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BEITEN BURKHARDT

**“Comparison of EU and Russian
Regulations on Investments into
Strategic Sectors of the
Economy”**

**Tuesday, February 26, 2008
Marriott Grand Hotel**

FOREIGN INVESTMENTS IN STRATEGIC BRANCHES – RECENT LEGISLATIVE DEVELOPMENTS IN RUSSIA

Alex Stoljarskij

Comparison of EU and Russian Regulations on Investments into
Strategic Sectors of the Economy

AEB Open Event, Marriot Grand Hotel, Moscow - 26.02.2008

Main principle: Freedom of foreign investments

- Variety of protection mechanisms:
 - Law on Foreign Investments (1999) *Guarantee of repatriation of profits. Protection of interests in Russian courts*
 - Bilateral agreements: e.g. Agreement on Facilitation and Mutual Protection of Capital Investments between the USSR and the FRG (1989)
Reasonable compensation in case of nationalization, repatriation of profits and capital investments
 - On European level: Agreement on Partnership and Cooperation between Russia and the EU (1997)

Restrictions for foreign investments

- Nowadays there are investment restrictions with respect to:
 - Bank sector
 - Insurance
 - Land plots for agricultural purposes
 - Aircraft manufacturing and air traffic
 - Gas and electrical power supply

Strategic Branches

Draft law on protection of strategic branches

- Draft Law „On Procedure of Foreign Investments into Commercial Organizations having Strategic Importance for the National Security of the Russian Federation“
- President Putin expressed the need in 2005
- In July 2007 the draft law was brought to the State Duma, in September 2007 it was adopted in the first reading
- Adoption in the second and the third readings was scheduled for November 2007 but was postponed
- Participation of the AEB in parliamentary hearing and working group sessions

Strategic Branches

Goals of the Draft Law

- *„Protection of the foundations of the constitutional system“*
- *„Guarantee of the state defence and security of the country“*
- Creation of transparent and clear rules for foreign investors

Strategic Branches

List of strategic branches

- (as of today) **40** „strategic“ sectors of economy, in particular:
 - Military technologies, nuclear power, aircraft and space industries, encryption means,
 - Natural monopolies (such as pipelines, electricity and heat transmission, maintenance of ports, airports) with the exception of public electro communication and mail services)
 - Subsoil use, television and radio broadcasting, extraction of biological water resources

Strategic Branches

Definition of “Control” (I)

For private investors:

- Acquisition of over 50% of the shares in a strategic company
- Acquisition of less than 50% in case of actual control but over 10% of the shares (“De-minimis-rule“)
- Acquisition of 10 or more % of the shares in a strategic company dealing with subsurface studies or extraction of mineral deposits

Strategic Branches

Definition of “Control” (II)

For state investors:

- Acquisition of over 25% of the shares in a strategic company
- Acquisition of other possibilities to block decisions of the management bodies
- Acquisition of more than 5% of the shares in a strategic company dealing with subsurface studies or extraction of mineral deposits

