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**Legal issues of foreign direct investment in the Russia Federation**

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# Introduction

Relevance of the research topic. The role of investments as a factor in the economic development of the state is increasing. Mutual exchange of investments is what characterizes the era of globalization. As a result of the era of globalization, the problem of the relationship between the interests of a foreign investor and the state that receives foreign investment has arisen.

 Over the past 60 - 70 years, the term "foreign investment" has changed both the understanding of what "investment" is and the content of the term "foreign investor". At the same time, the understanding of the first term has greatly expanded, while the essence of the second has become more complicated and often turns out to be logically contradictory.[[1]](#footnote-1)

It should be noted that the concept of foreign investment in the modern world is increasingly expanding and diversifying, and this, in our opinion, not only does not eliminate the difficulties with its definition, but also exacerbates them. It often becomes more and more difficult to determine whether we are dealing with investments in a particular case.

A single definition and understanding of foreign investment are still missing both in international practice and in national legislation, which is also explained by the great variety of forms and types of foreign investment, as well as ways and methods of their implementation. This is a huge problem, because it is impossible to operate with the term "foreign investment" and carry out their legal regulation without a clear understanding of the essence of the term.

For a foreign investor, it is important to have appropriate legal guarantees in the host country, which are implemented with the help of international legal and national legal mechanisms. However, everything is not so simple. The recipient state needs to protect its national interests, and therefore cannot provide a wide range of legal guarantees for a foreign investor.

A foreign investor, in the territory of the recipient state, is exposed to certain risks, such as expropriation, changes in the national legislation of the host state, nationalization, and other risks.

The main guarantees aimed at protecting the rights of foreign investors from the risks listed above are: the right to timely, fair compensation in the event of expropriation, nationalization, the right to receive and use income from investments, the right to freely move property outside the host state, "umbrella reservations". It should be noted that all this is complicated by the presence of different points of view on legal guarantees, such as "stabilization clause" and "umbrella reservations" are a destabilizing and complicating factor. It is important to note that the timing of compensation in the event of nationalization or expropriation is not properly regulated in many international investment agreements. Referring to the above, we can conclude that, along with the provision of legal guarantees to a foreign investor, certain restrictions are also necessary in relation to a foreign investor in order to maintain a balance of interests between the recipient state and the foreign investor. Maintaining a balance of interests is an integral part of legal relations, including those complicated by a foreign element.

The World Investment Report notes that about 150 countries are oriented towards the development of next-generation international investment agreements. These countries are taking a number of actions, such as reviewing national contract systems, as well as reviewing contract models in line with the UNCTAD package of measures to reform the international investment regime.[[2]](#footnote-2)

In this regard, at the present stage of development of cross-border investment relations, it will be necessary to solve these problems within states, as well as their interaction at the international level.

In this paper, we consider the problem of the lack of a single definition of the term "investment" in the legislation, as well as the legal problems of attracting foreign direct investment in the Russian economy at the present stage of development. The reasons for the unfavorable state of the investment climate are identified. And also, ways of solving problems of an investment nature are proposed.

The object of the dissertation. Legal relations related to the implementation of national and international guarantees of the rights and legitimate interests of foreign investors.

The subject of the dissertation. Norms of Russian and foreign legislation, provisions of international treaties, Russian and international judicial and arbitration practice in the field of resolving international investment disputes.

Purpose of the study. Formation of a scientific approach to the legal mechanisms for the implementation of guarantees of the rights and legitimate interests of foreign investors and the development of recommendations, solutions for improving national and international guarantees provided to foreign investors.

To achieve this goal, the following tasks are formed:

1. Analyze the concept of "investment" in Russian and international legislation;

2. Analyze the national legislation of the Russian Federation, international multilateral and bilateral investment agreements, the practice of international organizations, international commercial arbitrations in the field of investments.

3. Consider national legal and international legal guarantees for the protection of the rights of foreign investors.

4. To study the features of the implementation of the norms of international investment agreements in national legislation in order to improve it.

5. Describe the need to settle the balance of interests between the recipient state and the foreign investor.

6. Consider the forms of foreign direct investment and the problems of their legal regulation;

7. Develop recommendations for improving national and international guarantees provided to foreign investors.

Methodological basis of the dissertation.

Since the legal guarantees of foreign investors are of a complex intersectoral nature, our study is based on the main doctrinal provisions contained in the general theory of law, constitutional law, civil law, private international law, and public international law. The legal basis for the study is the national legislation of the Russian Federation, international multilateral and bilateral agreements in the field of investment law, in particular the protection of the rights of foreign investors.

This topic is covered by domestic authors: A.M. Lapteva, O.Y. Skvortsov, A.G. Bogatyrev, N.G. Doronina, K. Kinyashova, A.A. Anufrieva, M.M. Boguslavsky, G.E. Vilkova, T.V. Novikova, I.Z. Farkhutdinov and other researchers.

Also, foreign authors, including R. Dolzer, C. H. Scheuer, I. Shihata, M. Norton Patrick, G. Schwarzenberger, S. Friedman, Y. Rat, B.A.Wortley, K. Yannaca-Small. and others.

The methodological basis of the dissertation research is:

1. the historical method, which made it possible to consider the development of national investment legislation and international agreements in the field of

guarantees provided to foreign investors;

1. the method of comparative law, which made it possible to indicate similarities and differences in the legal regulation of guarantees provided to foreign investors in different countries;
2. a systematic method that made it possible to study the legal guarantees of foreign investors contained in national legislation and international treaties as a set of interrelated elements;
3. an analysis that made it possible to identify shortcomings in the legal regulation of guarantees provided to foreign investors.

Normative basis of the research. The normative basis of the dissertation research is the national legislation of the Russian Federation and other states, as well as international multilateral and bilateral agreements in the field of implementation of guarantees of the rights and legitimate interests of foreign investors.

Scientific novelty of the dissertation research.

The ineffectiveness of the "stabilization clause", "umbrella reservations", as guarantees that ensure the implementation of guarantees of rights and legal interests of foreign investors at the present stage of development of cross-border investment relations, as well as the imperfection of the conditions of various international agreements on the procedure and terms for payment of compensation in the event of expropriation, nationalization of the property of a foreign investor. The necessity of combining the principle of equality of parties arising from the legal relationship of a civil law contract concluded between a foreign investor and a state receiving foreign investment in the process of international investment activity is substantiated. In work a comprehensive study of national legal and international legal mechanisms for the implementation of guarantees of the rights and legitimate interests of foreign investors was carried out. The issue of improving some aspects of the legislation was considered.

# Chapter 1. The problem of defining the concept of "investment"

# The concepts of "investment" in Russian law

The world practice of attracting foreign investment shows that one of the fundamental aspects of the state policy in the field of investment is its legal regulation. As a rule, any study of the issue, including the legal regulation of any sphere, begins with the definition of the conceptual apparatus.

The definition of persons who can be recognized as foreign investors is of great practical importance in the legal regulation of foreign investment. This is due to the possibility of their entrepreneurial activities in the recipient country, as well as the provision to foreign investors of the relevant rights, benefits and guarantees provided for by national legislation and international treaties.[[3]](#footnote-3)

The concepts of "foreign investment" and "foreign investor" are enshrined in the national legislation of the Russian Federation by many federal laws and international treaties. If an international treaty provides for a different concept of "foreign investment" than federal law, then the concept formulated by the international act is applied. In some cases, international acts, when defining the concept of "foreign investment", refer to the internal legislation of the recipient state. In some cases, "domestic" investment laws, when defining the concept of "foreign investment", make reference to the "profile" law - the Law on Foreign Investments.[[4]](#footnote-4)

A. G. Bogatyrev, I. A. Vdovin, D. Carreau, P. Juillard, I. Z. Farkhutdinov point to the difficulties associated with the formation of a single legal concept of investment. [[5]](#footnote-5)

Let's consider the main signs of investment and identify the economic essence of investment and investment activity.

The first sign: investments are investments. Investment is the cost of producing and accumulating the means of production and increasing inventory.[[6]](#footnote-6) Investing is the process of parting with money today in order to get more of it in the future.[[7]](#footnote-7)

The second sign: the investment is characterized by an urgent nature, i.e. the potential benefit comes later, while there is no guarantee of benefit.

The third sign: investment is a risk. Investment activity involves the loss of investments.

The fourth feature: investments – investments made at the expense of savings.[[8]](#footnote-8) But not all savings are investments, because savings can be used for other purposes, such as consumer ones.

The fifth feature: investments are made with a specific purpose.[[9]](#footnote-9)

Summing up all of the above, we can conclude that investments are investments that involve obtaining benefits in the future, carried out on a risky basis at the expense of savings or attracted funds and pursuing certain socially significant goals.

Such a definition meets the goals of studying this phenomenon in the context of economic theory, but not legal, because all these features do not lend themselves to legalization, do not meet the necessary requirements based on strictly formal positions. Each of the elements of this concept is evaluative in nature and therefore largely depends on the subjective perception of a particular interpreter. This circumstance is the reason why there is no single definition of the concept of «investment» in both the national legal order and international law.

In the decision of the Presidium of the Supreme Arbitration Court of the Russian Federation of 02.07.2013 No. 1039/13 in case No. A51-11274/2012, it is noted that the term «investment» does not have its own strict legal content and is usually used in legislation as a general designation.

The diversity in legal definitions of the concept of investment is based on the fact that a specific regulatory act, which formulates the definition of investment, pursues a specific regulatory purpose. Since the goals of different laws are different, the legal models of the concept of "investment", which are laid down in a particular regulatory act, may differ. For example, the Law on Foreign Investment is aimed at attracting and effectively using foreign material and financial resources, advanced equipment and technologies, management experience in the Russian economy, ensuring the stability of the conditions for foreign investors' activities and ensuring compliance with the legal regime of foreign investment with international law and international practice of investment cooperation; and the Federal Law "On Special Economic Zones in the Russian Federation" aims to develop the manufacturing sectors of the economy, high-tech sectors of the economy, the development of tourism, health resorts, port and transport infrastructures, the development of technologies and the commercialization of their results, the production of new types of products.

Therefore, the concept of "investor", which is derived from the concepts of "investment" and "investment activity", depends on how the legislator defines the concept of "investment", "investment activity".

"Foreign investments" - investments of foreign capital made by a foreign investor directly and independently in the object of entrepreneurial activity in the territory of the recipient country in the form of objects of civil rights (money, property rights, securities, intellectual property, services and information).[[10]](#footnote-10)

This approach to the definition of "foreign investment" is reflected in some international bilateral agreements concluded by the Russian Federation. For example, consider Russian Federation - Sweden Bilateral Investment Treaties (BIT).[[11]](#footnote-11)

1) The term "investment" shall mean any kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation, and shall include in particular, though net exclusively:

(a) Movable and immovable property,related property rights, as well as leases;

(b) Shares, stocks,bonds and other forms of participation in a company or enterprise;

(c) Claims to money or to any performance under contract having an economic value;

(d) Intellectual property rights, as well as technology, know-how and goodwill;

(e) Rights, conferred by law or under contract to undertake economic activity, including rights to search for, extract or exploit natural resources.

