

## Tajikistan

### TAJIKISTAN INVESTMENT ACT (2016)

*Official translation*

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# TAJIKISTAN INVESTMENT ACT

This Investment Act regulates public relations associated with investments and defines the organizational, financial, legal, and economic foundations for promoting and providing state support for investments by granting an equal legal regime and guarantees for the protection of investors' rights (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).

## CHAPTER I. GENERAL PROVISIONS

### Article 1. Main definitions

This Investment Act includes the following main definitions:

- Investment - is a term with investor investing in the form of tangible and intangible assets in the territory of the Republic of Tajikistan for the purpose of profits obtaining;
- Investor – is a term with physical or legal person and organization without legal entity engaged in investment activity on the territory of the Republic of Tajikistan;
- Investment activity – is a term with investment process, including the stages of preparation, execution and management of investment projects associated with the investment;
- Long-term investment - is a term with investment of capital in the investment project with a duration of more than ten years;
- Foreign investor - is a term with a foreign government, foreign legal entity, foreign organization without a legal entity, foreign citizen, international organization, investing in the Republic of Tajikistan in accordance with the legislation of the country of their location;
- Domestic investor - is a term with physical and legal entities of the Republic of Tajikistan permanently residing outside the territory of the Republic of Tajikistan that have investments in various sectors of economy of the Republic of Tajikistan;
- Minority investor - is a term with the investor investments of less than ten percent of the voting shares (less than ten percent of votes of the total number of votes participants);
- Direct investments refer to the ownership or acquisition by an investor of no less than ten percent of the shares, stakes (contributions) in the charter (share) capital of a commercial organization established or newly created in the territory of the Republic of Tajikistan in accordance with the legislation of the Republic of Tajikistan, as well as the investment of capital into the fixed assets of a branch of a foreign legal entity established in the territory of the Republic of Tajikistan (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).
- Reinvestment - is a term with investor investment into the entrepreneurial objects and activities on the territory of the Republic of Tajikistan at the expense of the investors income or profits received from investments in the Republic of Tajikistan;
- Investment dispute - is a term with a dispute arising from contractual obligations between investors, public authorities, officials of the Republic of Tajikistan and (or) other participants of investment activities related with investment activities of the investor;
- An investment project is a strategically important commercial project that involves attracting investments for the development of a specific sector of the economy of the Republic of Tajikistan and improving the living standards of the population of the Republic of Tajikistan (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).
- Dedicated government agency in the sphere of investment - is a term with the government structure that implements the government policy in the sphere of investments;
- Government in-kind grant - is a term with property transferred to the investor in temporary and gratuitous use for the implementation of the investment project;
- Investment preference - is a term with targeting ascendants provided to investors in accordance with

the legislation of the Republic of Tajikistan, as well as in the framework of investment agreements and treaties;

- Net cash flow for investors - is a term with the authorized government structure centralized facilitation to investors in the investment sphere for public services provision to minimize the investors participation in documents assembling and preparation and their direct contact limiting with government authorities;
- Expropriation - is a term with forced uncompensated confiscation by the government in the national interest and stated purpose of establishing social equality;
- Indirect expropriation - is a term with regulatory government measures that have no purpose of direct deprivation of a person's property but investments financial value and efficiency forfeiture;
- Nationalization - is a term with the property transfer in the government ownership with appropriate cost payment and compensation for other expenses suffered by the owner due to the nationalization;
- Requisition - is a term with property seizure in cases of natural disasters, accidents, epidemics, epizooty and other extraordinary circumstances made in accordance with the forced decision of the Government of the Republic of Tajikistan in the manner established by the legislation and on the terms of social equality with the property value reimbursement.

#### **Article 2. Legislation on investment adjustment of the Republic of Tajikistan**

Constitution of the Republic of Tajikistan is the fundamental basis of the legislation of the Republic of Tajikistan on investments adjustment. Legislation of the Republic of Tajikistan on investments adjustment consists of the genuine Investment Act and other regulatory legal acts of the Republic of Tajikistan along with the international legal acts admitted by Tajikistan.

