POLICY SPOTLIGHT: LAW ON STRATEGIC INVESTMENTS

About the Policy Spotlight

The Policy Spotlight is a bimonthly publication of the American Chamber of Commerce in Kosovo (AmCham Kosovo) which aims to bring attention on different economic policies and outline the challenges for the development of such policies, in order to pave the way for addressing them. The recently adopted Law on Strategic Investments is the focus of analysis for this edition of the spotlight, in order to explain the goals of the law, and the applicable procedures for an investment to qualify as a ‘strategic investment’ in the Republic of Kosovo. Furthermore, the law is analyzed in a broader context vis-à-vis similar laws of neighboring countries, such as Albania, Croatia, Serbia, and Macedonia.

However, it must be stated that at the time this document is being published, despite the fact that the law has been approved by the Assembly, its constitutionality has been contested by ‘Serb List’ parliamentary group at the Constitutional Court, on the basis that the law is in contradiction with the overall decentralization process.

Problem Background

The Government of Kosovo has acknowledged that the economic development driven by private sector investments is the way to go forward. Reforms in the doing business environment have improved the situation bureaucracy-wise to a great extent, as evidenced by Kosovo’s impressive improvement in several indicators. While the efforts to improve doing business environment are welcome to the private sector, we have witnessed little improvements in private sector investments. Particularly worrying are Foreign Direct Investment data, which show that despite efforts, Kosovo has failed to attract the attention of potential investors. The following graph shows annual FDI inflow data for the period between 2009 and 2015:

![Figure 1 FDI in Kosovo (data from Central Bank of Kosovo)](image)

The graph points out that the FDI trend in the country has not been very satisfactory during these years. In addition to the annual data presented above, it must be noted that FDI in the period of January-August 2016 amounted to a disappointing 148 million euro (Central Bank of Kosovo, 2016). A further breakdown of the data reveals that a significant percentage of these investments is composed of investments in real estate (diaspora buying housing apartments in Kosovo). While such investments are welcome in terms of income coming into Kosovo, they do not directly generate employment and do not affect economic growth significantly.

This situation requires a careful analysis for the identification of factors causing the
hesitance of foreign investors to consider Kosovo. Some of the main discouraging factors have been Kosovo’s challenges with rule of law, contract enforcement, and political stability & certainty. Factors such as these increase the risk for investing in a given country and can deter investments. Thus, an increased emphasis should be placed on tackling these issues.

Furthermore, another challenge which has been raised increasingly over the last years, is the extensive bureaucracy requirements and the lack of a legal framework to offer interested investors any kind of incentives or facilitations, be them local or foreign. A deterring factor which certainly should be noted is the fact that municipalities have faced great challenges for giving municipal land for use to investors. Furthermore, upon establishing their operations in Kosovo, investors have to deal with a wide array of institutions, and these bureaucratic procedures - such as getting a license or permit - can get overwhelming.

This has created a situation whereby Kosovo has lost its competitiveness compared to regional countries, particularly due to the fact that institutions in these countries have been able to ‘negotiate’ in a more structured format with investors. Considering these challenges, the Government has identified the need for the creation of a separate law, which would enable a more customized approach toward interested investors. The Law on Strategic Investments is intended to serve this purpose and to pave the way for the establishment of fast-track procedures for aiding strategic investors in their efforts to invest in Kosovo.

### Purpose and Scope of the Law

Article 1 of the Law on Strategic Investments No. 05 /L-079, defines the purpose of the law as follows:

**Article 1 Purpose**

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.

Furthermore, this article stipulates that institutions involved in this process should make sure to respect principles of free movement of goods, services and capital, and adhere to the Law on State Aid and obligations deriving from the Stabilization and Association Agreement ("Law on Strategic Investments", Article 1).

It should be noted that at the very first article of the law, a special emphasis is given to the need for the creation of procedures for granting use to public property to strategic investors.

