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RUSSIA

## Duma Passes New Version of Bankruptcy Law

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 are designed to curb the practice of certain parties who have used the Bankruptcy Law as a means of stripping assets from insolvent companies, and to further protect the rights of insolvent companies, creditors and the RF Government.

If adopted, the amendments would, for the first time, give indebted companies the right to participate in the bankruptcy process. For example, owners of an insolvent company would have the right to dispute court rulings, as well as the actions of arbitration managers and creditors. Another key innovation is that the amendments allow the insolvent company to pay off its debts at any stage of the bankruptcy process. The amendments would allow the debtor to issue additional shares during the bankruptcy process and would permit the company to allocate its assets to a separate entity, subject to the approval of the management body of the debtor and the secured creditors.

Under the amended Bankruptcy Law, bankruptcy procedures may commence only after all creditors' claims have been approved by a court. Such preliminary involvement of the court should protect companies from fraudulent bankruptcy procedures being initiated against them, which has become a common practice; however, the new procedures may considerably lengthen the preliminary stage of bankruptcy.

The amendments also enumerate in greater detail the rights of secured creditors. For instance, secured creditors would have a preemptive right to have their debts repaid from the proceeds of pledged assets sold at public auctions.

The amendments also provide for a stricter screening and selection process for arbitration managers. Education and experience requirements have been increased. A "self-regulatory organization" of arbitration managers, selected by the creditors, will appoint the arbitration manager, subject to the consent of both the creditors and the insolvent company.

Certain issues related to the bankruptcy of so-called "city-forming" enterprises, credit institutions and natural monopolies will be addressed in separate laws. The amendments to the Bankruptcy Law were approved by the Federation Council on July 10, 2002, and it is expected that they will be signed by President Putin shortly. /E. Kuryatnikova

## Legal Fees for Court Representation May Be Recovered

The RF Constitutional Court (the "Court") recently issued a landmark ruling in a case brought by a confectionary factory against the RF Tax Inspectorate, which may allow legal entities to recover their legal fees for representation in arbitration court cases against federal, regional and municipal authorities. The Court based its decision on three main bodies of Russian law.

First, the Court ruled that the compensation required under the RF Civil Code for damages and lost profits due to the unlawful actions of governmental authorities must include expenses incurred in connection with the representation of the individual or entity whose rights were violated by such actions. Second, the Court held that the provisions of the RF Civil Procedure Code that require the losing party to compensate the other party for court expenses in civil court proceedings must also be applied to arbitration proceedings. Finally, the Court held that to exclude legal fees from damages subject to compensation would violate the RF Constitution, which establishes a right to qualified legal assistance and a right to the protection of property, and which requires compensation for harm caused by the unlawful actions of governmental authorities.

Legal experts believe that this ruling may serve as a basis for seeking compensation for legal services rendered in connection with arbitration proceedings in all cases, and not just in cases against governmental authorities. Governmental authorities, as well as the courts, are resisting the implementation of this landmark ruling – in fact, despite the Court's ruling, the Tax Inspectorate refused to compensate the confectionary factory for its legal expenses. Subsequently, the factory filed a claim to enforce compensation, but the arbitration court supported the Tax Inspectorate's refusal to compensate. At this stage, it is difficult to predict the ultimate outcome of the case, but generally, because rulings of the Court have precedence over all other court decisions and legal acts, it is likely that the factory's claim will be upheld. */P. Gloushkov*

## RF Regions May Be Permitted to Borrow in Foreign Currency

The RF Ministry of Finance (the "Ministry") is currently drafting amendments to the RF Budget Code that would change the current regime, which places numerous restrictions on RF regions seeking to borrow foreign currency. Currently, RF regions may seek financing in foreign currency only for restructuring or refinancing previous debts. According to sources within the Ministry, the proposed amendments would introduce economic criteria for determining whether RF regions will be allowed to borrow in foreign currency, such as whether the region has excessive budget deficits or defaulted loans, etc.

