

LAW No. 05/L-079

ON STRATEGIC INVESTMENTS IN THE REPUBLIC OF KOSOVO

The Assembly of the Republic of Kosovo;

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,

Approves

LAW ON STRATEGIC INVESTMENTS IN THE REPUBLIC OF KOSOVO

Article 1

Purpose

1. This Law aims to stimulate, attract and create conditions for implementation of strategic investments in the Republic of Kosovo, as well as to establish administrative procedures and criteria for evaluation, selection, implementation and monitoring of strategic projects, as well as determining the procedures for granting the use of the property of the Republic of Kosovo, for the purpose of implementation of strategic investments projects.

2. Institutions and authorities of the Republic of Kosovo for implementation of this Law shall respect principles of free movement of goods, services and capital, principles of free competition and equal treatment, principles of non-discrimination, principle of transparency, proportionality and mutual respect.

3. This law shall support principles and conditions set in the applicable legislation for state aid and those coming from the Stabilisation and Association Agreement.

Article 2

Scope

1. The status of strategic investment or of the strategic investment project may be realised according to the criteria and the procedures defined by Law, for project from priority sectors of economic and social development which contribute the economic growth, employment and implementation of new technologies, increase of competitive economic capabilities of Kosovo, increase of export and reduction of trade deficit and the ones having general impact in growth of welfare and living conditions of the citizens of the Republic of Kosovo in following sectors:

1.1. Energy with infrastructure and Mining;

1.2. Transport and Telecommunication;

1.3. Tourism;

1.4. Processing industry;

1.5. Agriculture and Food Industry;

1.6. Health;

1.7. Industrial and Technological Parks;

1.8. Wastewater and Waste Management.

2. The minimum volume of investment to gain the status of strategic investment is as following: for sub-paragraphs 1.1., 1.2. and 1.6. at least thirty (30) million Euro; for sub-paragraphs 1.3., and 1.4. at least twenty (20) million Euro; for sub-paragraphs 1.5., 1.7. and 1.8. at least ten (10) million Euros.

3. Priorities in selection of projects to gain the status of strategic investment shall be given to the projects with larger volume of investments and which generate more working places.

4. According to this Law the status of strategic investment can take projects realised within the interstate agreement, projects that are implemented in cooperation with the EU and those with international financial institutions.

5. Proposed investments to be considered strategic in terms of this law, must fulfil the following criteria:

5.1. investment entity at the moment of applying for the status of strategic investment must submit evidence, proving its financial capability to fulfil the investment;

5.2. proposed investments must be in compliance with environmental standards defined by legislation of the Republic of Kosovo and European Union;

5.3. proposed investments must not be in contradiction to the Constitution and obligations of the Republic of Kosovo defined by international conventions and agreements.

6. The manner and methods for verification of the fulfillment of the criteria defined by this Article, shall be regulated with sub-legal acts.

Article 3

Definitions

1. Within this Law, each of the following terms shall have the meaning defined below, unless the context in which these expressions are used clearly provides another meaning:

1.1. **Public Authority** - any state administration body, agency or other public institution exercising legislative, executive, regulative, administrative and public powers in the territory of the Republic of Kosovo;

1.2. **Strategic Investment** – the status proposed by the Strategic Investments Committee and approved by the Government of the Republic of Kosovo, which is given to investment projects, qualified as strategic under this Law, throughout the phases of implementation and operation of the strategic project in the territory of the Republic of Kosovo;

1.3. **Investment entity** – strategic investor initiating or implementing or just implementing a strategic investment project according to the criteria of this Law, domestic or foreign presenting a name (brand) with reputation and business references recognized internationally, supports dimensions of business activities, business ethics and advanced governing of corporations, verified by credible financial and auditing institutions.

