



LEGAL EXPERTISE OF INVESTMENT CONTRACTS IN CONSTRUCTION: TYPICAL MISTAKES AND WAYS TO MINIMIZE RISKS

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Abstract

The article is devoted to the legal expertise of investment contracts in the construction industry, with an emphasis on the analysis of typical errors that occur when concluding them. In particular, such problems include the uncertainty of the subject of the contract, unbalanced distribution of risks, the lack of clear mechanisms for dispute resolution and insufficient detailing of financial obligations. The author emphasizes that a comprehensive legal expertise is necessary to minimize risks and prevent litigation.

Keywords: Investment activity, construction industry, investment agreement, legal expertise, contractual risks, risk minimization, legal regulation, investor protection, arbitration, force majeure.

Introduction

The scientific novelty of this article lies in the comprehensive analysis of legal errors in investment contracts in construction and the systematization of practical mechanisms for minimizing risks for investors based on real cases from the United States. The work combines theoretical and legal research with practical examples, which allows us to show the specifics of legal protection of investment projects.

Investment activity in the construction sector plays a key role in the development of the national economy. Attracting capital and successful implementation of infrastructure projects directly depend on the quality of legal regulation and the reliability of the concluded contracts. It is contractual regulation that determines the balance of interests between investors, developers and the state.



Modern American Journal of Business, Economics, and Entrepreneurship

ISSN (E): 3067-7203

Volume 01, Issue 06, September, 2025

Website: usajournals.org

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Practical experience shows that most investment disputes in the construction industry arise due to poor legal expertise of contracts. This leads to conflicts over risk allocation, project implementation deadlines, funding volumes, and construction quality [1]. According to McKinsey & Company , up to 30% of large construction projects in the United States experience budget overruns or delays due to legal errors made at the stage of concluding agreements [2].

Scientific literature emphasizes that the most common problems are the uncertainty of the subject of the contract, the lack of clear guarantees and dispute resolution mechanisms, and ignoring the environmental and social aspects of projects [3]. In this regard, it becomes relevant to study typical errors in investment contracts and develop practical mechanisms to minimize contractual risks.

An investment contract in construction is a complex legal instrument that regulates relations between investors, developers, contractors and other project participants. Its peculiarity is that it combines the norms of private and public law, since it is necessary to take into account both the commercial interests of the parties and state requirements in the field of urban development, ecology and safety [4].

From the point of view of legal theory, an investment agreement is mixed, as it contains elements of different types of agreements: contract, equity participation, concession and public-private partnership (PPP) [5]. Of key importance here is the balanced distribution of obligations and risks between the parties, as well as the presence of clear mechanisms to ensure the fulfillment of contractual terms.

Research has shown that legal certainty in a contract is critical. According to the American Institute of Architects, uncertainty in such matters as the subject of the contract, terms, and financing mechanisms significantly increases the risk of litigation. McKinsey & Company, in turn, notes that insufficient detail in contract terms can lead to budget overruns of an average of 20-30% in US construction projects.

Legal expertise should also take into account the specifics of industry regulation. For example, the International Building Code (International Building Code), developed by International Code Council, sets quality and safety standards that



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ISSN (E): 3067-7203

Volume 01, Issue 06, September, 2025

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must be integrated into the terms of contracts. Moreover, the Federal Arbitration Act provides a legal basis for the inclusion of arbitration clauses, which helps to minimize legal costs and speed up the resolution of conflicts [6]. Consequently, the theoretical foundations of investment contracts in construction combine the principles of civil law, public regulation and international standards, which requires a comprehensive approach to their analysis and legal expertise.

Concluding investment agreements in the US construction sector is associated with a high level of legal and financial risks. An analysis of judicial practice shows that the greatest number of disputes and arbitration proceedings in the country arise precisely because of errors in the development and negotiation of the terms of these agreements [7].

Main mistakes in investment agreements:

1. Uncertainty of the subject of the contract. An inaccurate description of the construction project, its technical characteristics and quality requirements leads to ambiguous interpretation of the obligations of the parties and increases the number of lawsuits [8].
2. Lack of risk sharing mechanisms. Many contracts do not contain clear provisions on the distribution of risks associated with changes in the cost of construction materials, delays in delivery or actions of third parties. This creates legal uncertainty [4].
3. Insufficient detailing of financial obligations. Errors in determining the cost of the project, the financing procedure and payment terms can lead to budget overruns and the need to attract additional investments [2].
4. Ignoring mandatory industry standards. The absence of references to building standards such as International in the contract Building Code , may result in the contract being declared invalid or may give rise to claims from government agencies [3].
4. Ill-conceived dispute resolution mechanisms. Including general and vague provisions on judicial or arbitration jurisdiction in the contract contributes to delays in processes and increased costs [6].



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Table 1 - Typical mistakes in investment contracts and their consequences

No.	Error	Consequences
1	Uncertainty of the subject of the contract	Litigation over the quality and volume of work
2	Lack of risk sharing	Financial losses of an investor due to changes in market conditions
3	Non-itemized financial obligations	Budget overrun, project suspension
4	Ignoring building codes	Claims of supervisory authorities, recognition of the contract as invalid
5	Unclear dispute resolution procedures	Lengthy court proceedings, rising costs

Thus, typical mistakes when concluding investment contracts in construction significantly increase the likelihood of legal conflicts and financial losses. Conducting a comprehensive legal examination and using contractual regulation standards allow minimizing these risks.

