

Kosovo

Law No. 04/L-220 on Foreign Investment (2014)

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Republika e Kosovës

Republika Kosovo - Republic of Kosovo

Kuvendi - Skupština - Assembly

Law No. 04/L-220 on Foreign Investment

Assembly of Republic of Kosovo,

Based on Articles 65 (1) of the Constitution of the Republic of Kosovo, Approves

Law on Foreign Investment

Article 1: Purpose

The purpose of this law is to protect, promote and encourage foreign investment in the Republic of Kosovo, to provide foreign investors with a set of fundamental rights and guarantees that will ensure foreign investors that their investments will be protected and treated with fairness in strict accordance with the accepted international standards and practices.

Article 2: Definitions

1. Terms used in this Law shall have the following meaning:

1.1. Ministry - the respective Ministry of Trade and Industry;

1.2. Foreign Investor -a foreign person that has made an investment in the Republic of Kosovo.

1.3. Foreign Person :

1.3.1. any natural person who is a citizen of a foreign country;

1.3.2. any natural person who is a citizen of the Republic of Kosovo, but has residence abroad;

1.3.3. a legal person established according to the Law of a foreign country.

1.4. Investment -any asset owned or otherwise lawfully held by a Foreign Person in the Republic of Kosovo for the purpose of conducting lawful commercial activities, including but not limited to:

1.4.1. movable and immovable property, including rights in and to such property such as a mortgage, lien, pledge, lease or servitude;

1.4.2. intangible and intellectual property, including rights in such property, as well as goodwill, technical processes and knowledge;

1.4.3. cash, securities, commercial paper, guarantees, shares of stock or other types of ownership interests in a the Republic of Kosovo or foreign business organization; bonds, debentures, other debt instruments;

1.4.4. claims or rights to money, goods, services, and performance under contract;

1.4.5. concessions or licenses conferred by law, administrative act, or contract; and

1.4.6. returns yielded by an investment in the Republic of Kosovo or an investment elsewhere.

1.5. Business organization of the Republic of Kosovo - a business organization that has been established under the law applicable in the Republic of Kosovo and is not a foreign business organization.

1.6. Business activity- any activity involving the offering, providing or producing of goods, services, property and/or works to anyone in return for or in expectation of any type of payment or compensation.

1.7. Act of expropriation - any act or measure, any series of acts or measures, any failure to act or series of failures to act, if the direct or indirect effect thereof is to deprive the concerned foreign investor of the ownership or control of, or a significant benefit or use of, an asset; provided, however, that the term "act of expropriation" shall not apply to the imposition by the Republic of Kosovo of generally applicable taxes and duties.

1.8. Foreign investment organization - any business organization in the Republic of Kosovo lawfully established in the Republic of Kosovo if:

1.8.1. at least ten percent (10%) of its capital has been contributed, directly or indirectly, by a foreign investor; or

1.8.2. it is controlled by one or more foreign investors on the basis of a written contract, rights to exercise a majority of the organization's voting shares or similar ownership rights, or rights to appoint the majority of its board of directors or other principal supervisory bodies.

1.9. Freely convertible currency - any currency designated as such by the International Monetary Fund.

1.10. Public authority - any body, governmental executive authority, ministry, public body, department, agency, or other such authorities that exercises public executive, legislative, regulatory, administrative or judicial powers within the territory of the Republic Kosovo.

1.11. ICSID - the International Centre for Settlement of Investment Disputes.

1.12. ICSID Convention - the Convention of International Center on the Settlement of Investment Disputes between States and Nationals of Different States.

1.13. ICSID Additional Facility Rules - the Arbitration (Additional Facility) Rules of the International Centre for Settlement of Investment Disputes.

1.14. UNCITRAL Rules - the Arbitration Rules of the United Nations Commission on International Trade Law.

1.15. ICC Rules - the Rules of Arbitration of the International Chamber of Commerce.

1.16. New York Convention - the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

1.17. Court - the Competent Court for administrative issues. 1.18. Agency – Investment and Enterprise Support Agency.

1.19. Foreign Investment Dispute - any dispute or claim arising from a foreign investment or that is related to it.

1.20. Silence is consent – guarantying the right to each person to undertake business activity of a certain type, without obtaining approval from the competent body, if an approval or rejection of the application is not given within the timeframe contemplated in the legislation in force.

1.21. Micro, Small and Medium Enterprises MSME – enterprises with the status of one of the following classified enterprises:

1.21.1. micro-enterprise should employ nine (9) employees;

1.21.2. small-enterprise should employ from ten (10) to forty nine (49) employees;

1.21.3. medium-enterprise should employ from fifty (50) to two hundred and forty nine (249) employees.

