

氏 名 RIZOEV Musojon Mansurovich

論文題目 FOREIGN DIRECT INVESTMENT FACILITATION: LESSONS FOR UZBEKISTAN

(外国直接投資の促進：ウズベキスタンへの教訓)

Foreign Direct Investment¹ (FDI) plays an important role in the economic development process of a country. It can contribute to the transfer of financial resources, technology, and innovative management techniques.² Most of the developing countries that have effectively attracted more FDI have consistently experienced economic development.³ Thus, in this globalization era attracting foreign investment is a vital policy goal for states.⁴ Many governments have been marketing their countries in the FDI competition, frequently through investment promotion agencies (IPAs) set up specifically for this purpose.⁵ However, IPAs focused on attracting FDI through investment promotion activities, such as protection guarantees, tax privileges, free economic zones. Comparatively, less attention was given to investment facilitation policies and measures that improve the national business environment and investment climate.⁶ Consequently, investors persuaded by IPAs to invest in new locations through investment promotion activities are often confronted with unexpected administrative obstacles. It is the case particularly in third world nations like Uzbekistan, where the public sector's lack of efficiency and capacity adds to bureaucratic red tape, unanticipated delays, and poor service.⁷

Uzbekistan has been focusing on acquiring foreign direct investment since its independence from the Soviet Union in the early 1990s.⁸ Since then, Uzbekistan has unconsciously become party to several IIAs through the encouragement of external actors, such as capital-exporting states, and started developing its domestic investment framework through the technical assistance of international organizations. These were the first steps in forming a legal framework in Uzbekistan to regulate FDI.⁹ Since then, the government has continuously introduced occasional reforms to secure a more favorable investment climate to honor its

¹ Investment made by a firm or individual in one country into business interests located in another country. FDI takes place when an investor establishes foreign business operations or acquires foreign business assets in a foreign company.

² Carol Newman et al., "Technology Transfers, Foreign Investment and Productivity Spillovers," *European Economic Review* 76 (May 1, 2015): 168–87.

³ Jorge Bermejo Carbonell and Richard A. Werner, "Does Foreign Direct Investment Generate Economic Growth? A New Empirical Approach Applied to Spain," *Economic Geography* 94, no. 4 (August 8, 2018): 425–56.

⁴ Andreas Johnson, *The Effects of FDI Inflows on Host Country Economic Growth*, Working Paper Series in Economics and Institutions of Innovation no. 58 (Royal Institute of Technology, CESIS - Centre of Excellence for Science and Innovation Studies, March 29, 2006), accessed September 14, 2019 <https://econpapers.repec.org>.

⁵ Zulkefly Abdul Karim et al., "The Quality of Institutions and Foreign Direct Investment (FDI) in Malaysia," *Asian Journal of Accounting and Governance* 3 (2012): 61.

⁶ World Bank, "Investment Policy and Promotion," 2019.

⁷ United Nations Conference on Trade and Development, *Investment Policy Review: Uzbekistan*, UNCTAD/ITE/IIP/MISC.13, (2013), accessed September 14, 2019 <https://unctad.org>.

⁸ Pamela Blackmon, "Back to the USSR: Why the Past Does Matter in Explaining Differences in the Economic Reform Processes of Kazakhstan and Uzbekistan," *Central Asian Survey* 24, no. 4 (December 1, 2005): 391–93.

⁹ Alisher Siddikov, *Some Aspects of Attracting Investments into the Economy of Uzbekistan*, (State Statistics Committee of the Republic of Uzbekistan, 2018), 5, accessed September 20, 2019 <https://stat.uz>.

commitments. As a result, today, the operating FDI legal framework provides adequate state protection, incentives, and privileges for foreign investors.¹⁰

However, in practice, foreign investors face serious problems applying and utilizing these guarantees, incentives including privileges; thus, doing business in Uzbekistan is becoming difficult. In the context of Uzbekistan, the unpredictable legal environment, ineffective dispute resolution mechanism, lack of transparency, and public participation in the investment regime are the main concerns that usually frustrate foreign investors.¹¹ In addition, the lack of capacity and accountability of public institutions is largely to blame.¹² To put it more simply, Uzbekistan lacks an investment facilitation mechanism.

For the sake of clarity, investment facilitation is a set of policies and actions aimed at putting host state FDI legal framework and other promotion activities into effect to make it easier for foreign investors to establish and operate their investments.¹³ Unfortunately, Uzbekistan has heavily focused on FDI promotion efforts, whereas it paid less attention to facilitating those efforts, hindering expected outcomes. Thus, Uzbekistan has to fill this gap in its FDI legal framework to improve the investment climate.¹⁴

How can government facilitate FDI to create a more favorable investment climate in Uzbekistan? This thesis proposes that Uzbekistan should develop investment facilitation policies by utilizing and adopting similar stands found in UNCTADs practice and lessons of successful case studies worldwide.¹⁵ UNCTADs approach comprises implementing FDI Facilitation Action Menu (hereinafter referred to as Action Menu) based on four good governance standards: Predictability, Accountability, Transparency, and Participation.¹⁶ Uzbekistan can improve its overall investment framework and enable a more attractive investment climate by scrutinizing and implementing successful case studies based on Action Menu. Although authors tend to design policy prescriptions while considering the specificity of Uzbekistan's context, they contain the implications of transferability to other developing states. Thus, other developing states which wish to enable a more attractive investment climate can implement this study to enhance their investment facilitation efforts.

