

### 3.4.6 Registration

Effective as of 1 July 2002, the procedure for state registration described in Section 3.3.7 above in respect of LLCs is also applicable to JSCs: the only additional requirement in respect to JSCs is the registration of the issuance of the JSC shares with the FSFM, which is obligatory at the establishment of the company and when increasing the charter capital of the JSC.

## 4. ISSUANCE AND REGULATION OF SECURITIES

### 4.1 Introduction

The securities market and securities transactions within the Russian Federation are primarily regulated by Federal Law No. 39-FZ *On the Securities Market* (the *Securities Law*), dated 22 April 1996 (as amended). The offering of corporate securities is regulated by Federal Law No. 208-FZ *On Joint-Stock Companies* (the *JSC Law*), dated 26 December 1995 (as amended) and (with regard to credit institutions) by Law No. 395-1 *On Banks and Banking Activity*, dated 2 December 1990 (as amended). While recent years have seen considerable discussion on changes to the applicable legislation and the structure of the securities markets in general, to date such changes have been limited to the adoption of Federal Law No. 152-FZ *On Mortgage-Backed Securities* (the *MBS Law*), dated 18 November 2003 (as amended). The issuance of securities in the Russian Federation is also subject to a number of regulations issued by the Federal Service for the Financial Markets of the Russian Federation (the FSFM), and other regulatory agencies, as well as the general provisions of the *Civil Code*.

### 4.2 Securities in General

Particular instruments will not be considered securities unless they are specifically recognized as such under Article 143 of the *Civil Code* or other relevant securities laws.

Generally, all types of securities existing in the Russian Federation can be divided into two large groups: those which should be issued in compliance with a specific issuance procedure prescribed by the *Securities Law* and require registration with the securities regulator (such securities are usually referred to as “emissionnyie”) and those which need not be registered (“ne-emissionnyie”).

In some certain cases the *Securities Law* also requires a prospectus to be registered simultaneously with registration of the securities issue, namely:

- when securities are to be distributed through a public offering;
- when securities are to be distributed through a private placement among existing holders, whose number exceeds 500.

A prospectus may also be registered if securities are intended to be publicly traded.

The *Securities Law* also provides for disclosure of certain financial and other information by issuers, who have registered a prospectus. Such information includes:

- quarterly reports of the issuer (drafted in compliance with the FSFM requirements),
- material events which may affect the finances or the business activities of the issuer (a list of such events is established by the FSFM).

Generally information should be disclosed through one of the authorized news agencies (within one day of occurrence), through an internet site (within two days of occurrence) and in some cases relevant information should also be published in a printed publication that complies with requirements set out by the FSFM.

### **4.3 Equity Securities**

Russian joint-stock companies (JSCs) may issue shares, options on shares, corporate bonds, and other securities. Open joint-stock companies may raise capital either by issuing shares to the public or by private placement. Shares of closed joint-stock companies may not be offered to the general public. Shares in a limited liability company are not deemed to be securities and cannot be used for raising capital from the general public.

### **4.4 Debt Securities**

The issuance of corporate bonds is regulated by the *Civil Code*, the *JSC Law*, the *Securities Law* and, in respect of limited liability companies, by Federal Law No. 14-FZ *On Limited Liability Companies*, dated 8 February 1998 (as amended), (the *LLC Law*). This legislation introduced the concept of secured and unsecured bonds. Secured bonds must be fully secured with a third-party guarantee or suretyship, or with a pledge (or a mortgage) over the issuer's and/or third party's securities or immovable

property. Only companies (including credit institutions) which have existed for a minimum of two years may issue unsecured bonds. The above legislation provides that the par value of all unsecured bonds issued by a company must not exceed the charter capital of the company or the amount of a guarantee provided by a third party. The issuance of mortgage backed bonds and exchange bonds may be exempt from this restriction. Russian JSC's may also issue bonds convertible into shares.

Two specific types of securities were introduced in 2003 to facilitate mortgage securitizations. Pursuant to the *MBS Law*, Russian banks and certain other entities may issue mortgage-backed bonds and mortgage-participation certificates. Such securities must be backed by loan receivables secured by mortgages over real estate.

