

LAW OF THE REPUBLIC OF KAZAKHSTAN

ON INVESTMENTS

as of January 8, 2003 N 373.

This Law regulates the relations which are associated with investments in the Republic of Kazakhstan and defines the legal and economic basis of the stimulation of investments, guarantees the protection of the rights of investors when carrying out investments in the Republic of Kazakhstan, defines the measures of state support of investments, and the procedure for resolution of disputes with participation of investors.

Chapter 1. General Provisions

Article 1. Main Definitions That Are Used in This Law

The following main **definitions** are used in this Law:

- 1) investments - all types of property (except for goods of personal use), including the objects of lease from the moment of lease agreement execution as well as rights to them which are invested by the investor into the charter capital of a legal entity or increase of fixed assets which are used for entrepreneurial activities.
- 2) investment activities – activities of individuals and legal entities on participating in the charter capital of commercial organizations or creating and increasing of fixed assets which are used for entrepreneurial activities.
- 3) investment preferences - privileges of the addressed nature which are granted to legal entities of the Republic of Kazakhstan that are implementing an investment project in accordance with the Legislation of the Republic of Kazakhstan;
- 4) investment project – package of measures stipulating investments in establishment of new facilities, enlargement and renewal of existing facilities;
- 5) an investment dispute - a dispute which ensues from the contractual obligations between investors and state bodies in connection with investment activities of the investor;
- 6) an investor – individuals and legal entities, which carry out investments in the Republic of Kazakhstan;
- 7) state in-kind grants – property, which is owned by the Republic of Kazakhstan, conveyed or leased as a land tenure free of charge to legal entities of the Republic of Kazakhstan for implementing of the investment project
- 8) contract – an investment agreement stipulating investment preferences;
- 9) model contract - a standard contract approved by the Government of the Republic of Kazakhstan and used when executing a contract;
- 10) authorized body - the central executive body which is granted with the rights that are directly connected with the execution of contracts conclusion and control over the performance thereof;
- 11) legal entity of the Republic of Kazakhstan – a legal entity, including any legal entity with foreign participation, incorporated in accordance with the procedure established by the legislation of the Republic of Kazakhstan.

Article 2. The Legislation of the Republic of Kazakhstan On Investments

1. The legislation of the Republic of Kazakhstan on investments is based on the Constitution of the Republic of Kazakhstan and consists of the provisions of this Law and other normative legal acts of the Republic of Kazakhstan.

2. This Law shall not regulate relations which are associated with:
carrying out investments from the funds of the state budget;
investing capital into non-commercial organizations, including for educational, charity, scientific or religious purposes.

3. Relations which emerge in the case of carrying out investments and which pertain to the sphere of effect of other legislative acts of the Republic of Kazakhstan shall not be governed by the provisions of this Law, except for the cases that are provided for by such legislative acts.

4. If an international treaty that has been ratified by the Republic of Kazakhstan sets forth the provisions other than those which are contained in this Law, then the provisions of such international treaty shall apply.

Article 3. Items of Investment Activities

1) Investors shall have the right to invest in any items and types of entrepreneurial activities, except for the cases which are directly provided for by legislative acts of the Republic of Kazakhstan;

2) The legislative acts may determine activities and/or territories in which investments shall be either limited or prohibited, as may be required by the necessity of protection of national security.

Chapter 2. Legal Regime of Investments

Article 4. Guarantees of Legal Protection of Investors' Activities on the Territory of the Republic of Kazakhstan

1. An investor shall be entitled to the full and unconditional protection of the rights and interests, which protection shall be backed by the Constitution of the Republic of Kazakhstan, this Law and other normative legal acts of the Republic, as well as by international treaties ratified by the Republic of Kazakhstan.

2. An investor shall have the right to be reimbursed for damages caused to such investor as a result of the enactment by a state body of an act conflicting with legislative acts of the Republic of Kazakhstan or as a result of an illegal action (or a failure to act) of officials of such body, pursuant to civil legislation of the Republic of Kazakhstan.

3. The Republic of Kazakhstan shall guarantee the stability of the conditions of contracts entered into between investors and state bodies of the Republic of Kazakhstan, except for the cases when changes to the contracts are made by agreement of the parties.

