



FOREIGN INVESTMENT IN UKRAINE

2.1. Laws on Foreign Investment

The Law of Ukraine On Investment Activity, adopted on 18 September 1991, establishes the general principles for investment activity in the territory of Ukraine, irrespective of the nationality of the investor. The particularities of making foreign investments in Ukraine are regulated by the Law of Ukraine On the Regime of Foreign Investment (the “Foreign Investment Law”), adopted on 19 March 1996.

Under the Foreign Investment Law, the term “foreign investment” refers to all forms of value invested by foreign investors into objects of investment activity in accordance with the applicable Ukrainian legislation for the purposes of obtaining profit or a social effect. Pursuant to the Commercial Code of Ukraine (the “Commercial Code”), adopted on 16 January 2003, and the Foreign Investment Law, any Ukrainian company qualifies as an “enterprise with foreign investment” if foreign investment in its charter capital amounts to at least 10%.

Foreign investors are entitled to certain privileges and guarantees under the Foreign Investment Law as outlined below:



Protection against changes in legislation	Foreign investors are guaranteed protection against changes in foreign investment legislation for a period of ten years, although certain changes in other areas of Ukrainian legislation and their implementation have, in fact, limited the applicability of the above guarantee to changes in Ukrainian legislation on matters relating to nationalization, expropriation and similar.
Protection against nationalization	Foreign investments may not be nationalized. State bodies may not expropriate foreign investments, with the exception of emergency measures (such as national disasters, accidents, epidemics, etc.), and then only on the basis of the decisions of bodies authorized to that effect by the Cabinet of Ministers of Ukraine.
Guarantee for compensation and reimbursement of losses	Foreign investors have the right to be reimbursed for their losses, including lost profits and moral damages incurred as a result of the action, the failure to act or the improper performance on the part of state or municipal bodies of Ukraine or their officials with regard to their obligations to foreign investors or enterprises with foreign investment as required by law. All expenses and losses of foreign investors must be reimbursed at the current market rate and/or on the basis of a well-founded valuation certified by an independent auditor or auditing firm.
Guarantee in the event of the termination of investment activity	Foreign investors are guaranteed the right to remit their revenue and withdraw their investments from Ukraine free from export duties within six months of the termination of their investment activity.
Guarantee of profit repatriation	After the payment of taxes, duties and other mandatory payments, foreign investors are guaranteed the right to the unimpeded and immediate transfer abroad in a foreign currency of all profits and other proceeds legally earned as a result of their investment activity (subject to applicable currency exchange regulations).

Before 26 July 2016, the prerequisite to enjoying privileges and guarantees under the Foreign Investment Law was the registration of investments with the relevant state authorities. Today, all foreign investments, including those which were registered before 26 July 2016 and those which were not registered before or after 26 July 2016, are equally entitled to the privileges and guarantees under the Foreign Investment Law. Legal entities with foreign investments should now submit



statistical reports as provided by law.

Under the Customs Code of Ukraine adopted on 13 March 2012, enterprises with foreign investments are exempted from paying import duties on their foreign investors' in-kind contributions to their charter capitals (except for goods for sale or use for purposes not directly related to business activities). However, in the event that the corresponding assets are alienated by such enterprises earlier than three years from the date of them being added to the balance of the enterprise, then the enterprise will be required to pay the applicable import duty on general grounds.

Two categories of restrictions apply to foreign investment activity in Ukraine: The first relates to general restrictions on investment activity, which are applied both to foreign and domestic investors. Pursuant to applicable Ukrainian legislation, certain types of business activity may be pursued only by state-owned enterprises (eg, the rocket industry, banknotes and certain blank forms of securities certificates, etc.). The second category relates to certain restrictions applicable only to foreign investors. For example, foreign citizens and legal entities are prohibited from owning agricultural land in Ukraine and are only authorized to own land designated for non-agricultural use under the current version of the Land Code of Ukraine.

Specifics of investment activities are set out in the Laws of Ukraine On Public-Private Partnership, On Concessions, On General Principles of Creation and Functioning of Special (Free) Economic Zones, etc.

2.2. Making Investments

A foreign investor may make a cash contribution to a Ukrainian legal entity either through special investment accounts opened by the foreign investor with a Ukrainian commercial bank or by transferring funds from abroad directly to the bank account of its Ukrainian subsidiary.

