

Russian Federation

Federal Law on Foreign Investments (1999)

Unofficial translation

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Federal Law on Foreign Investments

Law No. N 160-FZ

(as amended by the Federal laws from 21.03.2002 N 31-FZ, from 25.07.2002 N 117-FZ, from 08.12.2003 N 169-FZ, from 22.07.2005 N 117-FZ, from 03.06.2006 N 75-FZ, from 26.06.2007 N 118-FZ, from 29.04.2008 N 58-FZ, from 19.07.2011 N 248-FZ)

[Preamble]

The present Federal law provides the basic guarantees of the rights of foreign investors to investment as well as the earnings and profit gained on them, the terms and conditions of entrepreneurship activities of foreign investors in the territory of the Russian Federation.

The present Federal law is aimed to involve and to use efficiently foreign material and financial resources, advanced machinery and technology, managerial experiences in the economy of the Russian Federation, to provide with a stable environment for the activities of foreign investors and to compliance of the legal treatment of foreign investments with the provisions of international law and international practices of investment cooperation.

Article 1. The relations governed by the present federal law and the applicability of the law

1) The present Federal Law shall govern relations connected with state guarantees of the rights of foreign investors when they invest in the territory of the Russian Federation.

2) The present Federal Law does not cover the relations connected with the investment of foreign capital in banks and other credit organizations as well as insurance organizations governed by the legislation on banks and banking activities of the Russian Federation and the legislation on insurance of the Russian Federation respectively.

The present Federal law does not also cover the relations connected with the investment of foreign capital in non-commercial organizations for the purpose of attaining a certain socially useful goal, including among other things, educational, charitable, scientific or religious goals, being governed by the legislation on non-commercial organizations of the Russian Federation.

The Articles 7 and 16 of the present Federal law do not cover the relations connected with industrial and manufacturing, technical and innovation or tourist and entertainment activities of residents of a special economic zone.

Article 2. The basic terms used in the present Federal law

The following basic terms are used for the purposes of the present Federal law:

“foreign investor” means a foreign legal entity civil legal capacity of which is determined under the legislation of the state where it has been instituted and which is entitled under the legislation of the mentioned state to invest in the territory of the Russian Federation; a foreign organization not being a legal entity the civil legal capacity of which is determined under the legislation of the state where it has been instituted and which is entitled under the legislation of the mentioned state to invest in the territory of the Russian Federation; a foreign citizen whose civil legal capacity and competence is determined under the legislation of the state of his/her citizenship and who is entitled under the legislation of the mentioned state to invest in the territory of the Russian Federation; a person without citizenship who permanently resides outside the territory of the Russian Federation and whose civil legal capacity and competence are determined under the legislation of the state where he/she permanently resides and who is entitled under the legislation of the said state investment in the territory of the Russian Federation; an international organization which is entitled under an international treaty of the Russian Federation to invest in the territory of the Russian Federation; foreign states in compliance with a procedure provided by federal laws;

“foreign investment” means the investment of foreign capital in an object of entrepreneurial activity in the territory of the Russian Federation in the form of objects under the civil law owned by the foreign investor unless trading in such objects under the civil law is prohibited or limited in the Russian ...

Federation under federal laws, including money, securities (denominated in foreign currency and the currency of the Russian Federation), other property, exclusive rights to the results of intellectual activities having pecuniary value (intellectual property) as well as services and information;

“direct foreign investment” means the acquisition by a foreign investor of at least 10 per cent stake, stakes (contribution) in the authorized (aggregate) capital of a commercial organization set up or being set up on the territory of the Russian Federation in the form of an economic partnership or company under the civil legislation of the Russian Federation; the investment of capital in the fixed assets of a branch of a foreign legal entity being set up on the territory of the Russian Federation; the pursuance of financial leasing (leasing) of the equipment specified under Sections XVI and XVII of the CIS CC FEA having a customs value of at least 1 million rubles by a foreign investor as lessor;

“investment project” means the substantiation of the economic feasibility, scope and term of a direct foreign investment including design and cost-estimate documentation elaborated in compliance with the standards provided in the legislation of the Russian Federation;

