

Turkmenistan

LAW OF TURKMENISTAN ON FOREIGN INVESTMENTS (2008)

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LAW OF TURKMENISTAN ON FOREIGN INVESTMENTS

(Official Newsletter of Mejlis (Parliament) of Turkmenistan, 2008, No1, p. 17)

(as amended by the law of Turkmenistan dated 08.06.2019 No 153-VI)

This Law determines the legal basis of the activities of foreign investors and enterprises with foreign investments in the territory of Turkmenistan and aims to attraction and effective use of foreign investment in Turkmenistan.

CHAPTER I. GENERAL PROVISIONS

Article 1. Basic terminology used in this Law

In the present Law, the following terms shall have the following meanings are used:

1) foreign investment shall mean the investment of foreign capital in the object of business activity on the territory of Turkmenistan in the form of objects of civil rights belonging to a foreign investor, including money, securities, other property, property rights, having monetary value, exclusive rights to results of intellectual activity (intellectual property), as well as services and information;

2) Foreign investor shall mean:

- Foreign legal entity, including its branch and representative office in Turkmenistan;
- an international organization;
- a Foreign State;
- a foreign natural person, as well as a stateless person, to the time of investment who permanently reside in the foreign country;
- Turkmen citizen with permanent residence outside Turkmenistan;

3) an enterprise with foreign investment - venture established in the territory of Turkmenistan in accordance with the legislation of Turkmenistan, which is owned to the foreign investor in full or on the equity participation with natural persons and legal entities of Turkmenistan;

4) foreign direct investment – shall mean the possession, purchase by a foreign investor of not less than a 10 percent interest in (contribution to) in the authorized capital established or newly established enterprises in the territory of Turkmenistan; the investment of capital in fixed production assets of a branch of a foreign legal entity in Turkmenistan;

5) investment project shall mean the economic feasibility study regarding the volume and terms of capital investments, including the design and estimate documentation prepared in accordance with state standards (norms), as well as practical measures for the implementation of investments (business plan). Priority investment project shall mean an investment project, which is fulfilled based on the decision of the Cabinet of Ministers of Turkmenistan;

6) the recoupment period of an investment project shall mean the period from the date of the beginning of the financing of an investment project with direct foreign investment until the date when the difference between retained net income, with depreciation taken into account, and the amount of investment expenditures of the enterprise with foreign investments, branch of foreign legal entity, becomes positive;

7) Reinvestment shall mean the implementation of capital investments in objects of business activity on the territory of Turkmenistan at the expense of income or profit received by foreign investor or enterprise with from the use of foreign investments on the territory of Turkmenistan;

8) Free Zone, free economic zone, a national travel zone, and the other free economic zones, the

6) Free Zone - free economic zone, a national travel zone, and the other free economic zones, the order of formation, and elimination operation, which is established by the Law.

Article 2. Laws, regulating foreign investments in Turkmenistan

1. Legislation of Turkmenistan on foreign investments shall be based on the Constitution of Turkmenistan and governed by this Law and other normative legal acts of Turkmenistan.
2. If other rules are established by an international treaty of Turkmenistan than those contained in this Law and other regulatory legal acts of Turkmenistan, the rules of the international treaty shall apply

Article 3. Forms of Foreign Investment

Foreign investments are established in the form of:

- 1) Equity participation in the joint venture with the legal entities and physical persons of Turkmenistan;
- 2) the establishment of enterprises fully owned by foreign investors, branches of foreign legal entities or acquisition of existing enterprises;
- 3) the acquisition of movable and immovable property, except for the limited in the civil circulation by the legislation of Turkmenistan;
- 4) of foreign loans;
- 5) acquisition of property and non-property rights established by the legislation of Turkmenistan.

Chapter II. State policy in the field of foreign investment and mechanism of its implementation

Article 4. State policy in the field of foreign investments

Development and implementation of state policy aimed to attraction of foreign investment, investment coordination, assistance to foreign investors in their activities in the territory of Turkmenistan are carried out by the Cabinet of Ministers of Turkmenistan and the authorized state body (hereinafter - the authorized body).

Article 5. Competence of the Cabinet of Ministers of Turkmenistan

The Cabinet of Ministers of Turkmenistan shall:

- 1) Develop and implements the state policy in the sphere of international investment cooperation;
- 2) Develop and ensures the implementation of state programs to attract Foreign investment;
- 3) Determine the priority projects, the industry and the territory in which it is expedient to attract foreign investment, as well as decide on the implementation of priority investment projects;
- 4) Supervise the preparation and signing of investment agreements with foreign investors and enterprises with foreign investments, associated with the implementation of priority investment projects;
- 5) Performs other functions to attract foreign investments into the economy of Turkmenistan.