1.4. **Strategic Project** - any private and public-private investment project which meets the criteria determined under this Law;

1.5 **Private investment project** - any investment project which is entirely or partially financed with the private capital of any trade association established in the Republic of Kosovo or trade associations and business enterprises with legal subjectivity established outside the Republic of Kosovo;

1.6. **Public-Private investment project** - any investment project that meets the criteria to be considered as such, under the relevant provisions of the respective Law on Public-Private Partnership;

1.7. **Immovable Property of the Republic of Kosovo** - any type of immovable property registered in the name of any publicly or socially-owned enterprise, administered by any public authority of the Republic of Kosovo, or immovable property registered on behalf of any public authority or agency of the Republic of Kosovo. In terms of this Law, the property of the Republic of Kosovo may be registered in the name of any publicly or socially owned enterprise and in the name of Kosovo Forest Agency:

1.7.1. **Socially owned enterprise** - any enterprise under the administration of Privatization Agency of Kosovo in compliance with the relevant Law on Privatization Agency of Kosovo;

1.7.2. **Publicly owned enterprise** - any enterprise defined in the lists attached to the relevant Law on Publicly Owned Enterprises;

1.7.3. **Kosovo Forest Agency** - the executive public authority responsible for issues related to regulation of forests and forestlands, administration and management of public forestlands in accordance with the relevant Law on Forests;

1.8. **Investment** - any direct investment and capital in the Republic of Kosovo, which may be private investment, public investment or public-private investment;

1.9. **Foreign investor** - a foreign person that has made an investment in the Republic Kosovo:

1.9.1. foreign person shall mean;

1.9.2. any natural person who is citizen of a foreign country;

1.9.3. any natural person who is a citizen of the Republic of Kosovo, but has residence abroad;

1.9.4. a legal person established according to the Law of a foreign country.

1.10. **Domestic Investor** - any business organization established in the Republic of Kosovo, and natural persons who are citizens of the Republic of Kosovo;

1.11. **Public Investment Authority:**

1.11.1. one or more municipalities, ministries or agencies of the Government of the Republic of Kosovo;

1.11.2. one or more publicly owned enterprises or other bodies regulated under the public law;

1.11.3. a contractual cooperation of the aforementioned authorities and bodies.

1.12. **Committee** - Inter-ministerial Committee for Strategic Investments, established by the decision of the Government of the Republic of Kosovo, in accordance with Article 7 of this Law;

1.13. **Investment and Enterprise Support Agency** - shall have the meaning as defined by the relevant Law on Foreign Investments;

1.14. **Operational group** - the group which is responsible to professionally support Investment and Enterprise Support Agency in adhering all procedures and preparation of all legal documents with the purpose of preparing and implementing a strategic investment project.

Article 4

The procedure of request submission for obtaining the status of strategic investments and conclusion of agreement for strategic investment

1. Investment entity who is entitled to submit a request for obtaining the status of strategic investments may be a foreign investor, domestic investor, public investment authority and any public investment authority in cooperation with any foreign or domestic investor.

2. The investment entity who wants to be included in administrative procedures for strategic investments aiming to develop the strategic investment project must submit a written request before the Investments and Enterprise Support Agency.

3. Committee shall enter into direct negotiations with the Investment entity for the conclusion of Agreements of Strategic Investments following the approval of request of investment entity by the Government of Republic of Kosovo for granting the status of strategic investment.

4. Government of the Republic of Kosovo may invite investment entities to apply for the selection of investment entities to achieve any strategic project in the cases when it evaluates that public interest of Republic of Kosovo may be achieved through tender procedures foreseen with the relevant Law on Public and Private Partnerships and the Law on Public Procurement. The invitation to participate in the selection procedure shall be published in accordance with the relevant provisions of Law on Public Procurement.

5. The Government of the Republic of Kosovo may enter into direct negotiations for the conclusion of Agreements of Strategic Investments without being subject to the procedures for obtaining status of strategic investments or procedures of public procurement, if such a thing is foreseen on the basis of an international agreement between Republic of Kosovo and or one or more other countries or international organizations.

6. The Government of the Republic of Kosovo on the basis of development priorities shall draft a list of potential strategic investment projects in accordance with Article 2 of this Law and with a public advertisement shall invite potential strategic investors for realisation of these projects. Based on the proposal of Inter-ministerial Committee for Strategic Investments, the Government may take a decision to enter in direct negotiations with reliable strategic investor as defined in Article 3 sub-paragraph 1.3., which responded to the invitation or have expressed interest to develop partnership in implementation of strategic projects, including negotiations on Kosovo's use of the property and other supporting measures for the implementation of these projects under this Law.

