KEY CONSIDERATIONS FOR OVERSEAS COMPANIES CONSIDERING A LISTING OF GDRS ON THE LONDON STOCK EXCHANGE

The purpose of this briefing note is to provide a short introduction to Global Depositary Receipts ("**GDRs**") and to explain the key benefits and issues for overseas companies considering seeking admission of GDRs representing their shares to listing on the UK Official List and to trading on the Main Market of the London Stock Exchange.

WHAT ARE GDRS?

GDRs are transferable securities issued by a depositary, typically an investment bank experienced in dealing with GDRs in the location of the listing. Such GDRs represent a proportion of underlying shares in a company incorporated outside of the United Kingdom. Prior to issuing GDRs, the company will deposit the relevant shares with the depositary in a specially created GDR facility.

GDRs provide investors with many of the economic and other benefits of holding shares, including voting rights and claims to dividends. GDRs therefore offer international investors a means of enjoying the benefits of holding shares in an overseas company, while avoiding some of the barriers faced by non-residents in some jurisdictions.

A GDR facility provides flexibility in allowing transfers of shares in and out of the facility and in certain circumstances investors can apply to withdraw the underlying shares held by the depositary. The depositary therefore plays an active role during the life of the GDR facility. In addition, the shares are held by the depositary on trust for the investors to ensure that they are ring-fenced from the assets of the depositary should the depositary become insolvent.

The shares represented by GDRs are usually held with a custodian on behalf of the depositary. The custodian is typically based in the same jurisdiction as the company and will be experienced in dealing with shares held by it locally. GDRs listed on the London Stock Exchange are typically denominated in US dollars and are cleared and settled through international clearing systems, such as Euroclear, Clearstream and DTC. Whilst the GDRs and underlying shares are separate securities and therefore can be traded at different prices, generally there will be strong correlation between the GDR price and the share price. The exchange rate risk if the currency in which the shares are denominated differs from that of the GDRs (which would usually be the case) rests with the investors.

Our selected GDR experience includes advising

- **Zenith Bank** on its IPO and London GDR listing. Zenith Bank is one of Nigeria's largest banks by market capitalisation and has its ordinary shares listed on the Nigerian Stock Exchange
- **TCS Group Holding**, the sole shareholder of Tinkoff Credit Systems Bank, on its IPO and London GDR listing, which raised US$1.09 billion
- the underwriters in relation to the IPO and London GDR listing of **Romgaz**, the largest natural gas producer in Central and Eastern Europe. The first London listing of securities in a Romanian state-owned company
- the selling shareholders in connection with the IPO and London GDR listing of **TBC Bank**, a leading Georgian bank
- **NOMOS Bank**, Russia's eighth largest banking group, on its US$700 million IPO and London GDR listing
- **OMV Petrom**, an integrated oil company which is the largest corporation in Romania, on its secondary London GDR listing
- a depositary bank on the IPO and London GDR listing of **MegaFon**. Equity deal of the year 2013, IFLR Europe Awards
- **PhosAgro**, a Russian fertiliser producer, on its London GDR listing

WHAT ARE THE BENEFITS TO AN OVERSEAS COMPANY OF OBTAINING A LISTING OF GDRS ON THE LONDON STOCK EXCHANGE?

There are sometimes barriers to foreign investors being able to purchase shares in an overseas company solely listed on a local stock exchange, which may reduce international demand for shares of locally listed companies.

International institutional investors investing in London are familiar with GDRs and, as such, a listing of GDRs in London allows a company to access foreign capital markets and unlocks a very large pool of potential additional investors, which is also a benefit for existing shareholders looking to transfer their holdings. In particular, London listed GDRs can be sold to qualified institutional buyers in the United States (as well as institutional investors outside of the United States).

In addition, a London GDR listing can expand a company's global presence by raising the company's public profile and can attract international research analysts and media coverage.

WHAT IS THE PROCESS AND TYPICAL TIMELINE FOR LISTING GDRS IN LONDON?

A London GDR listing is typically obtained alongside a wider transaction, such as a capital raising by the company or a sale of shares by an existing significant shareholder, or a combination of both. Whilst obtaining a London GDR listing is a well-trodden path, it can be a relatively involved process. Typically, such a transaction will take around four to six months from start to finish. An illustrative timetable is included in the appendix to this briefing note.

The first step in the process is usually the appointment of professional advisers and counterparties. In addition to the depositary and custodian, the key parties generally include: (i) one or more investment banks to act as global co-ordinators and bookrunners who are independent from the depositary, (ii) legal advisers to the company, the global co-ordinators and bookrunners and the depositary, (iii) reporting accountants and (iv) public relations advisors. Key elements of the process involve the preparation of a prospectus and registration statement, due diligence, marketing and negotiating the legal documentation.

