

Changes in legislation on foreign investments in strategic companies of the Russian Federation

September 26, 2017

Dear Ladies and Gentlemen,

We hereby inform you that recently Federal Law dated 01.07.2017 No. 155-FZ (“**155-FZ**”) and Federal Law dated 18.07.2017 No. 165-FZ (“**165-FZ**”) have been adopted and became effective, introducing significant amendments to Federal Law dated 29.04.2008 No. 57-FZ “On procedure for making foreign investments in business companies which are of strategic importance for national defense and state security” (“**Law on Strategic Investments**”) and Federal Law dated 09.07.1999 No. 160-FZ “On foreign investments in the Russian Federation” (“**Law on Foreign Investments**”).

Investments into Russian strategic companies via offshore companies – new rules

Pursuant to the Law on Strategic Investments (as amended by 155-FZ), offshore companies acquiring shares (whether directly or indirectly) in the Russian strategic companies are now subject to specific thresholds that require obtaining strategic consent of the Government Commission on Monitoring Foreign Investment in the Russian Federation (“**Government Commission**”):

- acquisition (directly or indirectly) of more than 25% of voting rights in a strategic company;
- acquisition (directly or indirectly) of more than 5% of voting rights in a strategic company carrying out geological survey and/or exploration and exploitation of subsoil resources on subsoil plots of federal importance;
- obtaining the right to block adoption of decisions by management bodies of a strategic company.

Such specific thresholds were initially provided for acquisition of shares or obtaining control by foreign states and international organizations; however, now they are extended also to offshore companies, even if such offshore company is used as a shell company and beneficially owned by a private person or entity. Thus, greater attention should be devoted now to a buyer’s group and transaction documentation in order to assess whether specific thresholds may apply. This amendment will likely result in more deals that would require preliminary consent under the Law on Strategic investments. The legal consequences of non-compliance are severe – the acquisition of shares would be considered void and null in Russia, and the investor would not be able to exercise its voting rights in relation to Russian strategic companies. Deprivation of investor’s voting rights is now also a consequence for lack of post-acquisition notification of the Government Commission.

List of offshore jurisdictions is maintained by the Ministry of Finance of the Russian Federation and includes more than 40 jurisdictions, such as the Bahamas, Bahrain, Belize, the British Virgin Islands, Hong Kong, Macao, the Marshall Islands, the United Arab Emirates, the Cayman Islands, the Isle of Man, the Channel Islands, Seychelles, and others.

Discretion of the Chairman of the Government

Pursuant to the Law on Foreign Investments (as amended by 165-FZ), the Chairman of the Government Commission is entitled to decide at his discretion that any particular transaction related to the Russian

strategic companies shall be subject to preliminary consent under the Law on Strategic Investments. The Federal Antimonopoly Service of the Russian Federation shall then within three business days notify the foreign investor on such decision.

The abovementioned right of the Chairman of the Government Commission should be taken into account when considering a buyer's approach in relation to any filings under the Law on Strategic Investments and drafting transaction documentation.

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 have any questions, please, do not hesitate to contact **Alexander Zharskiy** (AZharskiy@alrud.com), Partner, Head of **Corporate and M&A practices**, or **German Zakharov** (GZakharov@alrud.com), Partner, **Competition/Antitrust practice**.

Kind regards,

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