

Kyrgyzstan

Law on Investments (2003)

Unofficial translation

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Law on Investments

[Preamble]

This Law regulates the main principles of the state investment policy aimed at developing favorable investment climate in the republic and attracting and stimulating domestic and foreign investments by means of providing a fair legal regime to investors and quarranties for protection of investments made by investors to the economy of the Kyrgyz Republic.

Chapter I. General provisions

Article 1. Basic concepts and terms used in this Law

1) Investments mean tangible and intangible assets, in particular:

- money;
- movable and immovable property;
- property rights (mortgages, liens, pledges and others);
- stock and other forms of participation in a legal entity;
- bonds and other debenture liabilities;
- non-property rights (right to intellectual property including goodwill, copyrights, patents, trademarks, industrial designs, technological processes, trade names and know-how);
- any right to activity based on a license or in other form given by State agencies;
- concessions based on Law including concessions for search, development, mining or exploitation of natural resources;
- profit and revenue received from investment and re-invested on the territory of the Kyrgyz Republic;
- other forms of investments that are not forbidden by the legislation of the Kyrgyz Republic.

A form in which property is invested, or any change in this form shall not influence the nature of investments.

2) Direct Investments mean the holding, acquisition by an investor of not less than one third percent of stock and stockholders votes in joint stock companies registered or newly created on the territory of the Kyrgyz Republic, or any equivalent of such participation in business entities of other types and all further operations between an investor and a company which is invested to, investment of capital to the fixed assets of branches, representative offices of a legal entity created on the territory of the Kyrgyz Republic.

3) Investor means a subject of investment activity making his own, borrowed or attracted contributions as direct investments.

Domestic investor means a legal entity or natural person of the Kyrgyz Republic, a foreign citizen and person without citizenship having status of resident in Kyrgyz Republic and engaged in investment activity on the territory of the Kyrgyz Republic.

Foreign investor means any natural person or legal entity which is not a domestic investor making contributions to the economy of the Kyrgyz Republic, including:

1. a natural person who is a foreign citizen or person without citizenship, permanently living outside the Kyrgyz Republic;

2. a legal entity which is either:

- founded and registered in accordance with the legislation of a foreign State; or
- founded with foreign participation but established in compliance with the legislation of the Kyrgyz Republic: entirely belonged to one or more foreign natural, legal persons; or controlled and managed by one or more foreign natural, legal persons on the basis of a

written contract, the right to exercise the majority of shares, the right to appoint the majority of members to its executive or supervisory bodies, or not less than one third percent of stock and stockholders voices of which are held by foreign citizens, people without citizenship permanently living outside the Kyrgyz Republic or legal entities as referred to in this Article.

3. a legal entity created by inter-governmental treaty of the Kyrgyz Republic;

4. foreign organization which is not a legal entity;

5. international organization.

4) Investment Activity means practical operation of investor in respect of his investments.

5) Reinvestment means investment in the objects of entrepreneurial activity on the territory of the Kyrgyz Republic for the account of proceeds and profits of investors received from their investments made in Kyrgyz Republic.

6) An Investment dispute means any dispute between an investor and governmental bodies, officials of the Kyrgyz Republic and other participants of investment activity, arising in process of investment realization.

7) An Authorised governmental body means a body of state administration, authorized by the Government of the Kyrgyz Republic to promote investments and coordinate investment activity in the Kyrgyz Republic. The regulation on the authorized governmental body is approved by the Government of the Kyrgyz Republic.

Article 2. Legislation of the Kyrgyz Republic on investments

1) Legislation regulating the investment regime is comprised of the Constitution of Kyrgyz Republic, this Law, other laws and regulatory legal acts of the Kyrgyz Republic.

2) If any amendments are made to the investment legislation of Kyrgyz Republic except for the Constitution of Kyrgyz Republic, tax legislation and legislation regarding state security, public health and environmental protection, investors shall have the right to opt for more favourable conditions within ten years from the date of approval of such amendments.

3) In case of contradictions in provisions of this Law and the interstate agreements to which the Kyrgyz Republic is a signatory, the provisions of the interstate agreements shall apply.

