

Moldova, Republic of

Law of The Republic of Moldova on Investments in Entrepreneurial Activity (2004)

Unofficial translation

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Law of The Republic of Moldova on Investments in Entrepreneurial Activity

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[Preamble]

Taking into consideration the exclusive importance of attraction of the investments to the Republic of Moldova, the necessity of encouragement and protection through creation of stable and equal legal, social and economical conditions for investment activity, the necessity of providing the equal guarantees for foreign and domestic investors, and also prevention and elimination of barriers impeding the investment activity,

Based on the sub-item r), item 3, art. 72 of the Constitution of the Republic of Moldova, the Parliament adopts this organic law.

Chapter I. General provisions

Article 1. Field of application

This law shall establish legal, social and economic principals of organization and development of investment activity on the territory of the Republic of Moldova, defines rights and responsibilities of investors, responsibilities and sphere of duties of public authorities in the sphere of investment activity, guarantees provided by the state for local and foreign investors, methods of resolution of investment disputes, as well as methods of regulation of activity of enterprises with foreign investments.

Article 2. Legal framework

- 1) Investments in the Republic of Moldova are regulated by the Constitution, this law, and regulatory acts, as well as by international agreements to which the Republic of Moldova makes part.
- 2) If provisions of international agreements, to which the Republic of Moldova makes part, differ from provisions of this law, provisions of international agreements shall be applied.
- 3) Force of this law shall not apply to investments made by non-business (non-profit) organizations targeted to achievement of socially useful goals, including those related to education, charity, sponsorship, science, and religion. These relations shall be regulated by the corresponding legislation of the Republic of Moldova.

Article 3. Key terms

The following key terms shall be used in this law:

- investment - aggregate of values (assets), invested in any entrepreneurial activity on the territory of the Republic of Moldova, with a view of gaining profit;
- foreign investments – investments made by foreign investors in any entrepreneurial activity in the Republic of Moldova, including profits gained from this investments and reinvested on the territory of the Republic of Moldova;
- investment activity – activity related to investment and to carrying out of entrepreneurial activity in connection with this investment with a view of gaining profit;

- public authority - organizational structure or body, established by the law or regulatory administrative act, that acts as public authority with a view of fulfillment of public interests;

investment disputes – misunderstanding or disagreement between investor and public authority with regard to investments, including with regard to:

- a. investment activity;

- b. interpretation of any action or inaction of public authority within this law, other laws of the Republic of Moldova, or international law;

- c. any agreement, to which the Republic of Moldova and investor make part.

- investor – individual or legal person carrying out investment activity on the territory of the Republic of Moldova;

- foreign investor – person carrying out investment activity in the Republic of Moldova, namely:

- a. individual – foreign citizen having permanent residence in other country or stateless person but with permanent residence outside the Republic of Moldova;

- b. legal person, founded according to legislation of other country, with permanent residence in this country, or legal person which is located, or has central administration or the principal place of business registered in another country;

- c. organization or association, created on the basis of contract closed between states and other subjects of international law.

Article 4. Investment forms

1) Investments may be in the following forms:

- a. right of ownership over real estate and movables, as well as other proprietary rights;

- b. any right entitled by law or contract; any license or permit, issued in compliance with current legislation, including concessions to survey, cultivation, extraction, or exploration of natural resources;

- c. rights, arising from stocks, shares, or any other form of participation in commercial societies;

- d. monetary means;

- e. rights, arising from debt liabilities or any other liabilities to investor, which have economic and financial value;

- f. intellectual property rights: industrial property rights (patents for invention, useful models, trademarks, and service marks, brand names, name of places of origin of commodities, design and drawings, patents for varieties of plants, topography of integrated micro schemes), author's rights, and other allied rights, trade secret (know-how), goodwill.

2) Investment form in which values were invested, or modification of this form, shall not reflect on their character as investments.

3) Profits, obtained on account of investments, and invested in entrepreneurial activity on the territory of the Republic of Moldova, shall be also considered investments.

4) Domestic investors shall invest in the form of financial means only in units of national currency of the Republic of Moldova, whereas foreign investors shall invest in other convertible currency, too.

