Initial Public Offerings

2018

Second Edition

Contributing Editors:
Ilir Mujalovic & Harald Halbhuber

With contributions by:
afme/ Finance for Europe
sifma

CONTENTS

Country chapters cont.

Russia

Nadezhda Minina, Alexander Nektorov & Ilia Rachkov
Nektorov, Saveliev & Partners (NSP)

Читать статью на русском языке

Introduction

Acquisition by a Russian joint-stock company of the status of a public company means starting a new life: a public company gains better access to the capital markets; the investor base is expanded; the valuation of the market value of the company becomes easier and more precise; brand awareness increases; and additional ways to motivate the staff emerge.

The modern Russian stock market is quite young: the first initial public offering in Russia took place only in 2002 (with the amount of borrowed funds being USD 13 million). Since 2002,[1] more than 70 IPOs have been held in Russia, following which the issuing companies attracted about USD 83.9 billion. The boom of IPOs occurred in 2007 when 22 offerings took place. From 2004 to 2006 the major Russian companies combined the IPOs with regard to their shares in Russia with IPOs of derivatives (global depositary receipts or American depositary receipts) on their shares in London or the US, respectively. For example, this approach was chosen by PAO Novatek: the shares of Novatek were placed on the Russian stock exchanges, i.e. on the Moscow Interbank Currency Exchange (MICEX) and on the Russian Trading System (RTS), whereas GDRs on Novatek's shares were placed on the London Stock Exchange.

Another option was to hold the IPOs of the shares belonging to the Russian subsidiaries in Russia and to hold the IPOs outside the territory of Russia for the shares of the foreign companies controlling such Russian subsidiaries. This approach was chosen by Evraz S.A. (Luxembourg): its shares were placed on foreign stock exchanges and the shares of its Russian subsidiary steel-making plants were listed on the Russian stock exchanges.

Mid-size companies controlling assets in Russia did not hold IPOs in Russia at all, but posted their IPOs directly on stock exchanges abroad (for example, AIM in London) or on other foreign exchanges (Toronto, Stockholm, Frankfurt, etc.). This approach was chosen, for example, by Urals Energy plc. (Cyprus), which placed its shares on AIM.

However, such development hampered the development of the stock market in Russia and contributed to cross-border flows of capital outside Russia. Therefore, in 2002, Russia established the requirement that any Russian company which intends to hold the IPOs abroad is obliged to obtain a prior approval of the Russian Federal Commission for Financial Markets (currently – the Central Bank of Russia) and to hold an IPO in Russia.

In 2014, there were no IPOs in Russia. From 2015, the situation started to slightly improve: in 2015–2016, there were two initial public offerings, and in 2017 there were three. In 2018, several Russian companies have announced their plans to place the shares on the Moscow Exchange. The Moscow Exchange was established in 2011 as a result of a merger of MICEX (founded in 1992) and RTS (founded in 1995).

The IPO process: steps, timing and parties and market practice

IPO is a complex process consisting of a number of stages.

The shares offered within an initial public offering can be represented by primary shares (placed by the issuer through their sale during the IPO) or by secondary shares (the already-placed shares are sold at the stock exchange by the issuer's existing shareholders). When placing primary shares, the proceeds from their sale during the IPO are received by the issuer; when selling secondary shares, the selling shareholder receives such proceeds. Thus, when structuring an IPO, the following options are available to the issuer:

- to place only primary shares;
- to offer only secondary (i.e. already-placed) shares; and
- mixed offering: placement of primary shares and offering of secondary shares by selling shareholders.

Regardless of the structure chosen, any IPO requires careful planning and different specialists shall be involved in its implementation: investment advisors; auditors; lawyers; PR agencies, etc. (for further information please refer to the section titled "*Formation of the team to hold an IPO*" below).

The time to get an IPO through varies depending on the issuing company and the deal structure and can take from five to 12 months. As a rule, preparation for an IPO begins more than a year before the date of share placing/offering. The entire process can be conditionally divided into a preparatory and a public stage.

Main stages of an IPO:

Preparatory stage

1. Company restructuring

Only a joint-stock company is eligible to become a public company. If the issuer operates as a limited liability company, then preparation for an IPO will require reorganisation of the issuer, i.e. its transformation into a joint-stock company. Such transformation usually takes four months at least.

Besides, as a rule, in the course of preparation of any company for an IPO, external lawyers and tax advisors carry out a comprehensive due diligence of such company, its subsidiaries and the persons controlling the company itself *de jure* or *de facto*. Based on the results of this due diligence, these advisors make recommendations as for what kind of legal entities should be established, reorganised in one or another, divested from the family tree or should change their functions (for example, by executing, amending or terminating certain contracts).

