

# SOME QUESTIONS OF THE LEGAL REGULATION OF ACTIVITY OF THE ENTERPRISES WITH FOREIGN INVESTMENTS AND PROTECTION OF INVESTORS' RIGHTS IN UZBEKISTAN

Islambek Rustambekov

Doctor of sciences in law, Head of Business Law  
Department at Tashkent state university of law

[uzmailbox@rambler.ru](mailto:uzmailbox@rambler.ru)

**ORCID ID** <https://orcid.org/0000-0002-0217-144X>

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**Abstract:** In the article, legal bases of regulation of activity of the enterprises with foreign investments and protection of investors' rights in Uzbekistan are analyzed. The author analyzed national laws and international agreements of the Uzbekistan and tried to show legal environment of the investment climate. In the conclusion the author comes to opinion that favorable investment

climate has been established in the Republic of Uzbekistan, which is being improved in direction of strengthening guarantees for foreign investment and their broad attraction to the economy of the country.

**Key words:** foreign investments, enterprises with foreign investments, investors rights, investment activity.

## НЕКОТОРЫЕ ВОПРОСЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ДЕЯТЕЛЬНОСТИ ПРЕДПРИЯТИЙ С ИНОСТРАННЫМИ ИНВЕСТИЦИЯМИ, И ЗАЩИТА ПРАВ ИНВЕСТОРОВ В УЗБЕКИСТАНЕ

Исламбек Рустамбеков

Заведующий кафедрой Бизнес право, Ташкентского  
государственного юридического университета  
Доктор юридических наук, доцент

**Аннотация:** в статье осуществлен анализ вопросов правового регулирования деятельности предприятий с иностранными инвестициями и защиты прав иностранных инвесторов в Узбекистане. Автор провел анализ национального законодательства и международных договоров Узбекистана и осуществил попытку раскрыть правовую среду инвестиционного климата. В заключении автор приходит к выводу, что в Республике Узбекистан установлен благоприятный инвестиционный климат, который улучшается в направлении укрепления гарантий защиты иностранных инвестиций и их широком привлечении в экономику страны.

**Ключевые слова:** иностранные инвестиции, предприятия с иностранными инвестициями, права инвесторов, инвестиционная деятельность.

## ЎЗБЕКИСТОНДА ХОРИЖИЙ ИНВЕСТИЦИЯЛИ КОРХОНАЛАР ФАОЛИЯТИНИ ҲУҚУҚИЙ ТАРТИБГА СОЛИШ ВА ИНВЕСТИТОРЛАР ҲУҚУҚЛАРИНИ ҲИМОЯ ҚИЛИШ

Исломбек Рустамбеков

Тошкент давлат юридик университети, Бизнес  
ҳуқуқ кафедраси мудири, юридик фанлар  
доктори

**Аннотация:** Мақолада Ўзбекистонда хорижий инвестицияли корхоналар фаолиятини ҳуқуқий тартибга солиш ва инвесторлар ҳуқуқларини ҳимоя қилиш масалалари таҳлил қилинган. Муаллиф мазкур соҳадаги миллий қонунчилик ва халқаро шартномаларни, шунингдек инвестиция муҳитини ёритиб беришга ҳаракат қилган. Мақола якунида Ўзбекистонда чет эл инвестицияларини ҳимоя қилишни кафолатлашга ва инвестицияларни самарали жалб этишга қаратилган ижобий инвестиция муҳити ўрнатилганлиги тўғрисида хулоса қилган.

**Калит сўзлар:** Хорижий инвестиция. Хорижий инвестицияли корхона. Инвесторлар ҳуқуқлари. Инвестиция фаолияти.

In the years of independence, a wide range of measures has been adopted on radically improving the business and investment climate, introducing universally accepted system of criteria for assessing conditions of doing business in the world practice and on this basis, ensuring further increase of the country's international rating. Favorable climate for doing business has been created in the republic, as well as favorable business environment and reliable legal guarantees for entrepreneurs are created.

Guaranteeing by the state of freedom of economic activity and entrepreneurship, equality and legal protection of all forms of property enshrined in our Constitution is the basis for ensuring the rights of business, effective implementation of ongoing economic reforms. Adopted laws along with the legal regulation of the business sphere serve to ensure the rights and interests of entrepreneurs.

For a relatively short historical period, business entities as an integral part of the national economy have become a leading force in solving economic and social issues, developing industry and sphere of services, ensuring a prosperous life for people.