“priority investment project” means an investment project having an aggregate amount of foreign investment of at least 1 billion rubles (not below an equivalent amount in foreign currency at the exchange rate of the Central Bank of the Russian Federation as of the date when the present Federal law comes into force) or an investment project having the minimum stake (contribution) of foreign investors in the authorized (aggregate) capital of a commercial organization with foreign investment of at least 100 million rubles (not below an equivalent amount in foreign currency at the exchange rate of the Central Bank of the Russian Federation as of the date when the present Federal law comes into force) included in a list subject to endorsement by the Government of the Russian Federation;

“investment project justification term” means a term from the date of the commencement of funding of an investment project through the use of direct foreign investment to the date when a difference between the accumulated amount of net profit with depreciation and the amount of investment costs of a commercial organization with foreign investment or a branch of a foreign legal entity or lessor under a financial leasing (leasing) agreement becomes positive;

“reinvestment” means a major investment in objects of entrepreneurial activities in the territory of the Russian Federation out of the earnings or profit of a foreign investor or commercial organization with foreign investment received by them from foreign investment;

“aggregate tax burden” means a rated sum total amount of funds to be paid in the form of import customs duties (excluding the customs duties caused by application of measures aimed at protecting the economic interests of the Russian Federation when foreign trade in goods is being performed in compliance with the legislation of the Russian Federation), federal taxes (excluding excise taxes, value added tax on the goods manufactured in the territory of the Russian Federation) and contributions to the state non-budget funds (excluding contribution to the Pension Fund of the Russian Federation) by a foreign investor and a commercial organization with foreign investment implementing an investment project out of foreign investments, as of the moment of the commencement of funding of the investment project.

Article 3. The legal regulation of foreign investment on the territory of the Russian Federation

- 1) The legal regulation of foreign investment in the territory of the Russian Federation is effected by the present Federal law, other federal laws and other regulatory legal acts of the Russian Federation as well as international treaties of the Russian Federation.
- 2) The subjects of the Russian Federation are entitled to enact laws and other regulatory legal acts governing foreign investment, insofar as it concerns the issues within their competence as well as joint competence of the Russian Federation and the subjects of the Russian Federation, in compliance with the present Federal law and other federal laws.

Article 4. The legal treatment of the activities of foreign investments and commercial organizations with foreign investment

- 1) The legal treatment of the activities of foreign investors and the use of profit received from investments shall not be less favorable than the legal treatment of the activities and the use of profit received from investments granted to Russian investors, with the exceptions provided by federal laws.
- 2) Restrictive exemptions for foreign investors may be established by federal laws only insofar as it is required for the purposes of protecting the constitutional system, morals, health, rights and lawful interests of others, national defense and state security.
Incentive exemptions in the forms of privileges for foreign investors may be established for the purposes of social and economic development of the Russian Federation. The kinds of privileges and procedure for the granting thereof shall be established by the legislation of the Russian Federation.
- 3) A branch of a foreign legal entity set up on the territory of the Russian Federation performs a part of the functions or all of the functions of a representative office on behalf of the foreign legal entity that has set it up (hereinafter referred to as "head organization") on condition that the aims of the formation and activity of the head organization are of a commercial nature and the head organization is directly liable for the obligations it has assumed in connection with the pursuance of the said activity on the territory of

the Russian Federation.

4) Affiliated and dependent companies of a commercial organization with foreign investment shall not enjoy the legal protection, guarantees and privileges established by the present Federal law as they pursue their entrepreneurial activities on the territory of the Russian Federation.

5) A foreign investor, commercial organization with foreign investment set up in the territory of the Russian Federation where a foreign investor (foreign investors) owns (own) at least 10 per cent of stake, stakes (contribution) in the authorized (aggregate) capital of the mentioned organization shall enjoy the full scope of legal protection, guarantees and privileges established by the present Federal law as they reinvest.

6) A Russian commercial organization shall acquire the status of a commercial organization with foreign investment as of the date when a foreign investor becomes of the stakeholders thereof. From that date on, the commercial organization with foreign investment and the foreign investor shall enjoy the legal protection, guarantees and privileges established by the present Federal law.

