

# Client Update

## Amendments to Regulation of Foreign Investments in Strategic Companies

### MOSCOW

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On November 4, 2014 the Russian President signed into being Federal Law No. 343-FZ on Amendments to the Federal Law on Foreign Investment in Commercial Entities with Strategic Importance for National Defense and National Security<sup>1</sup> and Certain Legislative Acts of the Russian Federation (the “**Law**”). This law, which was drafted by the Federal Antimonopoly Service (“**FAS Russia**”), was developed with the following principal objectives in mind: (i) partial liberalization of the existing regulatory framework for foreign investment in companies with strategic importance for national defense and national security (“**strategic companies**”) by removing certain transactions from its scope of application and simplifying the procedure, but also bringing the acquisition of property classified as the fixed production assets of a strategic company under the scope of regulation; and (ii) clarification of particular norms of the Law on Strategic Entities.

The Law will enter into force on December 6, 2014.

Below is a summary of the principal provisions of the Law.

### CHANGES TO THE SCOPE OF APPLICATION OF THE LAW ON STRATEGIC ENTITIES

The following transactions related to strategic companies have been removed from the scope of application of the Law on Strategic Entities:

- transactions in which the purchaser is an organization under the control of a constituent entity of the Russian Federation (this exception was previously applicable only to companies controlled by the Russian Federation);
- transactions in which the foreign investor and the strategic company are

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<sup>1</sup> Federal Law No. 57-FZ dated April 29, 2008 (the “**Law on Strategic Entities**”).

under the control of a single person;

- transactions in respect of companies whose operations involve the use of pathogens of infectious diseases, if their principal business is related to food production;
- transactions in respect of strategic companies using subsoil sites of federal importance, if prior to the consummation of the transaction the foreign investor had the right to directly or indirectly control more than 75% of the total number of votes attributable to the shares/participation interests of the company.

The Law added to the list of transactions requiring prior approval. From December 6, 2014, transactions envisaging the acquisition of right of ownership, possession or use of property classified as the fixed production assets of a strategic company and the value of which represents 25% or more of the balance sheet value of the assets of such company as of the last reporting date will require approval. Such transactions include, *inter alia*, sale-and-purchase agreements, deeds of gift, barter contracts, leases, deeds of trust and gratuitous use agreements.

The Law also sets forth that:

- in addition to transactions, other actions resulting in the establishment of control by a foreign investor over a strategic company also require prior approval;
- the Law on Strategic Entities does not apply to transactions involving strategic companies using subsoil sites of federal importance if the Russian Federation retains the right to directly or indirectly control more than 50% of the total number of votes attributable to the shares/participation interests of such companies after the consummation of such transactions.

#### **EXTENSION OF THE VALIDITY PERIOD OF A DECISION ON THE PRIOR APPROVAL OF A TRANSACTION**

In accordance with Article 11 of the Law on Strategic Entities the validity period of a decision on the prior approval of a transaction is determined by the Governmental Commission on Monitoring Foreign Investments in the Russian Federation on the basis of the applicant's proposal and is set forth in the decision. Previously, if the parties were unable to complete the transaction within such period, they had to apply again for approval of the transaction.

The Law provides that if it is necessary to extend the validity period of a decision on the prior approval of a transaction, the applicant may write to FAS Russia

explaining why the period should be extended and specifying the extension period required. This will not require the provision of any additional documents. The application for extension of the validity period of a decision on the prior approval of a transaction must be approved or rejected in writing to the applicant within three business days of such decision being made.

### OTHER CHANGES

The Law also introduced additions and clarifications to other provisions of the Law on Strategic Entities:

- the concept of an agreement was clarified: an agreement is taken to mean an understanding in written or oral form aimed at the exercise of voting rights in respect of strategic companies at the general meeting of shareholders/participants, board of directors or other collective management body of such company, and at acquiring other means of determining the decisions of the management bodies of such company, including the terms on which it operates its business;
- additions were made to the definitions of certain strategic types of activities: the provision of port services has been identified as a separate type of activity (because it is planned to remove this type of activity from the list of natural monopolies), clarifications have been made to the criteria for the activities of editorial board, publisher and/or founder of a printed periodical publication as they apply to circulation requirements;
- the list of obligations that may be imposed on a foreign investor by the Governmental Commission has been expanded to include the processing in the Russian Federation of aquatic biological resources harvested/caught by a strategic company;
- the duty of foreign investors to notify FAS Russia of the performance of transactions and other actions for which prior approval was received has also been introduced.

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Please do not hesitate to contact us with any questions.