



NEWSLETTER

DRAFT LAW ON SUSTAINABLE INVESTMENTS

On 11 January 2023, the Government of the Republic of Kosovo adopted the Draft Law on Sustainable Investments, which repeals the laws in force, namely, the Law No. 04/L-220 on Foreign Investment and Law No. 05/L-079 on Strategic Investments.

The purpose of this draft law is to “regulate the protection, promotion and encouragement of sustainable investments in Kosovo”, and to “define the rights and obligations of public institutions, authorities, and other organizations related to investments”.

PRINCIPLES, OBJECTIVES & PRIORITY SECTORS

The Draft Law lists two instruments that will serve as basic principles for the promotion and protection of investments, namely: 1) Principles for Responsible Investment, supported by the UN Resolution 71/313; and 2) Declaration and Decisions on International Investment and Multinational Enterprises.

Article 14 lists ten (10) key national objectives of the promotion and protection of investments, including but not limited to increasing competitiveness of domestic industry, empowerment of youth, women, non-majority communities and marginalized groups, as well as environmental sustainability.

EQUALITY BEFORE THE LAW

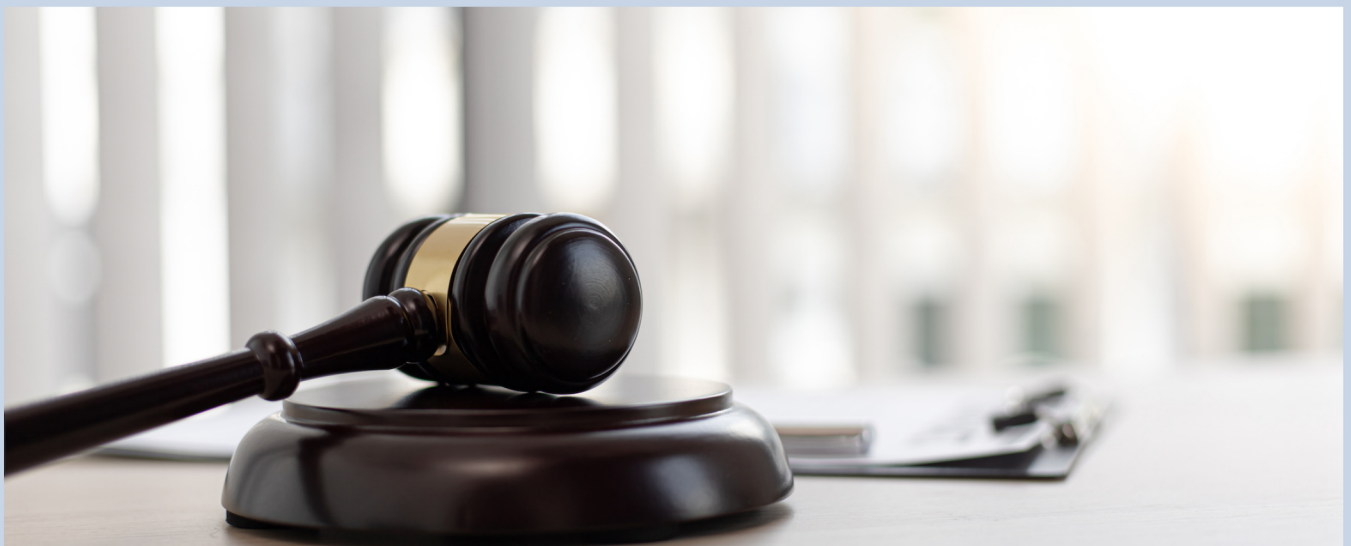
The Draft Law offers special benefits or advantages to investors based on international agreements with regards to 1) the method of resolving investment disputes, 2) customs, economic or monetary union, common market, free trade area or regional and international economic organizations, and 3) avoidance of double taxation or other tax issues.

EXPROPRIATION & NATIONALIZATION

The Draft Law establishes protection from expropriation or nationalization, directly or indirectly, except when it is necessary for a public interest.

According to the Law on Foreign Investments, the compensation for expropriation and nationalization includes a rate of interest that is equivalent to the London Interbank Offered Rate plus two percent.

Comparatively, the Draft Law establishes that the compensation shall include the interest equal to the “generally accepted rate in the European Union member states”. In addition, according to Article 13.2, the compensation shall not include lost profit or the cost of implementation of the new legislation.



COMPETENT BODIES FOR INVESTMENTS & PROCEDURES

The Draft Law establishes new competent bodies to conduct the procedures related to investments. It abolishes the Investment and Enterprise Support Agency (KIESA) established by the Law on Foreign Investments, and replaces it with two new agencies, namely: 1) the Agency for Investment and Export (AIE), under the Office of the Prime Minister as an executive agency; and 2) Agency for Support to Enterprises in Kosovo (ASEK), under the Ministry for Industry, Entrepreneurship and Trade.

The Draft Law also introduces the procedure of screening of a targeted investment or a foreign investment that is likely to affect the public order or national security. Screening may be particularly required for investments related to critical infrastructure, critical technology, supply of critical goods, access to or control over sensitive information, and media freedom.

DISAGREEMENTS AND DISPUTES

According to the Draft Law, the AIE may assist in resolving disputes with public institutions through consultation. The investor may also file complains at the Complaints Panel against the public institution, but not against a decision of the Council.

Regardless of whether the investor files a complaint, they may also use another legal remedy. In this regard, the investor may initiate an investment dispute lawsuit, or an administrative conflict lawsuit, before the competent court for commercial matters. Alternatively, the parties may agree to resolve the dispute through arbitration in Kosovo or in an EU member state which is part to the New York Convention.

In addition to the above, the Draft Law on Sustainable Investments contains provisions on the protection and security of the investor and investments, the obligations of public institutions to protect investment rights, currency conversion and transfers rules, liquidation of an investment, as well as facilitations for investments. For more see: gov.net/ActDetail.aspx?ActID=13319

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