

COUNTRY GUIDE – RUSSIA

(January 2016, updated in March 2019)

Important notes: *This guide does not override the Main Board Listing Rules (the “Rules”) and is not a substitute for legal, regulatory, tax, financial or any other advice from qualified professional advisers. If there is any conflict or inconsistency between this guide and the Rules, the Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Rules, or this guide.*

The information contained in this guide on foreign laws, regulations and market practices is based on our understanding of them as of the date of issue of this guide. This guide may not be updated to reflect changes in the law after the date of issue. We will revise this guide to reflect changes in this information only when notified of these changes.

A new applicant for listing that is incorporated in Russia must confirm to the Exchange, with its initial application for listing, that the Russian laws, regulations and market practices contained in this guide are still applicable, or provide us with details of any changes, and inform us of any other Russian laws, regulations and market practices that are relevant to its circumstances.

Purpose of this Guide

This guide is one of a series that gives guidance on our treatment of listing applications from overseas issuers incorporated in a particular jurisdiction. The aim of this guide is to enhance applicants' understanding of our expectations, practices, procedures and the criteria we consider when applying the Rules for overseas issuers.

This guide should be read in conjunction with the Joint Policy Statement Regarding Listing of Overseas Companies (27 September 2013) (“JPS”)¹. All issuers incorporated in Russia can apply for one or more “common waivers” and those seeking secondary listings and satisfy the conditions set out in paragraph 88 of the JPS do not need to apply for waivers of certain Rules which are automatically waived for them².

Summary of our Approach

Subject to Russian incorporated issuers meeting the conditions set out in this guide, we do not consider Russian shareholder protection standards to be materially different to our own.

We will consider a listing of depositary receipts (“DRs”) on the Main Board of the Exchange for Russian incorporated issuers.

Russia meets our international regulatory co-operation requirements as the Central Bank of Russia (“CBR”) is a full signatory of the International Organisation of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“IOSCO MMOU”).

We are prepared to consider waivers from strict compliance with our Rules on notifiable and connected transactions. This is if the issuer meets certain conditions for approving transactions where shareholders' approval is required under our Rules.

We are also prepared to consider other waivers from strict compliance with our Rules. These waivers may be conditional on the issuer providing alternative measures to comply with certain requirements set out in this guide.

We expect the issuer to prominently and fully disclose in its listing document details of the Russian taxation regime and how it is applicable to Hong Kong shareholders, including capital gains tax and withholding tax on dividends.

Applicants incorporated under The Federal Law dd. August 3, 2018 No. 290-FZ “On International Companies” as amended on 25 December 2018 (the “IC Law”), which may issue shares in certificated form, are also expected to meet the conditions set out in this guide and should consult the Listing Department to resolve any inconsistency between this guide and the IC Law. (Added in March 2019)

¹ Available on the HKEX website at: https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listing-of-Overseas-Companies/A-List-of-Acceptable-Overseas-Jurisdictions/jps_20180430.pdf?la=en

² JPS, paragraph 89

Table of Contents

1. Background	4
2. Application of this Country Guide	4
3. International Regulatory Co-operation Measures	4
4. JPS Shareholder Protection Standards	4
5. Practical and Operational Matters	6
6. Constitutional Documents	11
7. Accounting and Auditing Related Requirements	12
8. Taxation.....	12

Appendix	Our Approach to Differences between Our Constitutional Document Requirements and Russian Laws, Rules and Practices
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1. Background

- 1.1 Under Russian law, a Russian company seeking a listing on Russian and/or overseas stock exchanges must be incorporated in the form of public joint stock companies (“PJSCs”). Shares of PJSCs may only exist in uncertificated form. In view of this requirement, a Russian company seeking an overseas listing will need to list in the form of DR. Therefore, a Russian issuer can apply for a DR listing on the Main Board of the Exchange. In addition, the CBR, the Russian securities regulator, will only grant approval for a Russian company to list overseas if that Russian company is also listed on a Russian stock exchange. Therefore, a Russian company seeking a listing on the Exchange will need to be listed in Russia.
- 1.2 The CBR restricts the total share capital of a Russian company which can be offered and/or traded outside Russia to no more than 25% of its total issued share capital (whether in the form of shares or depositary receipts), subject to the company meeting certain criteria. Further, the number of shares offered overseas must not be more than 50% of the total number of shares offered in Russia.
- 1.3 As at 15 January 2016, there are no Russian incorporated companies listed on the Exchange.

