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Investment Funds In Uzbekistan: Legal Analysis

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ABSTRACT

In this article the author analyses the economic, social and legal factors which caused the emergence of investment funds in Uzbekistan. Nowadays, the economy of Uzbekistan is advancing rapidly. Economic development causes great demand for capital. The role of investment funds in the market of financial services as a means of private investing is indispensable. At present, there are a few investment funds operating in Uzbekistan, but their activities cannot be called satisfactory. The legislation in this sphere was established 25 years ago and has undergone some changes over the time. In this article, the author pays attention to the stages of development of legislation related to investment funds, and analyses the legislation in the sphere.

KEYWORDS

Investment funds, investment assets, mutual funds, capital market, securities market, cash, dividends, financial fraud.

INTRODUCTION

Investment funds are thriving in many countries. To the beginning of the year 2018, the net assets of the investment funds over the globe was estimated at about 49,3 billion dollars . However, investment funds in Uzbekistan still cannot contribute to the

economic growth of the country. But the reforms in this sphere are giving opportunity to this type of business to flourish. In lots of countries around the world, investment funds have already become financial brokers by

providing investment services and are fierce competitors of commercial banks.

Foreign investments are flowing into the countries, which have a developing economy but underdeveloped capital market. In this situation the dependence of the country on foreign financial sources will rise gradually. Thus, the developing countries should care about taking measures to boost own investment funds and fully use their inner investment opportunities. In this article, the author analyses the current state of investment climate, investment funds, the legislation in this sphere, the problems and solutions to them as well as perspectives of the development of investment funds in Uzbekistan.

Argumentation Of The Topic

The issues of investment funds have mainly been studied by economists in Uzbekistan and the economic importance of them have been clearly defined. In their works the above-mentioned economists have emphasized the emergence and stages of development of investment funds in foreign countries. But legal scholars have never seriously made research into these issues and a few scientific works by legal scholars have been conducted in related topics to investment funds, such as joint-stock companies, the protection of the rights of shareholders, establishment of corporate governance.

The Importance Of Investment Funds

I. Economic Importance

The emergence of investment funds is strongly connected with the establishment of joint-stock companies. The first investment funds were founded in Western Europe, but flourished in the USA. In 1970's their development thrived. Investment funds are like bridges connecting investors and the

sectors of the economy. There are several ways of financing the economy of the country. The first direction is the allocation of preferential loans from the state budget, in which funds are allocated to start a new business and expand a business. In the second direction, the loans are allocated by commercial banks to any business entities, in which the chances of the entrepreneur to repay the loan play an important role. The third option is self-financing of business entities through emission of stocks and bonds. In this case, raised funds will be spent on further expansion of production and development. Financially stable enterprises that have reached a certain stage of development prefer not to take loans from the bank, but attract private investment through bonds and stocks.

In this direction, investors' funds are concentrated and entered into the authorized fund of enterprises on behalf of the investor or investment funds. Retail investors will need the services of professional financial brokers due to the fact that they do not usually have sufficient financial knowledge. In addition, the development of the stockholder business has led to the emergence of modern large corporations that do not feel a strong need to attract small investments.

The economic need for investment funds is associated with the demand for capital in the country's economy. Individuals with free funds in hand are looking for ways to keep it safe and multiply. Investors transfer their funds to investment funds so that they can multiply. Therefore, ensuring the constant growth of concentrated funds is the main concern of investment funds.

Every country's economy needs financial resources, especially emerging economies

need tremendous financial support. In Uzbekistan, business is financed mainly from four sources. These are the state budget, commercial bank loans, entrepreneurs' own funds and foreign investments. In countries with developed the financial market, financial resources are heavily channeled into the economy through the stock market. Unfortunately, in Uzbekistan this method is not used effectively. Attracting the free-standing funds of the population to the economy is carried out through deposits made to commercial banks. But, in conditions of high inflation, the interest on savings allows only to keep the value of the funds.

Also in Uzbekistan, the state remains the main figurehead of business financing. Debts from international financial institutions are introduced into business through banks. The fact that the funds go through several hands until they enter the business from the first source will increase interest rate of loans.

