

Law on support of large investors in Ukraine adopted

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On 17 December 2020, the Verkhovna Rada of Ukraine adopted Law "On State Support of Investment Projects with Significant Investments". In addition to the sectors of state support for investment projects with significant investments and creation of new jobs, this law, also defines the stimulation of economic development of regions and increases the competitiveness of Ukraine's economy.

A new type of investor has been distinguished – an investor with significant investments, as well as an investment project with significant investments. Moreover, the law provides a number of benefits for such investors and defines forms (tools) for providing state support to investment projects with significant investments.

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The law provides for establishment of a special government agency that will support these investment projects, assist investors from the beginning and throughout project's process.

Investment project criteria

Under the Law, an investment project with significant investments must meet all the following requirements:

1. it must be implemented in the territory of Ukraine in the sectors of processing industry (except for production and circulation of tobacco products, ethyl alcohol, cognac and fruit, alcoholic beverages), mineral extraction for further processing or enrichment (except for coal and lignite, crude oil, and natural gas), waste management, transportation, warehousing, postal and courier operations, logistics, education, science, research and development, healthcare, arts, culture, sports, tourism, resorts and recreation;

2. the project must create at least 80 new jobs with an average salary of employees at least 15% higher than the average salary for the relevant activity in the region (where the project is implemented) for the previous calendar year;
3. amount of contribution in investment objects during implementation of the investment project with significant investments must exceed the equivalent of 20 million euros;
4. the project must include construction, modernization, technical and/or technological re-equipment of investment objects, purchase of necessary equipment and its components, and may also include construction of the infrastructure necessary for the investment project at the expense of investor;
5. implementation period of the investment project with significant investments should not exceed five years.

Forms of support for investors

The law stipulates that state support of investment projects with significant investments may be provided to an investor in the following forms:

- exemption from income tax for 5 years, as well as from payment of VAT and duties on import of new equipment;
- granting the preemptive right to use a state or municipal land plot for implementation of the investment project. This involves using (renting) a state or municipal land plot with rent to be paid under conditions provided by a special investment contract. Furthermore, the investor may be granted the preemptive right to acquire ownership of the land plot after expiration of the special investment agreement;
- provision of construction, reconstruction, restoration, major overhaul of related infrastructure (highways, communication lines, heat, gas, water, and electricity supply facilities, utilities, etc.) required for implementation of the investment project at the expense of the state, local budgets and other legal sources (state support in this form will be provided starting from 1 January 2022).

Total amount of state support is to be set in a special investment contract and should not exceed 30% of the planned amount of significant investments in the investment project with significant investments.

Special investment contract

Special investment contract is concluded for a period agreed by the parties, but not more than for 15 years. The contract defines the period of implementation of the investment project with significant investments, which may not exceed 5 years from the Commencement date of the contract.

Information on the total amount of state support and the amount of actually provided state support under a special investment contract is public, entered in the register of investment projects with significant investments and published on the official website of the Ministry of Economy of Ukraine.

Conclusion of a special investment contract

An applicant, who intends to implement an investment project with significant investments and receive state support, prepares and submits to the Ministry of Economy of Ukraine the following:

- an application;
- documents confirming the applicant's compliance with the financial capacity requirements set by the Cabinet of Ministers of Ukraine, as well as his/her non-affiliation to the category of ineligible investors;
- the feasibility studies of the investment project with significant investments under the requirements set by the Cabinet of Ministers of Ukraine (with mandatory indication of the social effect after project implementation);
- the draft of a special investment contract.

The investment project with significant investments is evaluated by the Ministry of Economy within 60 calendar days from the date of receipt of documents from the Applicant. The Antimonopoly Committee of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine, the State Ecological Inspectorate of Ukraine, and the local self-government body (if state support for implementation of the investment project with significant investments is provided by such body) must be involved in the evaluation of the investment project with significant investments. Other state bodies may be also involved in the evaluation due to the competence.

Based on the results of the evaluation of the investment project with significant investments, the Ministry of Economy prepares one of the following decisions:

1. the decision on the expediency of the investment project and the conclusion of a special investment contract. In this case, the draft contract together with the draft decision on its conclusion is sent within 30 working days to the Cabinet of Ministers of Ukraine and the relevant local self-government body, which must become a party to the contract. The Cabinet of Ministers of Ukraine decides on the conclusion of the contract within 30 calendar days from the date of receipt of the draft contract and the decision of the relevant local self-government body.
2. the decision on the inexpediency of the investment project and refusal to conclude a special investment contract. Such a decision can be appealed in court.

Liability under a special investment contract

- the applicant is jointly and severally liable for the investor's failure to properly perform the contract;
- the lost profit of the contract's party due to the other party's failure to properly perform obligations thereunder is not subject to compensation;
- in case of a court or arbitration decision establishing the fact of non-compliance with the guarantees of stability of the investor's business conditions during the investment project implementation, the investor has the right to compensation for losses unless otherwise provided by a special investment contract;
- in case of the applicant's and/or investor's failure to properly perform its obligations, the Cabinet of Ministers of Ukraine has the right to terminate the contract unilaterally. In this case, the investor must pay the full amount of funds exempted from taxation and to compensate the state for any other state support provided to him;

- in case of termination of the contract due to the investor's failure to properly perform obligations concerning the volume of investments and/or non-observance of the investment project implementation term established by the contract, the investor must pay the penalty in the full amount of provided state support. In addition, the investor must pay taxes and fees from which he was exempted. These provisions do not apply if such non-performance is due to a breach of the state obligations to provide state support under the contract or force majeure.

Investors ineligible for support

State support will not be provided for implementation of investment projects in the sectors of renewable energy, crop production, and the financial sector.

Following categories of investors will not be able to be applicants for state financial support:

- non-profit organizations,
- legal entities that have not disclosed information on their ultimate beneficial owners,
- enterprises registered in offshore zones, or enterprises with more than 50% of the authorized capital shares belonging to legal entities registered in offshore zones,
- legal entities registered in the Russian Federation and legal entities, whose beneficial owners of shares (stocks) are residents of the Russian Federation, etc.