

Albania

Foreign Investment Act (1990)

Unofficial translation

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

Contents

General provisions

Foreign Investment Act

Law No. 7496

General provisions

Article 1

In this Act, unless the context otherwise indicates:

"Albania" means; the Republic of Albania

"Territory" means; the territory under Albania's, sovereignty including the territorial sea, as well as the maritime area and the continental shelf over which Albania exercises , in accordance with International law, sovereign rights and jurisdiction.

"Authorization" means; an authorization for investment issued under this Act

"Foreign investor" means:

- a. any natural person that is a citizen of a foreign country
- b. any legal person that either is incorporated or constituted under a law that is not the Albanian law, or has its seat outside Albania
- c. an Albanian citizen with a permanent domicile abroad

"Foreign investment" shall comprise every kind of assets and, in particular, any foreign investment in:

- a. movable and immovable property and any other property right
- b. shares in and stock and debentures of a company and any other form of participation in a company
- c. loans, claims to money or to any performance under contract having an economic value
- d. intellectual property rights, including technical process and know how
- e. economic rights granted by public law, including the right to search for, extract or exploit natural resources

"Minister" means; the Minister of Trade and Foreign Economic Co-operation

"Ministry" means; the Ministry of Trade and Foreign Economic Co-operation

"Bank" means; the Bank of Albania

Article 2

Foreign investments may be effected in all sectors of the economy, provided that they shall not:

- a. affect Albania's national security and defence interests
- b. infringe the regulations in force meant to protect the environment

- c. harm the legal and public order, health and good morals

Article 3

Foreign investments in Albania shall be made on the basis of an authorization given by:

- a. the Council of Ministers, for an investment in major sectors of the economy which are of national importance and above a minimum value of USD\$10m. The sectors of national importance and the relevant minimum value shall be determined by the Council of Ministers.

- b. the ministry of Trade and Foreign Economic Co-operation for all other cases, except for an investment with a value under US\$50,000 in cash or in kind, or their equivalent in other convertible calculated in accordance with the average rate of exchange announced by the Bank upon effecting the investment.

- c. by the local governmental body for an investment with a value under US\$50,000. If the foreign investment is made in an Albania state owned enterprise, independently of the value of the investment, the Albanian state owned enterprise must ask for permission from the relevant ministry.

Article 4

All requests for authorization for foreign investments, except those within the competence of the local governmental bodies, or those in the banking sector, shall be presented to the Ministry. The request must contain:

- a. the identity of the foreign investor, partners, or in the case of joint stock companies the identities of the incorporators.

- b. documents that verify the name, seat and place of registration of the company.

- c. data about the activity of the foreign investor.

- d. documents that prove the foreign investor has the credibility and financial resources for the investment.

- e. pre-feasibility study for the investments including the amount of funds necessary for the investments.

- f. any other data that shall be deemed necessary by the Ministry.

Article 5

The Ministry should cooperate with and ask seek consensus from the relevant ministries, and also has the right to ask for data and information from banks, central and local governmental bodies in the field where the investment takes place. The relevant ministries, banks and other central and local governmental bodies must reply to the Ministry within a period of 20 days from the date of the receipt of the request from the Ministry. When the investment requires the authorization of the Council of Ministries, the Ministry should within a period of 30 days from the date of receipt of the request, present the dossier to the Council of Ministries together with its opinion thereon.

Article 6

The Council of Ministries gives or refuses the authorization within a period of 60 days from the date of receipt of the request from the Ministry. The Ministry gives or refuses the authorization within a period of 45 days from the date of receipt of the request in the Ministry. The local governmental body gives or refuses the authorization within a period of 30 days from the date of receipt of the request.

Article 7

Albanian legal persons, whose capital is controlled by a foreign investor, only for the purposes of articles 3, 4, 5 and 6 hereof should be considered as foreign legal persons.

Article 8

The foreign investor enjoys the same rights and obligations as the Albanian investor, except in cases determined by law.

Article 9

Foreign investment in Albania enjoys full protection and security. Foreign investment cannot be nationalized, expropriated or subjected to any other measure of tantamount effect, except in special cases in the public interest and always under due process of law, with compensation and without discrimination. The compensation should be immediate, realizable and appropriate.

