

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

## **Eurasia/Russia\***

KIMBERLY REED, SERGEY BUDYLIN, THOMAS FIRESTONE,  
MARIA GRECHISHKINA, MARYNA ILCHUK, DINARA JARMUKHANOVA,  
SERGEY KIM, AND NATALIA LANTANIO

This article discusses significant legal developments in 2017 in the Russian Federation, Ukraine, Kazakhstan, and Uzbekistan.

### **I. Russia**

#### **A. Strategic Investment Law**

In 2008, Russia passed a law limiting foreign ownership/investment in “strategically important” Russian companies,<sup>1</sup> i.e., those of strategic importance to the Russian Federation’s national interests, in over forty categories.<sup>2</sup> It labeled these companies “Strategic Enterprises.”<sup>3</sup> The law divided economic activity into four categories: Natural Resources, Defense, Media, and Monopolies.<sup>4</sup> Along with a broader 1999 federal law on foreign investment,<sup>5</sup> the Strategic Investment Law established requirements for preliminary notifications and approvals from the Russian government.<sup>6</sup> Since 2008, subsequent amendments to the Strategic Investment Law seemed to loosen controls on foreign investment. For example, amendments

---

\* Editor and co-author: Kimberly Reed (Reed International Law & Consulting, LLC, Washington, D.C.). *Authors:* Sergey Budylin (Roche & Duffay, Moscow, Russia); Thomas Firestone (Baker & McKenzie, New York, New York); Maria Grechishkina (Marks & Sokolov, LLC, Philadelphia, PA); Maryna Ilchuk (Arzinger Law Office, Kiev, Ukraine); Dinara Jarmukhanova (Centil Law, Almaty, Kazakhstan); Sergey Kim (Centil Law, Almaty, Kazakhstan); and Natalia Lantonio (Law Office of Natalia Lantonio, Newport Beach, CA)

1. Federal’nyy Zakon RF O Vnesenii Uzmeneniy v Federal’nyy Zakon RF “? Poryadke Osushchestvleniya Inostrannih Investitsiy v Hozaystvenniye Obshestva, Imeyushiyeh Strategicheskoye Znachenie dlya Obespecheniya Oborony Strany Bezopasnosti Gosudarstva” [Federal Law of the Russian Federation on the Procedure for Foreign Investments in Companies of Strategic Importance for National Defense and State Security], SOBRANIE ZAKONODATEL’STVA ROSSIYSKOY FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2008, No. 57-FZ [hereinafter Strategic Investment Law].

2. *Id.* at art. 6.

3. *See id.*

4. *See id.* at art. 6.

5. Federal’nyy Zakon RF O Vnesenii Uzmeneniy v Federal’nyy Zakon RF “Ob Inostrannih Investitsiyah v Rossiyskoy Federatsii” [Federal Law of the Russian Federation on Foreign Investments in the Russian Federation], SOBRANIE ZAKONODATEL’STVA ROSSIYSKOY FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1999, No. 160-FZ [hereinafter Foreign Investor Law].

6. *See id.*; Strategic Investment Law, *supra* note 1.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

572 THE YEAR IN REVIEW

[VOL. 52

raised the maximum allowable “control” by a foreign investor in a Strategic Enterprise that is a subsoil user<sup>7</sup> from ten percent to twenty-five percent,<sup>8</sup> shortened the list of “strategic” activities,<sup>9</sup> exempted additional activities from “strategic” clearance,<sup>10</sup> and excluded several types of transactions from the scope of the law.<sup>11</sup> But in July 2017, President Putin signed Federal Law No. 155-FZ<sup>12</sup> and Federal Law No. 165-FZ<sup>13</sup> (the July 2017 Amendments), introducing significant restrictions and tightening control over foreign investments.

The July 2017 Amendments prohibit offshore organizations<sup>14</sup> and organizations under their control, including entities incorporated in Russia, (Offshore Organizations) from entering into transactions to establish control over Strategic Enterprises or acquire fixed-production assets constituting

---

7. A “subsoil user” is one who engages in geological study or exploration and mining of mineral deposits that are of federal significance in Russia. *See id.* at art. 2, pt. 3.

8. *Id.* at art. 3, pt. 1, para. 3.

9. *Id.* at art. 6, paras. 12–14.

10. *Id.* at art. 6, para. 3.

11. *Id.* at art. 7, pt. 3.

12. Federal’niy Zakon RF O Vnesenii Uzmeneniy v Federal’nyy Zakon RF, “O Vnesenii Izmeneniy v Statiyu 5 Federal’nogo Zakona ‘O privatizatsii Gosudarstennogo i Munitsipalnogo Imushchestva’ i v Federal’niy Zakon ‘O Porydke Osushestvleniya Inostrannih Investitsiy v Hozastvenniye Obshestva, Imeyushiye Strategicheskoye Znachenkye dlya Obespecheniya Oborony Strany i Bezopasnoski Gosudarstva’ i otdelinye Zakonodlatelinye Acty Rossiys” [Federal Law of the Russian Federation on Introduction of Changes to Article 5 of the Federal Law “On privatization of State and Municipal property” and to the Federal Law “On the Procedure for Foreign Investments in Companies of Strategic Important for National Defense and State Security” and other Legislative Acts of the Russian Federation], SOBRANIE ZAKONODATEL’STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2017, No. 155-FZ, <https://rg.ru/2017/07/01/fz155-site-dok.html>.

13. Federal’niy Zakon RF O Vnesenii Uzmeneniy v Federal’nyy Zakon RF “O Vnesenii Izmeneniy v Statyu 6 Federal’nogo Zakona “Ob Inostrannih Investitsiyah v Rossiyskoy Federtsii” i Federal’niy Zakon “O Porydke Osushestvleniya Inostrannih Investitsiy v Hozastvenniye Obshestva, Imeyushiye Strategicheskoye Znachenkye dlya Obespecheniya Oborony Strany i Bezopasnoski Gosudarstva” [Federal Law of the Russian Federation on Introduction of Changes in Article 6 of the Federal Law on Foreign Investments in the Russian Federation and Federal Law on the Procedure for Foreign Investments in Companies of Strategic Important for National Defense and State Security], SOBRANIE ZAKONODATEL’STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2017, No. 165-FZ, <https://rg.ru/2017/07/21/investicii-dok.html>.

14. These are defined as entities incorporated in a jurisdiction listed by the Ministry of Finance. Prikaz Minfina Rossii ot 13.11.2007 (v red. ot 02.10.2014) “Ob Utverzhdenii Perechnya Gosudarstv i Territoriy, Predostavlayushih L’gotniy Nologoviy Rezhim Nalogooblozheniya i (ili) ne Predusmativayushih Raskritiya i Predostavleniya Informatsii pri Provedenii Finansovih Operatsiy (ofshorniye zony) [Order of the Ministry of Finance dated November 13, 2007 (as amended on October 2, 2014) on Approval of the List of Countries and Territories That Provide a Preferential Tax Regime and/or Do Not Require the Disclosure and Submission of Information When Conducting Financial Transactions (Offshore Zones)], BULLETEN’ NORMATIVNIH ACTOV [BNA] [Bulletin of Legal Acts], December 10, 2007, No. 50, <http://rulaws.ru/acts/Prikaz-Minfina-Rossii-ot-13.11.2007-N-108n/>.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 573

twenty-five percent or more of the company assets' book value.<sup>15</sup> Further, Offshore Organizations must obtain approval before acquiring over twenty-five percent of the voting shares in a Strategic Enterprise (or more than five percent in a Strategic Enterprise that is a subsoil user) or otherwise obtaining the right to block decisions of its governing bodies.<sup>16</sup> In addition, the July 2017 Amendments:

- (1) require the Governmental Commission on Control Over Realization of Foreign Investment, before the approval of any transaction, to determine a foreign investor's obligations aside from those listed in the Strategic Investment Law's Article 12 (1);<sup>17</sup>
- (2) update the list of activities that are "of strategic significance," adding the operation of an electronic platform for state purchases, closing areas of radioactive waste burial, and using nuclear materials and radioactive substances while conducting atomic energy works for defense purposes;<sup>18</sup>
- (3) establish that holding a license is not a mandatory condition for a business entity to be deemed "strategic";<sup>19</sup> and
- (4) authorize the Chairman of the Government to require approval for any transaction involving a foreign investor and a Russian company.<sup>20</sup>

The July 2017 Amendments may indicate a trend toward tightening state control over foreign investment in Russia and increased uncertainty for prospective foreign investors.

## B. REAL ESTATE TRANSACTIONS

In 2017, Russia moved to simplify its complex land registry system. One reason for the new amendments (the RE Amendments) was that since 2013, Russia had passed several laws, the most significant being amendments to the Russian Civil Code's real estate section, which came into force in 2017.<sup>21</sup> One result of this implementation was the cancellation of the registration of

---

15. Strategic Investment Law, *supra* note 1, at art. 2, pt. 1.

16. *Id.* at art. 2, pt. 3.

17. *Id.* at art. 12, pt. 1.1.

18. *Id.* at art. 12, para. 46.

19. *Id.* at art. 10, pt. 1, para. 1.

20. Federal'nyy Zakon RF O Vnesenii Uzmneniy v Federal'nyy Zakon RF "Ob Inostrannih Investitsiyah v Rossiystoy Federatsii" [Federal Law of the Russian Federation on Foreign Investments in the Russian Federation], SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1999, No. 160-FZ [hereinafter Foreign Investment Law] (citing Article 6). The definition of a "foreign investor" in this amendment extends to Russian citizens who are also citizens of other countries and Russian companies controlled by foreign investors. *Id.*

21. See Federal'nyi Zakon RF "O Gosudarstvennoy Registratsii Nedvizhimosti" [Federal Law of the Russian Federation on State Registration of Real Estate], SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 218-FZ, <https://rg.ru/2015/07/17/nedvizh-dok.html>.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

574 THE YEAR IN REVIEW

[VOL. 52

many significant real estate transactions.<sup>22</sup> The RE Amendments, despite some remaining ambiguity, have improved the system and should positively affect property owners.

