ON THE DIFFERENT INTERPRETATION OF INVESTMENTS IN RUSSIAN LAWS

Abstract

The article deals with one of the urgent problems of investment law, which, according to the authors, is the lack of a single definition of the concept of investment in the main legislative acts. The purpose of the work is to identify the existing contradictions, identify the causes of their occurrence and proposals for their solution. To achieve this goal, we analyze the current legislative acts regulating investment relations, as well as scientific approaches to the definition of investment. As a result, we conclude that there are various approaches to the concept of investment in the scientific community and the need to establish a single definition in regulatory acts.

Keywords: investment, concept of investment, definition of investment, investment legislation

Investment issues are among the most important in the economy of any state. The development of various sectors of the economy largely depends on their volume, quality, timing and investment directions. Any state that seeks to create a reliable modern economy seeks to create the most favorable conditions for investors. First of all, the state needs to address the issue of transparency and unambiguity of investment legislation.

A potential investor should be sure that the investments made in the company will not only bring him the planned dividends, but he will be able to receive these dividends without any risks. We believe that the first step in creating transparent investment legislation is to introduce unambiguous concepts and definitions into the regulations. Certain legal terms in regulations should evoke the same concepts and associations for all people who read them, without exception.

However, the current legislation does not meet the above criteria [1]. In accordance with Federal law №. 39-FЗ of 25.02.1995 «On investment activities in the Russian Federation carried out in the form of capital investments», an investment is considered to be cash, securities, other property, including property rights, other rights that have a monetary value, invested in objects of entrepreneurial and other activities in order to make a profit and achieve other useful effects [2].

The same law contains a definition of the concept of investment activity, which is understood as investment and implementation of practical actions in order to generate profit and achieve other useful effects.

From the analysis of these norms, it can be concluded that investments in it are understood as material values that the investor invests in a particular enterprise. The very process of investing certain material resources in accordance with this law is called investment activity. The analysis of the concepts of investment and investment activity is beyond the scope of this study. However, the definition of investment given in this law is not the only one.

So under Federal law from 09.07.1999 № 160-FЗ «On foreign investments in the Russian Federation» foreign investment is the investment of foreign capital by a foreign investor directly and independently in the objects of entrepreneurial activity on the territory of the Russian Federation in the form of objects of civil rights belonging to foreign investor, unless such objects of civil rights are not withdrawn from circulation or 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 that have a monetary value of exclusive rights to the results of intellectual activity (intellectual property), as well as services and information [3].
As follows from the analysis of these two laws, the term investment is understood in absolutely different ways. In the first case, investment refers to the property that the investor invests in the business, and in the second, the same term refers to the process (action itself) of disposing of capital by investing it in objects of certain civil rights.

In our opinion, these two legislative acts contain diametrically opposite approaches to the definition of investment, expressed in the legal literature. However, if it is appropriate, and even preferable, in scientific circles to express different opinions on the same problem in order to develop true knowledge, then the existence of two completely different definitions of the same legal term is unacceptable.

In this state of affairs, there can be no question of any transparency of investment legislation. It is unlikely that foreign investors in developed economic countries, accustomed to the absolute rule of law, will easily invest their capital in accordance with the legislation, in which the most key concept of regulated relations – investment, does not have an unambiguous interpretation and can be interpreted both as property (capital), which is made, and as the process of investing capital in business objects.

This problem is periodically raised in scientific circles [4], but so far it has not been solved. To solve this problem, it is necessary first of all to understand the reasons that led to the current situation. One of the reasons is the different interpretation of the concept of investment in scientific circles. The views of Russian scientists on the definition of investment are considered in detail by A.V. Belitskaya [5].

Some scientists believe that investments are related to objects of civil rights [6-7], while others understand investment as a process of capital investment [8-9]. There is also an opinion that in each case the term investment should be interpreted depending on the content of the contract [10]. From the analysis of the considered normative acts, it can be concluded that both laws consider the same area of legal relations.

A distinctive feature of the first law is that it regulates relations related to investments made in the form of capital investments, which in this law are understood as investments in fixed capital (fixed assets), including the costs of new construction, reconstruction and technical re-equipment of existing enterprises, the purchase of machinery, equipment, tools, inventory, design and survey work and other costs.

As for the second law, it applies to legal relations involving foreign investors. Thus, in practice, there may always be a situation where investments in the form of capital investments will be made by foreign investors, i.e. investment legal relations are simultaneously regulated by two laws, while the concept of investment in these laws has completely different definitions.

In our opinion, this situation is a gross violation of legal technology and does not contribute to the transparency of investment legislation. It seems that there are several reasons why this situation appeared at all, and also for so long it is not corrected. These regulations appeared in the late 90 - ies of the last century in the Wake of the transition to a market economy.

Earlier, during the planned economy, Soviet scientists were interested in investment issues, usually only in the theoretical aspect and mainly in the context of foreign investment. The regulatory framework of investment legislation at that time was not only not sufficiently developed, but also did not represent a significant interest for lawyers of the Soviet period.

Thus, the new investment laws did not have any significant practice or theoretical development. In those days, many legislative acts were adopted, as they say, «from the wheels», but then over time they were improved, improved and acquired a completely complete and practical form. However, this did not happen with the laws governing investment relations. As it was shown above, investment legislation is neither clear nor transparent to date.

Apparently, one of the reasons why the legislator has not yet paid attention to the non-alignment of investment legislation is that it is not in demand in real life. Otherwise, numerous
court proceedings would have long contributed to the improvement of the laws under consideration and the elimination of contradictions. Now investment legal relations are regulated in practice, most of them either by General civil legislation, or by narrow special laws [11].

In conclusion, it should be emphasized once again that attracting long-term and law-abiding investors to various sectors of the economy is one of the top priorities facing most countries.

Along with tax benefits and other preferences, transparency of investment legislation is an essential element for making investment decisions. As long as Russian legislation contains different definitions of investment, it can hardly be called transparent, and, as a result, we can count on the influx of both domestic and foreign investors.

References