

While states, including Russia, generate measures to save national economic entities from the impact of the coronavirus pandemic, Russian legislators do not forget about foreign investors.

On April 1, 2020, Federal law No. 69-FZ dated 01.04.2020 "On protection and promotion of capital investments in the Russian Federation" (hereinafter – the Law) entered into force, which introduces a new systematic approach to the legal regulation of investment activities, as well as state and municipal protection of capital investments.

The Law will provide companies, implementing investment projects, with predictable and stable regulation, including in the tax and customs sectors.

SCOPE OF REGULATION

The Law regulates relations arising in connection with investment on the basis of an agreement on the protection and promotion of investment concluded with the state and providing for the implementation of a new investment project in one of the areas of the Russian economy, with the exception of such areas and activities as:

- gambling;
- production of tobacco products, alcoholic beverages, and liquid fuels (the restriction does not apply to liquid fuels derived from coal, as well as at refineries for petroleum feedstocks according to the list approved by the Government of the Russian Federation)
- production of crude oil and natural gas, including associated petroleum gas (the restriction does not apply to investment projects for liquefied natural gas);
- wholesale and retail trade;
- activities of financial organizations subject to supervision by the Central Bank of the Russian Federation (the restriction does not apply to cases of securities issuance in order to finance an investment project);
- construction (modernization, reconstruction) of administrative and business centers and shopping centers (complexes), as well as residential buildings.

The first thing here is the absence of construction of production facilities in the list of exceptions, which should be an additional incentive for localization.

The Law introduces a broad conceptual framework, in particular, the concept of state or municipal support, investment, capital investment, investment project, investor, organization implementing the project, project company, etc.

According to the legislator, an investor is a foreign investor, as well as Russian individuals and legal entities (several individuals). At the same time, the concept of foreign investor remains the same as defined in the Federal act of 9 July 1999 N 160-FZ "On foreign investments in the Russian Federation" taking into account the already existing exception that ensures continuity of the existing state policy for protection of foreign investment.

POWERS OF STATE AUTHORITIES AND LOCAL SELF-GOVERNMENT

The Law establishes the powers of state authorities and local self-government in the regulation of relations arising in connection with the implementation of investments under the agreement on the protection and promotion of investment, in particular:

The government of the Russian Federation will establish the procedure for concluding agreements on the protection and promotion of investment, approve the standard form of the agreement, approve the procedure for monitoring the stages of the implementation of the investment project, approve the declaration form on the implementation of the investment project when forming the public project initiative by the federal executive body, the methodology for determining the amount of compensation for losses and real damage, etc.;

In order to provide information support for the implementation of the Law, a state information system “Investments” will be created with information, some of which will be publicly available on the Internet.

Obviously, it will be possible to conclude an agreement on the protection and promotion of investment after the adoption of the above-mentioned by-laws. However, the high speed of the new government of the Russian Federation gives hope that this will happen in the near future despite the situation with coronavirus.

INVESTMENT PROTECTION AND PROMOTION AGREEMENT AND STABILIZATION CLAUSE

— PARTIES

The concluded agreement on the protection and promotion of investment is the direct basis for the support and protection of investments.

The parties of the investment protection and promotion agreement are

- on the one hand, public legal entity depending on the volume of investments,
- on the other hand, a Russian project company specially created for the implementation of an investment project, indicating this in its charter as the subject of activity, and at least 90 percent of the total revenue which will be the revenue received from the implementation of the investment project, or another Russian organization implementing the project.

— STABILIZATION CLAUSE

The subject of the agreement on protection and promotion of investment is the obligation of a public legal entity to ensure that the organization implementing the project does not apply to it acts (decisions) of the relevant authorities that will be issued (adopted) that worsen the conditions for conducting business and (or) other activities:

- on increasing rates of export customs duties;
- on introduction of additional duties and reduction of the scope of rights of owners and tenants of land plots;
- on changing the procedure for determining the rent for a public land plot;
- on the establishment of other additional requirements for land use and development of territories;
- on changes in procedures related to urban development, etc.

The organization implementing the project is granted the right to require the relevant public legal entity not to apply such acts (decisions) to it when implementing the investment project. In other words, the so-called stabilization clause will apply to organizations implementing an investment project. The effect of such a clause and the period of its application (with the possibility of

extension) will depend on compliance with the requirements for the amount of investment established by Law.

The Law also establishes a list of essential terms of the agreement on protection and promotion of investment, which will serve as a checklist for checking the standard forms of the agreement.

— TERMS AND PROCEDURE FOR CONCLUDING AND TERMINATING AN AGREEMENT ON THE PROTECTION AND PROMOTION OF INVESTMENT, DISPUTE RESOLUTION

An agreement on the protection and promotion of investment is concluded based on the results of the implementation of established procedures in the framework of a private project initiative (formed by application) or on a competitive basis in the framework of a public project initiative (formed by Declaration).

The deadline for concluding an agreement on the protection and promotion of investment is no later than January 1, 2030. The agreement on protection and promotion of investments will be valid until the parties fully fulfill their obligations under it, unless otherwise provided by Law.

An agreement on the protection and promotion of capital investments to which the Russian Federation is not a party or to which a municipality is a party may be concluded no earlier than April 01, 2021.

The investment protection and promotion agreement can be terminated either by agreement of the parties or at the request of one of the parties.

Disputes under the agreement on protection and promotion of investments can be considered alternatively either by the state court of the Russian Federation or in the framework of arbitration proceeding with the place of arbitration in the Russian Federation at the conclusion of the arbitration agreement.

— STATE SUPPORT MEASURES

In addition to the above-mentioned stabilization clause, the Law provides for a number of other state support measures, which require amendments to other regulations, in particular, to budget and tax legislation, some of which have already been adopted.

Among the measures of state support, the Law calls for reimbursement of expenses from the Federal budget and (or) from the budget of a constituent entity of the Russian Federation within the time periods specified by the Law and when certain conditions for the creation (construction), modernization and (or) reconstruction of facilities providing and (or) related infrastructures necessary for the implementation of the investment project, including for the reconstruction of infrastructure facilities that are state (municipal) owned, for the payment of interest on loans and borrowings, etc.

In addition to the above measures, the agreement on the protection and promotion of investment offers to have signed their taxpayer rules stabilize tax environment - they will receive protection from changes in certain tax rules for a period established by the agreement or the Law, subject to the separate accounting for activities in the framework of the investment project.

Summing up, it is recommend that investors study the conditions for using this tool in the implementation of their projects in Russia in order to maximize the benefits provided by the Russian state.