

UPDATE OF INCENTIVES FOR PROJECTS WITH SIGNIFICANT INVESTMENTS IN UKRAINE

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On 17 September 2023, Law of Ukraine No. 3311-IX "On Amendments to Certain Legislative Acts of Ukraine on Implementation of Investment Projects with Significant Investments" dated 9 August 2023 (the "**Law**") came into force.

The Law enhanced incentives for projects with significant investments, extended the list of eligible projects and streamlined the selection procedure.

The key updates include the following:

- (1) the investment threshold for an eligible project was decreased from EUR 20m to EUR 12m, excluding VAT;
- (2) the job creation threshold was decreased from 80 new jobs to:
 - 10 new jobs, if an average salary of the employees is 50% higher than the average salary for the relevant type of activity in the region for the previous year (the "**Indicative Salary**") (for example, the average salary in Ukraine for 2022 is circa USD 406 according to [the official data](#));
 - 30 new jobs, if an average salary is 30% higher than the Indicative Salary; and
 - 50 new jobs, if an average salary is 15% higher than the Indicative Salary;
- (3) the full list of eligible projects now includes the following areas:
 - processing industry (except for the production and circulation of tobacco products, alcohol and alcoholic beverages);
 - production of bioethanol intended for use as a fuel component (*new area*);
 - production of biogas and biomethane, both liquefied and compressed (*new area*);

- minerals extraction for the purpose of further processing and/or enrichment (except coal, crude oil and natural gas);
- waste management;
- transport, warehousing, postal and courier activities, logistics;
- education, scientific and scientific and technical activities;
- health care, art, culture, sports, tourism, recreation; and
- electronic communications, for example, development or recovery of telecommunication networks (fixed, mobile, Internet) (*new area*);

(4) forms of state support for eligible projects now include:

- the exemption from payment of certain taxes according to the Tax Code of Ukraine;
- the exemption from payment of the import duty on new equipment intended for the project implementation according to the Customs Code of Ukraine;
- the allocation of state/municipally-owned land without an auction;
- the construction of engineering and transport infrastructure (roads, communication lines, heat, gas, water and electricity networks, etc.) at the expense of budget funds;
- the reimbursement of costs for engineering and transport infrastructure (roads, communication lines, heat, gas, water and electricity networks, etc.) built by the investor (*new form*);
- the reimbursement of costs for connection to utility and transportation networks; such costs now can be included in the project's CAPEX (*new form*); and
- the exemption from the compensation of losses for forestry production; change of designation of forestry lands is now allowed for the placement of projects with significant investments (*new form*);

please note that such state support will not be qualified as a state aid under the Law of Ukraine "On State Aid to Business Entities" and will not require a notification to the Antimonopoly Committee of Ukraine;

- (5) up to 30% of the project costs incurred by an investor prior to execution of a special investment agreement with the Cabinet of Ministers of Ukraine are now eligible for inclusion into the EUR 12m project CAPEX (being an eligible project's investment threshold) if the project commenced not earlier than 18 months prior to an application by the investor for the state support;
- (6) the project selection procedure now concentrates on the analysis of financial and social indicators, as well as environmental consequences of the project implementation, while the analysis of economic indicators of the project (such as ENPV, EIRR, BCR) is no longer required; and

- (7) an SPV incorporation for the project is no longer required if such SPV already exists and is designated solely for the project with significant investments.

The eligibility as a project with significant investments may be beneficial for a foreign investor due to the following benefits:

- the state support in the amount of up to 30% of the project CAPEX, including via tax and/or customs exemptions, construction of infrastructure (roads, communication lines, heat, gas, water and electricity networks, etc.) at the expense of budget funds or reimbursement of the investor's costs;
- the acquisition of rights to the state/municipally-owned land without an auction;
- the project implementation based on a special investment agreement entered into with the government of Ukraine and municipality (if required), which will specify the project, applicable forms of state support granted to the investor and rights, obligations and liability of the parties, including provisions on damages compensation in case the investor's rights or guarantees are not ensured by authorities; and
- the support of a governmental agency, UkraineInvest (called "*investment nanny*"), with certain regulatory issues relating to the project implementation.

Seize your opportunity to invest in Ukraine. Follow our updates to keep up with the latest legislative and regulatory changes in Ukraine.

Source: [official web portal of the Parliament of Ukraine](#).

HOW WE CAN HELP

- Legal advice on investments in Ukraine, including on projects with significant investments, PPP, concessions, privatization, and industrial parks;
- Legal structuring of foreign business in Ukraine;
- Turn-key legal support for the implementation of investment projects in Ukraine, including land allocation and construction; and
- Legal support for day-to-day operations of project companies in Ukraine.

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