

Legal Alert of Uzbekistan

New provisions on conclusion of investment agreements and application of stability clauses.

The Republic of Uzbekistan provides state support for investments aimed at creating a favorable investment climate, stimulating investment in the creation of new competitive and innovative industries. In this regard, legal regulations play an important role in providing basic and additional benefits and incentives as well as protecting foreign investors from unfavorable conditions.

In this respect, on April 30, 2020, by its Resolution No. 264 (hereinafter – the "Resolution"), the Cabinet of Ministers introduced Amendments to the resolution of the Cabinet of Ministers No. 180, dated August 2, 2005 "On measures to implement the Decree of the President of Uzbekistan "On additional measures to encourage the attraction of private foreign direct investments". The Resolution detailed the procedure for application of the stability guarantee (hereinafter - the "Stability Guarantee") and modified the procedure of conclusion, amendment, termination and implementation of investment agreements between the Government of Uzbekistan (hereinafter- the "Government") and a foreign investor (hereinafter – the "Regulation on Investment Agreements"). The Resolution has entered into force starting May 1, 2020.

How does the Stability Guarantee apply?

The Stability Guarantee established in Article 19 of the Law of Uzbekistan "On Investments and Investment Activities" (hereinafter – the "Law") applies where subsequent legislation of Uzbekistan worsens the investment conditions. In this case, the legislation in force on the date the investment was made should apply to investors for the next 10 (ten) years from the date the investment was made. Conditions worsening the investment include, for example, introduction of additional procedures for issuing and renewing visas for foreign investors and restrictions on the equity participation of a foreign investor in the charter capital of companies. If the new legislation improves the conditions of investment, the investor is entitled to apply provisions of such new legislation, at its own discretion. However, the Stability Guarantee does not apply if the change in legislation is directly related to the protection of the national security interests of Uzbekistan.

A foreign investor intending to use the Stability Guarantee should notify one of the following entities (hereinafter - the "Authorized Body") in writing of the application of the Stability Guarantee:

- servicing banks - if additional requirements are introduced that complicate repatriation procedures or reduce the amount of income (profit) which can be transferred abroad to the foreign investor;
- state registration authorities (for example, public services centers) – if the new regulations set out quantitative restrictions on the investment volume and other additional requirements to the size of investments;

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- the Ministry of Foreign Affairs and (or) the Ministry of Internal Affairs- in case of introduction of additional procedures for registration and extension of foreign investors' visas;
- The Ministry of Investments and Foreign Trade (hereinafter - the "MIFT") - if there is an investment agreement that provides foreign investor with guarantees and support measures additional to those established by law (under the investment conditions specified in the agreement).

The investor should indicate in the notification the circumstances that, in the investor's opinion, worsen the investment conditions, and the legal act, the provisions of which the investor intends to apply during the Stability Guarantee period. The notification serves as the basis for the Authorized Body to apply the legislation in force as of the date the investment was made to the foreign investor. The notification is effective from the date the legislation that worsens the investment conditions enters into force, regardless of the date the notification was provided by the investor.

What happens if the Authorized Body disagrees with the application of the Stability Guarantee?

Upon receipt of the notification, the Authorized Body may disagree and seek a legal opinion of the Ministry of Justice on legitimacy of application of Stabilization Guarantee in the case concerned. The Ministry of Justice should issue its opinion within 2 (two) weeks from the moment of receiving the application from the Authorized Body. Based on this legal opinion or without it, the Authorized Body may file a court claim on illegality of application of the Stability Guarantee by a foreign investor.

It should be noted that the Stability Guarantee continues to apply during the period of consideration of the Authorized Body's application by the Ministry of Justice and of the Authorized Body's claim by the court.

How the investment agreements are concluded between the Government and a foreign investor?

The Regulation on Investment Agreements defines the procedure for concluding, amending, terminating and implementing investment agreements between the Government and a foreign investor when the Government grants guarantees and support measures additional to those established by law to projects with the share of foreign investment exceeding USD10 mln. Additional guarantees and support measures in case of investment in priority sectors or projects can be provided in the form of government guarantees, special customs, tax and (or) payment regimes, assistance in project implementation, inclusion into an investment program, etc. However, the Regulation on Investment Agreements prohibits creation of a dominant position in the market by granting exclusive rights to an investor.

Additional guarantees and support measures are provided on a case-by-case basis to a foreign investor investing in priority industries and projects that ensure:

- sustainable economic growth, progressive technological advancement of the country's economy;
- strengthening and expanding the export potential of Uzbekistan, its integration into the world economic relations.

It should be noted that additional tax, customs and other mandatory payments benefits are provided to companies with foreign investment only for a clearly defined period and cannot be granted for an indefinite term.

The investment agreement, as well as amendments and additions thereto, should be concluded in writing. To conclude an investment agreement, a foreign investor independently or jointly with state bodies, business associations, local executive authorities or business entities submits the following documents to the MIFT or the Agency for the Promotion of Investment under the MIFT (hereinafter – the “Agency”):

- an application to conclude an agreement and invest in the object of investment activity, with reference to its experience in implementing investment projects (if any);
- draft investment agreement in the form established by the regulations;
- project business plan prepared based on a feasibility study, which in certain cases should undergo examination by the authorized bodies.

Besides, the MIFT or the Agency should receive a legal opinion of the Ministry of Justice, financial and economic assessment by the Ministry of Finance and the Ministry of Economic Development and Poverty Reduction, and the assessment by the State Customs Committee and the State Tax Committee of the additional benefits and incentives.

The authorized bodies should review the draft investment agreement and other materials within 15 (fifteen) days from the date of their receipt. However, if additional review, verification or other measures are required, the review period may be extended for up to 1(one) month with a written notification provided to the investor.

After approval by the authorized bodies, the draft investment agreement is submitted to the Government, which decides on its approval or in case of disagreement returns it for further revision. If approved, the investment agreement is signed by the MIFT, after which the MIFT prepares a draft of the government’s decree approving the agreement and submits it to the Government. The investment agreement with a foreign investor enters into force on the date the Government decree approving it is issued, unless otherwise provided by the respective decree.

Amendments and additions to the executed investment agreement can be made in writing by mutual consent of the parties. These amendments enter into force in accordance with the procedure specified in the investment agreement.

How the investment agreements are terminated?

An investment agreement may be terminated on one of the following grounds:

- upon expiration of the term of the investment agreement;
- by mutual agreement of the parties;
- at the initiative of the investor;
- at the initiative of the Government, in case of violation or non-fulfillment by a foreign investor of its obligations under the investment agreement upon expiration of a three-month period set for providing justifications of such non-fulfillment or breach and (or) a statement of the possibility of further implementation of the investment project.

If the investment agreement is terminated at the initiative of one of the parties, the investor is obliged to repay all the taxes and other payments, which were supposed to be paid to the state budget save for the provided additional guarantees and support measures under the investment agreement. In other cases, additional guarantees and support measures cease to apply upon the expiration of the investment agreement or within the term stipulated by the investment agreement.

We hope that provided information will be useful to you. The following specialists can answer your additional questions:

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