
THE FOREIGN INVESTMENT REGULATION REVIEW

SECOND EDITION

EDITOR
BRIAN A FACEY

LAW BUSINESS RESEARCH

THE FOREIGN INVESTMENT REGULATION REVIEW

The Foreign Investment Regulation Review

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This article was first published in The Foreign Investment Regulation Review - Edition

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(published in August 2014 – editor Brian A Facey).

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THE FOREIGN INVESTMENT REGULATION REVIEW

Second Edition

Editor
BRIAN A FACEY

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Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
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www.TheLawReviews.co.uk

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ISBN 978-1-909830-19-6

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ALI BUDIARDJO, NUGROHO, REKSODIPUTRO

ALRUD

AMARCHAND & MANGALDAS & SURESH A SHROFF & CO

AVENT ADVOKAT

BENTSI-ENCHILL, LETSA & ANKOMAH

BLAKE, CASSELS & GRAYDON LLP

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URÍA MENÉNDEZ

VIETNAM INTERNATIONAL LAW FIRM (VILAF)

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EDITOR'S PREFACE

I am pleased to present the second edition of *The Foreign Investment Regulation Review*. Building on the inaugural publication of last year, this edition provides insight into the national regulatory framework for foreign investment review in major jurisdictions around the world, as well as an overview of current trends and developments in this field.

Over the past few years, foreign investment has grown to match levels that were attained during the pre-economic crisis era of the mid-2000s. As national economies continue to recover from the global financial crisis, foreign investment often constitutes a source of capital that is key to promoting and sustaining domestic economic growth. From the perspective of investors, it can represent an important opportunity to expand into new markets or to implement efficiency enhancing improvements to a supply chain. Within this environment, legislators and regulators frequently face the challenge of attracting sufficient capital to develop the local economy while at the same time protecting national interests, including national security.

The diversity among foreign investment regimes reflects the fact that each nation has a unique set of goals and priorities to consider. Some countries, such as China, have recently introduced reforms aimed at attracting greater foreign investment. At the same time, the experience of jurisdictions such as Canada highlights that foreign investment review remains a balancing act between attracting foreign capital and protecting domestic interests in certain sectors of the economy. One common theme across jurisdictions is that foreign investment reviews continue to present complex issues for businesses, regulatory authorities and legal counsel alike.

Both legal practitioners and companies seeking to do business internationally will benefit by familiarising themselves with the regulatory frameworks outlined in this treatise. Of particular importance, this edition provides readers with practical guidance to navigate investments in major jurisdictions by anticipating key timing and substantive issues. We hope that it allows investors and businesses being acquired to better evaluate and manage risks associated with investments that may be subject to foreign investment review, ultimately reducing transaction uncertainty and delay.

This edition contains contributions from leading experts practicing in 23 jurisdictions around the world. I would like to express my gratitude to each author and law firm involved in this project for their commitment of both their expertise and time.

Please note that the views expressed in this book are those of the authors, and not those of their firms, any specific clients, the editor or the publisher.

Brian A Facey

Blake, Cassels & Graydon LLP

Toronto

August 2014

Chapter 17

RUSSIA

*Vassily Rudomino and Ludmila Merzlikina*¹

I INTRODUCTION

Attracting foreign investments has been a government priority 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.

The official statistics maintained by the Russian Federal Statistics Service show that these legislative and administrative developments have stimulated the flow of foreign capital into Russia. In 1995, the amount of foreign investment into Russia was approximately US\$3 billion dollars, which increased to around US\$19 billion dollars in 2000, and the rise in the amount of investment and growth continued until the financial crisis of 2008. Thus, while the amount of foreign investment was about US\$121 billion in 2007, following the crisis the amount of investment dropped to US\$81 billion. In 2012, the amount of foreign investment had increased to around twice as much, constituting US\$154 billion.²

European Union countries, in particular Cyprus, France, Germany and the Netherlands, remain the main investors into Russia's economy and industry. However, the flow of investment from Asian countries, in particular from China, Japan and Korea, is significantly increasing year-on-year.

The development of Russia's 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'

1 Vassily Rudomino is a senior partner and Ludmila Merzlikina is an associate at ALRUD.

2 Information available on the official website of the Russian Federal Statistics Service: www.gks.ru/free_doc/new_site/business/invest/in_inv1.htm.

(Foreign Investments Law).³ 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.