2. Application of this Country Guide

- 2.1 This guide applies to primary and secondary Main Board listing applicants incorporated in Russia. We do not accept applications for DR listing on GEM.

3. International Regulatory Co-operation Measures

- 3.1 The JPS states that the statutory securities regulator of an overseas issuer’s jurisdiction of incorporation must have adequate arrangements with the Securities and Futures Commission (“SFC”) for regulatory co-operation³. This requirement is met for issuers incorporated in Russia as the CBR is a full signatory of the IOSCO MMOU.
- 3.2 If an issuer is incorporated in Russia but its place of central management and control⁴ is elsewhere, similar international co-operation arrangements must generally also be in place with that jurisdiction.

4. JPS Shareholder Protection Standards

- 4.1 Subject to Russian issuers demonstrating⁵ how the practice set out below conforms to the JPS requirements, we do not consider Russian shareholder protection standards to be materially

³ JPS, paragraphs 42 to 44

⁴ JPS, paragraph 45

⁵ We list the key shareholder protection standards with which applicants must demonstrate equivalence in Section 1 of the JPS

different to our own⁶. We have set out below details of the differences between this practice and the JPS requirements.

Auditors' remuneration

- 4.2 Under the JPS, the remuneration of auditors must be approved by a majority of an overseas issuer's members or other body that is independent of the board of directors, for example the supervisory board in systems that have a two tier board structure⁷. Under Russian law, the remuneration of the auditors is required to be determined and approved by the board of directors of the applicant.

Our Approach

- 4.3 We do not consider the difference between the requirements under the JPS and Russian law to be material to shareholder protection subject to the applicant making full disclosure of the auditors' remuneration and the applicant adopting practices (either by amending its constitutional documents or internal regulations) to require the board of directors' approval of auditors' remuneration to be based on the recommendation of an independent body, such as an audit committee comprising wholly independent non-executive directors and an advisory vote⁸ from shareholders.

Proceedings at general meetings

- 4.4 **Right to speak and vote at general meetings**: The JPS requires that all members must have the right to speak and vote at a shareholder meeting, except where a member is required, by the Rules, to abstain from voting to approve the transaction or arrangement⁹.
- 4.5 Shareholders' right to speak at a general meeting is not explicitly set out under Russian law, although in practice, major Russian companies provide for such right and relevant procedures in their internal regulations.

⁶ Notes to Rules 19.05(1) and 19.30(1) and JPS, paragraphs 27 and 28

⁷ JPS, paragraph 35

⁸ The directors to seek independent shareholders' opinion on the auditors' remuneration in the form of an advisory vote

⁹ JPS, paragraph 38

Our Approach

- 4.6 We expect a Russian issuer to demonstrate that the right of the shareholders to speak at general meetings is included in its constitutional documents.
- 4.7 Appoint proxies or corporate representatives to attend general meetings: The JPS requires that a recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditor meetings¹⁰. In addition, an overseas issuer must notify the Exchange of any restrictions on a Hong Kong investor's right to attend general meetings to vote and/or to appoint proxies¹¹.
- 4.8 Under Russian law, a shareholder can exercise its right to participate in a general meeting by personal attendance, by having a duly authorised representative attend under a proxy attendance, or by submitting a voting ballot, signed either by a shareholder or its duly authorised representative. A shareholder is not permitted to appoint multiple proxies or authorised representatives. As a result, whilst the domestic depositary may vote at a general meeting in accordance with the instructions of holders of DRs, the holders of DRs themselves may not be able to attend general meetings to vote and/or to appoint proxies. If holders of DRs wish to attend general meetings to vote and/or to appoint proxies, they would need to withdraw their shares from the depositary facility and hold the shares directly.

