

**M&A NEWS****Total to Book 25% of Reserves at New Gazprom Field**

Total SA, Europe's third largest oil company, has signed an agreement with Russian gas giant Gazprom on the joint development of the Stokhman gas-condensate field located offshore in the Barents sea.

The announcement followed a phone conversation between French President Nicolas Sarkozy and his Russian counterpart Vladimir Putin the day before. The two men discussed energy cooperation issues.

Pursuant to the terms of the agreement, Total will be able to book 25 per cent of reserves of the giant Arctic field. It also allows for additional partners to take up to 24 per cent in the operating company, with Gazprom retaining at least 51 per cent.

"We can book reserves to the extent that we are taking risks," Christophe de Margerie (CEO Total) told reporters after the signing ceremony. "Since Total has a 25 per cent stake in the operating company, it should be able to book the same proportion of reserves", he said.

Majority state-owned Gazprom, which already supplies a quarter of Europe's gas, expects Shtokman to revive stagnating output. Gazprom initially plans to tap Shtokman to fill a planned pipeline to Germany in the Baltic Sea and later use it to become a major supplier of liquefied natural gas (LNG), to overseas markets like the U.S.

The first phase of the project will cost "more than US\$15 billion," de Margerie said. Total's investment share will amount to "US\$4 to US\$ 5 billion."

13 July 2007

**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 issues of the target company****Corporate governance**

In 2002 the Federal Commission on Securities Markets (now called "Federal Service for Financial Markets") promulgated a voluntary Code of Corporate Governance (see <http://www.fcsm.ru/eng>). It provides a good guideline for reorganising a company after an acquisition in a shareholder friendly manner. Efforts should be concentrated on shareholder structure, management activity and quality of financial information (the same criteria on which the S&P corporate transparency index is based<sup>1</sup>). Good corporate governance is a prerequisite for listings, IPOs and borrowings in the capital markets.

**Shareholders rights under Russian company law**

Most of the company matters that fall within the competence of shareholders can be decided upon by a 50% plus-one-share majority.

**Minority shareholders**

Minority shareholders have a number of rights in the context of divestitures and acquisitions:

- Rights of first refusal pursuant to which the seller of shares has to offer the shares first to **existing shareholders** are applicable only in closed joint stock companies and limited liability companies.
- Shareholder's right to sell shares to an **acquirer**: if the company has more than 1,000 shareholders and more than 30% of the companies shares are purchased
- Shareholder's right to sell shares to the **company**:
  - if the company is reorganised; or
  - the company's corporate documents are changed with a view to limiting shareholders' rights; or

<sup>1</sup> On 13 October 2004 S&P unveiled its corporate transparency index calculated for Russia's top traded companies, which increased from 40% in 2003 to 46% in 2004. In comparison, Russia's index was put at a level of 34% in 2002, while the UK achieved a level of 71% in 2003.

### Rosneft Announces Sale of 50% of Tomskneft

Rosneft announced that it had agreed to sell via its subsidiary Neft-Aktiv 50 per cent of OJSC Tomskneft to Vnesheconombank (VEB). Tomskneft is a former YUKOS oil and gas subsidiary, operating in Eastern Siberia and producing at an average rate of appr. 18 million tons p.a. Proceeds from the sale of 50 per cent of Tomskneft enable Rosneft to complete recent announced acquisitions without raising any further debt. Rosneft will continue to reduce debt through integration of recently acquired assets, improved operating performance, enhanced downstream margins, and potential asset sales. The company is targeting a reduction in leverage to 1x Debt/EBITDA and a less than 30 per cent gearing by 2010.

3 July 2007

### BP and TNK-BP Plan Strategic Alliance with Gazprom as TNK-BP Sells its Stake in Kovykta Gas Field

BP and TNK-BP have signed a memorandum of understanding to create a strategic alliance with the Russian gas company, Gazprom, to invest jointly in major long-term energy projects or swap assets around the world.