2. Financial statements

Companies planning to enter their shares in the quotation list of levels I or II shall, in advance, start compiling financial statements in compliance with the international financial reporting standards (IFRS) (if there is are consolidated financial statements, then to prepare individual financial statements). The statements shall be audited. The requirements concerning financial statements also apply to the entities that have been reorganised by way of transformation and which have experienced merger or spin-off.

3. Corporate governance

The company shall build up its corporate governance that meets the requirements of the Corporate Governance Code (approved by Letter No. 06-52/2463 of the Bank of Russia dated 10 April 2014).

Independent directors. The issuer shall set up a Board of Directors (also called a supervisory board). The Board of Directors shall be composed of independent directors. These are the persons who have sufficient autonomy to build their own positions and are able to make objective judgments independent of the influence of the issuer's executive bodies, certain groups of shareholders or any other interested parties, as well as possess a sufficient degree of professionalism and experience. To be recognised as an independent director, the member of the Board of Directors shall not be related to the issuer, any substantial shareholder of the issuer, any substantial counterparty of the issuer, any competitor of the issuer, nor to the state (the Russian Federation, a constituent entity of the Russian Federation) or a municipal formation.

Committees of the Board of Directors. The Board of Directors shall set up the following committees: for audit; for remuneration; and for personnel and nomination. Such committees have to comprise primarily independent directors.

The main functions of the audit committee include:

- control over ensuring completeness, accuracy and reliability of the issuer's financial statements;
- control over reliability and effectiveness of the risk management and internal control system; and
- ensuring independence and objectivity in carrying out internal and external audit functions.

The main functions of the remuneration committee include:

- development and periodic review of the issuer's policy on remuneration to the members of the Board of Directors, the members of the issuer's management board and CEO, supervision over introduction and implementation of such policy;
- initial assessment of work of the issuer's management board and CEO based on the results of the year according to the issuer's remuneration policy;
- elaboration of conditions for early termination of labour contracts with the members of the issuer's management board and CEO; and
- development of recommendations to the Board of Directors on determining the amount of remuneration and the guidelines for awarding the corporate secretary.

The main functions of the nomination committee include:

- annually carrying out a detailed formal procedure for self-assessment or external KPI of the Board of Directors and its members, as well as the committees of the Board of Directors, identification of priority areas for strengthening the composition of the Board of Directors;
- interaction with shareholders in order to make recommendations to shareholders in respect of voting on the election of candidates to the issuer's Board of Directors; and
- planning of personnel appointments, including consideration of continuity of activities, for the members of the management board and CEO, making recommendations to the Board of Directors regarding the candidates for the position of the corporate secretary, the members of the company's executive bodies and other key executive employees.

The functions of the nomination committee may be delegated to the remuneration committee.

Company secretary. The issuer shall appoint a corporate secretary (or establish a special structural unit). The corporate secretary's task is to ensure:

- seamless functioning of the company's management bodies;
- interaction of the issuer with regulatory authorities, the stock exchange, the registrar of shares and other professional participants in the securities market; and

- that the Board of Directors is immediately informed of any and all detected violations of the law and provisions of the company's internal documents, if control over compliance with such provisions falls within the competence of the corporate secretary.

Internal audit. The issuer shall establish a structural unit carrying out internal audit or instruct an external independent entity to perform the internal audit.

4. Formation of the team to hold an IPO

The issuer planning to issue an IPO shall form a working group. It consists both of internal members (management, members of the Board of Directors, employees of the finance and legal departments) and external advisors (underwriting banks, legal advisors, industry consultants, auditors, PR agencies).

Underwriting banks develop a project plan and the scheme for the IPO, coordinate the working group, make a comprehensive evaluation, assess the issuer's financial position, examine the business plan, build the company financial model based on a comprehensive evaluation and assessment of the market conditions, compile an order book, pricing, carry out underwriting, arrange for road shows and prepare presentations for investors, interact with investors, and perform the functions of the market-makers.

The issuer's legal advisors provide comprehensive legal support for the project, develop a project plan and a scheme for the IPO (together with the underwriting banks), carry out due diligence, prepare corporate documents for the coming IPO, draft appropriate documents, including the prospectus of securities and information memorandum, prepare legal opinions and interact with the stock exchange on the issues of listing.

The issuer's tax advisors provide the issuer with tax advice in the context of due diligence.

Legal advisors of the underwriting banks are responsible for preparing the underwriting agreement; they examine all documents related to the share offering and all relevant contracts.

The auditors audit the company's financial statements according to Russian accounting standards and the IFRS and provide comfort letters (confirmation of accuracy of the financial information published in the prospectus).

