

The law of Republic Kazakhstan from January, 8th, 2003 № 373-II On Investments

(with amendments and additions as of the February 20, 2012)

Chapter 1. General provisions (Articles 1-3)

Chapter 2. The Legal regime of investments (Articles 4-10)

Chapter 3. The state support of investments (Articles 11-22)

Chapter 4. Final provisions (Articles 23-24)

This law regulates the relations connected with investments in the Republic of Kazakhstan, and defines the legal and economic framework for investment incentives, guarantees the protection of the rights of investors in investing in the Republic of Kazakhstan, define measures of state support of investment, arbitration of disputes involving investors.

Chapter 1. General

Article 1. Main concepts used in this Law

The main concepts used in this Law are as follows:

- 1) components – constituent parts in aggregate forming structural integrity of manufacturing equipment and included in the corresponding list of goods made by the Commission of Customs Union;
- 2) work program – appendix to the investment contract assigning operations schedule on the investment project or strategic investment project implementation;
- 3) investments – all kinds of property (except goods intended for the personal consumption) including articles of the finance leasing after date of the lease agreement conclusion as well as the rights for them invested into the authorized capital of legal person or increase in fixed assets applied for business activity, and also the fixed assets produced and obtained by concessionaire (assignee) within the frameworks of franchising agreement;
- 4) authorized investment body (hereinafter – authorized body) – state body assigned by the Government of the Republic of Kazakhstan responsible for the investment contracts conclusion and their execution control;
- 5) investment dispute – dispute arising from the treaty obligations between investors and state bodies in connection with the investor's investment activity;
- 6) investment project – package of measures providing for investments in creating new production units and expansion and renewal of operating ones including enterprises produced and obtained by concessionaire (assignee) within the frameworks of franchising agreement
- 7) investment contract – agreement on investments providing for investment preferences;
- 8) investment activities – activity of the natural and legal persons concerning participation in the authorized capital of commercial organizations or creation or increase in fixed assets applied for the business activity, and also the fixed assets produced and obtained by concessionaire (assignee) within the frameworks of franchising agreement
- 9) investment preferences – point-of-use advantages given the legal persons of the Republic of Kazakhstan who implement investment project or investment strategic project in accordance with the legislation of the Republic of Kazakhstan;
- 10) investment strategic project – investment project included into the list determined by the Government of the Republic of Kazakhstan and able to effect strategically on economic development of the Republic of Kazakhstan;
- 11) investor – natural or legal person investing in the Republic of Kazakhstan;

12) legal person of the Republic of Kazakhstan – legal person including legal person with foreign participation founded in accordance with the procedure established by the Law of the Republic of Kazakhstan;

13) state government land grant – property which being the property of the Republic of Kazakhstan is transferred to the temporary free use or is given on the basis of temporary free use to the legal person of the Republic of Kazakhstan investment project or investment strategic project implementation with subsequent free transfer to ownership or land use;

14) minority investor – investor with investments of less than ten per cent of voting shares (less than 10 per cent votes of the total quantity of the participants’ votes);

15) model contract – **standard contract** approved by the Government of the Republic of Kazakhstan and applied when the investment contracts concluding;

16) manufacturing equipment - goods intended for application in the technological process of the investment project and included in the corresponding list of goods made out by the Commission of the Customs union concerning commodity items of the commodity nomenclature of the Customs union’s foreign economic activities.

Article 2. Legislation of the Republic of Kazakhstan on Investment

1. Legislation of the Republic of Kazakhstan on investments based on the Constitution of the Republic of Kazakhstan and consists of this Law and other normative legal acts of the Republic of Kazakhstan.

2. This Act does not regulate relations connected with: implementation of investment from the state budget; investment in non-profit organizations, including educational, charitable, scientific or religious purposes. Item 3, the wording of the Law of the RK of 19.02.07, the number 230-III (see the old. Ed

3. By the relations arising in the implementation of investment and within the scope of other laws of the Republic of Kazakhstan, the provisions of this Act shall apply to the extent not inconsistent with such laws of the Republic of Kazakhstan.

4. If an international treaty ratified by the Republic of Kazakhstan stipulates other rules than those contained in this Act, the rules of international treaty.