Article 2 of the Law provides for the scope of the law and the general conditions to be fulfilled in order for an investment to be eligible for being considered ‘strategic’.

<table>
<thead>
<tr>
<th>Sector/Industry</th>
<th>Minimum Investment</th>
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<tbody>
<tr>
<td>Energy with infrastructure and Mining</td>
<td>30 Million Euro</td>
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<tr>
<td>Transport and Telecommunication</td>
<td>30 Million Euro</td>
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<tr>
<td>Tourism</td>
<td>20 Million Euro</td>
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<td>Processing Industry</td>
<td>20 Million Euro</td>
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<tr>
<td>Agriculture and Food Industry</td>
<td>10 Million Euro</td>
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<tr>
<td>Health</td>
<td>30 Million Euro</td>
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<tr>
<td>Industrial and Technological Parks</td>
<td>10 Million Euro</td>
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<tr>
<td>Wastewater and Waste Management</td>
<td>10 Million Euro</td>
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One of ensuing sections will analyze these thresholds in a regional context. It should be noted that an earlier version of the draft law included the number of jobs created as a determining factor on granting the status of strategic investor to a given applicant. However, the final version of the law only stipulates that priority will be given to projects with larger investment amounts and projects that are expected to generate a larger number of jobs (“Law on Strategic Investments”, Article 2). The following conditions should also be met before investors can apply for the strategic status:

- **Investment entity at the moment of applying for the status of strategic investment must submit evidence, proving its financial capability to fulfil the investment;**
- **Proposed investments must be in compliance with environmental standards defined by legislation of the Republic of Kosovo and European Union;**
- **Proposed investments must not be in contradiction to the Constitution and obligations of the Republic of Kosovo defined by international conventions and agreements (“Law on Strategic Investments”, Article 2).**

**Services towards strategic investors**

Strategic investors shall benefit an array of services to facilitate their operations in the Republic of Kosovo. These services range from assistance in administrative procedures, to providing public property for use of up to 99 years.

With regards to article 16.1.1, the law provides for strict deadlines for the processing of applications for licenses and permits. Article 16.2 stipulates that upon receiving a complete application, the Operational Group and Kosovo Investment and Enterprise Support Agency are obliged to forward that request within 5 working days to the intended public institution. Consequently, the public institution is obliged to review the application and provide a response to the application within 15 working days after the received date. The deadline can only be extended for another 15 working days on specific and justifiable cases when the application is of a more complex nature.

**Land & public property concessions**

As stated in the document, one of the main benefits deriving from the Law on Strategic Investments is the possibility to grant use of public property to strategic investors. Articles 18 and 22-25 regulate the issue of providing land and public property to strategic investors, and the underlying procedures within. It must be noted that in order to guarantee a satisfactory level of transparency and accountability, the law foresees that in order to transfer socially-owned properties and publicly-owned properties for use in strategic projects, the issue needs to be voted in the parliament.
Furthermore, the law states that the transfer can proceed with a simple-majority rule. This role is given to the municipal assembly on cases concerning municipal property. Certainly this requirement can be interpreted both as positive and as negative.

While the formal vote at the assembly guarantees increased transparency and accountability, it also entails additional bureaucracy and waiting time for investors. Unfortunately we have witnessed delays in the voting process of many laws related to the private sector in the past, as a result of political stalemates.

According to Article 24 of the law, the maximum period of the right to use the property is 99 years, with a possibility of extension, if the entity has constructed facilities which are actively used for business purposes. This is a significant improvement compared to the draft law which was sent to the parliament by the Government, which included a maximum period of 40 years.

**Procedural Aspects**

Procedures for obtaining the status of a strategic investor are different, depending on who is the initiator of such a project. First and foremost, in accordance with article 4 of the Law on Strategic Investments, entities eligible for obtaining this status include: (1) foreign investors, (2) domestic investors, (3) public investment authorities, and (4) public investment authorities in partnership with foreign or domestic investors (“Law on Strategic Investments”, Article 4.1).

