

INCOME TAX CONVENTION WITH THE RUSSIAN FEDERATION

GENERAL EFFECTIVE DATE UNDER ARTICLE 27: 1 JANUARY 1994

TABLE OF ARTICLES

Article 1-----	General Scope
Article 2-----	Taxes Covered
Article 3-----	General Definitions
Article 4-----	Residence
Article 5-----	Permanent Establishment
Article 6-----	Business Profits
Article 7-----	Adjustments to Income in Cases Where Persons Participate, Directly or Indirectly, in the Management, Control or Capital of Other Persons
Article 8-----	International Transport
Article 9-----	Income from Real Property
Article 10-----	Dividends
Article 11-----	Interest
Article 12-----	Royalties
Article 13-----	Independent Personal Services
Article 14-----	Income from Employment
Article 15-----	Directors' Fees
Article 16-----	Government Service
Article 17-----	Pensions
Article 18-----	Students, and Researchers
Article 19-----	Other Income
Article 20-----	Limitation on Benefits
Article 21-----	Capital
Article 22-----	Relief from Double Taxation
Article 23-----	Non-Discrimination
Article 24-----	Mutual Agreement Procedure
Article 25-----	Exchange of Information
Article 26-----	Members of Diplomatic Missions Agents and Consular Officers
Article 27-----	Entry into Force
Article 28-----	Termination
Protocol-----	of 17 June, 1992
Letter of Submittal -----	of 25 August, 1992
Letter of Transmittal-----	of 8 September, 1992
The "Saving Clause"-----	Paragraph 3 of Article 1

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA
AND THE RUSSIAN FEDERATION FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL, TOGETHER
WITH A RELATED PROTOCOL, SIGNED AT WASHINGTON ON
JUNE 17, 1992

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, DC, August 25, 1992.

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The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the United States of America and the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, together with a related protocol, which you signed at Washington on June 17, 1992.

The Convention would replace, with respect to Russia, the existing income tax convention between the United States and the Union of Soviet Socialist Republics, which was signed at Washington on June 20, 1973, and would modernize tax relations between the two countries. It is hoped and expected that the new Convention will be an important impetus to Russia's emergence as a market economy by encouraging and facilitating greater United States private sector investment in Russia. The Convention will establish a framework which we hope will contribute to the expansion of economic relations between the two countries on a broader and reciprocal basis.

The new Convention provides for exemption from tax at source of interest and royalties. Dividends would be subject to tax at source at a maximum rate of 10 percent, reduced to 5 percent in the case of dividends paid by a subsidiary corporation in one country to its parent corporation (in this case defined as a more than 10 percent ownership interest) in the other country. The 5 percent rate would also apply to branch profits. Capital gains on assets other than real property would be taxable only in the country

of residence of the person deriving the gain. (Such gains are dealt with in the residual article on "other income" which provides for exclusive taxation at residence of income not effectively connected with a place of business in the other country.) Gains with respect to real property may be taxed where the property is located.

Under the new Convention if a construction site or drilling rig is maintained by a resident of one country in the other country for a period longer than 18 months, the site or rig would constitute a "permanent establishment", and become subject to profits tax in the other country. Business profits in general are taxable in the other country only to the extent attributable to a permanent establishment there, and then only on a net basis with deductions for business expenses.

The Convention provides conditions under which each country may tax income derived by individual residents of the other country from independent personal services or as employees, as well as pension income and social security benefits. Special relief is granted to visiting students, trainees, and researchers. The provision in the existing treaty of a two year exemption for visiting teachers and journalists is not retained. Any person who prefers the existing treaty may continue to have it applied in its entirety for one year after the new Convention enters into force. Items of income not specifically dealt with may be taxed only in the country of residence.

The benefits of the Convention are limited to residents of the two countries meeting certain standards designed to prevent residents of third countries from inappropriately using the Convention. Similar standards are found in other recent United States income tax conventions. The new Convention assures that the residence country will avoid double taxation of income which arises in the country and has been taxed there in accordance with the treaty's provisions. In addition, the Convention includes standard administrative provisions which will permit the tax authorities of the two countries to cooperate to resolve issues of potential double taxation and to exchange information relevant to implementing the Convention and the domestic laws imposing the taxes covered by the Convention. The non-discrimination provisions go beyond the standard provisions in including assurances of non-discriminatory tax treatment with respect to residents of third States as well as residents of the taxing State.

