The Russian Federation State Duma is adopting two draft laws at the same time amending the Strategic Investments Law.\(^1\) Contrary to the statements by Federal Antimonopoly Service representatives about “selective improvement” of the legislation on foreign investments,\(^2\) the adoption of the draft laws will result in major changes in the system of mechanisms for state regulation of foreign investments in the Russian Federation, and also in additional restrictions for some foreign investors. We will point out the basic provisions of those new acts.

- The first set of amendments, which entered into force on 1 July 2017,\(^3\) and which, according to the explanatory note to the draft law, is aimed at implementing the policy of deoffshorization of the Russian economy, considerably limits the range of entities have the right to establish control over “strategic” companies.\(^4\) For example, the ban on transactions resulting in the establishment of control over “strategic” companies now applies not only to foreign states and international organizations and the organizations under their control, but also to offshore companies and companies under their control. The term “offshore companies” introduced by the amendments includes in this category legal entities incorporated in states or in territories providing preferential tax treatment and/or not requiring disclosure and submission of information when conducting financial transactions.
  
  The list of such states and territories is approved by the Ministry of Finance of the Russian Federation\(^5\) and currently includes, \textit{inter alia}, such states and territories as the Commonwealth of The Bahamas, the British Virgin Islands, the Hong Kong Special Administrative Region (Xianggang), the United Arab Emirates, the Cayman Islands, the Republic of Seychelles and others.

  In addition, the thresholds for the percentage of votes acquired by offshore companies and organizations under their control in the charter capitals of “strategic” companies requiring prior approval have been decreased to the level of the limits imposed on foreign state investors.\(^6\)

  Considering that the definition of “control” means, \textit{inter alia}, the right directly or indirectly to exercise a certain number of votes in the charter capital of a “strategic” company, the amendments have led to a ban on a number of transactions conducted not only by offshore companies themselves, but also by companies (including Russian ones) that are under their control. Furthermore, the ban on establishing control may be interpreted as applying also in those cases where the ultimate beneficiary is not a state investor but a private investor, and the offshore company acts merely as a link in the chain of ownership.

  Due primarily to the global prevalence of offshore companies in the ownership structures of different groups, these restrictions will require foreign investors to structure future transactions so as to ensure the ability to make the necessary amount of investment into Russian “strategic” companies in light of the ban on offshore companies establishing control over such companies. The law does not apply to relations that arose before it entered into force.

- The second set of amendments to the Strategic Investments Law was adopted by the State Duma on 5 July 2017.\(^7\)
Arguably, both sets of amendments to the Strategic Investments Law are a manifestation of the process of strengthening state control over foreign investment in Russian business entities as a whole and in “strategic” ones. What is more, RF citizens holding other citizenship and Russian organizations controlled by foreign investors will be considered foreign investors.

- The draft law proposes to set forth the Governmental Commission’s powers to determine any obligations to be imposed on a foreign investor as a condition for prior approval of a transaction which it considers necessary to ensure national defense and state security. We note that, although the list of such obligations in the current version of the Strategic Investments Law is exhaustive, even now foreign investors themselves can propose to the Governmental Commission obligations that are not on the list and which they are prepared to undertake to complete transactions, and include them in the respective agreement signed with FAS.

- The wording of some types of activity of strategic significance for national defense and state security has been updated, and new types have also been added, such as “engaging in activity by a business entity that is the operator of an electronic trading platform in accordance with Russian Federation legislation on the contract system in the procurement of goods, work and services for state and municipal needs.” In addition, the approach according to which holding a license is not a mandatory condition for a company to be deemed “strategic” is now enshrined in law. Now for this it is enough that there be “other permitting documents” to engage in that type of activity.

- Within 90 days after the amendments enter into force foreign investors will be required to submit information on their holding of 5 and more percent of shares (interests) constituting the charter capital of “strategic” companies incorporated in the Republic of Crimea or the federal city of Sevastopol.

- Now, in addition to the already existing fines, for failure to comply with the requirement for foreign investors to file notices of their acquisition of 5 percent and more of votes in the charter capitals of “strategic” companies, and of the completion of pre-approved transactions and of holding 5 and more percent of shares (interests) in “strategic” companies incorporated in Crimea or Sevastopol, the Strategic Investments Law will provide for consequences in the form of depriving the foreign investor of the right to vote at a general meeting of the company through a court further to a claim by FAS, until the foreign investor property fulfills the obligation to file the notice, as confirmed by the service.

Arguably, both sets of amendments to the Strategic Investments Law are a manifestation of the process of strengthening state control over foreign investment in Russian business entities as a whole and in “strategic” ones in particular.

It appears that a particularly important new development is the introduction of the ban on transactions resulting in the establishment of control over “strategic” companies by offshore companies and companies controlled by them, as today almost every foreign acquirer is directly or indirectly controlled by an offshore company at some level of shareholding. Therefore, despite the trend toward deoffshorization that has long been taking shape, it seems this change will seriously affect the structuring of transactions for “strategic” companies.


2. See the speech by Andrey Yunak, head of FAS Russia’s Department for Control over Foreign Investments


4. Article 2(2) of the Strategic Investments Law.

5. See Order No. 108n of the Ministry of Finance of Russia on Approval of the List of Countries and Territories That Provide a Preferential
Tax Regime and/or Do Not Require the Disclosure and Submission of Information When Conducting Financial Transactions (Offshore Zones) of 13 November 2007.

6. Article 2(3) of the Strategic Investments Law.


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