Beginning on January 1, 2017, the Cadastre (describing the physical characteristics of real estate) and the Unified State Register of Real Estate Rights and Transactions (recording legal title to real estate) were merged to create the Unified Register of Real Estate (the Register), containing both legal titles to real estate and physical characteristics of properties.<sup>23</sup> Thus, a real estate purchaser no longer has to make two separate filings; instead, the purchaser applies to the Register by submitting the required documents at any reception or issuance office in Russia (regardless of where the real estate is located)<sup>24</sup> and both cadastral registration and registration of rights will be performed simultaneously within ten days (previously twenty days).<sup>25</sup>

Further, the new law provides that instead of receiving a certificate of state registration (the equivalent of a deed), a special registration inscription will be made on the sale/purchase document that certifies the state's registration of the transaction, and the buyer will receive a copy of the relevant extract from the Register.<sup>26</sup> The RE Amendments also allow copies of certain documents such as "acts of state bodies," i.e., courts, to be submitted instead of originals.<sup>27</sup> Applicants must submit only one original transaction agreement and can apply for registration from anywhere in the world through regular mail (rather than having to appear in person to complete the filing).<sup>28</sup>

Although the new legislation is very detailed, it raises many issues of practical concern for lawyers, especially due to what it does *not* cover. A major concern is that the RE Amendments do not address the legal shortcomings of many unamended laws. For example, the new legislation does not resolve the issue of when ownership rights become finalized, or "absolute." Whereas the purpose of a land registry is to provide third parties with reliable information about the rights and burdens attached to a

---

22. Dmitry Ilyin, *Legal Highlights: Russian Real Estate Legislation: Major Changes of 2013 and Prospects for 2014*, THE MOSCOW TIMES (Jan. 28, 2014, 18:01), <https://themoscowtimes.com/articles/legal-highlights-russian-real-estate-legislation-major-changes-of-2013-and-prospects-for-2014-31517>.

23. See Georgiy Panin, *Important Laws That Will Come into Force in 2017*, ROSSHSKAIA GAZETA [ROS. GAZ.] (Dec. 28, 2016), <https://rg.ru/2016/12/28/kakie-vazhnye-zakony-vstupiat-v-silu-s-2017-goda.html>; Artem Sirota, *Commercial Real Estate in the Russian Federation: Overview*, THOMSON REUTERS (Dec. 1, 2017), [https://uk.practicallaw.thomsonreuters.com/8-503-3478?transitionType=default&contextData=\(sc.Default\)&firstPage=true&bhpc=1](https://uk.practicallaw.thomsonreuters.com/8-503-3478?transitionType=default&contextData=(sc.Default)&firstPage=true&bhpc=1).

24. *Id.*

25. *Id.*

26. See DEBEVOISE & PLIMPTON, CLIENT UPDATE: TOP 10 LEGAL DEVELOPMENTS IN THE RUSSIAN REAL ESTATE, CONSTRUCTION AND INFRASTRUCTURE MARKET IN 2015 8 (2015).

27. Vladimir Landa & Julia Kopeeva, *11 Changes That Simplify the Registration of Property Rights in 2017*, SYSTEMA YURIST, <http://www.1jur.ru/#/document/165/4104/?of=copy-a464874e7a> (last visited Mar. 28, 2018) (citing to a Russian online legal reference system).

28. *See id.*

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 575

property, the current system allows for challenges (appeals) against land transactions for *ten years* after their entry into the Register, rendering uncertain any information in the Register that is less than ten years old.<sup>29</sup> In practice, there is a wide range of grounds on which to dispute contracts involving transfers of real estate; thus, for a ten-year period after registration, the information in the Register can still be disputed.<sup>30</sup> This long period of uncertainty could be remedied by amending the law to institute a significantly shorter statute of limitations, perhaps six months (beginning upon the application for registration of a transaction or the actual entry of the transaction into the Register), for appeals of such transactions, so that after that shorter period expires with no challenges made, the transaction would be considered final.<sup>31</sup>

Another remaining issue is the lack of liability of Register officials who fraudulently record false entries in the Register. While the RE Amendments address governmental liability for such fraudulent acts, in practice, no fraud victim has ever collected damages from the Government on these grounds because it is virtually impossible to prove fraudulent intent of an official.<sup>32</sup> The RE Amendments do nothing to ease the burden of proof or make such cases any easier for victims. In fact, courts currently are overwhelmed with cases contesting registry entries.<sup>33</sup>

An additional practical concern for business entities is that the issuance of an extract from the Register instead of a paper certificate, i.e., a deed, results in the prices of their transactions becoming public record. On the other hand, this kind of transparency is common in mature government systems and will provide for greater corporate accountability to shareholders.

Despite some legal issues being left unaddressed, the RE Amendments will have some positive effects, such as simplifying the real estate registry system, reducing bureaucracy, making fraudulent transfers and ownership more difficult, and increasing accountability. Real estate practitioners hope that the new system will encourage the Government to be receptive to remedying problems that arise by fine-tuning the laws.

### C. CORPORATE LAW

In 2014, the entire chapter of Russia's Civil Code regarding legal entities<sup>34</sup> was rewritten. Importantly, the legal entity forms of open joint-stock

---

29. Roman Bevzenko, Main Legal Events of the Year, 6th Legal Forum for Practitioners (Oct. 10, 2017), <http://forum.1jur.ru/>.

30. *Id.*

31. *Id.*

32. Roman Bevzenko, *Three Proposals to Improve the Registration System in the Field of Real Estate*, ZAKONRU (Oct. 31, 2017, 23:58), [https://zakon.ru/blog/2017/10/31/tri\\_predlozheniya\\_po\\_uluchsheniyu\\_registracionnoj\\_sistemy\\_v\\_sfere\\_nedvizhimosti#.WfjIOE1tvHk.facebook](https://zakon.ru/blog/2017/10/31/tri_predlozheniya_po_uluchsheniyu_registracionnoj_sistemy_v_sfere_nedvizhimosti#.WfjIOE1tvHk.facebook) (citing to a social network for lawyers).

33. *Id.*

34. Grazhdanskii Kodeks Rossiiskoi Federatsii [GK RF] [Civil Code] ch. 4, <http://pravo.gov.ru/proxy/ips/?docview&page=1&print=1&nd=102033239&rdk=102&&empire=>

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

576 THE YEAR IN REVIEW

[VOL. 52

company (OAO in Russian) and closed joint-stock company (ZAO) were abolished, and similar, but not identical, entity forms were created, called public joint-stock company (PAO) and non-public joint-stock company (AO).<sup>35</sup>

Additional amendments were to be made promptly regarding other legal entity forms such as limited liability companies (OOO) (LLCs), as well as joint-stock companies as a whole (both PAOs and AOs) (JSCs) to implement the 2014 Civil Code changes. This process is not finished, but it is progressing. In 2015, amendments<sup>36</sup> were adopted to (a) make LLC corporate documents more reliable by requiring authentication by a notary public;<sup>37</sup> and (b) for JSCs,<sup>38</sup> cover such important topics as preemption rights,<sup>39</sup> disclosure of corporate information,<sup>40</sup> shareholders' appraisal rights,<sup>41</sup> and tender offer regulation.<sup>42</sup> In 2016, further amendments to the LLC Law and the JSC Law<sup>43</sup> passed, and they took effect in 2017.<sup>44</sup> These amendments significantly changed the rules covering "major transactions"

---

35. *See id.*

36. Federal'nyy zakon Rossiyskoy Federatsii o vnesenii izmeneniy v nekotoryye zakonodatel'nyye akty Rossiyskoy Federatsii i priznanii priznaniya nedeystvitel'nymi opredelennykh polozheniy zakonodatel'nykh aktov Rossiyskoy Federatsii [Federal Law of the Russian Federation on Amending Certain Legislative Acts of the Russian Federation and Recognizing the Invalidation of Certain Provisions of the Legislative Acts of the Russian Federation], SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 210-FZ; *see also* ARTUR ILIEV ET AL., *IZMENENIYA V ZAKON OB AKTSIONERNYKH OBSHCHESTVAKH: NOVY ETAP [CHANGES TO THE JOINT-STOCK COMPANY LAW: A NEW PHASE]* (2016), <https://goo.gl/xr6HG6>.

37. Federal'nyy zakon Rossiyskoy Federatsii <<O vnesenii izmeneniy v nekotoryye zakonodatel'nyye akty Rossiyskoy Federatsii v otnoshenii obespecheniya dostovernosti informatsii, predstavlyayemoy gosudarstvennoy registratsiyey yuridicheskikh lits i individual'nykh predprinimateley>> [Federal Law of the Russian Federation on Amending Certain Legislative Acts of the Russian Federation with Regard to Ensuring the Reliability of Information Submitted by State Registration of Legal Entities and Individual Entrepreneurs], SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2015, No. 67-FZ, <https://rg.ru/2015/04/06/fz67-dok.html> (citing Article 3). Amendments were made to the basic LLC statute. *See* Federal'nyy zakon Rossiyskoy Federatsii o kompaniyakh s ogranichennoy otvetstvennost'yu [Federal Law of the Russian Federation on Limited Liability Companies], SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1998, No. 14-FZ [hereinafter the LLC Law] (amending Article 17).

38. Federal'nyy zakon Rossiyskoy Federatsii ob aktsionernykh obshchestvakh [Federal Law of the Russian Federation on Joint Stock Companies], SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1995, No. 208-FZ [hereinafter the JSC Law].

39. *Id.* at art. 7, para. 3.

40. *Id.* at art. 92, para. 1.1.

41. *Id.* at art. 75, para. 3.

42. *Id.* at ch. XI.1.

