A LEGAL OVERVIEW OF FOREIGN INVESTMENT IN RUSSIA'S "STRATEGIC" SECTORS

This note intends to achieve three things:

First and foremost, it provides a detailed overview of Russia's regulatory regime governing foreign investment in so-called "strategic" sectors of the Russian economy. It discusses the scope of application, approval procedure, exemptions, case law and transactional tips, and contains flowcharts for ease of use.

Secondly, it highlights draft amendments that will likely be adopted in the course of 2020. These amendments are designed to close certain loopholes. They do not, however, substantially change the existing regime.

Finally, this note attempts to provide a brief outlook on the impact that the COVID-19 pandemic is likely to have on future legislative amendments and the practical application of the foreign investment regime.

Key issues

- Scope of the Strategic Investment Law
- Special regime for the subsoil sector
- Additional requirements applicable to Public Foreign Investors
- Procedure for obtaining approval
- Merger control issues
- Notable case law
- Case studies
- Flowcharts
- Upcoming amendments
- COVID-19 and its potential consequences

BACKGROUND

On the face of it, strategic sectors appear to make up only a small fraction of Russia's economy. But in practice many transactions prove to involve a "strategic" element. Investors must, therefore, be aware of the various legal and practical issues before structuring the acquisition of a stake in or assets of a Russian company that operates in a strategic sector of the economy or in other potentially sensitive sectors.

The strategic investment regime is primarily regulated by Federal Law No. 57-FZ On the Procedure for Making Foreign Investments in Companies of Strategic Importance for National Defence and State Security, dated 29 April 2008 (the "**Strategic Investment Law**"). The Strategic Investment Law consolidated into a single legal regime the previously applicable rules governing foreign investment in various Russian strategic industries and established a procedure for granting foreign investors access to such industries.

Broadly speaking, the strategic industries include natural resources, media, defence, natural monopolies, as well as ports, airports and other sensitive infrastructure.

When the regime was first introduced, various issues were identified and intensely debated in the business and legal community. Subsequent amendments to the Strategic Investment Law clarified some, though not

nearly all, of these issues. Russian case law and official regulatory guidance also emerged which helped to clarify the scope of application of the Strategic Investment Law, but also contributed to new uncertainties as to how the statutory requirements should be interpreted.

In December 2011, amendments were adopted excluding certain transactions and activities from the scope of the Strategic Investment Law. In particular, the controlling stake threshold for Subsoil Strategic Entities (as defined below) was increased from 10% to 25%, and certain activities were removed from the list of activities of strategic importance, specifically encryption and cryptographic activities performed by privately owned banks, and the use of radiation sources as an ancillary activity by companies in the civilian sector (e.g., use of x-ray equipment by healthcare companies). Under the amendments, the requirement that foreign investors obtain prior approval of an additional share issue by a Subsoil Strategic Entity was abolished in cases where the share issue does not lead to any increase in the foreign investor's shareholding in the relevant entity.

In February 2014, following a terrorist attack at Domodedovo Airport in Moscow, activities related to security assessment and surveillance of infrastructure and means of transportation were included on the list of activities of strategic importance.

The Strategic Investment Law was further amended in November 2014:

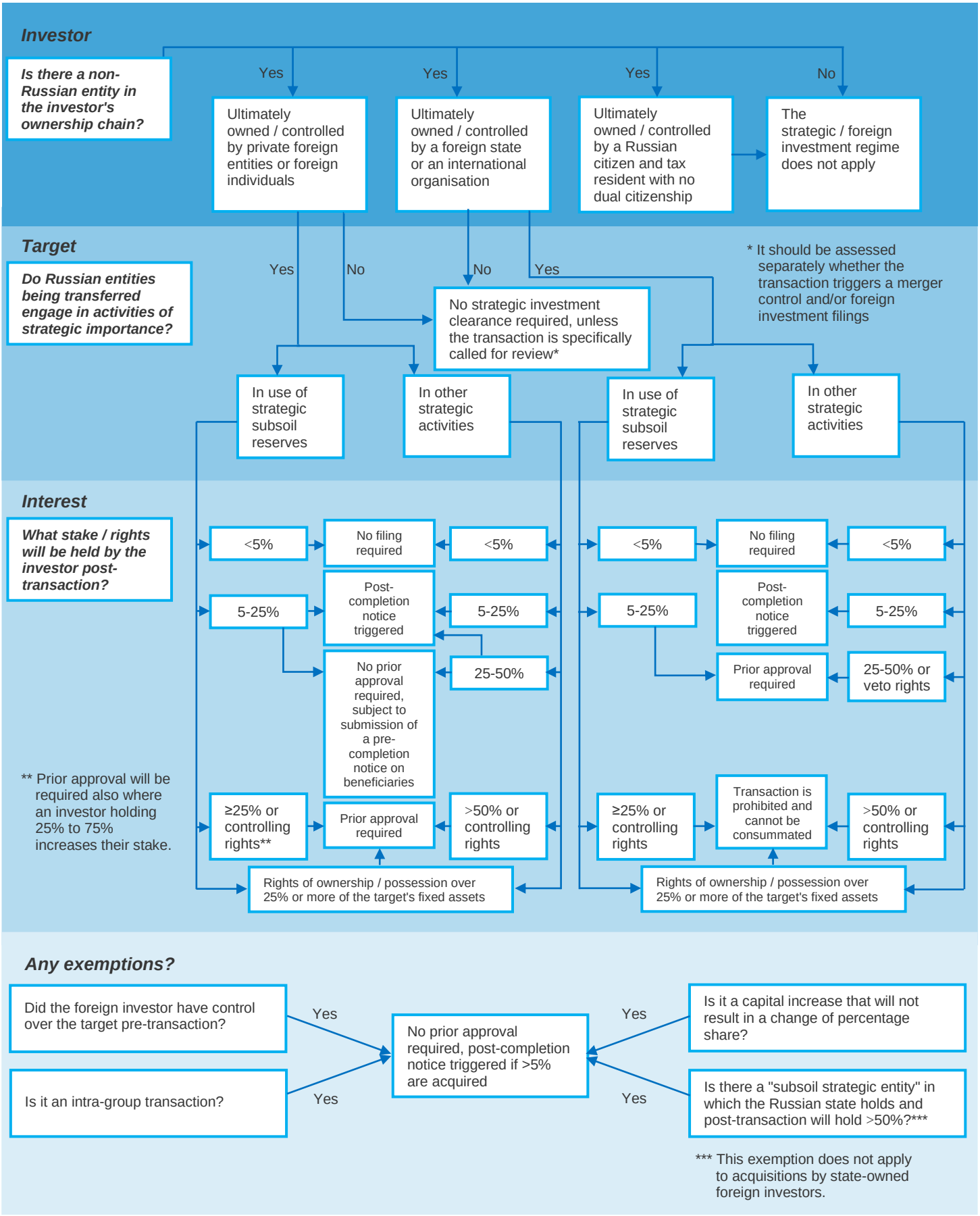
- The list of strategic activities was amended by adding certain activities in river ports and seaports and excluding the use of infectious agents by food-processing companies.
- Asset deals where the transferor of the assets is a Strategic Entity (as defined below) were included in the scope of the law.
- The requirement to obtain prior approval of certain intra-group transactions was abolished.
- A requirement to submit a post-completion notice of the closing of previously approved transactions was included.
- A special rule regarding the definition of "control" over a Strategic Entity by several Public Foreign Investors (as defined below) was introduced.

