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Investment Update

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Ukraine Offers Brand-New Perks for Big-Ticket Investments as Adopted Law No.1116-IX Gets Signed by the President

For the past couple of years, Ukraine has strived to designate comprehensive legal regime that would help its promotion as a promising investment destination and attract new capital. The investment agenda has been treated consistently, resulting in the introduction of fresh legal incentives aimed at expanding investment opportunities and boosting the country's standing on the global investment radar.

Amongst others, a notion addressing **treatment of large investments** has long been debated. It has finally become formalised by adoption with the Ukrainian parliament of Law No. 1116-IX Securing State Support for Large Investment Projects in Ukraine (the "Law"), and its signing by the Ukrainian president on 10 February 2021. Importantly, the Law will take effect on the date following the date of its promulgation, while within six months after its entry into force, the

Ukrainian government undertakes to adopt and align secondary legislation tailored to enable the performance of the Law.

Generally, state support is granted on an non-discriminatory basis and without prejudice to investor's nationality, for investment projects valued EUR 20 million and above through a wide range of schemes, while a free and public register is created to keep record of investment projects. The Law sets out *what the support includes*, *who may apply for the support*, and *how to apply*. We have covered all of the above in the present brief.

Types of state support

The Law provides that the amount of designated state support be set out in an investment contract effective of up to 15 years and may not exceed 30% of the total investment.

The support may be realised through:

(a) tax and customs reliefs, (b) land lease incentives, including a pre-emption purchase of leased land plots after the investment contract expiry, (c) starting 1 January 2022, financing of construction of adjacent infrastructure required for investment projects, and (d) facilitation in matters regarding connection to utilities owned and run by natural monopoly entities.

Additionally, the Law introduces stabilisation clause whereby freezes regulation framework for large investments, unless more favourable conditions apply. It further allows to use foreign law as governing law of an underlying investment contract, and apply for remedies through mediation and international arbitration (in the latter case, the investor must be a special purpose vehicle (SPV) incorporated in Ukraine with at least 10% of its authorised share capital paid of funds from abroad).

Qualifying criteria

Under the Law, state support may be granted where investment projects are run through SPVs incorporated in Ukraine and that satisfy the following requirements:

(1) pertain to certain industries (e.g. processing, minerals extraction, waste management, transportation, logistics, healthcare, tourism etc); (2) envisage construction and upgrading of facilities in the referred industries; (3) secure employment of no less than 80 professionals during the 5-year project realisation period, with their average wage exceed by 15% the average wage in a particular industry and location; (4) include investment of EUR 20 million and more.

However, the favourable regime does not cover concessions, public-private partnerships, production sharing agreements, and privatisations.

The Law exhaustively determines who may not enjoy the state support, too. Among others, those include offshore companies, sanctioned companies, FATF-blacklisted companies or their subsidiaries with at least 10% interest held (in-) / directly, and companies set up in aggressor states.

Application procedure

The application procedure aimed at engaging the state support is premised on several stages, as follows.

1. It is required that entities who contemplate to make large investments as defined by law and seek state support, to this end, must first submit an exhaustive batch of documents with the Ukrainian ministry of economy (the "Ministry"). This would include the following: an application, supporting documents that confirm investor's satisfaction of the qualifying criteria, investment project feasibility study (pointing out its social impact), and a draft investment contract. Apart from the above, investors must also prove that their financial standing is sufficient to realise investment projects.

2. On its part, the Ministry evaluates the investment project during 60 calendar days following the receipt of documents. For this purpose, it also engages the Ukrainian anti-trust authority, ministry of finance, ministry of justice, ministry of environmental protection and natural resources, as well as municipal authorities where state support is exercised through the latter.

3. Following the evaluation, the Ministry issues its decision by either approving or rejecting the project. In case of approval, it may also require that the draft investment contract be further elaborated in line with its comments and allocates two months, to this end, and repeated submission, whilst the rejection may be disputed in court.

4. After the draft investment contract is aligned with the Ministry's comments and repeatedly submitted, the Ministry proceeds with its review during 30 business days. Where the amended draft meets the requirements, it is further forwarded, along with a draft decision on the conclusion of an investment contract, to the government and relevant municipalities that would be engaged as a party to the contract.

5. Where the draft is satisfactory from the outset, the Ministry signs its opinion on the appropriateness of an investment project realisation and conclusion of an investment contract, to this end. Then, during 30 business days of the signing of the opinion, the draft investment contract and draft decision on its conclusion are forwarded to the government and relevant municipalities that would be engaged as a party to the contract.

6. Following the receipt of the draft investment contract, the relevant municipalities inform the government and the Ministry of the decision to conclude the contract during 5 business days of the decision.

7. Finally, during 30 business days following the receipt of the draft investment contract and the relevant municipalities’ decision, the Ukrainian government renders its decision regarding the conclusion of the investment contract. It also determines an authorised representative to sign the contract on the government’s behalf.

Future impact

Overall, the Law comes timely and handy in the nation’s attempt to engage more investments, both domestic ones and those coming from overseas. It introduces uniform rules of the "game", along with other investment related laws, and brings more clarity, on the legal part, to all interested in benefitting from the advantages that Ukraine offers nowadays.

We welcome the adoption of the Law and trust that after the enactment of the necessary secondary legislation during the next six months following its entry into force, as well as activation of its full-fledged application mode starting 1 January 2022, new and promising long-term investment opportunities should be expected to arise soon.

Key contact:

Should you be interested in pursuing opportunities in relation to large investments and require more details, to this end, or in case of any related or other queries, please reach out to Serhiy or your alternative contact at BOULDERS.

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