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LEGAL MECHANISMS FOR ATTRACTING INVESTMENT IN “GREEN” INFRASTRUCTURE UNDER THE BELT AND ROAD INITIATIVE: RUSSIAN EXPERIENCE AND INTERNATIONAL APPROACHES

Abstract. This article examines legal mechanisms for attracting private capital to green infrastructure projects associated with the Belt and Road Initiative (BRI). It investigates the conflict between the long investment cycle of infrastructure projects and the evolving character of environmental requirements. The purpose of the study is to identify a legal framework that preserves the State's regulatory powers while making the consequences of regulatory change predictable for investors. The methodological framework combines formal legal analysis, comparative legal analysis, and the case-study method. The research is grounded in the analysis of Russian national legislation on public-private partnerships, concessions, and special investment contracts, as well as an examination of international investment arbitration practice, in order to identify both the potential and the limitations of current legal instruments. Russian experience is examined through the rules on public-private partnerships and concessions, special investment contracts, and the national taxonomy of sustainable-development projects. Investment arbitration practice is assessed through the cases of *Vattenfall v. Germany* and *Rockhopper v. Italy*, taking account of the procedural status of those proceedings. The paper's contribution lies in developing an Adaptive Investment Platform, comprising dynamic regulatory clauses, ESG-linked residual-risk insurance, and multi-tiered dispute settlement. These components are proposed as the basis for a dedicated multilateral agreement on sustainable investment for BRI participants.

Keywords: Belt and Road Initiative; green infrastructure; sustainable finance; public-private partnership; concession; Special Investment Contract (SPIC); investment arbitration.

Introduction

The Belt and Road Initiative (BRI) brings together cross-border projects in transport, energy, municipal, and digital infrastructure. For such projects, differences among national regimes governing environmental regulation, disclosure, and risk allocation are especially material. The “green” status of infrastructure should therefore be understood not only as a technical attribute of an asset, but also as a legal characteristic of the project: it depends on eligibility criteria, financing terms, procedures for confirming compliance, and mechanisms for accounting for the effects of changes in mandatory requirements [1, pp. 6-7].

At the level of BRI financial institutions, voluntary benchmarks have already emerged. The Green Investment Principles are addressed primarily to financial institutions and call for the consideration of environmental, social, and

governance risks, the development of green-finance instruments, and stress testing. Yet a voluntary standard of financial practice replaces neither legislation nor a project implementation agreement; by itself, it neither allocates costs caused by a new environmental requirement nor creates investment protection under international law [1, pp. 142-143].

The research question is how to reconcile the predictability needed to attract capital to infrastructure with long payback periods and the regulatory flexibility required to achieve climate and environmental objectives. UNCTAD documents describe this issue as the need to balance the stability of the investment environment with the State's ability to pursue sustainable-development policies [2, pp. 32-33.].

Within the doctrine of international investment law, the State's right to regulate is understood not as an exception to the investment-



protection regime, but as a necessary element in its interpretation and design. Accordingly, the practically relevant issue is not an artificial “freezing” of regulation, but a clear identification of changes that fall within ordinary commercial risk, those that trigger contractual adjustment, and those that require project termination [3, pp. 6-9].

Materials and Methods

The methodological foundation of this study is built upon a combination of general scientific and special legal methods, enabling a comprehensive analysis of the legal mechanisms for attracting investment to green infrastructure.

The research materials comprise a wide range of sources. The normative legal basis includes Russian federal laws governing investment and infrastructure activities, specifically Federal Law No. 224-FZ “On Public-Private Partnerships”, Federal Law No. 115-FZ “On Concession Agreements”, and Federal Law No. 488-FZ “On Industrial Policy”. The study also analyzes the Criteria for Sustainable Development Projects approved by Government Resolution No. 1587. International legal sources are represented by investment treaties, with a particular focus on the Energy Charter Treaty, as well as doctrinal documents from the UN Conference on Trade and Development (UNCTAD). The empirical basis for the case-study method includes arbitral awards and procedural orders from the International Centre for Settlement of Investment Disputes (ICSID) in the cases of *Vattenfall v. Germany* and *Rockhopper v. Italy*, along with scholarly commentary on these proceedings.

