

## SESSION I: PROPERTY RIGHTS ENFORCEMENT

Presentation on  
**RULES AND PROCEDURES OF REGISTERING THE TRANSFER OF OWNERSHIP RIGHTS IN RUSSIA**  
by

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<sup>1</sup>1. At present the securities market infrastructure in Russia is undergoing one of its fundamental transformations. Much has so far been achieved, while new projects are being launched and certain changes in the legal base are in the development stage. In the meantime the dynamics, characterizing conditions on the securities market, are closely related to the critical political processes which are currently in evidence owing to the nearness of the presidential elections and which may be characterized as feverish expectations. But there are hopes for a brighter future for the corporate securities market. Therefore the main task facing the regulatory bodies and the professional community is to maintain and develop the existing registering system of ownership rights on securities in Russia. The self-regulating organization PARTAD, created for the purpose of developing the registrars' and depositaries' services market and the protection of the interests of both its members and investors alike, is set to act exactly in this direction.

### **Current Problems, Related to Regulating and Improving the Legal Base of the Registering System On Ownership Rights**

2. One of the more pressing directions in PARTAD's activities is the job of introducing suggestions as to the alterations and additions to the existing legal acts, regulating the activities of registrars and depositaries. In this connection a closer cooperation is needed by the professional community with the Federal Commission on Securities (FCS)(ФКЦБ), the Central Bank of Russia, the Ministry of Finance, the Ministry for Antimonopoly Policy, the Ministry on Taxation and Dues (MNS), as well as among the governmental bodies.

3. Unfortunately, the new year has brought with it a few unwanted surprises, provoked by attempts of some governmental bodies to interfere with the work normally regulated by the FCS. Namely, the MNS has introduced an official act demanding that registrars, apart from the task of recording ownership rights in the registry, to register all transactions of physical persons with securities, regardless of amounts of these transactions, followed by demands on the presentation of the underlying sales contracts. This violates both the Law on the Securities Market, which does not envisage such procedures, and is prohibited by regulatory acts of the FCS. It is doubtful that such uncoordinated actions may stimulate Russian citizens to invest in securities. Simultaneously, the Ministry for State Property of the RF (MSP) has introduced an institute of the so-called «authorized» registrars, to whom, it is being proposed, to hand over the functions of keeping registers of issuers with government participation. The principle criterion for the determination of a registrar's conformation to the status of an authorized organization was its refusal to accept payment for the registration from shareholding government bodies. This brings about numerous questions regarding the conformity of such initiatives to antimonopoly laws. Hopefully, the Ministry on the Antimonopoly Policy will pay heed to this problem. At present it is dedicated,

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<sup>1</sup> The views expressed in this paper are those of the author and do not necessarily represent the opinions of the OECD or its member countries. This paper is subject to further revisions.

together with the professional community, to thoroughly draw up its own legal acts in order to ensure adherence to the Law on Competition on Financial Markets.

4. The present lack of effective cooperation between the FCS and the Russian Federation's Ministry of Justice is a disturbing element for the market participants. Namely, the process of the renewal of the FCS's legal acts is being objectively retarded by the Ministry of Justice, which, when presented with the amendments, demands a registration in toto of formerly passed documentation, insisting upon their substantive, but not always justifiable changes.

5. Apart from finding a solution to the above current problems, it is desirable that the FCS, in eliminating gaps and contradictions of the existing legal acts, pays special attention to the introduction of amendments and additions to the "Instructions on the Order of Transferring Information and Documents, Constituting a System of Keeping a Company's Register List of Inscribed Securities Owners" (Decision of the FCS of Russia # 21, dated 24.06.97) and "Instructions On Depository Activities in the Russian Federation" (Decision of the FCS of Russia # 36, dated 16.10.97).

6. Additionally, PARTAD is aiming to complete the drafting and in conjunction with governmental regulators to attain a hearing at the State Duma of drafts of federal laws, concerning the protection of investors' rights and of upholding the interests in developing the security market's infrastructure. Namely, by introducing certain amendments into the text of the Law on Joint-Stock Companies, we propose to ban public companies, regardless of the number of shareholders, to independently keep the register, listing the owners of inscribed securities.

### **Merging of Registrars**

7. In order to maintain financial stability and independence of registrars, PARTAD intends to successively materialize a policy in favor of their voluntary agglomeration by offering support to registrars in their efforts towards agglomeration. Simultaneously this would provide for the tightening of control over the conformity of developing branches and transfer-agencies' networks of registrars of federal scale with the requirements of the FCS and PARTAD.

8. Additionally, it is necessary to generalize the working experience of the system-creating regional registrars in order to preserve them in the interests of securing the rights of the shareholders of those issuers, which are not listed as blue chips, especially in the distant regions. Unfortunately, lately the FCS has been demonstrating less consistency in its policy of promoting agglomerations among registrars. This had the effect of freezing their numbers on the level of 120, which seems to be excessive in the circumstances, presently prevailing in Russia.

9. But this issue has another problematic aspect. As a result of registrar merging and the intensification of competition among them, it becomes increasingly evident that legal acts regulating the process of the transfer of registers from one registrar to another often contradict one another. The reason for the resulting conflict of interests lies, as a rule, in the indebtedness of an issuer towards the registrar for services rendered. The Board of Directors of PARTAD wished to partly eliminate the problem by suggesting the registrars not to accept the register if the indebtedness of an issuer to the former registrar had not been settled. Nevertheless it is necessary to have improved texts of the regulatory acts of the FCS regarding the order of dissolution of contracts between the registrar and the issuer.

