NEAR EAST UNIVERSITY
INSTITUTE OF GRADUATE STUDIES
INTERNATIONAL LAW PROGRAM

THE LEGAL STATUES OF THE FORGIN INVESTOR IN THE IRAQI INVESTMENT LAWS

OMAR SALAH ABED

MASTER'S THESIS

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ACCEPTANCE/APPROVAL

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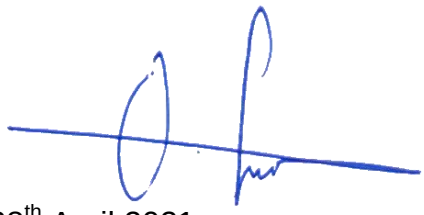

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ABSTRACT

THE LEGAL STATUES OF THE FOREGIN INVESTOR IN THE IRAQI INVESTMENT LAWS

Foreign investment is a longed-for objective by all countries, whether they are developed or developing. The demand for attracting foreign investment is twice in the most non-developed countries in the world, of which Iraq is - in fact - one of them. It is enough for any observer in Iraq to look around himself to see the extent of the underdevelopment that all sectors in this country suffer from. The possibility of rebuilding and rehabilitating these sectors requires competences and efforts Iraq does not have it in such situations, this is on the one hand. On the other hand, the issue of self-reliance in building and rebuilding all of this is unreal, especially since a massive gap departs us from the level of countries that are not only developed countries, but even from many developing ones. Perhaps we should point out at this point that the only industry that represents the national economy pillar in Iraq is the oil industry, and it is in an undeveloped state that cannot be hidden from any interested person. So, how are the rest of the other sectors are doing? For all reasons referred to above, and for the unseen economic openness that Iraq is witnessing, the issue of foreign investment is of the greatest importance. Perhaps what's the most significant in legal terms is defining the legal status of the foreign investor of what he has and what he owes in light of two investment laws that were recently issued in Iraq: which are the KRI Region and the Iraqi Federal Investment Laws. In order to be able to attract the foreign investor, we need to outline him a legal framework for what rights and obligations he has that enable him to know his legal position under these two laws.

Keywords: The Board of Investment, Investment law of KRG, investment law in Feral Government of Iraq, Foreign investor,

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ABBREVATIONS

WIPO……Intellectual Property Organization in Geneva

ICSID……Center for the settlement of investments Disputes in Washington

KRG……..…North of Iraq Region

WTO..…….. World Trade Organization

UNCITRAL…United Nations Commission on trade Law

OECD…….The Organization for Economic Co-operation and Development

UNCTAD……United Nations Conference on Trade and Development

INI……..…Instituto Nacional de Industria

1. Introduction

Foreign investment is one of the most significant aspects of achieving economic development today, as many countries resort to host the largest possible amount of foreign investment, given the returns they generate on the countries they invest in, particularly developing countries that are in dreadful need to induce such investments, relying therefore on several factors, as the suitable economic environment to magnetize these investments is an economy that's open to the outside world where this openness goes along with some measures that simplify the task for the investor and promises him considerable profits, and that will be through producing economic structures capable of absorbing foreign capital through facilitating legal procedures and make it in line with the policy and objectives of the investment hosting countries. Since doing an investment project on a territory of the host country leads to making economic savings that could be reflected in the increase in workers' wages and the production ability of the state, and this is achieved by training the workforce on the technical and advanced methods that the foreign investor has. In addition to increasing the social capital, in developing countries, and reduction in terms of the cost ratio of some production items that were not available, through providing them. Bringing in foreign investor with whatever experiences, capabilities he/she has along with the previous contact with global markets will lead to the expansion of the local market limits as well as opens new global markets for local products. In this context, the investment hosting countries in general, grant attractive incentives to foreign investors through their legislation or through the conclusion of bilateral agreements, and remove all the obstacles, barriers and restrictions that hamper their way, as attracting investors has become at the mercy of creating a favorable climate for investment and dependent on the incentives and benefits provided by the state of the host country due to their impact on economic development. Many countries have followed certain policies that encourage these investments and have sought to inspire and attract them by offering them a suitable environment due to their economic role along with considering them an effective vehicle for transferring advanced technology that enables countries to make optimal use

of their fortunes and various natural resources; in addition to their desire for obtaining foreign capital to achieve their development. However, real development must be based on economic autarky and the best and complete use of its natural resources and wealth, and not on the economic dependence of developed countries.

It's for this that the investment contracts have become the ones through which cooperation takes place between states, for being linked to more than one legal system and concluded between two parties, each of which belongs to a different legal system than the other. The state is considered the owner of the authority and the sovereignty as well as enjoying exceptional advantages as one of the persons of the international law and the foreign investor on the other hand, as a foreign person who owns money and technology, so the two parties seek to create a balance between the interests of each of them. In the investment contract, developing countries view the contractual relationship as a relationship of subordination and control over their wealth by foreign investors who own technology and money, while the foreign investor looks at it as a contractual relationship that tends to favor the developing country more due to the privileges it possesses from the public authority in terms of the powers of amendment of the contractual relationship that binds them and that makes it in a stronger position than these people. The first thing that countries wishing to attract foreign investment do is adopt objective rules that allow foreign investors to enter their territory, facilitate their stay and movement within it, as well as pledge to guarantee the rights of the investor, protect his capital and profits and his right to transfer them abroad, and his right of not to expropriate his ownership except for the public interest and through sound legal procedures and in return for fair and equitable compensation. It is also essential to offer him practical guarantees characterized by means that enable him to protect his rights judicially. Among the most important of these means is of course the international commercial arbitration approved by most national legislations and international conventions, which in turn, it works on removing investment-related disputes from the scope of competence of the jurisdiction of the host country and submitting them to a court or arbitration body the two parties chose, thus

ensuring a quick settlement of the dispute. The objectives of the research are evident in studying the legal status of the foreign investor, while he is on the territory of the host country for the investment; in addition to knowing of the legal texts and bilateral agreements concluded between countries and foreign persons that regulate the course of the investment project activity and define all aspects of the contractual relationship, stating the rights and obligations that fall under the responsibility of the foreign investor. As well as the knowing the means used by the parties to settle disputes that arise between them. As for the reasons that encouraged us to choose the topic, it is the prominent role that investment plays in the field of economic development and its adoption by many countries, especially developing countries that seek to drive economic development forward and keep up with the steps of the economic development that depicts developed countries. On top of that, it's the distinctness of some Laws that made investment the most vital legal mechanism to attract investors.

The association of the national investor with his country differs from that of the foreign investor who is in the host country for the investment.

1.1. Research hypothesis:

The research hypothesis is based on the possibility of investment laws to make a kind of balance between the state's interest in attracting foreign investment through providing rights, economic and legal incentives to the foreign investor on the one hand, and between the higher interests of the country that hosts investment without disrupting the state sovereignty; as often, there is a conflict between the interest of the foreign investor and the state's sovereignty and its economic interest. The first wants financial profit, while the second aims at offering investment opportunities to the foreign investor who contributes to building the infrastructure and speeding up the steps of the economy. Accordingly, the hypothesis of the research will be how to find a balance between the interest of the two parties and the creation of common ground that stimulates the foreign investor on the one hand, along with preserving the sovereignty of the host country on the other hand. In other words, protecting the rights of both parties, besides observing and applying the obligation of both parties.

1.2. The Research Objective:

The research objective is mainly to study the legal position of the foreign investor in Iraq, since there are two effective laws in the Federal Republic of Iraq. One of which is federal and applied throughout Iraq with exceptions to the regions that have a regional law for investment. And, the other one is regional that applied only in the KRI Region of Iraq. Comparative law, and the legal provisions study related to the rights and obligations of the foreign investor, with indicating the deficiencies and defects in these two Iraqi legislations. It's also connected with determining the means for settling investment disputes between the foreign investor and the host country. And then, preferring the most appropriate approach that reassures the parties of the investment relationship.

1.3. Research Difficulties:

The difficulties in researching this topic were represented in several aspects, including its web-like dimensions and connections to more than one branch of private and public laws, as well as the lack of jurisprudential sources that dealt with this topic in Iraq. Because the investment law with its two types, regional and federal, has been enacted recently, the first legislation of the investment law in the KRI Region of Iraq was in 2006, then followed the Federal Investment Law in the same year, which impelled us to rely on the legal texts included in the investment legislation mainly, in order to analyze it and try to extract legal provisions from it.

1.4. Research Methodology:

In view of the data that we referred to in the previous paragraphs related to the subject of this study, basically two scientific approaches have been counted on, one of which is complementary to the other, and these two approaches are:

1. The Comparative Approach: which is based on a comparison between the Investment Law of the KRI Region No. (4) for the year 2006, and the Iraqi Federal Investment Law No. 13 of 2006, and then comparing both them with each one of the Jordanian Investment Law No. 68 for the year 2003 and the amended Egyptian Investment Incentives and Guarantees Law No. 8 of 1997. In addition, assessing some other international laws, which over and

beyond the aforementioned laws are considered closest to the investment law in Iraq, to conclude how much the international agreements related to investment will be introduced.

2. The Analytical Legal Approach: This approach is mainly based on analyzing legal texts in an attempt to extract appropriate provisions, explaining their weaknesses and strengths, comparing and weighing some of them, explaining the reasons and justifications for that. It also analyzes the texts of a number of international and special agreements resolved to protect and encourage foreign investments; in addition to the international agreements that establishes international investment centers. One such is the Washington Agreement of 1965 that formed the International Center for Settlement of Investment Disputes between States and Nationals of Other Countries.

1.5. Defining Research Scope:

The research in this study was limited to the legal status of the private foreign investor, who is engaged in a direct investment activity, as we will not touch upon nor the study of the provisions of the legal status of the national investor and neither on the public investor in this research, without even touching on the indirect foreign investment.

1.6. Research Structure:

For the purpose of studying the legal status of the foreign investor and explaining the legal provisions related to it, the research is being divided as in the follows:

The introductory topic, in which the foreign investor is defined as the main focus linked to the research. Then in the first chapter the rights of the foreign investor are mentioned, where we will present for two reasons the rights, obligations and duties of the foreign investor. The first one is in line with what the legislations have followed, and the second is that most investment laws aim to grant more incentives, which targets granting a combination of investment motivation to the foreign investor, beginning with reviewing the rights that are usually much more than their duties and obligations; and then

allocating the second chapter to the duties and obligations that fall on the foreign investor.

Due to the importance of settling disputes arising between the foreign investor and the host countries, with regard to rights and obligations, the third and final chapters of this research are being devoted to settling those disputes.

Then, the study is closed with a set of conclusions along with some recommendations.

2. Introductory Study

2.1. Definition of the Foreign Investor:

The legal status study of the foreign investor, from the outset, requires a concise explanation of the concept of the Foreign Investor, through its definition; and also distinguish it from the national investor. This calls for dividing the research into three requirements. We will allocate the first one to define the foreign investor and in the second one the foreign investor will be distinguished from the national, and in the third which is the final one, we will deal with some issues related to the nationality of the foreign investor. Before we start doing that, it necessary to point out that the foreign investor might be a natural person or a juridical person, as the rules regulating investment have persistently used the term ((investor)) to cover both the natural person and the juridical person; and this is what we will run into in this study.

2.1.1. The First Requirement: Definition of the Foreign Investor

We will start by defining the foreign investor in national legislation, and then define it in the regulations of international law (investment agreements). And finally, define it in the jurisprudential principles, allocating for each one of them a separate division.

2.1.1.1. First Division: Definition of the Foreign Investor in National Legislation

The Investment Law No. 4 of 2006 in the KRI Region of Iraq, did not define the term “Foreign Investor”, but rather described the term “investor” in general, as Article 1/6 of it stipulates that the investor is a "natural person or juridical person who invests his money in the region according to the

provisions of this law, be it nationally or internationally " Foreign ". Whereas this legislator tried, through the twelfth paragraph of the same article, to describe the term " foreign capital " by stating that foreign capital is" what the investor invests in terms of cash or in-kind money or rights that have a financial value in the region." It seems that the legislator was not successful with this definition, as it was short of any distinctive reference to the national capital, and that's due to the generic terms of the expressions used: this is considered a flaw in the wording that needs to be corrected.

At this point, it should be noted that Article Three of the Investment Law in the KRI Region of Iraq stipulates that "The investor and foreign capital shall be treated like the national investor and capital are treated. And the foreign investor shall have the right to own the full capital of any project he starts in the region under this article, namely differences between the foreign investor and the national investor in front of the valid investment law in the KRG.

As for the federal [1] legislation of Iraq [2], the foreign investor definition is stipulated in the First Article, paragraph "I", stating that "a foreign investor is the one who does not hold the Iraqi nationality in the case of a real person and is registered in a foreign country if he is a legal or juridical body." Then, a definition of the Iraqi investor [3] is being mentioned in the second paragraph of the same the article. Even though its being noticed that this text contains expressions or terms that are either inaccurate or not recognized in Iraqi laws. The term "natural person" was metaphorically used for the natural

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[1] By the term (Federal) we refer to the laws issued and legislated by the Parliament of Iraq.

[2] The Iraqi investment Law No. 13 for 2006, published in Iraqi official gazette No. (4031) on January 17th, 2007, which was a complement to the Administrative Order No. 39, issued by the Coalition Authority in Iraq pertaining to the foreign investment, defined in paragraph 4 of the First Section of the law as follows "whoever has invested or is investing money and the following qualities applies to: A- a commercial entity established and regulated according to any states' law other than Iraq or, B- a natural person who is a citizen to another state other than Iraq or a person belongs to any country but he/she is a permanently resident of Iraq or he/she is an Iraqi citizen resides outside of Iraq with a permanent resident or commercial entity established that has been regulated through any of the aforementioned according the Iraqi law. It's also worth mentioning that this law has been cancelled pursuant to the Article 34 of the Iraqi Investment Law No. 13 for the year 2006 so to be replaced with the last one.

[3] The "Iraqi Investor" is the one who holds Iraqi nationality in the case of the real person and is registered in Iraq if he is a legal or juridical person."

person, and there is no doubt that the second expression is more accurate. It also included the phrase "a legal or juridical body" which is the last word, due to its ambiguity, it is not used in the legal language in Iraq, and also it appears to be not needed in this text.

The applied Jordanian investment law[4] defines the foreign investor within Article 2 as "the natural person or juridical person who invests in the Kingdom in accordance with the provisions of this law". Thus, the Jordanian law has clearly and absolutely defined the investor without distinguishing between the foreign and the national investor. This law addresses the investor absolutely, so that every natural person or juridical person is considered an investor if he/she invests his money inside the Kingdom, regardless of his nationality.

As for the Egyptian Investment Incentives and Guarantees Law No. 8 of 1997 in force, it did not define the investor at all.

Accordingly, we note that these definitions mentioned in these legislations, in the strict sense of speech, are not idiomatic definitions. Rather, they are merely giving meanings and concepts to the term foreign investor; these legislations do not even give detailed definitions for this term.

2.1.1.2. The Second Division: Definition of the Foreign Investor in International Investment Agreements

The issue of the definition of the terms is a fundamental and necessary subject in international investment agreements, as it raises a number of contentious matters between the parties of the agreement. It is not simply meanings for words, but rather a guiding content for the agreements[5], in the light of which the state party is determined to implement the provisions of the agreement and likewise at the investor level[6]. Its definition is considered of

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[4] The Temporary Jordanian Investment Law No. 68 for the year 2003, published in the official gazette No. 4606 on April 16th, 2003.

[5] UNCTAD, scope and definition series on issues in international investment agreements, New York and Geneva, 1999 p10 , www.unctad.org

[6] Sometimes some international investment agreements use the term citizen rather than natural persons as well as prefer the term company to the legal person. See Article 1/A-C from the bilateral agreement concluded between the Hashmiate Kingdom of Jordan and the United States of America

great importance, especially in the area of the investment agreement; and its value is not at lower rank, especially in the area of investment. It's even as significant as the definition of the investment is, since the investment agreement applies to investments made by investors covered by the agreement. In general, for one of the two reasons it is necessary to define the investor in the international investment agreement:

A. To ensure that this investor belongs to one of the countries which is a part to the agreement that aims to protect the investments issued by them[7].

B. To prevent investors from third countries those are not party to the agreement to benefit from the terms of the agreement. This is because, and generally, the International Investment Agreement applies only to the existing investment by the investor which is legally affiliated with one of the countries that are party to the agreement[8]. Also, to determine who has a rank in the agreement to invoke the dispute settlement terms in the agreement. In other words, it's to acknowledge who has the right to request the protection granted under the agreement[9].

This is stated in Article 25/2 of the Washington Convention for the Settlement of Disputes that's meant by the term "a national of the other contracting state other than the state party to the conflict, b. every juridical personholding the nationality of one of the state's contracting other than the state party to the dispute"[10] .

The investor, in the draft multilateral investment agreement prepared by the Organization for Economic Cooperation and Development (OECD), is

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on Mutual Investment Encouragement and Protection for 1997. The agreement text is made available at this website www.jedco.gov.jo/jedcod/agreement

[7] Dr. Ibrahim Shahata, The International Guarantees for the Foreign Investments, Dar Al-Nahdha Al-Arabia, Cairo, 19971 page 89.

[8] World trade organization, Working Group on the relationship between trade and Investment, Scope and definition: Investment and investor.by the Secretariat 21 march 2002 (www.wto.org)

[9] Negotiating Group on the Multilateral Agreement on Investment (MAI)definition of Investor and Investment, the document was Issued during MAI negotiations 1995 and 1998 by chairman of OECD p3, www.oecd.org

[10] Icsid.worldbank.org

defined by the fact that "not only is he a national of the contracting state, but he is also a legal permanent resident on the territory of the signatory state, and he could be any real or juridical person, even if the activity that is carried out It is not for profit."[11]

The agreement to encourage the Protection and Guarantee of Investments[12] from the First Article stipulates that “it’s the government of any contracting party or the natural person and/or juridical person, affiliated with any contracting party who owns the capital and invests in the territory of another contracting party defines its affiliation”, as follows:

1. A natural person: Every individual enjoying the nationality of a state party based on the prevailing nationality law provisions.
2. Juridical person: Every entity created pursuant to the applied laws in any contracting party and recognized by the law under which the juridical personality is established.

Among the bilateral investment agreements that defines the investor, for example, is the Republic of Sudan and Hashemite Kingdom of Jordan governments bilateral agreement for the Encouragement and Mutual protection of Investments for the year 2000[13], which stipulates in its First Article 1/1 that the term "investor" in this agreement is meant to refer to any natural person or a juridical body that invests in the lands of either of the contracting parties:

A. A natural person is meant to refer to any natural person who holds the nationality of a contracting party according to its laws that invests in the territory of the other contracting party.

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[11] Dr. Bashar Mohammed Al-Assad, Investment Contracts in the Private International Relationships, Halabi Legal Publication, Beirut 2006, pages 23 – 24.

[12] We are referring to the Agreement of the Islamic Organization Convention on (Encouragement, and Protection and Investment Guarantee Between member states) concluded on November 23rd, 1988, www.oic-oci.org

[13] www.jedco.gov.jo/agreement/.

B. A juridical personis meant to refer to any juridical person established or formed pursuant to the laws applied in a contracting party that invests in the territory of the other contracting party.

2.1.1.3. The Third Division: Definition of Foreign Investor in Jurisprudence

We did not find a jurisprudential definition for a foreign investor. Rather, it was satisfied with an absolute definition for a foreigner, in addition to the definition of foreign investment. It defines a foreigner[14] as "the person who does not have the nationality of the country in question."

Others[15] define a foreigner by saying that “he/she is someone who does not hold a national citizenship, that is, someone who does not meet the conditions required to enjoy a nationality”.

Also, it defines the Foreign Investment[16] as "those investments that are made by a foreign person, whether he/she natural or legal, and with cash or in-kind capital that has been entered into the investment attracted country by legally approved methods; whether it is an investment project that is subject to his/her control or direction, or in the form of loans or subscriptions to shares and bonds”.

Foreign investment is also defined as "the transfer of capital or materials from a country (refer to as the source of capital) to another country (refer to as the host country of the capital), in exchange for direct or indirect participation in the profits (earned income) for that project."

We can define the foreign investor, through this, as "every natural or legal foreign person who enters his cash or in-kind capital to the country that is hosting the investment for the purpose of starting an investment project in line with the provisions of its national laws; whether the investment project

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[14] Dr. Abdulmunim Zamzam, Foreigners Status in International and the Egyptian Contemporary Laws, Edition 4th, The Arabian Al-Nahdha Publication, Cairo 2007, page 11.

[15] Professor, Dr. Hisham Saddiq and Professor, Dr. Ukasha Mohammed Abdula’l and Professor, Dr. Afidha Al-Saeed Al-Hadad, the Nationality and the Status of the Foreigners, Publications of the University of Al-Askanderia 2006, page 473.

[16] Dr. Usamaddin Mustafa Baseem, The Legal System for the Private Foreign Investment in Developing Countries, Cairo, The Arabian Al-Nahdha Publication 1972, page 6.

that he/she starts is subject to his control and/or direction or in the form of loans or subscriptions to shares and bonds ".

It's clear, that the foreign investor may have direct control over his investment project, whereupon he will be referred to as the foreign direct investor[17], and he/she may not have direct control over his investment project. In other words, it will be in the form of loans or subscriptions to shares or bonds, so in this case he/she will be referred to as the indirect foreign investor[18].

2.1.2. The Second Requirement: Criteria that Distinguish the Foreign Investor from the National Investor

The legal status regulation of the foreign investor according to the National Legislation organizing investment and international investment agreements includes two types of personalities: the natural foreign person and the foreign juridical person[19]. In other words, the foreign investor may be a natural person or a juridical person. So, we will discuss in the first type the criteria that distinguish the foreign investor if he/she is a natural person, and in the

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[17] The foreign Investment that the investor does in this case is the direct foreign investment which is defined as "the foreign capital transferred to be invested abroad directly in the form of Industrial, financing, construction, agricultural or foreign units and the profit incentive is the main driver for this foreign direct investments.
ALASRAG,HUSSIEN Foreign Director Investments Development Policies in the Arab Country.2005 p6 www.mpra.ub.uni-muenchen.de , The United Nations, represented by the National Conference on World Trade and the Development of Direct Investment, defined it as an investment that guarantees a long-term relationship and reflects a sustainable interest and the ability to control and control by the investor in a project residing in an economy that belongs to a country other than the investor's country in an economic project that belongs to a country other than the investor's state. The original foreign direct investment is carried out by individuals and businesses. UNCTAD, WORLD INVESTMENT REPORT ,2007, UNITED NATIONS New York and Geneva ,2007

[18] The foreign investment which is carried out by the foreign investor in this form, is the indirect foreign investment. It the kind of investment that only limited to cash capital transference with the investor having neither full nor partial ownership of the project which the capital is invested in. The foreign investor does not even have any control of observation over the project, as well as he/she does not have any supervision on it, not even any decision-making authority for it, Irfan Taqqi, House of Deliberation, 2006, page 53.The foreign direct investment is distinguished from the foreign indirect investment by that the first one is accompanied by observation over the process of making decisions by the foreign company which is investing, in contrast to the indirect investment which does not include this type of control: see Raad Hassan, Basics of International Contemporary Trading, part 1 Ridha Publication, 1st Edition, Damascus 2000, page 67.

[19] The legal person is considered a legal fact just as it is that natural person, and that the legal person is based on an abstract legal entity, at a time when the natural person is based on a human physical entity, and this fact must be reflected on the legal position of the legal person, Dr. Mustafa Muhammad al-Jamal, The General Theory of The Law, University Publication, page 216.

second type we will clarify the criteria for the foreign investor if he/she is a juridical person.

2.1.2.1. First Branch: Criteria that distinguish the Foreign Investor if he/she is a Natural Person

There are laws in some countries that count on nationality criteria[20] as a tool to distinguish the foreign investor from the national one. It's clear from this that the investor is a foreigner in relation to the country hosting the investment: if he does not have the nationality of that country. It should be noted that the description significance of the foreign investor is relative and not absolute. Any individual could be a foreigner to a country at a time and a national one at another time. So, the jurisprudence has made a firm decision that the determination of the national or foreign character of an individual must be based on his/her nationality at the moment when the questions arise about whether he/she enjoys one of the rights and/or he/she bears some of the obligation[21]. This is as a general rule for the foreign person. As for the foreign investor, we think that the nationality of the investor should be considered at the moment when he is contracted with This criterion is the depended one in relation to many national legislations regulating investment, including, for example, the Iraqi Investment Law[22], which defines a foreign investor as "the person who does not hold Iraqi nationality in the case of a juridical person..." as well as Article 1/5 from the Saudi Investment Law[23], states that " A foreign investor is a natural person who does not enjoy the Saudi Arabian nationality ...".

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[20] The concept of the nationality determined according to the prevailing definition the drafters have for a private international law, that "it's the legal affiliation of a person to the population that form the state", Pierre Mayer – Van San Jose, Private International Law, page 759.
It's also defined as "a legal and political relationship between the individual and the state", in addition to that, it's a definition of the nationality at the international level which is recognized as "an attribute that the state relies on, so it becomes to have a direction towards the individual ascribed to it, a personal power to confront other countries with", page 761, besides that the definition of the International court of justice in the case of (Nottebohm) in 1954, as being "the legal relationship which is based on an genuine bond and on actual solidarity in living, interests and feelings:, it's also defined as " a legal and political connection that relates a person to with the state".

[21] Dr. Abdulmunim Zamzam, page 15.

[22] Article 1, paragraph T from Iraqi Investment Law No. 13 in forced for 2006.

[23] The Saudi Investment System for the year 2000.

Whereas there are other laws that have approved residency criterion to determine the foreignness of the investor, such as the French investment law, which takes the nationality element as a standard for defining the foreign investor. It rather relies on the investor's place of residence. After, looking into the investor's place of residence it will be decided whether the investment is a foreign one. So, the investor is a foreigner if he/she is not a France resident, even if he/she has French citizenship[24].

As for the status of the Investment Law in the KRI Region of Iraq, we did not find a text or criterion there that distinguishes between a foreign investor and a national investor. Since this is an indication of something, it only shows that that regional law is equally treating between the two of them, with exception to the cases stipulated in other applied laws that differently defines the national investor from the foreign.

What concerns the international investment agreements, the used criteria to decide whether the investor is a citizen of the contracting state in the agreement, is also the criterion of nationality for the contracting state [25]. According to the established principle in international law, the nationality of the investor as a natural person is defined pursuant to the national law of that state to which he/she claims to belong to [26]. Washington Agreement for Settlement of Investment Disputes for the year 1965 convened for the status competence, requires that the second party contracting with the state should be a foreign investor affiliated, with his nationality, to another foreign country which is party to the agreement. Therefore, paragraph 2 of the Article 25 of that agreement states that "it signifies the citizen of another contracting state other than the following: A - Any natural person holding the nationality of one of the contracting states other than the state party to the conflict [27]...

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[24] Dr. John Philip Fabian, a Thesis for PH D. presented to the University of Paris 2001, page

[25] UNCTAD, scope and definition series on issues in international investment agreements, New York and Geneva,1999 , P(1-35). www.unctad.org

[26] OECD International Investment law ,Understanding Concept and Tracking Innovations 2008,P10, www.oecd.org

[27] The Convention on the settlement of the investment Disputes between States and national of Other States ,Submitted March 18,1965 Entered into Force: October 14th 1966. www.unctad.org

It is clear from what is mentioned above that the investor's nationality is a central and necessary condition for the status competence[28] in the view of the dispute[29]. And, the time that he/she should enjoy the nationality is to be in two dates; the first one is the arbitration approval date, and the second one is the registration date[30]. Whereas some other agreements, whether bilateral or multilateral, are takes citizen criterion in addition to the nationality standard in this regard: which is usually expressed with the term of resident of or permanent residence. Article 201 of the North American Free Trade Agreement (NAFTA) stipulates that "the individual stands for a natural person, whether he/she is a citizen or permanently resident in one of the countries that are party to this agreement[31].

2.1.2.2. Second Branch: Criteria to distinguish a Foreign Investor if he/she is a Juridical person

The rule used to distinct a foreign investor from a national one, in the case of a juridical person, is also a criterion for the nationality. However, the arising question here is that, how to define the nationality of the juridical person?

To answer this question, it's possible to say that there are many criteria that have been set to determine the nationality of the juridical person, but some of them have almost been abandoned due to the nature of the economic openness that the world is witnessing today; especially in light of global trade agreements and lifting trough-border money movement restriction between different countries of the world. So, the standards used in this regard are:

1. Establishment Criterion: According to this standard, a juridical personacquires the nationality of the state where its establishment

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[28] It refers to the International Center for Settlement of Investment Disputes (ICSID) between states and citizens of other states.

[29] See, for example, the bilateral investment agreements concluded between Finland and Egypt in 2005 which defines the citizen as "A- with regard to Finland he/she is a Finnish citizen pursuant to the Finnish Laws, B- With regard to the Egyptian citizen, he/she is an Egyptian citizen according to the Egyptian laws. OECD international Investment law : op ,cit,8,p10

[30] Bilateral Investment Agreement concluded between Finland and Egypt in 2005.

[31] Among other bilateral agreements that sets citizen criterion besides nationality standards, is the bilateral agreement between Canada and Argentina in 1993 which explains the investor is intended to mean "any natural person having the citizenship or permanent residency in the contracting state pursuant to its national laws". www.unctad.org

procedures have been taken place and registered pursuant to its law, regardless of the nationality of the founders or partners; and without requiring the existence of the main management center or the existence of the place of utilization, and regardless of where the capital is coming from.

CHAPTER ONE
Rights of the Foreign Investor

Most countries of the world, especially developing ones, through their legislations, are trying to attract foreign investments via lifting the obstacles that stayed barring it at some time. These investments require to be framed with rules that can bring about the balance between the legal rights for the foreign investor without which his/her investment project would have no real profit, and between the interest of the hosting country especially those rights that are adherent to its sovereignty or its top economic interests that should not be inattentive, otherwise it will result in a new form of the economic colonialism or foreign politician[32].

This is true if there is a minimal rate of the established rights, within the international law, for foreigners in general, in the territory of the state that may not secure a flow-in of foreign capital from industrialized countries the developing countries. Because this flow is directly related to the investment hurdles[33], and with offering more rights and advantages; and the acceptance of nationals of the developed countries to present what they have of technological reserves, scientific and practical experiences that usually yearn for a good climate the hosting country creates in terms of guarantees to that secure the foreign investors protection and encouragement to enter those

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[32] Dr. Fouad Abdel-Moneim Al-Wasa in the Nationality and the Status of the Foreigner, 5th Edition, Alarabia Nahdha Publication, Egypt 1988, Page 399-400.

[33] These obstacles usually represented in the following;

A – The investor fears from losing his capital.

B- Uncertainty from being able to implement the project successfully that can turn about a profit that equates what efforts he/she has exerted and what he/she has been subjected to.

C- The foreign investors' fear from the invested capital that may not be returned to his original country or that a sufficient share of the profits will not be returned.

D- Absence of necessary guarantees to secure foreign investments against non-commercial risks.

E - Restricting the absolute financial ownership of projects to the two nationalities.

And - legal obstacles.

F- Lack of monitory policies.

G- Taxation Impediments. The lack of customs facilities particular to import and export.

H – Political and social impediments.

countries and practice the investment activities and become depending on it[34].

The scope of the rights granted to the foreign investor may be expanded due to the developing country's need for the foreign investments and technology. This is what each of the Iraqi legislator and the KRI legislator have tried to do in both the federal as well as in the regional investment laws. It may also come to the point to offer the foreign investors privileges that enable them not to become subject to the internal state system in general[35]; this means that they sometimes enjoy a more promising legal status not only for the rest of the foreigners, but for the citizens as well.

As a rule, despite the dissimilarities in the foreign investment hosting countries in the range and scope of the rights and incentives they provide for this objective, most of the legislation that organize the investment is pretty much in agreement in terms of some of the main rights that it grants to the foreign investor, which is the investor's right to transfer his capital and returns, and his right to use foreign workers as well. The right to own property and to enjoy financial exemptions. In what follows, we will give a separate discussion to each of these rights[36].

3.1. The Right of the Foreign Investor to Transfer His/her Capital and Returns

Probably the foreign investor fears is an inability to transfer his/her invested capital in projects in the hosted country, and in fact, these issues are considered among the challenges that the government must assure the investor before launching any project, and this is a generic problem not limited to foreign investors only. See Article 4 / IX of the KRI Investment Law.

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[34] See, Azad Salih Shukur, Laws to Encourage Investment in Iraq and the Kurdistan Region of Iraq and their explanations in the field Tourism Investment, institution. O.P.L.C 1st Edition, Erbil, 2006, p. 44, p. 52-5. As well as Dr. Fouad Abdel-Moneim, previous source, p. 397-398. As well as Dr. Salim Abdel Rahman Ghamidh, The, Foreign Investment and the Development of Financial Resources, p.19. The research is available online at: www.arablaws.com

[35] The same source.

[36] In addition to those rights referred to above - the investment legislation emphasizes the necessity for the investment authorities in the host country to provide public services such as water and electricity.

The legislation also gives the investor the right to keep his technical and economic classified information related to the investment project; and penalizes those who disclose those details if he/she has them in possession by virtue of his position ((Article 7 / IX of the KRI Investment Law)). However, we are of the view that this right is considered to be specific to the investor alone. Rather, the protection of business secrets, or so-called undisclosed information, is a right ensued to everyone under most Intellectual Property Rights Protection Laws, including the law on patents, industrial designs, undisclosed information, integrated circuits and the amended Iraqi Plant Varieties Law No. 65 of the year 1990, as well as the Egyptian Intellectual Property Rights Protection Law No. 2 of 2008. In addition to the trade related aspects agreement of the intellectual property right attached to the World Trade Organization agreement, based on the foregoing, we have eliminated this protection from the scope of these rights as well.

(1) - It's meant by the foreign capital, Under the KRI Investment Law, "what the investor invests in terms of cash or in-kind funds or a financially valuable rights in the region", Article 1 / Twelve. As for the Iraqi Federal Investment Law, Article 21 has specified that the capital of the project covered by the provisions of that law is consisting of the following:

First - Cash transferred to Iraq through banks and financial companies, or any other legal method, to invest it for the purposes of this law.

Second - In-kind funds and immaterial rights supplied to Iraq or procured from the local markets with the cash transferred to Iraq, which are:

A- In-kind funds associated to the project.

B - The machinery, tools, equipment, buildings, constructions, means of transportation, furniture and office supplies necessary for the set up the project.

C - Immaterial rights that include patents and registered trademarks; and technical knowledge, engineering, administrative and marketing services, and the like.

Third - Profits, returns and reserves resulting from investing capital in the project in Iraq if the capital of this project is increased, or if it is invested in another project protected by the provisions of this law.

Whether to his country of origin or to any other place, he/she may also fear that it will not be possible to return a sufficient share of his returns. Therefore, the foreign investment hosting countries seek to assure the foreign investor with the right to return or transfer the invested capital and its returns to the country of the foreign investor, or send it to another country. Giving such a right to a foreign investor requires legal regulation. Therefore, the majority of laws regulating investment include provisions that promise the foreign investor's right to transfer capital and its returns abroad and under conditions the legislator sets to exercise that right.

The value of offering this right to the foreign investor is shown by the fact that impeding such transfer or complicating its procedures is a big obstacle to attract foreign capital.

Additionally, this right is one of the rights that stimulate the flow of foreign capital to the territory of the state to be invested in. Because, it is intuitive to say that the main goal of the foreign investor is to make a profitable return from his continuous capital and the possibility of re-exporting the capital itself, accompanied by the return he achieved either to his country or any other country. Also, things have been processed to ensure the investor's right to take away his capital from the host country, with the option of getting out a certain percentage of the profits he achieved in the host country.

Countries differ in regulating the take-out method of capital, as there are a country that requests that pullout of the foreign invested capital should be in the same currency in which it was received. There are also restrictions that connect the exit of capital to the end of the investment project, or not to allow the capital and its returns to be taken away in one go. Accordingly, we will divide this research into three requirements. We will study in the first one the right of the foreign investor to transfer or take back his capital abroad, and in the second one we will look into the right of the foreign investor to transfer

the returns of his capital abroad. As for the third and final requirement, we will specify it to the restrictions put on the right to transfer capital and its returns.

3.1.1. First Requirement: The Right of the Foreign Investor to Transfer his Capital Abroad

What worries the foreign investor, when he resorts to setting up an investment project, is the extent of the possibility and the manner of transferring his capital abroad; as he seeks to do so upon the end of his investment project or disposing of it by selling. He also wants to transfer his money, usually to his mother country (the source of foreign capital). There are also cases in which the foreign investor likes to transfer his capital to a third country, when he is offered an investment opportunity in a country that is not his country.

The investment hosting countries, especially the developing ones, grant the foreign investor this right in accordance with their national legislation, as a motivation to do more investment projects there. In this regard, the KRI Investment Law, pursuant to Article (7/5), offers this right to the foreign investor, as it states that “the foreign investor has the right to return his capital abroad upon liquidation of the project or disposing of it in a manner that does not contradict the provisions of the laws and customs and tax procedures applied “.

Granting such a right to the foreign investor, that is, to transfer his money without being required by law to reinvest any percentage of his money made from the production projects in the region, or in developing his projects or transferring only a certain percentage, is considered - as seen by some - a generous encouragement and privilege given by law to the foreign investor[37].

Moreover, the Iraqi legislator in the Federal Investment Law gave this right to the foreign investor when its Article 11 affirmed that “the investor shall enjoy the following advantages:

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[37] Azad Salih Shukir, previous resource, page 277.

First: Withdrawing the capital that he brought into Iraq with its returns in line with the provisions of this law and the instructions of the Central Bank of Iraq, in a convertible currency after paying all its obligations and debts to the Iraqi government and all other parties.

Through this, we find that both the Kurdish and Iraqi laws are settled on to allow the foreign investor to take his capital abroad. However, they differ on the mechanism of transfer, as the Kurdish law sets cases for capital transfer, which will be at the time when the project is liquidated or disposed of (sold); while, these cases are not referred to in the Iraqi law. Besides that, Iraqi law provides that the foreign investor should pay his obligations to governmental or non-governmental agencies in Iraq, and then can have the right to transfer his money, and the take-away must be done in a currency that can be converted. Whereas, this condition is not included in the KRI Investment Law, except that it has associated the right to extract the capital with customs and tax procedures.

In this regard, the Jordanian legislator gave the right to a non-Jordanian to transfer or extract his capital that he brought into the Kingdom of Jordan for investment, and this is in line with the Investment Law[38], and in a convertible currency[39].

In Egypt, the Foreign Investment Law No. (2) Issued in 1997 and amended in (2004), which is currently in force, did not touch on this issue, unlike the canceled Egyptian Investment Law No. 230 of 1989[40].

However, this does not indicate that the foreign investor does not enjoy this right in Egypt, as Article (1) of Law No. 38 of 1994 specifically regulates trading in foreign cash[41] stipulates that “every natural or juridical person has the right to keep all foreign currency that’s entrusted to him, possesses, or holds, and he has the right to carry out any foreign exchange operation,

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[38] Article (18/A-1) of the Jordanian Investment Encouragement Law.
[39] Article (18/B) of the same law.
[40] See Articles (22, 23 and 24) from the cancelled Egyptian Investment Law No. 230 of 1998.
[41] The official gazette 22nd Edition, dated June 2nd, 1994.

including transferring inside and outside and internal dealing, provided that these operations are performed through banks approved for dealing in foreign exchange and other entities licensed to deal pursuant to the provisions of this law in the Arab Republic of Egypt". As such, it can be said that the foreign investor in Egypt has the right to take his invested capital abroad, based on the generic wording of the text and its release, as it gave this right to every natural or juridical personwithout specifying whether this person is Egyptian or not.