The tern "investment" shall also mean an investment made by an investor of one Contracting Party in the territory of the other Contracting Party indirectly through a legal person of a third State.

A change in the form in which assets are invested does not affect their character as investment.

(2) The term "investor" shall mean:

(a) Any natural person who is a citizen of a Contracting Party in accordance with its laws;

(b) Any legal person constituted in accordance with the legislation of a Contracting Party.[[12]](#footnote-12)

As a rule, the definition of the concept of "foreign investor" and "investment" is contained in the national legislation on foreign investment. In the Russian Federation, the concept of "foreign investor" and "investment" is enshrined in the Federal Law of July 9, 1999 N 160-FZ "On Foreign Investments" (FZ "On Foreign Investments")[[13]](#footnote-13), thus, in Art. 2 gives the following description of the concept of "foreign investor":

In accordance with Russian law, a foreign investor is interpreted as follows:

1. A foreign legal entity whose civil legal capacity is determined in accordance with the legislation of the state in which it is established and which is entitled, in accordance with the legislation of the said state, to make investments in the territory of the Russian Federation, with the exception of a foreign legal entity that is under the control of a citizen of the Russian Federation and (or) a Russian legal entity;

2. A foreign organization that is not a legal entity, whose civil legal capacity is determined in accordance with the legislation of the state in which it is established, and which is entitled, in accordance with the legislation of the said state, to make investments in the territory of the Russian Federation, with the exception of a foreign organization that is not a legal entity and being under the control of a citizen of the Russian Federation and (or) a Russian legal entity;

3. A foreign citizen whose civil legal capacity and legal capacity are determined in accordance with the legislation of the state of his citizenship and who is entitled, in accordance with the legislation of the said state, to make investments in the territory of the Russian Federation, with the exception of a foreign citizen who also has citizenship of the Russian Federation;

4. A stateless person who permanently resides outside the Russian Federation, whose legal capacity and legal capacity are determined in accordance with the legislation of the state of his permanent residence and who is entitled, in accordance with the legislation of the said state, to invest in the territory of the Russian Federation;

5. An international organization that is entitled, in accordance with an international treaty of the Russian Federation, to invest in the territory of the Russian Federation;

6. Foreign states in accordance with the procedure determined by federal laws.[[14]](#footnote-14)

It should be noted that in this form the definition of the concept of "foreign investor" appeared in the Russian legislation on foreign investment in May 2018, when the Federal Law "On Amendments to Certain Legislative Acts of the Russian Federation in Part of Clarifying the Concept of "Foreign Investor" dated May 31, 2018 No. 122-FZ.[[15]](#footnote-15)

The changes introduced excluded from the circle of persons falling under the concept of "foreign investor", foreign organizations under the control of citizens of the Russian Federation and (or) Russian legal entities, and foreign citizens who also have the citizenship of the Russian Federation.[[16]](#footnote-16)

The introduction of these changes in the legislation on foreign investment was caused, on the one hand, by the need to return the funds of Russian citizens who were abroad to the state economy. This Federal Law on Amendments is also aimed at creating an effective mechanism to prevent Russian legal entities and citizens from receiving unreasonable benefits provided for foreign investors, as well as improving the norms of investment legislation. The measures taken are related to the presence of numerous abuses of rights and benefits granted to foreign investors, Russian legal entities and individuals through the actual implementation of investment projects, using their own foreign companies registered abroad.

In accordance with the Federal Law "On Foreign Investments", the term investment is defined as an investment of foreign capital, carried out by a foreign investor directly and independently, in an object of entrepreneurial activity in the territory of the Russian Federation in the form of objects of civil rights owned by a foreign investor, if such objects of civil rights are not withdrawn out of circulation or not limited in circulation in the Russian Federation in accordance with federal laws, including money, securities (in foreign currency and the currency of the Russian Federation), other property, property rights having a monetary value of exclusive rights to the results of intellectual activity (intellectual property), as well as services and information.[[17]](#footnote-17)

The Federal Law "On Foreign Investments" does not disclose the purpose for which investments are made, namely, making a profit. This is the main shortcoming of the description of the concept. In the legislative interpretation, the economic essence of the regulated phenomenon is not visible. An investor becomes an investor only when he places capital as a means of earning income.

N.G. Doronina also connects this definition with making a profit: "The concept of investment can refer to financial transactions, when money is placed in securities, as well as to certain actions of a person performed for the purpose of making a profit and with the risk of losing both the expected profit and the invested capital".[[18]](#footnote-18) It seems expedient to indicate in the Federal Law "On Foreign Investments" as the purpose of foreign investment making profit.

Consider the concept of the term "investment", which is given in the Federal Law of February 25, 1999 N 39-FZ "on investment activities in the form of capital investments" (FZ "On investment activity in the form of capital investments") Investments - cash, securities, other property, including property rights, other rights having a monetary value, invested in objects of entrepreneurial and (or) other activities in order to make a profit and (or) achieve another beneficial effect.[[19]](#footnote-19)

When interpreting various legislative definitions of "investment", in particular when comparing these concepts in the FZ "on investment activity in the form of capital investments" and the FZ "on foreign investments", one can identify a different approach: the first law interprets the concept of "investment" as an object (what is invested by the investor), and the second - as a process (investment actions).

This inconsistency of legislative formulations is noted in the legal literature.[[20]](#footnote-20)

In addition to the above basic acts, there are also a number of laws relating to work on investment investments in various fields and industries. For example, the Civil Code of the Russian Federation, the Tax Code of the Russian Federation, the Customs Code of the Customs Union establish general rules for participants in legal relations regulated by these acts. Foreign investors are among such participants - they are all participants in civil law relations, they pay taxes on the territory of the Russian Federation.

"Foreign investment" is a certain capital (foreign investment) endowed by the recipient country with an appropriate legal regime (economic benefits, restrictions, protection of a foreign investor).[[21]](#footnote-21)

The legal status of a foreign legal entity is determined on the basis of the personal law of the legal entity. In the legal literature, it is proposed to distinguish between the concepts of "personal status of a legal entity" and "nationality of a legal entity".[[22]](#footnote-22) An overview of the practice of consideration by arbitration courts of cases involving a foreign investor, brought to the attention of the courts by the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated July 9, 2013 No. his personal law.[[23]](#footnote-23) The main issues to be resolved on the basis of the personal status of a legal entity are contained in the Civil Code of the Russian Federation (CC RF) dated November 30, 1994 N 51-FZ, namely Art. 1202 of the Civil Code of the Russian Federation.[[24]](#footnote-24)

Russian law or, at the choice of the creditor, the personal law of such a legal entity is applied to a person established abroad, carrying out its entrepreneurial activities in the territory of the Russian Federation. In this case, it should be pointed out that special legislation may contain special definitions of the concept of "foreign investor", "foreign investment". For example, in Art. 1 of the Federal Law "On currency regulation and currency control" of December 10, 2003 N 173-FZ[[25]](#footnote-25) defines "non-residents": legal entities established in accordance with the legislation of foreign states and located outside the territory of the Russian Federation; organizations that are not legal entities, created in accordance with the legislation of foreign states and located outside the territory of the Russian Federation.

Thus, when classifying a specific entity as a foreign investor, it is necessary to take into account the nature of the emerging relationship and the existence of special legislation in which other terminology can be used with respect to a foreign investor.

However, to assess the state of regulation of foreign investment from a legislative point of view, consideration of one domestic level is not enough. An increase in the volume of incoming foreign investment is possible only in the case of synergy of our own legal experience in the field of foreign investment and international investment law. In addition to national legislation, a foreign investor must take into account international regulations.

Currently, an active policy is being pursued to reduce all types of risks that arise in the process of attracting foreign investment. Projects of various measures to support foreign investors are being developed and investment legislation is being improved. Among the main support and partnership measures, one can single out such forms as public-private partnerships, road maps, the creation of special economic zones and priority development areas, single-industry towns, as well as industrial clusters and industrial parks.

# The concept of "investment" in international law

The international community has repeatedly attempted to define foreign investment, but has not been successful. In 1966, the Association of International Law at the congress in Helsinki stated that "the concept of foreign investment as a legal category is a new concept, which is revealed when solving a set of legal problems arising from foreign investment between the parties to an investment legal relationship". [[26]](#footnote-26)

A single definition and understanding of foreign investment are still missing both in international practice and in the national legislation of different countries, this is also due to the great variety of forms and types of foreign investment, as well as the ways and methods of their implementation. This is a huge problem, because it is impossible to operate with the term "foreign investment" and carry out their legal regulation without a clear understanding of the essence of the term.

With regard to international sources relating to foreign investment, they also do not contain a specific definition, but they contain some criteria that must be met by foreign investment.

The first international convention related to the problem we are considering is the Washington Convention of 1965, which established the Arbitration Center for the settlement of investment disputes between states and individuals or legal entities of other states. It states that a specific object is recognized as an investment if it:

1. is long-term;

2. involves the introduction of significant capital and risks;

3. assumes a constant income;

4. contributes to the development of the economy of the country - the recipient of capital.[[27]](#footnote-27)

Much more attention is paid to the understanding of foreign investment in numerous bilateral agreements on the promotion and mutual protection of investments, which began to be concluded by states since the 60s of the last century. At present, there are more than 2,500 such agreements.[[28]](#footnote-28) When considering investment disputes, it is their terms that are given priority and the question of whether it is about foreign investment in each specific case is decided.

Bilateral agreements on the promotion and mutual protection of investments are based on a broad understanding of foreign investment, and this is especially true for the agreements of the latest generation.

Bilateral agreements on the promotion and mutual protection of investments are based on a broad understanding of foreign investment, and this is especially true for the agreements of the latest generation.

Thus, the 1992 Agreement between Russia and the United States "on the Encouragement and Mutual Protection of Investments" contains the following text: "Investment means any investment in the territory of one of the Parties owned or controlled by citizens or companies of the other Party, such as participation in the property of a company, rights of claim under obligations, contracts for the provision of services or the implementation of investments and, in particular, but not exclusively:

1. all kinds of property, including movable and immovable, tangible and intangible, as well as the rights corresponding to it, such rights as the rights of pledge;

2. any kind of participation in the company, including shares, rights to manage and direct or participate in the assets of the company; rights of claim for funds or liabilities having economic value and associated with an investment;

3. intellectual property, which includes, in particular, the rights:

3.1. on works of literature and art, including sound recordings;

3.2. inventions in all areas of human activity;

3.3. topology of integrated circuits;

3.4. know-how, trade secrets and confidential commercial information;

3.5. trademarks, service marks and trade names;

3.6. any right relating to an investment, granted by law or contract, and by virtue of any licenses and permits issued in accordance with the law".[[29]](#footnote-29)

This broad description and understanding of foreign investment are contained in many bilateral investment protection agreements, although their specific provisions may not be the same.

