DOI: https://doi.org/10.30525/2256-0742/2025-11-4-126-133

LEGAL REGULATION OF INVESTMENT ACTIVITY: GUARANTEES AND RESTRICTIONS

Andrii Borovyk[1], Andrii Golovach[2], Andrii Oksentiuk[3]

Abstract. The study *focuses* on the legal regulation of investment activity, paying particular attention to the guarantees and restrictions applied in national and international legal systems. *Methodology.* The research is based on a methodological framework that draws on general scientific and special legal methods, including dialectical, comparative legal, formal legal and systemic analysis. These tools enabled the content and limits of investment guarantees to be explored, as well as the legal mechanisms that restrict or balance them in various conditions. The work *aims* to determine the essence of investment activity as a legal phenomenon, analyse the system of guarantees protecting investors' rights and identify the scope and legal nature of limitations imposed in the interests of national security, public order and economic stability. Particular attention is paid to the legal environment in Ukraine during martial law, as well as to the role of "soft law" instruments in shaping international investment standards. The *results* of the study showed that investment activity is legally regulated by a complex set of norms reflecting both private and public interests. Legal guarantees are essential for attracting investment, while legal limitations act as a safeguard in exceptional situations. The interaction between hard and soft law helps to make the investment regulatory framework more flexible and adaptive. *Conclusion.* In contemporary conditions, legal regulation of investment activity is not limited to creating favourable conditions for capital flow; it also encompasses mechanisms for balancing economic freedom with constitutional imperatives, such as national security, public order and environmental sustainability. Investment guarantees are essential for legal predictability and investor confidence, providing protection against arbitrary state interference, discriminatory practices and sudden regulatory changes. At the same time, legal restrictions are not necessarily negative. Rather, they reflect the state's sovereign right to regulate economic behaviour in the public interest, particularly during times of emergency such as armed conflict or economic crisis. The role of soft law in investment regulation is becoming increasingly important. In the absence of binding multilateral agreements, international advisory instruments, declarations and best practice standards provide essential normative guidance, contributing to the gradual formation of customary rules. These mechanisms help to bridge the gaps between different legal systems and promote the harmonisation of investment standards in a flexible and non-confrontational way.

Keywords: investment activity, legal guarantees, legal restrictions, martial law, international regulation, soft law, investment protection, national security, economic development, legal certainty.

JEL Classification: E22, H81, F52, F63

1. Introduction

In the modern globalised world, investment activity is one of the core instruments of economic development and national competitiveness. It connects capital and innovation, infrastructure and employment, and ultimately, domestic policy and international economic integration. The legal regulation of investment activity is therefore essential not only to ensuring market functionality, but also to guaranteeing the long-term resilience of the state's economic system (UNCTAD, 2020).

For a well-functioning investment climate, reliable legal guarantees are essential. These include protection from unlawful expropriation, access to impartial dispute

[1] Scientific Institute of Public Law, Ukraine *(corresponding author)*
E-mail: aborovychok@gmail.com
ORCID: https://orcid.org/0000-0003-1834-404X
Web of Science ResearcherID: GQZ-1183-2022
[2] Donetsk University of Economics and Law, Ukraine
E-mail: advoratgav@i.ua
ORCID: https://orcid.org/0009-009-1317-4214
[3] Scientific Institute of Public Law, Ukraine
E-mail: andrei101082@gmail.com
ORCID: https://orcid.org/0009-0005-6402-5017

resolution and the principle of legal certainty. Such guarantees are enshrined in national legislation and international agreements designed to promote foreign direct investment and bolster investor confidence (Sornarajah, 2021). However, these guarantees are not absolute. They are offset by legal limitations, which are often based on constitutional provisions safeguarding national security, environmental protection or public interest (Paparinskis, 2013).

In the context of an armed conflict or national emergency, such as the ongoing military aggression against Ukraine, the relationship between investment guarantees and limitations becomes particularly complex. While Ukraine's legal system continues to adhere to international investment standards, it has had to introduce extraordinary measures, such as martial law, that affect the operation of investment mechanisms (Vienna Convention on the Law of Treaties, 1969). This situation gives rise to urgent legal questions concerning the preservation of the balance between investment protection and sovereign regulatory authority in times of crisis (Wälde, 2005).

Moreover, in an increasingly challenging environment for negotiating binding multilateral treaties, the role of "soft law", including declarations, codes of conduct and advisory principles, has grown substantially. Such instruments, though non-binding, influence state behavior and gradually shape norms in the investment domain (Energy Charter Treaty, 1994).

