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# **The legal system of the investment environment in the public sector**

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## **Abstrac**

The investment is intended to invest money in any economic activity or project that benefits the country. The proper employment of oil resources is contributed by the sound environment to invest in achieving sustainable development in general and the economy of the country in particular. It is divided into public and private investments. Governmental organization to satisfy public needs and usually through the national institutions or companies competent as the national oil company established by the law of the establishment of the Iraqi National Oil Company No. 11 of 1964 and amended by Law No. 123 of 1967, which resorted to Iraq in the development of industry The private investment refers to that investment which comes as a result of the initiative of a natural or legal person alone to invest in a particular project to obtain profit and interest. The private companies owned by one of the people of the private law that invest their money for the purpose of making profit, and the investment is achieved under certain conditions related to the nature of money Investor and the nature of the investor and is under the legislative guarantees of the objective and formality (procedural) requires the text to achieve the best investment.

**El sistema legal del entorno de inversión en el sector público.**

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## Resumen

La inversión está destinada a invertir dinero en cualquier actividad económica o proyecto que beneficie al país. El ambiente adecuado contribuye al empleo adecuado de los recursos petroleros para invertir en el logro del desarrollo sostenible en general y la economía del país en particular. Se divide en inversiones públicas y privadas. Organización gubernamental para satisfacer las necesidades públicas y generalmente a través de las instituciones nacionales o empresas competentes como la compañía petrolera nacional establecida por la ley del establecimiento de la Compañía Petrolera Nacional Iraquí No. 11 de 1964 y enmendada por la Ley No. 123 de 1967, que recurrió a Iraq en el desarrollo de la industria La inversión privada se refiere a la inversión que surge como resultado de la iniciativa de una persona física o jurídica sola de invertir en un proyecto particular para obtener ganancias e intereses. Las empresas privadas propiedad de una de las personas del derecho privado que invierten su dinero con el fin de obtener ganancias, y la inversión se logra bajo ciertas condiciones relacionadas con la naturaleza del inversor de dinero y la naturaleza del inversor y está bajo la legislación Las garantías del objetivo y la formalidad (de procedimiento) requiere que el texto logre la mejor inversión

The importance of the research:

The importance of research shows that it highlights the environment of oil investment in Iraq and its implications for sustainable development through guarantees granted to investors within Iraq and the appropriateness of legal legislation in the field of investment.

The problem of research :

The problem of research is reflected in the statement of the effectiveness of the legal texts of oil investment in Iraq on the investment environment and whether the legal texts have addressed all the problems facing investors in the oil field in Iraq? Does the Iraqi legislator provide sufficient legal guarantees to protect investors from the wealth and wealth of the country

Methodology of research:

The methodology presented in the research is an analysis of the legal texts and jurisprudential opinions on the investment in the oil environment in Iraq and its impact on sustainable development.

Introduction:

The Iraqi economy after 2003 witnessed a historic development through the transition from the economy oriented to the free economy in line with the

desire of the state to achieve sustainable development in the oil sector. This is reinforced by the provisions of the Republic of Iraq for the year 2005. Article 225 states that " The Iraqi economy according to modern economic bases and to ensure the full investment of resources and diversity of sources and the encouragement and development of the private sector, "as well as the text of Article 26 of the Constitution, which stipulates that" the State guarantees the encouragement of investments in various sectors and regulated by a law. "Under these constitutional provisions, Legal data based on these considerations and activated under special laws aimed at encouraging the private sector to invest in the field of oil, including the Investment Law No. 13 of 2006, in addition to the rate on the Law of Crude Oil Filter No. 64 of 2007 amended legislation.

The purpose of this legislation is to encourage national and foreign investors to enter their land to invest in the field of the oil sector, which directly affects the sustainable development in the Iraqi economy. Therefore, this study will be divided into two sections: the first will deal with what the investment in terms of concept and types and then its terms either The second topic will deal with the guarantees of investment in Iraqi law, namely objective guarantees and procedural guarantees

The first topic

What is the investment and its terms?

In this section we will discuss the definition of investment and the statement of the most important types that are appropriate to the nature of investment in the field of oil and then linger on the most important conditions in the following two agencies:

The first requirement / concept of investment.

The statement of the concept of investment leads us to search for its definition and then the statement of its types.

Section 1: Definition of Investment.

