

## **The law of Republic Kazakhstan from January, 8th, 2003 № 373-II**

### **About investments**

(With changes and additions as of 19.03.2010)

Chapter 1. General provisions (Articles 1-3) Chapter 2. The Legal regime of investments (Articles 4-10)  
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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. Basic concepts used in this Act In this Law the following basic concepts: In sub-paragraph 1 amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.) **RK of 05.07.08 № 66-IV (see the old. Ed.)** 1) investments - all types of property (except for goods intended for personal consumption), including items of a financial lease agreement with the conclusion of the lease agreement, as well as the right to have invested the investor to the charter capital of a legal entity or an increase in fixed assets used for entrepreneurial activity, and produced and received by the fixed assets in the concession contract the concessionaire (successor);

**In sub-paragraph 2 amended in accordance with the Law of RK from 05.07.08 № 66-IV (see old. Ed.)**

2) investment activities - physical and legal persons for participation in the authorized capital of commercial organizations or to establish or increase of fixed assets used for business, as well as produced and received by the fixed assets under the concession contract the concessionaire (successor); In sub-paragraph 3 amended in accordance with the Law of RK on 13.02.09, the number 135-IV (see old. Ed.) 3) investment preferences - the benefits of targeted, provided in accordance with the laws of the Republic of Kazakhstan legal entities of the Republic of Kazakhstan, carries out an investment project or a strategic investment of the project; In sub-paragraph 4 amended in accordance with the Law of RK from 05.07.08 № 66-IV (see old. Ed.) 4) investment project - a complex of measures providing for investment in the creation of new, expansion and renovation of existing productions, including production, made or received under the concession agreement the concessionaire (successor); 5) investment dispute - a dispute arising out of contractual obligations between investors and government authorities in connection with investment activities of the investor; 6) investor - individuals and legal entities engaged in investment in the Republic of Kazakhstan;

In sub-item 7 amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.) **RK of 13.02.09, the number 135-IV (see old. Ed.)** 7) state in-kind grants - property that is owned by the Republic of Kazakhstan passed for temporary free use or be allowed the right of land use temporary gratuitous legal entity of the Republic of Kazakhstan to implement an investment project or a strategic investment of the project, followed by the donation of the property or land; 8) contract - a contract to make investments, providing investment preferences; Article 1, subparagraph 8.1 supplemented in accordance with the Law of RK on 19.02.07, the number

8-1) a minority investor - the investor, by investing in less than ten percent of the voting shares (less than ten percent of the votes of the total number of votes participants); 9) a model contract - a standard contract approved by the Government of the Republic of Kazakhstan and is used in awarding contracts; Item 10 is contained in the wording of the Law of the RK of 31.01.06, № 125-III (see the old. Ed.) 10) the authorized body on Investment (hereinafter - the authorized body) - a government body, determined by the Government of the Republic of Kazakhstan, at the conclusion of contracts for the provision of investment preferences and monitoring their execution; 11) entity of the Republic of Kazakhstan - a legal person, including a legal entity with foreign participation, established in accordance with legislation of the Republic of Kazakhstan;

Article added to subparagraph 12 in accordance with the Law of RK of 31.01.06, № 125-III 12) Work Program - a supplement to the contract specifying time schedules for the project implementation; Article added to subparagraph 13 in accordance with the Law of RK of 31.01.06, № 125-III 13) equipment - imported fixed assets, including tools, machinery, equipment, devices intended for use in the technological process of the investment project and transferring its value to the cost of manufactured goods (works, services); Article added to subparagraph 14 in accordance with the Law of RK of 31.01.06, № 125-III 14) parts - parts that together make up the structural integrity of equipment; Article added to subparagraph 15 in accordance with the Law of RK on 13.02.09, the number 135-IV 15) Strategic investment project - an investment project, included in the list determined by the Government of the Republic of Kazakhstan, and is able to provide strategic influence on the economic development of the Republic of Kazakhstan.

## 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 The wording of the Law of RK on 19.02.07, the number 230-III (see the old. Ed.) 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 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 accordance with this Act by entering into a contract with the competent authority granted the following investment preferences: 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. Article 14. The provision of investment preferences In paragraph 1 amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.)