The PR agency carries out overall PR support for the IPO and interacts with the Russian and foreign mass media.

Public stage

1. Acquisition of public status by the company

A non-public company acquires public status by introduction of changes containing the indication that the company is public into the company's articles of association. The introduction of such changes is possible only if the company's prospectus of securities is registered and the company has made a provisional agreement with the stock exchange on its share listing.

Conclusion of a provisional agreement on rendering listing services with the Stock Exchange.[2] To make a provisional agreement on rendering listing services, the issuer shall provide the stock exchange with a presentation. It shall contain the following information:

- general information about the company: name; brief description of its activities; participation in a group of companies; membership in associations; rating; information on its auditor; consultants; revenue; value of assets; and number of employees;
- company history;
- objectives/plans of the company for three to five years;

- key investment highlights;
- analysis of the economic sector in which the company conducts its business and advantages of the company as compared to its peers;
- information on the current ownership structure and preliminary offer structure;
- financial situation of the company, both before and after listing (forecast);
- information on the company's main competitors; and
- information on the range of activities, revenue, cost, operating cash flow, EBITDA and assets for the last three years.

The issuer is also obliged to provide the stock exchange with a set of documents confirming such information.

Upon receipt of the documents, the stock exchange carries out an examination as to the possibility to make a listing agreement (the period of examination is 14 business days). In the course of the examination, the stock exchange may request additional documents and information. In case of a positive decision on making a listing agreement such listing agreement is concluded **with a non-public company for a period up to six months with the possibility to extend its term in the future.**

Preparation and registration of the prospectus of securities, as well as additional issue of shares (if primary shares are offered). The prospectus of securities shall be registered with the Bank of Russia (the "megaregulator" that is also responsible for the securities market in Russia). The prospectus is an indispensable element for obtaining a listing on the stock exchange. In order to register the prospectus, it is necessary to present to the Bank of Russia the provisional listing agreement. Any additional issue of the shares to be placed by public offering shall also be registered with the Bank of Russia.

As a rule, the prospectus of securities is prepared by legal advisors together with the relevant employees of the company. The preparation of the prospectus takes about one month, and the period of state registration of the prospectus is 30–60 calendar days.

Introduction of changes containing the indication that the company is public into its articles of association. Such changes shall be introduced into the articles of association after registration of the prospectus of securities. As a rule, at the same stage the changes which harmonise the articles of association with the requirements established for the public company have to be introduced into the articles of association. The company acquires public status starting from the date of state registration of the changes to its articles of association.

2. Carrying out due diligence

This is a comprehensive due diligence: clean title of incorporation and activities of the issuer, its financial position and the operational stability of its business have to be verified.

3. Marketing and preparation of the information memorandum

The information memorandum is the main source of information on the issuer. The information memorandum is intended for a wide range of international investors. Preparation of the information memorandum requires the involvement of legal advisors, underwriting banks and the issuer's management.

For marketing purposes, many information and other public events and presentations are held. The main purpose of these events/presentations is to find out whether potential investors have an appetite for the company's shares offered for public sale.

4. Listing

Listing means enrolment of securities by the trade organiser (i.e. the stock exchange) in the list of securities that are admitted to on-exchange trading for conclusion of sale and

purchase agreements. This list consists of three independent levels (the 1st and 2nd levels constitute the quotation list). The level of the list is of significance for (i) the range of investors who are eligible for the acquisition of shares, and (ii) for the requirements for enrolment of the securities into the list and maintaining the level. Placement of securities and stock trading may be carried out on the stock exchange and over-the-counter (OTC). Obtaining a listing on the stock exchange is an important stage of the IPO; it precedes the placement of securities and confirms that the issuer meets the corporate governance requirements.

The issuer shall submit to the stock exchange an application for enrolment of its securities in the list; the application shall be accompanied by supporting documents. For the purposes of the listing, legal or financial advisors usually directly interact with the stock exchange. The stock exchange examines the securities from the point of view of their compliance with the listing rules.

To be included in the list the issuer must meet a number of criteria:

- the securities shall comply with the requirements of the legislation of the Russian Federation, including the regulations of the Bank of Russia;
- the company shall register the prospectus of securities;
- the company shall disclose information in accordance with the requirements of the securities legislation of the Russian Federation; and
- the securities shall be transferred for servicing to the clearing depositary (when secondary shares are offered).

Enrolment into levels I or II of the list imposes on the issuer the following additional requirements:

- the issuer should have existed for at least three years (for level I) or at least one year (for level II);
- the issuer should have complied with, and disclosed its statements according to, the IFRS (or any other internationally recognised standards) for three complete years preceding the date of listing of the shares into level I or for one year (for the shares to be included into list of level II);
- the issuer shall maintain a sufficient number of free-float shares and their total market value at certain level; and
- the issuer shall meet the corporate governance requirements.