Article 3: General Treatment

1. Republic of Kosovo shall accord fair and equitable treatment to foreign investors and their investments in Kosovo with any local investors and local investments.

2. Republic of Kosovo shall also provide foreign investors and their investments with full and constant protection and security in accordance with the applicable legislation.

3. In no case shall the treatment, protection or security required by this paragraph be less favorable than that required by generally accepted norms international law or any provision of the present law.

4. Republic of Kosovo shall not impair by any unreasonable or discriminatory action or inaction, the operation, management, maintenance, use, enjoyment or disposal of a foreign investment organization or other investment by a foreign investor in the Republic of Kosovo. Republic of Kosovo shall not interfere with the lawful activities, rights and legally recognized interests of a foreign investor.

5. Any public authority that violates or otherwise fails to respect the rights and guarantees provided by the present law to foreign investors and their investments shall be liable to pay compensation, in accordance with Article 8 paragraph 2. of this law, for losses and expenses incurred as a consequence of such violation or failure. No type of legal immunity shall serve as bar to the liability created by this Article.

Article 4: Non-discrimination

1. Republic of Kosovo shall provide the foreign investments the same treatment, regardless of their citizenship, origin, residency, place of establishment of business or control.

2. Foreign investors and their investments shall comply with, and have the rights and obligations established by, the law applicable in Kosovo to the same extent as domestic investors and their investments.

Article 5: Compliance with Obligations

1. Republic of Kosovo shall comply in good faith with all obligations that it has to the foreign investors. This provision shall apply to any type of obligation, whether created by law, agreement, or other legal act.

2. If any public authority issues an act or assumes an obligation with respect to a particular foreign investor, and the issuance of such act or the assumption of such obligation is beyond the authorization of such public authority, the foreign investor shall have the right to compensation in accordance with Article 8 paragraph 2. of this law for losses and expenses incurred as a result of the foreign investor's good faith reliance on the validity of such act or obligation.

Article 6: Stability of Investment Regime

1. No law, regulation or other legal act shall have retroactive force or be applied retroactively to the detriment of a foreign investor or the investment of a foreign investor.

2. No law, regulation or other legal act shall have retroactive force or be applied retroactively to the detriment of a foreign investor or the investment of a foreign investor. If, a foreign investor has invested in the Republic of Kosovo, and within a five years period, immediately after the investment, any provision of this Law will be amended or revoked, and this will have a negative impact to a foreign investor or his/her investment, then the foreign investor is entitled to compensation by the Government of the Republic of Kosovo under Article 8 paragraph 2. of this law, for all damages and expenses incurred as a result of change, revoke or issuance of such act. This privilege shall be given to the foreign investor and will be applied immediately after his/her investment in the Republic of Kosovo.

Article 7: Expropriation and Nationalization

The foreign investment shall not be subject to any form of expropriation or nationalization directly or indirectly or any other equivalent measure with it, except in cases of special public interest established by law, without discrimination, immediate, adequate and effective compensation in accordance with legal procedures.

Article 8: Compensation

1. Compensation for expropriation and nationalization will be as follows:

1.1. be paid in a freely convertible currency;

1.2. be equivalent to the fair market value of the concerned asset before the act of expropriation was taken; provided, however, that the fair market value of the concerned asset shall be adjusted to ensure that it does not reflect any change in value that can be attributed to the act of expropriation itself or to any prior knowledge or anticipation of the act of expropriation by private or public persons, and established in terms of a freely convertible currency;

1.3. include a rate of interest that is equivalent to the London Interbank Offered Rate [LIBOR] plus two percent (2%) for the period beginning on the date the act of expropriation occurred and ending on the date that all compensation required by paragraph 1. of this Article has been paid.

2. Where the present law requires the payment of compensation for losses and expenses arising from an act or failure to act that does not constitute an act of expropriation, the amount of such compensation shall be equal to the fair market value of the concerned losses and expenses, determined as of the date they were incurred. Such compensation shall be paid in a freely convertible currency and include a rate of interest that is equivalent to the London Interbank Offered Rate [LIBOR] plus two percent (2%) for the period beginning on the date the losses and expenses were incurred and ending on the date that the compensation required by the present law has been paid.

