



# Trading Russian securities abroad

AMENDMENTS TO THE RULES ON DEPOSITARY RECEIPTS PROGRAMMES

The Russian Federal Financial Markets Service (FFMS) has approved the amendments to the regulation governing the issuance of permits required for Russian issuers in connection with placement and trading of securities abroad, including permits for establishment of depositary receipts programmes (DR permits). The amendments have been registered by the Ministry of Justice and will become effective on 1 January 2010.

The Russian Federal Financial Markets Service (FFMS) has approved new regulations (the amendments) amending the regulation governing the issuance of a permit required for Russian issuers in connection with placement and trading of securities abroad, including permits for establishment of depositary receipts programmes (DR permits) (approved by the FFMS Order dated 12 January 2006 No. 06-5/pz-n and amended on 5 June 2008) (the regulation). The amendments have been registered by the Ministry of Justice and will become effective on 1 January 2010.

## Limitations

The amendments reduce the maximum percentage of a Russian issuer's shares that may be placed and/or traded outside Russia, including by way of depositary receipts programmes, and link such maximum percentages to the existing listing of the Russian issuer's shares on Russian quotation lists. The new limits are as follows:

- an issuer with shares admitted to list 'A' may have up to 25 per cent of its shares placed and/or traded outside Russia;
- an issuer with shares admitted to list 'B' may have up to 15 per cent of its shares placed and/or traded outside Russia; and
- an issuer with shares admitted to lists 'V' or 'I' may have up to 5 per cent of its shares placed and/or traded outside Russia.

The amendments, however, provide an exception to this rule, stipulating that a DR permit for up to 25 per cent

of a Russian issuer's shares may be granted (irrespective of the type of Russian listing) if the depositary bank is incorporated in a jurisdiction where the securities regulator has entered into a co-operation treaty with the FFMS. So far the FFMS has entered into such treaties with Germany, Venezuela, Cyprus, Syria, Turkey, the United Arab Emirates (UAE), India, China, Brazil, Oman, Belarus and Kyrgyzstan.

With respect to a Russian issuer involved in activities considered to be of strategic importance for Russia's national security and engaged in mining and other activities in subsoil areas of federal significance, the amendments provide that if prior approval for the acquisition of a certain number of the issuer's shares by foreign investors has been obtained from the competent Russian authority, the DR permit may be granted for a number of issuer's shares that does not exceed the number of shares specified in such prior approval, but in any case for not more than 25 per cent of the issuer's shares. Without prior approval from the competent Russian authority the issuer may have up to 5 per cent of its shares placed and/or traded outside Russia.

## Offering restrictions

Where newly issued and/or existing shares are offered outside Russia, the Russian issuer and/or the selling shareholder respectively must offer such shares in Russia. Under the amendments not more than 50 per cent of all existing shares offered in Russia may be placed abroad. In any given offering of newly issued shares, not

more than 50 per cent of the offering may be sold outside Russia including by way of depositary receipts. If an offering includes existing shares alongside newly issued ones (on the same offering terms), not more than 50 per cent of the aggregate number of the offered shares (both existing and newly issued) may be sold outside Russia (including by way of depositary receipts). Previously these limits were set at 70 per cent.

These offering restrictions will not apply to admissions to trading abroad of Russian shares made in connection with corporate re-organisations of Russian issuers which have previously received permits from the FFMS to place their shares abroad.

## Procedural issues

Within 30 days of the completion of the relevant share offering, both in and outside Russia, the relevant issuer or, with respect to any offering of existing shares, the relevant selling shareholder, must notify the FFMS of the results of the offering (the offering notification). This offering notification may be submitted by their broker or, if the shares are being offered in Russia through a stock exchange, by the relevant stock exchange.

If any modification is made to an existing depositary receipt programme, the issuer (or the depositary bank if the issuer is not a party to the deposit agreement) must notify the FFMS of the modification in writing, attaching a certified copy of the amended agreement in Russian.

Permits issued by the FFMS expire in the following instances:

- the shares are not placed or traded outside Russia (including by way of depositary receipts programme) within one year of the date of the permit;
- the offering notification is not submitted to the FFMS on time; and
- the shares are redeemed (cancelled).

The amendments also introduce certain technical changes with respect to the application procedure and provide formal requirements for applications, permits and offering notifications.

## Further amendments

In addition, the FFMS has recently published a draft of further amendments to the regulation. Under the proposed amendments, the offering restrictions will not apply to trading outside Russia of existing shares provided that:

- the shares are admitted to list 'A' on a Russian stock exchange;
- the application for a DR permit is signed by a Russian licensed custodian which meets certain criteria set out in the draft amendments; and
- the deposit agreement provides for (a) crediting of the shares underlying the foreign securities to an account opened with such a custodian and (b) the depositary bank providing the Russian issuer with quarterly reports containing a list of holders and nominee holders of foreign securities and the number of such securities held by each of them.

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