

Legal Guarantees Of Foreign Investment And Its Implications On Sustained Economic Growth

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Abstract

Most countries of the world, including Iraq, have paid great attention to the issue of foreign investment to achieve sustainable development as a guarantee of continuous and effective development of human life, which requires the Iraqi legislator to develop integrated laws and policies that will enhance the process of achieving these goals and preserving and managing natural resources in a way It serves the development process, changing production patterns and unsustainable behavior, and reducing bureaucracy in the administration to attract external sources of funding represented by foreign investors and cross-border trade, which is the most important way to advance the local economy, which in turn will positively reflect on improving living standards and creating job opportunities.

Keywords: Law, Foreign Investment, Economic, Sustainable Development.

Introduction

Global openness and permanent transformations at the economic and political levels that the republic of Iraq is witnessing, Providing a legal legislative environment is one of the most important guarantees to encourage foreign investment, and thus it will reflect positively on economic growth and political stability by creating job opportunities and establishing new projects for the purpose of absorbing large numbers of the workforce and increasing Its own ability and work to transfer technology and develop the necessary qualifications, and this was confirmed by many writings, research and legal, economic and social studies, which indicated the existence of a direct relationship between the provision of modern legal legislation and sustainable economic growth, and thus represents the granting of foreign investors legal guarantees in order to increase investment and success Investment projects are one of the most important guarantees, especially that all foreign investment experiences in the Republic of Iraq

faced many legal obstacles represented by the inconsistency of the laws and legislations currently in force with the quality and nature of investment activities and contractual relations, and the difficulty of resolving disputes arising from these projects by institutions, judicial bodies and control. The percentage of foreigners that represent a place of confidence for foreign investors because it is not possible to enforce judicial and arbitral decisions or awards issued by foreign courts or bodies without considering them in terms of objective, aspect and form, which requires procedures and more time to resolve these emerging disputes.

Despite the importance of investment, which represents the primary means and tool in the process of development and integration into the global economy that Iraq seeks to achieve and raise its efficiency, it is one of the most important general foundations that must be relied on to achieve economic and social growth. On the other hand, the majority of the Iraqi laws and regulations were enacted during the sixties of the last century, and modern ones did not deal with many matters related to investment, including the Iraqi Investment Law of 2006, the Iraqi Civil Law of 1951, the Iraqi Civil Procedures Law of 1969, and the continuity of work with the resolutions of the dissolved Revolutionary Command Council to this day contributed to creating an environment that hinders economic growth and investment, due to these laws and resolutions which have been regulated during a period when Iraq was closed to the international community and economy (before 2003).

thus become necessary to enact legislation and provisions that stimulate and attract investment and provide a suitable legal environment for the activities of capitalizations and foreign investors, as is the case in European countries, and to find special bodies and courts qualified to resolve disputes arising from these investment activities and to transfer the Iraqi economic system from rentier-based Oil exports to the real diversified economic system and to achieve the sustainable development goals called for by the United Nations in 2015 (Cai & Choi, 2020).

This study aims to contribute to conducting a comprehensive analysis of the legal status of foreign investment in Europe and the Republic of Iraq to clarify the direct relation between laws, regulations, and economic growth, and to reveal the extent of the need to devote further attention to improving the Iraqi legislation, and this purpose is achieved by solving the following objectives:

By clarifying the legal concept of foreign investors and investment in Iraq laws and the comparative laws.

By Clarifying the types and forms of foreign investment.

By answering the Following question “Has the Iraqi legislator created comprehensive Laws of investment consistent with international legislation”.

By Clarifying the alternative legal means of dispute resolution that may arise from foreign investment contracts.

By clarifying the relationship between sustainable development and foreign investment.

To reach the study's objectives, the descriptive-analytical method and comparative law were used, by relying on the laws and legislation in force in the Republic of Iraq and other countries, and the studies and research carried out by researchers in legal economic Fields.

This study will be divided into six sections: We devoted the first section to the introduction to the study and the objectives and methodology used in the study, the second to studies the Legal concept of foreign investment, and the third section clarifies the legal and administrative impediments to Foreign Investment, as for the Fourth section to caption The relationship between achieving sustainable development and foreign investment, The fifth section is devoted to conclusions, and the last section for recommendations.

