



LEGAL OBSTACLES TO FOREIGN INVESTMENT IN IRAQ (THE RIGHT OF THE FOREIGN INVESTOR TO OBTAIN INFORMATION)

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Abstract:

Investment is an important pillar for the achievement of economic growth and the advancement of economic and social reality, so the countries are seeking to attract foreign investment to them as they work to advance and enhance the process of economic and social development. Thus, the interest in investing and the removal of barriers would ultimately contribute to the development of new ventures aimed at absorbing large numbers of workers and developing their own potential. The right to information is seen as a key pillar of economic development and equal distribution of income and is also relevant because the information is one of the key components of economic growth and investment promotion. This research is done from a doctrinal approach; data are collected through a secondary source by examining the contribution of scholars in this field and the researcher will do a comparison between US, Iraq, Egypt, and Jordan to learn from the experiences of the countries under study in terms of how to provide information to foreign investors to enable them to invest. The Iraqi government must pass the Right to Information Law, which will enable foreign investors to obtain the information they need in order to invest in Iraq.

Keywords: *Foreign Investment, Iraq, Economic Development, The Right of Information.*

DOI Number: 10.14704/NQ.2022.20.12.NQ77154

NeuroQuantology2022;20(12): 1750-1759

1.0 INTRODUCTION

The leading and stimulating instrument for economic growth is an investment, whether in the economies of developing or developed countries. Therefore, rising expenditure and efficiency is one of the general concepts that must be used to achieve high rates of economic and social development. [1] The interest in investing and the removal of barriers would ultimately contribute to a narrowing of the distance between demand and production, an improvement in the quality of use of the resources available, and the development of new ventures aimed at absorbing large numbers of workers and developing their own potential.[2] In order to

persuade investors that they are the best countries to invest, global economies are in a competitive condition continuous, where governments play an important role in enabling the economy to attract investment flows, providing a stable macroeconomic climate and establishing a legislative and regulatory environment that attracts and stimulates foreign investment. It is well known that, particularly since the middle of the last decade, countries have made great efforts to reform structural imbalances linked to foreign trade, to work towards a stable economic policy, to enact legislation that stimulates and attracts investment, and to provide adequate infrastructure for



investment activities.[3] Also, the right to information is seen as a key pillar of economic development and equal distribution of revenue by providing strong support to individuals, investors and decision-makers, and its significance also stems from the fact that information is one of the key components of economic growth and the promotion of investment.[4] Also, it is noted that there has been a

shortage of internal and external sources of funding since 2003 and that it is important to look for other sources, the most important of which is a foreign investment to boost the economic aspect. In addition, there is a lack of a law regulating its offers information to foreign investors who want to invest in Iraq, which has yet to be passed by the Iraqi Parliament.

2.0 METHODOLOGY

This study will be carried out through a doctrinal approach, the doctrinal approach can be characterized as theoretical research that has a relationship with the study, creation, and implementation of legal texts, principles or doctrines. [5] This method was chosen because legal research involved review, analysis, criticism, the application of legal texts [6]; data will be obtained by a secondary source by analyzing the contributions of scholars in this area. This method was chosen because legal research included review, analysis, criticism, the application of legal documents, and other related enactments.[7] It was also

primarily based on legal materials and sources gathered from the library,[8] in studies by Alsamee, Wahab, Yusof [9] and Alsamee [10], a similar methodology was used, data were collected from the first source that was the legal documents, and the second source, including books, laws, papers, and reports, such as previous works on the subject. The researcher would compare the United States, Egypt, and Jordan in order to benefit from their experiences in terms of how to provide information to foreign investors in order for them to invest in Iraq.

3.0 THE CONCEPT OF FOREIGN INVESTMENT

Defining the concept of foreign investment and its aims will be addressed in this part of the study.

3.1 Defining Foreign Investment and Its Importance

Foreign investment is defined as all non-national monetary or in-kind capital flowing into another country, and the decision-maker for this business is essentially the foreign ownership of a foreign entity or a foreign non-national business, [11] it is also defined as any use of financial resources owned by a country made

abroad.[12] The United Nations literature defines the concept of investment as the sum of expenditures on existing capital goods, in addition to the shift in stock, investment does not include gross capital formation.[13] While the unified agreement for the investment of Arab capital defined it as "the use of capital in one of the areas of economic development with the aim of achieving a return to the country other than that of the country of nationality of the investor.[14] As for the World Trade Organization, it believes that foreign investment can



be in the form of currency, objects, services, property rights, and securities. Also, investment of a local national in a foreign investment can be in the form of currency, objects, services, property rights and securities. [15] The influence of foreign investment on the host country is illustrated by its effects on economic growth, its influence on raising the level of technology used in the host country. [16] In addition, its impact on the creation of fixed capital and its impact on the balance of payments and the exchange rate, as well as its impact on the ecology of the host country. [17]

