Russian Federation

David M Wack and Vladimir N Elizarov
Squire, Sanders & Dempsey LLP

www.practicallaw.com/4-502-1694

MARKET AND REGULATION

1. Please give a brief overview of the public M&A market in your jurisdiction. (Has it been active? What were the big deals over the past year? Please distinguish between trade buyers and private equity backed deals.)

The volume of deals in the Russian M&A market fell significantly in 2009 compared to 2008, with a total of reported 265 transactions, valued at US$42.76 billion (about EUR31.3 billion). This is almost one-half the value of 2008, which saw 390 reported transactions with an aggregate value of US$75.33 billion (about EUR55.2 billion). Similar to previous years, most 2009 M&A transactions primarily consisted of trade acquisitions or private equity investments.

Notable public M&A deals in 2009 included the:

- Merger of Vimpelcom, a leading Russian telecommunications provider, and Kievstar, a Ukrainian mobile provider, valued at US$11.74 billion (about EUR8.6 billion).
- Reverse merger of Russneft and En+ valued at US$2.7 billion (about EUR1.9 billion).
- Acquisition of 30% of the Russian telecommunications provider OAO Rostelekom by the Deposit Insurance Agency State Corporation for US$1.58 billion (about EUR1.1 billion).
- Takeover of Orton Oil Company by Gazpromneft for an estimated US$750 million (about EUR549 million).

2. What are the main means of obtaining control of a public company? (For example, public offer, legal merger, scheme of arrangement and so on.)

The main means of obtaining control of a Russian public company include:

- Privately negotiated share acquisitions.
- Public takeover bids.
- Statutory reorganisations, that is:
  - mergers (where two or more companies combine to form a new, merged company); and
  - accessions (where one company takes over the rights and obligations of another company).

The majority of Russian public company acquisitions are structured as directly negotiated acquisitions from key shareholders. Public bids exist, but are complicated and sometimes fail to succeed because a short-form merger option is unavailable and squeeze-out criteria are often hard to meet (*see Question 20*). Statutory mergers and accessions are rarely used in public takeovers.

3. Are hostile bids allowed? If so, are they common? If they are not common, why not?

Russian law does not prohibit hostile takeovers. However, they are typically not common because:

- The free float of public company shares is usually insufficient to launch a takeover bid.
- The squeeze-out criteria are often hard to meet (*see Question 20*).
- Many legal instruments and concepts used for hostile takeovers in common law jurisdictions are not readily available or may contradict existing Russian law.

4. How are public takeovers and mergers regulated, and by whom?

Federal Law No. 208-FZ of 26 November 1995 on Joint Stock Companies (JSC Law) provides public takeover bid rules (Rules). Unlike some other jurisdictions, the Rules apply to both publicly listed and privately held open joint stock companies. Every Russian public company with more than 50 shareholders must take the form of an open joint stock company. (A company with fewer than 50 shareholders can take the form of a closed joint stock company.)

The Rules contain basic regulations on takeover bids including:

- When a takeover bid can or must be made (*see Questions 12 and 16*).
- Permitted forms of consideration (*see Question 17*).
- Required contents of bid documents (*see Question 14*).
- Timing guidelines.
- Competing bid regulations.
- Disclosure requirements (*see Question 8*).

The Rules also contain protective provisions that seek to prevent methods like poison pills from being employed by management and directors to interfere with a takeover (*see Question 23*). Finally, the Rules regulate the acquisition of minority shareholders' shares in the event of a squeeze-out (*see Question 20*).

Public takeovers in Russia are regulated by the Federal Financial Market Service (FFMS), which holds primary responsibility for enforcing federal securities laws (*see box, The regulatory authorities*).

Depending on the size and the nature of the deal, additional federal laws may apply and other regulators may be involved in takeover clearance (*see Questions 25 and 26*).

PRE-BID

5. What due diligence enquiries does a bidder generally make before making a recommended bid and a hostile bid? What information is in the public domain?

Recommended bid

Most Russian transactions are structured between an acquirer and key shareholders that are generally in a position to grant access to all key information about the target (*see Question 3*). Therefore, bidders can often conduct thorough due diligence prior to the submission of a bid.

