Interest Rate Limits

National Bank of Ukraine Resurrects Interest Rate Limits for Foreign Loans

By Peter Teluk and Kateryna Kokot
(Squire, Sanders & Dempsey L.L.P.)

On October 15, 2009 the National Bank of Ukraine (NBU) enacted Regulation No. 614, "On Certain Issues of Registration of Loan Agreements in Foreign Currency Executed Between Resident Borrowers and Nonresidents." NBU Regulation 614 brings back to life limits on maximum interest rates for foreign loans imposed by the NBU in 2004 and subsequently suspended in the fall of 2008. The regulation and interest rate limits went into effect on November 15, 2009.

Old Rule on Maximum Interest Rates Brought Back to Life

NBU Regulation 614 cancelled NBU Regulation 294. Pursuant to Regulation 294, on October 27, 2008 the NBU lifted the limits on interest rates for loans granted

Continued on page 17

PUBLISHER: Gary A. Brown, Esq.
MARKETING: Jon Martel
SPECIAL INTERVIEWS: Scott P. Studebaker
PRODUCTION ASSISTANCE: Dana Pierce

ADVISORY BOARD:
Bruce W. Bean, Esq., Chair, ABA Russia-Eurasia Committee
Laura M. Brank, Esq., Chadbourne & Parke
Scott Brown, Frishberg & Partners, Kiev
Irina Dmitrieva, White & Case, Moscow
Erlan Dosymbekov, Ernst & Young, Baku
Courtney Fowler, PricewaterhouseCoopers, Almaty
Leigh Ganchan, Haynes and Boone LLP, Houston
Dr. Marshall I. Goldman, Harvard University, Russian Research Center
Max Gutbrod, Baker & McKenzie, Moscow
Jonathan H. Hines, Dewey & LeBoeuf LLP
Scott Horton, Human Rights First, New York
Alexander Marquardt, Esq., Kramer Levin Naftalis & Frankel
Petr V. Medvedev, Ernst & Young, Moscow
Eric Michailov, White & Case, Moscow
John H. Morton, formerly Hale and Dorr
Adam Mycyk, CMS Cameron McKenna, Kiev
Maureen O'Donoghue, Ernst & Young, Moscow
Robert C. Odle, Jr., Esq., Weil, Gotshal & Manges
Bill J. Page, Deloitte & Touche, Moscow
Vassili Salei, Borovtsov & Salei Law
John Sheedy, Esq., Orrick LLC, Moscow
Alice Sidorow, KPMG, Moscow
Robert Starr, Esq., Salans
Michael A. Sturdivant, Deloitte & Touche, Almaty
Saltanat Suleimenova, PricewaterhouseCoopers, Almaty
Bate C. Toms, B.C. Toms & Co.
Andrey Zelenin, Lidings Law Firm, Moscow

Published 12 times per year by WorldTrade Executive, a part of Thomson Reuters, P.O. Box 761, Concord, MA 01742
Phone: (978) 287-0301; Fax: (978) 287-0302; E-mail: info@wtexec.com; Website: http://www.wtexecutive.com
Copyright © 2009 Thomson Reuters, Rights of reproduction and distribution of any article contained herein are reserved. (ISSN 1067-635X)

agreement with a licensed depositary for servicing the issuance of electronic shares and (ii) an agreement with a licensed custodian for opening securities accounts for owners of shares subject to conversion.

6. On the shareholder register termination date, the shareholder register is transferred to the custodian.

7. The JSC prepares a global certificate of shares subject to conversion and deposits it with the depositary, which then generates the electronic shares.

8. After the electronic shares are generated, the JSC instructs the depositary to transfer the shares to accounts of the JSC and the custodian and instructs the custodian to credit shares to the shareholders' securities accounts.

Peter Teluk (pteluk@ssd.com) is the European Partner with Squire, Sanders & Dempsey L.L.P. in Kyiv. Dmytro Sakharuk(dsakharuk@ssd.com) is an Associate with Squire, Sanders & Dempsey L.L.P. in Kyiv. Volodymyr Smelik (vsmelik@ssd.com) is an Associate with Squire, Sanders & Dempsey L.L.P. in Kyiv.

Ukraine *(from page 3)*

by nonresidents to Ukraine-based residents for longer than one year. Limits were lifted for loans in non-Ukraine currency of the first group of the NBU Classifier of Foreign Currencies, which, *inter alia,* includes US dollars, euros, British pounds, Japanese yen and other convertible currencies that are traded on the major global financial markets (First Group of Foreign Currencies). In September 2008, the NBU decided to apply the interest rate limits only to short-term foreign loans — i.e., loans that did not exceed one year. The new maximum interest rate for short-term loans was established at 11 percent per annum for both fixed and floating interest rates.

By cancelling the maximum interest rate limits, the NBU responded to the rising cost of borrowing on international financial markets as well as the lack of sufficient credit resources resulting from the global financial crisis. However, starting on November 15, 2009 the old limits that were in force before October 27, 2008 will be valid again. In particular, for loans in the First Group of Foreign Currencies the following maximum interest rates will apply:

For fixed interest rates:

- 9.8 percent per annum if the term is less than one year;
- 10 percent per annum if the term is from one to three years; and
- 11 percent per annum if the term exceeds three years.

For floating interest rates the maximum is the London Interbank Offered Rate (for three-month deposits in US$) plus 750 basis points.

