

Russia Media Ownership: A Changing Landscape

On 26 September 2014 the State Duma, the lower chamber of the Russian Parliament, adopted in the second and (final) third reading the draft bill No. 604509-6 ("**Amendment**") which provides for far-reaching amendments to the Federal Law "On Mass Media" of 1991 ("**Mass Media Law**"). The Amendment deals with a set of restrictions on foreign ownership over Russian media businesses which seem capable of significantly changing the foundations of the media sector as it currently exists.

In this note we summarise the main provisions of the Amendment with a view to helping clients to understand what the Amendment may mean for their business in Russia and what, if any, steps may have to be taken in order to comply with the Amendment once it becomes effective on 1 January 2016.

Debate and political dimension

Restrictions on foreign ownership of Russian mass media are not a completely new idea. The current Mass Media Law sets out restrictions on foreign ownership which were first introduced in 2001. In 2011 the restrictions were significantly tightened, requiring that broadcasting companies, including television and radio channels, must be under majority control by a Russian shareholder. Yet those restrictions were much less severe than the restrictions envisaged in the Amendment, as they appear to have restricted only direct ownership in such Russian companies and not ultimate ownership structures. At that time, the introduction of the restrictions led to several foreign owners divesting themselves of their

Russian businesses, such as Lagardère's disposal of its Europa Media Group radio business to a group of Russian investors at the end of 2011.

Since 2011 there have been various proposals to expand the restrictions on foreign ownership of Russian media assets, but none has progressed as far in the legislative stage. This has changed with the Amendment, which was adopted a mere two weeks after the bill was first tabled in September 2014.

The Amendment is viewed by many journalists and media experts as part of Russia's reaction to the sanctions imposed by Western governments in connection with the Ukraine crisis. It has also been speculated that the Amendment primarily targets a small number of foreign-held businesses such as the daily business newspaper

Vedomosti and *Forbes* magazine. However, the scope of the Amendment extends to all mass media.

Legislative process

The Amendment was submitted by a group of members of the State Duma and was officially registered on 17 September 2014. It was adopted in the first reading on Tuesday, 23 September, and in the second and third (final) reading on Friday of the same week, 26 September 2014.

The entire legislative process in the State Duma took only nine days, with the second and third readings lasting no more than ten minutes. In total, 430 members of the State Duma voted for the Amendment, with only 2 members casting their votes against the initiative.

The Amendment still needs to be approved by the Federation Council, which is the upper chamber of the Russian Parliament, and must then be signed into law by the Russian President. However, these are expected to be formalities that should be completed in the next few weeks.

Restrictions

The restrictions introduced by the Amendment can be summarised as follows:

Foreigners (as explained below) are prohibited:

- (a) from acting as a founder or shareholder of a mass media organisation;
- (b) from acting as the editorial board of a mass media organisation;
- (c) from acting as an entity that carries out broadcasting;
- (d) from owning, managing or controlling (directly or indirectly) more than 20% of the participatory interests/shares in the charter capital of (i) a mass media organisation, or (ii) an entity acting as the editorial board of a mass media organisation, or (iii) an entity carrying out broadcasting; and
- (e) from otherwise controlling a founder (shareholder) of a mass media organisation, indirect shareholders of a mass media organisation, or the editorial board of a mass media organisation.

The term "mass media organisation" is broadly defined and applies to any media business. There have been attempts by sector associations to convince the State Duma deputies to narrow the scope of the Amendment

to only political media such as daily newspapers, and not to entertainment, children's, sports, music and lifestyle magazines. However, these requests were not reflected in the Amendment. The restrictions will therefore apply to (i) any publication of whatever nature; (ii) all television and radio broadcasting, including via cable and satellite; and (iii) all online media (if duly registered as mass media with the Russian regulators).

The only exemption is where international treaties ratified by the Russian Federation specifically state otherwise. However, in practice this affects only certain Russian-language television and radio channels that broadcast in Russia, Belarus and a number of other jurisdictions and is not of practical relevance for the media businesses of foreign private investors.

Definition of "Foreigner"

The Amendment contains a definition of the term "Foreigner" which, however, varies slightly depending on the specific restriction of those listed above.

For restriction (d) above (i.e. the 'ownership restriction'), a **Foreigner** is

- a foreign state, an international organisation, or an entity under their control;
- a foreign legal entity;
- a Russian legal entity with foreign participation of **more than 20%**;
- a foreign citizen;
- a stateless person; or
- a Russian citizen who also holds a foreign citizenship.