Other alternatives for obtaining information include:

- Reviewing a public company's disclosures (*see below, Public domain*).
- Using a shareholder's information rights. Acquiring shares in the company can entitle the bidder to certain information rights, including rights to:
  - the company's internal regulations and minutes;
  - a list of the shareholders; and
  - accounting books and records.

  The extent of information depends on the level of share ownership: minimal information is available for a holder of one share and full information rights may be obtained through the ownership of a 25% shareholding with one additional share.

Access to non-public information can sometimes make the bidder an insider and therefore subject to confidential information restrictions (*see below*), depending on:

- The basis it is obtained, for example:
  - commercial secrets disclosed to the bidder that are subject to a company's special regulation on commercial secrets (that is, a special internal protection regime that a company may introduce concerning any company information that is not known to third parties, that cannot be freely and legally accessed by other parties and that therefore provides real or potential commercial value);
  - information obtained under a non-disclosure agreement between the bidder and the company.
- The source (shareholders or the company itself) from which information was obtained.

There is no legal definition of "insider" or "insider trading" in Russian law. Confidential information is any kind of non-public information about the company and its shares that gives an advantage to persons that have access to it because of their (*Securities Market Law*):

- Official position.
- Employment duties.
- A contract executed with the company.

Persons that have access to confidential information include (*Securities Market Law*):

- A company's board and management.
- The company's auditor, or the auditor of a company's market marker (any kind of professional participant in the securities market, such as a broker, dealer, securities management company, clearing company, custodian, register holder or stock exchange bound to the company on a contractual basis).
- State officials that have access to information under law.

Russian securities law does not prohibit persons that possess confidential information from dealing in the company's shares in general, but it prohibits them from using confidential information in those transactions (*see Question 28*). There are no legal criteria for determining whether confidential information was used in the course of dealing in securities.

Hostile bid

A hostile bidder will not be able to conduct thorough due diligence but can access information in the public domain (*see below, Public domain*) and may have access to shareholders' information rights (*see above, Recommended bid*).

Public domain

A public company has a duty to disclose a considerable quantity of information to the public, for example:

- Material change events.
- Affiliates.
- Events significantly influencing the share market value.

However, not all companies follow this duty strictly. Therefore, relying solely on disclosed information may not always be sufficient when considering making an acquisition or a voluntary takeover bid.

6. Are there any rules on maintaining secrecy until the bid is made?

FFMS rules prohibit a public company bidder from disclosing any information about the bid prior to gaining FFMS clearance for the bid documents.

7. Is it common to obtain a memorandum of understanding or undertaking from key shareholders to sell their shares? If so, are there any disclosure requirements or other restrictions on the nature or terms of the agreement?

Most acquisitions tend to be privately negotiated. It is common for the potential bidder to enter into a conditional purchase or

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preliminary agreement for the purchase of key shareholders' shares. These agreements may be conditional on the bidder obtaining regulatory clearances and other shareholders tendering a minimum number of shares (*see Question 13*).

There are no specific rules on disclosing preliminary agreements. Certain preliminary agreements may be subject to preliminary Federal Anti-Monopoly Service (FAS) clearance, depending on their nature (*see Question 25*). Publicly held companies must also comply with requirements to disclose material changes and events significantly influencing share market value, which may apply to preliminary agreements.

8. If the bidder decides to build a stake in the target (either through a direct shareholding or by using derivatives), before announcing the bid, what disclosure requirements, restrictions or timetables apply? Are there circumstances in which shareholdings, or derivative holdings, of associates could be aggregated for these purposes?

Restrictions on acquisitions

Pre-bid share purchases are allowed and have no negative impact on the acquisition, provided that a mandatory offer is made once the 30% threshold is surpassed (*see Question 16*). Once a mandatory takeover bid is required to be made, any purchases outside the bid are not permitted. Until the mandatory bid is submitted to the target, the bidder's voting rights are limited to the numbers of shares it held prior to the corresponding thresholds being triggered (30%, 50% or 75%).

In public takeover bids, the shareholding of the bidder and its affiliates are aggregated to determine total share ownership (*see Question 12*). Any unexercised shares options and unconverted bonds are not included in the bidder's total share ownership amount.

