

**ATTRACTING FOREIGN INVESTMENT TO UZBEKISTAN:
CHALLENGES AND PROSPECTS**

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Abstract: *establishing a favourable business and investment climate that coincides with investors' interests is an important factor of successful cooperation among States in the sphere of international investment activities.*

Uzbekistan, with a population of more than 33 million people, is the most populous area in Central Asia, which also has the potential to become the largest economy in the region. Despite the fact that the government has a complex of laws, aimed at attracting greater foreign investment into the country based on the regulation of investment activity, foreign investors still experience substantial difficulties due to variances in enforcement and interpretation of these laws. This article offers a comprehensive overview of challenges of attracting foreign investment into Uzbekistan.

Keywords: *foreign investment, Foreign Direct Investment (FDI), investment protection, laws on investment, Alternative Dispute Resolution (ADR).*

**ПРИВЛЕЧЕНИЕ ИНОСТРАННЫХ ИНВЕСТИЦИЙ В
УЗБЕКИСТАН: ПРОБЛЕМЫ И ПЕРСПЕКТИВЫ**
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Аннотация: *создание благоприятного делового и инвестиционного климата, совпадающего с интересами инвесторов, является важным*

фактором успешного сотрудничества государств в сфере международной инвестиционной деятельности.

Узбекистан с населением более 33 миллионов человек является самой плотно населенной страной в Центральной Азии, а также имеет потенциал стать крупнейшей экономикой в регионе. Несмотря на то, что у правительства есть комплекс законов, направленных на привлечение большего объема иностранных инвестиций в страну на основе регулирования инвестиционной деятельности, иностранные инвесторы по-прежнему испытывают значительные трудности из-за различий в применении и толковании этих законов. В этой статье предлагается всесторонний обзор проблем привлечения иностранных инвестиций в Узбекистан.

Ключевые слова: *иностранные инвестиции, прямые иностранные инвестиции, защита инвестиций, законы об инвестициях, альтернативное разрешение споров (АРС).*

To the opinions of many investors Uzbekistan has become a great opportunity in the CIS. The country is considered to be politically stable, by attracting foreign investment conditions to serious investors. Uzbekistan's investment legislation is one of the advanced amongst legislations of the CIS, incorporating major provisions of international investment law, particularly, regulations on guarantees of the rights of foreign investors, certain preferences for investors and others. A number of innovations for the first time were fixed in the laws "On Foreign Investments", "On Investment Activities" and "On Guarantees and Measures for the Protection Foreign Investors' Rights" of 1998 which were not mentioned in most of other CIS countries. The government of Uzbekistan has recently recognized the need to improve and streamline business and investment legislation which is still perceived to be rather complicated, often contradictory, and not fully consistent with international legal norms. On December 25, 2019, the President of Uzbekistan Sh. Mirziyoyev signed the Law "On Investments and Investment Activities" serves as a unified document that combines the main provisions of the laws "On Foreign Investments", "On Investment Activities" and "On Guarantees and Measures to Protect the Rights of Foreign Investors", which all lost their validity when the Law came into force in January, 2020.

If the laws on investment are examined, one can realize the persistent gaps, unclearness, declarative sentences and other legal shortcomings in the laws mentioned above. Foreign investors, experts and banks have been making suggestions on perfecting the legislation on investment, customs, banking and anti-monopoly, while some issues have apparently not yet been resolved and investment policy does not fully conform to the WTO, EBRD standards and the principles of PCA [1].

Until recently, new or updated legislation has continued to leave room for interpretation and has contained rather unclear definitions regarding foreign investments. In many cases private businesses faced difficulties associated with

enforcement and interpretation of the legislation. For example, there was not clear determination of the term “entity with foreign investment” in the previous laws and the new Law “On Investments and Investment Activities” provides for the possibility of the creation of good climate for FDI in Uzbekistan [2].

According to the law disputes concerning foreign investments can be resolved in one of the following ways:

- by negotiation between the parties to the dispute and/or by mediation,
- by taking a decision by the economic court of Uzbekistan, through arbitration in accordance with rules and procedures, established by international agreements on investment disputes to which Uzbekistan is a party [3].

Public laws are subject to parliamentary approval in Uzbekistan. Unlike public laws, regulations and rules are usually developed by relevant government agencies and are approved by the President or relevant ministers.

Most rule-making and regulatory authority in Uzbekistan remains at the domestic level, only a minor part of legal, regulatory and accounting systems are transparent and fully consistent with international norms. Despite the efforts of the Uzbek Government to unify local accounting rules with international standards, local practices are still document- and tax- driven with an underdeveloped concept of accruals.

