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Contributing editor
Andrew Pitts



Publisher

Tom Barnes

tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall

claire.bagnall@lbresearch.com

Senior business development managers

Adam Sargent

adam.sargent@gettingthedealthrough.com

Dan White

dan.white@gettingthedealthrough.com

Published by

Law Business Research Ltd

87 Lancaster Road

London, W11 1QQ, UK

Tel: +44 20 3780 4147

Fax: +44 20 7229 6910

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Securities Finance

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Contributing editor**Andrew Pitts**

Cravath, Swaine & Moore LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Securities Finance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Indonesia, Monaco and Russia.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Andrew Pitts of Cravath, Swaine & Moore LLP, for his continued assistance with this volume.



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For further information please contact editorial@gettingthedealthrough.com

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Kirill Postavnin and Sergey Volkov

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

- 1 | What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

The Russian securities market (both debt and equity) is quite complicated and overregulated from an issuer's perspective. As shown below, the list of applicable regulation is extensive and the regulations set out detailed, often very technical rules for the step-by-step procedure for issuing securities, as well as a tremendous number of formal requirements (such as, the structure of the issuance documents, interaction of the issuer with the regulator and other parties involved, etc).

The regulation may be divided into the following three categories, each of which has both general and specific regulation:

- corporate issuers;
- financial institutions as issuers (banks, insurance companies, and others);
- sovereign and sub-sovereign issuers (ie, the federal government, regional government or Central Bank).

For corporate issuers, the main statutes, rules and regulations are the following:

- the Civil Code of the Russian Federation;
- the Federal Law On Securities Market (the SM Law);
- the Federal Law On Joint-Stock Companies;
- the Federal Law On Limited Liability Companies;
- the Federal Law On the Central Bank of the Russian Federation;
- the Federal Law On Currency Regulation and Currency Control;
- the Federal Law On Mortgage (Pledge of Real Property);
- the Federal Law On Organised Trades (governing operation of the stock exchanges);
- the Federal Law On Counteracting the Unlawful Use of Inside Information and Market Manipulation (CUUI);
- the Federal Law On Clearing, Clearing Activities and Central Counterparty;
- the Federal Law On the Central Securities Depository;
- the Federal Law On the Protection of Rights and Lawful Interests of Investors in the Securities Market;
- the Federal Law On the Procedure for Foreign Investment in Companies Which Are of Strategic Importance for National Defense and State Security;
- the Federal Law On Consolidated Financial Statements;
- the Federal Law On Advertisement;
- the Regulation on standards of issue of securities, procedure of state registration of securities issue, additional issue of securities, state registration of report on securities issue, additional issue of securities and registration of securities prospectuses (Standards);

- the Regulation on disclosure of information by issuers of issue-grade securities (RD);
- the Regulation on the Procedure of acceptance issuance by Central Bank of Russia on placement and(or) trading of issue-grade securities of Russian issuers beyond the Russian Federation territory; and
- the Listing Rules of a particular stock exchange.

In addition to the abovementioned documents, there are a lot of other regulations, rules, letters, court decisions and statutes that cover specific matters connected with securities.

Regulatory authority

The Central Bank of the Russian Federation (CB), also known as the Bank of Russia, is the primary administrative authority responsible for supervision and execution of legislation in the securities market as well as issuance of additional market regulation. The CB is responsible for prudential control and monetary policy and performs other administrative functions. It is also authorised to register issuance of securities and monitor the activities of various securities markets participants, in order to, among other things, protect investors from violations or abusive practices.

As the local market matures, the role of stock exchanges has grown over the past few years with a number of functions transferred to the stock exchanges from the CB. For example, a stock exchange has the right to evaluate new issuers according to their own methodology and even refuse access to listing (or delist) thereby acting as an additional filter for new issuers. In addition to listing functions, stock exchanges are authorised to register certain types of issue-grade securities (in which case the issuer is not required to file anything with the CB).

PUBLIC OFFERINGS

Mandatory filings

- 2 | What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

Equity

Please note that while the below describes the existing regulation substantial changes to the applicable legislation have been signed and are due to enter into force on 1 January 2020. These changes are aimed at simplifying the issuance process. LECAP will follow up with further publications regarding the new regime in the course of 2019.

Presently, the CB is authorised to consider each individual filing for registration of a new issuance.

