The legal regime of the foreign investments in the fuel & energy sector of Russia

Rashad A. Kurbanov

Abstract: This article describes the legal framework that affects foreign investment in the fuel-energy sector of the Russian Federation. Included is an explication of the constitutional norms governing economic activity and statutory law affecting foreign investment generally and investments in businesses of strategic importance, involving military-technical cooperation, in subsoil plots of federal significance, in projects within the continental shelf, involving concession agreements, affecting the nation’s gas supplies, in energy efficiency, involving natural monopolies, and gas exports. Relevant tax and environmental laws are also briefly described.

Keywords: auction, compulsory alienation of property, concedent, concession agreement, concessionaire, Consultative Council of foreign investments in Russia, contaminated land remediation, continental shelf, energy service contract, entrepreneurship, federal property, foreign investment, fuel-energy sector, gas supply, joint jurisdiction, market economy, military-technical cooperation, nationalization, natural monopolies, norms of constitution, pluralism of the forms of property, production sharing agreements, subjects of the Russian Federation, subsoil, subsoil plots of federal significance, subsoil proprietor, subsoil space, subsoil users, tender

Norms of Constitution on which the legal regulation of the foreign investment in the fuel-energy sector of Russia is based are of special attention in our research.

As it was already mentioned in science literature, «...the constitutional principles are not invented by the people, but are the subject to disclosure by them as well as all principles which exist objectively »². First of all it is true for article 8 of the Constitution of Russian Federation³, which guarantees the unity of the economical space, free movement of goods, services and financial instruments, the maintenance of the competition, and the freedom of economical activity.

Being the principal provisions of the market economy and entrepreneurship, these norms are the basis for the investment activity in Russia.

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¹ Head of the Department of the Civil and Labor Law at Russian University of Economics named after G.V. Plekhanov, Doctor of Law, Professor, Honored Lawyer of the Russian Federation

² Gadzhiev G.A. The Constitutional principles of the market economy (the development of the basement of the civil law in the decisions of the Constitutional Court of Russian Federation) – M., 2002. – P. 51.

Especially part 2 article 8 of the Constitution of Russian Federation, which enshrines the pluralism of the forms of property and it’s equal defense. It was developed in the article 9 of the Constitution of Russian Federation stipulates the regulations on the land and other natural resources.

The last used and protected in Russia as the basement for living for the peoples which inhabits the appropriate territory. The land and other natural resources can exist in private, state municipal and other forms of property. The provisions of the Constitution are developed in the special norms of legislation.

For instance, according to the article 1.2 The Law of Russia «On the subsoil» of 21 February 1992 №2395-I the subsoil on the territory of Russian Federation, including the subsoil space and the mineral, energy and other resources are of state property.

According to the article 9 Federal law «On the production sharing contracts» of 30 December 1995 №225-FZ the part of the extracted production which is under the terms of the contract the share of the investor, belongs to him as a property.

The norm of the part 4 of the article 15 of the Constitution of Russian Federation, under which the commonly recognized principles and norms of the international law and international treaties of Russian Federation are the integral part of its legal system. If international treaties of Russian Federation stipulate other rules, then national laws, the first will prevail.

Besides the principles of the legal regime of the investment activity, the Constitution stipulates it’s guarantees.

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4 Collected Legislation of the Russian Federation, 06.03.1995, №10, article823 (07.05.2013).
The article 34 of the Constitution guarantees each other the right to free use of his abilities and assets for commercial and other activity which is not prohibited by law. The Constitution guarantees to each other the right to have the property the right to own property, to own, use and dispose of them, either alone or jointly with other persons.

The principal meaning is the guarantee, under which the person can be deprived of its’ property only under the decision of the court. The compulsory alienation of the properties for state needs can be made only on the basis of the preliminary and equal compensation.

This provisions are developed in federal legislation. On the article 8 Federal law «On the foreign investment in Russian Federation» of 9 July 1999 №160-FZ⁶ the properties of the foreign investor or commercial entity with foreign participation is not the subject to compulsory withdrawal, including nationalization, requisition, excluding cases and juridical grounds which are stipulated by federal law or international treaty of Russia.

On the requisition a foreign investor or commercial entity with foreign participation is subject to compensation for properties being subject of requisition. As for the nationalization, a foreign investor or commercial entity with foreign participation is subject to compensation for properties and for other losses. All disputes concerning compensations are to be considered in the court.

As of the article 36 of the Constitution of Russian Federation the possession, use and disposition of the land and other natural resources are in full disposition of the proprietor if it does not damage the environment nor the rights and legal interests of other persons.