The commercial organization shall lose the status of a commercial organization with foreign investment as of the date when the foreign investor ceases to be a stakeholder thereof (when all the foreign investors cease to be stakeholders, should there be several foreign investors among the stakeholders thereof). As of this date the mentioned commercial organization and the foreign investor shall lose the legal protection, guarantees and privileges established by the present Federal law.

Article 5. The guarantee of legal protection of the activities of foreign investors on the territory of the Russian Federation

1) In the territory of the Russian Federation a foreign investor shall be granted a full and unconditional protection of rights and interests provided in the present Federal law, other federal laws and other regulatory legal acts of the Russian Federation and international treaties of the Russian Federation.

2) A foreign investor is entitled to receive reimbursement of losses inflicted as a result of unlawful actions (inaction) on part of state bodies, local self-government bodies or officials thereof, under the civil legislation of the Russian Federation.

Article 6. The guarantee of foreign investor's use of the various forms of investment in the territory of the Russian Federation

A foreign investor is entitled to implement investment in the territory of the Russian Federation in any forms not prohibited by the legislation of the Russian Federation.

The evaluation of investment in the authorized (aggregate) capital of a commercial organization with foreign investment shall be done in compliance with the legislation of the Russian Federation.

The evaluation of the investment shall be done in the currency of the Russian Federation.

The transactions settled by the foreign states, the international organizations or the organizations under their control resulting in acquiring the right of direct or indirect disposal of over 25 per cent from the total number of the votes (shares) making a part of the charter capital of the Russian business associations or giving any other opportunity to block the resolutions of the management boards of such associations, are to be agreed in advance in the order stated by Articles 9 – 12 of the Federal law “The Procedure for Performance of Foreign Investment into Associations of Strategic Significance to Ensure Defense and Security of the State”.

In compliance with Article 1 of the present Federal Law Article 7 does not cover the relations connected with industrial and manufacturing, technical and innovation or tourist and entertainment activities of the residents of a special economic zone.

Article 7. The guarantee of transfer of the rights and duties of a foreign investor to another person

1) Under an agreement a foreign investor is entitled to transfer his rights (assign claims) and duties (assign debt) and under the law or a decision of the court is obligated to assign his rights (assign claims) and duties (assign debt) to another person in compliance with the civil legislation of the Russian Federation.

2) Should a foreign state or a state body authorized by this state effect a payment for the benefit of a foreign investor under a guarantee (insurance policy) provided to a foreign investor in respect of investment implemented by the investor in the territory of the Russian Federation, and rights (right of claim) are transferred to this foreign state or a state body authorized by this state in respect of the mentioned investment, such transfer of rights (right of claim) shall be recognized as lawful in the Russian Federation.

Article 8. The guarantee of compensation in case of nationalization and requisition of the property of a foreign investor or commercial organization with foreign investment

1) The property of a foreign investor or commercial organization with foreign investment is not subject to forced appropriation, including nationalization, requisition, with the exception of cases and on the grounds stipulated by a federal law or international treaty of the Russian Federation.

2) In case of requisition a foreign investor or commercial organization with foreign investment shall be refunded for the value of the requisitioned property. Upon expiry of the circumstances in connection with which the requisition was effected a foreign investor or commercial organization with foreign

with which the requisition was effected a foreign investor or commercial organization with foreign investments shall be entitled to claim in accordance with the judicial procedure return of the remaining property but they shall refund the compensation amount they received less the loss in the value of the property.

In case of nationalization a foreign investor or commercial organization with foreign investors shall be reimbursed for the nationalized property and other losses. Disputes on the reimbursement of losses shall be resolved in accordance with the procedure set forth in Article 10 of the present Federal law.

