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Alice Rajewsky

Changes in the Russian Terminology of Economic Law since *Perestroika*

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Peter Rehder

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I dedicate this book to the memory of my mother.

Contents

Introduction

1. *Aim and Scope of the Research*

This thesis sets out to describe and analyse changes in the Russian terminology of economic law since *perestroika* (1986–98) against the background of social change. In the changes in Russia since the beginning of *perestroika* economic factors have been central. Dogmas have been abandoned. The effect of the reintroduction of legal private enterprise has been profound. The introduction of more and more elements characteristic of a market economy can be expected to have caused substantial changes in the Russian terminology of economic law for the following reasons. First, the decline in influence of Soviet ideology (and the simultaneous emergence of a new understanding of the concept of law) and the abolition of a planned economy can be expected to have made part of the terminology (i.e. terms relating to a planned economy and terms whose meaning was based on purely ideological categories) obsolete and, at the same time, to have made possible the introduction of what used to be referred to as bourgeois vocabulary (i.e. terms relating to pre-Revolutionary law and/or the laws of capitalist countries that had previously been taboo with respect to Soviet society). Secondly, market-related economic concepts and practices had either fallen out of use in Russia after 1917 (or, at the latest, after the NÈP period) or had had no precedents at all in Russia, and it may be expected that economic regulation of these has created a need to name them and thus extended the terminology. Thirdly, the fact that Russian economic legislation since 1986 has been modelled largely on the legislation of West European and American market economies and, in many cases, has been drafted with assistance from foreign advisers, is likely to have affected the terminology used in these laws.

The research is intended to make a contribution to the study of linguistic change resulting from social change since *perestroika*. The social motivation of linguistic change is most easily demonstrated by change in vocabulary (Comrie et al. 1996: 185). Previous investigations of lexical change since *perestroika* have drawn their information, primarily or exclusively, from newspaper articles, in order to ensure that as many contexts as possible, of as recent a date as possible, are included. In most cases they cover the whole of the vocabulary, with a view to illustrating the great variety of changes involved. As far as the analysis of change of meaning is concerned, such a procedure is bound to lead to simplification (Popp 1997: 5). The present thesis deliberately restricts its area of research in various ways. First, it will only investigate changes in vocabulary that represent semantic change or that can be related to changes in the speakers' attitudes or societal values; any other change (related to stress, orthography, etc.) will not be considered. Second, and more importantly, it will focus on a group of words that is closely defined in two ways — (i) thematically, in that these words must form part of economic terminology, and (ii) in relation to the type of text in which these words are used, namely legal texts, in particular laws. From the very beginning of *perestroika* economic change— to a much

greater extent than political change — has been mirrored in legislation (FOSTER-SIMONS 1989: 354). This makes legislation on economic law a particularly valuable source for investigating the relationship between post-*perestroika* social change and changes in Russian legal terminology.The use of words will be analysed not only from the point of view of a comparison between the periods before and after *perestroika*, but also within the post-*perestroika* period itself. For this purpose, legislation related to specific branches of economic law such as ownership law will be analysed carefully over time, thus providing a context that is even more clearly defined. By comparing laws that were passed within a certain legal branch before and after *perestroika* in chronological order, it will be possible to determine not only changes in the use of specific terms, but, perhaps even more importantly, the relationship and interaction between the various linguistic processes involved. It will be possible to determine: how terminological gaps are filled that may arise because of ideological change or because of the introduction of new realities to post-Soviet society; whether the frequency of English borrowings varies with respect to the area of economic law; whether any trends since *perestroika* can be determined; and so on. An attempt will also be made to discover whether the use of legal terms varies depending on the position which the legal text in which they occur occupies within the hierarchy of legal texts. It is possible that the way legal terminology is used in the Russian constitution differs in some respect — for example, as far as the frequency of English borrowings is concerned — from the vocabulary used in regulations published by the Ministry of Finance, or in commentaries written by legal scholars. The thesis will attempt to determine as precisely as possible the time of borrowing in each case; a distinction will be made between borrowings that have occurred since *perestroika* and reactivated borrowings that had entered the Russian vocabulary previously. The meanings of borrowings will be compared to their meanings in the loaning language. This aspect is of great importance for legal practice, but so far has rarely been addressed. The study will also investigate whether the meanings of pre-Revolutionary terms that have been revived since *perestroika* differ from their original senses. Up to now this problem has often been neglected. Finally, the renewal of the Russian terminology of economic law will be viewed from a historical perspective, by comparing it with previous periods of major change.

2. *Definitions*

(i) Legal terminology

A distinction may be made between, on the one hand, technical and scientific terminologies and, on the other hand, terminologies of the social sciences. These two groups differ in, among other things, their communicative purposes (SCHIPPAN 1992: 23). The basic function of law is to regulate social relationships, and legal thinking always starts from, and is directed at, everyday life. Therefore legal terminology must, to a greater extent than other terminologies, take up, and adapt to, changes in meaning. In other words, it lies in the nature of law that legal

terminology is characterized by a certain 'closeness to the standard language' (DIECKMANN 1975: 89). This is mirrored in the fact that a relatively large number of legal terms are formed on the basis of everyday vocabulary. According to PIGOLKIN (1990: 70), this is always done by narrowing the general meaning of the word. However, expansion, specification, and substitution are also potential means of legal term formation (HOFFMANN 1992: 128). Changes in the general meaning of those words, as resulting, for example, from changes in societal values, may affect their legal meaning and may even determine whether or not a word continues to form part of the legal terminology. This is demonstrated by the effects of the changes in societal values in Russia following the October Revolution which led to the exclusion of a large number of pre-Revolutionary commercial terms from the legal terminology. Moreover, the terminological motivation of the vocabulary used in laws depends, to some extent, on the understanding of the role of law prevailing in society and the kind of communicative purposes the law intends. This aspect is important when comparing Russian legal terminology before and after *perestroika*. Before *perestroika* laws were, in many cases, regarded as propagandistic rather than legal documents (PIGOLKIN and RACHMANINA 1989: 11), involving the deliberate use of catchwords, rather than legal terms. It is one of the aims of my research to account for the gradual changes in terminological motivation that have occurred as a result of the decline in influence of Soviet ideology since *perestroika*. Consequently, in order to present as complete a picture as possible of the changes in the Russian terminology of economic law and to do justice to the close relationship between legal terminology and the general vocabulary, it will be necessary to take into account changes in the general meaning of the words concerned, and to adopt rather broad definitions of legal terms: for example, a word (or a phrase) defined in legislation may also have a meaning which has not yet been clearly defined in legislation, or which so far has not been introduced into legislation, but is regularly used in legal texts other than legislation. A word (or a phrase) will be regarded as a legal term, if it has been defined in legislation or other legal texts. Thematically the terms refer to (i) basic concepts of a planned economy and a market economy, (ii) legal entities participating in economic relations, and (iii) economic activities, transactions, and contracts currently provided for in Russia.

(ii) Economic law

The term *economic law* will be used to refer to all legal regulations concerning (i) the relationship between the state and the economy, (ii) the organization of the economy as a whole, or (iii) the activity of individual enterprises (i.e. commercial law). Hence all those regulations of civil, constitutional, administrative, and criminal law that determine the economic system and regulate economic behaviour will be included. This meaning of *economic law* should not be confused with the concept of хозяйственное право, which is generally rendered as 'economic law' in English (for example, BUTLER 1988: 242–60) and is closely related to a planned economy. Even in that context it covers only part of the economic relations, namely those 'arising between (socialist) enterprises in the process of directing and carrying on

economic activities, having a planned character, and connected with the management of socialist ownership' (BUTLER 1988: 252), excluding the relations between citizens *inter se* and with enterprises. Special attention will be paid to ownership law, which is playing a crucial role in the changes of the economic order. It was formerly highly ideologized and represented the central feature of socialist law (BRUNNER 1986: 192). It provides a particularly good illustration of the effects of social change on legal vocabulary.

(iii) Continental European Law and Common Law

In comparative law the legal systems of the world are classified into *legal families*, according to the *juristic style* of a legal system, which can be determined from its historical development, its distinctive mode of legal thinking, certain legal institutions, its sources of law, and its ideology (ZWEIGERT and KOETZ 1992: 68–73). All classifications agree that the Common Law family (which includes English and American law, but excludes Scottish law and the law of the Channel Islands) must be classified separately from the legal systems of the European Continent. While the juristic style of the latter has been profoundly shaped by Roman law, England never had a comprehensive reception of Roman law, which has led to basic differences in legal thinking, legal institutions, and legal sources between the Common Law and Continental European law. It is disputed whether the legal systems of the European Continent should all (except Nordic law which stands by itself) be put in one legal family ('Romano-Germanic', DAVID and BRIERLEY 1985: 22), or whether a distinction should be made between a Germanic and a Romanistic family (ZWEIGERT and KOETZ 1992: 69–70). However, the Romanistic, Germanic (and Nordic) systems clearly have a closer relationship with each other than with the Common Law, and for the purpose of the present study it is sufficient to refer to both of them as one group, which will be called 'Continental European law'.

(iv) *Perestroika*

The term *perestroika* is generally applied to the political and economic reform programme carried out in the Soviet Union after M. S. Gorbachev had taken over as general secretary of the Communist Party on 12 March 1985. However, the official focus of *perestroika* shifted considerably over the following years, as is demonstrated by the successive appearance of some of the key elements of *perestroika*: the discussion of the concept of правовое государство 'legal state' which started (officially) with the 1987 Party Congress; the discussion of the political monopoly of the party which started in 1989 (FELDBRUGGE 1993: 52) and led to the removal of the Party's leading role from the Constitution in March 1990 (by an amendment of Art. 6); and the introduction of private ownership of the means of production in 1990 (Art. 7 Para. 1 ZoS SSSR 1990; see also Art. 17 point 2 ZoS SSSR–PROEKT 1989). Only as the political leadership gradually became aware of the extent of the political and economic crisis was a reform strategy developed, which became more and more radical as reform itself created new problems. The changing meaning of *perestroika* reflected the leadership's changing

understanding of the nature of the crisis, and it is therefore appropriate to regard *perestroika* as a 'learning process' rather than an articulate policy (FELDBRUGGE 1993: 55). Thus, dating *perestroika* depends on the area of research under consideration. Linguistic studies investigating the vocabulary of *perestroika* usually follow the dates of Gorbachev's leadership and take the year 1985 as a starting point (see, for example, STEPHAN 1993: 334 where the period before1985 is called 'pre-*perestroika*' and the period after 1991 'post-*perestroika*'). For the purpose of the present study, however, the relevant question is when *perestroika* began to be reflected in economic legislation. Within the context of the gradual transformation of the economic order of a planned economy by introducing more and more elements of market economy, *perestroika* is taken to refer only to steps leading to the creation of private enterprise in Russia. The need for far-reaching reform of the economic system was first expressed by Gorbachev on 25 February 1986 in his report to the 27th Party Congress. The first law officially recognized as a key document of *perestroika* was the law 'On the State Enterprise (Association)' adopted on 30 June 1987 (FELDBRUGGE 1993: 58; BUTLER 1988: 255; PERESTROJKA 1988). The starting point for my research, however, is the adoption of the law 'On Individual Labour Activity' of 19 November 1986 (ZOITD 1986). This law legalized a wide range of private economic activities which had formerly been treated as criminal. The broad campaign that was waged against (so-called) non-labour income (нетрудовые доходы) in May 1986 in the form of three enactments 'On Measures of Strengthening the Struggle against Non-Labour Income' issued by the Central Committee of the Communist Party, the USSR Council of Ministers, and the Presidium of the Supreme Soviet (*SP SSSR* 1986, No. 21, item 119–21; *VVS SSSR* 1986, No. 22, item 364) demonstrates that there was no clear intention to introduce private enterprise until the drafting of the law 'On Individual Enterprise' began. Scholars disagree on what its purpose was: to remove barriers for the development of entrepreneurial activity (BRAGINSKII 1993: 367–8; FELDBRUGGE 1993: 58) or to decriminalize existing private activity (STEPHAN 1990: 46). IOFFE (1988: 64) sees it even as a deliberate continuation of the May enactments. Whatever the legislator's intention was, the law gave rise to an upswing in private initiative which soon made further legislation necessary. It represents the first step towards the creation of a legal private sector and may therefore reasonably be regarded as the starting point of the transformation of the Russian economic order.

(v) Borrowing

Lexical borrowing is a result of language contact. 'Contact' will be understood in a wide sense, including not only geographical proximity but also trade relations and other types of cultural contact (BYNON 1977: 216). Borrowing will be defined as a process involving 'the attempted reproduction in one language of patterns previously found in another' (HAUGEN 1950: 212). Particular attention will be paid to loanshifts, i.e. the extension in sphere of usage of words in conformity with foreign models (HAUGEN 1950: 219–20; WEINREICH 1968: 48–50).

The second aspect is of particular importance when analysing Russian legal terminology since *perestroika*.

(vi) Catchword

The meaning of *catchword* is best defined through its function to influence the formation of public opinion by expressing, in a condensed form, part of ideologies or political programmes. 'A word *is* not a catchword, but it is used as one' (DIECKMANN 1975: 102). A catchword is effective because of its vagueness, generalization, and emotive components. A comprehensive account of research on the concept of catchword is provided in DIEKMANNSHENKE 1994: 8–23.

(vii) Taboo and Euphemism

Taboos exist in all cultures, referring to certain realities which society wishes to avoid. Social taboos affect the social and expressive meaning of lexemes (LYONS 1981: 151). Verbal taboos show that the social value of a word is just a matter of convention (HUDSON 1980: 53). My use of the term taboo is based on the observation that in officially approved language during the Soviet period before *perestroika* there was not only an attempt to restrict the meaning of some words exclusively to either capitalist or socialist contexts, but also that a convention had developed to regard words that referred exclusively to capitalist countries as taboo with respect to the Soviet Union. The introduction of these words into Russian legal terminology after *perestroika* was, in many cases, carried out gradually, by using temporary substitutes. The usual way of coping with linguistic taboos is to develop euphemisms and circumlocutions (WARDHAUGH 1992: 236–8; LYONS 1981: 151), a strategy that is illustrated by the varied ways of how 'to die' may be referred to in many languages. In this study the term euphemism will be used to refer to both the substitute terms that were used in Russian legal terminology before *perestroika* in referring to realities that were taboo with respect to the Soviet Union, and to the temporary substitutes used after *perestroika* in legal terminology as a means of preparing the introduction of formerly tabooed words.

3. *Sources*

The primary sources are of two kinds: (i) those that form the corpus from which the terms to be analysed have been chosen, and (ii) other original documents consulted for additional information and evidence. A list of all sources is presented below (pp. 167–82).

(i) *The Corpus*

(a) Legislation

As thousands of legal acts on economic law have been passed since November 1986, a selection has been made. The 1993 Constitution of the Russian Federation has been included to the extent that it embodies the most basic principles of the economic system (in particular, Arts. 7–9, 34–7 KONST. RF 1993). Russia, unlike most countries whose legal systems represent

European continental law, has never had a commercial code. Despite its name the *Ustav torgovyj* (Vol. XI part 2 of the 1832 *Svod Zakonov*) did not represent a commercial code as it included only administrative and financial regulations (ŠERŠENEVIČ 1994 (1914): 36–7). Since *perestroika* this tradition of regulating commercial law as part of civil law has continued. Hence those parts of the main civil law codifications — the 1991 'Fundamentals of Civil Legislation' (OSNOVY 1991) and, in particular, the Civil Code of 1994 (GK RF I 1994) and 1995 (GK RF II 1995) — that relate to economic relations have been used as sources. However, the provisions in these codices are rather general, and many aspects of economic law are not dealt with at all. Comprehensive regulations are to be found in laws devoted to single issues such as ownership, lease, competition, trademarks, or advertising, and a large number of such laws has been included. Other kinds of legal acts, such as decrees (issued by the president, the Supreme Soviet, or the government of the Russian Federation) or regulations (e.g. those passed by the Ministry of Finance or the Central Bank), have also been analysed. Presidential decrees, in particular, played an important role in implementing economic reforms, especially during the early period of *perestroika*, when the parliament was still too weak to adopt major laws. Finally, drafts of laws have also been used. If compared with the final version of a law they help to provide a clearly defined context for investigating terminological change.

(b) Legal Texts other than Legislation

In order to obtain a more reliable and complete picture of changes in the Russian terminology of economic law, and to determine changes of meaning on a broader evidential basis, six types of legal text other than legislation have also been included.

(i) Legal commentaries on specific laws. Commentaries on specific laws written by legal scholars hardly existed in Russia until *perestroika*. For example, no commentary existed to interpret the 1978 RF Constitution. NUSSBERGER (1998: 85–6) rightly views this phenomenon as reflecting the minor importance that was generally attributed to discussing controversially, and commenting on, legislation and jurisdiction, a fact which in her view was mainly due to certain basic ideological positions. Since *perestroika*, however, all major laws have been accompanied by several commentaries.

(ii) Legal documents reflecting Russian legal practice and economic life since *perestroika*. This includes, for example, model contracts and statutes, published in textbooks and manuals for entrepreneurs or newspapers, and other legal documents, such as the draft of the model programme of enterprise reform published by the Ministry of Economics (TIPOVAJA PROGRAMMA 1997).

(iii) Judgements adopted by the arbitration courts. They provide a valuable source to the extent that the meaning of certain terms is developed in order to solve a juridical problem. However, jurisdiction is still very poorly documented in Russia. Only a tiny proportion of the activities of the commercial arbitration courts is covered by the journal Вестник Высшего

Арбитражного Суда РФ (*VVAS RF*). Occasionally other journals and newspapers document specific rulings: see, for example, the section арбитражная практика in *ÉŽ*, e.g. 31/96: 24).

(iv) Legal and economic monolingual dictionaries and encyclopaedias published since *perestroika*. From the immense number of publications in this sector the most authoritative were chosen.

(v) Legal and economic studies on changes in the economic order, published as textbooks, monographs, or articles in journals such as *Государство и право* (*GiP*), *Российская юстиция* (*RJu*), or *Право и экономика* (*PÉ*). Countless studies have been published on the meaning of terms relating to the market economy, including recent borrowings from English.

(vi) Articles written by legal or economic experts in both semi-specialized publications such as the newspapers *Экономика и жизнь* (1990–8) and *Коммерсантъ*, and non-specialized ones such as *Московские Новости* (1989–92; 1996).

(ii) *Other Primary Sources*

1. Repealed Russian commercial legislation (which was in force before 1917, or during the period between 1917 and 1986). Used in order to determine the original meaning of pre-Revolutionary terms revived after 1986, to investigate changes of meaning during the Soviet era until 1986, and to compare it with recent codifications (such as the 1993 Constitution of the Russian Federation and the 1994–5 Civil Code).

2. Pre-Revolutionary textbooks on civil and commercial law as well as legal dictionaries published before 1917. These sources are particularly important as they reflect not only legislation but also customary law, which in Russia remained the only legal source[1] for many institutes of commercial law for much longer than in West European countries (Šeršenevič 1994 (1914): 4). By the end of the nineteenth century jurisprudence was highly developed in Russia. Among the textbooks chosen are those on civil and commercial law published by Šeršenevič in frequent editions until the Revolution; they have now been republished (in 1994 and 1995 respectively) and are once again enjoying widespread esteem (see, for example, Mamutov 1996: 47).

3. Foreign legislation, in order to trace and analyse both recent and earlier foreign influence on Russian legislation and terminology. This includes the French *Code Civil* of 1804 and the German *Bürgerliches Gesetzbuch* of 1899, both of which strongly influenced not only Russian legal terminology, but also the Russian legal system. This fact determines the way in which Russian legal terminology has changed since *perestroika* to a greater extent than is often assumed. Other, more recent, foreign legislation providing models for Russian post-*perestroika*

[1]The concept of *legal source* comprises both written law (legislation, doctrinal or scholarly writing, judicial decisions) and unwritten law (customary law, general legal principles underlying the legal system) (Creifelds 1992: 924, s. v. Recht). Each legal system has its own hierarchy of legal sources (de Cruz 1995: 28).

legislation includes the Dutch Civil Code (the most recent West European civil law codification), and American corporation law.

4. General monolingual dictionaries and encyclopaedias, in order to establish the general meaning of the terms concerned and to account for changes in meaning. A large number of terms which have been used in Russian legislation since 1986 were unknown in Soviet legislation. In officially approved contexts they were formerly regarded as 'bourgeois' and used only in referring to capitalist countries. In order to trace the change in the connotative meaning of these words facilitating their use as legal terms within Russian law, entries in SSRLJA 1950–65 have been compared to those in SSRLJA 1991–, and entries in Ožegov's dictionary (published in frequent editions between 1949 and 1988) have been compared to those in OŽEGOV and ŠVEDOVA 1992 and 1997. A particularly valuable source is TS 1998, which describes itself as a 'model of the lexicographic description of linguistic dynamism' (TS 1998: 10), and takes into account changes both in meaning and in the frequency of words.

5. In an attempt to take into account the terminology used by Soviet scholars before *perestroika* in publications investigating the legal and economic systems of capitalist countries terms have been excerpted from the most authoritative journal in this area, *Мировая экономика и международные отношения* (*MĖiMO*) (1–6/1957; 1958–63; 1970; 1975; 1977–80).

(4) *Previous Research*

Although a great deal has been written on the language of *perestroika*, no special investigation has yet been carried out into its effect on the Russian terminology of economic law (nor legal terminology in general, for that matter). However, some studies touch upon or are closely related to this subject. They include (CORTEN 1992), or are specifically concerned with (NIQUEUX 1990, HAUDRESSY 1992, RATHMAYR 1991, FERM 1994, POPP 1997), the Russian vocabulary of the *perestroika* period and comprise, *inter alia*, terms of economic law. However, the legal terms in question are not investigated in the context of legal texts. To the present research these studies are related only in so far as they provide additional information about the general meaning of the terms concerned. This is also true of KITAJGORODSKAJA 1996, a study focusing on basic Russian terms relating to a market economy. Her analyses are mostly based on newspaper articles; only in a few cases are definitions additionally quoted from legal texts. The author describes the extent to which the transformation of the Russian economic order led to the whole system of traditional values and norms being reversed (pp. 163–7) and mentions the effects of the ideologization of economic terminology during the Soviet period until *perestroika*, a development which she puts down to the existence of a planned economy. However, in order to account for the degree to which Russian legal terminology was influenced by Soviet ideology before *perestroika* it is necessary to consider the content of Soviet ideology, in particular as related to the understanding of the role of law, as it is not obvious why a market-

based system might not also lead to an ideologization of economic terminology. This problem is investigated in the present thesis (pp. 28–33). She goes on to examine a variety of processes such as de-ideologization of meaning, the rehabilitation of concepts and words relating to a market economy, the revival of pre-Revolutionary terminology, semantic derivation, and the recent borrowing of international terminology. However, the way in which the terms are classified often seems rather arbitrary. The value of the entries in HAUDRESSY 1992 is reduced by the fact that no references are given to the sources of her examples (said to be taken from newspapers and journals), which is particularly surprising in view of the fact that HAUDRESSY herself stresses the 'socio-historical interest' of her quotations (p. 10). The terms of economic law included in POPP 1997 are, in some cases, simply listed, without any indication of their meaning, context, or source; in other cases, the comments are superficial and, sometimes, misleading. A number of works are devoted to individual (or small groups of) borrowings from English, including some terms of economic law, illustrating their general meaning (again without referring to their use in legal contexts). See, for example, the treatments of брокер 'broker' (PODČASOVA 1994a: 50–4), оффшор 'off-shore' (PODČASOVA 1996), риэлтор 'realtor' (PODČASOVA 1994b: 53), лизинг 'leasing' (KATLINSKAJA 1993c: 48), ноу-хау 'know-how' (KATLINSKAJA 1993c: 50), ваучер 'voucher' (PODČASOVA 1995b: 62–3; KARPINSKAJA 1993: 61), and спонсор 'sponsor' (LARIONOVA 1992). RATHMAYR 1991 and FERM 1994 also provide classifications of the qualitative changes in the lexicon since *perestroika*, which also affect the terminology of economic law. These classifications may serve as a basis for discussing the results of the analyses presented below within a broader context. They include, in particular, (i) the revival of pre-Revolutionary terminology; (ii) change in meaning, comprising both shifts in connotation and the reorientation of nominalization; and (iii) the formation of new words, including borrowings from English, new calques of words from West European languages, and new derivations from Russian stems. Finally, mention must be made of a number of legal studies which discuss the origin of single Russian terms relating to the market economy, including recent borrowings from English, and carry out a comparative analysis, investigating the meaning of the term in question in various legal systems. Thus BELOV 1996a describes how лизинг 'leasing' emerged in Russian usage and compares this with American and English usage of *leasing*. BELOV 1996b subjects the term товарный знак 'trade mark' to similar treatment. MIL'ČAKOVA 1996 is concerned with the meaning of листинг 'listing' and discusses the question whether the American or the German system of *listing* is better suited to the Russian legal system. PARAŠUK 1995 investigates the meaning of недобросовестная конкуренция 'unfair competition' and discusses its significance in Russian legal terminology against the background of the continental European and Anglo-American legal systems respectively. A number of studies are concerned with the meaning of траст 'trust' and the transplantation (rather unsuccessful, so the authors suggest) of this concept, which is deeply rooted in Anglo-American law, into the Russian legal system, which is based

on Continental European law (LACHNO and BIRJUKOV 1995, ANDREEV 1994, and RJABOV 1996). These analyses are valuable in that the legal meaning of the terms is investigated. However, they cover only certain aspects of the questions raised in the present research, and they concern only a tiny proportion of the terms under consideration.

(5) *Analysing Change of Meaning*

An important aspect of the research is semantic change. The meaning of words is learned and maintained by the use to which language is put in communication (LYONS 1977: 4). In communicating there is no direct evidence of the understanding of utterances, only of their misunderstanding. Generally, understanding is taken for granted. 'Whether we have or have not the same "concepts" in our "minds" when we are talking to one another is a question that cannot be answered otherwise than in terms of the "use" we make of words in utterances' (LYONS 1968: 411). Probably everyone would describe the meaning of a word in a slightly different way; however, the aim of semantic study is to account for the degree of uniformity that makes normal communication possible (ibid.). Thus it is not only unnecessary, but even inappropriate to suppose that words have a fully-determined meaning that exists independently. Indeed the meaning of a word is taken to be fully reflected in its contextual relations (LYONS 1977: 572). The meaning of a word can only be revealed by making statements about the way it is used in specific contexts — by making statements both about its reference (or 'denotation') within these contexts, and its sense, i.e. its place in a system of relationships which it contracts with other words of the lexicon, as in cases of synonymy or antonymy. Semantic change is entirely dependent on synchronic meaning. Hence the study of change of meaning must be based on the analyses of contexts. The meaning of a word has changed, if the range of contexts in which it occurs has changed. The semantic changes that have occurred in the Russian terminology of economic law since *perestroika* concern both denotative and connotative meaning. Changes in denotative meaning will be traced and described by analysing the contexts in which the terms are used in legislation and other legal texts. To identify changes in connotative meaning, however, additional sources will also be consulted, in particular monolingual general dictionaries. The use of a word in one range of contexts rather than another creates a set of associations between the word and whatever is specific of its typical contexts of occurrence. These associations will be referred to as connotations (LYONS 1981: 150). Connotative meaning indicates communicative conditions of a word's or a phrase's usage. The changes in connotative meaning have occurred as part of a fundamental semantic change that occurred within the Russian vocabulary after *perestroika*. In this study the foremost conditions of usage are those shaped by the socio-political conditions of society.

Obviously, for detailed analyses of contexts dictionaries can be expected to be helpful tools, since lexicographic examples, i.e. contexts of usage, are often provided and statements of meanings are derived from concrete utterances. However, a distinction must be made between lexical meaning and lexicographic definition. The meaning of lexicographic definition will be

understood to refer not only to the statement of meaning, but also to the examples of usage which are often used as 'disguised definitions' and thus have a defining function too (MARTIN 1989: 602). This approach was also chosen by FARINA 1992: 76 for her study of entries in SSRLJA 1950–65 and SSRLJA 1991–, as in Russian dictionaries the ideological influence is particularly noticeable in the illustrative material (GOUWS 1993: 278). Whereas lexical meaning is a value that is derived from all references and sense-relationships of a word in all concrete utterances, the data used by a lexicographer to create his definitions are only individual contexts. Since the lexicographer's understanding of the system of language and the variety of usage is never complete (ZGUSTA 1971: 26), a lexicographic definition can be regarded only as 'an approximation of lexical meaning' (FARINA 1992: 70). Apart from the practical considerations that limit a dictionary definition (LANDAU 1989: 121, 136–7; ZGUSTA 1971: 255; FARINA 1992: 71) there are social considerations which may affect it in an even deeper, and at the same time, subtle way. The problem is that societal changes, as they may be documented in lexicographic definitions, may be the result of real changes in the usage of a word. However, it may also be the case that a certain change of social values has affected the lexicographer's personal attitudes, which are then reflected in the statement of meaning, chosen examples, stylistic remarks etc.; in this case, a real change in the usage of a word need not necessarily have occurred (FARINA 1992: 72). In other words, a change in lexicographic definition need not reflect a change in usage, and vice versa. In general, however, it can be assumed that changing societal views will eventually be expressed in lexicographic definitions. There are also external factors that contribute to dictionaries' expression of changing societal views: lexicographers usually write for their readers, on whose opinion they depend if they want their dictionaries to be sold and read. In the Soviet Union there were other factors ensuring that dictionaries reflected only officially approved societal views. Soviet lexicographers did not depend on market considerations, since most dictionaries were made by collectives of workers in the State-controlled Academies of Sciences and published by State-run publishing houses. However, they had to consider the ruling ideology and adjust the content of their entries accordingly. This requirement was made particularly difficult to fulfil as lexicographic projects had to remain politically correct throughout their duration, even though the meaning of 'politically correct' changed from year to year (FARINA 1992: 74). The definitions of words could change from one edition of a dictionary to another, according to the prevailing political preferences (KEIPERT 1992: 381). Moreover, during Stalinist times (1924–53) a habit developed to purge card indexes and to destroy lexicographic material (ZASLAVSKY and FABRIS 1982: 389). Probably the most famous example is that of JA. K. GROT's dictionary (GROT 1891), which had been conceived in the 1850s. It had been appearing in instalments since 1891; in 1937, however, its index, by then consisting of three million cards, was 'freed from ideologically alien material' (DENISOV 1974: 211), and the dictionary's publication, having only reached the letter O, was stopped (JACHNOW 1990: 2312–13, CEJTLIN 1958: 108, FARINA 1992: 83). In certain semantic

fields, including the political, legal, and economic spheres, a major task of lexicographic definition during the Soviet period until *perestroika* was, wherever this was possible, the further spread of views and values provided by the Communist Party, i.e. by the reigning ideology chosen to legitimize the Party's power. Lexicographers were supposed, in these cases, to concentrate not on defining lexical meaning objectively, but rather on directing the readers' views towards the views dictated by the Party. KEIPERT 1992: 386 justly identifies as two of the sorest points concerning Russian lexicography during the Soviet era (a) that dictionaries were made ideologically uniform — systematically, though with varying intensity — by eliminating or overlooking unwanted words or meanings, and (b) that, at the same time, there was an almost complete lack of critical accounts, which would document this process of severe semantic impoverishment and bring it to public attention. KALAKUCKAJA 1991, who in describing the qualities of the Русско-японский словарь (1988) reveals fundamental shortcomings of Russian lexicography during the Soviet period and shows with the example of moral and ethical vocabulary that 'only part of the words' meanings were revealed' (p. 105), is one of the first of such attempts. Dictionaries are artefacts which are designed in a specific social context and thus should by no means be considered as culturally neutral. The influence that Soviet ideology had on lexicographic definition in Russian dictionaries published in Soviet times reflects the overall influence it had on the whole of Soviet society, including the legal sphere — legislation, jurisdiction, and jurisprudence. To some extent, this influence is acknowledged by ŠVEDOVA, who writes in her preface to OŽEGOV and ŠVEDOVA 1992:

> Этот словарь полностью освобожден от тех навязывавшихся извне идеологических и политических характеристик и оценок именуемых понятий, которые в той или иной степени присутствовали в предыдущих изданиях [...] и от которых ни авторы, ни редактор не в силах были освободиться. Теперь все такие характеристики и оценки последовательно устранялись, так же как тенденциозно окрашенные примеры употребления и пометы, насильственно относившие некоторые слова к сфере устаревшей лексики (p. 4).[2]

Taking into account the ubiquitous presence of Soviet ideology and its influence, not only on dictionary definitions, it can be assumed that the ideas Russian people had about the meaning of certain words and about the way to use them was influenced, possibly even determined, by the way these words were used officially — in dictionaries and elsewhere. However, it has to be borne in mind that however strong the influence of this official language use on people's attitudes, there were always other uses of words as well, not only in the spoken language, but also in texts published in the samizdat or in the emigré press. Since the beginning of *perestroika* this formerly concealed layer of words and meanings has been revived, and it is one of the aims

[2] 'This dictionary has been freed completely from the ideological and political characteristics that were externally imposed and existed to varying degrees in the preceding editions [...] and that neither the author nor the editor were capable of eliminating. Now all these characteristics and evaluations successively have been removed, as have the tendentiously-coloured examples and style labels, which perforce attributed some words to the sphere of obsolete vocabulary.'

of this study to describe and analyse this process as far as it concerns the terminology of economic law.

(6) *Historical Background*

(i) *The Influence of Continental European Law on Russian Law and the Russian Terminology of Economic Law since Peter I*

Peter I's preoccupation with the modernization of Russia along Western lines entailed drawing on Western legal experience to a greater extent than ever before (cf. BUTLER 1988: 19). This led to a fundamental renewal of legal terminology following Western models (see, in general, KAISER 1965). The primary instrument in the attempt to modernize Russia was legislation (FELDBRUGGE 1993: 81). Peter I gave instructions for the collection and translation of foreign laws, from which he selected those he wished to use as models for his own legislation (WITTRAM 1964, ii., 44). This applies not only to the reforms of the state apparatus and armed forces (SKRIPILEV 1990: 72; BUTLER 1988: 18), but also to the attempt to modernize commercial practices and intensify trade. Up to then Russian commercial life had been regulated primarily by customary law; it was only now that it began to be regulated predominantly by statute (FELDBRUGGE 1993: 81). A deliberate attempt was made to make use of Western experience in trade and commerce. In 1712, for example, Peter I gave instructions for one or two foreigners to be engaged to set up the College of Commerce, as there was 'no doubt that their [foreigners', A.R.] methods are incomparably better' (UKAZ 1712, p. 22; VOSKRESENSKY 1945, I: 205). In 1723 he gave instructions that young Russians be sent to Riga and Reval in order to study foreign trade methods. New concepts of commercial law were introduced into legislation that were explicitly based on Western models, such as биржа 'stock exchange' (REGLAMENT 1721) — a concept modelled on the law of old trade towns such as Riga and Reval (WITTRAM 1964, ii., 154) — and маклер 'broker' (REGLAMENT 1721). In 1699 Peter I commanded the creation of trading companies modelled on the Dutch example (WITTRAM 1964, ii., 44; PAŠKOV 1955: 284):

> Московского государства и городовых всяких чинов купецким людям торговать также, как торгуют иных государств торговые люди, компаниями.... (*PSZRI*, Vol. 3, No. 1706, p. 653).[3]

The most far-reaching impact of the rule of Peter I on the Russian legal system and its terminology lies in the framework of legal education he set up, based on foreign (Western) models. As part of his reform and secularization of the Russian education system (which up to then had been organized exclusively by the church) Peter I founded the Academy of Sciences, which opened in St Petersburg in 1725, designed as both a research and a teaching institution.

[3] 'The merchants of the Moscow State and of all municipal orders shall trade as merchants of other states trade, with companies...'

Law was one of the subjects to be pursued, taught in Latin by German law professors (TILLE 1989: 4). The first of these to be invited by Peter I was J. S. Beckenstein from Königsberg University (BUTLER 1988:19; SILVESTRI 1993: 7). From then on German legal scholars dominated Russian jurisprudence in St Petersburg and, from 1755, also at the Law Faculty of Moscow University, where the first Professors were the German-educated P. H. Dilthey and K. H. Langer (BROWN 1977: 127 n. 32). The influence of the German school remained strong even after S. E. Desnickij and I. A. Tret'jakov, the first Russian Professors of Law, who also were the first Professors of Law to lecture in the Russian language (TILLE 1989: 4; BROWN 1977: 127), had been appointed in 1768 (BROWN 1977: 121). This orientation towards German legal thought marks a new era in the reception of Roman law in Russia. Since the beginning of the tenth century, and especially following the adoption of Christianity by Vladimir in 988, Roman law (as embodied in the *Corpus iuris civilis*)[4] had been conveyed to Russia by way of Byzantine law. The first Russian legal documents to mirror this influence are the treaties concluded between Kievan Rus' and Byzantium in 911 and 944 (OBOLENSKY 1971: 244). They are reproduced, in their Slavonic version, in the Повесть временных лет, attesting, *inter alia*, concepts of the Roman law of civil procedure and inheritance (SALOGUBOVA 1997: 30). The influence of the church as mediating power is most notable in the imported canon-law texts assembled in the Кормчая книга 'Book of the Pilot', the Slavonic version of the Greek *Nomokanon*, which continued in force until 1917. Byzantine-Roman law affected mainly canon law, but since the canon-law courts, which gave judgement on the basis of Byzantine-Roman law, also dealt with matters of criminal and civil law (SILVESTRI 1993: 4 n. 2) foreign legal concepts entered civil law. The fact that all major laws adopted until the seventeenth century — the Русская Правда, the Судебники of 1497 and 1550, and the Соборное Уложение of 1649 — demonstrate, to various degrees, Byzantine-Roman heritage, has led to the suggestion that 'Roman law provided Russia and the West not only with a common set of legal distinctions and a common concept of legislation, but also with a common legal vocabulary' (BERMAN 1963: 189). As from the reign of Peter I Roman law was received in Russia in the adaptation made by Continental European (mainly German and French) law. It was transmitted by the newly-founded universities and their law faculties to all areas of secular law, in particular civil and commercial law. This influx of Continental European legal thought resulted in an intense romanization of the Russian legal system, represented by the reception of the French *Code Civil*

[4] The *Corpus iuris civilis* represents the first complete codification of Roman law and was issued in the sixth century during the reign of Justinian. It consists of four books: the *Codex constitutionum*, a compilation of all law in force at the time; the *Novellae*, laws promulgated subsequently to the *Codex*; the *Digesta* or *Pandectae*, a condensation of jurisprudence based on extracts of works from important Roman jurists; and the *Institutiones*, an elementary handbook based largely on the *Institutiones* of *Gaius*.

of 1804 and, in particular, of German Pandectism[5] and its product, the *Bürgerliches Gesetzbuch* (BGB) of 1899.

During the first half of the nineteenth century the greatest influence on the Russian legal system was exerted by the French *Code Civil.*[6] With the Tsar's consent M. M. Speranskij began to draw up a Civil Code on the French model and in 1810 produced first drafts. After Napoleon's invasion in 1812, however, the climate changed and Speranskij was exiled to Siberia. Under Nicholas I he was allowed back and in 1826 was given the task of collecting and systematizing all Russian laws, which resulted in the publication of the forty-five volume, verbatim, chronological collection of all statutes enacted between 1649 and 1825, the *Polnoe Sobranie Zakonov Rossijskoj Imperii* 'Complete Collected Laws of the Russian Empire' of 1830, and the fifteen volumes of the *Svod zakonov* 'Digest of Russian Laws' of 1832. In the latter Speranskij eliminated obsolete provisions, applied a loose systematic order, and tried to introduce French civil-law concepts. Although the need, on the one hand, to adjust these ideas to Russia's situation, and, on the other, to avoid changing Russian law hindered this effort (IOFFE 1982: 724), the influence of the *Code Civil* is obvious: it is reflected not only in the techniques of systematization, the Latin vocabulary, and the legal concepts, but also (AJANI 1990: 57) in the fact that volume X, regulating civil law, contains literal translations of the *Code Civil* (see also SILVESTRI 1993: 4, n. 3; SKRIPILEV 1990: 72). Russian scholars were mostly unaware of the parallels between the *Code Civil* and the tenth volume of the *Svod Zakonov*, but they played an active part in the reception of German Pandectism during the second half of the nineteenth century. While the government was reluctant to carry out a legal reform based on the German models, the role played by legal scholars and the Supreme Court accounts for the extent to which traditional Russian legal concepts were replaced by Pandectist models, ensuring the long-lasting influence of German Pandectism, which subsequently shaped Russian and Soviet civil law codification.

By the middle of the nineteenth century, economic conditions in Russia having changed immensely, Volume X of the *Svod Zakonov* had become almost completely outdated (BERMAN 1963: 206–12). The majority of legal scholars pressed for a fundamental reform of the Russian legal system and, as they were most attracted by German law and the systematic, strictly logical Pandectist theory, they were keen on introducing those legal concepts through their works

[5] The term *Pandectism* refers to a movement of Roman lawyers in Germany and elsewhere who, since the sixteenth century, had been producing syntheses of modern Roman law, aiming at presenting its concepts in a strictly logical and orderly way. The Pandectists viewed law as a closed system of ideas, principles, and institutions derived from Roman law. The German *Bürgerliches Gesetzbuch* of 1899 is the product of Pandectism in its abstraction, precision, and logical symmetry.

[6] The *Code Civil* was adopted, adapted, and copied by many countries throughout the world, not only in Europe, but also in the Near East, Central and South America, and even some parts of North America. Its extraordinary influence was due to (i) its very quality (cohesion, clarity, admirable language, easy flexibility of expression), (ii) the status and prestige of France in the nineteenth century, and (iii) the intellectual and cultural authority of the *Code Civil* as the Code of the 1789 Revolution (ZWEIGERT and KÖTZ 1992: 102–3).

(SILVESTRI 1993: 7). Russian textbooks published after 1870 (for example, CITOVIČ 1886, 1891; FEMELIDI 1902) deal almost exclusively with German, French, and Italian legal concepts, extracted from Roman law and discussed on the basis of foreign (mostly German, but also French and Italian) textbooks, as if they had force in Russia, and contain a large number of quotations in the foreign languages, chiefly German. Aspects of Russian civil law are only rarely mentioned (see also IOFFE 1982: 72). The universities of Moscow, St Petersburg, and Kazan abandoned the teaching of the *Svod Zakonov* rules in favour of the more developed theories of the German Pandectists (SILVESTRI 1993: 8). Russian professors spent long periods of time in Berlin or Leipzig, and in 1887 the *Russisches Seminar für Römisches Recht* was founded in Berlin, specifically for training Russian students. As a result of the university reform of 1864, which put Roman law in the centre of the curriculum, there was a shortage of lecturers in Roman law and the institute was founded to meet this need. Out of the 26 students who attended the two-year-course during the existence of the institute (1887–96) 16 were later employed at Russian universities (KAISER 1984: 90–2). The process of the adoption of German commercial practices and legislation is vividly described in FEMELIDI 1902: 38:

> При толковании институтов русского торгового права, часто обращаются к *иностранному законодательству* и чаще — к **Германскому**; (помимо близости и торговых связей — большая часть наших торговых обычаев – происхождения германского). Начала иностранного торгового права приносятся к нам юристами, как торговые обычаи – купцами; долго применяемые у нас иностранные нормы становятся обычаем, укрепляются, записываются, признаются судом и становятся как бы нашим достоянием. Иногда прямо принимаются иностранные формуляры сделок, напр. *Гамбургския условия страхования* [...] (original emphases).[7]

As a result of the 1864 judicial reform the judges of the Supreme Court had been given extensive powers. This made it possible for them to develop an elaborated case law which was largely divergent from official legal sources but in complete accordance with the systematic theories of German Pandectists, as their way of dealing with the desired but politically blocked reform of civil legislation (SILVESTRI 1993: 9). Although the Supreme Court judges applied rules that contradicted the *Svod Zakonov*, they defined their activity as interpretation of existing legal rules, trying to create the impression that they were applying Russian law (ibid.). As a result of their activity a number of basic legal concepts based on Pandectist theories such as the notions of ownership and *rei vindicatio* were de facto incorporated into Russian law (SILVESTRI 1993: 10–19), which led to 'enormous alterations' in the legal system (ibid. 19).

The first drafts of a Russian civil code of 1903 and 1905 drew heavily on the German *Bürgerliches Gesetzbuch* (BGB) (SILVESTRI 1993: 27–8). Although neither draft was enacted, they played an important role as judges and legal scholars used them in practical decisions and

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[7] 'When interpreting institutes of Russian trade law we often turn to *foreign legislation*, and most often to the **German** (apart from the closeness also of trade relations a great part of our trade practice is of German origin). The principles of foreign trade law are brought to us by lawyers, as trade practice is brought by merchants; once foreign norms have been applied here for a long time they become practice, become established, are taken down, are recognized by the courts, and become as if our property. Sometimes foreign records of transactions are directly taken over, for example *Hamburg insurance conditions* [...] (original emphases).'

discussions (IOFFE 1982: 725). Since then the influence of German and (to a lesser extent) French civil law on Russian and Soviet civil law codification has been profound. This influence is particularly obvious in the Civil Code of 1922, which is modelled on the BGB not only in the structure, but also in the content of the regulations and the terminology used: most of the articles are literal translations from the BGB (TILLE 1989: 10). Only the regulation in Art.1, according to which 'civil rights are protected by the law except in cases where they are realized against the meaning of these rights in a socialist society during the period of building of communism' (Art. 1 GK RSFSR 1922; see also Art. 5 OSNOVY 1961 and Art. 5 GK RSFSR 1964, where the same formula was used) made this a Soviet code. To a large extent the concepts and regulations were taken over into the 1964 Civil Code (REICH 1972: 322; TILLE 1989: 10; IOFFE 1982: 727), and all recent civil law codifications have remained in this tradition. It should be stressed that on the eve of the October Revolution Russia had a legal system which formed part of Continental European law and had its origins in Roman law. Accordingly, the main legal source is written codes (DAVID and BRIERLEY 1985: 33; QUIGLEY 1992: 34). The influence of French and German civil law had strongly affected not only the formation of the Russian legal terminology, but also, more generally, the development of the Russian legal system, a fact which must have determined considerably the way in which Russian legal terminology has changed since *perestroika*.

(ii) *The Influence of Soviet Ideology on the Russian Terminology of Economic Law*

Ideology will be understood as 'a system of collectively held normative and reputedly factual ideas and beliefs and attitudes advocating a particular pattern of social relationships and arrangements, and/or aimed at justifying a particular pattern of conduct, which its proponents seek to promote, realise, pursue, or maintain' (HAMILTON 1987: 38). This definition can be applied to all ideologies (as distinct from ideas and beliefs more generally), but it is particularly well-suited to describe Soviet ideology (BROWN 1989: 2). Soviet ideology is generally claimed to be based on Marxism-Leninism; however, in fact it is both more and less than the sum of the works of Marx and Lenin. It is more because subsequent politically authoritative interpreters, in particular Stalin, added their own contribution, and also the doctrine was codified into a set of binding rules and principles applied in contexts often very different from those to which Marx and Lenin referred; it is less because for most of the Soviet period the political elite made a conscious selection from the works of Marx and Lenin, taking the liberty of adding weight to certain parts of their writings while ignoring others (BROWN 1989: 3).

In comparative law the 'powerful influence of the Marxist-Leninist ideology' (DE CRUZ 1995: 188) is generally taken as the criterion for classifying the legal systems of the Soviet Union and other Communist states as a separate legal family representing 'socialist law' (cf. also ZWEIGERT and KÖTZ 1992: 73; DAVID and BRIERLEY 1985, CONSTANTINESCO 1978). The fact, however, that a comparison between the ideological dogmas of Marxism-Leninism and Soviet legal reality

reveals striking discrepancies (for analyses see IOFFE 1985: 6–10; BRUNNER 1986: 189–91) shows that in exercising their power (among other things through legislation) Party rulers did not pay much attention to the actual content of this ideology. For example, despite the dogma of the 'omnipotence of the representative body', the influence of the parliament on legislature was insignificant (BRUNNER 1986: 191). More important was the claim that the ideology was universally valid and constituted absolute truth, thus providing a basis for the Party's monopoly on recognition and leadership — its 'hegemonic power and superior authority vis-à-vis all other institutions and groups within society' (BROWN 1989: 13) —, a principle that was laid down in Art. 6 of the 1977 Constitution. Even so, part of Marxist-Leninist ideology found its way into the laws of Communist states. This concerns, above all, the economic order, which was based on the principle of a centralized planned economy (only in Yugoslavia and Hungary were elements of a planned economy and a market economy combined, when a largely decentralized system was introduced in the 1950s and 1968 respectively; BRUNNER 1986: 193) and it is most notable in the implementation of the socialist concept of ownership, which contained a distinction between five different forms of ownership, ordered hierarchically according to their ideological value (mirrored in the level of nationalization), with each one being subject to different legal regulations. As a result, terms relating to a planned economy and to Marxist-Leninist ideology were introduced into Soviet law, partly replacing terms referring to traditional Roman concepts of civil law that had previously been used in economic law. Of particularly far-reaching importance for legal terminology was the fact that собственность 'ownership' was no longer viewed as a concept rooted in the Roman civil law tradition but rather, in accordance with Marxist-Leninist ideology, as a socio-economic category — an approach that was subsequently adopted (rather than anticipated) in both economic and legal scholarly studies of the concept of ownership (ŠKREDOV 1989: 10). As a result, purely economic (and, from a legal point of view, meaningless) categories such as the division of objects of ownership into means of production and commodities were introduced into legislation, while traditional categories of civil law such as the division of objects into movables and immovables were eliminated. The process of excluding from the terminology of economic law terms relating to concepts of pre-Revolutionary economic law (and the law of capitalist countries) concerns terms referring both to legal concepts that were no longer provided for under Soviet law, and to realities that continued to exist, but officially, according to Soviet ideology, were said to have been abolished. If a need arose to refer to them in legal contexts, euphemisms were used.

During the Soviet period the meanings of a large number of terms of economic law changed in that they were subordinated to an ideologically motivated black-and-white opposition. While terms relating to concepts of pre-Revolutionary commercial law and the economic systems of capitalist countries acquired a negative connotation in official contexts or were taboo with respect to the Soviet Union, those referring to concepts of socialist law acquired a positive connotation. It was a basic element of the officially-approved Soviet language to define legal

concepts in opposition to the concepts of so-called bourgeois law (NUBBERGER 1998: 84), which led to a number of legal terms being used in two senses, one referring to capitalist countries, the other to the socialist system, as illustrated by Stalin's definition of демократия 'democracy':

> Но что такое демократия? Демократия в капиталистических странах, где имеются антагонистические классы, есть в последнем счете демократия для сильных, демократия для имущего меньшинства. Демократия в СССР, наоборот, есть демократия для трудящихся, т.е. демократия для всех. Но из этого следует, что основы демократизма нарушаются не проектом новой конституции СССР, а буржуазными конституциями. Вот почему я думаю, что Конституция СССР является единственной в мире до конца демократической конституцией (STALIN 1936: 35).[8]

In other cases new terms were specifically introduced as counter-concepts to bourgeois terms in order to establish or at least emphasize the opposition between the two systems. Sometimes this was achieved by attaching the adjective 'социалистический' 'socialist' to nouns, as in социалистическая собственность 'socialist ownership', a concept that was introduced in 1932 (ZOOI 1932) as a basic legal concept and served as a counter-concept to the negatively connotated частная собственность 'private ownership'. Other examples are социалистическая законность 'socialist legality', introduced in opposition to the concept of the rule of law (BRAND 1993: 368), and социалистическое соревнование 'socialist competition', introduced as opposed to the concept of конкуренция 'competition' (see below, pp. 127–31). This process reflects what has been identified as a basic pattern of the officially-approved Soviet language: the polarization of values according to the opposition 'мы' — 'они' ('we' — 'they') (WEISS 1986: 289; see also ZEMTSOV 1984: xviii). The intention was to dissociate the socialist system from the capitalist system by stressing vigorously the anti-bourgeois character of the former, as if merely condemning the capitalist countries conclusively proved the infallibility of the socialist system. Such oppositions are undoubtedly characteristic of any language of propaganda, but in the officially-approved Soviet language they were applied in a particularly deliberate way, including the use of neutral vocabulary, like отдельный 'individual' and зримый 'visible' (WEISS 1986: 285–9, where whole lists of attributes, referring exclusively to either the capitalist countries or the socialist countries are given), and the extent to which Russian legal terminology has been influenced and shaped by such patterns during the Soviet period is greater than in other legal terminologies. This is partly due to the 'distinctly stereotyped nature' of officially-approved Soviet language (WEISS 1986: 270; see also STEPHAN 1993: 335–6), resulting in the fact that, for example, the linguistic similarities between the 1936 or 1977 Constitution of the USSR and a report of the secretary-general of the

[8] 'But what is democracy? Democracy in capitalist countries, where there are antagonistic classes, is, in the end, democracy for the strong, for the well-off minority. Democracy in the USSR, in contrast, is democracy for the working people, i.e. democracy for all. It follows that the fundamentals of democratism are violated not by the draft of the new USSR Constitution, but by the bourgeois constitutions. This is why I think that the USSR Constitution is the only completely democratic constitution in the world.'

