

# Kazakhstan

## Law on Investments (2003)

*Unofficial translation*

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## Law on Investments

Law No. 373-II

### [Preamble]

The law of Republic Kazakhstan from January, 8th, 2003 Nr. 373-II on Investments (with amendments and additions as of the November 07, 2014)

This law regulates the relations connected with investments in the Republic of Kazakhstan, and defines the legal and economic framework for investment incentives, guarantees the protection of the rights of investors in investing in the Republic of Kazakhstan, define measures of state support of investment, arbitration of disputes involving investors.

## Chapter I. General

### Article 1. Main concepts used in this Law

The main concepts used in this Law are as follows:

1. components: constituent parts in aggregate forming structural integrity of manufacturing equipment and included in the corresponding list of goods made by the Commission of Customs Union;
2. working program: the annex to the investment contract defining the schedule diagram of works on implementation of the investment project before putting production into operation, and also the main operational performance of the project after putting production into operation;
3. investments: all kinds of property (except goods intended for the personal consumption) including articles of the finance leasing after date of the lease agreement conclusion as well as the rights for them invested into the authorized capital of legal person or increase in fixed assets applied for business activity, and also the fixed assets produced and obtained by concessionaire (assignee) within the frameworks of franchising agreement;
4. authorized investment body (hereinafter – authorized body): state body assigned by the Government of the Republic of Kazakhstan responsible for the investment contracts conclusion and their execution control;
  - 4.1. priority investment project: the investment project realized by a newly created legal entity on certain priority types of activity, a list of which is approved by the Government of the Republic of Kazakhstan, and providing implementation of investments at a rate of not less than two million-fold size of the monthly calculated rate established by the law on the republican budget and operating for the date of sending application for providing investment preferences;
5. investment dispute: dispute arising from the treaty obligations between investors and state bodies in connection with the investor's investment activity;
6. investment project: package of measures providing for investments in creating new production units and expansion and renewal of operating ones including enterprises produced and obtained by concessionaire (assignee) within the frameworks of franchising agreement
7. investment contract: the contract for implementation of the investment project providing implementation of investments and providing investment preferences;
8. investment activities: activity of the natural and legal persons concerning participation in the authorized capital of commercial organizations or creation or increase in fixed assets applied for the business activity, and also the fixed assets produced and obtained by concessionaire (assignee) within the frameworks of franchising agreement;
  - 8.1. investment ombudsman: the official appointed by the Government of the Republic of Kazakhstan to whom functions on assistance in protection of the rights and legitimate interests of investors are assigned;
9. investment preferences: point-of-use advantages given the legal persons of the Republic of Kazakhstan who implement investment project in accordance with the legislation of the Republic of

Kazakhstan;

10. investment strategic project: investment project included into the list determined by the Government of the Republic of Kazakhstan and able to effect strategically on economic development of the Republic of Kazakhstan;

10.1. investment subsidy: a type of budgetary subsidy provided as investment preference on a gratuitous and irrevocable basis to a legal entity of the Republic of Kazakhstan that concluded an investment contract on implementation of a priority investment project;

11. investor: natural or legal person investing in the Republic of Kazakhstan;

11.1. the "one window" principle for the investor: the centralized form of assistance to the investors realizing priority investment projects, from the authorized body in providing state services, providing minimization of participation of investors in collecting and preparation of documents and restriction of their direct contact with subjects of rendering of state services;

12. legal person of the Republic of Kazakhstan: legal person including legal person with foreign participation founded in accordance with the procedure established by the Law of the Republic of Kazakhstan;

13. state government land grant: property which being the property of the Republic of Kazakhstan is transferred to the temporary free use or is given on the basis of temporary free use to the legal person of the Republic of Kazakhstan investment project implementation with subsequent free transfer to ownership or land use;

14. minority investor – investor with investments of less than ten per cent of voting shares (less than 10 per cent votes of the total quantity of the participants' votes);

15. model contract: standard contract approved by the Government of the Republic of Kazakhstan and applied when the investment contracts concluding;

16. manufacturing equipment : goods intended for application in the technological process of the investment project.

