



A foreign national can declare himself as highly qualified foreign professionals. To do this, he may file an application to the diplomatic or consular mission of the Russian Federation or in the office of the federal executive authority in the field of migration, while in his home country...

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SPECIAL INVESTMENT CONTRACTS: REQUIREMENTS AND PREFERENCES

Special Investment Contracts (SPICs), a relatively new form of incentive to invest in Russian industry, were introduced by amendments effective from 30 June 2015 to Federal Law No. 488-FZ of 31 December 2014, «On industrial policy».

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LEGAL NATURE OF SPIC

A SPIC is an agreement under which an investor undertakes to upgrade and/or develop manufacturing of an industrial product in the Russian Federation («RF»), and the other party (the RF or a constituent entity of the RF) undertakes to provide during the term of the SPIC incentives for industrial activities specified by legislation of the RF or the relevant constituent entity of the RF when the SPIC is entered into.

As such, one of the key obligations of the public side towards an investor under a SPIC is to provide incentives. At the same time, the list of incentives that may be prescribed in a SPIC is limited to measures provided by legislation of the RF or the constituent entity of the RF when the SPIC is entered into. Until recently, the list of potential incentives for investors under SPICs at the federal level was relatively short. Therefore, any new incentive measure provided by legislation will make SPICs significantly more attractive to potential investors.

On 1 September 2016, amendments to Federal Law No. 44-FZ of 5 April 2013, «On the contract system in state and municipal procurement of goods, works and services» («Law No. 44-FZ»), will take effect. These include a new incentive measure for SPIC participants: an investor under a SPIC, or a party engaged by the latter, may now be granted sole supplier status with regard to the procurement of a product, the production of which is set up or upgraded and/or developed under the SPIC (Law No. 44-FZ, Art. 111.3). Below, this article examines the conditions and procedure for applying this incentive measure.

REQUIREMENTS FOR THE INVESTMENT PROJECT

It is not enough for an investor (or a party engaged by the latter) to merely enter into the SPIC in order to obtain a sole supplier status. An RF government act is required, and each of the following conditions have to be met:

- the SPIC must be entered into by the RF (or by the RF together with a constituent entity of the RF and/or a municipality) – this means that the incentive applies only to federal SPICs, and not to regional SPICs, which currently make up the bulk of the SPICs that have been entered into;
- the volume of investment under the SPIC must exceed RUB 3 billion;



- the product must be made in the RF by a Russian legal entity;
- the country of origin of the product that is the subject of the SPIC must be the RF.

Furthermore, a SPIC, when entered into, must set out conditions precedent to the investor's right to enter into contracts for the supply of the product as a sole supplier, the maximum quantity of the product thus supplied, and liability for exceeding this quantity. These conditions take effect only after the publication of an RF government act appointing the investor as a sole supplier. It is worth noting that according to the standard SPIC form for selected industries (Approved by RF Government Resolution No. 708 of 16 July 2015, «On special investment contracts for selected industries»), a SPIC may be amended only in the event of a significant change in the conditions of performance of the investment project, or the nonperformance by the public side of its obligations under the SPIC. Therefore, the incentive in question cannot apply to investors entering into federal SPICs prior to 1 September 2016.

RESTRICTIONS ON PROCUREMENT

The amendments to Law No. 44-FZ set restrictions on the quantity of a product purchased as part of an incentive measure, and on its price.

The total quantity of a product that may be purchased from an investor (or a party engaged by the latter) as a sole supplier during a calendar year should not exceed 30% of the total output of the product during the calendar year. An investor in breach of this restriction is liable to a penalty in the amount of 50% of the value of the surplus. At the same time, there is no guarantee that 30% of the total output of the product will be

purchased from the investor, as procurement from a sole supplier is at the exclusive discretion of the contracting authority, which may substitute for a competitive procedure if it so desires.

A product may be procured from an investor under a SPIC who is a sole supplier at a price no higher than the maximum price per unit for the product. The procedure for setting the maximum price per unit for the product should be established by a federal agency authorised by the RF government. No such procedure has yet been approved.

It should also be noted that sole supplier status is not granted to an investor under a SPIC on an exclusive basis. The RF government may identify multiple producers of homogeneous or identical products, with which contracting authorities may enter into sole supplier contracts.

PREFERENCES AT THE REGIONAL LEVEL

As noted above, only investors under federal SPICs can be sole suppliers. At the same time, this incentive may also be provided at the regional level, though not to participants in regional SPICs, but to an entity with which a state contract for the supply of a product that includes investment commitments is entered into (a «supplier-investor») (Law No. 44-FZ, Art. 111.4).