.Investment is a language of fruit which is the types of money and the collection of fruits and the fruit of the man if a lot of money and investment is spending in full in any way to make a profit in the near and distant future[1]

The investment has been defined by jurists as different definitions, which are not different in terms of meaning, but it can be said that it is intended to invest in general dealing with the money for the purpose of making a profit either legally, the Iraqi legislator knew the investment in the first article that the use of money in any activity or economic project of legitimate benefit On the country.[2]

Investment is a key element in the economic activity of its capital. It is important for economists to set a specific definition of this important activity. There

fore, they have defined several definitions. And financial surplus, but they could not develop a comprehensive definition of the investment process, but only defined the objective of the investment process is to make a profit.[3]

The definition of investment is absolute to include all types of investment. The investment may be national when the investor is an Iraqi or a foreign investor, as stated in paragraph (j) of the same article that defined the Iraqi investor as "(who holds Iraqi nationality in the case of the real person And registered from Iraq as it was verbally and not moral rights)) as I know paragraph I of the above article foreign investor that he is not carrying Iraqi nationality in the event that the real person registered in a foreign country if he is a moral or human rights.[4]

The following are noted:

1. The legislator should provide a unified definition for the investor in general, regardless of his nationality, in order to avoid exaggeration in the texts that do not work under it, as defined by some of the Arab legislations that are invested in general.
2. The legislator used terms that Arab legislations did not use, such as the real person, which means the natural and the legal term to denote the moral person, and this raises confusion when the interpretation was supposed to be avoided by unifying the terms to mean one meaning.
3. There is no justification for distinguishing between the Iraqi and foreign investor except in some provisions because the investor, subject to the provisions of this law, regardless of his nationality, shall enjoy all the privileges, facilities and guarantees and shall be subject to the obligations contained therein.[5]

Section II: I am an investment.

The investment takes many forms and types, as mentioned above, as it varies from source to national investment and foreign investment.

The first type refers to the type of investment made by a natural or legal person from the employees of the state in which the investment is made and in accordance with the laws governing the investment therein, which in turn is divided into two public investment and private investment.

The second type is the foreign foreign investment, which is the reception of heads of foreign funds for investment from abroad directly to work in the form of industrial units or finance or construction, agricultural or service.[6]

The profit motive is the main driver of this type of investment. Foreign investment takes the form of a company or a partial or partial repurchase of a company in a foreign country, whether the company is different. Its branches are specialized in production or marketing or for sale or for any productive or service activity. The foreign investment is divided into two direct categories. It is known that the establishment of wholly-owned projects for foreign investors or ownership of shares enables them to control the administration, and this kind of great economic

importance as a means of economic development and include capital within the host country, either indirect investment whose role is limited to Hungary Provide capital through the purchase of stocks, bonds and traded for profit without having to exercise direct activity.[7]

It also divides investment into public and private sectors. Public investment refers to investment by a governmental body in order to satisfy public needs, usually through the national institutions or companies that are competent as the national oil company established by the law of establishing the Iraqi National Oil Company No. 11 of 1964 and amended by Law No. 123 of 1967 Which led to Iraq in the development of the oil industry, either private investment is intended to investment that comes as a result of the initiative of a natural person or legal alone to invest in a specific project to gain profit and interest is private companies owned by a person of private law Which invests their money for profit.

The investment has been expanded and diversified. Investment has been divided into many types and forms, including:

Investments by geographical location include internal investments and foreign investments. Investments by nature Real investments on capital assets, land or factories and financial investments, such as the purchase of shares, bonds and securities.[8]

#### The second requirement / investment conditions

With the growing importance of investment in the light of sustainable development and increasing calls to demand the encouragement of investment so it was natural that countries resort to the issuance of legislation governing the investment, including Iraq, where the legal system of investment from a number of laws related to the establishment of the investment project, each regulated a certain aspect, 118 of 1978 and the Private Companies Law No. 21 of 1997 and the Trade Law No. 30 of 1984 and other related legislations.

Under the Investment Law No. 13 of 2006, the Iraqi legislator stipulated several conditions relating to the quality or nature of the capital of the investment project (the invested money) or the size or amount of capital of the investment project and we shall deal with it in the following two branches:

Section 1: The nature of the invested capital (for the investment project).

