

Uzbekistan: An Overview of Foreign Investment Law

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Abstract

Uzbekistan has adopted several investment related laws in order to attract more foreign investment since gaining independence from the Soviet Union in 1991. Although, the effectiveness of such investment regulations is controversial. From this perspective, a few gaps and contradictions still exist on the legal framework of foreign investment protection in the country. Uzbekistan investment law includes, inter alia, substantive provisions of defining the notion of investment and investor as well as investment treatment (national treatment, most-favored nation treatment, protection from nationalization and expropriation, the right to access international investment arbitrations, protection from unexpected legal changes, and the right to transfer of funds). This paper provides a comprehensive review of foreign investment law in Uzbekistan. It is primarily based on general and protective provisions on foreign investment law and BIT.

Key words: foreign investment law, investment protection, BIT.

1. Introduction

Legal framework of foreign investment serves two important purposes. First of all, it supports to implement government policy on private investment. Secondly, it uses as important tool to support investment generation¹. Developing countries foster a favorable condition in quest of attracting more foreign investments through national investment law and bilateral investment law on the promotion and protection of investments (BIT)². The function of national investment law can be seen as a unilateral act of countries under international law³. The legal framework for foreign investment promotes and protects foreign investment. It contains obligations for the host country as well as rights for foreign investors⁴. In this respect, host countries fulfill the basic expectations of foreign investors.

The legal framework of foreign investment in Uzbekistan consists of a several foreign investment related laws. The main laws regulating foreign investment in Uzbekistan are the Foreign Investment Law⁵, the Investment Activity Law⁶ and the Foreign Investor Guarantees Law⁷.

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I am grateful to Alisher Umirdinov for his review and support on an early draft of this paper. All remaining errors are mine.

¹ World Bank Group, *Investment Law Reform: A Handbook for Development Practitioners Investment Climate Advisory Service*, (2010) 17
<<http://documents.worldbank.org/curated/en/502511467989536550/Facility-for-investment-climate-advisory-services-FIAS-strategy-for-FY17-21>> accessed 12 February 2018.

² Rudolf Dolzer and Christoph Shreuer, *Principles of International Investment Law* (Oxford University Press 2014)14.

³ Makane Mbengue, 'National Legislation and Unilateral Acts of States' in Gazzini, Tarcisio and Eric de Brabandere (eds), *International Investment Law: The Sources of Rights and Obligations* (MBRILL 2012) 183.

⁴ *Rumeli Telekom v. Kazakhstan* (Case ARB/05/16) ICSID Award (2008), para 335.

⁵ Law of the Republic of Uzbekistan "On Foreign Investments" dated 30 April, 1998. 609-I, amended by Law No. (5-6) of the year 1998, Law No.(9) of the year 1999, Law No. (14-15) of the year 2008, Law No.(52) of the year 2008, Law No.(52) of the year 2015, Law No. (4) of the year 2014, Law No. (16) of the year 2017. It

FDI (Foreign direct investment) flow in Uzbekistan is below expectations although its huge potential is attempting to attract more investment. Over the past 10 years, the value for foreign direct investment in Uzbekistan has fluctuated between USD 173,800,000 in 2006 and USD 66,502,370 in 2016⁸. FDI flow data indicates that Uzbekistan reached its peak with USD 1,635,145,000 in 2011. It dropped to USD 65,403,201, down to 89.65% on the year 2015. In 2017, FDI flows slightly declined to USD 65,000,000⁹. Furthermore, the ease of doing business index is not acceptable for Uzbekistan. According to the World Bank Annual Rating, Uzbekistan ranked 74th out of 190 economies in the ease of doing business¹⁰.

There are ten investment cases that foreign investors take legal actions in international arbitration against Uzbekistan as respondent State¹¹. Investment arbitrations rejected some of such cases against Uzbekistan including Metal-Tech v. Uzbekistan and Spentex v. Uzbekistan cases due to corruption allegations. Most likely, this kind of host country conduct damages the country's reputation to the international community. As a result, it leads to the loss of foreign investors' confidence to the host country. In this case, foreign investors will be more prudent before investing in the host country concerned. Likewise, in analyzing investment opportunities abroad, prosperous investors consider making profit as well as non-commercial risks including "country risk" related to the host country.

Name of the case	Treaty	Forum	Result
1. Romak S. Av. Uzbekistan	Switzerland-Uzbekistan BIT	PCA Case No: AA280	Decided in favor of State
2. Metal-Tech Ltd v. Uzbekistan	Israel-Uzbekistan BIT	ICSID Case No: ARB/10/3	Decided in favor of State
3. Oxus Gold v. Uzbekistan	United Kingdom – Uzbekistan BIT	UNCITRAL	Decided in favor of investor
4. Spentex v. Uzbekistan	Netherlands-Uzbekistan BIT	ICSID Case No: ARB/13/26	Decided in favor of State
5. Newmont USA Limited v. Uzbekistan	Investment Law	ICSID Case No: ARB/06/20	Discontinued
6. Mobile Tele Systems OJSC v. Uzbekistan	Investment Law	ICSID Case No: ARB(AF) 12/7	Discontinued
7. Kim and others v. Uzbekistan	Kazakhstan-Uzbekistan BIT	ICSID Case No: ARB/13/6	Pending

can be access the latest edition of all foreign investment laws as well as national legislation <<http://lex.uz/>> English version link <<http://cis-legislation.com/document.fwx?rgn=965>> accessed 12 March 2018.

⁶ Law of the Republic of Uzbekistan "On Investment Activity" dated 24 December 1998. 719-I, amended by Law No. (5) of the year 2014.

⁷ Law of the Republic of Uzbekistan "On Guarantees and Measures of Protection of Foreign Investment" dated April 30, 1998. 611-I 30, amended by Law No.(5-6) of the year 1998, Law No.(1-2) of the year 2004, Law No.(37-38) of the year 2005, Law No.(52) of the year 2008, Law No.(4) of the year 2014, Law No.(37) of the year 2017.

⁸ The World Bank, 'Foreign Direct Investment, Net Inflows' (2018) <https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?contextual=default&end=2016&locations=UZ&name_desc=false&start=1992&view=chart> accessed 5 May 2018.

⁹ UNCTAD, 'World Investment Report' (2017) <http://unctad.org/en/PublicationsLibrary/wir2017_en.pdf> accessed 5 May 2018.

¹⁰ The World Bank, 'Doing Business' (2018) <<http://www.doingbusiness.org/data/exploreconomies/uzbekistan>> accessed 5 May 2018.

¹¹ It can be reached full list of related investment cases; UNCTAD, Investment Hub Policy: Investment Dispute Settlement Navigator <<http://investmentpolicyhub.unctad.org/ISDS/Details/229>> and <<https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx>> accessed 5 May 2018.