Early warning notice

FFMS disclosure rules require a public company to disclose information through an early warning notice regarding any shareholder that has acquired 5% or more of the shares in the company and any subsequent changes resulting an increase or decrease to 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75%. Shareholdings of associates are not aggregated for this purpose. The public company must disclose these material change events by making a press release and through a posting on its website.

If the acquirer of a public company's shares is also a public company, identical disclosure regulations apply to it. If the acquirer is a closed joint stock company (instead of a public company), only the acquisition of 20% of shares constitutes a triggering event for an early warning disclosure, which should be made in the manner described above.

Limited liability companies are exempt from FFMS regulations and must only disclose when they acquire 20% of the shares in a public company. Disclosure must be made through an official bulletin in the state registration of legal entities (associated shareholdings are not aggregated).

9. If the board of the target company recommends a bid, is it common to have a formal agreement between the bidder and target? If so, what are the main issues that are likely to be covered in the agreement? To what extent can a target board agree not to solicit or recommend other offers?

In the Russian public takeover context, formal agreements between the bidder and the target are not common. The Rules do not provide for or prohibit a formal agreement. Most public takeover transactions are typically negotiated with key shareholders (*see Question 3*).

Unlike in some other jurisdictions, a Russian board of directors is not required to maximise value for its shareholders in the event of a takeover offer. The board is required to consider a bid and provide an opinion to the shareholders concerning its terms and conditions (*see Question 12*). However, the board's only requirement in relation to the price is to ensure the bidder complied with the "all shareholders' best price rules" in the case of mandatory bids (*see Question 18*). The board does not have to solicit other offers. Other bidders can submit bids and the board must consider their terms on their merits and provide an opinion. If the competing bid has better conditions, the board should provide sound reasons to recommend rejecting the competing bid.

10. Is it common on a recommended bid for the target, or the bidder, to agree to pay a break fee if the bid is not successful? If so, please explain the circumstances in which the fee is likely to be payable, and any restrictions on the size of the payment.

In a public takeover, the bidder and the target do not generally enter into a formal agreement to pay a break fee. The Rules do not expressly provide for a break fee option for either voluntary or mandatory takeover bids. In theory, a break fee could be a part of a voluntary takeover bid because additional conditions are allowed. For mandatory takeover bids, any conditions going beyond the scope of the Rules are prohibited (*see Question 16*).

In a share acquisition, a break fee is established practice. They are usually made between the selling shareholder(s) and the purchaser, not the company. To be enforceable, a break fee must have some form of binding obligation. If a break fee is contained in a memorandum of understanding, letter of intent or similar document, it is unlikely that a Russian court will enforce it in the absence of a binding agreement.

Russian courts are likely to treat break fees as penalties. Russian law does not set restrictions on the amount of a penalty, but a court retains the discretion to reduce the amount of the penalty, as it deems appropriate.

11. Is committed funding required before announcing an offer?

To secure its payment obligations in connection with a voluntary offer, a bidder must obtain an irrevocable bank guarantee. There are no legal requirements for committed funding in the direct acquisitions of shares outside the takeover process.

ANNOUNCING AND MAKING THE OFFER

12. Please explain how (and when) the bid is made public (highlighting any relevant regulatory requirements), and set out brief details of the offer timetable. (Consider both recommended and hostile bids.) Is the timetable altered if there is a competing bid?

Announcement of bid

A bidder can start a takeover by announcing a voluntary takeover bid for the acquisition of more than 30% of a target's shares. A voluntary takeover bid must initially be presented to the target's board of directors for consideration and subsequently to the shareholders. In addition, a bidder is required to make a mandatory bid when its shareholding in a company reaches a certain level (*see Question 16*).

If the target is a publicly listed company, for both voluntary and mandatory bids the bidder must obtain prior approval or pre-clearance from the FFMS. The FFMS has a 15-day review period to consider the bid documentation. The FFMS can reject clearance and order the bidder to alter the bid to make it accord with the law. If the FFMS fails to consider the bid documentation during the 15-day review period, the bid can proceed, but the FFMS can subsequently apply to the court to force the bidder to eliminate any legal violations in its bidding documentation.

The bidder must also secure the bid with an irrevocable bank guarantee (*see Question 11*).