The Convention will enter into force on the date of the exchange of instruments of ratification. The provisions concerning taxes on dividends, interest and royalties will take effect on the first day of the second month following the exchange of instruments of ratification, and provisions concerning other taxes will take effect for taxable years beginning on or after January 1 following the exchange of instruments of ratification. Upon entry into force of the Convention, the 1973 tax treaty will cease to have effect between the United States and the Russian Federation. As noted above, a taxpayer may elect to apply the 1973 treaty in full for one additional taxable year if its provisions are more favorable.

A protocol accompanies the Convention and forms an integral part of it. It clarifies the operation of certain provisions and denies treaty benefits with respect to dividends and interest paid by certain United States investment companies. Most significantly, it guarantees the deductibility of wage costs and interest that might not otherwise be deductible under Russian law to permanent establishments in Russia

of United States residents and to Russian entities owned at least 30 percent by United States residents and having total corporate capital of at least \$100,000. In such cases, the interest rate is subject to certain limits and the taxpayer may not apply any reduced tax rate applicable to taxpayers not claiming such deductions.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention. It has the full approval of both Departments.

Respectfully submitted,

ARNOLD KANTER
Acting Secretary.

Enclosures: As stated.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 8, 1992.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention between the United States of America and the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington on June 17, 1992, together with a related Protocol. I also transmit the report of the Department of State.

The convention replaces, with respect to Russia, the 1973 income tax convention between the United States of America and the Union of Soviet Socialist Republics. It will modernize tax relations between the two countries and will facilitate greater private sector United States investment in Russia.

I recommend that the Senate give early and favorable consideration to the convention and related protocol and give its advice and consent to ratification.

GEORGE BUSH.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA
AND THE RUSSIAN FEDERATION
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE

PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME AND CAPITAL

The United States of America and the Russian Federation, confirming their desire to develop and strengthen the economic, scientific, technical and cultural cooperation between both States, and desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, have agreed on the following:

ARTICLE 1
General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States and to other persons as specifically provided in the Convention.
2. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:
 - a) by the laws of either contracting State, or
 - b) by any other agreement between the Contracting States.
3. Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax, in accordance with its domestic law, residents (as determined under Article 4 (Residence)) and citizens or former citizens of that State.
4. The following benefits shall be conferred by a Contracting State notwithstanding the provisions of paragraph 3:
 - a) under paragraph 2 of Article 7 (Adjustments to Income in Cases Where Persons Participate, Directly or Indirectly, in the Management, Control or Capital of Other Persons), paragraph b) of Article 17 (Pensions) and Articles 22 (Relief from Double Taxation), 23 (Non-discrimination) and 24 (Mutual Agreement Procedure); and
 - b) under Articles 16 (Government Service), 18 (Students, Trainees and Researchers), and 26 (Members of Diplomatic Missions and Consular Officers) for individuals who are neither citizens of that State nor, in the case of the United States of America, individuals having immigrant status therein.

ARTICLE 2
Taxes Covered

1. The taxes to which this Convention shall apply are:
 - a) in the United States of America: the federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax,

and social security taxes) and the excise taxes imposed with respect to the investment income of private foundations (hereafter referred to as United States tax).

b) in the Russian Federation: taxes on profits and income provided by the laws “On Taxes on Profits from Enterprises and Organizations,” “On Taxation of Income of Banks,” “On Taxation of Income from Insurance Activities,” and “On the Income Tax on Individuals” (hereafter referred to as Russian tax).

2. The Convention shall apply also to any substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes, including taxes which are substantially similar to those currently imposed by one Contracting State but not by the other Contracting State and which are subsequently imposed by the other State. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

3. The Convention shall also apply to any tax on capital described in subparagraph g) of paragraph 1 of Article 3 (General Definitions) which is imposed by either Contracting State as of the date of signature of the Convention or thereafter, but only if such capital tax is provided by federal legislation.