Further amendments to the Strategic Investment Law entered into force in July 2017:

- New requirements/restrictions were introduced for offshore companies investing in strategic sectors of Russian industry.
- Wide-ranging powers were granted to state bodies, authorising them to require that any transaction contemplated by foreign investors must be cleared under the strategic investment regime if so requested.
- Penalties were introduced for failure to submit a post-completion notice.
- The operation of electronic trading platforms used for public procurement was included on the list of activities of strategic importance.

The most recent amendments to the Strategic Investment Law, in June 2018, excluded references to "offshore companies" and introduced a definition for "companies not disclosing information on their beneficiaries" instead. Special restrictions previously applicable only to offshore companies now apply to any company that does not disclose its beneficiaries.

NOTIFIABILITY – SIMPLIFIED FLOWCHART



GENERAL SCOPE OF APPLICATION

Foreign Investor

The Strategic Investment Law applies to any foreign investor – whether an individual (including any Russian national with dual citizenship) or legal entity (including Russian companies under foreign control) – or group that includes a foreign investor ("**Foreign Investors**"), and, in particular, to foreign governments and international organisations and any of their subsidiaries (including subsidiaries incorporated in the Russian Federation) ("**Public Foreign Investors**"), which enter into transactions involving (directly or indirectly) significant assets of, or shares in, a Strategic Entity (as defined below), and/or certain controlling and veto rights in relation to a Strategic Entity.

The provisions of the Strategic Investment Law apply only to transactions on the transfer of shares in, or assets of, Strategic Entities. They do not apply to situations where an existing (non-strategic) legal entity controlled by a Foreign Investor commences operations that are strategic in nature (although there may be exceptions, such as certain PPP projects, which can arguably fall within the scope of the Strategic Investment Law).

The Strategic Investment Law does not apply to domestic Russian transactions that by their nature do not constitute foreign investment but do involve foreign legal entities within a corporate group or chain of holding companies. These include transactions between entities, including those incorporated outside Russia, ultimately controlled by (i) the Russian Federation, or (ii) a Russian citizen who does not hold any other citizenship and is a Russian tax resident. In practice, this exemption is often not applicable because many Russian entrepreneurs hold a second citizenship.

Strategic Entity

For the purposes of the Strategic Investment Law, a strategic entity is an entity incorporated in the Russian Federation which performs at least one activity of strategic importance (a "**Strategic Entity**"). Article 6 of the Strategic Investment Law lists 48 types of activity that are deemed to be of strategic importance. These can broadly be divided into four categories:

- **Natural Resources**, including activity affecting geophysical processes, geological exploration, and development of natural resources, in cases where the natural resources in question are located in a subsoil block that is deemed to be "of federal importance" (see more on this below);
- **Media**, including television and radio broadcasting, and certain printing and publishing activities;
- **Defence and sensitive businesses**, including activity connected with weapons and military equipment, radioactive materials, space, aviation, encryption, and security assessment and surveillance of infrastructure and means of transportation;
- **Activities of natural monopolies**, including the activities of not only certain communications and railway companies (which have a dominant position on the Russian market), but also various natural monopolies.

The approval requirements set out in the Strategic Investment Law apply to some activities that are not, strictly speaking, related to national defence or state security, such as the use of yeast (which is classed as an infectious

disease agent)[1] or sterility testing by pharmaceutical manufacturers. There have been numerous transactions by pharmaceutical firms, manufacturers of medical products, and media companies with insignificant broadcasting operations which have required clearance under the Strategic Investment Law.

Any involvement by a Russian entity in an activity of strategic importance is sufficient for that entity to be deemed a Strategic Entity, irrespective of whether the activity in question is its core business or not. An entity can also be deemed a Strategic Entity if it merely holds a licence for any type of strategic activity, even if it does not actually engage in that activity. Further, according to recent practice of the regulator (the Federal Antimonopoly Service, "**FAS**"), any entity engaging in activity that is not strategic per se but is necessary to facilitate a strategic activity may also be deemed a Strategic Entity.[2]

Subsoil Strategic Entity

The Strategic Investment Law envisages a special regime for foreign investment in subsoil resource development. A subsoil strategic entity is a Strategic Entity that conducts geological study and/or analysis and recovery of subsoil resources from a "subsoil block of federal importance" (a "**Subsoil Strategic Entity**").

A subsoil block may be deemed to be of federal importance if it meets any one of the following criteria:

- it contains deposits of uranium, extra-pure quartz, yttrium rare earth elements, nickel, cobalt, tantalum, niobium, beryllium or lithium, primary deposits of diamonds, or primary (metalliferous) deposits of platinum metals, with reserves recorded in the State Balance of Mineral Reserves;
- it is located in the territory of the Russian Federation and contains (according to the State Balance of Mineral Reserves):
  - more than 70 million tonnes of recoverable oil reserves;
  - more than 50 billion cubic metres of natural gas reserves;
  - more than 50 tonnes of lode gold reserves;
  - more than 500,000 tonnes of copper reserves;
- it is located in the internal or territorial waters or on the continental shelf of the Russian Federation;
- its use requires the use of land designated as part of defence or security zones of the Russian Federation.

A list of subsoil blocks of federal importance (the "**Official List**") is maintained by the Federal Subsoil Agency. A subsoil block is considered to be "of federal importance" from the date it is entered in the Official List. The Official List is amended from time to time; currently it includes more than 1,000 subsoil blocks.

Definition of "control"

The Strategic Investment Law contains a unique and complex concept of "control". It stipulates that a Foreign Investor is deemed to exercise "control" over a Strategic Entity or Subsoil Strategic Entity if the Foreign Investor[3] directly or indirectly:

Subsoil blocks of federal importance – Background

An entity may acquire the right to use a subsoil block of federal importance by open tender or auction. The main criteria applied in determining the winner of a tender are:

- the basic terms of the development programme;
- the scientific and technical level of the geological survey and proposed subsoil use in the development programme;
- the contribution to the social and economic development of the area in the vicinity of the subsoil block;
- the effectiveness of measures aimed at protecting the subsoil block and its immediate environment; and
- national defence and state security considerations (since this is problematic for Foreign Investors, it has been criticised as favouring Russian applicants).

The main criterion for selecting the winner of an auction is the amount of the lump-sum payment for the right to use a subsoil block of federal importance.

There are also certain additional criteria applicable to entities that are seeking approval of use of a subsoil block of federal importance on the Russian continental shelf, specifically:

- the entity must be incorporated in Russia;
- the entity must have at least five years' experience in operations on the continental shelf; and
- the Russian Federation must either hold or have the right to control (directly or indirectly) more than 50% of the voting shares in the entity.

In practice, these criteria essentially mean that only Rosneft and Gazprom can develop subsoil blocks of federal importance on Russia's continental shelf.

[1] With the exception of its use by food-processing companies.

[2] For details, see the section *Notable Commission decisions and case law* below (the Schlumberger and Nabor cases).

[3] Public Foreign Investors are prohibited from gaining control over Strategic Entities/Subsoil Strategic Entities. Please see the section *Restrictions for Public Foreign Investors* below for details.