**First Option:** an interested investor can submit its written application to Kosovo Investment and Enterprise Support Agency for obtaining the status of a strategic investor. After the approval of the request by the Government of Kosovo, the investment entity shall enter into negotiations with the ‘Inter-ministerial Committee’ for the conclusion of a Strategic Investment Agreement (“Law on Strategic Investments”, Article 4.2 and 4.3). The request of the entity should contain the following documentation: 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.

Alternatively, if an entity is created particularly for applying for a strategic investment project, the applicant should submit supporting documents for the parent company and the joint venture partner (if applicable).

**Second Option:** in accordance with the Law on Public Procurement, the Government may invite entities to apply for the selection of investment entities for the realization of a strategic project, if public procurement procedures are deemed to maximize the

**Article 5**

**Content of the request for obtaining the strategic investment status**

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.
public interest of the Republic of Kosovo ("Law on Strategic Investments", Article 4.4).

Third Option: the Government can also enter into direct negotiations for the conclusion of Strategic Investment Agreements, without following the pre-set procedures if such a thing is foreseen on the basis of an international agreement between Republic of Kosovo and one or more other countries or international organizations ("Law on Strategic Investments", Article 4.5).

It should also be noted that 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 realization of these projects” ("Law on Strategic Investments", Article 4.6).

Institutional Framework

The law foresees the involvement of a number of institutions with varying roles in the process of selection, oversight, negotiations etc. The roles of each these institutions is explained in this section.

Kosovo Investment and Enterprise Support Agency

In the context of strategic investments, KIESA has a very important role in facilitating and coordinating all related procedures. In addition to being the first point of contact for interested entities, KIESA is also responsible for the following:

- Defining and assigning tasks to respective public authorities on the implementation of the strategic investment and informing the investor
- Assisting the strategic investor in project performance related activities, including the compilation of lists of documents required for benefiting from accelerated procedures
- Coordinating and assisting public authorities for the compilation of documents required for the implementation of the project
- Performing technical assessment of the strategic investment project, its strategic potential, operational risk and action plan for implementation of the project
- Analyzing the profile and potential of the strategic investor, and as such is entitled to request supporting documentation from the applicant (e.g. financial capacity).
- Proposing to the Committee for accepting, rejecting or annulling the strategic investment status ("Law on Strategic Investments", Article 8).

Based on the set of responsibilities assigned to KIESA and the operational groups (explained below), an emphasis needs to be placed on the fact that human and professional capacities of the Agency should be strengthened in order for it to be able to cope with the additional responsibilities. Some of the responsibilities listed require extensive professional capacities on the field. According to Article 11 of the Law, the time limit for conducting technical, financial and legal analysis of the application by KIESA is set to twenty working days.

Furthermore, KIESA “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." ("Law on Strategic Investments", Article 20).
Inter-ministerial Committee for Strategic Investments

These committees will be established for the purpose of “evaluating, selecting, implementing and monitoring strategic investment projects”. The Minister of Trade and Industry will serve as the head of the committees and will be responsible for coordinating and leading the work of the committees ("Law on Strategic Investments", Article 6). A simple-majority rule will be used for voting purposes.

The role of the committee is crucial in assessing requests for granting the strategic investment status and providing the recommendation to the GoK. It does so based on the recommendations received by KIESA. This Committee also establishes the Operational Groups within KIESA, and publishes biannual reports on the monitoring and implementation of strategic projects. Lastly, the committee is entitled to negotiate with the strategic investor the conclusion of the strategic investment agreement, after the GoK has approved the project.

Operational Groups

Operational groups for the implementation of Strategic Investments are established by the Committee and will include different professionals, depending on the profile of the project at hand. The group shall include representatives of all involved ministries, the municipality and the State Aid Office. The main role of the operational group is to provide professional support to KIESA on the successful implementation of the project activities ("Law on Strategic Investments", Article 9).