Since 15 July 2009, the Innovation and Investment Market is operating on the Moscow Exchange. This segment was created for those issuers who are high-tech companies. The main task of the Innovation and Investment Market is to promote attraction of investments in order to develop small and mid-size enterprises in the innovative sector of the Russian economy.

5. Securities offering

The commencement and ending dates for placement of securities are determined by the resolution on the issue. As a rule, in case of a public offering of securities, the period for placement is several business days (on average up to five business days) from the placement commencement date. As a general rule, placement shall be carried out within one year from the date of the state registration of securities. The specified term may be extended but the total period of offering cannot exceed three years.

Stock trading (i.e. subsequent sale of shares after their acquisition by the first purchaser from the issuer) is allowed from the date when the purchasers paid for securities during the IPO. Upon completion of the offering, the issuer shall send a notification on the results

of the issue to the Bank of Russia indicating, *inter alia*, the price and the actual number of securities placed in the course of the IPO. The number of placed shares may be less than the total number of securities issued.

Upon placement of securities, all potential purchasers shall be offered equal conditions for acquisition of securities. If newly issues shares are being offered, existing shareholders are entitled to buy them with a certain discount. As a rule, placement is carried out by combining on-exchange and OTC trades.

6. Public company life disclosures

Starting from the date when the company acquired public status (i.e. from the date of state registration of the changes to the company's articles of association), the company shall disclose information in accordance with the securities legislation. When determining the scope of the information subject to disclosure, the company shall be guided not only by the legal requirements but also by how detailed the information should be for its adequate perception by the market participants. As a rule, for this purpose, public companies establish investor relations departments.

Regulatory architecture: overview of the regulators and key regulations

Key regulations overview

The key regulations governing the IPO process are the following Federal Laws: No. 39-FZ On the Securities Market dated 22 April 1996; and No. 208-FZ On Joint-Stock Companies dated 26 December 1995. Other important regulatory sources are the Securities Issue Standards (Regulation No. 428-P of the Bank of Russia dated 11 August 2014) and the Regulation On Admission of Securities to On-exchange Trading (Regulation No. 534-P of the Bank of Russia dated 24 February 2016).

The law on the securities market regulates the relations arising in the course of issue of securities and stock trading (including shares). The securities issue standards establish the detailed procedure for issue of securities at all stages, as well as the procedure for registration of the prospectus of securities and mandatory requirements to its content. The procedure for acquisition of the public status by a company is regulated by Federal Law No. 208-FZ On Joint-Stock Companies.

The listing procedure is prescribed by the stock exchange. For example, the Moscow Exchange approved its listing procedure in its Listing Rules. Such procedure shall comply with the requirements of the regulations of the Bank of Russia and be registered by the Bank of Russia.

Information disclosure at the stages of issue and after acquisition of the public status by the company is governed by the Regulation On Disclosing Information by Securities Issuers (approved by Regulation No. 454-P of the Bank of Russia dated 30 December 2014).

Key regulators and listing authorities in the IPO process

The key state authority influencing the IPO process is the Bank of Russia. Not only state registration of the prospectus of securities and additional shares but also approval of the securities issue standards, as well as other legal regulations concerning registration and placement of securities and stock trading, fall within the competence of the Bank of Russia.

Apart from the state registration of additional issue of securities and prospectus of securities, the company shall undergo the procedure for listing of securities on the stock exchange.

The largest Russian stock exchange is the Moscow Exchange.

Key documentation

Issue documents

Offering decision. Making a decision on offering is the basis for placement of securities. Offering is the transfer of shares by an issuer to the primary acquirer. The offering decision is made by the general meeting of shareholders or the board of directors depending on the amount of issue and the requirements of the issuer's articles of association.

Resolution on the issue. This is a key document in order to register an additional share issue. The resolution of the issue establishes key parameters for securities offering: number and type of securities; procedure for determining start and end dates of offering; method of offering; pricing procedure; procedure for exercising the preemptive right; and information disclosure procedure. Resolution on the issue is usually prepared by legal advisors; before being approved by the issuer's board of directors and registered with the Bank of Russia, a draft resolution on the issue is discussed with all parties to the transaction, including with the issuer, the banks, and stock exchange.

