

**TOBB****TÜRKİYE
ODALAR VE BORSALAR
BİRLİĞİ**TÜM ODALARA
(Genel Sekreterlik)

Tarih : 13.02.2020
 Sayı : 34221550-100- 1530
 Konu : Türkiye-Ukrayna STA Müzakereleri-
 Hizmet Ticareti ve Yatırımların
 Kolaylaştırılması

İlgi : Ticaret Bakanlığı'ndan alınan 05.02.2020 tarihli ve E-00052057903 sayılı yazı.

İlgi'de kayıtlı yazıda, ülkemiz ile Ukrayna arasında hizmet ticareti, yatırımların kolaylaştırılması ve elektronik ticareti de içeren kapsamlı bir Serbest Ticaret Anlaşması (STA) akdedilmesine yönelik müzakerelerin sürdürüldüğü belirtilmiş olup, Ukrayna'daki Türk firmalarının yaşadığı sorunlar ile ilgili Ticaret Bakanlığı'na iletilen bilgiler üzerinden yapılan çalışmalar neticesinde özel bazı sorun alanlarının tespit edildiği açıklanmış olup, bu çerçevede STA müzakerelerinde görüşülmek üzere anılan Bakanlık tarafından bazı anlaşma metni önerilerinin hazırlandığı kaydedilmiştir.

Yazıda devamla, ekte sunulan "Yatırımın Kolaylaştırılması Faslı" ve "Gerçek Kişilerin Dolaşımı" başlıklı taslak metinlerin Ukrayna tarafına sunulmasında herhangi bir sakınca olup olmadığı ve varsa ilgili dokümanlara ilave edilmesinde fayda görülen hüküm/hususlar hakkında görüş talep edilmektedir.

Bu itibarla, ilişkide bir örneği sunulan dokümanlara yönelik Odanız üyesi ilgili firmaların görüş, öneri ve değerlendirmelerinin Birliğimize (kubilay.simsek@tobb.org.tr) 25 Şubat 2020 tarihine kadar gönderilmesi hususunda gereğini rica ederim.

Saygılarımla,

e-imza

Mustafa SARAÇÖZ
 Genel Sekreter

EKLER:

- 1- Yatırımın Kolaylaştırılması Faslı (5 sayfa)
- 2- Gerçek Kişilerin Dolaşımı (3 sayfa)

Bu belge, 5070 sayılı Elektronik İmza Kanununa göre Güvenli Elektronik İmza ile imzalanmıştır.



Evrakı Doğrulamak için : <http://belgedogrula.tobb.org.tr/dogrula.aspx?V=BELC2N52>

Dumlupınar Bulvarı No:252 (Eskişehir Yolu 9. Km.) 06530 /ANKARA

Tel: +90 (312) 218 20 00 (PBX) • **Faks:** +90 (312) 219 40 90 - 91 - 92...

E-Posta: info@tobb.org.tr • **Web:** www.tobb.org.tr • **KEP:** tobb@hs02.kep.tr

Ayrıntılı bilgi için: Kubilay ŞİMŞEK **Tel:** 0312-218-22-34

E-Posta: kubilay.simsek@tobb.org.tr

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CHAPTER XX INVESTMENT FACILITATION

Article 1 *Objectives and Scope*

1. The purpose of this Chapter is to ensure facilitation of procedures as much as possible to increase the direct investment flows between the Parties and create a better and safer environment for doing business [of investors] in the territory of each Party.
2. This Chapter applies to the administration of [measures (of general application) affecting] [requirements necessary for] the authorization of investment activities.
3. Parties recognise the right to regulate, and to introduce new regulations in order to meet national policy objectives and in a manner consistent with their obligations and commitments under this Agreement.
4. Nothing in this Chapter shall be construed to confer any rights for market access and establishment.
5. This Chapter is without prejudice to the terms, limitations, conditions and qualifications set out in each Party's Schedule of Specific Commitments and the List of MFN Exemptions.
6. This Chapter shall not apply to government procurement and public concessions. In case of inconsistency between this Chapter and the terms of a public concession, the latter shall prevail.

Article 2 *Definitions*

1. For the purposes of this Chapter;
 - a) **“authorization”** means the permission to pursue [investment activities], resulting from a procedure an investor must adhere to in order to demonstrate compliance with the necessary requirements.
 - b) **“investment”** means [an enterprise and a branch of an enterprise]
 - c) **“investor”** means a natural person of a Party or an enterprise of a Party that seeks to make, is making or has made investments in the territory of the other Party.
 - d) **“enterprise”** means any juridical person or any other entity duly constituted or organised under the applicable laws and regulations, whether or not for profit, and whether private or government owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, organisation or company

- e) “**investment activities**” means establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments in [services and non-services sectors];

Article 3
Transparency and Predictability

1. Each Party shall ensure that laws, regulations, procedures, and other measures of general application as well as international agreements affecting investments are promptly published or otherwise made available in a manner that enables interested persons and the other Parties to become acquainted with them.

