

OVERVIEW OF SPECIAL REGIMES FOR MAJOR REAL ESTATE INVESTMENTS IN UKRAINE



In its effort to facilitate investments activity and future recovery, Ukraine offers several special legal regimes / instruments as follows:

SIGNIFICANT INVESTMENT PROJECTS

defined as commercial activities such as construction, modernization and/or re-equipment of fixed assets (other than intangible assets and goodwill) and related infrastructure facilities, as well as supply of equipment and components as necessary for implementation of an significant investment project in certain areas and subject to specific conditions (including preferred terms) as specified by the law (*Law of Ukraine "On State Support of Investment Projects with Significant Investments in Ukraine" No. 1116-IX dated 17 December 2020*).



INDUSTRIAL PARKS

defined as a territory which is designated for industrial park development in accordance with the local zoning documentation and equipped with the relevant infrastructure, and where participants of industrial park may carry out certain commercial activities specified by the law on preferential terms (*Law of Ukraine "On Industrial Parks" No. 5018-VI dated 21 June 2012*).

IMMEDIATE RECOVERY PROJECTS















these are essentially a set of exemptions and simplified procedures, which serve as fast-track solution for constructions and other activities addressing immediate humanitarian needs (social / temporary housing, recovery of critical infrastructure etc.) within martial law in Ukraine (*Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding the Peculiarities of Regulation of Land Relations under Martial Law" No. 2247-IX dated 12 May 2022*).







While **Immediate recovery projects** are mostly of humanitarian and social, rather than commercial nature, **Significant investment projects** and **Industrial parks** are often considered among structuring options available for a major investment project having real estate focus. These two regimes are discretionary and aimed at obtaining potential additional benefits, and so an investor may still go for real estate development and operation under standard rules and regulations (i.e. no preferential terms etc). There are specific conditions applicable to these regimes as summarized below in high level by way of comparison.

BUSINESS AREAS

Significant investment projects can be developed in the following areas (subject to certain exceptions envisaged by the law):

-  processing industry
-  mining
-  waste management
-  transportation
-  warehousing
-  postal and courier services
-  logistics
-  education
-  scientific and technological activities
-  health care
-  arts
-  culture
-  tourism
-  resorts and recreation

Activities that can be carried out in an industrial park (subject to certain exceptions envisaged by the law):

-  processing industry
-  industrial and/or domestic waste processing (except for burial of waste)
-  scientific and technical activities
-  information and telecommunication activities



PROJECT SIZE

 **20+** mln EUR

 **10+** ha land plot
for the entire industrial park
(no specific requirements as to
project size within the park)

PROJECT TERM



A special investment agreement should be concluded for **NOT MORE THAN 15 YEARS**, and the agreement should determine the term of implementation of the significant investment project not exceeding 5 years from the date of conclusion of such agreement



An industrial park should be established for **NOT LESS THAN 30 YEARS**

ORGANIZATION



Significant investment projects should be implemented by Ukrainian companies (**SPVs**) incorporated by investor(s) based on a **special investment agreement** concluded (by such investor) with an applicant, the Cabinet of Ministers of Ukraine, and a local government body (in case of state support provided by such body) that defines the procedure and conditions for the project implementation.



Business activity in the industrial park should be carried by its **participant**, i.e., a business entity registered on the territory of the industrial park possessing the right to a land plot and/or other real estate objects within the industrial park and being a party to **agreement with the management company** pursuant to the concept of the industrial park.

ECONOMIC BENEFITS



temporary exemption (till 1 January 2035 and with certain exceptions) from certain taxes and fees (exemption from VAT on new equipment and its components imported exclusively for the implementation of an investment project; exemption from income tax for 5 years; exemption from land tax / preferential land tax rates under municipal authority's resolution);



exemption from import duties on new equipment and its components imported exclusively for the implementation of an investment project;



preemptive right to use state-owned or municipally owned land for implementation of an investment project (acquisition of land leases without competitive bidding; simplified, accelerated lease acquisition and renewal process; preemptive options to transition from lease to full ownership; assistance from state authorities in obtaining servitude rights, if necessary);



construction of related infrastructure facilities necessary for implementation of a significant investment project at the expense of the state, local budgets, and other sources (subject to availability of funds).

