

Features of Legal Regulation of Investment Activities in Russia

Abstract: The article considers some problems of legal regulation of investment activity in the Russian Federation. The issues of state regulation of investment activity are reflected, the actual problems of improving the forms and methods of state regulation in this area are considered. The effective development of the economy is directly related to the activation of investment activity. The transition to an innovative path of economic development has further actualized the importance of this factor. The solution to the problem of intensification of investment processes depends on many circumstances and involves the implementation of various measures in terms of content. Among them, an important place is occupied by the legal aspects of investment, improving the legal regulation of investment activities, which, in turn, necessitates a systematic and comprehensive study of the investment process as an economic and legal phenomenon, its essence and socio-economic significance, common properties and features generated by the diversity of investment spheres and types of investors, concretization of basic, basic concepts in this area of legal regulation, many of which do not meet the requirements of certainty and consistency.

Keywords: regulatory and legal regulation, investments, investment activity

Introduction

The purpose of the article is to consider certain theoretical and practical issues related to the peculiarities of the formation of the system of legal regulation of investment legal relations.

The research was based on the following general scientific methods of comparative, logical and statistical analysis, as well as by analyzing the structure and dynamics, graphical interpretation of information, methods of investment analysis.

Regulation of Investment Activities

In the system of legislative and regulatory legal regulation of the Russian Federation, the concepts of “investment” and “investment activity” have a specific meaning. According to Art. 1 of the federal law of 25.02.1999, No. 39-FZ “On investment activities in the Russian Federation carried out in the form of capital investments” invest-

ment activity is recognized as “investment and implementation of practical actions in order to obtain profit and (or) achieve other beneficial effect” [Federal’nyj zakon “Ob uchastii v dolevom stroitel’stve mnogokvartirnyh domov i inyh ob’ektov nedvizhivosti i o vnesenii izmenenij v nekotorye zakonodatel’nye akty Rossijskoj Federacii” ot 30.12.2004 No. 214-FZ].

Investments in the context of this law are cash, securities, other property, property and other rights that have a monetary value, invested in the course of investment activities. Since the first years of the formation of a market economy, support for investment activities has been one of the key priorities of the economic policy of the Russian Federation, which is reflected in land and tax legislation, in strategies for socio-economic development, scientific and technological development, economic security of the Russian Federation, in the distribution of federal and regional budget expenditures. etc.

In the process of investment activities, organizations find investments (financial and other resources), choose investment methods (instruments), form an investment program (or compose investment portfolios) and ensure its effective implementation. Investment activity is characterized by the following features:

1. the forms and methods of investment activities are less dependent on the industry characteristics of the organization than current activities;
2. investments provide an increase in the effectiveness of the organization’s current activities by increasing income and reducing costs for ordinary activities;
3. investment volumes are unevenly distributed over individual periods, which is associated with both the long-term nature of the use of the results of investment activities, and the need to accumulate investment resources and use favorable conditions of the economic environment;
4. financial and other results of investment activities appear with a significant lag, usually in the form of profit and other results of current activities, and are often distributed over time;
5. investment activities are inherent in their own risks, called investment. In addition, the results of the investment are reflected in both the operational and financial risks of the organization.

Depending on the forms of ownership and organizational and legal forms of investor organizations, investment activities can be:

1. public investments, which are carried out:
 - state authorities and administrations of various levels at the expense of the respective budgets;
 - state and municipal institutions at the expense of their own and borrowed sources of financing;

2. investments of individuals, commercial and non-governmental non-profit organizations, other legal entities that do not belong to the public sector, and associations of these persons;
3. foreign investments carried out by foreign citizens, legal entities, states and international organizations;
4. joint investments, which are carried out jointly by investors belonging to several of the groups listed above.