#### **Article 3. Invested Assets**

Investor are entitled to invest the properly owned assets and other ownership rights possessed to investor in accordance with the estate right and other legal justification that include in particular the following:

- real estate;
- funds;
- Shares, interests in the authorized (share) capital, and other forms of participation in a legal entity (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).
- property rights;
- intellectual property and other types of moral rights;
- miscellaneous civil rights that are not restricted in circulation by legislation of the Republic of Tajikistan.

#### **Article 4. Effectuation of foreign investments**

Foreign investors are entitled to invest in the following forms:

- the establishment of enterprises completely possessed to foreign investors including the representative offices and branches owned by foreign legal entities or by acquisition of ownership of existing enterprises;
- the establishment of legal entities of the Republic of Tajikistan with participation of citizens of the Republic of Tajikistan or the acquisition of shares in existing enterprises;
- acquisition of shares, bonds and other securities stipulated by the legislation of the Republic of Tajikistan;
- a standalone purchase or with the participation of legal entities of the Republic of Tajikistan and citizens of Tajikistan of the right of concession on use of objects of government property and natural resources on the territory of the Republic of Tajikistan;
- the acquisition of other property rights;
- other no prohibited forms stipulated by the legislation of the Republic of Tajikistan.

#### **Article 5. Investing restriction**

1. Investors are entitled to invest the facilities and various entrepreneurial activities with exception for activities related to the restricted or prohibited investment activity that ensure the national interests.
2. Investing the legal entities properties that have the domineering position on commodity markets of the Republic of Tajikistan has to be done in accordance with the antimonopoly legislation of the Republic of Tajikistan.

#### **Article 6. Dedicated government agency in the sphere of investment and functional liability**

The Government of the Republic of Tajikistan assigns the dedicated government agency in the sphere of investment to perform the following functions:

- assists investors in obligations performance with the relevant government structures and legal entities;
- considers appeals of investors on issues arising during the investment activity implementation in the Republic of Tajikistan and provides communication with the relevant government structures and investors;
- prepares and disseminates information on investment opportunities, programs, projects and investment conditions in the Republic of Tajikistan.

investment conditions in the Republic of Tajikistan;

- develops proposals for investment climate and investment legislation enhancement in the Republic of Tajikistan in the sphere of investment adjustment and introduces to the Government of the Republic of Tajikistan for contribution and regulation;
- assists investors in emerging issues and disputes decree including the pretrial procedure;
- signs in the prescribed manner the investment agreements and contracts;
- performs other functions aimed at attracting the direct investment, promotion, support and protection of investors in the Republic of Tajikistan.

## **CHAPTER 2. THE LEGAL REGIME OF INVESTMENT**

### **Article 7. Equality of Investors**

The Government of the Republic of Tajikistan guarantees the rights equality of the foreign and domestic investors that preclude the rights discrimination of investors related to their citizenship, nationality, language, gender, race and religion.

### **Article 8. Legal indemnification of investors**

1. This Act, other normative legal acts of the Republic of Tajikistan, as well as international legal acts recognized by Tajikistan, guarantee the protection of the rights, lawful interests of investors, and the stability of legislation in the field of investments (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).

2. Investor in accordance with the civil legislation of the Republic of Tajikistan has the right to compensation for harm caused because of the adoption acts by state organs that are contrary to the legislation of the Republic of Tajikistan also because of illegal actions (inaction) of officials of these organs.

3. The Republic of Tajikistan guarantees the concluded agreements and contracts terms stability between investors and the Government of the Republic of Tajikistan with exception for cases on contractual changes and amendments made by the consent of parties.

4. Investors, engaged in long-term investments within ten years from the date of entry into force of such laws, in case of the amendments introduction to the legislation of the Republic of Tajikistan or the new normative legal acts adoption, that are worsening the investment activities terms implementation, have the right to choose the most favorable conditions for these implementation.

5. The investment terms deterioration prescribes the modification and amendments to the legislation of the Republic of Tajikistan and the new normative legal acts of the Republic of Tajikistan adoption that include:

- the increase in the tax burden compared to the tax burden on the day of the beginning of financing of the investment project;
- the introduction of quantitative restrictions on the volumes of investing and other additional requirements by investment value or other prohibitions and restrictions;
- Introduction of restrictions on the share participation of foreign investors in the charter (share) capitals of legal entities (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).

