

Turkmenistan

Law on Investment Activities (1992)

Unofficial translation

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Law on Investment Activities

[Preamble]

The present Law defines legal, economic and social conditions of investment activities on the territory of Turkmenistan. It aims at ensuring equal protection of rights, interests and assets of a subject of Investment activities regardless of property forms.

Chapter I. General provisions

Article 1. Investments

Investments mean all kinds of property and intellectual values invested into the objects of entrepreneurial and other kinds of activities resulting in generating profit or obtaining social benefit. Such values may be the following:

- funds, special bank deposits, shares, stocks and other securities;
- movable property and real estate (buildings, constructions, equipment and other material values);
- rights of land and other natural resources use, and other property rights;
- property rights related to copyright, know-how, experience and other intellectual values;
- other values.

Investments into the reproduction of capital funds may be carried out in the form of capital investments.

Article 2. Investment activities

1) Investment activities shall be understood to mean the total of practical actions of the State, physical and juridical persons on realization of investments.

2) Investment activities are realized on the basis of:

- investing implemented by physical persons, economic associations, companies and partnerships, as well as public and religious institutions or by other juridical persons of Turkmenistan irrespective of property forms;
- state investing implemented by governmental bodies and authorities of Turkmenistan, by bodies of the local executive power on account of budgets, non-budget funds and loans, as well as by public enterprises and institutions on account of their own funds and loans;
- investing by foreign states, juridical and physical persons as well as by persons without citizenship;
- joint investing by Turkmenistan and foreign states, by foreign legal entities and physical persons as well as by persons without citizenship.

Article 3. Objects of investment activities

Objects of investments activity shall be newly established and up-dated capital funds and circulating capital in all branches and spheres of economic activity; securities, special monetary deposits, science-based technological products, intellectual values, other property units as well as property rights. It is prohibited to invest in the objects if their establishment or utilization do not satisfy any of seismic, fire-explosive, sanitary-hygienic, ecological, city-building requirements or if it may cause damage to legally protected rights and interests of citizens, juridical persons and the state.

Article 4. Subjects of investment activities

1) Subjects (investors and participants) of investment activities may be physical and juridical persons of Turkmenistan and other states as well as foreign states themselves.

2) Investors- subjects of investment activities, adopting decisions on investment of their own funds, loans and attracted property and intellectual values. Investors may act as depositors, creditors, buyers, as well as perform functions of any participant of investment activities.

3) Participants of investment activities shall be physical and juridical persons of Turkmenistan and other states, realizing investments as executors of orders or on the basis of investor's assignment.

Article 5. Turkmenistan legislation concerning investment activities

Matters related to realization of investment activities in Turkmenistan shall be regulated by the Present Law and by other legislative acts of Turkmenistan. Investment activities are regulated as follows:

- in the case the investments of Turkmenistan's subjects are made in the other countries, such investments are regulated by legislation of the states on the territory of which these investment activities are realized, by adequate international agreements, interstate treaties as well as special Turkmenistan legislation;
- in the case the investments of other states' subjects are made in Turkmenistan such investments are regulated by the Present Law and special Turkmenistan legislation.

Chapter II. Realisation of investment activities

Article 6. Investor's rights

1) All investors have equal rights on realization of investment activities. The investor's right to invest property and intellectual values into objects non-prohibited by the Present Law and other Turkmenistan legislation is unrestrictedly considered to be his inalienable right and is protected by Law.

2) An investor on his own defines the extent, directions and efficiency of investment realized by him and at his discretion on an agreement basis invites physical and juridical persons who may be necessary for realization of investment.

3) By an investor's derision his rights of ownership, utilization and disposal of investment as well as the results of its realization may be assigned to another physical and juridical persons according to the legally established procedure. The relations between the parties on such assignment of rights shall be regulated on the basis of agreements.

4) Financial means in the form of credits as well as the issue in accordance with the legally established procedure of securities and bonds may also be used for investment. Investor's property may be used by him as a guarantee his commitments. Property may be pawned only if it is owned by the borrower or is at his full disposal if otherwise is not stipulated by legislative acts of Turkmenistan. On violations of pawn commitments the pawned property may be sold in accordance with the legally established procedure.

