

Russia Amends Foreign Investment Rules

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Strategic Enterprises Law

In July 2017, the Russian Strategic Enterprises Law¹ (SEL) was amended to provide that the rules that restrict the acquisition of certain interests in Russian strategic enterprises² by a foreign state or international organization (or persons controlled by them) were extended to apply to any investor incorporated in an offshore jurisdiction or controlled through an offshore entity.

Effective June 12, 2018, the concept of “offshore investors” has been removed from the SEL. The rules that previously applied to offshore investors will now apply to foreign legal entities and foreign unincorporated organizations (Foreign Investors) that do not disclose to the Federal Antimonopoly Service of Russia their controlling persons, beneficiaries (those individuals for whose benefit the Foreign Investor acts) and beneficial owners (those individuals who, directly or indirectly, have an interest of more than 25 percent in the Foreign Investor or have the ability to control the Foreign Investor’s decisions).

The following restrictions therefore depend on whether the Foreign Investor is willing to make such a disclosure:

- Any acquisition by a Foreign Investor of “control” of a Russian strategic enterprise (generally, more than 50 percent of the voting rights of a Russian strategic enterprise, or 25 percent or more in the case of a subsoil user):
 - is prohibited for any Foreign Investor that does not make such a disclosure; or
 - requires the prior approval of the Russian government under the SEL in the case of any Foreign Investor that does make such a disclosure.
- Any acquisition by a Foreign Investor of more than 25 percent of the voting rights of a Russian strategic enterprise (or more than 5 percent in the case of a subsoil user), but less than “control”:
 - requires the prior approval of the Russian government under the SEL for any Foreign Investor that does not make such a disclosure; or
 - is permitted and requires no prior approval of the Russian government under the SEL in the case of any Foreign Investor that does make such a disclosure.

Foreign Investment Law

In July 2017, the Russian Foreign Investment Law³ was amended to permit the Russian government to review any transaction entered into by a foreign investor with respect to any Russian legal entity, if this review is needed for the purpose of ensuring national defense and state security. At that time, the term “foreign investor” for the purposes of the Russian government’s review of such transactions was expressly extended to apply to Russian nationals with dual citizenship and organizations — including those incorporated in Russia — that are controlled by foreign investors.

¹ Federal Law No. 57-FZ “On the Procedure for Implementing Foreign Investment in Commercial Enterprises Having Strategic Importance for Securing National Defense and Security of the State,” dated April 29, 2008, as amended.

² A Russian strategic enterprise is a commercial enterprise incorporated in Russia that conducts any activity having strategic importance for securing national defense and the security of the state as set out in the SEL.

³ Federal Law No. 160-FZ “On Foreign Investments in the Russian Federation,” dated July 9, 1999, as amended.

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While such a review regime is still applicable to this category of foreign investors in accordance with the procedure set out in the SEL, starting on June 12, 2018, the following persons will not comprise a “foreign investor” for the purposes of the guarantees and protections provided for all foreign investors under the Russian Foreign Investment Law:

- a foreign legal entity controlled by a Russian citizen and/or by a Russian legal entity;
- a foreign unincorporated organization that is controlled by a Russian citizen and/or by a Russian legal entity; and
- a foreign citizen who also has Russian citizenship.

Notably, the term “foreign investment” has changed to include only those investments made by a foreign investor “directly and on its own.” It appears that this amendment has been designed to make the guarantees and protections provided under the Russian Foreign Investment Law inapplicable to those investors that fall into any of the categories listed above.