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DEVELOPMENT TENDENCY OF INVESTMENT LEGISLATION: INTERNATIONAL EXPERIENCE AND NATIONAL LEGISLATION

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Abstract:

Nowadays, relations with the investment sector are growing rapidly on a global scale. Investment relations are becoming so complex that it is connecting with almost all branches of law and becoming a separate field. At the same time, investment is also an economic category, which requires interdisciplinary research. This thesis analyzes the development trends of investment legislation at the international level and analyzes the views on the current situation and potential changes in comparison with the development trends of the national legal system.

Keywords: Investment, Foreign Investment, Expropriation, Investment Code, Bilateral Investment Agreement (BIT), Alternative Dispute Resolution (ADR).

The collapse of colonial policy after World War II led to the formation of new independent states. As a result, the creation of a system for regulating capital flows with developed countries and developing and Third World Countries has become a global issue. Because the fact that the independent colonial states were now establishing their own procedures created certain obstacles and requirements for the developed states. At the same time, the newly independent states also needed external financial resources, including material and technical base, to solve financial problems and to reach the economic development. Therefore, since the second half of the twentieth century, the flow of international investment and its importance has increased.

The increase in international investment flows has also ushered in a new era in investment legislation. Conditionally, the development trend of investment legislation can be divided into the following two stages:

1. ***Period of regulation and control of investment flows*** (1945 to 1980).
2. ***The period of liberalization of investment flows*** (1980 to present)[1].

It was in the first stage of the development of investment legislation that the first investment codes appeared. The main purpose of investment codes during this period was not to attract foreign investment, but to control them. A good example of this is the 1944 Mexican Emergency Decree, which was the first unilateral Investment Code to regulate rather than provide assistance[2]. The purpose of this document was to prevent capital outflows following a steady flow of capital to Mexico during World War II. In addition, the complex of economic activities of companies with foreign participation required prior approval of the Ministry of Finance. The first comprehensive national investment code was adopted by Israel in 1950.

Investment codes have been an important feature of international investment relations since the 1950s, especially between countries with different levels of economic development. Their heyday was in the 1970s and 1980s, when more than 60 countries adopted domestic investment codes.

The practice of foreign investment legislation in the 1950s and 1970s was of a restrictive nature. In particular, Nigeria's 1972 National Economic Development Plan called for the localization of the economy through the gradual transfer of foreign investment to the local population.[3]. The Andean Code of 1969, which aimed to create a common market in Latin American countries, required foreign investors in certain industries to sell their main shares to local investors after a certain period of time.[4]. Another highly restrictive piece of legislation at the time was the South Korean Investment Code. The code gives South Korean companies the right to protect themselves from competition in their domestic markets. As a result, they had sufficient economic power to enter foreign markets in the 1960s and 1970s.

Restrictions on foreign investment are not limited to developing countries. The Canadian Foreign Investment Act of 1973 was an investment code that seeks to provide effective control over the Canadian economy, especially in the extractive industries, amid large-scale cross-border investment in these sectors. According to it, the Foreign Investment Review Agency approved new foreign investments only if they could bring "huge benefits" to Canada. One of the facts used

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in this assessment was the level and importance of use by Canadian participants. It was up to the investor to show that there was a big profit[5].

Since the 1980s, the importance of investment incentives and support in investment legislation has increased. For example, while unlimited foreign investment was allowed in Nigeria in 1995, Tanzania's Investment Law of 1997[6] and the 1994 Investment Promotion and Protection Decision in Venezuela[7] gave foreign investors the same legal status as domestic investors and lifted many restrictions on investment. Thailand's Investment Promotion Act of 2002 also mandates not to expropriate government-backed investments[8]. Another such document was Cuba's first Investment Code, adopted in 1982 by Act No. 50. This code made it possible to replace Soviet state aid with private investment and tourism. Cuba's Law No. 77, adopted in 1995, provided for the establishment of anti-expropriation guarantees, duty-free zones and industrial parks. Subsequently, duty-free trade zones within these concessions are becoming increasingly popular in the People's Republic of China, as well as now in Egypt and the Philippines, and even between North and South Korea to attract investment in certain areas.

