

Client Update

Russia to Increase Control of Foreign Inbound Acquisitions

On 5 July 2017, the Russian Duma adopted a bill (the “Bill”) amending the Federal Law on Foreign Investments in the Russian Federation and the Federal Law on Foreign Investments in Companies of Strategic Importance for the Defense and Security of the State (“Law No. 57”). The Bill:

- extends the range of transactions of foreign investors that are subject to preliminary clearance by the Governmental Commission for Control over Foreign Investments in the Russian Federation (the “Commission”);
- broadens the powers of the Chairman of the Commission by allowing him to request that any transaction of foreign investors be cleared by the Commission;
- broadens the Commission’s powers regarding approval of transactions; and
- imposes additional liability for breach of Law No. 57.

On 12 July 2017, the Federation Council approved the Bill. If the Russian President signs it, it will come into force 10 days after it is issued.

EXTENSION OF THE RANGE OF TRANSACTIONS SUBJECT TO CLEARANCE

According to Article 4 of Law No. 57, the acquisition of control over companies engaged in activities of strategic importance to the defense and security of the state (“strategic activities”) by a foreign investor¹ is subject to preliminary clearance by the Commission. Law No. 57 establishes the list of strategic activities and includes 45 types of businesses that are regarded as strategic.

The Bill extends the range of strategic activities to include:

- shutdown of radioactive waste disposal facilities;

¹ Foreign investors include foreign legal entities, foreign and international organizations, foreign citizens and other non-residents of Russia, and foreign states. Russian citizens that also have other citizenships, and Russian legal entities under the control of foreign investors, are also foreign investors for these purposes.

- expert survey of safety of nuclear facilities and activities in the field of nuclear energy use;
- utilization of nuclear materials and radioactive substances for military purposes;
- production and sale of metals, raw products and materials used for production of weapons and military equipment; and
- operation of electronic tender platforms in accordance with Russian law on state and municipal procurement.

In addition, under the Bill, the Chairman of the Commission may determine that a foreign investor must clear a transaction with the Commission, even if the transaction is not otherwise subject to clearance under Law No 57.

Failure to clear a transaction would lead to its invalidation or deprivation of the foreign investor's voting rights in the Russian company.

EXTENSION OF UNDERTAKINGS THAT CAN BE IMPOSED ON A FOREIGN INVESTOR

When approving a transaction, the Commission can impose certain undertakings on a foreign investor, *e.g.*, to preserve an average number of employees of a company of strategic importance within a certain time period.

The list of such undertakings in the current version of Law No. 57 is exhaustive.² The Bill makes this list open-ended.

LIABILITY FOR FAILURE TO PROVIDE INFORMATION UPON ACQUISITION OF MORE THAN 5% IN A STRATEGIC COMPANY

Under Article 14 of Law No. 57, a foreign investor must notify the Federal Antimonopoly Service ("FAS") upon acquisition of more than 5% of the shares (participatory interest) in a company of strategic importance. Violation of this obligation results in an administrative fine of up to RUB 500,000 (approx. USD 8,392) for legal entities and up to RUB 30,000 (approx. USD 503.5) for company officers.

² Under current law, this list includes: (a) forming governing bodies of a company of strategic importance from among the persons who may have access to a state secret and fulfillment of activities to protect state secrets, in particular, when it is necessary to provide a foreign investor or its officials or employees with access to a state secret or to formalize such access; (b) continuing supply of products by the company under state military procurement; (c) continuing implementation by the company of works aimed at maintaining mobilization capacities; (d) continuing services of the company at the prices established in compliance with the legislation on natural monopolies; (e) implementing the business plan of the company provided by the foreign investor; (f) implementing measures by the company in case of introduction of martial law or state of emergency; (g) preserving the average number of employees within the time period determined by the Commission; (h) processing in Russia minerals extracted by a company of strategic importance that uses a subsoil area of federal importance; or (i) processing in Russia aquatic biological resources procured (caught) by the company of strategic importance.

The Bill provides additional sanctions for the failure to provide notice: the foreign investor will lose its voting rights in a general shareholders' (participants) meeting, and the foreign investor's votes will not be counted in either calculating a quorum or voting results at the meeting. This loss of voting power will remain in effect until the foreign investor receives a confirmation from FAS that it has complied in full with the notification requirement.

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Please do not hesitate to contact us with any questions.

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