Prospectus / Registration Statement

One of the most involved aspects of the process is the preparation of the prospectus and registration statement. The prospectus is typically the primary document used to market the securities to investors and is required to be published to obtain a London GDR listing.

The prospectus is an extensive document that is intended to provide investors with all the information they require to make an informed investment decision. The prospectus will include risk factors, information about the company's business and industry and detailed financial information (prepared in accordance with international accounting standards or their equivalent). Specific content requirements for the prospectus are governed by the UK Prospectus Rules and Listing Rules. As such the prospectus will follow a standard format, however companies with existing listings are often able to leverage their existing public disclosure to assist with the drafting process.

The requirement to publish a registration statement is a new development in the UK market, following a recent consultation process by the UK Financial Conduct

Authority about the listing process. The registration statement will be published at the start of the public phase of the process. Whilst it remains to be seen how market practice will develop, the expectation is that the registration statement will contain all the same information about the company as the prospectus, but will not contain information about the GDRs or the proposed listing.

The prospectus and registration statement will be reviewed and approved by the UK Financial Conduct Authority, who will also consider the company's eligibility for listing.

The legal advisers to the company are usually responsible for preparing the prospectus and registration statement, although the preparation of both documents and the other legal documentation will require involvement from all parties, including attendance at drafting meetings by management.

Due diligence

Alongside preparation of the prospectus and registration statement, a due diligence process will be carried out by the investment banks and legal advisers, the purpose of which is to identify any material issues which may need to be reflected in the prospectus and registration statement. It is vital that all material information is included in the prospectus and registration statement and that they are accurate, complete and not misleading. Due diligence typically involves meetings with management, the preparation and review of a virtual data room and enquiries of the reporting accountants and occasionally other third parties (such as key customers or suppliers).

Marketing

If there is an offering of securities alongside the GDR listing, marketing efforts will be organised by the global co-ordinators and bookrunners. Typically, management of the company would meet with potential investors at various stages of the process, in order to present the strengths and future growth strategy of the business in order to generate demand and obtain valuation feedback. Preparation for such meetings involves the drafting of marketing presentations and rehearsals.

Legal documentation

Various agreements will need to be negotiated in connection with a London GDR listing. In particular, the company will need to enter into a deposit agreement with the depositary under which the GDR facility is established, a custody agreement with the custodian, an underwriting agreement with the global co-ordinators and bookrunners and engagement letters with the reporting accountants and other advisers. Such legal documentation will typically be governed by English law.

WHAT ARE THE ELIGIBILITY REQUIREMENTS FOR LONDON GDR LISTING?

There are various criteria which a company will need to satisfy in order to be eligible for GDRs representing its shares to be eligible for admission to the UK Official List and the Main Market of the London Stock Exchange. The most relevant eligibility requirements are that: (i) the company must have a sufficient financial track record and (ii) generally a free float of 25 per cent. of the GDRs (but not the underlying shares) must be held in public hands by unconnected public investors in one or more European Economic Area member states, to ensure that there is sufficient liquidity in the GDRs. Where a GDR listing accompanies an offering of GDRs to new investors, companies are generally able to meet such free float requirements.

WHAT CONTINUING OBLIGATIONS APPLY TO A GDR ISSUING COMPANY?