43. Alexander Kuznetsov, *Reforma krupnykh sdelok i sdelok s zainteresovannostyu: Chto izmenilos v regulirovanii [Major Transactions and Interested-Party Transactions Reform: What Has Changed in the Rules]*, ARBITRAZHNAJA PRAKTIKA DLYA YURISTOV (Jan. 2017), <http://e.arbitr-praktika.ru/article.aspx?aid=525353>; *see also* Mathieu Fabre-Magnan, *New Rules for Conclusion of Major and*

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 577

and “interested-party transactions” for both LLCs and JSCs.<sup>45</sup> Many important components of corporate transactions were altered, including requirements for relevant agreements and approval and objection procedures.<sup>46</sup> The changes are generally similar for both LLCs and JSCs, and were aimed at easing the burden of major companies’ management by reducing the number of transactions that require approval.<sup>47</sup>

1. *Major Transactions*

The term “major transaction” was re-defined as a transaction that is beyond the scope of normal business activity of the company and involves assets whose balance sheet value or transaction price equals at least twenty-five percent of the company’s balance sheet value.<sup>48</sup> Major transactions<sup>49</sup> may be transfers of title to assets, leases of assets, or transfers of intellectual property rights.<sup>50</sup> Consent of a JSC’s supervisory board (for transactions valued at twenty-five to fifty percent of the company’s assets) or of the shareholders/LLC members (for transactions valued at over fifty percent of the company’s assets) is required to enter into major transactions; otherwise, a court may rescind the transaction upon a shareholder’s (or LLC member’s)

---

*Interested-Party Transactions*, DENTONS (Jan. 18, 2017), <https://www.dentons.com/en/insights/alerts/2017/january/18/new-rules-for-conclusion-of-major-and-interested-party-transactions>.

44. Federal’nyy zakon Rossiyskoy Federatsii <<O vnesenii izmeneniy v Federal’nyy zakon <<Ob aktsionernykh obshchestvakh >> Federal’nyy zakon <<Ob obshchestvakh s ogranichennoy otvetstvennost’yu >>v otnoshenii regulirovaniya osnovnykh sdelok i sdelok s zainteresovannost’yu [Federal Law of the Russian Federation on Amendments to the Federal Law “On Joint Stock Companies” and the Federal Law “On Limited Liability Companies” Regarding the Regulation of Major Transactions and Interested Party Transactions], SOBRANIE ZAKONODATEL’STVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2016, No. 343-FZ, <https://rg.ru/2016/07/08/sdelki-dok.html> [hereinafter the Corporate Amendments].

45. *See id.*

46. Maria Miroshnikova et al., *Mergers & Acquisitions 2017: Russia*, GLOBAL LEGAL INSIGHTS, <https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions/global-legal-insights---mergers-and-acquisitions-6th-ed./russia> (last visited Mar. 28, 2018).

47. *See id.*

48. Corporate Amendments, *supra* note 44, at art. 1, para. 9(a) (amending Article 78 of the JSC Law); Corporate Amendments, *supra* note 44, at art. 2, para. 4 (amending Article 46 of the LLC Law). The following are deemed to be made within the normal scope of business and thus are not “major transactions”: (i) transactions normally executed by the company or other companies engaged in similar activities, regardless of whether the company has done such a transaction before, provided that (ii) the transaction does not result in either termination of the company’s operations or a change in the nature or scale of the company’s business. *Id.* at art. 2, para. 4.

49. The law explicitly notes that certain types of transactions are not considered “major,” such as those involving a company with a single shareholder acting as CEO, those required by law, IPOs of JSCs, etc. *Id.* at art. 1, para. 9(d).

50. *Id.* at art. 1, para. 9 (amending Article 78 paragraphs 1 and 1.1 of the JSC Law). The definition of “major transactions” was modified to include lease contracts and was somewhat narrowed to exclude, e.g., corporate reorganizations (like mergers and consolidations) and mandatory repurchase of the company’s own shares. *Id.* at art. 1, para. 9 (amending Article 78 paragraph 3 of the JSC Law).

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

578 THE YEAR IN REVIEW

[VOL. 52

claim.<sup>51</sup> Where such consent is needed, the JSC's supervisory board must prepare a report on the feasibility of the transaction and its potential consequences for the company.<sup>52</sup> The required consent may be obtained either before or after entering into the transaction; in the latter case, obtaining the consent may be made a condition precedent of the transaction.<sup>53</sup>

A new procedure applying to both LLCs and JSCs provides that major transactions can be contested on the grounds that they lacked the required approval *only* by shareholders/participants who together hold one percent or more of voting capital, a supervisory board member, or the company itself.<sup>54</sup> Claimants are no longer required to prove that the contested transaction resulted or may result in losses or other negative consequences for the claimant or the company.<sup>55</sup> But the burden of proof for demonstrating any acts of bad faith by the counterparty to the contested transaction was shifted to the claimant, who now must prove that the counterparty knew or should have known that the transaction was a "major transaction" for the company "and (or)"<sup>56</sup> that it was not duly approved.<sup>57</sup>

## 2. *Interested-Party Transactions*

The term "interested-party transactions" has been re-defined as a transaction of a company, other than one entered into in the ordinary course of business, in which either a member of the governing body of the company or a "controlling person" has an interest in the transaction.<sup>58</sup> A "controlling person" is a person who controls directly or indirectly over fifty percent of votes, is able to appoint over fifty percent of the board of directors or another collegial body, or is able to appoint the sole executive body of the company.<sup>59</sup> At least fifteen days before entering into an interested-party

---

51. *Id.* at art. 1, para. 10 (amending Article 79 of the JSC Law); *id.* at art. 2, para. 4 (amending Article 46 paragraph 3 of the LLC Law).

52. Federal'nyy zakon Rossiyskoy Federatsii ob aktsionernykh obshchestvakh [Federal Law of the Russian Federation on Joint Stock Companies], SOBRANIE ZAKONODATEL'STVA ROSSISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1995, No. 208-FZ [hereinafter the JSC Law] (citing Article 78 part 2). There is not such a requirement for LLCs. See Federal'nyy zakon Rossiyskoy Federatsii o kompaniyakh s ogranichennoy otvetstvennost'yu [Federal Law of the Russian Federation on Limited Liability Companies], SOBRANIE ZAKONODATEL'STVA ROSSISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1998, No. 14-FZ [hereinafter the LLC Law].

53. JSC Law, *supra* note 52, at art. 79, pt. 4; LLC Law, *supra* note 52, at art. 46, pt. 3.

54. JSC Law, *supra* note 52, at art. 79, pt. 6; LLC Law, *supra* note 52, at art. 46, pt. 4.

55. See JSC Law, *supra* note 52, at art. 79, pt. 6; LLC Law, *supra* note 52, at art. 46, pt. 4.

56. The meaning of this combination of conjunctions ("and (or)") is not clear.

57. JSC Law, *supra* note 52, at art. 79, pt. 6.1; LLC Law, *supra* note 52, at art. 46, pt. 5.

58. JSC Law, *supra* note 52, at art. 81, pt. 1; LLC Law, *supra* note 52, at art. 45, pt. 1. The term "affiliates" (originally borrowed from the anti-monopoly legislation) has been replaced by "controlling party" (as defined in the JSC Law or, identically, in the LLC Law). See JSC Law, *supra* note 52, at art. 81, pt. 1; LLC Law, *supra* note 52, at art. 45, pt. 1.

59. JSC Law, *supra* note 52, at art. 81, pt. 1; LLC Law, *supra* note 52, at art. 45, pt. 1. The Russian Federation, a subject of the Russian Federation, or a municipality will not be regarded



**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 579

transaction, the company must inform its non-interested executive directors and supervisory board members, and in some cases, its shareholders, about the interested parties and the proposed transaction.<sup>60</sup>

Approval of an interested-party transaction (as with a major transaction) is now required only if demanded by an executive director, supervisory board member, or shareholders/LLC members who together own at least one percent of the JSC's voting shares or the LLC's membership interests.<sup>61</sup> If approval is demanded, the transaction normally must be approved by a majority of non-interested JSC supervisory board members or LLC members; only in some situations, e.g., too many board members are interested, must the transaction be approved by the JSC's shareholders.<sup>62</sup> But, some other transactions, e.g., when the amount of the transaction is at least ten percent (formerly two percent) of the company assets' book value, require the approval of shareholders.<sup>63</sup>

With respect to public JSCs, the law was amended to allow a non-interested director to vote only if in the preceding year (1) neither the director nor the director's family members held management positions in the company and (2) the director was not a "controlling person" of the company or of its management company.<sup>64</sup>

An important change pertains to the calculation of the number of votes required to approve interested party transactions by a JSC's shareholders. Formerly, approval of interested party transactions required a simple majority of all non-interested shareholders; however, in public JSCs, non-interested minority shareholders often do not attend shareholders' meetings, so the sufficient percentage often was not attained.<sup>65</sup> The law now requires approval of only the total number of non-interested shareholders present at the meeting.<sup>66</sup> It is unclear, however, how this rule will work in tandem with a company's quorum requirements.<sup>67</sup>

The procedure mandated for challenging interested party transactions of LLCs and JSCs is generally similar. The persons entitled to challenge the transaction are the same as those in a major transaction.<sup>68</sup> The absence of

---

as a "controlling person" for this matter. JSC Law, *supra* note 52, at art. 81, pt. 1; LLC Law, *supra* note 52, at art. 45, pt. 1. The threshold was preserved at a twenty percent level for strategic enterprises and for state-controlled JSCs. JSC Law, *supra* note 52, at art. 81, pt. 1.

60. JSC Law, *supra* note 52, at art. 81, pt. 1.1; LLC Law, *supra* note 52, at art. 45, pt. 3.

61. JSC Law, *supra* note 52, at art. 83, pt. 1; LLC Law, *supra* note 52, at art. 45, pt. 4.

62. JSC Law, *supra* note 52, at art. 83, pts. 3 – 3.2; LLC Law, *supra* note 52, at art. 45, pt. 4.

63. *See* JSC Law, *supra* note 52, at art. 83, pt. 4; LLC Law, *supra* note 52, at art. 45, pt. 8.

64. JSC Law, *supra* note 52, at art. 83, pt. 3.

65. *See id.* at art. 83, pt. 4.

