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Investment Climate Development: Legal Regulatory Mechanism Within The
Framework Of Development Of The Eurasian Economic Union

Desarrollo Climático De Inversiones: Mecanismo Normativo Legal Dentro
Del Marco De Desarrollo De La Unión Económica Eurasiana

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Abstract.

In the broader global sense, economic development largely depends on both the overall national development profile and the degree of administrative obstacles for business. Meanwhile, one of the global indicators of stability of a nation's development and its potential is the level of economic openness and investment attractiveness. The paper outlines a review of the literature concerned with the investment climate. Scholarly approaches to interpretations of investment climate are identified. An expert survey is used to determine the constituent factors contributing to the investment climate, the components of the legal regulatory mechanism in investment activities, as well as the directions of further unification and harmonisation of investment legislation across the member states of the EAEU in the area of investment cooperation with third countries.

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Keywords: investment, foreign investment, investment climate, investment attractiveness, foreign investors, Eurasian Economic Union, EAEU.

Resumen.

En el sentido global más amplio, el desarrollo económico depende en gran medida tanto del perfil general de desarrollo nacional como del grado de obstáculos administrativos para las empresas. Mientras tanto, uno de los indicadores globales de la estabilidad del desarrollo de una nación y su potencial es el nivel de apertura económica y el atractivo de la inversión. El documento describe una revisión de la literatura relacionada con el clima de inversión. Se identifican enfoques académicos para las interpretaciones del clima de inversión. Se utiliza una encuesta de expertos para determinar los factores constitutivos que contribuyen al clima de inversión, los componentes del mecanismo regulatorio legal en las actividades de inversión, así como las instrucciones para una mayor unificación y armonización de la legislación de inversión en los estados miembros de la EAEU en el área de cooperación en inversiones con terceros países.

Palabras claves: inversión, inversión extranjera, clima de inversión, atractivo de inversión, inversionistas extranjeros, Unión Económica Euroasiática, EAEU.

Introduction

Today, there is no uniform approach to defining the notion of investment climate. The investment climate is mostly understood as a combination of political, economic and legal factors and regulatory conditions of investment activities (Lebedev, Eliseeva, 2017; Kosov et al., 2020).

The investment climate can be approached 1) as a combination of factors and conditions of investment (factor approach); 2) as a balance of investment attractiveness and investment risk (risk approach); 3) as investment conditions at the macro, meso and micro levels (territorial approach); 4) as investment conditions for foreign and domestic investors (complex approach); 6) as an assessment of investment environment conditions based on rankings (ranking approach); 7) as a dynamic investment environment (dynamic approach); 8) as specific activities of the state to attract investment (state governance approach).

Consider each approach in detail (Levkina, Sakharova, Edelev, 2020; Voroshilo et al., 2020; Osokina et al., 2019).

1. Factor approach. Under this approach, the investment climate is analysed through the lens of a combination of factors or conditions (preconditions) for engaging in investment activities. Such factors may include political, legal, economic, social, financial, regulatory, natural, geographic, environmental, cultural, organisational, innovation, etc. factors. They serve as a gauge for the viability of investment in a particular system. D. Dollar et al. made an attempt at the systematisation of the constituent factors contributing to the investment climate. The researcher proposes an aggregate classification of factors based on the following criteria: type of effect, scope, method of manifestation, direction of impact, object of choice, level of hierarchy, aspects of climate development, timing (Dollar, Hallward-Driemeier, Mengistae, 2006).

Other researchers only identify factors of positive or negative influence on investment activities, i. e., stimulant or destimulant factors. E. g., the stimulant factors of the investment climate include high profitability, stimulating fiscal policy, well-developed

monetary system, stable legal environment, quality human capital, innovation capabilities, advanced technology, high rate of economic growth. A destimulant factor is high investment risk (Tchouassi, 2014).

2. Risk approach. Under this approach, the investment climate is analysed in two planes, those of investment attractiveness and investment risk. Assessments of the investment climate are based on comparisons of the risk and return of investments. In this approach, the payback period, net present value and rate of return are analysed alongside political and economic risks (Trung, Kaizoji, 2017).

Under this approach, the investment climate is interpreted in a rather narrow sense through the lens of the investor's appraisals of investment performance indicators. According to G. A. Aleksandrov, the investment climate is "the capability of the economic and legal environment to generate proper returns on invested capital" (Aleksandrov, Viakina, Skvortsova, 2014). Profit maximisation is one of the main principles attracting investors. An item's investment attractiveness is a characteristic integrating the contradictory aspirations of an investor, e. g., attaining a maximum income with a minimum risk.

