

THE LAW OF TURKMENISTAN ON FOREIGN INVESTMENT IN TURKMENISTAN

This Law determines legal, economic and organizational bases of realization of foreign investments on the territory of Turkmenistan and is aimed to attract in national economy of foreign advanced technologies, managerial experience, material and financial resources and the development of market economy.

SECTION I. GENERAL PROVISIONS

Article 1. Foreign investment

By foreign investment there are meant all kinds of property and intellectual values, which are invested by foreign investors into the object of entrepreneurial and other activities on the territory of Turkmenistan in the form of:

- foreign currency, other currency values, currency valid on the territory of Turkmenistan;
- personal and real property (buildings, constructions, equipment and other material values) and property rights related to them;
- shares, bonds, other securities or forms of participation in enterprises;
- money requirements or rights of requirements of contract obligations execution, which are of value;
- any rights of intellectual property having value, including copyrights, rights on inventions, trade marks, firm names, industrial samples, know-how and others;
- right on economic activities, including exploration, extraction, output of mine or exploitation of natural resources, received by Law or agreement;
- paid services;
- other kinds of investments not prohibited by the legislation of Turkmenistan.

Foreign investors have the right to make investments in the forms of partial participation in enterprises of Turkmenistan, creation of enterprises which completely belong to foreign investors, or acquisition of functioning enterprises, acquisition of movable and immovable property including houses, apartments, premises, equipment, transport facilities and other objects of property not prohibited by the legislation of Turkmenistan by means of direct acquisition of property or in the form of shares, bonds, other securities, acquisition of independence or the right to use lands and concessions with the participation of legal entities or physical persons of Turkmenistan for the use of natural resources on the territory of Turkmenistan, acquisition of other property rights.

Article 2. Foreign Investors

The following persons can be the foreign investors in Turkmenistan:

- foreign legal entities including international organizations and associations and also the states;
- foreign physical persons (foreign citizens or persons without citizenship).

Article 3. Enterprises with foreign investment

Enterprise with foreign investment is acknowledged and effect of the present and effect of the present Law covers any form of enterprise founded in accordance with the legislation of Turkmenistan in case when the foreign investor possesses within the period of calendar year not less than 20 per cent of declared Charter capital on an average or a part the absolute value of which is established by the Cabinet of Ministers of Turkmenistan.

Article 4. Legal regulation of foreign investment

Relations connected with foreign investment in Turkmenistan are regulated by the Law **ВТН** On investment activities in Turkmenistan **ВТК**, by this Law and also by other legislative acts of Turkmenistan functioning on the territory of Turkmenistan and international agreements.

In case if an international contract or agreement signed by Turkmenistan determines different rules then those of the legislative acts of Turkmenistan, the rules of international contract or agreement are used.

Article 5. Government policy in the sphere of foreign investment

Elaboration and implementation of the policy of Turkmenistan aimed at attraction and use of foreign investment, co-ordination of investment activities, the assistance to foreign investors in their activities on the territory of Turkmenistan are performed by the Cabinet of Ministers of Turkmenistan or by the authorized body.

SECTION II. CREATION OF LEGAL ENTITIES WITH FOREIGN PARTICIPATION AND THEIR ACTIVITIES

Article 6. The creation of legal entities with foreign participation

By a legal entity with foreign participation any legal entity in Turkmenistan is meant, entrepreneurial activities of which are invested by subjects noted in Article 2 of the present Law, and foreign enterprises, which are under jurisdiction of Turkmenistan. Legal entities with foreign participation are created on conditions and in the order determined by the Laws on enterprises, entrepreneurial activities, stock associations, by this Law and other normative acts of Turkmenistan.

Article 7. Activities of legal entities with foreign participation

Legal entities with foreign participation may perform any kinds of activities not prohibited by the legislation of Turkmenistan.

Special kinds of activities, which are determined by the Cabinet of Ministers of Turkmenistan, may be carried out by legal entities with foreign participation only with special permission.

Article 8. State registration

State registration of legal entities with foreign participation is carried out in the order established by the Cabinet of Ministers of Turkmenistan. In order to be registered the legal entities should submit the following documents:

- application of the founders;
- permission to make investment into the economy of Turkmenistan;
- agreement on the terms of establishing a joint venture;

- Charter (regulations);
- the document certifying financial position of the foreign investor.

The agreement and the Charter are to be submitted in two copies confirmed by notary in the state language as well as in the language of original documents.

The authority responsible for state registration has no right to require any other documents except those mentioned above in this Law and has no right to refuse the founder in accepting his documents for registration. The resolution on registration or on rejection of registration is taken within two weeks after the foundation documents have been submitted.

An enterprise is rejected in state registration in writing and rejection is possible in case of violation by a founder of the procedure of establishing an enterprise set by the legislation of Turkmenistan and also in case of non-compliance of the founding documents with the requirements of this Law. The authority that has registered an enterprise with foreign participation within three days sends the confirmed copies of foundation documents for enterprises to be included into the State Register of Enterprises and to the Taxation Department of the location place of enterprise.