3.1.2. Second Requirement: Transferring Returns Capital (Profits)

The investment returns denote to the amounts generated or obtained from the investment in a specific period of time and includes profits, compensation and all increases gained in the principal capital put in the investment activity along with the usage of intangible rights[42].

The foreign investor seeks, through his investment activity in the host country, to obtain a lucrative return through the investment project. His concern is to transfer abroad the returns he has made, whether to his home country or by reinvesting it in another country[43].

As the foreign investor will not benefit from obtaining the financial returns, unless he is able to transfer it abroad, in a convertible currency and that's for being exposed to risks.

Conversion or what is known as the risk of inability to convert the currency, and since the risk of currency conversion is one that constitutes an obstacle to the flow of foreign capital, therefore the host countries for foreign investment, through their national legislation, are keen to offer many financial and monetary facilities to promote attracting foreign capital to them. Through these facilities, the foreign investor was given the right to take back the

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[42] Article (1/7) of the Investment Guarantees and Promotion Agreement between member states in the Islamic Conference Region – referred to earlier -

[43] Dr. Suzi Adli Nashid, Phenomenon of the International Tax Evasion and Its Impact on Developing Countries Economy, 1st Edition, Halabi Legal Publication, Lebonan 2008, page 189.

capital returns derived from the investment under specific conditions and rates[44].

Allowing the foreign investor to do so (i.e. transferring the annual net profits of the invested money) is taken as one of the factors that encourage the foreign investor, especially if the investor has sufficient funds to meet the needs of the investment project in the host country. And, if he is not allowed to transfer the net profits fully, he may be allowed to transfer a reasonable percentage of it; provided that the remaining is invested in the host country[45].

A study, carried out in France, showed that the top concern of French investors, before they make a decision to invest their money in a country, is political risks and the rules for transferring profits[46]. The Arab Investment Guarantee Corporation in its turn conducted a research that focused on the investment climate in the Arab countries and the scope of developing it. It turned out from this study that among the important elements that affect the investment climate in Arab countries is the freedom of profits transfer and the investment assets to abroad[47]. The national legislation regulating investment controls this issue according to the economic interest of state. So that the provisions for organizing this vary from one state to another.

The KRI Investment Law is permitting the foreign investor to transfer his capital returns abroad without any limitations. As Article (7 / 3) states that "the foreign investor is allowed to transfer abroad profits and interest of his capital pursuant to the provisions of this law".

The Iraqi Federal Investment Law also contains a provision to give this right to a foreign investor with the same mechanism for transferring the capital

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[44] Wasan Miqdad Abdullah Al-Shaheen, Mangment Obligation in Oil Investments Contracts, Master Thesis submitted to College of Law, University of Mosul, 2006, pages 292-293.
[45] Awni Mohammed Fakhri, previous source, page 91.
[46] Dr. Fawzi Attwi, Public Finance, Al-Halabi Legal Publication, Beirut, 2003, page 456.
[47] Mishar Elihaldi, Dr. Fawzi Attwi, Finance, previous source, pages 456-457.

asset, which needs to be in a convertible currency, after the investor pays for all his obligations and debts to the Iraqi government and all other parties[48].

Jordanian law also permits non-Jordanian investors to transfer the net profits and returns resulting from foreign investments outside of the Kingdom[49], in a convertible currency[50]; and without any restrictions or conditions.

As for the new Egyptian law[51] standing, it does not include any legal provisions with regard to allowing a foreign investor to transfer investment returns abroad. Unlike the previous law, which touched upon this issue carefully[52]. It likely that the reason for this absence in the new law is that the Egyptian legislator has organized the issue of the direct transfer of profits in Law No. 38 of 1994 which regulates the way to deal with the foreign currency conversion. So, according to Article (1) of that law, the foreign investor was given a wide range of freedom in transferring profits abroad; while putting controls and restrictions in place concerning the overseeing of those transfers that take place through banks approved to deal in foreign currencies. Or other entities licensed to deal with it according to the provisions of Law[53].

Moreover, the Egyptian economy enjoys the existence of a banking sector that has a high-level efficiency with an experience comparable to developed countries, which is attracting foreign investments as it provides the foreign investor a full freedom to transfer profits in foreign currency and at a high conversion rate[54].

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[48] Article (11/First) from the Iraqi Investment Law stipulates that the investor will enjoy the following privileges:
First: : Exit the capital that he brought into Iraq and its returns pursuant to the provisions of this law and the instructions of the Central Bank of Iraq, in a convertible currency after paying all its obligations and debts to the Iraqi government and all other parties.

[49] Article (18/A-2) of the Jordanian Investment Law.

[50] Article (18 / B) of the Jordanian Investment Law.

[51] Egyptian Investment Guarantees and Incentives Law No. (8) for 1997. The amended law in 2004.

[52] We are referring to the law No. (230) of 1989.

[53] Article (1) of the Egyptian Law that regulates dealing in foreign currencies No. 38 of 1994. It was referred to by Dr. Suzi Adli Nashid, previous source, page 191.

[54] Dr. Suzi Adli Nadhid. Previous source, page 176.

And before we conclude our speech on this right. I believe that there is a right connected to it, and must be referred to, which can be handling it within that right. It's the right to open bank accounts by the foreign investor for the benefit of his project; whether in national or foreign currency, at a bank in the host country or abroad. Even if that is at the expense of legal rules that organize the way to deal in foreign currency or other rules. This is meant to enabling investment projects to import machinery and equipment necessary for their operation and management without any restrictions or obstacles[55]. Therefore, after opening the account in a foreign or national currency, or both, this will be taken as a foreign investment magnetizing factor[56].

This is confirmed by Article (2 / Seventh) in the KRI Investment Law, as It states, "The investor has the right to open for the benefit of his licensed project, and in accordance with the provisions of this law, bank accounts in national or foreign currency, or both, at banks in the region and abroad."

Article (11/5) of the Iraqi Investment Law, as well as, refers to authorizing the foreign investor to open, for the benefit of his licensed project, accounts in Iraqi or foreign currency, or both, at a bank in Iraq or out of Iraq, without conditioning it: with exception to the condition that requires the investment project should have a license pursuant to the provisions of the Investment Law. Based on that requirement the foreign investor is entitled to open an account in foreign currency. In addition to the existence of protection in what relates to maintaining the confidentiality of the accounts as state by Article 49-50 of the Iraqi Banking Law No. 94 of 2004, and Article 2 of the Iraq Law for the Central Bank No. 56 of 2004[57].

In Egypt, through the issuance of Law No. 205 of 1990 regarding the secrecy of accounts and banks, the privacy of bank accounts has been tightened,

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[55] Dr. Duraid Mahmoud Al-Samerai, Guarantees, Non-National Commercial Investment, previous source, page 206.

[56] Check on this opinion at Abdulbasit ABdulkareem Mawlood, The Investment Legislation System in Iraq, Master Thesis submitted to College of Law, Sulaymaniyah University 2003. Page 69.

[57] For more details on protecting banking privacy, see: Dr. Naseer Sabbar Lafta and Dr. Dhikra Muhammad Hussein Al-Yaseen, Legal Protection of Banking Privacy in Iraqi Legislation, Research published in Iraq - Baghdad, Journal of Comparative Law: Issue / 47 Years 2008, page. 6 and after.

which provides an element of confidence and stimulus for foreign investor to invest in Egypt[58].

Likewise, the Agreement on Investments Promotion and Protection and Transfer of Capital between Arab Countries refers to the right of the foreign investor to open accounts in foreign currencies in the host countries without placing restrictions on the freedom of foreign currency circulation[59].

3.1.3. Third Requirement: Terms to transmit Capital and Returns by Foreign Investor

There is no doubt that authorizing the foreign investor to transfer the investment assets and returns abroad without restrictions or conditions constitute a great factor to motivate foreign investment, as long as it promises the investor boundless freedom to transfer his invested money[60].

Although the law commitment to the right of the foreign investor to transfer the capital and its returns abroad and in the form of a general rule, is achieving a clear benefit for the investor, whereas the actions of this rule may be responded to by some restrictions, which limits the range of that benefit[61].

Al-Waqif's Iraqi Newspaper - Issue: 21 | Date: 02/24/2003.

Before concluding this topic, it should be pointed out that it is based on Article (11 / Second - A, B) of the Iraqi Federal Investment Law that the foreign investor has the right to trade in the Iraqi market cash notes with shares and bonds listed in. Besides the right to make investment portfolios in stocks and bonds; provided that the related legal rules are observed.

Among these rules, for example, is the effective Article (3/3) of the amended Iraqi Companies Law No. 21 of 1997, which states that "an investment company may not invest more than / five percent of its capital from the

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[58] Dr. Suzi Adli Nashid, previous source, page 178.

[59] See Article (3 / Clause 6/4) of the Agreement on Promotion and Protection of Investments and Transfer of Capital between Arab Countries, signed in Cairo on 4th of Rabi` Al-Awwal / H corresponding to 7th June, 2000 which approved by the Council of Arab Economic Unity by its Resolution No. (1195 / D21), to which the Republic of Iraq joined by Law No. (8) of 2008 published in

[60] For more details, see Abdul-Basit Karim Mawloud, previous source, 2.

[61] Dr. Ahmed Sharaf al-Din, Methods for Removing Legal Investment Obstacles, without the publication source, Cairo, 12, page 45.

shares of any one company. Likewise, may not own in one company more than (10%) ten percent of the capital of that company, taking into account the previous percentage, and that the cash liquidity percentage it has at any time should not be less than (10%) ten percent of its paid-up capital. The Companies Law No. 21 of the year 1997 was published in the Iraqi Official Gazette No. 3689 on 29th September of 1997. Pursuant to Resolution No. (35) For the year 2008 issued by the KRI National Assembly, this law was considered effective in the KRI Region as well. This decision was published in the KRI Gazette, No. 2, dated 26th of December 2008, page 53.

By these restrictions we refer to the foreign investor's compliance to some of the conditions or procedures that the law imposes on him, which prevents him from being able to exercise that right with absolute freedom or not being able to do so at any time he wants. These conditions are represented, as a rule, by spending a considerable period on the transmitting the fund that shows the inability in implementing the project which has been allocated that money or canceling the continuation in doing so. Also, the capital to be transmitted with the approval of the competent government agency. This may be done in installments and not one lot. If the capital has been brought in in the form of in-kind funds, it may require it be exported, as well[62].

The working groups' recommendations for the countries of the Middle East and North Africa investment program called the Organization for Economic Cooperation and Development to lift the financial restrictions on transferring the invested capital and its returns in a timely and unconstrained manner, in addition to ensuring the transfer of the capital upon the end of the investment[63].

In general, the countries of the Middle East and North Africa vary in the degree to which foreign investors are allowed to freely transfer capital, that

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[62] Awni Mohammed Al-Fakhri, previous source, page 90.

[63] The Middle East and North Africa Investment Program of the Organization for Economic Cooperation and Development of United Nations Organization for Economic Co-operation and (OECD), Iraq Project, A New Generation of Foreign Investment Laws, page 15. www.oecd.org/mena/investment.

they can be divided into two groups. The first group allows the transfer of capital in terms of principle - without restriction- such (Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Tunisia, the United Arab Emirates, Iraq, Libya, and Sudan). As these countries stated that they allow the return of capital without restriction [64] . Obviously, the acknowledgment of such countries, of the right of free transfer, aims to provide the best suitable climate for investment to help promote the foreign investor. Despite that, these countries or their laws pertain this transfer with some conditions, such as the investor's fulfillment to all the obligations that are legally due to him, and this is in order to create some kind of balance between the rights and duties of the investor[65].

As for the second group, including Syria, Yemen, Algeria and Morocco, their laws restrict this right in varying degrees[66].

Moreover, the host country yet to impose restrictions on the external transfer. For example, Article (24) of the Syrian Investment Law No. (10) For 1991, amended pursuant to the provisions of Legislative Decree No. (2) In the year 2000, states the following:

A- After the lapse of five years from the investment of the project, Syrian expatriate investors and nationals of Arab and foreign countries are allowed to transfer abroad the value of their net share of the project in foreign currency on the basis of the actual value of the project on the date of the abandonment, and pursuant to the executive instructions issued by the Council in this regard.

B - It is permissible to transfer foreign money abroad in the same form in which it was received after the six months lapsed from the date of receiving

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[64] See, for example, the text of Article Seven of the Saudi Foreign Investment Law for 2000, which states that "the foreign investor has the right to re-transfer his share from selling his portion or from the liquidation surplus or the profits the foundation made to abroad or to dispose it by any other legitimate means. As well as he has the right to transfer the necessary amounts to fulfill any contractual obligations related to the project

[65] Dr. Duraid Mahmoud Al-Samerai, Foreign Investment – Legal Obstacles and Guarantees, 1st Edition, Center of Arab Unity for Research, Beirut 2006, page 193.

[66] The Middle East and North Africa Investment Program of the Organization for Economic Cooperation and Development (OECD), previous source, page 15.

it, if difficulties or circumstances uncontrollable by the investor prevent it from being invested, and its assessment will be returned to the Board. Also, the Board has the right to approve, in special cases, the transfer of the foreign money abroad; without restricting to the aforementioned period.

C - It is permissible, annually, to transfer the profits and interest made by the foreign invested money in accordance with the provisions of this law.

Article (25) of that law also states that “The Central Bank of Syria must permit the transfer of foreign invested money to abroad pursuant to the provisions of Article (2) of this law, along with its profits and revenues, in the currencies in which it was received or in any foreign convertible currency.”

This is a major obstacle to the flow of foreign capital into that country; as foreign investors will be subject to a number of requirements, formalities and delay periods whenever they want to transfer abroad their investment assets or their income, which justifies their preference to invest their money in developed and stable countries, especially since it is not conceivable - in the current situation - that the developing countries will abstain from these restrictions[67].

The investment hosting countries may allow the investor to dispose of the capital in the same country instead of re-exporting it[68].

At this point, it must be noted that the International Investment Guarantee Agency has been alerted by the dangers of the restrictions on the right of the foreign investor to transfer his funds. This agency, in Article (11 / A) of its rules, has referred to several forms of these restrictions, whether directly or indirectly, the state imposes on transferring the currency legally or practically. This article stipulates that these risks are result from an act from the host country or one of its agencies or public bodies. Hence, any action the state

[67] Razzaq Salman Mashkour, Conflicts of Law in Investment Guarantee Contracts, Master Thesis submitted to Faculty of Law, University of Baghdad 2002, page 36.
[68] Awni Mohammad Al-Fakhry, previous source, page 90.

takes against the project leads to restrictions on the currency transfer to and from the host country[69].

It is worth mentioning that there is no interest in rules of the general international law in what is related to promising the right of the investor to transfer his capital and revenues to his country, since there is no rule in international law about that. Also, the foreigner status rules do not define that right. The OECD project did not contain anything about that, with exception to one recommendation[70]. Therefore, the regulation of this right is mainly governed by domestic law or by the rules of bilateral [71] or multilateral agreements.

As long as we are talk about bilateral agreements, it must be noted that on this issue they are divided into two groups: The first one explicitly states the right of the investor to transfer his capital and revenues[72]. As for the second group, it does not explicitly state this right, but references it to the law of the

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[69] A. Abdullah Abdul-Karim Abdullah, Foreign Investment Guarantees Against Non-Commercial Risks, Research presented within the works of the New Legal Conference in Insurance Operations, organized by the Faculty of Law at Beirut Arab University, Lebanon, 2006, page 19. Accessible at the website: www.arablaw.com .

[70] Article (4) of the draft agreement for the protection of foreign funds prepared by the Organization (OECD) in 1969, whereby it stipulated the following: "Every state party to the agreement shall recognize the freedom of citizens of other state parties to transfer their current income and the outcome of the liquidation of their existing funds. In its territory. Each state party should seek to take promising steps to facilitate the completion of these transfers to the country of residence of the stakeholder and in their currencies.
Some believe that this text came in the form of a recommendation to the party states, without containing any legal obligation in this regard that could demand the latter state to implement it. See Dr. Muhammad Yunus Al-Sayegh, Legal Center for Direct Private Foreign Investment in Developing Countries, a PhD thesis submitted to the Faculty of Law, University of Mosul 2006, page 136. Also, see Abdul-Hakim Mustafa Abdel-Rahman, previous source, page. 166.

[71] As the majority of bilateral agreements stipulate this right, including, for example, an agreement between the government of the Republic of Sudan and the government of the Hashemite Kingdom of Jordan for the mutual promotion and protection of consultations. See the content of the agreement on the website: http://www.jedco.gov.jo/jedcod/agreement

[72] Some agreements have stipulated this, including, for example, Article (5) of the agreement concluded between the government of the Hashemite Kingdom of Jordan and the government of the United States of America on the promotion and mutual protection of investment, Likewise, Article (5) of the agreement concluded between the government of the Republic of Sudan and the government of the Hashemiyat Kingdom of Jordan, for the Mutual Promotion and Protection of Consulting – we have already referred to. And Article (6) of the bilateral agreement between the Kingdom of Saudi Arabia and Malaysia for 2000 for the encouragement and mutual protection of investments. The textual content of this agreement is accessible in the English language on the website:www.iisd.org/pdf

investment hosting country[73]. Then, based on its law, the consensual system is determined.

As for the multilateral agreements that sanctify the principle of freely transferring investment asset and its revenues without biased, managerial or legal restrictions; without causing any tax or fees from the transfer process, as stipulated in the Unified Agreement for the Investment of Arab Capital in the Arab Countries for the year 1980[74].

As for the position of the Agreement on the Promotion, Protection and Guarantee of Investments among the Member States of the Organization of the Islamic Conference, Article 11 of it states:

1- The host country pledges to guarantee a free transference of capital and its net revenues in cash to any contracting party without the investor being subject to any biased banking, administrative or legal restrictions, and without the transfer process to incur any taxes or fees. This does not apply to the exchange for banking services. The re-transfer of the capital asset shall take place after a period determined by the end of the investment pursuant to the nature or five years from the date of its transfer to the host country, whichever is less.

2- The transfer shall be made in the currency in which the investment was received, or in any other convertible currency, according to the announced price by the International Monetary Fund on the day the transfer was made.

3- The transfer must occur during the period usually necessary, to complete the banking procedures and without delay. In all cases, this period must not

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[73] It may be a total referral, for example, the Sweden and China Agreement of 1982, and the referral to it may be partial in relation to the transfer of capital and not profits, just like the United Kingdom and Egypt Agreement of 1976. For more details, see Dr. Abdul-Hakim Mustafa Abdel-Rahman, previous source, page 166.

[74] Abd al-Basit Karim Mawloud, previous source, page 12.

exceed ninety days from the date of submitting the transfer request that meets the legal requirements.

4- The regulatory measures for foreign currency control applied in the host country for administrative or criminal purposes to prevent the smuggling of the money of its citizens abroad are not considered as restrictions, nor is it considered a restriction to specify the percentage that is allowed to be transferred from salaries, wages and remuneration to investment workers and experts within the limits of 50 percent of it".

Moreover, the agreement of the International Investment Guarantee Agency[75] covers the risks related to currency conversion, resulting from the introduction of new restrictions on the part of the host country concerning the investor's conversion of the local currency into a convertible currency[76].

In this regard, we refer to all of the International Monetary Fund Law, which freely permits member states to control the transfer of funds, but prohibit restrictions on current international operations and not the capital; with exception to the temporary restrictions[77]. The guidelines of the World Bank safeguard what is related to the treatment of foreign investments for the year 1992, which guaranteed the investor's freedom to transfer his profits and capital outside the host country[78].

Despite all these attempts - referred to above - to remove obstacles in front of a free transfer of invested capital and its revenues, there are restrictions imposed by the reasons of justice so that the foreign investor and his invested money remain subject to some rules determined by the national legislation in the host country which the foreign investor cannot and unfair to be immune. This includes what is related to the bankruptcy of the foreign investor and the need to liquidate his funds for the benefit of his creditors, as well as protecting the rights of creditors.

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[75] This agency was established within the framework of the World Bank for Reconstruction and Development in 1995. The Republic of Iraq joined it on October 8th, 2007.
[76] (Article 11 / a) of the aforementioned convention.
[77] Dr. Abd al-Hakim Mustafa Abd al-Rahman, previous source, page 165.
[78] Dr. Mohammed Yunus Al-Sayegh, previous source, page 136.

Generally speaking, in all cases, in addition to cases in which the transfer of funds constitutes a criminal act punishable under the penal laws, but sometimes it is necessary to take into account the country's circumstances and deficit conditions in its balance of payments. But it must be taken into consideration all that has been foregoing that the imposition of these restrictions be in good faith; and not with the intention to harm the foreign investor and his interests.[79]

3.2. Second Study: The Right of the Foreign Investor to bring in Foreign Workers and Transfer their Financial Dues

It is well known that the investment project requires[80] trained manpower with the necessary knowledge to carry out the project, which may not be available among the national workers. In this case, the foreign investor must be excluded or exempted from national labor laws, and to be allowed to bring in foreign workers. It also involves nondiscrimination between foreign workers coming to work on the investment project and national workers in terms of wages, rights, and other social guarantees and securities[81]. Likewise, it requires that these workers be allowed to transfer their wages abroad.

Accordingly, we will divide this topic into two requirements, the first devoted to the foreign investor right to bring in foreign workers and the second one is the right of foreign workers to transfer their financial dues.

3.2.1. First requirement: The Right to bring in Foreign Workers

The foreign investor, in his investment project, may pursue the assistance of experts and foreign workers as much as the project needs and within the limits permitted by the laws of the host country for that investment.

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[79] Carlos A. Herrera, Investment Rules in the Andean Community, APEC Work shopping On Bilateral And Regional Investment Rules /Agreements By ASIA -Pacific Economic Cooperation Committee on Trade and Investment Experts Group Mexico 2002. Web Site: www.apecsec.org.sg .

[80] By foreign workers, in this requirement, we mean all workers in the investment project, including ordinary workers, technicians, experts, managers, and all those in their position.

[81] Dr. Fouad Abdel Moneim Riad, previous source, pp. 401-409.

Offering the foreign investor such a right may have a positive effect; as it encourages him to seek the assistance of experts and experienced foreign workers, especially when finding workers and experts from the host country with the essential qualifications at low wages to perform that investment project cost-effectively and with a high-end quality. However, at the same time, this may reflect a negative case on the investment hosting country as the foreign investor does not depend on the use of national workers, especially when the wages of national workers are high. This is what eventually leads to an increase in the unemployment situation in the investment hosting country.

In the second paragraph of Article 7, from the KRI Investment Law, recognizes this right, stating that “the investor has the right to use local and foreign manpower necessary for the project with priority given to the local workforce in accordance with the laws in force in the region.” It is clear from this text that the Kurdish legislator has firmly established this right to the foreign investor, while made a simple reference to prioritizing the employment of national labor.

As for where the Iraqi Federal Investment Law is standing, it may be that the Iraqi legislator also gave such a right to the foreign investor in Article 12 / First, which states that “The investor has the right to employ and use non-Iraq workers in the event that it is not possible to employ an Iraqi who does not have necessary qualifications and is not able to perform the same task consistent with the controls issued by the commission.

It is well understood from this text that, the Iraqi legislator has related this right to restrictions and controls that are clearer and more specific than those referred to by the legislator in KRI. Since the Iraqi legislator has connected this right with a condition; that an Iraqi who has the necessary qualifications and ability to do the same task cannot be used based to the controls that distinctive to the Investment Commission concerned with its assessment. As well as distinctive to assess whether or not such qualifications and capabilities are existing in Iraqi workers. It seems that the position of the Iraqi legislator was closer to achieving the national interest than the lawmaker in

KRI, who indicated “giving priority to local labor” without setting controls for that, as if he left the assessment of the issue to the investor himself. Certainly, the foreign investor's decision on this issue will be influenced by his economic interests, and not by the national interests of the region. I think that this issue is not free of any values, especially if we realize that creating job opportunities in such projects is not less significant than the other objectives of establishing the project. The issue takes another dimension if we recognize that the legislator in KRI has given every investor the right to bring in foreign labor, whether be it a foreign or national investor. This issue calls for having a pause at it, as permitting the national investor to use foreign labor fully will push him to search for cheap labor markets to use it, because of the low wages of workers there and thus minimizing the costs of production for the investor. But this issue holds several problems, including creating more job losses in society, which is already suffering from this scourge. As well as national and foreign currencies transmittance from the region through these foreign workers who will transfer their payments to their countries; whether through legal or illegal methods. In addition to other problems that result from the presence of foreign workers in the region in large numbers, by which I refer to social and housing issues and the burden on the infrastructure that is already suffering in several ways. We have, in the gulf countries, the best example of suffering from problems of various areas, due to the large number of foreign workers. Based on the foregoing, we call on the bodies supervising investment in the KRI, for an explanation “with priority given to the local workforce ...” a broad interpretation in order to be able to set conditions and controls for using foreign workers through restricting it to the lack of the capabilities and qualifications necessary to fulfill the tasks in the investment projects. And, the low wages of foreign workers compared to national workers, should not be the only excuse for overlooking local workers employment. Rather it’s better to determine percentages of local workers and staff in the KRI Region or even from the rest regions of Iraq so that the proportion of local workers is not lesser than 50%, for example, of

the total workers in the project. The Investment Law No. 64 of 2007[82] for refining crude oil in Iraq was followed when Article 3 of it stipulated that "the investing company is obligated to employ Iraqi staff of no less than (75%) seventy-five percent of the total employees".

As for the Jordanian Investment Law, it did not include an explicit provision that gives the foreign investor the right to seek assistance from foreign workers, but when looking at Article (19) of the aforementioned law it becomes obvious that the Jordanian legislator, through that article, permitted foreign workers to transfer their salaries outside the Kingdom, in which it stated "for workers of Non-Jordanian technicians and administrators in any project may transfer their salaries and compensation to outside of the Kingdom pursuant to the legislation in force". This would be an inevitable consequence of the foreign investor's remittance to recruit foreign technical and administrative workers in the investment project without any restrictions or conditions.

What concerns the Egyptian Investment Guarantees and Incentives Law No.? (8) For 1997, this is amended by the Law No. (13) For 2004, we did not find any text referring to granting the investor the right to bring in foreign labor, or to refrain from doing so. Regarding this negative position, one aspect of jurisprudence[83] says that the absence of a legal rule with regard to granting the investor the right to use foreign workers and transfer their wages and salaries abroad, does not mean that the foreign investor cannot do this, especially in light of the assurances and other vital rights given to the foreign investor, such as the right to own and not a thump up to nationalization...etc. Moreover, Law No. 3 of 1998, amending the Egyptian Companies Law No. 159 of 1981, has decided in the context of its regulation for the activities of local and foreign companies, that[84]:

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[82] This law was published in the Iraqi Official Gazette, issue 406 on February 18th, 2008.

[83] See Dr. Duraid Mahmoud Ali al-Samarrai, Guarantees for Non-National Commercial Investment, previous source, page 203.

84 Articles 174 - 275 of the Egyptian Companies Law No. 159 of 1981. Also pointed out by: Dr. Badr El-Din Abdel Moneim Shawky, previous source, pp. 463-463.

1- The number of Egyptians working in the company must not be lesser than 90 percent of the total employees, and their total wages should not be lesser than 80 percent of the total wage. And, the number of Egyptian technicians and administrators in the joint-stock companies must not be lesser than 75 percent of the total employees. As a minimum, their total wages should not be lesser than 70 percent of total wages.

2 - In the event that Egyptians were not found, it is permissible to employ foreign workers or professional consultants, with approval from a competent minister.

By reviewing the position of the previous laws, whether it's the Iraqi, Jordanian or Egyptian law, towards our trending is confirmed for the need to set controls and conditions on the issue of bringing in foreign workers into investment projects in the KRI region, in a way that the issue will be addressed by finding a balance between the investor's interest in the use of expertise and qualifications not existing in KRI or those that are not able to fulfill the tasks in investment projects, and the national interest represented in not wasting local energies and qualifications, or ignoring local workers who are able to perform the same tasks and works in these projects.

3.2.2. Second Requirement: The Right of Foreign Workers to Transfer their Financial Dues

By the financial entitlements of foreign workers, we refer to all the financial revenues starting from salaries, bonuses, financial incentives, financial compensation and others that a foreign worker gets through working for the foreign investor and in the investment project.

Undoubtedly foreigners work in return for cash within investment projects, therefore, they seek to transfer abroad what they receive as their financial dues.

Definitely this represents the right of these workers, and it is also one of the most significant incentives that motivate them to work in such projects. Thus, it constitutes an enticement for the foreign investor himself.

Therefore, investment laws recognize this right and permit foreign workers in investment projects to transfer abroad their financial dues that they receive from these projects.

The KRI Investment Law gave the right to foreign workers (non-Iraqis) in the project to transfer outside (that is, outside Iraq) all their entitled benefits and work wages, without restrictions or conditions, but the limits of the laws in force[85].

The Iraqi Investment Law has authorized foreign workers to transfer their salaries and compensation to outside Iraq. Even so, this right is not absolute, but then again it must be fulfilled according to the law and after paying off every obligations and debts they have, whether these obligations and debts belong to government agencies in Iraq or to other non-governmental body's[86].

So, it becomes clear to us that both Iraqi and Kurdish law is agreeing to give the right to foreign workers to transfer abroad their revenues. However, they vary in a significant point, which is the extent to which workers shall enjoy that right. According to the Kurdish law, this right is absolute and no limited by any condition. However, we find in Iraqi law that foreign workers in the investment project must fulfill their obligations and pay off their debts and only then can transfer abroad their dues. It seems that the standing point of the Iraqi legislator is more objective and clearer than the KRI legislator is.

What regards the standing point of the relative laws, we find that the Jordanian Investment Law permits foreign workers to transfer their salaries outside the Kingdom without any restrictions or conditions[87]. As for Egyptian status, according to Article 1 of Law No. 38 for 1994 that regulates dealing in

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[85] Whereas Article (7/4) stipulates that: "Non-Iraqi workers in the project and those dealing with them outside the region shall have the right to transfer abroad their dues and wages and according to the laws in force."

[86] Whereas Article (12 / Fourth) of the Iraqi Investment Law stipulates that "the non-Iraqi technical and administrative workers in the project may transfer their salaries and compensation to outside of Iraq in accordance with the law, after paying for their obligations and debts to the Iraqi government and all other parties."

[87] Article (19) of the Jordanian Investment Law.

foreign currency, we find that every person - whether Egyptian or Non-Egyptian - is permitted to transfer money to outside of Egypt according to controls specific to that[88].

Overall, allowing employees and foreign workers to transfer their financial dues abroad is one of the reasons for inspiring the foreign investor to finance an investment[89] in the host country. That is to say, it is believed to be a vital pushing factor for him to seek foreign workers help.

Some legislation[90] may set the rates for transferring employees' wages and salaries, but it is not thought of as a restriction on that; this is what is affirmed by the Arab Investment Guarantee Agreement[91].

3.3. Third Topic: The Right of the Foreign Investor to Own Property

The Iraqi Civil Code defined the meaning of the right of ownership in its Article 1043, as it stipulated that the total ownership would be disposed of by the owner, by an absolute disposition of what he possesses in-kind, advantage and exploitation. So, he benefits from it as viewed as owned with its yield, fruits, and products, and disposes of all permissible in-kind acts.

Then, the right to own a thing is the right to invest in its permanent use, exploitation and dispose it all within the limits of the law[92].

One of the characteristics of this right is that it is a collective one, as it entitles the owner - in principle - to benefit, exploit and dispose of the thing. It is also a precluding right in the sense that it is limited to the owner and not to the

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[88] See the First Requirement of the First Section of this chapter for this thesis.

[89] (1) Awni Muhammad Al-Fakhry, previous source, p 91.

[90] See, for example, Article 37 of the Syrian Investment Law, which states that "Experts, workers and technicians from Arab and foreign countries working on an approved project are allowed to transfer abroad (50%) of their net wages, salaries and bonuses and (100%) of end-of-service compensation in foreign currencies.

[91] Article (11 / H) of the Arab Investment Guarantee Agreement, which states that "The regulatory measures for foreign exchange control applied in the host country for administrative or protective purposes to prevent smuggling of the money of its citizens abroad are not considered as restrictions, nor is it considered a restriction to determine the percentage that is allowed to be transferred from the salaries, wages and remuneration of workers and experts in investment within the limits of 50 per cent of it".

[92] See Dr. Abdul-Razzaq Ahmed Al-Sanhouri, the Mediator in explaining the Civil Law.

others. So, no one may share him in that ownership and neither nip-up with his ownership affairs. Finally, the right of ownership is described as an everlasting right that remains as long as the possessed thing remains[93].

And as part of the requirements for encouraging foreign investment on one hand and as a right decided by the laws for the investor, the various investment laws acknowledge that this investor has the right to own his investment project along with whatever success this project requires in terms of movable funds or real estate. Similarly, these laws allow the foreign investor to dispose of his investment project based on certain controls. In order to promote and protect this right, these laws have established some guarantees for that. To shed light on all the aforesaid, we divide this topic into three demands. The first of which is to clarify the legal provisions for the right to own and dispose of the project. The second one is for the right to own the property. And the last one is devoted to insure protection of this right.

3.3.1. First Requirement: The Right to own and dispose of the Investment Project

In order for the investor to have the right to dispose of the investment project[94], he must have the right to own and to dispose it due to the relation between these two rights, as the right to dispose is one those subordinate to the right of ownership. Therefore, we believe it is necessary to address the right of ownership in the investment project before clarifying the right of the foreign investor to dispose of the investment project. Based on that, we will breakdown this requirement into two branches, so that the first branch is for

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[93] See Abd Al-Razzaq Ahmad Al-Sanhouri, previous source, pp. 528, 530 and 535.

[94] According to the provisions of the Kurdistan Investment Law, the project means: any economic activity or investment project established by a natural or legal person on a land designated for him and with national or foreign capital to which the provisions of this law and the regulations and instructions issued pursuant to it apply". Article 1 /7. It's also meant by the provisions of the Iraqi Investment Law that "It's economic activity that's covered by the provisions of the Investment Law "Article 1 / G. Al-Jadeed, New C 8 T 3, Al-Halabi Human Rights Publications, Beirut 2000, p. 493.

right of the foreign investor to own the investment project, and the second one is for the right of the foreign investor to dispose of the investment project.

3.3.1.1. First Branch: The Right of the Foreign Investor to own the Investment Project

It is well known that the position of the property right might be a tangible thing, a real estate or a movable one. It may also be something intangible or immaterial. Among these things are intellectual property rights, in general. Likewise, is what is called the "Legal Groups" that are among these things. An example of Legal Groups is the commercial shop[95]. It seems that the property right in the investment project is considered immaterial, because it is a Legal Group analogous to the commercial shop.

Investment laws regulate the right of the foreign investor to own his investment project with its various assets. Thus, the KRI Investment Law, according to Article (3), has given the foreign investor, as it does with the national investor, the right to own the full capital of any project he establishes in the region pursuant to the provisions of the Investment Law. The article mentioned earlier stipulates that the investor and foreign capital shall be treated like the investor and the national capital, and the foreign investor shall have the right to own the full capital of any project with which he sets up in the region, according to this law. This text has two meanings, one of which is the permissibility of the capital of the investment project to be entirely foreign without forcing a percentage of the foreigner's project capital to be national. While the other denotation is the right of the foreign investor to own his investment project with its various assets; whether they are movable funds or real estates, and whether these movables assets are tangible or intangible.

It's doubtful that this represents a motivation for the foreigner to freely invest his money in the KRI Region in light of these legal guarantees.

As for the Iraqi legislator, he did not explicitly refer to this right, but he understands from the entire provisions of this law that it permits the investor

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[95] For more details about the commercial store and its legal nature, see Hadi Muslim Yunus - Store Sale - Comparative Study - Master Thesis. submitted to the Faculty of Law, University of Baghdad, 12.

of that project, especially since the state's orientation now is towards easing the restrictions imposed on those foreigners, generally, in Iraq. In addition to that, the amendment of the Iraqi Companies Law has canceled provision of nationality among companies' membership conditions[96]. This means that the new legislation is directed towards clearing the way for the foreign investor to own the investment project.

In Jordan, any person, whether Jordanian or non-Jordanian has the right to own the investment project, by participation, or by contribution, based on the principles and conditions determined according to a special system for this purpose, which is in charge of determining the highest limit of the percentage of foreign participation in investment projects for various sectors[97].

While the Third Article identified some sectors in which a non-Jordanian is entitled to own up to no more than 50% of its capital; such as some commercial activities like buying or renting money for the purpose of selling or renting it, as well as import, export, supply and some services activities.

In Egypt, the legislator did not explicitly specify the right of the foreign investor to own the investment project. Nevertheless, there is no doubt that the Egyptian legislator, like the Iraqi one, permits the foreign investor to own his investment project. This is evident from the entire provisions of the Egyptian Investment Law. As for the standing point of the Joint Stock Companies Law in Egypt, the Egyptian legislator differentiates between two types of foreign capital in joint stock companies. The first of which is: resources for economic development projects which is subject to Investment Law No. 8 for 1997. According to which, it is permissible to form an Egyptian Joint Stock Company without being restricted to specifying a percentage for

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[96] See Article (12) of the Iraqi Companies Law in force and amended according to Administrative Order No. 64 of 2004 issued by the Administrative Governor of the United Coalition Authority in Iraq. For more details, see Dr. Hussein Tawfiq Faydallah, Latest Development of the Iraqi Companies Law, Al-Tefseer Library, 1st Edition, Erbil 2006, p. 93.

[97] For the sake of benefit, we cite some provisions of the system issued in Jordan concerning the regulation of non-Jordanian investments, No. 54 for 2000, where the second Article of this system affirms that in cases other than those mentioned in Articles 3 and 4 of this system, the non-Jordanian investor is entitled to own any project fully or any part of it.

the nationals in the source capital. The second one is: the resident or incoming foreign capital for purposes other than economic development. So, the Companies Law No. 159 of 1981 stipulated a 49% offer; at least from the shares of joint-stock companies upon their incorporation or increasing their capital in a public subscription that is limited to nationals from natural or juridical persons, for a period of one month- unless the nationals have already obtained this amount. However, it is acceptable to establish the company without fulfilling all or some of this percentage if it has not yet been fulfilled after offering it for public subscription[98].

Such as engineering services and contracting ... etc.

As for the Fourth Article of this system, the percentage of the non-Jordanian investor's contribution is limited to no more than 48% of the capital for some different projects, such as passenger's air transport services. While the Sixth Article identified some projects in which non-Jordanians are not entitled to invest in, such as passengers and goods transportation through land. As well as sand quarries, construction and security services.

At this point, we would like to note that this system is published on the Official Gazette No. (5644) issued on 16-11-2000.

Dr. Abdullah Abdul Karim Abdullah also referred to that, Investment Guarantees in the Arab Countries, First Edition, House of Culture, Amman 2008, pp. 79-82. Whereas, the Jordanian Temporary Investment Law No. 68 of 2008 and in its Article 3, Paragraph (b) requires that the regulations and instructions issued under the Investment Promotion Law No. (16) Continue to be valid until they are replaced or canceled by others. Also, the System No. 54 is among them.