The formal legal method is employed to interpret the content of legal norms, identify the essential terms of contractual structures (PPP, concession, SPIC), and define the legal consequences arising from legislative changes. Comparative legal analysis is used to juxtapose the Russian legal approach to infrastructure project regulation and risk allocation with international practice, as reflected in the doctrinal positions of the World Bank and UNCTAD, and to highlight opportunities and limitations for the transplantation of legal constructs. The case-study method is applied to the analysis of investment arbitration practice. This method allows for a thorough examination of specific dispute

resolution examples to identify not only the substantive reasoning of tribunals concerning public regulation but also the procedural status of the rulings. This approach is critical for distinguishing between operative awards, negotiated settlements, and annulled decisions, which is essential for a realistic assessment of legal risks in the context of regulatory change.

Results and Discussion

1. The investment dilemma of green infrastructure

Green infrastructure depends on public regulation throughout its life cycle. During design and operation, permitted emission levels, waste-management requirements, technical connection rules, parameters of environmental impact assessment, and tariff-regulation rules may change. For investors, this creates a risk that the financial model will need to be revised; for States, it creates a duty not to forego environmentally justified increases in standards merely because of the threat of a compensation claim.

From a legal perspective, at least three types of regulatory change should be distinguished. First, an ordinary adjustment of technical requirements which, where reasonably foreseeable, forms part of commercial risk. Second, a material change that makes project performance economically disproportionate to the original parameters. Third, a regulatory or technological disruption that renders the continued operation of the asset unacceptable on environmental, health, or international-obligation grounds. Each case calls for a pre-agreed legal response: risk retention by the investor, adjustment of economic terms, or an orderly decommissioning of the asset.

This is why a universal stabilization clause excluding the application of future environmental requirements is inconsistent with the public nature of the relevant relationship. A more defensible approach is a procedure for assessing the impact of regulatory change by reference to verifiable parameters: the costs of bringing the asset into compliance, the effect on tariffs or the volume of accessible public services, the payback period, the environmental outcome, and income already earned by the investor.

2. Russian instruments: opportunities and limits of transplantation



2.1. PPPs and the concession logic of risk allocation

Under Part 1 of Article 1 of Federal Law No. 224-FZ of 13 July 2015, the purpose of Russian PPP legislation is to create legal conditions for attracting investment and improving the quality of goods, works, and services whose provision falls within the competence of public authorities. Part 2 of Article 12 of that Law requires PPP agreements to stipulate their essential terms, including the agreement's components, the parties' obligations, performance indicators, characteristics of the project asset, and financing terms. The Law thus provides a basis for specifying environmental indicators and regulatory risks in the text of the project agreement, rather than through a later arbitrary revision of its terms ¹.

As Russian scholarship notes, the contractual form of PPP combines a public-interest objective with detailed specification of the parties' reciprocal obligations; the content of the agreement is therefore decisive for risk allocation [4, pp. 18-19.]. In a green project, the essential terms should expressly include the baseline environmental standard, the methodology for measuring indicators, an independent verification procedure, notice arrangements for regulatory change, and the outer limits of possible economic adjustment.

Russian law permits the adjustment of terms not only as an abstract contractual construct. Part 3 of Article 13 of the PPP Law requires the public partner to consider private-partner proposals to amend essential terms where there is force majeure, a material change of circumstances, or impossibility of performance established by a final court decision or an antimonopoly authority decision resulting from action by public authorities. For concession agreements, Article 20 of Federal Law No. 115-FZ of 21 July 2005 provides guarantees of concessionaire rights in the event of adverse legislative change. These provisions do not eliminate the need to agree specifically on a mechanism for responding to

environmental regulation, but they show that Russian law is already familiar with the logic of controlled adaptation of a long-term infrastructure contract ².

International PPP practice confirms that, in long-term agreements, the decisive factor is not the absence of a review procedure but its predictability: a procedure open to both parties and based on clear grounds reduces the risk of opportunistic renegotiation. For BRI projects, this means that project documentation should include a regulatory-risk matrix, a procedure for verifying costs, and an exhaustive list of measures for restoring economic equilibrium [5, pp. 76-83.].

