

# LEGISLATIVE BASIS PROVIDING AND ENSURING FOREIGN CAPITAL INVESTMENTS

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## **Abstract**

The main purpose of this research is to elaborate the role of legislation for protection of investments within each state. The provisions may be in general laws for foreign investments or specific ones which do regulate investments in different sectors such as: tourism, infrastructure, agriculture etc.

With this research we aim to study the legal system in a specific country which can be realized when among others in the host country exists the appropriate legislation for foreign investments with the efficient judiciary and effective legal security in general.

In order for this research to be real and scientific, we will study and evaluate legal instruments in disposal within a host country. States that have a modern and efficient trading system through which they protect the business interests, are more attractive and safe for the investors. Therefore, the legislation of the host country should be stimulant for the investors because it's an essential ingredient in the development, maintenance and enlargement of a healthy economy through which it enables them to use the freedom of the economy with the aim to achieve a joint contribution.

**Key word:** foreign investments, legal system, freedom of economy, business interests, investors

## ENTRY

Foreign capital investments are necessary for developing countries and those under development. Therefore, for their protection (investments) within each state are the provisions regulating foreign investments which are usually included in the special provisions in the "Investment Laws or Codices". Provisions may be in general laws (on foreign investments) or in special laws (which regulate investments in various sectors such as tourism, infrastructure, agriculture etc.).

The main purpose of the Law, both general and special, is the approach of regulating and creating the appropriate legal incentive climate for attracting foreign investment from developed countries.<sup>1</sup>

Foreign investment in a given country can be carried out when, among others things in the host country, there is favourable legislation on foreign investments with effective judiciary and effective legal security in general.<sup>2</sup>

Countries, which have a modern and efficient commercial legal system that protects business interests, are more attractive and secure for investors. Hence, host country legislation should be a stimulant for investors, as it is an essential component in the development, maintenance and expansion of a sound economy through which they are enabled to use economic freedom in order to achieve a common contribution.

Nowadays, most of the world's economies are open to the concept of globalization, which implies freedom of movement of ideas and economic capital from one country to another. Representatives of such trends are different investors<sup>3</sup>.

The role of foreign direct investments has grown significantly over the past decade as a source of capital, management, and technology for the developing world and transition economies. However, policy analysis on such investments for host countries and potential host countries has lagged far behind. There has been no complete assessment of the theory and

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<sup>1</sup> Hetemi J. Mehdi. Prof.Dr. Some current market themes. University of Prishtina, Prishtine 2005, p. 147

<sup>2</sup> Smaka Riza. Prof.Dr. Business La, Royal University Iliria, Prishtine, 2007, p. 263

<sup>3</sup> Bajrami Arsim - Prof.Dr. The Constitutional System of the Republic of Kosovo, Prishtina 2012- p. 399

evidence to clarify which policy approaches are more useful, which are counterproductive and which are really detrimental to governments wishing to use foreign direct investments as part of their development strategies.

The significance of the foreign direct investments study and the data on their worldwide performance lies in the ability to obtain internationally comparable information on the degree of economic integration and market competition, tracking investment trends aiming to draft well-informed policies for the approach to these investments.

Trade and foreign direct investments have, greatly, contributed to economic growth and increase of living standards throughout the world, particularly in Central European countries and Eastern Asia. Trade has provided better quality, lower cost products, which have significantly improved the quality of life of the citizens of these countries. Local businesses have flourished by increasing exports to new markets. Competitive pressures from imports have improved local standards, stimulating improvements in quality and productivity in the places where they were invested, thus leading to higher incomes for local citizens.

Small businesses, producing a wide variety of products but lacking full collections of products of industries necessary to compete, are the ones that best benefit of trade liberalization. Smaller businesses often have an advantage in key industry branches in need of export markets aimed to develop them further.

Therefore, countries aiming to absorb foreign investments, in order to implement them should initially undertake appropriate legal measures, such as the drafting of the Law on Foreign Investments, which regulates legal protection of investments, drafting and implementation of agreements with multilateral companies and protective measures, which ensure the protection of investor rights, property rights, etc., such as: The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, of the Central Bank for Settlement of Investment Disputes, OECD International Centre for Dispute Settlement on International Investments and Multilateral Enterprises. Therefore, in order to ensure a favourable climate for investors, agreements on bilateral investments should be developed and implemented, which determine the

protection and security of investments, the drafting of legal acts, which specifically regulate the expropriation measures and compensation in eventual cases, as well as ensuring that these conditions will be provided in a transparent and reasonable manner, in cases where investors are interested in buying land or renting it.

## **4.1. Importance of the law in the functionalization of economic development**

In the 1990s, transition economies developed their first steps towards a market economy, hoping to have a booming economy, but it was noted that no proper economic development would be achieved only with the transferring of private ownership, but this could only be achieved with proper implementation of the legislation, which will be used to protect economic freedom. Thus, the right to use, transform, trade and exclude others from the use of private property is necessary for a developed economy and society. Therefore, in order to support economic development and attract foreign investment, the country must protect the property rights.

Property consists of immovable property (land) and personal property (any property other than land). Personal property may be tangible such as machineries, vehicles, items, etc., or intangible as contractual rights, stock shares in a company, patents, copyrights etc. Therefore, countries of priority to absorb foreign investments are those which, by relevant law, protect property rights from uncompensated seizure by the government and from fraud and crime.