Article 7 of the Federal law «On the production sharing agreements» provides among other terms of the works of the investor the following:

- measures, directed to prevention of the influence of such works to the environment and the restitution of the results of such works;

– the insurance of the responsibility for compensation of the losses in the case of accidents that resulted in harmful effects on the environment;
– liquidation of all the installations, structures and other properties after the finalization of the works under the above mentioned agreement, and the purification of the territory of such works.

As of Russia is a federal state, the Constitution of Russian Federation demarcates of powers and duties between the Russian Federation as a subject of law and its regions. The formula «in the powers of the Russian Federation are», in fact means that respective areas and economic sectors of the country, types of property, certain activities are the subject of state regulation at the federal level.

As it is mentioned in the point «d» article 71 of the Constitution of Russian Federation, the constitutional status of Russian Federation can be characterized by the existence of the federal state property.

Russian Federation itself defines the order of the operation of the federal property. According to the point «g» of the article 114 of the Constitution of Russian Federation the Government of Russia administrates the federal property. The further development of this norm of the Constitution is made in the Federal Constitutional law «On the Government of Russian Federation» of 17 December 1997 № 2-FKZ. In the order defined in article 78 of the Constitution of Russian Federation and the legislation of the federal level, the Government of Russia can delegate some of its powers to the executive organs of the regions of Russia (subjects of the Russian Federation).

8 By the virtue of the absence of the law of property, the list of the objects, belong to the federal property, was approved by the Regulation of the Supreme Council of Russian Federation of 27 December 1991 r. «On the Division of State Property of the Russian Federation to the federal property, state property of the regions and municipal property» // Bulletin of the Congress of People's Deputies and the Supreme Soviet of the RSFSR. 1992. №3. Article 89.
According to the point «е» of the article 71 the main destinations of the federal politics in the scopes of the economical and ecological development of Russian Federation are to the powers and duties of Russian Federation. According to this constitutional provision, the Russian Federation has the right to define the main directions of the development of the energy and fuel industry activity in these areas of federal bodies of state power, bodies of state power of subjects of the Federation, local authorities, legal entities and individual entrepreneurs.

The provision of the unified legal bases of the market of Russian Federation is to the powers of Russian Federation serves to the realization of the principle of the united economical space. (point «j» of the article 71 of the Constitution).

Logically, the Russian Federation has the exclusive powers for the formation of the civil legislation (point «о» of the article 71 of the Constitution). Civil Code of Russian Federation¹⁰, named in literature the “Economical Constitution”, stipulates the norms concerning the foundation of the legal entities including the legal persons with foreign investments according to the Russian Law, making contracts etc.

During its activity in the territory of Russian Federation foreign investors are to pay taxes under the national law. The federal taxes stipulation is in the federal powers scope point «з» of the article 71 Of the Constitution of Russian Federation.

Nevertheless the fuel and energy investment sector regulated partially also by the common jurisdiction of the Russian Federation and its regions.

For instance the article 72 brings to the common jurisdiction the relationships in the scope of subsoil proprietor powers (possession, use and (point «v»); delimitation of state property (point «g»); the use of the natural resources, the environment protection and the ecological security (point «d»).

As reflected in the Constitution of the Russian Federation co-management due to the fact that everything connected with the territory, its use and protection directly affects not only the interests of each individual member of the Federation, but the whole of the Federation as a whole11.

Constitutional provisions are detailed in the special norms of the legislation. The, article 1 of the Law of Russia «On the subsoil» of 21 February 1992 №2395-112 defines that, the legislation of Russian Federation on the subsoil is based on the Constitution of Russia and consists of the Law above mentioned and other federal laws and normative acts which based on the Constitution of Russian Federation and consists of the mentioned Law, other federal laws and normative acts adopted in accordance with it, and the laws and normative acts of the regions of Russia. The laws and normative acts of the regions of Russia can not contradict the Law of Russia “On the subsoil”.

In the case of such a contradiction appears, only the norms of the Law of Russia “On the subsoil” and other federal laws can be seen as norms in force.

According to Article 11 (Part 3) of the Constitution of the Russian Federation division of powers between the state authorities of the Russian Federation and the bodies of state power of subjects of the Russian Federation is the Constitution of the Russian Federation, federal or other agreements on the delimitation of powers.

12 Collected Legislation of the Russian Federation, 06.03.1995, №10, art. 823 (amended 07.05.2013).
The Constitution of the Russian Federation carries out such a distinction, identifying objects jurisdiction of the Russian Federation (Article 71), the joint jurisdiction of the Russian Federation and its members (Article 72), as well as the completeness of the government (i.e. the authority) of the subjects of the Russian Federation, which they have outside the jurisdiction of the Russian Federation and the powers of the Russian Federation on joint jurisdiction (Article 73).