Article 6. Competence of the authorized body

Authorized body shall:

- 1) Develop and implements measures for the implementation of public policies to stimulate the attraction of direct foreign investments into the economy of Turkmenistan;
- 2) co-ordinate activities in the field of foreign investment, create effective mechanisms for partnership between the state and business, provide the interface between public authorities, local executive authorities and local governments and foreign investors and enterprises with foreign investments;
- 3) carries out the creation and maintenance of database referred to the preparation and implementation of investment projects with foreign investments, including sold with the equity participation of the state and as well on the base of foreign loans and grants applications;
- 4) organize the examination of investment projects with foreign investments, and carries out their registration;
- 5) provide marketing- information and consulting services to potential foreign investors, as well as providing them with the necessary practical assistance;
- 6) control the implementation of the commitments made by the foreign investor, enterprise with foreign investments for implementation of investment projects;
- 7) Monitor the attraction of funds received from the international financial institutions and donor countries; study the international capital markets and develop proposals for the further attraction of foreign investments;
- 8) submit to the Cabinet of Ministers proposals for the improvement of the investment climate and promote investment process, reduce investment risks and administrative barriers;
- 9) implement the measures aimed to the implementation of Turkmenistan's obligations arising from international treaties, taking measures for international cooperation, study and use of the best international practices;
- 10) Control the execution of legislation of Turkmenistan in the field of foreign investment by the public authorities and local government;
- 11) Perform other functions aimed to foreign investments attraction, support and protection of foreign investors in Turkmenistan.

Article 7. Examination and registration of investment projects

1. The investment project with foreign investment shall be subject to mandatory state examination

1. The investment project with foreign investment shall be subject to mandatory state examination, including the observance of the norms of seismic stability, fire and explosion safety, environmental and sanitary requirements.
2. Examination and registration of investment projects with foreign investments, as well as consideration of other forms of foreign investments should be done in the manner prescribed by law.

Chapter III. Legal regime of foreign investors and enterprises with foreign investments

Article 8. Legal regime of foreign investors and enterprises with foreign investments

1. The national legal regime are provided to the foreign investors, enterprises with foreign investments. Under the national legal regime is understood that the legal regime of foreign investors and enterprises with foreign investment and the use of profits derived from the investment cannot be less favorable than the legal regime of activities and the use of profits from investments provided by domestic investors.
2. Foreign investors, enterprises with foreign investment engaged in activities on the territory of free economic zone, provided favorable legal regime. Favorable legal regime means that the legal regime of foreign investors and enterprises with foreign investment and the use of profits received from investments is not less favorable than the legal regime of activities and the use of profits from investments, provided by any third State.
3. Foreign investors are free to choose the size, composition and structure of the capital of an undertaking, unless otherwise provided by the legislation of Turkmenistan.
4. The kinds of activities and (or) the territory in respect of which the investment activity is restricted or prohibited, as well as other restrictions for foreign investors can be established by the laws of Turkmenistan only as much it is required subject to protect the constitutional system, ensure the defense and Turkmenistan security.
5. If, as a result of changes in the legislation of Turkmenistan, led to prohibitions and restrictions, the legal regime of foreign investors and enterprises with foreign investments deteriorates, therein the legislation of Turkmenistan, effective to the time of registration of foreign investments, is applied to such investors for ten years, and to enterprises of foreign legal persons, branches of foreign legal entities implementing investment projects based on the decision of the Cabinet of Ministers of Turkmenistan, - during the payback period of the investment projects announced in the manner due to the normative legal acts of Turkmenistan, with its registration. The provisions of this subsection shall also apply to the tax legislation of Turkmenistan.
The provisions of this part shall not apply in case of changes in the legislation of Turkmenistan in order to protect the foundations of the constitutional system, to ensure the defense capability and security of the state.
6. With respect to foreign investment the state restricting on their territory the legal regime of investment for the economic entities of Turkmenistan, the Turkmen law may establish similar restrictions.

Article 9. Customs benefits

1. Property entered to Turkmenistan is exempted from customs duties if:
 - 1) Foreign investor's contribution to the charter fund of the enterprise with foreign investment in the fixed assets of the branch of a foreign legal entity in accordance with the stated list of them;
 - 2) Foreign investors and enterprises with foreign investments based on international treaties and contracts concluded in accordance with the decisions of the Cabinet of Ministers of Turkmenistan, as an investment. The property referred to in paragraph 2 of this Part, shall be exempt from customs duty for the payback period of the investment project established by the appropriate agreement.
2. In the event of alienation of the property specified in the first part of this article within three years after its import into Turkmenistan, the collection of customs duties, including penalties charged for the delay in their payment, shall be done in accordance with the procedure established by the legislation of Turkmenistan.
3. For customs clearance of the property specified in the first part of this article, customs duties are levied.