Article 10

The compensation, for the purposes of article 9, should be calculated in accordance with the market value of the investment at the time when the measures contemplated by article 9 take effect or become known, whichever is earlier. In cases where the market value cannot be ascertained, the compensation should be calculated in accordance with the equitable principles, taking into account, although not exclusively, the capital invested, current returns, depreciation, and capital repatriated. The compensation should be paid without delay and should include also interest calculated from the date of nationalization, expropriation or other measure of tantamount effect. The compensation is freely transferable and convertible in accordance with the average rate of exchange announced by the Bank on the date of such nationalization, expropriation or other measure of tantamount effect. In cases where the compensation is considered unsatisfactory by the foreign investor, the compensation can be determined by an international tribunal in accordance with the rules and regulations set fourth in Article 15 hereof.

Article 11

Foreign investors whose investment in the territory of Albania suffers losses owing to war, armed conflict, state of national emergency, and other similar situations, should be given treatment no less favorable than that accorded to Albanian investors.

Article 12

A foreign investor has the right to transfer abroad:

- a. The proceeds of the sale or liquidation of all or any part of his investment to a natural or legal Albanian or foreign person.

- b. The return of shareholder's equity resulting from the diminution of the capital when the company has decreased its capital in accordance with Albanian legislation.
- c. Profit and dividends calculated in accordance with Albanian legislation.
- d. Payment for licenses or payment to persons domiciled outside Albania for intellectual property rights used in the foreign investment, when these payments are the result of a contract.
- e. Necessary payments for the development and maintenance of the foreign investment.
- f. Personal earnings of foreign citizens employed by the foreign investor.

The right of transfer as determined by this Article 12 can take effect subject to:

- the payment of all relevant taxes.
- the taking into account of all claims of creditors.
- the procedure shall have been done in accordance with Albanian legislation.

The fulfillment of the above-mentioned conditions should be verified by the Bank.

In cases where the capital of the foreign investor is less than the total capital invested, then points (a), (b) and (c) of this Article 12 should be applied only to the portion of the total capital invested by the foreign investor and his pro rata share of the profits and proceeds of the sale or liquidation of the company.

The rights specified in this Article 12 do not apply to an Albanian investor.

Article 13

If in the opinion of the Bank, the amount of foreign currency required to give effect to paragraphs (a) and (b) of Article 12 would have a material adverse effect on the external payments liabilities of Albania, the appropriate foreign currency may be made available by such number of installments of such amount and at such interval as the Bank may determine.

Article 14

A foreign investor has the right to employ as qualified technical staff foreign citizens, in accordance with Albanian legislation.

Article 15

Any dispute between the holder of the authorization and the Council of Ministers, Ministry or local governmental body in respect of:

- a. any issue relating to discrimination, or any issue relating to the amount of or any other matter in connection with any compensation payable in a case of an expropriation as provided in Article 9 and 10 hereof,
- b. the validity or continued validity of the Authorization,

– shall be referred for settlement by international arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law in force at the time when the Authorization was issued, unless by agreement between the Minister and the Foreign investor to whom the Authorization is to be issued, another method of settling the dispute has been chosen and the Authorization so provides. Any award rendered in any such arbitration shall be final and binding on both parties.

Article 16

Any particular dispute between the foreign investor accorded an authorization in accordance with this Act and the Council of Ministers, ministry or the local governmental body, except those mentioned in Article 15, shall not be referred to international arbitration but must be settled by a competent court in Albania, in accordance with the procedures of the Albanian legislation.

Article 17

The issuer of the Authorization cannot, without the consent or on application of the holder of the Authorization, as the case may be, amend an Authorization or transfer the Authorization to any other foreign investor.

Article 18

The issuer of the Authorization has the right to impose a fine not exceeding US\$5000, or cancel the Authorization when the foreign investor:

- a. makes any statement which he or she knows to be false or does not believe to be true, or knowingly furnishes any false information in connection with the application for an Authorization.
- b. makes any act for which an Authorization is needed without the appropriate Authorization; The issuer of the Authorization, 30 days before making the decision for the cancellation of the Authorization, should give notice to the foreign investor in order to give him the opportunity to prepare and present any necessary documents to justify his actions or nonactions.

Article 19

Albania shall make public all the laws, rules and regulations concerning foreign investments.

Article 20

Decree nr. 7406, dated 31.07.90 and entitled "For the protection of foreign investments in Republic of Albania", second chapter of decree nr. 7407, dated 31.07.90 and entitled "for the economic activity of joint ventures with the participation of foreign capital in PSRA" and any other disposition in contradiction with this law, are hereby cancelled.

Article 21

The Council of Ministers shall issue all the rules and regulations necessary for the implementation of this law.

Article 22

This law enters into force 15 days after being published in the Official Journal.

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