

**RUSSIA'S NEW REGIME OF FOREIGN INVESTMENT  
RESTRICTIONS IN STRATEGIC SECTORS  
(With Focus on Mineral Resources)**

Overview Briefing for Clients

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# Executive Summary

*Opening Notes: This briefing summarizes the relevant packet of laws and amendments (enacted in May and July 2008) and the related RF Government decrees and FAS instructions, rulings and explanations (both formal and informal) adopted since then to date. Readers should check for further possible important developments occurring after the date stated above. (And uncertainties as to application of the regime in a particular case may be clarified with the Authorized Agency – FAS.)*

## 1. Entry into Effect; Retroactive Force; Extra Requirements (Section I)

- Entry into effect from May 7, 2008; limited retroactive force
- Further important notification/approval requirements (including for some non-strategic sector investments)

## 2. Industries/Enterprises Covered (Section II)

- General – Foreign Strategic Investments Law (“FSIL”) coverage
- Strategic oil & gas and hard minerals fields investments (per special FSIL provisions, and companion SL / CSL / GSL amendments)
- Certain power transmission companies, and other registered natural monopolies such as airports, marine ports, main oil/gas pipelines, railroads
- Certain telecoms providers and media outlets, aviation/aerospace, others

# Executive Summary (cont'd)

## 3. Scope of Investment Deals Covered (*Section III*)

- Direct sphere of application – advance approval required
- Wide scope of transactions/agreements/contexts covered
- Various possible “loopholes” per drafting looseness – *but blind reliance on them not recommended*

## 4. Approval Regime, Processes, Procedures (*Section IV*)

- Basic regime (Authorized Agency = FAS, plus Commission, FSB, etc.)
- Application submission basics
- Timing issues: seems can sign, with FSIL condition; overlap with general FAS approval
- Application review/approval basics (3 months + 3 months = 6 months)
- Possible approval, approval with conditions, rejection
- Decided: *e.g.*, DeBeers, Sukhoi, Barrick Gold, Kosmotras, Polyus, and ONGC/Imperial and RusVietPetro (both ruled non-strategic); three Commission meetings to date

## 5. Consequences of Non-Compliance (*Section V*)

- Direct legal consequence – void transaction
- Further/other possible consequences – loss of voting rights
- Required disinvestment upon rejection of application

# Executive Summary (cont'd)

## 6. Laws Enacted/Amended

- Foreign Strategic Investments Law (“FSIL” – newly enacted, May 2008)
- “First Amending Law” (simultaneous with FSIL enactment), amended:
  - Subsoil Law (“SL”) – this comprising most of Amending Law text
  - Continental Shelf Law (“CSL”)
  - Foreign Investment Law (“FIL”)
  - Stock Company Law and LLC Law
  - Law on Communications, Law on State Reg. of Development of Aviation
  - Law on Competition
  - Investig. Activity Law, Admin. Violations Code (“AVC”), Arbit. Procedure Code
- “Second Amending Law”: further amendments to CSL, SL and Gas Supply Law (“GSL”), enacted July 2008 – enshrined legality of non-auction / tender licensing of shelf oil fields and any strategic gas field (to Gazprom, Rosneft, affiliates, etc.)
- *Possible further FSIL amendments – some regime stiffening and some liberalizing, under discussion (both to streamline / help attract more investment and to close some perceived loopholes)*

# I. Entry Into Effect; Retroactive Force; Notifications

## 1. Effectiveness in Time; Retroactive Force (FSIL arts. 16, 17)

- FSIL and First Amending Law – in force from May 2008
- Commission, and Agency (= FAS), established (by July 2008 decree) – and most (not all) intended follow-on rules/forms now in place
- Basic application (FSIL art. 16.1) – to:
  - relations connected with foreign investors'/groups' investments and transactions with, and control over, any strategic enterprise ("SE") – arising after the law entered into force
  - and, as to such investment/transaction relations arising before the law entered into force
    - ❖ the law applies to the extent of rights and obligations that arise after its entry into force
    - ❖ *e.g.*, by acquisition per exercise of put/call option, default purchase, operation of mandatory offer, realization on share pledge (*this last one being quite on point in the current crisis context*)
- Second Amendment Law (re offshore fields) – no formal retroactive effect

# I. Entry Into Effect; Retroactive Force; Notifications (cont'd)

## 2. Further Important Notification/Approval Requirements

- Required notification of any  $\geq 5\%$  strategic enterprise share/stake purchase *post-FSIL enactment* (FSIL art. 14) – per Rules enacted by Gov't Decree No. 795 of October 27, 2008 (non-compliance penalty seems limited to admin. fine, see Section V.4 below)
- Required advance approval for acquisition (directly/indirectly) *by any foreign government, int'l organization or controlled company* of rights to  $> 25\%$  shares/stake in (or of ability to block the management decisions of) *any Russian company*, per the general new FSIL approval procedure rules (see companion newly amended Foreign Investment Law art. 6)
  - *whether in a strategic sector or not*
  - there is issue whether applies to *foundation* of any new company
  - also issue re applicability of FSIL art. 15 / other penalty rules (void transaction, loss of voting rights) for violation. (see Sections IV.1 last bullet and V.4 below)
  - *in any event, Agency (FAS) evident view/practice to date is to review such applications only for possible SE connection – and to return them to applicant on “no action needed” basis in event no SE control issue is found (e.g., ONGC/Imperial and RusVietPetro cases)*
  - Commission/FAS public clarification of sufficiency of such “approval” (or even FSIL / FIL amendment) would be helpful here

# I. Entry Into Effect; Retroactive Force; Notifications (cont'd)

- Does not apply to transactions completed (apparently means shares/stake actually transferred) before the Law's entry into force (FSIL art. 16.2)
- Within 180 days of Law's entry into force (FSIL art. 16.3) – ended early Nov. 2008 (but deadline was informally extended to end 2008):
  - foreign investor must have notified Authorized Agency per procedures given in Rules under above-noted Gov't Decree No. 795) of *pre-existing acquisition / ownership* (likely meaning direct or indirect) *of ≥5% of shares/stake in any SE*
  - here again, FSIL art. 15 penalty rules likely not meant to apply for non-compliance – rather just small admin. fine (see Section V below)
  - so it seems a delinquent investor can/should still notify of such past investment, with minimal risk beyond possible admin. fine (*and note recent FAS comment: discovered failure of such notice could "complicate" future SE application by the offending company*)
  - FAS reports around 260 such applications as of early May 2009; some still under consideration (because of incomplete info submitted)
  - this FSIL art. 16.3 prior-acquisition notice requirement not applicable to *pre-enactment non-SE share acquisitions* by foreign gov't-controlled companies per the above-noted companion FIL art. 6 amendment
- And see the important additional special retroactive-force rules applicable for strategic fields mineral E&P investments – per the companion Subsoil Law amendments (*see Section II.2 below*)