An application can be made to register a new issue of shares together with a prospectus or to register a prospectus for an existing

issue of shares if such issue was not accompanied with a prospectus at the time of the original registration.

Along with an application, issuers file a formal set of documents (including copies of the charter, the incorporation certificate, copies of shareholders' decisions, etc) and main documents (a prospectus or a decision on issuance of securities and a prospectus depending on a type of application). The full set of documents and information that must be included are specified in the Standards and the RD.

The issuance decision is essentially the terms and conditions of the respective instrument. It sets out the key rights granted to the holder, the manner in which such securities are to be placed by the issuer, and other applicable details. The prospectus is a disclosure document. The structure of both the issuance decision and the prospectus is prescribed in detail in the Standards and the RD. Although the areas of disclosure covered by the Russian prospectus are very similar to those prescribed by the Prospectus Directive or requirements of internationally recognised stock exchanges, the exact requirements or the manner in which the information needs to be provided may vary greatly from the European standards, which is the reason why Russian issuance documents are often considered to be not as user-friendly as the European issuance documents.

General rules about disclosure of information by issuers (selling shareholders may be subject to the general rules about disclosure of information by issuers) are specified in the SM Law and the RD and these rules mainly require the disclosure of notices about material facts, issuance documentation (decisions on issuance, prospectuses and other), financial statements, quarter reports, etc. In accordance with the abovementioned rules, issuers will have to disclose some notices about the registration process and the main documents. Selling shareholders must only disclose obligatory notices. It is always possible to disclose any extra information subject to restrictions provided by the SM Law and the RD.

During the drafting of a prospectus, issuers must also take into account the recommendations of a stock exchange in respect which additional information is required and provide an in-depth description of particular sections of a prospectus.

Once the CB is satisfied, the issuer has to file an application for listing with a stock exchange (under the current legislation it is possible to place shares over the counter without any stock exchange but it imposes additional limitations on the issuer) and, as with the CB, the issuer must file a formal set of documents (a copy of the charter, the shareholders' decisions, etc) and key documents that evidence the issuer's compliance with the requirements of the listing rules of a particular stock exchange and for a particular level of listing.

Debt

With respect to debt instruments, the number of filings depends on the particular type of the instrument and the registration authority.

If an issuer plans to issue debentures and bonds that are registered by CB then the procedure is similar to the equity registration described above and the set of documents (as well as their content) are approximately the same.

If an issuer plans to issue debentures and bonds that are registered by a stock exchange then there will be only one filing with that stock exchange. The set of documents and their content are approximately the same as those filed with the CB.

Non-Russian issuers

Foreign issuers have the option of admission via the CB or admission via a stock exchange. The first option is a general variant, which requires registration of a prospectus by the CB and subsequent listing on a stock exchange. The second option is available for foreign issuers whose securities meet the special requirements specified by the SM Law and

already have primary listing on one of stock exchanges that are on the list approved by the CB or a stock exchange.

The process for the first option is similar to the procedure of Russian securities registration by the CB but requires fewer documents. The process for the second option is similar to the registration of Russian debt securities by a stock exchange but requires fewer documents.

The general rules of disclosure are also applicable to foreign issuers and require them to disclose practically the same information as Russian issuers. Foreign issuers that use the second option may benefit from a simplified disclosure regime.

Review of filings

3 | **What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?**

There are many differences between the registration processes for equity securities and debt securities, for Russian and foreign issuers.

The equity securities registration procedure may be divided into four steps as follows:

- initial meeting with a stock exchange and application for technical documents (a preliminary listing agreement or a letter or other documents depending on a case);
- filing with the CB;
- registration by the CB; and
- filing with a stock exchange and listing of securities.

The debt securities registration procedure may be divided into one or four steps depending on the registration authority (CB or a stock exchange). In the case of registration by the CB all steps are similar to the registration of equity securities except for the first step, which is less formal and does not require any documents from a stock exchange. In the case of registration by a stock exchange, there is technically one step (filing with a stock exchange) but it could be divided into two: preliminary approval of an issuer by a stock-exchange; and filing of documents with a stock exchange and registration of securities.