## **Article 2. Legislation of the Republic of Kazakhstan on Investment**

1) Legislation of the Republic of Kazakhstan on investments based on the Constitution of the Republic of Kazakhstan and consists of this Law and other normative legal acts of the Republic of Kazakhstan.

2) This Act does not regulate relations connected with: implementation of investment from the state budget; investment in non-profit organizations, including educational, charitable, scientific or religious purposes.

3) By the relations arising in the implementation of investment and within the scope of other laws of the Republic of Kazakhstan, the provisions of this Act shall apply to the extent not inconsistent with such laws of the Republic of Kazakhstan.

3.1) Relations connected with attraction by the investor of foreign labor on the signed investment contract are regulated by the legislation of the Republic of Kazakhstan on population employment.

4) If an international treaty ratified by the Republic of Kazakhstan stipulates other rules than those contained in this Act, the rules of international treaty.

## **Article 3. Objects of investment activity**

1) Investors have the right to invest in any facilities and types of entrepreneurial activity, except in cases stipulated by legislative acts of the Republic of Kazakhstan. The rights and obligations of investors in respect of facilities and types of entrepreneurial activity in which the investment is established in this Law, other legislative acts of the Republic of Kazakhstan and the relevant treaties.

2) Laws of the Republic of Kazakhstan, based on the need to ensure national security, may be determined by the activities and (or) the territory in which investment activity is restricted or prohibited.

Chapter 2. The legal regime of investment.

## **Article 4. Guarantee legal protection of investors in the territory of the Republic of Kazakhstan**

1) Investors shall be accorded full and unconditional protection of the rights and interests, which is provided by the Constitution of the Republic of Kazakhstan, this Law and other normative legal acts of the Republic, as well as international treaties ratified by the Republic of Kazakhstan.

2) The investor is entitled to compensation for harm caused to him by the publication by public authorities act not in accordance with legislative acts of the Republic of Kazakhstan, as well as a result of unlawful actions (inaction) of officials of these bodies in accordance with civil legislation of the Republic of Kazakhstan.

3) The Republic of Kazakhstan guarantees the stability of the agreements concluded between the investors and the public authorities of the Republic of Kazakhstan, except in cases where a change in contracts made by mutual agreement. This warranty does not apply to:

## **Article 5. Guarantees of income**

Investors are entitled to:

## **Article 6. Transparency of public authorities in relation to investors and provide investors access to information related to the implementation of investment**

- 1) Official reports state authorities of the Republic of Kazakhstan and regulations affecting the interests of investors, are published in the manner prescribed by the legislation of the Republic of Kazakhstan.
- 2) Investors, including the minority investors, free access to information about the registration of legal entities, and their charters, the registration of real estate transactions, issued licenses, as well as a stipulated by legislative acts of the Republic of Kazakhstan of information that relates to the implementation of investment activities and does not contain commercial and other secrets protected by law.

## **Article 7. Implementation of the public authorities control over the activities of investors**

- 1) Supervision of investors by government authorities to whom such right is given to the laws of the Republic of Kazakhstan.
- 2) The order and timing of control over the activities of investors are determined by the laws of the Republic of Kazakhstan.

## **Article 8. Guarantee the rights of investors in the nationalization and requisition**

- 1) Forcible seizure of property of the investor (nationalization, requisition) for public use is permitted in exceptional cases stipulated by legislative acts of the Republic of Kazakhstan.
- 2) With the nationalization of the Republic of Kazakhstan to the investor shall be compensated in full the damages caused to him as a result of legislative acts of the Republic of Kazakhstan on the nationalization.
- 3) Requisition of property investor made with payment of the market value of the property. The market value of property determined in accordance with legislation of the Republic of Kazakhstan.
- 4) Assessment, on which the owner was reimbursed the cost of requisitioned property may be challenged them in court.
- 5) At the termination of the circumstances in relation to which the requisition, the investor is entitled to demand a return on the property, but must return the amount of compensation, taking into account losses from the reduction in value of the property.

