

RESOLUTION OF THE SUPREME RADA OF UKRAINE

**On the Draft Law of Ukraine
"On the Foreign Investment Regime"**

The Supreme Rada of Ukraine *enacts*:

To submit the draft Law of Ukraine "On the Foreign Investment Regime", submitted by the Cabinet of Ministers of Ukraine and considered by the Standing Committee on Economic Policy and the National Economy of the Supreme Rada of Ukraine, to be considered by the Supreme Rada of Ukraine.

Chairman of the Supreme Rada
of Ukraine

O. Moroz

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THE LAW OF UKRAINE ON THE FOREIGN INVESTMENT REGIME

This law stipulates the terms and conditions for foreign investment within the territory of Ukraine, based on the aims, principles and provisions of Ukrainian legislation.

SECTION 1. GENERAL PROVISIONS

Article 1. Definition of Terms in the Law

Terms used in this Law have following meanings:

- 1) foreign investors - persons engaged in investment activity within the territory of Ukraine, namely:

legal entities, established according to legislation other than Ukrainian legislation;

natural persons who are foreigners, who are not Ukrainian permanent residents and who are legally and otherwise competent;

foreign countries, international governmental and non-governmental organizations;

other foreign participants in investment activity, who are recognized as such by the legislation of Ukraine;
- 2) foreign investments are stores of value which are invested by foreign investors in objects of investment in accordance with the legislation of Ukraine with the aim of obtaining profit or achieving social results;
- 3) enterprise with foreign investment - an enterprise (organization) of any form of legal organization established according to the legislation of Ukraine, where foreign investment is no more than 10 per cent of the Charter Fund.

An enterprise shall obtain the status of an enterprise with foreign investment on the date of transfer of the foreign investment to its account.

Article 2. Types of Foreign Investment

Foreign investments may be in the form of:

- 1) foreign currency which is recognized as convertible by the National Bank of Ukraine;
- 2) the currency of Ukraine - while reinvesting in the initial investment or in any other investment according to the legislation of Ukraine on condition of paying income (profit) taxes;
- 3) any real property or immovable property and their ownership rights;
- 4) stocks, bonds, other securities and also corporate rights (right of ownership to shares in the charter fund

of the legal entity established according to the legislation of Ukraine or the legislation of other countries) expressed in convertible currency;

- 5) monetary claims and the right to claim for the fulfillment of contractual obligations guaranteed by the first class banks and having value in convertible currency, confirmed in accordance with the laws (procedures) of the investor's country or international trade procedures;
- 6) any kind of intellectual property and related rights including copyright, patents, trade marks (marks for goods and services), brand names, industrial samples, know-how, and others, the value of which, expressed in convertible currency has been confirmed according to laws (procedures) of the investor's country or international trade procedures;
- 7) right to engage in economic activity including the right to exploration and exploitation of natural resources granted according to the legislation or contracts, the value of which in convertible currency is confirmed according to the laws (procedures) of the investor's country or international trade procedures;
- 8) other stores of value according to the legislation of Ukraine.

The prohibition or restriction of foreign investments mentioned in this Article may only be provided for in the laws of Ukraine.

Article 3. Methods of Making Foreign Investments

Foreign investments may be made in the form of:

- 1) ownership interest in enterprises which were established jointly with Ukrainian legal entities and natural persons, or through the acquisition of shares of functioning enterprises;
- 2) the establishment of enterprises wholly owned by foreign investors, by affiliates or other separate subdivisions of foreign legal entities or by the acquisition of existing enterprises;
- 3) the acquisition, which is not prohibited by the laws of Ukraine, of real property or movable property including buildings, apartments, premises, equipment, transportation facilities and other property, by direct acquisition of property and proprietary complexes or in the form of stocks, bonds and other securities;
- 4) the acquisition of the rights to use land and or concessions for the use of natural resources on the territory of Ukraine by foreign investors, independently or jointly with Ukrainian legal entities or physical persons;
- 5) the acquisition of other property rights;
- 6) other kinds of investment, in particular, those based on agreements with agents of economic activity of Ukraine without the establishing of a legal entity, which are not prohibited by the laws of Ukraine.