## II. Industries/Enterprises Covered (General – FSIL)

### 1. General – Foreign Strategic Investments Law (“FSIL”)

- Aimed at foreign investment into Russian “commercial enterprises having strategic significance for assurance of the country's defense and national security” – (herein a “strategic enterprise” or “SE”)
- By “foreigner investor” or group of persons (see slides 20-21)
- No specific companies are named – rather, 42 specified areas of strategic activity, which may be grouped into 12 or 13 sub-categories – are set out for coverage (as long as engaged in at least one such), *including*:
  - exploration and production of mineral resources on “fields of federal significance” (herein a “strategic field” or “FFS”) – as defined in related amendments to the Subsoil Law (*details at Section II.2 below*)
  - certain power (and perhaps heat) transmission enterprises that are registered as natural monopolies under law (issue whether this applies to some of the former RAO UES generating companies undergoing foreign investment – *note TGK-4 case*)
  - certain other types of registered natural monopolies (*e.g.*, airports, sea / river ports, main oil / gas pipelines, railroads)
  - aviation/aerospace industry (with some carve-outs)

## II. Industries/Enterprises Covered (General – FSIL, cont'd)

- certain telecoms providers having “dominant position” (and included as such in the official register) under the Competition Law
  - ❖ telecoms providers (*but not including Internet – though this may change*)
  - ❖ fixed phone providers covering (i) five or more RF regions, or (ii) Moscow or St. Petersburg
- certain TV, radio, and print media (and printing house) enterprises (having certain defined reach/circulation)
- fishing, specialty metals, nuclear, weapons/military, cryptography industries (including banks, with their scrambling equipment?)
- certain “geophysical processes” enterprises (covers typical seismic, logging, drilling, or other service/equipment companies if use radioactive materials?)
- Related Notes:
  - see the new list of “critical technologies” in 35 described categories, issued to assist in review of approval applications (see FSIL art. 10.1(9)), per Gov’t Directive No. 1243-r, August 25, 2008.
  - and see the separate/unrelated Presidential Edict No. 1009 of August 4, 2004 (as amended many times to date) confirming the list of State-Owned Strategic Energy and Stock Companies (relating to restrictions on privatization)
- FSIL is triggered even if strategic activity isn’t primary for the target enterprise
  - but *de facto* simplified process (*e.g.*, for banks, oil field service cos.)
  - Commission/FAS public clarification of FSIL application and enforcement approach in such cases (or even FSIL amendment) would be helpful here

## II. Industries/Enterprises Covered (Mineral Fields Investments)

*Note: Readers not involved/interested in FSIL-related details specific to mineral resource (oil & gas, hard minerals) field investments / projects can skip the following slides 9-19, and go directly to slide 20.*

### 2. Mineral Resource Fields Investments – per FSIL, SL (and CSL and GSL) Amendments

*(relevant changes were introduced by companion amendments to Subsoil Law (“SL”), Continental Shelf Law (“CSL”) and Gas Supply Law (“GSL”) – these must be read/applied together with the core new FSIL regime)*

- Resource fields that are classified as “field of federal significance” (“FFS”) – sometimes also called “strategic field” herein – per amended SL art. 2<sup>1</sup>, namely:
  - fields located on land – *i.e.*, on RF regional territory) and confirmed reserves (per state balance figures as of January 1, 2006 – which can/will be updated) as follows:
    - ❖ extractable crude oil reserves of ≥70 million tons
    - ❖ natural gas reserves of ≥50 bcm
    - ❖ gold reserves of ≥50 tons
    - ❖ copper reserves of ≥500,000 tons
  - *all* offshore fields (on continental shelf and/or territorial/inland seas – note sensitive issue of / wording for Caspian fields categorization)

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- *all* fields with uranium, diamonds, nickel, platinum group metals, pure quartz, niobium, and certain other rare-earth metals
- *all* fields, development of which requires use of lands having defense/security significance (*e.g.*, near border area, military base)
- *and note here:* a company is classified as SE even if it has only one FFS
  - *e.g.*, Russneft's Varganskoye field (Basel/En+ proposed acquisition, maybe now unraveling, would need FSIL approval) – *but not the converse* (*e.g.*, RusVietPetro case – see just below)
- List of all such fields has been published by MNR on March 5, 2009 (per Gov't Decree No. 823 of Nov. 7, 2008) – contains 163 onshore oil & gas fields plus 823 hard mineral fields (*and plus all offshore fields – not listed individually*).  
Related issues:
  - intended role of list (apparently not definitive, given that thresholds / definitions make field inclusion basically self-evident – per MNR expressed view) – and may be further clarified over time
  - once listed, all such specific fields will retain FFS status even if the above initially-established FFS criteria – specified minerals, reserve thresholds, etc. – are later updated / changed (and perhaps also if state-balance booked reserve volume decreases – per MNR expressed view)

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- what about mixed oil/gas fields? might a combined BOE test also be used in the future to determine if meets FFS threshold? (seems not, for now)
- and a company evidently ≠ SE if no single licensed field is FFS (*e.g.*, FAS ruling in RusVietPetro case – involving multi-field area licenses in Nenets region on which estimated reserves collectively exceeds FFS volume threshold)
- what will be the effect of Russia's moving to new/different reserve classification system? (but recently postponed to 2012 in any event)
- Important special rules (and some questions) re application of FFS restriction to fields still under geological study (including under full combined E&P license) – *per amended SL art. 2<sup>1</sup> last three sub-paragraphs*:
  - if license holder having participation of foreign investor(s) (including RF subsidiary thereof) makes a commercial discovery that meets any FFS criteria, RF Gov't "may", based on national security considerations, take decision:
    - ❖ to refuse conversion to E&P license – if combined license not already in place (per new Regulation issued under Gov't Decree No. 897 of Nov. 27, 2008 – and see also corresponding amendment of related earlier-existing rule); or
    - ❖ to terminate the rights if already under combined license (per new Reg. issued under Gov't Decree No. 697, Sept. 16, 2008) – and see related new SL art. 6 point, at slide 13
    - ❖ with repayment (to licensee) of signing bonus; and study/appraisal expenses – plus premium payment for the discovery, per new Regulation approved by Gov't Decree No. 206 of March 10, 2009: premium payment to vary from 25% to 50% depending on region and type of mineral. (*seems inadequate / unsatisfactory: there is continued lobbying to improve, and some recent favorable MNR signals on this*)

