

State support for large investors in Ukraine updated

Introduction

1. Requirements for investment projects
2. Forms of investor support
3. Evaluation of investment projects
4. Special investment agreement
5. For investors who have already applied

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Mechanisms for promoting large investments have been actively implemented in Ukraine since 2021. The Law "On State Support for Investment Projects with Significant Investments in Ukraine" (hereinafter referred to as the "Law") and the procedures, methodologies and instructions developed for its implementation have been in force since then.

However, the Russian aggression and full-scale war have created new realities. Taking this into account, amendments were made to the Law, which entered into force on 17 September 2023. Investors were offered new forms of state support for investment projects with significant investments, certain requirements were relaxed, and new investment opportunities were created.

1. Requirements for investment projects

In order to receive state support for an investment project with significant investments, it must meet a set of criteria established by the Law. The amendments to the Law have expanded investment opportunities and eased project requirements.

Taking into account these amendments, today an investment project with significant investments must meet the following criteria:

- the project must be implemented in Ukraine in the areas of processing industry (except for activities related to the production and

- circulation of tobacco products, ethyl alcohol (except for the production of bioethanol intended for use as a fuel component), cognac and fruit spirit, alcoholic beverages), biogas and biomethane production (including liquefied or compressed), extraction for the purpose of further processing and/or enrichment of minerals (except for coal and lignite, crude oil and natural gas), waste management, transport, warehousing, postal and courier activities, logistics, education, scientific and technical activities, healthcare, art, culture, sports, tourism, resort and recreation. Now, following the amendments to the Law, it is also possible to invest in the electronic communications industry;
- the project must involve construction, modernisation, technical and/or technological re-equipment of investment objects, purchase of necessary equipment and components, and, in line with the amendments, may also involve construction of engineering and transport infrastructure necessary for the implementation of the investment project at the expense of the investor or applicant;
 - the project must generate at least 10 new jobs with an average salary of at least 50% higher than the actual average salary for the relevant type of activity in the region where the project is implemented for the previous calendar year. Other options are also established: if the salary of employees is at least 30% higher than the actual average salary for the relevant type of activity in the region, at least 30 new jobs must be created, if it is 15% higher, a minimum of 50 jobs must be created. This system is more flexible compared to the requirements that were in force before the amendments to the Law (previously, at least 80 new jobs with a 15% higher salary were required);
 - the amount of investment in the investment objects during the implementation period of the investment project must exceed the equivalent of EUR 12 million (previously, this threshold was set at EUR 20 million). Also, investments can now be made prior to submitting an application for an investment project. However, it should be noted that such a prior investment must be made no earlier than 18 months before the date of application, whereby the amount of the investment may not exceed 30% of the total investment;
 - the investment project implementation period may not exceed 5 years.

2. Forms of investor support

Ukraine provides investors with state support for investment projects in the amount of up to 30% of the planned investment amount.

As per the amendments to the Law, the forms of state support have been expanded. Now, state support for projects with significant investments is provided in the form of:

- 5-year exemption from income tax, value added tax and customs duties on the import of new equipment. Tax preferences for large investors remain unchanged;
- ensuring the preemptive right to use state-owned or municipally owned land plots for the implementation of an investment project. In this case, investors may be granted a pre-emptive right to acquire such land plots after the special investment agreement expires. In addition, the amendments to the Law allow for the change of designated purpose of especially valuable land and forest land plots for their use in implementing an investment project. This is an important novelty, as it expands the possibilities for locating investment project facilities (for example, at the expense of valuable land adjacent to roads or communications);
- ensuring the construction, reconstruction, restoration, overhaul of engineering and transport infrastructure facilities (roads,

communication lines, heat, gas, water and electricity supply facilities, engineering communications, etc.) necessary for the implementation of an investment project, at the expense of the state, local budgets, and other legal sources. Pursuant to the amendments to the Law, it is now possible to include the total cost of all engineering and transport infrastructure facilities built for the implementation of an investment project in the calculation of the state support amount;

- exemption from reimbursement of forestry production losses due to the change of designated purpose of especially valuable lands and forest land plots for the implementation of an investment project. Under the amendments, the amount of funds not received by the relevant budget as such compensation will be included in the calculation of the amount of state support;
- compensation for the costs of connection to engineering and transport networks necessary for the implementation of an investment project.

It is important that the amendments are aligned with the Ukrainian legislation on land and industrial parks.

