At the end of September the Industry and Trade Ministry tabled draft amendments to the Federal Law on Industrial Policy proposing the addition of a chapter devoted to special investment contracts (SPICs). If passed, the amendments would substantially alter the way in which the mechanism works, which is why the draft has already been dubbed “SPIC 2.0”.

Also being considered in parallel with this bill is a package of SPIC-related amendments to the Tax Code, as reported by EY in alerts dated 4 September and 27 August.

Presented below is a summary of the main changes proposed by the ministry.
Change in the Subject Matter of a Contract

The changes proposed by the draft law would alter the very substance of SPICs. Under the current law, a contract may be concluded by an investor that undertakes to invest at least 750 million roubles in the start-up, modernization or integration of production operations in Russia. The current rules do not impose any special requirements as to what products are made—the main thing is that they must be produced in Russia and the minimum amount must be invested.

The amendments proposed by the ministry, however, consist primarily in the introduction of requirements regarding the products produced as a result of a project. The products must either (1) be competitive on the global market or (2) there must be no equivalents made in Russia. It should be pointed out in this regard that neither the draft law nor current legislation provide a definition of or criteria for determining what makes a product “competitive on the global market”.

In addition, the products in question must in any case be produced using one of the technologies included in a register to be approved by the Government. The subject matter of a SPIC would not be the start-up, integration or modernization of production per se, but the development or implementation of a new technology designed for the start-up, integration or modernization of the production of products meeting specific requirements. It is expected that the list of technologies would be drawn up by the ministry with the involvement of business leaders and their associations and on the basis of reports prepared by Russian research organizations and associations, including Skolkovo.

If the draft law were passed as proposed by the ministry, the subject matter of a SPIC would consist either in the performance of operations aimed at the implementation of a new technology for the start-up or modernization of production, or exclusively in the development of such a technology. A SPIC project involving the expansion of existing production facilities without reference to new technology would no longer be an option.

New Rules for Selecting Investors

Under the provisions of the draft law, a SPIC would be concluded as a result of a public tender initiated by a public party or by the investor itself. At present, a SPIC is concluded on the basis of an application from an investor without any competitive procedures.

The draft law stipulates only three cases in which a competitive tender would not take place, namely if:

- A decision to this effect is made by the President
- Only one application is received for participation in a tender
- The project involves investment in military, special-purpose or dual-purpose products

In addition, the minimum investment required for participation in a SPIC would rise from 750 million roubles to 1 billion roubles.

Must Investors Develop Their Own Technologies?

It is important to note that the draft law allows for a SPIC to be used for the integration of an already developed technology in which Russia owns the rights.

Where a tender for the conclusion of a SPIC is held on Russia’s initiative, Russia has the right to specify in the tender documentation the particular results of intellectual activity, exclusively owned by Russia, that are to be integrated under the SPIC.

Theoretically, therefore, it may happen that an investor, rather than independently developing a new technology, would be able to use a ready-made technology provided by the Russian Federation. It should be mentioned that some such technologies have been developed in the context of certain federal special-purpose programmes.

What Does This Mean for You?

If passed, the draft law would substantially alter the regulatory framework for SPICs. To conclude a SPIC, it would no longer be sufficient for an investor simply to organize the manufacture of products that it did not previously produce (or to modernize existing production operations). SPIC 2.0 requires the...
development or implementation of new technologies designed to yield products that are not merely new, but are capable of being exported or are of a kind not produced in Russia. While SPIC 2.0 is still at the draft stage, we strongly recommend considering the SPIC mechanism in its current configuration as a means of obtaining state support for capital-intensive projects that are at an advanced stage of formulation. The number of potential participants in SPIC 2.0 projects is likely to be very small in view of the restrictive conditions for obtaining support and the artificial raising of the minimum level of investment required for participation.