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- some further questions on this (beyond important financial shortcomings):
  - ❖ seems to mean *any*, and not only  $\geq 10\%$ , “foreign-control” investment level. (Lukoil would seem included in any event; and even Gazprom / Rosneft themselves? how will it be applied? intent vs. language? *e.g.*, the Lukoil/Gazprom Tsentral’noye field case in Caspian – see below)
  - ❖ what about reimbursement of investor’s share purchase price? expropriation remedies?
  - ❖ what if there already was one FFS-sized commercial discovery on an E&P field, and now additional one is made (on different structure within the field)? or, if only both together = FFS size? (note interplay with Amending Law art. 12.2 – see slide 13 just below)
- *and further important point:* this additional restriction/obstacle appears to apply even in cases where a Russian state-owned company holds  $>50\%$  interest in the license/project, and regardless whether the foreign participant(s) is/are private or state-owned companies:
  - ❖ namely, the FSIL art. 2.7 “safe harbor” (see slide 24 below) doesn’t clearly extend this far
  - ❖ for example, this seems to be an issue in various foreign companies’ current/proposed offshore exploration license ventures with Rosneft
- possible alternative scenario / risk mitigation in such context
  - ❖ risk that license conversion allowed but foreign investor squeezed out
  - ❖ try to aim for post-closing best-efforts covenant and indemnity by (and/or a put option to) Russian partner in event of license conversion problem or squeeze-out
  - ❖ might allow conversion / retention of license with conditions (by analogy to FSIL art 12.1(8) provisions)? see below
  - ❖ possibility of further SL amendment (and/or elaborative rules by RF Gov’t decree) in time, to buttress investors’ rights/remedies?
- note special case of offshore fields – no more conversions at all? (see slides 14, 16 below)

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- per amended SL art. 6 last para., henceforth E&P work on an FFS may be carried out only (i) on the basis of relevant RF Gov't decision, (ii) upon completion of geological study work
  - ❖ this is newly created exception from general rule that E&P and geological study work can be carried out under combined license simultaneously
  - ❖ as written, seems to apply to *any* FFS, even if *no* foreign investment participation
  - ❖ seems intended to simplify the Government's administration / application of the new art. 2<sup>1</sup> rules
  - ❖ filing/approval of full-field development plan as the trigger/determinant?
- per Amending Law art. 12.2, these new art. 2<sup>1</sup> license conversion restriction (and compensation) rules summarized at slides 11-12 above:
  - ❖ *do apply* in event of commercial discovery after Amending Law enters into force
  - ❖ *don't apply* to fields already given out under full E&P combined license, and where license holder had already completed study work and commenced E&P work before this law entered into effect
- possible first test cases
  - ❖ Timan Oil & Gas (AIM-listed UK company): 100 mln. ton discovery confirmation at Nizhnochutinskoye field in Komi (but maybe E&P work had already commenced pre-FSIL? maybe also bank foreclosure FSIL issues now also?)
  - ❖ Lukoil/Gazprom 50/50 Tsentrcaspneftegas JV: est. 170 mln. ton discovery at Tsentral'noye field in Caspian – presents conversion, shelf field (or not – Caspian unique status?) state-share calculation, and special int'l treaty issues (*solution: make it 51/49? FSIL amendment?*)

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- Reformulated SL art. 9 – re permissible subsoil users (license holders):
  - in general, foreign companies (and simple partnerships / consortia) still may be users/holders – though there have not been many cases of either (and the special provisions re PSA users remain unchanged as well)
  - *new users/holders of an FFS on land* may be only RF-incorporated companies. (and, in tenders or auctions for such rights, RF Gov't may establish additional restrictions – *e.g.*, re participation of foreign investors or majority Gov't ownership in such Russian companies)
  - *new users/holders of an FFS on continental shelf and/or territorial / inland seas (i.e., any such field)* may be only (i) RF-incorporated companies *and* (ii) which further:
    - ❖ have at least 5 years experience in RF shelf project development (there are possible broad/narrow interpretations of how this requirement can be satisfied – with narrow one seeming to prevail in “official” discussions / clarifications to date)
    - ❖ have >50% shareholding (and/or direct/indirect control) by RF – presumably meaning by/through RF-controlled company such as Gazprom, Rosneft, affiliate (*there are basic issues on application of this rule in practice; see related notes below*)
    - ❖ and note problem with idea of transfer of such an existing license to a JV company in which foreigners have minority (<50%) stake – see slide 18

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- per Amending Law art. 12.3, these new SL art. 9 restrictions re permissible users of an FFS (on land or sea) *don't apply* to use of an FFS, rights for which were granted before the Amending Law's entry into force
  - ❖ but need to consider various contexts/applications of this (including for shelf fields)
  - ❖ including vis-à-vis the above-noted new art. 12.2 license conversion rule
  - ❖ so foreign companies still should be allowed farm-in participation in already-licensed FFS fields, per the FSIL rules/restrictions – *but interpretive and policy obstacles are being raised (by Rosneft and Gazprom) in practice*
  - ❖ and there may also be questions re such participation in *newly*-licensed FFS shelf fields, per possible interpretation of amended SL art. 10<sup>1</sup> – see next slide
- A few related notes
  - FSIL art. 12.1(8) provision for possible condition/requirement of a certain level of processing/refining of mineral resources extracted by an E&P SE on strategic field (*e.g.*, DeBeers / Arkhangelsk Diamonds) – see slides 35-36
  - Also note newly elaborated provision on “federal fund of reserve fields” – to be held back from licensing altogether until Gov't decision to release them (see SL art. 2<sup>2</sup>) – and rules to be issued by Gov't within 6 months (per Amending Law art. 12.4 – but still pending)