6. This mode does not apply in respect of changes and amendments to the Constitution of the Republic of Tajikistan and in the legislation of the Republic of Tajikistan related to matters of national security, public health, environmental protection, morality and ethics.

### **Article 9. Additional guarantees and indemnification of investors**

1. Legislation of the Republic of Tajikistan along with general guarantees and indemnification of investors can be provided through the additional guarantees and measures of protection of investments.

2. Additional guarantees and protection measures may be provided when making investments, with a total volume equivalent to five million United States dollars in national currency.

3. Additional guarantees and indemnification of investments specified in part 2 of this article should be granted to investors as the relevant agreements and treaties based on Laws of the Republic of Tajikistan "On investment agreement", "On state-private partnership", "On concessions" and "On agreements on production section".

### **Article 10. Guarantees for revenues application**

1. Investors have the right to:

- to open in banks and other credit organizations on the territory of the Republic of Tajikistan Bank accounts in national and (or) foreign currency in accordance with legislation of the Republic of Tajikistan;
- discretion to use the proceeds derived from the activities, after paying taxes and other obligatory payments.

2. Foreign investors are guaranteed the right to transfer outside the Republic of Tajikistan of their income in foreign currency obtained legally because of investment and production activities.

### **Article 11. Currency transactions**

1. Investors in the investment activities have the right to free convertibility of the national currency of the

Republic of Tajikistan in another freely convertible currency, as well as the purchase of foreign currency and other foreign exchange transactions in accordance with the Law of the Republic of Tajikistan "On currency regulation and currency control".

2. Limitations on remittances in foreign currency in the Republic of Tajikistan and Republic of Tajikistan abroad for investors can be entered only based on the legislation of the Republic of Tajikistan to prevent the legalization of income obtained by illegal means.

#### **Article 12. Guarantees of investor's partnership in the state property privatization**

1. Investor may participate in privatization of objects of state ownership by acquiring ownership rights to state property or share, shares (contribution) in the authorized (share) capital of the privatized organization.

2. Procedures and conditions of privatization of the state property are defined by the Law of the Republic of Tajikistan "On privatization of the state property".

#### **Article 13. Publicity in the government structures activity towards to the investors and access to information related to the implementation of investment activities**

1. Government shall guarantee to investors the free access to legal database.

2. Normative legal acts affecting the interests of investors are published in the order established by the legislation of the Republic of Tajikistan and posted on the official website of the authorized state organ in the sphere of investments.

3. Other investment information is available on the official website of the authorized state organ in the sphere of investments as other government agencies involved in investment activities. Other information contains on investment activities and includes the information on investment guarantees, benefits and privileges, state in-kind grants, net cash flow for investors, investment opportunities, programs, projects and investment terms, reports on the implementation of investment activity, signed investment agreements,

4. Investors, including minority investors, are ensured free access to information about the registration of legal entities, the registration of real estate and transactions with real estate, issued licenses, permits, and other information as provided by the legislative acts of the Republic of Tajikistan. This information is related to the implementation of their investment activities and does not contain commercial or other legally protected secrets (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).

#### **Article 14. Guarantees and indemnification of investors under the expropriation and requisition**

1. The property investor is not subject to nationalization.

2. Expropriation of investment, including indirect expropriation in the territory of the Republic of Tajikistan, or measures that are equivalent to expropriation of the investment are prohibited. The exception includes the expropriation of the investment in the interests of the state or society, on a non-discriminatory basis, in accordance with the procedure established by the legislation of the Republic of Tajikistan, with timely, adequate and effective compensation.

3. Investments and other assets investors are not subject to requisition except cases of emergencies, natural disasters, accidents, epidemics and epizootics.

4. The Government of the Republic of Tajikistan takes the decision on requisition.

5. Expropriation, including the indirect expropriation and requisition of the investor's property, has to be made through the property value reimbursement.