Legal concept of foreign investment

Giving an accurate legal definition of foreign direct investment is not easy for researchers in the legal field, due to the complications arising from different legal standards. Accordingly, it was necessary to address the issue of investment through its concepts and types, as an introduction to studying its objectives and tools.

Some scholars in the field of economics have defined investment as an economic phenomenon studied by a natural or legal person (the legal personality is institutions), based on scientific or rational foundations or rules through which economic, social, cultural, or scientific returns are achieved.

Others define it as “giving up money owned by an individual in a certain period and for some time to obtain future financial flows that compensate for the current value of the invested money”, these concepts represent the general concepts of investment (Cyberspace & Викторова, 2019).

As for foreign investment, it can be defined as (a group of foreign capital or individuals allocating to the purpose of obtaining new means of production, or for their development and renewal, or is the investment of funds on the condition that they are collected in a certain period in another country geographically, In other words, it must contain a foreign element). (Sornarajah, 2021)

On the legal level, the Iraqi legislator did not address the concept of foreign investment in the Iraqi Investment Law of 2006, but by reference to the general legal rules, which are by referring to the concept of general investment which the Iraqi legislator defined in Article 1, paragraph VI, as (the employment of capital In any economic activity or project benefit to the national economy under the provisions of this law). (Investment Act (Iraq), 2006)

It is essential to note that, the concept of investment in the legislation of the Republic of South Africa came in line with the definition of investment in the Iraqi Investment Law, where investment was defined as “any legal project established, obtained or expanded by the investor in anticipation of profit” (Protection of Investment Act (RSA), 2015) with the allocation of resources of economic value over some time. It is worth noting that both legislators (Iraq and South Africa) agreed that the goal of investment is profit during a certain period.

additionally, the Ukraine legislator defined the foreign investments as “stores of value which are invested by foreign investors in objects of investment by the legislation of Ukraine to obtain profit or achieve social results” (Regime of Foreign Investments (Ukraine), 1996), as the concept of investment to the Ukrainian legislator was not confined to financial benefit only but went further. from this, referring to the term “achieve social results” that aims to build non-financial capacities through building effective, sustainable community organizations, with strong

social impact, as well as by empowering individuals economically and responding to their societal needs through programs that enhance human dignity and social solidarity to achieve social impact and financial returns that help community organizations to sustain their work, as well as individuals to transition to the stage of self-sufficiency and financial independence.

And Perhaps the definition that the Belarusian legislator brought to foreign investment was broader than the definitions contained in the Iraqi, Ukrainian, and South African investment laws, where the investment was defined as (any property and other things of civil rights belonging to an investor on the right of ownership, another legal basis that allows him to dispose of such Those objects that are invested in the territory of the Republic of Belarus in the ways provided for by this Law to receive profit (income) and/or achieve another significant result or for other purposes not related to personal, family, household and other similar uses, in particular (Belarusian Investment Law, 2013):

1. movable and immovable property, including shares, shares in the legal fund, shares in the property of a commercial organization established on the territory of the Republic of Belarus, monetary means, including those that have been attracted, including loans, credits, or rights of claim after assessing their value;
2. Other objects of civil rights which have an appraisal of their value, except for objects of civil rights that are not allowed to be circulated (things withdrawn from circulation).

Based on the legal and economic concepts that we reviewed for investment, we can define foreign investment as: “It is a natural or legal foreign individual’s ownership of part or all of the investment in a specific project, or the employment of foreign capital in a specific project, or the participation of foreign persons in the management of a specific project individually. Or in partnership with a local investor, and this investment is not limited to money. The investment may be in expertise, knowledge, or project management, but the clause that the natural or legal individual or the capital does not hold the nationality of the country in which the investment is made.

The Iraqi legislator has put some considerations to consider the investor as a foreigner, which can be deduced from the description that has been given to the foreign investor in article one of the Investment Act, which is that “a person who obtains an investment license and who does not hold Iraqi citizenship if was a natural person and registered in a foreign country if were a legal person,”(Investment Act (Iraq), 2006) and this means that dual nationals cannot be considered Foreign investors, on the other hand, stipulated that the invested legal person (which is meant capital or companies) Should be established and registered in another country to acquire the status of a foreign investor.

