

Amendments to the Russian Securities Market Law: New Rules of the Game

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The end of 2018 was inaugurated with large-scale amendments to Russian securities market legislation aimed at improving the legal framework of the securities issuance procedure. While the majority of these changes will become effective on 1 January 2020, some of the provisions apply with effect from 28 December 2018.

This briefing focuses on the key amendments to the Russian Securities Market Law that became effective on 28 December 2018, as well as new developments that market participants should consider in connection therewith.

The Amendments – Salient Points:

1. Updates to the list of exemptions whereby the preparation and registration of a prospectus is not required;
2. Amendments to the procedure of admission of securities to trading in the course of their primary distribution;
3. Placement and/or circulation of certain types of securities outside Russia absent an approval from the Central Bank of Russia;
4. Introduction of a new instrument: perpetual corporate bonds;
5. Developments in the area of public placement and public circulation of securities of a foreign issuer;
6. Other amendments to the Securities Market Law.

1. Updates to the list of exemptions whereby the preparation and registration of a prospectus is not required

The first major development is the extension of the list of exemptions from the preparation of a prospectus for the purposes of registering a securities issuance. In particular:

- The cap on shareholders or persons having a pre-emptive right to acquire new securities has been eliminated.
- The cap on the issue proceeds received during a calendar year has been increased from RUB 200 million to RUB 1 billion.
- The investment entry-ticket (i.e., the minimum amount of funds to be invested) has been decreased from RUB 4 million to RUB 1.4 million.
- A provision similar to the one established in the EU Directive 2003/71/EC (Prospectus Directive) according to which, and subject to certain exceptions, a prospectus supplement is not required where an offering is made pursuant to a base prospectus and no more than one year has elapsed since the approval thereof.

Accordingly, the above amendments simplify the securities issuance process in the circumstances referred to above and ensure greater consistency between the relevant Russian law provisions and international best practices.

2. Amendments to the procedure of admission of securities to trading in the course of their primary distribution

The amendments also specify the rules for admitting securities to trading as part of their primary distribution

by ranging the relevant requirements based on the type of securities and the placement structure:

- Any securities may be admitted to trading when placed through an open subscription, subject to a registration of the prospectus.
- Securities (other than shares and securities convertible into shares) may be admitted to trading when placed through an open subscription absent a prospectus, provided that:
 - They are admitted to trading without being included in a quotation list.
 - Information is disclosed by the issuer in accordance with the rules of the relevant stock exchange.
 - At least one of the criteria set out in subclauses 4-6 of Article 22(1) of the Russian Securities Market Law is met.¹

3. Placement and/or circulation of certain types of securities outside Russia absent an approval from the Central Bank of Russia

The amendments to the Russian Securities Market Law introduced two exemptions whereby an approval from the Central Bank of Russia is not required for the purposes of placement and/or circulation of mass-issued securities of Russian issuers outside of the Russian Federation. From now on, this is possible for the:

- placement and/or circulation of sovereign debt securities, or
- placement and/or circulation outside of the Russian Federation of securities (other than shares or securities convertible into shares) issued by Russian issuers and governed by foreign law, provided that such issuance is subsequently notified to the Central Bank of Russia.

Setting aside the exemption for sovereign debt securities, which essentially codifies the current market practice, it appears that the lawmakers' objective when introducing the exemption for non-sovereign debt securities was to incentivize so-called "direct" issuances of Russian debt securities abroad.

Historically, for regulatory (i.e., the need to obtain an approval of the financial market regulator) and tax (i.e., withholding tax on coupon payments) reasons, such issuances were structured through special purpose vehicles. The amendments eliminate the first obstacle to "direct" placements, however, given that the

adoption of the amendments was not accompanied by a concurrent reform of Russian tax legislation, withholding tax consideration at this stage would remain a factor that makes "direct" placements of Russian debt securities abroad practically difficult due to the increased cost of funding.

4. Introduction of a new instrument: perpetual corporate bonds

The amendments also allow the placement of bonds with no stated maturity ("**perpetual corporate bonds**"). While the need for a broader implementation of this instrument into Russian law has been discussed at the business community level for a while, prior to the amendments being adopted, as a matter of Russian law, only credit institutions were eligible to issue bonds with no stated maturity (i.e., the issuance of perpetual subordinated bonds in order to increase regulatory capital).

Accordingly, the Russian law now expressly distinguishes two types of instruments: perpetual corporate bonds and perpetual subordinated bonds indicating that the relevant provisions of the Securities Market Law do not apply to the latter.

The amendments limit both the eligible issuers (these can only be legal entities meeting statutory requirements with respect to, *inter alia*, term of their existence and corporate rating) and the eligible holders thereof (these can only be legal entities which are Russian qualified investors) as well as establish a super-majority requirement for the approval of a perpetual corporate bond issuance.

Unlike certain categories of perpetual subordinated bonds, Russian law does not allow perpetual corporate bonds to be converted into shares or other mass-issued securities.

