

Foreign investments in Russia from a legal standpoint | BY ANTON KLYACHIN

This year Russian laws relating to business undergo significant changes. Some of them have been discussed in the Russian legal community for quite some time, while others are a response to current economic needs, aimed at providing more effective regulation in the distressed economy. In this article we discuss the most recent changes in Russian law which are important for a foreign investor considering doing business in Russia or acquiring Russian assets.

New antitrust rules

The antimonopoly package consisting of amendments to the Federal Law 'On protection of competition' and changes to other related laws was signed on 17 July 2009. The package introduces a number of changes amending the scope of the Law and specifying the powers of the Federal Antimonopoly Service (FAS).

The Law now covers not only agreements, but also the actions, of Russian and foreign entities, if such agreements are executed with regard to fixed assets located in the Russian Federation, intangible assets, shares (participatory interest) of Russian companies or rights to them or, (importantly) affect the state of competition in Russia. Thus, any agreements and actions, executed or performed by or between foreign organisations (including those governed by foreign law) that are either executed with regard to Russian assets, shares and rights, or otherwise affect competition in Russia, will formally come under the effect of the Law.

Following the changes introduced by the package, the thresholds relevant for the FAS control of acquisitions and other transactions have changed considerably. The new rules are especially important for foreign investors considering direct or indirect acquisition of Russian companies. For example, prior clearance will be required if inter alia the total balance sheet value of the aggregate assets of the buyer and the target together with their respective groups exceeds RUR 7bn (currently approximately €155m). Previously, prior clearance was required where such a value exceeded RUR 3bn (or approximately €66m). The aggregate amount of assets according to the latest balance sheet of entities (and their groups), whose shares (participatory interest), assets or rights to which are acquired, is increased from RUR 150m to RUR 250m (from approximately €3.3m to €5.5m). Threshold values are also doubled for assets above which the FAS must be notified about the execution of a transaction: from RUR 200m to RUR 400m (from approximately €4.4m to €8.8m) for the aggregate amount of assets of the acquirer of shares (participatory interest), assets or rights relating to the company and the company itself (and their groups of persons), and from RUR 30m to RUR 60m (from approximately €0.65m to 1.3m) for the aggregate amount of assets of the company and its group of persons.

Vertical agreements (agreements entered into by non-competing companies) are exempted from the prohibitions established for horizontal agreements. According to the amendments, vertical agreements are

only prohibited if they lead or may lead to resale price fixing or restrict the reseller from selling goods manufactured by the seller's competitors (the latter is not applicable if a reseller acts under the trade mark or firm name of the seller or manufacturer of goods). Vertical or horizontal agreements may be considered permissible if they meet criteria established by the amended version of the Law. Simultaneously, the Russian Government passed a decree on rules for the determination of the admissibility of vertical agreements.

The major part of the package became effective from 23 August 2009 save for several parts coming into force separately.

Foreign securities tradable in Russia

The amendments to the Federal Law 'On the Securities Market' which provide direct access to the Russian stock market for foreign issuers came into force on 16 May 2009. The amendments enable foreign companies to directly effect public or private placements in Russia. It is required that foreign issuers be incorporated in a country participating in one of the listed international treaties and the securities themselves must be registered by the Russian Federal Service for Financial Markets.

Continuous reform of corporate law

Following recent changes to the Federal Laws on Joint-Stock Companies and Limited Liability Companies which introduced shareholders' and participant's agreements and came into force on 9 June 2009 and 1 July 2009 respectively, the reform of Russian corporate laws continues. Further changes to rules applying to Russian companies were introduced on 19 July 2009. The changes are to be considered by any foreign investor owning shares or participatory interests in a Russian company.

In general, the amendments are an improvement and aim to positively revise some of the misleading and inconsistent provisions of the existing company laws. In particular, the above changes will affect such issues as the determination of a general meeting's scope and rules on convening general meetings, the invalidation of major and related-party transactions as well as decisions taken by corporate bodies.

For example, to convene an extraordinary general meeting of shareholders (EGM) the shareholders will now need to obtain a ruling by court should the board of directors fail to call a general meeting within the mandatory timeframe or deny the shareholders their rights to convene the EGM. Previously, the shareholders were able to convene the EGM without obtaining a court decision.

The company responsible for holding and maintaining the share register and where applicable the joint-stock company itself will now bear joint and several liability for damages caused to a shareholder of the joint-stock company as a result of the loss of shares, unlawful restrictions on exercising shareholders' rights and other similar events.

The amendments provide for extensive information rights for share- ►►

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holders and participants of Russian companies, breach of which now may lead to administrative liability of a company or its responsible officer.

The major part of the amendments will become effective from 21 October 2009 with some specific rules coming into force at a different date.

The corporate law reform is continuing and we expect the new rules to

be followed by court tests and interpretation, which will be vitally important for their application in practice. ■

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