

LAW OF UKRAINE

On State Support for Investment Projects with Significant Investments in Ukraine

This Law defines the organizational, legal and financial principles of state support for investment projects to create favorable conditions for attracting significant investments in Ukraine (internal and external), create new jobs, stimulate economic development of regions and increase the competitiveness of Ukraine's economy.

Section I GENERAL TERMS

Article 1. Definition of terms

1. In this Law, the terms are used in the following meaning:

1) application – a set of documents in accordance with the established list, form and content, which an applicant submits to the authorized body for implementation of an investment project with significant investments;

2) applicant – a legal entity registered in Ukraine or in a foreign state, or several such legal entities that have submitted an application;

3) significant investments – own or borrowed funds of an investor with significant investments, which are invested in investment objects in the process of implementation of an investment project with significant investments;

4) investment project with significant investments – an investment project that meets the requirements specified in Article 5 of this Law;

5) investor with significant investments – a legal entity registered in Ukraine, which is specifically established to implement an investment project with significant investments, is a party to a special investment agreement and whose business activity is aimed exclusively at implementation of an investment project with significant investments and performance of a special investment agreement;

6) objects of investment – non-current assets (except intangible assets and goodwill), which are built, modernized, technically and/or technologically re-equipped, acquired by an investor with significant investments, and related infrastructure facilities built or financed by an investor with significant investments at the expense of significant investments in accordance with terms of a special investment agreement;

7) special investment agreement – an agreement concluded between the Cabinet of Ministers of Ukraine, an investor with significant investments, an applicant and a local authority (in case of granting state support by such authority) defining a procedure and conditions for implementing an investment project with significant investments;

8) implementation period of an investment project with significant investments – period from the date of conclusion of a special investment agreement till the date of performance by an investor with significant investments of obligations provided by a special investment agreement, concerning investing significant investments in objects of investment and beginning of functioning of such objects within the framework of implementation of an investment project with significant investments, which may not exceed five years from the date of conclusion of a special investment agreement;

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9) authorized institution – a state institution authorized by the Cabinet of Ministers of Ukraine to support an applicant and an investor with significant investments in preparation and implementation of an investment project with significant investments, assistance in performing a special investment agreement, and other functions provided by this Law;

10) authorized body – the central executive body that ensures formation and implementation of state investment policy.

2. The term “control” is used in this Law in the meaning provided in the Law of Ukraine “On Protection of Economic Competition”, the term “ultimate beneficial owner” – in the meaning provided in the Law of Ukraine “On Prevention and Counteraction to Legalization (Laundering) of Criminal Proceeds, Terrorist Financing, Financing of Proliferation of Weapons of Mass Destruction”, the term “related persons” – in the meaning provided in the Tax Code of Ukraine, the term “construction” – in the meaning provided in the Law of Ukraine “On Regulation of City Planning Activities”.

Article 2. Legislation on state support for investment projects with significant investments

1. Relations arising in connection with granting state support for investment projects with significant investments, conclusion, performance and termination of special investment agreements are governed by the Constitution of Ukraine, the Civil Code of Ukraine, the Commercial Code of Ukraine, the Land Code of Ukraine, the Tax Code of Ukraine, the Customs Code of Ukraine, this Law, other laws of Ukraine and regulations, including those adopted for implementation of this Law, as well as international treaties of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine.

2. If an international treaty of Ukraine, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, establishes rules other than those provided for by this Law, the rules of the international treaty of Ukraine shall apply.

3. Laws of Ukraine “On State Aid to Business Entities” and “On Investment Activity” shall not apply to relations arising in connection with the provision of state support for investment projects with significant investments, conclusion, performance and termination of special investment agreements (in terms of granting state support for investment projects, conducting their state examination, as well as inclusion in the State register of investment projects).

4. This Law does not apply to investment projects that meet all the criteria of public-private partnership and are prepared and implemented in accordance with the laws of Ukraine “On Public-Private Partnership” and “On Concession”.

Chapter II

PRINCIPLES OF GRANTING STATE SUPPORT FOR INVESTMENT PROJECTS WITH SIGNIFICANT INVESTMENTS

Article 3. Forms of granting state support for investment projects with significant investments

1. State support for investment projects with significant investments can be granted to an investor with significant investments in the following forms:

1) exemption from payment of certain taxes and fees in accordance with the Tax Code of Ukraine;

2) exemption from import duties for importing new machinery (equipment) and components to it, which are imported exclusively for implementation of an investment project with significant investments to perform a special investment agreement, in accordance with the Customs Code of Ukraine;

3) ensuring the preemptive right to use a state or community owned land plot for implementation of an investment project with significant investments – providing a state or community owned land plot for use (lease) for implementation of an investment project with significant investments under conditions specified in under account obligations in special investment agreement, and with the preemptive right of the investor with significant investments to acquire such land in the property after the expiration of the special investment agreement (except in cases of early termination), if such a right is provided by a special investment agreement;

4) providing at the expense of state, local budgets, and other sources not prohibited by law, construction of related infrastructure (roads, communication lines, heat, gas, water and electricity supply facilities, etc.) required for implementation of an investment project with significant investments.