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- Revised SL art. 10<sup>1</sup> – re permissible bases of granting subsoil use rights
  - provides that only RF Gov't itself is to grant rights (i) generally on the basis of tender or auction, for E&P or combined license (geological study plus E&P) use on an FFS, and (ii) to convert geological study rights to full E&P rights upon commercial discovery on what was already an FFS or what would become one by virtue of the new discovery
  - *but note Second Amending Law clarification here* – that new licenses for shelf fields, strategic fields on land that extend onto shelf, and strategic gas fields, which appear on a Gov't-approved list, *may be granted without tender or auction* – and note that in effect it seems for now this will be only for Gazprom/Rosneft and affiliates, per revised SL art. 9 and companion amendments to CSL and GSL
    - ❖ and see implementing Regulation adopted by Gov't Decree No. 4 of January 8, 2009
    - ❖ initial list of 32 such strategic gas fields issued per Gov't Directive No. 1707-r in Nov. 2007
    - ❖ then, by four further directives, 13 individual gas and/or shelf fields – including Chayandinskoye in Sakha, Kirinskoye, Ayashskoye and East Odoptinskoye offshore Sakhalin (three of the four “Sakhalin 3” area fields), and West Kamchatka – have been ordered to be assigned to Gazprom without tender/auction
    - ❖ Zarubezhneft is another state-owned (100%) oil company – but without Russian shelf experience (recall this SL art. 9 requirement, per slide 14 above)
  - and note apparent MNR/Gov't interpretation of combined new FSIL/SL/CSL provisions to mean that shelf exploration licenses can no longer be “converted” at all
    - ❖ *unless the “new” licensee is RF state-controlled and has the 5 years' experience*
    - ❖ Lukoil facing this problem now on Tsentral'noye field in Caspian, per recent news reports

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- federal commission (with regional gov't participation) is to give out rights for geological study (and conversion from geological study to full E&P rights upon commercial discovery) on all fields except for FFS (and local jurisdiction fields)
- tender/auction commission (with regional gov't participation – see revised SL art. 13<sup>1</sup>) is to give out right for E&P or full combined license – except for FFS (and local jurisdiction fields)
- *Revised SL art. 13<sup>1</sup> – re tenders/auctions for use rights* provides (as now dovetailed with revised arts. 9 and 10<sup>1</sup> – see above) that:
  - decisions on conducting use right tenders/auctions, and related rules for such, to be taken by (i) RF Gov't for FFSs, (ii) regional gov'ts for widespread minerals and other local significance fields, and (iii) Rosnedra/MNR for all other fields
  - re tenders/auctions for FFS on land: Gov't can, per defense/security considerations, restrict / prohibit entry to bidders (per revised SL art. 9) having foreign investor participation (and tender/auction announcements to state any such restrictions)
  - re tenders/auctions for an FFS at sea, see the newly-set revised SL art. 9 rules re required >50% Russian state company participation and 5+ years experience
  - and see the related new SL art. 14(9) re rejection of a tender/auction application where the applicant doesn't fit the announced FFS tender/auction requirements
  - *tenders* (winner chosen based on various factors) are preserved, alongside *auctions* (winner chosen based on greatest offered bonus alone), as permissible format of granting subsoil use rights – contrary to some discussion / anticipation over the past few years that only the auction format would survive

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- but note again that “strategic” shelf, land/shelf, and gas fields can and will now be given out to Gazprom/Rosneft and affiliates without tender/auction, per the combined new amended SL, CSL and GSL regime and January 2009 Regulation (*e.g.*, Chayandinskoye gas field in Sakha/Yakutia, and 12 others including Kirinskoye offshore Sakhalin already so listed and granted to Gazprom – see slide 16 above)
- *Revised SL art. 16 – re organizational facilitation of licensing for FFSs:*
  - Rosnedra prepares tender/auction proposals, and proposed list of fields (for tender/auction or without), for Gov’t decision/issuance
  - Gov’t prepares rules on conversion of rights upon commercial discovery, and decides on granting licenses for FFS fields without tender/auction as now permitted by law (see above)
- *Revised SL art. 17<sup>1</sup> – re transfer of use rights:*
  - transfer of FFS use rights to a Russian company in which foreign investor/group has >10% ownership or other basis of right to control is prohibited (*i.e.*, this prohibition is meant basically to track that on such initial investment by foreigners – but some questions of interpretation / “fit” may arise)
  - apparent application to Lukoil (with 20% ConocoPhillips stake), not to mention TNK-BP; and various other similarly situated Russian companies?
  - but such a rights transfer may be permitted by RF Gov’t decision “in extraordinary cases” (note – seems intended roughly to dovetail with possible FSIL approval regime)
  - note amended-version MNR Order No. 1026 of November 23, 2003 – which will implement the new FFS transfer restrictions

## II. Industries/Enterprises Covered (Mineral Fields Investments, cont'd)

- *Revised SL art. 20 – re basis for termination of use rights:*
  - provision added re possible Gov't-initiated termination of E&P rights on an FFS upon commercial discovery
  - to be read in line with the related new SL art. 2<sup>1</sup> provisions summarized at slides 11-12 above
- *Revised SL art. 40 re one-time payments (bonuses) – provisions added:*
  - requiring that minimum-bid bonus, in cases of tender/auction for FFS E&P rights upon Gov't-decided termination of rights of previous user (having foreign-investor participation) upon commercial discovery, be set at the previous user's exploration/appraisal costs
    - ❖ to be reimbursed to such user, per the related provisions noted above)
    - ❖ but note the possible misfit here – such minimum bids should be set to include applicable premium? (see slide 11 above)
  - providing that the amount of bonus for FFS E&P or combined license rights granted without tender/auction (per the amended SL / CSL / GSL regime) is to be set by Gov't (and, since then, payment levels for the 10 already-assigned fields have been agreed between Ministry and Gazprom)
  - rules for this (formula based on extraction tax) adopted by Gov't Decree No. 94 of February 4, 2009

# III. Scope of Investment Deals Covered – Per the FSIL

## 1. Broad Direct Sphere of Application

- Foreign investment in form of purchase by foreign investor/group of >50% shares/stake in Russian SE...
  - *or ≥10% shares/stake, for SE engaged in mineral resource E&P on an FFS (strategic field) – but note the important/useful exception from this low 10% threshold, if Russian state-owned company has >50%) (see slide 24)*
  - “foreign investor” means basically foreign company/group, or Russian company controlled >50% (shares, board, etc.) by foreigners (FSIL art. 3.2) – but interp./applic. questions here
- Or other transactions/agreements aimed at establishing, or otherwise entailing, foreign investor’s (group’s) control over a Russian SE
- Note apparent loophole such that a *foreign-incorp’d* company directly holding/acquiring a strategic asset (like Salym N.V., the Shell / Sibir jointly-owned Dutch company holding an FFS (1 of 3 licenses) in Khanty-Mansi region, or purchasers thereof) technically is not covered (see FSIL arts. 2.1 and 3.1(2) etc. ... though seems covered by relevant new SL amendments for new subsoil use acquisition/transfer contexts)
- “Control” (resembles / builds on already-existing definitions in some RF Competition Law implementation rules, etc.)
  - generally by having rights/means to dispose over >50% (≥10% for mineral E&P in FFS) of voting shares/stake in SE, right to elect/appoint >50% (≥10%) of its Board of Directors or collective management body, or right to appoint General Director

