



RUSSIAN DESK

Law on Protection and Promotion of Investments

On 1 April 2020, the “Law on Protection and Promotion of Investments” No. 69-FZ (hereinafter referred to as the “**Law on Protection of Investments**”) was adopted, which is aimed to create predictable and favourable conditions for business operations and implementation of investment projects, to remove infrastructural restrictions and introduce a mechanism for reimbursing investors for infrastructure costs at the expense of taxes paid.

BACKGROUND. COMPOSITION AND CONTENTS OF AMENDMENTS

The idea of adopting an “investment code”, which would determine the general procedure for carrying out investment activities, has not been implemented in its original form. As a result, the final version of the Law on Protection of Investments does not mention the general investment regime but only regulates the conclusion of project-related agreements on protection and promotion of investments.

From this point of view, it is not quite appropriate to consider the law adopted as an “investment code” applicable to all companies. In fact, it is just another investment mechanism in addition to the existing ones:

- concession agreements;
- public private partnership projects; and
- specific economic zones – exclusive economic zones, priority development areas and special economic zones.

In addition to the Law on Protection of Investments, laws have also been adopted amending the Tax and Budget Codes of the Russian Federation.

STABILISATION CLAUSE

The main idea of the Law on Protection of Investments is to provide state guarantees ensuring stable conditions for activities of companies that meet certain criteria and have entered into an agreement on protection and promotion of investments (hereinafter the “**Agreement**”).

The guarantee of ensuring stable conditions, a so-called “stabilisation clause”, means that any federal, regional and local regulatory acts that entered into force after the conclusion of the Agreement and worsen the business environment will not be applicable, namely those that:

- increase the duration or number of procedures required for the implementation of the respective investment project or establish additional requirements for its implementation;
- increase the amount of payments charged during the implementation of the investment project;
- establish additional bans that impede the implementation of the investment project.

PERIOD OF VALIDITY OF STABILISATION CLAUSE. MINIMUM AMOUNT OF INVESTMENTS

The period of validity of the stabilisation clause, i.e. the period during which any acts worsening the investor’s position, shall not apply, depends on the amount of capital invested in the investment project and, as a general rule, cannot exceed the following periods:

- 6 years – if the amount of investments is below RUB 5 billion;
- 15 years – if the amount of investments is from RUB 5 to 10 billion;
- 20 years – if the amount of investments is over RUB 10 billion.

Such a period may be extended once by no more than 6 years if the additional conditions provided for by the Law on Protection of Investments are met.

The Law on Protection of Investments also contains requirements regarding a minimum amount of investments, in particular:

- at least RUB 250 million for health, education, culture, and sports projects;
- at least RUB 500 million for digital economy, ecology, and agriculture projects;
- at least RUB 1.5 billion for manufacturing industry projects;
- at least RUB 5 billion for projects in other areas.

These conditions apply to investment projects in respect of which the investor made a decision on financing and submitted an application for the conclusion of the Agreement no earlier than 7 May 2018 and no later than 31 December 2021.

CONCLUSION OF AND PARTIES TO THE AGREEMENT

An obligatory party to the Agreement is the federal constituent entity (i.e. region) or several entities of the Russian Federation, in whose territory the respective investment project is being implemented. In addition, the Russian Federation and/or municipalities may also be parties to the Agreement.

The possibility to conclude Agreements is expressly ruled out for companies operating in certain industries, such as:

- gambling business;
- production of tobacco and alcohol products;
- production of liquid fuel;
- production of crude oil and natural gas, including associated petroleum gas;
- wholesale and retail trade;
- activities of financial institutions supervised by the Central Bank (except for emission of securities in order to finance an investment project);
- construction (modernisation, reconstruction) of office buildings and shopping centres, as well as residential buildings.

At the same time, the Law on Protection of Investments provides for a number of exceptions: Agreements can be concluded for the implementation of projects in the field of liquefied natural gas and production of liquid fuel derived from coal, as well as in petroleum feedstock refineries in accordance with the list approved by the Government of Russia.