Timeline

The timeline for a takeover bid is comprised of the following steps:

- The bidder announces the bid after having obtained clearance from the FFMS (*see above, Announcement of bid*). A voluntary takeover bid can be made at any time. A mandatory takeover bid must be made within 35 days after passing the relevant shareholding threshold (*see Question 16*).
- The target's board must consider the bid and submit the bid together with its opinion to its shareholders within 15 days of announcement.
- The shareholders must consider the bid and accept or abstain within the time period set out in the bid. This must be a minimum of 70 days and a maximum of 80 days for a mandatory bid, and a minimum of 70 days and a maximum of 90 days for a voluntary bid. It is possible for a shareholder to revoke acceptance prior to the initial bid's expiry date if a competing bid is preferred (*see below, Competing bids*).
- Shareholders who accepted the bid must transfer their shares to the bidder within the time period provided in the bid, which must be at least 15 days following the bid expiration date.
- The bidder must deliver consideration for the shares within the time period set out in the bid, which must be at the most 15 days after the transfer of shares to the bidder.
- The bidder must notify both the FFMS, and the target, of the level of bid acceptance within 30 days after the bid expiration date.
- An acquisition of more than 95% of the shares triggers a minority shareholders' sell-out right or a bidder's squeeze-out right, provided that more than 10% of the shares were acquired by the bidder through either a voluntary or mandatory bid (*see Question 20*).

Competing bids

Competing bids are allowed, but the Rules impose limited timeframes for submission of competing bids and require that they be made for at least the same number of shares as the initial bid. In all other respects, competing bids are subject to the same rules as the initial bid. Competing bids can be made 25 days prior to the expiration date of the initial bid (or the most recent bid, if there is more than one). The initial bidder can extend its bid to the expiration date of the last competing bid.

13. What conditions are usually attached to a takeover offer (in particular, is there a regulatory requirement that a certain percentage of the target's shares must be offered/bid)? Can an offer be made subject to the satisfaction of pre-conditions (and, if so, are there any restrictions on the content of these pre-conditions)?

Voluntary takeover bids can contain conditions in addition to those provided by the Rules. The Rules state that obtaining a minimum percentage of the target's shares can be a possible condition. The courts are generally sceptical about deals executed with attached conditions and often dismiss them as being invalid for ambiguity. Therefore, the courts may not accept pre-conditions such as:

- Obtaining necessary government approvals.
- No material adverse change in the target.

However, such pre-conditions are commonly included.

The Rules prohibit mandatory takeover bids from including additional conditions (*see Question 14*).

State authorities can set specific conditions for the acquisition of a company of strategic importance following foreign investment takeover clearance (*see Question 26, Strategic industries*).

14. What documents do the target's shareholders receive on a recommended and hostile bid? (Please briefly describe their purpose and main terms, and which party has responsibility for each document.)

The following documents are the major transactional documents associated with a takeover bid.

Takeover bid

Both voluntary and mandatory takeover bid documents must provide:

- Information about the bidder and its affiliates and their current share ownership in the target.
- The type and category of securities offered.

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- The purchase price of (or valuation procedure for) shares.
- The expiration of bid date.
- The address for the submission of the acceptance notice.
- The terms and conditions of payment and share transfer.
- Information about the guarantor and the terms of the bank guarantee (*see below, Bank guarantee*).
- Disclosure of any third party beneficiaries if the bidder is acting as a nominee.

A voluntary bid can include additional information and state conditions for the tender.

Board opinion

The target's board opinion must include an:

- Assessment of the price offered by the bidder.
- Estimate of potential change in the market price of the shares following the acquisition.
- Assessment of the bidder's plans concerning the target and its employees.

Valuation report

The shareholders of an unlisted company (or a company which has been listed for less than six months) must be provided with a summary of a share market valuation report. The full text of the valuation report must be available for the shareholders at the target's corporate premises. The valuation report is prepared by an independent appraiser selected by the bidder to determine the fair market value of shares which the bidder must offer to the shareholders (this only applies to mandatory bids (*see Question 18*)).

Bank guarantee

An irrevocable bank guarantee must be attached to a takeover bid to secure the bidder's payment obligations for the entire amount of the consideration (*see Question 11*).

15. Are there any requirements for a target's board to inform or consult its employees about the offer?

There is no legal requirement for a target's board to inform or consult with its employees about the offer.