The state regulation of investment activity is based on several federal laws:

- Federal Law of 25.02.1999 No. 39-FZ “On investment activities in the Russian Federation carried out in the form of capital investments” defines the concepts and principles of regulation of investments in fixed assets, including construction, acquisition and creation of fixed assets;
 - Federal Law of October 29, 1998 No. 164-FZ “On Financial Lease (Leasing)” is the basis for the regulation of investment activities carried out using the financial lease mechanism;
 - Federal Law No. 39-FZ of 22.04.1996 “On the Securities Market” creates a legal basis for regulating investments in securities and derivative financial instruments;
 - Federal Law No. 48-FZ of 11.03.1997 “On Bills of Exchange and Promissory Note”, together with international agreements on bill of exchange law, creates a regulatory framework for relevant investments that are not investments in financial instruments from the standpoint of Federal Law No. 39-FZ of 22.04.1996;
 - The Civil Code of the Russian Federation is the basis for regulating certain types of investments that are not covered by the above federal laws, such as investments under a simple partnership agreement;
 - The Land Code of the Russian Federation creates a legal basis for investments in land plots;
 - investments in precious metals are regulated by the Federal Law of 26.03.1998 No. 41-FZ “On Precious Metals and Precious Stones”, etc.
1. Federal Law of 25.02.1999 No. 39-FZ “On investment activities in the Russian Federation carried out in the form of capital investments”, along with the Land and Urban Development Codes, is of particular importance for organizations conducting capital construction. In particular, it defines the concepts and relationships of the parties, called the subjects of investment activities. In Art. 4 of the federal law of February 25, 1999 No. 39-FZ, the following subjects of investment activity are distinguished [Federal’nyj zakon “Ob uchastii v dolevom stroitel’stve mnogokvartirnyh domov i inyh ob’ektov nedvizhi-

mosti i o vnesenii izmenenij v nekotorye zakonodatel'nye akty Rossijskoj Federacii" ot 30.12.2004 No. 214-FZ]: investors, customers, contractors, users of capital investment objects.

Table 1. Subjects of Investment Activity and Their Characteristics

Subject investment activities	Form of participation	Characterization of vested rights
1	2	3
Investor	individuals and legal entities created on the basis of an agreement on joint activities and not having the status of a legal entity, associations of legal entities, state bodies, local authorities, as well as foreign business entities (foreign investors)	<p>implementation of investment activities in the form of capital investments, with the exceptions established by federal laws;</p> <p>independent determination of the volumes and directions of capital investments, as well as the conclusion of contracts with other subjects of investment activity in accordance with the Civil Code of the Russian Federation;</p> <p>possession, use and disposal of capital investment objects and the results of capital investments made;</p> <p>transfer, under an agreement and (or) a state contract, of their rights to make capital investments and to their results to individuals and legal entities, state bodies and local governments in accordance with the legislation of the Russian Federation;</p> <p>control over the targeted use of funds allocated for capital investments;</p> <p>pooling of own and borrowed funds with funds of other investors for the purpose of joint implementation of capital investments on the basis of an agreement and in accordance with the legislation of the Russian Federation;</p> <p>exercise of other rights stipulated by the agreement and (or) government contract in accordance with the legislation of the Russian Federation.</p>
Customer	<p>individuals and legal entities authorized by investors who implement investment projects. At the same time, they do not interfere in entrepreneurial and (or) other activities of other subjects of investment activity, unless otherwise provided by an agreement between them. Customers can be investors.</p> <p>A customer who is not an investor is endowed with the rights of ownership, use and disposal of capital investments for the period and within the powers that are established by the agreement and (or) government contract in accordance with the legislation of the Russian Federation.</p>	<p>carry out investment activities in accordance with international treaties of the Russian Federation, federal laws and other regulatory legal acts of the Russian Federation, the laws of the constituent entities of the Russian Federation and other regulatory legal acts of the constituent entities of the Russian Federation and local authorities, as well as with standards (norms and rules) approved in the prescribed manner;</p> <p>comply with the requirements of state bodies and their officials, which do not contradict the norms of the legislation of the Russian Federation;</p> <p>use funds allocated for capital investments for their intended purpose.</p>