These guarantees shall not apply to:

1) changes in the Legislation of the Republic of Kazakhstan and/or coming into force of, and /or changes to the international treaties of the Republic of Kazakhstan, which change the procedure and conditions of import, manufacture, sale of the excisable goods;

2) changes and supplements which are introduced to the legislative acts of the Republic of Kazakhstan in order to provide for national and ecological security, healthcare and morality.

Article 5. Guarantees of the Use of Income

Investors shall have the right:

1. to use income derived from their activities at their sole discretion after payment of taxes and other mandatory payments to the budget in accordance with the legislation of the Republic of Kazakhstan.

2. to open accounts with banks on the territory of the Republic of Kazakhstan in the national currency and/or foreign currency in accordance with the banking and currency legislation of the Republic of Kazakhstan.

Article 6. Publicity of Activities of State Bodies in Respect of Investors

1. Official communications of state bodies of the Republic of Kazakhstan and normative legal acts, which affect the interests of investors, shall be published in accordance with the procedure established by legislation of the Republic of Kazakhstan.

2. Investors shall have free access to information regarding the registration and charters of legal entities, the registration of real estate transactions, and licenses issued, except for information containing commercial, bank or other secrets protected by law.

Article 7. Control and supervision by State Bodies over Investors' Activities

1. Control and supervision over the investors' activity shall be carried out by the state bodies which are granted such rights in accordance with the legislative acts of the Republic of Kazakhstan.

2. The procedures and terms for control and supervision over investors' activity shall be established by the legislation of the Republic of Kazakhstan.

Article 8. Guarantees of the Rights of Investors in the Case of Nationalization and Requisition

1. An involuntary taking of the property of an investor (nationalization, requisition) for state needs shall be allowed in exceptional cases which are provided for by legislative acts of the Republic of Kazakhstan.

2. In the case of nationalization, the investor shall be fully reimbursed by the Republic of Kazakhstan for the damages that were suffered as a result of the enactment of legislative acts of the Republic of Kazakhstan concerning nationalization.

3. Requisition of the property of the investor shall be carried out together with payment of market value of the property.

The market value of the property shall be determined in accordance with the established legislation of the Republic of Kazakhstan.

4. The valuation according to which the owner has been reimbursed for the requisitioned property may be challenged in court.

5. When circumstances due to which the property of an investor was requisitioned cease, such investor may demand the return of remaining property, but in doing so he shall return the amount of compensation he was paid, with offsetting the depreciated value of the property.

Article 9. Settlement of Disputes

1. Investment disputes shall be resolved through negotiations, including with involvement of experts, or in accordance with the procedure for resolution of disputes agreed to by parties in advance.

2. In the case of the impossibility of resolution of investment disputes in accordance with the provisions of paragraph 1 of this Article, the settlement of disputes shall be carried out in accordance with international treaties and legislative acts of the Republic of Kazakhstan in courts of the Republic of Kazakhstan, as well as by means of international arbitration agreed by the parties.

3. Disputes, which do not pertain to the category of investment disputes, shall be resolved in accordance with the legislation of the Republic of Kazakhstan.

Article 10. Transfer of the rights of an investor to another person

If a foreign state or a state body authorised thereby makes a payment in favor of an investor under the guarantee (under insurance contract) which was granted to him in respect of investments carried out on the territory of the Republic of Kazakhstan,

and such foreign state or state body authorised thereby are assigned the rights (assigned the rights of claim) of the investor with respect to the mentioned investments, then in the Republic of Kazakhstan such assignment of rights (assignment of a right to claim) shall be recognized as lawful only in the case of the performance by the investor of investments in the Republic of Kazakhstan and/or the fulfilment by the investor of his specified contractual obligations.

Chapter 3. State Support of Investments

Article 11. The Objective of State Promotion of Investments

1. The objective of state support of investments shall be the creation of a favourable investment climate to develop the economy and stimulate investments into the establishment of new facilities, enlargement and renewal of existing facilities, with application of up-to-date technologies, creation of new and preservation of existing jobs, as well as environmental protection.
2. State support of investments shall mean the granting of investment preferences.

