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Hong Kong

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HKEX PAVES THE WAY FOR RUSSIAN COMPANIES TO LIST IN HONG KONG

Introduction and Background

The Hong Kong Stock Exchange (the **Exchange**) has recognised Russia as an acceptable jurisdiction of incorporation for listing applicants (**Acceptable Jurisdiction**) and has issued an accompanying Country Guide. This guide sets out how companies incorporated in Russia can satisfy the requirements regarding equivalent shareholder protection standards under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (**Listing Rules**) and the Joint Policy Statement Regarding the Listing of Overseas Companies (**Joint Policy Statement**) issued jointly by the Securities and Futures Commission (**SFC**) and the Exchange, as well as fulfil other requirements under the Joint Policy Statement.

This is an important step as Russia-incorporated companies have so far been prevented from listing in Hong Kong due to Russia's lack of recognition. The only Russia-based companies that are currently listed in Hong Kong, Rusal and IRC Limited, are incorporated in Jersey and Hong Kong, respectively. The requirements of Russian law mean that Russia-incorporated companies will only be able to list depositary receipts on the Main Board of the Exchange. However, the fact that Russia is now an Acceptable Jurisdiction will provide a persuasive argument for the Exchange to accept the listing of a holding company incorporated in Hong Kong, Bermuda or the Cayman Islands, where the main business is conducted through a subsidiary incorporated in Russia. This would allow shares to be listed rather than depositary receipts.

Companies incorporated outside of the four Recognised Jurisdictions (Hong Kong, the People's Republic of China, Bermuda and the Cayman Islands) that are seeking to list on the Exchange need to satisfy the Exchange that their jurisdiction of incorporation has shareholder protection standards at least equivalent to those of Hong Kong. If the laws of the jurisdiction of incorporation do not provide the requisite shareholder protection standards, a company can amend its constitutional documents to achieve the same standards. The Joint Policy Statement requires that an overseas listing applicant demonstrates how its domestic laws, rules and regulations, constitutional documents and arrangements it has adopted as a whole satisfy the key shareholder protection standards set out in the Joint Policy Statement, in light of its particular facts and circumstances.

When the Exchange approves a country as an Acceptable Jurisdiction, it publishes a Country Guide for that jurisdiction setting out how companies incorporated in that jurisdiction can satisfy the Listing Rules' requirement regarding equivalent shareholder protection standards. According to the Joint Policy Statement, a listing applicant incorporated in an Acceptable Jurisdiction will not be required to give a detailed explanation of how it satisfies the key shareholder protection standards if it adopts the arrangements set out in the relevant Country Guide. A new listing applicant must confirm to the Exchange when making its initial listing application that the laws, regulations and market practices contained in the relevant Country Guide still apply, or provide details of any changes to the Exchange.

A listing applicant must also inform the Exchange of any other laws, regulations and market practices that are relevant to its particular circumstances. New applicants and listed companies incorporated in an Acceptable Jurisdiction are also required to inform the Exchange at the earliest opportunity of any material change in the laws, rules or regulations referenced in the Country Guide.

Russian listing applicants should follow the measures set out in Country Guide – Russia in order to meet the key shareholder protection standards.

Background – Overview of Russia’s Regime

Under Russian law, a Russian company seeking listing in Russia or overseas is required to be incorporated in the form of public joint stock companies (**PJSCs**). Shares of PJSCs may only exist in uncertificated form. Thus, Russian companies seeking overseas listing, such as on Hong Kong’s Main Board, must list in the form of depositary receipts. Russian companies seeking to list overseas must be listed on a Russian stock exchange.

The total share capital of a Russian company which can be offered and/or traded outside Russia is limited to a maximum threshold of 25% of its total issued share capital, conditional on the company meeting certain criteria. The number of shares offered overseas is limited to a maximum threshold of 50% of the total number of shares offered in Russia.

Applicability of the Country Guide

Russian companies can apply for primary or secondary listing on the Main Board. They cannot apply for listing on GEM as the Exchange does not allow depositary receipt listings on GEM.

