Investing in Turkmenistan Not for the Faint-Hearted

Author: IWPR Central Asia

As well as inviting investors to come in, the government will have to offer them a level playing-field before the money starts piling in.

Since coming to power a year ago, Turkmen president Gurbanguly Berdymuhammedov has made it plain he sees foreign investment as central to his plans for economic growth.

Turkmenistan has large reserves of gas as well as oil, and is also a major producer of cotton.

But before investors can come in and develop these or other sectors with confidence, a host of broader issues need to be addressed, including ensuring that the laws regulating foreign businesses are transparent, straightforward and applied equally to all.

At a cabinet session on February 8, the president returned to the theme, telling economic, finance and banking chief that more joint enterprises needed to be set up with foreign partners if the country was build a market economy.

Joint enterprises will not only attract investment but introduce new technologies and equipment, he believes.

Berdymuhammedov also wants foreign experts to come in and help redress the lack of skilled professionals in much of the economy.

According to local estimates, foreign direct investment, FDI, inflows to Turkmenistan have totalled only about three billion US dollars since independence in 1991. This is far less than a country possessing substantial energy reserves might have expected. For comparison, Kazakstan, another hydrocarbon-rich state, has attracted at least 40 billion in FDI over the same period.

Various laws currently govern the way foreign companies operate in Turkmenistan, including legislation on licensing, joint-stock companies and investment. But these laws often contradict one another, and coupled with other regulations issued by the president, the government and industry-specific departments, they deter rather than encourage foreign investors.

The law on foreign investment, for instance, requires companies in which foreigners have a share to obtain registration with the government, but also tells outside investors obtain prior “permission to invest in the Turkmen economy” without stating who should grant that permission.

In practice, the letter of the law is largely irrelevant, as any foreign firm that is serious about doing business in Turkmenistan first needs to secure an interview with the president and get his personal blessing.

Second-best alternatives are to obtain the patronage of the president’s key aides, deputy prime ministers (the president is also prime minister), top government ministers, or at least help from companies that have worked in Turkmenistan for a long time.

This modus operandi was informally institutionalised under the autocratic Niazov, and experts say the same systems remain in place.

Would-be investors and participants in joint ventures companies have to jump through countless hoops to ensure they meet requirements for tax, licenses, environmental cleanliness, health and safety, and fire regulations before they can even register. In other countries, these issues are addressed once a business is up and running.

Another key document for foreign investors, the law on property, is equally riddled with contradictions.

While the preamble states that private property is inviolable, subsequent articles introduce a host of limitations on this right. For example, one passage in the document says that under certain circumstances, other persons may be granted the right to use the assets of the owner in question. These circumstances are defined “by the relevant laws”, but the wording does not make it clear what these are.

Furthermore, foreign companies are not allowed to sell their share in a joint venture without getting permission from the authorities.

With such a complex, overlapping and contradictory legal framework, the authorities can easily create problems for a foreign company if they want to. Officials can cite an alleged breach of tax, environmental or fire regulations as sufficient reason to stop a company operating.

The domestic courts are not independent arbitors, and will always uphold a lawsuit of this kind brought by officials.

Nor is international arbitration an effective option for resolving disputes. Turkmenistan has not signed the 1958 New York convention under which states recognise decisions and awards made by international courts of arbitration.

In tandem with bureaucracy and opaque legislation, corruption is another major issue that investors have to grapple with in their dealings with the Turkmen authorities. Watchdog groups such as Transparency International consistently rate Turkmenistan among the world’s most corrupt countries.

Despite the adverse and unpredictable business climate, some foreign firms still brave the risks. Around 900 companies with some foreign share component are registered and active in Turkmenistan, almost one-third of them joint ventures.

In the absence of solid legal guarantees, they work at their own risk and on the sufferance of the Turkmen authorities.

Last October, foreign investors drew some comfort from President Berdymuhammedov’s decision to amend the law on foreign investment. The changes appeared to increase the scope for wholly foreignowned businesses to acquire assets in the country.

However, observers say the changes are less substantial than they appear, and largely amount to a public relations exercise.

The government’s selective approach to working with foreigners remains in place, they say, noting that would-be investors still need the president’s personal seal of approval before they can go ahead.

Indeed, the president inadvertently undermined the spirit of the changes during a visit to the United States in September. His trip was partly to boost interest in his pet project, a tourist and business zone on the shores of the Caspian Sea.

Speaking to businessmen in New York, Berdymuhammedov casually remarked that “as president of Turkmenistan, I am the guarantor of the safety of your future investments”. The statement was intended to inspire confidence, but it suggested that business operations would be governed not by a strengthened legal environment, but once again by the wishes of one individual.

That may not be enough to draw large numbers of investors to the proposed Avaza economic zone.

In other areas, Berdymuhammedov appears to the continuing the policies for which his predecessor became notorious – embarking on massive public works projects to raise ostentatious state buildings, in the process making unilateral decisions, displaying a marked preference for certain foreign contractors, and not even bothering to hold tenders for the work.

Apart from the concerns about the security of money invested in Turkmenistan, there are other unanswered questions about the president’s economic strategy.

While calling for more foreign investment as a way of boosting the economy, the authorities have been fairly vague about which industries - and which regions of the country - this help will target.

It can be assumed that much of the effort will go into finding investors for the natural gas industry, which is badly in need of modernisation if production levels are to be increased to meet rising foreign demand. But some experts question whether the government has conducted any kind of substantive analysis of its investment needs.

Seventeen years after independence, Turkmenistan has made little effort to revive its engineering industry, even though both Balkan region in the west and Mary in the southeast have a history of making parts and equipment for the oil and gas sector.

At the same time, the country is in desperate need of new industries to soak up the huge pool of unemployed labour. Although no statistics are made public, reliable estimates of the unemployment rate range from 40 per cent to as much as 70 per cent.

To date, government policy has been to assuage economic hardship through the pensions and benefits system and free or subsidised utilities. But it has failed to work on the building blocks of a successful economy and society – job creation and a liberal business climate.

Until such fundamental issues are addressed, the government’s ability to achieve ambitious economic targets – even with increased FDI flows – looks questionable.

Location: Turkmenistan
Topic: Komentar
Focus: Central Asia