The wording of all the other restrictions does not include a threshold of "more than 20%". Technically, this means that a mass media company as well as its direct

shareholders must be 100%-owned by Russian entities and persons. Only in a chain of indirect shareholders is foreign ownership permitted up to a limit of 20%.

It is worth pointing out that the foreign ownership threshold of 20% is calculated based on the aggregate percentage of all shareholdings held by Foreigners.

"Control" is defined very broadly in the Amendment in order to avoid loopholes to circumvent the restrictions. The term includes control via representation in management bodies, by contractual means, *de facto* control, etc.

Transition period

The Amendment will come into force on 1 January 2016 and the restrictions will then apply with immediate effect.

Mass media businesses must bring their corporate structures into line with the Amendment by 1 February 2016, and confirmation of such compliance must be filed with the state authorities by 15 February 2016.

A longer period – until 1 January 2017 – applies where Foreigners are ultimately owned by Russian beneficiaries that have a stake of at least 80% in such Foreigners, provided that such ownership has been reported to and confirmed by the state authorities by 1 February 2016.

Next steps

The Amendment does not contain any guidance as to how companies can bring existing corporate structures into compliance with the proposed restrictions. The Amendment is also silent as to any other exceptions, nor does it provide other guidance on the

precise scope or application of the restrictions.

Given the current political climate, it seems unlikely that the Amendment will be rejected or its restrictions eased before it enters into force in 2016. However, it is expected that there will be pressure from several foreign governments in countries where large media groups that have Russian operations are headquartered. In particular, legal disputes may arise as to whether the Amendment violates bilateral treaties on the protection of investments, several of which were ratified by the USSR and various European states, including Germany and Finland, at the end of the 1980s and are still in force. Moreover, recent experience shows that various ad-hoc laws and regulations that have been quickly enacted in Russia over the past six months have subsequently been amended or their implementation has been postponed. Against this background, the last word on foreign ownership in Russian media companies may not yet have been uttered.

However, should the Amendment remain as it is, it is expected that various foreign groups will be forced to consider selling their entire Russian operations to a Russian-controlled group or person (this could be a full or partial sale) or, alternatively, closing down such operations completely.

That said, there are various alternatives that companies may be able to consider depending on the specific circumstances of their operations. The brainstorming on possible solutions is only about to begin, but the following models are likely to be part of the discussions:

- **Management buy-out:** Some companies will consider selling

their Russian businesses to the existing management of the Russian media business, assuming such management consists of Russian nationals. The 'independent' Russian-controlled businesses will then enter into contractual arrangements with the foreign groups to which they previously belonged. From a legal perspective this will raise numerous issues, given that the foreign group will surrender control over the Russian business, which will then act in the manner of a third party provider. However, generally it appears that current intra-group arrangements should be able to be restructured into third party arrangements with regard to IP licences, marketing, provision of content, etc.. Furthermore, a certain level of influence can be preserved by continuing to hold a shareholding of up to 20% indirectly in the Russian media entity.

- **Separation of editorial and broadcasting business:** Various companies will consider ways of separating their editorial and broadcasting units from all other business operations. In this model, editorial decision-making and broadcasting will be carved out into a Russian-controlled standalone legal entity, while all other production and commercial operations will remain where they are and under foreign control. Models of this type have been developed in Kazakhstan, where similar restrictions have been in place since the adoption of the Law of the Republic of Kazakhstan "On Mass Media" in 1999.

- **Transfer abroad:** Various companies will consider ways to transfer their businesses out of Russia and provide services to Russian customers from abroad. Partially this may mean a move to online media or satellite services. From a legal perspective, this again raises a number of issues with regard to registration and licensing requirements, access to customers, etc., which will have to be considered.
- **Advertising model:** There have been suggestions that some companies may consider turning their publications into advertising bulletins. However, it seems doubtful that such an approach would put them beyond the scope of the restrictions. Also, such a model would hardly be feasible for large multinational corporations.

We hope that the above outline of the recent legislative changes to media ownership in Russia is of use. Please do not hesitate to contact us should you wish to discuss any of the above in more detail.

Authors



Torsten Syrbe
Partner

T: +7 495 725 6400
E: torsten.syrbe
@cliffordchance.com



Nicholas Rees
Partner

T: +7 495 258 5090
E: nicholas.rees
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Ul. Gasheka 6, 125047 Moscow, Russia
© Clifford Chance 2014
Clifford Chance CIS Limited

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.