66. *Id.*

67. *See id.*

68. *See id.* at art. 84, pt. 1; Federal'nyy zakon Rossiyskoy Federatsii o kompaniyakh s ogranichennoy otvetstvennost'yu [Federal Law of the Russian Federation on Limited Liability Companies], SOBRANIE ZAKONODATEL'STVA ROSSIYSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1998, No. 14-FZ [hereinafter the LLC Law] (citing Article 45 part 6).

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

580 THE YEAR IN REVIEW

[VOL. 52

proper approval is not sufficient for the rescission of a transaction; unlike major transactions, interested-party transactions may only be contested if they were *adverse to the interests of the company*.<sup>69</sup> A claimant must prove that (1) the transaction inflicted damage on the company, and (2) the other party to the transaction knew or should have known that the transaction was an interested-party transaction “and (or)”<sup>70</sup> that the transaction had not received the proper consent.<sup>71</sup> Further, an interested party transaction now may be ratified after closing unless preliminary approval of the transaction had been required by a general director, a member of the management or supervisory board, or a shareholder/LLC member holding at least one percent of the voting share capital of the company.<sup>72</sup>

Some important exemptions to the interested-party transactions rules cover transactions in which:

- (1) the company enters into a transaction on similar terms as prior transactions and “within the scope of normal business activity,” i.e., if the company has previously entered into many similar transactions within an extended period and such earlier transactions did not qualify as an interested-party transaction;<sup>73</sup>
- (2) the transaction price or balance sheet value does not exceed 0.1% of the balance sheet asset value of the company as of the last reporting date. In order to control transactions of companies with huge assets, the law provides that the Bank of Russia will institute a threshold value that cannot be exceeded even if it is less than 0.1% of the balance sheet assets (the Bank of Russia published relevant directions (“Ukazanie”) regarding the thresholds in May 2017);<sup>74</sup>
- (3) the charter of the relevant LLC or non-public joint-stock company waives the requirement for approval of interested-party transactions or sets out a different approval procedure.<sup>75</sup>

Generally, the modifications related to major and interested-party transactions benefit corporate managers, many of whom have complained about being terrorized by malignant minority shareholders challenging every transaction of the company. Accordingly, though, the changes may be harmful to minority shareholders, many of whom feel they are systematically duped by controlling shareholders and unscrupulous corporate managers.

---

69. JSC Law, *supra* note 52, at art. 84, pt. 1; LLC Law, *supra* note 68, at art. 45, pt. 6.

70. The meaning of this combination of the conjunctions (“and (or)”) is not exactly clear.

71. JSC Law, *supra* note 52, at art. 84, pt. 1; LLC Law, *supra* note 68, at art. 45, pt. 6.

72. Maria Miroshnikova et al., *Mergers & Acquisitions 2017: Russia*, GLOBAL LEGAL INSIGHTS, <https://www.globallegalinsights.com/practice-areas/mergers-and-acquisitions/global-legal-insights---mergers-and-acquisitions-6th-ed./russia> (last visited Mar. 28, 2018).

73. *Id.*

74. *See* JSC Law, *supra* note 52, at art. 81, pt. 2, para. 12; LLC Law, *supra* note 68, at art. 45, pt. 7; *see also* Directive on Setting Thresholds for the Size of Transactions of Joint-Stock Companies and Limited Liability Companies Beyond Which Such Transactions May Be Considered Interested-Party Transactions, Bank of Russia, Mar. 31, 2017, No. 4335-U.

75. JSC Law, *supra* note 52, at art. 83, pt. 8; LLC Law, *supra* note 68, at art. 45, pt. 9.

Minority shareholders are usually unable to win a court case, as they have practically no way to obtain evidence needed<sup>76</sup> (in Russia there is nothing remotely similar to the American pre-trial discovery system) and courts generally are not sympathetic to them.<sup>77</sup> Nevertheless, the main avenue for a minority shareholder to challenge directors' self-interested transactions has been to challenge their validity under the interested-party transaction rules, and that avenue has been substantially narrowed.

### 3. *Rosneft v. Sistema*

While judicial decisions have no precedential effect in Russia, case law can be instructive regarding how Russian courts may interpret the law.<sup>78</sup> Perhaps the most important corporate dispute in Russia in 2017 was *Rosneft v. Sistema*,<sup>79</sup> a case that attracted substantial attention.<sup>80</sup>

In the early 2000's, oil extraction companies in the Bashkiria region were privatized by the then-Bashkirian president's son into a new holding company, Bashneft.<sup>81</sup> In 2009, Sistema purchased Bashneft for around US\$2.5 billion.<sup>82</sup> As part of its efforts to make an IPO on the London Stock Exchange, Sistema carried out a corporate reorganization, simplifying the ownership structure of Bashneft.<sup>83</sup> As a result, some of the original Bashneft assets ended up with another company of the Sistema group.<sup>84</sup> When the Russian Government challenged the original Bashkiria oil assets' privatization, a court found the privatization to be illegal, and confiscated all Bashneft shares from Sistema.<sup>85</sup>

In 2016, Bashneft was privatized again, and its shares were purchased by Rosneft, a state-controlled oil giant.<sup>86</sup> In 2017, Rosneft and Bashneft filed a claim against Sistema alleging that Sistema caused harm to Bashneft by

---

76. See Sergey Budylin, *Rentgenovskiy luch prava: Raskrytie dokazatelstv v Rossii i za rubezhom*[X-Ray of Law: Evidence Disclosure in Russia and Abroad], 6 VESTNIK VYSSHEGO ARBITRAZHNOGO SUDA RF 56, 56 – 97 (2014).

77. See Sergey Budylin, *Razum i dobraya sovest: Obyazannosti diektora v SShA, Velikobritanii, Rossii* [Reason and Good Faith: Directors' Duties in the U.S., U.K., and Russia], 2 VESTNIK VYSSHEGO ARBITRAZHNOGO SUDA RF 10, 10 – 39 (2013).

78. Arina V. Popova & Andrey A. Arnautovich, *Update: A Guide to Legal Research in Russia*, HAUSER GLOBAL L. SCH. PROGRAM (Mar. 2017), [http://www.nyulawglobal.org/globalex/Russia\\_Legal\\_Research1.html](http://www.nyulawglobal.org/globalex/Russia_Legal_Research1.html).

79. *Postanovleniye Arbitrazhnogo suda Bashkortostana ot 30 avgusta 2017 goda, ? A07-14085 / 2017* [Ruling of the Arbitration Court of Bashkortostan of August 30, 2017, No. A07-14085/2017] 2017, No. A07-14085/2017.

80. See, e.g., *Rosneft vs AFK Sistema: Istoria konflikta* [Rosneft vs AFK Sistema: Conflict History], BBC PRODUCTION, <http://www.bbc.co.uk/guides/zwhx8mn#z9x74qt> (last visited Mar. 29, 2018).

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* This decision was questionable but its correctness is outside the scope of this article.

86. *Id.*

carrying out the reorganization, and that the real purpose of the reorganization was to strip Bashneft of assets.<sup>87</sup> The claimed damages were 170 billion rubles (about \$2.5 billion).<sup>88</sup> In August 2017, a first-instance Arbitrazh (Economic) Court partly sustained the claim and awarded 136 billion rubles (about \$2 billion) in damages to Bashneft.<sup>89</sup> In December 2017, the decision of the first-instance court was affirmed on appeal, but before the dispute progressed any further, the parties settled for 100 billion rubles (about \$1.7 billion) payable by Sistema to Rosneft.<sup>90</sup>

The decision of the Arbitrazh Court and its affirmation on appeal look astonishing but were, in a sense, unsurprising, considering Rosneft's political importance and connections. Lawyers widely believe that the decisions were not grounded in law or reason; indeed, one commentator called it "a horror."<sup>91</sup> If the decisions stand for any rule, it is arguably that no legal rules apply to sufficiently influential parties. This principle may have profound (and negative) consequences not only for Russian corporate law, but for the rule of law in Russia generally.

## II. Ukraine

Ukraine continued to face political, economic, and social changes in 2017, but these challenges fostered reforms in the energy sector that addressed the needs and expectations of the global business community and potential investors.

### A. IMPLEMENTATION OF GAS MARKET REFORMS

Implementation of the 2015 Natural Gas Market Law<sup>92</sup> created a competitive gas market in Ukraine, as well as a gas trading market and the unbundling of gas transportation from gas production and supply. Securing transparency and providing for clear rules in the market are of key importance for the Ukrainian government.

National Joint Stock Company Naftogaz (Naftogaz) is one of the strategic state entities that has undergone extensive corporate governance reforms to comply with international standards. Consequently, for the first time in five years, the company generated a net profit (approximately \$1 billion) in

---

87. *Id.*

88. *Id.*

89. *Id.*

90. See Max Seddon, *Rosneft settles high-profile Sistema lawsuits for \$1.7bn*, FINANCIAL TIMES (Dec. 22, 2017), <https://www.ft.com/content/94a0c0d1-cb1f-350f-aedf-fb67a9fe3e98>.

91. Grigory Chernyshov, *Corporate Disputes: Social Responsibility of Parties*, 40:20 (Oct. 6, 2017), [https://events.vedomosti.ru/events/corpspor\\_17](https://events.vedomosti.ru/events/corpspor_17).