International Regulatory Co-operation Measures

Under the Joint Policy Statement, the statutory securities regulator of an overseas issuer’s jurisdiction of incorporation is required to have adequate arrangements with the SFC in relation to regulatory co-operation. As the Central Bank of Russia 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, issuers incorporated in Russia satisfy this requirement.

Where a Russian incorporated issuer has its place of central management and control outside of Russia, comparable international co-operation arrangements must generally also be in place with that jurisdiction.

Conformity with the Joint Policy Statement’s Shareholder Protection Standards

The Exchange does not regard Russian shareholder protection standards as materially different to those of Hong Kong, subject to Russian issuers demonstrating how the practice set out below conforms to the Joint Policy Statement requirements.

The Exchange’s approach to dealing with such differences is as follows:

Auditors’ remuneration

| | Hong Kong Law (Joint Policy Statement) | Russian Law |
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| | Auditors’ remuneration must be approved by a majority of an overseas issuer’s members or other body that is independent of the board of directors (Board), such as the supervisory board in systems that have a two tier board structure. | Auditors’ remuneration must be determined and approved by the Board of the applicant. |

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| Approach of the Exchange under the Country Guide – Russia | The Exchange does not regard the difference between the requirements of the two jurisdictions to be material to shareholder protection subject to the applicant’s full disclosure of the auditors’ remuneration and the applicant adopting practices (either by amending its constitutional documents or internal regulations) requiring the Board’s approval of auditors’ remuneration to be based on the recommendation of an independent body, such as an audit committee comprising wholly of independent non-executive directors and an independent shareholders’ opinion in the form of an “advisory vote”. |
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Proceedings at general meetings: Right to speak and vote at general meetings

| | Hong Kong Law (Joint Policy Statement) | Russian Law |
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| | All members must have the right to speak and vote at a shareholder meeting, except where a member is required under the Listing Rules to abstain from voting to approve the transaction or arrangement. | Russian law does not explicitly provide for shareholders’ right to speak at a general meeting. However, in practice, the internal regulations of large Russian companies include this right and relevant procedures. |
| Approach of the Exchange under the Country Guide – Russia | A Russian issuer should establish that its constitutional documents include the right of the shareholders to speak at general meetings. | |

Proceedings at general meetings: Appoint proxies or corporate representatives to attend general meetings

| | Hong Kong Law (Joint Policy Statement) | Russian Law |
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| | A recognised Hong Kong clearing house must be able to appoint proxies or corporate representatives to attend general meetings and creditor meetings. Overseas issuers must notify the Exchange of any restrictions on a Hong Kong investor’s right to attend general meetings to vote and/or to appoint proxies. | <p>Shareholders may exercise their right to participate in a general meeting through 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.</p> <p>A shareholder is not permitted to appoint multiple proxies or authorised representatives. Thus, the domestic depositary may vote at a general meeting in compliance with the instructions of depositary receipt holders, but the depositary receipt holders themselves may not be able to attend general meetings to vote and/or appoint proxies.</p> <p>In order to attend general meetings to vote and/or appoint proxies, holders of depositary receipts would need to withdraw their shares from the depositary facility and hold the shares directly.</p> |

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| <p>Approach of the Exchange under the Country Guide – Russia</p> | <p>A shareholder's inability to appoint multiple proxies or authorised representatives to attend general meetings and creditor meetings is not regarded by the Exchange as material to shareholder protection.</p> <p>The jurisdictional difference may be resolved by taking into account the ability of a depositary receipt 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 depositary receipts 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. Further, the issuer must fully disclose the inability of depositary receipt holders to attend general meetings of the issuer.</p> |
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Practical and Operational Matters

Conflicts with Hong Kong's rules and regulations

Under the Joint Policy Statement, overseas issuers are advised to consult the Exchange in cases of potential conflict between the laws and regulations of the issuer's home jurisdiction and Hong Kong's Listing Rules or The Codes on Takeovers and Mergers and Share Buy-backs (**Takeovers Code**).