Article 3. Scope of the present Law

1) Direct investment relationships in the Kyrgyz Republic shall be regulated by this Law and other regulatory legal acts of the Kyrgyz Republic adopted in accordance with this Law.

2) Investments to credit or insurance organizations shall be regulated by specific regulatory legal acts of the Kyrgyz Republic.

Chapter II. Legal guarantees for investors

Article 4. Guarantees of investment and investors protection

1) The Kyrgyz Republic shall provide foreign investors, making investments on the territory of Kyrgyz Republic, with the national regime of economic activity applicable in respect of legal entities and natural persons of the Kyrgyz Republic.

- 2) Foreign investors, their representatives and foreign employees living in the Kyrgyz Republic in connection with their investment activity have the right for free travel on the territory of the Kyrgyz Republic, except for territories where they may stay on the terms and pursuant to the procedure as defined by respective legislation of the Kyrgyz Republic.
- 3) The Kyrgyz Republic in the person of its authorized governmental bodies shall not permit discrimination in respect of investors on the basis of their citizenship, nationality, language, sex, race, religion, place of their economic activity and country of origin of investors or investments.
- 4) The Kyrgyz Republic in the person of its authorized governmental bodies, officials and self-government bodies shall abstain from any interference with economic activity, rights and legal interests of investors, except as provided by the legislation of Kyrgyz Republic.
- 5) Officials of the Kyrgyz Republic violating the provisions of this Law shall bear a responsibility pursuant to Kyrgyz law.
- 6) Restoration of violated rights and interests of investors guaranteed by the laws of the Kyrgyz Republic shall be regulated by the legislation and international agreements of the Kyrgyz Republic.
- 7) Investors, making investments in the priority economic and social sectors and in certain areas of the Republic, in accordance with the state development programs (projects), may be granted investment benefits in compliance with the Kyrgyz law.
- 8) Investments may be made in any form to the objects and types of activity not prohibited by Kyrgyz law, including into the licenseable types of activity pursuant to the Law of the Kyrgyz Republic "On licensing".

Article 5. Guarantees of export or repatriation of investments, property and information outside the Kyrgyz Republic

- 1) An investor shall have right for free export or repatriation of compensation in freely convertible currency provided by Article 6 of this Law, and proceeds received from investments on the territory of the Kyrgyz Republic, including but not limited to the following:
 - a. profit from investments received as dividends, interest and other forms of proceeds;
 - b. resources received by investors upon partial or full termination of investment activity in Kyrgyz Republic or alienation of investments, property and property rights, without prejudice to the investor's obligations to Kyrgyz Republic or any other lenders.
- 2) An investor, who initially imported to Kyrgyz Republic property and information in a documentary or electronic form as investments, shall have right for repatriation (without being subject to quota, licensing and any other measures of nontariff regulation of foreign trade) of the aforesaid property and information outside the Kyrgyz Republic.

Article 6. Guarantees for protection from expropriation of investments and compensation of losses to investors

- 1) Investments shall not be subject to expropriation (nationalization, requisition, or other equivalent measures, including actions or omissions by the state bodies of the Kyrgyz Republic which have resulted in forced withdrawal of investors' funds or in their deprivation of an opportunity to gain on the investments' results), except as provided by the legislation of the Kyrgyz Republic when such expropriation is effectuated in public interests on the basis of nondiscrimination, in observance of a proper legal order and is carried out with timely, appropriate and real compensation of damages, including lost profit.
- 2) The compensation shall be equivalent to the fair market price of the expropriated investment or its part, including lost profit, fixed on the date of decision on expropriation. The fair market price must not reflect any change in the value as a result of knowing beforehand that the expropriation will take place.
- 3) The compensation shall be realizable, paid in a freely convertible currency within the terms agreed by parties. Compensation shall include interest at the London interbank rate of LIBOR in US Dollars corresponding to the period for which compensation is charged. If such period is more than one year, a twelve-month rate shall be used.
- 4) The proper legal order provides for the investors right for an expedient consideration of a case if the claim on expropriation was filed, including evaluation of his investment and payment of compensation, in accordance with provisions of this Article, by a judicial body or any other competent state body of the Kyrgyz Republic without violation of a procedure for compensation of losses to investors pursuant to Article 18 of this Law.
- 5) The investors which suffered damage to their investments in the Kyrgyz Republic as a result of the war or any other armed conflict, revolution, state of emergency, civil collisions or other similar circumstances, shall be granted the legal status and conditions as favorable as such are applied to legal and physical persons of the Kyrgyz Republic.

