IJDPP International Journal of Development and Public Policy

| e-ISSN: 2792-3991 | www.openaccessjournals.eu | Volume: 1 Issue: 6

History of Uzbekistan's Legislation on Investment - A Comparative Study of Uzbekistan and Some Developed Countries Investment Legislation

Shokhijakhon Fayzulloev Jobirovich

Teacher of the Private International law department

Abstract: This article will analyze, evaluate and explore the legislation of the Republics of Uzbekistan on investment and suggests favorable legal framework to attract foreign investment for Uzbekistan, and it would be comparative review of different jurisdictions on investment. Furthermore, legislations of developed countries such as Malaysia, Singapur and Indonesia will be studied in order to suggest appropriate legal environment for the Republic of Uzbekistan on attracting foreign investment.

Keywords: investment, definition of investment, investment climate, foreign investors, foreign investment, investment legislation, investment activity, investment code.

Introduction

Globalization and the integration of economic national relations between states have created prerequisites for increasing capital mobility. Now international capital flows have created large amounts of international investment, especially in developing countries. The role of foreign investment comes down to the development of the country's economy in general and the recipients of these investments (enterprises, industries, etc.) in particular. It is very profitable for the country to receive foreign investments from abroad, since they develop their productions, new innovative productions appear, jobs and taxes are paid to the national budget and at the same time nothing is spent on it. Foreign investment is an important element in development has led many countries to strive to create conditions that attract foreign investors. An important part of a mechanism, which attracts foreign investors is the availability of favorable legal framework for foreign investors.

Foreign investment is one of the main factors contributing to the accelerated economic development of the country. Even such highly developed countries as the United States, Germany, France, Japan, Great Britain consider the constant attraction of foreign capital as a necessary means of increasing their economic potential and improving the well-being of citizens. The activating influence of foreign investment is also clearly demonstrated by the experience of countries like China, South Korea, Singapore, Malaysia and other East Asian countries which are in a state of rapid economic development. One of the most important things on attracting foreign investors is creating an appropriate legal framework, investors first and foremost consider a country's legislation on investment before investing to any country. This research tends to analyze legislations of the Republic of Kazakhstan and the Republic of Uzbekistan.

MATERIALS AND METHODS

The word “investment" means: "parting with money today to get more of it in the future." Two factors are usually associated with this process - time and risk. You have to give money now in a certain amount and the reward comes later, its value is unknown in advance. In a broader interpretation, investment refers to the investment of capital for the purpose of its subsequent increase. At the same time, the capital gain should be sufficient to compensate the investor for not using their own funds for consumption in the current period, to reward them for the risk and to compensate for losses from inflation in the future period. Much attention has been paid to the concept of investment, both in the legal and economic literature. This is due to the fairly widespread nature of this phenomenon and the fact that investment has two main qualities: first of all, as an economic category, and then as a legal one, because legal relations arise from economic ones, and not vice

IJDPP International Journal of Development and Public Policy

| e-ISSN: 2792-3991 | www.openaccessjournals.eu | Volume: 1 Issue: 6

versa. The diversity of opinions and approaches to the definition of investment is due to the complexity and diversity of the concept itself and the lack of clear legal regulation of it in the current legislation. Various approaches to defining the term "investment" have been developed in the economic literature. Thus, D. Keynes understands investment as the current increase in the value of capital assets as a result of production activities of a given period, or that part of the income for a given period that was not used for acquisition1. L. J. Gitman, M. D. Junk distinguish as investments a method of placing capital that should ensure the preservation or increase in the cost of capital and (or) bring a positive amount of income2.

The legal literature focuses on the definition of "foreign investment" rather than "investment" in general. This is due to the fact that it is necessary to clearly distinguish those private foreign investments that are subject to guarantees and benefits provided under the country's investment legislation from other income from abroad that is not subject to this. According to N. N. Voznesenskaya, such a distinction is in the interests of the recipient state, which is not interested in any capital, not in any funds coming from abroad3. Foreign investments are considered as any property owned by foreign investors, including any rights and interests related to this property. According to A. G. Bogatyrev, foreign investment, first of all, is foreign property in its various manifestations, it is private property associated with the right to own, dispose of and use this capital on the territory of another state4. As correctly noted in the foreign legal literature by G. Schwarzenberger, it is desirable to distinguish more clearly between foreign property and investment and consider property as a broader term that includes investments, but is not limited to them5.