5) An investor is authorized to own, utilize and dispose of the objects and results of the investment including reinvestment and commercial operations on the territory of Turkmenistan in accordance with Turkmenistan legislation. Turkmenistan legislation may stipulate for the objects investment in which does not entail an acquisition of the property right, but does not preclude the possibility of subsequent ownership, operative management or investor's participation in getting profits from these objects' operation, and investors of foreign states are granted the right of exporting out of Turkmenistan.

6) An investor is authorized to purchase required property from physical and juridical persons directly or through his agents on prices and terms determined by the parties' agreements provided it does not contradict legislative acts, without any restrictions concerning extent or nomenclature.

Article 7. Relations between the subjects of investment activities

1) The main legal document regulating interrelations between the subject of investment activity is a contract (agreement). Conclusion of contracts, selection of partners, determination of commitments and other terms of economic interrelations not contradicting Turkmenistan legislation shall be an exclusive competence of the subjects of investment activities. Intervention of governmental bodies and officials in realization of contractual. Relations between the subjects of investment activities is not permitted except for the cases stipulated by the Present Law. Subjects of investment activities are authorized to organize competitions (auctions) for the attraction of physical and juridical persons to realization of investment activities.

Article 8. Obligations of the subjects of investment activities

1) In the cases and orders established by Turkmenistan legislation an investor is obliged:

- to present a declaration on the extent and resources of investments, effected by him, to the bodies authorized by Turkmenistan Cabinet of Ministers;
- to obtain all necessary permissions and arrangements of appropriate authorities and special bodies for capital construction;
- to obtain the results of the State Expertise on investment projects concerning observance of standards and rules of seismic, fire, explosive, sanitary-hygienic, ecological and city-building requirements.

2) Subjects of investment activities are obliged:

- to observe standards and rules determined by Turkmenistan legislation;
- to avoid unfair competition and to follow the requirements of anti-monopoly regulation;
- to fulfill the requirements of government bodies and officials, laid within the limits of their competence;
- to submit bookkeeping and financial reports in accordance with the established procedure.

3) Every participant of investment activities, performing special types of works, which require proper certification of the performer must have a license on performing such type of works. A list of such works and the procedure of their licensing is determined by the competent bodies of Turkmenistan.

Article 9. Financial resources of investment activities

Investment activities may be performed by means of:

- investor's own financial resources (profits, amortization fund, money accumulations, savings of citizens and juridical persons etc.);
- investor's borrowed financial funds (bonds, bank and budget credits);
- investor's attracted financial funds (funds generated by stock sales, share payments and other payments of citizens and juridical persons);
- budget investment grants.

Chapter III. Governmental regulation and management of investment activities

Article 10. Objectives of governmental regulation of investment activities

Governmental regulation of investment activities is performed with the purposes of implementation of economic, science-technical and social policy of Turkmenistan and must envisage favorable terms for any investors investing in the state priority sectors. A list of priority branches offering favorable investment terms is approved and periodically revised by the Cabinet of Ministers of Turkmenistan making a differentiation by the regions.

Article 11. Forms of governmental regulation of investment activities

1) Governmental regulation of investment activities comprises regulation of terms of investment activities and direct management of state investments.

2) Governmental regulation of terms of investment activities is performed by government bodies of Turkmenistan in accordance with the legislation:

- by the system of tax privileges provided by taxation legislation;
- by the implementation of amortization policy, including shortened term of amortization of capital stock. Amortization privileges for the certain branches and spheres of economy, elements of capital stock or kinds of equipment may be determined on a differentiation basis;
- by allocations of grants, subsidies, subventions, budget loans for the development of the certain regions, branches, productions;
- by implementation of monetary policy, state norms and standards, anti-monopoly measures, privatization of state property including non-completed construction objects and pricing policy;
- by the terms of land-tenure and utilization of other natural resources, expertise of investment projects.