Investment funds have become popular and developed in other countries because of the cost efficiency. Investment funds meet the following economic needs. The first need is the formation of funds, the second is the introduction of funds into the sectors of the developing economy, the third is the reduction of the burden of the state on the financing of business. Also, investment funds make the economy healthier. Qualified specialists of the investment fund constantly analyze the activities of enterprises. As a result, the shares of enterprises that do not bring economic benefits are sold and those that can make a profit are bought. As a result, enterprises try to achieve sustainable growth. Also, since the activities of investment funds are aimed at diversifying the risk, they not only buy shares of one enterprise, but also own the shares of hundreds of enterprises. As

a result, many enterprises have the opportunity to receive financial support from an investment fund.

II. Social Importance

Today, the population of Uzbekistan is growing rapidly and exceeds 34 million people. On the basis of President Mirziyoyev's idea that "if the people are rich, the state will be rich", measures are being taken to increase the material well-being of the people. And investment funds contribute to the achievement of material well-being of the population. Theories that promote the achievement of financial independence in developed countries are linked to pension and investment funds. In society, people are not always able to earn a lot of money. For example, athletes, representatives of show business and similar individuals receive large sums in a short period of their lives. However, they must distribute the funds earned in this short term in such a way that they will last until the end of their life. All individuals in the society want to steadily increase their funds. The existence of structures capable of multiplying funds on the basis of legitimate means leads to the general well-being of the society, as a result of which many social problems also find their solution. The establishment of personal funds for education and pensions in the US has paved the way for the development of investment funds.

III. Legal Importance

Today, in Uzbekistan there is a need for legal regulation of the activities of investment funds in two directions. The first direction is to create a legal field for investors to safely and reliably store and use their funds, as well as to protect their rights, the second direction is the legal regulation of the activities of investment

funds. The first direction is of great importance for all countries. In countries that are moving from consumer society to a accumulative society, there are a lot of cases of entanglement in the trap of financial fraudsters. The lack of effective operation of trusted legal mechanisms opens a wide way to fraudsters. In everyday life, various manifestations of financial frauds are emerging in Uzbekistan. If the largest of them was the "Ahmadboy incident", then in subsequent places we can place the incidents connected with the activity of "Straus house" LLC and "Auto 60 in months" LLC. In all cases, a significant amount of material damage was inflicted on citizens. There are also cases of financial frauds that arise abroad through electronic payment systems. According to their scheme, firms that are registered in foreign countries a month or 15 days ago offer an increase of funds. The client puts the money in electronic form for a certain period of time and starts to receive money in interest on a daily basis. Firms, however, are betting these funds on sports. Firms that have worked 3-4 months will continue to close without returning the deposits. Despite several warnings from the Capital Market Development Agency of Uzbekistan, some citizens do not abstain themselves from such risk.

The Task Of Investment Funds

The task of investment funds is to attract money from the public and invest it on securities on the basis of professional management and diversification. The most important function of investment funds is to act on behalf of the property interests of these investors and protect them.

Investment Climate In The Country

All reforms to attract investment in the country have paid attention to the protection

and promotion of foreign investment. Proof of this can also be seen from the content of the recently adopted law "On investments and investment activities". In normative-legal acts aimed at the legal regulation of investments, the concept of investment activity is used almost as a synonym for the concept of entrepreneurial activity. While both being equally important to the economy, this attitude gives preference to capital investment rather than financial investment. There are few attempts to encourage domestic investment. After the processes carried out in the early years of independence to create the shareholders, there is no confidence by the ordinary population in the stocks. In the process of privatization, a very large percentage of the shares of enterprises remained for themselves. As a result, corporate governance did not enter these enterprises. In practice, they were managed as a state enterprise. Therefore, the directors appointed to these enterprises by the state tried not to increase profits, but to preserve the existing property not showing any initiative. As a result, ordinary shareholders did not receive dividends. Due to the reforms on the joint-stock companies, their number has shrunk dramatically. This situation was also harshly criticized by President Sh.Mirziyoyev .

In the last 3 years, the country's stock market has been gradually reviving. Its activity is caused by the following factors. The first factor is entering of foreign investment companies into the Uzbek market, the second factor is starting a new stage of state privatization processes, the third factor is the establishment of an independent state body authorized to work with the capital market.

