



## **Changes to the Procedure Governing Foreign Investments in the Russian Federation**

**1<sup>st</sup> of November, 2011** the State Duma of the Russian Federation adopted in a third reading draft Law No. 503176-5 “On Amendments to Article 6 of the Federal Law “*On Foreign Investments in the Russian Federation*” and to the Federal Law “*On the Procedure for Performing Foreign Investments in Businesses that Have a Strategic Importance for the Defense of the Country and Security of the State*” (“**Amendment Law**”).

The Federation Council’s approval, with a subsequent signing of the Amendment Law by the President of the Russian Federation and its official publication can be expected soon. The Amendment Law will enter into force within 30 days of its publication.

Background: The permission of the Government Commission is required to carry out transactions that allow foreign investors or a group of entities control businesses of strategic importance. Transactions without the corresponding preliminary approval are deemed null and void. The Federal Antimonopoly Service (FAS) has to be notified of any transaction relating to the acquisition of over 5% interests in the charter capital of a business of strategic importance.

Now, the following transactions will no longer be subject to the requirements of the Law “*On the Procedure for Performing Foreign Investments in Businesses that Have a Strategic Importance for the Defense of the Country and Security of the State*” (“**Strategic Sectors Law**”):

- transactions involving the participation of international financial institutions, established in accordance with international treaties or with which the Russian Federation has concluded international treaties (The list of said organizations is approved by the Government of the Russian Federation separately);

- transactions between organizations under the control of the Russian Federation or citizens of the Russian Federation that are tax residents of the Russian Federation. This exemption does not apply to Russian citizens with dual nationality;

- transactions involving the acquisition of shares (interests in charter capitals) of businesses that have strategic importance and use federal subsoil plots, if, as a result of said transaction, the foreign investor or group of persons acquires the right:

a) to dispose of, directly or indirectly, up to 25% of the interests in the charter capital of the business;

b) to appoint up to 25% of the collegial executive body of the business or the unconditional ability to elect

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up to 25% of the board of directors (supervisory board) or other collegial management body of said business. Consequently, the threshold was increased from 10% to 25%.

The amendments also clarify that an increase in the charter capital of strategic businesses that use federal subsoil plots, which does not result in an increase in the interest of the foreign investor in the company's charter capital, does not require the preliminary approval of the authorities.

Activities involving the operation of radioactive sources by enterprises in the civilian sector of the economy, for which such activities do not constitute their core business, have been deleted from the list of strategic types of activities.

Activities related to the use of encryption tags remain strategic. However, the exercise of such activities by banks is no longer deemed strategic, if the Russian Federation holds no shares/participation interest in the charter capital of such a bank. Consequently, the already existing practice has been formalized in legislation.

Initially, there had been plans to withdraw activities related to the use of infectious agents of a low hazard level, e.g. dairy businesses or soft drinks production, from the list of strategic types of activity. However, the draft law adopted in the third reading no longer contains corresponding provisions.

The remaining provisions of the draft law affect primarily procedural issues. They clarify the decision-making procedure regarding the preliminary approval of a transaction by the Governmental Commission or a transaction involving the acquisition of control, subject to the existence of an agreement with the applicant that it will discharge specific obligations. Moreover, some of the previous powers of the Federal Security Service have been transferred to the Ministry of Defense.

The AEB welcomes the recent changes in the foreign investment legislation and the opportunity it was given to cooperate with the FAS and other involved federal officials in the course of working on these changes. The increase of the threshold from a 10% to 25% participation in businesses that have strategic importance and use federal subsoil plots will certainly help to stimulate the investment climate in this sphere.

Some issues addressed by the AEB aimed to shorten and simplify the application procedure in time and volume of information to be provided by foreign investors, as well as regarding liberalization of other strategic sectors, remain yet unsolved. We will continue monitoring the further practical implementation of the Strategic Sectors Law and court practice in this sphere and continue our long-standing cooperation with our partners in FAS and other ministries.

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