

Land plot issue in the implementation of investment projects in Uzbekistan



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This article analyzes the regulatory framework of the Republic of Uzbekistan in terms of the mechanism for acquiring rights (lease, acquisition, use, privatization) to land plots as part of the implementation of investment projects.

The following terms and phrases - wherever mentioned shall have the meanings assigned thereto unless the context requires otherwise: :

Land plot - a land plot intended for the purposes other than agriculture;

Privatization of a land plot - formalization of a publicly owned land plot into the ownership of individuals - citizens of the Republic of Uzbekistan and/or legal entities - residents of the Republic of Uzbekistan;

Free land plot - a publicly owned land plot free from buildings and constructions and free from obligations or prohibitions, if any;;

Electronic online auction - a method of conducting electronic trading in the form of an auction, where land plots are traded on a specialized electronic internet platform on the basis of equal access.

Foreign investors can obtain land plots for the implementation of investment projects in the following two ways:

- through open electronic auction platform, where the rights for a land plot are acquired by a foreign investor solely by paying its cost;
- a land plot allotment on the basis of the decisions/normative acts issued by the President and/or Cabinet of Ministers of the Republic of Uzbekistan, as part of an "investment agreement", "an agreement on public-private partnership" or "a concession agreement ".

During implementation of the allotment of a land plot for an investor's project, environmental compensation payments shall be incurred for the damages caused to the environment in the process of construction and operation of an investment object.

The legislation of the Republic of Uzbekistan did not provide for the privatization of land plots before the adoption of the Law "On the privatization of non-agricultural land plots" dated 13.08.2019 No.ZRU-552. The Law entered into force on 01.03.2020. The persons of the privatization of land plots are individuals - citizens of the Republic of Uzbekistan and legal entities - residents of the Republic of Uzbekistan.

Mechanisms for the acquisition of rights to land plots by investors

Land acquisition

The current legislation of the Republic of Uzbekistan provides for several land use regimes.

Legal entities can have land plots on the basis of permanent ownership, permanent use (unlimited use), fixed-term (for a period of three to ten years with the right to extend no more than one period) use, lease and ownership.

Non-residents of the Republic of Uzbekistan are limited in the right to acquire ownership of land plots, if not provided otherwise in international agreements.

From October 1, 2019, in accordance with the Resolution of the President of the Republic of Uzbekistan ("On measures to further improve the procedures for the provision of free non-agricultural land plots and the implementation of architectural and construction work" No.PP-4427 dated 08.26.2019), free non-agricultural land plots for entrepreneurial activity are provided exclusively through the electronic online auction on the "E-IJRO AUKSION" marketplace.

Interested parties have the right to submit proposals for the placement of information about the land plot and the planned construction object with specific investment obligations into the automated information system "YERELEKTRON" for further consideration of their placement to the electronic online auction.

The type of title to a land plot put up for an electronic online auction is determined in agreement with local government authorities. Lots at the auction are sold exclusively on a reimbursable basis.

Previous regulations on the allotment of land plots are suspended, with the exception of the decisions already made on land plots.

Benefits for foreign investors in terms of acquiring rights to land plots when participating in the auction are not provided.

Exceptions to the above are cases when the land plots are provided with decisions of the President and/or the Cabinet of Ministers of the Republic of Uzbekistan.

The provision or sale of land plots to enterprises with foreign investments for the possession, usage, lease and property is carried out in the manner of recusal by the Cabinet of Ministers of the Republic of Uzbekistan and local authorities. A foreign investor interested in obtaining rights to a land plot on a gratuitous basis must initiate the signing of an investment agreement between the investor and the government of the Republic of Uzbekistan or organize its activities in accordance with the laws "on public-private partnership" or "on concessions".

Government decisions on the implementation of investment projects under investment agreements, public-private partnership agreements or concession agreements should provide allotment of land plots with the right for unlimited or fixed-term use (as a rule).

For example, the land plot with the object of public-private is provided to the private partner without a tender on the basis of a public-private partnership agreement for the period established by the agreement (fixed-term use).

Land privatization

In accordance with the Law of the Republic of Uzbekistan dated August 13, 2019 No. ZRU-552 "On the privatization of non-agricultural land plots", unless otherwise provided by the Decision of the Government of the Republic of

Uzbekistan on land allocation, the investor can initiate the privatization process of the land plot directly through the operator company created by the investor (resident company) on the territory of the Republic of Uzbekistan.

The object of privatization will be the land plot on which the buildings or structures owned by the operator company are located, industrial/infrastructure facilities as well as near land plots in the amount necessary for the implementation of production activities.

The amount of payment for a privatized land plot on which real estate objects are located is determined by the Cabinet of Ministers of the Republic of Uzbekistan in multiples of the rate of land tax from legal entities established for the respective lands on the day of privatization.