Options investors generally have when making both portfolio and direct investments in Ukraine	Open an investment bank account in Ukraine and transfer funds in a foreign currency from abroad to this investment account.
	Transfer funds in a foreign currency from abroad directly to an account of a resident in Ukraine.
	Convert funds in a foreign currency kept in an investment account at a Ukrainian commercial bank into Ukrainian currency for further investment.
	Transfer funds in Ukrainian and foreign currencies from their investment account to an account of a resident in Ukraine or an investment account of another foreign investor.

2.3. Divestiture

The Foreign Investment Law provides that in the event of the termination of its investment activity, a foreign investor has the right, within six months of the date of the termination of such activity, to recover its investment in kind or in the currency of the investment to the amount of the actual



contribution (taking into account any possible reduction of charter capital), without the payment of any fees or duties. A foreign investor has the right to recover the benefits from its investments in cash or in kind on the basis of the actual market value of the investment at the moment of termination of the investment activity, unless otherwise stipulated by applicable Ukrainian legislation or international agreements to which Ukraine is a party.

2.4. Investment Incentives

All enterprises with foreign investment are taxed on their profits on par with other Ukrainian domestic enterprises, with the exception of certain state guarantees for foreign investments and the duty-free import of in-kind contributions to charter capitals of enterprises with foreign investment (see Section 2.1 above). The Foreign Investment Law also contemplates the possibility of the establishment of a priority regime with respect to certain projects with the participation of foreign investors, which will be implemented pursuant to state programs promoting key sectors of the economy, the social sphere and territories.

In addition, current Ukrainian legislation provides for the establishment of free economic zones. The legal status of foreign investments into such zones is regulated by separate legislation on free economic zones, under which foreign investors may be granted additional privileges and benefits.

2.5. Dispute Resolution

In the event of a dispute arising with respect to a foreign investment, a foreign investor may seek recourse through a number of institutions. As a general matter, the Foreign Investment Law provides that a dispute arising between a foreign investor and the state of Ukraine must be settled in Ukrainian courts, unless otherwise provided for by international treaties, while all other disputes involving a foreign investor must be settled in Ukrainian courts or in courts of arbitration (including international arbitration courts).

Furthermore, the Law of Ukraine On Foreign Economic Activity adopted on 16 April 1991 (the “LFEA”) allows parties to a commercial dispute to select a forum for its resolution. In accordance with Article 38 LFEA, disputes between parties regarding foreign economic activity may be resolved by Ukrainian courts, the International Commercial Arbitration Court, the Maritime Arbitration Commission of the Chamber of Commerce and Industry of Ukraine, or by other dispute resolution bodies chosen by the parties to the dispute. In addition, the Law of Ukraine On the International Commercial Arbitration Court adopted on 24 February 1994, specifically provides that both foreign investors and Ukrainian enterprises with foreign investment have the right to resolve disputes between themselves and third parties in international commercial arbitration courts.

As a party to the 1966 Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention or the Washington Convention), Ukraine shall recognize and enforce the awards of the International Centre for Settlement of Investment Disputes.

2.6. Investment Treaties

Ukraine is currently a signatory to Treaties on the Mutual Protection of Foreign Investments with various countries, including:

Albania, Argentina, Armenia, Austria, Azerbaijan, Belarus, the Belgium– Luxembourg Economic Union, Bosnia and Herzegovina, Brunei, Bulgaria, Canada, Chile, China, Croatia, Cuba, Czech Republic, Denmark, Egypt, Equatorial Guinea, Estonia, Finland, France, Gambia, Georgia, Germany,



Greece, Hungary, India, Indonesia, Iran, Israel, Italy, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Macedonia, Moldova, Mongolia, Morocco, the Netherlands, Oman, Panama, Poland, Portugal, Russian Federation, San Marino, Saudi Arabia, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Syria, Tajikistan, Turkey, Turkmenistan, the United Arab Emirates, the United Kingdom, the United States of America, Uzbekistan, Vietnam, Yemen and Yugoslavia.

Ukraine also signed Association Agreement with the European Union and the European Atomic Energy Community and their member states (the “Agreement”) in 2014 which became effective as of 1 September 2017. Pursuant to the Agreement, parties consented to cooperate and converge economic policy, legislation and regulation across a broad range of areas, including, *inter alia*, company and financial services laws, technical and consumer standards upheld by the European Union and establishment of a free trade area over transitional period of 10 years from effective date of the Agreement.

On 16 May 2008, Ukraine became a member of the World Trade Organization.