The Exchange's approach to dealing with potential conflicts between Russian laws and regulations and the Listing Rules and Takeovers Code is as follows:

Directors' Responsibility

| | Hong Kong Law (Listing Rules) | Russian Law |
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| | A listed issuer must ensure that its directors accept full responsibility, collectively and individually, for the listed issuer's compliance with the Listing Rules. | As a general rule, directors are responsible towards the shareholders and the company, but not towards third parties. There is no power vested in the Board to take collective responsibility, and the directors must accept the responsibility individually. |
| <p>Approach of the Exchange under the Country Guide – Russia</p> | A director must contractually undertake to the issuer and the Exchange to accept full responsibility, collectively and individually, for the listed issuer's compliance with the Listing Rules. | |

Shareholders' approval of directors' service contracts

| | Hong Kong Law (Listing Rules) | Russian Law |
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| | Prior shareholder approval is required for directors' service contracts which may last for more than 3 years or provide for more than 1 year's notice of termination or a compensation payment equivalent to more than 1 year's emoluments. | As the Board must be re-elected each year, it would not be feasible for the shareholders to approve these matters. All directors' service contracts must be reviewed and approved by the Remuneration Committee. |

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| <p>Approach of the Exchange under the Country Guide – Russia</p> | <p>The annual re-election of the Board by shareholders provides sufficient shareholder protection safeguard over the employment of directors. The Exchange considers the Rule regarding shareholders' approval of directors' service contracts as inapplicable to Russian companies, and consequently would expect to be prepared to grant a waiver from strict compliance with the Listing Rules.</p> |
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Notifiable Transactions

| | Hong Kong Law (Listing Rules) | Russian Law |
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| | <p>Shareholders' approval is required for a transaction where the relevant percentage ratio is at least 25%, subject to certain exemptions.</p> | <p>Shareholders' approval (by three-quarter majority vote at a general shareholders' meeting) is required for a transaction with a value of at least 50% of the company's book asset value, subject to certain exceptions.</p> <p>Board approval (by unanimous vote) is required for a transaction with a value of 25% to 50% of the company's book asset value. Where requisite Board approval is not achieved, an ordinary resolution (i.e. 50% plus one vote) at a general shareholders' meeting may approve the transaction.</p> <p>These are the only circumstances in which a company is permitted to submit material transactions to shareholders for their approval.</p> |
| <p>Approach of the Exchange under the Country Guide – Russia</p> | <p>Differences in shareholder protection standards may be resolved through amendments to the issuer's constitutional documents such as requirements that:</p> <ul style="list-style-type: none"> • where shareholders' approval is not required under Russian law, the directors of the issuer must obtain an independent shareholders' opinion in the form of an "advisory vote" for any transaction which would require shareholders' approval under the Listing Rules. Independence of a shareholder should be benchmarked against the Listing Rules' standards; and • the directors may only approve a transaction where the majority of votes cast by the independent shareholders for the purpose of the advisory vote are in favour of the transaction. | |

Connected Transactions

| | Hong Kong Law (Listing Rules) | Russian Law |
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| | <p>Shareholders' approval at a general meeting is required for a transaction between a connected person and the listed issuer, subject to certain exemptions.</p> <p>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-mentioned persons, a connected subsidiary, or a person deemed to be connected by the Exchange.</p> | <p>Shareholders' approval by an ordinary resolution is required for a transaction between an "interested person" and the company with a value of at least 2% of the company's book asset value, subject to certain exceptions.</p> <p>Interested persons may include a member of the Board, 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 associate of any of the above-mentioned persons.</p> <p>These are the only circumstances in which a company is permitted to submit transactions with an "interested person" to shareholders for their approval.</p> |
| <p>Approach of the Exchange under the Country Guide – Russia</p> | <p>Differences in shareholder protection standards may be resolved through amendments to the issuer's constitutional documents so that interested persons include each connected person as specified in the Listing Rules, and include the requirements that:</p> <ul style="list-style-type: none"> • where shareholder approval is not required under Russian law, the directors of the issuer must obtain an independent shareholders' opinion in the form of an "advisory vote" for any transaction which would require independent shareholders' approval under the Listing Rules. Independence of a shareholder shall be benchmarked against the Listing Rules' standards; and • the directors may only approve a transaction where the majority of votes cast by the independent shareholders for the purpose of the advisory vote are in favour of the transaction. | |