Maximum possible amount of total state compensation/benefits, as mentioned above (which are to be negotiated with the state on a case by case basis) – no more than 30 percent of the planned amount of significant investments for a significant investment project.

The above tax and customs exemptions are not guaranteed and subject to complex requirements and conditions.



tax and customs incentives (exemption from income tax for residents of industrial parks for 10 years; exemption of residents of industrial parks from import VAT and customs duties on equipment for own use; establishment of tax benefits for non-residential real estate by decision of municipal authorities; preferential land fee rates/exemption from payment of land tax (by decision of municipal authorities); exemption of new equipment and accessories for it from import duties);



full/partial compensation of the interest rate on credits (loans) for the arrangement and/or carrying out of business activities in the industrial park (for the initiator and management company – up to 60 million UAH; for participants of the industrial park – up to 45 million UAH);



provision of funds on a non-refundable basis for the development of industrial parks and/or construction of related infrastructure facilities necessary for the creation and operation of the industrial park (not more than UAH 60 million and 80% of their estimated cost);



compensation for the costs of connection to engineering and transportation networks (compensation can reach up to 100% of the cost of such expenses, excluding VAT);



land benefits – right to demand establishment of land servitudes for construction and passage of engineering, cable, and pipeline networks necessary for full functioning of industrial parks; acquisition of land leases by management companies of industrial parks without competitive bidding; exemption of industrial parks from forestry losses.

The above economic benefits (tax and customs exemptions, compensations) are not guaranteed and subject to complex requirements and conditions. For example, the budgetary compensations depend on availability of funds and may be hardly accessible in practice.

OTHER MATERIAL TERMS

To be eligible for the state support, a significant investment project must provide for at least 80 new jobs.

Special investment agreement with the state may (i) have any governing law as agreed by the parties subject to standard choice of law rules (i.e. not necessarily Ukrainian), and (ii) include flexible dispute resolution clauses (judicial, arbitration, mediation).

Significant investor is entitled to recover its losses (except for loss of profit) in case the state is not able to ensure investor's rights guaranteed by the state.

Industrial parks are fully subject to Ukrainian law, and no special guarantees apply (the law only guarantees the rights to land plots within the industrial park for creation and operation of industrial parks in Ukraine).



RECENT AND EXPECTED LEGISLATIVE DEVELOPMENTS



Ukraine has recently adopted *a number of legislative and regulatory acts to develop industrial parks in Ukraine*, i.e., regarding the procedures for providing funds for the development of industrial parks and/or ensuring the construction of related infrastructure facilities necessary for the creation and operation of industrial parks, granting full or partial compensation of the interest rate on loans (credits) for the arrangement and/or implementation of commercial activities within industrial parks, providing compensation to initiators of industrial parks' creation – business entities, management companies and participants of industrial parks for connection to engineering and transport network, importation of new equipment and components thereto by a participant of the industrial park into the customs territory of Ukraine, etc. These regulations mostly remain untested as of now. On 24 February 2023, the Cabinet of Ministers of Ukraine approved the Strategy for the Development of Industrial Parks for 2023-2030 (*Order of the CMU No. 176-p dated 24 February 2023*), which demonstrates long-term plans and intentions of Ukraine for its industrial development.



Draft Law "On Amendments to the Law of Ukraine "On State Support of Investment Projects with Significant Investments in Ukraine" No. 8138 – aimed to extend the areas of implementation of significant investment projects (in particular, commercial real estate is expected to be broadly covered, among other things), include pre-project works into the scope of significant investment projects, improve certain procedural aspects, etc. The draft law is pending consideration by the Parliament.



Draft Law "On Amendments to Certain Legislative Acts Regarding the Peculiarities of Regulation of Land Relations to Ensure the Rapid Implementation of Investment Projects Aimed at Recovery of the Economy of Ukraine During Martial Law and the Reconstruction Period" No. 7711 – provides for material exemptions and simplifies procedures with respect to the land investment and construction projects in connection with post-war recovery of Ukraine. This draft law is also pending consideration by the Parliament.

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