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## The Legal Issues Of International Investment Activity In Uzbekistan: Critical Analysis And Legal Solutions

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### ABSTRACT

In the article, the general review of the meaning, relevance, importance and issues of investment activities in Uzbekistan. It also emphasizes the fact that, despite the fact that Uzbekistan has a broad path for the development of international investment, there are still some legal problems, artificial obstacles and ways to overcome them.

### KEYWORDS

The notion of investment, international investment, international treaties, state, and investment law, investors' rights, BIT, ICSID, FET, expropriation, investment in Uzbekistan, investment legislation of Uzbekistan.

"In investing, what is comfortable is rarely profitable."

**Robert Arnott**

### INTRODUCTION

In today's developed world, we can see that most countries are developing through investment or credit. Of course, the state budget cannot develop all its spheres at the same time. The reason is that there is a lack of budget funds, and even if there is, there is a lack of specialists who can develop the industry. There are various reasons for this.

In the international arena, the import and export of capital between countries play an important role in the internationalization of world economic life, and these relations make a significant contribution to the economic development of countries. Many developing countries, in particular, need foreign

investment. Most of the countries that export capital today are industrialized countries.

### THE MAIN RESULTS AND FINDINGS

Derived from the word investment (Latin "Investio"), it is mainly interpreted as the sum of long-term investments in production, in the sum of costs. [2] Investments are all types of wealth that are spent over a period of time in various sectors of the economy to meet unlimited needs, effectively using limited opportunities by the state, legal entities and individuals (investors) in order to make a profit (income) or achieve social benefits. Most people who don't understand economics think of investment as debt. Investments are not taken into account when calculating public debt.

According to the World Statistics Office, the G20 countries are the main investors in the world. That is, we can see that the Group of Twenty major advanced and emerging economies consists of twenty groups of developed and developing economies. The G20 countries are: Australia, Argentina, Brazil, the United Kingdom, Germany, India, Indonesia, Italy, Canada, China, Mexico, Russia, Saudi Arabia, the United States, Turkey, France, South Korea, South Africa, Japan and the European Union.

2020 year has been a difficult period for all countries of the world. The spread of the COVID-19 virus among the population has hit the economies of many countries. Some are even on the brink of economic crisis. This situation has not bypassed Uzbekistan. In this regard, the Presidential Decree No. PF-5969 of March 19, 2020 "On priority measures to mitigate the negative impact of the coronavirus pandemic and the global crisis on sectors of the economy." [3] Investment policy is an important component of the pandemic. More than 70 countries have taken steps to

ease the policy.[1] In other words, benefits have been created for investors: the negative impact on foreign investment has been reduced, support measures have been introduced, new incentives have been introduced to make online investments faster, more convenient and easier, and to invest in healthcare.

An investor does not always have to be a private investor. Because in international investment relations we can divide investment subjects (participants) into 3 groups. They are

1. Public;
2. Private investors;
3. Independent investment funds.

In most cases, international individuals and legal entities have their own requirements before entering the country as an investor. For example, they require a 10-year warranty, which means that if an investor enters in 2020, they will pay the tax at the 2020 rate, regardless of any changes in the tax system by 2030. Another common condition is that the state provides the investor with a safeguard environment for its investment and protection from expropriation (illegal confiscation of state property). If there is a dispute between the parties, it is agreed that the case will be considered not by the Uzbek court, but by the International Center for Settlement of Investment Disputes (ICSID). usually take. In fact, the state cannot be sued in an international court because the state has the right to immunity. The question naturally arises: why have we seen so many cases of investment disputes being refer to the International Court of Arbitration?

That is a valid question. There is one aspect of the matter: if a contract is concluded between a foreign investor and the state, if one of the clauses of the contract states that in case of

dispute, the dispute will be considered in the International Arbitration Court and not in the Uzbek court considered. Put simply, by signing this agreement, the state waives its right to immunity. That is why investors can easily sue the state. This norm is also enshrined in Part 3 of Article 63 of the Law of the Republic of Uzbekistan "On Investments and Investment Activities" No. ZRU-598, adopted on December 25, 2019.

Now we try to disclosure the problems in the investment systems of Uzbekistan and their legal solutions.

As for the problems in the investment system of Uzbekistan:

1. In practice, the status of foreign investors and national investors is not the same;
2. Violation of the principle of FET (criteria for fair and impartial treatment) has become commonplace;
3. Lack of maximum favorable legal conditions for investors;
4. The increase in illegal expropriation of investors' property during the years of independence has tarnished the image of our state and still causes investors to distrust our state.

**The first solution** is to consider the fact that in practice the status of foreign investors and domestic investors is not the same. For example, if a foreign investor wants to invest in the state, the state gives the investor all the opportunities. As a clear proof of our opinion, if a foreign investor takes a loan from a bank, he is allowed to use the most convenient, low-interest credit system. In addition, a foreign international investor has the right to appeal to an international arbitration tribunal (i.e., the state accepts the foreign investor's terms even if the contract is the same), but local investors cannot use this. If the state ensured equal

treatment of both types of investors, our country would develop faster.