For additional information please contact the authors of this publication:

Natalia Aristova  
+7 (495) 641 2908  
Natalia.Aristova@ru.ee.com

Ilya Skripnikov  
+7 (495) 755 9920  
Ilya.Skripnikov@ru.ee.com

Authors:
Natalia Aristova
Dmitry Bazin
Ilya Skripnikov
Inquiries may be directed to one of the following executives:

**Moscow**

- **CIS Tax & Law Leader**
  - Irina Bykhovskaya
  - +7 (495) 755 9886

- **Oil & Gas, Power & Utilities**
  - Alexei Ryabov
  - +7 (495) 641 2913
  - Victor Borodin
  - +7 (495) 755 9760

- **Financial Services**
  - Alexei Kuznetsov
  - +7 (495) 755 9687
  - Maria Frolova
  - +7 (495) 641 2997
  - Ivan Sychev
  - +7 (495) 755 9795

- **Industrial Products**
  - Andrei Sulin
  - +7 (495) 755 9743

- **Consumer Products & Retail, Life Sciences & Healthcare**
  - Dmitry Khalilov
  - +7 (495) 755 9757

- **Real Estate, Hospitality & Construction, Infrastructure, Transportation**
  - Anna Strelchnenko
  - +7 (495) 705 9744
  - Svetlana Zobnina
  - +7 (495) 641 2930

- **Technology, Telecommunications, Media & Entertainment; Tax Performance Advisory**
  - Ivan Rodionov
  - +7 (495) 755 9719

- **Tax Technology**
  - Sergey Saraev
  - +7 (495) 664 7862

- **People Advisory Services**
  - Ekaterina Ukhova
  - +7 (495) 641 2932
  - Gueladjo Dicko
  - +7 (495) 755 9961
  - Sergei Makeev
  - +7 (495) 755 9707

- **Private Client Services**
  - Anton Ionov
  - +7 (495) 755 9747

- **Customs & Indirect Tax**
  - Vadim Ilyin
  - +7 (495) 648 9670

- **Transaction Tax**
  - Yuri Nechuyatov
  - +7 (495) 664 7884

- **Cross Border Tax Advisory**
  - Vladimir Zheltonogov
  - +7 (495) 705 9737
  - Marina Belyakova
  - +7 (495) 755 9948
  - Andrey Vostokov
  - +7 (495) 755 9708

- **Transfer Pricing and Operating Model Effectiveness**
  - Evgenia Vetere
  - +7 (495) 660 4880
  - Maxim Maximov
  - +7 (495) 662 9317

- **Tax Policy & Controversy**
  - Alexandra Lobova
  - +7 (495) 705 9730
  - Alexei Nesterenko
  - +7 (495) 622 9319

- **Global Compliance and Reporting**
  - Yulia Timonina
  - +7 (495) 755 9838
  - Alexei Malenkin
  - +7 (495) 755 9898
  - Sergei Pushkin
  - +7 (495) 755 9819

- **Law**
  - Georgy Kovalenko
  - +7 (495) 287 6511
  - Alexey Markov
  - +7 (495) 641 2965

- **St. Petersburg**
  - Dmitri Babiner
  - +7 (812) 703 7839

- **Vladivostok**
  - Alyeia Erokhin
  - +7 (914) 727 1174

- **Ekaterinburg**
  - Irina Borodina
  - +7 (343) 378 4900

For information about Foreign Countries Business centers in EY Moscow office please follow the [link](http://www.ey.com/).

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Contacts

Almaty
+7 (727) 258 5960
Astana
+7 (7172) 58 0400
Atyrau
+7 (7122) 99 6099
Baku
+994 (12) 490 7020
Bishkek
+996 (312) 39 1713
Ekaterinburg
+7 (343) 378 4900
Kazan
+7 (843) 567 3333
Kyiv
+380 (44) 490 3000
Krasnodar
+7 (861) 210 1212
Minsk
+375 (17) 240 4242

Moscow
+7 (495) 755 9700
Novosibirsk
+7 (383) 211 9007
Rostov-on-Don
+7 (863) 261 8400
St. Petersburg
+7 (812) 703 7800
Tashkent
+998 (71) 140 6482
Tbilisi
+995 (32) 215 8811
Togliatti
+7 (8482) 99 9777
Vladivostok
+7 (423) 265 8383
Yerevan
+374 (10) 500 790
Yuzhno-Sakhalinsk
+7 (4242) 49 9090

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