

# Russia

## Energy Charter Treaty. Putin Attempts to Ease EU Concerns over Energy

Vladimir Putin, Russian president, on Thursday tried to reduce tensions between Russia and the European Union over energy, insisting Russia "was, is and always will be" a reliable supplier to Europe.

But he warned that any opening of Russia's own energy market – including opening its gas pipeline monopoly to independent producers, as the EU is pressing for – had to be matched by European countries giving Russian companies access to their energy infrastructure.

Officials at an EU-Russia summit at Mr Putin's summer residence in Sochi on the Black Sea said Russia had made efforts to reduce the frictions sparked by the decision by Gazprom, Russia's gas monopoly, to cut off gas to Ukraine amid a pricing dispute in January.

One European official said Russia had indicated that it might in future be prepared to ratify the Energy Charter Treaty, the international treaty that provides for market-based rules on energy trade, with some conditions. Russia has signed the treaty but never ratified it, saying it is unhappy with some of its provisions.

Officials had warned that a bad-tempered meeting could bode badly for July's summit of the Group of Eight industrialised nations that Russia is hosting in St Petersburg, where energy security is due to be top of the agenda.

But both sides emerged from Thursday's discussions, totalling 10 hours, saying progress had been made.

"For 40 years Russia has been a very reliable partner, and we have complied with our obligations to our European partners on time and in full," Mr Putin said.

But he insisted the relationship had to be "reciprocal". "If our partners expect us to give them some special treatment, if they want us to apply an ab-

solutely liberal policy in terms of producing and transporting energy ... our question is what would you give in return?" he said. If Europe did not give Russia equal access, a "compromise" would have to be found.

Mr Putin's tone differed from his combative stance after a meeting with Angela Merkel, the German chancellor, last month. He said then that Russia was facing barriers "to the west, north and south" and might shift the focus of future energy investments towards new markets such as China.

The two sides also discussed the crisis surrounding Iran's nuclear programme, and insisted their approach was similar. Wolfgang Schüssel, chancellor of Austria, holder of the rotating EU presidency, said: "The EU and Russia share the same objective, that we want to achieve a diplomatic and peaceful solution."

Asked to comment on a hard-hitting speech by US Vice-President Dick Cheney last month attacking Russia's record on democracy, Mr Putin tried to remain above the fray.

"The United States is our major partner, and we value relations with that country," he said. "I am confident that many political forces in the US have the same approach to Russia."

The meeting in Sochi comes against a backdrop of mounting frustration within the EU over Russia's energy politics.

Moscow, now more confident because of high gas prices, continues to brush off EU pressure.

Attempts by Jose Manuel Barroso, European Commission president, to begin "a new energy partnership" with Russia have borne little fruit.

EU leaders have also agreed to forge a common energy policy – but to date internal divisions have hampered the effort. Additional reporting by Daniel Dombey in London.

*Neil Buckley in Sochi,  
The Financial Times*

## Petro-Canada and Gazprom Sign Pact for Baltic LNG Plant

Petro-Canada [TSX:PCA; NYSE:PCZ] and Russian natural gas giant Gazprom have signed a deal for the initial engineering design of a Baltic gas liquefaction plant near St. Petersburg, Russia.

The announcement Tuesday furthers Petro-Canada's ambitious plans to import Russian gas into North America to meet growing demand from consumers and industry.

Preliminary studies of the Baltic plant, expected to cost about \$1.5 billion and start up in 2010, will provide cost and schedule estimates, Calgary-based Petro-Canada said. The two firms will split the \$5-million cost of the preliminary studies. "This is a win-win project for Gazprom and for Petro-Canada," Petro-Canada CEO Ron Brenneman said in a conference call.

The partnership will provide Gazprom with "easy shipping access to the Quebec and Ontario markets" and for Petro-Canada "represents a significant entry into the North American LNG market," Brenneman said.

