

Significant changes in regulation of foreign investments in Russia

July 14, 2017

Dear Ladies and Gentlemen,

We would like to make you aware of the adoption of two draft laws amending the Strategic Investments Law¹:

- 1. The first set of amendments has already entered into force on July 1, 2017² and is aimed at implementing the policy of deoffshorization of the Russian economy, considerably limits the range of entities that have the right to establish control over “strategic” companies**

For example, transactions resulting in establishment of control over “strategic” companies by not only foreign states and international organizations and the organizations under their control, but also by offshore companies and companies under their control are prohibited.

The term “offshore company” introduced by the amendments includes in this category such legal entities that are incorporated in states or in territories providing preferential tax treatment and/or not requiring disclosure and submission of information when conducting financial transactions. The full list of such states and territories is established by the Ministry of Finance of Russia and currently includes the British Virgin Islands, the Cayman Islands, the Republic of Seychelles etc.³

In addition, the thresholds for the percentage of votes acquired by offshore companies and organizations under their control in the authorized capitals of “strategic” companies requiring prior approval have been decreased to the level of the limits imposed on foreign state investors.

- 2. The second set of amendments to the Strategic Investments Law was adopted by the State Duma on July 5, 2017⁴ and approved by the Council of the Federation on July 12, 2017 (the upper house of the Federal Assembly of Russia) (close to the final stage of lawmaking process and might be adopted approximately by the end of July) (execution of the draft law by the Russian President is also required)) expands the list of transactions requiring Strategic Investment clearance**

The most important innovation provided for by this draft law is the right of the Chairman of the Governmental Commission for Control over Foreign Investments in the Russian Federation

1 Federal Law No. 57-FZ on Procedures for Foreign Investments in Companies having Strategic Importance for the National Security and Defence dated April 29, 2008

2 Federal Law No. 155-FZ on Amendments to Article 5 of the Federal Law on Privatization of State and Municipal Property and the Federal Law on Procedures for Foreign Investments in Companies having Strategic Importance for the National Security and Defence dated July 1, 2017, officially published on July 4, 2017

3 Order No. 108n of the Ministry of Finance of Russia on Approval of the List of Countries and Territories That Provide a Preferential Tax Regime and/or Do Not Require the Disclosure and Submission of Information When Conducting Financial Transactions (Offshore Zones) dated November 13, 2007

4 Draft Law No. 788849-6 on Amendments to Article 6 of the Federal Law on Foreign Investments in the Russian Federation and the Federal Law on Procedures for Foreign Investments in Companies having Strategic Importance for the National Security and Defence (with Respect to Establishing Procedures for Applying Russian Federation Legislation on Foreign Investments in the Territory of the Republic of Crimea and the Federal City of Sevastopol)

(current Prime Minister of the Russian Federation is Mr. Dmitry Medvedev) to present to the Governmental Commission for consideration transactions conducted by foreign investors with respect to practically any Russian business entities, not just “strategic” ones. The Prime Minister on its own discretion might choose these transactions if he believes that these transactions might influence national security and defense of Russia. The spheres of scope of interest of the authorities potentially might be food, pharmaceutical industry and defense sector.

Moreover, the draft law proposes to set forth the Governmental Commission’s powers to determine any obligations to be imposed on a foreign investor as a condition for prior approval of a transaction which it considers necessary to ensure national defense and state security. Although the list of such obligations in the current version of the Strategic Investments Law is exhaustive, even now foreign investors themselves can propose to the Governmental Commission obligations that are not on the list and which they are prepared to undertake to complete transactions, and include them in the respective agreement signed with the FAS.

Draft law also updates the wording of some of the types of strategic activities set out in Article 6 of the Strategic Investments Law and also adds such new kind of activity of strategic importance as “engaging in activity by a business entity that is the operator of an electronic trading platform in accordance with Russian Federation legislation on the contract system in the procurement of goods, work and services for state and municipal needs”.

In addition, the approach according to which holding a license is not a mandatory condition for a company to be deemed “strategic” is now established in law. Now for this it is enough that there are “other permitting documents” enabling the company to engage into that type of activity.

Foreign Investors shall be required to disclose information on their shareholdings of 5 and more percent of shares (interests) constituting authorized capital of the “strategic companies” incorporated in the Republic of Crimea or federal city of Sevastopol within 90 days after amendments shall come into force.

In addition to the already existing fines, for failure to comply with the requirement for foreign investors to file post-transaction notifications of their acquisition of 5 percent and more of votes in the authorized capitals of “strategic” companies, and of the completion of pre-approved transactions and of holding 5 and more percent of shares (interests) in “strategic” companies incorporated in Crimea or Sevastopol, the Strategic Investments Law will provide for consequences in the form of depriving the foreign investor of the right to vote at a general meeting of the company through a court further to a claim by the FAS, until the foreign investor properly fulfills the obligation to file the notification for consideration by the authority.

Adoption of the draft laws will result in major changes in the system of mechanisms for state regulation of foreign investments in the Russian Federation, and also in additional restrictions for some foreign investors.

ALRUD lawyers have extensive experience in provision of comprehensive support to clients in all areas of law, including in support of merger control procedures and filings required under the Strategic and Foreign Investments Laws.

Hope that the information provided herein would be useful for you. If any of your colleagues would also like to receive our newsletters, please let us know by sending us his/her email address in response to this message. If you would like to learn more about our **Antitrust/Competition practice**, please let us know about it in reply to this email. We will be glad to provide you with our materials.

If you have any questions, please, do not hesitate to contact the Partner of ALRUD Law Firm **German Zakharov** at gzakharov@alrud.ru.

Kind regards,
ALRUD Law Firm

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