8.Güneş Tekstil and others v. Uzbekistan	Turkey-Uzbekistan BIT	ICSID Case No: ARB/13/19	Pending
9.Federal Elektrik Yatırım and others v. Uzbekistan	Energy Charter Treaty, Investment Law	ICSID Case No: ARB/13/9	Pending
10.Bursel Tekstil and others v. Uzbekistan	Turkey-Uzbekistan BIT, Investment Law	ICSID Case No: ARB/17/24	Pending

Source: Investment Policy Hub (Investment Dispute Settlement Navigator)

All the indicators above show that Uzbekistan still needs to take measures to improve the investment climate, including a comprehensive review of foreign investment regulations. In this regard, lack of transparency in government bodies, lack of stability of financial system and investment regulations, complicated and contradictory investment related regulations, problems with ineffectiveness and unbiased in justice system are the common issues in Uzbekistan.

This paper addresses the definition of investor and investment in the context of Uzbek national investment law. In order to ascertain the role and relevance of notion of investor and investment, it is necessary to examine a case law including investment treaty case against Uzbekistan. Afterwards the paper provides overview of protective provisions for foreign investors. In the same section, it reviews all crucial clauses of national investment law through international investment standards and investment arbitration awards with regard to identify gaps in that law.

2. Definition of investor and investment

The scope of investment and investor plays a crucial role to protect investors. The investor can use all rights and privileges if the investment sets out a scope as the national investment law defined. In this respect, substantive standards and privileges of national investment law will only apply to eligible investors. Access to arbitration for investment disputes also depends on eligible investment and investors¹².

2.1. Investor

Article 4 of Law on Foreign Investment (LFI), which defines the scope of investors, separates four, groups; the first group is composed by foreign countries that are accepted as foreign investors. The second group is made by international organizations, which are established by agreements or other contacts. The third group is a legal entity, which is the existence of country laws. Lastly, citizens of the Republic of Uzbekistan and stateless persons are also eligible as investors if they have constant residence abroad.

There are law references that some of the rights of foreign investors in Uzbek law are largely directed at the foreign capital company. Within the scope of the rights stipulated

¹² ICSID jurisdiction connected with the existence of investment and investor nationality under Article 25(1) of the ICSID Convention. Because of this, it is important to identify a notion of investment and investor nationality. See also *Metal-Tech LTD v. Republic of Uzbekistan* (Case No: ARB/10/3) ICSID Award (2013) paras 122-130, *Romak. S.A (Switzerland) v. The Republic of Uzbekistan* (Case No: AA.280) UNCITRAL Award on Jurisdiction (2009), para 160 <<https://www.italaw.com/cases/918>> accessed 12 March 2018.

Uzbekistan has signed and ratified the Convention on the Settlement of Investment Disputes between States and Nations of Other States. Entry into force: 25.08.1995 <<https://icsid.worldbank.org/en/pages/default.aspx>> accessed 12 February 2018. Convention on Recognition and Enforcement of Foreign Arbitral Awards Accession:7.02.1996 <<http://www.newyorkconvention.org/countries>> accessed 12 May 2018.

for foreign capital enterprises, companies with legal personality of Uzbek investment law provide wider rights than other countries' legislation and bilateral investment agreements. Albeit, this convenience is provided to protect foreign investors where the interests of the Uzbek company are necessary. The United Nations Commission on Trade and Development (UNCTAD) has made some recommendations on this clause¹³. UNCTAD recommended that all rights in the mentioned clause should focus on foreign investors instead of foreign-owned enterprises. The applicability of the investor's scope is wide enough. To determine the foreign nature of investment, there are two main criteria; nationality or residence¹⁴. LFI accepts nationality criteria to determine foreign nature of the investment. As a rule, the foreignness of investment is determined by the nationality of investor¹⁵. Commonly, investors' nationality clause exists in International Investment Agreements, such as BITs (Bilateral Investment Treaty)¹⁶, North American Free Trade Agreements (NAFTA) and the Energy Charter Treaty (ECT)¹⁷.

With the amendment made in the LFI in December 21, 2014, the Uzbek citizens residing abroad will not be considered as "*foreign investors*". Also, similar provision can be found in Product Sharing Agreements (PSA)¹⁸. Within the framework of PSA, Uzbek citizens who are investing search, processing, extraction and use of natural sources will not be able to win the status of "*foreign investor*"¹⁹.

According to the Uzbek law, double citizenship is not recognized²⁰. This issue raises questions during investment disputes²¹. *Siag v. Egypt*²² is a good example for dual citizenship. The tribunal found that they had lost their citizenship because of Egyptian law. Tribunal pointed that the claimants' continuing residence and operation of business interest were not relevant. Considering the claimants were not dual citizenship, there was no room for a test of

¹³ UNCTAD, *Investment Policy Review of Uzbekistan* (1999) 15, <<http://unctad.org/en/pages/PublicationArchive.aspx?publicationid=520>> accessed 12 March 2018.

¹⁴ World Bank Group (n 1) 12, See. Dolzer and Schreuer (n 2) 47.

¹⁵ Dolzer and Shreuer (n 2) 49. The main criteria to determine investor nationality is "*the genuine link*" between the state and the person. See. *Nottebohm Case* (1955), IJC Reports 4-65, *IoanMicula ... and S.C. Multipack S.R.L. v. Romania* (Case ARB/05/02) ICSID Decision on Jurisdiction and Admissibility (2008).

¹⁶ For example, Article 1 (a) of Russia and Uzbekistan BIT defines the natural persons as follows: "*Any natural person who is a citizen of the State of a Contracting Party in accordance with the legislation of this State*". The Treaty entered into force on 14 January 2014 <<http://investmentpolicyhub.unctad.org/IIA/CountryBits/226>> accessed 12 March 2018.

¹⁷ Uzbekistan signed Energy Charter Treaty on 5 April 1995 and ratified on 22 December 1995. It is entered into force on 16 April 1998 <<https://energycharter.org/who-we-are/members-observers/countries/uzbekistan/>> accessed 12 March 2018.

¹⁸ Product Sharing Agreement Law, Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 2002, N9.

¹⁹ In comparative law, some national investment laws qualify as foreign investor who is a person temporarily or permanently residing in the host country. For example, Article 2(a) of Turkish Foreign Investment Law, Article 23 (c) of USA Foreign Assistance Act, Article 2(a) of the Law of Azerbaijan on "Protection of Foreign Investments", Article 1 of Law of the Republic of Belarus on Investments, Article 1(4) of Indonesia Investment Law, Article 2(5) of Korea Foreign Investment Promotional Act <<http://investmentpolicyhub.unctad.org/InvestmentLaws>> accessed 22 March 2018.