ARTICLE 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term “Contracting State” means the United States of America (the United States) or the Russian Federation (Russia) as the context requires;

b) the term “United States” means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory. When used in a geographical sense, the term “United States” includes the territorial sea, and also the economic zone and continental shelf in which the United States, for certain purposes, may exercise sovereign rights and jurisdiction in accordance with international law and in which the tax legislation of the United States is in force;

c) the term "Russia" means the Russian Federation. When used in a geographical sense, the term "Russian Federation" or "Russia" includes the territorial sea, and also the economic zone and continental shelf in which the Russian Federation, for certain purposes, may exercise sovereign rights and jurisdiction in accordance with international law and in which the tax legislation of the Russian Federation is in force;

d) the term "person" means an individual, an estate, a trust, a partnership, a company and any other body of persons;

e) the term "company" means any entity which is treated as a body corporate for tax purposes. In the case of Russia this term means a joint stock company, a limited liability company or any other legal entity or other organization which is liable to a tax on profits;

f) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in one of the Contracting States;

g) the term "capital" means movable and real property, and includes (but is not limited to) cash, stock or other evidences of ownership rights, notes, bonds or other evidences of indebtedness, and patents, trademarks, copyrights or other like right or property;

h) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his authorized representative; and

(ii) in Russia: the Ministry of Finance of the Russian Federation or its authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 24 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which this Convention applies.

ARTICLE 4

Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of incorporation, or any other criterion of a similar nature. However, this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein. In the case of income derived by a partnership, trust, or estate, residence is determined in accordance with the residence of the person liable to tax with respect to such income.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a citizen;

d) if each State considers him as its citizen or if he is a citizen of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavor to settle the question by

mutual agreement, but if the competent authorities are unable to reach such an agreement, the company shall be treated as a resident of neither Contracting State for the purposes of deriving benefits under this Convention.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Convention to such person.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which a resident of a Contracting State, whether or not a legal entity, carries on business activities in the other Contracting State.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop; and
- f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction, installation or assembly project, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, constitutes a permanent establishment only if it lasts more than 18 months.

4. Notwithstanding the preceding provisions of this Article, the following kinds of activity of a person who is a resident of one Contracting State will not be treated as carried on in the other Contracting State through a permanent establishment:

- a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to this person;
- b) the maintenance of a stock of goods or merchandise belonging to this person solely for the purpose of storage, display, or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to this person solely for the purpose of processing by another person;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for this person;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for this person, any other activity of a preparatory or auxiliary character.

f) the maintenance of a fixed place of business by this person solely for the purpose of facilitating the conclusion of, or for the mere signing of, contracts in the name of this person concerning loans or the delivery of goods or merchandise or technical services;

g) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to f).

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person who is a resident of a Contracting State carries on activities in the other Contracting State through an agent, that person shall be deemed to have a permanent establishment in that other State in respect of any activities which the agent undertakes for that person, if the agent meets each of the following conditions:

a) he has an authority to conclude contracts in that other State in the name of that person;

b) he habitually exercises that authority;

c) he is not an agent of an independent status to whom the provisions of paragraph 6 apply; and

d) his activities are not limited to those mentioned in paragraph 4.

6. A resident of Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6 Business Profits

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on or has carried on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on or has carried on business as aforesaid, the business profits of the resident may be taxed in the other State but only so much of them as is attributable to the assets or activity of that permanent establishment.

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent person carrying on the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as

deductions expenses which are incurred for the purposes of the permanent establishment. There shall be allowed a reasonable allocation, between a resident of a Contracting State and its permanent establishment situated in the other Contracting State, of properly documented expenses. Such allocable expenses include executive and general administrative expenses, research and development expenses, interest, and charges for management, consultancy, or technical assistance, whether incurred in the State in which the permanent establishment is situated or elsewhere. The business profits attributed to a permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

4. No business profits shall be attributed to a permanent establishment of a person who is a resident of one Contracting State by reason of the mere purchase by the permanent establishment of goods or merchandise for that person.

5. For purposes of this Article, the term “business profits” includes, for example, profits from manufacturing, mercantile, agricultural, forestry, fishing, transportation, communication, or extractive activities, from the rental of tangible movable property, and from the furnishing of services of another person. It does not include income received by an individual for his performance of personal services (either as an employee or in an independent capacity). Income of an individual from the performance of services as an employee is dealt with in Article 14 (Income from Employment). Income of an individual from the performance of services in an independent capacity is dealt with in Article 13 (Independent Personal Services).