3. Territorial approach. Literary interpretations vary as to the levels of investment. Followers of this approach can be divided into two groups. The first group approaches the investment climate at the macro, meso and micro level, i. e., at the national, regional, sectoral and enterprise levels. Each level is associated with specific factors, which, in combination, produce an assessment of whether the investment climate is favourable (Sukhinova, 2004; Litvinova, 2013).

At the macro level, the investment climate is measured using the indicators of the political, legal, economic and social environment; in particular, the dynamics and structure of GDP, payment balance and financial market conditions, external and domestic debt servicing are analysed, etc. At this level, the resolution is made as to whether investment may be channelled to the country in general.

After the investment climate is analysed at the macro level, next come the regional and sectoral (meso level) assessments for a specific region or sector. Typically, at this level, the investment climate is different by sector or region. The differentiation of regions by investment levels and their alignment to either favourable or distressed regions reflects the uneven production profile and the trend toward the growing divergence in their economic development.

After the regional and sectoral assessment comes the assessment of the enterprise and down to the individual projects. A majority of works, as a rule, address the investment climate at the macro level or, less frequently, at the meso level, but often overlook the macro level, which is integral to the development of a nation's investment climate.

Another group of researchers is convinced that the investment climate is shaped exclusively at the national level. It reflects principal conditions of investment activities and is the same for all territories in a country. At the level of individual regions and sectors, investment attractiveness is formed. Multiple factors contribute to its variance across regions. Investment attractiveness is associated with individual regions, districts, economic sectors, enterprises, real projects, financial (stock market) instruments. In their view, the investment climate is shaped at the national level, while investment attractiveness is associated with individual territories, sectors, enterprises (Aleksandrov, Viakina, Skvortsova, 2012).

4. Complex approach, which is aimed at creating favourable conditions for both domestic and foreign investors. Scholarly views also differ as to the subjects of investment. Some researchers emphasise that the investment climate should be only developed for foreign investors. E. g., according to T. Kinda (2009), the investment climate is a combination of factors attributable to a country and defining its attractiveness for foreign investors. The same view is held by S. Adams (2010) interpreting investment attractiveness as a combination of factors shaping the country's potential to attract foreign investment.

K. Sekkat maintains quite the opposite. According to the researcher, the investment climate is a factor generating economic stimulus primarily through the society's inner resources and only in the second turn through foreign investment. He estimates the

volume of domestic private investment is four times as big as the level of foreign direct investment in countries across the world. Global investment practice suggests that the most attractive countries for foreign investors are those where domestic investors are rather active (Sekkat, Veganzones-Varoudakis, 2007).

Meanwhile, S. Fankhauser (2003) believes that the investment climate is a combination of political, economic and legal factors merging into a specific condition creating equal opportunities for effecting investment processes both for domestic and foreign investors. Remarkably, this definition does not draw a line between domestic and foreign investment, which means primarily the basic factors influencing investment activity in the country, can be considered.

5. Systemic approach. Followers of this approach emphasise the systemic or structural aspect of the investment climate.

E. g., according to some researchers (Debaera, Lee, Lee, 2010), the investment climate is a complex economic system representing a set of interrelated elements as one whole without clear boundaries. The system's inputs are climate-shaping factors acting as the constituent influences of the investment climate. The output parameters reflect the quality of the investment climate. In the middle, the system represents a semi-structured homogeneous space. The investment climate is made up of subsystems of various types, in most cases each of them constitutes an environment (economic, financial, political, institutional, behavioural, social, cultural environment, etc.). This approach results in equating the investment climate to the external environment, which is a wider notion.

A somewhat different interpretation of the investment climate is offered by N. A. Serova (2013) viewing it as a complex of political, social and infrastructure elements adding up to provide synergy in the form of maximum attraction of investment resources to a given territory.

6. Ranking approach. Followers of this approach link a country's investment climate to its investment image. A country's investment image (perception of its investment climate) is shaped around the ranks of its credit standing as assessed by global expert agencies.

The better the country's image, the more investment it will be able to attract (Nam et al., 2016).

7. Dynamic approach. Under this approach, the investment climate is understood as a highly dynamic characteristic constantly changing for the better or worse. The dynamism of the investment climate is emphasised by N. Bayraktar whose understanding of the notion integrates the following elements: 1) existing conditions at a given time; 2) developing conditions emerging in the current period; 3) conditions to emerge and shape the outlook of the investment climate in the future (Bayraktar, 2013).

