Investment Funds *(from page 16)*

and see also *Press Conference with Anatoly Chubais and Dmitry Vasiliev*, Official Kremlin International News Broadcast, September 1, 1995.

3 Edict of the President of the Russian Federaion No. 765 dated 26 July 1995 "On Additional Measures on Raising the Effectiveness of Investment Policy of the Russian Federaion," Article 1.

4 Decree of the Federal Commission on Securities and Captial Market with the Government of the Russian Federaion No. 15, dated October 18, 1995 "On the Adoption of Model Emission Prospectus of Investment Shares of a Share Investment Fund."

5 *See* Decree of the Federal Commission on Securities Captial Market with the Government of the Russian Federaion dated October 10, 1995 No. 12 "On the approval of tempoary statute on the composition and structure of assets of share investment funds."

6 *See* footnote 2. ❑

Amendments to the Civil Procedure Code

by Daniel J. Rothstein

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One of the greatest fears of foreign organizations operating in Russia is to become involved in litigation in local courts. Underdeveloped substantive law, a court system historically discredited for being subject to interference by the ruling communist party and today's corruption, increases the uncertainty and risk connected with any lawsuit.

Amendments Became Effective in January

The first major amendments to the Civil Procedure Code (CPC) since 1988 went into effect at the beginning of January, 1996. The amendments are an important step toward rationalizing litigation in Russian courts and establishing the rule of law.

Russia's civil courts primarily decide cases involving an individual on at least one side of the dispute. Thus, a foreign legal entity, or its subsidiary, is most likely to be summoned to civil court as a defendant against a disgruntled employee, or a person injured in an accident, or by the company's products. (Lawsuits between companies or other "organizations" are generally handled by the state arbitration courts, which apply a separate procedural code from the CPC.)

The amendments discard much of the CPC's paternalism and proclaim for the first time the adversarial contest, rather than "socialist legal consciousness," as the basic guide to civil court proceedings. Thus, each party bears primary responsibility for prosecuting its own case. The court has been mostly relieved of its pre-amendment duty to actively defend the parties' rights, for example, by requiring presentation of evidence even without a request by either party. Now the court decides the dispute as presented by the parties.

Similarly, if the plaintiff asks to drop the case, the court is no longer required to inquire into whether he is needlessly relinquishing his rights, unless there are signs of coercion or fraud.

This shift in the court's role suggested by the amendments may be mitigated by lingering traditions and some provisions that leave broad discretion to the court. For example, the court is required, "when necessary," to "propose" to the parties to present specific evidence. This provision was contained in the previous version of the CPC and has been confirmed by the amendments.

Loser Pays Legal Fees

The revised CPC provides that the court must order the losing party to pay the winning party "reasonable" attorney's fees. Previous absolute limits on awards of attorney's fees have thus been removed. The new rule, which follows the rule prevailing in England and Europe (as opposed to the American rule that each side pays its own legal fees), increases the risk for both sides and tends to encourage settlement of disputes rather than initiating or prolonging litigation.

The amendments introduce a new form of expedited court procedures for pursuing claims based on certain types of fixed and documented monetary obligations, such as wages or an amount due under a written contract, promissory note, or check.

Under the expedited procedures, if the defendant does not contest the claim within twenty days, the court will issue a decision for the plaintiff immediately, i.e., on the basis of documentary evidence and without conducting usual preliminary procedures or holding a trial. While the new expedited procedures will not apply to many large transactions, these procedures could have a positive impact on the respect for contracts on the grassroots level.

Penalties for Frivolous Suits, Abuse of Process

The CPC amendments include a number of provisions that should enhance discipline and efficiency in the courts. For example:

- The court can now rule that a party that disobeys a court order to produce certain evidence is considered to have admitted the facts allegedly demonstrated by the withheld evidence;
- The court can impose penalties on a plaintiff that brings a frivolous lawsuit, a defendant that unreasonably opposes a lawsuit, or any party that does not cooperate with the court in speedily resolving the lawsuit;
- The amendments clarify the court's means—including decision by default on particular questions or the

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entire case—to deal with the widespread failure of parties to appear at court sessions; and

- A basic rule of court administration has been added to the CPC's rules of appellate procedure: a party that does not present available evidence to the trial court cannot have a second chance by trying to present that evidence on appeal.

Ex Parte Meetings Still Permitted

It would be unrealistic to try to totally overhaul civil procedure overnight. Accordingly, the CPC revisions are ambitious but not drastic. However, one necessary change that was not made stands out clearly. The CPC reaffirms procedures that allow the court to meet with each party separately without the opposing party's knowledge.

Under the new amendments, the court has broader powers to deal with frivolous suits and parties who hide evidence or fail to appear in court.

In most legal systems, such conduct can be grounds for disbarring a lawyer or removing a judge, unless an emergency makes *ex parte* contacts unavoidable. This fundamental protection does not exist anywhere in Russian legislation, and the Federal Assembly missed a chance to introduce it through the CPC. ❑

Ending an Employment Relationship: Employee Rights and Practical Considerations

by Dmitri Pentsov and Glenn S. Kolleeny

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EXECUTIVE SUMMARY: As foreign investment in the Russian Federation expands, an increasing number of Western companies are establishing representative offices, branches and subsidiaries in Russia or acquiring control of existing Russian companies. Most companies are unaware that in many respects, Soviet labor law continues to be the law of the land in Russia. There is no concept of employment at will, as it is known in the United States. Employment can only be terminated upon a specific statutory ground and in compliance with legislation requiring mandatory notice, preferences and severance.

The most useful provision of Russian law is Article 33(1) of the Labor Code, which permits termination of employment on the basis of the liquidation or a reduction of employees or positions. This provision will likely be used when a Russian company restructures or downsizes. Article 33 should prove particularly relevant in the event of the acquisition of an existing company that is overstaffed (and underproductive).

This second article of a two-part series examines the rights of employees in case of termination of employment. Part I examined relevant Russian legislation (*see* EWEG, January 1996, p. 22).

Preferential Rights to Continuation of Employment

Article 34 of the Labor Code of the Russian Federation (KZOT) establishes preferential rights for certain categories of employees to continue employment in the event of termination on the basis of reduction of employees or positions. The general rule articulated by Article 34 is that employees with greater productivity and skills are entitled to preferential consideration. One of the factors to be taken into account in determining that an employee is more qualified than another employee pursuant to Article 34 of KZOT is the length of experience of the employee in a particular economic sector or enterprise.

For example, the Supreme Court of the USSR decided a case in 1986 involving the termination of *T*, a senior economist in a scientific research institute, pursuant to Article 33(1) of KZOT. *T* claimed preferential rights on the basis of greater productivity and qualifications. *T* had worked in the institute for 22 years, including 14 years as an economist, and had completed higher education as well as a one-year correspondent economics course for management personnel and Higher Economic courses at Gosplan USSR (the former USSR central planning administration). The employees that were not being terminated had neither the economic education nor the length of experience that *T* had. The Supreme Court decided that *T* had established that she had a higher level of productivity and reinstated her employment.

In the event that two or more employees are equally productive and have the same skills, preferential rights are nonetheless accorded to the following classes of employees:

- to married employees with two or more dependents;
- to employees whose families do not have other sources of income;

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