3. Due process of law, as required by paragraph 1. of this Article includes, in particular, compliance with the procedural and material requirements of the law applicable to expropriations and the right of the foreign investor, foreign investment organization or foreign person that claims to have been affected by an act of expropriation to obtain a prompt review of its case, including a determination of the compensation due, by the Court or an arbitral body selected by the foreign investor or foreign person in accordance with Article 16 of this Law.

Article 9: Currency Conversion and Guaranteed Transfers

1. A foreign investor shall with respect to any payments, obligations, returns and proceeds relating to a foreign investment organization or other investment in the Republic of Kosovo have the right to convert any local currency lawfully in use in the Republic of Kosovo into a freely convertible currency, and to convert any freely convertible currency into any local currency lawfully in use in the Republic of Kosovo.

2. A foreign investor shall the right to transfer freely convertible currency in and out of Kosovo, including, but not limited to, amounts received in a conversion transaction covered by paragraph 1. of this Article.

3. The conversion and transfer rights established by paragraph 1. and 2. of this Article shall be exercisable without restriction whenever the foreign investor determines, in his sole discretion, that such a conversion or transfer is necessary or advisable to:

3.1. make contributions to the stated or operating capital of a foreign investment organization or other investment in the Republic of Kosovo;

3.2. protect the value of repatriate returns, earnings, payments or proceeds received in connection with a foreign investment organization or other investment in the Republic of Kosovo;

3.3. make payments under any contract;

3.4. protect the value of or repatriate proceeds from the sale or liquidation of an asset or any part of an interest in a foreign investment organization or other investment in the Republic of Kosovo; and

3.5. protect the value of or repatriate any payments of compensation arising from the settlement of a dispute or received as a result of the operation of the present law.

4. Republic of Kosovo shall permit all such conversions and transfers to be effectuated without delay in accordance with normal and customary banking procedures in accordance with applicable law unless otherwise determined by a valid and final court order issued by a court of competent jurisdiction in accordance with applicable law.

5. All conversions shall be made at a market rate of exchange.

6. If a public authority interferes with or diminishes the rights established by this Article, such public authority shall, in accordance with paragraph 3. of this Article compensate the concerned foreign investor for any losses and expenses incurred as result of such action.

7. The Republic of Kosovo may restrict transfer of rights through the impartial, equal and non-discriminatory implementation laws of general character, including those relating to the payment of fees, taxes, fiscal obligations, facilitating the control of criminal activity, and court decisions.

Article 10: Illegal Action or Inaction

1. Without prejudice to any other rights or remedies that a foreign investor may have, a foreign investor shall have a right to refer to the court or arbitration for compensation for losses and expenses incurred as a consequence of any action or inaction that is directed against the foreign investor and that is a violation of the applicable law in the Republic of Kosovo or generally accepted norms of international law; and is attributable to the Republic of Kosovo.

2. Silence is consent – shall be applied in case if the foreign investor undertakes business activity of a certain type, without obtaining approval from the competent body, if an approval or rejection of the application is not given within the timeframe contemplated in the legislation in force.

Article 11: Armed Conflict and Civil Disturbance

1. If a foreign investor suffers a loss of an asset or an investment in the Republic of Kosovo as a result of violence that is related to the political or economic situation including war, other armed conflict, revolution, rebellion, riot, protest, civil disturbance, act of terrorism or other similar events, Republic of Kosovo shall accord such foreign investor or foreign person - as regards compensation or other settlement – the same and equal treatment to any local investors and local investments.

2. A foreign investor shall have the right to obtain compensation in accordance with Article 8 paragraph 1. of this law in the event of:

2.1. a requisition of an asset by a public authority;

2.2. a destruction or damage to an asset by public authority, if such destruction or damage was not necessary based on the situation; or

2.3. a failure by the Republic of Kosovo to provide the protection and security in accordance with its obligations under Articles 3 and 4, unless the provisions of such protection and security was impossible as a result of a force majeure (vis major).

Article 12: Respect of Rights

Public authorities shall recognize and respect all rights of a foreign investor relating to a foreign investment in the Republic of Kosovo, especially when such rights relate to immovable and movable property, intellectual property and other assets, contract rights, and the rights established by this Law.

Article 13: Compliance with Laws and Standards

1. A foreign investor carrying out its activities in the Republic of Kosovo shall act in compliance with all laws and standards applicable in the Republic of Kosovo, on equal basis with other local investors.
2. In performing the activity, a foreign investor must act in compliance with legal provisions on environmental protection that are applicable for local investors too.

