



Information enclosed

New regulations on disclosing information on ultimate beneficiaries

New regulations governing the method for disclosing information before the conclusion of transactions in relation to strategic companies have been implemented

On 13 December 2018, Order of the Government No. 1456 dated 1 December 2018 (the "Regulations") entered into force, which establish regulations for disclosing information concerning beneficiaries, beneficial owners and controlling entities (the "Beneficiaries") when applying Federal Law No. 57-FZ On Foreign Investments in Business Entities having Strategic Significance for Ensuring the Defence of the Country and the Safety of the State dated 29 April 2008 (the "Law").

The Regulations provide clarity in relation to the requirements for foreign investors that intend to make investments in Russian strategic companies. The Regulations establish the procedure and scope of the disclosure of information concerning the Beneficiaries to the Federal Antitrust Service of Russia (FAS). In addition, the norms established by the Regulations are applicable when forming the set of documents and information in the framework of a post-transaction notification.

Applicable restrictions

In May 2018, the Law was amended in relation to the obligation of foreign investors intending to conclude a transaction in relation to Russian companies that have a strategic significant to disclose information on the Beneficiaries. In particular, without providing such information, the foreign investors could not acquire the following without preliminary approval:

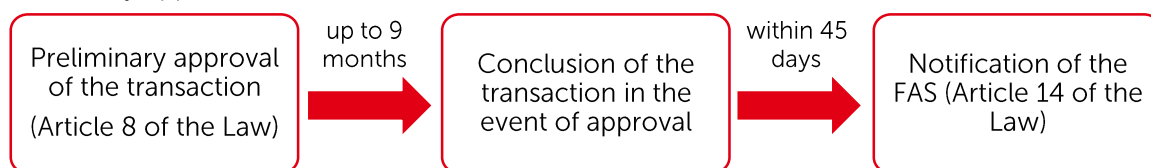
- more than 25% of the total number of voting shares (interests) in a strategic company
- more than 5% of the total number of voting shares (interests) in a company that is engaged in geological exploration or the extraction of mineral resources on subsoil plots of federal significance
- the rights to block the decisions of the governing bodies of a strategic company

In accordance with the previous version, restrictions were imposed only upon offshore companies that were registered in jurisdictions established by the Government in a special list. However, these restrictions now apply to all foreign investors that have not disclosed information concerning their Beneficiaries to the FAS.

Options for complying with the requirements

In practice, this means that to conclude a number of transactions that do not require preliminary approval under Article 7 of the Law, a foreign investor is required to provide the FAS with information on the Beneficiaries prior to the transaction. For example, to conclude an intragroup transaction concerning the acquisition of 10% of a Russian company that carries out geological exploration on a plot of federal significance, the foreign investor has two options for complying with the Law.

Preliminary approval



Preliminary disclosure and subsequent notification



The second option appears to be the more optimal way from the point of view of time and procedural expenses. Therefore, the legislator is clearly motivating foreign investors that are looking to invest in strategic Russian businesses to use the procedure of preliminarily disclosing the information concerning the Beneficiaries.



Procedure and scope

The Regulations were adopted in accordance with Article 2.2 of the Law, which itself was introduced in May 2018. Pursuant to its provision, information on the Beneficiaries is to be provided in a free-form document or in a form of a request on necessity to clear the transaction (Article 8 (6) of the Law).

According to the Regulations, foreign investors have to disclose information on the Beneficiaries and the grounds on which they have such status in relation to the investor. In the framework of this disclosure, the investor must provide the FAS with the following information and documents concerning the Beneficiaries.

Business entities

- ✓ Name
- ✓ Registered and actual address
- ✓ Documents that confirm the registration and/or creation of the Beneficiary

Individuals

- ✓ Full name
- ✓ Place of residence
- ✓ Identification documents
- ✓ Information on citizenship, including information on the existence of Russian citizenship and the status as a tax citizen of the Russian Federation

- ✓ Taxpayer Identification Number (INN) or any other taxpayer code
- ✓ The Beneficiary's primary types of business
- ✓ Contact details
- ✓ The number of the investor's shares (interests) that the Beneficiary or any other entity (in the Beneficiary's interests) possesses, uses and/or manages
- ✓ Grounds of the investor being under the control of the Beneficiary or any other entities
- ✓ Documents that confirm the status of the Beneficiary (surety agreements, commission agreements, simple partnership agreements or any other agreements) with an indication of the term of validity

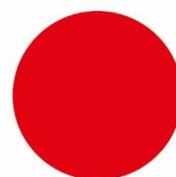
Investor fulfils the procedure established in the Law if they provide the necessary information and documents 30 days prior to the conclusion of the transaction. It is presumed that within this time nothing should change in relation to the ownership structure and status of the Beneficiaries.

Public companies and investment funds

The Regulations confirmed the approach that has developed in practice, according to which if a foreign investor and/or the foreign investor's Beneficiaries are public companies (listed on Russian or foreign stock exchanges) or investment funds, then the information concerning them may be reported by referencing websites on which the official and open information that confirms such status is contained.

Notification

Together with the Regulations, Order No. 1457 dated 1 December 2018 was adopted, which extends the requirements of the Regulations to the procedure for providing post-transaction notifications under Article 14 of the Law. As a result, when submitting such notifications, the scope of the documents and information that the investor must submit together with the notification within 45 days after the conclusion of the transaction in relation to a strategic Russian company must comply with the Regulations.



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