Article 7. Guarantees for the use of proceeds

- 1) Foreign investors shall have the right to use and dispose their investments and proceeds and profit received from investment activities for any purposes, not prohibited by the legislation of the Kyrgyz Republic, freely and in their own discretion.
- 2) In order to maintain and utilize proceeds and other resources, investors shall have the right to open accounts in the national and foreign currency in accordance with the legislation of the Kyrgyz Republic in the territory of the Kyrgyz Republic.

Article 8. Freedom of currency transactions

- 1) Currency transactions shall be carried out by investors in accordance with the Law of the Kyrgyz Republic "On Foreign Currency Transactions" and other regulatory legal acts of the Kyrgyz Republic on currency controls.
- 2) With respect to all payments relating to investments in the Kyrgyz Republic investors shall have the right to convert freely the national currency of the Kyrgyz Republic into any other currency.
- 3) Money transfers in foreign currency related to investments shall be carried out freely to and from the Kyrgyz Republic in conformity with a procedure established by Kyrgyz law.

4) If Kyrgyz legislation is amended to the extent restricting foreign currency transfers to and from the Kyrgyz Republic, such amendments shall not apply to foreign investors. Such restrictions for foreign investors may be enforced only on the basis of the law to prevent money laundry operations.

Article 9. Free access to open information

1) All regulatory legal acts of Kyrgyz Republic and court decisions which affect in any manner interests of investors must be accessible to them, and must be published as directly provided for by the legislation of the Kyrgyz Republic.

2) State bodies and officials of Kyrgyz Republic shall provide investors at their request with accessible information they are interested in according to the procedure provided for by the legislation of the Kyrgyz Republic.

Article 10. Investors' economic independence and recognition of their rights

1) Investors can freely choose the amount, composition and structure of the capital of a newly created legal entity unless otherwise provided by Kyrgyz law.

2) Investors shall have right to conduct economic activity necessary for realization of investment activity with legal and natural persons, including foreign persons in compliance with Kyrgyz law.

3) Investors may create subsidiaries, branches and representative officers on the territory of the Kyrgyz Republic subject to Kyrgyz legislation. Branches and representative officers shall operate pursuant to the regulations approved by a parent company and shall carry out their activity on behalf of the parent company. The parent company shall bear responsibility for activities of branches and representative officers.

4) By virtue of agreement, investors may transfer their rights (assign claims) and duties (assign debts) in accordance with Kyrgyz legislation.

5) Investors may voluntarily form associations and other unions on the territory of Kyrgyz Republic in accordance with Kyrgyz legislation.

6) Investors may attract to the Kyrgyz Republic monetary funds as credits, securities and other loans. The investor's assets and various property and nonproperty rights may be used as a security for such investor's obligations.

7) Investors may participate in privatization of the state and communal property by acquiring the ownership rights to the state and communal property or its shares in the charter capital of the privatized enterprise on the terms and in conformity with a procedure established by Kyrgyz legislation.

8) Investors may acquire the government notes, stock and other securities of legal entities registered in the Kyrgyz Republic in accordance with Kyrgyz legislation.

9) The Kyrgyz Republic and its officials shall recognize all rights of investors with respect to their intellectual property objects and pertaining to the foreign investments.

10) During the transfer of property rights on buildings and constructions the right to use lands is transferred along with these objects in order and conditions established by the legislation of the Kyrgyz Republic.

11) The tenant right of land can be acquired by investors in conformity with a procedure established by the legislation of the Kyrgyz Republic.

Article 11. Concession contracts

1) Provision to foreign investors of concession on exploration, development and exploitation of natural resources and depths, other economic activity is carried out on the basis of concession contracts signed by foreign investors with authorized state bodies of the Kyrgyz Republic in order determined by the legislation of the Kyrgyz Republic.