6. Where business profits include items of income which are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 7

Adjustments to Income in Cases Where Persons Participate, Directly or Indirectly, in the Management, Control or Capital of Other Persons

1. Where:

a) a person which is a resident of a Contracting State participates directly or indirectly in the management, control or capital of a person which is a resident of the other Contracting State; or

b) the same persons participate directly or indirectly in the management, control or capital of a resident of a Contracting State and any other person;

and in either case conditions are made or imposed between the two persons in their commercial or financial relations which differ from those which would be made between independent persons, then any income which would have accrued to one of the persons, but by reason of those conditions has not so accrued, may be included in the income of that person and taxed accordingly.

2. Where, in accordance with the provisions of paragraph 1, income which has been included by a Contracting State in the income of a person is later also included by the other Contracting State in the income of another person, then the first State shall make a correlative adjustment to the amount of tax charged to the first person on such income. In determining this adjustment, due regard shall be paid to the other provisions of this Convention, and the competent authorities of the Contracting States shall consult each other as necessary.

3. The provisions of paragraph 1 shall not limit either Contracting State in applying its domestic law to make adjustments to income, deductions, credits, or allowances between persons, whether or not residents of a Contracting State, when necessary to prevent evasion of taxes or clearly to reflect the income of any such persons.

ARTICLE 8 International Transport

1. Income of a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Income of a resident of a Contracting State from the following activities shall be taxable only in that State:

- a) income from the rental of ships or aircraft operated in international traffic by the lessee;
- b) income from the rental of ships and aircraft, whether or not operated in international traffic, if such rental activity is incidental to the operation of ships or aircraft in international traffic by the lessor; and
- c) income (including demurrage) from the use, or rental for use, of containers in international traffic (including trailers, barges, and related equipment for the transport of containers).

3. The provisions of paragraphs 1 and 2 shall also apply to income from participation in a pool, a joint business, or an international transportation agency.

ARTICLE 9 Income from Real Property

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. For purposes of this Convention, the term “real property” includes any interest owned or held in tenancy by any individual or any legal entity in land, unsevered products of land as well as any fixture built on that land (buildings, structures, etc.) and other property considered real property under the law

of the Contracting State in which the property in question is situated. ships, boats and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in that other State may elect, subject to the procedures of the domestic law of that other State, to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in that other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless revoked pursuant to the procedures under the domestic law of the Contracting State in which the property is situated.

ARTICLE 10

Dividends

1. Dividends that are paid by a company which is a resident of a Contracting State and that are beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the first Contracting State, and according to the laws of that State, but the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 percent of the voting stock (or, in the case of Russia, if there is no voting stock, at least 10 percent of the statutory capital) of the company paying the dividends; and

b) 10 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The term "dividends" also includes income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises. In the case of Russia, this term includes income transmitted abroad to the foreign participants of an enterprise with foreign investments created under the laws of the Russian Federation.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed

base. In such case the provisions of Article 6 (Business Profits) or Article 13 (Independent Personal Services), as the case may be, shall apply.

5. A company which is a resident of a Contracting State and which has a permanent establishment in the other Contracting State or which is subject to tax on a net basis in that other State under Article 9 (Income from Real Property) or paragraph 3 of Article 19 (Other Income) may be subject in that other State to a tax in addition to the tax on profits. Such tax, however, may not exceed 5 percent of the portion of the profits of the company subject to tax in the other Contracting State which represents the "dividend equivalent amount" of such profits.

ARTICLE 11

Interest

1. Interest derived and beneficially owned by a resident of a Contracting State may be taxed only in that State.

2. The term "interest" as used in this Convention means income from debt-claims of every kind, unless described in paragraph 3 of Article 10 (Dividends), and in particular, income from government securities, and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds, or debentures as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 6 (Business Profits) or Article 13 (Independent Personal Services), as the case may be, shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

ARTICLE 12

Royalties

1. Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "royalties" as used in this Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work, including computer programs, video cassettes, and cinematograph films and tapes for radio and television broadcasting; any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or information concerning industrial, commercial, or scientific experience ("know-how").

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 6 (Business Profits) or Article 13 (Independent Personal Services), as the case may be, shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

ARTICLE 13 Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State from the performance of independent personal services shall be taxable only in that State, unless

- a) such services are performed or were performed in the other Contracting State; and
- b) the income is attributable to a fixed base which the individual has or had regularly available to him in that other State; and
- c) such individual is present or was present in that other State for a period or periods exceeding in the aggregate 183 days in the calendar year.

