

FDI Guide Russia

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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Russia
1.	Principle	Describe if the FDI ¹ regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	Regime by exception <ul style="list-style-type: none">• According to Federal Law No 160-FZ as of 9 July 1999 ‘On Foreign Investments in the Russian Federation’ (the ‘Foreign Investments Law’), Russia provides foreign investors with investment rights no less favourable than those of Russian investors.• Under the Foreign Investments Law, exceptions from this general rule may be provided by federal laws only for the purposes of the protection of the fundamental principles of the constitutional system, public health, rights and interests of other persons, ensuring national security and state defence.• Therefore, the FDI regime is based on the exception to a principle of freedom of investment.

¹ This guide describes only the FDI regime. Starting from February 2022, Russia adopted several regulations establishing certain counter-sanction measures. These measures require separate filings to be made in certain situations (eg, transactions between residents and ‘unfriendly’ non-residents resulting in the acquisition of the ownership of securities, repayment of loans to ‘unfriendly’ non-residents and other measures). However, this regime is not described in this guide.

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2.	Legal regime Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/...).	The FDI rules are set out in the following main laws: <ul style="list-style-type: none"> • Foreign Investments Law; and • Federal Law No 57-FZ as of 24 April 2008 ‘On the Procedure of Making Foreign Investments in Companies of Strategic Importance for National Defence and State Security’ (the ‘Strategic Investments Law’). At the same time, there are also decrees and orders laying out the functions of the authority in charge, and a review procedure of transactions in Russia such as: <ul style="list-style-type: none"> • Decree of the Government of the Russian Federation ‘On the Government Commission on Monitoring Foreign Investments’ No 510 dated 06 July 2008; • Decree of the Government of the Russian Federation No 838 dated 17 October 2009, which establishes certain rules on the preparation and review of FDI filings; and • Decree of the Government of the Russian Federation No 1456 dated 1 December 2018, which establishes the rules for disclosure of beneficiaries, beneficial owners and controlling persons. • Filings should be submitted to the Federal Antimonopoly Service (‘FAS Russia’), which is responsible for preparing documents for a meeting of the Government Commission on Monitoring Foreign Investments in Russia (the ‘Commission’). The Commission itself consists of the Prime Minister, deputies of the Prime Minister, and heads of the main Russian ministries and state agencies. • Within the consideration process, FAS Russia provides informational and analytical assistance for the Commission, and the latter is responsible for granting clearance and imposing obligations (if required).
3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> • Type • Materiality thresholds 	Describe the nature of the transactions that may be subject to FDI rules. In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.	Under the Strategic Investments Law, there are two regimes depending on the type of foreign investor involved in a transaction: a public ² (or undisclosed private) foreign investor and a private foreign investor, which disclosed information on its beneficiaries. For details about the types of foreign investors, please see item 5 below. Private disclosed investor For private foreign investors, the following transactions require clearance:

2 Foreign state, international organisation or a company under control of any of them.

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	<ul style="list-style-type: none"> Rights of evocation 		<ul style="list-style-type: none"> acquisition of control over a strategic company, which means: <ul style="list-style-type: none"> direct or indirect acquisition of more than 50 per cent (25 per cent and more for strategic companies involved in the use of subsoil plots of federal importance or harvesting (catching) of aquatic biological resources)³ of voting shares of a strategic company; acquisition of the rights to determine decisions made by a strategic company, including the rights to determine the terms of its business activity; acquisition of rights to appoint the chief executive officer (CEO) or more than 50 per cent (25 per cent and more for strategic companies involved in use of subsoil plots of federal importance or harvesting (catching) of aquatic biological resources) of members of a management board or an unconditional opportunity to elect more than 50 per cent (25 per cent and more for strategic companies involved in use of subsoil plot of federal importance or harvesting (catching) of aquatic biological resources) of a board of directors (supervisory board) or other collegial managerial body; and execution of functions of a managing company of a strategic company; and acquisition of fixed production assets of a strategic company, the balance sheet value of which is 25 per cent and more of the balance sheet value of assets of this company, for the last reporting date, according to its accounting reports. <p>Public foreign investor or undisclosed private foreign investor</p> <p>It is prohibited for public investors and undisclosed private investors, and companies under their control, to acquire control over strategic companies and (or) acquire 25 per cent and more of their fixed production assets.</p> <p>At the same time, the following transactions are subject to clearance and may be cleared:</p> <ul style="list-style-type: none"> direct or indirect acquisition of more than 25 per cent of voting shares of a strategic company or other opportunity to block decisions of managerial bodies of a strategic company, or acquisition of more than five per cent of voting shares of strategic companies involved in use of subsoil plots of federal importance or harvesting (catching) of aquatic biological resources.