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The dynamism of the investment climate can hold a negative potential for investment activities. This point is specifically highlighted by the authors of (Gebrezgabher, Taron, Amewu, 2019) who believe an investor primarily needs legal continuity, which would provide for planning within a specific time horizon. Constant attempts at improving legislation mean instability for investors: providing investments on initial terms, operating on other and reaping results on still other terms.

8. State governance approach. Followers of this approach emphasise the state's active role in the development of the investment climate. E. g., A. V. Snarskaia (2017) believes the investment climate is a multi-factor system of targeted measures scrupulously developed at the national and regional level to facilitate more active attraction of additional monetary and physical resources to the territory.

Given that one of the main processes of the modern development of the global economy is regionalisation bringing about gradual convergence in the levels of development of individual economic entities in a territory and given also that economic integration processes are underway, the investment climate can be attributed to not only individual countries but supranational associations as well.

In practice, regionalisation processes occur through regional associations and unions such as the European Union (EU), the North American Free Trade Agreement (NAFTA), the Association of South East Asian Nations (ASEAN), the South American trade bloc – Southern Common Market (MERCOSUR), the Eurasian Economic Union

(EAEU) (not to be confused with the Eurasian Economic Community (EAEC or EurAsEC), which existed in 2001-2014). The above mentioned regional organisations are fully operational and pursue the important mission to increase investment and trade between member countries. However, it is worth keeping in mind that investment and trade are only tools to achieve the main objective, i. e., to improve prosperity levels.

The mastermind of the EAEU and Eurasian integration in general was the President of Kazakhstan N. Nazarbayev. In the first instance, the project of such level of integration was proposed by N. Nazarbayev in his address at the Lomonosov Moscow State University in 1994 as a philosophical idea to preserve the existing ties. It was then that the Kazakh leader elaborated on the need for integration in the post-Soviet area guided by the principle of equality by cancelling customs restrictions and opening the borders of the CIS. N. Nazarbayev understood the Eurasian integration project as an alternative to globalisation and Westernisation providing equitable participation for all member countries.

The launch of the union was the topic of an address made by the President of Russia V. Putin in 2011, which marked the beginning in the institutionalisation of the EAEU. The Russian leader hailed the establishment of the EAEU as a new integration project for Eurasia. As with other Eurasian integration initiatives, V. Putin specifically focused on taking maximum advantage of the post-Soviet infrastructure, the common linguistic, scientific and technical space and production specialisations to promote further integration in the post-Soviet territory. As an open project for all geographically adjacent members, the EAEU would also become a key geopolitical actor and a centre of global development. Indeed, the EAEU was meant as a harmonised community of economies along the lines of a transcontinental integration "bridge" making a connection between Europe and the Asia-Pacific region. V. Putin pointed that "the Eurasian Union would be a powerful supranational union capable of becoming one of the poles of the modern world and of playing the role of an effective 'link' between Europe and the dynamic Asia-Pacific region" (Vladimir Putin: *Novyi integratsionnyi proekt dlya Evrazii – budushchee, kotoroe rozhdaetsya segodnya*, 2011). The CIS would remain a mechanism to preserve and

maintain the dialogue in the post-Soviet territory between the RF and those countries that are not yet prepared for accession to the EAEU.

The framework for practical implementation of the imperatives of the Eurasian doctrine was outlined by V. Putin in March 2012 in the runup to his return to the presidential office. In his inaugural address on May 7, 2012, V. Putin stressed, "We must all understand that the life of our future generations and our prospects as a country and nation depend on us today, <...> on our ability to become a leader and centre of gravity for the whole of Eurasia" (Vladimir Putin vstupil v dolzhnost Prezidenta Rossii, 2018).

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Going forward, the EAEU should take the place of the CIS and become the centre of future integration of its potential members. The future integration project would be effected with due regard to the rights of the integrating peoples, particularly, their cultural, linguistic and ethnic specifics. Apart from the economic component of Eurasian integration processes, V. Putin pays attention to the political and geopolitical constituents, which means making the ground for the strategy and process of a future integration model to develop a supranational civilisational institution as an alternative to the EU. Meanwhile, the course of the EAEU doctrine finds support in Chinese political circles, where the reintegration of the post-Soviet space is seen as an objective necessity amid the accelerating globalisation, regional integration and escalating financial crisis, etc.