In general, foreign investment takes two types, the first one called the direct foreign investment (Wang, 2019) this type is based on a long-term relationship in capital assets in a particular country (the host country) so this relationship that's reflects the benefit to the foreign investor who has the right to manage and control their assets from the home or host country, the investor may be a natural or legal person, and in this context, it's we should mention that this form is considered the most acceptable form of financial flows in the long term because it is characterized by relative stability compared to other financial flows, and an increase in the proportion of exports in the host country compared to the country of origin, which contributes significantly to the economic development of the host country, resulted from a major source of external financing for developing countries such as Iraq and a means of effective exploitation of state resources , In addition, This type of investment take many forms, such as following:

- A. Manufacturing contracts(Hyytinen et al., 2019): this form is based on an agreement concluded between a multinational company and a national company (public or private) in the host country to carry out production operations in the agency.
- B. Management contracts(Dawande et al., 2019): it is an agreement or a set of legal procedures according to which the multinational company initiates all or part of the operations or functional activities related to the management of the investment project in return for a specific financial return or in exchange for partnership in profits.
- C. Licensing and concession contracts(Cerqueti & Ventura, 2020): It is an agreement whereby a foreign company or a foreign investor allows the local investor to use a certain technology or specific expertise owned by foreign companies or the foreign investor.

And the second type of foreign investment called Non-Direct foreign investment (Hadaś-Dyduch, 2015): Is intended to buy shares from the financial markets, in other words, this form of investment is represented by the purchase of shares by natural or legal persons residing in one country for companies existing in another foreign country, with no interest in the influence exercised, but rather the interest in preserving their capital and increasing the value of the securities they own.

The legal and administrative impediments to Foreign Investment

The existence of a legislative framework that governs and regulates the active foreign direct investment activities is the important and influencing factor determining its direction. For the legislative framework to be attractive to investors, it must have a unified investment law that is clear, transparent, and complies with international regulations, as we absence of sufficient guarantees to protect investors from certain types of risks. Such as nationalization, sources of preference, and expropriation, as well as the importance of the existence of law protecting intellectual property in addition to providing an independent judicial structure or system capable of implementing contracting laws and resolving disputes that arise between the investor and the host country with high efficiency.

and multiplicity of laws regulating foreign investment and the lack of clarity in some of their texts and their sometimes inconsistencies lead to the dispersal of investors between more than one law and opens the field for jurisprudence by the authorities supervising investment in interpreting legal texts in a way that may be incorrect, which leads to alienating investors, As is the case in the Republic of Iraq

The Republic of Iraq remained confined by the multiplicity of old legislation and the dissolved Revolutionary Command Council which is not in line with the requirements of development in investment and global trade, which were legislated before 2003 and did not serve the public interest, as well as it's isolated the Iraqi judiciary from foreign courts, this has led to many impediments in the enforcement of decisions issued by international or foreign courts and regulatory bodies, which represent a source of foreign investor confidence more than the local judiciary, but this does not mean that it is impossible to enforce these foreign decisions.

For example, The Iraqi legislator stipulated several conditions for considering the implementation of foreign decisions inside Iraq in the Foreign Courts Execution Law No. 30 of 1928, the first of which is that the decision must be issued by a foreign court with jurisdiction,

that's mean the movable or immovable should be in the country of the foreign court that was issued Including the decision or the contract was signed in the foreign court state, in addition to if some or all commercial or investment activities have taken place in the foreign court state, and if this decision does not conflict with Iraqi laws and legislation, a decision called (the implementation decision) is issued, and the Iraqi legislator did not obligate the courts for a period to issue the implementation decision, and this leads to prolonging the duration of the conflict and bearing more costs by the investor the foreigner.

