

THE LAW OF THE KYRGYZ REPUBLIC

On foreign investments in the Kyrgyz Republic

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This Law is aimed at the creation of legal, economic and organizational preconditions for attraction of foreign investments, development of the bases for a favorable investment climate in the Kyrgyz Republic for foreign investments. It establishes their legal regime, the procedure for settlement of investment disputes, and also regulates the protection and provision of foreign investors with guarantees.

Chapter I General provisions

Article 1. Basic concepts and terms used in this Law

1. Investments mean tangible and intangible assets, in particular:

money;

movable and immovable property;

property rights (mortgages, liens, pledges and others);

stock and other forms of participation in a legal entity;

bonds and other debenture liabilities;

rights (claims) to money, goods, services and any other claims to performance under a contract;

the right to intellectual property including goodwill, copyrights, patents, trade marks, industrial designs, technological processes, trade names, and know-how;

any right to activity based on a license or in other form given by State agencies;

concessions based on Law including concessions for search, development, mining or exploitation of natural resources;

profit received and re-invested within the territory of the Kyrgyz Republic.

The form in which property is invested, or a change of this form does not affect its nature as investments.

2. "Foreign investments" are investments appearing as contributions of foreign investors into objects of economic activity in the territory of the Kyrgyz Republic to derive profit.

3. "Foreign investor" means:

1) any individual who is:

a foreign citizen; or

citizen of the Kyrgyz Republic who has permanent residency status abroad provided that he is registered in the country of his permanent residency to conduct economic activity; or

a person without a citizenship, permanently living abroad;

2) any legal entity which is either:

created and registered in accordance with the legislation of a foreign State; or

founded in accordance with the legislation of the Kyrgyz Republic, and has its legal address or principal place of business on the territory of a foreign State; or

an enterprise with foreign participation, i.e. founded in compliance with the legislation of the Kyrgyz Republic, and also:

a) wholly owned by one or more foreign individuals, legal entities; or

b) controlled and managed by one or more foreign individuals, legal entities on the basis of: a written contract, the rights to exercise the majority of the voting shares, right to appoint the majority of the members in its executive or supervisory bodies; or

- c) in which not less than twenty percent (20%) of the Charter capital owned by foreign citizens, individuals without citizenship permanently living abroad or legal entities referred to in this Article;
- 3) a foreign State or its administrative-territorial unit conducting economic activity;
- 4) a legal entity created on the basis of an intergovernmental treaty or agreement.
4. "Profit" is the amount received as a result of investment activity and defined as the difference between total annual income and deductions as is defined by the Tax Code of the Kyrgyz Republic.
5. "Investment dispute" means any dispute between a foreign investor and the Kyrgyz Republic concerning a foreign investment.
6. "Freely tradable currency" means any currency determined as such by the International Monetary Fund.

Article 2. Priority of interstate agreements

Provisions of intergovernmental agreements and other acts ratified by the Jogorku Kenesh of the Kyrgyz Republic of which the Kyrgyz Republic is a signatory, shall have priority over the provisions of this Law.

Chapter II Guarantees for foreign investors

Article 3. Guarantees of national treatment, equitable and fair treatment, full and constant protection for foreign investors

1. The Kyrgyz Republic shall accord to foreign investors making investments within the territory of the Kyrgyz Republic fair, equitable legal treatment, full and constant protection, and guarantees.

The Kyrgyz Republic through its authorized governmental bodies shall abstain from interference in the economic activity, rights and legally recognized interests of foreign investors.

Officials of the Kyrgyz Republic who fail to comply with the provisions of this Article shall be held liable in accordance with the Laws of the Kyrgyz Republic.

2. The Kyrgyz Republic shall provide foreign investors, who make investments, with the national treatment of economic activity applied to legal entities and individuals of the Kyrgyz Republic within the exception that restrictions which can be introduced in the areas related to defense, the protection of national security, health of the population, and public morals.

Article 4. Guarantees of non-discrimination of foreign investors

The Kyrgyz Republic through its authorized governmental bodies shall permit no discrimination in respect of foreign investors on the basis of their citizenship, residency, religion, place of economic activity, and State of origin of investors or investments taking into account international agreements of the Kyrgyz Republic.

Article 5. Guarantees of protection from expropriation of foreign investments

1. Foreign investments shall not be subject to expropriation (nationalization, requisition or any other equivalent measure including inactivity on the part of the authorized governmental bodies of the Kyrgyz Republic which has the effect of forced alienating of assets of a foreign investor or depriving of an opportunity to use investment results), except in those instances when such expropriation is carried out for an overriding public purpose, on a non-discriminatory basis, in accordance with the required legal procedure, and accompanied by prompt, required and actual compensation.