"Notionally, what we're talking about now is a 50-50 interest" in ownership of the Baltic plant, "but the ultimate partnership in both ends of this project are part of what needs to be determined between now and the end of the year when we finish the preliminary engineering work."

Talks on the Baltic project have been going on for about two years.

Under the Petro-Canada plan, liquefied natural gas from the Baltic plant would be shipped in supertankers to the company's LNG regasification plant in Gros-Cacouna, Que., that – subject to regulatory approvals – Petro-Canada intends to build with partner TransCanada Corp. [TSX:TRP] at a cost of C\$500 million.

Once the liquid gas is regasified, it would be fed into Eastern Canada's natural gas pipeline network for delivery to consumers and businesses in Ontario and Quebec.

"The supply assurance is certainly an important part of any of these projects," Brenneman said.

The proposed plant would be large enough to satisfy needs at Gros-Cacouna, about 500 million cubic feet per day, and Gazprom is contemplating a larger plant that could supply even more, he said.

While Petro-Canada is moving ahead with its LNG plans, another major U.S. natural gas producer is slowing plans for its own LNG import terminal on Cape Breton Island.

Anadarko Petroleum Corp. [NYSE:APC], a company based in Houston, Tex., confirmed Tuesday it will slow construction of its LNG terminal at Bear Head, N.S., as the company continues to negotiate with potential gas suppliers.

Petro-Canada is one of this country's largest oil and gas companies, with major oil and natural gas production in Western Canada and off the East Coast, growing international operations and a national gasoline station network across Canada.

The oil company and others have been seeking approval to build LNG plants in the hopes of creating a new lucrative energy market.

Unlike crude oil, which is a global traded commodity shipped by tanker from producers in one part of the world to consumers thousands of kilometres away, natural gas has traditionally been a continental market, with suppliers and consumers linked by pipelines that criss-cross North America.

With LNG, Russian gas can be liquefied and shipped to North America, while South American or Middle Eastern gas can be transported the same way to California, Louisiana or British Columbia.

Petro-Canada would also like a stake in the production of gas in Russia, but any such investment would not be part of the initial Gazprom deal, Brenneman said.

"We do have an interest ultimately in acquiring the upstream resource that would back the supply that's coming out of the Baltic LNG project. But at this stage we're just talking about taking gas off the general grid that Gazprom can supply."

Another LNG project planned for Quebec, a C\$700-million Rabasca terminal near Quebec City, is backed by Quebec's leading gas distributor, Gaz Metro [TSX:GZM.UN], Calgary-based pipeline company Enbridge Inc. [TSX:ENB; NYSE:ENB] and Gaz de France.

Meanwhile, Irving Oil and Spanish energy company Repsol [NYSE:REP] have proposed a plant for Saint John, N.B.; while other Canadian LNG terminals are planned for the Halifax area and on the West Coast in British Columbia.

Some analysts caution, however, that not all the LNG proposals will develop, in part because of environmental concerns, but also because the companies must secure long-term supplies.

Shares in Petro-Canada were up 84 cents at C\$53.74 in afternoon trading on the Toronto Stock Exchange.

*James Stevenson, The Canadian Press  
March 14, 2006*

## Development of State Cadastral Appraisal

**On 11 April 2006 the Government Issued Resolution No. 206 Amending Certain Acts of the Government in Connection with the Development of State Cadastral Appraisal of Land**

The Resolution, in particular, revises the rules established by the April 2000 Government Resolution No. 316 and states that a state cadastral appraisal of land must take place once every five years, but not more than once every three years.

The cadastral cost of a land plot shall be determined on the basis of the state cadastral appraisal at the time of (i) state cadastral record-keeping of newly-formed land plots and (ii) the changes of category of land, types of permitted use and the area of a land plot.

State cadastral appraisals of land are carried out by the State Agency of Real Estate Cadastre. The Ministry of Economic Development and Trade is empowered to issue methodical guidelines on cadastral appraisals of land.

