The Peculiarities of Modern Investment Legislation of the Republic of Uzbekistan

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Abstract
Today the operating legal regulations provide an adequate state of guarantees of protection, tax benefits and preferences, incentives for foreign investors as well as government introduces new legal amendments and regulatory mechanisms to fulfill its obligations to ensure more favorable investment climate.

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 2021. 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 environment, investment legislation, investment policy, investment subsidy, mediation, state support, tax credit, foreign trade

1. Introduction
Nowadays considering a growing economic competition in the world, as a key factor of stability, it is important to increase the investment attractiveness of the country, expand production and take a strong position in foreign markets. In turn, owing to investments, production will be technically and technologically modernized and with the implementation of strategic and important investment projects it will be possible to achieve economic development, extensive employment, improved living standards and welfare.

Before analyzing the modern investment legislation of the Republic of Uzbekistan, it is advisable to provide information on the potential and current economic opportunities of the country. 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].

Furthermore, 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 [4].
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.

2. Regulatory documents governing investment activities

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.


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" [9] 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” [10] (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” [11].

3. Features of modern investment legislation

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. The concept of investment was defined as following:

“investments — tangible and intangible assets and rights to them, including intellectual property rights, as well as reinvestments, invested by an investor on the basis of risks in social facilities, entrepreneurial, scientific and other activities for profit, which may include:

- funds, including cash (including foreign currency), targeted bank deposits, shares, stocks, bonds, bills and other securities;
- movable and immovable property (buildings, structures, equipment, machinery and other material values);
- intellectual property rights, including patented or non-patented (know-how) technical, technological, commercial and other knowledge, drawn up in the form of technical documentation, skills and production experience, necessary for organizing a particular type of production, as well as other values, not prohibited by the legislation of the Republic of Uzbekistan”.

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. 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.

4. Benefits and preferences for state support of investments and investment activity

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.

Section 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 [12] of the Republic of Uzbekistan.

Section 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.

Chapter 9 of the Law stipulates that foreign investors and foreign investments are provided with a fair and equal treatment, their full and constant protection and safety. This regime cannot be less favorable than the regime defined in international treaties of the Republic of Uzbekistan. Moreover, the legal regime for foreign investment can not be less favorable than the corresponding regime for investments realized by legal entities and individuals of the Republic of Uzbekistan. Besides that, this chapter includes legal norms on Attraction of foreign workers, Freedom of Movement and Investments Insurance.

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 visa with 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.

In addition, chapter 11 of the law established the rules regarding the regulation principals of the Investment Activity outside the Republic of Uzbekistan. Based on these norms, individuals and legal entities - residents of the Republic of Uzbekistan have the right to carry out investment activities outside the Republic of Uzbekistan.

What is more, with the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 264 of April 30, 2020, the Regulation “On Procedure for Notification of the Application of the Guarantee Established by Article 19 of the Law of the Republic of Uzbekistan on Investments and Investment Activities” [13] was approved. Based on this provision, a foreign investor who finds himself in the described situation must notify the appropriate authorized body in writing of the application of the guarantee:

- a servicing bank - in the event of the introduction of additional requirements that complicate the repatriation procedure or reduce the amount of income (profit) of a foreign investor transferred abroad, except as provided by law;
- bodies carrying out state registration of legal entities - in the case of the introduction of quantitative restrictions on investment volumes and other additional requirements for the size of investments;
- Ministry of Foreign Affairs and (or) the Ministry of Internal Affairs - in the case of the introduction of additional procedures for processing and renewing visas of foreign investors;
- Ministry of Investments and Foreign Trade - in the presence of an investment agreement that provides a foreign investor with guarantees and support measures additional to those implemented by law (under the investment conditions specified in it). A notice can be sent at any time after the adoption of an act of legislation that worsens the conditions of investment. The investor must indicate in it the circumstances, assuming own standpoints, worsening the conditions of investment, and the regulatory act, the provisions of which he intends to apply during the term of the guarantee. Notification - the basis for the authorized body to apply for foreign investors the legislation in force on the date of investment. Regardless of when it is sent, the notice is effective from the moment the act of legislation comes into force that worsens the conditions for investment.

