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The Law “On Investments and Investment Activities” has come into force in Uzbekistan

On December 25, 2019, the Law of the Republic of Uzbekistan No. ZRU – 598 “On Investments and Investment Activities” (the “Law”) was adopted, and entered into force on January 27, 2020. The Law covers all basic principles envisaged at all stages of investments and investment activities in relation to both domestic and foreign investors.

The Law upholds foreign investors` guarantees of rights provided by the state, including the free disposal and transfer of funds, their repayment in connection with the termination of investment activities, the protection from nationalization or expropriation and the detrimental change of legislation, guarantees for openness and publicity, as well as other guarantees which can be provided by the government in addition to those listed above. Furthermore, the Law upholds the legal regime of foreign investment, which implies special rights for investors (for instance, different types of visa, conditions for obtaining residence permits, etc.), the procedure of attracting foreign employees and investment insurance. At the same time, the Law introduces a more detailed and systematized regulation regime in the sphere of investment, as well as additional instruments for the support of investors, including:

- ▶ investment tax credit – taxpayer-investors within a certain period of time have the right to reduce the amount of taxes owed and then gradually shall pay the loan amount and accrued interest;

- ▶ investment subsidies – financial assistance, which is provided by the government in the form of either the construction of external electrical and plumbing systems, or tax and customs incentives.

The Law also sets out the legal regime of enterprises with foreign investment in the territory of the Republic of Uzbekistan (the “EFI”), which are defined as “enterprises where foreign investments amount to at least fifteen percent of shares (participatory interest) or charter capital (authorized capital)”. Please note that in accordance with Uzbek law, the minimum size of EFI’s charter capital is UZS 400 million (approximately USD 42,000) (Decree of the President of the Republic of Uzbekistan No. UP-5495 dated August 1, 2018). The Law provides that EFI shall be treated equally to economic entities of the Republic of Uzbekistan. In accordance with the Law, EFI are entitled to open bank accounts in any Uzbek bank and dispose funds, receive and repay loans in foreign currency, as well as establish separate subdivisions (branches) etc. The Law establishes that the activities of the EFI are subject to tax and other mandatory payments. Furthermore, the Law decrees that property imported for the production needs of the EFI shall be exempt from customs duties for a period of two years, while property imported for the personal needs of foreign investors and foreign citizens entered into employment agreements with foreign investors shall not be subject to customs duty.

The Law also enshrines that the EFI are entitled to a long-term lease of non-agricultural land plots for a period of up to 50 years, but not less than period specified in the application for the implementation of the investment project. Moreover, the Law envisages that the EFI are eligible, in a manner provided by Uzbek Law, to:

- ▶ purchase land plots;

- ▶ receive the ownership right for a land plot, upon the transfer of ownership to buildings and structures;

- ▶ lease property on the basis of corresponding agreements.

The Law provides that labor relations with the EFI's staff are subject to the Labour Code, and that pensions shall be subject to Uzbek law.

The Law envisages various types of state support for investments and investment activities, including the provision of incentives and preferences, centralized investments from the government for the project's co-investment, as well as support by the means of financing, consulting or the provision of information. The Law lists the transfer of state assets and property rights associated with such assets to investors, on a preferential basis or at a zero-redemption value, as one of the incentives provided by the state for the support of investments and investment activities.

The Law contains a broad conceptual framework of general terms that are referred to in the Law. According to the Law, 'investment activities' are a set of actions related to the investment that are carried out by entities involved in investment activities, while the term investment includes monetary funds, different types of securities, movable and immovable property, as well as property rights for intellectual property, including know-how. The Law introduces the term 'investment project' that is defined as *"a complex of inter-related activities, aimed at carrying out or attracting investment for receiving economic, social and other profit"*. A clear distinction is made between foreign and domestic investors.

The Ministry of Investment and Foreign Trade of the Republic of Uzbekistan (the "MIFT") is determined as an authorized state body in the field of investment activities, responsible in particular for the implementation of general state policy in the sphere of investment and the coordination of activities of other state bodies working in the field of investment activities.

The Law sets out the types of investments by virtue of their purpose, including:

- ▶ capital investment made for the establishment of capital funds;

- ▶ financial investment made in different types of securities, shares and sovereign bonds;

- ▶ social investment made for the development of human capital, including different forms of intangible benefits.

On par with types of investments, the Law also determines permitted modes of investments that are:

- ▶ the incorporation of new legal entities or holding participatory interest (shares) in existing legal entities;
- ▶ different types of concessions;
- ▶ the acquisition of ownership rights, including rights to intellectual property and facilities in the field of trade and services together with land plots under such facilities;
- ▶ the purchase of land plots and other natural resources on the basis of the right of ownership or possession.

The Law determines investors' rights and obligations. In accordance with the Law, an investor's rights include, among others, the right to: freedom of contract, freedom of carrying out investment activities, free disposal of assets, adequate compensation in case of requisition (expropriation) of the assets and etc. However, the Law does not specify whether compensation is provided in the case of legal or illegal requisition. The investor, in his turn, is obliged to comply with all requirements of the current legislation of the Republic of Uzbekistan, including due fulfillment of his contractual obligations and reimbursing his counter party for all the damages caused in connection with non-fulfillment or inadequate fulfilment of his contractual obligations.

Investment agreement

The Law establishes the procedure of entering into an investment agreement. The Law enshrines the right of the Government of the Republic of Uzbekistan to enter into investment agreements with foreign investors, under which foreign investors are granted with additional incentives and preferences.

The Law defines an investment agreement as *"a written agreement, entered into by and between entities involved in investment activities that defines the rights, obligations, and responsibilities of the parties to an investment agreement"*.

