide consumers with the necessary and accurate information about a product is subject to the same liability as a seller of a product of improper quality.

The section of the Law covering liability for violations of the

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rights of consumers includes an article establishing that harm caused to the life, health or property of a consumer as a result of design or other defects of a product (or work, or services), or as a result of false or incomplete information about a product, may be remedied only through full reimbursement by the seller (or producer) of the cost of the product (or work, or services) regardless of the seller's actual fault. Furthermore, the consumer has the right to choose to whom to such a request should be directed – the seller or producer of the product. A separate chapter is dedicated to the rights of consumers in the area of provision of services and fulfillment of work.

Additionally, the right of a consumer to apply to a court at his place of residence has been re-affirmed. That is, a Belarusian citizen now has the right to file a complaint against any producer, seeking damages that have arisen as a result of goods produced by such producer, in a Belarusian court. /V. Salei

UKRAINE

## Ukrainian Parliament Adopts New Law on Legalizing of Foreign Documents

On January 10, 2002, the Supreme Rada, Ukraine's Parliament, adopted Law No. 2934-III "On Ukraine Joining the Convention Canceling the Requirement to Legalize Official Foreign Documents" (the "Convention"). The Convention covers official documents executed on the territory of one contracting state which must be presented on the territory of another contracting state.

In accordance with the provisions of the Convention, which will now include Ukraine as a signatory, each contracting state must abandon the requirement of "legalization" with respect to the documents covered by the Convention and intended for presentation on its territory. Under "legalization," the Convention means a strictly formal procedure used by diplomatic or consular agents of the country on whose territory the document must be presented in order to certify the authenticity of a signature, the authority of the signatory, and, if appropriate, the authenticity of a seal or stamp with which the document is affixed.

In accordance with the provisions of the Convention, the only formality which may be requested in order to certify the authenticity of a signature, the authority of the signatory, and the authenticity of a seal or stamp with which the document was affixed, is attachment of an apostille by a competent authority of the state in which the presented documents were executed.

However, attachment of an apostille should not be required if the laws, rules or customs existing in the state in which the document is presented, or an agreement among two or more contracting states, provide for a simpler procedure or do not require any certification of the authenticity of a document or the authority of its signatory. /T. Rogach

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