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RUSSIA

Effects of Terrorist Attacks in US Felt on Russian Markets

The tragic and unprecedented terrorist attacks in the United States on September 11 caused some temporary disruption to Russia's relatively stable retail currency market. On September 12, 2001, some currency exchange outlets and Russian banks sought to purchase US Dollars at a rate 30%-40% lower than the previous day, apparently benefiting from a sense of panic among ordinary Russians about the effect of Tuesday's events on the dollar and the US economy. Such speculative changes in the exchange rate violate a Resolution of the Central Bank of Russia ("CBR"), dated August 21, 1998, which mandates that a retail bank's exchange rate may not differ from the official CBR currency rate by more than 15%. The CBR reacted almost immediately by threatening to revoke the licenses of banks and exchange outlets operating in such a manner, and set up a hotline allowing consumers to inform the CBR of such violations. By the end of last week, the problem had been brought under control and the exchange rate stabilized to a rate slightly below that of September 12. */S. Volfson*

Two Companies to Represent Russia in Future PSAs

The Russian Government recently adopted Regulation No. 1155-r (the "Regulation"), which appoints the state-owned joint stock company Rosneft and the state unitary enterprise Zarubezhneft as the authorized bodies to represent the interests of the Russian Federation in negotiating production sharing agreements (PSAs) in the petroleum sector. Rosneft and Zarubezhneft will participate in the preparation and implementation of PSAs; the framework for such preparation and implementation will be established through agreements between these two companies and the Russian Antimonopoly, Finance, Natural Resources and Economic Development Ministries.

Analysts believe that this representation could create conflicts of interest due to the pre-existing involvement of Rosneft and Zarubezhneft in PSAs. For example, Rosneft is a party to the Sakhalin I PSA, and now, pursuant to the Regulation, Rosneft could obtain access to documentation on the competing Sakhalin II project. The Regulation */ continued page 2*

does contain a provision to the effect that if either Rosneft or Zarubezhneft is acting as an investor in a given PSA, then the Russian Government's interests must be represented by another company. It is also unclear from the Regulation whether existing PSAs will be covered in addition to future PSAs. /S. DeBeer and P. Gloushkov

Putin Signs Decree Eliminating Certain Benefits for Foreign Investors

On August 29, 2001, President Putin signed Decree No. 1088, which rescinds (or in some cases amends) a presidential decree of 1993 and certain provisions of several decrees issued in 1994. The old decrees established certain benefits and favorable treatment for foreign investors, but the new 1999 Law "On Foreign Investment" (the "Foreign Investment Law") then duplicated certain of these benefits; Decree No. 1088 ostensibly was intended to rescind or bring the decrees into compliance with the law. However, the new decree also eliminates certain other benefits.

For example, one of the abolished decrees, Decree No. 1466 dated September 27, 1993, contained a provision that any new regulations concerning foreign investors would not be binding for three years after adoption if the President judged these regulations to negatively affect such investors (i.e. the older rules would be grandfathered); under Decree No. 1466, regulations deemed beneficial to foreign investors were allowed to enter into force. The Foreign Investment Law contains a similar provision, albeit only for large-scale investment projects, whereby foreign investors are unaffected by such regulations until the project reaches its break-even point but not for more than seven years.

Among the preferences abolished or severely limited were: (1) a provision that any regulation restricting or binding foreign investors can only be imposed by federal law or presi-

dential decree; (2) the blanket rescission of all other regulations restricting the activities of foreign investors; and (3) a preference for entities involved in production activities with foreign investment exceeding US \$10 million and 30% of the charter capital, granting the same beneficial tax regime as small enterprises. The abolishment of these provisions was probably not intended to affect foreign investors but to eliminate several much-criticized discrepancies in Russian legislation. /P. Gloushkov

Amended Currency Law Allows Russian Residents To Buy Foreign Securities

The Law "On Currency Regulations and Currency Control" (the "Currency Law") was recently amended, and a new version of the Currency Law came into force on July 7, 2001. Among other things, the amended Currency Law now legalizes trade by Russian residents of derivative securities and stock options denominated in foreign currency, and removes currency restrictions related to the implementation of these financial instruments in Russia. Moreover, the amendments establish the right of Russian residents to transfer an amount in foreign currency equivalent to a maximum of US \$75,000 outside Russia for the purpose of acquiring foreign securities, without an obligation to obtain a Central Bank license. A license is also not required for such individuals to annually transfer back to Russia an amount in foreign currency of up to US \$75,000 realized from the sale of such foreign securities.

Of course, certain restrictions have been established, including: (1) a requirement that such transfers be made through Russian authorized banks; and (2) a requirement that such banks, as well as the individuals making the transfer, must disclose information on such transfers to the competent authorities. Within 10 working days of the transfer, the bank is obliged to inform the individual's local tax inspectorate of the transfer, including information related to the bank account used for the transfer.

