

# Acquisition of Russian Strategic Companies: New Rules for Foreign Investors

June 13, 2018

On June 12, 2018, Federal Law No. 122-FZ dated May 31, 2018 (the “Law”) became effective, significantly changing the regulatory regime for acquisition of Russian strategic companies by foreign investors.

The Law:

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- repeals certain prohibitions or restrictions on the acquisition of control over Russian strategic companies by offshore companies<sup>1</sup> and introduces prohibitions and restrictions for non-disclosing investors (as defined below);
- changes the approach to the determination of aggregate control over a strategic company;
- enhances the authority of the Federal Antimonopoly Service of the Russian Federation (“FAS Russia”) and
- withdraws benefits afforded to foreign investors from offshore companies owned by Russian citizens.

**Prohibitions and restrictions for non-disclosing investors.** Previously, investors from certain offshore jurisdictions such as Jersey, Guernsey, British Virgin Islands, among others, were effectively barred from acquiring control over strategic companies and needed strategic investments clearance for acquisition of certain minority positions regardless of the ultimate ownership of these offshore companies (in many cases, Russian nationals). The Law removes this requirement and treats all offshore and foreign jurisdictions equally by imposing restrictions on non-disclosing foreign investors.

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<sup>1</sup> The respective prohibitions and restrictions were discussed in detail in our Client Update of July 18, 2017 available [here](#).

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Pursuant to the Law, a non-disclosing investor is an investor that does not provide information on its beneficiaries, beneficial owners or controlling persons to FAS Russia regardless of the jurisdiction of its incorporation.

The beneficiaries and beneficial owners are defined in the Russian laws on combatting money laundering and financing of terrorism.<sup>2</sup> The controlling persons are determined pursuant to the criteria of control set forth by the Law on Strategic Companies.

The Government of the Russian Federation will stipulate the regulations on disclosure of information on beneficiaries, beneficial owners and controlling persons of foreign entities. In cases where it is not apparent that the transaction involves acquisition of control over a strategic company, the foreign investor can disclose its beneficiaries in a request for clarification as to whether the transaction requires a strategic clearance.

Non-disclosing investors are barred from obtaining control over a strategic company (in particular, from acquiring 25% or more of the total votes in strategic subsoil users or more than 50% of total votes in other strategic companies) or acquiring fixed production assets of a strategic company the value of which represents 25% or more of the balance sheet value of the assets of such strategic company as of the last reporting date.

In addition to prohibiting acquiring control over strategic companies, non-disclosing investors must receive preliminary approval of the Governmental Commission for Control over Foreign Investments in the Russian Federation for acquisition of:

- the right to directly or indirectly dispose of more than 5% of the total votes in a strategic subsoil user, or
- the right to directly or indirectly dispose of more than 25% of the total votes in another strategic company or other options for blocking the decisions of its corporate bodies.

**Aggregate control.** The Law also amends the rules for calculating aggregate shares of non-disclosing investors not belonging to the same group of persons. Previously, the Law on Strategic Investments required that shares of all offshore companies be aggregated for determination of control over a strategic company even if such offshore companies did not fall within the same group of persons. Practically, it leads to situations where an offshore company could not buy, for example, 2% of votes in a

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<sup>2</sup> A beneficiary is a person for whose benefit a client commits transactions with monetary and other assets, in particular, on the basis of an agency agreement, a commission agreement or a trust management agreement; a beneficial owner is an individual who ultimately, directly or indirectly (through a third party), owns/has a majority shareholding of more than 25% in the capital of a legal entity or has the ability to control its actions (Article 3 of Federal Law No. 115-FZ on Money Laundering and Financing of Terrorism dated August 7, 2001).

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strategic subsoil user, if other offshore companies already held more than 23% of votes in the same strategic subsoil user.

The Law provides that the aggregate control rule will not apply to calculation of shares of foreign investors that are shareholders of a public company within the meaning of Article 11 of the Russian Tax Code.<sup>3</sup> Therefore, in determining whether such foreign investors have control over a strategic company, only the votes owned by their group of persons will be taken into account.

**Applicability of foreign investor benefits.** Entities controlled by Russian persons or foreign nationals who are also Russian citizens are no longer considered foreign investors and may not claim any benefits granted by the laws on foreign investments.<sup>4</sup>

**Authority of FAS Russia.** The Law authorises FAS Russia to provide guidance on the application of the Law on Strategic Companies. This is a new provision that was not in the previous version of the Law on Strategic Companies.

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Please do not hesitate to contact us with any questions.

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<sup>3</sup> The public companies are Russian and foreign entities that are issuers of securities (or depositary receipts representing such securities) listed and/or admitted to trading on Moscow Exchange or Saint-Petersburg Exchange or exchanges included in the list of foreign financial intermediaries. This list is approved by Instruction No. 4393-U of the Bank of Russia dated May 30, 2017 and includes, inter alia, the London Stock Exchange, the New York Stock Exchange and the Hong Kong Stock Exchange.

<sup>4</sup> This provision was discussed in detail in our Client Update of April 16, 2018 available [here](#).

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