2. If implementation of an investment project with significant investments requires connection to heat, gas, water and electricity networks, etc., including networks and/or communications owned by subjects of natural monopolies, being under economic management, operational management or other proprietary law belonging to subjects of natural monopolies, the Government assists an investor with significant investments in connection to such networks in the manner prescribed by law.

Article 4. Amount of state support for implementation of investment projects with significant investments

1. Total amount of state support for implementation of an investment project with significant investments consists of:

1) all funds released due to tax and customs duties exemptions – the amount of taxes and fees that are not paid to the budget and remain at the disposal of an investor with significant investments in accordance with the terms of a special investment agreement. In case of providing for use (lease) of a land plot for implementation of an investment project with significant investments with payment for use (lease) of a provided land plot in the amount less than the amount established by the local authority for the relevant category of land plots in the respective territory, the difference is taken into account in determining the total amount of state support for implementation of an investment project with significant investments;

2) total cost of all related infrastructure facilities required for implementation of an investment project with significant investments and built to perform a special investment agreement in accordance with subparagraph 4 of paragraph 1 of Article 3 of this Law, as of the date of commissioning of related infrastructure facilities.

2. Total amount of state support for implementation of an investment project with significant investments is defined in a special investment agreement and shall not exceed 30 percent of the planned amount of significant investments in an investment project with significant investments.

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3. The methodology for calculating the amount of state support for implementation of an investment project with significant investments shall be determined by the Cabinet of Ministers of Ukraine.

4. Information on investment projects with significant investments, for implementation of which state support is granted in accordance with this Law, including information on fulfillment by an investor with significant investments of obligations under a special investment agreement, making significant investments in investment objects, beginning of operation of such investment objects within implementation of an investment project with significant investments, as well as amount of state support granted to an investor with significant investments in accordance with this Law and a special investment agreement, is included in the register of investment projects with significant investments maintained by the authorized body. A list of information entered in the register of investment projects with significant investments and a procedure for its maintenance shall be approved by the Cabinet of Ministers of Ukraine.

Information contained in the register of investment projects with significant investments is open and publicly available (except for information with limited access), charging for access to this information is prohibited.

The authorized body, the central executive body implementing the state tax policy, and the central executive body in the field of customs may carry out automatic exchange of information contained in the register of investment projects with significant investments, in the amount and according to the procedure determined by regulation of the central executive authority, which ensures the formation and implementation of public financial policy, in agreement with the authorized body.

Article 5. Requirements for an investment project with significant investments, for implementation of which state support may be granted

1. An investment project with significant investments, for the implementation of which state support may be granted in accordance with this Law, shall meet all the following requirements:

1) an investment project with significant investments is implemented on the territory of Ukraine in the fields of processing industry (except for manufacturing of tobacco products, ethanol, cognac and fruit spirits, alcoholic beverages), extraction for the purpose of further processing and/or enrichment of natural resources (except for bituminous coal, lignite, crude oil and natural gas), waste management, transportation, warehousing, postal and courier activities, logistics, education, research and development, healthcare, arts culture, sports, tourism, and resort and recreational sphere;

2) an investment project with significant investments provide for construction, modernization, technical and/or technological re-equipment of investment objects in the areas specified in subparagraph 1 of this paragraph, purchase of necessary machinery (equipment) and components to it, and may provide for construction at expense of an investor with significant investments of necessary related infrastructure facilities for implementation of an investment project with significant investments;

3) creating at least 80 new jobs within the duration of implementation of an investment project with significant investments with an average salary of employees, the amount of which is not less than 15 percent higher than the average salary for the relevant activity in the region where the project is implemented, according to the previous calendar year;

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4) amount of significant investments in investment objects within implementation of an investment project with significant investments exceeds the amount equivalent to 20 million euros, calculated at the official exchange rate set by the National Bank of Ukraine on the first business day of the quarter in which the application is submitted, and on the date of actual making significant investments in investment objects for performance of a special investment agreement;

5) duration of implementation of the investment project with significant investments shall not exceed five years.

2. State support granted in accordance with this Law shall not apply to investment projects that meet the criteria of public-private partnership, which must be implemented in accordance with the requirements of the Laws of Ukraine “On Public-Private Partnership” and “On Concession”, and investment projects implemented in accordance with production sharing agreements to be implemented in accordance with the requirements of the Law of Ukraine “On Production Sharing Agreements”, as well as not granted for fulfillment by business entities of their investment obligations within privatization of facilities of state and municipal property.

Article 6. Functions of the authorized institution in the process of preparation and implementation of investment projects with significant investments

1. The authorized institution assists in preparation and implementation of investment projects with significant investments, as well as assists in performance of special investment agreements by the state bodies and local authorities (in the case of state support by such bodies).

