

THE INITIAL PUBLIC
OFFERINGS
LAW REVIEW

Editor

David J Goldschmidt

THE LAWREVIEWS

THE INITIAL PUBLIC OFFERINGS LAW REVIEW

The Initial Public Offerings Law Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Initial Public Offerings Law Review - Edition 1
(published in April 2017 – editor David J Goldschmidt)

For further information please email
Nick.Barette@thelawreviews.com

THE INITIAL PUBLIC
OFFERINGS
LAW REVIEW

FIRST EDITION

Editor

David J Goldschmidt

THE LAWREVIEWS

PUBLISHER
Gideon Roberton

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGERS
Felicity Bown, Thomas Lee

SENIOR ACCOUNT MANAGER
Joel Woods

ACCOUNT MANAGERS
Pere Aspinall, Jack Bagnall, Sophie Emberson,
Sian Jones, Laura Lynas

MARKETING AND READERSHIP COORDINATOR
Rebecca Mogridge

EDITORIAL COORDINATOR
Gavin Jordan

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Claire Ancell

SUBEDITOR
Tessa Brummitt

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2017 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of March 2017, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-910813-40-9

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

THE LENDING AND SECURED FINANCE REVIEW

THE INTERNATIONAL TRADE LAW REVIEW

THE SPORTS LAW REVIEW

THE INVESTMENT TREATY ARBITRATION REVIEW

THE GAMBLING LAW REVIEW

THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW

THE REAL ESTATE M&A AND PRIVATE EQUITY REVIEW

THE SHAREHOLDER RIGHTS AND ACTIVISM REVIEW

THE ISLAMIC FINANCE AND MARKETS LAW REVIEW

THE ENVIRONMENT AND CLIMATE CHANGE LAW REVIEW

THE CONSUMER FINANCE LAW REVIEW

THE INITIAL PUBLIC OFFERINGS REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

A&L GOODBODY

ALLEN & OVERY

ASW LAW LIMITED

CHIOMENTI

HAN KUN LAW OFFICES

HERBERT SMITH FREEHILLS LLP

HOUTHOF BURUMA COÖPERATIEF UA

NIEDERER KRAFT & FREY LTD

PINHEIRO NETO ADVOGADOS

PROLEGIS LLC

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

URÍA MENÉNDEZ

CONTENTS

PREFACE..... v
David J Goldschmidt

Chapter 1 BERMUDA 1
Becky Vernon and Neil Horner

Chapter 2 BRAZIL..... 11
José Luiz Homem de Mello, Guilherme Sampaio Monteiro and Gustavo Ferrari Chauffaille

Chapter 3 CHINA..... 22
Chen Yang and Zhi Bin

Chapter 4 GERMANY..... 31
Stephan Hutter and Katja Kaulamo

Chapter 5 HONG KONG 42
Christopher Betts

Chapter 6 IRELAND..... 52
Matthew Cole and Sheena Doggett

Chapter 7 ITALY 61
Enrico Giordano and Federico Amoroso

Chapter 8 LUXEMBOURG..... 72
Frank Mausen and Paul Péporté

Chapter 9 NETHERLANDS 87
Alexander Kaarls and Jetty Tukker

Chapter 10 PORTUGAL..... 95
Carlos Costa Andrade and Ana Sá Couto

Chapter 11	RUSSIA	106
	<i>Alexey Kiyashko and Alexander Kovriga</i>	
Chapter 12	SINGAPORE.....	118
	<i>Siddhartha Sivaramakrishnan, Jin Kong, Ban Leong Oo and Sandra Tsao</i>	
Chapter 13	SPAIN.....	129
	<i>Alfonso Ventoso and Marta Rubio</i>	
Chapter 14	SWITZERLAND	139
	<i>Philippe A Weber, Thomas M Brönnimann and Christina Del Vecchio</i>	
Chapter 15	UNITED KINGDOM	153
	<i>Danny Tricot and Adam M Howard</i>	
Chapter 16	UNITED STATES	168
	<i>David J Goldschmidt</i>	
Appendix 1	ABOUT THE AUTHORS.....	181
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	193

PREFACE

Welcome to the inaugural edition of *The Initial Public Offerings Law Review*. While it is largely agreed that the first ‘modern’ initial public offering (IPO) was by the Dutch East India Company (VOC) in 1602, IPOs now take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Several of the earliest exchanges are still at the forefront of the global IPO market, such as the NYSE and LSE, however, the world’s major stock exchanges now are scattered around the globe, and many of them are now public companies themselves. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market. For example, markets in the Asia-Pacific region, including Hong Kong, Shanghai and Tokyo, have enjoyed a significantly stronger presence in the global IPO arena in recent years owing to economic growth in the Asian markets.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different between jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, is it important that the company and its management are aware of the requirements from the outset as well as potential pitfalls that may derail the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply.

Virtually all markets around the globe have experienced significant volatility in recent years. In 2016, the uncertainty surrounding the US presidential election, the unexpected outcome of the Brexit vote and numerous other geopolitical issues facing regions throughout the world furthered the general decline in both overall deal count and proceeds raised. Moving forward, however, many regions have a healthy IPO pipeline for the coming 12 months, including many household names.

