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RUSSIA

New Labor Code Comes Into Force

The new Russian Federation ("RF") Labor Code (the "Labor Code"), which entered into force on February 1, 2002, alters considerably the framework for employee relations in Russia. Every employer in Russia, including foreign companies, will need to review and, if necessary, revise its internal labor policies, in order to ensure compliance with the requirements of the Labor Code. Indeed, the Labor Code expressly provides that its provisions apply to all foreign nationals working in Russia, unless an international treaty or a specific law provides otherwise.

The Labor Code consists of six sections: (1) General Provisions; (2) Social Partnerships; (3) Employment Contracts; (4) Special Features on Labor Regulation for Certain Types of Employees; (5) Protection of Employees' Rights, Labor Dispute Resolution and Consequences for Violation of Labor Legislation; and (6) Final Provisions. The Labor Code both expands on concepts contained in the previous version of the Labor Code and establishes important new rules.

The Labor Code lays out the specific rights and obligations of employers, thereby restricting employers' discretion with respect to, among other things, entering into fixed-term contracts, the hiring process, and the trial period for new employees. For example, under the new Labor Code, employers may enter into a fixed-term contract only if specifically provided for by the Labor Code or other federal laws, such as: (a) to replace an absentee employee; (b) if an employer has less than 40 employees; (c) to perform a particular task when the date of performance is not able to be determined in advance; (d) contracts with retired individuals (pensioners) or students; or (e) contracts with an entity's directors, deputy directors and chief accountants. In addition, if an employer refuses to hire an applicant seeking to fill a vacant position, then such applicant must be informed of the basis for refusal, and such refusal may be challenged in court.

Enforcement of employee rights is also dealt with in the Labor Code. Inspectors from the RF Ministry of Labor and Social Development are now entitled to enter a company's premises at any time (including without notification) to inspect working conditions, and may request any documents necessary to conduct their inspection. Furthermore, such inspectors may issue orders requiring that employers cure specified violations, granting employees all rights available under law, and holding an employer responsible for infringements of an employee's rights, or even dismissing a representative of an employer from his position for a violation of an employee's rights.

Another provision mandates that employers protect each employee's personal information, and not disseminate such personal information to third parties without the employee's written consent.

Finally, for the first time, the Labor Code establishes detailed guarantees with regard to the payment of salaries. An employee is entitled to receive his salary at least two times a month. Employers who fail to pay salaries on time may now be forced to pay fines in the amount of not less than 1/300th of the current refinancing rate of the RF Central Bank (currently, 25% per year) on the unpaid salary and other payments due to the employee (*i.e.*, compensation for unused vacation, etc.) for each day of delay. Moreover, employees are now permitted to stop working if their salaries remain overdue for more than 15 days.

On the other hand, employers have now gained broader rights with regard to the unilateral termination of employment contracts. Specifically, the Labor Code permits the dismissal of an employee for even a single failure by the employee to fulfill his duties or if the employee submitted false information to the employer when entering into his employment contract (note that previously, submission of false information could not be a basis for dismissal). If an employee is to be dismissed in connection with the liquidation of a company or a reduction in the number of personnel, then an employer may terminate the employee's contract without giving two months' prior notice, but must obtain the employee's prior consent and pay the employee two months' salary. In the past, employers were required to provide two months' prior notice, during which period the employee continued to receive a salary, and then pay an additional two to three months' salary after dismissal. In terms of the general director and his or her deputies, it is now permitted to terminate their employment contracts when, for example, there is a change in the company's owner, or an unfounded decision is taken that results in damage to, or unlawful use of, the company's property.

Overall, the Labor Code represents significant progress in Russian employment regulations and is much better suited to Russia's current economic condition than the previous Labor Code, which was adopted over thirty years ago. At a recent speech given to the Western business community on the impact of the new Labor Code, Mr. Alexander Pochinok, the RF Minister of Labor and Social Development, expressed confidence that the Labor Code will help to establish a contemporary, civilized labor market in Russia. However, it is clear that a number of other regulations must also be implemented, and Mr. Pochinok himself admitted that the Labor Code is already in need of certain amendments. He also said that his Ministry is currently drafting an official commentary

on the Labor Code, which will provide clarification on certain provisions. /E. Abrossimova and P. Gloushkov

Rules to be Eased on Non-Resident Equity Investments in Russian Banks

The RF Central Bank (the "CBR") is seeking a relaxation of the controls on equity investments by non-residents in Russian banks. At a recent press conference, Ms. Tatiana Paramonova, First Deputy Chairman of the CBR, reiterated that the CBR is particularly interested in enacting legislation that would encourage more direct foreign investment in Russian banks.

To achieve this aim and as part of the joint strategy of the CBR and the RF Government to reform the banking system, the RF Government has introduced a bill in the State Duma that will eliminate the need to obtain the prior approval of the CBR when acquiring 10% or less of the equity in a Russian bank. Under the proposed bill, a simple notice to the CBR acknowledging any acquisition within this threshold will be all that is required.

Even though restrictions on the aggregate percentage that foreign investors may hold in the overall Russian banking sector have already been lifted, currently, non-residents must still obtain CBR approval in order to acquire even a single share of a Russian bank. The intent is that this new regime will facilitate the acquisition of shares in Russian banks by foreign portfolio investors and promote the public trading of shares of Russian banks. /P. Gloushkov

New Privatization Law Adopted

The RF Parliament has recently passed a new Law "On Privatization of State and Municipal Property" (the "Privatization Law"), which abolishes the 1997 Law "On Privatization" and is the third such law adopted in Russia in the last ten years. The Privatization Law was recently signed by President Putin and will enter into force at the end of April 2002. The Privatization Law establishes the regulatory framework for privatization of most state-controlled property, but does not apply to the pri-

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vativation of: (a) land, with the exception of land plots underlying immovable property; (b) natural resources; (c) state reserves; and (d) state property located outside of Russia.