Russian prospectus of securities issue. The prospectus of securities is necessary in case of public offering and to obtain listing on the Moscow Exchange. Public status can only be acquired after registering prospectus of securities. The prospectus of securities must contain information reflecting the circumstances which may affect the decision to acquire shares. The prospectus of securities shall be approved by the issuer's board of directors and signed by its CEO and chief accountant. In addition, the prospectus of securities may also be signed by a financial advisor on the securities market; however, this option is not widely used, as such financial advisor requires extra payment for this service, explaining that he/she will be responsible for the prospectus for the securities content. The persons who signed or approved the prospectus of securities (e.g. the members of the board of directors who voted for approval of the prospectus) and the audit firm that prepared its audit report relating to the issuer's accounting (financial) records disclosed in the prospectus are jointly and severally or secondarily (depending on the case) liable for losses caused by the issuer to the investors due to inaccurate, incomplete and/or misleading information in the prospectus. The prospectus of securities must contain, among other things, information about financial and economic operations of the issuer, the issuer's market capitalisation, liabilities, risks relating to acquisition of shares, governing bodies and controlled entities. As IPO is usually accompanied by preparation of an international prospectus, the content of both prospectuses should be brought into line with each other.

In 2017, the Moscow Exchange developed recommendations on the scope of the information to be disclosed by issuers in prospectuses of securities in order to inform the issuers on the international best practices of information disclosure and to elaborate a uniform approach to information disclosure in prospectuses of securities. Adherence to the recommendations is not mandatory, but it facilitates submitting harmonised data in Russian and international prospectuses. The recommendations involve the disclosure of a broader list of information as compared to Russian statutory requirements; however, the benefit for the issuer from disclosure to such extent allows the issuer to meet international market standards relating to the scope and quality of the information disclosed.

Notification on the results of the issue. Notification on the results of the issue must be submitted to the Bank of Russia within 30 days from the expiration date of the securities offering. The notification shall be approved by the CEO, the board of directors or the management board (depending on the allocation of competences provided for by the company's articles of association).

Listing agreement

Obtaining a listing on the stock exchange is an important stage of an IPO. (In order to register the prospectus of securities and to obtain public status, the company typically enters into a "temporary" listing agreement for a period of six months. After registering the prospectus of securities and registering amendments to the issuer's articles of association concerning reference to the public status of the company, the issuer's securities are included in the list, and a fully-fledged listing agreement is made between the stock exchange and the issuer.) Obtaining a listing precedes the securities offering and confirms that the issuer meets the corporate governance requirements.

Transaction documents

Engagement letter with underwriting banks. The engagement letter shall be concluded between the issuer and the underwriting banks. The engagement letter is subject to foreign (English as a rule) law if the underwriting bank is a foreign entity. (Sometimes a foreign entity is artificially introduced as one of the underwriting banks for this agreement to be subject to foreign law.) In accordance with the engagement letter, the underwriting banks are engaged by the issuer to provide IPO services, and securities can be offered to both Russian and foreign investors. The engagement letter determines general parameters of IPO transactions, a list of banking services provided before the date of the underwriting agreement, banks' fees, confidentiality terms, etc.

Underwriting agreement. The underwriting agreement is made between the issuer and underwriter banks and is usually governed by a foreign (English as a rule) law. Underwriting banks undertake to ensure sale of certain number of shares at certain price, and the issuer and/or the selling shareholder undertakes to sell such shares under such conditions. (The underwriting agreement is not necessary if the shares are offered to Russian investors only.) The issuer and the selling shareholder make representations regarding accuracy of the information in the prospectus of securities, lawfulness of the shares and rights to them, the issuer's financial standing and stability of the issuer's business. If only secondary shares are offered in the course of the IPO, the underwriting agreement is made without participation of the issuer. In this case, an indemnity agreement or an underwriting support agreement can be made between the underwriting banks and the issuer. These agreements are aimed at protecting the interests of the underwriting banks from any risks associated with the IPO. As a rule, underwriting banks acquire shares under preferential terms (with a discount) and are given options to buy/sell shares.

Brokerage agreement. The brokerage agreement is made under Russian law between the issuer and a licensed Russian broker to perform an exchange tranche and to offer shares in Russia to the public.

Market-maker contract. This contract is made in order to stabilise the price for the company's shares.

International prospectus/information memorandum

On the one hand, the international prospectus of securities is a marketing document which describes the achievements and strengths of the issuer and its group. On the other hand, the international prospectus discloses accurate information about the risks relating to the acquisition of shares. The risk section of the international prospectus traditionally describes the industry, the home country of the issuer, its reputation risks, risks relating to the issuer's operations, as well as the issuer's policy for reducing the likelihood of the occurrence of such risks. The prospectus also describes the issuer's investment history and

development strategy, the main types of products manufactured or services provided by the issuer, its relations with its counterparties, the sources of raw materials the issuer uses in its production activity, the issuer's position among its competitors, information about the issuer's employees, material transactions, the issuer's property and litigation involving the issuer. The international prospectus is prepared by external legal advisors with the participation of the issuer and underwriting banks.