Given the importance of foreign investment in achieving economic growth and promoting the national economy, most countries have tried to create an investment-driving environment, and for this reason a range of investment-enhancing legislation has been released and a range of enabling items have been created, including the exemption of investors from income tax, social services and fees. However, the right to obtain information for investors and companies remains a privilege, and despite the value of these privileges in encouraging investment, all these privileges remain inadequate to achieve the desired basic objective unless they are followed by the introduction of a condition that supports it and enhances its foundations, which is the right to obtain information. [18]

3.2 Objectives of Foreign Investment

There are several economic objectives and advantages that host and exporting countries can acquire as a result of attracting foreign investment, the most significant of which are:

First: The Level of the Host Country

- 1- Foreign investment is considered a way of obtaining the resources or currencies needed to fund development programs and plans.
- 2- Individuals participating in investment projects or working to establish and grow projects in support of foreign investment projects will help to increase the contribution of the private sector to the national product and create a new class of entrepreneurs.
- 3- It helps host countries to acquire advanced and modern technologies, especially for certain kinds of industries.
- 4- To link foreign investment to the capital formation of the economies of developing countries and to compensate for the lack of domestic savings resulting from the revived flow of those investments or the reinvestment of their returns. [19]

Secondly: The Level of The exporting Country

The objectives of foreign investment at the level of the exporting country are as follows: to invest funds at a rate of return higher than that of alternative investment, to monopolize technology, to exploit such companies for political purposes, such as to interfere with the internal affairs of the host country. [20]

3.3 Obstacles to Foreign Investment

Among the obstacles to foreign investment are those linked to the political and environmental system, where the political system is characterized by stability and the absence of possibilities of conflict, the more it attracts investment and vice versa. Whereas, if the environment included customs, practices, positive values and foreign investment approval, it would have attracted



investment and vice versa.[21] Also, there is another obstacle, which is the legislative obstacles that regulate dealing with foreign investment, if there is an investment law that is clear and does not conflict with the rest of the other legislation in the country and includes adequate guarantees of the freedom to transfer profits which leads to attracting investment and vice versa.[22]

As far as the economic aspect is concerned, if economic policies are characterized by flexibility, stability and do not interfere with goals and are consistent with economic changes at the level of the national economy and developments at the level of the global economy, then the issue is attractive to investments within the state and vice versa. Thus, the economic determinants include the determinant of the competitive power of the national economy, where that determinant is attractive to foreign investment; and there is another barrier which we will highlight in this part of the article, which is the right of the investor to obtain information.

3.4 Defining The Right to Obtain Information and Indicate Its Significance

The understanding of societies of the value of knowledge in different fields is the center of social organization, as knowledge is a force in itself, as the force of states and societies is determined by the informational culture they have. [23] Therefore, there is needed to safeguard the human right to own information, on the one hand, providing security for and obtaining the flow of information and providing legal protection to avoid attacks on this right. The right to obtain information is defined as the right of persons to obtain all information kept by the administration without the need to give

any justification for it. [24-4] This definition confers the right to obtain information held by the administration on natural or moral persons and that right of access is limited by not requiring access. The right to information is also strongly supported by investors and decision-makers because the information is one of the main elements of economic growth, customer demand management and attracting foreign investment. [25]

There are also several advantages to accessing information, including that it contributes to improved living standards for citizens, economic growth, and the protection of human rights which can only be achieved by the existence of a general principle of transparency governing all public affairs of the state. This principle has two components, namely, the participation of individuals in public decision-making and the ability of individuals to access the information maintained by the public administration. [26]

Where it has a role to play in the fight against administrative corruption, which is reflected in government responses to people's right to access information on government work and how decisions are taken, in particular, those relevant to the public interest and affecting people's lives, and giving people the opportunity to see the performance of the government.[27] And his role in the achievement of administrative accountability as well, information gathering is a fundamental prelude to achieving administrative transparency, which in turn is seen as a basis for combating corruption.[28]

However, the right of investors and companies to obtain information remains a privilege, and although the importance of these privileges in encouraging investment, all of these



privileges remain insufficient to achieve the desired basic objective unless they are followed by the implementation of a requirement that supports it and strengthens its foundations, which is the right to obtain information. [29]

