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**LAW**

**No. 7764, dated 02.11.1993**

**ON FOREIGN INVESTMENTS**

*(Amended by Law No. 10 316, dated 16.09.2010;*

*Amended by Law No. 46, dated 13.04.2017)*

Pursuant to Article 16 of Law No. 7491, dated 29.4.1991, "On the main constitutional provisions", upon the proposal of the Council of Ministers,

**THE PEOPLE'S ASSEMBLY  
OF THE REPUBLIC OF ALBANIA**

**DECIDED:**

**Article 1**

**General Provisions**

*(Amended by Law No. 10 316, dated 16.09.2010, Article 1)*

For the purposes of this Law, "territory" means the territory under the sovereignty of the Republic of Albania, including the territorial waters and the maritime zone and continental shelf, on which the Republic of Albania exercises its sovereign and legal rights in accordance with international norms.

- "Foreign Investor" means:

- a) any natural person who is a citizen of a foreign country; or
- b) any natural person who is a citizen of the Republic of Albania, but who is permanently resident abroad; or
- c) any legal person established under the law of a foreign country, which directly or indirectly intends to make or is making an investment in the territory of the Republic of Albania in accordance with its laws or has made an investment in accordance with the laws pertaining to the period from 31.7.1990 and following;

ç) any “community association”, within the meaning of Article 49 of the Stabilization and Association Agreement, approved by Law No. 9590, dated 27.7.2006 “On the ratification of the “Stabilization and Association Agreement between the Republic of Albania and the European Communities of their member states”.

- “Foreign investment” means any type of investment in the territory of the Republic of Albania, owned directly or indirectly by a foreign investor, consisting of:

a) movable and immovable, tangible and intangible assets or any other property right;  
b) a company, rights derived from any form of participation in a company, with shares etc.

c) loans, cash obligations or liabilities in an activity that is economically viable and related to an investment;

d) intellectual property, including literary works and artworks, technical-scientific works, sound recordings, inventions, industrial projects, integrated circuit schemes, know-how,

trade marks, trademark designs and trade names;

d) any rights recognized by law or contract, and any license or permit granted in accordance with the laws.

- “Dispute for a foreign investment” means any dispute or claim arising out of or related to a foreign investment.

- “Income” means a sum of money that is derived or is related to an investment, including profit, dividend, interest, capital revaluation, management and administration fees, technical assistance fees or other fees; or contributions in kind.

“Special state protection” means the legal civil protection that the Republic of Albania, by decision of the Council of Ministers, grants to foreign investments, in accordance with the conditions and circumstances set forth in this law, in cases when, due to judicial conflicts with private third parties, the realization of a foreign investment or the exercise of the economic activity arising out of or related to it is prevented by law.”

## **Article 2**

### **Permission and Treatment**

1. Foreign investments in the Republic of Albania shall not be subject to prior authorization. They are permitted and treated on the basis of conditions no less favorable than those which are recognized to domestic investments under similar conditions, with the exception of land ownership, which is governed by a special law.

2. In all cases and at any time, investments have equal and unbiased treatment, enjoy full protection and security.

3. In any case, foreign investments have a treatment not less favorable than the one provided by the generally accepted norms of international law.

**Article 3**  
**Right to Employment**

A foreign-owned investment company has the right to employ foreign citizens as well.

**Article 4**  
**Expropriation and Nationalization**

Foreign investments shall not be directly or indirectly expropriated or nationalized, shall not be subject to any other measure equivalent to them, except for special cases in the interest of public use stipulated by law, without discrimination, with prompt, appropriate and effective compensation and in accordance with legal procedures.

**Article 5**  
**Compensation for expropriation and nationalization**

1. Compensation is equivalent to the real value of the expropriated investment market, immediately before the expropriation act was made or became known, whichever is the first.
2. Compensation shall be paid without delay and shall include interest from the time of expropriation, calculated at a reasonable market rate; is fully transferable and convertible, calculated at the exchange rate on the expropriation date.
3. The foreign investor has the right to request an immediate review by the judicial authorities in accordance with the provisions of Article 8 of this law, of the expropriation or compensation act.

**Article 6**  
**War and Armed Conflicts**

Foreign investors, whose investments incur losses as a result of war, armed conflicts, state of emergency or other similar situations are treated in a manner no less favorable than the one addressed to local investors as regards the measures taken in connection with these losses.

