

The legal status of subjects of investment relations in attraction of foreign investment

From the early years of independence, a special attention is paid to the creation of a favorable investment climate in the country, attracting foreign partners, as well as automotive, consumer electronics, pharmaceuticals and other industries. The first president of Uzbekistan Islam Karimov in the solemn ceremony that was dedicated to the 23rd anniversary of the adoption of the Constitution of the Republic of Uzbekistan stated: "Over the past five years, our economy has invested about \$ 67 billion, of which over 21 percent is foreign investment.¹" It can be seen that the role of foreign investment in the development of newly emerged state has vital importance, hence, the government worked out the plan of priorities for the creation of legal, socio-economic and other conditions for the attraction of foreign investments, assistance to the establishment of joint ventures, protection of the rights and legitimate interests of investors. In particular, during the last years, a number of legislative acts have been adopted and amended taking into consideration investor`s protection.

In order to determine legal relationship in the scope of investment activity, it preferable to understand what legal relationship means. Legal relationship is the regulation of social relations between individuals who are subject to subjective rights and obligations through legal norms and that is based on legal norms and actions². According to R. Bozorov, "Investment legal relationship is a social relationship regulated by the norms of investment law and its participants are protected by the state³. Moreover, the subjects of the examining relationship are "investors - individuals, who are involved in the organization, expansion or modernization of the material (goods and services) and non-material benefits, as well as the infrastructure investor (any kind of investments)⁴."

Summarizing the above points, the subjects of investment activity are those who participate in these investment relationships. When it comes to investing, it is definitely strengthened by a deal or contract, and the contract sets out the rights and obligations of the parties.

Studying the subject of investment relationships, as a public investment participant, it also has the same legal status as other subjects of the business. However, the legal nature of the state's involvement in the legal profession implies a number of specific features in this area. In general, the state is the main subject of international law. The state has power and administration authority, territories, population, and, most importantly - sovereignty. For international law, sovereignty is one of the basic requirements. First of all this requirement does not depend on the will of the individual state, including its recognition by other states as the subject of international law. In general, international law can be defined as the matter of the subject of international law.

Accordingly, the state participates in the international market relations, chooses the partners that are elaborate, and concludes agreements with contractual parties. The stability and effectiveness of the international market depends on the ability of the state to comply with the contractual discipline and to fulfill its obligations honestly. In some cases, the state may fail to fulfill its obligations, and there is a question of its commitment and responsibility. However, the state of the market economy is an exception, but not the rule of law for the state to engage in market relations. Government's involvement in civil-law relations, such as

¹ <http://www.press-service.uz/uz/news/5214/>

² Hwang L.B. Tax Law: Textbook-T.: Konsauditinform 2001.-p.41.

³ Bozorov R.B. Investment Law: Textbook. - Dushanbe: TGNU, 2008. – p. 109.

⁴ Bogatyrev A.G. Investment Law, - Moscow: Russian Law 1992. – p. 22.

public borrowing and the state's role as a market participant, are governed by general regulations governing private investment.

The state participates equally with its members in relation to civil law regimes. In the relations regulated by the civil legislation, the state shall enjoy the power of public administration and other bodies specially authorized by it. The state responds to its own civil and legal obligations with its property.

According to the Law of the Republic of Uzbekistan "On foreign investments" the state, public administration bodies and local bodies of state authority are responsible for the obligations undertaken by appropriate agreements with foreign investors, signed by the persons authorized by the legislation of the Republic of Uzbekistan. The state does not bear responsibility for the obligations of residents of the Republic of Uzbekistan attracting foreign investments, except for the cases when such obligations are guaranteed by the state in the prescribed manner⁵.

According to N. Doronina, in order to attract foreign investment the state should not pay attention to national legislation, but to the form of regulation of the investment relations, as well as to the international agreements, by creating certain preferable conditions for the activities of a foreign investors⁶.

Thus, in some cases, the state is known as a separate subject of the law, in which it can determine the rules of civil procedure, the content and boundaries of its legal capacity. However, the special state jurisdiction hereafter means that it has governmental prerogative, at the same time it may be subject of investment contract and it does not mean that in investment agreements government has power of setting its contractual priorities beyond investor`s rights⁷.

In today's rapidly developing market economy, the role of business entities is vital. Today, most of the business entities in our country are legal entities engaged in entrepreneurial activity, forming a legal entity. During their entrepreneurship activities, it is natural that those entities attract investment in order to develop certain area of business.

Hereby, foreign legal entities are recognized as investors of all countries under the Law on Foreign Investments. Besides special legislation of Uzbekistan on foreign investment, the legal status of a legal entity is also determined by other normative acts regulating this area of entrepreneurial activity.