Communist Party are much greater than those between the German *Grundgesetz* and a report of the chancellor (WEISS 1986: 264). The 'diffusion of propagandistic elements into the legal language' (ibid.) results from the Soviet understanding of law as resulting from the basic tenets of Marxist-Leninist ideology. The Marxist concept of law is founded on the doctrines of dialectical and historical materialism (ZWEIGERT and KÖTZ 1987: 297–300; BUTLER 1988: 27–30). In applying the fundamental thesis of materialism to the social world it is argued that the basis of any social order is its economic foundation, while people's views and ideas and the whole of political and legal rules and institutions, i. e. the state and the law, constitute the superstructure. Hence law is not independent and does not derive from any given idea of law and justice, but merely reflects the economic foundation and, in particular, the relations of production. A further proposition states that the economic foundation, and with it the superstructure, alters through history. In the course of its evolution a society goes through various stages — from the slave-owner society through medieval feudalism and then capitalism to socialism, until finally, after socialism, law dies away in a classless society with no necessity for any legal order (ZWEIGERT and KÖTZ 1987: 298).

Following the October Revolution the views of Soviet legal theorists differed as to the role to be played by law during the transition period to communism, but no one doubted that law — viewed as an element of bourgeois society, a tool for oppression by the ruling class — would die away rapidly (BUTLER 1988: 32). In the 1920s the discussion was dominated by radical theorists such as P. Stučka and E. B. Pašukanis, who rejected the idea of a socialist law. In the 1930s, however, with the consolidation of the power of the Soviet state under Stalin, this view became unsustainable. It was officially abandoned on 27 April 1938, during a session of the department of social sciences at the Academy of Sciences, when A. Ja. Vyšinskij, the leading jurist of the Stalin era, denounced the views of Pašukanis, who had been executed in 1937 as an 'enemy of the people', as nihilistic and antimarxist (VYŠINSKIJ 1949) (BRUNNER 1986: 189–90). Instead, the concept of социалистическая законность 'socialist legality' was introduced in recognizing that law had to be retained temporarily as a means to construct a socialist society. According to VYŠINSKIJ's definition law was the totality of rules of conduct which expressed the will of the ruling class and were laid down in a legislative manner; the application of these rules was backed up by the coercive power of the state in order to secure, reinforce, and develop the social relationships and conditions which were agreeable to the interests of the ruling class (VYŠINSKIJ 1938: 76). From now on law was seen as an instrument for the advancement towards communism, determined in its content by the Communist Party, which, as guardian of Marxist-Leninist ideology, alone possessed the necessary insight into the progress of social development (BRAND 1993: 367; ZWEIGERT and KÖTZ 1992: 299). Hence law was viewed as determined exclusively by its political function. As it was one of the tasks of politics, and thus of law, derived from Marxist-Leninist doctrine, to alter the consciousness of individuals, to purge them of traces of bourgeois morality, and to coach them in socialist thought and

behaviour (ZWEIGERT and KÖTZ 1992: 299), law was believed to have an educational function too. This is vividly illustrated in the Soviet constitutions of 1936 and 1977, which contain provisions such as 'труд в СССР является обязанностью и делом чести каждого способного к труду гражданина по принципу: "кто не работает, тот не ест" [...]' 'labour in the USSR is a duty and a matter of honour for every citizen able to work according to the principle: "he who does not work, neither shall he eat" [...]' (Art. 12 KONST. SSSR 1936). Another example is the preamble of the RSFSR Code on Marriage and the Family, according to which basic tasks of the code include the 'strengthening of the Soviet family based on the principle of communist morality' and 'the children's preparation to actively participate in the construction of a communist society'. It results from this understanding of law that during the Soviet period laws were often seen as records of social progress rather than legal documents. This view is expressed, for example, in STALIN 1936: 15 (with respect to the 1936 Constitution). Following the October Revolution the majority of Soviet jurists had accepted the idea that the terminology used in legislation should be freed of its abstractness 'in order not to veil its Revolutionary nature' (PIGOLKIN 1990: 20, referring to Soviet jurisprudence of the 1930s). The abstractness of Russian legal language, which was a result of the strong Pandectist influence in Russia during the last fifty years of Tsarist rule, culminating in the reception of the German *Bürgerliches Gesetzbuch* of 1899, was now seen as a remnant of the influence of the bourgeoisie. In discussing the nature of legal language scholars stressed that terms used in legislation 'must not cause any doubt' (PRIZENT 1931: 145) or 'allow for different interpretations' (LAPTEV 1929: 17); in order to be accessible to the masses Soviet laws would have to be written in the 'language of the masses' (ibid.) A seeming contradiction was established between the immediate intelligibility of legal terminology and its abstractness, without taking into account that from a legal point of view legal terminology needs to be sufficiently precise in order to be truly intelligible, and that abstract criteria are always needed in law, whether they are introduced into legislation or jurisdiction. A broad and declarative vocabulary developed, including such vague terms as 'to increase, to raise, to strengthen' (KERIMOV 1991: 57). Because of its generality and ambiguity it permitted, even necessitated, extensive *ad hoc* clarification and elaboration of legislation by administrative bodies (FOSTER-SIMONS 1989: 356; KERIMOV 1991: 57), thus creating unpredictability and inconsistency in regulation. This practice began to change, when Gorbachev introduced as the main element of the правовое государство 'legal state' the concept of верховенство закона 'supremacy of the law': 'Главное для характеристики правового государства состоит в том, чтобы на деле обеспечить верховенство закона' 'the main characteristic of the legal state is to actually provide for the supremacy of the law' (GORBACHEV 1988: 5). This concept includes, *inter alia*, a 'qualitative aspect' (BRUNNER 1991: 286) from which requirements as to the use of legal terminology must be deduced. As part of the strong self-criticism which, following the general mood of *perestroika*, initiated the change in legal thinking, legal scholars began to call for a

legislative technique to be developed (PIGOLKIN and RACHMANINA 1989: 13; KERIMOV 1991: 57), and first attempts were made at textbooks on legislative technique (the first to be published since *perestroika* is PIGOLKIN 1990).The Soviet (and indeed Russian) tradition of правовой нигилизм 'legal nihilism' came under attack (TUMANOV 1989), which gave rise to a complex discussion of the concept of law. Various approaches have been developed, but here it is sufficient to say that law has lost its instrumental character as a tool of politics and is recognized as an independent value. The dwindling influence of Soviet ideology since *perestroika* and the emergence of a new understanding of the concept of law is bound to have affected the terminology of economic law.

Chapter One

PRE-REVOLUTIONARY TERMINOLOGY

All terms investigated in this chapter formed part of the legal terminology in pre-Revolutionary Russia. They were rarely used between 1917 and 1986, but have become widespread since. The chapter consists of two sections. The first examines terms that were not used in legislation during the Soviet period before *perestroika* as they referred only to pre-Revolutionary Russia (and, in some cases, the NĖP period) and capitalist countries. Since 1986 the terms have been used in legal terminology in referring to Russia. The second section deals with terms which, although associated mainly with capitalist countries, continued to be used as legal terms in Soviet legislation. Their range of application at that time was restricted, whereas today these restrictions have been removed.

1. *Terms Not Used in Soviet Legislation Before Perestroika*

(i) *Акциз 'excise-duty'*

This term is a loan-word from Fr. *accise* 'excise' (KAISER 1965: 187; FASMER 1986–7). The SRJA XVIII 1984–, s. v. акциз, gives 1719 as the date of its first attestation, but in fact it was used in Russian legislation as early as 1710:

> [...] что ему по старому все его доходы при портерном сборе, акциз [...], также половина процента со всяких входящих и исходящих товаров [...] (DOGOVOR 1710, p. 562).[9]

Excise-duties were firmly established in pre-Revolutionary Russia and continued to exist until 1930. After that, the meaning of акциз was closely associated with capitalist countries:

> Для акцизов характерны две отличительные черты, обусловившие их широкое распространение при капитализме [...] В.И. Ленин справедливо называл А. налогами на бедных' (FKS 1961, s. v. акцизы).[10]

The term was said to have a different meaning when it referred to Soviet Russia:

> В СССР система акцизов существовала до 1930 г. и коренным образом отличалась от системы, действующей в буржуазных государствах. Акцизы строились таким образом, чтобы в минимальной степени затрагивать доходы трудящихся' (ibid.).[11]

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[9] '[...] that his are, as before, all his income from harbour dues, excise-duties [...], also half percent of all incoming and outgoing goods [...].'

[10] 'Two distinguishing features are characteristic of excise-duties which have caused their wide spreading in capitalism [...] V. I. Lenin justly called excise-duties taxes on the poor.'

[11] 'In the USSR the system of excise-duties existed until 1930 and was radically different from the system operating in bourgeois states. Excise-duties were set up in a such a way as to affect the income of the workers to a minimal extent.'

Акциз was also used with respect to other socialist countries, where excise duties were abolished in 1948–9; they were described as 'остаток буржуазной налоговой системы' 'a leftover from the bourgeois tax system' (ibid.). According to SSRLJA 1991– акциз still refers only to 'pre-Revolutionary Russia and some capitalist countries', which obviously excludes the Russian Federation. However, in 1991 a law 'On Excise Duties' (ZoA 1991) was adopted:

> Настоящим Законом вводятся акцизы — косвенные налоги, включаемые в цену товара и оплачиваемые покупателем (Art. 1 ZoA 1991).[12]

(ii) *Акционер 'share-holder'*

This term was first recorded in 1786 (SRJA XVIII 1984–, s. v. акционер). Until the October Revolution it referred to shareholders in joint-stock societies as regulated in Russian legislation (Art. 2171 SVOD ZAKONOV, x., part 1; see DEMIS' 1859, s. v. акционер; GURLJAND 1885, s. v. акционер). Since the late 1920s, when national economic planning was introduced and joint-stock societies were no longer provided for, the meaning of акционер was mostly used in referring to shareholders in capitalist countries: 'капиталист, владелец акции, совладелец акционерного предприятия' 'capitalist, owner of shares, joint owner of a joint-stock enterprise' (OŽEGOV 1978, s. v. акционер). Since the reintroduction of joint-stock societies into Russian law the meaning of акционер changed in that it refers to Russian shareholders: российский акционер 'Russian shareholder' (*ĖŽ* 49/97: 5; see also SSRLJA 1991–, s. v. акционер; see also the article headed 'Права акционеров' 'Shareholders' Rights', *ĖŽ* 29/95: 25).

(iii) *Аренда 'lease'*

This term is a loan-word from Pol. *arenda* which was first recorded in 1665 (SRJA 1975–, s. v. аренда). In pre-Revolutionary law it referred to the lease of immovables, i. e. a contract by which one person provides immovable property to another for a fixed period of time in exchange for rent (ĖS 1890–1904, ii. (1890), s. v. аренда). The concept of имущественный наем also existed as a legal term, but a clear distinction was made between аренда and наем:

> Предметом найма является пользование *служебными* качествами вещи (а не доходами с нее), предметом же аренды — пользование *производительными* качествами (плодами и доходами) (ibid., xx. (1897), s. v. наем, p. 450) (original emphases).[13]

Thus, historically, аренда was used in relation to the lease of means of production (see also ODA 1996: 323). In view of the fact that after the October Revolution private ownership of the

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[12] 'This law introduces excises — indirect taxes which are included in the price of the goods and paid by the customer.' There is another example of the use of this term in INSTRUKCIJA 43/1996. See also the articles 'Акцизы при импорте: что нового?' (*ĖŽ* 13/96: 40) and 'Кому какой платить акциз?' (*ĖŽ* 24/97: 26).

[13] 'The object of hire is the use of *instrumental* qualities of a thing (and not income from it), whereas the object of lease is the use of the *productive* qualities (fruits and income).'

means of production was no longer provided for, it is not suprising to find that the 1922 Civil Code did not use аренда, but only наем. Only during the NÈP period, until the late 1920s, was аренда used in separate laws referring to the lease of enterprises and land (BSÈ 1926–48, iii. (1926), s. v. аренда государственных промышленных предприятий; аренда земли). However, although the concept of аренда as developed in pre-Revolutionary law was not provided for in Soviet legislation after the NÈP period, the term was still used by some authors, as a synonym of наем (see ODA 1996: 323–4 with n. 4; see also JURSN 1986, which under the heading аренда refers the reader to имущественный наем). The first law after *perestroika* to reintroduce the term аренда were the 'Fundamental Principles of the Law on Lease' (OSNOVY 1989), according to which land, natural resources, enterprises, and other property needed by the lessee in order to conduct economic and other activities for a fixed period were recognized as objects of аренда (Art. 1). This meaning of аренда corresponds to the 'productive character' of the objects of аренда as regulated in pre–Revolutionary law, and differs from the meaning of наем as regulated during the Soviet period, which did not allow for the lease of land, natural resources, or enterprises, as they were in the exclusive ownership of the state. However, there are also differences in the meaning of аренда as regulated before the October Revolution (and during the NÈP period) and since *perestroika*, the most significant of which is the newly introduced right of the lessee to purchase the object of lease (Art. 10 OSNOVY 1989).

(iv) *Аудитор 'auditor'*

Аудитор is a borrowing from Germ. *Auditeur* or Pol. *audytor*. It is first attested in 1705 (SRJA XVIII 1984–, s. v. аудитор). The term аудит had also been borrowed by Russian, meaning 'судебное исследование, или судебное следствие' (GURLJAND 1885, s. v. аудит). GURLJAND 1885 (s. v. аудитор) mentions that in Germany *Auditeur* refers to a young legal scholar who takes part in office work in order to gain experience, whereas in France and England, *auditeur* and *auditor* refer to an assessor at court who listens to the litigants. GURLJAND describes the meaning of аудитор as follows:

> В России аудиторы находились только при военных судах, где они занимали должности секретарей. Звания аудитора, обер-аудитора, генерал-аудитора — учреждены Петром Великим в 1716г. [...] В настоящее время все эти должности уничтожены.[14]

During the Soviet period аудитор related only to capitalist countries:

[14] 'In Russia auditors were to be found only at courts-martial where they occupied the post of secretaries. The titles auditor, chief-auditor, auditor-general were founded by Peter I in 1716 [...] Today all these posts have been abolished.' See also the *ukaz* of 13 Dec. 1720 issued by Peter I, where the function of various posts is indicated: 'Аудитор — для исправления судов и розысков' 'an auditor for the reform of trials and inquiries' (UKAZ 1720).

> Аудиторы — в капиталистич. странах лица, получившие от государства полномочия производить проверку балансов акционерных обществ и банков перед их опубликованием' (FKS 1961, s. v. аудиторы).[15]

The word acquired a negative connotation: descriptions of its meaning suggest that an аудитор in capitalist countries, though supposedly independent, is in fact subordinate to the monopolies (ibid.). After *perestroika*, аудитор lost this connotation. Since the early 1990s it has become one of the most widespread terms in commercial terminology. In legislation аудиторская деятельность 'auditor's activity' has been defined as

> предпринимательская деятельность аудиторов (аудиторских фирм) по осуществлению независимых вневедомственных проверок бухгалтерской (финансовой) отчетности, платежно-расчетной документации, налоговых деклараций и других финансовых обязательств и требований экономических субъектов, а также оказанию иных аудиторских услуг (point 3 VREMENNYE PRAVILA 1993).[16]

The main purpose of аудиторская деятельность is to establish that an enterprise's financial book-keeping is trustworthy, and that its financial and economic operations are performed in accordance with the law (cf. ibid. p. 5).The present meaning of аудитор recalls that of the Engl. *auditor* 'an accountant who verifies the books of a company' (COLLINS LAW 1996, s. v. auditor). In pre-Revolutionary Russia this was a ревизор (borrowed from Pol. *rewizor* or Germ. *Revisor* in the Petrine period, FASMER 1986–7, s. v. ревизор):

> Общее собрание, прежде утверждения [...] отчета, назначает ревизоров для проверки инвентаря и баланса по торговым книгам' (CITOVIČ 1886: 90).[17]

Ревизор has been revived from pre-Revolutionary legal vocabulary. The 1995 federal law 'On Joint-stock Societies' (FEDZOAO 1995) rules:

> Для осуществления контроля за финансово-хозяйственной деятельности общества общим собранием акционеров в соответствии с уставом общества избирается ревизионная комиссия (ревизор) общества (Art. 85 Para. 1 FEDZOAO 1995).[18]

This article also states that the activities of the ревизор are determined by internal documents of the society approved by the general meeting. Only shareholders of the given enterprise can be elected into its ревизионная комиссия which in small companies can consist of a single ревизор (FEDZOAO КОММ. 1996: 328). Thus the difference between the legal meaning of

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[15] 'Auditors are persons in capitalist countries who have been entitled by the state to verify the balances of joint-stock societies and banks before their publication.'

[16] 'Entrepreneurial activity of auditors (auditing firms) carrying out independent extra-departmental verifications of book-keeping (financial) accounts, the documentation of payments, tax declarations and other financial liabilities and claims of the economic subjects, and also other rendering other auditing services.' A law on аудиторская деятельность 'auditor's activity' is in preparation (see *EŽ* 12/98: 24).

[17] 'Before confirming the account the general meeting appoints auditors in order to check the inventory and the balance according to the books.'

[18] 'In order to implement control over the financial-economic activity of the society the general meeting of the shareholders in accordance with the statute of the society elects an inspection commission (inspector).'

ревизор and the one of аудитор lies in that the former is elected from among the shareholders and carries out his investigation on the initiative and behalf of the enterprise's leadership, whereas the latter is by definition detached and independent from the company, his activity being determined by legislation (see also Art. 86 FEDZOAO 1995). Ревизор refers to what is called внутренный аудит 'internal audit', meant to prepare the enterprise for внешний аудит 'external audit' carried out by the аудитор (FEDZOAO КОММ. 1996: 330; SAFARJAN 1997: 116). Аудиторская деятельность has become an independent and flourishing branch of business, and the term аудитор is now much more widespread than ревизор. Newspapers contain numerous advertisements in which companies called 'Аудиторско-консалтинговая компания Бизнес & Аудит' 'Audit-consulting company Business & Audit', 'ФинАудит' 'FinAudit', or 'Аудит-Оптим' 'Audit-Optim' (*FinGaz* 22/96: 14) offer their services, including аудиторские проверки с выдачей заключений, аудит бирж и инвестиционных институтов, разработка бизнес-планов, составление баланса (ibid.).[19] The adjective аудиторский is mostly used in the expressions аудиторская проверка 'audit verification' (Art. 42 FEDZOB 1995), аудиторское заключение 'audit conclusion' (Art. 42 FEDZOB 1995), аудиторские услуги 'auditing services' (Art. 779 Para. 2 GK RF I 1994), and аудиторская фирма 'audit firm' (*ĖŽ* 22/95: 27). Compounds such as аудиторы-частники (instead of частные аудиторы 'private auditors') also occur (see *ĖŽ* 13/97: 21). To some, the increase in frequency of аудитор since *perestroika* seems to suggest that it has replaced the old ревизор, as suggested by an article headed 'Ревизор? нет, аудитор' (*ĖŽ* 10/97: 30). In legislation, however, ревизор and аудитор are both used, with clearly distinct meanings.

In pre-Revolutionary Russian legislation there was need only for a ревизор, and the concept of аудитор is a new addition to Russian commercial practice. This means that while the term ревизор refers to the same functions as before 1917, its terminological status has changed. The concept of audit, which is now called аудит instead of ревизия, is split, partly represented by ревизор, and partly by аудитор. Although the meaning of аудитор refers to the same duties as Engl. *auditor*, it has been pointed out that Russian аудит has its 'national pecularities', and that it is yet too early to treat Russian audit standards as equivalent to foreign standards (CHALILOV 1997).

(v) *Банкир 'banker'*

This word is first attested in 1712 and in pre-Revolutionary Russia referred to the owner of a bank (SRJA XVIII 1984–, s. v. банкир). During the Soviet period it was only used with respect to capitalist countries: 'владелец или крупный акционер банка в капиталистических странах' 'owner or large shareholder of a bank in capitalist countries' (OŽEGOV 1988, s. v.

[19] 'Audit verification with the issuing of conclusions, audit of stock exchanges and investment institutes, the working-out of business-plans, the drawing-up of a balance.'

банкир; see also FKS 1961, s. v. банкиры). Since *perestroika*, банкир has been applied to Russia as well; the note 'in capitalist countries' has been deleted (see, for example, OŽEGOV and ŠVEDOVA 1992, s. v. банкир). Since 1987, it has become a widespread term, referring not only to the owner of a bank or a large shareholder, but to any professional banker: 'банковский работник, специалист по банковским операциям' 'bank-worker, specialist in banking operations' (NOVYE SLOVA-80 1997, s. v. банкир; see also the article headed 'Свободные банкиры' 'free bankers' in *ÉŽ* 30/90: 2, where банкиры is used as a synonym for финансисты 'financiers'). From банкир, new compounds such as банкиры-рекордсмены (*MN* 10/96: 33) have been derived.

(vi) *Банкротство 'bankruptcy'*

This term is a loan-word from Fr. *banqueroute* which was first attested in 1735 (SRJA XVIII 1984–, s. v. банкрот). Pre-Revolutionary Russian legislation included a bankruptcy law (Arts. 78, 101–7 USTAV TORGOVYJ) providing for a procedure to be followed if an enterprise ceased to pay its debts. The term несостоятельность was also used (for банкротство, see CITOVIČ 1873: 45; for несостоятельность, see ŠERŠENEVIČ 1994 (1914): 138; 164). During the Soviet period before *perestroika* bankruptcy legislation did not exist, and the term банкротство referred only to capitalist countries: 'вынужденная ликвидация капиталистического предприятия в результате его неплатежеспособности' 'forced liquidation of a capitalist enterprise as a result of its insolvency', whereas in socialist countries, 'где действует закон планомерного, пропорционального развития народного хозяйства, банкротства не могут иметь места' 'where the law of planned, proportional development of the national economy operates, bancruptcy cannot take place' (FKS 1961, s. v. банкротство). The official rejection of bankruptcy has been identified as one of the major causes of the economic backwardness of the former Soviet block (TIMMERMANS 1996: 453). After the beginning of economic reforms банкротство began to be used with respect to Russia too. The first laws to introduce the term were the 1990 Law 'On Enterprises and Entrepreneurial Activity' and the 1990 Statute 'On Joint Stock Societies'. These laws, however, did not define the meaning of банкротство, but merely referred to non-existent bankruptcy legislation (see Art. 37 Para. 3 ZoP 1990; Art. 136 POLOŽENIE 1990). A first definition of банкротство was given in the presidential edict 'On Measures for Support and Financial Restructuring of Insolvent State Enterprises (Bankrupts) and the Application of Special Procedures to Them' (UKAZ 1992), but this regulation referred only to state enterprises. A more general definition of банкротство applicable to all enterprises followed in the 1992 Law 'On Insolvency (Bankruptcy)' (ZoNBP 1992):

> Под несостоятельностью (банкротством) предприятия понимается неспособность удовлетворить требования кредиторов по оплате товаров (работ, услуг) [...] в

> связи с превышением обязательств должника над его имуществом или в связи с неудовлетворительной структурой баланса должника (Art. 1).[20]

The RF Arbitration Court has interpreted this law as allowing for a bankruptcy procedure to be initiated upon the claim of only one creditor (see, for example, decision No. 8547/95 of the RF Arbitration Court of 9 April 1996, *VVAS RF* 7/96: 83–5), while in Continental European law it is an absolute requirement that there is more than one creditor (TIMMERMANS 1996: 428). The 1994 Civil Code also contains provisions on bankruptcy and introduces the possibility of 'несостоятельность (банкротство) индивидуального предпринимателя' 'insolvency (bankruptcy) of an individual entrepreneur' (Art. 25 GK RF I 1994). TIMMERMANS 1996: 433 suggests that Art. 65 GK RF I 1994 'seems to introduce the requirement of a plurality of creditors for commencing bankruptcy proceedings since it uses the plural form' ('если оно [юридическое лицо, A.R.] не в состоянии удовлетворить требования кредиторов' 'if it [the legal entity, A.R.] is not in a position to satisfy the claims of the creditors'). This argument, however, is not convincing since Art. 1 ZoNBP had also used the plural form. The legal meaning of банкротство, as it has developed in post-*perestroika* legislation, contains both elements of foreign concepts of bankruptcy and original elements. An example for the former is Art. 45 part 2 ZoB 1992, which was taken over directly from Art. 206 (1) point (f) of the English Law on Insolvency of 1986 (KLEPICKIJ 1997: 58). An example of the latter is Art. 105 Para. 2 GK RF I 1994, which introduces the concept of liability of the parent company for its subsidiary's bankruptcy:

> [...] В случае несостоятельности (банкротства) дочернего общества по вине основного общества (товарищества) последнее несет субсидарную ответственность по его долгам.[21]

As a provision of law this element of the concept of bankruptcy is new in international practice. Court practice, however, is more and more developing towards accepting such liability (TIMMERMANS 1996: 447). The rather vague expression 'по вине' 'by the fault of' caused American and Western European lawyers to express fear that this provision opened the possibility for unrestricted liability of parent companies for their subsidiaries in Russia, thus representing a major obstacle for Western investment in Russia (WISSELS 1995: 4–7; GASHI-BUTLER 1995: 11–3). However, both in Russian legal commentaries and subsequent legislation the view has been developed that only in the case of wilful actions causing the bankruptcy of the subsidiary would the parent company be held liable (GK RF I KOMM. 1995: 162; point 10 Para. 4 UKAZ No. 1769/1993 as amended by UKAZ No. 784/1995; SOLOTYCH 1996: 39). As far as

[20] 'Insolvency (bancruptcy) of an enterprise is understood as the inability to satisfy the claims of the creditors as to the payment of goods (work, services) [...] due to an excess of these obligations over the debtor's assets or due to an unsatisfactory structure of its balance.'

[21] '[...] In case of insolvency (bancruptcy) of a subsidiary caused by the fault of the parent company the latter is liable for the obligations of the subsidiary.'

joint-stock societies are concerned, the legal meaning of 'по вине' has been further developed in the federal law 'On Joint-Stock Societies':

> Несостоятельность (банкротство) дочернего общества считается происшедшей по вине основного общества (товарищества) только в случае, когда основное общество (товарищество) использовало указанные право и (или) возможность в целях совершения дочерним обществом действия, *заведомо зная*, что вследствие этого наступит несостоятельность (банкротство) дочернего общества (Art. 6 Para. 3 FEDZOAO 1996) (emphasis A.R.).[22]

It may be difficult to prove that a parent company 'consciously knew' that certain actions would lead to its subsidiary's bankruptcy. It remains to be seen how this criterion will be applied in court practice.

As a concept of criminal law банкротство had been introduced into pre-Revolutionary law under the influence of French law (in particular, the *Code de commerce* of 1808 and the *Code pénal* of 1810), but it remained poorly developed (KLEPICKIJ 1997: 52). In contrast to the previous (Soviet) Criminal Code of 1960 (UK RSFSR 1960) the new Russian Criminal Code of 1996 contains provisions on fraudulent bankruptcy — see Art. 195 on Неправомерные Действия при Банкротстве 'Unlawful Actions at Bankruptcy', Art. 196 on Преднамеренное Банкротство 'Intentional Bankruptcy', and Art. 197 on Фиктивное Банкротство 'Fictitious Bankruptcy'. Although these regulations have been modelled on English, French, and German law, they differ from these models in many respects (KLEPICKIJ 1997: 53–9). This case is an example for the tendency in Russian legal terminology to adapt foreign influences to the Russian legal and economic system, an observation which is confirmed by recent legal analyses (SCHROEDER 1997; NUBBERGER 1998: 83) showing that despite the reception of foreign models and expertise the law emerging in post-*perestroika* Russia is genuinely Russian.

(vii) *Биржа 'stock exchange'*

Биржа is a borrowing from Dutch *beurs* or Germ. *Börse* 'stock exchange', first attested in Russian in 1705 (FASMER 1986–7, s. v. биржа). It is a central term in the terminology of Russian economic law, because from the outset of commercial life exchanges played a crucial role as trading centres and meeting-points for merchants. An early example of its use in legislation is the following passage in the REGLAMENT 1721, headed 'О Биржах или о Схожных Местах' 'On Exchanges or on Meeting Places':

> В удобных местах недалеко от Ратуши, по примеру иностранных купеческих городов, построить биржи, в которые б сходились торговые (люди) граждане для своих торгов и постановления векселей [...] (Chapter XVIII, p. 301).[23]

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[22] 'The insolvency (bankruptcy) of a subsidiary is considered to have taken place by the fault of the parent company (partnership) only in the event that the parent company (partnership) made use of the indicated right and (or) ability with the purpose to have the subsidiary perform actions, *consciously knowing* that as a consequence thereof the insolvency (bancruptcy) of the subsidiary will result (emphasis A.R.).'

[23] 'To build stock exchanges in suitable places not far from Ratuša, following the example of foreign trading cities, where commercial (people) citizens would meet for their tradings and the presentation of bills of exchange [...].'

In legal textbooks of the nineteenth century, the meaning of биржа was given as: (1) 'merchants' assembly place'; (2) 'market where transactions are concluded but not fulfilled'; (3) 'local commercial institution reserved for merchants', (4) 'regular visitors to the stock exchange' (cf. Crtovič 1886: 166–7; Crtovič 1891: 236–7; Femelidi 1902: 156). However, the term was mostly used to refer to the 'место, куда сходятся банкиры, купцы, маклера [...] для торговых дел') 'place where bankers, merchants, stockbrokers [...] meet to trade' (Perenogo 1832, s. v. *bourse*). In legislation биржа was defined as 'сборное место, или собрание принадлежащих к торговому классу лиц, для взаимных по торговле сношений и сделок' 'assembly place, or gathering of people belonging to the commercial class, for mutual trade dealings and transactions' (§ 656 Ustav Torgovyj). In December 1917 trade with securities was forbidden and the corresponding terminology ceased to form part of the vocabulary used in laws. In 1921 биржи were reintroduced and existed throughout the NÈP period, but in 1930, 'с развитием социалистического планирования хозяйственного оборота и введением кредитной реформы' 'with the development of the socialist planning of the economic turnover and the introduction of the credit reform' (JtS 1956, s. v. биржа), they were finally abolished. From now on, legal dictionaries gave two meanings of биржа: one referring to capitalist countries — 'в буржуазных странах организация крупных капиталистов [...]' 'in bourgeois countries an organization of big capitalists', the other referring to the NÈP period (see, for example, JtS 1956, s. v. биржа). When exchanges reopened in the early 1990s (two of the biggest in Moscow are the Московская межбанковская биржа, ММББ, see *PÈ* 1–2/96: 32–6, and the Московская товарная биржа, МТБ, see Šelenkova 1995: 66), the old terminology was reorientated to refer to Russia. The first law to reintroduce it was the law 'On the Commodity Exchange' (ZoTB 1992). The legal literature on exchanges is now vast, and special dictionaries covering this terminology have been published (for example, TBS 1996). Apart from биржа, a number of other, related terms have been revived: биржевик 'broker' ('Московские биржевики полюбили сибирских эмитентов' 'Moscow brokers came to like Siberian emitters', *ÈŽ* 33/97: 5; for an example of the use of биржевик in pre-Revolutionary legal texts, see Crtovič 1891: 250); биржевой комитет 'exchange committee' (Haudressy 1992: 49); фондовая биржа 'stock exchange'; товарная биржа 'commodity exchange'; валютная биржа 'exchange (currency, money) market'; биржевой маклер 'stockbroker'; and many more. In addition, new words have been derived from биржа: биржемания 'exchange obsession' ('биржемания: господа, не делайте больше ваши ставки!' 'Gentlemen, do not gamble anymore!', *MN* 16/96: 22), and биржеманы ('патологические биржевые игроки' 'pathological exchange gamblers', ibid.).

(viii) *Благотворительность 'charity'*

The concept of charity was first incorporated into Russian legislation in 1775, when the Учреждение о Губерниях permitted private people and organizations to establish благотворительные заведения 'charitable institutions'. Until 1862, however, the foundation and propagation of such organizations remained restricted by the fact that permission for founding a charity had to be obtained from the tsar. Only after 1869 was the Ministry of Internal Affairs allowed to authorize the statutes of public and private charities directly, without the consent of subordinate departments (ĖS 1890–1904, iv., s. v. благотворительность). Soon after the October Revolution the concept of charity was rejected by the Communist Party. On 26 April 1918 a decree was issued to the effect that the Народный комиссариат призрения 'People's commissariat of charity' was to be renamed the Народный комиссариат социального обеспечения' People's commissariat of social security', because the former name 'did not correspond to the socialist understanding of the tasks of social security' and was 'a remnant of the old times',

> когда социальная помощь носила характер милостыни и благотворительности 'when social aid had the character of alms and charity' (DEKRETY, ii., 180–1).

As a consequence, charities were dissolved, and further legislation expressly prohibited the Church from any charitable activity. From the 1950s, in official publications, the word благотворительность was no longer applied to the Soviet Union, where the socialist system had allegedly 'eliminated need, poverty, and unemployment' (BSĖ². v., s. v. благотворительность), it was employed only in relation to 'bourgeois societies':

> Благотворительность — помощь, лицемерно оказываемая представителями господствующих классов эксплуататорского общества некоторой части неимущего населения с целью обмана трудящихся и отвлечения трудящихся от классовой борьбы (ibid.)[24]

Dictionaries such as SRJA 1957–61 and 1981–4, or OŽEGOV (up to 1988) also restricted the use of благотворительность to 'в буржуазном обществе' 'in bourgeois society'. See also the example of usage given in OŽEGOV 1952: 'частная б. – одно из средств маскировки эксплуататорской природы буржуазии' 'private charity is one of the means used to disguise the exploiting nature of the bourgeoisie.'

When *perestroika* began and social problems such as poverty and unemployment were widely discussed in the press, the concept of благотворительность too began to be seen in a new light. An example is TRET'JAKOV 1988, where the reintroduction into the legal vocabulary of this word (which, 'judging from Soviet dictionaries and encyclopaedias of recent decades, refers to something that does not and cannot exist in the Soviet Union') is expressly welcomed.

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[24] 'Charity is the assistance which is hypocritically rendered by representatives of the ruling class in an exploiting society to part of the indigent population in order to deceive the working people and to distract them from the class struggle.'

Dictionaries published since 1991 no longer say 'in bourgeois society', but apply благотворительность to any society (SSRLJA 1991–, s. v. благотворительность; OŽEGOV and ŠVEDOVA 1993, s. v. благотворительность).

The first legal document to include благотворительность was the draft of the law 'On Co-operatives' of 1988 (ZOKOOP SSSR–PROEKT 1988), ruling that any profit directed into the Soviet Children's fund or на другие благотворительные цели ('other charitable purposes') would not be liable to taxation. The new attitude towards the concept of благотворительность was mirrored in the 1993 RF Constitution, where 'voluntary social insurance, and the creation of additional forms of social security and charity [благотворительность] are encouraged' (Art. 39 Para. 3 KONST. RF 1993). However, only in 1995, when the federal law 'On Charitable Activity and Charitable Organizations' (FEDZOBD 1995) was adopted, did the term acquire a precise legal meaning. Art. 1 defines благотворительная деятельность 'charitable activity' as

> добровольная деятельность граждан и юридических лиц по бескорыстной (безвозмездной или на льготных условиях) передаче гражданам или юридическим лицам имущества, в том числе денежных средств, бескорыстному выполнению работ, предоставлению услуг, оказанию иной поддержки.[25]

The concept of благотворительность was also included in other major laws, such as the Civil Code (Art. 50 Para. III GK RF I 1994; Art. 1109 Para. IV GK RF II 1995), and its meaning is given in legal dictionaries (for example, JURÈ 1997, s. v. благотворительная деятельность; BJUS 1997, s. v. благотворительность; благотворительная деятельность).

Today (1999), eleven years after the first post-Soviet use of благотворительность in an officially approved context, the process of reviving the pre-Revolutionary meaning of this word is not yet complete. The underdeveloped state of the charity infrastructure in Russian society, as compared with its situation in American and Western European societies, is explained by the fact that the historical roots of Russian philanthropy, which were suppressed in Soviet times, are not remembered well enough. According to Russian bankers and other entrepreneurs, Russian society has now to come to an understanding of благотворительность 'as a natural process by which business grows into the social sphere' (TELOV 1997). Banks and other enterprises have begun to engage actively in charity work, which they regard as a promising sphere of business:

> Чем больше примеров успешного осуществления благотворительных программ будет накоплено конкретными коммерческими структурами, чем благоприятнее будет законодательный климат для этой сферы деятельности, тем скорее мы придем к пониманию благотворительности как формы деловой активности (ibid.).[26]

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[25] 'The voluntary activity of citizens and legal entities in the form of the desinterested (free of charge or on preferential terms) passing-on of property, including money, to citizens or legal entities, the selfless carrying-out of work, the rendering of services, or the provision of other support.'

[26] 'The more examples of successful realization of charity programmes are accumulated through specific commercial structures, the more favourable the legislative climate in this sphere will be, and the sooner we will come to understand charity as a form of business activity.'

This shows that in legal terminology the current meaning of благотворительность contains an aspect not included in its ordinary meaning before and after the October Revolution, when it was defined as 'проявление сострадания к ближнему и нравственная обязанность имущему спешить на помощь неимущему' (ĖS 1890–1904, iv., s. v. благотворительность).[27]

(ix) *Гильдия 'guild'*

This word is a borrowing from NHG. *Gilde* (KAISER 1965: 135; FASMER 1986–7, s. v. гильдия; SRJA XVIII 1984–, s. v. гильдия). It is first attested in 1710 (see SCHIBLI 1988: 135, who gives an even earlier instance of the form гил(ь?)да for 1648). Гильдия was introduced into Russian law in 1721, when merchants were divided into two guilds: 'и в дву гильдиях состоят такие: [...]' (REGLAMENT 1721, chapter VII 'о разделении гражданства' 'on the division of the citizenry'). In the second half of the nineteenth century гильдия still referred to the different categories of merchants:

> Гильдиями называются разряды, на которые подразделяется купеческое сословие по количеству объявленного капитала и по роду торговых прав (DEMIS´ 1859, s. v. гильдия).[28]

In Soviet times commercial guilds were no longer provided for, and the term гильдия ceased to be used in legislation. It was reintroduced into Russian legislation in 1992, with the adoption of the law 'On Commodity Exchanges' (ZoTB 1992). Art. 26 is headed 'Брокерские гильдии и их ассоциации' and reads:

> Биржевые посредники, биржевые брокеры вправе создавать брокерские гильдии, в частности при биржах. Брокерские гильдии могут объединяться в ассоциации. Брокерские гильдии и их ассоциации создаются в порядке и на условиях, установленных законодательством для общественных объединений (организаций).[29]

Thus, the law states that a гильдия can only be founded in accordance with the legislation relating to social associations (organizations). Indeed, after the October Revolution, гильдия acquired a wider meaning than it had had before, in that it could refer to any professional association. However, it was not much used in Soviet times; dictionaries of the time refer to гильдия as 'историческое' 'historical' and 'дореволюционное' 'pre-Revolutionary' (for example, UŠAKOV 1935–40, s. v. гильдия). Only after *perestroika* did it become widespread, as part of the reactivated commercial terminology, referring to various kinds of associations

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[27] 'Manifestation of compassion for one's neighbour, and the moral duty of the well-off to give prompt to help the poor.'

[28] 'Guilds are categories into which the merchants are divided according to the amount of declared capital and the kind of trading rights.'

[29] 'Stock-exchange mediators, stock-exchange brokers are entitled to found brokers' guilds, particularly at the stock exchange. Brokers' guilds may join together to form associations. Brokers' guilds and their associations are founded according to the conditions laid down in legislation relating to social associations (organizations).'

connected with commerce: 'в Москве учреждена Гильдия менеджеров-строителей [...] К участию в Гильдии менеджеров-строителей приглашаются производственные организации, учебные и научные центры, фонды и союзы, финансовые учреждения и издательские дома' (*ÉŽ* 3/97: 3).[30] Other guilds recently founded include the Российская торговая гильдия 'Russian trading guild' (*BiP* 1/96: 5), the Российская гильдия риэлторов 'Russian guild of estate agents' (*MN* 3/96: 27), and the гильдии финансистов 'guild of financiers' (*FinGaz*, reg. vypusk, 22/96: 5). Membership of a guild is sometimes indicated after the name: 'Ирина Никонова, начальник управления Банка развития предпринимательства, член Гильдии финансистов' 'Dr Irina Nikonova, Director of the Bank of the development of entrepreneurship, member of the guild of financiers' (ibid.).

(x) *Гоф-маклер 'senior broker'*

This is a borrowing from Germ. *Hofmakler*. According to SRJA XVIII 1984– (s. v. гофмаклер), is first attested in 1735, but the *ukaz* 'Об учреждение Гоф-маклера' 'On the Institution of the Senior Broker' of 1717 (UKAZ 1717; see also UKAZ 1731, where both гофмаклер and гофмаклерский are used) shows that in fact it was used before this. Гоф-маклер is one of many terms with the prefix гоф- that were borrowed from German in the Petrine period (VASMER 1950-8, s. v. гоф-; WEISMANN 1731, s. v. гоф-; CHRISTIANI 1906: 57–8; SRJa XVIII 1984–, s. v. гоф-). It refers to 'старший маклер' 'senior broker' (ŠERŠENEVIČ 1994 (1914): 101), the senior stock-exchange broker appointed first by the tsar ('Великий Государь указал: от казенных товаров быть Гоф-маклером Самойлу Мюксу [...] ', UKAZ 1717) and later by the Minister of Finance. He was responsible for the quotation of stocks and shares, and for controlling the activity of the stock-exchange brokers (BURYŠKIN 1991: 230; 346). During the Soviet period гоф-маклер did not form part of Russian legal terminology; it related only to capitalist countries: 'в капиталистических странах старший маклер на фондовой или товарной бирже [...]' 'in capitalist countries a senior broker at the stock exchange or commodity exchange' (FKS 1961, s. v. гоф-маклер). Since *perestroika*, however, although most of the borrowings with the prefix гоф- have remained defunct (OŽEGOV and ŠVEDOVA 1992 have none), гоф-маклер has again become widespread, referring to the senior broker at a stock exchange who is elected by the members from amongst its brokers for a limited period of time. The main function of a modern гоф-маклер has remained the same as before the October Revolution: 'гоф-маклер осуществляет наблюдение за деятельностью маклеров на бирже и к концу биржевого собрания составляет свободную курсовую запись с указанием курсов состоявшихся сделок для биржевого комитета' 'the senior

[30] 'In Moscow a guild of manager-builders has been founded [...] Production organizations, educational and scientific centres, foundations and unions, financial institutions and publishing houses are invited to take part in the guild of manager-builders.'

broker supervises the activity of the brokers at the exchange and towards the end of the exchange meeting puts together a free record indicating the rate of the transactions for the exchange committee' (ÈP 1994, s. v. гоф-маклер; see also JR 1992, s. v. гоф-маклер; TBS 1996, s. v. гоф-маклер). Interestingly enough, the neologism гофброкер also occurs (*ÈŽ* 5/91, quoted by PODČASOVA 1994a: 53). Brokers are often called брокер instead of маклер; this is also true in legislation (Art. 22 ZoTB 1992, for example, defines the term биржевой брокер).

(xi) *Добросовестность 'bona fides'*

This term had been used in pre-Revolutionary civil law, where a distinction was made between добросовестное владение 'bona fide possession' and недобросовестное владение 'non bona fide possession' (Art. 529 SVOD ZAKONOV, x., part I; see also ibid., Arts. 628, 622, 633–4, 626). In the 1994 Civil Code, however, the concept of добросовестность has been introduced as a general principle, referring to a basic requirement to be met by all participants of civil legal relations:

> В случаях, когда закон ставит защиту гражданских прав в зависимость от того, осуществлялись ли эти права разумно и добросовестно, разумность действии и добросовестность участников гражданских правоотношений предполагаются (Art. 10 Para. 3 GK RF I 1994; see also Art. 6 Para. 2 GK RF I 1994).[31]

This use of the term добросовестность is reminiscent of the use of *Treu und Glauben* 'in good faith' in the German *Bürgerliches Gesetzbuch* (see, in particular, §§ 157, 242 BGB), and of *bonnes mœurs* 'good manners' in the French *Civil Code* (Art. 6 CODE CIVIL 1804). In continental European civil law the implementation of the ethical principle of decent, considerate, and reliable behaviour as a binding legal principle has a long tradition and is regarded as a fundamental precondition for establishing a civil and commercial legal order. In Soviet legislation these concepts had not been used (ŠČENNIKOVA 1997: 119). Their introduction into post-*perestroika* legislation reflects the intention of the legislator to take up this tradition of Continental European law. The concept of добросовестность is no longer used in referring only to a single legal relationship, владение 'possession', as in pre-Revolutionary law, but as a general principle underlying the legal oder as a whole.

(xii) *Дом, торговый 'trading firm*

In pre-Revolutionary legislation this term was used in referring to the товарищество полное 'full partnership' and the товарищество на вере 'partnership on trust':

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[31] 'In instances when a law makes the protection of civil rights dependent upon whether these rights have been effectuated reasonably and in good faith, the reasonableness of the actions and the good faith of the participants of civil law relations are presupposed.'

> Торговые товарищества, полное и на вере, называются торговыми домами, каковое название чуждо гражданским товариществам (ŠERŠENEVIČ 1994 (1914): 106; see Arts. 61–2; 71 USTAV TORGOVYJ; Arts. 2–3 MANIFEST 1807).[32]

In contrast to other forms of enterprise торговые дома did not require the approval of the central government. They were established by presenting the contract to the municipal clerk (OWEN 1991: 11). There were many thousands of such enterprises in pre-Revolutionary Russia (ibid., n. 24). During the Soviet period the term disappeared from active usage (HAUDRESSY 1992: 71); in specialist literature investigating capitalist systems, however, it was still used as a synonym for крупные специализированные корпорации 'big specialized corporations' (for example, TKAČENKO 1980: 95). Since *perestroika* the term торговый дом has become widespread in referring to various kinds of enterprises in Russia, including фирма 'firm', предприятие 'enterprise', магазин 'shop', заведение 'establishment' (HAUDRESSY 1992: 71). Thus its meaning is now much broader than it was in pre-Revolutionary times, when the term referred to only two specific organizational-forms of legal entities.

(xiii) *Коммерсант 'merchant'*

This term is a loan-word from Fr. *commerçant*, which was first recorded in 1804 (FASMER 1986–7, s. v. коммерсант; SSRLJA 1950–65, s. v. коммерсант). In pre-Revolutionary legal texts it was sometimes written in the Latin alphabet:

> Торговать не значит еще монтировать магазин, сделать зеркальные окна, выставить вывеску — все это не суть des actes de commerce, а нужно их exercer, чтобы стать commerçant'ом (CITOVIČ 1873: 27, n. 2; see also ibid., 193).[33]

During the Soviet period this term officially was used in referring to merchants 'in bourgeois society': 'в буржуазном обществе — лицо, занимающееся торговлей, преимущественно в крупных размерах' 'in bourgeois society a person engaged in trading, mainly on a large scale' (SSRLJA 1950–65, s. v. коммерсант). Only after the beginning of *perestroika* did it again become widespread in referring to Russian merchants:

> Хотите стать коммерсантом? С чего начать, как раскрыть свой потенциал, что входит в арсенал приемов высококвалифицированного коммерсанта [...] 'Would you like to become a merchant? How to start, how to discover one's potential, what goes into the arsenal of a highly qualified merchant's devices [...]' (*ÉŽ* 8/95: 11).

In the late 1980s the publishing house 'Коммерсантъ' was founded, publishing, among other publications, the journals *Коммерсантъ-weekly* and *Коммерсантъ-daily* (see the article headed 'Информационная империя издательского дома "Коммерсанта"', *BiP* 5/1996: 26). The use of the hard sign demonstrates that this word is a deliberate revival of a pre-Revolutionary term. In post-*perestroika* legislation the term коммерсант is not used.

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[32] 'Trading partnerships, full and on trust, are called business houses, a name that is alien to civil partnerships.'
[33] 'To trade does not mean to still assemble the shop, to make mirror windows, to display the sign — these are not actes de commerce, but it is necessary to exercise them in order to become a merchant.'

(xiv) *Коммивояжер 'commercial traveller'*

Коммивояжер (pre-1917 spelling: комми-вояжер) is a borrowing from Fr. *commis-voyageur* first attested in 1864 (SSRLJA 1950–65, s. v. коммивояжер). In Russian legislation it was first used to refer to foreign commercial travellers and was written in the Latin alphabet: 'агенты и комиссионеры иностранных домов, неимеющие товаров в своем распоряжении и неуполномоченные на производство торговли а служащие только посредниками при заключении торговых операций (commis-voyageurs)' (Art. 56 POLOŽENIE 1865; see also CITOVIČ 1873: 355).[34] By 1886, however, the Cyrillic version already had gained acceptance. At least this is true for legislation (see also Art. 57 POLOŽENIE 1898). SIS 1900 has *commis voyageur* in an appendix of 'words and expressions that have retained their foreign spelling in Russian'. Коммивояжер then referred to all commercial travellers:

> Прикащик, не случайно получающий приказ, поручение своего хозяина, а определенный именно для того, чтобы, разъезжая в известном районе, заключать торговые сделки от имени и за счет своего хозяина, есть комми-вояжер (Handlungsreisende) (CITOVIČ 1886: 62).[35]

Legislation determined what conditions an enterprise had to fulfil (i.e. how many taxes it had to pay) in order to be allowed to have commercial travellers (Art. 57 POLOŽENIE 1898). During the NĖP period the term was also used in legislation. DEKRET 1923 rules that state enterprises, in order to increase sales of their goods, are entitled to use the services of коммивояжеры (Art. 1) who commit themselves to accept orders and sell goods on behalf of the enterprise within a certain area on the basis of models and assortments of goods, price lists, and according to instructions (Art. 2). In dictionaries published after the NĖP period the word does appear, but with remarks such as 'в буржуазном обществе' 'in bourgeois society' (OŽEGOV 1988, s. v. коммивояжер) or 'в капиталистических странах' 'in capitalist countries' (SSRLJA 1950–65, s. v. коммивояжер; SIS 1980, s. v. коммивояжер). Since 1990, however, these notes have been deleted in dictionary entries (OŽEGOV and ŠVEDOVA 1992, s. v. коммивояжер; SIS 1994, s. v. коммивояжер) and the word has again been used with reference to Russia as well as to other countries. Its meaning is explained in newspapers, for example in the section 'словарь делового человека' (*ĖŽ* 3/90: 10), and used in legal studies (for example, SOSNA 1997: 25). Коммивояжер is also included in recently published legal dictionaries such as ĖP 1994:

> Разъездной представитель торговой фирмы, сбытовый посредник, предлагающий покупателям товары по имеющимся у него образцам (s. v. коммивояжер).[36]

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[34] 'Agents and commission-agents of foreign [business] houses, who do not have goods at their disposal and who are not authorized to trade but who serve only as mediators for the conclusion of commercial operations.'

[35] 'A commercial traveller is a salesman, who has obtained the order, the instruction of his master, not accidentally but specifically in order to travel about in a certain district and conclude commercial transactions on behalf and at the expense of his master.'

[36] 'Travelling representative of a commercial firm, selling agent, who offers the customers goods with samples that he has with him.'

In contrast to other mediators (агент, комиссионер, дилер), а коммивояжер cannot be an independent legal entity (ÉP 1994, s. v. коммивояжер). This was also true of a коммивояжер in pre-Revolutionary times.