A state contract for the supply of a product that includes investment commitments is entered into following a tender process based on an act of the supreme executive body of a constituent entity of the RF. Law No. 44-FZ sets out a number of requirements for such a contract:

- the supplier-investor must undertake to set up, upgrade and/or develop production of a specified product in the RF;

- the term of the contract must not exceed 10 years;
- the minimum volume of investment in setting up, upgrading and/or developing production of the product must be at least RUB 1 billion;
- the country of origin of the product that is the subject of the contract must be the RF.

The contracting authorities of the relevant constituent entity of the RF and the municipalities in such an entity may enter into contracts with a supplier-investor as a sole supplier (Law No. 44-FZ, Art. 93, part 1, clause 48).

In this case, as with a SPIC, restrictions are set on the price of the product sold by the supplier-investor to the contracting authorities. This price must not exceed the maximum price set in accordance with a procedure to be established by a competent government agency of the constituent entity of the RF. At the same time, unlike with SPICs, the amendments to Law No. 44-FZ do not prescribe any restrictions on the quantity of the product being purchased from the supplier-investor. As such, the supplier-investor retains the possibility to sell all the products produced by it that are the subject of a state contract that includes investment commitments to the contracting authorities of the relevant constituent entity of the RF.

As with SPICs, multiple state contracts that include investment commitments may be entered into for homogeneous or identical products within a constituent entity of the RF. Accordingly, the right to act as a sole supplier is not granted to a supplier-investor on an exclusive basis.

In general, the obligations of a supplier-investor are in many ways similar to those of an investor under a SPIC (setting up production of the product in the RF with a certain level of investment). As such, it is unclear why the lawmakers have decided to create this new concept of a state contract that includes investment commitments rather than granting such procurement preferences to participants in regional SPICs. As a result, we have a situation where parties engaged in similar investment projects are being offered different incentives. On one hand, investors under regional SPICs cannot act as sole suppliers in public procurement, while on the other supplier-investors are deprived of the preferences granted to investors under SPICs (stability of legal regulation, the tax burden, etc.). It would seem that if investors had the right to all these incentives together, this would be a far greater incentive to industrial production in the RF.

Despite their limitations and certain debatable aspects, the amendments to Law No. 44-FZ covered in this article represent a significant step forward, and should help to make SPICs significantly more attractive to potential investors. 📌

ПРЕСС-РЕЛИЗЫ

СИБИРСКАЯ ЮРИДИЧЕСКАЯ НЕДЕЛЯ

В Новосибирске появилась новая площадка для диалога бизнеса, государства и юридического сообщества — «Сибирская юридическая неделя», которая будет открыта 8–13 октября. Ее тема — «Государство и бизнес: пути развития и взаимодействия». Организаторы «Сибирской юридической недели»: правительство Новосибирской области, юридическая компания «Юсконсалт», юридическая группа «Вэритас», юридическая компания LexProf.

Юридическая неделя имеет практическую ценность для руководителей компаний, лиц, принимающих управленческие решения, и представителей профессионального юридического сообщества. На мероприятиях недели будут обсуждены актуальные вопросы защиты и развития бизнеса, структурирования капитала, налогообложения и оборота недвижимости.

Юридическое сообщество будет представлено ведущими юристами из Москвы, Санкт-Петербурга, Томска, Кемерово и Новосибирска. «Сибирская юридическая неделя» пройдет на площадке правительства Новосибирской области, в залах мэрии г. Новосибирска, DoubleTree by Hilton Novosibirsk, ГПНТБ СО РАН. Участие бесплатное.

СЛИЯНИЯ И ПОГЛОЩЕНИЯ В РОССИИ И СТРАНАХ СНГ

В столичном отеле «Арабат Парк Хаятт» 18 октября пройдет VIII ежегодная конференция IBA «Слияния и поглощения в России и странах СНГ».

Эксперты прогнозируют, что сделки, связанные с M&A в России, которые, по их мнению, увеличились в количестве, достигнут своего пика к 2018 году. В рамках конференции ведущие эксперты выступят с докладами о текущих и предстоящих изменениях в Гражданском кодексе и поделятся опытом сопровождения сделок по M&A в России и СНГ. К обсуждению будут предложены темы:

- Развитие корпоративного права: извлеченные уроки и каковы следующие шаги?
- Актуальные вопросы сделок слияния и поглощения: мнения юрисконсультов и инвестиционных банкиров.
- Публичные сделки по слиянию и поглощению: обязательные и добровольные тендерные предложения в России, Великобритании и Европейском союзе.
- Реформа арбитража и сделок по слиянию и поглощению в России.
- Среди подтвержденных спикеров:
 - М. Гальперин, заместитель министра юстиции РФ.
 - П. Золотарёв, McKinsey & Company, Россия.
 - Р. Квитко, «Газпромнефть», Россия и др.

К участию в конференции приглашаются корпоративные юристы, юристы частной практики, финансисты и другие эксперты, специализирующиеся в сфере слияний и поглощений.