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Simplifying control over foreign investments in Russian strategic enterprises

The Federal Law on amendments to the article 6 of the Federal Law "On Foreign Investments in Russian Federation" and the Federal Law "On the Procedure of Foreign Investments in Companies Having Strategic Significance for the Preservation of National Defense and State Security" (hereinafter – the "Law") was passed in the second reading by the State Duma on 1 November 2011. The Law simplifies the control procedure over foreign investments into the Russian strategic enterprises.

Introduced amendments change several criteria, used for identification of either foreign investor's or group of persons' control over company, having strategic significance. Thus the minimum interest of foreign investor in such Russian companies, defined as an interest granting corporate control, was increased from 10 to 25 percent. The minimum interest of foreign investor in oil-and-gas and mining companies (which transactions are subject to preliminary consent) was increased equally as well.

Furthermore, a series of activities were excluded from the range of activities, having significant importance for the preservation of national defense and state security, namely activities on:

- exploitation of radiation sources by companies in the civil economy sector, for which it is not a basic kind of activity;
- the activity of banks in which charter capital the Russian Federation has no participation, which (activity) is connected with distribution and maintenance of encryption tools and rendering services in the sphere of data encryption.

The Law excludes the requirement on preliminary consent of several transactions, in which international finance organizations take participation. The list of such international finance organizations should be affirmed by the Russian Government. A transaction made by foreign investor or by group of entities on share purchase of legal entity (which has the strategic importance and uses land plot of federal level) can be an example of such excluded transaction if the amount of share of such foreign investor or group of entities in the charter capital of legal entity wouldn't increased.

According to other amendments introduced by the Law, the coordinating procedure of transactions subject to preliminary consent was specified as well. In particular, terms of several procedures were increased which influence on the whole term of decision making process with regards to application on approval of transaction. The Ministry of Defense like the Federal Security Service will also take part in such procedures.

The Law also imposes a series of norms, specifying the procedure of petition examination and decision making by Governmental Committee of Control over foreign investments in Russian Federation.

In general, The Law aims to clarify the previously uncertain exact legal provision, as well as to remove some existing barriers to foreign investors for investing in strategic legal entities in Russia.