2. Functions of the authorized institution include:

1) implementation of measures to attract potential applicants for implementation of investment projects with significant investments;

2) providing applicants, investors with significant investments with organizational, informational, and advisory assistance in preparation and implementation of investment projects with significant investments in accordance with the requirements of this Law, in particular regarding preparation and submission of applications, other documents necessary for implementation of investment projects with significant investments, free of charge;

3) cooperation with executive bodies, local authorities on issues related to assistance in preparation and implementation of investment projects with significant investments;

4) preparation and submission of periodic (on a quarterly and yearly basis) and progress (at the request of the authorized body) reports to the authorized body on the status of assisting investment projects with significant investments;

5) development of proposals, recommendations, action plans aimed to improve the process of preparation and implementation of investment projects with significant investments;

6) organization of trainings and information events on preparation and implementation of investment projects with significant investments for public authorities, local authorities, their officials;

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7) other functions on preparation and implementation of investment projects with significant investments, defined by the legislation and constituent documents of the authorized institution.

3. The authorized institution shall assist an applicant and an investor with significant investments, perform other functions specified by this Law free of charge for an applicant and an investor with significant investments.

The procedure for cooperation of the authorized institution with applicants, investors with significant investments, public authorities, local authorities on issues related to assisting in preparation and implementation of investment projects with significant investments shall be determined by the Cabinet of Ministers of Ukraine.

4. Unlawful interference and obstruction of the activity of the authorized institution and its employees, in particular for the purpose of counteracting or complicating performance of its functions specified by this Law, is prohibited.

Section III

PREPARATION OF AN APPLICATION AND DECISION ON EXPEDIENCY OR INEXPEDIENCY OF CONCLUDING A SPECIAL INVESTMENT AGREEMENT

Article 7. Preparation and submission of an application

1. An applicant who intends to implement an investment project with significant investments and receive state support provided by this Law, prepares and submits to the authorized body an application, documents confirming an applicant's compliance with requirements of paragraphs 3 and 4 of this Article, feasibility study of an investment project with significant investments (with mandatory indication of the social effect of its implementation) and a draft special investment agreement.

Groundless request of other documents from an applicant is prohibited.

Requirements for feasibility study of an investment project with significant investments shall be determined by the Cabinet of Ministers of Ukraine.

2. At the request of an applicant, the authorized institution shall provide organizational, informational and consultative assistance on preparation of the documents provided for in paragraph 1 of this Article and their submission to the authorized body.

3. An applicant shall meet the requirements determined by the Cabinet of Ministers of Ukraine for financial capacity to implement an investment project with significant investments.

4. The following entities may not be applicants:

1) state business associations, state holding companies, other state economic organizations, state enterprises, institutions, organizations or business associations, in the authorized capital of which more than 50 percent of shares (stakes) belong to the state or other business entity in the authorized capital of which more than 50 percent of shares (stakes) belong to the state;

2) municipal unitary enterprises and business entities, in the authorized capital of which more than 50 percent of shares (stakes) belong to the territorial community;

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- 3) non-profit enterprises, institutions and organizations;
- 4) legal entities, information on the ultimate beneficial owners of which is not disclosed in violation of the Law of Ukraine “On State Registration of Legal Entities, Individuals-Entrepreneurs and Public Associations”;
- 5) legal entities registered in states (territories) classified by the Cabinet of Ministers of Ukraine as offshore zones, or legal entities in the authorized capital of which more than 50 percent of shares (stakes) belong directly or indirectly to legal entities registered in such states (territories);
- 6) legal entities, the beneficial owners of shares of which are residents of the state recognized by the Verkhovna Rada of Ukraine as the aggressor state, or the state recognized by the Verkhovna Rada of Ukraine as the aggressor state. This provision does not apply to legal entities whose shares are admitted to trading on foreign stock exchanges in accordance with the list approved by the Cabinet of Ministers of Ukraine (except for legal entities that are residents of the aggressor state);
- 7) legal entities registered in a state recognized by the Verkhovna Rada of Ukraine as the aggressor state;
- 8) legal entities registered in accordance with the legislation of the states included by the Financial Action Task Force (FATF) in the list of states that do not cooperate in combating money laundering, as well as legal entities, 10 percent or more of the authorized capital of which directly or indirectly belongs to such persons;
- 9) legal entities in respect of which special economic and other restrictive measures (sanctions) have been applied in accordance with the legislation of Ukraine or international law, as well as persons related to them;
- 10) legal entities in respect of which bankruptcy proceedings have been opened or which have been declared bankrupt;
- 11) legal entities that are in the process of liquidation or reorganization;
- 12) legal entities that on the date of application have arrears of national and/or local taxes, fees and/or other mandatory payments in excess of the equivalent of 10 minimum wages on January 1 of the respective year.

5. If an applicant is represented by several legal entities, the restrictions provided for in paragraph 4 of this Article shall apply to each of such legal entities.

6. An applicant is responsible for the completeness and accuracy of the provided information.

Article 8. Evaluation of an investment project with significant investments and decision-making on concluding a special investment agreement

1. Evaluation of an investment project with significant investments shall be carried out by the authorized body within 60 calendar days from the date of receipt of the documents provided for in paragraph 1 of Article 7 of this Law, and shall include:

1) verification of compliance of an applicant, an investment project with significant investments and submitted documents with the requirements established by legislation (first stage);

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2) analysis of an investment project with significant investments and a draft special investment agreement (second stage):

analysis of economic, financial, social indicators and environmental consequences of an investment project with significant investments;

risk analysis of implementation of an investment project with significant investments;

analysis of the forms and total amount of state support offered for implementation of an investment project with significant investments;

analysis of a draft special investment agreement and preparation, if necessary, comments on its completion.