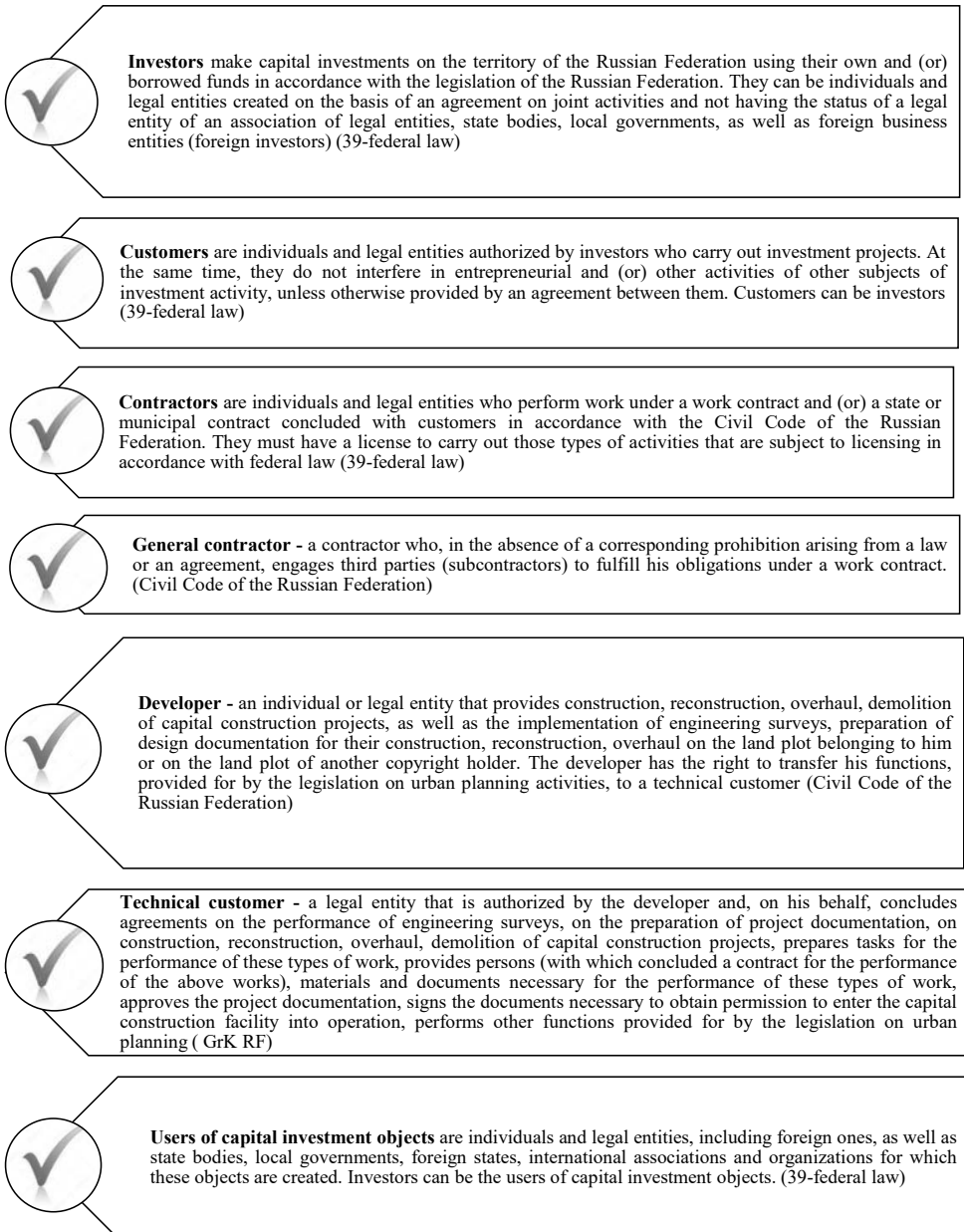
Contractor	individuals and legal entities who perform work under a work contract and (or) a state or municipal contract concluded with customers in accordance with the Civil Code of the Russian Federation. Contractors are required to have a license to carry out those types of activities that are subject to licensing in accordance with federal law.	carry out investment activities in accordance with international treaties of the Russian Federation, federal laws and other regulatory legal acts of the Russian Federation, the laws of the constituent entities of the Russian Federation and other regulatory legal acts of the constituent entities of the Russian Federation and local authorities, as well as with standards (norms and rules) approved in the prescribed manner; comply with the requirements of state bodies and their officials, which do not contradict the norms of the legislation of the Russian Federation; use funds allocated for capital investments for their intended purpose.
Capital investment user	individuals and legal entities, including foreign ones, as well as state bodies, local self-government bodies, foreign states, international associations and organizations for which these objects are created. Investors can be users of capital investment objects.	carry out investment activities in accordance with international treaties of the Russian Federation, federal laws and other regulatory legal acts of the Russian Federation, the laws of the constituent entities of the Russian Federation and other regulatory legal acts of the constituent entities of the Russian Federation and local authorities, as well as with standards (norms and rules) approved in the prescribed manner; comply with the requirements of state bodies and their officials, which do not contradict the norms of the legislation of the Russian Federation; use funds allocated for capital investments for their intended purpose.