The Federal Law 'On investment activity in the Russian Federation in the form of capital investments' (Capital Investments Law)⁴ regulating the investment activities of both national and foreign companies was also adopted in 1999. Provisions concerning foreign investments are also contained in banking, insurance, currency control, foreign trade and other legislation.

With the increased flow of foreign investments into Russia, it became clear that the process of investment in strategically important sectors of the economy required more precise control by the state authorities. For this purpose, the Federal Law 'On procedures for foreign investments in companies having strategic importance for the national security and defence' (Strategic Investments Law)⁵ was enacted, and a special governmental commission with control over foreign investments (Governmental Commission), chaired by the Prime Minister, was formed.

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

Within the framework of international cooperation, the Russian Federation has concluded more than 60 bilateral investment treaties (BITs) with the governments of various countries. Some of these were concluded during the time of the Soviet Union, such as the BITs with Germany and the Netherlands, which were both signed in 1989. Other BITs have been concluded quite recently, such as the BIT with Indonesia, signed in 2007, and the BIT with the United Arab Emirates, signed in 2010.

The activity of the state authorities is not limited to the adoption of new legislation in the sphere of foreign investments. Under the joint initiative of the government and

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

4 The Federal Law 'On investment activity in the Russian Federation in the form of capital investments' No. 39-FZ dated 25 February 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 the national security and defence' No. 795 dated 27 October 2008.

large multinational companies undertaking business in Russia, the special Consultative Council on Foreign Investment was established in 1994, and currently comprises around 40 foreign companies (mainly from the US, EU and Japan). The main activities of the Consultative Council activity are:

- a* the declaration of developments regarding innovations and high technologies;
- b* the elimination of administrative barriers for business;
- c* the facilitation of banking reforms;
- d* the improvement of tax and currency policies, as well as customs procedures; and
- e* the general promotion of Russia's investment image.

On 22 August 2012, after 19 years of negotiation, Russia finally joined the World Trade Organization (WTO) as its 156th member. Russia's membership of the WTO creates a more favourable climate for foreign investments in the country as a result of changes to the legal system in accordance with the WTO standards (e.g., Russia undertook obligations to lower import duties, limit export duties and grant foreign companies greater access to the national market). Generally, joining the WTO should ensure that Russia is a much more accessible and predictable market for foreign investors.

II FOREIGN INVESTMENT REGIME

The legal rules regulating foreign investment 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, *inter alia*, in the Civil Code of the Russian Federation (Civil Code),⁷ the Federal Law 'On limited liability companies',⁸ the Federal Law 'On joint-stock companies',⁹ the Federal Law 'On the state registration of legal entities and sole proprietors'¹⁰ and the Federal Law 'On the securities market'.¹¹ 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 the antitrust rules contained in the Federal Law 'On protection of competition' (the Competition Law).¹²

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.

7 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).

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

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

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

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

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

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 investors within the territory of Russia. This Law is not applicable to making investments of foreign capital into banks and other credit organisations, insurance companies and non-commercial organisations. These spheres are subject to regulation under the Federal Law 'On banks and banking activities' (Banking Law),¹³ the Law of the Russian Federation 'On the organisation of insurance business in the Russian Federation'¹⁴ and the Federal Law 'On non-commercial organisations'.¹⁵

The second principal law is the Strategic Investments Law, which determines the procedures for making foreign investments in the 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 45 specified types of activity listed therein (including handling nuclear and radioactive materials, and activities in the aviation and space sectors and the natural resources sector); has a licence for conducting such activity (strategic company); or both. According to the latest amendments to the Strategic Investments Law, activities of banks are excluded from the list of strategic importance (except for banks with the participation of the Russian Federation). Since the list of activities stipulated by the Strategic Investments Law is exhaustive, a foreign investor can easily check whether a potential target can be considered as a strategic company.

Any transaction leading to establishment by a foreign investor (or group of persons) of control over a strategic company falls within the scope of regulation of the Strategic Investments Law, and requires the approval of the Governmental Commission. In accordance with the Decree 'On Governmental Commission executing control over foreign investment in the Russian Federation',¹⁶ the state body responsible for monitoring the foreign investments sphere is the Federal Antimonopoly Service (FAS). The Governmental Commission considers submitted notifications on transactions and concludes whether there is a threat to national security and defence. Under the Strategic Investments Law, a threat to national security and defence includes a number of conditions and factors that pose a danger to the vital interests of individuals, society or the state.

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.

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

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

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

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

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

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 companies have limited rights to establish mass media. A foreign company, or a Russian company with a foreign share participation of 50 per cent or more, is not allowed to establish a television or video channel, and may not be a founder of a company broadcasting to an area constituting more than a half of the territory of Russia, an area where more than half of the population of Russia resides, or both.