On May 29, 2014, the presidents of the member states of the Customs Union and the Common Economic Space signed the Treaty on the EAEU at the meeting of the Supreme Eurasian Economic Council, which implied a higher level of integration. On October 10, 2014, the Treaty on the Accession of the Republic of Armenia to the EAEU was signed in Minsk, and on December 23, 2014, in Moscow, the Treaty on the Accession of the Kyrgyz Republic to the EAEU was signed. The EAEU officially commenced its functioning in January 2015 upon the coming into effect of the treaty establishing the organisation on the ground of the CU and the EurAsEC as their legal replacement.

The objective of this paper is to determine the ways to refine the legal mechanisms for facilitating and regulating the investment climate along the way of the EAEU development.

Research hypothesis: to improve the investment climate in the EAEU member countries, further unification and harmonisation of their investment legislation concerning investment cooperation with third countries is required.

The findings suggest that the research objective is met..

Materials and methods

The following research methods were used in the study:

- literature review with regard to facilitating investment climate and legal mechanisms to regulate it along the way of the EAEU development;

- expert survey to determine:

 - the constituent factors of the investment climate;

 - the components of the mechanism of legal regulation of investment activities;

 - the directions of further unification and harmonisation of investment legislation of the EAEU member states in the area of investment cooperation with third countries.

Fifty experts took part in the online survey (economists, legal scientists, political scientists), specifically those concentrating on the activities of the EAEU member countries in attracting investment.

Results and Analysis

Based on the expert survey, we aggregate the constituent factors of the investment climate in a country and determine the main influencing factors behind them (Table 1).

Table 1. Constituent factors of the investment climate

Influencing factors of investment climate		Factors of favourable influence on investment factors	%*
Political and legal factors	Government investment policy	ensuring proper economic development performance in general; structural improvements; ensuring proper condition of productive factors and their efficient operation; high scientific and technical profile of the country; efficient public governance	90%
	Legal and regulatory	developed legislation on foreign investment, regulations of external economic activities	85%

	framework of investment		
	Institutional system	accomplished legislative framework for investment operations; established rules of business practice in the country	75%
	Political and legal environment	smooth and non-contradictory operation of the executive and legislative bodies; refinement of the legal framework, development of a logically accomplished comprehensive framework of economic processes, particularly for investment operations; legislative continuity	75%
Economic factors	External economic conditions	ensuring access to new markets for domestic businesses; attracting foreign investors engaged in the production of goods that are not produced locally; provision of state loans; membership in international organisations	80%
	Labour market	improving the competitiveness of working age population in the labour market; creating the environment for self-employment	70%
	Situation in the domestic market	increasing profit margins; expansive budget policies promoting government consumption and investment; sufficiency of enterprise liquidity sources; accessible levels of borrowing costs	65%
Facilities	Available production potential	adequacy of fixed capital; state of fixed assets; fixed asset performance	70%
	Infrastructure development	multifunctional chain of facilities for all types of cargo operations; customs depots and other divisions for temporary storage and export-import clearance; quality rail and road network; distributed watercraft and marine transport infrastructure; logistics services infrastructure in place (motels, catering services, petrol stations, car service stations); information infrastructure (mobile services, Internet access, GPS, etc.)	55%

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Source: based on the expert survey; * indicates the percentage of expert references

The experts indicated that the efforts of the EAEU member states in attracting investments might be arranged in two directions: 1. advancing mutually beneficial cooperation of the EAEU with external investors; 2. development of investment cooperation between the member states within the EAEU. We focused on the first direction in our survey.

According to the experts (80% of respondents), advancing mutually beneficial cooperation of the EAEU with external investors would only be possible with an efficient

mechanism of legal regulation of investment operations in place. The said mechanism should be based on arrangements negotiated by the EAEU member states and facilitate links between the negotiating members and their links with third countries.

Here is how such arrangements should operate, according to the experts (Table 2).

Table 2. Components of the legal mechanism in the investment industry

No.	Components of the legal mechanism	%*	Rank
1	implementation by the EAEU member states of coordinated and concerted policies across economic sectors	90%	1
2	adoption of similar regulatory mechanisms in economic relations	80%	2-3
3	unified legal regulation approach	80%	2-3
4	entry of third-party agreements into the legal regulatory sources of the EAEU	75%	4

Source: based on the expert survey; * indicates the percentage of expert references

The mechanism of legal regulation of external investment is multi-layered by its structure, as it operates at the international level represented by bilateral agreements and EAEU agreements with third countries and at the national level.

The structure of relations between the actors of the investment process is quite complicated. The operation of an external investor relates to two regulatory domains, as it simultaneously interacts with the EAEU as a whole and with the individual member state. Relations with the investors incorporated in the EAEU member states make a separate domain.