Although many states and international organizations have focused on investment promotion activities, very few have done so, particularly on investment facilitation.¹⁷ Therefore, this paper aims to scrutinize the investment facilitation policy concept, taking the context of Uzbekistan as an example. Besides, Trebilcock and Daniels highlight the role of socio-cultural and historical values as a critical success factor in reforms.¹⁸ On the other hand, using the one-size-fits-all method and insensitivity to the needs and contexts of target states might result in failures.¹⁹ Thus, the study considers Uzbekistan's path dependence and socio-cultural values in the FDI legal framework to design policy prescriptions, fitting Uzbekistan's context.

¹⁰ Bobomurod Muminov, "Latest Amendments in the Foreign Investment Laws of Uzbekistan: Manifestation of Serious Ambitions for Change?," *Russian Law Journal* 4, no. 1 (March 18, 2016): 129–31.

¹¹ Bureau of Economic and Business Affairs, *2017 Investment Climate Statements: Uzbekistan*, (US Department of State, June 29, 2017), accessed September 20, 2019 www.state.gov.

¹² Evgeniy Minchenko, Kirill Petrov, and Andrey Kazantsev, *Assessment of Political Risks for Foreign Investors in Central Asian Countries: Comparative Analysis*, (Minchenko Consulting, 2013), 4.

¹³ United Nations Conference on Trade and Development, "Global Action Menu for Investment Facilitation," 2017, 4.

¹⁴ Muminov, "Latest Amendments in the Foreign Investment Laws of Uzbekistan," 139–41.

¹⁵ United Nations Conference on Trade and Development, "Global Action Menu for Investment Facilitation."

¹⁶ Ahmad Ghouri, "Served on a Silver Platter? A Review of the UNCTAD Global Action Menu for Investment Facilitation," *Indian Journal of International Law* 58, no. 1–2 (June 1, 2018): 139–45.

¹⁷ United Nations Conference on Trade and Development, "Global Action Menu for Investment Facilitation," 4.

¹⁸ Michael J. Trebilcock and Ronald J. Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (Edward Elgar Publishing, 2009), 332.

¹⁹ *Ibid.* at 336.

Moreover, Uzbekistan frequently overlooked the value of investment facilitation policies. Instead, the government usually concentrated on market size, natural resource availability, and regulatory framework. While all these factors are important, investment facilitation is critical, and Uzbekistan should not underestimate it.²⁰ In addition, there is evidence that investment facilitation policies contribute to the attractiveness of an investment location and a better regulatory environment for business.²¹

This study undertakes socio-legal and interdisciplinary research approaches. In particular, the study comprises an analysis of legal documents, case studies, and a set of qualitative interviews conducted in Uzbekistan. For the sake of clarity, legal and policy documents include both domestic and international regulations in investment promotion relevant in the context of Uzbekistan. As for case studies, to draw lessons for Uzbekistan, the author scrutinizes UNCTADs best practices of successful international cases and knowledge gained through technical cooperation activities worldwide.

Lastly, the author conducted interviews with a former government official, a Business ombudsman officer, two foreign investors, and an investment lawyer to examine the current investment framework in practice from the perspectives of different stakeholders. In addition, interviewees were encouraged to share their opinions about the effectiveness of national and international investment frameworks, including constraints in dealing with foreign investment-related issues and challenges and prospects of improving the investment climate. Moreover, interviews are helpful to take into consideration perceptions, interests, needs, and recommendations of different stakeholders in designing suitable policy prescriptions for Uzbekistan's investment facilitation efforts.

The interviews are semi-structured, open-ended, and designed to engage the participants in a conversation. The author conducted interviews in Tashkent, Uzbekistan. In reporting, the author did not disclose interviewees' identities and specific job positions, as he had given assurance of confidentiality and anonymity. Instead, the author summarized findings in the paper and reported interviewees' statements directly in Appendix 1 to provide the reader with an unprocessed picture to apply the findings in their context.

This thesis consists of six chapters. The first chapter presents the introduction, the problem statement, purpose statement, methodology, and a structure map of the paper. Chapter 2 discusses the background of the problem, the significance of FDI in economic development, and the necessity of a proficient legislative framework to attract FDI. Chapter three critically analyzes the development of the current FDI legal framework and promotion efforts of Uzbekistan. Also, it presents limitations and obstacles in the system. Chapter four will discuss why the UNCTADs FDI facilitation menu based on four good governance standards is more suitable for Uzbekistan than other international organizations' practices. Chapter five scrutinizes lessons from successful case studies and best practices gained by UNCTAD through technical cooperation activities worldwide. In particular, this chapter demonstrates how UNCTAD's approach has improved investment climate in target countries of case studies and how Uzbekistan can utilize lessons acquired from these case studies. Finally, the sixth chapter presents a conclusion, which is the restatement of the thesis and suggests areas for further research.

²⁰ See generally, Muminov, "Latest Amendments in the Foreign Investment Laws of Uzbekistan," 129–40.

²¹ Barry Kolodkin, Olga Moreva, and Shawn Sullivan, *Best-Practice Guide for a Positive Business and Investment Climate* (Vienna: Organization for Security and Co-operation in Europe, 2016), 12.