(xv) *Кондоминиум 'condominium'*

This term was adopted from Roman law, where *condominium* was the joint possession of an object by various owners. Before the October Revolution кондоминиум was used in both civil law and state law; in the latter it referred to the joint realization of state power in a specified territory by two or more states. During the Soviet period before *perestroika* кондоминиум was used only in this second meaning (BSÉ² xiii. (1973), s. v. кондоминиум ; SSRLJA 1950–65, s. v. кондоминиум; UŠAKOV 1934–40, s. v. кондоминиум). As a term of civil law кондоминиум was reintroduced into Russian legislation only in 1993 in the 'Temporary Statute on Condominium' (POLOŽENIE 1993), where it is defined as follows:

> Кондоминиум является объединением собственников в едином комплексе недвижимого имущества в жилищной сфере (далее именуется – домовладельцы), в границах которого каждому из них на праве частной или государственной, муниципальной собственности, иной форме собственности принадлежат в жилых домах жилые (квартиры, комнаты) и/или нежилые помещения, включая пристроенные, а также другое недвижимое имущество, непосредственно связанное с жилым домом, являющееся общей собственностью домовладельцев [...]. (Art. 1)[37]

The entry in NOVYE SLOVA–80 1997 (s. v. кондоминиум) states that the meaning referring to living-space is new, having appeared in the 1980s, and that it is exclusively applied to 'the West': 'Дом (на Западе), которым совокупно владеют собственники квартир' 'House (in the West), which is jointly owned by the owners of the apartments'. However, as shown above, кондоминиум in this sense is in fact also used to refer to Russia. A further example is the article 'К ваучеру привыкли. Привыкнем ли к кондоминиуму?' 'We got used to the voucher. Will we get used to the condominium?', in ŠAPOŠNIKOV 1997: 39).

(xvi) *Корпорация 'corporation'*

Before 1917 корпорация meant an association (with its own statute and specific rights) consisting of people joined together by a common interest, which in most cases was professional (корпорация врачей 'corporation of doctors') (SIS 1894; SIS 1902; SIS 1910; SIS 1880; SIS 1900, s. v. корпорация). During the Soviet period корпорация acquired a second meaning, namely that of *corporation* as a monopolistic association (see OŽEGOV 1988, s. v. корпорация). This is the meaning of a *business corporation* in American law — in

[37] 'A condominium is an association of owners in a single complex of immovable property (hereafter house-owners), where each of them has in private, state, or municipal ownership living space (apartments, rooms) and/or uninhabitable space, including extensions, and also other immovable property that is directly linked to the dwelling house, which is joint property of the house-owners [...].'

Continental European law the corresponding terms are *Aktiengesellschaft* (Germ.), *société par actions* (Fr.), *акционерное общество* (Russ.) —, and корпорация was used only with reference to the USA: 'корпорация «Дженерал элэктрик» заключала с Советским правительством контракт [...]' 'the corporation "General Motors" concluded a contract with the Soviet government' (ARTEMOV 1958: 17; for another example, see KRUTOV 1958: 87). Legal dictionaries published during the Soviet period before *perestroika* describe корпорация as a concept rooted in 'bourgeois civil law' and as a tool used by the biggest monopolies in order to exercise economic supremacy, thereby bending the bourgeois state to their will (see, for instance, FKS 1961, s. v. корпорация). When, from 1990, various legal forms of private enterprise were introduced into Russian law, joint-stock societies were named акционерные общества, not корпорации: the term was borrowed from continental European languages, not American English. Корпорация continues to mean an American corporation (BJuS 1997, s. v. корпорация; ÈJuS 1997, s. v. корпорация; SYROIDOEVA 1993: 122; 126; 127), but in Russian post-*perestroika* legislation the term is rarely used. Some legal dictionaries under the heading корпорация (for example, SÈS 1997, s. v. корпорация) give (without any further comment and therefore misleadingly) the meaning of Engl. *corporation* (as a term of American law). Others claim that in Russian legislation корпорация is used only as part of the name of commercial state organizations (BJuS 1997, s. v. корпорация). In fact, корпорация is also used as referring to an association of enterprises:

> Госкомимущество России не вправе делегировать свои полномочия [...] холдинговым компаниям, создаваемым на базе государственных концернов, корпораций, ассоциаций, а также иным хозяйствующим субъектам, не являющимся покупателями в соответствии с пунктом 1 статьи 9 настоящего Закона (Art. 4 Para. 2 ZoPRIV 1991).[38]

Another legal document in which корпорация is used as referring to 'объединение предприятий' 'association of enterprises' is the METODIČESKIE REKOMENDACII 1994 (Para. 2. 4. 2.). An example of this use of корпорация in specialist literature is: 'сегодня в составе корпорации — 11 предприятий, расположенных в России, Беларусе, Украине и в Казахстане 'today the corporation comprises 11 enterprises situated in Russia, Byelorussia, Ukraine, and Kazakhstan' (*ÈŽ* 8/98: 23). Such cases are, however, very rare, and the precise legal meaning of корпорация as referring to an association of enterprises (or entrepreneurs) has nowhere been defined. Rare as they may be, such instances are none the less characteristic of the current transformation process of Russian law, in which the influences of native and various foreign legal traditions compete with each other, this battle being mirrored in the choice of terminology.

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[38] '*Goskomimuščestvo* [State Committee of the Russian Federation for the Administration of State property] does not have the right to delegate its powers [...] to holding companies that have been formed on the basis of state concerns, corporations, associations, and also other commercial subjects that are not buyers according to Para. 1 Art. 9 of this law.'

(xvii) *Маклер 'broker'*

This term is a loan-word from Germ. *Makler* (FASMER 1986, s. v. маклер). It is first attested in 1721(REGLAMENT 1721, chapter XIX: 'О маклерах и торговых сводчиках'). It means a commercial broker, in particular a broker at a stock exchange (PERENODO 1832, s. v. маклер; CITOVIČ 1886: 64). When stock exchanges were finally closed down in 1930 this term disappeared from active usage. After *perestroika* it was revived and reintroduced into legal dictionaries:

> посредник при заключении сделок на фондовых, товарных и валютных биржах, а иногда и при заключении страховых, фрахтовых, жилищных и иных договоров (BJuS 1997, s. v. маклер).[39]

In legislation, however, no cases of its use have been found; instead the English loan-word брокер is used (see below, pp. 85–7).

(xviii) *Недвижимость 'immovable property'*

The division of things into *movable* and *immovable* goes back to Roman law (*res mobiles/res immobiles*) (KASER 1971: 382). Immovable things are, broadly defined, things that cannot be moved, such as land or buildings, whereas movable property can either be moved (money, stocks and shares, securities, etc.) or move itself (animals). This distinction was inherited by all European legal systems (and conveyed to many more), and has remained a basic legal distinction, particularly in civil law. The distinction between недвижимые вещи 'immovable things' and движимые вещи 'movable things' had been used in Russian Canon Law, following its Roman-Greek model, most notably in *Kormčaja kniga* and in various laws subsequently passed by Russian Church authorities in 1580, 1584, and 1667 (KAISER 1965: 245–6). However, it was only under Peter I that these terms were introduced into secular legislation. The terms поместье 'estate', вотчина 'inherited estate', двор 'yard', and лавка 'shop' were united under недвижимые вещи in the *ukaz* of 23 March 1714 'О порядке наследования в движимых и недвижимых имуществах' (UKAZ 1714). This *ukaz* completed Peter I's effort to bring into line the various kinds of ownership of land. The terms недвижимые вещи, движимые вещи, недвижимое имущество, and движимое имущество are therefore generally regarded as new legal terms coined under Peter I (KAISER 1965: 246; ŠERŠENEVIČ 1995 (1905): 98). When Russian commercial law developed, the categories of движимое and недвижимое имущество (or движимость and недвижимость), were among those taken over from civil law (Art. 383 SVOD ZAKONOV, x., part 1: имущества суть недвижимые или движимые 'property is immovable or movable'):

> Торговое право берет готовыми из гражданского права все те понятия и определения, которые принадлежат последнему [...], напр. [...] понятия недвижимости и движимости (CITOVIČ 1891: 34).[40]

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[39] 'Mediator at the conclusion of transactions at stock, commodity and currency exchanges, and sometimes also at the conclusion of insurance, freight, housing, and other treaties.'

From then on these terms served as basic concepts in the description of commercial transactions: 'акция — имущество движимое' 'a share is movable property' (Crnović 1886: 28); 'вот почему участие акционера в складочном капитале всегда есть имущество движимое, хотя, быть может, главную часть имущества товарищества составляют недвижимости' 'this is why a shareholder's share in the capital is always movable property, even though, perhaps, immovable property constitutes the main part of the partnership's property' (ibid., 103; cf. Art. 2176 Svod zakonov, x., part 1). The distinction between движимое and недвижимое имущество was also used in commercial legislation:

> Товарищи сего торгового дома ответствуют за все долги оного вообще и порознь имуществом своим движимым и недвижимым (Art. 2 Manifest 1807).[41]

In Soviet times, however, property was no longer divided into 'movable' and 'immovable', but into means of production and commodities— in other words, a legal classification was replaced by economic criteria. Accordingly dictionaries published in Soviet times treated the term недвижимое имущество as referring only to pre-Revolutionary and contemporary bourgeois law:

> Недвижимое имущество — в русском дореволюционном и современном буржуазном праве, имущество, состоящее из земельного участка, строения (SRJa 1981–4, s. v. недвижимый).[42]

Overcoming this Soviet legacy proved difficult. Even in JuRÉ 1995 (s. v. вещь) this division is still considered the fundamental one in civil law — 'наиболее существенное', and even though the entry is rather detailed and mentions other civil law classifications of property, it does not mention the concepts of движимые and недвижимые вещи. (In JuRÉ 1997 s. v. вещь the word 'наиболее' has been omitted, and the distinction between движимые and недвижимые вещи has been introduced.) In 1989, a legal scholar commented on the problem as follows:

> Допускается смешение деления имущественных объектов с их делением по экономическим признакам на средства производства и предметы потребления. На самом же деле здесь нет никакого юридического признака различия. Традиционно известно деление на движимое и недвижимое имущество [...] Но эта терминология до сих пор не употребляется, а само деление исчезло. (Škredov 1989: 11–2)[43]

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[40] 'Commercial law takes over from civil law all those concepts and definitions that belong to the latter [...], for example [...] the concepts of immovables and movables.'

[41] 'The partners of a business house are liable for all its obligations together and separately with their movable and immovable property.'

[42] 'Immovable property is, in Russian pre-Revolutionary law and contemporary bourgeois law, property which consists of land plots, buildings.'

[43] 'The mixing up of the division between ownership objects and their division according to economic criteria into means of production and commodities is permitted. In fact, however, there is no legally distinguishing feature here. Traditionally known is the division into movable and immovable property. But this terminology is still not used, and the division itself has disappeared.'

Since 1990, however, the situation has changed. The first law to mention the term недвижимое имущество again was the law 'On Ownership in the RSFSR', ruling that a citizen or legal entity who was not the owner of property,

> но добросовестно и открыто владеющее как собственник недвижимым имуществом не менее пятнадцати лет либо иным имуществом не менее пяти лет,[44]

acquired property rights (Art. 7 Para. 3 ZoS RSFSR 1990). Although the terms are not yet defined here, this regulation is still relevant as it introduces the distinction between недвижимое имущество and движимое имущество as the criterion for the length of time in which property has to be held in possession before property rights can be claimed. In 1991 the 'Fundamentals of Civil Legislation of the SSSR and the Republics' stated more expressly that

> имущество подразделяется на недвижимое и движимое 'property is divided into immovable and movable property' (Art. 4 Para.2 Osnovy 1991).

Finally, the Civil Code defined the meaning of недвижимые вещи:

> К недвижимым вещам (недвижимое имущество, недвижимость) относятся земельные участки, участки недр, обособленные водные объекты и все, что прочно связано с землей, то есть объекты, перемещение которых без несоразмерного ущерба их назначению невозможно, в том числе леса, многолетние насаждения, здания, сооружения (Art. 130 Para. 1 GK RF I 1994).[45]

The meaning of движимые вещи is defined as 'вещи, не относящиеся к недвижимости' 'things that are not immovables' (Art. 130 Para. 3 GK RF I 1994). The introduction of an abstract criterion to distinguish between immovables and movables is new in Russian legislation. Pre-Revolutionary law had instead aimed at enumerating the objects belonging to each group. Considering the fact that the number of immovable and movable objects is infinite, this approach was useless (critically also Šeršenevič 1995 (1905): 97):

> Недвижимыми имуществами признаются по закону земли и всякие угодья, дома, заводы, фабрики, лавки, всякие строения и пустые дворовые места, а также железные дороги (Art. 384 Svod zakonov, x., part 1).[46]
> Движимые имущества суть: мореходные и речные суда всякого рода, книги, рукописи, картины и вообще все предметы, относящиеся к наукам и искусствам, экипажи [...], лошади, скот, хлеб сжатый и молоченый [...] (Art. 401 Svod zakonov, x., part 1).[47]

With the adoption of the 1994 Civil Code the distinction between недвижимое имущество and движимое имущество has been firmly established in Russian law (see, for example, GK RF I

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[44] '[...] but has been in bona fide and open possession as an owner of immovable property for at least fifteen years or of other property for at least five years [...].'

[45] 'To immovable things (immovable property, immovables) are relegated land plots, subsoil plots, isolated water objects and all that is firmly connected with the land, that is objects whose movement without incommensurate damage to the purpose thereof is impossible, including forests, perennial plantings, buildings, and installations.'

[46] 'Immovable property is recognized by the law as land and all kinds of arable land, houses, factories, shops, all kinds of buildings and empty outbuildings, and also railways.'

Комм. 1995: 204–6). Since the introduction of market reforms in Russia the concept of недвижимость has increasingly attracted attention in legal practice and legislation, as the state gradually has lost its role as the sole owner of immovable property. Whereas previously transactions with immovable property were merely a transfer of property between various state representatives, these transactions have become more complex with the introduction of private property and today pose much greater legal problems. Although the term недвижимость is still used in legislation to classify property (a recent example is Art. 1 FedZoGosReg 1997, where the term 'недвижимое имущество (недвижимость)' is defined on the basis of Art. 130 Para. 1 GK RF 1 1995), it is now more and more associated with the rights connected with this property — a semantic component that in Soviet times before *perestroika* was insignificant. The new legal challenge has been described as 'учитывать недвижимость не только как физический объект, *но и права на нее*' 'to consider immovable property not only as a physical object, *but also as the rights to it* ' (Kravčenko 1998; original emphasis).

(xix) *Общество, акционерное 'joint-stock society'*

In pre-Revolutionary Russia joint-stock societies were an established form of enterprise (see, in general, Šepelev 1973). The first to be founded was the Российская и в Константинополе торгующая компания (1757); followed by the Российско-Американская компания (1799). From the 1820s the number of joint-stock societies grew significantly. See Šeršenevič 1994 (1914): 143; Butler and Gashi-Butler 1996: iii). The terminology used in legislation to refer to joint-stock societies was inconsistent: акционерное товарищество (Art. 55 Ustav torgovyj; Art. 2128 Svod zakonov, x., part 1), акционерная компания (Art. 58 Ustav torgovyj; Art. 2139 Svod zakonov, x., part 1), and акционерное общество (Art. 55 Ustav torgovyj) all occurred. As an organizational form of legal entity they survived the October Revolution and, during the 1920s, were widely used as part of the New Economic Policy. In the late 1920s, when national economic planning was introduced, joint-stock societies were mostly phased out. Even though certain state-owned legal entities retained the title акционерное общество throughout the Soviet period, one of the most notable being Intourist (Butler and Gashi-Butler 1996: iv), the term акционерное общество acquired a negative connotation because of its close association with capitalism: 'в действительности же акционерные общества служат орудием не демократизации, а гигантской централизации капитала и ведут не к смягчению, а к обострению противоречий капитализма' 'in reality, however, joint-stock societies serve as a tool not of democratization, but of a gigantic centralization of capital, leading not to a alleviation, but to an aggravation of the contradictions of capitalism' (FKS 1961, s. v. акционерное общество). The fact that the Soviet Union itself took part in

[47] 'Movable property is: sea- and river ships of all kinds, books, manuscripts, paintings and in general all objects relating to the sciences and the arts, carriages [...], horses, cattle [...].'

joint-stock societies with other socialist countries was justified as 'форма оказания помощи странам народной демократии в востановлении и подъеме их народного хозяйства' 'a form of helping the people's democracies in restoring and developing their national economies' (ibid.). Joint-stock societies were first reintroduced into Russian law in the statute 'On Joint-Stock Societies and Companies with Limited Liability':

> Акционерным обществом является организация, созданная на основе добровольного соглашения юридических и физических лиц (в том числе иностранных), объединивших свои средства путем выпуска акций, и имеющая целью удовлетворение общественных потребностей и извлечение прибыли (Art. 1 Polož.: 6/1990).[48]

The fact that the term акционерное общество has been introduced into Russian legislation referring to a form of enterprise provided for by Russian law is a clear sign of that its connotative meaning has changed. The concept of акционерное общество was further developed in subsequent legislation — the law 'On Enterprises and Entrepreneurial Activity' (Art. 11–2 ZoP 1990), and, in particular, the Civil Code (Art. 96–104 GK RF I 1994) and the federal law 'On Joint-Stock Societies' (FedZoAO 1995). Although the definitions of акционерное общество in these laws differ from each other in some respects, they all include the following two main elements: (i) the capital of an акционерное общество is divided into a certain number of shares; (ii) the shareholders are not liable for the society's obligations and incur losses resulting from the activity of the society according to the value of the shares they own. The limited liability of the shareholders was also the central feature of акционерное общество as regulated in pre-Revolutionary Russian legislation (Šeršenevič 1994 (1914): 138).

(xx) *Предприниматель 'entrepreneur'*

In pre-Revolutionary law the meaning of предприниматель was defined as

> лицо, которое организует торговое предприятие, даст ему свое имя, выделяет для него часть своего имущества, несет на себе риск успеха и пользуется всеми выгодами (Šeršenevič 1994 (1914): 71).[49]

In legislation apart from предприниматель (Art. 2 point 10 Polož. 1865) the terms хозяин торгового предприятия 'proprietor of a commercial enterprise' (Art. 1238 Svod zakonov, x., part 1), глава торгового дома 'head of a commercial house' and владелец предприятия 'owner of an enterprise' (Art. 526 Svod zakonov, v.) were used. During the Soviet period and until the beginning of *perestroika* and economic reforms предприниматель was used only with

[48] 'A joint-stock society is an organization created on the basis of voluntary agreement of juridical and natural persons (including foreign) who have combined their assets by issuing stocks and have the purpose of satisfying social requirements and deriving a profit.'

[49] 'A person who organizes a commercial enterprise, gives it his name, assigns part of his property to it, takes the risk of success upon himself, and enjoys use of all profits.'

respect to entrepreneurs in capitalist countries. OžEGOV 1949 and 1960 define предприниматель as 'капиталист, владеющий предприятием' 'a capitalist who owns an enterprise' and give one example: 'крупный предприниматель' 'big entrepreneur'; for the use of the adjective предпринимательский the example 'предпринимательская прибыль' ('entrepreneurial profit') is given. OžEGOV and ŠVEDOVA 1992 give as the first definition of предприниматель 'владелец предприятия, фирмы, а также вообще деятель в экономической, финансовой сфере' ('owner of an enterprise, a firm, but also generally a figure in the economic, financial sphere'), and as an example ассоциация предпринимателей ('association of entrepreneurs'). The second meaning is 'предприимчивый и практичный человек' ('enterprising and practical person'). Unlike the various editions of OžEGOV, OžEGOV and ŠVEDOVA 1992 note the female form of предприниматель, предпринимательница, which was first recorded in DAL' 1880. This suggests that since the beginning of *perestroika* предприниматель has been widely used in the Russian language in relation to Russian society.

(xxi) *Прейскурант 'price-list'*

This term is a loan-word from Germ. *Preiskurant* (FASMER 1986–7, s. v. прейскурант). In pre-Revolutionary law it referred to a list containing the prices of goods and securities traded at the exchange:

> Биржевая цена [...] приводится в известность оффициально и оповещается как курс, в бюллетене или в прейс-куранте (CITOVIČ 1891: 238).[50]

After 1930, when stock exchanges ceased to exist, the term disappeared from active usage. Since the beginning of *perestroika* it was revived and reintroduced in legal dictionaries: справочник, перечень цен на продукцию, товары и разного рода услуги 'reference book, price list of products, goods and various kinds of services' (JURÊ 1997, s. v. прейскурант; see also BJUS 1997, s. v. прейскурант). This is a broader meaning of прейскурант than the one the term had until 1930. It no longer refers only to the price-list used at an exchange, but to any price-list used in business. This meaning of прейскурант competes with прайс-лист 'price-list' (for examples of the use of прайс-лист, see *ÉŽ* 50/96: 33; *ÉŽ* 34/95: 23).

(xxii) *Реклама 'advertising'*

This loan-word from Germ. *Reklame* (FASMER 1986–7, s. v. реклама) was first recorded in 1864 (SSRLJA 1950–65, s. v. реклама). Its legal meaning was defined in legal studies (for example, GOL'DENBERG 1901: 53–66) and encyclopaedias:

[50] 'The exchange price is publicized officially and notified just as the rate of exchange in the bulletin or in the price-list.'

> Объявление о продаваемых товарах или предлагаемых услугах, с целью привлечь потребителей расхваливанием, часто преувеличенным, качества товара (ĖS 1890–1904, xxvi. (1899), s. v. реклама).[51]

During the Soviet period the need to legally regulate commercial advertising decreased and the term was used less frequently. This changed after 1986, when private enterprise was reintroduced into Russia. Реклама was now seen as 'неотъемлемая часть успешной рыночной экономики' 'inalienable part of a successful market economy' (*ĖŽ* 4/95: II) and as 'двигатель торговли' 'motor of trade' (Narin'jani 1995: 46). A рекламный рынок 'advertising market' developed, which grew rapidly, in particular following the рекламный бум 'advertising boom' in 1994 (*Rossijskaja Gazeta*, 18 Mar. 1996: 7; *ĖŽ* 7/95: I).

Before the October Revolution реклама referred to an advertisement in a newspaper (ĖS 1890–1904, xxvi. (1899), s. v. реклама, p. 527). Since *perestroika* it also means *advertising*, of which different kinds can be distinguished, including прямая почтовая реклама 'direct-mail advertising', печатная реклама 'press advertising', экранная реклама 'screen advertising', радиореклама 'radio advertising', and наружная реклама 'outdoor advertising' (ĖP 1994, s. v. реклама). The meaning of реклама is explained in columns such as 'словарь делового человека' 'dictionary of a businessman', published in specialized newspapers as a way of familiarizing the reader with new terminology (for example, *ĖŽ* 11/90: 15). Реклама is also included in legal and commercial dictionaries (for example, ĖP 1994, s. v. реклама; SKомм 1996, s. v. реклама; BJuS 1997, s. v. реклама). Textbooks have been published on the legal meaning of реклама (see, for example, Seregina and Titkova 1995), and many articles in legal journals (for example, Narin'jani 1995) and specialized newspapers (for example, 'Реклама: дорога с двусторонним движением', *ĖŽ* 7/95: I) are devoted to it. The term реклама is used in the 1994 Civil Code (Art. 437 GK RF I 1994) and in the new Criminal Code, which regulates ложная реклама 'false advertising' (Art. 182 UK RF 1996). In the 1995 federal law 'On Advertising' реклама is defined as

> распространяемая в любой форме, с помощью любых средств информация о физическом или юридическом лице, товарах, идеях и начинаниях (рекламная информация), которая предназначена для неопределенного круга лиц и призвана формировать или поддерживать интерес к этим физическому, юридическому лицу, товарам, идеям и начинаниям и способствовать реализации товаров, идей и начинаний (Art. 2 FedZoR 1995).[52]

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[51] 'Announcement about goods on sale or services offered with the aim to attract customers by praising, often in an exaggerated way, the quality of the goods.'

[52] 'Information spread in any form, by any means, about a natural person or legal entity, goods, ideas, and undertakings (advertising information), intended for an indefinite circle of persons and designated to form or support an interest in this natural person, legal entity, goods, ideas, and undertakings and to make for the sale of goods, ideas, and undertakings.'

The pre-Revolutionary реклама referred to only one specific kind of advertisement of goods and services, whereas the post-*perestroika* meaning covers any kind of information about a natural person, a legal entity, goods, ideas or any kind of undertaking. Apart from реклама, the following terms have been revived in legal terminology:

• Рекламист 'advertiser' (Dal.' 1914, s. v. реклама). Examples of its use are the model contract 'Договор на разработку рекламной продукции и оказание рекламных услуг' 'contract about the working out of an advertising production and the rendering of advertising services' (in Seregina and Titkova 1995: 94–6) to be concluded between a рекламодатель and a рекламист, and the article headed 'Слово рекламисту' (*ĖŽ* 23/96: XI).

• Рекламировать (Dal.' 1914, s. v. реклама): 'возможности предпринимателей рекламировать те или иные товары' 'the possibilities of entrepreneurs to advertise these or other gooods' (*ĖŽ* 4/95: II).

• Рекламный (Dal.' 1914, s. v. реклама): рекламные агентства 'advertising agencies' (*ĖŽ* 1/95: 12); рекламные кампании 'advertising campaigns' (*ĖŽ* 4/95: XI); рекламный бизнес 'advertising business' (*ĖŽ* 4/95: II); рекламный рынок 'advertising market' (*ĖŽ* 7/95: I); рекламная деятельность 'advertising activity'; рекламная цензура 'advertising censorship' (*ĖŽ* 1/95: 12), рекламный ролик 'trailer' (Seregina and Titkova 1995: 34); рекламные кинофильмы, видеофильмы и слайдфильмы 'advertising movies, videos, slide shows'(ibid.).

The following new terms have been derived from реклама:

• Рекламодатель 'advertiser': юридическое или физическое лицо, являющееся источником рекламной информации для производства, размещения, последующего распространения рекламы (Art. 2 FedZoR 1995).[53] See also the article headed 'Уважаемые рекламодатели!' 'Dear advertisers!' (*ĖŽ* 10/97: 1).

• Рекламопроизводитель 'producer of advertisement': юридическое или физическое лицо, осуществляющее полное или частичное приведение рекламной информации к готовой для распространения форме (ibid.).[54] This term is used as a synonym of рекламист.

• Рекламораспространитель 'spreader of advertisement': юридическое или физическое лицо, осуществляющее размещение и (или) распространение рекламной информации путем предоставления и (или) использования имущества, в том числе технических

[53] 'A legal entity or natural person, representing the source of an advertising information for the production, placing, and subsequent spreading of the advertisement.'

[54] 'A legal entity of natural person, carrying out the full or partial conversion of the advertising information into a form ready for distribution.'

средств радиовещания, телевизионного вещания, а также каналов связи, эфирного времени и иными способами (ibid.).[55]

Other neologisms include фирмы-рекламодатели 'advertiser firms' (*ÈŽ* 1/95: 12), организация-рекламодатель 'advertiser organization' (SEREGINA and TITKOVA 1995: 34), радио- и телереклама 'radio- and television advertising' (SEREGINA and TITKOVA 1995: 35), and рекламно-коммерческие службы 'commercial advertising services' (ibid.).

(xxiii) *Сервитут 'servitude'*

The legal concept of *servitudes*, i.e. the right of a person to make limited use of someone else's thing, was developed in Roman law, where more than forty kinds of such rights were distinguished. Servitude law had been developed because of the need to regulate conflicts resulting from conflicting interests between private owners. The concept was mostly applied to immovable property (real estate), but personal servitude rights such as *usufructus* also existed. Servitudes were mostly applied to land plots, concerning, for example, the right to conduct water through a neighbour's plot of land. All European legal systems adopted this legal concept, to various degrees, but only certain aspects of it were integrated into Russian legislation. This was done, moreover, in an unsystematic way, using an inconsistent terminology. Mostly the term угодье was used as referring to *servitus*, but in some places it was replaced by the term право участия частного (for example Art. 287 POLOŽENIE 1890). Towards the end of the nineteenth century the term сервитут became more and more widespread in legislation (ŠERŠENEVIČ 1907 (1995): 229). At that time the absence of a systematic regulation of servitude rights had led to an increasingly difficult situation for the courts and the need was expressed to introduce a comprehensive servitude law to Russian legislation, based on the European tradition (*ÈS* 1890–1904, xxix. (1900), s. v. сервитуты, p. 631). However, while Russian scholars discussed servitude rights against the background of Roman law (see, for instance, the chapter 'сервитуты' in ŠERŠENEVIČ 1907 (1995): 226–37; MERKEL' 1902, Para. 613–6; GUSAKOV 1884), a corresponding reform of Russian legislation was never carried out.

According to dictionaries and encyclopaedias published during the Soviet period before *perestroika* сервитут refers only to servitudes in 'ancient, feudal, and capitalist societies' (SSRLJA 1950–65). In *BSÈ*[3] 1969-81, xxiii (1976) it is referred to the law of 'bourgeois societies'. Legal dictionaries and textbooks on civil law published during the Soviet period did not deal with the concept; only textbooks on Roman law and on the history of state and law mentioned it occasionally (KAZANCEV and KORŠUNOV 1997: 22). One of the most important kinds of servitude rights in Roman law was the *usufructus*, a personal servitude right, giving a person the right to make use of someone else's thing for a limited period of time, including the

[55] 'A legal entity or natural person, carrying out the placing and (or) distribution of the advertising information by means of granting and (or) using property, including the technical means of radio broadcasting, television broadcasting, but also communication channels, air time and by other means.'

appropriation of the proceeds from it, under the condition of preserving the essence of the thing. In Russian law this concept was known as узуфрукт, пользовладение, or пожизненное владение (see ŠERŠENEVIČ 1907 (1995): 231). So far, these terms have not been revived in Russian legislation, but the meaning of узуфрукт is explained in all new legal dictionaries (for example, BJuS 1997, узуфрукт; JurÈ 1997, s. v. узуфрукт; JuÈS 1997, s. v. узуфрукт). The reintroduction of servitude rights into legislation began in 1994 with the law 'On the Privatization of State and Municipial Enterprises' (confirmed by decree No. 1535), by which three kinds of public servitudes were introduced in order to ensure the unimpeded use of objects of public usage (such as footpaths and streets) and to allow for repair work (of electrical and phone cables etc.) to be carried out (KAZANCEV and KORŠUNOV 1997: 22). Subsequent legislation further developed the concept of сервитут. The first part of the Civil Code, for example, contains a series of articles on servitude rights concerning someone else's land plot, 'право ограниченного пользования соседним участком' 'the right to make limited use of a neighbouring plot of land' (Art. 274 Para. 1 GK RF I 1994), regulating the basic preconditions and features of this right (Arts. 274–7). The second part of the Civil Code puts certain aspects of servitude law into more concrete terms (for example, Arts. 553, 613, 689, 694 GK RF II 1995). The 1995 Water Code introduces the concept of водный сервитут 'water servitude' (Arts. 21, 43–4 VodK RF 1995), whereby a distinction is made between a 'публичный''public' and a 'частный' 'private' water servitude. The draft of the Land Code (земельный кодекс) produced by the Committee on Agrarian Questions contains twelve new servitude rights (see KAZANCEV and KORŠUNOV 1997: 23). The most recent definition of сервитут is contained in the federal law 'On the Public Registration of Rights on Immovable Property and Transactions with it':

> право ограничного пользования чужим объектом недвижимого имущества, например, для прохода, прокладки и эксплуатации необходимых коммуникацийи иных нужд, которые не могут быть обеспечены без установления сервитута. Сервитут как вещное право на здание, сооружение, помещение может существовать вне связи с пользованием земельным участком [...] (Art. 1 FedZoGosReg 1997).[56]

Here the concept of servitude right is applied to immovable property in general, not only to land plots. In Roman law servitude rights were first developed to be applied to land ownership; later the concept was developed further and a distinction was made between land servitudes and private servitudes. It can be assumed that future Russian legislation will further develop the concept of сервитут. This is one of the cases where the process of receiving European legal concepts was interrupted in Soviet times, but has been resumed since *perestroika*.

[56] 'The right to make limited use of someone else's object of immovable property, for example, in order to make way for, to construct, and to exploit essential means of communication and other needs, which cannot be provided for without establishing the servitude. The servitude as a property right to a building, premises, may exist without a connection to the use of the land plot [...].'

(xxiv) *Тайна, коммерческая 'business secret'*

Before 1917 this legal concept was acknowledged both in Russian legislation and Russian legal theory as a means of protection from недобросовестная конкуренция 'unfair competition' (ROZENBERG 1910: 68). On 14 (27) November 1917 the concept of коммерческая тайна was abolished by decree in order to implement the principle of workers' control (POLOŽENIE 1917). In August 1917 deputies had already called for the abolition of коммерческая тайна as they thought this was necessary in order to implement 'workers' control' (PĖ 1972–80, s. v. коммерческая тайна). Soviet encyclopaedias referred to коммерческая тайна as

> охраняемое буржуазным законодательством право на засекречивание всех документаций по ним на частных капиталистических предприятиях (PĖ 1972–80, s. v. коммерческая тайна)[57]

and legal dictionaries did not mention the term at all. In Soviet law the meaning of коммерческая тайна was incorporated into the meaning of государственная тайна, which was nowhere clearly defined. The only legal act to define what was considered to represent a state secret was an unpublished decree by the Council of Ministers of 28 Apr. 1956, to which numerous other secret decrees were added subsequently (RIVINIUS 1996b: 61 with n. 3.). The first law to reintroduce the term коммерческая тайна was the law 'On Enterprises and Entrepreneurial Activity', where the term was mentioned but not defined: 'предприятие имеет право не представлять информацию, содержащую коммерческую тайну' 'an enterprise has the right not to present information that contains a business secret' (Art. 28 Para. 2 ZoP 1990). The basis for the final definition of коммерческая тайна as an object of civil law in the 1994 Civil Code (GK RF I 1994) was Art. 151 of OSNOVY 1991, where ноу-хау 'know-how' was defined as 'technical, organizational, or commercial information, which represents a production secret'. The possessor of such information had the right to be protected from unlawful utilization of the ноу-хау by a third person under the following conditions: '(1) this information has an actual or potential commercial value, because of its being unknown to third persons; (2) this information is not freely accessible on a legal basis; (3) the possessor of the information takes measures to ensure its confidentiality'. These three conditions are repeated verbatim in Art. 139 GK RF I 1994, where they now constitute the definition of the legal meaning of коммерческая тайна.

So far, no law on коммерческая тайна has been adopted, but the term is well established in legislation. Over seventy legal acts employ the term (RIVINIUS 1996b), including the new Criminal Code (adopted after RIVINIUS 1996b was published), which regulates коммерческая тайна as an object of criminal law (Art. 183 UK RF 1996; see also Art. 727 GK RF II 1995). Of particular importance is its use in the law 'On Competition and the Restriction of

[57] 'The right protected by bourgeois legislation of private capitalistic enterprises to hide all documentation reflecting their activity.' The entry in BSĖ[3], xii. (1973), s. v. коммерческая тайна uses a similar wording.

Monopolistic Activity on Commodity Exchanges' (ZoK 1991/95), which defines the acquisition, use, and passing-on of a коммерческая тайна without the consent of its owner as a form of недобросовестная конкуренция 'unfair competition' (Art. 10). This regulation highlights the intention of the legislator to protect the owner of a business secret from competitors, and this was regarded as the main component of the meaning of коммерческая тайна in pre-Revolutionary Russian law. In current legislation this component is slowly gaining ground over the other one — to protect an enterprise from state institutions — which is rooted in the Soviet understanding of коммерческая тайна as part of государственная тайна.

(xxv) *Товарищество с ограниченной ответственностью* (hereafter TOO) *'company with limited liability'*

This is a loan translation from Germ. *Gesellschaft mit beschränkter Haftung* (hereafter *GmbH*). It entered Russian legal terminology after 1892, when the law on this type of institution had been adopted in Germany and Russian legal scholars began to discuss whether it should be introduced into Russian law as well (Тімосню 1993: 43–4). The final draft of a civil code of 1899 did not include it, although German and other foreign legislation had been taken into account extensively during the drafting process. The 1898 draft by the Ministery of Finance, for example, was based on the German *Handelsgesetzbuch* of 1897 (Klemm 1996: 36). In the final draft of 1899 — the law itself was never passed — up to ten articles from foreign legislation were used (at the same time) to elucidate one article (ibid., 37). However, legal scholars continued to press for the introduction of a *TOO* into Russian legislation and regularly referred to the *GmbH* as the model (Rozenberg 1912: 44), which indicates that in their usage the meaning of *TOO* corresponded to that of *GmbH*. In what follows, the regulations on *TOO* in Russian legislation after 1986 will be analysed in order to determine how far the meaning of Russ. *TOO* corresponds to that of Germ. *GmbH*. The laws to be considered are the statute 'On Joint-Stock Societies and Companies with Limited Liability' (Položenie 6/1990), the law 'On Enterprises and Entrepreneurial Activity' (ZoP 1990), and the 1994 Civil Code (GK RF I 1994). First, however, the 1922 Civil Code (GK RSFSR 1922) will briefly be examined, since it was the first Russian law to provide for a *TOO*.

Two features of the *TOO* as regulated in GK RSFSR 1922 (Arts. 318–21) seem not to correspond to the concept of a *GmbH*. First, the founding of a *TOO* is authorized only for a single purpose, which is specified in the law (see, for example, Art. 320 GK RSFSR 1922 (company for providing electric power). Second, the charter capital is variable, depending on the number of members (whereas in the case of a *GmbH* it is fixed in the company's statute). Thus the *TOO* was designed as a co-operative form of enterprise rather than an economic company allowing for free entrepreneurial activity. This suggests that it was modelled on the товарищество с переменным составом as regulated in the draft of the GK 1899, which, in its turn, was developed on the basis of the German *Erwerbs- und Wirtschaftsgenossenschaft*

(Klemm 1996: 63–5) and the French *societas a capital variable* (Timochov 1993: 46–8). At the time, Russian legal scholars were well aware of the basic difference between the *TOO* in GK RSFSR 1922 and a *GmbH*:

> На Западе этот вид товариществ является разновидностью акционерных компаний... С такого рода товариществами наше товарищество с ограниченной ответственностью ничего общего не имеет (Šreter 1928: 183–4).[58]

It can therefore be concluded that товарищество с ограниченной ответственностью as regulated in GK RSFSR 1922 is a 'false friend' of *Gesellschaft mit beschränkter Haftung*.

After the end of the NĖP period the *TOO* had lost any practical relevance (formally it ceased to be in force only in 1964, when a new civil code was adopted) and it was only in the statute 'On Joint-Stock Societies and Companies with Limited Liability' (Položenie 6/1990) that it was again introduced. This statute regulates the forms of акционерное общество and *TOO* in twenty-nine joint articles, followed by thirty-four special articles on the former and eighteen on the latter. Even though the regulation in this law (Arts. 64–81) is not exhaustive, it is clear from the way in which elements of a partnership and a joint-stock society are combined that this concept of *TOO* has been developed on the basis of the German *GmbH* (Klemm 1996: 80; 84–8). Six months after the Položenie 6/1990 had been adopted, the law 'On Enterprises and Entrepreneurial Activity' was passed (ZoP 1990), which also provides for the *TOO*:

> Товарищество с ограниченной ответственностью (акционерное общество закрытого типа) представляет собой объединение граждан и (или) юридических лиц для совместной хозяйственной деятельности [...]. (Art. 11 Para. 1)[59]

The fact that in this definition the terms товарищество с ограниченной ответственностью and акционерное общество закрытого типа are used as synonyms is striking in that, in Continental European law, of which Russian law is historically a part, companies with limited liability and joint-stock societies have traditionally been regulated as distinctly different genres of economic companies, whereas in Anglo-American law there is only one such form, the joint-stock society (in American terminology: *business corporation*), of which the company with limited liability (in American terminology: *close corporation*) is a subtype. The distinction between акционерное общество закрытого типа and акционерное общество открытого типа (the latter is regulated in Art. 12 ZoP 1990) was drawn for the first time in this law, and one might suppose that the former term was coined on the basis of the American term *close corporation*. However, in the second part of Para. 1 of Art. 11 ZoP 1990 there seems to be a distinction between *TOO* and акционерное общество закрытого типа, in that вклад is attributed to the former and акция to the latter.

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[58] 'In the West this kind of company is a variety of joint-stock society [and] has nothing in common with our company with limited liability.'

[59] 'The company with limited liability (closed joint-stock society) is an association of citizens and (or) legal entities formed for the purposes of engaging in a joint commercial activity.'

> Уставный фонд товарищества (акционерного общества) образуется только за счет вкладов (акций) учредителей.[60]

This article led to considerable confusion among legal scholars, since it was unclear from the law whether the legislator had intended to create the *TOO* as a separate form of economic company or to follow the Anglo-American model. The matter was further complicated by the fact that in the Položenie 12/1990, which was adopted on the same day as the ZoP 1990, the *TOO* was not mentioned at all; the only distinction drawn here was between акционерное общество открытого типа and акционерное общество закрытого типа, the latter being a subtype of the former. Thus it was now unclear whether *TOO* referred to the concept of *GmbH* or to that of *close corporation*. The positions held by legal scholars (for an account see Klemm 1996: 138–48; Тимохин 1993: 49–53) ranged from the view that the *TOO* was designed as identical with the *акционерное общество закрытого типа*, or as a subtype of the latter, to the view that Art. 11 ZoP was the result of a 'misunderstanding' (Тюхомов 1993: 49): the legislator had mistakenly attempted to define two forms of companies which in reality were of course different, in one article (Suchanov 1993b: 29). Investigating the regulations of Art. 11 ZoP and the Položenie 12/1990 (pp. 120–9) Klemm finds that the features that are usually considered to be constitutive for a company with limited liability are realized, if only rudimentarily, in the ZoP 1990, and, perhaps even more importantly, that the regulations on the акционерное общество in Položenie 12/1990 do not seem to allow for a company with limited liability to be integrated into this system (Klemm 1996: 130–1). Klemm concludes that although the legislator introduced terminology taken from Anglo-American law, the legal concept he had in mind in ZoP 1990 was the *GmbH* as known in Continental European law and regulated in Položenie 6/1990 (Klemm 1996: 143). This interpretation is strengthened by the fact that in subsequent legislation both *TOO* and акционерное общество are used side by side (Klemm 1996: 121). It is often suggested that the ZoP 1990 was based on Continental European law, while the Položenie 12/1990, allegedly under the influence of American consultants, followed Anglo-American law (Lapiev 1993: 34; Syrodoeva 1993: 121; Solotych 1992: 171 with n. 83). From legal practice, as it developed after the adoption of the ZoP 1990 and Položenie 12/1990, it became obvious that neither legal scholars (who criticized the attempt to adopt disparate foreign concepts; Lapiev 1993: 34; Тимохин 1993: 53; Klemm 1996: 148 with n. 238) nor the public were willing to accept the legislator's attempt to introduce a concept from Anglo-American law instead of providing for a type of company corresponding to the *GmbH*: According to Тимохин 1993: 50, thousands of companies with limited liability were founded despite the fact that Russian legislation in force did not provide any regulation of them. Model statutes of such companies were published in specialized newspapers (for example, *ĖŽ* 3/1992:

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[60] 'The charter capital of the partnership (joint-stock society) is formed only from deposits (shares) of the founders.'

70–80) which did not at all correspond to the regulations in Положение 1990; some legal scholars advised going back to Положение 6/1990 or other legislation, including foreign forms (Тимошюv 1993: 50; Klemm 1996: 146–8). Only the adoption of the Civil Code of 1994 (GK RF I 1994) resolved the problem. According to this regulation (Arts. 87–94), where товарищество с ограниченной ответственностью has been replaced by общество с ограниченной ответственностью (hereafter abbreviated as *OOO*) in order to 'stress the capitalist character' of this type of company (Тимошюv 1996: 74), the *OOO* does not only correspond to the traditional concept of a company with limited liability in Continental European law; it is actually said to represent a 'typical German *GmbH*' (Rivinius 1996: 17; see also Тимошюv 1996: 74). However, for a full evaluation of this matter, one has to await the adoption of the law on *OOO*.

This case demonstrates the ambiguity and the terminological difficulties that may arise when a legal concept is adopted from an alien legal system. One reason for these difficulties is that the foreign concept is introduced only into legislation, while the corresponding jurisdiction that has evolved around it and determines its meaning to a considerable extent, cannot be taken over. This is particularly true in this case, since the role that jurisdiction plays in determining the meaning of a concept is much higher in Anglo-American law than it is in Continental European law.

(xxvi) *Фактор 'factor'*

Фактор was borrowed in 1667 from Pol. *faktor* or Germ. *Faktor* 'sales representative, agent' (Gardiner 1965: 219). An early example of its use is the Договор с маркизом Кармартеном 'Treaty with the Marquis Karmarten' of 16 Apr. 1698 ((PIB I 1887, No. 234 (pp. 243–9): 247). It has been suggested that the existence of Engl. *factor* 'sales representative, agent, manager' helped the spread of фактор (Otten 1985: 260, n. 844). Фактор referred to a commission-agent: 'комиссоньe (торговые) агенты [...] и назывались факторами' 'comission- (trade) agents were also called factors' (Komarov in GK RF II Комм. 1996: 436). The task of a фактор in pre-Revolutionary times was not only to sell goods for his principal, but also to grant advances and credit for his products, in which case the фактор took on the risk, guaranteeing the receipt of the payment in return for a commission. The Russian фактор and the English factor sold goods on behalf of their principals and occasionally lent them money on the security of the goods to be sold (Bradgate 1995: 507). Factors both in England and Russia often traded in their own names, without disclosing the principal's name and often also traded on their own behalf (for *factor*, see Bradgate 1995: 328–9; for фактор, see Komarov in GK RF II Комм. 1995: 436). Gradually English factors concentrated more and more on the financial service rendered to their clients, and also went over to buy directly debts from the suppliers. Here lie the roots of the activities of a modern factor: under a factoring agreement, a business which has supplied goods or services to customers on credit will transfer

to the factor the right to receive payment from those customers, in return for an immediate cash payment. The factor will pay a reduced price in return for undertaking the collection, and may make a retention until payment is received. The factor is in fact a debt collecting agency, often a subsidiary of bank or other large commercial organization (BRADGATE 1995: 507).

In Soviet times the term фактор was considered a historicism (SSRLJA 1950–65, s. v. фактор, where it is considered 'устаревшее' 'obsolete'). Its revival in the early 1990s took place in the context of the introduction of factoring — факторинг — a new concept in Russian commercial practice (see below, p. 135–7). Like Engl. factor, фактор now usually refers to a specialized organization:

> Кредитору оказывается выгодней не самому заниматься собиранием этих денег со своих должников, а найти специализированную организацию — фактора, который за определенную комиссию все эти долги забирает и занимается их получением с должников (MAKOVSKIJ 1996: 104).

In the 1995 Civil Code, where факторинг has been regulated for the first time in Russia (Arts. 824–33 GK RF II 1995), the term финансовый агент is used instead of фактор and refers to 'banks or other credit organizations, and also other commercial organizations which have obtained the licence to carry out this activity' (Art. 825 GK RF II 1995). In legal practice, however, the term фактор is widely used, and even legal commentaries sometimes prefer it to финансовый агент (for example, KOMAROV in GK RF II КОММ. 1996: 436–42). Often, compounds such as фактор-банк (ĖP 1994 s. v. факторинг; BLOCHIN 1995: 26) (or факторбанк, BIZNES 1996: 506–8) or фактор-компания are used in order to distinguish the meaning of the modern фактор from a фактор in pre-Revolutionary times (ĖP 1994, s. v. фактор-компания; факторинг; TBS 1996, s. v. фактор-банк, фактор-компания).

(xxvii) *Фирма 'firm-name'*

Фирма was borrowed from Germ. *Firma* or directly from Ital. *firma* 'signature' (VASMER 1950, s. v. фирма). Before 1917 its legal meaning was, as Germ. *Firma*, the *name of an enterprise* (GURLJAND 1886, s. v. вывеска: CITOVIČ 1891: 9; CITOVIČ 1873: 362; ŠERŠENEVIČ 1995 (1907): 263): 'имя, подъ которым ведется торговля данного лица, есть фирма' 'the name under which the business of a given person is conducted is the firm' (CITOVIČ 1886: 42). If a merchant was trading on his own, the name of his enterprise corresponded to his own name, but in the case of a company enterprise, the question of the name had to be regulated, which was how фирма entered legal terminology:

> Когда торговля ведется коллективно (товарищески), фирма звучит (ditta) и глядит (firma) иначе, чем гражданское имя участников товариществ. Вот почему

> кодексы раньше заметили фирму на товариществах; большинство из них лишь по поводу товариществ дают постановления о фирме (Citovič 1886: 42)[61]

Until the October Revolution the legal meaning of фирма remained the same:

> Фирма есть *название торгового предприятия*, как обособленного частного хозяйства. Фирма имеет своей целью индивидуализировать предприятие подобно тому, как имя и фамилия индивидуализируют человека. Фирма составляет *принадлежность* торгового предприятия'. (Šeršenevič 1994 (1914): 75) (original emphases).[62]

However, in contexts other than legislation фирма was also used as referring to an *enterprise* (Gol'denberg 1901, Part I, p. 66; 70; see also Buryškin 1991: 82). Today фирма is again widely used, but with the meaning компания 'enterprise': 'это компания известна как крупнейший производитель справочных правовых систем для персональных компьютеров. Юристы фирмы проанализировали и обработали более 13000 документов' 'this company is well known as the biggest producer of legal reference books for personal computers. The lawyers of the firm have analyzed and and processed more than 13,000 documents' (*ÉŽ* 10/97: 22); 'проблемы бухгалтера — это деньги фирмы' 'the accountant's problems are the firm's money' (*ÉŽ* 51/96: 19). In legislation, too, фирма is used as the equivalent of *enterprise*: 'брокерская фирма является предприятием [...]' 'a broker's firm is an enterprise [...]' (Art. 10 Para. 2 ZoTB 1992). Фирма with the meaning 'name of an enterprise' has been replaced by фирменное наименование 'firm name'. The Civil Code, for example, states:

> Фирменное наименование полного товарищества должно содержать либо имена (наименования) всех его участников и слова «полное товарищество», либо имя (наименования) одного или нескольких участников с добавлением слов «и компания» и слова «полное товарищество.» (Art. 69 Para. 3 GK RF I 1994)[63]

In German *Firma* as a legal term still means the name of an enterprise (§ 171 GerHGB; Creifelds 1992, s. v. Firma: 'Name, unter dem ein Kaufmann im Handel seine Geschäfte betreibt und die Unterschrift abgibt'), while in contexts other than legislation the term is often used as a synonym for *enterprise*. Russian usage, however, is different: since фирма was revived, it refers only to enterprise. In its former meaning it has been replaced by фирменное наименование. The entry in JurÉ 1997 (s. v. фирма) reads

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[61] 'If the business is conducted jointly (comradely), the firm sounds (ditta) and looks (firma) different from the civil name of the members of the partnership. This is why the codices first noticed the firm for partnerships; most of them give regulations on the firm only in connection with partnerships.' — The Russian regulation in the Ustav Torgovyj was influenced by the French *Code de Commerce* (Šeršenevič 1994 (1914): 77).

[62] 'The firm-name is the *name of a commercial enterprise*, as an isolated private economy. The firm-name aims to individualize the enterprise just as the name and surname individualize a person. The firm-name is the *property* of a commercial enterprise.'

[63] 'The firm name of a full partnership must contain either the name of all its members and the words "full partnership" or the name of one or some members with the addition of the words "and company" and the words "full partnership"'.

(1) в праве фирменное наименование юридического лица; (2) синоним понятия 'коммерческая организация'.[64]

2. *Terms Used in Soviet Legislation Before Perestroika*

(i) *Бумаги, ценные 'securities'*

This is a loan-translation from Germ. *Wertpapiere* and in pre-Revolutionary Russian law it referred to a basic concept embracing various kinds of securities — акция, облигация, варрант, чек, коносамент, and others (ŠERŠENEVIČ 1994 (1914): 173–4). In dictionaries published during Soviet times the term ценные бумаги related primarily to capitalist countries, and its widespread use before 1917 was not mentioned:

> Ценные бумаги — в капиталистических странах свидетельства о вложении пая в акционерный капитал либо о предоставлении займа [...] Основными видами ценных бумаг являются: акции и облигации капиталистических предприятий, облигации государственных, коммунальных и др. займов и закладные листы ипотечных банков [...] Основными владельцами ценных бумаг являются крупные капиталисты и капиталистические компании (FKS 1961, s. v. ценные бумаги).[65]

During the Soviet period before *perestroika* the concept of ценные бумаги was closely associated with the immorality of capitalist societies, and the fact that some securities were owned by small shareholders was seen as a profitable arrangement made by the 'monopolistic bourgeoisie' in order to 'accumulate additional capital at the expense of the savings of the working people' (ibid.). Nevertheless, the term ценные бумаги still continued to relate to securities in the USSR, even though its meaning was restricted to only one kind of security: 'в СССР единственным видом ценных бумаг являются облигации государственных займов, используемые для целей расширенного социалистического воспроизводства' 'in the USSR the only kind of securities are obligations of state loans, which are used in order to expand the socialist production' (ibid.). After *perestroika* and the beginning of economic reforms, ценные бумаги again became a fundamental concept, as it had been before 1917, and the former extent of its meaning was restored (see Chapter 7 of the Civil Code [Arts. 142–9 GK RF I 1994]; Arts. 454, 817, 835, 843–4, 877, 921, 925 GK RF II 1995; ZoRCB 1996):

> Ценной бумагой является документ, удостоверяющий с соблюдением установленной формы и обязательных реквизитов имущественные права, осуществление или передача которых возможны только при его предъявлении (Art. 142 Para. 1 GK RF I 1994).[66]

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[64] '(1) In law the name of a legal entity; (2) a synonym of the concept "commercial organization".'