Besides bonds, Russian companies commonly use promissory notes and bills of exchange for debt financing. Under Russian law, promissory notes and bills of exchange are treated as securities. The legal regime for promissory notes and bills of exchange is prescribed in Federal Law No. 48-FZ, *On Promissory Notes and Bills of Exchange*, dated 11 March 1997. In addition, the Russian Federation is a party to the *Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes* (Geneva, 7 June 1930).

## **4.5 Russian Depository Receipts (RDRs), Exchange Bonds, Investment Units**

### **RDRs**

An RDR is a registered issuable security without a nominal amount which certifies the right to a specified amount of shares or bonds of a foreign or Russian issuer of RDRs and the provision of services in connection with the realization of rights by a Russian holder of an RDR.

Only a Russian depository which has been in business for 3 or more years and is a professional participant in the securities market can issue RDRs. RDRs are documented bearer securities and are stored centrally by the issuer. In the event that the issuer performs services relating to the acquisition of income on shares or bonds certified by the RDRs, it must open separate depository accounts for the benefit of the holders of the RDRs. According to the issuer's obligations, funds in such accounts may not be executed.

A foreign issuer assumes obligations to Russian RDR holders by entering into an agreement governed by Russian law with a depository. Such agreement must specify

the order of voting under such securities, the obligation of the foreign issuer to disclose information in Russian, and other information. This agreement cannot be terminated without the consent of the RDR holders. Where a foreign issuer does not assume obligations to Russian RDR holders, public circulation of RDRs will only be allowed if the securities of such foreign issuer are listed on the foreign stock exchanges which feature on a list drawn up by the FSFR.

It should be noted that the RDR is a newly introduced type of security for the Russian financial market and no RDRs have been issued at the time of writing.

## Exchange Bonds

Exchange bonds differ from ordinary bonds in that they can be issued through a simplified procedure. Maturity of exchange bonds may not exceed 36 months. The issuance, prospectus and placement report do not need to be registered. However, the following conditions are set out, inter alia: (i) the placement must be made through a public offering; (ii) the issuer must be a Russian company, a state corporation or an international financial institution, whose shares or bonds are listed on a stock exchange permitting the trading of exchange bonds; (iii) the issuer must have existed for 3 years and have annual accounts for the two closed financial years; (iv) exchange bonds may not be issued with pledge collateral; (v) the FSFM must be notified of the admittance to trading and placement on the stock exchange; (vi) such bonds may only be placed on one stock exchange although they may subsequently be circulated on other exchanges provided certain procedural rules are complied with.

## Investment Units of Mutual Investment Funds (“Investicionnij Paj”)

Pursuant to Federal Law No. 156-FZ *On Investment Funds* (the *Investment Funds Law*), dated 29 November 2001 (as amended) mutual investment funds are considered to be a property complex and not legal entities. Mutual investment funds are managed by a management company, which acts on behalf of the founders pursuant to a trust agreement. Management companies need to be licensed. An investment unit is a registered security issued by a management company, certifying the share of its holder in the ownership right to the property composing an investment fund and property resulting from the management.

The *Investment Funds Law* and relevant FSFM acts provide detailed regulation of various issues regarding investment funds, including the foundation, decision-making and asset structure thereof. Managing companies of mutual investment funds are also subject to certain information disclosure requirements (*e.g.* information on the value of an investment share).

## 4.6 Infrastructure of the Securities Market

The *Securities Law* regulates the status of professional participants of the securities market and provides the legal requirements for their operations. The activities of professional participants of the securities market are subject to licensing by the FSFM, and the procedures for obtaining a license and the requirements for professional participants of the securities market are prescribed in various regulations adopted by the FSFM. A summary of the types of professional participants of the securities market that are subject to FSFM licensing and regulation is set forth below.

### 4.6.1 Brokers, Dealers, and Trust Managers of Securities

Under the *Securities Law*, brokers are professional participants of the securities market who perform transactions with securities on behalf of and at the expense of their clients (investors or issuers) or on their own behalf and at the expense of a client.

Dealers are defined as professional participants of the securities market who perform transactions with securities on their own behalf and for their own account by declaring in public the bid/ask prices with the obligation to buy and/or sell securities at such prices.

