



LAW ON INNOVATION SCIENTIFIC AND TECHNOLOGICAL CENTERS IN RUSSIA



Federal Law No. 216-FZ of 29 July 2017 “On Innovative Scientific and Technological Centers and on Amending Certain Legislative Acts of the Russian Federation” (the “Law No. 216-FZ”), which entered into force on 10 August 2017, regulates relations arising in connection with establishment of innovative scientific and technological centres and their functioning.

The Innovation Scientific and Technological Centre (an ISTC) is defined as a complex of organisations engaged in scientific and technological activities and other persons whose activities are aimed at ensuring the functioning of such a center, acting in the territory defined by the Government of the Russian Federation (RF Government). ¹ISTC may be located in the territory of one or several constituent entities of the Russian Federation.

Persons participating in the project (a set of activities aimed at achieving the goals for the creation and operation of ISTC) in the territory of ISTC enjoy the benefits provided by Law No. 216-FZ and there are certain peculiarities of urban planning and some other activities established.

The procedure for an ISTC establishment

The initiator of the ISTC project can be an educational organisation of higher education or a scientific organisation that meets the criteria established by RF Government.

ISTC is established by the decision of RF Government of the Russian Federation on the basis of the proposal of the initiator of the project submitted to the authorised federal executive body.

In the event the authorised body supports the proposal of the initiator of the project, it issues a draft decision of the Government of the Russian Federation on the establishment of ISTC. Such a decision must contain, in particular:

- direction (directions) of scientific and technological activities to be carried out in the territory of the ISTC being established;
- a list of land plots (parts of land plots) that are included in the boundaries of the ISTC territory;
- the project rules;
- the decision to establish a foundation and appoint a general director (in case the founder (founders) of the foundation is RF Government or RF Government and the initiator of the project);
- a list of movable and immovable property transferred to the foundation as a property contribution of the Russian Federation necessary for the implementation of the project;
- the decision on appointment of the responsible persons or establishment of a management company of ISTC.

The project rules regulate, in particular:

¹A Skolkovo innovation centre - a scientific and technological complex for the development and commercialisation of new technologies, a set of infrastructure for the territory of Skolkovo Innovation Centre and mechanisms for interaction of persons participating in the project, including through the use of this infrastructure, created on the basis of Federal Laws No. 244-FZ “On the Innovation Centre Skolkovo” and No. 243-FZ “On Amending Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law “On the Innovation Centre” Skolkovo”, was founded in 2010 in Russia.

- the procedure for taking decisions on granting the status of the project participant to a legal entity and its inclusion in the register of persons participating in the project implementation (the register), as well as on the deprivation of the legal entity of such status and the cases when such status is lost;
- criteria for selection of persons involved in the implementation of the project to which the land plots may be subleased on preferential terms;
- criteria for selection persons involved in the implementation of the project, which ITC infrastructure facilities may be granted on preferential terms.

ISTC management and disposal of property

The foundation is established by RF Government and (or) the initiator of the project as a Russian non-profit organisation and is charged with organising the construction of ISTC infrastructure facilities, using of the property received from founders or acquired in ownership or possession and (or) use, ensuring implementation of the project, assisting the project participants in promotion of their products and services to the market and in the development of their scientific and scientific and technical cooperation.

The foundation may either own or lease the land plots located within the boundaries of ISTC territory. Such land plots and other assets the foundation transfers to the management company into lease (sublease).

The relevant land plots may only be possessed and / or used by persons participating in the project.

To manage ISTC, RF Government and (or) the initiator of the project establish a management company in the form of a Russian joint stock company.

The management company decides on the granting to the legal entity of the status of the project participant and its inclusion in the register of persons participating in the project, as well as on the deprivation of the legal entity of such status and its exclusion from the register.

The management company also ensures the creation and functioning of the ISTC infrastructure, in particular:

- prepares proposals for changes to the general plans of settlements, general plans for urban districts, schemes for the spatial planning of municipal areas in the territory of which ISTC is located, as well as in their land use and development rules;
- issues permits for construction, permits for commissioning of facilities during the construction, reconstruction, capital repairs of capital construction facilities located in the territory of ISTC;
- examines the design documentation of capital construction projects and the results of engineering surveys;
- organises the provision of transportation services, electricity, heat, gas and water supply, water disposal, fuel supply, communication services, catering, trade, consumer services, leisure in the territory of ISTC;
- coordinates the installation of advertising structures in the territory of ISTC;
- issues permissions for educational activities and medical activities in the territory of ISTC.

