

New stabilization mechanism for significant investment projects

A new mechanism for protecting investors was recently launched in Russia in order to make the business climate more attractive. A new law, “On the Protection of Investment in Russia” (Law), effective since April 1, 2020, came into force and relevant Resolutions of the Government specifying the implementation details were approved in October 2020. The Law is aimed at ensuring the stability and predictability of the conditions for the implementation of significant new investment projects (IP) as well as possible compensation of the costs for relevant infrastructure. In order to apply the stabilization mechanism, it is necessary to conclude an Agreement with the state authorities on the protection and invitation of capital investments (Agreement). The Agreement may be concluded not later than January 1, 2030.

Such stabilization mechanism is not available directly to foreign companies but only to their Russian subsidiaries/affiliates – project companies focusing on the implementation of new IP provided that certain thresholds for investment are reached. Even existing IP may be recognized as new ones if the capital investment budget was approved after May 7, 2018. Please note that the mechanism is not available for IP in certain industries, in particular for wholesale or retail, production of tobacco products, alcoholic products, oil fuel, constructions of business centres and residential buildings, etc.

The main benefits of conclusion of the Agreement may be the following: (1) stabilization of the current regulatory conditions and (2) state compensation of the costs relevant to IP infrastructure.

Stabilization of the regulatory conditions is important for long-term planning and the predictability of IP conditions. Stabilization means that acts and decisions deteriorating the current conditions of business activity (i.e., additional requirements for implementation of IP) would not be applicable to IP. Thus, certain initial conditions for IP may be fixed, and new legislative changes would not affect the initial plan of the investor, i.e., in case of change of land-use, urban development rules, and increase in tariffs of export customs duties and taxes. The duration of the stabilization period may deviate and depends on the amount of capital investment, i.e., a 20-year period provided that the capital investment exceeds 10 billion rubles, a 15-year period for capital investment within the range of 5-10 billion rubles, and a 6-year period for investment of up to 5 billion rubles.

Please note that stabilization of land regulation, urban planning, and the provision of a subsidy are available provided that certain thresholds for capital investment are reached:

- at least 250 million rubles for IP in the sphere of medicine, and education;
- at least 500 million rubles for IP in the sphere of digital economy, and ecology and agriculture,
- at least 1.5 billion rubles for IP in the sphere of manufacturing;
- at least 5 billion rubles for IP in other spheres – if the Agreement is concluded with the Russian Federation

Stabilization of export customs duties, payments for the negative environmental impact utilization fee, charge for the use of bodies of water, environmental fee, fee for the use of a forest plot are available only if the capital investment is at least 10 billion rubles.

The company implementing the IP registered in the relevant register also obtains the stabilization of certain tax conditions. Thus, any legal acts adopted after conclusion of the Agreement changing certain

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tax rules (i.e., base calculation, tax rate, tax benefits, etc) are not applied save for the new tax benefits. Stabilization of certain taxes depends on the party to the Agreement, thus should the Agreement be concluded with:

- the Russian Federation and a state of the Russian Federation – stability of profit tax and VAT conditions;
- a state of the Russian Federation – stability of property and transport tax rules;
- the municipal unit joined the Agreement – stability of the land tax rules.

However, conclusion of the Agreement provides no special tax allowance for the investors, i.e., a decrease of tax rates, only stability of the current tax conditions.

As noted above, additional benefit for the investor may be state compensation for costs/part of the costs actually incurred by the investor for (1) construction and modernization infrastructure objects (including ones in public ownership) required for the IP, (2) payment of interest under the credits and loans taken for IP implementation. The amount of compensation may not exceed the amount of obligatory payments to the budget of the governmental units with whom the Agreement is concluded (i.e., profit tax, property tax, transport tax and VAT, and import duties relevant to the IP).

State authorities monitor the implementation of the IP on an annual basis. Failure to observe the Agreement would result in termination of the Agreement and the loss of state regulatory support.

Should a Russian company implement a significant new IP in Russia availability of the stabilization mechanism may be considered taken into account relevant restrictions and thresholds.