In conclusion, it became clear to us that the Egyptian lawmaker, as both the Kurdish and Iraqi legislators have done, nevertheless in contrary to what the

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[98] Article 2 / 2-1 of the Egyptian Companies Law No. 159 of 1981. It's also been referred to by: Dr. Badr Al-Din Abdel-Moneim Shawky, previous source, pp. 631-632.

Jordanian legislator did, does not identify the percentages permissible for a foreigner to own an investment projects for various sectors. For that, we favor the position of the Jordanian legislator over the rest of the other comparative legislations - mentioned earlier - because through this, a balance is found between promoting foreign investment on the one hand. On the other hand, protecting national interests represented in controlling investment projects by means of defining the percentage of foreign participation along with putting a percentage of the project capital into the hands of the natural or juridical persons and/or nationals.

3.3.1.2. Second Branch: The Right to Dispose of the Investment Project

The right to dispose of stems from the right of ownership and is considered one of its elements[99]. It is intended for two types of actions: the material action that responds to the substance of the thing and is called the material disposition, and the legal action that responds to the right of the owner and is called the legal disposition. Accordingly, the disposition authority permits the owner to consume the thing, to destroy it, to change it, and so on. It also authorizes him to transfer his right in whole or in part to others by sale or gift, for example, or to determine a right in-kind to others, such as the right of usufruct or mortgage, and other actions, provided that it does not go over the limits identified by a law or an agreement[100].

Since the investment project can be taken as the subject of ownership - as we have shown earlier - its owner has the right to dispose of it by all means of disposal, taking into account the controls established for that in investment laws, Thus, the KRI Investment Law has decided this right, pursuant to Article 7 / Sixth, which states that “the investor may transfer his investment wholly or partly to another foreign investor or to a national investor or assign the project to his partner with the approval from the

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[99] See Abd Al-Razzaq Ahmad Al-Sanhouri, previous source, p. 589. As well as Dr. Ali Hadi Al-Obaidi, The Concise Explaining of Civil Law, In-Kind Rights, 1st Edition. pp. 20-21, as well as Muhammad Taha Al-Bashir and, Ghani Hassoun Taha, In-Kind Rights, Ministry of Higher Education and Scientific Research, Baghdad, 19, p. 48.

[100] Dr. Ali Hadi Al-Obaidi, previous source, pp. 22-23.

Commission, and the new investor replaces the previous one in the rights and obligations arising from the project".

It appears from this text that it allows the foreign investor to transfer his investment, whether in whole or in part, to another investor - whether he is a foreign or a national. Additionally, he has the right to dispose of the project to be assigned to his partner if the project is joint venture. This right given to the foreign investor is not absolute; rather it is restricted to a condition, which is to obtain the approval of the investment authority in the region[101].

As for the status of the Iraqi Federal Investment Law, there is no special text to indicate that the foreign investor is given the right to dispose of the investment project. However, this right can be assumed from Article (23) of this law which states that “If the ownership of the project is transferred during the period of the exemption given to it, the project will continue to enjoy the exemptions, facilitation and guarantees granted to it until the expiration of that period, provided that the new investor continues to work in the project is in the same jurisdiction or in another jurisdiction after the approval of the Commission and replaces the previous investor in the rights and obligations arising under the provisions of this law”.

It is clear from the foregoing that, the foreign investor can dispose of ownership of the project; under one condition only, which is that the new investor (disposed to) must continue to work on the project in the same jurisdiction as the previous investor (the predecessor), and he also has the

[101] Pursuant to Article 10 of the Investment Law in the Kurdistan Region, an institution in the name of (Investment Commission in the Kurdistan Region) was formed having a moral personality, financial and administrative independence, and it can perform all the necessary legal actions for the purposes of implementing the provisions of the Investment Law. The Commission is also chaired by a Chairman having the rank of a minister, who enjoys the rights and powers of a minister, He is responsible for directing its work, supervising and controlling its activities and other related to that. Also, the tasks of the Commission are defined within the law.

right to change the jurisdiction, which is subject to the approval of the Investment Authority[102].

As for Article (24), it stipulates that:

First: The investor may sell, with the approval of the commission, the exempt assets or assign them to another investor who benefits from the provisions of this law, provided that he reuses them for his project.

Second: The investor may sell, after notifying the Commission, the exempt assets to any person or other project not covered by the provisions of this law after paying the fees and taxes due on them.

Third: The investor may re-export, with the approval of the Authority, the exempted assets.

Based on that, it appears that the law permits the foreign investor to dispose of the assets exempted to the other investor through sale or assignment, and that is subject to the approval of the Authority[103], whether the succeeding investor benefits from the provisions of the Investment Law or not, but he needs to pay the fees and taxes due on them.

In the Jordanian Investment Law, the non-Jordanian investor has the right to liquidate his investment or sell his project, share, or shares, provided that he

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[102] It should be noted that this article did not specify what is meant by the competent authority, knowing that the Iraqi Investment Law has introduced two types of investment commissions, namely the investment commissions for the regions and governorates, whose formation and terms of reference was stipulated in Article Five, and the National Investment Commission that is formed in accordance with Article Four which competences were specified at the same time. And, if we carefully consider the terms of reference of both bodies, then what was referred above regarding the approval of disposing of the investment project was not referred to neither in the terms of reference introduced in the Article nor in those mentioned in the Fifth Article. And if we tend to understand that, what is meant in the text of the Article 23 referred to is the investment commission of the region or governorate for two reasons. The first one is that the legislator did not name the body referred to in Article 23 above as the National Authority, and the second one is to give more independence and decentralization to the work of the regions and governorates investment commissions.

[103] The competent authority is not defined in this Article either. See previous footnote.

performs the obligations that were imposed on others through the project and his obligations that resulted from it under the legislation in force[104].

In this regard, the Jordanian Investment Law authorized the foreign investor to transfer the ownership of the project to any other investor, provided that the committee[105] is informed in advance. Namely, before completing the necessary procedures, indicating the reasons behind transferring of ownership, and if the project is in the state of exemption, then he will continue to benefit from the exemptions, facilitation and guarantees offered to him throughout the period of exemption[106].

Whereas the Egyptian Investment Law did not refer to such a right for a foreign investor.

There is no doubt that the acceptability of disposing of the invested money, if it is in exchange for free foreign cash, while the person disposed of it, whether it's a national or a foreign, continues to benefit from the advantages established for the original investor, is considered one of the important rights for the foreign investor, as this free disposition increases the commercial value of the investment and reassures the investor of the possibility of disposing of his investment whenever he wants and when necessary[107].

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[104] Article (18/3-a) of the Jordanian Investment Law.

[105] By this committee we refer to the Investment Incentives Committee, formed pursuant the Investment Law. It is formed in the Investment Promotion Corporation, headed by the Executive Director of the commission and the membership of each of:

1- The Executive Director of the Investment Promotion Corporation as Vice President.

2- Executive Director of the Jordan Enterprise Development Corporation.

3- Director General of the Income Tax Department

4- Director General of the Customs Department

5- A representative of the Ministry of Planning to be named by its Minister.

6- A representative of the private sector appointed by the Council of Ministers upon the Minister's recommendation.

The committee shall appoint, from among the employees of the Investment Promotion Corporation, its secretary to organize and keep its records, record its decisions and sign them by the Chairman of the meeting and the attended members. Also, the functions of the committee are defined pursuant to the provisions of the Investment Law. See Article (7), (8), (9) from the Jordanian Investment Law.

[106] Article (15) of the Jordanian Investment Law.

[107] This was also indicated by Dr. Fadel Hama Salih Al-Zahawi, previous source, p. 442.

The disposal of the investment project has a number of legal effects, the most important of which is the in-coming of the new investor (disposed to him) in the same legal position enjoyed by the former investor (the disposer), and this is confirmed by the investment legislation. The KRI Investment Law has established, pursuant to Article (7/6) - the aforementioned text - that the new investor replaces the previous one in all rights and obligations arising from the project.

Moreover, the Iraqi law also affirmed in Article (23) - the text of which was referred to earlier - that if the ownership of the project is transferred to a new investor, the latter (the disposed person) will be in the same legal position as the previous investor (the disposer) in terms of rights, obligations and exemptions, in accordance with the provisions of the Iraqi Investment Law. The same is true with the Jordanian law[108].

3.3.2. Second Requirement: Right to own Real Estate [*]

If the general rules of international law give each country the right to formulate its economic and social system, thus it is permissible for them to place restrictions on foreign ownership[109]. Then, states differ in their positions

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It should also be noted that the right of the foreign investor to dispose of the investment project is also of concern within the scope of international rules, as Article (12) of the Agreement on the Promotion, Protection and Guarantee of Investment among the Member States of the Organization of the Islamic Conference decided that "the host country shall guarantee to the investor the freedom to dispose of the ownership of the invested capital, whether by selling in whole or in part, by liquidation, by assignment, by donation, or by any other means, provided that the continuation of the capital transaction in accordance with the provisions of this agreement is required for the disposal to be to another investor affiliated with one of the contracting parties after the approval of the host country".

In addition, the Agreement on the Promotion and Protection of Investments and Transfer of Capital between Arab Countries affirmed in Article (3 / Clause 6/8) the right of the foreign investor to dispose of all or part of the invested money in foreign or national currency, and the person disposed to is entitled to benefit from all the advantages of investment.

[108] Article (15) of the Jordanian Investment Law.

[*] We have singled out a special request to examine the right of the foreign investor to own real estate in the host country. Due to the importance of this right as an exception to the rule followed in most countries' laws, which prohibit foreigners from owning real estate or restrict that. Hence, this right acquires exceptional importance.

[109] Dr. Ramadan Siddiq Muhammad, Legal Guarantees and Tax Incentives to Encourage Investment, 1st Edition, Al-Nahda Al-Arabiya Publication, Cairo, 1998, p. 169.

on this issue between those who permit foreigners to own money, especially real estate, either as their own citizens, or between those who put restrictions on it, or even preventing it in the first place.

What needs to be noted is that the developing countries and countries that do not pursue a free-market policy, usually foreign ownership of real estate is prevented or restricted in them. This is one of the major obstacles to encouraging foreign investments in such countries. As most investment projects require, in one way or another, real estates to setup these projects' facilities on for various purposes. Therefore, it follows that giving the foreign investor the right to own to have a positive impact on the foreign investor and it constitutes a strong incentive for him.

Based on the above, this requirement must be divided into two branches. In the first one, we examine the position of the comparative legislation on this right, and in the second we inspect the restrictions on this right.

3.3.2.1. First Branch: Legislation's Status on the Foreign Investor's Right to own Real Estate.

The prevailing trend in comparative law is to restrict the foreigner's right to own property real estate and lands, since allowing foreigners to own property in this area would create a way for foreigners to accumulate a large amount of real estate wealth under their control, making them to influence the national economy and state policy as a result. Then, it is normal for the legislation of most countries to turn to this restriction[110]. This is the general principle for ordinary foreigners. As for foreign investors, some countries, through legislation that regulate investment, may give a foreign investor the right to own real estate with the objective of implementing his investment project within the areas specified in the law. In what follows, we will demonstrate the standing point of some comparative investment laws in this regard, and then explain the where the Iraqi and KRI Investment Laws both stand in this regard.

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[110] (1) See Dr. Abu Al-Ela Ali Abu Al-Ela Al-Nimr, Foreign Ownership of Real Estate and Movable Property in the Egyptian and Comparative Laws, 7th Edition, Al-Nahda Al-Arabiya Publication, Egypt 1997 p. 6.

In Egypt, according to Article 12 of the effective Egyptian Investment Guarantees and Incentives Law, investment projects from investment companies and institutions were given the right to own construction lands and constructed real estate necessary for investment activity or to expand it in the areas specified under the law. Regardless of the nationality of the partners, their place of residence or the percentage of their participation in the investment project.

As a desire of the state to give the maximum incentives to the foreign investor, it has treated him as a national investor, as it granted him the right to obtain the lands necessary set up the investment project, free of charge, in certain areas that the state wishes to direct investment to[111]. As for the procedures of specifying land pursuant to the Egyptian law, it differs from the case that is free of charge with the allocation procedures that are not free of charge. As for the first case or the whole law, through Article 28 of the Investment Guarantees and Incentives Law to the executive regulations of this law, the task of determining the procedures for allocating lands for investment projects is to be free of charge. This regulation, issued by Prime Minister No. 2108 of 1997, indicated in Article 23 that the competent minister is to create maps that include locations, borders and areas of the lands; along with demonstrating the areas in which these lands are located at the beginning of each fiscal year, by providing more lands necessary for industrial and commercial development, while ensuring that there is no speculation on the prices of these lands. This requires setting up a state-leveled comprehensive geographic information network through which private investments can be promoted. This network is constantly being updated,

[111] Article (28) of the applied Egyptian Investment Guarantees and Incentives Law.
Also see Dr. Abdullah Abdul-Karim Abdullah, previous source, p. 46; As well as Dr. Abdel-Fattah Murad, Explanation of Investment Laws and Small Enterprises, without the year and place of publication. Pp. 111-112.

giving multiple options and alternatives to investors with the aim of choosing the most suitable places to set up their projects and facilities[112].

Article 24 of the executive regulations of the Investment Guarantees and Incentives Law has added that the aforementioned maps are presented to the Council of Ministers to agree on the free-of-charge allocation principle, and later on to set the period and conditions for the allocation for these lands.

Hence, the authority to do so is entrusted by a decision from the Council of Ministers, based on the proposal of the competent minister, who is the new[113] Minister of Housing, Utilities and Urban Communities, to submit applications for lands allocation that the Council of Ministers agreed to give for free, or without compensation from the concerned parties to the General Authority for Investment and Free Zones, indicating the area required, size and nature of the activity to be established on along with the amount invested for. The authority must decide on the allocation request within two weeks from the date of its submission, and communicate its decision to the concerned person (the investor) within two days, at most, from the date of its issuance. Likewise, the allocation decision must include an extended duration and its terms.

As for the procedures of allocating lands that are not free of charge, Article 2 of the executive regulations of the Investment Guarantees and Incentives Law has defined them and indicated that the governor or whoever he delegates is the competent administrative authority to conclude contracts for state-owned lands or belongs to public juridical persons that are required for companies and investment institutions; but then again after receiving the

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[112] For more details, see Counselor Ragab Abdel-Hakim Salim, Explaining Provisions of the Egyptian Investment Guarantees and Incentives Law No. (8) of 1997 and its implementing regulations as in the latest amendments, i-4, Abu al-Majd Publication, 2000, p. 536.

[113] See Dr. AbdelFattah Murad, previous source, p. 284

approval from the competent minister on this allocation and to identify for the receiver the advantages and its duration[114].

At this point, it worth noting that the enjoyment of this right is limited to companies and facilities that operate under the internal investment system, which are do not enjoyed by projects in the free zones[115].

Moreover, the Egyptian legislator's stance towards the issue of offering the foreign investor without restrictions is criticized taking into consideration the negative effects of this policy that can be generated from promoting foreign investment in areas in which it would have been better to be unique for the national capital; as one lawmaker believes[116].

In the applied Jordanian investment law, there is no indication regarding giving the foreign investor the right to own real estate. Nonetheless, according to general rules, foreigners are allowed to own or rent real estate, provided that reciprocity is used and that the property is developed within five years from the date of approval. Also, obtaining the approval of the Council of Ministers to authorize foreign ownership of land and property, and agricultural land not included in the provisions of this law. A foreign company that continues in the agricultural sector in Jordan automatically obtains national treatment with regard to ownership of agricultural land once it is registered as a Jordanian company. In general, a foreign investor is allowed to purchase the land only if reciprocity agreements are in place and the approval of the Council of Ministers is available[117].

The KRI Legislator took a bold step when it permitted the foreign investor to own land - unlike the Iraqi Federal Investment Law - whereby Section Four of Chapter One of the KRI Investment Law was selected out for the allocation of lands. And, pursuant to Paragraph (Six) of Article (Four): The foreign investor has the right to buy and rent lands and the real estate necessary

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[114] Dr. Awad-Allah Shaybah Al-Hamad Al-Sayed, previous source, pp. 307-308.
[115] Dr. Ramadan Siddiq Muhammad, previous source, p. 173.
[116] (3) Abu Al-Ela Ali Abu Al-Ela Al-Nimr, previous source, p. 185.
[117] Quoted from Appendix 2 of the Middle East and North Africa Investment Program, the Organization for Economic Cooperation and Development, previous source., p. 27

with the goal of establishing, expanding, diversifying and developing the project in agreement with the provisions of the Investment Law in force in the region; and within the limits of the area and period estimated in light of the project objectives and the actual need, taking into account the provisions of Paragraph (Third) of Article Four, which stipulates the authority of the Supreme Investment Council[118] to own the lands allocated for strategic projects[119] at an inspiring price, pursuant to the proposal of the Investment

[118] According to the Investment Law, the Supreme Council for Investment in the Kurdistan Region is composed of the Prime Minister as Chairman and the Deputy Prime Minister as his deputy, who acts on his behalf in his absence, and the membership of each of (the Minister of Finance and Economy, the Minister of Commerce, the Minister of Municipalities, the Minister of Planning, the Minister of Agriculture, the Minister of Industry, and the President of Investment Board) See Article (14 / First) of the Kurdistan Investment Law No. (4) for 2006.

[119] By the strategic investment project, according to Paragraph Second of Instructions No. 1 for 2007, its meant that "those projects that relate to needs of special importance at a specific period of time determined by the Supreme Investment Council and contribute to the process of economic and social development in the region. The investment projects listed below are considered strategic investment projects:

1- Strategic storage projects and warehouses - (silo) (greater than 2,500 tons) and cooling complexes for vegetables and meat (greater than 250 square meters).

2- Electrical energy generation projects whose capacity is not less than 50 megawatts.

3- Industrial projects:

A- Food industries such as dairy, meat, mineral water, vegetables and fruits canning.

B - Metallurgical industries such as extraction plants, iron melting and casting and other minerals.

C - Heavy construction industries such as cement plants and pre-fabricated building.

D - Spinning, weaving, tanning and leather industries.

E- Petrochemical industries.

F- Electronic industries such as manufacturing and assembly laboratories for home electronic devices and computers.

G- Paper industries such as paper and cardboard making factories.

H- Plastic industries such as plastic molds and sections making factories.

I- Manufacture of machinery, equipment and car assembly.

4- Tourism projects having international brand, with no less than four stars.

5- Private hospitals of not less than 400 beds

6- Road construction projects, building bridges, and passenger tram stations and airports (what is meant is the continuous implementation of such type of projects via the BOT method, i.e. building the project, then operating it, and then transferring it to the state).

7- Establishing banks and financial institutions or opening branches of international banks in the region, provided that they are at the level of international banks and have international financial relations with a capital of not less than 40 million US dollars.

8- Housing projects, provided that they are not less than 100 housing units, and the area of each unit is not less than 80 square meters.

9- Projects to build private schools, institutes and universities (provided that they contain all supplies, laboratories, multi-purpose halls, sports fields ... etc.).

10 - Irrigation projects, such as the construction of dams, irrigation canals and land reclamation, namely, the investor is to implement this type of project using the BOT method, i.e. building the project, then operating it and then transferring it to the state).

11- Agricultural and livestock projects:

Commission in the region, or without a compensation. It is necessary to take into account the nature of the investment project and the requirements of the public interest upon ownership. This has been eliminated from provisions of the Law of Sale and Rent of State Funds, in forced in the region.

The fourth paragraph of the above-mentioned article also requires that a sign of "not to dispose of the lands allocated for investment projects" be placed at the related real estate registration departments, that's not to be lifted except with a written approval from the Investment Board and when the investor has fulfilled all his obligations. The Investment Commission in the region can also own purely state-owned lands without an allowance and own state-owned lands that are overburdened with disposable rights, after extinguishing those rights on them and compensating their owners with a fair and adequate compensation consistent with the laws, regulations and instructions in force in this regard[120] as to allocate them for investment projects.

In addition, according to Paragraph Ten of the same Article, the foreign investor is given the right to buy or rent for the benefit of his investment project residential real estate as required by the project, which is subject to winning approval from the Board of Investment in the region; taking into consideration the controls set by the Board of Investment in the region for that purpose.

This clearly indicates that, in some cases, the foreign investor can own a land in the region without compensation, and that the authority to award ownership of lands to a foreign investor is given to the regional Supreme

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A- Breeding animals by constructing advanced fields and using modern systems and devices, provided that the number of animals in a single project is not less than 500 heads of dairy cows or (1000) heads of fattening calves or (2000) heads of sheep and goats for breeding and reproduction.
B - Raising poultry using advanced modern systems, with no less than (50) million eggs per year, in the project of table egg mother hens or broiler mother chickens.
C- Cultivation of animal feed using sophisticated methods, provided that the cultivated area is not less than 250 dunums.
D - Fruitful orchards using contemporary methods, with a minimum of 250 dunums.
E- Seed emendation and improvement projects.

[120] Article 4/5 of the Kurdistan Investment Law.

Investment Council and the Board of Investment. It seems that the KRI lawmaker has gone too far in bestowing foreign investors the right to own real estate. May be this is due to the desire of the legislator referred to earlier to give more motivations to these investors to attract more investments into the region in light of the latter's need, i.e. concentrated efforts for the development of its urban reality, which has suffered from severe neglects over the past decades for known reasons.

As for the Iraqi legislator stance in the Federal Investment Law, at the first glance, it seems to be on a different line of than the KRI legislator and that's for not having an explicit text stipulating the right of the foreign investor to own real estates in Iraq. As Article (11) of the Federal Investment Law states that:

The investor can have the following advantage by Leasing lands necessary for the project or Ground Lease for a period in which the investment project is based on a condition that does not exceed (50) fifty years, renewable with the approval from the Board, provided that the nature of the project and its feasibility to the national economy are taken into account while determining the period.

This text clearly does not indicate the right of the foreign investor to own real estate. However, this does not appear to be absolute, as, according to Article 10 of the same law, it allows the foreign investor under certain controls[121], to own lands when the investment is associated with housing projects, as this article stipulates that the investor, regardless of his nationality, can have all the benefits and facilitations and guarantees and is subject to the obligations set forth in this law. Both the Iraqi and foreign investor, for the purposes of housing projects, has the right to keep the land in return for a fee to be

[121] These controls or conditions are: 1- That the project is a housing project. 2- That this is for a compensation that needs to be determined between him and the owner of the land. 3- And that the investor does not speculate with the land. 4- That the controls set by the National Investment Commission be taken into consideration and approved by the Council of Ministers. See Article 10 of the Iraqi Federal Investment Law.

determined between him and the owner of the land without speculating with the land consistent with controls set by the National Investment Commission and with the approval of the Council of Ministers. For this reason, the Land Allocation Board is to make necessary facilitation for housing projects as well as award ownership of housing unit to Iraqis when the project is completed".

Although this text did not openly refer to the right of the investor to own property; instead it has used the phrase "the right to retain the land," but in view of the general meaning of this text, this can only be understood as a right to own. Nevertheless, this term was used due to considering the foreigner's ownership of the land is temporary until the housing project is completed. Then, to be committed to awarding the ownership the housing units built on that land to the Iraqis. This also explains the absence of a text in the Iraqi investment law to refer to giving the foreign investor guarantees against expropriation for the public benefit from our point of view.

In respect to the issue of renting lands required for the project or arranging the right of a Ground Lease over it, for the duration in which the investment project is in place, provided that it does not outdo (50) fifty years, renewable upon approval by the Board. But then, there might be other projects such as housing projects, large urban projects such as massive commercial complexes, and mega strategic projects in which investments exceed hundreds of millions of dollars. As investment companies cannot undertake them on a leased land or on the basis of Ground Leases, no matter how long the lease period is; because the global financing system in such projects takes the ownership of the land as a guarantee and condition for giving big loans to these projects. Especially, since these large projects are planned on the basis of capital recovery in the long run; most of which depend on increasing the value of the project and not the annual revenues of the project. Thus, this cannot happen in the case of leased lands, in which small amounts of money are usually invested and have a quick refund. This is on one hand, and on the other hand, housing projects in particular are based on selling the housing unit to the Iraqi citizen as an exchange property and not like a building on leased land. This way, no success is envisaged for the market of selling housing units. Note that Iraq's need for current housing units is more

than three million housing units, and the government cannot fill the deficit in this area[122]. Therefore, the investment sector must be relied upon to build residential complexes. Bear in mind that the private sector does not own suitable residential lands for building housing complex projects. In view of this, we are into favoring the proposal in respect to the status of projects that are exceptional or have strategic importance - such as residential complexes which calls for necessary land ownership for the project; next to the proposal of the President of the National Investment Commission; then bringing on this proposal to win approval from the Council of Ministers.

At the end, it became clear to us that there is a visible difference between the statuses of the Kurdish legislator from the Iraqi legislator on the issue of giving the foreign investors ownership of real estate. Since the first one permitted this with full, little or no compensation and according to certain controls. While no statement expressively mentioned in the Iraqi law on giving the foreign investor the right to own real estates in Iraq; except for the case of housing projects, which was previously mentioned[123].

3.3.2.2. Second Branch: Restrictions on Foreigner's Right to own Land and Real Estate

According to the universal rules governing foreign ownership of real estate in Iraq, the extent of that ownership depends on the principle of reciprocity[124]. Also, giving this right to a foreigner is not absolute, but it is limited by some restrictions within the framework of the state's public interest. As allowing a foreigner to own property is for a specific goal pursued by the legislator,

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[122] See Dr. Kamal Al-Basri, A Reading from the (Proposed) Draft Investment Law, 2006, Research Papers, p. 5, published on the website: www.iier.org/i/files/docs/

[123] In the international context, Article (3 / Clause 6-1) of the Agreement on the Promotion and Protection of Investments and Transfer of Capital between Arab Countries affirmed that the foreign investor has the right to own or benefit from lands and real estates in which the project exercises its investment activity, or take advantage from pursuant to the conditions and controls set by the legislation of the state in which the investor is investing and within the limits of the special treatment guaranteed by these legislations to the projects and their workers.

[124] See Article 1 of the Foreign Real Estate Law No. 38 of 1961, which states that "the foreigner shall be treated in the right of ownership and in the banking transactions that are received for the property with what the Iraqi is treated in the country of that foreigner and according to the reciprocal rule. It is not permissible for him to own a property in Iraq except what the Iraqi may own in that country in terms of type, area, location and the use that are in accordance with what is stipulated in this law. Ministry of Justice shall outline instructions for reciprocal rules.

which is to achieve integration of the foreigner into the state's society in a way that contributes to serving the interests of society[125]. Overall, there are some restrictions on the foreign ownership of lands and real estates stipulated by the laws; they can be summarized as follows[126]: -

1- The not acceptable to own lands close to (adjacent) to the borders, due to the danger that the foreigner's stability and ownership of lands adjacent to the borders has on the security of the state.

2- Agricultural lands, whereby it's prohibited for foreign to ownership agricultural lands.

3- The lack of an administrative or military impediment.

Moreover, constitutions of some countries do not allow non-nationalists to own real estate, except in cases determined by law. For example, the Iraqi Constitution of 2005[127], (Article 23 / Third - A) it states that: "An Iraqi has the right to own property in any place in Iraq, and it is not permissible for others to possess immovable assets, except as exempted by law".

Likewise, the Egyptian constitution issued in 1956 came with a similar ruling, as in Article (12), which stipulates that "it is not permissible for non-Egyptians to own land except in the cases stated by the law".

The KRI Investment Law has placed, within the framework of the investment laws, some restrictions on foreign investor ownership of real estates in the KRI Region, including:

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[125] Abu Al-Ela Ali Abu Al-Ela Al-Nimr, previous source, p. 36.

[126] See Dr. Hassan Al-Haddawi, Nationality and the Status of Foreigners and Its Provisions in Iraqi Law, 2nd Edition. Al-Ershad Publication. As well as Dr. Ali Hadi Al-Obaidi, previous source, pp. 28-29; 430; As well as Muhammad Taha Al-Bashir and Dr. Ghani Hassoun Taha, previous source, p.57. Likewise, Abu-Al-Ela Ali Abu Al-Ela Al-Nimr, previous source, p. 25.

[127] The Constitution of the Republic of Iraq, published in the Iraqi official gazette, issue (4012), on December 28th, 2005.

First: The foreign investor is absolutely prohibited from those lands that contain oil and gas or any other precious or heavy mineral resources[128].

Second: The foreign investor is prohibited from leasing the land allocated for his project partly or fully from subcontractors[129].

Third: The foreign investor is prevented from exploiting the land granted to him partly or fully for purposes other than those designated for it, without approval of the Board of Investment[130].

As for the Iraqi legislator's stance on these restrictions, from the start it must be pointed out that this lawmaker did not include clear texts to permit the foreign investor to own real estates - rather, as we have already explained, he used the term "retaining the lands". He also referred to the right of the foreign investor to rent lands or a make ground lease. However, he has limited that with restrictions, of which:

1- That the land is retained for a compensation to be determined between the foreigner investor and the owner of the land[131].

2- The inadmissibility of its speculation[132].

3- In the case of renting or ground leasing, the period should not exceed 50 years, which is subject to renewal, depending on the nature of the project and its feasibility[133].

In Jordan, and consistent with the general rules - as previously stated - foreign ownership of real estates is required to be treated reciprocally. And developing the property within five years from the date of approval. In addition to getting the approval of the Council of Ministers, the foreign ownership of land and property is authorized. It is also prohibited to own agricultural land.

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[128] Article (19) of the Kurdistan Investment Law.
[129] Article (3/9) of the Kurdistan Investment Law.
[130] Article (3/9) of the Kurdistan Investment Law.
[131] Article 10 of the Iraqi Federal Investment Law.
[132] Article 10 of the Iraqi Federal Investment Law.
[133] Article 11/3rd of the Iraqi Federal Investment Law.

Although the Egyptian Investment Law permits a foreign investor to own real estates in Egypt, it prevents him from possessing land and real estates situated in the areas that need to be specified by a decision from the Council of Ministers. Provided that this decision specifies the conditions and rules for disposing them of[134].

There are also other legal restrictions established for the public interest, such as expropriation for public benefit, confiscation, seizure, and nationalization. Investment legislation attempts to eliminate these limits in order to attract more foreign investment, and this is what we will talk about within the legal guarantees context in the third requirement of this topic.

3.3.3. Third Requirement: Legal Guarantees to Protect Foreign Investor Ownership *

The importance of researching legal guarantees to protect the ownership of the foreign investor is shown by the fact that in investment area it is essential to protect foreign investments from non-commercial risks which they may be exposed, through means that protect them from these risks[135]; with the aim of rooting confidence and reassurance in the souls of investors towards their capital in order to be able to devote themselves to its management and development it so that benefit returns to them to them and to the investor country[136]. By non-commercial risk, we refer to risks that are not connected with the idea of speculation, profit and loss accounts, and market factors. Examples of such risks are administrative decisions that deny the foreign investor from some of the rights or limit those rights in an extraordinary manner.

The legal guarantees are represented in the inability to expropriate his project and its movable or real estate assets; as well as the unacceptableness of nationalizing the project, confiscating it or confiscating its assets.

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[134] Article 12 of the Egyptian Investment Guarantees and Incentives Law.

[135] Dr. Abdullah Abdul-Karim Abdullah, Investment Guarantees in the Arab Countries, previous source, p. 23.

[136] Wasan Migdad Abdullah, previous source, p. 170.

Accordingly, I divided this requirement into two branches, in which I discuss a guarantee for non-nationalization and non-confiscation and in the second a guarantee of non-expropriation.

3.3.3.1. First Branch: Guarantee for Non-nationalization and Non-Confiscation*

It's meant by Nationalization the procedure by which a project or group of private enterprises is transferred from the ownership of individuals or companies (private ownership) to a national ownership (public ownership) represented in the state with the aim of achieving the community interests[137]. It is also considered a legal instrument that leads state to control various means of production in its territory, all or some of which are belongs to private persons, so that these enterprises become the property of the state[138]. Nationalization is typically focused on ownership of a private enterprise[139]. The funds on which nationalization focuses are usually importance funds to the national economy that give their owners a fortunate position or monopoly over one or more sectors of economic life[140]. It may aim to keep foreigners away from intrude into some of the country's significant economic sectors[141].

As for confiscation, it is a punishment imposed by the competent state authority as a penalty for the unlawful acts committed by the owner[142]. [143] It is also known as the expropriation of something by force from its owner for no compensation and adding it to the state properties. It is a consequential or

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* Legally, its meant by guarantee to provide the means to insure the legal security to someone who is presented to him to do the work and he is a guarantor of its results. This definition was indicated by Dr. Abdullah Abdul-Karim Abdullah, Investment Guarantees in the Arab countries, previous source, p 23.

[137] Dr. Ramadan Siddiq Muhammad, previous source, p. 153; as well as Dr. Fadel Hama Salih Al-Zahawi, previous source, p. 446.

[138] Awni Muhammad Al-Fakhri, previous source, p.93.

[139] Dr. Abdul Razzaq Ahmad Al-Sanhouri, previous source, p. 626.

[140] Dr. Ahmed Abu Al-Wafa, Mediator in Public International Law, 4th Edition., Al-Nahda Al-Arabiya Publication, Cairo, 2004, p. 607.

[141] Awni Muhammad Al-Fakhry, the previous source, p. 93.

[142] Hisham Ali Sadiq, previous source, p. 6.

[143] Dr. Samir Alia, Explanation of the Penal Code - General Section - Dar Al Majd, Beirut 2002, p. 463.

additional punishment when it is in the form of a punitive measure taken by the judicial and administrative authorities to seize the ownership of all or some of the money and financial rights owned by a person existing on the territory of these authorities' state without compensation. Because it is a punishment, it is based on a legal text approving this confiscation; and according to the legal rule (the legal permissibility is against guarantee)[144]. In addition, the punitive nature of confiscation unavoidably leads to denying compensation for the confiscated funds, and hence the absence of compensation is one of the most important characteristics that distinguish confiscation from expropriation for the public benefit[145].

The guarantee of the investment project returning to the foreign investor against the risks of nationalization and confiscation must be based on a legal basis, whether within a national scope or within an international framework, so that the foreign investor feels reassured of the safety of his investment project from the nationalization and confiscation risks.

The philosophy for which investment laws are legislated in countries wishing to attract foreign capital is to inspire the foreign investor and offer him the largest possible amount of security, provided that this is not at the expense of the public interest[146]. Moreover, developing countries strived in issuing internal laws to announce special treatment for foreign investments and the guarantees and protections that they give in this regard[147].

In this regard, the Investment Law in KRI is lacking any reference to such guarantees. This in itself is seen as a legislative deficiency that is supposed to be avoided in order to complete all the incentives put into this law to motivate foreign investment. However, this does not indicate and absolute absence of such guarantees. Rather, by referring to the provisions of the permanent Iraqi constitution of 2005, which is in force in the KRI region, it is

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[144] Quoted from Awni Muhammad Al-Fakhri, p. 94.
[145] Dr. Duraid Mahmoud Al-Samarrai, Foreign Investment, Legal Obstacles and Guarantees, previous source, p. 111.
[146] Dr. Abdullah Abdul-Karim Abdullah, Investment Guarantees in the Arab Countries, previous source, p. 41.
[147] Wasan Miqdad Abdullah, previous source, p. 167.

not permissible to confiscate funds or nationalize projects regardless of their revenues[148]. Also, Article (1050) from the Iraqi Civil Code in force in the KRI Region - states that: (No one may be deprived of his property except in the cases determined by the law and in the manner that it decides, and this is in return for a fair compensation paid to him in advance).

In article (12), paragraph 3, the Iraqi legislator emphasized that nationalization and confiscation is not allowable, as that article stipulates: "Not to confiscate or nationalize the investment project covered by the provisions of this law in fully or partly, except for what is issued against him by a final court ruling." It text shows that it is absolutely impermissible to nationalize investment projects, whether in whole or in part, setup by a foreign investor on Iraqi lands pursuant to the provisions of the Iraqi Federal Investment Law.

Concerning the stand point of the Jordanian legislator, he has dealt with the subject in another way, as Article (18) of the Jordanian Investment Law states that "It is not permissible to expropriate any project or subject it to any procedures that lead to that unless it is consumed for the requirements of the public interest, provided that fair convertible-currency compensation is paid to the investor". It's understood from this text that the Jordanian legislator originally prohibited depriving the foreign investor from the ownership of the investment project through expropriation or subjecting it to procedures leading to that, of which nationalization is considered. However, there is an exception that allows this, but on the condition that the acquisition takes place for the public interest purpose, with paying fair convertible-currency compensation to the foreign investor[149].

In the same context, the Egyptian Investment Guarantees and Incentives Law forbids the nationalization of companies and institutions operating in the

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[148] See Article 23 of the Iraqi constitution in force.

[149] See United Nations, Economic and Social Commission for Western Asia, Policies to Attract FDI and Intra-ESCWA Region: Improving the Climate for Foreign Direct Investment and Mobilizing Domestic Savings with Case Studies of Jordan, Bahrain and Yemen, New York 2009, p. 45. Available online: www.escwa.un.org/information/publications/edit/upload/grid-03-28-a.pdf

areas of investment, or seize or take hold of their funds, or freeze them, or confiscate them; out of concern of the legislator to create a favorable climate for investment and to provide the capital invested in Egypt [150] a legal protection. And that's when Article 8 stipulated that "companies and facilities may not be nationalized or confiscated." It is also clear from this text that the lawmaker wanted, through it, to reassure investors to challenge this important type of non-commercial risk, upholding that the investment projects benefiting from its provisions will not be subject to nationalization or confiscation[151]. In addition to that, Egyptian law referred to the project funds protection by prohibiting requisition, seizure, freezing, confiscation, reservation, or impose non-judiciary[152] supervision on them. We would like to highlight that in addition to these guarantees stipulated in some countries' laws, investors may fear the revocation or amendment of the legal text that prevents the state from nationalization. Therefore, in order for the foreign investor to make sure that this will not happen, he stipulates within the investment contract a condition known as the condition of confirming or freezing the law applied to the contract[153]. What is meant is the contract agreement parties include a condition or clause in the contract that explicitly excludes all modifications that may occur to it in the future[154].

In the framework of international rules, as the rules of customary international law do not prohibit the host countries from nationalizing the ownership of foreign investors provided that the three conditions are met together; namely

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[150] Dr. Abdel-Fattah Murad, previous source, p. 109.

[151] Dr. Awad-Allah Shaybah Al-Hamad Al-Sayed, A Concise Brief of Private International Law, 2nd Edition, Al-Nahda Al-Arabiya Publication, 1997, p. 297. As well as Prof. Dr. Hisham Sadiq and Prof. Okasha Mohamed Abdel-Al and Prof. Hafizah Al-Sayed Al-Haddad, Nationality and Foreigners' Status, previous source, p. 566.

[152] Article 9 of the Egyptian Investment Law. And also see:
Dr. Badr El-Din Abdel Moneim Shawky, International Special Relations, previous source, p. 476. Likewise, Rajab Abdel Hakim, the previous source, p. 289, and onward.

[153] Dr. Badr El-Din Abdel-Moneim Shawky, Mediator in Egyptian Private International Law, Cairo, 1989, p. 221.

[154] See Dr. Bashar Muhammad Al-Asaad, previous source, p.162 onwards; As well as prof. Dr.. Hafizah Al-Sayed Al-Haddad, Contracts concluded ebtween Foreign Countries and Persons, previous source, p. 320 and onward, as well as Dr. Badr El-Din Abdel-Moneim Shawky, International Special Relations, previous source, p. 486.

that the expropriation of foreign investors is for the public benefit purpose, and that it is pursuant to the law, without discrimination between nationals and foreigners, Finally, the takeover must go with adequate compensation[155].