Creation of favorable conditions for doing business in our country, simplification of procedures in this process contribute to the growth of the number of small business entities that are conducting successful activity in all sectors of the economy. At present, there are 11,1 small business entities for every 1000 people. This indicator is much higher than in the CIS countries.

In this aspect, effectiveness of ongoing reforms and newly adopted laws, which are confirmed by the data of the most authoritative international economic and public centers, can be also noted. For example, Uzbekistan currently ranks the 44<sup>th</sup> place among 158 countries of the world and the first among the CIS countries according to the "World index of happiness".

As well as, the World Bank Group conducts an analysis every year in the sphere of "Doing business" and in its report published on October 27 on "Doing business 2016: assessing the quality and effectiveness of regulation", Uzbekistan has risen 16 positions compared to the last year – from the 103<sup>rd</sup> to the 87<sup>th</sup> place among 189 countries.

Thus, over the years of independence, Uzbekistan has carried out extensive work on development of the

sphere of entrepreneurship. In particular, a legal framework has been created free activity of entrepreneurs, including enterprises with foreign investment. The business environment has been improved. There is an opportunity of access of entrepreneurship entities to material-technical and financial resources. The procedure for registering and submitting reports has been simplified, licensed types of activities and licensing procedures have been reduced.

In order to create a pace of accelerated development of entrepreneurship, as well as increasing attractiveness of the investment climate for entrepreneurs and enterprises with foreign investment, more than 380 privileges and preferences are provided by the national legislation in more than 70 normative-legal acts.

In particular, more than 70 benefits are provided in tax, more than 50 in the customs, more than 50 in the banking spheres and more than 40 benefits and preferences are stipulated in the sphere of foreign investment. As a result, at present there are more than 630 thousand business entities in the country.

The main legislative acts regulating entrepreneurial activity in the Republic of Uzbekistan are the Civil Code, the Laws "On guarantees of freedom of entrepreneurial activity", "On the contractual-legal basis of activities of economic entities", "On joint-stock companies and protection of shareholders' rights", "On companies with limited and additional liability", "On private enterprise", "On family entrepreneurship", "On business partnerships", "On competition", "On foreign economic activity", etc.

In addition, a broad system of legal guarantees and benefits for foreign investors has been created, an integrated system of measures of stimulating activities of

enterprises with foreign investment has been developed in Uzbekistan.

It should be noted that over the years of reforms, the total amount of investments in the economy of Uzbekistan has exceeded 100 billion dollars, of which 35 billion dollars is foreign direct investment. All foreign investors, as well as their investments in the republic are legally protected and guaranteed by the state. The rapid growth of the country's economy and stability of political, financial and banking systems make Uzbekistan attractive for foreign financial institutions and international banks for investment and entry into the national banking system.

This important role is played by the normative-legal framework established in the country, which is one of the most advanced in the CIS countries legislation system, incorporating the main provisions of international investment law, in particular, provisions on guarantees of the rights of foreign investors, granting certain preferences to investors and others.

The legal framework for regulating the investment activities of the Republic of Uzbekistan can be divided into international-legal and national-legal foundations.

#### **International-legal bases.**

The Republic of Uzbekistan as an equal participant of the world community from the first days of independence began to form its base of international agreements in all spheres of development of society and the state. Thus, in direction of regulation and protection of investments, the Republic of Uzbekistan has signed such major conventions as the Washington Convention of 1965 (Uzbekistan participates from August 25, 1995), the Seoul Convention of 1985 (Uzbekistan participates from November 4, 1993), the Treaty to the Energy Charter and the Energy Charter Protocol on Energy Efficiency and Related Environmental

Aspects signed in Lisbon on April 1995 (Uzbekistan participates from December 22, 1995) and others.

As well as, within the framework of activities on attracting foreign investment, the Republic of Uzbekistan pays special attention to Bilateral Investment Treaties. In the first years of independence, or more precisely in 1992, the first agreements on promotion and protection of investments between the Republic of Uzbekistan and Turkey, Finland, Egypt, China were signed. Every year the number of such contracts has increased. To date, the total number of such contracts is more than 50.

In addition, the Republic of Uzbekistan has a large number of treaties in the tax sphere between the countries of the world, which led to the development of a number of universally recognized international standards. Contracts that are concluded and are being concluded by Uzbekistan are based on the model contract developed by the OECD.

Today in the Republic of Uzbekistan, there are more than 50 agreements on avoidance of double taxation and prevention of evasion from payment of tax on income and capital. Such contracts concern the tax on incomes of legal entities, the tax on incomes of physical persons and tax to property. In accordance with the Article 4 of the Tax Code of the Republic of Uzbekistan, the above agreements as an international document take precedence over the norms of the national legislation.

