



ЮРИСТ АХБОРОТНОМАСИ

ВЕСТНИК ЮРИСТА * LAWYER HERALD

ҲУҚУҚИЙ, ИЖТИМОИЙ, ИЛМИЙ-АМАЛИЙ ЖУРНАЛ



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ISSN 2181-9416

Doi Journal 10.26739/2181-9416

ЮРИСТ АХБОРОТНОМАСИ

3 СОН, 1 ЖИЛД

ВЕСТНИК ЮРИСТА

НОМЕР 3, ВЫПУСК 1

LAWYER HERALD

VOLUME 3, ISSUE 1



TOSHKENT-2020

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TERM OF SUBJECTS OF INVESTMENT ACTIVITY: THEORETICAL AND COMPARATIVE LEGAL ANALYSIS

For citation (иктибос келтириш учун, для цитирования): JAMOLOV A.N. TERM OF SUBJECTS OF INVESTMENT ACTIVITY: THEORETICAL AND COMPARATIVE LEGAL ANALYSIS // Юрист ахборотномаси - Вестник юриста - Lawyer herald. № 3 (2020), P.44-48.



№3 (2020) DOI <http://dx.doi.org/10.26739/2181-9416-2020-3-5>

ANNOTATION

In this article the concept of subjects of investment activities, including their types and general description is explained. The article provides definitions for the terms such as the subject of investment activity, individual, citizen, sole proprietor, legal entity, resident, investor, contractor, user of capital investment objects, and includes comparative analysis of the new and old legal acts on investment and investment activity.

Keywords: subject of investment activity, individual, citizen, individual entrepreneur, legal entity, resident, investor, user of capital investment objects.

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ИНВЕСТИЦИЯ ФАОЛИЯТИ СУБЪЕКТЛАРИ ТУШУНЧАСИ: НАЗАРИЙ ВА ҚИЁСИЙ-ҲУҚУҚИЙ ТАҲЛИЛ

АННОТАЦИЯ

Ушбу мақолада инвестиция фаолияти субъектлари тушунчаси, уларнинг турлари ва умумий тавсифи баён этилган. Мақолада инвестиция фаолияти субъекти, инвестиция фаолиятининг иштирокчиси, жисмоний шахс, фуқаро, яқка тартибдаги тадбиркор, юридик шахс, резидент, инвестор, пудратчи, капитал қўйилма объектларидан фойдаланувчи тушунчалари алоҳида-алоҳида таъриф берилиб, янги ва эски таҳрирдаги инвестициялар ва инвестиция фаолияти тўғрисидаги қонун ҳужжатлари қиёсий таҳлил қилинган.

Калит сўзлар: инвестиция фаолияти субъекти, инвестиция фаолиятининг иштирокчиси, инвестиция фаолияти, жисмоний шахс, фуқаро, якка тартибдаги тадбиркор, юридик шахс, резидент, инвестор, пудратчи, капитал қўйилма объектларидан фойдаланувчи.

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ПОНЯТИЕ СУБЪЕКТА ИНВЕСТИЦИОННОЙ ДЕЯТЕЛЬНОСТИ: ТЕОРЕТИЧЕСКИЙ И СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ

АННОТАЦИЯ

В статье даются понятия, виды и общее описание субъектов инвестиционной деятельности. В статье рассматриваются субъекты инвестиционной деятельности в качестве физического лица, индивидуального предпринимателя, юридического лица, резидента, нерезидента инвестора, подрядчика, пользователя объектов капитальных вложений, а также проведен сравнительный правовой анализ новых и старых законодательств об инвестициях и инвестиционной деятельности.

Ключевые слова: субъект инвестиционной деятельности, физическое лицо, гражданин, индивидуальный предприниматель, юридическое лицо, резидент, инвестор, пользователь объектов капитальных вложений.

Today, one of the main functions of every developing country is to attract investment to the economy. In this regard, a number of steps are being taken in our country, as well. In particular, practical work has been accomplished to introduce public-private partnership mechanisms, which are one of the most effective means of attracting investment in a number of social and industrial sectors of the country, including health, education, infrastructure, information technology, electrical engineering, transport and energy.