2) Concessions are allowed in all spheres and types of activity if they are not forbidden by the legislation of the Kyrgyz Republic and comply with the purposes of signed concession contracts.

Article 12. Investments in special economic zones

The provisions of Kyrgyz legislation governing the special economic zones shall apply to the making of investments into the special economic zones.

Chapter III. State support of investors and investments

Article 13. Purposes of state support of investors and investments

1) The purpose of state support and protection of investors and investments is to create a favorable investment climate and attract direct investments into the country's economy.

2) State support and protection of investments, promotion of investments shall be carried out by an authorized state body.

Article 14. Authorized state body effectuating support and protection of investors and promotion of investments

1) For the state support and protection of investors, promotion of investments in the Kyrgyz Republic, the authorized state body, in accordance with the Regulation approved by the Government of the Kyrgyz Republic, shall perform the following functions:

- ensuring connection between state bodies and investors;
- preparing and distributing information about investment opportunities and conditions in the Kyrgyz Republic
- advising potential investors on legal, economic and other issues regarding a specific activity;
- providing investors with the necessary information related to the procedure of permissibility to implement activities and provides necessary assistance;
- providing assistance in resolving problems of the existing and potential investors, including assistance and protection if they become faced with illegal actions or hindrances caused by the state and other bodies;
- developing proposals for all agencies of the Kyrgyz Republic concerning improvement of the investment climate in the Kyrgyz Republic;
- within its competence, representing the Kyrgyz Republic or participating on behalf of the Kyrgyz Republic in international negotiations or consultations on foreign investments;

- taking measures aimed on liability fulfillment of the Kyrgyz Republic coming out from international contracts, conducting actions on international cooperation, organizing learning and use of international experience in these spheres;
- advising any agencies and officials on the existing policy or a policy being planned in the area of investments;
- organizing and conducting competition of investment projects and programs jointly with interested ministries and bodies;
- performing other functions directed to the promotion of investments, maintenance and protection of investors in the Kyrgyz Republic.

2) Investors shall, on equal basis, have the right but not be obliged to use the services for development and protection of their interests which are provided by the authorized state body effectuating the promotion of investments.

Chapter IV. Instructions of the labor legislation for investors

Article 15. Labor relations between the investors and the citizens of the Kyrgyz Republic

Relations between investors and employees which are the citizens of the Kyrgyz Republic shall be subject to the labor legislation of the Kyrgyz Republic.

Article 16. Attraction of foreign workers

- 1) Foreign citizens may be hired as workers by investors in accordance with Kyrgyz legislation. Such workers may enter the administration of a legal entity.
- 2) Salary, compensation and other types of reimbursement and income paid by the investor to the worker may be freely transferred outside the Kyrgyz Republic in order established by the legislation of the Kyrgyz Republic.
- 3) The authorized state bodies shall provide assistance with entrance, departure and stay of foreign citizens for their employment term within the bounds of the investment activity in the Kyrgyz Republic.

Article 17. Social insurance and provision

- 1) Investors shall be obliged to pay for its employees, who are the citizens of the Kyrgyz Republic, individuals without citizenship, the deductions on social insurance and provision established by the Law of the Kyrgyz Republic.
- 2) Foreign investor shall have the right to transfer payment on social insurance and provision for foreign employee to the respective funds of the foreign state unless otherwise provided by the international agreements of the Kyrgyz Republic.

Chapter V. Final provisions

Article 18. Settlement of investment disputes

- 1) Investment dispute shall be resolved in accordance with any applicable procedure agreed in advance between an investor and authorized state bodies of the Kyrgyz Republic that does not exclude the use of other means of legal defense by an investor in accordance with the legislation of the Kyrgyz Republic.

2) If such agreement is not reached the investment dispute between authorized state bodies of the Kyrgyz Republic and investor shall be resolved by conducting consultation between parties. If parties will not agree in 3 month period from the day of first written address for such consultation, the dispute shall be resolved by addressing to a court of the Kyrgyz Republic, unless one of the parties to a dispute between the foreign investor and the state body requests to consider the dispute in accordance with one of the following procedures:

a. by applying to the International Center for Settlement of Investment Disputes (ICSID) pursuant to the Convention on settlement of investment disputes between states and citizens of other states or the rules regulating the use of additional means for conduct of hearings by the Secretariat of the Center; or

b. by applying to arbitration or an international temporary arbitral tribunal (commercial court) formed in accordance with the arbitration rules of UN Commission on international trade law.