Article 10. Tax regulation of foreign investments

Taxation of foreign investors and enterprises with foreign investment, including tax benefits is conducted in accordance with the Tax Code of Turkmenistan.

Article 11. Other measures to stimulate foreign investment

1. Enterprises with foreign investment and branches of foreign legal entities have the right to export products (works, services) of own production and import products (works, services) for their own needs without a license.
2. Foreign investors, enterprises with foreign investments operating in the territory of the free economic zone, have the right to rent the land, depending on the payback period of investment projects in accordance with the legislation of Turkmenistan.

accordance with the legislation of Turkmenistan.

3. Registration of investment projects, as well as enterprises with foreign investments, branches and representative offices of foreign legal entities engaged in the object construction and operation in the free economic zone, is made free of charge registration fees.

4. Foreign investors, enterprises with foreign investments operating in the territory of the free economic zone shall be exempt from:

- 1) Consular and registration fees payment;
 - 2) Payment of the exchange fees for the contracts registration;
 - 3) Payment of state fees for the issuance of the license and its prolongation;
 - 4) The rent for the land in the manner and conditions stipulated by the legislation of Turkmenistan;
 - 5) Deductions from profits to the extra budgetary funds established by the legislation of Turkmenistan.
5. Certification of equipment and materials imported to Turkmenistan by foreign investors, enterprises with foreign investments, as well as their contractors and subcontractors, carrying out activity on the construction and operation of facilities in the free economic zone is made without charge for certification services.
6. Enterprises with foreign investment and branches of foreign legal entities independently determine the conditions for the realization of manufactured products (works, services), except for goods (works, services), the prices of which are regulated by the state.
7. In the interests of socio-economic development of Turkmenistan on priority investment projects, concession contracts, ensuring sustainable economic growth, progressive structural changes in the economy, strengthen and increase the export potential, as well as raising the level of employment, the legislation of Turkmenistan may establish other benefits for foreign investors and enterprises with foreign investments.

Article 12. Start and termination of business activity

Establishment, state registration and liquidation of enterprises with foreign investments, branches and representative offices of foreign legal entity, the state registration and termination of activities of foreign natural persons and persons without citizenship as an individual entrepreneur are carried out in accordance with the legislation of Turkmenistan.

Article 13. Regulation of labor relations

1. Labor relations between the enterprise with foreign investment, branch of a foreign legal entity and their employees, including those who are not citizens of Turkmenistan are regulated by the legislation of Turkmenistan.
2. Salaries, fees and other sum of money lawfully received by employees of the enterprise with foreign investment, branch of a foreign legal entity who are not citizens of Turkmenistan may be transferred outside of Turkmenistan in accordance with the legislation of Turkmenistan.

Article 14. Social insurance and social security

Enterprises with foreign investment and branches of foreign legal entities shall:

- 1) Exercise the deductions for state social insurance in accordance with the legislation of Turkmenistan for their employees who are citizens of Turkmenistan;
- 2) Exercise the payments on social insurance and social security for workers of foreign entity or a person without citizenship, in the appropriate public funds of its nationality or permanent residence.

Article 15. Insurance of foreign investments

Insurance of property and risks of foreign investors and enterprises with foreign investments is carried out at their discretion, unless otherwise stipulated by the legislation of Turkmenistan.

Article 16. Fair Competition Observance by Foreign Investors, Enterprises with foreign investments

Foreign investors, enterprises with foreign investments should prevent unfair competition, including through the establishment in Turkmenistan the production facilities for manufacturing of any products in high demand, and then terminate its activities in order to promotion the similar goods of foreign origin, as well as conclusions agreements on prices or on the distribution markets for goods, restricting the rights of other economic entities in Turkmenistan.

Article 17. Accounting and Reporting

Accounting, statistical accounting and reporting by enterprises with foreign investments, branches and representative offices of foreign legal entities on the territory of Turkmenistan are carried out in accordance with the legislation of Turkmenistan.

Article 18. Evaluation of foreign investments

An assessment of investments in the authorized fund of the enterprise with foreign investment in the fixed assets of the branch of a foreign legal entity in national currency of Turkmenistan in accordance with the legislation of Turkmenistan.