In the scientific literature6 foreign investment is defined as the investment of foreign capital in an object of business activity on the territory of a country in the form of objects of civil rights belonging to a foreign investor, including money, securities, other property, property rights that have a monetary value of exclusive rights to the results of intellectual activity, as well as services and information.

After gaining independence at the end of the XX century the Republic of Uzbekistan and the Republic of Kazakhstan became separate independent Republics. At that stage of development the Republic of Kazakhstan as a new independent state focused on market relations, the main direction of economic reforms was the development and implementation of the investment policy of the state aimed at ensuring high rates of economic growth and improving the efficiency of the economy. In order to solve these problems, as well as to ensure the structural transformation of the economy on the basis of the government's program of action to deepen reforms and in conditions of limited domestic sources of financing, it became extremely important to attract foreign capital to the economy of the Republic. Attraction and effective use of foreign investments in the economy of the Republic was the basis, one of the directions of mutually beneficial economic cooperation of Kazakhstan with foreign countries.

When it comes to Uzbekistan in 1992-1999 years Uzbekistan showed a general trend like all CIS countries — a decline in investment in fixed assets. The greatest decline occurred in 1994, after which the volume of investment in fixed assets began to gradually increase. Funds of foreign investors played a significant role in financing investment in fixed assets. At the beginning of the XXI century, foreign investors made the most significant contribution to the financing of investments in fixed capital. The inflow of foreign investment in Uzbekistan is characterized by positive dynamics, although in general this volume is small compared with other CIS countries. This is evidenced by the indicator of the level of foreign investment per capita of the recipient country. In Uzbekistan, this indicator was one of the lowest in the CIS.

Over the years of independence, the Republic of Uzbekistan has created a solid legislative base in the field of attracting and supporting investment, as well as approved a wide system of legal guarantees and benefits for both foreign and local investors.

[1] Keynes D. (1936) ‘’General theory of employment, interest and money’’

[2]Lawrence J Gitman, Michael D Joehnk (2004) ‘’Fundamentals of Investing’’.

[3]Voznesenskaya N. N. (1975) ‘’Foreign investment and mixed enterprises in Africa’’, Moscow.

[4]Bogatyrev A. G. (1992) ‘’Investment law’’, Moscow.

[5]Georg Schwarzenberger (1969) ‘’*Foreign Investments and International Law’’*.

[6] T. V. Teplova (2011) "Investments" textbook , Moscow.

ISSN 2792-3991 (online), Published under Volume: 1 Issue: 5 in October -2021

IJDPP International Journal of Development and Public Policy

| e-ISSN: 2792-3991 | www.openaccessjournals.eu | Volume: 1 Issue: 6

The first stage of formation, in our opinion, could cover the period from 1991 to 1997. It begins simultaneously with the formation of the economic policy of independent Uzbekistan, coincides with the beginning of economic reforms, including the initial period of denationalization and privatization of state property. During this period, a number of important legal documents were adopted. Among them are the laws "on foreign investment in the Republic of Uzbekistan" of 14.06.1991, "on currency regulation" of 7.05.1993, "on foreign investment and guarantees for foreign investors" of 5.05.1994, decrees of the President of Uzbekistan "on additional incentives and benefits provided to enterprises with foreign investment" of 30.11.1996, "on additional measures to stimulate export of products produced by enterprises with foreign investment" dated 26.08.1997. The Cabinet of Ministers of the Republic of Uzbekistan issued resolutions on measures to stimulate foreign economic activity, attract and protect foreign investment in the Republic of Uzbekistan dated 21.10.1992, on measures to ensure insurance protection of investments in the Republic of Uzbekistan dated 13.04.1994, a number of instructions and regulations of ministries and departments.

