



Ukraine

“On the regime of foreign investment”

12th August 2001

With changes and additions per the Law of Ukraine of July 16, 1999 N° 997-XIV and June 08, 2000 N° 1807-III. Proceeding from the goals, principles and provisions of the legislation of Ukraine, this Law determines specific features of regime of foreign investments on the territory of Ukraine.

SECTION I.

GENERAL PROVISIONS

Article 1.

Definition of Terms Used in the Law

The terms used in this Law have the following meanings:

1. foreign investors - entities that carry out investment activity on the territory of Ukraine, namely:
legal entities, established under legislation other than the legislation of Ukraine;

foreign natural persons who have no permanent residence on the territory of Ukraine and are not limited in their legal capacity ;

foreign states, international governmental and non-governmental organizations;

other foreign subjects of investment activity recognized as such by effective legislation of Ukraine.

2. Foreign investments - valuables invested by foreign investors in objects of investment activity pursuant to effective legislation of Ukraine for the purpose of gaining profit or achieving social effect;
3. Enterprise with foreign investments - an enterprise (organization) of any legal organizational form, established in compliance with Ukrainian legislation, where foreign investments in its charter fund, if available, constitute no less than 10 percent.

Enterprise acquires the status of an enterprise with foreign investments from the date of entering foreign investment into accounting records;

Article 2.

Types of Foreign Investments

Foreign investments can be contributed in the form of:

Foreign currency recognized as convertible by the National Bank of Ukraine;

the currency of Ukraine if reinvesting in the object of initial investment or in any other objects of investment in accordance with Ukrainian legislation on the condition of payment of tax on profit (incomes);

any personal and real property and property rights related thereto;

stocks, bonds, other securities as well as corporate rights (property right for participation (share) in the charter fund of a legal entity established pursuant to the legislation of Ukraine or legislation of other countries) expressed in convertible currency;

money claims and the rights to claims related to contractual obligations, which are guaranteed by the first-class banks and have value in convertible currency confirmed in accordance with the legislation (procedures) of the investor's country or international trade practices;

any intellectual property rights, value of which in convertible currency is confirmed according to the legislation (procedures) of the investor's country or international trade practices as well as confirmed by expert evaluation in Ukraine, including legalized on the territory of Ukraine copyrights, rights to inventions, utility models, industrial models, product and service trademarks, know-how, etc.;

the rights to carry out business activity including the rights to use or exploit natural resources granted pursuant to laws or under agreements, value of which in convertible currency is confirmed in accordance with the legislation (procedures) of the investor's country or international trade practices;

other valuables according to the legislation of Ukraine.

Article 3.

Forms of Foreign Investing

Foreign investing may be carried out through:

share participation in enterprises established jointly with Ukrainian legal entities and natural persons, or acquisition of shares in existing enterprises;

creation of enterprises wholly belonging to foreign investors, subsidiaries and other separated structural subdivisions of foreign legal entities, or acquisition of entire ownership of existing enterprises;

acquisition, except when expressly prohibited by the legislation of Ukraine, of real or personal property, including buildings, apartments, premises, equipment, transport vehicles and other objects of ownership through direct acquisition of property or property complexes, or in the form of stocks, bonds and other securities;

acquisition of the rights to use land or concessions to exploit natural resources on the territory of Ukraine independently or jointly with Ukrainian legal entities and natural persons;

acquisition of other property rights;

economic (entrepreneurial) activity, that is based on Production Sharing Agreements; (Paragraph 7 of Article 3 added by Law of Ukraine of June 08, 2000)

other forms of investing which are not explicitly prohibited by the legislation of Ukraine, in particular, those based on agreements with business subjects of Ukraine without establishment of legal entities.

Article 4.

Objects of Foreign Investments

Foreign investments may be made in any objects, investments into which are not prohibited by the laws of Ukraine.

Article 5.

Evaluation of Foreign Investments

Foreign investments and investments of Ukrainian partners, including contributions to charter funds of enterprises, shall be evaluated in foreign convertible currency and Ukrainian currency as agreed upon by the parties on the basis of prices of international markets or Ukrainian market.

