

Azerbaijan

Law on the Protection of Foreign Investments (1992)

Unofficial translation

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Law on the Protection of Foreign Investments

Law No. 57 of 1992

[Preamble]

The present Law determines legal and economic principles of realization of foreign investments at the territory of the Azerbaijan Republic. The Law is aimed to attraction and efficient use of foreign material and financial resources in the economy, modern foreign equipment and technology and managerial experience and guarantees protection of rights of foreign investors.

Chapter I. General

Article 1. Legislation concerning foreign investments

All relationships concerning foreign investments at the territory of the Azerbaijan Republic are governed by the present Law, other legislative acts and international agreements of Azerbaijan Republic.

Article 2. Foreign investors

The following persons and entities might be foreign investors in the Azerbaijan Republic:

- a. foreign legal entities
- b. foreign citizens, stateless citizens and citizens of the Azerbaijan Republic permanently living abroad, if they have been registered as participants of economic activity in the country of their citizenship or permanent residency
- c. foreign states
- d. international organizations.

Article 3. Foreign investments and their forms

Foreign investments might be represented by any kind of property and proprietary rights, including right for results of intellectual activity and other immaterial rights being contributed by foreign investors to the objects of business activity and other kinds of activity with the objective of obtaining the profits.

Foreign investors might make investments at the territory of the Azerbaijan Republic by the way of:

- a. participation in enterprises, organizations established together with legal entities and citizens of Azerbaijan Republic on the basis of sharing;
- b. establishment of enterprises completely belonging to foreign investors;
- c. purchase of enterprises, proprietary complexes, buildings, structures, shares in enterprises, other shares, bonds, securities and also other property which according to legislation of the Azerbaijan Republic might belong to foreign investors;
- d. acquisition of rights for use of land and other natural resources and also other proprietary rights;
- e. conclusion of agreements with legal entities and citizens of the Azerbaijan Republic providing for other forms of realization of foreign investments.

Article 4. Participation of foreign investors in privatization

Foreign investors might take part in privatization of state and municipal enterprises and also objects of incomplete construction on terms and according to the order stipulated by legislation of the Azerbaijan Republic.

Article 5. Legal regime of foreign investments

Legal regime of foreign investments and also activity of foreign investors in connection with their implementation might not be more favorable than regime for property, proprietary rights and also

implementing measures more favorable than regime for property, proprietary rights and other investing activity of legal entities, citizens of the Azerbaijan Republic except cases envisaged by the present Law.

Additional privileges might be established for foreign investments in the priority spheres of economy of the Azerbaijan Republic and also on specific territories thereof.

Control over execution of contracts concluded with governmental enterprises and organizations in the field of investments attraction shall be exercised by respective executive power body.

Article 6. Kinds of activity

Enterprises with foreign investments might exercise any kinds of activity if they have not been prohibited by legislative acts of the Azerbaijan Republic.

Some kinds of activity (following regulations of the Cabinet of Ministers of the Azerbaijan Republic) might be accomplished by the enterprises with foreign investments only after obtaining special permit (license).

Article 7. Territorial restrictions for foreign investments

Legislative acts of the Azerbaijan Republic might determine territories whereon the activity of the enterprise with foreign investments is restricted or prohibited from the point of view of defense, national security, protection of environment and population.

Article 8. Coordination of investment activity

Respective executive power body of the Azerbaijan Republic exercises control over development and implementation of measures on attraction and use of foreign investments, assistance to foreign investors and enterprises with foreign investments.

Chapter II. State guarantees concerning foreign investments

Article 9. Legal protection of foreign investments

Foreign investments on the territory of the Azerbaijan Republic enjoy full legal protection that is guaranteed by the present Law, other legislative acts and international agreements of the Azerbaijan Republic.

Article 10. Guarantees against changes in legislation

In case if in future legislation of the Azerbaijan Republic will worsen investment terms, then within 10 years legislation which existed at the moment of implementation of investments will be applied thereto. This does not apply to changes in legislation of the Azerbaijan Republic concerning defense, national security and public order, environmental protection, credits and finances, public morals and public health.