Acquisition of more than 10 per cent of the fixed assets of a legal entity operating in the sphere of natural monopolies requires clearance from the FAS.¹⁷ In cases of acquisition of more than 10 per cent of the shares (participatory shares) constituting the authorised capital of such legal entity, post-transaction notification is required.

III TYPICAL TRANSACTIONAL STRUCTURES

Generally, there are three legal forms for foreign investment 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 due to the fact that foreign law provides for a wide range of protection mechanisms and remedies. Nevertheless, Russian law has lately become more widely used for JV creation due 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 LLCs 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 the Section IV, *infra*, 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; or
- c* shares, participatory shares or rights in respect of foreign companies or organisations that supplied goods to Russia in an amount exceeding 1 billion roubles during the calendar year preceding the date of execution of the transaction or other action subject to state control.

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

Accordingly, the establishment of a company (including a JV) may require prior approval of the FAS if the shares (participatory shares) of any Russian companies (without regard to the Russian turnover) or foreign companies (the Russian turnover of which exceeds the 1 billion rouble threshold) from the founders' groups are contributed to the authorised capital of a company during its set up process, or fixed productive or intangible assets located or registered in Russia that are held by any of the founders (by the companies from their groups), are transferred to a company during its set up process.

A foreign company that is properly registered in its country of origin may carry on business activity in Russia through a registered branch or representative office. A representative office or a branch of a foreign legal entity is not considered a Russian legal entity, but rather a body representing the interests of a foreign legal entity in Russia.

A representative office is entitled to promote the business and represent and protect the interests of the foreign founder. A branch is a subdivision of a foreign legal entity that may fulfil all or part of the functions of its foreign founder.

Branches must be accredited by the State Registration Chamber of the Russian Ministry of Justice. In the case of representative offices, registering requirements with state authorities may differ depending on the nature of the head office's activity, but registration is typically either with the State Registration Chamber of the Russian Ministry of Justice or the Russian Chamber of Commerce.

According to the latest amendments to the Banking Law, the branches of foreign banks are excluded from the definition of 'Russian banking system'. Thus, opening branches of foreign banks in Russia is currently prohibited. As such, the status of foreign banks' representative offices in Russia is regulated by the Decree of the Bank of Russia 'On the order of establishing and functioning of the foreign bank representative offices',¹⁸ which clarifies that a representative office of a foreign bank may be established for the purposes of consulting with the bank's clients, contacting Russian credit organisations and developing international cooperation.

IV REVIEW PROCEDURE

According to the Foreign Investments Law, foreign investment is the investment of foreign capital in an object of entrepreneurial activity on the territory of the Russian Federation in the form of objects of civil rights owned by the foreign investor, if such objects are not withdrawn from circulation or limited in circulation in Russia in accordance with federal laws, including money, securities (in foreign currency and the currency of the Russian Federation), other property, property rights having monetary value or exclusive rights to intellectual property, as well as services and information. In turn, a foreign investor is defined as:

- a* a foreign legal entity, the civil legal capacity of which is determined under the legislation of the state where it has been instituted, and which is entitled under the legislation of the said state to invest on the territory of the Russian Federation;

18 The Decree of the Bank of Russia 'On the order of establishing and functioning of the foreign bank representative offices' No. 02-437 dated 7 October 1997.

- b* a foreign organisation not being a legal entity, the civil legal capacity of which is determined under the legislation of the state where it has been instituted, and which is entitled under the legislation of the said state to invest on the territory of the Russian Federation;
- c* a foreign citizen whose civil legal capacity and competence is determined under the legislation of the state of his or her citizenship, and who is entitled under the legislation of the said state to invest on the territory of the Russian Federation;
- d* a person without citizenship who permanently resides outside the territory of the Russian Federation, and whose civil legal capacity and competence are determined under the legislation of the state where he or she permanently resides and who is entitled under the legislation of the said state to invest on the territory of the Russian Federation;
- e* an international organisation that is entitled under an international treaty of the Russian Federation to invest on the territory of the Russian Federation; or
- f* a foreign state in compliance with a procedure provided by the federal laws.

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 250 million roubles;
- 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 250 million roubles; or
- c* one of the entities (the acquirer, the target company or any entity from their groups) is recorded in the Register of Companies as having a market share exceeding 35 per cent on the particular commodity market.