Additionally, there are numerous international investment agreements, binary[156] and multiple[157] - their clauses protect the foreign investor from risks of nationalization by the host countries. The objective from this is to stop foreign investment from being compromised or exposed to it through

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[155] OECD, "Indirect Expropriation" and the "Right To Regulate" In International Investment Law, Working Papers on International Investment. Number 2004/4 "p3 (www.oecd.org)

[156] Article (7) / 1- A of the bilateral agreement for the promotion and protection of mutual investments between Kuwait and Egypt on 5/15/1989 stipulated that the investments made by investors affiliated to either of the two contracting states in the host contracting state may not be subject to expropriation. Any similar procedures except in accordance with the legal procedures, except for a general purpose related to the national interest of that Contracting State and in return for immediate, adequate and effective compensation, provided that such measures were taken on the basis of non-discrimination and in accordance with legal procedures generally applicable. Article (5) of the treaty concluded between Britain and Panama for the year 1983 also stipulates the following: ((Investments of nationals and companies of either contracting party shall not be nationalized or expropriated, or subject to any procedure having the same effect in the territory of the other contracting party)). This was also indicated by Dr. Muhammad Yunus Al-Sayegh, previous source, p. 36.

Article 4/1 of the Agreement on the Promotion and Mutual Protection of Consultations between the Two Countries, concluded between the government of the Libyan Arab Republic and the government of France, prohibits the non-permissibility of expropriating the investments made by investors from either of the contracting parties by the other contracting party except for the purposes of achieving the public interest for that contracting party; and it requires that these procedures be non-discriminatory and in line with the internal regulations that have a general application. The agreement stipulated that the compensation be equivalent to the value of the investment that was takenover immediately prior to the date on which the threat became a common knowledge to move or to actually take measures issued, for nationalization, for expropriation, or any similar action. And to be instant and transferable. Also referred to by Wasan Miqdad Abdullah, previous source, p. 210.

[157] The Agreement on the Promotion and Protection of Investments and Transfer of Capital between Arab Countries stipulated (Article 4, Paragraph 1). The "non-permissibility of nationalization or confiscation of investment projects, or blocking, seizing, freezing, confiscating, reserving or imposing custody of its funds except through the judiciary. Article 4, paragraph 2, also stipulates that the ownership of all or some of the investment projects shall not be expropriated except for public benefit and in accordance with the law, without discrimination, and in return for fair compensation. And the Agreement on the Promotion and Guarantee of Investment between the Member States of the Organization of the Islamic Conference concluded 1981: Article 10 of this agreement stipulates that the host country undertakes not to take any action or authorization that directly leads to prejudice to the investor's ownership of his capital, or his advice, or divestment of ownership in whole or in part, or some of his substantial or possessive rights. The state may expropriate property for the public interest in return for paying a compensation without adequate and effective delay pursuant to the laws of the host country, while preserving the investor's right to a judicial challenge. Also, the North American Free Trade Agreement (NAFTA) concluded on the 1993 between Canada, the United States of America and Mexico, prohibits direct or indirect nationalization or expropriation of investment.

legislative measures, which would lead to depriving the foreign investor of his actual rights or basic powers over his investments[158].

3.3.3.2. Second Branch: Ensure Ownership is not forfeited

Expropriation is defined as an administrative procedure or act that is legally derived, through which the state denies any person from his ownership, whether for it's for the state interest or for the benefit of a third person. Such a procedure must go alone with compensation payable to him immediately without delay, and that the process should be justified by a reason or a public interest purpose[159].

Expropriation for the public benefit - namely expropriation in Iraqi law - is an administrative process intended to deny, forcibly, a person from his real-estate property for re-assigning it to the public benefit in exchange for a fair compensation paid to him to compensate the damage he suffered[160]. or any procedure equal to expropriation except for the purpose of public interest, on a non-discriminatory basis, according to a worthy judicial decision from the law within the standard minimum transaction and a reasonable, freely and transferable monetary compensation. See:

William A. Dymond, Investment rules in NAFTA, Center for Trade Policy and Law, Carleton University / University of Ottawa Mexico, 2002: www.apecsec.org.sg last visited in 2/7/2008

It is a concession given to the administration, whereby it can forcibly deprive the owner of a property from his ownership for the public benefit, in exchange for compensating him in return[161].

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[158] Dr. Muhammad Yunus Al-Sayegh, previous source, p.92.

[159] Alejandro Buvinic, Protection and Guarantees in Investment Agreements, Mexico 2002. p. 121. www.apecsec.org.sg.

[160] Dr. Hussein Othman Muhammad Othman, Fundamentals of Administrative Law, 1st Edition, Al-Halabi Legal Publications, Beirut 2006, p. 414. As well as Prof. Samir Abdul-Sami, Jordan, Commentary on the Texts of Law No. 10 of 1990 Concerning Expropriation for Public Benefit, Al-Ishaa Art Library, 1st Edition, Alexandria 2002, p. 15 and onward.

[161] Dr. Abdel-Ghani Bassiouni Abdullah, The Administrative Law, Al-Ma'arif Institution, Alexandria 2004, p. 652

It appears, from this, that expropriation is only applicable to a physical property owned by individuals. And, if the lawmaker decided that the subject of the decision to expropriate the ownership from is a real estate, there is nothing to prevent the decision from also including real estate by allotment[162]. Also, expropriation for the public benefit is the administrative authority prerogative and has one goal, which is to attain to the public benefit[163]. Moreover, no expropriation is fair without compensation; it is a matter dictated by the necessity to reconcile the public interest with the private interest of the individuals expropriated. It's, at the same time, a sound application of the equality principle between individual's vis-à-vis public burdens[164].

The administrative verdict issued to take off the ownership of a property for the public benefit this way, after the sovereign procedures that the public authority assumes inside the limits of its territorial jurisdiction, and then applied in turn on foreigners as is the case for nationals[165]. Additionally, expropriation for the public interest, in every country, is based on its internal laws. In Iraq[166], expropriation is made on the property and the in-kind rights connected to it in return for a sensible compensation, in line with the rules and procedures specified in the Acquisition Law No. (12) For the 1981.

The expropriation record, due to the nature of the private property violation it holds, is considered one of the most dangerous records that the administration uses to meet its demands and needs. Therefore, the administration, based on unilateral administrative decisions, is not justified in expropriating property unless legislation permits to do so. So, this behavior must be carried out strictly within the limits of the law and must satisfy the

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[162] Dr. Hussein Othman Muhammad Othman, previous source, p. 415.
[163] Dr. Hussein Othman Muhammad Othman, previous source, p. 418. Also,. Abdel-Ghani Bassiouni Abdullah, previous source, p. 656.
[164] Dr. Hussein Othman Muhammad Othman, previous source, p. Also, Abdel-Ghani Bassiouni Abdullah, previous source, p. 656.
[165] Dr. Hisham Ali Sadiq, previous source, pp. 20-21.
[166] Expropriation in Iraq is called Acquisition. See Dr. Muhammad Taha Al-Bashir and Dr. Ghani Hassoun Taha, previous source, p. 56.

conditions that justify the administration to undertake it, which is public benefit in the first place, and fair compensation in the second place[167].

The investment law in KRI did not include the expropriation of investment project entirely for the public benefit. We believe that such a matter is not justified because of the risk that this would repel foreign investments instead of being attracting them. However, by referring to Article 9 of this law, it has made the expropriation of the land and established facilities under the controls of the foreign investor a penalty or a legal procedure that results from the investor's persistence on the violation without bring it to an end, and not take away its effects Whereas this law has confined the practice of this procedure with restrictions, including:

A- A violation of provisions of this law made by the investor or the contract concluded between him and the competent authorities.

2- If the competent authority warns him of the necessity to immediately stop the activity for causing a violation, allow him the appropriate period, and the nature of the violation.

3- That compensation is paid for the value of the facilities that were acquired with the land from the investor, but with their value and they are due to be evicted. The legislator has permitted the land be recovered from the violating investor when he leases it or exploits it for a purpose other than the specified purpose, while forcing the investor to pay double the equivalent wage for his leasing period or exploitation for the purposes other than those designated for it.

Finally, it must be noted that, in these procedures, the KRI lawmaker did not discriminate between the foreign and national investor.

Moreover, the effective Iraqi Federal Investment Law did not touch upon guaranteeing the foreign investor expropriation, of for the public benefit. The reason for this, in our point of view, is that expropriation for the public benefit

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[167] Al-Arabi Muhammadi, previous source, p. 4.

- as we explained earlier - is focused only on real estate(s). Originally, Iraqi law did not permit a foreign investor to own land(s) and real estate(s) in Iraq.

As for the stand point of the Egyptian Investment Guarantees and Incentives Law, Article 11 of that law forbids the administrative authorities to cancel or suspend the license to use the real estate that the company or establishment has been authorized to use, unless the company or establishment violates the conditions of the license[168].

In conclusion, we would like to make clear that each of nationalization, confiscation, and expropriation for the public benefit agree the same point of removing the ownership of the money from owner. But they differ in terms of the issuing authority: as the state has the right to issue an administrative decision to expropriate, for public benefit, the physical property (expropriation) in exchange for fair compensation, including the judiciary. Whereas, nationalization is issued by a law from legislative authority and responds to the project with its material and literary elements[169]. As for confiscation, it is a procedure that aims to acquire for the state, according to a court ruling, all or part of the property of the convicted person, or to own assets, or to own the injured, except in accordance with that ruling, seized funds related to a crime, forcibly on behalf of its owner and without compensation[170]. Whereas nationalization is consistent with expropriation, it requires from it the termination of the private property individual enjoys and the transfer of its ownership to the state. However, nationalization is characterized by the fact that it does not respond to a specific property, as is the case with expropriation, but rather to a set of rights, whether material or immaterial. Nationalization may respond to a productive project represented by a group of real estate or physical movables, as it may focus on stocks and bonds or on institutions and projects in general[171]. In addition to the fact that the nationalization procedures are usually quick. As for expropriation for the

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[168] The investor, Rajab Abdel-Hakim Salim, previous source, p.301.
[169] Dr. Abdul-Hakim Mustafa Abdel-Rahman, previous source, p. 162.
[170] Dr. Muhammad Mutlaq Assaf, Confiscations and Financial Penalties, 1st Edition, Al-Warraq Foundation, Amman 2000, p. 23.
[171] Dr. Fouad Muhammad Abdel-Moneim Riad, previous source, p.

public benefit, its procedures are long, through which the property is transferred and to the public domain in afterwards[172].

3.4. Fourth Topic: Foreign Investor Right to Financial Exemptions

Financial exemptions for investment projects are an attractive incentive for the foreign investor to come to the country that gives him such a right, since these exemptions result in increasing project profit rates and reducing the project cost as well as firming up the competitive position from the start of production, or practicing the investment activity until its end.

A study conducted in the United States of America showed that tax benefits and exemptions come in second place in the interests of American investors[173].

Perhaps the most important financial exemptions are customs tax and non-customs taxes exemptions. We will try to focus light on these two types through two requirements.

3.4.1. First Requirement: Exemption from Customs Tax *

Customs taxes[174] are usually imposed on goods and products when they cross the borders, at exit and entering. That is, it is imposed on exports and imports, but much investment legislation exempts the foreign investor from such customs tax to encourage him to import machinery, equipment and raw

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[172] Dr. Abd Al-Razzaq Ahmad Al-Sanhouri, previous source, p. 626 For more on that, see Constantin Katzov, Nationalization Theory, Al-Ani Press House, Baghdad, 1972, p. 365 ff.

[173] Quoted from Dr. Fawzi Atwi, previous source, p. 456.

* Tax is defined as a compulsory cash deduction made by the state or one of its public institution on the resources of various economic units with the intention of covering public burdens without a specific fee, and distributing these burdens among economic units according to their mandated capacity.

Dr. Taher Al-Janabi, The Science of Public Finance and Financial Legislation, The Legal Library, Baghdad, without a year of publication, p. 136.

[174] The term is usually called Customs Duties and it is imprecise because the fee is usually paid in exchange for the service, while the tax is paid to the state without any compensation, and what the state collects through customs is not usually in return, so it is more correct to say the customs tax and not the customs fee.

Dr. Ahmed Suleiman Al-Saffar, Lectures on Public Finance and Financial Legislation, given to Postgraduate /Masters Students, College of Law, University of Dohuk for the 2006-2009 academic year, unpublished, so to mention it.

As well as Prof. Ghazi Enaya, Public Finance and Tax Legislation, Al-Bayaq Printing House, 1st Edition, Beirut, 1998, p. 131.

materials need for the completion of the investment project, which are not available within the host country with the necessary quality or quantity.

As far as the KRI Investment Law is concerned, after giving the foreign investor the right to import all the needs of his project in terms of machinery, tools, devices and equipment[175], it decided to exempt them from customs tax through Article (5 / Second), which states that “Second: The machines, devices, equipment, machinery, and heavy equipment imported for the project are exempted from taxes, fees and are subject to obtaining an import license, provided that they are entered through the border crossings of the region within two years from the date of approval of their lists by the Chairman of the Commission and that they are used for purposes of the project exclusively; otherwise, not covered by these exemptions, obliges the investor to pay the tax and is punished with a fine of twice the amount of the tax due.

The law was not satisfied with that much, it granted an exemption from importing those machines, devices, machineries, equipment, and the number needed to expand, develop or modernize the project as well[176].

These exemptions included spare parts imported by the foreign investor for his project[177]. In addition to the raw materials imported for production, which were exempted from taxing to the extend for five years, and the legislature did not specify the start date of forcing this period, is it from the date of obtaining the license, or from the date of the actual start of the licensed investment activity, or from the date of the start of the project to provide services or the date of actual production, or from the date of importing the first batch of raw materials. It was necessary to specify the date when the validity period starts, because this is considered to be the statute of limitations of the right, and usually in such cases the legislator defines the period of entry into force of the statute of limitations.

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[175] Article 5/Sixth of the Kurdistan Investment Law.
[176] Article 5z/ Fourth of the Kurdistan Investment Law.
[177] Article 5/3 of the Kurdistan Investment Law.

What can be noted from the text of Article (5) referred to in the KRI Investment Law, is that sometimes it uses the term customs taxes and fees, and sometimes using the term customs duties, and it uses the word tax alone at other times. It was better to suffice with the phrase customs tax for the sake of accuracy, this on one hand, and on the other hand, the aforementioned legislator has set controls and restrictions on the foreign investor which he must to adhere to obtain these exemptions. These controls and restrictions can be summarized in the following[178]:

1- Obtain the approval of the Chairman of the Board of Investment to import them through lists submitted to him.

2 - To be entered through border crossings of the region and within two years from the date of the approval of the aforementioned Board Chairman.

3- To use them exclusively for the purposes of the project, and otherwise not covered by these exemptions, and the investor is obligated to pay the tax for them with a fine estimated to be twice the amount of the due tax.

4- With regard to spare parts, the value which should not exceed 15% of the value of machinery and equipment that have been imported for the maintenance purpose.

5- As for the imported raw materials for production - as earlier referred to - exempted for a period of 5 years, provided that raw materials suitable for the project are not local available.

It essential to note that Article 6 / First of the aforementioned law, in one of these two following cases, authorized offering additional incentives and facilities to foreign investment projects:

A- If the project is to be established in one of the least developed areas in the region.

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[178] These controls and restrictions were mentioned in Article 5 of the Kurdistan Investment Law.

B - If the investment project is a joint venture between the national and foreign investor.

As this law provides other added exemptions for furniture and furniture purchases in service projects, according to their nature, such as hotels, hospitals, tourist cities, universities and schools. And for such projects benefit from these exemptions every three years, provided that they are entered within one year from the date of winning the approval of the Chairman of the Board of Investment on the lists and quantities of procurement[179].

Finally, it must be mentioned that the customs exemptions referred to above and came in Articles 5 and 6 of the KRI Investment Law, embraces only those projects whose capital exceeds (250,000) Two Hundred and Fifty Thousand Dinars[180].

In the same context, Article 17 of the Iraqi Federal Investment Law states that “The project that won an investment license shall also enjoy the following:

First - Dispensing from fees the assets imported for the purposes of the investment project, provided that they are entered into Iraq in (3) three years from the date on which the investment license is granted.

Second - The imported assets necessary for the expansion, development or modernization of the project shall be exempted from fees if that leads to an increase in the design capacity, provided that they are entered within (3) three years from the date on which the board is notified of the expansion or development, and for the purposes of this law, expansion is meant to add fixed capital assets with the intention to increasing the design capacity of the project in terms of goods, services, or materials by more than (15%) fifteen percent. As for development, it is intended for the purposes of this law to replace advanced machines with the project's machines in whole or in part,

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[179] Article 6 / Second of the Kurdistan Investment Law.

[180] Paragraph 3 of Instructions No. 1 of 2007 issued by the Supreme Council for Investment in Kurdistan.

or to perform development of existing equipment in the project by adding new machines or devices, or parts of it with the aim of raising production efficiency or to improve and develop products and services type.

Third - Spare parts imported for the purposes of the project shall be exempted from fees, provided that the value of these pieces does not exceed (20%) twenty percent of the value of the asset procured, provided that the investor does not dispose of them for purposes other than those imported for.

Fourth - Projects of hotels, tourist establishments, hospitals, health institutions, rehabilitation centers, educational and scientific institutions are given additional exemptions from import fees for furniture, furnishings and supplies for the purpose of modernization and renewal once every (4) four years at least, provided that they are entered into Iraq or used in the project within (3) three years from the date of the authority's decision to approve the lists and quantities of the imports, only if they are not used for purposes other than those for which they are imported for.

Then, if we want to make a comparison between what was stated in the paragraphs of this article and those refer to in the KRI Investment Law, we will note that they are, objectively, in agreement concerning offering the foreign investor exemptions right from customs tax, but they differ in some details. The dissimilarity points can be summarized as follows:

1- That the Iraqi legislator has metaphorically used the term imported assets for the phrase imported machines, devices, equipment, machinery and machines, which are mentioned in the KRI legislation.

2 - That the time frame given to the foreign investor to enter these assets is three years from the date of winning the investment license instead of the two years referred to in the KRI Law. In addition, these two years - as earlier referred to – does not start from the date of winning the license, rather it starts from the date of getting approval for the lists of these assets.

3- That the percentage of the value of spare parts subject to exemption must not exceed 20% of the purchased asset value and not 15% of that value, as indicated by the KRI legislator.

4- The period in which the foreign investor must enter the assets decided to expand and develop the project is three years from the date of the Board of Investment being notified of, while the KRI Investment Law did not specify that period.

5- The Iraqi legislature has defined what is meant by the expansion of the project as adding fixed assets with the intention of increasing the design capacity of the project by more than 15%. As for the development, it is intended to substitute the project's machines in whole or in part or to add new machines and devices in order to increase production efficiency and develop the quality of products and services.

6- With regard to fee-free furniture and furnishings for the purposes of renovation in some investment facilities, he made this renewal period every four years instead of the three years referred to in the KRI law. Then, the Iraqi text included this exemption not only for projects, hotels, hospitals, tourist cities, universities and schools - as does the KRI law - rather, hotels, tourism establishments, hospitals, health institutions, rehabilitation centers, and educational and scientific institutions.

Lastly, Article 18 of the Iraqi Federal Investment Law indicated that the foreign investor is obligated to pay all taxes and fees due in addition to the fines levied on them in agreement with the law, if he disposed of the sale in the assets of the project exempted in whole or in part from taxes and fees contrary to the provisions of the investment law, or used in other project, or used for purposes other than those authorized to.

Article 3 / A in the Jordanian investment law indicates that the project shall enjoy the benefits and exemptions from the fees and taxes stipulated in the Investment Law and the regulations issued pursuant to it if it is in any of the exempt sectors, its assets included in the lists of fees and taxes are exempted.

In Egypt, as a commitment from the legislator to the policy pursued towards encouraging investors to establish their companies and setup their facilities in the Republic of Egypt as well as to attract foreign capital, it decided to collect

a unified category customs tax of 5% of the value of what investors import of machinery, equipment and devices necessary for construction of companies and establishments that are approved in application of the provisions of Law No. 8, for 1997[181].

3.4.2. Second Requirement: Exemption from Taxes and Non-Customs Fees.

Reducing income taxes as well as fees motivates investors to double their investments, which raises the marginal sufficiency of capital, and thus increases the volume of total production of the investment project[182].

In this context, Article (5 / First) of the KRI Investment Law stipulates that "the project shall be exempt from all non-customs taxes and fees for a period of (10) ten years from the date when the project commences to provide services or the date of actual production."

It can be noted in the context of this text that when the investment project of the foreign investor begins providing services or actual starts production, it will be subject to tax exemptions and non-customs fees, including income tax and the exemption will continue for a period of 10 years.

In addition to that, the law permits the Board of Investment to give additional incentives and facilitation - including tax exemptions and fees - to investment projects that belong to the foreign investor in one of the following two special cases:

1- If the project was established in less developed areas of the region.

2- If the project is a joint venture between the national and foreign investor.

In this regard, the Board of Investment sets controls and mechanisms by which it determines the method and the amount of additional exemptions provided to the foreign investor, along with identifying less developed areas in the region.

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[181] Quoted from Dr. Rajab Abdul-Hakim Salim, previous source, pp. 565-566

[182] (2) See this with regard to Prof. Ghazi Inayya, the previous source, pp. 161-162

This is what we have concluded in Article 6/1 of the KRI Investment Law, which states: “The Board may, in line with the requirements of the public interest in the region, grant investment projects additional incentives and facilitation approved pursuant to the provisions of this law in which one of the following two features is available in accordance with the controls set by the Board for this purpose:

1- Projects that are set up in the less developed areas of the region.

2- Joint projects between the national and foreign investor.

The regions distribution according to the economic growth level in the KRI region is based on the following classification[183]:

Class (A): relatively developing regions, including the boundaries of municipalities of Erbil, Sulaymaniyah, Dohuk and Zakho.

Class (B): Medium growth areas, including districts of Soran, Shaqlawa, Harir, Koya, Rania, Chamchamal, Kalar, Amideya, and Aqrah.

Category (C): Low growth areas, including all the territories, sub-districts, and rivers in the region that were not mentioned in paragraphs A and B above and are considered within this category as well as the sectors of agriculture, tourism, industry and education in all areas of the region.

The Board reconsiders the distribution of the above regions from time to time in light of the development progresses that take place in each region, and submits its recommendations to the Supreme Council for approval.

Article 15 / First of the Iraqi Federal Investment Law states that “the project that won an investment license from the Board shall enjoy exemption from taxes and fees for a period of (10) ten years from the date of commercial operation commences in line with the development zones determined by the Council of Ministers upon a proposal from the National Investment

[183] Paragraph Eight of Instructions No. 1 of 2007 issued by the Chairman of the Supreme Council for Investment in the Region.

Commission based on the degree the economic development of the region and the nature of the investment project".

This indicates that the Iraqi law grants the foreign investor tax exemptions, including exemption from income tax, for a period of 15 years from the date of his project commences commercial operation, according to the nature of the investment project. In addition to that, there are other additional exemptions referred to by the Iraqi Investment Law, whereby it is granted to the foreign investor for his investment projects setup according to the nature of the activity, his geographical location, the extent of his contribution to the employment of manpower and the economic development advancement for considerations required by the public interest[184]. In the event that the project is transferred, from one development zone to another development zone, during the period of the exemptions granted, for the purposes of the exemption stipulated in Clause (First) of Article (15) the project shall be treated during the remaining period as district development projects transferred to it, provided that the National Investment Commission is aware of that[185].

The third paragraph of the same article also stipulated that "The National Investment Commission may increase the number of years of taxes and fees exemption to reach (15) fifteen years directly proportional to the increase of the Iraqi investor's participation in the project, if the Iraqi investor's partnership proportion in the project is more than 50 %".

It appears from this text that the authority assigned to the National Investment Authority to increase the number of years of taxes and fees exemption in the event that the national investor participates in his investment project, and the number of years is increased according to the participation rate of the national investor to go up to (15) fifteen years if the proportion of the Iraqi investor's partnership in the project is more than 50%.

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[184] Article 16 of the Iraqi Federal Investment Law.
[185] Article 15 / Second of the Iraqi Federal Investment Law.

This indicates the Iraqi legislator is keen to encourage joint ventures and the mix foreign capital with national funds

Article 5 of the Jordanian Investment Law indicated that it assigned the authority to the Council of Ministers pursuant to a joint recommendation by the Minister of Industry and Trade and the Minister of (Finance) based on the committee's recommendation to decide to grant any project, whether it is within the exempt sectors or not, any advantages or exemptions from fees and taxes that are stipulated under the provisions of the Investment Law or any additional benefits or exemptions for the period and conditions he deems appropriate, provided that the decision is published in the Official Gazette.

In Egypt, all legal texts in the Egyptian Investment Guarantees and Incentives Law that grant the foreign investor exemptions from income tax in accordance with the Income Tax Law No. 91 of 2005[186] have been canceled.

Additionally, the foreign investor is exempted from stamp tax and from documentation fees, publicizing contracts for instituting companies and establishments, loan and mortgage contracts related to their business, for a period of five years from the date of their registration in the Commercial Registry, and also exempted from the aforementioned fees land registration contracts necessary to companies and establishments setup[187].

[186] See Article 3 of the Income Tax Law No. 91 of 2005, which states "Articles 19, 17, 18, 19, 21, 22, 23 bis, 29, 20 and 29 from the Investment Guarantees and Incentives Law abolished by Law No. 8 for 199 "and these canceled articles in the Egyptian Investment Law are represented in giving the foreign investor exemptions from income tax.

[187] Article 20 of the Egyptian Investment Guarantees and Incentives Law.

CHAPTER TWO
Foreign Investor Duties and Obligations *

Researching the legal status of the foreign investor requires determining the responsibilities imposed on him in exchange for the rights and guarantees given to him. From this standpoint, the investment laws set out a set of duties and obligations that a foreign investor must fulfill during his investment activity, otherwise he may get exposed to a set of penalties represented in the procedures specified by those laws as an effect of the investor's breach or violation of those obligations. This is the principle in all comparative investment laws, but the latter neither agree on the number and the nature of

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* Both the Kurdistan Investment Law and the Iraqi Investment Law have listed all these duties and obligations under the title ((Investor's Obligations)), as they did not distinguish between what are taken as duties and what are considered as obligations.

Although each of them has a meaning different from the other one within the scope of private law. As the duty is a generic concept and therefore it is broader than the concept of obligation, since the obligation within the scope of private law has been defined by the Iraqi Civil Law in Article (69) as "1 - A personal right is a legal association between two persons, a creditor and a debtor, whereby the creditor is required to transfer an in-kind right, or to take action, or to abstain from working.

The obligation to transfer ownership is considered a personal right, regardless of its location in cash, in-kind, or values. It is also considered a personal right, the obligation to hand over something special.

The expression "commitment" and the word "Debt" have the same meaning as the expression "personal right". The obligation is usually located or assigned, to begin with or to end with, it is a material thing with a financial value (i.e. money). While the duty may be in a place other than money, and that the duty is imposed at the beginning and some of them, namely that the duties of the investor are imposed on him at the beginning and he must fulfill them or pledge to fulfill them from the beginning. Some of them are during the work progress, while the investor's obligations may be assumed to be implemented at the beginning or during the work on the project or even upon its completion.

See Dr. Abdul Majeed Al-Hakim and Prof. Abdul-Baqi Al-Bakri and Prof. Muhammad Taha Al-Bashir, A Concise Brief in the Theory of Commitment in Iraqi Civil Law, Part 1, Ministry of Higher Education and Scientific Research, Baghdad 1980, p. 6 ff. Also see Dr. Amjad Muhammad Mansour, The General Theory of Commitment, Sources of Commitment, 1st Issue, Second Edition, Culture Print House, Amman, 2003, p. 19 ff. As well as Dr. Mustafa Abdel-Gawad, Sources of Compliance, Legal Books Print House, Egypt 2005, p. 11 ff, as well as Prof. Hassan Ali Al-Thanun and Dr. Muhammad Saeed Al-Rahho, Al-Concise Brief in The General Theory of Commitment, Part 1: Sources of Commitment, Wael Print House, 1st Edition, Amman 2002, p. 7, ff.

those obligations, nor in the nature of the penalties for breaking these obligations. These legal obligations do not constitute a substituent for the contractual obligations imposed on both the foreign investor and the contracting party, whether it is a public or private law person. These obligations differ – by its nature - from one contract to another according to the type and content. Based on this fact, we dismiss contractual obligations from this study.

For this reason, we divided this chapter into two topics, the first one we clarify the duties of the foreign investor and in the second one, and we explain the obligations of the foreign investor.

4.1. First Topic: Foreign Investor Duties

Here duties denote the burdens the foreign investor should meet or fulfill in order to be able to practice the investment activity in the country where the foreign investment is to be established, and the duties include applying a request to obtain an investment project license and list it under the commercial registry; safekeeping records and accounts organized. Finally, comes media and news. We will assign each of these duties a separate requirement.

4.1.1. First Requirement: Application Submit to Obtain an Investment Project License

In order the foreign investor to be able to invest and setup his investment project in a country, and then benefit from the advantages and exemptions stated in the law, he must get an approval or permission to start the investment project. For this purpose, he needs to submit the application to the relevant institutions and follow a set of procedures the laws stipulated. There is no doubt that these set of actions differ from one state to another.

In KRI Region of Iraq, according to the applied investment law, Article 16 / First requires the foreign investor to get a license from the Board of Investment to start the project; without which he cannot work or benefit from

the privileges recognized in line with the law[188]. Granting the foreign investor this license must be based on a request submitted by the foreign investor to the Board of Investment pursuant to the conditions that the Board has prepared[189].

After the request submitted by the foreign investor to the Board of Investment, the latter needs to decide on that request within a period of (30) days from the date of completing the technical, legal and economic requirements and conditions in line with the provisions of the Investment Law, taking into consideration the controls and standards set by the Board[190].

Board of Investment does not have the authority to decide to approve giving the foreign investor the license to start the project on its own, but rather it needs to seek the understandings of the competent authorities on what is related to the feasibility of issuing the foundation license. Thereafter, it's essential for those parties to state their opinion, either approving or rejecting, or a request for an amendment, provided that this occurs within a period not exceeding thirty days from the date the request was referred to those parties by the Board of Investment. The law considers non-response equivalent to approval by those parties. The legislator did not specify what are those parties whose opinions must be taken, nevertheless they must be

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[188] Paragraph Six from Instructions No. 1 of 2008 issued by the Chairman of the Supreme Council for Investment in the region, states when applying Paragraph 1 of Article 16 of the Kurdistan Investment Law, the foreign investor must observe the following conditions:
1- The project investment activity requested to be given a foundation license from the Board, listed within the economic sectors which stipulated in Article (2) of Chapter Two / Section One of the Law.
2- No final judgments have been issued against the investor or the project due to the materiality of the investment law and the provisions of these instructions.
3- The investor, whether a natural or legal person, has not been previously convicted of financial or commercial violations in the region, or Iraq, or other countries.
4- It is not allowed to grant a license, or a privilege, or an exemption that causes that breaches an international or regional treaty or agreement to which the region or Iraq is a party.

[189] Through our visit to the Board of Investment in Erbil Governorate, and our interview with Mr. Saman Arab, Director of Legal Affairs at the Board, he thankfully informed us that the conditions for granting the license, which were prepared by the Board of Investment represented in gaining the environmental approval from Ministry of Environment, as well as obtaining the ISO 1400 standard from the Quality Control Department, as well as obtaining the concerned ministry approval.

[190] Article (19 / Second) of the Kurdistan Investment Law.

represented by ministries concerned with the activity of the project to be started, as well as other administrative authorities that the Board decides to seek its opinion, whether for reasons of preserving public health, the environment, or even the security and safety of society. If the competent authorities refuse the request to launch the project, it needs to be justified[191]. In other words, in the event of a refusal to give a license to a foreign investor, the rejection verdict must include the reasons for dismissing the application; that decision is not the final decision. Rather, in this case, the applicant can object to the rejection decision, not in front of the Board of Investment, but with the President of the Supreme Investment Council[192] directly and within a period of (15) days from the date on which he was notified of the rejection decision, and the Council Chairman decides on the objection submitted to him by the person concerned within a period of thirty (30) days from the date of submitting the objection, and the Council's Decision in this regard shall be deemed final[193].

As for the Iraqi Federal Investment Law, the foreign investor has to obtain a license, to authorize investment in order to be able to setup his investment project and benefit from the advantages and exemptions provided by the Investment of authority under the investment law[194]. In order for the foreign investor to get the project approval or the project foundation, he must submit a request. To that effect, to the Investment authority, using a form prepared for that by that Authority, and that request must contain several matters, as stipulated in Article (12 / Second), which has decided that "the authority shall grant the investment license or the establishment of the project based on a request submitted to it by the investor in accordance with affordable terms

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[191] Article (19/3) of the Kurdistan Investment Law.

[192] The President of the Supreme Council for Investment in the region is the Prime Minister. See Article (Fourteen) / First), which states: The Supreme Council for Investment in the region consists of the Prime Minister, the Prime Minister and the Deputy Prime Minister as his deputy, who acts on his behalf in his absence, the membership of ministers (Finance and Economy, Trade, Municipalities, Planning, Agriculture and Industry) and the head of the Board of Investment.

[193] Article (16/Fourth) of the Kurdistan Investment Law.

[194] Article (12 / First) of the Iraqi Investment Law.

prepared by the Commission. The application submitted by the investor is to include the following matters:

A- Fill out the application form prepared by the Authority.

B - Financial capability from an approved bank.

C - Projects undertaken by the investor in or outside Iraq.

D- Details of the project to be invested in and its economic viability.

E - A timetable for the project completion.

In view of the clarity of the text, we will not go to explain it here, nevertheless what is noticed on this text - at the same time - is its poor wording. Because after it denoted, at the beginning of paragraph (Second) of Article (19) referred to, that the license is granted based on an application submitted to The Commission, and added that the request has to include (the matters earlier mentioned), It was mentioned in sub-paragraph (A) "Fill out the application form prepared by the Authority." And turned it into one of the things that ought to be included in the request. This is an overlap and a lack of coordination, if not an unpalatable diminution. In addition, this text has in sub-paragraph (B) referred to the phrase "financial efficiency from an approved bank" and did not specify what this efficiency is and what is the criterion for this efficiency. In other sub-paragraphs, it has specified additional requirements that need to be included in the application. Actually, it was better for the text to indicate that the license is only granted based on an application submitted by the investor to the authority, and that a set of requirements should be attached to the request, such as a bank certificate or its guarantee and a statement or certificate of the projects that the investor undertook in or outside Iraq; in addition to the project details as well as a timetable for project completion.

Although Article (19) and the texts that follow it contain the word “commission” in abstract without specifying whether it is meant by that “the National Investment Commission” or the “Investment in the Region or Governorate Commission”, but when looking into the texts of the other

articles in this law, it looks like that what is meant by that is the last meaning, with exception to the strategic investment projects that are exclusively within the jurisdiction of the National Investment Commission[195].

Article (20 / First) states that “the authority may issue the Foundation License by creating a single window in the region or the province that is irregular in a region that includes authorized representatives from the ministries and relevant authorities, and the commission[196] awards the license to setup the project and obtain approvals from other parties in line with the law".

Consequently, the authority grants the investment license according to affordable terms prepared by the authority, additionally, the approval of the competent authorities is mandatory. The Board of Investment law permits to assist the foreign investor to get the establishment license by approaching the competent authorities and seeking the assessments of those authorities regarding the issuance of the setup license. Those authorities shall express their decision of approval or rejection or the request for amendment within (15) fifteen days from the date they were notified. The non-response from the party from which the opinion is requested, is to be taken as an approval. In the case of rejection, the rejection decision must be connected to reasons. In the event of a disagreement between the decision of the National Commission for Investment and the other relevant party, other than the regional parties, in terms of granting a foundation license, the dispute shall be sent to the Prime Minister for a decision[197].

In all cases, the National Investment Commission shall decide on investment license applications within a period not exceeding (45) forty-five days from the date the application submitted[198].

When the foundation application is rejected, the law permits the applicant to file an objection to the President of the commission in concerned region or

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[195] Articles (4, 5,7 and ٩) of the Iraqi Investment Law.
[196] Article 19 / Second of the Iraqi Investment Law.
[197] Article (20 / 1-2-3) of the Iraqi Investment Law.

[198] Article (7 / C) of the Iraqi Investment Law.

province within a period of (15) fifteen days from the date he was notified of the rejection decision. The head of the concerned party decides on the submitted complain within a period of (7) seven days from the date of submitting the request the objection. The concerned party head decision is not considered final. Rather, the law permits the applicant to object to the decision of the head of the concerned party to reject his objection at the authority to which the National Investment Commission - the Prime Minister - is linked, within (15) fifteen days from the date of filing the objection, after that its decision is final[199].

It should be noted here that the Iraqi Investment Law has required the Investment Commission not to accept project license applications for whose capital is less than the limit determined by the Council of Ministers using a system issued on the proposal of the Investment Commission for that concern [200] . If the value of the investment project the foreign investor submitted to the investment authority with aim of obtaining the license is more than two hundred and fifty million dollars, the investment authority must get the approval from the Council of Ministers, before granting the license[201].

In Jordan, the law requires that a foreign investor wishing to benefit from advantages and exemptions to submit a request to the Chairman of the Investment Committee in Jordan attached to it all the required documents and conditions. The head of the committee needs to present this request to the committee in its first meeting in order to take its decision about it within a period not exceeding thirty days from the date it was submitted to him. It shall be bound, and in the event of rejection, to explain its reasons[202].

The law authorized the applicant - the investor or his legal representative – to object, within thirty days from the date of his written notification of this

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[199] Article (4/20) of the Iraqi Investment Law.
[200] Article (7 / A) of the Iraqi Investment Law.
[201] Article (7 / B) of the Iraqi Investment Law.
[202] Article (10) of the Jordanian Investment Law.

decision, to the Minister[203] about the committee's decision concerning his request provided that the request is submitted in writing and state objection reasons also[204]. The minister either supports the committee's decision or agrees with the investor's objection. In the first case, the support decision is not considered final, but is subject to appeal before the Supreme Court of Justice. In the second case, the objection request is sent back to the committee for reconsideration. In the event that the committee insists on its decision, it returns the objection request to the minister to raise it to the Council of Ministers to take a decision. The decision of the Council of Ministers is subject to appeal in front of the Supreme Court of Justice[205].

From this it seems that the Jordanian legislator has entrusted the authority to consider the decisions objected to by the foreign investor - the applicant - to a higher judicial authority. This indicates the Jordanian legislator's keenness on the investor's interest in order to gain or benefit from the advantages and incentives established under the provisions of the applied investment law, aiming at attracting the largest possible amount of foreign investments and to flow foreign capitals into Jordan.

In Egypt, according to Article (25) of the Investment Guarantees and Incentives Law, the Investment Authority draw up standard forms for investment requests according to the nature of each activity, inclusive of all the necessary data on the activity, the required documents; in particular a statement of the type of activity, the investment costs of the project, its needs for services and energy sources, and all licenses, as well and the required approvals from various authorities for the establishment of the project, the conduct of its activities and its liquidation, and the documents it needs. The authority also prepares a brochure that includes the legislations that regulate the investors' activities, and manages its update in light of the amendments

[203] By the Minister it referring to the Minister of Industry and Trade. See Article (2) of the Jordanian Investment Law.
[204] Article (11 / A) of the Jordanian Investment Law.
[205] Article (11 / B) of the Jordanian Investment Law.

that occur to it, and publish it on the authority's website on the information network.