³ Due to the high importance of related industries for state defence and national security, the Strategic Investments Law provides for lower thresholds for both regimes.

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			Under the Foreign Investments Law, separate clearance is required if a public investor intends to acquire directly or indirectly more than 25 per cent of shares of any Russian entity or rights to block the decisions of its management bodies. Generally, this procedure is more straightforward and serves as an additional mechanism for FAS Russia to check that transactions of public investors do not need to be referred to full FDI review, neither because the acquired Russian company is the strategic company nor because the Prime Minister wants to use it discretionary right to refer 'any' transaction to full FDI review. This filing ends up with a letter from FAS Russia stating that the filing is not subject to full FDI review. Practically it may take up to one to two months.
		Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)? Are share transfers involving a group company internal restructuring covered? Are greenfield investments covered?	As described above, indirect acquisitions are also covered. For internal restructuring, please see item 7 (section 6.2) below.
		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	Yes, upon the decision of the Russian Prime Minister, any transaction of a foreign investor with regard to any Russian entity, which does not even relate to the specified 'strategic activities', might be brought to the Commission for FDI clearance under the same procedure specified in the Strategic Investments Law (ie, as if it were a deal requiring this clearance). These powers are not retrospective. There are no legal criteria clarifying which transactions could fall within this procedure. As a rule, transactions that are important for the Russian economy/defence but do not formally fall under the scope of the Strategic Investments Law may be caught by this rule.
4.	Sectors falling under the FDI scope	Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.	The Strategic Investments Law provides for an exhaustive list of activities of strategic importance for national security and state defence. Only a Russian company exercising at least one of these activities may be deemed as 'strategic' for the purposes of the application of this law. The law contains <i>48 types of business activities</i> , which may be grouped in the following categories: <ul style="list-style-type: none"> nuclear and radioactive materials;

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		<p>Are there sector-specific stricter limits on foreign investment that will apply such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<ul style="list-style-type: none"> • military equipment; • aviation and space; • oil and gas; • natural resources; • mining exploration and production; • mass media and telecoms; • harvesting (catching) of aquatic biological resources; • coding and cryptographic equipment; • printing and publishing; • use of agents of infectious diseases (except for companies engaged in food production); • services in seaports and river ports; and • services provided by natural monopolies such as: <ul style="list-style-type: none"> - oil and gas pipeline transport; - railroad transport; - services in airports; and - water supply, and so on. <p>Despite the list being exhaustive, FAS Russia interprets strategic activities rather broadly, especially in the oil and gas sector. FAS Russia may regard the Strategic Investments Law as encompassing companies whose work is only related to or tangential to a strategic activity.</p> <p>As mentioned in item 3, activities regarding the use of subsoil plots of federal importance or harvesting (catching) of aquatic biological resources have lower thresholds.</p>
5.	Qualified investors	<p>Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).</p>	<p>There are two types of foreign investors under the Russian legislation:</p> <p>Public foreign investors</p> <p>This category includes foreign states, international organisations or companies under the control of any of them. The legal status of private investors, which do not disclose information to FAS Russia about their ultimate beneficial owners, is equal to public foreign investors.</p>

