IT companies have been included in the list of strategic entities: implications for foreign investors

FAO foreign investors, heads and employees of IT companies

Pepeliaev Group advises of proposed amendments to Federal Law No. 57-FZ 'On the Procedure for Making Foreign Investments in Business Entities of Strategic Importance for Ensuring the Defence of the Country and Security of the State' ('Law No. 57-FZ'), as well as to Federal Law No. 160-FZ 'On Foreign Investments in the Russian Federation' ('Law No. 160-FZ').

The Russian Government has published a draft law proposing to add certain areas of the IT sector to the list of strategically significant activities (the 'Draft Law')[1]. The draft law also provides for an expansion of the list of companies in relation to which foreign investors' proposed transactions are to be notified to the Government Commission.

If adopted, the amendments will make it significantly harder for IT companies to attract and retain foreign investment without complying with a special approval regime.

Expansion of the list of strategically important activities

The draft law proposes to expand the list of strategically important activities by adding:

1) licensed activities involving the technical protection of confidential information;
2) activities of mining infrastructure operators.

Compared with the previous version of the draft law, the list of new strategically important activities has excluded marketplace activities, the development of trusted software, data centre operator activities or activities in the field of AI technologies. In addition, mining pool organisers and

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[1] Draft Law 'On Amending the Federal Law "On the Procedure for Making Foreign Investments in Business Entities of Strategic Importance for Ensuring the Defence of the Country and Security of the State"' (Draft ID: 168601).

operators of information systems in which digital financial assets (DFAs) are issued have been removed from the list.

Exemption from approval

Approval of a foreign investor or group of persons establishing control over a company is not required if all of the following conditions are met:

- a decision approving the establishment of control was previously adopted in accordance with Law No. 57-FZ;
- the application concerns the same type of activity as that specified in the previous decision approving the establishment of control;
- information on the beneficiaries, beneficial owners and controlling persons of the foreign investor and the company, as well as information on the signs of control, was submitted no later than 30 days before the application for the relevant permit was filed;
- the list of such persons and the grounds for classifying them as such have not changed compared with the information specified in the application on which the decision approving the establishment of control was based.

Expansion of the list of companies for information to be submitted to the Chair of the Government Commission

The draft law also provides for an expansion of the list of companies in which membership interests/shares being at the disposal of foreign investors is subject to notification to the Government Commission through the Federal Antimonopoly Service of Russia. In particular, this list will include companies that:

1) own and/or operate an intermediary digital platform included in the relevant register;
2) develop (modify or adapt) trusted software that is included in the relevant list;
3) create (modify, maintain or repair) trusted hardware and software systems that are included in the register of Russian radio-electronic products;
4) develop (modify or adapt) sovereign and/or national large foundation AI models.

What to think about, what to do

IT companies whose activities may be classified as strategically important should already be reviewing their ownership structure and identifying whether there are transactions planned by foreign investors.

It is important to take into account the risk that a proposed transaction may be referred for approval by the Government Commission at the decision of its Chair, and to assess this scenario in advance when structuring transactions.

Help from your adviser

Pepeliaev Group's specialists are ready to provide legal support in assessing whether the requirements of Law No. 57-FZ are applicable to a specific ownership structure, a company's activities and planned corporate changes. We will provide services that involve help in interacting with the relevant authorities, while we will propose options for restructuring ownership and reducing regulatory risks.

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