The Authority and its branches have, on behalf of the investor, to complete all procedures and provide the competent authorities with the data and copies of the documents required from the investor. Article (53) also demands that investors submit to the authority's offices or branches, requests for establishing and registering companies and institutions, and get all licenses and approvals from all relevant government agencies, as well as requests for land allocation, utility connections and contracting, on the forms approved by the Commission's Chairman. Article (54) necessitates that the investor to submit to the Authority or one of its branches a request, on the form prepared for this purpose, attached to the documents that it specifies. Upon submitting his request, under his responsibility, he shall be given a temporary license to start the project, and the party that received the request shall provide him with the approval documents and licenses of the competent authorities. The temporary license continues to be valid until the final license is issued. It also stipulates that the investor may not be exposed to or suspend his activities, or abstain from giving him the facilitations and approvals he need, due to the delay in issuing the final license.

According to Article (55), the Authority shall issue the final license, within a period not exceeding fifteen days from the date of issuance of all licenses and approvals required from the competent authorities through its employees in its offices in the Authority or its branches and those who have the authority to issue them, provided that the above-mentioned documents are fulfilled. If this period elapses without the final license being issued, the president of the authority shall present it, within a week, to the committee[206] formed in the Investment Authority in line with Article (65) of this law to take the appropriate

[206] This committee shall be formed in the Investment Authority headed by a judge having at least the rank of advisor to be chosen pursuant to the provisions of the Judicial Authority Law and the membership of a representative from the union of the activity in which the investor is from, and a representative of the commission.
Article 65 of the effective Egyptian Investment Guarantees and Incentives Law.

decision within fifteen days at most, pursuant to the rules and procedures specified by the executive regulations. The companies, established for the integrated development, are granted a single approval for the foundation and operation of all their projects, and each project of the company enjoys the guarantees and incentives for investment recognized as of the date of activity commencement, which is determined in line with the provisions of this law.

4.1.2. Second Requirement: Registration in the Commercial Registry

The Commercial Registry refer to a special book in which each businessman, whether an individual or a company, is assigned a personal page in which his name and all the data and information of interest to others who wish to deal with him are recorded, in terms of his activity or his business[207].

Supporting commercial credit and cooperation stability requires enabling others to find out the businessman's legal and financial standpoint and the various elements that make up his commercial activity, so that he can work with the businessman and give him the appropriate credit. As publicly to declaring the data related to the financial and legal status of the trader requires the presence of some kind of trust and confidence in those who deal with him as well as to facilitate commercial transactions[208]. From that, the value of registration in the commercial registry is evident which an essential tool for advertising in commercial articles is. The foreign investor - whether as an individual or in the form of a company - is like the rest of the merchants, must register in the commercial registry as maintained by the rules mentioned in the trade law of the investment hosting country.

It should be well-known that the issue of being registered in the commercial registry is not a test issue for businessman, but rather a legal duty that involves penalties for breaking the law pursuant to the law[209].

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[207] Dr. Muhammad Al-Sayyid Al-Fiqi, Principles of Commercial Law, Al-Halabi Legal Publications, Lebanon 2002, p. 204.

[208] Dr. Aziz Al-Aqili, Explanation of Commercial Law, Edition 1, Third Issue, Part 1, Al-Thaqafa Print House, Amman 2006, p.181. As well as Dr. Mustafa Kamal Taha, Basics of Commercial Law, Edition 1, Al-Halabi Legal Publications, Alexandria 2006, p.157.

[209] Article 33 of the Iraqi Trade Law No. 30 of 1984 states that:

In order to find out, we have divided this requirement into two branches: In the first one, we discuss the legal system of the Commercial Registry, and in the second we explain the penalties for not being registered in the commercial registry.

4.1.2.1. First Branch: The Legal System for Registration in the Commercial Registry

Registration in the commercial registry is a legal responsibility forced on the foreign investor, whether or not it is stipulated in the investment laws, given that trade laws impose on the merchant, whether national or foreign - registration in the commercial registry. Since the foreign investor is a trader, according to the standards that It is adopted by comparative trade laws, so he needs to be registered in the commercial registry just like other foreign tradesmen.

Thus, despite the nonappearance of explicit texts in both the KRI Investment and the Iraqi Federal Investment Laws to compel the foreign investor to register in the commercial registry, it is, based on the general provision,

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First: Every businessman must, within thirty days from the date of opening his commercial store or from the date he owns a commercial store, submit an application for registration in the Commercial Registry that includes the following information:

A- The tradesman's name, date and place of birth, and nationality.

B- His brand's name.

C- The type of commerce he carries out.

D- The opening date of the commercial store or the date of its ownership.

E - The address of the main tradesman's center and the addresses of its branches, whether in Iraq or abroad, along with the addresses of other commercial stores belonging to the tradesman and the type of business he practices in each of them.

F- The names of his agents, if any, and the date and place of birth of each of them besides their nationality.

Second: If the tradesperson opens a branch for his trade, he must indicate in his registration application in the register the main office registration number, the date of this entry, the name of the branch manager, the date and place of birth, his nationality, and the date of opening the branch.

Third: If the tradesperson has a head office outside Iraq and a branch inside it, he must indicate in the branch registration application the license issued to him to practice his activity in Iraq.

Article 38 of the aforementioned law stipulates that "a trader, whether natural or legal, shall be penalized with a fine of not less than one hundred dinars and not more than one thousand dinars if he violates any of the provisions relating to the keeping of commercial books, taking the brand name and being registered in the commercial Registry." For more details, see d. Basem Muhammad Salih, Commercial Law, 7th Edition, Baghdad University Press, 1992, p.128. As well as Dr. Muhammad Hussein Ismail, Commercial Law, 1st Edition, Al-Warraq Foundation, Amman, 173, 2003.

mentioned in the effective Iraqi Trade Law making it a responsibility for the investor. The Iraqi Trade Law No. 30 of 1974 in effect required every foreign tradesman – a natural person or a company - to be registered in the commercial registry within thirty days from the date of licensing him in Iraq[210]. Conversely, he will be subjected to penalization for his violation. This is what was confirmed by its Article 33, which states that “First: Every tradesman must, within thirty days from the date of opening his commercial store or from the date of owning of a commercial store, submit an application for registration in the commercial registry that includes the following information:

A- The tradesman's name, date and place of birth, and nationality.

B- His brand’s name.

C- The type of trade he carries out.

D- The date of the opening of the commercial store or the date of its ownership.

E - The address of the main tradesman’s center and the addresses of its branches, whether in Iraq or abroad, and the addresses of other commercial stores belonging to the tradesman and the type of trade he practices in each of them.

F- Names of the tradesman’s agents, if any, and the date and place of birth and nationality of each of them.

Third: If the tradesman has a main office outside Iraq and a branch inside it, he must indicate in the branch registration application the license issued to him to practice his activity in Iraq.

In what concerns the companies, Article 34 of the Trade Law stipulates that “First - the company must, within thirty days from the date of its establishment, submit an application for registration in the commercial registry that includes the following information:

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[210] Article (33-34-35) of the Iraqi Trade Law

A- The name of the company.

B- The date of its establishment.

C- The type of business activity that it carries out.

D- Names of its founders, chairpersons and authorized directors.

Second - In general, the registration request must contain the information referred to in Article (33) of this law.

Third - The branch of the foreign company or economic institution to request registration in accordance with paragraphs (First) and (Second) of this Article within thirty days from the date of licensing it in Iraq.

Therefore, registration becomes a responsibility for the foreign investor who wishes to invest, whether he is a natural person or a company, and whether in Iraq in general or in the KRI region, given the validity of the provisions of the Iraqi Trade Law referred to in the Federal Republic of Iraq, including the KRI region.

The Jordanian Trade Law No. 12 for 1966, specifically in Article (24) requires every individual tradesman, whether a Jordanian company or a foreigner, to register in the commercial registry, whenever he has a commercial place in the Kingdom, whether this it's main office, branch, or an agent[211].

In addition, Article 23 of the Jordanian Investment Law states:

A. Without prejudice to what is stated in any other law, the following should be observed:

1- That all projects requiring a sector license to be practiced have been registered, before submitting the license application pursuant to the

[211] Dr. Aziz Al-Aqili, previous source, p. 187.

provisions of the Companies Law in force[212] and the provisions of applicable legislation relating to the registration of tradesmen and trade names.

2. No requirement to suspend registration on the existence of previous approvals or licenses. "

In Egypt, according to Article (16) of the Executive Regulations of the Egyptian Investment Guarantees and Incentives Law, the foreign investor is required to register the company or the facility in the commercial registry in order to be able to obtain the license to set up the project. Conversely, he cannot get a license. Moreover, this duty is put on the foreign investor based on Article 4 of the Commercial Registry Law[213], which requires foreigners to register in the Commercial Registry in the following cases:

1- Practicing projects that are set up in line with the provisions of Investment Guarantees and Incentives Law No. 8 in 1997, subject to having approval from the General Investment Authority.

2- If the foreigner is a partner in a company of Egyptian persons, provided that at least one of the joint partners is Egyptian and has the right to management and to sign, provided that the share of the Egyptian partners is at least 51% of the company's capital[214].

It is been noticed that, since the Commercial Registry Law was issued, all projects that were established under the umbrella of the successive investment laws were subjected to compliance with registration Law No. 43

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[212] Article 240 / B of the Jordanian Companies Law No. (2) for 1997 and its amendments up to Law No. 17 of 2003 stipulated that no foreign company or organization may conduct any commercial business in the Kingdom unless it is registered under the provisions of this law after obtaining a permit to work in accordance with the laws and regulations in force.
For more details, see Dr. Fawzi Muhammad Sami, The Commercial Companies, previous source, p. 594 ff.

[213] Commercial Registry Law No. 34 of 1976, as amended by Law No.98 for 1996.

[214] Dr. Abdul Hamid Al-Shawarbi, the previous source, p. 1096. As well as Dr. Hani Dewidar, the previous source, p. 166.

of 1974 first, then Law No. 230 in 1989, and currently Law No. 8 of the year 1997." Quoted from Dr. Hany Dewidar, Commercial Law, The New University Print House, Alexandria 2004, p.163.

3- Every company, regardless of its legal form, has its main office or headquarters abroad, if it engaged in commercial, financial or industrial business in Egypt or undertakes a contracting operation, subject to the approval of the General Investment Authority.

4- Foreigners involved in the export activity and within the limits of this activity, whether they are individuals or partners in companies of other persons' companies or funds, regardless of their capital shares.

The Commercial Registry Law forces foreigners to register when practicing products exporting activity, and that reflects the state's policy to promote production with the aim of exporting and developing exports. In order to inspire foreigners to invest in Egypt so as to achieve the aforementioned goal, the law permits foreigners to engage in export activity in Egypt, they shall then be bound by registration in the commercial registry[215].

The Egyptian Trade Law in force[216] No. 17 of 1999 stipulated in Article (30)[217]:

1- A registry shall be setup in the competent administrative authority in which the names of tradesmen, whether individuals or companies, are recorded.

2 - The laws and decisions related to this, with regard to the appointment of those subject to the registration duty in the Commercial Registry, shall apply

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[215] Dr. Hany Dewidar, The Legal Organization of Trade, The New University House, Alexandria, 2001, pp. 152 -153.

[216] (3) Published in the official gazette in issue 19 bis on 17/5/1999.

[217] In detail, see Dr. Abdel-Fattah Murad, Comparison between the New Trade Law and Previous Legislation, Al-Jalal for Printing, pp. 55-58. As well as Dr. Abdel-Fattah Murad, Encyclopedia of Trade Law, Explanation of Business, Record and Commercial Books, Al-Jalal Printing Company, Egypt, without printing year, pp. 88-89. As well as Dr. Ibrahim Sayed Ahmed, Principles of Commercial Law, First Edition, University Alexandria Printing House, 2005, pp. 29-30.

to the dates of registration, the data required to be recorded, the cancellation of registration, and the penalties prescribed for violating these provisions.

As for the registration concerned authority, they are not investment bodies or institutions, but rather those parties associated with the Ministry of Commerce and defined in the Trade Law and the Companies Law and other relevant rules[218].

As for Iraq - including the KRI region - the new investment laws did not specify the authority that permits the establishment of investment companies, did not even identify the role of the company registrar in this field, which is certainly a very important role. Therefore, it was necessary to clearly indicate the relationship and the role of the company registrar with the investment law. However, the Companies Law No. (21) For 1997 has not been cancelled, but rather amended, which clearly indicates that the Companies Registrar Department is in charge of registering companies, projects and commercial agencies operating in Iraq, whether they are national or foreign. This was referred to by INI organization, the Center for International Private Enterprise (CIPE), on opinions to reform a business environment in Iraq, registering prospects for the process of company registration, Series 3, 2008, p. 11.

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[218] Article 30, paragraph 1, of the Egyptian Trade Law states that "in the competent administrative authority there is a registry in which the names of tradesmen, whether individuals or companies, are registered." It is evident from this that the Egyptian legislator has given competence to supervise the commercial registry and make the registration therein for the administrative body represented in offices of the Commercial Registry at the Ministry of Commerce.
See Dr. Abdel-Fattah Murad, Encyclopedia of Trade Law, Explanation of Business, Record and Commercial Books, previous source, p.
In Jordan, "Article (23) of the Trade Law decided that the commercial registry should be organized in accordance with the conditions specified by the regulations issued in implementation of the Trade Law. Then the Jordanian Trade Registry System was issued, which meant to create a decentralization of registration, as it required the opening of a registry in the center of each governorate under the supervision of the ministry concerned (Article 3 of the system), and this article has added that the Minister to appoint a registrar in the center of each governorate, who undertakes, after taking an oath stipulated in Article 4 of the Registry System, the implementation of the legal provisions and the exercise of his powers". Quoted by Dr. Muhammad Hussein Ismail, previous source, p. 177.

In conclusion, we would like to clarify that this duty does not dispense with the need to register the project at the beginning at the administrative authorities supervising the investment, whether in the KRI region or in Iraq in general. Vice versa, as registration with these authorities to get a license and permission to establish the investment project does not exempt the foreign investor from registering in the commercial register; and through the way we have shown, and for the reasons that we have referred to earlier.

It is noted, for example, in the KRI region that the Board of Investment does not grant investment licenses to foreign investors - foreign companies or their branches - unless they are initially registered in the company's registry in the region[219].

4.1.2.2. Second Branch: Penalties for not being registered in the Commercial Registry

There are consequences imposed by laws on those who violate the duty to register in the commercial registry, and these consequences vary. They may be civil penalties, they may be commercial penalties, and they may even be criminal.

In Iraq - including the KRI Region, if the foreign investor - as a trader - violates this duty, he may be subjected to the civil penalty of paying compensation to everyone who was harmed by this violation. The violation here is referring to not to register in the commercial registry in the first place, not to give sufficient information about his institution, or to give false and incorrect information or not to take notes of what changes occurs to this data. Also, from the legal point of view, any data not recorded in the commercial registry is not considered evidence against others. As for the criminal penalties, they are what they are stipulated in Article (38) of the Iraqi Trade Law of the imposition of financial fines on the violator, despite the fact that they are feeble and insignificant penalties that deter the violation. In addition to the fact that the two Articles (217 and 218) of the effective Iraqi Companies

[219] A personal interview with Saman Arab, Director of Legal Affairs at the Board of Investment - Erbil. On 22/9/2008

Law No. 21 of 1997, as amended, inflict criminal penalties for not being able or delay to present the information to be submitted for registration in the commercial registry or these penalties are in the form of financial fines. The aforesaid articles impose criminal penalties on every official in a company who deliberately gives incorrect data or information to the registry, and these penalties include imprisonment and fines.

In Jordan, and according to Article (23/2) of the Jordanian Trade Law, if the tradesman and those under his position have not requested that the compulsory restrictions stipulated in the Trade Law or the Register System be completed during the dates specified in either of them, the competent court may, upon the request of the observer of the Trade Registry, rule with a fine not exceeding Twenty dinars, and when the businessman ignores the recording in the registry, the violator will be penalized with a fine of one dinar for each day that his violation continues[220].

In Egypt, there are separate commercial legislations that have organized some legal effects on registration in the commercial registry, whether they are civil or penal effects. The civil effects are that he is not allowed to invoke any statement that is compulsory for registration and it is not registered unless it is proven that others know the contents of the statement[221], as well as does not accept the preventive composition application from bankruptcy unless the applicant practiced trade on an ongoing basis during the two years preceding the submission of the application and performed during this period the provisions the commercial registry[222] imposed on him. According to Article 3/17 of Law No. 159 of 1981, concerning Money Companies, it requires that the company does not get the juridical personality until fifteen days have passed since the date of registration in the Commercial Registry.

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[220] See Dr. Muhammad Hussein Ismail, previous source, 182.

[221] Article 23/2 of the Egyptian Trade Law, and also see Dr. Abdel-Fattah Murad, Encyclopedia of Trade Law, Explanation of Business, Registry and Commercial Books, previous source, pp. 97-98.

[222] Article 726/2 of the Egyptian Trade Law. Also see Dr. Abdel-Fattah Murad, Comparison between the New Trade Law and Previous Legislations, Previous Source, p. 789. Likewise, Dr. Hani Dewidar, The Legal Regulation of Trade, previous source, p. 167.

Therefore, it is not permitted to start practicing the activity before the registration in the Commercial Registry is completed and the aforementioned period has passed[223]. As for the criminal penalties, they differ from one form to another according to the severity of the violation. Article 18 of the Commercial Registry Law states that "Without prejudice to any penalty that may be stipulated in another law, a penalty of imprisonment for a period of no less than three months and no more than two years shall be imposed, and a fine of no less than one hundred pounds and not exceeding five hundred pounds, or with either of these two penalties:

1- Anyone who improperly provides incorrect data related to requests for registration or notation in the registry, renewal or erasure, the court shall order the correction of these data according to the conditions and on the dates it determines, and the competent commercial registry office shall take the necessary procedures for the correction.

2- Everyone who mentioned on the front side of his shop or on one of the correspondences, publications or papers related to his trade a trade name or a registration number that he does not have, or he mentioned what is indicative of the registration even if it did not happen.

3- Anyone who implements the provisions of this law if he divulges a secret that is connected by virtue of his work." Article 19 of this law also indicates that every violation of the provisions of the law in a manner other than what is mentioned in Article 18 – referred to earlier - shall be punished by a fine of no less than Ten Pounds and not exceeding One Hundred Pounds, provided that the fine is doubled in the case of recurrence. Accordingly, the fine shall be imposed in the event of failure to submit the application for registration or the request for notation of amendments, renewals, or deletions on the date legally established[224].

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[223] Dr. Hani Dewidar, Commercial Law, previous source, p. 179.

[224] Dr. Hani Dewidar, The Legal Regulation of Trade , previous source, p. 171

In conclusion, it can be said that it was necessary for each of the legislators in the KRI Investment Law, as well as in the Iraqi Federal Investment Law, to include in their legal texts clauses obliging the foreign investor to register in the commercial registry. So that the foreign investor is aware of that because he cannot see all the laws of the country in which the foreign investor resides his investment activity. Nevertheless, he must familiarize himself with the investment law, as it concerns his investment activity which he runs it.

4.1.3. Third Requirement: Keeping Records and Organized Accounts

The foreign investor, upon starting his investment activity, must keep records and accounts a good order for the purposes specified by law. Otherwise, the foreign investor is responsible in front of law. Most of the laws regulating investment enforce this obligation on the foreign investor, due to the great significance it has, both for the investor or the host country.

To get more familiar with this subject, we divided this requirement into two branches. In the first one, we deal with the duty of the investor to keep special records in which some data are recorded, and in the second one the duty of the foreign investor to prepare structured legal accounts.

4.1.3.1. First Branch: Duty to Keep Private Records (Business Books)

The commercial books perform a set of functions, whether for the commercial institution or for others and even for the state, including, for example, determining the financial status of the foreign investor - as a tradesman - that is, it considers the mirror which reflects the reality of his financial status continuously and clearly, so that in his pursuit of profit he must make economic decisions necessary to achieve this goal. This will only be achieved through accurate knowledge of its financial status[225]. Likewise, all assets that are exempt from duties and taxes are recorded in the commercial books, in which timing is necessary. In addition to its function to facilitate the

[225] Dr. Hani Dewidar, The Legal Regulation of Trade, previous source, p. 173.

task of the affiliates of the Investment Authority when carrying out their duties with the periodic operations they perform to inspect and control the process of investment activity and to know the percentage of project completion. Generally, commercial books may be used as a tool of evidence.

For this reason, most of the investment laws of the countries hosting foreign investment enact a duty on the foreign investor to keep private records.

In this regard, Article 8 / Fourth in the KRI Investment Law states that the foreign investor is obligated to "keep records of the materials imported for the project that are free from customs duties in line with the provisions of this law." It appears from this that the KRI Investment Law requires the foreign investor to keep special records in which all imported materials are recorded for the purpose of executing the investment project and exempt from customs taxes according to the provisions of the investment law. This means that the legislator intends, from this duty put on the foreign investor, to control or regulate tax exemptions granted to the foreign investor in the course of the stages of its execution of the investment project as said by controls of what has been mentioned giving him the right to exemptions according to the investment law.

In the same way, Article 14 / Fourth of the Iraqi Federal Investment Law stipulates that the investor is obligated to "keep records of the materials imported for the project that are exempt from fees pursuant to the provisions of this law with specifying the periods of depletion of these materials." However, this last provision also requires drawing up the depreciation periods of imported materials within the records functions that needs to be kept by the foreign investor.

As for Jordan, the foreign investor is required, by the Jordanian Investment Law, to keep a special registry in which all details connected to taxes-and-fees-exempted fixed assets are recorded, as Article 14/3 states that the foreign investor is obligated to "keep a record of the exempt fixed assets, in which all the details related to them are listed." This shows that all fixed

assets are subject to accurate recording and registration from the moment they enter the Jordanian territory[226].

At this point, an issue arises, which is whether the records required from the foreign investor to keep them according to the investment laws, enrich or replace those commercial books that the tradesman is required to keep in line with the trade laws or not?[227].

Before answering that, first it must be clarified that the investment activity carried out by the foreign investor does not go away from being, in terms of legal nature a commercial activity, practiced in the state territory[228]. Then we explain the commercial legislation stance to discover whether the duty of commercial bookkeeping is special to the national tradesmen or covers foreigners as well.

As for Iraq - including the KRI Region - Article (12) from Trade Law No. (30) for 1984 requires that "a tradesman whose capital is not less than (30,000) thirty thousand dinars to keep the books that are required by the nature and importance of his trade in a way that ensures the indication of his financial status and, in all cases, he must keep the following two books:

1- Daybooks.

2- Ledger

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[226] Dr. Mustafa Al-Nizami, Mortgage of Industrial Machinery and Equipment in Light of the Provisions of the Investment Law, First Edition, Academic Book Center, Amman, 2004, p.35.

[227] The commercial books required from the tradesman to keep in general according to commercial laws are:
- Dailybooks.
- Ledger.
For more details, see Dr. Elias Nassif, The Perfection in Commercial Law, Part 1, Oweidat for Printing and Publishing, Beirut, 1999, p. 58; As well as Dr. Fawzi Muhammad Sami, Explanation of Commercial Law, Part 1 Culture Printing House, Amman, p. 11 ff. As well as the Commercial Bookkeeping System for income Tax Purposes No. 2 of 1985 published in the Iraqi Official Gazette, No.3030 on 28/1/1985.

[228] Dr. Dureid Mahmoud al-Samarrai, Foreign Investment, Legal Obstacles and Guarantees, previous source, p.355

Article 16 of that law also stipulates that “the tradesman is to keep true copies of letters, telegrams and other documents he sends or receives related to his business, and he must preserve these documents in an orderly and clear manner.”

In view of the generic expressions used in these two texts, it suggests that its ruling is going toward foreign tradesmen, including foreign investors in Iraq.

Concerning the standpoint of Jordanian law, pursuant to Article (16) thereof, the requirement to keep commercial books has been imposed on every trader who conducts business in Jordan without distinguishing between Jordanian and foreign tradesmen or between individual merchants and commercial companies[229].

In Egypt, the commitment to keep commercial books falls, in principle, on everyone who has acquired the status of tradesman, whether was Egyptian or foreign, as long as he is involved in commercial activity in Egypt[230].

This makes it clear to us that the foreign investor gets the status of a trader as long as he practices the legally defined business. He is also like any tradesman therefore he required meet all the duties imposed on the businessman by the Trade Law, except in the case if the nationality is taken into count for the purpose of those duties.

Also, the purpose from the records required of the foreign investor to keep differs from what is in the Trade Law. The firstly it’s limited to listing of taxes-exempt imported materials. As for the second type, its function is much more inclusive than that. Therefore, the foreign investor is like any foreign merchant and is bound by his duties, among which is keeping commercial books; and violating the same will result in procedures and penalties stipulated in the Trade Law.

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[229] See Dr. Aziz Al-Aqili, previous source, pp. 160-163

[230] Dr. Hani Dowidar, The Legal Regulation of Trade, previous source, pp. 176-177.

As for using computers, is it a substitute for traditional commercial bookkeeping? Some have argued that the use of computers may lead to disposing of keeping commercial books because of the easiness and time saving in terms of storing information. If the legislator recognizes the authenticity of the data contained in the commercial books in evidence, despite the fact that it's the only place where the tradesman has written the data on, then there is nothing to prevent the recognition of the authenticity of the information stored in the computers that the tradesman also stores exclusively[231].

However, this requires legislative intervention[232] for what in proof through computers machines to breach the general rules in evidence, which necessitates the need for the legislator to intervene to define exceptions that can be found in those general rules[233]. In addition, the Iraqi Investment Law permitted relying on electronic correspondence along with the regular correspondence between the commission and the official parties related to the work and activities of the commission through local and the international networks in accordance with controls determined by the commission[234]. But this does not go further to the permissibility of a foreign investor to rely on that.

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[231] Dr. Hani Dewidar, previous sources, p. 175.

[232] As did the Saudi system, which approved the recording of commercial book data through computer. The Saudi legislator created a special system for commercial books by issuing Royal Decree No. M/61, dated 17/12/1409 Hijri, and published in Um Al-Qura Newspaper its issue No. 3299 dated 10/1/1410, issuing the executive regulation, after its amendment, specifying the scope of tradesmen who are entitled to record commercial notebook data through the computer and has defined rules and provisions related to that. Quoted by Prof. Reda El-Sayed Abdel-Hamid, Electronic Commercial Books in Egyptian, Saudi and Emirati Laws, The Arab Organization for Administrative Development, Conferences Management, Contracts and Agreements in Electronic Commerce, Prepared by a Group of Experts, 2007 p. 128.

[233] Dr. Hani Dewidar, The Legal Regulation of Trade, previous source, p. 175.

[234] See Article (6) of the Iraqi Investment Law.

4.1.3.2. Second Branch: Preparing Structured Asset Accounts

In addition to requiring the foreign investor to keep commercial records and books, he must prepare regular structured accounts[235]. By this we refer to organizing the project's accounts in an orderly and fundamental way, with the appointment of a legal auditor licensed in the country in which the foreign investor carries out his investment activity, in order to audit all accounts related to the investment project, so that the financial status of the foreign investor is more organized and clearer for him and for the relevant official authorities.

In this regard, the Iraqi Federal Investment Law decided in Article (14 / Second), that the investor is to be committed to "keep proper accounts audited by a certified chartered accountant in Iraq in accordance with the law." However, the investment law in KRI does not have a similar paragraph within Chapter Four, which is dedicated to explaining the duties and obligations of the investor. However, the absence of the aforementioned text in law does not exempt the investor, whether he is a national or a foreigner, from preparing regular legal accounts, based on the rules contained in the Trade Law, which force the tradesman to keep commercial books that include businessman's accounts. These books should be organized according to rules and regulations, principles defined by Law[236]... or even based on the provisions confined in the Companies Law, which require that the company's accounts be organized and express their true financial status[237].

When two companies or two or more institutions merge, then the new company or entity resulting from the merger is obligated to organize separate accounts for each project before the merger, to register and apply the

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[235] That the Iraqi legislator has mentioned the phrase "keeping fundamental accounts ..." and it seems to us that the word "keeping" is not accurate here. The correct word is "prepare or orgnanize".

[236] See Articles (12-20) of the applied Iraqi Trade Law.

[237] See Articles (33-39) of the applied Iraqi Companies Law .

exemptions and facilitations stipulated in the investment law during the remaining period of the exemption[238].

Moreover, Article 14 from the Jordanian Investment Law indicated that the foreign investor must keep regular accounts for the project and assign a legal auditor licensed in the Kingdom to audit them[239].

As for the Egyptian investment Guarantees and Incentives law and edge, it has nothing to indicate the imposition of this type of duty on the investor. However, Article 166 from the Egyptian Companies Law specified that the branches of the foreign company in Egypt must be the auditor.

4.1.4. Fourth Requirement: The Duty to Inform and Submit the Required Data and Documents

The notification and informing are meant to tell that the investor is to give to the host country or to the agency to which it is affiliated, all the papers, records, plans and documents that it requires, along with submitting periodic reports detailing the business status. After submission, such different papers or documents become the exclusive property of the state[240].

In fact, this duty holds a set of details that in turn constitute various duties forced by investment laws on the investor. In relative terms they may be different from each other, but what brings them together is the general framework they have, which is that the content of these duties is the informing the administrative bodies supervising the investment and provide them the data and documents required.

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[238] See Article (25) of the Iraqi Investment Law

[239] Article 3 of the Account Auditing Profession Law in Jordan No. (32) for 1985 stipulates that no person may practice the profession of auditing in the Kingdom unless he has been licensed as an auditor by the Auditing Board in the Kingdom and must be registered with the Audit Bureau in this capacity.

This was referred to by Dr. Forzi Muhammad Sami, Commercial Companies, First Edition, Second Issue, Culture Printing House, 2005, pp. 525-526.

[240] A. Dr. Hafizah Al-Sayed Al-Haddad, Contracts Between States and Natural Persons, Al-Hanbali Legal Publications, Beirut, Lebanon, 2003, p. 221.

This signify that we are not dealing with a single duty, but rather we can express it as a duty that is to inform relevant administrative authorities in the investment hosting country of some personal information and data about the investor himself, his institution, as well as its financial status, in addition to adequate information about the project to be setup, sometimes presenting its economic and technical feasibility study, and submitting documents and papers related to all of the above. Investment laws also impose on the investor a duty to inform the administrative authorities about the project start, when the assets are installed, when it's prepared, and at the time when the actual services are provided.

It should be noted at this point that although comparative legislation in general enforces such a duty on the investor, there is a difference between the nature of the data, information and documents needs to be presented and confirming the foregoing. In this context, what the Kurdish legislator imposes differs in details from what is imposed by each of the federal legislators Iraqi, Jordanian or Egyptian legislators, and vice versa as well.

Article (8) from the KRI Investment Law stipulates that "the investor shall be bound by the following:

First: Defining the field of his investment in relation to the projects completed by him, and stating his financial status and the contracts he implemented.

Perhaps the intent of this duty is to see the extent of the experience that the concerned foreign investor possesses in the field of the project in which he wants to invest, along with his technical and financial capabilities in this field; in addition to reviewing his financial position, which represents the basic guarantee for those dealing with him at the administration or other persons.

As for the second paragraph of the same article, it requires the investor to "inform the authority of the project completion and its commencement of providing services or actual production." Perhaps it was better for the legislature not to only drive the investor to notify the completion of the project, but to compel him to report about the commencement or work launch and on every basic stage that is completed. What is noticed about this text is that it

did not renew a specific reporting form; this means that it is permissible to do so in any way whether it was oral or written. It seems that the standpoint of the Iraqi federal legislator - as we will see - was better when he requested that the reporting be done by written notification.

The Third Paragraph of the Article 8, earlier referred to, imposes on the foreign investor to “offer the necessary facilitations to the authority’s competent employees in relation to collecting and obtaining the essential information on various aspects of the project for the purposes of the Commission”.

This text did not specify what these facilitations are, and this last duty may raise some problems from a practical point of view, especially with regard to the issue of ascertaining or ensuring the extent to which the investor meets this duty or not, as well as with regard to the nature of the information that is to be collected about the project and the extent of the balance between the interest of the authority in collecting information and the interest of the foreign investor in preserving some of his business secrets. It seems that these entire issues are objective and realistic ones that are subject to the discretion of the party that settles the dispute whenever that occurs.

In the same context, Article (14 / First) of the Iraqi Federal Investment Law states that the investor shall be tied the following:

First: Notifying the National Investment Commission, the region or the governorate, as the case may be, in writing, upon completion of the installation and preparation of the assets for the purposes of the project, and the date of commencement of commercial work.

It was evident from that period that the Iraqi legislator required the foreign investor to notify the concerned authorities represented by the National

Investment Commission or the region or governorate commission, based on the following circumstances[241]:

1- If the investment project is has a federal character, the notification shall be submitted to the National Investment Commission.

2- If the investment project is established in any of the regions except for the KRI region (if it is to be developed in future), the notice is submitted to the district authority.

3- If the investment project is located in one of the governorates, not linked to the regions, the notification shall be submitted to the governorate authority.

These entities shall be notified upon assets installation and preparation completion for the purposes of the project, in addition to the date of starting commercial work. The investor must submit the notice in writing.

Here, it can be said that both the Iraqi Federal and the KRI Investment Laws are in agreement from the objective point of view that is the foreign investor must notify the concerned authorities as soon as his investment project is ready and commercially began activities.

Nonetheless, they are different from the procedural point of view, as the Kurdish law, as we have shown previously, did not require the written form of notice submission. Additional to that, it limited the party to which the notice to be submitted as the Board of Investment, which is located in the capital, whether the investment project is located in the capital or other provinces. Whereas according to the Iraqi federal law, the notification should be submitted in writing, to the concerned authorities pursuant to the spatial jurisdiction. Thus, it appears that federal law is more precise and better than Kurdish law in that respect.

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[241] Regarding the competencies of the National Investment Commission, the Region Authority, and the Governorate Authority. See Article (1 / b, c, and d) of the Iraqi Investment Law.

Moreover, the Third paragraph of Article (14) from the Iraqi Investment Law states that the foreign investor must “submit an economic and technical feasibility study about the project and any information, data or documents requested by the authority or other competent authorities regarding the project budget and the progress made in its implementation. "

Through this paragraph it becomes clear to us that, as is the case in the Kurdish law, the foreign investor should submit an economic and technical feasibility study about the project in addition to any other information, data or documents related to the budget and the project completion if requested by the concerned authorities, including the Investment Commission. This being said, the work schedule provided by the investor must also match the reality, provided that the time difference is not more than six months. In the event of a violation, the investor will be subject to punitive penalties imposed by the National Investment Authority; it may go up to withdrawing the investment license from the investor. As paragraph seven in Article (14) stipulates that the investor must comply with the reality work progress schedule provided by the investor, provided that the time difference is not more than six months. The National Investment Commission is to set penal conditions in the event of exceeding the six-month time frame; upon which case, the Commission has the right to withdraw the license.”

Once again, it can be said that the Iraqi legislator is more successful in its compatibility - than the KRI legislator - in terms of the project completion supervision, as it has sat an upper time-limit for the time discrepancy between the practical reality and the work progress schedule submitted by the foreign investor; in addition to setting penal conditions in case of contravention.

As for comparative legislation, the Jordanian law requires that the foreign investor, whose project has been granted exemptions and privileges, in accordance with the provisions of the law, must inform the committee in writing of the project's fixed assets installation completion and the date of its

work commencement or the actual production of the investment project[242]. This indicates that the Jordanian law stipulates that the notification be in written form, as is the case in Iraqi law.

Furthermore, the foreign investor must submit information, documents or data related to the project to the Investment Incentives Committee, upon the latter's request. He must also allow any employee authorized by the Chairman of the Investment Incentives Committee to enter the investment project with the aim of matching the data and information about reality[243]. Moreover, the Egyptian Investment Guarantees and Incentives Law did not impose such a duty on the foreign investor.

It is noticed, at this point, that this duty is of a special kind from the view point of some of its requirements. This obligation must be performed during the validity of the contract, such as reporting assets installation and work or production start, and so on. Some of these duties are there that are imposed on the investor even before the conclusion of the contract; such as the duty that the Kurdish legislator put on the investor to define his status and experience. This type of duty falls within the duty to provide information before the contract. The duty to report is outside the framework of traditional obligations, as it was adopted by jurisprudence and the judiciary, and later, the legislators[244]. The basis of this commitment is the law, via legislative texts of a mandatory impression[245].

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[242] Article 14 of the Jordanian Temporary Investment Law No. 68 of 2008.

[243] Article 14 of the Jordanian Temporary Investment Law No. 68 of 2003.

[244] A. Prof. Jaafar Muhammad Jawad Al-Fadhli, Commitment to Advice, Safety, and Caution in the Contracting Process, an analytical study, Al-Rafidain Journal of Law, issued by the Faculty of Law, University of Mosul, Issue 13, 2002, p. 1 ff. Likewise, for the same author, Commitment to Information, Advice, and Cooperation, previous source, p.130, ff. As well as Dr. Hadi Muslim Yunus, Legal Regulation of Electronic Commerce, a PhD Thesis submitted to the Faculty of Law, University of Mosul in 2002, pp. 200-201. As well as Dr. Awaz Soliman Dzje, Commitment to Providing Information When Contracted, PhD Thesis submitted to the Faculty of Law, University of Baghdad in 2000, p. 41 ff.

[245] Dr. Hadi Muslim Yunus, previous source, p. 202.

4.2. Second Topic: Foreign Investor Obligations and Violation Penalty

We will separate this research into two requirements. In the first one we explain the foreign investor obligations, and in the second one, the legal procedures for the foreign investor violations.

4.2.1. First Requirement: Foreign Investor Obligations

As earlier mentioned, the investment laws[246] impose a set of obligations on the foreign investor[247] in addition to his rights, with no agreement between these laws regarding the number, type and nature of these obligations. However, there are some obligations that almost all investment laws have in common with it. It is represented in the commitment of the foreign investor to start the commercial activity on time and continuing with it, as well as training and qualifying commitment for national employees in addition to his commitment to the safety and environment preservation. Here, It must be noted that the obligations that we will discuss through this requirement are

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[246] The Law of Investment Incentives and Guarantees in the Arab Republic of Egypt No. (8) for 1997 does not contain provisions regarding the obligations imposed on the foreign investor, except for Article 64 pertaining to requiring the foreign investor to notify the Investment Authority when starting an investment activity, which was added to the law within the last amendment. The justification for the failure of Egyptian law to stipulate other obligations may be that the legislator has left it for investment contracts and the obligations that their clauses put on the foreign investor. This approach may not be considered favorable, given that this leads to the foreign investor being unaware of the obligations imposed on him and thus he does not know or cannot know his legal status and it may lead to the reluctance of the foreign investor to come to the Arab Republic of Egypt. As for the temporary investment law in Jordan No. 68 of 2003, Article (14) thereof was set to clarifying the obligations imposed on the foreign investor. As for the Saudi Foreign Investment Law for 2000, this was dealt with in a narrow scope within the fifteenth article thereof. As for the Sudanese Investment Promotion Law for 1999, amended until 2000, this was stipulated under the title of Duties of the Investor in Chapter Four of the Law. In Kuwait, Law No. 8 for 2001 regulating direct investment of foreign capital has imposing obligations on the investor in Chapter Four of that Article. As for the Kurdistan Investment Law No. 4 of 2006 stand, it includes investor's obligations within Chapter Four. Likewise, the Iraqi Federal Investment Law No. 13 of 2006 did, it has devoted Chapter Four of it for investor obligations.