Our Approach

- 4.9 We do not consider the inability of a shareholder to appoint multiple proxies or authorised representatives to attend general meetings and creditor meetings to be material to shareholder protection. The jurisdictional difference can be addressed taking into account the ability of a DR holder to give instructions to the depositary to participate in general meetings and to vote the underlying shares on his behalf; and the ability to convert DRs to shares and hold them as a shareholder to directly exercise the right to speak and vote at general meetings, and that the amount of time, costs and procedures involved in processing the conversion must be reasonable under the deposit agreement acceptable to the Exchange. In addition, the issuer shall make full disclosure of the inability of holders of DRs to attend general meetings of the issuer.

5. Practical and Operational Matters

- 5.1 Reference is made to Section 4 of the JPS which contains guidance on an overseas issuer's ability to comply with Hong Kong's rules and regulations; the eligibility of securities; cross-border clearing and settlement; Hong Kong depositary receipts; taxation; and stock name identifications. Issuers are encouraged to notify the Listing Department if they envisage difficulties in complying with such matters, where applicable.

¹⁰ JPS, paragraph 40

¹¹ JPS, paragraph 70(f)

Conflicts with Hong Kong's rules and regulations

- 5.2 The JPS states that overseas issuers are strongly encouraged to consult the Exchange where there is a potential conflict between the laws and regulations of its home jurisdiction and the Rules or the Takeovers Code¹², for example, those that require a management or supervisory body of an issuer to approve matters that under the Rules require shareholders' approval¹³.
- 5.3 We set out below our approach to certain potential conflicts between Russian laws and regulations and the Rules and the Takeovers Code.

Directors' Responsibility

- 5.4 The Rules require a listed issuer to ensure that its directors accept full responsibility, collectively and individually, for the listed issuer's compliance with the Rules¹⁴.
- 5.5 As a general rule, under Russian law, directors are not responsible towards third parties, but towards shareholders and the company only. The board of directors is not empowered to take collective responsibility and the directors should accept the responsibility individually.

Our Approach

- 5.6 Each director should contractually undertake to the issuer and the Exchange to accept full responsibility, collectively and individually, for the issuer's compliance with the Rules.

Shareholders' approval of directors' service contracts

- 5.7 The Rules require a listed issuer to obtain the prior approval of its shareholders for certain service contracts entered into with its directors¹⁵.
- 5.8 Under Russian law, it would not be possible for this matter to be put to the shareholders for approval as the board of directors is required to be re-elected on an annual basis. All directors' service contracts are subject to review and approval by the Remuneration Committee under Russian law.

Our Approach

- 5.9 The annual re-election of the board of directors by shareholders provides sufficient shareholder protection safeguard over the employment of director. We consider the Rule for shareholders' approval of directors' service contracts to be inapplicable. We would expect to be prepared to grant a waiver from strict compliance with the Rule.

Notifiable Transactions

¹² The Codes on Takeovers and Mergers and Share Buy-backs

¹³ JPS, paragraph 67(b)

¹⁴ Rule 3.16

¹⁵ Rule 13.68 requires prior approval of shareholders for directors' service contracts that have a duration exceeding three years or those provide for a notice of termination of more than one year or to pay compensation equivalent to more than one year's emoluments

- 5.10 The Rules require, subject to certain exemptions, transactions with any of the applicable percentage ratios reaching 25% or above to be subject to shareholders' approval¹⁶.
- 5.11 Under Russian law, shareholders' approval (by three-quarter majority vote at a general shareholders' meeting) is required, subject to certain exceptions, for a transaction with a value of 50% or more of the company's book asset value. Where the transaction has a value of 25% to 50% of the company's book asset value, approval from the company's board of directors (by unanimous vote) is required. However, if the requisite board approval is not obtained, the transaction may be approved by an ordinary resolution (i.e. 50% plus one vote) at a general shareholders' meeting.
- 5.12 Except as described above, Russian law does not permit a company's material transactions to be put to shareholders for their approval and the directors must decide on those matters.

Our Approach

- 5.13 These differences in shareholder protection standards can be addressed by amendments to the issuer's constitutional documents to include requirements that:
- (a) unless shareholders' approval is required under Russian law, the issuer's directors shall seek independent¹⁷ shareholders' opinion in the form of an "advisory vote" for any transaction which would require shareholders' approval under the Rules; and
 - (b) the directors shall not approve such transaction unless a majority of the votes cast by the independent shareholders for the purpose of the advisory vote are in favour of such transaction.