It should also be borne in mind that a bilateral agreement is valid only for its two signatory states and, naturally, their terms may not be taken into account by other states. Therefore, a very broad understanding of foreign investment, characteristic of the latest generation of agreements on the protection and promotion of investments, although established in international practice, can hardly be considered universal. We repeat that when considering investment disputes, the specific agreement on the protection and promotion of investments, concluded between the state-recipient of capital and the state of the investor's company, is always taken into account. In such an agreement, the understanding of investment may not correspond to the new realities and may turn out to be much less comprehensive.

Thus, the solution to the problem of understanding investments is achieved only on a bilateral basis - in bilateral agreements between states. In addition, an analysis of bilateral agreements on investment protection shows that, without giving a general definition of investment, they contain a very broad list of things (shares, property, property rights, etc.) that can be recognized as an investment.

Investment promotion and protection agreements are not uniform. As already noted, they can differ significantly both in the interpretation of what is an investment, and in relation to whether a particular investor is a foreign investor, a person of another state. Repeated attempts have been made to create a universal multilateral convention on the basis of numerous bilateral agreements on the promotion and protection of foreign investment, but they have not been successful. For this reason, arbitration practice is not uniform, and the problem of determining foreign investment has not yet been resolved.

However, the modern expanded understanding of foreign investment is also not universal and is often the subject of disputes in courts and arbitrations. In this regard, it seems useful to us to cite the decision of the EU Court of Justice in the case "Commission v. Slovakia"[[30]](#footnote-30), adopted by it on September 15, 2011 and affecting the problem we are considering. In our opinion, it is of particular interest for the modern understanding of foreign investment. According to the circumstances of the case, in 1997 a Swiss investor, ATEL, pursuant to a private law contract concluded by it with the Slovak electricity company SEPS, financed the construction of a link between Poland and Slovakia in exchange for a preferential right of access to it for 16 years. In 2004, Slovakia joined the EU, and the EU Commission considered that the right of pre-emption granted by ATEL violated the second EU electricity directive, which provides for non-discriminatory third-party access to electricity systems. In the opinion of the Commission, Slovakia, by granting the pre-emptive right to ATEL, thereby violates European law and, therefore, should terminate the contract with this company. Slovakia, in turn, stated that ATEL's preemptive right is a foreign investment protected by the Slovak-Swiss Investment Protection and Promotion Agreement and cannot be cancelled. The court upheld the arguments of Slovakia. Thus, in this case, the consideration for construction financing is recognized as a foreign investment, and therefore the cancellation of ATEL's preemptive right, in the opinion of the Court, would be a measure equivalent to expropriation under the Slovak-Swiss Investment Protection Agreement.[[31]](#footnote-31) As we can see, the EU Court proceeded from a broad interpretation of the term "foreign investment".

We summarize all of the above and sum up thanks to the developed table. Using the table (Appendix No. 1), based on the comparison and enumeration of the concept of "foreign investment", an analysis was made. Let's turn to the table and consider the concept of "foreign investment".

Based on the table, we see the inconsistency of legislative formulations, the lack of a unified concept among expert authors.

When interpreting various legislative definitions of "investment", in particular when comparing these concepts in the FZ "on investment activity in the form of capital investments" and the FZ "on foreign investments", one can identify a different approach: the first law interprets the concept of "investment" as an object (what is invested by the investor), and the second - as a process (investment actions).

As we can see, the FZ "on foreign investments" lists the objects of possible investments, and not their definition. Federal Law No. 57-FZ of April 29, 2008 "On the procedure for making foreign investments in business entities of strategic importance for ensuring the defense of the country and the security of the state"[[32]](#footnote-32) does not contain the concept of interest to us at all.

Bilateral treaties contain a definition of the types of property values ​​that relate to "investments", however, the term "investment" itself does not exist.

A single definition, as well as the understanding of foreign investment, is also absent in international practice.

As we can see, based on the table, the Washington Convention does not contain an essential characteristic of foreign investment, but it contains one very important indication of the conceptual order: it does not provide for the mandatory physical location of foreign investment in the territory of the host state. Note that this provision of the Convention is in a certain contradiction with the generally accepted idea that foreign investment is the investment of capital in the territory of the host state by a foreign entity. The Washington Convention practically does not use the term "foreign investment". It governs investment relations "between a Contracting State and a person of the other Contracting State". The most common term used by the Convention is "an investment in the territory of one country owned or controlled by persons or companies in another country".

As we have shown above, today there is no single concept of what foreign investment is, either in the legislation or in international (multilateral and bilateral) treaties. Under these conditions, arbitration and judicial practice is of decisive importance. We are close to the approach of the Association of International Law "the concept of foreign investment as a legal category is a new concept, which is revealed when solving a set of legal problems arising from foreign investment between the parties of an investment legal relationship".

# Legal forms of foreign direct investment in the Russian Federation

Direct investment - investments that provide long-term control of the investor over the business operations of the recipient company, which is how they differ from portfolio investments, which are focused on short-term financial benefits.[[33]](#footnote-33)

Another interpretation of the term "direct investment" is given by A.M. Lapteva. Direct investments - investments that provide growth of invested capital and business management, as a rule, direct investments involve obtaining a controlling stake (participatory interest) in an enterprise. Direct investments are long-term in nature and allow you to control the business (enterprise).[[34]](#footnote-34)

In further research, we will adhere to the concept of "foreign direct investment" based on the Federal Law "On foreign investment in the Russian Federation". Foreign direct investment - the acquisition by a foreign investor of at least 10 percent of a share, shares (contribution) in the authorized (reserve) capital of a commercial organization established or newly established in the territory of the Russian Federation in the form of a business partnership or company in accordance with the civil legislation of the Russian Federation; capital investment in the fixed assets of a branch of a foreign legal entity established on the territory of the Russian Federation; implementation on the territory of the Russian Federation by a foreign investor as a lessor of financial lease (leasing) of equipment specified in sections XVI and XVII of the unified Commodity Nomenclature for Foreign Economic Activity of the Customs Union within the framework of the EurAsEC (hereinafter referred to as the Customs Union), with a customs value of at least 1 million rubles.[[35]](#footnote-35)

Direct investments of foreign capital in the production assets of enterprises have reduced liquidity for the investor - after they are made, they are not easy to unilaterally withdraw from the investment object and withdraw outside these countries, which ensures the stability of the investment process for the recipient country.

Foreign investors have the right to make investments on the territory of the Russian Federation in any form not prohibited by the legislation of the Russian Federation (Article 6 of the Law on Foreign Investments). They are: the acquisition of commercial organizations and stakes in them, the provision of loans, credits; acquisition of rights to use land and other natural resources; transfer of rights to the results of intellectual activity; implementation of other activities not prohibited by the current legislation of the Russian Federation in the field of investment activity.

Currently, foreign investment in the Russian Federation is implemented in the following forms:

1. creation of enterprises in the field of production, finance, consulting services, in foreign and domestic trade, etc.;

2. activities based on concession agreements or production sharing agreements;

3. establishment of special economic zones in order to effectively attract foreign investment to certain regions of the country for their accelerated development.

Concession agreements.

Concession - the state transfers to a private entity-concessionaire the right to use certain resources, while the concessionaire assumes obligations to invest certain funds in this object. At the same time, the objects of the concession agreement remain in the ownership of the state, while the private investor receives the right to operational management of this object and receive appropriate income. Concession agreements are used in areas that require the monopolization of resources, in relation to objects that are not subject to privatization or are of significant public importance, for example, in the field of energy, water supply, gas supply, road construction, etc.

The definition of the concept of a concession agreement is given in Part 1 of Art. 3 of the Federal Law of July 21, 2005 No. 115-FZ "On Concession Agreements" (hereinafter referred to as the Law on Concessions), according to which, under a concession agreement, one party (the concessionaire) undertakes at its own expense to create and (or) reconstruct the real estate specified by this agreement ( hereinafter referred to as the object of the concession agreement), the ownership of which belongs or will belong to the other party (grantor), to carry out activities using (operating) the object of the concession agreement, and the concessor undertakes to provide the concessionaire for the period established by this agreement, the right to own and use the object of the concession agreements for the implementation of these activities.[[36]](#footnote-36)

At the same time, the products and income received by the concessionaire as a result of concession activities are the property of the concessionaire, unless otherwise provided by the concession agreement (Part 7, Article 3 of the Law on Concessions). This provision corresponds to the rule, according to which the ownership of proceeds received as a result of the use of property by a person other than the owner is fixed to the person using the property on a legal basis (Article 136 of the Civil Code of the Russian Federation).[[37]](#footnote-37)

Against the backdrop of a dynamically growing concession practice, the issue of the legal nature of the concession agreement is still unresolved. Even the adoption of the Law on Concessions did not put an end to the disputes.

To date, four main concepts regarding the legal nature of the concession agreement (agreement) have taken shape in jurisprudence.

Supporters of the first classify the concession agreement as a public act or an administrative (public law) contract (J. Wedel, M. Trivus, I.N. Bernstein, B.A. Landau, M.M. Boguslavsky, D.N. Bahrakh, S.V. Shorokhov and others).

The second concept considers the concession agreement as a "heterogeneous" contract, having both private law and public law features (L.S. Tal, E. Nosov, S.A. Sosna, L.K. Linnik, O.N. Savinova, A.V. Bagdasarovaidr.).

According to the third concept, the concession contract is a civil law contract (A.V. Venediktov, N.G. Doronina, I.S. Bakhtinskaya, R.M. Zhemaletdinov, I. Drozdov, etc.).

In accordance with the fourth concept, the concession contract is considered international legal (E. Nvogugu, E. Schwarzenberger).

In this regard, a number of authors note that the concession agreement combines elements of various agreements, which quite naturally gives rise to a plurality of concepts of its legal nature. Thus, it is not clear how the reference norms of the Law on Concessions should work, that is, to which regulatory legal acts to refer. However, from an economic point of view, the problem of the correlation between concession and investment relations is of direct interest. Are the rules governing investment relations applicable in disputable situations arising between the concessor and the concessionaire? And will the legal position of the concessionaire, which guarantees a stable and secure position throughout the entire term of the contract, change, in this case?[[38]](#footnote-38) Obviously, further research is needed in this area, which will help develop balanced approaches to this issue.

The ratio of investments and concessions is becoming more and more relevant. Consideration of concession relations within the framework of investment would make it possible to extend a wide range of legal guarantees of the investor to the concessionaire. However, preliminary it would be necessary to strengthen in every possible way the relationship between the investor, investments and the concession agreement.

The effective use of the concession system, which ensures the optimal distribution of income and risks between investment participants, can significantly increase the inflow of investments into the real sector of the Russian economy.

Investment activities in special economic zones and other territories with a special regime.

World experience convinces us that the creation of special economic zones in certain cities or regions with the establishment of a preferential regime for economic activity, the stimulation of investment in the economy of these territories, is one of the effective solutions to investment problems.