- holds
  - more than 50% of the voting shares in the Strategic Entity; or
  - 25% or more of the voting shares in the Subsoil Strategic Entity; or
- has the right to appoint
  - more than 50% of the members of the board of directors, management board, or other management body of the Strategic Entity; or
  - 25% or more of the members of the board of directors, management board, or other management body of the Subsoil Strategic Entity; or
- has the right to appoint the so-called "single-person executive body" (e.g., the CEO) of the Strategic Entity/Subsoil Strategic Entity (as applicable); or
- is entitled to determine the decisions taken by the Strategic Entity/Subsoil Strategic Entity (as applicable), including, without limitation,
  - on the basis of an agreement; or
  - by virtue of being a management company of the Strategic Entity/Subsoil Strategic Entity; or
  - due to a shareholding structure that provides the Foreign Investor, which holds less than 50% of the Strategic Entity, the right to determine the decisions of the Strategic Entity (e.g., where the stakes held by all of the other shareholders are smaller than the Foreign Investor's stake).

The relevant provisions of the Strategic Investment Law are worded so as to encompass all possible types of acquisition of substantial stakes in, or control over, Strategic Entities and Subsoil Strategic Entities.

As a general rule, it is the cumulative holding of a single Foreign Investor or a group of Foreign Investors which is relevant for the purposes of the above control tests. For example, if one Foreign Investor owns 49% of a Strategic Entity and another Foreign Investor intends to acquire 5%, the acquisition will not require government approval as long as the two Foreign Investors are not part of the same corporate group and have not concluded any agreement between them which would have that effect. There is, however, a special rule for Public Foreign Investors: please see the section *Restrictions for Public Foreign Investors* below for more detail.

Transactions requiring clearance

Prior approval – Foreign Investors

Prior approval is required for transactions that would allow a Foreign Investor:

- to control a Strategic Entity or a Subsoil Strategic Entity (see the section *Definition of "control"* above); or
- to acquire any additional shares in a Subsoil Strategic Entity, where the Foreign Investor holds 25% to 75% of the shares in the Subsoil Strategic Entity prior to the transaction (except in cases where the Foreign Investor's shareholding will not increase following the transaction); or
- to acquire fixed assets of a Strategic Entity or a Subsoil Strategic Entity, where the value of such assets is 25% or more of the book value of the entity's total assets.

If a Foreign Investor acquires control over a Strategic Entity or a Subsoil Strategic Entity due to changes in the shareholding structure without the performance of a transaction or the acquisition of new shares (e.g., as a result of redemption of shares), the Foreign Investor should submit an application for clearance of acquisition of control within three months of the date of such acquisition.

Prior approval – Public Foreign Investors

A special regime with lower filing thresholds (compared to the general regime for Foreign Investors) applies to investments by Public Foreign Investors.

A Public Foreign Investor is required to obtain prior approval of the following transactions:

- direct or indirect acquisition of more than 5% of shares in a Subsoil Strategic Entity;
- direct or indirect acquisition of more than 25% of the shares in or any veto rights in relation to a Strategic Entity.

A Public Foreign Investor is also required to obtain prior approval of the direct or indirect acquisition of more than 25% of the shares in or of any veto rights in relation to any Russian entity, i.e., even non-strategic entities. This requirement is established by Federal Law No. 160-FZ On Foreign Investment in the Russian Federation, dated 9 July 1999.[4]

The above requirements do not apply to transactions involving certain international financial organisations, such as the European Bank for Reconstruction and Development, Multilateral Investment Guarantee Agency, International Development Association, International Finance Corporation, etc. The list of such organisations is maintained by the Russian government and currently numbers 14 organisations.[5]

Prior approval – Prime minister request

Legislative amendments that came into force in July 2017 give the chairman of the Governmental Commission for Control over Foreign Investment in the Russian Federation (the "**Commission**")[6] the right to issue *ad hoc* resolutions requiring that prior approval under the strategic investment regime be obtained in relation to a given transaction if the chairman deems this necessary in the interests of national defence and state security. The law is quite broadly worded, suggesting that such resolutions can be issued in relation to virtually any transaction by a Foreign Investor involving any Russian entity, whether strategic or not.

It is intended that the chairman of the Commission exercise these wide-ranging powers in exceptional cases only. Since the legislative amendments took effect, there has been only one known instance where such an *ad hoc* resolution was issued, namely in respect of the acquisition of a controlling stake in a major Russian gold-mining company, GV Gold (PJSC Vysochaishy), by a consortium of Chinese investors headed by Fosun.[7]

Pre-completion notice

Effective June 2018, restrictions were introduced for Foreign Investors that fail to disclose their beneficiaries (including persons in the interests of whom a Foreign Investor acts under an agency/trust agreement or otherwise).

The procedure for disclosing beneficiaries is set out in Decree of the Government of the Russian Federation No. 1456, dated 1 December 2018 (the "**Decree**"). According to the Decree, a Foreign Investor anticipating acquisition of shares in a Strategic Entity/Subsoil Strategic Entity must disclose its beneficiaries to the FAS in cases where such disclosure could

[4] This law does not establish any special procedure for obtaining such approval and refers to the procedure set out in the Strategic Investment Law in this regard.

[5] The full list is set out in Directive of the Government of the Russian Federation No. 119-r, dated 3 February 2012 (as amended).

[6] The Commission includes representatives of various federal bodies and is currently chaired by the Russian prime minister.

[7] The transaction was subsequently abandoned by the parties.

affect the decision as to whether the contemplated transaction requires prior clearance or not. This applies to cases where a Foreign Investor (not a Public Foreign Investor) intends to acquire 25% to 50% in a Strategic Entity or 5% to 25% in a Subsoil Strategic Entity.[8] In such cases the Foreign Investor should disclose its beneficiaries to the FAS at least 30 calendar days prior to the closing date. The Foreign Investor should ensure that the information disclosed remains true and accurate as on the closing date.

Post-completion notice

The following transactions may be concluded without prior approval but do require a post-completion notice to be submitted within 45 calendar days of the date of their conclusion:

- acquisition by a Foreign Investor of 5% or more of the shares in a Strategic Entity or Subsoil Strategic Entity; and
- acquisition by a Public Foreign Investor of 5% or more of the shares in a Strategic Entity.[9]

In addition, a post-completion notice is to be submitted (by a Foreign Investor or Public Foreign Investor, as applicable) in relation to the closing of a transaction that was previously approved under the prior approval procedure. Such notice should also be submitted within 45 calendar days of the date of closing.

For the sake of completeness, the amendments to the Strategic Investment Law which came into force in July 2017 obliged Foreign Investors/Public Foreign Investors which as of that time held a stake of 5% or more in any Strategic Entity/Subsoil Strategic Entity incorporated in Crimea to report it by 28 October 2017.

Exemptions

The Strategic Investment Law establishes certain exemptions from the above requirements to obtain prior approval. It is a common characteristic of all such exemptions that the scope of their application is not entirely clear. Therefore, in practice it is advisable to take a cautious approach when relying on any exemption.

The law does not envisage any exemptions with respect to post-completion notices. Therefore, they should be submitted in relation to all transactions meeting the thresholds specified above, including intra-group transactions.[10]

Existing control

The Strategic Investment Law exempts a Foreign Investor from the requirement to obtain prior approval if, before the transaction, the same Foreign Investor already controls, directly or indirectly, more than 50% of the voting shares in the Strategic Entity. In other words, a subsequent increase in an existing controlling stake in a Strategic Entity which was approved at the time of initial acquisition of such control does not require new approval.

[8] As described above, acquisitions of more than 5% of the shares in a Subsoil Strategic Entity made by Public Foreign Investors are subject to pre-completion clearance, whereas acquisitions of lesser stakes (by any type of Foreign Investor) do not trigger the requirement to notify the FAS.

[9] As noted above, acquisition by a Public Foreign Investor of more than 5% of the shares in a Subsoil Strategic Entity requires prior approval.