Any of the methods of making foreign investments indicated in this Article can be prohibited or restricted only by the laws of Ukraine.

Article 4. Objects of Foreign Investment

Foreign investments can be made in any objects, investment in which is not prohibited by the laws of Ukraine.

Article 5. Valuation of Foreign Investments

Foreign investments and the investments of Ukrainian partners, including contributions to the Charter Fund of the enterprise, shall be valued in convertible foreign currency and in Ukrainian currency according to the understanding reached by the parties, on the basis of prices in international markets or in the Ukrainian market.

Foreign currency for investment shall be converted into the currency of Ukraine at the official rate for the currency of Ukraine as determined by the National Bank of Ukraine.

The profits, income, and other funds, received in the currency of Ukraine as a result of foreign investments, and which are being reinvested, shall be converted according to the official rate of the currency of Ukraine as determined by the National Bank of Ukraine.

Article 6. Legislation on Investment Activity of Foreign Investors on the Territory of Ukraine

Activities connected with foreign investments in Ukraine shall be regulated by this Law and also other legislative acts and international agreements, to which Ukraine is party. If an international agreement, to which Ukraine is party, provides rules other than that provided for by the legislation of Ukraine, the rules of the international agreement shall apply.

PART II. GOVERNMENT GUARANTEES FOR THE PROTECTION OF FOREIGN INVESTMENT

Article 7 Legal Status of Foreign Investments

Foreign investors on the territory of Ukraine shall receive national treatment for investment and other economic activity with the exceptions provided for by Ukrainian legislation and international agreements to which Ukraine is party.

Investment incentives and other economic incentives may be granted to projects with foreign investment, which are implemented according to government programs for the development of priority sectors of the economy, the development of social services or the development of territories.

The laws of Ukraine may, for the purposes of national security, designate territories where foreign investor activity and enterprises with foreign investment are restricted or prohibited.

Article 8 Guarantees against Changes in Legislation

In the event that subsequent special legislation of Ukraine concerning foreign investment shall change the terms and conditions of guarantees for the protection of foreign investments specified in Part 2 of this Law, upon request of the foreign investor, government guarantees for the protection of foreign investment shall apply for a period of ten years from the day when the legislation came into force.

Article 9 Guarantees against Seizure and Unlawful Acts of Government Bodies and Government Officials

Foreign investments in Ukraine shall not be nationalized. State bodies may not seize foreign investments, with the exception of emergency measures in the event of natural disaster, accidents, epidemics, or epizooty. The above-mentioned seizures may be carried out on the basis of decisions of bodies authorized to do so by the Cabinet of Ministers of Ukraine.

Decisions on the seizure of foreign investments and the terms and conditions of compensation may be challenged in legal proceedings as provided for in Article 43 of this Law.

Article 10. Compensation and Reimbursement of Losses Incurred by Foreign Investors

Foreign investors have the right to receive compensation of their losses, including lost profit and moral damage incurred as a result of actions or omissions inactivity or improper fulfillment by the government bodies of Ukraine or its officials of responsibilities in relation to foreign investors or enterprises with foreign investment provided for by legislation, according to the legislation of Ukraine.

All expenses and losses incurred by foreign investors as a result of activity described in Article 9 and the first paragraph of this Article, are to be compensated at current market rates and/or values, certified by an auditor or auditing company.

Compensation paid to the foreign investor shall be prompt, adequate, efficient, and shall be calculated as of the moment of the actual implementation of the decision to compensate losses.

The sum of compensation shall be paid in the currency in which the investment was made, or in any other currency acceptable to the foreign investor according to the legislation of Ukraine. From the moment of receiving entitlement to compensation and up to the moment of its payment, interest rates for the amount of compensation shall be charged in accordance with the average interest rate which London banks provide credits to first-class banks on the European foreign exchange market (London Inter-Bank Offered Rate - LIBOR).

Compensation to foreign investors shall be made according to the legislation of Ukraine, if not otherwise provided for by international agreements to which Ukraine is party.