As a result of these efforts, in 2019, the rate of foreign direct investment amounted to \$ 4.2 billion, which was 3.7 times more, in other words increase by \$ 3.1 billion in comparison to 2018. The share of investment in GDP reached to 37% [1].

During his address to the Oliy Majlis on January 24, 2020, the President of the Republic of Uzbekistan Shavkat Mirziyoyev stated: "I would like to emphasize that a significant part of the investments that will be made in 2020 will be foreign direct investment and loans. In order to support the investors, additional mechanisms are being introduced such as paying taxes by installments and partially covering the cost of infrastructure construction by the state".

One of the main factors of increasing investment attractiveness is stability, accuracy, conciseness and clarity of the current legislation in the country for investment entities. As lawyer A. Vedernikov [2] asserts that "supporting the expansion of investment relations should be the main purpose of state regulation."

On December 25, 2019, the Law of the Republic of Uzbekistan "On Investments and Investment Activities" was adopted [3]. With the entry into force of this law on January 26, 2020, changes and reforms in the field of investments and investment activities have been implemented and a single unified law, which is directly applicable in investment area have been adopted into practice.

In accordance with Article 9 of the Law of the Republic of Uzbekistan "On Investments and Investment Activities", the concept of investment entities is defined as citizens,

individual entrepreneurs and legal entities of the Republic of Uzbekistan, residents, public administration and local authorities, foreign countries, administrative or territorial bodies of foreign countries, international organizations and foreign legal entities and citizens, as well as stateless persons are considered as subjects of investment activity. As it can be seen from this norm, the subjects of civil law are simultaneously the subjects of investment activity, as well.

In comparison to the Law of the Republic of Uzbekistan "On investment activity" of 09.12.2014 [4], according to the article 9, the following categories are entitled to be subjects of investment activity (investors and parties to the investment activity):

citizens (individuals) of the Republic of Uzbekistan, legal entities which are residents of the Republic of Uzbekistan;

governmental bodies and local governmental institutions;

foreign states, administrative or territorial bodies of foreign states, international organizations and foreign legal entities and citizens, as well as stateless persons.

Investors can act as customers (depositors), lenders, buyers, and also perform the functions of a party to the investment activities in accordance with the law.

According to Russian scholars V.V.Gushin and A.A.Ovchinnik, the subjects become investors when they invest in production for profit [5]. B.Samarxodjaev believes that the legal status of a foreign investor is regulated by special (foreign and national) legislation [6].

Parties to the investment activity act as a contractor on the basis of an agreement with an investor.

If we pay attention to the development trends of the definition given to the subjects of investment activity, we can understand that in the former law, the subjects of investment activity are referred to as investors and participants of investment activity. Also, the Law does not reflect the fact that in accordance with the law, investors can act as a customer (investor), lender, buyer, as well as a participant in investment activities, which was stated in the Law adopted on December 25, 2019.

In addition, it can be seen that in the former version of the law, individual entrepreneurs were not recognized as subjects of investment activities.

In the legal literature, the notion of the subject of investment activity is defined in different ways. In particular, A.V.Mayfat divides the subjects of investment activity into the following types: organizer of investment activity, investor, professional participants of investment activity [7]. According to I.Y.Selovalnikova, the theory of "subjects of investment activity" includes the concept of "collective" or "institutional" investors [8].

Although the law which was adopted on December 25, 2019 defines the concept of subjects of investment activity, the concept of participants in investment activity still remains ambiguous. According to the author, the concept of participants in investment activities should also be clearly defined in the law. Since these cases clarify the issue of legislation, privileges and additional guarantees which are applicable to the subjects of investment activity and participants of investment activity.