²⁰ English version: Law of the Republic of Uzbekistan on Citizenship of the Republic of Uzbekistan <<https://www.uta.edu/cpsees/uzbekcit.htm>> accessed 7 December 2017. Article 26 of Uzbek Citizenship Law (UCL) provides that Uzbek citizenship "*shall be lost*", among other reasons, "*as a result of joining ... State governments bodies and other administrative bodies of another state*" or "*a person permanently residing abroad has not registered without valid reasons in a consular institution within three years*", "*citizenship of the Republic of Uzbekistan has been acquired on the basis of deliberately false information or forged documents*" or "*a person has caused +substantial harm to the interests of society and the state, engaging in activities for the benefit of a foreign state or by the commission of crimes against peace and security*" or "*a person has acquired citizenship of a foreign state*".

²¹ Note: Investor must be not the citizen of the host state under Article 25(2.a) of ICSID Convention.

²² *Siag v. Egypt* (Case ARB/05/15) ICSID Decision on Jurisdiction (2007).

dominant and or effective nationality²³. In spite of ICSID's dual nationality exclusion, the latest approach shows that the tribunal could qualify dual nationality as investor including host country nationality²⁴.

Identifying the corporation nationality is not easy as defining investor's nationality. The most important criteria to define corporation nationality is assembling (*incorporation*) or the main seat of the company (*siege social*)²⁵. In practice, Uzbek BITs often combines two of the criteria. For example, Article 1(a) of Russia and Uzbekistan BIT defines clearly a judicial person as follows: “*any legal established with the laws of the State of the Contracting Party*”.

On the other hand, Article 1.5 (a) of Japan and Uzbekistan BIT²⁶ adds “*owned*” and “*controlled*” criteria to be eligible investor. That defines an enterprise as follows:

- a. “*owned*” by an investor if more than fifty (50) percent of the equity interest in it is owned by the investor; and
- b. “*controlled*” by an investor if the investor has the power to name the majority of its directors or otherwise to legally direct its action”

It is clear that the requirements of enterprises are different according to states. Uzbekistan BIT's definition of an enterprise is not broad enough comparing with the national investment law. As stated above, Russian-Uzbekistan BIT refers to “*with respect to Contracting Party Laws*” in order to define investor. Japan and Uzbekistan BIT adds “*owned*” and “*controlled*” to the investor's definition. In case of failing to carry “*owned*” and “*controlled*” requirement, foreign investor is only eligible in the scope of LFI²⁷. It means that foreign investor can still be protected under LFI.

2.2. Investment

According to the Article 3 of LFI, all kind of investment is eligible including intellectual property. Any income from foreign investment in Uzbekistan is also accepted an eligible foreign investment on condition that this investment must be received with respect to Uzbek laws. The similar definition of investment can be found in the Law of the Republic of Uzbekistan as “*Investment Activities*”. The definition of investment is broad enough to cover all kind of investments. By this, LFI provides the same guarantees for all kind of investment. The only requirement for this is that investment establishes with respect to Uzbek laws.

Legality of investment is crucial to protect investment and access international arbitration. In this respect, investors use any rights, which is provided by national investment law and BIT. Investment arbitration practice shows that investment awards connects with the impact of illegality through “*in accordance with host state law*” clause²⁸. In *Salini v. Morocco*

²³ *ibid* paras 195-200.

²⁴ *Garcia Armas v. Venezuela* (Case 2013-3) UNCITRAL Decision on Jurisdiction (2014). See also Treves, E ‘International Investment Treaty: Dual Nationals are Now Welcome; A Way out of ICSID Dual Nationality Exclusion’ (2017), 49 *International Law and Politics*.

²⁵ Christoph Shreuer, ‘The Nationality of Investors: Legitimate Restriction and Business Interest’ (2009) 24(2) *ICSID Review* 524.

²⁶ The Treaty entered into force on 24 September 2009 <<http://investmentpolicyhub.unctad.org/IIA/CountryBits/226>> accessed 12 March 2018.

²⁷ Foreign investor is not eligible in the scope of Japan-Uzbekistan BIT because of additional requirement to define investor. Nevertheless, it is possible that most favorite nation clause may allow to this foreign investor to be eligible in the scope of Russian-Uzbekistan BIT. See also (Japan-Uzbekistan BIT Article)

²⁸ *Metal Tech Ltd* (n 12). See also, Alisher Umirdinov ‘Sharing Responsibility on Corruption Allegation in Investor –State Arbitration: The Contribution of *Metal-Tech v. Uzbekistan*’ (2015) 264 *Nagoya University Journal of Law and Policies* 43-83.

case, tribunal noted that “*in accordance with laws and regulation of parties*” refers to the validity of investment and not to its definition. In particular, it seeks to prevent the BIT from protecting investment that should be not protected because that would be illegal²⁹.

Illegality could be occurring in all stage of investment such as pre-establishment of investment or after investment. The tribunal in *Metal-Tech v. Uzbekistan*³⁰ said in this respect: corruption is established to an extent sufficient to violate Uzbek law in connection with the establishment of the claimant’s investment in Uzbekistan. As a consequence, the investment has not been “implemented in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made” as required by Article 1(1) of the BIT”. Similarly, in *Spentex v. Uzbekistan*³¹, the tribunal decided in favor of Uzbekistan because of bribery allegations. The tribunal started to assess whether bribery would have an impact on the jurisdiction of the tribunal or on the admissibility of the claimant’s claim. Uzbekistan argued that investment required to be establishing “in accordance with the host state law”, basing on Article 2 of Netherlands and Uzbekistan BIT. Tribunal refers “*if a finding of corruption routinely leads to the dismissal of the claimant’s claim, corrupt investor is punished for their conduct, while corrupt host states are left off the hook*”. Tribunal concluded that *corruption in the making of an investment established a core violation of the principle of good faith and a violation of international public order and the a claimant who comes with “unclean hands” to a tribunal should be heard*³².

In practice, the scope of investment does not cover all kinds of investment because the host country has some expectations from investors. Foreign investment is qualified as an eligible investment on condition that there is a fulfillment of some requirements such as contribution to host country’s economy. In *Romak v. Uzbekistan* case³³, the starting point for the definition of investment, the tribunal based on Swiss and BIT³⁴ to define investment. The tribunal noted contribution, duration, and risk as basic characters of investment³⁵. In this respect, it is interpreted the notion of investment as “*inherent meaning*” of the term

²⁹ *Salini Costruttori S.P.A. and Italstrade S.p.A. v. Kingdom of Morocco* (Case ARB/00/4) ICSID Decision on Jurisdiction (2003), para 46.