The state of the capital market is also decisive for the investment situation in the country. The share of securities in the country's GDP is

0.4 percent , and the amount of shares of investment funds in shares issued by joint-stock companies is 0.0039 percent . According to the researchers, for the rapid development of investment funds, a large capital market should be operating . Sellers in the market should also be more than buyers. Today the Uzbek capital market and the volume of daily trades is not large and IPOs (initial public offerings) in this market do not often happen. For the first time in 2017, the Quartz joint-stock company implemented IPO and there are very few public offerings to date .

Financial Literacy Of The Population

In Uzbekistan, the proportion of rural and urban population is becoming almost equal. Uzbeks have always been a money-saving nation. For large family events, including weddings, matrimonial ceremonies people prepare financially in advance. In surveys conducted in 4 large cities and several villages in January 2019, it was found out that the majority of the population does not have information about the securities. It is desirable for the rural population to invest their surplus funds in the construction of a house, the purchase of land and cattle. In cities, however, the population prefers to buy precious metals and land, as well as to make deposits in the bank. Very few inhabitants of large cities have information about stocks. The fact that the population is not interested in the securities market is characteristic of all Central Asian countries.

Integration With The World Market

Globalisation has brought the countries of the world closer to each other. The absence of investment funds in a country can not deprive investors who live there from global investment relations. The penetration of modern information technologies into the financial services market has made the

appearance of extraterritorial investment services. In Uzbekistan, some firms that have been registered in the state as a professional participant of the securities market also offer to buy shares of prospective companies in the United States. This situation creates the risk that the investment will flow abroad. Many countries that border with developed financial market suffered greatly from this situation. To be more precise, the lack of timely improvement in the legislation on investment funds caused a large number of private investments to move from Italy to Luxembourg . Also, as a result of privatization of state property, many foreign investment funds are entering Uzbekistan.

The First Investment Funds

According to economist M. Sultanov, the first investment fund in Uzbekistan was established on June 1, 1994. Its founders were the State Property Committee of the Republic of Uzbekistan and The Open Joint-Stock Company Uzmoliyainvest . First investment funds in Uzbekistan didn't emerge as a result of economic need. They were called privatization investment funds and were established with the aim of facilitating privatization processes. These funds had been effective for some time due to the preferential loans from the state.

However, when the time repayment of loans arrived and requirement that the authorized fund of the joint-stock companies should not be less than 400 thousand US dollars was introduced into the legislation, this factors negatively affected the activities of the investment funds. While the number of investment funds reached 86 in 1996-1998 years, by the year 2010 their number fell to 9. Until today, there has not been a change in their number, although in 2015 year a special law "On investment and mutual funds" was

adopted, but no new investment funds have passed the state registration yet.

The emergence of legislation on investment funds

The activities of investment funds are not regulated by a single normative-legal act. There are many laws and by-laws that directly and indirectly regulate their activities. All normative-legal acts related to investment funds can be divided into two large groups. The first group will include normative-legal acts regulating the securities market. Norms for investment funds first appeared in the composition of this group. The second group includes norms related to the activities of the joint-stock companies. Investment funds, which are established in Uzbekistan as a legal entity, can only be in the form of a joint-stock company. All normative-legal acts related to the joint-stock companies are also considered relevant to the investment funds.

The first legal definition of investment funds was given in the law "On the mechanism of activity of the securities market", adopted on 25 April 1996. This law consisted of 31 articles and was in force until 2008 year . With the adoption of the law 'On the securities market' on July 22, 2008, this normative-legal act lost its force. The new edition of law 'On the securities market' from July 22, 2008 was much more detailed and progressive than the previous law. If the old law consisted of 31 articles, then this law consisted of 64 articles. In the law, the scope of legal relations was established, new concepts were introduced into the law. Also important was the definition of legal terms - the main innovation of this law. This law also lost its force with the adoption of the law of the Republic of Uzbekistan "On amendments and additions to

the law of the Republic of Uzbekistan on the securities market' dated June 3, 2015 № 387.

