

GUARANTEES OF FOREIGN INVESTORS' RIGHTS IN THE REPUBLIC OF UZBEKISTAN

Mallakhanov Samandar Qahramon ugli

Third-stage student at Tashkent State University of Law

mallaxonovsamandar50@gmail.com

"Our main goal is to make Uzbekistan a reliable and long-term partner for foreign investors."

— **Sh.M. Mirziyoyev**

Anotatsiya: Ushbu maqolada mamlakatimizda so'nggi yillarda investorlarning huquqlarini kafolatlarini ta'minlashga qaratilgan chora-tadbirlar, milliy qonunchiligimizdagi investorlar uchun yaratilgan kafolatlar hamda ularning ahamiyati to'g'risidagi ma'lumotlar yuzasidan fikr boradi.

Kalit so'zlar: investitsiya, investor huquqlari, kafolatlar, soliq imtiyozlari, afzallik va preferensiyalar.

Абстракт: В данной статье рассматриваются меры, направленные на обеспечение прав инвесторов в нашей стране за последние годы, гарантии, созданные для инвесторов в нашем национальном законодательстве, и информация об их значении.

Ключевые слова: инвестиции, права инвестора, гарантии, налоговые льготы, преимущества и преференции.

Abstract: This article discusses measures aimed at guaranteeing the rights of investors in our country in recent years, guarantees created for investors in our national legislation, and information about their importance.

Key words: investment, investor rights, guarantees, tax benefits, advantages and preferences.

Emphasis should be placed on the fact that in recent years, extensive measures have been implemented to enhance the economic potential of our country, elevate its international relations to a new level, create the most favorable investment climate and corresponding legal landscape to attract investments, limit interference in the activities of any form of entrepreneurial entities, further simplify the licensing and permitting system necessary for their operations, and establish the required conditions for carrying out investment activities in the regions.

Considering the interests of investors, several amendments have been introduced to our country's Tax Code. These include reducing the tax burden, further simplifying the taxation system, and creating a fair tax and customs system in a healthy competitive environment. Reforms are also being carried out to amend and supplement existing legislative documents.

Reflecting on the experience accumulated over the past years, it becomes evident that there have been certain issues in protecting investors' rights, safeguarding these rights, and ensuring

their guarantees. These issues have long hindered the economic development of our country, as highlighted by our national leadership. To decisively address these problems, the President of the Republic of Uzbekistan issued Decree No. PF-5495 on August 1, 2018. This decree established a new framework aimed at ensuring investors' rights, effective from August 1, 2018. Specifically:

If an investor acting in good faith uses property, enters into agreements, or benefits from privileges and advantages based on an administrative document issued by a state body, and such document is later annulled or deemed invalid, the investor shall be fully compensated for all incurred losses.

If the annulment or amendment of an administrative document by a state body (or official) could affect the investor's interests, the matter of annulment or amendment shall be reviewed in court.

If losses are incurred by an investor due to decisions, actions (or inactions) of state bodies, their officials, or employees that are found to be unlawful, such losses shall be fully compensated from targeted fund resources based on a court decision.

The measures to ensure investors' rights did not stop with Decree No. PF-5495. As a result of consistent efforts, the Law of the Republic of Uzbekistan "On Investments and Investment Activity" was adopted on December 25, 2019. This law established a robust system of legal guarantees for investors in our country. The law includes the following guarantees:

Guarantees against unlawful interference and harm in investment activities — The essence of this guarantee is that state bodies and their officials are not entitled to interfere in the lawful activities of investment entities. If state bodies or their officials identify violations of legislation in the activities of investment entities, they may only take measures within their authority that are directly related to addressing such violations. If violations are detected, state bodies and their officials may not interfere in or restrict other lawful activities unrelated to investment activities. State bodies can cause harm to investment entities in two ways: first, through actions contrary to existing laws by state bodies or officials; and second, through failure by state bodies or their officials to adequately fulfill their obligations toward foreign investors. Here, "harm" refers to monetary losses incurred by investors or enterprises due to unlawful actions by state bodies or officials, as defined in Article 14 of the Civil Code of the Republic of Uzbekistan.