Chapter II. Investment principals

Article 5. Freedom to invest

- 1) Investors shall invest in any field of entrepreneurial activity on the entire territory of the Republic of Moldova in compliance with current legislation, provided interests of national security are not affected, provisions of antitrust legislation, norms of environment protection, people's health, and public order are not violated.
- 2) The Republic of Moldova shall ensure the regime of full and constant security and protection of all investments regardless of their forms, in compliance with current legislation, international agreements on mutual promotion and protection of the investments, to which the Republic of Moldova makes part.

Article 6. Investments non-discrimination

- 1) Investments in the Republic of Moldova shall not be discriminated based on citizenship of investor, place of residence, place of registration or business activity, country of origin of investor or investment, or any other reasons.
- 2) Investors shall be offered fair and equal conditions for their activity, excluding the use of measures of discrimination, which could impede management, operation, maintenance, use, profits, acquisition, expansion or dealing with investments.
- 3) Any privilege, offered to investors in compliance with current legislation as to assist the state in pursuing regional, structural policy, environmental, research and development policy, or offered to investor for execution of its investments, which does not contradict to provisions of international agreements, to which the Republic of Moldova makes part, shall be observed and shall not be subject to discrimination.

Article 7. Transparency

- 1) Laws and regulatory acts that are directly or indirectly related to investments, shall be published in compliance with current legislation.
- 2) Public authority, intending to develop or is developing a new investment policy, shall organize public consultations before carrying out such policy, as well as shall publish or make it accessible along with explanatory documents in case if such policy has already been adopted.
- 3) Public authorities shall answer to all the inquiries made by investors and submit information concerning investments or any other information in relation to investments and investment activity on the territory of the Republic of Moldova.

Article 8. Investors discharge of duties

- 1) Investors shall invest in compliance international agreements, to which the Republic of Moldova makes part, this law and other legislative acts, and also in accordance with standards (norms, rules, etc.) adopted in the established procedure.
- 2) Investors, including foreign investors, shall comply with the legal requirements of public authorities.
- 3) Under violation of law, contractual obligations, investors shall be liable in compliance with legislation of the Republic of Moldova.

Chapter III. Investment protection

Article 9. Guarantee of investors rights observance

- 1) Public authorities shall observe investors' rights, entitled by law.
- 2) Under public authority's violation of investor's rights, the latter shall have to demand recognition of its rights and ask for damage compensation.

Article 10. Guarantee of non-expropriation or other similar actions

- 1) Investments shall not be expropriated or subject to any other similar measures, which can directly or indirectly deprive investor of its property right or the right to control investments, except for the cases, envisaged in item (2).
- 2) Investment activity shall be compulsorily terminated only in the simultaneous presence of the following conditions:
 - a. given measure is undertaken for the general public use;
 - b. given measure is not a discrimination measure;
 - c. condition of preliminary and equivalent damage compensation is observed.
- 3) Public usefulness and damage compensation are regulated by legislation on expropriation for public use (public interests).

Article 11. Guarantee against losses

- 1) In compliance with current legislation, investor shall enjoy the guarantee against losses as a result of its rights' violation, also as a result of acts adopted by the public authority, which violates investor's rights and interests, or any other unlawful actions of the body of public administration.
- 2) Amount of compensation shall be equal to the real cost of caused damage at the moment of its causation.
- 3) Damages, including loss of profit incurred by investor as a result of execution of any instruction of public authority or official, violating the rights of investor, and also damages caused as a result of non- fulfillment or improper fulfillment of obligations to investor by public authority or official (obligations shall be stipulated in this law and other legislative acts of the Republic of Moldova); damages shall be compensated at the expense of public authority to have caused the damage to investor.
- 4) Amount of compensation shall be paid in the currency the investment was made, or any other convertible currency, if investment was made in convertible currency.

Article 12. Additional guarantees

Public authorities, within the range of their competence, and in accordance with current legislation shall have the right to grant additional guarantees to investors, particularly, through pledging of property owned by these authorities.