Non-budget investment funds established in accordance with the legislation of Turkmenistan as well as funds of support of small-sized enterprises may also be involved as economic methods of governmental regulation of investment activities. The State creates conditions for activation of investment activities by physical persons, economic associations, societies and companies as well as public and religious organizations, other juridical persons in the priority sectors of the economy, as well as for involving them in participation in state investment activities including implementation of special state complex programs by means of the issue and sale of shares, attraction of sharing payments and other measures.

Article 12. Co-operation of Turkmenistan with other states

The co-operation of Turkmenistan with other states in realization of investment activities is implemented by means of adjustment of the economic legislation and arrangement of investment policy, elaboration and realization of joint state special science-technical, economic, social, ecological, and other programs being of common interest as well as programs on liquidation of consequences of natural disasters, foundation and functioning of the fund of regional development and social security of the population. On its own territory Turkmenistan establishes the order of realization and guarantees protection of investments.

Article 13. Procedure of decision-making for state investments

1) Decisions on state investments are adopted on the basis of forecasts for economic and social development of Turkmenistan and schemes of labor development and distribution and special science-technical and complex state programs and feasibility studies, determining the high return of these investments.

2) Drafts of special complex state programs shall be elaborated in accordance with the procedure determined by the Cabinet of Ministers of Turkmenistan with the participation of local executive bodies and public organizations concerned.

3) On planning state investments the Cabinet of Ministers of Turkmenistan with participation of local executive authorities shall ensure their correspondence to the amounts of investments required for implementation of special complex programs and to the amounts of the state order for the fixed time.

4) State budget allocations shall be assigned only for the most significant construction objects of the state order and for realization of the state programs.

Article 14. Expertise and approval of state investments in capital constructions

1) State, inter-state and regional projects as well as special programs, realized by means of state investment are subject to the obligatory state expertise and approval in accordance with the procedure established by the Cabinet of Ministers of Turkmenistan. In the course of the expertise shall be drawn the conclusion concerning investment completion of each program or project linked to the previously adopted programs and projects.

2) Projects, economic feasibility studies and economic calculations for the objects constructions regardless of financial resources are subject to the obligatory state expertise concerning observance of seismic, fire, explosive, sanitary-hygienic, ecological and city-buildings requirements.

Article 15. Procedure of allocation of state orders for capital construction

1) One of the forms of state investment realization shall be state orders for capital construction.

2) The aim of a State order for capital construction is to establish the highly significant production capacities and non-production objects in priority branches and directions of the economy with determination of the time of putting in operation.

3) As a rule, a state order is placed on a competitive basis. For the period of transition to the market economy Cabinet of Ministers of Turkmenistan is authorized to place State orders, obligatory for all state enterprises and organizations-participants of investment activities, taking into account economic profits of such orders for enterprises and organizations. The Cabinet of Ministers of Turkmenistan approves a list of privileges and advantages rotated to priority fulfillment of state orders.

4) State orders for construction of objects are approved after the agreement of their placement with local executive bodies according to the legislation of Turkmenistan.

5) Any participant of investment activities has a right to participate in a competition for obtaining the State order for capital construction.

6) Acceptance of an object of the State order for further operation is done in accordance with the procedure established by the Cabinet of Ministers of Turkmenistan.

7) Final settlements with contractors concerning objects of the State order shall be fulfilled after state commission approves the acts.

Article 16. The procedure of state investing into securities, deposits, movable property, real estate and other values.

- 1) The amounts of state investing into securities, deposits, movable property, real estate and other values are determined by the Cabinet of Ministers of Turkmenistan.
- 2) Investment projects concerning the above mentioned directions shall pass through the state expertise according to the procedure established by the Cabinet of Ministers of Turkmenistan.

Article 17. Activities of local executive bodies on realization of state investments

Local executive bodies practice investments according to the present Law and the Law of Turkmenistan "On Property".

Article 18. Pricing in the investment activities

The cost of production (works, services) in the process of performing investment activities is mostly defined by agreed prices, including the results of competitions (auctions); the agreed cost of construction financed by the state budget of Turkmenistan is determined by existing estimate norms and prices, taken as a recommendation, with the compensation of extra expenditures.