## **Article 7**

### **Transfers**

1. Foreign investors have the right to transfer outside the territory of the Republic of Albania all funds and contributions in kind related to a foreign investment, including:
  - a) income;
  - b) compensation according to Article 5 of this law;
  - c) payments arising as a result of an investment dispute;
  - ç) payments made under a contract, including loan and interest payments made in accordance with a loan agreement;
  - d) income resulting from the sale or partial or complete liquidation of an investment;
  - dh) income resulting from the reduction of the company's capital in accordance with Albanian legislation.
2. Foreign investors are entitled to make these transfers outside the territory of the Republic of Albania in easily convertible currencies, calculated at the exchange rate for instant transactions on the transfer day in the currency to be transferred.
3. The Republic of Albania may limit the transfer right through the impartial and non-discriminatory implementation of general laws, including those that are related to the payment of taxes and the fulfillment of obligations and judicial decisions.

## **Article 8**

### **Dispute Resolution**

1. If a dispute arises about a foreign investment between a foreign investor and an Albanian private party or an Albanian state enterprise or state company that has not been amicably settled, then the foreign investor may choose to settle the dispute according to any previously agreed and enforceable procedure. If no dispute settlement procedure is anticipated, then the foreign investor has the right to address a court or competent arbitration of the Republic of Albania, in accordance with its laws.
2. If a dispute arises about a foreign investment between a foreign investor and the state administration of the Republic of Albania, which has not been amicably settled, then the foreign investor may address a competent court or arbitration of the Republic of Albania, in accordance with its laws. If the dispute arises or is related to expropriation, compensation for expropriation or discrimination, and transfers under Article 7 of this law, then the foreign investor may also address to the International Center for the Settlement of Investment Disputes (the "Center") established by the Convention on the settlement of investment

disputes between the states and the citizens of other states adopted in Washington on 18 March 1965.

3. Any decision of the international arbitration under this Article shall be final and irrevocable for all parties to the dispute. The Republic of Albania undertakes to implement without delay the provisions of these decisions and to ensure their implementation in its territory.

#### **Article 8/a**

##### **Conditions for Granting Special State Protection**

*(Added by Law No. 10 316, dated 16.09.2010, Article 2)*

The Council of Ministers may grant special state protection to foreign investment, in cases when such investment is made in public or tourist infrastructure, energy or agriculture:

- a) under a state concession contract, in the meaning of Law no. 9663, dated 18.12.2006 "On concessions", as amended;
- b) on an immovable property made available to the foreign investor by the Albanian state;
- c) on an immovable property on which the foreign investor has acquired the rights, on the basis of regular, valid and legitimate public documents or acts issued by a competent state body or public entity, and performs or anticipates to make an investment of a value of not less than 10 million euros.

#### **Article 8/b**

##### **Contents of the Special State Protection**

*(Added by Law No. 10 316, dated 16.09.2010, Article 2)*

1. Special state protection provides the substitution with full rights of the foreign investor by the Albanian state in the civil-law dispute with private third parties. The substitution of the foreign investor as a party is made under Article 200 of the Civil Procedure Code.
2. Representation of the state at trial is made by the ministry covering the field with which the foreign investment is related, through the General State Advocacy Office, in accordance with the rules and procedure set forth in Law No. 10 018, dated 13.11.2008 "On State Advocacy".
3. Special state protection is granted only after the civil legal dispute has arisen with the private third parties and never a priori. Special state protection is granted only for individually determined disputes and ends with an amicable or legal resolution of these disputes or, as the case may be, with the execution of the court decision.
4. Special state protection may also include the undertaking by the state of the obligations imposed by the Albanian court on the foreign investor, in favor of the private third parties provided that:

- a) this protection has been established and the Albanian state has been represented in the court, at least before the phase of closing the judicial investigation;
- b) the decision of the Council of Ministers to grant this protection has expressly provided for the undertaking by the Albanian state of any obligation that the Albanian court may decide on the concrete case against the foreign investor.

### **Article 8/c**

#### **Procedure on Granting Special State Protection**

*(Added by Law No. 10 316, dated 16.09.2010, Article 2)*

1. Special state protection is provided by the Council of Ministers, upon the proposal of the ministry covering the investment related field upon the written request, substantiated and accompanied by evidence documentation, which the foreign investor files with the ministry covering the field. Special state protection does not constitute a legal right of the foreign investor. Granting or refusing it is at the discretion of the Council of Ministers.

2. The Minister, covering the field, submits to the Council of Ministers for examination and approval the initiative, in the form of an individual draft decision, for granting special state protection, according to the procedure established by Law No. 9000, dated 30.1.2003 "On the organization and functioning of the Council of Ministers". In the accompanying report of the draft decision, the minister should argue the fulfilment of the conditions set out in Article 8/a and the public interest for granting special state protection. The report must be accompanied, in any case, by the legal analysis of the dispute, carried out by the General State Advocacy Office.

This document of the General State Advocacy Office has the same confidential status for third parties, such as the debates, the opinions of ministers, reflected in the minutes of the meeting of the Council of Ministers and is used only by members of the Council of Ministers during the examination and approval.

