

**HOW INVESTOR'S LEGITIMATE EXPECTATION IS PROTECTED UNDER FAIR AND
EQUITABLE TREATMENT.
WHAT ARE THE LEGAL AND PRACTICAL OBSTACLES**

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Abstract: *By the example of the practice of international investment arbitration, the article reveals the content of the concept of "legitimate investor expectations". This term is not used in bilateral and multilateral international treaties on the protection and promotion of foreign investment. Nevertheless, as follows from the practice of international investment arbitrations, "legitimate investor expectations" are an integral part of the standard of fair and equal treatment of a foreign investor by the State receiving the investment. Only if the state has given specific assurances and guarantees to a foreign investor, this generates legitimate expectations for the investor. If the State has not fulfilled these assurances and guarantees, it has thereby failed to meet the legitimate expectations of the investor and, consequently, violated the obligation to treat a foreign investor fairly and equally. For this, the State may bear international legal responsibility to the investor if he files a lawsuit against the state in international investment arbitration.*

Keywords: *foreign investments, fair and equal treatment, international treaties on the promotion and protection of investments.*

The collapse of the communist regime and the transition of many countries to a market economy contributed to the conclusion of international investment agreements (mainly bilateral agreements on the promotion and mutual protection of investments), which are aimed at attracting and stimulating foreign investment. So, if in 1990 the number of international investment agreements (hereinafter referred to as investment agreements) was about 500, by now their number worldwide exceeds 3,200. Since gaining independence, Uzbekistan has also contributed to this process by concluding about 50 agreements.

Investment agreements establish a number of standards for ensuring favorable conditions for foreign investors by States. One of the most important standards within the framework of these agreements today is to ensure a fair and equitable regime (hereinafter referred to as the standard). It is noteworthy that investment agreements do not define the standard, and do not clarify which state action can be considered a violation of it. However, most of the claims of foreign investors in recent years are based on this standard.

A large number of claims from investors contributed to the creation by arbitration tribunals for the consideration of disputes between investors and States of criteria for recognizing the actions of the State inconsistent with a fair and equitable regime under investment agreements. According to the UN Commission on Investment and Trade, today, the following illegal actions can be pointed out, which can be recognized as a violation of the standard:

- a) damage to the legitimate expectations of the investor (taking into account the right of the state to pursue a policy in the public interest);
- b) denial of justice and due process;
- c) clear arbitrariness in decision-making;
- d) discrimination;

e) obvious ill-treatment.

The study of the Commission showed that the subject of a claim for violation of the standard can be various actions (inaction) on the part of state bodies, ranging from refusal to issue or revocation of a license (permit) to flaws in the activities of courts. However, in recent years, foreign investors have been less and less concerned with the issues of judicial activity when considering disputes in international arbitration. The main number of current lawsuits relate to ensuring the stability of legislation in the field of foreign investment and protecting the procedural rights of investors when making administrative decisions.

Ensuring the stability of legislation by tribunals is considered within the framework of the concept of protecting legitimate expectations of investors, which has become one of the most discussed issues in the framework of international investment arbitration. Many investor lawsuits based on this concept have been successful in arbitration proceedings. Nevertheless, this concept, like the standard itself, has certain criteria when applying it.

Firstly, the investor can rely on domestic legislation or individual assurances made to the investor. Secondly, legislation or assurances should be beneficial to the investor. Thirdly, the investor's expectations must be reasonable.

According to the first criterion, the investor is based on the conditions that took place during the investment. Expectations are based on the current legislation aimed at attracting foreign investment, the provisions of contracts with a government agency or information provided by a representative of the state. As for the second criterion, if changes in legislation or assurances of the state are favorable to the investor, the investor has the right to apply these changes.

It is necessary to dwell separately on the third criterion, since it is, according to many characteristics, controversial. Investors' expectations can be recognized as legitimate only if the investor takes into account all the conditions that existed at the time of investment, including political, socio-economic, cultural and historical features of the invested state. For example, a developing State or a country with a transition economy cannot fully guarantee the stability and predictability of its legislation.

In addition, investors should take into account the right of the state to adopt legislation and perform other actions in the public interest. A fair and equitable regime provides not only for the protection of investor expectations, but also balances this requirement with the sovereign powers of the state to implement domestic policy. At the same time, there are certain restrictions on the application of these powers when the state gives a guarantee in contracts in the form of stabilization clauses. As noted by the UN Commission, the right of a state to implement a policy, provided that compensation is not provided to an investor, may be limited when separate assurances are made about the preservation of relevant aspects of the business and legal regime.

Another aspect of a fair and equitable regime concerns the nature of the decision-making procedure by public authorities. According to international investment law, when making decisions of an administrative nature, the procedural rights of investors must be respected and they must be provided with an appropriate legal procedure. This also applies to the relationship between licensing authorities and investors.

This procedure provides, in particular, that the rights of participants in the process to receive notification of upcoming hearings, to present their oral arguments, must be respected. In addition, it requires the indication of the reasons for the decisions taken.

Within the framework of a fair and equitable regime, due process can be divided into judicial and administrative. In the past, many lawsuits related to flaws in the activities of the courts. Recently, more and more disputes with foreign investors are related to administrative procedures. This is

explained by the fact that if the procedural rights of a foreign investor are violated by the administrative authorities, the investor has the right, bypassing local courts, to apply directly to international arbitration.

Of course, depending on the development and conditions of the invested state, the level of responsibility in ensuring a fair and equitable regime may vary. Arbitration tribunals note that an investor should not require the same level of legal protection in developing countries as in the most developed countries.

In conclusion, it should be noted that, on the one hand, each state, when concluding investment agreements, undertakes to provide international standards for the protection of foreign investors. On the other hand, every investor should take into account the investment risks that may arise during the implementation of further entrepreneurial activities.

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