The Resolution will enter into force on 28 April 2006.

*White & Case LLP*

## Amendments to the Land Code

**On 18 April 2006 the President Signed Federal Law No. 53-FZ Amending the Russian Land Code, the Law "On Enactment of the Land Code" and the Law "On State Registration of Rights to Immovable Property"**

The Law defines land plots in federal, regional and municipal ownership. It sets forth the procedure for state registration of ownership during the delimitation of state ownership to land and provides that disposition of these land plots shall be possible after state registration of ownership is completed.

The Law also sets out the powers of federal and regional authorities to dispose of land plots whose ownership is not yet defined.

The Law invalidates the Law "On Delimitation of State Ownership to Land" and a few other legislative acts.

The Law will enter into force on 1 July 2006.

*White & Case LLP*

## Amendments to the Law on Subsoil

**On 15 April 2006 the President Signed Federal Law No. 49-FZ Amending Certain Provisions of the Federal Law "On Subsoil"**

The amendments address the competence of the regional governmental authorities in the sphere of regulation of subsoil use on their territories. The amended Articles 3(5), 4(14) and 29(7) provide for the distribution of powers between the federal and regional state authorities with respect to the state expert review of mineral reserves and geological, economic and ecological information on subsoil plots.

The Law will enter into force on 1 January 2007.

*White & Case LLP*

## PSA

**14 March 2006 the Government Issued Resolution No. 133 "On the Procedure for the Appointment to and Activity of State Representatives in Steering Committees, Formed Pursuant to Production Sharing Agreements"**

Following the requirements of Article 7 of Federal Law No. 225 "On Production Sharing Agreements", the Resolution sets out the procedure for the appointment of state representatives to steering committees formed to coordinate activities under production sharing agreements, and their dismissal. The Resolution defines the authority of these representatives and the procedure for the adoption of decisions taken by them on behalf of the state.

The Russian Ministry of Industry and Energy is empowered to issue directives to state representatives in the steering committees.

The Resolution entered into force on 14 March 2006 and replaced Government Resolution No. 86 of 2 February 2001 on the same issue.

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## Construction

**On 21 April 2006 the Government Issued Resolution No. 233 "On the Requirements for the Amount of Developers' Own Monetary Funds, the Calculation Procedure of Such**

**Funds, and Standards of Evaluation of the Financial Stability of a Developer's Business**

Pursuant to Article 23 of the December 2004 Law "On Participation in Shared Construction" (discussed in our update for 10-16 January 2005), the financial stability of a developer's business shall be evaluated on the basis of three standards: (i) standard of secured obligations, (ii) standard of purposeful usage of funds and (iii) break-even standard. The Resolution now approves the minimum level of these standards.

Furthermore, the minimum amount of a developer's own funds for attracting monetary funds for shared construction shall be 7% of the funds attracted pursuant to contracts for shared construction.

These standards will apply as of 1 January 2007.

*White & Case LLP*

**On 1 February 2006 the Government issued Resolution No. 54 "On State Construction Supervision"**

The Resolution was issued in accordance with Article 54 of the Town-Planning Code. It sets out the procedure for state construction control and supervision and criteria for classification of objects of capital construction in the following categories: extra dangerous, technically complicated or unique.

State construction supervision is undertaken in respect of (i) construction and reconstruction of objects of capital construction and (ii) capital repair of objects of capital construction. Upon completion of the construction, the authorized state body issues a decision on compliance of the work done with the requirements of technical and other regulations and project documentation.

Pursuant to the Resolution, federal authorities (including, Federal Service for Ecological, Technological and Atomic Supervision and Ministry of Defense) must exercise state construction supervision over the construction of objects connected with use of atomic energy, extra dangerous, technically complicated or unique, defense facilities and those objects, the information on which is a state secret. Regional authorities exercise state construction supervision in all other cases.

The Resolution will come into force ten days after its official publication.