Perpetual corporate bonds expand the traditional line of financing by a highly flexible instrument which, among other things, allows increasing the company's liquidity without the need to refinance. Nevertheless, in light of the increased risks for the holders thereof, perpetual corporate bonds are likely to result in higher effective interest rate as compared to classic fixed-maturity corporate bonds issued by the same issuer.

The introduction of the concept of perpetual corporate bonds to Russian law is, by itself, a very positive step, however, we believe that the demand for this instrument will depend on a number of factors, including those of

¹ These criteria set a cap on issue proceeds and an investment entry-ticket.

non-legal nature, such as tax and accounting matters (e.g., whether the instrument is to be treated as liability or equity).

5. Developments in the area of public placement and public circulation of securities of a foreign issuer

The amendments also cover a number of aspects of public offering and public circulation of securities of foreign issuers (“**foreign securities**”) in the Russian Federation which are discussed below.

Criteria for evaluation of foreign securities

In particular, with the amendments entering into force, the earlier existing provision, whereby the Central Bank of Russia made a decision on admission of foreign securities to public placement and/or public circulation in the Russian Federation on the basis of the liquidity (anticipated liquidity) criteria and the investment risk criteria, has been repealed.²

Instead, the Central Bank of Russia is now vested with a broader authority to establish requirements for admitting foreign securities to public placement and/or public circulation in the Russian Federation.³

Additional restrictions on the circulation of foreign securities

The amendments introduced a new provision regulating the circulation of foreign securities following their placement in the Russian Federation according to which:

- transfer of title to any securities of a foreign issuer acquired by their first holder as part of their primary distribution in the Russian Federation is prohibited until the securities are paid in full, and
- transfer of title to shares of a foreign issuer and securities convertible into shares of a foreign issuer that (i) were not publicly placed and paid for in cash or publicly traded securities, and (ii) were not admitted to trading, is prohibited until they are fully paid and the notice of the results of placement is submitted to the Central Bank of Russia.

The Securities Market Law imposes similar restrictions on Russian mass-issued securities. This evidences the lawmakers' intention to bring the regime of foreign securities closer to that of local securities.

The restrictions described above, the consequences of the breach thereof and the relevant mitigants

(e.g., the inclusion of an undertaking to submit a notice to the Central Bank of Russia and providing the relevant representations in the transaction documents) must be considered and addressed, as applicable, when structuring and executing cross-border transactions involving the placement of, and/or transfer of title to, foreign securities in the Russian Federation.

Admission of foreign securities to trading among qualified investors

The amendments expressly provide that foreign securities not admitted to public placement and/or public circulation in the Russian Federation that have been assigned ISIN and CFI codes and have been qualified as securities under Russian law may be admitted to trading as part of their placement and/or circulation among qualified investors.

In this case, the requirement to register or make the prospectus available in respect of such securities does not apply.

6. Other amendments to the Securities Market Law

Other notable amendments to the Securities Market Law include the following:

- Delisting of bonds as a result of the breach by the issuer of disclosure obligations now gives rise to the early redemption of bonds at the request of their holders.
- The types of security which could be granted in respect of bonds has been expanded: in addition to bank guarantees, bonds may now be secured by independent guarantees issued by general corporates (provided their net assets are not less than the value of the guarantee⁴).
- Similarly, the list of exemptions whereby the appointment of bondholders' representative is not mandatory now covers the guaranteed issuances where the bonds have the benefit of an independent guarantee or suretyship granted by a state corporation or enterprise which acts in the capacity of an institute for development.
- From now on the Securities Market Law provides that, where all the bonds are non-voting in respect of a particular matter considered at the bondholders meeting, all bondholders are entitled to vote at such meeting.

² Federal Financial Markets Service of Russia Order No. 10-5/pz-n of February 9, 2010 sets forth the indicators characterizing liquidity and degree of investment risk of securities and how to estimate them.

³ The requirements have not been established as of the date of this briefing.

⁴ The amendments, however, do not provide for the consequences of subsequent decrease in the guarantor's net assets below the minimum threshold.

- Where the issuer, in certain circumstances provided for by the Russian Federation Government,⁵ does not disclose (in full or in part) information which is subject to mandatory disclosure, it is required to inform the Bank of Russia on restrictions imposed on the disclosure thereof and submit a notice containing the information the disclosure of which has been withheld to the Bank of Russia.

7. Conclusion

The adoption of the amendments is an important milestone in the development of Russian securities laws. The amendments are primarily intended to enhance flexibility of the existing securities regulations, ease the administrative burden on market participants where it does not prejudice the balance of interests and introduce international best practices to Russian securities laws and regulations.

While market participants can already benefit in full from a number of the amendments discussed above, we believe that some of the concepts introduced by the amendments would require a further fine-tuning before these can be used to their full extent by the market.

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⁵ These cases are set forth in Russian Federation Government Resolution No. 37 of January 20, 2018.