Article 72 (Part 1) Of the Constitution of the Russian Federation considers the issues of ownership, use and disposal of land, subsoil, water and other natural resources (point "c"), division of state property (point "d"), natural resources (paragraph "d"), and forest legislation (point "k") under the joint jurisdiction of the Russian Federation and its subjects.

Article 76 Of the Constitution of the Russian Federation establishes that the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation issued by federal laws and in accordance with, the laws and other normative legal acts of the Russian Federation (Part 2), the laws and other normative legal acts of the Russian Federation may not contradict the federal laws adopted by the issues of competence of the Russian Federation, as well as the joint jurisdiction of the Russian Federation and its subjects (part 5).

Consequently, the Constitution of the Russian Federation shall distinguish rule-making power of the federal lawmakers and legislators of the Russian Federation on issues of joint management. Moreover, within the meaning of Article s 72 and 76 (parts 2 and 5) of the Constitution of the Russian Federation to the publication of the federal law on a particular subject is the subject of joint jurisdiction of the Russian Federation shall have the right to adopt its own law and other regulations. But after the publication of the federal law, such acts must be brought into compliance with federal law.
Federal law as a normative legal act of the general operation of regulating certain issues (objects) of a joint reference, defines the rights and obligations of the parties involved, including the powers of the government, and thus performs separation of powers.

From article 11 (part 3), 72 (points "c", "d", "e" and "e" of Part 1), 76 (parts 2 and 5) and 94 of the Constitution of the Russian Federation follows that the Federal Assembly of the Russian Federation shall be entitled to legal regulation of issues related to the joint jurisdiction, to determine the appropriate specific powers and authorities of the government of the Russian Federation and the bodies of state power of subjects of the Russian Federation.

In this case, however, must be complied with the requirements of the Constitution of the Russian Federation, including its article s 9 and 36, relating to the ownership of natural resources and their use."13

Concluding statement of the issue of the constitutional foundations of the foreign investment in the Russian energy industry, we note that by virtue of the Constitution of the Russian Federation adopted the preamble based on the responsibility for their country to present and future generations, aiming to ensure the well-being and prosperity of Russia.

Russia's transition to market economic conditions determined the need for a law on foreign investment. Actual Federal law «On the foreign investments in Russian Federation» of 9 July 1999 №160-FZ, as a successor of the Law of the RSFSR “On the foreign investments” of 1991, has not changed the list of the potential foreign investors. (In accordance with the Law of foreign investors in the RSFSR recognized:

- foreign entities, including, in particular, any company, firm, business, organization, or association created and eligible to invest in accordance with the laws of the country of destination;

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13 paragraph 4 Of the Constitutional Court Resolution of 9 January 1998 г. № 1-II «On the question of the examination of the compliance of the Forestry Code of Russia with the provisions of the Constitution of Russian Federation».
foreign citizens, persons without citizenship, Soviet citizens with permanent residence abroad, provided that they are registered for doing business in their country of citizenship or permanent residence;

foreign countries;

international organizations.)

Otherwise some changes took place. In particular, to potential foreign investors by the Federal Law dated July 9, 1999 № 160-FZ charged foreign organizations that are not legal persons.

In turn, the range of possible foreign investors were excluded citizens of the Russian Federation (under the Law on Foreign Investment in 1991 - Soviet citizens) residing outside the Russian Federation.

By the virtue of article 4 of the Federal Law «On the foreign investments in Russian Federation», the legal regime of the foreign investors activities cannot be less favorable than the legal regime of Russian investors except other is pointed out by federal laws.

So, the provisions of the regional laws and federal rules other than law cannot limit the activity of the foreign investors.

Federal Law «About the production sharing agreements» regulates the relationships in the scope of conclusion, executing and cessation of this civil law contracts and defines the principal conditions of such contracts.

The relationships concerning survey, geological survey and the extraction of the minerals and the sharing of the oil extracted from the subsoil parcels, also the mentioned federal law regulates its transportation its transportation, handling, storage, processing, use, enjoyment or disposal otherwise regulated directly by agreement.

Production Sharing Agreement is classified as civil contracts (paragraph 2 of paragraph 3 of Article 1 of the Act).
This law provides the criteria for inclusion in the category of subsoil plots, the right to use which may be granted under the PSA - lack of exploration, development and mining operations under a license regime provided for by the Federal Law "On Subsoil" 1992.