Legal opinions

The purpose of legal opinions is to create an additional legal protection for the underwriting banks. The protection is based on the fact that the banks (*inter alia*, by engaging advisors and obtaining the relevant opinions) carried out due diligence and acted with necessary and sufficient prudence when examining the state of the issuer's business. Legal opinions are prepared by legal advisors to the issuer and its underwriting banks. Legal advisors usually confirm compliance with the statutory procedure for issuing and offering shares, the existence of the title to the selling shareholders' shares, and the existence of corporate and regulatory approvals. Legal advisors also confirm the existence of corporate approvals of transaction documents, their due execution by authorised persons and compliance of their contents with applicable laws.

Comfort letters

Comfort letters are submitted by an independent auditor and confirm the accuracy of the issuer's information contained in the prospectus of securities (in addition to financial records relating to which an auditor's opinion was issued) and with regard to the events occurred after the date of the auditor's opinion.

Marketing documents

Issuers usually issue announcements on the intention to float, on the price range, and press releases on the completed transaction. Marketing materials must comply with requirements of the Russian advertising laws; in particular, shares are not allowed to be advertised prior to the state registration of their prospectus. In addition, securities advertising is not allowed to contain promises to pay dividends on shares (this is, in particular, due to the fact that dividends are paid out of the net profit, but the net profit cannot be guaranteed: it depends on the company's performance) and forecasts of the growth of securities market value.

Public company responsibilities

Disclosures

Public companies must disclose information about their operations. The information disclosure procedure is established in Federal Law No. 39-FZ of 22 April 1996 "On the Securities Market", No. 208-FZ of 26 December 1995 "On Joint-Stock Companies" and No. 208-FZ of 27 July 2010 "On Consolidated Financial Statements", and Regulations on Disclosures by Issuers of Equity Securities (approved by the Bank of Russia on 30 December 2014, No. 454-P).

Annual report. The annual report is one of the main forms of disclosure of information about the joint-stock company's operations. The annual report shall give the shareholders and investors a complete overview of operations and development of the company for the last reporting year providing aggregate information intended first of all for long-term investors. The annual report is one of the most important tools of information exchange with shareholders and other interested parties. Therefore, it must contain information that allows evaluating the company's performance over the year. Not only public companies but

also non-public companies with more than 50 shareholders must disclose annual reports; however, public companies must disclose more information according to the Corporate Governance Code.

The content of the annual report is governed by the Disclosure Regulations. The annual report has to contain information on the company's position in the industry, its business priorities, a report of the board of directors on the results of the company's development of its business priorities, information on the amount of energy resources used, the company's prospects of further development, dividend payout report, description of the main risk factors relating to the company's operations, information on major transactions and related party transactions, members of the board of directors, CEO information, information on compliance with principles and recommendations of the Corporate Governance Code.

Public companies are recommended to include a statement (aimed at the shareholders) of the chairman of the board of directors and the CEO in the annual report, containing:

- an evaluation of the company's performance over the year;
- information on the company's securities (including on offering additional shares by the company) and capital flow over the year, on number of shares held by the company and other companies under its control;
- key operating indicators, key accounting (financial) reporting indictors, results achieved over the year compared to the planned ones;
- information on profit distribution and on its compliance (or non-compliance) with the dividend policy adopted in the company;
- investment projects and strategic tasks of the company;
- company's development prospects (turnover, production capacity, market share under control, profits increase, profitability, debt-to-equity ratio);
- summary of the most essential transactions;
- corporate governance system description;
- risk management and internal control system description;
- description of personnel and social policy; and
- social development, personnel health protection, professional training of employees, compliance with safety of work requirements, information on environment protection policy and ecological policy.

The following corporate governance information is also recommended to be included in the annual report:

- BoD report;
- results of the evaluation by the audit committee of the efficiency of external and internal audit process;
- description of procedures used when electing external auditors;
- information on the main results of evaluation (self-evaluation) of the board of directors' work;
- information on direct or indirect shareholding by the board members and executive bodies;
- information on conflicts of interest that board members or executive bodies may have;
- information on remuneration of governing bodies, description of principles and approaches applied to the motivation of key executives; and
- information on loans granted by the company.

If foreign investors have a significant ownership interest in the capital of the company, it is recommended to disclose, along with disclosure in Russian, the same information in English and to ensure free access to such information.