Article (21) of the Investment Law stipulates: "The capital of the project covered by the provisions of this law shall consist of the following:

First: Cash transferred to Iraq through banks and financial companies or by any other legal method for the purpose of investment for the purposes of the law.[8]

Second: the money in kind and moral rights supplied to Iraq or purchased from the local markets by cash transferred to Iraq, namely:

1. The money in kind has to do with the project.
2. Machines, machinery and buildings.

3. Moral rights include trademark patents.

Third: the profits, benefits and reserves resulting from the investment of capital in Iraq if the capital of this project is increased or if invested in another project covered by the provisions of the law.

Fourth: The size or amount of capital of the investment project "

The law of the Iraqi legislator in Law No. 13 of 2006 on specific types of funds that are included in the capital formation of the investment project, as stipulated in Regulation No. 2 for the year 2009 minimum shall not less than the value of the capital of the investment project one and the amount of (250) thousand dollars or Is equivalent to the Iraqi dinar and did not include the above law and it was better for the Iraqi legislator to provide for that in the law itself and not just the system.[9]

Section II: The nature of the investor.

The investor under the Investment Law represents every natural or legal person in general and whether national or foreign. The law does not specify the conditions that must be met in this person, nor does the law require a specific nationality for the investor. Nationality is the criterion of distinction between national investment and foreign investment. The investor is foreign when he does not carry The nationality of the country is often found to take the form of a company and there is more than one criterion adopted by the various comparative legislations, for example, the criterion of the main management center (according to which the legal person is the nationality of the state in which the actual management center of the legal entity is located) (The composition or establishment), ie, the legal person has the nationality of the state in which it was established and under its laws. There is a criterion of nationality of most of the shareholders, or what is known as the criterion of control, where the legal person has a nationality Most of the shareholders are shareholders in the company's capital, and there is also the standard of the exploitation center where the legal person has the nationality of the country in which the activity of this legal person comes into being. In reference to the Iraqi Investment Law No. 13 of 2006, A prophet that he is registered in a foreign country if the person is moral or human, as we find in his definition To the national investor that he is registered in Iraq if the person is moral or legal. It seems from these texts that the Iraqi legislator has taken the place of establishing the legal entity as a criterion for determining his nationality. This is in line with the Iraqi Companies Law No. 21 of 1997, The company that is established in Iraq under its provisions is Iraqi.[10]

Article 19 / II of the Investment Law in force stipulates the requirements that must be provided by the investor to obtain the investment license which is as follows:

- Investment application form prepared by the Investment Authority.
- The project financing plan is accompanied by the guarantee of the financing by an approved financial institution.
- Projects carried out by the investor or his partners in Iraq or abroad and the supporting bodies in his execution.
- Details of the investment project and feasibility study.
- Project completion schedule.

The second topic

Legislative guarantees for investment in the oil sector

The law is considered a tool for the formulation of the investment policy of the state or to express it in all its economic, financial and administrative directions. The law is the tool that reveals the incentives that the state pays the investor to work in certain activities and areas of investment and the advantages and guarantees it provides to improve the investment climate. The laws and regulations relating to investment have failed to provide a definition of the benefits or guarantees that are guaranteed to the investor. We also find that there is a difference between investment legislation on what is considered a guarantee and what is considered an advantage granted to the investments subject to its provisions.

The provision of legal guarantees for the protection of the investment environment can only be done under clear rules, because the ambiguity, conflict or lack of mutual interests between the parties will contribute to the difficulty of providing the necessary protection for both parties and the protection of rights and this is reflected on development and perhaps due to mutual fear Between the investment companies that aim to profit and speculation and the concerned governments that strive to obtain the greatest possible revenues from their natural resources stored in their lands, which they consider part of their national wealth and exercise power and sovereignty for the benefit of their peoples. (I) to each party that includes the mutual rights and duties between them and which prevent future conflicts resulting in harm to their vital interests

Therefore, it was obvious to find the guarantees that must be met, which encourage investment and thus reflect on sustainable development, especially in the field of oil activity of various kinds. The general guarantee is to provide the means necessary to achieve legal security provided to him to provide the work and guarantees the results and guarantees divided into two parts guarantees Objectivity and procedural safeguards.

First requirement

Objective safeguards

It is defined as the legal rules whose subject matter is the undertaking to guarantee the rights of the foreign investor and protect his capital and profits



and his right to transfer them outside the concerned state and his right not to nationalize them or to dispose of them except for the public interest and in return for a fair compensation, as well as not to impose custody or confiscation thereof except by virtue of a competent court. From:

Section I: Constitutional Guarantees.