First of all, citizens of the Republic of Uzbekistan are recognized as subjects of investment activity. In accordance with Article 5 of the Law of the Republic of Uzbekistan "On Citizenship of the Republic of Uzbekistan" [9], adopted in the new edition on March 13, 2020, the following are citizens of the Republic of Uzbekistan:

a) an individual, permanently residing in the Republic of Uzbekistan as of July 28, 1992, without having a foreign citizenship and wishing to become a citizen of the Republic of Uzbekistan;

b) an individual, who lived in the territory of Uzbekistan and left Uzbekistan for study before July 28, 1992 and received continuous education or served in the military

and returned to Uzbekistan within one year after completion of study or military service and permanent residence in the Republic of Uzbekistan, without having a foreign state citizenship;

c) an individual, who has the citizenship of the Republic of Uzbekistan on the date of entry into force of this Law;

d) an individual, who has acquired the citizenship of the Republic of Uzbekistan in conformity with this Law.

Individuals, who are actually in the Republic of Uzbekistan for a total of more than 183 calendar days during any consecutive 12-month period for which the relevant tax period begins or ends, shall be recognized as tax residents of the Republic of Uzbekistan.

According to Article 6 of the Law of the Republic of Uzbekistan "On guarantees of freedom of entrepreneurial activity" [10], adopted in the new edition on May 2, 2012, individual entrepreneurship is an act of carrying out of entrepreneurial activity by a physical person without company formation (individual entrepreneur).

The definition for the individual entrepreneur is also provided in the article 31 [11] of Tax code of the Republic of Uzbekistan which was adopted in a new edition. According to the article, a sole proprietor is an individual entrepreneur who is duly registered and carries out entrepreneurial activity without forming a legal entity.

According to Article 39 of the Civil Code of the Republic of Uzbekistan [12], a legal entity is an organization that owns, maintains or operates separate property and is liable for its obligations with this property, can acquire and exercise property and personal non-property rights on its own behalf, bear obligations, be a plaintiff and defendant in court. Legal entities must have an independent balance sheet or budget.

According to Article 33 of the Tax Code of the Republic of Uzbekistan, the following legal entities are tax residents of the Republic of Uzbekistan:

- 1) legal entities of the Republic of Uzbekistan;
- 2) foreign legal entities recognized as tax residents of the Republic of Uzbekistan for the purposes of application of these international agreements in accordance with international agreements of the Republic of Uzbekistan on taxation;
- 3) foreign legal entities, the actual place of management of which is the Republic of Uzbekistan, unless otherwise provided by the international agreement of the Republic of Uzbekistan on tax issues.

If we study the legislation of foreign countries in this regard, article 4 of the Law of the Russian Federation "On investment activities in the form of capital investments in the Russian Federation" adopted on February 25, 1999 [13] highlights the subjects of investment activities. According to the article, the subjects of investment activity are investors, customers, contractors, users of capital investment objects and other persons.

Individuals and legal entities, associations of legal entities that do not have the status of a legal entity and established for cooperation on a contractual basis, state bodies, local state bodies and foreign business entities (foreign investors) may be act as investors in the Russian Federation.

The customer can be individuals and legal entities authorized by investors to implement investment projects. The customer can be an investor.

Non-investor customers have the right to own, use and dispose of capital investments for the period and within the powers specified in the state contract concluded in accordance with the legislation of the Russian Federation.

Contractors - natural and legal entities, performing works on the basis of the contract with the customer on the basis of the contract, concluded in accordance with the Civil code of the Russian Federation and (or) the contract of the state or local government.

Users of capital investment objects - individuals and legal entities using capital

investment objects, including governmental bodies of this state and foreign countries, local state authorities, foreign states, international associations and organizations. Users of capital investment objects can be investors.

In conclusion, we can say that the interpretation of definition of the concept of investment entities by national and foreign legal scholars varies from the notion specified in our legislation. Thus, the definition can be enhanced with the followings "the organizer of investment activities", "investors", "professional participants in investment activities".

In addition, as it was mentioned above, at present, there is a shortage in defining the notion of subjects of investment activity and participants of investment activity in our national legislation. As a result, these circumstances are leading to misunderstandings in ascertaining the rights and obligations of these individuals, the applicable legislation, the privileges and preferences.

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