A special economic zone is a limited territory in which, in relation to other regions of the state, a special legal regime has been established, which implies preferential conditions for doing business.[[39]](#footnote-39)

In accordance with Art. 2 of the Federal Law "On Special Economic Zones in the Russian Federation" dated July 22, 2005 N 116-FZ a special economic zone is a part of the territory of the Russian Federation, which is determined by the Government of the Russian Federation, where a special regime for doing business is in force, and the customs procedure for free customs zones.[[40]](#footnote-40)

It should be noted that in addition to the term "special economic zone", there are many other similar names: "free economic zone", "free zone", "offshore zone", "techno-economic development zone", "technopark", etc.[[41]](#footnote-41) In domestic legislation, various concepts are used to designate a territory with a certain legal regime. The presence of such a variety served as the basis for the emergence of discussions in the legal literature regarding the comparison of these concepts, as well as the need for the existence of such a variety in Russian legislation.

# Chapter 2. Legal regulation of guarantees of the rights of foreign investors

# 2.1. General guarantees of the rights of foreign investors in national legislation

The positive economic development of the state is directly related to the investment climate in the country. A favorable investment climate depends on the level of development of legislation governing investment activities. Guarantees for a foreign investor are a way to protect an investment. In order to ensure the efficient conduct of its activities in the host State of investment, a foreign investor should be aware of the extent to which he can rely on the national law of that State as a self-sufficient source of guarantees for his investment.[[42]](#footnote-42)

Legal guarantees from the state are one of the most important means of protection against non-commercial risks for a foreign investor.

The investment policy of the state from a legal point of view is the creation of a favorable investment climate for foreign investment, which includes the use of national legal regulation, national legal forms and methods, and, accordingly, international legal regulation.

First of all, guarantees are important for a foreign investor, which are of a private law nature, i.e., enshrined in civil law contracts concluded between the recipient states and foreign investors.

Researchers agree that guarantees of the rights of foreign investors are obligations assumed by the state to ensure the conditions for the implementation of investment activities of a foreign investor.[[43]](#footnote-43) And there is also an opinion that guarantees for a foreign investor are measures that protect investments from political events and actions of the authorities in the recipient country.[[44]](#footnote-44) Along with this, we can conclude that the guarantees provided to foreign investors are a series of positive conditions, factors and funds in the host state.

Legal guarantees are established both at the national level and at the international level. The main legal act that secures guarantees at the national level is the Constitution of the state.

The first legal act that we will consider in this chapter is the Constitution of the Russian Federation.

The Constitution of the Russian Federation has the highest legal force, direct effect and is applied throughout the territory of the Russian Federation.[[45]](#footnote-45) This provision characterizes the Constitution as the fundamental law of the state.

The law of foreign investment includes general international law, general standards of international economic law and certain norms inherent in its field. The study of this area should take into account all these three components. In addition, the rules on foreign investment, if necessary, also include the features of the national legislation that accepts foreign investment of the state.[[46]](#footnote-46) Referring to this statement, it can be argued that the regulation of legal guarantees for foreign investors goes beyond the scope of any one legal branch, the regulation of legal guarantees for foreign investors is interdisciplinary in nature, i.e. includes both private law and public law regulation.

The doctrine highlights such important principles for the protection of foreign investment by the recipient states as the protection of the property rights of a foreign investor, granting a foreign investor the right to dispose of property.[[47]](#footnote-47) Such principles of national treatment for foreign citizens and stateless persons, as well as the inadmissibility of the expropriation of property for state needs without the payment of preliminary and equivalent compensation, are enshrined in Part 3 of Art. 35 and part 3 of Art. 62 of the Constitution of the Russian Federation.[[48]](#footnote-48) Such principles of protection of the rights of foreign investors by the host state can be called legal guarantees regarding their property rights.

Such principles of protection of the rights of foreign investors by the host state can be called legal guarantees regarding their property rights.

The private law nature of guarantees for a foreign investor is also indicated in the Civil Code of the Russian Federation. In accordance with paragraph 1 of Art. 1 of the Civil Code of the Russian Federation "civil legislation is based on the recognition of the equality of participants in the relations it regulates, the inviolability of property, freedom of contract, the inadmissibility of arbitrary interference by anyone in private affairs, the need for unhindered exercise of civil rights, ensuring the restoration of violated rights, and their judicial protection".[[49]](#footnote-49) Based on paragraph 1 of Art. 2 of the Civil Code of the Russian Federation "the rules established by civil law apply to relations with the participation of foreign citizens, stateless persons and foreign legal entities", we can say that the norms of the Civil Code of the Russian Federation apply to foreign investors.

Also, Chapter 23 of the Civil Code of the Russian Federation describes the provisions on ways to ensure the fulfillment of obligations that apply to participants in a civil legal relationship, which, among other things, may be a foreign investor and a recipient state of foreign capital by virtue of a civil law contract concluded between them. And Art. 329 of the Civil Code of the Russian Federation lists ways to ensure the fulfillment of obligations.[[50]](#footnote-50)

Concluding the above, referring to the Civil Code of the Russian Federation, the list of mechanisms for ensuring the fulfillment of obligations is extensive. This makes it possible to include in the civil law contract with a foreign investor additional way to ensure the fulfillment of the obligations of a foreign investor, which will meet the interests of the recipient state.

V. N. Lisitsa emphasizes that investment agreements include sales and purchase agreements (currency values, securities, shares in authorized (share capital) business companies and partnerships) (clause 1, article 454 of the Civil Code of the Russian Federation), financial lease (leasing) agreements ) (Article 665 of the Civil Code of the Russian Federation), financing agreements against the assignment of a monetary claim (clause 1 of Article 824 of the Civil Code of the Russian Federation), commercial concession agreements (clause 1 of Article 1027 of the Civil Code of the Russian Federation).[[51]](#footnote-51)

The Civil Code of the Russian Federation contains rules on legal guarantees that apply to contracts of an investment nature. Such contracts named in the Civil Code of the Russian Federation include financial lease (leasing) (Chapter 34 of the Civil Code of the Russian Federation), financing against the assignment of a monetary claim (Chapter 43 of the Civil Code of the Russian Federation), commercial concession (Chapter 54 of the Civil Code of the Russian Federation). Let us give an example of paragraph 1 of Art. 670 of the Civil Code of the Russian Federation - this article establishes civil legal relations in the field of a financial lease (leasing) agreement. According to this article, without the consent of the landlord, the tenant is not entitled to terminate the contract of sale with the seller.

In addition, the Civil Code of the Russian Federation contains the norms of "assertions about the circumstances." In accordance with paragraph 1 of Article 431.2 of the Civil Code of the Russian Federation, a person who has provided an unreliable assurance is obliged to compensate for the losses caused by the inaccuracy of such an assurance and (or) pay the penalty agreed upon when providing the assurance (Article 394 of the Civil Code of the Russian Federation).[[52]](#footnote-52)

The norms of "certificate of circumstances", enshrined in the Civil Code of the Russian Federation, give legal guarantees, give the right to exercise the right in the field of compensation in case of violation, to participants in civil legal relations that arise in the interaction of a foreign investor and the recipient state. In this regard, relations between the foreign investor and the host state are becoming more stable, open and transparent.

Consider another guarantee of the rights of foreign investors in domestic legislation on the example of Art. 235 of the Civil Code of the Russian Federation and Art. 306 of the Civil Code of the Russian Federation in the field of private property rights. According to Art. 235 of the Civil Code of the Russian Federation, nationalization is carried out on the basis of the law with compensation for the value of property and other losses. Moreover, the guarantees prescribed in Art. 306 of the Civil Code of the Russian Federation, establish the right to compensation for losses and the cost of property from the state as a result of state seizure of private property.[[53]](#footnote-53)

Legal guarantees for foreign investors are also enshrined in federal laws adopted to regulate investment relations with a foreign element.

In the Russian Federation, the main legal guarantees provided to foreign investors, as well as the legal mechanisms for the implementation of these legal guarantees are enshrined in Federal Law No. 160-FZ of July 9, 1999 "On Foreign Investments in the Russian Federation".

The Federal Law "On Foreign Investments in the Russian Federation" declares several types of guarantees:

"Article 5. Guarantee of legal protection of the activities of foreign investors in the territory of the Russian Federation.

Article 6. Guarantee of the use by a foreign investor of various forms of investment in the territory of the Russian Federation.

Article 7. Guarantee of transfer of rights and obligations of a foreign investor to another person.

Article 8. Guarantee of compensation in case of nationalization and requisition of property of a foreign investor or a commercial organization with foreign investments.

Article 9. Guarantee against adverse changes in the legislation of the Russian Federation for a foreign investor and a commercial organization with foreign investments.

Article 10. Guarantee of ensuring the proper resolution of a dispute arising in connection with the implementation of investments and business activities on the territory of the Russian Federation by a foreign investor.

Article 11. Guarantee of the use on the territory of the Russian Federation and the transfer outside the Russian Federation of income, profits and other legally received sums of money.

Article 12. Guarantee of the right of a foreign investor to unhindered export of property and information outside the Russian Federation in documentary form or in the form of recording on electronic media that were originally imported into the Russian Federation as a foreign investment.

Article 13. Guarantee of the right of a foreign investor to purchase securities.

Article 14. Guarantee of participation of a foreign investor in privatization.

Article 15. Guarantee of granting to a foreign investor the right to land plots, other natural resources, buildings, structures and other immovable property".[[54]](#footnote-54)

Legal guarantees in the investment sphere are also contained in the Federal Law of February 25, 1999 No. 39-FZ "On investment activities in the Russian Federation, carried out in the form of capital investments." P. 2 Art. 4 indicates that investors also include "foreign business entities" i.e. foreign investors.[[55]](#footnote-55)

As you can see, these two federal laws contain legal guarantees and apply to both domestic and foreign investors. The legal doctrine emphasizes that the presence of two laws regulating the same relations hinders the formation of a uniform law enforcement practice, as well as a common understanding of the category "investment" within the Russian legal order.[[56]](#footnote-56) The researchers also suggested adopting a special federal law that would regulate foreign investment in terms of providing guarantees to foreign investors.[[57]](#footnote-57)

In 2020, another Federal Law "On the Protection and Promotion of Investments in the Russian Federation" came into force.[[58]](#footnote-58) According to Art. 2 of the Federal Law "On the Protection and Promotion of Investments in the Russian Federation", along with a domestic investor, a foreign investor can also be.

According to M. M. Boguslavsky, the need of the regions to attract foreign investment, the lack of effectiveness of federal legislation in this area and a number of other reasons led to the development of legal regulation in the constituent entities of the Russian Federation. In accordance with Art. 17 of the Federal Law "On Foreign Investments in the Russian Federation", the constituent entities of the Russian Federation and local governments, in accordance with their competence, are entitled to provide the foreign investor with appropriate benefits and guarantees.