[247] It should be noted at this point that some of the investment laws do not differentiate between the foreign investor and the national investor; that is, they treat the foreign investor in the same way they treatment the national investor, without differentiating them, especially in the field of investor's obligations. Therefore, the obligations of the foreign investor are almost the same as the obligations imposed on the National Investor. Among these laws are the Kurdistan Investment and the Iraqi Federal Investment Laws.

nothing but legal obligations[248]. Its direct source is investment laws, which determine its scope and content. As for the contractual obligations imposed on the foreign investor, they are set according to the investment contracts that he concludes with persons in the investment hosting country. These obligations vary - of course - according to the different types of those contracts. Based on the aforesaid, those contractual obligations are excluded from the scope of this study, which will be limited to obligations Imposed by investment laws.

We will allocate for each of these obligations a separate section as follows: -

4.2.1.1. First Branch: Starting Investment Activity on Specified Time and Continuing with it

The licensed foreign investor must start the implementation procedures necessary to execute the investment project according to the schedule he submitted to the relevant entity. This implies that the foreign investor needs to initially present a timetable for the progress and work stages in the investment project. Later, he must then abide by this schedule and time periods allocated for the work stages. And he must also abide by the times he has set for installing or preparing the assets, and an actual starting date or "commercial" activity of the project. Perhaps the wisdom of this commitment is clear and evident through the time importance and economic value in investment projects. Rather, some of these projects connect to the daily lives of citizens, so that the start of these projects with their activities is of great importance to citizens. In many cases, a contract is made with a so-and-so investor, and not the other, by virtue of the first one dedicated to complete the project and start the activity in a shorter time than others require.

In this regard, the KRI Investment Law stipulated in Article (8 / Second) that the foreign investor is obligated to "notify the Commission about the project

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[248] For more details on the obligations that its source is the law, see Dr. Amjad Muhammad Mansour, The General Theory of Commitment, Sources of Commitment, 1st Edition, Second Issue, Culture Print House, Amman, 2003, p. 392. As well as Samir Abdel-Sayed Tanago, Sources of Commitment, Knowledge Foundation, Alexandria 2005, pp. 351-352.

completion and its commencement for providing services or actual production." Through that, the foreign investor is forced to inform the Authority upon completion of the project and its actual initiation of providing services or production of the investment project. But without the law require him to continue his investment activity, and this deficiency in legislation may create negative consequences for the region. As the foreign investor may start the investment activity and then stop his work, whether with or without an excuse. Therefore, we believe that it is necessary to add a reference to stating the commitment of the foreign investor is to continue his activity aside from his commitment to start the investment activity. In the absence of this - the foreign investor will take advantage of using that loophole and thus the commitment will not be of any benefit. In addition, the legislator did not force the foreign investor to adhere to the timetable he presented regarding the stages of project completion. When is it late? What is the deadline that he can be given? What are the cases to offer that period?

Nevertheless, we can say that such gaps in the KRI Investment Law provisions can be fixed through the contractual clauses contained in the investment contracts between the foreign investor and the party or the persons contracting with him.

As for the Iraqi investment law, it required the foreign investor to notify the National Investment Authority or the provincial or governorate commission, based on the case and in writing, upon the project assets installation and preparation completion and the date of commencement of the commercial business[249]. Moreover, the foreign investor must comply with the work progress schedule the investor provided and the reality, without the time difference exceed more than six months. On contrary, the National Investment Commission must set penal conditions in the event of exceeding

[249] Article (14 / First) of the Iraqi Federal Investment Law.

the aforementioned period. Similarly, the Commission has the right to withdraw the license[250].

The Jordanian legislator also binds the foreign investor to notify the Investment Committee in writing immediately upon completion of the fixed assets installation in the project along with the date of its work commencement or actual production[251]; without putting legal guarantees to continue the work of the investment project.

As for the Egyptian Investment Guarantees and Incentives Law, it forces the foreign investor to notify the Investment Authority of the activity commencement date in new establishments or their expansion. It also assigned the General Authority exclusively the power to determine the date of the commencement, stopping and termination of enjoying the incentives and benefits, as well as resolving any dispute between ministries and their interests and agencies regarding this date or the date of activity commencement[252].

Also, the General Investment Authority alone shall undertake the procedures for determining the date of production commencement or practicing the activity through one or more committees to be formed by a decision from the president of the authority or whoever he delegates, in which the parties concerned with the project activity participate. The committee, for that purpose, right to carry out the necessary inspections and necessary documentary examination. The committee must prepare a report on the work result based on its inspection and what documents and data records it has seen[253].

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[250] Article (14/7) from the Iraqi Federal Investment Law stipulates that “the obligation to match the work progress schedule presented by the investor with reality, provided that the time difference is not more than six months, and the National Investment Commission shall set penal conditions in the event of exceeding the six-month period. The authority also has the right to withdraw the licenses. "

[251] Article (14/1-A) of the Jordanian Investment Law.

[252] Article (64) of the effective Egyptian Investment Guarantees and Incentives Law.

[253] Article (64) of the effective Egyptian Investment Guarantees and Incentives Law.

This report shall include the principles upon which the committee relied for determining the date of the production commencement or the practice of the activity. The committee must notify the company or facility of this report within a week from the date of its preparation. The company or establishment may express an opinion about the report prior to approval by the head of the authority or whomever he delegates. The report of the committee shall be approved by the president of the authority or whomever he authorizes, and the company or facility and the competent authorities shall be notified of the outcome of the report and its approval[254].

The foreign investor shall have the right to object to the decision determining the start of production or the activity practice within thirty days from the date of his notification thereof. Reconsideration of this objection shall be by another committee formed in accordance with the rules and procedures established in this regard, which shall study the objection and present a reason-based report with the result of its study, including a statement of the procedures followed.

This report shall be final after being approved by the Chairman of the Authority within two weeks from the date the company or facility has completed all the documents required by the committee[255].

In the event that the investor wishes to extend the time limit specified in the schedule to a specific period, legally, he must submit a request to the Authority clarifying the realistic reasons that prevented him from taking the investment project implementation measures as determined in the timetable submitted by him[256]

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[254] Article (64) of the effective Egyptian Investment Guarantees and Incentives Law.

[255] Article (64) of the effective Egyptian Investment Guarantees and Incentives Law.

[256] Dr. Abdullah Abdul-Karim Abdullah, Investment Guarantees in the Arab Countries, Al-Sadr previously, p. 101.

4.2.1.2. Second Branch: Foreign Investor Commitment to Train and Qualify his National Employees

Foreign investment may result in the lack of attention and interest of the foreign industrial investor in training and qualifying national workers and provide them necessary skills to carry out similar work in future without the help from foreign investor; resulting in a kind of unwanted habit of the host country on the foreign investor. In so that the latter does not benefit the host country in terms of the production process[257].

Therefore, the investment hosting countries usually impose on the foreign investor a commitment to train and qualify the national manpower of the host country while teaching them modern methods.

According to the KRI Region Investment Law, despite granting the foreign investor the right to employ foreign labor, the law obligated him to "train and qualify local labor in the investment project"[258]. The position of the KRI legislature regarding this is a pioneering step towards emphasizing human investment, which is a vital step in the process of comprehensive economic and social development; as investment has no feasibility unless it is brings alone developing human capabilities and qualifying cadres capable of setting up or running projects in the host country for future investment[259].

As for the Iraqi law - and as we explained in the first chapter - it did not stop the foreign investor from employing foreign workers absolutely, and at the same time he did not neglect the issue of hiring and employing Iraqi workers. It obligates the foreign investor to give priority to hiring and employing Iraqi workers, in addition to forcing the foreign investor to train, qualify and increase the efficiency of Iraqi employees and raise their skills and

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[257] Dr. Othman Ismail Mohamed; Dr.. Awni Hamdan Mufleh; Dr. Muhammad Hajji, Foreign Investment in the State of Kuwait: Reality, Challenges and a View in the Foreign Investment Law of 2001, Kuwait Institute for Scientific Research - State of Kuwait. P. 43. Research is online at: last vesited 6/5/2008 http://library.gcc-sg.org/Books/Arabic Publish-19.htm

[258] Article (2 / Six) of the Kurdistan Investment Law.

[259] Azad Shakur Salih, Ways of Attracting Foreign Investment to Kurdistan Region and a Look at the Kurdistan Investment Law No. (4) for 2006, a research published in Terrazzo Magazine, which is a quarterly academic journal issued by the Kurdistan Jurists Union, Erbil, No. 29-30 for 2006, p. 103.

capabilities[260]. This means: that the Iraqi legislator tried to match the foreign investor interest with his right to bring in foreign workers in certain cases - as we have earlier explained - with the national interest by training and increasing the competence of national workers and raising their efficiency and capabilities as well as providing them job opportunities. The Iraqi legislator in this issue is clear when he allows the foreign investor to employ and bring in foreign workers on the condition that it is not possible to employ the Iraqis because they do not have the necessary qualifications or the ability to carry out the same tasks according to the controls issued by the National Investment Commission. While the position of the KRI legislator regarding this issue came in a way that can be thought of as, It is reported that it is ambiguous, or the foreign investor is left the test in whether or not to use local manpower when it was stipulated in Article (Seven / Second) of it that "the investor shall use the local and foreign manpower necessary for the project with priority given to the local manpower in accordance with the laws in force in the region." In another context, the Iraqi investment law did not neglect the rights of Iraqi workers and their guarantees with foreign investment projects, which is binding the foreign investor to the Iraqi laws in force in the areas of salaries, vacations, hours and working conditions, etc. as a minimum[261] This indicates that the Iraqi legislator did not give the foreign investor freedom for imposing restrictions on Iraqi workers or exploit the opportunity of unemployment in Iraq to give national workers low salaries or not taking into account vacations and other things, that includes official and religious holidays in Iraq. It seems to us that the countries whose laws force the foreign investor to use the national labor unquestionably and do not give him the right to bring in foreign workers are causing the wages of local labor to rise compared to the foreign labor that the foreign investor intends to bring. Thus, the situation leads to the foreign investor being unwilling to invest in

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[260] Article (14 / Eighth) from the Iraqi law, which stipulates the investor to be commitment to "train and rehabilitate his Iraqi employees, increase their efficiency, and raise their skills and abilities, and priority is to recruit and employ Iraqi workers."

[261] As Article (14/6) of the Iraqi law states that the foreign investor "must abide by the Iraqi laws in force in the areas of salaries, vacations, working hours and conditions, and others as a minimum."

that country. As for the state laws that give the foreign investor absolute self-determination to bring in foreign workers, this will also result in negative consequences, the most important of which is the lack of job opportunities for local workers as well as the foreign investor's effort to bring in low-waged labor from countries known in this field. Therefore, it is necessary to have some balance out there between allowing the foreign investor to bringing in foreign labor and at the same time not to neglect the employment of national workers. So, we see that the Iraqi legislator on this issue was successful because it did not prevent the foreign investor from bringing in foreign workers and at the same time gave priority to employing national workers.

It also became clear to us that both the KRI Investment and the Federal Laws are in agreement in compelling the foreign investor to train national workers; this aims at provide job opportunities in Iraq in general and to avoid reliance on foreigners in the future.

As to where the Jordanian applied investment law and the enforced Egyptian Guarantees and Incentives Law are, they do not find any text to show the binding the foreign investor to this type of commitment, as is the case in the laws of other countries.

In conclusion, we would like to remark that the commitment of the foreign investor to train and qualify local workers is an obligation to achieve a result and not just an exertion of care. The foreign investor cannot deny this responsibility once he proves that he has taken the required care[262].

It is also the right of the state in the event of failure of the foreign investor to train local workers to teach them modern methods, when decides to deny the project the benefiting from the tax and customs exemptions it has granted[263].

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[262] Prof. Hafizh Al-Sayed Al-Haddad, Contracts Concluded between States and Natural Persons, previous source, p. 239.

[263] Same source.

4.2.1.3. Third Branch: Society and Environment Safety Preservation Commitment in the Host Country

This means the commitment of the foreign investor to preserve the integrity of the environment when implementing his investment project, so that he needs to take the necessary measures in this regard to avoid harming to the environment.

Environment means the surrounding in which a human being lives and derives from it the components of his life, including food, clothing, medicine and housing; and in which he begins his relationship with other fellow human beings[264]. Environment with this sense has two meanings: one of them has a tangible material effect and includes the materials that a person turns to in order to derive the components of his life from, and the second is an entity with a moral effect that includes customs, ethics, values and religions as well as different social institutions[265].

The environment is no longer that traditional concept, which is the area surrounding human being, but this concept has expanded into researching the biosphere with its economic, social, cultural and political aspects and the influence it has on human life on one hand, and on its relationships with other organisms and materials that exist with it on the other hand[266].

Due to the importance of preserving the environment and being of concern, especially in recent times whether at the international level or in the domestic domain, therefore, most recent investment laws issued include a clause whereby the investor is pushed into protecting society and the environment in the host country once practicing investment activity.

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[264] Quoted from Dr. Mahmoud Saleh Al-Adi, Encyclopedia of Environmental Protection, Part 1, Al-Fikr University Press, Cairo, without year of printing, p. 147.

[265] Same source.

[266] Dr. Muhammad Abdul-Ghani Hassan Hilal, Environmental Protection and Management, Performance Development and Promotion Center, Environmental Management Group, 1st issue, 2004-2005, p. 11.

Concerning this, the KRI Investment Law decided to have the investor to look after the integrity of the environment[267], security and public health. As paragraph (Fifth) of Article (8) stipulates that the foreign investor should be committed to maintain the safety of the environment, security and public health and adhere to the quality measurement and control systems in accordance with international standards.

Article 14/5 of the Iraqi Federal Investment Law states the commitment of the foreign investor to "preserve the integrity of the environment and abide by the quality control systems applied in Iraq and the global systems adopted in this field and the laws associated to security, health, public order and the values of Iraqi society".

This commitment is noted to be not limited to preserving the environment, but includes the investor's commitment not to prejudice the laws related to the security of society, public health issues as well as the need to preserve the public order in society and the values of the Iraqi society.

Maintaining public health imply taking preventive measures and procedures from the risks of diseases and epidemics, infection and pollution, and fighting their causes through providing protective and curative medical services, along with taking necessary measures from medical examinations when foreign investors and workers enter the country[268]; as well as adherence to health specifications when producing industrial products. Also, this obligation includes preserving the cleanliness of the country or environment in which the foreign investor works; preventing waste in public places and removing it to places designated for disposal, impeding the practice of industries that pollute the environment near residential areas, putting a stop to the entry of cars that cause high pollution into the cities, and ban animal husbandry near residential areas, adhering to health conditions for commercial places,

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[267] Environmental protection means look after the environment and prevent or reduce its pollution and degradation. Article 11/1 of Law No. 8 of 2008 for the Protection and Improvement of the Environment in the Kurdistan Region - Iraq.

[268] Dr. Adnan Amro, Principles of Administrative Law, 9th Edition, Knowledge Foundation, Alexandria, 2004, p. 19.

factories, residences and restaurants, and following instructions that preserve workers health and residents[269].

As for public security, it is intended to secure and protect lives and money from been attacked. Maintaining public security requires putting an end to the risks and dangers of chaos. Therefore, the process aims to avoid and evade all kinds of risks and dangers that threaten the entity of the group or individuals[270].

This, additionally, is to take measures to maintain quietness and tranquility in roads and public places, avoiding noise and not disturbing residential neighborhoods, streets and road; accompanied by curbing the use of rest disturbing means, such as loudspeakers or annoying machines or others, besides eliminating disorders and arguments that disturb public calmness and serenity[271] .

Moreover, preserving the environment extends the of point of adhering to quality control and standardization systems[272].

The objective behind this is to get the foreign investor committed to pay attention to the quality of the products offered by the industrial facilities to the market. Likewise, countries give a significant role to the quality control department for monitoring and inspecting production to make sure that it is produced pursuant to the outlined and defined specifications and standards besides treating deviations and errors or avoiding them before they occur. Accordingly, and based on the size of the facilities, their development, the

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[269] Same source.

[270] Prof. Ali Khattar Shantawi, Concise Brief in Administrative Law, Wael Press House, 1st Edition, Ayyan, 2008, p. 362.

[271] Dr. Abdel-Ghani Bassiouni Abdullah, Administrative Law, Knowledge Institution, Alexandria, p. 295.

[272] Quality control is the function or grouping of tasks which must be accomplished by an organization in order to achieve its qualitative objectives.
Prof. Khudhair Kazim Hammoud and Dr. Hayel Yaqoub Fakhoury, Production and Operations Managment, 1st Edition, Safa Publishing and Distribution House, Amman, 2001, p. 299.

production size, the complexity of procedures where the establishments are an independent unique department for quality control linked to this administration is the supreme administration in the country[273].

It also must take the necessary measures to follow up the specifications of the products that the factories produce. This one requires assigning specialized and experienced persons in the field of applying the specifications to follow the manufacturing process according to the defined specifications[274]. Foreign investor commitment to the quality measurement and control systems is sometimes the determination for preserving the environment.

The investment hosting country have to work on licensing environmentally friendly foreign investments, as the foreign investment, which is characterized for being environmentally clean or environmentally friendly, can last for a long time and is considered the investment aspect of the investment hosting country[275].

In KRI Region, the foreign investor is not granted a certified license without obtaining the approval[276] from the Ministry of Environment in addition to an official document from the Quality Control Department[277] as the requirements for obtaining an investment license in the region[278]. This is aimed at

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[273] Same source, p. 300.

[274] Same source, p. 305.

[275] Dr. Othman Ismail Muhammad. Dr. Awni Hamdan Mufleh; Dr.. Muhammad Haji, previous source, p.57.

[276] The environmental approval refers to an official document issued by the ministry according to which it permits the practice of specific activities from the environmental point of view, Article 2/1 of the Law on the Protection and Improvement of the Environment in the Kurdistan Region - Iraq No. 8 of 2008. published in the Kurdish official gazette, issue 90 on 11/8/2008, p. 42.

[277] The standard required from the foreign investor is the standard (ISO 14000), which is a set of requirements concerned with the formation of an environmental management system that can be applied in all types and sizes of systems and adapts to different diverse circumstances, whether cultural, social or geographical.
Prof. Najm Al-Azzawi and Dr. Abdullah Hekmat Al-Naqar, Environmental Management, Al-Masirah Press House, 1st Edition, Amman, 2007, p. 127.

[278] See the first topic of this chapter.

supporting the process of protecting the environment and preventing pollution or balanced with economic and social needs; in addition to facilitating the application process by gathering and defining the requirements of the standard simultaneously and reviewing them at any time[279].

It is clear from that that the standpoint of Iraqi and Kurdish laws is in agreement concerning the responsibility of the investor to maintain the safety of the environment and public health and to adhere to the quality measurement and control systems in accordance with international standards. Nonetheless, at this point the Iraqi law is distinguished from the Kurdish one as the latter singled out the commitment of the foreign investor to systems of measurement and quality control in line with international standards and not the national one. As for the position of Iraqi law, it did not fail the national standard for systems of measurement and quality control, in addition to the international standard.

As for the stance of both Jordanian and Egyptian laws, we did not find any text in it that decides to get the investor committed to preserve the integrity of the environment, as is the case in the Kurdish and Iraqi laws and other comparative laws[280].

4.2.2. Second Requirement: Legal Procedures when Foreign Investor Violate

In exchange for the incentives and guarantees that the investment legislation is keen to provide to the foreign investor, it - as earlier referred to - imposes on him a set of duties and obligations in favor of the investment hosting country, down to balancing between the interests of the two parties, as a natural result and within the context of the previous thought. These legislations need to put a whole set of procedures that can be used when

[279] A. Prof. Najm Al-Azzawi and Dr. Abdullah Hikmat Al-Naqar, previous source, p. 127.

[280] With regard to other comparative laws, the Kuwaiti Investment Law affirmed this commitment in Article 14, stating that "the foreign investor shall be bound to preserve the integrity of the environment, the public order and public norms, and the instructions related to security and public health, and not to expose others to dangers."

there is a violation on the part of the investor in his duties and responsibilities.

As is recognized in the philosophy of modern laws and punishment, whoever is liable to penalty must be given a chance to get rid of it by the methods set forth in law. Therefore, we will first discuss the penalties that the investor may face when he breaks his legal obligations, and then we will examine the right of the foreign investor to complain against these penalties in the following two branches.

4.2.2.1. First Branch: Foreign Investor Legal Obligations Violation Penalty

The procedures stipulated in investment legislation are no more than different legal penalties. They are imposed on the foreign investor once violating his legal obligations under investment laws and are not a substitute for civil or criminal penalties or even administrative penalties stated in other laws when the foreign investor's behavior constitutes a breach.

In this context, there are a set of penalties and procedures forced by laws on the foreign investor when he violates the provisions of the obligations contained therein, and they are considered penalties of a special nature due to their diversity in terms of their gender. Because difference of these penalties vary from one case to another, as it starts from notice or warning and denial of benefits, exemptions and compensation for the damage resulting from his obligations violation, and finally up to the point of withdrawing the license or prevent from working. The position of the legislation also differs for the investment hosting countries in this regard.

The KRI Investment Law has decided in Article (9) that it is "First: when the investor violation the provisions of this law or one of the paragraphs of the contract concluded between him and the competent authorities, the Board shall warn the violator and request the immediate ending of the activity causing the occurrence of the violation and give him an appropriate period determined by the Board proportional with the kind of the violation to remove it along with its effects.

Second: In the case of if the investor insistence not to stop and not to remove the effects of the violation in line with the provisions of Paragraph (First) above, the land shall be recovered from him and the Authority shall acquire the facilities built by the investor on land (if any) with their due value to be taken out pursuant to the law, The new investor, to whom the land is allocated, shall bear the payment of this value to complete the project in line with the provisions of this law. The violator shall be responsible for any damage resulting from his failure to comply with his commitment.

It's obvious from this text that the KRI Investment Law permitted the Board of investment in KRI region to warn the foreign investor with a request to immediately stop the activity causing the violation in these two cases:

1- If it was proven that the foreign investor has violated the provisions of the Investment Law.

2- If it was proven that the foreign investor has violated one of the clauses of the contract concluded between him and the competent authorities.

Furthermore, in both cases, the Authority can request immediate suspension of the activity that caused the violation to happen, through given the foreign investor a period suitable to the nature of the violation, so that the investor can remove that violation and its consequences.

Also, the violation may be partial; therefore the investment activity suspension request pertains to that part and does not affect the rest of the activity for the same project.

In the event that the foreign investor insists on not stopping and/or removing the effects of the violation, during the period his allowed to by the Board of Investment, the following will result:

A- The land granted to him by the competent authorities shall be recovered, and in the event that the facilities are built on the land(s) by the investor, then the Board shall take possession of those facilities, and their value is due to be extracted in line with the law. If this land is be reallocated to a new investor for the purpose of completing the project, then the new investor shall

bear the payment of the value of the facilities to the investor whom land is recovered from.

B - The violator, foreign investor, shall be held responsible for the damages resulting from his failure to do his obligations.

It can be noted from this, that these penalties are mandated by the Commission to the foreign investor not only when he violates the provisions of the Investment Law, rather they are also the terms of the contract. The intention from the violating investor bearing liability of the damages is that it's the latter's responsibility to compensate for the damages that resulted from his violation, regardless of who is entitled to this compensation because of the damage suffered from, not only the state. In other words, the party who is eligible to compensation may be some other person, whether he is contracting with this investor or not, nonetheless he was hurt by that investor's violation. The legislator did not specify a mechanism for how to assess the compensation, nor how the competent authority to start to diagnose the violation or judge the investor as a violator, nor the competent authority to estimate and impose compensation on the violator. In answer this; it is necessary to refer to the general rules in this field.

Bearing in mind the importance of the land and its economic value, the allocation of which to the investor is one of the most attractive incentives provided to him, Article (9), referred to earlier, has put special penalties on the foreign investor when he misuses this land as paragraph (third) stipulates that "If the investor leases the allocated land for his project wholly or partially or uses it for purposes other than those for which it was allocated and without the approval of the Board, then the land or the leased or exploited part shall be recovered from him for other than the specified purpose. Then, the investor shall pay double the wage for the period of renting the land or using it for purposes other than those designated for it. The amount is collected in line with the provisions of the government debt collection law effective in the region. In the event that the land is fully recovered from it, the violating investor shall be treated according to the provisions of Paragraph (Second)

above, in which it relates to the facilities built on the land at the time of recovery.

Therefore, cases of misuse of land are understood as follows:

A- If it becomes evident to the Board that the investor has leased foreigner the land allocated for his project in whole or in part.

B - If the foreign investor exploits the land allocated to him for other purposes than for which it was allocated without the approval of the Board.

If one of these two cases is realized, the land to be recovered from him and the investor is forced to pay double the wage for the period of delaying the land or using it for purposes other than those designated for. The amount is collected pursuant to the provisions of the government debt collection law in forced in the region. In the event if the land was recovered from him, the competent party shall acquire the facilities built on the land at the value it's to be extracted. The new investor whom land is allocated for to complete the project, shall pay the value of these facilities. The violating investor is also responsible for any damage subsequent to violation. If the foreign investor subleases part of the land allocated to him, then he recovers that part from the sublease, and not the whole land. The same is true in the case of exploiting part of the land for purposes other than for which it is intended.

As for the Iraqi legislator, it is in line with Article 2 of the effective investment law. It has stipulated that in the event if the investor violates any of the provisions mentioned in this law, the authority may notify the investor in writing to remove the violation within a specified period; and in the event that the investor does not comply to the content of the notification within the specified period, the Commission shall invite the investor or his representative to clarify his situation and give him another time to settle the matter. When the violation reoccurs or not remove it, the authority may withdraw the investor's license that it has issued and halt work on the project while the state retains its right to deprive the investor, from the date of the violation, of the exemptions and privileges that were granted to him. While others retain the right to claim compensation for damage resulted from this

violation and without prejudice to any penalties or other compensation provided for by the laws in force. "

It is crystal clear from this that the law permits the Investment Authority to impose sanctions on the foreign investor or to take a set of measures against him when he violates the conditions stipulated in the Investment Law. These penalties or procedures are first to warn him in writing for the purpose of removing the violation within a period defined by the Commission. In the case that he does not eliminate the violation during that period, the Commission shall invite the investor or his legal representative to explain his position and give him another time to settle the matter. When the violation is recurring or not taken away, the Commission may withdraw the investor's license issued by and stop work on the project while the state retains its right to deprive the investor, from the date of the violation, of the exemptions and privileges that were granted to him. This does not affect the works carried out by him before the violation. If the violation caused damage to others, the latter retains the right to claim compensation for the damage considering that the Investment Law does not prevent the application of other penalties stipulated in the laws in force.

After we presented the standpoint of both the Kurdish and the Iraqi federal laws, regarding the penalty for the foreign investor breaking his legal obligations, we have shown, through a comparison between them, the following:

A- The Iraqi legislator sometimes referred to withdrawal of the license for the violating investor, while the KRI law did not touch on this procedure or penalty.

B- That the Iraqi legislator did not make any reference to whether or not the land is to be withdrawn from the investor as one of the penalties imposed on the violating investor. It seems that this comes in line with the position of this legislator about giving ownership of land(s) to foreign investors, since he - as we have already mentioned that - has not explicitly decided to give the ownership of the lands to the foreign investor. Instead of the term ownership,

vague terms are used, such as (allocation) or (the investor's right to keep the land).

C- the Iraqi legislator gave the investor, in Article (10) and within the privileges of the investor, in the field of housing projects the right to keep the land provided that he does not speculate with it. Whereas neither this article nor the aforementioned Article (2) did not address the penalty for a foreign investor's breach of his obligation for not to speculate the land.

D- The Iraqi legislator - unlike KRI - did not address the fate of the buildings and establishments that the investor had built upon withdrawing the license from him, which is a shortage that needs to be avoided.

What regards the position of the Jordanian legislator; he did not put aside the issue of the foreign investor's breach of the obligations imposed on him. Rather, he dealt with them differently from both the KRI Investment and the Iraqi Investment Laws. Paragraph (B) of Article (14) of the law specified that if the investor fails to implement any of his obligations as stipulated in Paragraph (A) of the same Article, then the committee shall establish[281] to issue him a warning

In order to implement the obligation during the period the warning specified, and if he does not do that during that period, he shall be punished with a fine

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[281] Article 7 of the Jordanian Law states that "

A- A committee shall be formed in the Investment Promotion Corporation, called the (Investment Incentives Committee), headed by the Executive Director of the Authority and the membership of each of:

1. Executive Director of the Investment Promotion Corporation as Vice President.
2. Executive Director of the Jordan Enterprise Development Corporation.
3. Director General of the Income Tax Department.
4. Director General of the Customs Department.
5. A representative of Ministry of Planning named by its minister.
6. A representative of the private sector appointed by the Council of Ministers upon the recommendation of the Minister.

B. The committee shall appoint from among the employees of the Investment Promotion Corporation a secretary to organize and keep its records, it, and record its decisions and sign them by the chairman of the meeting and the attending members."

not exceeding five hundred dinars, and if the violation is reoccurs, he shall be penalized with a fine of one thousand dinars.

It is obvious from the position of the Jordanian legislator that he placed a fine penalty on the foreign investor when he violates the obligations stipulated in the Investment Law, and that the party authorized to impose the fine is the Investment Incentives Committee, provided that the amount of the fine does not exceed five hundred dinars, and when the violation is repetitive, the violating investor is penalized with a fine of one thousand Dinar.

The position of the Jordanian legislator in this regard is criticized by us for the reason that it did not state the license is to be withdrawn from the foreign investor when he repeatedly violates the obligations imposed under the law or did not remove the violation. Imposing a fine with those small amounts are not enough to prevent the foreign investor from violating the provisions of the Investment Law. It seems that the introduced procedures by both the investment laws in KRI and Iraq are far better and more effective.

In the same context, the Egyptian legislator went to where Article 63 [282] referred from the Egyptian Investment Guarantees and Incentives Law states that in the event that the investor violates any of the provisions of laws, regulations and decisions, the administrative authorities may warn him to remove the causes of that violation within a period determined by the warning in light of the size and nature of the violation. The legislature requires informing the General Investment Authority and the free zones about the violation and the period determined in the warning. If that period passed without removing reasons for the violation, the Board of Directors of the General Investment Authority has the right to issue a reasoned decision to suspend the project's activity[283].

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[282] This article has been added to the Egyptian Investment Guarantees and Incentives Law pursuant to Law No. 13 for 2004 issued on 21/3/2004 to amend some provisions of the Investment Guarantees and Incentives Law No. 8 for 1997.

[283] The Investor, Rajab Abdel-Hakim Salim, previous source, p.999.

It is apparent from that that the Egyptian legislator entrusted the administrative authorities with the power to issue a warning to the foreign investor in case if he violates. As for the power to impose a penalty on the investor by suspending the investment project, it is assigned to the Investment Authority. This indicates that when the investor undertakes his investment project, there are other administrative bodies that have the power to follow up on the completion of the investment project.

In addition, Article (40) from the Executive Regulations of the Egyptian Law on Guarantees and Incentives authorizes the Board of Directors of the Authority in addition to the penalties prescribed in the text of Article (63) of the Egyptian Investment Guarantees and Incentives Law to sign penalties that differ in nature from the aforementioned penalties. The penalties are[284] :

1- Stopping projects from enjoying guarantees and incentives.

2- Shortening the duration of the project enjoying guarantees and incentives.

On the other hand, Article (27), from the Executive Regulations of the Investment Guarantees and Incentives Law, has permitted the principle of administrative recovery of the lands allocated for free, in the event that the investor (company, establishments) violates the terms of the allocation. Whereas this article requires the decision of recovery to be issued through administrative methods via a decision of the Council of Ministers based on a proposal from the Chairman of the General Investment and Free Zones Authority[285].

4.2.2.2. Second Branch: Objection against Penalties Imposed on Foreign Investor

It should be noted from the position of the aforesaid legislation - apart from for the Egyptian - concerning the issue that the authority to adopt procedures and put sanctions is entrusted to investment agencies or institutions without

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[284] See the investor, Rajab Abdul-Hakim Salim, previous source, p. 1001.

[285] The Investor, Rajab Abdel-Hakim Salim, previous source, p. 537. As well as Dr. Awad-Allah Shaybah Al-Hamad Al-Sayed, previous source, p.307.

stipulating or the legislature to lay down guarantees for the foreign investor to object to these sanctions. This negatively affects the legal position of the foreign investor.

It is also noted that the Egyptian law authorized the foreign investor to complain against the decision to suspend the project issued by the Board of Directors of the General Investment Authority, in front of one of the committees that are formed in the Authority and its branches. The objection will be within ten days from the date of receiving the suspension decision notification. This results in suspending the implementation of the decision except for violations which threaten the public health or the security of citizens. The legislator required the committee to issue a decision, within seven days from the date of submitting the objection, to implement the decision appealed against - that is, to stop the project activity - or to continue to temporarily suspend its implementation until the objection is finally decided upon.

The formation of the committees and the system of their work shall be issued by a decision of the Prime Minister, provided that they are headed by an investor from the State Council and the complainant (the investor) or his representative shall participate in its membership, and a representative of the party from which the complaint is issued (the issuer of the decision) and the decision issued by the committee shall be enforceable and binding on all government agencies without prejudice to the right of the complainant to resort to the judiciary.

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(1) Article 63 of the Egyptian Investment Guarantees and Incentives Law. This approach has been adopted by Sharia in both

From Libya, Kuwait, Saudi Arabia and Yemen. See Article (20) of the Libyan Investment Law No. (5) of the year 1426 AH, Article (15) of the Kuwaiti Enlightenment Law: Article (12/4) of the Saudi Foreign Investment Regulation for the year 2000.

The legislator also empowered the Prime Minister with the authority to form committees and define their working system, provided that they are headed by investors from the State Council.

It's worth mentioning here that the objection decided in this context is an optional and not compulsory one. In other words, the investor can resort directly to the judiciary without accessing the objection path. Therefore, there is no disadvantage to him, and the court does not rule that his case is not accepted due to the lack of a precedent for the objection against the decision[286].

What can be seen from the approach the Egyptian legislator adopted is that it is a fair one to a large extent, as it is on one hand made the head of the bodies competent to consider complaint an advisor "as a judge", which constitutes an important guarantee, on top of that he did not turn the objection into compulsory; and did not make the decisions of the body that examines the objection as conclusive. However, the way to resort to court remains guaranteed to the investor.

As for the position of each one of KRI Investment Law, the Iraqi Federal Investment Law and the Jordanian Investment Law, they did not address this issue. It is a legislative deficiency that must be avoided by identifying specific bodies to consider objections and complaints to decisions issued by the bodies supervising investment against the right of investors, provided that the right to recourse to court after this remains guaranteed.

Therefore, we call on the Iraqi legislator to interfere and set up a suitable mechanism that includes a period of objection with specifying a party to object or grievance in front of. So that the foreign investor can object to the penal decisions taken by the authority against the foreign investor. As is the case with some legislation of other countries.

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[286] Counselor Rajab Abdel-Hakim Salim, the previous source, p. 1000

In the absence of that, it can be said that the decisions of investment agencies are administrative decisions. Therefore, an objection against it is received by the competent administrative authority, and this is stipulated in Article (7 / Second / F) of the Second Amendment to the State Council Law No. 109 for 1989 in Iraq that "it is required before submitting the appeal in front of the Administrative Court that the appellant must file a complaint at the competent administrative authority, which has to decide on the complaint according to the law, within thirty days from the date of registering the complaint therein, and when the complaint is not decided or rejected, the Administrative Court registers the appeal it has after the legal fee has been collected[287].

In order for a complaint to take place this way, certain conditions must be met, which are[288]:

1- That the request be submitted by the concerned person, the "foreign investor" who is affected by the decision appealed against, in his legal position or his representative,

2- That the complaint be directed to the authority that issued the decision or to a higher body. Or to a committee specialized in looking into the objection, and the objection is filed with the administrative committees.

3- The objection against the decision must be feasible, that is, the administration to which the objection is submitted should be able to amend,

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[287] In this regard, the Administrative Judiciary Court ruled in its decision 2005/26: "When considering the merits of the case, it was noticed that the plaintiff did not complain about the administrative decision that included the withdrawal of the plot of land from it. From the provision to file lawsuit at the Administrative Court is for the plaintiff to complainant at the administrative body that issued the administrative decision that is the subject of the lawsuit, and since the plaintiff did not complain about the contested decision ... he must decide to dismiss the plaintiff's case in form.
This was indicated by Dr. Mazen Lilo Radhi, Administrative Judiciary, Lectures Given to Students of Higher Education / Masters in the Faculty of Law, University of Duhok, 2008-2009. Unpublished Authorized Reference, p. 105.

[288] Quoted from Dr. Mazen Layali Radi, previous source, pp. 106-109.

cancel or withdraw the decision, so it is not permissible to object to the decision preventing the law from grieving it.

4- That the objection be clear and indicative of the contested decision, and that the complainant must show it is desires to cancel, withdraw or amend the decision appealed against, and indicate the deficiencies attached to this decision. But if the objection wording did not include a call to the administration to reverse the decision by simply requesting compassion and sympathy from the competent administrative authority, then this not an objection and does not lead to cutting the date of the cancellation lawsuit.

5- If the objection is based on a final administrative decision that was actually issued, it is not permissible to complaint against the preparatory work that precedes the issuance of the decision or against the non-final administrative decision.

CHAPTER THREE
Disputes Settlement between Foreign Investor and the State*

As the preceding chapters stated that the investment hosting countries are keen to promote and protect foreign consultations through specifying the rights and obligations of the foreign investor in terms of scope and content, in line with relevant legal rules. However, the practical reality may sometimes lead to disputes between the foreign investor and the country in which the foreign investor setup his investment activity in what concerns the accurately interpretation and definition of the rights and obligations content of any of the parties towards the other one.

The basic problem that usually preoccupies the foreign investor is not only specifying his rights and obligations in clear legal texts, but also the extent to which he is able to have these rights. So, he is also interested in finding neutral and effective legal bodies that he can resort to resolve disputes that may arise between him and the investment polarizing country; as these disputes are characterized by their own nature coming from the legal status differences of the parties in dispute. One of them is a state with sovereignty and the other - the foreign investor- is usually a natural or a private juridical person[289]. It would be very useful from the foreign investor's point of view if investment legislation includes practical tools to ensure respect for its rules and settle implementation related disputes without delay or complication, through a device that the foreign investor trusts in its neutrality[290].

Accordingly, it can be said that studying the legal status of a foreign investor within the scope of investment legislation has no feasibility unless these legislations include legal provisions or texts that give the foreign investor

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* What is meant by the State here is the state represented by its administrative bodies that supervise the investment.

[289] Dr. Duraid Mahmoud al-Samarrai, previous source, p. 309.

[290] Dr. Ahmed Sharaf Al-Din, previous source, p. 101.

legal procedural guarantees that ensure dispute settlement between him and the country hosting the investment.

The common methods used in investment disputes settlement as non-judicial, judicial means and arbitration, and we devoted to each one of these means, respectively, a separate study.