1 Investment preferences are provided in priority activities, a list which is approved by the Government of the Republic of Kazakhstan at the level of classes of general classification of economic activities. In paragraph 2, amended 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.)

2 The Government of the Republic of Kazakhstan on each of the priority of the claims the maximum amount of investment.

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.) In paragraph 4, amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.)

4 Investment preferences are provided through a contract with a legal entity of the Republic of Kazakhstan, carries out the investment project.

Article 15. Terms of investment preferences Investment preferences are granted subject to: 1) compliance with the envisaged investment list of priority activities; 2) Delete 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.)

In sub-paragraph 3 amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.) 3) the submission of required documents listed in Article 19 of this Law, confirming the existence of financial, technical and institutional capacity of legal entity of the Republic of Kazakhstan, the applicant for an investment 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 Exemption from customs duties is granted for import of equipment and its components imported for the investment project.

2 Exemption from customs duties is granted for the term of the contract, but not more than 5 years from the date of registration of the contract.

3 Notification of the decision taken in accordance with paragraph 2 of this article shall be forwarded by the authorized body within five working days of the public authority on customs matters.

Article 18. Public 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 Public-kind grants in the manner prescribed by this Law, provided by competent authority in consultation with relevant government authorities in the management of state property and (or) the land, as well as local executive bodies for temporary free use or the right of temporary gratuitous land, followed by the donation of ownership or land use in the event of implementation of investment commitments in accordance with the contract. The reason for the donation provided by the state in-kind grant of ownership or land use is the decision of the authorized body. The decision of the authorized body is made based on the results of inspection carried out by them in accordance with paragraph 3) of paragraph 2 of Article 21.1 of this Act.

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

**Application** for granting investment preferences are accepted and registered by the authorized body in the presence of:

- 1) notarized copy of certificate of state registration of legal persons;
- 2) notarized copies of the statute of legal entity;
- 3) the business plan of the investment project, prepared in accordance with the requirements established by the authorized body;
- 4) notarized copies of documents substantiating the estimated cost of construction and installation work and costs for the acquisition of fixed assets used for investment project;
- 5) notarized copies of documents establishing the sources and guarantees of investment project financing. In the case of investment project financing from its own resources attached written confirmation of their availability;
- 6) 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;
- 7) the balance sheet as the first of the quarter in which the application was filed;
- 8) Help 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. Awarded contract**

1 Authorized body within ten working days after the decision to grant investment preference is preparing to sign a contract subject to the provisions of the model contract.

2 Contract registered by the authorized body within five working days from the date of signing and shall enter into force from the date of its registration. Article added to paragraph 3, in accordance with the Law of RK of 31.01.06, № 125-III

3 The contract specifies the duration of investment preferences. Completion date of work on the work program should end no later than three months before the expiry of the contract.

### **Article 21-1. Enforcement of contracts**

1 Monitoring compliance with the terms of contracts made by the authorized body in the following forms: 1) cameral control - the control exercised by the authorized body on the basis of study and analysis of reports submitted in accordance with paragraph 2 of this article; 2) with a visit to the object of investment activities, including consideration of documents on the execution of the work program and terms of the contract.

2. After the conclusion of the contract entity of the Republic of Kazakhstan, has entered into a contract, is the authorized body: 1) the duration of the work program: interim report on the implementation of the work program no later than the twenty-fifth day of June; annual report on the implementation of the work program no later than the twenty-fifth in January with

information for fixed assets acquired in accordance with the working program; 2) within one month after the commissioning of fixed assets document confirming the commissioning of fixed assets; 3) within one month after the expiration of the completion of the work program confirmed the audit report: report on the implementation of the work program; report on revenues and expenditures as a result of investment activities; decoding of fixed assets acquired in accordance with the working program. The audit report should include analysis of financial and economic activity for the entire duration of the work program.

2 Changes in the work program may be amended by agreement of the parties once a year.

3 Check with a visit to an investment activity carried out on the basis of the decision of the authorized body within three months after the expiration of the completion of the work program. Exceptional check with a visit to an investment activity carried out by the decision of the authorized body: 1) in case of revealing the results of a desktop monitor breaches of contract; 2) on the appeals of law enforcement.

