

CABINET OF MINISTERS OF UKRAINE

RESOLUTION

dated June 23, 2021 No. 648

Kyiv

**On Approval of Requirements to an Applicant regarding Financial Capacity to
Implement an Investment Project with Significant Investments**

In accordance with paragraph 3 of Article 7 of the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine”, the Cabinet of Ministers of Ukraine **decrees:**

To approve the requirements to an applicant regarding financial capacity to implement an investment project with significant investments, attached.

Prime Minister of Ukraine

D. SHMYHAL

APPROVED
by the resolution of the Cabinet of Ministers of Ukraine
dated June 23, 2021 p. No. 648

REQUIREMENTS
to an Applicant regarding Financial Capacity to Implement an Investment Project
with Significant Investments

General requirements

1. These requirements establish the criteria for financial capacity of an applicant to implement an investment project with significant investments (hereinafter – the investment project).

2. In these requirements, the term “parent company” is used in the meaning given in the Tax Code of Ukraine, other terms – in the meaning given in the Law of Ukraine “On State Support for Investment Projects with Significant Investments in Ukraine”.

3. An applicant must meet all the criteria for financial capacity of an applicant to implement the investment project, defined by these requirements, namely:

 criterion of equity adequacy;

 criterion of sufficient net operating cash flow;

 criterion of availability of funding necessary to fully finance the investment project.

For these criteria, minimum values of indicators are set in view of the amount of significant investments in investment objects during implementation of the investment project.

4. Eligibility for financial capacity to implement the investment project is confirmed by submitting the relevant documents in paper form to the Ministry of Economy or in electronic form using the Unified State Web Portal of Electronic Services (if technically possible).

5. Documents issued by the competent authorities of a foreign state must be legalized, unless otherwise provided by an international treaty of Ukraine, and submitted together with a duly certified translation into Ukrainian.

6. If several legal entities submit an application jointly as applicants, the criteria specified in paragraphs 10-15 of these requirements shall refer to these legal entities collectively, and the requirements specified in paragraphs 16-24 of these requirements - to the legal entity (legal entities) that will provide financing for the investment project at the expense of borrowed funds.

Documents specified in subparagraphs 1-4, 6 of paragraph 8 of these requirements shall be submitted in respect of all legal entities that have jointly submitted an application. The documents referred to in subparagraph 5 of paragraph 8 of these requirements may be submitted by one or more legal entities that have jointly submitted an application and that will provide financing for the investment project at the expense of borrowed funds.

Legal entities that have submitted a joint application are required to submit an agreement on cooperation in implementing the investment project as a part of the application.

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7. For the purpose of confirming an applicant's compliance with the criteria for financial capacity to implement the investment project specified in paragraphs 10-15 of these requirements, an applicant has the right to use supporting documents of the parent company and/or persons related to him by control relationship. An applicant or an applicant's parent company or a person related to him by control relationship, if such a person will provide financing for the investment project at the expense of borrowed funds, must meet all the requirements for financial stability, profitability and liquidity specified in paragraphs 16-24 of these requirements.

If an applicant uses supporting documents of the parent company and/or persons related to him by control relationship to confirm compliance with the criteria for financial capacity to implement the investment project specified in these requirements, in addition to the necessary financial information about the parent company and/or person related to an applicant by control relationship specified in paragraphs 8-9 of these requirements, the applicant must also submit a letter of commitment of such parent company and/or a person related him by control relationship. Such a letter of commitment is signed by an authorized person and must confirm the willingness of a parent company and/or the person related to an applicant by control relationship to provide financing for the investment project, if an applicant intends to finance part of significant investments at the expense of borrowed funds.