7 All requests for obtaining the status of strategic investment, calls by the Government, decisions from the meeting of the Committee and decisions of the Government, pursuant to paragraph 1. and 3. of this Article shall be published within seven (7) days on the website of the Government.

Article 5

Content of the request for obtaining the strategic investment status

1. The request by the investment entity for obtaining the status of strategic investment should contain the following information and documents:

1.1. investment business plan, investment financing plan and work program for implementation of strategic investment for the duration of contract, which should not be shorter than five (5) year period.

2. Investor`s demand should contain elements which in particular should include:

2.1. investment locations;

2.2. the audit report for the investment entity for a certain period of time;

2.3. detailed profile of the investment entity including filiations;

2.4. previous references of investor`s experience in similar projects;

2.5. description of how the project will be financed;

2.6. written authorization of the investment entity that authorizes the Investments and Enterprise Support Agency to make all verifications and checks of data presented in the dossier of the investment entity;

2.7. a financial statement and profit and loss accounts for the last three (3) financial years.

3. If the investment entity is established for the purpose of this investment or this request under

paragraph 2. of this Article shall also apply for the parent company and the joint venture partner.

Article 6

Procedures for evaluation, selection and implementation of strategic projects

1. Inter-ministerial Committee for Strategic Investments ("Committee") shall be established as a body for evaluating, selecting, implementing and monitoring strategic investment projects.

2. The committee shall consist of:

2.1. Minister of Trade and Industry, presiding;

2.2. Minister of Finance;

2.3. Minister of Environment and Spatial Planning;

2.4. Minister of Agriculture, Forestry and Rural Development;

2.5. Minister of Economic Development;

2.6. One (1) Minister from other non-majority community in Kosovo;

2.7. Mayor of Municipality in which a strategic investment is implemented;

2.8. Minister of the Ministry in which a strategic investment is implemented;

2.9. General State Advocate.

3. The Commission takes recommendations by a relative (simple) majority of votes.

4. The minister of Trade and Industry leads and coordinates the Commissions activity and serves as the head of it.

5. Members of the Committee cannot be involved in any way in activities of strategic investors without passing three (3) years from the end of their mandate.

Article 7

Responsibilities of the Inter-ministerial Committee for Strategic Investments

1. Responsibilities of the Committee are as in the following:

1.1. assesses strategic projects proposals;

1.2. issues a decision to establish the operational group for preparing, monitoring and implementing any individual project for strategic investments and appoints the Chairperson of the Operational Group;

1.3. monitors the implementation of strategic projects and publishes six (6) months reports on the web page of the Government of Kosovo;

1.4. approves the action plan for measures, procedures and time limits related to services and easing the procedures for compiling and implementing a strategic investment project, in which are specified actions, tasks and concrete time limits for the central and local institutions at all stages of project implementation;

1.5. evaluates and approves recommendations of the Investment and Enterprise Support Agency addressed to the Government of Republic of Kosovo to issue a decision for granting the status of strategic investment, reject the proposal for granting the status of strategic investment and annulling the decision for granting the status of strategic investment;

1.6. negotiates with the investment entity the conclusion of the agreement for strategic investment upon the issue of the decision for obtaining the status of strategic investment.

2. The Government of the Republic of Kosovo shall review all recommendations of the Committee and may reject their approval or amend them only in the cases when it considers that the criteria defined by this Law are not met.

3. The manner of Committee work and functioning shall be determined by the Rules of Procedure of the Committee.

4. The Investment and Enterprise Support Agency shall have the role of the Secretary of the Committee, which enables necessary support for organizing Committee's meetings.

Article 8

The Investment and Enterprise Support Agency

1. The Investments and Enterprise Support Agency in addition to the duties and powers provided under the relevant Law on Foreign Investments, in terms of implementation of this Law, also has the following responsibilities:

1.1. define and describe the tasks, actions and procedures of each public authority regarding the preparation and implementation of each individual project for strategic investments and inform the interested investor;

1.2. perform actions related to the presentation of project development, support strategic investment performance, and compile a list of measures and documents which should contain and/or should be obtained in order to accomplish the project of a strategic investment through accelerated procedures;

1.3. harmonizes and coordinates public authority activities for the preparation and drafting of necessary documents for the the project and the deadlines for its implementation, in accordance with the competence of the relevant institutions;

1.4. performs technical assessment of the strategic investment project, its strategic potential, operational risk and action plan for implementation of the project;

1.5. analyzes the investment entity profile, and therefore is entitled to request the investor information regarding its financial capacity and its ability to generate sufficient funds to finance the investment, its financial statements, management structure, ownership, market positioning, previous experience related to the field of investment, similar projects, and other elements necessary to prove the ability of being a strategic investor, under the criteria of this law;

1.6. proposes to the Committee rejection of the decision for granting the status of strategic investment and annulment of decision for granting the status for strategic investment.