Chapter IV. State guarantees of foreign investments protection

Article 19. Guarantees of legal protection of foreign investors and enterprises with foreign investments

1. Foreign investors, enterprises with foreign investments on the territory of Turkmenistan are

1. Foreign investors, enterprises with foreign investments on the territory of Turkmenistan are guaranteed the protection of rights and interests in accordance with this Law and other normative legal acts of Turkmenistan.

2. Foreign investors, enterprises with foreign investments, entered initially into the territory of Turkmenistan property and information in hard copy or in electronic format as foreign investment and registered it, have the right to unhindered (without quotas, licensing, and application to them other measures of non-tariff regulation of foreign trade) export of the said property and information outside of Turkmenistan.

3. Foreign investors, enterprises with foreign investments acquires legal protection, guarantees and benefits established by this law, from the date of registration of the investment project with foreign investment, enterprises with foreign investments in the territory of Turkmenistan.

4. Foreign investors, enterprises with foreign investment when reinvestment of profits from foreign investments use in full the legal protection, guarantees and benefits established by this Law.

5. The public authorities and local executive bodies has no right to interfere in the economic activity of foreign investors and enterprises with foreign investments carried out in accordance with the legislation of Turkmenistan.

The public authorities and local executive bodies and local authorities when revealing the violations of the legislation of Turkmenistan by foreign investors and enterprises with foreign investment shall have the right within the limits of their competence to take measures directly related to the elimination of the specific violation, and may not use the fact of violation as grounds for intervention, suspension or limitation of a legitimate activity of foreign investors and enterprises with foreign investment.

6. Acts of the public authorities and local executive authorities contradicting with this law and violating the rights of foreign investors and enterprises with foreign investment shall be acknowledged invalid, but based on their actions are considered illegal in accordance with the legislation of Turkmenistan.

Article 20. Guarantees of ensuring visa and stay in the territory of Turkmenistan

1. Foreign natural persons and persons without citizenship, as well as their representatives, representatives of foreign legal entities, international organizations and foreign countries being the foreign investors, foreign citizens working in enterprises with foreign investments, branches and representative offices of foreign legal entity and members their families in Turkmenistan in connection with the implementation of investment activities, have the right to:

- 1) Ensuring the multiple-entry visa for a period not less than one year;
- 2) Freedom of movement over the territory of Turkmenistan, except the territories where conditions and order of stay are determined by the legislation of Turkmenistan.

Foreign natural persons and persons without citizenship, as well as their representatives, representatives of foreign legal entities, international organizations and foreign countries being the foreign investors, foreign citizens working at enterprises with foreign investments, branches and representative offices of foreign legal entity, arriving to Turkmenistan to work during the construction and operation of facilities in the free economic zone, visas and permits are issued in expedited procedure, approved by the Cabinet of Ministers of Turkmenistan.

2. Foreign natural persons and persons without citizenship being the foreign investors, fully own enterprises with foreign investments have the right to permanent residence in Turkmenistan in accordance with the legislation of Turkmenistan.

Article 21. Guarantees of use on the territory of Turkmenistan and transfer the revenue and profit outside Turkmenistan

1. Foreign investors and enterprises with foreign investments have the right to open bank accounts in national and foreign currency with banks in Turkmenistan in accordance with the legislation of Turkmenistan.

2. Foreign investors, enterprises with foreign investments after taxes paying and other obligatory payments stipulated by the legislation of Turkmenistan, have the right to free use of income and profit in Turkmenistan, including for reinvestment for the purposes not contradicting the legislation of Turkmenistan, as well as to free transfer of income, profit and other legally received monetary means in foreign currency outside of Turkmenistan in connection with earlier investments made by them, including:

- 1) Income from foreign investments received in the form of profits, dividends, interest and other income;
- 2) Money due to the obligations of the enterprise with foreign investment or a branch of a foreign company under the contracts and other deals;
- 3) Money received by a foreign investor in connection with the liquidation of an enterprise with foreign investments or alienation of the invested property, property rights and exclusive rights to the results of intellectual activity;
- 4) The compensation provided for in Article 26 of this Law.

3. Conversion of funds, as well as money transfers in foreign currency to and from Turkmenistan related to foreign investments are exercised by foreign investors, enterprises with foreign investments in accordance with the procedures established by the legislation of Turkmenistan.

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Article 22. Guarantees of transfer of rights and obligations of foreign investors, enterprises with foreign investments to another person

1. Foreign investors and enterprises with foreign investments have the right to transfer their rights and obligations under the contract, including the assignment of claims and the transfer of debt to another person in accordance with Turkmen civil law.

