

Legal Alert

Amendments to the Fisheries Law and the Law on Foreign Investments in Strategic Companies (57-FZ)

INTRODUCTION

On 2 July 2021, the Russian President signed Federal Law No. 339-FZ (the “**Law**”) “On Amendments to Federal Law No. 166-FZ dated 20 December 2004 On Fisheries and Conservation of Aquatic Biological Resources (the “**Fisheries Law**”) and to Federal Law No. 57-FZ dated 29 April 2008 On the Procedure for Making Foreign Investments in Business Entities of Strategic Importance for Ensuring National Defence and State Security (“**Law No. 57-FZ**”).”

The main purpose of the amendments is to enhance control over foreign investments in the fishing industry, which is a strategic type of activity under Law No. 57-FZ.¹ The Law extends to such investments the legal regime that has been applied previously to foreign investments in Russian companies engaged in geological survey and/or exploration and production of mineral resources on subsoil plots of federal importance.

1. KEY PROVISIONS

- 1.1. The Law changes the thresholds for obtaining control over a Russian fishery company.² Such company will be deemed controlled by a foreign investor, if:
 - i) the controlling person has the right, directly or indirectly, to exercise 25% or more of the total number of votes attaching to voting shares (interests) in the charter capital of the controlled person;³ or
 - ii) the controlling person has acquired the right or authority, pursuant to an agreement or on other grounds, to determine the decisions taken by the controlled person, including to determine the terms on which the controlled person engages in business; or
 - iii) the controlling person has the right to appoint the sole executive body and/or 25% or more of members of the collective executive body of the controlled person and/or an unconditional right to elect 25 or more per cent of the members of the board of directors (supervisory board) or other collective management body of such person; or
 - iv) the controlling person performs the function of the management company of the controlled person.
- 1.2. From the date the Law comes into force (12 July 2021), foreign states, international organisations and foreign investors who do not disclose information about their beneficiaries to the FAS of Russia, or organisations under their control, will be prohibited from exercising control over Russian fishery companies on any of the above grounds.⁴

¹ The activities having strategic importance for the defence and security of the state include fishery (Article 6(1)(40) of Law No. 57-FZ).

² Article 2(4) of the Law.

³ Here and below, including cases where the right to dispose of the votes has been transferred on a temporary basis to a third party under a trust management, pledge or repurchase agreement, a security deposit or other agreement or transaction.

⁴ Article 2(2) of the Law No. 57-FZ.

- 1.3. Otherwise, having regard to the changes in the control criteria, the Law provides that the following types of foreign investments in Russian fishery companies will require prior consent of the Governmental Commission:⁵
- i) Transactions to acquire, directly or indirectly, more than 25% of the total number of votes attaching to voting shares (interests) in the charter capital of a company;
 - ii) Transactions that result in the foreign investor acquiring the right to appoint the sole executive body and/or 25% or more of members of the collective executive body of a company and/or an unconditional right to elect 25% or more of the members of the board of directors (supervisory board) or other collective management body of such company;
 - iii) Any transactions which result in additional shares (interests) being acquired, directly or indirectly, which increase the interest of the foreign investor in the charter capital of a company, if, at the time of the transaction, the foreign investor already owns from 25% to 75% of the total number of votes attaching to voting shares (interests) in the charter capital of such company;
 - iv) Transactions to acquire, directly or indirectly, more than 5% of the total number of votes attaching to voting shares (interests) in the charter capital of a company, if they are entered into by a foreign state, an international organisation or a foreign investor, which has failed to disclose information about its beneficiaries to the FAS of Russia, or an organisation controlled by them.
- 1.4. According to the amendments, the criteria of control will be similarly adjusted in the Fisheries Law. Moreover, to make the provisions of the Fisheries Law consistent with the provisions of Law No. 57-FZ, the Law provides that the prohibitions and limitations on fishing activities will apply not only to fishery companies controlled by foreign investors, but also to a group of such investors.⁶
- 1.5. Finally, the Law provides that, no later than one year after its effective date, foreign investors who own from 25% to 50% of shares in the charter capital of a fishery company will have to file an application to obtain approval with respect to control in the manner provided for by Law No. 57-FZ, or decrease their interest in the charter capital of such company to less than 25% of the voting shares (interests) and notify FAS accordingly.⁷
- 1.6. A failure to meet the above requirements will be grounds for a court to deprive the foreign investor or a group of persons of which the foreign investor is a member of voting rights at the shareholders' (participants') meeting of the company pursuant to a claim filed by the FAS.
- 1.7. Interestingly, by the second reading of the draft law in the Russian State Duma, the Law was amended to include an important provision protecting the rights of "historic" investors. Pursuant to Article 3(4) of the Law, its requirements do not apply to a foreign investor and its group of persons who own more than 25% of voting shares (interests) and have no other right of control over a Russian fishing company, if such right was acquired before the effective date of Law No. 57-FZ (i.e. before 7 May 2008), or if such right was acquired before 6 December 2014 by a foreign investor who is a Russian citizen with dual citizenship.
- 1.8. In addition, the Law will not apply to foreign investment relations regulated by international treaties ratified by the Russian Federation, or to international financial organisations (IBRD, IDA, IFC, EBRD, EIB and other organisations included in the list approved by the Russian Government⁸).

⁵ Article 2(5) of the Law.

⁶ Articles 1(4) of the Law.

⁷ Article 3 of the Law.

⁸ Russian Government's Resolution No. 119-r dated 3 February 2012 "On the List of International Financial Organisations the Transactions With Which Do Not Require a Prior Approval".

RGP's recommendations:

New amendments to Law No. 57-FZ and the Fisheries Law are aimed at yet another tightening of control by FAS and the Governmental Commission over foreign investments in Russian companies engaged in strategic activities. To avoid the risk of penalties and loss of assets, the foreign investors concerned should conduct a thorough legal analysis in each specific situation and act accordingly, having regard to the new changes to the legislation.

Should you have any questions regarding this message, please feel free to contact us at alerts@rgp.legal.

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