

A.A. Nukusheva

«Bolashak» Academy, Karaganda, Kazakhstan
(E-mail: akuka007@mail.ru)

The role and significance of bilateral and multilateral agreements on the promotion and mutual protection of foreign investment in the investment legislation of the Republic of Kazakhstan

The article considers the role and significance of bilateral and multilateral agreements in the field of promotion and mutual protection of foreign investments. It is well-known that the shortcomings of the national legal regulation of relations related to foreign investments can be compensated by their international legal regulation. At the same time, it is obvious that at the level of bilateral intergovernmental agreements a rather narrow range of issues is regulated (as a rule, a general principle is formulated for treating foreign investments and standard guarantees are given), and multilateral universal conventions cover only particular situations related to the investment (energy sphere, arbitration settlement of investment disputes, the mechanism of compensation of the investor's losses from political risks through the insurance system in a special international home agency). International conventions of the CIS countries also mainly refer to the internal law of the participating states. All this allows us to conclude that the main role in regulating foreign investments is played by national legislation that most fully regulates the procedure and forms for attracting foreign investors and the activities of an enterprise with foreign participation, and also specifies the procedure for the implementation of guarantees enshrined in international agreements.

Keywords: foreign investments, bilateral and multilateral agreements on promotion and mutual protection of foreign investments, investment legislation of the Republic of Kazakhstan, national legislation, investment climate.

The acquisition of independence by the Republic of Kazakhstan and access to the world market in the status of a sovereign state require the creation of a developed and internally consistent system of foreign economic legislation. An important place in the system of foreign economic legislation is investment legislation, which is an important component in the system of law of any state.

As the Head of our state N.A. Nazarbayev stated at the 26th plenary session of the Foreign Investors Council: «For Kazakhstan as a young independent state that has embarked on the path of integration into the world economy and transition to an open economy, it is extremely important to participate in the migration of capital as an importer and exporter. This will facilitate the country's involvement in the internationalization of production. At present, Kazakhstan's participation in these processes is insignificant if to be compared to other Asian and Latin American countries, more attractive to foreign investors. The desire to attract as many foreign investments as possible is connected with the need to solve strategic and current tasks. Investments form the productive potential on a new scientific and technical basis and predetermine the competitive positions of countries in world markets. At the same time, the involvement of foreign capital in the form of direct investments, portfolio investments and other assets plays an important role for many countries, especially those that are escaping economic and social ills» [1].

In order to ensure a direct dialogue between the Government of the Republic of Kazakhstan and foreign investors for the effective resolution of the urgent issues related to their investment activities in the country and the improvement of the investment climate in Kazakhstan by the presidential decree of June 30, 1998, a consultative body, the Council of Foreign investors under the President of the Republic of Kazakhstan under the chairmanship of the Head of our state [2] in accordance with Subparagraph 20 of Article 44 of the Constitution of the Republic of Kazakhstan [3].

The main task of the Council is to develop recommendations and proposals on the following issues:

- Definition of the main directions of the investment policy of the Republic of Kazakhstan;
- improvement of the investment climate in the Republic of Kazakhstan;
- improvement of the regulatory legal framework of the Republic of Kazakhstan on investments;
- assistance to foreign companies in economic diversification, industrialization of the industrial sector, development of small and medium-sized businesses in the Republic of Kazakhstan;
- integration of the economy of the Republic of Kazakhstan into world economic processes;
- strategies for attracting foreign investment into the economy of the Republic of Kazakhstan;
- Implementation of major investment programs and projects of the Republic of Kazakhstan, having international significance [4].

Since the establishment of the Foreign Investors Council, 30 plenary sessions were held under the chairmanship of the Head of State Nursultan Nazarbayev, where a wide range of issues were raised and discussed, including improvement of legal regime for foreign investment in the country, improvement of the judicial system of Kazakhstan, optimization of the taxation system and foreign labor involvement issues, improvement of the investment image of the Republic of Kazakhstan, etc [5].