The equity securities registration procedure

Initial meeting with a stock exchange and application for technical documents

In the case of a secondary offering there is no need to apply for technical documents. This usually requires an underwriter to organise a meeting between an underwriter, an issuer and a stock exchange where the stock exchange may evaluate the prospective issuer (taking into account reliability, future interest of the market, among other things) and understand a structure of a deal. Depending on a structure of a deal a stock exchange could execute various roles, for example: conclude a preliminary listing agreement; or provide a letter about the preliminary examination of an issuer's documents for registration in the CB. This step takes between two and four weeks.

Filing with the CB

This includes the preparation of key documents and necessary corporate actions (board of directors and shareholders approvals, approvals of an issuer's by-laws, etc). It is more a technical step but an issuer should take into account all the factors that may have an influence on registration, listing and placement. This step usually takes between one and three months.

Registration by the CB

This includes the additional filing of revised documents with CB if the CB finds any mistakes in the documents or requires any clarifications

or changes. The regulatory time limit is 30 calendar days but if the CB reverts with comments then it will take an extra 15 to 20 calendar days.

Filing with a stock exchange and listing of securities

This step may be divided into two stages: preliminary approval of all documents by a stock exchange; and filing of documents and listing. The first stage may begin after the documents are filed with the CB. The issuer must prepare all necessary by-laws, agree them with a stock exchange, find and agree independent directors with a stock exchange and perform other actions if the issuer wants to boost the listing. The second stage is more a technical phase if all documents are preliminarily approved. The stock exchange will examine all documents received and may ask the issuer to file revised documents if it finds any mistakes or defects. The first stage takes between four and five weeks, and the second stage takes two weeks.

The debt securities registration procedure

As described above, this procedure depends on the registration body. In the case of the CB, the whole procedure is similar to the procedure for equity securities registration. The first step is less formal and does not require documents from or filing of documents in a stock exchange. This step takes usually up to two weeks.

The fourth step basically is similar to the equity step but the first stage requires the agreement of a lesser number of documents, which is why it takes less time on the whole.

As regards registering with a stock exchange there are two stages: preliminary approval of an issuer by a stock exchange; and filing of documents and registration of securities with a stock exchange. The first stage includes only a meeting with a stock exchange as is the case with debt securities registered by CB. The second stage technically combines all the other phases with another form of registration. At the same time, it should be noted that a stock exchange does not preliminarily approve a prospectus and a decision on issuance. Generally, all these actions take between three and four months.

A public offering is not permitted until a prospectus is registered or securities are listed, and the issuer undertakes to disclose information in accordance with listing rules.

Publicity restrictions

4 | What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Under the current legislation an advertisement of any securities as well as an offer of such securities to the general public (by publishing materials in press or otherwise) must not be made prior to the registration of the relevant prospectus by CB or a stock exchange except for the case when securities could be admitted for public placement or trade without a prospectus (with some certain limitations).

The main legal requirements applicable to any advertisement in regard to securities offerings apply to both equity and debt securities of Russian issuers and foreign issuers and are summarised below:

- any advertisement of unregistered securities or that concerning securities before the state registration of their Russian prospectus is prohibited;
- any advertisement of restricted securities (eg, securities for qualified investors), except when such securities are advertised to qualified investors only, is prohibited;
- any advertisement that guarantees or promises future earnings or dividends of a security, except when such payments are specified in securities' documentation and is obligatory for an issuer, is prohibited;

- any advertisement that gives forecasts in respect of a growth of securities price is prohibited; and
- any advertisement containing misleading or false information is prohibited.

Research reports

Under the current legislation there are no specific rules about research reports that could be issued by underwriters. Underwriters should take into account only rules applicable to an advertisement of any securities as well as an offer of such securities and rules about disclosure of information of issuers and inside information of issuers.

Secondary offerings

5 | Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

Generally in Russia there are no specific rules differentiating primary and secondary offerings except for some technical aspects (usually fewer documents are necessary for the registration and the listing) and the necessity to obtain a public status by an issuer. It is worth mentioning that there is no option to avoid pre-emptive rights with public offerings except when an issuer has only one shareholder.

There are no specific rules in respect of a liability of a selling issuer or shareholder during primary or secondary offerings (all general rules in a sphere of disclosure of information, inside information, an advertisement and other are applicable).

Settlement

6 | What is the typical settlement process for sales of securities in a public offering?

