

Regulation of Inside Information in Russia: What Will Change in 2019

September 10, 2018

On August 3, 2018, the Law¹ amending the Federal Law on Countering the Unlawful Use of Inside Information and Market Manipulation and on Amendment of Certain Legislative Acts of the Russian Federation No. 224-FZ dated July 27, 2010 (the “Insider Trading Law”) and other legislative acts was published. The Law provides for a number of significant changes affecting all persons whose activities involve access to inside information.

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Most of these amendments enter into force on May 1, 2019.

List of Inside Information. The List of Inside Information Approved by the Bank of Russia² will no longer be considered exhaustive. Legal entities covered by the Law (issuers of securities, trading institutions, etc.) will be required to make their own lists of inside information subject to the specifics of their businesses. Such lists will be approved by the entity’s sole executive body and will have to include, *inter alia*, information contained on the List of Inside Information Approved by the Bank of Russia. However, issuers, their officers or employees will not be responsible for the absence of any information, not included on the List of Inside Information Approved by the Bank of Russia, in their own lists of inside information.

List of Insiders. The Law amends the list of insiders set forth in the Insider Trading Law. In particular, insiders will include:

- persons holding shares (now both directly and indirectly) entitling them to 25% or more of the votes in the highest governing body of certain entities, including issuers;

¹ Federal Law on Amendments to the Federal Law on Countering the Unlawful Use of Inside Information and Market Manipulation and on Amendment of Certain Legislative Acts of the Russian Federation, and to Certain Legislative Acts of the Russian Federation No. 310-FZ dated August 3, 2018 (the “Law”).

² See Instruction of the Bank of Russia No. 3379-U dated September 11, 2014 on the List of Inside Information of Entities Referred to in Paragraphs 1-4, 11 and 12 of Article 4 of the Federal Law on Countering the Unlawful Use of Inside Information and Market Manipulation and on Amendment of Certain Legislative Acts of the Russian Federation (the “List of Inside Information Approved by the Bank of Russia”).

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- persons having access to information regarding preparation and/or sending of a voluntary, mandatory or competitive tender offer, a notice of the right to request stock repurchase or a stock repurchase request pursuant to Chapter XI.1 of the Joint Stock Company Law, including persons who submitted any such offer, notice or request to the joint stock company.

The Law clarifies that, in addition to issuers of foreign securities admitted to trading on an organized trading platform in Russia without having an agreement between the trading institution and such issuers, the Insider Trading Law will also not apply to executive bodies of a foreign state, public entities and municipal bodies of a foreign state which have obligations to holders of securities related to the exercise of rights under such securities. Other foreign issuers (according to the definition introduced to the law³) are expressly named on the list of insiders.

New By-Laws of Issuers and Insiders. Legal entities indicated by the Law, including domestic and foreign issuers, their counterparties and advisers on the insider list will be required to approve a number of new by-laws, including:

- internal audit rules for preventing, detecting and eliminating unlawful use of inside information and/or market manipulation. The requirement to approve the regulations on access to inside information, protection of its confidentiality and oversight of compliance with the Insider Trading Law and regulatory acts of the Bank of Russia remains effective, and these regulations may now be included in the internal audit rules mentioned above;
- terms and conditions for dealing with financial instruments by members of the board of directors, management board, the sole executive body, members of the audit commission, individuals having access to inside information on the basis of employment or civil law contracts, or persons related to them.

In addition, while under the previous regime the insider was advised on the requirements of the Insider Trading Law and liability for its violation only upon being included in the insider list, the Law now explicitly requires to inform of the above (and of the fact that the insider will be included in the insider list) also upon the execution of an agreement with a legal entity receiving access to inside information.

³ The definition of a foreign issuer as a foreign entity that made an agreement with a trading institution, pursuant to which securities of such foreign entity or securities of any other entity representing securities of such foreign entity were admitted to trading on an organized trading platform in the Russian Federation, became effective on August 3, 2018.

Trade Reporting Requirements. Pursuant to the Law, the insiders will no longer be required to notify the company and the Bank of Russia of any transactions involving securities, financial instruments, foreign currency, etc. Instead, companies will have the right to request a report from their insiders of transactions undertaken by them. In the latter case, the insiders will be required to provide such information in the manner and within the time which will be specified by the Bank of Russia.

Expansion of Powers of the Bank of Russia regarding Compliance Review. The Bank of Russia, when conducting reviews for compliance with inside information laws, will have unrestricted access to:

- the property and premises of entities, in respect of which the Bank of Russia conducts its review or has reasonable grounds to believe that they have relevant information (except for, in particular, residential premises);
- necessary documents or information (including those constituting a commercial secret), other than documents or information constituting a state or tax secret, secrecy of communication (save for postal money transfers); and
- electronic data storage.

Any properties, premises, documents or personal belongings of individuals may be inspected only upon their consent. The Law also governs the procedure and timing of reviews. Generally, reviews cannot last longer than 18 months, with a maximum duration, including extensions or suspensions, of 22 months.

The Law provides for certain rights of inspected persons, in particular, the right to challenge in court any decisions or acts/omissions of officials/employees of the Bank of Russia during the course of the review and to claim damages.

Definition of Market Manipulation. The Bank of Russia will be authorized to supplement the market manipulation practices listed in the Insider Trading Law.

Restrictions on Disclosure of Inside Information. According to the Law, the Russian Government will be entitled to indicate instances when inside information is not subject to disclosure or delivery and/or is subject to limited disclosure or delivery.

Please do not hesitate to contact us with any questions.

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