Article 9. Guarantee against a change in the legislation of the Russian Federation that is unfavorable for a foreign investor and commercial organization with foreign investment

1) Should new federal laws and other regulatory legal acts of the Russian Federation come into force changing the rates of import customs duties (excluding the customs duties arising from the application of measures aimed at protecting the economic interests of the Russian Federation in the pursuance of foreign trade in goods in compliance with the legislation of the Russian Federation), federal taxes (excluding excise taxes, value added tax on the goods manufactured on the territory of the Russian Federation) and contribution to the state non-budget funds (excluding contribution to the Pension Fund of the Russian Federation) or should amendments be introduced in the effective federal laws and other regulatory legal acts of the Russian Federation leading to an increase in the aggregate tax burden on the activity of a foreign investor and commercial organization with foreign investment of implementing priority investment projects or setting up restrictive and limiting regimes in respect of foreign investments in the Russian Federation in comparison with the aggregate tax burden and regimes effective under federal laws and other regulatory acts of the Russian Federation as of the date when funding of the priority investment project was commenced out of foreign investment, such new federal laws and such other regulatory legal acts of the Russian Federation and also the amendments introduced in the effective federal laws and other regulatory legal acts of the Russian Federation shall not apply, within the terms specified under clause 2 of the present Article, to the foreign investor and commercial organization with foreign investment implementing priority investment projects out of foreign investment, on condition that the goods imported to the customs territory of the Russian Federation by the foreign investor and commercial organization with foreign investment are used as earmarked to implement the priority investment projects.

The provisions of Paragraph 1 of the present clause shall extend to a commercial organization with foreign investment if the stake (s) (contribution) of foreign investors in the authorized (aggregate) capital of such an organization make up over 25 per cent and also to a commercial organization with foreign investment implementing a priority investment project, irrespective of the stake (contribution) of foreign investors in the authorized (aggregate) capital of such an organization.

2) Stability of the terms and conditions as well as environment specified under clause 1 of the present article shall be guaranteed within the justification term of the investment project but not exceeding seven years from the date when funding was commenced for the project out of foreign investment. Investment project justification term shall be differentiated depending on the kind of the project in accordance with the procedure established by the Government of the Russian Federation.

3) In exceptional cases, as a foreign investor and commercial organization with foreign investment implement priority investment projects in the area of manufacturing or creating a transportation infrastructure or another infrastructure with the aggregate amount of foreign investment of at least 1 billion rubles (not below the equivalent amount in foreign currency at the exchange rate of the Central Bank of the Russian Federation as of the date of the coming into force of the present Federal law) the justification term whereof exceeds seven years, the Government of the Russian Federation shall make a decision to extend the effective term of the terms and conditions as well as the regime specified under clause 1 of the present article for the mentioned foreign investor and commercial organization with foreign investment.

4) The provisions of clause 1 of the present article shall not extend to the amendments introduced from time to time in the legal acts of the Russian Federation or the newly enacted federal laws and other regulatory legal acts of the Russian Federation in order to protect the fundamentals of the constitutional system, morals, health, rights and lawful interests of other persons, national defense and state security.

5) The Government of the Russian Federation shall:

Should the foreign investor and commercial organization with foreign investment fail to perform their obligations specified in Part 1 of the present clause, they shall be deprived of the privileges granted thereto in compliance with the present article. The amount of the funds not paid as a result of the privileges so granted, shall be subject to refund in accordance with the procedure established by the Government of the Russian Federation.

Article 10. The guarantee of proper resolution of a dispute arising from performance of foreign investment and entrepreneurial activities by a foreign investor in the territory of the Russian Federation

A foreign investor's dispute arising in connection with the implementation of investment and entrepreneurial activities in the territory of the Russian Federation shall be resolved in compliance with international treaties of the Russian Federation and federal laws in the court or arbitration court or in an international arbitration court.

Article 11. The guarantee of the use in the territory of the Russian Federation and transfer out of the territory of the Russian Federation of earnings, profit and other lawfully gained funds

After payment of the taxes and fees as provided in the law of the Russian Federation, a foreign investor shall have the right to freely use earnings and profit in the territory of the Russian Federation for the purposes of reinvestment in compliance with the provisions of Clause 2 Article 4 of the present Federal law or for other purposes not conflicting with the legislation of the Russian Federation as well as unimpeded transfer out of the Russian Federation of earnings, profit and other lawfully gained funds in foreign currency in connection with the investments effected by him earlier, including the following:

Article 12. The guarantee of the right of a foreign investor to freely move out of the Russian Federation property and information in documentary or electronic record carrier form that were originally imported to the territory of the Russian Federation as a foreign investment

A foreign investor who originally imported to the territory of the Russian Federation property and information in documentary form or in the form of a record on electronic carriers as a foreign investment shall be entitled to freely (without quotas, licensing and other non-tariff foreign trade regulation applied thereto) export the mentioned property and information out of the Russian Federation.

