

THE FOREIGN
INVESTMENT
REGULATION
REVIEW

FIFTH EDITION

Editor
Calvin S Goldman QC

THE LAWREVIEWS

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INVESTMENT
REGULATION
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RUSSIA

*Vassily Rudomino, Ksenia Tarkhova, Ruslana Karimova, Roman Vedernikov and Anastasia Kayukova*¹

I INTRODUCTION

Attracting foreign investment has been a priority of the Russian government since the moment the country took its first steps towards developing a market economy in 1991. During the past few decades, consistent legislative and administrative measures have been taken to improve the investment climate and provide guarantees and protection for foreign companies undertaking business in Russia. This trend still remains effective and has been maintained by the government within the period of mutual economic sanctions, since investment in Russia is encouraged and supported despite the political alienation between Russia and European countries.

After the economic crisis in 2008, when it dropped to US\$81 billion, the amount of investment had doubled by 2012, up to US\$154 billion. The 2013 statistics showed a rapid growth of foreign investment – up to US\$170 billion.² After a period of moderate growth, Russia's economy slowed in 2014 following the introduction of sanctions against Russia and a plunge in oil prices, which have significantly affected the investment climate, although the overall macroeconomic situation has remained favourable. In the first half of 2015, the Russian economy continued to drop, but during the second half of 2015 and 2016 it showed a steady growth in the number of foreign investments. Thus, despite the imposition of sanctions and other politics-related issues, Russia remains one of the most attractive fields for investment and will continue its course aimed at attracting foreign investments to the Russian market.

European Union countries, in particular Cyprus, the Netherlands, France, Germany and Switzerland, remain the main investors in the Russian economy and its industry. Other major investors actively operating in the Russian market include the United Kingdom, British Virgin Islands and Bahamas.³ Furthermore, the flow of investments from Asian countries – in particular, China, Korea and Japan – is currently significantly increasing year on year, and Russia considers Asian countries as promising business partners in the field of mutual investments.

1 Vassily Rudomino is a senior partner, Ksenia Tarkhova is an associate, Ruslana Karimova and Roman Vedernikov are senior attorneys and Anastasia Kayukova is a junior attorney at ALRUD.

2 Information from the official website of the Russian Federal Statistics Service at: www.gks.ru/wps/wcm/connect/rosstat_main/rosstat/ru/statistics/enterprise/investment/foreign/#.

3 Information from the official website of the Central Bank of the Russian Federation, available at: www.cbr.ru/statistics/?Prtid=svs. The Central Bank of the Russian Federation is currently responsible for analysis of the investment climate in Russia and for the preparation of statistics reports instead of the Russian Federal Statistics Service.

The development of Russian legislation on foreign investments began in 1991, when the first law on foreign investments was enacted. This was replaced in 1999 by the currently effective Federal Law 'On foreign investments in the Russian Federation' (the Foreign Investments Law).⁴ The Foreign Investments Law generally defines the status of a foreign investor, the legal regimes for foreign investments, and guarantees and benefits provided to foreign investors active in Russia, and contains provisions regulating the establishment and operation of companies with foreign investments and branch offices of foreign companies.

With the increase in foreign investment in Russia, it became clear that the process of investment in strategically important sectors of the economy required stricter control by the state authorities. For this purpose, the Federal Law 'On procedures for foreign investments in companies having strategic importance for national security and defence' (the Strategic Investments Law)⁵ was enacted, and a special government commission, the Government Commission on Monitoring Foreign Investment (the Government Commission), was formed with control over foreign investments, chaired by the Prime Minister.

Normative acts adopted by the Russian government also constitute a substantial part of the country's foreign investments legislation and usually contain guidelines on implementation of the foreign investments control rules.⁶

The legal regime governing foreign investment is still developing. For example, new important provisions were recently adopted and entered into force on 1 July 2017.⁷ These amendments are aimed at implementation of the de-offshorisation policy in the Russian economy, and considerably limit the range of entities that have the right to establish control over strategic companies. For example, transactions resulting in the establishment of control over strategic companies – by not only foreign states and international organisations and the organisations under their control, but also offshore companies and companies under their control – are prohibited. Moreover, a second set of amendments was adopted shortly after, and these came into force on 30 July 2017.⁸ The second set of amendments not only expands the list of transactions requiring strategic investment clearance, but also provides some major changes in relation to the powers of the Government Commission.