92. Zakon Ukrainy pro rynek pryrodnoho hazu [Law of Ukraine on the Natural Gas Market], BYULETEN' VERKHOVNOYI RADY [VVR] [Bulletin of the Verkhovna Rada] No. 27, p. 234, 2015, No. 329-19, <http://zakon3.rada.gov.ua/laws/show/329-19>.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 583

2016.<sup>93</sup> Privatization of Naftogaz is planned through an IPO by 2020 (subject to Parliamentary approval).<sup>94</sup>

In order to decrease Ukrainian dependence on Russian gas and diversify its gas suppliers, Ukraine has adopted an ambitious plan to increase its domestic natural gas production up to twenty-seven billion cubic meters (bcm) in 2020.<sup>95</sup> To this end, the state gas production company UkrGasVydobuvannya (UGV), for the first time, signed contracts for drilling and well operations with several foreign gas drilling companies.<sup>96</sup>

Currently, over seventy percent of Ukrainian gas consumption is met by domestic production, principally by UGV, with the remaining thirty percent being imported.<sup>97</sup> Naftogaz's pre-2015 monopolization of gas importation has been transformed into a competitive and transparent market in which thirty-five Ukrainian and foreign traders imported gas in 2016 (a fifty percent increase over 2015),<sup>98</sup> including AOT Energy, Engie, Trafigura, DufEnergy, and Met Holding.<sup>99</sup> A continued increase in domestic and foreign importers is expected in 2018, along with the unbundling of distribution system operators.<sup>100</sup>

---

93. NAFTOGAZ, IN THE BLACK: ANNUAL REPORT 2016 13 (2016), [http://www.naftogaz.com/files/Zvity/Anual\\_report\\_eng\\_170608.pdf](http://www.naftogaz.com/files/Zvity/Anual_report_eng_170608.pdf).

94. Andriy Kobolyev, CEO, NAFTOGAZ, Naftogaz Strategy: Affordable Energy for Ukraine 9 (Oct. 24, 2017), [http://www.naftogaz.com/files/Information/2017-10-24%20A.Kobolyev\\_Strategy\\_EN.pdf](http://www.naftogaz.com/files/Information/2017-10-24%20A.Kobolyev_Strategy_EN.pdf).

95. Ukaz Kabinetu Ministriv Ukrayiny: Kontseptsiya rozvytku vyrobnytstva hazu do 2010 roku [Decree of the Cabinet of Ministers of Ukraine: Concept of Gas Production Development Until 2010] 2016, No. 1079-p, <http://zakon2.rada.gov.ua/laws/show/1079-2016-%D1%80>.

96. See Ukhazvydobuvannya pidpysalo kontrakty z dvoma kytays'kymy kompaniyamy na postachannya burovykh ustanovok [UkrGasVydobuvannya Signed Contracts with Two Chinese Companies to Supply Drilling Rigs], UKRGAZPRODUCTION (Nov. 7, 2017), <http://ugv.com.ua/page/ukrgazvidobuvanna-pidpysalo-kontrakti-z-dvoma-kitajskimi-kompaniyami-na-postachanna-burovih-ustanovok>; see also Ukhazvydobuvannya ta kytays'ka Xinjiang Beiken pidpysaly kontrakty na burinnya 24 novykh sverdlovin [UkrGasVydobuvannya and Chinese Xinjiang Beiken Have Signed Drilling Contracts for 24 New Wells], UKRGAZPRODUCTION (Sept. 7, 2017), <http://ugv.com.ua/page/ukrgazvidobuvanna-ta-kitajska-xinjiang-beiken-pidpysali-kontrakti-na-burinnya-24-novykh-sverdlovin>; Ukhazvydobuvannya ta Crosco pidpysaly kontrakty na burinnya novykh sverdlovin [UkrGasVydobuvannya and Crosco Have Signed Contracts for Drilling New Wells], UKRGAZPRODUCTION (Aug. 1, 2017), <http://ugv.com.ua/page/ukrgazvidobuvanna-ta-crosco-pidpysali-kontrakti-na-burinnya-novykh-sverdlovin>.

97. NATIONAL INVESTMENT COUNCIL, UKRAINE GAS UPSTREAM: OPPORTUNITIES DOWN THE ROAD 5 (2017), <http://agpu.org.ua/upload/files/10150531332088.pdf>.

98. See *id.*

99. *Id.*

100. See *A New Law Aims at the Europeanisation of Ukrainian Gas Market. What Could Hamper this Progress?*, EU IN UKR. COOPERATION NEWS (Oct. 9, 2015), <https://euukrainecoop.com/2015/10/09/third-energy-package/>.

**B. ELECTRICITY MARKET REFORMS**

On June 11, 2017, the Law on the Electricity Market<sup>101</sup> (the Electricity Law) took effect, beginning the transformation of the current “wholesale-buyer model” market into a liberalized market with bilateral contracts; day-ahead, balancing, and intra-day markets; and auxiliary services and retail markets.<sup>102</sup>

Also in June, national energy company Ukrenergo signed an agreement with the European Network of Transmission System Operators (ENTSO-E) regarding the future interconnection of the Ukrainian power system with that of Continental Europe, thus starting the integration of Ukraine’s power grid with the European Union’s.<sup>103</sup> Further, the unbundling of electricity transportation and electricity distribution is anticipated.<sup>104</sup> As a result of these reforms, new domestic and foreign players are expected to appear in the Ukrainian electrical sector, as they have in the gas sector.<sup>105</sup>

Ukraine’s nuclear power sector advanced in 2017, with the Government granting a license to State Enterprise “Energoatom” for the construction and operation of a Centralized Spent Fuel Storage Facility to store spent nuclear fuel from Ukrainian nuclear power plants for a century.<sup>106</sup> In addition, Energoatom is working with top global companies to diversify its nuclear fuel supply sources for Ukrainian nuclear power plants,<sup>107</sup> as well as considering producing fuel in Ukraine.<sup>108</sup>

**C. ENERGY EFFICIENCY AND RENEWABLES**

The Ukrainian renewables sector has proven attractive to investors as favorable legislation has created new business opportunities and provided

---

101. Zakon Ukrainy pro rynek elektroenerhiyi [Law of Ukraine on the Electricity Market], BYULETEN’ VERKHOVNOYI RADY [VVR] [Bulletin of the Verkhovna Rada] No. 27-28, p. 312, 2017, No. 2019-19, <http://zakon3.rada.gov.ua/laws/show/2019-19/print> [hereinafter Law on the Electricity Market].

102. *Id.* at art. 4.

103. *Electricity Transmission System Operators of the ENTSO-E Continental Europe Region Sign Agreements on the Conditions for Future Interconnections with Ukraine and Moldova*, ENTSO-E (July 7, 2017), <https://www.entsoe.eu/news-events/announcements/announcements-archive/Pages/News/entsoe-ce-agreement-conditions-future-grid-connections-with-ukraine-moldova.aspx>.

104. *Id.*

105. See Law on the Electricity Market, *supra* note 102, at art. 32, pt. 4.

106. *The State Nuclear Regulatory Inspectorate of Ukraine Granted a License to the Energoatom Company for the Construction and Operation of the Centralized Spent Fuel Storage Facility*, SSTC NRS (Jul. 10, 2017), <http://sstc.com.ua/en/enterprise-news/3921-the-state-nuclear-regulatory-inspectorate-of-ukraine-granted-a-license-to-the-energoatom-company-for-the-construction-and-operation-of-the-centralized-spent-fuel-storage-facility>.

107. *Westinghouse to Supply Six Batches of Nuclear Fuel to Energoatom in 2017—Westinghouse CEO*, INTERFAX-UKRAINE (Apr. 27, 2017), <http://en.interfax.com.ua/news/economic/418288.html>.

108. *Westinghouse and Turboatom Sign Extended Partnership Contract*, NNEG “ENERGOATOM” (Sept. 28, 2017), [http://www.energoatom.kiev.ua/en/press/nnegc/53027-westinghouse\\_and\\_turboatom\\_sign\\_extended\\_partnership\\_contract/](http://www.energoatom.kiev.ua/en/press/nnegc/53027-westinghouse_and_turboatom_sign_extended_partnership_contract/).

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 585

more certainty. In September 2017, the National Energy and Utilities Regulatory Commission (NEURC) approved amendments<sup>109</sup> to the template Power Purchase Agreement (PPA)<sup>110</sup> providing, *inter alia*, for the use of preliminarily concluded PPA contracts (pre-PPA's).<sup>111</sup> Thus, in order to secure the bankability of PPA's, the amendments allow a PPA to be signed before the construction and/or commissioning of a power plant.<sup>112</sup> In a change long sought by market players, a long-term PPA can be valid until 2030.<sup>113</sup> The amended template PPA also provides a wider list of remedies in the event of breach.<sup>114</sup>

A package of laws on energy efficiency also was adopted, including the Law on the Energy Efficiency Fund.<sup>115</sup> It is expected that the technical and financial tools of the Fund will help to reduce gas consumption in Ukraine by thirty percent, and that money available for financing energy efficiency projects should spur the creation of new small and medium-sized businesses.<sup>116</sup>

---

109. Postanova NKREKP pro zatverdzhennya zmin do Uhody pro zakupivlyu shablonu mizh DP "Enerhorynok" ta sub'yektom hospodaryuvannya, yakyy vyroblyaye elektroenerhiyu z al'ternatyvnykh dzherel enerhiyi [Resolution of NKREKP on Approval of Amendments to Template Power Purchase Agreement Between State Enterprise Energorynok and a Business Entity That Produces Electricity from Alternative Energy Sources] 2017, No. 1118, <http://www.nerc.gov.ua/index.php?id=27543> [hereinafter NERC Resolution 1118]. These amendments were adopted by the NEURC in cooperation with the European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC). *Ukraine Improves PPA for Renewable Energy*, ASTERS (Oct. 2, 2017), [http://www.asterslaw.com/press\\_center/publications/ukraine\\_improves\\_ppa\\_for\\_renewable\\_energy/](http://www.asterslaw.com/press_center/publications/ukraine_improves_ppa_for_renewable_energy/). The Resolution will become effective after its official publication. *Id.*

110. A PPA is an agreement between a producer of electricity from renewable energy sources and the State Enterprise Energorynok, which is statutorily required to purchase all electricity from renewable energy sources under the "green" tariff (a feed-in tariff). ASTERS, *supra* note 110.

