

LEGAL FOUNDATIONS AND PRACTICAL PROBLEMS OF RESOLVING
COMPENSATION ISSUES IN THE FIELD OF INTERNATIONAL INVESTMENT

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Annotatsiya. Ushbu tadqiqot xalqaro investitsiya huquqida kompensatsiya masalalarining nazariy va amaliy asoslarini chuqur tahlil etishga bag'ishlangan. Global investitsiya oqimlarining ortishi investorlar aktivlarini himoya qilishga doir huquqiy kafolatlar, xususan adolatli va o'rinli kompensatsiya tamoyilining dolzarbligini oshirmoqda. Tadqiqotda ekspropriatsiyaning to'g'ridan-to'g'ri va bilvosita shakllari, kompensatsiyani hisoblashning asosiy metodlari, ICSID va boshqa arbitraj institutlari amaliyotidagi qarama-qarshi yondashuvlar qiyosiy o'rganilgan. Shuningdek, legitim kutishlar mezonining noaniqligi, baholashdagi metodologik tafvutlar, davlatning regulyator vakolatlari va investor manfaatlari o'rtasidagi muvozanatni ta'minlash kabi muammolar yoritilgan. Tadqiqot yakunida kompensatsiya tizimini takomillashtirish bo'yicha amaliy takliflar ishlab chiqilgan.

Kalit so'zlar: xalqaro investitsiya huquqi, kompensatsiya, ekspropriatsiya, adolatli va o'rinli kompensatsiya, fair market value, legitim kutishlar, ICSID arbitraji, baholash metodologiyasi, DCF, regulyator vakolatlari, investitsiya bitimlari (BIT), xalqaro arbitraj, huquqiy noaniqliklar.

Abstract. This research explores the legal foundations and practical challenges of resolving compensation issues in the field of international investment law. With the expansion of global capital flows, the protection of foreign investors' assets and the determination of fair and adequate compensation in cases of direct or indirect expropriation have become highly significant. The study analyzes the normative framework established by bilateral investment treaties, international conventions, and arbitral practice, with particular emphasis on ICSID and UNCITRAL tribunals. Various valuation methods—such as fair market value, discounted cash flow (DCF) analysis, and comparable transactions—are assessed to identify inconsistencies and methodological difficulties in compensation calculations. Special attention is given to the tension between investors' legitimate expectations and the host state's right to regulate in the public interest. The research concludes with practical recommendations aimed at enhancing clarity, consistency, and fairness in compensation mechanisms within international investment disputes.

Keywords: international investment law; compensation; expropriation; fair and adequate compensation; fair market value; legitimate expectations; investor–state disputes; ICSID arbitration; UNCITRAL; valuation methods; discounted cash flow (DCF); regulatory powers; bilateral investment treaties (BITs); arbitral practice.

The legal foundations and practical problems of compensation in international investment relations constitute one of the most important elements determining the stability of economic cooperation between states and investors. As investment flows continue to increase, the issue of maintaining a proper balance between the economic policies, public interests and regulatory

powers of states, on the one hand, and the property rights of investors, on the other, has become increasingly relevant. At the same time, expropriation and compensation claims related to it remain among the most frequently encountered and most complex disputed issues in international arbitration practice. Their proper resolution is essential for ensuring the stability and predictability of the investment climate. In international investment law, the legal foundations of compensation are mainly based on two sources: international treaties, particularly bilateral investment treaties (BITs), and customary international law principles developed through arbitral tribunal decisions.

Many investment treaties contain the requirement of “prompt, adequate and effective compensation,” which is intended to ensure that the investor’s losses are compensated in cases of expropriation or measures equivalent to expropriation. Under customary international law, the concept of “fair market value” is generally accepted as one of the main criteria for determining compensation. However, the practical application of these principles has become more complicated through different arbitral cases, because each dispute involves its own economic, political and technical circumstances.