Article 3. Objects of investment activity

In paragraph 1 amended in accordance with the Law of RK on 19.02.07, the number 230-III (see the old. Ed.)

1. Investors have the right to invest in any facilities and types of entrepreneurial activity, except in cases stipulated by legislative acts of the Republic of Kazakhstan. The rights and obligations of investors in respect of facilities and types of entrepreneurial activity in which the investment is established in this Law, other legislative acts of the Republic of Kazakhstan and the relevant treaties.

2. Laws of the Republic of Kazakhstan, based on the need to ensure national security, may be determined by the activities and (or) the territory in which investment activity is restricted or prohibited.

Chapter 2. The legal regime of investment

Article 4. Guarantee legal protection of investors in the territory of the Republic of Kazakhstan

1. Investors shall be accorded full and unconditional protection of the rights and interests, which is provided by the Constitution of the Republic of Kazakhstan, this Law and other normative legal acts of the Republic, as well as international treaties ratified by the Republic of Kazakhstan.

2. The investor is entitled to compensation for harm caused to him by the publication by public authorities act not in accordance with legislative acts of the Republic of Kazakhstan, as well as a result of unlawful actions (inaction) of officials of these bodies in accordance with civil legislation of the Republic of Kazakhstan.

3. The Republic of Kazakhstan guarantees the stability of the agreements concluded between the investors and the public authorities of the Republic of Kazakhstan, except in cases where a change in contracts made by mutual agreement. This warranty does not apply to:

- 1) changes in the legislation of the Republic of Kazakhstan and (or) the entry into force and (or) changes in international treaties of the Republic of Kazakhstan, which altered the terms and conditions of import, production, sales of excisable goods;
- 2) changes and additions are made to legislative acts of the Republic of Kazakhstan in order to ensure national and environmental security, health and morality.

Article 5. Guarantees of income

Investors are entitled to:

1. at its discretion to use the proceeds from their activities, after taxes and other obligatory payments to the budget in accordance with the laws of the Republic of Kazakhstan;
2. to open banks in the territory of the Republic of Kazakhstan bank accounts in national currency and (or) foreign currency in accordance with banking and currency legislation of the Republic of Kazakhstan.

Article 6. Transparency of public authorities in relation to investors and provide investors access to information related to the implementation of investment

1. Official reports state authorities of the Republic of Kazakhstan and regulations affecting the interests of investors, are published in the manner prescribed by the legislation of the Republic of Kazakhstan.

2. Investors, including the minority investors, free access to information about the registration of legal entities, and their charters, the registration of real estate transactions, issued licenses, as well as a stipulated by legislative acts of the Republic of Kazakhstan of information that relates to the implementation of investment activities and does not contain commercial and other secrets protected by law.

Article 6 The wording of the Law of RK on 19.02.07, the number 230-III (see the old. Ed.)

Article 7 The wording of the Law of RK of 31.01.06, № 125-III (see the old. Ed.)

Article 7. Implementation of the public authorities control over the activities of investors

1. Supervision of investors by government authorities to whom such right is given to the laws of the Republic of Kazakhstan.

2. The order and timing of control over the activities of investors are determined by the laws of the Republic of Kazakhstan.

Article 8. Guarantee the rights of investors in the nationalization and requisition

1. Forcible seizure of property of the investor (nationalization, requisition) for public use is permitted in exceptional cases stipulated by legislative acts of the Republic of Kazakhstan.

2. With the nationalization of the Republic of Kazakhstan to the investor shall be compensated in full the damages caused to him as a result of legislative acts of the Republic of Kazakhstan on the nationalization.

3. Requisition of property investor made with payment of the market value of the property. The market value of property determined in accordance with legislation of the Republic of Kazakhstan.

4. Assessment, on which the owner was reimbursed the cost of requisitioned property may be challenged them in court.

5. At the termination of the circumstances in relation to which the requisition, the investor is entitled to demand a return on the property, but must return the amount of compensation, taking into account losses from the reduction in value of the property.

Article 9. Disputes

1. Investment disputes can be resolved through negotiations, including with the involvement of experts, or in accordance with previously agreed by the parties dispute settlement procedures.