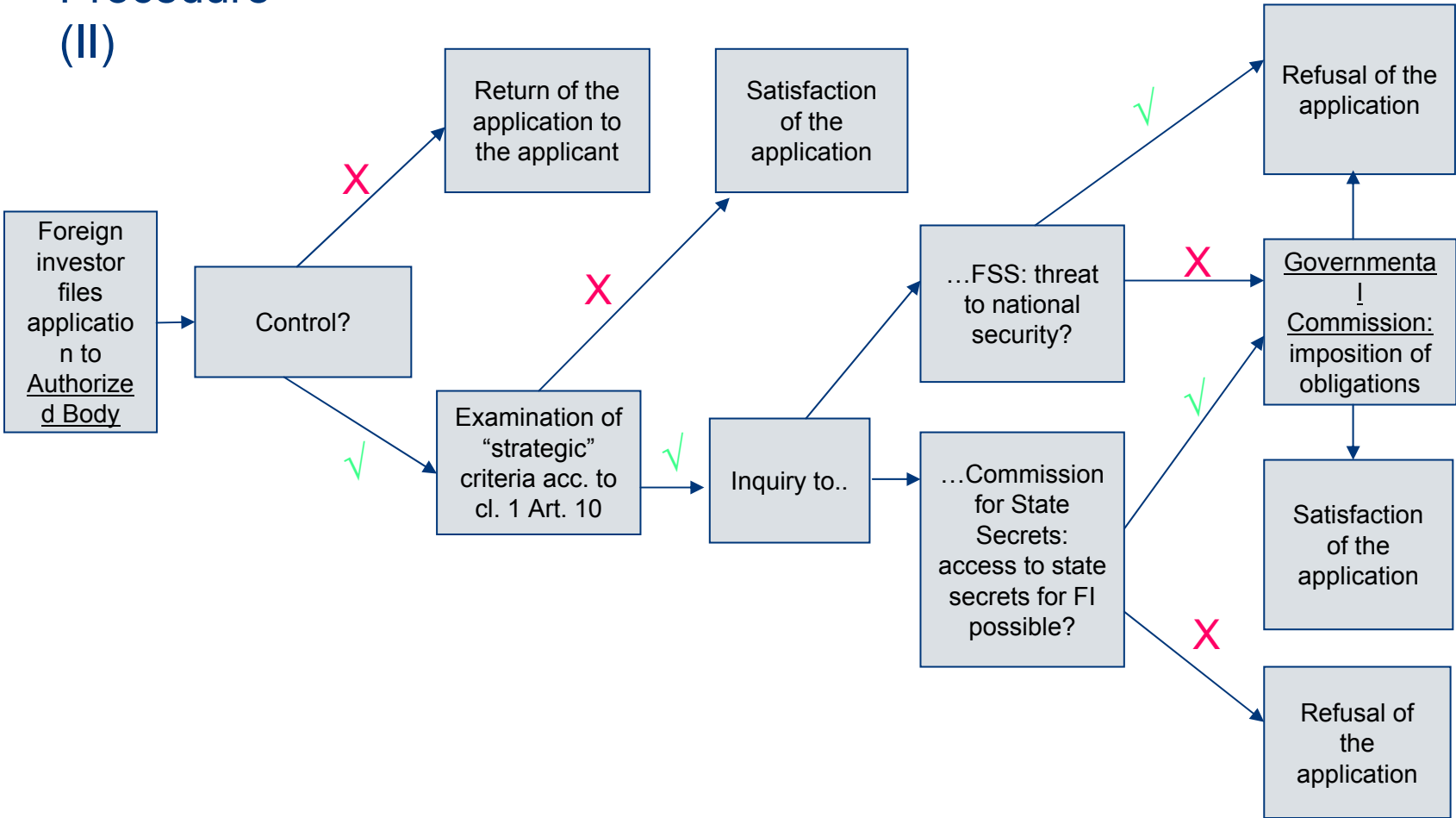
Strategic Branches

Procedure (I)

- Universal obligation to obtain preliminary consent for transactions re acquisition of control over strategic companies
- Term of processing an application is 3 months, with exceptional possibility of prolongation for another 3 months - important change to the draft law that passed first reading
- Decision of the Governmental Commission may be appealed in court

Strategic Branches

Procedure (II)



Strategic Branches

Sanctions

- in case of acquisition of control without obtaining a consent:
 - Invalidity of the decisions of the company passed prior to this moment
 - Transactions are null and void
 - Investor loses his ownership title to the shares
 - Threat of personal liability of the involved parties
 - Possibility to sell shares within 3 months only through passively obtained control due to widespread shareholdings

Strategic Branches

AEB proposals during legislative process

- Decisions to be made in writing and with provision of reasons
- Introduction of a transition period - Jan.1, 2009
- No retrospective effect
- De-minimis clause
- Determination of strategic company either through market shares or annual turnover or other criteria
- Possibility to sell shares obtained under violation of this law

Strategic Branches

Critical issues (I)

- Broadening of the list of strategic branches (subsurface, mass media, commercial fishing....)?
- What is a strategic enterprise? How far down does the law apply? Strategic activity does not have to be the core business of a company
- Too strict sanctions, forced nullity? More flexibility possible?
- Procedure for obtaining consent complicated

Strategic Branches

Critical issues (II)

- No administrative regulation worked out yet
- Fiction clause for approval was deleted: if a decision has not been taken within the established period, a transaction is deemed approved
- Legal action because of inactivity of the authorities can not be the solution
- May 10% participation of a foreign investor be seen as having control, if e.g. a Russian state company owns 90%? Systematically correct approach?
- Introduction of 25% participation barrier (need to receive prior approval) for state companies in ALL Russian companies - amendment to the Law on Foreign

Strategic Branches - Perspectives

What comes next?

- Draft law remains a priority - March 19, 2008
- Tendency to more strict wordings (major part of Russian economy strategic?)
- Lobbying by international business organisations continues
- Interest of law-makers in foreign know-how
- Have the goals been reached?

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Thank you for your attention!



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TTC TANFIELD CHAMBERS

Regulation on Investments into Strategic
Sectors of the Economy in EU countries:
United Kingdom

Date: 26 February 2008

*Regulation on Investments
into Strategic Sectors of the
Economy in EU countries:
United Kingdom*

Richard Nowinski

- *“The test I apply is for the consumer. And the consumer in my view benefits from there being in the private sector a free market. You can argue forever about whether it was right or wrong to privatise various companies but if they are in the private sector, the best thing for the consumer is the best possible management. ... But for me, essentially, it is what is the best deal for the British consumer. And I think all the evidence is, if government starts interfering in this process, and trying to pour politics over it, you don't succeed for the consumer.”*

Tony Blair. Monthly Press Conference. June 2006

Historical Background

- Exchange Control Act 1947
 - Section 29 (1): *“Except with the permission of the Treasury no person resident in the UK shall settle any property, ... so as to confer an interest in the property on a person who, ... is resident outside the scheduled territories, or shall exercise, ... any power of appointment, ... in favour of a person who at the time of the exercise of the power, is resident outside the scheduled territories.”* (Now Repealed)

- Industry Act 1975 – Section 11 (1) & 13(1)
 - The secretary of State may make a prohibition order if it appears to him:
 - there is a serious and immediate probability of a change of control of an important manufacturing undertaking;
 - that change of control would be contrary to the interests of the UK
 - Change of Control – Section 12
 - a person / body corporate not resident there acquires the whole of part of the undertaking.
 - Acquisition of 30, 40 or 50% of voting rights of the undertaking.

- Secretary of State's power to make prohibition orders to the undertaking (s.13)
 - prohibit that change of control
 - Prohibit of restrict the doing of things which in his opinion would constitute or lead it.
- Vesting Order (s. 13)
 - Share capital, loan capital or any assets which are employed in the Undertaking to be vested in ... in himself or in nominees for ... himself.
 - Vesting order is to be made only when necessary in the national interest and there are no other way to protect it.

- ‘Golden Share’ rule

- Government’s control over certain matters in recently privatised companies.
- Government retains 1 special right share and give consent on certain matters of the company.
- Specifically used to restrict foreign ownership in certain strategically significant companies.
- Objections from the EU Commission on the ground of discrimination of capital from other EU members.
- ECJ Review: Ruled Golden Share violated Articles 43 and 56 of the EC Treaty (Free Movement of Capital).
- Most of the pre-2004 EU member states (including UK) are now in the process of abolishing or limiting Golden Share.