[65] 'Securities are in capitalist countries certificates about the investment of a share into a shareholder's capital or about the granting of a loan [...] The main kinds of securities are: shares and obligations of capitalist enterprises, obligations of state, communal and other loans and mortgage certificates of mortgage banks [...] The main owners of securities are big capitalists and capitalist companies.'

[66] 'A security is a document certifying, in compliance with the established form and obligatory requisites, property rights whose effectuation or transfer are possible only when it is presented.'

This meaning of ценные бумаги recalls the meaning of Germ. *Wertpapier* 'eine Urkunde, in der ein privates Recht derartig verbrieft ist, daß zur Ausübung des Rechts der Besitz der Urkunde erforderlich ist' 'a document which attests a private right in such a way that in order to exercise the right it is necessary to be in possession of the document' (CREIFELDS 1992, s. v. *Wertpapier*; see also § 783, 2. a BGB). The legal meaning of Russ. ценные бумаги and the American meaning of *securities* do not correspond to each other. Whereas the meaning of ценные бумаги is based on the strong link between right and document, Eng. *securities* refers to property rights, irrespective of the form in which they are laid down, whether in a document, a register, or in some other way (MAJFAT 1997: 87). The definition of ценные бумаги in Art. 142 Para.1 GK RF I 1994 contains the 'classical definition of securities which was passed from Germany to Russia' ('классическое определение ценной бумаги, перешедшее в Россию из Германии') (MAJFAT 1997: 88). This was also true of the pre-Revolutionary meaning of ценные бумаги: 'есть документ — есть право, нет документа, нет права' 'if there is a document there is a right, if there is no document there is no right' (ŠERŠENEVIČ 1994 (1914):). The distinction between именная ценная бумага 'bearer security' and ордерная ценная бумага 'order security' corresponds to that between Germ. *Inhaberpapiere* and *Orderpapiere*.

(ii) *Варрант 'warrant'*

This term, borrowed from Engl. *warrant*, entered pre-Revolutionary legislation in the early 1870s, when statutes of companies were issued which had the purpose of organizing warehouses with the issuing of warrants (ĖS 1890-1904, v. (1892), s. v. варрантъ). It is not clear whether варрант had entered the Russian language before; the word is not included in FASMER 1986–7, DAL' 1914, SSRLJA 1991– or indeed any other of the dictionaries used in this study, except ĖS 1890–1904. Although the POLOŽENIE 1888 introduced the term складочное свидетельство, a loan-translation from Germ. *Lagerschein*, into legislation, варрант continued to form part of the legal vocabulary (ibid.). Legal dictionaries published during the Soviet period before *perestroika* pointed out that though the concept was widespread in capitalist countries, particularly in England and the USA, and widely used 'для спекулятивных сделок' 'for speculative transactions', it was used in the USSR only between 1925 and 1930; after that it referred only to some foreign trade operations (FKS 1961, s. v. варрант). When the warrant as a concept of civil law was reintroduced as part of the Civil Code in 1995, the traditional Russian term варрант was reactivated:

> Двойное складское свидетельство состоит из двух частей — складского свидетельства и залогового свидетельства (варранта), которые могут быть отделены одно от другого. Двойное складское свидетельство, каждая из двух его частей и простое складское свидетельство являются ценными бумагами (Art. 912 Para. 2–3 GK RF II 1995).[67]

[67] 'A dual warehouse certificate consists of two parts — the warehouse certificate and the pledge certificate (warrant), which may be separated one from the other. A dual warehouse certificate, each of the two parts thereof, and a simple warehouse certificate are securities.'

In pre-Revolutionary Russian law вappaнт could either refer to складочное или кладовое свидетельство 'warehouse certificate' (Сτονιć 1886: 165) or to товаро-залоговое свидетельство 'pledge certificate' (Сτονιć 1886: 224, п. 781). The latter use of вappaнт followed the example of French legislation: 'по примеру французского законодательства, варрантом называется товаро-залоговое свидетельство' 'following French legislation a pledge certificate is called a warrant' (Сτονιć 1886: 224, n. 781). As demonstrated by the definition quoted above, it is this second meaning ('залоговое свидетельство') that has been revived in the 1995 Civil Code.

(iii) *Вексель 'promissory note / bill of exchange'*

Вексель is a borrowing from Germ. *Wechsel* 'promissory note / bill of exchange'. The first recorded instance of its use dates from 1698 (SRJA XVIII 1984–, s. v. вексель; Otten 1985: 509): 'токмо бъ получить намъ векселя о денгахъ съ Москвы' 'if only we would obtain the bills of exchange from Moscow' (PIB I 1887: 687 (= letter from F. A. Golovin to Peter I; a detailed account of the use of вексель in various sources is given by Otten 1985: 508–12). In 1700 Peter I wrote *manu propria*: 'я чрезъ векъсель запълачю' 'I will pay with a promissory note/bill of exchange' (PIB I 1887: 344 = letter of 21 Mar. 1700).

Bills of exchange had come into being in Italy during the Middle Ages, and the practice of trading with them had quickly spread throughout Western Europe, but it was only at the end of the seventeenth century that they were introduced into Russia by foreign merchants (Šeršenevič 1994 (1914): 268). When the first Russian legal regulation on bills of exchange appeared in 1729, it was published in both Russian and German (Veksel'nyj Ustav 1729).[68] It has often been claimed that the statute was drawn up by a German professor at Leipzig and then translated into Russian (Šeršenevič 1994 (1914): 268; Veksel' 1996: 18; Schultz 1951: 198). This is clearly a reasonable assumption — the Russian statute was modelled on the Leipzig statute on bills of exchange of 1682, which at the time was regarded as the most advanced European regulation on this matter; Šeršenevič 1994 (1914): 267) —, but so far it has not been conclusively proved. Other claims have also been made, suggesting that the author was I. A. Osterman, head of the коммерц-коллегия at St Petersburg (Rossijskoe zakonodatel'stvo 1987, v., p. 422). There is, however, no doubt that the Вексельный Устав of 1729 was modelled on German legislation (Femelidi 1902: 213; 215–6) and that the legal concept of the *Wechsel* (and related terminology) was directly transferred from German into Russian. From then on, вексельное право 'law on bills of exchange' played a central role in the Russian legal system, and numerous legal studies were devoted to it (an early example is Dil'tej 1768; a list

[68]. The Voinskij Ustav ('Kriegs-Reglement') of 1716 had also been published in both Russian and German — 'для иноземцев в нашей службе' 'for the foreigners in our service', as Peter I wrote in an *ukaz* to the Senate in 1716 (published in Voskresenskij 1945: 52).

of standard textbooks and studies that had appeared by the end of the nineteenth century is given in ŠERŠENEVIČ 1994 (1914): 260). When stock exchanges were closed down in December 1917, вексель ceased to be part of the legal language. Although bills of exchange were introduced again in 1922 (POLOŽENIE 1922), their use between private persons was forbidden in 1927, and in 1930, on the basis of the resolution 'On Credit Reform' of 30 Jan. 1930, they were generally abolished in the whole country (PÈ 1972–80, i., s. v. вексель). From then on, bills of exchange were used only in connection with foreign-trade accounting with capitalist countries (FKS 1961, s. v. вексель). Thus the term вексель and related terminology was used only in very restricted contexts. However, when stock exchanges re-opened in the early 1990s, the whole terminological system relating to the law on bills of exchange was re-activated. This legal branch again plays a central role in Russian law, and numerous legal textbooks have been published (for example, FEL'DMAN 1995 and VEKSEL' 1996). In 1990 the Statute 'On Securities' was adopted, which provides for bills of exchange (Art. 40–44 POLOŽENIE 1990). In 1991 the statute 'On the Bill of Exchange and the Promissory Note' was adopted (POLOŽENIE 1991). Today the final adoption of the federal law 'On the Bill of Exchange and the Promissory Note' is awaited ('Вексельному рынку необходимо государственное регулирование' *Finansovye Izvestija*, 6 June 1996, p. III; 'Вексель в ожидании закона', *ÉŽ* 17/96: 2). The following derived basic terms have also been re-activated:

- Переводной вексель 'bill of exchange'
- Простой вексель 'promissory note'
- Протест векселя 'protest of a bill': Протестование, протест векселя, and протестовать are used in Arts. 10, 12, and 15 (and others) of the VEKSEL'NYJ USTAV 1729.
- Векселедатель 'drawer of a bill': In the VEKSEL'NYJ USTAV 1729, векселядавец is used instead (for example, Art. 3). Векселедатель is used in Art. 540 USTAV TORGOVYJ, SVOD ZAKONOV, xi.; cf. also DEMIS' 1859, s. v. векселя.
- Векселедержатель 'holder of a bill'
- Вексельный курс 'rate of exchange': As far as legislation is concerned, вексельный курс (Germ./Fr. *Wechsel-cours*) was first used in Art. 29 of the VEKSEL'NYJ USTAV of 1729 ('o вексельном курсе в Россию').

Other terms relating to the law on bills of exchange that have been reactivated from pre-Revolutionary legal terminology include тратта 'bill of exchange', трассант 'drawer', трассат 'drawee', камбио 'cambio', рекамбио 'recambio', соло-вексель 'single promissory note', ремитент 'remittent', and индоссамент 'endorsement'.

(iv) *Владение 'possession'*

In pre-Revolutionary Russian law a sharp distinction was made between the concepts of владение 'possession' and собственность 'ownership'. This distinction had developed during

the second half of the nineteenth century, when the terms поместье 'estate' and вотчина 'inherited estate' were replaced by собственность, the meaning of which corresponded to that of Fr. *propriété* and Germ. *Eigentum*, while владение became 'more or less a translation of the German word Besitz' (SILVESTRI 1993: 8, n. 14). In German civil law *Eigentum* refers to the right to a thing, including the right to possess it (§ 903 BGB), whereas *Besitz* refers to the factual (whether lawful or unlawful) dominion over a thing (§ 845 Para. 1 BGB). Accordingly, Russian law defined the latter as 'фактическое господство лица над вещью' 'factual dominion of a person over a thing' (ŠERŠENEVIČ 1995 (1907): 150). During the Soviet period, when собственность was seen as an economic rather than a legal category, the distinction between the concepts of владение and собственность was less marked. This is mirrored in expressions such as 'в личной собственности гражданина может находиться один жилой дом' 'in the personal ownership of a citizen can be one residential building' or 'право иметь в собственности часть дома' 'the right to have part of the building in ownership' (Art. 106 GK RSFSR 1964). The meaning of собственность in these examples is closer to that of владение than to that of pre-Revolutionary собственность. In the legislation on ownership adopted since *perestroika* this ambiguity still prevails: 'Собственник [...] владеет [...] принадлежащим ему имуществом' 'The owner [...] possesses [...] the property belonging to him' (Art. 1 Para. 2 ZoS SSSR 1990; Art. 2 Para. 2 ZoS RSFSR 1990). It should be pointed out that in referring to the concepts *Eigentum* or *Besitz* the BGB does not use the word *gehören* 'to belong'. There are many other instances in these laws too where принадлежать or находиться are used in referring to the relationship between the owner and the thing he owns (for example, Art. 5 Para. 2 ZoS SSSR 1990; Art. 3 Para. 2 ZoS RSFSR 1990). This lack of terminological precision has rightly been criticized (WESTEN 1991: 16). In legal textbooks a clear distinction is made between владение and собственность:

> Собственник имеет правовую власть над предметом. Она состоит в праве владения и праве распоряжения имуществом. [...] Владелец имеет фактическую власть над предметом. [...] Если собственник сдает внаем свою квартиру, он остается собственником, а квартирант становится владельцем. [...] Вор является незаконным владельцем украденной вещи (ROGAČ 1992: 18).[69]

In legislation, however, the phrasing continues to be ambiguous: 'собственник вправе по своему усмотрению совершать в отношении принадлежащего ему имущества любые действия, не противоречащие закону 'with regard to the property belonging to him the owner is entitled to carry out at his discretion any activities that do not contradict the law' (Art. 209 Para. 2 GK RF I 1994).

[69] 'The owner has the legal dominion over the object. It consists of the right to possess and to dispose of the property. [...] The possessor has the factual dominion over the object. [...] If an owner rents his flat, he remains the owner, and the tenant becomes the possessor. [...] A thief is the unlawful possessor of the stolen thing.'

(v) *Знак, товарный 'trademark'*

The legal concept of товарный знак was introduced into pre-Revolutionary legislation in 1896 (Arts. 161, 1–21 UST. PROM; introduced with law of 26 Febr. 1896), following the adoption of the German *Warenzeichengesetz* of 1894 (ŠERŠENEVIČ 1994 (1914): 179; ĖS 1890-1904, xxxiii. (1901), s. v. товарный знак, p. 398). Earlier Russian legislation had used the term фабричное клеймо 'trademark' (Arts. 157–61 UST. PROM), and it therefore seems reasonable to regard the term товарный знак as a loan-translation from Germ. *Warenzeichen*. The Russian term referred to 'те наружные отметки, которыми купец стремится отличить в глазах потребителей свои товары от товаров всякого другого купца' 'those external marks with which the merchant seeks to distinguish his goods in the eyes of the consumer from the goods of all other merchants'. The товарный знак was protected by the law (ŠERŠENEVIČ 1994 (1914): 179) and considered an object of rights like any other property (ĖS 1890-1904, xxxiii. (1901), s. v. товарный знак, p. 397). During the Soviet period, under the conditions of a planned economy, trademarks were of minor importance in economic practice. Only after the beginning of economic reform the concept of товарный знак, representing a 'неотъемлемый элемент рыночной экономики' 'an inalienable element of a market economy' (*MN* 44/96: 19) began to play an important role (see also the articles 'Рыночная стоимость товарного знака', *ĖŽ* 18/95: 17, and 'Товарный знак получит защиту', *ĖŽ* 7/96: 45):

> Если еще совсем недавно мало кто из руководителей предприятий серьезно задумывался о значении товарных знаков, то переход к рыночной экономике заставил их по-иному взглянуть на этот объект промышленной собственности (*MN* 44/96: 19).[70]

In 1992 this development led to the adoption of the law 'On Trademarks' (ZoTZ 1992), where товарный знак is defined as

> обозначения, способные отличать соответственно товары и услуги одних юридических или физических лиц от однородных товаров и услуг других юридических или физических лиц (Art. 1 ZoTZ 1992).[71]

This definition differs from the one used in pre-Revolutionary law in that it (a) covers not only goods, but also services, and (b) is addressed not only at 'merchants', but at all kinds of legal entities and natural persons. However, the pre-Revolutionary and the post-*perestroika* concepts of товарный знак correspond to each other in that they are both defined as an object of rights. This aspect is regulated in Art. 138 GK RF I 1994, where товарный знак is defined as a 'means of individualization', representing an 'объект исключительного права' 'object of an exclusive right'. This definition corresponds to the legal meaning of Germ. *Warenzeichen*, of

[70] 'While until very recently hardly any manager of an enterprise seriously thought about the meaning of trademarks, the transition to a market economy has forced them to look differently at this object of industrial property.'

[71] 'Marks capable of distinguishing goods and services of legal entities or natural persons from similar goods and services of other legal entities or natural persons.'

which the *Warenzeichenschutz* 'protection of the trademark' is a central feature, entitling the owner of the trademark to the exclusive right to use it in business (§§ 15–6 WZG 1968; CREIFELDS 1992: 1363). The Russian regulation rules accordingly:

> Владелец товарного знака имеет исключительное право пользоваться и распоряжаться товарным знаком, а также запрещать его использование другими лицами (Art. 4 Para. 1 ZoTZ 1992; see also JR 1992, s. v. товарный знак).[72]

(vi) *Котировка 'quotation'*

In pre-Revolutionary Russia the quotation of stocks and shares on the stock exchange was called котировка: 'обозначение курса технически называется котировкою; отсюда и самое допущение данной бумаги как предмета сделок на бирже также называется котировкою' 'the marking of the rate technically is called quotation; hence the admission of a given security as an object of transactions at the exchange is also called a quotation' (CITOVIČ 1891: 238, n. 3; see also FEMELDI 1902: 156). The verb котироваться was also used: 'бумага ходит (котируется) с премией' 'a security goes (is quoted) with the premium' (CITOVIČ 1886: 172, n. 620). In the Soviet period before *perestroika* котировка was mostly used with respect to quotation on stock exchanges in capitalist countries; however, it referred also to the rates of exchange of foreign currencies in the Soviet Union, which were published in the bulletin of the State bank (FKS 1961, s. v. котировка; BSÉ ³1969-81, xiii. (1973), s. v. котировка). When stock exchanges reopened in the early 1990s, котировка was again used in referring to Russian stock exchanges: 'всего за три часа котировки российских акций снизились на 5%' 'in only three hours the quotation of Russian shares fell by five per cent' (*Коммерсантъ-daily*, 7 Dec. 1996, p. 1; see also the page 'цены и котировки' that is a regular feature of Russian newspapers, e.g. *Коммерсантъ-daily*, 7 Dec. 1996, p. 7). In JURÉ 1995 (s. v. котировка) three meanings are given: (1) establishment of the stock-market price of stocks and shares; (2) presentation of stocks and shares at the stock exchange; (3) official publication of stock-market prices of stocks and shares, foreign currencies, and goods.

(vii) *Предприятие 'enterprise'*

In pre-Revolutionary Russian law the term 'торговое предприятие' 'commercial enterprise' meant 'совокупость личных и имущественных средств, соединенных для достижения известной торгово-хозяйственной цели по определенному плану' 'the total sum of personal and property means that are united for the attainment of a certain commercial-economic goal according to a certain plan' (ŠERŠENEVIČ 1994 (1914): 70; see also Art. 1238 SVOD ZAKONOV, x., part 1). Thus предприятие was defined as an object of rights. Under Soviet

[72] 'The owner of the trademark has the exclusive right to use, and dispose of, the trademark, and also to prohibit its use by other persons.' The cyrillic version is used in CITOVIČ 1873: 51.

law предприятие lost this meaning and instead was used as a purely economic term, in referring to a production plant (for example, Art. 24 ZGB 1964; JÈS 1987, s. v. предприятие; and SSRLJA 1950–65, s. v. предприятие: 'производственное учреждение' 'production establishment'). After the beginning of *perestroika* the meaning of предприятие again changed. The 1990 law 'On Enterprises and Entrepreneurial Activity' rules:

> Предприятием является самостоятельный хозяйствующий субъект, созданный [...] для производства продукции, выполнения работ и оказания услуг в целях удовлетворения общественных потребностей и получения прибыли (Art. 4 Para 1 ZoP 1990).[73]

Arts. 6–15 ZoP 1990 regulate the 'организационно-правовые формы предприятий' 'organizational-legal forms of enterprises': государственное предприятие 'state enterprise' (Art. 6), муниципальное предприятие 'communal enterprise' (Art. 7), индивидуальное (семейное) частное предприятие 'individual (family) private enterprise' (Art. 8), полное товарищество 'full partnership' (Art. 9), смешанное товарищество 'mixed partnership' (Art. 10), товарищество с ограниченной ответственностью (акционерное общество закрытого типа) 'partnership with limited liability (closed joint-stock society)' (Art. 11), and акционерное общество открытого типа 'open joint-stock society' (Art. 12). Thus предприятие is used as a collective term for the organizational forms that the law provides for entrepreneurial activity. The regulation explicitly rejects various former (Soviet) dogmas concerning enterprises (MALFLIET 1993: 143). Entrepreneurial activity, in general, is now characterized by the risk and pursuit of profit by the entrepreneur (Art. 1 Para. 1 ZoP 1990), and liability arises for the entrepreneur according to the legal form of the enterprise (ibid., Para. 2). Enterprises can found and eliminate subsidiaries and branches, and form associations on a contractual basis (Art. 13), they can borrow money but are responsible for the loan (Art. 24 Para. 3 ZoP 1990). Governmental entities at all levels are not responsible for the financial obligations of enterprises and vice versa (Art. 6 Para. 3 part II ZoP 1990). Moreover, the use of hired labour becomes an essential characteristic of предприятие:

> Предпринимательская деятельность, осуществляемая без привлечения наемного труда, может регистрироваться как индивидуальная трудовая деятельность. Предпринимательская деятельность, осуществляемая с привлечением наемного труда, регистрируется как предприятие (Art. 2 Para. 3 ZoP 1990).[74]

At the same time, traditional mechanisms were retained. Prices remain centrally controlled; the enterprise conducts its own planning, but its plans have to incorporate state orders (FELDBRUGGE 1993: 59). The ZoP 1990 was a first attempt to create a system of enterprises; however, it contains logical mistakes. In particular, while the last four forms truly represent organizational-

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[73] 'An enterprise is an independent managing subject created [...] for producing output, carrying out work, and rendering services in order to satisfy public needs and to make profit.'

[74] 'Entrepreneurial activity that is carried out without bringing in hired labour may be registered as individual labour activity. Entrepreneurial activity that is carried out by bringing in hired labour is registered as an enterprise.'

legal forms of enterprises, it is unclear to which group the first three types belong and how they differ from the other forms (RIVINIUS 1996: 16–7; SUCHANOV 1995a: 6–8). The 1994 Civil Code developed the concept of предприятие further. It regulates it both as an object of rights:

> Предприятием как объектом прав признается имущественный комплекс, используемый для осуществления предпринимательской деятельности. Предприятие в целом как имущественный комплекс признается недвижимостью (Art. 132 Para. 1 GK RF I 1994)[75]

and as a subject of rights:

> Юридические лица, являющиеся коммерческими организациями, могут создаваться в форме хозяйственных товариществ и обществ, производственных кооперативов, государственных и муниципальных унитарных предприятий (Art. 50 Para. 2 GK RF I 1994).[76]

In contrast to previous legislation (Art. 4 Para 1 ZoP 1990; ZoNBP 1992), where all legal entities engaged in entrepreneurial activity had been defined as предприятие, the Civil Code recognizes only state and communal unitary enterprises as предприятие. This regulation mirrors the Soviet heritage of the understanding of предприятие and the fact that the state sector still plays a strong role in the post-*perestroika* economic system, while the definition of предприятие as an object of rights takes up the pre-Revolutionary meaning of this term.

(viii) *Собственность 'ownership'*

In pre-Revolutionary law this term was defined — following French and German civil legislation, where *propriété* and *Eigentum* are defined in describing the rights of the owner (Art. 544 Code Civil: 'La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu'on n'en fasse pas un usage prohibé par les lois ou par les règlements'; cf. § 903 BGB), — as 'право владения, пользования и распоряжения' 'the right to possess, use, and dispose' (Art. 420 SVOD ZAKONOV, x., part 1). From there this definition passed to the 1992 RSFSR Civil Code (Art. 58) and from then on was used in civil legislation in referring not only to owners, but also to other participants of civil turnover, in particular state enterprises, which were not considered owners (the state was the owner). The first law on ownership to be adopted after *perestroika* defines собственность as follows:

> Собственник по своему усмотрению владеет, пользуется и распоряжается принадлежащим ему имуществом (Art. 2 Para. 1 ZoS SSSR 1990).[77]

This formulation, which was repeated in the law 'On Ownership in the RSFSR' (Art. 2 Para. 1 ZoS RSFSR 1990), suggests that the owner at any particular moment in time possesses, uses,

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[75] 'An enterprise as an object of rights is recognized as a property complex that is used for the realization of entrepreneurial activity. The whole enterprise as a property complex is recognized as immovable property.'

[76] 'Legal entities, which are commercial organizations, can be founded in the form of economic partnerships and societies, production cooperatives, or state and communal unitary enterprises.'

[77] 'An owner, at his discretion, possesses, uses, and disposes of property which belongs to him.'

and disposes of his property. However, the essential characteristic of the position of an owner is his right to possess, use, and dispose of his property: even if a thing is stolen from him, he remains the owner (in Art. 209 GK RF I 1994 the definition of собственность has been corrected accordingly). This use of собственность is a result of the Soviet understanding of ownership as an economic rather than a legal category. According to Soviet ideology economic phenomena were regarded as fundamental, while legal phenomena were regarded as derivative, which relegated them to the category of the superstructure. As a result a basic distinction was made between the concepts of собственность 'ownership' and право собственности 'right of ownership', the former being of much greater weight than the latter (see, for example, BSÈ ²1949-58, xxxix. (1956), s. v. собственность). As a rule these concepts were regulated in different laws (cf. also BUTLER 1991a: 7), a tradition from which the law 'On Ownership in the USSR' was the first piece of legislation since the mid-1930s to depart. Another sign that the distinction between the concepts of собственность and право собственности is still maintained is the fact that while the law is called 'о собственности в СССР' 'On Ownership in the SSSR', the first article is headed 'о праве собственности' 'On the Right of Ownership' (ZoS SSSR 1990; the same applies to the law 'On Ownership in the RSFSR' with Art. 2 ZoS RSFSR 1990). Also, both laws continue the Soviet tradition of assigning the triad of the right to possess, use, and dispose not only to owners, but also to state enterprises which are not owners, but merely carry out полное хозяйственное ведение 'full economic jurisdiction' (Art. 24 Para. 1 ZoS SSSR 1990; Art. 5 Para. 2 ZoS RSFSR 1990). The question of how the rights of an owner differ from those of a non-owner is left open. Finally, the fact that the term собственность is not yet always used in referring to ownership as a right is demonstrated by formulations where собственность is used in referring to the property which is being owned, for instance 'произведенная продукция и полученные доходы *являются собственностью* крестьянского хозяйства' 'the produced production and gained income *is the ownership* of the peasantry (Art. 9 Para. 1 ZoS SSSR; similarly Art. 12 Para. 1 ZoS RSFSR 1990; emphases A.R.). In subsequent legislation, however, this use of собственность has not occurred.

(ix) *Спекуляция 'speculation'*

In pre-Revolutionary Russian law this term meant a 'daring business deal' at the stock exchange:

> Спекулируют продавец и покупщик — [...] покупщик надеется, что курс повысится, он спекулирует на повышение (sur la hausse); продавец надеется, что курс понизится, он спекулирует на понижение (sur la baisse) (СТОЮЧ 1886: 169–70; see also ibid., 178).[78]

[78] 'The seller and the buyer speculate — [...] the buyer hopes that the rate will go up, he speculates on a rise (sur la hausse); the seller hopes that the rate will go down, he speculates on a fall (sur la baisse).'

During the Soviet period спекуляция acquired a different meaning. The Юридический справочник для населения 'Legal handbook for the population' defined it as

> скупка и перепродажа товаров с целью наживы. Спекуляция — это опасное преступление, причиняющее вред советской торговле. Одновременно спекуляция затрагивает интересы советских граждан. Лица, занимающиеся спекуляцией, как правило, ведут паразитический образ жизни [...] (JURSN 1968, s. v. спекуляция).[79]

A distinction was made between мелкая спекуляция 'petty speculation', which was recognized as an administrative misdemeanour (UKAZ 1957), and more severe forms of спекуляция, which were regulated as criminal offences (Art. 154 UK RSFSR 1960), forming part of хозяйственные преступления 'economic crimes'. Since *perestroika* спекуляция can have two meanings:

> (1) в предпринимательской практике скупка и перепродажа различных товаров и иного имущества с целью получения прибыли (дохода)
>
> (2) купля-продажа биржевых ценностей (акций, облигаций, валюты и т. п.) с целью получения спекулятивной прибыли от разницы между покупной и продажной ценой (курсом) при перепродаже этих ценностей (биржевая спекуляция) (JURÈ 1997, s. v. спекуляция).[80]

Спекуляция as used in the first meaning is no longer regarded as a criminal offence — the liability for speculation was excluded from the criminal code in December 1991 (BJUS 1997, s. v. спекуляция) —, but, on the contrary, as 'правомерное деяние' 'lawful act', representing 'экономическую сущность любой торговой деятельности' 'economic essence of any commercial activity' (ibid.). The second meaning, биржевая спекуляция, has been revived from pre-Revolutionary law and is often given as the first meaning (for example, OŽEGOV and ŠVEDOVA 1992, s. v. спекуляция).

(x) *Трансферт 'transfer'*

In Russian legislation трансферт, a borrowing from Fr. *transfert*, first appeared in 1817, in connection with the transfer of capital over the state debt-register: 'трансферт (перевод) капиталов по Государственной долговой книге и предъявление оных в залог' (POLOŽENIE 1817, chapter III, Para. II). This word is also used in the USTAV KREDITNYJ of 1857 (§§ 127–39) with the same meaning (for example, § 128: 'Вкладчик капитала представляет в Коммисию билет для трансферта [...]' 'The depositor of the capital presents to the

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[79] 'Buying up and re-sale of goods with the aim of making profit. Speculation is a dangerous offence which harms Soviet trade. At the same time speculation affects the interests of Soviet citizens. Persons who are engaged in speculation usually lead a parasitic life-style [...].'

[80] '(1) In commercial practice the buying up and re-sale of various goods and other property with the aim of obtaining profit (income); (2) buy-and-sell of stock exchange securities (shares, bonds, foreign currency, etc.) with the aim of obtaining the speculative profit from the difference between the purchase price and the sale price (exchange rate) at the re-sale of these securities (stock exchange speculation).'

Commission a banknote for the transfer'). From this and other contexts of usage (for example, Cітović 1886: 106) it appears that трансферт meant not only the 'transfer of currency or gold from one country to another', as suggested by Komjagin´ 1996, but also financial transactions inside Russia — for example, between two investors. This is also supported by the entry in BÉ [1900]–09 (xviii. (1896), s. v. трансферт), where three meanings are given: (1) перевод или перенос сумм со счета одного вкладчика на счет другого 'remittence or transfer of a sum from the account of one depositor to the account of another', (2) перевод денег из одного места (страны или города) в другое 'transfer of money from one place (country or city) to another', (3) перевод различных именных ценных бумаг [...] с одного владельца их на другого 'remittence of various nominal securities [...] from one owner to the other'.

After the October Revolution трансферт continued to be used as a legal term, but only in restricted contexts, such as international accounting (FKS 1961, s. v. трансфер, или трансферт). Only since 1992 has its use become widespread, both in legal literature and legislation, though up to now its legal meaning has not been defined conclusively (Komjagin 1996). One example of its use occurs in the legislation on budgets, where it is used to refer to any transfer of financial resources from a central fund to the budget of a lower territorial unit. Since 1994 the term has acquired an even broader meaning: 'сейчас под трансфертами подразумеваются практически любые платежи, перераспределяемые на федеральном уровне' 'now transfer refers to practically any payment that is re-distributed on a federal level' (ibid.). The budget classification, as confirmed by the Ministry of Finance (Prikaz 1994), consists of sections such as 'капитальные трансферты' 'capital transfers', 'субсидии и текущие трансферты' 'subsidies and current transfers', 'трансферты населению' 'transfers to the population' (pensions, scholarships, etc.), 'текущие трансферты за границу' 'current transfers abroad', and others. The term трансферт has also been included in legal dictionaries (for instance, JurÉ 1995, s. v. трансферт, ÉP 1994, s. v. трансферт).

Chapter Two

SOVIET TERMINOLOGY

1. *The Introduction of 'Bourgeois' Terms*

This section investigates terms that after *perestroika* became widespread but originate in the Soviet period before 1986. At that time they referred (officially) only to capitalist countries and were either not used in Soviet legislation, or if they were — as in the case of ноу-хау 'know-how' and клиринг 'clearing' — only in legislation concerning relations between the Soviet Union and capitalist countries. After *perestroika* they lost their 'bourgeois' connotation and became widespread terms relating to Russia as well as to any other country.

(i) *Безработица 'unemployment'*

Only since the beginning of *perestroika* has this word acquired a specific legal meaning in Russian. The verbal neglect of unemployment in the Soviet Union began in 1930, when Stalin decided to close down all labour exchanges. From then on the meaning of безработица was associated with a whole complex of conditions supposedly distinctive to capitalism, such as insecurity and homelessness. However, the social problem of unemployment remained a reality in the Soviet Union (for figures, see Zemtsov 1984: 257, Nquidx 1990: 46). An analysis of the entries for безработица in Russian general dictionaries published during the Soviet period before *perestroika* shows that the term was always defined as referring to something peculiar to capitalist countries. In Ušakov 1935–40, and in the various editions of Ožegov's dictionary, this restriction of contexts is conveyed not in the statements of meaning, but in the examples. Ušakov's examples read 'миллионы пролетариев в Западной Европе и Америке терпят постоянную безработицу' 'millions of proletarians in Western Europe and America suffer constant unemployment' and 'в СССР безработица уничтожена' 'in the USSR unemployment has been eliminated'. Ožegov 1949 defines the meaning of безработица as 'невозможность получить работу, заработок' 'the impossibility to get work, earnings' and gives as an example: 'социализм не знает безработицы' 'socialism does not know unemployment'. In the editions of 1960 and 1978 a second example has been added: 'массовая безработица в капиталистических странах' 'mass unemployment in capitalist countries'. Taken together, these two examples show how strictly the referent for безработица was determined. In Ožegov 1988 the definition of безработица remains as before, and the example given is similar to the previous ones: 'рост безработицы в капиталистических странах' 'increase of unemployment in capitalist countries'. However, in Ožegov and Švedova 1992 this example is shortened and now reads simply 'рост безработицы' 'increase in unemployment'. The devaluation of Soviet ideology means that безработица no longer needs to serve within the

polar system of values characteristic of the official Soviet discourse. In SSRLJA 1950–65 безработица is described as 'типичное для капиталистического общества экономическое явление' 'a typical economic phenomenon in capitalist societies'; this statement is followed by a quotation from Stalin, which contrasts the 'need and suffering of millions of unemployed in the bourgeois countries' with the situation in the Soviet Union, where 'безработица исчезла' 'unemployment has disappeared'. In SSRLJA 1991– the definition has changed in a significant way to the neutral formulation 'социально-экономическое явление, при котором часть трудящихся не может найти применения своему труду' 'a socio-economic phenomenon, in which part of the working population cannot find an application for their labour'; and the examples, compared to the former edition, illustrate neutral usage: скрытая безработица 'latent unemployment', снижение уровня безработицы 'reduction of the level of unemployment', уничтожить безработицу 'to eliminate unemployment', пособие по безработице 'unemployment benefit'. In referring to unemployment during the Soviet period before *perestroika* euphemisms such as незанятость 'inoccupation' or временная незанятость 'temporary inoccupation' were used:

> Слово безработица в нашем лексиконе отсутствовало... Некоторые предпочитали заменять его деликатным термином 'временная незанятость' (*ÉŽ* 15/1990: 12).[81]

The use of such euphemisms was intended to make people believe that, whereas in the Soviet Union the problem of unemployment was a temporary, easy-to-handle difficulty in no way related to the essence of Marxist communism, безработица should be regarded as an integral part of capitalism. This contrast was heightened by the fact that безработица was usually referred to as массовая безработица 'mass unemployment', as in OŽEGOV's examples (the use of миллионы 'millions' in the examples in UŠAKOV and SSRLJA 1950–65 serves the same purpose), and unemployment benefit or any other details that might have softened the contrast, were not mentioned. One could therefore view the expression массовая безработица as a label, as one of the formulas which were part of the polarized system of values of the official Soviet discourse and therefore usable in the verbal struggle against capitalism. The ultimate goal of this verbal struggle was to confer legitimacy on the Soviet system, and to give the Russian people a feeling of predictability and stability.

The introduction of the words безработица 'unemployment' and безработный 'unemployed' into post-*perestroika* legislation proved difficult: 'слово «безработный» все еще стыдливо умалчивается в наших законах' 'the word "unemployed" is still bashfully suppressed in our laws' (BARABAŠEVA 1990: 87). In an effort to avoid the use of безработные the term высвобождаемые работники 'freed workers' was introduced (see article 20[1] UKAZ 1988, which is headed 'гарантии обеспечения права на труд высвобождаемым

[81] 'The word "unemployment" did not exist in our vocabulary... Some preferred to replace it with the delicate term "temporary inoccupation".'

работникам' 'guarantees of providing freed workers with the right to work'. This formulation, even during *perestroika*, demonstrates the striving to confirm the view that unemployment is inherent only in capitalist society and cannot exist in socialism, implying that 'our' freed workers are somehow different from 'their' unemployed (BARABAŠEVA 1990:87). The 1991 law 'On Employment' finally introduced the term безработные:

> Безработными признаются трудоспособные граждане, которые не имеют работы и заработка, зарегистрированы в службе занятости в целях поиска подходящей работы и готовы приступить к ней [...] (Art. 1 ZoZN 1991).[82]

Other examples of the use of the terms безработный and безработица in legislation are the UKAZ 7/1992 and the 1993 Constitution:

> Каждый имеет право на [...] защиту от безработицы 'everyone has the right [...] of protection from unemployment' (Art. 37 Para. 3 KONST. RF 1993).

(ii) *Бизнес 'business'*

This loan-word from Eng. *business* was first recorded in 1933, referring to 'дело, приносящее выгоду' 'a business that brings in profit' (KRYSIN 1968: 110). Throughout the Soviet period бизнес had a pejorative connotation as referring 'in all contexts and all circumstances' to something 'morally reprehensible' (ZEMTSOV 1984: 34; see also KRYSIN 1986: 111). Its meaning covered 'the totality of such practices as bribery, tax evasion, falsification of documents or reports, illegal industrial enterprises, theft of state property, and abuse of one's position' (ZEMTSOV 1984: 33). The negative connotation also applied to бизнесмен 'businessman'. Since *perestroika* бизнес has become one of the most frequent English loan-words. Some scholars claim it has lost its negative connotation (RODIMKINA and DAVIE 1995: 42), others suggest that it has not (or not fully) done so (FERM 1994: 164; ŠAPOŠNIKOV 1997: 41). My analysis of the use of бизнес in newspapers and other printed material suggests that since *perestroika* the number of contexts in which it refers to illegal or criminal activity has been decreasing, and that it is now predominantly used to refer to *bona fide* business: for example, 'организовать по-настоящему серьезный, полезный обществу бизнес' 'to organize business that is truly serious and useful for society' (*ÉŽ* 51/90: 11). Another example is the draft of the Хартия бизнеса России 'Russia's business charter' (*ÉŽ* 38/95: 2), the text of which illustrates the intention of Russian businessmen to convey a positive image of Russian бизнес. Further evidence of this change of meaning might also be seen in an article where the derivative бизнесмен is used neutrally, but when referring to 'недобросовестный предприниматель (читай: мошенник)' 'unfair entrepreneur (i.e. swindler)', the word is put in quotation marks: 'такой "бизнесмен"' 'such a "businessman"' (*ÉŽ* 33/95: 25). The loss of the

[82] 'Unemployed are citizens able to work, who do not have work and earnings and who have registered with the employment service in order to search for suitable work, ready to take it up.'

connotation 'morally reprehensible' is also demonstrated by a comparison between the entries on бизнес in Ožegov 1988: 'предпринимательская деятельность, являющаяся источником личного обогащения, наживы' 'entrepreneurial activity that is the source of personal enrichment, profit', and in Ožegov and Švedova 1992, which reads more objectively 'предпринимательская экономическая деятельность, приносящая доход, прибыль' 'entrepreneurial economic activity that brings in a revenue, profit'. In the legal vocabulary бизнес and бизнесмен are used to refer only to legal activities, which represents a clear change of meaning compared to бизнес as used in the Soviet period before *perestroika*. In Jurė 1997 бизнесмен is defined as

> Коммерсант, предприниматель, занимающийся любым законным видом экономической деятельности, приносящей доход или иные выгоды (s. v. бизнесмен).[83]

Бизнес is used with such adjectives as финансовый 'financial' (*ĖŽ* 49/97: 5), рекламный 'advertising'(*ĖŽ* 25/95: 14), софтверный 'software'(*ĖŽ* 44/96: 20), компьютерный 'computer'(*ĖŽ* 31/95: 41), сетевой 'network' (*ĖŽ* 21/97: 35). The large number of new derivatives demonstrating the high productivity of this loan-word include нефтебизнес 'oil business' (*ĖŽ* 49/90: 5; 7); медиабизнес 'media business'(*MN* 19/96: 19), бизнес-школа 'business school' (*ĖŽ* 31/95: 23), бизнес-справочник (*ĖŽ* 23/95: 26), бизнес семинар 'business seminar' (*ĖŽ* 49/95: 42), бизнес-центр 'business centre' (*ĖŽ* 7/98: 22), бизнес-информация 'business information' (*ĖŽ* 33/95: 25), бизнес-инкубатор 'business incubator' (*ĖŽ* 16/97: 1), бизнес-план 'business plan' (*ĖŽ* 26/95: 26), бизнес-парк 'business park' (*ĖŽ* 16/97: 1). The expressions бизнес-план and бизнес-инкубатор have been used in legislation (for бизнес-план, see Položenie 12/97, Para. 3. 1.; 3. 3. 9; see also Tipovaja programma 1997, Para. I. 2; for бизнес-инкубатор, see Art. 17 FedZoGosPMP 1995) and a federal law on a 'Centre of International Business' ('центр международного бизнеса') has been adopted (FedZoCMBI 1996). The terms малый бизнес 'small business' and средний бизнес 'medium business' are widely used as synonyms of малые предприятия 'small enterprises' and средние предприятия 'medium enterprises' (or предприятия малого (среднего) сектора, *ĖŽ* 7/98: 27). Comrie et al. 1996: 313 mention that бизнес originally meant 'business, endeavour', but has developed a new, more specific meaning 'enterprise, factory', a change which is reflected in the use of the plural form. However, I have not found any instances of бизнес used in the plural, and the expression малый бизнес seems to be the only case where бизнес clearly refers to 'enterprise'. Even here it is used only in the singular form, as a collective term: малый бизнес means малые предприятия. For малый бизнес see, for example, the following quotation:

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[83] 'Merchant, entrepreneur who is engaged in any kind of legal economic activity that brings in a revenue or other income.'

> Минэкономики разбатывают новое налоговое законодательство для малого бизнеса [...] Проектом нового закона к субъектам малого бизнеса будут отнесены предприятия с числом работающих до 100 человек (*ÉŽ* 7/97: 3).[84]

(iii) *Брокер 'broker'*

A брокер 'broker' is an agent who negotiates contracts for the sale and purchase of goods and other property. Unlike concepts such as franchising or factoring, that of a broker, in this case a stockbroker, is not new to Russian society. The tradition of stock exchanges in Russia goes back to 1703, when the first such institution was opened in St Petersburg. Throughout the period of active stock exchanges in Russia, i.e. until 1930, when stock exchanges were finally forbidden (BSÉ 1969–81, iii. (1970), s. v. биржа), a stockbroker was called маклер in Russian (from Germ. *Makler*, *Mäkler*). In the early 1990s, when stock exchanges reopened in Russia, a sudden need for Russian terminology arose. While in some cases (such as that of *stock exchange* and *bill of exchange*), the traditional, pre-Revolutionary term was chosen (биржа, вексель), in others, such as *stockbroker*, priority was given to an English name, and маклер was replaced by (биржевой) брокер: 'в англоязычных странах и в РФ (с 1990 г.) данное лицо именуется брокером' 'in English-speaking countries and the Russian Federation (since 1990) the given person is called broker' (BJuS 1997, s. v. маклер). However, брокер is not a new borrowing. According to SSRLJA 1991– (s. v. брокер), it was first recorded in 1937; KOPELOVA 1995 (s. v. брокер) gives 1951. In the Soviet period before *perestroika* it was used in referring to a *broker* in a capitalist country (for example, GLOSSARY 1963: 150–1 gives вексельные брокеры for bill brokers; KOPELOVA 1995, s. v. брокер). Брокер has now become one of the most frequent English loan-words in Russian. The legal meaning of брокер and брокерская деятельность 'broking' is defined in the federal law 'On the Market of Securities':

> Брокерской деятельностью признается совершение гражданско-правовых сделок с ценными бумагами в качестве поверенного или комиссионера, действующего на основании договора поручения или комиссии, а также доверенности на совершение таких сделок при отсутствии указаний на полномочия поверенного или комиссионера в договоре.
> Профессиональный участник рынка ценных бумаг, занимающийся брокерской деятельностью, именуется брокером (Art. 3 FEDZoRCB 1996).[85]

The law 'On Commodity Exchanges' introduced the term биржевой брокер:

> Биржевые сделки совершаются в ходе биржевых торгов через биржевых брокеров. Биржевыми брокерами являются служащие или представители

[84] 'Economists of the Ministry of Economics are working out new tax legislation for the small business. The draft of the new law will regard as subjects of a small business enterprises with up to 100 workers.' For more examples of this use of малый бизнес, see BLINOV 1996: 8.

[85] 'Broking is recognized as the fulfilment of civil law transactions with securities and shares in the capacity of an agent or commission-agent who acts on the basis of an agency contract or of legal power to carry out such transactions in the absence of instructions in the contract to empower an agent or commission-agent. A professional member of the stock-market who is engaged in broking is called a broker.'

> предприятий, учреждений и организаций — членов биржи и биржевых посредников, а также независимые брокеры (Art. 22 ZoTB).[86]

The use of the adjective биржевой suggests that брокер on its own does not necessarily refer to stockbrokers. Indeed, the meaning of брокер was soon extended to many areas, and as with Engl. *broker*, different kinds of брокер can now be distinguished: страховой брокер 'insurance broker' (ĖP 1994, s. v. брокер страховой), фрахтовой брокер 'freight broker' (BJuS 1997, s. v. брокер фрахтовой), вексельный брокер 'bill broker' (TBS 1996, s. v. брокер; ĖP 1994, s. v. брокер вексельный), and, in particular, таможенный брокер 'customs broker' (ĖP 1994, s. v. брокер таможенный; see also the article 'Таможенные брокеры: будущее за профессионалами', *ĖŽ* 26/96: 27): Postanovlenie 7/1997 states that a таможенный брокер is a commercial organization founded in accordance with the legislation of the Russian Federation that is a legal entity and has received the licence from the State customs committee to act as a customs broker (Para. 1), and then continues to describe the activities of a customs broker:

> Деятельность таможенного брокера заключается в совершении от собственного имени операций по таможенному оформлению товаров и транспортных средств и выполнении других посреднических функций в области таможенного дела за счет и по поручению представляемого лица [...] (Para. 2 Postanovlenie 7/1997).[87]

These activites include the declaration of goods and means of transport, the presentation of all relevant documents and additional information to the customs organs, the provision of customs payment in connection with the declared goods and transport means, and others (Para. 2 points (а)–(д) Postanovlenie 7/1997). It should be noted that a таможенный брокер is defined as a legal entity (see also Art. 157 TK RF 1993), whereas a брокер can be represented by broker's firms, broker's branch office, or independent brokers.

A number of new words have been derived from брокер. The adjective брокерский is particularly common in the phrases брокерская гильдия 'broker's guild' (Art. 23 ZoTB 1992), брокерское обслуживание 'broker service', and брокерское вознаграждение 'broker's commission'. As synonyms of брокерское вознаграждение, the doublets брокераж (ĖP 1994) and брокеридж (TBS 1996; BJuS 1997), derived from Engl. *brokerage*, are often used, replacing the old term куртаж 'courtage' (see Šeršenevič 1994(1914): 102; Perenoo 1832, where куртаж is given for *Mäkler-Gebühr*). Other derivations include брокерство ('было предложено брокерство запретить' (*MN* 37/91: 9)), брокервис (quoted by Pojčasova 1994a: 53), and гофброкер 'senior broker', which

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[86] 'Stock-market transactions are carried out by stockbrokers in the course of tenders. Stockbrokers can be employees or representatives of enterprises, institutions and organizations — members of the stock exchange and agents, but also independent brokers.'

[87] 'The activities of a customs broker comprise the accomplishment of operations in his own name concerned with the customs registration of goods and means of transport and the fulfilment of other mediatory functions in the area of customs at the expense and on behalf of the represented person.' See also Art. 159 TK RF 1993.

POIDČASOVA (1994a: 53) quotes as an example of the 'high derivational activity' of брокер. In fact, it seems that it has been derived by analogy with the traditional гоф-маклер, which had the same meaning (see ŠERŠENEVIČ 1994(1914): 102; BURYŠKIN 1991: 230; 346) (see above, p. 46–7).

(iv) *Демпинг 'dumping'*

This loan-word from English was first recorded in 1933 (KRYSIN 1968: 93). Before *perestroika* the term referred to trade practices of capitalist countries such as the United States (for example, ŠTIL'MAN 1976: 76) or Japan (for example, SERGEEV 1980: 122):

> Демпинг — продажа товаров капиталистами на иностранном рынке по искусственно заниженным ценам при повышенных ценах на внутреннем рынке с целью вытеснения конкурентов (SSRLJA 1950–65, s. v. демпинг).[88]

The entry in SSRLJA 1991– (s. v. демпинг) repeats the above definition, but the word капиталисты 'capitalists' has been omitted. The use of the term демпинг in the press shows that since *perestroika* the term is used to refer to activities in Russia as well as to any other country (*ÉŽ* 11/96: 1). The adjectives демпинговый and антидемпинговый are also used (*ÉŽ* 49/90: 10; *ÉŽ* 5/98: 1). The latter is not a new derivative, as suggested by KUROKHTINA 1996: 22, but was used during the Soviet period (for example, ŠTIL'MAN 1961: 76). In legal texts демпинг is defined as one of the forms of недобросовестная конкуренция 'unfair competition' (PARAŠČUK 1995: 25). OŽEGOV and ŠVEDOVA 1995, however, define демпинг as 'одно из средств конкурентной борьбы' 'one of the means of competition struggle' (s. v. конкуренция). This use of конкурентный mirrors the former Soviet understanding of this concept as a principle that restricts trade and has only negative effects on the economy. Since *perestroika*, however, конкуренция has been recognized as a basic economic principle that needs to be developed (see, for example, Art. 8 FEDZOGOSPMP 1995) and protected constitutionally (Art. 8 Para. 1 KONST. RF 1993), while any misuses of конкуренция are covered by the concept of недобросовестная конкуренция.

(v) *Дилер 'dealer'*

This loan-word from English is sometimes described as a recent borrowing of which the earliest instances date from 1987 (NOVYE SLOVA-80 1997, and 1991 (SP 1992, s. v. дилер) respectively. HAUDRESSY 1992 (s. v. дилер) too seems to regard this word as a neologism. However, it was used in the Soviet period with respect to English-speaking countries:

> Дилеры — в англо-саксонских странах лица, являющиеся членами фондовой биржи и совершающие сделки с ценными бумагами. В отличие от брокеров,

[88] 'Dumping is the selling of goods by capitalists at artificially lowered prices on the foreign market and raised prices on the internal market with the aim of ousting competitors.'

> выступающих посредниками, дилеры производят операции за собственный счет (FKS 1961, s. v. дилеры).[89]

When stock exchanges reopened in Russia in the early 1990s, a need arose for terminology for the various посредники 'mediators' involved in stock-exchange transactions. Брокер and дилер, which until then had been used only in very restricted contexts, have become the most widespread terms. While a брокер mediates contracts on behalf of his principal, in return for a commission, a дилер negotiates in his own name and at his own expense:

> Дилерской деятельностью признается совершение сделок купли-продажи ценных бумаг от своего имени и за свой счет [...] Профессиональный участник рынка ценных бумаг, осуществляющий дилерскую деятельность, именуется дилером. Дилером может быть только юридическое лицо, являющееся коммерческой организацией (Art. 4 FEDZoRCB 1996).[90]

A дилер makes his own profit, using the difference between purchase and retail prices, or, in the case of a валютный дилер, of changes in exchange rates. This is also characteristic of a *dealer*, who for this reason is not considered an *agent* in American and English law, in contrast to *brokers* and *factors*, who act on behalf of their principals (BRADGATE 1995: 86; 90). Different kinds of дилер can be distinguished, in particular инвестиционный дилер 'investment dealer', and валютный дилер 'foreign-exchange dealer'. In contexts other than laws (where a дилер is by definition a member of the stock exchange), a distinction is made between официальный дилер 'official dealer' (member of the stock exchange) and серый дилер 'grey dealer' (not a member of the stock exchange) (PODCASOVA 1994a). As in the case of Engl. *dealer*, дилер can also refer to a wholesaler: 'ознакомиться с программой и приобрести ее можно в 200 городах у 400 дилеров' (*ÉŽ* 35/95: 17). There is a difference between the legal meaning of дилер and its usage in everyday language: 'в массовом же сознании *дилер* — это и просто мелкий торговец, перепродавец' 'in mass consciousness, however, a dealer is just a petty merchant, a re-seller' (ŠAPOŠNIKOV 1997: 40–1). Engl. *dealer* has not been borrowed into Russian in its general (non-financial) sense. The adjective дилерский is commonly used in the phrases дилерская деятельность 'dealer's activity' (see above) and дилерская сеть 'dealers' network': 'из покупателей оборудования у фирмы "Прома" начала мало -помалу формироваться дилерская сеть' (*ÉŽ* 47/95: 35).[91]

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[89] 'Dealers are persons in English-speaking countries who are members of the stock exchange and complete transactions with securities. In contrast to brokers, who act as mediators, dealers carry out operations at their own expense.'