*White & Case LLP*

**On 13 February 2006 the Government issued Resolution No. 83 "On the Adoption of Rules for the Evaluation and Provision of Technical Conditions for the Connection of a Capital Construction to Public Utilities and Rules for the Connection of a Capital Construction to Public Utilities"**

Pursuant to Article 48 of the Town-Planning Code, the Resolution sets forth a new procedure for the connection of a newly-constructed capital construction site to the public utilities (facilities used in processing electricity, gas, and water supplies and water disposal). It regulates the relationship between organizations operating the public utilities, the local authorities and the owners of land plots in connection with the evaluation and provision of technical specifications and connection to the public utilities. It also lists the documents required from contractors for the connection of the sites to the relevant public utilities.

The Resolution entered into force on 3 March 2006.

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**Use of State Geological Data**

**On 12 December 2006 the Ministry of Natural Resources issued Order No. 340 approving the "Procedure and Conditions of Use of State Geological and Other Subsoil Data"**

The Order was registered by the Ministry of Justice on 20 February 2006.

The Order sets forth the procedure and conditions of the use of state geological and other subsoil data. Pursuant to the Order, to receive such data, an interested person or entity must send a request for information to the Federal Agency on Subsoil Use or its regional department (the "Subsoil Agency") in the format approved by the Order. Within 10 days of the application date, the Subsoil Agency will decide (and respond to the applicant) whether to provide access to the geological data and determine the payment charge for the use of such data.

The applicant may be denied access to the requested data if:

- ! the application does not meet the requirements listed in the Order; or
- ! the requested data falls into the list of "data with restricted access" listed in the Order and therefore cannot be provided to the applicant.

A refusal to access open geological data may be challenged in court.

The Order will enter into force from the date of its official publication.

*White & Case LLP*

## **Proposed Amendments to the Limited Liability Company Law Would Eliminate Right of Withdrawal**

The Russian Federation ("RF") State Duma is currently preparing for a second reading of a draft law which would amend the RF Law 'On Limited Liability Companies' (the "LLC Law") (the "Draft LLC Amendments"), significantly affecting the legal status and procedures governing LLCs in the RF. The most significant changes proposed are summarized below.

### **Establishment**

Under the LLC Law, an LLC is liable for the obligations of its founders related to the establishment of the LLC only if the founders' actions are subsequently approved by the general participants' meeting. The Draft LLC Amendments limit the liability of founders to 1/5 of the paid in charter capital of the LLC.

The Draft LLC Amendments would extend the list of issues to be approved by the founders of an LLC at the foundation meeting, stipulating that the founders should elect at the meeting, if required, the audit committee (or auditor) and the external auditor. Also, the majority required to elect such auditing committee (or auditor) and the external auditor, as well as the management bodies of the LLC, would be increased from 2/3 to 3/4 of all of the founders' votes.

The Draft LLC Amendments establish that if a founder of the LLC does not make the required contribution to the charter capital within one year after the LLC's establishment, then the unpaid portion of the participatory interest would be transferred to the LLC and sold within six months after such transfer to other participants or, if not prohibited by the LLC's charter, to third parties.

### **Constituent Documents**

Under current Russian law, an LLC must have two constituent documents, which consist of the foundation agreement and the charter. According to the Draft LLC Amendments, the con-

stituent document of an LLC will comprise only the charter. In addition, the Unified State Register of Legal Entities, rather than the charter, will include information on the size and nominal value of the participants' participatory interest in order to avoid the need to amend the charter each time there is a change in the participatory interests. The Draft LLC Amendments propose to replace the foundation agreement with an "Agreement on the Establishment of a Company" (the "Agreement on Establishment"), similar to the Law on Joint Stock Companies, which would not be considered a constituent document. The Agreement on Establishment would be executed by the founders and determine, inter alia, the joint activity of the founders related to the establishment of the LLC, the size of the charter capital, the nominal value of the participatory interests, and the procedure and schedule for the payment of contributions.