The formed system of international treaties of the Republic of Uzbekistan promotes effective establishment of economic cooperation of the Republic of Uzbekistan with other countries, and above all – attraction of mutual investments and growth of foreign trade turnover.

#### **National-legal bases.**

The basis of legal regulation in the field of attracting foreign investment in the Republic of Uzbekistan is the Laws of the Republic of Uzbekistan “On foreign

investments”, “On investment activities”, “On guarantees and measures of protecting the rights of foreign investors”, “On free economic zones”, “On production sharing agreements”, “On concessions” as well as a number of normative-legal acts adopted in the form of decisions of the President of the Republic of Uzbekistan and government resolutions.

According to the norms of national laws for foreign investment, a national regime is established in the Republic of Uzbekistan. This regime provides for granting foreign investment conditions that are not less favorable than corresponding conditions for investments carried out by legal and physical persons of the Republic of Uzbekistan.

The state guarantees and protects the rights of foreign investors carrying out investment activities in the territory of the Republic of Uzbekistan. If the subsequent legislation of the Republic of Uzbekistan worsens the terms of investment, then foreign investors within 10 years from the moment of investing is applied legislation that acts on a date of investment. A foreign investor has the right, at his own discretion, in notifying procedure to apply those provisions of the new legislation that improve conditions for his/her investment.

The legislation provides for a notification procedure of using a ten-year guarantee. Therefore, in impending deterioration of investment conditions, the foreign investor notifies the relevant authorized body about application of the guarantee.

In addition, in some cases, foreign investors may be provided additional guarantees and measures of rights protection when investing in priority industries and projects that ensure sustainable economic growth, strengthening and expanding the export potential of the republic, projects in the sphere of small entrepreneurship.



In the event of provision by the Government of the Republic of Uzbekistan of foreign investor with additional guarantees and protection, measures (benefits and preferences) established by the legislation, an investment agreement should be concluded in compulsory order.

In accordance with the current legislation, foreign investments are all types of the material and non-material benefits and the rights to them, including rights on intellectual property, and reinvestments invested by foreign investors in entrepreneurship and other types of activities, which are not forbidden by the legislation.

Foreign investments in the territory of the Republic of Uzbekistan can be implemented in various forms. In particular:

- equity participation in statutory funds and other property of business entities and partnerships, banks, insurance organizations and other enterprises established jointly with legal entities and (or) individuals of the Republic of Uzbekistan;

- Creation and development of economic societies and partnerships, banks, insurance organizations and other enterprises wholly owned by foreign investors;

- Acquisition of property, shares and other securities, including debt obligations issued by residents of the Republic of Uzbekistan;

- investing in intellectual property rights, including copyrights, patents, trademarks, utility models, industrial designs, brand names and know-how, as well as business reputation (goodwill);

- Acquisition of concessions, including concessions for exploration, development, extraction or use of natural resources;

- drafting of production sharing agreements, including the exclusive rights to search, investigation of

fields and mining on the subsoil plot and on conducting the works connected with it;

- acquisition of ownership rights to trade objects and service industries, to residential premises together with the land plots on which they are located, as well as the rights to own and use land (including on a lease basis) and natural resources.

There are no restrictions in the Republic of Uzbekistan regarding the form of investment. Foreign investors can create enterprises in the territory of the republic in any organizational and legal form permitted by the legislation.

To date, potential foreign investors are offered a variety of forms of investment:

- Creation of joint venture;
- Creation of enterprises with 100 percent foreign capital;
- Acquisition of a part or full block of shares in privatized enterprises.

Enterprises with foreign investments are recognized newly created enterprises that meet the following conditions:

- The amount of the statutory fund of the enterprise not less than the amount equivalent to 150 thousand US dollars;
- One of the participants of the enterprise is a foreign entity;
- The share of foreign investment is at least 30 percent of the enterprises authorized capital.

To date, in order to increase the investment attractiveness of the republic by the Decree of the President of the Republic of Uzbekistan of October 5, 2016 no. DP-4848 "On additional measures of ensuring accelerated development of entrepreneurial activity, full protection of private property and qualitative improvement of business

climate”, all newly created industrial enterprises with foreign investment regardless the amount of money invested by them, are granted the right to apply tax rates and other duties effecting on the date of their registration in five years.

Also this Decree since January 1, 2017 has cancelled all types of unscheduled inspections of entrepreneurial activity, except the checks in connection with liquidation of legal entity and also which are carried out only according to the decision of Republican council for coordination of activity of supervisory authorities of short-term checks on the basis of appeals of natural and legal entities about the facts of violations of the law, and also counter checks of activity of subjects of business including on criminal cases. Thus, supervisory authorities have no right to initiate conducting unscheduled inspections now.