The Initial Public Offerings Law Review seeks to introduce the reader to the global IPO regulatory environment and main stock exchanges in 16 different jurisdictions. Each chapter provides a general overview of the IPO process in the region, addresses regulatory and exchange requirements and presents key offering considerations. We hope this inaugural edition of *The Initial Public Offerings Law Review* introduces the reader to the intricacies of taking a company public in these jurisdictions and serves as a helpful handbook for companies, directors and managers.

David J Goldschmidt

Skadden, Arps, Slate, Meagher & Flom LLP
New York
March 2017

or Global Depositary Receipts. In this case, a depository bank would hold the underlying Russian shares in custody and issue its own securities (depositary receipts) representing interest in those shares that would be listed on a foreign stock exchange.

The first domestic IPO in Russia was carried out in 2002 by RBC Information Systems, a media and IT company with a dual listing on the Russian Trading System (RTS) Stock Exchange and the Moscow Interbank Currency Exchange (MICEX), both leading Russian exchanges then located in Moscow. Dual listings on RTS and MICEX became a staple for domestic IPOs of Russian issuers going forward until the landmark merger of the two exchanges in 2011, as a result of which the Moscow Exchange (MOEX) was created.

Despite a low number of transactions in recent years, the Russian IPO market is now well-developed, with over 100 publicly traded companies (including foreign-domiciled companies with predominantly Russian operations). Each of the bulge-bracket investment banks has a significant presence in Russia, competing against a number of strong local commercial banks with investment banking divisions.

Since 2013, the Russian Central Bank (CBR) has been the principal regulator of financial markets in Russia. The CBR is responsible for, among other things, promulgating and enforcing regulations, licensing and oversight of securities market professionals, registering securities issuances and overseeing the issuers' compliance with their ongoing obligations.

II GOVERNING RULES

The fundamental legislative framework for initial public offerings in Russia is comprised of the Securities Markets Law,⁴ the Insider Trading and Market Manipulation Law,⁵ the Investor Rights Law,⁶ the Joint-Stock Companies Law⁷ and numerous rules and regulations promulgated thereunder by the CBR (and its predecessors, the Federal Securities Commission and the Federal Service for Financial Markets). The most important regulations for initial public offerings include the Securities Issuance Standards,⁸ the Disclosure Regulation,⁹ the Public Trade Admission Regulation¹⁰ and the Foreign Offerings Regulation.¹¹ The Listing Rules of MOEX, a leading Russian exchange that is the preferred listing venue for Russian issuers, are also an important part of the regulatory framework for Russian IPOs.

4 Federal Law No. 39-FZ 'On Securities Market' dated 22 April 1996 (as amended).

5 Federal Law No. 224-FZ 'On Counteracting the Illegitimate Use of Insider Information and Market Manipulation and on Amendments to Certain Laws of the Russian Federation' dated 27 July 2010 (as amended).

6 Federal Law No. 46-FZ 'On Protecting Investors' Rights and Lawful Interests in the Securities Market' dated 5 March 1999 (as amended).

7 Federal Law No. 208-FZ 'On Joint Stock Companies' dated 26 December 1995 (as amended).

8 CBR Regulation No. 428-P 'On the Standards of Securities Issuance, the Procedure for the State Registration of an Issue (Additional Issue) of Serial Securities, State Registration of Reports on the Results of an Issue (Additional Issue) of Serial Securities and Registration of Prospectuses' dated 11 August 2014 (as amended).

9 CBR Regulation No. 454-P 'On the Disclosure of Information by Issuers of Securities' dated 30 December 2014 (as amended).

10 CBR Regulation No. 534-P 'On Admission of Securities to Organised Trading' dated 24 February 2016 (as amended).

11 CBR Regulation No. 436-P 'On Procedures for Granting Permission by the CBR for Placement and/or Circulation of Securities of Russian Issuers Outside of the Russian Federation' dated 13 October 2014 (as amended).

Although Russia does not formally recognise judicial precedent as a source of law, as a matter of practice, decisions of upper courts have a significant and often decisive impact on lower courts' practice. This particularly concerns decisions by the Russian Supreme Court and its predecessor, the Supreme Arbitrazh Court. However, specifically, with respect to capital markets legislation, there is a dearth of court precedents that would have particular significance for the overall legal and regulatory framework. Shareholder litigation is not nearly as widespread in Russia as it is in the United States and some other jurisdictions. There are a number of contributing factors, including:

- a* a fairly limited number of public companies in Russia with a dispersed shareholder base. It is very typical in Russia even for major large-cap companies to be controlled by one single shareholder or several significant investors;
- b* the widespread use of offshore holding structures whereby the ultimate shareholders own stock in a foreign company (typically incorporated in a low-tax jurisdiction such as Cyprus, the British Virgin Islands, the Cayman Islands, Luxembourg and the Netherlands), which in turn wholly owns Russian operating subsidiaries. Accordingly, non-Russian courts would have jurisdiction over shareholder actions with respect to such companies. The popularity of offshore listings discussed above also has a similar effect; and
- c* perhaps most importantly, limited availability of class action lawsuits. Although legally available since July 2009, Russian class action litigation is still at a relatively nascent state, and can only be brought in very limited circumstances.¹²

In a testament to the lack of securities actions, a search of public court records that we conducted reveals that in the 20 years of existence of the Securities Markets Law that established the legal framework for listed companies' disclosure obligations, only eight cases based on a public company's disclosure have been brought before Russia's highest court. None of these cases was a shareholder action. Instead, all of them were disputes regarding administrative fines imposed by the securities markets regulator for formal non-compliance with the disclosure requirements. Similarly, there is a very thin body of court precedents relating to insider trading and market manipulation cases, although both concepts are recognised in Russian law.