Domestic researchers of investment relations note that in modern conditions the legal regulation of foreign investment is carried out on two levels: international legal and national legal level [6; 70].

There are many norms of international law that are contained in multilateral and bilateral international treaties that regulate the issues of investment relations. It is well-known that the shortcomings of the national legal regulation of relations related to foreign investments can be compensated by their international legal regulation.

The role of international investment agreements, especially bilateral ones, is to guarantee the stability of the regime for foreign investors, provide them with appropriate incentives, and mutual agreement on the interests of both foreign investors and countries where investments are made.

Bilateral and multilateral agreements in the field of protection of foreign investment have always been given special significance. Appeal to the norms of international law as a source of regulation of foreign investment has always been considered as the best means of protection of foreign individuals when regulating their relations with the state. Before the adoption of laws on foreign investment in the 60's of the twentieth century all foreign investments related problems were mostly being solved by granting diplomatic protection to these people. Due to the fact that foreigners were mostly connected with the activities of state missions, it seemed possible to address the protection of foreign investment in the framework of the current rules on the granting of diplomatic protection to foreigners [7; 115]. With the development of international economic relations it became necessary to adopt special regulations for the regulation of foreign investment and, accordingly, the development of special measures to protect the rights and interests of foreign individuals engaged in entrepreneurial activities in a foreign country. In foreign judiciary literature it was noted that the insufficient development of international law in this area of relations was especially acute after the Second World War, when the first laws on foreign investment adopted [7; 115].

An attempt to eliminate this shortcoming and create a multilateral international convention on the protection of foreign property was not successful, and the practice followed the development of bilateral treaties on the protection of foreign investment, as well as multilateral conventions that addressed certain and specific problems of the legal regulation of foreign investment, for example, the problem of dispute resolution between the state and the private investor, the problem of insurance of foreign investments.

First bilateral international agreements on the protection of foreign investment appeared after the Second World War in the practice of international relations between industrialized and developing countries. The first such agreement was signed by the FRG and Pakistan in 1959 [7; 115]. More than three hundred of such agreements have already been concluded.

Speaking about the importance of bilateral agreements, it should be noted that they play a very important role in the international legal regulation of foreign investment. It is due to the fact that they, as I.Z. Farkhutdinov notes, are concluded in order to ensure, with the help of legal means, the relative stability of reproduction and freedom of movement of capital within the global economic system in the conditions of the socioeconomic crisis, and especially the inflow of foreign investment into developing countries, protecting them from the so-called non-business risks [8; 159]. M.M. Boguslavskii points out that the purpose of such an agreement is to encourage mutual implementation of investment by creating a favorable investment climate [9; 23]. From the point of view of N.A. Ushakov, the states due to the virtue of their sovereignty are free to conclude any contracts that do not contradict the peremptory norms of general international law, including treaties containing the obligation to represent the most favored nation regime [10; 104–105]. In M.E. Koveshnikov's opinion bilateral investment agreements are generally of a framework nature and hardly ever require specific obligations. However they clearly state provisions that reduce risks and provide legal protection for investments, provide for a reliable dispute resolution mechanism that excludes voluntarism and prejudgment in local courts [11; 14].

In general, it should be noted that the literature has repeatedly called attention not only to the importance of bilateral investment protection treaties, but also to the fact that, given common approaches in each country, in the presence of such agreements, specific bilateral agreements contain certain differences, and for practical purposes, certainly, it is necessary to study the exact text of a particular agreement [12; 371].

One of the important areas of investment attractiveness of Kazakhstan is the improvement of the international legal framework in the field of promotion and mutual protection of investments.

