

# ClientAlert

## Moscow

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# Special Update on Supporting Investments on the Basis of Project Finance in Russia

Government Resolution No. 1044 entered into force on 23 October 2014, approving the program to support investment projects implemented in Russia on the basis of project finance (the “**Program**”).

Pursuant to the information published on the Ministry of Economic Development’s website, the first Russian credit organizations and international financial organizations for participation in the Program were selected in December 2014 and January 2015. The first investment projects were also selected in January 2015.

The Program was designed to establish a mechanism for providing support to selected investment projects. It provides for the following: (i) the provision of special purpose loans to borrowers in rubles at a rate not exceeding the key rate of the Bank of Russia plus 1% per annum; and (ii) the provision of state guarantees to secure up to 25% of the loan amount. Resolution No. 1044 includes the Government’s recommendation to the Bank of Russia to provide loans to authorized banks in order to refinance loans they granted under the Program, in accordance with regulations of the Bank of Russia.<sup>1</sup>

In this special update we cover certain general provisions of the Program, including criteria and procedure for selecting Russian credit organizations, international financial organizations and investment projects for participation in the Program and the procedure and terms for providing state guarantees for loans. The update takes into account clarifications on the Program given by the Ministry of Economic Development based on typical questions raised by potential participants of the Program (the “**Clarifications of the Ministry of Economic Development**”).<sup>2</sup>

## 1. Criteria and procedure for selecting authorized banks

Russian credit organizations and international financial organizations that intend to participate in the Program as authorized banks must meet the established criteria.



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<sup>1</sup> Clause 5 of the Recitals of Government Resolution No. 1044 “On Approval of the Program to Support Investment Projects Implemented on the Territory of the Russian Federation on the Basis of Project Finance”, dated 11 October 2014.

On refinancing issues see also the Clarifications of the Ministry of Economic Development on Question No. 20; Information of the Bank of Russia on refinancing of loans provided for the investment projects selected under Government Resolution No. 1044, dated 12 November 2014; Information of the Bank of Russia on refinancing of loans provided for investment projects, dated 25 April 2014; Information of the Bank of Russia on interest rates for special-purpose refinancing instruments of the Bank of Russia, dated 16 December 2014.

<sup>2</sup> The Clarifications of the Ministry of Economic Development are published on its website: <http://economy.gov.ru/minec/activity/sections/corpmangement/investprojectprogramme/2014112410#>

The criteria for selecting Russian credit organizations are as follows:

- its capital must be no less than RUB 100 billion;
- it must not be subject to the Bank of Russia's ban on accepting deposits from individuals;
- it has implemented at least ten investment projects within the last three years that are valued at no less than RUB 3 billion each; and
- it has a subdivision dealing with loans for investment projects.

The criteria for selecting international financial organizations are as follows:

- it is established on the basis of an intergovernmental agreement with participation of the Russian Federation, and where the Russian Federation's share in its capital is no less than 30%;
- it has experience in the public offering of its securities in Russia;
- its capital adequacy level is no less than 20%;
- loans issued to Russian companies or funds invested in bonds of Russian issuers constitute no less than 25% of the total amount of issued loans and/or invested funds;
- it has implemented at least three investment projects within the last three years; and
- it has a subdivision dealing with loans for investment projects.

The specially-formed Interdepartmental Commission under the Ministry of Economic Development (the "**Commission**") is to select projects on the basis of documents submitted by Russian credit organizations and international financial organizations, confirming compliance with criteria set forth by the Program.<sup>3</sup> Russian credit organizations and international financial organizations selected as authorized banks are to be included in a list published on the Ministry of Economic Development's website.<sup>4</sup>

## 2. Criteria and procedure for selecting investment projects

### 2.1 Criteria and selection of investment projects

The Program is designed to support projects implemented in Russia on the basis of project finance. Pursuant to the Clarifications of the Ministry of Economic Development, investment projects implemented on the basis of project finance refer to projects that achieve a return on invested funds (depending on the economic efficiency of the project), such that the return of borrowed funds to a creditor is at the expense of cash flow generated by the related project.<sup>5</sup>

Projects that are implemented in priority sectors of Russia's economy (e.g., electricity, pharmaceuticals, agriculture, communications and information technologies, and housing and utilities) can be selected to participate in the Program. A complete list of such sectors is determined in accordance with the Guidelines on the Government's activities until 2018.<sup>6</sup>

The total cost of the investment project, which is determined as the sum of all costs save interest payments on loans, may be no less than RUB 1 billion and no more than RUB 20 billion. Pursuant to the Clarifications of the Ministry of Economic Development, all project costs associated with the design and construction of production facilities, including costs for building necessary infrastructure for the designed production facility, shall be taken into account when determining the total cost of the project. Costs may also include those already incurred and paid for prior to the applicability of the Program for a given project, including costs associated with borrowing funds, although such costs will not be refinanced under the Program.<sup>7</sup>

The amount of borrowed funds must not exceed 80% of the total cost of the project. Authorized banks may establish additional requirements applicable to investment projects (e.g., requirements as to project effectiveness indicators).