The Russian legislature and the CBR have been particularly focused over the past several years on promoting domestic listings over the foreign offerings. In 2003, even before the Russian IPO market really took off, foreign public offerings by Russian issuers were made subject to regulatory clearance by the Russian securities market regulator. The number of shares that a Russia-incorporated issuer could offer outside Russia (whether directly or through the issuance of depositary receipts representing shares) was limited to a certain percentage of the share capital. In addition, any such foreign offering was conditioned on obtaining a domestic listing and offering securities in the Russian public market as well. Such limitations have increased over time. In 2009, the Russian securities market regulator lowered the number of

12 See, for example, Resolution of the Ninth Court of Appeals No. 09AI-22376/2010 dated 29 September 2010 (blocking an attempted bondholder class action based on the fact that each bondholder purportedly had its own independent relationship with the issuer and was not part of one and the same 'legal relationship' with its fellow bondholders) and Resolution of the Presidium of the Supreme Arbitrazh Court No. 7628/12 dated 9 October 2012 (blocking an action by a group of investment funds based on similarly formalistic criteria).

shares that a Russian issuer could offer on a foreign exchange in any given offering to 50 per cent of the total number of shares sold in such offering, and the total number of shares that could be floated abroad to 25 per cent, 15 per cent or 5 per cent of the issuer's share capital depending on the level of listing obtained by the issuer on a Russian stock exchange (or 25 per cent regardless of the level of listing if the issuer of depositary receipts representing the Russian shares was incorporated in a jurisdiction with which the Russian regulator had entered into a cooperation agreement). The number of such jurisdictions was limited, which for a period of time gave certain depositaries a competitive advantage. Additionally, Russian strategic enterprises, licensed to develop certain types of subsoil reserves,¹³ were in each case subject to the total cap on the number of shares they could float outside Russia equal to 5 per cent of their share capital regardless of the level of listing in the domestic market, unless special permission has been obtained from the Government Commission for Strategic Investments to increase that cap to 25 per cent for a particular issuer.

In response to these limitations and in view of other considerations (including tax), many Russian businesses went through the pre-IPO restructuring to incorporate foreign holding companies as listing vehicles. Offerings conducted by such foreign companies were not subject to the limitations described above. Although the Russian securities market regulators have always frowned upon such transactions, no regulatory measures were taken to prohibit or restrict such offering structures. It was widely accepted in the marketplace that the clearance regime for foreign public offerings by Russia-incorporated issuers was excessively restrictive and inefficient. Since 2011, there have been talks of relaxing these requirements and, in fact, a draft regulation was made public that would abolish the 25 per cent, 15 per cent or 5 per cent restriction for all Russian companies other than strategic enterprises, with a further limitation of 5 per cent for strategic subsoil users. That draft, however, was never enacted and in April 2015 the new Foreign Offerings Regulation came into effect. Currently, the general cap for the total number of shares that any Russian issuer could offer outside Russia is set at 25 per cent of the aggregate number of outstanding and newly issued shares from the same category.

There has also been a significant effort made to establish an infrastructure for foreign issuers to list their securities in Russia so that foreign holding companies of Russian assets publicly traded on foreign exchanges can easily access the domestic capital markets. There was also an attempt to attract Russian businesses back to the Russian exchanges through the creation of Russian Depositary Receipts, but this has generally failed (only one issuer utilised this instrument in Russia).

In late 2012, the Securities Markets Law was amended with a view to facilitating the process of directly listing foreign securities on a Russian stock exchange as long as such securities have already been listed on a qualifying foreign exchange. These new rules established an issuer-friendly procedure and proved quite popular with the issuers, with numerous Russian issuers adding a secondary Moscow listing to their primary London or New York listings. These amendments afforded a number of Russian businesses listed outside Russia an opportunity to access the Russian retail investor base, with an added advantage of potentially becoming eligible for inclusion in certain Russian trading indices. Qiwi, a Nasdaq-listed, Cyprus-incorporated holding company of a Russian payments services

13 In each case as established under the Federal Law No. 57-FZ 'On the Procedure for Making Foreign Investments in Enterprises Having Strategic Importance for State Defence and Security' dated 29 April 2008 (as amended).

business, was the first foreign issuer to make use of the 2012 amendments, and Lenta, an LSE-listed, British Virgin Islands-incorporated owner of a major Russian retail chain, was the first to list in Moscow in parallel with an offering on a foreign exchange. These rules were subsequently fine-tuned and made even more advantageous for the issuers, as the need to have the disclosure documents translated into Russian for the purposes of the listing (which used to be the most burdensome of the requirements) was removed. Besides this, the listing procedure was amended to allow for completely simultaneous listings on Russian and foreign stock exchanges. Under the current legislation and the MOEX Listing Rules, all it takes for a foreign issuer with equity listed on an eligible foreign exchange to have the same equity admitted to trading on MOEX is to file a simple admission package with the exchange itself. No vetting or other regulatory clearance is required in this case, and there are no requirements that the issuer needs to comply with beyond those imposed by the jurisdiction of an eligible foreign exchange. The list of such exchanges is very broad, although only the issuers listed on certain major exchanges are eligible for Level 1 listing on MOEX.