Kazakhstan signed 47 bilateral and 1 multilateral (EurAsEC) Agreements on the promotion and protection of investments with countries that are world leaders in FDI, including such countries as the United States; European countries — the Republic of Austria, the Belgian-Luxembourg Union, Bulgaria, the United Kingdom of Great Britain and Northern Ireland, Hungary, Germany, Greece, Spain, Latvia, Lithuania, Macedonia, Netherlands, Poland, Romania, Slovakia, Serbia, Finland, France, Czech Republic, Sweden, Switzerland, Estonia; the CIS member states — Azerbaijan, Armenia, Georgia, Kyrgyzstan, Russia, Tajikistan, Uzbekistan, Ukraine; and the countries of Asia, Africa and the Middle East - Egypt, Israel, India, Iran, Jordan, China, Republic of Korea, Kuwait, Qatar, Malaysia, Mongolia, Pakistan, Turkey, Vietnam, Afghanistan, Japan) [13].

Agreements on the promotion and protection of investments create favorable legal conditions for the promotion and protection of Kazakh investments abroad, as well as for foreign investments in Kazakhstan. They also contribute to improving the investment climate and further development of mutually beneficial trade and economic cooperation between countries.

Moreover, nowadays there are 18 drafts of Agreements to be developed and 3 Agreements are at ratified [13].

For the Russian Federation there are bilateral agreements concluded by the Soviet Union. The Russian Federation participates in bilateral international agreements on the protection of foreign investment as the successor to the former USSR. In accordance with the Agreement on the Establishment of the Commonwealth of Independent States, signed in Minsk on December 12, 1991 [14], Russia assumes the rights and obligations under international treaties concluded by the USSR. It should be noted that on December 21, 1991 in Alma-Ata the leaders of 11 of the 15 former union republics (except for Lithuania, Latvia, Estonia and Georgia) signed the Protocol to the Agreement on the establishment of the CIS on December 8, according to which Azerbaijan, Armenia, Moldova, Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan and Tajikistan joined the Commonwealth of Independent States as its founders on an equal grounds. On the same day, the leaders of 11 states also signed the Alma-Ata Declaration, which confirmed the main goals and principles of the CIS [15]. Mutual understanding on the issue of succession in respect of treaties of the former USSR was reached in the Memorandum of July 6, 1992 [16], which was signed by the Russian Federation and nine other member states of the Commonwealth of Independent States. It is noteworthy that, especially with respect to bilateral agreements on the protection of foreign investment, the Ministry of Foreign Affairs of the Russian Federation signed a note in December 1991, in which it confirmed its succession under these treaties [8; 332].

Obligations of the Republic of Kazakhstan on bilateral agreements, as a rule, boil down to the following:

- 1) promotion and protection of investments;
- 2) a fair and equitable treatment for foreign investment;
- 3) ensuring adequate protection of foreign private property;
- 4) compensation for damage;
- 5) provision of guarantees of investors' rights during nationalization, requisition and expropriation;
- 6) freedom to transfer foreign income from foreign investments abroad;
- 7) consent to the transfer of disputes with a foreign investor to international arbitration.

On the basis of bilateral investment agreements, its participants are able to more clearly determine their relationship based on the interests of only two sides of this investment agreement. Bilateral agreements are designed to protect the rights and interests of the states that signed this agreement. The conclusion of these international treaties is due to the fact that foreign investors investing from us consider the guarantees provided by Kazakhstan legislation insufficient for them and insist on fixing in the international agreements the basic conditions for the implementation of investments and activities in connection with them. In the opinion of M.M. Boguslavskii, «the purpose of any such agreement is to encourage precisely the mutual implementation of investment by creating a favorable climate» [17; 23]. Therefore, it is very important to draft a bilateral agreement in the most complete and precise form.

In addition, Kazakhstan ratified Multilateral Agreements in the field of investments in particular: The Seoul Convention of 1985 «On the Establishment of the Multilateral Investment Guarantee Agency (MIGA) (Seoul, October 11, 1985) [18; 77], the 1970 Washington Convention on the Settlement of Investment Disputes between States and Natural and Legal Persons of Other States (ICSID Convention) (Washington, March 18, 1965) [18; 95], the Agreement on the Promotion and Mutual Protection of Investments in

States — members of the Eurasian Economic Community (Moscow, December 12, 2008) [18; 109], the Energy Charter Treaty [18; 113], the Convention on the Protection of Investor Rights with CIS Countries [19].

