

# CIS LEGAL NEWSWIRE

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RUSSIA

## Procedure Clarified on Registration of Legal Entities with Foreign Investment

On July 25, 2002, President Putin signed into law certain amendments to the Federal Law "On Foreign Investment" (the "Amendments"), clarifying the general procedures for the registration of legal entities, as established by the Federal Law "On Registration of Legal Entities" (the "Registration Law"), on legal entities in Russia with foreign investment. As a result, such entities, similar to all other Russian entities, are now subject to registration with the federal tax authorities.

On August 8, 2001, President Putin signed Federal Law No 129-FZ, "On the State Registration of Legal Entities," which established unified regulations regarding the state registration of legal entities (for more information, please see our *CIS Legal Newswire*, dated August 16, 2001). Unfortunately, the law did not specifically provide that entities with foreign investment would also be covered. For entities with foreign investment, the State Registration Chamber (the state organ previously responsible for the state registration of legal entities with foreign investment) had been refusing to accept documents for registration, while at the same time, certain tax inspectorates also refused to register entities with foreign investment, arguing that the Registration Law was unclear as to which agency was in fact responsible.

Legal entities with foreign investment will now also be subject to those provisions of the Registration Law which require legal entities registered before July 1, 2002 to file certain information (as specified in the Registration Law) with the tax authorities no later than December 31, 2002 in order to validate their registration. According to the Registration Law, if a legal entity fails to file the necessary information, then the tax authorities may commence an action in court seeking to have the entity liquidated. /D. *Taktashova*

## Putin Vetoes Draft Amendments to Law on Bankruptcy

As we reported in the July 15, 2002, issue of the *CIS Legal Newswire*, on July 1, 2002, the Russian Federation ("RF") State Duma passed in its final reading draft amendments to the 1998 RF Law "On Bankruptcy" (the "Bankruptcy Law"). The amendments were approved by the Federation Council on July 10, 2002, and were expected to be signed by President Putin. However, on August 6, 2002, the President vetoed the new version of the Bankruptcy Law, stating that the amendments contradict the RF Civil

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Code, and must be redrafted substantially.

Specifically, according to Putin, the new version of the bill only defines three categories of priority creditors, whereas the RF Civil Code establishes that there must be five such categories. The President also suggested toughening standards for the appointment of external bankruptcy managers. A new set of draft amendments is expected to be ready for debate in the State Duma by September. Until then, bankruptcy proceedings will continue to be regulated by the previous version of the Bankruptcy Law. /O. Titenko

## Mandatory Conversion Rate May Be Decreased

In a recent interview, Sergei Ignatyev, the new Chairman of the Central Bank, indicated that the mandatory conversion rule, which currently requires that fifty percent (50%) of convertible currency proceeds received by Russian legal entities must be converted into Rubles, will be relaxed such that only thirty-five percent (35%) of such proceeds would need to be converted. Such a decrease would require either that the RF Law "On Currency Control" be amended, or that a relevant provision be included in a new version of this law scheduled to be adopted this fall.

If adopted, this change would signal the RF Government's commitment to further liberalization of Russia's convertible currency regulations. The new rules in respect of mandatory convertible currency conversion would effectively increase the convertible currency available to Russian companies, allowing them to minimize currency risks and potentially attract financing using convertible currency receivables to secure such financing.

This change is one more step toward liberalization of Russia's strict currency rules which the RF Government has used as a means of combating capital flight from Russia. It follows Central Bank Regulation No. 1030-U passed last year, which abolished the licensing requirement in respect of foreign currency loans from non-residents (for further information, please see our *CIS Legal Newswire*, dated October 8, 2001). These latest developments in Russia's currency policy indicate that the authorities are becoming more confident in the sta-

bility of the Ruble and may signal a step towards full convertibility of the Ruble. /L. Brank, M. Goldman, P. Gloushkov

## Putin Signs Law on Private Arbitration

President Vladimir Putin recently signed the Federal Law "On Arbitral Tribunals in the Russian Federation" (the "Private Arbitration Law"), which had been under discussion for over four years. In a speech before Parliament earlier this year, President Putin referred to this law as an integral part of the reform of Russia's justice system. The Private Arbitration Law sets out the underlying principles and procedures applicable to private arbitration proceedings in Russia that take place outside of the state court system, such as permanent arbitration institutions and *ad hoc* arbitration.