[10] Although there are no official guidelines in this regard, representatives of the FAS have confirmed this view on several occasions.

Intra-group transfers

Intra-group transactions are not subject to prior approval, provided that the shares in the Strategic Entity are transferred by the Foreign Investor controlling the Strategic Entity (see the section *Definition of "control"* above) to a subsidiary of the Foreign Investor in which the latter holds more than 50% of the shares.

Continuing state control

The Strategic Investment Law establishes special exemptions for transactions on the acquisition of shares in or rights in relation to Subsoil Strategic Entities: such transactions do not require prior approval if more than 50% of the shares in the Subsoil Strategic Entity are held by the Russian Federation (directly or indirectly) and will remain in the possession of the Russian Federation following the transaction. This exemption does not, however, apply to transactions on the acquisition of more than 5% of the shares in a Subsoil Strategic Entity by a Public Foreign Investor (such transactions are subject to prior approval).

Capital increases

An exemption applies where a Foreign Investor holds 25% to 75% of the shares in a Subsoil Strategic Entity prior to the transaction and its stake will not increase following the transaction. This exemption applies, in particular, where additional shares are issued pro rata among the existing shareholders without any change in their respective stakes, and also where the shares are transferred between Foreign Investors that belong to the same group and are related to each other through a direct or indirect shareholding of more than 50% (i.e., where the Foreign Investor that ultimately controls the shares remains the same).

RESTRICTIONS FOR PUBLIC FOREIGN INVESTORS

While Public Foreign Investors may, following prior approval, acquire a minority stake in a Strategic Entity and/or a Subsoil Strategic Entity, the Strategic Investment Law categorically prohibits them from

- gaining "control" (see the definition above) over a Strategic Entity/Subsoil Strategic Entity, whether as a result of a singular transaction, a number of interrelated transactions, a mandatory offer to buy shares, or otherwise; and/or
- acquiring fixed assets of a Strategic Entity/Subsoil Strategic Entity if the value of such assets is 25% or more of the book value of the total assets of that Strategic Entity/Subsoil Strategic Entity.

According to the Strategic Investment Law, a Strategic Entity is deemed to be under the control of Public Foreign Investors if several of them (including those that do not belong to the same corporate group) hold in aggregate (i) more than 50% of the Strategic Entity's shares, or (ii) less than 50% of the Strategic Entity's shares, but a stake sufficient for them to determine the Strategic Entity's decisions (e.g., by virtue of the specific shareholding structure).[11]

Accordingly, any transaction resulting in such a shareholding structure is prohibited. The relevant statutory provision is narrowly worded and expressly refers to Strategic Entities only. However, it is generally understood that it will

[11] This rule does not apply if a Public Foreign Investor is controlled by one of the international organisations included on the list maintained by the Russian government (referred to in footnote 5 above).

be construed broadly by the authorities and will be applied *mutatis mutandis* to Subsoil Strategic Entities as well.

The same restrictions apply to companies that do not disclose information on their beneficiaries.

PENALTIES

The Strategic Investment Law prescribes extraordinarily severe penalties for its violation.

Transactions requiring prior approval under the strategic investment regime (including those in relation to which the chairman of the Commission has issued an *ad hoc* resolution requiring prior approval) and closed in breach of that regime are null and void. The consequences of invalidity established by the general provisions of Russian civil law apply to such transactions, including the obligation that each party return to the other all property and/or money transferred under the transaction.

Since July 2017 the Strategic Investment Law has envisaged penalties for failure to submit a post-completion notice. In case of such failure Russian courts are entitled to strip the shares acquired by an investor of all voting rights (such shares are not counted when determining a quorum at shareholders' meetings).

The same penalty (deprivation of voting rights) applies:

- if a transaction closed in breach of a prior approval requirement has led to the establishment of control by a Foreign Investor/Public Foreign Investor over a Strategic Entity/Subsoil Strategic Entity and for any reason the civil law consequences of invalidity of the transaction cannot be applied;
- if a transaction is cleared conditionally, but a Foreign Investor/Public Foreign Investor fails to comply with the conditions imposed.

As follows from the case law, the courts may strip shares of voting rights at the Russian level even in foreign-to-foreign transactions. For details, see the section *Notable Commission decisions and case law* below (the Telenor/VimpelCom case).

Another available penalty is invalidation by the courts of shareholders' decisions, decisions of management bodies, and/or contracts made by the relevant Strategic Entity/Subsoil Strategic Entity following a transaction that has closed in breach of the Strategic Investment Law.

Failure to obtain prior approval may also give rise to administrative penalties. The applicable fines are, however, low: the Russian Administrative Offences Code establishes fines of up to RUB 1 million (approx. EUR 13,000)[12] for legal entities and up to RUB 50,000 (approx. EUR 700) for their responsible officers. Similar fines may be imposed for submission of filings containing false information. Failure to submit a post-completion notice (or submission of a notice containing false information) is punishable with fines of up to RUB 500,000 (approx. EUR 7,000) for legal entities and up to RUB 30,000 (approx. EUR 400) for their responsible officers.

The Federal Security Service of the Russian Federation has the power to conduct investigations (including inspecting documents and emails, monitoring telephone calls, etc.) in order to determine whether or not

[12] Figures given in Russian roubles in this note have been converted into euro at a convenience exchange rate of RUB 75.00 / EUR 1.00. In each specific case the relevant figures should be recalculated at the official exchange rate set by the Central Bank of the Russian Federation, available on its official website, http://www.cbr.ru/eng/currency_base/daily/.

a Foreign Investor/Public Foreign Investor has control over, or is taking steps to obtain control over, a Strategic Entity/Subsoil Strategic Entity.

PROCEDURE FOR OBTAINING APPROVAL

Procedural stages

In order to obtain approval for a transaction, the Foreign Investor (or Public Foreign Investor, as appropriate) must prepare and submit an application to the FAS together with certain supporting documentation. The application must include the following: a draft business plan in the prescribed form[13], the constitutional documents of the Foreign Investor/Public Foreign Investor, information on companies of its group, and the draft transaction documents.

The approval process has two stages:

- the FAS initially reviews the application; and
- if the FAS decides that the application requires further assessment, it passes the application on to the Commission.

During the initial review stage, which may last up to 14 calendar days after the application is filed, the FAS checks that the application is complete (i.e., that it includes all the necessary information and documents) and determines whether or not control over the Strategic Entity/Subsoil Strategic Entity will be established/transferred as a result of the contemplated transaction.

Upon completion of the initial assessment, the FAS may proceed in one of the following ways:

- if the FAS determines that as a result of the contemplated transaction a Public Foreign Investor (or a company that did not disclose information on its beneficiaries) will gain control over a Strategic Entity/Subsoil Strategic Entity or will acquire 25% or more of its fixed assets (which, as noted above, is prohibited), the FAS will reject the application outright, without passing it on to the Commission;
- if the application has been submitted by a Public Foreign Investor seeking to acquire more than 25% of shares in, or veto rights in relation to, a non-strategic entity and the FAS concurs that the target is indeed not strategic, the FAS will clear the application without passing it on to the Commission.[14] In such cases the FAS will issue a so-called "negative" clearance decision confirming that no further assessment / approval is required and the parties are therefore free to proceed with the transaction;
- if the application has been submitted in fulfilment of any other requirement for prior approval (for details, see the section *Transactions requiring prior approval* above), the FAS will pass the application on to the Commission for further review.

Upon receiving an application, the Commission reviews it and decides whether to clear or reject the proposed transaction. The Commission's decisions can be challenged in the Supreme Court of the Russian Federation, but to date no such challenges have been made.