Foreign investors face obstacle as foreign entity registration which is a major problem in Uzbekistan. A lot of documents are required to register such entities and the size of registration fees of foreign entities are higher than the fees comparing to the entities created by national entrepreneurs. The problem of the place of foreign investment entity’s registration has not totally been solved. According to normative documents, foreign investment entity depending on the size of its charter capital passes state registration either at the Ministry of Justice (and at its territorial subdivisions) or at registration authorities at the city (district) khokimiyats. This causes confusion for entrepreneurs and civil servants, and complicates management of the registration procedure and execution of an effective control over compliance with the current legislation. If the sizes of a charter capital of the entities are changeable, then those entities are re-registered, especially, those that were registered by khokimiyats, must be re-registered by the Ministry of Justice or, vice versa. Besides they must be registered at the bodies of statistics, in order to be included to the State Statistics Committee of Uzbekistan. It is necessary to submit again a package of documents, to pass the bureaucratic procedure of registration and to spend time on expecting the decision of a specific authority etc.

To unify registration procedures of foreign investment entity and provide due control over observance of the procedure, it is necessary to delegate the registration-related functions to one single authority and exclude the repeated re-registration of such an entity; this should be extended to registration of all business entities. It would be enough to give a short information to the authority annually about the main summary of entity’s activity (changes of charter capital, balance sheet etc.).

Uzbekistan adopted Article VIII of the IMF Charter in October 2003 and, thus, committed to currency convertibility for current account transactions [4]. Foreign investors are guaranteed transfer of funds in foreign currency into and out of Uzbekistan without limitation, provided they have paid all taxes and other financial obligations in accordance with legislation. Local authorities may stop the repatriation of a foreign investor's funds in the following cases:

- in case of insolvency and bankruptcy;
- criminal acts made by the foreign investor;
- or when directed by arbitration or a court decision.

The greatest operational concerns facing foreign and private investors are access to currency conversion, frustrating bureaucratic processes, an onerous tax system, overregulated banking, and punitive customs laws and procedures.

Uzbek legislation favouring the free cross-border movement of foreign investors' capital has to deal not only with the access to Uzbekistan as the host country, but also with the substantive and procedural safeguards protecting the investor's rights, including quick and non-restricted conversion of their capital to freely convertible currency. After making the mandatory payments, foreign investors must have opportunity to repatriate freely their revenues. Attraction to the Republic of Uzbekistan of foreign direct investments and their repatriation, as well as the realization of the rights acquired in connection with the implementation of foreign direct investments, are carried out without restrictions today [5].

Elimination of double taxation should be realised for foreign legal entities, that is the levying the taxes from both the main company and from its affiliate. Affiliates of the foreign company should not be considered as the juridical persons according to Uzbek legislation [6]. Foreign enterprises need to satisfy Tax Code exemption requirements to claim double tax treaty benefits on Uzbekistan-sourced income. Non-residents should provide tax residence certificates confirmed by the competent authority in their country of residence to the beneficiary. Not only large investors but also small and medium-sized enterprises with foreign investments must be provided with tax privileges and incentives.

In 1996 the Law of the Republic of Uzbekistan "On competition and restriction of monopolistic activities in the market" was adopted. It fixes legal bases for the prevention, restriction of monopolistic activity and unfair competition and is directed towards providing conditions for the formation of a competitive market [7]. It is necessary in country to exceed the negative consequences of excessive government intervention and discretion in economic activity and to take antimonopoly measures against establishing monopolistic prices. The actions for activating of the privatisation process and the practical resolution of antimonopoly issues are essential to open the doors for external capital investments.

It should be mentioned that foreign investors have not always trust in the national courts, including economic courts of the Republic of Uzbekistan,

particularly in regions where the supremacy of bureaucracy and the loyalty to state interests and national entrepreneurs are observed. Taking into account, the above-mentioned facts, foreign investors prefer to resolve the disputes at ad hoc arbitration or at international arbitration courts outside of Uzbekistan.

If we speak about the ADR in Uzbekistan, it should be mentioned that there is no precise legislation regulating mediation but arbitration in Uzbekistan. Article 130 of the Economic Procedural Code requires plaintiffs to attempt to settle a dispute amicably before taking any lawsuit to economic courts [8]. Providing documentary evidence of an attempt to settle a dispute amicably is a mandatory legal requirement in Uzbekistan. In practice, this mandatory form of mediation is treated as having been complied with if a pre-judicial notice of default has been delivered to the defendant in writing. Alternative dispute resolution in turn is well developed and regulated by the Law on Arbitration. The Law on Arbitration introduces the possibility of establishing arbitration courts as an alternative to settling commercial disputes in state economic courts [9].

