

# CLIENT UPDATE

## RUSSIA SIMPLIFIES RULES FOR SECURITIES OFFERINGS AND CHANGES DIVIDEND PAYMENT PROCEDURE

### MOSCOW

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On December 29, 2012, the President of Russia signed into law Federal Law No. 282-FZ on Amendment of Certain Legislative Acts of the Russian Federation and Abolition of Certain Provisions of Legislative Acts of the Russian Federation (the “Amendments Law” or the “Law”).

The Law is aimed at enhancing Russia’s appeal as an international financial center and introduces important amendments that are intended to, among other things, simplify the rules for securities offerings, make dividend payment procedures more convenient for investors and issuers, and protect the rights of investors if securities are de-listed.

This overview highlights some of the most interesting and important provisions of the Amendments Law, which (unless stated otherwise) came into effect on January 2, 2013.

### SHARE OFFERINGS

- Offering timetable is shortened:
  - If a public offer to subscribe for securities is accompanied by a prospectus, the offer period may begin from the date the prospectus is published (the law previously provided that an offer period could not start earlier than two weeks following disclosure of the information on registration of the securities issue).

- The minimum period for the exercise of preemption rights in a public offering of securities is reduced from 20 calendar days to eight business days (conditional upon the disclosure of information contained in the preemption right notice).
- The issuer may submit offering documents to the FSFM for preliminary review. The review period is 30 days; however, an issuer may submit offering documents for review even if such documents have not been approved by the governing body of the issuer. If the FSFM has no comments on the documents or all comments have been addressed, the securities issuance may be registered within 10 business days following the filing of the final approved documents. This provision will take effect from July 2, 2013.
- If a prospectus is not required to be registered in connection with an offering of securities, the period for registration of the securities issuance will be reduced from 30 to 20 days. This provision will take effect from July 2, 2013.
- A prospectus may be registered in two parts: the main part of the prospectus (details of the issuer) may be registered in advance, in which case the supplementary part (information on the terms of the offering) may be registered together with the registration of the securities issuance (but no later than one year from the date of registration of the main part of the prospectus). This provision will take effect from July 2, 2013.
- Greater flexibility is provided to change the terms of an offering of securities, including the following:
  - The maximum offering (placement) period (one year from registration of the resolution approving the securities issuance) may be extended by amending the resolution on the securities issuance (any such extension not to exceed one year, and the maximum overall period of the offering not to exceed three years from registration of the resolution on the securities issuance).
  - The issuer now has the right to cancel an offering of securities.
- Rules governing the use of notices on the results of an offering (in lieu of registration of a report on the results of an offering) have been amended:
  - There is no longer a requirement to appoint a broker.
  - Lending institutions may now also file notices on the results of the offering in lieu of registering a report, which is expected to significantly accelerate the timetable for the start of trading in the securities of lending institutions following a public offering.

- Trading in securities on the secondary market may begin before an offering results notice is filed.
- Where a public offering of securities is made by a lending institution, investors may obtain Central Bank consent for an acquisition of more than 20% of the securities after they have acquired the securities.

#### **DIVIDEND PAYMENT PROCEDURE (EFFECTIVE JANUARY 1, 2014)**

- Dividend payments to shareholders whose shares are held through a nominee will be made to such nominee, who will then be responsible for the distribution of such dividends to the shareholders.
- The dividend record date may not be earlier than, and may not be later than 20 days after, the date of the resolution of the general shareholders meeting approving the payment of the dividend (or, in the case of a dividend payment in respect of shares traded on a regulated market, earlier than 10 days from the date of such resolution and no later than 20 days after the date of such resolution). At present, the dividend record date must be the date on which the general shareholders meeting to approve the payment of the dividend is held.
- Time periods for dividend payments were amended. Instead of the currently envisaged term of 60 days from the date the decision to pay the dividends is passed at the general shareholders meeting (unless a different term for payment of dividends is set forth in the company's charter or determined by a shareholders' resolution), the Law provides that the dividends must be paid to nominees and trustees registered in the register – within no more than 10 business days from the dividend record date, to all other registered shareholders – within no more than 25 business days from the dividend record date.

#### **CORPORATE APPROVAL OF LISTING AND DE-LISTING OF SHARES**

- Prior to the enactment of the Amendments Law, the listing and de-listing of securities did not require the approval of the board of directors (unless otherwise provided for by the charter of the issuer in question) or the shareholders of the issuer.
- From September 30, 2013, an application for listing of shares or securities convertible into shares will need to be approved by a resolution of the general meeting of the shareholders or, if provided for by the issuer's charter, a resolution of the board of directors.