5.1. First Topic: Non-judicial methods for Settling Investment Disputes Friendly Settlement

Numerous national legislations and international investment agreements[291] have statement to resolve investment disputes between the foreign investor and the host country by amicable methods represented in negotiations and conciliation first before referring them or raising them to the judiciary or arbitration; as it is better to have an opportunity as much as possible to settle them early and in an amicable manner[292]. Realistically speaking, the amicable ways or means of settling disputes are through negotiations and conciliation.

Based on the foregoing, we will divide this topic into three requirements, the first one of which is devoted to the legislation position on the friendly settlement, the second is to its forms, and the third one to which we will discuss estimation and evaluation of this method.

5.1.1. First Requirement: Legislation Position on the Investment Disputes Friendly Settlement

Investment legislation varies based on the extent to which this method is explicitly approved or not. The legislator has adopted the KRI Investment Law in this method and took it as one of the ways of resolving investment disputes, as Article (17) of it stipulates that “Investment disputes are resolved according to the contract signed between the two parties, and when there is

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[291] For example, the Agreement on the Promotion and Protection of Reciprocal Investments between Kuwait and Egypt for 2001, where Article 10 of it refers to the settlement of disputes between the contracting state and an investor of the other contracting state in relation to an investment belonging to the latter in the territory of the first mentioned state, to be settled as much as possible by amicable methods. The text of the agreement is accessible at the website: http://www.arblaws.com/board/archive/index.php/t-4744.html

[292] Dr. Fadel Hama Salih Al-Zahawi, previous source, p. 490.

no paragraph therein in this regard, it is resolved in a friendly manner and with the mutual consent of the two parties ...".

It is clear from this text that the KRI Region Investment Law allows the parties to settle investment disputes in an amicable way and with the mutual agreement of both parties, as there is no clause in the contract requiring resolving the dispute(s) by other means. This implies that the first method of resolving such disputes under KRI law is that which the parties to the contract have agreed to, whether it is arbitration or resorting to the ordinary judiciary. However, what is observable from this text is that the legislator has tried to deal with the disputes that arise between the foreign investor and the parties contracting with the state. However, the parties that deal with the foreign investor are usually not one party, namely it is only the parties contracting with him, but there are other bodies such as the Board of Investment. It seems that the legislator here excluded the disputes that take place between the investor and the Board of Investment from the scope of the above-mentioned Article (17) text, and was satisfied with resolving them though methods mentioned in Chapter Five of the Law, which we previously discussed in the Second Topic of Chapter Two.

As for the Iraqi Federal Investment Law, it did not touch upon the good-natured ways of settling investment disputes explicitly or directly. However, it allowed the parties in dispute to agree on the approaches of settling this dispute, as Article (27) of the said law stipulates that “disputes arising between the parties subject to the provisions of this law the Iraqi law applies to them, unless they agree otherwise, except in cases that are exclusively subject to the provisions of Iraqi law or where the jurisdiction if for the Iraqi courts”.

Paragraph[293] of the same article also states that, "If the parties in the conflict are non-Iraqis and other than disputes resulting from a crime, the disputants may agree on the applicable law and the competent court or any other agreement to resolve the dispute between them."

As for Paragraph (4) of the same article, it states that “if one of the parties in dispute is subject to the provisions of this law, they may, upon contracting, agree on a dispute resolving mechanism, including resorting to arbitration in line with the Iraqi law or any other internationally recognized body.”

It is clear, from all that’s said above, that the Iraqi legislator did not explicitly refer to good-natured means of resolving investment disputes. Rather indirectly authorized that when he allowed the parties of the conflict to agree on a method or mechanism to resolve it. It is a common sense that an amicable solution is one of those mechanisms.

It seems from the conditions that the Iraqi legislator has presented that its way of treating with the issue of resolving investment disputes was in several aspects different from that of the KRI legislator, which can be briefed as follows: -

1- The Iraqi legislator has probed into the details of the investment dispute forms and referred to the disputes stemming from the employment contract[5] disputes involving non-Iraqi parties[294], and disputes in which one of the parties is an Iraqi[295]. and disputes in which the Investment Authority is a party ... etc. Meanwhile, the KRI legislator did not mention such forms rather he briefed them in one phrase which is ‘Advisory Disputes”.

2- The Iraqi legislator has placed restrictions on the freedom of the conflict parties to find a mechanism to resolve it. In other cases, such a scope was not opened to them in the first place. Therefore, some of the disputes were compulsorily subject to the jurisdiction of the Iraqi judiciary - as we will see when talking about judicial instrument. While the KRI legislator did not put such restrictions.

No paragraph or text has been referred in the Jordanian Investment Law pertaining to resolving investment disputes through friendly ways between the foreign investor and the country hosting investment. Whereas Article (20)

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[5] Article (1/27) from the Iraqi Investment Law.
[294] Article (2/27) from the Iraqi Investment Law.
[295] Article (4?27) from the Iraqi Investment Law.

demands observance of international agreements related to the investment disputes settlement connected to the application of the Jordanian Investment Law provisions, in which the Kingdom of Jordan is a party, or joined to[296].

However, according to the Jordanian Investment Law [297] - canceled - investment disputes between the foreign investor and Jordanian government institutions are settled in a friendly way. If the dispute is not fixed within a period not exceeding six months, then both parties have the right to resort to the judiciary or refer the dispute to the Investment Disputes Settlement International Center[298], where Jordan ratified the membership agreement to join this center in 1972[299]. In Egypt, the Egyptian Investment Law[300] has permitted settlement of investment disputes related to the Investment Law application provisions, through agreement with the foreign investor for the sake of establishing a mechanism for settling the dispute. Agreement is also acceptable between the parties concerned to settle these disputes within the framework of the agreements in force between the Arab Republic of Egypt and the state of the investor[301] or within the framework of the agreement for settling disputes arising from investments between countries and between

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[296] See, for example, Article (1/6) from the bilateral agreement between the government of the Hashemite Kingdom of Jordan and the Republic of Sudan to Mutual Investments Promote and Protection - referred to above - which allows for disputes settlement in amicable ways between the contracting state and an investor of the other state. It is also known that the Agreement on Investment Disputes Settlement in the Arab Countries issued by the Council of Arab Unity and ratified by the Kingdom of Jordan, regulates the provisions for investment disputes settlement through conciliation.

[297] Refers to the Investment Promotion Law No. (11) for 1995, and its amendments for 2000.

[298] (3) We mean the International Center for Settlement of Investment Disputes (ICSID), which was established in accordance with the Washington agreement the year 1965

[299] This was referred to by Prof. Muhammad Waheeb Jamal Al-Alamy, Determinants of Foreign Direct Investment in Jordan, research presented to the Conference on Investment, Finance and Foreign Direct Investment (FDI) and published in the Journal of Foreign Direct Financing, issued by the Arab Administrative Development Organization, Cairo 2006, p. 16.

[300] Article (7) from Egyptian Investment Law.

[301] See, for example, Article 10 from the 2001 Agreement on Promotion and Protection of Mutual Consultations between Kuwait and Egypt - referred to earlier, which decides to settle disputes that arise between the contracting state and an investor of the other contracting state in relation to an investment belonging to the latter in the territory of the first mentioned state. Its settlement is, as far as possible, to be through friendly methods.

nationals of other countries to which the Arab Republic of Egypt joined by Law No. 90 for 1971 - Under the terms and conditions, and in cases in which those agreements apply.

In addition, the Egyptian Investment Guarantees and Incentives Law required formation of a committee in the Investment Authority, headed by a judge with at least an advisor position and appointed pursuant to provisions of the Judicial Authority Law and a membership of such as the Federation of Investor Activities, and a representative of the commission. The committee starts settlement efforts at the investor's request, and issues its recommendations about the dispute after calling its parties and hearing their statements. If one of the parties in the dispute does not accept the committee's recommendation, the dispute shall be submitted to the ministerial committee states in Article (66) of this Law [302]. The rules, procedures and work system from settlement committee shall be issued by a decision from the Commissions' Chairman.

5.1.2. Investment Disputes Settlement Friendly Method Forms

Conciliation and negotiation are forms of common friendly methods used to settle investment disputes. We will allocate to each of them a separate branch as follows:

5.1.2.1. First Branch: Negotiations

To discuss the dispute between the foreign investor and the other party from the investment hosting country, is meant to seek to settle it and put an end to the dispute through negotiation and direct contact between the two conflicting parties targeting settlement of the dispute arose between them.

Negotiations are among the oldest, most common, and least detailed ways of settling disputes.

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[302] Article (66) of it stipulates that "the Prime Minister issues a decision to form a ministerial committee to look into it. Investors' complaints and disputes with administrative authorities shall be submitted or referred to the ministerial committee. Committee Decisions are enforceable and binding on the administrative authorities after approval from Council of Ministers, without prejudice to the right to resort to the courts. "

The jurisprudence believes that any dispute, no matter how serious it is, can be discussed and find appropriate solutions for it through negotiation or dialogue[303]. Provided that a minimum legal equality is available between the two negotiating parties, otherwise the result of the negotiations will be the reflection of the strong party's control over the weak one[304].

The negotiations are characterized by flexibility and contribute to narrowing the dispute between the conflicting parties[305], in addition to finding disputes quick-fixing solutions compared to other mechanisms[306]. Therefore, most investment contracts demand exhausting this method before resorting to other techniques.

At the end, negotiations may lead to a positive or negative outcome. If they were positive, they would result in the parties reaching a full or partial solution to the dispute between them. If the result was negative, the dispute will remain[307]. Resorting to the negotiation method does not establish an alternative or a hindrance to search for other methods, such as arbitration or the judiciary, whenever those negotiations become unsuccessful to resolve the dispute.

5.1.2.2. Second Branch: Conciliation *

Conciliation is defined as an instrument for settling investment disputes by ways of which the party in the dispute has resorted to a neutral body in

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[303] Quoted from Dr. Fadel Hama Al-Zahawi, previous source, p. 490.

[304] Dr. Duraid Mahmoud Al-Samarrai, Foreign Investment, Legal Obstacles and Guarantees, previous source, p. 312.

[305] Same source.

[306] Professor Ross P Buckley & Paul Blyschak, Guarding the Open Door: Non-party Participation Before The International Center for Settlement of Investment Disputes, 2007, p12. www.ssrn.com

[307] Dr. Ahmad Abu Al-Wafa, previous source, p. 648.

* Article (3/1) from the Model Law of the United Nations Commission on International Trade Law for International Commercial Conciliation for (2002), states that "for the purposes of this law, the term" conciliation "means any process, whether referred to by the term conciliation, mediation, or another term relevant to a similar connotation, in which the two parties request another person or persons ("the conciliator") to assist them in their endeavor to reach a friendly settlement to their dispute arising out of a contractual or other legal relationship or related to that relationship. The conciliator shall not have the power to impose a solution to the dispute on the parties. "

charge of determining the facts and proposing basics for the settlement of the dispute that can be satisfied by both parties[308]. It is also known as a friendly way to settle disputes that arise between the parties, based on the test of a gentile to do a conciliation (conciliator) to find a solution to the conflict through bringing together the different points of view without expanding his role to propose a solution agreed by both of them[309].

The conciliator - a neutral body - always attempts during conciliation procedures, via prior agreement with the parties, to present the best aspects to reconcile between them. Then, begins to reconcile the different viewpoints of the opposing positions[310]. Naturally, he does not have the power to force a solution on the two parties in the dispute; otherwise he will become an arbitrator.

The conciliator takes forward the conciliation process based to what he deems appropriate, guided by the principles of neutrality, justice and fairness[311]. The conciliation committee or conciliator explains the points in dispute after hearing the disputing parties and gathering all the necessary facts; and then presents the terms of the settlement which the committee sees appropriate and not unfair [312]. If the conciliation procedures are successful, the settlement agreement shall be recorded in the reconciliation report signed by the parties and by the conciliator[313].

There are two basic patterns or forms of the conciliation procedures, which are[314]:

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[308] Dr. Duraid Mahmoud Al-Samarrai, Foreign Investment, Legal Obstacles and Guarantees, previous source, p313.

[309] Dr. Muhammad Ibrahim Moussa, Al-Tawfiq International Commercial, New University House, Alexandria 2005 p. 23.

[310] Dr. Bashar Muhammed Al-Asaad, previous source, p 318.

[311] Same source.

[312] Dr. Ahmed Abu Al-Wafa, previous source, pp. 662-663.

[313] See Article (12/2) from the United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules for 1980.

[314] Dr. Bashar Muhammad Al-Asaad, previous source, p.319.

1- Private conciliation: It is basically a process that is organized and managed according to what the parties themselves determine without the help from any other institution. The conciliation rules adopted by the United Nations Commission on Trade Law (UNCITRAL) for the year 1980 are an addition to the UNCITRAL Arbitration Rules of 1974 a good example of the rules of private conciliation.

2- Institutional Conciliation: This pattern is characterized by being organized through one of the specialized institutions or centers, which are often institutions or arbitration centers. Examples of this type of conciliation are the Conciliation Rules of the International Center for Settlement of Investment Disputes, and the Conciliation Rules of the Center for Mediation and Reconciliation of the Cairo Regional Center for International Commercial Arbitration.

As a general rule, the decision of conciliation commission is not binding[315]. Meaning that the parties of the conflict are free to accept or reject them. At the end, the issue depends on the will and consent of the parties[316]; since all the proposals and solutions presented by the conciliator must, for their entry into actual application, have the approval of the parties in the conflict[317].

When the conciliation actions fail to reach to a conclusion, the parties can agree to refer the case to a state's courts or arbitration tribunals[318], with unacceptability to use any proposals or opinions expressed or offers made during the conciliation proceedings[319].

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[315] Dr. Dureid Mahmoud al-Samarrai, previous source, p. 213; As well as Dr. Muhammad Ibrahim Musa, previous sources, p. 38.

[316] Disputes Settlement, ICSID, 2,2 Selecting the Appropriate Forum, UNCTAD, UN, New York and Geneva, 2003, p14 (www.unctad.org).

[317] Dr. Ahmed Abu Al-Wafa, previous source, p. 659

[318] See Article (16) of the Committee Conciliation Rules United Nations International Trade Law (UNCITRAL) for 1980

[319] See Article (35) of the Agreement of Establishing the International Center for Settlement of Investment Disputes, which states: "Unless agreed otherwise, neither party may, on the occasion of any other measures taken before an arbitration or judicial body, or in any other way, rely on the

Moreover, the conciliator may not be appointed as an arbitrator in the same case when he has failed in the conciliation process[320].

For example, the actions for settling a dispute through conciliation starts with a written request submitted by the party wishing to settle the dispute, as stipulated in Article (1/28) of the Washington Agreement establishing the International Center for Settlement of Investment Disputes. This request must have data connected to the identity of the disputing parties, the disputed subject(s), and evidence of their consent to submit their dispute for conciliation pursuant to the regulations stated in Article (2/28) of the same agreement. The request for conciliation is raised to the general secretary of the center, who examines the request, and if it appears to him, based on the data available to him, that the center is experienced to deliberate over the dispute, the request shall be registered. Even if there is doubt about the level of the center's competence; as in case of doubting that the center is considered competent. Nevertheless, if the General Secretary finds that the dispute is definitely is not within the center's jurisdiction, then only he refrains from recording the request based on Article (3 /28) of the said agreement. After registering the request and sending a copy of it to the other party, the General Secretary needs to take the necessary steps to initiate the procedures which is to form and appoint a conciliation committee and determine the conciliation procedures[321].

5.1.3. Third Requirement: Estimating Friendly Channels

Friendly channels play an important role in resolving the dispute between the foreign investor and the host country. As on one hand, it is concerned with the dispute and its causes more than its legal aspects. It also aims at

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opinions expressed or the statements or offers of settlement that were made by the other party during the failed reconciliation procedures, other than what was stated in the official record or the committee's recommendations.

[320] See Article(19) of the UNCITRAL Conciliation Rules for 1980.

[321] Dr. Abdullah Abdul-Karim Abdullah, previous source, 117. As well as Dr. Muhammad Ibrahim Moussa, previous source, p. 12 ff.

reaching to a quick settlement of the dispute, not binding on the parties without their consent, on the other hand[322].

In addition to that, the foreign investor usually favors alternative channels over the judicial settlement, because these alternative channels may take place through non-public procedures, i.e. they may be almost done in secret and not as is the case with the judicial settlement that is based on the principle of publicity. Also, foreign companies do not wish to inform or other countries or other competing companies know about the extent of compensation decided for the foreign investor's lawsuit", in addition to the slow procedures that are usually courts described by. Similarly, these methods will not waste the determination of the disputed parties regarding the proposed solutions. Rather, the solution is not imposed on the parties in the first place, as is the case with other approaches such as resorting to the judiciary or even arbitration.

Also, the United Nations General Assembly, through one of its decisions, realized and expressed the value of these approaches and the benefits they have for settling investment disputes between the foreign investor and the host country or one of its corporations[323].

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[322] Dr. Bashar Muhammad Al-Asaad, previous source, p. 324.

[323] Where it was stated in the preamble to the Model Law of the United Nations Commission on International Trade Law for International Commercial Conciliation "that the content of this resolution is ". The General Assembly of the United Nations, recognizing the value of international trade from the methods of settling commercial disputes in which the dispute is requested by another person. Or other persons assisting it in its endeavor to settle the dispute amicably. Noting that these methods of dispute settlement are referred to by terms such as conciliation and mediation and that such terms are increasingly used in international and domestic commercial transactions as an alternative to litigation, and considering that the use of these methods of dispute settlement yields benefits such as reducing the situations in which the conflict leads to the termination of the commercial relationship, facilitating the management of international transactions by the commercial parties; and achieving savings in the administration of justice on the part of states, convinced that the issuance of model legislation on these methods is acceptable to countries with their various legal, social and economic systems, would contribute to In establishing harmonious international economic relations, and noting with satisfaction that the United Nations Commission on International Trade Law has completed the law, now It is a model for and habitual international commercial conciliation, and is convinced that the Model Law will greatly assist states in strengthening their legislation governing the use of modern conciliation or mediation methods and

However, the mechanism of these methods depends exclusively on the consent of the parties, those who have complete freedom to implement recommendations and/or decisions or not that are issued by the conciliator. Therefore, these recommendations do not have the same excuses as the rulings of the courts or arbitration, and consequently they cannot be recognized as a judgment issued by those courts, which leads, according to some, to the inability of one of the parties to demand from the state courts to implement the advises of the conciliator or any other recommendations. It was agreed upon[324]. However, it seems to us that what has been agreed upon between the parties on the basis of the consent and then noted down on a paper signed by the parties in the dispute is considered a binding agreement in our discretion and can be relied upon and invoked before the courts. This agreement derives, its binding force, from the will and consent of the parties with it.

Generally, most investment laws are not unique to relying on friendly approaches to settle investment disputes, but rather they are merged with other methods. As they offer resorting to alternative approaches of resolving the dispute, and in the event of their failure, other ways such as courts and arbitration are resorted to[325].

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in developing such legislation, if it does not exist at all,. Also noting that the preparation of the Model Law has been subject to extensive deliberations and consultations with governments and the relevant departments, convinced that the model law and conciliation rules recommended by the General Assembly in its resolution 35/52 of 4th December 1980, contribute greatly to the development of a homogeneous legal framework for the settlement of disputes arising from international commercial relations in a fair and effective manner, and recommends that all states to give due attention to the enactment of the Model Law in light of the desirability of standardizing a procedure law for settling disputes and specific needs for practicing international commercial reconciliation".

Official Records of the General Assembly, Fifty-Seventh Session, Appendix No. 18 (A / 57/17), Annex First ... Resolution adopted by the General Assembly 2002 November 19th, General Session 52.

[324] Dr. Bashar Muhammad Al-Asaad, previous source, p. 324.

[325] See Article (Seventeen) of the applicable Kurdistan Investment Law, which states that investment disputes in accordance with the contract concluded between the two parties and when there is no clause in this regard in this regard are resolved in an amicable manner and with the mutual consent

5.2. Judiciary *

Given that foreign investment has a unusual nature and is connected to the national interests of the state on whose territory the investment activity is setup. Therefore, the investment hosting countries are eager to make their national judiciary a competent authority to settle the dispute arising between them and the foreign investor, unless there is an agreement to the contrary[326]. In general, comparative investment legislation differs from its standpoint on the issue of resorting to the national judiciary of the host country to resolve investment disputes. We will try, through the following two requirements, to review the positions of the legislations on this issue, and then evaluate this method for resolving disputes of investment.

5.2.1. First Requirement: Legislation's Position on Judicial Solutions for Investment Disputes

We mentioned earlier - that the positions of the legislations on this issue are not consistent. There are legislations that make opting to the judiciary the last

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of the two parties. In the event that an amicable solution is not possible, the parties may resort to arbitration. Its provisions are set out in the laws in force in the region or in accordance with the provisions of dispute settlement contained in any of the international or bilateral agreements to which Iraq is a party.

* That what is meant here is the national judiciary of the host country and not the international judiciary. As it is considered outside the framework of this study because the investment laws that are the subject of comparison in this study did not touch upon it as an approach of settling investment disputes. The international judiciary also does not have jurisdiction over disputes, unless its parties are from Persons of public international law, and this is what Article 1/34 from the Statute of the International Court of Justice affirms, which states that "only states have the right to be parties to the cases that are brought to the court." Whereas the parties to the investment relationship are usually not states, or at least one of them is usually a person of internal private law. Finally, researching international judgments is considered one of the issues of public international law.

[326] t is not possible and unrealistic to present the dispute to the national judiciary of the mother country with respect to the foreign investor or a third country, because it is inconsistent with the principle of the state's sovereignty and independence. So is suing the host country as a party to the dispute with the foreign investor before the judiciary of another country is a violation of its sovereignty and an infringement for its independent. For more details on that see: Disputes Settlement, ICSID, 2,2 Selecting the Appropriate Forum, Op.cit., p.10.

solution to settle investment disputes. While there are other legislations that make resorting to the judiciary in some investment disputes inevitable when there is no other room available for their resolution. We will try here to discuss the positions of some legislations towards this matter.

Under the KRI Investment Law, turning to the judiciary is considered the last solution to settle investment disputes. Rather, if we look at the text of Article (17), we find it free from any reference to the national judiciary, as this article states that “Investment disputes are resolved according to the contract concluded between the two parties”; when there is no clause in it in this regard, it is resolved in a friendly manner and with the mutual consent of the two parties. In the event that an amicable solution is not possible, the parties may resort to arbitration whose provisions are indicated in the laws in force in the region or according to the provisions of dispute settlement contained in any of the international or bilateral agreements to which Iraq is a party. It is clear from this text, in this article, that the KRI legislator did not refer to resorting to the national judiciary as one of the methods for resolving investment disputes. Therefore, it seems at first glance, that the judiciary in KRI do not have jurisdiction over such disputes. This result seems somewhat unacceptable. The matter is not like that at all, because even in light of this article, recourse to the judiciary remains a possible option in three cases; two of which are indirect and the other one is direct. As for the first indirect case, that is when the investment contract includes a clause stating that the settlement of disputes arising from it is within the jurisdiction of the national judiciary. While the second indirect case is achieved when any international or bilateral agreement benefits - Iraq, including a region KRI is a party to it - over the capability of national courts to settle investment disputes particular to such agreements[327].

[327] For example, the Investment Promotion and Protection Agreement between Iraq and Sudan for the year 1999, according to which Article (11) states that “the investor has the right to resort to the local judiciary in the country attracting investment in any of the following cases:

1- Failure of the parties to agree to resort to conciliation.

2- The conciliator was unable to issue his report within the specified period.

In all cases, any dispute that falls on the territories of Iraq, and the specific laws, methods and mechanisms for its resolution have not been specified, it shall be subject to the Iraqi judiciary, with a sense of general jurisdiction over the whole territory. In addition, Article (15) of the Iraqi Civil Law provides that a foreigner to be sued before Iraqi courts in the following cases:

1- If it is existing in Iraq.

2- If the lawsuit is related to a right related to a real estate or a present movable property located in Iraq at the time of filing the lawsuit.

3- If the subject matter of lawsuit was a contract that was concluded in Iraq or was due to be executed therein, or the litigation was about an incident that occurred in Iraq.

As for the Iraqi Federal Investment Law, it gave a significant and clear role to the Iraqi judiciary in resolving investment disputes; even made some of these disputes exclusively within the authority of this judiciary and no other methods. Upon examining Article (2) of the aforesaid law relating to settling investment disputes. We find that it puts, sometimes, making use of the Iraqi judiciary the last option in relation to other approaches. This is evident from Paragraph (4) of the said article which states that “if one of the parties in the dispute is subject to the provisions of this law they may, upon contracting, agree on a mechanism for resolving the dispute, including resorting to arbitration in line with Iraqi law or any other internationally recognized body”.

While in other cases, the Iraqi legislature does not permit anyone other than the Iraqi judiciary, a way to resolve disputes arising from investment. This is visible through paragraph (1) of Article (27) referred to, which states that disputes resulting from the employment contract are exclusively subject to the provisions of Iraqi law and the Iraqi courts have jurisdiction over them,

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3- Failure of the two parties to agree to accept the solutions proposed in the report of the conciliator.

4- Failure of the parties to agree to resort to arbitration

5- Non-issuance of the arbitral tribunal’s decision within the prescribed period without an acceptable reason.

with the exception of a non-Iraqi worker if the work contract stipulates otherwise.

While there are cases in which the Iraqi legislator has permitted recourse to the Iraqi judiciary; also in which resort has permitted arbitration, and this is understandable from Paragraph (5) of the above-mentioned article, which states that “disputes arising between the commission or any government agency and between any of those who are subject to the provisions of this law, in matters other than those related to the violation of one of the provisions of this law, shall be subject to the Iraqi law and courts in civil matters. As for commercial disputes, the parties may make use of arbitration, provided that this is stipulated in the contract that regulates the relationship between the parties.

The same may apply even to the text of the paragraph mentioned at the beginning of Article 27, which states that “disputes arising between the parties bound by the provisions of this law shall be subject to Iraqi law unless they agree otherwise, with exception to cases that are exclusively falling under the provisions of Iraqi law or in which the jurisdiction are for the Iraqi courts ".

In general, at this point it can be said that neither the position of Kurdish law, which seems to be a concession to the entire region jurisdiction, to a large extent, nor the position of Iraqi law, which subjected many disputes to the exclusive jurisdiction of Iraqi courts, were successful. As for the first one, which is we favor mostly is to give freedom, to some extent, to the conflicting parties to determine disputes resolving mechanisms, with a deadline for the using up those methods and mechanisms, after which the jurisdiction of the national judiciary host state shall assemble to consider such disputes.

To confirm this point of view, the Agreement for the Support and Protection of Consultations between Iraq and Yugoslavia in 2000, stipulates in Article 2/9, that “If the dispute is not settled by friendly manners within a period of six months, then either of the parties may refer the dispute to the competent courts of the contracting party that is party to the conflict".

The applied Jordanian investment law did not stipulate the jurisdiction of its national judiciary in settling investment disputes that arise between one of its managerial bodies and the foreign investor. However, Article (20) of that law requires the observance of international agreements related to investment, its protection and settlement of disputes related to it, in which the Kingdom of Jordan is a party or joined to it. There are agreements such as the bilateral agreement between the government of the Hashemite Kingdom of Jordan and the government of the United States of America on the promotion and mutual protection of investment, which stipulated that " (2) A citizen or a company that is a party to an investment dispute may submit the dispute to settlement under one of the following alternatives: - (A) To the courts or administrative councils of that party that is party in the dispute."

As regards the standpoint of the Egyptian Investment Guarantees and Incentives Law, we did not find a clear provision in which the authority to settle investment disputes is assigned to the Egyptian jurisdiction. Rather, it stipulated in Article (7) that investment disputes related to the applying provisions of this law may be settled in the way agreed upon with the investor ... "It seems from this, the Egyptian legislator has permitted the settlement of investment disputes in the manner agreed upon with the investor, and there is nothing to stop the two parties, the foreign investor and the administrative body, to agree to settle their dispute before the Egyptian judiciary.

5.2.2. Estimation of Resorting to Judiciary to Settle Investment Disputes

A part of the jurisprudence supports the jurisdiction determination of the internal judiciary in investment disputes between the foreign investor and the host country, based in their opinion that the judiciary is an aspect of sovereignty and one of its main aspects that do not accept concession or reconciliation, especially since the national law should be applicable when

there is no one more capable than the national judiciary to implement this law[328].

In addition, administration of justice and establishment of the right are considered part of the state's function signified by its judicial authority, regardless of the conflict nature and the nationality of the conflicting parties. If the state abandons this task for any reason, it come to view as incapable of performing this essential duty, which leads to prejudice to the sovereignty of the state[329].

In general, the independence, impartiality and integrity of the national judiciary and its ability to enforce its rulings on everyone's right is a prerequisite for providing the appropriate environment and conditions to protect and inspire the necessary investments to ensure sustainable economic and social development. The most prominent manifestation of these circumstances is to safeguard the issuance of impartial, fair and prompt judgments in investment disputes according to simplified and complexity-free procedures and based on clear and transparent laws[330].

However, the foreign investor's recourse to the national courts of the host country is not without difficulties, whether they are already in place, or if he does not trust the ability of this judiciary to do justice to him, which makes this method ineffective for him. So, he prefers to resort to international arbitration[331].

Consequently, another aspect of jurisprudence supports that it is agreed upon to resort to the national judiciary in the host country after the method most consistent with the requirements of its sovereignty. But then again, its

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[328] Referred to by Dr. Fadel Hama Salih Al-Zahawi, previous source, p. 493,

[329] Same source.

[330] A. Hanan Muhammad Al-Jarbi, Mechanisms for Settlement of Investment Disputes (a critical analysis study), research presented to the National Conference on Foreign Investment in Libya, Tripoli 2006, p.3. Accessible on the website of the Investment Promotion Authority in Libya: , www.libyainvestment.org.

[331] Dr. Muhammad Yunus Al-Sayegh, the previous source, p.

desire to encourage investment in its territory obliges it to take into account what is happening with the same investors with regard to the national judiciary in terms of its neutrality. Therefore, it is desirable, for this purpose, that investment legislation to establish the principle of permissibility to present investment disputes to arbitration bodies within the framework of what is agreed upon with the foreign investor or within the framework of the relevant International agreement[332].

Altogether, it can be said that the foreign investor does not favor to settle his dispute with the Investment Authority through the national judiciary of the investment hosting country, for the following reasons:

1- Doubt about the impartiality of the national judge in cases in which his state is a party in relation to a foreign party[333]. This is because state judges, regardless of their objectivity and impartiality, cannot get rid of the point of view of their countries, specifically when it comes to the national economy of the country to which they belong[334].

2- Slowness in the issuance of judgments, which results in the buildup of huge numbers of cases in the courts, which are not decided until after a long period of time to the extent that, sometimes, some judgments become useless.

3- National courts, especially in developing countries, lack the technical expertise necessary to settle foreign investment disputes, in addition to the lack of national courts specialization in commercial matters. Just as judges do not always have adequate training in resolving disputes of a technical and complex nature, such as contracts for the abusing natural resources and the transfer of technology and handing over the keys and other contracts you

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[332] Quoted from Dr. Ahmed Sharaf Al-Din, previous source, p. 101

[333] Disputes Settlement ICSID, 2,1 Overview, Op, cit., 2003. p.

[334] Dr. Bashar Muhammad Al-Asaad, previous source, p. 332.

require technical knowledge and legal expertise specialized in resolving its disputes, which is not available in the national judiciary[335].

4- In addition, the internal judicial settlement of investment disputes between the foreign investor and the host country may raise several difficulties, stemming from differences in the legal status of the disputed parties and the difficulty of getting full equality between them at the courts of the host country, which may lead to the disappointment from the internal courts of the host country to provide sufficient security to reassure the foreign investor through his lawsuit[336].

5- Also, it is not desirable for the host country to be both an opponent and an arbiter.

Therefore, the foreign investor is usually not comfortable with submitting the dispute to the national judiciary of the country in which the foreign investor conducts his activities, but rather he prefers to settle it by other methods such as arbitration.

In light of the foregoing, we emphasize that neither freeing the hand of the national judiciary alone in all investment disputes is a commendable matter, nor is it absolutely restricting the hand of this judiciary to such disputes is a beneficial one. Therefore, it seems that the interest lies in giving some room for the parties of the investment relationship for the actions of will to determine methods of resolving their disputes in this context, along with setting a deadline for that. So, if that time expires without a settlement, jurisdiction is automatically after that falls to the national judiciary of the investment hosting country, with reference to the need to turn disputes related to sovereign issues and the rights of citizens as individuals such as

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[335] Dr. Bashar Muhammad Al-Asaad, previous source, p. 333. And also Disputes Settlement ICSID, 2.1. Overview, Op.cit., P.7

[336] Dr. Fadel Hama Salih Al-Zahawi, previous source, p. 492.

national workers, specifically to the national judiciary, in explicit and clear manner.

5.3. Investment Arbitration

Whereas the incidence of investment disputes with the state or one of its agencies is a potential issue for any investor, whether national or foreign, it is necessary to take precautions to face such a dispute in the event it is raised; and to ensure the provision of neutral and effective means for settling it, that can result from investment agreements in proportion to Its special nature, which is consistent with its important to its parties, whether it's the state, one of its public bodies, or the foreign investor.

In light of the prevailing belief that the judicial organs in developing countries are not sufficiently independent in the face of political authority, and in the absence of national courts[337] that have knowledge of investment affairs in these countries, international arbitration has become a convincing and effective method from the viewpoint of the foreign investor to resolve and settle his disputes with the host countries[338].

In fact, there is a sense among many that arbitration does not embody real guarantees for the host state and that it is only a method to protect investors, guaranteeing them the implementation of international legal systems that do not take into account the country's special circumstances or its domestic laws. The acceptance of developing countries to resort to arbitration is based on their urgent need to obtain the capital required to make its development plans come true and not necessarily out of a conviction, on its part, of the appropriateness of arbitration to settle investment disputes[339].

We deal with arbitration in three requirements. We devote the first one to a concept statement of arbitration and its advantages, and the second one is

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[337] A. Prof. Ibrahim Ahmed Ibrahim, Arbitration and Development, p. 3.

[338] Dr. Umar Mashhour Haditha Al-Jazi, previous source, p. 3.

[339] Dr. Umar Mashhour Haditha Al-Jazi, previous source, p. 4.

the status of legislation on arbitration. As for the third or last requirement, we specified it to the types of arbitration.

5.3.1. First Requirement: Arbitration Concept and Advantages

Many years have been spent on this requirement, Concept of Arbitration and its most important Advantages, in two separate branches.

5.3.1.1. First Branch: Arbitration Concept

The Egyptian Arbitration Law No. 27 of 1994 indicated in Article 1/4 therein, that “the term (arbitration) in the provision of this law applies to the arbitration agreed upon by the party to the dispute out of its free will, whether the party undertakes the arbitration procedures by virtue of the two parties agreement, are an organization or a permanent center for arbitration or not.[340] Thus, no definition of arbitration included in any of the Jordanian Arbitration Law[341] and the relevant Iraqi laws[342]. The Egyptian Court of Cassation defined it in several provisions of its rulings, including It is: "An exceptional way to settle litigations, based on breaking out of the normal litigation methods and the guarantees it promises. Thus, it is definitely limited to what the arbitrators will attempt to present to the arbitration panel"[343].

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[340] Article (1/4) of the Egyptian Arbitration Law No. Accessible at the website: www.arablawinfo.com

[341] See the Jordanian Arbitration Law No. 31 of 2001, published on page 2821 of the Official Gazette No. 4496 dated 16/9/2001. Accessible at the website: www.arablawinfo.com

[342] There is no special law for arbitration in Iraq. Rather, the Iraqi legislator has regulated arbitration provisions within the Civil Procedures Law, in Chapter Two of that law and Articles 276-251.

It should be noted here that Article (1) of the Syrian Arbitration Law No. (4) of 2008 defines arbitration as: a legal, consensual method for resolving the dispute instead of the judiciary, whether the party that will undertake the arbitration actions under the agreement of the parties is an organization or a permanent center for arbitration, or not. Additionally, it defined commercial arbitration in the same article as "Commercial Arbitration: arbitration in which the subject matter of the dispute arises from a legal relationship of an economic, contractual or non-contractual nature."

[343] This definition was referred to by Dr. Muhannad Ahmad Al-Sanouri, The Role of Arbitrator in Special International Arbitration Dispute, 1st Edition, Culture Press House, Amman, 2005, pp. 35-36.

It is defined in an arbitration award as "the agreement to submit the dispute to a specific person or persons related to settle the dispute without the court having jurisdiction on it. According to the arbitration, litigants relinquish to resort to the judiciary with being committed to submit the dispute to one or more arbitrators in order to settle it through a binding judgment for the litigants."[344]

Also, it was stated in a judgment issued by the Jordanian Court of Cassation that: “Arbitration is an exceptional way to settle disputes and is limited to what the will of the two parties go to present to the arbitrator”[345].

In terms of international rules, the rules of the UNCITRAL Model Law on International Commercial Arbitration indicated that what is intended is any arbitration, whether or not it is undertaken by a permanent arbitration institution or not”[346].

In the legal juristic terminology, arbitration means: that it is a dispute settlement system whereby the parties to the conflict are empowered to decide on it to arbitrators they voluntarily choose them[347]. Or it is a "consensual way to settle disputes by which the dispute is goes out from the jurisdiction of the state’s judiciary, and it is entrusted to an individual or body to adjudicate it with a binding ruling for both parties.”[348]

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[344] This definition was referred to by Dr. Muhannad Ahmad Al-Sanouri, previous source, p. 36.

[345] This definition was referred to by Dr. Muhannad Ahmad Al-Sanouri, previous source, p. 37.

[346] Article (1/2) from rules of the UNCITRAL Model Law on International Commercial Arbitration for 1985 as amended in 2006. Accessible on the website: www.uncitral.org

[347] A. Prof. Muhammad Sami Al-Shawa, International Commercial Arbitration, The Most Important Alternative Solutions to Resolve Economic Disputes, Research presented to the Sixteenth Annual Conference (International Commercial Arbitration) The Most Important Alternative Solutions to Resolve Economic Disputes ", which was organized by the Faculty of Law - United Arab Emirates University from April 28-30 of 2000 at the Emirates Center for Strategic Studies and Research - Abu Dhabi, p. 15.

[348] Dr. Mohammed Al-Robi, Arbitration in Construction, Exploitation and Delivery Contracts. BOT, a paper presented to the Sixteenth Annual Conference on International Commercial Arbitration "The Most Important Alternative Solutions for Resolving Economic Disputes", which was organized by the

It is also known as a special technique of litigation based on an agreement whereby the parties entrust one or several persons with the task of resolving suspended disputes by issuing a binding judgment that enjoys the authenticity of the adjudicated matter[349].

It is also known as a special judicial system or an extraordinary way to settle litigations away from normal litigation. It is resorted to consistent with the parties' agreement to settle all or some of the disputes that arose or could arise between them with regard to a specific legal, contractual or non-contractual relationship[350].

In another definition, it is “a system for resolving and settling disputes away from the court of the judiciary that is organized by the state”[351].

So, it becomes clear from all that’s said above that arbitration is one of the methods of resolving disputes in general, and it is considered an exceptional one, given that originally the task of resolving disputes is the core of the authority of the relevant country judiciary, and recursion to this judiciary is the usual way to resolve disputes.