16. Is there a requirement to make a mandatory offer? If so, when does it arise?

Once a person together with its affiliates holds more than 30% of the shares of an open joint stock company it must make an offer to purchase the outstanding shares or convertible securities of all of the target's shareholders. This requirement also applies where a person together with its affiliates holds more 50% or 75% of shares, if those shares were not acquired under a previous voluntary or mandatory bid.

See *Question 12*.

CONSIDERATION

17. What form of consideration is commonly offered on a public takeover?

For voluntary takeover bids, consideration can take the form of cash or securities. For mandatory public takeover bids, squeeze-outs and sell-outs, consideration must be in cash (*see Questions 16 and 20*).

18. Are there any regulations that provide for a minimum level of consideration? If so, please give details.

Generally, all target shareholders must be offered identical consideration. For voluntary public takeover bids, the consideration is at the bidder's discretion. In mandatory public takeover bids, the "all shareholders' best price rules" set out the share price must be a minimum of the:

- Weighted average purchase price of the listed target's shares for the six-month period preceding the application for FFMS clearance (*see Question 12, Announcement of bid*).
- Market value of one share evaluated by an independent appraiser (if the target is not listed or has been listed for fewer than six months) (*see Question 14, Valuation report*).
- Highest price offered by the bidder (or its affiliates) for the securities within the six-month period preceding the bid.

19. Are there additional restrictions or requirements on the consideration that a foreign bidder can offer to shareholders? If so, please give details.

In general, there are no restrictions on the form of consideration a foreign bidder can offer shareholders. However, certain rules apply to foreign non-cash consideration.

Foreign securities can be offered as consideration to any person provided that they are admitted to public trade in Russia, that is, the foreign securities must be:

- Issued by a company incorporated in:
  - an OECD member state, or a member state of the Financial Action Task Force (FATF) or Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL); or
  - a country where the FFMS has arrangements with local authorities.
- Provided under a prospectus.
- Either:
  - listed with a foreign stock exchange recognised by the FFMS, and can be offered to an unlimited scope of persons; or
  - admitted for public trade in accordance with the personal law of the securities' issuer and comply with liquidity and investment risk criteria set by the FFMS.

Otherwise, foreign securities can only be offered to qualified investors (such as an institutional investor or high-net worth individual).

Foreign financial instruments can be offered as consideration provided that:

- They comply with the foreign securities rules requirements above (*see above*).
- They have an international securities ID code and financial instruments international classification code.
- They are qualified as securities under FFMS rules.

Foreign promissory notes, cheques, bills of lading and similar securities can be offered as consideration without restriction.

However, the consideration for shares acquired by foreign investors in Russian insurance companies can only be in roubles (*Federal Law No. 4015-1 of 27 November 1992 on the Organisation of Insurance Activity in the Russian Federation (Insurance Law)*).

POST-BID

20. Can a bidder compulsorily purchase the shares of remaining minority shareholders? If so, please give details.

A bidder that has acquired more than 95% of the target's shares must:

- Inform the minority shareholders of their right to sell their shares to the bidder.
- Buy the shares from the shareholders that use this sell-out right.

A bidder that has acquired more than 95% of the target's shares can make a compulsory offer to minority shareholders (squeeze-out), provided that both:

- The bidder has acquired more than 95% of the target's shares.
- More than 10% of the target's shares were acquired under a voluntary or mandatory bid preceding the squeeze-out.

The squeeze-out must be made within six months following the takeover bid expiration date. A squeeze-out requires preliminary FFMS clearance, which is considered to be granted if the FFMS makes no decision 15 days after the filing date (*see Question 12, Announcement of bid*).

In a squeeze-out, the share purchase price must be the fair market value and cannot be lower than the:

- Preceding takeover bid price.
- Highest price offered by the bidder (or its affiliates) for securities after the expiration of the bid resulting in the acquisition of greater than 95% of the total shares.

The purchase price can be contested by minority shareholders. However, a legal proceeding will not in itself halt a squeeze-out. Additionally, a bank guarantee is not required for a squeeze-out (*see Question 11*). The timing for a squeeze-out is considerably shorter than the timing for a takeover bid.

21. If a bidder fails to obtain control of the target, are there any restrictions on it launching a new offer or buying shares in the target?