In such a case, the income attributable to that fixed base may be taxed in that other State in accordance with principles similar to those of Article 6 (Business Profits) for determining the amount of business profits and attributing business profits to a permanent establishment.

2. The term "independent personal services" includes, in particular, independent scientific, literary, artistic, educational or teaching activities, as well as the independent services of physicians, lawyers, engineers, architects, dentists, and accountants.

ARTICLE 14
Income from Employment

1. Subject to the provisions of Articles 15 (Directors' Fees), 16 (Government Service), and 17 (Pensions), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if all of the following conditions are met:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 153 days in the calendar year concerned;
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State;
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Remuneration derived by a resident of a Contracting State that would otherwise be taxable in the other Contracting State under the preceding provisions of this Article may be taxed only in the first-mentioned State when the remuneration is in respect of:

- a) employment as a member of the regular complement of a ship or aircraft operated in international traffic, or
- b) employment directly connected with a place of business which is not a permanent establishment under paragraph 3 of Article 5 (Permanent Establishment), but only if such resident is present in the other State for a period not exceeding 12 consecutive months, or
- c) technical services directly connected with the application of a right or property giving rise to a royalty, as defined in paragraph 2 of Article 12 (Royalties), if such services are provided as part of a contract granting the use of the right or property.

ARTICLE 15
Directors Fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or similar body of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16
Government Service

1. Remuneration, excluding a pension, paid from the public funds of a Contracting State, a political subdivision or local authority of the United States or any republic or local authority of Russia to an individual in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- a) is a citizen of that State or
- b) did not become a resident of that State solely for the purpose of rendering the services.

2. Any pension paid from the public funds of a Contracting State, a political subdivision or local authority of the United States or any republic or local authority of Russia to an individual in respect of services rendered to that State, subdivision, authority or republic shall be taxable only in that Contracting State. However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a citizen of, that other Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2, the provisions of Article 13 (Independent Personal Services), Article 14 (Income from Employment), or Article 17 (Pensions), as the case may be, shall apply to remuneration paid in respect of services rendered in connection with a business.

ARTICLE 17

Pensions

Subject to the provisions of Article 16 (Government Service):

- a) Pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment may be taxed only in that State; and
- b) Social security benefits and other public pensions paid by a Contracting State may be taxed only in that State.

ARTICLE 18

Students, Trainees and Researchers

1. An individual who is a resident of a Contracting State at the beginning of his visit to the other Contracting State and who is temporarily present in that other State for the primary purpose of:

- a) studying at a university or other accredited educational institution in that other State,
- or
- b) securing training required to qualify him to practice a profession or professional specialty, or

c) studying or doing research as a recipient of a grant, allowance, or other similar payments from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other State with respect to payments from abroad for the purpose of his maintenance, education, study, research, or training, and with respect to the grant, allowance, or other similar payments.

2. The exemption in paragraph 1 shall apply only for such period of time as is ordinarily necessary to complete the study, training or research, except that no exemption for training or research shall extend for a period exceeding five years.

3. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 19

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income if the beneficial owner of the income, being a resident of a Contracting State, carries on or has carried on business in the other Contracting State through a permanent establishment situated therein, or performs or has performed in that other State personal services in an independent capacity from a fixed base situated therein, and the income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 6 (Business Profits) or Article 13 (Independent Personal Services), as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, gains derived by a resident of a Contracting State from the alienation of real property (as defined in paragraph 2 of Article 9 (Income from Real Property)) situated in the other Contracting State, or of shares or other rights participating in profits in a company whose assets consist not less than 50 percent of real property situated in that other Contracting State, may be taxed in accordance with the domestic law of that other State.

ARTICLE 20

Limitation on Benefits

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other State only if such person is:

a) an individual;

b) engaged in the active conduct of business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), and the income derived from that other State is derived in connection with, or is incidental to, that business;

c) a company the shares of which are traded in the first-mentioned State on a substantial and regular basis on an officially recognized securities exchange or a company which is wholly owned, directly or indirectly, by another company that is a resident of the first-mentioned State and the shares of which are so traded;

d) a not-for-profit organization that is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are entitled, under this Article, to the benefits of this Convention; or

e) a person that satisfies both of the following conditions:

i) more than 50 percent of the beneficial interest in such person, or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares, is owned directly or indirectly by persons entitled to the benefits of this Convention under subparagraphs a), c) or d), and

ii) not more than 50 percent of the gross income of such person is used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs a), c) or d).