Experts point out that the Treaty on the Eurasian Economic Union of May 29, 2014, does not establish an exclusive competence of the EAEU to create favourable conditions, protect the rights of foreign investors or ensure economic security by protecting against external investment in strategic sectors of the EAEU countries. The principal role in it is reserved for bilateral investment agreements (BIA).

According to one of the experts, "it would be reasonable if legal norms adopted by the parties under BIAs were in accordance with the laws of the EAEU and the organisation was to assume responsibility for foreign investments in the same way as the host countries, by maintaining a legal status with regard to investment ties and creating a favourable investment climate within the EAEU." However, "this mechanism is currently under development."

The first step in the development of a supranational investment regulatory framework was marked by the Protocol on trade in services, incorporation, activities and investments (Annex No.16 to the Treaty on the EAEU), guided by the principle of functional national sovereignty, freedom of payments, transfers and application of incomes, adoption of national and preferential regimes, freedom of investment operation (Treaty on the Eurasian Economic Union, 2014).

According to the experts (65%), the document should be praised for providing a resolution to the collision between the national and preferential regime based on the investor's own choice in favour of the most favourable system, for guarantees against losses and compensations in case of expropriations.

The next step toward a common mechanism of legal regulation of investment activities engaging the EAEU was associated with the signing of the Agreement on the EAEU's International Treaties with Third Countries, International Organisations or International Integration Associations of May 14, 2018 (Agreement on the EAEU's International Treaties with Third Countries, International Organisations or International Integration Associations, 2011). The Agreement governs the relations around signing, cancelling or suspending EAEU international treaties with third countries. As one of the experts pointed out, "the EAEU's assuming responsibilities in relation to third countries in international cooperation would promote transparency in common investment policies consolidating the EAEU's attractiveness for foreign investors, while simultaneously building protection for EAEU investors outside the union."

The experts (75% of the respondents) believed that going forward, the Supreme Eurasian Economic Council should pass a decision to develop common investment law of the EAEU and to bring the member states' BIA into compliance. This would enable a transition to regulating external investments at the supranational level.

The experts believed that local legislation in the EAEU member states was relatively harmonised. However, they found the union's investment law development profile inadequate.

Based on the above, the experts identified the directions of further unification and harmonisation of investment legislation of the EAEU member states in the area of investment cooperation with third countries.

1. There has to be a revision of the traditional approach to investments as a list of objects (Chapter II of Protocol No. 16 of the Treaty on the EAEU) without consideration for other significant attributes (durable period, job creation, economic contribution, legal compliance, etc.). The above attributes should be considered when the preferential regime is applied.

2. An important priority in ensuring a favourable regime for attracting external investment for long-term investment projects concerns a stabilisation covenant, i. e., providing guarantees against the possibility of deterioration of business conditions. Such guarantee should be provided to investors implementing projects under agreements with subjects of public law and priority projects.

3. For both the EAEU's common laws and national laws on cooperation with third countries, the principles of compensations should be specified for the cases of nationalisation, expropriation and requisition along the lines of Protocol No. 16 to the Treaty on the EAEU. Meanwhile, one of the respondents remarked that "investments, as well as incomes and property generated by them, should not be subject to direct or indirect

expropriation, nationalisation or other similar measures, except when such measures are taken in the interests of the state recipient in accordance with a statutory procedure." That said, any such measures should ensure timely and full compensation including the accrued interest in case of delay payable in the currency in question, based on the interbank market rates.

4. A potential mechanism for investment dispute resolution may involve establishing an international arbitration institution of the EAEU.

5. Clause 8 of Protocol No. 16 to the Treaty on the EAEU should be amended to include a paragraph to guarantee the right of free exports in respect of both imported assets and information and objects of civil rights legitimately developed or acquired as a result of investment activities on the contract terms.

Conclusions

The definitive objective of the EAEU policy with regard to investment activities relates to the development of a favourable investment climate understood as a combination of economic, legal, regulatory, political and other factors eventually shaping the risk profile of capital investments and possibilities of their efficient use.

A key condition of economic development is the efficient functioning of the investment process. Investment is integral for the modernisation of production and diversification of the economy. That is why, in the modern sense, there is the problem of creating an investment climate for foreign investors.

The findings thus confirmed the research hypothesis that to improve the investment climate of the EAEU member countries, further unification and harmonisation of their investment legislation concerning investment cooperation with third countries is required.

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