Article 12. Authorised Body

1. State support of investments shall be carried out by the authorized body, as appointed by the Government of the Republic of Kazakhstan.
2. The authorized body, within its authority and in performance of its mission, shall have the right to involve specialists of respective state bodies, consultants and experts, being the Republic of Kazakhstan's individuals and legal entities, in accordance with the procedure established by the Government of the Republic of Kazakhstan.
3. The activity of the authorized body shall be governed by the regulations approved by the Government of the Republic of Kazakhstan.

Article 13. Types of Investment Preferences

In accordance with this Law and by means of concluding a contract with the authorized body the following investment preferences shall be granted:

- 1) investment tax preferences;
- 2) exemption from customs duties;
- 3) state in-kind grants.

Article 14. The Procedure for Granting Investment Preferences

1. Investment preferences shall be granted within the priority types of activity, the list of which is approved by the Government of the Republic of Kazakhstan at the level of the classifier of activity subtypes.
2. The Government of the Republic of Kazakhstan shall approve maximum investment volumes and duration of investment tax preferences for each priority type of activity, under which the authorized body shall grant investment preferences.
3. In case the established maximum volume of investments is exceeded, the duration of investment tax preferences shall be determined by means of an appropriate decision by the Government of the Republic of Kazakhstan.
4. Investment preferences are granted by means of execution of a contract with an investor.

Article 15. Conditions for Granting Investment Preferences

Investment preferences shall be granted subject to:

- 1) compliance of the proposed investment activities with the list of priority activity types;

2) carrying out investments into fixed assets of a legal entity of the Republic of Kazakhstan to create new facilities, enlarge or renew existing facilities with application of up-to-date technologies;

3) the submission of necessary documents as set forth by Article 19 of this Law which evidence the availability of financial, technical, and organizational capability of the investor for carrying out of the investment project.

Article 16. Investment Tax Preferences

1. Investment tax preferences shall be granted for a term to be determined depending on the volumes of investments into fixed assets, but not to exceed five years.

2. The commencement date for investment tax preferences shall be established by the contract, in accordance with the Tax Code of the Republic of Kazakhstan.

3. Investment tax preferences shall not be granted with respect to a legal entity's activities, to which a special tax regime applies, as well as activities under contracts of subsoil use,

4. Investment tax preferences shall not be granted in respect of fixed assets that have been conveyed to a legal entity of the Republic of Kazakhstan in the form of a state natural grant.

Article 17. Exemption from Customs Duties

1. Exemption from customs duties may be granted with respect to imported equipment and components thereof brought in to implement the investment project in the following cases:

- 1) unavailability on the territory of the Republic of Kazakhstan of manufacture of similar equipment and components thereof;
- 2) insufficient manufacture of similar equipment and components thereof on the territory of the Republic of Kazakhstan in order to carry out activities with respect to the investment project;
- 3) non-conformity of similar equipment and components thereof manufactured on the territory of the Republic of Kazakhstan to the requirements pertinent to such project.

2. Exemptions from customs duties shall be granted for a term of one year with possible extension of such term, but not for a term exceeding five years from the moment of the contract's registration.

Decision on granting the exemption from customs duties and extension of the term thereof shall be made by the authorized body.

3. Notification of the decision made in accordance with the paragraph 2 of this Article shall be sent to the authorized state body on customs affairs.

Article 18. State In-kind Grants

1. State in-kind grants, in accordance with the procedure established by this Law, shall be given by the Government of the Republic of Kazakhstan or the authorized body with the consent of appropriate state bodies in the sphere of management of state-owned property and land resources into proprietorship or as a land tenure in accordance with the legislation of the Republic of Kazakhstan.

Approval of a state in-kind grant shall be carried out within fifteen working days from the moment of submission of the request.

2. The following may be conveyed as a state in-kind grant: land plots, buildings, constructions, machinery and equipment, computing equipment, measuring and regulating devices and units, transport vehicles (except for passenger motor-transport), industrial implements.

3. The valuation of state in-kind grants shall be based on the market price thereof and shall be carried out in accordance with the procedure that is established by the legislation of the Republic of Kazakhstan.

4. The maximum amount of a state in-kind grant shall not exceed thirty per cent of the volume of investments in fixed assets of the legal entity of the Republic of Kazakhstan.

If the value of the requested state in-kind grant exceeds the mentioned maximum amount, a legal entity of the Republic of Kazakhstan shall have the right to be conveyed the requested property after payment of the difference between the value thereof and the maximum amount of the state in-kind grant.