The input of various government authorities such as the Federal Security Service, the Ministry of Defence, and the Commission for Protection of State Secrets may be sought to assess the overall effect of a given transaction.

Statistics

As of May 2020, the Commission has taken decisions on 282 transactions since 2008. Of those, approximately 170 transactions were approved unconditionally, and approximately 80 were approved subject to conditions. 23 transactions were blocked.

[13] Not required for certain types of transactions, in particular for transactions by Public Foreign Investors.

[14] In practice, in such cases the review process is limited to a formal review of the documentation and checks by the FAS to confirm the non-strategic nature of the target.

Timing

Formally, the application review process is required to be completed within three months from the date the FAS registers the filing of the application. In exceptional cases that period may be extended by the Commission by a further three months. In practice, the entire review process can take more than six months, partially due to the fact that the Commission sits only two to four times a year.

A schematic diagram illustrating the approval process is provided at the end of this note.

Approval decision

Any approval should state how long the approval remains valid. A Foreign Investor/Public Foreign Investor can apply for an extension of the period of validity of the Commission's decision if the transaction will not be completed within the time frame specified in the decision.

The Commission may approve the proposed transaction conditionally, i.e., subject to certain obligations being fulfilled by the Foreign Investor/Public Foreign Investor. Where a transaction is approved with conditions, the Commission decides what additional obligations to impose on the applicant and instructs the FAS to draft and execute a separate "agreement on undertakings" with the applicant. If the applicant declines to enter into the agreement, the transaction will be blocked.

Neither the Strategic Investment Law nor the secondary legislation establishes any specific criteria that the Commission should use when assessing an application. However, one may assume that a transaction will only be approved if it does not, in the opinion of the Commission, pose a threat to Russian national defence or disaccord with other security considerations.

There is no express requirement for the Commission or the FAS to specify the reasons for rejecting an application, and the respective notices tend to use highly formalistic language. However, FAS officials do sometimes touch upon the underlying reasons for rejection during official press conferences or interviews that follow the meetings of the Commission.

CORRELATION OF THE STRATEGIC INVESTMENT LAW WITH OTHER LAWS

Merger control regime

As a rule, the notification and approval requirements prescribed by the Strategic Investment Law are separate from the merger control regime established by Russian Competition Law. However, where a transaction requires clearance under both regimes, the FAS will postpone the merger control review until clearance under the Strategic Investment Law has been obtained. If the transaction is blocked under the Strategic Investment Law process, the FAS will automatically deny merger clearance as well.

Takeover regime

The fact that a Foreign Investor/Public Foreign Investor is obliged to make a mandatory offer to buy shares pursuant to the Joint-Stock Companies Law does not exempt that investor from the requirement to obtain prior approval under the Strategic Investment Law. Unless such approval is obtained, the Foreign Investor/Public Foreign Investor may buy only such a quantity of shares (pro rata from the potential sellers) that will keep its shareholding within the statutory thresholds.

NOTABLE COMMISSION DECISIONS AND CASE LAW

Court practice involving application of the Strategic Investment Law remains limited; as noted above, no decision of the Commission has yet been challenged in court. However, Russian courts have considered several appeals concerning agreements that were found to have been concluded in violation of the Strategic Investment Law.

TeliaSonera / Megafon

In November 2009 TeliaSonera and Altimo entered into a joint venture agreement and agreed to contribute their shares (comprising 60.7% in aggregate) in Megafon (a Russian mobile telecommunications operator that is a Strategic Entity) to a new company. The joint venture agreement allowed TeliaSonera to acquire control over the new company and thus effectively acquire control over Megafon. TeliaSonera was jointly controlled by the governments of Sweden and Finland.

In June 2010 the *Arbitrazh*[15] Court of the City of Moscow ruled that the joint venture agreement between TeliaSonera and Altimo was void, as it provided for the acquisition of indirect control over Megafon by Public Foreign Investors (the Swedish and Finnish governments) in violation of the Strategic Investment Law. The court disregarded the fact that the Public Foreign Investors were not in any way connected to one another.

The court emphasised that the Strategic Investment Law prohibits both (i) the establishment of effective control over Strategic Entities by Public Foreign Investors, and (ii) the conclusion of agreements that create conditions for this, i.e., which may result in the establishment of control over Strategic Entities by Public Foreign Investors.

The decision was upheld by two higher courts.

Telenor / VimpelCom

Another noteworthy case also relates to a major player in the Russian telecoms sector, VimpelCom.

In February 2012, the Telenor group, controlled by the Norwegian government, increased its stake in VimpelCom's non-Russian holding company ("**Holdco**") from 25.01% to 36.36% and entered into an option agreement for the acquisition of an additional 3.44%. The increase was implemented without Telenor seeking clearance under the Strategic Investment Law.

The FAS initiated legal action in a Russian state court, challenging the acquisition of shares and the option agreement. The FAS argued that Telenor is a state-controlled group, i.e., a Public Foreign Investor, and that by increasing its stake to 36.36% in Holdco it was acquiring indirect control over VimpelCom, a Strategic Entity.

The FAS applied for, and the Russian court ordered, interim measures prohibiting, among other things, (i) Holdco from exercising its voting rights in VimpelCom with regard to the appointment of management and the approval of so-called "major" and "interested party" transactions, and (ii) Telenor and its counterparty from implementing the option agreement.

In September 2012, despite the above interim measures, Telenor exercised its option right under the option agreement. Holdco, however, refused to register the share transfer in its shareholder register.

[15] *Arbitrazh* courts are Russian state commercial courts.

In November 2012, Altimo (controlled by Russian businessman Mikhail Fridman) increased its stake in VimpelCom to 48%, becoming the company's main shareholder. As a result, Telenor lost control over VimpelCom and a settlement with the FAS became possible.

Later, the FAS withdrew its lawsuits against Telenor, and the Commission recognised the validity of the deals.

The case shows that the FAS is capable of bringing effective enforcement measures also in relation to foreign-to-foreign transactions that occur entirely outside Russia. In the Telenor case, the acquisition and the option agreement were governed by foreign law and concluded between non-Russian entities in relation to shares in a non-Russian company (Holdco).

It is worth noting that the FAS's substantive assessment of the increase in Telenor's stake was not entirely clear. The FAS could have focused on the fact that the increase to 36.36% in Holdco enables state-controlled Telenor to block decisions of VimpelCom (the acquisition of such veto rights is subject to clearance, and Telenor failed to obtain it). But instead, the FAS appears to have taken the view that the increase to 36.36% would provide Telenor with (*de facto*) control over VimpelCom, and that Telenor, being an entity controlled by a foreign state, was not even eligible to seek such clearance (in view of the general prohibition barring Public Foreign Investors from having control over Strategic Entities).

Abbott / Petrovax

Since the enactment of the Strategic Investment Law in May 2008 up to May 2020, 23 transactions have been rejected. The most notable rejection of foreign investment was in the pharmaceutical sector.

In April 2013, after nine months of review, the Commission blocked the proposed acquisition of Russian vaccine manufacturer Petrovax Pharm by Abbott Laboratories (USA).

The head of the FAS noted that this was one of the very rare cases where the Commission had decided to deny clearance based on national security considerations. He emphasised that the Commission's decision was not against Abbott Laboratories or the United States, but rather represented the Russian government's position that the production of vaccines is a strategic activity.

