

November 14, 2014

Dear Sirs,

We would like to inform you about the recent developments in regulation of the procedures for the foreign investments in companies of strategic importance for national defense and security.

On November 4, 2014 the President of the Russian Federation Vladimir Putin signed the Law “On amendments to the Federal Law “On the Procedures for Foreign Investments in Companies of Strategic Importance for National Defense and Security” and to the certain legislative acts of the Russian Federation” (N 343-FZ).

This law is coming into force on December 6, 2014. Main amendments introduced by the law are described below.

#### **Definition of “control” of foreign investor**

Amendments to the Federal Law “On the Procedures for Foreign Investments in Companies of Strategic Importance for National Defense and Security” N 57-FZ as of April 29, 2008 (hereinafter – the “**Law**”) add one more criterion for companies of strategic importance for national defense and security (hereinafter – “**strategic companies**”) to be under control of foreign investors. A strategic company is recognized being under control of foreign investors if the right to dispose of more than 50% of voting shares (participatory interest) of the company or less than 50% (in case the proportion of number of voting shares provides a foreign investor with possibility to determine decisions taken by the entity) are collectively held by the foreign investors not included in the same group of persons, and herewith, these foreign investors are under control of foreign states, international organizations, organizations that are under control of foreign states or international organizations or these foreign investors are foreign states or international organizations.

#### **Application of the Law to transactions and other acts with a property of strategic companies**

According to the adopted amendments the Law applies not only to transactions with strategic companies but to other acts (for example, reorganization in the form of accession) that lead to acquisition of control over strategic companies.

The Law applies also to strategic companies’ property. Now pre-transaction approval shall be obtained in case a foreign investor acquires the rights of ownership, possession or use of property that relates to fixed production assets of strategic companies and its value exceeds 25% of total value of their assets as of the latest reporting date.

#### **Transactions that do not fall within the scope of the application of the Law**

According to the amendments the Law does not apply to intra-group transactions between foreign investors and strategic companies in case both a foreign investor and a strategic company are controlled by the same natural person or legal entity.

Some other transactions are also excluded from the scope of the application of the Law. Now strategic clearance is not required if purchaser is controlled not only by the Russian Federation or a Russian citizen but also by a constituent entity of the Russian Federation. Amendments also specify that in order this exclusion to be applied only a purchaser shall be under control of the Russian Federation, a constituent entity of the Russian Federation or a Russian citizen.

The Law will not apply to strategic companies using subsoil plots of the federal importance in case a foreign investor has more than 75% of voting shares (participatory interest) of these companies before the transaction has been made.

Amendments also provide that the Law will not apply to transactions with companies using subsoil plots of the federal importance where the Russian Federation has the right to directly or indirectly dispose of more than 50% of voting shares and in case Russia retains this right after the transaction has been completed.

### **Strategic activities**

The introduced amendments provide for exclusion from the list of strategic activities of the activity related to use of agents of infectious diseases by companies mainly involved in food production. This amendment clarifies earlier raised questions on whether companies producing, for example, dairy or bakery products shall be recognized as strategic companies.

At the same time the amendments specify one of the types of the strategic activities – provision of services in the ports of the Russian Federation by an entity listed in the Register of business entities having a market share over 35% of a certain type of commodities or holding a dominant position and at the same time holding a dominant position on this market. Herewith, the Inland Water Transport Code and the Federal Law “On the Sea Ports of the Russian Federation and on amendments to the certain legislative acts of the Russian Federation” are also amended with the provisions determining the definition of an entity holding a dominant position on the market of provision of services in the sea or river ports of the Russian Federation as an entity that has a determined by the antimonopoly authority a market share in the geographical boundaries of a certain sea or river port of more than 20%.

Amendments to the Law also specify requirements of production volumes of editing, publication or foundation of a printed periodical publication in order this activity to be recognized as a strategic one.

### **The term “agreement”**

The Law also specifies the term “agreement” that is now defined as an oral or written agreement aimed at obtaining by foreign investors of a right to exercise control over strategic companies including agreements (oral and written) aimed at:

- exercise of voting rights on general meetings of collective management bodies of strategic companies;
- determining of decisions of management bodies of strategic companies by other means.

Therefore, execution of abovementioned agreements is also subject to strategic clearance.

**Prolongation of a decision on pre-transaction approval**

In case of necessity of prolongation of a decision on pre-transaction approval of a certain transaction an applicant is entitled to send to the authorized body an application with justification of necessity to prolong the term of this decision (with indication of necessary term). Prolongation of a decision on pre-transaction approval or rejection to prolong the term is documented on the basis of the decision of the Governmental Commission for Control over Foreign Investments in the Russian Federation within 3 business days from the date of its adoption.

**Post-transaction notification**

The Law specifies an obligation of a foreign investor (groups of persons) to notify the authorized body on completion of the transaction earlier approved in accordance with the Law.

The aim of this important amendment is to develop the system of monitoring over completed transactions with shares, participatory interests and assets of strategic companies.

**Providing confidential information protected by the law**

Amendments to the Law impose on natural persons and legal entities including registrars of strategic companies an obligation to provide necessary information, including information constituting state, commercial, business secret or other secret information protected by the law, upon the request of the authorized body.

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We hope the information above is helpful for you. For more information on ALRUD Competition practice please visit our **Web-site** or contact directly Senior Partner, Head of ALRUD Competition practice **Vassily Rudomino**, [vrudomino@alrud.ru](mailto:vrudomino@alrud.ru).

Kind regards,  
**ALRUD Law Firm**

*Note: All information was obtained from publicly available sources. The author of this information letter assumes no liability for the consequences of decision-making based on such information.*