## **Article 9. Disputes**

- 1) Investment disputes can be resolved through negotiations, including with the involvement of experts, or in accordance with previously agreed by the parties dispute settlement procedures.
- 2) If you can not resolve investment disputes in accordance with the provisions of paragraph 1 of this article, the resolution of disputes shall be in accordance with international treaties and laws of the Republic of Kazakhstan in the courts of the Republic of Kazakhstan, as well as in international arbitrations, the parties specified in the agreement.
- 3) Disputes not related to investment, are settled in accordance with the laws of the Republic of Kazakhstan.

## **Article 10. Vesting of the investor to another person**

If a foreign country or his authorized public agency makes payments to the investor under a guarantee (insurance contract), granted to him in respect of investments made in the territory of the Republic of Kazakhstan and to the foreign state or public bodies, go right (succumbing to demands from investors) to these investments, the Republic of Kazakhstan such subrogation (assignment of claims) is recognized as lawful only in case of an investor investment in the Republic of Kazakhstan and (or) the performance of certain contractual obligations.

# **Chapter 3. State support for investment**

## **Article 11. The purpose of state support for investment**

- 1) The purpose of state support for investment are creating a favorable investment climate for economic development and stimulate investment in new, expanding and updating existing plants with modern technologies, training of Kazakhstani personnel, as well as environmental protection.
- 2) State support for investments is to provide investment preferences.

## **Article 12. Authorized body**

- 1) State support of investments made by the authorized body, determined by the Government of the Republic of Kazakhstan.
- 2) The authorized body, within its competence and in order to perform its tasks has the right to the procedure established by the Government of the Republic of Kazakhstan, to involve specialists of state agencies, consultants and experts from the natural and legal persons of the Republic of Kazakhstan

agencies, consultants and experts from the natural and legal persons of the Republic of Kazakhstan.

2.1) The authorized body interacts with the investors realizing priority investment projects by the principle of "one window" for the investor.

2.2) The authorized body renders assistance to investors in providing the guaranteed order from the interested legal entities according to the investment contract signed between the authorized body and the investor.

3) Activities authorized body governed by a regulation approved by the Government of the Republic of Kazakhstan.

#### **Article 12.1. Investment ombudsman**

1) For ensuring protection of the rights and legitimate interests of the investors, the investment ombudsman:

3) develops and brings in the Government of the Republic of Kazakhstan recommendations on improvement of the legislation of the Republic of Kazakhstan.

2) Regulation on the activity of the investment ombudsman is approved by the Government of the Republic of Kazakhstan.

#### **Article 13. Types of investment preferences**

1) The following types of investment preferences are provided for investment project (including priority investment project):

2) The following types of investment preferences (hereinafter - investment preferences for priority investment project) are provided for priority investment project):

#### **Article 14. Procedure of obtaining investment preferences**

1) To receive investment preferences, a legal entity of the Republic of Kazakhstan sends a demand for providing investment preferences and documents confirming compliance of the applicant with the established current Law on requirements, form established by the authorized body, to authorized body.

2) Investment preferences are provided on the basis of investment contract signed between the authorized body and the legal entity of the Republic of Kazakhstan, realizing the investment project. Rules of granting investment preferences by the authorized body by the principle of "one window" to the investors realizing the priority investment project are approved by the Government of the Republic of Kazakhstan.

#### **Article 15. Terms of investment preferences**

1) Investment preferences are granted:

For the purposes of application of investment preferences for a priority investment project by a newly created legal entity of the Republic of Kazakhstan is the legal entity corresponding to the following conditions:

2) Investment preferences are provided at realization by the legal entity of an investment project on the kinds of activity included in the list of priority kinds of activity, approved by the Government of the Republic of Kazakhstan.

Definition of priority kinds of activity is carried out according to the general classifier of types of economic activity approved by the authorized government body in the field of technical regulation.

As a part of the list of priority kinds of activity for implementation of investment projects, the list of priority projects which is formed according to documents of the System of state planning of the Republic of Kazakhstan in the sphere of industrial and innovative activity is approved.