Quarterly reports. Public companies must disclose quarterly reports, the content of which largely coincide with the content of the Russian prospectus of securities. Quarterly reports serve as a consolidated source of information for investors on the main aspects of the public company existence during the accounting quarter. Quarterly reports must contain the following information:

- on the issuer's core business;
- on the issuer's financial and economic performance;
- on the issuer's financial and economic operations (including liquidity, financial investments, intangible assets, position among competitors, etc.);
- on the issuer's plans for future business;
- on the persons who are members of the issuer's corporate governance bodies;
- on the issuer's auditor, shareholders, controlled entities; and
- the issuer's accounting (financial) statement.

Quarterly reports are signed by the issuer's CEO and chief accountant and must be disclosed within 45 days from the quarter end date.

Material events. Public companies must disclose the information which, if disclosed, can significantly affect the value or quotation of the issuer's securities. Material event notices shall be signed by the CEO or another person acting under a power of attorney issued by the CEO. Disclosure regulations provide for more than 60 events required to be disclosed; for example:

- calling a general meeting of shareholders/board of directors;
- decision-making by the general meeting of shareholders/board of directors;
- new controlling or controlled parties of the issuer;
- going through the stages of the securities issue procedure;
- making material transactions by the issuer or entities under the issuer's control; and
- failing to perform obligations to holders of securities, etc.

The list of material events is open; the issuer can disclose any information in the form of material event notices which, in the issuer's opinion, significantly affect the value of the issuer's equity securities. Disclosure of material event notices requires the issuer to be prompt: such notices must be published within one day from the date of the material event. As a general rule, each material event requires a separate notice. However, if occurrence of the same event or performance of the same action requires disclosure in the form of several material event notices, one notice can be made containing the description of all such material events the information about which is included in such notice.

Consolidated financial statements. Public companies must disclose annual and interim (for six months of the accounting year) consolidated financial statements. Annual consolidated financial statements are disclosed with the auditor's opinion attached. Annual statements shall be disclosed within 120 days from the end date of the accounting year, and interim statements within 60 days from the end date of the second quarter.

Other matters. Public companies must disclose information on concluding a shareholders' agreement by the shareholders of a public joint-stock company. Public companies must also disclose information on the fact that a person acquired, under the shareholders' agreement, the right to determine the voting procedure at the general meeting of shareholders of such company. Public companies must also publish a notice of intention to file a claim:

- for contesting the resolution of the general meeting of shareholders of a public joint-stock company;
- for damages caused to a public joint-stock company;

- for invalidation of the transaction of a public joint-stock company; or
- for application of consequences of invalidity of the transaction of a public joint-stock company.

Corporate management

In addition to the above disclosure obligations, the issuer must observe the corporate management standards established in the Corporate Governance Code. Detailed corporate governance requirements for the companies the securities of which are listed on a Russian stock exchange are described above in section "*The IPO process: steps, timing and parties and market practice / Preparatory stage / Corporate governance*".

Potential risks, liabilities and pitfalls

Due diligence

When getting ready for the IPO, the external legal advisors to the issuer and to the underwriting banks check whether at the date of the IPO launch the prospectus contains (i) any material inaccurate or misleading information, and (ii) all necessary material information. The company's financial and economic activity, the lawfulness of the company's formation and its management are examined at this stage. The due diligence review may include the analysis of financial statements, material contracts, tax returns, managerial decisions, production site visits, interviews with the employees and the members of the company's corporate governance bodies. The issuer is usually invited to fill out questionnaires; afterwards, external advisors check the content of the answers and can ask persons who answered the questions additional questions requesting comments on the information contained in the draft issue and transaction documents.

Responsibility

Violation of Russian laws in the process of an IPO results in civil, administrative and even criminal liability.

Civil liability occurs in case of guilty (intentional or negligent) infliction of damage by the issuer to investors. An investor has to prove a causal link between illegal behaviour (undue action or undue omission to act) of the issuer and losses caused thereby, the fact of losses itself and the extent of such losses, whereas the issuer's fault is presumed (but this is a rebuttable presumption, i.e. the issuer may proof that actually there is no fault on his side). Any damages can be recovered from the issuer: both direct loss and lost profit.

Violation by the issuer of the established procedure for issue of securities constitutes an administrative offence. It results in imposing an administrative (monetary) fine upon the issuer and its officers (article 15.17 of the Code of Administrative Offences). Inclusion of intentionally untrue information in the prospectus of securities, approval or confirmation of the prospectus or notice of the results of securities issue with intentionally inaccurate information, offering equity securities issue of which has not been registered with the state authorities are crimes if any of the said actions has caused damage over RUB 1.5 million to individuals, organisations or the state (article 185 of the Criminal Code).

