

# PROJECT FINANCE

## IN UZBEKISTAN

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This legal highlight covers some important aspects of project finance in Uzbekistan, outlining its main features. Uzbek law does not prohibit or limit receipt of foreign funds from abroad, but remains to be underdeveloped in many transactional aspects. This is even more so in case of project finance deals, where more sophisticated financial mechanisms and collaterals are used.

Several main features of project finance in Uzbekistan may be distinguished. The first feature is participation of multiple foreign lenders, including regional development banks, large investment banks and regular commercial banks of a particular foreign state. This requires elaborating more flexible and thought-through structures of financing for rapid reallocation of rights and responsibilities. The second feature is active involvement of the Uzbek state, acting through numerous state-owned entities as project sponsors and/or offering investment agreements that provide additional incentives and benefits or set a specific regulatory regime for an investment project.

The overview below outlines the main Uzbek law elements of a possible project finance arrangement and singles out the most important issues.

## **FOREIGN LENDING**

The Law on External Borrowings of 28 August 1996 governs taking of loans in foreign currency. Under the Law, external borrowings are the raising of credit funds or commodity loans by the Uzbek state and its residents from foreign sources. Public external borrowings made by the state or under a state guarantee are subject to registration with the Ministry of Finance. Private external borrowings must be communicated to the Central Bank of Uzbekistan (“**CBU**”), maintaining the respective registry.

Communication of a private loan arrangement has to be made through a resident borrower's servicing bank. The relevant agreement must clearly articulate the purpose, conditions of the lending and repayment terms. CBU has a right to request the submission of additional documents and information. The servicing bank is, in its turn, obliged to make sure that the raised credit funds are used for their intended purpose.

## FOREIGN CURRENCY EXCHANGE

Up until very recently, practical impossibility to convert the national currency into a foreign currency was the main problem of investing in Uzbekistan. Despite legislative guarantees, it was difficult for a foreign investor to repatriate profits generated in Uzbekistan in practice.

On September 2, 2017, the President of Uzbekistan adopted a long-awaited decree on liberalization of the forex policy in Uzbekistan, which provided for “opening” the foreign currency conversion and dealing with possible negative consequences of such liberalization. The practice of setting official “state-controlled” foreign exchange rates was abandoned. Legal entities may now freely purchase foreign currency from local commercial banks for making payments on international transactions (import of goods, works and services, profit repatriation, loan repayment, etc.).

## PROVISION OF SECURITY

Under Uzbek law, any property in civil circulation can be an object of pledge. Land plots are an exception, as land is owned by the state, albeit some rights to it may still be pledged in limited cases. A more detailed overview of security options available in cross-border financing is provided in Annex I.

When structuring security for multiple-lender financing, special attention shall be given to the following key issues:

- (i) **Only creditors can be secured:** Security can be given only to a creditor under an obligation that is being secured. The creditors shall hold security directly themselves or through security agent, which shall act in the name of the creditors;
- (ii) **No concept of security trustee:** The concept of security trustee is alien to Uzbek law;
- (iii) **One obligation – one creditor:** Where there is more than one obligation or creditor, the security for each such obligation and creditor must be separate and ranked in order of priority;
- (iv) **Loan transfers:** The safer view is that any material changes in the secured loan, such as transfer or assign of the loan, change in the amount or term of the loan, may require the change in the security.

Considering the above, the following security structures are being used in multiple-lender financings in Uzbekistan:

**(a) Co-pledgeholders:** Security is granted to the secured creditors and a security agent in a single instrument, whereby the secured creditors have to actually sign each security document. This structure eases the exercise of the enforcement rights, as this is done by the security agent that acts based on the rules set in offshore inter-creditors' agreement, but does not provide for sufficient flexibility with respect to possible loan transfers and assignments.

**(b) Conduit Financing:** An arranger of the financial syndicate or special purpose vehicle ("SPV") established for these purposes in lenders-friendly jurisdiction becomes a borrower under all senior loans. SPV then on-lends the proceeds from the senior loans to Uzbek borrower. Obligations of the Uzbek borrower under the on-loan agreement are secured by the first ranking Uzbek pledge. Payments of the Uzbek borrower under the on-loan agreement shall correspond to the payment obligations of SPV under the senior facility agreements. This structure provides sufficient flexibility in creating security and perform necessary enforcement actions.