The following kinds of activity are not subject to inclusion in the list of priority kinds of activity defined for implementation of priority investment projects:

The list of priority kinds of activity, including the list of priority kinds of activity defined for implementation of priority investment projects, can be reconsidered no more than once a year.

3) Investment preferences for a priority investment project are provided at observance of the following conditions:

1. the recipient is a newly created legal entity of the Republic of Kazakhstan, operating for date of application for providing investment preferences, that carries out investments at a rate of not less than two million-fold size of the monthly calculated rate established by the law on the republican budget and operating for the date of sending an application for providing investment preferences, except for:

2. founder and (or) participant (shareholder) of a legal entity of the Republic of Kazakhstan that has submitted an application for receiving investment preferences for a priority investment project that is not a state and (or) a subject of quasi-public sector;

3. budgetary funds are not raised as sources or guarantees of financing for implementation of a priority investment project;

4. investment activity is carried out not within a concession contract;

5. there is a resolution of the Government of the Republic of Kazakhstan on each priority investment project on granting an investment subsidy.

4) The term of application of investment preferences is established by this Law and other legislative acts of the Republic of Kazakhstan and is specified in the investment contract by each type of investment preferences.

5) Investment preferences are granted to an investor on condition of submission of the documents provided by chapter 19 of this Law and confirming compliance of the investor to the specified requirements.

6) Application of investment preferences is carried out according to this Law and other legislative acts of the Republic of Kazakhstan.

#### **Article 16**

[Repealed]

#### **Article 17. Exemption from customs duties**

1) Legal person of the Republic of Kazakhstan implementing investment project in the investment contract network is exempted from customs taxation when importing manufacturing equipment, components and spare parts for them, raw stock and (or) materials in accordance with the legislation of the Republic of Kazakhstan.

2) When transporting manufacturing equipment and components for it the exemption from customs taxation is granted for the term of investment contract but not later than 5 years after the investment contract registration.

3) When importing spare parts for the manufacturing equipment, raw stock and (or) materials for term up to 5 years the exemption from customs taxation is granted to the legal persons of the Republic of Kazakhstan depending on the volume of investment in the fixed assets and in case of the investment project compliance with the list of priority activities approved by the Government of the Republic of Kazakhstan.

Exemption from the customs taxation is granted for the investment contract term but not later than 5 years after the fixed assets commissioning according to the work program. In case when the work program makes provision for entry of two or more fixed assets the computation of the term of exemption from customs taxation for import of spare parts to the manufacturing equipment, raw stock and (or) materials is made from the date of the first fixed asset commissioning under the work program.

4) The notice of the decision made according to paragraph 2 of this article is directed by the authorized body within five working days to the body of state revenues

#### **Article 18. State in-kind grants**

1) In the order established by this Law the state government land grants are provided for the temporary free use or is given on the basis of temporary free use with subsequent free transfer to ownership or land use in case of the investment obligations fulfillment according to the investment contract. They are provided by the authorized body in coordination with the corresponding authorized state inventory and (or) land recourse control body and the local executive bodies as well.

Free transfer of the provided state government land grant to ownership or land use is executed on the

ground of the authorized body directive. The authorized body decision shall be taken on the expiry of the investment contract in case the investor fulfills the investment obligations in compliance with the investment contract concluded between the investor and authorized body.

2) As a full-scale government grants can be transferred: land, buildings, structures, machinery and equipment, computers, measuring and control devices and equipment, vehicles (excluding cars), industrial and household equipment.

3) Evaluation of government in-kind grants made by their market value in the manner prescribed by the legislation of the Republic of Kazakhstan.

4) The maximum size of the public in-kind grant of not more than thirty percent of the volume of investment in fixed assets of legal entities of the Republic of Kazakhstan. If the appraised value of the requested state in-kind grant exceeds the maximum size, juridical person of the Republic of Kazakhstan shall be entitled to receive the requested property to pay the difference between its appraised value and the maximum size of public in-kind grant.