Schlumberger / Eurasia Drilling

In January 2015, Schlumberger (France) announced its intention to indirectly acquire 45.65% of the shares in Eurasia Drilling, a Russian drilling operator, with a potential increase of the stake up to 100%. Schlumberger submitted a merger control application in connection with the proposed transaction.

In March 2015, the FAS in the course of its merger review decided that the transaction was also subject to prior approval by the Commission in accordance with the Strategic Investment Law. According to the Strategic Investment Law, geological exploration is an activity of strategic importance. Eurasia Drilling neither engaged in geological exploration itself nor held a licence for geological exploration. It did, however, drill the boreholes required for geological exploration. The FAS decided that an entity that drills boreholes should be considered a Strategic Entity, given that its activities are necessary to facilitate a strategic activity (geological exploration), as it is impossible to carry out geological exploration without drilling boreholes.

The Commission postponed its review of the transaction several times. After several months, the Russian authorities suggested a number of conditions

under which the transaction could be cleared. The conditions included, among other things, an undertaking by Schlumberger that it would transfer the shares it intended to acquire to Russian investors if the economic sanctions against Russia were extended. In September 2015, Schlumberger decided to abandon the transaction.

In July 2017, Schlumberger made another attempt to acquire a stake of 51% in Eurasia Drilling. In April 2018, the Commission decided that Schlumberger could acquire up to 49% (but not more), subject to certain remedies that would be formulated by the FAS. Negotiation of the remedies took almost a year. In addition to the remedies discussed in 2015, Schlumberger made commitments concerning the transfer of technology to Eurasia Drilling. However, no consensus was reached. In February 2019, Schlumberger withdrew its application from the FAS and did not proceed with the deal.

Nabor / Tesco Corporation

A similar approach as in the Schlumberger/Eurasia Drilling deal was taken by the FAS in relation to Nabor's acquisition of Tesco Corporation in 2017. The target's Russian subsidiary, LLC Ocset, renders services and supplies equipment for companies carrying out geological exploration. The FAS decided that the closing of the transaction was subject to the Commission's approval, while the parties proceeded without it. By court order Nabor was stripped of its voting rights in LLC Ocset. The court dismissed Nabor's argument that LLC Ocset's activities do not qualify it as a Strategic Entity within the meaning of the Strategic Investment Law.

The FAS's decisions that the Schlumberger/Eurasia Drilling deal and the Nabor/Tesco deal required the Commission's approval were extensively debated due to the potentially far-reaching implications of a significant broadening of the scope of application of the Strategic Investment Law. Should the FAS take the same approach in the future, the strategic investment regime could potentially be applied to any entity engaging in any activity that is in some way necessary to facilitate a strategic activity.

Port Perm

JSC Port Perm engages in inland waterway freight shipping and cargo-handling operations at the port in the city of Perm, a large industrial and logistics centre located in the Ural region. In March 2017, the FAS filed a claim against a number of Port Perm's shareholders, seeking to invalidate a series of transactions through which they had acquired the company's shares. As alleged by the FAS, the transactions led to establishment of control over Port Perm, which is a Strategic Entity,[16] by a Foreign Investor (a citizen of the Czech Republic).

Initially the FAS's claim was dismissed on the grounds that the statute of limitations had expired. More than two years later the FAS succeeded in arguing that the limitation period had commenced later than the date initially determined by the courts. In early 2020, the court of first instance ruled the transactions null and void.

The FAS argued that the Foreign Investor exercised *de facto* control over the Strategic Entity based on a complex fact pattern, including (i) the manner in which shareholders' decisions had been taken since 2010, (ii) discreet arrangements between three of the five shareholders, (iii) personal and family relations within the relevant corporate bodies, and (iv) jointly used attorneys as

[16] Port Perm claimed that is not a Strategic Entity, but the claim was dismissed by the court.

well as template documents. Based on the numerous facts gathered by the FAS, it is expected that the decision will be upheld by the higher courts.

CASE STUDIES

To demonstrate the principles of the Strategic Investment Law in context, below we examine three different theoretical scenarios. These examples represent how the legislation should currently work in practice.

Case 1

A UK sovereign wealth fund (acting through a Russian joint-stock company subsidiary in which the fund owns 60% of the shares) wishes to acquire a participatory interest of 7% in a Russian limited liability company that has a licence to conduct geological study of a beryllium deposit in the Ural mountains.

Analysis: The transaction will require the prior approval of the Commission.

- The purchasing entity is categorised as a Public Foreign Investor. Although the purchasing entity is incorporated in Russia, it is nevertheless a subsidiary of a foreign state-owned entity (a sovereign wealth fund). The fact that the purchasing entity is not wholly owned by the fund is irrelevant as long as the fund's stake is sufficient to provide it with effective controlling rights over the purchasing entity.
- As the subsoil block contains a beryllium deposit, it meets the criteria of a subsoil block of federal importance. Assuming that the subsoil block has been included on the Official List, it will be categorised as a subsoil block of federal importance, and therefore the target company is a Subsoil Strategic Entity.
- The Public Foreign Investor is seeking to acquire (indirectly) 7% of the Subsoil Strategic Entity, which exceeds the applicable 5% threshold for prior approval (but is below the 25% threshold of control over a Subsoil Strategic Entity which Public Foreign Investors cannot exceed).

Case 2

A private Swedish company signs a memorandum of understanding with a Chinese state company to directly acquire a 40% stake in a Russian joint-stock company that holds licences to explore and develop a subsoil hydrocarbon block in Western Siberia which is listed in the State Balance of Mineral Reserves as containing 50 million tonnes of recoverable oil reserves.

Analysis: The strategic investment regime should not apply; the proposed transaction should neither require the prior approval of the Commission nor be prohibited on other grounds.

- The fact that a Chinese state company is involved should be irrelevant in this case, as it is the vendor and so will not be gaining any sort of control.
- The Swedish entity is a potential Foreign Investor, as it is proposing to acquire shares in a Russian joint-stock company that operates in a strategic industry.
- Having said that, the target does not qualify as a Subsoil Strategic Entity, as the recoverable oil reserves only total 50 million tonnes, i.e., less than the 70-million-tonne threshold. Therefore this subsoil block, not having been included on the Official List, cannot be deemed to be of federal importance.

Case 3

A consortium of investors which includes a US company but is primarily made up of Russian investment companies (the "**Consortium**") has agreed heads of terms in respect of a Russian limited liability company ("**Opco**") that is 100%-owned by a Cypriot company ("**Cypco**"). Cypco is 15%-owned by the Consortium and 85%-owned by a Russian government agency. Opco has a mining licence to explore and develop a copper deposit on the Kola Peninsula with reserves of 800,000 tonnes.

The basic terms of the deal are as follows:

- Cypco will transfer a 30% participatory interest in Opco to the Consortium;
- the existing shareholders' agreement in respect of Cypco will be amended to allow the Consortium to appoint Cypco's CEO and control the Cypriot management board (which generally provides written instructions to Opco's general director on various management issues).

Analysis: The transaction should not require the prior approval of the Commission or be prohibited on other grounds.