**(c) Joint and Several Creditors:** In a joint & several creditor structure, the security is granted to secure the borrower's payment obligations only to a party who is a joint & several creditor with the other lenders under the project. The parties agree that the borrower's payments to any creditor discharge the borrower's obligations to all the lenders in general and to the extent of the paid amount. This kind of arrangement is clearer and more well-established from the Uzbek law perspective, which explicitly provides for such deals. Furthermore, unsecured lenders have more flexibility in transferring their shares of the loan.

## ENFORCEMENT OF SECURITY

Generally, similar enforcement rules apply for movable and immovable property. Under Uzbek law, the enforcement and foreclosure must be approved by the court, unless a non-judicial procedure was envisaged in the relevant pledge agreement. Both alternatives involve the sale of the secured property at public auction with the pledgee being entitled to get a part of the proceeds from the sale in the amount equivalent to the secured indebtedness.

### (a) Judicial Procedure

The starting selling price of the pledged object is set by the court. In case if the initial auction is unsuccessful and with the consent of the pledger, the pledgee is entitled to acquire the collateral and set off its value against the indebtedness. Otherwise,

the second auction is held. In case if the second auction fails as well, the pledgee acquires the right to get the object into his property at a discounted cost. If the pledgee does not exercise this right within one month after the second auction is unsuccessful, the pledge agreement is deemed to be terminated.

### **(b) Non-Judicial Procedure**

Despite any non-judicial procedures for the enforcement of pledge may be stipulated, Uzbek law lacks any guidance on to how to implement them. These procedures are, therefore, not widely resorted to, as much uncertainty is involved.

### **AVAILABILITY OF “STEP-IN RIGHTS”**

The concept of “step-in” is alien to Uzbek law. Certain provisions of Uzbek may only roughly be interpreted as having such effect. Thus, the Civil Code of the Republic of Uzbekistan (the “Civil Code”) provides a creditor with the right to assign his rights of claim to another party. However, these rights are limited in nature and cannot be exercised in case if an explicit prohibition is set by the relevant agreement or by law. To mitigate this, the foreign lenders seek to enter into direct agreements with the government of Uzbekistan, whereby the government acknowledges the lenders' step-in rights and consent to these.

## **FOREIGN INVESTMENT PROJECTS AND OWNERSHIP RESTRICTIONS**

There are three main laws determining the legal basis for making foreign investments in Uzbekistan:

- Law No. 609-I on Foreign Investments;
- Law No. 611-I on Guarantees and Protective Measures of Foreign Investors' Rights;
- Law No. 719-I on Investment Activity.

All types of material and non-material benefits and rights, including intellectual property rights and reinvestments, contributed by the foreign investor to objects of entrepreneurial and other non-prohibited types of activity for obtaining profits within Uzbekistan are recognized as foreign investments.

Uzbek law does not provide the government with the explicit right to prohibit a foreign investment transaction based on national security or public interest grounds. However, certain limitations may apply to the investment of foreign entities

into companies that operate in the defence industry, telecommunications, finance, and insurance sectors. Further, the foreign investor should still take into account that many significant enterprises and most of natural resource deposits are state-owned, whereas the consent of state authorities is required for obtaining numerous licenses, permits and approvals.

Uzbek law also provides for the following cases, where the special investment examination by state authorities is mandatory:

- a foreign investor would like to implement a project relying on some financial support of the government (funds, guarantees, etc.);
- a foreign investor would like to request additional benefits and privileges;
- a foreign investor would like to implement a project with the involvement of international financial institutions or foreign state financial organizations;
- a foreign investor would like to establish cooperation with a state-controlled enterprise (50%+ shares are owned by the state or another enterprise 50%+ shares of which are owned by the state) for implementing a project;
- a foreign investor would like to implement a project for processing strategic resources (precious, ferrous and non-ferrous metals, hydrocarbons, coal and uranium);
- a foreign investor would like to conclude a product sharing agreement.

The examination has to be initiated by the relevant sector-specific regulator or the state-owned holding company overseeing the sector, which are also supposed to be the first point of contact for the foreign investor seeking the state support. In the majority of cases the main examination body is the State Unitary Enterprise "Centre for Comprehensive Examination of Projects and Import Contracts" under the Ministry of Economy and Industry of the Republic of Uzbekistan (slightly different examination procedures may apply to production sharing agreements and projects with the participation of international and foreign state financial organizations). It is to note that the process may be lengthy and last for 2-3 months, as many negotiations may be required.

On November 2, 2017, the Uzbek State Committee for Investments released draft Proposal for a new Investment Code that is intended to significantly improve the Uzbek investment environment by introducing new concepts and mechanisms of investment (mutual funds, investment tax credits and investment subsidies, new types of governmental guarantees, etc.).