One and the same person has the right to combine the functions of two or more subjects of investment activity. Listed in table 1. investors, customers, contractors, users of capital investment objects are the main participants in the investment process. In addition to them, minor participants, such as commercial banks, may be involved in investment activities, if they do not act as an investor or lender, but only carry out settlements on behalf of a customer or investor, suppliers, intermediaries, insurance, consulting, and audit organizations. In addition to the federal law of February 25, 1999 No. 39-FZ, the status of individual participants in capital construction is determined by the Urban Planning Code of the Russian Federation, as well as directly by the Civil Code of the Russian Federation (Figure 1.).

All participants in investment activities in accordance with Art. 7 of the Federal Law of February 25, 1999 No. 39-FZ are obliged to:

- comply with the requirements of international treaties of the Russian Federation, federal laws, laws of the constituent entities of the Russian Federation and other regulatory legal acts, including the current standards of the Russian Federation;
- comply with the requirements imposed by state bodies and their officials within the framework of the powers granted by the laws of the Russian Federation and the constituent entities of the Russian Federation;
- to use funds allocated for capital investments for their intended purpose.

Figure 1. Subjects of Investment in Objects of Capital Investment



Other obligations of participants in investment activities arise from their status established by the specified federal law, and are also determined by an agreement. In the practice of construction and investment activities, the most common are contracts that correspond to §§3–5 of Chapter 37 “Contract” and Chapter 52 “Agency” of the Civil Code of the Russian Federation. The created object usually becomes the property of investors (including equity). The operation of social, cultural and household facilities, such as shopping or office centers that are in shared ownership, is often transferred to a management company (Chapter 53 “Trust Management of Property” of the Civil Code of the Russian Federation).

When the customer of capital construction is the Russian Federation or a constituent entity of the Russian Federation represented by a state authority or a state institution, the agreement between the participants in investment activities is concluded in the form of a state contract. The issues of concluding and executing government contracts are governed by federal law dated 05.04.2013 No. 44-FZ “On the contract system in the procurement of goods, works, services to meet state and municipal needs.”