The issuer's failure to disclose or violation of the disclosure procedure or time limits, and failure to disclose information to the full extent or disclosure of inaccurate or misleading information also results in administrative liability (article 15.19 of the Code of Administrative Offences). Liability for wilful evasion of disclosure or providing information, or providing intentionally incomplete or false information, if any of these actions has caused damage over RUB 1.5 million to individuals, organisations or the state are provided for by criminal law (article 185.1 of the Criminal Code).

Failure to comply with a legitimate prescriptive order of the Bank of Russian within the established time limits results in imposition of administrative liability (article 19.5 of the Code of Administrative Offences).

Market manipulation entails imposition of criminal and administrative liability (article 15.30 of the Code of Administrative Offences and article 185.3 of the Criminal Code).

Conclusion

Going public is a complex procedure which requires an in-depth and comprehensive preparation and skilled company management and advisors. It is advisable to start preparing for the IPO well in advance in order to properly examine all matters the company encounters with at the preparatory stage of IPO and to facilitate the period after acquiring the status of a public company.

* * *

Endnotes

1. Only IPOs of the Russian companies on the Russian exchanges are taken into account.
2. The procedure is described in compliance with the requirements of the Moscow Exchange.

Nadezhda Minina
Tel: +7 495 646 81 76 / Email: nadezhda.minina@nsplaw.com

Nadezhda is a Senior Associate and Attorney at Nektorov, Saveliev & Partners law firm. She specialises in capital markets, investment transactions and M&A. Nadezhda has been involved in issues of shares and bonds, IPOs, SPOs, restructuring of bond issues and bondholder representative services for more than five years. She graduated from the Moscow State University, Faculty of Law, where she also did her postgraduate studies. Nadezhda also studied at Humboldt University in Berlin, Germany and in Regensburg, Germany. She is fluent in Russian, German and English.

Alexander Nektorov
Tel: +7 495 646 81 76 / Email: alexander.nektorov@nsplaw.com

Alexander specialises in supporting technology projects. He is an expert in corporate law, M&A, and capital market transactions (ICO/IPO/SPO/bonds). He has extensive experience in financial law and securitisation and carries out strategic management of complex litigation projects. *The Legal 500* and *Chambers Europe* list Alexander among their recommended lawyers every year. He has also twice been ranked among Russia's Top 250 General Managers by *General Manager* magazine (2012, 2014). Alexander is a member of the expert board for the legislative development of financial technologies under the Russian State Duma Committee for the Financial Market. Alexander is also a member of the expert committee for listings of the Moscow Exchange. Alexander is fluent in Russian and English.

Ilia Rachkov
Tel: + 7 495 646 81 76 / Email: ilia.rachkov@nsplaw.com

Ilia is a partner at Nektorov, Saveliev & Partners, a Russian law firm. Ilia specialises in dispute resolution, arbitration and international trade law. After his graduation from the law faculty of the Moscow State University named after M.V. Lomonossov (1996), Mr. Rachkov has gathered substantial experience in advising Russian and foreign companies (including banks and state bodies) on dispute resolution matters, both before state courts in and outside Russia, and before international and domestic arbitral tribunals, and on international trade law matters. Ilia Rachkov participated in the legal teams which prepared IPOs of RosBusinessConsulting (RBC), 36.6 Pharmacies (both Russian stock exchanges), Novatek (MICEX + RTS and London Stock Exchange), Urals Energy (AIM, London), Russoil Corporation (Nasdaq), White Bear Resources (Toronto Stock Exchange), ZAAB Invest AG (Deutsche Börse, Frankfurt), and Selena Oil & Gas AB (Stockholm Stock Exchange). Mr. Rachkov is a member of the Legal Committee of the German-Russian Foreign Trade Chamber. Mr. Rachkov teaches international economic law at the Moscow State Institute of International Relations – MGIMO (Moscow).

Nektorov, Saveliev & Partners (NSP)

17 Gogolevsky Boulevard, Bldg 1, 5th Floor, Moscow, 119019, Russia
Tel: +7 495 646 81 76 / URL: www.nsplaw.com

www.globallegalinsights.com

Other titles in the **Global Legal Insights** series include:

- **Banking Regulation**
- **Blockchain & Cryptocurrency Regulation**
- **Bribery & Corruption**
- **Cartels**
- **Commercial Real Estate**
- **Corporate Tax**
- **Employment & Labour Law**
- **Energy**
- **Fund Finance**
- **International Arbitration**
- **Litigation & Dispute Resolution**
- **Merger Control**
- **Mergers & Acquisitions**
- **Pricing & Reimbursement**

Published by: glg global legal group

Strategic Partner: ECLA European Company Lawyers Association