

## Ukraine

### The Law of Ukraine On the Regime of Foreign Investments (1996)

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# **The Law of Ukraine On the Regime of Foreign Investments**

As amended according to Laws of Ukraine, N 997-XIV of July 16, 1999, N 1807-III of June 08, 2000, N 762-IV of May 15, 2003, N 153 of 23 June 2009, N 2155-VI of 27 April 2010, N 2850-VI of 22 December 2010, N 4496-VI of 13 March 2012, N 4835-VI of 24 May 2012, N 406-VII of 04 July 2013, N 1390-VIII of 31 May 2016

This Law stipulates the terms and conditions for foreign investment within the territory of Ukraine, based on the aims, principles and provisions of the legislation of Ukraine

## **SECTION I. GENERAL PROVISIONS**

### **Article 1. Definition of Terms in the Law**

Terms used in this Law have the following meanings:

- 1) foreign investors - persons engaged in investment activity within the territory of Ukraine, namely:
  - legal entities, established according to legislation other than Ukrainian legislation;
  - natural persons who are foreigners, who are not Ukrainian permanent residents and who are legally and otherwise competent;
  - foreign countries, international governmental and non-governmental organizations;
  - other foreign participants in investment activity, who are recognized as such by the legislation of Ukraine;
- 2) foreign investments are stores of value which are invested by foreign investors in objects of investment in accordance with the legislation of Ukraine with the aim of obtaining profit or achieving social results;
- 3) entity with foreign investment - an entity (organization) of any form of legal organization established according to the legislation of Ukraine, where foreign investment is no less than 10 per cent of the Statutory Fund.

An entity shall obtain the status of an entity with foreign investment on the date of inclusion of the foreign investment to the balance sheet of the entity.

### **Article 2. Types of Foreign Investment**

Foreign investments may be in the form of:

- foreign currency which is recognized as convertible by the National Bank of Ukraine;
- the currency of Ukraine - according to the legislation of Ukraine;
- any movable property or real estate and related ownership rights;
- stocks, bonds, other securities and also corporate rights (ownership rights for share in the Statutory fund of the legal entity established according to the legislation of Ukraine or the legislation of other countries) expressed in convertible currency;
- monetary claims and the right to claim for the fulfillment of contractual obligations guaranteed by the first class banks and having value in convertible currency, confirmed in accordance with the laws (procedures) of the investor's country or international trade procedures;

- any kind of intellectual property and related rights including copyright, patents, trade marks (marks for goods and services), industrial samples, know-how, and others, the value of which has been expressed in convertible currency and confirmed according to laws (procedures) of the investor's country or international trade procedures and by the expert's evaluation in Ukraine
- rights to engage in economic activity including the right to exploration and exploitation of natural resources granted according to the legislation or contracts, the value of which in convertible currency is confirmed according to the laws (procedures) of the investor's country or international trade procedures;
- other stores of value according to the legislation of Ukraine.

### **Article 3. Methods of Making Foreign Investments**

Foreign investments may be made in the form of:

- ownership interest in entities which are being established jointly with Ukrainian legal entities and natural persons, or acquisition of shares of functioning entities;
- the establishment of entities wholly owned by foreign investors, subsidiaries and branches of foreign legal entities or full acquisition of existing entities;
- the acquisition, which is not prohibited by the laws of Ukraine, of movable property or real estate including buildings, apartments, premises, equipment, transportation facilities and other property, by direct acquisition of property and proprietary complexes or in the form of stocks, bonds and other securities;
- the acquisition of the rights to use land and/or concessions for the use of natural resources in the territory of Ukraine by foreign investors, independently or jointly with Ukrainian legal entities or physical persons;
- the acquisition of other property rights;
- economic (business) activities based on production sharing agreements;
- other kinds of investment, which are not prohibited by the laws of Ukraine, in particular, those based on agreements with agents of economic activity in Ukraine without establishing a legal entity.

### **Article 4. Objects of Foreign Investment**

Foreign investments can be made in any objects, investment in which is not prohibited by the laws of Ukraine.

### **Article 5. Valuation of Foreign Investments**

Foreign investments and the investments of Ukrainian partners, including contributions to the Statutory Fund of the entity, shall be valued in convertible foreign currency and in Ukrainian currency according to the understanding reached by the parties, on the basis of prices at international markets or at the market of Ukraine.

Foreign currency for investment shall be converted into the currency of Ukraine at the official rate for the currency of Ukraine as determined by the National Bank of Ukraine.

The profits, income, and other funds, received in the currency of Ukraine as a result of foreign investments, and which are being reinvested, shall be converted according to the official rate of the currency of Ukraine as determined by the National Bank of Ukraine at the date of actual reinvestment.