8. An applicant submits:

1) a certificate including a list of legal entities submitting an application, indicating, in particular, their full legal name, information on the registration of the legal entity, information on authorized persons, contact information on each legal entity submitting an application;

2) a certificate including a list of shareholders of an applicant who own more than 5 percent of shares in the authorized capital of an applicant, related companies and beneficial owners, as well as the ownership structure of an applicant;

3) a copy (copies) of the audit report on the results of the audit of financial statements prepared by an auditing entity that meet the requirements for auditing entities as defined in paragraphs 25 and 26 of these requirements, an applicant's financial statements for the last financial year or penultimate financial year (in the absence of results of the audit of financial statements for the last financial year), prepared in accordance with the requirements of national regulations (standards) of accounting or international financial reporting standards. Provided that, along with the audit of the financial statements for the penultimate financial year an applicant shall submit financial statements for the last financial year;

4) a confirmation letter from an auditing entity regarding its compliance with the requirements for the auditing entity as defined in paragraphs 25 and 26 of these requirements;

5) a confirmation letter (letters) from a bank (banks) that meets the reliability requirements for banks as defined in paragraphs 27-29 of these requirements on the willingness to provide an applicant with financing in the amount sufficient for the investment project, if an applicant provides financing for the investment project at the expense of borrowed funds. The validity of such a confirmation letter must be at least 24 months from the date of submission of an application;

6) a certificate/account statement (certificates/account statements) from a bank or another document (documents) confirming the availability of funding or relevant liquid assets;

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7) a certificate of compliance with all criteria to an applicant with reference to the relevant supporting documents and information in them, as well as calculations of indicators including the sources of information confirming such compliance. Such a certificate shall be signed by an applicant's authorized person, and if several legal entities as applicants submitted an application jointly, the certificate shall be signed by authorized persons of all legal entities that have submitted the application jointly.

9. Applicant – a legal entity registered in a foreign state, in addition to the documents specified in paragraph 8 of these requirements, submits:

1) a copy of an official document issued by the competent authority of the foreign state in which the applicant is registered, or a person providing organizational support, which confirms the legal status of an applicant;

2) a copy of a certificate of incorporation or another similar document (for example, an extract from the trade register or an extract from the register of companies).

Criterion of equity adequacy

10. Equity means the difference between the value of all assets and the value of all liabilities and is expressed in the amount of charter capital, retained profit, reserve funds and other forms of equity.

11. Upon the criterion of equity adequacy, an applicant, as well as parent companies and/or persons related to an applicant by control relationship, must jointly have the amount of equity of at least 20 percent of the planned amount of significant investments at the end of the last financial year, which is confirmed by an audit report.

Criterion of sufficient net operating cash flow

12. Net operating cash flow means available cash received from operating activities, less expenses in the course of operating activities.

13. Upon the criterion of sufficient net operating cash flow, an applicant, as well as parent companies and/or persons related to an applicant by control relationship, must jointly have a net operating cash flow of at least 20 percent of the planned amount of significant investments at the end of the last financial year, which is confirmed by an audit report.

Criterion of availability of funding necessary to fully finance the investment project

14. Availability of funding necessary to fully finance the investment project means the ability of an applicant, as well as parent companies and/or persons related to an applicant by control relationship to provide their own and/or borrowed funds to fully finance the investment project with significant investments.

15. Upon the criterion of availability of funding necessary to fully finance the investment project, an applicant, as well as parent companies and/or persons related to an applicant by control relationship must jointly confirm the availability of funding (own and/or borrowed funds) necessary to fully finance the investment project with significant investments

Requirements for a legal entity that will provide financing for the investment project in terms of financial stability, profitability and liquidity

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16. An applicant or a legal entity that submitted an application jointly with an applicant, an applicant's parent company or a person related to an applicant by control relationship, if such a person will provide financing for the investment project at the expense of borrowed funds, must meet all the requirements for financial stability, profitability and liquidity specified in paragraphs 18, 20, 22 and 24 of these requirements.

17. The financial independence ratio is an indicator of financial stability, which is determined as equity to assets ratio and allows to determine a share of own funds in total liabilities and a degree of independence of an applicant from external financing. The financial independence ratio is determined on the basis of an applicant's financial statements according to the following formula:

$$R_{FI} = \frac{E}{B}$$

where R_{FI} – financial independence ratio;

E – equity;

B – balance-sheet total.

18. The financial independence ratio must amount not less than 0.2.

19. The financial stability ratio is an indicator of financial stability, which means the ability of an applicant to meet its obligations in the medium and long term. The financial stability ratio is determined on the basis of an applicant's financial statements according to the following formula:

$$R_{FS} = \frac{E}{LTR + CL}$$

where R_{FS} – financial stability ratio;

E – equity;

LTR – long-term liabilities;

CL – current liabilities.

