

Client Update

Russian Issuers One Step Closer to Hong Kong Listings

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The Hong Kong Stock Exchange (“**HKEx**”) has long been an attractive listing venue for global corporates seeking additional liquidity and a diversified international investor base, but, as Russia was not a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding (“**IOSCO MMoU**”), Russian issuers could not list on the HKEx. With the Bank of Russia signing the IOSCO MMoU on February 16, 2015, an important roadblock to listing on the HKEx has now been cleared for Russian companies.

REQUIREMENTS OF THE HONG KONG STOCK EXCHANGE AND RUSSIAN REGULATORY REGIME AND PRACTICE

Under a joint policy statement (the “**JPS**”) on the list of overseas companies published by the HKEx and the Hong Kong Securities and Futures Commission (“**SFC**”), prior to seeking an admission to listing equity securities on the HKEx, an overseas issuer incorporated outside of a “recognised jurisdiction” (currently limited to Hong Kong, the People’s Republic of China, the Cayman Islands and Bermuda), is required to apply to the HKEx and the SFC to have the jurisdiction where the issuer is incorporated approved as an “acceptable overseas jurisdiction.” In addition to requiring that the overseas jurisdiction be a signatory to the IOSCO MMoU, the application needs to demonstrate, among other things, that the statutory shareholder protection standards of the issuer’s jurisdiction and those contained in the constitutional documents of the issuer are equivalent to the shareholder protection provided under Hong Kong law, and that the audit and accounting standards applicable to the issuer meet specified requirements.

SHAREHOLDER PROTECTION STANDARDS

Key shareholder protection standards are laid out in Section 1 of the JPS requiring, among other things:

- a super majority vote of shareholders on principal issues (e.g., material changes to constitutional documents and voluntary winding up of the company);
- compliance with minimum procedural standards on convocation and holding of general shareholders meetings (annual and extraordinary) (e.g., notification, voting and procedural rights and shareholders' rights to convene meetings);
- shareholders' consent to appointment, removal and remuneration of auditors;¹
- legal acknowledgment of the right of overseas investors to exercise their shareholders' rights, including voting rights, via an overseas financial intermediary (i.e., the Hong Kong Securities Clearing Company Nominees Limited) acting in accordance with the instructions of the overseas investor.

In principle, the shareholder protections provided under Hong Kong law are in line with similar requirements of the Russian Joint Stock Companies Law,² Russian Securities Law³ and the Listing Rules of the Moscow Stock Exchange⁴ that apply to Russian public companies with equity securities listed on the Moscow Exchange.

AUDIT AND ACCOUNTING STANDARDS

In addition, Section 3 of the JPS requires that:

- audits are to be conducted in accordance with the auditing standards set by the International Auditing Assurance Standards Board of the International Federation of Accountants or the U.S. Public Company Accounting Oversight Board

¹ According to Federal Law No. 208-FZ, "On Joint Stock Companies" dated December 26, 1995, (as amended) remuneration of auditors is a matter of competence of the board of directors, which, however, does not prevent shareholders from consenting to what the board of directors approved or will approve should the decision on auditors' remuneration be adopted by shareholders simultaneously with appointment of auditors for the relevant financial year (this is normally done at an annual shareholders meeting).

² Federal Law No. 208-FZ, "On Joint Stock Companies" dated December 26, 1995 (as amended).

³ Federal Law No. 39-FZ, "On Securities Market" dated April 22, 1996 (as amended).

⁴ <http://fs.moex.com/files/1522>

- financial statements of the issuer shall be prepared in conformity with IFRS or U.S. GAAP; and
- audits are conducted by independent and certified auditors and accountants that have an international name and reputation and that are subject to an independent oversight by a regulatory body of a jurisdiction that is a signatory to the IOSCO MMoU.

Large Russian public companies with an international shareholder base typically retain reputable international audit firms to prepare financial statements in accordance with IFRS or U.S. GAAP and, in most of the cases, these companies should be able to demonstrate compliance with the audit and accounting requirements set out in the JPS.

TECHNICAL MATTERS

Section 4 of the JPS sets out various technical requirements for issuers listing on the HKEx, and whether a Russian issuer is able to comply with such requirements would need to be determined on a case-by-case basis. Recent Russian legislative developments and Moscow Stock Exchange infrastructure improvement initiatives have sought to address the technical requirements reflected in the JPS.

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Russia's signing of the IOSCO MMoU clears away a key obstacle for Russian companies wishing to list on the HKEx, and Russian companies seeking to list should be able to comply with the remaining requirements to listing outlined above. If you have any further questions regarding these requirements, please contact one of the Debevoise lawyers listed above.