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			<p>Private foreign investors</p> <p>This category includes companies/organisations incorporated outside of Russia,⁴ foreign citizens, Russian citizens with other citizenship, a person without citizenship who is a foreign resident and companies (including Russian ones) under the control of any of the listed persons/entities.</p>
6.	<p>Procedure</p> <p>6.1 Before or post-closing filing</p>		<p>An application should be submitted to FAS Russia and clearance of the Commission should be obtained <i>before completion of the transaction</i>.</p> <p>At the same time, in the case of the acquisition of five per cent and more of shares in strategic companies (if FDI filing is not triggered), as well as in the case of closing those transactions that received pre-transaction FDI approval, a foreign investor must file a <i>post-closing notification to FAS Russia</i>.</p>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<p><i>It is mandatory</i> to file an application for clearance before the completion of the investment within the scope of the FDI rules.</p> <p>Foreign investment clearance should therefore be a closing condition precedent to the completion of the transaction.</p> <p>Exceptions: no application is required:</p> <ul style="list-style-type: none"> • when a foreign investor already possesses more than 50 per cent of the voting shares of the strategic company prior to the transaction or if the foreign investor is under the control of the company, which already has more than 50 per cent of voting shares of the strategic company; this exemption does not apply to strategic companies involved in use of subsoil plots of federal importance or harvesting (catching) of aquatic biological resources (a higher ownership threshold shall apply, which is more than 75 per cent of voting shares) – post-closing notification would still be necessary; • when a foreign investor is under the control of the Russian Federation or of a citizen of the Russian Federation who is a Russian tax resident (excluding Russian citizens having dual citizenship); and

⁴ Regardless of having the status of a legal entity.

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			<ul style="list-style-type: none"> when the acquired strategic company is involved in the use of subsoil plots of federal importance or harvesting (catching) of aquatic biological resources and the Russian Federation has more than 50 per cent of its voting shares and retains this right after the transaction (the exception does not apply to public foreign investors). <p>As a rule, these exceptions apply only to those foreign investors who duly disclosed information on their beneficial owners to FAS Russia prior to the completion of the transactions ('UBO Disclosure'). Upon review of the submitted UBO Disclosure the anti-monopoly authority issues a confirmation letter. Proper UBO Disclosure has become vital for the validity of transactions in Russian strategic sectors as it allows the avoidance of the application of lower thresholds for private investors and allows the proper application of exceptions, should they apply.</p>
8.	6.3 In the case of post-closing, what are the powers of the authority?		Post-transaction notification shall be submitted to FAS Russia within 45 calendar days from the date of closing the transaction. Upon the results of the review of the notification, special notice shall be granted.
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>It is possible to receive the opinion of FAS Russia on whether the transaction requires obtaining pre-closing FDI approval. Together with the letter asking for the authority's opinion, the investor should file a package of documents, including the major part of the documents required for the FDI filing.</p> <p>FAS Russia has 30 days to review this request, and it is obliged to notify the Commission about this request and the response to it. After determining the result of the review, FAS Russia provides the investor with its opinion regarding the transaction and its status according to the Strategic Investments Law.</p>
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	The time required for preparing the FDI filing depends on the speed of collection of the required information and documents. In practice, this process usually takes at least two to three weeks. The Strategic Investments Law and Foreign Investments Law do not provide for a special term for submitting the filing, and the only rule is that clearance shall be obtained before closing.

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11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	<p>The review procedure consists of three stages:</p> <ol style="list-style-type: none"> 1. The filing is reviewed by FAS Russia, which checks on its compliance with the formal requirements. 2. Then, FAS Russia sends out requests related to the filing to other government authorities, including those in charge of state security and national defence. 3. Finally, the Commission reviews the complete file (filing along with the reports provided by the specified government authorities) and adopts a decision. <p>Under the Strategic Investments Law, the review term by FAS Russia and the Commission is limited by three months, and the Commission may prolong the term for up to additional three months (six months in total). At the same time, in practice, the process may take longer (eg, even up to nine to 12 months) because the Commission holds meetings on an ad hoc basis (on average, three to four times a year). Therefore, once the filing has been reviewed by FAS Russia and prepared for transfer to the Commission, the file waits for the next Commission's meeting.</p>
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>The application review process is non-public and FAS Russia can provide an applicant with only limited information about the status of the review. It might be possible to discuss conditions. However, the Commission and FAS Russia are not obliged to discuss these issues with the applicant and can develop conditions at their own discretion.</p> <p>Conditions under the FDI process are imposed in the form of an agreement between the acquirer and FAS Russia, and might include various obligations aimed at ensuring the safety of a state and/or specific sector of the economy.</p>
		Are there any guidelines issued by the authority?	Regulations describe the procedure of a filing going through various steps within the review process (ie, checking filing completeness, sending out requests to government authorities and transferring the file to the Commission); however, there are no guidelines on the applicable criteria for deciding on clearance/rejection or conditions.
13.	(iv) Filing fees	Is there a filing fee?	There is no filing fee for FDI filings.

