

Newsletter

Disclosure of Information on Beneficiaries, Beneficial Owners and Controlling Persons required under Russian Strategic Investments Law: Procedure and Scope Have Been Clarified.

January 10, 2019

Dear Ladies and Gentlemen,

On June 12, 2018, amendments to the Federal law No. 57-FZ, dated April 29, 2008 "On Foreign Investments into Business Entities of Strategic Importance for the Country's Security, Protection and Defense Support" ("**Strategic Investments Law**") came into force. In accordance with the amendments a new concept of "companies not disclosing information about their beneficiaries, beneficial owners and controlling persons" acting as acquirers, within the forthcoming transactions, was provided. This category means that non-disclosing acquirers shall be treated as public investors and due to this, additional legislative restrictions would apply, which include prohibition to purchase control over strategic companies, as well as application of lower thresholds for the necessity of strategic investment clearance of the transaction.

There was a gap in the regulation, since the Strategic Investments Law contained only the definitions of beneficiaries, beneficial owners and controlling persons and did not include any provisions on the scope and procedure for disclosure of this information to the Federal Antimonopoly Service ("**FAS**"). In order to clarify the relevant legislative provisions, the Governmental Order as of December 01, 2018 №1456 describing the procedure for disclosure, as well as the scope of the relevant information required for submission to the authority ("**Order**"), was adopted and came into force on December 13, 2018.

Please find the main provisions of the Order below.

1 Procedure for submission of information on beneficiaries, beneficial owners and controlling persons to the FAS

According to the Order, a free-form document containing information on beneficiaries, beneficial owners and controlling persons should be submitted within the notification on pre-transaction /

post-transaction strategic investment clearance OR within the request to the FAS seeking to confirm necessity of clearance of the particular transaction, if it is not clear whether the transaction is subject to it.

The document with such information should also be submitted to the FAS, for the purposes of applying some exemptions provided by the Strategic Investments Law that abolish the necessity of receiving clearance for some types of transactions. These should be received no later than 30 days prior to the proposed date of transaction's closing.

2 Scope of information on beneficiaries, beneficial owners and controlling persons to be disclosed

The following information on beneficiaries, beneficial owners and controlling persons should be provided to the authority within strategic investments filing.

- (A) Information on a beneficiary, beneficiary owner, controlling person of the acquirer within the proposed transaction:
 - (i) For individuals:
 - surname, first name and patronymic (if any), place of residence;
 - information on citizenship, including the information on whether the Russian citizen has another citizenship, as well as information on whether this Russian citizen could be regarded as a tax resident of the Russian Federation, in accordance with the Russian tax legislation;
 - taxpayer identification number;
 - requisite elements of documents certifying the identity;

- requisite elements of documents confirming state registration as an individual entrepreneur;
 - main types of activities implemented;
 - contact phone number and e-mail address (if any).
- (ii) For companies and organizations:
- full and abbreviated name (if any), registered address and corporate registered office;
 - taxpayer identification number, or a code of a foreign organization that is not a legal entity;
 - requisite elements of documents confirming state registration of a company, or confirming foundation of a foreign organization that is not a legal entity;
 - main types of activities undertaken;
 - contact phone number and e-mail address (if any).
- (B) Grounds for considering the persons as beneficiaries, beneficial owners, controlling persons of the acquirer:
- (i) number of shares (participatory interest) (with indication of the exact percentages of ownership) in the acquirer's share capital, or (and) number of votes accounting for the shares constituting its share capital, in respect of which the rights of possession and (or) use and (or) disposal are exercised;
 - (ii) signs of being under control in accordance with Article 5 of the Strategic Investments Law;
 - (iii) details and term of validity of the documents, confirming that the person is a beneficiary, beneficial owner and controlling person of the acquirer (including the

documents confirming its participation in a legal entity that is the shareholder of the acquirer, partnership, agency, commission, trust agreements/contracts or other documents).

3 Definition of beneficiaries and scope of information to be disclosed

According to the current legislation, a beneficiary means a person to whose benefit the acquirer acts, including based on an agency, commission and trust agreements/contracts, when conducting transactions with monetary funds and other property.

Thus, it is unclear how many shares (ownership percentages) in the acquirer's share capital a company / organization, or individual, should possess to be considered as a beneficiary for the purposes of the Strategic Investments Law.

The Order does not clarify and indicate the exact percentage of ownership. However, it establishes the possibility not to provide information about the beneficiaries that own and (or) use, and (or) dispose of less than 5% of the shares and (or) votes accounting for the shares constituting the share capital of the acquirer, or in the interests of which the rights of ownership and (or) use and (or) disposal of such shares are exercised. Such refusal shall be justified and well-grounded.

4 Conclusion

The Governmental Order has filled the vacuum in legislation and clarified what kind of information shall be disclosed to the competition authority and also which procedure shall be followed in order to receive clearance to the transactions required under the Strategic Investments Law.

We hope that the information provided herein will be useful to you. If you would like to learn more about our [Competition / Antitrust Practice](#), please, [click here](#).

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If you have any questions,
please, do not hesitate
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Sincerely,
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