There are no calculation methods and approved tariffs for this period due to the absence of by-laws. By the time the Law entered into force (March 1, 2020), and by-laws must be approved.

In the event of liquidation of the operator company or in other circumstances, when the ownership right can pass to the founder of the operator's company - a non-resident of the Republic of Uzbekistan (investor), the land plot acquired in this way is subject to alienation within six months from the date of such an event.

Compensation environmental payments for land acquisition

Allocation of a land plot within the framework of a foreign investor's project (unless otherwise specified in the decision of the Government of the Republic of Uzbekistan) may entail compensation payments in terms of damage to the environment.

Compensation payments can be accrued in cases of cutting down trees and shrub plantations in the order related to the construction of buildings, structures and communications within the framework of the investor's project (Resolution of the Cabinet of Ministers No. 43 of January 17, 2019 "On the procedure for planting, growing and cutting down trees and shrubs on lands not included in the state forest fund").

Also, compensation payments can be accrued in cases of violation of the habitat of objects of the animal world (Regulation "On the procedure for using objects of the animal world and passing licensing procedures in the field of using objects of the animal world", Appendix No. 2 to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated 20.10.2014 №290) on the basis of the conclusion of the authorized body.

Compensation coefficients are established in accordance with the category of flora and fauna objects and approved by the State Committee for Ecology and Environmental Protection.

Additionally, in accordance with the Regulation "On State Environmental Expertise" (Appendix No. 1 to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated November 22, 2018 No. 949), an environmental impact assessment is being carried out.

The purpose of the environmental impact assessment is to determine the compliance with the environmental requirements of the forecasted economic activity and to determine the possible damage to the environment and related compensational payments.

Environmental expertise is carried out in respect of the objects specified in the List of "types of activities for which the state environmental expertise is carried out" (Appendix No. 2 to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated November 22, 2018 No. 949).

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Sources:

- I. Land Code of the Republic of Uzbekistan;
- II. Law of the Republic of Uzbekistan "On the privatization of non-agricultural land plots" No. ZRU-552 dated 13.08.2019;
- III. Law of the Republic of Uzbekistan "On Environmental Expertise" No. ZRU-72-II dated 25.05.2000;
- IV. Law of the Republic of Uzbekistan "On guarantees and measures to protect the rights of foreign investors" No. ZRU-611-I of 30.04.1998;
- V. Law of the Republic of Uzbekistan "On Foreign Investments" No. ZRU-609-I dated 30.04.1998;
- VI. Law of the Republic of Uzbekistan "On guarantees of freedom of entrepreneurial activity" No. ZRU-328 dated 02.05.2012;
- VII. Resolution of the President of the Republic of Uzbekistan "On measures to further improve the procedures for the provision of free non-agricultural land plots and the implementation of architectural and construction work" No. PP-4427 dated 26.08.2019;
- VIII. Decree of the President of the Republic of Uzbekistan "On additional measures to strengthen the protection of private property and guarantees of the rights of owners, to radically improve the system of organizing work to support entrepreneurial initiatives, as well as to expand the access of business entities to financial resources and industrial infrastructure" No. UP-5780 dated 13.08.2019;
- IX. Decree of the President of the Republic of Uzbekistan "On measures to radically improve the investment climate in the Republic of Uzbekistan" No. UP-5495 dated 01.08.2018;
- X. Decree of the President of the Republic of Uzbekistan "on additional measures to stimulate the attraction of direct private foreign investment" No. UP-3594 dated 11.04.2005;
- XI. Resolution of the Cabinet of Ministers "On the procedure for planting, growing and cutting trees and shrubs on lands not included in the state forest fund" No. 43 dated 17.01.2019;
- XII. Resolution of the Cabinet of Ministers "On Approval of the Regulation on State Environmental Expertise" No. 949 dated 22.11.2018;
- XIII. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On measures to further improve the economic mechanisms for ensuring environmental protection" No. 820 of 11.10.2018;
- XIV. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On the regulation of the use of biological resources and on the procedure for passing licensing procedures in the field of environmental management" No. 290 dated 20.10.2014;
- XV. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On measures to implement the decree of the President of the Republic of Uzbekistan" on additional measures to stimulate the attraction of direct private foreign investment "" No. 180 dated 02.08.2005;
- XVI. Regulation "On the procedure for the use of flora and fauna objects and passing licensing procedures in the use of flora objects" (Appendix No. 1 to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 290 dated 20.10.2014);
- XVII. Regulation "On the procedure for using objects of the flora and passing licensing procedures in the field of using objects of the animal world" (Appendix No. 2 to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 290 dated 20.10.2014).