¹⁶ Rule 14.08

¹⁷ Independence of a shareholder shall be benchmarked to the standards under the Rules. See Rules 2.15 and 2.16 which require shareholders with material interest to abstain from voting in the general meetings

Connected Transactions

- 5.14 The Rules require, subject to certain exemptions¹⁸, transactions between a connected person and the listed issuer to be conditional on shareholder’ approval at a general meeting held by the listed issuer¹⁹. A connected person includes a director, chief executive or substantial shareholder of the listed issuer or any of its subsidiaries, a person who was a director of the listed issuer or any of its subsidiaries in the last 12 months, a supervisor of a PRC issuer or any of its subsidiaries, an associate of any of the above persons, a connected subsidiary, or a person deemed to be connected by the Exchange²⁰.
- 5.15 Under Russian law, shareholders’ approval by an ordinary resolution is required, subject to certain exceptions, for a transaction (“**Interested Party Transactions**”) between an “interested person” and the company with a value of 2% or more of the company’s book asset value. Interested persons may include a member of the board of directors, management board or the CEO/management company, any shareholder which alone or together with its affiliates holds 20% or more of the company’s voting shares, any person who can give mandatory instructions to the company, any other persons indicated in the company’s constitutional documents, or an associate²¹ of any of the above persons.
- 5.16 Except as described above, Russian law does not permit a company’s transactions with an “interested person” to be put to shareholders for their approval.

Our Approach

- 5.17 These differences in shareholder protection standards can be addressed by amendments to the constitutional documents to specify that interested persons include each connected person as set out under the Rules, and include requirements that:
- (a) unless independent shareholders’ approval is required under Russian law, the issuer’s directors shall seek independent shareholders’ opinion in the form of an “advisory vote” for any transaction which would require independent shareholders’ approval under the Rules; and
 - (b) the directors shall not approve such transaction unless a majority of the votes cast by the independent shareholders for the purpose of the advisory vote are in favour of such transaction.

DR Programmes

- 5.18 The JPS states that an overseas issuer must notify the Exchange if the laws and regulations of its home jurisdiction do not recognise a nominee company holding securities on behalf of third parties, such as the HKSCC Nominees that holds listed securities on behalf of Central

¹⁸ Rules 14A.73 to 14A.105

¹⁹ Rule 14A.36

²⁰ Rule 14A.07

²¹ Any of the spouses, parents, children, full or half brothers or sisters, adoptive parents or adopted children and/or any other affiliates of the interested persons

Clearing and Settlement System (“CCASS”) participants²². In addition, an overseas issuer must notify the Exchange as to who will be recognised as the legal owners of the securities in the issuer’s place of incorporation²³.

- 5.19 A Russian issuer seeking an overseas listing in Hong Kong can only list in the form of DRs on the Main Board. There is uncertainty under Russian law as to who shall be recognised as the legal owners of the securities. Typically, depository banks may open “depo” accounts with the National Settlement Depository which allow them to be treated as nominee holders of the shares in Russian companies and not as direct shareholders. However, there are some applicable Russian securities markets laws under which depository banks are still considered as shareholders of Russian companies and only they may practically exercise certain shareholders’ rights and perform relevant obligations.

Our Approach

- 5.20 Russian issuers are reminded that the Hong Kong depository must be a suitably authorised and regulated financial institution acceptable to the Exchange²⁴ to ensure, amongst other things, that the relevant DRs held under CCASS are eligible securities for deposit, clearance and settlement in CCASS²⁵. In assessing suitability, the Exchange will also have regard to the jurisdiction of incorporation of the Hong Kong depository. Similarly, the governing law of the deposit agreement should be that of Hong Kong or, if another jurisdiction is chosen, one that is generally used in accordance with international practice²⁶.
- 5.21 The listing document should include full details of (a) the rights and obligations of DR holders including how the rights of DR holders may be enforced against the Russian issuer and/or the Hong Kong depository in Hong Kong and Russia; (b) the associated risks to the Russian issuer and its DR holders; and (c) full details of the clearing and settlement arrangements including how Hong Kong investors (through HKSCC Nominees) will hold the DRs and the roles and responsibilities of any domestic depository, the Hong Kong depository and CCASS, including with reference to any applicable Russian rules and regulations.
- 5.22 The deposit agreement must be in a form acceptable to the Exchange²⁷. As such, a Russian issuer should early consult the Exchange on the terms of the deposit agreement.

