

МІЖНАРОДНЕ ПРАВО ТА ПРАВО ЄВРОПЕЙСЬКОГО СОЮЗУ

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FEATURES OF THE OF INTERNATIONAL LEGAL REGULATION OF INVESTMENTS AT THE UNIVERSAL LEVEL

ОСОБЛИВОСТІ МІЖНАРОДНО-ПРАВОВОГО РЕГУЛЮВАННЯ ІНВЕСТИЦІЙ НА УНІВЕРСАЛЬНОМУ РІВНІ

This article focuses on international investment, the definition of international conventions, multilateral international treaties, bilateral international agreements, particularly the promotion of investment activities, protection of international investments.

Key words: *international investment, international conventions, international investment agreements, bilateral intergovernmental agreements.*

Статтю присвячено питанням міжнародних інвестицій, визначенню міжнародних конвенцій, багатосторонніх міжнародних інвестиційних договорів, двосторонніх міждержавних угод, особливостей сприяння інвестиційній діяльності, захисту міжнародних інвестицій.

Ключові слова: *міжнародні інвестиції, міжнародні конвенції, багатосторонні міжнародні інвестиційні договори, двосторонні міждержавні угоди.*

Статья посвящена вопросам международных инвестиций, определению международных конвенций, многосторонних международных договоров, двусторонних межгосударственных договоров, особенностям содействия инвестиционной деятельности, защите международных инвестиций.

Ключевые слова: *международные инвестиции, международные конвенции, международные инвестиционные договоры, двусторонние межгосударственные соглашения.*

Modern understanding and fundamental investments and investment process that existed in all times and all nations, to the economy consists of and grows with the development of the market. After the formation of national and international markets for investments and investment process becoming of paramount importance to the national and global economy. In other words, the basis of modern market economies of all countries and the world economy as a whole represent relations associated with investing in the production of material and spiritual values [1]. State investment policy from a legal point of view, is the creation of a favorable investment climate for foreign investment, which involves the use of national regulation and national legal forms and methods, and, consequently, international law and multilateral to bilateral and regional levels. Legal regulation of investment relationships means primarily the formation of stable legal guarantees to foreign investors who are independent of subjective reasons should always encourage investment in production, i.e. the investment.

Formation of a competitive economic structure of society requires the mobilization of all national resources, the use of absolute national benefits. The investment source can't remain ignored and target objects investments that are outside the country and who are able to enhance the rate of economic growth. For individual national economies, large-scale international investment diversification activities, or in other words, receipt and utilization of foreign investment, determine basic long-term and usually irreversible mechanisms of highly integrated economic development.

Much too important is the problem in countries with developing economies, including Ukraine. Among the potential sources of resources for market transformation of their economies, stands out foreign investment. Also, it is necessary to focus that the positive results from the implementation of international investment law countries formed after enabling citizens, legal entities, states act as exporters of capital investment to those countries where the tax rate over the optimal level of profit in similar areas of the economy more. These factors stimulate investment exporting countries to more rapid economic development, liberalization of local investment, tax legislation.

They are able to provide the scale and pace of structural adjustment through the development of market economy, and thus more organic integration of national markets to international.

Great importance are the works of foreign authors (D. Steiner, I. Ansof, D. Brandenburg, S. Beer, J. Forester, S. Uemy etc.) for evaluating the effectiveness of investments in market conditions, (D. Karro, P. Zhyuyar) on the protection of investments in international treaties. An important contribution to the economic theory on the investment policy and the effectiveness of capital investments have also Ukrainian scientists V. Alexandrov, O. Alimov, Y. Bazhal, E. Bersheda, I. Lukin, V. Shevchuk, E. Shilov and others.

Depending on the maturity of national economies, their level of integration into the world economy and emerging policy on foreign investment as part of the international movement of capital. In countries that have consistently engaged in encouraging foreign investment activity, are the appropriate macroeconomic environment and legal framework, which determinates of investment processes, promote their economic revival, attracting capital into the national economy.