#### **Article 18.1**

[Repealed]

#### **Article 18.2**

[Repealed]

#### **Article 18.3. Guarantees for stability at change of the legislation of the Republic of Kazakhstan**

1) Legal entities realizing priority investment projects are guaranteed stability at change of:

2) Application of a guarantee for stability of the legislation of the Republic of Kazakhstan is cancelled in case of early cancellation of the investment contract in the order established by this Law.

#### **Article 18.4. Tax preferences**

1) Tax preferences are provided to legal entities of the Republic of Kazakhstan realizing priority investment projects in the order and on conditions provided by the tax legislation of the Republic of Kazakhstan.

2) Types of preferences by taxes:

3) The investment contract establishes the period of validity of each type of tax preferences, but no more than the deadline of their application defined according to the Code of the Republic of Kazakhstan "On taxes and other obligatory payments in the budget" (the Tax code).

4) Application of tax preferences is cancelled in case of early cancellation of the investment contract in the order established by this Law.

#### **Article 18.5. Investment subsidy**

1) For the purposes of assistance to regional development, the investment subsidy is provided to an investor realizing a priority investment project on the basis of resolution of the Government of the Republic of Kazakhstan.

2) Investment subsidy is provided by compensation of up to 30 percent of the actual expenses for installation and construction works and equipment acquisition without value added tax and excises on the basis of supporting documents, but not exceeding the cost of expenses provided by preproject documentation having the conclusion of state expertise in the order established by the legislation of the Republic of Kazakhstan.

3) Documents confirming the actual expenses of the investor, are the following:

4) The schedule and annual volumes of payments of investment subsidy are established within the investment contract by way of distribution of the investment subsidy by equal shares for the period depending on the volume of investment and profitability of the priority investment project, but not less than three years after putting the production into operation and before cancellation of the investment contract.

5) Payment of the investment subsidy is carried out after putting the production into operation in the full volume established by the investment contract, following the results of the year on condition of performance by the investor of obligations for production load.

In case of non-performance of the annual indicator established in the working program for production load by the investor, the volume of the subsidy proportional to the percent of performance of this

load by the investor, the volume of the subsidy proportional to the percent of performance of this indicator is paid to the investor.

6) Rules of granting investment subsidy are approved by the Government of the Republic of Kazakhstan.

#### **Article 19. Requirements for application for the provision of investment preferences**

Application for the investment preferences is shall be accepted and registered in form established by the authorized body if there are:

#### **Article 20. Timing for review of applications for investment preferences**

1) Application for granting investment preferences is filed for consideration by the authorized body, which is in accordance with the requirements set out in Article 15 of this Act shall take a decision on granting investment preferences and sends the applicant a written response within twenty working days from the date of the registration application.

2) The procedure for admission, registration and review of applications for investment preferences defined by the authorized body.

#### **Article 21. Investment contract conclusion**

1) Taking into account provisions of the model contract the authorized body shall make the investment contract ready for signing within ten working days after day of taking decision on granting investment preferences.

2) The authorized body shall register the investment contract within five working days after day of signing. The investment project comes into effect from the day of its registration.

The date of conclusion of the investment contract is the date of its registration by the authorized body.

3) The investment contract term is determined by the term of investment preferences. Works according to the work program shall end not later than nine months before the investment contract term.

#### **Article 21.1. Control of adherence to the terms and conditions of the investment contract**

1) The authorized body performs control of adherence to the terms and conditions of the investment contracts in following forms:

2) After the investment contract conclusion the legal person of the Republic of Kazakhstan shall present semiannual accounts with itemization of expenses and costs provided by the work program and attachment of documents confirming fixed assets implementation, supply and use of the spare parts to manufacturing equipment, raw stock and (or) materials, in the form established by the authorized body and not later that on the twenty fifth of July and on the twenty fifth of.

3) Amendments to the work program may be included once a year under the parties' arrangement.

4) The investment activity inspection with the site visiting shall be carried out:

5) According to the inspection results, the authorized body representative and chief of the legal person of the Republic of Kazakhstan concluded the investment contract sign the act on the current state of fulfillment of the investment contract work program.