The authorized body shall terminate the evaluation of an investment project with significant investments, if the results of the first stage reveal non-compliance of an applicant, an investment project with significant investments and submitted documents with the requirements established by law.

The Antimonopoly Committee of Ukraine, the central executive body that ensures formation and implementation of state financial and budgetary policy, the central executive body that ensures formation and implementation of state legal policy, and the central executive body that ensures formation and implementation of state policy in the field of environmental protection, and local authority (if state support is granted by such an authority for implementation of an investment project with significant investment) must be involved in evaluation of an investment project with significant investments. Other public authorities may also be involved in evaluation in accordance with their competence.

In order to obtain additional information and/or documents necessary for evaluation of an investment project with significant investments, the authorized body may address relevant requests to the authorized institution, public authorities, local authorities, financial institutions, legal entities and individuals. A response to such a request shall be provided as soon as possible and may not exceed 10 working days.

The procedure and methodology for evaluating an investment project with significant investments shall be determined by the Cabinet of Ministers of Ukraine.

2. Based on the results of evaluation of an investment project with significant investments, the authorized body shall prepare one of the following conclusions:

conclusion on the expediency of implementing an investment project with significant investments and concluding a special investment agreement;

conclusion on the inexpediency of implementing an investment project with significant investments and refusal to enter into a special investment agreement.

Grounds for giving a conclusion on the inexpediency of an investment project with significant investments and refusal to enter into a special investment agreement are the following:

submission by an applicant of inaccurate information in an application;

non-compliance of an applicant and/or investment project with the requirements provided by this Law;

the amount of state support proposed in an investment project exceeds the maximum allowable amount of state support provided for in Article 4 of this Law;

identification during evaluation of an investment project of economic, financial, social and/or environmental risks and/or negative consequences that may result from its implementation.

The relevant conclusion shall be sent by the authorized body to an applicant and the authorized institution within five working days from the date of its signing.

3. If the authorized body adopts a conclusion on the inexpediency of an investment project with significant investments and refuses to enter into a special investment agreement, an applicant has the right to appeal such a conclusion in court.

4. If it is necessary to finalize a draft special investment agreement, the authorized body together with a conclusion on the expediency of an investment project with significant investments and entering into a special investment agreement shall send an applicant comments on a draft agreement with a proposal to finalize it.

An applicant shall finalize a draft special investment agreement taking into account the comments of the authorized body and send it to the authorized body within two months from the date of receipt of the relevant conclusion and comments from the authorized body. To finalize a project, an applicant may apply to the authorized institution for organizational and advisory assistance.

5. The authorized body shall consider a revised draft of a special investment agreement within 30 working days from the date of its receipt and if an applicant takes into account all the comments of the authorized body shall send such a draft together with a draft decision on concluding a special investment agreement to the Cabinet of Ministers of Ukraine and a local authority which is to become a party to a special investment agreement.

6. In case of signing a conclusion on expediency of implementing an investment project with significant investments and conclusion of a special investment agreement, if a draft special investment agreement does not need completion, the authorized body within 30 working days from the date of signing of such conclusion sends it along with a draft special investment agreement to the Cabinet of Ministers of Ukraine and a local authority which is to become a party to a special investment agreement.

7. A local authority to which a draft special investment agreement is sent shall be obliged to notify the Cabinet of Ministers of Ukraine and the authorized body of its decision within five working days from the date of a decision to conclude a special investment agreement.

8. The Cabinet of Ministers of Ukraine within 30 calendar days from the date of receipt of a draft special investment agreement and a decision of a local authority decides on a conclusion of a special investment agreement and appoints a person authorized to sign it on behalf of the state.

Article 9. Providing land plots for implementation of an investment project with significant investments

1. A state or community owned land plot defined by a special investment agreement as necessary for implementation of an investment project with significant investments shall be provided to an investor with significant investments for use (lease) for the duration of a special investment agreement in accordance with the Land Code of Ukraine.

2. State or community owned land plots formed by executive bodies or local authorities for the purpose of implementing investment projects with significant investments and defined in special investment agreements may not be divided, privatized, transferred for use to third parties or otherwise alienated by executive bodies or local authorities until they are transferred for use (lease) to an investor with significant investments, with whom a special investment agreement has been concluded.

If a state or community owned land plot necessary for implementation of an investment project with significant investments is formed before the conclusion of a special investment agreement, restrictions on alienation of such a land plot by executive bodies or local authorities to third parties expires after 12 months from the date of its formation, if a special investment agreement has not been concluded within this period.

3. Providing an investor with significant investments with a land plot for use (lease) defined in a special investment agreement for implementation of an investment project with significant investments, which is registered in the State Land Cadastre in accordance with the Law of Ukraine “On State Land Cadastre”, the ownership of which is registered in the State register of rights to immovable property, without changing its boundaries and use is carried out by executive bodies or local authorities in accordance with their powers defined by Article 122 of the Land Code of Ukraine:

1) in case of granting an investor with significant investments with a state owned land plot by an executive body – within 10 working days from the date of receipt by an executive body of an application of the investor with significant investments for the use (lease) of the state-owned land plot;

2) in case of providing an investor with significant investments with a community owned land plot by a local authority – within five working days from the date of decision by a local authority as a result of considering a request by an investor with significant investments for providing for use (lease) community owned land plot at the next session after receiving such a request.

