In July 2017 Russian legislation regulating foreign investments was modified through two sets of amendments. The first set of amendments relates to limitations of so-called “offshore companies” when investing in Russian strategic companies and participating in the privatisation of Russian state assets. The second set of amendments extended the application of the Law “On Foreign Investments” to Russian certain entities, which means that the Governmental Commission for Control over Foreign Investments (“Governmental Commission”) will have wider control over investments made in “strategic companies”. Please find below a more detailed summary of the amendments.

1. RULES FOR “OFFSHORE COMPANIES”

On 1 July 2017 the following amendments to the Law “On Foreign Investments in Strategic Companies” and the Privatisation Law were adopted and entered into force with immediate effect:

- Investments made by so-called “offshore companies” in Russian strategic companies are now treated the same way as foreign states or international organisations that invest in Russian strategic companies, meaning that such investments are subject to stricter rules. Before the amendments, investments through “offshore companies” in strategic companies were not specifically regulated and subject to the ordinary foreign strategic investment control mechanism applicable to any other foreign investor.

- “Offshore companies” are companies registered in particular jurisdictions or offshore zones, a list of which has been approved by the Ministry of Finance of the Russian Federation. At present, offshore zones include 40 territories, including the British Virgin Islands, the United Arab Emirates, the Principality of Monaco, Gibraltar, the Special Administrative District of Hong Kong (Xianggang) and others. Typical foreign holding jurisdictions for Russian investments, such as Cyprus, Luxembourg or the Netherlands, are not included on the list and therefore companies incorporated in these jurisdictions are not considered “offshore companies”.

- Restrictions in relation to offshore companies also extend to companies controlled by offshore companies, including Russian companies.
The following restrictions for “offshore companies” have been introduced with the recent legislative amendments:

1. an unconditional prohibition on “offshore companies” (and entities controlled by an “offshore company”) acquiring more than 50% of the shares in a strategic company or otherwise acquiring control over a strategic company;

2. an unconditional prohibition on “offshore companies” (and on entities controlled by an “offshore company”) acquiring 25% or more of the shares in a strategic mining company operating subsoil plots of federal importance (“Subsoil User”);

3. an unconditional prohibition on “offshore companies” (and on entities controlled by an “offshore company”) acquiring 25% or more of the book value of the main production assets of a strategic company;

4. “offshore companies” (or entities controlled by an offshore company or a group of persons which includes an offshore company) will no longer be able to act as buyers of state-owned or municipally-owned property;

5. the acquisition by an “offshore company” (or an entity controlled by an “offshore company”) of more than 25% of the shares in a strategic company now requires approval by the Governmental Commission (the same applies to the acquisition of other rights to block decisions of strategic companies);

6. the acquisition by an “offshore company” (or an entity controlled by an “offshore company”) of more than 5% of the shares in a strategic company that is a Subsoil User now requires approval by the Governmental Commission (the same applies to the acquisition of other rights to block the decisions of strategic Subsoil User companies).

These rules do not extend to transactions of “offshore companies” (save for item 4 above) where the beneficial owner is a citizen and a tax resident of the Russian Federation, or where the Russian Federation itself or its constituent entity is the ultimate owner of the “offshore entity”.

2. TIGHTER RULES FOR INVESTMENTS IN STRATEGIC COMPANIES

On 18 July the following changes were made to the Law “On Foreign Investments” and the Law “On Foreign Investments in Strategic Companies”, which entered into effect on 30 July 2017:

- The Chairman of the Governmental Commission may now require the prior approval of a transaction in relation to any Russian company (not just companies that are qualified as “strategic”) in the manner prescribed for approving transactions in relation to strategic companies. It is not yet clear when and in which instances the Chairman of the Governmental Commission will require such prior approval.

- The Governmental Commission may now impose on a foreign investor any obligations as a condition for the approval of a strategic transaction. Previously there was an exhaustive list of measures defined in the law, but in practice foreign investors could themselves propose measures that were not on the list and have them included in an agreement signed with the Federal Antimonopoly Service (“FAS”).

- The following new activity has been added to the list of strategically important activities, meaning that a foreign investment in a company performing such activity will now be subject to the Law “On Foreign Investments in Strategic Companies”: “being the operator of an electronic trading platform in accordance with the laws of the Russian Federation for the procurement of goods, work and services for state and municipal needs”.

- Citizens of the Russian Federation who also have another citizenship are deemed foreign investors and therefore subject to the same regulations that apply to foreign investors.

- If a foreign investor fails to provide FAS with information on the acquisition of five or more percent of the votes in a strategic company, a court order may be issued that such investor will be disqualified from the right to vote at the strategic company’s general meeting. This disqualification supplements the existing
sanction for failing to give notice – a fine of up to RUB500,000.

- By the end of October 2017 foreign investors must notify FAS if they hold five or more percent of the voting shares in a strategic company registered in Crimea or Sevastopol.

3. INTERESTING FACTS

In June 2017 FAS announced that in the nine years of the application of the Law “On Foreign Investments in Strategic Companies”, 465 petitions were submitted, 221 of which were considered by the Governmental Commission, and in 13 cases the approval of the transaction was refused.¹

Footnotes:


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