And the lack of interest in the laws regulating alternative means of settling disputes, such as arbitration and mediation (Al-Khafaji, 2021), which are often confidence of the foreign investor, which is distinguished by such advantages as speed away from the bureaucratic and secret procedures and the low cost, but unfortunately the arbitration remained far of The legislator's concern was limited to the existence of the rules that were regulated in the Iraqi Civil Procedures Law and neglected the regulation of other types of arbitration (electronic arbitration) and (documents only), which The Iraqi Civil Procedure Code (Civil Procedures Act (Iraq), 1969) did not address the provisions of international commercial arbitration, which makes this arbitration silent and not forbidden because Article 16 of the Civil Law(Civil Act (Iraq), 1951) permits the implementation of judgments issued by foreign courts under a law issued in this regard (Implementation of Judgments of Foreign Courts in Iraq Law, 1928), and what is meant here is that if an Iraqi and a foreigner in a contractual relationship agree to resort to international commercial arbitration and a judgment is issued by a foreign court in this dispute, then this judgment can be implemented in Iraq. It is not correct to refrain from implementation because international commercial arbitration is not approved in Iraqi law. It was stated in the Civil Code that the law of the state in which the contracting parties reside in the contractual obligations shall apply if they are united in the domicile, and if they differ, the law of the state in which the contract was concluded shall apply. This is unless the two contracting parties agree or it becomes clear from the circumstances that another law is to be applied. Therefore, resorting to international commercial arbitration is subject to the principle of sovereignty of will and there is no restriction on it. It is possible to stipulate in the investment contract concluded between the state and the foreign investor to resort to international commercial arbitration, while all developed and investment-attracting countries allocated special legislation called the Arbitration Law(Shao, 2021).

On the other hand, the administrative bureaucracy represents the multiplicity of bodies supervising the investment, the duplication of competencies among them, the absence of coordination and procedures that are characterized by rigid behavior, and the difficulty of adapting to changes, in addition to increased oversight and subjective rules that lead to increased stagnation and problems that the foreign investor may face in the Republic of Iraq or any developing country. Others, leading the foreign investor may resort to paying bribes, in order not to waste time and delay the completion of their investment projects, all these legal pluralities and administrative complexities led to the results of a legal environment that repels foreign investment in the Republic of Iraq.

And tax legislation represents one of the most important means to encourage foreign investment, as the tax incentives granted to the foreign investor or foreign projects are in the form of an exemption or reduction in short or long-term tax, and because of their positive role in attracting investment.

The Relationship Between Achieving Sustainable Development And Foreign Investment

The issue of foreign investment and its relationship to sustainable development occupied a prominent place among writers and researchers in developed and developing countries. Therefore, it is necessary to clarify the concept of sustainable development, and its characteristics of this concept, and then clarify the role of foreign investment in achieving development. It can be defined as the graphic development or structural change of society with its economic and social dimensions. To provide a decent life for all members of society, in which foreign investment plays a positive and tangible role in achieving it.

As some academics and researchers defined it as that process that decides the necessity of achieving an economic solution that is compatible with the capabilities of the environment, on the basis that economic development and the preservation of the environment are two complementary currencies (Tomislav, 2018).

And it is also defined as the maintenance and use of the multiple resources in the environment to meet the social and economic needs of current human beings and manage them with the brilliance of technology while ensuring the continuity of resources for the welfare of future generations (Mensah, 2019).

Or its process by which the quality environment is preserved in the long period in which economic growth becomes increasingly constrained by the energy of the socio-economic ecosystem to perform two main functions in the long term, which is equivalent to providing economic and environmental resources and absorbing the waste of human activity, And sustainable development has many characteristics, the most important of which are (Rublev et al., 2021):

- A. It allows it to preserve the right of subsequent and future generations to the existing natural resources.
- B. Using resources while directing investments and technological alternatives to achieve integrated development.
- C. Sustainable development seeks to advance all of humanity over the distant future.
- D. It is based on estimating the available capabilities and skipping them for the longest possible future period, that is, it depends on long-term development

The relationship between foreign investment and achieving sustainable development (Azmat et al., 2021) is manifested through The presence of a positive direct impact on poverty reduction requires the existence of a positive impact of these investments on economic growth, the positive indirect impact of these investments on poverty reduction depends on how economic growth affects poverty, and in theory economic growth affects poverty through The increase in the growth rate of output is required to increase investment, and on the demand side, as a result of the increase in the growth of the economy, the demand for existing products will increase or a demand for new products will arise, which will subsequently lead to an increase in the investment demand, and given that investment and technological innovation are among the main factors that result in It has to increase the workforce and increase the income of the workers, the poverty will be reduced. The economic growth will improve the budgets (national and local), which will lead to increased spending programs on health care, education, and road construction in poor rural areas, job opportunities in poor areas, and development, and the

Economic growth that occurs due to foreign investment helps the poor through economic links such as labor migration between sectors and regions, and the increase in demand for products, Where the process of economic development is directed towards more equality through price support, taxes, subsidies, public investment, and infrastructure, financing of small and micro enterprises, preparing optimal policies in all fields, including trade, investment, and financing, and a legal framework for the benefit of the poor.

