

# Introduction of Significant Amendments to the Russian Corporate and Securities Market Legislation

**January 28, 2019**

On December 28, 2018, a federal law<sup>1</sup> simplifying the procedure for issuing shares and debt securities was published. The Law introduces a new type of preferred shares and “perpetual” bonds, as well as certain other amendments to joint stock companies, securities and other laws.

Whilst a number of amendments became effective from the date of the official publication of the Law (December 28, 2018), most of the amendments will only come into force on January 1, 2020.



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## Amendments Effective on December 28, 2018

### New Type of Preferred Shares

The amendments to Article 32 of the JSC Law<sup>2</sup> will allow joint stock companies to issue a new type of preferred shares which carry priority for the receipt of dividends (“Priority Shares”).

The charter of a joint stock company may provide for Priority Shares, which give their holders priority in receiving dividends ahead of other preferred shares and ordinary shares. The amount of dividends paid on such Priority Shares will be a fixed lump sum or a percentage of the nominal value of such shares.

Priority Shares do not carry rights to the proceeds of the assets of the joint stock companies upon their liquidation, and their voting rights are limited to matters relating to the liquidation, the appointment of a liquidation committee, and the approval of interim and final liquidation balance sheets of the company. The rights corresponding to Priority Shares may not be changed after the issue of the first Priority Share, charter

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<sup>1</sup> Federal Law No. 514-FZ on Amendments to the Federal Law on the Securities Market and Certain Legislative Acts of the Russian Federation with regard to Improvement of Regulation on the Issue of Securities dated December 27, 2018 (the “Law”).

<sup>2</sup> Federal Law No. 208-FZ on Joint Stock Companies dated December 26, 1995 (as amended, the “JSC Law”).

capital reduction by reducing the nominal value of Priority Shares is prohibited, and Priority Shares cannot be converted into ordinary shares or other preferred shares.

### **Perpetual Bonds**

The Law entitles certain issuers to issue bonds without a predetermined maturity date—the so-called perpetual bonds (“Perpetual Bonds”).

Perpetual Bonds may only be issued to qualified investors that are legal entities and can be issued only by issuers that meet the following criteria:

- the issuer is a legal entity that has been operating for at least five years;
- the issuer has no history of significant violations of the terms of bonds in the last five completed reporting years;<sup>3</sup> and
- the issuer has the highest credit rating level of the national rating scale for Russia.

Perpetual Bonds cannot be converted into shares or other issuable securities, and the decision to issue them must be made by a majority of 95% of the votes of all shareholders holding voting shares or participants of the company. The issuer has the right to unilaterally refuse to pay interest on Perpetual Bonds if such discretion was contemplated in the decision to issue Perpetual Bonds.

### **Relaxed Disclosure Requirements for Certain Entities**

The Law amended certain legislation to give the Russian Government the power to determine whether, and the extent to which, particular entities (issuers, joint stock companies,<sup>4</sup> credit institutions, the central securities depository, clearing organizations and central counterparty, trade organizers, microfinance institutions and companies, insiders, and the antitrust authority)<sup>5</sup> are obliged to disclose or provide information. Among other things, the Russian Government has a discretionary power to limit access to information on the Russian Unified State Register of Legal Entities.

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<sup>3</sup> Such violations include delays in the fulfillment of obligations to pay interest on bonds or a part of the nominal value of bonds, or to purchase bonds, for more than 10 business days (or for a shorter period provided for by the terms of the bonds), as well as the loss of security for bonds or a significant deterioration of the conditions of such security.

<sup>4</sup> Previously, Article 92.2 of the JSC Law provided for the opportunity of the Russian Government to determine the criteria when joint stock companies have the right not to disclose their major and interested party transactions or to limit the disclosed information.

<sup>5</sup> The antitrust authority is affected by such disclosure obligations when it is processing an application for consent for the execution of a transaction.

### **Amended Requirements for Obtaining Permission from the CBR for the Placement, or the Placement and Organization of Circulation, of Securities**

The permission of the Central Bank of Russia (the “CBR”) is not required either for the placement, or the placement and organization of circulation, of securities issued by Russian issuers abroad in accordance with foreign law if such securities are not shares or other securities convertible into shares. Further, the issuer must notify the CBR of such placement or placement and organization of circulation (as applicable) of securities.