4. If in the course of implementing an investment project with significant investment it may be necessary for an investor with significant investments to establish a land servitude on a land plot (plots) regardless of its ownership, the state shall assist the investor with significant investments in establishing it in accordance with the legislation.

5. An executive body or a local authority in accordance with their powers defined by Article 122 of the Land Code of Ukraine shall provide an investor with significant investments with a land plot defined by a special investment agreement for implementation of an investment project with significant investments within three months from the date of conclusion of a special investment agreement.

If within six months from the date of conclusion of a special investment agreement an investor with significant investments does not register the right to use (lease) a land plot defined by a special investment agreement for implementing an investment project with significant investments in

accordance with the legislation on registration of real property rights on grounds that do not depend on an investor with significant investments, such an investor with significant investments has the right to unilaterally terminate a special investment agreement.

Section IV **SPECIAL INVESTMENT AGREEMENT**

Article 10. Content of a special investment agreement

1. Under a special investment agreement, an investor with significant investments and an applicant shall commit to implement an investment project with significant investments that meets the requirements established by this Law at the expense of own and/or borrowed funds, and the Cabinet of Ministers of Ukraine and a local authority (if a local authority is a party to a special investment agreement) shall commit, within their powers, to ensure the stability of business conditions for an investor with significant investments for implementation of an investment project with significant investments and to grant state support in the form and on the terms specified by this Law and a special investment agreement.

2. A special investment agreement is concluded for a period agreed by the parties, but not more than 15 years. A special investment agreement specifies the duration of implementation of an investment project with significant investments, which may not exceed five years from the date of conclusion of such an agreement.

3. A special investment agreement shall determine the form and amount of state support granted to an investor with significant investments for implementation of an investment project with significant investments within the duration of a special investment agreement.

4. Obligations of the Cabinet of Ministers of Ukraine and a local authority (if a local authority is a party to a special investment agreement) to grant state support defined by a special investment agreement shall be terminated from the next financial quarter in which the amount of the actually granted state support exceeded the total amount of state support specified in a special investment agreement. Information on the total amount of state support and the amount of the actually granted state support under a special investment agreement is public, entered in the register of investment projects with significant investments and posted on the official website of the authorized body on a quarterly basis.

Article 11. Parties to a special investment agreement

1. The state of Ukraine represented by the Cabinet of Ministers of Ukraine, the territorial community represented by the local authority (if state support is granted by such a local authority for implementation of an investment project with significant investments), an applicant and an investor with significant investments are the parties to a special investment agreement.

Article 12. Obligations of an applicant and an investor with significant investments

1. In case of an approval of a decision to conclude a special investment agreement, an applicant shall take measures to establish an investor with significant investments. If there is a legal entity registered in Ukraine that is specially established by an applicant to implement an investment project with significant investments and meets all the requirements and restrictions to an applicant stipulated by this Law, such a legal entity may be a party to a special investment agreement as an

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investor with significant investments. All requirements and restrictions established by this Law for an applicant shall apply to an investor with significant investments.

2. An applicant must own 100 percent of the shares (stakes) in the authorized capital of an investor with significant investments.

3. Within 15 calendar days from the date of establishing an investor with significant investments an applicant must provide the authorized body with information on the relationship of control over an investor with significant investments, including disclosure of information on ultimate beneficial owners and ownership structure.

4. A change in the relationship of control over an investor with significant investments within the duration of a special investment agreement shall be carried out with the prior consent of the Cabinet of Ministers of Ukraine.

Within the duration of a special investment agreement, an investor with significant investments is obliged to notify the authorized body of any change in the relationship of control over an investor with significant investments, including disclosure of information about ultimate beneficial owners, within 15 calendar days of such changes.

5. An applicant and an investor with significant investments shall be held liable for accuracy of the information provided pursuant to this Article in accordance with the legislation. A special investment agreement may provide for additional sanctions in case of violation by an applicant and an investor with significant investments of the requirements of this Article.

Article 13. Essential terms of a special investment agreement

1. Essential terms of a special investment agreement shall include:

1) parties to a special investment agreement;

2) a subject of a special investment agreement, including conditions and implementation period of an investment project with significant investments, objects of investment, types and amount of significant investments;

3) total amount, forms and period of granting state support for an investor with significant investments for implementation of an investment project with significant investments;

4) conditions and consequences of termination of granting state support for an investor with significant investments, including the procedure for reimbursement by an investor with significant investments of the excess of the amount of actually granted state support over the total amount of state support specified in a special investment agreement;

5) rights and obligations of the parties, including obligations of an investor with significant investments in an investment project with significant investments, as well as mechanisms to ensure the fulfillment by an investor with significant investments and/or an applicant of obligations under a special investment agreement (in particular, guarantees, etc.);

6) duration of a special investment agreement;

