

## **Review of Kirill Y. Ratnikov's book "A New Approach to Privatization and Sale of Shares in Russian Companies and Banks Abroad. American and Global Depository Receipts"**



I read Mr. Ratnikov's book with great pleasure and recommend it to all those who are interested in international securities offerings – stock-exchange employees, government officials, management of Russian companies and banks planning to issue depository receipts, lawyers and specialists in the area of international finance. I am convinced that each of them will find something of value for themselves in this work.

This book addresses both general matters relating to the issuance, allocation, conversion and redemption of ADRs, as well as the challenges which emerge in the practice of ADR project implementation by Russian companies. Mr. Ratnikov does not merely highlight the pitfalls of ADR projects, but also proposes astute and practical solutions for their resolution, "prescriptions for the treatment of ailments".

An important part of the book is dedicated to an analysis of the use of ADRs as an instrument in the privatization of Russian companies and banks. Federal Law No. 178-FZ "On the Privatization of State and Municipal Properties", dated 21 December 2001, provides for the issuance of ADRs as a separate means of privatization (articles 21 and 22). In this respect, the study carried out by the author will no doubt serve as a useful practical reference for Russia's authorities and governmental agencies responsible for managing state property.

The book consists of an introduction, 3 chapters, findings and appendices. The material is written in a lively and exciting manner. The recommendations and findings contained in the book are substantiated by practical examples. More specifically, the author cites the purchase by MAIR of a controlling stake of ADRs representing shares in the Seversk Pipe Plant to demonstrate how ADRs are exploited to complete "hostile" takeovers.

The problems that arise when ADR holders convene an extraordinary general meeting of shareholders in Russian companies upon the initiative of minority shareholders are illustrated by the example of the organization of an extraordinary general meeting of shareholders of RAO "UES of Russia" in 2000.

The problem of identifying the holder of ADRs and the risks associated with the sale of Russian shares represented by ADRs is illustrated by a description of the Ms. Kagalovskaya-Gourfinkel case.

One example of particular interest is the privatization of British Petroleum in 1987, which reflects the risks for underwriting banks, incurred when underwriting issues of securities and ADRs amid financial crises. The author cites examples of privatization schemes, including the use of ADRs, carried out in Belgium, Brazil, Canada, Portugal, Thailand, Turkey, Spain, Poland and Indonesia, and contrasts them with privatization "Russian-style". Privatization using ADRs in the Russian context is analysed with reference to a pilot offering of depository receipts representing shares in Lukoil made at London Stock Exchange.

An interesting section of the book is dedicated to corporate governance and the infringement of minority shareholders' rights in Russian holding companies. It describes asset-stripping schemes; sundry methods used to secure "predictable" voting results at general meetings of shareholders; analyses principal types of infringements of shareholders' rights committed in Russia; offers an analysis of the use by the management of Russian companies of ADRs, which did not vote, for the election of management-friendly representatives to boards of directors and to approve related-party and major transactions.

Many of the problems touched upon by Mr. Ratnikov are addressed in the Federal Law "On Joint-Stock Companies", as currently drafted, and the Russian Code of Corporate Conduct drafted under the guidance of Russia's Federal Commission for the Securities Market (FCSM).

Chapter 1 "Legal Framework of ADR Projects under U.S. Law, types of ADRs, Specific Features of ADR Issue and Corporate Disclosure", for the first time ever in Russian law books, offers a detailed

analysis of the U.S. securities law, comparing concept of a “security” in the legislation of Russia and the U.S.A., and analyses the legal nature and types of depository receipts.

The author analyses the registration and reporting requirements set forth in the U.S. Securities Law (1933), U.S. Securities and Exchanges Law (1934), regulations of the U.S. Securities and Exchanges Commission, and basic court precedents.

The book describes the specific features of ADR offerings among qualified institutional purchasers in the process of a private ADR offering. Mr. Ratnikov shares his hands-on experience of work with Russian issuers and underwriters in ADR projects at all levels and gives valuable advice on how to structure them.

Mr. Ratnikov’s book may justifiably be regarded as a guideline for Russian companies willing, step by step, to follow the path trodden by Russian issuers that have already offered ADRs on the international stock market. Chapter 2 “Global ADR Offerings, Contracts between Parties to ADR Projects, ADR Project Phases and transactions in Russian ADRs”, for the first time ever in Russian legal literature, offers a detailed overview of foreign ADR prospectuses and deposit agreements; it analyses legal relations between American depositories and Russian custodians arising from ADR projects; the various types of agreements that may be entered into with underwriters and their legal nature. In this book, the reader will find a review of the most frequently used mechanisms for the issuance and offering of ADRs in the U.S.A., as well as for the global offering of depository receipts; an analysis of sundry mechanisms for launching ADR projects, examples of the most typical limitations imposed by the laws of various countries on ADR offerings (India, Peru, China, etc.)

Chapter 3 “Regulating the Privatization of Russian Companies and Banks using ADRs and Russian Aspects of ADR Issue Programs” analyses the use of ADRs in privatizing Russian companies and banks, as well as the problems of ADR projects in Russia.

One of the problems addressed in great detail in Mr. Ratnikov’s book is the violation of the interests of foreign investors holding ADRs when exercising their voting rights at the general shareholders’ meetings of Russian companies, the limited participation of foreign investors in the management of Russian joint-stock companies and problems related to their holding extraordinary general shareholders’ meetings. These problems are particularly pertinent in practice, since major Russian holding companies and natural monopolies are currently being restructured.

The ownership of Russian shares represented by ADRs is not yet fully covered by legislation; there are problems with the registration of such shares in Russian shareholder registers. The author offers valuable recommendations and options for the resolutions to these problems. Mr. Ratnikov substantiates his findings with an in-depth analysis of legal theory, which overlaps Anglo-Saxon (common) law and the Roman-German (continental) legal system, (the latter being applied in Russia) and addresses complicated issues of law which apply to Russian ADRs and the shares represented by them.

Many of the author’s proposals have been closely examined by employees of the FCSM, particularly when drafting its regulations requiring ADR issuers to obtain clearance from the FCSM. Mr. Ratnikov’s proposals on how to deal with the issue of ownership rights to shares represented by ADRs will be of great assistance in the study of emerging practical issues and the finalizing of amendments to federal legislation that are on the agenda of the State Duma (Russian Parliament).

ADR listing requirements at NYSE and NASDAQ and a list of ADR issues made by Russian companies and banks from 1995 to 1998 are provided in appendices to the book.

Having read the book, I became aware of a lot of new information. I believe that has work will be appreciated by many readers and that it will be useful for their everyday activities. I would like to wish the author inspiration for new interesting books, articles, innovative ideas and fascinating projects!

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