## **4.2. Legislative Stability (Riza)**

One of the key factors to attracting foreign investment is legislative stability, for a political environment, that supports a sustainable business and investment climate. Therefore, the laws, which are constantly amended, have a negative impact on investors' expectations, to carry out the planned profits upon the investment. Thus, an unstable legislative environment at a given moment creates investors' perception that there is a high risk of creating unfavourable conditions,

and in order to avoid potential risks, they waive from investments and require to carry out an investment in any country (state) having a stable legislation. We can say that, the adoption of the legislation on trade, similar or approximate to the European Union's *acquis communautaire*, which are known to investors, and the same provides a recognized legal framework with international standards, which is known and clear to investors. Therefore, for investors, a country with stable legislative system is more advantageous, especially countries that are open to reform in trade legislation and adopt non-discriminatory laws, and practice setting a period of notice and comment for draft laws on trade, whereby business people are given the right to prepare to change their way of doing business and with their eventual "comments" can improve trade legislation.

### **4.3. Insurance and Protection of investors' rights**

Given the fact that investment, as an engine to economic development, can play a key role by ensuring that economic growth is sustainable, thus any investor host country (state), has the sovereign authority to insure, with legal acts, foreign investments in their territory, hence the state with its own legal activity can create an appropriate climate, no less favourable or a bad climate for foreign investors.<sup>4</sup> Therefore, the investor should feel confident that he will be treated fairly and without discrimination, and that eventual disputes will be resolved fairly even in cases where the state in which the investment is taking place, is a safe place, investors claim their rights and demand that they be protected.

So, countries that have an organized climate for doing business and investment, treat domestic and foreign enterprises equally, whereby as a fundamental principle under which foreign investments are regulated are made on the basis of the principle of their national treatment.<sup>5</sup> Therefore, according to this principle, foreign investors (enterprises) should be subject to approval and permission by domestic authorities under the same conditions as domestic investors (enterprises).

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<sup>4</sup> Hetemi J. Hetem. Prof.Dr .Disa tema aktuale të ekonomisë së tregut, Prishtinë 2005, p.127

<sup>5</sup> Smaka Riza. Prof.Dr. E drejta biznesore, Univeristeti mbretëror Iliria, Prishtinë, 2007, p.262

We can say that based on this principle, it is required that the foreign investor can transfer his/her property authorizations, have the same rights to purchase real estate, be taxed and charged with entitlements, if not with facilities or favours at least the same as those of domestic investors. Also, foreign investors should be entitled to the right to set up and organize subordinate enterprises, subsidiaries and representative offices of enterprises in another country, such as domestic investors.

The business climate in the Republic of Kosovo is in the phase of efforts to become one of the competing countries in the region. Established advantages are in the path to an excellent taxation system, abundant natural resources, fast and easy business registration, transparent laws on foreign investment and other benefits are making Kosovo a very attractive environment for absorbing foreign investments. For investors (companies), who are looking for a place with appropriate climate for investment, with lower costs and easy access to the EU, Central Europe and the Balkan markets, Republic of Kosovo represents an attractive opportunity. In this period in Kosovo, an investor can register their business for 2 days at no cost. Based on the World Bank's Doing Business Index, Kosovo's ranking increased for 26 positions, thereby making the most dynamic change in South East and Central Europe.

We can say that any investor, upon deciding to invest in a country, initially requires some basic protections and assurances. Fundamental principles of the investor include the right to equal and non-discriminatory treatment of domestic and foreign investors, investment in all sectors and all types of business, which are regulated by the laws of the country for investment, transfer of means (profits) overseas, after payment of taxes and certain conditions in accordance with the law, assurance in cases of privatization or expropriation or other measures, protection of intellectual and industrial property and settlement of eventual disputes in the competent local courts, or in concrete cases to address to the local arbitration or international act.

The Republic of Kosovo is constantly creating a favourable business climate, hence, in April 2006, with the intention to implement certain legal guarantees and the provision of the above

mentioned conditions, which are necessary for inclusion of foreign investments, the Government of Kosovo drafted the law on Foreign Investments (Law No.02/L -33). Under this Regulation, a foreign investor, defined as a natural person who is not a permanent resident of Kosovo, a business or other organization, or association established outside Kosovo's jurisdiction should be guided by the principle of national treatment, meaning that foreign companies will be treated similarly to similar domestic enterprises. In particular, the rights pertaining to a foreign investor are:

- Equal or non-discriminatory treatment
- Continued protection and security
- Compensation in cases of nationalization or expropriation, including interest payment
- Free transfer and unlimited use of income
- Protection against retroactive application of laws.

Kosovo's legal system has been reconstructed to comply with EU legislation. Repatriation of profits and transfer of invested capital is free and unlimited. All laws and regulations in Kosovo are available on the Internet in English, thereby making Kosovo's legislative system the most transparent in the region.

Therefore, based on legislative guarantees and aiming to promote the investment protection, Kosovo has drafted and signed ten bilateral agreements with the USA (OPIC), Austria, Turkey, Albania, Montenegro, Kuwait and Qatar, Belgium and Luxembourg, Macedonia and Croatia.

## Literature

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