Though many provisions of the Privatization Law are similar to those of the 1997 law, several important changes have been introduced.

The Privatization Law allows for other new methods of privatization in addition to those previously available (*i.e.*, reorganization of a state enterprise, tender or auction). Such new methods include the sale of shares through an exchange, public offerings and the sale of shares outside of Russia, for example, by the issuance of depositary receipts. In addition, the Privatization Law states that if the value of the assets of an entity to be privatized exceeds the ruble equivalent of approximately US \$16.5 million, then that entity may only be privatized as specifically provided for under the Privatization Law.

The Privatization Law requires that the RF Government approve a plan for the privatization of state property, which should include a list specifying the shares and other assets to be privatized. This eliminates the requirements under the 1997 law that a special federal law be enacted as part of the privatization of any state property, which requirement has been ignored over the past several years. However, the Privatization Law does provide that the state-owned shares of Gazprom, RAO UES and the railway entities may only be sold pursuant to a special federal law.

The Privatization Law further establishes particular requirements for different methods of privatization, such as the minimum amount of funds that must be deposited in order to participate in a tender, the procedure for disclosure of information to potential bidders, and the obligations of purchasers. The Privatization Law also provides that payment of the purchase price may be deferred by a maximum of one year. Other requirements under the Privatization Law are that all B-type shares acquired through a privatization must eventually be converted into common stock, and that current privatization plans of state-owned enterprises must be amended to comply with the new provisions.

Unlike the 1997 law, the Privatization Law does not contain provisions on the invalidation of privatization transactions, except for privatizations conducted by an unauthorized body. The result is that challenges to the validity of a privatization, including the expiration of the applicable statute of limita-

tions, will be governed by the general provisions of the RF Civil Code. Some expect, however, that a separate law laying out the basis for invalidation of privatizations may be passed later this year or in 2003. /P. Gloushkov

Export Duty on Gold Lifted

As we reported in the November 13, 2001 issue of the *CIS Legal Newswire*, on October 25, 2001, the RF Government Commission on Protective Measures in Foreign Trade, Customs and Tariff Policy, headed by Mr. Alexei Kudrin, Vice Premier and RF Minister of Finance, issued a decision canceling the current 5% tariff on the export of gold. This export tariff was originally instituted in December 1999.

On January 14, 2002, the RF Government formally approved Decision No. 17 abolishing the 5% export tax on gold, as well as other export taxes on gems, timber and charcoal. Decision No. 17 will become effective on February 19, 2002. /P. Gloushkov

BELARUS

New Rules Adopted Governing Inspection of Commercial Enterprises

Pursuant to Presidential Decree No. 722, dated December 6, 2001, a new procedure has been adopted governing the inspection and/or audit of a commercial enterprise by judicial and governmental authorities. Importantly, new provisions on imposing sanctions have also been introduced. Under the previous procedure, in order to impose economic sanctions on a commercial enterprise, the authorities were required to establish an intentional violation of an applicable regulation. Under the new procedure, this will no longer be required. Now, sanctions may be imposed based solely upon the existence of a violation, regardless in almost every case as to how it arose. The new procedure leaves in place the previous rule that audits or planned inspections may only be conducted once per year. Unplanned inspections may be carried out only if ordered by certain governmental bodies (*e.g.*, the tax inspectorate, a court or the police).

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In addition, Decree No. 722 extends from two-months to three-months the time period during which economic sanctions may remain in force. This period begins to run from the date the violation is uncovered. If, within the prescribed timeframe, an appeal is brought against a decision to impose economic sanctions, then the sanctions are automatically suspended.

Another important development is that the scope of any inspection or audit will now be much more limited. Previously, the inspecting agencies could investigate not only the legality of a transaction, but also whether such transaction was economically viable. Under the new procedure, the economic viability of a transaction is now specifically excluded from the scope of any investigation. /V. Salei

Changes Made to Tax Legislation

On January 1, 2002, a new law entered into force introducing a series of important changes in Belarusian tax legislation – most notably to the Law “On Income and Profits Tax.” In particular, the profits tax has been reduced from 30% to 24%, which analysts believe will help to encourage growth and investment in Belarusian enterprises. In this sense, Belarus is following the example of Russia, which recently reduced its profits tax from a maximum of 35% to 24%.

At the same time, a blow has been dealt to Belarusian non-governmental organizations, which derive the majority of their funding from charitable donations by legal entities and individuals, both Belarusian and foreign. Prior to January 1, 2002, such donations were not subject to tax. Now, only donations from Belarusian legal entities and individuals will be exempt from taxation. /V. Salei

KAZAKHSTAN

New Licensing Rules Approved for Property Appraisers

Pursuant to Decree No. 1389, dated November 2, 2001, new rules have been implemented on licensing of appraisers (the

“Rules”). The Rules establish the procedure for granting appraisal licenses, as well as minimum qualification requirements for those applying for an appraiser’s license. The Rules provide that licenses will be unlimited as to term and valid throughout the Republic of Kazakhstan. The Registration Service of the Justice Ministry will be responsible for issuing new appraisal licenses.

Importantly, in addition to specialty licenses, appraisers will be entitled to receive general licenses granting appraisers the authority to carry out all of the particular categories of appraisal activities currently envisioned under the Rules. If an applicant is refused a license, then he is to receive a written response detailing the reasons for such refusal. In addition, an applicant refused a license has one-month to file a claim in court contesting the refusal. If the court finds that a license was not issued in a timely fashion or the refusal to grant a license was groundless, then the court may issue an order obligating the authorities to issue the license within 10 days. /Y. Zhussupov

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