111. See NERC Resolution 1118, *supra* note 110.

112. See *id.* An executed pre-PPA becomes effective only when the producer of electricity from renewable energy sources fulfills all condition precedents listed in the template PPA, e.g., obtaining a license for electricity production, becoming a member of the Wholesale Electricity Market, and receiving a "green" tariff. *Id.*

113. See *id.*; see also *Ukraine: Draft Changes to PPA for Renewables*, DENTONS (Aug. 2, 2017), [https://www.dentons.com/en/insights/alerts/2017/august/2/ukraine-draft-changes-to-ppa-for-renewables?utm\\_source=mondaq&utm\\_medium=syndication&utm\\_campaign=view-Original](https://www.dentons.com/en/insights/alerts/2017/august/2/ukraine-draft-changes-to-ppa-for-renewables?utm_source=mondaq&utm_medium=syndication&utm_campaign=view-Original) (reflecting the approach taken in the new NERC Resolution 1118 discussed above).

114. See NERC Resolution 1118, *supra* note 110, at pt. 8, para. 7.4.

115. Zakon Ukrayiny "Pro Fond enerhoefektyvnosti" [Law of Ukraine on the Energy Efficiency Fund], BYULETEN' VERKHOVNOYI RADY [VVR] [Bulletin of the Verkhovna Rada] No. 32, p. 344, 2017, No. 2095-19, <http://zakon2.rada.gov.ua/laws/show/2095-19>.

116. See *EU Prepares Launch of Energy Efficiency Fund for Ukraine*, EU NEIGHBOURS (Oct. 5, 2017), <http://www.euneighbours.eu/en/east/stay-informed/news/eu-prepares-launch-energy-efficiency-fund-ukraine>.

### III. Kazakhstan

On July 1, 2017, Kazakhstan's new procedure for out-of-court appeals of tax-inspection findings came into effect.<sup>117</sup> On June 29, 2017, the Supreme Court of Kazakhstan issued Normative Decree No. 4,<sup>118</sup> which has a binding effect on the courts and clarifies certain aspects of appellate procedures. Before these changes, taxpayers could appeal the results of a tax inspection extra-judicially only by filing a complaint with the tax authorities at the level immediately above the tax office that conducted the inspection.<sup>119</sup> This often resulted in the rubber-stamping of the original inspectors' actions without a real review.<sup>120</sup> The only recourse remaining to the taxpayer was to appeal the inspection results to a civil court.<sup>121</sup>

The new procedure envisages the establishment of a special body within the Ministry of Finance called the Appeals Commission,<sup>122</sup> comprised of high-ranking officials from the Ministries of Finance and National Economy and chaired by the Deputy Minister of Finance.<sup>123</sup> A representative from the National Chamber of Entrepreneurs (Atameken) may be present and speak at the Commission's meetings, without voting rights.<sup>124</sup> The Appeals Commission will examine complaints from taxpayers, generally within ten business days of receipt, or fifteen business days for complaints from major taxpayers.<sup>125</sup> The Commission's decisions are made by simple majority of

---

117. Zakon Respubliki Kazakhstan <<O vnesenii izmeneniy i dopolneniy v nekotoryye zakonodatel'nyye akty Respubliki Kazakhstan po voprosam nalogooblozheniya i tamozhennogo administrirovaniya>> [Law of the Republic of Kazakhstan on the Introduction of Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Taxation and Customs Administration], 2017, No. 26-VI, <http://zakon2.rada.gov.ua/laws/show/2095-19>.

118. Normativnoye postanovleniye Verkhovnogo Suda Respubliki Kazakhstan o sudebnoy praktike primeneniya nalogovogo zakonodatel'stva [Normative Resolution of the Supreme Court of the Republic of Kazakhstan on Judicial Practice of Applying Tax Legislation] 2017, No. 4, [https://tengrinews.kz/zakon/verhovnyiy\\_sud\\_respubliki\\_kazahstan/gpajdanskoe\\_pravo/id-P170000004S/](https://tengrinews.kz/zakon/verhovnyiy_sud_respubliki_kazahstan/gpajdanskoe_pravo/id-P170000004S/) [hereinafter Decree No. 4] (citing Part 29).

119. Kodeks Respubliki Kazakhstan o nalogah i drugih obyazatelnykh platejakh v byudjet (Nalogovyi Kodeks) [The Code of the Republic of Kazakhstan on Taxes and Other Mandatory Payments to the Budget (Tax Code)] art. 667 [hereinafter Tax Code] (citing Part 1).

120. *See id.*

121. *Id.* at ch. 95.

122. *See id.* at art. 671, pt. 1.

123. *See* Prikaz Ministra finansov Respubliki Kazakhstan po opredeleniyu Polozheniya ob Apellyatsionnoy komissii po rassmotreniyu zhalob na uvedomleniye ob itogakh audita i (ili) uvedomlenii ob iskorenenii narusheniy [Order of the Minister of Finance of the Republic of Kazakhstan on the Definition of the Provision on the Appeals Commission for Review of Complaints on the Notification of the Results of the Audit and (or) Notification of the Elimination of Violations] 2017, No. 322, [https://base.spinform.ru/show\\_doc.fwx?rgn=102770](https://base.spinform.ru/show_doc.fwx?rgn=102770) [hereinafter Regulations on the Appeal Commission].

124. *See id.* at pt. 17.

125. *Id.* at pt. 7. According to the Tax Code, "Major taxpayers" are identified by the State as the top 300 taxpayers in terms of income, provided that the book value of their assets is above 325,000 Monthly Calculated Indices (approximately \$2,214,500) and their staff comprises 250 employees or more. Kodeks Respubliki Kazakhstan o nalogah i drugih obyazatelnykh platejakh



**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 587

voting members present<sup>126</sup> and may uphold the results of a tax inspection or reject them (partially or wholly).<sup>127</sup> The Ministry of Finance then issues a reasoned decision within thirty business days following receipt of the complaint (or forty-five business days if the complaining party is a “major taxpayer”).<sup>128</sup> Because the Appeals Commission has been functioning for less than two years, it is not yet clear whether it will be a success. But due to its separation from the tax inspector’s office, the Commission may be more impartial and thorough in examining taxpayer appeals than previously was the case.

Another feature of the new law is that for “major taxpayers” and taxpayers who have concluded investment contracts with the Kazakh government,<sup>129</sup> the tax authorities are now required to serve a preliminary tax inspection report<sup>130</sup> setting out their findings before formally completing an inspection. If the taxpayer objects to the preliminary report within fifteen business days following its receipt, the relevant tax office must request in writing a consultation with the State Revenue Committee of Kazakhstan’s Ministry of Finance.<sup>131</sup> That Committee must respond within ten business days, and then the relevant tax office will issue its final inspection report, which must include responses to the taxpayer’s written objections.<sup>132</sup> As with the introduction of the Appeals Commission, this new procedure is designed to ensure a more measured approach to tax inspections by the State, which has been known to stall the operations of businesses undergoing such inspections for lengthy periods of time.

These new appellate procedures do not apply to all tax inspections; rather, they are limited to inspections that result in a “notification of the results of a

---

v byudjet (Nalogovyi Kodeks) [The Code of the Republic of Kazakhstan on Taxes and Other Mandatory Payments to the Budget (Tax Code)] art. 623 [hereinafter Tax Code] (citing Part 2). “Major taxpayers” also include certain categories of subsoil users that concluded production sharing agreements with the Government of Kazakhstan prior to January 1, 2009, and subsoil users that concluded a contract for exploration, mining operations, and combined exploration and production. *Id.*

126. Regulations on the Appeal Commission, *supra* note 124, at pt. 17.

127. *Id.* at pt. 18.

128. *Tax Code*, *supra* note 124, at art. 670, pt. 1.

129. Prikaz Ministra finansov Respubliki Kazakhstan ob utverzhdenii Pravil i usloviy predostavleniya nalogoplatel'shchiku Predvaritel'nogo nalogovogo audita, Predstavleniye pis'mennogo vozrazheniya protiv predvaritel'nogo akta nalogovogo audita, a takzhe Rassmotreniye takogo vozrazheniya i Kategorii nalogoplatel'shchikov, v otnoshenii kotorykh primenyayutsya normy v sootvetstvii s predvaritel'nym aktom nalogovogo audita [Order of the Minister of Finance of the Republic of Kazakhstan on Approval of the Rules and Terms of Handing to the Taxpayer a Preliminary Tax Audit Report, Submission of a Written Objection to the Preliminary Act of Tax Audit, as well as Consideration of Such Objection and Categories of Taxpayers in Respect of Which the Norms Under the Preliminary Act of Tax Audit Are Applied] 2017, No. 334, [https://online.zakon.kz/Document/?doc\\_id=32291023#pos=6;-78](https://online.zakon.kz/Document/?doc_id=32291023#pos=6;-78) [hereinafter Preliminary Report Rules] (citing Part 4).

130. *Tax Code*, *supra* note 124, at art. 636-1.

131. Preliminary Report Rules, *supra* note 130, at pts. 9, 14.

132. *Id.* at pts. 15, 17.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

588 THE YEAR IN REVIEW

[VOL. 52

tax inspection,” i.e., a notice to the taxpayer of additional taxes and penalties imposed by the tax authorities.<sup>133</sup> In other cases, for example, where the tax authorities conclude that the taxpayer has committed an administrative offense punishable by a fine, the confiscation of goods, or the termination of its license, but not additional taxes or penalties, the procedure for appealing the results of a tax inspection does not apply.<sup>134</sup> Indeed, if tax inspectors determine in their final report that a taxpayer has committed an administrative offense, the matter is transferred to an Administrative Court, which hears arguments from the parties and decides whether sanctions should be applied.<sup>135</sup> In practice, Administrative Courts tend to uphold the findings of the state authorities, so the confirmation of the finding often is deemed a foregone conclusion, and sanctions are prescribed by the Administrative Code.