Article 11. Guarantees in Case of Termination of Investment Activity

In case of termination of investment activity, a foreign investor has the right within 6 (six) months from the day of cessation of that activity to recoup his investment in-kind or in the currency of investment in the amount of the actual contribution (taking into account the possible reduction of the Charter fund) without payment of duty and also profits from those investments in monetary form or in goods at actual market value at the moment of termination of investment activity, if not otherwise provided for by the legislation of Ukraine or international agreements to which Ukraine is party.

Article 12. Guarantees for the Remittance of Revenues, Profits, and Other Sums in Connection with Foreign Investments

Upon payment of taxes, duties, and other mandatory payments, foreign investors shall be guaranteed unimpeded and prompt remittance abroad of their revenues, profits and other sums in foreign currency obtained legally in connection with foreign investments.

Procedures for the remittance of revenues, profits and other sums received in connection with foreign investments shall be determined by the National Bank of Ukraine.

Article 13. Guarantees for the Disposal of Revenues, Profits and Other Sums Obtained from Foreign Investments on the Territory of Ukraine

Income, profit and other assets obtained by the foreign investor in the currency of Ukraine or in foreign currency as a result of foreign investments, shall be used by the foreign investor, including for reinvestment, according to the procedures specified in the legislation of Ukraine.

PART 3. STATE REGISTRATION AND CONTROL OF FOREIGN INVESTMENT

Article 14. State Registration of Foreign Investments

State registration of foreign investments shall take place after their actual contribution within the terms and according to the procedure determined by the Cabinet of Ministers of Ukraine.

Unregistered foreign investments shall not be entitled to privileges and guarantees provided for by this Law.

Article 15. Denial of State Registration for Foreign Investments

State registration of the foreign investments may be denied only in cases where there is a violation of the established registration procedure. Refusals for reasons of its unsuitability is not permitted.

Refusals of state registration of foreign investments should be in written form with the reason for the refusal indicated, and can be appealed in court.

Article 16. Statistical Information on Foreign Investments

Bodies conducting state registration of foreign investments, enterprises with foreign investments, taxation and customs bodies, and bank institutions shall present statistical reports on foreign investments according to established forms and periods.

Part 4. ENTERPRISES WITH FOREIGN INVESTMENT

Article 17. Organizational and Legal Forms of Enterprises with Foreign Investments

Enterprises with foreign investments on the territory of Ukraine shall be established and shall operate within the forms provided by the legislation of Ukraine.

Article 18. Procedure for Establishing Enterprises with Foreign Investments

An enterprise with foreign investment may be established by founding a new enterprise or as a result of the acquisition by a foreign investor of equity (shares, stocks) of an enterprise established earlier or by

purchasing an entire enterprise.

Enterprises with foreign investment shall be established according to the procedure provided in the legislation of Ukraine.

The acquisition of equity (shares, stocks) by an investor in an enterprise previously established without foreign investment or of an enterprise, shall take place according to the procedure provided by the legislation of Ukraine, taking into consideration requirements of this Law.

Article 19. Founding Documents of Enterprises with Foreign Investments

Founding documents of enterprises with foreign investments shall include information required by the legislation of Ukraine for the appropriate organizational and legal form of the enterprise and also information on the nationality of its founders (equity holders).

Article 20. State Registration of Enterprises with Foreign Investment

State registration of enterprises with foreign investment shall take place according to the procedure of the state registration of enterprises provided for in the legislation of Ukraine.

Article 21. Types of Activity

An enterprise with foreign investment may carry out any type of activity corresponding to the aims defined in the charter of the enterprise, taking into consideration restrictions provided for by the legislation of Ukraine.

Article 22. Subsidiaries, Affiliates and Representative Offices of Enterprises with Foreign Investment

Enterprises with foreign investment may form subsidiaries, affiliates, representative offices and other separate subdivisions on the territory of Ukraine and abroad in keeping to the requirements set forth in the legislation of Ukraine and the legislation of the appropriate foreign countries.

Article 23. Associations and Unions of Enterprises with Foreign Investment

Enterprises with foreign investments may voluntarily form partnerships, unions, associations, concerns, inter-sector associations, regional and other associations according to the legislation of Ukraine.

