

2.7.2 Charter Capital and Management of Private Enterprises

There is no legislative minimum applicable to the charter capital amount of private enterprises, which is determined by the owner himself and can be formed by contributions in the form of money, securities or any other assets which have monetary value. As the owner, an individual is presumed to run the company.

3. FOREIGN INVESTMENT IN UZBEKISTAN

3.1 Forms of Investment

A foreign investor is entitled to engage in investment activity in Uzbekistan by means of:

- Equity participation in companies, banks, trusts, cartels, associations, and other enterprises established together with Uzbek resident legal entities and individuals;
- Establishment of an enterprise wholly owned by a foreign investor;
- Portfolio participation through the acquisition of bonds, shares and share certificates, and other securities issued by Uzbek companies or the Government;
- Total or partial acquisition of tenure rights, rights to immovable property (including land use rights), concession rights effecting the use of subsoil resources, etc.; and
- Other forms of investment which do not conflict with Uzbek legislation.

3.2 Enterprises with Foreign Investment

The principal laws governing foreign investment in Uzbekistan are the *Foreign Investment Law* and the *Foreign Investor Guarantees Law*. It should be noted that the *Foreign Investment Law* requires all foreign currency expenses of enterprises with foreign investment to be paid out of their own foreign currency receipts and other permitted sources of foreign currency. Both the *Foreign Investment Law* and the *Foreign Investor Guarantees Law* state that a foreign investor shall be entitled to freely repatriate its earnings, but this may be difficult to implement in practice. The latter law also

provides that companies with foreign participation are protected from certain adverse changes in the legislation for a period of ten years from the date of investment if, upon adoption of such legislation, such company notifies the tax and other appropriate authorities of the applicable privileges (described in Sections 3.3, 3.5 and 5.2.2).

Uzbekistan very strongly favors major foreign investments and discourages investments by small and medium-sized foreign investors. In order to promote the state policy of self-sufficiency, Uzbekistan's foreign investment regime particularly favors foreign investors who produce goods in Uzbekistan which may be exported, or which replace goods that would otherwise be imported.

In an effort to attract such investors, the Presidential Decree "On Additional Incentives and Privileges Granted to Enterprises with Foreign Investments" was enacted on 30 November 1996. It sets out requirements for particular entities to qualify as enterprises with foreign investment. Only those companies which meet these requirements are considered to be an enterprise with foreign investment ("EWFI") and are subject to state registration with the Ministry of Justice. Such requirements include:

- The size of the charter capital of the company must be equivalent to at least US\$ 150,000;
- One of the founders must be a foreign legal entity; and
- The share of foreign investment must comprise not less than 30% of the charter capital.

In addition, if an EWFI receives over 60% of its revenues from the sale of products which it has produced or the sale of its services, then it will be deemed a production enterprise with foreign investment ("PEWFI"). PEWFIs, which also need to be registered with the Ministry of Justice, may receive certain tax, customs and other benefits and incentives.

Companies with foreign participation (both EWFI and PEWFIs), which manufacture certain types of goods and export a certain percentage of their production, may be eligible for general tax incentives described in Sections 5.2.2 and 5.5.1 below.

By a special resolution of the Cabinet of Ministers, a company with foreign investment may be granted extra tax exemptions and other benefits, depending upon the importance of the company's project to the Government, the volume of the investment to be made, and other factors.

It should be noted that only enterprises registered with the Ministry of Justice are considered to be PEWFIs and enjoy the incentives granted by the Government exclusively for production enterprises with foreign investment.

A Presidential Resolution of 11 April 2005 stipulates that direct foreign investments (existing or new) in certain sectors of the economy (production of computer components, textiles, construction materials, dairy products, etc.), without the guarantee assurances of the Government of Uzbekistan, are entitled to tax holidays on profits, property, and certain other taxes provided that a number of other conditions are met, such as requirements to establish business in regions with an abundant labor force, and to reinvest income generated from such privileges into the development of this entity. The aforementioned tax exemptions are granted to qualifying companies with not less than 50% of foreign participation for a period ranging from 3 to 7 years depending on the size of direct private foreign investment.