The Washington and Seoul Conventions, although adopted with a large gap in time, are aimed at resolving the same problem of protecting foreign investment. Convention also united by a common method of solving the problem of protection of foreign investments: the creation of an international organization in accordance with the provisions of multilateral international agreements, and endowing it with specific powers. The Washington Convention deals with the creation of an international body to resolve investment disputes arising in relations between the state and a foreign private individual. The Seoul Convention regards the establishment of an international body which carries out insurance of foreign investments and the payment of compensation to a foreign private investor, if he suffered loss action caused by the State where he runs his foreign investment activity. The Washington Convention of 1965 defines the procedure for the work of ICSID, the International Center for the Settlement of Investment Disputes.

The conclusion of the 1985 Seoul Convention is due in no small part to the fact that the Washington Convention could not exhaustively solve the problem of protecting foreign investment. The problem of the implementation of the decision of the international arbitration body created by the Washington Convention remained unresolved in cases when the state against which the decision is rendered refuses to comply with this decision. Thus, despite the unconditional success (more than one hundred states are its participants), the Washington Convention is not always able to provide the desired result — compensation to a foreign investor of losses caused by the actions of the state taking the investment. The reason for this lies, as ICSID practice shows, in the special status of the state as a sovereign and at the same time as a party to a legal relationship with a foreign private investor. Seoul Convention on the Establishment of the Multilateral Investment Guarantee Agency, 1985 offers a purely pragmatic solution to the problem of protecting foreign investment.

In accordance with the Seoul Convention, the Multilateral Investment Guarantee Agency (MIGA) was established, which, like ICSID, is an international organization. The insurance contract is the basis of the protection of the interests of foreign investors proposed in the Seoul Convention, the parties to which, on the one hand, the international organization MIGA (insurer, subrogate) acts, and on the other hand, the foreign investor (insurer, guarantee holder). In relations with a foreign private investor, MIGA acts as an insurance company. In accordance with the concluded contract, MIGA undertakes to pay to the guarantee holder the insurance amount specified in the contract, calculated as a percentage of the amount of losses that will arise as a result of the occurrence of one of the cases enumerated in the contract: introduction of restrictions in the transfer abroad of the amount of profit in the state accepting foreign investment; expropriation of the property of a foreign investor by the receiving state; violation of the contract concluded by the foreign investor with the host state; military actions and civil unrest in the host state.

The adoption of the Seoul Convention summed up the retarded efforts to solve the problem of protecting foreign investment, as a problem arising from the relations of the state with a foreign private investor. With the adoption of the Seoul Convention, all legal means for solving the problem of protecting foreign investment can be considered exhausted.

Acts of international organizations in the field of foreign investment can be divided into two large groups — 1) acts related to the regulation of foreign investment, and 2) acts related to the legal regulation of the activities of transnational corporations (hereinafter — TNCs).

The first group of legal acts includes the World Bank's Guidelines on Foreign Investment, the provisions of the GATS Agreement on foreign investment issues, the Agreement on Investment Measures Related to Trade, the outcome of the Uruguay Round of WTO negotiations, the OECD codes and acts (the Code on the Liberalization of Capital the Code on the Liberalization of Current Transactions Related to Capital Flows, the National Regime Act), regional agreements (such as Chapter XI of the North American Agreement on Free Trade Area (NAFTA) and the draft Multilateral Agreement on Investment, developed under the auspices of the OECD) [20].

The second group of acts of international organizations includes the draft of Code of Conduct for TNCs developed by UNCTAD and the Guidelines on TNCs prepared by the OECD.

