Special Investment Contracts as a Stimulating Measure of Industrial Activity in the Russian Federation

Special investment contracts were introduced by the Russian government as one of the innovative instruments aimed at stimulating industrial activity in the Russian Federation. On 30th June 2015 Federal Law No. 488-FZ dated 31st December 2014 “On Industrial Policy in Russia” came into force providing general provisions for special investment contracts among other stimulating measures. The procedure for entering into special investment contracts was detailed in Government Resolution No. 708, dated 16th July 2015.

A special investment contract is concluded between a private investor (legal entity, individual entrepreneur) and a public entity (Russian Federation, constituent entity of the Russian Federation, or municipal entity) under which the investor undertakes to establish, upgrade and/or set up a manufacturing facility or enterprise, and, on the other, the public entity undertakes to apply and uphold the incentive measures provided by the laws of the Russian Federation or the constituent entity of the Russian Federation and agreed by the parties.

Unlike private-public partnerships/concession agreements, under a special investment contract the state is not co-investing the budget money or a state property in the project – the manufacturing facility – and does not possess any title to the project facility. The following conditions should be met in order to enter into a special investment contract, i.e. an investor shall provide:

- evidence of investing the minimum investment amount which is set at RUB 750 million (copies of either a credit/loan agreement, preliminary loan agreement, other documents confirming the necessary amount of investment);
- a list of stimulating measures which the investor requests for the purpose of the specific special investment contract, i.e. tax or customs duties benefits, benefits (discounts) on...
payment of rent for state and municipal property including land plots, and other incentives (stimulating measures) provided by the Law;
- a list of obligations of the investor and/or other persons that might be involved in the project;
- a project’s business plan indicating certain results/outcome of the implementation of the investment project;
- other documents proving that the project complies with the conditions set out by the laws for special investment contracts.

The maximum term of the special investment contract is 10 years.

- The investments required for concluding a special investment contract, in particular, can be spent on:
  - acquisition or long term lease of land plots for creation of new production facilities;
  - development of project documentation;
  - construction and reconstruction of industrial buildings and structures;
  - creation of work places;
  - acquisition, construction, development, supply and modernization of capital assets;
  - customs duties and payments; and
  - installation and construction works, commissioning works.

Main advantages of a special investment contract are the clear written long-term conditions and guarantees provided to the investor by the government against adverse change of laws, in particular:

- new bans, limitations, restrictions that change the requirements for the industrial products, their design, production, construction, installation, etc. shall not apply during the contract term;
- the tax burden on profit of the investor and/or other persons specified in the contract shall not be increased during the contract term.

However, the investors should keep in mind that in case of termination of the special investment contract for non-fulfillment by the investor of his obligations, the investor shall be obliged to return money and property received as a result of applying stimulating measures; compensate the sums of non-paid (saved) taxes in case tax benefits were provided; and pay a penalty.

The procedure for entering into a special investment contract is as follows:

1. The investor submits an application for a special investment contract supported by the necessary (required) documents to the Ministry of Industry and Trade of the Russian Federation.
2. The Ministry forwards the documents with a preliminary conclusion to the Interagency Government Commission for review.
3. Within 60 business days from the date of receipt of the set of documents, the Commission reviews the documents and issue a conclusion regarding the application, which is then sent to the investor.

4. If the conclusion regarding the investors’ application is positive, the investor receives a draft special investment agreement.

5. Within 10 business days from the receipt of the draft agreement the investor either returns a signed copy of the contract or a refusal to sign, or a statement of disagreement regarding matters not related to the terms of special investment contract fixed in the conclusion of the Commission. In case of such disagreements the parties may hold additional negotiation.

Overall, according to Resolution No. 708 minimum time required to process a special investment contract is 90 business days, and maximum – in case additional negotiations are required – 100 business days.

Besides special investment contracts the Law On Industrial Policy in Russia provides for other incentives and benefits for production companies, including but not limited to financial support in the form of subsidies, loans via funds for industrial development, support for R&D and innovation, support in procurement for state and municipal needs, informational support, industrial parks, industrial clusters. Please see LegaLife’s brief overview of the Law at: http://legalife.ru/news/law_on_industrial_policy/.

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MARINA ZINOVIEVA, MANAGING PARTNER

ANNA RYABTSEVA, SENIOR ASSOCIATE