High economic growth leads to a sustainable increase in productive capacity, which consequently leads to an increase in employment opportunities with high productivity in a way that allows the unemployed / or the poor to increase their incomes, whether in existing jobs or in new jobs that require high levels of skill. Income of the poor A reduction in the level of poverty, which in turn leads to an increase in spending on health care, education and skills formation, which consequently leads to an increase in the productive capacity of labor in the future, which creates the necessary conditions for achieving high levels of economic growth, which complements The vicious circle of economic growth and poverty reduction

As for the agricultural sector, foreign investment improves the balance of payments of the developing country in more than one direction, including the flow of foreign capital, which leaves positive effects on the balance of payments in the developing country through the resort of these companies to selling their foreign currencies in this developing country and buying the national currency to finance their domestic payments, which leads to a reduction in the scarcity of foreign exchange if foreign investment is directed to replace imports, and this leads to improving the balance of payments by reducing imports, can also be seen more clearly on the balance of payments - through a contribution to increasing agricultural production and then reducing agricultural imports, as well as increasing the volume of exports due to the knowledge-experiences these foreign companies possess in global markets as well as the possibilities of increasing production with different qualities. With international specifications(Pieńkowski, 2020).

On the other hand, foreign investment leads to the introduction of modern technology in the production processes of the developing country through foreign companies investing in these countries. In addition, these companies will provide expertise and cheap or almost free education for local cadres in dealing with this technology, and then increase their production skills. So that these cadres will be the basic base for increasing the national cadres trained in modern technology.

Conclusions

1. Investment has been known from a jurisprudential viewpoint with many definitions, but we believe that the definition that the Ukrainian investment law gave is a comprehensive definition of the meaning of foreign investment than the definitions contained in Iraqi law and South African law.
2. Foreign investment is one of the most important means of economic growth and advancing development in the country in terms of social, cultural ,and economic terms
3. The multiplicity of laws and legislation in the Republic of Iraq related to disputes arising in investment contracts, but it did not regulate international commercial arbitration as a means of settling disputes, and these legislations were not characterized by clarity, which makes them subject to misinterpretation.

4. Administrative bureaucracy is one of the biggest problems and challenges facing investment in the Republic of Iraq
5. There is a positive relationship between foreign investment and achieving sustainable development, as it contributes to job opportunities, technology transfer, and improving the growth rate.
6. Attracting foreign companies is one of the most important ways to eliminate unemployment.
7. Foreign investment contributes to increasing jobs, combating unemployment and poverty, and improving the standard of living, thus leading to an increase in social capital, and given that unemployment is an obsession for the Iraqi state, it is necessary to always strive to take advantage of the operational opportunities offered by these investments.
8. The role of foreign investment generates positive effects if these investments are employed in industries with links to local industries, which contributes effectively to improving the quality of local industries, and thus, contributes to increasing exports and improving the trade balance. Foreign investment also improves the general work environment and strengthens competition, and this leads to economic development in the host country and an increase in domestic products and others.
9. And foreign investment leads to scientific and technological progress in the host country, as this progress is an important factor in the production process. This progress is obtained by introducing a package of production and marketing systems and methods and technical knowledge, especially if technology is directed to the transformational sectors. It should be noted that the transfer of Technology is not an easy matter, but rather the issue of keeping it under the control of multinational companies and their countries, and not based on the interests of the developing country.
10. Foreign investment is one of the methods of transforming a country's economy from rentiers to a real diversified economy

Recommendations

1. Legislation of a law regulating international commercial arbitration.
2. Allocating a specialized court to settle disputes arising from investment contracts.
3. Elimination of administrative bureaucracy, which leads to the provision of an environment repelling investment.
4. Facilitate the process of implementing decisions issued by foreign courts within the Republic of Iraq, Facilitating the process of implementing decisions issued by foreign courts inside the Republic of Iraq by amending Law No. 30 of 1928.
5. Legislate a law obligating foreign companies to contribute to the transfer of modern technology and work to raise national competencies through training and continuing education in return for obtaining exemptions or tax reductions.
6. Benefiting from foreign investments, especially in developing export commodities and making them competitive in the global markets in terms of efficiency and price.
7. We suggest that the Iraqi legislator should enact a special law to regulate electronic contracts.

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Author's contributions

I read and approved the final manuscript

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