In the judiciary literature, the dispute raises the question of which norms should be prioritized. Some authors believe that when regulating relations related to the implementation of foreign investment, the regulation of relations should be carried out «primarily by international treaties, since the national laws of individual countries contain significant differences, and the regulation of investment relations is associated with the application of the law of more than one state» [21; 25]. Other authors express an opinion on setting the priority of the norms of the national legislation of the host country. Moreover, international treaties should

regulate individual investment relations, in these cases «in no way replacing the national legislation of the recipient country» [22; 21]. Analyzing the above, we should agree with the opinion expressed by N.N. Voznesenskaya [22; 21].

If we talk about the correlation between the norms of special and general civil legislation, then we can come to the conclusion that the norms of special laws prevail. As for the correlation between the norms of international treaties concluded by the Republic of Kazakhstan and national law, it found its consolidation in the Constitution of the Republic of Kazakhstan [3], in the Civil Code of the Republic of Kazakhstan (general and special parts) [23, 24], in the Entrepreneurial Code of the Republic of Kazakhstan [25], the Law of the Republic of Kazakhstan «On international treaties» [26].

So, Paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan says: «International treaties ratified by the Republic have priority over its laws and are applied directly ...» [3].

According to Paragraph 8 of Article 3 of the Civil Code of the Republic of Kazakhstan: «If the international treaty, to which the Republic of Kazakhstan is a party, establishes rules different from those contained in the civil legislation of the Republic of Kazakhstan, the rules of the mentioned agreement are applied» [23]. In this case, in accordance with Paragraph 8 of Article 1 of the Law of the Republic of Kazakhstan «On international treaties of the Republic of Kazakhstan» as an international treaty of the Republic of Kazakhstan is understood an international agreement concluded by the Republic of Kazakhstan with a foreign state (foreign countries) or with an international organization (international organizations) in writing and regulated by international law, one document or in several related documents, and also regardless of its specific name [26].

The same principle is also fixed in paragraph 3 of Art. 1 of the Business Code of the Republic of Kazakhstan: «If an international agreement ratified by the Republic of Kazakhstan establishes other rules than those provided for by this Code, then the rules of the international treaty are applied» [18] and has an extension in Article 276 «The investor is granted full and unconditional protection of rights and interests that is provided by the Constitution of the Republic of Kazakhstan, this Code and other normative legal acts of the Republic of Kazakhstan, as well as international treaties ratified by the Republic of Kazakhstan» [25].

At the same time, it should be pointed out that a rather narrow range of issues is regulated at the level of bilateral intergovernmental agreements (as a rule, a general principle is formulated for treating foreign investments and the seven guarantees mentioned above), and multilateral universal conventions cover only particular situations related to the investment (energy sphere, arbitration settlement of investment disputes, the mechanism of compensation of the investor's losses from political risks through the insurance system in a special international agency). International conventions of the CIS countries also mainly refer to the internal law of the participating States.

The main source of legal regulation of foreign investment is the national legislation of the host country. To a certain extent, international acts (international multilateral or bilateral agreements) can regulate individual investment relations, but they should in no way replace the national legislation of the recipient country of capital, its national law [22; 33].

All this allows us to conclude that the main role in regulating foreign investments is played by national legislation that most fully regulates the procedure and forms for attracting foreign investors and the activities of an enterprise with foreign participation, and also specifies the procedure for the implementation of guarantees enshrined in international agreements.

In modern conditions, the main direction for the development of international legal regulation of foreign investment is not the protection of foreign investment, but the «equalization» (harmonization) of legal regimes for the activities of foreigners. To achieve this, it is not enough to proclaim free access of foreign investments to the national market (providing the necessary state guarantees to a foreign private investor means an exact indication in the international agreement of the amount of existing exemptions from the national regime established in national legislation at the time foreign capital is allowed into the national economy, is its obligation under the international agreement not to increase the number of such exemptions) [7; 125].

