Dear Committee Members:

We are pleased to present to you this edition of the Eurasia/Russia Committee Newsletter.

This edition of the Newsletter starts out with an overview of the Committee’s recent panel on the Yukos case at the ABA Spring Meeting in Washington, D.C., in April. We are excited to report that this panel has been nominated for the Best Spring Meeting Program Award. The Newsletter also covers an upcoming webinar on the growing geopolitical importance of the Arctic market, which is being co-sponsored by the Committee and will be moderated by Zachary Klein, as well as the recent U.S.-Russia Legal Seminar Program, which took place in Moscow in June. Among the legal developments discussed in this Newsletter is the new U.S. law strengthening existing sanctions and levying new ones against Russia; a Russian bill that would introduce the instrument of convertible debt to the corporate finance toolkit; and the recent expansion of the authority of Russian courts to reduce statutory damages awards in intellectual property cases.

We would like to thank our contributors to the current edition: Dr. Ariel Cohen of the Atlantic Council and the Institute for the Analysis of Global Security; Prof. Bruce W. Bean of the Michigan State University College of Law; Zachary N. Klein of the New Jersey Office of the Attorney General; Evgeny Golovanov and Lucius Smejda; Rosa Sakhle and Elena Kazakova of Hérès Legal; and Katya Stepanishcheva and Yulia Vasilyeva of Jones & Co.

We encourage the Committee members worldwide to contribute to the upcoming editions of the Newsletter!

Sincerely,
Evgeny Krasnov
Michael Skopets
Ann Sultan
Amanda Weir
Panel on Yukos at the ABA Spring Meeting in Washington, DC (April 2017)  
(Prof. Bruce W. Bean, Michigan State University College of Law)

The Yukos Affair has been with us for well over a decade. Once the world’s fourth largest oil company, Yukos was controlled by Russia’s richest man, Mikhail Khodorkovsky. Yukos was seized by the Russian government and, by 2005, the company had been destroyed. Yukos has triggered hundreds of litigated matters in tens of countries. At the Spring Meeting, the Eurasia/Russia Committee assembled Yukos experts from Russia, Italy, France and the U.S, and presented a panel entitled Pipe Dream: Yukos’ Journey from an Oil Giant to a Lifetime of Litigation. The panel discussed two unprecedented judgments in favor of Yukos shareholders against Russia: a $50 billion award to Yukos shareholders in the Permanent Court of Arbitration in The Hague and a $2 billion award in the European Court of Human Rights. The arbitration award was subsequently vacated by a lower Dutch court. Among the topics presented by the panel were the Energy Charter Treaty, global enforcement of arbitral awards and ECHR judgments, sovereign immunity and other related areas. The panel was well attended and received universally positive feedback.

Webinar Announcement: The Emerging Arctic Market: New Trends, Key Players, and Why It Matters to Everyone South of the North Pole (October 2, 2017)  
(Zachary N. Klein, New Jersey Office of the Attorney General)

The Eurasia/Russia Committee is sponsoring a webinar that will take place on October 2, 2017, at 2:00 PM EST. The webinar will address the growing importance of the Arctic region in international relations. Arctic sea ice is thawing at an unprecedented rate, creating economic opportunities that are quietly being exploited by state actors. New sources for hydrocarbons, minerals, and fishing are materializing amidst the melting ice, as are shipping lanes that would expand access to markets in Europe, North America, and Asia. While these new opportunities draw increased human activity, gray areas in the law present a growing challenge, as disputes over territorial claims and resource rights loom large. The webinar panel will explore this new market, the key players involved, and the legal challenges ahead.

The program is organized by Zachary N. Klein who will also moderate the panel comprised of Heather Conley of the Center for Strategic and International Studies, Washington D.C.; Caitlyn Antrim of the Rule of Law Committee for the Oceans, Washington D.C.; Paul Deemer of Vinson & Elkins, London; and Prof. Kai Sun of the Ocean University of China, Qingdao. In addition to the Eurasia/Russia Committee, the webinar is also sponsored by the International Energy & Natural Resources Committee, Europe Committee, Canada Committee, China Committee, and International Transportation Committee.

Please click here to register for the webinar.
A New Annual U.S.-Russia Legal Seminar Program
(Evgeny Golovanov and Lucius Smejda, LEX International Law Firm)

The Florida Bar International Law Section, ABA Section of International Law, together with the Moscow International University of Foreign Relations (MGIMO), the foremost legal and diplomatic university in Russia, successfully organized a legal seminar in Moscow on June 27, 2017. The seminar, also supported by the Russian American Bar Association of Florida, focused on American-Russian business and investment topics, and was dedicated to furthering U.S.-Russian business relations for mutual economic benefit despite political disagreements. This event was planned as the first in a series of annual jointly sponsored events for U.S. and Russian attorneys, alternating venues between North America and Russia.

