

# ClientInsight

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## Special Update on Foreign Investments and Strategic Investments in Russia

### Foreign Investments and Strategic Investments in Russia

**On 16 November 2011, the President of the Russian Federation signed Federal Law No. 322-FZ to amend the Foreign Investments Law (Federal Law No. 160-FZ of 9 July 1999) and the Strategic Investments Law (Federal Law No. 57-FZ of 29 April 2008).**

The amendments are aimed at removing excessive administrative barriers to foreign investors and improving the investment climate in Russia. Generally, the amendments limit the scope of transactions of foreign investors which are subject to approval by the Government Commission on Control over Foreign Investments in the Russian Federation (the "Commission"), as well as at facilitating the procedure for obtaining such approvals in certain cases.

The amendments will definitely help to simplify the regulation of foreign investments; however, some amendments would still require a position of the regulatory authorities to be formed and the relevant court practice to be developed.

### 1. Transactions involving International Financial Organizations (IFOs)

Pursuant to the amendments, IFOs established under agreements to which Russia is a party or IFOs having international treaties with the Russian Federation shall be exempt from obtaining approval from the Commission for their transactions. A list of exempted IFOs will be approved by the Russian Government. Supposedly, it will include such major IFOs as the European Bank for Reconstruction and Development and the International Finance Corporation.

The exemption will significantly facilitate investments made by IFOs in both strategic and non-strategic Russian entities.

### 2. Transactions by entities controlled by the Russian Federation or Russian citizens

In accordance with the amendments, provisions of the Strategic Investments Law shall no longer apply to transactions between entities controlled by the Russian Federation or Russian citizens (provided that such citizens do not have double citizenship and are Russian tax residents).

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This long-awaited amendment will remove excessive regulatory barriers to Russian investors' transactions and in general significantly reduce the number of transactions subject to approval by the Commission.

Application of this new provision in practice will, however, require that a definite position on its interpretation be formulated by the regulatory authorities. In particular, at the moment it is not clear from the literal interpretation of the new provision whether it applies exclusively to transactions in which both parties are controlled by the Russian Federation or Russian citizens or it may also apply to transactions in which the counterparty of a Russian investor is a foreign entity.

### 3. A different concept of "control" with respect to strategic subsoil users

The amendments increase the threshold for establishing "control" over a company of strategic importance using a subsoil area of federal significance (a strategic subsoil user). The thresholds (number of votes attached to voting shares (participatory interests) in a company's equity capital and/or number of members in the board of directors or in another joint governing body) evidencing "control" have been increased from 10% to 25%.

This amendment will allow to significantly reduce the regulatory barriers to private foreign investors, as they will be able to purchase without the Commission's approval, in particular, up to 25% of the voting shares (participatory interests) in subsoil users (instead of the former 10%). It will also allow to expand the potential for investments made by foreign "state" investors (i.e., investors being or controlled by foreign states or international organizations), which are generally prohibited from acquiring control over Russian strategic companies.

The amendments also explicitly exempt acquisitions of shares (participatory interests) of strategic subsoil users from the requirement to obtain Commission approval, if a foreign investor's share in a company is not increased as a result of such transaction (e.g., in the event of an additional issue of shares).

### 4. Exceptions to the list of strategic activities

According to the amendments the following activities shall **no longer** be considered strategic:

- operation of radiation sources by business entities in the civilian sector of the economy for which this is not a core business (i.e., companies engaged in the manufacture/use of X-ray medical apparatus, dental equipment, flaw detectors, and luggage inspection devices); and
- distribution and maintenance of cryptographic devices and services for data encryption delivered by banks (other than banks involving an equity interest held by the Russian Federation).

Therefore, transactions involving companies engaged in the above activities no longer fall under the Strategic Investments Law and shall not be subject to approval by the Commission.

Contrary to expectations, activities related to the use of hazard group IV infectious agents have not been dropped from the list of strategic activities. Therefore transactions involving companies engaged in such activities (i.e., cheese-making and dairy mills, bread-baking complexes and confectioneries) are, as before, subject to obtaining approval from the Commission.

### 5. Simplified procedure for obtaining Commission approval of transactions requiring an agreement with the investor

Pursuant to the Strategic Investments Law, the Commission may approve a transaction on condition that certain obligations are to be imposed on a foreign investor with respect to post-transactional activities of a strategic company (such as retention of a number of its employees within a specified term, or performance of its business-plan, in particular, the making of certain investments). Such obligations are listed in an agreement entered into between an investor and FAS (acting as the competent authority in the sphere of foreign investments).

Pursuant to the amendments, the procedure for obtaining Commission approvals for such transactions will be simplified. Thus, once the Commission approves a transaction on condition of the conclusion of such agreement, FAS will then issue a written approval (or refusal to approve, if the agreement is not concluded) without further involvement of the Commission.

*The amendments are to come into force on 18 December 2011.*