³⁰ *Metal-Tech* (n 12)

³¹ *Spentex Netherlands v. Uzbekistan* (Case ARB/13/26) ICSID Award (2016). This case was not published yet. See also. Kathrin Betz, *Proving Bribery, Fraud and Money Laundering in International Arbitration: On Applicable Criminal Law and Evidence* (Cambridge University Press 2017) 128-141.

³² *Spentex* (n 31) para 819. It is interesting that tribunal suggested for the future similar cases in BITs: “*On one hand, the claimant cannot have its claim entertained (due to a lack of either jurisdiction or admissibility). On other hand, a tribunal should be able to entertain the claim as if no corruption had occurred and, in case it finds the State liable, calculate damages that a claimant having made investment without resort to corrupt would have been entitled to and then order that such amount be transferred not to the claimant, but to an appropriate body of the UN and the OECD, or any other body fighting against corruption*”. *ibid* (n 31) para 978.

³³ *Romak. S. A* (n 12).

³⁴ Treaty entered into force on 5 November 1993.

Article 1(2) of Swiss-Uzbek BIT “*the term investment shall include every kind of investments assets and particularly:*

- a) *movable and immovable property as well as any other rights in rem, such as servitudes, mortgages, liens. pledges;*
- b) *shares. parts or any other kinds of participation in companies;*
- c) *claims to money or to any performance having an economic value*
- d) *copyrights, industrial property rights (such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), technical processes, know-how and goodwill*
- e) *concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law ”.* The Treaty entered into force on 5 November 1993.

³⁵ In detail: *Fedax. v. Venezuela* (Case ARB/96/3) ICSID Decision of the Tribunal on Objections to Jurisdictions (1997), *Salini* (n 29).

investment in respect of the Swiss-Uzbekistan BIT. The contribution should involve extension “over period of time and that involves some risk”³⁶.

LFI contains provision that requires the investment to be made in the territory of Uzbekistan. Article 3 of LFI states that foreign investment is required to be established on the territory of the Republic of Uzbekistan. This is in a case including financial instruments such as loans and, in a case involving pre-shipment inspection services³⁷. In *Ambiente v. Argentina*, tribunal clarified the issue of territoriality requirement. In order to identify in which State’s territory an investment was made, one has to determine first which State benefits from this investment³⁸. Tribunal pointed that where an investment was made, the criteria must be to whose economy development an investment contributed. In the light of investment arbitration cases, tribunal have to address “to what extent the activities of an investor in connection with his investment have to be performed within the territory of the host State in order to qualify as a whole as having a sufficient territorial nexus with the host State.”³⁹

As previously noted, investment in the scope of LFI and BIT is necessary to fulfill two requirements. First and foremost, investment is established with respect to Uzbek laws and in the territory of Uzbekistan. Furthermore, investment must be legal in all stage of investment establishment. The Laws protect only such investment in the scope of LFI and BIT in Uzbekistan.

3. Protective provisions for foreign investors

LFI provides a range of concessions and protective provisions, along with providing legal guarantees for foreign investors. In order to attract more investment, the host country promotes foreign investors through providing guarantees and facilities. In fact, prospective investors focus on not only profitability but also concern with non-commercial risks. Foreign investors usually cannot mitigate such risks. When non-commercial risks occur the host country acts or do series of acts that lead to restrictions such as limitation of transfer funds, expropriation, nationalization, discrimination, civil disturbance. In this respect, foreign investors prefer to head to host countries providing more security, concessions and facilities.

3.1. National treatment

In accordance with Article 9 of LFI, the foreign investor is not in less favorable conditions than local investors are. This provision provides equal regime and constant protection for foreign investors⁴⁰. The scope of this regime is not more than Uzbekistan signed international treaty. There are two exceptions to apply this regime. First of all, the host state has the right to take measures when the establishment of investment is opposite to national economy policy. Second, national treatment regime could be restricted in case of

³⁶ *Romak S.A* (n 12) para 208.

³⁷ In case of inspection services, tribunal noted that investments should include “the injection of funds into territory of the host state and non-severable of the overall service was provided in the host state”. *SGS. v. Pakistan* (Case ARB/01/13) ICSID Decision of the Tribunal on Objections to Jurisdiction (2003).

³⁸ *Ambiente v. Argentina* (Case ARB/08/9) ICSID Decision on Jurisdiction and Admissibility (2013).

³⁹ Knahr Christina ‘Investment in “in the Territory of the Host State in Christina Binder, Ursula Kriebaum, August Reinisch, Stephan Wittich (ed) *International Investment Law for the 21 century: Essays in Honor of Christopher Schreuer* (Oxford University Press 2009) 54.

⁴⁰ National treatment clause provides for foreign investors is accorded treatment no less favorable than that the host state accords to its own investors. See also Rudolf Dolzer and Margrete Stevens, *Bilateral Investment Treaties* (Kluwer Law International 1995) 63.

necessity of national interest of Uzbekistan⁴¹. But the law failed to give definition of national interest. In this respect, the scope of national interest is broad enough to cover all kind of investment because of vague definition.

In the past, most countries applied two different regimes for foreign investment and domestic investment. Nowadays, legal framework for foreign investment covers both domestic and foreign investment. But it could be more complicated to make such laws because of different nature of domestic and foreign investment. The major benefit of common law for foreign and domestic investment is to keep the balance between domestic and foreign investors' rights. The distinction between domestic and foreign investors' rights carries some risk for the government. In case of the increase of such risks, countries should make comprehensive investment law, including domestic and foreign investor⁴².

Today Uzbekistan has a separate law for local and foreign investors⁴³. As previously mentioned, separate laws carry some level of discrimination. But it is clear that current Uzbek laws provide more favorable conditions for foreign investors than domestic investors. It is recommended that investment law should not create different standards of treatment between foreign and domestic investors. In this respect, the host country often elaborates protection of foreign investment through adopting clear legislative guarantees. But it does not mean that the host country discriminates in favor of foreign investors against domestic investors⁴⁴.

Similar provisions exist in Uzbekistan BITs⁴⁵. The main difference between national investment law and BIT of national treatment provisions is the scope of applicability. National treatment clause in LFI could be applied for all foreign investors when BIT is only applied for parties.

3.2. Stabilization clause

The stabilization clause protects foreign investors from unexpected regulation changes. Frequent changes in national foreign investment law can have negative impact on foreign investments. This is because unexpected legislative changes have forced foreign investors to change their investment objectives previously, which can lead to large financial losses. From the host country perspective, the stabilization clause is often seen an indispensable and persuasive tool to attract foreign investment in risky environment⁴⁶. Therefore, taking measures against frequent legislative changes by the host country may give assurance to foreign investors, especially for long term projects.

