



# ЮРИСТ АХБОРОТНОМАСИ

ВЕСТНИК ЮРИСТА \* LAWYER HERALD

ҲУҚУҚИЙ, ИЖТИМОИЙ, ИЛМИЙ-АМАЛИЙ ЖУРНАЛ



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# ЮРИСТ АХБОРОТНОМАСИ

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## ВЕСТНИК ЮРИСТА

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## LAWYER HERALD

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# ЮРИСТ АХБОРОТНОМАСИ ВЕСТНИК ЮРИСТА LAWYER HERALD

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## REFORMS IN THE INVESTMENT LEGISLATION OF UZBEKISTAN

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### ANNOTATION

This article discusses the implementation of an active investment policy and the issues of the modern investment legislation in the country taking into account the main tasks set by the President in the Message of 2020. Besides, the scientific work analyses the features and differences of the previous legislation of the Law of the Republic of Uzbekistan "On Investments and Investment Activities". Moreover, based on the study, the main factors of a favorable investment environment and modern investment policy in the country are identified as an answer to the question of why investors should invest in Uzbekistan today.

**Keywords:** investment, investment agreement, investment legislation, investment subsidy, mediation, state support, tax credit. foreign trade.

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## ЎЗБЕКИСТОН ИНВЕСТИЦИЯ ҚОНУНЧИЛИГИДАГИ ИСЛОҲОТЛАР

### АННОТАЦИЯ

Мазкур мақолада мамлатимизда фаол инвестициявий сиёсатини амалга ошириш, бу борада Президентимизнинг 2020 йилги Мурожаатномасида белгиланган асосий вазифалар ҳамда замонавий инвестиция қонунчилигига оид масалалар қўриб чиқилди. Шунингдек, илмий ишда Ўзбекистон Республикасининг "Инвестициялар ва инвестициявий фаолият тўғрисида"ги Қонунининг ўзига хос хусусиятлари ва аввалги қонунчилик ҳужжатларидан фарқли жиҳатлари таҳлил қилинди. Бундан ташқари, мақолада қулай инвестиция муҳити ва замонавий инвестиция

сиёсатининг асосий омилларини қайд этиш орқали нима сабабли айнан Ўзбекистонга инвестиция киритиш мақбуллиги тўғрисидаги саволга жавоб беришга ҳаракат қилинди.

**Калит сўзлар:** инвестиция, инвестиция шартномаси, инвестициявий қонунчилик, инвестиция субсидияси, медиация, давлат томонидан қўллаб-қувватлаш, солиқ кредити, ташқи сиёсат.

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## РЕФОРМЫ ИНВЕСТИЦИОННОГО ЗАКОНОДАТЕЛЬСТВА УЗБЕКИСТАНА

### АННОТАЦИЯ

В статье, с учётом основных задач указанных в Послании Президента 2020 года рассматриваются вопросы реализации активной инвестиционной политики и инвестиционного законодательства в стране. В научной статье проанализированы новшества Закона Республики Узбекистан "Об инвестициях и инвестиционной деятельности" в новой редакции. На основе проведенного исследования определены основные факторы благоприятной инвестиционной среды и политики в стране как ответ на вопрос, почему инвесторы должны инвестировать именно в Узбекистан.

**Ключевые слова:** инвестиция, инвестиционное соглашение, инвестиционное законодательство, инвестиционная субсидия, медиация, государственная поддержка, налоговый кредит. внешняя торговля.

Uzbekistan is a resource-rich, most populated country, strategically located in the heart of Central Asia. The nominal Gross Domestic Product per capita in Uzbekistan was last recorded at 50 billion US dollars with 250 billion purchasing power parity (PPP) [1]. It is noteworthy that in 2019 Uzbekistan entered the top 20 countries in the world that achieved the greatest results in improving the business environment. It should be pointed out that in the "Doing Business" 2012 ranking, Uzbekistan was in 166th place (an increase of 97 positions). In the 2020 ranking, the country accomplished the best results in protecting minority investors, paying taxes, enforcing contracts and international trade. In fact, the republic moved up from 76th to 69th place in "Doing Business 2020" ranking among 190 countries [2].

Moreover, based on the best international practices, in December 2016 the government developed a program, "Strategy actions in five priority areas of the Republic of Uzbekistan in 2017-2021" [3]. The Strategy is directed to stimulate economic liberalization through the implementation of regulations, including the development of market mechanism, diversification of exports along with the expansion of economic and export potential, amendments of economic development policies due to export promotion and foreign direct investment attraction.

As a result, consistent measures are being undertaken in the country to implement modern, effective approaches and mechanisms for radical improvement and reform of investment policy, as well as to accelerate investment processes and to improve the business environment.