4 The audit, the representative of the authorized body and the head of the legal person, has entered into a contract, signed by an act of the current state of execution of the work program of the contract.

5 In the event of default or improper performance of the work program of the contract authorized body sends a legal entity of the Republic of Kazakhstan, to conclude a contract notice in writing specifying the violations and establishes a term not exceeding three months to remedy the violation.

6 Information about the termination of the contract in order to protect the economic interests of the state goes: 1) in the authorized state agency that provides fiscal control over the execution of tax obligations to the State, and, if necessary, to other government agencies for appropriate action; 2) contract under which the state provided in-kind grant, the authorized state agency that provides fiscal control over the execution of tax obligations to the State, public authorities in the management of state property and (or) the land, and local executive bodies.

7 Legal entity of the Republic of Kazakhstan, has entered into a contract during the contract shall not: 1) change the purpose of the provision of public in-kind grant, as well as property acquired in accordance with the working program; 2) to dispose of state-provided in-kind grants, as well as property acquired in accordance with the working program.

## **Article 22. Terms of the contract termination**

1 Effects of investment preferences is terminated upon the expiration of the contract or may be

terminated before the expiration of such period in the manner prescribed by this article.

2 The contract may be terminated prematurely: 1) by agreement of the parties; 2) unilaterally. In paragraph 3, amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.)

3 The authorized body shall be entitled to unilaterally terminate the contract after three months from the date written notice of the legal entity of the Republic of Kazakhstan, to conclude a contract for this in the following cases: 1) the detection of distortion or concealment of information submitted by the applicant and influenced the decision on granting investment preferences; Paragraph 2, the wording of the Law of the RK from 04.05.05 g. № 48-III (see the old. Ed.) 2) the default entity of the Republic of Kazakhstan to enter into a contract, its obligations under the contract. Article added to subparagraph 3, in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.) 3) the detection of distortion or concealment of information in reporting entity of the Republic of Kazakhstan, a contract in accordance with paragraph 1 of Article 21.1 of this Act. In these cases, the legal entity shall pay the amount of taxes and customs duties are not paid because the contract granted investment preferences, the application of punitive sanctions under the laws of the Republic of Kazakhstan. See: Letter from NK MF RK from May 19, 2004 number NK-UM-08-1-21/3897 on grant investment tax preferences. Item 4 is contained in the wording of the Law of the RK from 04.05.05 g. № 48-III (see the old. Ed.)

4 In case of early termination at the initiative of a legal entity of the Republic of Kazakhstan, has entered into a contract unilaterally the legal entity shall pay the amount of taxes and customs duties are not paid because the contract granted investment preferences, with accrued interest at the manner prescribed by the legislation of the Republic of Kazakhstan. In paragraph 5, amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.)

5. Upon early termination of the contract by agreement of the parties legal entity of the Republic of

Kazakhstan, has entered into a contract, pay taxes and customs duties are not paid by the provision of the contract of investment preferences. In paragraph 6 amended in accordance with the Law of RK from 04.05.05 g. № 48-III (see the old. Ed.)

5 Upon early termination of the Republic of Kazakhstan legal entity that has entered into a contract, return the property in kind, given to him as a public in-kind grant, or its initial value at the date of transfer in accordance with the terms of the contract. Article added to paragraph 7 in accordance with the Law of RK from 04.05.05 g. № 48-III

6 Return the public in-kind grant made legal entity of the Republic of Kazakhstan, entered into a contract within thirty calendar days after the decision of the authorized body on the early termination of the contract.

Chapter 4. Final Provisions Article 23 The wording of the Law of RK on 10.12.08, the number 101-IV (entered into force on 1 January 2009) (see the old. Ed.) Article 23. The stability of contracts

1 Exemptions granted under contracts concluded with the authorized state body on investments to give effect to this Act, remain valid until the expiration of the period specified in those contracts.

2 The rules of the third sub-paragraph 1), subparagraph 2) of paragraph 2 of Article 21-1, paragraphs 3, 4 and 5 of Article 22 of this Act in part payment of the sums of tax effect on retained contracts with the competent authority 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  
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N. Nazarbaev