Development of cooperation with foreign partners and the integration of Russia into the world economy was always one of the priorities of Russia's development.

4 The Federal Law 'On foreign investments in the Russian Federation' No. 160-FZ dated 9 July 1999.

5 The Federal Law 'On procedures for foreign investments in companies having strategic importance for the national security and defence' No. 57-FZ dated 29 April 2008.

6 For instance, the Decree of the government of the Russian Federation 'On approval of rules for preliminary approval of the transactions and coordination of establishment of control of foreign investors or a group of persons, including a foreign investor, over the business entities of strategic importance for the national security and defence' No. 838 dated 17 October 2009 and the Decree of the government of the Russian Federation 'On approval of rules of submitting by a foreign investor or a group of persons, including a foreign investor, of information on transactions with shares (participatory shares) constituting the authorised capitals of the business entities of strategic importance for national security and defence' No. 795 dated 27 October 2008.

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

8 Federal Law No. 165-FZ 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 National Security and Defence dated 18 July 2017.

One of the main changes in Russia's position on the international scene is related to the creation of the Eurasian Economic Union (EEU). A treaty establishing the EEU was signed on 29 May 2014 by the leaders of Belarus, Kazakhstan and Russia, and came into force on 1 January 2015. Treaties aiming at Armenia's and Kyrgyzstan's accession to the EEU were signed on 9 October 2014 and 23 December 2014, respectively. Armenia's accession treaty came into force on 2 January 2015. Kyrgyzstan's accession treaty came into effect on 6 August 2015 and it participated in the EEU from the day of its establishment as an acceding state.

The EEU represents the political and economic union based on the Customs Union of Belarus, Russia and Kazakhstan, which has an integrated single market of 183 million people and a gross domestic product of over US\$4 trillion (PPP). The EEU is considered to be a major player in the world's energy sector, raw materials, arms industry and agricultural production.

The EEU is a new stage of integration, which introduces the free movement of goods, capital, services and people, and provides for common transport, agriculture and energy policies, with provisions for a single currency and greater integration in the future. The union operates through supranational and intergovernmental institutions. The Supreme Eurasian Economic Council is the Supreme Body of the Union, consisting of the Heads of the Member States. The other supranational institutions are the Eurasian Commission (the executive body), the Eurasian Intergovernmental Council (consisting of the prime ministers of Member States) and the Court of the EEU (the judicial body).

II FOREIGN INVESTMENT REGIME

The legal rules regulating foreign investments can be divided into two groups.

The first group contains general rules that are equally applicable to both Russian and foreign investments. These legal rules are contained in the Civil Code of the Russian Federation (the Civil Code),⁹ the Federal Law 'On limited liability companies',¹⁰ the Federal Law 'On joint-stock companies',¹¹ the Federal Law 'On the state registration of legal entities and sole proprietors',¹² the Federal Law 'On the securities market'¹³ and others. These federal laws regulate, *inter alia*, general procedures for the establishment of legal entities, purchasing of shares (participatory shares) constituting the authorised capital of legal entities, questions of corporate governance and state registration of legal entities. In this group, it is also worth mentioning antitrust rules contained in the Federal Law 'On protection of competition' (the Competition Law).¹⁴

The second group of rules solely regulates foreign investments. The principal laws in this group are the Foreign Investments Law and the Strategic Investments Law.

The Foreign Investments Law determines state guarantees of an investor's rights to invest, gain income and profit, as well as conditions for commercial activities of foreign

9 The Civil Code of the Russian Federation (Part One No. 51-FZ dated 30 November 1994, Part Two No. 14-FZ dated 26 January 1996, Part Three No. 146-FZ dated 26 November 2001 and Part Four No. 230-FZ dated 18 December 2006).