Guarantees against discrimination — The state guarantees that investors will not face discrimination based on citizenship, place of residence, location of economic activity, or the origin of the investors or investments. This guarantee ensures that our country treats investors from all nations equally and provides them with the same privileges or advantages under its legislation.

Guarantees for the use and free transfer of funds — Foreign investors may reinvest or otherwise use profits and income earned during their activities after paying taxes and other mandatory payments under the laws of the Republic of Uzbekistan. Notably, the ability to freely bring in and transfer funds without bureaucratic barriers strengthens a country's appeal to foreign investors. They gain confidence that their profits and income will not be appropriated by state bodies or officials but will instead be protected. However, allowing foreign investors to freely withdraw funds from developing or transitioning market economies could lead to capital flight and disrupt the balance of payments. Therefore, while guaranteeing the free transfer of funds, national interests must also be considered.

Guarantees for the repatriation of foreign investments in case of termination of investment activity — Under the aforementioned law, any investor in the Republic of Uzbekistan has the right to terminate their investment activity. After termination, foreign investors may freely repatriate their assets in cash or in kind, provided this does not harm creditors or obligations to the Republic of Uzbekistan (Article 18).

Guarantees against unfavorable changes in legislation for investors — Article 19 of the law stipulates that if subsequent legislative acts of the Republic of Uzbekistan worsen the conditions for investment, the laws in effect at the time of investment shall apply to the investor for the next ten years. Additionally, the investor has the right to opt for new laws that improve their investment conditions. This means that if new laws or amendments worsen the investor's legal standing, they may adhere to the previous laws for ten years. For example, if tax rates are increased under a new law, the investor may continue paying taxes at the previous rates for ten years.

The guarantees for applying the laws in effect at the time of investment for ten years are applicable in the following cases: When additional requirements complicate repatriation procedures or reduce the amount of income (profits) transferred abroad, except where repatriation is suspended due to the insolvency of an enterprise with foreign investment, violation of creditors' rights, criminal or administrative offenses by a foreign investor, or other necessary grounds under court or arbitration decisions. When quantitative restrictions or additional requirements, such as increasing the minimum share of foreign investments in enterprises, are introduced. When restrictions on foreign investors' participation in the charter funds of Uzbek enterprises are imposed. When additional procedures for visa issuance or extension, or other requirements for foreign investments, are introduced. The guarantees against unfavorable changes take effect in the following cases: For enterprises — from the date of state registration. For acquiring property, shares, securities issued by Uzbek residents, or rights to trade and service facilities, residential properties, land plots, or other natural resources — from the date the document confirming ownership or other property rights takes effect.

For intellectual property rights, including copyrights, patents, trademarks, utility models, industrial designs, trade names, know-how, or goodwill — from the date the document confirming such rights takes effect. For concessions, including exploration, development, extraction, or use of natural resources — from the date the concession agreement is registered. For other forms of investment not prohibited by Uzbek law — from the date the document confirming the investment activity takes effect.

Another unique aspect of investor rights guarantees is the protection against nationalization. According to the Civil Code, nationalization is the transfer of property owned by individuals or legal entities to state ownership with compensation. Typically, nationalization is justified for the following purposes:

- Preserving enterprises and other facilities of strategic importance for national security or social development.
- Ensuring environmental safety.
- Protecting consumers from potential abuses by private monopolies.
- Restructuring the economic framework.
- Halting illegal capital flight.
- Establishing control over financial resources held by banks and other institutions.

— Achieving nationally defined socio-economic goals.¹ Even in these cases, the state fully guarantees the inviolability of investors' property.

To reliably ensure these guarantees and effectively address challenges faced by investors, the "Tashkent International Investment Forum" has been held annually in Tashkent since 2022. During the first forum, several issues awaiting solutions to attract large-scale foreign investments to our country were highlighted. These included frequent changes in Uzbek legislation, bureaucratic barriers in transferring funds out of Uzbekistan (investors noted that in the UAE, they could bring in and withdraw investments on the same day, unlike in Uzbekistan), and the reluctance of foreign entrepreneurs to invest in local businesses or their minimal investments (they primarily invest in their own ventures). These criticisms were raised by foreign experts.