- Incoming firms: Intervention by authority (Section 194 FSMA 2000).
 - The authority may exercise its power of intervention if an incoming firm:
 - has contravened or is likely to contravene a requirement imposed on it by this Act or ...
 - it is desirable to exercise the power in order to protect the interests of actual or potential customers. ...

Recent Example

- Gazprom's bid over Centrica (2006)
- Rosneft flotation on LSE (2006)
 - Concern over 'politicisation' of economic life
- National Champion Theory – Industrial Policy and Competition.
- Compare with the US approach on foreign investment on strategic sectors.

The background is a solid red color. A white arc starts from the top left and curves towards the right. A grey wedge-shaped area is located on the right side, pointing towards the center.

THANK YOU

THE END

TANFIELD CHAMBERS

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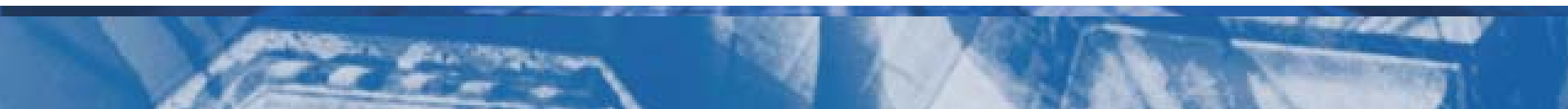
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Regulation on investments into Strategic Sectors of the Economy in EU countries: France & Benelux

EU

- Sectors in connection with the exercise of the public authority (Article 45 of the Treaty)
- Objectives of general interest (such as agricultural land)
- Protection of essential security interests (Articles 296 and 297 of the Treaty) : such measures must be justified, of an exceptional nature and clearly defined



FRANCE

Foreign investments

■ *Notion of foreign investment and strategic sectors*

- Decree n° 2005-1739 of 30 December 2005

“regulating financial relations with foreign countries and implementing Article L. 151-3 of the Monetary and Financial Code”

- Direct, indirect and assimilated foreign investments

Monetary and Financial Code, art. R151-1 5° - R151-1, 6°
- R151-1, 7°

FRANCE - Foreign Direct Investment

► **Must be qualified as a “foreign direct investment”:**

(for the purposes of section R. 152-5)

- The creation of a new company by a foreign company or a non-resident individual;
- The acquisition by a foreign company or a non-resident individual of all or part of the business of a French company;
- All transactions in the capital of a French company by a foreign company or a non-resident individual when, after such transaction, the cumulative sum of the capital or voting rights held by foreign companies or non-resident individuals in the French company exceeds 33.33% of the capital or voting rights;
- The same operations performed by a French company whose capital or voting rights are held at more than 33.33% by a foreign company, several foreign companies or non-resident individuals.

FRANCE - Foreign Investment (assimilated)

■ **Must be also qualified as a “foreign investment”:**

(for the application of Article R. 152-5)

- Operations, such as loans or substantial guarantees or acquisition of patents or licences;
- commercial contracts or technical assistance, which involve as a practical consequence the takeover of a French company by a foreign legal entity or a non-resident individual.

FRANCE - Indirect Foreign Investment

- **Must be qualified as an “indirect foreign investment”:**
(for the application of Article R. 152-5)
 - A transaction performed abroad with the effect of changing the control of a non-resident company, which itself holds a participation or the voting rights in a French company whose capital or voting rights are held at more than 33.33% by the non-resident company.

FRANCE - French Strategic Sectors

■ An exhaustive list of 11 sectors :

P.A.
EU
vs. Third
Country



- 1) Games (Casino),
- 2) Regulated Activity in Security,
- 3) Biotechnology (production of antidotes in the anti-terrorism policy),
- 4) Equipment for intercepting communications,
- 5) and 6) Safety in new technologies systems,
- 7) Dual Technologies (dual use technologies; civilian and military technologies, products and components with possible military uses)
- 8) Cryptology,
- 9) State Secrets, Defense,
- 10) Military,
- 11) Contracts related to Defense.

P.A.



FRANCE - French Strategic Sectors

- Foreign investments from either European countries or third countries in sectors 8 to 11 require a **preliminary authorisation**
- For the first 7 sectors, they are also subject to prior authorisation in both cases,
 - but their definition and the conditions for the takeover are defined more narrowly when investments come from countries of the European Union or assimilated thereto.
- Moreover, only investments in the form of acquisition of industry is targeted for European investments in sector 7.
 - Accordingly, the takeover on control or the reach of the threshold of one-third of the capital or voting rights does not apply to EU companies.

FRANCE - Preliminary authorization

■ Prior Authorisations

- For investments from third countries outside EU
- For investments from EU countries
- Applications made to the “Direction du Trésor”
 - 2 months: silence [ok] or acceptance with reserves or refusal
 - The Ministry of the Economy and Finance can be solicited before adopting a prior authorisation

FRANCE - OTHERS DECLARATIONS

■ Administrative declaration

- For direct investments set forth in the Monetary and Financial Code art. R151-1 5°
- For assimilated transactions pursuant to art. R151-1, 6°
- For Foreign Indirect investments pursuant to art. R151-1, 7°

■ Statistic filing (declaration) to the “Banque de France”

- (R152-1 à R154-4 du CMF)
- Transaction of non resident’s holding more than 10% in the capital or voting rights of a French company
- Transactions between assimilated companies
- Immovable property (real estate)

■ Statistic filing (declaration) to the “Direction du Trésor”