One of the directions of the state regulation of foreign economic and investment activity in the Republic of Uzbekistan is creation of free economic zones. The legal base of their functioning is the Law of the Republic of Uzbekistan “On free economic zones”.

To date, in order to develop free economic zones, Decree of the President of the Republic of Uzbekistan No. DP-4853 of October 26, 2016 “On additional measures of activating and expanding activities of free economic zones” was adopted. This Decree establishes the most favorable conditions for further development of free economic zones in the republic as the most important factor for expanding attraction of foreign direct investment for creation of new high-tech industries.

The Decree executes unification of free industrial and economic zone “Navoi” and special industrial zones “Angren” and “Djizak” into free economic zones “Navoi”, “Angren” and “Djizak” with unified legal regime.

As well as, to date, new free economic zones have been created in the country. Such zones are “Urgut”, “Gijduvan”, “Kokand” and “Khazarasp” in Samarkand, Bukhara, Fergana and Khorezm regions.

The main tasks and directions of activities of these free economic zones are attraction of direct investments of foreign and local investors for creation of modern production facilities on production of in-demand in foreign markets and import-substituting products with high added value and others.

In addition, in order to develop the pharmaceutical industry, free economic zones are created in Uzbekistan, such as “Nukus-pharm”, “Zomin-pharm”, “Kosonsoy-pharm”, “Sirdarya-pharm”, “Boysun-pharm”, “Bustonlik-pharm” and “Parkent-pharm”. Zones are created in Karakalpakstan, Djizak, Namangan, Syrdarya, Surkhandarya and Tashkent regions.

In conditions of introducing by participants of free economic zones of appropriate investments, they are granted exemption from payment of certain taxes and mandatory payments, as well as customs payments, when importing technological equipment, materials and components.

Also, participants of free economic zones have the right to use convenient terms and forms of payment and conduction of accounting for exported and imported goods.

It should be noted that created free economic zones are a great incentive for attracting foreign investment in the national economy.

In modern development of business and investment climate, establishment in Uzbekistan of the institution of business-ombudsman should be especially noted. Thus, in order to strengthen guarantees for protection of rights and legitimate interests of business entities, preventing

unreasonable interference of state bodies in their activities, further strengthening legal mechanisms of inviolability of private property, as well as ensuring the principle of priority of the rights of business entities by the Decree of the President of the Republic of Uzbekistan of May 5, 2017 No. DP-5037, the institution of the Commissioner under the President of the Republic of Uzbekistan for the protection of the rights and legal interests of business entities – Business-ombudsman is established.

In addition to all this, comprehensive measures are planned and are being implemented at this stage of development of the investment climate in the Republic of Uzbekistan. Directly in the Action Strategy for five priority directions of development of the Republic of Uzbekistan in 2017-2021, approved by the Decree of the President of the Republic of Uzbekistan No. DP-4947 of February 7, 2017, the need for active involvement of foreign investment in the economy and regions of the country by improving the investment climate was specially emphasized. In this direction, such activities as further expansion of lending prospective investment projects are planned; effective use of attracted foreign investment and credits; conduction of an active investment policy aimed at modernization, technical and technological renovation of production, implementation of industrial, transport-communication and social infrastructure projects; improvement of the investment climate, active involvement of foreign, first of all, foreign direct investment in the economy and regions of the country.

In order to ensure implementation of this, in 2017-2021 it is planned to implement sectoral programs providing a total of 649 investment projects amounting to 40 billion US dollars. As a result, in the next 5 years, the production of industrial goods will increase by 1,5 times, its share in GDP – from 33,6 percent to 36 percent, the

share of processing industry – from 80 percent to 85 percent.

It should be noted that a new organizational structure – the State Committee of the Republic of Uzbekistan for Investments has been formed in the aspect of implementing these goals and objectives. In accordance with the Decree of the President of the Republic of Uzbekistan “On formation of the State Committee of the Republic of Uzbekistan for Investments” of March 31, 2017, the new committee, being an authorized state body, is responsible for coordinating the formation and implementation of a unified state investment policy and attracting foreign investment. It can be noted that establishment of this committee will serve to improve the public administration system for attracting and encouraging investments.

As it can be seen from all that has been considered, a favorable investment climate has been established in the Republic of Uzbekistan, which is being improved in direction of strengthening guarantees for foreign investment and their broad attraction to the economy of the country.