Basic information for supporting investment decisions comes from a variety of sources, but information prepared by government agencies remains one of the most important sources, and the Handbook of the Statistical Organization of the United Nations summarizes the key concepts of official statistics. In addition, independence, since the statistical body must be independent and impartial from the rest of the departments of government that manage the various aspects of policy-making and implementation activities. [30]

The right to access information helps support investment decisions based on a variety of main factors, including the projected economic growth rate, the government budget surplus or deficit, the investor's familiarity with the causes of inflation, and the inflation rate.[31] The balance of payments, the quality of the infrastructure and the decision to make any investment depend on the estimation of each of these factors, and without information, it is impossible to estimate these factors, and the matter does not stop at the limit of obtaining information, but rather at the possibility of relying on that information, since this issue increases the confidence of the investor.[32]

The issue of access to information has become a priority for decision-makers in developing and developed countries in the light of the activation of the market economy and the wealth of information,[33] so the market economy aims to achieve economic efficiency goals based on demand and supply

processes, leaving market parties free to make their decisions if the market economy process succeeds complete knowledge is important for the activation of the consumer economy and the economic performance of markets.[34]

4.0 APPLICATIONS OF THE RIGHT OF FOREIGN INVESTOR TO OBTAIN INFORMATION

The governments of the countries under study aim to promote investment in the country as a key driver of growth and support for the national economy, while enacting special legislation to encourage investment, including a collection of privileges that contribute to encouraging investment, including exempting investors from income tax, social services, customs duties and others. These privileges, however, remain incapable of achieving the objective unless they are accompanied by a fundamental condition which supports them and strengthens their foundations, namely the right of investors and companies to obtain information because investors are unable to position their investments without a law which guarantees their right to obtain all information on the legislative framework for their investments. In order to learn from the experiences of the countries under study in terms of how to provide information to foreign investors to enable them to invest, as well as assisting the Iraqi government in drafting a law on acquiring information based on those countries' laws.

4.1 The United States of America

North American Free Trade Agreement (NAFTA) which includes the United States of America (USA), Canada, and Mexico has helped to develop a wide market of over 355 million people. This has led to a rise in aggregate demand



for these countries, in addition to the production of a strong gross national product. This union has helped open up the Mexican markets as a consequence of the increase in the marginal consumption trend in that country and the high growth rate of trade and investment in the rest of Latin America. This created a more favorable atmosphere for direct foreign investment. In an effort to create a state of convergence between foreign investment and trade, this agreement allowed Latin American countries to draw foreign direct investment.[35] In addition, the business was defined by the District Court of Appeals for the District of Columbia Circuit as designs, descriptions and processes of commercial value, or as the means by which commercial products are produced, prepared, multiplied and processed, and which can be represented as the final product of either invention or great effort. This definition constitutes an explicit departure from what has been settled in Jurisprudence and the judiciary that the object of business and investment is that knowledge which gives its owner a competitive advantage over its competitors, and the definition of the Court of Appeal of the Columbia Circuit for Business was adopted by the Court of Appeal of the Tenth Circuit, declaring that this definition is largely consistent with the policies behind the issuance of the Freedom of Information Act.[36]

4.2 Iraq

The Iraqi Parliament has yet to pass the draft legislation on the right to obtain information, which does not include a text granting investors the right to obtain the information and data they need on how to invest in Iraq.

It should be noted that Iraq adopted Investment Law No. 13 of 2006, which granted Iraqi and foreign investors the

right to benefit from all incentives, services, and guarantees, subjected them to legal obligations, and gave them the right to own land allocated to state and public sector residential projects, as well as the right to buy land belonging to the private sector. [37]

Because of the importance of investment and its primary function in achieving economic growth, multinational companies and non-Iraqi investors consider this when making investment decisions in Iraq. [38-16] However, the Iraqi economic system lacks the clarity that international corporations and non-Iraqi capital holders need when making investment decisions. Transparency here refers to the knowledge that allows foreign companies and investors to forecast future conditions of the internal economic environment in which they can formulate and guide investment plans.

The Iraqi government must also resolve the gap in the 2012 draft law that allows foreign investors to obtain information on investment and development in financial markets and banking, as well as how to invest in Iraq in order to attract investment and help the country develop its economy.

The analysis of the barriers that hinder the flow of foreign investment, whether they are economic, legal, or linked to the investor's right to obtain information and solve them, must be prioritized. It is important to make it possible for a foreign investor to obtain the information required for investment and the growth of financial markets and banking.

One of the reasons why businesses are reluctant to join the investment process is the lack of political and security stability, the Iraqi government must work to provide the requisite



assurances to attract investors to Iraq by improving the security situation.