### **Amended Conditions under Which the Registration of an Issue (or Subsequent Issue) of Securities Will Not Require the Preparation and Registration of a Prospectus**

In addition to already existing exceptions, the preparation and registration of a prospectus will not be required if the amount of funds raised by the issuer through the placement of securities within one year does not exceed RUB 1 billion (approx. USD 15.15 million).<sup>6</sup>

### **Clarification of the Procedure for Making a Decision to Delist All Shares of a Public Company and for Exempting a Company from the Disclosure Obligations Pursuant to the Securities Market Law**

According to the clarifying provisions of the Law, the decision of a public company to apply to delist all its shares and all of the company’s securities convertible into its shares, as well as the decision to apply to the CBR to exempt the company from the obligation to make disclosures as required by Russian securities legislation, shall be adopted within a single agenda item at a general shareholders’ meeting simultaneously with the resolution to amend the company’s charter and remove the indication of its public status. Such resolutions require at least 95% of the votes of all shareholders (regardless of share category) of a public company.

### **Clarification of the JSC Law Provisions on Redemption of Shares**

The Law provides that the company is not required to redeem shares from the shareholders who voted against the following resolutions (or did not participate in voting):

- for a public company—in relation to:
  - the introduction of changes to a company’s charter to remove the indication of its public status, the application to delist all its shares and all of the company’s securities convertible into its shares, as well as the application to the CBR to

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<sup>6</sup> In this *Debevoise In Depth*, the relevant amounts are calculated using the exchange rate of USD 1 = RUB 66. Previously, the respective amount was RUB 200 million (approx. USD 3.03 million).

exempt the company from the obligation to make disclosures as required by Russian securities legislation;

- the application to delist the company's shares and/or its securities convertible into its shares;
- for a non-public company with more than 500 shareholders—in relation to the application to the CBR to exempt the company from the obligation to make disclosures as required by Russian securities legislation,

if such resolutions did not come into effect.

Resolutions on these issues take effect if the total number of shares, in respect of which redemption requests were received, does not exceed the aggregate number of shares that can be redeemed by the company, which is limited to 10% of the value of the company's net assets on the date such resolutions were passed.

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## Amendments Effective on January 1, 2020

### Classification of Issuable Securities into Certificated and Uncertificated Is Abolished

The Law provides that, from January 1, 2020, unless provided otherwise by federal securities laws, all issuable securities will be uncertificated, and the rights of holders of such securities will be set forth in the resolution on such securities' issuance. The rights of holders of securities will be recorded on personal accounts in the registers maintained by the registrars, or on securities (depo) accounts where such rights are recorded by depositories. From January 1, 2020, certificates as documentary verification of the rights of holders of securities will be abolished.

### Change of the Concept of Holders of Securities

According to the current Securities Market Law,<sup>7</sup> a holder of securities is a person to whom such securities belong by the right of ownership or any other proprietary right. From January 1, 2020, a holder will include:

- a person set forth in record entries (entries in personal or securities (depo) accounts) as holder of a right to uncertificated securities; or

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<sup>7</sup> Federal Law No. 39-FZ on the Securities Market dated April 22, 1996 (as amended, the "Securities Market Law").

- a person to whom certificated securities belong by the right of ownership or other proprietary right.

The Law further provides that the rules applicable to holders of securities in accordance with the Securities Market Law shall apply to other persons exercising rights attached to securities unless otherwise provided by the Securities Market Law or other federal securities laws, and provided that it does not contradict the substance of the relevant legal relations.

Hence, the rules applicable to holders of securities can also be applied to a number of persons exercising rights attached to securities, such as foreign custodians, trustees and, depending on the interpretation of the relevant provisions of the Law, depository banks having securities (depo) accounts of depository programs. It remains unclear to what extent these new rules will be applied to depository banks that have securities (depo) accounts of depository programs, and how this will affect the rights and obligations of such depositories and holders of depository receipts which represent the rights to shares of Russian issuers. Further clarifications from the CBR on this issue would be important to Russian blue chip issuers with depository programs and to holders of depository receipts.