i Main exchanges

MOEX is the largest exchange in Russia by a wide margin, and the only one that regularly hosts initial public offerings. MOEX ranks among the world's top 20 exchanges by total capitalisation of shares traded, and also among the 10 largest exchange platforms for bonds and derivatives trading. Securities of over 700 issuers were admitted to trading on the equity and bond markets of MOEX as of the end of 2016. Its RTS and MICEX indices are the major benchmarks for the Russian stock market, and are widely used by portfolio managers to develop investment strategies.¹⁴ MOEX was created in 2011 through the merger of the Moscow exchanges, RTS and MICEX. It went public in February 2013 and is traded on its own trading platform under the stock symbol 'MOEX'.

MOEX has undergone substantial transformation over the past several years. Until recently, the Moscow listing was mostly viewed either as secondary to the London listing (as the latter typically provided more liquidity and trading volumes), or as an option for smaller companies that were not ready to tap international capital markets. As discussed in more detail above, the Russian securities market regulator and MOEX (and its predecessors before it was created in 2011) have undertaken a significant effort to create a new securities settlement infrastructure and generally increase the attractiveness of the local market for investors and issuers (both domestic and foreign). That effort has generally paid off, as evidenced by the fact that all of the Russian companies that went public in 2015–2016 floated exclusively on MOEX and did not seek a listing outside Russia. This is a notable departure from the prevailing trends of the previous two decades, although a smaller appetite for Russian equities from foreign investors due to macroeconomic and geopolitical concerns has also played a role in increasing the attractiveness of the Russian domestic market. Below are some of the most significant reforms (in addition to the creation of infrastructure for foreign securities listings described in more detail above):

- a* the introduction of a fully functional central securities depository and central counterparty (the National Securities Depository (NSD) and the National Clearing Center (NCC), both subsidiaries of MOEX);

¹⁴ As reported by MOEX, <http://moex.com/s348>.

- b* Russian equities and corporate bonds becoming fully eligible and available for settlement via Euroclear and Clearstream through their direct links to the NSD. According to the NSD, its central securities depository status makes it compliant with the requirements towards an 'eligible securities depository' under Rule 17f-7 of the US Securities and Exchange Commission (SEC) promulgated under the Investment Company Act of 1940, which provides that registered investment companies may maintain their foreign assets with NSD;
- c* the transfer of the equity market to the T+2 settlement cycle with partial prefunding in accordance with the best practices used by leading foreign exchanges and clearing houses;
- d* the introduction of a new closing auction process in 2013, with a new price-determining algorithm that corresponds with international best practice for setting closing prices; and
- d* more recently, the introduction of a new methodology for setting tick sizes, which are now determined not only by a stock price, but also by its liquidity, with the aim of narrowing the bid-ask spreads and aggregating liquidity at the best price level.¹⁵

MOEX has become the preferred listing venue for Russian issuers. Although it has a modern and robust infrastructure in place for foreign companies to list their equity, all foreign issuers that are listed on MOEX are primarily the foreign holding companies of businesses with predominantly Russian assets.

ii Overview of listing requirements

MOEX offers three listing segments (referred to as Levels 1, 2 and 3).¹⁶ Level 3 comprises the 'off-quotation list' securities, which are technically considered 'admitted to public trading' but not 'listed'. Only Level 1 listed securities are eligible for the portfolios of Russian non-state pension funds that provide mandatory pension insurance, which often account for a sizeable portion of investor demand in Russian IPOs.

The listing requirements of MOEX are generally not onerous compared to other major stock exchanges. Of note are the quantitative requirements regarding market capitalisation, free float and corporate existence, which are set forth below (for illustrative purposes, with respect to ordinary shares only):

- a* corporate existence:
 - Level 1 listing: three years; and
 - Level 2 listing: one year;
- b* free float and market capitalisation:
 - Level 1 listing: 3 billion roubles, while at the same time comprising at least 10 per cent of the total issued ordinary shares (or a larger percentage, based on a formula, for companies with a market capitalisation equal to or less than 60 billion roubles; and
 - Level 2 listing: 1 billion roubles, while at the same time comprising at least 10 per cent of the total issued ordinary shares.

¹⁵ As reported by MOEX, <http://moex.com/s348>.

¹⁶ The latest version of the Listing Rules of MOEX at the time of writing was registered by the CBR on 21 December 2016 and entered into force on 28 December 2016.

There are no income, assets, stockholder equity or similar tests under the Public Trade Admission Regulation or the MOEX Listing Rules, in contrast to the NYSE and NASDAQ.

Both Level 1 and Level 2 listings contemplate certain corporate governance requirements, which are in line with those that are typically required or are commonly expected on major international stock exchanges, including:

- a* independent non-executive directors (INEDs) on the issuer's board:
 - Level 1 listing: at least three INEDs (who simultaneously comprise at least 20 per cent of the board); and
 - Level 2 listing: at least two INEDs.
- b* It should be noted that independence under the MOEX Listing Rules is determined primarily by bright-line tests rather than a board discretion, unlike in the United States, although a board decision may override them if vetted by MOEX;
- b* an audit committee that, as a general rule, should consist entirely of INEDs for both Level 1 and Level 2 listings;
- c* for a Level 1 listing, an additional compensation committee that as a general rule should consist entirely of INEDs, and a nomination committee with an INED majority;
- d* a board-approved formal dividend policy for both Level 1 and Level 2 listings;
- e* a formalised corporate secretary function for both Level 1 and Level 2 listings; and
- f* a formalised internal audit function and board-approved formal internal audit policy for both Level 1 and Level 2 listings.