2. A person that is not entitled to the benefits of the Convention pursuant to the provisions of paragraph 1 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income arises so determines.

3. For purposes of subparagraph (e)(ii) of paragraph 1, the term "gross income" means gross receipts, or where a person is engaged in a business which includes the manufacture or production of goods, gross receipts reduced by the direct costs of labor and materials attributable to such manufacture or production and paid or payable out of such receipts.

ARTICLE 21

Capital

1. Capital represented by real property referred to in Article 9 (Income from Real Property) owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships, aircraft, and containers owned by a resident of a Contracting State and operated in international traffic, and by movable property pertaining to the operation of such ships, aircraft, and containers shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 22 Relief From Double Taxation

In accordance with the provisions and subject to the limitations of the law of each Contracting State (as it may be amended from time to time without changing the general principle hereof), each State shall allow to its residents (and, in the case of the United States, its citizens), as a credit against the tax on income, the income tax paid to the other Contracting State by such residents (and, in the case of the United States, also such citizens).

ARTICLE 23 Non-discrimination

1. A citizen of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which a citizen of that other State or of a third State, who is in the same circumstances, is or may be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States. This provision shall not be construed as obliging a Contracting State to grant to citizens of the other Contracting State tax benefits granted by special agreements to citizens of a third State.

2. A resident of a Contracting State which has a permanent establishment in the other Contracting State shall not, in that other State and with respect to income attributable to that permanent establishment, be subjected to more burdensome taxes than are generally imposed on residents of that other State or of a third State which are carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to permanent establishments of the residents of the other Contracting State tax benefits granted by special agreements to permanent establishments of the residents of a third State.

3. Except where the provisions of paragraph 1 of Article 7 (Adjustments to Income in Cases Where Persons Participate, Directly or Indirectly, in the Management, Control or Capital of Other Persons,) paragraph 4 of Article 11 (Interest), or paragraph 4 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. A company which is a resident of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first-mentioned State (whether owned by residents of that State or of a third State) are or may be subjected.

5. Nothing in this Article shall prevent a Contracting State from imposing the tax described in paragraph 5 of Article 10 (Dividends).

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description.

ARTICLE 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or citizen.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree:

- a) to the same attribution of income, deductions, credits, or allowances of a resident of a Contracting State to its permanent establishment situated in the other Contracting State;
- b) to the same allocation of income, deductions, credits, or allowances between persons;
- c) to the same characterization of particular items of income;
- d) to the same application of source rules with respect to particular items of income;
- e) to a common meaning of a term; and

f) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.
They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of complete original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

ARTICLE 26

Members of Diplomatic Missions and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consular officers or employees of a consular establishment under the general rules of international law or under the provisions of special agreements.

ARTICLE 27

Entry Into Force

1. This Convention shall be subject to ratification in each Contracting State and instruments of ratification shall be exchanged as soon as possible.
2. The Convention shall enter into force on the date of the exchange of instruments of ratification and its provisions shall have effect:
 - a) in respect of taxes withheld at source on dividends, interest or royalties, for amounts paid or credited on or after the first day of the second month following the month in which the Convention enters into force;
 - b) in respect of other taxes, for taxable periods beginning on or after the first of January following the date on which the Convention enters into force.
3. Upon entry into force of the provisions of this Convention in accordance with this Article, the Convention between the United States of America and the Union of Soviet Socialist Republics on Matters of Taxation, signed on June 20, 1973, (“the 1973 Convention”) shall cease to have effect.
4. Where any greater relief from tax would have been afforded to a person entitled to the benefits of the 1973 Convention under that Convention than under this Convention, the 1973 Convention shall, at the election of such person, continue to have effect in its entirety for the first taxable year with respect to which the provisions of this Convention would otherwise have effect under paragraph 2.