2. Turkmenistan recognizes the legitimacy of the transfer of rights (assignment of a claim) in accordance with an international treaty to which the foreign State and Turkmenistan are parties in the event that the foreign State or a State body authorized by it makes a payment in favor of foreign investors or enterprises with foreign investments under a guarantee (insurance contract) provided to them in respect of investments made in Turkmenistan, and to that foreign State or body authorized by it.

Article 23. Guarantees for the protection of intellectual property rights

Implementation of intellectual property rights of foreign investors and enterprises with foreign investments and their protection ensured in accordance with the law.

Article 24. Guarantees of access to information for foreign investors, enterprises with foreign investments

1. Foreign investors and enterprises with foreign investments have the right to access to information in accordance with the legislation of Turkmenistan.

2. Normative legal acts of Turkmenistan that in any way affect the interests of foreign investors, enterprises with foreign investments should be available to them, and in cases directly stipulated by the legislation of Turkmenistan it should be published.

Article 25. Guarantees of the foreign investment return resulted the termination of the investment activity

1. Foreign investors and enterprises with foreign investments have the right to stop the investment activity in Turkmenistan. After the termination of the investment activity of foreign investors, enterprises with foreign investments are entitled to a free return in cash or in kind of assets obtained resulted of foreign investment, without prejudice to the obligations of foreign investors and enterprises with foreign investment in respect of Turkmenistan or other creditors.

2. Return of funds of foreign investors, enterprises with foreign investments can be suspended based on the Court decision in cases established by the legislation of Turkmenistan.

Article 26. Compensation guarantees for forced withdrawal of property

1. Forced returned property withdrawal of foreign investors, enterprises with foreign investments in the ownership or temporary use of the State in the form of requisition is allowed only in the cases stipulated by the legislation in order to overcome circumstances of emergency nature, including natural disasters, accidents, epidemics, epizooties and their consequences.

2. Upon termination of the circumstances in connection with which the requisition, foreign investors, enterprises with foreign investments have the right to demand the return of the remaining property with the condition of repayment of the amount they received compensation for confiscated property, net of impairment losses of the remaining property.

3. In case of requisitioning the property of foreign investors and enterprises with foreign investments, compensation:

1) Should be made immediately in a foreign currency and transferred abroad upon the investor's request;

2) Should correspond to the market value of the investment to the moment of the decision making to requisition.

4. The requisitioned property and losses from the reduction in its value are estimated by an authorized body or an independent appraiser in the manner determined by the legislation of Turkmenistan.

5. Settlement of disputes regarding the legality of property requisition, compensation for losses resulted the property requisition shall be carried out in accordance with the procedure provided for in Article 29 of this Law.

Chapter V. Responsibility for violation of legislation of Turkmenistan on foreign investments. Settlement of disputes

Article 27. Responsibility for violation of legislation of Turkmenistan on foreign investments

1. State and local government officials violated legislation of Turkmenistan on foreign investment are liable in accordance with the legislation of Turkmenistan.

2. Foreign investors, enterprises with foreign investments implementing the investment activities in Turkmenistan should observe the legislation of Turkmenistan, as well as the obligations undertaken to implement investment projects.

3. The property of foreign investors and enterprises with foreign investments, branches of foreign legal entities, including attracted funds, property rights, can be used by them as a means of securing

obligations in the manner established by the legislation of Turkmenistan.

4. A foreign legal entity is responsible for the activities of the branch and representative office established in the territory of Turkmenistan in the manner prescribed by the legislation of Turkmenistan.

Article 28. Responsibility of Turkmenistan on foreign investments

Turkmenistan is not liable for obligations of foreign investors, enterprises with foreign investments, unless these obligations are guaranteed by the State.

Article 29. Disputes Resolution

Disputes arising in connection with the implementation of foreign investment in the territory of Turkmenistan are resolved through negotiations or consideration in the Arbitration Court of Turkmenistan, or if Parties agreed - in the arbitration court.

Chapter VI. Final provisions

Article 30. Entry into force of this Law

1. This Law shall enter into force on the day of its official publication.

2. From the date of entry into force of this Law is subject to recognize as invalid the Law of Turkmenistan "On Foreign Investments in Turkmenistan", adopted by the Mejlis (Parliament) of Turkmenistan on May 19, 1992, as well as all subsequent laws, or their corresponding parts, which amended and supplemented it.

3. Normative legal acts of Turkmenistan contradicting the present Law should be brought into conformity with the present Law during one month from the day of entry into force of the present Law.

President of Turkmenistan

Gurbanguly Berdimuhamedov

Ashgabat city

3 March 2008

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