In addition, the management company organises the provision of services to the project participants necessary for the implementation of their scientific and technological activities (including legal and accounting services) and for the state registration of rights to intellectual property and management of such rights; provides or organises the provision of the services of a customs representative to persons participating in the implementation of the project.

The foundation may transfer movable and other property, including exclusive rights owned by foundation, to the management company for a period of no more than 49 years for the purpose of the project implementation and earning income (for financing the statutory activities of the foundation).

The management company may entrust certain its functions to its subsidiaries, in the authorised capital of which it owns 100% of the shares (stakes) and that do not carry out any other activities, other than related to the implementation of the project.

Project participants and features of their activities

In order to obtain the status of the project participant, legal entities apply to the management company in the manner prescribed by the project rules.

A participant of the project can be:

- a legal entity established in accordance with Russian law;
- a permanently operating executive body of which, as well as other bodies or persons entitled to act on its behalf without a power of attorney, are permanently located on the territory of ISTC;
- constituent documents of which allow it to carry out exclusively scientific and technological activities².

If a person does not meet the above criteria, it nevertheless may be entitled to carry out scientific and technological activities in the territory of ISTC without obtaining the status of a project participant, on the basis of an agreement with the management company. The person who entered into such an agreement is included in the register of persons participating in the project. However, such person is not entitled to the benefits granted to the project participants.

The decision to exclude a legal entity from the register of persons participating in the implementation of the project is taken in the following cases:

- violation by the participant of the project of the requirements of Law No. 216-FZ, project rules;
- the participant's refusal to participate in the project;

² Scientific and technological activity is understood as scientific (scientific research), scientific and technical and innovative activities, research and development, the implementation of scientific and (or) scientific and technical projects, the use of scientific and (or) scientific and technical results, the results of intellectual activities, including their commercialisation, in the areas defined in the decision to establish an ISTC in accordance with the priorities of scientific and technological development of the Russian Federation. At the same time, activities that contradict the requirements of Law No. 216-FZ and the project rules are not recognised as scientific and technological activities.

- liquidation or reorganisation of a legal entity (except for reorganisation in the form of a transformation or a merger if each participating in the merger legal entity has the status of a project participant on the date of state registration of their successor).

Benefits and special features of the operation in the territory of ISTC

1. Compensation of expenses for payment of customs duties

The management company may provide the services of the customs representative in respect of goods (excluding excisable goods) imported for the purpose of the construction, equipment and technical equipment of real estate in the territory of ISTC or those required for the implementation of scientific and technological activities by the participants of the project, including payment of the customs duties in relation to imported goods on behalf of such persons.

The expenses incurred by persons participating in the implementation of the project in connection with payment of customs duties and value added tax when importing goods are reimbursed to such persons in the form of grants transferred to the management company in accordance with the procedure established by the budget legislation.

2. Technical regulation and provision of sanitary and epidemiological welfare in the territory of ISTC

The technical regulations of the Eurasian Economic Union (EEU) are applied in respect of products or associated design processes (including surveys), production, construction, installation, commissioning, operation, storage, transportation, sale and disposal, used in the territory of an ISTC. If such regulations have not yet been adopted or entered into force, the standards of the Russian Federation can be applied.

Compulsory assessment of compliance in the absence of technical regulations is not carried out, with the exception of state control (supervision). State control (supervision) in such cases is conducted to verify compliance with safety requirements of the products used in the territory of ISTC or related processes of design, production, construction, installation, commissioning, operation, storage, transportation, sale and disposal.

Sanitary-epidemiological rules and regulations or requirements contained in the technical regulations of the EEU or the standards of the EEU member states can be applied in the territory of ISTC, on condition that the harmful effects of environmental factors in the territory of ISTC and the adjacent territories are eliminated.

The management company decides on the application of technical regulations, standards, sanitary and epidemiological rules and regulations in the territory of ISTC. Thereat, the management company has the right to determine the specifics of the application of the relevant regulatory acts in the territory of ISTC.

Safety requirements and sanitary and epidemiological requirements stipulated by the decision of the management company are applied in the territory of ISTC from the date of sending of the relevant decision to the authorised federal executive bodies.

3. Regulation of urban development activities on the territory of ISTC

The most significant exceptions to the rules established by federal legislation are provided for by Law No. 216-FZ with respect to design and construction activities in the territory of ISTC.