Article 13. The guarantee of the right of a foreign investor to acquire securities

A foreign investor is entitled to acquire shares and other securities of Russian commercial organizations and state securities under the securities legislation of the Russian Federation.

Article 14. The Guarantee of a Foreign Investor's Participation in Privatization

A foreign investor may participate in privatization of property being in state or municipal ownership by means of acquiring the rights of ownership to the state and municipal property or a stake, stakes (contribution) in the authorized (aggregate) capital of an organization being privatized, on the terms and in accordance with the procedure established by the legislation of the Russian Federation on privatization of state and municipal property.

Article 15. The guarantee of the foreign investor being granted the rights for land lots, other natural resources, buildings, structures and other immobilities

The acquisition of rights for plots of land, other natural resources, buildings, structures and other real property by the foreign investor shall be effected in compliance with the legislation of the Russian Federation and the legislation of the subjects of the Russian Federation.

The right to lease a plot of land can be acquired by the commercial organization with foreign investment through bidding (auction, tender), unless otherwise provided in the legislation of the Russian Federation.

In compliance with Article 1 of the present Federal law Article 16 does not cover the relations connected with industrial and manufacturing, technical and innovation or tourist and recreational activities of residents of a special economic zone.

Article 16. The benefits on customs payments that may be granted to a foreign investor and commercial organization with foreign investment

Benefits on customs payments are granted to foreign investors and commercial organizations when they implement a priority investment project under the customs legislation of the Russian Federation and tax legislation of the Russian Federation.

Article 17. The privileges and guarantees that may be granted to a foreign investor by the subjects of the Russian Federation and local self-government bodies

The subjects of the Russian Federation and local self-government bodies, acting within their competence, may grant to a foreign investor privileges and guarantees, provide funding and render other forms of support in respect of an investment project implemented by a foreign investor, out of the budget resources of the subjects of the Russian Federation and local budgets as well as non-budgetary resources.

Article 18. Anti-monopoly legislation of the Russian Federation and compliance of a foreign investor with fair competition principles

A foreign investor shall observe the anti-monopoly legislation of the Russian Federation and avoid unfair competition and restrictive business practices, including through setting up of a commercial organization with foreign investment or a branch of a foreign legal entity in the territory of the Russian Federation to manufacture a high-demand product and subsequently to self-liquidate for the purpose of promoting a similar foreign-made product as well as through a bad faith price agreement or agreement on distribution of sales markets or on participation in bidding (auction, tender).

Article 19. The property insurance performed by a commercial organization with foreign investment and the head organization of a branch of a foreign legal entity

The commercial organization with foreign investment, at its discretion, the branch of a foreign legal entity, at the discretion of the head organization, shall effect property insurance against the risk of a loss (peril), shortage or damage of property, civil liability and entrepreneurial risk, unless otherwise provided by the legislation of the Russian Federation.

1) Establishment and liquidation of a commercial organization with foreign investment shall be effected on the terms and in accordance with the procedure provided by the Civil Code of the Russian Federation and other federal laws, except the cases that may be established by federal laws in compliance with clause 2 Article 4 of the present Federal law.

2) Legal entities being commercial organizations with foreign investment shall be subject to state registration in the order stated by the federal law on the state registration of the legal entities.

Article 20. Establishment and Liquidation of the Commercial Organization with Foreign Investment

1) Establishment and liquidation of a commercial organization with foreign investment shall be effected on the terms and in accordance with the procedure provided by the Civil Code of the Russian Federation and other federal laws, except the cases that may be established by federal laws in compliance with clause 2 Article 4 of the present Federal law.