4.3 Jordan

With regard to the Jordanian Law on the Guarantee of the Right to Information No. 47 of 2007, there is no single a single text indicating the right of investors or companies to receive information within a specific mechanism, where this law limits the right to obtain information to the Jordanian according to the article 7, which states that "... any Jordanian, whether he has a valid interest or a legitimate purpose, has the right to obtain information." Whereas, as part of its relentless efforts to encourage foreign investment, the Jordanian Government has issued a range of laws aimed at attracting foreign investment, such as the Investment Law, the Income Tax Law and the Non-Jordanian Investment Scheme, with the goal of treating foreign investors in the same way as national investors, whether by ownership or participation. The Non-Jordanian Investment Promotion Act of 1997 provides that a non-Jordanian investor is entitled to own all or part of any project, with the exception of sectors in which he is not entitled to own more than 50% of the project in the shipping, contracting, commercial, banking, insurance, communications and mining sectors.[39] The Government of Jordan must provide information on investment guarantees within the country and offer investors great privileges, but these privileges remain insufficient to serve their purpose unless the right to access information is included in the legislation that gives them the right to know how their money is spent in the country.

4.4 Egypt

The view of the Egyptian government is full of optimism and confidence in foreign investment and the importance of attracting foreign investment to Egypt, and fill the gap between national savings and investment required for economic development, and helping foreign direct investment to increase investment levels and increase employment opportunities, bringing new technology into production (nd) [40], according to the Egyptian Right to Information Law of 2013, it is noted that it guaranteed the right to access information for all persons without exception, in other words, that it did not merely make that right preservation of the Egyptian citizen, as was done by the Jordanian legislator, and Article 2 of that right was stipulated that "..... The state guarantees for everyone the right to obtain it in accordance with the rules, controls, conditions and procedures stipulated in this law" also, it is noted that this right includes the Egyptian and foreign investors as they are entitled to obtain the information they need it.

Furthermore, the Egyptian Investment Law of 2015 attached great importance to foreign investors by treatment of foreign investors should be handled in a manner similar to that of national investors and that, in applying the principle of reciprocity or taking into account factors applicable to the national economy and national securities.[41] It also gave investments the right to benefit from guarantees, irrespective of the system to which they are subject, even though they enjoy the guarantees provided for in the law for foreign investments. However, the foreign investor has a special point of view, as he believes that the investment climate of Egypt is not sufficiently prepared to attract foreign capital into Egypt. As the foreign



investor assumes, this environment consists of a variety of elements, including the availability of the economy's basic infrastructure, the high degree of human resource productivity, the high rates of economic growth, the low rate of inflation, the liberalization of trade, the failure of the foreign investor to obtain sufficient information to attract capital, and the failure of the foreign investor to attract sufficient capital. [42]

5.0 Conclusion

Foreign investment is a way of obtaining capital or currencies required to finance programs and plans for growth, and most countries have tried to establish an atmosphere to attract investment because of the importance of foreign investment in achieving economic growth and sustaining the national economy and many laws have been issued to encourage investment for this purpose. Also, the effect of foreign investment economic growth is dependent on the level of human capital available in the host economy.

The privileges granted to foreign investment remain inadequate to achieve the desired basic objective unless followed by the introduction of a condition supporting and strengthening its foundations, which is the right of investors and companies to obtain information, whilst the right to information provides to investors and decision-makers strong support, in terms of the fact that information is one of the basic elements in achieving economic growth, because reliable information takes upon itself the task of achieving balance in the market economy and attracting foreign investments.

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Notably, it is noted that the draft law on the right to information of 2012 did not contain an article that gives investors the right to obtain the information they want related to how to invest in Iraq. Furthermore, the Investment Law No. 13 of 2006 and its amendments granted Iraqi and foreign investors the right to benefit from all the advantages, facilities and guarantees, made them subject to the obligations laid down in the legislation. Therefore, in the investment decision-making process, the Iraqi economic system lacks the clarity that is of great importance to international companies and non-Iraqi owners of resources, and transparency is the knowledge that enables foreign companies and investors to foresee the future conditions of the internal economic climate in which investment plans can be formulated and directed.

Finally, it is important for foreign investors to be able to obtain information on investment and growth in financial markets and banking, and that it is also appropriate for the Iraqi government to fix the shortfall in the 2012 draft law to enable foreign investors to obtain the information they need on how to invest in Iraq. Policy and security stability must be maintained, which is one of the reasons for limiting the entry of companies into the Iraqi investment process. We, therefore, propose studying the obstacles that restrict the flow of foreign investment, whether economic, legal or even related to the right of the investor to obtain and resolve information.

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