Chapter IV. Guarantees of rights and protection of investments

Article 19. Guarantees of the rights of investment activities subjects

- 1) Turkmenistan guarantees stable rights of subjects of investment activities. In the cases of adopting legislative acts which provide for the restriction of rights of the subjects of investment activities, adequate provisions of such acts shall not come into effect before 10 years from the date of their promulgation.
- 2) In the case of adoption by the state bodies of acts which violate the rights of investors and participants of investment activities, the losses including lost profit incurred by the subjects of investment activities as a result of adoption of the above mentioned acts shall be reimbursed by such bodies according to the judgement of the Court. Should such bodies have a shortage of funds the damage shall be reimbursed by the Cabinet of Ministers of Turkmenistan. State bodies and their officials are not authorized to interfere with investment activities except the cases when such interference is permitted by the legislation and exercised within the limits of competence of mentioned bodies and their officials. No person is authorized to restrict (the investors' right to choose investment objects except the cases stipulated by the legislation of Turkmenistan.
- 3) Termination or suspension of investment activities may take place by the decision:
 - of investors who in their turn shall reimburse the damage to the participants of investment activities;
 - of an authorized state body.

State body's decision to terminate or suspend investment activities may be adopted by the following reasons:

- if the investor is legally declared bankrupt on account of insolvency;
- natural calamities, accidents etc;
- introducing the state of emergency;

- if in the course of investment activities it is found out that its continuation would lead to violation of the legally established sanitary-hygienic, ecological, economic and other standards, legally protected rights and interests of citizens, juridical persons and State. In such case the procedure of reimbursement to participants of investment activities shall be determined by the legislation of Turkmenistan.

Article 20. Responsibility of subjects of investment activities

In case subjects of investment activities do not observe contractual obligations they shall bear property responsibility and other kinds of responsibility stipulated by the legislation and signed contracts. Payment of fines and forfeits resulted from the violation of contract provisions as well as reimbursement of damages would not exempt the guilty party from implementation of obligations if otherwise not stipulated by the Law or the contract.

Article 21. Responsibility of implementation of state orders

- 1) If enterprises or organizations do not fulfill or do not fulfill in a proper way assumed obligations on implementation of a State order or another obligations legally entrusted with them they bear property responsibility for their obligations towards the subject of investment activities. Officials guilty of this bear personal responsibility in accordance with the applicable legislation.
- 2) State bodies bear mutual property responsibility for non-fulfillment or not appropriate fulfillment of obligations related to implementation of a state order: they shall reimburse the damages including lost profits.
- 3) Participants of investment activities bear property responsibility towards the investor, which is Turkmenistan, for the implementation of state orders according to the procedure established by the legislation and the signed contracts.

Article 22. Investment protections

- 1) Turkmenistan guarantees protection of investments regardless of property forms and state belonging. Investment protection is ensured by the legislation of Turkmenistan. Simultaneously with this all investors are guaranteed equal regime excluding discriminative measures which could obstruct the management of investments, their utilization or liquidation; besides the terms and procedure of exporting the results of investment shall also be determined.
- 2) Investments shall not be nationalized, requisitioned without indemnity, nor shall they be inflicted measures equal by their consequences. The mentioned measures may be inflicted only on the basis of legislative acts of Turkmenistan with full reimbursement to the investor of the damage caused by the reason of termination of investment activities. In the case of withdrawal in accordance with the legislative acts of Turkmenistan paid or purchased by the investor special bank deposits, shares and other securities, payments for the purchased property or tenant rights shall be reimbursed to the investors with the exception of amounts already used, lost as a result of investors own actions or performed with his participation.
- 3) Disputes occurring in the course of implementation of investment activities shall be examined in the adequate courts.
- 4) Disputes arising from non-fulfillment or not adequate fulfillment of obligations related to investment activities between Turkmenistan and foreign states shall be settled by means of negotiations, or in Law courts determined by inter-state treaties (agreements).
- 5) Investments may be, and in the cases stipulated by the Law shall be insured. The present Law comes into effect as from the date of its publishing.