It should be noted that Investment activity is an indispensable factor of socioeconomic development of the country, which is directly linked to the reputation of the state in the

international arena. As a matter of fact, the role of investment for the state's economy is remarkable considering its substantial role in ensuring the sustainable development of the country's economy. In particular, quantitative changes in investment will have a direct impact on the dynamics of development and the systemic economic indicators of the total production volumes, employment rates and diversity of the national economy.

Accordingly, in our country, great attention is paid to investment activities. Along with this, the Republic of Uzbekistan conducts an open, mutually beneficial and constructive foreign policy based on the national interests of the country. Current foreign policy of Uzbekistan is formed taking into account the dynamic changes in the world and the region as well as large-scale reforms within the country.

In January 2020 the President of the Republic of Uzbekistan Shavkat Mirziyoyev in his Address [4] of on setting priorities and tasks for the next five years to the Legislative Chamber and Senate of the Oliy Majlis, was also paid attention to foreign policy and investment. In particular, the President emphasized the need to create the most favorable conditions for business and investment so that our community can receive sufficient income, increase the number of new enterprises and jobs along with consistently pursue an active investment policy in the country for the rapid development of the national economy. He also noted that this year investments in the amount of \$ 23 billion will be mastered with the commissioning of 206 new large production facilities, a significant part of investments amassed in 2020 will be foreign direct investment and loans. It was affirmed that at the same time, in order to support investors, installment payment mechanisms are being introduced, and the state partially compensates for the costs of creating infrastructure. Along with this, the practice of deduction of expenses for the purchase of new technological equipment, construction and modernization of new facilities during the calculation of income tax has been expanded.

In addition, the message identified such tasks as holding the Tashkent International Investment Forum at a high level, implementing public-private partnership mechanisms in transport, energy, roads, medicine, education and other areas of life so as to actively attract foreign investors together with preventing the scourge of corruption to create a real business climate and a favorable investment environment in the country.

It is noteworthy that the World Investment Report 2019 [5] of United Nations Conference on Trade and Development (UNCTAD) noted several positive indicators of the country, on initiating a project to create a special information portal, available in several languages, to provide information on visas, residence permits, registrations, tax mechanisms and other important news in Uzbekistan. It was pointed out that Uzbekistan increased the quota for issuing work permits for highly qualified foreign specialists. Accordingly, Country fact sheet Uzbekistan 2019 [6] a review of foreign direct investment (FDI) shows that recent reforms in the country have successfully affected the flow of direct investment, and in 2018 FDI increased more than 4 times compared to 2017.

In recent years, the country has undergone many reforms to effectively regulate investment activities, the relevant legislation has been revised and regulatory documents have been improved. In particular, the Decrees of the President of the Republic of Uzbekistan "On Measures for Cardinal Improvement of Investment Climate in the Republic of Uzbekistan" [7] and "On measures to Improve the Management System in the Field of Investment and Foreign Trade" [8] and the Resolutions "On measures for the Implementation of the Investment Program of the Republic of Uzbekistan for 2019" [9] and "On Measures to Further Improve the Mechanisms for Attracting Foreign Direct Investment in the Economy of the Republic" [10] were aimed at increasing the efficiency of attracting foreign direct investment in the economy, informing foreign investors about the opportunities and potential of the country, enhancing investment

attraction in priority sectors of the economy, and ensuring the interaction of the investment process with the manufacture of competitive export products.

Moreover, The Decree of the President of the Republic of Uzbekistan "On measures to Implement the Investment Program of the Republic of Uzbekistan for 2020 - 2022" [11] approved the Investment Program of the Republic of Uzbekistan for 2020 - 2022 (hereinafter - the Program), which includes summary forecast parameters for the development of capital investments in 2020 - 2022 as well as forecast parameters for the development and attraction of investments and loans in 2020 - 2022 providing for the development of investments in the amount of 850.5 trillion sums, including 35.5 billion US dollars of foreign investments; targeted program for the commissioning of large production facilities and capacities in 2020, arranging the creation of 206 new production capacities and more than 31 thousand jobs.

Furthermore, on the basis of this regulatory document, the following documents were approved:

- consolidated targeted program for the development of investments and loans in 2020, as well as forecast indicators of its quarterly performance;

- targeted program of investment projects implemented in 2020 with the attraction of foreign loans under the state guarantee of the Republic of Uzbekistan;

- targeted program of investment projects implemented in 2020 with the involvement of foreign direct investment and loans;

- a list of investment projects that require the development, approval and approval of pre-project and project documentation in 2020;

- list of promising investment projects to be developed in 2020.

However, the main document aimed at regulating investment activity in the country - the Law of the Republic of Uzbekistan "On Investments and Investment Activities" [12] (hereinafter - the Law) was adopted in a new edition on December 25, 2019. This law is directed towards regulating relations in the field of investment and investment activities carried out by foreign and domestic investors. It is the only document that combines the main provisions of laws "On Investment Activity", "On Guarantees and Measures to Protect the Rights of Foreign Investors" and "Foreign Investment Law" [13].