6. The value of the property determined as of the date of the decision on expropriation or requisition based on current market prices or by other methods of evaluation, by an independent appraisers in the currency in which investments were made, or in any other acceptable to the investor currency.

7. Since the emergence of the right to compensation and its payment in the amount of the average annual commercial rate on the day of interest payment accrued in the currency in which investments were made or in any other acceptable to the investor's currency.

8. The person whose property is requisitioned, has the right after termination of circumstances, to requisition, to claim return of the property saved, and in the event of his return, to go to court

9. Investor may challenge the legality of the purpose used for the implementation of expropriation and requisition, evaluation • value of the expropriated or requisitioned property, the procedure that complied with state organs in the implementation of expropriation or requisition, in the courts of the Republic of Tajikistan and also in arbitration court, international arbitration and international commercial arbitration.

#### **Article 15. Rights cession from the investor to another person**

1. The investor has the right to transfer their rights (assign claims) and obligations (transfer debt) in accordance with the legislation of the Republic of Tajikistan to another person. The transfer of rights and obligations related to licensed activities or activities requiring permit documents is carried out after coordination with the authority that issued the license or permit documents for the right to conduct this type of activity (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).

2. Investing the legal entities properties that have the domineering position on commodity markets of the Republic of Tajikistan has to be done with the consent of the authorized state antimonopoly organ

the Republic of Tajikistan has to be done with the consent of the authorized state antimonopoly organ in the cases determined and regulated by the antimonopoly legislation of the Republic of Tajikistan.

3. Tajikistan recognizes the right of a foreign state, its authorized body or insurance Agency under the insurance contract in connection with investment in the territory of the Republic of Tajikistan only in cases where the investor actually invested in the territory of the Republic of Tajikistan and (or) fully complied with his contractual obligations.

#### **Article 16. Guarantees and indemnification of investors on overseas property and information export**

Investor is entitled to import information or property to the territory of the Republic of Tajikistan in the form of a documents or electronic records as an investment. Investor has the right on unobstructed export of the specified property and information outside of the Republic of Tajikistan at the end of the investment period in accordance with the customs legislation of the Republic of Tajikistan. The unobstructed import prescribes the information and property import without obtaining a license, quota and application to it of other measures of non-tariff regulation of foreign trade activity.

#### **Article 17. Rights of the investor to use of natural resources**

1. Investor is entitled to land and other natural resources usage in accordance with the legislation of the Republic of Tajikistan.

2. Investor is entitled to buildings and structures that passes the right to use land in the manner and on the terms stipulated by the legislation of the Republic of Tajikistan.

#### **Article 18. Guarantees for investors the reinvestment**

1. Investor is entitled to use the profit for reinvestment in the territory of the Republic of Tajikistan at its discretion and taxation payment.

2. Reinvestment makes guarantees, indemnification and privileges to Investor in accordance with this Investment Act.

#### **Article 19. Concession treaties**

Investor is entitled to concession right to objects based on the concluded concession treaties under the Law of the Republic of Tajikistan "On concessions".

#### **Article 20. Investments in free economic zones**

Legislation on free economic zones regulation of the Republic of Tajikistan guarantees the investment adjustment in free economic zones.

## **CHAPTER 3. STATE SUPPORT FOR INVESTORS AND INVESTMENTS**

#### **Article 21. Investment incentives**

Investor is entitled to tax, customs and other privileges granted in the manner and on the terms regulated by the legislation of the Republic of Tajikistan, investment agreements, contracts and international legal acts ratified by Tajikistan.

#### **Article 22. State Support for Investment Activity Entities (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547)**

1. The Government of the Republic of Tajikistan provides informational, financial, and property support, including the provision of state in-kind grants to investors, other subjects of investment activity, and organizations involved in insuring loans and investments against risks.

2. Government in-kind grants may be provided to investors by the Government of the Republic of Tajikistan through an authorized state body in the field of investments within the framework of investment and other agreements.

3. The size of the state in-kind grant, conditions of its use, transfer to ownership, and return of the in-kind grant in case of early termination of the agreement are determined by an agreement between the investor and the authorized state body in the field of investments (Law of the Republic of Tajikistan dated 03.08.2018, No. 1547).