This article explores the legal foundations, guarantees and permissible restrictions on investment activity, examining them through the lens of legal doctrine and practical challenges. Ukraine is examined as a jurisdiction undergoing legal adaptation in wartime conditions, with a focus on the emergence of soft law as a regulatory supplement to traditional legal mechanisms.

2. Theoretical and Legal Foundations of Investment Activity

As a legal phenomenon, investment activity lies at the intersection of public and private law, combining the imperatives of economic freedom with the regulatory interests of the state. Legally speaking, investment is an economic act of capital allocation and a legal relationship, governed by both domestic legislation and international treaties. This duality forms the basis of the legal regulation of investment processes within national jurisdictions and the transnational economic space (European Commission, 2021).

The term "investment" refers to various types of assets, such as monetary contributions, property, intellectual rights and technological resources. However, legal doctrine recognises that the legal classification of an asset as an investment is often more important than its economic value. Whether a transaction is covered by investment protection mechanisms, such as those in bilateral investment treaties (BITs), depends on the definition used in a given legal system or treaty (Paparinskis, 2013). This definitional variability means that not all capital movements are equally protected; therefore, the legal form of investment is as important as its material substance.

The legal regulation of investment activity is based on fundamental legal principles such as the rule of law, legal certainty, the protection of property rights, equality before the law and non-discrimination. These principles guarantee that investors, whether foreign or domestic, can participate in economic activity free from arbitrary interference. According to the principle of legitimate expectations, the state must respect the legal and factual framework within whichan investment was made, unless there are overriding public interests that justify a change (Titi, 2014).

In this context, a central concept is legal certainty, which refers to the clarity, predictability and consistency of the legal norms that govern investment. Investors must be confident that the regulatory environment will not change in a way that undermines the viability of their projects. According to UNCTAD (2020), sudden legislative changes, discriminatory taxation, or the unjustified revocation of permits may be interpreted as violations of this principle and may lead to investor–state disputes under international law.

In doctrinal terms, investment activity is categorised as having both subjective and objective legal dimensions. The subjective dimension relates to the legal status of the investor and the basis of their rights, while the objective dimension relates to the types of assets and activities that are protected. For instance, many investment agreements stipulate that protected investors must be nationals of a contracting state and that investments must be made in accordance with the host state's laws (UNCTAD, 2011).

Moreover, investment law is becoming increasingly reflective of the dualist structure of modern legal systems, which are divided into domestic and international spheres. At the domestic level, investment regulation encompasses property law, company law, taxation and administrative procedures. At the international level, rules are derived from treaties, customary international law and general legal principles. The two systems often overlap, creating complex legal intersections where disputes may be adjudicated by domestic courts, international arbitration tribunals, or both (Muchlinski, 2008).

It is also important to emphasise the public dimension of investment law. While traditional investment was considered part of private international law, the increasing involvement of states as regulators, hosts and investors has led to the field becoming more publicised. Modern investment regimes must balance private investor rights with public policy concerns such as sustainable development, labour standards, human rights and environmental protection (Energy Charter Treaty, 1994).

The evolution of investment activity in the digital and globalised economy gives rise to new legal challenges. The increasing importance of digital assets, cross-border services and intangible investments (such as algorithms, branding and data pools) has made it more difficult to define the boundaries between jurisdictions. Investment law must now address issues such as data localisation, cybersecurity risks and extraterritorial regulation. Furthermore, investment screening mechanisms, which are often justified in the name of national security, are becoming increasingly commonplace in response to strategic acquisitions in sensitive sectors (Newcombe, 2009).

Another relevant theoretical foundation is the notion of regulatory autonomy. States have the sovereign right to regulate matters of public interest. However, these regulations must be implemented in a way that is consistent with international commitments, and they must not constitute disguised protectionism or the arbitrary deprivation of property. Achieving this balance is one of the most pressing legal challenges in modern investment law.

Finally, the internationalisation of investment protection, facilitated by mechanisms such as investor-state dispute settlement (ISDS), has further transformed the legal landscape. These mechanisms enable investors to initiate legal proceedings directly against states before international arbitration tribunals. While this improves investor protection, concerns have been raised about regulatory chill, procedural fairness and the democratic legitimacy of adjudication processes.

