

REVIEW OF THE LEGISLATION
ON THE PROTECTION AND PROMOTION OF INVESTMENT IN THE
RUSSIAN FEDERATIONⁱ

On April 1, 2020, Federal Law No. 69-Φ3 “*On the protection and promotion of investments in the Russian Federation*” (hereinafter the “**PPI Law**”) and Federal Law No. 70-Φ3 “*On the amendments to Article 5 of the First Part of the Tax Code of the Russian Federation*” entered into force. The PPI Law provides for the conclusion of agreements on the protection and promotion of investment (hereinafter the “**PPI Agreements**”) with companies implementing investment projects (hereinafter the “**Project Companies**”), which shall include a “stabilization clause” guaranteeing the non-application of certain legislative acts that aggravate the position of a Project Company. The PPI Law is applicable to Project Companies participated by Russian and foreign investors, including associations of legal entities established in the form of simple partnership.

1. Investment fields subject to PPI Agreements

A PPI Agreement may be concluded with a Project Company implementing a new investment project in one of the areas of the Russian economy, with the exception of:

- gambling industry;
- production of tobacco products, alcohol products, liquid fuel;
- production of crude oil and natural gas, including associated petroleum gas (the restriction is not applicable to investment projects on natural gas liquefaction);
- wholesale and retail trade;
- activities of the financial organizations, supervised by the Central Bank of the Russian Federation;
- construction (modernization, reconstruction) of administrative and business centers, shopping centers and residential buildings.

2. Initiators of PPI Agreements

Both Project Company (private project initiative) and public party (public project initiative) may initiate the conclusion of a PPI Agreement.

With respect to a state investment project, a declaration containing all the information on the project objectives, the amount of investments, infrastructure facilities financed from the budget, is prepared and published. For the implementation of state investment projects on the basis of the PPI Agreements, the Project Company is selected at a tender.

The criteria for selecting the successful tenderer are:



- the largest amount of investment;
- the lowest amount of government support measures;
- the terms for implementation of the project.

The deadline for the conclusion of a PPI Agreement shall be no later than January 1, 2030.

3. Stabilization clause of a PPI Agreement

The stabilization clause of a PPI Agreement guarantees to the Project Company the inapplicability of normative acts and decisions of state authorities hardening the conditions for conducting activities related to the investment project, in comparison with the ones applicable at the time of the conclusion of such agreement. Acts and decisions are considered hardening the conditions, in case they:

- increase the time required to carry out the procedures necessary for the implementation of the investment project;
- increase the number of procedures necessary for the implementation of the investment project;
- increase the amount of payments to be done by the Project Company for the purposes of the implementation of the investment project;
- establish additional requirements for the implementation of the investment project, including requirements for the provision of additional documents;
- establish additional prohibitions impeding the implementation of the investment project.

The guarantees provided by a stabilization clauses in PPI Agreements depend mostly on the value of the investment of the Project Company, as indicated below:

Public party of the PPI Agreement	Value of investments	Guarantees under the stabilization clause
Subject of the Russian Federation (except Moscow and St. Petersburg Cities)	Not less than 200 million rubles and not more than 1 billion rubles	The acts and decisions shall not apply in case the effect would be to: <ul style="list-style-type: none"> • increase the terms of decision-making on the provision of government support measures; • eliminate the grounds for the creation of rights to land plots owned by the state (municipality); alter the procedure for granting rights to a land plot, the procedure for determining the sale price of a land plot or the amount of rent; exclude cases for the provision of land plots at or without tenders; limit,
Moscow or St. Petersburg Cities	Not less than 200 million rubles	
Russian Federation ¹	• Not less than 250 million rubles for new investment	

¹ The Russian Federation and municipalities may be parties to a PPI Agreement in case the federal subject, on the territory of which the investment project is implemented, is a party to such agreement at the same time.