By the time of the "Third Tashkent International Investment Forum," many of these shortcomings had been addressed. The forum attracted over 2,500 delegates from 93 countries and saw the signing of major investment agreements with companies such as "Data Volt" (Saudi Arabia), "Acwa Power" (Saudi Arabia), "Amea Power" (UAE), "Nil Shugar" (Egypt), "Shaynxay Knud Interneshnl" (China), "Vilmar Interneshnl" (Singapore), "Bonafarm Grup" (Hungary), "Sayar" (USA), "Goldvind," "Sinoma" (China), "Sam Yapi" (Turkey), "Pasha Development" (Azerbaijan), "Laselsberger" (Austria), and "Petrosat Chexelsoton" (Iran) in sectors like thermal energy, textiles, and food industries.

While we have analyzed the privileges under our national legislation, we now turn to international practices. Globally, financial, fiscal, and other guarantees for foreign investors are common, often in the form of incentives. Financial guarantees are created through free economic zones, offering tax incentives and preferential credit systems. Fiscal guarantees are typically used by developing countries with limited resources, introducing "tax holidays" or customs exemptions for investors in specific regions or nationwide. Such measures can strain national budgets, so they are usually time-limited. The goal is to improve the "investment landscape" and attract more foreign capital.

For example, countries like Bahrain, Paraguay, Uganda, Vanuatu, Mongolia, the Maldives, Ukraine, and Tajikistan exempt foreign investors from most taxes, either for a specified period or indefinitely. Egypt, South Korea, and Trinidad and Tobago exempt foreign investors from corporate taxes. South Korea and Zambia exempt foreign investors from dividend taxes. Guyana, Singapore, Thailand, and Mozambique exempt foreign investors from import taxes on goods deemed essential for these countries.

Preferential taxation may apply to specific sectors or regions, as seen in the laws of Romania, Armenia, Nigeria, and Morocco².

In summary, a legal and effective guarantee system for foreign investors is essential. Investors thoroughly study the legal guarantees and incentives offered by a country before committing their funds. They ask questions like, "What privileges are available here?" and "Who ensures these privileges?" A robust legal framework capable of addressing such questions is crucial for our rapidly growing economy.

¹ Дойников И.В. Хозяйственное (предпринимательское) право: новый курс. – М., 2001. – С. 240

² O.Oqyulov, N.Imomov, Sh.Ro'zinazarov, B.Samarxodjayev, I.Rustambekov, Q.Mexmonov, E.Musayev, U.Saydaxmedov, A.Tojiboyev, A.Ibragimova, A.Jumagulov. Investitsiya huquqi. – Toshkent: Toshkent davlat yuridik universiteti, 2019. – 300 b.

Our efforts are not limited to legislation. Under Presidential Decree No. PQ-4001 of November 5, 2018, the Tashkent International Arbitration Center (TIAC) was established under the Chamber of Commerce and Industry of Uzbekistan. Pursuant to Presidential Decree No. PF-6034 of July 24, 2020, a specialized judicial body was created within the Supreme Court of Uzbekistan, authorized to resolve investment disputes involving investments of at least \$20 million, as well as competition-related cases. These measures exemplify our commitment to safeguarding investors' rights.

Despite these efforts, challenges remain in ensuring and reliably protecting investors' rights. Unfortunately, these issues often stem from individuals within state authorities, negatively impacting our country's investment appeal and reputation. For instance, a January 9, 2023, article in "Kun.uz" reported that Kerry Adler, CEO of Canada's "Skypower Global," accused certain government officials of obstructing a solar power plant project in Uzbekistan. Although an agreement was reached to sell solar energy at 6 cents per kWh, the Uzbek side later attempted to lower the price. Such incidents raise doubts among investors about the rule of law in the country. Similarly, in Quvasoy, a dispute arose between a Turkish investor and the city mayor over the latter's attempt to take over the investor's project. Additionally, Aziz Mirzakarimov, an Andijan native, faced bureaucratic hurdles and unnecessary meetings when trying to establish a business in Uzbekistan after selling his business in Russia. These cases highlight the need for stronger and more attentive approaches to this sector, as the harm caused to investors ultimately affects our people and economy.

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5. Presidential Decree of the Republic of Uzbekistan "On Additional Measures to Improve Judicial Activities and Enhance the Efficiency of Fair Justice," No. PF-6034, July 24, 2020.