ARTICLE 28

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention

enters into force, by giving, through diplomatic channels, at least 6 months prior notice of termination in writing. In such event, the Convention shall cease to have effect:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after the first of January following the expiration of the 6 month period;
- b) in respect of other taxes, for taxable periods beginning on or after the first of January following the expiration of the 6 month period.

DONE at Washington, this seventeenth day of June, 1992, both in duplicate, in the English and Russian languages, both texts being equally authentic.

FOR THE UNITED STATES
OF AMERICA:

(s) George Bush

FOR THE RUSSIAN
FEDERATION:

(s) Boris Yelsin

PROTOCOL

At the signing today of the Convention between the United States of America and the Russian Federation for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, the Parties have agreed upon the following provisions, which shall form an integral part of the Convention:

1. With regard to Article 6,

(a) A Contracting State's right to impose tax under Article 6 on a resident or the other Contracting State extends only to profits attributable to a permanent establishment in the first State. A resident of the other State may earn income from more than one investment or activity; under Article 6, income from any particular investment or activity, whether from a source in the first State or elsewhere, must be separately tested to determine whether it may be included in profit attributable to a permanent establishment in the first State.

Whether profits are attributable to a permanent establishment is determined on the basis of the actual information about an investment. In particular, profits are attributable to a permanent establishment only if the profits are derived from the assets employed by, or the activities engaged in by, the permanent establishment. Profits derived from other assets or activities are not attributable to the permanent establishment.

Example 1. A resident of a Contracting State is engaged in the other Contracting State in a construction project. The duration of the construction is 4 years. Under paragraph 3 of Article 5 a construction site which lasts for more than 18 months constitutes a permanent establishment in the other State, and profits derived from the construction activities are therefore liable to a tax in that other State. The resident simultaneously sells

equipment for another project owned by the same customer. The signing (but not the negotiation) of the contract for the sale of equipment takes place in the other State. Under paragraph 4 f) of Article 5, the mere signing of contracts in the other State in one's own name does not constitute a permanent establishment. Profits derived from the sales of equipment shall not be liable to tax in that other State.

Example 2. A company resident in a Contracting State is engaged in oil and gas exploration, development and production activities on a worldwide basis. The company is producing oil and gas through a well located in the other Contracting State. The company is also engaged in exploration in the other State. The exploration activities are not carried on at the site of the well, are not conducted by the employees of the well site, do not use assets from the well site and are concluded within 18 months. The company also occasionally rents drilling equipment not currently being used in its exploration activities to third parties for use in the other State. Under paragraph 2 f) of Article 5, the well located in the other State is a permanent establishment; the profits attributable to that permanent establishment may be taxed by the other State under Article 6. Under paragraph 3 of Article 5, the exploration activities do not constitute a permanent establishment in the other State, and the expenses associated with such activities may not be deducted in determining the profits from the well taxable in the other State. The rental of the drilling equipment does not constitute a permanent establishment in the other State, and the income from such rental is not derived from the assets or activities of the well site. The rental income is therefore not taxable in the other State.

(b) A resident of a Contracting State maintaining a permanent establishment in the other Contracting State may also maintain offices in other countries, including a home office in the first State and offices in third countries. In computing the profits of the permanent establishment, properly substantiated payments to third parties by the home office or by offices in third countries should be taken into account to the extent such payments relate to the assets or activities of the permanent establishment, or to the extent that such payments relate to the assets or activities of the resident as a whole and are reasonably allocable to the permanent establishment. It is not necessary that such payments actually be reimbursed by the permanent establishment to the home office or the offices in the third country.

(c) Under paragraph 3, the Russian Federation agrees that there shall be allowed to a permanent establishment, in computing a tax payable on its profit or income, a deduction for interest, whether paid to a bank or another person and without regard to the period of the loan. The deduction may not exceed the limitation under Russian tax law, as long as the limitation is not less than the London Inter-bank Offered Rate ("LIBOR") plus a reasonable risk premium to be provided for in the loan agreement.

(d) It is understood that the documentation of expenses claimed as deductions by a permanent establishment pursuant to the provisions of paragraph 3 need not be submitted with the tax return but must be made available by the taxpayer on the request of the tax authorities.

2. With regard to Article 10,

(a) In the case of dividends from a United States Regulated Investment Company, subparagraph (b), and not subparagraph (a), of paragraph 2 shall apply. In the case of dividends from a United States Real Estate Investment Trust, the rate of withholding applicable under domestic law shall apply.