	<p>projects related to healthcare, education, culture, physical education and sports;</p> <ul style="list-style-type: none"> • Not less than 500 million rubles for new investment projects related to digital economy, ecology, agriculture; • Not less than 1,5 billion rubles for new investment project related to manufacturing sector; • Not less than 5 billion rubles for new investment projects related to other sectors of economy 	<p>diminish the rights of land users or increase the responsibilities; alter the procedure for requisition and withdrawal of land for state or municipal needs;</p> <ul style="list-style-type: none"> • establish additional requirements for land use and territory development, additional administrative procedures for design, construction, urban planning, connection to utilities, passing examination of design documentation, alter the construction order, etc.
Russian Federation	Not less than 10 billion rubles	<p>In addition to what indicated in previous line, the Project Company may also opt for the non application of acts and decisions in case they:</p> <ul style="list-style-type: none"> • increase the rates of export customs duties; • increase the rates of fees (charges) and/or expansion of the payment base (of tax units), used in determining the amount of pollution fees, fees for the use of water bodies, utilization fees, environmental fees, payable to the budgets of the budget system of the Russian Federation; • increase in the rate of payment per unit of forest resources, amend the procedure for determining and the total amount of rent, established for the use of a forest plot with acquisition of forest resources from the leased forest plot.

The duration of a stabilization clause may not exceed:

- 6 years, in relation to investment projects, having a value lower than 5 billion rubles;
- 15 years, in relation to investment projects, having a value higher than 5 billion rubles, but less 10 billion rubles;
- 20 years, in relation to the investment projects, having a value equal or higher to 10 billion rubles.

In certain cases, the period of application of the stabilization clause may be extended once for a period of up to 6 years.

The stabilization clause has certain features related to taxation:

Public party	Stabilization clause on non-application of the subsequent tax and fees legislation
Federal Subject of the Russian Federation	amending the procedure for determining the tax base, tax rates, tax benefits, as well as the procedure and/or the terms of payment of corporate property tax and transport tax.
Russian Federation and its Federal Subject	in addition to what provided in previous line above, also regarding the amendments to tax unit, procedure for determining tax base, tax period, tax fees, calculation procedure, procedure and/or terms of payment of corporate income tax, VAT refund and/or introduction of new taxes and/or fees.
Federal Subject of the Russian Federation and municipality	in addition to what provided in first line above, also regarding the amendments to tax rates, tax benefits, procedure and/or terms of payment of land tax.
Russian Federation, its Federal Subject and municipality	regarding all the amendments indicated in the three lines above.

The provisions of the tax stabilization clause shall apply to the taxpayers until the earliest of the following dates:

- the expiration of the term duration of the stabilization clause, specified in the register;
- the date of record of the information on termination of the relevant PPI Agreement in the register.

4. Other government support measures

A Project Company may apply for other government support measures including but not limited to reimbursements from the federal budget and/or the budget of the Federal Subject of the Russian Federation of the following costs:

- for the construction, modernization and reconstruction of infrastructure objects required for the implementation of the project;
- interest on loans, coupon income from bonded loans, loans received for the construction, modernization and reconstruction of infrastructure objects required for the implementation of the project.

The reimbursable costs on infrastructure facilities may amount to 100% depending on the type of such facilities. Nevertheless, the maximum amount of the reimbursed costs may not exceed the amount of mandatory payments calculated by the Project Company, due to public entities, parties to the PPI Agreement, for the payment of corporate income tax, corporate property tax, transport tax, VAT, import customs duties, excise duties on passenger cars and motorcycles.

Contracts on the basis of which the Project Company receives government support measures (reimbursements, budget investments, soft loans, etc.) may be considered as contracts “related” to PPI Agreements. The terms of a PPI Agreement, in particular, the conditions of the stabilization clause may also apply to the contracts related to the PPI Agreements.

5. Liability for breach of a PPI Agreement

In case of violation of terms of a PPI Agreement, the following liability measures may apply to the parties:

- Losses may be recovered from the Project Company in case it received resources from the National Wealth Fund and/or budget investments, and/or government guarantees;
- In case the Project Company violates the terms of a contract related to the PPI Agreement, the funds received under such contract shall be returned to the budget;
- In cases specified by the PPI Law the public party may be obliged to compensate the actual damages or losses, provided the Project Company has fulfilled its obligations.

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ⁱ This article was prepared as a brief overview of the law and does not constitute a legal advice of OOO “Pavia e Ansaldo”.