

**M&A NEWS****Lukoil acquired 34% stake in Geoilbent**

The largest Russian oil company Lukoil has consolidated 100% stake in Geoilbent. In 25<sup>th</sup> of January the company announced acquisition of 34% interest in the company from Russneft.

Geoilbent is developing the Severo-Gubkinskoe, Prisklonovoe and Yuzhno-Tarasovskoe oil and gas condensate fields and has exploration licenses for the Urabor-Yakhinsk and Vansko-Namyssk areas in the Yamal-Nenets Autonomous District, Russia.

The transaction price was not disclosed. However, analysts believe that Lukoil paid ca. US\$ 120-140 million. (US\$ 1.4-1.6 per barrel for proved reserves)

25 January 2006

**Rosneft – KNOC asset SWAP**

Rosneft, the second largest oil producer in Russia, has disclosed its intention to continue negotiations with Korean National Oil Company (KNOC) on the possible asset swaps within the companies.

Korea is highly interested in crude oil suppliers diversification. The country has no commercial hydrocarbon deposits within its territories and has to import more than 100 million tons of oil annually. Moreover, ca. 80% of import goes from Middle East countries.

Currently KNOC has only one asset

**M&A in the Russian oil and gas industry**

The following article is an excerpt from the M&A Guide for the Russian oil and gas industry published by ACP and the law firm Nörr Stiefenhofer Lutz in September 2006.

**Legal due diligence****1. Ownership of shares in the target company****Issuance and registration of new shares**

Issuance of shares generally requires **approval** by the shareholders of the issuer and possibly of other corporate bodies. Special approvals may be necessary if the State owns a stake in the company.

Russian companies are not allowed by law to issue bearer shares. Shares issued by a Russian company are “uncertificated” (non-documentary) and ownership is recorded in book-entry form in the shareholders register administered by each company or – if the number of shareholders of the company exceeds 50 – an independent licenced registrar.

A **prospectus** must be prepared and registered with the local branch of the Federal Service for Financial Markets<sup>1</sup> for any open offering or for a closed offering of shares involving more than 500 purchasers.<sup>2</sup>

**State registration** of share issuances is typically done by the local branch of the Federal Service for Financial Markets.

**2. Purchases made in the secondary market****Shareholders register**

Since Russian shares are “uncertificated” a change of ownership in the shares is recorded at least in book-entry form in the company’s shareholders register. For this new shareholders must open a “shareholder personal account” with the registrar. Ownership passes to the purchaser upon

<sup>1</sup> Formerly called “Federal Commission on Securities Markets” (“FCSM”, also called Federal Securities Commission).

<sup>2</sup> Once a prospectus is registered, the issuer is subject to various information disclosure requirements, such as quarterly issuer’s reports and notification of material events.

in Russia - 40% interest in West-Kamchatka offshore block with possible reserve potential of 245 mln tons. The majority beneficiary of the project is Rosneft. In late October 2006, Rosneft declared its intention to sell 25% interest in Sakhalin 3 project to the company. Indian ONGS and Chinese CNPC are also highly interesting in gaining access over the project.

In turn, Rosneft is interesting in development of downstream business in the Asian region, both in terms of JV or acquisition of existing assets.

2 February 2006

### **Gazprom searches for new opportunities in Europe**

In its intention to get access to lucrative Western gas distribution markets, Gazprom was marked as an unprecedented leader and one of the most aggressive M&A players in the region of the previous year.

European countries, in turn, were not so optimistic on that issue, trying to secure local companies by introducing various legislation barriers for foreign investments.

It is worth to be mentioned that only in 2006 Gazprom failed to acquire assets in Europe with total value of more than US\$ 30 bn.

But the monopoly is not going to step back. The company understands that one should be strong and persistent to exist in sharp competitive environment and nobody is going to let it enter the market for free. The monopoly slowly but steadily opens the doors to international gas distribution markets.