Article 24. Customs Duty

Property imported into Ukraine as the investment of a foreign investor to the Charter Fund of an enterprise with foreign investment shall be exempt from customs duty.

Customs bodies shall permit the entry of such property onto the territory of Ukraine on the basis of a promissory note issued by the enterprise for the amount of duty with a postponement of payment for a period of no more than 15 calendar days from the date of issue of the import customs declaration.

The note is paid and import duty is not imposed if within the payment postponement period above mentioned property is placed to the balance and taxation inspection at the place of the enterprise's location made mark about this at the note.

Procedure of issuing, discounting and settlement of a bill is determined by the Cabinet of Ministers of Ukraine.

If during three-years period from the moment of foreign investment's placing to the balance of the enterprise with the foreign investments property imported into Ukraine as a contribution of the foreign investor to the authorized fund of the mentioned enterprise is alienated (including cessation of the activity of this enterprise) enterprise with the foreign investments pays import duty calculated proceeding from the duty cost of this property converted into the currency of Ukraine at the official rate of the currency of Ukraine at the day of property alienation.

Property imported into Ukraine by the foreign member of the staff of the enterprise with the foreign investments for own purposes is relieved from duties according to the current legislation of Ukraine.

Article 25. Sale conditions for Products (Works, Services)

Enterprise with the foreign investments determine sale conditions for the products (works. services) by itself including price at them if another is not stipulated by the legislation of Ukraine.

Production of the enterprises with the foreign investments is not the subject for licensing and quotas on the condition of its certification as a production of own manufacturing according to the procedure defined by the Cabinet of Ministers of Ukraine.

Export of goods to which special export regime is applied is carried out according to the legislation of Ukraine.

Article 26. Exchange Control

Exchange control regime determined by the legislation of Ukraine is applied to the enterprises with the foreign investments.

Article 27. Property and Risk Insurance

Insurance of property and risks of the enterprise with foreign investments is fulfilled at its discretion if another is not stipulated by the legislation of Ukraine.

Article 28. Tax Assessment

Enterprises with the foreign investments are paying taxes according to the legislation of Ukraine.

Control for the proper and opportune payment of taxes by the enterprises with the foreign investments is performed by the taxation inspections according to the legislation of Ukraine.

Article 29. Accounting and Reporting on Financial and Economic Activity

Enterprises with the foreign investments are obliged to keep records in accounting, draw up reports on financial and economic activity and provide its safety according to the legislation of Ukraine.

Enterprises with the foreign investments have the right for the additional accounting keeping and drawing up reports according to the regulations of the country of foreign investor.

Article 30. Ensuring Fulfillment of Obligations

Enterprises with the foreign investments can use their property and property rights as a pledge for security of their obligations performance according to the legislation of Ukraine.

Article 31. Intellectual Property Rights

Protection and realization of the intellectually property rights of the enterprises with the foreign investments are secured according to the legislation of Ukraine. Enterprises with the foreign investments are making decisions by themselves on patenting (registration) abroad of the inventions, industrial samples, trademarks and other aspects of the intellectual property belonging to them according to the legislation of Ukraine.

Article 32. Working Relationships

Working relations with employees including employment and dismissal, issues on the working time and rest, remuneration of labour, guarantees and compensations at the enterprises with the foreign investments are controlled by the collective agreements and labour contracts. With the consent of the parties employee and enterprise with the foreign investments can draw up labour agreement in the form of contract.

Terms and conditions of the collective agreements and labour contracts should not be worse than terms and conditions stipulated by the legislation of Ukraine.

Working relations with employees of the enterprises with the foreign investments who do not have permanent residence at the territory of Ukraine are controlled by the legislation of Ukraine or international agreements of Ukraine.

Activity of the labour unions at the enterprises with the foreign investments is carried out according to the legislation of Ukraine.

Article 33. Social Insurance and Social Security of Employees of Enterprises with Foreign Investment

Social insurance and social security of the employees of the enterprises with the foreign investments (except pension security of the foreign employees) is fulfilled according to the legislation of Ukraine.