Depositary Receipt Programmes

| | Hong Kong Law (Joint Policy Statement) | Russian Law |
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| | <p>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, for example the HKSCC Nominees that holds listed securities on behalf of Central Clearing and Settlement System (CCASS) participants.</p> | <p>A Russian issuer seeking an overseas listing in Hong Kong can only list in the form of depositary receipts on the Main Board.</p> |

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| | 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 incorporation. | There is legal uncertainty as to who should be recognised as the legal owners of the securities under Russian law. 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, under some applicable Russian securities markets laws, depository banks are regarded as shareholders of Russian companies and only they may practically exercise certain shareholders' rights and perform relevant obligations. |
| Approach of the Exchange under the Country Guide – Russia | <p>The Hong Kong depository must be a suitably authorised and regulated financial institution acceptable to the Exchange to ensure, inter alia, that the relevant depository receipts held under CCASS are eligible securities for deposit, clearance and settlement in CCASS. In evaluating suitability, the Exchange will take into account the jurisdiction of incorporation of the Hong Kong depository. The governing law of the deposit agreement should be either that of Hong Kong or that of a jurisdiction that accords with international practice.</p> <p>The listing document should include full details of:</p> <ol style="list-style-type: none"> the rights and obligations of depository receipt holders including how their rights may be enforced against the Russian issuer and/or the Hong Kong depository in Hong Kong and Russia; the associated risks to the Russian issuer and its depository receipt holders; and full details of the clearing and settlement arrangements including how Hong Kong investors (through HKSCC Nominees) will hold the depository receipts 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. <p>The deposit agreement is required to be in a form acceptable to the Exchange. Thus, a Russian issuer should early consult the Exchange on the terms of the deposit agreement.</p> | |

Share Buy-backs

| | Russian Law | Differences between Russian Law and the Hong Kong Share Buy-backs Code |
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| | 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 such circumstances. | <p>The requirement for SFC approval of off-market buy-backs may not be in compliance with Russian law, because it would be considered as limiting the rights of the shareholders and the company under Russian law.</p> <p>The company would need to follow the share buy-back offer requirements under Russian law.</p> |

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| | <p>The company may not reject such buy-back as it is a statutory requirement (Russian Mandatory Share Buy-back).</p> <p>Subject to the confirmation of the SFC, the Russian Mandatory Share Buy-back is an exempt share buyback for the purposes of the Hong Kong Share Buy-backs Code.</p> | <p>Russian law does not require independent shareholders' approval.</p> |
| <p>Approach of the Exchange under the Country Guide – Russia</p> | <p>The jurisdictional differences between Russia and Hong Kong regarding share buy-back requirements can be resolved by obliging the Russian incorporated issuer to disclose in its listing document the requirements for share buy-back under both jurisdictions and requirements that it must:</p> <ul style="list-style-type: none"> • not 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, as well as corporate approvals under Russian law); and • seek the SFC's confirmation on an exempted transaction regarding any Russian Mandatory Share Buy-back when the circumstances arise. | |

Constitutional Documents

Russian rules and regulations do not include provisions equivalent to all of Hong Kong's Listing Rules regarding the contents of constitutional documents. Some of the items that a Russian issuer should include in its constitutional documents so as to satisfy Hong Kong's requirements are set out below:

| Hong Kong Law (Listing Rules) | Russian Laws, Regulations and Practice | Approach of the Exchange under the Country Guide – Russia |
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| <p>Power taken to forfeit unclaimed dividends should not be exercised until at least six years after the date of declaration of the dividend.</p> | <p>The exercise of a power to forfeit dividends is permitted five years after the date of declaration of the dividend. This period cannot be extended.</p> | <p>The difference between the jurisdictions is immaterial to shareholder protection. The requirement under Russian law must be disclosed in the listing document. The Exchange would expect to be prepared to grant a waiver for this item.</p> <p>Under the Joint Policy Statement, an eligible secondary listing applicant is entitled to an "automatic waiver" for this item.</p> |