### III. Scope of Investment Deals Covered (cont'd)

- by self or group of persons, by agreement or agreed action, and includes
  - ❖ *means of indirect control through third parties, etc.*
  - ❖ in general – FSIL spins out elaborate “control” definition (art. 3) and concepts (art. 5)
  - ❖ other key definitions (“group of persons”, “agreement”, “agreed actions”) borrowed from Competition Law
- *expressly made to apply also to transactions/agreements done outside Russia with aim or result of gaining control over a Russian SE*
- note that (per art 5.2) “control” can be <50% stake in SE, if dispersion of other holdings is such as to give that <50% stake effective control
  - ❖ thus, it seems <50% foreigner direct/indirect stake should *not* = control in other circumstances – *e.g.*, when a Russian co. directly/indirectly owns/controls >50%
  - ❖ *but caution needed re possible alternative views, involving foreigners’ / Russian companies’ direct/indirect shareholdings and mathematical calculations in various scenarios*
  - ❖ *hypothetical case study: SE JV comprising 51% Gazprom / 49% Lukoil*
- but mere “negative control” – *i.e.*, possibility to block key board / management decisions
  - ❖ evidently ≠ prohibited control (but caution needed re negative/positive borderline)
  - ❖ compare with express prohibition on blocking rights for foreign gov’t-owned company investments. (note, could consider making FSIL art. 8.6 inquiry for certainty on this)

### III. Scope of Investment Deals Covered (cont'd)

- Also, possibility that foreign investors' control *not* present for FSIL purposes if
  - >50% (or ≥10%) total foreign participation in Russian privately-held SE but *without* any affiliation between / among the foreign companies (each holding < 50% / 10%) by group of persons, agreement, agreed action, etc.
  - *e.g.*, total >50% (or ≥10%) foreign portfolio, and/or mini-strategic, investment holdings of Russian publicly traded SE company (like in Gazprom, Rosneft)?
  - or 50/50 foreign/Russian JV company that neither side "controls" in any usual sense?
  - and note apparent dominant view to date (including at FAS) that ADR/GDR depository bank holder of SE shares normally should *not* be considered a single foreign investor/group
  - but again, we don't recommend reliance on any/all such possible "loopholes" (rather, could send inquiry to Authority per FSIL art. 8.6 – see Section IV.2 below)
- Note: there is no exception – so FSIL general regime applies – for foreign investors/groups ultimately owned/controlled by Russian co./persons
  - many such applications to date; note these first case studies, for example:
    - ❖ Sibur (proposed control acquisition by Hidron Holdings, Cyprus) – deal on hold
    - ❖ Russneft (proposed control acquisition by Deripaska's Eni+ Group, Jersey – pending since 2007) – unwinding?
    - ❖ Taganrog Shipyard / port complex (purchase by a Lissin-owned Cyprus co.) – approved
    - ❖ Polyus Gold (Nafta Moskva purchases additional 15% stake) – approved
  - FAS/Commision seem to be using as "hook" to examine/criticize typical complex offshore structures (*e.g.*, Deripaska/Russneft case)
  - but will this strict interpretation be applied to foreign SPVs of Gazprom/Rosneft, etc.?

### III. Scope of Investment Deals Covered (cont'd)

- Special regime (per FSIL arts. 2.2, 2.3, 2.4, and new FIL art. 6) for investments by foreign gov'ts, int'l org's, and their controlled companies (presumably including IFIs) – and including their RF-incorp'd entities:
  - prohibited to obtain/have affirmative *control* of an SE (>50%, or ≥10% for an FFS SE): evidently intended/applied as absolute prohibition; or/but maybe OK with approval? exceptions? law amendment may possibly come, to allow? (see below)
  - approval required for (i) any SE – or *any* Russian company – stake of >25%, or (ii) any possibility to block SE – or *any* Russian company – board / management decisions (not defined as “control” *per se*, but regulated similarly)
  - approval required (i) for any stake >5% in an SE engaged in FFS (strategic field) mineral resource E&P (even if RF state company holds >50% – see arts. 2.3 and 2.7 – *but sense of law seems to allow for ≤ 49% in some such FFS SE projects where RF state company has >50%* (see slide 24 just below), or (ii) for negative controls. (*but actual state policy/practice still developing*)
  - and note possibility of foreign gov't <50% stake in a foreign “state-owned” company being considered as “control” (per arts 2.4 and 5.2) – *seems that determination of such control is to be by analogy to FSIL rules* (see slides 20 - 22)
  - FSIL makes no distinction between “market oriented” and more rigidly run (often 100%-owned) state-owned companies; such possible distinction might develop in practice/application (*i.e.*, in what is approved or not)
  - first such approval granted for investment in SE – to Khartron of Ukraine (see slide 37)
  - and note also the separate FSIL art. 2.6 carve-out for treaty-based investments (no such examples yet) – of potential help here for important foreign state-owned companies (see slide 25); *also some possible further law amendment to lighten this specific regime*

### III. Scope of Investment Deals Covered (cont'd)

- The above-noted general low “≥10% = restricted control” and related special thresholds for foreign investment in strategic fields E&P SEs
  - *shouldn't apply* (seem expressly waived – per FSIL art. 2.7) in any case where the RF itself (presumably meaning though RF owned/controlled companies – such as Gazprom, Rosneft, Zarubezhneft, affiliates, etc.) holds >50% of the shares/stake and/or otherwise directly/indirectly controls a >50% stake
    - ❖ *but note possible issues: how to calculate this for Gazprom/Rosneft? (there seems to be helpful interpretation from Yuzhno-Russkoye and Alrosa cases)*
    - ❖ *and consider Tsentral'noye case; and what about non-oil/gas RF state company as the >50% partner? (seems OK – Sberbank Credit / Urals Petroleum)*
    - ❖ *so the Gov't policy/position appears to be developing – and stay tuned for more...*
  - *and also subject to the special art. 2.3 requirement* that foreign gov'ts (or int'l org's) and their controlled companies need Authorized Agency approval to acquire/control >5% of a strategic field E&P SE – which rule still applies even in such “RF has >50%” cases
    - ❖ thus in such cases a foreign gov't-owned company should be able to acquire ≥10% (up to 49%) by approval (and a private foreign company up to 49% even without approval) – appears to comply with letter/spirit of law – but FAS/Gov't view still evolving
    - ❖ the authorities seem to agree, per informal indications – but practice/rulings involving foreign state-owned companies still awaited (different from ONGC/Imperial and RusVietPetro cases – finding that no FFS/SE involved)
    - ❖ and so, it seems, private E.ON Ruhrgas / Yuzhno-Russkoye was ok without FSIL approval