For some intra-group transactions, a post-transaction notification may be filed instead of a pre-transaction clearance.

In certain jurisdictions, including Russia, acquisition of strategically important businesses requires a separate clearance by the state authorities. The necessity of such prior clearance may significantly affect the transaction timing, and therefore should be established in advance. Failure to obtain such clearance can have serious negative consequences for the acquirer, from substantial financial sanctions to potential nullification of the transaction based on the petition of the antitrust authority.

Thus, in accordance with the Strategic Investments Law, regulatory approval should be obtained, *inter alia*, in the event that:

- a* as a result of the transaction, a foreign investor (or foreign group of persons) acquires (directly or indirectly) more than 50 per cent (or 25 per cent or more for companies that exploit subsoil resources of federal significance) of the voting shares in the strategic company;

- b* as a result of the transaction, a foreign investor (or foreign group of persons) acquires the right to appoint a chief executive officer, and more than 50 per cent (or 25 per cent or more for companies that exploit subsoil resources of federal significance) of the directors or members of another collegial management body, or both, of the strategic company;
- c* the transaction transfers to a foreign investor (or foreign group of persons) the right to determine decisions of the management bodies of the strategic company, including the right to determine conditions of its business activity;
- d* contracts are concluded regarding the exercising of the functions of the manager (managing organisation) of the strategic company by a foreign investor, or by a commercial organisation or sole proprietor belonging to the same group with a foreign investor;
- e* the transaction is aimed at the acquisition by a foreign state, international organisation or by an organisation controlled by them of the right to dispose (directly or indirectly) of over 25 per cent of the total number of votes of the voting shares constituting the authorised capital of the strategic company, or other ability to block decisions of the management bodies of such company; or the right to dispose (directly or indirectly) of over 5 per cent of the total number of votes of the voting shares constituting the authorised capital of a strategic company that uses a subsoil area of federal importance; and
- f* other transactions aimed at the transfer to a foreign investor (or foreign group of persons) of the right to determine the decisions of the management bodies of the strategic company, including the conditions under which it exercises business activities. Subsequent control is maintained through notification or possession of 5 per cent or more of the shares (participatory shares) constituting the authorised capital of the strategic company.

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 decisions made by managerial bodies of such commercial organisations.

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

An application is submitted to the FAS, which operates as a secretary by checking all the submitted documents, coordinating agencies and preparing a draft for the decision of the Governmental Commission. Altogether, the compliance procedure takes between three to six months from the moment of submitting the application. However, in cases where a foreign state or international organisation acquires over 25 per cent of the total number of the voting shares or participatory shares constituting the authorised capital

of a Russian commercial organisation that is not a strategic company, the application for approval of such transaction is reviewed only by the FAS and is not transferred to the Governmental Commission.

In the event of failure to observe the above-mentioned legal rules, some 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 an 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, depending on the character and gravity of the violation, may be also imposed on the CEO of the acquirer.

If a transaction implemented without FAS clearance may 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.

Moreover, according to the latest amendments to the Code of the Russian Federation on administrative offences,¹⁹ considerable fines have been introduced for failure to obtain preliminary approval or notify the transaction in accordance with the Strategic Investments Law (up to 1 million roubles for legal entities).

The statutory period for consideration of the pre-transaction 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 about 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 an application if it is to be approved in advance in accordance with the Strategic Investments Law prior to the adoption of the decision with respect to such a transaction in accordance with the Competition Law. Moreover, the FAS will refuse to clear a transaction in accordance with the Competition Law if such transaction is not approved in accordance with the Strategic Investments Law.

¹⁹ The Code of the Russian Federation on administrative offences No. 195-FZ dated 30 December 2001.

In carrying out its clearance of transactions, the FAS may request information concerning the market shares of the parties, as well as the transaction's effect on competitors or other persons that may be affected by the conclusion of the transaction. Such requests may be published on the official website of the FAS or the regional offices thereof.

The FAS and its regional offices are authorised to refuse approval for a transaction if it actually or potentially will establish or strengthen a dominant position of the acquirer and his or her group after implementation of the transaction.

Under the Strategic Investments Law, the Governmental Commission is entitled to initiate an expert assessment of the data, which is 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 the 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.

A foreign investor or commercial organisation with foreign investments set up on Russian territory, where the foreign investor owns at least 10 per cent of interest in the authorised capital of an organisation, shall enjoy in full the legal protection, guarantees and privileges established by the Foreign Investments Law while performing the reinvestment. A Russian commercial organisation acquires the status of a commercial organisation with foreign investment from the date when a foreign investor becomes the shareholder thereof. From that moment, the commercial organisation with foreign investments and the foreign investor shall enjoy the legal protection, guarantees and privileges established by the Foreign Investment Law.

