

Procedure amended for determining whether a foreign investor controls a Russian strategic company

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To prevent foreign investors from abusing their rights in relation to Russian strategic companies, the prior-clearance rules have changed to qualify transactions for a stake in this type of company. The change was made to protect strategic companies from undisclosed foreign interference and has resulted in a more transparent foreign investment environment in Russia.

In August 2020, [amendments](#)* came into force for Federal Law No. 57-FZ "On the Procedure for Making Foreign Investments in Commercial Companies of Strategic Importance for Ensuring the Defence of the Country and the Security of the State".

These amendments clarify the procedure for determining a foreign investor's control of a Russian strategic company through its shares (in joint-stock companies) or participatory interests (in limited liability companies). For the sake of simplicity, this article describes shares only, but the same rules apply to participatory interests.

As a result, shares for which a foreign investor **does not actually dispose** of voting rights, including if they are temporarily transferred to a third party (e.g. under a property trust agreement, pledge agreement, repo agreement, security deposit), **must now be taken into account** to determine the threshold values under which a foreign investor controls a strategic company.

By way of background, Federal Law No. 57-FZ sets various thresholds for determining whether a foreign investor controls a Russian strategic company (for more details, please refer to the relevant [section](#) of our "Doing business in Russia" guide). The main thresholds include the following:

- when an investor directly or indirectly disposes of more than 50% of the total number of votes attributable to voting shares of a Russian strategic company; and
- when an investor directly or indirectly disposes of 25% or more of the total number of votes attributable to voting shares of a Russian strategic company that uses a subsoil plot of federal significance.

Previously, foreign investors could, in fact, transfer their rights to dispose of voting shares of a strategic company to a third party without taking these shares into account when determining whether they control a strategic company. As a result, in certain cases, foreign investors could avoid clearing transactions of a strategic company's shares with the Government Commission for the Control of Foreign Investment in the Russian Federation.

In fact, the amendments deprive foreign investors of the ability to exempt themselves from having their transactions cleared with the Government Commission in the above cases.

Taking into account that concluding transactions in violation of legal regulatory-clearance requirements makes these transactions null and void, it is vital for foreign investors acquiring stakes in Russian strategic companies to take into account the amendments when structuring their transactions.

If you have any questions on this eAlert, do not hesitate to contact CMS Russia experts [Maxim Boulba](#) and [Elena Andrianova](#) or your regular contact at CMS Russia.

* *In Russian*

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