The vast majority of foreign direct investments involved in Ukrainian economy through the mechanism of the joint enterprise. Ukrainian subjects of entrepreneurial activity can act as founders of foreign companies to open their branches, representative offices of foreign territory for market expansion of products or services. The main objectives and tasks of the joint ventures are bringing into the country the newest technologies, progressive experience in organization and production management, foreign capital, in obtaining foreign loans on preferential terms, the growth and diversification of exports, saturation of the domestic market, import substitution. Among the determinants of favorable conditions for international investment is the certainty of international investment arrangements, legislative support for ongoing investment processes. However, public-legal international agreements in most cases insufficient for a clear definition of the legal basis of the investment activity and further investment protection as in the process of their implementation, and their results.

Among the goals of this work is to determine the legal nature of the concepts of investment, related timeframes, mechanisms of regulation of investment activities and to guarantee the protection of the public and private spheres among the variety of international norms, conventions, defining international public documents that influence and regulate the development of international investment processes.

To outlining material regarding international investment through widespread ambiguity of terms should be the first to stay in front of the definition of their nature. Consider the notion of international (foreign) investment, subjects of investment relations, totally investment relations.

Clear definition of this concept due to the large number of approaches that are caused by the increasing number of legal sources is hard to determine.

On this issue, there are many national laws and regulations. Almost every state has its own legislation and regulation in the field of investment. A great variety of legal support of the investment process, unfortunately, makes it impossible to unify. So here, conduct a comprehensive and comparative analysis of the domestic law of different states is impossible.

However, equally numerous and international sources, with their lack of a unified approach. But this situation is quite easily explained: the definition of international investment depends on the tasks defined by applicable international document, which contains the following definition. Obviously, the definition of which is present in the document on the protection of investments may not be identical to that which is present in the document relating to the movement of investment. Accordingly, it is necessary to further the work is confined to only a few examples of such documents.

International law does not provide a uniform definition of “international investment”. The differences relate both concepts as “investments” and “international”.

The essence of the concept of investment is closely linked with the economic science that uses it as a technical term. One would assume that the legal definition of investment to be transcription economic definition. It follows that as a lawyer qualified interpreters ought to join a definition that “type” the Economist, and it would have helped to determine uniformity.

However, this approach does not take into account the function of law, which derives not from legislation but from the normative law. If there is international investment law, it is the participants – government and other entities, “operators” (both legal and natural persons) investment relations – are in the field of rights and obligations, whose composition is determined by the relevant documents. In this regard, the notion of investment will be replaced depending on the composition and purpose of the regulation. Accordingly, there may not be a common understanding of investment.

However, we must define the term “investment” in a purely legal sense. Specifying this definition is of practical importance because only investment as investment law and international investment agreements extend the relevant rules on the legal protection of foreign investment.

There are several options for the term “investment”. Pretty to consider them in the Treaty on freedom of investment, investment protection, the promote for development [4].

As for agreements on freedom of investment under such documents understand the Code of liberalization of capital movements, which was developed by the Organization for Economic Cooperation and Development, the Rome Treaty (articles 67–73) [8], the Treaty of the European Community, taking into account the changes introduced by the Maastricht Treaty (articles 73V–73N) [9]. According to these documents, *direct investment* takes place if there are the following factors in combination:

- presence of a deposit;
- this one contribution should be expressed in the form of capital;
- that contribution should contribute to establishing long-term relationships, but not necessarily that it was legal relations;
- such long-term relationships should be established between the investor and the company, is an organization that carries out an economic activity;
- long-term investors due to such connections should be able to make a real impact on the company’s management, in which invested.

The latter factor is a criterion that makes it possible to distinguish direct investment from other forms of investment.

Thus, according to the documents of the OECD and the EU, investments – the movement of capital, that is the source of financing to the free allocation of individuals and businesses. International community’s interest in the economic sphere require that businesses and companies can work in a place to move freely back and depending on the profitability in the medium and long term [19].