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7) procedure and conditions for entry into force of a special investment agreement or its individual provisions;

8) a list of land plots necessary for implementation of an investment project with significant investments, conditions of land use of such land plots and a procedure for their return;

9) a procedure for allocating costs for development of land management documentation required in accordance with the legislation for the use (lease) of land plots for implementation of an investment project with significant investments;

10) a procedure for approving changes in the relationship of control over an investor with significant investments within the duration of a special investment agreement;

11) guarantees of stability of conditions of carrying out business activity by an investor with significant investments during implementation of an investment project with considerable investments;

12) environmental and social requirements for implementation of an investment project with significant investment;

13) a procedure for control and monitoring implementation of terms of a special investment agreement;

14) a procedure for changing and terminating a special investment agreement;

15) grounds, procedures and consequences of early termination of a special investment agreement;

16) liability of the parties for failure to perform or improper performance of obligations under a special investment agreement;

17) a procedure for resolving disputes between the parties.

A special investment agreement may contain other conditions agreed by the parties.

Article 14. Procedure for amending and terminating a special investment agreement

1. A special investment agreement may be amended by mutual consent of the parties, unless otherwise provided by the agreement. The parties may not change terms of a special investment agreement relating to the requirements for investment projects with significant investments, defined by this Law.

2. A special investment agreement shall be terminated upon its expiration or in the event of its early termination.

3. A special investment agreement may be terminated early:

1) by mutual consent of the parties;

2) at the request of one of the parties by a court or arbitration in the event of a material breach by the other party of the obligations specified in a special investment agreement;

3) in the event of a significant change in the circumstances that guided the parties in the process of concluding a special investment agreement, if it is provided by a special investment agreement;

4) in case of violation of the obligations of an applicant and/or investor with significant investments provided for in Article 12 of this Law;

5) in case of causing significant environmental damage or man-made emergencies due to the fault of an investor with significant investments;

6) in other cases, provided by a special investment agreement and this Law.

Early termination of a special investment agreement is carried out in the manner prescribed by such a special investment agreement.

4. Information on conclusion, change, termination of a special investment agreement shall be entered in the register of investment projects with significant investments.

Article 15. Liability of the parties to a special investment agreement

1. The Parties shall bear liability, established by law and a special investment agreement, for non-performance or improper performance of their obligations under a special investment agreement.

An applicant is jointly and severally liable for non-performance or improper performance of a special investment agreement by an investor with significant investments.

2. The lost profit of a party to a special investment agreement due to non-performance or improper performance of obligations by another party to a special investment agreement shall not be reimbursable.

3. If a court or arbitration decision establishes the fact of non-compliance with the guarantees of stability of business conditions by an investor with significant investments during implementation of an investment project with significant investments, such investor has the right to compensation, unless otherwise provided by a special investment agreement.

4. In case of non-fulfillment or improper fulfillment by an applicant and/or investor with significant investments of the obligations provided for in Article 12 of this Law, the Cabinet of Ministers of Ukraine shall have the right to terminate a special investment agreement unilaterally. If the Cabinet of Ministers of Ukraine exercises such a right, an investor with significant investments is obliged to pay the full amount of tax-exempt funds as a result of exempting an investor with significant investments from paying certain taxes and fees within the duration of a special investment agreement and to compensate the state for other state support granted to an investor with significant investments within the duration of a special investment agreement.

5. In case of termination of a special investment agreement, an investor with significant investments loses the right to receive state support granted by this Law. Termination of a special investment agreement is the basis for termination of a lease agreement of a state of community owned land plot provided to an investor with significant investments for the use (lease) for implementation of an investment project with significant investments.

6. In case of termination of a special investment agreement due to non-fulfillment by an investor with significant investments of obligations regarding the amount of significant investments in investment objects and/or non-compliance with the implementation period of an investment project with significant investments established by a special investment agreement, except if such non-fulfillment is caused by violation of the state obligations to grant state support under a special investment agreement or the occurrence of force majeure, an investor with significant investments is obliged to pay a fine in the amount of all state support granted to an investor with significant investments on the date of establishing the fact of such non-compliance by a court or arbitration, except for taxes and fees. Amounts of corporate income tax, value added tax, import duties and land fees, not paid as a result of granting an investor with significant investments within the duration of a special investment agreement state support in the form of exemption from taxes and fees, are payable in the manner prescribed by the Tax Code of Ukraine and the Customs Code of Ukraine.

Article 16. Control and monitoring of implementation of special investment agreements

1. Control and monitoring of implementation of special investment agreements shall be carried out by the Cabinet of Ministers of Ukraine, the authorized body, a local authority that is a party to a special investment agreement in accordance with the law and/or a special investment agreement.

Within controlling and monitoring of implementation of special investment agreements, it is not allowed to interfere in business activity of an investor with significant investments, as well as to disclose information that became known within implementation of such control and monitoring.

2. For verification of the amount of significant investments made by an investor with significant investments in investment objects, and the fact of beginning of operation of such investment objects within implementation of an investment project with significant investments and the amount of state support granted to investors with significant investments in accordance with this Law and special investment agreement, an auditor shall be involved, which in accordance with the Law of Ukraine “On Audit of Financial Statements and Audit Activities” has the right to conduct a mandatory audit of financial statements of enterprises of public interest.