### **Reorganization**

The LLC Law currently permits the reorganization of an LLC into a joint stock company, a different liability company or a manufacturing cooperative. The Draft LLC Amendments would add partnership to the list of permissible entities into which an LLC may be reorganized.

### **Elimination of Right of Withdrawal**

One of the most significant changes proposed by the Draft LLC Amendments is the deletion of Article 26 from the LLC Law, which would eliminate the right of a participant to withdraw from the LLC at anytime and receive the actual value of its participatory interest in the LLC. If Article 26 were removed, should a participant decide to leave the LLC, its participatory interest must be sold to the other participants, third parties or the LLC, depending on the circumstances, in compliance with the right of first refusal rules. The elimination of this provision will likely encourage investors, particularly in closely held companies, to set up companies in the LLC form, instead of the joint stock company form, as the LLC form provides greater flexibility to shareholders in terms of corporate governance and eliminates the need to comply with securities law requirements. In the past, some investors have avoided the LLC form due to concerns about the possible economic impact of another participant withdrawing from the company and through a put of its participation interest to the company.

### **Right of First Refusal**

The Draft LLC Amendments would affect the right of first refusal rules. In particular, the Draft LLC

Amendments clarify that the charter of an LLC may (i) provide for a disproportionate right of first refusal of the participants and (ii) establish a preliminary price at which the right of first refusal may be exercised by a participant or the LLC (currently, the right of first refusal may only be exercised at the price established for a third party sale). These rules may be provided for in the charter of the LLC at the time of its establishment or in amendments to the charter upon approval by a unanimous decision of the general participants' meeting. The Draft LLC Amendments indicate that if a participant does not exercise its right of first refusal, the other participants may purchase such participatory interests in proportion to their respective participatory interests. Such changes would provide greater flexibility to owners to agree on an exit strategy.

#### Interested Party Transactions

The Draft LLC Amendments propose a number of changes to the interested party rules, most of which clarify existing provisions. One of the newly proposed rules would permit the general participants' meeting of the LLC to pre-approve an interested party transaction which may be concluded in the future. In such case, the general participants' meeting must agree on a maximum threshold amount for the transaction, and the decision would be effective until the next general participants' meeting. This again would provide greater flexibility to owners, who are often hampered by the interested party transaction rules which create uncertainty about subsequent approval of contemplated agreements with the owners, such as loan agreements or management support agreements.

#### General Director Liability

The Draft LLC Amendments would make the general director jointly liable for increases in the charter capital made by increased valuation of the company's property. The general director must sign the application for the registration of the amendments to the charter of the LLC related to such increases in the charter capital. This application would serve as confirmation that the company has fulfilled its obligation related to such increases in the charter capital of the company (i.e., determination of the amount by which the charter capital may be increased through increased value of the company's property). Together with the company, the general director will be jointly liable in the amount of the value of such portion

of the property which has not been transferred to increase

the charter capital within three years after the registration of the increase of the charter capital.

The Draft LLC Amendments are currently being prepared for their second reading in the Russian State Duma, which is expected to occur some time near the end of June.

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### Factoring Licenses May Be Abolished

The RF Duma is considering an amendment to the Civil Code that, if ratified, will resolve an inconsistency in Russian law and open the door for any commercial entity to engage in factoring.

On April 14, 2006, the RF State Duma carried out the first reading of a draft federal law that would abolish the requirement in the RF Civil Code that factoring companies hold licenses (the "Factoring Amendment").

Factoring, which is also referred to as accounts receivable financing, is the selling of a company's accounts receivable at a discount to a factor who then assumes the credit risk of the account debtors and receives cash as the debtors settle their accounts.

Pursuant to the RF Civil Code, a company must hold a factoring license in order to engage in factoring. However, RF Law No. 128-FZ "On Licensing Certain Types of Activities", dated August 8, 2001 (the "Licensing Law"), does not require factoring companies to apply for such license. Thus, no agency exists to issue factoring licenses. Due to this inconsistency in the law, participation in the factoring market has been limited to banks, which may trade in accounts receivable under the terms of their banking licenses.