But the large-scale liberalization of the investment climate accelerated further after the end of the Cold War. For example, Brazil, India, and Indonesia began liberalizing foreign investment regimes in the early 1990s. In the Philippines, the 1991 Foreign Investment Act expanded the number of economic sectors that are 100 percent foreign-owned[9]. Indonesia, meanwhile, has lifted restrictions on foreigners owning property.

Since the 1980s, the international community has also stepped up its multifaceted efforts to increase the flow of private capital and investment to developing countries, as it has been instrumental in stimulating development and combating poverty. In particular, the Uruguay Round has reached a number of agreements in setting multilateral rules for investment, including:

- General Agreement on Trade in Services (1994) (GATS);
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) (TRIPS);
- Public Procurement Agreement (GPA);
- Agreement on Subsidies and Compensation Measures (ASCM)
- Trade-Related Investment Measures Agreement (TRIMs).

However, with the advent of Bilateral Investment Treaties (BITs), the importance of investment codes has diminished over the past three decades. Because the BIT is a bilateral agreement to encourage and protect investment in the territory of each Contracting State, that is, states agree together on standards of guaranteed measures for cross-border investment. In contrast, investment codes set out unilaterally the measures for accepting and regulating foreign investment[10].

BITs can therefore be seen as agreed, transnational investment codes. They mainly include the material protection, dispute resolution rules and compensation standards contained in the Investment Code[11]. They follow a facilitating model and generally do not include restrictions on investor behavior. Because the relevant restrictions on access are set by the legislation of the receiving state[12].

Restrictions on land ownership by foreign investors are also common. Investment codes sometimes provide a more favorable regime than national legal systems sometimes guarantee in any other way. The problem with national investment codes is that they are often poorly designed, and rarely include an authentic language rule for interpretation and dispute resolution[13].

Therefore, the rules of dispute resolution in the latest generation of investment codes are of particular interest. In particular, the Foreign Investment Code of Saudi Arabia of 2000 establishes an Investment Dispute Resolution Committee to consider disputes arising from licensed investments.[14]. Burundi's 2008 Investment Code (Law № 1/24) adopts a differentiated regime for dispute resolution[15]. If the capital for the investment is Burundian, only domestic arbitration, and for investments with mixed or international sources of capital, international arbitration, including ICSID arbitration, is available.[16]. The Investment Code of the Republic of Belarus No. 37-Z of June 22, 2001, as amended by July 15, 2008, defines the law applicable to the settlement of disputes, which includes international agreements to which Belarus is a party.[17].

In addition, there is a tendency in investment legislation to impose certain obligations and restrictions on investors. But this is a positive trend, because its intended purpose goes beyond the territory of a state. In particular, the Law of the Republic of Cote d'Ivoire on Investment Code No. 95-620 of 1995 obliges investors not to harm the environment[18].

In general, the existing investment codes are independent, single codes and have all the relevant rules for foreign investment. They typically specify the types of capital allowed, open and closed networks for foreign investors, environmental, planning and other rules for foreign investment, and the conditions for stopping such investments. They often include tax

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breaks and other benefits. Most of them apply only to existing foreign investments.

So, what is the development trend of investment legislation in the national legal system of Uzbekistan?

In the Republic of Uzbekistan, the development and improvement of the legislative system on investment and investment activities has taken place at certain stages. This period can be conditionally divided into three periods:

The first – The period from 1993 to 2001. This period was a stage in the formation of investment legislation, as well as obligations, rights and industry scientific legislation, which are the main conditions of the contract mechanism. As a result, a number of laws of the Republic of Uzbekistan in this area were adopted.

The second – The period from 2002 to 2016. This period was a stage of development and improvement of the sphere of investment activity and the legislative system regulating it. Because this period is characterized by the interest of investors in investment projects. This is what prompted the development of legislation in the field.

The third – The period from 2017 to the present. This period is aimed at further improving the investment climate in Uzbekistan, increasing its attractiveness, encouraging the attraction of direct investment, strengthening investors' confidence in the consistency of public policy in this area and the role of government agencies in working with investors. There is a phase of increasing its capacity. In short, Uzbekistan is building its brand in the global investment market[19]. The radical reforms carried out in the country in recent years are proof of this, and the complete renewal of the legal framework confirms this.