In Anglo-American law (UK and USA), the main criterion for determining the nationality of a legal entity is the place where it was created, *id est* the law of the country in which the legal entity was established and whose system was governed. This criterion is called the principle of corporation⁸.

There are two methods of accomplishing foreign investment. In the first case, the foreign investor has the right to enjoy a more favorable regime provided by the investment recipient country, for example, the recipient country may apply a special tax regime towards the foreign investor. In this case, the investment activities of such a legal entity are fully based on the national legal system of the receiving state. The exclusion from this principle may occur only if such exception is mentioned in the investment agreement with a legal entity or a foreign investor, as well as by an international treaty or law of the receiving state⁹.

At the same time, the issue of legal regulation of transnational corporations` (TNC) participation in investment processes should be emphasized. Since, due to the organizational structure of transnational corporations, their global outflow and large financial potential, possible threaten the national sovereignty of host governments, they are considered as a separate group of investors.

⁵Article 45 of the law of the Republic of Uzbekistan "On foreign investments". № 609-I from April 30, 1998

⁶ Doronina N.G. Commentary on the Law on Foreign Investments. - Moscow: Justicinform, 2000. – p. 15.

⁷ Ermolaev I.G. and Simakov O.N. Private International Law. Lecture course. -M.: Bylina, 1998. – p. 115.

⁸Arutyunyan A.L. and Prusova S.B. Mechanisms and forms of attracting capital as tools to shape the competitive advantages of TNCs // Gaps in Russian legislation. - M.: Pravda, 2011.–p. 271.

⁹ Krupko S.I. Investment disputes between the state and a foreign investor: Teaching material. - M.: BEK Publishing House 2002. – p. 93.

It is well known that the TNC's budget is equivalent to the average GDP rate of some countries. This circumstance makes it possible for the TNC to participate equally with countries in international processes, even though they are not internationally recognized as legally binding and not legally binding on international legal obligations¹⁰.

Based on the above mentioned clauses, it can be concluded that, in the field of regulating legal regime of foreign legal entities – our national legislation complies with world standards.

According to the Article 9 of the Law of the Republic of Uzbekistan "On investment activity", subjects of investment activity are citizens of the Republic of Uzbekistan (physical persons), foreign citizens in accordance with Part 3 of this article, as well as stateless persons.

Usually, "foreigners' right" defines their legal status both in narrow (specific) and broad (general) sense. In a narrow sense, these principles are largely based on administrative law; and those principles subject to differentiated status of foreigners from the status of local citizens. In the broad sense, this is a set of principles that define the status of a foreigner; which means that it is a regime that is equally indigenous to a foreigner in that country¹¹.

According to Article 23 of the Constitution of the Republic of Uzbekistan, the rights and freedoms of foreign citizens and stateless persons in the territory of the Republic of Uzbekistan shall be guaranteed in accordance with the norms of international law. They fulfill the duties stipulated by the Constitution, laws and international treaties of the Republic of Uzbekistan¹². The legal status of a foreign citizen permanently residing on the territory of the Republic of Uzbekistan varies from the legal status of a foreign citizen temporarily residing in the Republic of Uzbekistan.

According to the Article 1169 of the Civil Code of the Republic of Uzbekistan, foreigners and stateless persons enjoy the civil rights of the Republic of Uzbekistan equally with the citizens of the Republic of Uzbekistan. Further the Law of the Republic of Uzbekistan "On Foreign Investments" states that foreign citizens, stateless persons and citizens of the Republic of Uzbekistan residing abroad may be foreign investors¹³. From these legal norms, it can be seen that the law allows foreign investors, both foreigners and foreigners who live abroad, are entitled to participate in the investment project irrespective of their citizenship (as an investor can be a non-citizen).

Overall, the legal status of subjects of investment relations has clearly defined by national legislation, and it facilitate to improve international cooperation, and attract foreign investment flow. Moreover, by “Strategy of actions on development of Uzbekistan for 2017-2021”, the government has set additional prior plans in order to advance the role of investors, investment potential of the Republic. Representatives of International organisations highly appreciated the results achieved by Uzbekistan in a short period of time after last year’s presidential elections.

¹⁰ Gritsay N.V. Transnational corporation (TNC): problems of determining the legal status // Juridical analytical journal. № 1-2 (19-20). 2007.-p. 86-88.

¹¹ Yerpuleva N.Y. Individuals as subjects of international labor law and international educational law // Law and Politics. –M.: 2009.№ 5 (113). – p. 1048.

¹² Article 23 of the Constitution of the Republic of Uzbekistan. From December 8, 1992

¹³ Article 4 of the law of the Republic of Uzbekistan “On foreign investments”. № 609-I from April 30, 1998.