Share Buy-backs

- 5.23 Under Russian law, shareholders may request the company to buy-back their shares in certain circumstances, including reorganisation of the company, major transactions, amendments to constitutional documents which limit the shareholders’ rights or delisting of the company’s shares, provided that the requesting shareholder voted against or abstained from voting under

²² JPS, paragraph 67(d)

²³ JPS, paragraph 70(c)(iii)

²⁴ Rule 19B.15

²⁵ Rule 8.13A, paragraph 69 of the JPS

²⁶ Rule 19B.16(t)

²⁷ Rule 19B.16

such circumstances. The company may not reject such buy-back as it is a statutory requirement (“**Russian Mandatory Share Buy-back**”). Subject to the confirmation of the SFC²⁸, the Russian Mandatory Share Buy-back is an exempt share buy-back for the purposes of the Hong Kong Share Buy-backs Code.

5.24 There are differences between the requirements for buy-back for shares under Russian law and the Hong Kong Share Buy-backs Code:

- (a) requirement for the approval of the SFC for off-market buy-back may not be in compliance with Russian law, as it would be regarded as limiting the rights of the shareholders and the company under Russian law;
- (b) Russian law sets out its own requirements for share buy-back offer which would need to be followed by the company; and
- (c) there are no requirements as to independent shareholders’ approval under Russian law.

Our Approach

5.25 To resolve the jurisdictional differences on share buy-back requirements under Russia and Hong Kong, where applicable, a Russian incorporated issuer should disclose in its listing document the respective requirements for share buy-back under both jurisdictions and:

- (a) not to carry out voluntary off-market buy-back or share buy-back by general offer unless the Hong Kong share buy-back requirements are followed (i.e. seeking the SFC’s approval before obtaining an independent shareholders’ approval, in addition to corporate approvals under Russian law); and
- (b) to seek the SFC’s confirmation on exempted transaction with respect to any Russian Mandatory Share Buy-back when there is a case.

6. Constitutional Documents

6.1 Russian laws and regulations do not have equivalent provisions for all of our Rules on the contents of constitutional documents²⁹. We set out in the Appendix our approach to some of the items required to be included in a Russian issuer’s constitutional documents in order for it to meet our requirements.

7. Accounting and Auditing Related Requirements

7.1 We normally require the accountants’ reports and financial statements of overseas issuers seeking a primary or secondary listing to conform to the Hong Kong Financial Reporting

²⁸ The Executive Director of the Corporate Finance Division of the SFC

²⁹ Appendix 3 to the Rules

Standards or the International Financial Reporting Standards or, for applicants seeking a secondary listing, general accepted accounting principles of the United States of America³⁰.

Our Approach

- 7.2 Section 3 of the JPS sets out the accounting and auditing related requirements³¹. No examination has been made to the acceptability of Russian generally accepted accounting practices or Russian auditing standards. A Russian issuer will need to demonstrate to the Exchange that Russian generally accepted accounting practices and auditing standards are comparable to those required in Hong Kong in order to use such practices and standards.

8. Taxation

- 8.1 As a general rule, Russian income tax of 15% would be withheld in relation to the dividends payable to overseas shareholders, subject to any applicable double taxation treaties.
- 8.2 Capital gain from sales of securities is taxable at the general corporate income tax rate of 20%, which is subject to a number of exemptions and applicable double taxation treaties.

