

LEGAL ADVISORY COLUMN

What are the legal guarantees for foreign investments in the Kyrgyz Republic?

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Foreign investments have been a major prerequisite for economic development of Kyrgyzstan; however, the country has not been the best country for business. It is not even among the top 75 on the list.

Is that because the country does not have access to sea? Is the local market too small even for a small-sized business? Does "...stan" sound strange for a potential investor? Are public officials too "business-oriented" to disrupt any business? Are people too politicized preferring to displace a local governor rather than going to a workplace to earn his/her daily bread and butter? I guess to hear "yes" from any potential investor and expect to see any local businessman nodding twice at least... What guarantees does the Kyrgyz Republic provide to a foreign investor?

The Kyrgyz Republic (including a president, bank officer, ambassador, prime-minister, parliament member, ministry clerk, public notary, court judge, policeman, etc.) shall guarantee to any foreign investor:

- equal treatment to domestic and foreign investors;
- no intervention into business activities, protection and restitution of infringed rights in accordance with Kyrgyz laws and international treaties;
- free access to open-source information;
- freedom to invest in any form into activities not prohibited by Kyrgyz laws, including those which are subject to licensing; right to engage in any business activity not prohibited by Kyrgyz laws;
- right to incorporate an entity or joint venture in any legal form provided by Kyrgyz laws, establish a branch office or open a representative office, create a business association or other union;
- choose any managerial structure for the business; hire local and foreign employees subject to Kyrgyz legislation;
- right to acquire property (with the exception of land), shares, other securities; participate in privatization of state-owned property;

- free conversion of foreign currency, unrestricted money transfers;

- repatriation of investment profit, export of proceeds, assets, intellectual property and information out of the country;

- protection against expropriation (nationalization, requisition or similar measures that may result in seizure of investment funds or investor's deprivation of the possibility to manage the investments) with exception of cases which require appropriate coverage of the investor's damage;

- right to choose foreign law and domestic or international arbitration institution for settlement of disputes;

- other guarantees specifically provided by treaties to which the Kyrgyz Republic is a party.

The aforesaid guarantees/rules constitute the basis of the national investment protection policy.

There are a number of multinational investment protection treaties to which the Kyrgyz Republic is a party. There are bilateral treaties on mutual support, encouragement and protection of investments with more than 26 countries. National legislation on promotion and protection of investments originates from 1991, and has been re-drafted and updated twice during twenty years of sovereignty of the Kyrgyz Republic. The inflow of foreign investments is not as much as desired, but there has been a positive effect of making the legislation more clear and liberal.

Investing in the Kyrgyz Republic may, in the worst case scenario, become a game which is not worth the candle or, hopefully, turn to a globally accepted no-risk venture. Result depends on whether Kyrgyz laws and lower-level regulations in every specific industry are regularly modified to meet needs, if not to exceed expectations, of the majority of foreign investors. Moreover, the result is subject to what extent the rules, and specifically the exceptions for such rules, are clear to every single foreign investor and Kyrgyz public authority, and how they all are duly implemented.