6) In case of default or improper performance of the investment contract work program the authorized



body shall send the legal person concluded the investment contract the written notice with the violations' indication and set the two-month term to eliminate violations.

7) In case of detecting after the authorized body inspection the default on commissioning or using the manufacturing equipment, components, and spare parts to them, raw stock and (or) materials imported for the investment project implementation and exempt from customs duties the legal person of the Republic of Kazakhstan due to investment preferences under the investment contract having not paid the customs duties' amounts shall pay them in part of the non-used manufacturing equipment, components, and spare parts to them, raw stock and (or) materials with the penalty fee charge in the order established by Law of the Republic of Kazakhstan.

7.1) On completion of implementation of the working program, the legal entity of the Republic of Kazakhstan that signed the investment contract submits the auditor report to the authorized body which shall contain:

8) With purposes of the government interests protection the information on the investment contract termination is addressed to:

9) The legal person of the Republic of Kazakhstan having concluded the investment project within the duration of the investment contract is not entitled to:

10) Control over the purpose use of the exempt from customs duties entities is executed in the order determined by the Commission of the Customs Union.

#### **Article 22. The investment contract termination terms and conditions**

1) The investment preferences duration stops on the investment contract cut-off date or may terminate prior to such cut-off date in order established by this article.

2) The investment contract duration may terminate before the appointed time:

3) In case of non-execution or inadequate execution of obligations under the investment contract by the investor, the authorized body sends to the investor the letter on need of submission of documents justifying the possibilities of further implementation of the investment project for introduction of amendments to the investment contract.

In case if within three months from the moment of receiving the letter by the investor, the documents are not submitted, the authorized body sends to the investor the notice of early cancellation of the investment contract unilaterally after two months from the moment of the notice provision.

In case of cancellation of the investment contract, the specified legal entity pays the sums of taxes and customs duties which have not been paid to the budget owing to investment preferences provided on the investment contract.

4) On the investment contract early termination initiated by the legal person of the Republic of Kazakhstan being the party of the investment contract unilaterally the referred above legal person shall pay tax and customs duty amounts not paid due to the investment preferences granted under the investment contract.

5) On the investment contract early termination under the parties' agreement the legal person of the Republic of Kazakhstan being the party of the investment contract shall pay tax and customs duty amounts not paid due to the investment preferences granted under the investment contract

6) On the investment contract early termination the legal person of the Republic of Kazakhstan being the party of the investment contract shall relinquish the property given to this person as the state government land grant, or its initial cost as of the transfer date in accordance with the investment contract terms and conditions

7) Legal person of the Republic of Kazakhstan being the party of the investment contract shall retribute the state government land grant within thirty calendar days after date of the authorized body decision on the investment contract early termination.

# Chapter 4. Final Provisions

## **Article 23. The investment contracts' stability**

1) Benefits given on the basis of the investment contracts with the authorized bodies concluded earlier than this Law has come into force shall maintain the effect up to the cut-off date stated in such investment projects.

2) Norms of the paragraph 2 of the Article 21-1, paragraphs 3, 4 and 5 of the article 22 of this Law in part of the tax amounts payment shall maintain the effect in relation to the investment contracts concluded with the authorized bodies prior to January 1, 2009.

See: Joint letter to NK MF RK from June 30, 2004 number NK-UM-08-1-16/5336 and Investment Committee of the Ministry of Industry and Trade on June 30, 2004 № 2-542 «On the procedure of tax benefits provided under contracts entered into before the enactment of the Law of the RK of 08.01.2003 "On investments", NC A letter from the MP of Kazakhstan on Oct. 13, 2003 number NK-UM-08-1-17/8056, Letter NC MF RK on October 7, 2003 number NK-UI-08-1-17/7881, Letter NK MF RK from 27 March 2003 number NK-UM-07-1-17/23 46

## **Article 24. On the invalidity of some legislative acts of the Republic of Kazakhstan**

To annul the following legislative acts of the Republic of Kazakhstan: