

THE PROTECTION OF FOREIGN INVESTMENT RIGHTS UNDER INTERNATIONAL PUBLIC LAW IN DIGITAL ERA

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Abstract: The digital economy has transformed the global landscape, creating unprecedented opportunities for economic growth and innovation. However, the digital revolution has also introduced complex challenges to the protection of foreign investment rights. Traditional concepts of investment, often anchored in physical assets and tangible transactions, are no longer always applicable in the digital realm, where intangible assets, cross-border data flows, and virtual interactions reign supreme.

Key words: *digital economy, foreign investment, international investment law, intellectual property, data protection, regulatory challenges, sovereignty.*

RAQAMLI TEXNOLOGIYALAR DAVRIDA XALQARO OMMAVIY HUQUQ DOIRASIDAGI XORIJIY INVESTITSIYALARNI HIMOYA QILISH HUQUQI

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Annotatsiya: Raqamli iqtisodiyot global hayotni o'zgartirib, iqtisodiy o'sish va innovatsiyalar uchun misli ko'rilmagan imkoniyatlar yaratdi. Biroq, raqamli inqilob xorijiy investitsiyalar huquqlarini himoya qilishda ham murakkab muammolarni keltirib chiqardi. Ko'pincha jismoniy shaxslar va moddiy bitimlar bilan bog'liq bo'lgan an'anaviy investitsiya tushunchalari endi har doim ham nomoddiy aktivlar, transchegaraviy ma'lumotlar oqimi va virtual o'zaro ta'sirlar hukmronlik qiladigan raqamli sohada qo'llanilmaydi.

Kalit so'zlar: *raqamli iqtisodiyot, xorijiy investitsiyalar, xalqaro investitsiya huquqi, intellektual mulk, ma'lumotlarni himoya qilish, tartibga solish muammolari, suverenitet.*

ЗАЩИТА ПРАВ ИНОСТРАННЫХ ИНВЕСТИЦИЙ В СООТВЕТСТВИИ С МЕЖДУНАРОДНЫМ ПУБЛИЧНЫМ ПРАВОМ В ЦИФРОВУЮ ЭПОХУ

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Аннотация: Цифровая экономика изменила глобальный ландшафт, создав беспрецедентные возможности для экономического роста и инноваций. Однако цифровая революция также создала сложные проблемы для защиты прав иностранных инвестиций. Традиционные концепции инвестиций, часто основанные на физических активах и материальных транзакциях, больше не всегда применимы в цифровой сфере, где господствуют нематериальные активы, трансграничные потоки данных и виртуальные взаимодействия.

Ключевые слова: *цифровая экономика, иностранные инвестиции, международное инвестиционное право, интеллектуальная собственность, защита данных, проблемы регулирования, суверенитет.*

Introduction

The advent of the digital revolution has transformed global landscapes, fundamentally altering the dynamics of international investment and governance. While the digital economy has spurred unprecedented opportunities for economic growth and innovation, it has also posed novel challenges to the protection of foreign investment rights. Traditional concepts of investment, often rooted in physical assets and tangible transactions, are no longer always applicable in the digital realm, where intangible assets, cross-border data flows, and virtual interactions reign supreme. This evolving landscape has necessitated a reassessment of international investment law frameworks and the principles that safeguard foreign investors' interests.

The digital economy is characterized by the seamless movement of intangible assets, including data, software, and intellectual property, across borders. These assets, often difficult to define and quantify, raise complexities in determining whether they fall under the traditional purview of investment protection under international law. The concept of investment, traditionally anchored in physical presence within a host state, becomes less clear-cut in the digital era, where investments can exist and generate returns without a tangible footprint.

Main part

The rise of digital investments underscores the need to adapt the existing framework for investor protection to encompass the nuances of the digital realm.

International investment agreements (IIAs), the cornerstone of investor protection, typically include provisions guaranteeing fair and equitable treatment, prohibiting expropriation without compensation, and ensuring most-favored-nation treatment. However, the application of these provisions to digital investments is often ambiguous, leaving investors vulnerable to potential disputes and uncertainties [1].

The challenges to safeguarding foreign investment rights in the digital era extend beyond the definition of investments. The obligations of host states towards foreign investors, enshrined in IIAs, need to be clarified in the context of digital investments. Host states' responsibilities, such as providing fair and equitable treatment, refraining from arbitrary measures, and ensuring non-discrimination, must be interpreted and applied consistently in the digital sphere.

The digital landscape poses a unique challenge in balancing investor protection with host state sovereignty. While investors seek robust safeguards for their investments, host states retain the right to regulate their economies and protect their public interests. Striking a balance between these competing interests is crucial to fostering a conducive environment for digital investment and ensuring sustainable economic development [2].

The protection of foreign investment rights in the digital era demands a multi-faceted approach, encompassing legal reforms, policy adjustments, and international cooperation. International organizations, such as the United Nations and the World Trade Organization, can play a pivotal role in facilitating dialogue, promoting best practices, and developing norms tailored to the digital economy.

