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THE WORLD'S SHORTEST INVESTMENT GUIDE TO UZBEKISTAN

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I. Overview

Uzbekistan is the most populous country in Central Asia, with an estimated GDP of $70 billion and a population of over 32 million people. Cotton is one of the main products exported out of the country. At the same time, natural gas production is on the rise and has recently become one of the main export commodities. The mining industry also produces significant amounts of gold, silver and copper and the country has well-developed automotive, textile and petrochemicals industries. It is widely believed that Uzbekistan is the most industrially developed country in the region.

II. Legal system

Uzbekistan's legal system is not case law based and belongs to the continental family, hence case law is not part of the legislation. It is also built around a backbone of Soviet civil law, though over the past decade significant changes have been introduced to Uzbek laws in order to reflect modern financing and contracting instruments.

III. Foreign investment

Investments can be made by purchasing shares, acquiring assets and setting up concessions. Most foreign investments are made in the form of joint ventures, though, with some exceptions, 100% foreign ownership is allowed. From time to time, the Uzbek government launches privatisation programmes in a variety of sectors and considerable scrutiny is usually required to evaluate the potential targets. A medium-sized investment project (up to USD 100 million) may take up to one year from market assessment to launch stage.

IV. General incentives

Foreign investors, i.e. any non-residents investing into Uzbekistan, are statutorily protected against nationalisation, confiscation and unlawful interference. They are also granted the stability of laws for a ten-year period against negative changes. Such changes include increases in income/ dividend tax rates, limitations of dividends or profits, or limitations of company ownership ratio. In addition, investors get certain tax exemptions, provided that they invest into particular sectors of the economy.

V. Individual incentives

There are several ways of getting incentives and exemptions in Uzbekistan. The simplest way is to invest in one of the free trade zones. However, there are still few of them and they are designed for particular industries. In addition, they are quite far from the country's capital of Tashkent; that said, they do have good logistics infrastructure.

The other way is to enter into an investment agreement with the Uzbek government, which may theoretically provide any type of incentives and exemptions. This approach, however, is limited to particular prioritised industries (mainly manufacturing) and usually requires investments of no less than USD 20 million. Such support usually includes tax, customs, fiscal regulatory exemptions, utility supply, stability of laws, waiver of sovereign immunity and other standard clauses usually found in cross-border agreements. In addition, Uzbek law provides a number of statutory guarantees and incentives.

VI. Restrictions for foreigners

Generally, there are no restrictions that prevent foreign investors from operating in Uzbekistan and they receive the same treatment as Uzbek nationals, though certain restrictions do exist in particular sectors. Such sectors traditionally include strategic areas, such as banking, insurance, defence, telecom and mass media. Real estate (with the exception of land) can be directly owned by non-Uzbek residents.

VII. Corporate vehicles

The majority of private businesses in Uzbekistan are organised in the form of liability-limited companies, whilst state-owned enterprises and all banks are mainly registered as joint stock companies. Joint stock companies are more heavily regulated by capital markets authorities, though such status provides certain tax incentives. Both options may have a multilayer management system, i.e. a general assembly of shareholders, supervisory board and CEO.

Whether an investor should go with LLC or JSC depends on many factors, including the requirements of the financial institutions participating in the project. By default, a JSC would get exemptions on withholding tax on dividends and also personal income tax and social fund payment of non-resident employees. Whilst an LLC is simpler in terms of management, a JSC has a more complex management structure and requires reporting with the securities regulator. In practice, however, almost all foreign investment projects are done in the form of an LLC.

VIII. Consent for the acquisition of shares

Unless related to strategic sectors, no consent is generally required, other than the consent of the target's remaining shareholders (which, again, might not be the case, depending on the target's constitutional documents). In addition, it is very important to identify whether the transaction requires antitrust clearance.

Even if the transaction is between Uzbek non-residents, but involves Uzbek located assets, it may potentially require antitrust clearance. In order to trigger such requirements, one of the following two factors must occur: (i) the total value of assets involved must exceed approximately USD 4.5 million, depending on the industry and/or (ii) either of the transaction parties must hold a dominant position in Uzbekistan or elsewhere around the globe. As a result, an antitrust committee will either issue a particular decision or will simply confirm that no clearance is required. The whole process may take up to one month.

IX. Currency control regulations

Uzbekistan has very strict currency regulations. All local payments must be made in the local currency, with the exception of certain limited cases in which foreign currency may be used. Most local companies (with the exception of certain industries) are required to sell 25% of their hard currency proceeds to local banks. In addition, the free and unrestricted conversion of local currency still remains a major problem. This matter, however, is becoming less relevant for investors who enter into export-oriented industries.

The Uzbek banking regulator has a list of off-shore jurisdictions (about 50 jurisdictions, including UAE, BVI, Delaware, etc.), with which bank transfers will trigger anti-money-laundering procedures. In practice, it may even block transfers to or from such jurisdictions.