As an example, in 2014 the Investment Strategy of the Leningrad Region for the period up to 2025 was adopted.[[59]](#footnote-59) This strategy uses such measures to stimulate investment activity as "investment tax credit" and "state guarantees of St. Petersburg".[[60]](#footnote-60) It can be argued that thanks to measures aimed at stimulating investment activity, it will be possible to further attract foreign investment in the development of the sector of the economy of the constituent entity of the Russian Federation - the Leningrad Region.

Therefore, we can say that in the Russian Federation there are policy documents on the issues of attracting foreign investment. However, there are some downsides as well. It is important to adopt such a document as an investment strategy at the federal level in order to create a unified program to attract foreign investment.

It should be pointed out that compensatory guarantees are very important for a foreign investor. Such guarantees are enshrined in Art. 8 of the Federal Law "On Foreign Investments in the Russian Federation" a guarantee of compensation in the event of the nationalization of the property of a foreign investor.[[61]](#footnote-61) Compensatory guarantees are closely related to acts of expropriation.

As noted earlier, favorable factors are necessary for foreign investors, both in the legal sphere of the state, and in the economic and political spheres. The researchers note that in recipient countries, political risks may be associated with sanctions, or policies that restrict foreign investment.[[62]](#footnote-62) Non-commercial risks are risks arising from force majeure events and having a political nature.[[63]](#footnote-63)

Investment activity is associated with the existence of a certain commercial risk. Foreign investors are often associated with the existence of risks of a non-commercial nature, as they may depend on the socio-economic, and, above all, political stability of the state receiving investments; from the development of the legal system; changes in legislation; introduction of a state of emergency, etc. Foreign literature emphasizes that political risks include war, revolutions, seizure of property of foreign investors, restrictions on the transfer of profits from investments in the recipient state.[[64]](#footnote-64)

Against the backdrop of the new realities of our time and the unstable political situation in the world, the investment climate in Russia is significantly declining. The tightening of the sanctions policy of Western countries against the Russian Federation, political changes at the international level have a negative impact on the investment climate in the Russian Federation.

As you can see, the Russian Federation has an extensive list of legal acts that guarantee foreign investors the protection of their interests, however, in order to effectively attract foreign investment, full protection of the rights and legitimate interests of foreign investors is necessary, which is currently difficult, because there are certain commercial risks.

According to paragraph 3 of Art. 451 of the Civil Code of the Russian Federation, upon termination of the contract due to significantly changed circumstances, the court, at the request of any of the parties, determines the consequences of such termination of the contract, in accordance with the need for a fair distribution between the parties of the costs incurred by them in connection with the execution of the contract.[[65]](#footnote-65) Thus, if there are no provisions on the payment of compensation in a civil law contract with a foreign investor, then by virtue of Art. 451 of the Civil Code of the Russian Federation, compensation for damage is possible, which, it seems, is possible not only in relation to a foreign investor, but also in favor of the recipient state of foreign capital, if this state suffers damage from a foreign investor, which reflects the principle of equality of arms, characteristic of civil legal relations.

Simultaneously with the provision of legal guarantees to a foreign investor, it is also necessary to establish certain restrictions for foreign investors between a foreign investor and the recipient state in order to maintain a balance of interests.

Federal Law No. 57-FZ dated April 29, 2008 "On the Procedure for Making Foreign Investments in Business Companies of Strategic Importance for Ensuring the Defense of the Country and the Security of the State", which regulates the limitation of attracting foreign investment in strategically important sectors of the Russian economy, can be attributed to such a law.[[66]](#footnote-66) At the same time, a government commission was created to control foreign investment in the Russian Federation.

Since the recipient state must regulate the inflow of foreign investment into certain, strategically important areas of the economy, in order to protect the national security of the state. The main tasks of this Commission are the preliminary approval of transactions involving the establishment of control by a foreign investor over business entities of strategic importance. Thus, G.V. Tsepov emphasizes that the removal of the turnover of shares from the sphere of national jurisdiction leads to the loss of state control over business, which is unacceptable.[[67]](#footnote-67)

Summing up, it should be emphasized that the stability of legislation for foreign investors established by the recipient states cannot be unlimited, since, in turn, the states receiving foreign investments also need to protect their national security. This reflects the principle of equality of the parties to a civil legal relationship.

# 2.2. General guarantees of the rights of foreign investors in the international legal field

The principles of international investment law also underlie the legal regulation of foreign investment in the Russian Federation. They are multilateral treaties and international conventions.

The investment policy of the state from a legal point of view is the creation of a favorable investment climate for foreign investment, which includes the use of national legal regulation, national legal forms and methods, as well as international legal regulation.

In our opinion, international treaties should be a key tool for regulating investment relations complicated by a foreign element. International treaties introduce an element of stability into changing national legislation and eliminate the adverse effects that arise for investors as a result of government regulatory measures.[[68]](#footnote-68) Moreover, the advantage of international treaties on the protection of investment rights creates a favorable investment climate for the country.

I. Z. Farkhutdinov emphasizes that since foreign investments are carried out in the conditions of a foreign state, they need to be provided with international legal protection.[[69]](#footnote-69)

According to experts, the right to property is a fundamental principle of international law.[[70]](#footnote-70) Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1952 enshrines the right of property "every natural or legal person has the right to respect for his property. No one may be deprived of his property except in the public interest and under the conditions provided for by law and the general principles of international law".[[71]](#footnote-71) These are universal legal guarantees.

Along with universal legal guarantees, special guarantees of the rights of foreign investors should be singled out. International guarantees of the rights of foreign investors can be called special in relation to general international legal guarantees, since, unlike these guarantees, they have a special subject of regulation - the obligations of the states receiving foreign investments in the field of ensuring the protection of the property rights of foreign investors.

For example, the Washington Convention of 1965 "on the procedure for settling investment disputes between States and foreign persons." The Washington Convention on the Settlement of Investment Disputes of 1965 is an important normative act that declares the creation and development of mechanisms for resolving investment disputes between the investor and the host state. The Washington Convention is a universal multilateral act, the operation of this convention has no territorial restrictions. Also, the Washington Convention is an international legal act that contains mechanisms for resolving investment disputes. So, according to the provisions of paragraph 1 of Art. 42 of the Washington Convention, the Court shall decide the dispute in accordance with the rules of law that may be agreed upon by the Parties or, in the absence of such agreement, the Court shall apply the law of the Contracting State that is a Party to the dispute and the rules of international law that may be applicable.[[72]](#footnote-72) These provisions can be called a guarantee for the resolution of cross-border investment disputes.

An important guarantee for a foreign investor is the guarantee of recognition and enforcement of the arbitral award, that is, the final nature of the decision of the International Center for the Settlement of Investment Disputes, contained in paragraph 1 of Art. 54 of the Washington Convention. Under the Washington Convention, ICSID was established as an institution to facilitate the resolution of cross-border investment disputes.

At the same time, the legal guarantee of resolving cross-border investment disputes is very important for foreign investors. According to the provisions of the BITs, foreign investors can apply to the ICSID, arbitration courts, state courts of the recipient countries in order to restore their violated rights. So, in accordance with the provisions of sub. b) paragraph 2 of Art. 8 "Agreements between the Government of the Russian Federation and the Government of the Czech Republic on the Promotion and Mutual Protection of Investments" (hereinafter referred to as the CSIS between the Government of the Russian Federation and the Government of the Czech Republic) disputes between a foreign investor and the Russian Federation may be referred to the ICSID if the Parties to this BITs are parties to the Washington Convention, or may be considered through the BITs Supplementary Procedure if the Parties to the said CSIS are not parties to the Washington Convention.[[73]](#footnote-73)

The norms of international law in the investment sphere were reflected for the first time in the decision of the International Court of Justice in The Hague in the Horze Factory case.[[74]](#footnote-74)

Russia takes part in activities in the Multilateral Investment Guarantee Agency (Seoul Convention). The Seoul Convention regulates many issues related to the provision of guarantees to investors. The Convention provides for guarantees of insurance compensation for foreign investors against non-commercial (political) risks.[[75]](#footnote-75) Many scholars consider it one of the best legal international acts in this area. The Seoul Convention is a document containing the recognition by the overwhelming number of countries of the world of the principle of subrogation in insurance against political risks carried out by the agency.[[76]](#footnote-76)

The international body that performs the functions of insuring foreign investments against political risks is the Multilateral Investment Guarantee Agency, established in accordance with the Seoul Convention. According to the Seoul Convention, MIGA guarantees cover the following risks:

1) any imposition, at the initiative of the host country of investment, of restrictions on the transfer outside the host country of its currency into a freely usable currency or another currency acceptable to the holder of the guarantee;

2) any legislative or administrative action or omission by the host State of the investment that results in the holder of the guarantee losing ownership of, control over, or substantial income from such investment;

3) any refusal by the host state of the contract with the holder of the guarantee or violation of such an agreement in cases where: a) the holder of the guarantee is not able to apply to a judicial or arbitral body to decide on a claim for withdrawal from the contract or its violation; b) such body fails to make a decision within a reasonable period of time, as provided for in the guarantee contracts in accordance with the provisions of the Agency; c) such a decision cannot be implemented;

4) war and civil unrest.[[77]](#footnote-77)

The Energy Charter Treaty of 1997 contains international guarantees of the rights of foreign investors in the field of investments in the energy sector of the economy. The Energy Charter Treaty establishes such guarantees as: guarantees for the promotion, protection and investment regime (Article 10 ECT), indemnification (Article 12 ECT), guarantees in cases of expropriation (Article 13 ECT), transfer of payments related to investments (Art. 14 ECT).[[78]](#footnote-78) The Russian Federation is not a party to the Energy Charter Treaty. It seems that the intention of the Russian Federation not to become a party to the ECT is due to the fact that the energy sector is a strategically important sector of the economy, and therefore it would be appropriate to legally regulate it by national legislation and prevent foreign investors from exercising any control.

At the same time, in 2009, the Russian Federation adopted the "Conceptual Approach to a New Legal Framework for International Cooperation in the Energy Sphere".[[79]](#footnote-79) The Energy Concept enshrined such legal guarantees for foreign investors as: non-discriminatory encouragement and protection of investments, ensuring non-discriminatory access to energy technologies and participation in technology transfer (clause 4 of the Energy Concept). In addition, the Energy Concept proceeds from the preference for diplomatic channels of conflict resolution over judicial ones with the possibility of resolving disputes in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) (Appendix 1 to the Energy Concept).[[80]](#footnote-80)

The international document regulating the guarantees of the rights of foreign investors, existing within the World Trade Organization - "Agreement on Trade-Related Investment Measures".[[81]](#footnote-81) The doctrine notes that TRIMs prohibit states from using trade policy measures that adversely affect foreign investment, contradict the principle of national treatment and the principle of the prohibition of quantitative restrictions.[[82]](#footnote-82)

The Treaty on the Eurasian Economic Union can be called an important regional multilateral international agreement.