3.3 Registration of Legal Entities

3.3.1 Charter Capital Requirements

Procedures for registration (formation) of a legal entity that has foreign ownership differ for entities with over US\$ 150,000 of charter capital and those with less than US\$ 150,000 of charter capital. The former (*i.e.*, an EWFI) must be registered with (formed at) the Ministry of Justice of Uzbekistan or its territorial departments, while the latter (*i.e.*, a company with foreign participation (“CWFP”)) must be registered with (formed at) the local authorities - the local khokimiyats.

3.3.2 Registration of a Legal Entity

In order to improve procedures for state registration of companies in Uzbekistan (including companies with investment in foreign capital), the Cabinet of Ministers approved the “*Regulation on the Procedure of State Registration and Record of Business Entities and Issuance of Permits*,”⁶ in 2003. This Regulation provides a unified checklist of registration documents, irrespective of the amount of foreign capital in the company.

⁶ Regulation on the Procedure of State Registration and Record of Business Entities and Issuance of Permits approved by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On Principal Improvement of the Registration System for Organization of Business Activities” dated 20 August 2003, as amended.

In addition, this Regulation provides for a concept of registration under which most post-registration steps are carried out by the registering body simultaneously with the corporate registration of the company. In particular, the registering body completes the following registrations at the time of the company's corporate registration:

- Registration with tax and statistical agencies;
- Registration with pension, employment, social insurance and road funds;
- Obtaining a permit from the Ministry of Internal Affairs or its divisions for the company stamp and seal; and
- Other permits as may be necessary for business operations (registration of land plot, re-registration of residential premises into office premises, etc.).

In 2006, the President adopted the Regulation “*On Introduction of Notification Based State Registration and Record of Business Entities*,”⁷ in accordance with which registration of most types of business entities is expedited and is subject to less scrutiny.

In order to register an EWFI with the Ministry of Justice or a CWFP with the local khokimiyat, the following documents must be submitted to the Ministry of Justice or its relevant territorial departments or to the local khokimiyat:

- Application for state registration;
- Two notarized originals of the foundation documents - either the charter and/or the foundation agreement, subject to the corporate form of the company. It should be noted that notarization of the foundation documents is not required for joint stock companies formed from state enterprises;
- Receipt for a deposit in Soum and hard currency temporary savings accounts as the initial payment of 30% of the charter capital, or (where the initial payment to the charter capital is made in the form of a property contribution) customs certificate confirming import of property or an independent evaluation of the intellectual property to be contributed to the charter capital;
- Receipt for payment of the state registration fee;

⁷ Regulation of President “On Introduction of Notification Based State Registration and Record of Business Entities” dated 24 May 2006.

- EWFI must pay an amount equal to five times the minimum monthly wage, plus an amount equal to US\$ 500. This fee must be paid in the national currency at the official Central Bank exchange rate. The receipt confirming official exchange of currency must be presented to the registering body. The fee for registration of a CWFP shall be established by local khokimiyats;
- Extract from the Trade Register of the foreign founder notarized and legalized in the country of origin by the consulate of the local Uzbek Embassy or (if there is no Uzbek Embassy) by the Ministry of Foreign Affairs of the country of origin and by the Embassy or Consulate of the country of origin in Uzbekistan, with further approval by the consulate department of the Uzbek Ministry of Foreign Affairs, unless the founder is registered in the country with which Uzbekistan has a special juridical cooperation treaty;
- Certificate of registration of the company's name, issued by the relevant statistical agency departments;
- Three samples of sketches of the company's stamp and seal; and
- A letter from the landlord or a certificate of ownership confirming the office address of the foreign enterprise.

The state registration of the company (including post registration procedures) must be completed within a period of two working days, commencing from the date of submission of the registration documents.