According to Article 3 of the LFI, in case the subsequent legislation of Uzbekistan leads to deterioration of investment conditions, the legislation in use at the time of investment will

⁴¹ For example, According to Article 8 of "On Mass Media" on Law of the Republic of Uzbekistan, "Establishment of mass media by foreign legal entities in the charter capital of which thirty percent or more share of investments is not allowed."

⁴² World Bank Group (n 1) 15.

⁴³ Domestic investors are regulated by The Law of the Republic of Uzbekistan Guarantees of Freedom of Entrepreneurship, dated 2 May 2000, as amended by Law No. 328 of the year 2012 <http://lex.uz/Pages/GetAct.aspx?lact_id=31846> accessed 5 April 2018.

⁴⁴ World Bank Group (n 1)15.

⁴⁵ According to Article 3 of Israel and Uzbekistan BIT "Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors or to investors of any third state."

⁴⁶ Alisher Umirdinov 'The End of Hibernation of Stabilization Clause in Investment Arbitration: Reassessing its Contribution to Sustainable Development' (2015) 43(4) Denver Journal of International Law and Policy 456.

be applied for ten years from the start date of the investment to foreign investors. The foreign investor has the right to implement the provisions of the new legislation, which improves the investment conditions in case that investor has made it at his discretion. The stabilization clause protects against legislative changes in extraordinary broad protection of foreign investors. In the scope of the clause, foreign investors are protected against any negative changes that might occur in Uzbek legislation unless national security interests are required. The stabilization provisions are broader than those for foreign investors in other national investment legislation and investment agreements.

The stabilization is the common clause in the context of BITs and investment contracts⁴⁷. The function of such clause directly protects foreign investor from the issue of regulatory changes adopted by the host country during the investment period. In case of capital-intensive projects in foreign countries such as extractive industry, infrastructure, public service projects (mining, oil, electricity, water and sewage, telecommunications transport), concession agreements, production sharing agreements, build-operate and transfer agreements⁴⁸. Generally, the scope of stabilization clause is to cover domestic regulation relating to taxation, non-discrimination, favorable exchange rates, presence of foreign currency, free remittance⁴⁹.

Oxus Gold v. Uzbekistan case⁵⁰ is a good example for modified tax regulations. Uzbekistan granted AGF (Gold mining company) for specific tax privileges in the lifetime of the project⁵¹. According to Clause 7 of Decree No.477 “*In the event of changes during the next ten years in the tax law of the Republic of Uzbekistan which adversely affect the activities of the Joint Venture, to provide the application of legal and other normative acts valid at the time of signing of the statute documentation for the Joint Venture*”⁵². Tribunal noted that such a clause in a law or a general regulation does not give a vested right to the investor, as the State can always modify its laws and general regulations. The situation is different when a stabilization clause is included in a contract or a regulation specifically directed at the investor, as in the present case, where the different Decrees all concerned expressly Amantaytau Goldfields Joint Venture. The Tribunal considered the extent of the protection granted by

⁴⁷ See also, Umirdinov 458-459, Moshe Hirsch, ‘Between Fair and Equitable and Stabilization Clause: Stable Legal Environment and Regulatory Change in International Investment Law’ (2011) 12(6) *Journal of World Investment and Trade* 787-792, Thomas Waelde, George Ndi, ‘Stabilizing International Investment Commitments: International Law Versus Contract Interpretation (1996) 31 *Texas International Law Journal* 238-245.

⁴⁸ Katja Gehne and Romulo Brillo, ‘Stabilization Clause in International Investment Law: Beyond Balancing and Fair and Equitable Treatment’(2017) *Institute of Economic Law Transnational Economic Law Research Center (TELC)* 9.

⁴⁹ Peter Cameron, *International Energy Investment Law: The Pursuit of Stability* (Oxford University Press 2010) 249. Dolzer and Shreuer (n 2) 125-126.

⁵⁰ *Oxus Gold v. Uzbekistan* (Case IIC 779), Jurisdictional Decision/ Award (2015) <<https://www.italaw.com/cases/781>> accessed 14 March 2018.

⁵¹ These tax privileges based on Decree No. 477 of 22 September 1994 “On the creation of the Joint Venture “Amantaytau Goldfields” and measures to ensure its effective functioning”.

It contains tax privileges as follows:

- exemption from paying income tax during five years as of registration of AGF
- exemption from paying taxes on customs and property
- exemption of foreign shareholders and foreign lenders from taxes on dividends and loan-service payments transferred abroad,
- exemption of taxes or charges on amortization of fixed assets.

⁵²This stabilization clause was to be valid for 10 years as of signing of the “statute documentation” of AGF

these Decrees to the Joint Venture. Finally, tribunal found that the host country was responsible for a violation of Article 2(2) of the BIT⁵³ in relation to tax regime changes⁵⁴.

The host country has obligation not to change the legal framework for foreign investment. In this respect, countries frequently change their laws and regulation in response to changing economic circumstances or changing political, economic or social considerations. Those changes may well make certain activities less profitable or even uneconomic to continue⁵⁵. It is apparent that the host country should follow some requirements in the stabilization clause when taking measures or making changes regulations. In view of all these points, the stabilization clause should be including reasonable *bona fide* regulations: non-discriminate, reasonable, necessarily, fairly affect the investor⁵⁶.

3.3. Protection of investors against expropriation

In the framework of Uzbekistan investment regulations, foreign investment is protected and guaranteed against expropriation and nationalization. A good practice in investment law for protection of investors against expropriation is that the host country will not expropriate except for a public purposes and on a non-discriminatory basis, in accordance with law and procedure, and payment of adequate and effective compensations⁵⁷.

Foreign investment and other assets in Uzbekistan cannot be expropriated according to Article 5 of the LFI. Moreover, the law prohibits the seizure of foreign investment and other assets belonging to foreign investors. Such prohibition is an exemption for some exceptional cases (natural disasters, accidents, epidemics).

In this content, in exceptional cases, the confiscation of foreign investment includes in accordance with the following conditions:

- *Limitation of the minimum amount of investments or other assets necessary for the settlement of cases arising from exceptional circumstances*
- *Performing in a non-derogatory manner and in accordance with the rules laid down in the law*
- *As regards the payment of damages in accordance with the winding order made as a result of the transactions carried out,*

The Council of Ministers of the Republic of Uzbekistan will accept it. The state will guarantee that compensation payments will be made on time.

Nationalization and expropriation of Uzbek law constitute one of the undefined issues; the investment legislation provides for protection against expropriation and nationalization for foreign investors. The Article 202 of the Civil Code of Uzbekistan⁵⁸ contains provisions on

⁵³ According to Article 2(2) of UK - Uzbekistan BIT “*Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party*”. The Treaty entered into force on 24 November 1993.

