

INVESTORS PREFERENCES

SPECIAL INVESTMENT CONTRACTS
IN THE RUSSIAN FEDERATION

Starting in 2015, for the first time a new form of cooperation between the state and private investors became available – the special investment contract (hereinafter SPIC). The goal of implementing it is to stimulate the attraction of large-scale investment to help create and upgrade industrial production facilities inside Russia by providing industry incentives, credits, and stable conditions in which to conduct business. What advantages does this investment mechanism have, and what additional obligations must a party that is investing take upon itself in order to enjoy them?



Maxim GRIGORYEV,
Partner, Head of special projects,
VEGAS LEX law firm,
Moscow

SPIC: the concept, regulations, the players

As of now the Russian Federation, represented by the Ministry of Industry and Trade, has signed only 12 of these contracts, and seven of those were with the subsidiaries of transnational or foreign investors. There are that many applications to sign SPIC's submitted by large business organizations currently under review, and there are significantly more organizations that want to try using this instrument to implement programs for their further development. What is an SPIC?

An SPIC is an tool of Russian Federation industrial policy that represents an agreement between a private entity (an investor and, if necessary, an industrial manufacturer) and a public entity (the Russian Federation and/or one of its regions, or, in certain cases, a municipality) that prescribes:

- ✓ the obligations borne by the private entity to set up, in a pre-determined time frame, inside the Russian Federation, on the Russian Federation continental shelf, or in a Russian Federation special economic zone certain new production facilities for certain products, or to develop production facilities for those products, or to upgrade already existing production facilities that have no counterparts inside Russian borders (hereinafter target products)
- ✓ the obligations borne by the public entity to guarantee stability for the tax and regulatory conditions for the target products, and to take special measures in respect to the private entity that provide state support and incentives provided for by legislation for SPIC participants.

At present, the Russian Federation government has ratified a standard contract template for just a few industries: machine building (including automobile manufacturing), machine tool design, metallurgy, chemicals, pharmaceuticals, biotechnology, medicinal products, light industry, the timber industry and

woodworking, electronics, aviation, shipbuilding, radioelectronics, and the manufacture of communications equipment (Russian Federation government Resolution No. 708 dated July 16th, 2015 "On special investment contracts for certain industrial sectors" (hereinafter Russian Federation government Resolution No. 708). There is a corresponding expanded SPIC template for other industries. Along with that, in the near future it is anticipated that the list of industrial sectors where an SPIC may potentially used to achieve investment goals will be significantly expanded.

Besides the abovementioned Russian Federation government Resolution 708, the main form of legal regulation that governs SPIC's in the Russian Federation is enforced via the following:

- Federal Law No. 488-FZ dated December 31st, 2014 "On Russian Federation industrial policy"
- the Russian Federation Tax Code
- the Russian Federation Land Code
- Federal Law No. 44-FZ "On the contract system for procuring goods, work, and services to provide for municipal and government needs"
- Russian Ministry of Industry and Trade Directive No. 2288 dated August 7th, 2015 "On ratifying the application form to sign special investment contracts"
- Russian Ministry of Industry and Trade Directive No. 2289 dated August 7th, 2015 "On ratifying the procedure for monitoring and controlling the performance by investors of their obligations under special investment contracts that they have signed, and the reporting forms submitted by investors."

In addition, many regulations have been enacted at the level of the Russian Federation federal government and the Russian Ministry of Industry and Trade that govern the types of incentive measures and state support for the private entity involved in an SPIC, as well as the justification and procedure to take advantage of them.

The provisions outlined in legislation on investment activities apply to SPIC's, unless otherwise established by Federal Law No. 488 dated December 31st, 2014 "On Russian Federation industrial policy" and they do not run contrary to the essence of the contract. In addition, when an SPIC is being structured, and its conditions are being determined, the parties actively use the range of legal instruments spelled out in the Russian Federation Civil Code.

Investors performing work under an SPIC can be Russian or foreign legal entities, or entrepreneurs,

that are not going through the process of bankruptcy and do not have any overdue mandatory payments that must be paid into the budgets at various levels or public pension funds. An SPIC participant can be a third party brought in by an investor for actual work involved in implementing the investment project (industrial manufacturer). And there may be several of these kinds of parties. Russian authorities plan to expand the kind of organizations involved with the private entity: as an option, the list of SPIC participants can include lending organizations, natural monopolists, development corporations (institutes), and others.

The time period for which the SPIC is valid is taken to be five years from the time the investment project reaches the level where it has an operating profit. But as of today the maximum period for an SPIC cannot exceed 10 years. However, on instructions from the Russian Federation President amendments to existing regulation have been drawn up that are intended to increase this validity period to no less than 20 years.