The registering body registers the company's foundation documents (the charter and/or the foundation agreement). The sealed and signed Certificate of Registration and registered originals of the foundation documents are issued by the registering body and given to the company, including documents confirming the post-registration procedures.

The company acquires the rights of a legal entity and is deemed to exist after state registration with the registering body (*i.e.*, the Ministry of Justice or its territorial departments, or the local khokimiyat).

In the event of a change in the company's official address, the company must, within ten days, send a notification letter to the registering body, tax, and statistical agencies.

In the event of changes in or amendments to the company's foundation documents, or its reorganization, the company must be re-registered. In the event of amendments to the foundation documents, the company must, within seven business days, submit to the registering body an application for re-registration, with all necessary documents attached. A re-registration fee in the amount of 50% of the initial registration fee must be paid. Change of an official address does not require any payment of a re-registration fee.

3.4 Annual Investment Program

Every year the Government enacts an "Investment Program" listing those projects deemed to be of most significance to the Uzbek economy. These are usually limited to multi-million dollar investment projects involving PEWFIs. Contrary to the perception of many foreign investors, inclusion in the Investment Program does not automatically entitle a particular project to tax, currency conversion, or other incentives. Rather, projects included in the Investment Program are simply eligible for incentives at the discretion of the Government.

The Government may grant the following incentives to investors participating in the Investment Program: temporary tax holidays, a favorable tax regime, accelerated amortization of assets, customs preferences, and others. To obtain these benefits, a participant in the Investment Program is required to obtain a special Government resolution.

3.5 Free Industrial Economic Zone

To attract direct foreign investments, the Decree of the President #UP-4059 dated 2 December 2008 established a free industrial economic zone ("FIEZ") in Navoi viloyat of Uzbekistan. This FIEZ includes a future international air hub which is currently being developed (Navoi airport) and the surrounding area. According to the aforementioned Decree, the FIEZ shall operate for 30 years with an option to extend this period. During the term of the FIEZ, a special tax, currency and customs regime shall be applicable to entities registered within the territory of the FIEZ. These entities are exempt from land, corporate profits, property and infrastructure tax, unified tax payments (for micro firms), school tax and payment to the Road Fund:

- for 7 years where direct investments range between 3 million and 10 million Euro;

- for 10 years where direct investments are between 10 million and 30 million Euro; and
- for 15 years where direct investments exceed 30 million Euro.

The entities are exempt from customs duties provided that manufactured products are fully exported. If products manufactured in the FIEZ are sold on the internal Uzbek market, customs duties will be applicable at 50% on those entities' imports.

4. CURRENCY REGULATIONS

4.1 Exchange Controls

The Soum has been fully convertible for current international transactions since the end of 2003. Specifically, the Cabinet of Ministers of Uzbekistan notified the International Monetary Fund ("IMF") that it accepted the obligations of Article VIII, Sections 2(a), 3 and 4, of the IMF *Articles of Agreement*, with effect from 15 October 2003. According to the IMF, Uzbekistan is the 157th of the IMF's 184 members to have accepted those obligations. As a result, all currency restrictions with respect to the export-import of products and services, the buying and selling of hard currency valuables (precious metals, jewelry checks, etc.), interest transfers, dividend payments from investments abroad, dividends and revenue payments abroad for investments in Uzbekistan, as well as certain other currency conversion restrictions, have been abolished. However, certain administrative difficulties in converting Soum to foreign currency for remittance abroad diminish the effect of currency liberalization in practice.

Uzbek legal entities may not hold bank accounts outside Uzbekistan without permission from the Central Bank. All settlements within Uzbekistan must be made in Soum, except for payments made by nonresidents for certain services in hard currency and some other limited instances established by the Cabinet of Ministers and Uzbek currency law.

4.2 Multiple Exchange Rates

There are multiple exchange rates for the Soum. The first (the official rate) is fixed by the Central Bank of Uzbekistan. The second (exchange rate) is traded through