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Introduction

In Armenia, the state policy towards the investors is rather liberal. On the one hand, through the legislation the country offers its investors a wide range of protection mechanisms in correspondence with international best practices and on the other hand, generally, does not set any harsh pre-requirements or bans for entering into the Armenian market and carrying out business activities in Armenia.

The primary source of legislation specifically applicable to the investors is the RA Law on Foreign Investment

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(“the Law”) which was adopted back in 1994. Armenia has also entered into 44 bilateral investment treaties. Besides, it is a member of International Centre for Settlement of Investment Disputes (ICSID) convention, allowing foreign investors to bring claims against the country on breaches of the protections provided to the investors.

Foreign Direct Investment: Ground Rules

The law defines the “**foreign investment**” as follows: foreign investment shall mean any type of property, including financial resources and intellectual values, which is being directly invested by a foreign investor in commercial and other activities implemented in Armenia with the purpose of gaining profit (revenue) or any other beneficial result. The law further establishes a broad and non-exhaustive scope of manners through which an investment can be made. And finally, the law is entitling investors to make their investment in the way not prohibited under the law, and there are very few such limitations.

The evaluation of the investment is conducted based on the national dram of Armenia or any convertible exchange rate as the investor may choose.

State Guarantees of Protection of Investment

As noted above, Armenian legislation

provides a number of guarantees which correspond with internationally recognised standards for the protection of the rights and lawful interests of the investor. Notably, the investors have protections against the change of legislation (stabilisation clause), nationalisation and expropriation, right to recovery of damages (including non-material/moral damages by illegal actions of state officials). The foreign investors are entitled to freely use their profit and other means as well as export their property, profit (income) and other means (guarantee of repatriation).

Firstly, one of the most significant protections for foreign investors is the guarantees **against the change of legislation (stabilisation clause)**. Particularly, in case of change of law *within five years after the investment has been made, the legislation in force at the moment of investing may be applied to the investor should the investor wish so*. This regulation allows the investor to mitigate risks connected to the change of legislation that may have served as the material rationale for entering the Armenian market. One of the most common examples is the tax legislation which is reasonably an integral part of economic evaluations and predictions made by the investor. After the adoption of the new Tax Code of Armenia (even before it would enter into force) the code has had over 30 amendments. Undoubtedly, this shows how the protection would be vital to provide predictability and stability to the investment allowing the investors to rely on the legislation which was in force when the investment was made, and due diligence for entering into the Armenian market was conducted.

Moreover, there is a relevant court practice, and the Court of Appeal has confirmed that the **investor** may announce that it wishes to rely on the respective regulations either immediately after the legislative amendment has entered into force or at least within five years upon investing.

The law further determines protections against nationalisation and expropriation.





Namely, it is established that foreign investments cannot be nationalised in the Republic of Armenia. The state bodies cannot expropriate foreign investments. Confiscation, as an extraordinary measure, can be implemented only during the emergencies based on the decision of the court and provided that a full compensation has been made.

The free disposal of the profit (income) of the foreign investor is another protection guaranteed by law, entitling the investor to freely manage its profit (income) after the taxes and other duties established under the Laws of Armenia have been duly paid. Moreover, the law allows the foreign investors to freely export their property, profit (income) and other means which have been legally gained as a result of the investment.

Protections provided under BITs:

Bilateral Investment Treaties (BITs) are a significant source of protection of the rights and lawful interests of foreign investors. Armenia has entered into 44 BITs with countries including the United States, Japan, United Kingdom and Switzerland. These treaties protect the interests of foreign investors from the contracting parties in Armenia and vice versa.

As an example, the protections determined under BIT concluded with the United States include **the National Treatment** and **Most-Favoured-Nation Standard /MFN/** (requiring the party to treat the nationals of the other party on a basis no less favourable than that accorded in like situations to investment or associated activities of its citizens or companies, or of nationals or companies of any third country), **the requirement of Fair and Equitable Treatment (FET); prohibition of arbitrary and discriminatory measures.** The BIT further prohibits expropriation (including direct and indirect) or nationalisation, as well as determines standards for the free transfer of property in a freely usable currency. Finally, the BIT allows settlement of disputes between the State

and nationals of the other state by the International Centre for the Settlement of Investment Disputes (“ICSID”).

Evidently, ICSID currently hears a case against Armenia initiated based on the Armenia-US BIT, where the country participates in the procedure in full compliance with its obligations.

Restrictions (and the lack thereof) for Entering Armenian Market

The nature of state policy towards foreign investors can be observed both from the perspective of protection provided and from the perspective of restrictions applicable to such investors. It is safe to say that Armenia is very open in this respect as well.

Foreign individuals and legal entities are free to establish a legal entity in Armenia. There are very few sectors where it is required to have a local content/participation. As a rule, foreign entities can be the 100 % owner of a local entity. There is no requirement to appoint a local director or hire local staff only (of course, provided that the regulations applicable to work permit and residence permit are duly complied with). One of such few restrictions is established under the Law on TV and Radio, which requires that the foreign ownership in a company holding a TV and Radio companies shall not exceed 50%.

Moreover, there are no requirements to

have a permanent physical existence, physical address or office in Armenia (a postal address is sufficient). Business can easily be recognised in proxy, starting from the process of establishment of a company to day-to-day activities. Government is keen to implementation of e-governance mechanisms and mostly has capacities to organise the administrative procedures in a proxy—a fact which was well proven during the COVID-19 pandemic.

Foreign entities are also allowed and welcome to participate in state procurement tenders. As established under the respective law, any person, irrespective of being a foreign citizen or company or a stateless person, shall have an equal right to participate in the procurement process.

A (quasi) restriction related to the foreign investors is established under the Constitution of Armenia and the Land Code, which determines that a land (of agricultural purpose) cannot be owned by a foreign individual or a stateless person. Yet, no such restrictions apply to companies with foreign holding or foreign legal entities. Moreover, the foreign entities can have any other rights (lease, right of use and property rights towards specific types of land – e.g. land under the buildings) toward the land, and those rights are fully protected under Armenian legislation.