The Private Arbitration Law will enter into force upon its official publication and will replace the "Regulation on Arbitral Tribunals," currently an annex to the current 1964 Civil Procedural Code, as well as the 1992 "Temporary Regulations on Arbitration Courts for the Resolution of Economic Disputes." Together with the RF Law "On International Commercial Arbitration," dated July 7, 1993, which regulates the arbitration procedures at the International Commercial Arbitration Court of the RF Chamber of Commerce and Industry, a permanent arbitration institution, as well as the new Arbitration Procedural Code, which governs the procedure for hearing commercial disputes in state arbitration courts (due to come into force on September 1, 2002), the Private Arbitration Law is intended to refine and increase the efficiency of Russia's dispute resolution mechanisms.

The Arbitration Law provides that in respect of civil matters, the parties are free to agree that disputes will be settled by means of arbitration. Notably, the notion of a "civil matter" under Russian law encompasses both commercial and non-commercial matters, excluding those involving an administrative element. Among the matters addressed in the Private Arbitration Law are: the permissibility of using either *ad hoc* rules and procedures or a permanent arbitration institution; the competence of the arbitral tribunal; and the notion that the agreement to arbi-

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trate must be in writing and is independent of the underlying agreement.

The Arbitration Law includes a number of default rules governing various issues that apply in the absence of any express agreement by the parties to the contrary, such as selection of the forum and language of the proceedings, maintenance of confidentiality and attributing responsibility for the costs of, as well as the procedure governing the submission of evidence during arbitration proceedings. The Private Arbitration Law also provides that arbitrators must meet certain minimum requirements, *e.g.*, the sole arbitrator or the chairman of the arbitral tribunal must have a university (undergraduate) degree in law.

In addition, the Private Arbitration Law, together with the new Arbitration Procedural Code, now clearly provides that interim relief (*e.g.*, temporary arrest of assets) may be sought in the course of arbitration proceedings and the claimant may file an application for such interim relief with a competent State arbitration court at the place of arbitration or where the disputed property is located. Previously, it was possible to seek interim relief on the basis of the Law "On International Commercial Arbitration," which allowed a party to file a relevant request; however, since the current Arbitration Procedural Code (*i.e.*, the Code which will be replaced as of September 1, 2002) does not contain a mechanism for implementing such a request, parties are unable, in practice, to obtain such relief.

The Private Arbitration Law also confirms that if the parties do not specifically provide that the arbitral award is final, then the losing party may challenge the award within three months after it has been awarded. The grounds for such a challenge enumerated in the Private Arbitration Law generally correspond to standard rules present in international practice pursuant to which a court may refuse to enforce an award (*e.g.*, agreement to arbitrate was invalid). Significantly, the Private Arbitration Law also provides that Russian courts may review arbitral awards issued in private arbitral proceedings on their merits with respect to whether such awards comply with the fundamental principles of Russian law (*i.e.*, "public order" doctrine). /E. *Abrossimova*

## New Central Bank Law Enters into Force

On July 13, 2002, the Federal Law "On the Central Bank of the Russian Federation (the Bank of Russia)" (the "CBR Law") entered into force. This law is part of the overall reform of the banking sector, as proposed in the "Joint Strategy on Developing the Banking Sector," which was approved by the RF Government and the CBR to reform the banking sector last year.

The most important new innovation introduced by the CBR Law is the replacement of the current two-tier management structure of the Central Bank with a three-tier structure consisting of the National Banking Council (the "Council"), the Board of Directors of the Central Bank, and the Chairman of the Central Bank. While the status and authority of the Chairman of the Central Bank has been only slightly modified, the authority of the Board of Directors has been decreased significantly in favor of the Council, which is now the senior management body at the Central Bank. According to the CBR Law, the Council must have 12 members, to include representatives of the Federation Council and State Duma, as well as three members appointed by the President and three members appointed by the RF Government.

In fact, the previous law covering the Central Bank (also called the Federal Law "On the Central Bank of the Russian Federation (the Bank of Russia)," dated December 2, 1990) provided for the Council, though the composition of the Council was different and rather than setting the exact number of members, the Council was limited to 15 members. However, until now, the Council has played a mainly consultative role and lacked decision-making authority.

