

Theme 3:
**Legal regimes of investment. The legal basis
of state support of investment**

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Plan

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Background

- As is known, during the 27th session of the Foreign Investors' Council held on 12 June 2014, the President of Kazakhstan N. Nazarbayev announced the establishment of a unilateral visa-free regime for citizens of 10 countries, which most actively invest in Kazakhstan, specifically for the UK, Germany, Italy, Malaysia, the Netherlands, the UAE, the Republic of Korea, the USA, France and Japan [1]
- At the same date the President signed the Law for Introducing Amendments (поправки) to Various Legislative Acts on Issues Relating to the Improvement of the Investment Climate (the "Law"), which entered into force from June 24, 2014 [2]

Green light for Priority Investment Projects

- Kazakhstan has established a highly preferential regime for those investment projects classified as “priority investment projects” (the “Project(s)”). The primary criteria on for a Project is investment of not less than approx. USD 20 million in one of the areas specified by the Government.
- An investor which has concluded (заключатъ) an investment contract for a Project with the authorized (уполномоченный) body (currently – Investments Committee under the Ministry of Industry and New Technologies (the “Investments Committee” [3]), may enjoy the following advantages (преимущества) (as specifically set out in an investment contract):

- 1) exemption (освобождение) from corporate **income tax (20%)** (**ПОДОХОДНЫЙ НАЛОГ**) for **up to 10 years**;
- 2) exemption from land tax for **up to 10 years**;
- 3) exemption from property tax for **up to 8 years** from the date when fixed assets (актив) (e.g. ,a plant) are commissioned (вводить в эксплуатацию)(only for those assets which were commissioned for the first time);
- 4) reimbursement (возмещение)of **up to 30 %** of actual expenses (расход)on construction works and purchase of equipment (so-called “investment subsidy (субсидия) [4]”) on the basis of documentary evidence after full commissioning. To apply for an investment subsidy, an applicant must also provide a feasibility (возможность) study approved by the state expertise. The Government will approve the rules on granting investment subsidies;

5) exemption from the need to obtain work permits for foreign workers of the legal entity holding the investment contract , its contractors and subcontractors in the area of research and design activities, engineering services and construction works. Such exemption is valid (действительный) until the **expiration of 1 year from** the date of commissioning. The list of professions and Number of attracted staff is set out in the investment contract;

6) stability with regard to the above tax preferences and “work permits-free” regime [5]

- 7) interaction with the Investments Committee under the principle of “one window”. An investor shall only file an application to the Investments Committee with related documents and negotiate further with the Committee Regarding conditions of the investment contract;
- 8) Simplified procedure for obtaining land plots for a Project;
- 9) assistance from the Investments Committee with regard to obtaining a guaranteed order(s) from national state-owned companies;
- 10) (this preference existed earlier and remains valid) exemption from customs fees for the import of technological equipment and spare parts, for the period of an investment contract, but not more **than 5 years**

Entry criteria (критерии включения в исследование)

Status of a newly established Kazakhstan entity

- An investment contract for a Project can be concluded only with the entity, which has the status of a “newly established Kazakhstan entity”, i.e. :
 - 1) its state registration was performed not earlier than 1 year before the application (заявление) for investment preferences was submitted;
 - 2) it carries out activities set out in the list of priority types of activities for Execution (исполнение) of Projects (the “Activities List”);
 - 3) the implementation of the Project is performed only within the framework (рамки) of a single investment contract.

- The Activities List is determined by the Government and can be reconsidered not more than once per year(в год). The following areas cannot be included in the Activities List:

(i) Gambling (играть на бирже),

(ii) subsoil use(недропользование) and

(iii) manufacturing of excisable goods (except for motor transportation vehicles with volume of engine being more than 3,000 cubic cm, not including microbuses, buses and trolleybuses).

The investment preferences for a Project are provided under the following conditions:

1) a newly established Kazakhstan entity shall invest more than approx. & 20 million USD.

Such entity shall not:

- (i) carry out activities on the territory of special economic zones;
- (ii) be a company owned directly or indirectly by the state (including by a state-owned company); or
- (iii) be an autonomous educational institution.

- 2) no funds from the Kazakhstan national budget shall be allocated (разместить) as a source or guarantee of financing of the Project;
- 3) the investment activity shall not be performed under a concession (уступка) contract; and
- 4) the resolution of the Government on granting an investment subsidy shall be available (in our view, it is applicable only if the investor wishes to receive an investment subsidy).

Conditions under the Tax Code

- Tax preferences referred to the entity-holder (юридическое лицо) of an investment contract under a Project shall receive not less than 90 % of the aggregate (совокупность) annual income from carrying out the activity relating to the execution of the Project.
- If tax legislation is amended and rates of taxes and fees are increasing, then the holder of the investment contract under a Project shall apply the rates of taxes and fees (except for VAT and excises), that were applicable on the day when the investment contract was concluded.

Investments Ombudsman

- The Law also introduced the position of an Investment Ombudsman. He is appointed by the Government and has to assist in the protection of rights and lawful interests of investors.
- He shall:
 - (i) consider applications of investors and issue recommendations for resolving them, including by means of interaction with the authorities;
 - (ii) assist investors in the resolution of disputable issues in out-of-court (вне суда) and pre-trial (досудебный) orders (предписание); and
 - (iii) elaborate (тщательно разработать) and file (представлять документы) to the Government recommendations for improving Kazakhstan legislation.

- A potential applicant shall collect the documents required by the Investments Law. [6]
- According to current regulations [7], the Investments Committee considers an application with relevant documents **within 20 business days.**
- If it is approved, the Committee prepares a draft (проект) investment contract within **10 business days from the date of approval.**
- Such contract is made in view of provisions (положение) of the typical investment agreement approved (одобрять) by the Government [8]. The parties may negotiate (обсуждать) more detailed content (содержание) of the investment contracts.

The legal basis of state support of investment

- Study of applications of entrepreneurs engaged in projects of industrial zone on preferential benefits for the participation in the Program Business Road Map-2020 (interest rate subsidies and partial guarantee of collateral for bank loans)
- Grant of land without an auction held by the subject of industrial innovation for the implementation of industrial and innovative projects
- Free land for private property investors who implemented investment projects of the Industrialization Map (“FIID” SP)

- Provide the participants of industrial zone with engineering and communication infrastructure;
- Ensure training and retraining of skilled personnel industrial zone of participants;
- Preferential study of projects implemented in industrial zone when provide subsidized loan and financial leasing at the expense of regional development institutions, Damu-regions program and local budget.

References

1. This regime is valid from 15 July 2014 to 15 July 2015 with potential prolongation. Citizens of such countries can cross the border of Kazakhstan multiple times without a visa for up to 15 calendar days from the moment of entry into Kazakhstan
2. Provisions on tax preferences and an investment subsidy enter into force from 1 January 2015
3. <http://www.mint.gov.kz/?page=committee&comm=3&lang=en>
4. Newly added Article 18-5 (Investment Subsidy) of the Investments Law
5. Newly added Article 18-3 (Guarantees of Stability at Change of Legislation of
6. The Republic of Kazakhstan) of the Investments Law Article 19 (Requirements to Application for Provision of Investment Preferences) of the Investments Law
7. Rules on Receipt, Registration and Consideration of Application for Granting Investment Preferences , approved by Order of Minister of Industry and New Technologies dated 1 June 2012 No. 183
8. Government Decree dated 8 May 2003 No. 436, as amended