As for agreements on protection of investments, such contracts are mostly in developed countries with developing countries, to protect property, exporters, investment. Nevertheless, these documents no particular the notion of investment, to leave the determination of the matter at the discretion of the courts in disputes. This approach is unsatisfactory and therefore has negative consequences. This suggests that in fact the purpose of these documents is to protect the property of foreigners, regardless of whether it is an investment nature.

As for agreements on investment promotion. In most such agreements in its name with the phrase “the protection and promotion of investment”, and in practice to

act as investment protection, causing dissatisfaction among developing countries. The most demonstrative instrument of this class is the Seoul Convention 1985 “On establishing the Multilateral Investment Guarantee Agency” [7]. First of all investment in the convention divided into types that are regulated and within and outside equity. According to the Seoul Convention, investments must meet the following criteria:

1) it’s necessary to invest expressed in deposits. Without the contribution of investment possible. It can be either in cash or in a nature, in which case we can talk about both the material and non-material goods. However, the contribution cannot be input in the form of service delivery;

2) it’s necessary that this contribution was made for the long term. Investing – not speculation, which is why investors should be aware that satisfaction, which he expects to receive from its operation, could only come after a while. Because of this Seoul Convention recognizes only investment medium and long-term operation. Thus, short-term transactions are not covered under warranty;

3) investments takes place only when the investor assumes at least a small business risk. In other words, the satisfaction, which the investor expects the operation must have an expression in some resulting from the operation of a contribution, albeit in partial, but this result may be a profit and loss. This third criterion is the main thing it does help to distinguish the specific obligations depending on whether they are components of investment operations.

Regarding the concept of international as well, some differences are regulated structure and purpose of the treaty that governs it. Thus, under agreements that have as their purpose the free movement of investments, international investments are those investments that entail international capital flows, which are mainly associated with the crossing of frontiers, as shown in the balance of payments. Bilateral same convention on the protection of investments based on the fact that the international nature of the investments are undertaken by the investor, person or entity from another State Party in the territory of another State Party.

The investment, according to art. 1(6) of the Energy Charter Treaty [2], meaning “all kinds of assets”. In a broad sense this includes the material and intangible property, and any property rights, demands for funds and claim obligations under the contract, revenues, which include income, dividends, interest, gains capital value, and any right conferred by law or contract or because of any licenses and permits.

In terms of investments legislation of Ukraine and foreign investment divided by the relevant laws, that is the impression of better detail than this period, for example the legislation of Ukraine. Thus, according to the Law “On Investment Activity” dated 18 September 1991, investments have all kinds of property and intellectual property invested in the business and other activities, which resulted in creating profit (income) and achieve social effect [5]. A foreign investments identified in the Law “On the elimination of discrimination in the taxation of business entities created using assets and resources of national origin” of 17 February 2000, – all kinds of values that are directly invested by foreign investors in business and other activities for profit (income) and achieve social impact [6]. Among the types of foreign investment, according to the same law is:

- 1) foreign currency and other currency values, currency, operating on the territory of Ukraine;
- 2) any movable and real property (buildings, equipment and other property) and any related property rights;
- 3) stocks, bonds and other securities, or any other form of participation in the enterprise;
- 4) cash requirements and license requirements on the performance of contractual obligations, which have a value;
- 5) any intellectual property rights that have value, including copyrights, inventions, trademarks (trademarks and service marks), trade names, industrial designs, know-how and other.

Generally, analyzing different definition of “foreign investment” used in international and domestic practice, the following conclusions:

- 1) diversity goals explains the large number of conventional definitions of foreign investment;
- 2) however, in international practice, traditionally, the essence remains the only key – for foreign investment to understand the value of contributions (cash or in a nature) belonging to individuals and companies of one country but in another country;
- 3) international investments is synonymous with foreign investment. The legislation in some detail by the concept, subjectivity, their rights and duties, in order to attract foreign investment to national enterprises over time by optimizing other factors (such as tax harmonization, the judiciary, the practical reduction of corruption in the country) lead to a positive outcome.

