

LEGAL ASPECTS OF INVESTMENT SECURITY

1. GENERAL GUARANTEES OF INVESTMENTS IN UKRAINE

Investments, profit, legal rights and interest of foreign investors in Ukraine are protected by its laws ([The Law of Ukraine «On Protection of Foreign Investments in Ukraine»](#)).

Ukraine is a member of the International UN Convention of 1965 on procedure for solution of investment disputes between the states and non-residents (investors).

Guarantees for foreign investors are prescribed by the Economic Code of Ukraine (Articles 397-399) and [The Law of Ukraine «On Regime of Foreign Investment»](#) (Articles 7-12).

The following guarantees are envisaged by the law.

- **Guarantees against compulsory withdrawal and illegal actions of state authorities and their officials**

Foreign investments in Ukraine are not subject to nationalization. State authorities may not confiscate foreign investments except for carrying out rescue actions in case of a natural disaster, accidents, epidemics or epizootics. Such requisition can be made on the basis of the resolution of authorities empowered by the Cabinet of Ministers of Ukraine. A decision on requisition of foreign investments and conditions of compensation can be appealed to the court.

- **Guarantees of compensation of damages to foreign investors**

Foreign investors are entitled to compensation of damages, including loss of profit and moral damage caused to them by actions, inactivity or improper performance of obligations with respect to a foreign investor envisaged by the laws by state authorities of Ukraine or their officials. All expenses and losses incurred by foreign investors, which were caused to them by actions of state authorities, must be recovered on the basis of current market prices and/or evaluation confirmed by the auditor or audit firm. Compensation, which is paid to the foreign investor, must be quick, adequate and effective.

The amount of compensation must be paid in the currency of the investment. Interest is accrued on the amount of compensation as the right to compensation arises and until the compensation is paid. They are accrued at the average interest rate at which London banks provide loans to first-class banks at the Eurocurrency market (LIBOR).

- **Guarantees in case of termination of investment activity**

In case of termination of the investment activity a foreign investor is entitled to compensation not later than six month from the date of termination of the activity of its investments in kind or in the currency of investment in the amount of actual depreciation (allowing for possible reduction of the authorized fund) without paying any duty, as well as return on such investments in cash or in the form of commodities at actual market cost at the date of termination of investment activity.

- **Guarantees of transfer of profit, income and other funds received from foreign investment**

After payment of taxes, duties and other compulsory payments foreign investors are guaranteed free and immediate transfer of their profit, income and other funds in foreign currency received legally from foreign investments abroad. The procedure for transfer of profit, income and other funds received from foreign investments abroad is set by the National Bank of Ukraine.

- **Guarantees in case of legislation changes**

If guarantees of protection of foreign investments are changed by the special laws of Ukraine on foreign investments, then during ten years from the effective date of such laws by request of the foreign investor state guarantees of protection of foreign investors are applied. The above guarantees do not apply to the changes in the legislation related to the issues of defence, national security, provision for public order and environmental protection.

2. REGISTRATION OF FOREIGN INVESTMENTS

Foreign investments in Ukraine are subject to state registration. Unregistered investments do not give any rights to benefits and guarantees envisaged by the laws. It should be noted that registration is not compulsory. In particular, in accordance with explanatory letters of the National Bank of Ukraine (a letter of the NBU of 5 October 2005, No.13-124/4696-9871) if there is no registration, the purchase of currency by the bank (to return investments and/or return on investments) is allowed if there is a written confirmation of the investor that the investment was not registered.

The rights of the investor to register the investment are stipulated by the Economic Code of Ukraine (Article 395) and [The Law of Ukraine “On Regime of Foreign Investments”](#) (Articles 13 and 14). The registration procedure is set by the government of Ukraine (Provision on the Procedure for State Registration of Foreign Investments approved by the Resolution of the Cabinet of Ministers of 7 August 1996, No. 928). The state registration of foreign investments may be refused only in the case of violation of the prescribed procedure for registration.

The state registration of foreign investments is made by the Board of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol City State Administrations during three working days. The registration is made after the investment is made actually.