The SM Law specifies that during public offerings placement of securities should be only after full payment and that placement could be performed only during a placement period (in case with the pre-emptive right additional rules are applicable). Under these rules securities may be delivered to an investor during a specified day but they should be paid off within that day or before. With over the counter placements, it is possible to set various mechanics for concluding a contract and settlement, but they should follow the abovementioned rules. With placements on a stock exchange a settlement is processed under clearing and settlement rules of authorised organisations. These rules are usually incorporated into the trading rules of a stock exchange or are mandatory if investors agree with trading rules of a particular stock exchange. The general principle is that securities are delivered against payment within one day.

PRIVATE PLACINGS

Specific regulation

7 | Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Currently there are no specific requirements for private placements. The main set of requirements is vested in the SM Law and in the Standards and includes the general regulation of issuance and transferability of securities. The SM Law stipulates, among other things, two crucial rules:

- an initial offering (a procedure of placement to a first investor) is allowed only if an issue is registered in accordance with prescribed procedures and has obtained an appropriate identification number; and

- further transfers of securities are allowed only when securities are paid in full through the initial offering and fixation of its result in the form of report or notice on issuance results.

Investor information

- 8 | What information must be made available to potential investors in connection with a private placing of securities?

Private placement does not imply public disclosure of information except when an issuer has an obligation to disclose information (see question 15). With a private placing an issuer shall disclose to its investors the information related to securities, the extent of rights attached to securities and the order of exercise of such rights.

Transfer of placed securities

- 9 | Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

In addition to the aforementioned, the main regulatory restrictions related to the transferability of securities include satisfaction of an issuance procedure and full payment of securities in the case of the initial placing. Liquidity of securities usually could be maintained in a public case, (ie, after subsequent listing of securities and by means of using stock exchange instruments and contracts).

OFFSHORE OFFERINGS

Specific regulation

- 10 | What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

Until recently, legal consent was required for a cross-border offering of securities and the ratio of volumes offered in Russia and abroad. The legislation has now been significantly liberalised and almost all respective restrictions removed.

PARTICULAR FINANCINGS

Offerings of other securities

- 11 | What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

Regulation of convertible securities in Russia was significantly changed at the end of 2018. Before that time convertible instruments were either not used under Russian law at all or were replaced with complicated legal constructions.

Amendments to the securities market legislation in respect of convertible instruments significantly facilitated and supplemented the realisation of convertible and option programmes.

The regulation of depositary securities has existed for around 10 years and, in the main, complies with international standards.

UNDERWRITING ARRANGEMENTS

Types of arrangement

- 12 | What types of underwriting arrangements are commonly used?

Russian legislation does not specifically regulate underwriting. Usually parties use a particular type of underwriting arrangement, which is more

satisfy international standards used in business practice. Commonly underwriting agreements are governed by a foreign law.

Typical provisions

- 13 | What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

Underwriting in Russia is based on international and banking standards. Hence, standard provisions of underwriting agreements in respect of damages, force majeure, success fee, etc., conform to practices commonly used in Europe and other jurisdictions.

Other regulations

- 14 | What additional regulations apply to underwriting arrangements?

When underwriting agreements are governed by a foreign law, specific Russian rules are not applicable.

At the same time under Russian conflict of law rules Russian public imperative rules prevail over contractual rules in cross-border transactions. However, the Russian rules in respect of damages, force majeure, success fee, etc, all conform to general international practices.

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

- 15 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

In Russia there are different forms of reporting and some of them are connected only with a form of a legal entity or its status. Here we will describe only the main grounds for disclosure of information in forms of notices about material facts, annual or quarterly reports and financial statements (for rules about disclosure of an issuer's inside information, see question 17).

The main grounds for disclosure of information are the following:

- a status of a joint-stock company as a public;
- registration of a prospectus or public placement of securities; and
- admission of securities for trading on a stock exchange.

Information to be disclosed

- 16 | What information is a reporting company required to make available to the public?

There are many forms for disclosure of information by issuers, which depend on different factors. We list below only the main forms for companies that have a registered prospectus and securities admitted to trading on a stock exchange.

The main forms are the following:

- notices about material facts (law suits, material contracts, general meetings, etc);
- annual or quarterly reports;
- financial statements (under Russian standards and in some cases under the IFRS);
- charter and bylaws that regulate corporate bodies;
- securities documentation (decisions on issuance, prospectus, etc); and
- lists of an issuer's affiliates.

