

NEW MECHANISM FOR TERMINATION OF FOREIGN INVESTORS' RIGHTS UNDER ASSET BUYBACK OPTIONS

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Draft law No. 1059849-7, which supplements Federal Law No. 160-FZ On Foreign Investments in the Russian Federation, dated 9 July 1999, with a new Article 20¹, is currently under consideration in the State Duma. The article introduces a legal mechanism allowing Russian purchasers who bought shares (equity interests) in Russian companies previously owned by foreign investors (the "*assets*") to refuse, subject to a number of conditions, to perform their obligations to return the assets to foreign investors under buyback options and other similar agreements.

According to information from public sources, the latest version of the draft law sets the following conditions for refusal to perform such obligations, all of which must be met:

- a) the foreign investor is a person associated with an unfriendly foreign state;
- b) the foreign investor sold the assets concerned in the period from 22 February 2022 to 31 December 2022 (the previous version of the draft law set a longer period - from 24 February 2022 to 1 March 2025);
- c) the sale price was significantly less than the market value, and the SPA provided for a buyback option for three or more years;
- d) at least two years passed after closing;
- e) the Russian purchaser duly performs obligations towards the employees (including former ones) and creditors of the company(ies) it acquired from the foreign investor;
- f) the relevant companies' business is subject to federal sanitary and epidemiological control (i.e., the companies are engaged in the production of food, related products and materials, or restaurant business);
- g) the asset sale did not require approval from the Government Commission for Control over Foreign Investments in the Russian Federation; and
- h) prior to the sale, the foreign investor had publicly announced its exit from Russia for political reasons.

The draft law provides that the termination of the foreign investors' buyback rights is only possible through court proceedings, and compliance with all eight conditions must be proved in court. The claim for such termination should be filed by the Russian purchaser (or, in some cases, by the relevant government authority) with the Arbitration Court of the Moscow Region, including in cases where the SPA is governed by foreign law and disputes are subject to international arbitration. If the court rules in favor of the purchaser (or the government authority) and the foreign investor's buyback right is terminated, the foreign investor is entitled to claim, within one year, compensation from the Russian purchaser of the assets.

The draft law also provides that further conditions for the termination of foreign investors' buyback rights may be set by a decree of the Russian President.

We will continue monitoring the situation.



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