There is a possibility to change the license conditions for using a particular oilfield mode production sharing agreement (par.3 Article 2 paragraph 4 of the Act). Parties to the production sharing agreement may be the Russian Federation and investors.

Investors may be only legal entities and based on agreements on joint activities without forming a legal entity associations of legal entities engaged invest their own money borrowed or raised (property and (or) property rights) in prospecting, exploration and extraction of mineral resources and are subsoil users to the terms of the agreement.

Term of the agreement is determined by the parties. In order to coordinate the execution of work by the parties should be provided for the establishment of the steering committee, composed of an equal number of representatives from the government and the investor. The number of members, the rights and duties of such a committee, and its implementation is determined by the agreement.

The procedure for appointment of representatives of the state, their powers, and the procedure of preparation and decision making on behalf of the State set in the Russian Federation Government Decree «On the appointment and activities of state representatives in the governing committees set up in accordance with the terms of the production sharing agreements» of 14 March 2006 №133.14

The provisions of paragraph 1 of article 8 of the Law “On Production Sharing Agreements” are defined by the approximate order of production sharing between the parties. Changing the way of production sharing is not allowed.

Paragraph 2 of Article 17 of the Federal Law "On Production Sharing Agreements" provides for the reservation of the stability of the investment regime for the investor. If during the term of the agreement by the legislation of the Russian Federation, Russian Federation and the legal acts of local self-government will set the standards, deteriorating business performance of the investor under the agreement, the text of the agreement have been changed to ensure investor commercial results, to which he was entitled to expect at the conclusion of the production sharing agreement.

Attention is drawn to limit the application of this clause in case of changes in the laws of the Russian Federation and it subjects. Thus, by-laws, worsening terms of investment, are not grounds for a corresponding change in the agreements.

This law was the first act providing for the possibility of failure of the Russian Federation on jurisdictional immunities of the agreements concluded with foreign citizens and foreign legal persons (Article 23 of the mentioned Law)\textsuperscript{15}.

It should be noted that the bilateral agreements between the Government of the Russian Federation and foreign governments on the promotion and reciprocal protection of investments are to be concluded on the basis of the Model Agreement, approved by the, Russian Federation Government Decree of 9 June 2001 №456\textsuperscript{16}.

Formed for the early 90-ies of the last century investment legislation did not provide any significant features of foreign investment in the oil and gas industry.

\textsuperscript{15} Despite widespread opinion, the waiver of the state immunity can be pronounced not only expressis verbis. For example the filing a counter-claim by the state or appearance of a representative of the state in court can be appraised as a waiver of state immunity.


These exemptions concerned two aspects of foreign investors:

1) their participation in the charter capital of business entities of strategic importance for national defense and national security;
2) they commit transactions that establish their control of such business entities.

Federal Law №57-FZ does not apply to relations connected with the implementation of foreign investment and regulated by other federal laws or duly ratified international treaties to which the Russian Federation.

The relationships associated with foreign investment in the field of military-technical cooperation between the Russian Federation and foreign states, governed by the laws of the Russian Federation on military-technical cooperation.

The effect of this legal act also applies to relations connected with foreign investments by foreign states, international organizations or people under their control in the business entities of strategic importance for national defense and state security, and asking for the use of subsoil plots of federal significance, if charter capital of business entities share (s) of the Russian Federation is more than fifty percent of the votes attached to the voting shares (interests) in the authorized capital of business entities, and (or) if the Russian Federation shall have the right, directly or indirectly, more than fifty percent of the total number of these votes.

The essence of the Federal Law number 57 is succinctly stated in paragraph 1 of article 4 - transactions that entail the establishment of a foreign investor (a group of persons

17 Collected Legislation of the Russian Federation 5.05.2008, N 18, article 1940 (amended 29.12.2011)
including a foreign investor) on the business entities of strategic importance, is allowed if a decision on preliminary approval, which is issued by the federal executive body authorized to perform the functions for Control of Foreign Investments in the Russian Federation.

This rule provides an exception - does not require approval of the transaction if the transaction to a foreign investor (group of persons) directly or indirectly more than 50% of the votes attached to the voting shares (shares) in the authorized capital of the economic entity.

The procedure for filing an application for preliminary approval of the transaction and the application for approval of establishing control in accordance with the Federal Law № 57 is that a foreign investor who intends to make a deal to take control, or control over a business entity of strategic importance, must submit 2 copies of the authorized Body, accordingly the application for preliminary approval of the transaction or request for approval of establishing control.

