

Significant Informational Resources – Restrictions for Foreign Shareholders and Other Amendments

August 5, 2019

On July 26, 2019, the Russian State Duma registered the Bill¹ on amendments to the Information Law² and the Personal Data Law.³ The proposed amendments introduce a regulatory framework for the designation of websites, webpages, informational systems and/or computer programs as “significant informational resources” (“SIRs”). The amendments also prohibit direct foreign ownership of SIRs and restrict direct or indirect foreign shareholding in an owner of a SIR. The adoption of the Bill may materially affect the business of Russian Internet companies with foreign shareholders.

The proposed amendments, if adopted, are expected to come into force on January 1, 2020.⁴

We set out an overview of the main provisions of the Bill below.

SIGNIFICANT INFORMATIONAL RESOURCES — NEW CONCEPT IN RUSSIAN LAW

The Bill states that a special commission of the Russian Government (the “Commission”) may, at Roskomnadzor’s⁵ suggestion, designate websites, webpages, informational systems and/or computer programs that can be used by their owners to collect information about users in Russia as “significant informational resources” (SIRs), *i.e.*, informational resources which are significant for the development of information

¹ The record form and the text of bill No. 763517-7 on Amendments to the Federal Law on Information, Information Technologies and Protection of Information and Article 18 of the Federal Law on Personal Data (the “Bill”) are available at <https://sozd.duma.gov.ru/bill/763517-7>.

² Federal Law No. 149-FZ on Information, Information Technologies and Protection of Information dated July 27, 2006 (the “Information Law”).

³ Federal Law No. 152-FZ on Personal Data dated July 27, 2006 (the “Personal Data Law”).

⁴ In order to be adopted as a federal law, the Bill must pass three readings in the Russian State Duma, get approval from the Russian Federal Council, be signed by the Russian President and officially published. Public authorities and business representatives disapproved the current version of the Bill. According to public sources, the Bill’s author mentioned that the Bill may be significantly revised.

⁵ The Federal Service for Oversight of Communications, Information Technologies and Mass Media (“Roskomnadzor”).

and communication infrastructure and technologies for data processing in Russia. In preparing its suggestions, Roskomnadzor would consider the number of users of a resource, the volume and scope of information stored and the anticipated effects of its operation on the development of the information and communication infrastructure and technologies for data processing in Russia.

The Russian Government shall adopt the regulation on the Commission, its composition, decision-making procedures and procedures for the notification of owners of websites and/or other resources of the Commission's decisions.

A SIR owner which receives a notice that its resource has been designated as a SIR (a "SIR Designation Notice")⁶ will be required, within two months from the date of receipt of such SIR Designation Notice, to provide Roskomnadzor with documents evidencing its compliance with the requirements relating to the ownership, management and control of the SIR.⁷

REQUIREMENTS APPLICABLE TO SIR OWNERS

Restrictions

Pursuant to the Bill, only Russian citizens or Russian legal entities may own SIRs. Further, unless otherwise provided for in an international treaty to which Russia is a party, the following persons (each, a "Foreign Shareholder") and/or their affiliates may not, as a general rule, individually or collectively, own, manage and/or control, directly or indirectly, more than 20% of shares in a SIR owner:

- a foreign state, an international organization and/or any organization under their control;
- a foreign legal entity;
- a Russian legal entity with foreign participation of more than 20%; and/or
- a foreign citizen and/or a stateless person.

The Commission may, upon a grounded request by a SIR owner, permit a higher threshold of foreign participation in the SIR.

⁶ The Russian Government shall adopt procedures for such notification.

⁷ The Russian Government shall adopt a list of such documents.

Consequences of Failure to Comply

Foreign Shareholders who own, manage and/or control more than 20% of shares in a SIR owner, without having obtained the Commission's permission in respect of a higher threshold, will only be allowed to vote in respect of no more than 20% of shares in the SIR owner, and the rest of such Foreign Shareholders' stake in the SIR owner shall carry no voting power and would not be counted for the purposes of a quorum. Any transaction that violates this restriction shall be void.

Further, pursuant to the Bill, if a SIR owner fails to comply with the requirements as to ownership, management and/or control of the SIR, Roskomnadzor shall be notifying the Commission accordingly and the Commission shall designate such SIR owner as a person who is in violation of the respective requirements. No such designation may be made earlier than six months from the date the SIR owner received the SIR Designation Notice. Following such designation:

- any advertising of the SIR itself and/or services provided through the SIR would be prohibited; and
- the SIR owner would be prohibited from using the SIR for targeted advertising towards consumers in Russia through the Internet.

INFORMATION ABOUT USERS IN RUSSIA

Pursuant to the Bill:

- in order to protect the Russian internal market, develop the national economy and support Russian producers, the Russian Government may, at the Commission's suggestion, impose restrictions on the use of a SIR for the purposes of collecting and processing information about users in Russia;
- information, and access to such information, about users in Russia collected through a SIR shall not, without the Commission's prior consent, be provided to foreign legal entities, Russian legal entities with the foreign participation of more than 20%, foreign citizens and/or stateless persons; and
- databases comprising a part of a SIR used for the processing of personal data may not be located outside of Russia.

OTHER AMENDMENTS

Pursuant to the Bill:

- Roskomnadzor shall publish, on its official website, the list of the SIRs and the list of the SIRs whose owners were designated as persons who are in violation of the requirements as to ownership, management and/or control of the SIR; and
- the relevant hardware of the SIRs must be located in Russia, and the SIRs owners shall, within three months of receiving a SIR Designation Notice, ensure compliance with such requirement and notify Roskomnadzor accordingly.

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Please do not hesitate to contact us with any questions.

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