MGIMO provided online session video and broadcasting. U.S. attorneys had ample opportunities to participate as speakers and attendees, both in person and online. All speakers were of high quality, and their presentations were applauded. Presentations covered various aspects of U.S.-Russian legal relations, including: cooperation in the Arctic region, bi-national tax agreements and their practical use, international enforcement of arbitration awards, differences between U.S. and Russian laws on real estate and investment, U.S. immigration matters, and other related topics. Attendance totaled about 190 persons, 38 attending in person in Moscow (including attorneys from the United States, Russia, Hong Kong, and Latvia) and approximately 150 participating online. The 5-hour seminar was recorded and will soon be available online, as will be the photos of the event. MGIMO also plans to publish a book with the seminar materials within several months.

The Seminar included exciting social and cultural activities for the Moscow attendees – a speakers’ dinner at the famous Cafe Pushkin; lunch at MGIMO; Nikulin Circus; Carmen performance at the Bolshoi Theatre; and Kostroma Russian Dance.

The Seminar participants unanimously agreed to:

1. organize a second annual seminar in Miami in January 2018 (and to thereafter alternate locations between Moscow and Miami);
2. include the Florida International Law Quarterly (ILQ) in MGIMO’s library (700,000 volumes) in both electronic and paper formats;
3. involve the Russian Bar Association in the future events (as per the Agreement¹ noted below);
4. consider an appropriate student/young lawyer exchange program – either as law clerks or as students in law schools – between the Florida Bar entities and MGIMO;
5. consider submitting scholarly articles for publication in Florida Bar legal journals about the subject matters of the seminar and possibly extending reciprocal privileges for MGIMO publications in Florida Bar legal journals;
6. consider establishing direct law school contacts for MGIMO with Florida law schools, potentially via the International Law School (ILS) Committee of the Florida Bar; and
7. organize a permanent Eurasian Law committee under the ILS Florida Bar that will be in charge of all the above-mentioned organizational matters.

¹ In 2003, the ILS organized two Russian Legal Symposia (in Moscow and St. Petersburg). During those Symposia, an Agreement of Cooperation between Florida Bar and Russian Bar was signed.
U.S. Business Unhappy with the Latest Russia Sanctions

(Ariel Cohen, PhD, Senior Fellow, non-resident, Atlantic Council; Director, Center for Energy, Natural Resources and Geopolitics, at the Institute for the Analysis of Global Security)

A new set of Russia sanctions went into effect on August 2, 2017, as a part of H.R.3364 – “Countering America’s Adversaries Through Sanctions Act.” Overwhelmingly supported by the Congress, the new law introduces sanctions for the unlawful activities in cyber security, human rights abuses and corruption. Moreover, new sanctions target entities conducting business with the Russian military or intelligence agencies, companies participating in Russian off-shore oil projects and oil or gas pipeline construction within Russia. The law also establishes a review process that allows Congress to block any effort by the President to ease or lift sanctions on Russia.

President Donald J. Trump expressed reservations about the sanctions as undermining his foreign policy prerogatives. Although aimed at hurting the Russian economy, the new law harms American and European businesses as well. Hundreds of U.S. companies spanning almost every industry have significant investments in Russia; only the US-Russia Business Council comprises more than 150 members such as Boeing, Google, Ford, LUKOIL, and others. All these major players, however, are now restricted from partnering with sanctioned Russian firms on projects in which the latter own at least a 33 percent stake. “Modification of Directive 4” section further prohibits the U.S. firms from participating in oil and gas projects involving Russian companies on the territory of the Russian Federation and worldwide. Thus, the new law could block American companies from joining certain international oil exploration and production projects, depriving businesses of billions of dollars in investments and job opportunities.

Big corporations such as BP, Exxon, Caterpillar, Visa, and others have raised issues with the new law impacting their businesses. Dozens of companies claimed that the competitiveness of their firms would be negatively affected by the legislation, as they would be disadvantaged in the Russian market.

Some firms pay a high price for their dealings with Russia. Exxon was levied a $2 million fine for the deals signed with Igor Sechin, the CEO of Rosneft, Russia’s largest oil company, weeks after the first round of sanctions was imposed, and Sechin was blacklisted. Exxon sued the U.S. government for imposing an unfair penalty, and the case is currently ongoing.

President Trump pointed out other flaws in the bill as he signed it last week. He particularly emphasized sections 253, 257, and 216, which restrict his executive power and infringe his constitutional rights. Sections 253 and 257 encroach on the exclusively presidential right to recognize foreign governments and go against the 2015 case Zivotofsky v. Kerry. Section 216 enables Congress to block the presidential decision to lift sanctions by a simple majority vote; this clashes with the procedure for changing the law defined in Article I, section 7 of the Constitution and conflicts with the Supreme Court's decision in INS v. Chadha. The applied restrictions hinder the President’s ability to conduct negotiations and reach an agreement with the Russian government. The sections above can be challenged in court; however, even if they were corrected, they would not affect the core of the law.