Trust managers of securities are professional participants of the securities market who manage the securities of their clients under a trust management agreement. Trust management may be exercised over securities, money for investment in securities, and also assets and securities derived from such management activities.

### 4.6.2 Registrars, Depositories

Under the *Securities Law*, registrars are professional participants of the securities market who are charged with maintaining the register of securities owners. If a joint-stock company has over 50 shareholders, it must appoint a professional licensed registrar to maintain its shareholders' register. (A joint-stock company with 50 or less shareholders may maintain its own shareholders' register.)

Under the *Securities Law*, depositories are professional participants of the securities market who hold certificates of securities and/or record the transfer of rights to the securities. The conclusion of a depositary contract does not involve the transfer to the depositary of the right of ownership of the depositor's securities. The depositary has no right to dispose of the depositor's securities, to manage them, or to perform any actions with securities on behalf of the depositor, except for those performed on the depositor's order in cases provided for by the depositary contract.

## **4.7 Organizers of Trade, Stock Exchanges, and Clearing Organizations**

Under the *Securities Law*, “organizers of trades” are professional participants of the securities market who render services which directly facilitate the conclusion of transactions with securities among the participants of the securities market. The *Securities Law* requires organizers of trades to disclose information on the rules for trading, rules for the circulation of securities, rules for the conclusion and registration of transactions with securities and other information related to trade to any interested party.

The Russian Federation has several well-established stock exchanges in Moscow and throughout the country, including MICEX (Moscow Interbank Currency Exchange), RTS (Russian Trading System Stock Exchange), and certain others. A legal entity may exercise the activity of a stock exchange as a non-profit partnership or as a joint-stock company.

Under the *Securities Law*, clearing organizations are professional participants of the securities market that clear settlements under transactions with securities. Typically, a clearing organization will work closely with a stock exchange (*e.g.* MICEX Clearing House, RTS Clearing Center, etc.).

## **4.8 Regulation of the Securities Market**

### **4.8.1 The Federal Service for the Financial Markets**

Pursuant to Presidential Decree No. 314 dated 9 March 2004, the FSFM has replaced the FCSM as the primary regulator of the Russian securities market. The main functions of the FSFM, which it carries out either directly or through its authorized territorial agencies, include: the licensing and supervision of professional securities-market participants; the authorization of self-regulatory organizations; the registration of securities issuances and prospectuses and the approval of standards for them; the issuance of approvals for issuing securities outside the Russian Federation; and the classification and definition of different types of securities. The FSFM has the authority to take certain actions against professional participants of the securities market who have breached securities market regulations. Such measures include the suspension and revocation of licenses, enforcement actions, and petitions for criminal prosecution. In addition, the FSFM has the power to fine legal entities or individual entrepreneurs for various securities law violations. Any action pursued against issuers,

such as the invalidation of an issuance, must be effected through the courts. Consequently, the ultimate jurisdiction over breaches of securities laws remains with the courts.

As for banks, certain regulatory functions (including registration of securities, etc.) have been transferred from the FSFM to the Central Bank of the Russian Federation. Issuance of securities by state and municipal authorities also falls outside the domain of FSFM regulation and is regulated by the Ministry of Finance.

#### 4.8.2 Self-Regulating Organizations (“SROs”)

Under the *Securities Law*, an SRO is a voluntary association of professional participants in the securities market functioning on the principles of a non-profit organization established for the provision of their professional activity, the observance of standards of professional ethics, the protection of the interests of owners of securities and the implementation of regulations and standards to ensure the effective functioning of the securities market. Membership in an SRO is not mandatory.

### 4.9 Regulation of Certain Securities Transactions

#### 4.9.1 Acquisition of More Than 30%, 50% and 75% of Voting Shares of an Open Joint-Stock Company

According to the *JSC Law* a person who intends to buy more than 30% of voting shares in a company (including shares owned by its affiliates) should make an offer to the shareholders of the company (the “Voluntary Offer”) to purchase their shares. A shareholder who together with its affiliates acquired more than 30%, 50% or 75% of the voting shares of a company must make an offer (the “Obligatory Offer”) to purchase the remaining shares. The *JSC Law* provides general requirements as to terms, form and content of such an Obligatory and Voluntary Offer. The law also sets certain limitations with respect to determination of the price of purchased shares.

