ALUMNI PARTNERS

RESTRICTION OF FOREIGN INVESTORS' RIGHT TO REPURCHASE DIVESTED ASSETS

ALUMNI Partners law firm highlights that, on 24 July 2026, the Federation Council approved amendments[1] to the Federal Law on Foreign Investments[2] providing for the possibility of terminating the right of an "unfriendly" foreign investor to repurchase (buy back) assets sold by it to acquirers after 22 February 2022. These amendments do not envisage any transition period and, subject to the President's signature, will enter into force immediately upon their official publication.

Scope of Application

Under the new rules, the possibility of terminating a foreign investor's[3] buy-back right arises where the following conditions are met:

- the foreign investor disposed of shares (participatory interests) in a Russian business entity and/or other business assets located in the territory of Russia previously owned by it;
- the purchaser (acquirer) was a citizen of the Russian Federation, a Russian legal entity, or a foreign legal entity controlled by a citizen of the Russian Federation whose personal law is that of a state not classified as unfriendly;
- under the terms of the transaction, the foreign investor retained the right to acquire (repurchase) the asset in the future, and the term for exercising such right has not yet expired;
- the disposal transaction was concluded after 22 February 2022, with no limitation as to the outer time limit for its conclusion following that date.

Notably, these rules also extend to agreements governed by foreign law.

Conditions for Termination of the Buy-Back Right

1. Bad-faith/unfriendly conduct of the investor

Bad faith or unfriendly conduct is presumed where, after 22 February 2022, the foreign investor engaged in at least one of the following:

- publicly supported unfriendly actions by a foreign state or international organization against the Russian Federation, its citizens, or Russian legal entities, called for such actions, or engaged in conduct discrediting the use of the Russian Armed Forces or the activities of Russian state authorities, or disseminated knowingly false information to that effect;
- participated in the financing of terrorism, extremist activity, or the proliferation of weapons of mass destruction;
- publicly announced the cessation/suspension of its activities in the Russian Federation and/or took actions or omissions connected therewith, improperly performed corporate or other obligations, or restricted the conclusion or performance of, or terminated, agreements material to the Russian company. Such conduct is deemed to fall within the scope of the provision where it is not attributable to evident economic reasons and/or there are grounds to believe it is connected with compliance with foreign sanctions.

2. Economic imbalance of the transaction terms

In addition, for the claim to be deemed well-founded, it must be established that:

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[1] Federal Law "On Amendments to Article 5 of the Federal Law 'On International Companies and International Funds' and Certain Legislative Acts of the Russian Federation.

[2] Federal Law No. 160-FZ "On Foreign Investments in the Russian Federation" dated 9 July 1999.

[3] The amendments apply to foreign investors connected with unfriendly states, as well as to persons under their control (including Russian legal entities).

- the buy-back price, as determined under the terms of the buy-back agreement, is discounted by 25% or more against the market price of the asset, and/or
- the acquirer made additional investments in the asset (or related assets) during the period of ownership, or took other actions without which the company's business could have been suspended, materially curtailed, or terminated.

It is evident that the broad, evaluative language used both with respect to investor bad faith and the additional economic conditions (for example, the amount, purpose, and grounds of the acquirer's investments) potentially creates grounds for terminating the buy-back right in respect of a significant number of options. This applies in particular to "discounted" call options frequently used in connection with asset sales by foreign companies exiting Russia since February 2022.

Procedure

The right to initiate a claim for termination of the buy-back right belongs to:

- the acquirer of the asset, following receipt of a position from the competent ministry confirming that the above conditions for denial of the right are satisfied, and a resolution of the Governmental Commission for Control over Foreign Investments (in practice, a subcommission thereof);
- the competent ministry, following authorization from the Governmental Commission (subcommission). In other words, a claim for termination of the right may be brought not only by a party to the option agreement, but also by a state authority.

Such a claim may be brought irrespective of whether the foreign investor has sought to exercise its buy-back right, and the dispute will be heard by the Arbitrazh (Commercial) Court of the Moscow Region. This rule applies even where the agreement contains an arbitration clause providing for dispute resolution before a foreign court or an international commercial arbitral tribunal (arbitration) abroad, if such agreement is found unenforceable due to restrictive measures impeding a party's access to justice.

In such circumstances, the position of the competent ministry, as in the case of the initial clearance of transactions with an "unfriendly" party, becomes decisive.

Consequences of Termination and Compensation

Where the court grants the claimant's request, the foreign investor's right to acquire (repurchase) the asset is terminated.

The foreign investor is entitled, within one year from the date the court decision enters into legal force, to bring a claim against the acquirer for payment of compensation for the loss of the buy-back right.

In the event of a dispute regarding payment of such compensation to the foreign investor, the court may:

- reduce the amount of compensation having regard to the nature of the investor's bad-faith conduct, the amount of losses associated therewith, and the volume of investments made by the purchaser in the assets following their acquisition. Since the law establishes no specific criteria for assessing the nature of the investor's conduct or the amount of the acquirer's investments for purposes of reducing compensation, nor any minimum amount of compensation, the court is afforded broad discretion in such matters, and as a result the amount of compensation awarded to the foreign investor may be reduced to a purely nominal sum;
- deny compensation altogether if the investor or its executives have been held administratively or criminally liable for financing terrorism, extremism, or the proliferation of weapons of mass destruction.

ALUMNI Partners client alerts provide a brief overview of legislative and regulatory developments and should not be construed as legal advice or a legal opinion.

Should you have any questions or comments regarding this alert, please do not hesitate to contact us — we would be pleased to discuss them.

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