The management company takes a decision on the preparation of documentation for the planning of the territory of ISTC, prepares and approves such documentation. A decision of the local government of the city district, the settlement on the preparation of documentation for planning the territory of ISTC is not required.

The ISTC site planning documentation is approved without a public hearing. Documents for territorial planning are also not required for the preparation and approval of such documentation.

Project documentation of capital construction projects, construction, reconstruction, major repairs of which are planned to be carried out in the territory of ISTC, and the results of engineering surveys conducted for the preparation of such project documentation are not subject to state expertise.

State construction supervision with respect to the construction, reconstruction, overhaul of capital construction facilities in the territory of ISTC is not carried out.

The management company carries out examination of the design documentation for capital construction projects, the construction, reconstruction, major repairs which are planned to be carried out in the territory of ISTC, and the results of engineering surveys conducted for the preparation of such project documentation, supervision of construction, reconstruction, overhaul of these facilities, and issues construction permits and the commissioning of such facilities.

RF Government may establish in the territory of ISTC special regulation regarding:

- provision of technical conditions, determination of payment for technological connection, specifics of technological connection to power grid facilities of power receiving devices of electric energy consumers;
- providing technical conditions, determining connection fees, especially connecting a capital construction site to heat and gas supply networks, hot water supply, cold water supply and sanitation.

4. Employment of foreign citizens in ISTC

With respect to employment of foreign work force for the purposes of the project implementation in the ISTC, the following exceptions to the rules are provided for by Federal Law No. 115-FZ of 25 July 2002 on the Legal Status of Foreign Citizens in the Russian Federation:

- 1) the project participants are not required to obtain permits to employ foreign employees;
- 2) invitations to come to Russia for the purpose of employment (required for obtaining work visas), as well as work permits for foreign nationals are issued regardless of the quotas established by RF Government;
- 3) invitations to come to Russia for the purpose of employment (if necessary) and work permits for foreign nationals are obtained through the management company or its subsidiary.

Work permits for foreign nationals employed to carry out work for the implementation of the project shall be issued for the duration of the employment contract or civil law contract concluded with

them, but not exceeding 3 years from the date of the arrival of a foreign national to Russia (subsequent repeated renewal for a period of up to three years is possible). At the same time, foreign nationals may work based on such works permits only for the purpose of implementing the project.

Adult members of the families of highly qualified specialists who are hired for the implementation of the project are entitled to obtain work permits regardless of quotas for the issuance of such permits.

5. Powers of state authorities of the constituent entities of the Russian Federation and local governments in the territory of ISTC

The state authorities of the constituent entities of the Russian Federation do not have the powers exercised by the management company in the territory of ISTC, as well as a number of other powers, including:

- reservation of land, seizure of land for state needs of the constituent entity, transfer of lands or land plots from one category to another;
- establishment of administrative liability for the violation of laws and other regulatory acts of the constituent entities and local self-government bodies;
- approval of territorial planning schemes for the constituent entity, documentation on the planning of the territory for the placement of capital construction facilities of regional importance, regional standards for urban planning, state construction supervision;
- regional state control over the conformity of residential houses, apartment buildings in the process of their operation to the requirements of energy efficiency and the requirements for equipping energy consumption meters established by the legislation of the Russian Federation.

The powers of local governments in the territory of ISTC are also limited by the powers of the management company. In addition, local self-government bodies do not carry out land reservation and seizure of land plots within the boundaries of the settlement for municipal needs, the municipal land control over the use of the settlement lands, the transfer of lands or land plots from one category to another and a number of other powers provided for by Law No. 216-FZ.

Law No. 216-FZ also amended the Land Code of the Russian Federation, the Federal Law on Technical Regulation, the Federal Law on the Licensing of Certain Types of Activities, the Federal Law on Advertising and a number of other federal laws.

Best Regards,

GRATA International Law Firm (Moscow)

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- advising on choice of a legal form for doing business in Russia with a view of corporate and tax law and regional and/or specific activities related incentives;
- providing for the establishment of legal entities (including joint ventures), including the development of charters and corporate contracts, ensuring the state registration of a legal entity and state registration of a share issue (for joint-stock companies);
- protection of intellectual property;
- development/review of distribution agreements, supply contracts, agent agreements, contract agreements, services and other contracts..

Contacts:

Yana Dianova

Director of the Corporate and Commercial Law Department, GRATA International (Moscow)

Tel.: +7 (495) 660 11 84

E-mail: Ydianova@gratanet.com