There are no restrictions on launching a new bid after an initial failed attempt to purchase shares in the target.

22. What action is required to de-list a company?

There is a difference in terminology concerning de-listing under Russian securities law and in international practice: de-listing, under Federal Law No. 39-FZ On Securities Market, involves shares being removed from the stock exchange quotation list, but not from the stock exchange itself. Therefore, de-listing will not necessarily result in a company going private; that will happen when the securities are removed from the list of securities admitted for trade on the stock exchange (*Federal Law No. 39-FZ On Securities Market*).

De-listing can be initiated by the FFMS, a stock exchange for breach of the securities law, or at the company's initiative. If the company wishes to de-list, it must follow this procedure:

- The company must make a corporate resolution regarding the de-listing. This rule is subject to uncertainty (*see below*).
- The company's chief executive officer must apply for de-listing to the stock exchange listing committee.
- The stock exchange must consider the application.
- The stock exchange board must make a final resolution concerning the de-listing and the date that it is effective.
- The listing agreement is terminated.
- The stock exchange members and the FFMS must be notified.

The procedure under a company may apply to have its securities removed from the list of securities admitted to trade may differ depending on the internal regulations of the relevant stock exchange.

The JSC Law does not provide rules as to how the corporate resolution must be made, or by which body. There is no established practice on this, as only one company has de-listed recently in Russia. It is thought that the company's corporate body which validly resolved on listing is the proper corporate body to resolve on de-listing.

It is important to mention that a Russian company that de-lists its shares does not have to buy the shares from minority shareholders if a de-listing decision is made.

Russian securities law provides that the company must disclose information about the progress of de-listing during all stages of the procedure.

TARGET'S RESPONSE

23. What actions can a target's board take to defend a hostile bid (pre- and post-bid)?

In Russia, no anti-takeover statutes have been adopted, partly because hostile takeovers are still relatively uncommon (*see Question 3*). In relation to a reorganisation (*see Question 2*), it is the shareholders' exclusive right to decide whether to amend the company's charter or to proceed in a reorganisation (*JSC Law*).

It is at the sole discretion of the shareholders whether to tender shares to a bidder. A target's management and directors may not, and have no powers to, pre-empt or frustrate that right.

Throughout the offer period and for 20 days following the bid's expiration date, only the target's shareholders can resolve on the following actions, which may have the effect of frustrating a hostile takeover (*Rules*):

- Increase the share capital by issuing additional shares.
- Issue convertible securities (that is, securities which can be converted into the company's shares in certain circumstances).
- Approve a purchase, sale or possible sale of property worth more than 10% of the target's value.
- Approve any interested party transactions in which the board has an interest.
- Acquire the target's own shares.
- Increase the target's executive compensation or modify employment termination conditions.

The target's board and management can be liable for losses incurred by the shareholders and the company resulting from a violation of the voluntary or mandatory takeover bid procedures.

TAX

24. Are any transfer duties payable on the sale of shares in a company that is incorporated and/or listed in your jurisdiction? Can payment of transfer duties be avoided?

No transfer duties or value added tax is payable on the sale of shares in a Russian company.

OTHER REGULATORY RESTRICTIONS

25. Are any other regulatory approvals required, such as merger control and banking? If so, what is the effect of obtaining these approvals on the public offer timetable (for example, do the approvals delay the bid process, at what point in the timetable are they sought and so on)?

Russia's Federal Law No. 135-FZ of 26 July 2006 on Competition Protection (Competition Protection Law) establishes procedures to review transactions involving the acquisition of businesses operating in Russia. The Federal Anti-monopoly Service (FAS) is the federal authority responsible for the oversight of Russian competition laws (*see box, The regulatory authorities*).

The Competition Protection Law requires the FAS to give preliminary approval for certain transactions concerning companies that carry on (or control a company that carries on) an operating business in Russia. Different requirements apply depending on the nature of the transaction:

- **Mergers.** A merger requires clearance if:
  - the aggregate value of the assets on the most recent balance sheets of the merging parties (and their affiliate groups) exceed RUB3 billion (about US$100.15 million);
  - the aggregate revenues for the preceding year of the merging parties exceed RUB6 billion (about US$200.3 million); or
  - one of the merging parties is on a list of enterprises that have been identified as being part of a monopoly.
- **Acquisitions.** The following acquisitions may require preclearance if they meet the relevant thresholds:
  - an acquisition of more than 25%, 50% and 75% of a joint stock company;
  - an acquisition of more than 20% of the assets of an ordinary company (more than 10% for financial institutions (*see below*)); or
  - an acquisition of rights to control or operate the business of a company.