X. Licensing

In Uzbekistan, businesses do not generally require a license to operate, unless the business relates to finance, telecom, defence, the production of certain consumer goods or other strategic sectors. Also, operations involving hazardous activity, like the construction of certain facilities, may also trigger licensing requirements.

The whole process of obtaining a license may take up to three months. Foreign companies are not allowed to get licenses and need to set up local entities in order to be eligible. Sometimes, however, in large scale projects, the government may allow foreign EPCs to acknowledge their licenses or obtain one in Uzbekistan. However, this provision only relates to EPC contractors and service providers.

XI. State-owned enterprises (SOE)

The top ten corporations in Uzbekistan are either partially or wholly state owned. SOEs operate mainly in strategic sectors of the economy: energy, metallurgy, mining (non-ferrous metals and uranium),telecoms (fixed telephony and data transmission), agriculture (cotton processing), machinery (the automotive industry, locomotive and aircraft production and repair), and transportation (airlines, railways, municipal public transportation).

SOEs are big and often very bureaucratic organisations, which also have certain regulatory powers within their particular industry. They organise tenders, set up joint ventures, facilitate administrative issues and act as a local strategic partner to most foreign investors.

XII. Concession contracts

Concession contracts are not common in Uzbekistan and are mainly used in the oil and gas sector. Though the government constantly stresses the importance of the PPP sector, there is still no solid legal background behind PPP projects as the country has not been heavily involved in public-private partnerships.

The oil and gas sector has seen tremendous inbound investment, both in terms of upstream and downstream projects. Upstream projects are usually based on production sharing agreements signed with the Uzbek government, whilst downstream projects are usually implemented in the form of complex investments agreements with the Uzbek government. Both formats provide certain incentives in return for the investor's commitment for the project's entire lifetime.

XIII. Contract structures

Investors do not usually face many problems with contract terms, other than the usual negotiations over commercial terms. There are generally no prescribed formats of contracts, but in certain cases, and especially in public tenders and in the public sector, there are special mandatory formats. Contracts with local partners may have English law concepts used in cross-border agreements, like put and call options, tag alone rights, reps and warranties, deadlock provisions, etc. These have not been tested in practice, however, and therefore it is unclear whether Uzbek courts would enforce such concepts, which are still a novelty to Uzbek law.

XIV. Land

Land cannot be owned by foreigners (other than diplomatic missions), nor can it be owned by Uzbek residents. Land in Uzbekistan belongs to government, which allocates land for particular projects, which receive land on a permanent-use basis but do not own it. Once land is allocated, its title then follows the title to a real property located on such land. Therefore, there is no need to have land allocation each time a title to real property changes as titles to a land, though limited, happens simultaneously.

XV. Tax

Uzbek-resident companies may choose whether to be on simplified or regular tax regimes, depending on the scale of their business. If a manufacturing business has fewer than 200 people on the payroll, it may choose a simplified tax regime. Unless an investor gets tax exemptions, their maximum Uzbek total tax rate may take up to 38% of their profits. In any case, the Uzbek government often provides tax incentives in one form or another. In addition, Uzbekistan has signed double taxation treaties with major developed countries, including the UK, Netherlands, China, Russia, etc.

XVI. Financing

There are several ways to finance foreign investment projects other than through equity. Public sector projects are mainly financed by the IFC, World Bank, JBIC and ADB, whereas the private sector has seen the increasing participation of Korean Exim Bank, Islamic Development Bank, CDB and also other commercial banks from Russia. In addition, the EBRD has recently declared that it would relaunch its operations in Uzbekistan, whilst the AIIB has not yet been active in Central Asia. Cross-border debt investments transactions in Uzbekistan are usually governed by English law, but always remain subject to the mandatory rules and regulations of Uzbek law. In addition, there is a state-owned development fund – UFRD – which also finances investment projects.

XVII. Foreign governing law

The general rule in Uzbek Law enables parties to select foreign law as the governing law for the contract. However, the mere fact that the Uzbek Civil Code allows parties to choose any governing law for their contract does not mean that the parties can, by their own act, oust the fundamental principles of the local municipal law, which generally underpins areas such as labour law, insurance, competition regulation, agency rules, embargoes, import-export and currency control regulations.

XVIII. Dispute resolution

Uzbekistan is party to the 1958New York Convention, the Agreement of Kyiv on ways of dispute resolution, connected with commercial activities dated 20 March 1992, and the Minsk Agreement on the procedures for the mutual enforcement of arbitration decisions of commercial and economic courts within the territory of the Member States dated 6 March 1998. Assuming that disputes relating to the Agreement are not liable to fall in the list of the exclusive jurisdiction of Uzbek courts (which include disputes related to land, real estate and corporate disputes),it is presumed that Uzbek law enables parties to choose a foreign forum for litigation or arbitration.

About CENTIL

CENTIL advises clients within the Central Asian jurisdictions of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.
It is one of the largest law firms in the region, with a core team that was established in 2003. Following its unique strategy of providing hybrid services, the firm focuses on investments, banking and finance, energy, trade, market research and business advisory projects across the region.

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