Enterprises with foreign participation obtain the right of legal entity after being included into the State Register of Enterprises. The information on including it in State Register of Enterprise is published by the legal entity.

Article 9. Foundation documents of legal entity with foreign participation

Foundation documents of legal entity with foreign participation must determine the subject and purposes of activities, the amount of the Charter fund, share participation, the order of liquidation of a legal entity and also the other regulations provided by the legislation of Turkmenistan.

All the additions and amendments to the foundation documents of already registered enterprises with foreign investments and their branches are also subject to the state registration.

Additions and amendments to the foundation documents come into force only after their registration and with the written consent of the authority that issued the permission to make investments in the economy of Turkmenistan.

Article 10. Appraisal of investment objects

Investment protects and programs, technical-economic calculations on the construction of objects are subject to the obligatory state expert examination including the compliance with the standards of seismic firmness, fire-burn security, ecological and sanitary requirements. An investor at his discretion can carry out expert examination of the protects additionally, involving state and other expert organizations on a contract basis.

Article 11. Limitation of foreign investing

Foreign investing is not allowed into the objects creation and use of which does not meet the requirements of sanitary, ecological and other standards set by the legislation of Turkmenistan.

Article 12. Responsibility of foreign investors

The foreign investors are responsible for their actions violating the legislation of Turkmenistan up to the holding up of their activities on the territory of Turkmenistan by the resolution of Cabinet of Ministers.

Article 13. Requirements to production of foreign investors

The quality of foreign investors' production and provided services must correspond to the standards accepted in Turkmenistan.

The legal entity with foreign participation can independently determine the terms of realization of production (work, services), including prices on it.

Article 14. Associations of legal entities with foreign participation

Legal entities with foreign participation may voluntarily join into unions, associations, concerns, industrial, regional and other associations in the order and on terms provided by the legislative acts of Turkmenistan.

Article 15. Customs privileges

Property imported in Turkmenistan as the contribution of a foreign investor into the Charter fund of legal entities with foreign participation, and also property intended for their own material production are exempted from customs duty and the tax on import.

Property brought to Turkmenistan by foreign employees of legal entities with foreign participation for personal needs is exempted from customs duty.

Article 16. Export and import of production

Legal entities with foreign participation which have more than 30% of foreign investment in hard currency in the Charter fund have the right to export goods (works and services) of their own production without license and in the volume adequate to the foreign investor's share in the Charter fund on the basis of the certificate issued by the authorized body.

Legal entities with foreign participation have the right to import goods (works, services) for their own economic activities without license.

The order of attribution of goods (works, services) to the goods of own production of legal entities with foreign participation is established by the Cabinet of Ministers of Turkmenistan.

After the payment of taxes and duties stipulated by the legislation of Turkmenistan, the currency income of the legal entity with foreign participation from the export of its own production is left at its disposal.

Article 17. Taxation

Legal entities with foreign participation pay taxes on profit in the amount and in the order determined by the legislation of Turkmenistan.

For the period of the recovery of initial investments the foreign investor who has invested the share of more than 30% of hard currency in the Charter fund of an enterprise is exempted from the tax on dividends and the enterprise is exempted from the tax on profit.

Enterprises with foreign participation directing their profit to re-investment are exempted from the taxation in the sphere directed to reinvestment after the recovery of initial investment.

The other privileges for the legal entities with foreign participation may be established by the Cabinet of Ministers of Turkmenistan.

Control of regularity of tax payments, financial and commercial activities is implemented by the tax authorities and authorized organizations of Turkmenistan.

Article 18. Bookkeeping report and accounts

Bookkeeping (statistical) report and accounts of legal entities with foreign participation on the territory of Turkmenistan are recorded according to the rules adopted in Turkmenistan.

Balance appraisal and property accounting of legal entities with foreign participation are carried out in the way of re-calculation of foreign currency into the money unit of Turkmenistan according to the special rate of the Central Bank of Turkmenistan.

Article 19. Obligations security

Property of the legal entity with foreign participation including attracted borrowed funds, property rights including rights of buildings, constructions, equipment, except rights of possession of land and other natural resources can be used as security for all kinds of obligations. Mortgaged property can be sold by the mortgage holder for the money unit of Turkmenistan and for foreign currency including auctions, to other legal entities and physical persons.

SECTION III. STATE GUARANTEES OF FOREIGN INVESTMENT PROTECTION

Article 20. Legal regimen of foreign investment

Foreign investment on the territory of Turkmenistan have legal protection provided by this Law, other legislative acts and international agreements applicable on the territory of Turkmenistan.

Legal regimen of foreign investment and foreign investors activities directed to the investment implementation cannot be less favorable than regimen for property, property rights and investment activities of legal entities and citizens of Turkmenistan.

In case the change of legislation concerning foreign investment, a foreign investor can require that the Law that was in force at the moment of investment registration must be used for the period of 10 years.

Article 21. Guarantees of property of foreign investors

Foreign investments in Turkmenistan are not subject to nationalization and requisition. The property of foreign investor can be confiscated in case of perpetration by the investor of illegal actions and only in the court order.