Article 13. Tax and customs facilities

Tax and customs facilities shall be granted to investors in accordance with fiscal and customs legislation of the Republic of Moldova.

Chapter IV. Investment disputes

Article 14. Resolution of investments disputes

- 1) Investment disputes shall be resolved by mutual agreement.
- 2) In the event of failure to resolve the dispute by mutual agreement the latter shall be subject to resolution by a competent court instance of the Republic of Moldova or, upon mutual consent, by the ad hoc or permanent arbitration.
- 3) If the parties agreed to resolve the dispute at the arbitration, they shall expressly confirm this fact, specifying, if necessary, rules of practice, selected in compliance with legislation of the Republic of Moldova on arbitration.

4) If the parties agreed to resolve the dispute at ad hoc arbitration, the following rules of practice shall be taken into account:

- a. Arbitration Rules of United Nations Commission on International Trade Law (UNCITRAL Rules);
- b. Arbitration Rules International Chamber of Commerce of Paris, approved on January 1, 1988 (ICC Rules);
- c. other principles, norms, rules, established by the parties.

5) If the parties agreed to resolve the dispute at the permanent arbitration, there shall be taken into account international agreements, to which the Republic of Moldova makes part, including:

- a. The 1958 New York Convention on the Recognition and Enforcement of International Arbitration Awards;
- b. European Convention on International Commercial Arbitration of 1961 Done at Geneva;
- c. The 1962 Paris Agreement Relating to Application of the European Convention on International Commercial Arbitration.

6) Labor disputes between management of enterprise with foreign investments and its employees shall be adjudicated in compliance with legislation of the Republic of Moldova, if otherwise not envisaged for foreign employees in individual labor contracts.

Article 15. Applicable law

Investment disputes shall be resolved based on the legislation of the Republic of Moldova, if the parties did not agree otherwise.

Article 16. Binding effect of arbitral awards

Any arbitral award, adopted in compliance with provisions of this Chapter, shall be binding to the parties. At that, they shall receive originals or authenticated copies of awards.

Chapter V. Special provisions on foreign investors and foreign investments

Article 17. Enterprises with foreign investments. Associations of enterprises

- 1) In the Republic of Moldova, enterprises with foreign investments can be created in the form of joint ventures and enterprises with participation of foreign capital.
- 2) Joint venture is enterprise, created in compliance with legislation of the Republic of Moldova, whose statutory capital is partially formed of foreign investments.
- 3) Enterprise with participation of foreign capital is enterprise, created in compliance with legislation of the Republic of Moldova, whose statutory capital is entirely formed of foreign investments.
- 4) Enterprises with foreign investments shall have the right to create international associations and organizations, as well as be member of international associations and organizations.

Article 18. Registration, operations, and dissolution of enterprise with foreign investments

- 1) Procedure of registration, operation, and dissolution of enterprise with foreign investments shall be identical to registration, operation, and dissolution of domestic enterprises, and shall be carried out in compliance with current legislation of the Republic of Moldova.

2) To register enterprise with foreign investments submitted shall be documents envisaged in legislation on state registration of enterprises and organizations.

3) Enterprise that had been created without participation of foreign investments, and afterward was completely purchased by foreign investor, shall acquire status of enterprise with foreign capital in compliance with current legislation.

4) If foreign investor purchases shares ownership interests (shares) of enterprise that was initially created without participation of foreign investments, this enterprise shall acquire the status of joint venture in compliance with current legislation.

Article 19. Branch offices and agencies

1) Nonresident enterprises, their associations and international organizations shall have the right to establish branch offices and trade and economic agencies in the Republic of Moldova.

2) Branch offices of nonresident enterprises, their associations and international organizations, established on the territory of the Republic of Moldova, shall acquire the status of enterprise entirely owned by foreign investor, starting with the day of registration thereof in the form and manner envisaged in Article 18.

3) Agencies of nonresident enterprises shall be registered on the territory of the Republic of Moldova in compliance with current legislation as unincorporated company and shall not have the right to carry out business activity.