3) In the event that an investment dispute is to be resolved through arbitration as referred to in subpoints "a" and "b" of point 2 of this Article, the Kyrgyz Republic shall waive any claim for preliminary application of the internal administrative or judicial procedures prior to referral of the dispute to international arbitration.

4) Any investment dispute between the foreign and domestic investors shall be considered by the judicial bodies of the Kyrgyz Republic unless the parties reach an agreement on any other dispute settlement procedure, including national and international arbitration.

5) Disputes between foreign investors and physical and legal entities of the Kyrgyz Republic may be resolved under agreement of parties by an arbitral tribunal of the Kyrgyz Republic as well as a foreign arbitral tribunal. In case if such agreement is not reached the disputes will be resolved in conformity with a procedure provided by the legislation of the Kyrgyz Republic.

Article 19. Liabilities of the Kyrgyz Republic on investments

The Kyrgyz Republic shall not be liable for liabilities of the residents and nonresidents of the Kyrgyz Republic, attracting foreign and/or domestic investments, except when these liabilities are guaranteed by the state in conformity with a procedure established by the legislation of the Kyrgyz Republic.

Article 20. Observance by investors of legislation of the Kyrgyz Republic

1) Investors shall observe the legislation of the Kyrgyz Republic in carrying out their economic activity on the territory of the Kyrgyz Republic.

2) In the event of breach of Kyrgyz legislation, the investor shall be imposed liability in accordance with Kyrgyz legislation.

Article 21. Specifics of state registration of legal entities with foreign participation

The state registration, re-registration and liquidation of legal entities with foreign participation as well as their branches and representative offices shall be carried out in accordance with the Civil Code of the Kyrgyz Republic and the Law of the Kyrgyz Republic "On the State Registration of Legal Entities".

The foreign investor shall additionally provide the following documents:

- for foreign legal entity as a founder: a legalized extract from the trade register to verify that the foreign investor (founder) is a legal entity in accordance with the legislation of the country where this legal entity has been registered, with a notarized translation into

the state or official language. No legalization is required for legal entities registered in the CIS countries;

- for foreign natural person as a founder: a copy of passport or any other ID (stating the term of visa), with a notarized translation into the state or official language.

Article 22. Insurance of investments

1) Insurance of investments and risks of investors shall be voluntary. Unless required by Kyrgyz legislation, the investments and risks may be insured both in and outside the Kyrgyz Republic.

2) Kyrgyz Republic is not liable for obligations of insurance organizations.

Article 23. Application of law on foreign investment made before its adoption

Foreign investors registered in the Kyrgyz Republic before the enforcement of this Law are allowed for privileges, provided by part one of Article 20 and Article 23 of Law on Foreign Investments in the Kyrgyz Republic (Vedomosti of Supreme Soviet of the Kyrgyz Republic, 1991, #13, page/Article 449) with changes and addenda as of 7 May 1993 and 28 July 1995 (Vedomosti of Jogorku Kenesh of the Kyrgyz Republic, 1993, #9, page/article 181; 1995, #10, page/article 390) until the expiry date.

Article 24. Publicity in the activity related to the investment project realization

The authorized state body shall publish all legal acts of the Kyrgyz Republic related to the investment project realization in mass media.

Article 25. Enactment procedure for this Law

1) This law shall come into effect as of its publication.

2) To consider invalid the Law of the Kyrgyz Republic "On Foreign Investments in the Republic of Kyrgyzstan" (Vedomosti of the Supreme Soviet of the Republic of Kyrgyzstan, 1997, No10, page 475).

3) The Government of the Kyrgyz Republic within a three month period shall:

- prepare and submit to Jogorky Kenesh of the Kyrgyz Republic proposals on bringing legislative acts in compliance with this law;
- bring its own decisions in compliance with this law.

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