Section V
GUARANTEES OF RIGHTS OF INVESTORS WITH SIGNIFICANT INVESTMENTS

Article 17. Guarantees of stability of conditions of carrying out business activity within implementation of investment projects with significant investments

1. The state guarantees the stability of the conditions of business activity within the implementation of investment projects with significant investments, carried out on the basis of special investment agreements, as well as observance of the rights and legitimate interests of applicants and investors with significant investments.

2. The state guarantees fulfillment of its obligations to grant an investor with significant investments state support in the forms and amounts specified by this Law and a special investment agreement.

3. The rights and obligations of an investor with significant investments defined by a special investment agreement shall be governed by the legislation of Ukraine in force on the date of concluding a special investment agreement (except for legislation that reduces or abolishes taxes

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or fees, simplifies business regulation, weakens procedures state supervision (control) in the field of business activity, mitigates the liability of investors with significant investments or otherwise improves position of investors with significant investments, which should be applied from the date of entry into force of such legislation).

4. The business activity of an investor with significant investments within implementation of an investment project with significant investments may be suspended in whole or in part in the manner prescribed by law. From the moment an investor with significant investments eliminates the conditions as a result of which his activity was suspended completely or partially, his activity is subject to full resumption.

5. In case of adoption by public authorities or local authorities of decisions that violate the rights of an investor with significant investments, the losses caused to him as a result of such decisions shall be subject to compensation by such authorities in accordance with the law.

Section VI
APPLICABLE LAW AND DISPUTE RESOLUTION

Article 18. Applicable law

1. A special investment agreement shall be governed by the law of Ukraine, unless otherwise provided by such agreement.

Article 19. Settlement of disputes

1. The parties to a special investment agreement are free to choose a dispute settlement mechanism, including recourse to the courts in Ukraine, mediation, non-binding expert assessment, national or international commercial or investment arbitration, including arbitration located abroad (if an investor with significant investments is an enterprise with foreign investment within the meaning of the Law of Ukraine “On the Regime of Foreign Investment”), and procedural rules for resolving disputes, except as provided by law.

Section VII
CONCLUDING AND TRANSITIONAL PROVISIONS

1. This Law enters into force on the day following the day of its publication.
2. Establish that granting state support for investors with significant investments in the form defined in sub-paragraph 4 of paragraph 1 of Article 3 of this Law will be carried out in accordance with the terms of special investment agreements, starting from January 1, 2022.
3. Establish that investors with significant investments implementing investment projects with significant investments in respect to iron ore enrichment may obtain state support only in the forms defined in subparagraphs 1-3 of paragraph 1 of Article 3 of this Law, in accordance with the legislation.
4. Acknowledge as invalid the Law of Ukraine “On Preparation and Implementation of Investment Projects according to the Principle of Single Window” (The Bulletin of the Verkhovna Rada of Ukraine, 2011, no. 11, p. 70).
5. Introduce amendments to the following legislative acts of Ukraine:

1) in the Land Code of Ukraine (The Bulletin of the Verkhovna Rada of Ukraine, 2002, no. 3-4, Art. 27):

in Article 123:

paragraph 8 shall be added to paragraph 1 that reads as follows:

“An investor with significant investments with whom a special investment agreement has been concluded in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments” and who is interested in obtaining a land plot of state or communal property determined by a special investment agreement as necessary for implementation of an investment project with significant investments, has the right to order development of technical documentation on land management to establish boundaries of such land plot in kind (in the territory) without permission of the executive body or local authority, which transfers the land for use in accordance with Article 122 of this Code, of which he is obliged to notify in writing a relevant executive body or local authority within five working days. A copy of an agreement on land management works to establish the boundaries of such land plot in kind (in the territory) and a copy of a concluded special investment agreement shall be attached to the written notice”;

subparagraph 4 shall be added to paragraph 2 that reads as follows:

“If an investor with significant investments, with whom a special investment agreement has been concluded in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”, or a person authorized by him, applies for a permit to develop a land management project for land allocation, a copy of a concluded special investment agreement and a copy of documents confirming the powers of the authorized person shall be attached to an application”;

a new paragraph shall be added after paragraph 10 that reads as follows:

“11. If a land plot is provided for use to an investor with significant investments, with whom a special investment agreement is concluded in the manner prescribed by the Law of Ukraine “On State Support for Investment Projects with Significant Investments”, an approved land management project, and, in case of mandatory state examination of land management documentation in accordance with the law – after receiving a positive opinion of the state examination, is submitted by an investor with significant investment to an executive body or local authority in accordance with their powers specified in Article 122 of this Code.

If a state or community owned land plot is formed before concluding a special investment agreement in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”, its transfer to the use of an investor with significant investments is carried out after concluding such agreement based on conditions, determined by the Law of Ukraine “On State Support for Investment Projects with Significant Investments” and a special investment agreement.