Article 9

Operational Group on the preparation and implementation of strategic investment projects

1. The Committee appoints the Operational Group within the Investments and Enterprise Support Agency. Members of the Operational Group should have professions from relevant fields, depending on the object and the characteristics of strategic investment project.
2. On the operational group are appointed representatives from all Ministries and Municipalities that aim strategic investment and one representative of the relevant State Aid Office.
3. The operational group has a duty to support professionally the Investment and Enterprise Support Agency and to support enterprises to perform duties and responsibilities foreseen with the Article 8 of this Law.

Article 10

Limitation on granting the Status Strategic Investment

The Strategic investment status, may be subject to certain limitations set forth in the applicable legislation and international law, which are in the interest of national security, protection of public order and safety.

Article 11

Reviewing the project file with strategic potential and approving the status for the strategic project

1. The Investment and Enterprise Support Agency, within twenty (20) working days from the date of submission of the complete file for obtaining the strategic investment status, shall verify the submitted documents and perform technical, financial and legal assessment of the project file.
2. The Investment and Enterprise Support Agency, if it determines that the documentation is incomplete, requires, in writing, from the investment entity to complete all the required documents and data. The investment entity must complete the documentation within a time limit of ten (10) days from the date of receiving the notice.
3. If the Investment and Enterprise Support Agency determines that the project proposal meets the requirements of this law, following the approval by the Committee shall submit recommendation to the Government of the Republic of Kosovo to approve the strategic investment status.

4. If the Government of the Republic of Kosovo determines that the criteria for obtaining the strategic investment status, foreseen by this Law, were not meet, it should inform the investment entity through the Committee's Secretariat.

Article 12

The decision of the Government of Republic of Kosovo for selecting strategic project

1. The decision of the Government of the Republic of Kosovo which approves the proposal of the Agency for granting the status of strategic investment to a project, shall in its content include the following elements:

- 1.1. the title of the strategic investment project;
- 1.2. the estimated amount of capital to be invested within the period of five (5) years;
- 1.3. the name of the interested investor and its partners;
- 1.4. the type of the investment project;
- 1.5. the site where the investment project will be developed;
- 1.6. description of the property or facility in which the strategic investments will be made;
- 1.7. the rationale for declaring a project as an important strategic project for the Republic of Kosovo, which shall include a justification explaining that the proposed project meets the requirements envisaged by this law.

2. The decision of the Government of the Republic of Kosovo by which the request of an interested investor is approved or rejected shall be final in the view of provisions of the relevant Law on Administrative Procedure.

Article 13

Right to appeal

The investment entity is entitled to file an appeal against the decision of the Government to the Basic Court of Pristina, within thirty (30) days upon receipt of the decision.

Article 14

Revocation of the decision on granting the strategic project status and termination of the agreement

1. If during the preparation and implementation of strategic investment project, the Committee receives new proofs based on which it determines and certifies that the investment project has provided false data or the data have been changed, to such extent whereby based on such data the decision on granting the strategic investment status would not have been issued, the Government revokes the decision on granting the strategic project status.

2. If more than six (6) months have passed from the Government's decision regarding the

approval of the agreement on a strategic project and on the investment subject's fault, the work in the implementation of project has not begun.

3. Revocation of the decision on granting the strategic project status, does not relieve the investment entity from civil responsibility for damage caused as a consequence of failure to perform the strategic investments.

Article 15

Priority of Procedures for strategic investments

1. The administrative procedures envisaged by this law which are related to the preparation, selection, implementation and supervision of projects for strategic investments, as well as the issuance of licenses, permits, authorizations and recommendations, under this law are considered as high priority administrative procedures and are applied with accelerated procedures by all institutions and public authorities of the Republic of Kosovo involved in these procedures.

