

Global Rewards Update: RUSSIA

December 2009

LONG TERM INCENTIVE PLANS: FEDERAL FINANCIAL MARKETS SERVICE (FFMS) CLARIFIES THE MAY 2009 CHANGES TO SECURITIES MARKET LEGISLATION

Note: This communication is an update to the Russia Global Rewards Update which was released in July 2009.

BACKGROUND

Earlier this year, the Russian State Duma had adopted amendments to the Russian securities market legislation which included a provision that the financial instruments of a foreign issuer could only be "admitted for circulation" in Russia if the securities satisfied the following two conditions:

- The financial instruments have an International Securities Identification Number (ISIN) and Classification of Financial Instruments code (CFI) assigned to them, and
- The financial instruments qualify as securities per the stipulations of the FFMS.

The amendments were subsequently approved by President Medvedev, and were effective from May 16, 2009. While the legislation prior to May 2009 referred to the "public circulation" of a foreign issuer's securities (other than the securities of international financial organizations) in Russia, the May 2009 amendments made reference to both "public circulation" and "circulation". Therefore, the two requisite conditions state above appeared to apply to any circulation, not just public circulation.

Public circulation, both before and after the May 2009 changes, and, potentially, any circulation after May 2009, would be possible only where an international agreement between Russia (effectively, the FFMS) and the appropriate, securities-governing body in the foreign issuer's

country of residence. However, in practice, there were, and are, no valid international agreements with regard to public circulation of non-Russian securities in Russia. Generally, distribution of foreign securities to Russian employees under the terms of an employee share plan would not normally be considered "public circulation" in Russia since a) the securities are distributed to specific individuals who are employees of the foreign issuer or its local Russian entity, and b) the securities are not available for public purchase.

However, the completion of any transaction resulting in a transfer of title to securities is equivalent to "circulation" of those securities and, therefore, the restrictions embodied in the May 2009 amendments have generally been viewed as applying to employees participating in an employee share plan at the point where title to the securities is transferred from the employer to the Russia-based employee (e.g. at distribution of restricted stock/restricted stock units or exercise of stock options). Literal interpretation of the legislation, as revised in May 2009, appeared to render the share plans sponsored by non-Russian employers inevitably non-compliant in Russia.

ANNOUNCEMENT AND CLARIFICATION BY THE FFMS

On December 7, 2009, Vladimir Milovidov, the head of the FFMS verbally confirmed at an American Chamber of Commerce (ACC) meeting in Moscow that the May 2009 amendments referred to above will not apply to employee share plans under which Russian employees receive title to foreign securities. Mr. Milovidov went on to indicate that private written clarifications on this point have already been issued, and that publication of at least one such clarification - issued to the ACC - is expected shortly.

The FFMS clarification is a welcomed announcement given the considerable uncertainty in this space. Mr. Milovidov's comments serve as confirmation that the government body which oversees the Russian securities markets does not view the amended securities market legislation as applicable to Russian employees participating in employee share plans and, subsequently, accepting title to foreign securities.

Employers should take note that while these comments may be a strong indication of the FFMS's views toward employee share plans sponsored by non-Russian entities, the legislation, as amended in May 2009, remains unchanged. However, it is expected that a "general official clarification" or public release of the FMSS response to the ACC is forthcoming in the near future. Once the general official clarification is officially released and published, this announcement will be viewed as part of the securities legislation and may generally be relied upon by taxpayers when operating a share plan in Russia.

ACTION

- In light of the FFMS announcement that title to foreign shares may be delivered to Russian employees, employers should now reconsider offering employee share plans in Russia. The expected general official clarification and/or explanatory response to ACC should be seen as further reassurance to employers.
- While clarification by the FFMS should encourage employers to proceed with employee share plan planning in Russia, employers should continue to consult their local tax advisor to keep abreast of any changes to the actual securities legislation, as amended.

People to Contact

For assistance in this matter or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services advisor or email us at: globalequity@deloitte.com and a global rewards consultant will contact you.

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