Article 14: Foreign Personnel

1. A foreign investor shall have the right to employ or otherwise contract natural persons who are citizens of a foreign state for the purpose of engaging such persons to provide or perform, in the Republic of Kosovo, professional, management, administration, supervision, or consultancy services or skilled technical functions.
2. Such natural persons shall be permitted to enter and remain in the Republic of Kosovo for the period required by their contract with the foreign investor in accordance with the applicable law.
3. Such natural persons shall while in the Republic of Kosovo comply with all the applicable laws in the Republic of Kosovo.

Article 15: Liquidation of an Investment

1. A foreign investor shall have the right to liquidate or terminate investment activities, in accordance with applicable law.
2. Upon liquidation or other termination of an investment activity, foreign investors shall have the right freely to repatriate all physical and non-monetary assets received as a result thereof.
3. Upon liquidation or other termination of an investment activity, foreign investors shall have the right to convert and transfer in accordance with Article 9 of this Law all currency and money received as a result thereof, after prior payment of all outstanding taxes and liabilities to the Republic of Kosovo.

Article 16: Mechanisms for the Resolution of Investment Disputes

1. A foreign investor shall have the right to require that an investment dispute be resolved in accordance with any applicable requirements or procedures that have been agreed upon in writing between the foreign investor and the Republic of Kosovo.
2. In the absence of such an agreed procedure, a foreign investor shall have the right to require that the investment dispute be settled either through litigation before a court of competent jurisdiction in the Republic of Kosovo or through local and international arbitration. The foreign investor may choose any of the following procedural rules to govern the arbitration of the investment dispute:
 - 2.1. the ICSID Convention, if the foreign investor is a citizen of a foreign country and that country and the Republic of Kosovo are both parties to that convention at the time of the submission of the request for arbitration;

2.2. the ICSID Additional Facility Rules, if the jurisdictional requirements “ratione personae” of Article 25 of the ICSID Convention are not fulfilled at the time of the submission of the request for arbitration;

2.3. the UNCITRAL Rules, in such case the appointing authority referred to therein shall be the Secretary General of ICSID; or

2.4. the ICC Rules.

3. The consent of the Republic of Kosovo to the submission of an Investment Dispute for arbitration under this Article is hereby given under the authority of the present law. The consent of the foreign investor may be given at any time either by filing a request for arbitration or by providing to the Agency a written statement expressing such consent.

4. The consents referenced above shall be deemed to satisfy the requirements for the forms of consent under Chapter II of the ICSID Convention, the ICSID Additional Facility Rules, the UNCITRAL Rules, the ICC Rules, as well as the New York Convention. In particular, if an arbitral award is issued by a foreign or international arbitration body under a procedure authorized by this Article, such award shall be enforceable in accordance with law applicable to arbitration and the enforcement of foreign arbitral awards.

5. Unless the concerned foreign investor and the Republic of Kosovo agree otherwise in writing, any arbitration under the present law shall be held in an EU member country that is also a party to the New York Convention.

Article 17: Law Applicable to Investment Disputes

1. The court or arbitral tribunal considering an Investment Dispute shall determine the issues in dispute in accordance with the substantive rules or laws agreed upon by the parties in writing.

2. In the absence of such an agreement, the court or arbitral tribunal shall apply the substantive law applicable in the Republic of Kosovo - excluding the private international law rules thereof - and such rules of public international law as may be applicable to the issues in dispute.

Article 18: Final and Binding Nature of Arbitral Awards

1. Any arbitral award rendered in connection with an Investment Dispute covered by the present law shall be deemed final and binding on the parties to the dispute, including the Republic of Kosovo.

2. Such award shall be enforceable within the Republic of Kosovo to the same extent and degree as if it were a final decision of the highest court of competent jurisdiction in the Republic of Kosovo. No type of legal immunity shall be claimed or serve as bar to the enforcement of such an award.

Article 19: Conflicts with International Agreements and other Laws

1. In the event of a conflict between a provision of the present law and a provision of a bilateral or multilateral international agreement related to foreign investment and to which the Republic of Kosovo is a party, such international agreement shall prevail.

2. In the event of a conflict between any provision of the present law and a provision of any other law applicable in the Republic of Kosovo, the provisions of the present law shall prevail; provided, however, the provisions of such other normative act shall prevail if such law contains a clearly expressed intention to avoid the application of a provision of this law.

3. Nothing in this Article shall be interpreted or applied in any manner that impairs or obstructs the right to compensation created by Article 8 of this law.

Article 20: Application to Pre-existing Investments

The present law - and the rights, guarantees, privileges and protections established by the present law - shall apply equally to foreign investors that invested in the Republic of Kosovo prior to the effective date of this law.