2. If you can not resolve investment disputes in accordance with the provisions of paragraph 1 of this article, the resolution of disputes shall be in accordance with international treaties and laws of the Republic of Kazakhstan in the courts of the Republic of Kazakhstan, as well as in international arbitrations, the parties specified in the agreement.

3. Disputes not related to investment, are settled in accordance with the laws of the Republic of Kazakhstan.

Article 10. Vesting of the investor to another person

If a foreign country or his authorized public agency makes payments to the investor under a guarantee (insurance contract), granted to him in respect of investments made in the territory of the Republic of Kazakhstan and to the foreign state or public bodies, go right (succumbing to demands from investors) to these investments, the Republic of Kazakhstan such subrogation (assignment of claims) is recognized as lawful only in case of an investor investment in the Republic of Kazakhstan and (or) the performance of certain contractual obligations.

Chapter 3. State support for investment

Article 11. The purpose of state support for investment

In paragraph 1 amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.)

1. The purpose of state support for investment are creating a favorable investment climate for economic development and stimulate investment in new, expanding and updating existing plants with modern technologies, training of Kazakhstani personnel, as well as environmental protection.

2. State support for investments is to provide investment preferences.

Article 12. Authorized body

1. State support of investments made by the authorized body, determined by the Government of the Republic of Kazakhstan.

2. The authorized body, within its competence and in order to perform its tasks has the right to the procedure established by the Government of the Republic of Kazakhstan, to involve specialists of state agencies, consultants and experts from the natural and legal persons of the Republic of Kazakhstan.

3. Activities authorized body governed by a regulation approved by the Government of the Republic of Kazakhstan.

Article 13. Types of investment preferences

In compliance with this Law, the following investment preferences are provided by means of the investment contract conclusion with the authorized body:

1. Excluded in accordance with the Law of the RK of 10.12.08, the number 101-IV (introduced with effect from 1 January 2009) (see the old. Ed.)

2. exemption from customs duties;

3. state in-kind grants;

4. land tax and property levy allowances in the order stipulated by the tax legislation of the Republic of Kazakhstan for the legal persons implementing investment strategic projects;

5. industrial benefits for the legal persons implementing investment strategic projects in settlements with the low level of social and economic development.

Article 14. The provision of investment preferences

1. Investment preferences are provided according to the lists of **priority activities** on the level of classes of **general classifier of the economic activities** or **list of the investment strategic projects** approved by the Government of the Republic of Kazakhstan.

2. Excluded in accordance with the **Law** of the RK of 20.02.12, No 567-IV (**see old ed.**)

3. Deleted in accordance with the Law of RK on 10.12.08, the number 101-IV (entered into force on 1 January 2009) (see the old. Ed.)
4. Investment preferences are provided by means of the investment contract conclusion with the legal person of the Republic of Kazakhstan implementing investment projects or investment strategic projects.

Article 15. Terms of investment preferences

Investment preferences are granted subject to:

1. the investment activities compliance with the lists of priority activities on the level of classes of general classifier of foreign economic activity or the list of investment strategic projects;
2. deleted in accordance with the Law of RK on 10.12.08, the number 101-IV (entered into force on 1 January 2009) (see the old. Ed.);
3. submission of necessary documents listed in [article 19](#) of this Law confirming availability of financial, technical and organizational capabilities of the legal person of the Republic of Kazakhstan effecting an application for implementation of the investment project or investment strategic project.

Article 16. Deleted in accordance with the Law of RK on 10.12.08, the number 101-IV (entered into force on January 1, 2009) (see the old. Ed.)

Article 17 The wording of the Law of the RK from 04.05.05 g. № 48-III (see the old. Ed.)

Article 17. Exemption from customs duties

1. Legal person of the Republic of Kazakhstan implementing investment project or investment strategic project in the investment contract network is exempted from customs taxation when importing manufacturing equipment, components and spare parts for them, raw stock and (or) materials in accordance with the legislation of the Republic of Kazakhstan.

2. When transporting manufacturing equipment and components for it the exemption from customs taxation is granted for the term of investment contract but not later than 5 years after the investment contract registration.

3. When importing spare parts for the manufacturing equipment, raw stock and (or) materials for term up to 5 years the exemption from customs taxation is granted to the legal persons of the Republic of Kazakhstan depending on the volume of investment in the fixed assets. And in case of the investment project compliance with the list of priority activities approved by the Government of the Republic of Kazakhstan on the level of classes of general classifier of economic activities. It is possible to reconsider this list of the priority activities only one time a year.