5. Investment agreement with the Government of the Republic of Uzbekistan

The chapter 8 of the Law establishes the procedure for concluding and terminating an investment agreement with the Government of the Republic of Uzbekistan, along with the rules on initiation proposals for concluding such an agreement. According to the article 40, the Government of the Republic of Uzbekistan may conclude an investment agreement in order to ensure the fulfillment of obligations by foreign investors, who are provided by mutual agreement with additional
guarantees and support measures (benefits and preferences). An investment agreement with the Government of the Republic of Uzbekistan without fail is concluded if the Government of the Republic of Uzbekistan provides a foreign investor with additional guarantees and support measures (benefits and preferences) in the framework of state support for investments and investment activity.

On April 30, 2020 approved another regulatory document regarding the Investment Agreement with the Government of the Republic of Uzbekistan. This is the Regulation “On the Procedure for Concluding, Amending, Terminating and Implementing Investment Agreements Between the Government of the Republic of Uzbekistan and Foreign Investors” [14].

It is known that, an Investment Agreement with the Government is concluded to provide the investor with additional guarantees and support measures (benefits and preferences) in addition to those established by law. This may be a government guarantee, a special customs, tax and payment regime, assistance in the implementation of projects, inclusion in an investment program, etc. But it is impossible to give an investors’ exclusive rights that create his dominant position in the market. In this case, additional guarantees and measures are provided in each case to foreign entities investing in priority sectors, ensuring:

- sustainable economic growth, progressive technological changes in the country's economy;
- strengthening and expanding the export potential of the republic, its integration into world economic relations.

It should be taken into account that additional privileges on the payment of taxes, customs and other obligatory payments are provided to established enterprises with foreign investment only for a clearly defined period and cannot be unlimited. An investment contract, as well as amendments and additions to it, should be concluded in writing form. The procedure is the same in both cases. On behalf of the Government, the agreement is signed by the Ministry of Investment and Foreign Trade. The initiator is the investor - independently or jointly with state and with economic management bodies, local executive authorities or business entities.

To conclude an investment agreement with the Government of the Republic of Uzbekistan, a foreign investor, independently or jointly with the relevant project initiators, represents the Ministry of Investment and Foreign Trade of the Republic of Uzbekistan (hereinafter - The Ministry) or the Agency for Attracting Foreign Investment under the Ministry of Investment and Foreign Trade of the Republic of Uzbekistan:

- a statement indicating information about the intention to conclude an investment contract and make investments in the investment activity object, as well as on the experience (if any) of implementing investment projects;
- draft investment agreement;
- the business plan of the project, executed on the basis of a feasibility study (feasibility study), which, in cases asserted by law, was examined by authorized bodies.

In turn, the Ministry or the Agency receives the conclusions of interested state bodies of the Republic, including the Ministry of Justice (concerning the legal expertise of the draft investment agreement), the Ministry of Finance and the Ministry of Economic Development and Poverty Reduction (regarding the financial and economic assessment of the investment project), the State Customs Committee and State Tax Committee (in terms of providing foreign investors and (or) the newly created enterprise with foreign by investments of guarantees and support measures (benefits and preferences) additional to those established by law).

The draft contract and other materials are considered within 15 days from the date of receipt. If additional study, verification or other measures are required, the period may be extended by no more than a month. The investor will be informed about this in written form. A draft investment agreement acknowledged by all authorized bodies is submitted to the Cabinet of Ministers which...
considers and approves it in case of disagreements, returns it for revision. The approved agreement is signed by the Ministry, afterwards the authority body prepares a draft government decision on the approval of the agreement and presents it to the Cabinet of Ministers. The contract comes into force from the date of adoption of the act or within the period specified in it.

Moreover, the Ministry monitors the progress by the foreign investor in fulfilling obligations arising from the investment agreement. Additional guarantees and support measures (benefits and preferences) are terminated upon expiration of the investment contract or may be terminated before the expiration of such a period in the manner prescribed by the investment contract.

It should be noted that the procedure described above does not apply to investment agreements concluded with regional authorities in the implementation of projects with a share of foreign investment in the equivalent of not more than $10 million.

6. Settlement of Investment Disputes

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 [15] 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 [16] 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.

7. Conclusion

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. 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.

Along with this, it is important to note that the most important is the successful implementation
of these new legal norms of investment activity to further increase investment attractiveness, increase the volume of foreign investment in the economy and improve the business environment in our country. According to President Shavkat Mirziyoyev:

“Investment is the driver of the economy, in other words, its heart. There is no doubt about it. Obviously, new technologies, advanced experience, highly qualified specialists enter all sectors and spheres, all regions owing to investment activities and indeed, entrepreneurship will be developed rapidly” [17].

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