On 22<sup>nd</sup> January, Gazprom signed a

recording in the shareholders register. The registrar issues, upon request, an "excerpt" to the new shareholders confirming ownership.

### **Regulatory approvals**

- Federal Anti-Monopoly Service ("FAS")<sup>3</sup> or its relevant territorial division
  - The acquisition of 20% or more of the shares of, or other interest in, a Russian company requires a prior written consent or notification of the FAS in most cases.

**Practice note:** In some bidding situations involving 20% or more of the shares of a company it may occur that a bidder of a final (binding or non-binding) bid notifies the FAS of its intention to acquire the shares or the assets of a company. This can lead to the situation that several companies notify the FAS prior to the selection of the final bidder.

- The approval must be issued by the FAS within 30 days; this term may be extended by up to 20 days.
- Federal Service for Financial Markets
  - No sale transaction may be completed until the issuance of shares is registered with the Federal Service for Financial Markets except for transactions with underwriters. Hence, the registration will be a condition precedent of the sales and purchase agreement.

### **Use of nominees and custodians**

In many cases, the owners of Russian joint stock companies are investing via an offshore company (in the past often a Cyprus company), have cross-ownerships or are hiding behind nominal owners (nominees). Acquisitions through third parties (i.e. nominees and custodians) – who are required to be licenced - are possible but:

- Use of nominees can complicate the due diligence process
- Nominees are often used to hide the identity of the true owner. However, the registrar of the company's shareholders register has the right to demand a list of

<sup>3</sup> In March 2004 the former Ministry of Anti-Monopoly Policy ("MAP") was reorganized into the FAS.

Memorandum for further cooperation with Algeria largest gas producer **Sonatrach**. The monopoly believes that this will open new gates to South-European gas markets. Moreover, the companies arranged to proceed joint development of Algerian and Russian assets.

On 2<sup>nd</sup> February, the fifth largest energy company in Germany **Rohoel-Aufsuchungs AG (RAG AG)** disclosed in their pre IPO press release its intention to have Gazprom as a shareholder. Company believes that this will secure gas supply to its power stations and this cooperation will be fruitful for both sides. Gazprom, in turn, might be interesting is such kind of deals due to recently declared policy towards development of power generation business in Russia and abroad. Gazprom also tried to secure coal supply to its current power stations in Russian by creating a JV with Siberian Coal Power Company (SUEK).

On 8<sup>th</sup> February, the government of the United Kingdom officially approved the acquisition of gas distribution assets in the country by Gazprom should the Russian company be still interested in such acquisition. Therefore, gas monopoly has a chance to acquire a minority stakes in **Centrica** and **National Gas**. Centrica is more preferable to the gas monopoly, its representative said in Moscow. The company has enduring gas deficit what, in turn, presents good opportunities for Gazprom.

By positioning itself as a reliable gas supplier, the monopoly integrates more and more with European gas distribution network. Thus Gazprom's strategy slowly but steadily comes to reality.

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the actual owners. In addition, a shareholder holding at least 1% of the votes may request a list of shareholders entitled to participate in the general shareholders' meeting.

### Rights of first refusal and pre-emptive rights

Rights of first refusal pursuant to which existing shareholders have the right to purchase shares in the first place have to be examined.

- In joint stock companies existing shareholders have the statutory right of first refusal in any open subscription (applicable to open stock company only), or if they voted against the decision on closed subscription or did not participate in such a vote, in a closed subscription (applicable equally to an open or closed joint stock company). A failure to comply with rights of first refusal procedures may lead to the invalidation of a transaction.
- Limited liability companies do not issue shares. A limited liability company may invite a new participant (somewhat similar to a closed subscription in favor of a third party in a joint stock company) in which case, subject to unanimous approval of the existing participants, such new participant receives a participatory interest. However, no pre-emptive rights apply.
- In other cases it has to be checked whether the issuer's corporate documents or shareholder agreements grant existing shareholders rights of first refusal to participate in the purchase. E.g. if the issuer is an open joint stock company such rights cannot be granted under its corporate documents (this is prohibited by law). Such rights can only be granted in shareholder agreements. A right of first refusal may also be granted to the company, if provided in the company's corporate documents.