Subjects investment relations are investors-owners of assets (investments in any form), aimed at the establishment, expansion or modernization of production material (goods and services) and spiritual benefits, and infrastructure. Development of investment relations possible with a normal market economy, where there is both national and international legal market for goods, capital, etc. Therefore, as soon as possible in such circumstances normal investment process is based on the division of labor. Both domestic and foreign investments are in production and infrastructure in a broad sense [3].

Legal regulation of investment relations means primarily the formation of stable legal guarantees to foreign investors who are independent of subjective reasons should always encourage investment in production, i.e. investment.

According to the laws of Ukraine, investors – investment entities that make decisions about investing their own, borrowed and borrowed property and intellectual property in the investee.

Investors can act as investors, creditors, customers, and serve as any participant investment.

Investment relations – is primarily relations owners. Therefore improving the investment climate, in terms of rights, creation of legal preconditions for cooperation in the investment process of all kinds and forms of ownership and owners – the economic investment relations, which include the national law and international legal forms and methods of control. Creation of favorable conditions for investment process

requires a clear legal forms and methods of protection of investment, but it is complicated by the nature of the two-level adjustment.

According to the State Statistics Service of Ukraine, as of October 2013, investment in Ukraine is 6 714,6 million USD and investment in Ukraine amounted to 65 785,2 million USD [10].

Direct investment from Ukraine implemented up to 50 countries. Most of them share is directed to Cyprus – 89,6%, Russia – 4,5%, Latvia – 1,5%. Requirements Ukrainian direct investors in debt instruments to direct investment enterprises abroad constituted 203,9 million USD.

For this information, we can conclude that the relatively Ukrainian subjects of investment most favorable economic, legal, political conditions in the three above mentioned countries. At the same time, Ukraine's economy is in a state of development and its domestic law is optimized to attract more investment from abroad than in their output, which in numerical terms is about 10 times.

For Ukrainian business entities investing activities relevant availability, condition and terms of international public documents, that affect and regulate the development of international investment processes on relatively of Ukraine to Cyprus, Russia and Latvia.

The issue of the economic status of foreigners in customary international law is not enough waste and reduced to the formulation of some general principles. Because of territorial sovereignty, it refers to domestic law and announces only mandatory provisions concerning the protection of persons and their property. Deference can be reduced to two main conclusions: each state is a sovereign has the right to decide what it seems acceptable in its territory. If the alien admitted to the territory, it will use only those rights, which the State agrees to give him stay. No State is not obliged to admit to its territory immigrants from other countries. This principle is undoubted and such that comes from the exclusivity of territorial jurisdiction. In other words, no foreign person may not temporarily to live in the country, to her is not native, nor the more there is to be to live permanently. There is no law on immigration, which is given to individuals. Immigration policy has always been and remains to this day one of the main areas in which states are assigned a maximum authority.

What is typical for individuals applies to legal persons. No "foreign" legal person is eligible for permanent settlement without the consent of the country (in a local branch or department of the same, without any legal personality activity).

Where the State shall permit the temporary or permanent residence of the foreigner (person or entity) in its territory, along with the resolution of state gives the person certain rights and responsibilities. Among them economic rights and obligations, the right to protection in the property. These rights and duties are specified in international conventions, international bilateral agreements which are aggregated to individual rights.

Universal means of regulating foreign investments are international conventions, multilateral interstate agreements, bilateral agreements between investors and the receiving investments. Taking for example the Ukraine, most existing multilateral international treaties ratified by the Verkhovna Rada of Ukraine, and they are part of

national law. However, at the same time it is necessary to work towards concluding bilateral agreements. Information available State Statistics Service demonstrate the need to improve such arrangements between all countries to develop investment for cooperation.

Among the diversity of theoretical legal developments states, international organizations, researchers in international investment law fixed terms, investment mechanisms and methods of protection. For the development of investment flows to specify procedures between the two countries taken by Ukraine to be concluded bilateral agreements with most countries in the world that will lead to economic growth as a nation as a whole and its businesses.

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