ICSID and UNCITRAL arbitral tribunals have adopted different approaches to interpreting compensation issues, which has resulted in a lack of uniformity in practice. For example, in some cases, tribunals have tended to award maximum compensation to investors, whereas in other cases they have given greater priority to the regulatory rights of states. This issue becomes especially controversial in cases of indirect expropriation, where state regulatory measures significantly affect the investor’s economic activity without formally transferring ownership. In such situations, the question of compensation often becomes one of the most sensitive and disputed matters.

One of the major problems in investor–state disputes is the methodology used to determine the amount of compensation. In practice, three main approaches are commonly applied: fair market value, the discounted cash flow method, and the analysis of comparable transactions. The discounted cash flow method is particularly controversial because it is based on forecasts of the investor’s future profits. This creates a high degree of subjectivity. Arbitral tribunals sometimes refuse to apply this method, especially where the project is small, newly established or has not yet generated stable profits, because in such circumstances the method may be considered excessively speculative.

The comparable transactions method involves valuing the investment on the basis of prices paid for similar assets in similar markets. However, in practice, comparable transactions or reliable market data are not always available. Although fair market value is often viewed as the most appropriate standard, its calculation criteria are also interpreted differently in arbitral practice. Therefore, even when tribunals refer to the same general standard, the final amount of compensation may vary significantly depending on the valuation method and factual circumstances of the case.

In addition, the principle of investors’ “legitimate expectations” is closely connected with compensation. An investor may reasonably expect the host state’s policies to remain stable, contracts not to be violated, and regulatory changes not to be sudden or unpredictable. At the same time, the state has the sovereign right to regulate in areas such as public health, environmental protection and national security in the interests of society. Therefore, the task of an arbitral tribunal is to find a balance between these two competing interests.

Some cases, such as *Philip Morris v. Uruguay*, gave priority to the state's right to protect public health. In other cases, however, arbitral tribunals have attached greater importance to the investor's expectations. For this reason, decisions concerning compensation are not always consistent. Another practical problem relates to the ability of states to pay compensation. In some developing states, large compensation awards may negatively affect economic stability. Moreover, problems also arise in relation to the enforcement of compensation awards, because arbitral decisions may sometimes be delayed for political or financial reasons.

In conclusion, compensation occupies a central place in the field of international investment law, and its fair resolution determines the reliability of the global investment environment. Although a legal framework exists, inconsistencies in practice demonstrate the need to clarify compensation calculation methodologies, ensure greater uniformity in arbitral practice, and define more precisely the limits of the state's regulatory powers. In addition, states should include clearer compensation formulas when concluding BITs, while arbitral tribunals should ensure a consistent and transparent approach when applying economic valuation methods. Finding a proper balance between investor interests and state sovereignty will remain one of the key challenges in this field.

This research is aimed at conducting an in-depth analysis of the legal foundations and practical problems of compensation issues in the field of international investment. The results of the research show that although compensation principles are formally established within international investment law, many uncertainties and differences remain in practice. In cases of expropriation and indirect expropriation, arbitral tribunal decisions differ considerably. This is mainly due to the role of investors' legitimate expectations, the regulatory powers of states, and the subjectivity of valuation methods, all of which may lead to significant differences in the amount of compensation awarded. Furthermore, the discounted cash flow method and the comparable transactions methodology often produce different valuation results in practice. This creates difficulties in ensuring stability and predictability in the investment environment. On the basis of the research, the following proposals may be advanced. First, the mechanism and criteria for determining compensation should be more clearly defined in BITs and national legislation. Second, valuation methodologies should be applied consistently and transparently in arbitral practice, and the discounted cash flow method should be used only where sufficient and reliable financial data are available. Third, legal norms should be developed to determine the balance between the regulatory powers of states and the protection of investor interests. In the context of Uzbekistan, it is recommended to take measures aimed at preventing investment disputes, studying international arbitration practice and harmonising national legislation with international standards. In this way, improving the compensation system in the field of international investment will contribute to strengthening the reliability, stability and attractiveness of the investment climate.

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