⁵⁴ *Oxus Gold* (n 50) para 827.

⁵⁵ *Marvin Roy Feldman Karpa v. United Mexican States* (Case ARB/99/1) ICSID Award (2002) para.112.

⁵⁶ *Gehne and Brillo* (n 48) 14-15.

⁵⁷ *World Bank* (n 1) 44.

⁵⁸ Civil Code of the Republic of Uzbekistan 1996 (Extract) (as last amended by the Law of the Republic of Uzbekistan No.312 of December 26, 2011). It can be found general provision of acquisition of property rights in Constitution of Uzbekistan. Article 53 in Constitution of Uzbekistan “*private property, along with other types of property, shall be inviolable and protected by the state. An owner may be deprived of his property solely in the cases and in accordance with procedure prescribed by law*”.

expropriation. However, the arrangements to answer questions such as the scope of expropriation, basic principles of expropriation, compensation payments are neither in Civil Code nor in special laws. In other words, there are no procedure to determine the essential conditions and nationalization scheme for the realization of the nationalization known as a measurement of the abolition of private property in Uzbek law⁵⁹. Such gaps in the law lead to the litigation between foreign investors. In order to keep its promise and provide all guarantees, the host country should create a legal basis for the implementation of the guarantees given.

In *Oxus Gold v. Uzbekistan* case, the foreign investor claimed that the host country committed unlawful expropriation of its investments through a series of acts⁶⁰. First, the tribunal referred to Article 5(1) of UK-Uzbekistan BIT⁶¹. This clause carries some requirements in case of expropriation. According to this clause, expropriation must occur in a public purpose, non-discriminatory basis, adequate compensation, immediately, review by competent authority. Then the tribunal interpreted direct and indirect expropriation. “A direct expropriation, where the goal of the legal act performing the expropriation is precisely to take a property, in case of indirect expropriation, there is a State law or regulation, or sometimes some behavior, – the purpose of which was not to take the property, but the effect was just that. Such indirect expropriation can result from a single act or a series of acts”⁶². The tribunal found that there is no connection between two points⁶³. The first point is the effective destruction of the value of the investment. The second point is the causality link between the loss of such value and an act attributable to the State. It emphasizes that the deterioration of investor’s investment comes from internal management problems. Finally, tribunal concluded that investor has failed to establish the necessary causal link between the incriminated action of Uzbekistan and investor’s alleged deprivation of its investment⁶⁴.

3.4 Transfer of Funds

Investors have the right of transfer their income to their countries. Foreign investors, who are investing in the Republic of Uzbekistan, can freely use the income earned as a result of their investment activity (Article 10, LFI). In addition, according to Article 7 of the Law on the Protection and Guarantee of Foreign Investor Rights, free money transfer by foreign investors is guaranteed without any restrictions, provided that taxes and other compulsory payments are made in accordance with the laws of Uzbekistan.

⁵⁹ Rahmonqulov, H va Oqyulov, O *Ozbekiston Respublikasi Fuqarolik Kodeksiga Sharhlar* 3-tom (Commentary on the Civil Code vol 3), (Tashkent: Vektor-Press 2010) 505.

⁶⁰ *Oxus Gold* (n 50) para 714. In *Metal-Tech v. Uzbekistan* case, foreign investor claimed unlawful expropriation because host country disseminated against Metal-Tech on the ground of its nationality. But tribunal dismissed that case due to lack of jurisdiction (illegal investment).

⁶¹ Article 5(1) of UK-Uzbekistan defines expropriation of investment could be happen under five cumulative conditions:

- *expropriation, or any measure having equivalent effect, must be justified by a public purpose*
- *it must be effected on a nondiscriminatory basis;*
- *it must be accompanied by adequate compensation to be calculated based on the “value of the investment expropriated immediately before the expropriation”, including interest;*
- *be effected “without delay”*
- *the expropriation or the valuation of the compensation shall be subject to review by a judicial or other independent authority*

⁶² *Oxus Gold* (n 50) para 740.

⁶³ *Oxus Gold* (n 50) para 748.

⁶⁴ *Oxus Gold* (n 50) para 753.

It is important to note that the transfer of funds clause doesn't allow foreign investors to transfer any funds. Generally, those funds should be related to investments⁶⁵. BITs usually add restriction of fund transfers. For example, Article 6 of Russian-Uzbekistan BIT⁶⁶. Furthermore, any cross-border capital movement within the fund transfer clause in BIT cannot be considered as "*investment related*" and such transfer is not protected in this content. In order to protect fund transfers, one or more of the transfers defined in BIT must be of the transfer type (such as profits, dividends and interest payments)⁶⁷.

In accordance with Priority Measures for Liberalizing Foreign Exchange Policy Decree⁶⁸, legal entities in Uzbekistan to exchange foreign currency in banks without restrictions for payments under current international operations (import of goods, works and services, repatriation of profits, repayments of loans, payment of travel expenses, and other transfers of non-trade nature). Natural persons can also freely buy and sell foreign currency in bureau change and in exchange offices of banks with currency transferred to international bank cards and use them abroad without any restrictions.

Investment laws provide guarantees of access to the convertibility and free transfer of funds. As previously noted, in spite of any restriction in the context of LFI, fund transfers should be related to investments.

3.5. Acquisition of immovable property

LFI guarantees that investors have the right to acquire ownership of immovable properties (Article 10). In this scope, foreign investors acquire ownership rights to facilitate commercial and service sectors.

⁶⁵ *Continental Casualty Company v. Argentine Republic* (Case No: ARB/03/09) ICSID Award (2008) para 240.

⁶⁶ Each Contracting Party shall guarantee to investors of the other Contracting Party the transfer of payments related to investments from the territory of the State of the first Contracting Party without any restrictions after fulfillment of all tax and other similar obligations provided for by the law of the State of the first Contracting Party, and in particular:

- initial capital or any additional funds used to maintain or expand investments
- profits
- compensation (Articles 4 and 5 of this Agreement)
- proceeds obtained from the whole or partial sale or liquidation of investments
- payments in connection with an investment contract, including related payments made pursuant to a loan agreement;
- earnings and remuneration of nationals of the other Contracting Party who work in connection with an investment;
- payments arising from the settlement of disputes in accordance with Article 8 of this Agreement.

⁶⁷ *Continental Casualty Company* (n 65) para 242. See also, Dolzer and Shreuer (n 2) 194-195.