The advantages of an SPIC for the private entity

The investor can choose incentive measures and state support on its own (including together with the industrial manufacturer) when submitting the application to sign an SPIC. The decision on whether to provide the measures of support chosen by the private entity is made by a specially created Russian Federation interagency commission that evaluates the possibilities involved in signing the SPIC (hereinafter the Interagency commission), taking into account:

- preliminary findings made by the Russian Ministry of Industry and Trade
 - the relevant tasks and/or target indicators, or targets and other indicators for the Russian Federation government long-term and medium-term programs in the industries where the investment projects are being implemented.
- Currently, Russian Federation legislation calls for the following guarantees, credits, and/or incentives for SPIC participants (the relevant list is always being expanded, as it is for individual industrial sectors):

- the stability of the tax regime for the time period that the SPIC is in force (a guarantee that the amount of the total tax burden imposed on the investor's income and/or the industrial manufacturer's income will not increase in comparison with the amount of the total tax burden imposed on their income when the SPIC was signed)

- the stability of the regulatory regime (a guarantee of stability for the range of what is banned or restricted by law in regard to performance of the SPIC, as well as fulfilling mandatory requirements in regard to the life cycle of the target products, meaning the stages of surveying work, design engineering, production, construction, installation, commissioning, operations, storage, transportation, sales, and disposal operations)

- granting the exclusive right, in respect to the target products, to sell certain types of goods inside Russian Federation borders that originate from foreign countries, and for which the Russian Federation government has instituted a strict ban on allowing them into Russia

- tax credits (at the federal level for profit tax, at the regional level for profit tax, property tax, and transportation tax, and at the municipal level for land tax if the appropriate regulatory framework is in place)

- simplified procedures for receiving public plots of land to use to implement investment projects, without having to go through the process of a bidding competition
- simplified procedures to attain the status of a Russian manufacturer in respect to the target products

- the possibility to acquire, in accordance with a special procedure, the status of sole supplier for government needs (if the responsibility has been taken on under the SPIC to make an investment of more than 3 billion rubles)

- simplified procedures to attain the status of a major industrial goods manufacturer for favorable terms for the procedures involved with administering and making certain transfer payments (at present, this is realistic only for the disposal charges for manufacturers of certain kinds of special-purpose equipment)

- industry subsidies (for example, as compensation for that portion of expenses associated with

consuming energy resources during the manufacturing process for the target products, maintaining the workforce, transporting the goods, performing scientific research and design and development work in high-priority areas of civilian production, and for that portion of expenses associated with maintaining its warranty obligations vis-à-vis these goods).

In terms of these forms of preferential treatment, as with industry subsidies it is worth noting that now at the federal level they are actively discussing the necessity of granting the private entity in the SPIC subsidies in the near future geared toward providing incentives to export Russian-made goods abroad.

Besides that, target products manufactured in the framework of an SPIC could be even more attractive to those who acquire them since they are covered by an accelerated rate of depreciation.

It is worth noting that under an SPIC the private entity does not receive from the government (or its regions or municipalities) any property or budgetary investment. For its part, neither does the public entity under the SPIC receive any property, including intellectual property assets or money.

As a rule, indicating the application of any relevant credits or incentives in the SPIC means following a special (high-priority) procedure for the private entity to take advantage of them due to the SPIC participant's status as such. However, the SPIC itself is not a source of incentive measures or state support. These measures must be provided for by legislation when the SPIC is signed.

Key obligations taken on by an investor under an SPIC

The minimal scope of investment under an SPIC to set up, upgrade, or develop production facilities for target products amounts to no less than 750 million rubles (without VAT). Along with that, it is worth taking into consideration that according to existing legal regulations the amount of investment made toward implementing the project before the SPIC is signed does not count. The contract can call for investment accomplished on a phase-by-phase basis. Business communities are actively discussing whether it is possible to decrease the "entry

threshold" to sign an SPIC. However, the Ministry of Finance is proposing the opposite, to raise the threshold to 1 billion rubles, and not including in that amount any borrowed funds, or funds accrued by implementing the SPIC's investment project.

The private entity involved in the SPIC needs to take upon itself the responsibility to achieve, by specific deadlines, certain target parameters for the investment project; the Russian Ministry of Industry and Trade, and the Interagency commission, take that into account when they review the investor's application.

These parameters are:

- the list of measures outlined in the investment project (for example, acquiring a plot of land, preparing technical specification and detailed design documentation for construction, installation supervision for the necessary equipment, performing the construction and installation, etc.).

- the scope of investment in the project (according to practices with signing SPIC's the amount of investment is indicated not only for the entire period the SPIC is in force, but is broken down by year)

- the amount (in money equivalent) of target products to be produced and sold (both annually, by the end of each calendar year, and when the SPIC expires)

- the amount of taxes (federal, regional, and local) that are planned for payment when the SPIC expires
- the share of the cost of materials and components (equipment) of foreign origin that are used in the cost of the target products produced when the SPIC expires

- the number of jobs created while the investment project is implemented (both annually, by the end of each calendar year, and when the SPIC expires)

- the volume of exports (this parameter is not stipulated in regulations, but in practice significant meaning is attributed to it both on the part of the Russian Ministry of Industry and Trade and the Interagency commission)

- other additional obligations taken on by the investor that are not covered by regulations that it is prepared to take on, and which might be in the interests of the public entity involved in the SPIC (for example, creating innovation centers, centers that train highly-qualified specialists, etc.).

ИД «Экономическая газета»
«РУССКАЯ КЛАССИЧЕСКАЯ БИБЛИОТЕКА. ЭКОНОМИКА И ДУХОВНОСТЬ»

Притчи

Просто о самом главном.

(499) 152-86-90
eg-online.ru, ideg.ru, e-mail: sale@eg-online.ru