2. Compensation shall be equivalent to the objective market value of the expropriated investment or the portion of the investment expropriated on the date the decision is adopted concerning expropriation.

3. Compensation shall be actually made and is required to be made in a freely traded currency. Compensation shall include interests corresponding to the interest rate of a long-term credits used by the National Bank of the Kyrgyz Republic calculated for the period between the date of expropriation and the date of compensation payment.

4. The required legal procedure will provide for the right of the foreign investor which claims to be effected by expropriation to prompt review, including the valuation of his investment and payment of compensation in accordance with the provisions of this Article by a judicial authority or any other competent authority of the Kyrgyz Republic without violating the procedure for compensation foreign investors under Article 23 hereof.

Article 6. Reimbursement of losses to foreign investors

1. Foreign investors who incurred losses related to their foreign investments within the territory of the Kyrgyz Republic as a result of a war or other military conflict, revolution, emergency situation, civil conflicts (unrest) or other similar circumstances shall be granted the legal status and conditions not less favorable than the status and conditions given to legal entities and individuals of the Kyrgyz Republic.

2. The Kyrgyz Republic through its authorized governmental bodies shall without delay and honestly fulfill all the obligations created by law in force or by any agreement with a foreign investor. If a foreign investor has incurred losses as a result of activity or inactivity of the Kyrgyz Republic's officials and such activities contradict the legislation of the Kyrgyz Republic, the foreign investor has the right to compensation in accordance with the Article 5 this Law.

Article 7. Guarantees for the use of incomes

1. Foreign investors shall have the right to use freely and to apply at their discretion their investments and incomes received from investment activities for any purposes which are not prohibited by the legislation of the Kyrgyz Republic.

2. For the protection and use of incomes and any other resources, foreign investors shall have the right to open in the territory of the Kyrgyz Republic accounts in the national and foreign currency in accordance with the legislation of the Kyrgyz Republic.

Article 8. Freedom of currency transactions

1. Currency transactions shall be carried out by foreign investors in accordance with the Law of the Kyrgyz Republic "On Foreign Currency Transactions" and other legislation of the Kyrgyz Republic on Currency Controls.

2. Foreign investors shall with respect to all payments relating to a foreign investment in the Kyrgyz Republic have the right to freely convert the national currency of the Kyrgyz Republic into any other currency.

3. All foreign investment-related foreign currency transfers in a foreign currency into and out of the Kyrgyz Republic shall be carried out freely and without delays under the condition of payment of taxes and other mandatory payments in accordance with the procedure established by the legislation of the Kyrgyz Republic.

Such transfers shall include:

profits, incomes, payments for services and commissions;

compensation received for losses incurred;

dividends, interest rates payments;

proceeds from the sale of one's property;

proceeds from the sale or liquidation of a part of or all investments;

membership dues fees, royalties, payments on management contracts, and expenses related to debt servicing;

the Charter capital and additional amounts to establish or increase a foreign investment;

payments made under contracts including local agreements;

payments arising from settlement of disputes;

salary and other remuneration to foreign employees;

proceeds legally received from other sources.

4. In the territory of the Kyrgyz Republic a foreign investor shall have the right to freely dispose of the National currency of the Kyrgyz Republic which belongs to the investor.

Article 9. Free access to the open information

1. Laws and regulations, and also court decisions which in any manner affect interests of foreign investors must be accessible to them, and in cases directly provided for by the legislation of the Kyrgyz Republic they must be published.

2. State bodies, at foreign investors' requests, shall provide them with information they are interested in accordance with to the procedure provided for by legislation of the Kyrgyz Republic.

Article 10. State body effectuating the attraction of foreign investments

1. A Governmental Organ to attract investments shall be created in order to facilitate the attraction, realization, development and protection of foreign investments in the Kyrgyz Republic.

2. To foreign investments the Governmental Organ effectuating the attraction of investments shall guarantee communication between foreign investors and the Kyrgyz Republic and will carry out the following functions:

1) preparation and distribution of information about investment opportunities and conditions in the Kyrgyz Republic;

2) advising potential foreign investors on legal, economic and other issues regarding a specific activity;

- 3) providing foreign investors with necessary information related to the licensing procedure of permissibility for carrying out activity and providing necessary assistance;
 - 4) developing proposals for all organs of the Kyrgyz Republic concerning improvement of the investment climate in the Kyrgyz Republic;
 - 5) within its power, representing the Kyrgyz Republic or participating on behalf of the Kyrgyz Republic in international negotiations or consultations on foreign investments;
 - 6) advising any organs and officials on the existing policy or a policy being planned in the area of foreign investments;
 - 7) performing other functions aimed at the attracting support, maintenance and protection of foreign investments in the Kyrgyz Republic.
3. Foreign investors shall, on equal basis, have the right but not the obligation to use services of the State Organs effectuating the attraction of investments concerning the development and protection of their interests.