⁶⁸ Decree of the President of the Republic of Uzbekistan No. DP-5177 of September 2, 2017 "On priority measures of liberalizing foreign exchange policy", <http://uza.uz/uz/documents/valyuta-siyosatini-liberallashtirish-bo-yicha-birinchi-navba-04-09-2017?sphrase_id=2784283> accessed 10 July 2018. In the past there are two restrictions for investors to transfer their funds. Firstly, foreign investors have to convert 50% of all currency earnings to Uzbek Som (Official Currency Exchange). In some exceptional cases, this requirement can be reduced to 40% for export goods of small-scale companies or fully foreign companies. Foreign investors were obliged to pay a 10% tax on their earnings when they transfer their proceeds abroad. See: Presidential Decree No. DP-837 'On Measures to Ensure the Currency Control of Export and Import Operations'.

The legal framework for real property and property rights in Uzbekistan is regulated by the Constitution⁶⁹, the Property Law⁷⁰, Civil Code⁷¹, Land Code⁷², and Urban Planning Code⁷³. These laws provide to have property rights and there is no restriction for foreigners in the scope of general legal framework. According to Article 16 of Land Code of Uzbekistan⁷⁴, “Land is the property of the state and the basis for national wealth, it ought to be used rationally, protected by the state and it is not liable to sale, exchange, give as a present, mortgage with the exception of cases established by the legislative acts of the Republic of Uzbekistan”.

Foreign juridical and real persons have the right to own lands parcels in the scope of Land Code. In accordance with Article 18 of Land Code, the right to own of foreign juridical and real persons, employees of diplomatic corps, mass media representative accredited in the Republic of Uzbekistan, employees of firms, companies and international organizations, people working on the permanent basis at the enterprises with foreign investments and also persons permanently living in the republic and having residence permit appears when selling to them apartment houses together with land parcels they are situated on in the order established by the legislation.

The registration procedure of property rights in Uzbekistan is complicated. Investment Climate Advisory Service reviewed Uzbekistan property registration and concluded overall property registration system as bureaucratic and cumbersome⁷⁵. Specifically, there is no comprehensive registration law about the land and property issues in Uzbekistan. According to the Instruction for Registration of Buildings, registration of non-residential buildings is governed by the district and regional state cadastral offices, residential buildings is conducted by bureaus of technical inventory and mortgages by Land Committee. Registration service of property in Uzbekistan keeps separate land book for foreigner owned property, mortgage, municipality property, state buildings, and leased buildings. Such separate registration is a

⁶⁹ Article 36 of the Constitution of the Republic of Uzbekistan, amended by Law No. (1) of the year 1994, Law No.(3-4) of the year 2003, Law No.15 of the year 2007, Law No.12/1 of the year 2011, Law No.16 of the year 2014, Law No.14, 22, 35 of the year 2017.

⁷⁰ Law “On Property in the Republic of Uzbekistan“, dated 31 October 1990, amended by Law No.91 of the year 1991, Law No. 5 of the year 1993, Law No. 11-12 of the year 1994, Law No. 6 of the year 1995, Law No.2 of the year 1997, Law No.1 of the year 2003, Law No.37 of the year 2017.

⁷¹ Article 479-489 of Civil Code of Uzbekistan.

⁷² Land Code of the Republic of Uzbekistan dated 30 April 1998, amended by Law No.4 of the year 2003.

⁷³ Urban Planning Code of the Republic of Uzbekistan dated 4 April, 2002.

⁷⁴ In the applicable scope of Land Law, land for permanent and temporary use is granted to following groups:

- Citizens of the Republic of Uzbekistan;
- Industrial, transport and other non - agricultural enterprises, institutions and organizations;
- Enterprises with foreign investments, international associations, and organizations foreign juridical and real persons (Art 20)

⁷⁵ Investment Climate Advisory Service (World Bank Group) provided comprehensive review of property registration in Uzbekistan and found following challenges:

- *Legal framework for registration of property as a proper legal process is regulated by multiple codes (land and civil laws). Procedure of property registration has not been clearly established*
- *The registration of property requires too many manual and paper based operations*
- *The use of technology in the procedure of property registration is not standardized*
- *Property owners and stakeholders have poor access to property registration data*

See in detail: Investment Climate Advisory Service, *Property Registration in Uzbekistan*, (2011) 20 <http://www.unece.org/fileadmin/DAM/hlm/prgm/cph/experts/uzbekistan/03_land_admin_and_urban_dev/Uzbekistan_Property_Report_WB.pdf> accessed 7 May 2018.

violation of the whole concept of a unified registry system. The property registration in multiple books is time consuming and subject to errors⁷⁶.

As noted above, foreign investors have right to access property rights. Albeit, property legal framework needs comprehensive review because current property legislations fail to meet foreign investor expectations. Clear property rights and simple property registration procedure in the context of property law make the country a more attractive destination for foreign investment.

3.6 Dispute settlement clause

In accordance with Article 10 of the LFI, *“Dispute associated with foreign investments (investment dispute) directly or indirectly, can be settled on the agreement of the parties by consultation between them. If the parties will not be able to achieve agreed settlement, than such dispute should be settled either by an economic court of the Republic of Uzbekistan or by arbitration in accordance with the rules and procedures of international agreements (conventions) on settlement of investment disputes, to which the Republic of Uzbekistan has been joined.*

Dispute settlement clause provides right for investors to access arbitration without local remedy. According to the clause, investors have two options; either domestic court or international investment arbitration. Because of lack of objectivity and obligated to apply domestic laws, domestic courts are rarely chosen by investors⁷⁷. The access to international arbitration is restricted to investment disputes. However, the scope of Uzbekistan BITs is broad enough to cover any legal disputes. For example, in accordance with Article 8 of Uzbekistan and Israel BIT⁷⁸, expression of a dispute is *“...any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former”*.

After dispute settlement clause raised interpretive issue, the Uzbekistan Supreme Court interpreted dispute settlement clause in LFI⁷⁹. According to the Supreme Court, it is required to take consent for every dispute to access arbitration. In other words, dispute settlement clause in LFI is not a *“statement of consent”*. To bring a case in international investment arbitration, the host country and investor make arbitration agreement for every investment dispute. The dispute settlement clause in the scope of FIL can be accepted as unilateral offer. In this case, good faith must be the guiding principle in order to determine legal binding of such offer in spite of vagueness or ambiguity⁸⁰. It means that *a state cannot reasonably hide behind the curtain of legal obscurity to exclude unilateral offers that the foreign investors perceived in good faith as constituting binding unilateral acts (commitments) under international law*⁸¹.

⁷⁶ ibid 21.

⁷⁷ Christoph Schreuer, ‘Calvos’s Grandchildren: The Return of Local Remedies in International Arbitration’ (2005) *Law and Practice of International Courts and Tribunals* 1.

