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INTERNATIONAL INVESTMENT RELATIONSHIPS **RELACIONES INTERNACIONALES DE INVERSIÓN**

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ABSTRACT

The article shows that in the Russian legal science has repeatedly been proposals to introduce additional criteria for classification of investments as “foreign investment” category, concerning to the criterion of the invested capital. Foreign investment regime would extend to the Russian citizen’s investments, received from abroad, that would facilitate the return of exported capital. In addition, the control of foreign capital in the Russian economy would be more flexible and indirect investment capital from foreign sovereign funds would be taken into account. However, the Russian legislature does not fully consider that criteria.

Keywords: Investment, foreign economic activity, protection of the national economy, attraction of foreign resources for the development of the national economy.

RESUMEN

El artículo muestra que en la ciencia jurídica rusa ha sido repetidamente propuestas para introducir criterios adicionales para la clasificación de las inversiones como “inversión extranjera” categoría, en relación con el criterio del capital invertido. El régimen de inversión extranjera se extendería a las inversiones del ciudadano ruso, recibidas desde el exterior, que facilitarían el retorno del capital exportado. Además, el control del capital extranjero en la economía rusa sería más flexible y se tomaría en cuenta el capital de inversión indirecta de los fondos soberanos extranjeros. Sin embargo, el legislador ruso no considera plenamente esos criterios.

Palabras clave: Inversión, actividad económica extranjera, protección de la economía nacional, atracción de recursos externos para el desarrollo de la economía nacional.

INTRODUCTION

Investments are one of the most important legal problems in the investment relations analysis. Despite of the presence of several legal definitions of this term, there is a doctrine concept that investment is typically economic, extremely abstract notion, that does not have a specific legal content. This view is confirmed by the practice of the Supreme Court of Arbitration of Russian Federation. In the reasoning part of its resolution of 5 February 2013 12444/12 stated that “the definition of “investment” does not have its own strict and generally recognized legal content, and therefore, it can mean a variety of relations developing between citizens in different contracts”.

According to article 2 of the Federal Law of June 9, 1999 160 “About Foreign Investments in the Russian Federation”, “Foreign investment” shall mean the investment of foreign capital in objects of business activity on the territory of the Russian Federation in the form of objects of civil rights belonging to a foreign investor, unless such objects are excluded from the turnover or are restricted in the Russian Federation pursuant to federal laws, including money, securities (denominated in foreign currency or in the currency of the Russian Federation), other property, property rights, exclusive rights to the results of intellectual activities (intellectual property) which can be evaluated in a monetary form and services and information.

Moreover, the lack of the certain definition of “investment” is confirmed by international agreements. In particular, the preamble of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington, 1965) states that foreign investments have a clear purpose of stimulating the economic development of the host government. In accordance with article 12 of the Convention “About the Establishing the Multilateral Investment Guarantee Agency” (Seoul, 1985), all kinds of capital investments are recognized as investments. At the same time foreign investments may be considered as investment, received from a citizen of the receiving government investments, in case they are transferred from abroad (paragraph “c” of Article 13 of the Seoul Convention).

In the Russian legal science has repeatedly been proposals to introduce additional criteria for classification of investments as “foreign investment” category, concerning to the criterion of the invested capital. Foreign investment regime would extend to the Russian citizen’s investments, received from abroad, that would facilitate the return of exported capital. In addition, the control of foreign capital in the Russian economy would be more flexible and indirect

investment capital from foreign sovereign funds would be taken into account. However, the Russian legislature does not fully consider that criteria.

Thus, “at the basis of investment may be agreements with different legal nature”, that’s why investments may not be limited to once and for all in any types of contracts, concerning to development of economic relations and the emergence of new financial instruments.

All the above allows you to define foreign investment as investments in the economy of objects of civil rights the receiving government, or the rights outside of the receiving government, with a view to profit and economic development. Accordingly, the international investment relations are understood by us as the relations arising in the process of foreign investment.

DEVELOPMENT

Analysis of the current legislation of the Russian Federation and the practices of foreign countries leads to the conclusion that international investment relations must be divided into two groups:

1. The relationship for attracting foreign investments into the country (investments import);
2. Relationships for the investments export.

Russia is one of the world richest countries in terms of natural resources reserves, but it is technologically far away from developed countries. For our country attracting foreign investment is almost the only way to get into the be on a level of developed post industrial countries. In fact, Russian Federation needs a large amount of investment nowadays. The Russian government has taken various steps to improve its investment attractiveness:

- was established the post of Investment Ombudsman.
- were amended the Civil Code of the Russian Federation (the Federal Law of September 30, 2013 260 “On amendments to the third part of the Civil Code of the Russian Federation”).
- was created Russian agency for attracting investment in the region under the name “Russian investment Agency “Invest in Russia”.

The name has been registered in accordance with the instructions of Russian Prime Minister Dmitry Medvedev on April 1, 2014 and the order of the Ministry of Justice on April 11, 2014 № 654. But the high level of political risks, corruption and distrust of the Russian judicial and law enforcement systems is negative to all the positive changes in the legal regulation of foreign investments.