Availability of a construction permit is also one of the criteria for an investment project to be selected.

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<sup>3</sup> The procedure for the Commission's activities is approved by Government Resolution No. 1341 "On the Intergovernmental Commission for Selecting Investment Projects, Russian Credit Organizations and International Financial Organizations for Participation in the Program on Support of Investment Projects Implemented on the Territory of the Russian Federation on the Basis of Project Finance", dated 9 December 2014.

The composition of the Commission is approved by Government Decree No. 2503-r "On the Composition of the Intergovernmental Commission for Selecting Investment Projects, Russian Credit Organizations and International Financial Organizations for Participation in the Program on Support of Investment Projects Implemented on the Territory of the Russian Federation on the Basis of Project Finance", dated 9 December 2014.

<sup>4</sup> The procedure for maintaining such list of authorized banks is approved by Order of Ministry of Economic Development No. 792 "On the Procedure for Maintaining the List of Russian Credit Organizations and International Financial Organizations Selected for Participation in the Program on Support of Investment Projects Implemented on the Territory of the Russian Federation on the Basis of Project Finance", 12 December 2014.

<sup>5</sup> See the Clarifications of the Ministry of Economic Development on Question No. 4.

<sup>6</sup> The Guidelines on the Government's activities until 2018 were approved by the Government on 31 January 2013.

<sup>7</sup> See the Clarifications of the Ministry of Economic Development on Question No. 6.

## 2.2 Requirements to project initiators and borrowers

A project initiator is the entity who submits documents in relation to an investment project to one of the authorized banks. The project initiator and an ultimate borrower may be the same entity.

The project initiator and ultimate borrower(s) must comply with the following requirements:

- they must be registered as Russian legal entities;
- they must not have any overdue tax debts or outstanding indebtedness for other budgetary payments;
- they must not have any bankruptcy procedure initiated against them; and
- a person controlling the project initiator and/or an ultimate borrower must not be registered in an "offshore zone" (a list of such states (territories) is approved by the Ministry of Finance). Pursuant to the Clarifications of the Ministry of Economic Development, this requirement applies to the entire chain of ownership and controlling persons refer to persons holding more than 51% of shares (participation interests) in the project initiator and/or ultimate borrower.<sup>8</sup>

Authorized banks may establish additional requirements applicable to ultimate borrowers (e.g., in respect of size of capital or financial position).

## 2.3 Procedure for selecting investment projects

The initiator of the investment project must submit documents on the project to an authorized bank. Pursuant to the Clarifications of the Ministry of Economic Development, the list of required documents is determined by the authorized bank itself, but such list will include certain documents listed in Attachment 1 to the Program<sup>9</sup> (e.g., investment project documents, constituent documents and financial statements of the initiator of the investment project and the borrower). The authorized bank will review the documents and make a decision whether or not to grant a loan on the terms of the Program. If approved, the bank will submit the documents contained in Attachment 1 to the Program and a passport of the investment project<sup>10</sup> to the Commission.

The Commission in turn, will submit the documents for review to an agent of the Government, whose functions are performed by Vnesheconombank, and the federal executive authority relating to the investment project. If approved by Vnesheconombank, the Commission will make a final decision whether or not to select the project for participation in the Program. Selected investment projects are to be included in a register that is published on the Ministry of Economic Development's website.<sup>11</sup>

If financing of the investment project requires a number of loans from various authorized banks, the above-mentioned steps may be performed by each authorized bank individually or by one of the authorized banks on the basis of an agreement with the other authorized banks.

## 3. The procedure and terms for providing state guarantees for loans

An agreement for providing a guarantee is to be concluded with the Ministry of Finance following the decision to select a relevant investment project. Pursuant to the Clarifications of the Ministry of Economic Development, the authorized bank will submit a set of documents to the Ministry of Finance, which will be similar to those submitted to the Commission at the time of selecting the project, but will also include a loan agreement and the authorized bank's documents.<sup>12</sup>

A guarantee will be provided to secure the obligations of the borrower under the loan for the implementation (financing) of the investment project to repay the loan within the term established by the loan agreement, up to 25% of the loan amount.

Under the guarantee, the Russian Federation is jointly and severally liable to the creditors with respect to the borrower's secured obligations.

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<sup>8</sup> See the Clarifications of the Ministry of Economic Development on Question No. 8.

<sup>9</sup> See the Clarifications of the Ministry of Economic Development on Question No. 11.

<sup>10</sup> See the Guidelines on preparing the investment project's passport for participation in the Program on support of investment projects implemented on the territory of the Russian Federation on the basis of project finance. <http://economy.gov.ru/minec/activity/sections/corpmanagment/investprojectprogramme/201412307>

<sup>11</sup> The procedure for maintaining such register of the selected projects is approved by Order of the Ministry of Economic Development No. 793 "On Approval of the Procedure for Maintaining the Register of the Investment Projects Implemented on the Territory of the Russian Federation on the Basis of Project Finance," dated 12 December 2014.

<sup>12</sup> See the Clarifications of the Ministry of Economic Development No. 12.