**The second solution:** "Fair and equitable treatment (FET)" is part of the minimum standards of international customary law, mainly to create a favorable environment for foreign investors by the host countries, there is a principle that requires that their rights be guaranteed and that discrimination not be tolerated. According to Article 47 of the Law "On Investments and Investment Activities", the rights of a foreign investor are as follows:

- Has the right to independently decide on the patenting of inventions, utility models and industrial designs obtained as a result of investment activities in the Republic of Uzbekistan, both abroad and in the Republic of Uzbekistan;
- Founders (participants) who have made investments are issued a residence permit in the Republic of Uzbekistan in a simplified manner under the conditions stipulated by the decrees of the President of the Republic of Uzbekistan;
- Foreign investors can apply for an "investment visa" with the possibility of extension without leaving the Republic of Uzbekistan on the terms stipulated by the decrees of the President of the Republic of Uzbekistan, and their family members (spouse, parents and children) has the right to receive a "guest visa" in accordance with the period of validity of the "visa";
- Foreign investors and their family members (spouse, parents and children) holding a residence permit or "investment visa" in the Republic of Uzbekistan have the following rights: to work in the territory of the Republic of Uzbekistan location; Access to medical and educational services on the basis of equal rights for citizens of the Republic of

Uzbekistan; secondary and higher education in educational institutions of the Republic of Uzbekistan.

- If some of these rights are artificially blocked, the flow of investors to Uzbekistan will be reduced.

**The third solution:** Another legal aspect of investment relations is the legal conditions that the state must create for investors. A number of scholars have suggested that the legal environment for investors is as follows:

- ✓ Reliable protection of property rights;
- ✓ Independent and influential judiciary;
- ✓ Clarity in the law;
- ✓ Clear definitions of government intervention and business regulations;
- ✓ Good management.

Reliable protection of property rights means the extent to which property rights are secured in order to attract investment to countries. If property rights are heavily protected in a country, the inflow of investment into such a country will be high.

The existence of an independent and influential judiciary makes it easier to resolve disputes between the investor and the host country or, in the event of a dispute between the investor and other private entrepreneurs, in the country where the investment is located. However, in recent years, disputes between the host country and investors have hardly been heard in national courts. The main reason for this is that investors do not trust the courts of the host countries. For this reason, disputes between host countries and investors are now being considered more by international arbitration courts.

Clarity in law. By creating these conditions, an attempt is made to avoid future

misunderstandings or to arouse suspicion in order to attract investors to the country. However, if we pay attention to the domestic legislation of Uzbekistan, we will encounter a lot of ambiguities. The main reason for this is the large number of laws and regulations adopted in one area.

In turn, the fact that the rules of entrepreneurship are clearly defined and have a good management system indicates that the investment activity in the country is well organized.

**The fourth solution:** we all know that during the years of independence, the level of confidence in investment activities in Uzbekistan has decreased due to the illegal expropriation of the property of many investors. Let's clarify the concept of expropriation. Expropriation is a term used in international investment law to refer to the confiscation of investor property. Expropriation can be divided into two types. These are: legal expropriation and illegal expropriations. In the first round, no discrimination is allowed, compensation is paid if necessary, and fair treatment is required. In the second round, the state confiscates the investor's property on illegal grounds, which can lead to liability.

The World Statistics Committee publishes an annual report on the conditions created for illegally seized property and investors. If an investor wants to enter the country, he should first get acquainted with these statistics. It is natural for an investor who has seen a bad result to change his mind.

Here is a list of cases filed by investors against our country because of the illegal seizure of property by many investors: [8]

Cases	Applicable agreements	Status/Forum
1.Bursel Textil vs Uzbekistan (2017)	Turkey-Uzbekistan BIT (1992)	Continuation. ICSID Case No. ARB/17/24
2.Federal electric vs Uzbekistan (2013)	Turkey-Uzbekistan BIT (1992)	Continuation. ICSID Case No. ARB/13/9
3.Gunes Textil Uzbekistan (2013)	Turkey-Uzbekistan BIT (1992)	Continuation. ICSID Case No. ARB/13/19
4.Kim vs Uzbekistan (2013)	Kazakhstan-Uzbekistan BIT (1997)	Continuation. ICSID Case No. ARB/13/6
5.Spentex vs Uzbekistan (2013)	Netherlands-Uzbekistan BIT (1996)	Resolved in favor of the state; ICSID Case No. ARB/13/26
6.Oxsus Gold vs Uzbekistan (2011)	United Kingdom - Uzbekistan BIT (1993)	Partially resolved in favor of the state; UNCITRAL
7.Metal-Tech vs Uzbekistan (2010)	Israel-Uzbekistan BIT (1992)	Resolved in favor of the state; ICSID Case No. ARB/10/03
8.Romak vs Uzbekistan (2006)	Switzerland-Uzbekistan BIT (1993)	Resolved in favor of the state; PCA Case No. AA280
9.MTS vs Uzbekistan (2012)	Investment Law – Uzbekistan BIT (1998)	Terminated by greement ICSID Case No. ARB(AF)/12/07
10.Newmont vs Uzbekistan (2006)	Investment Law – Uzbekistan BIT (1998)	Terminated by greement ICSID Case No. ARB/06/20

## CONCLUSION

In conclusion, investment is an important factor for the development of the country.

Therefore, it is necessary to create as favorable conditions for investors as possible. It is possible to increase the efficiency of

international investment in Uzbekistan by equalizing the status of foreign investors and domestic investors, creating legal conditions, providing investors with reliable protection, and allowing them to freely manage their income. In addition, these factors can also improve the image of Uzbekistan in international investment relations.

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