### III. Scope of Investment Deals Covered (cont'd)

- note possible even-broader reading of the art. 2.7 exception – per a FAS July 2009 ruling in a particular oilfield sale case
- *but note also, this is subject to the related rule* (per amended SL art. 9 – see slide 14) that *only* a Russian company having >50% shareholding/control by RF (a Russian state-owned company), and with 5 years of Russian shelf experience, can be holder of *any* offshore field (and note conversion restriction seems to be strictly interpreted re these fields)
- there is some doubt as to whether a 51/49 equity but 50/50 voting-arrangement venture between a foreign investor and a Russian state-owned company would work (without approval)
- *and note possible hindrance of 10% (or 5%) threshold on reserves bookability*
- This whole FSIL regime is not applicable in cases where foreign investment is governed by a separate/special law or a treaty (see art. 2.6) – *e.g.*, re:
  - some treaty-based bi-national oil & gas field joint investments (*e.g.*, with Kazakhstan in Caspian)
  - possibly, investments by EBRD, IFC and similar IFIs, governed by treaty to which Russia is a party (and that has special power over investment decisions, etc.)
  - presumably, investments in grandfathered PSAs
  - defense industry cooperation with foreign governments
  - *note: this is a possible “cure” approach for foreign state-owned/controlled companies*

## III. Scope of Investment Deals Covered (cont'd)

- Some further scope-of-application issues:
  - the whole regime is seen to apply now (per FAS informal clarification) even to proposed intra-group transactions – but there might be amendment (or decree) to clarify/fix
  - application to foreign participation in start-up or existing “non-strategic” company that later develops into strategic sector activity? (need approval? must disinvest? possible Licensing Law amendments to handle? and note link to above question re co. foundation). or this variant: has, but not using, strategic-sector license...
  - possible issue whether the FSIL regime/restrictions are directed only at “commercial enterprises” (in Russian, *khozyaistvennye obschestva*), and don’t apply to investments in partnership-form entities/ventures – shouldn’t risk this!
  - and recall the apparent loophole re foreign-incorporated SEs (see slide 20 above)

# III. Scope of Investment Deals Covered (cont'd)

## 2. Wide Scope of Transaction/Agreement Types and Contexts

*(per FSIL art. 5 "indicia of control" and art. 7 "types of transactions" – amplifying on the art. 2 basics)*

- Covers sophisticated structuring possibilities – including trust, management contract, delegation/agency, other types of agreements giving direct/indirect control over SE, and/or deals giving right to determine management decisions of SE, etc. *(What about a typical E&P project operating agreement?)*
- Including
  - purchase/sale (including additional share issue), gift, exchange agreements, exercise of put/call options, operation of mandatory tender offer rules under Stock Company Law, repo, etc.
  - bank's (or others') enforcement of pledge upon default (assuming that taking of pledge itself, without voting right, is not subject to approval) – *highly relevant in this crisis time*
  - and what about preferred shares (given their limited voting rights)? some uncertainty here – note MNR expressed conservative view. *(but note E.ON / Yuzhno-Russkoye case)*
- And even situation where foreign investor/group gets "control" of an SE without itself having taken any new action (see FSIL art. 7.5):
  - as result of reallocation of SE shares among other holders (by shares buy-back, charter capital decrease, redistribution among other holders, conversion of preferred to common voting shares (assuming not already counted – see above), exercise of put, operation of repo, etc.
  - in which case FSIL approval must be obtained within 3 months of having gained control by such "passive" means (and see the related disinvestment rule per art. 15.5 – slide 40 below)

# IV. Approval Regime, Processes, Procedures

## 1. Basic Regime

- Application for approval to Authorized Agency (herein "AA")
  - *FAS has this role* (by Gov't Decree No. 510 of July 6, 2008)
  - new Dep't of Control over Foreign Investments established within FAS for this (we are well acquainted with its chief Svetlana A. Levchenko and her key staff members)
- AA acts under, and in close coordination with, new Gov't Commission for Control over Foreign Investments (herein "Commission"), headed by Prime Minister Putin
  - basic Commission Regulation adopted by Decree No. 510, and Commission membership (mix of deputy PMs, and economic sectoral and "power" security agency ministers) set by Gov't Directive No. 974-r of July 6, 2008
  - also direct/active role of FSB in this process – to investigate and draw conclusions on potential threat to national security, etc.
  - FAS has also drafted general rules for consideration of FSIL applications; now (as of July 2009) under consideration– to be promulgated by Gov't decree
- If investment is through RF-incorporated company, that company (rather than foreign parent(s)) should be the applicant – this is FAS expressed preference/practice to date
- Applicants are advised by FAS to submit all possible info on the FSIL art. 10.1 items (though not strictly required) as well as the required art. 8.2 info items – to help expedite
- And FAS apparently wants separate application for each proposed SE control acquisition

## IV. Approval Regime, Processes, Procedures (cont'd)

- Whole process can take up to 3 months from receipt of proper application – extendable up to 3 months more, for total to 6 months (art. 11.4) – some talk of reducing
- Approval for making investment will have time period/deadline of validity (based on applicant's request/proposal) – and for (up to) certain number of shares – if/as appropriate, within reason, for the deal proposed (see FSIL arts. 4.3, 8.2(1))
- Approval can have conditions – to be formalized in investor - AA agreement (see slides 35-36), and various penalties provided/possible for violation (slides 39-40)
- Approval not needed (per FSIL art. 4.4) for additional share purchases once foreign investor/group already directly/indirectly (and lawfully) holds >50% of an SE's shares:
  - except for SEs engaged in strategic-field (FFS) mineral resource E&P (but note our client's "100%+" case example – no approval needed)
  - questions how would/wouldn't apply to foreign state-owned co. investment – beyond 25%? and beyond 50% (acquired pre-FSIL)?
  - this exception apparently applies (per FAS interpretation/practice) only where the additional purchase is by the same investor/group
  - and see the Onexim / TGK-4 court case decisions of early 2009 – re requirement of approval for any post-FSIL >50% acquisition to "count" for this purpose
- Applicant/investor is entitled to acquire the shares/stake/control, per the approval (including time period and number of shares / size of stake, etc.), by one or more transactions (see art. 4.3)