[90] 'A dealer's activity is recognized as the undertaking of buy-and-sell transactions on the dealer's own behalf and at his expense [...] A professional member of the stock exchange, who carries out a dealer's activity, is called a dealer. A dealer can only be a legal entity that is a commercial organization.'

[91] 'Little by little, from among purchasers of equipment from the firm "Proma" a dealers' network began to form.'

(vi) *Забастовка 'strike'*

The term забастовка was introduced into legal terminology with the law 'On Labour Conflicts' (ZoPRKTS 1989). It was also included in the later drafts of the 1993 Constitution and its final version (Art. 37 Para. 4 KONST. RF 1993 provides for the 'право на забастовку' 'the right to strike'). Its legal meaning is defined in commentaries (KONST. RF КОММ. 1994a: 115–19; KONST. RF КОММ. 1994b: 209–14) and dictionaries:

> Коллективное прекращение работы рабочими и служащими, предъявляющими предпринимателям или правительству экономические или политические требования (JuRÉ 1995, s. v. забастовка).[92]

The appearance of забастовка as a Russian legal term is based on a change in its meaning. Strikes have a long history in Russia. The massive workers' strikes that took place at the end of the nineteenth and at the beginning of the twentieth century involved millions of workers and finally led to the October Revolution. Their significance was recognized in officially approved publications like the BSÉ ²1949-58 (xvi. (1952), s. v. забастовка), but stress was laid on the fact that the October Revolution entirely eliminated the need for strikes in Russia,[93] and legislation did not provide for them from then on. On the contrary, they were violently suppressed. Only during the NÉP period was the possibility of legal strikes recognized (a fact that is not mentioned in BSÉ ²1949-58. xvi. (1952), s. v. забастовка). However, they were subsequently forbidden, until 1989, when a new the law on labour conflicts was passed. Despite their prohibition, strikes occurred again and again during Soviet times, and have thus remained a reality in Soviet society and post-Soviet society up to the present day. From 1930 reports on strikes were not published in the Soviet Union (FELDBRUGE et al. 1985: 426). However, GIDWITZ 1982 provides a detailed record of the major known strikes that took place in the Soviet Union from the mid-1950s. Entries for забастовка in Russian dictionaries published in Soviet times before *perestroika* always define it as something peculiar to capitalism. The definition given in UŠAKOV 1934–40 reads as follows:

> Коллективное прекращение работы с целью принудить предпринимателей к выполнению заявленных экономических требований или с целью принудить правительство, власть эксплоататорских классов к выполнению предъявленных политических требований.[94]

The use of предприниматели and эксплоататорские классы, which clearly refer to

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[92] 'Collective stoppage of work by workers and employees, presenting economic or political claims to entrepreneurs or the government.'

[93] See, for example, BSÉ ²1949-58, xvi. (1952): 269: 'Великая Октябрьская социалистическая революция разбила капитализм [...]; тем самым социально-экономическая основа для З. была ликвидирована' 'The Great October socialist revolution destroyed capitalism [...]; thereby the socio-economic cause of strikes was eliminated.'

[94] 'A collective stoppage of work with the aim of forcing the entrepreneur to agree to the economic demands put forward, or in order to force the government, the power of the exploiting classes, to acceed to the political claims raised.'

capitalism, indicates that the context of usage of забастовка is restricted to capitalist countries. In OžEGOV 1949 and OžEGOV 1960 (s. v. забастовка) the use of капиталист 'capitalist' has the same function: 'прекращение работы с целью принудить капиталистов к выполнению каких-л. требований'.[95] Similarly, in SSRLJA 1950–65, the meaning of забастовка is defined as 'способ принуждения капиталиста-нанимателя удовлетворить требования рабочих или служащих'.[96] Even as late as 1987 the meaning of забастовка was still described as 'одно из основных средств борьбы рабочего класса против капиталистической эксплуатации' (KPS 1987, s. v. забастовка).[97] OžEGOV 1988 and OžEGOV and ŠVEDOVA 1992, however, define the meaning of забастовка more neutrally as

> организованное массовое прекращение работы с целью добиться выполнения каких-л. требований,[98]

and in SSRLJA 1991– забастовка is described quite objectively as

> организованное коллективное прекращение работы на фабрике, заводе и т.п. с целью добиться от администрации или правительства выполнения каких–л. требований.[99]

Soviet encyclopaedias referred to the strikes that led to the October Revolution as забастовки, but denied the existence of such a phenomenon in Russia from then on. The massive strikes that occurred in Russia just after the October Revolution and during the following years were referred to as саботаж 'sabotage' and the strikers were called саботажники 'saboteurs' or враги народа 'enemies of the people' (for example, DEKRETY, i, pp. 226; 458–9). From October 1917 strikes occurred very frequently and were a great problem for the communist rulers. A decree released on 30 October (12 November) 1917 states that забастовка чиновников недопустима 'a strike by the functionaries is impermissible (DEKRETY, i, p. 31); but from then on, during these early years, strikes were always referred to as саботаж. In the *Malaja Sovetskaja Enciklopedija* of 1930, the entry on саботаж reads:

> К С. в капиталистических государствах прибегают рабочие в борьбе с предпринимателями. В стране пролетарской диктатуры к С. прибегают враги народа.[100]

This shows quite clearly that in these early years of Bolshevism what would now be referred to as a забастовка was described as саботаж. Саботаж was also used in broader contexts, referring not just to strikes, but also to actions of individuals or smaller groups of people which

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[95] 'Work stoppages with the aim of forcing the capitalists to agree to certain demands.'
[96] 'A means of forcing the capitalist employer to satisfy workers' or employees' demands.'
[97] 'One of the basic means in the struggle of the working class against exploitation.'
[98] 'An organized mass stoppage of work with the aim of obtaining the fulfilment of certain demands.'
[99] 'An organized collective work-stoppage in a factory with the aim of obtaining the fulfilment of certain demands from the administration or the government.'
[100] 'In capitalist countries the workers resort to sabotage in the struggle against the entrepreneurs. In the country of the dictatorship of the proletariat, the enemies of the people resort to sabotage.'

would not be referred to as забастовка. From 1930 and until very recently strikes in Russia were usually not referred to at all in official sources.[101] How the meaning of забастовка was determined becomes obvious from two articles in *Pravda* (21 June 1980, p. 4) that were printed next to each other. The first denies that strikes are taking place in Tol'jatti and puts the word забастовка in quotation marks:

> Чувство глубокого возмущения вызвали у рабочих Волжского автозавода измышления западной пропаганды о будто бы имевших место у них 'массовых забастовках'.[102]

The other reports strikes in Ottawa, Canada, and uses забастовка without quotation marks:

> Перед крупными новостройками канадской столицы [...] с понедельника несут вахту пикеты бастующих строителей. Забастовкой охвачены также 30 других объектов в Оттаве.[103]

According to the official ideology the October Revolution had eliminated the need for strikes not only in Russia, but in all people's democracies as well (BSÈ ²1949-58, xvi. (1952), s. v. забастовка, p. 269). The massive strikes that took place in Poland in summer 1980 were referred to as перерывы в работе 'interruptions of work'. In September 1980 there were articles in *Pravda* about the situation in Poland almost every day and they all used exclusively перерывы в работе, when referring to the strikes. In order to prove that забастовка has become a synonym of перерыв в работе we need a specific context in which перерыв в работе has been replaced by забастовка. Such evidence is provided in an article in *Pravda* (6 Sept. 1988, p. 4), where the Polish strikes of 1980 (at that time called перерывы в работе) are now referred to as забастовки.

Since 1988 забастовка has been used extensively in the Soviet and Russian press, including reference to Russian society (for example, *Pravda*, 18 July 1988, p. 4; *Pravda*, 12 May 1995, p. 1; *ÈŽ* 24/97: 29). Перерыв в работе is no longer used in referring to strikes; it is only used (almost ironically) when people remind themselves of Soviet times, as in the quotation from *Izvestija* (23.7.1989), which is part of the entry in SP 1992:

> Не «перерыв в работе», как стыдливо именовали мы прежде подобные происхождения, а именно забастовка — новое слово в нашем политическом словаре.[104]

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[101] In 1980 strikes occurred at automotive plants in Tol'jatti and Gor'kij, in which hundreds of thousands of workers took part. As a reaction to reports of these strikes in Western newspapers, several articles appeared in *Pravda* and other Russian newspapers denying this news: 'речь идет о статьях в "Вашингтон пост" и других газетах, поместивших заведомо лживые сообщения о том, будто имели место "массовые забастовки рабочих на советских автомобильных заводах в городах Тольятти и Горьком"' 'What we are referring to are articles in the Washington Post and other newspapers that carried deliberately false reports about the alleged occurrence of "mass strikes by workers at Soviet automotive plants in Tol'jatti and Gor'ki"' (*Pravda*, 19 June, p.5).

[102] 'A feeling of deep indignation was provoked on part of the workers of the Volga automative plant by the invention by Western propaganda of the alleged occurrence of "mass strikes" at their plant.'

[103] 'Since Monday, the pickets of the striking builders have been keeping watch in front of the large, newly erected buildings [...] in the Canadian capital. The strike involves 30 other sites in Ottawa.'

With regard to the Soviet Union, забастовка was a taboo word. Its connotative meaning obscured the fact that both забастовка and перерыв в работе actually referred to the same social phenomenon — one that occurred both in capitalist and, albeit less frequently perhaps, in socialist countries:

> Отношение к забастовке как чисто капиталистическому феномену мешает правильно понять и оценить это явление. Нам прежде всего надо 'вписать' забастовку в новое экономическое мышление, дать ей правильное объяснение (*MN* 12/89: 10).[105]

Since *perestroika* забастовка has become a widespread term: 'сегодня это слово стало обыденным — точно так же, как в 1905 году' 'today this word has become commonplace — just as in 1905' (*Pravda*, 12 May 1995, p. 1). Views of the забастовка vary, ranging from a factor intensifying today's crisis (*Pravda*, 20 June 1990, cited in SP 1992, s. v. забастовка) to a democratic means of solving conflicts (*MN* 31/89: 9). The removal from забастовка of the ideological content that was imposed on it after 1917 allows a more varied way of looking at this social phenomenon.

(vii) *Маркетинг 'marketing'*

This loan-word from Eng. *marketing* has been recorded since 1974 (BSÉ ³1969–81, xv. (1974), s. v. маркетинг). Until *perestroika*, however, it was used rarely (Ožegov does not contain the term until the edition of Ožegov and Švedova 1992) and only with reference to capitalist countries:

> Осуществляемая крупными капиталистическими компаниями система мероприятий по изучению рынка и активному воздействию на потребительский спрос с целью расширения сбыта производимых ими товаров (SIS 1980, s. v. маркетинг).[106]

Only after economic reforms gave enterprises the right to determine their own fate was маркетинг used to refer to Russian economic practice. It soon became an established term: 'термин маркетинг, похоже, прочно входит в лексикон советских коммерсантов' 'it looks as if the term marketing is firmly entering the vocabulary of Soviet entrepreneurs' (*ÉŽ* 22/90: 18). Meanwhile маркетинг is recognized as forming a major part of Russian business. The importance and relevance of this concept and its meaning are broadly discussed and investigated in newspapers (see, for instance, the article 'Где выход из кризиса? О роли

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[104] 'Not an "interruption of work", as we bashfully used to call such events, but "strike", a new word in our political vocabulary.'

[105] 'The attitude to the strike as a purely capitalist phenomenon prevents us from correctly understanding and evaluating this phenomenon. First of all, we have to introduce "strike" into the new economic thinking and provide a correct explanation of it.'

[106] 'A system of measures implemented by large capitalist companies to analyse the market and to exert active influence on consumer demand with the aim of increasing the sales of their products.'

маркетинга в деятельности предприятия', *ÉŽ* 32/96: 20), journals, textbooks, and specialized dictionaries:

> Комплексная система организации производства и сбыта продукции, ориентированная на удовлетворение потребностей конкретных потребителей и получение прибыли. Основывается на системном исследовании и прогнозировании рынка, изучении внутренней и внешней среды предприятия-экспортера, разработке стратегии и тактики поведения на рынке с помощью маркетинговых программ [...] (JURÉ 1997, s. v. маркетинг).[107]

Among the various forms of маркетинг discussed are практический маркетинг 'practical marketing' (*ÉŽ* 34/95: 9), социально-этический маркетинг 'socio-ethical marketing' (*ÉŽ* 25/95: 14), дифференциальный маркетинг 'differential marketing' (TIPOVAJA PROGRAMMA 1997, Para. 5.1.), нишевый маркетинг 'niche marketing' (ibid.), and многоуровневый маркетинг 'multi-level marketing' (*ÉŽ* 40/96: 31). The adjective маркетинговый 'marketing' was first recorded in 1983 (NOVYE SLOVA–80 1997, s. v. маркетинговый). It is used in many widespread expressions such as маркетинговые исследования 'marketing investigations' (*ÉŽ* 29/95: 24), маркетинговая деятельность 'marketing activity' (*ÉŽ* 24/96: 22), маркетинговые центры 'marketing centres' (*ÉŽ* 31/95: 41), маркетинговая политика 'marketing policy' (*ÉŽ* 25/95: 14; *MN* 29/96: 20), маркетинговая стратегия 'marketing strategy' (*ÉŽ* 47/95: 9), маркетинговый подход 'marketing approach' (*ÉŽ* 25/95: 14), маркетинговая программа 'marketing programme' (*ÉŽ* 47/95: 9), and маркетинговые мероприятия 'marketing measures' (*ÉŽ* 25/95: 17). Other derivatives include маркетинг-центр 'marketing centre' (*ÉŽ* 31/95: 2), макромаркетинг 'macromarketing' (*RÉŽ* 11–12/96: 62), тест-маркетинг 'test marketing' (*ÉŽ* 25/95: 17), директ-маркетинг 'direct marketing' (*ÉŽ* 38/95: 23), and маркетинг-директор 'marketing director' (HAUDRESSY 1992, s. v. маркетинг). The neologism маркетолог 'marketing specialist' was first attested in 1995, but has not yet been recorded in any dictionary:

> В рыночной экономике маркетологом, конечно, невольно становится каждый предприниматель, поскольку теперь нельзя работать без учета требований рынка, но успех на нем приходит к профессионалам (*ÉŽ* 7/95: 32).[108]

Other examples of this word are the articles 'Болит голова маркетолога' (*ÉŽ* 49/95: 36) and 'Стратегия маркетингового исследования' (*ÉŽ* 29/95: 24). The draft of a programme on the reform of enterprises published by the Ministry of Economics and presented to the Russian

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[107] 'A complex system of the organization of production and sales of products, directed towards the satisfaction of the needs of specific consumers and making profit. It is based on the systemic analysis and prognosis of the market, the analysis of the interior and exterior environment of the enterprise exporting, the elaboration of a strategy and tactics of conduct on the market with the help of marketing programmes [...].' See also the entries on маркетинг in ÉP 1994, TBS 1996, and SÉS 1997.

[108] 'In a market economy, naturally, every entrepreneur involuntarily becomes a marketologist, since now one should not work without taking into account the demands of the market, but success comes to the professionals.'

government (TIPOVAJA PROGRAMMA 1997) provides for the создание отдела маркетинга 'founding of a marketing-department' (Para. 4. 1.) and the implementation of маркетинговые исследования 'marketing investigations'(Para. 4. 2), and recommends consultation with специализированные маркетинговые компании 'specialized marketing companies' (ibid.).

(viii) *Инвестиция 'investment'*

This term is a borrowing from Germ. *Investition*, which was first recorded in 1934 (SSRLJA 1950–65, s. v. инвестиция). Until *perestroika* and the beginning of economic reforms in Russia, it was used with reference only to the economies of capitalist countries:

> Инвестиции — в капиталистич. странах вложения капитала в промышленное, с.-х. и др. предприятия, а также в ценные бумаги с целью получения прибыли, дивиденда или др. видов дохода (FKS 1961, s. v. инвестиции).[109]

Because the 'aim to gain profit' was regarded as alien to the Soviet economic system, this term was (officially) not used with respect to the Soviet Union: 'в социалистической экономике существуют лишь реальные вложения средств. В СССР термин И. не употребляется' (FKS 1961, s. v. инвестиции).[110] Instead, the term капитальные вложения (or капиталовложение, капвложение) 'capital investment' was applied, referring only to fixed assets, i.e. financial means spent for the construction of new, or the re-equipment of existing, buildings, technical equipment etc. (FKS 1961, s. v. капитальные вложения). During the first years of *perestroika* инвестиция usually referred only to the economies of capitalist countries; gradually it was also applied to Soviet and Russian investments (FERM 1994: 166). In 1991 инвестиция was introduced to Russian legislation as a basic term in the law 'On Investment Activity in the RSFSR':

> Инвестициями являются денежные средства, целевые банковские вклады, паи, акции и другие ценные бумаги, технологии, машины, оборудование, лицензии, в том числе и на товарные знаки, кредиты, любое другое имущество или имущественные права, интеллектуальные ценности, вкладываемые в объекты предпринимательской и других видов деятельности в целях получения прибыли (дохода) и достижения положительного социального эффекта (Art. 1 Para. 1 ZoID 1991).[111]

The meanings of Engl. *investment* and Germ. *Investition* comprise all kinds of investment, including financial and physical investment. Instead of extending the meaning of капиталовложение to cover not only physical, but also financial investment, the meaning of инвестиция has been changed to include reference to Russia. The phrasing of the last part of

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[109] 'In capitalist countries investment into industrial, agricultural, and other enterprises, and also into securities with the intention to gain profit, dividends, or other forms of income.'

[110] 'In the socialist economy exists only real investment of resources. In the Soviet Union the term investment is not used.'

[111] 'Monetary assets, special-purpose bank deposits, shares, stocks, and other securities, technology, machines, equipment, licences, including rights to trade marks, credits, and any other property or property rights, and intellectual valuables contributed to objects of entrepreneurial and other typs of activity for the purposes of obtaining a profit (revenue) and attaining a positive social effect are investments.'

the above article, where 'получение прибыли' 'gaining profit' is linked with 'достижение положительного социального эффекта' 'achieving a positive social effect', illustrates the change in meaning of инвестиция that has taken place, making it possible to introduce this term into Russian legislation. Another example of its usage in legislation is the law 'On Foreign Investment in the RSFSR' (Zoll 1991), where the term иностранные инвестиции 'foreign investment' is defined in Art. 2.

(ix) *Инвестор 'investor'*

This term is first attested in SRJA 1957–61 (s. v. инвестор). Until the beginning of *perestroika*, инвестор was used to refer only to capitalist countries. With respect to the Soviet Union, вкладчик 'depositor' was used (FKS 1961, s. v. вкладчики). After the beginning of economic reforms, инвестор began to be used with respect to Russia as well (FERM 1994: 166): 'но способен ли он предоставить соответствующий кров зарубежным и отечественным инвесторам?' 'but is he able to provide foreign and native investors with an appropriate shelter?' (*Izvestija*, 9/11–91) At the same time, вкладчик took over the meaning of инвестор. Whereas before, it had referred to the owner of financial resources deposited in a bank or savings bank, it now acquired a second meaning 'лицо, вкладывающее деньги в ценные бумаги (инвестор)' 'a person, who invests money in securities (investor)' (TBS 1996, s. v. вкладчик; see also FERM 1994: 166). However, in legislation the term инвестор was given preference. It was first introduced into legislation with the 1991 law 'On Investment Activity':

> Инвесторы — субъекты инвестиционной деятельности, осуществляющие вложение собственных, заемных или привлеченных средств в форме инвестиций и обеспечивающие их целевое использование (Art. 2 Para III ZoID 1991).[112]

Whereas вкладчик may refer to a natural person or legal entity investing in an enterprise, or to a natural person or legal entity having an account at a bank, инвестор is unambiguous in that it has only the first of these two meaning.

(x) *Инфляция 'inflation'*

This term was first recorded in 1934 (SSRLJA 1950–65, s. v. инфляция). Before *perestroika* in official publications such as dictionaries, encyclopaedias, and specialist literature published by the Academy of Sciences it related only to inflation in capitalist countries. In those contexts it was often explicitly stated that the phenomenon of инфляция occured only in capitalist countries. Typical is the entry in Ožegov 1960 (s. v. инфляция), where the only example of usage given is 'инфляция характерна для экономики капиталистического

[112] 'Investors are subjects of investment activity effectuating the investment of their own, borrowed, or attracted assets in the form of investments and ensuring their special-purpose use.'

общества'.[113] The article in BSÈ ³1969–81, x. (1972), s. v. инфляция, also presents инфляция as an inherent feature of capitalist economies (and a 'means of capitalist exploitation of labour'), whereas inflation in socialism is named with the euphemism избыток денег 'surplus of money' and described as a temporary phenomenon, created only by exceptional circumstances such as war. This argument was used to justify the two monetary reforms in the Soviet Union of 1922–4 and 1947 (Nıqulɛux 1990: 117). After *perestroika* the use of инфляция was reorientated towards post-Soviet Russia (see, for instance, the article 'Наша инфляция' 'our inflation', *MN*, 15 Jan. 1990): 'забытое и запретное слово стало популярным и модным' 'the forgotten and forbidden word has become widespread and fashionable' (Zemcov 1989: 155). It did not lose its negative connotation, but was no longer regarded as something peculiar only to capitalist countries; on the contrary, it was now used primarily to characterize the economic situation in Russia after *perestroika* and the beginning of the reforms: 'оно [i.e. the word инфляция, A.R.] предстало в образе [...] повинного во всех несчастьях и бедах советской экономики' 'the word inflation appeared as being guilty for all the misfortunes and calamities of the Soviet economy' (Zemcov ibid.). Инфляция has been included in economic and legal dictionaries (JurÈ 1997, s. v. инфляция; ÈP 1994, s. v. инфляция) and refers to the Russian economic system no less than to that of any other country. Caused by the economic situation in the early 1990s, the terms гиперинфляция (borrowed from Engl. *hyperinflation* in 1990, see SP 1992, s. v. гиперинфляция) and галопирующая инфляция 'galloping inflation' became widespread (for example, *MN* 20/90: 6; ÈP 1994, s. v. инфляция). This expression is common to various European languages (for example, Fr. *inflation galopante*, Engl. *galloping inflation*, Germ. *galoppierende Inflation*, Span. *inflación galopante*) and the precise source of the Russ. calque галопирующая инфляция cannot easily be established. The Glossary 1963 gives Fr. *inflation galopante*, but Russ. необузданная инфляция for *run-away inflation*. Kotelova 1995 has an example of usage of 'инфляция [...] галопирует' of 1970, but I have not found an example of галопирующая инфляция dating from before 1990. In recent years the situation relaxed somewhat: 'инфляция перестала быть «гипер» и продолжает хиреть' 'inflation has ceased to be "hyper" and continues to decay' (*MN* 17/96: 13).

(xi) *Клиринг 'clearing'*

Most orders to make payments to third parties are generally processed through the *clearing system* (клиринговая система): they are paid and collected by the banks of the payer and payee and a daily account is drawn up of all mutual credits and debits between the participants. A balance of the net sum due from each participant to each of the others is produced and only that

[113] 'Inflation is characteristic of the economy of the capitalist society.' See also the series of articles published in 1976 and 1977 in *MÈiMO*, investigating the phenomenon of inflation in numerous capitalist countries, under the heading 'Инфляция — неотъемлемый элемент капиталистической экономики' 'Inflation is an inalienable element of capitalist economy' (No. 11/76; 2/77: 98–111; 3/77: 101–12; 4/77: 109–21).

sum is transferred between the banks (BRADGATE 1995: 579). The most recent clearing system introduced in Russia is described in the article 'Клиринг — "в реальном времени"' (*ÉŽ* 15/96: 4). According to SSRLJA 1950–65 клиринг was first recorded in 1949 as a technical term. In Soviet times before 1986 it referred to

> система расчетов за проданные товары, ценные бумаги и оказанные услуги, основанная на зачете взаимных требований сторон, участвующих в расчетах (FKS 1961, s. v. клиринг).[114]

However, the term клиринг referred not only to transactions in capitalist countries, but also in the Soviet Union, where the concept was said to have acquired new content:

> Форма их [клиринговых расчетов, A.R.] заимствована у капитализма, но получила новое содержание: преодолены узкие рамки банковского клиринга; вместо расчетов, производимых между банками, большое распространение получают расчеты между предприятиями и организациями различных отраслей хозяйства; расчеты производится на основе хозяйственных отношений, вытекающих из народнохозяйственных планов, носят плановой характер и в свою очередь содействуют успешному выполнению предприятиями планов производства и обращения товаров (FKS 1961, s. v. клиринг).[115]

The first Russian law to introduce the term клиринг was the federal law 'On the Securities Market' (FEDZORCB 1996). In Art. 8, which regulates *clearing* ('деятельность по определению взаимных обязательств (клиринг)'), клиринговая деятельность 'clearing activity' is defined as 'деятельность по определению взаимных обязательств [...] и их зачету по поставкам ценных бумаг и расчетам по ним' 'activity to determine the mutual obligations [...] and their balance from the supply of securities and payments with them'. (In this article, the term клиринговая организация 'clearing organization': 'организация, осуществляющая клиринг' is also used.) In her discussion of the concept of расчетный фьючерс ROCHINA 1997: 57 suggests that this definition of клиринг might soon have to be expanded to include also transactions connected with transactions in securities. According to the VREMENNOE POLOŽENIE 1991 the adjective клиринговый or other expressions derived from клиринг can be used as part of the name of an enterprise or for advertisement only by legal entities that have a licence to carry out clearing operations (BJuS 1997, s. v. клиринг).

The distinction between two basic kinds of clearing – *bank clearing* and *currency clearing* – is reflected in Russian terminology, which distinguishes between межбанковский клиринг and валютный клиринг (ÉP 1994, s. v. клиринг межбанковский; клиринг валютный). Before

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[114] 'An account system for sold goods, securities, and rendered services, based on the payment of mutual claims, taking part in the accounts.' The plural form клиринги 'clearings' was also used, see GLOSSARY 1963: 134–5, where 'clearings' ('means of payment used for clearing settlements') is rendered as банковские клиринги; see also ÉÉ 1972–80, s. v. клиринги.

[115] 'The form was borrowed from capitalism, but it acquired a new content: the narrow limits of bank clearing are overcome; instead of accounts carried out between banks, accounts between enterprises and organizations of various economic branches became widespread; the accounts are carried out on the basis of economic relationships resulting from the plans pertaining to the national economy, they are of planned nature and in their turn contribute to the successful fulfilment of the production plans and the circulation of goods by the enterprises.'

perestroika the term валютный клиринг was used to refer not only to clearing agreements between the Soviet Union and capitalist countries, but also between the Soviet Union and other socialist countries:

> Особенно широкое применение валютный клиринг получил в расчетах между СССР и др. социалистич. странами. Отличительная особенность этого клиринга состоит в его плановом характере. В клиринговых расчетах между социалистич. странами находит отражение процесс развития их внешнеторговых отношений, основанных на более рациональном использовании экономич. возможностей и естественных богатств каждой страны и международном социалистич. разделении труда (FKS 1961, s. v. клиринг).[116]

Since *perestroika*, when referring to Russian banking, the meaning of клиринг has lost the connotation of being shaped by the system of a planned economy and of thus being different from *clearing* in market economies, and клиринг is applied indiscriminately to Russian transactions as well as those in other countries.

The place where cheques and other orders are cleared has traditionally been called a *clearing house* in English (Braidgate 1995: 577). This expression appeared in the Russian language as early as 1866, borrowed as клиринг-гаус or клиринс-гаус (Aristova 1978: 96). Before *perestroika* the term расчетная палата was used for *clearing house* (ĖĖ 1972–80, s. v. клиринги). However, this term has now been replaced by клиринговая палата: 'клиринговые палаты ускорят товарооборот'.[117] The adjective клиринговый is also used in the phrase клиринговый центр 'clearing centre' ('решение этой проблемы с помощью клиринговых центров, учетно-вексельных контор' 'a solution of this problem with the help of clearing centres, registration-exchange offices' — *ĖŽ* 20/96: XXIII). The adjective has been introduced into legislation. It is used in the law 'On Commodity Exchanges':

> Биржа в целях обеспечения исполнения совершаемых на ней форвардных, фьючерсных и опционных сделок обязана организовать расчетное обслуживание путем создания расчетных учреждений (клиринговых центров) [...] или заключения договора с банком или кредитным учреждением об организации расчетного (клирингового) обслуживания (Art. 28 Para. 1 ZoTB 1992).[118]

In Položenie 1/1998 клиринговый центр 'clearing centre' is defined in connection with the term централизованный клиринг: 'операции [...] клирингового центра, то есть

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[116] The use of currency clearing became particularly widespread with regard to accounts between the Soviet Union and other socialist countries. The distinguishing peculiarity of this kind of clearing consists in its planned character. In clearing accounts between socialist countries the process of developing their foreign trade relationships finds expression which is based on a more rational usage of the economic possibilities and the natural resources of every country and the international socialist division of labour.'

[117] 'Clearing houses will speed up commodity circulation.' This is the heading of an article, in which the need for a 'центральная клиринговая вексельная палата' is expressed (*ĖŽ* 20/96: XXIII). For examples of usage, see also ARBĖS 1995 (s. v. clearing house), and ĖP 1994 (s. v. клиринг чековый).

[118] 'In order to ensure the fulfilment of forward, future, and option transactions concluded in the stock exchange, the stock exchange is obliged to organize an accounting service by setting up accounting institutions (clearing centres) or by concluding an agreement with a bank or other credit institution about the organization of an accounting (clearing) service.'

организовывать централизованный клиринг обязательств между профессиональными участниками рынка ценных бумаг [...]' 'operations of the clearing centre, i.e. to organize the centralized clearing of the obligations between the professional members of the market of securities' (point 2, Spiegelstrich 2). Another expression commonly used is клиринг-банк 'clearing bank'. Originally, a *clearing bank* (клиринговый банк) was a bank that belonged to the London clearing system (ARBÈS 1995, s. v. clearing bank), but now клиринг-банк is used to describe a bank that is a participant in a Russian clearing system (TBS 1996, s. v. клиринг-банк, BÈS 1994, s. v. клиринг-банк).

Even though the terms клиринг and валютный клиринг have been in use since the 1950s, the first contexts in which these terms occurred were much more restricted than they are today. This is due to the transformation of the economic and legal system in Russia, leading to the reintroduction of stock exchanges and banks, and the further development of their commercial activities, which made it necessary to develop the concept of clearing. The implementation of a uniform clearing system in legislation is regarded as a means to create what has been called a civilized market in Russia: 'разработка [...] концепции единой клиринговой системы должна приблизить создание в России цивилизованного рынка' 'the working-out of a concept of a single clearing system must bring Russia nearer to the creation of a civilized market' (*ÈŽ* 26/97: 5).

(xii) *Конкуренция 'competition'*

This term is first attested in 1881 (Dal' 1880–2, s. v. конкурс), but it was first introduced into Russian legal terminology in 1988, when the law 'On Cooperatives' was adopted, which described 'стимулирование развития экономического соревнования, конкуренции на рынке товаров, работ и услуг' 'stimulation of the development of economic emulation, of competition in the market of goods, work, and services' as one of the aspects of the activity of cooperatives (Art. 5 ZoKoop SSSR 1988). From then on, in addition to the synonyms соревнование and состязательность the term конкуренция was used more and more frequently both in the press and in normative acts (Varlamova 1996: 10). The law 'On Competition and the Restriction of Monopolistic Activity on Commodity Exchanges' defines the meaning of конкуренция as

> состязательность хозяйствующих субъектов, когда их самостоятельные действия эффективно ограничивают возможности каждого из них воздействовать на общие условия обращения товаров на данном рынке и стимулируют производство тех товаров, которые требуются потребителю (Art. 4 ZoK 1991/95).[119]

[119] 'Competition between economic subjects, when their independent actions effectively restrict the possibilities of each of them to influence the general conditions of circulation of goods in a given market and stimulate the production of those goods that are demanded by the consumer.'

The principle of конкуренция is also embodied in the 1993 Constitution: 'В Российской Федерации гарантируется [...] поддержка конкуренции' 'in the Russian Federation the support of competition is guaranteed' (Art. 8 Para. 1 KONST. RF 1993). The entries on конкуренция in legal dictionaries such as JÈŠ 1997 (s. v. конкуренция) and JURÈ 1995 (s. v. конкуренция) describe it as a basic economic principle and stress its positive effects for the economy and consumer interests ('соперничество в области качества товара' 'rivalry in the field of the quality of goods', 'улучшение и обновление товарного ассортимента' 'improvement and renewal of the range of goods', 'предоставление комплексных услуг' 'offering of complex services', 'совершенствование системы сбыта товаров' 'improvement of the system of the sale of goods' — JURÈ 1997, s. v. конкуренция; see also *ÉŽ* 23/90: 20). The positive connotation of конкуренция is illustrated by the following contexts: благотворительное влияние конкуренции 'the beneficial influence of competition' (*ÉŽ* 23/96: 10); конкуренция — вот движущая сила рынка 'competition — the driving force of the market' (*ÉŽ* 41/96: 1). In contrast, official sources published before *perestroika* had stressed the negative effects of конкуренция, in describing it as an external force, leading

> к вытеснению мелкого производства крупным, к расслоению мелких товаропроизводителей, подавляющее большинство которых разоряется, превращаясь в пролетариев и полупролетариев (PÈ 1972–80, ii., s. v. конкуренция).[120]

In Russian monolingual dictionaries published before *perestroika* конкуренция is described as something peculiar to capitalist countries. The statement of meaning in UŠAKOV 1934–40, for example, reads: 'состязание, борьба на рынке различных участников капиталистического производства или торговли'.[121] Similarly, expressions used in the definition of конкуренция in SSRLJA 1950–65 such as 'борьба между капиталистами за получение наивысшей прибыли' 'struggle between capitalists for making the highest profit' indicate the range of contexts in which конкуренция may be applied as restricted to capitalist countries. This restriction becomes even more obvious when the lexicographic examples are analysed. OŽEGOV 1960 and OŽEGOV 1978 give only one: 'нездоровая капиталистическая конкуренция' 'unhealthy capitalist competition' (s. v. конкуренция). In SSRLJA 1950–65 three examples are given. The first is a quotation from Engels ('конкуренция есть наиболее полное выражение существующей в современном буржуазном обществе войны всех против всех'),[122] the second a quotation from Lenin ('[...] конкуренция и монополии существенны для империализма [...]'[123]), and the third a quotation from Gor'kij ('конкуренция и

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[120] '[...] to the ousting of small production by large production, to the stratification of small goods producers, of which the overwhelming majority is brought to ruin and transformed into proletarians or half-proletarians.'
[121] 'Contest, fight between different participants in the capitalist production or trade.'
[122] 'Competition is the fullest expression of the war of all against all in contemporary bourgeois society.'
[123] 'Competition and monopolies are fundamental in imperialism.'

социалистическое соревнование понятия не совместимые ибо враждебны в корнях своих').[124] The expressions 'буржуазное общество' 'bourgeois society', 'война всех против всех' 'war of all against all', 'монополии' 'monopolies', 'империализм' 'imperializm', all negatively connotated as referring to bourgeois, capitalist countries, indicate a restriction of contexts of usage and assign конкуренция the same negative connotation of belonging exclusively to the bourgeois, anti-socialist bloc of countries. The quotation from Gor'kij suggests that the expression 'социалистическое соревнование' 'socialist emulation' functions as a counter-concept to конкуренция. This is supported by the entry in UšAKOV 1935–40, where the statement of meaning of социалистическое соревнование is followed by a quotation from Stalin:

> Социалистическое соревнование и конкуренция представляют два совершенно различных принципа. Принцип конкуренции: п о р а ж е н и е и с м е р т ь одних, победа и господство других. Принцип социалистического соревнования: товарищеская п о м о щ ь отставшим со стороны передовых, с тем чтобы добиться о б щ е г о подъема (emphasis in the original).[125]

The intention was to reject the concept of конкуренция, and with it the whole of bourgeois society, and, at the same time, to propagate the concept of социалистическое соревнование (often shortened to соцсоревнование) and with it the whole of communist society. ZEMCOV (1989: 378) views this practice as 'стремление найти замену капиталистической конкуренции, попытка искусственная и с самого начала бесплодная' 'the striving to find a substitute for the capitalist competition, an artificial and from the very outset futile attempt'. In order to establish verbal oppositions such as конкуренция vs. социалистическое соревнование, the adjective социалистический was frequently used: частная собственность 'private ownership' vs. социалистическая собственность 'socialist ownership', буржуазное право 'bourgeois law' vs. социалистическая законность 'socialist legality'. When *perestroika* began and words that had been taboo with respect to the Soviet Union were to be introduced into legal terminology they were sometimes provided with the adjective социалистический in order to make their introduction easier: рынок 'market' was first introduced as социалистический рынок 'socialist market'; similarly, the concepts of плюрализм 'pluralism' and правовое государство 'legal state' were first introduced as социалистический плюрализм 'socialist pluralism' (BROWN 1992: 23–5) and социалистическое правовое государство 'socialist legal state' respectively. Eventually, the adjective социалистический was dropped in all cases. The opposition between конкуренция and социалистическое

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[124] 'Competition and socialist emulation are incompatible concepts for they are hostile to each other at their roots.'

[125] 'Socialist emulation and competition represent two completely different principles. The principle of competition is the d e f e a t and the d e a t h of some, and the victory and power of others. The principle of socialist emulation is for those who are foremost to comradely h e l p those who are backward in order to achieve c o m m o n development.'

соревнование was maintained in official sources as late as 1987: 'с ликвидацией частной собственности на средства производства и установлением общественной собственности на средства производства происходит смена конкуренции *социалистическим соревнованием* [...]' 'with the abolition of private ownership of the means of production and the establishment of public ownership competition is being replaced by *socialist emulation*' (KPS 1987, s. v. конкуренция; original emphasis). In OŽEGOV 1988 and OŽEGOV and ŠVEDOVA 1992 the lexicographic example of конкуренция previously used, 'нездоровая капиталистическая конкуренция', has been omitted. In OŽEGOV 1988, the expression социалистическое соревнование still appears; in OŽEGOV and ŠVEDOVA 1992, however, it is no longer mentioned. Because of the change of meaning of конкуренция, which now refers to Russian society as well as to capitalist countries, its former counter-concept has become superfluous.

The legal meaning of конкуренция is only beginning to evolve in Russian law. The legal regulation of конкуренция in PROGRAMMA 1992, for example, is of a merely declarative character, and the law 'On Competition and the Restriction of Monopolistic Activity on Commodity Exchanges' (ZoK 1991/95), even in its revised version of 1995, does not succeed in developing a comprehensive regulation of the concept of конкуренция (VARLAMOVA 1996: 10–11). Legal scholars still discuss how various foreign (continental European and Anglo American) regulations of the concept of competition could be used in developing a concept of конкуренция suitable to address the problems posed by the pecularitics of the Russian economic system in the post-*perestroika* period (for example, VARLAMOVA 1997). In legislation the concept of конкуренция is regulated as part of антимонопольное законодательство 'antimonopolistic legislation', which aims at limiting монополистическая деятельность 'monopolistic activity', thereby securing the principle of competition: 'запрещаются действия хозяйствующего субъекта [...], которые имеют либо могут иметь своим результатом существенное ограничение конкуренции [...]' 'actions of an economic subject that result or might result in a substantial restriction of competition are forbidden' (Art. 5 Para. 1 ZoK 1991/95; see also Arts. 6–8 ZoK 1991/95). The linguistic change that has taken place within the semantic field of соревнование, состязание, and конкуренция is that since *perestroika* конкуренция has aquired a broader meaning than it had during the Soviet period, thereby replacing the other two terms.

(xiii) *Концерн 'concern'*

Until the late 1980s концерн was applied only to associations of enterprises in capitalist countries. In OŽEGOV 1988 (s. v. концерн) this is expressed by adding the adjective капиталистический 'capitalist':

> Монополистическое объединение капиталистических предприятий под общим финансовым руководством.[126]

In OžEGOV and ŠVEDOVA 1993 (s. v. концерн) the meaning is defined without this connotation. An example for the usage of концерн before *perestroika* is VOLKOV 1980. The GLOSSARY 1963: 80–1 refers the use of terms such as концерн only to 'Western countries' (see remark on p. 73). In 1988 концерн began to be applied to Soviet enterprises as well (NOVYE SLOVA-80 1997, s. v. концерн) and in 1990, with the law 'On Enterprises and Entrepreneurial Activity', the term was introduced into Russian legislation:

> Предприятия могут объединяться в союзы, ассоциации, концерны [...] и другие объединения. Объединения создаются на договорной основе в целях расширения возможностей предприятий в производственном, научно-техническом и социальном развитии (Art. 13 Para. 1 ZoP 1990).[127]

The legal meaning of концерн corresponds to that of Engl. *concern* insofar as in both cases the association is always created on the basis of a contract, whereas a холдинг and a *holding* usually gain control by acquiring a majority of shares. The definition of концерн given in KITAJGORODSKAJA 1996: 182 is therefore not correct: 'концерн покупает какую–то часть пакета акций этих самостоятельных предприятий и таким образом устанавливает над ними финансовый контроль' 'a concern buys some part of the shares of these independent enterprises and thereby establishes financial control over them'. The term финансово-промышленная группа 'financial-industrial group' is sometimes used in legislation as a synonym of концерн (Art. 2 FEDZOFINPROG 1995).

(xiv) *Hoy-xay 'know-how'*

Engl. *Know-how* is the information, practical knowledge, techniques, and skill required for the achievement of some practical end, particularly in industry or technology. It is considered incorporeal property, in which rights can be bought and sold (WALKER 1980, s. v. know-how). Russ. Hoy-xay 'know-how' was first recorded in 1970 (NOVYE SLOVA-70 1984, s. v. ноу-хау, and KOTELOVA 1995, s. v. ноу-хау). From then on it was used as a synonym of научно-техническая информация 'scientific-technical information' in specialist literature analysing the economic and legal system of capitalist countries: 'платежи за пользование научно-технической информацией, «ноу-хау»' (SYSOEV 1975: 135).[128] Hoy-xay was not used with respect to *know-how* in the Soviet Union, except when referring to its foreign trade relations (see RATHMAYR 1991: 208, who does, however, not mention the use of ноу-хау as referring to

[126] 'A monopolistic association of capitalist enterprises under a common financial leadership.'
[127] 'Enterprises may combine into unions, associations, concerns [...] and other associations. Associations are created on a contractual basis for the purpose of expanding the possibilities of enterprises in production, scientific-technical, and social development.'
[128] 'Payments for the usage of scientific-technical information, "know-how".'

know-how in capitalist countries). Consequently, it was not used in Russian legal documents, except international contracts between the Soviet Union and capitalist countries (JurÈS 1987, s. v. ноу-хау). Since the introduction of economic reforms in the late 1980s, however, the term has become much more frequent, referring to *know-how* in all countries, including Russia (an example is the article headed 'Передача ноу-хау в уставный фонд дочернего предприятия' 'the transfer of know-how into the statutory capital of a subsidiary', *ÈŽ* 2/98: 20). It is usually used as an indeclinable singular noun, but the plural also occurs: коммерческие ноу-хау 'commercial know-hows' (*ÈŽ* 51/95: 35); другие ноу-хау 'other know-hows' (*ÈŽ* 26/96: 22); 'коммерческие «ноу-хау» пользуются спросом' 'commercial know-hows are in demand' (*ÈŽ* 8/97).

The first law to introduce ноу-хау as a legal term was the 1991 'Fundamentals of Civil Legislation of the SSSR and the Republics', where its meaning is defined as техническая, организационная или коммерческая информация, составляющая секрет производства 'technical, organizational, or commercial information, which represents a production secret' (Art. 151 Osnovy 1991); the possessor of such information has the right to be protected from unlawful utilization of the ноу-хау by a third person under the following conditions: (1) эта информация имеет действительную или потенциальную коммерческую ценность в силу неизвестности ее третьим лицам, (2) к этой информации нет свободного доступа на законном основании, (3) обладатель информации принимает надлежащие меры к охране ее конфиденциальности (ibid.)[129] From this article it appears that, although ноу-хау is recognized as a legal category, the legal interests of its possessor are protected only under specific conditions. The legal transfer of know-how is carried out in the form of a contract (договор о передаче ноу-хау), regulating the details of the transfer, the period of validity of the contract, the price and order of payment, the obligation of both sides to confidentiality, and, in particular, all elements of the information itself. This is necessary, since a договор о передаче ноу-хау transfers the information itself, in contrast to a лицензионный договор, transferring the right to make use of it.

While ноу-хау continued (and continues) to be used in legislation (for example, Art. 7 Para. 2 (a) ZoNDS 1991; Para. 4. 7. Tipovaja programma 1997), legal practice (for instance, the model of a договор о передаче ноу-хау 'contract of transfer of know-how' in Tichomirov 1996: 493–6; see also Vackovskij 1997: 46), legal dictionaries (JurÈ 1995 s. v. ноу-хау; SKомм 1996 s. v. ноу-хау; TBS 1996 s. v. ноу-хау), and specialized newspapers (see, for example, the article headed 'Цена ноу-хау' 'the price of know-how', *ÈŽ* 1/95: IX; see also *ÈŽ* 37/95: 29; 49/95: 33; 51/95: 35; 26/96: 22), the legislator chose to replace it in the 1994 Civil

[129] '(1) This information has an actual or potential commercial value, because of its being unknown to third persons; (2) this information is not freely accessible on a legal basis; (3) the possessor of the information takes measures to ensure its confidentiality.'

Code by the Russian term коммерческая тайна 'commercial secret'. Art. 139 GK RF I 1994 repeats verbatim the definition given of ноу-хау in Art. 151 OSNOVY 1991, and adds the three conditions, which here form part of the legal definition of коммерческая тайна. In this respect, the meaning of ноу-хау differs from that of коммерческая тайна. Interestingly enough, ноу-хау is usually printed in quotation marks when used in legal texts, despite the fact that by now it has become a widespread term. No other English loan-words used in legal texts are ever printed in quotation marks.

(xv) *Дочернее общество 'subsidiary'*

This term was borrowed in the 1950s from Germ. *Tochtergesellschaft* and referred to the subsidiary of a company in a capitalist country:

> Дочернее общество (в к а п и т а л и с т и ч. с т р а н а х) — акционерное общество, формально самостоятельное, но фактически находящееся в полном подчинении другого акционерного общества — «матери», которому принадлежит большая часть акций Д. о. [...]' (BSÈ ²1949–58, xv. (1952)).[130] (original emphasis)

Дочернее общество (or the expressions дочернее предприятие, дочерняя компания) was used throughout the Soviet period in specialist literature investigating the economic and legal system of capitalist countries: 'в США через свою дочернюю компанию «Хэмбро аутомотив» он финансирует импорт автомашин английской компании «Бритиш мотор корпорейшнз»' (LJUDMILIN 1963: 125–6).[131] After *perestroika*, when economic reforms introduced joint-stock societies and other forms of capitalist enterprises into the Russian legal system, дочернее общество lost its 'bourgeois' connotation and now refers to companies in Russia as well as in any other country. Until *perestroika* and the economic reforms it was used mostly in the context of specialist literature, whereas today it is a widespread term. The first Russian law to introduce дочернее общество was the statute 'On Joint-Stock Societies and Companies with Limited Liability':

> Общество может иметь дочерние общества [...] Дочерним обществом является общество, в котором приобретено 50 процентов акций плюс одна (Art. 149–50 POLOŽENIE 6/1990).[132]

Meanwhile дочернее общество has become a well-established term in Russian legislation, defined in basic laws such as the 1994 Civil Code (Art. 105 Para. 1 GK RF I 1994) and the federal law 'On Joint-Stock Societies' of 1996 (FEDZoAO 1996). Its meaning is reminiscent of that of Germ. *Tochtergesellschaft* — a company which is controlled by another (parent) company (CREIFELDS 1992, s. v. Muttergesellschaft):

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[130] 'Subsidiary (in c a p i t a l i s t c o u n t r i e s) — a joint-stock company, formally independent, but in fact subordinate to another joint-stock company, the 'mother', who owns the majority of shares.'

[131] 'With his subsidiary "Hambro automotiv" he finances the import of motor vehicles of the English company "British Motor Corporation".' See also MAMUKJAN 1970: 30.

[132] 'A company may have subsidiaries [...] A subsidiary is a company in which 51 per cent of the shares have been acquired.'

> Общество признается дочерним, если другое (основное) хозяйственное общество (товарищество) в силу преобладающего участия в его уставном капитале, либо в соответствии с заключенным между ними договором, либо иным образом имеет возможность определять решения, принимаемые таким обществом (Art. 6 Para. 2 FEDZOAO 1996).[133]

However, in Russian law a distinction is made between different types of companies that are controlled by another company, in particular between дочернее общество and зависимое общество 'dependent company'.

(xvi) *Материнское общество 'parent company'*

This term was borrowed from Germ. *Muttergesellschaft* or Fr. *société mère* in the 1970s and referred then to a *parent company* in a capitalist country. During the Soviet period before *perestroika* the term was used only in specialist literature investigating the legal and economic system of capitalist countries (for example, CHVOLNIK 1975: 95; VOLKOV 1980: 134):

> Именно коммерческие банки и их заграничные учреждения осуществляют [...] перевод прибылей от заграничных [...] дочерних [...] предприятий к материнским компаниям, расположенным на территории США (ACKASOV 1978: 112).[134]

Sometimes, instead of материнское общество, it was called мать 'mother' (for example, BSÉ ²1949–58, xv. (1952), s. v. дочернее общество). Since *perestroika*, when economic reforms introduced various forms of capitalist enterprises to Russian law, a parent company in legislation has been called основное общество (Art. 105 Para. 1 GK RF I 1994; Art. 6 Para. 1 FEDZOAO). However, материнская компания is used in other legal texts and dictionaries (for instance, TBS 1996, s. v. компания материнская) and a draft of the new taxation code (NALOGK–PROEKT 1997) used the term материнское предприятие (Art. 36). According to an article in *ÉŽ* 6/98: 3 the terms материнское предприятие, сестринское предприятие, дочернее предприятие have meanwhile been removed from the draft of the new taxation code.

(xvii) *Рынок 'market'*

During the Soviet period the economic term рынок was primarily perceived as a concept restricted to capitalist countries. Due to the 'effort of several generations of theorists, politicians, and propagandists' the meaning of рынок was closely associated with stereotypes such as стихия 'elemental state', эксплуатация человека человеком 'exploitation of man by man', and капитализм 'capitalism' (*ÉŽ* 32/90:1). Accordingly the expression общий рынок

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[133] 'A company is recognized as a subsidiary, if another company (partnership), i.e. the parent company has the possibility to determine the subsidiary's decisions through the parent company's predominant stake in the subsidiary's capital, through a contract, or otherwise.' The definition given in Art. 105 Para. 1 GK RF I 1994 is identical. See also Art. 105 Para. 1 GK RF I 1994; JURÉ 1995, s. v. дочернее хозяйственное общество; SSRIJA 1991–, s. v. дочерний.

[134] 'In particular, commercial banks and their foreign establishments transfer profit from foreign subsidiaries to the parent company, which is situated on territory of the USA.'