In summary, the theoretical and legal foundations of investment activity are multidimensional, with roots in both national legal systems and international legal frameworks. This requires striking a balance between predictability and adaptability, individual rights and public interests, and economic liberalism and sovereign regulation. Only a comprehensive, coherent and evolving legal doctrine can ensure that investments serve not only private capital, but also the public good and long-term stability.

3. Guarantees of Investment Activity: National and International Dimensions

Legal guarantees for investment activities are essential for creating a stable and predictable business environment. They are intended to encourage capital inflow, protect investors from arbitrary interference and provide a legal framework that supports long-term economic planning. The fundamental principle of the rule of law, which obliges states to act within the bounds of established norms and procedures, lies at the heart of such guarantees (Wälde, 2005).

At the domestic level, the system of investment guarantees is enshrined in a state's constitution, civil and commercial codes, investment-specific laws, and administrative regulations. Constitutional guarantees, including the right to property and the freedom of enterprise, form the foundational layer of investor protection. In the context of Ukraine, Articles 13 and 41 of the Constitution formally acknowledge private property and entrepreneurship as integral components of the nation's legal framework (UNCTAD, 2012).

The civil code provides the legal framework for acquiring, transferring and protecting property, while commercial and corporate law govern the ways in which businesses are conducted. Special investment laws, such as the Law of Ukraine "On Investment Activity", establish preferential regimes including tax incentives and simplified procedures for strategic projects.

A critical component of domestic guarantees is the prohibition of unlawful expropriation. Expropriation is only permitted for public purposes, under clearly defined legal procedures and with full compensation. Any deviation from these criteria can render the measure unlawful, opening the door to domestic or international legal action (Paparinskis, 2013).

Furthermore, the principles of administrative justice and judicial independence are indispensable guarantees. Investors must have access to impartial and effective dispute resolution mechanisms, whether in the form of specialised commercial courts or administrative tribunals. The credibility of such mechanisms is often a determining factor in the perception of legal risk in the host state (UNCTAD, 2011).

In post-socialist or transitioning economies, such as Ukraine, state support mechanisms for investors are vital. These include state guarantees for infrastructure development, compensation for regulatory changes (stabilisation clauses) and co-financing in public–private partnerships. However, the enforceability of such commitments often depends on budgetary constraints and the state's institutional capacity.

International law provides a second, complementary layer of investor protection. A robust normative system setting minimum standards of treatment for foreign investors has been developed through over 3,000 bilateral investment treaties (BITs), along with regional agreements such as NAFTA/USMCA, the Energy Charter Treaty, and EU investment chapters (Sornarajah, 2021).

These standards typically include:
– Fair and equitable treatment (FET) (requiring stable, transparent, and non-arbitrary regulation).
– Full protection and security (obliging the host state to protect investments from physical or legal harm).
– National treatment and MFN (ensuring that foreign investors are treated no less favorably than nationals or third-country investors).
– Protection against expropriation (requiring prompt, adequate, and effective compensation).
– Free transfer of funds (allowing investors to repatriate profits and capital without restrictions) (Muchlinski, 2008).

The FET standard has become pivotal in investor-state dispute settlement (ISDS). Arbitral tribunals have interpreted FET broadly, holding states accountable for abrupt legal changes, denial of justice, and violations of legitimate expectations. For instance, in Metalclad v. Mexico, the tribunal determined a violation of the FET on the grounds of a paucity of transparency and procedural fairness. While this measure has been shown to strengthen investor rights, it has also given rise to concerns regarding the limitation of regulatory sovereignty (Schreuer, 2009).

The ISDS mechanism facilitates direct access for investors to international arbitration, circumventing domestic courts. Ukraine, as a signatory to the ICSID Convention and multiple BITs, has participated in such proceedings in both the capacity of claimant and respondent. While ISDS enhances credibility, it also imposes fiscal and reputational risks on the host state (Vienna Convention on the Law of Treaties, 1969).

Recently, there has been a surge of interest in regional investment courts (e.g., the proposed EU Multilateral Investment Court) as potential alternatives to ad hoc ISDS. The objective of these initiatives is to enhance transparency, consistency, and public trust in investment arbitration.

In addition to hard law instruments, a range of soft law frameworks now play a functional role in shaping expectations and behaviour in investment governance. The OECD Guidelines for Multinational Enterprises, the UNCTAD Investment Policy Framework for Sustainable Development, and the World Bank's Investment Climate surveys provide advisory norms that states often internalise through domestic regulation (OECD, 2022).