2.2. Special Investment Contracts: stabilization of conditions without a presumption of ESG status

A Special Investment Contract (SPIC) should be used as an example of legal techniques for long-term commitments, not as a self-contained green-investment regime. Under Part 1 of Article 18.1 of Federal Law No. 488-FZ of 31 December 2014, an investor under a SPIC undertakes to implement a project for the introduction, or the development and introduction, of technology for the purpose of establishing serial production of industrial goods; the public party undertakes to ensure the stability of business conditions and apply the agreed incentives. Article 18.4 of the same Law defines the limits of that stability and provides for compensation of actual loss where it is not ensured; lost profits are not compensable ³.

Accordingly, it would be incorrect to conclude that SPIC 2.0 contains a universal mandatory ESG filter. The Industrial Policy Law does not formulate ESG as an autonomous condition for concluding a Special Investment Contract. Environmental indicators may become legally binding where they are included in a specific SPIC, arise from applicable sectoral regulation, or condition the grant of a separate support measure. This qualification is especially important for comparative analysis: the value of SPICs for the BRI lies in the design of stability-

¹ Federal Law No. 224-FZ of 13 July 2015 "On Public-Private Partnership, Municipal-Private Partnership in the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation" (Part I), Art. 4350. (In Russian.). URL: https://www.consultant.ru/document/cons_doc_LAW_182660/ (accessed: 09.05.2026).

² Federal Law No. 115-FZ of 21 July 2005 "On Concession Agreements" (Part II), Art. 3126. (In Russian.). URL:

https://www.consultant.ru/document/cons_doc_LAW_54572/ (accessed: 09.05.2026).

³ Federal Law No. 488-FZ of 31 December 2014 "On Industrial Policy in the Russian Federation". (Part I), Art. 41. (In Russian.). URL:

https://www.consultant.ru/document/cons_doc_LAW_173119/ (accessed: 10.05.2026).



of-conditions mechanisms and liability rules, not in the existence of a general “green” status for the contract.

2.3. Taxonomy and Verification in Sustainable Finance

The regulatory basis for Russia’s green filter is formed by the Criteria for Sustainable (Including Green) Development Projects, approved by Government Resolution No. 1587 of 21 September 2021. Under paragraphs 1 and 2 of the Criteria, they establish whether projects correspond to the principal directions of sustainable development and include taxonomies of green, transition, and social projects. Section I of the Criteria sets out the categories and conditions for classification as green projects, including in waste management, energy, transport, and other infrastructure sectors ⁴.

In scholarship, a taxonomy is rightly viewed not as a promotional label but as an element of the legal infrastructure of sustainable finance: it creates a common language for issuers, investors, lenders, verifiers, and public authorities. In the BRI context, this means that the compatibility of national classifications and verification procedures becomes a tool for reducing information asymmetry and preventing regulatory arbitrage [6, pp. 7-15].

However, the Russian taxonomy should not be mechanically transplanted into a cross-border project. In a multilateral framework, it is advisable to identify a minimum common core of criteria, provide for mutual recognition of verifiers subject to independence and disclosure requirements, and retain more stringent national or regional requirements as a permissible elevation of the standard.

3. Lessons from investment arbitration: accuracy of legal characterization and procedural status

For investment agreements, it is essential to distinguish substantive protection from the assessment of the lawfulness of public regulation.

Article 10 of the Energy Charter Treaty contains requirements concerning the promotion, protection, and treatment of investments; Article 13 governs expropriation; and Article 26 provides a mechanism for the settlement of investor-State disputes. The existence of these provisions alone does not automatically entail a State obligation to compensate for the consequences of every environmental measure: the analysis depends on the treaty text, the factual circumstances of the investment, the nature of the measure, causation, the quantification of loss, and the procedural conditions of the particular proceedings ⁵.

3.1. Vattenfall v. Germany

In Vattenfall v. Germany, the proceedings concerning German nuclear-energy policy were discontinued after the claimants requested discontinuance on the basis of the parties’ agreement of 25 March 2021. The ICSID order records that each party bears its own costs and that the arbitration costs are shared equally. It is therefore inaccurate to describe this case as an operative arbitral award granting the investor a fixed amount of compensation. Its practical lesson lies in the independent value of negotiated arrangements and procedural settlement mechanisms when a public-interest energy or environmental measure is implemented ⁶.