## IV. Approval Regime, Processes, Procedures (cont'd)

- See also art. 14 – establishing a general requirement to *notify* the AA of any acquisition of  $\geq 5\%$  of shares/stake in SE – per set rules (see slide 5)
  - general application to any such acquisition, even where FSIL approval not needed
  - issue whether art. 14 notice also needed for acquisition deals that have proceeded per FSIL approval – apparently not (see slide 38)
  - penalty for non-compliance – seems limited to admin. fines, and not covered by art. 15-based invalidation or loss of voting rights, etc. (see Section V below)
  - distinct from art. 16.3 retroactive-application notice provision for pre-FSIL  $\geq 5\%$  shares/stake acquisition in SE (here again, likely non-applicability of art. 15 penalties) – see slide 6
- And recall new related Foreign Investment Law art. 6 approval requirement per this same new FSIL-based regime
  - for  $> 25\%$  investment (or blocking right) by any foreign-gov't (or int'l org.) controlled company *in any Russian company*
  - again, note issue of whether could apply to *foundation* of a company
  - possible direct application of Civil Code void-transaction consequences for non-compliance (but not other FSIL art. 15 penalties?)
  - *but see slide 5 above re favorable real interpretation/practice to date*

## IV. Approval Regime, Processes, Procedures (cont'd)

### 2. Application Submission Basics (FSIL art. 8)

- Provision made for two types of application
  - for advance agreement/approval to enter into a transaction for direct/indirect control, etc. (per arts. 7.1 - 7.3)
  - for agreement/approval of already-estab'd control by passive means (per art. 7.5)
- Much overlap of needed supporting documents, some distinctions – and
  - there supposedly is to be no official form of application; time will tell; procedures may still be developed/issued anyway
  - application in most cases to include “business plan” in AA-approved form (see art. 8.2(10)) – guidelines issued by FAS Order No. 308 of Aug. 13, 2008
- Also, art. 8.6 provision for submission of foreign investor’s “inquiry” to AA, in case of possibly covered transaction by foreign investor/group where fact of establishing control “is not obvious”
  - limited intended scope for inquiries? *but wider practice has developed already*
  - required document attachments specified
  - to be answered within 30 days (uneven practice on this to date)

## IV. Approval Regime, Processes, Procedures (cont'd)

### 3. Application Review/Approval Basics (FSIL arts. 9-13)

- Some basic timing points
  - apparently can do application/review post-signing, with approval as condition precedent to closing (like with standard FAS share-acquisition approval)
  - standard FAS share-acquisition approval process evidently can/will be held up for completion of FAS/FSIL process (per new Competition Law amend. of Nov. 2008)
- Authorized Agency (FAS) coordinating role/actions (art. 9)
  - checks application for completeness; informs applicant of gaps
  - determines fact of establishment of control – by proposed transaction, or by passive means
  - if determines will be (is) no control, informs applicant (and Commission), and no approval needed (except for case of foreign gov't / controlled company gaining >25% (>5% for SE E&P in strategic field) – then same further process as for “control” cases, see just below and FSIL art. 10)
  - if determines will be (is) control (including by  $\geq 10\%$  of strategic field E&P SE), or will be foreign gov't / controlled company gaining >25% (>5%) of SE, the application is processed/reviewed further – by AA in coordination with FSB

## IV. Approval Regime, Processes, Procedures (cont'd)

- And recall *de facto* simpler approach, as noted above, in cases of
  - foreign gov't-owned company acquisition of >25% stake in non-SE, per amended FIL art. 6 (see slides 5, 30)
  - strategic activity not primary for the target "SE" (see slide 8) – or for investor... (possible law amendment in store on this?)
- AA/FSB further coordinated actions (FSIL art. 10)
  - in designated cases (*i.e.*, all cases requiring approval under FSIL), AA sends inquiry to FSB and, within 20 days, FSB investigates and reports back to AA re potential threat to national defense/security if control or related transaction were to be allowed (arts. 10.1, 10.3)
  - simultaneously, AA within 30 days investigates for presence of one/more of 12 listed "risk indicia" associated with target SE (see detailed list at FSIL art. 10.1)
    - ❖ which items to large extent reflect specifics/sensitivities associated with the 42 strategic sectors listed at art. 6
    - ❖ as well as whether that SE has a state secret license
  - upon AA finding that there is state secret licensing involvement, sends inquiry to Inter-Agency Commission on Protection of State Secrets, for confirmation whether there is relevant bilateral treaty re state secrets

## IV. Approval Regime, Processes, Procedures (cont'd)

- once AA/FSB findings are done (in case requiring approval), AA sends all the application materials – together with AA/FSB respective findings and AA recommendation re approval/rejection of application – to Commission for review/approval (per arts. 11-12)
- the AA's (but evidently *not* the FSB's) actions/inaction, conduct of review, and decisions may be challenged in RF court
- Commission role/actions (FSIL art. 11)
  - within 30 days, takes decision to approve, to approve with conditions (investment agreement – per. FSIL art. 12), or to reject application
    - ❖ to be promptly conveyed through AA to applicant
    - ❖ total time from AA's receipt/registration of application to final decision is to be ≤3 months, or ≤6 months "in extraordinary cases"
  - Regulation and make-up of Commission already set by Gov't decree; further detailed Commission/AA rules for considering applications may still come
  - Commission rejection of application appealable directly to RF Supreme Arbitration Court
  - to date there have been three Commission meetings for formal consideration of SE control applications (in Oct. 2008, and Feb. and June 2009) – *i.e.*, applications gathered/grouped for occasional Commission meetings

## IV. Approval Regime, Processes, Procedures (cont'd)

- If Commission intends to approve the application on basis of conditions (FSIL art. 12):
  - decides on one or more of the conditions set out at FSIL art. 12.1, as appropriate to the case, re:
    - ❖ various measures for protection of state secrets
    - ❖ continued fulfillment of state military orders, mobilization plan, etc.
    - ❖ carrying out national monopoly services per state-set tariffs, etc.
    - ❖ carrying out business plan submitted by applicant (per art. 8.2(10))
    - ❖ preservation of work-force level
    - ❖ carrying out appropriate level of refining/processing of produced mineral resources (this being consistent with general Gov't/Ministry policy priority – increase in value-added products exports)
  - *note:* possible view of awkwardness of imposing such conditions on the proposed investor, in cases where only minority interest being acquired and thus investor cannot control compliance (*e.g.*, DeBeers)