Investments in foreign currency shall be translated into the currency of Ukraine at the official rate of exchange, set up by the National Bank of Ukraine.

When re-investing profit, income and other earnings received in the currency of Ukraine from making foreign investments, investments shall be translated at the official exchange rate of Ukraine, established by the National Bank of Ukraine at the date of re-investments being actually carried out.

Article 6.

Legislation on Investment Activity of Foreign Investors on the Territory of Ukraine

Relations arising out of foreign investments in Ukraine are regulated by this Law, other legislative acts or international agreements of Ukraine. If an international agreement of Ukraine establishes rules other than those stipulated by the Ukrainian legislation for investment activity, provisions of the international agreement shall prevail.

SECTION II. GOVERNMENT GUARANTEES TO PROTECT FOREIGN INVESTMENTS

Article 7.

Legal Regime of Investment Activity

Except for the cases envisaged by Ukrainian laws and international agreements of Ukraine, a national regime for investment and other business activities shall be established on the territory of Ukraine.

A privileged regime of investment and other business activities may be established for individual business entities which implement investment projects with involvement of foreign investments to be realized under the state programs of development of priority branches of economy, social sphere and territories.

Ukrainian laws may determine territories where activities of foreign investors and enterprises with foreign investments are limited or forbidden proceeding from the national security requirements.

Article 8.

Guarantees against Changes in Legislation

Should the future special legislation of Ukraine on foreign investments change the guarantees of protection of foreign investments, as prescribed in Section II of this Law, then, if demanded by a foreign investor, the government guarantees to protect foreign investments indicated in this Law shall be applied during ten years period from the date such legislation takes effect.

Rights and liabilities of the parties of the Production Sharing Agreement are regulated by the legislation of Ukraine acting at the moment of signing of the Production Sharing Agreement. The above-mentioned guarantees may not be disseminated to changes in legislation in the area of defense, national security, public order security, and environmental protection. (Second part of Article 8 added by Law of Ukraine of June 08, 2000)

Article 9.

Guarantees against Compulsory Requisitions as well as Unlawful Actions of Government Bodies and their Officials

Foreign investments in Ukraine are not subject to nationalization. Government bodies are not entitled to requisition of foreign investments, except for emergency measures in case of a calamity, accident, epidemic, epizootic. The above-mentioned requisition may be enforced on the basis of decisions of bodies authorized to do so by the Cabinet of Ministers of Ukraine.

Decisions on requisition of foreign investments and compensation conditions may be appealed against in court according to Article 26 of this Law.

Article 10.

Compensation and Indemnification of Losses incurred by Foreign Investors

Foreign investors are entitled to compensation for losses, including lost benefit or moral damage incurred by them due to actions, omissions or improper fulfillment by Ukrainian government bodies or their officials of obligations required by law, with respect to a foreign investor or enterprise with foreign investments according to the legislation of Ukraine.

All expenses and losses incurred by foreign investors as a result of the actions, specified in Article 9, and in the first part of this Article, shall be indemnified on the basis of current market prices and/or substantiated estimates confirmed by an auditor or auditing firm.

Compensation payable to foreign investor should be prompt, adequate and efficient. Compensation to be paid to foreign investor due to the actions, specified in Article 9 of this Law, is calculated at the moment of termination of the right of property.

Compensation to be paid to foreign investor due to the actions, specified in the first part of this Article, is calculated at the time of actual implementation of the

decision to compensate for losses. Amount of compensation is to be paid in the currency in which investments have been made, or in any other currency acceptable for the foreign investor in accordance with the effective legislation of Ukraine on foreign currency. From the moment when the right to compensation emerges and until the moment of its payment, interest is calculated on the amount of compensation according to average interest rate, at which London banks issue loans to the first-class banks in the market of European currencies (LIBOR).

Article 11.