In 1996, the law defined that investment funds were listed as an investment institution, while in 2008 the law defined it as a professional participant in the securities market. In the law of 2008, the licensing of the activities of investment funds was established. The rule on article 18 of the law 1996 which prohibited combining the activities of an investment fund with other types of professional activity, was also preserved in article 20 of the law 2008. In the law of 2008, the requirement to have at least two employees with certificates of qualification in the issuance of licenses to professional participants of the securities market was established. But as for licensing the activities of investment funds, such requirement was not defined.

The article 23 of the law 2008 was amended twice, in 2013 and 2014. The change in the 2013 year was related to joint-stock companies, the open and closed types of the joint-stock companies were excluded from the legislation, and only the concept of the joint-stock companies was preserved. In the 2014 year amendment, however, the requirement to agree with the authorized state body in the securities market in order to reorganize (merger, accession, division, spin-off, transformation) the investment fund was abolished.

Also, this article has established two new norms for investment funds that didn't exist in the previous law, the first article defined that the investment fund does not have the right to change its organisational forms to other forms of a legal entity, that meant that investment funds are established only in the form of a joint-stock company. It can not be established in the form of a limited liability

company, an additional liability company, a full or limited partnership. The second is that the investment fund can be reorganized (merger, accession, division, spin-off, transformation) only in the form of a joint-stock company.

Also, the law of 2008 establishes a special requirement that the termination or cancellation of the validity of the license granted to the investment fund in order to carry out professional activities in the securities market may lead to the liquidation of the investment fund in accordance with the established procedure.

On June 3, 2015, the Law 'On the securities market', which is currently in force, was adopted. In Article 29 of the law, the investment fund is given a legal definition. According to it, a legal entity in the form of a joint-stock company that issues stocks with the aim of attracting investors' funds and investments to investment assets is an investment fund. If in the law of 2008 it was established that investment funds can invest concentrated funds in securities, other investment assets, as well as in bank accounts and deposits, then the law of 2015 is defined as investment assets, combining all of the objects of investment.

The law of 2015 also further improved the norms for the functioning of investment funds, introduced norms that were not met in previous laws, including restrictions on the functioning of investment funds. The law of 2015 year imposed 8 restrictions on investment funds, these norms were also developed in a special law and brought to 11 pieces. The main purpose of these restrictions is to protect the rights of investors.

Two months later, on August 25, 2015, to regulate the activities of investment funds as

a subject of collective investment, a special law "On investment and mutual funds" was adopted. This law consists of 29 articles. The law introduced the concept of mutual funds, which is a new phenomenon in the legislation of our country.

This law has developed legal innovations related to investment funds. The law introduced the investment declaration, restrictions on the activities of the investment fund, the governing bodies of the investment fund, the features of the reorganization and liquidation of the investment fund, the accounting of the property of the investment fund and its maintenance. In the law, investment funds were divided into two groups. The first is an investment fund, which is established as a legal entity, and the second is a mutual fund, which is formed in the form of property, without the establishment of a legal entity governed by a trusted manager of investment assets.

1990-2000 years

These years were the first years of independence, it was the period of not only the formation of the securities market, but also the period of the formation of the whole legislation. In these years, special laws that regulate the activities of investment funds were not adopted. The norms related to investment funds were contained in the Civil Code, in the laws "On the mechanism of functioning of the securities market" and "On the protection of the rights of joint-stock companies and shareholders".

The other important normative-legal acts of this period are 3 regulations approved by the Resolution of the Cabinet of Ministers No. 410 of 25 September 1998. In these regulations, the procedure for the organization, reorganization, liquidation of investment

funds, conduct of their activities and their management were regulated in detail. At the end of this decade there were a lot of investment funds, which produced good results.