Article 11. Guarantees against nationalization and requisition

Foreign investments in the Azerbaijan Republic are not subject to nationalization except exclusive cases causing damage to the people and state interests of the Azerbaijan Republic.

Decision about nationalization is taken by the Supreme Council of the Azerbaijan Republic.

Foreign investments are not subject to requisition except cases of natural calamities, accidents, epidemic, epizootic situations and other force-majeur circumstances.

Decision about requisition is taken by the Cabinet of Ministers of the Azerbaijan Republic.

Whenever measures on nationalization and requisition are taken, foreign investor will immediately receive adequate and efficient compensation.

Article 12. Compensation of losses to foreign investors

Compensation paid to foreign investors should correspond to actual cost of investment at the moment of taking decision about nationalization or requisition.

Compensation shall be paid in foreign currency and, should investor so desire, it shall be transferred abroad.

Foreign investors have the right for compensation of losses including loss of profits as a result of acts of state bodies or officials thereof contradicting legislation of the Azerbaijan Republic.

Disputes concerning sums of compensation of losses, terms and procedure of payment shall be solved respectively in the courts and if so specified in bilateral agreement of the Parties or in international agreement of the Azerbaijan Republic in Arbitration Courts.

Article 13. Guarantees against termination of investment activity

In case of termination of investment activity foreign investor has the right for compensation of sums due to him and profits obtained as a result of said activity in monetary or material form, at actual cost at the moment of termination.

Article 14. Guarantees of transfer of profits and other sums in foreign currency

After payment of respective taxes and charges transfer of profits of foreign investors and other sums, including compensation of losses in foreign currency obtained legally in connection with investments is guaranteed.

Article 15. Guarantees of use of profits

Profits of foreign investors obtained on the territory of the Azerbaijan Republic may be reinvested in the same currency, stored in banks of the Azerbaijan Republic, used for purchase of foreign currency in an order and on terms determined by National Bank of the Azerbaijan Republic.

Chapter III. Establishment and activity of enterprises with foreign investments

Article 16. Enterprises with foreign investments

Enterprises with foreign investments are established in the form of stock companies, limited liability companies and other economic companies and enterprises and also in any other forms not contradicting the legislation of the Azerbaijan Republic.

The following companies might be established and act on the territory of the Azerbaijan Republic: enterprises with participation of foreign investors (joint ventures); enterprises being full property of foreign investors (foreign companies); representations (bureau, offices, agencies) of foreign legal entities.

Joint ventures and foreign companies are legal entities of the Azerbaijan Republic.

Procedure of establishment of enterprises with foreign investments is determined by legislation of the Azerbaijan Republic.

Specificities of establishment of banks with foreign investments are determined by legislative acts of the Azerbaijan Republic concerning banks and bank activity.

Registration of the enterprises with foreign investments in the Azerbaijan Republic is carried out by respective executive power body.

Article 17. Expertise

When establishing enterprises with foreign investments constitutors, in specific cases and according to procedure envisaged by the legislation of the Azerbaijan Republic, should obtain Certificate of expertise concerning sanitary-hygienic and environmental requirements. Enterprise with foreign investments should obtain such Certificate during the period of its activity and at the moment of termination.

When establishing enterprises with the objective of large -scale construction and reconstruction or development of large deposits of natural resources respective technicaleconomical expertise of projects should be accomplished.

In cases falling under the competence of respective executive power body, an expertise of investors' proposals connected with making an investments shall be carried out in an order stipulated by the respective executive power body.

Article 18. State registration

Enterprises with foreign investments are subject to state registration by authorized executive power body.

State registration is fulfilled in an order, stipulated by the respective Law of the Azerbaijan Republic. Enterprise with foreign investments acquires the rights of legal entity from the moment of state registration. Notification about registration is published by the body that has accomplished state registration.

The enterprises with foreign investments are included into the State Register of Legal Entities in an order established by the legislation.

Enterprise with foreign investments might be refused of registration thereof only in cases stipulated by the Law of the Azerbaijan Republic "On state registration and state register of legal entities".