INVESTOR SUPPORT MEASURES

The stabilisation clause intended to guarantee the stability of business environment covers the following groups of issues related to the activities of investors:

- **Taxation**, including preservation of existing taxation regimes in respect of profit tax, property tax and transport tax, the deadlines for payment of taxes, and the VAT refund procedure, as well as restriction on application of new taxes and

levies. The composition of stabilisation guarantees in the tax sphere depends on whether the parties to the Agreement include only the authorities of a federal constituent entity or the federal executive authority as well. If the Russian Federation is a party to the Agreement too, the stabilisation clause shall also cover profit tax. Moreover, in addition to protection from deterioration of the taxation conditions, investors may apply new tax concessions.

- **Land use** issues, for example, non-application of regulatory acts providing for a change in the procedure for granting rights to land plots;
- **Urban development** issues, including non-application of changes in relation to the preparation of territorial planning documents; and
- **Use of state support measures** granted to the investor in terms of the concluded Agreement.

The most significant preferences are provided for investments exceeding RUB 10 billion: non-tax payments (for up to 3 years) can be additionally included in the tax conditions of the stabilisation clause, immutability of export customs duties can be fixed, a ban can be established on the increase of the rates of fees for negative impact on environment, fees for the use of water bodies, utilisation and environmental fees, and the rates of payments for forest resources may be fixed.

Article 15 of the Law on Protection of Investments provides that the state support measures can be granted in the form of **reimbursement**, at the expense of federal or regional budgetary funds, **of expenses of the investor on the creation or reconstruction of the infrastructure**. Thus, investors will have the opportunity to be compensated for the expenses incurred thereby on transport, energy, social, utilities and digital infrastructure at the expense of taxes accrued in connection with the activities under the project or by virtue of receiving state subsidies.

The Law on Protection of Investments provides for the possibility of recognising certain previously concluded agreements (e.g. an agreement on provision of budget subsidies, a contract with a company operating in the field of housing and utility services, or a loan agreement which stipulates subsidising interest rates from the state budget) as **related agreements** provided that such agreements meet certain criteria. This makes it possible to establish additional obligations of public entities with respect to observance of the timelines, and the amount of budget financing of the investment project.

CONTENTS OF THE AGREEMENT. PARTIES' OBLIGATIONS

The Law on Protection of Investments establishes mandatory requirements for the contents of the Agreement. In particular, the Agreement should contain:

- the detailed description of the investment project;
- the stages of its implementation;

- the information on the maximum permissible deviations from the parameters of the project (no more than 25 percent);
- the period of application of the stabilisation clause;
- the terms and conditions of any related agreements;
- the obligations of the public entity in connection with payments, compensation for damages and expenses incurred;
- the procedure for provision by the investor of information on the performance of obligations under the Agreement.

PROCEDURE FOR ENTERING INTO AGREEMENTS

In accordance with the Law on Protection of Investments, Agreements can be entered into at the initiative of the investor or the state (public initiative):

- in order to enter into the Agreement at the investor's initiative (so-called private project initiative), the investor must submit an application and a set of documents, including a business plan and financial model of the investment project;
- if an investment project is implemented at a public entity's initiative, the competent executive authority shall publish a declaration on implementation of the investment project, with respect to which the Agreement is to be entered into.

The detailed terms and conditions and the procedure for entering into Agreements will be determined by the Government of Russia that shall regulate, in particular, the following issues:

- the procedure for entering into Agreements;
- the procedure for holding tenders under the public project initiative;
- the procedure for maintaining the register of Agreements; and
- the procedure for determining the amount of compensation for expenses and tax credits.

The Agreement shall be entered into in an electronic form using the state information system (GIS) and shall be deemed concluded from the date of inclusion of the information thereon in the register of Agreements. The information systems required in accordance with the Law on the Protection of Investments must be developed and put into operation within one year.

Agreements may be entered into until 1 January 2030.

CONCLUSION

As was noted above, to ensure that the provisions of the new law are implemented, the Government of Russia should adopt a number of regulatory acts.

Moreover, specialised federal bodies and authorised regional authorities will have to adopt additional acts regulating protection and promotion of investments.

Application of the Law on Protection of Investments gives rise to a number of issues regarding the existing mechanisms of state support. In particular, such mechanisms as special investment contracts (SPIC) and agreements on provision of state support at the regional level, which are widely used in the constituent entities of the Russian Federation for the purpose of granting tax preferences, will have to be modified and adjusted at the regional and federal levels. An important practical issue will be the necessity to go through the procedures established by the Law on Protection of Investments in order to confirm the rights to state support measures in accordance with agreements entered into previously.



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