'common market' was used in specialist literature as referring to the 'sphere of the absolute supremacy of the large capitalist monopolies' (SUSLIN 1962: 38). This perception changed after the beginning of *perestroika*:

> Долгое время в советской экономической науке господствовала концепция, согласно которому рынок — это неотъемлемая часть только экономической системы капитализма. Оценивалось это понятие негативно, особенно при попытках перенести его в сферу экономики социализма. Как отмечал советский экономист Н. Шмелев, «одно время у нас затеяли ругаться словом рынок». В настоящее время в связи с теоретическим обоснованием радикальной экономической реформы это понятие рассматривается в новом аспекте. «Сейчас слово рынок приобрело права гражданства. Следует понять, что высокоразвитое общественное распределение труда — это рынок».[135] Соответственно изменился и оценочный компонент значения термина (KRJUČKOVA 1989: 111).[136]

During the Soviet period before *perestroika* the meaning of рынок was defined firstly as 'market-place': 'место розничной торговли съестными продуктами и товарами под открытым небом или в торговых рядах' 'site of retail trade with foodstuffs and goods in the open air or under market rows' (SSRLJA 1950–65, s. v. рынок; see also *MN* 19/90: 10: 'о рынке мы знаем по воспоминаниям о нэпе и рассказам о заграннце. Наш личный опыт с ним — чисто базарного происхождения' 'about the market we know only from memories of the NÈP period and from accounts on foreign countries. Our own experience with it is purely of a market-place nature'). Only the second meaning refers to market as an economic term. In OŽEGOV's dictionary this order was maintained until the edition of 1988; in OŽEGOV and ŠVEDOVA 1992 the two statements of meaning have been interchanged. Other new (specialized) dictionaries such as SP 1992, JR 1992, and JURÈ 1997 state only the economic meaning of рынок.

Together with other central notions of market economy, рынок (in the capitalist sense) gradually found its way into the Russian language: 'more and more often, economists use the words приватизация "privatization", рынок "market", предпринимательская деятельность "entrepreneurial activity"' (*MN* 17/90: 2). In the media, the expression рыночная экономика 'market economy' emerged in the first years of *perestroika* (HAUDRESSY 1992: 200), but it took much longer for it to be recognized in official texts and statements. The first step in this change in meaning was the introduction of the concept of планово регулируемый социалистический рынок 'socialist market regulated by plan' at the plenum of the Communist Party in 1987 (*MN* 30/87: 8). Later, the concept of a планово-рыночная экономика 'planned-market economy'

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[135] Телепередача «Навстречу XIX Всесоюзной партийной конференции» 13.6.88.

[136] 'In Soviet economics for a long time a conception prevailed according to which the market is an inalienable part only of the economic system of capitalism. This concept was negatively evaluated, especially when attempts were made to transfer it into the sphere of socialist economics. As observed by the Soviet economist N. Šmelev, "there was a time when the word *rynok* was a term of abuse". Today in connection with the theoretical foundation of the radical economic reform this concept is viewed in an different light. "Now the word *rynok* has been granted civic rights. We have to understand that the *rynok* is the highly developed public distribution of work". Accordingly the evaluating component of the meaning of this term changed, too.'

was presented (*ĖŽ* 8/90: 3–6), and in May 1990, this expression was officially replaced by государственно регулируемая рыночная экономика 'state-regulated market economy' (*MN* 18/90: 10). Still later, it became свободная рыночная экономика 'free market economy', and was finally called simply рыночная экономика 'market economy'. This change in meaning of рынок was carried out by proclaiming the market to be 'a universal value of mankind' (Nouveaux 1990: 124), thereby avoiding the ideological conflict of accepting as socialist a concept that had always been regarded as an attribute of capitalism. This way of stressing the historical dimension of the concept of the market was picked up by the press: 'but the market in its basic forms emerged many thousands years ago. All these years it developed, acquiring more complete forms. That is why one should regard it as an achievement not of a single socio-economic formation, but of the whole of mankind' (*ĖŽ* 21/90: 5).

The meaning of рыночная экономика gradually concentrated upon the adjective рыночный which now was used in combination with various nouns. Haudressy (1992: 200) lists the most common ones: механизмы, меры, установки, цены, but there are also стоимость (*ĖŽ* 26/95: 6), потенциал товара (*ĖŽ* 29/95: 24), структуры (Korel' 1994: 23), среда (Korel' 1994: 24), реформы (Korel' 1994: 30), постановления (*MN* 19/90: 10), инфраструктура (*ĖŽ* 30/90: 21; SP 1992), общество (Korel' 1994: 15, 17), ценности (Korel' 1994: 18), стереотипы поведения (Korel' 1994: 23). The word рынок itself is now used as a synonym of рыночная экономика, which becomes evident from headings such as '10 шагов к рынку' '10 steps to the market' (*ĖŽ* 29/90: 6), 'К какому рынку мы идем' 'To which market are we going?' (*ĖŽ* 19/90: 4), 'В ожидании рынка' 'Expecting the market' (*MN* 19/90: 10), 'Рынок даст уроки' 'The market gives lessons' (*MN* 21/89: 6), and common expressions such as переход к рынку 'transition to the market' (*ĖŽ* 52/90: 5), законы рынка 'the laws of the market' (*ĖŽ* 28/95: 4), адаптация к рынку 'adaptation to the market' (Korel' 1994: 15), вхождение в рынок 'entering the market' (Korel' 1994: 28). It is also well illustrated by the following statement: 'what the government means by market is a kind of hybrid of plan and market [гибрид плана и рынка]' (*MN* 22/90: 4), where план is short for плановая экономика, and рынок for рыночная экономика. Besides these, рынок can also denote single sectors of the market, divided either geographically: советский рынок 'Soviet market' (*MN* 30/89: 7), американский рынок 'American market' (*ĖŽ* 25/95: 14), российский рынок 'Russian market' (*ĖŽ* 31/95: 41), мировой рынок 'world market' (*ĖŽ* 51/90: 17); or according to single economic branches: компьютерный рынок 'computer market' (*ĖŽ* 31/95: 41), медиарынок 'media market' (*MN* 19/96: 19), рынок ценных бумаг 'market of securities' (*ĖŽ* 35/95: 8), рынок паблик рилейшнз-услуг 'market of public relation-services' (*ĖŽ* 25/95: 14) etc.; or to moral categories: спекулятивный рынок 'speculative market' (*ĖŽ* 35/95: 14), черный рынок 'black market' (*MN* 46/89: 14), цивилизованный рынок 'civilized market' (*MN* 15/90: 10). The meaning of цивилизованный рынок is described as comprising not only the whole of the

interactions between advertisement companies and customers, producers and consumers, but also civilized relationships between the participants of the market (*ÉŽ* 38/95: 23).

A large number of contradictory connotations are part of the meaning of рынок: 'для одних «рынок» пугало, для других панацея' 'for some, "market" is a scarecrow, for others it is a panacea' (*MN* 19/90: 10). People fear the market because they fear rising prices: 'in mass perception, the market is a place where you have to pay through the nose for everything' (*MN* 20/90: 6; see also *ÉŽ* 26/90: 5). This impression is supported by the results of a survey carried out in April/May 1990. To the question 'what do you personally fear the most when market conditions are going to be introduced?' the largest number (47% of all people questioned) answered 'rising prices' (*MN* 19/90: 10). In referring to this prospect of inaccessible prices under market conditions the word рынок-монстр 'monster-market' has been used (Korel' 1994: 17), and another neologism, рынкобоязнь, has emerged to describe the fear of market conditions in general (*MN* 18/90: 4). To others, рынок means something very different: 'in the eyes of many people, market is almost the same as what was yesterday communism — the bright future, where everybody will be provided for according to his requirements' (*MN* 18/91: 7). The market, 'this ideal representation of mankind' (*ÉŽ* 32/90: 1), 'one of the greatest achievements of human civilization' (Abalkin 1997: 4) is regarded as a way to remedy all things that are wrong: 'undoubtedly, the market is the only way our country will be led out of its critical condition' (*ÉŽ* 29/90: 4). The impression that the meaning of рынок is idealized, or even mystified, is supported by headings such as 'Рынок: без мифов и иллюзий' 'The market: without myths and illusions' (*ÉŽ* 22/90: 6). Рынок can be regarded as one of the 'magic words' of which it seems to many people enough to pronounce them 'and the problems will be solved as if by the wave of a magic wand' (*MN* 41/89: 11). According to him, the process of dismantling ideological stereotypes threatens to turn into the formation of new stereotypes the other way around. However, there are also reconciling voices to be heard: 'in fact, "rynok" is a usual, normal state of the economy' (*MN* 19/90: 10). Also, others attempt to overcome this polarization by a more differentiated view. For example, one writer discusses different models of the market economy, and concludes: 'when we talk about the transition to the market, we have to imagine precisely towards which one exactly we strive' (*ÉŽ* 21/90: 7).

Just as there are перестройщики 'supporters of *perestroika*' and антиперестроечники or антиперестройщики 'opponents of *perestroika*' (see SP 1992), people are also divided into groups according to both their attitude towards the market economy and their ability to adjust themselves to it. Several neologisms have been derived to name these groups. Thus, supporters of the market economy are called рыночники (*ÉŽ* 33/95: 1), as opposed to антирыночники (*MN* 49/89: 10) or плановики (SP 1992, s. v. рыночник). The corresponding adjectives рыночный and антирыночный are used accordingly, in expressions like трансформация антирыночного сознания в рыночное 'the transformation of an anti-market consciousness into a pro-market consciousness' (Korel' 1994: 29) The expression антирыночное сознание

'anti-market consciousness' is also used in *MN* 19/90: 10. In a sociological investigation of the ability of the Siberian population to adjust to market conditions, рыночники are further divided into вынужденные ('forced') рыночники, потенциальные ('potential') рыночники and собственные или реальные ('proper') рыночники; whereas people who are not at all expected to adjust to the market are called нерыночные 'market-incompatible' (Korel' 1994: 20; see also the heading 'нерыночные американцы' (*MN* 45/90: 10) of an article that analyses the results of a survey, where the views of Americans and Russians on the market economy are compared). Also, a distinction is emerging between the market as it should be in the future, and the present condition, which is felt to be imperfect: the рыночное завтра (*MN* 18/90: 10) versus этот предрыночный период (*ĖŽ* 21/90: 4). The latter is also called квазирынок 'quasi-market' (*MN* 22/90: 4; Korel' 1994: 29), and to it belong квазирыночные отношения 'quasi-market relations' (*MN* 22/90: 4), квазинормы 'quasi-norms', квазиценности 'quasi-values', and, generally, a квазирыночный менталитет 'quasi-market mentality' (Korel' 1994: 29). It is also common to call the market in spe цивилизованный рынок 'civilized market' (*MN* 15/90: 10, *MN* 19/90: 10, Korel' 1994: 29) which is again put in opposition either to the present квазирынок: 'не цивилизованный рынок, а квазирынок' (Korel' 1994: 29), or to базар 'bazaar': защита от базара — рынок. Цивилизованный, как мы любим добавлять' 'protection against the bazaar is the market. A civilized [one], as we like to add' (*MN* 19/90: 10). The adjective цивилизованный is also commonly used for other constructions, such as цивилизованный бизнес 'civilized business' (JR 1992, s. v. бизнес), цивилизованные социальные отношения (*MN* 11/90: 7), цивилизованные кооператоры (*MN* 50/89: 12), цивилизованное общество (SP 1992, s. v. цивилизованный), or цивилизованное государство (SP 1992, s. v. цивилизованный). The large numbers of derivations from рынок, only some of which have been documented above, are a sign of how ever-present this word is in today's Russian language.

(xviii) *Собственность частная 'private ownership'*

Following the October Revolution, private ownership had been abolished by means of expropriation and nationalization. During the first post-Revolutionary years there was still discussion as to whether private ownership was obtained on the basis of one's own work or of other people's work, but in the 1930s, both forms were united under the term частнокапиталистическая собственность (Škredov 1990: 122–3). From then on частная собственность had a negative connotation as an epitome of the capitalist society: (for example, BSÈ [2]1949-58, xxix. (1956), s. v. собственность). As M. S. Gorbačev put it as late as 1988:

> Частная собственность — это, как известно, основа эксплуатации человека человеком, и наша революция совершалась именно для того, чтобы ее ликвидировать (*Izvestija*, 28 Nov. 1988, p. 2).[137]

[137] 'Private ownership is, as is well known, the basis of exploitation of man by man, and our revolution was accomplished specifically in order to eliminate it.'

The socialist concept of ownership was based on the notion of социалистическая собственность 'socialist ownership' (developed as a counter-concept to капиталистическая собственность 'capitalist ownership'), containing a distinction between different forms of ownership, which were ordered hierarchically according to their level of nationalization. The most valuable form was государственная собственность 'state ownership', followed by кооперативная собственность 'co-operative ownership', and собственность общественных организаций 'ownership of social organisations'. Личная собственность 'personal property' was not considered 'socialist' and was tolerated only during the transition to communism. It was meant to fulfil personal needs and could only be created on the basis of трудовые доходы 'earned income' (Art. 93 GK RSFSR 1964) — as opposed to частная собственность in capitalism which was supposed to be created on the basis of what was called нетрудовые доходы 'unearned income'. The term частная собственность was considered a taboo-word with respect to the Soviet Union and was never used in Soviet legislation.

The introduction of the concept of private ownership into Russian legislation started in 1989 with the draft of the law 'On Ownership in the USSR' (ZoS SSSR-Proekt 1989) which introduced the new term собственность граждан 'citizens' ownership'. Art. 17 lists the objects traditionally associated with личная собственность (the list is copied verbatim from Art. 105 GK RSFSR 1964 on личная собственность), but continues

> а также средства производства, необходимые для ведения подсобного хозяйства, садоводства и огородничества, занятия индивидуальной трудовой деятельности, фермерством.[138]

This represents a drastic innovation insofar as, for the first time, a citizen can now own the means of production. The final version of the law (ZoS SSSR 1990) retained the term собственность граждан, but defined it differently:

> Собственность граждан создается и приумножается за счет их трудовых доходов от участия в общественном производстве, от ведения собственного хозяйства и *доходов от средств, вложенных в кредитные учреждения, акции и другие ценные бумаги*, приобретения имущества по наследству и по иным основаниям, допускаемым законом (Art. 6 Para 1 ZoS SSSR 1990; emphasis A.R.).[139]

Whereas the first part of the income described here corresponds to what used to be considered трудовые доходы 'earned income', the second represents income from capital investment, i. e. нетрудовые доходы 'unearned income'. Thus in fact this article introduced the concept of private ownership. However, in order to avoid the use of the taboo-word частная собственность a new term, собственность граждан 'citizens' ownership', was used (Nquex 1990: 169; see also Rathmayr 1991: 206; Mallet 1996: 288). In the press the

[138] 'And also means of production, necessary for conducting secondary husbandry, horticulture and market-gardening, the pursuit of individual labour activity, or farming.'

[139] 'Ownership of citizens is created and multiplied at the expense of their labour incomes from participation in social production, from conducting their own husbandry, and revenues from assets invested in credit institutions, stocks, and other securities, the acquisition of property by inheritance, and on other grounds permitted by law.'

change in meaning of частная собственность that should have made possible its introduction into legislation had already been expressed: 'понятие "частная собственность" уже не вызывает священного ужаса' 'the term "private ownership" does no longer provoke a holy terror' (*MN* 15/90: 10). The law 'On Ownership in the RSFSR' (ZoS RSFSR 1990), which was adopted eight months later, went one step further; its second section is headed право частной собственности 'the right of private ownership' and regulates in Art. 9–13 собственность гражданина 'ownership of the citizen'. The singular form seems to stress the intention to regulate ownership as a right of the individual, to be shaped according to the individual's free will. In contrast, the content of личная собственность allowed for each person had been regulated in legislation in every detail ('предельное количество скота, которое может находиться в личной собственности, устанавливается законодательством РСФСР' 'the maximum amount of livestock that can be held in personal property is determined by the legislation of the RSFSR' Art 112 GK RSFSR 1964; Art. 106 GK RSFSR 1964 ruled that the living space of a house which a person has in personal property must not exceed 60 square meters). In a final step the 1993 Constitution introduced explicitly the concept of частная собственность without any substitute terms or restrictions:

> Право частной собственности охраняется законом. Каждый вправе иметь имущество в собственности, владеть, пользоваться и распоряжаться им как единолично, так и совместно с другими лицами (Art. 35 Para. 1–2 KONST. RF 1993).[140]

(xix) *Траст 'trust'*

This word was borrowed in the 1960s from Engl. *trust* and used in specialist literature on banks and their services in capitalist countries. The derivatives траст-отделы 'trust-departments', трастовые операции 'trust operations'(ANIKIN 1961: 67), траст-компании 'trust companies'(KIRSANOV 1963: 130), траст-фонды 'trust funds', трастовые отделы 'trust departments'(KOČEVRIN 1978: 47) were all used. Траст also appeared in transliterations of (mostly American) companies such as Юнайтед Стейтс траст-компани, Бэнкерз траст компани (KIRSANOV 1963: 132), Морган гэранти траст оф Нью-Юрк, Ирвинг траст (Нью-Юрк) (AČKASOV 1978: 113). However, the contexts were very restricted; no dictionary or encyclopaedia published before *perestroika* has the word траст. Only after *perestroika* did it become a widespread term, used to refer to the Russian legal system. The first legal act to introduce this term was the decree 'On trust ownership (trust)' (UKAZ 12/93; see also the draft of a federal law of the same name, in *Rossijskaja Gazeta*, 3 Dec. 1994, pp. 6, 12–5.). However, there also exists another form: трест. In Russian dictionaries трест (a loan-word from Engl.

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[140] 'The right of private ownership is protected by law. Everyone is entitled to own property and to possess, utilize, and dispose of it both individually and together with others.' See also Art. 212 Para. 1 GK RF I 1994: 'в Российской Федерации признаются частная, государственная и иные формы собственности' 'in the Russian Federation private ownership, state ownership and other forms of ownership are recognized.'

trust) has been recorded since DAL' 1914 (s. v. трест, трэст). Most dictionaries published during the Soviet period before *perestroika* give трест two meanings, one expressly referring to capitalist countries, the other one referring to the Soviet Union. In SIS 1949, for example, the first meaning is given as

> одна из форм капиталистических монополий. [...] Тресты — вдохновители активной колониальной политики, агрессивных империалистических устремлений капитала и ожесточенной борьбы против рабочего класса.[141]

The statement of the second meaning reads

> одна из форм организации социалистических предприятий, связанных между собой однородностью продукции или различными стадиями переработки сырья [...][142]

In the editions of SIS 1964 and 1982 the attribution to capitalist countries is formulated less sharply, but the main opposition ('одна из форм капиталистических монополий' vs. 'одна из форм организации социалистических предприятий') is maintained. In the corresponding entries in UŠAKOV 1934-40 and in OŽEGOV 1960, 1978, and 1988, the same opposition is expressed in a similar way. The entry in OŽEGOV 1988, for example, reads:

> 1.В Советском Союзе: объединение нескольких однотипных предприятий.
> 2. В капиталистическом обществе: одна из форм монополистического объединения капиталистических предприятий с централизацией производственных и коммерческих операций.[143]

Even in OŽEGOV and ŠVEDOVA 1993, this distinction is still drawn. One meaning is no longer assigned expressly to the Soviet Union ('объединение нескольких однотипных предприятий, а также вообще сложное производственное объединение'), but the other meaning remains the same as in OŽEGOV 1988. The definitions quoted above seem to suggest that the motivation to list two separate meanings of трест lies in the need to distinguish between capitalist and socialist countries rather than in the nature of a трест itself. This becomes even more obvious from the entry in SSRLJA 1950–65, where the two statements of meaning also appear to be opposed to each other, but use the same words to describe the basic nature of a трест: 'объединение предприятий с централизацией управления' 'association of enterprises with a centralized administration'. In legal and economic dictionaries published after *perestroika* this distinction disappears (for example, JURÉ 1995, s. v. трест). Usually, however, the meaning of трест includes reference to England and the United States. With reference to Russia other terms are used, in particular концерн 'concern', the use of which in

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[141] 'One of the forms of capitalist monopolies [...] Trusts are inspirers of an active colonialist policy, of aggressive imperialistic striving for capital, and of the embittered struggle against the working class.'
[142] 'One of the forms of organizations of socialist enterprises that are connected with each other by the homogeneity of production or different stages of the processing of raw materials.'
[143] '1. In the Soviet Union: an association of several enterprises of the same kind. 2. In capitalist society: one of the forms of monopolistic association of capitalist enterprises, where production and commercial operations are centralized.'

Soviet times was restricted to capitalist countries (see above, pp. 102–3).

Engl. *trust* has two different meanings. In American English *trust* usually means 'large-scale business combinations and groups, frequently utilizing the device of a holding company, whereby one corporation holds enough stock in other companies to control and co-ordinate their operations' (WALKER 1980, s. v. trust). In England *trust* is mostly used as a civil law term; it refers to the 'relationship which arises wherever a person called the trustee is compelled in Equity to hold property [...] for the benefit of some persons (of whom he may be one) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustee, but to the beneficiaries or other objects of the trust' (PADFIELD 1987: 249). The concept of trust has been described as 'one of the most distinctive features of English law' (PADFIELD 1987: 249) and as 'practically unknown' in other civil law systems (WALKER 1980, s. v. *trust*). This suggests that the Russian word трест was borrowed from *trust* with its American meaning. The phrase антитрестовское законодательство 'anti-trust legislation' (BSÈ 1969–81, s. v. трест) was also borrowed. From трест, the word трестирование was derived (BSÈ 1969–81, s. v. трест), without the intervening stage of the verb. The legal meaning of траст has been given as follows:

> Траст — это система отношений, при которой собственник наделяет своими правами управляющего, однако этот последний, выступая в имущественном обороте в роли собственника, должен отдавать полученный доход выгодоприобретателю — бенефициару (SUCHANOV 1995: X).[144]

This is clearly a definition of a *trust* in English civil law. However, from the usage of траст in Russian legal language it appears that it can be used in two different ways: either as a synonym of доверительная собственность 'trust ownership', or as representing the concept of доверительное управление 'trust administration' (LACHNO and BIRIUKOV 1995: 35). SUCHANOV (1995: X) investigates the meaning of доверительное управление and доверительная собственность in relation to траст and *trust*. He points out that the legal concepts represented by доверительное управление and доверительная собственность are utterly different. Whereas the concept of доверительное управление is build upon the idea of indivisible ownership,[145] the concept of доверительная собственность presupposes that ownership can be divided. In this respect, the concept of доверительная собственность is similar to the notion of *trust* in English law, a distinctive feature of which is the 'duality of ownership'. The trustee is the legal owner; the beneficiary is the equitable owner. 'This split in ownership is possible because, whilst admitting that the trustee has the legal title, equity acts on the trustee's conscience and will compel him to hold the property for the beneficiaries'

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[144] 'T. is a system of relations in which the owner provides the manager with his rights; however, the latter who in this property turnover acts as owner, must return the income he receives to the beneficiary'.

[145] 'Передача имущества в доверительное управление не влечет перехода права собственности к доверительному управляющему [...]' (Art. 209 Para. 4 GK RF I 1994).

(PADFIELD 1987: 249). The concept of divisible ownership may be contrasted with the concept of indivisible ownership on which continental European civil law is based: 'данного деления права и основанных на нем подходов не знала и не знает ни одна правовая система Европы, в том числе и российское право' (SUCHANOV 1995: X).[146] It can be concluded that the concept of доверительная собственность, as laid down in Russian legislation, resembles the concept of trust in English civil law. The concept of доверительное управление, however, contradicts the English notion of trust, since it does not foresee a split in ownership, which is the specific feature of trust in English law, but rather presupposes indivisible ownership. Therefore, the Russian term траст — if used as referring to доверительное управление — must be regarded as a false friend of *trust*.

The case of траст demonstrates the terminological problems and ambiguity that may arise if a term is borrowed from an alien legal system. When траст was first introduced into Russian legislation, its meaning basically corresponded to the concept of *trust* in English law. Later, however, the meaning of траст was adapted to the notion of indivisible ownership, on which Russian civil law is based. Траст can now have two different meanings in Russian legal terminology. As far as legislation is concerned, this conflict seems to have been resolved by replacing траст by доверительное управление (Art. 209 Para. 4 GK RF I 1994). However, in textbooks, the use of траст as referring to доверительное управление is still widespread (for example, BSR 1995b: 7–29), and phrases such as трастовой договор 'trust contract' (*ÉŽ* 16/95: 29) are also widely used in legal terminology: 'речь идет об использовании чужеродной терминологии, в действительности не несущей никакой содержательной нагрузки' 'this is a matter of using an alien terminology which is actually completely lacking in content' (SUCHANOV 1995: X).

(xx) *Холдинг-компания 'holding-company'*

A *holding company* (or *parent company*, or *holding*) is 'a company which controls, usually through a majority shareholding, another company or companies' (STEWART and BURGESS 1996, s. v. holding). Russ. холдинг-компания, which is presented as a neologism in SP 1992 (s. v. холдинг-компания), has been used since the 1950s in specialist literature as referring to a holding company in a capitalist country: 'свыше 400 банков прямо контролируются через холдинг-компании десятком крупных банков' (ANIKIN 1961: 63).[147] Engl. *holding company* was also borrowed as холдинг-компани (see ÉÉ 1972–80, s. v. холдинг-компани), холдинговая компания (ibid.; FERM 1994: 152 mistakenly regards холдинговый as a neologism introduced into Russian since *perestroika*) and держательская компания (see JuS

[146] 'The sub-division of this right and of the approaches based on it was and is unknown to any European legal system, including the Russian one.'

[147] 'More than 400 banks are directly controlled by holding companies of ten large banks'. For more examples of usage, see MÉ 5/57: 142; LJUDMILIN 1963: 121; VLADIMIROV 1977: 63.

1956, s. v. контролирующие общества; GLOSSARY 1963: 80–1; VLADIMIROV 1977: 63). In addition, холдинг (from Engl. *holding*; see VLADIMIROV 1977: 63; GLOSSARY 1963: 80–1), общество-мать (GLOSSARY 1963: 80–1) and материнская компания (from Fr. *société mère* or Germ. *Muttergesellschaft*) were used with the same meaning. The plural form холдинги was also used (GLOSSARY 1963: 80–1; MAMUKJAN 1970: 37). However, until the beginning of the economic reforms in Russia these borrowings were used only in specialist literature, referring exclusively to capitalist countries. Only when the concept of a holding company was introduced to Russian law, the terms холдинг-компания (ÈP 1994; BÈS 1994, TBS 1996, all s. v. холдинг-компания), холдинговая компания, and холдинг became widespread. In legislation, only холдинговая компания and холдинг have been used. Холдинг-компани, общество-мать, and держательская компания are used neither in legislation nor in other legal texts or dictionaries.

Regulations concerning the formation of associations of companies were first introduced into the law 'On Enterprises and Entrepreneurial Activity' (ZoP 1990) (Art. 13: объединения предприятия 'associations of enterprises'); however, a holding company was not yet among the legal forms provided for. The first legal act to introduce the concept of a holding company was the VREMENNOE POLOŽENIE 1992:

> Холдинговой компанией признается предприятие, независимо от его организационно-правовой формы, в состав которого входит контрольные пакеты акций других предприятий.[148]

The concept of контрольный пакет акций refers to any form of participation in the capital of the enterprise that guarantees the unconditional right to adopt or to decline certain decisions at a general meeting of its members (share-holders) and in its management organs (BJuS 1997, s. v. холдинговая компания (холдинг)). Both Russ. холдинговая компания and Engl. *holding company* differ from a концерн 'concern' in that the latter is formed on the basis of a contract, whereas the former is created by acquiring a majority of shares (JurÈ 1995, s. v. концерн and холдинговая компания).

In American usage a distinction is made between a *pure holding company* and an *operating holding company*. Whereas the former is created specifically for the management of the dependent companies, the latter carries out its own entrepreneurial activity and thereby takes possession of a majority of shares of another company or companies (SKомм 1996, s. v. холдинговая компания). These two types of holding companies are also provided for in Russian legislation, where they are called финансовая холдинговая компания and производственная холдинговая компания (VREMENNOE POLOŽENIE 1992). As synonyms for финансовая холдинговая компания, чистый холдинг (ÈP 1994, s. v. холдинг-компания) and чисто холдинговая компания (SKомм 1996, s. v. холдинговая компания) are

[148] 'An enterprise, irrespective of its legal form, is recognized as a holding company if it holds a voting majority of shares of other companies.'

sometimes used, but even more often such organizations are called финансовый холдинг: 'финансовая холдинговая компания вправе вести исключительно инвестиционную деятельность [...] При этом финансовый холдинг не должен вмешиваться в производственную и коммерческую деятельность дочерных предприятий [...]' (*ĖŽ* 14/95: 6).[149]

Just as *holding* serves as a synonym for *holding company*, холдинг is more and more often used in replacing холдинговая компания: 'нормативные документы, определяющие "жизнь" холдингов в Российской Федерации' 'normative documents that determine the "life" of holdings in the Russian Federation' (*ĖŽ* 14/95: 6); 'холдинги, создающиеся вокруг нефтяных компаний с участием крупных банков' 'holdings that are founded around oil companies with the participation of large banks' (*MN* 9/96: 21). Likewise, холдинг replaces the term холдинговая компания in legislation, for example in the 1995 federal law 'On Banks and Banking Activity', which regulates 'Группы кредитных организаций и холдинги' 'groups of credit organizations and holdings' (Art. 4 FEDZOB 1995).

2. *The Exclusion of 'Socialist' Terms*

When *perestroika* began and the influence of Soviet ideology decreased, the terms discussed below disappeared from the legal vocabulary.

(i) *Достояние 'common property'*

In Soviet legislation достояние 'common property' and собственность 'property' were used as synonyms:

> Собственность гражданина является его личным достоянием [...] (Art. 11 KONST. SSSR 1977; see also Art. 6 KONST. SSSR 1936)

This usage goes back to the years immediately following the October Revolution, when the concept of социализация земли 'socialization of the land' was being developed. According to this, собственность на землю 'land property' was to be transformed into общее достояние 'common property', allowing for free access to its use, but banning any transactions. Land was considered государственная собственность 'state property', according to the concept of национализация земли 'nationalization of the land'. These two principles were soon transferred into legislation.[150] The fact that достояние народа (or народное достояние) 'common property of the people' and государственная собственность 'state property' were used as synonyms (see also Art. 11 KONST. RSFSR 1978) despite the fact that they relate to

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[149] 'A pure holding company is entitled to conduct exclusively investing activity [...] When doing so, the pure holding must not interfere in the production and commercial activity of the subsidiaries [...].'

[150] 'Всякая собственность на землю, недра, воды, леса и живые природы [...] отменяется навсегда' (DEKRET 2/1918); 'вся земля [...] считается единым государственным фондом' (i.e. the state is declared owner of the land) (POLOŽENIE 2/1919).

two concepts so different in nature that they seem to exclude each other, is due to socialist ideology: within its framework, собственность and достояние were 'seen as terms of equal weight — the state and the people were one' (MALFLIET 1993: 126):

> Всенародный характер государственной социалистической собственности выражается прежде всего в том, что единым и единственным собственником всех государственных имуществ является весь советский народ в лице своего социалистического государства (VENEDIKTOV 1948: 313).[151] (original emphasis)

The question of how and by whom ownership rights to that property, including the right to dispose of it, might legally be divided and distributed, remained unsolved and the view of BUTLER 1993b: 11, suggesting that 'the title of state ownership had passed to the entire people' is therefore untenable (MALFLIET 1996: 295–6). The Soviet law 'On Ownership in the USSR' introduced a fundamental change in the concept of государственная собственность 'state ownership'. Whereas before, the state had been acknowledged as the sole owner of state property, государственная собственность is now divided between the USSR, the union and autonomous republics, autonomous regions, autonomous national areas, regions, districts, and cities:

> К государственной собственности относятся общесоюзная собственность, собственность союзных республик, собственность автономных республик, автономных областей, округов, собственность административно-территориальных образований (коммунальная собственность) (ZoS SSSR 1990).[152]

Each of these subjects has become the sole owner of the property belonging to it and has the right directly and exclusively to possess, use, and dispose of it.[153] It follows from this change in meaning that the former equivalency between государственная собственность and достояние народа, between the state and the people, does not hold anymore, and one would have expected the latter term not to be applied as a synonym of the former in the new legislation. However, while Art. 3 of the law declares that 'land, its minerals, water, flora and fauna [...]' 'могут находиться в собственности' 'may be in ownership' (Para. 1), Art. 20 of the same law reads:

> Земля и ее недра, воды, растительный и животный мир являются неотъемлемым достоянием народов, проживающих на данной территории [...]. (Para. 1)[154]

and the law 'On Ownership in the RSFSR' which was adopted six months later declares:

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[151] 'The all-nation character of the socialist state property is expressed above all in that the one and only owner of all state property is the whole of the Soviet people in the person of its socialist state.'

[152] 'State ownership comprises all-union ownership, the ownership of union republics, the ownership of autonomous republics, autonomous regions, and autonomous national areas, and the ownership of administrative-territorial formations (communal ownership).'

[153] The term государственная собственность 'state ownership' does not seem appropriate, considering that some of the owners (autonomous regions and autonomous national areas, regions, districts, cities, and others) are not states (BUTLER 1991: 192).

[154] 'The land and its minerals, waters, and flora and fauna are the inalienable common property of the peoples who reside on the particular territory.'

> Государственная собственность РСФСР является достоянием многонационального народа РСФСР. (Art. 20 Para. 1 ZoS RSFSR 1990)[155]

This use of достояние is also inappropriate in so far as the legal meaning of собственность refers to a personalized right that presupposes a specific, precisely defined relationship between a subject and an object, whereas the meaning of достояние, in contrast, does not allow for any personalization and is, rather, a 'synonym for the material wealth of the society itself' (Škredov 1989b: 36; see also Černomorec 1993: 18). Consequently, legal scholars have criticized this use of достояние in legislation on ownership and generally dispute its suitability as a legal term:

> Никакой смысловой нагрузки мы в нем не обнаружим [...] Оно является, скорее всего, юридическом балластом, от которого право должно быть очищено (Černomorec 1993: 18).[156]

Even as late as 1993 достояние was still being used, for example in some of the drafts of the new constitution:

> Земля, ее недра, воды, растительный и животный мир, другие природные объекты находятся в государственной, частной и иной собственности, являются достоянием народов, проживающих на соответствующей территории, всего народа Российской Федерации [...]. (Art. 58 Para. 1 Konst. RF–Proekt 1993)[157]

In the final version of the constitution, however, достояние is no longer used (see Art. 9 Para. 2 Konst. RF 1993), and the final regulation of state ownership in the new Civil Code also does without it:

> Земля и другие природные ресурсы, не находящиеся в собственности граждан, юридических лиц либо муниципальных образований, являются государственной собственностью. (Art. 214 Para. 2 GK RF I 1994)[158]

The case of достояние is characteristic of the transformation of Russian law und legal terminology. It demonstrates the ambiguity that arises within the legal system if a term, representing an ideological rather than a legal concept, remains part of the vocabulary, although the meaning of the concepts surrounding it has changed.

(ii) *Доходы, (не)трудовые '(un)earned income'*

The distinction between трудовые доходы 'earned income' and нетрудовые доходы 'unearned income' was a specific feature of Soviet property law not shared with the capitalist system: while частная собственность 'private property' — a term that referred only to

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[155] 'The state property of the RSFSR is the common property of the multinational people of the RSFSR.'

[156] 'We cannot find any meaning in it [...] At best, it is legal ballast of which the law must be cleansed.' For similar criticism, see Ivanov 1990: 40; Škredov 1989b: 12; see also van den Berg 1996: 120.

[157] 'Land, its resources, waters, flora and fauna, and other natural objects are in state, private, or other ownership and represent the common property of the peoples who reside on the corresponding territory, of the whole people of the Russian Federation.' See also Art. 58 Para. 1 Konst. RF-Proekt 1992.

[158] 'Land and other natural ressources that are not ownership of citizens, legal entities or municipal formations, are state property.' — In the old civil code достояние had been used as a synonym of государственная собственность 'state ownership' (Art. 94 GK RFSR 1964).

capitalist countries and was a taboo-word with respect to the Soviet Union — was said to be built on нетрудовые доходы, личная собственность 'personal property' could only be created on the basis of трудовые доходы:

> Основу личной собственности граждан составляют трудовые доходы [...] Имущество, находящееся в личной собстенности граждан, не должно служить для извлечения нетрудовых доходов, использоваться в ущерб интересам общества (Art. 93 Para. 4, 6 GK RSFSR 1964).[159]

There are three arguments suggesting that the meaning of the expressions трудовые доходы and нетрудовые доходы resulted primarily from their function as ideological keywords. First, neither the laws nor dogmatic texts contained what could be regarded as a specified legal meaning for these terms. Although the intention of these concepts — to prevent any private economic activity not expressly foreseen by law — was 'common knowledge' (Иоффе 1988: 65), a precise legal meaning was nowhere fixed. Second, to oppose трудовые to нетрудовые доходы causes a narrowing in the perception of the relations between people and their work; in fact, these relations are much more diverse than this simple formula suggests. This complexity was also true for the socialist system, as is demonstrated by the case of Poliakov, which went through all the courts and was one of the most controversial cases of the Soviet era. Finally, the distinction between трудовые and нетрудовые доходы was used as a means of political struggle, too. Especially from the 1930s to the 1960s the blanket clause of Art. 1 GK RSFSR 1922 was applied to owners who had misused their personal property in order to achieve unearned income. Later these campaigns were continued on the basis of Art. 13 Konst. 1977 resp. Art. 111 GK RSFSR 1964. The final step in this struggle against нетрудовые доходы was the decree of the Central Commitee of the Communist Party of May 1986, which called for a firm social condemnation of all 'who try to give less and less to the state, but to take more and more from it', and to apply Soviet laws most strictly to them. Also, the mass-media were asked to mobilize against the 'psychology of private property and greed'.

The 1990 Soviet law 'On Ownership in the USSR' introduced the concept of private property (although it was not yet named частная собственность); what formerly had been called нетрудовые доходы was now accepted as property that every citizen could own. In this law the term трудовые доходы was still used as before, but нетрудовые доходы was omitted (Art. 6 Para 1 ZoS SSSR 1990). This omission could only lead to confusion since the use of трудовой makes sense only as a counterpole to нетрудовой. The Russian law that was adopted six months later did not use either of the expressions, but still specified which kind of доходы 'income' was accepted as the basis of 'citizen's property', using a long phrase to describe what formerly might have been meant by трудовые доходы:

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[159] 'The basis of personal citizens' property is earned income [...] Property in which citizens have personal ownership must not serve as a source of unearned income, be used to the detriment of society.'

> Собственность гражданина создается и приумножается за счет его доходов от участия в производстве и иного распоряжения своими способностями к труду [...] (Art. 9 Para. 1 ZoS RSFSR 1990).[160]

The 1994 Civil Code does not distinguish anymore between different kinds of доходы but accepts 'любое имущество' 'any property' as the basis of private property (Art. 213 Para. 1 GK RF I 1994). Although the concepts of трудовые доходы and нетрудовые доходы had been made redundant legally, the legislature had difficulties eliminating this terminology from the law and finding names for the 'new' realities. Such difficulties in filling terminological gaps are a result of the all-too-influential role of Soviet ideology in the legal language and its claim to be the absolute truth.

(iii) *Социалистическая собственность 'socialist ownership'*

This term was introduced into Soviet legislation in 1932, when a law was passed to protect nationalized property (ZoOI 1932). From then on the concept of социалистическая собственность was further developed and became a distinct feature of Soviet law. It contained a distinction between different forms of ownership (социалистические формы собственности 'socialist forms of ownership'), ordered hierarchically according to the level of nationalization of the property in question. The most valuable form was государственная собственность 'state ownership': 'государственная собственность — высшая форма социалистической собственности' (SOVETSKOE GOSUDARSTVENNOE PRAVO 1948: 90), followed by кооперативная собственность 'co-operative ownership', and собственность общественных организаций 'ownership of social organisations'. Личная собственность 'personal property' was not considered 'socialist' and was tolerated only during the transition period to communism. The legal meaning of the expression социалистические формы собственности, which had been introduced into legislation without any theoretical preparation (BUTLER 1991a: 122), was nowhere defined (RUBANOV 1989: 122). This is not surprising considering the fact that социалистическая собственность was an ideological rather than a legal concept that had been developed as a counter-concept to the negatively-connotated 'bourgeois' concept of частная собственность 'private ownership'. In Continental European law (of which pre-Revolutionary Russian law formed part) ownership refers to an abstract right which does not allow for any diversification between groups of owners and property.

The 1977 USSR Constitution obliged citizens to safeguard and strengthen социалистическая собственность 'socialist ownership' (Art. 61 KONST. SSSR 1977). However, the meaning of this term became ambiguous, when the 1990 law 'On Ownership in the USSR' introduced a fundamental change to the concept of ownership. Государственная собственность 'state ownership' was now divided between different possible owners,

[160] 'A citizen's property is created and increases according to his income from his participation in production and other uses of his abilities for work.'

собственность граждан 'citizens' ownership' was acknowledged as a form of ownership, and коллективная собственность 'collective ownership' was introduced as a new form of ownership, encompassing various kinds of property: things belonging to co-operatives (including collective farms), lease enterprises, joint-stock societies, religious organizations and others. This last change was intended above all to direct public awareness away from the traditional ideological black-and-white division of property into 'good, socialist' and 'not so good, nonsocialist' (BUTLER 1991a: 57). The draft of this law had still used the term социалистическая собственность:

> Основу экономической системы в СССР составляют общественная собственность на средства производства в форме народной собственности [...], кооперативной собственности и собственности некооперативных общественных организаций. *Социалистической* является также собственность государственных предприятий и объединений (Art. 3 Para. 2 ZoS SSSR–PROEKT 1989; emphasis A.R.),[161]

but the final version no longer recognized it as a special legal concept. See also Art. 1 Para. 1 of the law 'On the Introduction of Changes into the Criminal Code (FEDZOVIDUK 1994): 'В части первой статьи 1 слова «социалистической собственности, личности, прав и свобод граждан» заменить словами «личности, прав и свобод граждан, всех форм собственности».' However, vestiges of the concept of социалистическая собственность are to be seen in the fact that the law still distinguishes between different forms of ownership and, more importantly, does not establish the principle of the legal equality of all forms and types of ownership. Throughout the discussion of the draft law proposals were made to introduce this principle (BUTLER 1991a: 67). It was established in subsequent legislation (Art. 8 Para. 2 KONST. RF 1993).

(iv) *Оперативное управление 'operative management'*

This concept first appeared in the work of A. V. Venediktov and was afterwards recognized by civil legislation. Soviet state enterprises, as subjects of civil law, acted in their own name as legal entities, which received state property in оперативное управление 'operative management' (VENEDIKTOV 1948: 326–9). This concept was a means to administrate socialist state property, elaborated as a complex institution within civil legislation (see Art. 21 OSNOVY 1961). It contained two contradicting principles. On the one hand, the right of оперативное управление conferred to the enterprises the rights of possession, use, and disposal of the state property, thereby granting them a certain autonomy. On the other hand, however, the enterprises had to exercise these rights in accordance with the plan tasks and were dependent on state property. In order to ensure that the plan tasks were fulfilled, the balance between autonomy and

[161] 'The basis of the economic system of the USSR is formed by public ownership of the means of production in the form of people's ownership [...], co-operative ownership, and the ownership of non-co-operative social organizations. The ownership of state enterprises and associations is also recognized as socialist ownership.'

dependence was varied (MALFLIET 1993: 130). In legislation the concept was defined as follows:

> Имущество, закрепленное за государственными [...] организациями, состоит в оперативном управлении этих организаций, осуществляющих в пределах, установленных законом, в соответствии с целями их деятельности, плановыми заданиями и назначением имущества, права владения, пользования и распоряжением имуществом (Art. 94 GK RSFSR 1964).[162]

The concept of оперативное управление reflects the peculiarities of the Soviet understanding of ownership. The definition of оперативное управление uses the 'triad of the rights of the owner',[163] the classical definition of ownership used in Continental European, including Russian, law, which is based on the unity of ownership rights. An enterprise holding state property in operative management, however, did not represent the owner of that property. The concept of оперативное управление is rather based on the division of ownership rights between the state as the owner and the enterprise which manages, in its name, property belonging to the state. The use of the triad 'права владения, пользования и распоряжения' in defining the concept of оперативное управление reflects the ambiguity of the position of the state-run enterprise with respect to its competence in ownership rights.

(v) *Форма собственности 'form of ownership'*

The concept of социалистические формы собственности 'socialist forms of ownership' was first used in the 1936 Constitution of the USSR (KONST. SSSR 1936), to which it was introduced in an 'authoritarian way' (BUTLER 1991a: 52), without being prepared by legal doctrine. It served as the instrument to implement in legislation the hierarchical scheme of the Soviet concept of ownership (MALFLIET 1996: 284). A precise legal meaning of the concept of форма собственности was nowhere fixed.

> Закон придал понятию формы собственности ключевую роль, не раскрыв, однако, содержания этого понятия и не дав каких-либо косвенных указаний на этот счет (RUBANOV 1989: 122).[164]

There existed only a general understanding that it had been recognised that a certain category of property as a form of ownership meant that property played a special and significant socio-economic role (BUTLER 1991a: 52). The scheme was of an ideological nature. Some categories of ownership were placed above others. The highest form of ownership and the one to be listed

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[162] 'The property assigned to state [...] organizations is in the operative management of these organizations, which exercise, within the limits determined by law and according to the aims of their activity, the plan tasks and the purpose of the property, the rights to possess, use, and dispose of the property.'

[163] This term refers to possession, use, and disposition as the three variants of the owner's behaviour with respect to a thing. The tradition of defining ownership in listing all possible actions of the owner goes back to Art. 544 of the French *Code Civil*; see also § 903 of the German *Bürgerliches Gesetzbuch*. In Russian legislation it was first used in Art. 420 of the *Svod zakonov* (x., part 1), from where it passed to the 1922 GK RSFSR (Art. 58) and was used in all subsequent civil legislation, see e.g. OSNOVY 1991 (Art. 45).

[164] 'The law gave a key role to the concept of forms of ownership, without, however, revealing the content of this concept and without giving any indirect indications in this respect.'

first was государственная собственность 'state ownership', followed by собственность 'ownership of collective farms', and кооперативная собственность 'co-operative ownership'. These forms of ownership were called 'socialist', whereas личная собственность 'personal ownership' was not accorded the status of a form of ownership. In the law 'On Ownership in the USSR' (ZoS SSSR 1990) the concept of форма собственности was retained, although some legal scholars had called for it to be abandoned (for example, Rubanov 1989). However, certain changes were introduced. Most noteworthy is the fact that the sequence of forms of ownership was reversed. State ownership, which is no longer called 'socialist', was listed last, while собственность граждан 'ownership of the citizens', which was accorded the status of a form of ownership for the first time, was listed first. A new form of ownership was inserted, коллективная собственность 'collective ownership', which encompasses various kinds of property, including the property of lease enterprises, collective enterprises, joint-stock societies, and religious organizations. The eclectic nature of this form of ownership has rightly led to the suggestion that its introduction was directed not towards the creation of a strict classification, but rather towards reorientating public awareness away from decades of ideological black-and-white divisions of property into 'good, socialist' and 'not so good, nonsocialist (Butler 1991a: 57). The law 'On Ownership in the RSFSR' (ZoS RSFSR 1990), which was adopted nine months later than the ZoS SSSR 1990, no longer uses the term форма собственности; however, the principle of a hierarchy between the subjects of ownership has been retained. According to the 1991 'Fundamentals of Civil Legislation of the SSSR and the Republics' (Osnovy 1991), ownership is a single, indivisible right, which may have various subjects: citizens, legal entities, or the state (Art. 44 Osnovy 1991). This approach excludes the possibility of the concept of форма собственности. Accordingly Art. 212 of the 1994 Civil Code is headed 'Субъекты права собственности' 'subjects of the right of ownership'. However, it then reads:

> В Российской Федерации иризнаются частная, государственная, муниципальная и иные формы собственности [...] Права всех собственников защищаются равным образом.[165]

The use of the term формы собственности and the regulation that 'the rights of all owners are protected in the same way' contradict the title of this article, which presupposes an indivisible concept of ownership. From the point of view of civil law these provisions are meaningless (Suchanov 1995a: 6). This instance is, however, the only use of the term форма собственности in the 1994–5 Civil Code.

(vi) *Хозрасчет 'economic accountability'*

This term is an abbreviation for хозяйственный расчет and refers to a method of managing the socialist economy, which was introduced by Lenin during the NEP period (Zemtsov 1989:

[165] 'In the Russian Federation private, state, municipal and other forms of ownership are recognized [...] The rights of all owners are protected in the same way.'

426, Mazolin 1989: 77). The concept of хозяйственный расчет was regarded as a means to ensure profitability within the system of a planned, centralized economy by granting an autonomy as far-reaching as possible (PS 1958: 629). Among the basic principles of хозрасчет were хозяйственная самостоятельность предприятий 'economic independence of the enterprise' and материальная заинтересованность их коллективов и каждого отдельного работника в результатах своей хозяйственной деятельности 'material interest of their collectives and of every worker in the results of their economic activity' (BSÈ ³1969-81, xxviii. (1978), s. v. хозяйственный расчет). The principle of хозрасчет, 'directed towards the realization of the fundamental economic law of socialism', was seen in opposition to the principle of коммерческий расчет 'commercial accountability', which was said to 'serve private interests' (ibid.). In the course of Soviet history the meaning of хозрасчет was adapted according to the development of the economic system (Zemcov 1989: 426). The term became particularly widespread during the first years of Gorbachev's leadership, when it was taken up in the attempt to revive the economy (Corten 1992: 63), reflecting 'сущность и грани горбачевской политики хозяйствования: самостоятельность, самоокупаемость, самофинансирование, самоуправление' 'the essence and grain of Gorbachev's management policy: independence, ability to pay its way, self-financing, self-government' (Zemcov 1989: 426). The draft of the 1990 law 'On Ownership in the USSR' (ZoS SSSR–Proekt 1989) uses the term хозрасчетная собственность (Art. 11): an economic term is used to define a form of ownership. However, state enterprises working on the basis of хозрасчет were not considered owners of the state property, and they only had the rights of оперативное управление 'operative management' (see above, pp. 122–3). The use of the term хозрасчетная собственность mirrors the degree to which legal concepts were pervaded with economic ones.

(vii) *Эксплуатация 'exploitation'*

It was one of the postulates regularly proclaimed in Soviet legislation that 'the triumph of socialism has completely and forever eliminated the exploitation of man by man' (preamble of the 'Fundamental Principles of Labour Legislation in the USSR and the Republics'). The phenomenon of 'exploitation of man by man' was deduced directly from the prevalence of private ownership in capitalist countries:

> Процесс роста имущественного неравенства [...] привел к появлению частной собственности, основанной на присвоении результатов чужого труда. Возникает эксплуатация человека человеком, общество раскалывается на классы эксплуататоров и эксплуатируемых (BSÈ ³1969-81, xxiv. (I) (1976): 11),[166]

whereas in the Soviet Union,

[166] 'The process of increasing property inequality [...] led to the appearance of private ownership, based on the appropriation of the results of someone else's labour. The exploitation of man by man appears, society splits into the classes of exploiters and the exploited.'

> где господствует социалистическая собственность на средства производства, ликвидированы эксплуататорские классы, навсегда уничтожена эксплуатация человека человеком (SIS 1949: 749).[167]

After the adoption of the 1936 USSR Constitution a tradition developed of using the provisions on ownership to proclaim ideological postulates (BUTLER 1991a: 33; see, for example, Art. 94 Para. 1 GK RSFSR 1964). A remnant of this tradition is to be found in the following provision of the 1990 law 'On Ownership in the USSR':

> Использование любой формы собственности должно исключать отчуждение работника от средств производства и эксплуатацию человека человеком (Art. 1 Para. 6 ZoS SSSR 1990).[168]

The two postulates contained in this provision are opposed to each other. The first reflects the position of the reformers, who described the effects of state ownership as 'alienation of the worker from the means of production', while the second reflects the position of the proponents of the Soviet system (BUTLER 1991a: 33–4). The legislator followed the Soviet tradition in including a provision of a purely ideological nature, but in expressing both opposed postulates avoided taking sides with either point of view and removed himself from the ideological struggle. In the press the use of the word эксплуатация in this law was described as a 'play on words' that in future would find less and less support.

> особенно когда сотни тысяч немцев уходят *эксплуатироваться* в ФРГ, а сотни тысяч советских граждан — с государственных предприятий в кооперативные (*MN*, 15 April 1990: 10).[169]

It was pointed out that terminology should be freed from the 'ideological blinkers' contained in words such as эксплуатация, which form part of an 'abusive vocabulary' (ругательный лексикон): 'either we continue to congratulate ourselves on our superiority, or we introduce commensurate concepts according to whether or not they allow people to live better' (*MN* 20/1990: 8). In fact, however, this has nothing to do with the Russian vocabulary, only its use. In the law 'On Ownership in the RSFSR' (ZoS RSFSR 1990), which was adopted nine months after the law 'On Ownership in the USSR', this provision was eliminated, and since then the expression эксплуатация человека человеком has no longer been used in Russian legislation.

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[167] '[...], where the socialist ownership of the means of production prevails, the exploiting classes have been eliminated, exploitation of man by man has been abolished forever.'