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14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>The Strategic Investments Law provides an exhaustive list of documents and information required for a filing. The list includes the application itself, formalities in respect of the investor (articles of association and certificate of incorporation), draft agreement containing the subject of the transaction (eg. sale and purchase agreement (SPA)), information about the investor's group and its beneficiaries, as well as certain details in respect of the strategic company and business plan for its development. The business plan is one of the most important documents that requires substantive information about the planned business development in respect of the strategic company.</p> <p>Legislation does not require the submission of information on approvals in other jurisdictions.</p>
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	As noted in item 11 above, the issuance of the decision may be delayed as meetings of the Commission are not regular. There are no specific consequences. In practice, the complete file should wait for the review at the next Commission's meeting where it is included in the agenda.
16.	16. Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p>The Strategic Investments Law provides for a non-exhaustive list of possible obligations that may be imposed on a foreign investor. Among others, the list includes:</p> <ul style="list-style-type: none"> • limitation of access to state secrets; • fulfilment of defence procurement supplies; • continuing maintenance of mobilisation capacities; and • execution of the submitted business plan. <p>Upon its decision, the Commission can develop and suggest any other obligations aimed at the fulfilment of the purposes of the Strategic Investments Law.</p>
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	As noted in item 3, the Russian Prime Minister is empowered to transfer any transaction regarding a foreign investor and Russian company for review by the Commission.
18.	(iii) Risk of veto	Describe a topical case. Statistics	The Commission has a right to block a transaction, but it is not very common in practice.

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			<p>Ten-year statistics:⁵</p> <ul style="list-style-type: none"> • 516 notifications submitted; • 206 notifications returned because clearance was not required and 47 withdrawn by the applicants; • 229 considered, of which 216 were cleared (63 conditional approvals) and 13 rejected; and • others were reviewed.
19.	Role of other national authorities	<p>Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.</p>	<p>As noted in item 11 above, FAS Russia sends requests for an opinion to the interested state authorities according to the related industry. In addition to the defence authority (Ministry of Defence) and national security authority (Federal Security Service), other sector-specific agencies are involved and provide their options on a transaction.</p> <p>Moreover, the Commission itself consists of the Prime Minister, deputies of the Prime Minister, and heads of the main Russian ministries and state agencies.</p>
20.	Sanctions	<p>Describe the type of sanctions that may be imposed by the authority in the case of:</p> <ul style="list-style-type: none"> • breach of conditions and/or commitments attached to the approval; and • investment carried out without prior approval. 	<p>Transactions executed in breach of the Strategic Investments Law are null and void. If it is impossible to apply the consequences of the invalidity of a void transaction (eg, for indirect acquisitions), the court may, upon a lawsuit by FAS Russia, adopt a decision to:</p> <ul style="list-style-type: none"> • deprive a foreign investor of its right to vote at the shareholders' meeting of the strategic company; the same is applicable in the case of a gross or repeated breach of the conditions imposed; or • invalidate the decisions of the management bodies of the strategic company adopted after the establishment of control in breach of the Strategic Investments Law. <p>Moreover, according to the Russian Code on Administrative Offences, administrative fines are to be imposed in the case of failure to obtain FDI approval or failure to provide notification after the transaction and submission of misleading information to the authority.</p>

⁵ The statistics as of 27 April 2018 are available at: <https://fas.gov.ru/p/presentations/145> (in Russian only), accessed 24 October 2022.

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			<p>Failure to comply with the requirements above may result in the imposition of the following fines:</p> <ul style="list-style-type: none"> • for pre-transaction clearance: up to RUB 1m on a company and up to RUB 50,000 on a company official; and • for post-transaction notification: up to RUB 500,000 on a company and up to RUB 30,000 on a company official. <p>An agreement between FAS Russia and a foreign investor (in the case of conditional approval) shall also specify civil law sanctions for breach of its conditions.</p>
21.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	Not applicable: no specific rules were established.