

COMMITTEE INSIGHTS

Soviet Union*

Several recent Soviet laws and decrees have had the effect of broadening the potential for foreign investment in the Soviet Union and establishing a legal framework for the stability and development of foreign investment in the USSR. This recent legislation includes Soviet laws providing for the expansion of permitted foreign ownership in joint ventures, the establishment of a commercial exchange rate for the ruble, the establishment of legal frameworks for securities, joint stock and limited liability companies, and banks and banking activities in the Soviet Union. In addition, there has been substantial legislation relating to business and entrepreneurial activity by the Russian Republic.

The potential for foreign investment in the USSR and foreign control of Soviet enterprises was expanded in a recent decree by the president of the USSR. In a decree dated October 26, 1990, President Gorbachev provided that foreign investors, both legal entities and individuals, may establish ventures in which foreign investment constitutes 100 percent of the ownership of property.¹ In addition, the decree provided for the establishment of joint enterprise zones in regions of the USSR in order to promote joint venture activity. The decree also guarantees foreign investments in the USSR the same legal status and protection accorded Soviet ventures, organizations, and citizens.

Also in the Fall of 1990, a decree by the President of the USSR introduced a commercial exchange rate for the ruble.² The decree establishes a new commercial exchange rate for the ruble of 1.8 rubles per U.S. dollar as of November 1, 1990. This commercial exchange rate will only apply to foreign trade transactions, foreign capital investments in the USSR, Soviet investments abroad, and

*Prepared by Walter H. White, Jr., Partner, Quarles & Brady, Milwaukee, Wisconsin, and Co-Chair, Soviet Law Committee, ABA Section of International Law and Practice, and Rebecca A. Speckhard, Associate, Quarles & Brady, Milwaukee, Wisconsin.

1. Decree of the President of the USSR: Foreign Investments in the USSR, Oct. 26, 1990.

2. Decree of the President of the USSR: The Introduction of a Commercial Exchange Rate for the Ruble into Foreign Currency and Measures for Establishing an All-Union Currency Market, Oct. 25, 1990.

noncommercial transactions performed by legal entities. While the black market more accurately values the ruble at approximately 20 rubles per U.S. dollar, the new commercial exchange rate is somewhat more favorable to the foreign investor than the prior official exchange rate, which still applies to noncommercial transactions such as tourist exchanges, and was established for the express purpose of attracting and encouraging additional foreign investment. The decree also grants the State Bank of the USSR the power to adjust the exchange rate in response to changes in the value of foreign currency and other factors.

In addition, the decree provides that as of January 1, 1991, enterprises and organizations that are legal entities pursuant to Soviet legislation have the right to buy and sell foreign currency for rubles at the effective exchange rate of the currency market. This rate of exchange applies to currency transactions between and among banks, in currency markets, auctions, and other forms permitted by legislation. The Council of Ministers of the USSR is given the power to execute measures necessary to the implementation of this decree.

In the Summer of 1990 the USSR Council of Ministers adopted a Regulation on Joint Stock Companies and Limited Liability Companies and a Regulation on Securities. The Regulation on Joint Stock Companies and Limited Liability Companies establishes the legal basis for the creation of joint stock companies and limited liabilities companies, and defines their rights and duties under the law.³ It prescribes procedures and requirements for the establishment, registration, management, and liquidation of the company, and for the issuance of shares or bonds by the company. The regulation also allocates power and responsibility among various bodies and participants (such as the general meeting of shareholders, the observation council, the executive body and its chairman) within the joint stock or limited liability companies, much as the various state business corporation acts in the United States do. In addition, the regulation provides a mechanism whereby a Soviet state enterprise may, with the approval of its personnel and responsible state body, be converted into a joint stock company.

The Regulation on Securities establishes a regulatory framework for a variety of securities such as stocks, bonds, state treasury debts, savings certificates, and promissory notes.⁴ It defines each form of securities, prescribes in broad outline the form and properties of each security, discusses the types of entities which may issue and acquire the security, and outlines the rights of and restrictions on the holders of the security. The decree also provides for the registration of all securities with either the USSR Ministry of Finance, local ministries of finance, or the USSR State Bank.

3. *Polozhenie ob aktsionernykh obshchestvakh i obshchestvakh s ogranichennoi otvetstvennost'iu* (Regulation on Joint Stock Companies and Limited Liability Companies), pursuant to a Decree of the Council of Ministers of the USSR, June 19, 1990, No. 590, *Ekonomika i zhizn'*, No. 27, July 1990, at 12-14.

4. *Polozhenie o tsennykh bumagakh* (Decree on Securities), pursuant to a Decree of the Council of Ministers of the USSR, June 19, 1990, No. 590, *Ekonomika i zhizn'*, No. 29, July 1990, at 14.

Finally, banking regulations published in December of 1990 provide for the establishment of a banking system similar to those operating in the West. The Law on the State (*Gosudarstvenii*) Bank of the USSR establishes the State Bank of the USSR as the exclusive regulator of banks and banking activities in the USSR.⁵ It appoints the State Bank of the USSR to the position of central bank for the country, and provides that the State Bank of the USSR and the central banks of the union republics operate within a single centralized system with a single currency. The law also provides that the State Bank will represent the USSR in its dealings with the central banks of other nations.