Under the new appellate procedures, the Administrative Court must suspend its proceedings if the taxpayer has “appealed the results of the tax inspection,”<sup>136</sup> but if the taxpayer is not legally able to appeal the results of the tax inspection, the taxpayer could be left in a difficult position. Such a situation arose in a 2017 case in which the tax inspectors found that an alcohol vendor had violated labelling laws, which could have resulted in the loss of its alcohol license.<sup>137</sup> But the taxpayer was not issued a notification of additional taxes or penalties due and therefore could not appeal to the new Appeals Commission, which would have suspended the Administrative Court proceedings and postponed the license termination until the appeal was resolved.<sup>138</sup> As a result, the taxpayer was in danger of losing the alcohol license necessary to operate its business and had no recourse but to begin a probably lengthy civil court proceeding.

In June 2017, the Supreme Court attempted to clarify remedies available to taxpayers by issuing Normative Decree No. 4,<sup>139</sup> stating that the results of a tax inspection that does not result in a notification of additional taxes or penalties may be challenged by filing a complaint at the level immediately above the tax office that conducted the inspection, i.e., the same procedure that existed before the November 2016 amendments with the weaknesses noted above. Such a complaint would not be deemed an “appeal against the

---

133. See Tax Code, *supra* note 124, at art. 638, pt. 1.

134. See *id.*

135. See Kodeks Respubliki Kazakhstan ob administrativnykh pravonarusheniyyakh (Administrativnyy kodeks) [The Code of the Republic of Kazakhstan on Administrative Offense (Administrative Code)] arts. 802, 804 [hereinafter Administrative Code] (citing Part 2 of Article 802 and Part 1 of Article 804).

136. Tax Code, *supra* note 124, at art. 674.

137. Decree No. 4, *supra* note 119, at para. 29. In this case, the tax inspectors found the alcohol vendor to be in violation of a new law requiring the re-labelling of products for sale, even though the relevant products were manufactured and labelled under the previous labelling requirements and were scheduled not to be sold, but to be destroyed pursuant to the applicable procedures.

138. *Id.*

139. *Id.*

results of the tax inspection” for the purposes of the Tax Code and would not suspend administrative proceedings,<sup>140</sup> therefore not addressing the situation of the alcohol vendor described above.<sup>141</sup>

In summary, the distinction made in the new law between tax inspections that result in the necessary notifications and those that do not seems unreasonable. It may lead to situations in which businesses acting in good faith suffer significant damages due to a judgment by local tax inspectors that essentially cannot be appealed except in civil court. Nevertheless, the creation of the Appeals Commission and implementation of the other changes to the tax inspection procedure are important steps toward creating proper checks and balances.

#### **IV. Uzbekistan**

Several important developments in Uzbek law and politics occurred in 2017. The September 2016 death of President Islam Karimov, who had ruled Uzbekistan for twenty-seven years,<sup>142</sup> led to uncertainty about repercussions and fears of a violent succession struggle among various “clans.”<sup>143</sup> Instead, former Prime Minister Shavkat Mirziyoyev won the presidential election in December 2016<sup>144</sup> and immediately embarked on a series of important reforms, some of which are discussed below. With the goal of building a “steadily developing, free, prosperous and democratic Uzbekistan,”<sup>145</sup> Mirziyoyev launched a five-year plan called the “Strategy of Action,” which “encompass[es] the five top priority directions related to state building, improvement of the judicial system, liberalization of the economy, acceleration of development of the social sphere and implementation of an active foreign policy.”<sup>146</sup>

Some foreign policy experts believe that the primary motivation behind the reforms is improvement of Uzbekistan’s poor economic situation.<sup>147</sup> With a population of thirty-four million and a high birthrate, the country needs to create enough jobs for its young adults.<sup>148</sup> Therefore, among other

---

140. *Id.*; Administrative Code, *supra* note 136, at art. 817, pt. 4.

141. *See* Tax Code, *supra* note 124, at arts. 686 – 87.

142. *Islam Karimov: Uzbekistan President’s Death Confirmed*, BBC NEWS (Sept. 2, 2016), <http://www.bbc.com/news/world-asia-37260375>.

143. *See, e.g.*, Otabek Akromov, ‘*Mirziyoyev Model: Break from the Past in Uzbekistan*, INT’L POL’Y DIG. (Oct. 3, 2017), <https://intpolicydigest.org/2017/10/03/mirziyoyev-model-break-from-the-past-in-uzbekistan/>.

144. *Uzbekistan Elects Shavkat Mirziyoyev as President*, THE GUARDIAN (Dec. 6, 2016), <https://www.theguardian.com/world/2016/dec/05/uzbekistan-elects-shavkat-mirziyoyev-president-islam-karimov>.

145. Bahtiyar Abdukerimov, *Uzbek President Following ‘Active’ Foreign Policy*, ANADOLU AGENCY (Oct. 23, 2017), <http://aa.com.tr/en/asia-pacific/uzbek-president-following-active-foreign-policy/945316>.

146. *Id.*

147. Andrew E. Kramer, *Once Closed and Repressive, Uzbekistan Is Opening Up*, N.Y. TIMES (Oct. 25, 2017), [https://www.nytimes.com/2017/10/25/world/asia/uzbekistan-politics.html?\\_r=0](https://www.nytimes.com/2017/10/25/world/asia/uzbekistan-politics.html?_r=0).

148. *Id.*

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

590 THE YEAR IN REVIEW

[VOL. 52

aims, the adoption of reforms meant to attract foreign investment and encourage increased foreign purchases of Uzbek products (including cotton, the country's major export) may help combat these economic challenges.<sup>149</sup>

**A. IMPROVEMENT OF RELATIONS WITH OTHER COUNTRIES IN THE REGION**

President Mirziyoyev visited Kyrgyzstan in September 2017<sup>150</sup> and negotiated the reopening of over eighty percent of the Uzbek-Kyrgyz border, previously closed for years,<sup>151</sup> agreeing to resolve the remainder of the disputed border.<sup>152</sup> In October 2017, Mirziyoyev made the first official visit by an Uzbek President to Turkey in 20 years.<sup>153</sup>

After a twenty-five year suspension, commercial air travel between Uzbekistan and Tajikistan resumed in April 2017.<sup>154</sup> In July, the Uzbek Government appeared to substantially walk back its previous hostility to Tajikistan's planned Rogun Dam project.<sup>155</sup>

**B. IMPROVEMENT OF THE HUMAN RIGHTS SITUATION**

In September 2017:

- President Mirziyoyev announced that the government had reviewed individual cases of 17,000 detained people on a so-called security "watchlist" of potential Muslim religious extremists, and had removed 16,000 of them from the list.<sup>156</sup> At the same time, he said, "we have to bring them into our society and educate them,"<sup>157</sup> and the Government began a program of reintegration of those citizens into the community. According to the United

---

149. See *id.*; see also Kenneth Rapoza, *Eurasia's Latest Economic Reboot Can Be Found in Uzbekistan*, FORBES (Sept. 14, 2017), <https://www.forbes.com/sites/kenrapoza/2017/09/14/eurasias-new-perestroika-uzbekistan-silk-road-china/#5705990e6f25>.

150. *Uzbekistan's Mirziyoyev to Make First Presidential Visit to Kyrgyzstan Since 2000*, RADIOFREEEUROPE/RADIOLIBERTY (Sept. 4, 2017), <https://www.rferl.org/a/kyrgyzstan-uzbekistan-mirziyoyev-first-presidential-visit-2000/28715961.html>.

151. See Bahtiyar Abdukerimov, *Uzbek President Following 'Active' Foreign Policy*, ANADOLU AGENCY (Oct. 23, 2017), <http://aa.com.tr/en/asia-pacific/uzbek-president-following-active-foreign-policy/945316>.

152. *Id.*

153. *Id.*

154. Megan Eaves, *First Flight in 25 Years Between Uzbekistan and Tajikistan Touches Down*, LONELY PLANET (Feb. 15, 2017), <https://www.lonelyplanet.com/news/2017/02/15/flights-uzbekistan-tajikistan/>.

155. See Catherine Putz, *Uzbekistan's Changing Rogun Tone*, THE DIPLOMAT (July 20, 2017), <https://thediplomat.com/2017/07/uzbekistans-changing-rogun-tone/>.

156. Reuters, *Uzbekistan Removes 16,000 People from Security Blacklist*, BUSINESS INSIDER (Sept. 1, 2017), <http://www.businessinsider.com/r-uzbekistan-removes-16000-people-from-security-blacklist-2017-9?international=true&r=US&IR=T>.

157. *Id.*

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 591

Nations, Uzbek prisons “seem to have adopted similar rehabilitative approach toward their inmates”;<sup>158</sup>

- the Government prohibited the forced labor in the cotton fields of those under eighteen or in health care work.<sup>159</sup> According to some reports, forced labor has long been used in Uzbekistan to complete the harvest of the country’s vast cotton crops, and up to this point, school children were conscripted along with adults;<sup>160</sup>

- Mirziyoyev addressed the United Nations General Assembly about the need to build “a democratic state and just society” where “human interests come first.”<sup>161</sup>

Also during 2017, Mirziyoyev continued developing a system for citizens to raise complaints with the President’s office through an “electronic portal” and so-called “Presidential reception centers” throughout the country.<sup>162</sup> Though clearly not a panacea for all of Uzbekistan’s challenges, the portals are proving effective in resolving everyday social and practical complaints of citizens, which had been ignored under previous President Karimov.<sup>163</sup>

The Parliament introduced an amendment to the Code of Criminal Procedure that limits the length of time that arrestees can be held in pretrial detention without a court hearing, meeting a long-standing recommendation from the United Nations Human Rights Committee.<sup>164</sup> Throughout the year, the Government also released numerous high-profile political prisoners, including human rights activist Ganihon Mamathonov (incarcerated for eight years),<sup>165</sup> journalist Solijohn Abdurahmonov (nine

---

158. *Preliminary Findings of Country Visit to Republic of Uzbekistan by the Special Rapporteur on Freedom of Religion or Belief*, UNITED NATIONS HIGH COMMISSIONER ON HUMAN RIGHTS (Oct. 12, 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22224&LangID=E>.