Government of Kosovo

The Government of Kosovo is the final authority responsible for granting or refusing the strategic investment status. However, it must be noted that upon the recommendation of the committee, the Government can alter their decision (rejection or approval) only if conditions set by the law are not met (as opposed to deciding on merits). The government is also entitled to prepare the decisions for the strategic investment status, based on criteria outlined in Article 12.

Kosovo Assembly and Municipal Assemblies

As explained earlier, the role of the assembly and municipal assembly is on voting for the use of public, social or municipal land/property for strategic projects.

Strategic Investment Frameworks in Other Countries

Countries apply different strategies when it comes to stimulating domestic investments and attracting foreign direct investments. This section looks at the legislation and supporting framework of selected countries in terms of strategic investments.

European Union Framework

In the Union level, the EU has not established any framework which addresses strategic investments directly. This responsibility is left to member states, whereby each of them is free to create their own rules and regulations. However, EU considers strategic investments
Policy Spotlight on the Law on Strategic Investments

those contributing to principles of “Europe 2020- a Strategy for Smart, Sustainable and Inclusive Growth”, which generally aims at facilitating economic growth and increasing employment (European Commission, 2015).

Consequently, the European Union has adopted an investment plan which focuses on removing barriers to investment, offering visibility and technical assistance on investment projects. To achieve this, the plan is focused on mobilizing investments of at least 315 billion euro, supporting investments in the real economy, and the creation of a suitable investment environment. Additionally, the EU has established the European Fund for Strategic Investments, which will support investments in economically sustainable projects with a high value added, with a special focus on:

- Strategic infrastructure, including digital, transport and energy
- Education, research, development and innovation
- Increasing renewable energy and efficiency of resources, and
- Support to SME-s

In this aspect, investments made in strategic sectors of one country are considered as strategic investments, which are channeled towards achieving long term development goals of a country and increasing employment. (European Commission, 2015)

Croatia

Croatia has a Law on Strategic Investments, which targets a wide list of sectors: economy, energy, tourism, transport and infrastructure, electronic communications and postal services, environment protection and public services, agriculture, forestry, water management, fishery, healthcare, culture, science, technology, education, defense and judiciary. Furthermore, the law states that strategic investments shall be considered those that affect employment significantly, improve quality infrastructure, promote the use of technology for increasing competitiveness, help environment protection goals etc. (Croatian Agency for Investments and Competitiveness).

The following criteria are used to determine strategic investments:

- Generally, investments of over € 20 Million
- Investments of over € 10 million, if co-financed with EU funds
- Investments of over € 3 million, if the project is implemented in zones of national concern (under-developed)
- Investments of over € 3 million if the investment is in an island
- Investments of over € 3 million if the investment is in agriculture or fisheries.

Similarly to Kosovo, the main benefits that strategic investors have in Croatia is the access to facilitated administrative procedures for licenses and permits, and the use of public property in concession for up to 99 years (Croatian Agency for Investments and Competitiveness).

Albania

In 2015, Albania adopted a Law on Strategic Investments, with the aim to stimulate domestic and foreign investments in the country. The law makes a difference between two types of strategic investments: assisted procedure and special procedure. The types of services rendered for both these procedures differ. The sectors and the respective investment values for strategic investments in Albania have been outlined in the table below.

The services rendered to strategic investors in general are similar to those offered in Kosovo and in Croatia, i.e. facilitated procedures for licenses and permits and the use of public property for implementing the strategic investment project. However, it must be noted that the law in Albania also foresees the possibility of the expropriation of private
property for the purpose of implementation of Strategic Investments: Special Procedure. It also gives the Council of Ministers (the Government) substantial powers and responsibilities in such procedures. Furthermore, the strategic investor in the special procedure can ask for its agreement with the Council of Ministers to be voted in the Assembly in order to reduce political risk and legal uncertainty (Assembly of the Republic of Albania, 2015).