A state or community owned land plot, formed by an executive body or local authority in accordance with their powers defined by Article 122 of this Code, for implementation of an investment project with significant investments in the manner prescribed by the Law of Ukraine “On State Support for Investment Projects with Significant Investments” may not be divided, privatized, transferred for use to a third party or otherwise alienated before signing a special

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investment agreement until transfer of such land plot to an investor with significant investments with whom a special investment agreement has been concluded.

If a state or community owned land plot necessary for implementation of an investment project with significant investments is formed before conclusion of a special investment agreement, restrictions on alienation of such a land plot by executive bodies or local authorities in favor of third parties expires after 12 months from the date of its formation, if a special investment agreement has not been concluded within a specified period.

Land plots defined by a special investment agreement as necessary for implementation of an investment project with significant investments shall be transferred for use exclusively to an investor with significant investments with whom a special investment agreement has been concluded in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments” for the duration of such agreement.”

In connection with this, paragraphs 11 to 15 shall be considered as paragraphs 12 to 16, respectively;

subparagraph 30 shall be added to paragraph 2 of Article 134 that reads as follows:

“granting a state or community owned land plot for use (lease) to an investor with significant investments for implementation of an investment project with significant investments”;

2) in the Law of Ukraine “On Investment Activity” (The Bulletin of the Verkhovna Rada of Ukraine, 1991, no. 47, p. 646; 2011, no. 34, p. 343; 2017, no. 18, p. 221, no. 32, Article 344; 2019, no. 48, Article 325):

the following words shall be added to paragraph 5 of Article 2 “and except for state support for investment projects carried out for implementation of an investment project with significant investments on the terms and in accordance with the requirements of the Law of Ukraine “On State Support for Investment Projects with Significant Investments”;

the following words shall be added to paragraph 1 of Article 15 “and except for investment projects with significant investments implemented in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”;

3) in the Law of Ukraine “On the Regime of Foreign Investment” (The Bulletin of the Verkhovna Rada of Ukraine, 1996, no. 19, Art. 80):

a second sentence shall be added to paragraph 1 of Article 10: “The lost profit of an investor with significant investments under a special investment agreement due to non-fulfillment or improper fulfillment by the state represented by the Cabinet of Ministers of Ukraine and/or local authorities of their obligations, if such authority is a party to a special investment agreement, shall not be reimbursable”;

the following words shall be added to Article 11 “or by a special investment agreement concluded in accordance with the procedure provided for by the Law of Ukraine “On State Support for Investment Projects with Significant Investments”;

4) in the Law of Ukraine “On Local Self-Government in Ukraine” (The Bulletin of the Verkhovna Rada of Ukraine, 1997, no. 24, p. 170 with the following changes):

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subparagraph 28-1 shall be added to paragraph 1 of Article 26 that reads as follows:

“28-1) making decisions on concluding special investment agreements in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”;

subparagraph 2 shall be added to paragraph 8 of Article 46 that reads as follows:

“The session of the council is convened to consider the issue of concluding a special investment agreement within a month after receiving a draft special investment agreement from the authorized body in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”;

5) in the Law of Ukraine “On Land Lease” (The Bulletin of the Verkhovna Rada of Ukraine, 2004, no. 10, Art. 102 as amended):

paragraph 10 shall be added to Article 8 that reads as follows:

“If the lessee of a land plot is an investor with significant investments, with whom a special investment agreement has been concluded in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”, sublease of state or community owned land plots defined by a special investment agreement for implementation of an investment project with significant investments is prohibited”;

subparagraph 10 shall be added to paragraph 1 of Article 31 that reads as follows:

“termination of a special investment agreement concluded in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”;

a new paragraph shall be added after paragraph 6 of Article 33 that reads as follows:

“If no later than 30 days before the expiration of an agreement with the lessee, which is an investor with significant investments, with whom a special investment agreement is concluded in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”, the landlord did not notice of non-renewal of an agreement and provided that the lessee intends to continue to use the land plot after expiration of the land lease agreement, such agreement is renewed for the same period under the terms of the land lease agreement, except for the amount of rent. The change in the rent shall be defined by an additional agreement to the land lease agreement”.

In connection with this, paragraphs 7 to 9 shall be considered as paragraphs 8 to 10, respectively;

6) paragraph 2 shall be added to the Article 34 of the Law of Ukraine “On State Examination of Land Management Documentation” (The Bulletin of the Verkhovna Rada of Ukraine, 2004, № 38, Art. 471) that reads as follows:

“The duration of state examination of land management documentation at the request of an investor with significant investments, with whom a special investment agreement has been concluded in accordance with the Law of Ukraine “On State Support for Investment Projects with Significant Investments”, may not exceed 10 working days from the date of registration of an object

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of state examination by the specially authorized executive authority in the field of state examination”.

6. The Cabinet of Ministers of Ukraine shall within six months from the date of entry into force of this Law:

adopt regulations arising from this Law;

bring its regulations in line with this Law;

ensure adoption, revision by ministries and other central executive bodies of their regulations arising from this Law.

7. The Cabinet of Ministers of Ukraine shall include information on implementation of this Law in the report on the progress and results of implementation of the Program of Activities of the Cabinet of Ministers of Ukraine for the relevant year.

President of Ukraine

V. ZELENSKY

Kyiv

December 17, 2020

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