

LEGAL INVESTMENT INSTRUMENTS IN KAZAKHSTAN

unicase

Kazakhstan has enormous potential for profitable investments. Foreign investors are increasingly looking at the Kazakhstan market for implementing their projects in various areas of the economy.

According to the results summarised by KAZAKH INVEST¹ for 2021²:

- More than 50 projects worth over USD3.8 billion were implemented (2.4 times more than in 2020);
- About 5 thousand jobs were created;
- According to the National Bank of Kazakhstan, around USD18.7 billion was attracted in Kazakhstan in the first 9 months of 2021 (showing a 50% increase compared to 2020);
- 193 business delegations visited Kazakhstan as part of KAZAKH INVEST's accompaniment to the country's investment potential.

At the same time, KAZAKH INVEST shared its forecasts for 2022³:

- Launch of about 60 projects worth USD6.2 billion;
- Start of construction and installation work on 52 projects worth USD12 billion;
- Support of major strategic projects, including preparation of investment agreements with the government.

Taking the above into account, it can be seen that the government of Kazakhstan is rapidly developing its investment attractiveness for investors. An important process in this mission is the development of legal investment instruments. Legal investment instruments shall be understood as investment agreements under which a wide range of investment preferences can be granted to investors.

The current Kazakhstan legislation provides for 4 types of investment agreements, 2 of which have been introduced in the recent past:

1. Model contract for the implementation of an investment project;
2. Model special investment contract;
3. Agreement on investments (no model form) – introduced in January 2021;

¹ National Company KAZAKH INVEST JSC was established in accordance with Decree of the Government of Kazakhstan No. 100 dated 1 March 2017 to promote the sustainable social and economic development of Kazakhstan by attracting foreign investment in priority sectors of the economy and comprehensive support of investment projects.

² <https://kapital.kz/economic/102341/kazakh-invest-podvel-itogi-2021-goda.html>

³ Ibid.

4. Agreement on investment obligations – introduced in January 2022.

To understand the differences between them, Unicase provides an overview of the main differences between these investment agreements in the table below.

Provision:	Model contract for the implementation of an investment project	Model special investment contract	Agreement on investments (no model form)	Agreement on investment obligations⁴
Investment projects:	<p>Types of investment projects implemented under the contract:</p> <ul style="list-style-type: none"> ▪ Investment project; ▪ Priority investment project. 	<p>Types of investment projects implemented under the contract:</p> <ul style="list-style-type: none"> ▪ Special investment project. 	<p>Types of investment projects implemented under the agreement:</p> <ul style="list-style-type: none"> ▪ Priority investment project. 	<p>Agreement on investment obligations is an agreement (concluded between the Government of Kazakhstan and a legal entity) that provides for the obligation of a legal entity to finance capitalised subsequent expenses and/or expenses for the acquisition, production, construction of new fixed assets, as well as the financing of other expenses that increase the value of fixed assets in accordance with international financial reporting standards and/or requirements of</p>

⁴ According to the Entrepreneurial Code, the model form of an agreement on investment obligations shall be developed by the authorised investment body and approved by the government of Kazakhstan. However, the model form of the agreement has not yet been approved, as the agreement was put into effect from 1 January 2022.

Provision:	Model contract for the implementation of an investment project	Model special investment contract	Agreement on investments (no model form)	Agreement on investment obligations ⁴
				Kazakhstan accounting and financial reporting legislation in an amount not less than 150 million MCI.
Investment company:	Legal entity of Kazakhstan (excluding AIFC territory).	Legal entity of Kazakhstan (excluding AIFC territory): <ul style="list-style-type: none"> ▪ participants of a special economic zones; ▪ owners of free warehouses; ▪ which have concluded an agreement on industrial assembly of motor vehicles. 	<ul style="list-style-type: none"> ▪ Legal entity of Kazakhstan; ▪ Legal entity established in AIFC. 	The agreement shall be concluded with a legal entity that meets the following conditions at the same time: <ul style="list-style-type: none"> ▪ legal entity is an export-oriented commodity producer (at least 70% of the company's total annual income); ▪ legal entity is a large taxpayer subject to horizontal monitoring, including participation in a horizontal monitoring pilot project;

Provision:	Model contract for the implementation of an investment project	Model special investment contract	Agreement on investments (no model form)	Agreement on investment obligations ⁴
				<ul style="list-style-type: none"> ▪ does not conduct activities for the production of excisable goods; ▪ does not apply special tax regimes.
Activities:	List of priority activities identified for the implementation of investment projects and investment priority projects under investment agreements is approved by the government of Kazakhstan. ⁵	List of priority activities identified for the implementation of special investment projects under special investment agreements is approved by the government of Kazakhstan. ⁶	List of priority activities identified for the implementation of investment priority projects under agreements on investments is approved by the government of Kazakhstan. ⁷	Legal entity is an export-oriented commodity producer, except for exporters of hydrocarbon minerals and petroleum products. An export-oriented commodity producer shall be a legal entity whose income from sales for export constitutes at least 70% of the total annual income of the preceding year.

⁵ Decree of the Government of Kazakhstan No. 13 dated 14 January 2016.

⁶ Ibid.

⁷ Ibid.

Provision:	Model contract for the implementation of an investment project	Model special investment contract	Agreement on investments (no model form)	Agreement on investment obligations⁴
Investment preferences⁸:	<p>The following types of investment preferences are granted for an investment project (including a priority investment project):</p> <ul style="list-style-type: none"> ▪ exemption from customs duties and VAT on imports; ▪ government in-kind grants. <p>Other tax preferences for the investment priority project.</p>	<ul style="list-style-type: none"> ▪ Exemption from VAT on import of goods; ▪ Exemption from customs duties on imports of technological equipment, components and spare parts; ▪ Exemption from customs duties on used raw materials and (or) supplies. 	<ul style="list-style-type: none"> ▪ Exemption from customs duties and VAT on imports; ▪ Other tax preferences for the investment priority project; ▪ Government in-kind grants. <p>Other conditions stipulated for agreements on investments.</p>	<p>Tax preferences are granted in accordance with the Entrepreneurial Code and the Tax Code in force at the time of the agreement.</p>
Term:	The term of the investment contract shall be determined by the term of the investment preferences.	The term of the special investment contract shall be determined by the term of the investment preferences.	The term of the agreement on investments is determined by the agreement.	The term of the agreement is 10 years.

⁸ Investment preferences depend on the type of investment project and the provisions of the Entrepreneurial Code of Kazakhstan.

* * * * *

info@unicaselaw.com
www.unicaselaw.com