2000-2014 years

During this period, normative-legal acts on investment funds were not adopted much. By 2003, the licensing mechanisms of the activities of professional participants of the securities market were determined. The Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated July 9, 2003 № 308 approved the regulation on the licensing of professional activity (activity of investment institutions in the securities market) in the securities market. During this period, the work of investment funds went back. This is associated with two situations. Privatization investment funds were operating effectively with the great support of the state. They were granted privileges such as the acquisition of shares of privatized state enterprises in nominal value, the acquisition of shares with the support of state preferential loans. During this period, privatization processes almost stopped, the moment of repayment of loans came. In addition, the Decree of the President of the Republic of Uzbekistan No. PF-4053 of November 18, 2008 "On measures to further enhance the financial stability of enterprises in the real sector of the economy" established that open and closed joint-stock companies should form their authorized capital equivalent to at least 400 thousand US dollars or ensure the transition to private ownership by 1 January 2010. Most joint-stock companies were not able to raise the authorized capital for this amount, and changed to another organizational form. The most appropriate organizational form would be a limited liability company, but it could not, by law, accept more than 50 founders. As a result, the shares

of millions of shareholders were canceled. In turn, investment funds lost their clients.

During this period, the concept of "collective investment" began to enter the legislation. As a result, in the speech of the President in front of the members of the Senate and the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan on November 12, 2010, a proposal was made to adopt the law "On investment and mutual funds."

After 2015

The 2015 law also further improved the norms for the activities of investment funds, introducing norms not included in previous laws, including restrictions on the activities of investment funds. The 2015 law imposed 8 restrictions on investment funds, and these norms were also developed in a special law, bringing it to 11.

The main purpose of these restrictions is to protect the rights of investors. Two months later, on August 25, 2015, a special law 'On investment and share funds' as a subject of collective investment was adopted. The law consists of 29 articles. The law introduces the concept of mutual funds, which is a new phenomenon in the legislation of our country. This law has developed legal novels about investment funds. The law includes new rules on the investment declaration, restrictions on the activities of the investment fund, the governing bodies of the investment fund, the specifics of the reorganization and liquidation of the investment fund, the accounting and maintenance of the investment fund's property. The law divides investment funds into two groups. The first is an investment fund established as a legal entity, and the second is a mutual fund created by a trust manager of investment assets in the form of a property complex without the formation of a legal entity.

Organizational and legal situation for the emergence of investment funds

Frauds can be committed through investment funds. It will be easier to raise funds under the guise of legal means. There is a growing trend in the world to facilitate entrepreneurship. In many countries, the requirement for the authorized capital of an enterprise has been abolished. In Uzbekistan, in 2019, the general requirement for authorized capital as requirement for licensing was changed. Joint-stock companies that no longer require a license are not required to form an initial authorized capital at the amount of 400,000 US dollars. Since investment funds attract public funds, states require a fixed amount of their initial capital. The initial charter capital of investment funds in the United States should be no less than \$ 100,000 , and in Luxembourg no less than \$ 1,250,000 . This, firstly, ensures the liquidity of the shares of investment funds, and secondly, guarantees the rights of shareholders. Therefore, investment funds operate under the constant and strict control of the state. The state cannot give the opportunity to provide investment services to any person. The activity of investment funds is licensed according to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated July 9, 2003 No 308 on the licensing of professional activities in the securities market (activities of investment institutions in the securities market). Due to the fact that investment funds are joint-stock companies and the law 'On joint-stock companies and protection of shareholders' rights' stipulates that the authorized capital for all joint-stock companies must be at least \$ 400,000, the license does not establish a special requirement for the authorized fund of the investment fund.

In 2019, the Law 'On joint-stock companies and protection of shareholders' rights' was amended to set the amount of the authorized capital in accordance with the requirements of the license. License requirements must be set out in a special law or statutory document. So far, neither the Law 'On investment and mutual funds', nor the Regulation approved by the Cabinet of Ministers No. 308, requires an authorized fund. Logically, the demand for the authorized capital of investment funds should be the same as that of banks.

The activities of banks, insurance, private pension funds, microcredit organizations are close to the activities of investment funds. The financial services market in Uzbekistan is based on the dominance of banks which is a typical feature of the continental legal system. Under current law, banks are allowed to operate in the securities market without a license. Investment advisers predominate in setting up investment funds in the United States. In Uzbekistan, however, their numbers are small, and it is difficult for them to find such a sum if the authorized capital of commercial banks is required. In the country's practice, private pension funds have not been established, insurance companies are in the early stages of development, and microcredit organizations cannot fully compete with banks. Therefore, it is possible to rely on commercial banks in the establishment of investment funds in the country.