## IV. Approval Regime, Processes, Procedures (cont'd)

- in such cases, AA prepares agreement (“Investment Agreement”) to be signed by applicant with AA, based on Commission conclusions re required conditions of approval
  - ❖ based on model agreement adopted/issued by AA (per FAS Order No. 357 of September 17, 2008) – the form is quite short/simple (4 pages), with only certain blanks to be filled in; *extent of negotiability to await further practice*
  - ❖ also to incorporate provisions on liability for violation (see FSIL arts. 12.8, 15 – and section 5 of the form Agreement)
  - ❖ to be signed within 20 days of Commission decision re required conditions
  - ❖ signed Investment Agreement (or applicant’s refusal to agree on one/more of the required conditions) sent from AA to Commission
- Commission then reviews/approves the Investment Agreement
  - ❖ checks conformity of agreement terms with required conditions
  - ❖ if applicant has refused one/more conditions, Commission is to reject application (no provision for negotiation – but let’s see in practice ...)
- Investment Agreement is to remain in effect for whole term of applicant’s control of / holding in the SE – and may be amended, but only:
  - ❖ by agreement of applicant and AA, and approval by Commission
  - ❖ in case of substantial change of circumstances (see Civil Code art. 451)

## IV. Approval Regime, Processes, Procedures (cont'd)

- AA/FSB rights and obligations per this review/approval/monitoring regime – see art. 13
- We keep track of AA/Commission actions on approval applications to date, and can summarize. As of late July 2009 (per FAS official info and press reports):
  - at first meeting (Oct. 10, 2008), two approvals by Commission (one with conditions):
    - ❖ *DeBeers*, for 49.99% stake in Lukoil's Arkhangelskgeoldobycha diamond mining company (w/reported conditions: processing in Russia, employment, business plan, state secrets – and DeBeers then reported to have backed off, in part perhaps because of the processing condition and in part due to current market deterioration)
    - ❖ *Alenia* of Italy (through Swiss sub.), for 25.1% stake in Sukhoi civil aircraft JV co. – *first case of FSIL approval for foreign state-owned/controlled stake of >25% (or >5%) in an SE*
  - at second meeting (Feb. 4, 2009), three approvals by Commission:
    - ❖ *Barrick Gold*, for increase of stake (per exercise of pre-existing options) from 50% to 79% in the Fedorovo Tundra project – with est. reserves of 100,000 tons of platinum, palladium and gold – in Kola Peninsula region of Murmansk Oblast.
    - ❖ *Khartron*, a Ukrainian state-owned/controlled company, for purchase of part of additional share issuance, bringing it to 49.74% stake in ZAO Kosmotras (an aerospace industry company)
    - ❖ *A Cyprus company, controlled by NLMK's Vladimir Lissin*, for 100% share acquisition in a Taganrog ship repair yard (on Azov Sea) with access to a neighboring grain and oil products loading port

## IV. Approval Regime, Processes, Procedures (cont'd)

- at third meeting (June 8, 2009), reported 5 approvals by Commission (some with conditions) – all for Russian-owned offshore structures, including:
  - ❖ An offshore affiliate of *Nafta Moskva* (controlled by Suleiman Kerimov), for purchase from Potanin's group of a further 15% equity stake in Polyus Gold (Russia's leading gold producer), in addition to the 22% stake already held [approval for that me?]
  - ❖ Restructuring-type acquisitions of stakes (*i.e.*, no change in controlling shareholders) in the *Tver Railway Car Plant* (Russia's largest), and in the *Okskaya Shipyard*
- per FAS figures, as of early July there were 60 pending SE acquisition applications, over 1/3 of them involving oil & gas companies, a few in aviation/aerospace, and several from banks (mostly involving cryptographic equipment aspect)
- about 1/2 of all applications are from foreign companies controlled by Russian shareholders / beneficiaries (see slide 22 above)
- several applications returned upon finding that target company not SE (including some foreign gov't-owned co. applications for non-SE stake acquisitions under FIL art. 6 – see slide 5 above)

### 4. Notification of Investment by Applicant, Following Approval

- Possible interpretation that art. 14 general provision requiring notice of any future  $\geq 5\%$  share purchase in SE applies after approved purchase
- AA / FAS official has informally clarified that this is not needed; investor may double-check in particular case to be sure

## V. Consequences of Non-Compliance (art. 15)

1. Direct Legal Consequences – For Transactions in Violation of Law
  - Considered null and void (per art. 15.1 and general Civil Code art. 168 rule)
  - Court (on application of AA) applies consequences of void transaction (per Civil Code art. 167 etc. – *e.g.*, possible mutual return of shares/money, etc.)
2. Possible Further / Other Consequences (FSIL arts. 15.2 – 15.4)
  - Decisions taken by shareholders / management bodies of the SE, after transaction / control etc. done in violation, may be held void by court
  - If not possible to apply other penalties/consequences for void transaction (per specific deal/SE circumstances – *e.g.*, offshore company deal), or for failure of timely application/approval for passive-means control – court can deprive investor/group of shareholder vote (so that its vote doesn't count for quorum/general purposes)
  - Similar possible penalties/consequences for gross/repeated violation of art. 12 Investment Agreement
  - To our knowledge no FSIL-related violations/penalties have yet arisen

## V. Consequences of Non-Compliance (art. 15)

### 3. Required Disinvestment (FSIL art. 15.5)

- For passively-gained control cases (per art. 7.5)
- Within 3 months of rejection of approval application, investor/group must dispose of portion of shares/stake so that remaining portion doesn't give control (meant to apply as well to foreign gov't/company-acquired 25% (5%) stake? – though that is not itself defined as "control")
- For non-compliance, similar penalties/consequences as above – lose vote at shareholder level, votes don't count for quorum/general purposes

### 4. Application of Full Art. 15 Penalties/Remedies:

- Evidently not, for non-compliance only with art. 14 (future  $\geq 5\%$  SE stake) or art. 16.3 (pre-FSIL  $\geq 5\%$  SE stake) notification requirements
- Rather, likely only (rather small) Admin. Violations Code fines – but might be AVC amendments to increase these
- For non-compliance only with new Foreign Investment Law art. 6 requirement of AA approval for  $\geq 25\%$  investment (or blocking right) by any foreign-gov't (or int'l. org.)-controlled company in any (non-SE) Russian company – seems could be subject to direct Civil Code voidness consequences
- And, for any of these, possible FAS resistance/delay on the company's next FSIL application

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Questions?