It should be noted that in paragraph 3 of Appendix No. 17 to the Treaty on the EAEU, the provisions on national treatment can be considered as a legal guarantee that creates a certain stability for a foreign investor operating in the financial market of the EAEU, since, according to the provisions on national treatment, any discrimination against a foreign investor. An important guarantee for a foreign investor is the provisions of paragraph 81 of Art. 4 Guarantees of the rights of investors upon expropriation of Section VII Investments of Annex No. 16 to the Treaty on the EAEU that compensation, in cases of expropriation, must be paid without delay within the period stipulated by the legislation of the recipient state, but no later than three months from the date of expropriation.[[83]](#footnote-83)

So, according to paragraph 3 of Art. 5 Expropriation of the "Agreement between the Government of the Russian Federation and the Government of the Italian Republic for the Promotion and Mutual Protection of Investments", compensation must be paid without undue delay and in any case within three months from the date on which the amount of compensation is determined.[[84]](#footnote-84)

Thus, the period for paying compensation from the date of expropriation, clearly defined in Annex No. 16 to the Treaty on the EAEU, can be considered as a legal guarantee that creates predictability for foreign investors in international investment relations, which is an important factor in attracting foreign investment.

Regarding the harmonization of investment legislation within the EAEU, the researchers note that the next step in strengthening cooperation could be the development of a model agreement that reflects a common investment policy of the states participating in the EAEU, which could enhance the effectiveness of national legislation.[[85]](#footnote-85)

We believe that if a general model agreement is adopted that generally regulates investment policy within the EAEU, its provisions, along with the cooperation of states in the investment market, should also take into account the national legislation of the EAEU member states in the field of legal guarantees for foreign investors, since each state must maintain its sovereignty in the international investment sphere. By virtue of its sovereignty, each state has the right to independently determine capital investments that relate to foreign investments, and the corresponding legal guarantees provided for these investments, as well as certain areas of the economy of strategic importance, in which the inflow of foreign capital should be limited or completely prohibited. These restrictions are necessary in order to maintain a balance of interests between a foreign investor as a foreign element and the state - the recipient of foreign capital in civil law relations, as well as the sovereignty of this state in international investment relations.

It should be noted that along with the indicated international legal guarantees contained in multilateral international agreements, an important role is played by guarantees of the rights of foreign investors, enshrined in bilateral agreements on the promotion and mutual protection of investments.

So, according to A. G. Bogatyrev, bilateral investment agreements create the basis for international legal regulation in the field of international investment relations in combination with the investment national legislation of states.[[86]](#footnote-86)

As stated in the legal literature, bilateral international treaties contain more detailed regulation of investment relations.[[87]](#footnote-87)

International treaties contain fundamental provisions on cooperation between states in the international economic sphere, among which the most important is the most favored nation regime and which have been further developed and applied in bilateral agreements on the promotion and mutual protection of investments.

Thus, from the meaning of the provisions of one of the bilateral agreements concluded by the Russian Federation on the promotion and mutual protection of investments on the basis of the previously existing Model Agreement - "Agreement between the Government of the Russian Federation and the Government of the Republic of Nicaragua on the promotion and mutual protection of investments" it follows that this Agreement was concluded due to the fact that the Parties recognize that the encouragement and mutual protection of investments will contribute to the development of mutually beneficial trade, economic, scientific and technical cooperation.[[88]](#footnote-88)

From the content of these provisions, we can conclude that the purpose of the agreement between the Government of the Russian Federation and the Government of the Republic of Nicaragua is to create favorable conditions for the purpose of attracting foreign capital in the development of the economy of the Russian Federation, however, these favorable conditions are possible through the consolidation of appropriate legal guarantees in the civil -legal contract with a foreign investor, which are also contained in the said agreement, including guarantees of a fair and equitable treatment. Also, through paragraph 2 of Art. 3 of the agreement between the Government of the Russian Federation and the Government of the Republic of Nicaragua establishes the legal regimes for the implementation of investment activities for foreign investors: national treatment and most favored nation treatment.[[89]](#footnote-89)

The legal doctrine notes that the national treatment is provided for by Russian laws, and the most favored nation treatment is provided for by international treaties with the participation of the Russian Federation.[[90]](#footnote-90)

It can be said that the establishment of national treatment and the most favored nation treatment is one of the factors contributing to the establishment of a favorable investment climate for foreign investors, which leads to the openness of the economic space to attract foreign capital.

Along with this, it should be noted that, in comparison with such a legal guarantee as a stabilization clause, by virtue of which only partial guarantees are provided to a foreign investor about the immutability of legislation in the field of tax payment, as well as about the immutability of legislation regarding the amount of contributions to state non-budgetary funds, the national the regime provides a foreign investor with greater legal guarantees, since a foreign investor, in terms of legal status, is equated to national individuals and legal entities of the Russian Federation, with some exceptions contained in the domestic legislation of the Russian Federation, for example, in accordance with the provisions of the Federal Law "On the procedure for making foreign investments in economic companies of strategic importance for ensuring the defense of the country and the security of the state".

Describing the leading role of international guarantees contained in the BITs and ensuring the ownership of foreign investors, foreign researchers note that the central component of the guarantees contained in the BITs is to provide foreign investors with guarantees for the protection of their property rights, which should be considered a very important factor in the field of the rights of foreign investors.[[91]](#footnote-91)

Based on the analysis of the provisions of the BITs, it can be concluded that the legal guarantees enshrined in them complement the guarantees of the rights of foreign investors contained in multilateral international agreements. Thus, the most effective mechanisms for the implementation of guarantees of their rights and legitimate interests are created for foreign investors.

Speaking about the role of international agreements in the field of guaranteeing the rights and legitimate interests of foreign investors, foreign authors note that international agreements can serve as the mechanism by which governments provide foreign investors with irrevocable obligations and guarantees that correspond to the interests of foreign investors and are aimed at protecting these interests. from any political action.[[92]](#footnote-92)

Thus, the international legal guarantees contained in the BITs, are the obligations of the recipient state in relation to foreign investors, which are the result of a bilateral agreement between states and are aimed at realizing the rights and legitimate interests of foreign investors within the framework of the BITs.

As mentioned above, the legal guarantees contained in the BITs, are complementary to the guarantees contained in multilateral investment agreements under international law, as a result of which they interact and provide more effective protection of the rights of foreign investors.

Based on the foregoing, we can conclude that international legal guarantees of foreign investors are the legal obligations of the recipient states, enshrined in international multilateral and bilateral agreements that apply to foreign investors, through which foreign investors have the opportunity to realize their rights and legitimate interests in the sphere of investments owned by them in the recipient states.

International guarantees of the rights of foreign investors are contained in international universal multilateral and regional treaties, BITs, trade and navigation treaties, which, in turn, form a system of compliance of international obligations of states accepting foreign investments with international standards of guarantees in order to provide legal guarantees for a foreign investor.

# 3.3. The problem of international legal and international legal regulation of international relations

Along with the analysis of national and international legislation in the field of the rights of foreign investors, it is necessary to consider the problem of interaction between national and international regulation in the field of investment.

The activity of a foreign investor in the territory of the state receiving foreign investments is also carried out in accordance with the provisions of the national legislation of this state - the recipient of foreign capital.

With the help of international legal regulation, a foreign investor is provided with additional legal guarantees. In turn, legal guarantees included in civil law contracts concluded between a foreign investor and a state accepting foreign investment, as well as legal guarantees contained in the national legislation of this state, cannot conflict with international legal guarantees, since in in the event of their contradiction, uncertainty is created in the activities of a foreign investor in the territory of the recipient state.

Thus, foreign researchers point out that the rules governing the terms of contracts between a foreign investor and a state receiving foreign investment are based on both private and public law. These rules establish a link between national legislation and public international law.[[93]](#footnote-93)

The doctrine points out the problem of applying the norms of international law in relation to individuals and legal entities that are subjects of private law. In this regard, a state that has assumed obligations as a result of joining an international treaty must ensure the norms of its national legislation with the provisions of the international treaty.[[94]](#footnote-94)

Currently, the relevance of the problem of interaction between national legislation and international treaties is reflected in the light of the implementation of the constitutional reform in the Russian Federation. Thus, according to the Law of the Russian Federation on an amendment to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ "On improving the regulation of certain issues of the organization and functioning of public authorities" (hereinafter referred to as the Law of the Russian Federation on an amendment to the Constitution of the Russian Federation), art. 79 of the Constitution of the Russian Federation is set out in a new edition, taking into account its addition with the following provisions: "Decisions of interstate bodies adopted on the basis of the provisions of international treaties of the Russian Federation in their interpretation that contradicts the Constitution of the Russian Federation shall not be enforceable in the Russian Federation".[[95]](#footnote-95) In addition, according to the said Law of the Russian Federation on the amendment to the Constitution of the Russian Federation, art. 125 of the Constitution of the Russian Federation was also supplemented by part 5.1. According to paragraph b) part 5.1 of the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation: resolves the issue of the possibility of executing decisions of interstate bodies adopted on the basis of the provisions of international treaties of the Russian Federation in their interpretation that contradicts the Constitution of the Russian Federation, as well as the possibility of executing a decision of a foreign or international (interstate) court, foreign or international arbitral tribunal (arbitration), imposing obligations on the Russian Federation, if this decision is contrary to the fundamentals of the public order of the Russian Federation.

The above provisions of the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation can be called very significant norms of the Constitution of the Russian Federation, aimed at resolving the problem of interaction between national legislation and international treaties, including in the field of cross-border investment activities.

At the same time, the provisions of Part 4 of Art. 15 of the Constitution of the Russian Federation remained unchanged: "If an international treaty of the Russian Federation establishes other rules than those provided for by law, then the rules of the international treaty shall apply".[[96]](#footnote-96)

Thus, along with the amendments to Art. 79 of the Constitution of the Russian Federation, the norms of Part 4 of Art. 15 of the Constitution of the Russian Federation on the primacy of international law. Meanwhile, it should be emphasized that, in accordance with the amendments to the Constitution of the Russian Federation, the primacy of international law is possible only if the decisions of international bodies adopted in accordance with international treaties do not contradict the Constitution of the Russian Federation, which, in turn, also indicates the supremacy of the Constitution of the Russian Federation. as the fundamental law of the state.

Currently, various types of arbitration bodies resolve cross-border investment disputes both at the international level and at the domestic level.

Such bodies that ensure the implementation of guarantees of the rights and legitimate interests of foreign investors are, in particular: arbitration courts of states, the Arbitration Institute of the Stockholm Chamber of Commerce, the Arbitration Court at the International Chamber of Commerce in Paris, the London International Arbitration Court, the International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry Federation, ICSID.