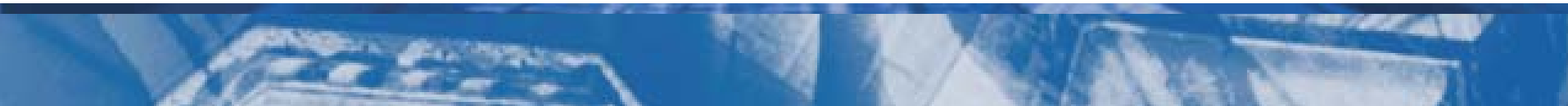
- Transactions by foreigners on immovable property (exceeding € 1.5 Million)
- Withdraw of foreign investments
- Transactions requiring the Ministry of the Economy’s approval
- Any drop in the foreign participation in the capital of a French company, which is owned by foreigners (and any amendments)
- Agricultural land for wine business

BENELUX

Regulation on investments into Strategic Sectors

▀ BELGIUM, NETHERLANDS, LUXEMBOURG

- No sectors qualified as strategic – no specific regulation discriminating against foreign investments.



Christophe Huet

Avocat

CMS Bureau Francis Lefebvre

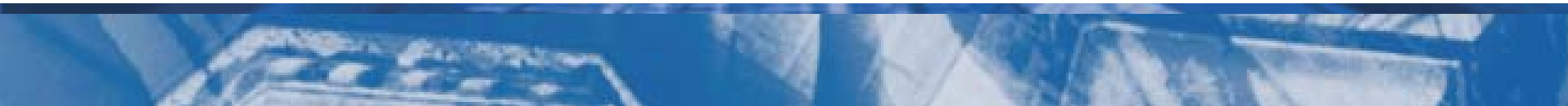
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Regulation on Investments into Strategic Sectors of the Economy in EU Countries: Germany

Dr. Christian von Wistinghausen

AEB Conference: “Comparison of EU and
Russian Regulations on Investments into
Strategic Sectors of the Economy”
Moscow, 26.02.08

Contents:

- Introduction
- Current legislation in Germany
- Draft law (tightening of control)
- Conclusion
- Contact

The fear of foreign investments - Introduction

Trend towards control over foreign investments

- State-owned investment funds play an increasingly important role in the international capital markets
 - Use of income generated by sales of commodities (oil, gas)
 - Mainly Asian and Arabian funds, in Europe only Norway and Russia
 - Stabilization of several (western) banks during the current subprime crisis
- Fear of political interference into the economy, desire to protect strategic sectors
- Many countries either already have a legal instrument regulating the control of such investments (USA) or are creating it (Russia, Germany)

Current legislation in Germany

Germany - a very open market

- So far no systematic monitoring of, or "subject to statutory approval" caveats on, foreign investments in Germany
- Legal provisions in the Foreign Trade Act (*Außenwirtschaftsgesetz – AWG*) and the Foreign Trade Ordinance (*Außenwirtschaftsverordnung – AWV*)
- Restrictions on foreign investments in only two sectors:
 - Defense industry
 - Production of encoding technology
- Procedure: an acquisition of shares giving the purchaser more than 25% of (voting) shares must be disclosed to the Federal Ministry of Economics and Technology, which can interdict the acquisition within one month

Draft law (tightening of control)

Draft law

- Draft issued by the Federal Ministry of Economics and Technology
 - First step of the legislation procedure
 - Government plans to decide in April
- Ongoing political discussion regarding the objectives:
 - Protection against hedge funds, state-controlled investment funds and state-run companies as foreign buyers
 - Protection of strategic industries (e.g. energy, telecommunications)
 - Compatibility with EU legislation
- Draft likely to be submitted to the Parliament in 2008

Regulation of foreign investments

- Blanket clause (new Sec. 7 para. 2 no. 6 AWG; Sec. 53 AWW)
 - Foreign investment in any company and sector having its place of business in Germany
 - An investment may be reviewed and vetoed by the Federal Ministry of Economics and Technology
 - Interdiction if the investment poses a threat to national security
- Foreign investments amounting to 25% or more of the company's equity are subject to the procedure
- 25% stake: voting rights are decisive; direct and indirect holdings; due to one-time or successive acquisitions