Related article: Creation and operation of industrial parks in Ukraine

It should be borne in mind that the total amount of state support will not change if, during the implementation of a special investment agreement, the actual amount of significant investment exceeds the amount stipulated in such an agreement.

The total amount of state support will be changed if, during the implementation of the special investment agreement, the actual amount of investment is lower than that provided for in such an agreement.

Note! If the actual amount of investment is less than EUR 12 million, the investor will have to return the entire amount of state support received.

3. Evaluation of investment projects

In order for an investment project with significant investments to receive state support, it must be positively assessed by the authorised body, which in this case is the Ministry of Economy of Ukraine (hereinafter referred to as the Mineconomy). The Mineconomy evaluates the project and provides a conclusion on the feasibility or inexpediency of its implementation and the signing of a special investment agreement. It is important to understand how and by what criteria the evaluation is carried out, as this affects the content and composition of the documents submitted by the investor to the Mineconomy.

4. Special investment agreement

In order to receive state support, an investor or an applicant must enter into a special investment agreement with the Ukrainian government

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or a local community (if state support is provided by a local governing body).

Such an agreement shall be concluded for a term not exceeding 15 years. The term of an agreement does not affect the implementation period of an investment project, which may not exceed 5 years from the date of the agreement.

A special investment agreement defines a number of key terms, including:

- terms and conditions of project implementation;
- investment objects;
- types and amount of investment;
- total amount, forms, and terms of state support;
- conditions and consequences of state support termination;
- list of land plots required for the implementation of an investment project with significant investments;
- terms of use of such land plots and the procedure for their return (if allocated);
- the procedure for approving changes in control over an investor during the term of the special investment agreement, etc.

If a decision is made to conclude a special investment agreement, the applicant must establish a legal entity under the laws of Ukraine, which will be the investor. If the applicant is already a legal entity registered in Ukraine specially established for the implementation of an investment project with significant investments that meets all the requirements and restrictions established by the Law, then a new legal entity does not need to be established.

In any case, the applicant must hold 100% of the shares in the authorised capital of such a legal entity.

The amendments to the Law provide for the possibility of negotiating the terms of a special investment agreement. If the Mineconomy decides that the draft special investment agreement needs to be revised, the applicant will be sent remarks on the draft with a proposal to negotiate its terms.

These negotiations are held within 2 months from the date of receipt of such a proposal. If no agreement is reached on the mechanism for taking into account the remarks within this period, the negotiations may be extended for another 2 months.

However, it should be borne in mind that the essential terms of the special investment agreement cannot be changed through such negotiations.

5. For investors who have already applied

Investors who have already submitted applications but have not yet concluded a special investment agreement should note that the Mineconomy must return their applications within 10 working days from the date of the Law's entry into force.

Such applications must be brought in line with the new rules and resubmitted under a simplified procedure. Hereby, the calculation of the volume of significant investments may include funds invested prior to the submission of the returned application, but not earlier than 18 months before such date.

When resubmitting applications, it is necessary to take into account the amendments to the Law, in particular:

- the assessment shall be carried out by the Mineconomy within no more than 60 calendar days from the date of receipt of the documents;
- economic indicators should not be assessed (in practice, this means cancelling the calculation of the project economic indicators, including the benefit-cost ratio), and therefore, no related documents should be submitted;
- during the application process, the information and documents submitted as part of the application may be identified as containing confidential information and trade secrets. This does not apply to the information to be entered into the register of investment projects with significant investments after the signing of a special investment agreement;
- if the Mineconomy recognises the need to revise the draft special investment agreement, its terms might be negotiated with the Mineconomy.

In addition, it is very important to note that the regulation of specific mechanisms of state support for investment projects with significant investments will also be amended. They may affect the procedures and algorithms for preparing an investment project, its evaluation, the procedure for state support provision, etc.

It is expected that such changes will be made to:

- requirements for the feasibility study of an investment project with significant investments;
- methodology for calculating the amount of state support;
- methodology for evaluating an investment project;
- the procedure for maintaining a register of investment projects;
- the procedure for importing new equipment (machinery) and its components imported by the investor into the customs territory of Ukraine and for their intended use;
- requirements to the applicant regarding their financial capacity to implement the investment project;

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- an exemplary form of a special investment agreement;
- the procedure for providing funds on a non-refundable basis to ensure the construction of related infrastructure facilities necessary for the creation and operation of industrial parks.

In any case, the planned changes may be subject to adjustment. Therefore, it is important to monitor the current legislation on state support for investment projects with significant investments at the time when it is applied by the investor.