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### Foreign investment in Ukraine \*

In Ukrainian legislation foreign investments are viewed as valuables, that are put up by foreign investors in objects of investment activities with the purpose of receiving profit and/or achieving social effect (Art. 1 of the Ukrainian Law "About Regime of Foreign Investment in Ukraine").

As **foreign investors** can act:

1. Legal persons, created according to the legislation other, than Ukrainian
2. Private persons - foreigners, who do not have permanent place of residence in Ukraine and are not limited in capability
3. Foreign states, international governmental and non-governmental organizations
4. Other subjects of investment activity, who are recognized as these according to legislation of Ukraine

Foreign investors act within legal boundaries set directly for them and within legal boundaries set for the foreign subjects of economical activity and non-residents.

According to Art. 2, 3 of the Law of Ukraine " About Regime of Foreign Investment in Ukraine " and Art. 391, 392 of The Commercial Code, **foreign investments could be of the following types:**

- Foreign currency, which is recognized as convertible by the National Bank of Ukraine
- Ukrainian currency in cases of re-investment
- Any movable and immovable assets and connected with it property rights
- Shares, stocks and other securities, and also corporate rights ( property rights on a part (share) of the statutory fund of legal person, created according to the legislation of Ukraine or other countries), expressed in convertible currency
- Monetary demands and rights to demand execution of contract obligations, which are guaranteed by the first class banks and have value in convertible currency, affirmed according to the laws (procedures) of investors home country or international trade customs
- Any intellectual property rights, cost of which in convertible currency was affirmed according to the laws (procedures) of investors home country or international trade customs, and affirmed by the expert evaluation in Ukraine, including legalized on Ukrainian territory author's rights, rights on invention, useful models, industrial samples, marks for goods and services, know-how etc.
- Rights on exercising economical activity, including rights to use natural resources and Earth's interior, given according to legislation or contracts, cost of which in converted currency is affirmed according to the laws ( procedures) of investor's home country or international trade customs
- Other valuables according to Ukrainian legislation.

Foreign investment exists in the following **forms:**

- partial participation in enterprises, created together with Ukrainian legal or natural persons or purchase of the part in already existing enterprise
- creation of the enterprise, fully owned by foreign investors; separate divisions of foreign legal persons or full purchase of already existing ones

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\* Information is given according to the Ukrainian legislation valid on the 01. 06. 2007 . In each individual case of foreign citizenship international treaties need to be taken into consideration also.

- purchase, not forbidden by laws of Ukraine, of mobile and immobile assets, including houses, apartments, rooms, equipment, means of transportation and other property, by receiving assets or asset complexes directly or as shares, stocks and other securities
- purchase with or without Ukrainian legal and natural persons rights on land and natural resources use on the territory of Ukraine
- purchase of other property rights (for example, intellectual property rights)
- In other forms, not forbidden by the laws of Ukraine, including contracts with subjects of economical activity without creation of legal person.

According to Ukrainian legislation there are certain **limits and restrictions in the following areas of investment:**

1. Creation of television or radio company by foreign legal and natural persons is forbidden, and foreign investment in other forms needs consent and supervision of the National Council on Television and Radio Broadcast (Art. 13 of Ukrainian Law "About Television and Radio Broadcasting")
2. Insurance activities can perform only residents (p.2, Art. 2 of Ukrainian Law "About Insurance")
3. Property rights and right on using or servicing of telecommunication nets may belong only to residents (p.2 Art.27 of Ukrainian Law "About Telecommunications")
4. Industrial investor may not be a company, registered in the off-shore zone.

Also The Land Code (Art. 22, 81, 82, 85, 93, 129) establishes certain **conditions for purchasing land** by foreign investors:

- Land for agricultural use can not be obtained in possession of foreign citizens, legal persons, states
- Foreign citizens have right to obtain property rights on land areas for non-agricultural use in inhabited locality, and also land area of non-agricultural use out of inhabited locality, on which are situated immobile assets, which belong to them as a private property
- Foreign legal persons may obtain property rights on land areas of non-agricultural use in inhabited locality in case of purchasing immobile assets and for building objects later to be used in economical activity in Ukraine; and out of inhabited locality in case of purchasing immobile assets
- Foreign states may obtain land areas for location of buildings of diplomatic representatives and organizations according to international treaties
- Foreign citizens, legal persons, international unions and organizations and foreign states have right to rent land areas .

But at the same time water objects, the Earth's interior are exceptional property of the people of Ukraine and may only be given in temporary use, the same as forests, which belong to the state property.

So, **the foreign investment activity may be conducted through creation of legal person** (for example, part foreign-part Ukrainian enterprises, 100 % foreign enterprises) or without it (as a contract about common investment activity).

If a legal person is not created, such contract about common investment activity is a subject to state registration (Approved by The Cabinet of Ministers of Ukraine Regulation from 30.01.1997 # 112). The parties should open separate bank accounts, have separate accounting and bookkeeper's records. For all assets (except goods for sale and own consumption) imported on the grounds of such contract on term not less than 3 years it is not necessary to pay duty.

If legal person is created, than it should be registered in the same order as Ukrainian legal persons. Assets for foreign investment contribution to statutory fund of enterprise pass customs with the bill of exchange on the sum of duty with postponed on 30 days payment, which during this term should met a bill and be counted in enterprise's balance.

Enterprises with foreign investments by themselves determine conditions of production and services distribution, including prices within legal boundaries of Ukrainian laws. Such production doesn't need licensing or quoting if it is certified as production of own manufacturing. (Regulated by The Cabinet of Ministers of Ukraine Regulation from 5.09. 1996 #1061).

Key requirement for such enterprises is **state registration of investment**. (Approved by The Cabinet of Ministers of Ukraine Regulation from 7.08.96 #928). For Kiev, for example, it takes place in the city administration during 3 workdays from the moment when investment was contributed. State registration is valid during the whole period of investment functioning; in case of

investment repatriation investor or empowered by him person has to inform about it the registrar. State registration ensures all state guarantees and investor's rights according to Ukrainian legislation.

And those **state guarantees for foreign investors** are the following:

1. In case of change in laws about investment, the investor may require use of the previous one during 10 years term.
2. There can be no nationalization of foreign investment. Seizure of property is possible only in cases of force majeure like natural disaster, epidemy etc. And in order set by law with immediate, adequate and effective compensation.
3. When all necessary tax payments are made, is guaranteed immediate unrestricted transfer abroad of all sums of profit from investment activity, and it doesn't require individual license from The National Bank of Ukraine for **operations with foreign currency** or any special order, other than the regular one (Instruction about Order of Opening, Use and Closing of Accounts in National and Foreign Currency).
4. If a foreign investor decides to stop his investment activity in Ukraine, no later than in a 6 months period he will receive back investment and profits made in form of money or goods if the law or contract does not state other.

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