The rapid advancement of digital technologies has revolutionized global commerce, transforming the very nature of international investment. While the digital economy has unleashed unprecedented opportunities for economic growth and innovation, it has also introduced complex challenges to the protection of foreign investment rights. Traditional concepts of investment, often anchored in physical assets and tangible transactions, are no longer always applicable in the digital realm, where intangible assets, cross-border data flows, and virtual interactions reign supreme. This evolving landscape necessitates a redefinition of investment and a reassessment of host state obligations in the digital era [3].

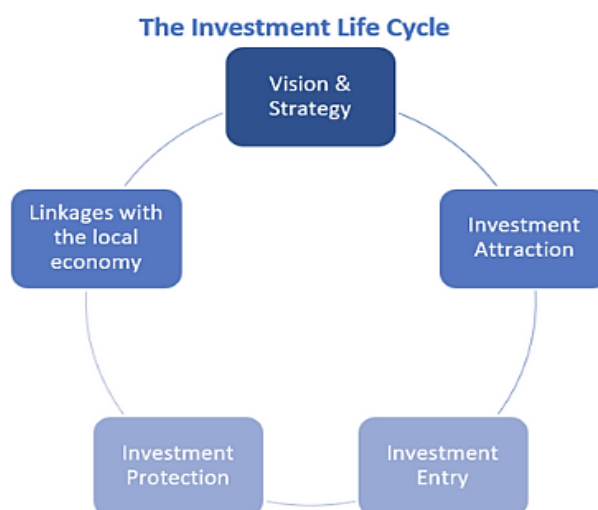
The digital economy is characterized by the seamless movement of intangible assets, including data, software, and intellectual property, across borders. These assets, often difficult to define and quantify, challenge the traditional purview of investment protection under international law. The concept of investment, traditionally rooted in physical presence within a host state, becomes less clear-cut in the digital era, where investments can exist and generate returns without a tangible footprint [4].

The rise of digital investments underscores the need to adapt the existing framework for investor protection to encompass the nuances of the digital realm. Traditional

definitions of investment, often focused on tangible assets and physical presence, may not adequately capture the value and potential returns generated by intangible assets in the digital economy. A more comprehensive definition of investment that encompasses intangible assets and virtual interactions is crucial to safeguard the interests of investors in the digital sphere.

The obligations of host states towards foreign investors, enshrined in international investment agreements (IIAs), need to be clarified in the context of digital investments. Host states' responsibilities, such as providing fair and equitable treatment, refraining from arbitrary measures, and ensuring non-discrimination, must be interpreted and applied consistently in the digital sphere [5].

The digital landscape poses unique challenges in interpreting and applying IIA provisions to digital investments. The intangible nature of digital assets, the potential for cross-border data flows to transcend territorial boundaries, and the evolving nature of digital technologies can complicate the assessment of host state compliance with IIA obligations (Picture 1).



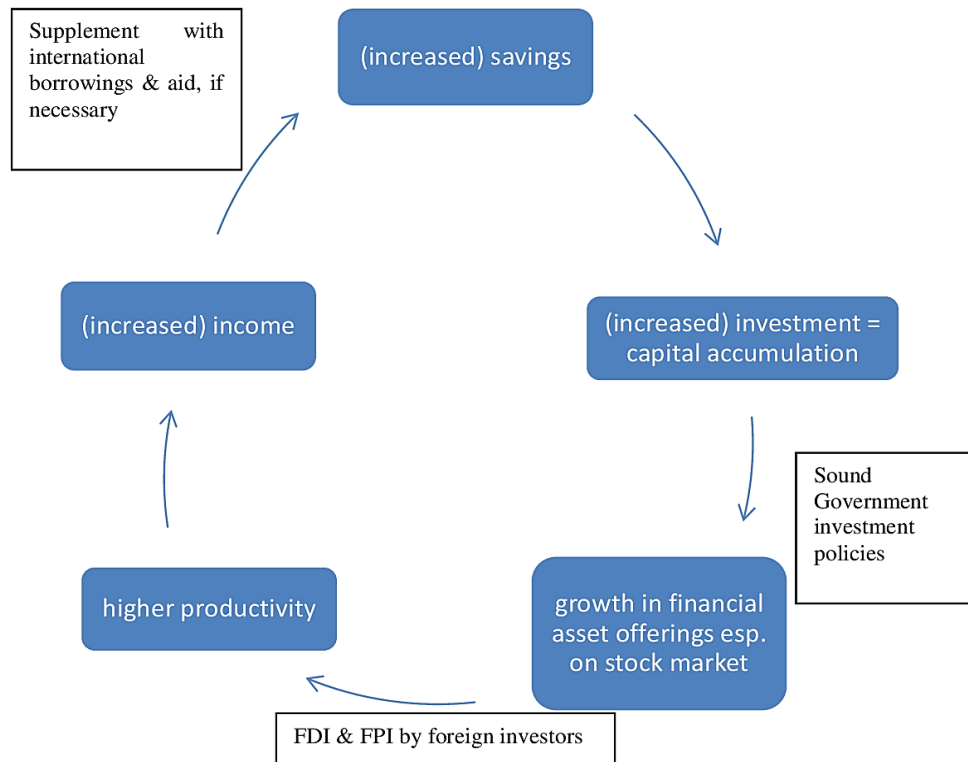
Picture 1. Investment life cycle graphic

To effectively protect foreign investors in the digital era, IIA provisions need to be interpreted in a manner that recognizes the unique characteristics of digital investments. Host states should ensure that their regulatory frameworks and enforcement mechanisms are adapted to the digital realm, providing a level playing field for digital investors while safeguarding legitimate public interests [6].