Russian Federation Government Decree of 17 October 2009 №83818 Rules approved for preliminary approval of transactions and agreement to establish control of foreign investors or a group of persons including a foreign investor on the business entities of strategic importance for national defense and national security. In addition to matching the above transactions, foreign investors or a group of persons are required to submit to the authority information on purchasing 5 or more percent of shares (shares) of the share capital of the business entities of strategic importance to the procedure established by the Government of the Russian Federation.

Russian Federation Government Decree of October 27, 2008 № 795 approved the "Rules for submission of a foreign investor or a group of persons including a foreign investor, 

information on transactions in shares (shares) of the share capital of the business entities of strategic importance for national defense and security state "19.

Of the scope of the Federal Law №57-FZ are withdrawn:

− relationships associated with foreign investment and regulated by: 1) other federal laws, and 2) the ratified international treaties of the Russian Federation;

− relations related to foreign investments in the field of military-technical cooperation between the Russian Federation and foreign states, governed by the laws of the Russian Federation on military-technical cooperation;

− the relations in the sphere of foreign investment in companies engaged in activities of strategic importance and are the users of subsoil plots of federal significance, does not apply to the relationship associated with foreign investment in companies in the authorized capital of which the share (s) of the Russian Federation is more than 50 % of the votes attached to the voting shares (interests) in the authorized capital of business entities, and (or) if the Russian Federation the right to dispose of more than 50% percent of the total number of these votes.

This rule provides an exception: Trades that are committed by foreign states, international organizations or organizations controlled by them, and as a result of which these actors acquire the right to dispose of more than 25% of the votes attached to the voting shares (shares) of the share capital of companies of strategic importance, as well as another opportunity to block decisions of the management of such business entities or acquire the right to dispose of more than 5% of the votes attached to the voting shares (interests) in the authorized capital of such companies engaged in geological exploration and (or) exploration and production of minerals on subsoil plots of federal significance (hereinafter - the use of subsoil plots of federal significance) are also subject to prior approval.

Federal Law of 29.04.2008 №57-FZ highlights among business entities of strategic importance, the ones who carry out the use of subsoil plots of federal significance.

First, the deal to acquire five per cent of the share capital of the company is to be agreed (paragraph 3. Article 2 of the Act), and this rule applies even if the authorized capital of the

19 Collected Legislation of the Russian Federation, 03.11.2008, №44, article 509.
Russian share of such companies is more than 50% (Claim 7 of Article 2 of the Act) and, if such a transaction before committing investor directly or indirectly more than 50% of the vote in the share capital of such company\textsuperscript{20}.

Second, to establish other such societies, more stringent criteria of being under the control of a foreign investor: 1) the ability to directly or indirectly control more than 10 percent of the share capital, and 2) the right of foreign investors to appoint a sole executive body, or more than 10 percent of collegial executive body, and 3) the ability to elect more than 10 percent of the board of directors (or other collective management body) of such a society.


The given federal law has amended the Law of the Russian Federation "On Subsoil" in 1992. The criteria and procedure for classification of subsoil to the subsoil plots of federal significance has undergone some changes in the subject structure of subsoil users. According to Article 9 of the Federal Law "On Subsoil" they can be a business entity, including the members of a society, foreign citizens, legal persons, unless otherwise provided by federal law.

\textsuperscript{20} In case when the corporation, do not use the federal subsoil parcel such acquisitions are not subject to compliance.

\textsuperscript{21} Collected Legislation of the Russian Federation, 05.05.2008, №18, article 1941 (amended 30.11.2011)
However, due to the introduction of the category of subsoil plots of federal significance put some differentiation potential users of such sites. They fall into two categories: 1) subsurface users in the areas of federal significance, and 2) subsurface users on subsoil plots of federal significance of the continental shelf of the Russian Federation, as well as in areas of federal importance, situated on the territory of the Russian Federation, and extending its continental shelf.

Subsoil users on subsoil plots of federal significance, can be legal entities established under the laws of the Russian Federation, unless the Government of the Russian Federation in accordance with the present law does not establish additional restrictions for admission to the competition or auction for the right to use such subsoil established under with the legislation of the Russian Federation entities with foreign investors.

Subsoil users on subsoil plots of federal significance of the continental shelf of the Russian Federation, as well as in areas of federal importance, situated on the territory of the Russian Federation, and extending its continental shelf, can be legal entities that are established in accordance with the laws of the Russian Federation, have experience of developing sites of the continental shelf of the Russian Federation not less than 5 years, in which the share (s) of the Russian Federation in the authorized capital of more than 50%, and (or) for which the Russian Federation has the right to directly or indirectly more than 50% of the total number of votes the voting shares (interests) in the authorized capital of such entities.