2) Legal entities being commercial organizations with foreign investment shall be subject to state registration in the order stated by the federal law on the state registration of the legal entities. (as amended by the Federal laws from 25.07.2002 N 117-FZ, from 08.12.2003 N 169-FZ)

Article 21. Establishment and liquidation of a branch of a foreign legal entity

A branch of a foreign legal entity is established for the purpose of performing in the territory of the Russian Federation the activity performed by the head organization and liquidated based on decision of a foreign legal entity – the head organization.

State control over establishment, activities and liquidation of the branch of a foreign legal entity shall be carried on by means of the accreditation thereof in accordance with the procedure defined by the Government of the Russian Federation.

The executive federal body specified in Article 24 of the present Federal law shall be responsible for the accreditation of a branch of a foreign legal entity.

A branch of a foreign legal entity may be denied accreditation for the purpose of protecting the fundamentals of the constitutional system, morals, health, rights and lawful interests of others, national defense and state security.

Article 22. Requirements for the regulations on the branch of a foreign legal entity

1) The head organization shall submit to the federal executive body specified in Article 24 of the present Federal law regulations on a branch of a foreign legal entity and other documents the list and requirements for which are endorsable by the Government of the Russian Federation with due regard to clauses 2 and 3 of the present article.

2) The following shall be specified in the regulation on the branch of a foreign legal entity: the names of the branch and the head organization thereof, organizational and legal form of the head organization, the location of the branch in the territory of the Russian Federation and the legal address of the head organization thereof, goals of the formation and the kinds of activity of the branch, composition, amount and term for contributing funds in the fixed assets of the branch, procedure for managing the branch. The regulations on the branch of a foreign legal entity may include other information reflecting the peculiar features of activities of the branch of foreign legal entity in the territory of the Russian Federation that are not in conflict with the legislation of the Russian Federation.

3) The evaluation of the contribution of funds in the fixed assets of a branch of a foreign legal entity shall be done by the head organization on the basis of domestic or world prices. The evaluation of the contribution of funds shall be effected in the currency of the Russian Federation. The assessed value of the contribution of funds in the fixed assets of a branch of a foreign legal entity shall be specified in the

the combination of funds in the fixed assets of a branch of a foreign legal entity shall be specified in the regulation on the branch of a foreign legal entity.

4) A branch of a foreign legal entity is entitled, effective as of the date of accreditation, to pursue entrepreneurial activities in the territory of the Russian Federation.

A branch of a foreign legal entity shall terminate entrepreneurial activity in the territory of the Russian Federation as of the date when it is deprived of the accreditation.

Article 23. Elaboration and implementation of state policy in the area of foreign investment

In accordance with the Federal Constitutional Law "On the Government of the Russian Federation" the Government of the Russian Federation elaborates and implements the state policy in the sphere of international investment cooperation.

The Government of the Russian Federation shall:

Article 24. The Federal executive body in charge of coordination of attracting direct foreign investment

The Government of the Russian Federation shall designate a federal executive body to be responsible for the coordination of attracting direct foreign investments to the economy of the Russian Federation.

Article 25. Declaring repealed of certain legal acts and specific provisions thereof adopted earlier in connection with adoption of the present Federal law

In connection with the adoption of the present Federal law the following shall be regarded as repealed:

Clause 4 Article 1 of the Federal law "On the Introduction of Amendments and Additions to the Legal Acts of the Russian Federation in Connection with the Adoption of the Federal Constitutional law "On Arbitration Courts in the Russian Federation" and of the Arbitration Procedural Code of the Russian Federation.

Article 26. Bringing the legislation of the Russian federation to conformity with the present Federal law

1) The President of the Russian Federation and the Government of the Russian Federation are hereby proposed to bring their regulatory legal acts to conformity with the present Federal law.

2) The Government of the Russian Federation shall in due course present to the State Duma of the Federal Assembly of the Russian Federation proposals for amendments to the legal acts of the Russian Federation resulting from the present Federal law.

Article 27. Bringing the regulations on branches of foreign legal entities set up in the territory of the Russian federation to conformity with the present Federal law

Head organizations the branches of which had been set up in the territory of the Russian Federation prior to entry of the present Federal law into force shall:

Article 28. Entry of the present federal law into force

The present Federal law will enter into force upon its official publication.