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TRENDS AND DEVELOPMENTS IN UKRAINIAN INVESTMENT REGULATIONS

Ukrainian governmental authorities have been actively promoting investments, particularly foreign investment, in Ukraine. Growing appreciation among state authorities that Ukraine has been competing for foreign investment has led to the adoption of laws aimed at facilitating/increasing it. However, as the authorities have come to the conclusion that certain industries and businesses are of a critical and strategic importance to the country, the Government has also started to introduce foreign investment controls.

I. Support of Significant Investment Projects

On 10 February 2021, the President of Ukraine signed the Law "On State Support of Investment Projects with Significant Investments" (the "Significant Investments Law") that was adopted by the Parliament of Ukraine on 17 December 2020. After the adoption of the Significant Investments Law, the Ministry for Development of Economy, Trade and Agriculture of Ukraine ("the Ministry of Economy") has started developing a number of regulations in order to practically implement the adopted law.

According to the Significant Investments Law, the State provides support to assist investors in the implementation of their investment projects through:

- tax benefits;
- exemptions from customs duties;
- privileges in the use of state/communal property land;
- construction of additional infrastructure at the state or municipal expense (e.g. highways, telecommunications, power supply, etc.) necessary for the implementation of the investment project (becomes available from 01 January 2022).

Furthermore, investors are entitled access to a recently dedicated state institution, namely – the Investment Promotion Office (UkraineInvest) that will assist and support them at all stages of the project.

In order to be eligible for the state support mechanism, an investment project should meet the following requirements:

- be implemented in processing industries, mineral processing and enrichment, waste management, transport industry, warehousing, postal and courier activities, health care, art, culture, sport, tourism, or resort and recreation;
- envisages either the construction and/or development of the investment objects in established industries or acquisition of appropriate equipment/component parts for such objects;
- creates at least 80 job opportunities;
- amounts to over EUR 20 million;
- be implemented within 5 years.

State support is provided under a separate investment agreement concluded between the investor and state and cannot constitute more than 30% of the planned value of investments. The investment agreement cannot be concluded for a period exceeding 15 years.

The State guarantees stability in carrying-out investors' business activities under investor-state investment agreements and the fulfilment of its obligations.

The projects which are excluded from state support under the Significant Investment Law framework are the following:

- state-private partnerships, concession projects;
- investment projects under product sharing agreements;
- privatisations of state and communal property.

Nevertheless, these projects would be subject to the investment protection framework existing under Ukrainian national law and the bilateral investment treaties of Ukraine.

II. Foreign Investment Control in Strategic Industries

On 03 February 2021, the Draft Law "On Foreign Investments in Enterprises of Strategic Importance for Ukraine's National Security" ("**Draft Law**") was registered in the Parliament of Ukraine. Most likely, the initiative of the Draft Law was caused by a situation with the Ukraine's unique *Motorsich*, the company involved in production of helicopter engines and other military and civil equipment, that Chinese investors have been trying to acquire.

The Draft Law regulates foreign direct investments ("**FDI**") in Ukrainian business and enterprises that conduct activities of strategic importance for Ukraine's national security and establishes national screening and evaluation mechanisms carried out by the Ministry of Economy and the Interdepartmental Commission for Foreign Investments Impact Assessment ("**Commission**").

Under the Draft Law, the need to screen and evaluate an FDI transaction appears when the latter:

1. *Is directed towards a Ukrainian enterprise that conducts its business activity in one of the established strategic sectors*

At the moment, the Draft Law provides a list of 38 activities in strategic sectors that, among others, include nuclear energy and waste, weapons and military technology, aerospace, natural resources and telecommunications.

2. *Falls under the type of transaction that should undergo the screening and evaluation process*

Under the Draft Law, the transaction falls under the above requirement if it, among others, represents the right of the investor or its related parties (i) to directly or indirectly dispose of more than 25% of voting shares in the charter capital, or (ii) to appoint a sole executive body and/or more than 25% of the collegial executive body of the enterprise in a strategic sector.

A foreign investor that intends to invest in one of the established strategic sectors by means stipulated by the Draft Law should first make an application to the Ministry of Economy. The Ministry of Economy itself further determines whether the FDI is subject to evaluation by the Commission. In the case of a positive evaluation by the Commission, the investor receives the approval for the planned FDI transaction.

The Draft Law also introduces some changes to Ukrainian merger and control rules. For example, obtaining a permit for concentration would not be possible, unless the Commission approves the FDI transaction (if the transaction is subject to the evaluation mechanism).

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