#### 4.9.2 Acquisition of Remaining Shares by a Person Who Acquired More Than 95% of a Company’s Voting Shares (“Squeeze Out”)

Under the *JSC Law* a shareholder who has acquired more than 95% of a company’s voting shares (as a result of an Obligatory Offer or Voluntary Offer) is entitled to purchase the remaining shares in the company and securities convertible to such shares. On the other hand a minority shareholder is entitled to demand purchase

of his shares. Pursuant to Federal law No. 7-FZ on amending the *JSC Law* dated 5 January 2006 the same right is granted to a shareholder who owns more than 95% of a company's voting shares as of 1 July 2006, in this case a minority shareholder is entitled to demand purchase of his shares before 1 August 2008.

## **4.10 Placement and Circulation of Russian Shares Overseas**

Generally, no more than 30 per cent of shares in the capital of a Russian company may be placed outside Russia and even lower thresholds apply to "strategic" companies, namely:

- 5 per cent for the "strategic" companies conducting a geological survey at and/or exploration and development of deposits of federal significance (i.e. major deposits);
- 25 per cent for other "strategic" companies.

These requirements are intended to keep liquidity of Russian issuers within domestic financial markets and restrict foreign investment in certain strategic industries.

## **4.11 Regulation of Derivatives in Russia**

### **4.11.1 General Overview**

Although derivative transactions have been used in practice in Russia for some time, only some aspects of them have been dealt with by the law or courts, for instance, by the amended Article 1062 of the RF Civil Code, several normative acts of the Central Bank of Russia, the Federal Securities Market Commission, and in Russian tax legislation.

Prior to 2007, courts had denied judicial protection to claims based on non-deliverable derivatives transactions under Russian law unless they had an economic purpose. Courts were applying the rule on gambling laid down in Article 1062 of the RF Civil Code. On the contrary, deliverable transactions were treated as enforceable because they included an obligation to transfer the underlying asset (such as a particular currency or securities).

In 2007, amendments to Article 1062 were introduced which extended protection to claims based on "an obligation of a party or parties to the transaction to pay monetary amounts depending on the changes of prices for goods, securities, foreign

exchange rates, interest rates, levels of inflation, or parameters calculated based on an aggregate of such indicators, or on the occurrence of another circumstance is provided by law and relative to which it is unknown whether it will occur or not”, provided that one of the parties to the transaction holds a license for banking operations or a license of a professional market participant. Since then, there have been a number of court precedents in which non-deliverable derivatives have been granted judicial protection.

#### 4.11.2. The ISDA Master Agreement in Russia

The ISDA Master Agreement is often used by foreign companies in contracting Russian counterparties. Such agreements are typically governed by non-Russian law. If Russian law were to apply to the ISDA Master Agreement (for instance, if in the opinion of the respective court the parties did not rightfully choose foreign law to govern their relationship), some of the agreement’s provisions may not be enforceable, while in general the contract would be valid. Russian law does not require a license or similar authorization of any party for derivative contracts governed by foreign law.

#### 4.11.3. Netting

It is unclear whether the netting mechanism would stand in a Russian bankruptcy scenario, since netting is not expressly dealt with by Russian law and Russian court practice has not yet considered it as distinct from set-off of claims. This may lead by analogy to application of the rules for set-off of claims to netting. Set off is not possible after instituting bankruptcy proceedings or if such set off, made within 6 months prior to a bankruptcy petition being filed with the court, led to the preferential treatment of the claims of one creditor<sup>1</sup>.

## 5. COMPETITION PROTECTION LAW

The basic law for antimonopoly regulation in the Russian Federation is the *Federal Law on Protection of Competition* (the “*Competition Law*”), adopted on 26 July 2006, effective as of 26 October 2006. Antimonopoly issues in the Russian Federation are under the auspices of the Federal Antimonopoly Service (the “FAS”).

The Competition Law regulates competition in both the commodities market and the financial services market and includes seven main areas of particular interest to foreign investors:

<sup>1</sup> See Article 103.3 of the Bankruptcy Law