10 The Federal Law 'On limited liability companies' No. 14-FZ dated 8 February 1998.

11 The Federal Law 'On joint-stock companies' No. 208-FZ dated 26 December 1995.

12 The Federal Law 'On the state registration of legal entities and sole proprietors' No. 129-FZ dated 8 August 2001.

13 The Federal Law 'On the securities market' No. 39-FZ dated 22 April 1996.

14 The Federal Law 'On protection of competition' No. 135-FZ dated 26 July 2006.

investors within Russian territory. This law is not applicable to making investments of foreign capital into banks and other credit organisations, insurance companies and non-commercial organisations. These areas are subject to regulation under the Federal Law 'On banks and banking activities' (the Banking Law),¹⁵ the Law of the Russian Federation 'On the organisation of insurance business in the Russian Federation'¹⁶ and the Federal Law 'On non-commercial organisations'.¹⁷

The second principal law is the Strategic Investments Law, which determines the procedures for foreign investments in strategic sectors of the Russian economy. A strategic clearance according to the Strategic Investments Law is required if the target company is incorporated in Russia and is active in one of the specified types of activity listed therein (such as activities in nuclear and radioactive materials, devices and waste; aviation and space; the natural resources sector; exploration and production of minerals on subsoil plots of federal value, and use of subsoil plots of federal value (the oil and gas sector); coding and cryptographic equipment; mass media and telecommunications; use of agents of infectious diseases (except by companies engaged in food production); or with a licence for conducting such an activity (a strategic company). Moreover, the new set of amendments to the Strategic Investments Law clarifies the wording of some activities and adds to this list new strategic activities such as the carrying out of activities by an entity that is an operator of an electronic trading platform. In addition, it is now established in law that holding a licence is not a mandatory condition for a company to be deemed strategic. It is now enough that there are 'other permitting documents' enabling the company to engage in that type of activity.

As a general rule, the list of activities stipulated by the Strategic Investments Law is exhaustive, therefore a foreign investor can easily check whether a potential target can be considered as a strategic company. However, amendments provide the right of the chair of the Government Commission, at his or her own discretion, to present to the Government Commission for consideration transactions conducted by foreign investors with respect to practically any Russian business entity, not just strategic ones. The authorities' spheres of interest are, potentially, food, the pharmaceutical industry and the defence sector.

In accordance with the Decree of the Government of the Russian Federation 'On the Government Commission executing control over foreign investment in the Russian Federation',¹⁸ the state body responsible for monitoring the foreign investments sector is the Federal Antimonopoly Service (FAS). The Government Commission considers submitted notifications on transactions and decides whether there is a threat to national security and defence.

In the banking sector, the acquisition of 10 per cent or more of the shares in a Russian credit organisation is subject to the Central Bank of Russia's prior approval, while acquisition of more than 1 per cent but less than 10 per cent requires a post-transaction notification.

15 The Federal Law 'On banks and banking activities' No. 395-1 dated 2 December 1990.

16 The Law of the Russian Federation 'On the organisation of insurance business in the Russian Federation' No. 4015-1 dated 27 November 1992.

17 The Federal Law 'On non-commercial organisations' No. 7-FZ dated 12 January 1996.

18 The Decree of the Government of the Russian Federation 'On Government Commission executing control over foreign investment in the Russian Federation' No. 510 dated 6 July 2008.

In the insurance sector, a Russian insurance organisation must receive prior approval to increase its authorised capital by means of foreign funds and to assign its shares to a foreign investor. Its shareholders must receive prior approval for the assignment of their shares to foreign investors.

In the mass media sector, foreign investors cannot own more than 20 per cent of shares (participatory interests) in the Russian mass media. Moreover, foreign investors and foreign legal entities, Russian citizens with dual citizenship and stateless persons cannot be among founders of mass media.

In the natural monopolies sector, acquisition of more than 10 per cent of fixed assets of a legal entity operating in the sphere of natural monopolies requires clearance from the FAS.¹⁹

III TYPICAL TRANSACTIONAL STRUCTURES

Generally, there are three legal forms for foreign investments in Russia: legal entities (limited liability companies (LLCs), joint-stock companies or partnerships), including joint ventures (JVs); branches and representative offices; and legal investment contracts.