Exemption from the customs taxation is granted for the investment contract term but not later than 5 years after the fixed assets commissioning according to the work program. In case when the work program makes provision for entry of two or more fixed assets the computation of the term of exemption from customs taxation for import of spare parts to the manufacturing equipment, raw stock and (or) materials is made from the date of the first fixed asset commissioning under the work program.

4. Notification on decision taken in accordance with the paragraph 2 of this article is sent to the customs authority by the authorized body within five working days.

Article 18. State in-kind grants

Item 1, the wording of the Law of the RK from 04.05.05 g. № 48-III (see the old. Ed.)

Amended in accordance with the Law of RK of 31.01.06, № 125-III (see the old. Ed.)

1. In the order established by this Law the state government land grants are provided for the temporary free use or is given on the basis of temporary free use with subsequent free transfer to ownership or land use in case of the investment obligations fulfillment according to the investment

contract. They are provided by the authorized body in coordination with the corresponding authorized state inventory and (or) land recourses control body and the local executive bodies as well.

Free transfer of the provided state government land grant to ownership or land use is executed on the ground of the authorized body directive. The authorized body decision shall be taken on the expiry of the investment contract in case the investor fulfills the investment obligations in compliance with the investment contract concluded between the investor and authorized body.

2. As a full-scale government grants can be transferred: land, buildings, structures, machinery and equipment, computers, measuring and control devices and equipment, vehicles (excluding cars), industrial and household equipment.

3. Evaluation of government in-kind grants made by their market value in the manner prescribed by the legislation of the Republic of Kazakhstan.

4. The maximum size of the public in-kind grant of not more than thirty percent of the volume of investment in fixed assets of legal entities of the Republic of Kazakhstan. If the appraised value of the requested state in-kind grant exceeds the maximum size, juridical person of the Republic of Kazakhstan shall be entitled to receive the requested property to pay the difference between its appraised value and the maximum size of public in-kind grant.

Article 18-1. Land tax and property levy allowances for the legal person (s) implementing investment strategic projects stipulated by the tax legislation of the Republic of Kazakhstan

1. Legal person implementing the investment strategic project may claim to the land tax and property levy allowances in the order stipulated by the tax legislation of the Republic of Kazakhstan.

2. To be included into the list of the investment strategic projects the investment projects shall be oriented on manufacturing products with the high value added (higher re-divisions and processing) and comply with the priority activities. In addition, it shall fit with one of the following criteria:

1) the investment project shall be oriented on manufacturing products included in the list of activities on manufacturing advanced technology products approved by the Government of the Republic of Kazakhstan;

2) volume of investment under the investment projects shall be not less the minimum estimate indicator set for the corresponding fiscal year by the law on republican budget multiplied by five million.

3. Procedure of the investment projects including in the list of the investment strategic projects shall be approved by the Government of the Republic of Kazakhstan.

Article 18-2. Industrial benefits for the legal persons implementing investment strategic projects in settlements with the low level of social and economic development

1. Industrial grants for the legal persons implementing the investment strategic projects in settlements with the low level of social and economic development consists in compensation or partial payment of expenses of the legal person implementing the investment strategic project in settlements with the low level of social and economic development in following kinds of expenses for:

1) gas;

2) electric power;

3) purchase of plot of land;

4) acquisition (construction) of facilities, buildings.

2. The Government of the Republic of Kazakhstan shall approve procedure of the industrial benefits granting for the legal persons implementing the investment strategic projects in settlements with the low

level of social and economic development. The Government of the Republic of Kazakhstan shall approve the list of the Kazakhstan settlements with the low level of social and economic development.