Article 19. Requirements to an Application for Investment Preferences

An application for investment preferences shall be accepted and registered by the authorized body if the following are provided:

- 1) a copy of the certificate of state registration of a legal entity, notarized;
- 2) a copy of the statistical card of a legal entity, notarized;
- 3) a copy of the charter of a legal entity, notarized;
- 4) the business plan of the investment project that is compiled in accordance with the requirements as established by the authorized body;
- 5) documents which support the estimated value of construction works and expenditures for purchasing of fixed assets applied for the implementation of the project;
- 6) documents which indicate sources and guarantees of the project financing;
- 7) documents which support the amount (value) of the state in-kind grant requested by the investor and the preliminary consent for conveyance thereof.

Article 20. Terms of consideration of the application for investment preferences

An application for investment preferences shall be submitted for consideration to the authorized body, which shall decide on granting investment preferences in accordance with the requirements established by Article 15 of this Law and shall send a reply in writing to the applicant within thirty working days from the date of the application registration.

Article 21. Contract Execution

1 The authorized body, within ten working days from the day of the adoption of the decision concerning granting of investment preferences, shall prepare for signature the contract with due regard to the provisions of the model contract.

2. The contract shall be registered by the authorized body within five days from the date of its signing and shall enter into force from the date of its registration.

Article 22. Conditions of the Termination of the contract

1. The effect of investment preferences shall be terminated upon the expiration of the term of the contract or may be terminated prior to the expiration of such term in accordance with the procedure which is established by this Article.

2. The contract may anticipatorily be terminated:

- 1) by agreement of the parties;
- 2) unilaterally.

3. The authorized body shall have the right unilaterally to terminate the contract following three months from the moment of giving the investor a written notice of termination in the following cases:

1) when a misrepresentation or a concealment of information that was presented by the applicant and that affected the decision, which were material to granting investment preferences has been revealed;

2) in the case of a failure by the investor to perform the obligations under the contract.

In such cases the investor shall pay the amount of taxes and customs fees which were not paid because of the investment preferences granted under the contract with application of fines which are provided for by the laws of the Republic of Kazakhstan;

4. In the case of anticipatory termination of the contract by the initiative of the investor unilaterally, the investor shall pay amounts of taxes and customs duties which were not paid because of the investment tax preferences that were granted under the

contract with assessment penalties charged according to the procedure established by the legislation of the Republic of Kazakhstan;

5. If a contract is anticipatorily terminated by agreement of parties, the investor shall pay the tax and customs duties amounts that have not been paid under the investment preferences under the contract.

6. If a contract is anticipatorily terminated, the investor shall return either the property in-kind conveyed as a state in-kind grant or the initial value thereof as of the date of conveyance of such property in accordance with the contract's conditions.

Chapter 4. Final Provisions

Article 23 Stability of Contracts

Privileges granted on the basis of the contracts concluded with the authorized state body on investments prior to this Law's coming into force shall remain valid until the expiration of the term established by such contracts.

Article 24. On Repeal of Some Legislative Acts of the Republic of Kazakhstan

The following legislative acts of the Republic of Kazakhstan shall be deemed repealed:

- 1) Law of the Republic of Kazakhstan of 27th December, 1994 "On Foreign Investments" (Bulletin of the Supreme Council of the Republic of Kazakhstan, 1994, № 23-24, p. 280; 1995, № 20, p. 120; Bulletin of the Parliament of the Republic of Kazakhstan, 1996, № 14, p. 274; 1997, № 11, p. 143; № 13-14, p. 205; № 17-18, p. 218; 1998, № 5-6, p. 50; 1999, № 21, p. 786; 2000, № 10, p. 244);
- 2) Decree of the Supreme Council of the Republic of Kazakhstan of 27th December 1994 «On Procedure of the Enactment of the Law of the Republic of Kazakhstan "On Foreign Investments" (Bulletin of the Supreme Council of the Republic of Kazakhstan, 1994, № 23-24, p. 281)
- 3) Law of the Republic of Kazakhstan of 28th February 1997 «On State Support of Direct Investments" (Bulletin of the Parliament of the Republic of Kazakhstan, 1997, N 4, p. 50; 1999, № 21, p. 786).

President of the Republic of Kazakhstan