In recent years, it has become quite common for foreign investors to conduct business in Russia by forming a JV with a Russian partner who is more familiar with the local rules and customary business practices, and has vast business experience in the Russian market. Until recently, the prevailing tendency in Russia has been to use offshore structures for the creation of JVs, and to govern shareholders' agreements by a foreign (mostly English) law because foreign law provides for a wide range of protection mechanisms and remedies. Nevertheless, Russian law has lately become more widely used for JV creation owing to certain positive legislative and law enforcement changes, including the fact that it now allows the conclusion of shareholders' agreements governed by Russian law, and it is now possible to limit the right of the participants in Russian LLCs to withdraw from the company, which makes the LLC a more stable and convenient form for establishing a JV.

The Competition Law includes several areas of particular interest to foreign investors. Thus, provided that the filing thresholds described in Section IV, are met, transactions and other actions (including the establishment of companies) that involve acquisition of the following will fall under the merger control requirement:

- a* fixed productive assets, intangible assets, or both, located or registered in the territory of Russia;
- b* shares, participatory shares or rights in respect of Russian companies and non-commercial organisations;
- c* shares, participatory shares or rights in respect of foreign companies or organisations that supplied goods to Russia in the amount exceeding 1 billion roubles during the calendar year of the date of execution of the transaction or other action subject to state control; or
- d* conclusion of JV agreements.

Thus, since 5 January 2016, all JV agreements concluded between competitors (including actual or potential competitors) that have combined assets of over 7 billion roubles or combined revenues of over 10 billion roubles have been subject to pre-completion clearance

19 The Federal law 'On natural monopolies' No. 147-FZ dated 17 August 1995.

with the FAS if the agreement is concluded in relation to the territory of the Russian Federation.²⁰ In this regard, three possible situations regarding the pre-transaction clearance of JV agreements might be considered.

Entering into a JV agreement that supposes formation of a new legal entity

If the assets or turnover thresholds are met, the transaction will require the merger filing if the authorised capital of the newly formed JV will be composed of or contributed to by:

- a* fixed productive assets or intangible assets located or registered in the territory of the Russian Federation, which are held by any of the JV's founders (or by the companies from their groups) and the balance sheet value of which exceeds 20 per cent of all fixed productive assets and intangible assets of the transferring company;
- b* more than 25 per cent of a Russian joint stock company (or one third participatory share of a Russian limited liability company); or
- c* more than 50 per cent of the shares of a foreign company supplying products (or services) to Russia in the amount exceeding 1 billion roubles during the calendar year preceding the date of execution of the transaction.

Entering into a JV agreement that supposes participation in an already existing legal entity

If the assets or turnover thresholds are met, the transaction will require the merger filing if:

- a* the already existing foreign legal entity has assets or subsidiaries in Russia; or
- b* the already existing foreign legal entity supplied products (or services) to Russia in the amount exceeding 1 billion roubles during the year preceding the transaction.

Entering into a JV agreement without formation of a new legal entity.

In this case, all JV agreements that may impact on the state of competition in Russia are subject to obligatory merger clearance if the assets or turnover thresholds are met.

If JV agreements concluded between competitors do not formally require pre-completion clearance by the FAS, parties to the JV have a right to submit a voluntary application to the FAS to verify that the JV is compliant with Russian anti-monopoly legislation, and to mitigate the risk of its qualification as an anticompetitive agreement.

In accordance with the Clarifications 'On procedure and methods of analysis of JV agreements' issued by the FAS on 8 August 2013,²¹ a JV agreement cannot be recognised as admissible if the purpose of the agreement is a restriction of competition. The Clarifications provide a rebuttable presumption that JV agreements envisaging a refusal of competition on the same or related markets are potentially anticompetitive and may lead to a restriction of competition.

20 The Federal Law 'On amendments to the Federal Law "On protection of competition" and separate legal acts of the Russian Federation' No. 275-FZ dated 5 October 2015.

21 Clarifications of the FAS 'On procedure and methods of analysis of JV agreements' dated 8 August 2013.

IV REVIEW PROCEDURE

As previously mentioned, the Competition Law provides for merger control in the form of a pre-transaction clearance.