Refusal in state registration might be appealed against in the Law Court of Azerbaijan Republic.

Article 19. Subsidiary companies, branches and representations

Enterprise with foreign investments might establish subsidiary companies with the rights of legal entities and also branches and representations both in the Azerbaijan Republic and abroad following provisions of legislation of the Azerbaijan Republic and legislation of respective foreign countries.

Branches and representations have the right to open accounts in banks of the Azerbaijan Republic on the territory of the Azerbaijan Republic.

Article 20. Merger of enterprises

Enterprises with foreign investments might join into associations, concerns, consortiums etc., on terms and in accordance with procedure envisaged by legislative acts of the Azerbaijan Republic.

Such enterprises might join previously established companies.

Article 21. Contributions of joint venture partners

Terms, amounts, procedure of contributing and estimate of shares of each partner in the Partnership fund of Joint Venture are specified in constituent documents. Cost of property contributed by the partners of Joint Venture as their share in the Partnership fund is determined according to mutual agreement of the partners.

If on expiration of one year after registration the partners fail to present documents confirming 50%

if on expiration of one year after registration the partners fail to present documents committing 50 % contribution to the Partnership fund specified in the constituent documents then the body that has registered said Joint Venture will regard it as null and void and will exclude it from the Register of Joint Ventures. Information about exclusion of Joint Venture from the Register will be published.

Article 22. Reserve fund

Reserve fund in the amount of up to 25% of the Partnership fund is established at the enterprises with foreign investments. Reserve fund is formed at the expense of annual deductions thereto. Amounts of deductions and kind of currency are determined by the enterprise independently.

Article 23. Sale of products and deliveries to the territory of the Republic

Enterprise with foreign investments has the right to establish prices on its own products (works, services), to determine terms of sale thereof in the inner republican market, to choose sellers of products (works, services) from this market.

Article 24. Settlements in foreign currency on the territory of the Azerbaijan Republic

Enterprises with foreign investments might dispose of foreign currency and also payment documents when accomplishing settlements on the territory of the Azerbaijan Republic according to provisions of legislation of the Azerbaijan Republic concerning currency regulation.

Article 25. Export and import of products

Enterprises fully belonging to foreign investors and joint ventures with more than 30% of foreign investments in the partnership fund have the right to export products (works, services) without licenses. Enterprises with foreign investments have the right to import products (works, services) for their own economic activity.

Procedure of ascribing products (works, services) to the products of self-activity of the enterprises with foreign investments is defined by the Cabinet of Ministers of the Azerbaijan Republic.

Profits obtained by enterprises with foreign investments as a result of export of their products remain at their disposal.

Article 26. Payment of custom duties

Property delivered to the territory of the Azerbaijan Republic as the share of foreign partner being contributed to the Partnership fund of Joint Venture is completely exempted from custom duty.

Property delivered to the Azerbaijan Republic by foreign employees of the enterprise with foreign investments for their own use is exempted from custom duty.

Article 27. Insurance

Property, productive, financial and other risks of the enterprise with foreign investments will be insured upon decision of the enterprise if obligatory insurance is not provided for by legislation of the Azerbaijan Republic.

Article 28. Taxation

Enterprises with foreign investments and also foreign investors themselves pay taxes in accordance with legislation of the Azerbaijan Republic.

Article 29. Control over activity of enterprises with foreign investments with taxation purposes

[Excluded]

Article 30. Accountancy and reports

Enterprise with foreign investments should keep accounts and prepare reports in accordance with regulations of the Azerbaijan Republic and, if necessary, in accordance with regulations existing in the country of origin of foreign investor.

Article 31. Security

Property of the enterprise with foreign investments might be used as security as per all kinds of obligations, including use of loans. Proprietary rights of the enterprise on buildings, structures, equipment and other proprietary rights including right for use of land might be used as security.

Respective executive power body shall notify appropriate governmental authorities and also render an assistance connected with settlement of investments disagreements to take measures stipulated by the legislation in regard to legal and physical entities violated acting legislation in the sphere of investment activity.