However, arbitration at the present-day time is considered an effective method, and its role is increasing day after day, to settle commercial disputes, especially if the parties belong to different legal systems, and perhaps this technique acquires another dimension and additional reputation in the field of investment disputes, assuming that its parties, in addition to the

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Faculty of Law - United Arab Emirates University from April 28 -30, 2008 at the Emirates Center For Strategic Studies and Research - Abu Dhabi, p.159.

[349] Dr. Bashar Muhammad Al-Asaad, previous source, p. 346.

[350] Dr. Muhammad Hassan Mansour, International Contracts, New University Press House, Alexandria, without a year of reprint, p.476.

[351] Dr. Ashraf Khafaji referred to this definition, The Role of the Judiciary and Arbitration in Settling Intellectual Property Rights disputes, a paper presented to the Forum for Investment in Information and Knowledge Architecture held in Cairo in December 2006, and published in the book of Investing in Information and Knowledge Architecture issued by the Organization of Arab Administrative Development, Cairo Conferences, 2007, p. 239.

above - are often unequal. So, if the host state agencies are in a better status politically, then the foreign investor is usually in a better position in terms of economics and knowledge, especially if it is a global institution or corporation that monopolizes expertise and technology in one of the vital areas.

5.3.1.2. Second Branch: Arbitration Advantages "Arbitration Discretion"

Arbitration is the primary procedure for settling investment disputes, with the ease, facilitation, simplicity and speed it achieves in resolving the dispute, away from the complexity and difficulty of litigation and the sluggish steps of litigation. Therefore, many countries have moved to organize their laws so that they include provisions that open the way to settle investment disputes with the foreign investor through arbitration[352].

There is no doubt that the provision of arbitration as a technique of resolving investment disputes includes many advantages. Therefore, foreign investor prefers arbitration as a method to settle disputes between him and the investment hosting country or one of its bodies. Among these advantages: -

1- Simplicity of Procedures: Arbitration is featured by the simplicity of procedures, as we find that the arbitral tribunal enjoys more freedom than the national judiciary in everything related with lawsuit procedures, such as notifications, conducting and organizing sessions, submitting data, contacting parties to the dispute, and so on. In all these matters and many others, moves away, as much as possible, from formal procedures that are often, in front of the courts, long and tedious, which are useless except to a verbatim adherence to the legal texts related to the procedures; at the expense of the subject and essence of the dispute? And because of the natural result of that, the arbitration decision is issued within a significantly shorter time if the dispute itself is presented to the judiciary[353].

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[352] Professor Dr. Ibrahim Ahmed Ibrahim, Arbitration and Development, p. 3.

[353] Dr. Hamza Haddad, Arbitration as an Alternative Method for Settling International Commercial Disputes, A working paper submitted to the “Lawyers of the Future” symposium held in Amman - Jordan during the period 3-7 October / 1998 in cooperation with the Bar Association in England and

2- The speed of dealing with disputes and putting an end to them in an appropriate time, as the arbitrator is usually an expert on the subject matter of the dispute and devoted to adjudicating it, which helps to settle the issue in the shortest possible time. As, the arbitration system is of single degree, so the judgment issued by the arbitrator is considered a final judgment and it is not permissible to appeal by any methods of appeal, nevertheless the dispute before the courts requires a lot of time and takes long and multiple procedures to resolve it[354].

3- Arbitration contributes to preserving secrets of the parties' transactions, especially commercial investment transactions. Thus, they are not able to reveal their professional secrets and not disclose their financial positions, in addition to the foreign investor, especially if the foreign company avoids defamation of its reputation right after it leaves a trial and has been find guilty for its products, for example, being of a poor quality, or it is not respected the dates or they are not faithful in paying the debts owed by them. Only the arbitrators chosen to hear the dispute can see them on time. Since, they may agree to make all or some of the arbitration sessions confidential, in addition to being a contributor to the protection of relations between the two parties, which leads to bring them closer and reach an understanding and a satisfactory solution[355].

4- This method gives the foreign party full confidence in the litigation process, especially in cases where the judicial authority in the country is still in a formative role[356].

Wales, the Arab Lawyers Union and the Jordanian Bar Association, p. 2. Accessible at the website: http://www.lac.com.jo/resear011.htm

[354] Dr. Bashar Muhammad Al-Asaad, previous source, pp. 350-351. As well as Dr. Muhammad Al-Ruby, previous source, p. 161. As well as Prof. Ashraf Al-Khafaji, previous source, p. 242.

[355] A. Kamal Ibrahim, International Commercial Arbitration, 1st Edition, Arab Thought Press House, Cairo, 1991, pp. 73-74. As well as Dr. Najdat Sabri Akrawi, previous source, p.293, As well as Dr. Muhammad al-Ruby, previous source, 161.

[356] Wasan Miqdad Abdullah, previous source, p. 1٧5.

5- In arbitration, the opponent and the arbitrator meet in one body, so that each party is completely reassured that his technical and legal point of view and his defense have fully reached to his opponent and his judgment[357].

6- The philosophy of arbitration is based on the principle of the freedom of the legal relationship parties to choose the techniques to settle their disputes by arbitration, the place of arbitration, the applicable law, and the role of the parties in the dispute; in that there are advantages of arbitration and confirms the increased demand for the foreign investor to resolve his dispute by arbitration. The parties or their representatives have the first and greatest opportunity to choose the arbitrators, either directly or indirectly. Such a situation gives the parties a kind of safety and psychological comfort that makes the parties feel legal stability, as the person partakes in choosing his judge who will hear the dispute. And it has an effective trace, whether in accepting the ruling or the way it's applied. This is in contrast to resorting to the national judiciary, as the court is made up of official judges in the country, and the parties have no role in assigning or appointing any of them. The foreign investor remains as a foreigner from that national judicial system. In this area as well, some of the arbitrators, if not all, are chosen from among those with competence and capability in relation to the contract subject of the dispute, especially in the so-called institutional arbitration[358].

7- Arbitration safeguards that the dispute is submitted to an arbitrator which is specialized in the type of activity to which the litigation is subject to

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[357] Same source.

[358] Dr. Hamza Haddad, previous source, p.3. As well as Prof. Hussein Al-Douri, Arbitration in International Trade Contracts, research delivered to the Symposium on International Trade Contracts Administration held in Cairo in September 2006, and published in the book of International Trade Contracts issued by the Arab Development Organization, p. 131. As well as Dr. Noor Hamad Al-Hajaya, The Law in which the Arbitral Dispute Governs, a paper presented to the sixteenth annual conference (International Commercial Arbitration) "The Most Important Alternative Solutions to Resolve Economic Disputes", which was organized by the Faculty of Law - United Arab Emirates University from April 28-30, 2008 at the Emirates Center for Strategic Studies and Research - Abu Dhabi, p. 653.

arbitration, especially in subtle technical and scientific issues, which are difficult for the ordinary judge, given his legal composition[359].

8- Arbitration is considered a method to inspire foreign investment, as there is no single judicial body competent to judge in disputes arising from foreign investment and the absence of unified legal rules to which these disputes are subject on the other hand. So, seeking arbitration in the field of commercial investment is considered a constant necessity and determinants of foreign investment[360].

9 - Arbitration is in line with international investment contracts concluded at the international level. It is distinguished by complexity and technical nature, and the multiplicity of parties from different countries and cross-border goods and services. It cannot be subjected to national courts due to the difficulty in determining them, the foreign party's lack of confidence in them, and the insufficiency of the law that it applies to these disputes[361].

Despite this, from the political point of view, some may see that allowing the foreign investor, especially the juridical person, to enter into arbitration agreements may expose public funds, national wealth, and the capabilities of countries, especially the developing ones, to be lost. The argument for this aspect is that foreign investors can, through arbitration, obtain advantages and benefits that they will not be able to get if the dispute not referred to the national judiciary[362]. In addition, the arbitration has another criticism, which is its large expenses compared to the judiciary, especially when the arbitration is international.

In this case, each of the members of the arbitration tribunal (for example, the three), the parties to the dispute and the attorneys may be of different

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[359] Dr. Muhammad al-Ruby, previous source, p. 162.

[360] See this meaning, A. Prof. Ashraf Al-Khafaji, previous source, p. 245.

[361] Dr. Muhammad Hussein Mansur, previous source, p. 482.

[362] See Dr. Omar Mashhour Haditha Al-Jazi, Arbitration Agreement Under the Jordanian Arbitration Law No. (31) for 2001, this article was published in the Lebanese Journal of Arab and International Arbitration 2003, Issue Twenty-Second, p. 2.

nationalities, or residing in different countries, which means an increase in the costs of the arbitration in relation to their movements and meetings in a particular place. This is in addition to arbitrators' fees and administrative expenses for the center that organizes the arbitration, where arbitration is institutional. In most cases, these fees and expenses are directly relative to the value of the dispute, so that their amount increases as the dispute value increases[363]. However, others from the jurisprudence disagree to this trend, and they see from the advantages of arbitration the economy in expenses and its low costs compared to litigation procedures in the state courts, including judicial fees, attorneys' fees and experts' fees, and witnesses' summoning fees[364].

There are also other real concerns, especially for developing countries, about international arbitration as a method of resolving investment disputes in which they are a party, which lies in the fact that the arbitration judiciary itself and the practical approach that it has followed for many decades indicates that, in many disputes, they defend the foreign investor and guarantee his rights, when he is oblivious to the development concerns of these countries[365].

5.3.2. Second requirement: Legislation's Position on Arbitration

The Investment Law in the KRI Region, in Article 17, which approved resorting to arbitration in settling investment disputes, states that: “Investment disputes are resolved according to the contract concluded between the two parties, and when there is no paragraph in this regard, they are resolved in an friendly manner and with the mutual consent of the two

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[363] Dr. Hamza Haddad, previous source, p. 4. As well as Dr. Muhannad Ahmad Al-Sanouri, previous source, P. 45.

[364] A. Prof. Ashraf Khafaji, previous source, p. 242.

[365] Dr. Essam Al-Din Al-Qasabi, International Arbitration and Preserving the Economic Balance of Investment Contracts, Research presented to the Sixteenth Annual Conference (International Commercial Arbitration) "The Most Important Alternative Solutions for Resolving Economic Disputes", which was organized by the Faculty of Law - United Arab Emirates University in the period From 28-30, April 2008 at the Emirates Center for Strategic Studies and Research - Abu Dhabi, p. 260.

parties resorting to arbitration whose provisions are set out in the laws in force in the region or pursuant to the dispute settlement provisions contained in any of the international or bilateral agreements to which Iraq is a party".

It is clear from this text that the highest importance tied to arbitration and its role in settling investment disputes under KRI law. The parties have always been allowed to recourse to arbitration in the event that there is no agreement between them on any other methods. Under this law, arbitration is considered one of the options that may be agreed upon between the parties in line with the investment contract. However, this text did not specify whether this arbitration should have of a national or international nature. This is visible from the ultimate expressions that were referred to in this text.

As for the position of the Iraqi Federal Legislation regarding arbitration, it was not in the absolute manner as stipulated by the Kurdish law. It put many investment disputes subject to the jurisdiction of the Iraqi courts, as if it made resorting to arbitration an exception from the principle of being subject to the jurisdiction of the Iraqi judiciary. It permits the parties in the dispute, under paragraph 4 of Article (27), resort to arbitration when this paragraph stipulates that "if one of the parties in the dispute is subject to the provisions of this law, they may, upon contracting, agree on a mechanism for resolving the dispute, including resorting to arbitration pursuant to the Iraqi law or any other internationally recognized body." Whereas paragraph (2) from the same article contained a lot of ambiguity when it stipulated that "disputes arising between the commission or any government agency and any of those subject to the provisions of this law in matters other than those related to the violation of one of the provisions of this law, are subject to the Iraqi law and courts in civil matters. As for commercial disputes, the parties may recourse to arbitration, only if this is stated in the contract regulating the relationship between the parties. Perhaps the most important manifestations of vagueness in this text appear in the first line of it when it referred to the phrase "disputes arising between the commission or any government agency and between any of those subject to the provisions of this law in matters other than the violation of one of the provisions of this law ..." What is meant by those subjects to the provisions of this law? Note that, in its first articles,

this law did not include any reference to the scope of application of this law, meaning that it did not specify who is subject to it in the first place. Anyhow, the text of this paragraph permits parties of investment disputes with a commercial nature may resort to arbitration, provided that the contract concluded between them has a reference to an ((arbitration clause))[366].

It should be noted that the second paragraph of Article (2) from Iraqi law has included an indirect reference to the permissibility of resorting to arbitration when it stipulates that “if the parties to the conflict are non-Iraqi and in disputes other than those resulting from a crime, the disputants may agree on the applicable law and the competent court or any agreement to resolve the dispute between them", since the phrase" ... or any other agreement to resolve the dispute between them" can be interpreted as allowing the parties to agree to resort to arbitration to resolve their dispute.

In this regard, the Egyptian Law of Guarantees and Incentives decided to devote the principle of arbitration in the settlement of investment disputes in Article Seventh thereof in the manner agreed upon with the investor, as it says, “Investment disputes related to the implementation of the provisions of this law may be settled in the manner agreed upon with the investor. As well, it is permissible to agree between the parties concerned to settle these disputes within the framework of the agreements in force between the Arab Republic of Egypt and the state of the investor, or within the framework of the agreement for settling disputes arising from investments between countries and between nationals of other countries to which the Arab Republic of Egypt has joined by Law No. 90 for 1971, and in cases in which those agreements are enforceable or in line with the provisions of an arbitration law in civil and

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[366] It is meant by the Arbitration Clause that the contract clauses include a condition whereby arbitration is made to settle disputes that arise in the future or to settle a dispute that may occur in a particular case. But if there is no condition in the contract concluded between the two parties rather an agreement between them has been agreed on the occasion of an already existing dispute to be resolved by means of arbitration, then this case is called the arbitration stipulation. See Prof. Fawzi Muhammad Sami, International Commercial Arbitration, Al-Hikma Press House, Baghdad, 1992, p.18. As well as, Shuaib Ahmed Suleiman, Arbitration in Disputes for the Implementation of the General Economic Plan, Al-Rasheed Press House, Baghdad 1981, pp. 135-136.

commercial matters issued by Law No. 27 of 1974. It is also permissible to agree to settle the disputes referred to by arbitration before the Cairo Regional Center for International Commercial Arbitration.

It seems from this text that the Egyptian legislator - as is the case with the KRI legislator - has opened the door wide to arbitration as a main method for settling investment disputes linked to the law referred to above, giving more details about the parties that can be referred to and legal basis for arbitration agreements in the investment contracts subject to this law[367].

Moreover, it does not introduce a binding obligation for arbitration that falls on the Egyptian government, but it merely includes an invitation to the investor to enter into an arbitration contract for the arbitration stated in Law[368].

As for the effective Jordanian investment law, it does not directly refer to how investment disputes are settled or to arbitration. Rather, it says in Article (20) of that law that “in application of the provisions of this law, Arab and international agreements related to investment and its protection and settlement of disputes related to it, in which the Kingdom is a party or bound to it, shall be taken into consideration".

In addition, many international and especially bilateral agreements regarding the promotion and protection of foreign investments force their parties to resort to arbitration as a technique to settle the dispute between the investment hosting country that is a party to the agreement and the foreign investor who holds the nationality of the other contracting party; and in this case arbitration is mandatory pursuant to the provisions of the said agreements[369]. However, many of the bilateral agreements concluded to

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[367] A. Prof. Hisham Sadiq and A. Prof. Okasha Mohamed Abdel-Al and A. Prof. Hafizh Al-Sayed Al-Haddad, previous source, p.537.

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[369] Dr. Mona Mahmoud Mustafa, International Protection of Foreign Direct Investment and the Role of Arbitration in Settlement of Investment Disputes, Al-Nahda Al-Arabiya Press House, Cairo 1990, p. 47. See, for example, the agreement between the government of the Hashemite Kingdom of Jordan and the government of the United States of America

encourage and protect foreign direct investment leave the freedom to resort to arbitration to the agreement of the parties[370].

At this point, an issue arises, whether the legislation of the investment hosting country allows the foreign investor to settle the dispute through arbitration, even after the investor has agreed to carry out the investment activity in that country, the latter resorts to changing its legislation, through which arbitration is excluded as a method to settle the dispute. This will lead to an increase foreign investor concerns in dealing with the host country. Also, contributes to destabilizing the desired stability of the investment climate in general. For the purpose of avoiding this, some countries resorted to including investment contracts a special clause of legislative stability, according to which the agreement, including the arbitration clause, is subject to the law of the host country in effect, at the contract conclude[371]. In addition, the principle of legislative stability has been adopted by some investment legislations themselves within the framework of what is known as

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- We have already referred to it - on the promotion and mutual protection of investment, which states that:

2- A citizen or a company that is a party to an investment dispute may submit the dispute for settlement under one of the following alternatives: -

(A) To the courts or administrative councils of that party that is a party in the dispute, or

(B) Under any procedures applied and agreed to in advance to resolve the dispute, or

(C) Under the conditions mentioned in Paragraph (2).

3- (a) A citizen or company may submit the dispute for settlement through binding arbitration, provided that - the concerned citizen or company has referred the dispute for settlement under Paragraph (1/2) and that three months have passed over the date of its establishment to:

1- The center if the center is available, or

2 - The center's additional facility if the center is not available, or

3- According to the UNCITRAL Arbitration Rules, OR

4- If the dispute has been agreed between the two parties to any arbitration body or according to any other arbitration rules.

As well as the bilateral agreements between Egypt and the United States of America in 1982, between Egypt and the Netherlands in 1976, between Egypt and Japan in 1977, and between Egypt and France in 1974.

[370] Dr. Mona Mahmoud Mustafa, previous source, p. 47.

[371] See Dr. Essam Al-Din Al-Qasabi, previous source, p. 230.

ensuring that the foreign investor continues to enjoy the benefits and guarantees that these legislations provide him with[372].

5.3.3. Third Requirement: Form (Types) of Arbitration

Arbitration may be through a person or body that the parties to the dispute agree to refer to, to resolve the investment dispute between them. this arbitration is then called private arbitration. The parties may resort either willingly or by virtue of the law to one of the bodies or institutions specialized in arbitration. Then, it is called institutional arbitration. Both types may be of a local or internal character and may be of an international one.

In order to be informed of what has been foresaid, we divide this requirement into two branches. We discuss in the first one of which is Private Arbitration and the Institutional Arbitration in the second one.

5.3.3.1. Ad Hoc Arbitration *

Ad Hoc arbitration means that it is the arbitration that the parties themselves - in line with what the law authorizes them - formulate for their dispute, far from any institution or permanent arbitration centers, where the litigants establish it for a specific dispute to settle. They also test the arbitrators and test the rules and procedures of arbitration[373]. The private arbitration mainly depends on the parties, so they have to arrange the procedures for the formation of the Arbitration Tribunal, define their rules and procedures, or refer to arbitration rules to be set up for this purpose. Among the most outstanding arbitration rules at the present time in the international field are the rules determined by

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[372] An example is the Algerian Law of 1966, and Tunisian Law No. 35 of 1969. Quoting from Dr. Issam Al-Din Al-Qasabi, previous source, p.233.

* It should be noted that some jurists use the term free arbitration instead of private arbitration. See Dr. Ahmad Muhammad Abd Al-Badi 'Sheta, Explanation of the Arbitration Law, a comparative Study, 3rd Edition, Al-Nahda Al-Arabiya Press House, 2005, p. 55. As well as Dr. Bashar Muhammad Al-Asaad, previous source, p. 357.

[373] Dr. Bashar Muhammad Al-Asaad, previous source, pp. 358-359. Dr. Ashraf Al-Khafaji, previous source, p.241. As well as Prof. Mohamed Sami Al-Shawa, previous source, p. 42. As well as Dr. Ahmed Muhammad Abd Al-Badi 'Sheta, previous source, p. 55.

the United Nations Commission on International Commercial Law for 1996 (UNISTRAL)[374].

Private arbitration may be internal or international[375], as the Model Law of UNCITRAL stipulates that arbitration shall be international in one of the following cases[376]:

1- If the place of business of the two parties in the arbitration agreement at the time of concluding that agreement were located in two different countries.

2- If one of the following places is located outside the country in which the parties 'place of business is located:

(A) The place of arbitration if it is definite in the arbitration agreement, or

(B) Any place where a considerable part of the commitments arising from the commercial relationship is carried out, or where the subject of the dispute is most closely related to it.

3- If the two parties openly agree that the subject matter of the arbitration agreement relates to more than one country.

Private arbitration is considered ultimately consistent with the privacy of arbitration. Therefore, it is taken as one of the most appropriate types of economic relations that require confidentiality, as is the case in technology transfer relations[377].

In addition, it is characterized by the fact that it tends to be less expensive, more pliable and faster, and mostly resorted to in some disputes, as is the case in international maritime disputes and reinsurance disputes[378]. Among

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[374] UNCTAD Series on issues in international investment agreements, Disputes Settlement: Investor-State, 2003, p. 14. As well as Prof. Ashraf Al-Khafaji, the previous source, p.

[375] Dr. Munir Abdul-Majeed, General Foundations of International and Internal Arbitration, Knowledge Institution, 2000, p. 47 ff.

[376] (Article 3/1) of the UNCITRAL Model Law on International Commercial Arbitration Rules.

[377] Prof. Muhammad Sami al-Shawa, previous source, p. 42.

[378] Dr. Bashar Muhammad Al-Asaad, previous source, p. 359.

the disadvantages of this type of arbitration is the difficulty for the arbitrators to foresee the problems they will face, Then, the inability to precaution for it in the arbitration agreement. It may sometimes happen that issues arise that are not covered by national law or their agreement, and the arbitrators remain in a state of concern until the arbitration award is carried out[379]. Moreover, the arbitrator has inadequate knowledge in applying the agreed rules and procedures. beside the lack of administrative expertise available to arbitration institutions and the difficulty of implementing the arbitration award due to the nonexistence of sufficient practice among the parties in this field[380].

It worth mentioning that some investment agreements allow the foreign investor and the contracting party in the host country submit their dispute to private arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL), before submitting it to regulatory institutions such as the International Chamber of Commerce or the Stockholm Chamber of Commerce[381].

As we have shown in the first requirement of this topic, the national legislation specific to investment does not object to resolving investment disputes by the methods set forth in international agreements - multilateral and bilateral - in which the host country is a party. Most of the agreements whose clauses include private arbitration as a considered method of settling investment disputes between the host country party in the agreement and the foreign investor who holds the nationality of the state of the other contracting party.

5.3.3.2. Second branch: Institutional Arbitration

Institutional arbitration refers to that arbitration that takes place by a permanent center or permanent arbitration institution, whether nationally or

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[379] Dr.. Muhannad Ahmad Al-Sanouri, previous source, page 48, as well as Dr. Ahmad Muhammad Abd al-Badi 'Sheta, previous source, p. 56.

[380] Dr. Ahmad Muhammad Abd Al-Badi 'here, previous source, p. 56.

[381] Assistant Professor Susan D. Franek; Foreign Direct Investment, Investment Treaty, Arbitration and the Rule of Law, p342 http://ssrn.com/abstract=882443

internationally. Arbitration occurs in line with this center's system and procedures. The center may also appoint arbitrators or one of them according to the two parties' agreement, or it reviews the arbitration award, as stated in its regulations[382]. One of the shortcomings of this type is that its cost is often higher than private arbitration [383], and the basis of the differentiation between private arbitration and institutional arbitration is the presence or absence of an arbitration institution tasked with organizing the arbitration process, in terms of appointing the arbitral tribunal, defining arbitration procedures, and what is related to the issuance of an arbitration decision and reporting it to the parties in the dispute. Arbitration is institutionalized when it refers the parties of the dispute to arbitration according to the rules of an arbitration institution. Meaning that the agreement to refer the dispute to arbitration only, or according to certain arbitration rules without referring to a specific arbitration institution, is an agreement on a private arbitration. While the agreement to arbitrate according to the rules of a specific center, institution or body is an agreement on institutional arbitration[384].

Institutional arbitration may be internal and is called compulsory arbitration[385], which is regulated by the national legislator in specific matters, such as the Egyptian Arbitration Law of 1994, the Jordanian Arbitration Law No. 31 of 2001, the Syrian Arbitration Law No. 8 of 2008, and Chapter Four of the Iraqi Civil Procedure Law. Institutional arbitration may be international, such as arbitration before the Permanent Court of Arbitration of the International Chamber of Commerce in Paris ICC and the American Arbitration

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[382] A. Prof. Muhammad al-Sami al-Shawa, previous source, p. 43. As well as Prof. Ashraf Khafaji, Sadr Al-Sabeq, p. 241.

[383] Dr. Muhannad Ahmad Al-Sanouri, previous source, page 48.

[384] Dr. Hamza Haddad, previous source, p.2.

[385] Arbitration is primarily characterized by a test character, that is, it is carried out by the free will of the parties of the dispute, and there is compulsory arbitration in which the legislator states that it must be resorted to as methods for resolving the dispute with regard to some matters of a special nature, such as labor disputes, taxes, customs and arbitration related to dealing in monetary bills, which is an internal procedure conduct according to statutory regulation. This was indicated by Dr. Muhammad Hussein Mansur, previous source, p. 478.

Commission (AAA), The London Court of International Commercial Arbitration (LCICA) and Permanent Arbitration Court in The Hague, the Cairo Regional Center for International Commercial Arbitration, and the World Intellectual Property Organization in Geneva (WIPO); and the International Center for the settlement of investments Disputes in Washington (ICSID)[386].

Since the latter is competent to settle disputes that arise between contracting countries and foreign investors from individuals and private companies[387], without others. Therefore, we will shed light on this center and the procedures it follows to look into investment disputes.

First: The Center's Establishment: The International Center for Settlement of Investment Disputes was founded in line with multilateral international agreements, which is the Washington Convention of 1965, which deals with the settlement of investment disputes between the state - or one of its public bodies - that is signatory to the agreement and one of the investors - whether a natural or juridical person- who has the nationality of another country that is a signatory to this agreement[388]. In addition to arbitration, this center adopts the method of conciliation as a technique of settling investment disputes[389].

According to this agreement, the foreign investor has the right to litigate directly and constructively based on a previous agreement with the state of the defendant or the plaintiff, with which this agreement may not be withdrawn by the will of one of the parties[390].

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[386] ICSID stands for International Center For Settlement Of Investment Disputes.

[387] See Dr. Jalal Wafa Muhammadin, Arbitration between the Foreign Investor and the Host Country for Rent before the International Center for Settlement of Investment Disputes, New University Press House, Alexandria, 2001, p. 13.

[388] A. Prof. Mahmoud Mukhtar Ahmed Berary, International Commercial Arbitration, 3rd Edition, Arab Renaissance Press House, Cairo, 2004, p. 86. As well as Dr. Hussein Tawfiq Faizullah and Azad Shakur Salih, Settlement of Investment Disputes, "The Investment Law in Iraq and the Kurdistan Region includes race and the rules of ICSID as a model", a research published in Yasa and Ramyari magazine, issued by the Facutly of Law and Politics, Year 6th, Issue 4 1998, p. 42.

[389] Articles 56-63 of the agreement apply to conciliation and arbitration, while articles 34-50 deal with arbitration only.

[390] Dr. Abdul-Hakim Mustafa Abdel-Rahman, previous source, p. 205

Perhaps the International Center for Settlement of Investment Disputes carries out the task of arbitration much more than its mission in reconciling the litigants[391]. This is because the arbitration provisions issued by the International Center for Settlement of Investment Disputes are final judgments, as if they were issued by the court of the plaintiff or the defendant[392].

The KRI Investment Law allows resolving investment disputes by resort to the arbitration whose provisions are set out in line with the dispute settlement provisions contained in any of the international agreements to which Iraq is a party[393].

The Iraqi Investment Law also referred to the permissibility of resorting to arbitration by the parties subject to the provisions of the Iraqi Investment Law, through agreement and upon contracting, in accordance with an international body. Whether the issue in dispute is related to a violation of the requirements of the Investment Law or other commercial matters[394].

This indicates that a foreign investor, who practices his commercial activity in Iraq or in the KRI region, can resort to arbitration before the International Center for Settlement of Investment Disputes if Iraq joins the agreement that established that center.

Second: The Objectives of Center: The ultimate goal of the International Center for Settlement of Investment Disputes is to create a climate of common trust between foreign investors and governments; that, it would increase the flow of capital for productive purposes with appropriate terms. The center is considered an international tool to promote investment and

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[391] Dr. Abdullah Abdul-Karim Abdullah, Investment Guarantees in the Arab Countries, previous source, p. 119.

[392] Dr. Abdul-Hakim Mustafa Abdel-Rahman, previous source, p. 206.

[393] Article (17) from the applicable Kurdistan Investment Law.

[394] Article (27) from the Iraqi Investment Law in force.

economic development, in addition to being a technique to facilitate settlement of disputes between countries and foreign investors[395].

Third: The Center's jurisdiction: The International Center for Settlement of Investment Disputes is not thought of as a compulsory instrument for settling investment disputes that emerge between its members and investors from other member states. This indicates that the state's ratification of the center establishment agreement indicates anything more than its willingness to accept its facilitation and services without deviating from that to oblige it with its competence to settle disputes in which it is a party[396]. Accordingly, the voluntary nature of the center can be assigned. It follows that the state must openly agree to present the dispute, in which it is a party, to the center for settlement by arbitration. The approval must always be in writing, and it may take the form of a text in a bilateral treaty on the acceptance of resorting to the center to settle any investment disputes that may come up. The approval may also take the form of a text put in one of the internal laws. Additionally, the approval of the foreign investor must be given to that in writing; otherwise it is impossible to present the matter to the Center[397].

After the approval of the host country and the foreign investor, none of them has the right to withdraw his consent unilaterally. Also, the agreement guarantees that the investor's state has the right to resort to diplomatic methods and even to the International Court of Justice, in the case of a contracting state refuses to recognize its previous approval[398].

The center is competent with settling disputes that occur between one of its member states and a citizen of another country that is party to the agreement. Nonetheless it is not concerned with settling disputes between

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[395] Dr. Mona Mahmoud Mustafa, previous source, p. 50.

[396] Dr. Mona Mahmoud Mustafa, previous source, p. 50; As well as Dr. Mahmoud Saad, Means, Settling Foreign Investment Disputes in the Kingdom, a research published in the Diplomat Journal, Institute of Diplomatic Studies, Saudi Arabia, 3rd issue, March 1983, p.48.

[397] Article (1/25) from the International Convention for the Settlement of Publicity Disputes. See also Dr. Mahmoud Saad, previous source, p. 48

[398] Dr. Mahmoud Saad, previous source, p. 48.

states or between private parties and individuals. The terminology of the state party in the agreement includes all the bodies and their subsidiaries[399].

According to Article (24)[400], from the agreement – referred to earlier - that the parties' acceptance of arbitration before an arbitration court affiliated with the center is considered a waiver from them on other techniques of settling disputes unless they explicitly agree otherwise. This is the center's exclusiveness of the cases submitted to it. This is what increases the effectiveness of the center[401].

Fourth: Arbitration Procedures before the International Center for Settlement of Investment Disputes: In the event that the disputants decide to refer the dispute to the Center, an arbitration panel shall be formed from an odd number of arbitrators appointed by the parties to the dispute[402]. Upon disagreement, the Administrative Council head of the Center shall appoint the arbitrators from the Center's lists; on condition that the majority of the arbitrators are of non-nationalities of the disputants. The administrative board of the center decides the costs of arbitration in the dispute in question, which are distributed by the arbitration panel between the parties, unless the parties agree otherwise. The Center's system also has the procedural rules followed before the arbitration tribunal except if the parties agree to take otherwise[403].

If the arbitration court is not formed this way within the ninety days following the announcement of the registration at the General Secretariat or the date agreed upon between the parties, the President of the World Bank as the Chairman of the Board of Directors of the Center shall assume the

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[399] Article (1/25) of the International Convention for Settlement of Investment Disputes. See M.SORNARAJAH, The Settlement of Foreign Investment Disputes, op.cit., p216

[400] Article (26) from the agreement states that "the consent of the parties to the dispute to submit it to arbitration within the scope of this agreement shall be deemed, unless otherwise stipulated, a waiver of practicing any other way of settlement. Its permissible for the contracting state to provide for its agreement to present the dispute to arbitration within the scope of this agreement the exhaustion of internal litigation methods, whether administrative or judicial.

[401] See Disputes Settlement ICSID.2.2. Selecting the Appropriate Forum, op.cit, p. 9.

[402] Article (37-40) of the Agreement.

[403] Article (37-40) of the Convention.

responsibility of the center, at the request of one of the parties. After consultation with the parties, if it is possible to appoint the arbitrator or arbitrators, those who have not been appointed, provided that they are not of the nationality of the state party to the conflict or the nationality of the country to which the second party belongs to[404]. It is also of vital importance that the majority of arbitrators be of a nationality different from the nationality of the parties to the dispute, except if the parties agree to assign one arbitrator by each of them[405].

Perhaps one of the most important guarantees established for the foreign investor in the said agreement - is his authorization, in his personal capacity, to initiate his lawsuit before the center against the state, therefore he does not need his nationality state to adopt his international claim before the center[406].

The agreement also gave the right to each party to request the Secretary General of the Center within forty-five days from the date of issuance of the ruling to correct the decision issued by the Center or to ask for the issuance of a supplementary decision in the matter that he neglected. He must submit the request in writing explaining the objection reasons. Furthermore, the party who discovers new facts affecting the arbitration decision may submit a request reconsideration of the award within three months from the date of the award[407].

The agreement defined the reasons on which each of the parties may rely on and request the annulment of the judgment, and these reasons are[408]:

1- A defect in the composition of the court.

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[404] A. Prof. Mahmoud Mukhtar Ahmad Bariri, previous source, p.87.

[405] The same source.

[406] Dr. Duraid Hammoud Al-Samarrai, previous source, p. 330.

[407] Article (1/51) from the International Convention for Settlement of Investment Disputes.

[408] Article (1/52) of the International Convention for Settlement of Investment Disputes.
Look: Professor OKUMA Kazutake, Investment Disputes Settlement by Focusing on ICSID Arbitration New York, 2002, P97. (www.seinagu.ac.jp/ura/bome.pdfu)

2- The court obviously trespassed the limits of its authority.

3- A member of the court was bribed.

4- Total disregard of a basic procedural rule.

5- Non-causation judgement.

It worth noting that if the reason for submitting the request to nullify the judgment is due to the bribery of one of the arbitrators, then the request needs be submitted within four months from the date of knowing about the bribery. In all circumstances, the application should be submitted in three years from the date of issuing the judgment[409]. Once receiving the request, the head of the center shall form a special committee made up of three persons from among those on the list of arbitrators, provided that none of them are arbitration board members that issued the judgment, the subject of the appeal[410].

Fifth: The Law to be Applied: The arbitration board needs to apply the legal rules agreed upon by the parties. Otherwise, the arbitration board applies the investment hosting country internal law that is a party to the conflict, plus rules of the conflict laws as well as the rules of international law permissible to apply to the dispute.[411] These international law rules are represented in treaties - in particular bilateral investment agreements - in addition to customary international law, general principles of law and special judicial practices issued by the previous arbitration bodies of the Center. [412] It

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[409] Article (2/56) from the International Convention for Settlement of Investment Disputes. Also see M.SORNARAJAH, The Settlement of Foreign Investment Dispute, Published By Kluwer Law International, London, 2000, p166.

[410] Dr. Fawzi Muhammad Sami, previous source, p. 65.

[411] Article (1/42) from the International Convention for Settlement of Investment Disputes. And see: Professor OKUMA Kazutake, OP.CIT., P87.

[412] Disputes Settlement, ICSID, 2.6 Applicable Law, UNCTAD, UN, New York and Geneva, 2003, p19.

permissible for the tribunal to settle the dispute in line with the rules of justice and equality if the parties agree to that[413].

The above-mentioned agreement is an effective tool to protect foreign direct investment, especially in the third world countries, since most of these countries joined the agreement and even released investment-specific legislation in which it explicitly stipulated the acknowledgement of the facilitation provided by the center in settling its disputes[414]. In addition, there are bilateral or multilateral international agreements through which the foreign investor is permitted to choose arbitration in the International Center for Settlement of Investment Disputes with the investment hosting country[415]; Including the bilateral agreement on the promotion and protection of investment between Iraq and Algeria for 1999, according to which Article (6) states that "If the dispute is not settled in a friendly way within six months from the date, usually, the foreign investor is reassured by presenting his dispute to the International Center, where he makes sure that his dispute with the host country will be looked into by a neutral technical body and decide on the matter based on the legal and economic principles that govern him away from the trends of international politics[416].

It needs to be raised in writing by either of the parties of the dispute; it is referred upon the request of one of the parties to arbitration "The International Center for Settlement of Investment Disputes"

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[413] Article (2/42) from the International Convention for Settlement of Investment Disputes. For more details, see: Professor OKUMA Kazutake, OP.CIT., P86.

[414] Dr. Mona Mahmoud Mustafa, previous source, pp. 54-55.

[415] Among them is the Multilateral Energy Charter Treaty (ECT) for 1994, which gives the investor, based on the terms of this agreement, to choose arbitration pursuant to the provisions or in line with the additional facilitation from the International Arbitration Center ((ICSID, that is, even if one of the parties is not a member of the Washington Agreement)). See Dr. Essam Al-Din Al-Qasabi, previous source, margin 7th, p. 2.

[416] Dr. Mona Mahmoud Mustafa, previous source, p. 55.

6. Conclusion

For the economic side improvement and then promote the local or foreign private sector, particularly, capital owners (states, companies or individuals), to enter the Iraqi market and invest their money, the circumstances need emphasizing on the importance of investment law legislation to be clear and comprehensive, taking into account the great potential of Iraq, the state of destruction and negligence of the infrastructure, the shortage of financial resources and the requirement to use the Iraqi competencies inside and outside Iraq. This will be through the re-enactment of the investment law applied in Iraq and the KRI Region, which must take into account the transparency of the laws regulating investment and stabilize the legislative provisions, as the stability of legislative provisions give the investor a fixed basis for his expectations, and reflects confidence in the stability and firmness of the investment environment surrounding conditions, and vice versa, will generate concern about the lack of assumptions continuity on which his investment decision is based, as well as the conflict between the laws organizing the investment process, and the absence of Investment legislation inclusive of all matters that address and regulate the investment course, which opens the way for Jurisprudence regarding aspects that have been overlooked by the legislation regulating investment and the difference of jurisprudence from time to time, which violates the fairness of the legislation and may prevent its happening. As it is not reasonable to prevent the investor from the right to own property according to the property law in which applied by Ministry of Municipalities in Iraq, which is considered the main owner of lands in the Republic of Iraq, while the investment law allows, in addition to facilitating the procedures for both obtaining an investment license and its implementation.

The focus is on encouraging foreign investment through enactment of laws that give greater freedom to the foreign investor through the freedom to own lands and real estates in Iraq, unlike the prevailing

law now which does not give the foreign investor the right to own land. likewise, a set of legal obstacles related to the ownership and sizes of private companies, and the permissible volumes of foreign investment. The legal barriers to contractors with the governmental ministries and the rest of the Iraqi government institutions for foreign investors must be removed. In addition to the aforementioned obstacles, there are a number of obstacles facing the growth of the banking sector's participation in financing some industries with a foreign capital, that the security circumstances and political instability and the lack of clarity of constitutional and legal matters make the official authorities refrain at the present time to take a long-term decision regarding the development of some industries.

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