The second stage of development could cover the period 1998-2003. The regulatory framework and level of regulation of foreign capital that was in effect at the beginning of the project did not yet contribute to a massive inflow of foreign capital in the form of FDI. In this regard, Uzbekistan has a fairly strict monetary policy aimed at reducing the rate of inflation and creating conditions for improving the financial sector. This period is marked by the preparation and adoption of more than 20 important legal documents. Among them are the laws of the Republic of Uzbekistan "on foreign investment" from 30.04.1998 , "on guarantees and measures to protect the rights of foreign investors" , "on guarantees of freedom of business activity" from 25.05.2000. Decrees of the President of the Republic of Uzbekistan "on partial amendment of the Decree of the President of the Republic of Uzbekistan from November 30, 1996'', "On additional incentives and benefits provided to enterprises with foreign investment" dated 27.03.1998, "On measures to attract foreign direct investment in oil and gas exploration and production" dated 28.04.2000 , "on additional measures to stimulate the increase in production of finished consumer goods by enterprises with foreign investment" dated 20.06.2003. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On measures to improve information support for attracting foreign investment" dated 06.01.1999. Resolution of the Cabinet of Ministers, "on measures to further liberalize the foreign exchange market and expand currency exchange operations" dated 13.07.2000, "on additional measures to attract foreign investment in the creation of joint ventures" dated 11.10.2000 , "on additional measures to strengthen the legal protection of foreign direct investment" from 2.05.2003 etc.

The third (modern) stage of improvement, which began in 2004 and is currently ongoing, is related to the further development of legislation on foreign investment, in particular, with the gradual bringing it into line with international standards. Among the adopted laws : "On amendments and additions to the Tax code and the Law of the Republic of Uzbekistan" on guarantees and measures to protect the rights of foreign investors " from 16.09.2005, the Decree of the President of the Republic of Uzbekistan "on measures to improve the process of attracting and developing foreign investment and loans" from 24.07.2008, decrees of the President of Uzbekistan "on additional measures to encourage the attraction of direct private foreign investment" from 11.04.2005 , "on improving the management system in the field of foreign economic and trade relations, attracting foreign investment" from 21.07.2005, etc. At this stage of economic development, capital inflows are traditionally provided by state guarantees (intergovernmental international agreements).

On December 25, 2019, the President of the Republic of Uzbekistan signed the Law "On Investments and Investment Activities". The adoption of the Law is provided for by the Decree of the President of the Republic of Uzbekistan "On measures to improve the investment climate in the Republic of Uzbekistan" dated 01.08.2018. The Law currently serves as a single document combining the main provisions of the laws "On Foreign Investment", "On Investment Activity" and "On guarantees and measures to protect the rights of foreign investors", which lose their force after the entry into force of the Law.7

[7] Law of Uzbekistan on foreign investments.

ISSN 2792-3991 (online), Published under Volume: 1 Issue: 5 in October -2021

IJDPP International Journal of Development and Public Policy

| e-ISSN: 2792-3991 | www.openaccessjournals.eu | Volume: 1 Issue: 6

Investment relations play a crucial and defining role in the global economy. One of the main factors in ensuring the effectiveness of investments in the economy of any state is their legislative consolidation, the creation of a developed system of investment legislation and an effective mechanism for implementing legal norms

Result and discussion

Analysis of sources of investment law in foreign countries, including sources of legal regulation of investment activities involving foreign investment, allows us to say that in general, legal regulation is reduced to either codified regulation or regulation through special legislation. Thus, at various times, investment codes have been adopted in the Republic of Belarus, the people's Democratic Republic of Algeria, and a number of other countries. At the same time, special legislation on foreign investment is mostly in force in the post-Soviet space, for example, special laws have been adopted in Armenia, Uzbekistan, Turkmenistan, Ukraine, etc. However, for a number of countries in order to establish a legal regime for foreign investment, it is typical to use non-special (and certainly not codified) legislation. Legal regulation is carried out by applying the General rules of currency, tax, banking law, etc. This method of legal regulation applies, in particular, in the United States, Great Britain, France, Japan, Switzerland, Spain and a number of other countries.

In 2007, the Indonesian investment law was adopted. The investment law, in particular, concerns the establishment of new investments, investment incentives and investor rights. This law defines the definition of investment, domestic investment, foreign investment, investor, domestic investor, foreign investor. According to the Indonesian investment law Central Government, hereinafter called Government, shall be any the President of the Republic of Indonesia holding the governmental power of the state of the Republic of Indonesia pursuant to the 1945 Constitution of the Republic of Indonesia8. Furthermore, Indonesian Investment Law states principles and objectives of investment, basic policy investment, the rights, obligation, and liability of investors.

Having separated from Malaysia in 1965, the city-state of Singapore shocked the entire world. A poor dwarf country, a former colony of the British Empire, the lack of its own drinking water and sand for construction — it would seem that such a state will never have a reason to be proud of the rest of the world. However, the case of Singapore once again proves that many things in life happen . The "Asian tiger" or, as Singapore is also called, the country of the future, has turned into a man-made civilization in just half a century.