Guarantees in Case of Termination of Investment Activity

In case of termination of investment activity, a foreign investor is entitled to recovery, not later than in six months from the moment of termination of this activity, of its investments in kind or in the invested currency in the amount of the actual contribution (with account of possible decrease in charter fund) without payment of customs duty, as well as revenues earned on these investments in terms of money or goods at the real market value at the moment of termination of investment activity, unless otherwise is established by the legislation or international agreements of Ukraine.

Article 12.

Guarantees for Remittance of Profits, Revenues and Other Assets Obtained in Connection with Foreign Investments

After paying taxes, duties and other mandatory payments, foreign investors are guaranteed the right to free and prompt remittance abroad of their profits, revenues and other assets, legally obtained in connection with foreign investments.

Procedure of remittance of profits, revenues and other assets obtained in connection with foreign investments is established by the National Bank of Ukraine.

SECTION III.

STATE REGISTRATION AND CONTROL OVER CARRYING OUT FOREIGN INVESTMENTS

Article 13.

State Registration of Foreign Investments

State registration of foreign investments is executed by the Government of the Autonomous Republic of Crimea, Regional, Kyiv and Sevastopol City State Administrations during three working days from the moment of actual contribution according to the order, established by the Cabinet of Ministers of Ukraine.

Non-registered foreign investments do not entitle to privileges and guarantees provided by this Law.

Article 14.**Refusal of State Registration of Foreign Investments**

Refusal of state registration of foreign investments is possible only in case of violation of the established order of registration. Refusal motivated by its inexpediency is not allowed.

Refusal of state registration of foreign investments should be documented in written form with indication of reasons for the refusal, and can be appealed against in court.

Article 15.**Statistical Reporting on Foreign Investments**

Bodies that execute state registration of foreign investments, enterprises with foreign investments, tax and customs authorities and banking institutions submit in compliance with the established forms and deadlines the consolidated statistical reports on foreign investments.

SECTION IV.**ENTERPRISES WITH FOREIGN INVESTMENTS****Article 16.****Organizational and Legal Forms of Enterprises with Foreign Investments**

Enterprises with foreign investments are established and act on the territory of Ukraine in the forms envisaged by the legislation of Ukraine.

Article 17.**Constituent Documents of Enterprises with Foreign Investments**

Constituent documents of enterprises with foreign investments shall contain the information envisaged by the legislation of Ukraine for the relevant organizational and legal forms of enterprises as well as the data of nationality of their founders (participants).

Article 18.**Imposition of Duties**

Property imported into Ukraine as contribution of a foreign investor to the charter fund of enterprises with foreign investments (except for the goods for realization or own consumption) is exempted from duties.

The customs authorities make clearance for entry of such property into the territory of Ukraine based on a promissory note, issued by the enterprise, in the amount of the duty with deferment in payment not more than for 30 calendar days from the date of customs clearance of the import cargo customs declaration.

The promissory note is discharged and import duty is not levied if within the period, assigned for deferment in payment, the above property has been credited to the

balance sheet of the enterprise, and the Tax Inspectorate at place of location of the enterprise has made the relevant note on a copy of the promissory note.

Procedure of issuance, recording and discharging of the promissory notes is established by the Cabinet of Ministers of Ukraine.

If within three years from the time of crediting of the foreign investment to the balance sheet of the enterprise with foreign investments, the property, imported in Ukraine as contribution of the foreign investor to the charter fund of the said enterprise, is alienated including in connection with termination of activity of this enterprise (except for exportation of the foreign investment abroad), the enterprise with foreign investments pay import duty calculated on the basis of the customs value of this property, translated into the currency of Ukraine at the official exchange rate of Ukraine established by the National Bank of Ukraine at the date of alienation of the property.

Article 19.

Conditions of Realization of Products (Works, Services)

The enterprise with foreign investments determines itself the conditions of realization of products (works, services) as well as their price unless otherwise is stipulated by the legislation of Ukraine.

Products of enterprises with foreign investments are not subject to licensing and quotation provided they are certified as the products of own manufacturing according to the order, established by the Cabinet of Ministers of Ukraine.