3.2. Rockhopper v. Italy: an Annulled Award and its continuing analytical value

In its Final Award of 23 August 2022, the tribunal in Rockhopper v. Italy awarded EUR 184 million in principal compensation and EUR 6,675,391 in decommissioning costs, plus interest. That result cannot, however, be treated as an account of Italy’s current legal obligation: on 2 June 2025, the ad hoc committee annulled the award in its entirety. Consequently, an analysis of legal risk must consider not only the amount awarded and the substantive reasoning, but also the procedural integrity of the tribunal and compliance with fundamental rules of procedure ⁷.

⁴ Government Resolution No. 1587 of 21 September 2021 “On the Approval of the Criteria for Sustainable (Including Green) Development Projects in the Russian Federation and the Requirements for the System for Verifying Sustainable Finance Instruments in the Russian Federation”. (In Russian.). URL: https://www.consultant.ru/document/cons_doc_LAW_396203/ (accessed: 10.05.2026).

⁵ Energy Charter Treaty (Lisbon, 17 December 1994). Official text: Energy Charter Secretariat. URL: https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/1994_ECT.pdf (accessed: 10.05.2026).

⁶ Vattenfall AB and others v. Federal Republic of Germany, ICSID Case No. ARB/12/12, Order Taking Note of the Discontinuance, 9 November 2021, paras. 312–315, pp. 62–64. URL: <https://icsid.worldbank.org/news-and-events/news-releases/vattenfall-ab-and-others-v-federal-republic-germany-icsid-case-no-0> (accessed: 10.05.2026).

⁷ Rockhopper Italia S.p.A., Rockhopper Mediterranean Ltd and Rockhopper Exploration Plc v. Italian Republic, ICSID Case No. ARB/17/14, Final Award, 23 August 2022, para. 319, p. 113. URL: <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/17/14> (accessed: 10.05.2026).



The police-powers doctrine and the related assessment of the good faith of a public measure do not grant States unconditional immunity. Their purpose is to determine whether a measure pursues a legitimate public purpose, is applied in a non-discriminatory and proportionate manner, and does not serve as a pretext for bad-faith interference with investors' rights. For the drafting of BRI agreements, the inference is straightforward: the right to regulate should be expressly recognized, but the consequences of its exercise must be procedurally defined and capable of verification [7, pp. 323-343.].

4. The Adaptive Investment Platform: an original *de lege ferenda* model

The proposed Adaptive Investment Platform (AIP) does not describe an existing international institution; rather, it is an original model for a project agreement and, where appropriate, an inter-State treaty. Its purpose is to transform unstructured regulatory risk into a sequence of legal procedures. The AIP gives investors no veto over environmental regulation and does not displace mandatory rules of law; it specifies how the effects of good-faith changes in requirements are to be verified and which measures may be used to preserve project viability.

4.1. Dynamic regulatory clause

The first AIP element is not absolute stabilization, but a dynamic regulatory clause. The agreement should provide for review points, for example every five years or when a pre-agreed threshold of change in an environmental indicator is reached. For each review point, the baseline and new requirements, the independent verifier, documented compliance costs, the effect on tariffs and the accessibility of public services, and the permissible adjustment measures should be specified.

The sequence of measures must be agreed in advance. Non-monetary remedies are preferable: extension of the agreement term, tariff adjustment within agreed limits, adjustment of service volume, the grant of additional support, or refinancing. Monetary compensation should be available only where these measures do not restore the agreed economic balance and the costs are substantiated. This approach is consistent with the contemporary approach to PPP renegotiation: an agreement should not contain merely a general duty to "review terms in good faith," but a

procedure, timetable, evidential requirements, and limits on discretion [8, pp. 76-83].

4.2. ESG-Linked insurance for regulatory risk

The second element is insurance against loss caused by a qualifying change in environmental regulation. This proposal is *de lege ferenda*. It differs from ordinary political-risk insurance in that the deductible, premium, or coverage limit should depend on investor conduct: verified environmental performance, completeness of disclosure, timely modernization, and compliance with agreed indicators. This creates a financial incentive to improve environmental performance before a regulatory requirement is tightened.