### 3. Ownership and use of assets

Clearly the company (or the shareholder from whom an investor is purchasing shares in the company) must hold the assets or shares which are acquired.

With respect to **land**, at least the following issues should be checked:

- Who is the owner of the land plot? Possible answers are: the Russian Federation, one of its member states, a municipality, a legal entity or an individual.
- Does the company hold valid ownership to the land plot? Typically, the company will be leasing the land plot on the basis of a written lease agreement with the owner of the land plot.

**FINANCIAL ADVISORY NEWS****Syndicated loans market in Russia**

Syndicated loans market is performing its 3<sup>rd</sup> year of outstanding growth after the financial crisis of 1998. More than 290 syndicated loans with the total amount of approx. US\$ 35bn were provided in 2006.

Fast growing Russian economy requires more investments and, hence, financial sources. Syndicated loan is one of the most efficient debt instruments for project financing, which is still quite new for Russian borrowers.

Foreign banks dominate the market because of relevant experience, access to vast financial facilities and relative cheap capital. Market leaders in 2006 were:

- ABN AMRO (US\$ 6,88 bn)
- Citigroup (US\$ 3,35 bn)
- Barclays Capital (US\$ 3 bn).

Key advantages of such loans are longer tenor and lower interest rates compared to straight forward corporate loans.

Most of issued loans are still nominated in USD, however Russian roubles loans gain more and more their share in the market.

16 February 2006

- Did the previous owner(s) or user(s) of the land plot validly waive their rights to use the land plot? For state-owned companies, there is a special procedure to waive land use rights.
- What is the category of the land plot? In Russia, all land is categorised and a land plot may only be used in accordance with its category. Most land in Russia is either agricultural or forest land. Natural resources may only be extracted on land plots which are industrial, forest or settlement land plots. Extraction of natural resources on agricultural land plots is strictly prohibited and may be penalised by fines, sometimes with considerable amounts, and prohibitions to carry out a business activity.

As far as real estate is concerned purchase contracts, lease contracts and mortgages must be registered to be valid; prior to September 2004 mortgage agreements with respect to immovable property mandatorily had to be notarised which was expensive. However, the need for notarisation has now largely been abolished, and notarisation may be done now on a voluntary basis. The permitted use of real property must be verified, especially if land is involved: rights for the use of land plots are granted to oil and gas companies after the receipt of a relevant subsoil licence and determination of the area and depth of subsoil exploration. While Russian law does not prohibit the ownership of land plots over subsoil, in practice, oil and gas producers typically lease such land plots from the State.

***In the next issue of the ACP Monitor more on: legal due diligence***

Based on its market knowledge and transactional experience, ACP has developed an M&A Guide for the Russian oil & gas industry in co-operation with the law firm Nörr Stiefenhofer Lutz. RPI, and Statoil ASA and LeBoeuf Lamb were involved in preparing the Guide. The Guide describes in detail legal and tax issues of mergers, divestitures and acquisitions in the Russian oil & gas industry, and shall be of assistance to companies and individual investors interested in acquiring or divesting Russian oil or gas assets with a focus on the upstream sector. The Guide is provided to our clients free of charge upon request.

**Upcoming conferences to which ACP is invited as a speaker:**

- **1st International Russian Alternative Investment Forum: Examining the rise of private equity, hedge funds & other alternative investment tools**  
Adam Smith Conferences  
London, 21-23 February 2007
- **3rd International Conference: Trade & project finance in Russia**  
Adam Smith Conferences  
Moscow, 19-22 March 2007
- **6th International Pipeline Forum: Pipeline Transport 2007**  
RPI, Transneft  
Moscow, 17-18 April 2007

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