Exportation of the goods subject to the special export regime is carried out in accordance with the legislation of Ukraine.

Article 20.

Taxation

Enterprises with foreign investments pay the taxes in compliance with the legislation of Ukraine.

Article 21.

Rights of Intellectual Property

Protection and realization of intellectual property rights of enterprise with foreign investments are assured pursuant to the legislation of Ukraine. Enterprises with foreign investments make themselves decisions as to patenting (registration) abroad of inventions, industrial models, trademarks and other rights of intellectual property which belong to them according to the legislation of Ukraine.

**SECTION V.
FOREIGN INVESTMENTS ON THE BASIS OF CONCESSIONS,
AGREEMENTS (CONTRACTS) ON PRODUCTION COOPERATION,
JOINT PRODUCTION AND OTHER FORMS OF JOINT INVESTMENT
ACTIVITY**

Article 22.

Concession Agreements

The granting of rights to foreign investors to carry out business activity using the objects in the state or communal ownership subject to concession, shall be regulated by applicable legislation of Ukraine and on the basis of a concession agreement. (Article 22 amended by Law of Ukraine of July 16, 1999)

Article 23.

Agreements (Contracts) on Investment Activity

Foreign investors are entitled to enter into agreements (contracts) on joint investment activity (production cooperation, joint production, etc.) which does not involve creation of a legal entity under Ukrainian legislation.

Article 24.

Regulation of Business Activity under Agreements (Contracts)

Business activity under agreements (contracts) indicated in Article 23 of this Law shall be regulated by the legislation of Ukraine.

Parties to agreements (contracts) shall keep a separate accounting and reporting on operations related to fulfillment of these agreements (contracts), but they shall open special accounts in banking institutions of Ukraine to make settlements under these agreements (contracts).

Agreements (contracts) shall be registered within the deadlines and in the order established by the Cabinet of Ministers of Ukraine.

Property (except for goods for realization or own consumption) imported into Ukraine by foreign investors for the period not less than three years with the purpose of investing on the basis of registered agreements (contracts) are exempted from duty in the order envisaged by parts two and three of Article 18 of this Law. In case of alienation of such property earlier than three years from the moment when it was credited to the balance sheet the duty shall be paid in the order envisaged by part five of Article 18 of this Law.

Profits from the joint investment activity under agreements (contracts) shall be subject to taxation in accordance the legislation of Ukraine.

**SECTION VI.
FOREIGN INVESTMENTS IN SPECIAL (FREE) ECONOMIC ZONES**

Article 25.

Regulation of Foreign Investments in Special (Free) Economic Zones

Specific rules for regulations of foreign investments in special (free) economic zones are established by the Ukrainian legislation on special (free) economic zones. Legal regime of foreign investments established in special (free) economic zones shall not create any conditions for investments and carrying out business activity which are less favorable than those stipulated by this Law.

**SECTION VII.
SETTLEMENT OF DISPUTES**

Article 26.

Procedure of the Settlement of Disputes

Disputes between foreign investors and the state on issues of state regulation of foreign investments and the activities of enterprises with foreign investments shall be subject to consideration in courts of Ukraine unless otherwise specified by the international treaty to which Ukraine is a party.

All other disputes shall be subject to consideration in courts and/or arbitration courts of Ukraine or, upon agreement of the Parties, in conciliatory courts including foreign courts.

Article 27.

Final Provisions

To recognize as invalidated:

The Law of Ukraine "On Foreign Investments" (Vidomosti Verkhovnoyi Rady Ukrainy, 1992, No. 26, p. 357);

The Decree of the Cabinet of Ministers of Ukraine "On the Regime of Foreign Investments" of May 20, 1993, No. 55-93 (Vidomosti Verkhovnoyi Rady Ukrainy, 1993, No. 28, p. 302);

The Law of Ukraine "On the State Program of Encouragement of Foreign Investments in Ukraine" (Vidomosti Verkhovnoyi Rady Ukrainy, 1994, No. 6, p. 28)

President of Ukraine L. Kuchma

March 19, 1996