### **Controls Over the Conduct of Professional Activities**

10. The Association, using its experience, plans to work out and establish new versions of “The Procedures For Conducting Controls Over the Registrars and Depositaries” in order to heighten the quality of PARTAD’s control over their members’ adherence to the established requirements in the conduct of their professional activities. All departures from established procedures, revealed during the check-ups, shall be reflected in the regular update of the “Typical Violations in the Activities of the Registrars and Depositaries”.

11. It was the new, perfected in 1999, approach in the organization’s system of check-ups of its registrars, possessing considerable ramifications of their branch and transfer agencies. It allowed PARTAD’s inspection commission to reveal and take notice of rude violations in the operations of “Panorama” Registrar Company, termed by PARTAD’s Board of Directors, as being consistent in character. This practice of wide-scale inspections shall be continued during the present year.

12. It should be noted, that inspections of organizations combining depositary functions with brokerage, allows to conclude, that most of the transgressions revealed were the result of wrong distribution of priorities between the depositary and the organization’s back-office. Historically it happened that the appearance of the legal base and of the functional standards for the back-office proceeded the development of depositary technologies, considered as being supplementary. But legal requirements stipulate that it is the depositary records in such organizations, which should provide the legal base for operations of the back-offices. In this connection it is necessary to fulfil three consecutive stages in order to improve depositary recording in a broker organization. First comes a detailed scrutiny from the above point of view of the new version of the “Rules for Depositary Activities”. Second, the new rules should become the basis for formalizing requirements for computer software serving the depositary activities and the development of corresponding recommendations. The third stage is the introduction of amendments into the regulatory acts of the FCS and the standards of NAUFOR (the National Association of Members of the Securities Market), which regulate the activities of the back-office. We hope that in cooperation with NAUFOR this problem can be solved.

13. Among the pressing problems of offering methodological support to PARTAD member’s depositaries are the texts of recommendations that have been prepared lately. They cover procedures for commencing and terminating services offered by depositaries on securities issues, determination of specifics in the payment for depositaries’ services, and the procedures for the write-offs of securities by depositaries in case of their licenses of professional members of the market are being revoked.

### **Reducing Risks**

14. In accordance with the “Program of Development and Introduction of a System of Measures, Aimed at Reducing Risks, Connected with the Implementation of Professional Activities on the Securities Market”, PARTAD hopes to develop in the year 2000 recommendations to registrars on risk insurance concerning liabilities, loss and/or damage to property, illegal acts, electronic and computer crime, as well as methodological recommendations regarding classifying and upraising risks of depositaries. It is also necessary to analyse the possibility of effective coverage of risks of a depositary functioning within the framework of a centralized system of transfer and storage of information on operations with securities.

15. In order to create the required assumptions to solve the above tasks, PARTAD in cooperation with the FCS of Russia will strive to obtain permit to substitute in most cases formal requirements regarding the registrar’s or depositary’s equity with a corresponding limit of insurance liability.

### **The Transfer-Agency Center**

16. Within the conditions of an evident narrowness of the Russian securities market, transaction costs play an important role. Depositories, by allowing to conduct business without noticeable delays, introduce certain risks into the procedure of registering ownership rights. Most registrars are carrying out the above procedure with sufficient soundness within the rigid framework set out by the FCS of Russia and PARTAD, but charge slightly more for the re-registration, which they carry out within three days. In order to cope with this problem, a group of leading Russian registrars, which support the registering system of transfer of property rights to up to 70% of Russia's blue chip market (including RAO "EEC" /EAC/ and Lukoil), have established the Transfer-Agency Center (TAC). This will allow to substantially quicken the re-registration entries in the registers, while maintaining a high degree of security and stimulating lower costs of the registrars' services. The availability of an electronic approach to registers by investors and professional members which provide them with their services, will urge depository organizations to heighten reliability and efficiency of interdepository relations and vice versa.

17. The Transfer-Agency Center is a new infrastructure project that has been approved by the experts of the World Bank. It is designed to consolidate the arbitrarily created registration system concerned with ownership rights on the securities market and mold it into a single block. In our opinion its creation solves a number of issues of national importance, aimed at increasing dependability and efficiency of the system which conducts registration of property rights in the Russian Federation, lowering of investment risks and offers protection of investors' rights. We consider its creation as one of the preliminary stages in the formation of the necessary technological conditions for the establishment of a Central Depository, acting as an office for federal registration of information on ownership titles for securities.

18. Similar projects are being reviewed by PARTAD as testing grounds for devising new technologies and integrated approaches towards regulating risks within the registration system, as well as a natural means of voluntary unification of documentary flows among PARTAD's members in the process of their execution of their professional activities.

19. This is also objectively aided by a program of certification of computer software, which remains to be one of the most important in PARTAD's activities. It is within this framework that PARTAD has been consistently providing consultations to members on the Y2K problem. Work has also involved the manufacturers of software and the professional members of the market in order to ensure technical dependability of the ownership rights registration systems.

20. In the year 2000 it is being planned to prepare and to start testing (expert evaluation) of the software. It is designed not only to be used by depositories, but also to help reach a consensus among the securities market members in order to introduce "Electronic Formats for Information Exchange Between the Nominal Holder and the Registrar" in order to simplify interaction of depository companies with the registrars.