One of specific features of Singapore’s legislation on investment is the absence of an investment law. There is neither any specific law in Singapore on foreign investment nor an economy-wide investment law which could govern domestic or foreign investment. Laws of general application that is , the common law of contract , sector-specific legislation and Singapore Companies Act govern investment in Singapore. Investment Agency Singapore’s Economic Development Board (EDB) was established by statute in 1961. The Economic Development Board Act sets out the functions and the powers of the EDB. Notably, Section 6 of the EDB Act makes it clear that its function is to attract and facilitate both local and foreign investment. On its website, the EDB currently describes itself as a Singapore’s Economic Development Board (EDB) acts as an investment agency. In 1961, Singapore’s Economic Development Board was established according to the statute. Functions and powers of the EDB of Singapore are set out by The Economic Development Board Act. Notably, according to the Section 6 of the EDB Act makes it clear that its function is to attract and facilitate both local and foreign investment9.

Conclusion

In conclusion, it is emphasized that Singapore is an example of implementing an exceptionally competent and effective public policy in relation to foreign direct investment, which has become the basis for economic development. At the same time, it should be noted that in the twenty-first century, the state policy has been transformed towards a preferential orientation towards the development of national companies. The

[8] Indonesian Investment Law (2007).
[9] The Economic Development Board Act 1961.

ISSN 2792-3991 (online), Published under Volume: 1 Issue: 5 in October -2021

government of Singapore has realized that global corporations in search of more efficient factors of production and more promising markets can leave the island state at any time. Therefore, a state policy of economic development that is primarily based on the foreign sector can be effective in the short and medium term, but in the long term the future needs to rely on internal sources of growth.

Creating the investment code of the Republic of Uzbekistan can be suggested as well to unify the current legislation on investment. In the process of investing in Uzbekistan, investors are not satisfied with working with such a large number of documents, getting acquainted with each of them individually, the existence of complexities in the process of application of investment law. At the same time, the variability of normative legal acts in the sphere, the abundance of reference norms in the laws have a negative impact on the investment environment, causing distrust of investors. Proceeding from this, it is believed that the urgent task of the present day to develop and adopt a new investment code through the unification of the current legislation and legislative documents related to the investment process in order to overcome the problems in the investment sphere, increase the volume of gross domestic product by creating a favourable investment environment.

REFERENCES

1. Keynes D. (1936) ‘’General theory of employment, interest and money’’.
2. Lawrence J Gitman, Michael D Joehnk (2004) ‘’Fundamentals of Investing’’.
3. Voznesenskaya N. N. (1975) ‘’Foreign investment and mixed enterprises in Africa’’, Moscow.
4. Bogatyrev A. G. (1992) ‘’Investment law’’, Moscow.
5. Georg Schwarzenberger (1969) ‘’*Foreign Investments and International Law’’*.
6. Law of the Republic of Uzbekistan on investments and investment activity.
7. T. V. Teplova (2011) "Investments" textbook , Moscow.
8. Law of Uzbekistan on foreign investments.
9. Declaration of the Kazakh SSR on state sovereignty of the Kazakh SSR.
10. Collection of normative acts regulating the legal basis of market relations in the Republic of Kazakhstan.
11. Constitution of the Republic of Kazakhstan.
12. Law of the Republic of Kazakhstan on foreign investment.
13. Law of the Republic of Kazakhstan on state support of direct investment.
14. Indonesian Investment Law (2007).
15. The Economic Development Board Act 1961.
16. Sattorova M. Investor Responsibilities from A Host State Perspective: Qualitative Data and Proposals for Treaty Reforms, 2019, 113 AJIL Unbound 23.
17. Model international Agreement on Investment for Sustainable Development IISD, 2005.
18. Cotula L. Raising the Bar on Responsible Investment: What Role for Investment Treaties?, 2018. Available at: http://pubs.iied.org/pdfs/17454IIED.pdf (accessed 20.04.2020).
19. Vinuales J. E. Investor Diligence in Investment Arbitration: Sources and Arguments, ICSID Review 346, 2017, 32 (2).
20. Weiler T. Balancing Human Rights and Investor Protection: A New Approach for a Different Legal Order, Boston College International and Comparative Law Review 433, 2004, 27 (2).

ISSN 2792-3991 (online), Published under Volume: 1 Issue: 5 in October -2021