#### **Article 6. Legislation on Investment Activity of Foreign Investors on the Territory of Ukraine**

Activities connected with foreign investments in Ukraine shall be regulated by this Law, other legislative acts of Ukraine and international agreements of Ukraine. If an international agreement of Ukraine provides rules other than that provided for by the legislation of Ukraine, the rules of the international agreement shall apply.

## **SECTION II. GOVERNMENT GUARANTEES FOR THE PROTECTION OF FOREIGN INVESTMENT**

#### **Article 7. Legal Regime for Investment Activity**

Foreign investors on the territory of Ukraine shall receive national treatment as to investment and other economic activity with the exceptions provided for by Ukrainian legislation and international agreements of Ukraine.

Investment incentives and other economic incentives may be granted to business entities which carry out projects with the attraction of foreign investment that are implemented according to governmental programs for the development of priority sectors of the economy, the development of social services or the development of territories.

The laws of Ukraine may, for the purposes of national security, designate territories where foreign investors' activity and activity of entities with foreign investments are restricted or prohibited.

#### **Article 8. Guarantees against Changes in Legislation**

In the event that subsequent special legislation of Ukraine concerning foreign investment shall change the terms and conditions of guarantees for the protection of foreign investments specified in the Section II of this Law, upon request of the foreign investor, government guarantees for the protection of foreign investment stipulated by this Law shall apply for a period of ten years from the date when such legislation came into force.

The rights and obligations of the parties defined sharing agreement production during the period of validity applicable legislation of Ukraine, current at the time of its conclusion. These guarantees are not subject to changes in legislation relating to defense, national security, public order, public environment.

#### **Article 9. Guarantees against Seizure and Unlawful Acts of State Bodies and State Officials**

Foreign investments in Ukraine shall not be nationalized. State bodies may not seize foreign investments, with the exception of emergency measures in the event of natural disaster, accidents, epidemics, or epizootic.

The above-mentioned seizures may be carried out on the basis of decisions of bodies authorized to do so by the Cabinet of Ministers of Ukraine.

Decisions in respect of the seizure of foreign investments and the terms and conditions of compensation may be appealed in court in accordance with Article 43 of this Law.

#### **Article 10. Compensation and Reimbursement of Losses Incurred by Foreign Investors**

Foreign investors have the right to receive compensation of their losses, including lost profit and moral damage incurred as a result of actions, inaction or improper fulfillment by the state bodies of Ukraine or their officials of the responsibilities in relation to foreign investors or entities with foreign investment stipulated by the legislation, according to the legislation of Ukraine.

All expenses and losses incurred by foreign investors as a result of activity described in Article 9 and the first paragraph of this Article, are to be compensated on the basis of current market prices and/or substantiated valuation, certified by an auditor or auditing company. .

Compensation paid to the foreign investor shall be prompt, adequate and efficient. Compensation to be paid to the foreign investor as a result of the actions mentioned in Article 9 of this Law shall be calculated as of the moment of the cessation of the property rights. .

Compensation to be paid to the foreign investor as a result of the actions mentioned in the part 1 of this Article shall be determined as of the moment of making the decision regarding reimbursement of losses. The sum of compensation shall be paid in the currency in which the investment has been made, or in any other currency acceptable to the foreign investor, according to the legislation of Ukraine. From the moment of receiving entitlement for compensation and up to the moment of its payment, interest for the amount of compensation shall be accrued at the average interest rate, at which London banks provide credits to first-class banks on the European foreign exchange market (London Inter-Bank Offered Rate - LIBOR)).

#### **Article 11. Guarantees in the Event of Termination of Investment Activity**

In the event of termination of investment activity, a foreign investor has the right within 6 months from the day of cessation of that activity to recoup his investment in-kind or in the currency of investment in the amount of the actual contribution (taking into account the possible reduction of the Statutory fund) without payment of duty, along with profits from those investments in monetary form or in goods at actual market value at the moment of termination of investment activity, if not otherwise provided for by the legislation of Ukraine or international agreements to which Ukraine is a party.

#### **Article 12. Guarantees for the Remittance of Profits, and Other Sums Resulted from Foreign Investments**

Upon payment of taxes, duties, and other mandatory payments, foreign investors shall be guaranteed unimpeded and prompt remittance abroad of their profits and other sums in foreign currency obtained legally as a result of foreign investments.

Procedures for the remittance of profits and other sums received as a result of foreign investments is determined by the National Bank of Ukraine.

## **SECTION III. CONTROL OF FOREIGN INVESTMENTS**

### **Article 15. Statistical Information regarding Foreign Investments**

Entities with foreign investment and bank institutions shall present statistical reports on foreign investments according to legislation.