4.3. Multi-Tiered dispute resolution

The third element is multi-tiered dispute resolution: independent technical expertise, negotiations or mediation to adjust the project parameters, and only then expedited arbitration. Experts in environmental technology and project finance should not replace arbitrators; however, their opinions may form an evidentiary basis for determining a proportionate adjustment. The subject of the proceedings should not be limited to the binary question of breach but should include an assessment of which contractually provided mechanism can preserve the project without depriving the State of its regulatory competence.

5. A Multilateral agreement on sustainable investment for the BRI

The AIP may be used at the level of an individual project agreement, but its effect will be greater if common requirements are enshrined in a dedicated multilateral agreement on sustainable investment for the BRI (the Green Investment Treaty, or GIT). Such an agreement should not duplicate every provision of bilateral investment treaties. Its subject matter could include the conditions for a green project to qualify for special protection, minimum stress-testing requirements, and adaptation procedures in response to good-faith changes in environmental requirements.

First, the GIT should expressly recognize the State's right to regulate for the protection of the environment, the climate, and public health. That right should be matched by procedural duties: prior notice to the affected investor, disclosure of the measure's rationale, an



assessment of its project-specific impact, and negotiations within a specified period. This formulation does not exclude investment protection; rather, it moves the dispute from the realm of abstract expectations to the realm of verifiable consequences.

Second, access to special protection should be linked to an ESG stress test conducted before financial close. The baseline scenario reflects current requirements; the moderate scenario assumes a realistic tightening; and the aggressive scenario assumes a technological or regulatory disruption. A project that is not viable even under a moderate adjustment should not transfer the entire risk to the host State. For technologies that become objectively unacceptable as a result of new scientific knowledge or international obligations, a sunset clause is needed, setting out the termination of protection, accounting for profits already received, and a fair decommissioning of the asset.

Third, the GIT should combine mutual recognition of taxonomies with a minimum common core of criteria. The joint document of the China Development Bank and UNDP links the harmonization of BRI standards with respect for national conditions and, at the same time, with the development of common approaches to sustainable finance. For Russia, this creates an opportunity to use the experience of the national taxonomy and verification system without wrongly assuming that the Russian classification system is automatically applicable in all

jurisdictions.

Conclusion

The challenge of attracting investment to BRI green infrastructure is primarily legal rather than merely financial. Investors require a predictable model for the consequences of regulatory change, while States must retain the capacity to increase the level of environmental protection. Russian PPP, concession, SPIC, and sustainable-finance taxonomy regimes are useful in different ways: PPPs and concessions provide techniques for risk allocation and the adjustment of terms; SPICs demonstrate a structure for long-term stability in industrial policy; and the taxonomy and verification regime establish the criteria for access to sustainable finance.

The proposed Adaptive Investment Platform replaces the false alternative of “stability or regulation” with a system of sequential procedures: pre-investment stress testing, dynamic contractual adaptation, residual-risk insurance, and specialized dispute settlement. In a multilateral GIT format, this model can simultaneously strengthen the project’s environmental integrity, reduce uncertainty for investors, and preserve the State’s sovereign right to change regulation.

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«БІР БЕЛДЕУ, БІР ЖОЛ» БАСТАМАСЫ ШЕҢБЕРІНДЕ «ЖАСЫЛ» ИНФРАҚҰРЫЛЫМҒА ИНВЕСТИЦИЯЛАР ТАРТУДЫҢ ҚҰҚЫҚТЫҚ ТЕТІКТЕРІ: РЕСЕЙ ТӘЖІРИБЕСІ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ТӘСІЛДЕР