#### **Article 23. One-stop shop for assisting investors**

1. To assist investors in obtaining public services, the authorized government body in the field of investments establishes a one-stop shop for investors .

2. The one-stop shop performs the following functions:

- Reception and consultation of investors on existing public services;
- Acceptance of investor applications for public services, assistance in preparing and processing the necessary documents for receiving public services, and providing the results of public services;
- Support of investment projects in public bodies during the process of obtaining public services;
- Assistance in resolving investor issues in cooperation with the relevant government bodies;
- Monitoring the provision of public services, as well as reviewing requests and appeals from investors to government bodies.

3. The procedure for organizing and operating the one-stop shop for assisting investors is established by the Government of the Republic of Tajikistan.

## **CHAPTER 4. REQUIREMENTS TO THE INVESTORS**

#### **Article 24. The obligations of the investors**

1. When carrying out investment activities within the territory of the Republic of Tajikistan, the investor

1. When carrying out investment activities within the territory of the Republic of Tajikistan, the investor is obligated to comply with the legislation of the Republic of Tajikistan.

2. To monitor the fulfillment of obligations under investment agreements and contracts, the investor must submit quarterly reports in a format approved by the authorized government body in the field of investments.

3. The investor must refrain from engaging in actions leading to unfair competition, as well as from performing actions (or inaction) aimed at preventing, eliminating, or restricting competition or causing harm to the rights, freedoms, and legitimate interests of other individuals.

4. In the course of their investment activities, the investor must take necessary measures to create jobs and train qualified workers from among the citizens of the Republic of Tajikistan.

#### **Article 25. Regulation of the labor relationship between the investor and citizens of the Republic of Tajikistan**

The employment relationship between the investor and the employees, being citizens of the Republic of Tajikistan, has to be regulated by the labor legislation of the Republic of Tajikistan.

#### **Article 26. The rights and obligations of the investor on attraction of the foreign employees to the Republic of Tajikistan**

1. Investors have the right to recruit foreign labor into the Republic of Tajikistan for employment in the Republic of Tajikistan, in accordance with investment agreements and contracts, the legislation of the Republic of Tajikistan, and international legal acts recognized by Tajikistan.

2. The wages, remuneration, and other forms of compensation paid by the investor to a foreign worker, as well as other income, may be transferred out of the Republic of Tajikistan without any hindrance, in accordance with the procedures established by the legislation of the Republic of Tajikistan.

### **CHAPTER 5. FINAL PROVISIONS**

#### **Article 27. Investment monitoring and control**

The relevant authorized state organs in the order stipulated by the legislation of the Republic of Tajikistan implement the investment monitoring and control.

#### **Article 28. Resolution of investment disputes**

1. Investment disputes between participants in investment activities shall be resolved according to the terms set out in the agreements and contracts made between the parties. In the absence of such agreements and contracts, investment disputes between participants in investment activities shall be resolved, as much as possible, through consultations between the parties.

2. If it is not possible to resolve investment disputes according to the agreements and contracts, the disputes shall be resolved in accordance with the legislative acts of the Republic of Tajikistan and international legal acts recognized by Tajikistan, in the courts of the Republic of Tajikistan, as well as in arbitration courts, international arbitration courts, or international commercial arbitration, as determined by the agreement of the parties.

#### **Article 29. Liability for failure to comply with the requirement of this Investment Act**

Physical and legal entities in case of failure to comply with the requirements of this Investment Act should be prosecuted in accordance with the legislation of the Republic of Tajikistan.

#### **Article 30. Annulment of the Law of the Republic of Tajikistan "On investments"**

To admit and declare invalid the Law of the Republic of Tajikistan dated of May 12, 2007 "On investments" (Ahbori Majlisi Oli of the Republic of Tajikistan, 2007, #5, p. 365).

#### **Article 31. Enactment of the Investment Act**

This Investment Act shall enter into force upon its official publication.

President of the Republic of Tajikistan Emomali Rakhmon

Dushanbe

March 15, 2016

No. 1299