The law gives the State Bank broad responsibility over such matters as the stability of the monetary system, the protection of creditors and depositors, the setting of interest rates and required reserves, regulating monetary supply in accordance with guidelines set by the USSR Supreme Soviet, servicing the sovereign debt, and regulating the ruble's exchange rate in relation to foreign currencies. In addition, the State Bank has the responsibility for the licensing, registration, and general supervision of commercial banks. It also acts as a lender to commercial banks. In response to the provision delegating responsibility for set interest rates to the State Bank, the State Bank has recently raised interest rates to 6 percent from the previous 2 percent.

Accompanying the law defining the role of the USSR State Bank is the Law on Banks and Banking Activity, which lays the legal foundation for the banking activity in the Soviet Union.⁶ It defines the term "bank" and introduces the concept of the "commercial bank," and establishes their sphere of operations and permitted activities.

Any citizen or legal entity, except for certain political figures, may establish a commercial bank. However, the portion of start-up capital attributable to any one contributor may not exceed 35 percent of the total. A commercial bank can have foreign investors, but if it does, one of the foreign participants must be a bank. Banks established with foreign capital must also satisfy additional licensing requirements.

The regulations provide that commercial banks will be independent of the executive and administrative organs of the state. Banks are not liable for state debts, nor, absent a specific commitment, is the state liable for banks' debt.

The regulations establish control over the banking system through licensing and registration requirements. Commercial banks must be licensed by the central bank of the union republic in which they operate, or if they operate throughout the Soviet Union, by the State Bank of the USSR. In order to receive a license,

5. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik: O Gosudarstvennom banke SSSR* (Law of the Union of Soviet Socialist Republics: On the State Bank of the USSR), pursuant to a Decree of the Supreme Soviet of the USSR, Dec. 11, 1990, *Izvestiia*, Dec. 18, 1990, at 3.

6. *Zakon Soiuza Sovetskikh Sotsialisticheskikh Respublik: O bankakh i bankovskoi deiatel'nosti* (Law of the Union of Soviet Socialist Republics: On Banks and Banking Activity), pursuant to a Decree of the Supreme Soviet of the USSR, Dec. 11, 1990, *Izvestiia*, Dec. 18, 1990, at 3-4.

the commercial bank must, among other things, demonstrate the professional competence of its management. In addition to the general licensing requirement, commercial banks that intend to carry out transactions in foreign currency must be licensed to do so by the State Bank of the USSR. Also, commercial banks must be registered with either the central bank of the applicable union republic or the State Bank of the USSR.

The regulations also provide for capitalization requirements. Capitalization requirements for commercial banks are set by the State Bank of the USSR. However, the regulations provide that union republic central banks may establish additional requirements relating to the capitalization of commercial banks operating within their jurisdiction.

The regulations further provide that commercial banks may join together in associations for purposes of coordinating their activities and furthering their interests.

In addition to these Soviet laws, there has also been substantial legislation relating to business and entrepreneurial activity at the level of the Russian Republic. Regulations on joint stock companies, enterprises and entrepreneurial activity, and a law on property all came into effect on January 1, 1991.

In December of 1990, the Council of Ministers of the RSFSR adopted a Regulation on Joint Stock Companies which establishes a legal framework for companies operating on the territory of the RSFSR.⁷ The regulation differs from the Soviet law on joint stock and limited liability companies in that it permits foreign entities to participate in the founding of a joint stock company. It also requires all stocks to be registered, whereas the Soviet law permits stocks to be issued in bearer or registered form.

Also in December of 1990, the Supreme Soviet of the RSFSR adopted a Law on Property.⁸ This law is significant in that it permits private ownership of land, both by domestic and foreign entities. It also prohibits the government from differentiating between property on the basis of the type of its ownership.

Finally, a Law on Enterprises and Entrepreneurial Activity adopted in December of 1990 attempts to create the legal framework for entrepreneurial activity within the RSFSR.⁹ However, the law is inconsistent in some respects with other legislation and has left areas of confusion. For instance, it provides that enterprises must register with the local soviet of people's deputies, while the Regu-

7. *Polozhenie ob aktsionernykh obshchestvakh* (Regulation on Joint Stock Companies), pursuant to a Decree of the Council of Ministers of the RSFSR, Dec. 25, 1990, No. 601.

8. *Zakon Rossiiskoi Sovetskoi Federativnoi Sotsialisticheskoi Respubliki: O sobstvennosti v RSFSR* (Law of the Russian Soviet Federative Socialist Republic: On Property in the RSFSR), pursuant to a Decree of the Supreme Soviet of the RSFSR, Dec. 24, 1990, No. 443-I.

9. *Zakon Rossiiskoi Sovetskoi Federativnoi Sotsialisticheskoi Respubliki: O predpriiatiakh i predprinimatel'skoi deiatel'nosti* (Law of the Russian Soviet Federative Socialist Republic: On Enterprises and Entrepreneurial Activity), pursuant to a Decree of the Supreme Soviet of the RSFSR, Dec. 25, 1990.

lation on Joint Stock Companies requires registration with the Ministry of Finance of the RSFSR. In addition, the law defines limited partnerships and closely held joint stock companies identically, leaving an unclear distinction between the two.

The advent of legislation on business and entrepreneurial activity at the Russian Republic level has expanded the opportunity for the development of business and foreign investment in the RSFSR. However, the applicability and enforceability of laws of the RSFSR that conflict with provisions of Soviet law have not yet been clarified.