The protection of foreign investment rights in the digital era demands a delicate balance between investor protection and host state sovereignty. While investors seek robust safeguards for their investments, host states retain the right to regulate their economies and protect their public interests. Striking a balance between these

competing interests is crucial to fostering a conducive environment for digital investment and ensuring sustainable economic development.

On the one hand, host states should provide a predictable and transparent regulatory environment that encourages digital investment. This includes ensuring that regulatory measures are applied in a non-discriminatory manner, that investors have access to fair and impartial dispute resolution mechanisms, and that expropriation of digital investments is only permitted under exceptional circumstances and with adequate compensation (Picture 2).



Picture 2. Factors influencing on investment attraction

On the other hand, host states retain the right to regulate their economies, including in areas such as data privacy, cybersecurity, and the protection of intellectual property. These regulations should be implemented in a manner that balances investor protection with legitimate public interests, avoiding undue restrictions on digital investment [6].

The protection of foreign investment rights in the digital era requires a multifaceted approach, encompassing legal reforms, policy adjustments, and international cooperation. International organizations, such as the United Nations and the World Trade Organization, can play a pivotal role in facilitating dialogue, promoting best practices, and developing norms tailored to the digital economy.

International organizations can foster cooperation among states on issues such as defining digital investments, clarifying host state obligations, and balancing investor

protection with host state sovereignty. They can also provide technical assistance to developing countries in implementing appropriate regulatory frameworks for digital investment.

The digital economy has revolutionized global commerce, creating unprecedented opportunities for economic growth and innovation. Yet, this transformation has also introduced complex challenges to the protection of foreign investment rights. Traditional concepts of investment, often anchored in physical assets and tangible transactions, are no longer always applicable in the digital realm, where intangible assets, cross-border data flows, and virtual interactions reign supreme. This evolving landscape necessitates a reassessment of the framework for investor protection and the principles that safeguard foreign investors' interests [7].

One of the primary challenges lies in adapting the concept of investment to encompass the nuances of the digital realm. The traditional definition of investment, often focused on tangible assets and physical presence, may not adequately capture the value and potential returns generated by intangible assets in the digital economy. Data, software, and intellectual property, which are the cornerstones of digital investments, often lack a physical presence and can be difficult to define and quantify.

To effectively protect foreign investors in the digital era, the definition of investment needs to be expanded to encompass intangible assets and virtual interactions. This would ensure that investors in data-driven companies, software developers, and creators of intellectual property can enjoy the same level of protection as those investing in traditional physical assets [8].

Host states, the countries where foreign investments are made, have certain obligations towards foreign investors, typically enshrined in international investment agreements (IIAs). These obligations include providing fair and equitable treatment, refraining from arbitrary measures, and ensuring non-discrimination. However, the application of these IIA provisions to digital investments is not always clear.

The intangible nature of digital assets, the potential for cross-border data flows to transcend territorial boundaries, and the evolving nature of digital technologies can complicate the assessment of host state compliance with IIA obligations. To effectively protect foreign investors, IIA provisions need to be interpreted in a manner that recognizes the unique characteristics of digital investments. Host states should ensure that their regulatory frameworks and enforcement mechanisms are adapted to the digital realm, providing a level playing field for digital investors while safeguarding legitimate public interests [9].

Striking a balance between investor protection and host state sovereignty is another critical challenge. While investors seek robust safeguards for their investments, host states retain the right to regulate their economies and protect their public interests.

Finding a middle ground is crucial to fostering a conducive environment for digital investment and ensuring sustainable economic development.

On the one hand, host states should provide a predictable and transparent regulatory environment that encourages digital investment. This includes ensuring that regulatory measures are applied in a non-discriminatory manner, that investors have access to fair and impartial dispute resolution mechanisms, and that expropriation of digital investments is only permitted under exceptional circumstances and with adequate compensation [10].

On the other hand, host states retain the right to regulate their economies, including in areas such as data privacy, cybersecurity, and the protection of intellectual property. These regulations should be implemented in a manner that balances investor protection with legitimate public interests, avoiding undue restrictions on digital investment.

Conclusion

The protection of foreign investment rights in the digital era is a complex and evolving issue. The rise of intangible assets, cross-border data flows, and virtual interactions has challenged traditional concepts of investment and host state obligations. Adapting the definition of investment, clarifying host state obligations, and balancing investor protection with host state sovereignty are essential steps in ensuring a secure environment for digital investment and fostering sustainable economic growth.

Further research and development of international investment law are necessary to address the challenges posed by the digital economy. International organizations, such as the United Nations and the World Trade Organization, can play a pivotal role in facilitating dialogue, promoting best practices, and developing norms tailored to the digital era. By addressing these challenges, we can create a global framework that protects foreign investment rights while enabling the digital economy to flourish.

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