[168] 'The use of any form of ownership must exclude the alienation of the worker from the means of production and the exploitation of man by man.'

[169] 'Especially if hundreds of thousands of Germans leave to get *exploited* in (West) Germany, while hundreds of thousands of Soviet citizens leave from state enterprises into cooperative enterprises.'

Chapter Three

NEW TERMINOLOGY

I. Borrowings

1. Loan-words

(a) *Loan-words ending in -инг*

One of the most striking features of the Russian language since *perestroika* is the number and frequency of loan-words ending in *-инг*. These are not all new. Some were borrowed during the 1960s and 1970s (see above the sections on демпинг 'dumping', pp. 87; клиринг 'clearing', pp. 96–9; маркетинг 'marketing', pp. 92–94; and холдинг 'holding', pp. 115–17). Probably the first English word ending in *-инг* to be borrowed into Russian was митинг 'meeting', which appeared in 1864 (KIPARSKY 1975: 126). However, only from the 1960s did the borrowing of such words become increasingly popular, culminating in the massive influx recorded since the beginning of *perestroika*. Words ending in *-инг* are represented in many different areas such as sport (кикбоксинг 'kickboxing'), politics (имидж-мейкинг 'image-making'), everyday life (шопинг 'shopping'), and, in particular, business. The most common ones include, apart from those discussed below: эккаунтинг 'accounting' ('функциональная сфера предпринимательской деятельности, связанная со сбором, обработкой, классификацией, анализом и документальным оформлением различных видов финансовой информации', JuÈ 1997, s. v. эккаунтинг)[170]; эквайринг 'acquiring' ('в последнее время среди сегментов финансового рынка, на которых особенно остро ощущается соперничество крупных банков, появился так называемый эквайринг. Это понятие включает в себя обслуживание банками торговых и сервисных точек [...] где в качестве платежного средства принимаются пластиковые карточки', *ÉŽ* 34/97: 8)[171]; мониторинг 'monitoring' (PROGRAMMA 1994: 34; 'Всероссийский мониторинг: первые итоги', written by the 'начальник Управления анализа и мониторинга Минтруда России', *ÉŽ* 7/96: 11)[172]; процессинг 'processing' ('Банк «Российский кредит« открыл собственный процессинговый центр', *ÉŽ* 12/96: 5)[173]; рейтинг 'rating' ('Сегодня наш рейтинг высок', *SJu* 5/91: 5[174]; the plural рейтинги 'ratings' and the derivatives рейтингование 'rating', рейтинговый 'rating', рейтингуемый 'rated' also occur, *ÉŽ* 3/95:

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[170] 'The functional sphere of entrepreneurial activity that is connected with the collection, processing, classification, analysis, and documenting registration of various kinds of financial information.'

[171] 'Among segments of the financial market where the rivalry of the large banks is felt particularly sharply, appeared what is called acquiring. This concept comprises banks servicing commercial and service points where plastic cards are accepted as payments.'

[172] 'Head of the department of analysis and monitoring at the Russian Ministry of labour.'

[173] 'The bank "Russian credit" has opened a proper processing centre.'

XI); рекрутинг 'recruiting' (defined as 'подбор персонала' 'selection of staff', *ÉŽ* 36/96: 11; the noun рекрутер: 'профессия рекрутера в России молода как по времени существования, так и по возрасту сотрудников'[175] and the adjective рекрутерский: рекрутерский бизнес 'recruiting business' are also used, ibid.); and рэнкинг 'ranking' ('Что точнее отражает положение — коллективные оценки и ожидания операторов рынка или подобная бухгалтерскому балансу статистически «проявленная фотография» состояния рынка? Первое в специальных исследованиях принято именовать собственно **рейтингом**, а второе — **рэнкингом**', *ÉŽ* 7/98: 6, original emphasis).[176]

The number of words ending in *-инг* continues to increase (KUROKHTINA 1996: 24; SÉŠAN 1996: 46). It is held that the suffix occurs only with English stems (SÉŠAN 1996: 48), and that it remains to be seen whether it will undergo further assimilation and combine with Russian stems (COMRIE et al. 1996: 312). KOSTOMAROV, who mentions the form сбербанкинг (1994: 91; 192), claims that this process has already begun (1996: 192). In what follows, twelve legal terms recently borrowed from English are analysed.

(i) *Андеррайтинг 'underwriting'*

In English law *underwriting* refers to an undertaking in marine insurance whereby a person is indemnified against loss by reason of an accident resulting from sea adventure; the term is also used of the undertaking to take all or a stated proportion of the shares offered before a public issue of shares by a company and not taken up by the public, in return for a commission (WALKER 1980: 1247). The loan-word андеррайтинг has only the second of these meanings. It has been explained as follows:

> Понятие это возникло во времена становления морского страхования, когда купец в качестве третьей стороны ставил свою подпись (write) под (under) суммой и слагаемыми риска, которые он согласен был покрыть. В современном понимании слова андеррайтинг — это гарантированное (полное или частичное) приобретение оператором фондового рынка выпуска ценных бумаг в процессе их первичного размещения по фиксированной цене (*ÉŽ* 31/95: 8).[177]

Андеррайтинг — or, as it is sometimes spelled, андерайтинг — has not been included in recent general dictionaries such as KOTELOVA 1995, OŽEGOV and ŠVEDOVA 1997, or SSRLJA 1991–. Its legal meaning is given in legal and economic dictionaries (RÉ 1995, s. v. андерайтинг; JR 1992, s. v. андерайтинг; SKомм 1996, s. v. андеррайтер; BJuS 1997, s. v.

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[174] 'Today our rating is high.'

[175] 'In Russia the profession of a recruiter is young, both in terms of the time of its existence and the age of the employees.'

[176] 'What mirrors the condition more precisely — the collective evaluations and expectations of the operators of the market, or a statistical "displayed photograph" of the condition of the market similar to a book-keeping balance? In specialist literature the former is usually called **rating**, the latter **ranking**.'

[177] 'This concept originates from the time when marine insurance came into being, when the merchant put his signature under the sum and the components of the risk he had agreed to cover. According to the present

андеррайтинг) and discussed in newspapers such as *ÉŽ* ('Андеррайтинг как залог успешной эмиссии', in the section 'профессиональная деятельность', *ÉŽ* 31/95: 8).The term has not yet been used in legislation, but the loan-word андеррайтер 'underwriter' was recently introduced into a legal act (see below, p. 142).

(ii) *Дилинг 'dealing'*

This word was borrowed into Russian in the early 1990s, when economic reforms were introduced that allowed Russian banks to carry out what is called дилинговые операции 'dealing operations'. Дилинг has become one of the most frequent English loan-words in Russian economic terminology. Particularly common is the phrase валютный дилинг[178] — 'совокупность операций с финансовыми инструментами, проводимых на валютных и денежных рынках' (*ÉŽ* 48/96: 7).[179] Three of the most popular types of operations are спот 'spot', форвард 'forward' (*ÉŽ* 48/96: 7), and форекс (a stump-compound from Engl. *foreign exchange*, *ÉŽ* 20/95: 7). The adjective дилинговый is used in phrases such as дилинговые службы российских коммерческих банков 'dealing services of the Russian commercial banks' (*ÉŽ* 20/95: 7), дилинговые операции 'dealing operations', от дилинговые отделы банков 'dealing departments of banks' (*ÉŽ* 20/95: 7). Дилинг has not yet been used in legislation. Instead, the phrase дилерская деятельность 'dealer's activity' is used (see above, p. 88).

(iii) *Инжиниринг 'engineering'*

In the area of business this loan-word from Engl. *engineering* was first recorded in 1986 (NOVYE SLOVA–80 1997, s. v. инжиниринг). Its meaning is described as

> инженерно-консультационные услуги, сфера деятельности по подготовке и обеспечению процесса производства и реализации продукции, по обслуживанию строительства и эксплуатации промышленных, инфраструктурных и сельскохозяйственных объектов (JURÉ 1997, s. v. инжиниринг).[180]

Инжиниринг (BRODSKY 1992: 73; 79 gives the form инджиниоринг; however, all dictionaries consulted in this study have инжиниринг, for example SKомм 1996, s. v. инжиниринг and BJuS 1997, s. v. инжиниринг) is often used in the expression финансовый инжиниринг

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understanding of the word, it means the guaranteed (full or partial) acquisition of the emission of shares by an operator of the stock exchange during their first issue at a fixed price.'

[178] see e.g. the articles 'Новые горизонты валютного дилинга' 'New horizons of currency dealing' (*ÉŽ* 48/96: 7); 'Валютный дилинг: новый инструмент спекуляция' 'Currency dealing: a new instrument of speculation' (*ÉŽ* 20/95: 7); 'Валютный дилинг на российском рынке' 'Currency dealing on the Russian market' (*ÉŽ* 17/95: 5).

[179] 'The sum of operations with financial instruments, carried out in the currency- and monetary markets.'

[180] 'Engineering-consulting services, activities concerned with the preparation and securing of the production process and the sale of goods, and the servicing of construction and exploitation of industrial, infrastructural, and agricultural objects.'

'financial engineering': 'Финансовый инжиниринг, или Как вывести формулу финансового успеха предприятия' (*ÉŽ* 19/96: 24).[181] It also occurs as an adjective, in instances such as инжинирингo-консалтинговая компания 'engineering-consulting company' (the publisher of Банковская система России). The neologism реинжиниринг 're-engineering' also occurs: 'кому бы вы доверили реинжиниринг бизнес-процессов при проведении комплексной автоматизации?' 'to whom would you entrust the re-engineering of business-processes during the implementation of complex automatization?' (*ÉŽ* 43/96: 33).

(iv) *Консалтинг 'consulting'*

The first Russian dictionary to record this loan-word from Engl. *consulting* is TS 1998, where its meaning is defined as 'консультирование производителей, продавцов и покупателей по экономическим, хозяйственным и правовым вопросам' 'consultating producers, salesmen, and customers as to economic and legal problems' (s. v. консалтинг). This meaning includes

> исследование и прогнозирование рынка (товаров, услуг, лицензий, ноу-хау и т.д.), оценка торгово-политических условий, разработка маркетинговых программ, анализ финансово-хозяйственной деятельности предприятий (JurÉ 1997, s. v. консалтинг).[182]

Консалтинг has become a form of business itself: 'бизнес консалтингов и лизингов' 'the business of consultings and leasings' (*MN* 13/96: 33). Companies specializing in consulting are called консалтинговая фирма 'consulting firm' (*ÉŽ* 44/96: 25), консалтингова группа 'consulting group': 'мнение юристов консалтинговой группы «Интеллект»' (*MN* 25/96: 14),[183] or консалтинговая компания 'consulting company' (TS 1998, s. v. консалтинговый). The adjective консалтинговый is often used as a synonym of консультационный: 'франчайзер имеет, как правило, постоянно действующий консультационный (консалтинговый) центр' 'a franchiser usually has a permanent active consulting (consultation) centre' (Dovgan' 1994: 35). It seems that in connection with the nouns фирма or компания, консалтинговый is used, whereas with услуг, консультационный is given preference, as in the following example: 'небольшое количество аудиторских и консалтинговых фирм, дороговизна консультационных услуг' 'the small quantity of audit and consulting firms, the high cost of consultation services' (*ÉŽ* 44/96: 25).[184]

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[181] 'Financial engineering, or How to bring out the formula of financial success of an enterprise.'

[182] 'Investigation and prognosis of the market (goods, services, licences, know-how etc.), evaluation of the commercial-political conditions, working-out of marketing programmes, analysis of the financial-economical activity of the enterprise.'

[183] 'The opinion of the lawyers of the consulting group "Intellekt".'

[184] For more examples of this usage see *ÉŽ* 44/96: 24.

(v) *Лизинг 'leasing'*

Engl. *lease* means a contract between a lessor and a lessee for the hire of a specific asset. While the *lessor* retains ownership of the asset, the *lessee* acquires the right to possess and use it over the period of the lease, on payment of the rentals specified in the contract (BRADGATE 1995: 192). The corresponding traditional Russian terms used to be аренда 'lease', арендодатель 'lessor', and арендатор 'lessee'. Since *perestroika* these terms have partly been replaced by лизинг, лизингодатель, and лизингополучатель respectively. The first instances of usage of лизинг and лизинговый date from 1986 (NOVYE SLOVA–80 1997, s. v. лизинг). However, аренда and лизинг are not exact synonyms. The difference can be described as follows. First, аренда refers to three different kinds of contract: долгосрочная аренда 'long-term lease' (= лизинг), среднесрочная аренда 'medium-term lease' (= хайринг 'hiring'), and краткосрочная аренда 'short-term lease' (= рентинг 'renting') (BELOV 1996a: 43; ÈP 1994, s. v. аренда). Thus лизинг is a specific kind of аренда. Secondly, аренда refers to the lease of both immovable and of other property (machines and equipment), whereas лизинг in most cases refers only to the latter (JURÈ 1995, s. v. лизинг), thereby reflecting the American meaning of *leasing* (BELOV 1996a: 43). In English and American law (for (minor) differences between American and English law, see BELOV 1996a: 45) commercial leases can be divided into two broad categories: *finance leasing* and *operating leasing*. Finance leasing involves not only the two parties (lessor and lessee), but also the manufacturer of the asset, with whom both parties enter a legal relationship. It is a lease under a long-term agreement, covering the major part of the asset's economic life. The equipment to be leased is chosen by the lessee; often, it is produced to his specification (BRADGATE 1995: 192–3). In contrast, an operating lease is usually cancellable at short notice, the lessor having envisaged that the asset will be let under a series of successive leases to different lessees (BRADGATE 1995: 194).

Both terms were borrowed into Russian: *finance leasing* as финансовый лизинг, and *operating leasing* as операционный лизинг (ÈP 1994, s. v. лизинг операционный) or оперативный лизинг (BSR 1995a: 25; IŠČENKO 1997: 48). In the definition of финансовый лизинг the same characteristics are given as those mentioned above for *finance leasing* (see, for example, PAVLODSKIJ 1995: 30; ÈP 1994, s. v. лизинг финансовый), which leads to the conclusion: 'фактически в этом случае имеет место долгосрочное кредитование покупки' 'actually in this case a long-term purchase credit is given' (BSR 1995a: 25). This tallies with BRADGATE's evaluation of *finance leasing*: 'essentially, the lessor supplies the lessee with financial assistance to acquire the asset' (1995: 193). The definitions given of оперативный лизинг and *operating leasing* also agree (IŠČENKO 1997: 48; ÈP 1994, s. v. лизинг операционный; BSR 1995a: 25). Apart from these two types of leasing, which represent the basic categories both in English and in Russian usage, a number of subtypes have been borrowed into Russian, including *returnable leasing* – возвратный лизинг (IŠČENKO 1997: 49; ÈP 1994, s. v. лизинг возвратный), *export leasing* – экспортный лизинг (ÈP

1994, s. v. лизинг экспортный), *international leasing* – международный лизинг (ÈP 1994, s. v. лизинг международный), and *lease-back* – лиз-бэк (BELOV 1996a: 45; ÈP 1994, лизинг финансовый; ARBÈS 1995, s. v. *lease-back*; WEST 1985, s. v. *sale* and *leaseback*.)

However, финансовый лизинг has become by far the most popular kind of leasing in Russia (for an account of the scale of activity in this area, see BELOV 1996a: 47–9). As a result, it appears that лизинг without the adjective is often used as a synonym of финансовый лизинг. In particular, this is true of its use in legislation. The first legal document to apply the term лизинг was the decree 'On the Development of Financial Leasing in Investment Activity' (UKAZ 9/1994); however, subsequent legal acts concerned with финансовый лизинг used the single word лизинг (Постановление Правительства РФ от 29 June 1995, No. 633 'О развитии лизинга в инвестиционной деятельности', confirming the 'Временное положение о лизинге'; PAVLODSKIJ 1995: 31 has shown that the regulation is indeed about finance leasing). The synonymous use of финансовая аренда and лизинг was probably modelled on the Belgian royal decree on enterprises practising financial leasing, where the two terms are also used as synonyms (IŠČENKO 1997: 47). The concept of finance leasing was introduced into the second part of the Civil Code under the heading 'финансовая аренда (лизинг)' (Chapter 34, § 6 GK RF II 1995):

> По договору финансовой аренды (договору лизинга) арендодатель обязуется приобрести в собственность указанное арендатором имущество у определенного им продавца и предоставить арендатору это имущество за
> плату во временное владение и пользование для предпринимательских целей [...] (Art. 665 GK RF II 1995).[185]

The question of whether this definition covers only financial leasing or both financial and operating leasing is disputed. IŠČENKO claims that the fact that this definition presupposes the presence of three parties — lessor, lessee, and manufacturer — shows that the law recognizes only financial leasing as лизинг. Also, the stipulation that the property has to be acquired anew for each transaction excludes, in his view, certain varieties of leasing — not only оперативный лизинг 'operating leasing', but also револьверный лизинг 'revolver leasing', and возвратный лизинг 'returnable leasing' from the definition of лизинг in GK RF II 1995 (IŠČENKO 1997: 48) which, because of the basic status of the Civil Code, is valid generally: 'все отношения, не подпадающие под сферу действия параграфа 6 гл. 34, официально лизингом признаваться не будут' 'all relations that are not covered by paragraph 6 of chapter 34 will not be recognized officially as leasing' (ibid.). MÜLLER 1997: 178, however, holds the view that Art. 665 covers operating leasing as well as financial leasing since it does not mention certain specific elements of financial leasing agreements such as their irredeemability during the basic lease period. GAZMAN 1997: 115 mentions that оперативный лизинг is regulated in

[185] 'In an agreement of financial lease (leasing agreement) the lessor undertakes to acquire the property indicated by the lessee from a manufacturer appointed by him and let this property to the lessee for a fee in temporary possession and use for entrepreneurial purposes.'

chapter 34 of the GK RF. In any case, in the case of the POLOŽENIE 1996 there is no doubt that the legislator intended лизинг to refer only to financial leasing: it was clarified by the Russian government in an official note to point 6 of the POLOŽENIE 1996 (MÜLLER 1997: 178), and that generally лизинг is used to refer to financial leasing (in BJuS 1997, for example, under the entry лизинг the reader is referred to the entry договор финансовой аренды). Thus лизинг has a different meaning from Engl. *leasing*. It remains to be seen whether the new law 'On Leasing' ('о лизинге') will introduce a broader definition of лизинг. The draft of this law has passed the first reading in the Duma and is currently being revised. It appears from BUTKEVIČ 1997 that the meaning of лизинг clearly refers to финансовый лизинг. It has also been mentioned that the draft introduces an article on возвратный лизинг (ibid.).

The adjective лизинговой is commonly used in the phrase лизинговая компания 'leasing company' (meaning a company that specializes in leasing machines and equipment to other companies): 'если в конце 1994 г. в стране было всего четыре реально работающих лизинговых компании [...], то сегодня их насчитывается более двадцати пяти' 'while at the end of 1994 there were just four genuinely active leasing companies in the country [...], today there are more than 25' (*ĖŽ* 17/96: 12). 'Деятельность лизинговых компаний' is included in the list of activities that require a licence (POSTANOVLENIE 12/1994). Лизинговый is also often used with the nouns

- деятельность 'activity': 'правовое пространство для лизинговой деятельности в России' 'legal space for leasing activity in Russia' (PAVLODSKIJ 1995: 31),
- оборудование 'equipment': 'порядок отражения стоимости лизингового оборудования в статистической отчетности' 'a way to reflect the cost of the leasing equipment in the statistical accounts' (*ĖŽ* 26/96: VIII),
- инфраструктура 'infrastructure': '1995 стал стартовым для широкого развития лизинговой инфраструктуры' '1995 has become the starting year for a broad development of a leasing infrastructure' (*ĖŽ* 8/96: 3),
- рынок 'market': 'на лизинговом рынке работает только «Балтлиз»' 'only "Baltliz" works on the leasing market' (*ĖŽ* 8/96: 3)
- имущество 'property': 'сумма, возмещающая стоимость лизингового имущества' 'the sum that compensates for the cost of the leasing property' (VREMENNOE POLOŽENIE 1992, Para. 1, p. 19)
- операции 'operations': 'кредитная организация [...] вправе осуществлять [...] лизинговые операции' 'a credit organization is entitled to carry out [...] leasing operations' (FEDZOB 1995, Art. 5).

The plural form of лизинг is used: 'все эти лизинги [...] просто фьючерсные сделки' 'all these leasings are just futures transactions' (*MN* 13/96: 33). Apart from лизингодатель, лизингополучатель, and лизинговый, лизингуемый 'leased' has been derived from лизинг: 'полное восстановление лизингуемого оборудования' 'full restoration of the leased

equipment' (*ÉŽ* 8/96: 3). Лизингуемый might be expected to be part of a verb ending in -*овать*. This form, however, is not attested, a fact which points to the question of the borderline between inflection and derivation. Many abbreviations have also been derived, including Лизевропа (for 'Европейская ассоциация лизинговых компаний', see BELOV 1996a: 46), Балтлиз (for 'Балтийский лизинг', see *ÉŽ* 8/96: 3), and МУЛИЗкомпани (for 'Московская Универсальная Лизинговая компания', see BELOV 1996a: 48).

(vi) *Листинг, делистинг 'listing', 'delisting'*

Listing refers to the contract between a firm and a stock exchange covering the trading of that firm's securities on the stock exchange (WEST 1985, s. v. listing of securities). Листинг and делистинг are recent borrowings from Engl. *listing* and *delisting*, not included in OŽEGOV and ŠVEDOVA 1992, KOTELOVA 1995, or TS 1998.[186] They have been introduced into legal dictionaries (JURÉ 1995; TBS 1996, s. v. листинг, делистинг) and are also used in legislation:

> Фондовая биржа самостоятельно устанавливает процедуру включения в список ценных бумаг, допущенных к обращению на бирже, процедуру листинга и делистинга (Art. 13 ZoRCB 1996).[187]

Листинг is also discussed in legal studies. MIL'ČAKOVA 1996: 87, for example, discusses peculiarities of the German and the American concept of listing and delisting, and concludes that the German rather than the American model should be adapted to Russian law. Only released securities that have been registered at the stock exchange can be sold and bought according to a купля-продажа ('buy and sell') contract. Shares that have not been 'listed' are sold 'с прилавка' ('over the counter'), on the 'street' market (JURÉ 1997, s. v. листинг). Делистинг refers to the elimination of shares from the stock exchange list by decision of the stock exchange or the company itself, which means the deprivation of the privilege of листинг forever. Делистинг is carried out if the shares no longer exist, or if the company has gone bankrupt, or if the public allocation of shares is very small, or if the company has violated the regulations on листинг (JURÉ 1997, s. v. делистинг).

(vii) *Рентинг 'renting'*

This term is a recent loan-word from Engl. *renting* which has not been included in KOTELOVA 1995, OŽEGOV and ŠVEDOVA 1997, or TS 1998. It refers to one of the three forms of lease, namely a short-term lease. Here, in contrast to a лизинг contract, the lessee has no right to acquire the machine or equipment after the leasing period:

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[186] NOVYE SLOVA-80 1997 has листинг only as 'распечатка машинного текста на принтере' (s. v. листинг).

[187] 'The stock exchange determines independently the procedure of introducing securities that are admitted to the stock exchange into the register, the procedure of listing and delisting.'

> Краткосрочная аренда машин и оборудования без права их последующего приобретения арендаторами (JURÈ 1997, s. v. рентинг).[188]

The adjective рентинговый 'renting' is also used, in expressions such as рентинговое общество 'renting society' (BJUS 1997, s. v. рентинг).

(viii) *Толлинг 'tolling'*

This loan-word from Engl. *tolling* has not been found attested earlier than April 1997, when it was introduced into Russian legislation with the regulation 'On Some Questions About the Taxation of "Internal" and "External" Tolling', issued by the Ministry of Finance (PIS'MO MINFIN 4/1997). The document itself does not define the meaning of толлинг, but in an article headed 'Толлинг — находка производителей' 'Tolling, a godsend for producers' it is described as

> способ организации производства, основанный на разделении товарно-сырьевых потоков и переработке давальческого сырья 'a method to organize production that is based on the division of production lines and the processing of raw materials' (*ÈŽ* 22/97: 18).

This kind of production organization is widespread in other countries. When it was introduced into the Russian economy, the English term *tolling* was borrowed together as well. The adjective толлинговой is also used, in the expressions толлинговая схема 'tolling scheme' and толлинговые операции 'tolling operations' (*ÈŽ* 22/97: 18).

(ix) *Факторинг 'factoring'*

Under a factoring agreement, an enterprise which has supplied goods or services to customers on credit will transfer to the factor (often a subsidiary of a bank or other large commercial organization) the right to receive payment from those customers, in return for an immediate cash payment. The factor will pay a discounted price for undertaking the collection (BRADGATE 1995: 507). The growing importance of factoring as a means of financing international trade is reflected by the fact that in 1988 UNIDROIT (ЮНИДРУА) (International Institute for the Unification of Private Law) adopted a draft convention on international factoring (BRADGATE 1995: 508; BSR 1995a: 64; *ÈŽ* 20/96: XXII).

The concept of factoring was introduced into the Russian legal system as факторинг (ÈP 1994, s. v. факторинг) or фэкторинг (BÈS 1994, s. v. фэкторинг) — only the former gained acceptance — in the early 1990s, when the first Russian banks joined the 'Factors Chain International' (Фэкторз Чейн Интернейшнл, see RÈ 1995, s. v. факторинг), an association of factors from 27 countries. The first legal document to use the term was the PIS'MO 1992: 'K

[188] 'Short-term lease of maschines and equipment without the right of their subsequent acquisition by the lessees.' See also the entry in BJUS 1997, s. v. рентинг.

операциям банков, облагаемым налогом на добавленную стоимость, относятся следующие операции и услуги: [...] факторинговые операции' 'the following operations and services are attributed to bank operations that are taxed with surplus tax: [...]' (p. 5). The term itself has not yet appeared in Russian laws, but it is commonly used in other legal documents (see, for example, the model of a договор о проведении факторинговых операций 'factoring agreement' in BIZNES 1996: 506–8), legal commentaries (GK RF II Комм. 1996: 434–50), legal dictionaries (JURÉ 1997, s. v. факторинг, SKомм 1996, s. v. факторинг), and specialized newspapers (see, for instance, the articles 'Возможности факторинговых операций' in *ÉŽ* 20/96: XXII, and 'На помощь отечественным компаниям придет факторинг', in *ÉŽ* 27/96: 9). In the 1995 Civil Code the concept of factoring is regulated in some detail (Arts. 824–33 GK RF II 1995); however, it is there called 'финансирование под уступку денежного требования', a term which is unfamiliar to the Russian terminology of economic law. The legal commentary on the relevant articles states that what is meant in the law is факторинг: 'операции, обозначаемые обычно как "факторинг"' 'operations, which are usually called "factoring"' (GK RF II Комм. 1996: 435), and uses only this term in its explanations. In GK RF II Комм. 1997: 390 it is also mentioned that the regulations of Art. 824–33 GK RF II 1995 take into account the regulations of the convention on international factoring. See also *ÉŽ* 1/96: 96: 'договор финансирования под уступку денежного требования, больше известный под именем "факторинга"'. It has been pointed out that the drafters of the law intended to avoid foreign terminology, which in some cases, such as факторинг, led to the introduction of uncommon and long terms (MAKOVSKIJ 1996: 103). Many legal scholars agree with this practice of avoiding foreign terminology (ibid.), and it is also explicitly recommended in textbooks on legislative technique (for example, KERIMOV 1991a: 97). The term финансирование под уступку денежного требования is reminiscent of the legal concept of уступка требования (цессия), which is regulated in Arts. 388–90 GK RF I 1994. The terminological closeness of the two concepts has led to some confusion in legal practice, as in the two cases the legal relationships between the parties involved are of a different nature (VORONIN 1997: 15).

The meaning of Russ. факторинг basically corresponds to that of its source. Differentiation between different kinds of factoring agreements is also reflected in the Russian regulations; for example, *non-discourse factoring* corresponds to факторинг без права регресса (BSR 1995a: 60–1), *split factoring* corresponds to дробный факторинг (BSR 1995a: 62), and *discounting factoring* corresponds to соглашение об учете (дисконтировании) счетов-фактур (BSR 1995a: 63). In order to express today's meaning of *factor* (what in pre-Revolutionary times was called a фактор; see above, p. 66–7), the compound факторбанк (see, for example, the model factoring contract in BIZNES 1996: 506–8) or фактор-банк (for instance, ÉP 1994 s. v. факторинг; BLOCHIN 1995: 26) is used. This usage reflects the fact that in Russia factoring agreements are made almost exclusively with banks, whereas in other

countries (with a longer tradition of factoring) a factor can be any large commercial organization. From факторинг the adjective факторинговый has been derived, which is used frequently, especially in the expressions факторинговые операции 'factoring operations' (BLOCHIN 1995: 26; *ÉŽ* 34/96: 12) and факторинговое обслуживание 'factoring service' (*ÉŽ* 27/96: 9). Its negated form нефакторинговый is also used: 'основу российского экспорта составляют так называемые нефакторинговые товары (сырье)' 'the basis of Russian export is formed by so called non-factoring goods (raw materials)' — *ÉŽ* 27/96: 9).

(x) *Форфейтинг 'forfeiting'*

This term has recently been borrowed from Engl. *forfeiting*. It is not included in KOTELOVA 1995, OŽEGOV and ŠVEDOVA 1997, or NOVYE SLOVA–80 1997. It refers to a method of financing trade transactions in which the buyer (forfeiter) purchases bills of exchange from a creditor and, in return for a discount, takes on the obligation to forfeit any claim for compensation if he does not receive payment from the debtor (BSR 1995a: 66; ARBÈS 1995, s. v. a forfait). The forfeiter's commission amounts to 1 – 1.5%. This procedure guarantees the creditor against any currency risk (BJuS 1997, s. v. форфейтинг). The meaning of форфейтинг, as it is defined in textbooks and legal dictionaries, corresponds to the meaning of Engl. *forfeiting*.

Engl. *forfeiting* is a borrowing from Fr. *à forfait*. The latter was borrowed into Russian as афорфе (ÈP 1994, s. v. афорфе), the former in the forms форфэтинг (ARBÈS 1995, s. v. a forfait) and форфейтинг (SKомм 1996, s. v. форфейтинг), but only the last of these is widely used. A number of new words have been derived from форфейтинг:

• Форфейтер 'forfeiter': 'форфейтинг предполагает переход всех видов риска по долговому обязательству к покупателю векселя — форфейтеру' 'forfeiting presupposes the transition of all kinds of risk connected with the promissory note to the buyer of the bill of exchange — the forfeiter' (ÈP 1994, s. v. форфейтинг)

• Форфейтинговый 'forfeiting': размер форфейтингового рынка 'the scale of the forfeiting market' (BSR 1995a: 70)

• Форфетируемый 'forfeited': 'расчет номинальной стоимости форфетируемых векселей' 'calculation of the nominal value of the forfeited bills of exchange' (BSR 1995a: 78)

• Форфетирование 'forfeiture': 'в качестве объекта форфетирования аккредитивы применяются редко' 'as an object of forfeiture a letter of credit is rarely accepted' (BSR 1995a: 68, 72). In BSR 1995a: 67, however, the form форфейтирование is given, which is also included in TBS 1996.

It should be noted that форфетируемый and форфетирование presuppose a verb ending in *-ировать* which evidently does not exist.

(xi) *Франчайзинг 'franchising'*

Franchising is a typical example of a number of economic concepts that were introduced into the Russian legal system only in the early 1990s as a result of the fundamental change in commercial law which permits and stipulates the provisions for private business. The meaning of франчайзинг basically corresponds to that of Engl. *franchising*. In both cases, regulations provide for a contract allowing the franchisee (who may be either a commercial organization or a businessman), in return for the payment of a fee, to supply the franchiser's products or services, to make use of both his expertise and his tradename (and thus benefit from the goodwill built up by the franchiser), and to share his intellectual property (for the meaning of Engl. *franchising*, see BRADGATE 1996: 95; for the meaning of франчайзинг, see GK RF II КОММ 1996: 550–60 and SOSNA 1997: 25).

The concept of franchising originates in American law; it was developed in the USA from where it has spread to more than 80 countries of all continents (SOSNA 1997: 26–8). Франчайзинг is not included in KOTELOVA 1995, NOVYE SLOVA–80 1997, or OŽEGOV and ŠVEDOVA 1997. One of the first instances of its use is in DOVGAN' 1994. When franchising was borrowed into Russian, three variants appeared: 'франшизинг (или как его еще называют франчайзинг)' (*ÉŽ* 3/95:XI; the entries in ÉP 1994 and SKомм 1996 also give both forms), and френчайзинг. The latter, however, did not gain acceptance. Франшизинг has apparently been borrowed by analogy with франшиза 'franchise'. *Franchisor* and *franchisee* were borrowed, too. Engl. *franchisor* was borrowed as франчайзер (KOMLEV 1995, s. v. франчайзинг), франшизер (SKомм 1996), and франчайзор (VACKOVSKIJ 1997: 44). Engl. *franchisee* was borrowed as франчайзи (JURÉ 1995, s. v. франчайзное предприятие), франшизи (SKомм 1996), and франчайзиат (VACKOVSKIJ 1997: 44).[189] However, the use of франчайзинг, франчайзер, and франчайзи soon began to predominate over the other forms and have now clearly become the established terminology. It has been pointed out that the use of оператор, лицензиат, дилер, филиал and others for *franchisee* is not acceptable as an alternative to франчайзи since these terms are also used in connection with other legal concepts and therefore are not specific to the concept of франчайзинг (SOSNA 1997: 25 n. 2). Франчайзинг and all its derivatives are declinable, with the exception of франчайзи: e.g. 'контракт между франчайзером и главным франчайзи' 'a contract between the franchiser and the main franchisee' (DOVGAN' 1994: 23). From франчайзинг, франчайзер, and франчайзи, a number of new words and expressions have been derived:

• Франчайзинговый 'franchising': 'развитие франчайзинговых отношений в России' 'the development of franchising relationships in Russia' (*ÉŽ* 2/97: 12); 'предприятия франчайзинговой сети' 'enterprises of the franchising network' (*ÉŽ* 24/97: 19).

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[189] In BLINOV 1996 оператор is used for Engl. *franchisee*: '"зарубежный франчайзер — российский оператор"' 'a foreign franchisor — a Russian franchisee' (p. 9).

• Нефранчайзинговый 'non-franchising': 'компании (франчайзинговые и нефранчайзинговые)' 'companies (franchising and non-franchising)' (DOVGAN' 1994: 112).

• Франчайзировать 'to franchise': 'магазины [...] могут франчайзировать только продажу персональных компьютеров' 'shops may franchise only the selling of personal computers' (DOVGAN' 1994: 112).

• Франчайзирование 'franchising': 'изначальный франчайзинг более сложен, чем франчайзирование бизнеса' 'primordial franchising is more complicated than franchising a business' (DOVGAN' 1994: 39).

• Франчайзный 'franchised': 'такие франчайзные предприятия действуют по всему миру' 'such franchised businesses exist throughout the world' (*ĖŽ* 9/96: 15–III).

• Предприятие-франчайзи 'franchisee enterprise': 'риски для предприятия франчайзи' 'risks for the franchisee enterprise' (DOVGAN' 1994: 29).

• Франчайзи-партнер 'franchisee partner': франчайзи-партнеры фирмы «IC»' 'the franchisee partners of the firm "IC"' (*ĖŽ* 4/96: 35).

• Суб-франчайзинг 'sub-franchising' and суб-франчайзер 'sub-franchisor': 'в суб-франчайзинге суб-франчайзер также осваивает какую-то определенную территорию 'in sub-franchising, the sub-franchisor also masters some territory' (DOVGAN' 1994: 24).

• Компания-франчайзер 'franchisor company': '1440 компании-франчайзеры, объединявших более 60000 "единиц"-франчайзи"' '1,440 franchisor companies, uniting more than 60,000 franchisee-"units"' (SOSNA 1997: 27).

• Суб-франчайзинговый 'sub-franchising': 'суб-франчайзинговые отношения' 'sub-franchising relationships' (DOVGAN' 1994: 24).

The term франчайзинг has not yet appeared in Russian laws, but it is regularly used in legal practice (see, for instance, the model of a договор о франчайзинге 'franchising contract' in TICHOMIROV 1996: 489–92), legal studies (see, for example, BLINOV 1996 and VACKOVSKIJ 1997), specialized newspapers (see the articles 'Возможности и преимущества франчайзинга', *ĖŽ* 3/95: XI; and 'Стоит начать с франчайзинга', *ĖŽ* 20/96: 44), textbooks (the first one to appear in Russian was DOVGAN' 1994), and legal dictionaries (ĖP 1994 s. v. франчайзинг/франшизинг; SKомм 1996 s. v. франшизинг/франчайзинг; JURĖ 1997 s. v. франчайзинг; франчайзное предприятие). The concept of *franchising* was introduced into GK RF II 1995 (Arts. 1027–40). However, the term used there is коммерческая концессия 'commercial concession': 'договор, названный договором коммерческой концессии [...] известен в праве других стран под английским названием "франчайзингом"' 'the contract called commercial concession is known in the law of other countries under the English name "franchising"' (MAKOVSKIJ 1996: 105–6). Most legal studies investigating the regulation in GK RF II 1995 use the term франчайзинг: 'анализ статей гл. 54 ГК не оставляет сомнений в

том, что речь в ней идет о франчайзинге' (Sosna 1997: 25).[190] This is even true for legal commentaries (for example, GK RF II Komm. 1996: 550–60). Franchising is a contractual business arrangement in which the franchisor, an enterprise, grants an independent franchisee to use its trade name or trademarks and to use its system for operating the franchisee's enterprise. The franchisor also provides the franchisee with training, technical assistance, and access to know-how in the management of the franchised enterprise. In return, the franchisee agrees to operate its business in conformity with the franchisor's system, and to make payments to the franchisor (Wissels 1996: 512; Bradgate 1995: 95). These elements are all covered by the regulation in Arts. 1027–40 GK RF II 1995. However, there are some differences between the meaning of Engl. *franchising* and that of франчайзинг as regulated in the civil code. In Art. 1031, for example, the rendering of continuous consultative assistance by the franchisor to the franchisee —regarded as an essential element of *franchising* in America — is formulated only as a discretionary obligation which may be set aside by the contracting parties (Art. 1031 Para. 2). This and some other minor particularities in the regulation demonstrate that the definition in GK RF II 1995 is rather broad in that it may also cover commercial transactions that in other countries are clearly not considered franchising (GK RF II Komm. 1996: 554–5; Wissels 1996: 512). In general however there is no doubt that the drafters intended to introduce a concept of franchising close to those of other countries (Wissels 1996: 512), and it seems appropriate that legal scholars often refer to Arts. 1027–40 as франчайзинг, given that the main elements of the meaning of franchising are covered by the Russian regulation. The question now arises why the legislator chose the term коммерческая концессия instead of франчайзинг. The status of franchising as a legal institute is generally a disputed issue. Whereas in American law franchising is regarded as a special and independent variety of commercial transaction, French (and, to some extent, Italian) law considers franchising a form of *commercial concession*[191] and even regards the American concept of franchising as a variety of the European concept of commercial concession with some local modifications (Baldi 1988: 134, 140; Sosna 1997: 29–30). Both the concept of коммерческая концессия and the one of франчайзинг belong to what are called exclusive contracts: one party offers the other the right to the exclusive spreading, distribution, advancement, and sale, of its products in a certain territory the borders of which are determined in the contract. The obligations and mutual restrictions the two parties take upon themselves in a contract of commercial concession are in many respects the same as in a franchising contract. However, there are some important differences, too. First, the concept of commercial concession is traditionally connected with the selling of products, but not with the rendering of services (Baldi 1988: 136). Second, a franchisee has the right to produce products or services that are identical to the ones produced by the franchisor (Sosna 1997: 30). Thirdly, and maybe most importantly, the degree of co-

[190] 'An analysis of the articles of chapter 54 GK leaves no doubt that they are about franchising.'

[191] The term commercial concession (Fr.: distribution commerciale) is in current use in the laws of some European countries, in particular France, Belgium, and Switzerland (Sosna 1997: 29).

operation between the two parties can be considerably higher in a franchising agreement than in case of a commercial concession, which leads SOSNA to conclude:

> Только в своих низших формах франчайзинг имеет некоторое сходство с коммерческой концессией. Чем больше объем исключительных прав, предоставляемых франчайзером своему франчайзи, тем дальше уходит франчайзинг от коммерческой концессией (SOSNA 1997: 30).[192]

This third point is given even more weight since the form of franchising that in recent years has spread most widely from the USA to other countries (including Russia) is what is called in Russian '"бизнес-формат" франчайзинг' 'business-size franchising' (SOSNA 1997: 30). Here, the franchisor offers the franchisee not only the whole complex of exclusive rights, but also carries out directly the preparation of an all-round activity programme for the franchisee, provides equipment, and assists with the planning of current operations, the creation of a transport and storage infrastructure, and the registration of the franchisee's legal status (ibid.).

The Russian legislator acted somewhat ambiguously. On the one hand, franchising is given the status of an independent form of contractual commercial arrangement which is regulated in a separate chapter, like other contractual arrangements. On the other hand, the chapter is headed коммерческая концессия which seems to suggest that the concepts of commercial concession and franchising are considered identical. It can be concluded that the Russian legislator tried to combine the American meaning of franchising with its European status. This ambiguity demonstrates the difficulties that may arise when a concept originating in American law is introduced into a legal system that is based on Continental-European law.

(xii) *Хайринг 'hiring'*

This loan-word from Engl. *hiring* is not in OŽEGOV and ŠVEDOVA 1997. Hiring means 'to purchase the temporary use of a thing, or to arrange for the labour or services of another for a stipulated compensation' (WEST 1985, s. v. hiring). It refers to one of the three forms of leasing, namely a medium-term lease: 'среднесрочная аренда имущества (от 6 месяцев до 3 лет)' 'medium-term lease of property (from six months to three years)' (BJuS 1997, s. v. хайринг). It can also refer to a medium-term credit whereby the acquired goods remain in the ownership of the seller until the last part of the money is brought in; the goods appears as the material security of the credit (ibid.).

[192] 'Only in its lower forms has franchising some resemblance with commercial concession. The greater the extent of exclusive rights presented to the franchisee by the franchisor, the further franchising departs from commercial concession.'

(b) *Other loan-words*

(i) *Андеррайтер 'underwriter'*

The English word *underwriter* (like *underwriting*, see above, p. 128–9) is used in the areas of insurance and of banking. The entry on андеррайтинг in BJuS 1997 (s. v. андеррайтер) also refers to those two areas:

> Лицо, уполномоченное страховой (перестраховой) организацией или синдикатом «Ллойда» принимать на страхование (в перестрахование) риски; отвечает за формирование страхового (перестраховочного) портфеля страховщика (перестраховщика) [...] В банковской деятельности — физическое или юридическое лицо, гарантирующее эмитенту (т.е. выпускающему облигации или акции) размещение их на рынке на согласованных условиях за специальное вознаграждение.[193]

In Soviet times, when the economic system of capitalist countries was investigated in specialist literature, an *underwriter* was called подписчик:

> Первичный рынок включает в себя корпорации, выпустившие акции и инвестиционные банки, осуществляющие эмиссионную деятельность, являясь посредниками и «подписчиками» (underwriters) в этой операции (KOČEVRIN 1978: 49).[194]

Today underwriters exist in Russia too, and the calque подписчик has been replaced by the English loan-word андеррайтер which was first recorded in 1994 (ĖP 1994, s. v. андеррайтер) and has since then become widespread. Like андеррайтинг it is mostly used to refer to the area of banking. An example of its usage is 'отношения эмитента и андеррайтера оформляются эмиссионным соглашением или договором' (*ĖŽ* 31/95: 8).[195] Recently андеррайтер has been introduced into legislation (Art. 2 STANDARDS 1996).

(ii) *Бартер 'barter'*

The Engl. word *barter* means the exchange of one thing for another without money being involved. Бартер was first recorded in 1990 (SP 1992, s. v. бартер) and soon began to replace the traditional Russian term товарообмен, especially after autumn 1991, when, because of hyperinflation and supply problems, barter became a widespread feature of Russian life (HAUDRESSY 1992, s. v. бартер). Бартер is one of the most widespread loan-words of the 1980s and early 1990s (SERGEEVA 1996: 45, KITAJGORODSKAJA 1996: 168). Mostly it has been used to refer to trade between Soviet (Russian) enterprises (FERM 1994: 189; see also TS 1998,

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[193] 'A person who is authorized by an insurance (re-insurance) organization or the syndicate "Lloyd's" to take risks on an insurance (re-insurance); is responsible for the setting-up of an insurance (re-insurance) portfolio of the insurer (re-insurer) [...] In banking — a natural person or legal entity that guarantees the issuer (i.e. the issuer of obligations or shares) to place them on the market according to agreed conditions for a special commission.'

[194] 'A primary market comprises corporations that have issued shares, and investment banks that carry out an emission activity in serving as mediators and "underwriters" (underwriters) in this operation.'

[195] 'The relationship between the issuer and the underwriter is set down in form of an issue agreement or a contract.'

s. v. бартер). It has also been included in legal dictionaries such as ĖPF 1995, where its meaning is given as 'прямой товарообмен, без проведения денежных расчетов' 'direct exchange of goods without payment of money'.

One of the derivatives of бартер is бартеризация: 'единство России может не выдержать второго за последние несколько лет испытания бартеризацией и товарным дефицитом' 'the unity of Russia might not bear a second ordeal in the past few years of barterization and shortage of goods deficit' (*Izv.* 18 Sept. 93). The earliest recorded example of the usage of this word dates from 1992 (TS 1998, s. v. бартеризация). The adjective бартерный was recorded as early as in 1963 in GLOSSARY 1963, where *barter agreements* is rendered into Russian as товарообменные сделки or бартерные сделки. It is remarkable that the adjective was attested earlier abroad than Russia: according to NOVYE SLOVA-80 1997, the earliest example of usage of бартерный dates from 1973. FERM 1994: 152 mistakenly treats it as a new word. Бартерный is often used in the expression бартерная экономика 'barter economy' (*ĖŽ* 9/98: 25). In civil law the traditional term мена 'exchange' is still being used (see, for example, Art. 567 GK RF II 1995). However, бартерная сделка is now also used in legislation, for example in a decree of August 1996 (UKAZ 8/96), where внешнеторговые бартерные сделки 'foreign trade barter transactions' are defined as

> совершаемые при осуществлении внешнеторговой деятельности сделки, предусматривающие обмен эквивалентными по стоимости товарами, работами, услугами, результатами интеллектуальной деятельности (далее именуется — бартерные сделки). К бартерным сделкам не относятся сделки, предусматривающие использование при их осуществлении денежных или иных платежных средств (Art. 1).[196]

There are two differences between the legal meaning of бартер and the one of мена, as used in legislation. First, бартер usually refers to foreign trade transactions. So far, all legislation using the term бартерная сделка is concerned with foreign trade relations (for example, POSTANOVLENIE 10/1996). The same is true for legal analyses: 'бартерные операции во внешней торговле России' 'barter operations in Russia's foreign trade' (*ĖŽ* 22/97: 26); 'итоги внешней торговли России в рамках бартерных операций' 'results of Russia's foreign trade within the framework of barter operations' (*ĖŽ* 23/97: 18). In contexts other than legislation бартер is mostly used to refer to the internal Russian economy (for example *ĖŽ* 9/98: 25). Second, the range of objects that can be exchanged is considerably broader in case of a бартерная сделка (including goods, work, services, and the results of intellectual activity) than with мена, which is only about goods:

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[196] 'Transactions, carried out by the realization of foreign trade activity, which foresee the exchange of goods, work, services, or the results of intellectual activity equivalent to their cost (hereafter called barter transactions). Transactions that foresee the use of money or other means of payment for their realization are not considered barter transactions.' Another example of the use of бартерный in legal documents is TIPOVAJA PROGRAMMA 1997, Para. 7.6-7.

> По договору мены каждая из сторон обязуется передать в собственность другой стороны один товар в обмен на другой (Art. 567 Para. 1 GK RF II 1995).[197]

The meaning of бартер corresponds to that of Engl. *barter* in as much as the latter also includes both goods and services (WEST 1985, s. v. barter).

(iii) *Ваучер 'voucher'*

Engl. *voucher* means a 'document that serves to recognize a liability and authorize the disbursement of cash' (WEST 1985, s. v. voucher). The loan-word ваучер is the unofficial and widespread name for приватизационный чек 'privatization cheque', a security with a nominal value of 10,000 roubles that was given to all Russians living on Russian territory on 2 September 1992: 'в представлении населения ваучеры были символом весомости доли гражданина в общенародной собственности' 'in the conception of the population vouchers were the symbol of the ponderability of the citizen's share in the national property' (*ÉŽ* 49/97: 5). Ваучер became increasingly popular from summer 1992 on, and an effort was made to promote the official term приватизационный чек (for sources, see KARPINSKAJA 1993: 61). This meaning of ваучер differs from Engl. *voucher*. From ваучер both ваучерный (FERM 1994: 152; KITAJGORODSKAJA 125; 154) and ваучеризация have been derived: 'едва лишь появились ваучеры (приватизационные чеки), как возникло слово ваучеризация' 'as soon as vouchers (privatizing cheques) appeared, the word voucherization came to rise' (quoted from KITAJGORODSKAJA 1996: 108; see also KARPINSKAJA 1993: 61). Other recent derivations from ваучер are ваучерист 'dealer specializing in vouchers', ваучерник 'buyer-up of vouchers', and ваучеродержатель 'voucher holder', all of which were first recorded in 1994 (TS 1998, s. v. ваучерист; ваучерник; ваучеродержатель). In 1994 a second meaning of ваучер emerged, which is not given in KARPINSKAJA 1993 and OŽEGOV AND ŠVEDOVA 1993: туристский ваучер 'tourist voucher' (PODČASOVA 1995b: 62). The federal law 'On Tourism' introduces the term туристский ваучер: 'документ, устанавливающий право туриста на услуги, входящие в состав тура, и подтверждающий факт их оказания' 'a document that establishes the tourist's right to services belonging to the tour, and confirming the fact that they have been rendered' (Art. 1 FEDZOTD 1996). In a commentary on this law this innovation is described as necessary to enable the country to take part in the 'civilized tourist-market':

> Сложные понятия "туристский продукт" или "туристский ваучер" действительно непривычны для российского законодательства (особенно после печальной практики "неудачного вложения ваучеров от приватизации"), но без них не может обходиться международный туризм. Принимая эти новации, мы входим в цивилизованный туристский рынок (*ÉŽ* 2/97: 45).[198]

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[197] 'In an exchange agreement each party undertakes to pass goods into the ownership of the other party in exchange for other goods.'

[198] 'The expressions "tourist product" and "tourist voucher" are indeed unusual for Russian legislation (especially after the unfortune episode of the "unsuccessful investment in privatization vouchers"), but international tourism cannot do without them. By accepting these innovations we enter the civilized tourist-market.'

(iv) *Оффшор 'off-shore'*

As an economic term, Engl. *off-shore* can have several meanings, including 'to be located beyond the sea border, transoceanic; foreign' 'a financial operation implemented in foreign countries', 'not being subject to national regulation (particularly with regard to tax regulations)' (PODČASOVA 1996: 47). When off-shore was borrowed into Russian, several variants appeared: офф-шор (JURÈ 1997; SKомм 1996), оффшор (*ÈŽ* 24/96: 23–XV; TBS 1996), офшор or оф-шор (for both see KITAJGORODSKAJA 1996: 175), forms that are used either as a noun (TBS 1996, s. v. оффшор) or as an adjective (BÈS 1994, s. v. офф-шор). The Russian term is used to refer to international financial centres, and to certain banking operations. Mostly it is applied to territories where credit and other (national and foreign) institutions carry out transactions with non-residents (foreign natural persons and legal entities) in a currency other than the one used in the given country; for an institution or company registered in an оффшор centre a particularly favourable tax regime is created, up to full exemption from tax (BJuS 1997, s. v. оффшор; ÈP 1994, s. v. центры офф-шорные). The term is also used to refer to companies of international law that act in a tax-free zone (ibid.). The adjective офф-шорный is also used and has been defined as 'не попадающий под национальное регулирование' (ÈP 1994, s. v. офф-шорный. ARBÈS 1995, s. v. off-shore). It is often used in combination with the nouns центр 'centre' ('сеть зарубежных оффшорных центров' — *ÈŽ* 24/96: XV), территории 'territory', or зона 'zone'. The main component of the meaning of оффшорный can be described as безналоговый 'exempt from tax', by which it is sometimes replaced (for examples, PODČASOVA 1996: 47). Particularly common is the phrase оффшорная компания 'off-shore company', naming a company that is registered in an off-shore territory (ÈP 1994, s. v. компания офф-шорная; see also PODČASOVA 1996: 48).

