

New Russian Law on Protection & Promotion of Investments

Bryan Cave Leighton Paisner (Russia) LLP, formerly Goltsblat BLP in Russia, advises that, on 1 April 2020, the President of the Russian Federation signed a new Law on Protection and Promotion of Investments in the Russian Federation (the "**Law**"). The Law is intended to attract more investments into the Russian economy by creating a favourable legal framework.

The Law applies to investments made under agreements on protection and promotion of investments ("**APPI**") providing for implementation of a new investment project. APPI may be concluded between a Russian legal entity (the organisation implementing the project) and a constituent entity of the Russian Federation and/or the Russian Federation. APPI is a private law agreement coming under the Russian civil legislation (with exclusions provided for by the Law).

The minimum investment required under APPIs varies depending on the economic area in which the project is implemented. In healthcare, education, culture, physical training and sports, the minimum is RUB 250 m; in the digital economy, ecology, agriculture – RUB 500 m, in processing and manufacture – RUB 1.5 bn, and in other economic areas – RUB 5 bn.

The Law excludes certain economic areas from its scope: gambling, tobacco, alcohol, liquid fuel, oil and gas production, wholesale and retail trade, construction of administrative and business centres, shopping centres, residential buildings, and activities of financial institutions supervised by the Bank of Russia.

APPIs may be entered into either on the initiative of the organisation implementing the project (private project initiative) or on the initiative of public authorities (public project initiative). In the first scenario, a Russian legal entity that intends to implement an investment project may submit an application to the relevant state authorities, which consider it then decide on conclusion of an APPI. In the second scenario, public authorities publish declarations on the planned investment projects indicating the government aid measures to be adopted and the organisation to implement the project is determined by tender.

Government aid measures include reimbursement of (i) the costs of creating or reconstructing the infrastructure and (ii) interest on loans needed for implementing the project. The maximum reimbursable costs may not exceed 50% of the costs actually incurred for supporting infrastructure facilities and 100% of the costs actually incurred for associated infrastructure facilities. The time limit for cost recovery is five years for the supporting infrastructure and ten years for the associated infrastructure.

The Law generally limits the liability of the Russian Federation and its constituent entities under APPIs to damage actually suffered. If the investment exceeds RUB 300 bn, APPIs should require the Russian Federation (or its constituent entity) not to worsen the financial performance conditions of a public investment project. If this obligation is breached, an organisation implementing the project is entitled to claim damages in full (including lost profit). The Law also stipulates several conditions that should be satisfied in order to claim damages, including that the investment must have been made in the amount prescribed by the APPI.

The Law does not contain a standing offer to arbitrate disputes under APPIs. The parties are free to include an arbitration clause in APPIs, although such a clause should also allow a dispute to be referred to a Russian state court at the choice of the party initiating the dispute. Arbitration must be seated in Russia and administered by an arbitral institution holding a licence from the Russian Ministry of Justice or exempted from the licensing requirement under Russian arbitration law. Currently, such institutions include (i) the International Commercial Arbitration Court at the Russian Chamber of Commerce, (ii) the Russian Arbitration Centre at the Russian Institute of Modern Arbitration and, (iii) the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs (RSPP), as well as such foreign institutions as (iv) the Hong Kong International Arbitration Centre (HKIAC) and (v) the Vienna International Arbitral Centre (VIAC). If the APPI does not include an arbitration clause, disputes thereunder will be referred to Russian state courts. The Law also imposes a mandatory 3-month cooling-off period for disputes under APPIs.

Get in touch

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