For loans in other currencies (the second and third groups under the NBU Classifier of Foreign Currencies) the maximum rate is 20 percent per annum. The second group of foreign currencies includes, *inter alia,* Russian rubles, Polish zlotys, Turkish liras and other currencies that, though convertible, are not widely used in international transactions and are not traded on the major global financial markets. The third group of foreign currencies includes, *inter alia,* Egyptian pounds, New Taiwan dollars and other currencies that are not convertible on the international financial markets.

Loan Agreements Registered Before the Return of Interest Rate Limits

Loan agreements registered with the NBU before November 15, 2009 will enjoy the flexible rules on interest rates established by NBU Regulation 294. However, if the parties introduce changes to the loan agreement and such changes have to be registered with the NBU (e.g., a change in the amount of the loan) after November 15, 2009, the parties must adjust the interest rate to the maximum rate established by the NBU. Otherwise, the NBU will not register changes to the loan agreement.

The maximum interest rate adjustment rule does not apply to the following changes to a loan agreement: (i) change in the name, address or banking details of the Ukraine-based borrower or foreign lender; and (ii) assignment of debt to a nonresident.

Important Considerations When Extending a Foreign Loan

NBU Registration of Foreign Loans

Loan agreements in foreign currency executed between residents of Ukraine and nonresidents must be registered by the NBU. Subject to certain exceptions, such loan agreements go into effect after their registration with the NBU.

Registration of the loan agreement is evidenced by a registration certificate issued by the respective NBU territorial department. A registration certificate is valid for the entire term of the loan agreement, provided that the resident borrower receives the loan or a portion of the loan within 180 days from the date the registration certificate is issued.

Resident borrowers must have the loan agreements registered before they can receive loan funds. If registration is not performed, the Ukraine-based borrower will be

Continued on page 18

Ukraine *(from page 17)*

subject to a fine equal to 1 percent of the loan funds received without NBU registration. No repayment of a loan can be made without NBU registration of the loan agreement.

Maximum Interest Rate Peculiarities

Calculations to determine whether the interest rate set forth in the loan agreement corresponds to the limits imposed by the NBU should also take into account the amount of penalties (whether realized or not), commissions (subject to certain exceptions such as commission fees paid to the servicing bank in Ukraine and to the nonresident bank) and other contractual fees.

If Ukraine residents carry out projects of strategic importance to the economy of Ukraine and such projects require loans with interest rates that exceed the maximum rate established by the NBU, the NBU may consider allowing such interest rates on a case-by-case basis.

Peter Teluk (pteluk@ssd.com) is the European Partner with Squire, Sanders & Dempsey L.L.P. in Kyiv. Kateryna Kokot (kkokot@ssd.com) is an Associate with Squire, Sanders & Dempsey L.L.P. in Kyiv.

UZBEKISTAN

Uzbekistan Changes PSA Rules

By Ilya Kedrov

On August 28, the Uzbek parliament approved an amendment to the Tax Code eliminating benefits for foreign participants in Production Sharing Agreements (PSAs). They will now pay the same profit, land, water resource and uniform social taxes as do Uzbek residents, unless PSA provisions provide for differing payment levels. For foreign companies, the amendment also introduces a 25 percent excise tax on hydrocarbon raw material from custom costs equal to Uzbeks participating in PSAs. In addition, irrespective of the PSA conditions, resident subsoil royalty rates will apply to foreigners, meaning those rates will increase from 4.1 percent to 30 percent. Investors already operating in the country under PSAs will start to pay the excise tax only after ten years from the date the agreement commenced.

Uzbek authorities are tightening the tax regime for foreign oil companies operating in the country under the provisions of production sharing agreements (PSAs). On August 25, the Senate of the Uzbek Oliy Majlis (parliament) adopted amendments to the country's *Tax Code* eliminating incentives for foreign PSA participants. The amendments revise Article 256 of the *Tax Code* and aim to create equal conditions of tax and royalty payments, as well as hydrocarbon excise duties for both foreign investor and Uzbek resident PSA members.

PSA participants will now pay profit, land, water resource and uniform social payment taxes on an equal basis with Uzbeks unless the PSA specifies concrete alternative rates of taxation. A gas excise of 25 percent is also introduced for foreign companies from customs costs, equal to resident PSA participants. In addition, irrespective of PSA conditions, authorities will charge the tax on subsoil use (royalty). With acceptance of the amendments, that rate increases from 4.1 percent to 30 percent. For investors in already operating PSAs, the excise tax payment will start only after ten years from the agreement's date of introduction. The authorities have yet to comment on royalty revisions.

In recent years, foreign investors in PSA projects throughout the former Soviet Union regularly have had to make concessions to the authorities. However, the main target was usually the project ownership structure, rather than the tax regime. Sakhalin-2 shareholders in Russia had to relinquish a controlling stake to Gazprom. Kazakh leadership forced Eni (Italy) and its partners to increase the share of state oil and gas company Kaz-MunayGaz (KMG) in the offshore Kashagan development project. At the same time, Astana introduced early last fall an oil export tax affecting only companies that had no protection in the form of a PSA.

It is virtually impossible to evaluate the financial and legal implications or the intentions of the Uzbek authorities because PSA participants are not willing to disclose the terms of their relationships with the government.

Who will the New Tax Mode Affect?

Currently, Uzbek authorities have allocated 44 subsoil blocks for exploration by foreign investors. From these, foreign companies have received licenses on 23. The capacities of state oil and gas holding Uzbekneftegaz (UNG) provide for the production of about 60 billion cubic meters of natural gas and 8 million tons of crude oil a year.

However, Uzbekistan does not have many PSAs. Most preliminary agreements signed by Uzbekistan with foreign partners contain a provision providing that the