2. If a Party requires authorization for investment activities, the Party shall promptly publish or otherwise make publicly available in writing the information necessary to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information shall include, inter alia, where it exists:

- (a) the requirements and procedures;
- (b) contact information of relevant competent authorities;
- (c) fees;
- (d) technical standards;
- (e) procedures for appeal or review of decisions concerning applications;
- (f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;
- (g) opportunities for public involvement, such as through hearings or comments; and
- (h) indicative timeframes for processing of an application.

3. Each Party shall ensure that laws it proposes to adopt in relation to matters falling within the scope of this Chapter are published in advance in electronic form.

4. Each Party shall endeavour to ensure that regulations it proposes to adopt in relation to matters falling within the scope of this Chapter are published in advance in electronic form.

5. Each Party should endeavour to provide reasonable opportunity for investors of the Parties to comment on such proposed laws and regulations and to address collectively in writing substantive issues raised in the comments received.

Article 4
Procedures

Submission of Applications

1. Each Party shall, to the extent practicable, endeavour avoid requiring an applicant to approach more than one competent authority for each application in order to demonstrate compliance with licensing and qualification requirements.

2. To the extent practicable, the competent authorities shall accept applications in electronic format under the same conditions of authenticity as paper submissions.

Application Timeframes

3. The competent authorities shall, to the extent practicable, permit an applicant to submit an application at any time. Where specific time periods for applications exist, they shall be of reasonable length.

Acceptance of Copies

4. The competent authorities of each Party shall, in accordance with its domestic law and practice, accept authenticated copies in place of original documents

Processing of Applications

5. If a Party requires authorisation, it shall ensure that its competent authorities:

(a) to the extent practicable, provide an indicative timeframe for processing of an application;

(b) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Party's domestic laws and regulations;

(c) at the request of the applicant, provide without undue delay information concerning the status of the application, if possible in electronic form.

(d) process an application which they consider complete under the Party's domestic laws and regulations, as expeditiously as possible.

(e) inform the applicant of the final decision in writing¹ without undue delay.

6. Each Party shall ensure that an authorisation is granted when all the applicable requirements have been fulfilled and, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

7. The competent authorities shall, within a reasonable period of time after the receipt of an application which they consider incomplete:

(a) inform the applicant that the application is considered incomplete;

(b) identify the additional information required to complete the application or otherwise provide guidance on why the application is considered incomplete; and

(c) provide the applicant the opportunity to complete its application within a reasonable period of time or, if appropriate, to submit a new application.

8. If the competent authorities reject an application, they shall inform the applicant, in writing²:

(a) of the reasons for rejection of the application and, if applicable, the procedures for resubmission of an application

¹ "In writing" may include electronic form.

² "In writing" may include electronic form.

- (b) of the timeframe and procedures for any available review or appeal against the decision

9. An applicant should not be prevented from submitting another application solely on the basis of a previously rejected application.

Article 5 Fees

Each Party shall ensure that authorization fees³ are based on authority set out in a measure, reasonable and if possible commensurate with the costs incurred by the competent authorities, including those for supervision of the investment activities.

Article 6 Appeal and Review

1. Each Party shall provide that an investor to whom a competent authority issues a decision has the right, within its territory, to:

- a. an administrative appeal to or review by an administrative authority higher than or independent of the competent authority that issued the decision⁴; and/or
- b. a judicial appeal or review of the decision.

2. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

Article 7 Independence and Impartiality

1. Each Party shall ensure that the procedures used by, and the related decisions of, the competent authorities are impartial with respect to all applicants.

2. The competent authorities should be operationally independent of, and not accountable to, any investor for which the authorisation is required.

Article 8 Digitilization and Electronic Governance

Electronic Documents

1. Parties shall endeavour to reach the highest possible level of digitalization of procedures related to investments.

³ For the purposes of this paragraph, fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

⁴ In situations in which a decision is issued at a ministerial level or higher, the decision shall be subject to a request for reconsideration by the same competent authorities.

2. For the purposes of this Agreement, electronic documents and electronic signatures shall produce the same legal effects as those of paper documents and handwritten signatures, subject to the Party's domestic laws and regulations on electronic documents and electronic signatures

Single Contact Point

3. The Single Contact Point (SCP) shall constitute a single entry point for the submission of all documents required by the agencies or regulatory bodies involved in the investment activities.

4. Documents uploaded through the SCP shall not be subsequently required by any agency or regulatory body by any other means, except in cases in which the authenticity of the electronic document cannot be established or ensured through electronic means alone.

5. The SCP website shall provide information regarding policy, laws and regulations relating to the investment activities. Parties shall endeavour to include subnational information regarding policy, laws and regulations relating to the investment activities.