The thresholds for the pre-transaction filing are as follows:

- a* the worldwide value of assets of the acquirer (with its group) and the target company (with its group) according to the latest accounts exceeds 7 billion roubles; and the worldwide value of assets of the target company (with its group) according to the latest accounts exceeds 400 million roubles;²² or
- b* the worldwide aggregate turnover of the acquirer (with its group) and the target company (with its group) in the previous business year exceeds 10 billion roubles; and the worldwide value of assets of the target company (with its group) according to the latest accounts exceeds 400 million roubles.²³

Post-transaction notification may still apply in specific cases; for example, to certain intra-group transactions, provided that the company discloses its group on the official competition authority website.

As mentioned above, acquisition of strategically important businesses in Russia requires separate clearance by the state authorities.

Thus, in accordance with the Strategic Investments Law, the following types of transactions are subject to receiving the preliminary consent of the Government Commission:

- a* transactions (except for transactions concerning a subsoil plot of federal value) as a result of which the foreign investor (or its group) receives:
 - the right to dispose of more than 50 per cent shares (interests) in a strategic company;
 - the right to appoint an individual executive body and (or) more than 50 per cent of a collegial executive body or board of directors (or supervisory board) of a strategic company.
- b* transactions related to shares (interests) in a strategic company that is making use of a subsoil plot of federal value, as a result of which the foreign investor (or its group) receives:
 - the right to dispose of more than 25 per cent shares (interests) in the strategic company; and
 - the right to appoint an individual executive body and (or) more than 25 per cent of collegial executive body or board of directors (supervisory board) of the strategic company.
- c* acquisition of shares (interest) in respect of a strategic company using a subsoil plot of federal value, if a foreign investor (or its group) of persons has the right to dispose of not less than 25 per cent and not more than 75 per cent of shares (interests) in this company;
- d* contracts on the implementation of the functions of the managing director (or managing organisation) of a strategic company;

22 The Federal Law 'On amendments to the Federal Law "On protection of competition" and separate legal acts of the Russian Federation' No. 264-FZ dated 3 July 2016.

23 Ibid.

- e* transactions aimed at the acquisition by a foreign state, international organisation or by an organisation under its control of the right, directly or indirectly, to dispose of more than 25 per cent shares (interests) in a strategic company, or other opportunity to block decisions of a strategic company that is making use of a subsoil plot of federal value;
- f* other transactions or agreements aimed at the transfer of the right to determine the decisions of the managerial bodies of a strategic company, including conditions of implementation of its business activity, to the foreign investor or a group of persons; and
- g* acquisition of fixed productive assets of strategic companies, the balance sheet value of which exceeds 25 per cent of all fixed productive assets of the transferring company.

Subsequent control is maintained through notification on possession of 5 per cent or more of the shares (participatory shares) constituting the authorised capital of the strategic company.

Regarding the post-transaction notification, this should be submitted to the authority within 45 calendar days from the date of the transaction closing. Post-transaction notification should be considered within 30 days of the date of submission of the relevant documents.

Once the results of the notification have been submitted to the FAS, a special notice is granted acknowledging that notification of the transaction has been taken into account.

Additionally, foreign investors or groups of persons are also obliged to submit post-completion notification to the authority and inform the authority of implementation of the transaction or other actions for which preliminary consent was granted.

Under the Foreign Investment Law, transactions made by foreign states, international organisations or by organisations controlled by them are subject to pre-transaction clearance if the transaction results in:

- a* the acquisition of the right to dispose directly or indirectly of over 25 per cent of the total number of the voting shares or participatory shares constituting the authorised capital of a Russian commercial organisation; or
- b* other abilities to block the decisions made by managerial bodies of such commercial organisations.

Generally, prior to implementation of the transaction leading to establishment of direct or indirect control over a strategic company, a foreign investor should obtain the approval of the Government Commission chaired by the Prime Minister of Russia. Preliminary proceedings are held by the FAS and other state bodies.

Furthermore, the new amendments to the Strategic Investment Law provide the option to recognise a transaction as strategic if the chair of the Government Commission, at his or her own discretion, believes that this transaction might influence national security and the defence of Russia.