Foreign investors are fully protected against nationalisation or expropriation, unless such action is mandated by the federal laws. In such case, 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 a number of 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 of setting up a new business in a special economic zone (SEZ). SEZs are territories within the Russian Federation defined by the government as areas where a special business activity regime has been introduced and where a free customs area may be applicable.²⁰

SEZs can be created for a variety of purposes, including the development of manufacturing and high-technology industries to facilitate tourism, the creation of sanatorium resort areas and the improvement of port and transport infrastructures. For example, one SEZ in Lipetsk is designed to attract foreign investment into the production of finished metal products, machinery and equipment, vehicles, machines and components, and construction materials; another in Alabuga is designed to stimulate foreign investment into motor vehicles and components, petrochemicals and the production of construction materials.

VII CURRENT DEVELOPMENTS

Within the framework of Russia's general legislation, legislation pertaining to investment is continually being reformed and amended to make the legal system more favourable to both local and foreign investors. A number of amendments have recently been introduced in banking regulations, corporate law and other fields of law. Such amendments, along with legislative proposals that will be enacted in the near future, aim to make Russian law more widely used in structuring mergers and acquisitions (M&A) and JV transactions involving Russian partners or assets located in Russia.

A positive trend in the development of the foreign investment legislation is its consistent modification to bring it into line with international norms and practices. During the initial stages of the formation of Russia's foreign investment legislation there was no clear distinction between the regulation of direct and portfolio investments; however, the latest amendments to the Foreign Investments Law and the Capital Investments Law make such distinction between these two types of investments.

Another trend is the gradual convergence of the status of national and foreign investors (subject to certain restrictions imposed on foreign investments in strategic sectors of the economy). Such tendency is in line with the practice of developed countries where all investors are provided with equal legal regimes and guarantees. Notably, on 14 May 2013, the State Duma of the Federal Assembly of Russia approved a bill prepared by the FAS on amendments to the Strategic Investments Law. The bill aims to eliminate administrative barriers and simplify the procedure for considering applications

20 Federal Law 'On special economic zones in the Russian Federation' No. 116-FZ dated 22 July 2005.

from foreign investors, including the provision of a possibility to extend the validity of a previously issued decision on a preliminary approval of the transaction.

Finally, it is intended that the Civil Code will be significantly amended and upgraded at the earliest possible moment, with due consideration of local needs and the experience of other jurisdictions. Certain legal concepts of significant importance for the implementation of M&A and JV transactions, such as option agreements, warranties and negative covenants, will be integrated into the Civil Code, and the respective law enforcement practice in Russia will be developed.

Appendix 1

ABOUT THE AUTHORS

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Vassily Rudomino, senior partner and head of ALRUD's competition and antitrust practice, is a recognised expert in antitrust legislation. He leads one of the largest and most highly ranked antitrust teams in the Russian market, which provides a full range of legal services in the field of Russian competition law. He advises clients on the implementation of both multijurisdictional and domestic projects.

Mr Rudomino actively participates in the preparation of the latest amendments to the Competition Law and the competition authority guidelines within the framework of the activity of the Non-commercial Partnership 'Competition Support Association' in Russia. He is also the chair of the board committee of the Non-commercial Partnership 'Competition Support Association in CIS Countries'.

Mr Rudomino actively participates in international conferences and workshops devoted to antitrust regulation issues in Russia, the CIS and BRICS countries. He is one of the initiators and organisers of the annual Russian conference, Antitrust Regulation in Russia.

LUDMILA MERZLIKINA

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Ludmila Merzlikina is an associate in ALRUD's competition and antitrust practice, specialising in merger control, restrictive agreements and JV establishment. She has managed projects related to clearance by FAS Russia, the governmental commission exercising control over foreign investments, and other state authorities regarding transactions to purchase or transfer the assets or shares (stocks) of companies doing business in Russia (in particular for ALRUD clients including Fiat, Unilever and Thomas Cook). She advises both Russian and foreign clients on compliance with the antitrust regulations and the corporate law requirements within the framework of operating in

Russia, and different aspects of JV establishment. In addition, she takes part in seminars and training sessions for clients regarding antitrust regulation.

Ms Merzlikina is a member of the International Bar Association and the Competition Support Association, which is a non-commercial partnership.

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