Аңдатпа. Мақала «Бір белдеу, бір жол» бастамасымен байланысты «жасыл» инфрақұрылым жобаларына жеке капитал тартудың құқықтық тетіктерін зерттеуге арналған. Зерттеуде инфрақұрылымдық жобалардың ұзақ инвестициялық циклі мен экологиялық талаптардың өзгермелі сипаты арасындағы қайшылық қарастырылады. Зерттеудің мақсаты – мемлекеттің реттеушілік өкілеттіктерін сақтай отырып, реттеушілік өзгерістердің салдарын инвесторлар үшін болжамды ететін құқықтық негізді айқындау. Жұмыстың әдіснамалық негізі формальды-құқықтық талдауды, салыстырмалы-құқықтық талдауды және кейс-стади әдісін қамтиды. Зерттеу Ресей Федерациясының мемлекеттік-жеке әріптестік, концессиялар және арнайы инвестициялық келісімшарттар саласындағы ұлттық заңнамасын талдауға, сондай-ақ қолданыстағы құқықтық құралдардың мүмкіндіктері мен шектеулерін анықтау мақсатында халықаралық инвестициялық арбитраж тәжірибесін зерттеуге негізделген. Ресей тәжірибесі мемлекеттік-жеке әріптестік пен концессиялар ережелері, арнайы инвестициялық келісімшарттар және тұрақты даму жобаларының ұлттық таксономиясы арқылы қарастырылады. Инвестициялық арбитраж тәжірибесі Ваттенфол Германияға қарсы және Роконпер Италияға қарсы істері негізінде, олардың іс жүргізу мәртебесін ескере отырып талданады. Зерттеудің ғылыми жаңалығы динамикалық реттеуші ережелерді, ESG қағидаттарына байланысты қалдық тәуекелдерді сақтандыруды және дауларды шешудің көпдеңгейлі жүйесін қамтитын Бейімделмелі инвестициялық платформаны (Adaptive Investment Platform) әзірлеуде көрінеді. Аталған элементтер БББЖ қатысушылары үшін тұрақты инвестициялар бойынша арнайы көпжақты келісімнің негізі ретінде ұсынылады.

Түйін сөздер: «Бір белдеу, бір жол» бастамасы; жасыл инфрақұрылым; тұрақты қаржыландыру; мемлекеттік-жекекешелік әріптестік; концессия; арнайы инвестициялық келісімшарт (SPIC); инвестициялық арбитраж.

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ПРАВОВЫЕ МЕХАНИЗМЫ ПРИВЛЕЧЕНИЯ ИНВЕСТИЦИЙ В «ЗЕЛЁНУЮ» ИНФРАСТРУКТУРУ В РАМКАХ ИНИЦИАТИВЫ «ОДИН ПОЯС – ОДИН ПУТЬ»: РОССИЙСКИЙ ОПЫТ И МЕЖДУНАРОДНЫЕ ПОДХОДЫ

Аннотация. В статье исследуются правовые механизмы привлечения частного капитала в проекты «зелёной» инфраструктуры, связанные с инициативой «Один пояс – один путь» (BRI). Рассматривается конфликт между длительным инвестиционным циклом инфраструктурных проектов и динамичным характером экологических требований. Цель исследования заключается в выявлении правовой модели, обеспечивающей сохранение регуляторных полномочий государства при одновременном обеспечении предсказуемости последствий регуляторных изменений для инвесторов. Методологическая основа включает формально-юридический метод, сравнительно-правовой анализ и метод кейс-стади. Исследование базируется на анализе российского законодательства в области государственно-частного партнёрства, концессионных соглашений и специальных инвестиционных контрактов, а также на изучении практики международного инвестиционного арбитража с целью выявления как потенциала, так и ограничений действующих правовых инструментов. Российский опыт рассматривается через призму правового регулирования ГЧП и концессий, специальных инвестиционных контрактов, а также национальной таксономии проектов устойчивого развития.



Практика инвестиционного арбитража анализируется на примере дел Vattenfall против Германии и Rockhopper против Италии с учётом их процессуального статуса. Научная новизна работы заключается в разработке концепции адаптивной инвестиционной платформы (Adaptive Investment Platform), включающей динамические регуляторные оговорки, страхование остаточных рисков, связанных с ESG-факторами, а также многоуровневую систему разрешения споров. Указанные элементы предлагаются в качестве основы специализированного многостороннего соглашения о устойчивых инвестициях для участников BRI.

Ключевые слова: инициатива «Один пояс – один путь»; зелёная инфраструктура; устойчивое финансирование; государственно-частное партнёрство; концессия; специальный инвестиционный контракт (СПИК); инвестиционный арбитраж.