While these documents are not legally binding, they function as normative benchmarks, particularly for multinational corporations and international financial institutions. The areas of focus encompass responsible business conduct, environmental impact, stakeholder engagement, and anti-corruption compliance. It is evident that certain BITs and FTAs now explicitly reference these soft instruments within their respective preambles or interpretative annexes.

Furthermore, investment promotion and protection strategies are incorporating sustainable investment principles that focus on environmental, social and governance (ESG) criteria. Countries that incorporate these principles into their domestic legal framework are increasingly being seen as safe havens for ethical investment.

Guarantees are not absolute. They are subject to exceptions for public necessity, national security clauses and emergency measures. According to international law, states have the right to regulate investments, even if this has an adverse effect, provided that the regulation is carried out in good faith, is proportionate, and is for legitimate purposes (Dolzer, 2012).

During times of war, pandemics or natural disasters, states may impose restrictions that temporarily limit the operation of investment guarantees. For example, Ukraine's introduction of martial law has resulted in the nationalisation of critical infrastructure, restrictions on currency operations and the reallocation of resources, all of which affect investment flows and investor rights. However, if these actions comply with the principles of proportionality and are only implemented temporarily, they do not necessarily constitute violations of international law (UNCTAD, 2020).

In conclusion, the investment guarantee system is a complex, multi-layered framework that encompasses national legislation, international treaties and non-binding normative instruments. Its dual purpose is to promote investor confidence and preserve the sovereign right of states to regulate in the public interest. The evolving nature of global challenges, such as war, climate change and technological disruption, means that investment guarantees must be legally robust, adaptable and sustainable.

4. Legal Restrictions on Investment Activity: Justifications, Limits, and Risks

Although legal guarantees are the cornerstone of investor confidence, no guarantee exists in a legal vacuum. Every right is subject to limitations, particularly in the context of sovereign regulatory powers. Within the domain of investment, these restrictions do not represent exceptions but rather serve as manifestations of constitutional equilibrium, democratic legitimacy, and national interest. A comprehensive understanding of the principles of nature, legitimacy, and the boundaries of legal restrictions is imperative for a holistic comprehension of the legal framework governing investment activity (ICSID, 2023).

The right of states to regulate economic activities is widely recognised. Legal restrictions are frequently necessitated by objectives that extend beyond mere economic optimisation and encompass fundamental values of national governance. These include national security, particularly in sectors such as defence, energy, critical infrastructure and information technology. In 2020, the United States expanded the remit of its Committee on Foreign Investment in the United States (CFIUS) to encompass minority transactions and specific real estate acquisitions in proximity to sensitive sites.

Public order and moral concerns, such as regulations on gambling, alcohol, pornography, or crypto assets, are of particular concern in cases where foreign investment is perceived to potentially compromise domestic cultural or ethical standards.

This includes environmental protection measures such as bans on polluting technologies, mandatory environmental impact assessments and carbon taxation. In several cases, including Vattenfall v. Germany, changes in environmental policy have led to investor-state arbitration (ICSID, 2023).

These include social and labour considerations such as mandatory local content requirements, quotas for the employment of domestic workers and wage regulations. While these may reduce profitability, they are increasingly justified under the umbrella of inclusive development.

Fiscal integrity and anti-corruption refer to states restricting access to government procurement markets or requiring transparency in beneficial ownership, in order to prevent tax evasion and illicit financial flows (Salacuse, 2013).

These restrictions are more than just policy options; they are expressions of a state's constitutional identity. When enacted properly, they reflect public will and democratic consensus, thereby reinforcing the legitimacy of the broader legal system.

Any restrictions must be prescribed by law, non-discriminatory and meet the criteria of necessity and proportionality. These standards are firmly established in comparative constitutional law.

In Germany, for instance, the principle of 'Verhältnismäßigkeit' (proportionality) requires that any limitation on rights, including property rights, must pursue a legitimate aim and be suitable and necessary in relation to the intended goal, and not excessive.

In Ukraine, the Constitution permits restrictions under martial law or states of emergency, provided they are declared in a formal decree and subject to parliamentary oversight (The Law of Ukraine "On Investment Activity" No. 1560-XII).

In the UK, judicial review is used to evaluate the reasonableness and legality of administrative decisions affecting property or investment rights, in line with the principles established in cases such as Achmea B.V. v. Slovak Republic (CJEU, 2016).