Serbia

Serbia does not have a law designated for strategic investments; however, it tries to pursue policies aimed at driving domestic and foreign investments in particular sectors. Overall the national framework of the country considers economic activities with a high value added and with high international trade prospects as being of a strategic importance. Specifically, investments in this category include:

- Standard Investment Projects - up to €50 M
- Large Investment Projects - over €50 M
- Special importance investments - over €20 M and 500 jobs created, or €5 M and 200 new jobs for less developed regions (Government of the Republic of Serbia, 2012)

In addition to flexible policies for the recognition of deductible expenses, tax allowances and incentives, the Government of Serbia also applies wage subsidies for stimulating employment and encouraging investments in the private sector. Employment incentives outlined below are per new job created:

<table>
<thead>
<tr>
<th>Gr. I Municipalities</th>
<th>20% but no more than € 3,000</th>
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<tbody>
<tr>
<td>Gr. II Municipalities</td>
<td>25% but no more than € 4,000</td>
</tr>
<tr>
<td>Gr. III Municipalities</td>
<td>30% but no more than € 5,000</td>
</tr>
</tbody>
</table>

Gr. IV Municipalities | 35% but no more than € 6,000
Less Developed Municipalities | 40% but no more than € 7,000

Despite the lack of a law on Strategic Investments, investors in Serbia are able to get a public property in concession of up to 99 years, based on the legislation in power (Parliament of the Republic of Serbia, “Law on Public Property”).

Macedonia

Similarly to Serbia, Macedonia lacks a special law on Strategic Investments. However, the Government of Macedonia and responsible institutions try to stimulate investments through Technological Industrial Development Zones. These zones offer investors land for use between 10 and 99 years, and offer supporting ready-to-use infrastructure. Some of the incentives provided to investors located in these industrial zones include:

- Corporate Income Tax holidays for up to 10 years
- Custom duty exemptions
- Easy access to necessary infrastructure
- Use of public property of up to 99 years (PricewaterhouseCoopers, 2016)

Companies with projects fulfilling the following criteria are given priority for these zones: increase of employment, companies having manufacturing certificates in line with environmental standards, high-end manufacturing, energy efficient projects etc.

Conclusions and way forward

While the Law on Strategic Investments can be a positive step in Kosovo’s efforts towards increasing private sector investments—particularly FDI—a number of key issues need to be reemphasized:
First, capacities of implementing institutions—particularly KIESA—need to be strengthened significantly, in order to get the desired results from this law. Many of the activities and responsibilities prescribed by the law require in-depth professional expertise related to the sector at hand.

Second, respective institutions, particularly the Ministry of Trade and Industry, should promote these mechanisms in front of potential investors, be them domestic or foreign. The law in Albania specifically mentions that the Agency should increase its efforts for promoting the law to potential investors in international fairs and conferences.

Thirdly, any reform in the process of stimulating the investment environment will not have the desired effects without substantially improving the situation in rule of law and contract enforcement. This has been the main stumbling point for Kosovo in terms of attracting FDI for many years now. Improving rule of law will lower the investment risk and incite investors to consider Kosovo as a destination for their investment.

Last but not least, in line with the Law on Corporate Income Tax and the Law on Customs Exempted goods, the Ministry of Finance should enact an AI on Tax Holidays and should further increase the list of custom exempted goods. Such steps are particularly desirable to companies seeking to invest in manufacturing processes.

**List of Acronyms**

- **CBK** – Central Bank of Kosovo
- **GoK** – Government of Kosovo
- **FDI** – Foreign Direct Investments
- **SME** – Small and Medium Enterprises
- **KIESA** – Kosovo Investment and Enterprise Support Agency

**References**


Assembly of the Republic of Kosovo. (2016). Law No.05/ L-079 on Strategic Investments. Assembly of the Republic of Kosovo.