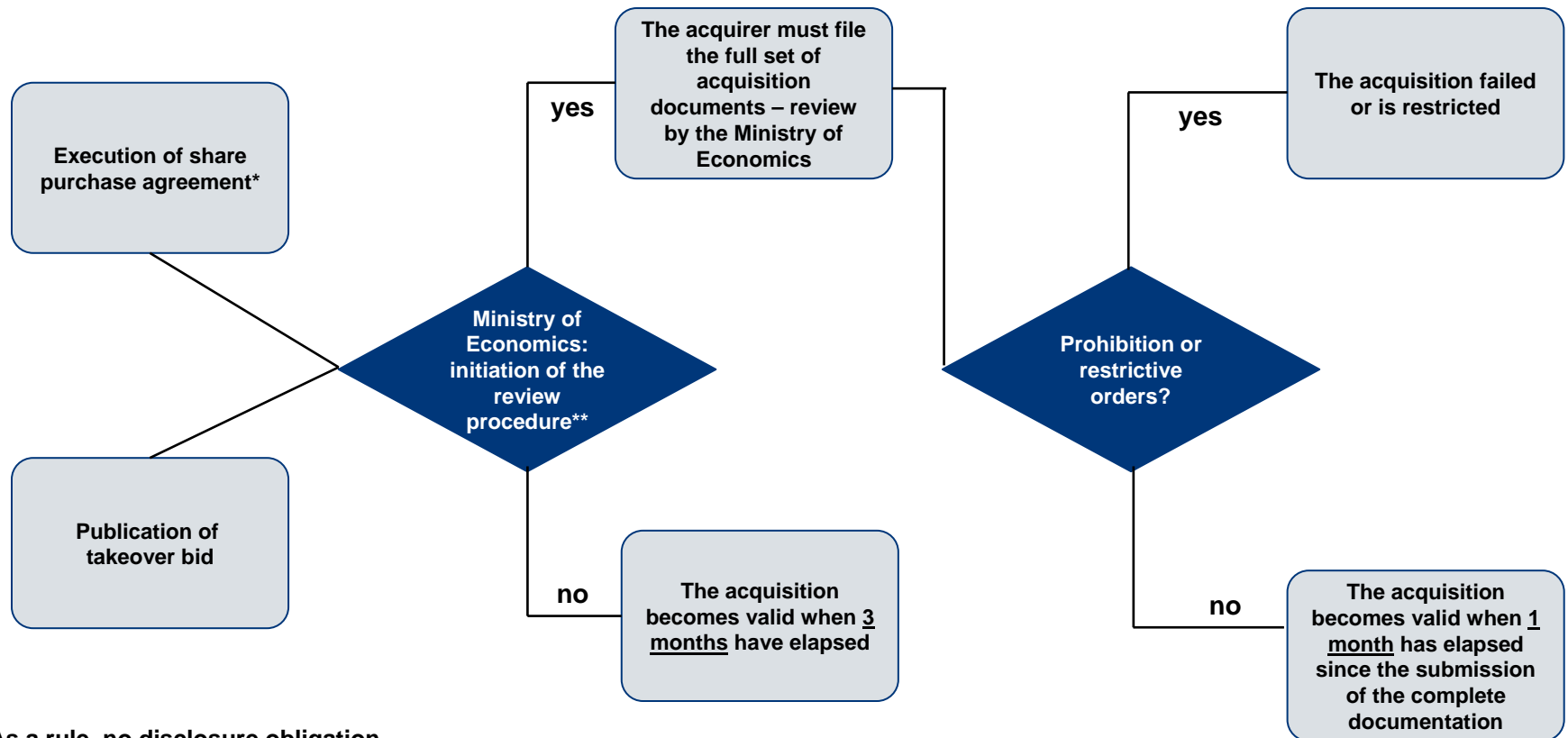
Foreign investor

- A foreign investor/foreign company or a German company in which a foreign investor/foreign company holds at least a 25% stake
- Regardless of whether a hedge fund, state-controlled investment fund, state-run company or other foreign investor, including private sector investor (e.g. industrial investor)
- EU/EEA-member states shall be excluded; open issue: third-country investors which use a subsidiary company incorporated in an EU/EEA-member state would be protected under the EC Treaty/EEA Agreement

Procedure

- No general obligation to disclose acquisitions
- Review of acquisition by the Federal Ministry of Economics and Technology after execution of a share purchase agreement or takeover bid
- The procedure should be used only in individual/exceptional cases
- Any acquisition qualifying for the review process is unenforceable pending the lapse of a 3-month waiting period or a 1-month review period
- An investor can demand an examination procedure to clarify the situation at an early stage
- A decision of the Ministry may be challenged in court

Procedure



* As a rule, no disclosure obligation.