Article 22. Guarantees of the property transference right

Foreign investors and foreign employees are given the guaranteed right of free property transference abroad. The order of transference through the border of currency, payment documents, securities is determined by the legislation of Turkmenistan on currency regulation.

Article 23. Guarantees of the use of foreign investor's profit

After paying taxes the profit of the foreign investor remains at his disposal and can be re-invested on the territory of Turkmenistan.

Foreign investors have the right to open current and settlement accounts in banks of Turkmenistan in the currency of Turkmenistan and currencies of other states.

A foreign investor has the right to use the currency of Turkmenistan for acquisition of foreign currency at the domestic currency market.

Article 24. Guarantees of the restitution of foreign investor's property

In case of termination of investment activities a foreign investor has the right for the restitution of his investments not later than within 6 months and also restitution of income in the form of money and goods on the real market price.

Article 25. Protection of the rights on intellectual property of foreign investors

The legislation of Turkmenistan provides implementation and protection of the rights for intellectual property of foreign investors including copyright for fiction, scientific works, programs for computers and data base, patents and other rights for inventions and industrial samples, "know-how," commercial secrets, service and trade marks, firm names and protection of these rights from unfair competition.

Article 26. Money compensation of damages and indemnification for losses of foreign investors

Foreign investors have the right to claim in the court order for money compensation of damages and indemnification for losses resulting from illegal actions of authorities or its officials. The amount of damages and

losses is determined according to the current market prices or on the basis of appraisals of independent auditors.

The damages are compensated and losses are indemnified in the currency used for the investment or in another currency acceptable for the investor. From the moment of effect of the right for compensation and until the compensation payment period the interests are added

SECTION IV. LABOUR AND SOCIAL RELATIONS OF LEGAL ENTITIES

WITH FOREIGN PARTICIPATION GOVERNED BY LAW

Article 27. Regulation of legal labor relations in enterprises with foreign participation

Legal labor relations of enterprises with foreign participation, including clauses of social development and health protection of the staff are regulated by collective and individual agreements (contracts) in accordance with the legislation of Turkmenistan and international standards.

The staff of workers and employees of the legal entity with foreign participation and its administration may also include foreign citizens.

Article 28. Social insurance and security

Social insurance and security of employees of the legal entity with foreign participation (with the exception of pensions security for foreign employees) are regulated by the legislation of Turkmenistan.

The legal entity with foreign participation makes allocations for the state social insurance and pension security of their workers at the rates established for enterprises of Turkmenistan.

Allocations for the state social insurance of foreign employees of the legal entity are made by an enterprise only in case if these workers want to use the proper forms of social insurance on the territory of Turkmenistan.

Payments for pension security of foreign employees of enterprise are transferred to the proper funds in countries of their permanent residence place in the currency and on the terms of these countries.

Article 29. Regulation of the right for intellectual property at the enterprise with foreign investments

The right for intellectual property between the legal entity with foreign participation and an employee is regulated by the agreement between them. The agreement points the obligation of the legal entity to provide for the financial, industrial and social security of an employee in response to his concession to the right of the patent possession.

If such an agreement was not signed the patent is issued to the author of the invention and the legal entity may use this invention on the terms stipulated in the agreement with the author - the owner of the patent.

The patent on the invention, industrial sample and trade mark is issued to the legal entity by proper authorities after the submission of the mentioned agreement.

Article 30. Insurance of property and risks

Insurance of the property and risks of legal entity with foreign participation is implemented at its discretion if it is not stipulated by the current legislation on the territory of Turkmenistan.

SECTION V. LIQUIDATION OF THE LEGAL ENTITY WITH FOREIGN PARTICIPATION AND SOLUTION OF ARGUMENTS

Article 31. Liquidation of legal entity with foreign participation

Liquidation of the legal entity with foreign participation, its branches (representations) is carried out in the order and in the cases pointed in the foundation documents and according to the legislation of Turkmenistan. In case if the founders have not contributed 50% of the initially declared Charter capital within one year since the date of putting an enterprise in the State Register of Enterprises, the banks of Turkmenistan terminate performing operations on the accounts of such enterprises and inform on this fact the authorities that registered this enterprise for adopting a decision on its liquidation.

Registration of liquidation of the legal entity with foreign participation is implemented by the registration body on the basis of the statement of liquidation commission and liquidation balance approved by the auditing organization.

When liquidating the enterprise with foreign participation, its accumulated assets are subject to taxation according to their real cost.

The legal entity with foreign participation is liquidated after the expiration

of 30 days period, after publishing it by the legal entity in press.
The enterprise with foreign participation is excluded from the State Register after its liquidation.

Article 32. Solution of disputes of the foreign investor

Disputes of the foreign investor with legal entities and physical persons are subject to the trials in courts of Turkmenistan or in arbitration by agreement of the parties.

In case if the international agreement of Turkmenistan stipulates the other rules of disputes' consideration, the rules of international agreement are applied.

**PRESIDENT OF TURKMENISTAN
SAPARMURAT TURKMENBASHY**

**With Changes and amendments
By Mejlis on October, 8, 1993**