Moreover, the law proposes to set out the Government Commission's powers to determine any obligations to be imposed on foreign investors as conditions for prior approval of a transaction that it considers necessary to safeguard national defence and state security. Although the list of these obligations in the previous version of the Strategic Investments Law was exhaustive, foreign investors themselves can nonetheless propose to the Government Commission obligations that are not on the list and that they are prepared to undertake to complete transactions, and can include them in the relevant agreement concluded with the FAS.

An application is submitted to the FAS, which works as a 'secretary'. The FAS checks all the documents, coordinates agencies and prepares a draft of the decision for the Government Commission. Altogether, the compliance procedure takes from three to six months from the moment of submitting the application.

As to the procedure of consideration of the application, since 2 February 2016 the Government Commission has obtained the right to adopt decisions on applications filed by foreign investors in the absence of Government Commission members, without convening a meeting (absentee voting). Decisions on whether the absentee voting might be held or not are made by the chairman of the Government Commission. If the Government Commission members cannot reach a unanimous position, the voting should be held once again in the presence of all Government Commission members.²⁴

As for merger-control review procedure, amendments introduced by the Fourth Antimonopoly Package also established the option to submit applications and documents in electronic form to simplify the document circulation process.

In the event of failure to observe the legal rules with respect to clearance of the transactions and notification of the authorities of the transactions implemented, civil and administrative liabilities will apply.

Violation of the filing obligations (failure to notify within the required time limits, such as by submitting misleading information to the FAS; failure to provide required information; failure to comply with the FAS ruling), as well as closing the transaction without FAS clearance, may result in the imposition of an administrative fine of up to 500,000 roubles on the acquirer. Administrative liability in the form of a fine of up to 20,000 roubles may be also imposed on the CEO of the acquirer.

If a transaction implemented without FAS clearance could result or results in the restriction of competition in Russia (including, without limitation, the strengthening of a dominant position), the FAS may file a lawsuit and a competent state court may declare the transaction invalid, and, as a result, reverse the transaction. Transactions executed in breach of the Strategic Investments Law are null and void. If it is not possible to apply the consequences of invalidity on a void transaction, the state court may, upon a lawsuit brought by the FAS, adopt a decision to deprive the foreign investor of its right to vote at the shareholders' (participants') meeting of the strategic company; or to invalidate those decisions of the management bodies of the strategic company adopted after the establishment of control in breach of the Strategic Investments Law. A foreign investor might also face an administrative fine of up to 1 million roubles for failure to obtain preliminary approval or notify the transaction in accordance with the Strategic Investments Law. The following case is among recent examples of the courts voiding transactions concluded without obtaining clearance under the Strategic Investments Law. In April 2017, the FAS initiated judicial proceedings to invalidate transactions that had established control of Perm Port joint-stock company by UK national Charles Batler.²⁵ The case is currently being heard in the Russian courts.

The amendments to the Strategic Investments Law also make special provision in relation to the Republic of Crimea and the federal city of Sevastopol: foreign investors are required

24 The Decree of the Government of the Russian Federation 'On amendments to section 9 of the Regulation on the Government Commission executing control over foreign investment in the Russian Federation' No. 46 dated 30 January 2016.

25 <http://en.fas.gov.ru/press-center/news/detail.html?id=50205>.

to disclose information on their shareholdings of 5 per cent or more of shares (interests) constituting authorised capital of strategic companies incorporated in the Republic of Crimea or the federal city of Sevastopol within 90 days of the amendments coming into force.

In addition to the already existing fines for failure to comply with the requirement for foreign investors to file post-transaction notification of their acquisition of 5 per cent or more of votes in the authorised capital of strategic companies; of the completion of pre-approved transactions; and of holding 5 per cent or more of shares (interests) in strategic companies incorporated in Crimea or Sevastopol, the Strategic Investments Law will provide for the foreign investor to be deprived, through a court further to a claim by the FAS, of the right to vote at a general meeting of the company until the foreign investor properly fulfils the obligation to file a notification for consideration by the authority.

The statutory period for consideration of the pre-transaction merger-control application by the FAS is 30 calendar days from the date of receipt of the application and the full set of documents attached thereto. The above term may be extended by an FAS decision for up to two months for the submission of additionally requested documents. As such, the period for obtaining approval under the Strategic Investments Law constitutes from two-and-a-half to three months from the moment of submission of the application, and can be extended for up to three more months.