Another important amendment introduced by the CBR Law relates to the types of normative acts issued by the Central Bank. The CBR Law states that the Central Bank will issue normative acts only in the form of directives, regulations and instructions. Such provision is an attempt to eliminate the ambiguity caused by the variety of contradictory documents previously issued by the Central Bank, which included (in addition to the above-mentioned documents) orders, letters and telegrams, the authority of which was unclear. The CBR Law

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also establishes that these normative acts will enter into force 10 days after they are published in the Central Bank's official publication, *Vestnik of the Bank of Russia* (previously, such normative acts entered into force as of the date of publication).

The CBR Law also amends certain issues with respect to the supervisory activities of the Central Bank. According to the CBR Law, the Central Bank is prohibited from carrying out multiple investigations of a single matter in respect of a credit institution's activity during any single reporting period, with a few specified exceptions. In addition, the CBR Law establishes a five-year statute of limitations on the imposition of fines for violations of laws and directives of the Central Bank. /D. *Taktashova*

## Putin Signs Law on Transactions with Agricultural Land

On July 25, 2002, President Putin signed the RF Law "On Transactions with Agricultural Land" (the "Agricultural Land Law"), which establishes the framework for the ownership, use and disposal of any agricultural land, with the exception of land plots intended for the construction of houses or garages by individuals, personal gardens and cattle breeding and land plots under any houses, buildings and construction sites. The Agricultural Land Law will become effective within six months after its official publication.

While the Agricultural Land Law permits the sale of agricultural land, it also imposes certain restrictions on ownership, use and disposal of such land. For example, the designated use of such land may not be unilaterally changed by the landowner, the total size of such land that may be owned by a group of individuals and/or companies is limited, and the regional governments and co-owners of land plots have the right of first refusal with respect to the purchase of agricultural lands.

Foreign citizens, foreign legal entities and individuals without citizenship, as well as companies with more than 50% foreign ownership, may not own agricultural land but may hold only

leasehold rights with respect to such land. Under the Agricultural Land Law, a lease of agricultural land may not exceed a term of 49 years. If the ownership of a land plot acquired prior to the enactment of the Agricultural Land Law is inconsistent with the provisions of the new law, then such plot must be alienated within one year after the Agricultural Land Law comes into force. In furtherance of this requirement, each administrative region of the Russian Federation must designate a competent body that will have the authority and the obligation to file court cases compelling landowners to sell the parcels of land that are held in violation of the Agricultural Land Law.

The Agricultural Land Law also re-confirms that all of the title documents issued with respect to land prior to the enactment of the RF Law "On State Registration of Rights to Real Estate and Transactions Therewith," dated July 21, 1997 (as amended), including decisions of local governments regarding the privatization of agricultural land plots, remain valid. /E. *Abrossimova*

## Decisions of Courts in Russia and Belarus Are Valid in Both Countries

On January 17, 2001, Russia and Belarus signed the "Agreement Between the Russian Federation and the Republic of Belarus on the Procedure for Mutual Enforcement of Court Acts of the Arbitration Courts of the Russian Federation and Economic Courts of the Republic of Belarus" (the "Agreement"), which, effectively, unified their legal systems with respect to the enforcement of court decisions on commercial matters. After ratification by both the Russian and Belarusian Parliaments, Presidents Putin and Lukashenko signed the ratification laws with respect to the Agreement on July 11, 2002 and June 13, 2002, respectively.

The Agreement provides that decisions of the relevant courts in Russia and Belarus are automatically recognized in the other country and must be enforced on the basis of writs of execution issued by the relevant court, pursuant to the procedure established for enforcement of national court decisions.

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The only required formality for a court decision to become enforceable in either Russia or Belarus is the issuance of a writ of execution in Russian bearing an official court seal and signed by a judge. After this formality has been completed, an individual seeking recovery of a debt, for example, would simply need to address the writ of execution to the debtor's bank or to a court officer in the location where the enforcement is sought. /E. *Abrossimova*

BELARUS

## Additional Requirements for Transactions on the Alienation of Immovable Property

Effective as of July 8, 2002, Decree No. 329 of the President of Belarus, dated June 26, 2002, introduced additional requirements for the consummation of transactions on the alienation of immovable property. According to Belarusian legislation, transactions involving a purchase and sale, exchange (barter), gift, rent, or trusteeship of ownership must be notarized. However, the owner of immovable property must now present the notary not only with documents confirming his rights to such immovable property, but also with a certificate issued by the tax authorities responsible for the location of the immovable property to be alienated. Such certificate must evidence payment of income tax (for individuals), and land tax and real estate tax (for individuals and legal entities).