2. All institutions and public authorities of the Republic of Kosovo are obliged to cooperate with operational group and to provide administrative and technical support to the Investment and Enterprise Support Agency.

3. Operational Group coordinates all activities related to the implementation of decisions of the Inter-governmental Commission in issuing licenses and cooperates with the investor.

Article 16

Services to investors after taking the decision to grant the strategic investment status

1. After the decision to grant the strategic investment status has been taken, the investment entity through the Investment and Enterprise Support Agency may benefit services and facilities in the administrative procedures, pursuant to the provisions of this law, outlined as follows:

1.1. assistance in administrative procedures for obtaining licenses, permits and authorizations at public institutions;

1.2. assistance in the performing of preparatory actions, preparation of documents necessary to initiate administrative procedures for obtaining licenses, permits and authorizations;

1.3. an accelerated procedure for examining applications which relate to the preparation, implementation and realization of strategic project;

1.4. support on access to basic infrastructure, in accordance with the relevant Law on State Aid ;

1.5. making available the state-owned immovable property for the purposes of developing and executing strategic investment projects.

2. Operational group and the Investment and Enterprise Support Agency shall forward the requests of the investment entity that has gained the status of strategic investment, for obtaining licenses, permits and authorizations to the public institutions responsible for issuing these legal documents, within five (5) working days from the date the application was filed. The date of the application under this Article is the date of receipt of all documents required for obtaining licenses, permits and authorizations by the Investment and Enterprise Support Agency. If some documents are submitted on different dates, the date of submission shall be considered the date on which the last document was received.

3. Public institutions, upon receipt of requests by the Investment and Enterprise Support Agency, within fifteen (15) working days, shall review and issue licenses, permits and authorizations, pursuant to the criteria set forth by the legislation in force.

4. Exceptionally from paragraph 3. of this Article, due to justifiable reasons related to the complexity of licenses, permits and authorizations, the deadline shall be extended only once, for a period of fifteen (15) working days.

5. The investment entity, which has obtained the strategic investment status, shall have the responsibility to accurately and truthfully fill the data and documents necessary for issuance of licenses, permits, and relevant authorizations in accordance with the legislation of Kosovo.

Article 17

Agreement on the preparation and implementation of the strategic project with the interested entity

The agreement for realization of the strategic project, besides the elements defined by the legislation and the decision of the Government of the Republic of Kosovo for granting the status of strategic investment, in its content should also include the commitments assumed from the Republic of Kosovo and the investment entity with the purpose of implementing the project, meeting deadlines on every committed obligation, implementing mechanisms to protect the interests of the Republic of Kosovo in case of exceeding the deadlines, or abandoning the implementation of the projects, as well as establishing mechanisms for resolving investments disputes.

Article 18

Use of state-owned immovable properties for execution of strategic investments

1. Disposal with immovable property of the Republic of Kosovo to implement projects related to strategic investments shall be regulated by laws dealing with governance and use of state and public property, the property rights, the law on bonds and laws governing the use and disposition of property of the Republic of Kosovo, if by this Law is not provided otherwise.

2. Property of the Republic of Kosovo, including forests, forest land, agricultural land, public roads shall be available to the Government of Kosovo in accordance with spatial and urban regulation. This property can be used by the Government to implement projects through direct negotiations, according to the provisions of Article 4 paragraph 1. to 6. of this Law.

3. The Government provides procedures for granting the use of property referred to in paragraph 2. of this Article and may engage a judicial expert to determine the value of immovable property provided for use.

4. The Public Procurement Rules shall be adhered to, where the transfer of the property referred to in the paragraph 2. of this Article is made in order to implement strategic projects that have element of contracts provided by the relevant Law on Public and Private Partnership.

Article 19

Strategic projects prepared by public authorities

1. Public authorities can prepare strategic projects that can be presented to investment entities and require them to apply with their projects pursuant to the procedures defined by this Law.

2. Strategic projects prepared by public authorities may be financed through public funds of the Government of the Republic of Kosovo in accordance with the relevant Law on State Aid.