Chapter III Rights and obligations of foreign investors

Article 11. Economic autonomy of foreign investors

1. Foreign investors shall have the right independently to attract legal entities and individuals, including foreign, on a contractual basis who are needed to realize their investments.
2. Foreign investors may establish subsidiary enterprises, as well as branches and representative offices within the territory of the Kyrgyz Republic in compliance with the legislation of the Kyrgyz Republic. Affiliates and representative offices shall act based upon procedural rules for them approved by their founding foreign investor.
3. A foreign investor may assign his property rights and authority concerning investments to other legal entities and individuals in accordance with the procedure established by laws of the Kyrgyz Republic. Interrelations between parties to an assignment of rights are regulated by law or by an agreement.
4. Foreign investors shall have the right to attract funds into the Kyrgyz Republic in the form of credits, issuance of securities and loans. Property and various types of property rights of an investor may be used as collateral to secure obligations of a foreign investor.

Article 12. Formation of charter capital

Foreign investors are free to choose the amount (size), composition and structure of the charter capital of a legal entity being created in accordance with requirements of the Civil Code of the Kyrgyz Republic and the law of the Kyrgyz Republic "On Economic Partnerships and Enterprises".

Article 13. The observance of Kyrgyz Republic laws by foreign investors

While conducting economic activity within the territory of the Kyrgyz Republic, foreign investors are obliged to observe laws of the Kyrgyz Republic, in particular, but not exclusively, concerning ecology and environmental protection, labor, health and municipal building requirements.

Article 14. Insurance of foreign investments

Legal entities with foreign participation may and, in circumstances specified by legislation of the Kyrgyz Republic, must be insured. Foreign investments may be insured both in the Kyrgyz Republic and outside its borders.

Chapter IV The creation and registration of legal entities with foreign participation

Article 15. The procedure for creation and registration of legal entities with foreign participation

1. A legal entity with foreign participation is created in accordance with the Civil Code of the Kyrgyz Republic and the Law of the Kyrgyz Republic "On Economic Partnerships and Enterprises".

2. State registration of legal entities with foreign participation shall be carried out at the Ministry of Justice of the Kyrgyz Republic in accordance with the Civil Code of the Kyrgyz Republic and the law of the Kyrgyz Republic "On State Registration of Legal Entities" with consideration of special requirements set forth in this law.

Article 16. Special requirements for state registration of legal entities with foreign participation

1. In addition to the documents provided in the law of the Kyrgyz Republic "On the State Registration of Legal Entities," a foreign investor must provide the Ministry of Justice of the Kyrgyz Republic with the following documents or their notarized copies with a notarized translation in the Kyrgyz or Russian languages:

for a foreign individual:

a passport, but for an individual without a citizenship any other document which verifies his identity;

for a foreign legal entity:

an extract from a trade register, certificate or any other document which verifies that the foreign participant is a legal entity in accordance with the legislation of the country where the given legal entity has been registered.

2. For conducting specific types of activity, foreign investors shall obtain licenses in accordance with the law of the Kyrgyz Republic "On Licensing".

Chapter V

Taxation of foreign investors and accounting

Article 17. Taxation of foreign investors

Unless this Law states otherwise, the taxation of foreign investors and foreign investments shall be carried out in accordance with the tax legislation of the Kyrgyz Republic.

Article 18. Accounting and reporting

1. Foreign investors must keep accounting records and reporting according to the rules in force in the Kyrgyz Republic.

2. Foreign investors shall be obliged to present reporting documents and information to tax, statistics and other agencies according to the procedure established by legislation of the Kyrgyz Republic.

Chapter VI

Instructions of the labor legislation for foreign investors

Article 19. Labor relations with citizens of the Kyrgyz Republic

Citizens of the Kyrgyz Republic who work at enterprises which are fully or partially owned by a foreign legal entity or individual and which are located in the territory of the Kyrgyz Republic shall be subject to laws and other legal acts which are in effect within the territory of the Kyrgyz Republic.

Article 20. Attraction of foreign workers

1. Foreign citizens may be hired as employees by foreign investors and may be part of the management of a legal entity with foreign participation.

2. The Kyrgyz Republic through its authorized governmental bodies shall assist the entry and stay of foreign citizens related to activity concerning the conducting of foreign investments for the period of their work in the Kyrgyz Republic in compliance with the legislation of the Kyrgyz Republic.