Within the creation of a favorable investment climate and attraction of foreign investment in Russian Federation are established the most favorable conditions for foreign investments. Moreover, additional guarantees are provided to foreign investors, which are unavailable for national investors:

- Possibility to transfer rights and obligations under the claim assignment and transfer the debt to another person.
- Rights to compensation for requisition and nationalization.
- The guarantee against unfavorable changes in legislation for a period of up to seven years (applies to commercial organizations with over 25% of foreign investment).
- The rights to unhindered export of assets, including currencies, and information from Russia.

In order to protect strategic sectors of the national economy of the Russian Federation legislation provides for a special procedure for the admission of foreign investors in the sectors of Russia's economy, which are strategic and therefore foreign capital is very sensitive for this sectors.

MAIN PART

Federal Law of April 28, 2008 57 "About the procedure for foreign investment to business entities of strategic importance for national defense and state security" provides that only after the pre- and post-approval by foreign investors or group of persons, investments as acquisition of shares can be carried out, as well as other transactions, which resulted to control business entities by foreign investors or group. And list of strategic activities is given in the law.

Federal Law of 14.12.2015, 372 "On Amendments to Articles 16 and 18 of the Federal Law "On Banks and Banking Activities" set the 50% limit of foreign capital in the aggregate authorized capital of credit banking institutions. The size of foreign capital is calculated as the ratio of non-resident investments in the authorized capital of credit bank institutions licensed to conduct banking operations, and the aggregate authorized capital of these credit institutions. The calculation of foreign investments in the authorized capital of credit bank institutions not included foreign investments:

- To authorized capital of credit bank institutions, funded from Russian Federation or repatriated to Russia from abroad;

- to authorized capital of subsidiary credit institutions of foreign banks, as well as all future investments of these organizations;
- To authorized capital of credit bank institutions, till the 1 January 2007;
- To authorized capital of credit bank institutions with the privatization after August 22, 2012;
- To authorized capital (in 51 and more percent of shares) of credit bank institution, after 1 January 2007, subject to investors property for 12 years or more.

The size of foreign capital in the aggregate authorized capital of credit bank institutions is calculated by bank of Russia in the manner established on January 1 of each year. Quota is limited size of the participation of foreign capital in the aggregate authorized capital of credit bank institutions, equal to 50 percent. It was found, that when the quota is reached, the bank of Russia carries out the following actions to foreign investment:

- refuse to register a credit organization with foreign investments;
- impose a ban on the increase in authorized capital of a credit bank institution and sale of credit institution shares in favor of non-residents.

In the case of a transactions on acquisition of shares in violation of the prohibition, Bank of Russia file a claim for recognition of the relevant transaction invalid. It is envisaged that the Bank of Russia, by agreement with the Government, has the right to establish restrictions on credit organizations with foreign investment on banking operations.

Export of investment involves the embedding of objects of civil rights, produced on the territory of Russia, to the economy of a foreign country. These relationships are not explicitly regulated by the legislation of the Russian Federation, however, this is provided by the same international treaties that guarantee the imported investment.

It should be noted that the Presidential Decree dated 11 September, 2012 № 1285 "On measures to protect the interests of the Russian Federation in the implementation of Russian legal entities of foreign economic activity" establishes a special procedure for the implementation of the foreign economic activity of companies. In fact, the decree prohibits foreign companies (included in the list of strategic companies by Presidential Decree of August 4, 2004 № 1009) to comply with the requirements of foreign regulators without the consent of Russian authorities. The

relationships of insurance risks of Russian exporters and investors are included.

CONCLUSIONS

A special government agent was created in Russia for business and political risks insurance - Open Joint Stock Company "Russian Agency for Export Credit and Investment Insurance" ("EXAR"). According to Russian Federation Government Decree of November 22, 2011 964 "About insurance of export credits and investments from business and political risks, "EXAR" provides insurance business risks up to 90% of the insured value and up to 95% by political risk insurance. Russian Insurance of investments abroad provides for the protection of Russian investors against the risk of loss the investments as a result of political nature. It's applied to investments made abroad, in the form of capital investments, loans or in other forms. According to "EXAR", priority areas are foreign economic transactions with residents from CIS countries, Asia, Africa and South America.

So, in August 2015 between "Metrovagonmash" and "BKV" was signed an export contract for the implementation of the reconstruction and modernization of the electric rolling stock of the Budapest Metro with the delivery of services and technical equipment, and in December 25, 2015 "EXAR" granted loan agreement in the amount of 4 billion rubles to "Roseximbank".

Another example is the delivery of rail cars under an export contract between "TD RM Rail" (integrated manufacturer of freight rolling stock for railways, as well as equipment for the petrochemical and gas industry, the owner is group "Russian Machines" companies) and Empresa Proveedora General del Transporte (TRADEX, Cuba). Financial resources for TRADEX Cuban buyer were granted to Banco Internacional de Comercio S.A. and borrowed by "Roseximbank". "EXAR" granted "Roseximbank" under the loan agreement concluded between the "Roseximbank" and BICSA bank in order to fulfill obligations under the export contract for railway cars supply from Russia. Previously, November 2, 2015 was signed an agreement on cooperation between "EXAR" and BICSA, concerning to business missions of Russian exporters in Cuba. Under the agreement, "EXAR" expressed its readiness to consider the possibility of providing insurance for loans granted to BICSA for implementing the payment of the export contract for railway carriages supply from Russia to Cuba. The total amount of export deal, signed by "EXAR", was 22.7 million euros.

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