In a move designed to extend Gazprom's access to international markets and deepen BP's and TNK-BP's involvement in Russian oil and gas, the companies will establish a joint team to identify strategic opportunities for investment both overseas and inside Russia. "We will initially be looking for projects of at least US\$ 3 billion, but the potential for further growth could be very significant," said BP chief

### Minority shareholders

- a major transaction is to be realised (sale or purchase of more than 25% of the assets or placement of more than 25% of the company's share capital) if the minority shareholder has voted against or not voted at all
- voting right with respect to transactions involving conflicts of interest

A shareholder with **25 and up to 50%** has blocking rights on amending the charter, implementing a reorganisation, commencing a liquidation, determining the quantity, nominal value and class of authorised share capital and approving interested party transactions.

Shareholders with **less than 25%** are in a weak position unless their rights are protected by an investment agreement and such contractual rights are in accordance with Russian law. However, they may influence the election of the members of the supervisory board of the company due to the so-called "cumulative voting requirement" which provides that shareholders must be represented on the supervisory board in proportion to their shares. In addition, they are protected against squeeze-out and asset stripping by legal provisions on public offers and interested party transactions.

A **25%** shareholder can block certain decisions of the general shareholders meeting and has the right to participate in profits and receive yearly reports and minutes of the shareholders and directors meetings. Such shareholders are not entitled to receive financial or book-keeping documentation and minutes of the management board (i.e. the second tier executive management of the company as distinct from the board of directors).

### Majority shareholders

A shareholding of between 50% + 1 share and 75% gives the holder the right to determine most major issues except amending the charter, implementing a reorganisation, commencing a liquidation, determining the quantity, nominal value and class of authorised share capital and approving interested party transactions. One way a minority investor can minimise the power of the majority shareholder is by shifting control from the shareholders meeting to the board of directors. In order for a minority

executive Tony Hayward. "This historic agreement lays the ground for powerful co-operation between BP, TNK-BP and Gazprom."

Dr. Hayward said the companies would immediately set up a joint steering group to look for suitable investment options "across all geographies."

"Our firm aim is to establish a venture that is strategic and long term, with mutual benefits for the companies, both inside and outside Russia."

Under the terms of the agreement signed by all parties, TNK-BP agreed to sell to Gazprom its 62.89 per cent stake in Russia Petroleum, the company which holds the licence for the Kovykta gas field in East Siberia. It will also sell its 50 per cent interest in East Siberian Gas Company (ESGCo), which is involved in the construction of the regional gasification project.

Gazprom will pay between US\$700-US\$900 million, subject to adjustments, for TNK-BP's interests in Russia Petroleum and ESGCo.

TNK-BP said a longer-term 'call' option for TNK-BP to buy a 25 per cent plus one share stake in Kovykta at an independently verified market price had also been agreed with Gazprom. This option could be exercised once a significant joint investment or asset swap has been agreed under the terms of the memorandum of understanding. President and CEO of TNK-BP, Bob Dudley noted: "This is an important development in the future growth of TNK-BP. We look forward to broadening our working relationships with Gazprom and BP and to further developing our Russian asset base as well as securing access to material additional opportunities for TNK-BP."

26 June 2007

shareholder to obtain representation at board level, the charter must provide for cumulative voting for directors.

### **Majority shareholders**

In cumulative voting the number of votes held by each shareholder is multiplied by the number of persons to be elected to the board. A shareholder has the right to cast all votes received in such a manner for one candidate or may distribute his votes among two or more candidates. Through this method he will receive something along the lines of proportional representation on the board.

There has been a practice in the past of acquiring assets through false bankruptcies or dilution of minority shareholders.

## **Taxes and other payments to the State**

### **Licence charges and fees**

#### **Current Subsoil Law**

Under the current Subsoil Law the following payments are required with respect to licences:

- A one-time subsoil use payment
- Regular payments for the right to explore, prospect and appraise
- Payments for geological information
- Payment of tender participation and licence issuance fees
- License payment

#### **Production sharing agreements**

In case of a production sharing agreement ("PSA") the subsoil user pays the subsoil use fees agreed under the PSA. This regime is not entirely open for negotiation and agreement. It is substantially regulated by the PSA Law (Article 13) and the PSA Chapter of the Tax Code.