ANTI-MANIPULATION RULES

Prohibitions

17 | What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The current legislation in respect of market manipulation mainly consists of the CUUI and several regulations adopted by the CB and other former authorities, which were responsible for this sphere.

In a simplified form the market manipulation rules comprise three directions: rules on disclosure of inside information; insiders and insiders' transactions; and manipulative transactions.

Russian rules on disclosure of information are closely connected with rules on disclosure of inside information and generally the amount of inside information is similar to the amount of information that should be disclosed under rules on disclosure of information except for specific notices and documents that should be disclosed only under rules on disclosure of inside information. An issuer has the right to specify additional types of information in addition to a list of information adopted by the CB (and which should be adopted by an issuer), which he or she must identify as insider information.

The CUUL sets criteria for the identification of an issuer's insiders, prohibits the concluding of transaction under insider information, transmitting of insider information to third persons and the giving of recommendations to third persons in respect of an issuer's securities, and sets rules about the obligations of an issuer in respect of the protection of inside information and the obligations of insiders (for example they are obliged to send a notification to an issuer about transactions with the issuer's securities).

The CUUL specifies seven types of actions that constitute market manipulation. Generally these types include the intended disclosure of false or misrepresentative information, which could affect the price of securities; and prearranged transactions with the intent to change a price of securities (except for transactions under market-making agreements).

At the same time there are no specific rules in respect of underwriters, brokers, issuers or selling shareholders for purchasing or participating in public offerings except for general limitations (for example, transactions under insider information or corporate limitations on purchase of shares by issuer).

PRICE STABILISATION

Permitted stabilisation measures

18 | What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

Generally price stabilisation is permitted in Russia and there is a specific regulation pertaining to it. The main form taken is a market-making agreement, which should be concluded between an issuer, a stock exchange and a market-maker (the requirements for market-maker status are specified by a stock exchange). This agreement should comply with rules of a particular stock-exchange, which are made on ground of the current legislation.

As quasi forms of price stabilisation it is possible to indicate an underwriting agreement and lock-up declaration of shareholders.

Nowadays there is no specific Russian regulation in respect of underwriting agreements and there is no practice of concluding such agreements under Russian law during offerings. These agreements generally should comply with anti-manipulation rules and civil legislation.



Kirill Postavnin

kirill.postavnin@lecap.ru

Sergey Volkov

serguey.volkov@lecap.ru

Usacheva str. 1, bld. 1
119048, Moscow
Russia
Tel: +7 495 122 05 17
<http://lecap.ru/>

A lock-up practice during public offerings is not popular but there is a new trend that during recent equity public offerings main shareholders declared that they would refrain from any sale or purchase of an issuer shares during a particular time period. There are no specific rules regarding this but it is possible to file a claim against shareholders who break this declaration (for example, on grounds of misrepresentation).

LIABILITIES AND ENFORCEMENT

Bases of liability

19 | What are the most common bases of liability for a securities transaction?

The most common grounds for liability include infringement of rules related to unfair issuance, violation of information disclosure rules, inside regulations and market manipulation rules, etc. These violations could provide grounds for different types of liability: civil, administrative and criminal. There is also specific regulation related to derivatives, foreign currency exchange regulations, etc.

Remedies and sanctions

20 | What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Damages caused by respective infringements should be recovered in civil litigation administrated by state courts or arbitration tribunals. Collective rights may be protected by a bond trustee and state bodies (eg, a public prosecution office).

Violations of regulatory requirements are subject to administrative liability imposed under procedures exercised by Bank of Russia and other state bodies (such as the Federal Antimonopoly Service in the case of infringements of financial advertisement rules).

Offences that are publicly dangerous may be subject to criminal procedures. For example, offences related to market manipulation may be considered both as administrative violations and crimes.

UPDATE AND TRENDS**Proposed changes**

21 | Are there current proposals to change the regulatory or statutory framework governing securities transactions?

Russian securities legislation is constantly being updated. Several important amendments have been adopted recently (some of them came into force on 1 January 2019 and some of them will come into force on 1 January 2020) regarding the following:

- structured bonds;
- investment consulting;
- issuance of convertible securities;
- disclosure of information and inside information;
- corporate subordinated loans; and
- issuance procedure.

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