

Federal Law No. 57-FZ, “On Procedures for Making Foreign Investments in Commercial Entities of Strategic Importance for Defense Support and National Security” (Strategic Investments Law), dated April 29, 2008, establishes procedures and limitations applicable to non-Russian entities seeking to acquire equity in, or *control* of, Russia-based companies conducting business of national strategic importance (Strategic Companies). Any approvals required under the Strategic Investments Law are in addition to approvals that may be required under Federal Law No. 135-F3, “On the Protection of Competition” (see Quick Reference Guide No. 1).

Strategic Companies

Strategic Companies are companies that engage in business activities identified to be of national strategic importance. The Strategic Investments Law identifies 42 such fields of business, which can be broadly categorized as defense; nuclear power; handling, processing and disposal of nuclear and radioactive materials; aerospace; handling of infectious agents; mass media; cryptology; telecommunications of significant scale (excluding Internet services); and “natural monopolies” (except providing publicly accessible telecommunications, postal, electric and heat energy services). In addition, Strategic Companies include those that perform geological subsoil exploration, mineral prospecting or mining operations on subsoil plots of federal importance (Strategic Companies Using Subsoil). The types of subsoil plots that are considered to be of federal importance are listed in the Federal Law “On Subsoil Use” No. 2395-I, dated February 21, 1992 (as amended), but generally include subsoil plots containing (i) hydrocarbons and rare or precious minerals with identified reserves exceeding certain defined thresholds and (ii) any resources located in the territorial sea waters and continental shelf of Russia in addition to certain defense and security lands. The Federal Subsoil Agency is required to prepare, maintain and make publicly available a list of the subsoil plots that are of federal importance.

Foreign Investors

Foreign investors are of two types: (1) foreign states, international organizations and entities controlled by them (public investors) and (2) companies incorporated outside Russia (private investors). A foreign investor may be either one person or a “group of entities.” (See Quick Reference Guide No. 1 regarding the definition of group entities.)

Notion of Control

Control over Strategic Companies, excluding Strategic Companies Using Subsoil, is defined as:

- The power to dispose of more than 50 percent of the voting equity interests in a strategic company;
- The right to determine the decisions of a Strategic Company including the terms and conditions of performance of the company’s activities (including when a foreign investor has less than 50 percent of the equity interests in a Strategic Company but actually may determine decisions of the Strategic Company based on contract or otherwise, and may include extensive veto rights that one may find in a shareholders’ agreement);
- The right to appoint the sole executive body of a Strategic Company, or more than 50 percent of the collegial executive body, board of directors or any other management body of a Strategic Company; or
- Acting as the management company for a Strategic Company.

Control over Strategic Companies Using Subsoil is defined identically, with the exception that the 50-percent thresholds are reduced to 10 percent.

Transactions Subject to Preliminary Approval

The following transactions of public investors are subject to preliminary approval:

- Acquisition, directly or indirectly, of more than 25 percent of the voting equity interest in a Strategic Company, or acquisition of the right to block

decisions of executive bodies of the Strategic Company; and

- Any acquisition, directly or indirectly, resulting in the ownership of more than 5 percent of the voting equity interest in Strategic Companies Using Subsoil.

Public investors are absolutely prohibited from acquiring control over Strategic Companies.

The following transactions of private investors are subject to preliminary approval:

- Acquisition, directly or indirectly, of 10 percent or more of the voting equity interest in a Strategic Company Using Subsoil, or the right to appoint the sole executive body or to elect 10 percent or more of the members of the board of directors or collegial management body of such a Strategic Company Using Subsoil;
- Acquisition of additional equity interests in a Strategic Company Using Subsoil if the private investor may dispose, either directly or indirectly, of 10 percent or more of votes provided by equity interests in such a Strategic Company Using Subsoil;
- Acquisition, directly or indirectly, of more than 50 percent of the voting equity interest in a Strategic Company, or acquisition of the right to appoint sole executive body or to elect more than 50 percent of the members of the board of directors or collegial management body of a Strategic Company;
- Conclusion of management agreements between a Strategic Company and a private investor or any person of the private investor's group; and
- All other actions aimed to provide foreign investors or foreign groups of entities with rights to determine decisions taken by management bodies of a Strategic Company.

Cases for Which No Approval is Required

No approval is required under the Strategic Investments Law if a foreign investor directly or indirectly controlled more than 50 percent of the voting equity interests in a Strategic Company before the intended transaction, or when a Strategic Company Using Subsoil is more than 50-percent owned (or more than 50-percent controlled, directly or indirectly) by Russia. The provisions of the Strategic Investments Law do not apply to those legal relations regarding foreign investments regulated by other Russian federal laws and international treaties of Russia.

Transactions Subject to Notification and Post-Approval

Acquisition of 5 percent or more of the equity interests (including nonvoting equity interests) in a Strategic Company by a foreign investor is subject to notification. If a foreign

investor acquires control over a Strategic Company through a share buyout by a Strategic Company, share conversion or other means provided by Russian law, the foreign investor must seek approval within three months after the acquisition of control.

Approval Process

The Federal Antimonopoly Service (FAS) processes all approval applications in conjunction with the Governmental Commission on Control Over Procedures for Foreign Investments in Russia, headed by the Prime Minister of Russia (Commission). FAS and the Commission must respond to applications within three months of submission, but in exceptional cases the Commission may extend the period of review for another three months.

Consequences of Making a Transaction Without Approval

Foreign investments into Strategic Companies concluded without prior approval are deemed void. FAS also may sue to have a foreign investor dispossessed of its voting rights and revoke past shareholder and board resolutions of the Strategic Company.

Caveat

This Guideline is intended only to provide a general overview of the issues covered. Interpretation and application of the Strategic Investments Law may involve complex legal issues and sensitive political questions. Accordingly, legal advice should be obtained with respect to your unique facts.

For More Information

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The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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