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Note on the Law of the Republic of Uzbekistan

“On Investments and Investment Activities”

On December 25, 2019, the Law of the Republic of Uzbekistan No. ZRU – 598 “On Investments and Investment Activities” (the “Law”) was adopted, which has 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 the foreign investors` guarantees of rights provided by the state, including free disposal and transfer of funds, their repayment in connection with termination of the investment activities, protection from nationalization or expropriation and detrimental change of legislation, guarantees for openness and publicity, as well as other guarantees which can be provided by the Government in addition to the above-listed. Furthermore, the Law upholds the legal regime of foreign investment, which implies special rights of investors (for instance, different types of visa, conditions for obtaining residence permit, 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 – investor within a certain period of time has a right to reduce the amount of taxes payable and then gradually shall pay the loan amount and accrued interest;
- investment subsidies – financial assistance, which is provided by the Government in a form of either construction of external electrical and plumbing systems or tax and customs incentives.

The Law also envisages 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 amounts 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 with economic entities of the Republic of Uzbekistan. In accordance with the Law, EFI is entitled to open bank accounts in any Uzbek banks and dispose funds, receive and repay loans in foreign currency, as well as establish separate subdivision (branches) and etc. The Law establishes that the activities of the EFI are subject to tax and other mandatory payments. Furthermore, the Law sets that property imported for the production needs of the EFI shall be

exempt from customs duty for the period of two years, while property imported for the personal needs of foreign investors and foreign citizens entered into employment agreement with foreign investors shall not be subject to customs duty.

The Law also enshrined that the EFI is entitled for a long-term lease of non-agricultural land plot for the period of up to 50 years, but not less than period specified in the application for implementation of investment project. Moreover, the Law envisages that the EFI is 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 Labour Code, as well as pension shall be subject to Uzbek law.

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

The Law contains broad conceptual framework of general terms that are referred to in the Law. According to the Law, investment activities is a set of actions related to the investment that is 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 of investment project that is defined as "*a complex of inter-related activities, aimed at carrying out or attraction of 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 coordination of activities of other state bodies working in the field of investment activities.

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

- capital investment made to the establishment of capital funds;
- financial investment made to different types of securities, shares and sovereign bonds;
- social investment made to the development of human capital, including different forms of intangible benefits.

On a 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 investor`s rights and obligations. In accordance with the Law, the investor`s rights include, among others, the right to: freedom of contract, freedom of carrying out the 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 the compensation is provided in case of legal or illegal requisition. Investor, on his turn, is obliged to comply with all requirements of the current legislation of the Republic of Uzbekistan, including duly fulfillment of his contractual obligations and reimbursing to his counter party 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 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 agreement shall comprise and stipulate following conditions:

- *“timeline for the commencement and completion of the project;*
- *anti-corruption and anti-monopoly clauses;*
- *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, reparation of damages incurred by foreign investor due to unlawful actions (omissions) of 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 with exceptional conditions and exclusive rights that might allow the investor to dominate in the market.

The Law stipulates that previously established procedure of initiation of investment proposals regarding the 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:

- *“foreign investor shall file an application with the statement of intention to enter into an investment agreement and to make an investment into investment project, as well as the information regarding his expertise (if any) in implementation of investment projects;*
- *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, unilateral termination of an investment agreement. In the event of 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 three months period concerning the reasons of the suspension of investment obligations fulfillment, MIFT shall initiate a procedure for 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 termination as well as 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 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 if the dispute is not 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 corresponding arbitration clause into 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 agreement shall prevail, as, for example, such arbitration clause is 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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We hope that this Note will be helpful for you.
Should you have any queries with respect to any aspect described above,
please, do not hesitate to contact us at your convenience.

Respectfully submitted,

A handwritten signature in black ink that reads "Grata Law Firm". The word "Grata" is written in a cursive style, while "Law Firm" is written in a more straightforward, slightly cursive script.

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