

Investing in Uzbekistan: Rights and Protections

October 8, 2009

**U.S. - Uzbekistan Investment
Summit 2009**

Uzbekistan is Attractive to Foreign Investors

- Centrally located at the crossroads of Central Asia.
- Has a young and entrepreneurial population, the largest in Central Asia, with a high rating for literacy.
- Has relatively well-developed transportation and energy infrastructure, and it exports a portion of its energy resources.
- Corporate income tax is only 10%, and it offers various tax holidays and incentives to foreign investors.
- Has rich natural resources and raw materials, such as gold, natural gas, cotton, uranium and coal.
- Has a large potential consumer market.

Sectors of the Uzbekistan Economy Open to Foreign Investment

- oil and gas exploration, extraction and processing
- power, including transportation and distribution, renewable energy
- manufacturing of construction materials, textiles and building of automotive, agricultural and other machines
- tourism infrastructure

Legal Framework for Investment in Uzbekistan

- the Law on Foreign Investments (dated April 30, 1998, as amended in 1999 and 2008)
- the Law on Investment Activity (dated December 24, 1998, as amended in 2003, 2006 and 2008)
- the Law on Guarantees and Measures of Protection of Foreign Investors' Rights (dated April 30, 1998, as amended in 2003, 2005 and 2008)

A foreign investor may make investments into Uzbekistan through:

- equity participation in charter capital and other enterprises established with legal and/or natural persons in Uzbekistan;
- establishment and development of companies, banks, insurance organizations and other enterprises, completely belonging to foreign investors;
- acquisition of property, assets and securities held by residents of Uzbekistan;
- investment in rights to intellectual property;
- acquisition of concessions, including those for prospecting, exploration, mining or use of natural resources; and
- acquisition of property rights to objects of trade and services.

What Constitutes An Enterprise with Foreign Investment under Uzbek Law?

- foreign investment must comprise at least 30% of shares of the charter capital of the enterprise;
- at least one of the foreign investors must be a legal entity; and
- the minimum charter capital must not be less than USD \$150,000 (except in the Karakalpakstan and Khorezm regions, where the charter capital requirement is USD \$75,000).

Law on Guarantees, Article 3

Foreign investments are protected from any subsequent changes in the legislation, which may worsen investment conditions, for the period of ten years from the date of the investment.

“Worsening of Investment Conditions”:

- increase in the withholding tax rate on dividends payable to a foreign investor;
- introduction of additional requirements that complicate procedure of repatriation or reduce the size of foreign investor’s profit to be transferred abroad (with exceptions);
- limitations on the size of investment or increase in the minimum size of charter capital for enterprises with foreign investments.

Law on Guarantees, Article 4:

“The additional guarantees and measures of protection, including assurance of unconditional execution of obligations by partners before foreign investors may be provided by the legislation, alongside with general guarantees and measure of protection of foreign investors.

Foreign investors may be provided with additional guarantees and measures of protection in each concrete event when investing:

- in priority branches, ensuring firm economic growth and progressive structural changes of the country’s economy;
- in priority projects, ensuring strengthening and expansion of export potential of the Republic, its integration into global economic cooperation;

Law on Guarantees, Article 4 (cont'd):

- in projects in small and medium business, realization of which is directed to the processing of raw materials, production of consumer goods and services, ensuring employment of population.

The additional guarantees and measures of protection to foreign investors may include granting of a guarantee of the Government of the Republic of Uzbekistan, rendering an assistance in financing of investment projects, establishment of a special tax and payment treatment, carrying out state monitoring of realization of projects and other measures in accordance with the legislation.

The foreign investors shall be provided with additional guarantees and measures of protection by special decisions of the Government, which, in particular, stipulate the terms and order of investment, use and security of recoupment of foreign investments.”

Sovereign Guarantees: Law on Foreign Investments, Article 19

The Law on Foreign Investments instructs that Uzbek national and local authorities shall only answer for “those liabilities undertaken in relevant agreements with foreign investors and signed by officials” as authorized in accordance with the laws of Uzbekistan.

Sovereign Guarantees: Law on Guarantees, Article 4

Factors considered by the Uzbek Government as to whether to issue a sovereign guarantee:

- (1) whether the investment is in a “priority branch” that would ensure economic growth;
- (2) whether the investment is for a “priority project” that would ensure the strengthening and expansion of Uzbekistan’s export growth and its “integration into world economic relationships;” and
- (3) whether the investment is in a small or medium enterprise that is directed at processing raw materials or providing consumer goods and services, or that would provide employment of Uzbekistan’s population.

Political Risk Insurance

Law on Foreign Investments, Article 16

- Article 16 acknowledges that insurance of foreign investments against political and other risks can be fulfilled by “international organizations,...foreign state export credit agencies and other insurance companies.”
- Article 16 also instructs that the Government of Uzbekistan will not answer for the obligations of the insurance organizations unless specifically stipulated in an agreement with the Government.

Three Main Types of Political Risk Insurance

- currency inconvertibility
- expropriation insurance
- political violence coverage

Multilateral Investment Guarantee Agency (“MIGA”)

- Affiliate of the World Bank Group
- Offers PRI to member countries investing in developing member countries
- Eligibility
 - New investments and investments in existing projects are covered.
 - Must be justified by economic viability, positive developmental effect, compliance with local laws and conditions in the host country.

Overseas Private Investment Corporation (“OPIC”)

- Agency of the U.S. Government
- Offers PRI only in projects with significant U.S. involvement
- Eligibility
 - New investments and investments in existing projects are covered.
 - OPIC will also consider the effect of the project on the U.S. economy and on developmental needs.