** The acquirer may apply for an examination procedure in order to obtain an early decision.

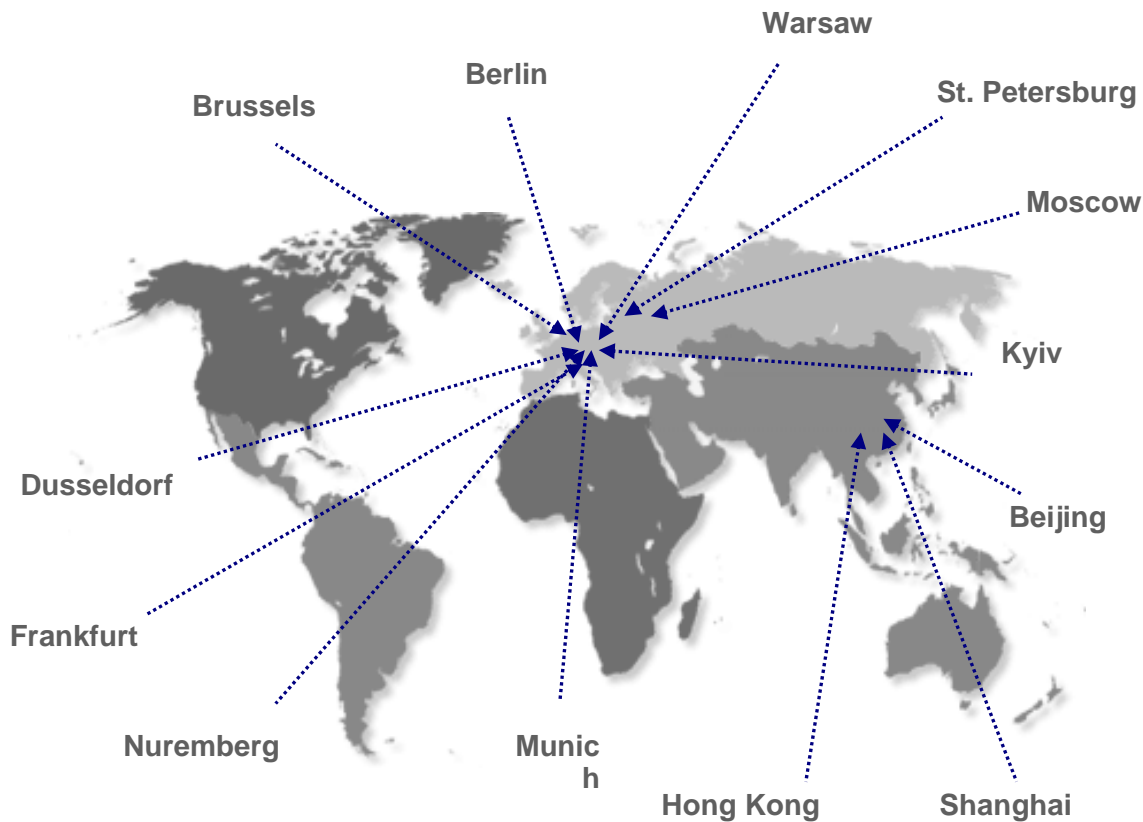
Conclusion

Conclusion

- The draft law is still under discussion; important changes before adoption very probable
- Government: no restrictions for investors from EU/EEA countries
- No restrictions for investors from countries with whom Germany has a special regime (e.g. USA)
- The Ministry has pledged to use the legal framework only in exceptional cases
- The draft law will nevertheless create an obstacle for foreign investors in Germany

Contact

Beiten Burkhardt



- International law firm (>380 attorneys)
- Extensive expertise in corporate, M&A, capital markets, banking, finance, real estate, tax law
- Strong presence in Eastern Europe (4 offices with over 100 lawyers)
- Close cooperation with leading US and European law firms

BEITEN BURKHARDT

- Coverage of core German business regions
- Russian speaking lawyers



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law firm on the market



St. Petersburg: Since 1996, leading
international law firm in the
Northwest Region



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Ukraine



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COFFEE BREAK



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Changes to the Subsoil Law of the Russian Federation: regulation of foreign investment in the development of natural resources



Tatiana Khovanskaya
“Pepeliaev, Goltsblat & Partners”
26 February 2008
Marriott Grand Hotel, Москва

Legal regulation of activities in the sphere of Subsoil Use, alongside the subsoil legislation, includes the following aspects:

Правовое регулирование деятельности в сфере недропользования наряду с законодательством о недрах включает аспекты:

- Land legislation / *земельного законодательства*
- Construction legislation / *строительного законодательства*
- Environmental protection legislation
законодательства об охране окружающей среды
- Forest legislation / *лесного законодательства*
- Industrial safety legislation
законодательства о промышленной безопасности.



Amendments to the Subsoil Law to bring it into line with the Land legislation

Изменения в Закон о недрах, в связи с приведением его в соответствие с земельным законодательством.

- Clause 6, article 11 of the Subsoil Law: “A licence shall be issued for subsoil use given the consent of the owner of the land plot, the land user or land holder to the relevant land lot being granted for performance of work connected with geological surveying or other use of the subsoil”.

П. 6 ст. 11 Закона о недрах «Предоставление лицензии на пользование недрами осуществляется при наличии согласия собственника земельного участка, землепользователя или землевладельца на предоставление соответствующего земельного участка для проведения работ, связанных с геологическим изучением и иным использованием недр.».

- Clause 6, article 11 of the Subsoil Law: “A land plot shall be granted for performance of work connected with geological surveying and other subsoil use in the manner established by the legislation of the Russian Federation after the project for performance of the given work has been approved”. (It is not possible to get a land plot immediately for both surveying and development, this running counter to clause 4, article 88 of the Land Code of the Russian Federation.)

П. 6 ст. 11 Закона о недрах «Предоставление земельного участка для проведения работ, связанных с геологическим изучением и иным использованием недр, осуществляется в порядке, установленном законодательством Российской Федерации, после утверждения проекта проведения указанных работ.» Одновременное предоставление для разведки и разработки невозможно и противоречит п. 4 ст. 88 ЗК РФ)

- Article 25.1 of the Subsoil Law – withdrawal of land plots for state and municipal needs.

Ст. 25.1. Закона о недрах – изъятие земельных участков для государственных и муниципальных нужд



- The Law on environmental examination no longer requires mandatory state environmental examination of projects for developing mineral deposits. The environmental aspects are to be evaluated within the scope of the unified state expert examination of the design documentation in accordance with the town-planning legislation.

Закон об экологической экспертизе более не содержит требований об обязательной государственной экологической экспертизе проектов разработки месторождений полезных ископаемых. Экологические аспекты подлежат оценке в рамках единой государственной экспертизы проектной документации в соответствии с градостроительным законодательством.

- The new forest legislation has totally excluded the possibility of subsoil use activities in group 1 forests (currently protective forest).

Новое лесное законодательство полностью исключило возможность осуществлять деятельность по недропользованию в лесах 1-ой группы (ныне защитные леса).



- Amendments to the Law on industrial safety have excluded the need for industrial safety expert examination to be conducted in relation to construction projects, reconstruction and overhaul of industrially hazardous facilities and have handed over these functions to the unified state expert examination of the design documentation in accordance with the town-planning legislation.

Изменения в Законе о промышленной безопасности исключили необходимость проведения экспертизы промышленной безопасности в отношении проектов строительства, реконструкции и капитального ремонта промышленно опасных объектов, передав экспертные функции единой государственной экспертизе проектной документации в соответствии с градостроительным законодательством.

Legal fundamentals of subsoil use by foreign investors in the Russian Federation

Правовые основы осуществления иностранными инвесторами недропользования в Российской Федерации

- Foreign citizens and foreign legal entities are permitted to engage in subsoil use in the Russian Federation unless federal laws set relevant restrictions (part 1, article 9 of the Subsoil Law).

К использованию недр Российской Федерации допускаются иностранные граждане и юридические лица, если федеральными законами не установлены ограничения (ч. 1 ст. 9 Закона о недрах).