- Starting January 2, 2013, shares or securities convertible into shares may only be de-listed if a resolution to de-list the shares or securities convertible into shares is approved by the shareholders of the issuer in a general meeting (such resolution must be approved by at least  $\frac{3}{4}$  of the votes of shareholders present and voting) and provided that shareholders that voted against the resolution or did not take part in the voting are given the right to tender their shares to the issuer. The purchase price for the tendered shares is to be determined by an independent appraiser, but cannot be lower than the average weighted price of the securities over the six months preceding the date of the resolution to hold a general meeting of the shareholders to approve the de-listing of securities. A resolution to de-list the shares will only take effect if all shares tendered to the issuer can be bought out by the issuer (i.e., the total purchase price does not exceed 10% of the net asset value of the issuer).
- Unless the issuer's charter requires a greater majority, the listing or de-listing of any preferred shares requires the approval of a  $\frac{3}{4}$  majority of the votes of holders of preferred shares and a  $\frac{3}{4}$  majority of the votes of holders of common shares taking part in the general meeting to approve the listing or de-listing of the preferred shares.

#### **CHANGES APPLICABLE TO FOREIGN DEPOSITARY RECEIPTS (DRs)**

- Effective January 1, 2014, the Law eliminates the prohibition on payment of dividends to holders of DRs on whom no information has been provided to the issuer. Given the recent clarification issued by the FSFM stating that this prohibition enters into force on November 6, 2013,<sup>1</sup> in practice it will mean that the prohibition will be in effect for a period of less than two months.
- Issuers are released from their obligation to quarterly draw up lists of holders of DRs representing rights to their securities (however, depositary banks will still be under an obligation to make such lists available at the request of the issuer, the courts, the FSFM or law enforcement bodies).

#### **AMENDMENTS RELATING TO OFFERING AND TRADING OF FOREIGN SECURITIES AND RUSSIAN DEPOSITARY RECEIPTS (RDRs)**

- The Amendments Law extended the list of conditions allowing admission of securities of foreign issuers to public offering and (or) public trading in Russia and introduced a number of other amendments to Article 51.1 of the Securities Market Law. In particular,

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<sup>1</sup> FSFM Information Letter No. 12-DP-01/54910 dated December 25, 2012 on the Exercise of Rights Attaching to Shares by Persons for Whom Securities Accounts (Depo Accounts) Recording the Shares of Russian Issuers, the Rights to Which are Certified by Securities of Foreign Issuers, Were Opened Prior to January 1, 2013.

in addition to securities issued by companies incorporated in member countries of OECD, FATF and MONEYVAL, the following securities can now be also admitted to public placement and public trading in Russia: securities issued by companies incorporated in member states of the Common Economic Space (i.e., Belorussia and Kazakhstan) and securities issued by non-Russian companies, securities of which are listed on a foreign stock exchange included in the list approved by the FSFM (which includes, among others, the London Stock Exchange, the Luxembourg Stock Exchange, NASDAQ OMX, Belorussian Currency Financial Exchange, etc.). Therefore, securities of issuers registered in jurisdictions that are not member states of OECD, FATF, MONEYVAL or the Common Economic Space, e.g., Jersey, can now be admitted to public offering and (or) public trading in Russia provided that the securities of such issuers are listed on a foreign stock exchange.

- Article 51.1 of the Securities Market Law now expressly allows foreign depositary receipts issued by a foreign issuer (e.g., depositary bank) to be admitted to placement and (or) public trading in Russia, provided that the underlying securities are eligible for such admission.
- The Law introduced amendments aimed at simplifying and streamlining the procedure of issuance and offering of RDRs:
  - RDRs can be issued without state registration of their issuance and a prospectus provided that the foreign securities underlying the RDRs (i) comply with general eligibility criteria for admission to public placements and (or) trading in Russia (i.e., were assigned ISIN and CIF codes, are qualified as “securities” under the FSFM regulations, and were issued by an issuer whose securities can be admitted to public placement and (or) public trading in Russia); and (ii) are listed on a foreign stock exchange included in the list approved by the FSFM.
  - The decision on issuance of RDRs is no longer required to indicate the maximum number of RDRs that can be in issue (which, under previous wording, would require registration of amendments to the decision on issuance of RDRs for new deposits).
  - The Law provides that “securities of a foreign issuer certifying rights to shares” (i.e., foreign depositary receipts) can now be the underlying securities for the RDRs.

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Please do not hesitate to contact us with any questions.

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