159. *Uzbekistan: Cotton Slave Labor Out, Human Rights Ombudsman In?*, EURASIANET (Sept. 25, 2017), <http://www.eurasianet.org/node/85276>. “These significant developments show that Uzbekistan can end the decades-long practice of mobilizing massive forced labor to harvest cotton. But these positive steps should not obscure the persistence of forced labor in the current cotton harvest or the continuing threats against activists trying to monitor the situation. The Uzbek government should follow these steps with meaningful reforms to end this repressive and exploitative form of production once and for all.” *Uzbekistan: A Year into New Presidency, Cautious Hope for Change*, HUMAN RIGHTS WATCH (Oct. 25, 2017), <https://www.hrw.org/news/2017/10/25/uzbekistan-year-new-presidency-cautious-hope-change>.

160. EURASIANET, *supra* note 159.

161. *President Shavkat Mirziyoyev Addressed the 72nd Session of the United Nations General Assembly*, UZBEKISTAN TODAY (Sept. 20, 2017), <http://ut.uz/en/politics/president-shavkat-mirziyoyev-addressed-the-72nd-session-of-the-united-nations-general-assembly/>.

162. HUMAN RIGHTS WATCH, *supra* note 159.

163. *Id.*

164. *See id.*

165. *Uzbek Rights Defender Mamathonov Released After Eight Years in Prison*, RADIO FREE EUROPE/RADIO LIBERTY (Oct. 16, 2017), <https://www.rferl.org/a/uzbekistan-human-rights-activist-freed/28798315.html>.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

592 THE YEAR IN REVIEW

[VOL. 52

years),<sup>166</sup> journalist Muhammad Bekjaniov (eighteen years),<sup>167</sup> and former opposition member of the parliament Samandar Qoqonov (twenty-four years).<sup>168</sup>

As a result of these reforms, Human Rights Watch issued a report in October 2017, noting that President Mirziyoyev had “taken some positive steps to improve the human rights situation,” and expressing “cautious hope for change.”<sup>169</sup>

**C. THE ADOPTION OF MEASURES TO COMBAT CORRUPTION**

Effective January 1, 2017, Mirziyoyev cancelled all unplanned regulatory inspections (“proverki”) of businesses, a mechanism which regulators had often abused to harass businesses and demand bribes.<sup>170</sup> Mirziyoyev also created the position of business “ombudsman” to protect businesses against arbitrary government actions.<sup>171</sup>

In February 2017, Mirziyoyev signed a foundational anti-corruption law<sup>172</sup> that, *inter alia*, defines responsibilities of various government agencies in combatting corruption, proposes to reduce corruption by removing bureaucratic barriers to conducting business, and provides protection for whistleblowers.<sup>173</sup>

**D. ADOPTION OF MAJOR JUDICIAL REFORM PROGRAM**

In April 2017, President Mirziyoyev introduced judicial reforms that took effect on July 1, 2017, creating specialized economic courts to address business cases and specialized administrative courts to address civil cases, administrative cases, and complaints about illegal actions by government

---

166. *Independent Uzbek Journalist Released After Nine Years in Prison*, RADIO FREE EUROPE/RADIO LIBERTY (Oct. 5, 2017), <https://www.rferl.org/a/uzbekistan-journalist-abdurahmonov-released/28775300.html>.

167. *Uzbek Journalist Mubammed Bekjanov Freed After 18 Years*, BBC (Feb. 22, 2017), <http://www.bbc.com/news/world-asia-39054928>.

168. *Uzbekistan's 'Longest-Held Political Prisoner' Freed*, RADIO FREE EUROPE/RADIO LIBERTY (Nov. 24, 2016), <https://www.rferl.org/a/uzbekistan-qoqonov-longest-held-political-prisoner-freed/28137324.html>; see also HUMAN RIGHTS WATCH, *supra* note 159.

169. HUMAN RIGHTS WATCH, *supra* note 159.

170. *Uzbek Entrepreneurs Exempt from Inspections for Two Years*, FERGANANEWS (Jan. 24, 2018), <http://enews.fergananeews.com/news.php?id=3736&mode=snews>; Muminov Behzod Abduyahobovich, *Business Inspection Reforms in Uzbekistan*, 4(11) INT. J. ADV. RES. 864 (2016), <http://www.journalijar.com/article/12856/business-inspection-reforms-in-uzbekistan/>.

171. American-Uzbekistan Chamber of Commerce, *Business Ombudsman Institution Set Up in Uzbekistan*, THE AMERICAN UZBEKISTAN CHAMBER OF COMMERCE (May 8, 2017), [http://auctonline.com/news.php?news\\_id=1394](http://auctonline.com/news.php?news_id=1394).

172. *Uzbekistan budet podkbidit' k bor'be s korruptsiyey s semi storon [Uzbekistan Will Approach the Fight Against Corruption from Seven Sides]*, SPUTNIK (Feb. 6, 2017), <http://ru.sputnik-tj.com/asia/20170206/1021641428/uzbekistan-korruptsiya-borba-zakov.html>.

173. Kosta Law Firm, *Uzbekistan: The Anti-Corruption Law Comes into Force*, MONDAQ (Apr. 24, 2017), <http://www.mondaq.com/x/587872/White+Collar+Crime+Fraud/The+AntiCorruption+Law+Comes+Into+Force>.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

2018]

EURASIA RUSSIA 593

agencies and public officials.<sup>174</sup> The judicial reform also created a new Supreme Judicial Council, which will be responsible for selecting judges and disciplining them (powers previously held by the President).<sup>175</sup>

**E. LIBERALIZATION OF THE NOTORIOUSLY RESTRICTIVE CURRENCY CONTROL REGIME**

In a step toward joining the global economic community, a decree took effect on September 5, 2017, *inter alia*, allowing the exchange of foreign currency,<sup>176</sup> abolishing “mandatory conversion” (which had required exporters to sell a percentage of their hard currency export proceeds to the government), and allowing the exchange rate of the soum (Uzbekistan’s national currency) for hard currency to be set by market mechanisms.<sup>177</sup> As a result, the Central Bank exchange rate changed in one day from 4,200 soums to 8,100 soums to the dollar.<sup>178</sup> Gas and transportation prices increased sharply, and experts predicted a resulting increase in consumer product and food prices.<sup>179</sup>

Reform in Uzbekistan is clearly a work in progress. Human rights activists allege continuing abuses and caution that the positive reforms must be transformed into “institutional change and sustainable improvements.”<sup>180</sup> It is too early to judge whether the reforms will last and whether they will create a more transparent and robust polity and economy. But it is clear that the reforms attempt to lower several obstacles that were preventing Uzbekistan from realizing its full potential: currency conversion rules that discouraged foreign investment, official harassment of businesses that deterred entrepreneurial innovation, and human rights abuses that stifled the development of civil society. A positive assessment of the reforms is reflected in the European Bank for Reconstruction & Development’s (EBRD’s) decision in October 2017 to grant a \$100 million credit line to the

---

174. Maksim Yeniseyev, *New Reforms to Uzbekistan’s Judicial System Attempt to Address Deficiencies*, CARAVANSERAI (May 12, 2017), [http://central.asia-news.com/en\\_GB/articles/cnmi\\_ca/features/2017/05/12/feature-01](http://central.asia-news.com/en_GB/articles/cnmi_ca/features/2017/05/12/feature-01).

175. See *Uzbekistan: A Year into New Presidency, Cautious Hope for Change*, HUMAN RIGHTS WATCH (Oct. 25, 2017), <https://www.hrw.org/news/2017/10/25/uzbekistan-year-new-presidency-cautious-hope-change>.

176. Andrew E. Kramer, *Once Closed and Repressive, Uzbekistan Is Opening Up*, N.Y. TIMES (Oct. 25, 2017), [https://www.nytimes.com/2017/10/25/world/asia/uzbekistan-politics.html?\\_r=0](https://www.nytimes.com/2017/10/25/world/asia/uzbekistan-politics.html?_r=0).

177. See Kenneth Rapoza, *Eurasia’s Latest Economic Reboot Can Be Found in Uzbekistan*, FORBES (Sept. 14, 2017), <https://www.forbes.com/sites/kenrapoza/2017/09/14/eurasias-new-perestroika-uzbekistan-silk-road-china/#5705990e6f25>.

178. *Uzbekistan Devalues Currency by Nearly 50%*, KHALEEJ TIMES (Sept. 5, 2017), <https://www.khaleejtimes.com/uzbekistan-devalues-currency-by-close-to-half-central-bank>; see also *The Risk of Reform in Uzbekistan*, STRATFOR WORLDVIEW (Sept. 26, 2017), <https://worldview.stratfor.com/article/risk-reform-uzbekistan>.

179. See *Currency Reform in Uzbekistan: Pain Precedes Gain*, EURASIANET (Nov. 16, 2017), <http://www.eurasianet.org/node/86061>.

180. HUMAN RIGHTS WATCH, *supra* note 175.

**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

594 THE YEAR IN REVIEW

[VOL. 52

Uzbek National Bank,<sup>181</sup> as well as the fact that Uzbekistan jumped thirteen places in the World Bank's annual "Doing Business" report.<sup>182</sup> If reforms are broadened and implemented effectively and rule of law is established, Uzbekistan could attract significant foreign investment in the near future.

---

181. *FIF-NBU SME Senior Loan*, EUROPEAN BANK FOR RECONSTRUCTION & DEVELOPMENT, <http://www.ebrd.com/work-with-us/projects/psd/fif-nbu-sme-senior-loan.html> (last visited Apr. 1, 2018); see also Catherine Putz, *EBRD Approves First New Projects for Uzbekistan Since 2007*, THE DIPLOMAT (Oct. 20, 2017), <https://thediplomat.com/2017/10/ebd-approves-first-new-projects-for-uzbekistan-since-2007/>.

182. See *Doing Business: Ease of Doing Business in Uzbekistan*, THE WORLD BANK, <http://www.doingbusiness.org/data/exploreeconomies/uzbekistan> (last visited Apr. 1, 2018).

**PUBLISHED IN COOPERATION WITH  
SMU DEDMAN SCHOOL OF LAW**