- Use of individual (strategic) subsoil blocks belonging to the federal fund of reserve deposits might be restricted or prohibited for national security and environmental protection purposes (article 2.1., part 1, article 8 of the Subsoil Law; article 10 of the Federal Law on Gas Supplies).

Пользование отдельными (стратегическими) участками недр, включенными в федеральный фонд резервных месторождений, может быть ограничено или запрещено в целях обеспечения национальной безопасности и охраны окружающей природной среды (ст. 2.1., ч. 1 ст. 8 Закона о недрах, ст. 10 Федерального Закона о газоснабжении).

The right to extract minerals in the Russian Federation is granted on the basis of:

- the results of tenders and auctions, or
- as a result of discovery of new deposits,
- as well as on the basis of Production Sharing Agreements (article 10.1 of the Subsoil Law). Production Sharing Agreements may grant the right to extract no more than 30% of a deposit's surveyed reserves booked on the state balance sheet, in relation to which an auction for the subsoil use right has been held and recognized as not having taken place (Federal Law "On Production Sharing Agreements").

Право добычи полезных ископаемых в Российской Федерации предоставляется:

- *по результатам конкурсов и аукционов, либо*
- *в результате открытия месторождения, а также*
- *на основании Соглашений о разделе продукции (ст. 10.1 Закона о недрах). На основании Соглашений о разделе продукции может быть предоставлено право добычи не более 30% разведанных и учтенных на государственном балансе запасов месторождения, в отношении которого был проведен и признан несостоявшимся аукцион на право пользования недрами (Федеральный Закон «О соглашениях о разделе продукции»).*

Restricted access for foreign investors to strategic branches of the economy of the Russian Federation

Ограничения допуска иностранных инвесторов в стратегические отрасли экономики Российской Федерации

- Transfer of a previously acquired subsoil use right is permitted only in specific circumstances and only to legal entities resident in the Russian Federation (article 17.1 of the Law on the Subsoil).
- *Передача ранее приобретенного права пользования недрами допускается только в определенных случаях и только юридическим лицам – резидентам Российской Федерации (ст. 17.1 Закона о недрах).*

Ограничения допуска иностранных инвесторов в стратегические отрасли экономики Российской Федерации

Restricted access for foreign investors to implementation of subsoil use projects in the Russian Federation

Ограничения допуска иностранных инвесторов к реализации проектов недропользования в Российской Федерации

- Only Russian legal entities are permitted to engage in extraction of radioactive raw materials and in interment of radioactive materials, toxic and other hazardous waste (part 4, article 9 of the Law on the Subsoil).

Деятельность по добыче радиоактивного сырья и захоронению радиоактивных материалов, токсичных и иных опасных отходов вправе осуществлять только Российские юридические лица (ч. 4 ст. 9 Закона о недрах).

- Draft Federal Law on the procedure for foreign investment in commercial organisations of strategic significance for the national security of the Russian Federation.

Проект Федерального Закона о порядке осуществления иностранных инвестиций в коммерческие организации, имеющие стратегическое значение для национальной безопасности Российской Федерации.



Ограничения допуска иностранных инвесторов в стратегические отрасли экономики Российской Федерации

Non-resident foreign investor:

- *a legal entity registered outside the RF;*
- *a foreign organisation that is not a legal entity;*
- *a foreign citizen;*
- *a stateless person living outside the RF more than 183 days a year;*
- *an international organisation with an international treaty with the RF;*
- *foreign states;*
- *an organisation under the control of a foreign state and/or international organisation;*
- *a group of persons, in the understanding of the anti-monopoly legislation, that includes the foreign investor.*

Иностранный инвестор – нерезидент:

- *юридическое лицо, зарегистрированное за пределами РФ;*
- *иностранная организация, не являющаяся юридическим лицом;*
- *иностранный гражданин;*
- *лицо без гражданства, проживающее за пределами РФ более 183 дней в году;*
- *международная организация, имеющая международный договор с РФ;*
- *иностранные государства;*
- *организация, находящаяся под контролем иностранного государства и/или международной организации;*
- *группа лиц в понимании антимонопольного законодательства, в состав которой входит иностранный инвестор.*

Ограничения допуска иностранных инвесторов в стратегические отрасли экономики Российской Федерации

A strategic company is an economic entity operating in at least one of the spheres of activity in the draft law, in particular:

- *nuclear and radioactive sphere;*
- *cryptography, tracking devices;*
- *defence industry;*
- *aerospace industry;*
- *activities of natural monopolies;*
- *dominant position on the telecommunications market;*
- *television and radio broadcasting;*
- *extraction (withdrawal) of biological water resources;*
- *subsoil use in subsoil blocks of federal significance.*

Стратегическое общество – хозяйственное общество, осуществляющее деятельность в хотя бы в одной из указанных в законопроекте сфер деятельности, в частности:

- *ядерная и радиоактивная отрасль;*
- *криптография, приборы слежения;*
- *военная промышленность;*
- *авиационная и космическая отрасль;*
- *деятельность субъектов естественных монополий;*
- *доминирующее положение на рынке услуг связи;*
- *теле- и радиовещание;*
- *добыча (вылов) водных биологических ресурсов;*
- *недропользование на участках недр федерального значения.*

The concept of control over strategic companies:

- *right of disposal with respect to over 50% of the voting shares/ownership interests in the strategic company (for a subsoil user of a federal subsoil block – over 10%);*
- *determination of the conditions for the strategic company to engage in business and for business decision-making;*
- *the possibility of appointing the General Director and/or over 50% of the members of the Board of Directors (for a subsoil user of a federal subsoil block – over 10%);*
- *exercise of the powers of the managing company of the strategic company.*

Понятие контроля над стратегическими обществами:

- *распоряжение более 50% голосующих акций/долей стратегического общества (для недропользователя федеральным участком недр – более 10%);*
- *определение условий осуществления стратегическим обществом предпринимательской деятельности, принятие бизнес-решений;*
- *возможность назначать генерального директора и/или более 50% совета директоров (для недропользователя федеральным участком недр – более 10%);*
- *осуществление полномочий управляющей компании стратегического общества.*

Transactions entailing establishment of control over strategic companies may be entered into only given a decision by the relevant authority granting prior consent to such transactions.