6. The SCP shall contain the information referred to in Article 3 (2) of this Chapter.

7. The provisions regarding SCP shall be implemented within 3 (three) years after the entry into force of this Agreement.

Article 9

Working Group on Investment Facilitation

1. A Working Group on Investment Facilitation is hereby established in accordance with Article VII (3).

2. The Working Group shall meet as needed but at least once a year as envisaged by Article VII (2), for the purpose of affording Parties the opportunity to raise any matters related to the implementation of this Chapter or the furtherance of its objectives.

3. The Working Group shall carry out such responsibilities such as:

- a. follow the implementation of this Chapter;
- b. discuss issues related to investment facilitation of general interest;
- c. propose cooperation and facilitation agendas, which may include issues such as: transfer of funds, personnel mobility and logistical matters, among others;
- d. exchange experiences in investment facilitation;
- e. discuss views and requests from investors and other relevant stakeholders, when applicable, on specific issues; and
- f. compile and disseminate international best practices.

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ANNEX ON MOVEMENT OF NATURAL PERSONS

Article 1 Scope and General Provisions

1. This Annex applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service.
2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
3. The Agreement shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.
4. The Parties shall ensure that all measures affecting the entry and temporary stay for the purpose of supplying services are administered in a reasonable, objective and impartial manner consistent with Article 6.1 of the GATS and that such measures are not applied in a manner so as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.
5. Parties shall grant entry and temporary stay to natural persons of the other Party covered by its specific commitments in accordance with the terms and conditions of that commitment, provided that the natural persons comply with the relevant immigration laws and regulations applicable to entry and temporary stay, which are not inconsistent with the provisions of this Agreement.
6. The sole fact that a Party grants entry and temporary stay to a natural person of the other Party shall not be construed to exempt that person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession.

Article 2 Provision of Information

1. For the purposes of this Annex, each Party shall ensure that its competent authorities make publicly available the information necessary for the effective application of the grant of

authorizations for the entry into and temporary stay in its territory. Such information shall be made electronically available and kept updated.

2. Information referred to in paragraph 1 shall include, among others,:

- (a) categories of visas and work permits or any similar type of authorization regarding entry and temporary stay;
- (b) documentation and evidence required and conditions to be met;
- (c) method of filing and options on where to file, such as consular offices or online;
- (d) processing time;
- (e) application fees;
- (f) period of validity of the visas and work permits;
- (g) conditions for extensions or renewal;
- (h) available review and/or appeal procedures;
- (i) reference to relevant laws of general application; and
- (j) respective requirements referred to in Article 3 (10)

3. Each Party shall provide the other Party with details of relevant publications or web-sites where information referred to in paragraph 2 is made available.

Article 3 Entry and Temporary Stay Related Requirements and Procedures

1. Documents requested for the application process for entry and temporary stay of natural persons supplying services shall be relevant and not excessive in relation to the purpose for which they are collected.

2. Fees for processing applications for entry and temporary stay for the service suppliers shall be reasonable and determined with regard to the administrative costs involved.

3. Complete applications shall be processed promptly and expeditiously. The competent authorities of each Party shall notify the applicant of the outcome of its application promptly after a decision has been taken. The notification shall include, if applicable, the period of stay and any other terms and conditions.

4. Upon the applicant's request, the competent authorities of the Party concerned shall, without undue delay and to the extent possible, provide information concerning the status of the applicant's application. This information shall normally be provided free of charge.

5. In case of an incomplete application, the applicant shall be informed promptly of the information required to complete the application and shall be provided with the opportunity to correct any deficiencies within a reasonable period of time.

6. If a Party requires additional information from an applicant in order to process the application for temporary stay, the authority shall notify the applicant without undue delay and provide the applicant with the opportunity to supply that additional information within a reasonable period of time.

7. If an application is refused, the Party concerned shall inform the applicant, in writing¹ and without undue delay, about the reasons for such refusal. The applicant shall be given an opportunity to appeal against that decision and/or to submit a new application.

8. If a Party requires separate applications for entry and temporary stay it shall ensure that the respective time periods for entry and temporary stay, if granted, are compatible.

9. Applicants shall be given an opportunity to apply for renewal or extension of authorisation for temporary stay. Each Party shall ensure that the procedures for application for the renewal or extension of authorisation for temporary stay are pre-established and clearly specified.

10. When a Party decides to grant entry and temporary stay to a service supplier of the other Party and when the respective requirements are fulfilled, the granting Party shall issue multiple entry visas.

11. Parties shall endeavour to accept and process applications in electronic format.

Article 4

Relationship with other Agreements

In case of an inconsistency between the provisions of this Annex and a provision of an international agreement to which the Parties are party, the provision most favourable to the service supplier shall apply.

¹ For greater certainty, "in writing" may include in electronic form.