The proposed amendments would also clarify that an RF region that issues a guarantee will not be deemed to have borrowed funds. Current provisions of the RF Budget Code deem a guarantee to be a form of indebtedness, which complicates the ability of RF regions to issue guarantees. The draft amendments will likely be submitted to the State Duma this autumn and are expected to be approved shortly after their submission. */P. Gloushkov*

### UKRAINE

## Ministry of Economy Introduces Changes For Registering Foreign Trade Agreements

Order No. 165 of the Ministry of Economy of Ukraine "On the Introduction of Changes in Order No. 136 of the Ministry of Economy of Ukraine, dated June 29, 2000," dated June 3, 2002 ("Order No. 165"), entered into force on June 23, 2002. Order No. 165 introduces changes in the procedure for registering

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foreign trade agreements (contracts), as well as in the procedure for completing "registration cards" and "informational cards," which allow the import and export of certain goods under such agreements (contracts).

Order No. 165 expands the list of goods that may only be exported if the relevant foreign trade agreements (contracts) are registered. In particular, registration of such agreements (contracts) will now be required to export certain types of chemicals and byproducts from the production of certain metals. Order No. 165 also establishes that the registration requirement for foreign trade agreements (contracts) is suspended for the entire period during which such license or "export document" is in effect for those goods requiring a license to export or a special "export document" (*i.e.*, a single-use license). */T. Rogach*

## Changes Introduced in Procedure for Issuance of Permits to Use Subsurface Resources

Resolution No. 705 of the Cabinet of Ministers of Ukraine "On the Introduction of Changes in the Procedure for the Issuance of Special Permits (Licenses) to Use Subsurface Resources," dated May 30, 2002 ("Resolution No. 705"), entered into force on June 1, 2002. The previous procedure, which had been approved by Resolution No. 709 of the Cabinet of Ministers of Ukraine, dated August 31, 1995, was supplemented with new provisions, pursuant to which a fee will now be charged for the issuance of licenses to explore for mineral resources. The amount of such fees will be determined in accordance with legislation, and will vary widely from approximately US \$80 to US \$400, depending on the type of resources and exploration. In addition, Resolution No. 705 establishes a fee schedule for the issuance of special permits to use subsurface resources once such resources have been located. */T. Rogach*

### AZERBAIJAN

## Amendments Expected to Azeri Constitution

President Heydar Aliyev recently voiced the opinion that the Azeri Constitution should be amended in light of the forthcoming elections. In accordance with a new Presidential Decree, a national referendum will be held August 24 on a set of 24 proposed amendments to be made in the current year. The Azeri Constitution has not been amended since its adoption in 1995.

Many of these amendments are being introduced to streamline certain legislative processes in Azerbaijan. For example, an amendment to Article 88 proposes the elimination of norms establishing specific time limits for holding sessions of the Milli Medjlis, the Azerbaijani Parliament. Further, it is proposed to supplement Article 83 with provisions that would introduce a majority system for parliamentary elections, rather than the current proportional system. Under the current system, voters select political parties as a bloc according to a party list, and then these parties are awarded seats in proportion to the total number of votes received. According to most observers in Azerbaijan, the majority system, under which each representative will be elected individually, will serve the interests of Azerbaijan's most powerful and well-connected parties and candidates, while the country's numerous smaller political parties rely on the proportional system to attain at least some measure of representation in the Milli Medjlis.

Another amendment, proposed to Article 105, would establish that if the President, for any reason, is unable to exercise his authority, such authority would be temporarily delegated to the Prime Minister. Current regulations stipulate that the Speaker of the Milli Medjlis would exercise the President's authority in the event that he is incapacitated. Analysts view this proposed amendment as an attempt to separate and better define executive and legislative powers, but because the Milli Medjlis often reflects the views of opposition parties, there is some concern that this amendment may diminish the power and status of Milli Medjlis. Under this proposed amendment, the Milli Medjlis would in fact lose the authority

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to manage the country during a changeover in power. Another amendment would allow citizens deprived of their civil rights by governmental organs to apply for restitution of such rights by filing appeals with the Constitutional Court of the Azerbaijan Republic after their cases are heard in the lower courts. Under the earlier system, citizens could appeal either directly to the relevant governmental organ or to the courts, but in the case of the courts, such cases could only go as high as the Supreme Court – one level below the Constitutional Court. This amendment would also transfer the Constitutional Court's authority to ban political parties and non-governmental organizations to the Ministry of Justice. Analysts are concerned about the impact of this amendment on the democratic process, as political parties may be subject to arbitrary decisions by the executive branch. /F. Mirzayev

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