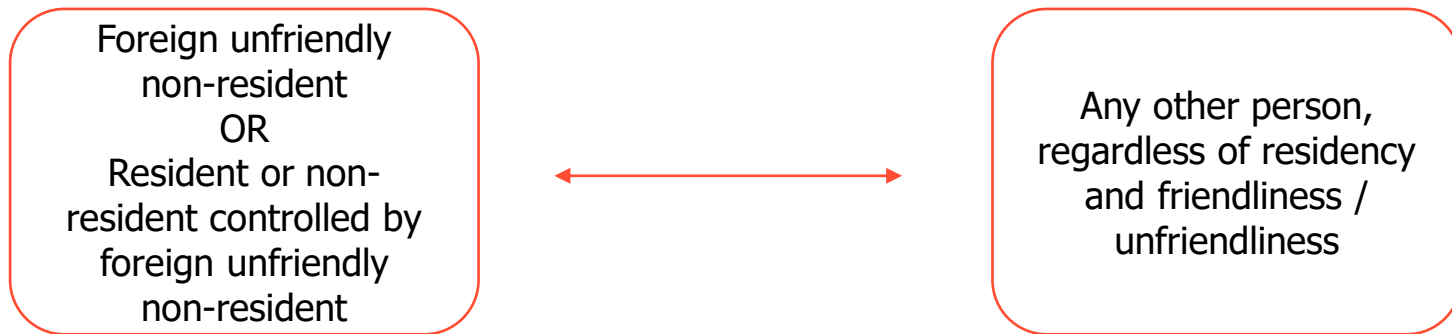


Application of Decree No. 618

30 September 2022

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Parties to transaction under Decree No. 618



Foreign unfriendly person is not regarded as unfriendly if:

- Such person has been disclosed as a CFC (clause 12 of Decree No. 95), or
- Such person is controlled by a friendly person, provided that such control occurred before 1 March 2022



Do unilateral transactions (e.g., withdrawal from a company, liquidation of the company) fall under the effect of Decree No. 618?

Formally, the Decree refers to **transactions** and **operations** with at least 2 parties (“between” 2 parties), but there is a risk of practical difficulties in interacting with notaries and banks

Subject matter of transaction under Decree No. 618

Subject matter of transaction

- Participatory interest in LLC
- "management rights" over LLC
- Rights to determine entrepreneurial activity of LLC

Exceptions

Decree No. 618 **does not apply to:**

- Participatory interests in credit and non-credit financial institutions
- Participatory interests in companies included in the list of strategic enterprises (and in legal entities, in which such strategic entities own participatory interest)
- Participatory interests in companies within the fuel and energy sector (the list is approved by the President of the Russian Federation)
- Participatory interests in companies that are users of subsoil plots (subject to meeting the criteria)

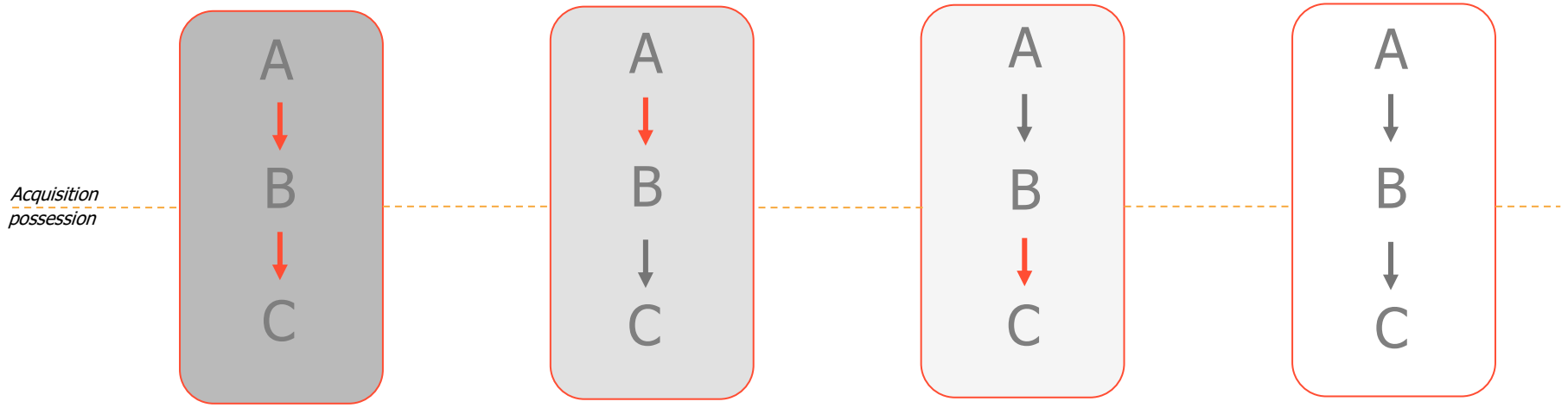
Transactions (operations) requiring approval

Establishment, modification or termination of rights of possession, use and (or) disposal of participatory interests in LLC

Establishment, modification or termination of other rights allowing to determine the terms and conditions of management of any LLC
(“*Management rights*”)

Establishment, modification or termination of other rights allowing to determine the terms and conditions of entrepreneurial activity of any LLC

Indirect acquisition



Minority participatory interest



Majority participatory interest



High risk of applying Decree No. 618



Low risk of applying Decree No. 618

Case study: direct transactions

Transaction	Possibility	Notes
Sale and purchase agreements	Subject to approval	Except if the “unfriendly” person is controlled by a “friendly” resident or a “friendly” non-resident
Framework agreements	Possible	Provided that the CPs for performance include the obtainment of approval of Government Commission
Option agreements		
Preliminary agreement		
Pledge agreements	??	No transfer of voting rights to the peldgee upon signing of the Pledge agreement
Corporate resolutions (director change, charters adoption)	Possible	Except the charter capital decrease / increase
Liquidation and re-organization	??	Only without the involvement of a notary (direct filing with the tax office), but the risk of challenging
Withdrawal	??	Only for withdrawal of resident

Consequences of making a transaction without approval



Transaction
without
approval



Void under
168 CC RF
(possibly also
under 169 CC RF)



How would voidance apply to indirect transactions made in relation to foreign legal entities owning participatory interests in LLC?

There is no clear answer. Only an analogy with the 57-FL is possible (deprivation of the right to vote and the invalidity of decisions of the management bodies). However, such consequences are explicitly prescribed only for violation of the 57-FZ.

No such special consequences are explicitly prescribed for violations of Decree No. 618.

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