(v) *Риэлтер 'realtor'*

Engl. *realtor* is an American term for an agent dealing with real estate. The corresponding term in British English is *estate agent*. *Realtor* is derived from Am.Engl. *realty* (immovable property). The terms риэлтер and риэлтерская деятельность were borrowed into Russian when market reforms were introduced: 'эти понятия возникли вместе с рыночной экономикой и уже прочно вошли в нашу жизнь' 'these concepts appeared together with the market economy and have already firmly entered our life' (*ÈŽ* 50/96: 27). Engl. *realtor* has produced the Russian doublets риэлтор and риэлтер. So far, there is no sign of one form superseding the other. According to an article in *ÈŽ* headed 'Риэлтер = риэлтор. Требования, единые для всех' the choice of form is a 'matter of taste' (дело вкуса) (*ÈŽ* 50/96: 27). The term риэлтер has been used in legal documents (for example, POSTANOVLENIE 12/1994, where риэлторская деятельность is mentioned), textbooks (such as KRAŠENINNIKOV 1995), legal and economic dictionaries (ÈP 1994, TBS 1996, BÈS 1994), and specialized newspapers (for

instance, the articles 'Риэлтер на доверие', *MN* 3/96: 27; and 'Риэлторы объединяются', *ĖŽ* 8/95: 26). In November 1996 a decree was issued by the Russian government to enact the Положение о лицензировании риэлтерской деятельности 'On the Licensing of a Realtor's Activity' (POSTANOVLENIE 11/1996), where риэлтерская деятельность is defined as

> осуществляемая юридическими лицами и индивидуальными предпринимателями на основе соглашения с заинтересованным лицом (либо по доверенности) деятельность по совершению от его имени и за его счет либо от своего имени, но за счет и в интересах заинтересованного лица гражданско-правовых сделок с земельными участками, зданиями, строениями, сооружениями, жилыми и нежилыми помещениями и правами на них.[199]

Риэлтер occurs in the name of the organization Российская гильдия риэлтеров 'Russian guild of realtors' (*MN* 3/96: 27; see also *ĖŽ* 8/95: 26, where it is called 'Российская гильдия риэлторов) founded in 1992 (ĖP 1994). The meaning of риэлтор is commonly described as 'агент по продаже недвижимости' 'agent in selling immovable property' (ĖP 1994, see also PODČASOVA 1994b: 53), which corresponds to the meaning of Am.Engl. *realtor*. ŠAPOŠNIKOV 1997: 41 uses the example of риэлтер to demonstrate a change of meaning that in his view has occurred frequently in the recent borrowing of English words into Russian: while Engl. *realtor* refers to a person dealing with the trade in immovable property, риэлтор is applied to an agent who exchanges appartments ('квартирный маклер-обменщик'). However, it has been shown above that the legal meaning of риэлтор corresponds to that of *realtor*. The profession of риэлтор is regarded as something positive: 'по сути своей риэлтор является «терапевтом» недвижимости, помогая собственнику решать ряд острых проблем' 'in essence, a realtor is a "therapeutist" of immovables, helping the owner to solve a number of critical problems' (*ĖŽ* 23/97: 8). The adjective риэлтерский is mostly used in combination with the nouns деятельность 'activity' (*ĖŽ* 26/96: IX), компания 'company' (*ĖŽ* 11/95: 1), бизнес 'business' (*ĖŽ* 17/97: 25), and фирма 'firm' (*MN* 3/96: 27). The neologisms фирма-риэлтер 'real-estate company' (TBS 1996), риэлтор-профессионал 'professional realtor' (*ĖŽ* 17/97: 25), and риэлтор-брокер 'realtor-broker' (*ĖŽ* 50/96: 27) are also used.

(vi) *Спонсорство 'sponsorship'*

The federal law 'On Advertising' introduced this term for the first time. Its meaning is defined as

> осуществление юридическим или физическим лицом (спонсором) вклада (в виде предоставления имущества, результатов интеллектуальной деятельности, оказания услуг, проведения работ) в деятельность другого юридического или

[199] 'An activity carried out by legal entities or individual entrepreneurs on the basis of an agreement with an interested person (or by proxy) about civil-law transactions in the interested person's name and at his expense, or in the realtor's name, but at the expense and in the interest of the interested person, with plots of land, residential and non-residential buildings, and the rights to them.'

физического лица (спонсируемого) на условиях распространения спонсируемым рекламы о спонсоре, его товарах [...]. (Art. 19 FEDZOR 1995)[200]

The terms спонсорство 'sponsorship' and спонсируемый 'sponsored natural person/legal entity' are new derivations from спонсор 'sponsor'. Спонсорство has been recorded since 1986 (NOVYE SLOVA–80 1997, s. v. спонсорство). The first recorded use of спонсор dates not from the 1980s, as is sometimes suggested (NOVYE SLOVA–70 1984, s. v. спонсор; ULUCHANOV 1994: 72; KRYSIN 1996: 151; LARIONOVA 1992: 122), but from 1972 (KOTELOVA 1995, s. v. спонсор). However, it is only since the late 1980s that the word has been used to refer not only to a sponsor in a foreign (capitalist) country, but also (and predominantly) to one in Russia. The word quickly became widespread and has given rise to a relatively large number of derivatives, including, apart from the two mentioned above

• Спонсировать 'to sponsor': 'авиакомпании "Марк 6" [...] спонсирует школу' 'the airline "Mark 6" [...] sponsors the school' (*AiF* 5/93; see FERM 1994: 175).

• Спонсорье 'sponsor': 'неужели наши певцы будут петь теперь исключительно по-английски, желая понравиться иноземному спонсорью и заработать валюту?' 'will our singers now really sing solely in English, hoping to please a foreign sponsor and to earn [hard] currency?' (*Pravda*, 24/12–91).

• Фирма-спонсор 'sponsoring enterprise' (LARIONOVA 1992: 123).

Engl. *sponsor* orginally meant 'warrantor'; in the 1930s it acquired a second meaning, referring to a person who pays for a broadcast programme in exchange for commercial advertising; and it was only in the 1960s and 1970s that the word was used with respect to a person financing something or somebody (OED 1989, xvi., s. v. sponsor). It is the third meaning that has been borrowed into many other languages, including Russian (ŠAPOŠNIKOV 1997: 4:). In former times this meaning was covered by меценат 'patron', a word which during the Soviet period referred mainly to capitalist countries: 'в буржуазно-дворянском обществе — богатый покровитель наук и искусств' (OŽEGOV 1960). LARIONOVA (1992: 124) ponts out that although the word 'had fallen out of active usage', it continued to form part of the Russian vocabulary, mainly because of its widespread use in literature and in translations of foreign texts. Since the beginning of *perestroika*, however, it has been reorientated towards Russian society (SP 1992, s. v. меценат). Меценат, though a borrowing itself (from Germ. *Maecenat*, as suggested by ULUCHANOV 1994: 72; or, according to SIS 1982, s. v. меценат, from Lat. *Maecenas* (*Maecenatis*)), is considered a Russian word — 'существуем за счет спонсоров, или по-русски — меценатов' (*AiF* 8/1991). This shows how much the question of how foreign a borrowing is felt to be depends on the time of borrowing and on whether

[200] 'The realization of an investment (in the form of property, the results of intellectual activity, the rendering of services, or the carrying-out of work) by a legal entity or a natural person (sponsor) in the work of another legal entity or natural person (sponsored [natural person/legal entity]) on condition that the latter spreads advertising about the sponsor and his goods.'

another, more recent, borrowing with a similar meaning is competing with it. The question arises as to why the FEDZOR 1995 introduces спонсор and not меценат, despite a general tendency in Russian legislation since the late 1980s to restrict the use of borrowings from English, especially if there are Russian words available. In some cases, the usage of спонсор seems to suggest that this word is merely a new name for the same concept previously only covered by меценат: 'помогают нам и спонсоры, продолжающие дело таких меценатов прошлого, как Мамонтов, Морозов [...]' 'we are helped by sponsors who continue the work of such patrons of the past as Mamontov, Morozov [...]' (*Izvestija*, 22 Nov. 1991: 11). While KAKORINA 1996: 69 treats спонсор and меценат as synonyms, a more detailed analysis of the corresponding entries in OŽEGOV and ŠVEDOVA 1993 (and 1997)[201] and JURÈ 1997[202] and of the use of these words in other contexts such as newspapers ('сегодня культуре позарез нужны меценаты' 'today culture badly needs patrons', *Pravda*, 9 Mar. 1990: 1; 'акционерное общество «Мосэнерго» стало одним из «золотых» спонсоров Российского олимпийского комитета' 'the joint-stock company Mosénergo has become one of the "golden" sponsors of the Russian Olympic committee', *MN* 14/97: 1) shows that there are clear differences between the meaning of спонсор and that of меценат. First, меценат usually refers to a patron of the arts or sciences, whereas the activity of a спонсор is not restricted to any particular area. Second, while the former does not seek profit, the latter invests money for this purpose, mostly in the form of commercial advertisement or tax reduction. Third, меценат always refers to only one person, while спонсор can also (and in fact in most cases does) refer to a legal entity such as an enterprise. Given that the law on advertising is aimed at natural persons and legal entities doing business in all spheres of commercial life, these three differences in meaning make it clear why спонсор was given preference over меценат.

(vii) *Фьючерс 'futures'*

A *future transaction* is a contract with the obligation to purchase or sell goods or other property (in particular stocks and shares) on an agreed day, at a price fixed in advance, which will not be influenced by any fluctuation of the stock market. At delivery date the contract holder (buyer) pays the seller the difference between market value and the stated price if the value of the commodity has fallen; if it has risen, the buyer is paid this difference by the seller. In the eighteenth century the kind of transaction 'когда между заключением и пополнением сделки проходит известное время' was called in Russian '*à terme*-сделка' (FEMELDI 1902: 157); later this term was replaced by срочная сделка (ŠERŠENEVIČ 1994(1914): 238–9). KOSTOMAROV (1994: 83), in discussing the question whether the borrowing of фьючерс was useful ('полезно'), mentions the Russian words предоплата, задаток and проплата, but not

[201] 'Меценат — богатый покровитель наук и искусств [...]'; 'Спонсор — лицо, организация, фирма, выступающая как [...] финансирующая сторона'.

[202] 'Меценат — богатый покровитель наук и искусств [...]'; 'Спонсор — гражданин или юридическое лицо, участвующее в финансировании какого-либо мероприятия [...] в рекламных целях'.

срочная сделка, which was the established legal term. When, beginning in 1992, future transactions became increasingly popular (the first futures transaction since 1930 was concluded in Moscow on 11 Jan. 1992, ÈP 1994 s. v. фьючерсная сделка), the well-established term срочная сделка was not revived; instead, such dealings were named форвардные сделки and фьючерсные сделки 'futures transactions' or фьючерсы 'futures'. While форвардные сделки are the kind of futures transaction that were practiced in pre-Revolutionary Russia, фьючерсы represent a variety of форвардные сделки that was introduced to Russian stock exchanges only in the early 1990s (BURENIN 1997).

The law 'On Commodity Exchanges', which regulates the different kinds of stock-market transactions, states:

> В целях настоящего Закона участниками биржевой торговли в ходе биржевых торгов могут совершаться сделки, связанные с: [...] взаимной передачей прав и обязанностей в отношении стандартных контрактов на поставку биржевого товара (фьючерсные сделки) (Art. 8 ZoTB 1992).[203]

A фючерс is a contractual agreement carried out at a stock exchange in which one party untertakes to sell an item of merchandise (including securities), while the other party undertakes to pay for it; the realization of the deal is set for a later time (BJuS 1997, s. v. фючерсная сделка). There are two differences between a фьючерсная сделка and a форвардная сделка: first, the former agreement has to be concluded under certain conditions determined by the stock exchange in a standardized contract, whereas the latter is formulated according to the wishes of the two parties. Second, in a фьючерсная сделка the profit or losses are calculated every day, according to the results of past transactions, whereas in a форвардная сделка they are determined only when the contract expires (BJuS 1997, s. v. форвардная сделка).

The form of the adjective is inconsistent: фьючерный (ÈPF 1995 фьючерные сделки), фьючерский (*MN* 10/96: 22), and фьючерсный (*MN* 29/96: 3) all occur. Lately, however, it seems that the last of these has gained preference, and it is in this form that the term has been introduced into legislation. Apart from the expression фьючерсная сделка, the adjective фьючерсный is often used with the nouns

- торговля 'trade': 'большая специфика и сложность технологии фьючерсной торговли' 'the great specifity and complexity of the technology of the futures trade' (JAKOVLEV and DANILOV 1996: 72).
- рынок 'market': 'участники фьючерсного рынка России' 'the members of the Russian futures market' (*ÈŽ* 3/97: 5).
- торг 'trading': 'регулярные фьючерсные торги ведутся 15 товарными, фондовыми и валютными биржами в Москве, Санкт-Петербурге, Воронеже,

[203] 'According to this law, members of the stock-exchange can conclude transactions in the course of performing stock-exchange trading connected with [...] the mutual transmission of rights and obligations relating to standard contracts regulating the delivery of stock-exchange goods (future transactions)'

Омске и Самаре' 'regular futures tradings are conducted by 15 commodity exchanges, stock exchanges and currency exchanges in Moscow, St Petersburg, Voronezh, Omsk and Samara' (*ÉŽ* 3/97: 5).

• контракт 'contract': на Московской бирже 'среднедневной оборот фьючерсных контрактов на доллар составлял 60 млн. долларов' on the Moscow stock exchange 'the average daily turnover of futures contracts in dollar amounted to 60 million dollar' (*ÉŽ* 3/97: 5).

As a synonym of фьючерсные сделки, фьючерсы is often used: 'валютные фьючерсы — срочные биржевые контракты на валюту' 'currency futures are stock exchange contracts for a fixed period on currency' (TBS 1996, s. v. фьючерсы; see also BSR 1995a: 87; *ÉŽ* 49/97: 5). The expression товарные фьючерсы 'commodity futures' is also used (for example, *ÉŽ* 6/98: 5). The phenomenon of a plural form being borrowed as a singular form is known as *depluralization*:[204] the English plural morpheme *-s* is not recognized as such, but treated as the ending of the stem to which the Russian plural morpheme *-ы/-и* is then attached. Wołłowicz (1984: 91) holds the view that depluralization is connected to the meaning of the nouns concerned: they are either predominantly or exclusively used as plural forms in English. These findings have been confirmed by recent analyses (for example, Kurochtina 1996: 24), and the case of фьючерсы may serve as a further example.

2. Calques

(i) *Акция, золотая 'golden share'*

Золотая акция is a calque from *golden share*, an English term that was coined in Britain under the Thatcher government in connection with the privatization of companies. In order to back up certain ownership restrictions, the British government retained, in a number of cases, what was referred to as a *golden share* — a share that controls at least 51% of the voting rights. This gives the government, among other privileges, the power of veto, enabling it to prevent an unwelcome takeover bid or the amendment of articles without its prior consent (Veljanovski 1988: 127–8). In Russian legislation the term золотая акция was first used in a decree of November 1992 on privatization:

> При преобразовании в акционерные общества предприятий, приватизация которых [...] может быть разрешена по решению Правительства Российской Федерации или Государственного комитета Российской Федерации по управлению государственным имуществом, указанные органы вправе принимать решения о выпуске при эмиссии их акций «Золотой акции», предоставляющей ее владельцу на срок до 3 лет [...] право «вето» при принятии собранием акционеров решений:
> о внесении изменений и дополнений в устав акционерного общества;
> о его реализации или ликвидации;

[204] For examples for depluralized loan-words borrowed from Dutch and English in the eighteenth century, see Speck 1978: 153-4; for a discussion based on more recent material, see Wołłowicz 1984: 89-92.

> о его участии в других предприятиях и объединениях предприятий;
> о передаче в залог или аренду, продаже и отчуждении иными способами имущества, состав которого определяется планом приватизации предприятия.
> «Золотая акция» в указанных случаях находится в государственной собственности. Ее передача в залог или траст не допускается. [...] (Art. 4 UKAZ 11/1992).[205]

Since 1992 the concept of золотая акция has been developed further in Russian law. Certain aspects of its meaning have been specified in jurisdiction;[206] the draft of the new law on privatization (1997) contains a separate article on it (as mentioned in *ÉŽ* 6/97: 39), and the legal implications of this new concept are the subject of round-table discussions in specialized newspapers (see, for example, 'Какой пробы «золотая акция»?, *ÉŽ* 6/97: 39). It has also been introduced into legal dictionaries (TBS 1996, s. v. золотая акция). In various decrees the concept has since been applied, ruling either to keep the золотая акция of a company in state property for an extended period of time (UKAZ 5/1997b and UKAZ 5/1997c), or to convert federal shares into a золотая акция (UKAZ 4/1997), or to convert a золотая акция into ordinary shares (UKAZ 5/1997a).

The meaning of золотая акция refers not to a variety of *security* as suggested by the word акция, but rather to a specific bundle of rights the legal nature of which legal scholars still try to determine: 'я поддерживаю ту точку зрения, что «золотая акция» — это не разновидность ценной бумаги, а нечто другое [...]' 'I support the view that a "golden share" is not a variety of a security, but something else [...]' (SKIJAROV in *ÉŽ* 6/97: 39). MAJKOVA (ibid.) describes its meaning as 'share in the property of society' (not a security), the peculiarity of which consists in that its owner has special rights. The federal law 'On the privatization of state property and the foundations of the privatization of communal property in the Russian Federation' (FEDZOPRIVGOSIM 1997) does away with this ambiguity in introducing the term специальное право 'special right' as a synonym of золотая акция.

As with the concept of *golden share* in English law, the main purpose of a золотая акция is to keep at least 51% of voting shares (see UKAZ 4/1997) under the control of the government. Both concepts are regarded as a temporary restriction on privatization imposed by the state in order to keep control on a company's activity for a certain amount of time. There is a difference.

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[205] 'Under the transformation into joint-stock societies of enterprises the privatization of which can be authorized by the government of the Russian Federation or the State Committee of the Russian Federation for the Administration of State property these organs are entitled to take a decision about the issuing of their shares "golden share", which gives their holder over three years the right of veto on decisions taken by the shareholders' meeting about the introduction of changes and additions into the statute of the joint-stock society, its realization or liquidation, its participation in other enterprises or associations of enterprises, the transfer of property, the composition of which is determined by the privatization plan of the enterprise into pledge or lease, sale or alienation by other means. In these cases the "golden share" remains in state ownership. Its transfer into pledge or trust is forbidden.'

[206] see e.g. Постановление пленума Верховного Суда РФ и пленума Высшего Арбитражного Суда РФ от 2 апреля 1997 г. № 4/8 О некоторых вопросах применения Федерального закона «Об акционерных обществах», in *ÉŽ* 17/97: 16).

however, in that a *golden share* is held by the relevant Secretary of State, whereas a золотая акция is considered государственная собственность 'state property'. Secondly, the *golden share* was introduced primarily in order to prevent foreign takeovers, whereas this aspect does not have priority in the case of a золотая акция; here the aim is to ensure generally the government's control over the activity of companies whose production is considered to be of vital importance for the Russian state. An example is the UKAZ 497 of May 1997, ruling that the золотая акция of the joint-stock company Апатит, 'whose production is of great importance for the country's economy', will remain three more years as federal property.

(ii) *Государство, социальное 'social state'*

This term is a loan-translation from Germ. *Sozialstaat*. The German *Grundgesetz* (1949) was the first constitution ever to introduce the principle of a *Sozialstaat* (Art. 20, 28), a state which tries to fulfil to the greatest possible extent the postulate of social justice in legislation, administration, and jurisdiction (CREIFELDS 1992, s. v. *Sozialstaat*). Other European constitutions subsequently included this principle (France 1958, Spain 1978). In following its tradition of adapting Continental European law, Russia introduced the concept of социальное государство into the 1993 Constitution. The so-called El'cin-draft of the text of the constitution (published under his signature on 30 April 1993) did not proclaim the principle of социальное государство, but the draft written by the parliamentary constitutional commission (published on 8 May 1993) introduced it (VAN DEN BERG 1996: 121). Art. 7 of the final text states:

> Российская Федерация — социальное государство, политика которого направлена на создание условий, обеспечивающих достойную жизнь и свободное развитие человека.[207]

RIVINIUS 1996c: 81 rightly comments on the introduction of the term социальное государство as 'surprising' in view of the fact that only a few years ago this term was almost considered an insult. In Germany the concept of *Sozialstaat* has developed over almost fifty years and meanwhile, as the social market economy emerged, has been integrated deeply into the legal order of the state. It finds its expression not only in certain basic rights and obligations, but affects the interpretation of laws, restricts individual rights, and has motivated numerous legislative acts, concerning national insurance, welfare, equality of educational opportunities, worker participation etc. The Russian concept of социальное государство has only just been introduced, and it is therefore too early to investigate the relationship between социальное государство and *Sozialstaat* in full. Even though a central feature of the German concept of *Sozialstaat*, the obligation to use property to the benefit of the public ('Sozialbindung des Eigentums') has not been included in the Russian constitution — a similar regulation was foreseen in the draft written by the parliamentary constitutional commission, but was later

[207] 'The Russian Federation is a social state whose policy aims at creating conditions ensuring a worthy life and free development of the individual.'

removed (VAN DEN BERG 1996: 121) —, it becomes clear fom various regulations in the Russian constitution that it was the intention of the legislator to provide a legal framework for the emergence of a social state, to base Russian law on the model of the *social market economy* (*soziale Marktwirtschaft*) rather than the free American model (FEDOROV 1992; VAN DEN BERG 1996: 122). According to JÈS 1997 (s. v. социальное государство), the constitutional obligations of the Russian state following from the principle of социальное государство are to protect the work and health of the people, to guarantee a minimum wage, to develop a system of social services, and to install state pensions, social benefits, and other guarantees of social protection.

(iii) *Компания, аффилированная 'affiliated company'*

The English term *affiliated company* originates in Anglo-American law. It can have two meanings: it may refer to a *subsidiary* (a company more than 50 per cent of whose voting shares are owned by another, parent, company) or an *associate company* (one of two companies that are subsidiaries of a third parent company, or a company associated to another by less than 50 per cent of the shares). Only the second meaning, that of *associate company*, has been borrowed into Russian — 'компания, в которой имеется пакет акций меньше контрольного (обычно 5–50%), или одна из двух компаний, являющихся дочерными третьей' (ARBÈS 1995, s. v. affiliated company; see also ÈP 1994, s. v. компания аффилиированная).[208] *Affiliated company* as referring to a *subsidiary* corresponds to the Russian term дочерняя компания which was borrowed from Germ. *Tochtergesellschaft* in Soviet times, then referring only to capitalist countries. As referring to one of two companies that are subsidiaries of a parent company, the term аффилиированная компания competes with сестринская компания, a recent borrowing from Germ. *Schwestergesellschaft* or Fr. *société sœur*. So far, аффилиированная компания has not been used in legislation.

(iv) *Лицо, аффилированное 'affiliated person'*

This term was borrowed from Engl. *affiliated person*, a concept originating in Anglo-American law (SPIES 1996: 133). The form аффилированный is striking, since the verb to which it belongs would be expected to be аффилиировать (derived from аффилиация), which should give аффилиированный, by analogy with examples such as ассоциация 'association' — ассоциировать 'to associate' — ассоциированный 'associated'. The term *affiliated company* has been borrowed as аффилиированная компания (see above). Аффилированное лицо was first introduced into Russian legal terminology in 1992, when it appeared in the statute 'On Investment Funds':

[208] 'A company in which less than the controlling block of shares (usually 5–50 per cent) are available, or one of two companies which are subsidiaries of a third company.'

> Аффилированное лицо физического или юридического лица (акционерного общества, товарищества, государственного предприятия) — его управляющий, директора и должностные лица, учредители, а также акционеры, которым принадлежат 25 и более процентов его акций, или предприятие, в котором этому лицу принадлежат 25 и более процентов голосующих акций. В число аффилированных лиц управляющего входят все инвестиционные фонды, заключившие с ним договор об управлении инвестиционным фондом (Para. 4 section 3 Polozhenie 10/1992).[209]

The term аффилированное лицо was used in several articles (81–2, 92–3) of the 1995 federal law 'On Joint-Stock Societies' (FedZoAO 1995). Art. 93 is headed 'информация об аффилированных лицах общества', but, instead of defining the meaning of аффилированное лицо, it refers to other legislation: 'лицо признается аффилированным в соответствии с требованиями антимонопольного законодательства Российской Федерации' 'a person is recognized as an affiliated person in accordance with the requirements of the anti-monopoly legislation of the Russian Federation' (Para. 1). However, the law 'On Competition and the Restriction of Monopolistic Activity on Commodity Exchanges' (ZoK 1991/5), which represents the central piece of legislation in this area, makes no use of the term, either in its original version of 1991, or in the revised version of 1995. Antimonopoly legislation does, however, define the meaning of 'юридические лица контролирующие имущество друг друга' 'legal entities controlling each other's property' as legal entities that have an opportunity to control each other's activities by virtue of (i) ownership by one legal entity of 25% of shares (probably not only voting) in another one; (ii) ownership by one legal entity of any number of shares conferring rights to cast 50% of the votes in another entity; (iii) having at least 1/4 of the same individuals as elected officers in different legal entities (Sirodoeva 1996: 89). The question of who exactly is meant by the term аффилированные лицо in FedZoAO 1995 is of far-reaching importance for the application of the law (Tot'ev 1997: 80), and it is therefore even more surprising that the FedZoAO 1995 does not define the term. Legal scholars discuss the problem controversially. The definition of аффилированное лицо in BJuS 1997(s. v. аффилированное лицо) is based exclusively on Para. 4 Polozhenie 10/1992. In contrast, Tot'ev 1997: 81 claims that the definition in Polozhenie 10/1992 cannot be used in the context of company law since the Polozhenie 10/1992 can hardly be considered part of antimonopoly legislation; it was created with different intentions. Also, Para. 4 Polozhenie 10/1992 does not, in his view, provide a definition of аффилированное лицо, but merely enumerates entities that for the purpose of this specific legal act are considered an аффилированное лицо (ibid.). Others try to deduce a definition of the term on the basis of all

[209] 'An affiliated person of a natural person or a legal entity (joint-stock society, partnership, state enterprise) is its manager, directors, other officers, founders, and shareholders that own 25% or more of its shares, or a company in which that first company owns 25% or more voting shares. To the affiliated persons of the manager belong all investment funds that have concluded a contract with him about the management of the investment funds.'

instances of occurrence, including Položenie 10/1992. Thus it has been concluded that an аффилированное лицо of a joint stock company is a legal entity or natural person that has either obtained the right to have 20 per cent or more of the voting shares at its disposal, or, by virtue of its legal position or office, has the right to give binding orders and (or) the possibility of determining in some other way the conditions by which the company carries out its entrepreneurial activity (FedZoAO Komm. 1996: 361). Finally, a group of scholars, represented by Sirodoeva 1996: 89, holds the most convincing view, that it is 'not entirely clear at this time' to whom the regulations in FedZoAO 1995 relating to аффилированные лица will apply. Meanwhile the term continues to be used in legal documents (for example, Para. I. 2. Tipovaja programma 1997).

The meaning of аффилированное лицо corresponds to the one of *affiliated person* in that both refer to a natural person or legal entity that takes part in the share capital of a joint-stock society and is able to determine its activities. The criteria, however, are different: in American law an affiliated company is a company that owns 5% or more of the voting shares of another company (Tot'ev 1997: 81).

(v) *Общество, акционерное закрытое/открытое 'closed/open joint-stock society'*

This term was first introduced into Russian law in the 1990 statute 'On Joint-Stock Societies and Companies with Limited Liability':

> Общества могут быть открытым или закрытым, что отражается в уставе. Акции открытого общества могут переходить от одного лица к другому без согласия других акционеров. Акции закрытого общества могут переходить от одного лица к другому только с согласия большинства акционеров [...] (Art. 7 Položenie 1990).[210]

An open joint-stock society is a society in which the stock is publicly offered and may be acquired by anyone, whereas in a closed joint-stock society the number of stockholders may not exceed a specific number, and, as a rule, stocks must first be offered to other stockholders before sale to a non-stockholder (Butler 1993a: 12; for a more detailed comparison between these two forms see Mamaj 1996: 21). In the 1995 federal law 'On Joint-Stock Societies' these concepts have been developed further. Legal analyses suggest that these concepts have been modelled on the Germ. *offene Handelsgesellschaft* and *GmbH* (*Gesellschaft mit beschränkter Haftung* 'society with limited liability'). Indeed, in some legislative acts товарищество с ограниченной ответственностью is given as a synonym for закрытое акционерное общество (for example, Art. 11 ZoP 1990; Art. 15 Para. 7 ZoPriv 1991). However, it has also been suggested that in fact these concepts are more reminiscent of the American *public* and *close business corporation* (Solotych 1992: 171).

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[210] 'A society may be open or closed, which is reflected in the charter. The stocks of an open society may be transferred from one person to another without the consent of other stockholders. Stocks of a closed society may be transferred from one person to another only with the consent of the majority of stockholders [...].'

(vi) *Предприятие, сестринское 'sister enterprise'*

Art. 37 of the draft of the new taxation code (NALOGK-PROEKT 1997) which was adopted in its first reading by the State duma on 19 July 1997 (published in *ÉŽ* 27/97: 4–30) is headed 'материнские, дочерние и сестринские предприятия' 'Parent, Daughter, and Sister Enterprises'. According to an article in 6/98: 3 the terms материнское предприятие, сестринское предприятие, and дочернее предприятие have meanwhile been removed from the draft of the new taxation code. Whereas the expressions материнская компания and дочерняя компания were borrowed in the Soviet period as referring to *parent company* and *subsidiary*, сестринское предприятие which refers to one of two companies that are controlled by the same parent company, is a new calque from Germ. *Schwestergesellschaft* or Fr. *société sœur*.

(vii) *Предприятие, совместное 'joint enterprise'*

This term was introduced into Russian law in 1987, with an enabling decree (UKAZ 1987) by the Presidium of the USSR Supreme Soviet authorizing the creation of совместные предприятия — joint enterprises with participants from capitalist countries — and the enactment of decree No. 49 of the USSR Council of Ministers, which elaborated the essential features of this new legal form. The term was almost at once mistranslated as 'joint venture', a mistake with serious consequences for many Western companies: 'seldom has a pure and blatant error of legal translation served the Western commercial and legal community so ill' (BUTLER 1993a: 8). In fact, the concept of совместное предприятие as laid down in decree 49 was a particular model of a legal entity with particular legal features based upon the Soviet state enterprise, and thus on the Soviet concept of ownership. For example, the provision that a совместное предприятие had 'possession, use, and disposition' of its property referred not to the concept of ownership underlying continental European (and pre-Revolutionary Russian) law, but to the Soviet concept of оперативное управление 'operative management' (see above, pp. 122–3), which meant that the state enterprise's contribution could always be withdrawn by the state, which remained the true owner (BUTLER 1993a: 8–11). This and many other features make совместное предприятие a specifically Russian concept, distinct from the concept of a *joint venture*, a term comprising all kinds of legal entities with foreign participation, including joint-stock societies, and limited responsibility societies and partnerships. Thus VOSNESENKAJA 1988: 125 concludes her analysis of the совместное предприятие in asking for the determination of its legal status for which it will be expedient to introduce the legal forms акционерное общество and товарищество с ограниченной ответственностью. These legal forms, however, were created in Russia only after 1990.

(viii) *Раздел продукции 'production-sharing'*

This term is a loan-translation from Engl. *production-sharing*. Agreements between states and big enterprises about the extraction of raw materials are called *production-sharing-agreements (PSA)* in English usage (BECKERT and MASBAUM 1996: 297). The first Russian legal regulation relevant to this concept is a decree of December 1993 (UKAZ 12/1993), which introduced the term соглашение о разделе продукции 'agreement on the division of production'. In the federal law of December 1995 (FEDZORP 1995) this terminology has been retained. The adoption of the new law on production-sharing agreements which was adopted by the Duma on 24 June 1997 has yet to pass the federal council and be signed by the President (*WiRO* 8/97: 316).

II. Indigenous Formations

(i) *Ведение, полное хозяйственное 'full economic jurisdiction'*

This term was introduced in an attempt to explain the actual division of competence of ownership rights between the owner-state and the state enterprise, a legal arrangement which during the Soviet period used to be regulated under the concept of оперативное управление 'operative management'. After *perestroika* and the introduction of economic reforms the degree of power of the state-owner decreased; however, the state still retained certain powers over the property distributed among state enterprises, including the right to decide on issues of the founding of the enterprise, to define the goals of its activity, reorganization, and liquidation (Art. 47 Para. 2 OSNOVY 1991). Thus the position of the state enterprise, which was, on the other hand, supposed to act as an independent legal entity, was ambiguous. This ambiguity is demonstrated in the definition of полное хозяйственное ведение contained in the 1991 'Fundamentals of Civil Legislation of the SSSR and the Republics', which introduced the term:

> Предприятие, за которым имущество закреплено собственником этого имущества на праве полного хозяйственного ведения, является юридическим лицом и осуществляет в отношении этого имущества права и обязанности собственника, поскольку законодательными актами не предусмотрено иное (Art. 47 Para. 1 OSNOVY 1991).[211]

The concept of полное хояйственное ведение falls in between оперативное управление and собственность (MALHET 1993: 147). With the privatization of state enterprises and the recognition of собственность as an indivisible right it has become superfluous and the term has disappeared from the terminology used in laws.

[211] 'The enterprise, to which property is allotted as the owner of this property with full economic jurisdiction, is considered to be a legal person and has the rights and duties of an owner with regard to this property, insofar as not otherwise provided for in legislative acts.'

(ii) *Группа, финансово-промышленная 'financial-industrial group'*

This term was introduced into legal terminology with the federal law 'On Financial-Industrial Groups' (FEDZOFINPROG 1995), where its meaning is defined as

> совокупность юридических лиц, действующих как основное и дочерние общества либо полностью или частично объединивших свои материальные и нематериальные активы (система участия) на основе договора о создании финансово-промышленной группы в целях технологической или экономической интеграции для реализации инвестиционных и иных проектов и программ, направленных на повышение конкурентоспособности и расширение рынков сбыта товаров и услуг, повышение эффективности производства, создание новых рабочих мест (Art. 2 FEDZOFINPROG 1995).[212]

This definition corresponds to the meaning of Germ. *Konzern* and Engl. *concern*. These two legal forms are also created on the basis of a contract rather than by acquiring a majority of shares (SOLOTYCH 1996: 38). In referring to this concept other terms are used in Russian legislation as well: концерн 'concern' (Art. 13 Para. 1 ZoP 1990) and объединения в форме ассоциаций или союзов 'unions in the form of associations or alliances' (Art. 121 GK RF I 1994).

(iii) *Деятельность, индивидуальная трудовая 'individual labour activity'*

This term was introduced into Russian legal terminology with the law 'On Individual Labour Activity' (ZoITD 1986), which was adopted in recognizing the need to regulate and promote private entrepreneurial activity. After decades of 'ideological discrimination' against such activity (SCHWEISFURTH 1988: 9) an effort was now made to stress its benefits in the preamble to the law,[213] in the law itself (Art. 1 Para. 2 ZoITD 1986), and in the press:

> Прежде всего хотелось бы подчеркнуть еще раз: индивидуальная трудовая деятельность, если в рамках закона, – это деятельность ОБЩЕСТВЕННО ПОЛЕЗНАЯ, нужная всем нам... (*Izvestija*, 9 Sept. 1987: 3) (original emphasis).[214]

The use of индивидуальный 'individual' suggests that the law is aimed at individuals; in fact, however, it concerns individuals as well as members of their families (Art. 1 Para. 1 ZoITD 1986) and collective organizational forms such as co-operatives and voluntary societies, the creation of which is explicitly encouraged (Art. 1 Para. 3 ZoITD 1986). Thus the use of the word индивидуальный, which 'must not be taken literally' (UHBOPLU 1991: 58) may be

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[212] 'The sum of legal entities, acting as parent company and subsidiaries, uniting fully or partly their material and immaterial assets on the basis of a contract about the formation of a financial-industrial group aiming at a technological or economic integration for the realization of investment and other projects and programmes, directed towards the increase of competitiveness and the expansion of the markets for goods and services, the increase of the effectiveness of production, the creation of new jobs.'

[213] 'Индивидуальная трудовая деятельность в СССР используется для [...] повышения занятности граждан общественно полезной деятельности' 'individual labour activity in the USSR is used for promoting the employment of citizens in socially useful activity.'

[214] 'Above all we would like to stress again that individual labour activity, if carried out within the limits of law, is an activity that is SOCIALLY USEFUL, that we all need...'

regarded as a euphemism for the taboo-word частный 'private', which would have been the appropriate term, but was introduced into legislation only in 1990 (ZoS RSFSR 1990; see above, pp. 110–12). The term индивидуальная трудовая деятельность was still used in the draft of the law 'On Ownership in the USSR' (Art. 17 ZoS SSSR-Proekt 1989). In subsequent legislation, however, it has been replaced by the term предпринимательская деятельность 'entrepreneurial activity' (see below, pp. 159–60).

(iv) *Деятельность, предпринимательская 'entrepreneurial activity'*

This term was first used in the law 'On Ownership of the RSFSR' (ZoS RSFSR 1990), where it replaced the term хозяйственная деятельность 'economic activity', which had still been used in the law 'On Ownership in the USSR' (ZoS SSSR 1990). Accordingly the terms хозяйственное право 'economic law' and хозяйственное законодательство 'economic legislation', which were used in referring to the law of the planned economy, have been replaced by the new terms предпринимательское право 'entrepreneurial law' and предпринимательское законодательство 'entrepreneurial legislation' (Laptev 1995: 49).

> Собственность гражданина создается и приумножается за счет его доходов [...] от предпринимательской деятельности [...] (Art. 9 Para. 1 ZoS RSFSR 1990; see also Art. 11 ZoS RSFSR 1990).[215]

Since then the term has been introduced into the 1993 Constitution[216] and the Civil Code (Art. 23 GK RF I 1994). Предпринимательская деятельность can be carried out by natural persons, including foreigners, and all kinds of legal entities. The legal meaning of this term is defined as

> самостоятельная, осуществляемая на свой риск деятельность, направленная на систематическое получение прибыли от пользования имуществом, продажи товаров, выполнения работ или оказания услуг лицами, зарегистрированными в этом качестве в установленном законом порядке (BJuS 1997, s. v. предпринимательская деятельность).[217]

The term предприниматель 'entrepreneur' had been negatively connotated until the start of *perestroika* and economic reforms and was used only with respect to the West. Rathmayr (1991: 200) believes that this was also true for предпринимательская деятельность. However, none of the Soviet encyclopaedias or dictionaries — until Ožegov and Švedova 1992 — included this expression. This might indicate that предпринимательская деятельность

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[215] 'The ownership of a citizen is created and increased at the expense of his income [...] from entrepreneurial activity [...].'

[216] 'Каждый имеет право на свободное использование своих способностей и имущества для предпринимательской и иной не запрещенной законом экономической деятельности' 'Everyone has the right to make free use of their abilities and property for entrepreneurial and other economic activity not prohibited by law' (Art. 34 Para. 1 Konst. RF 1993).

[217] 'Independent activity carried out at one's own risk, directed at systematically gaining profit from using property, selling goods, carrying-out work or rendering of services by persons who have been registered in this capacity in the corresponding legal order.'

was formed recently, in order to provide a substitute for хозяйственная деятельность, appropriate to the new economic maxims of the market economy. Its introduction into legal terminology is the result of a change in the meaning of предприниматель and предпринимательство. Instead of the stigmatizing example 'крупный предприниматель' used formerly, OžEGOV and ŠVEDOVA 1992 give предпринимательская деятельность as example for the use of the adjective, representing the new sphere of private business. In SR 1992 предпринимательство is even described as 'a form of culture' ('форма культуры') that plays an integral part in economic life. The (positively connotated) terminology of the market economy has become an integral part of the Russian language: 'экономисты все чаще в интервью и статьях употребляют слова приватизация, рынок, предпринимательская деятельность' (*MN* 17/90: 2).[218] In numerous publications on предпринимательство, предпринимательская деятельность is praised almost as a universal remedy. In Rogač 1992, for example, it reads:

> Предпринимательская деятельность служит не только интересам развития индивидуума, но и общества в целом. Такая деятельность создает дополнительные условия для развития государства, улучшает экономическое положение страны, стабилизирует политическую ситуацию (p. 33).[219]

(v) *Концессия, коммерческая 'commercial concession'*

See above, under франчайзинг (pp. 138–41)

(vi) *Право, специальное 'special right'*

See above, under акция, золотая (pp. 150–2)

(vii) *Управление, доверительное*

See above, under траст (pp. 112–15)

(viii) *Финансирование под уступку денежного требования*

See above, under факторинг (pp. 135–7)

(ix) *Чек, приватизационный 'privatization cheque'*

See above, under ваучер (pp. 144)

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[218] 'Economists use the words privatization, market, entrepreneurial activity more and more often in interviews and articles.'

[219] 'Entrepreneurial activity is advantageous not only to the individual, but also society as a whole. Such activity creates additional conditions for the development of the state, it improves the country's economic status, and it stabilizes the political situation.'

Conclusions

It has been shown that a large number of terms used in legislation on economic law since *perestroika* have been revived from pre-Revolutionary legal terminology. This concerns, first of all, the reintroduction of terms referring to basic civil law concepts that were not used during the Soviet period before *perestroika* (аренда, pp. 35–6; добросовестность, p. 47; недвижимость, pp. 52–5; сервитут, pp. 60–61), and secondly the change in meaning of terms that continued to be used in Soviet legislation with a different meaning (pp. 69–80). This process is a result of the considerable expansion of the sphere of civil-law legislation since *perestroika*. During the Soviet era most institutions of civil law were intended to create or refine for the state a mechanism to interfere in civil law relationships. Legal entities were provided with only a restricted legal capacity in accordance with the purposes laid down in their charters; they could use their property only in conformity with the same purposes, the plan tasks, and the designation of the property. With the introduction of economic reforms these administrative restrictions have been loosened and civil law has extended to define all economic relations in society, including, to a large degree, the status of the individual. The reintroduction into legislation of the classic civil-law distinction between движимые and недвижимые вещи, and the exclusion of the division of property into means of production and commodities from legislation is an example of the process of reintroducing traditional civil-law terminology and, at the same time, excluding terms connected to a planned economy that proved incompatible with them. It has also been demonstrated that the further development of civil-law concepts, which was interrupted during the Soviet period, has resumed since *perestroika*, leading to changes in meaning of the corresponding terms (недвижимость, pp. 52–5; сервитут pp. 60–61). In some cases vestiges of the influence of Soviet ideology on the meaning of civil law terms still prevail, as was demonstrated with the example of владение (pp. 72–3).

It has also been shown that a large number of commercial terms (59) have been revived from pre-Revolutionary law (pp. 34–80). The significance of this process lies in that these terms have been reintroduced into legislation although the concepts they refer to have, in many cases, changed over time, as emerges from the analyses of аудитор (pp. 36–8), торговый дом (pp. 47–8), прейскурант (p. 57), and фактор (pp. 66–7). Often these revived terms have aquired a broader meaning than they had in pre-Revolutionary times. The example of коммерсант(ъ) (p. 48) makes it particularly clear that the reintroduction of pre-Revolutionary commercial terminology may be motivated by a desire to revive associations with the times before the October Revolution, when Russian commercial law flourished. Many terms that had been used in pre-Revolutionary legislation acquired a negative connotation during the Soviet period and were used mainly in referring to capitalist countries. The fact that these terms had been widespread until the October Revolution was, in some cases, concealed in official publications. Due to the decreasing influence of Soviet ideology since *perestroika* these terms no longer form

part of the polar opposition between 'bourgeois' and 'socialist' countries, which characterized officially-approved Soviet language, and are used in referring to Russia as well as to any other country: акциз (pp. 34–5), акционер (p. 35), банкир (pp. 38–9), банкротство (pp. 39–41), биржа (pp. 41–2), благотворительность (pp. 43–5), торговый дом (pp. 47–8), коммерсант (p. 48), кондоминиум (p. 50), акционерное общество (pp. 55–6), предприниматель (pp. 56–7). The same is true of terms that originated in the Soviet period and until *perestroika* were used only when referring to capitalist countries, whereas they were taboo with respect to the Soviet Union: бизнес (pp. 83–5), демпинг (p. 87), дилер (pp. 87–8), забастовка (pp. 89–92), маркетинг (pp. 92–4), инвестиция (pp. 94–5), инвестор (p. 95), инфляция (pp. 95–6), конкуренция (pp. 99–102), ноу-хау (pp. 103–5), дочернее общество (pp. 105–6), материнское общество (p. 106), рынок (pp. 106–10), траст (pp. 112–15), холдинг-компания (pp. 115–17). The research has demonstrated that the introduction of such terms into post-*perestroika* legislation was often carried out gradually, by using euphemisms, as in the cases of безработица (pp. 81–3) and частная собственность (pp. 110–12). It also transpires that certain terms whose meaning until *perestroika* was based on purely ideological categories (достояние, pp. 117–19; нетрудовые доходы, pp. 119–21; социалистическая собственность, pp. 121–22; форма собственности, pp. 123–4; эксплуатация, pp. 125–6) and terms referring to a planned economy (оперативное управление, pp. 122–3; хозрасчет, pp. 124–5) are no longer used in legislation.

The predominant feature in the development of the Russian language since *perestroika* is often identified as a dramatic increase of borrowings from English. This view is supported by the analysis of recent developments in the terminology of economic law. The number of borrowings from English in the economic sphere that appear in newspapers, particularly specialized ones such as *ÉŽ* and *Kommersantъ*, is indeed striking. In some cases English borrowings refer to a new phenomenon: аффилированное лицо (pp. 153–5), ваучер (p. 144), риэлторская деятельность (pp. 145–6), or make possible a new semantic distinction, as between меценат and спонсор (pp. 146–8); in others, they even supersede native terminology — подписчик, долгосрочная аренда, and срочная сделка have been replaced respectively by андеррайтер (p. 142), лизинг (pp. 131–4), and фьючерсная сделка (pp. 148–150).

At the same time, however, it emerges from the analyses of primary sources that great caution is exercised in order to avoid introducing too many English borrowings into Russian laws. The frequency of English borrowings in legislation depends on the position which a legal text occupies within the hierarchy of legal texts. In fundamental laws such as the constitution and the civil code relatively few borrowings are used. Even if an English borrowing is well established in legal practice, preference is often given to a Russian term in legislation, although it is likely to be unpopular: финансирование под уступку денежного требования instead of факторинг (pp. 135–7); приватизационный чек instead of ваучер (p. 144), коммерческая

концессия instead of франчайзинг (pp. 138–41). In other cases an English borrowing that was introduced into legislation is later replaced by a Russian term: ноу-хау has been replaced by коммерческая тайна (pp. 103–5) траст has been replaced by доверительное управление(pp. 112–15). This practice of avoiding the use of foreign terms meets with the approval of legal scholars and is recommended in Russian textbooks on legislative technique (p. 136), according to which the use of foreign terminology is justifiable only under certain strict conditions. However, as this research has revealed, the frequency of English borrowings increases as the status of the legal text in which they are used diminishes — from fundamental laws such as the constitution or the civil code to separate laws regulating specific matters, legal commentaries, and decrees, to legal documents published by ministries or other institutions, model contracts, and finally to legal studies published in legal journals or specialized newspapers.

Many terms, including older loan-words and calques, were previously used only by a small part of the Russian language community (scholars, translators, diplomats), mostly in referring to capitalist countries, but have become known to large parts of the population since *perestroika*. This fact makes it clear that the process of introducing new words into the vocabulary of a language cannot be described satisfactorily just from the point of view of time; changes in the social distribution of words may be just as radical and important. The introduction of economic reforms has been accompanied by the formation of new social groups, in particular the Russian бизнесмены 'businessmen', who have become a large, ambitious, and influential part of the population. They have absorbed the many new terms and meanings that are introduced with economic reforms, and, because of their social prestige and their influence on this dynamic process, have ensured an even greater spread of these terms. A clear sign of the dynamics of this process is the number of true neologisms that have been derived from older loan-words. A great number of those derivatives are noun compounds of the type бизнес-план. They are used, in particular, to name the many new legal entities participating in legal and economic transactions: аудитор-частник (p. 38), банкир-рекордсмен (p. 39), маркетинг-директор (p. 93), предприятие-франчайзи (p. 139), риэлтер-брокер (p. 146), фирма-риэлтер (ibid.), компания-франчайзер (p. 139), фирма-рекламодатель (p. 60), клиринг-банк (p. 99), фактор-компания (p. 67), фактор-банк (ibid.). Other new developments in derivation are an increasing number of stump-compounds (броксервис, p. 86; форекс, p. 129), and of forms such as лизингуемый (pp. 133–4) and форфетируемый (p. 137), which seem to have been derived directly from the noun, as a verb in *-ировать* evidently does not exist. It has also been shown that borrowings ending in *-инг* have undergone considerable assimilation. However, no evidence was obtained of the suffix *-инг* combining with Russian stems (pp. 127–41).

The overall significance of this research lies in its exposition of the deep paradox inherent in a legal system which is closest to Continental European law yet borrows its terminology, to a considerable extent, from the English language — the language of countries (England, USA,

and the Commonwealth) whose legal systems are alien to it. While reform in the Russian legal system is eclectic, the adoption of linguistic borrowings is not eclectic; almost the only source is English. Russian legislation has traditionally been built upon the Pandectist system; thus concepts borrowed from a Pandectist legal system are more suitable for Russian law, while borrowing from Anglo-American law is much more difficult, a fact that was demonstrated with the examples of корпорация (pp. 50–1), товарищество с ограниченной ответственностью (pp. 63–6), траст (pp. 112–15), and франчайзинг (pp. 138–41). Legal scholars continue to point out that although foreign expertise and models are needed for the reform of Russian law, foreign legal concepts should not be transferred mechanically, in particular if taken from Anglo-American law, without taking into account the origins of the Russian legal system and specifically Russian economic features and national traditions. However, it emerges from this research that the attempt to transfer directly foreign models into Russian legislation is particularly characteristic of the years of *perestroika*, while since 1991 Russian legal terminology has developed procedures for adapting both Anglo-American influences and continental European traditions to the peculiarities of the Russian economic and political system (банкротство, pp. 39–41; лизинг, pp. 131–4, франчайзинг, pp. 138–41; траст, pp. 112–15). These findings corroborate legal analyses which suggest that despite foreign legal assistance and debates on models taken from Anglo-American and continental European legal systems the law now emerging in the Russian Federation is genuinely *Russian*.

Abbreviations*

AiF. Аргументы и факты.

ASEES. Australian Slavonic and East European Studies.

BGBl. Bundesgesetzblätter.

BiP. Бизнес и политика.

ChiP. Хозяйство и право.

ÈŽ. Экономика и жизнь.

FinGaz. Финансовая газета.

GiP. Государство и право.

MÈiMO. Мировая экономика и международные отношения.

MN. Московские новости.

OER. Osteuropa Recht.

Parker SJ. The Parker School Journal of East European Law.

PÈ. Право и экономика.

PSZRI. Polnoe Sobranie Zakonov Rossijskoj Imperii.

RESl. Revue des études slaves.

RÈŽ. Российский экономический журнал.

RCEEL. Review of Central and East European Law (formerly *Review of Socialist Law*).

RF. Российская Федерация.

RGBl. Reichsgesetzblätter.

RJaŠ. Русский язык в школе.

RJu. Российская юстиция.

ROW. Recht in Ost und West.

RR. Русская речь.

SGiP. Советское государство и право.

SJu. Советская юстиция.

SP SSSR. Собрание постановлений Правительства СССР.

SZ RF. Собрание законодательства Российской Федерации.

VÈ. Вопросы экономики.

VFKCB. Вестник Федеральной комиссии по рынку ценных бумаг.

VJa. Вопросы языкознания.

VMU. Вестник Московского Университета.

VRF. Ведомости Российской Федерации.

VSND RF i VS RF. Ведомости Съезда народных депутатов Российской Федерации и Верховного Совета Российской Федерации.

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* This list contains abbreviations of journals and newspapers only. All other abbreviations — of laws, dictionaries, and other material — are included in the references.

VVAS RF. Вестник Высшего Арбитражного Суда РФ.
VVS. Ведомости Верховного Совета.
WGO–MfOR. WGO–Monatshefte für osteuropäisches Recht.
WiRO. Wirtschaft und Recht in Osteuropa.
ZfSlPh. Zeitschrift für slavische Philologie.

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