

Russia

Russia Endorses Kyoto Protocol

After seven years of uncertainty regarding the Russian Federation's ("RF") position on the Kyoto Protocol (the "Protocol"), RF President Vladimir Putin endorsed the first binding global agreement to reduce greenhouse-gas emissions on November 4, 2004. The RF's ratification of the Protocol, named after an ancient city in Japan where the emissions targets were established, triggered its entry into force among its signatories. The RF's approval of the Protocol was key to its realization following rejection by the United States and Australia. The Protocol required ratification by at least 55 of the 186 parties to the United Nations Framework Convention on Climate Change (the organization responsible for developing an international response to the greenhouse gas levels), including by developed countries and countries in transition to a market economy (the "Annex I Parties") representing at least 55% of global emissions as of 1990. As a result of such requirement, although over 100 countries had signed the pact to reduce global warming by cutting greenhouse gas emissions, without the RF's support, the Protocol would not have had a chance to come into force.

Benefit to the RF for Endorsement

Under the Protocol, the Annex I Parties must reduce their emissions of six greenhouse gases to 5.2% below 1990 levels between 2008 and 2012, with varying specific targets based on the particular country. The RF was responsible for 17% of global carbon dioxide emissions in 1990 and at the current time, the RF has already achieved a reduction of 30% below the 1990 level due to the collapse of Soviet-era industries in the 1990s. Thus, compliance with the Protocol should be quite manageable since the RF had already met its terms before the Protocol was approved. In fact, supporters hope that the Protocol's implementation will provide an opportunity for the RF to attract significant investment to modernize its energy sector.

Ratification of the Protocol may financially benefit the RF in two ways. First, the RF may engage in trading carbon credits, selling its unused entitlements to emit carbon dioxide to other de-

veloped countries whose emissions exceed their allowances. Second, the Protocol's system for earning carbon credits will give European countries an incentive to invest in the RF energy sector to both modernize and reduce wasteful consumption. Developed countries may achieve part of their Kyoto commitment by investing in emissions reduction projects in other developed countries, which may prove a more efficient way of earning carbon credits than attempting to reduce emissions from lower levels in their home markets.

Ratification may also benefit the RF politically. President Putin had promised to put ratification of the Protocol on the fast track if the European Union would support the RF's 11-year endeavor to join the World Trade Organization.

Likely Impact

Throughout the internal debate in the RF regarding its position on the Protocol, some detractors vociferously opposed ratification, maintaining that such an agreement would suppress economic growth. Opponents of the Protocol have argued that the expansion of the RF economy will naturally lead to a corresponding proliferation in the emission of carbon dioxide, one of the main gases targeted for reduction, and that limiting such emissions would force the economy to contract. However, according to some sources, the RF gross domestic product (GDP) would have to grow by as much as 9 to 10 percent per year before it would reach the Protocol quotas by 2010. As a comparison, the RF's GDP was 7.3% in 2003, and reached only 4.7% in 2002. The year 2000 represented the only year during which the RF's GDP reached 10%. Between 2000 and 2003, the RF's average GDP growth was 6.78%. Other international experts also speculate that there is little risk of the RF exceeding the Protocol's emission quotas.

Detractors of the Protocol also find support among the Russian scientific community, who point out the lack of evidence linking greenhouse gas emissions to climate change and maintain that the Protocol would have no perceptible effect on the global climate. However, other scientists argue that the Protocol was not intended to solve the greenhouse emissions problems completely, but rather, was meant to represent an initial step in the di-

rection of addressing global warming and more importantly, the ability of the international community to attain mutual cooperation in curbing carbon dioxide emissions. By agreeing to sign on to the Protocol, the RF should benefit financially through increased investment into its energy sector and the sale of carbon credits to other nations, as well as politically.

S. Reizner, Chadbourne & Parke LLP

Liability for Currency Law Violations Toughened

On October 1, 2004, amendments (the "Amendments") to Article 15.25 of the RF Code on Administrative Offences (the "CAO")¹ entered into force. Article 15.25 establishes administrative liability for violations of currency law requirements. The Amendments both expand the list of currency law violations subject to administrative liability and increase the penalties imposed for such violations.

Article 15.25 provides that conducting currency operations which are forbidden by law, as well as conducting currency operations in violation of the Ruble reserve requirement or requirement on the use of a special account,² may trigger a fine on a legal entity or an individual, as applicable. The Amendments sharply increase the minimum amount of such fine, from 10% to 75% of the amount of the currency operation. Similarly, the minimum fine for a violation by a Russian resident of currency law requirements related to the repatriation of funds into Russia was increased from 10% to 75% of the amount of funds not repatriated into Russia. The maximum fine for all of the above violations remains unchanged at 100%.