  The clearance thresholds are:
  - the aggregate asset value of the acquirer (and its affiliate group) and the target (and its affiliate group) exceeds RUB7 billion (about US$233.69 million);
  - the aggregate revenues of the acquirer (and its affiliate group), the target (and its affiliate group) for the preceding year exceeds RUB10 billion (about US$333.84 million) and their aggregate asset value exceeds RUB250 million (about US$8.34 million); or
  - the acquirer or the target company is on a list of enterprises that have been identified as being part of a monopoly.

If the transaction does not meet the relevant thresholds, it may be necessary to notify the FAS after the transaction, depending on its size.

Separate thresholds are set for financial institutions by the Russian Government acting with the Central Bank of the Russian Federation (Bank of Russia) (*see box, The regulatory authorities*). Depending on the type of financial institution, the threshold amount varies from:

- RUB100 million (about US$3.34 million) to RUB3 billion (about US$100.15 million) for FAS prior consent.
- RUB50 million (about US$1.67 million) to RUB1 billion (about US$33.38 million) for subsequent notification.

THE REGULATORY AUTHORITIES

Federal Financial Market Service (FFMS)

Head. Vladimir Milovidov

Address. Leninsky Prospekt 9
119991 GSP-1 Moscow
Russian Federation
T +7 495 935 87 90
F +7 495 935 87 91
W *www.ffms.ru*

Main area of responsibility. The FFMS holds primary responsibility for enforcing federal securities laws.

Contact for queries. See contact details above.

Obtaining information. See contact details above.

Federal Anti-monopoly Service (FAS)

Head. Igor Artemiev

Address. Sadovaya-Kudrinskaya ulitsa 11
123995 D-242, GSP-5
Moscow
Russian Federation
T +7 499 795 76 53
W *www.fas.gov.ru*

Main area of responsibility. The FAS is responsible for overseeing federal competition and strategic investments laws.

Contact for queries. See contact details above.

Obtaining information. See contact details above.

Central Bank of the Russian Federation (Bank of Russia)

Head. Sergei Ignatyev (Chairman)

Address. Neglinnaya ulitsa 12
107016 Moscow
Russian Federation
T +7 495 771 91 00
F +7 495 621 64 65
W *www.cbr.ru*

Main area of responsibility. The Bank of Russia has responsibility for supervision and control over Russia's currency and financial institutions.

Contact for queries. See contact details above.

Obtaining information. See contact details above.

In addition to FAS clearance, the acquisition of more than 20% of the shares in a Russian bank or credit institution, whether through a single transaction or a series of transactions, requires preliminary clearance from the Bank of Russia. The Bank of Russia must also be notified each time a purchaser acquires more than 1% of the shares of a Russian bank or a credit institution.

The standard time period for FAS clearance is 30 days, but this can be extended by the FAS for a maximum of two months if additional investigation is required.

FAS cannot provide clearance if the:

- Acquisition will limit competition.
- Applicant's clearance information is unreliable or incomplete.
- Acquisition was rejected as a result of the Strategic Companies Law clearance procedures (*see Question 26*).

26. Are there restrictions on foreign ownership of shares (generally and/or in specific sectors)? If so, what approvals are required for foreign ownership and from whom are they obtained?

The Governmental Commission on Foreign Investments Oversight (Governmental Commission) must give prior approval for a direct or indirect acquisition of more than 25% of any Russian commercial entity by a (*Foreign Investments Law*):

- Foreign government.
- International organisation.
- Entity subject to the control of a foreign government or international organisation.

As in many other jurisdictions, foreign investment in particular industries is restricted:

- **Insurance.** The total foreign shareholding in Russian insurance companies is limited to 25% of the total share capital of all Russian insurance companies (this level is periodically monitored by the Russian federal insurance authority and is currently about 17%). After this threshold is reached, new licences will not be granted to insurance companies that are subsidiaries of foreign parents or where foreign ownership exceeds 49% of the share capital of the insurance company.