Such regulation will likely limit owners' rights to dispose of property, since such civil transactions are now dependent on the fulfillment of tax obligations to the State budget. The decree applies both to Belarusian and foreign legal entities and individuals owning immovable property located in Belarus. /V. *Salei*

## Change of Norms Regulating Registration of Foreign Legal Entities with Tax Authorities

Effective as of June 2002, norms regulating the registration of foreign legal entities with the tax authorities in Belarus have changed. The changes are related to the new differentiation of the tax status with respect to non-residents, which is determined on the basis of whether a non-resident is engaged in active entrepreneurial activities, is performing purely representative functions, or is only receiving "passive" profit by opening a bank account.

Since each tax status for non-residents has its own particular features, if a non-resident changes the type of its activities in Belarus, it would have to re-register with the tax authorities and change its tax status. For instance, if a non-resident which has been registered with the tax authorities as a representative office (having the tax status "Foreign Legal Entity/Representative Office") begins to conduct entrepreneurial activities (*i.e.*, starts to enter into commercial agreements), it must re-register and change its status to "Foreign Legal Entity/Permanent Representative Office."

Additionally, the new tax status called "Foreign Legal Entity/Immovable Property" has been introduced for non-residents acquiring rights to immovable property. Such non-residents are obligated to register their tax status within 15 days after the transfer to such non-residents of the right of ownership to the property or the rights otherwise to possess such property. /V. *Salei*

UZBEKISTAN

## Conversion Partially Freed, but Import Restricted

The Government of Uzbekistan continues to implement its undertakings to the International Monetary Fund with re-

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spect to the country's macroeconomic policy, as outlined in the "Memorandum on Economic and Financial Policies," which was delivered to the IMF on January 31, 2002, and further negotiated between the Uzbek Government and the IMF in June 2002. By relaxing conversion rules and placing restrictions on imports, the Government of Uzbekistan is seeking to reduce pressure on the country's foreign currency reserves.

The Uzbek Government issued a decree introducing relaxed conversion procedures for certain types of businesses. Pursuant to Decree No. 247 of the Cabinet of Ministers of Uzbekistan "On Measures to Develop Further the OTC Market," dated July 12, 2002, Uzbek commercial banks must convert Soums into convertible currency at a floating exchange rate, to be established on the basis of the supply and demand for foreign currency. However, such Soums are then considered proceeds from the sale of "imported consumer goods or services, including transportation and communication services." Therefore, businesses which import such consumer goods or services will be able to convert their Soud receivables into convertible currency without first obtaining permission for conversion. Certain questions remain as to how this change will be implemented into the Government's established conversion system, including, among others: which goods are classified as consumer goods for conversion purposes; whether Soud proceeds subject to conversion will be collected from all services or only "imported services"; how to determine whether services are imported; and whether banks are obliged to convert immediately all eligible Soums upon a client's request.

Although the Uzbek Government has relaxed the conversion procedure for imported consumer goods and services, severe restrictions have been imposed on the import of such goods and services. Pursuant to Edict No. PF-3105 of the President of Uzbekistan "On the Regulation of the Import of Consumer Goods into the Territory of the Republic of Uzbekistan," dated July 11, 2002, the Uzbek Government imposed a new charge on the import of consumer goods, which must be paid by importers along with existing import taxes (VAT, customs duties, excise tax), and eliminated all import tax payment exemptions (with the exception of several types of goods, such as pharmaceuticals, computers, humanitarian goods, and the personal belongings of diplomats). In addition, Uzbek customs authorities are now permitted to confiscate imported goods for any violation of customs law, without obtaining a court decision.

Decree No. 248 of the Cabinet of Ministers of Uzbekistan "On Additional Measures to Regulate the Import by Individuals of Goods into the Territory of the Republic of Uzbekistan," dated July 12, 2002, requires that individuals engaging in "shuttle trading" must pay customs duties in hard currency, rather than in Soums, as was previously the case. Pursuant to recent changes in legislation concerning "shuttle traders," such individuals must pay customs duties in the amount of 90% of the value of the goods they seek to import. */J. Askarov*

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