3. In cases when the draft decision provides the undertaking of obligations, according to point 4 of Article 8/b of this law, the draft decision is also accompanied by the position of the State Aid Commission for the request in question, according to the Law No. 9374, dated 21.04.2005 "On State Aid", as amended.

4. The decision to grant special state protection is publicly announced in accordance with the rules in force for the publication of acts of the Council of Ministers, whereas the draft decision and the disapproval of the special state protection are not publicly announced. In case of disapproval, the practice is archived.

#### **Article 8/ç**

##### **Term for Examining and Granting Special State Protection**

*(Added by Law No. 10 316, dated 16.09.2010, Article 2)*

1. The term for examining and granting of special state protection is 45 days from the date of receipt of the application along with the accompanying documentation by the foreign investor. The draft decision on the proposal for granting special state protection and accompanying documentation shall be submitted to the Council of Ministers within 30 days from the date of receipt of the application along with the accompanying documentation.
2. In case that, within the 30-day time limit, the ministry covering the field does not consider legally justified, from the point of view of the public interest as well, the submission of the proposal for granting special state protection, it shall archive the request along with the legal reasoning of the case, and notifies the foreign investor without giving any explanations for not undertaking the initiative.
3. Disapproval by the Council of Ministers of the proposal for the granting of special state protection shall not be notified to the applicant or to any third parties.
4. Upon the expiry of the 45-day time limit, the applicant shall deem application rejected.

#### **Article 8/d**

##### **Special Measures in the Framework of Special State Protection**

*(Added by Law No. 10 316, dated 16.09.2010, Article 2)*

1. After the provision of special state protection, the lawsuit security can only be made on public properties or income. If these measures were previously decided, then the court accepts the request of the General State Advocacy Office for the replacement of measures for securing the lawsuit with other public properties or income, in accordance with the second paragraph of Article 206 of the Civil Procedure Code.
2. If the court, by a final decision, has rejected the foreign investor's rights on immovable properties, object of foreign investment, and has recognized these rights to private third parties, then the Council of Ministers may decide for the expropriation, in public interest, of private third parties, and to pass the properties to the foreign investor, in accordance with the relevant legislation in force.

#### **Article 8/dh**

##### **Coverage of Costs by Special State Protection**

*(Added by Law No. 10 316, dated 16.09.2010, Article 2)*

1. All representation costs, due to the substitution of the party, as a result of the special state protection, are covered by the foreign investor seeking protection. When the court decides that these costs are to be transferred to third party litigants, then the foreign investor shall be compensated to the extent determined by the court.

2. The Minister of Justice, in cooperation with the Minister of Finance, shall determine by common instruction the costs of representation and the rules for the payment of the obligation.

3. In cases when the decision of the Council of Ministers determines the undertaking by the state of the obligations imposed by the Albanian court, then these obligations are covered by the State Budget. This provision does not cease the right of state bodies to seek compensation through court from any third party for the damage caused by the enforcement of a court decision.

#### **Article 9**

##### **Status of this Law**

1. Law No.7594, dated 4.8.1992 "On foreign investments", and any other legal provision or other by-laws that are in contradiction with this law, shall be abrogated.

2. If the provisions of this law are not in accordance with international agreements ratified by the People's Assembly, in which the Republic of Albania or the Government of the Republic of Albania is a party, the latter shall prevail to the extent that they provide rights or greater protection for foreign investors than those provided in this law.

#### **Article 10**

##### **National Security**

Nothing in this law shall prevent the application by the Republic of Albania of the measures necessary for the maintenance of public order, the fulfillment of its international obligations in relation to the maintenance or establishment of world peace and security, protection of national security or defense interests.

#### **Article 11**

##### **Publication of Laws**

The Republic of Albania shall publish all laws, rules and procedures relating foreign investments.

#### **Article 11/1**

##### **Transitory Provision**

*(Added by Law No. 46/2017, dated 13.04.2017, Article 1)*

1. Special state protection, in the meaning of this law, shall be granted until 31 December 2018.

2. Special state protection, according to the provisions of Articles 8/b, points 1 and 2, 8/d and 8/dh of this law, benefit automatically and without the need to follow any procedure or take any other decision the investors/strategic investments, a special procedure, having obtained



this status, in accordance with the provisions of Law No. 55/2015, "On strategic investments in the Republic of Albania". The Council of Ministers determines the limits and substitution rights of the parties, in accordance with Article 8/b of this law.

#### **Transitory Provision**

*(Added by Law No. 10 316, dated 16.09.2010, Article 3)*

Special state protection, in the meaning of this law, shall be granted until 31 December 2014.

#### **Article 12**

##### **Entry into Force**

This law enters into force 15 days after the publication in the Official Journal.

Tirana, on 2.11.1993

Law No.: 7764

**Promulgated by Decree No. 687, dated 10.11.1993 of the President of the Republic of Albania, Sali Berisha.**