³⁰ Rules 4.11 to 4.13, 19.13, 19.39 and Notes 2.1 and 2.4 to paragraph 2 of Appendix 16. See also JPS, paragraphs 56 to 62

³¹ JPS, paragraphs 50 and 59

Our Approach

- 8.3 We expect an Russian issuer to disclose the following prominently in its listing document:
- (a) details of any Russian taxes, including the applicable rates, investors in its securities will have to pay;
 - (b) details of any treaty between Russia and Hong Kong that may affect the taxes payable;
 - (c) the effect of holding DRs through CCASS or outside CCASS on any tax payable (where applicable); and
 - (d) the procedures for paying capital gain tax and for claiming any tax relief or exemptions.
- 8.4 We expect appropriate disclosure of taxation in at least the “Summary” and “Risk Factors” sections of the issuer’s listing document and any sections summarising Russian laws and regulations.

Please note the important notes on the front page of this Country Guide regarding Russian laws, regulations and practices

**Our Approach to Differences between Our Constitutional Document Requirements
and Russian Laws, Rules and Practices**

Rule Paragraph	Rule Requirement	Russian Laws, Regulations and Practice	Our Approach
Appendix 3, 3(2)	Where power is taken to forfeit unclaimed dividends, that power shall not be exercised until six years or more after the date of declaration of the dividend.	Russian law permits the exercise of power to forfeit dividends five years after the date of declaration of the dividend. This period cannot be extended.	We consider the difference to be immaterial to shareholder protection. The Russian requirement must be disclosed in the listing document. We would expect to be prepared to grant a waiver for this item. Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.
Appendix 3, 4(5)	That the period for lodgment of the notices referred to in subparagraph 4(4) ³² will commence no earlier than the day after the dispatch of the notice of the meeting appointed for such election and end no later than 7	Notices to propose a person for election as a director must be lodged no later than 30 days after the end of the financial year (in the case of an AGM), and no later than 30 days prior to the date of the general meeting (in the case of	A Russian issuer should amend its constitutional documents to increase the minimum meeting notice period such that the notice period for lodgement of notices referred to in paragraph 4(4) of Appendix 3 of the Rules will not

³² Paragraph 4(4) of Appendix 3 of the Rules requires the minimum length of the period for shareholders to lodge their notice with the issuer to nominate a director and for the proposed director to notify the issuer of his willingness to be elected, shall be at least 7 days.

Please note the important notes on the front page of this Country Guide regarding Russian laws, regulations and practices

Rule Paragraph	Rule Requirement	Russian Laws, Regulations and Practice	Our Approach
	<p>days prior to the date of such meeting.</p>	<p>an EGM). It is possible that the notice period for lodgement of notices referred to in paragraph 4(4) of Appendix 3 of the Rules will expire before shareholders receive their notice of meeting.</p>	<p>expire before shareholders receive their notice of meeting.</p> <p>Under the JPS, an eligible secondary listing applicant is entitled to an “automatic waiver” for this item.</p>
<p>Appendix 3, 14</p>	<p>If a shareholder is, under the Rules, required to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution, any votes cast by or on behalf of such shareholder in contravention of such requirement or restriction shall not be counted.</p>	<p>Unless the shareholder is required to abstain under Russian law, his vote should be counted. In case the Russian law requirements and the Rules differ, it is not possible to adopt the position under the Rules. As to those interested party transactions under Russian law solely, a Russian company may change its constitutional documents to provide for parties considered interested in a certain transaction under the Rules will not be able to vote, if they vote, their vote would not be counted.</p>	<p>A Russian issuer should amend its constitutional documents to provide for parties considered interested in a certain transaction under the Rules will not be able to vote, and, if they vote, their vote would not be counted.</p> <p>As an alternative to amending its constitutional documents to provide for conformity, we accept that a Russian issuer may adopt internal procedures satisfactory to the Exchange to ensure that the issuer shall not carry out any transaction which is the subject matter of the approved resolution unless the resolution would still have passed had the votes of the parties considered as interested</p>

Please note the important notes on the front page of this Country Guide regarding Russian laws, regulations and practices

Rule Paragraph	Rule Requirement	Russian Laws, Regulations and Practice	Our Approach
			<p>shareholders under the Rules not been counted. These procedures must be disclosed in the listing document.</p> <p>Under the JPS, no “automatic waiver” is available to a secondary listing applicant for this item.</p>