Article 21: Registry of foreign investments

1. The Ministry shall establish and maintain a registry of foreign investors and investments.
2. The registry shall be public and shall be updated two times each year, by 30th June and 31st December.
3. The form and contents of the registry shall be specified with sub-legal act issued by the Ministry.

Article 22: Programs and Measures for Establishment and Development of MSME

1. The Government of the Republic of Kosovo, after taking into consideration the restricted administrative and budgetary sources, may authorize the Agency to support the establishment and development of a suitable environment for MSME by:
 - 1.1. working with private sector lenders to ensure a fair and non-discriminatory access for MSME in private loans and other creditor possibilities;
 - 1.2. working together with private sector lenders to identify and minimize legal, administrative and/or juridical obstacles which unnecessarily restrict lending in general or lending for MSME in particular;
 - 1.3. cooperating with Republic of Kosovo Office of Statistics, to collect, analyze and distribute statistics and other notes which shall serve:
 - 1.3.1. to understand better the economic and commercial environment of MSME;
 - 1.3.2. to help in creation of rational policies with reasonable costs for MSME;
 - 1.3.3. to encourage investments from private sector suppliers of goods and services;
 - 1.3.4. to enable fair solution in decision making of entrepreneurs, lenders and consumers regarding the production and services of the MSME.
 - 1.4. cooperating with respective Ministry of Finances, respective Ministry of Agriculture and other public authorities, to ensure that legislation and administrative practices don't discriminate without any reason small and medium enterprises;

- 1.5. working and meeting regularly with MSME to identify and develop proposal that eliminate or minimize the barriers or unnecessary or problematic bureaucratic conditions, deriving from a law or other legislative instrument or from public administration practice;
- 1.6. engaging business or professional associations, NGOs and other civil organizations in development of infrastructure to support establishment of MSME and their development;
- 1.7. ensuring that the small and medium enterprises have fair and non-discriminatory possibility of competition in Governmental contracts;
- 1.8. working with relevant international organizations and governmental institutions to enable trading outside Kosovo for different types of productions and services with origin from the Republic of Kosovo;
- 1.9. working with respective Ministry of Labour and Social Welfare and with others to draft necessary legal policies and instruments to provide the MSME more flexible rules on relations employer-employee; and
- 1.10. facilitating communication:
 - 1.10.1. through MSME;
 - 1.10.2. through MSME and big enterprises that need productions or services of the SME; and
 - 1.10.3. through MSME and private counselors, trainers or professionals who could increase capacity and MSME level of expertise;
- 1.11. building training and counseling schemes for categories of potential entrepreneurs and the existing ones and MSME in general;
- 1.12. developing program for working spaces through business incubators, business and industrial parks;
- 1.13. cooperating with respective Ministry of Finance and Central Banking Authority of Kosovo, to prepare together and propose to the Assembly the program and scheme to support the MSME in access to private capital and financial sources.

Article 23: Kosovo Investment and Enterprise Support Agency

1. Agency is an institution operating under the Ministry of Trade and Industry and is responsible for protection and promotion of investments, supports application of public policies and programs for Micro, Small and Medium enterprises and develops policies related to establishment and development of economic zones.
2. Agency is headed by the General Director. Appointment, discharge, functions and responsibilities of the General Director are implemented in accordance with the provisions of the Law on Civil Service of the Republic of Kosovo and respective Regulation on appointment procedures for senior managerial positions.
3. Recruitment of officials of the Agency is made in accordance with the conditions and criteria specified in the applicable legal provisions of Civil Service of the Republic of Kosovo.
4. Organization and functioning of the Agency is regulated through a bylaw on internal organization and structuring of the Ministry of Trade and Industry.

5. With the entry into force of this Law, the “Agency for promotion and Investment in the Republic of Kosovo and Agency for Support of Small and Medium Enterprises” shall be joint together and the rights and obligations shall be transferred to the Agency.

Article 24: Transitional and final provisions

In order to implement this Law, Ministry of Trade and Industry shall issue sub-normative acts within twelve (12) months from the date of entry into force of this Law.

Article 25: Annulment

Upon entry into force of the present law, Law No. 02/L-33 on Foreign Investments and Law No.02/L-05, on the Support of Small and Medium Enterprises, Law No.03/L-031, on the Amendment and Supplement of Law 02/L-05 on the Support of Small and Medium Enterprises shall be repealed.

Article 26: Entry into Force

This Law shall enter into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No. 04/L-220 12 December 2013

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI

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