  Acquisition of any shares in an insurance company by a foreign investor is subject to the preliminary consent of the Russian federal insurance authority. Preliminary consent must be granted if the 25% quota has not been met.

- **Broadcasting and mass media.** A foreign investor cannot acquire 50% or more of a Russian company engaged in television or radio broadcasting.
- **Strategic industries.** Federal Law No. 57-FZ of April 29, 2008 on Foreign Investments in Companies Having Strategic Importance for State Security and Defence (Strategic Companies Law) implements the mechanism for reviewing and potentially blocking foreign acquisitions that affect national security.

The Governmental Commission has responsibility for oversight of foreign investments into strategic industries. The FAS is responsible for liaising with foreign investors and preparing materials and recommendations for the Governmental Commission.

In total, the Strategic Companies Law covers 42 areas of strategic importance which can be divided into the following categories:

- nuclear industry and nuclear safety;
- munitions production;
- aerospace;
- geological surveying and/or exploration for and production of mineral resources of federal significance;
- natural monopolies included in the FAS Register;
- communications and telecommunications; and
- mass media.

If a company is engaged in any of these areas, it is deemed to be a strategic company and any transactions involving its shares can be subject to prior approval by or notification to the Governmental Commission.

27. Are there any restrictions on repatriation of profits or exchange control rules for foreign companies? If so, please give details.

Foreign investors can repatriate profit without any restrictions. However, the investor must provide appropriate documentation to prove that the funds originated from a legitimate source.

28. Following the announcement of the offer, are there any restrictions or disclosure requirements imposed on persons (whether or not parties to the bid or their associates) who deal in securities of the parties to the bid?

Directors and officers involved in a deal must be aware of their responsibilities under the securities laws as insiders who possess material, non-public information (*see Question 5, Recommended bid*). It is crucial for both bidders and targets to have comprehensive internal policies and procedures targeted to prevent insider trading, tipping off or selective disclosure of material non-public information.

In Russia, insider trading rules have been ineffective in preventing individuals from using non-public information. The only concrete restriction is the prohibition on state officials owning securities during the period in which they occupy a position as a state or municipal authority. Otherwise, there is no legal prohibition on a company's management or directors owning or trading the company's securities. Likewise, there is no legal duty for either the bidder or target's management or directors to disclose any purchases or sales of target securities prior to the takeover offer.

General regulation on insider trading is provided by the Federal Law No. 39-FZ of 22 April 1996 on the Securities Market. Persons having access to confidential information are not entitled to use it personally or transfer it to third parties to conclude transactions in the underlying securities. However, low administrative penalties (maximum of US$35,000 (about EUR25,670)) and no criminal liability for insider trading regulation violations pose no significant barrier to insider trading.

The Corporate Code of Conduct (CCC) developed by the FFMS defines insider information and makes recommendations as to how insider information should be handled by the company's management and directors. The CCC recommendations are not binding on Russian companies. However, following the FFMS's recommendations, the Russian stock exchanges rules require that listed companies comply with CCC provisions. Non-compliance with the CCC could result in the termination of the listing agreement with the relevant stock exchange.

Recently, the Bill on Insider Trading was adopted in its first reading by the Russian State Duma, which provides for criminal liability for insider trading (*see Question 29*).

REFORM

29. Please summarise any proposals for the reform of takeover regulation in your jurisdiction.

In February 2010, the FAS organised public hearings regarding amendments to the Strategic Companies Law. The proposed amendments include:

- A revised definition of the acquirer's group for the purpose of collective control assessment.
- Increasing time for the conclusion of an agreement with a foreign investor regarding a strategic company.
- Reducing the number of industries which are considered strategic.

In addition, the FFMS prepared and submitted the Bill On Illegal Insider Information Use and Market Manipulation Countervailing to the Russian State Duma. Among other things, the Bill provides for criminal liability for the use of insider information, which is currently only punishable by a small administrative fine (*see Question 28*).

CONTRIBUTOR DETAILS

David M Wack and Vladimir N Elizarov
Squire, Sanders & Dempsey LLP
T +7 495 258 5250
F +7 495 258 5251
E *dwack@ssd.com*
velizarov@ssd.com
W *www.ssd.com*