3. The method and procedures of financing strategic projects prepared by public authorities shall be regulated by sub-legal acts, which shall be issued on the basis of provision of this Law and relevant Law on State Aid.

Article 20

List of strategic projects prepared by public authorities

1. In the view of supporting strategic investments in the Republic of Kosovo must be created the List of Strategic Projects and the list of properties for implementing strategic projects, which can be presented to investment entities.

2. The Investment and Enterprise Support Agency establishes and maintains a register of all potential strategic projects prepared by public authorities and the list of properties for the implementation of strategic projects.

3. The Investment and Enterprise Support Agency can register a potential project prepared by public authorities in the List foreseen under this Article, only after obtaining the approval by the Committee stating that the project has been prepared in accordance with criteria set by this law.

Article 21

List of projects granted a Strategic Projects status

1. The Investment and Enterprise Support Agency establishes and maintains a register for the List of Projects that have been granted with the status of strategic projects.

2. The register must be made public and updated at least twice a year, on June 30 and December 31.

3. The form and content of the register shall be determined through a bylaw.

Article 22

Transfer of the right to use public and socially-owned immovable properties by the interested investor

1. The Government of the Republic of Kosovo can transfer the right to use a socially owned immovable property for strategic investment under the Law on Expropriation of the Immovable

Property, only after the Assembly of Kosovo renders a decision with a simple majority of votes.

2. The Government of the Republic of Kosovo can transfer the right to use the publicly owned immovable property for strategic investment only after the Assembly of Kosovo renders a decision with a simple majority of votes.

3. The Government of the Republic of Kosovo can transfer the right to use a municipal immovable property for strategic investment only after the respective Municipal Assembly renders a decision with a simple majority of votes.

Article 23

Transfer of the right to use the publicly-owned enterprise's property to the investment entity

1. The Government of the Republic of Kosovo can transfer the right to use the property of public enterprises to the investment entity for the purpose of implementing a strategic investment project.

2. The method of making immovable property owned by public enterprises available for the development and implementation of strategic investment projects shall be regulated through bylaws, which shall be issued in compliance with the provisions of this law and provisions of the relevant Law on Publicly Owned Enterprises.

Article 24

Duration of the right to use the property of the Republic of Kosovo by the investment entity

1. Duration of the right to use the property in which strategic investment has taken place, shall be determined by the agreement on investments taking into account the maximum duration allowed by this law, however such right shall last up to ninety-nine (99) years.

2. Responsible public authority shall be entitled to give the consent for extending the right of using the property for another period with a reasonable time limit, if in the property in which foreign or local capital investments have been made are constructed facilities and buildings that are actively used for business purposes.

3. When the decision for granting the status of strategic investment is revoked, or upon termination of the agreement, according to the criteria of this law, the Committee shall terminate the investment entity's right to use the property of the Republic of Kosovo, which is provided for use with the purpose of implementing strategic investment.

Article 25

Obligation of cooperation and consequences of refusal

1. All public authorities are obliged to provide assistance to the Committee on the implementation of legal provisions set forth in Article 15 and 16 of this law, and to provide the adequate support according to their request.

2. Refusal to cooperate with the Committee or the Committee's supporting administrative structures by a civil servant, official, or public authority is considered grievous failure to fulfil

the duties and shall constitute the grounds for initiating administrative proceedings, including disciplinary measures in accordance with the Law on Civil Servants.

Article 26
Transitional and final provisions

1. This Law shall apply to strategic investments which are foreseen to be implemented in the Republic of Kosovo, upon entry into force of this law.

2. After the proposal of the Ministry of Trade and Industry, the Government of the Republic of Kosovo shall issue sub-legal acts for implementation of this Law within sixty (60) days from entry into force of this Law.

Article 27
The deadline for request submission

1. The request referred to in this Law shall be submitted to the Agency by any investment subject upon entry into force of this Law.

2. The deadline for submitting a request by investment entities, interested to be included in the procedures for granting the strategic investment status, pursuant to this law, is 31 December 2020.

Article 28
Entry into force

This law enters into force fifteen (15) days after its publication in the Official Gazette of the Republic of Kosovo.

Law No. 05/L-079
11 October 2016

Promulgated by Decree No.DL-009-2017, dated 03.02.2017, President of the Republic of Kosovo Hashim Thaçi.