At the national level, these are the state courts of the countries that are recipients of foreign capital. So, according to paragraph 1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of December 10, 2019 No. 53, the parties to a civil dispute have the right to choose alternative means of resolving disputes, including the transfer of a dispute to arbitration (arbitration), in accordance with Art. 45 (part 2) of the Constitution of the Russian Federation.[[97]](#footnote-97)

Researchers single out incorporation and transformation as ways for the state to implement its international obligations, and also note that during incorporation, international law is automatically included in national law, while transformation implies the need for the state to adopt a special (transformation) act for such inclusion.[[98]](#footnote-98)

In addition, they define "self-executing" and "non-self-executing" norms of international treaties. "Self-executing" norms of international treaties, sanctioned by the state, require the issuance of a "transformational" or some other act on the part of the state that has concluded the international treaty. On the other hand, "non-self-executing" norms of an international treaty, for their application, must be specified by issuing a certain act.[[99]](#footnote-99)

The provisions that international treaties are applied directly, except in cases where, according to the meaning of the international treaty, the issuance of a domestic act is necessary, are reflected in paragraph 2 of Art. 3 of the Federal Law "On the Protection and Promotion of Investments in the Russian Federation".

Thus, the norms of "non-self-executing" contracts cannot be applied automatically and require the adoption of an appropriate act specifying them, which is also enshrined in the new Federal Law "On the Protection and Promotion of Investments in the Russian Federation".

International investment arbitration, like the European Court of Human Rights, can accept claims from individuals and legal entities and resort to enforcement measures for the recipient state to fulfill its civil law obligations arising from a civil law contract concluded with a foreign investor. The guarantees contained in international agreements such as the Universal Declaration of Human Rights[[100]](#footnote-100), the International Covenant on Civil and Political Rights[[101]](#footnote-101), the International Covenant on Economic, Social and Cultural Rights[[102]](#footnote-102), the Convention for the Protection of Human Rights and Fundamental Freedoms[[103]](#footnote-103), are generally recognized basic international legal guarantees that states must follow, which is also confirmed by judicial practice.

Thus, in accordance with paragraph 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of June 27, 2013 No. 21 "On the application by courts of general jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and the Protocols thereto" (hereinafter referred to as the Resolution of the Plenum of the Supreme of the Court of the Russian Federation "On the Application by Courts of General Jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms"), the legal positions of the European Court of Human Rights contained in the final judgments of the European Court adopted in relation to the Russian Federation are binding on the courts.[[104]](#footnote-104)

However, later the Constitutional Court of the Russian Federation made some clarifications regarding the consideration of the legal positions of the European Court in the application of the legislation of the Russian Federation. Thus, according to the Ruling of the Constitutional Court of the Russian Federation of July 14, 2015 No. 21-P, if the Constitutional Court of the Russian Federation comes to the conclusion that the ruling of the European Court of Human Rights, based on the Convention for the Protection of Human Rights and Fundamental Freedoms in the interpretation, contrary to the Constitution of the Russian Federation, cannot be executed, then this decision in this part is not subject to execution.[[105]](#footnote-105)

Thus, the said Resolution of the Constitutional Court of the Russian Federation emphasizes the supremacy and supreme legal force of the Constitution of the Russian Federation in relation to the provisions of international treaties.

In addition, in the Ruling of the Constitutional Court of the Russian Federation on the case on resolving the issue of the possibility of enforcing, in accordance with the Constitution of the Russian Federation, the judgment of the European Court of Human Rights dated July 31, 2014 in the case of PLC Oil Company Yukos v. Russia, the Constitutional Court of the Russian Federation pointed out that the decision of the European Court of Human Rights cannot be binding on the Russian Federation if the provision of the Convention for the Protection of Human Rights and Fundamental Freedoms, on which it is based, contradicts the provisions of the Constitution of the Russian Federation.[[106]](#footnote-106)

In this regard, we can conclude that in this decision the Constitutional Court of the Russian Federation specified its position on the supremacy of the fundamental principles of the Constitution of the Russian Federation in the investment sphere in relation to the decision of the European Court of Human Rights, based on an international treaty.[[107]](#footnote-107)

However, one should agree that the international norm will be interpreted according to the rules of international law, the Russian one - according to the rules of the Russian legal system, in many cases the interpretation may not coincide.

According to T. N. Ivanova, public order should be understood as the totality of economic, political, moral, legal, cultural foundations and traditions operating in a particular country.[[108]](#footnote-108)

Also very relevant is the procedure for recognizing and enforcing the decision of an international arbitration body, in which there is a close interaction between national legislation and international treaties. Recognition and enforcement of international commercial arbitration awards are the final stage in the legal mechanism for the implementation of guarantees of the rights and legitimate interests of foreign investors. Along with this, it seems that among the grounds for a possible refusal of such recognition and enforcement of an international commercial arbitration award, the most relevant is its contradiction to the public policy of the Russian Federation. It should be assumed that this aspect is very significant in matters of recognition and enforcement of international commercial arbitration awards, since there is no clear concept of the category "public order" at the legislative level. It can also be assumed that this definition cannot be enshrined in legislation, since it is abstract. At the same time, the fundamental, initial principles of public order are primarily contained in the Constitution of the Russian Federation.

According to paragraph 1 of Art. 15 of the Constitution of the Russian Federation, the Constitution of the Russian Federation has the highest legal force, direct effect and is applied throughout the territory of the Russian Federation. Thus, the Constitution of the Russian Federation as the main law has the highest legal force on the territory of the Russian Federation, and therefore the provisions of international treaties cannot contradict it.

Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin emphasized that the main problem faced by the Constitutional Court is the need to simultaneously solve two tasks that are not always easy to combine: on the one hand, harmonization of the Russian legal system with the common European legal space, and on the other hand, protecting their own constitutional identity.[[109]](#footnote-109)

National legislation must comply with the provisions of international treaties to the extent that these provisions do not contradict the foundations of the constitutional order of the state, as well as the provisions of national legislation. In this regard, the state, assuming the obligations arising from an international treaty when joining an international treaty, must determine the appropriateness of such accession.

The doctrine also emphasizes that the complication, as well as the complex nature of international treaty regulation at the present stage, require the state to make certain efforts for the mutual adaptation of national and international regulation.[[110]](#footnote-110)

Meanwhile, the obligations of the state arising from an international treaty arise from the state as a result of its accession to the international treaty. In turn, the decisions of international organizations and the decisions of international judicial institutions can be based on an international treaty to which the state has acceded.

At the same time, the provisions of international treaties, decisions of international organizations and international judicial bodies cannot contradict the norms of constitutions and should not conflict with the national legislation of the states that are parties to these treaties. In addition, the provisions of the BITs may also be made more complex in order to take into account the interests of the host state and the foreign investor. To do this, the state must implement and transform into its national legislation only those provisions of the international treaty that correspond to the foundations of the constitutional order of the state and which will also subsequently be included in civil law contracts between the state receiving foreign investment and the foreign investor.

Thus, the state can fulfill its obligations to fulfill the provisions contained in the international treaty, including in the field of regulation of cross-border investment activities arising from civil law relations with a foreign investor.

It should also be emphasized that the provisions of Art. 54 of the Washington Convention, which states that states must recognize an ICSID award as binding, as if it were the final decision of a state court, obliges the state hosting foreign investment to enforce the ICSID award.[[111]](#footnote-111)

On the one hand, ICSID is a commercial organization, which also follows from Art. 17 of the Washington Convention that the costs of ICSID are covered by fees for the use of its structures or from other income, the costs may also be covered by contributions from Contracting States that are members of the International Bank for Reconstruction and Development.

On the other hand, according to Art. 54 of the Washington Convention, a state against which an ICSID decision has been issued is obliged to comply with it. At the same time, the decision of ICSID as a commercial organization, based on the provisions of the Washington Convention, cannot be equated with the decision of the state court, and also cannot contradict the Constitution of the Russian Federation. It seems that in connection with the provisions of the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation in terms of the new wording of Art. 79 of the Constitution of the Russian Federation that decisions of interstate bodies adopted on the basis of the provisions of international treaties of the Russian Federation in their interpretation that contradicts the Constitution of the Russian Federation are not subject to execution in the Russian Federation, these provisions of Art. 54 of the Washington Convention may be an obstacle to the ratification of the Washington Convention by the Russian Federation.[[112]](#footnote-112)

# Conclusion

The problem of the lack of a single definition and understanding of the term "investment", both in national legislation and in the international field, updated our study.

The conclusions obtained as a result of the study indicate that the legal problems of regulating foreign investment in the Russian Federation are important for the investment climate of the state.

In the course of studying the topic of investment, it was found that there is no single approach to the definition of this concept, which seems problematic. And also, the definition of persons who can be recognized as foreign investors is of great practical importance in the legal regulation of foreign investment. This is due to the possibility of their entrepreneurial activities in the recipient country, as well as the provision to foreign investors of the relevant rights, benefits and guarantees provided for by national legislation and international treaties.

Thus, an analysis was made in the form of a comparative table, which is based on the study of the normative legal acts of national and international legislation, various opinions of international organizations, foreign and domestic researchers (Appendix No. 1). As the table shows, today there is no single concept of what foreign investment is, either in the legislation or in international (multilateral and bilateral) treaties. Under these conditions, arbitration and judicial practice is of decisive importance. We are close to the approach of the Association of International Law "the concept of foreign investment as a legal category is a new concept, which is revealed when solving a set of legal problems arising from foreign investment between the parties of an investment legal relationship".[[113]](#footnote-113)

When considering the legal forms of foreign direct investment, a number of legal problems were identified. In this section, such forms as a concession agreement and investment activities in special economic zones and other territories with a special regime were considered.

It is concluded that against the background of a dynamically growing concession practice, the issue of the legal nature of the concession agreement is still unresolved. The ratio of investments and concessions is becoming more and more relevant. Consideration of concession relations within the framework of investment would make it possible to extend a wide range of legal guarantees of the investor to the concessionaire. However, preliminary it would be necessary to strengthen in every possible way the relationship between the investor, investments and the concession agreement. Obviously, further research is needed in this area, which will help develop balanced approaches to this issue.

When considering the legal regulation of investment activities in special economic zones and other territories with a special regime, it was concluded that in addition to the term "special economic zone" there are many other similar names: "free economic zone", "free zone", "offshore zone», "techno-economic development zone", "technopark", etc.[[114]](#footnote-114) In domestic legislation, various concepts are used to designate a territory with a certain legal regime. It is obvious that the presence of such a variety served as the basis for the emergence of discussions in the legal literature regarding the comparison of these concepts, as well as the need for the existence of such a variety in Russian legislation.