Subsoil users under production-sharing agreements may be, as before, legal entities and established on the basis of cooperation agreements (contracts of a partnership) and not having the status of a legal entity association of legal persons, provided that the members of such
associations are jointly and severally liable for obligations arising from the production-sharing agreements.

The bodies of state power of the Russian Federation in accordance with the new item 13.1 acquired the right decision on tenders and auctions for subsoil use (the composition and procedure of the tender or auction commissions, the definition of the procedure and conditions for such procedures or auctions).

The provision of defense and state security in tenders (auctions) into more concrete. Earlier consideration of national security was in last place in the list of the main criteria for deciding the winner of the competition, according to the new article 13.1, in the interests of national defense and security of the State Government of the Russian Federation in determining the order and conditions of tenders or auctions for the right to use subsoil plots of federal significance, except in the areas of federal importance of the continental shelf of the Russian Federation and the subsoil plots of federal significance, located in the territory of the Russian Federation and extending its continental shelf, on the proposal of the Ministry of Defense and (or) of the Federal Security Service can be set to limit admission to participate in such tenders or auctions, established in accordance with the laws of legal entities with foreign investors.

Legislative regulation of foreign investment in the energy industry now represents a set of laws passed and operating in a number of areas of law. Without setting goal-depth coverage of the content of these acts, we will try to provide current to date their system.

Designated we are interested in the field of legal regulation occupy codified acts. First of all, we are talking about the Civil Code of the Russian Federation.

Of course the Civil Code of Russian Federation does not regulate the investment activity in oil and gas sector directly. But a great amount of the investment in oil and gas
activities legal regime concrete provisions are defined by Civil Code of Russian Federation abstract norms.

Besides, civil legislation consists of the Civil Code of Russian Federation and federal laws adopted pursuant thereto. The norms of civil law (which regulates the relationships based on equality and autonomy of the parties) made in other laws are to be adopted in accordance with the Civil Code of Russian Federation.

One of the legal forms of the international investment cooperation broadly widespread is a participation of the foreign investors in Russian organizations – legal persons. They are subjects to the Civil Code of Russian Federation provisions on the legal persons. In the force of article 1214 Civil Code of Russian Federation the contract of the establishment of the legal entity with a foreign participation, is subject to the application of the law of the state where under the provisions of that contract the legal entity is to be established.

The foreign investment can be made in any kind of objects which are not excluded from the civil overturn. The legal regime of such objects is constructed by the Civil Code of Russian Federation. For the aims of their activity, the foreign investors conclude different types of the contracts, which underlays the Civil Code of Russian Federation. This list can be continued over and over.

So the legal bases of the foreign investors activity is provided in the Civil Code of Russian Federation, if the other is not defined by the acts of the international law of Russian Federation.

The tax and revenues system, paid by the foreign investors in Russia is stipulated in the Tax Code of Russia\textsuperscript{22}.

In addition to the taxes which are to be paid under the common tax regime (corporate income tax, the tax on mineral extraction activities, etc.), some foreign investors can become the taxpayers of the special regime.

For instance, foreign investors, participating in the production sharing agreement become the subjects of the special tax regime according to the Chapter 26.4 Tax Code of Russia « Taxation system of production-sharing agreements ».


Under the Federal law «On the Continental shelf of Russian Federation» of 30 November 1995 г. №187-FZ\(^{27}\) the parcels of the continental shelf can be granted to physical and legal persons of Russian Federation and foreign states, and to the or two or more legal entities acting as a partnership.

The subsoil parcels are granted for use of miners for the following aims:

- regional geological survey;
- geological survey;
- geological survey, geological research and the extraction of the mineral resources;

\(^{23}\) Collected Legislation of the Russian Federation, 01.01.1996, № 1, article1 (amended 05.04.2013).


— other forms of mining activity pointed out in the Law “On the subsoil”.

This Law defines the legal status of the continental shelf of Russia, it’s sovereign rights and jurisdiction on the continental shelf according to the Constitution of Russia, commonly recognized principles and norms of the international law and international treaties of Russian Federation.

Federal law «On the concession agreements» of 21 July 2005 № 115-FZ\(^ {28}\) regulates the relationships on the conclusion, signing, changing and ending the concession agreements, provides the guarantees of the rights and interests of the concession agreements.

Under the provisions of that law under the concession agreement one party (the concessionaire) is obliged to create and (or) reconstruct за свой счет the real property defined in this agreement (hereinafter – the object of the concession agreement), the rights of the proprietor to this object belongs or will belong to the other party (concedent), to make activities using this object, and the concedent is obliged to provide the concessionaire the rights of possession and use of this object for the term mentioned in the concession agreement.