The Amendments also introduce penalties for several types of currency law violations which previously were not subject to fines. For example, a legal entity or individual may be fined for failing to follow the proper procedures for opening a bank account outside of Russia. In addition, a legal entity may be subject to fines for violating the requirements with respect to the mandatory sale of a portion of foreign currency proceeds. Such violation may now trigger the imposition of a fine on a legal entity in an amount ranging from

75% to 100% of the amount of foreign currency proceeds which were subject to mandatory sale but not sold.

*A. Kelina,
Chadbourne & Parke LLP*

¹ The Amendments were adopted as part of RF Law No. 118-FZ "On Introducing Amendments to the Russian Federation Code on Administrative Offences and the Russian Federation Customs Code," dated August 20, 2004.

² For a review of the new currency law, please see the February 12, 2004 CIS and Central Europe Legal Newswire.

New Chapter of Tax Code Establishes Ceilings on State Duties

A new chapter of the RF Tax Code, which will streamline various taxes and state duties, will take effect on January 1, 2005. The new chapter, Chapter 25.3, summarizes and puts in order numerous rules and regulations on the payment of state duties, fees and levies adopted in Russia since the early 1990s. As a result of the introduction of Chapter 25.3 of the RF Tax Code, more than twenty federal laws will be cancelled and amended. Chapter 25.3 replaces the outdated Law "On State Duty", dated December 9, 1991, as amended, which was one of the "oldest" laws of the new Russia.

One of the most notable changes contained in Chapter 25.3 concerns the maximum allowable amounts for certain state duties. For example, while arbitration court fees (i.e., the state duty payable to state arbitration courts) is currently limited to a maximum amount of 1,000 times the minimum monthly wage (currently 100,000 Rubles, or approximately US \$3,500), the new Article 333.21 of the RF Tax Code directly limits the maximum amount of court fees to 100,000 Rubles regardless of any future changes in the statutory amount of the minimum monthly wage.

Furthermore, while currently no limit is placed on the court fee payable for submission of a lawsuit to the courts of common jurisdiction (currently 1.5% of the amount under dispute) or for notaries' fees for certification/attestation of a contract (currently 1.5% of the amount of transaction), the new Chapter 25.3 will limit both state duties to a maximum of 20,000 Rubles (approximately US \$700) (see the October 11, 2004 issue of the CIS & Central Europe Legal Newswire for a more detailed discussion of the recent decrease in notaries' fees).

S. Volfson, Chadbourne & Parke LLP

Tax Authorities Fight "Russian-Style" Hostile Takeovers

On October 26, 2004, the Russian Federal Tax Service (the "Tax Service") issued Letter No. 09-0-10/4223 (the "Letter"), designed to counteract hostile takeovers through illegal means. Throughout the Russian "corporate wars" of recent years, one of the most "effective" methods of seizing control over a Russian joint stock company has been to replace the target company's management. This was often accomplished by a "parallel" shareholders' decision, which challenged the authority of the lawful management and ultimately led to the registra-

tion of changes in the Unified State Register of Legal Entities (the "Unified Register") held by the territorial tax authorities, indicating the name of the target company's new General Director.

Specifically, Tax Service representatives were entering changes to the Unified Register on the basis of an application from the new General Director requesting to amend the names of the company's management held in the Unified Register. In many cases, the new General Director's application was falsified, which led to numerous disputes between the "new" and "old" management, and in the worst case, even physical battles at the company facilities.

By issuing the Letter, the Tax Service attempted to put an end to such abuses by requiring that any application from a company requesting to change the name of its General Director must be signed not by the new General Director, but by the previous General Director of the company. Only physical obstacles (e.g., death or incapacity) preventing the previous General Director from signing such an application, or a court decision directly specifying the name of the lawful General Director of the company, is precluded from the new rule.

Whether or not this new requirement will be effective in reducing corporate management battles is not yet clear, however, it should close one area of widespread abuse. It is advisable for companies to review the terms of the General Director's employment contract to ensure that the contract provides an obligation on the part of the General Director to "certify" the authority of newly appointed management.

S. Volfson, Chadbourne & Parke LLP

Mandatory Foreign Currency Conversion Rate Decreased

On November 26, 2004, the Board of Directors of the RF Central Bank (the "CBR") approved a decision to establish a new rate for the mandatory conversion into Rubles of foreign currency proceeds received by Russian legal entities. The new rate is equal to 10%, 15% below the previous rate, and will be applicable from the date of the official publication of the decision of the CBR's Board of Directors.

As discussed in the June 20, 2004 CIS and Central Europe Legal Newswire, the CBR is authorized to establish the percentage of the foreign currency proceeds subject to mandatory conversion, up to a maximum amount of 30%, in accordance with the new RF Law "On Currency Regulation and Currency Control," which became effective in June, 2004 (the "New Currency Control Law"). In its Instruction No. 111-I of March 30, 2004, the CBR had set the mandatory conversion rate of foreign currency proceeds at 25%.

The decrease falls within the general goal of the New Currency Control Law to reduce the excessive requirements of the currency control regime in the Russian Federation.

A.Kelina, Chadbourne & Parke LLP