Article 32. Right for results of intellectual property and other immaterial rights

Protection and realization of rights of enterprises with foreign investments for results of intellectual property and also other immaterial rights (know-how, commercial secrets and others) are implemented according to legislation of the Azerbaijan Republic.

Article 33. Labour relationship

Labour and employer-employee relationship including problems of hiring and dismissal, conditions of work and recreation, payment, guarantees and compensations, at the enterprise with foreign investments are controlled by collective agreement and individual working agreements (contracts). Terms of collective and individual working agreements should not deteriorate conditions of employees of said enterprise comparing with conditions envisaged by legislative acts of the Azerbaijan Republic. Questions of wages, holidays, and pensions of foreign employees at the enterprise with foreign

investments should be solved in individual working agreements (contracts) concluded with each employee separately. Obtained wages after payment of income tax might be transferred abroad in an order established by the National Bank of the Azerbaijan Republic.

Article 34. Social insurance and social maintenance

Social insurance of employees of the enterprise with foreign investments and their social protection (excl. pensions for foreign employees) are controlled by legislation of the Azerbaijan Republic. Enterprise with foreign investments transfers money for pensions of foreign employees to respective funds of countries of their permanent residence, in hard currency and on terms of said countries. Enterprise accomplishes deductions as per social insurance of local and foreign employees and deductions for pensions of local employees at rates established for enterprises and organizations of the Azerbaijan Republic.

Article 35. Liquidation

Enterprise with foreign investments may be liquidated in cases and according to procedure envisaged by legislative acts of the Azerbaijan Republic.

Chapter IV. Purchase of securities by foreign investors

Article 36. Purchase of state securities

Purchase of state securities by foreign investors is accomplished on terms and according to procedure established by legislation of the Azerbaijan Republic.

Article 37. Purchase of shares, bonds and other securities of enterprises by foreign investors

Foreign investors have the right to purchase shares, bonds and other securities of enterprises located at the territory of the Azerbaijan Republic according to procedure established by legislation of the Azerbaijan Republic.

Chapter V. Acquisition of rights for use of land and other proprietary rights by foreign investors

Article 38. Right for use of land and other natural resources

Granting right for use of land, including lease thereof and use of other natural resources to foreign investors is regulated by Land Code and other legislative acts of the Azerbaijan Republic.

Article 39. Leasing

Letting property on lease to foreign investors and enterprises with foreign investments is accomplished by the owner based on agreements and according to legislation of the Azerbaijan Republic concerning leasing.

Article 40. Concession agreements

Granting right for search, exploration and development of natural resources is accomplished based on concession agreements concluded with foreign investors by the Cabinet of Ministers of the Azerbaijan Republic and approved by the Supreme Council of the Azerbaijan Republic.

If not specified otherwise terms of concession agreement cannot be changed by one side.

Proposals connected with establishment of free economic zones and regulation of their activity shall be prepared by respective executive power body.

Chapter VI. Foreign investments in free economic zones

Article 41. Activity of foreign investors and enterprises with foreign investments in free economic zones

Territory whereon privileges for economic activity of foreign investors and enterprises with foreign investments are established shall be considered free economic zone of the Azerbaijan Republic.

Procedure of establishment of free economic zones, terms of registration, economic and other activity of foreign investors and enterprises with foreign investments therein is determined by legislation of the Azerbaijan Republic concerning free economic zones.

Chapter VII. Conclusions

Article 42. Settlement of disputes

Disputes or disagreements arising between foreign investors and enterprises with foreign investments and state bodies of the Azerbaijan Republic, enterprises, public organizations and other legal entities of

and state bodies of the Azerbaijan Republic, enterprises, public organizations and other legal entities of the Azerbaijan Republic, disputes and disagreements between participants of the enterprise with foreign investments and such enterprise itself are to be settled in Law Courts of the Azerbaijan Republic or, on agreement between the Parties, in the Court of Arbitration, including those abroad.

Article 43. International agreements

If according to International agreement of the Azerbaijan Republic rules other than those included in the present Law are established, the former will enjoy priority.