A foreign investor or its authorized person submits the following documents to the state registration authority for state registration of foreign investments:

- information memo on making a foreign investment in three copies completed in the form and in accordance with the procedure set by the Provision on the Procedure for Registration of Investments with a stamp of the state tax inspection office at the place of investment about its actual payment;

The information memo on making a foreign investment (annex No. 1 to the Provision on the Procedure for State Registration of Foreign Investments approved by the resolution of the Cabinet of Ministers of Ukraine of 07.08.96, No. 928) should contain the following information:

– Foreign investor;

– Type of investment;

*Foreign investments can be made **in the type of:***

***Foreign currency**, which is acknowledged by the National Bank of Ukraine as a convertible;*

***Currency of Ukraine – in case of reinvestments in the object of initial investment or in any other investment objects under the Laws of Ukraine**, provided that the profit tax was paid;*

Any other movable and immovable property and property rights related to it;

Shares, bonds, other securities, as well as corporate rights (ownership rights to a share in the authorized fund of a legal entity established under the laws of Ukraine or laws of other countries) expressed in a convertible currency;

Monetary claims and rights of claim to perform contractual obligations, which are guaranteed by first-class banks and have a cost in a convertible currency confirmed under the laws (procedures) of the country of the investor or international trade practice; as well as confirmed expert evaluation in Ukraine, including authors' rights, rights to inventions, useful models, designs, trademarks, knowhow, etc. legalized in Ukraine;

Rights to carry out economic activity, including rights to use subsurface resources and natural resources provided under the laws and contracts, the cost of which in a convertible currency is confirmed in accordance with the laws (procedures) of the country of investor or international trade practice; and other valuables under the legislation of Ukraine.

/Article 2 of the Law of Ukraine “On Regime of Foreign Investment”/

– Form of investments;

*Foreign investments can be made in the following **forms:***

***Partial participation in enterprises**, which are established together with Ukrainian legal entities and individuals, or purchase of a share of existing enterprises;*

*Creation of **enterprises, which fully belong to foreign investors**, branches and other separate subdivisions of foreign legal entities or acquisition of existing enterprises in full;*

Acquisition** of immovable or movable property, including houses, flats, premises, equipment, vehicles and other property objects, which is not prohibited by the laws of Ukraine, by the direct receiving of property and property complexes or **in the form of shares, bonds and other securities;

Acquisition of rights to use the land and natural resources in Ukraine solely or with participation of Ukrainian legal entities or individuals; acquisition of other property rights; economic activity on the basis of agreements on allocation of products; in other forms, which are not prohibited by the laws of Ukraine, including without establishment of a legal entity on the basis of the agreements with economic agents of Ukraine.

/Article 3 of the Law of Ukraine “On Regime of Foreign Investments”/

– Object of investment;

Foreign investments can be made in any objects not prohibited to be invested by the laws of Ukraine.

/Article 2 of the Law of Ukraine “On Regime of Foreign Investments”/

– Amount of investment in foreign convertible currency and currency of Ukraine;

– Term of investment functioning.

- documents, which confirm the form of foreign investment (constituent documents, agreements (contracts) on production cooperation, joint production and other types of joint investment activity, concession agreements, etc.);

- documents, which confirm the cost of the foreign investment

*Foreign investments and investments of Ukrainian partners, including contributions to the authorized fund of the companies, are evaluated in a foreign convertible currency and in the currency of Ukraine under agreement of the Parties on the basis of prices of international markets or the market of Ukraine. **Investment amounts shall be converted from a foreign currency into the currency of Ukraine at the official exchange rate set by the National Bank of Ukraine.** In case of reinvestment of profit, income and other funds received in the currency of Ukraine due to making foreign investments, the investment amounts are translated at the official rate of the currency of Ukraine set by the National Bank of Ukraine on the actual date of reinvestment*

/Article 5 of the Law of Ukraine “On Regime of Foreign Investment”/

- a document confirming the payment of the registration fee by the applicant; and
- a document (power of attorney from the investor) to a person, which submits registration documents

3. GUARANTEES OF SECURITY OF INVESTMENTS IN COLLECTIVE INVESTMENT INSTITUTIONS

The activity of investment funds in Ukraine is under a cross supervision and is strictly regulated and controlled by the state authorities and other organizations. Main measures aimed at protection of investors are set forth in [The Law of Ukraine On Mutual Funds \(Share and Corporate Investment Funds\)](#).

An asset management company (hereinafter – AMC) is entitled to carry out its activity only on the basis of the License issued by the State Securities and Stock Market Commission. In order the AMC does not abuse the funds of investors, the legislation provides for the Custodian to keep separate records of fund’s assets from the Company. As a rule, a commercial bank having the relevant license of the State Securities and Stock Market Commission performs the function of the Depositor. It is extremely important that assets of the fund are kept by an independent Custodian, as the Custodian shall check the accuracy of calculation of the cost of net assets of the collective investment institution made by the AMC and act only for the benefit of investors.

Besides government control, the legislation also provides for the control over the AMC by investors. Such control is performed by the Supervisory Board of the Joint Investment Institute (for unit investment trust) and General Shareholders’ Meeting and Supervisory Board (for corporate investment trust). The Supervisory Board consists of investors, which purchased securities of the joint investment institute.

The activity of the AMC is also regulated within the frames of its participation in the organization of professional participants of the securities market. For the AMC Ukrainian Association of Investment Business is such an organization. Moreover, AMC is annually audited by the independent auditor.