## **BENEFITS AND PRIVILEGES**

Benefits and privileges granted to a foreign investor may include tax, customs and organizational incentives in the form of setting a special taxation and payment regime, assisting in supervision over project implementation, providing external engineering and communication networks, etc. These are given on a case-by-case basis if the foreign investor invests into:

- Priority sectors securing sustainable economic growth and progressive structural changes in the country's economy;
- Introduction of modern technologies and development of high-tech industries;
- Priority projects securing the strengthening and expansion of the Republic's export potential and its integration into international economic relations;
- Small enterprise projects aimed at processing raw and other materials, producing consumer goods and services and providing employment to the population.

A specific list of incentives and relevant terms are determined by the President of the Republic of Uzbekistan (in case of tax incentives and conclusion of the investment agreement) or the Cabinet of Ministers (in case of non-tax-benefits) in co-ordination with other state bodies after the examination described above.

## **NATIONALIZATION AND EXPROPRIATION**

Although the term 'expropriation' is used in different legislative instruments as well as international agreements concluded by Uzbekistan, the definition of the term is not set forth in Uzbek law. The Civil Code provides for the general concept of seizure (Article 199 of the Civil Code) that is understood as the reclamation of owner's property in accordance with the relevant court decision and repayment of owner's obligations out of the claimed property. The concept embraces, among other things, three forms of involuntary termination of ownership rights over the property: (i) nationalization (Article 202 of the Civil Code); (ii) requisition (Article 203 of the Civil Code) and (iii) confiscation (Article 204 of the Civil Code).

It is to note that in practice, if expropriation is intended, state authorities often question the underpinning deals that allowed the owner to acquire the property. Hence, privatization deals may be reverted with the property being re-nationalized as a consequence. Therefore, an attentive approach to formalizing property rights is recommended.

## **NATIONALIZATION**

Nationalization is defined as a compensated transfer of ownership rights over the seized property from the owner to the state. In case of subsequent denationalization of the property, the former owner has a priority right to re-claim the property. A special law has to be passed by the Uzbek Parliament to declare nationalization.

Importantly, Uzbek laws on investments provide that investments and other assets of investors in Uzbekistan may not be nationalized. Since most foreign and local entities fall under the definition of investor under these laws, nationalization turns to be completely prohibited.

## **REQUISITION**

Requisition applies in case of natural disasters, accidents, epidemics, epizootics and other circumstances of extraordinary nature, where property may be taken from the owner based on the relevant decision of public authorities on public interest grounds. Compensation equal to the value of the seized property has to be paid. After termination of the relevant circumstances, the former owner of the requisitioned property has a right to claim the return of the remained property.

Uzbek laws on investments sets a special regime for requisitioning property of foreign investors. The decision on requisition of such property must be taken by the Cabinet of Ministers in compliance with the following requirements:

- the requisition must be limited only to that part of investment and of other assets that is necessary for resolving particular tasks of the requisition;
- the requisition must be made on a non-discriminatory basis and in compliance with procedures set forth by law;
- the requisition must be followed by the payment of compensation comparable to the caused losses. The state shall be a guarantor of timely payment of such compensation.

## **CONFISCATION**

Confiscation is involuntary termination of ownership rights caused by faulty actions of an owner of confiscated property. It is also defined as compensation-free seizure of property from the owner based on a court decision for committing a crime or another wrongdoing. Stating this otherwise, confiscation represents punishment for

wrongful acts/omissions of a defaulting party and, hence, is compensation-free.

## **COMPENSATION FOR SEIZURE**

Uzbek law does not provide detailed rules for calculating compensation and, therefore, some general principles set out above apply.

One of the few legislative acts regulating the area is the Regulation on the Procedures for Compensation of Losses for Seizing Land Plots for State and Public Needs No. 97 of 29 May 2006. The document regulates the compensation process of land plots seizure when it is done for state and public needs. In accordance with this procedure, individuals or legal entities, after having received a notice of the forthcoming demolition, must submit an application to the local municipalities indicating the type of compensation within a month in order to be compensated. The seizure of land is subject to the provision of the following types of compensation:

- provision of the equivalent property and full compensation for the incurred damages – for the owners of the property located at the land plot being seized;
- provision of the compensation for the incurred damages including lost profit – for the land owners, land users and lessees.