The Competition Law provides for the extension of the period to consider whether an application is to be approved in advance in accordance with the Strategic Investments Law prior to the adoption of the decision with respect to the transaction in accordance with the Competition Law. Moreover, the FAS will refuse to clear a transaction in accordance with the Competition Law if the transaction is not approved in accordance with the Strategic Investments Law.

The parties may also apply to the FAS to provide notice of a forthcoming transaction before submission of an application or subsequent notification (the pre-notification process). The parties may provide the FAS with the documents and information about the transaction and participate in developing remedies with a view to ensuring competition. The same provisions concerning remedies apply to strategic companies.

Under the Strategic Investments Law, the Government Commission is entitled to initiate an expert assessment of the data, which are accessible by the applicant, as regards their pertinence to data constituting a state secret. In addition, for the purposes of establishing the fact of institution of control by a foreign investor or a group of persons over a company of strategic importance, as well as the fact that there is an agreement made by a foreign investor and third persons (concerted actions) aimed at instituting control over a company of strategic importance, operational units of the federal security service agencies are entitled to undertake operational search measures. The results of these operational search activities may be used for substantiation of claims made in court.

V FOREIGN INVESTOR PROTECTION

According to the Foreign Investments Law, the legal regime for foreign investments is generally equal to that for the investment activities of national (local) investors to the extent particularly indicated in the federal laws. Restrictive exceptions to the foreign investments regime may be introduced only for protection of the constitutional fundamentals of morality, health and other rights of persons, or to ensure state security and defence.

Foreign investors are fully protected against nationalisation or expropriation, unless such an action is mandated by the federal laws. In such cases, foreign investors are entitled to receive compensation for any investment and other losses. However, any affiliated and dependent companies of a commercial organisation with foreign investments shall not enjoy the legal protection, guarantees and privileges established by the Foreign Investments Law.

The Foreign Investments Law provides several guarantees for foreign investors. *Inter alia*, it guarantees the right of foreign investors to:

- a make investments in any forms permitted by the law;
- b acquire private and government securities;
- c take part in privatisations; and
- d acquire land plots, subsoil resources, buildings and other immovable property.

VI OTHER STRATEGIC CONSIDERATIONS

When considering making investments in Russia a foreign investor should also consider the benefits and preferences of setting up a new business in a special economic zone (SEZ), which is a territory within the Russian Federation defined by the Russian government where a special business activity regime is introduced and free customs area may be applied.²⁶

SEZs might be created for different purposes, from development of manufacturing and high-technology industries to facilitation of tourism, creation of sanatorium resort areas, improvement of port and transport infrastructure. For instance, the SEZ in Lipetsk is designated for the attraction of foreign investments in the production of finished metal products, machinery and equipment, vehicles, machines and components, and construction materials, while the SEZ in Alabuga stimulates foreign investment in motor vehicles and components, petrochemicals and construction materials production.

The majority of special economic zones were created under government decrees. However, special economic zones may also be formed in accordance with federal laws; the free economic zone in the territory of Crimea and Sevastopol, which has been created with a term extending until 31 December 2039, is an example of such a zone.²⁷

Except for SEZs, regional development zones (RDZ) may also be created on the territory of the Russian Federation.²⁸ A RDZ is the part of the territory of the region of the Russian Federation where special measures of state support are granted to its residents with the aim of socio-economic development of the region by way of attracting investments. The measures of state support are related to tax benefits and financing of different projects. These zones may be formed only on the territory of definite regions of the Russian Federation, the list of which is established by government decree.²⁹

Moreover, another of the main aims of investment policy of the Russian Federation is currently increasing the investment appeal of the far eastern region. On 29 December 2014,

26 The Federal Law No. 116-FZ dated 22 July 2005 'On Special Economic Zones in the Russian Federation'.

27 The Federal Law 'On the development of Crimean Federal District and Free Economic Zone on the territory of the Republic Crimea and city of federal significance Sevastopol' No. 377-FZ dated 29 November 2014.