Сделки, влекущие за собой установление контроля над стратегическими обществами могут совершаться только при наличии решения уполномоченного органа о предварительном согласовании таких сделок.

- *Foreign states, international organisations and organisations under the control of a foreign state and/or an international organisation are not entitled to close transactions entailing establishment of control over strategic companies.*

Иностранные государства, международные организации и организации, находящиеся под контролем иностранного государства и/или международной организации не вправе совершать сделки, влекущие за собой установление контроля над стратегическими обществами.

- *Foreign states, international organisations and organisations under the control of a foreign state and/or international organisation may close transactions entailing the possibility of blocking resolutions of the managing bodies of strategic companies only given a resolution of the relevant authority granting prior consent to such transactions.*

Иностранные государства, международные организации и организации, находящиеся под контролем иностранного государства и/или международной организации могут совершать сделки, влекущие за собой возможность блокировать решения органов управления стратегических обществ, только при наличии решения уполномоченного органа о предварительном согласовании таких сделок.

- *Control established by a foreign investor over a strategic company against the foreign investor's also requires the consent of the relevant authority to establishment of control within a maximum of 3 months following establishment thereof. If the consent is denied, the foreign investor shall, within 3 months, sell some of its voting shares/ownership interests.*

Контроль иностранного инвестора, устанавливаемый над стратегическим обществом по мимо воли иностранного инвестора, так же требует получения согласия уполномоченного органа на установление контроля в срок не более 3-х месяцев с момента установления контроля. В случае отказа в согласовании, иностранный инвестор обязан в течение 3-х месяцев реализовать часть своих голосующих акций/долей.

Consent to a transaction and/or establishment of control in relation to subsoil use of a federal subsoil block shall be given:

- 1) provided a conclusion of the Federal Security Service is available on the absence of any threat to national security as a result of establishment of control and*
- 2) on the condition that the subsoil user processes the extracted minerals on the territory of the Russian Federation.*

Согласие на совершение сделки и/или на установление контроля в отношении недропользователя федеральным участком недр принимается:

- 1) при наличии заключения Федеральной Службы Безопасности об отсутствии угрозы национальной безопасности в результате установления контроля, и*
- 2) при условии осуществления недропользователем переработки добываемых полезных ископаемых на территории РФ.*

Ограничения допуска иностранных инвесторов в стратегические отрасли экономики Российской Федерации

Federal significance subsoil blocks:

1) deposits of uranium, diamonds, particularly clean quartz raw materials, rare earth elements of the yttric group, nickel, cobalt, tantalum, columbium, beryllium, lithium, platinum group metals;

2) containing reserves, according to the state balance sheet data as of 1 January 2006:

- commercial oil deposits of from 70 million metric tons;*
- gas reserves of from 50 billion cubic metres;*
- reserves of bedrock gold of from 50 metric tons;*
- copper reserves of from 500 thousand metric tons;*

Участки недр федерального значения:

1) месторождения урана, алмазов, особо чистого кварцевого сырья, редких земель иттриевой группы, никеля, кобальта, тантала, ниобия, бериллия, лития, металлов платиновой группы;

2) содержащие запасы по данным государственного баланса на 1 января 2006 года:

- извлекаемые запасы нефти от 70 миллионов тонн;*
- запасы газа от 50 миллиардов кубических метров;*
- запасы коренного золота от 50 тонн;*
- запасы меди от 500 тысяч тонн;*

Federal significance subsoil blocks:

- 3) subsoil blocks of internal sea waters and the continental shelf of the Russian Federation;*
- 4) subsoil blocks for use of which use of civil defence and security land plots is necessary.*

Участки недр федерального значения:

- 3) участки недр внутренних морских вод, территориального моря и континентального шельфа Российской Федерации;*
- 4) участки недр, при пользовании которыми необходимо использование земельных участков из состава земель обороны и безопасности.*

Users of federal significance subsoil blocks may only be residents of the RF.

Users of subsoil blocks of the continental shelf of the RF may only be residents of the RF with five years' experience of developing subsoil blocks of the continental shelf of the RF in which the participation share of the Russian Federation in the authorised capital amounts to over 50%.

Пользователями участками недр федерального значения могут быть только резиденты РФ.

Пользователями участками недр континентального шельфа РФ могут быть только резиденты РФ, имеющие не менее чем пятилетний опыт освоения участков недр континентального шельфа РФ, в которых доля участия Российской Федерации в уставном капитале составляет более 50%.

- *Transfer of rights to use federal significance subsoil blocks in the manner of article 17.1 of the Subsoil Law to residents of the RF over which control has been established by a foreign investor is possible only by decision of the Russian Government.*

Переход права пользования участками недр федерального значения в порядке ст. 17.1 Закона о недрах к резидентам РФ, в отношении которых установлен контроль со стороны иностранного инвестора, будет возможен только по решению Правительства РФ.

- *Additional grounds for early termination of subsoil use rights on the basis of a joint licence in the event of a deposit being discovered that meets the criteria of a federal significant subsoil block.*

Дополнительное основание для досрочного прекращения права недропользования на основании совмещенной лицензии в случае открытия месторождения, отвечающего критериям участка недр федерального значения.

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