Article 19. Requirements for application for the provision of investment preferences

Application for the investment preferences is shall be accepted and registered in form established by the authorized body if there are:

- 1) notarized copy of certificate of state registration of legal persons;
- 2) deleted in accordance with the Law of RK on 19.03.10 № 258-IV;
- 3) notarized copies of the statute of legal entity;
- 4) business-plan of the investment project or the investment strategic project worked out in compliance with the requirements established by the authorized body;
- 5) notarized copies of documents according to the list established by the legislation of the Republic of Kazakhstan justifying estimated cost of the building and assembly works and purchasing costs of the fixed assets, raw stock and (or) materials used when implementing the investment project or the strategic investment project;
- 6) notarized copies of documents establishing sources and guarantees of the investment project or the investment strategic project financing. In case of the investment project or the investment strategic project financing from own funds the written confirmation of their availability shall be attached;
- 7) documents certifying the size (cost) of the requested entity applying for the Republic of Kazakhstan state and in-kind grant preliminary approval of its provision;
- 8) excluded in accordance with the Law of the RK of 20.02.12 r. No 567-IV (see old ed.);
- 9) references from the tax authority at the place of registration of the absence of tax arrears, arrears of mandatory pension contributions and social contributions.

Article 20. Timing for review of applications for investment preferences

1. Application for granting investment preferences is filed for consideration by the authorized body, which is in accordance with the requirements set out in **Article 15** of this Act shall take a decision on granting investment preferences and sends the applicant a written response within twenty working days from the date of the registration application.

2. The procedure for admission, registration and review of applications for investment preferences defined by the authorized body.

Article 21. Investment contract conclusion

1. Taking into account provisions of the model contract the authorized body shall make the investment contract ready for signing within ten working days after day of taking decision on granting investment preferences.

2. The authorized body shall register the investment contract within five working days after day of signing. The investment project comes into effect from the day of its registration.

3. The investment contract term is determined by the term of investment preferences. Works according to the work program shall end not later than nine months before the investment contract term.

Article 21-1. Control of adherence to the terms and conditions of the investment contract

The authorized body performs control of adherence to the terms and conditions of the investment contracts in following forms:

- 1) office control means the control performed by the authorized body on the basis of study and analysis of reports presented in accordance with paragraph 2 of this article;

2) with the investment medium visiting including consideration of documents under fulfillment of the work program and the investment contract terms and conditions.

2. After the investment contract conclusion the legal person of the Republic of Kazakhstan shall present semiannual accounts with itemization of expenses and costs provided by the work program and attachment of documents confirming fixed assets implementation, supply and use of the spare parts to manufacturing equipment, raw stock and (or) materials, in the form established by the authorized body and not later than on the twenty fifth of July and on the twenty fifth of.

3. Amendments to the work program may be included once a year under the parties' arrangement.

4. The investment activity inspection with the site visiting shall be carried out:

1) in the six-month period expiring three months prior to the investment contract cut-off date provided the work program is completed;

2) annually, starting from the year consequent to the year of import of the spare parts to manufacturing equipment, raw stock and (or) materials exempt from the customs duties.

5. According to the inspection results, the authorized body representative and chief of the legal person of the Republic of Kazakhstan concluded the investment contract sign the act on the current state of fulfillment of the investment contract work program.

6. In case of default or improper performance of the investment contract work program the authorized body shall send the legal person concluded the investment contract the written notice with the violations' indication and set the two-month term to eliminate violations.

7. In case of detecting after the authorized body inspection the default on commissioning or using the manufacturing equipment, components, and spare parts to them, raw stock and (or) materials imported for the investment project implementation and exempt from customs duties the legal person of the Republic of Kazakhstan due to investment preferences under the investment contract having not paid the customs duties' amounts shall pay them in part of the non-used manufacturing equipment, components, and spare parts to them, raw stock and (or) materials with the penalty fee charge in the order established by Law of the Republic of Kazakhstan.

8. With purposes of the government interests protection the information on the investment contract termination is addressed to:

1) the revenue service organs, customs bodies and , as appropriate, to other government bodies to undertake corresponding measures;

2) the revenue service organs, customs bodies, the authorized state property and land resources management bodies and the local executive bodies (according to the investment contracts under which the state full size grant was provided).

9. The legal person of the Republic of Kazakhstan having concluded the investment project within the duration of the investment contract is not entitled to:

1) change purpose of the provided state government land grant and the property procured according to the work program as well;

2) alienate the provided state government land grant and the property procured according to the work program as well;

10. Control over the purpose use of the exempt from customs duties entities is executed in the order determined by the Commission of the Customs Union.