The document provides that the amount of compensation for seized land plots and destroyed (seized) constructions that were located on these land plots must be determined by the special commission comprising representatives of various state authorities, local self-governing bodies, users of land plots and other persons based on the relevant decree of local municipalities. The amount of compensation has to be calculated based on the evaluation of technical conditions of the demolished (seized) constructions by the appraisal company engaged by the owner of the land plot. In the cases of seizure based on the illegal decision, the losses of individuals or legal entities are refundable at the expense of extra budgetary funds of corresponding state organs.

## **INSOLVENCY**

Under Law on Bankruptcy of 24 April 2003, all insolvency procedures can be divided into two main groups: out-of-court procedures and judicial bankruptcy procedures. Out-of-court procedures include (i) out-of-court rescue and (ii) volunteer liquidation of a debtor. Bankruptcy procedures include: (i) supervision; (ii) judicial rehabilitation; (iii) amicable settlement; (iv) external management; and (v) liquidation.

**Bankruptcy proceedings include steps as follows:**

1. Satisfaction of insolvency criteria – inability to perform financial obligations (including those relating to mandatory payments, e.g. taxes, etc.) exceeding 500 minimal monthly wages set in Uzbekistan within the term exceeding 3 calendar months.
2. Initiation of bankruptcy proceedings by a debtor, creditor/s, a public prosecutor, tax authorities or the Anti-Monopoly Committee by filing a petition/ claim with the Uzbek economic court.
3. Acceptance of the application by the Uzbek economic court within 5 business days from the date of filing the relevant petition/claim.
4. At the creditor's claim and before the relevant bankruptcy procedure is initiated, the court may order measures for securing creditors' claims.
5. The court reviews the bankruptcy case and orders one of the bankruptcy procedures.

It is important that in case of bankruptcy proceedings claims of secured creditors are satisfied from the property provided as a security separately from and without regard to other unsecured creditors. If proceeds received from the sale of the pledged property are insufficient to satisfy claims of the secured creditor, the outstanding claims will be qualified as claims of the secured creditor under the tier 2 of the below ranking and will be covered in the relevant order.

Generally, the Law on Bankruptcy provides for the below ranking of creditors' claims, determining the priority for payouts. Any court expenses, current utility and maintenance charges, expenses for insurance of debtor's property, debtor's obligations arising after the initiation of bankruptcy proceedings are covered as a matter of priority without regard to the below ranking.

1. Payments under payment (enforcement) documents related to wages, alimonies and tort (negligence) claims of individuals, compensation for damage caused to property of individuals by a crime or an administrative offense;
2. Payments related to taxes and other mandatory payments, mandatory insurance, bank loans and insurance of bank loans as well as outstanding claims of secured creditors and claims of unsecured creditors.
3. Payments of dividends to claiming shareholders.
4. Other payments.

If the recovered amount is insufficient to satisfy all the requirements of a particular tier in full, the recovered funds must be spread proportionally based the amount due to each creditor.

## **EXTERNAL MANAGEMENT**

If the court introduces external management, the chief executive officer will be released from his duties and an external manager will be appointed. The external management is introduced for the period of 12 - 24 months if the real possibility of restoring the debtor's solvency is envisaged by the creditors' meeting or the state agency, if the debtor is wholly or partially owned by the state.

Once appointed, the external manager has to introduce a moratorium on payment obligations of the debtor and may unilaterally terminate the debtor's agreements made before initiating the bankruptcy procedures. Further, a claim to invalidate some transactions may be filled to the court.

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## Economy of the European Union



Branding is defined as the process of coming up or making a unique name or design for a certain product. Having a good brand strategy allows you to have a major advantage in gaining a large increase in your market competition. Your brand tells your customers what they can have or expect from the products and services you offer.

Are you innovative or do you offer the experienced type or do you offer a high-cost, high-quality product, or a low-cost, high-value product? It's impossible to be both. You should consider on standard what your customers need you to be. Your brand is the main foundation of your company. All the promotional materials should be connected with your brand. Having a good brand strategy allows you to have a major advantage in gaining a large increase in your market competition. Your brand tells your customers what they can have or expect from the products and services you offer.

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It is a process to allow an organization to focus resources on the greatest opportunities to increase sales and achieve the company's target.

Marketing strategy's goal is to increase sales and achieve advantage over other competitors. It includes short-term and long-term activities of marketing that have to do with the analysis of a company's situation and contribute to its objectives. It is a process to allow an organization to focus resources on the greatest opportunities to increase sales and achieve the company's target.

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