Pursuant to Article 41 of the Law, except to mandatory conditions previously established by Uzbek law, investment agreements shall comprise of and stipulate the following conditions:

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- "a

timeline for the commencement and completion of the project





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anti-corruption and anti-monopoly clauses;



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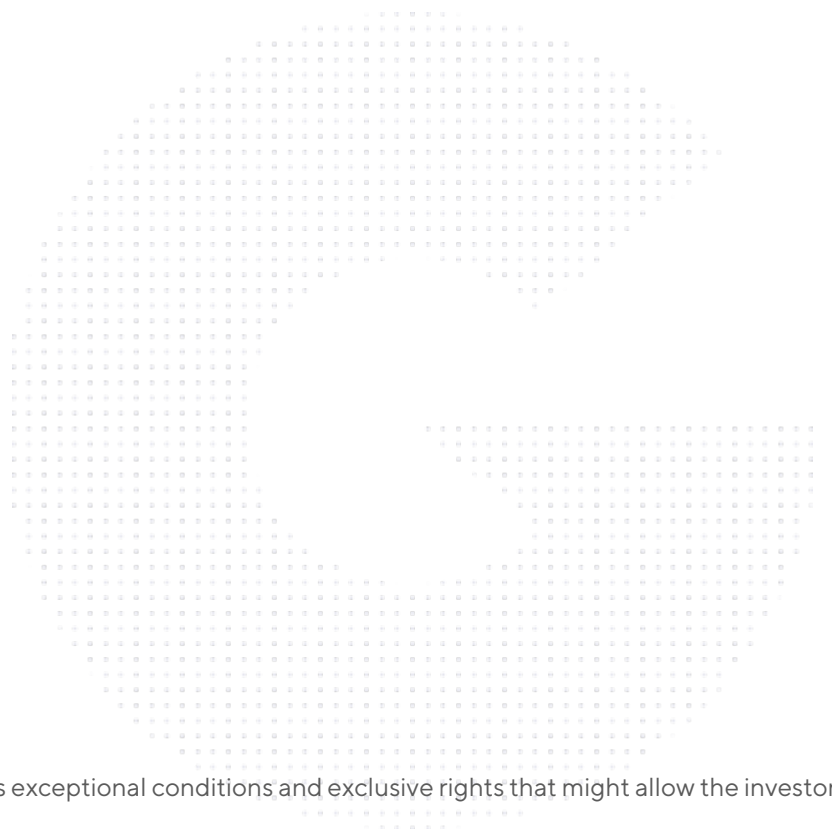
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the rights and obligations of the parties with regard to compliance with the rules, regulations, and standards established by Uzbek law, inter alia, requirements set forward in competition, anti-corruption, investments and investment activities, labor, urban planning and environmental protection laws;





liability of the parties for non-compliance with the terms of an investment agreement, inter alia, the reparation of damages incurred by foreign investors due to unlawful actions (omissions) undertaken by state body officials, as well as the right of the Republic of Uzbekistan to unilaterally terminate an investment agreement in the event of non-compliance or improper compliance of the foreign investor with its obligations. »



Pursuant to the Law, it is forbidden to grant investors exceptional conditions and exclusive rights that might allow the investor to

dominate in the market.

The Law stipulates that previously established procedures of initiating investment proposals regarding entering into investment agreements, except from the mandatory receipt of opinions of relevant state bodies to the draft investment agreement, is amended by the following:

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“foreign investors shall file an application with a statement of intent to enter into an investment agreement and to make an investment into an investment project, as well as information regarding his expertise (if any) in the implementation of investment projects;

▶



A business-plan of an investment project that should be developed based on a feasibility study (technical and economic calculations) approved by authorized bodies in the events provided Uzbek law.”



The Law stipulates the termination procedure of an investment agreement, inter alia, the unilateral termination of an investment agreement. In the event of a foreign investor's non-compliance or improper compliance with its obligations, MIFT shall send a written notice to a foreign investor and request the reasons of such suspension. If a foreign investor does not provide explanatory documentation to the MIFT within a three-month period concerning the reasons for the suspension of the investment obligations fulfillment, MIFT shall initiate a procedure for the early termination of an investment agreement. If such a decision regarding the early termination of an investment project is reached by the Government of the Republic of Uzbekistan, the MIFT notifies a foreign investor of a termination of an investment agreement in a unilateral manner. Article 44 of the Law stipulates that in the event of the termination as well as the early termination by the initiative of a foreign investor, all taxes and other mandatory payments, that were exempted in accordance with incentives and preferences granted under the investment agreement, shall be repaid. Please also note that in the event of a mutually agreed termination of an investment agreement, obligations should be executed in a manner agreed upon by the parties.

Dispute resolution

The Law provides a general procedure of investment dispute resolution, which includes the following steps:

- ▶ negotiation;

- ▶ mediation;

- ▶ in the event of the dispute not being resolved by means of negotiations and mediation, the dispute shall be referred to the authorized court of the Republic of Uzbekistan.

In the event of the exhaustion of the above listed steps, a dispute can be referred to an international arbitration, subject to the inclusion of a corresponding arbitration clause into the corresponding international agreement or investment agreement.

Please also note that Uzbek law recognizes the primacy of international law. Accordingly, if an international or intergovernmental agreement provides for the resolution of disputes between the investor and the government in international arbitration, in this event such an agreement shall prevail, as, for example, such an arbitration clause as provided in the Agreement between the Government of the Republic of Uzbekistan and the Government of the Russian Federation "On the Promotion and Reciprocal Protection of Investments" dated April 15 2013, which was ratified and entered into force on the territory of the Republic of Uzbekistan

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