Level 3 listing requirements are very basic. As long as a Securities Markets Law-compliant prospectus has been registered by the CBR and certain additional technical requirements have been complied with, in general, any security would be eligible. There are no requirements as to track record, market capitalisation, free float or corporate governance. Nevertheless, Level 3 securities can be offered to the public, including retail investors.

Russian public companies are required to report under the International Financial Reporting Standards (IFRS). Level 1 listing requires disclosure of IFRS financial statements with respect to the past three financial years, while Level 2 listing only requires one year of IFRS financial statements. There is no equivalent requirement for a Level 3 listing. Nevertheless, the Securities Markets Law and the Disclosure Regulations require that a prospectus contain IFRS financial statements covering a three-year period regardless of the listing level (unless the issuer has been in existence for less than three years).

iii Overview of governmental rules and regulations

The Securities Markets Law regulates, among other things, the status and operations of professional securities market participants such as brokers and dealers, securities issuance procedures, disclosure requirements and the rights of the securities markets regulator. The Insider Trading and Market Manipulation Law sets forth certain obligations of issuers and market participants with the aim of preventing market disruptions and, perhaps most importantly for initial public offerings, provides a safe harbour for stabilisation transactions. The Investor Rights Law provides for various investor protections, notably with respect to the marketing of securities and, importantly, prohibits any agreements with investors limiting rights available to them under law, thus making the practice of the 'big boy letters' generally unenforceable under Russian law. The Joint-Stock Companies Law governs the corporate affairs of joint-stock companies (the only type of legal entity in Russia that can list its equity), including the powers and procedures of the shareholder meetings and other governing bodies,

mergers and acquisitions, dividends and other corporate matters. The Securities Issuance Standards set forth the procedural aspects of the securities issuance process. The Disclosure Regulations establish the rules governing public disclosure of Russian companies, both as part of the offering process and on an ongoing basis. The Public Trade Admission Regulation establishes the basic listing requirements that stock exchanges build upon and implement in their own listing rules.

III THE OFFERING PROCESS

The Russian IPO market generally follows international best practices, with the LSE in particular serving as a benchmark. Russian offerings, even those with a Moscow listing only, typically draw substantial demand from foreign investors, including those from the United States. Consequently, a significant portion of market participants on the advisory side, including investment banks, law firms and accounting firms, are local branches or subsidiaries of global firms. Due to these factors, the offering process generally follows the same basic steps as any initial public offering in any other mature European market.

A company that has made the decision to go public would typically, as a first step, engage one or more investment banks. In small-cap deals, this can often be independent Russian brokerage houses. However, large- and mid-cap deals would typically be underwritten by one or more of the ‘bulge bracket’ international investment banks or investment banking divisions of one or more of the major Russian commercial banks (with state-owned Sberbank and VTB dominating both the Russian commercial banking and investment banking sectors).

It is common practice for both the issuer and the banks to be represented by outside legal counsel. Major US and UK firms are well represented in the Russian market and, unlike in certain jurisdictions, typically have full Russian law capabilities. A number of strong local competitors have also emerged, although major offerings continue to be handled by foreign law firms. Each of the ‘big four’ accounting firms also has a strong local presence.

Due diligence is typically carried out to match international standards, and is generally within the same scope as US SEC-registered deals, unless the transaction is purely Moscow-listed and no international investment banks are involved.

IPO documentation typically includes the following:

- a* in foreign-listed deals, a prospectus prepared in accordance with applicable law of the listing venue, for example, the EU Prospectus Directive or the US Securities Act of 1933. Often, in purely Moscow-listed deals, an international prospectus (typically, a Prospectus Directive lookalike) is also prepared, although in such cases it is used for marketing purposes and is not a liability document;
- b* in Moscow-listed deals, a Russian Securities Markets Law-compliant prospectus that is a key admission document from the Russian law standpoint;
- c* an underwriting agreement governed by foreign law (typically, English law) if the deal involves a foreign listing or a foreign underwriter;
- d* a brokerage agreement (the Russian equivalent of an underwriting agreement) and a market-making agreement with a licensed Russian brokerage house, if the deal involves a Moscow listing; and
- e* legal and tax opinions, and auditor comfort letters that generally follow the same standards in foreign-listed and major Moscow-listed deals.

i General overview of the IPO process

The timeline of a Russian IPO can vary significantly. It is generally recommended to budget for at least three to four months, although it can be less if the deal does not involve a primary share offering (i.e., an offering of newly issued shares as opposed to a secondary offering of existing shares by one or more shareholders) or a foreign listing. The latter process tends to take more time than purely Moscow-listed deals.

In order for a company incorporated in Russia to list its equity, it has to be incorporated in the form of, or transformed into, a public joint-stock company (the other entity types that are commonly used for business entities in Russia are non-public joint-stock companies and limited liability companies). Such transformation requires approval by the company's equity holders by either a qualified 75 per cent majority (if such company has previously been a non-public joint-stock company) or a unanimous vote (if such company has previously been a limited liability company). Further, the decision to have the company's shares listed on a stock exchange requires approval by the company's board of directors and a majority vote of its shareholders, unless the company's charter (the main organisational document for a Russian company) vests such power in the board alone. The shareholders who vote against a decision to list or abstain from voting may tender their shares to the company at the market price, which shall be not less than the average-weighted price of the shares for the six months preceding the respective shareholders' decision.

In the event that the deal involves a primary offering by a Russia-incorporated issuer, it would also include the following steps:

- a* approval by the shareholders or by the board of directors of a decision to increase the company's share capital and to issue shares;
- b* approval by the board of directors and registration by the CBR of a share issuance decision and, as a general rule, a Russian Securities Markets Law-compliant prospectus (both in the form prescribed by the CBR); and
- c* registration of a share issuance report by, or submission of a share issuance notification to, the CBR (both in the form prescribed by the CBR).

In secondary-only transactions, none of these steps is required other than the registration of a prospectus by the CBR. Starting from 2013, amendments to the Securities Markets Law have enabled issuers to pre-clear prospectuses with the CBR. However, unlike in the United States, draft versions of the prospectus or any correspondence between the regulator and the issuer never becomes public.

Under the Securities Markets Law and the Investor Rights Law, only securities that have been admitted to public circulation can be advertised or marketed to the general public. Such admission entails either registration of a Securities Markets Law-compliant prospectus with respect to such securities by the CBR or the decision of a stock exchange to list the securities in the absence of such prospectus (which is available with respect to securities of foreign issuers listed on a qualifying foreign stock exchange, as described above). Prior to such admission, securities can only be advertised or marketed to persons that are considered 'qualified investors' under Russian law.

ii Pitfalls and considerations

Several years ago, some of the Russian securities law provisions were ill-suited for an IPO process (e.g., prohibition of conditional trading, unavailability of prospectus pre-clearance and shelf registrations, and ability of the regulator to invalidate an offering post-closing).

Recently, the Russian IPO-related legislation was significantly revamped and brought in line with international best practices. By 2013, the Russian regulators eliminated most of the obstacles, making the IPO process in Russia relatively straightforward and consistent with the settlement process in foreign jurisdictions that are popular as listing venues with Russian issuers. Of all the issues mentioned above, currently only the prohibition of conditional trading remains in place as shares in a Russian company in a public offering followed by the filing of a share issuance notification can only be transferred upon full payment thereof (i.e., once they have been placed with and paid for by the first purchasers). However, as a result of the MOEX efforts, the Securities Markets Law was amended in 2015 to allow conditional trading of eligible foreign securities (such as global depositary receipts issued in respect of Russian shares) in a similar fashion as is done on the LSE, subject to disclosure of the summary of an international prospectus in respect of such securities on a Russian exchange's website.

Unlike in the United States (e.g., under Delaware or New York law), pursuant to the Joint Stock Companies (JSC) Law all shareholders of a public joint-stock company have statutory pre-emptive rights to subscribe to the company's shares proposed to be issued to the general public. Furthermore, unlike in the UK and most other common law jurisdictions, such pre-emptive rights cannot be waived in a company's constitutional documents. Due to the fact that most Russian companies are closely held, this has historically had more of an impact on the lead-in time required to prepare a deal rather than on allocations. It is permissible, however, to launch the pre-emptive rights' exercise period during the pre-marketing stage of the transaction before the offer price is disclosed, and the period itself was substantially shortened to streamline the process.

Another oft-cited peculiarity of the JSC Law is the requirement to have certain related party transactions approved by a majority of all disinterested shareholders (but not only those participating in a shareholder meeting). This would often capture underwriting agreements if a majority shareholder is involved as seller in an offering. In a transaction where some or all of the major shareholders would be selling, disinterested shareholders would often exclusively comprise passive holders of minority stakes who would be difficult to even assemble for a meeting. As such, this requirement often presented significant challenges to the IPO timetable or had to be structured around. Starting from 1 January 2017, transactions entered into in connection with the placement of shares (that would presumably include underwriting agreements to which a majority selling shareholder is a party) are exempted from this corporate approval regime.

Furthermore, the JSC Law provides that 'major' transactions (e.g., transactions that involve or may potentially involve an acquisition or disposal of property worth over 50 per cent of a company's asset value under Russian accounting standards) are subject to approval by a 75 per cent majority of all shareholders present at the meeting (it being noted that a meeting is only quorate if holders of more than 50 per cent of voting shares are in attendance). Similarly, this would often capture potential payments by the issuer under a standard indemnity typically provided to the underwriters pursuant to an underwriting agreement. Since major shareholders are not legally prevented from voting, their approval would generally be enough to carry a vote. However, the major transactions approval regime used to present a different challenge as the shareholders who voted against such resolution or did not participate in the voting have a statutory right to tender their shares to the company at the price determined by a company's board on the basis of the market value. Again,

transactions entered into in connection with the placement of shares or the provision of services related thereto (that would presumably include underwriting agreements) have been exempted from this corporate approval regime starting from 1 January 2017.

iii Considerations for foreign issuers

To the extent that a foreign issuer's securities have not been listed on an eligible foreign stock exchange, their admission to public trading is generally subject to the same requirements as those applicable to domestic issuers. Furthermore, in the absence of such eligible foreign listing, only issuers incorporated in certain jurisdictions can access the Russian public market. Such jurisdictions include the Member States of the Organisation for Economic Co-operation and Development, the Financial Action Task Force on Money Laundering, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, and the Eurasian Economic Space. Securities that have been listed on an eligible foreign exchange benefit from a very lax listing regime, as described in more detail above. Securities of foreign issuers that satisfy neither requirement may generally only be marketed to persons that are considered 'qualified investors' under Russian law.

In July 2014, there were a number of changes to the Securities Markets Law and other laws that regulate the procedures for listing in Russia of foreign securities already listed outside Russia. These amendments further relaxed the requirements for the listing of securities by Russian stock exchanges without the consent of the issuing company. In particular, the July 2014 amendments relieved the issuers from certain Russian reporting and disclosure obligations by shifting the burden of compliance onto the relevant Russian exchange.

IV POST-IPO REQUIREMENTS

Disclosure obligations of public companies are governed by the Securities Markets Law and the Disclosure Regulation. While disclosure made by Russian public companies is extensive, it is also significantly more formalistic than that of companies in the United States and other Western jurisdictions, often based on a 'form over substance' approach. In addition to a prospectus registered in connection with an initial public offering, Russian issuers' ongoing mandatory public disclosure includes quarterly reports on a form that is substantially similar to a Securities Markets Law-compliant prospectus, statements of certain material facts, and annual and six-month IFRS consolidated financial statements. Russian public companies are also required to publicly disclose their organisational documents (including charters and internal regulations) and comprehensive lists of their affiliates.

In addition, under the Insider Trading and Market Manipulation Law, an issuer is required to adopt and maintain a list of the types of information pertaining to such issuer that are considered insider information. This list must contain all items classified as insider information set forth in an exhaustive list of the types of insider information adopted under the Insider Trading and Market Manipulation Law. In contrast to insider trading laws in many other jurisdictions, the concept of 'insider information' under Russian law is not open-ended and is limited to such exhaustive list. Similarly, whether or not a person is deemed an insider is based on a bright-line test that, notably, does not include persons that became aware of such insider information by mere chance. Listed companies are required to maintain and disclose to the Russian stock exchanges where they are listed the lists of their 'insiders' (including, among other things, top management, certain employees, advisers and brokers).

Generally, the burden and cost of being a public company in Russia are significantly lower than in the United States and, to a lesser degree, the United Kingdom.

V OUTLOOK AND CONCLUSION

There has been a significant slowdown in the Russian IPO market over the past few years due to economic and geopolitical factors. As discussed in more detail above, the Russian regulators and MOEX, as a leading Russian exchange, have made significant progress over this slow period to substantially revamp outdated regulations with a view to bringing them in line with the best international practices. The state-of-the-art legal and regulatory infrastructure has been put in place to accommodate and promote the IPO transactions in the Russian market. The trend of conducting Russian IPOs with a Moscow listing only is expected to continue, especially for small and mid-size companies, and in connection with privatisation transactions, a number of which are anticipated in the short to medium term. Large-cap Russian companies will continue looking for opportunities to raise capital in international markets, and we expect to see a number of secondary public offering transactions by Russian listed companies once the market conditions improve.

ABOUT THE AUTHORS

STEPHAN HUTTER

Skadden, Arps, Slate, Meagher & Flom

Dr Stephan Hutter is a partner in Skadden's Frankfurt office, where he focuses on international capital markets transactions, cross-border corporate transactions and bank financings. He has a broad range of experience in initial public offerings, capital increases and high-yield debt financings involving international securities offerings of German, Austrian and Swiss companies, including dual listings and private placements of shares, and debt securities in the United States. For more than a decade, Dr Hutter has been named by industry surveys as a market-leading German and European capital markets practitioner for equity and debt transactions, and has spoken and published on international securities laws transactions and issues.

KATJA KAULAMO

Skadden, Arps, Slate, Meagher & Flom

Dr Katja Kaulamo is a partner in the corporate group in Skadden's Frankfurt office, where she advises on a wide range of international corporate and capital markets transactions. Dr Kaulamo has extensive experience in capital markets transactions representing issuers, underwriters and selling shareholders in connection with initial public offerings, capital increases, rights offerings, block trades and offerings of convertible and hybrid capital instruments, as well as investment grade and high-yield debt. Her practice also includes capital markets-related regulatory advice, corporate governance and other corporate matters. Dr Kaulamo is cited as a leading capital markets lawyer in *Chambers Global*, *Chambers Europe*, *The Legal 500*, *IFLR1000* and *JUVE* (Germany).

CHRISTOPHER BETTS

Skadden, Arps, Slate, Meagher & Flom

Christopher Betts primarily focuses on China-related capital markets, M&A transactions and general corporate advice. Mr Betts advises major corporations, investment banks and private equity funds on a broad range of corporate and securities matters such as listings on the Hong Kong Stock Exchange (including Hong Kong depositary receipt listings, secondary listings, spin-offs and listings by companies with VIE arrangements), rights issues, share placements and other fundraising activities, takeovers, and mergers and acquisitions. Mr Betts has been named a leading lawyer for capital markets work in Hong Kong and China by *Chambers*

Global, Chambers Asia and *IFLR1000*. He also was named one of *Law360*'s 2015 'rising stars' under 40 for capital markets. Mr Betts speaks fluent Mandarin and is a professionally accredited translator of Chinese. Mr Betts' work has been repeatedly recognised for its innovation, including by the *Financial Times* in its 'Asia Pacific Innovative Lawyer' reports.