Article 22. The investment contract termination terms and conditions

1. The investment preferences duration stops on the investment contract cut-off date or may terminate prior to such cut-off date in order established by this article.

2. The investment contract duration may terminate before the appointed time:

1) under the parties' agreement;

2) unilaterally.

3. The authorized body is entitled to terminate the investment project unilaterally after date of written notification of the legal person of the Republic of Kazakhstan being the party of the investment contract in the following cases:

1) of reveal the misrepresentation and (or) concealment of information provided by applicant and having effect on decision to grant the investment preferences;

2) of non-execution by the legal person of the Republic of Kazakhstan being the party of the investment contract of its obligations under the investment project;

3) of reveal the misrepresentation and (or) concealment of information in reports presented by the legal person of the Republic of Kazakhstan being the party of the investment contract in accordance with the [paragraph 1 of the article 21-1](#) of this Law.

In such cases the foregoing legal person shall pay tax and customs duty amounts not paid due to the investment preferences granted under the investment contract.

4. On the investment contract early termination initiated by the legal person of the Republic of Kazakhstan being the party of the investment contract unilaterally the referred above legal person shall pay tax and customs duty amounts not paid due to the investment preferences granted under the investment contract with the penalty fee charge in order established by the Law of the Republic of Kazakhstan.

5. On the investment contract early termination under the parties' agreement the legal person of the Republic of Kazakhstan being the party of the investment contract shall pay tax and customs duty amounts not paid due to the investment preferences granted under the investment contract

6 On the investment contract early termination the legal person of the Republic of Kazakhstan being the party of the investment contract shall relinquish the property given to this person as the state government land grant, or its initial cost as of the transfer date in accordance with the investment contract terms and conditions

7. Legal person of the Republic of Kazakhstan being the party of the investment contract shall restitute the state government land grant within thirty calendar days after date of the authorized body decision on the investment contract early termination.

Chapter 4. Final Provisions

Article 23. The investment contracts' stability

1. Benefits given on the basis of the investment contracts with the authorized bodies concluded earlier than this Law has come into force shall maintain the effect up to the cut-off date stated in such investment projects.

2. Norms of the [paragraph 2 of the Article 21-1](#), [paragraphs 3, 4 and 5 of the article 22](#) of this Law in part of the tax amounts payment shall maintain the effect in relation to the investment contracts concluded with the authorized bodies prior to January 1, 2009.

See: Joint letter to NK MF RK from June 30, 2004 number NK-UM-08-1-16/5336 and Investment Committee of the Ministry of Industry and Trade on June 30, 2004 № 2-542 «On the procedure of tax benefits provided under contracts entered into before the enactment of the Law of the RK of 08.01.2003 "On investments", NC A letter from the MP of Kazakhstan on Oct. 13, 2003 number NK-UM-08-1-17/8056, Letter NC MF RK on October 7, 2003 number NK-UI-08-1-17/7881, Letter NK MF RK from 27 March 2003 number NK-UM-07-1-17/23 46

Article 24. On the invalidity of some legislative acts of the Republic of Kazakhstan

To annul the following legislative acts of the Republic of Kazakhstan:

1) Law of the Republic of Kazakhstan dated 27 December 1994 "On Foreign Investments (Official Gazette of the Supreme Council of the Republic of Kazakhstan, 1994, № 23-24, Art. 280, 1995, № 20, Art. 120, Bulletin of the Parliament of the Republic Kazakhstan, 1996, № 14, Art. 274, 1997, № 11, Art. 143; № 13-14, Art. 205; №17-18, Art. 218, 1998, № 5-6 , Art. 50, 1999, № 21, Art. 786, 2000, № 10, Art. 244);

2) The Supreme Council of the Republic of Kazakhstan dated 27 December 1994 on the procedure for enactment of the Law of the Republic of Kazakhstan "On Foreign Investments (Official Gazette of the Supreme Council of the Republic of Kazakhstan, 1994, № 23-24, Art. 281, 1995 , № 1-2, Art. 15);

3) Law of the Republic of Kazakhstan dated 28 February 1997 "On State Support of Direct Investments (Official Gazette of the Parliament of the Republic of Kazakhstan, 1997, № 4, Art. 50, 1999, № 21, Art. 786).

President
Republic of Kazakhstan
N. Nazarbayev