



New Russian rules on trading and custody of foreign securities and securities designated for qualified investors

A new set of rules on trading and custody of foreign securities and securities designated for qualified investors was recently adopted by the Russian securities market regulator, the Federal Service for Financial Markets (FSFM).

On 5 April 2011, the FSFM issued Order No. 11-8/pz-n 'On the Particularities of Trading and Recording Rights to Securities Designated for Qualified Investors and Foreign Securities' (the Order), which entered into force on 19 June 2011.

This briefing looks at the new rules and assesses their implications.

Foreign securities

As a general rule, under Russian law foreign securities that have not been admitted to public offering and/or public trading in Russia may not be offered in Russia other than to persons who are qualified investors (QIs). A person may be a QI either by virtue of the law (this applies to licensed banks, brokers, dealers and certain other persons) or may be qualified as a QI (for one or more categories of foreign securities) by licensed Russian brokers and certain other types of licensed securities professionals. Under Russian securities laws, foreign securities may only be offered to QIs (who are not QIs by virtue of the law) in a transaction involving a Russian broker.

The Order establishes a number of important exemptions to this general rule, when foreign securities may be offered to or acquired by a person who is not a QI and not through a broker:

- 1 if the person is a foreign legal entity or an individual;
- 2 if the person is a Russian citizen acquiring foreign securities:
 - according to the terms of an employment contract;
 - in connection with the performance of the obligations arising from an employment contract; or
 - in connection with being a member of a board of directors (supervisory board) of a legal entity – this clears the path for employee, director and management incentive programmes involving foreign securities;

- 3 if the person acquires foreign securities by a 'universal succession' (that is, as a successor of a legal entity (or entities) undergoing re-organisation, for instance by way of a merger); or
- 4 where foreign securities are acquired as a result of the following events occurring or actions being taken:
 - a converting other securities held by the person into foreign securities (that is, exchanging for foreign securities any other securities of the same issuer by a decision of the issuer);
 - b an offering of foreign securities to persons already holding securities of the same class;
 - c a distribution of the assets of a legal entity being liquidated or wound up;
 - d when the issuer of the securities is undergoing re-organisation;
 - e when foreign securities are acquired by exercising pre-emptive rights to acquire securities of the same issuer; or
 - f where foreign securities are acquired by exercising rights attaching to Russian depositary receipts.

Russian securities designated for QIs

Generally, in addition to foreign securities and foreign financial instruments, Russian securities laws also establish a category of Russian securities designated for QIs only (securities for QIs). Under Russian securities laws, securities for QIs may only be offered to or acquired by QIs and, other than in the case of QIs by virtue of

the law, only through a broker. The Order establishes a number of exemptions to this general rule, whereby securities for QIs may be acquired by a non-QI person (and not through a broker) if the person is the issuer of the securities or in cases 3 and 4 (a to e) above.

For other cases, where securities for QIs and/or foreign securities (together, restricted securities) are offered to QIs outside the above exemptions and the involvement of a broker is required, the Order clarifies the legal basis of the involvement. Under the Order, the broker may act in such transactions as an agent, commissioner or attorney-in-fact. However, the other party to any transaction involving restricted securities may only be a QI, an issuer of such securities or, in case of foreign securities, a foreign legal entity or an individual.

Custody of restricted securities

The Order also establishes a number of rules applicable to the custody of restricted securities, generally aimed at enforcing the existing legal restrictions (subject to the new exemptions established by the Order) through custodians. In particular, under the Order a custodian (*depository*) may only credit restricted securities to the proprietary depo account of a particular person if:

- the person is a QI by virtue of law;
- the securities have been acquired through a broker or by a trustee manager (*doveritelniy upravliayushiy*);
- the securities have been acquired under the exemptions established by the Order; or
- where the person is not a QI, the person can supply documentary evidence that it was a QI at the date of the transaction when the securities were acquired.

The Order also establishes a number of other requirements concerning the registration and custody of restricted securities by Russian registrars and custodians.

Important points to note

- The exemptions established by the Order do not apply to foreign financial instruments that are not qualified as 'foreign securities' for Russian securities laws purposes under the procedure established by the FSFM – eg derivatives governed by a foreign law.

- The Order has expressly clarified that no restrictions apply to foreign persons acquiring foreign securities in Russia.
- The Order expressly allows foreign securities to be offered to Russian individuals under employee/management incentive programmes.

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