- Although the Consortium includes a non-Russian company, it is conceivable that the latter might not be deemed a Foreign Investor, because it is in fact controlled by Russian investment companies. But this will not be clear until an application for prior approval is submitted to the FAS. In this example, let us assume that the Consortium is considered to be a Foreign Investor.
- Since the copper deposit has reserves of 800,000 tonnes (above the 500,000-tonne threshold qualifying it as a subsoil block of federal importance), this means that Opco is a Subsoil Strategic Entity from the date the subsoil block is included on the Official List. It is worth noting that had the subsoil block been located offshore from the Kola Peninsula in Russian internal/territorial waters or on Russia's continental shelf, it would be deemed to be of federal importance, irrespective of whether the reserve threshold was met or not.
- The Consortium is seeking to acquire a participatory interest of 30% in the Subsoil Strategic Entity (i.e., more than the 25% threshold) as well as rights enabling it to appoint Cypco's CEO and control the Cypriot management board that effectively runs Opco, which suggests that the transaction would require the prior approval of the Commission.
- However, in this case a Russian government agency already owns (indirectly) 85% of the Subsoil Strategic Entity. Therefore the transaction can proceed, since any transaction involving a Subsoil Strategic Entity is generally exempt from the provisions of the Strategic Investment Law where the Russian Federation controls, directly or indirectly, more than 50% of the relevant voting shares prior to the transaction and will retain its stake following the transaction.

TRANSACTIONAL TIPS

Below we summarise few practical tips that should be borne in mind when planning a transaction.

Check applicability at the early stage

The potential strategic status of a target should always be checked at a very early stage. Unless clarified/confirmed during preliminary negotiations, this will need to be verified in the course of the due diligence review. It is good practice to consider not only 'purely' strategic activities of the target, but also any other

activities that could be deemed to facilitate a strategic activity. Such facilitating activities may be of importance to the FAS in deciding whether the law ought to be applied more broadly (such as in the Schlumberger/Eurasia Drilling and Nabor/Tesco Corporation cases — see the section *Notable Commission decisions and case law* above) and/or to the chairman of the Commission in deciding whether to order an *ad hoc* review of the deal or not.

Negotiate contractual protection

It is advisable to include specific provisions in the transaction documents in order to mitigate risks associated with possible application of the Strategic Investment Law. The buyer-friendly option is negotiating a seller's warranty to the effect that none of the subsidiaries that are being transferred engages in any strategic activities, and also an indemnity for losses incurred as a result of violation of the Strategic Investment Law.

Mind the timing

The review process under the Strategic Investment Law is time-consuming. It rarely takes less than four months from the date of submission of the application, and can take more than a year if there is a political dimension to the deal. This should be borne in mind when planning the deal and developing the step plan for it.

Consider a carve-out

It is worth considering an alternative transaction structure that will allow Strategic Entities to be kept separate and the transaction to close in other jurisdictions pending strategic clearance in Russia. If such carve-out options are developed at a very early stage, potential delays in the Russian review process will not jeopardise the global closing.

STATUS QUO AND OUTLOOK

Looking back

In enacting the Strategic Investment Law in 2008 the Russian Federation significantly expanded the domestic legislation governing foreign investment across a wide range of industries. The Strategic Investment Law has largely formalised what had already been the default position, while establishing a clear process for seeking the relevant approvals.

To date, political tensions between Russia and many Western countries over the situation in Ukraine do not appear to have significantly impacted decision-making under the Strategic Investment Law. The Russian government has emphasised that foreign investment is most welcome and that the Strategic Investment Law should not hinder such investment. The statistics indeed show that only very few transactions have been blocked by the Commission. At the same time, the number of transactions approved with conditions has risen significantly in recent years.

Although the Strategic Investment Law has been in force for more than 12 years now, it still remains difficult for Foreign Investors to reliably determine the precise scope of its application. In addition, many investors have complained of the onerous approval process and the significant delays it causes.

Upcoming amendments

In spring 2020, the Russian government introduced a bill to the State Duma amending the Strategic Investment Law. The proposed amendments are, however, not as far-reaching as might have been expected. They are largely

technical in nature and aim to close certain loopholes in the regime. More specifically, the concept of 'acquisition' of shares will be revised to cover also shares that are pledged or placed with a repo partner. There have been instances where foreign investors have circumvented the clearance procedure by placing shares with a third party. Technically, in such cases the owner does not enjoy voting rights, and currently such shares are not taken into account when calculating ownership stakes. However, the FAS and the government take the view that such shares remain effectively controlled by their owner and should be included when calculating their stake.

Another bill, envisaging broader amendments to the Strategic Investment Law, was published by the FAS in summer 2019, but has been pending approval by the Russian government since that time.

According to the current draft of the bill, a Strategic Entity should be deemed controlled by Foreign Investors if multiple unaffiliated Foreign Investors hold in the aggregate (i) more than 50% of the Strategic Entity's shares, or (ii) such lower stake as is sufficient to determine the Strategic Entity's decisions by other means. If adopted, this would lead to a substantial change. Clearance would be triggered by the fact that a majority of shares is owned by Foreign Investors, even if unrelated. A similar concept is already applied to Public Foreign Investors, i.e. where several state-controlled investors acquire shares.

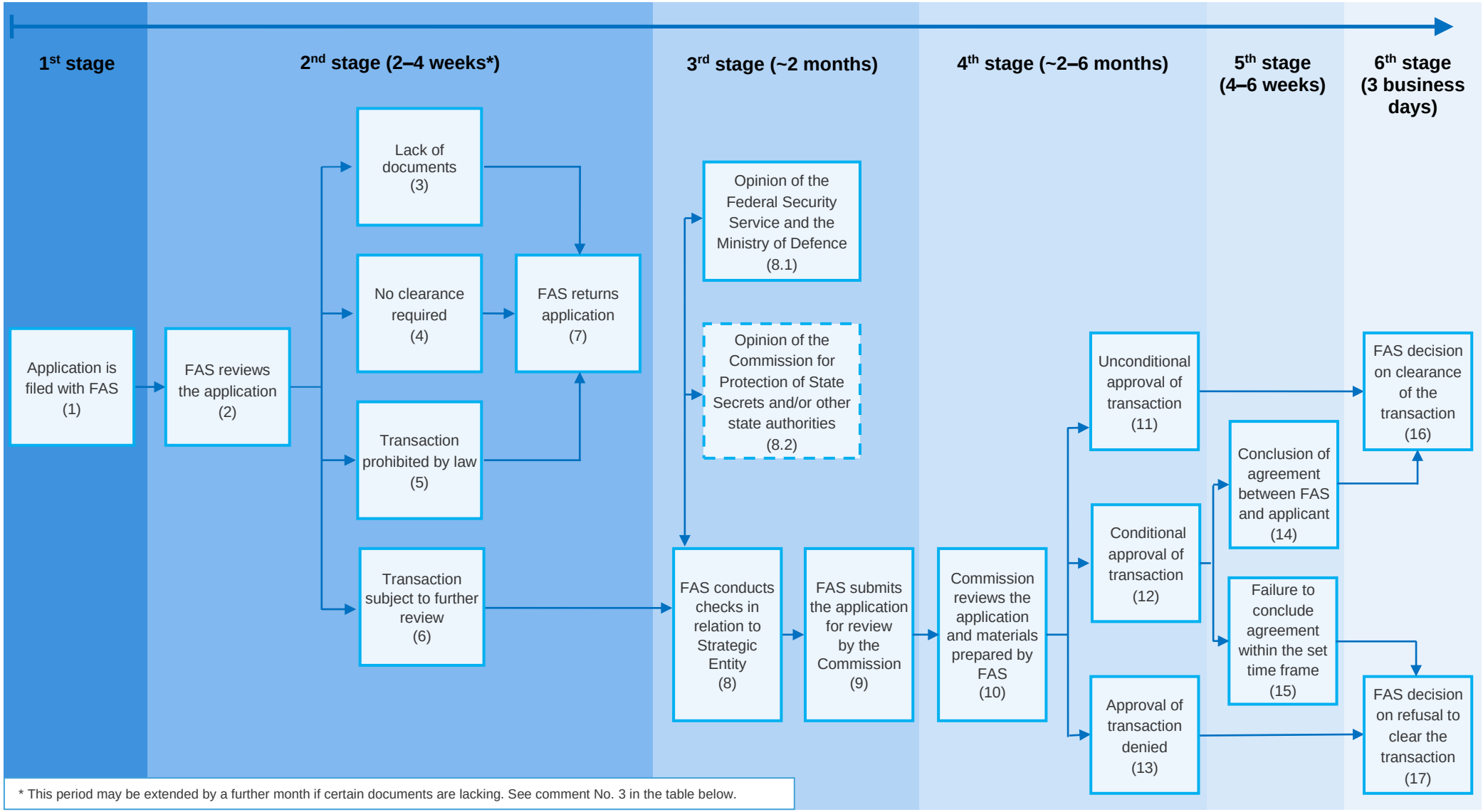
However, the expansion of this concept has been widely criticised, because it will be difficult to implement. It is understandable that the FAS wishes to avoid abuse situations where several Foreign Investors are artificially separated, although they do, in fact, exercise control jointly. However, in its current form the bill would go much further. Potentially, the buyer of a small minority stake could be required to seek clearance due to the fact that there are already numerous other Foreign Investors that may not have any connection and may not even be known to the buyer.