The absence of clear criteria, arbitrary decision-making and/or a lack of judicial control may render restrictions unconstitutional or illegal under national law. Such actions can damage investor confidence and may lead to domestic constitutional complaints or international claims.

Modern international investment treaties do not offer unconditional protection. They often include exceptions that allow the host state to regulate dynamically in response to changing priorities:

– General exceptions (modeled after Article XX of the GATT), which allow states to take measures "necessary" to protect life, health, or the environment.
– Security exceptions, which authorise deviation from treaty obligations in situations threatening national security, often self-judging in nature.
– Non-precluded measures (NPM) clauses in BITs (e.g., U.S. Model BIT), which allow host states to adopt macroeconomic measures in exceptional circumstances such as balance-of-payments crises or war (UNCITRAL, 2019).

However, tribunals often interpret these exceptions narrowly. In LG&E v. Argentina, for instance, the tribunal accepted the economic emergency as justification for temporarily suspending guarantees, but emphasised that any measures taken must be proportionate and temporary. By contrast, similar claims were rejected in CMS v. Argentina (ICSID, 2007).

This illustrates the legal tension between necessary regulation and treaty obligations. Tribunals not only assess whether the public interest goal is legitimate, but also whether the chosen measure is the least intrusive and has been implemented in good faith.

Ukraine, under martial law, has introduced measures that include:

– Nationalisation of strategically important enterprises;
– temporary suspension of repatriation of dividends;
– export licensing for critical goods;
– restrictions on currency conversion and movement of capital.

Although these steps are driven by the logic of wartime governance, they significantly affect foreign investors. The challenge for Ukraine is to demonstrate that such restrictions are exceptional, proportionate and consistent with constitutional and international standards (The Law of Ukraine "On Investment Activity" No. 1560-XII).

Other jurisdictions illustrate varying approaches.

India introduced retrospective taxation (Vodafone case, 2016), which led to a string of BIT claims and eventual treaty termination.

South Africa revised its investment framework to eliminate ISDS access while reinforcing domestic protections, citing constitutional supremacy and public interest as primary justifications.

China, while formally providing extensive guarantees, maintains sectoral restrictions via its "negative list" regime and retains ultimate discretionary control through state bodies.

These examples highlight that the form and context of restrictions are as important as their substance. Transparent, accountable, and legally anchored measures are far more likely to withstand scrutiny and maintain investor trust.

Improperly designed restrictions carry manifold risks:
– Legal risk, including breach of BITs, claims for compensation under ISDS, or challenges in national courts;
– reputational risk, which affects a country's ranking in investment climate indices and investor perception;
– chilling effect, where fear of retroactive, discriminatory, or overly burdensome regulation deters future investment, even in unrelated sectors;
– retaliation, especially when restrictions target foreign investors selectively, potentially triggering diplomatic disputes or economic countermeasures.

Contemporary legal thought increasingly views restrictions not as exceptions, but as integral components of a balanced investment regime. The modern model sets priorities:
–– Transparent policymaking;
–– stakeholder engagement;
–– legal remedies and access to justice;
–– ex ante clarification of regulatory space in treaties and national legislation.

International organisations such as UNCITRAL, UNCTAD and the OECD are developing frameworks to ensure that the right to regulate is not undermined by overly broad investor protections, while also ensuring that such regulation is accountable and reasonable.

In conclusion, legal restrictions are an indispensable part of investment governance. Rather than contradicting the principle of legal certainty, they affirm the broader legal and constitutional order in which investment operates. The challenge for states is to ensure that such restrictions are well-crafted, evidence-based, proportional and grounded in both national legitimacy and international compatibility. Achieving this nuanced equilibrium is the hallmark of a mature and responsible investment legal system.

5. Investment Activity Under Martial Law: Legal Regime and Practical Challenges

Martial law is an extraordinary legal regime that dramatically reconfigures the balance between public interest and private rights. In times of armed conflict, states must adapt their legal and institutional systems to prioritise survival, national defence and internal order. Investment activity, particularly foreign investment, undergoes fundamental shifts in regulatory logic and operational feasibility (MIGA, 2022).

In most legal systems, martial law is introduced via a constitutional or statutory mechanism that empowers the executive to restrict certain rights, override normal procedures and centralise decision-making. In Ukraine, for example, the imposition of martial law is governed by the Law of Ukraine "On the Legal Regime of Martial Law," which authorises the government to:
– Temporarily suspend certain constitutional guarantees (e.g., property rights, economic freedoms);
– introduce special procedures for asset seizure, mobilisation, and nationalisation;
– control communications, banking operations, and cross-border transactions;
– impose curfews and restrict movement of persons and goods.