Currently, the investment policy of most developed countries is aimed at strengthening the state's control over foreign investments invested in strategically important sectors of the economy for this state. It is no coincidence that in the Annex to the Treaty between the Republic of Kazakhstan and the United States of America on the promotion and mutual protection of investments, it is determined that the key industries related to ensuring national security and preserving sovereignty (military and some extractive industries, rail and air transport, river and sea navigation, agriculture and forestry, fishing, mass media, banking and insurance, intermediary activity in the market of valuable booms g); ownership of land, use of subsoil and other

natural resources, including in the maritime exclusive zone; branches in which there is a state monopoly (mail, telegraph, telecommunications, electricity production and supply, production and sale of alcohol and tobacco products) [27].

This was done on the initiative of the United States, since in the early twentieth century the legislator of this state identified certain areas of the economy in which the participation of foreign investors is not desirable or limited, and now the list of such spheres has only expanded. In particular, the US law of 1934 prohibited the transfer of television and radio stations to foreigners; the same with the sphere of commercial navigation of the United States from 1920; from 1958 only US residents have been allowed into the sphere of air transportation; Under the Law on Mines 1972, the exclusive right in this sphere was also assigned to residents; The Law on Atomic Energy does not allow the issuance of licenses to non-citizens of the United States for the production and use of nuclear energy and the possession of nuclear facilities; The law on federal means of communication prohibits such a merger of telegraph companies, as a result of which over 20% of their shares will be owned or controlled by foreigners; foreigners in the United States do not have the right to own more than 25% of the ownership in the aircraft or in coasting or inland navigation vessels; The Foreign Direct Investment Act of 1990 provides for regular consideration by the US Congress of reports on the activities of enterprises with foreign investment in the United States [28; 311]. Consequently, the thesis put forward by B.T. Adyshev is unconvincing. He states that in the developed countries there are practically no exceptions from the national regime or they are very insignificant [29; 505]. Such a policy became widespread in the period of the 50–70's. In the twentieth century, when developed countries sought to protect their investments in the territory of less developed countries, today the situation has changed dramatically - developed states impose various restrictions from the national regime for foreign investment in order to protect the national economy from unwanted competition and other negative factors.

Despite the absence of a clear legislative consolidation of the list of those sectors of the economy where foreign investment may be restricted or prohibited, a certain practice of their application has already developed. In the United States there are 4 categories of federal restrictions: 1) effective prohibition (used in such areas as energy, federal land, mining, maritime transport and defense); 2) a ban based on the principle of reciprocity with respect to those aliens whose countries apply this principle to US citizens (applies in such areas as leasing the federal land, developing mineral deposits, transporting them, banking, securities and insurance); 3) restrictions on the ownership of shares (in air transport — up to 25% of shares with voting rights, in the coastal and river shipping companies — up to 25%, in communications and radio-telecommunications — up to 25%, telephone / telegraph — up to 25%, satellite communication — up to 20%, in fisheries — up to 49%); 4) restrictions on participation in management prescribe foreigners to a certain percentage of employees or a certain number of members in the directorate in certain sectors of the economy (for example, in the shipping company, the main partners of the partnership should be US citizens, and foreigners should not exceed 10% of the crew, also a minimum quorum in board of directors in air transport and banking) [30; 14].

As practice shows, recently there has been a trend, according to which the number of laws aimed at controlling foreign investments is constantly growing. Even states that adhere to the open door policy with respect to foreign investment are beginning to introduce regulation of inflow of foreign capital. The reason for this is the changes in the movement of foreign capital that are currently taking place in the world. However, the government's introduction of a ban on foreign capital inflows without sufficient economic justification for their actions is considered by international treaties in force in this area as a violation of non-discrimination clauses [7; 124]. As a result, the concept of permissive regulation of foreign investment, which in addition to the United States has been applied in Spain, France and a number of other countries.