#### **Draft Subsoil Law**

Under the Draft Subsoil Law the following payments have to be made:

- A one-time subsoil use payment
- Regular subsoil use payments

## FINANCIAL ADVISORY NEWS

### Deutsche Bank announced financing plans for real estate development projects of STT Group.

Moscow, 22 July, 2007 – Deutsche Bank AG and STT Group, real estate developer owned by Shalva Chigirinsky, reached a strategic agreement according to which Deutsche Bank will provide financing for STT Group's projects at the total amount of RUR12 billion (US\$472 million).

The first tranche of RUR3 billion (US\$118 million) has been already provided under the financing agreement for acquisition and reconstruction of Passage Shopping Center located on the St. Petersburg main street Nevsky Prospect, in the heart of the historic centre of St. Petersburg. The total reconstruction area is 37,380 square meters. Deutsche Bank Ltd. Russia and STT Group confirmed that they are planning further cooperation and will continue co-investing in major development projects.

As STT Group is also considering an IPO, it is expected that announced strategic partnership with Deutsche Bank will also continue on that field as well.

This partnership with STT Group shall be considered as part of the Deutsche Bank's development strategy aimed at achieving leadership position in the Russian real estate and development sector. Among other landmark transactions of Deutsche Bank in Russia are financing of the Moscow Hotel reconstruction project with overall investment volume of US\$600 million, as well as joint venture project in partnership with STRABAG AG.

*Deutsche Bank press release  
22 July 2007*

- Payments for geological information
- Auction payment duty

The **one-time subsoil use payment** is paid by subsoil users in the following cases:

#### Draft Subsoil Law

- exploration and production of mineral products
- regional geological exploration, conducted at the expense of a subsoil user
- special geological research, conducted at the expense of a subsoil user
- collection of various geological materials

The amount of the one-time subsoil payment is determined in a subsoil use contract. The amount of a single subsoil payment shall not be less than 10% of the mineral extraction tax amount calculated on the basis of the estimated average annual production capacity. The amount of the subsoil payments actually payable is set in the subsoil use contract and determined by the auction results. This amount cannot be paid within the first 30 days after the contract registration. If a subsoil user discovers a new deposit whilst conducting search and exploration works at his own expense or with funds received from third parties, the subsoil payment amount is equal to 10% of the mineral extraction tax amount calculated on the basis of the estimated average annual production capacity. In this case, the single subsoil payment is due only after achieving a certain production capacity.

In case of short term subsoil plot usage (less than 1 year) the single subsoil payment is set by the Russian Government. In case of a PSA the subsoil users pay single subsoil use payment as agreed in the PSA.

**Regular subsoil use payments** are due on a quarterly basis and charged in addition to the one-time subsoil use payment for the following activities:

- Search and deposit evaluation
- Exploration and prospecting of deposits
- Construction and operation of underground and underwater facilities, which are not related to the mineral extraction, such as oil and gas storage facilities, dumping and disposal grounds for harmful substances, pipelines or cables.

**US\$6 billion acquisition finance credit facilities for OJSC "MMC "Norilsk Nickel" signed**

On 22 June 2007 OJSC MMC Norilsk Nickel signed loan agreements for an aggregate amount of US\$6 billion with Original Mandated Lead Arrangers BNP Paribas and Société Générale for purpose of funding the acquisition of all of the outstanding common shares of LionOre Mining International Ltd.

The facilities were arranged and fully underwritten by BNP Paribas and Société Générale.

The acquisition financing package is structured as a US\$2 billion five-year pre-export finance facility, a US\$1.5 billion three-year dual-tranche unsecured term loan and revolving facility, as well as a US\$2.5 billion one-year unsecured facility.

Norilsk Nickel is the world's leading producer of nickel and palladium, one of the largest producers of platinum and one of the top ten producers of copper in the world. For the full year 2006 Norilsk Nickel recorded revenues of US\$11.5 billion with net profit reaching US\$5.9 billion. The Company is rated Baa2 by Moody's Investors Service and BBB- by Standard & Poor's and Fitch Ratings.