Although such powers are legally recognised, they must be exercised proportionately, for a necessary purpose and for a limited time. Any abuse or arbitrariness would undermine both domestic legitimacy and international investor confidence.

The realities of wartime governance necessitate targeted interventions in the economy, many of which affect investors directly:
– Nationalisation or temporary seizure of strategic enterprises, especially in defense, logistics, or critical infrastructure;
– suspension of fiscal incentives and stabilisation clauses due to shifting budgetary priorities;
– currency controls, including mandatory conversion of foreign currency revenues and limitations on repatriation of capital;
– delays in dispute resolution, particularly if courts are suspended or operating in limited capacity.

While such measures may be considered justifiable in the context of existential threat, they have the potential to give rise to allegations of indirect expropriation, violation of fair and equitable treatment (FET), or denial of justice under bilateral investment treaties (ICSID, 2004).

Investment in a country under martial law entails heightened political risk, legal unpredictability, and logistical complications. These risks include:
– Force majeure disruptions to supply chains, construction, or contractual obligations;
– security risks for personnel and assets in conflict zones;
– regulatory opacity, as emergency decrees may be adopted without prior notice or public consultation;
– information asymmetry, particularly when media and communication channels are restricted.

However, it should be noted that not all consequences are negative. It is submitted that certain investors may derive benefit from wartime procurement contracts, reconstruction opportunities, or strategic partnerships with the state. Nevertheless, such advantages are frequently ephemeral and prone to fluctuation.

It is evident that even during periods of armed conflict, states continue to be bound by a range of international obligations. These obligations encompass various treaties, including those pertaining to investments, the International Covenant on Civil and Political Rights (ICCPR), and customary international law. The doctrine of state necessity may be invoked to justify deviation from treaty obligations, but such invocation is narrowly interpreted.

In CMS v. Argentina, the tribunal rejected Argentina's claim of necessity during an economic crisis, stating that mere difficulty does not absolve treaty responsibilities. In contrast, the claim in LG&E v. Argentina was upheld for a specific period, recognising the exceptional nature of the crisis.

The lesson for Ukraine and other conflict-torn states is clear: careful documentation, transparency and evidence-based justification of wartime measures are essential for defending them in future legal proceedings.

To mitigate risks and foster resilience under martial law, both states and investors should consider the following strategies.

Clear legal guidelines for emergency economic measures should be adopted by states, with minimal interference with core investment rights ensured, and post-war mechanisms for compensation or restoration provided.

Investors should diversify their legal protections (for example, by using investment insurance and setting up structures with multiple nationalities), monitor treaty frameworks and actively engage in risk mitigation planning. This should include drafting force majeure clauses and planning for arbitration.

Furthermore, international institutions such as the World Bank, MIGA and regional development banks should extend the scope of their political risk insurance instruments to encompass conflict-affected regions and provide financing for post-conflict recovery (World Bank, 2021).

In summary, martial law engenders a legal environment wherein investment activity becomes intricately interwoven with questions of sovereignty, survival, and public interest. The predictability and security that are typically associated with legal frameworks are superseded by a system shaped by emergency situations, disruption, and improvisation. Nevertheless, careful legal design, the proportional application of measures and post-conflict restitution mechanisms make it possible to preserve core elements of investment protection, even in the most adverse circumstances.

6. Conclusions

The legal regulation of investment activity involves a complex interplay between two competing imperatives: protecting investor rights and enabling the state to exercise its sovereign authority to regulate in the public interest. Throughout this article, it has been demonstrated that a modern investment regime cannot function solely on guarantees; it must also recognise and legally define permissible restrictions. This dual structure ensures the stability and predictability necessary for economic growth, as well as the flexibility and resilience required to withstand crises of an economic, environmental or geopolitical nature.

National legal systems provide fundamental guarantees, such as property rights, equal treatment, access to justice and legal certainty. These are reinforced by international investment treaties, which introduce standards such as fair and equitable treatment, protection from expropriation and dispute resolution mechanisms between investors and states. At the same time, both domestic and international law recognise the right of states to limit or qualify these guarantees for reasons such as national security, public health, fiscal stability or social justice. If these limitations are clearly defined, proportionate and transparent, they do not weaken investment regimes; rather, they strengthen their legitimacy.

