

# Client Update

## New Prohibitions and Restrictions Imposed on Offshore Companies Acquiring Russian Assets

On 1 July 2017, a new law<sup>1</sup> imposed additional limitations on the ability of offshore companies and entities under their control<sup>2</sup> (“offshore companies”) to acquire strategic entities and privatized state and municipal property. Acquisition of a strategic company by an offshore company is now subject to the same requirements as its acquisition by a foreign state or international organization. The prohibitions and restrictions apply to offshore companies, including offshore structures of investment funds, controlled by a foreign citizen or a Russian citizen with dual citizenship and/or who is not a Russian tax resident.

### PROHIBITIONS

Starting from 1 July 2017, offshore companies:

- cannot establish control over strategic companies by (among other things) acquiring more than 25% of the voting rights in strategic subsoil users<sup>3</sup> or more than 50% of the voting power in other strategic companies;
- cannot acquire a strategic company’s production-related assets exceeding 25% of the total balance sheet value of its assets as of the last reporting date; and
- cannot acquire state or municipal property.

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<sup>1</sup> Federal Law No. 155-FZ on Amendments to Article 5 of the Federal Law on Privatization of State and Municipal Property and the Federal Law on Foreign Investments in Companies of Strategic Importance for the Defense and Security of the State dated 1 July 2017 (“Law No. 155-FZ”).

<sup>2</sup> Under Law No. 155-FZ, an offshore company is a legal entity incorporated in a state or territory that grants preferential tax treatment and/or does not require disclosure and provision of information on financial operations, as set forth on a list. The list is approved by the Order of the Ministry of Finance of the Russian Federation No. 108n dated 13 November 2007 and includes more than 40 jurisdictions, including the British Virgin Islands, Cayman Islands, Liechtenstein, Hong Kong, etc.

<sup>3</sup> A strategic company that exploits a subsoil deposit of federal importance.

Voting rights held directly or indirectly by unrelated offshore companies (as well as voting rights held by foreign states and international organizations) are aggregated for purposes of determining whether control has been established over a strategic company.

## **RESTRICTIONS**

In addition to the general prohibition described above, starting from 1 July 2017, offshore companies must obtain the prior consent of the Governmental Commission for Control over Foreign Investments in the Russian Federation for transactions resulting in:

- in respect of strategic subsoil users: the direct or indirect acquisition of more than 5% of the voting rights in a strategic subsoil user; or
- in respect of other strategic companies: the direct or indirect acquisition of more than 25% of the voting rights in a strategic company or the ability to block the decisions of its governing bodies.

These prohibitions and restrictions do not apply to relationships created before 1 July 2017.

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Please do not hesitate to contact us with any questions.

### **MOSCOW**

Alan V. Kartashkin  
akartashkin@debevoise.com

Natalia A. Drebezhina  
nadrebezhina@debevoise.com

Alyona N. Kucher  
ankucher@debevoise.com

Anna V. Maximenko  
avmaximenko@debevoise.com

Maxim A. Kuleshov  
makuleshov@debevoise.com

Elena Klutchareva  
emklutchareva@debevoise.com