When a developer attracts investments under a contract of equity participation in construction, a number of additional obligations are imposed on him in accordance with Federal Law No. 214-FZ of December 30, 2004 “On Participation in the Shared Construction of Apartment Buildings and Other Real Estate Objects and on Amendments to Certain Legislative Acts RF”. The developer has the right to raise funds only after obtaining a building permit, publishing a project declaration and fulfilling a number of other requirements established by this federal law. Shared participation agreements in construction and an object of unfinished shared construction are subject to state registration, and investors are considered holders of collateral on the land plot and on the object of construction in progress. Investors’ funds are deposited in special accounts with authorized banks (escrow accounts from which funds can be transferred to the developer only after they are given permission to put the facility into operation). The developer’s current account transactions are also limited and monitored by an authorized bank. The law establishes obligations for the developer to disclose information, including the permits received by him, project declaration, reporting on the attraction and use of funds, annual and interim financial statements. The developer’s annual financial statements are subject to mandatory audit. The listed requirements, obligations and restrictions are designed to protect the rights of participants in shared construction, prevent unfair actions by developers and create conditions to compensate for the consequences of such unfair actions, if they were not prevented in a timely manner. Despite the complexity and responsibility, equity participation agreements are widely used in the construction of not only residential buildings, but also commercial real estate.

State regulation of investment activities carried out in the form of capital investments is carried out by the state authorities of the Russian Federation and the con-

stituent entities of the Russian Federation in accordance with Art. 11 of the federal law of 25.02.1999 No. 39-FZ [Federal'nyj zakon "Ob uchastii v dolevom stroitel'stve mnogokvartirnyh domov i inyh ob"ektov nedvizhimosti i o vnesenii izmenenij v nekotorye zakonodatel'nye akty Rossijskoj Federacii" ot 30.12.2004 No. 214-FZ]. In this case, federal government bodies use the following forms and methods:

- 1) creation of favorable conditions for the development of investment activities carried out in the form of capital investments by:
 - improving the tax system, the mechanism for calculating depreciation and the use of depreciation deductions;
 - the establishment of special tax regimes for the subjects of investment activity, which are not of an individual nature;
 - protecting the interests of investors;
 - providing subjects of investment activity with preferential conditions for the use of land and other natural resources that do not contradict the legislation of the Russian Federation;
 - expanding the use of funds of the population and other non-budgetary sources of financing for housing construction and the construction of social and cultural facilities;
 - creation and development of a network of information and analytical centers carrying out regular ratings and publication of ratings of investment entities;
 - taking anti-monopoly measures;
 - expanding the possibilities of using collateral for lending;
 - development of financial leasing;
 - revaluation of fixed assets in accordance with the inflation rate;
 - creating opportunities for the subjects of investment activities to form their own investment funds.
- 2) direct participation of the state in investment activities carried out in the form of capital investments by:
 - development, approval and financing of investment projects carried out by the Russian Federation jointly with foreign states, as well as investment projects financed from the federal budget;
 - formation of a list of construction projects and objects of technical re-equipment for federal state needs and their financing at the expense of the federal budget. The procedure for the formation of this list is determined by the Government of the Russian Federation;
 - allocation of federal budget funds to finance investment projects in the manner prescribed by the legislation of the Russian Federation on placing orders for the supply of goods, performance of work, provision of services for state and municipal needs. The placement of these funds is carried out on a return-

able and urgent basis with payment of interest for their use in the amount determined by the federal law on the federal budget for the corresponding year, or on the condition of securing the state ownership of the corresponding part of the shares of the joint-stock company being created, which are sold after a certain period of time on the securities market. securities with the direction of proceeds from sales to the revenues of the respective budgets;

- examination of investment projects in accordance with the legislation of the Russian Federation;
- protection of Russian organizations from the supply of obsolete and material-intensive, energy-intensive and unscientific technologies, equipment, structures and materials;
- development and approval of standards (norms and rules) and control over their observance;
- issue of bond loans, guaranteed target loans;
- involvement in the investment process of temporarily suspended and moth-balled construction projects and state-owned facilities;
- granting concessions to Russian and foreign investors based on the results of tenders (auctions and tenders).

Conclusion

Joint investments with the participation of foreign investors are regulated by the Federal Law of 09.07.1999 No. 160-FZ “On Foreign Investments in the Russian Federation” [O kontraktnoj sisteme...], which determines the conditions for entrepreneurial activities of foreign investors in the Russian Federation, guarantees of foreign investors’ rights to investments and received from them income and profit.

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