⁷⁸ Uzbekistan and Israel BIT <[https://www.investorstatelawguide.com/documents/documents/BIT-0416%20-%20Israel-Uzbekistan%20BIT%20\(1994\).pdf](https://www.investorstatelawguide.com/documents/documents/BIT-0416%20-%20Israel-Uzbekistan%20BIT%20(1994).pdf)> accessed 12 December 2017.

⁷⁹ Solution of the Constitutional Court of the Republic of Uzbekistan of November 20, 2006, About interpretation of part one of article 10 of the Law of the Republic of Uzbekistan "About guarantees and measures of protection of the rights of foreign investors" <http://www.lex.uz/pages/GetAct.aspx?lact_id=1267669> accessed 12 December 2017.

⁸⁰ *Malicorp Limited v. Egypt* (Case ARB/08/18) ICSID Award (2011) paras 115-116.

⁸¹ Mbengue (n 3) 212.

Investment arbitration practice shows that there are three ways to give consent to the international arbitration⁸². The most obvious way is a consent clause in a direct agreement between the host country and the foreign investor. The dispute settlement clause is a common practice through investment agreement between the host country and the foreign investor. Another technique to give consent for arbitration is dispute settlement clause in the national investment legislation of the host country. Such dispute settlement clause provides foreign investor as general terms. It is a common practice among capital importing countries to adopt a dispute settlement clause. Although such consent is based on the host country investment law, it can only become manifest through the agreement between the host country and the investor⁸³. In this case, the dispute settlement clause in the host country investment law is no more than an offer. Such offer, in order to be effective, must be accepted by the foreign investor⁸⁴. Foreign investor may accept this offer. In other words, such consent is not sufficient to provide access to the international arbitration. The third method to give consent to access international arbitration is BIT between the host country and the investor's state of origin. Several BITs include a dispute settlement clause to access international arbitration. The same method is operated by a number of regional multilateral treaties such as the NAFTA and the ECT. This dispute settlement clause, in order to be operative, is accepted by the foreign investor. Recent developments in international investment arbitration indicates that international arbitration could be accessed without the state consent. Although this is debatable, there are few examples to support it⁸⁵.

This being said, the scope of consent to arbitration in investment law is general. LFI contains no implicit acceptance to arbitration. The consent provision in LFI is not enough to be considered as a consent to access arbitration. The dispute settlement clause should be more clarified.

3.7. Employing Foreign Personnel

According to Article 18 of LFI, investors have the right to have the employment contract with citizens of any foreign countries, citizens or persons without citizenship who permanently reside outside of the Republic of Uzbekistan. This right should be guaranteed only when the investment activity is carried on in respect of Uzbek laws.

Employing foreign personnel procedure is complicated and cumbersome. When investors need to employ foreign personnel, they have to apply for a work permit from the Ministry of Labor and Social Security. The work permit is granted for a period of one year and can be extended every year. The work permit is issued within a period of 6 months for a foreign company, although it is granted for 1 year. It also given in a period between 3 and 6 months for foreign personnel except for the company owner⁸⁶.

Under LFI, foreign personnel can freely transfer their profits gained in the country. Accordingly, the salary, yearly allowance and retirement of foreign personnel working in a

⁸² UNCTAD *Dispute Settlement: Consent to Arbitration* (2003) <http://unctad.org/en/docs/edmmisc232add2_en.pdf> accessed 8 May 2018.

⁸³ Schreuer (n 77) 1-2.

⁸⁴ UNCTAD (n 82)11.

⁸⁵ *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt* (Case ARB/84/3) ICSID Award (1992). See also arbitration without consent, Jan Paulsson, 'Arbitration without Privity' (1995) 10 ICSID Review 232-257, Muthucumaraswamy Sornarajah, *Resistance and Change in the International Law on Foreign Investment*(Cambridge University Press 2015) 139-147.

⁸⁶ See. Regulations on the procedure for attraction and use of foreign labor force in the Republic of Uzbekistan (the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan from October 19, 1995 of No. 408), Instruction on the procedure of application of the Regulation on the procedure of attraction and use of foreign labor force in the Republic of Uzbekistan (No. 285, of 20 November 1996).

foreign-owned enterprise will be determined by the employment contract with each of the employees. Those employees may transfer their wages and other legal proceeds to their country without any restrictions after making the taxes and other obligatory payments as prescribed by the law. Foreign-owned enterprises transfer foreign funds to their respective funds, insurance and social security payments (Article 18 LFI). General rules for the working conditions of foreign personnel are regulated by the Labor Law⁸⁷.

4. Conclusion

This paper has highlighted substantial provisions of protecting foreign investment in the scope of LFI. In this regard, such provisions of protecting investment evaluates through international investment standards. In order to be a comprehensive review, the main provisions of LFI compares to substantial provisions in BIT.

Foreign investment is an indispensable part of development of countries' economy including Uzbekistan. Without creating favorable conditions, it is difficult to attract foreign investment. Foreign investment laws, national regulations, and bilateral agreements make a sigh of efforts by host countries to attract foreign investment. Although stable, clear and predictable legal framework give more credibility for foreign investors.

Foreign investors have basic expectations from the country when investing. As a matter of priority by investor, the host country's legal order must be stable, consistent and predictable. Predictability of legal order will provide investors to plan their investment in advance and comply with such legal regulations. From this perspective, it is hard to say Uzbekistan LFIs meet foreign investors' legal expectations. Lack of consistency and certainty in Uzbekistan legal order including investment laws constitute a great challenge.

Furthermore, as distinct from Uzbek Investment Law, international practice indicates that single investment law is more preferable than a few investment laws. Because such investment laws are neither more different nor more providing protection to investors. In this case, a few investment laws often lead to confusion for investors. The main reason is that nearly all of foreign investment laws are similar or some of them are in contradiction one another. This could be deterrent to foreign investors to invest in the country. It is advisable that the basic provisions of protecting foreign investment should be through single investment law. Such a practice has a benefit of preventing confusion as well as enabling more transparency. Last but not least domestic legislation should be consistent with investment law.

⁸⁷ See, Labor Code of the Republic of Uzbekistan dated 21 December 1995, as amended by Law No. (1) of the year 1996, Law No.(2) of the year 1997, Law No. (5-6) of the year 1998, Law No. (1, 5, 9) of the year 1999, Law No.(5) of the year 2001, Law No(1, 9) of the year 2002, Law No.(37-38) of the year 2005, Law No.(52) of the year 2009, Law No.(51) of the year 2011, Law No.(37) of the year 2012, Law No (18) of the year 2013, Law No.(4) of the year 2014, Law No.(33) of the year 2015, Law No.(17, 52) of the year 2016, Law No.(37) of the year 2017, Law No.(03/18/456/0512,03/18/459/0536, 03/18/476/1087) of the year 2018.