28 The Federal Law 'On regional development zones in the Russian Federation and amendments to the separate legal acts of the Russian Federation' No. 392-FZ dated 3 December 2011.

29 The Decree of the Government 'On establishment of the list of the regions of the Russian Federation on the territories of which creation of regional development zones is authorised' No. 326 dated 10 April 2013.

the Federal Law 'On the territories of priority socio-economic development and other measures of state support for regions of the far east' was adopted. Under this law, the 'territories of priority socio-economic development' (Accelerated Zones) are the parts of the territories of the regions of the Russian Federation in which the special regime of carrying out business activity is established with the aim of attracting investments. This law became effective on 30 March 2015 and for three years from this date Accelerated Zones may be created only on the territory of the Russian far eastern region, and on the territories of the 'monotowns' (towns whose economy is dominated by a single industry or company), the list of which is established by order of the government.³⁰ After expiration of this term, Accelerated Zones may be created on the territories of all regions of the Russian Federation, not only on the territories of the Russian Far East.

Russia also takes a number of practical measures for the creation of bodies whose purpose is the development of the investment climate in Russia; for example:

a The Foreign Investment Advisory Council (FIAC). FIAC was established in 1994 as a result of the combined efforts of the Russian government and foreign businesses to improve the investment climate in Russia.

The key task of the council is to assist Russia in forging and promoting a favourable investment climate based on global expertise and the experience of international companies operating in Russia, with a focus on the crucial aspects of fostering a healthy investment climate.

The council is chaired by the Russian Prime Minister and includes 53 international companies and banks, among them 3M Company, ABB Ltd, Abbott Laboratories, Alcoa Inc, AstraZeneca, BASF SE, Bayer AG, BP, BAT, Cargill, Inc, Carlsberg Breweries AS, Deutsche Bank AG, the Coca-Cola Company, Total SA, UniCredit, Unilever, United Technologies Corporation and the World Bank.³¹

b Agency for strategic initiatives: an autonomous non-profit organisation founded by the government of the Russian Federation for the realisation of a package of measures in economic and social spheres, in particular, for the promotion of priority projects, realisation of actions for improvement of the enterprise environment in Russia, the development of professional personnel, etc.³²

c Investment portal of the Russian regions: the aim of the investment portal is to acquaint Russian and foreign businessmen with investment opportunities in the Russian regions and to help choose locations for establishing businesses.³³

VII CURRENT DEVELOPMENTS

Within the defined form and structure of foreign investments legislation in Russia, which has been in existence for over two decades, the legislators' priority now is specification of the rules and compliance with global best practices. The main aim is to make foreign investment easier, to limit administrative barriers and to guarantee a comprehensive and non-discriminatory approach to foreign investor initiatives in Russia.

30 The Order of the Government 'On establishment of the list of monotowns' No. 1398-r dated 29 July 2014.

31 www.fiac.ru/members.php.

32 www.asi.ru/.

33 www.investinregions.ru/en/why-russia/.

According to the FAS and the Government Commission, the number of applications on strategic clearance is constantly increasing. In 2014, 34 applications were considered by the Government Commission, and in 2015 the number of applications grew to 44.³⁴ By the end of the first quarter of 2016, the FAS and the Government Commission had been considering approximately 15 applications. In particular, applications have been received from investors from Japan, the United States, Norway and Cyprus. The total number of applications to be considered by the Government Commission in 2016 is now expected to exceed the total reviewed in 2014–2015.

The most important transactions recently approved by the Government Commission include clearance of the acquisition of shares amounting to €1.808 billion in Severneftegazprom, which is controlled by Gazprom. As Mr Artemiev, the head of the FAS, said: ‘In fact, this company controls 1.1 trillion cubic metres of gas, which is an absolutely mind-boggling amount.’³⁵

In general, the natural monopolies, the companies rendering services in Russian Federation seaports and those carrying out activities in the nuclear industry have been the most popular strategic businesses for foreign investors seeking to become established in Russia in recent years.

34 <http://en.fas.gov.ru/press-center/news/detail.html?id=44615>.

35 http://government.ru/en/dep_news/28431/.

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