The new Law defines as main principles of this sphere are the rule of law, justice and equality of subjects of investment activity, non-discrimination against investors and the presumption of their good faith. It should be mentioned that this law is also notable for the fact that investment relations are regulated by more specific rules, the guarantee of investor rights is increased, and additional requirements are included in the content of investment agreements as well.

In addition, it should be pointed out that previous laws do not distinguish between foreign and local investors whereas the Article 3 of the current law provides clear definition of local and foreign investors.

Obviously, the significance of the definition of investor and investment is essential. In fact, from the perspective of a capital exporting country, the definition identifies the group of investors whose foreign investment the country is seeking to protect through the agreement, including, in particular, its system for neutral and depoliticized dispute settlement. From the capital importing country perspective, it identifies the investors and the investments the country wishes to attract; from the investor's perspective, it identifies the way in which the investment might be structured in order to benefit from the agreements' protection [14].

The third chapter of the law is entitled as "State Guarantees of the Rights of Subjects of Investment Activity and Investments Protection" and Articles 15-23 included legal



norms approving non-discrimination of investors in relation to their citizenship, place of residence or business, their country of origin or investments; the free transfer of funds in foreign currency to and from the Republic of Uzbekistan without any restrictions, on condition that the certain taxes and payments are accomplished. For instance, after the termination of the investment activity, the investor is authorised to freely repatriate the received assets in cash or in form that assets without disregarding the foreign investor's obligations to the Republic of Uzbekistan or towards other creditors. If the subsequent legislation of the Republic of Uzbekistan worsens the conditions for the investment, then the legislation that was in force on the date of investment will be applied within ten years from the date of investment. The investor has the right, at his discretion, to employ those provisions of the new legislation that improve the conditions for his investment.

1. It should be pointed out that the guarantees established by law provide for the assertion that "The state, the recipient of the property, must ensure the implementation of the rights of the investor, enshrined in the norms of investment law" [15. P.281].

2. Moreover, accordingly Stephan W. Schell the specific guarantees aim at implementing structures that are essential for the functioning of a market economy and cover aspects of the rule of law. National and most-favored-nation treatment are designed to bring about equality before the law by ensuring, as a prerequisite for fair competition, a level playing field for the economic activity of foreign and domestic economic actors. The protection against expropriation guarantees respect for property rights as an aspect of the rule of law and an essential prerequisite for market transactions; capital transfer guarantees ensure the free flow of capital in and out of the host state and contribute to the efficient allocation of resources in a global market; and umbrella clauses back up private ordering between foreign investors and the host state by ensuring that contractual and other similar promises vis-à-vis foreign investors benefit from a layer of international law protection in addition to the protections that exist under domestic law. All these standards address problems that businesses face and which concern aspects of the rule of law [16].

Chapter 6 of the Law contains rules providing with benefits and preferences for state support of investments and investment activities, according to which such benefits may include:

give value or property rights of state-owned objects to the investor with preferential or zero redemption;

tax and payments incentives;

subsidizing interest rates on loans received by the investor for implementation of the investment project.

Article 35 of the law supplies an investment tax credit that indicates changing the deadline of fulfilling a tax liability, in which the taxpayer - investor is given the opportunity to reduce the tax payments, that determined over a certain period, by systematically repaying the loan amount and accrued interest in accordance with the Tax Code [17] of the Republic of Uzbekistan.

Governments subsidies business sectors to promote economic growth, offset market imperfections, develop economies of scale and meet social policy objectives [18]. At country or industry levels, government subsidies can affect operational efficiency, production capacity, research and development activities, employment and export competitiveness [19]. Obviously, government subsidies are applied around the world to overcome market imperfections as well as article 36 of the Law states that, The Government of the Republic of Uzbekistan may provide an investment subsidy in the form of financial assistance furnished with investment preferences for the implementation of an

investment project to ensure the necessary engineering and communication conditions, as well as the provision of benefits.

One of the necessary conditions for investors is temporary registration in the territory of which they place their capital. The easy procedure and legal ensuring of obtaining and renewing such permission is of great importance in attracting more investors to the country. So, it is noteworthy that Article 47 approves the norm that Foreign investors - founders (participants) of enterprises with foreign investments have a right to receive an "Investment Visa" and their family members (spouse, parents and children) are allowed to get a "Guest Visa" considering the duration of the investment visawith the possibility of extending its term without leaving the Republic of Uzbekistan by complying with the statement of the President of the Republic of Uzbekistan.