(b) The term “dividend equivalent amount,” as used in paragraph 5, refers to the portion of the profits of a permanent establishment subject to a tax under Article 6 (Business Profits), or that portion of the profits of a resident of one State subject to tax on a net basis in the other State under Article 9 (Income from Real Property) or paragraph 3 of Article 19 (Other Income), that is comparable to the amount that would be distributed as a dividend if such income were earned by a locally incorporated subsidiary. In the case of the United States, the term “dividend equivalent amount” shall have the same meaning that it has under the law of the United States as it may be amended from time to time without changing the general principle of this paragraph 2(b) of the Protocol.

3. With regard to Article 11,

Notwithstanding the provisions of paragraph 1, the United States may tax an excess inclusion with respect to a Real Estate Mortgage Interest Conduit (“REMIC”) in accordance with its domestic law.

4. With regard to Article 13,

Taxes withheld at the source in a Contracting State at the rates provided by domestic law will be refunded in a timely manner on application by the taxpayer if the right to collect the said taxes is limited by the provisions of the Convention, including Article 13.

5. With regard to Article 14,

It is understood, with respect to subparagraph (b) of paragraph 3, that temporary absences of less than one month will be disregarded for purposes of measuring the 12 consecutive month period. It is further understood that an individual described in subparagraph (b) of paragraph 3 may be employed at more than one such place of business.

6. With regard to Article 19,

Under paragraph 3, the United States retains the right to tax a “United States real property interest” as defined in section 897 of the U.S. Internal Revenue Code (or any successor provision), as well as an interest in a partnership, trust or estate to the extent attributable to a United States real property interest.

7. With regard to Article 20,

In the United States, the term “officially recognized securities exchange” means the NASDAQ System owned by the National Association of Securities Dealers, Inc., and any stock exchange registered with the Securities Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934.

8. With regard to Article 22,

(a) It is understood that in the case of an individual resident in Russia who is also a citizen of the United States, the credit required to be granted against the Russian tax on income shall include a credit for the income tax paid by such individuals to the United States imposed solely by reason of citizenship, subject only to a limitation of such credit to the Russian tax on income from all sources outside the Russian Federation.

(b) The Russian Federation agrees that an entity that is a resident of Russia and at least 30 percent beneficially owned by residents of the United States, and that has total corporate capital of at least \$100,000 (or the equivalent value in rubles), shall, in computing the profits tax, be permitted deductions for interest, whether paid to a bank or another person and without regard to the period of the loan, and for actual wages and other remuneration for personal services. In the event that the Russian law “Tax on profit from Enterprises and Organizations” (or a substantially similar profits tax law) ceases to be in effect, such resident will be permitted to continue to compute its tax in the manner stipulated by such law, taking into account the provisions of this subparagraph (b). Corporate capital includes the capital investment of all participants, including residents of Russia, the United States, and third countries. In the case of interest, the deduction may not exceed the limitation under Russian tax law, as long as the limitation is not less than the London Inter-bank Offered Rate (“LIBOR”) plus a reasonable risk premium to be provided for in the loan agreement.

(c) The Russian Federation agrees that if a banking, insurance or other financial business is carried on in Russia by a permanent establishment of a United States resident, or by a resident of Russia that is at least 30 percent beneficially owned by residents of the United States and has total corporate capital of at least \$100,000 (or the equivalent value in rubles), such permanent establishment or resident of Russia shall be permitted deductions for interest, whether paid to a bank or another person and without regard to the period of the loan, and for actual wages and other remuneration for personal services; provided that such person will apply the tax rates in effect in accordance with the law on taxation of profits. In the event that such law ceases to be in effect, such permanent establishment or resident will be permitted to continue to compute its tax in the manner stipulated by this subparagraph (c). Corporate capital includes the capital investment of all participants, including residents of Russia, the United States, and third countries. In the case of interest, the deduction may not exceed the limitation under Russian tax

law, as long as the limitation is not less than the London Inter-bank Offered Rate (“LIBOR”) plus a reasonable risk premium to be provided for in the loan agreement.

FOR THE UNITED STATES
OF AMERICA:

(s) George Bush

FOR THE RUSSIAN
FEDERATION:

(s) Boris Yelsin