Development prospects for investment funds
In the Anglo-Saxon legal system, funds investing in stocks are well developed. In the Romano-Germanic legal system, there are more investment funds that invest in bonds. Due to the fact that Uzbekistan belongs to the family of continental law, bond investment funds can be developed. On top of that, the

coronavirus is having a serious impact on the country's economy.

The state will be forced to issue new bonds. Also, state-owned enterprises can be privatized en masse. In such a situation, if the state does not allow ordinary retail investors to enter the stock market, foreign investors will have full ownership of the shares.

Influence of the legislation of foreign countries on development of the legislation on investment funds

All constructions in doing business are derived from the system of continental law. But recent reforms have tended to the Anglo-Saxon legal system. In addition, it is planned to create a new capital market based on the US experience. Scientists say that it is impossible to create a new perfect system by mixing the two systems.

Factors influencing the development of investment funds

According to researchers, the following factors contribute to the development of investment funds.

- The income of the population should be high.
- There must be a developed capital market.
- The market of financial services, including the banking system, insurance services, private pension funds should work effectively.
- There should be a convenient and solid legal framework.

We analyze the presence of the above factors in Uzbekistan. The income of the population of Uzbekistan is not high. GDP per capita is about \$ 1,800. The whole country has not moved to a fully accumulative society.

However, material prosperity is on the rise in the country. As for the developed capital market, the market is extremely small. About 100 out of 603 joint stock companies are listed on the stock market. Like other continental European countries, Uzbekistan's financial system relies on banks. Private pension funds have not yet entered the market. Insurance companies are also gradually developing now. Much needs to be done to create a convenient and robust legislative system. There are many documents regulating the activities of investment funds. The laws in this area are almost the same as in the CIS. There is a great need to study the experience of developed foreign countries.

Opportunities In Legislation

Current legislation allows the establishment of both contractual and corporate investment funds. According to Article 3 of the Law 'On investment and mutual funds', an investment fund as a legal entity is divided into two types: an investment fund with an obligation to repurchase its own shares and an investment fund without an obligation to repurchase its own shares.

The first is the same as an open-end investment fund or mutual fund, and the second is a closed-end investment fund. In open-end investment funds, the fund undertakes to repurchase shares. This is a guarantee for all investors and the return on investment is possible at any time. Closed-end investment funds are not obligated to repurchase shares. A shareholder may sell its shares on the stock market. This situation places a great responsibility on closed-end investment funds.

According to Article 11 of the Law, in the establishment of an investment fund, the payment for the value of its shares is made in cash, securities, shares, as well as real estate

and other property, property rights. In this case, at least 75% of its authorized capital must be paid in cash. To protect the rights of investors, the fund's investment assets are kept separate from the manager's assets. Assets are accounted for by the Central Securities Depository. The investment fund can not issue corporate bonds and infrastructure bonds, as well as preference stocks, invest more than 10% of the investment fund's net assets in the securities of one issuer or a limited liability company, guarantee, pledge property or property rights, to invest in issued securities by trustees, auditing organizations, as well as to receive their shares in the authorized capital, be involved in investment activities without agreements, options or futures, and more than 10 percent of the total amount of the net assets of the fund investments.

Shortcomings In The Legislation

In theories aimed at the legal regulation of investment funds, the investment fund should not guarantee the amount of profit to investors. It is also not allowed to give signs and expectations about this guarantee. This golden rule in the activities of investment funds is not established by law. It is very important to include this rule in the legislation. However, in practice, some brokerage companies are convincing investors that the target growth of the stock is 50 or 60 percent.

Also, there is currently no legal opportunity for investment funds to organize CIKAV and CIKAF, which is a modern organizational and legal form. CIKAV is a special form of joint-stock company that can issue as many additional shares as it wishes without changing the constituent documents. The net assets of the investment fund are accounted for on a daily basis. In addition, although the law imposes an obligation on open-end

investment funds to repurchase their shares, it does not specify the period of time and in what order the settlement procedure.

The conclusion is that although the legal framework is not fully formed, the country's economy is in great need of support from investment funds.

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