The production and income received by the concessionaire as a result of the activity provided under the concession agreement belongs to the concessionaire, if the concession agreement does not stipulate the other terms.

The object of the concession agreement can be a real property which is expressly pointed out in the point 1 of the article 4 of this Law.

1) roads and transport infrastructure engineering structures, including bridges, overpasses, tunnels, parking of vehicles, vehicle checkpoints, paragraphs charging vehicle owners;
2) the objects of railway transport;
3) pipeline facilities;

4) sea and river ports, including artificial land plots intended for the creation and (or) the reconstruction of the waterworks ports, waterworks ports, the objects of their production and engineering infrastructure;

5) marine and river vessels, mixed (river - sea), as well as the court, asking for icebreaking, hydrographic, research activities, ferry, floating docks and dry;

6) airfields and buildings and (or) buildings used for take-off, landing, taxiing and parking of aircraft, as well as created and designed to organize civil air traffic aviation infrastructure and air traffic services, navigation, landing and communication;

7) and industrial and engineering infrastructure of airports;

8) waterworks;

9) facilities for the production, transmission and distribution of electric and thermal energy;

10) utility infrastructure and other public utilities, including the facilities of water, heat, gas and electricity supply, sewerage, waste water treatment, recycling and disposal (disposal) of waste, objects designed to illuminate areas of urban and rural settlements, objects intended for land improvement, as well as facilities and social amenities;

11) metro and other public transport;

12) health care facilities, including facilities designed for the spa treatment;

13) Objects of Education, Culture, Sports, objects used for recreation and tourism citizens, other aspects of social and cultural facilities.

Concession agreement is a “mixed contract” which is under the provisions of the paragraph 3 article 421 of the Civil Code of Russian Federation.

On the side of the concedent (the capital recipient) can act: Russian Federation, through the person of the Government of Russia or the federal executive body empowered by the Government, The region of Russia, through the person of the regions state body or a municipal territory through the person of the municipal body.

Some powers and duties of the concedent can be delegated to the state bodies and legal entities, and concedent’s duty is to inform the concessionaire of such bodies and entities and
it’s rights and duties. The powers of the concedent can be executed by the state company «Russian highways» 29.

The legal role of the concessionaire can be played by the private entrepreneur, Russian or foreign legal entity, or two or more legal entities acting as a partnership.

Thus, first, the number of potential concessionaires are excluded citizens of the Russian Federation, not individual entrepreneurs and foreign citizens (regardless of whether they have the right of doing business), and secondly, is somewhat difficult part of foreign organizations that are not legal persons.

The term of the concession agreement, the amount of the concession price, the form, the order and the moment of it’s payment are defined by the concession agreement itself (article 6 of the mentioned Law).

30 December 2009 The Regulation of the Government of Russian Federation №1141 approved the Statement of the Consultative Council on the foreign investments in Russia 30, which forms of the chiefs of the foreign investors in Russia’s economy, international organizations and other bodies participating in the work on the formation of the investors-friendly climate in Russian Federation the Consultative Council on the foreign investments in Russia executes the following functions:

a) prepare proposals aimed at improving the investment attractiveness of the Russian economy;

b) consider the reports by federal bodies of executive power and foreign organizations, proposals and recommendations;

c) consider the differences between the federal bodies of executive power and foreign organizations whose leaders are members of the Council;

d) gives the order in the prescribed manner by the federal executive bodies and the leaders of the recommendations of foreign organizations - members of the Board on

29 Established under the rules of the Federal law of 17.07.2009 №145-FZ «On the state company «Russian highways» and on the changes in legislative acts of Russian Federation

30 Was not published officially
matters relating to the implementation of the state policy in the field of investment, attracting foreign investments into the Russian economy and a resolution of the problems of foreign investors;

e) approves annually the list of its priorities, the priorities of the economic development of the Russian Federation and the most significant problems faced by foreign investors.

An only one transfer law shows a wide range of regulated relations: from the establishment of common rules for investment activities, the legal status of investors to the legal regulation of its individual species. The research made by the author of this article shows that the legislative acts in this scope of relations are of rather small amount.

Federal law «On the gas supply in Russian Federation» or 31 March 1999 г. №69-FZ\(^{31}\) defines the legal, economical and organization bases in the gas supply and directed to meet the needs of the state in the form of strategic energy resources.