In our opinion, the legislators in the Republic of Kazakhstan should carefully study this experience and take into account its positive aspects. First and foremost, we are talking about the need for state control over those foreign investments that are invested in strategically important sectors of the economy.

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А.Ә. Нүкішева

Қазақстан Республикасының инвестициялық заңнамасындағы шетел инвестицияларын қолдау мен өзара қорғау саласындағы екіжақты және көпжақты келісімдердің қызметі мен маңызы

Мақалада шетел инвестицияларын қолдау мен өзара қорғау саласындағы екіжақты және көпжақты келісімдердің қызметі мен маңызы қарастырылған. Шетел инвестицияларымен байланысты қатынастарды ұлттық-құқықтық реттеудің кемшіліктері халықаралық-құқықтық реттеумен қалпына келтірілуі мүмкін. Үкіметтердің арасындағы екіжақты келісімдер деңгейінде аз сұрақтар реттеледі (шетел инвестицияларына қатынастың қағидасы анықталып, қалыпты кепілдіктер беріледі), ал көпжақты әмбебап конвенциялар инвестицияларды жүзеге асырумен байланысты жекелеген жағдайларды (энергетика саласын, инвестициялық дауларды төрелік сотпен реттеуді, арнайы халықаралық агенттікте сақтандыру жүйесі арқылы инвестордың саяси тәуекелдерден шеккен залалдарын өтеуді) қарастырады. ТМД елдерінің халықаралық конвенциялары көбінесе қатысушы мемлекеттердің ішкі құқығына сілтеме жасайды. Осының барлығы шетел инвестицияларын реттеуде негізгі қызметті ұлттық заңнаманың атқаратын ролі туралы қорытынды жасауға мүмкіндік береді. Ұлттық заңнама шетел инвесторларын тартудың тәртібі мен нысандарын, шетелдіктердің қатысуымен жұмыс істейтін кәсіпорындар қызметін неғұрлым толық реттеп, халықаралық келісімдерде бекітілген кепілдіктерді тәжірибе жүзінде іске асырудың тәртібін нақтылайды.

Кілт сөздер: шетел инвестициялары, шетел инвестицияларын қолдау мен өзара қорғау саласындағы екіжақты және көпжақты келісімдер, Қазақстан Республикасының инвестициялық заңнамасы, ұлттық заңнама, инвестициялық климат.

А. А. Нукушева

Роль и значение двусторонних и многосторонних соглашений о поощрении и взаимной защите иностранных инвестиций в инвестиционном законодательстве Республики Казахстан

В статье рассмотрены роль и значение двусторонних и многосторонних соглашений в области поощрения и взаимной защиты иностранных инвестиций. Общеизвестно, что недостатки национально-правового регулирования отношений, связанных с иностранными инвестициями, могут быть компенсированы путем их международно-правового регулирования. Вместе с тем очевиден тот факт, что на уровне двусторонних межправительственных соглашений регулируется довольно узкий круг вопросов (как правило, формулируется общий принцип отношения к иностранным инвестициям и даются стандартные гарантии), а многосторонние универсальные конвенции освещают лишь частные ситуации, связанные с осуществлением инвестиции (энергетическую сферу, арбитражное урегулирование инвестиционных споров, механизм возмещения убытков инвестора от политических рисков через систему страхования в специальном международном агентстве). Международные конвенции стран СНГ также преимущественно отсылают к внутреннему праву государств-участников. Все это позволяет сделать вывод о том, что основную роль в регулировании иностранных инвестиций играет национальное законодательство, которым наиболее полно регулируются порядок и формы привлечения иностранных инвесторов и деятельности предприятий с иностранным участием, а также конкретизируется порядок осуществления на практике гарантий, закрепленных в международных соглашениях.

Ключевые слова: иностранные инвестиции, двусторонние и многосторонние соглашения о поощрении и взаимной защите иностранных инвестиций, инвестиционное законодательство Республики Казахстан, национальное законодательство, инвестиционный климат.

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Репозиторий КАРГУ