Article 63 of the law strengthens the new multi-stage mechanism for resolving investment disputes. The new Law introduces a new multitiered argument resolution mechanism for investment disputes related to foreign investment that arising during the investment activity of a foreign investor in the territory of the Republic of Uzbekistan. The first tier requires that both parties endeavor to settle the conflicts through negotiations. If the parties fail to resolve the dispute amicably, mediation is the next step. It is noteworthy that Mediation Law [20] does not contain detailed provisions on the procedure for mediation in investment disputes. On mediation explicitly provides that mediation is based on a consensus between the parties to agree on mediation whether the refusal to mediate in a dispute will prevent the escalation of the conflict between the parties. Therefore, it is not clear to what extent mediation is mandatory for investment disputes and the transition of the dispute to the next level. The third level of the dispute resolution mechanism requires the parties to refer the dispute to the national courts of the Republic of Uzbekistan. If the parties are unable to resolve the dispute in court, the dispute may be submitted to arbitration.

Despite the adopted modern legislative documents and stable reforms, as in other sphere of the country, there are still some problems in investment activity, the solutions of which mean increasing the importance of research activities in this area.

For example, according to some foreign experts, the main obstacles to FDI in Uzbekistan are: economic diversification and dependence on commodity prices; low competitiveness; underdeveloped banking sector; state interventionism and difficult general business climate; autocratic regime [21].

Furthermore, as in other areas in investment activity, there are a number of problems associated with the implementation of legal norms as well as problems in the implementation of tax incentives and administrative barriers. In such circumstances, not only creates an unfavorable environment but also in many ways causes many investors to refuse to invest because of fear for their own investments, not only because of a lack of profitability, but more importantly for the complete loss of such investments. In order to eliminate problems, by analyzing theoretical literature on the effective legal regulation of investment activity and based on the experience of leading foreign countries, it is advisable to take the following measures:

- 1) creation of stable investment legislation;
- 2) elimination of existing economic and political barriers that adversely affect the development of investment activity;
- 3) join efforts in the direction of innovative development;
- 4) improve business education;
- 5) the creation of the most optimal economic and legal mechanisms for regulating investment activity;
- 6) the introduction of modern methods to ensure the rights of investors;

- 7) not just extending guarantees for investors, but also supplementing the legal document with legitimate interests, specific features of their protection;
- 8) reduce the tax burden for investors;
- 9) consolidate the legal norm on the investment agreement in the civil code and develop a system of investment agreements
- 10) creation of a non-profit investment risk insurance mechanism.

Moreover, one of the tools that could help eliminate almost all the problems in this area is the development and adoption of a unified investment code. This would make it possible to unify the norms of laws, bring them into line with international standards, and secure guarantees of the rights and legitimate interests of investors in a single codified act.

Along with this, there are very good reviews about Investment activity of our country based on a survey conducted earlier [22]. They considered that Uzbekistan has the best labor force, which is intelligent, hardworking and relatively low cost. The size of the internal and regional market is extremely attractive and there is a pent-up hunger for consumer goods. The central location was seen as enabling the country to become the main transport hub of the region.

Undoubtedly, the reforms in Uzbekistan in recent years, such as legislative updates, liberalization of the foreign exchange market, the provision of special guarantees and support measures (benefits and preferences) and the creation of special economic zones have made the country more attractive place for international capital.

It follows from the foregoing that we can cite many more positive features of the modern investment legislation of the Republic of Uzbekistan. Firstly, Uzbekistan has established a new modern legal framework to provide important rights and assurances to foreign investors and has avoided certain disputes with potential investors. Secondly, Uzbekistan has introduced taxation incentives to encourage FDI including "Investment Tax Credit". Thirdly, the Law established new investor support mechanisms such as "Investment Subsidies". Fourth, a new multi-level mechanism for resolving disputes between investors and the state on investment disputes. Fifth, Uzbekistan has attractive unexploited resources of minerals and appealing explorational potential for additional discoveries. Sixth, Uzbekistan also has abundant resources of land which is suitable for agriculture. Seventh, with a population of nearly 35 million, Uzbekistan is seen as presenting a sizeable market for investment in consumer goods and for services. Eighth, reasonable human resource, at same time with the levels of education and skills of the workforce. Ninth, Uzbek government constantly develops various tools aimed at improving the local business climate. In particular, as a result, according to the world Bank's "Business Registration" rating, Uzbekistan ranked 8th among 190 countries and entered the Top 10 for the first time in history. Tenth, socio-political stability in the country is the most important positive sign of the country. Uzbekistan has not been subject to the abrupt and violent changes in government that often undermine the investment climate in other emerging markets.

The main goal of each investor is to get more profit from their investments and be sure of the complete safety of their investments. For this reason, in the current attractive investment environment in Uzbekistan, which is based on the above positive factors, the introduction of investment activities in accordance with the norms of the new investment legislation may be the most optimal solution for any investor.

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