DAVID J GOLDSCHMIDT

Skadden, Arps, Slate, Meagher & Flom LLP

David J Goldschmidt represents US and international issuers and investment banks in a variety of financing matters, including public offerings and private placements of debt and equity securities, and international securities offerings. He also counsels US and international clients on an ongoing basis, including advising on corporate governance, SEC filings and disclosure issues. He has extensive experience advising issuers and underwriters on offerings by high-technology and communications companies. Mr Goldschmidt is also very active in representing and advising real estate investment trusts in connection with capital market transactions, including many initial public offerings and general corporate matters, as well as representing issuers and investment banks in connection with private and public securities offerings by Israeli companies. He is also involved in developing new financial products. Mr Goldschmidt serves on Skadden's policy committee. He was named *Who's Who Legal 2016* Capital Markets Lawyer of the Year, and has repeatedly been selected for inclusion in *Chambers USA*, *Chambers Global*, *The Legal 500 US*, *The Best Lawyers in America*, *IFLR1000*, *Who's Who Legal* and *Euromoney*.

ALEXEY KIYASHKO

Skadden, Arps, Slate, Meagher & Flom

Alexey Kiyashko has practised law in Skadden's Moscow, New York and Paris offices. Co-head of Skadden's Moscow office, Mr Kiyashko rejoined the Moscow office in February 2002 after working as counsel at the European Bank for Reconstruction and Development in London. He focuses on international M&A and corporate finance transactions, and has been repeatedly ranked as a leading individual in *Chambers Global*, *Chambers Europe* and *The Legal 500 EMEA*. Mr Kiyashko was a member of the Moscow Exchange's Committee on Primary Equity Markets, a committee advising the Moscow Exchange and the Russian securities market regulator on how to improve the legislative and regulatory framework for the equity capital markets in Russia.

ALEXANDER KOVRIGA

Skadden, Arps, Slate, Meagher & Flom

Alexander Kovriga is a member of Skadden's corporate practice and has experience in a variety of corporate finance, M&A and joint venture transactions in Russia. Mr Kovriga's recent corporate finance experience includes advising Russia-based companies on a wide range of transactions, including IPOs and secondary offerings, public and private placements, as well as offerings of American Depositary Shares and Global Depositary Receipts. Mr Kovriga previously practised in Skadden's New York office, where he focused on mergers and acquisitions and private equity matters. He is a native Russian speaker and is fluent in English and German.

DANNY TRICOT

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Danny Tricot leads Skadden's European corporate finance practice and is based in the London office. His capital markets work includes acting for issuers and underwriters on a broad range of equity and debt transactions. Mr Tricot has advised on initial public offerings, rights offerings and private placings. He has been involved in equity listings in London and on various international exchanges. Most of the offerings that he has worked on have included a Rule 144A component. He has worked across several European jurisdictions, and also in growth markets, with extensive experience in the Middle East, Africa and Russia.

Chambers UK has described Mr Tricot as 'an incredibly hard-working lawyer' who displays 'a balance of commerciality and technical brilliance'. He also is listed in *Chambers Europe*, *Chambers Global*, *The Legal 500* and *IFLR1000*. He was named as one of only three lawyers in *Financial News*' Top 100 Rising Stars 2007, and in 2016 he was featured in *Financial News*' Hall of Fame. Mr Tricot's work has been repeatedly recognised for its quality and innovation in various international awards, including several commendations in the *Financial Times*' 'Innovative Lawyers' reports.

ADAM M HOWARD

Skadden, Arps, Slate, Meagher & Flom (UK) LLP

Adam M Howard focuses on international corporate finance and public M&A transactions. He has advised both issuers and underwriters in connection with offerings of equity and debt securities and listings in London and on various international exchanges. In 2016, Mr Howard was named by *Financial News* as one of their 40 Under 40 Rising Stars in Legal Services. In 2015, Mr Howard received The M&A Advisor's European Emerging Leaders Award, which recognises industry professionals who have reached a significant level of success and made notable contributions to their industry and community.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

4 Times Square
New York
New York 10036
United States
Tel: +1 212 735 3000
Fax: +1 212 735 2000/1
david.goldschmidt@skadden.com

An der Welle 3
60322 Frankfurt am Main
Germany
Tel: +49 69 74220 0
Fax: +49 69 74220 300
stephan.hutter@skadden.com
katja.kaulamo@skadden.com

42/F, Edinburgh Tower
The Landmark
15 Queen's Road Central, Hong Kong
Hong Kong
Tel: +852 3740 4700
Fax: +852 3740 4727
christopher.betts@skadden.com

Ducat Place III
Gasheka Street 6
Moscow 125047
Russian Federation
Tel: +7 495 797 4600
Fax: +7 495 797 4601
alexey.kiyashko@skadden.com
alexander.kovriga@skadden.com

Skadden, Arps, Slate, Meagher & Flom (UK) LLP
40 Bank Street
Canary Wharf
London E14 5DS
United Kingdom
Tel: +44 20 7519 7000
Fax: +44 20 7519 7070
danny.tricot@skadden.com
adam.howard@skadden.com

www.skadden.com