The shortcomings of legal regulation of foreign investments in Uzbekistan can be eliminated in different ways, i.e. by making amendments and changes to legal acts, determining the conditions for regulation of foreign investments. The perfection of currency legislation is needed by delimitation of operations relating to the use of capital movement and on establishment of FDI. There are also several issues in the Law “On bankruptcy” of the Republic of Uzbekistan, which was adopted in 2003. This law scored “low compliance” when compared with international standards in the EBRD’s 2004 Insolvency Sector Assessment. The Insolvency Law of the Republic of Uzbekistan is particularly deficient in addressing the issue of reorganisation. Today, the reorganisation provisions provide for virtually no supervision of the debtor company and prescribe inadequate requirements for the qualification of insolvency administrators, who play an important role for the reorganisation process. There is no institutional base for the activity of independent administrators and their professional organization has not been created as well. The issues of specialization of courts on bankruptcy are still existed. Generally, the Law “On Bankruptcy” from 2003 is more aimed at the liquidation of the company, not at the rehabilitation of it [10]. All of these issues can affect the interests of foreign investors, either debtors or creditors. Finally, it would be worthwhile for the law to address the matter of cross-border insolvency proceedings too.

The further perfection of investment processes in Uzbekistan requires harmonization of national investment law of Uzbekistan in line with International and the EU law in the sphere of investment. This process goes through adapting of existing laws concerning foreign investment to European and International legal practice.

It is expected that new laws will address the bilateral and multilateral treaties of Uzbekistan which will be designed to protect the interests of foreign investors. It is necessary to pass the special investment laws, particularly Investment Code in the Republic which unites the norms regulating investment

activity. In this way it will be possible to provide for favourable, legal climate for foreign investments, mainly, a real mechanism of its practical functioning, which will protect the interests of foreign investors and conform the recommendations of WTO and EBRD rules.

Many positive changes in the field of foreign investment have been made in recent years.

The Uzbek Government under the new leadership of the President Shavkat Mirziyoyev began the liberalization of economy by improving fiscal, trade, tax, investment policy, that was much welcomed by international financial institutions, such as the World Bank, the International Monetary Fund, EBRD, and ADB. One of the important measures in this sphere was to start the convertibility of national currency in September of 2017. From the first days of his presidency Mirziyoyev commenced the policy of making the national economy more attractive for foreign investors by improving the investment climate in the country. The Uzbek government is working today with foreign consulting companies, investment banks and other international financial institutions to realize vast economic and social reforms. The Strategy of Actions on further development of Uzbekistan in 2017-2021 which was initiated by the President of the country plays an important role in regulating all these reforms and it serves as a roadmap to them [11].

The main features of the Strategy are:

1. The Strategy acknowledges the existing problems and challenges of all fields in today's Uzbekistan. Improving the investment climate, active attraction to the economy and provinces of foreign investment, especially foreign direct investment is one of the most important tasks of the Strategy;

2. This document was for the first time adopted through the direct dialogue between the Government and the people.

3. The Strategy is not just a document; it is the Guidance for dramatic changes, leading to modernization of the country.

4. Uzbekistan achieved significant results in the development of friendly and mutually beneficial relations with foreign countries, primarily with neighboring countries.

In particular, according to the Strategy "Priority areas of development and liberalization of the economy" the Project will provide its support in improving the investment climate to attract foreign direct investments to the economy and the regions to create jobs. The following results are expected in the new future:

- a) Focused on the international best practices development of proposals for further improvement of the legal framework for attracting foreign investments into the country, as well as analysis of scenarios of economic liberalization with an assessment of their impact on various segments of the economy and society.

- b) Support in strengthening capacities of members of the Parliament and specialists of government agencies in the field of attracting investments, as well as raising awareness of the general public about the reforms in this area.

Summarizing all the above mentioned it is possible to come to the following conclusion: despite the existing problems, dramatic changes have occurred in Uzbekistan. The Uzbek leadership has confirmed its innovative and effective internal and foreign policy, which is important not only for Uzbekistan, but also for its foreign partners interested in a stable and prosperous Central Asia.

Today the priority direction of the social and economic development of Uzbekistan like of any state of the world is aimed at the formation of an attractive investment environment. Therefore, for Uzbekistan consideration of the challenges of attracting foreign investment into Uzbekistan is of great importance in achieving sustainable development, increasing incomes and improving the living conditions of the Uzbek people.

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