The second chapter is devoted to guaranteeing the rights of foreign investors in national legislation and at the international level. And also, the problem of interaction of national legal and international legal regulation of the rights of foreign investors is consecrated. Upon completion of the study of the second chapters, the following conclusions can be drawn:

1. The main guarantees for the protection of the rights of a foreign investor are: the right to timely, fair compensation in the event of expropriation, the right to receive and use income from investments, the "umbrella reservations", the right to freely move property outside the host state, but not always data Guarantees are implemented in full.
2. The obligations of a state arising from an international treaty arise for the state as a result of its accession to the international treaty. In turn, decisions of international organizations and decisions of international judicial institutions can be based on an international treaty to which the Russian Federation has acceded. The provisions of international treaties, decisions of international organizations and international judicial bodies cannot contradict the norms of Constitutions and should not conflict with the national legislation of the states that are parties to these treaties. To do this, the state must implement and transform into its national legislation only those provisions of the international treaty that correspond to the foundations of the constitutional order of the state and which will also subsequently be included in civil law contracts between the state receiving foreign investment and the foreign investor.
3. Inclusion in the agreement on the protection and promotion of investments, provided for in paragraph 1 of Art. 4 of the Federal Law "On the Protection and Promotion of Investments in the Russian Federation"[[115]](#footnote-115), the provisions on legal guarantees for a foreign investor contained in a bilateral agreement on the encouragement and mutual protection of investments, could contribute to the possibility of transforming public-law guarantees provided to a foreign investor, contained in the bilateral agreement on the encouragement and mutual protection of investments, in private law by fixing the relevant legal guarantees in the agreement on the protection and encouragement of investments, concluded between the state-recipient of foreign capital and a foreign investor, as well as being a civil law contract. At the same time, in this process, there would be a transformation of an international legal obligation into a private law one.
4. It seems that for the purpose of stable performance of activities for a foreign investor, it is much more important that the national legal guarantees contained in the legislation of the state receiving foreign investments and private law guarantees in contracts concluded with a foreign investor comply with the legal guarantees enshrined in international treaties, rather than the immutability of the legislation of the state recipient, which, moreover, may be contrary to these international legal treaties.[[116]](#footnote-116) In this sense, a stabilization clause cannot be considered an effective legal guarantee for a foreign investor, since a high degree of integration into the economy of the host state is very important for a foreign investor. In turn, such a high degree of integration is possible if national legal guarantees comply with international legal guarantees. The stabilization clause contains the threat of creating a plurality of legal regimes, which can become a prerequisite for instability in cross-border investment relations, as well as violations of competition. In addition, according to paragraph 2 of Art. 422 of the Civil Code of the Russian Federation[[117]](#footnote-117), if after the conclusion of the contract a law is adopted that establishes rules different for the parties than the rules that were in force at the conclusion of the contract, then the terms of the concluded contract shall remain in force, except in cases where the law is given retroactive effect. Thus, the norms of paragraph 2 of Art. 422 of the Civil Code of the Russian Federation[[118]](#footnote-118) on the stability of legislation for the parties to a civil law contract create a greater legal guarantee of stability than the provisions on a stabilization clause, since they can apply to a foreign investor and the recipient state that are parties to a civil law contract of a private law nature.
5. Establishing the term and procedure for payment of compensation in the event of seizure of foreign property is a guarantee provided to a foreign investor. At the same time, provisions regarding the procedure for payment of compensation should be contained in national legislation. In this case, they can apply to both domestic and foreign investors.[[119]](#footnote-119) The provisions of the Bilateral agreement on the promotion and mutual protection of investments will generally contain provisions relating to how compensation is to be paid. In these circumstances, an important guarantee becomes the proper determination of the deadlines and procedure for paying compensation to a foreign investor in the event of an act on the expropriation of the property of a foreign investor. For example, the deadlines within which compensation must be paid, as indicated in paragraph 81 of Art. 4 Guarantees of the rights of investors upon expropriation of Section VII Investments of Annex No. 16 (Protocol on Trade in Services, Establishment, Activities and Investments) to the Treaty on the Eurasian Economic Union[[120]](#footnote-120), compensation in cases of expropriation must be paid without delay within the period provided for by the legislation of the recipient state, but not later than three months from the date of expropriation.
6. Legal mechanisms for the implementation of guarantees of the rights and legitimate interests of foreign investors represent a system of legal means in the national legislation of countries accepting foreign investments, in international multilateral and bilateral treaties, as well as in Bilateral agreements on the promotion and mutual protection of investments. The implementation of guarantees of the rights and legitimate interests of foreign investors is possible both with the help of the relevant national authorities of the states that are recipients of foreign capital, and international bodies, which together form a system of bodies that facilitate the implementation of legal guarantees for foreign investors. Meanwhile, foreign investors cannot exercise their rights and legitimate interests within the framework of any of the international bodies that make up the system of bodies for the implementation of legal guarantees for foreign investors, but only with the help of certain bodies of this system due to the fact that states are members of any individual international investment treaties. Along with this, the recognition and enforcement of a foreign arbitral award also takes place taking into account the peculiarities of the provisions of the national legislation of the state receiving foreign investments, which must comply not only with the interests of a foreign investor, but also with the interests of this state.

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# Appendix No. 1

Table 1. Comparison of the concept of "investment"

|  |  |
| --- | --- |
| International organization, law, expert author | Definition of the concept of "investment" |
| Federal Law No. 160-FZ of July 9, 1999 (as amended on July 2, 2021) "On Foreign Investments in the Russian Federation" | Foreign investment - an investment of foreign capital, carried out by a foreign investor directly and independently, in an object of entrepreneurial activity in the territory of the Russian Federation in the form of objects of civil rights owned by a foreign investor, if such objects of civil rights are not withdrawn from circulation or are not limited in circulation in the Russian Federation in in accordance with federal laws, including money, securities (in foreign currency and the currency of the Russian Federation), other property, property rights having a monetary value of exclusive rights to the results of intellectual activity (intellectual property), as well as services and information.  |
| Federal Law No. 39-FZ of February 25, 1999 (as amended on March 14, 2022) "On investment activities in the Russian Federation carried out in the form of capital investments" | Investments - cash, securities, other property, including property rights, other rights having a monetary value, invested in objects of entrepreneurial and (or) other activities in order to make a profit and (or) achieve another beneficial effect. |
| Federal Law No. 53 "On the Procedure for Making Foreign Investments in Business Companies of Strategic Importance for Ensuring the Defense of the Country and the Security of the State" | Does not contain the concept of "investment". |
| Russian Federation – Sweden BIT | The term "investment" shall mean any kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with its legislation, and shall include in particular, though net exclusively:(a) Movable and immovable property,related property rights, as well as leases;(b) Shares, stocks,bonds and other forms of participation in a company or enterprise;(c) Claims to money or to any performance under contract having an economic value;(d) Intellectual property rights, as well as technology, know-how and goodwill;(e) Rights, conferred by law or under contract to undertake economic activity, including rights to search for, extract or exploit natural resources. |
| W. Sharp, G. Alexander, J. Bailey | Investing is the process of parting with money today in order to get more of it in the future. |
| A.M. Lapteva, O.Y. Skvortsov  | Foreign investments - investments of foreign capital made by a foreign investor directly and independently in the object of entrepreneurial activity in the territory of the recipient country in the form of objects of civil rights (money, property rights, securities, intellectual property, services and information). |
| N.G. Doronina | The concept of investment can refer to financial transactions when money is placed in securities, as well as to certain actions of a person performed for the purpose of making a profit and with the risk of losing both the expected profit and the invested capital. |
| N.N. Voznesenskaya  | Foreign investment is a certain capital (foreign investment) endowed by the recipient country with an appropriate legal regime (economic benefits, restrictions, protection of a foreign investor). |
| International Law Association | The concept of foreign investment as a legal category is a new concept, which is revealed when solving a set of legal problems arising from foreign investment between the parties to an investment legal relationship. |
| Washington Convention 1965 | A specific object is recognized as an investment if it:1. is long-term;
2. involves significant capital investment and risks;
3. assumes a permanent income;
4. contributes to the development of the economy of the country - the recipient of capital.
 |
| Seoul Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) 1985 | There is no general definition of "investment", the Convention specifies which investments are subject to its guarantees. |
| Agreement between Russia and the United States on the encouragement and mutual protection of investments, 1992 | Investment means any investment in the territory of one of the Parties, owned or controlled by citizens or companies of the other Party, such as participation in the property of a company, rights of claim under obligations, contracts for the provision of services or investment and, in particular, but not exclusively:1. all kinds of property, including movable and immovable, tangible and intangible, as well as the rights corresponding to it, such rights as the rights of pledge;
2. any kind of participation in the company, including shares, rights to manage and direct or participate in the assets of the company; rights of claim for funds or liabilities having economic value and associated with an investment;
3. intellectual property.
 |

**САНКТ-ПЕТЕРБУРГСКИЙ ГОСУДАРСТВЕННЫЙ УНИВЕРСИТЕТ**

**АННОТАЦИЯ**

**Выпускной квалификационной работы студента магистратуры по программе Transnational Legal Practice (in English)/Юридическое сопровождение международного бизнеса (на английском языке)**

Ведякина Анна Алексеевна

«Правовые проблемы прямых иностранных инвестиций в Российской Федерации»

**Ключевые слова:** понятие инвестиции, иностранные инвестиции, прямые иностранные инвестиции, концессионное соглашение, правовое регулирование инвестиций, специальные экономические зоны, «стабилизационная оговорка», «зонтичная оговорка», гарантии прав иностранных инвесторов.

На современном этапе глобализации понятие иностранные инвестиций в современном мире все более расширяется и диверсифицируется. Нередко становится все труднее определить, имеем ли мы дело с инвестициями в конкретном случае. Отсутствие унификации термина «инвестиции» объясняется большим многообразием форм и видов иностранных инвестиций, а также способов и методов их осуществления. Все это является существенной проблемой, потому что нельзя оперировать термином «иностранные инвестиции» и осуществлять их правовое регулирование без четкого понимания сущности термина. Исследование освещает проблему отсутствия единого определения термина «инвестиции» в законодательстве, а также правовые проблемы привлечения прямых иностранных инвестиций в российскую экономику на современном этапе развития. Проведен анализ нормативно-правовых документов в сфере инвестиций, выявлены правовые проблемы. А также, предложены пути решения проблем инвестиционного характера, через призму правового регулирования прямых инвестиций на национальном и международном уровне.

**SAINT PETERSBURG STATE NIVERSITY**

**ANNOTATION**

**Master's Degree Program Transnational Legal Practice (in English)/Юридическое сопровождение международного бизнеса (на английском языке)**

Vedyakina Anna Alekseevna

"Legal issues of foreign direct investment in the Russia Federation"

**Keywords:** concept of investment, foreign investment, foreign direct investment, concession agreement, legal regulation of investments, special economic zones, "stabilization clause", "umbrella reservations", guarantees of the rights of foreign investors.

 At the present stage of globalization, the concept of foreign investment in the modern world is increasingly expanding and diversifying. It often becomes more and more difficult to determine whether we are dealing with investments in a particular case. The lack of unification of the term "investment" is explained by the great variety of forms and types of foreign investment, as well as the ways and methods of their implementation. All this is a significant problem, because it is impossible to operate with the term "foreign investment" and carry out their legal regulation without a clear understanding of the essence of the term. The study highlights the problem of the lack of a single definition of the term "investment" in the legislation, as well as the legal problems of attracting foreign direct investment in the Russian economy at the present stage of development. The analysis of regulatory and legal documents in the field of investment was carried out, legal problems were identified. And also, ways of solving problems of an investment nature are proposed, through the prism of legal regulation of direct investment at the national and international level.

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