

The concept of the term “foreign investor” in strategic economic companies has been expanded

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The Federal Law of April 28, 2023 №139-FL “On Amendments to the Federal Law “On the Procedure of Making Foreign Investments in Economic Companies of Strategic Importance for Ensuring the Defense of the Country and the Security of the State”

The Amendments to the Law on investments in strategic economic companies (№ 57-FL of April 29, 2008), which expand the concept of the term “foreign investor”, came into force on May 9. This increases the risks of expanding a special procedure of making deals with stakes and shares of such companies for Russian businessmen under the threat of declaring them invalid.

Prior to the Amendments in the Law on investments in strategic economic companies were made, a foreign investor was considered to be a foreign legal entity or an individual or a citizen of the Russian Federation with foreign citizenship. **Now Russian citizens with a residence permit or another document giving the right to the permanent residence in a foreign country are also recognized as foreign investors.**

Risks

Russian citizens who live abroad have more risks to face the consequences of the invalidity of transactions for the sale of shares or stakes in their Russian companies. For instance, in case a shareholder who owns directly or indirectly more than 50% of the voting shares of the strategic company (the list of transactions which must be approved is stated in the art. 7 of the Law № 57-FL, and the list of actions which lead to the recognition of strategic companies,- in art. 6 of the mentioned Law), expropriates shares of such company without a special consent. The preliminary consent to the transaction is given by the Federal Antimonopoly Service.

At the same time, the Law № 57-FL now directly indicates that in case a transaction is made deliberately by a negligent investor, **the court may exact the shares of a strategic company, property or income that an investor had derived as a result of this transaction in the revenue of the Russian Federation.** This point is equivalent to the art. 167 of the Civil Code on the invalidity of transactions, however the Law has not yet mentioned a direct indication about the possibility of seizing property.

Who can challenge a transaction?

A transaction can be challenged by the Federal Antimonopoly Service as an authorized body for controlling foreign investments in strategic companies.

It is a prosecutor who has a right to challenge a transaction. The law, which was passed last year, authorized them to bring lawsuits independently with a demand to declare a transaction invalid and apply consequences of its invalidity, if it violates the requirements of anti-money laundering,

currency, customs and tax and sanctions legislation.

The company itself can file a lawsuit against such an investor with a demand to claim damages, including lost profits, and compensate for damages from a void transaction.

“DSL-Service” lawyers will help to find on time legal risks for your business and minimize them.

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