3. Labor relations between foreign investors and their employees who are not nationals of the Kyrgyz Republic shall be regulated by laws chosen in their labor agreements. These labor agreements may not establish standards lower than mandatory requirements established by the Labor Code of the Kyrgyz Republic. In the event that there is no such labor agreement Laws and other legal acts of the Kyrgyz Republic on labor shall apply to foreign citizens who work at enterprises located in the territory of the Kyrgyz Republic.

Article 21. Social insurance and security

1. Foreign investors shall be obliged to pay for its employees required contributions to the Social Fund and other non-budget special purpose financial funds established by Law.

2. Foreign investors and employees shall be exempt from mandatory contributions to the Social and other funds of the Kyrgyz Republic in the amount which correspond to the amount of paid payments to corresponding funds of a foreign State.

Chapter VII Final provisions

Article 22. Foreign investments in free economic zones

Specifics about foreign investments in free economic zones shall be regulated in accordance with legislation of the Kyrgyz Republic on free economic zones.

Article 23. Settlement of investment disputes

1. Without limiting other means of legal protection which could be used by a foreign investor in accordance with the legislation of the Kyrgyz Republic an investment dispute shall be settled in accordance with any applicable which is previously agreed upon between the foreign investor and the authorized governmental organs of the Kyrgyz Republic.

2. When such an agreement is absent, an investment dispute between the authorized governmental organs of the Kyrgyz Republic and a foreign investor shall be settled, if possible, through consultations between the parties thereto. If the parties thereto cannot come to a peaceful settlement of the dispute within three months from the day of the first written request for such consultations, the dispute shall be settled through arbitration in accordance with one of the following procedures:

Regulations of the Third Party Arbitration Court under the Chamber of Industry and Commerce of the Kyrgyz Republic;

The Convention concerning the procedure for the settlement of investment disputes between governments and citizens of any other states, ("Convention ICSID" signed in Washington DC on March 19, 1965) if applicable;

Arbitration (Auxiliary) regulations of the International Center for the settlement of the investment disputes (ICSID), if applicable;

Arbitration regulations of the Commission of the United Nations Organizations on International Trade Law (UNCITRAL Regulation); in this case the appointing body shall be General Secretary of ICSID.

3. The Kyrgyz Republic through its authorized governmental body shall consent to the transfer of the investment dispute for arbitration by virtue of this law. A foreign investor's agreement may be given at any time through a written notification to the State Body effectuating the attraction of investments or at the moment of resort to the arbitration.

4. Disputes between foreign investors and individuals or legal entities of the Kyrgyz Republic are resolved upon the agreement of the parties through a Third Party Arbitration Court located inside or outside the Kyrgyz Republic. In the event that there is no such agreement the disputes are decided in accordance with the procedure established by legislation of the Kyrgyz Republic.

A decision of the Court shall be binding and final.

Article 24. Application and protection from denouncement

1. No legislative act of the Kyrgyz Republic which worsen the legal regime of foreign investors established by this Law shall be retroactive.

2. If any provision of this law is changed or is abolished, and such change or abolishment will cause worsening of a foreign investor's condition, then the foreign investor shall have the right to compensation for any losses incurred which is thereby caused in compliance with Article 5 hereof.

3. Benefits provided in Part I of Article 20 and in Article 23 of the Law of the Kyrgyz Republic "On foreign investments in the Republic of Kyrgyzstan" (Vedomosti of the Supreme Soviet of the Republic of Kyrgyzstan, 1991, # 13, page 449) with amendments and supplements as of May 7, 1993, and July 28, 1995, (Vedomosti of Jogorku Kenesh of the Kyrgyz Republic, 1993, # 9, page 181; 1995, # 10, page 390) before the expiration of the term of their validity shall be applied to foreign investors registered in the Kyrgyz Republic before this Law comes into force.

Article 25. Enactment procedure for this Law

1. This Law shall come into force from the moment of publication.

2. The Law of the Kyrgyz Republic "On foreign investments in the Republic of Kyrgyzstan" (Vedomosti of the Supreme Soviet of the Republic of Kyrgyzstan, 1991, # 13, page 449) is no longer in force, except as provided in parag.1 of Article 20 and Article 23 of that Law in application to parag.3 of Article 24 of this Law.

3. The Cabinet of Ministers of the Kyrgyz Republic within a three month period shall:
prepare and submit to Jogorku Kenesh of the Kyrgyz Republic proposals on bringing normative acts in compliance with this law;
bring its own decisions in compliance with this law.

President of the Kyrgyz Republic A.Akaev

Adopted by the Legislative Assembly of September 16, 1997
Jogorku Kenesh of the Kyrgyz Republic