20. The financial stability ratio must amount not less than 0.3.

21. Earnings before interest, taxes, depreciation, and amortization margin (EBITDA) means the ratio of earnings before interest, taxes, depreciation, and amortization to net income and demonstrates the profitability of an applicant without considering non-monetary deductions, payment of interest on loans and taxes. EBITDA margin is calculated based on the applicant's financial statements according to the following formula:

$$\text{EBITDA margin} = \frac{NP + ITE - R_{IT} + EE - EI + P\% - R\% + D - R_A}{NR}$$

where NP – net profit;

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ITE – income tax expenses;

R_{IT} – reimbursed income tax;

EE – extraordinary expenses;

EI – extraordinary income;

P% – interest paid;

R% – interest received;

D – depreciation on tangible and intangible assets;

R_A – revaluation of assets;

NR – net revenue.

22. EBITDA margin must amount not less than 0.1.

23. The current liquidity ratio determines the ability of an applicant to cover short-term liabilities at the expense of current assets. The current liquidity ratio is determined on the basis of an applicant's financial statements as a ratio of the sum of all current assets in the form of inventories, short-term receivables, short-term financial investments, cash and other current assets to current liabilities according to the following formula:

$$R_{CL} = \frac{CA}{CL}$$

where R_{CL} – current liquidity ratio;

CA – current assets;

CL – current liabilities.

24. The current liquidity ratio must amount not less than 1.

Requirements for auditing entities of an applicant

25. An auditing entity that conducts a statutory audit of an applicant's financial statements must meet the requirements of the Law of Ukraine “On Auditing Financial Statements and Auditing Activities” (hereinafter – the Law) to auditing entities that have the right to conduct a statutory audit.

An auditing entity of any member state of the European Union, which conducts a statutory audit of an applicant's financial statements, must be allowed to conduct it in the relevant state in accordance with the requirements equivalent to the requirements established by the Law for auditing entities that have a right to conduct a statutory audit.

26. An auditing entity of any other foreign state that conducts a statutory audit of an applicant's financial statements is subject to an agreed procedure under which an auditing entity that is authorized

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to conduct a statutory audit in accordance with the Law prepares a report on compliance of the financial statements submitted by an applicant with the conceptual basis of the applied accounting standards and preparation of financial statements in such a foreign country and the audit report to the requirements of international auditing standards.

Reliability requirements for applicant's bank

27. Banks that provide an applicant with confirmation of willingness to provide financing in the amount sufficient for implementation of the investment project must meet the criteria of reliability of banks.

28. The following banks meet the reliability criteria:

1) a resident bank that meets one of the following conditions:

the state of Ukraine directly or indirectly owns more than 75 percent of the authorized capital of a bank;

the bank has a long-term credit rating on a national scale not lower than “uaAA” (“AA (ukr)”); in the absence of a credit rating on a national scale, a bank is part of a foreign banking group whose rating is not lower than BBB (Standard and Poor's or Fitch's rating) or Moody's Baa2 rating;

2) a non-resident bank with a credit rating not lower than BBB (Standard and Poor's or Fitch rating) or Moody's Baa2 rating.

29. The following banks are not considered as reliable banks:

1) a bank that falls (persons related to a bank by control relationship that fall) under any restriction established by subparagraphs 5-9 of paragraph 2 of Article 8 of the Law of Ukraine “On Privatization of State and Communal Property”;

2) a bank that is (persons related to a bank by control relationship that are) under sanctions in accordance with the legislation or international law or international sanctions recognized by Ukraine;

3) a resident bank that violated the requirements of the National Bank on the capital adequacy ratio (H2 indicator) during the last 12 months;

4) a resident bank with regulatory capital, 25 percent of which is less than the amount of collateral specified in a confirmation letter, which a bank is willing to provide for the investment project, i.e. compliance with a confirmation letter in full carries the risk of violation of the maximum the amount of credit risk per counterparty (H7), determined by the National Bank.