Under the “gas supply” the law understands one of the forms of energy supply, which concerns the providing consumers with gas, including work to establish the fund explored deposits, production, transportation, storage and supply of gas. Analyzed by the law, in particular, established grounds and procedure for classifying gas fields to the objects of federal significance (Article 10). These include gas fields that are of strategic importance for the gas supply in the Russian Federation. The assignment of the gas fields to the objects of federal carried out in accordance with the Law "On Subsoil". Much attention is paid to the Act economic fundamentals of gas supply. In particular, we have these principles of state policy in the field of pricing of gas supply, such as:

- creation of favorable conditions for the search, exploration and development of gas production, transportation, storage and supply of gas, to ensure self-financing organizations gas supply systems;
- monitoring compliance with state-regulated prices and tariffs in the gas supply;

\(^{31}\) Collected Legislation of the Russian Federation, 05.04.1999, №14, article 1667 (amended 05.04.2013).
− promoting the use of gas as a fuel for vehicles in order to reduce the emission of harmful substances into the environment and improve the economic efficiency of fuel resources;
− ensuring the competitiveness of Russian gas in the global energy market, etc.

Federal law «On the safety of the environment» or 10 January 2002 г. №7-FЗ\(^{32}\) provides obligatory norms and standards in the scope of the safety of the environment during the functioning of the oil & gas plants.

In particular, Article 46 of the Act established that the location, design, construction, reconstruction, commissioning and operation of oil and gas production facilities, processing facilities, transportation, storage and distribution of oil, gas and refined products should provide for effective measures to clean up and disposal of waste and the collection of oil (passing) gas and brine, and reclamation of contaminated land, reducing the negative impact on the environment, as well as to compensate for damage to the environment caused during the construction and operation of these facilities.

Construction and operation of oil and gas production facilities, processing facilities, transportation, storage and distribution of oil, gas and refined products are allowed in the presence of contaminated land remediation projects in the areas of time and (or) permanent land acquisition, the positive conclusions of the state ecological examination of the legislation and other government expertise, financial guarantees for the realization of such projects.

Construction and operation of oil and gas production facilities, processing facilities, transportation and storage of oil and gas fields located in the water areas on the continental shelf and the exclusive economic zone of the Russian Federation, are allowed at a positive

\(^{32}\) Collected Legislation of the Russian Federation, 14.01.2002, №2, article 133 (amended 05.03.2013).
conclusion of the state ecological examination of the legislation and other public examinations after the recovery of the contaminated land parcels.

Federal Law «On the energy savings and on the energy effectiveness increasing and on the changes to certain laws of Russian Federation» or 23 November 2009 №261-FZ provides the energy service contract – a service contract, which provides the actions directed to the energy saving and the energy effectiveness increasing for the interest of the other party (Chapter 5 of the mentioned law).

Produced in the territory of the Russian Federation, imported to the Russian Federation for a purposes of the commercial overturn in the territory Russian Federation the goods (including the number of household energy-consuming devices, computers and other electronic devices and computer office equipment) should contain information about the class of their energy efficiency in the technical documentation supplied these products in their marking on their labels. The above requirement applies to the products of the following:

1) household energy consuming devices with January 1, 2011;
2) computers or other electronic devices and computer office equipment from 1 January 2012.

The Federal Law "On Natural Monopolies" defines the legal basis of federal policy with respect to natural monopolies in the Russian Federation and is aimed at balancing the interests of consumers and natural monopolies, which provides access to the goods sold by them to the consumers and the effective functioning of the natural monopolies. The spheres of natural monopolies, the Act refers, in particular:

- transportation of oil and oil products through pipelines;
- gas transportation through pipelines.

34 Collected Legislation of the Russian Federation 21.08.1995, N 34, article 3426 (amended 27.01.2013)
Bodies regulating natural monopolies in respect of the activities of natural monopolies can be used the following methods:

1) price regulation by definition (establishment) of prices (tariffs), or their maximum level;

2) Identification of consumers subject to obligatory service, and (or) the establishment of a minimum level of security in case of failure to meet the full needs of goods produced (sold) a natural monopoly, with the need to protect the rights and legitimate interests of citizens, state security, the protection of nature and cultural values.

The Federal Law «On the export of gas» 18 July 2006 г. №117-FZ provides exclusive right to the export of natural gas to the legal entity which is a proprietor of the united system of the gas supply or it’s dependent society where the proprietor of the united system of the gas supply has 100% of the shares.

Summing up the legislative support of relationships in the energy industry, it is safe to say that at the present time in Russia there is no sufficient number of legislative acts in the field. Those who accepted solve the problems of fuel and energy complex only partially.

Based on the above, and considering that all regulatory and legislative activity must further meet the goals and objectives of the long-term development of the energy sector of the country as defined in the Energy Strategy of Russia for the period up to 2030, we can conclude on the need for the energy industry in more complex pieces of legislation.

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