The U.S.-Russian relations continue on their downward spiral with no end in sight. American businesses need all the legal help they can get to navigate these dangerous shoals.
**Convertible Debt: New Type of Financing in Russia**  
* (Rosa Sakhle and Elena Kazakova, Hérès Legal, Moscow)

On May 31, 2017, a [bill](#) introducing a new contractual and financing mechanism to the corporate legislation was submitted to the Russian State Duma. According to its proponents¹, the goal is to implement in Russia instruments that are widely used in foreign corporate law practice. This factor should contribute to improving the investment climate.

The convertible debt (note) represents a loan agreement between a debtor and a creditor that grants the latter the right to set off a loan (in full or in part) against the debtor’s shares. The set-off does not depend on a maturity date. As for the contracting parties, the creditor can be an existing shareholder of a debtor or a third party, and the debtor is a non-public joint-stock company or a limited liability company.

Such a mechanism should allow the business to receive financing promptly with minimal risks for an investor who can become, at his own will, a shareholder of the debtor. In this respect, the convertible debt tends to guarantee the interests of all the parties involved.

Some technical aspects of this new type of contract are noteworthy. For instance, unanimous approval of the debtor’s general meeting is required, and the value of shares in question or the method of its calculation along with the conditions of the set-off must be determined in the contract.

The debt-to-equity conversion is performed through the buyback of the company’s own shares (stocks) or through the increase of a company’s share capital (applicable to limited liability companies). In the former case, treasury shares must be transferred in a period not exceeding 3 years. After expiration of this period, the share capital must be reduced through retirement of these shares. In the latter case, the additional contribution (debt set-off) must be made within the same period.

Regardless of the method, the bill provides the investor with an additional guarantee – the right to effective judicial protection. The circumstances in which such protection may be employed include the situation where the debtor avoids his obligation to place shares (applicable to joint-stock companies) or to proceed with the state registration of the distribution of shares (applicable to limited liability companies).

It is very likely that the bill will receive support from the Russian business community and the legislature, as the current law² provides only limited options for the debt-to-equity swap and does not provide direct regulatory measures (two factors that encourage investors to conclude similar transactions under foreign law models). Still, the implementation of the new law will be highly influenced by existing court decisions and will probably require further amendments. The legislative package is currently under consideration in the Parliament.

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¹ Explanatory note to the bill.
² Cl. 4 art. 19 of Federal Law on Limited Liability Companies, cl. 2 art. 34 of Federal Law on Joint-Stock Companies
Statutory Damages for IP Rights Infringement Can Be Reduced by Courts
(Katya Stepanishcheva & Yulia Vasilyeva, Jones & Co., Toronto, Canada)

The statutory damages regime in Russia is changing: Russian courts now have the discretion to reduce the amount of statutory damages for infringement of intellectual property rights below the minimum set out in the Civil Code.

Under the Russian Civil Code, the owners of copyright, neighbouring right copyright, and trademarks can claim statutory damages (“compensation”) from the infringers of their intellectual property (see articles 1301, 1311, and 1515 of the Civil Code). The minimum amount of the statutory damages is fixed in the Civil Code and does not depend on the actual infringement. The owner can choose to claim statutory damages instead of actual damages, because in many cases, proving or even calculating the amount of actual damages caused by intellectual property rights infringement is nearly impossible.

Recognizing that in some cases awards of statutory damages are disproportionate to the extent of the infringement, in late 2016 the Constitutional Court allowed the courts to reduce an award if the minimum amount is unfair and disproportionate to the actual breach. The courts will now consider mitigating factors, such as whether the infringement was minor or the compensation sought significantly exceeds the inflicted damage.

A bill amending the Civil Code to comply with the decision of the Constitutional Court has been introduced in the State Duma; until the bill is passed into law, judges will follow the guidance provided by the Constitutional Court.

This ruling is consistent with the statutory damages regime existing in the U.S. and Canada, where courts have the discretion to lower the amount of statutory damages on the basis of proportionality and fairness.
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We appreciate your comments and suggestions regarding the contents of this Newsletter.

If you would like to contribute or have any questions, please feel free to contact editorial board members:

Evgeny Krasnov, Michael Skopets, Ann Sultan, and Amanda Weir

The Eurasia/Russia Committee unites ABA members around the world who are interested in the countries of the Eurasian region: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The Committee focuses on issues relevant to the region and, through its activities, promotes dialogue and cooperation between legal professionals in business, academic, non-profit, and government spheres.

Co-Chairs:
Pamela Egan
Anastasia Herasimovich
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For more information, including access to the Committee’s publications and other resources, please visit the Committee’s website.