### **Change of the Period for the Approval of Issue Documents and Registration of Share Issuances by the CBR**

According to the Law, from January 1, 2020:

- if the registration of the issue is accompanied by a prospectus, the CBR will process clearance requests to preliminary review issue documents upon an issuer's application in respect of their compliance with the requirements of Russian securities legislation within 20 business days (currently—30 calendar days);
- the CBR will register an issue (or subsequent issue) of securities or refuse registration:
  - within 15 business days (currently—20 calendar days); or
  - if the registration of the issue (or subsequent issue) is accompanied by a prospectus, within 20 business days (currently—30 calendar days);
- the CBR will process applications for the registration of a report on the results of a securities issue (or subsequent issue) within 10 business days (currently—14 calendar days).

## Registration of Securities Issuances by Registering Organizations

From January 1, 2020, the Law introduces an option to register an issue of securities, under certain circumstances, through the registrar, stock exchange or the central securities depository (so-called “registering organizations”).

Registrars will be authorized to register issues of shares of joint stock companies upon their establishment (this excludes credit institutions and non-credit financial institutions, issuances of shares in which are registered by the CBR). The central securities depository and stock exchanges will be authorized to register bond issues (such bonds are named commercial bonds and exchange-traded bonds, respectively) provided that:

- such bonds are placed through public subscription and are admitted to trading on a regulated market by the registering stock exchange (upon registration of the issue by the exchange);
- such bonds do not grant their holders any other rights, except for:
  - the right to receive the nominal value or nominal value and fixed interest; and
  - rights attached to security of such secured bonds;
- centralized accounting of the rights to such bonds is operated by the central depository; and
- payment of the nominal value and set interest is carried out only in cash.

Commercial bonds cannot be collateral bonds, and exchange-traded bonds with collateral can only be mortgage-secured bonds pursuant to the Mortgage Securities Law.<sup>8</sup>

## Removal of the Issuers' Obligation to Submit a Notice on the Results of an Issue of Securities

From January 1, 2020, the Law obliges, instead of issuers, all registrars, which maintain registers of holders of securities, and depositories, which centrally record rights to securities, to submit a notice on the results of an issue of securities. This amendment does not affect cases where the issuer must submit the report on the results of an issue of securities to the CBR.

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<sup>8</sup> Federal Law No. 152-FZ on Mortgage Securities dated November 11, 2003 (as amended, the “Mortgage Securities Law”).

## Exclusion of the List of Material Facts from the Securities Market Law

Currently, Article 30, para. 14 of the Securities Market Law contains a list of more than 50 events that must be disclosed in the form of statements of material facts.

From January 1, 2020, the Law will no longer prescribe such a list of events. Instead, the CBR may specify, via regulatory acts, which events require disclosure in the form of statements of material facts, including the content of such disclosure.

## Submission of Issue Documents in Electronic Form

Requisite documentation for the registration of an issue (or subsequent issue) of securities can be submitted to the CBR or to the applicable registering organization in electronic form using the relevant information resources, including user accounts, placed on the website of the CBR or applicable registering organization.

## Other Amendments

The Law introduces a number of technical changes in various legislative acts to align their provisions and terminology with the Securities Market Law as amended by the Law.<sup>9</sup>

## Transitional Provisions

The Law establishes that the provisions of the Securities Market Law governing the procedure for issuances of securities, as amended, will not apply to legal relations associated with:

- the issue (or subsequent issue) of securities, the state registration or identification number of which was assigned before January 1, 2020; and
- the state registration of an issue of shares upon the establishment of a joint stock company if the state registration of such joint stock company occurred before January 1, 2020.

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Please do not hesitate to contact us with any questions.

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<sup>9</sup> Changes are made, in particular, in the Mortgage Securities Law, Federal Law No. 46-FZ on Protection of the Rights and Legal Interests of Investors on the Securities Market dated March 5, 1999, Federal Law No. 127-FZ on Insolvency (Bankruptcy) dated October 26, 2002, Fundamental Principles of Legislation of the Russian Federation for Notary Activities No. 4462-1 dated February 11, 1993.

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