There are also a number of other noteworthy changes in the bill. It introduces mandatory clearance for concession agreements relating to assets used for strategic activities. Further, it empowers the chairman of the Commission to require foreign investment approval prior to issuing a licence for any type of strategic activity to a particular applicant (by the instrumentality of an *ad hoc* resolution). It also stipulates that an entity is to be deemed a Strategic Entity from the moment when it applies for a licence for any type of strategic activity. Finally, the bill regulates situations where a Russian beneficiary obtains a foreign citizenship and thereby becomes a Foreign Investor.

Looking ahead

The COVID-19 pandemic is having a significant impact on economies around the world, and Russia is no exception. Oil prices have been plummeting, the rouble has come under pressure, and many Russian companies have seen a decrease in their share price. In many European jurisdictions foreign investment rules are now being amended to protect certain local players from foreign takeovers. Against this background, it is to be expected that the FAS will also propose amendments to the foreign investment regime in the near future. The FAS has already proposed introducing additional merger control triggers to avoid IT start-ups (which sometimes have low turnover and book value) from being acquired without the regulator's scrutiny. It is not unlikely that similar amendments will be proposed for the Strategic Investment Law, e.g., by including parts of Russia's tech industry, players holding valuable IP, and manufacturers of products of relevance in pandemic situations. Even in the absence of legislative amendments, one can expect that the instrument of *ad hoc* resolutions will be exercised more often in order for the Commission to assess particular transactions.

REVIEW PROCESS – SCHEMATIC DIAGRAM



No.	*Statutory time frame*[17]	*Comments*
Stage 1: Submission of the application		
1	No specific filing deadline.	The Strategic Investment Law requires that two copies of the application (both accompanied with all necessary documents) be filed with the FAS.
Stage 2: Preliminary review of the application by the FAS		
2	14 calendar days	The FAS registers the application, checks its completeness (including the enclosure of all documents), and concludes whether or not the proposed transaction is subject to the clearance procedure set out in the Strategic Investment Law.
3	1 month	If the application is incomplete, the FAS will suspend its review and request the outstanding documents from the applicant. If the documents are not provided within 1 month, the application will be returned to the applicant without being reviewed.
4	3 business days	If the FAS concludes that control is not being acquired over a Strategic Entity and, accordingly, the Commission's clearance is not required, the FAS will return the application together with a letter containing a "negative" clearance decision.
5	3 business days	If the FAS concludes that the applicant is a Public Foreign Investor (ultimately controlled by the state or an international organisation) or failed to disclose information on its beneficiaries and therefore is prohibited from acquiring control over a Strategic Entity, the FAS will return the application, explaining the reasons for such return.
6	14 calendar days	If the FAS concludes that the contemplated transaction is subject to the clearance procedure set out in the Strategic Investment Law, the FAS will proceed with further review.
Stage 3: Analysis of the impact of the transaction		
8	30 calendar days	If the FAS establishes that the transaction is subject to clearance, it will verify whether or not the Strategic Entity engages in certain activities (e.g., licensed activities, supplies under government defence orders, etc.) and/or meets other criteria set out in the Strategic Investment Law.
8.1	3 business days	The FAS requests opinions of the Federal Security Service and the Ministry of Defence as to whether or not the transaction may impact national defence or state security.
8.1	30 calendar days	The Federal Security Service and the Ministry of Defence prepare their opinions on any such potential impact and deliver them to the FAS.
8.2	3 business days	If the Strategic Entity holds a licence for handling state classified information, the FAS will also request that the Commission for Protection of State Secrets comment on whether or not the applicant and/or its officers or employees can potentially be permitted access to such classified information.
8.2	14 calendar days	The Commission for Protection of State Secrets confirms whether or not the relevant foreign state has a reciprocal treaty with the Russian Federation governing the protection of state secrets.[18]
8.2	30 calendar days	The FAS may request the opinion of other state authorities.
9	3 calendar days	Once the FAS has completed its internal checks and the relevant state authorities have provided their opinions, the FAS submits the application to the Commission together with other materials and its own recommendation as to whether or not the transaction should be cleared.
Stage 4: Clearance		
10	3 months from the date of submission of the application; may be extended by a further 3 months[19]	The Commission reviews the application and other materials provided to it by the FAS for review.
11-13		Based on the review, the Commission decides to (i) clear the transaction unconditionally, or (ii) clear the transaction conditionally, or (iii) refuse clearance of the transaction.
Stage 5: Agreement with the applicant		
14, 15	30 calendar days following receipt of the Commission's decision by the FAS; may be extended by a further 14 calendar days upon the applicant's request	The Commission decides on the conditions. The FAS drafts an "agreement on undertakings". The applicant and the FAS enter into the agreement.[20] If no agreement is signed, clearance of the transaction will be refused.
Stage 6: Final resolution		
16, 17	3 business days	The FAS formalises the Commission's decision in a final decision to be sent to the applicant.

[17] The time frames in this column should in each case be counted from the date the previous stage is completed or the date the FAS became aware of the information in question (as the case may be). In practice, there can be delays in review. Accordingly, the review periods given in the schematic diagram may differ from the statutory time frames indicated in the table.

[18] The Strategic Investment Law does not contain any specific list of grounds on which clearance may be denied. Accordingly, there is no reason to presume that in the absence of such a treaty the transaction in question would not be cleared. It should be noted, however, that currently foreign nationals and stateless persons are only permitted to access classified state information on the basis of such treaties.

[19] The Commission does not always meet these deadlines in practice (for details, see the section *Procedure for obtaining approval – Timing* above).

[20] The statutory recommended form of agreement to be entered into between the applicant and the FAS is specified in Order of the FAS No. 357, dated 17 September 2008 (as amended).

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CONTACTS

Torsten Syrbe
Partner

T +7 495 725 6400
E Torsten.Syrbe
@cliffordchance.com

Olga Mizikova
Senior Associate

T +7 495 660 8042
E Olga.Mizikova
@cliffordchance.com

Ani Tangyan
Transaction Support
Lawyer

T +7 495 660 8060
E Ani.Tangyan
@cliffordchance.com

www.cliffordchance.com

Clifford Chance, Ul. Gasheka 6, 125047
Moscow, Russia