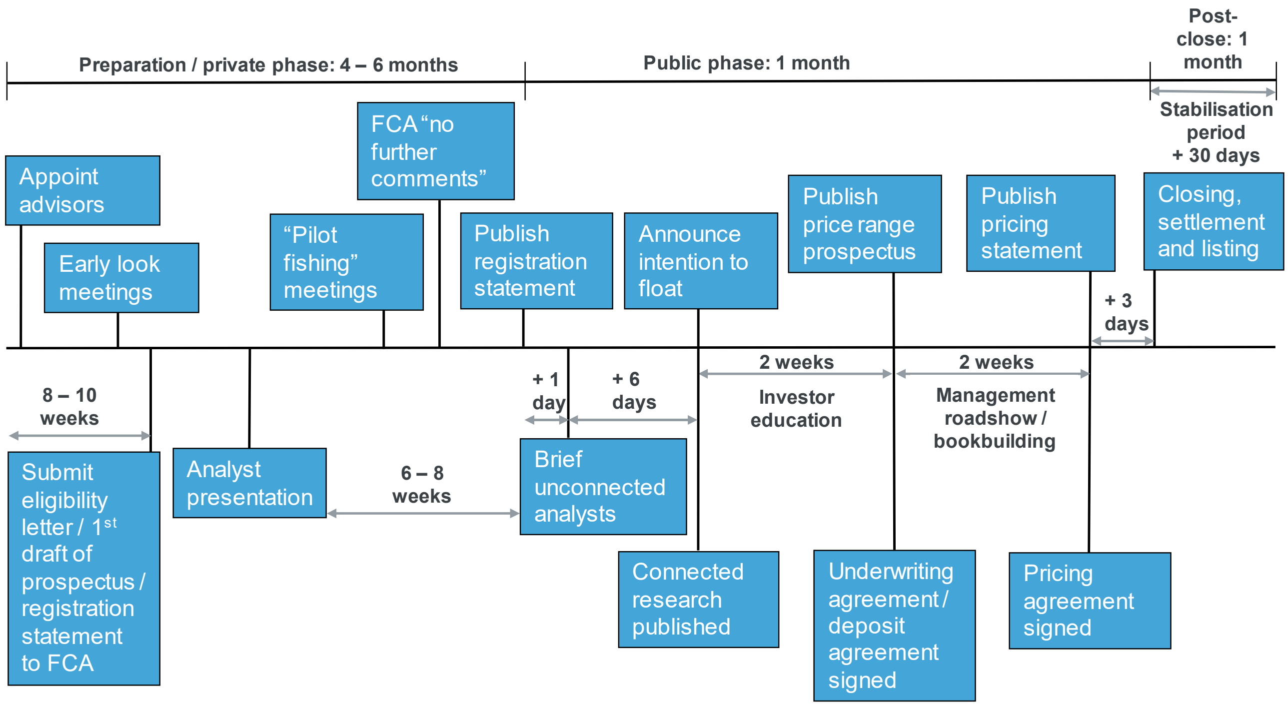
Companies with a London GDR listing will need to comply with various continuing obligations, in particular under the UK Listing Rules, the UK Disclosure Guidance and Transparency Rules and the EU Market Abuse Regulation.

The most important continuing obligation is that the company must generally disclose inside information to the market (in the United Kingdom, the requirement is to disclose as soon as possible). An important consideration for overseas companies will be co-ordinating disclosure of inside information and providing other information across two markets, given the potentially large time difference between the local jurisdiction and the United Kingdom, and the different regulatory requirements, particularly in relation to whether such disclosures can be made in or outside of trading hours.

Other continuing obligations include a requirement on the company to publish an audited annual report within four months of the end of its financial year and an unaudited half yearly report within three months of the end of its half financial year. Directors and managers of a company with a London GDR listing must also comply with certain restrictions on dealing in securities to avoid insider trading.

Appendix

Illustrative GDR listing timetable



CONTACTS

London

Maggie Zhao
Partner

T +44 20 7006 2939
E maggie.zhao
@cliffordchance.com

Iain Hunter
Partner

T +44 20 7006 1892
E iain.hunter
@cliffordchance.com

Owen Lysak
Partner

T +44 20 7006 2904
E owen.lysak
@cliffordchance.com

Malcolm Sweeting
Senior Partner

T +44 (0)20 7006 2028
E malcolm.sweeting
@cliffordchance.com

Adrian Cartwright
Global Head of Capital Markets

T +44 20 7006 2774
E adrian.cartwright
@cliffordchance.com

Bruce Kahl
Partner

T +44 20 7006 2419
E bruce.kahl
@cliffordchance.com

Simon Thomas
Partner

T +44 20 7006 2926
E simon.thomas
@cliffordchance.com

Katherine Moir
Partner

T +44 20 7006 3688
E katherine.moir
@cliffordchance.com

Hong Kong

Terry Yang
Partner

T +852 2825 8863
E terry.yang
@cliffordchance.com

Francis Edwards
Partner

T +852 2826 3453
E francis.edwards
@cliffordchance.com

Liu Fang
Partner

T +852 2825 8919
E fang.liu
@cliffordchance.com

Connie Heng
Partner

T +852 2826 2457
E connie.heng
@CliffordChance.com

Amy Lo
Partner

T +852 2826 3420
E amy.lo
@CliffordChance.com

Virginia Lee
Partner

T +852 2826 3451
E virginia.lee
@CliffordChance.com

Beijing and Shanghai

Tim Wang
Co-Managing Partner

T +86 10 6535 2266
E tim.wang
@cliffordchance.com

Terence Foo
Co-Managing Partner

T +86 10 6535 2299
E terence.foo
@cliffordchance.com

Glen Ma
Head of Corporate, China

T +86 21 2320 7217
E glen.ma
@cliffordchance.com

Singapore

Jean Thio
Partner

T +65 6506 1956
E jean.thio
@cliffordchance.com

CLIFFORD CHANCE

CONTRIBUTORS

Stuart Mason
Senior Associate

T +44 20 7006 4291
E stuart.mason
@cliffordchance.com

James Spencer
Senior Associate

T +44 20 7006 1329
E james.spencer
@cliffordchance.com