## **SECTION IV. ENTITIES WITH FOREIGN INVESTMENTS**

### **Article 16. Organizational and Legal Forms of Entities with Foreign Investments**

Entities with foreign investments on the territory of Ukraine shall be established and shall operate within the forms stipulated by the legislation of Ukraine.

### **Article 17. Statutory Documents for Entities with Foreign Investments**

Statutory documents of entities with foreign investments shall include information required by the legislation of Ukraine for the appropriate organizational and legal form of the entity and also information on the nationality of its founders (equity holders).

### **Article 18. Customs Duty**

Property imported into Ukraine as a contribution of a foreign investor to the Statutory Fund of an entity with foreign investment (except for the goods for sale or personal consumption) should be done according to Custom Code of Ukraine.

### **Article 19. Sale terms for Products (Works, Services)**

Entity with foreign investments determines sale terms of its products (works, services), including their price, by itself unless other rule is stipulated by the legislation of Ukraine.

Products of entities with foreign investments are not the subject for licensing and quotas provided that they are certified as products of own manufacturing according to the procedure defined by the Cabinet of Ministers of Ukraine.

Export of the goods to which a special export regime is applied is carried out according to the legislation of Ukraine.

### **Article 20. Taxation**

Entities with foreign investments pay taxes according to the legislation of Ukraine.

### **Article 21. Intellectual Property Rights**

Protection and execution of intellectual property rights by entities with foreign investments are secured according to the legislation of Ukraine. Entities with foreign investments make decisions on foreign patenting (registration) of the inventions, industrial samples, trademarks and other intellectual property objects, which belong to them according to the legislation of Ukraine, by themselves.

## **SECTION V. FOREIGN INVESTMENTS ON THE BASIS OF CONCESSION CONTRACTS, AGREEMENTS (CONTRACTS) ON PRODUCTION CO-OPERATION, JOINT PRODUCTION AND OTHER FORMS OF JOINT INVESTMENT ACTIVITY**

### **Article 22. Concession Contracts**

Assignment of rights to foreign investors on economic activity connected with the usage of the state and communal owned and is given into concession in accordance with concession legislation by conclusion of the concession contract.

### **Article 23. Agreements (Contracts) on Investment Activity**

Foreign investors have the right to conclude agreements (contracts) on joint investment activity (production cooperation, joint production, etc.) which is not connected with establishment of a legal entity according to the legislation of Ukraine.

### **Article 24. Regulation of Economic Activity under Agreements (Contracts)**

Economic activity on the basis of the agreements (contracts) indicated in Article 42 of this Law is regulated by the legislation of Ukraine.

Parties of the agreements (contracts) should keep separate accounting and draw up reports on operations connected with the fulfillment of the terms and conditions of these agreements (contracts) as well as open separate accounts in bank institutions of Ukraine to make payments under these agreements (contracts).

The agreements (contracts) should be registered within the terms and according to the procedure determined by the Cabinet of Ministers of Ukraine.

Property (except for goods for sale or entity's consumption) imported into Ukraine by foreign investor for not less than 3 years with the purpose of investment under the registered agreements (contracts) should be taxed in accordance with Custom Code of Ukraine.

Profit received as a result of the joint investment activity under agreements (contracts) is taxed according to the legislation of Ukraine.

## **SECTION VI. FOREIGN INVESTMENTS IN SPECIAL (FREE) ECONOMIC ZONES**



#### **Article 25. Regulation of Foreign Investments in Special (Free) Economic Zones**

The specific features of the regulation of foreign investments in special (free) economic zones are determined by the legislation of Ukraine regarding special (free) economic zones. Legal regime of foreign investments established in special (free) economic zones cannot create investment and economic activity conditions that are less favorable than those determined by this Law.

## **SECTION VII. DISPUTE SETTLEMENT**

#### **Article 25. Procedure for Dispute Settlements**

Disputes between foreign investors and the state on the issues of the state regulations of foreign investments and activity of entities with foreign investments should be considered in the courts of Ukraine unless other procedure is stipulated by the international agreements of Ukraine.

All other disputes are subject for consideration in the courts and/or arbitration courts of Ukraine or with the consent of the parties in the arbitration courts abroad.

#### **Article 27. Concluding Provisions**

The following is considered to be no longer valid:

The Law of Ukraine "On Foreign Investments" (Vidomosty Verkhovnoy Radi Ukrainy, 1992, N 26, p. 357);

The Decree of the Cabinet of Ministers of Ukraine N 55-93 of May 20, 1993 "On the Regime of Foreign Investment" (Vidomosty Verkhovnoy Radi Ukrainy, 1993, N 28, p. 302);

The Law of Ukraine "On the State Program of Foreign Investment Attraction in Ukraine" (Vidomosty Verkhovnoy Radi Ukrainy, 1994, N 6, p. 28).

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