The case of Ukraine, particularly under martial law, highlights the fragility and importance of legal infrastructure during times of national emergency. The suspension of certain investment protections, the nationalisation of assets and the introduction of administrative restrictions reflect the harsh realities of war. However, these actions must be legally justified and compliant with national and international legal standards. Failure to maintain legal discipline during a crisis can undermine post-conflict recovery, investor trust and access to international financial support.

Moreover, the role of soft law instruments is growing. Although they are not legally binding, codes of conduct, declarations and multilateral guidelines can influence investor behaviour, set expectations for responsible investment and contribute to the formation of customary norms. In a fragmented global legal landscape, such instruments provide a means of reconciling development goals with investor rights, offering a bridge between rigidity and innovation.

Ultimately, investment law must evolve towards a more integrated, responsive and balanced approach. Legal systems should protect capital, promote sustainable development, and encourage public accountability and social cohesion. Investment guarantees should foster trust and economic dynamism, and well-designed restrictions should facilitate democratic governance, ecological responsibility, and national security.

The way forward is to construct legal frameworks that combine flexibility with predictability, sovereignty with co-operation and economic freedom with constitutional order. Only then can investment law fulfil its dual function of acting as both a shield and an instrument for a just, resilient and forward-looking economic system.

References:

Achmea B.V. v. Slovak Republic, CJEU Case C-284/16.

Dolzer, R., & Schreuer, C. (2012). *Principles of international investment law* (2nd ed.). Oxford University Press.

Energy Charter Treaty (1994). Available at: https://www.energychartertreaty.org

European Commission (2021). *Investment protection and investor-to-state dispute settlement (ISDS)*. Brussels.

ICSID (2023). *Database of pending and concluded cases*. Available at: https://icsid.worldbank.org/cases

International Centre for Settlement of Investment Disputes (ICSID). (2004). *CMS Gas Transmission Company v. Argentina*, ICSID Case No. ARB/01/8.

International Centre for Settlement of Investment Disputes (ICSID). (2007). *LG&E Energy Corp. v. Argentina*, ICSID Case No. ARB/02/1.

Muchlinski, P., Ortino, F., & Schreuer, C. (Eds.) (2008). *The Oxford handbook of international investment law*. Oxford University Press.

Multilateral Investment Guarantee Agency (MIGA) (2022). *Political risk insurance report*. Available at: https://www.miga.org

Newcombe, A., & Paradell, L. (2009). *Law and practice of investment treaties: Standards of treatment*. Kluwer Law International.

Organisation for Economic Co-operation and Development (OECD). (2022). *FDI qualities indicators: Measuring the sustainable development impacts of investment*. OECD Publishing.

Paparinskis, M. (2013). *The international minimum standard and fair and equitable treatment*. Oxford University Press.

Salacuse, J. W. (2013). *The law of investment treaties* (2nd ed.). Oxford University Press.

Schreuer, C. (2009). Protection against arbitrary or discriminatory measures. *Transnational Dispute Management, 6*(1).

Sornarajah, M. (2021). *The international law on foreign investment* (5th ed.). Cambridge University Press.

Titi, A. (2014). *The right to regulate in international investment law*. Nomos/Hart Publishing.

UNCITRAL (2019). *Working Group III on ISDS Reform*. Available at: https://uncitral.un.org/en/working_groups/3/investor-state

UNCTAD (2011). *Scope and definition* (UNCTAD Series on Issues in International Investment Agreements II). United Nations.

UNCTAD (2012). *Fair and equitable treatment* (UNCTAD Series on Issues in International Investment Agreements II). United Nations.

UNCTAD (2020). *World investment report 2020: International production beyond the pandemic*. United Nations.

The Law of Ukraine "On Investment Activity" No. 1560-XII. The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 1991, No. 47, Article 646. (1991, as amended).

Vodafone International Holdings B.V. v. India, PCA Case No. 2016-29.

Wälde, T. W. (2005). The present state of international investment law. *International and Comparative Law Quarterly, 50*(4), 731–770. DOI: https://doi.org/10.1093/iclq/54.4.731

World Bank (2021). *Doing business report 2021*. Washington, DC: World Bank.

Vienna Convention on the Law of Treaties (1969). United Nations.

Received on: 11th of July, 2025
Accepted on: 20th of August, 2025
Published on: 24th of September, 2025