It is foreseen that these provisions will broaden the variety of projects in which RF residents can invest, and it has been reported that a number of foreign companies are currently considering entering the Russian securities market using marketing companies to promote their securities. These amendments will also make it possible for Russian employees to participate in stock option plans without the necessity of obtaining a CBR license. */J. Romanova and L. Brank*

Agency Established to Regulate Unified Tariffs

A recent decree signed by President Putin, Decree No. 1091, has established that the Russian Federation Energy Commission (“FEC”) will act as a unified state agency regulating tariffs for electric and thermal power and natural monopolies (except for public telecommunications and public postal services), as well as certain other tariffs for goods and services subject to state regulation under Russian law. The new decree will cover, among other tariffs, those for railroad transportation, port services, and transportation of oil and gas. The decree also puts an end to speculation on the creation of a new unified regulatory agency for tariffs, as the President and the Government had promised in the spring of 2001. The FEC will retain its authority as a tariff regulatory agency in the energy sector and will gain the authority to establish tariffs in other regulated sectors of the economy, most of which are still monopolized. Previously, tariffs for each of the sectors covered by this decree were established by different authorities, which sometimes led to discrepancies and conflicts among such authorities. The Government has claimed that such discrepancies were one of the main reasons for the increase in inflation last year. */P. Gloushkov*

AZERBAIJAN

Azerbaijani Parliament Considers Comprehensive Oil Law

According to sources within the Milli Majlis (the Azerbaijani Parliament), the Milli Majlis is prepared to adopt a comprehensive law called the Law “On Oil” (the “Oil Law”) during the 2001-2002 winter session. If the draft is passed in its present form, it will affect nearly all aspects of the petroleum sector in Azerbaijan. Most prominently, the Oil Law would fundamentally change the character of, and procedures for, production sharing agreements (“PSAs”). Presently, all major offshore oil and gas production ventures, and an increasing number of on-shore ventures, are structured as PSAs, in which one or more foreign companies enter into a PSA with the State Oil Company of the Azerbaijani Republic (“SOCAR”), and the PSA is then approved by the Milli Majlis, effectively becoming a law in its own right.

Under the draft Oil Law, PSAs would no longer be *sui generis*, or law in their own right, but simply contractual instruments (with SOCAR as a party) providing the right to explore and produce hydrocarbons. The Oil Law would also introduce significant uniformity to the PSA process, which has been rather ad hoc in the past, although without the comfort of Milli Majlis approval, some foreign observers are concerned that the draft Oil Law will create uncertainty as to tax and customs issues. */H. Nasibov and S. DeBeer*

KAZAKHSTAN

Temporary Ban on Fuel Oil Export

The Government of the Republic of Kazakhstan, by Resolution No.1170, dated September 10, 2001, intro- / continued page 4

duced a temporary ban on the export of fuel oil from Kazakhstan for the period from October 1, 2001 to March 1, 2002. Temporary export bans on fuel are not unprecedented in Kazakhstan, where lower domestic prices and the need for convertible currency have left the domestic market undersupplied in the past. In fact, Kazakh law expressly permits presidential and governmental decrees banning exports. For example, in the past, the Government has regulated the country's fuel oil supply on the threshold of the heating season.

The Deputy Premier Minister, who serves as the Minister of Energy and Natural Resources, has been charged with implementation of the Resolution, and the Customs Committee of the Ministry of State Revenues will take the necessary steps to fulfill the Resolution. The Ministry of Foreign Affairs has been instructed to notify the Integration Committee of the Euro-Asian Economic Community on the introduction of this temporary ban. In addition, beginning November 1, 2001, regional leaders, together with the Ministry of Energy and Mineral Resources, will be required to inform the Government monthly as to the status of supplies of fuel oil in their regions. */Y. Zhussupov*

UKRAINE

New Criminal Code Seeks to Regulate Certain Economic Crimes

Ukraine's new Criminal Code entered into force on September 1, 2001. While the majority of the innovations in the new code concern issues of prisoners' rights, classification of crimes, elimination of the death penalty, and standards for the consideration by the courts of mitigating circumstances, certain aspects of the new code directly concern crimes of an economic nature.

For example, the code introduces a set of new provisions concerning non-payment of taxes, establishing a three-tiered sys-

tem of liability for such non-payment. Now, an individual or a legal entity can be liable for this crime only if the amount concealed constitutes 1,000 times the minimum monthly wage (*i.e.*, 17,000 Hryvnas, or approximately US \$3,184 at present exchange rates). Increasing levels of liability are introduced for non-payment of taxes of more than 3,000 and then 5,000 times the minimum wage (*i.e.*, US \$9,552 and \$15,920, respectively). Furthermore, criminal liability for non-payment of taxes will no longer be imposed if an individual or legal entity found guilty of non-payment of taxes pays the state all taxes and penalties owed before trial. In the banking sphere, the new code contains certain regulations about illegally opening foreign currency accounts, illegal money transfer operations and operations with debit cards. The new code also introduces new anti-money-laundering provisions. */T. Rogach*

For more on the information contained herein or about Chadbourne & Parke LLP and its affiliated offices throughout the CIS, please contact:

In Moscow

Laura Brank – lbrank@chadbourne.com
Mikhail Rozenberg – mrozenberg@chadbourne.com
Shane DeBeer – sdebeer@chadbourne.com
7-095-974-2424 or 1-212-408-1190

In London

Nabil Khodadad – nkhodadad@chadbourne.com
44-20-7337-8000

Or visit our website – www.chadbourne.com.

To change an address, or to add or remove a recipient from this distribution list, please contact:

Marc Schleifer, Marketing Coordinator
mschleifer@chadbourne.com
7-095-974-2424

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