Payments for the pension security of the foreign employees of the enterprises with the foreign investments are placed to the appropriate fund of the countries of their permanent residence in the currency and on conditions of these countries.

Article 34. Cessation of Activity of Enterprises with Foreign Investment

Cessation of the activity of the enterprises with the foreign investments is fulfilled according to the procedure stipulated by the legislation of Ukraine for the appropriate organizational and legal forms of the enterprises.

Part 5. ACQUISITION OF PROPERTY AND CERTAIN KINDS OF PROPERTY RIGHTS BY FOREIGN INVESTORS

Article 35. Acquisition of Stocks, Bonds, other Securities and Corporate Rights by Foreign Investors

Foreign investors have the right to acquire stocks, bonds, other securities and corporate rights including state rights according to the legislation of Ukraine.

Article 36. Participation of Foreign Investors in Privatization

Foreign investors have the right to take part in the privatization of the property of state enterprises and units of the uncompleted capital construction at the territory of Ukraine according to the legislation of Ukraine.

Article 37. Property Rights to Natural Resources

Acquisition by the foreign investors of the property rights at the natural resources is controlled by the legislation of Ukraine.

Article 38. Rent of Property

Rent of property to the foreign investors is fulfilled by lessors at the framework of the rent contract according to the legislation of Ukraine.

Article 39 Concession Contracts

Assignment of rights to the foreign investors at the mining and development of the renewable and nonrenewable natural resources, carrying out economic activity connected with the usage of the state owned items which are not given to the enterprises, institutions, organizations for the complete ownership or operational management is executed on the basis of the concession contracts drawn up with the foreign investors by the Cabinet of Ministers of Ukraine or authorized for this state body according to the legislation of Ukraine.

Term of the concession contract validity is determined depending on the type and conditions of the concession but can not be longer than 99 years.

If the concession contract includes conditions which are not stipulated by the legislation of Ukraine then they are to be confirmed by the Supreme Rada of Ukraine.

PART 6. FOREIGN INVESTMENT ON THE BASIS OF AGREEMENTS (CONTRACTS) ON PRODUCTION COOPERATION, JOINT PRODUCTION AND OTHER FORMS OF JOINT INVESTMENT ACTIVITY

Article 40. Agreements (Contracts) on Investment Activity

Foreign investors have the right to conclude agreements (contracts) on joint investment activity (production cooperation, joint production, etc) which is not connected with establishing of the legal person according to the legislation of Ukraine.

Article 41. Control of Economic Activity on Agreements (Contracts)

Economic activity at the framework of the agreements (contracts) indicated in the article 42 of this Law is controlled by the legislation of Ukraine.

Parties according to the agreements (contracts) should keep separate accounting and draw up reports

on operations connected with the fulfilment of the terms and conditions of this agreements (contracts) and open separate accounts in the bank institutions of Ukraine for settling accounts on this agreements (contracts).

Agreements (contracts) should be registered within the terms and according to the procedure determined by the Cabinet of Ministers of Ukraine.

Property imported into Ukraine by the foreign investor with the purpose of investment on the framework of the registered agreements (contracts) is relieved from duty payment during the periods defined by the appropriate agreements (contracts) according to the procedure stipulated by the second and third parts of the article 24 of this Law.

Profit received from the joint investment activity on agreements (contracts) is liable to tax according to the legislation of Ukraine.

Article 42. Control over Foreign Investment in the Special (Free) Economic Zone

Specific features of the control over the foreign investments in the special (free) economic zones is determined by the legislation of Ukraine on special (free) economic zones.

Legal regime of the foreign investments established in the special (free) economic zones can not create conditions for the investment and carrying out economic activity which are less favoured than that determined by this Law.

Part 8. DISPUTE SETTLEMENT

Article 43. Procedure for the Settlement of Disputes with the Participation of Foreign Investors

Disputes between foreign investors and state on the issues of the state control of the foreign investments and activity of the enterprises with the foreign investments should be considered in the courts of Ukraine if another is not determined by the international agreements of Ukraine.

All other disputes not mentioned in the first part of this article should be considered in the courts and/or arbitration courts of Ukraine or with the consent of the parties in the arbitration courts abroad.