4) Enterprises with foreign investments shall have the right to establish branch offices and trade and economic agencies both on the territory of the Republic of Moldova, and outside its territory, if it is envisaged in enterprise's foundation documents.

5) Branch offices and agencies created in the Republic of Moldova by (resident) enterprises with foreign investments shall not be legal entities.

Article 20. Social insurance and social security

1) Social insurance and social security of employees of enterprise with foreign investments shall be maintained in compliance with legislation of the Republic of Moldova. Enterprise shall have the right to transfer national insurance contributions to the Social Insurance fund only for those foreign employees, who manifested the desire to use medical maintenance and social security in the Republic of Moldova. This desire shall be also applicable in case of payments to the Retirement Fund according to legislation of the Republic of Moldova.

2) Allocations to social insurance and social security of employees on board of enterprises with foreign investments shall be carried at uniform rate in the national currency of the Republic of Moldova.

Article 21. Transfer of monetary means and property obtained on account of foreign investments

1) Monetary means and property, obtained on account of foreign investments, shall be freely used and transferred on the territory of the Republic of Moldova and outside, after fulfilling tax liabilities. Foreign investors shall have the right to freely convert national currency of the Republic of Moldova and foreign currency, and conversely, in compliance with legislation of the Republic of Moldova.

2) Monetary means and property, envisaged in item (1), shall particularly include:

a. profit, interests, return on investments, and other current revenue;

b. monetary means obtained on contractual basis, including reimbursed debts and interests on such debts;

c. periodical payments, returns, and other amounts, obtained on account of execution of rights over intellectual property, envisaged in sub-item f) item (1) art. 4;

d. compensation (reparation of losses), envisaged in this law and other legislative acts of the Republic of Moldova;

e. amounts obtained on account of resolution of any disputes;

f. salaries and honorariums to employees, hired abroad and admitted to work in connection with investments on the territory of the Republic of Moldova, to the amount and in the form and manner, established by legislation of the Republic of Moldova;

g. amounts and property, which make up the investments, obtained or left after dissolution of enterprise;

h. amounts obtained by investor in connection with proposal of investments or expropriation of investments.

3) In compliance with this law, monetary means, envisaged in items (1) and (2), may be converted and transferred through the licensed banks of the Republic of Moldova, by applying procedures that are established by legislation of the Republic of Moldova.

4) Monetary means shall be converted at the exchange rate of the licensed bank of the Republic of Moldova.

5) Foreign investors shall have the right to export from the Republic of Moldova their profits, left after fulfillment of tax liabilities, or part of these profits in the form of products, purchased on the domestic market of the Republic of Moldova, if it shall not contradict the legislation of the Republic of Moldova.

Article 22. Real estate regime

Foreign investors shall have the right to take possession, in compliance with legislation of the Republic of Moldova, of real estate on the territory of the Republic of Moldova to carry out business activity, except for agricultural lands and forestry fund lands.

Article 23. Guarantee of Acknowledgement of Cession of Rights

Republic of Moldova shall acknowledge cession of right of foreign investor over its investments on the territory of the Republic of Moldova to other state or legal entity from other state.

Chapter VI. Duties of public authorities in investment activity

Article 24. Development and execution of state policy in investment activity

1) State policy in investment activity shall be developed and executed by the Government.

2) Ministry of Economy shall act as executive agency, authorized to carry out the investment policy and coordinate the activity targeted to attraction of investments to the Republic of Moldova.

Chapter VII. Final and transitional provisions

Article 25

1) Starting with the effect date of this law, the Law on Foreign Investments, No. 998-XII, as of April 1, 1992, shall be null and void.

2) Foreign investors to have made investments and enjoyed guarantees and facilities in compliance with Law on Foreign Investments, No. 998-XII, as of April 1, 1992, shall have the right to further use all guarantees and facilities accorded by this law.

3) Within a three-month period, the Government shall:

a. submit to the Parliament proposals about bringing of legislation into accordance with this Law;

b. bring its regulatory acts in accordance with this law;

c. submit to the Parliament proposals on amendments to the tax and customs legislation as to provide foreign and domestic investors with equal rights.

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