To ensure the sustainability of investment projects in the construction sector, it is necessary to apply a set of legal and organizational measures. These measures are aimed at reducing the risks identified when concluding contracts. In the United States, this issue is studied in detail in the context of investment law, corporate regulation and construction jurisprudence. Key risk minimization mechanisms include:

1. Clear regulation of the subject of the contract. Specific indication of technical parameters, quality standards and construction deadlines helps to reduce the likelihood of disagreements. It is recommended to use standard forms of contracts of the American Institute of Architects (AIA), as they contain time-tested formulations.
2. Balancing the distribution of risks. It is necessary to establish in the contract provisions on the distribution of risks associated with changes in the cost of materials, delays in deliveries and actions of third parties. In American practice, risk-sharing mechanisms are actively used for this purpose. clauses » and « force majeure ».
3. Financial transparency and audit. Including in the contract obligations for regular financial reporting and independent audit helps prevent misuse of funds and avoid corruption risks [9].



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4. Compliance with regulatory requirements. To prevent claims from government agencies, the contract must include provisions on mandatory compliance with building codes and standards, such as International Building Code .
5. Effective dispute resolution mechanisms. It is recommended to provide for multi-stage conflict resolution procedures: negotiations, mediation and arbitration. This significantly reduces the likelihood of protracted litigation and allows disputes to be resolved more quickly and at lower costs.

Table 2 - Ways to Minimize Risks in Investment Agreements

No.	Risk	Minimization mechanism
1	Uncertainty of the subject of the contract	Detailed description of the object, application of standard AIA forms
2	Financial losses due to market fluctuations	Enabling « risk-sharing clauses », force majeure clauses
3	Budget overrun	Mandatory audit, transparent reporting
4	Claims from supervisory authorities	Integration of Building Codes (IBC)
5	Litigation	Multi-stage conflict resolution procedures (negotiations, mediation, arbitration)
6	Unbalanced obligations of the parties	Application of Model Contracts and SEC Guidelines

Thus, minimizing risks in investment contracts requires a systematic approach that combines contractual mechanisms, financial control and compliance with legal norms. The use of model contracts and international standards reduces the likelihood of disputes and increases the investment attractiveness of the construction industry.

Despite the presence of a developed regulatory framework and a wide range of protection mechanisms, investment contracts in construction are often accompanied by conflicts and litigation in practice. For a deeper understanding of the specifics of risks and ways to minimize them, we reviewed real cases from US practice. They allowed us to clearly demonstrate what mistakes are made



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when concluding contracts, and how these mistakes could have been prevented using the legal expertise tools discussed above.

In New York, an investor and developer were embroiled in a dispute over an unclear timeline for a project. The developer blamed the delay on rising material costs, while the investor was seeking punitive damages. The lawsuit found that the contract was not drafted according to American Institute of Architects (AIA) standards and did not contain adequate phasing provisions (milestone clauses "). Ultimately, the investor suffered significant financial losses [7] . Therefore, proper fixing of the phased terms and conditions for their possible extension is critical to minimizing risks.

In an infrastructure project in California, investors were confronted with a significant overestimation by the contractor. An audit found that the contract did not include mandatory provisions for an independent audit and regular financial reporting. After regulatory intervention, the contract was terminated, and investors suffered partial financial losses [10]. Therefore, including provisions for an independent audit and financial transparency in the contract is key to preventing abuse.

In Texas, a dispute arose between the parties to a construction contract over the allocation of risks associated with a sharp rise in steel prices. Because the contract had no risk-sharing provisions, the contractor refused to continue the work without an increase in budget. The dispute was referred to arbitration under the Federal Arbitration Act. The arbitration award was in favor of the contractor because the contract did not provide for " risk-sharing" clauses » or « force majeure » clauses [6]. Therefore, the proper use of risk allocation and force majeure provisions is an important instrument of legal protection for the investor.

The analysis of the presented cases confirms that, despite the existence of a developed legal system, the protection of investor interests in the construction sector largely depends on the quality of the legal examination of a specific contract. Errors in wording related to terms, financial transparency or risk distribution can lead to significant losses and protracted litigation.

At the same time, the inclusion of detailed conditions in the contract and the use of proven risk minimization mechanisms significantly increases the



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sustainability of investment projects. Thus, thorough legal expertise and a proactive approach to drafting contracts are key factors for ensuring the reliability and successful implementation of investment and construction projects.

The legal framework for investment in the US construction industry is complex and multi-layered. It is based on a combination of federal legislation, state regulations, and detailed contractual regulation. Despite the presence of advanced protection mechanisms such as arbitration, insurance, and escrow accounts, significant risks associated with legal fragmentation and regulatory complexity remain. To improve the predictability and security of investment in construction, it is necessary to harmonize legislation and expand the application of international standards. These measures will create a more favorable investment climate and ensure sustainable development of the industry.

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