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| <p>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 must be at least 7 days. This period cannot commence before the day after the dispatch of the notice of the meeting appointed for such election and must end no later than 7 days prior to the date of such meeting.</p> | <p>Notices proposing a person for election as a director are required to be lodged no later than 30 days after the end of the financial year (in the event of an AGM), and no later than 30 days prior to the date of the general meeting (for an EGM).</p> <p>The notice period for lodgement of notices in the Listing Rules could potentially expire before shareholders receive their notice of meeting.</p> | <p>A Russian issuer's constitutional documents should be amended so as to increase the minimum meeting notice period so that the notice period for lodgement of notices in the Listing Rules will not expire before shareholders receive their notice of meeting.</p> <p>Under the Joint Policy Statement, an eligible secondary listing applicant is entitled to an "automatic waiver" for this item.</p> |
| <p>If the Listing Rules require a shareholder to abstain from voting on any particular resolution or restrict the shareholder to voting only for or only against any particular resolution, any votes cast by or on behalf of such shareholder in breach of such requirement or restriction must not be counted.</p> | <p>A shareholder's vote should be counted, except where the shareholder must abstain under Russian law. Where there are differences between Russian law and the Listing Rules, it is not possible to adopt the position under the Listing Rules.</p> <p>In relation to interested party transactions under Russian law, a Russian company may amend its constitutional documents so that parties regarded as interested in a certain transaction under the Listing Rules will not be permitted to vote, and, if they vote, their vote would not be counted.</p> | <p>A Russian issuer should amend its constitutional documents so that parties regarded as interested in a certain transaction under the Listing Rules will not be permitted to vote, and, if they vote, their vote would not be counted.</p> <p>An alternative to a constitutional document amendment accepted by the Exchange is the adoption of internal procedures which satisfy the Exchange that the issuer will not carry out any transaction which is the subject matter of the approved resolution, except where the resolution would have still passed if the votes of the interested shareholders under the Listing Rules had not been counted. These procedures must be disclosed in the listing document.</p> <p>Under the Joint Policy Statement, no "automatic waiver" is available to a secondary listing applicant for this item.</p> |

Accounting and Auditing Related Requirements

| Hong Kong Law (Listing Rules and Joint Policy Statement) | Approach of the Exchange under the Country Guide – Russia |
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| <p>Accountants' reports and financial statements of overseas issuers seeking a primary or secondary listing must conform to: (i) the Hong Kong Financial Reporting Standards; or (ii) the International Financial Reporting Standards; or (iii) the general accepted accounting principles of the United States (in the case of secondary listings).</p> | <p>The accounting and auditing related requirements are specified in section 3 of the Joint Policy Statement. There has been no examination of the acceptability of Russian generally accepted accounting practices or Russian auditing standards. In order to use Russian generally accepted accounting practices and auditing standards, a Russian issuer must demonstrate to the Exchange that the Russian standards are comparable to those required in Hong Kong.</p> |

Taxation

| Russian Law | Approach of the Exchange under the Country Guide – Russia |
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| <p>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. 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.</p> | <p>The Exchange expects a Russian issuer to prominently and fully disclose the following in its listing document:</p> <ul style="list-style-type: none"> • details of any Russian taxes (including capital gains tax and withholding tax on dividends), including the applicable rates, investors in its securities will have to pay; • details of any treaty between Russia and Hong Kong that may affect the taxes payable; • the effect of holding depository receipts through CCASS or outside CCASS on any tax payable (where applicable); and • the procedures for paying capital gains tax and for claiming any tax relief or exemptions <p>Appropriate disclosure of taxation should be made in at least the "Summary" and "Risk Factors" sections of the issuer's listing document and any sections summarising Russian laws and regulations.</p> |

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