In particular, the adoption of the Law of the Republic of Uzbekistan "On Investments and Investment Activities" No. LRU-598 of December 25, 2019 was the basis for finding practical solutions to many problems in the legislative system and new reforms. started the wave.

So, what development trends in the legal framework governing investment activities in the Republic of Uzbekistan focus on the activities of foreign and domestic investors, its guarantees and legal regulation of risk management?

The Law of the Republic of Uzbekistan No. LRU-598 of December 25, 2019 "On Investments and Investment Activities" for the first time introduced a norm on the basic principles of investment and investment activities. They include:

- ✓ legitimacy;
- ✓ transparency and openness;
- ✓ freedom to carry out investment activities;
- ✓ fairness and equality of subjects of investment activity;
- ✓ non-discrimination against investors;
- ✓ presumption of investor conscience.

Also, Part 2 of Article 4 of the Law stipulates that the basic principles of the legislation on investment and investment activities shall be applied at all stages of the investment and investment process.[20].

This law establishes common guarantees for the activities of both foreign and domestic investors. They are grouped as follows:

1. Guarantees of the rights of investment entities.

2. Guarantees of use of funds.

3. Guarantees of free transfer of funds.

4. Guarantees for the return of foreign investment in connection with the termination of investment activities.

5. Guarantees against unfavorable changes in the legislation for the investor.

6. Guarantees of transparency and openness.

7. Investment protection guarantees.

8. Additional guarantees and measures to protect investments.

9. Guarantees under conflicting rules.

The above guarantees established by law are inextricably linked with the reduction of investment risk, which is the most important aspect for investors.

Currently, the current national regulatory framework for investment activities can be divided into 3 groups according to their content. These are:

1. Laws governing property relations. This is stated as examples of the Civil Code of the Republic of Uzbekistan, LRU-336 of September 24, 2012 "On protection of private property and guarantees of property rights", LRU-152 No. XII of October 31, 1990 "On Property", Law No. LRU-387 of June 3, 2015 "On the Securities Market".

2. Laws regulating business activity. This is stated as examples of LRU-328 of May 2, 2012 "On guarantees of freedom of entrepreneurial activity", LRU-310 No. II of December 6, 2001 "Limited Liability Company and Additional Liability Company", LRU-370 of May 6, 2014 "On Joint Stock Companies and Protection of Shareholders' Rights".

3. Laws aimed at legal regulation of investment relations. These laws are regulated by the Law of the Republic of Uzbekistan dated December 25, 2019 LRU-598 "On investments and investment activities", February 18, 2020 LRU-604 "On special economic zones" as well as LRU-312-II of December 7,

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2001 "On Product Sharing Agreements", LRU-392 of August 25, 2015 "On Investment and Share Funds", LRU-537 of May 10, 2019 "On Public-Private Partnership".

In general, the legal acts regulating investment activities can be seen in the above-mentioned trend of continuous development. The norms of this legislation are becoming increasingly liberal. However, there are some shortcomings, and in the framework of the above reforms, specific proposals are being put forward to find practical solutions to these problems.

In particular, significant reforms have taken place in the field of investment dispute resolution. One of them is the Law of the Republic of Uzbekistan No. 674 "On International Commercial Arbitration" of February 16, 2021, and the other is the Law of the Republic of Uzbekistan No. 482 "On Mediation" of July 7, 2018. These introduced new alternative dispute resolution methods (ADRs) into national legislation. But there is another form of ADR that we do not yet have a complete legal basis, but in which certain elements are scattered, and this is conciliation[21].

It is obvious that the investment legislation in Uzbekistan is also developing on a much larger scale. Therefore, it is necessary to develop the Investment Code of the Republic of Uzbekistan, taking into account the above-mentioned practice of codification of investment legislation in foreign experience and the fact that national legislation contains more than 50 laws regulating investment activities, many of which duplicate norms. It is also advisable to detail the following issues in the Investment Code and minimize the use of reference norms:

- unification of all norms related to investment activity and investors;
- reflect the norms that maximize the conditions of investment, the rights of investors and the guarantees of their real protection;
- the forms of consideration and resolution of investment disputes and their procedural and legal mechanisms.

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