

# Client Update

## Proposed Changes to Russian Foreign Investments Laws

The State Duma is currently considering a draft law prepared by the Russian Ministry of Economic Development that would exclude foreign companies controlled by Russian persons from the list of foreign investors that can benefit from incentives available under Russian foreign investments laws (the “Bill”). The Bill was adopted in the first reading on 22 February 2018. The Federal Antimonopoly Service is expected to propose changes to the Bill to amend the rules on the acquisition of “strategic companies” by offshore companies.

### “FOREIGN INVESTOR” DEFINITION NARROWED FOR THE PURPOSES OF FOREIGN INVESTMENTS LAW

Investments legislation provides for certain investment incentives for foreign investors, such as customs or tax privileges. The Federal Law on Foreign Investments in the Russian Federation No. 160-FZ, dated 9 July 1999 currently allows foreign companies controlled by Russian persons to use investment incentives available to, and intended for, foreign investors. To prevent this, the Bill proposes excluding the following persons from the definition of “foreign investor” for purposes of that law:

- foreign legal entities controlled by a Russian citizen and/or a Russian legal entity;
- foreign unincorporated organisations controlled by a Russian citizen and/or a Russian legal entity; and
- foreign citizens who are also Russian citizens.

The Bill introduces quite broad criteria of “control” by a Russian person that includes instances when a Russian person directly or indirectly holds less than 50% of the voting rights of a foreign entity, but, given the distribution of votes, is entitled to direct the decisions of that foreign entity.

In addition, the Bill clarifies that foreign capital investment by a foreign investor must be “direct and independent.” The explanatory note to the Bill states that this clarification is aimed at preventing Russian entities or citizens from using investment incentives if they structure their investments in Russia through trusts.

**AMENDMENTS REGARDING THE RULES ON THE ACQUISITION OF “STRATEGIC COMPANIES” BY OFFSHORE COMPANIES**

The current wording of the Bill does not address the existing procedure for governmental clearance of the acquisition by foreign investors of Russian “strategic companies.” The Federal Antimonopoly Service has commented that it plans to propose amendments to the Bill to lift certain limitations imposed on offshore companies with respect to the acquisition of Russian “strategic companies.”

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Please do not hesitate to contact us with any questions.

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