Norilsk Nickel press release,  
22 June 2007

The regular subsoil use payments increase with the different stages of the development process and are as follows:

- For **search and deposit evaluation** the annual regular payments are at least Roubles 120 per km<sup>2</sup> and at a maximum Roubles 360 per km<sup>2</sup>. For offshore hydrocarbons these amounts are a minimum of Roubles 50 per km<sup>2</sup> and at a maximum Roubles 150 per km<sup>2</sup>

**Draft Subsoil Law**

- For **exploration and prospecting of the deposit** the annual regular payment is a minimum of Roubles 5,000 per km<sup>2</sup> and at a maximum Roubles 20,000 per km<sup>2</sup>. For offshore hydrocarbons these amounts are at least Roubles 4,000 per km<sup>2</sup> and at a maximum Roubles 16,000 per km<sup>2</sup>
- Regular payments for **storage of oil and gas condensate** are equal to Roubles 3.5 per tonne, for natural gas Rouble 0.2 per tcm.

The subsoil users should pay for **federally owned geological or any other subsoil information**, which they use. The amount of payments is determined by the Federal Government. Subsoil users which reimbursed expenses for the Government's search and deposit evaluation for a specific subsoil plot for which a subsoil use right has been granted are exempt from this payment.

An **auction participation duty** is paid by **all** auction participants. The auction duty is determined on the basis of the expenses for auction preparation, conducting and closing of the auction. With regard to subsoil which is federal property the duty is set by the Russian Government. If the subsoil is local property the duty is set by the member states of the Russian Federation.

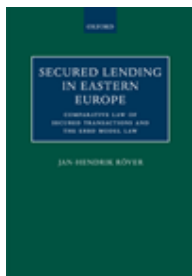
***In the next issue of the ACP Monitor more on: Taxes and other payments to the State.***

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, 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.

**Most recent conferences where ACP was invited as a speaker:**

- **3rd International Conference: Trade & project finance in Russia**  
Adam Smith Conferences  
Moscow, 19-22 March 2007  
<http://www.assetcapitalpartners.com/public/conferences.php>
- **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  
Vladimir Matias: "Financing options for leveraged deals and exit strategies"  
<http://www.assetcapitalpartners.com/public/conferences.php>
- **6th International Pipeline Forum: Pipeline Transport 2007**  
RPI, Transneft  
Moscow, 17-18 April 2007  
<http://www.rpi-inc.com/PF2007/index.html>
- **The Performance Theatre**  
The Performance Theatre Foundation  
St.Petersburg, 20-21 June 2007  
[www.theperformancetheatre.com](http://www.theperformancetheatre.com)

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**Recent publications by Asset Capital Partners:**
**Jan-Hendrik Röver, Secured Lending in Eastern Europe. Comparative Law of Secured Transactions and the EBRD Model Law (Oxford 2007)**


This new work is the first comparative study of central and eastern European secured transactions laws to be written in English. It gives a valuable insight into the legal reforms taking place in the transition economies of central and eastern Europe (and elsewhere), by explaining the general mechanics of secured transactions law in a helpful and practical way.

The book explores the characteristics that make security law useful from a practical point of view, the purpose being not merely to describe existing rules on security but to concentrate on the question of how those rules can apply in practice. The author concentrates on seven central and eastern European secured transactions laws in Bulgaria, the Czech Republic, Hungary, Poland, Romania, the Russian Federation and the Slovak Republic. These laws are contrasted with the EBRD's Model Law on Secured Transactions and the EBRD's Core Principles for a Modern Secured Transactions Law. In addition, English, German and US law (which, among others, influenced the EBRD's work) are used as further reference sources.

The descriptions of eastern European laws were reviewed by Nörr Stiefenhofer Lutz, a leading European law firm, thus ensuring an up-to-date introduction to central and eastern European secured transactions laws.

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**Asset Capital Partners** is an international investment banking and financial advisory firm based in Munich and Moscow with a special focus on Russia and other CIS countries.

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