If adopted, the Factoring Amendment would eliminate the existing conflict between the relevant provisions of the RF Civil Code and the Licensing Law and, therefore, would likely encourage the entry of new major factoring companies and suppliers into the Russian receivables market. According to Andrey Sharonov, the Head Deputy of the RF Ministry for Economic Development and Trade, the Factoring Amendment could result in an increase in the volume of the factoring market from 0.5% of the RF's GDP in 2005 to 3% of the RF's GDP in 2008.<sup>1</sup>

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<sup>1</sup> Please see <http://www.sostav.ru/print/rus/2006/17.04/news/72>.

## The Russian Depository Receipt -Russia May Permit Distribution of Foreign Securities

The RF State Duma is currently preparing for the first reading of amendments to the law "On the Securities Market" which would provide for the introduction of Russian Depository Receipts ("RDR") in Russia (the "Draft RDR Amendments").

Currently, non-Russian or foreign securities may only be publicly circulated or issued on the Russian securities market if a respective prospectus is registered, which, in turn, is only possible where a relevant international treaty with the issuer's country has been entered into. Since no such international treaties have been entered into, foreign securities, in practice, may not be publicly issued or sold in Russia. Thus, the Draft RDR Amendments would permit foreign securities to be circulated on Russian exchanges in RDR form, a long anticipated opportunity for foreign issuers.

The RDR would be very similar to the American Depository Receipt (ADR) and Global Depository Receipt (GDR): an RDR would certify entitlement to a certain amount of shares or bonds of a non-Russian issuer and confirm the right of the holder to demand a respective amount of shares (bonds) from the issuer. The Draft RDR Amendments set forth requirements for RDR issuers comparable to those for ADR and GDR issuers. An RDR issuer may choose to enter into an agreement with any issuer of securities represented by RDRs or proceed unsponsored, unless otherwise required by foreign law.

However, certain of the provisions of the RDR Amendments would require further input from the Federal Financial Markets Service ("FFMS"), without which the law would not work. In particular, this relates to two areas:

**Foreign Custodian.** The FFMS must approve a list of permissible foreign custodians from whom shares may be issued in RDR form by a Russian custodian.

**Foreign Stock.** Only stock which is traded on foreign exchanges included in the list to be approved by the FFMS may be used to issue RDRs.

In addition, the Draft RDR Amendments set forth the following requirements that local custodians must meet in order to become an RDR issuer:

- (i) local custodians must be established under the laws of the Russian Federation and be licensed to operate in Russia;
- (ii) custodians must hold an account with an "admitted foreign custodian" (i.e., one included in the list to be approved by the FFMS), and all rights of a custodian as an RDR issuer with respect to the represented shares must be properly reflected on such account;
- (iii) a custodian must have been operating in Russia for three years.

The RDR issuance procedures would include the following 3 steps:

- (1) adoption of the decision on RDR issuance, which would include procedures for exercising voting rights of the RDRs;
- (2) state registration of the RDR issuance; and
- (3) placement of the RDRs.

The RDR placement procedures would contain some unusual features in comparison with other securities. For instance, in contrast to the requirements for the placement of other Russian securities, where an issuer is required to complete a placement within a one-year term and register a placement report afterwards, an RDR would not be held to such one-year term. The RDR issuer would only be required to first state the maximum amount of RDRs that it will place, and then quarterly register a placement report for the quarters in which it decides to place the RDRs. Such report must contain information on the quantity of RDRs placed in a certain reporting period, the outstanding amount of RDRs to meet the maximum quantity stated by the issuer, and the quantity of securities represented by RDRs.

The Draft RDR Amendments are still in the first stages of development, but are expected to be adopted by the end of 2006. /

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