Second: It is not permissible to dispose of property except for the purposes of public benefit in return for fair compensation, and this is regulated by law. The text of this constitution is that the owner of the property The Constitution encourages investors when they wish to invest inside Iraq to reassure their funds inside Iraq and use them and exploit them within the limits of the law and not being subjected to confiscation, which achieves the best results for them and for the country invested and this is reflected positively on the resources of the country.

Section II: Legal Safeguards.

The Iraqi Investment Law stipulates that "The project established under the provisions of this law shall enjoy the following guarantees:

a. Not to include in any action that deprives investors of their capital ownership, either directly or indirectly, by means of nationalization, expropriation or expropriation.

B. Failure to reject restrictions on the right of the investor to return his capital and profits and any other rights resulting from the investment and the conversion in the currency entered or any other currency convertible from currencies accepted by the Central Bank.

C. The products of the investment project shall not be subjected to forced pricing and the determination of profits for the purpose of achieving the desired returns from practicing the investment activity.

Second: Exemption from the provision of paragraph (a) of the first item of this article may be expropriated if necessary if necessary for the purposes of public interest in accordance with fair compensation to the owner .....

It is also known that the state has the authority to issue legislation within its territory, enabling it to amend or abolish legislation related to investment in a way that does not prejudice the contractual balance and the state has sovereign advantages under which the contract can be amended and terminated by the individual will so it is natural for investment companies to protect their investments through The establishment of a condition that requires legislative stability in relation to the laws relating to investment to limit the power of the legislative state to modify or cancel the contract without prejudice to the individual will and the purpose of this is not to change the contract as it is fixed through

the state's pledge not to The application of any new legislation or administrative decision on the new contract concluded with the investment companies and the text of the investment law of Article (13) thereof that "(any amendment to this law does not entail any retroactive effect affects the guarantees and exemptions and rights prescribed therein) A legal requirement in terms of source and general condition in substance and that any future amendment to the Investment Law would prejudice the guarantees and waivers of the rights applicable to the contract that was concluded prior to the issuance of such amendment.

And other guarantees granted by law to the investor the right to buy shares and treasury bonds traded in the Iraqi market for securities and has the right to insurance on the project in question with any foreign or local insurance company, and has the right to open bank accounts in local and foreign currencies, both inside Iraq or abroad in respect of The investment project and also the right to employ foreign workers when needed after giving priority to Iraqi workers

The second requirement

Procedural safeguards

Procedural guarantees are defined as the means provided by law to the investor to protect his rights administratively and judicially.

Section 1: Administrative Means.

The legal means for the foreign investor to settle the disputes arising in respect of his investment practice include the means of appeal against decisions related to the investment activity issued by the administrative authorities in the host country. The legal system of the host country must include the procedural means that would allow parties to investment disputes to end the disagreement or dispute between them at the beginning before they develop into a dispute.

And the first of these stages of grievance of administrative decisions, the law gave the competent investment bodies the power to impose specific sanctions on the investor in the event of any dispute on the investment law such as withdrawal of the investment license as a breach of contractual obligations or deprivation of economic advantages and privileges or liquidation of the investment project as provided for in Article 27 of the Investment Law No. 13 of 2006 and reference to the investment law, we find that the legislator identified procedures to be taken before the withdrawal of the investment license is to warn the investor to remove the violation or to implement the investment project during the agreed period And then in case of non-response is given a final warning.

## Section II: Judicial means.

As stated in the above article, which states that (disputes arising between the parties subject to its provisions apply to them under Iraqi law and jurisdiction of the Iraqi courts unless otherwise agreed otherwise than cases that are subject to the provisions of the law exclusively or the jurisdiction of the Iraqi courts) If there are investment differences, it will be solved by one of the following mechanisms:

- 1- The national judiciary (Iraqi) represented in the competent courts.
2. Arbitration mechanisms provided for in Iraqi law or any other internationally recognized body.
- 3 - Special agreement with the investor, which provides for the arbitration clause.

## Conclusion

Through this study, which took place on the subject of the impact of the legal system of the investment environment in the public sector oil on sustainable development - Iraq model we reached some of the findings and recommendations that may contribute to solving the problems of investment in the oil environment inside Iraq Agencies:

### First: Results.

Many of the results emerged through the study of this subject, the most important of which is the following:

1 - Insecurity in Iraq is considered the first enemy (for the foreign investor) because the investor does not venture to transfer his capital and experience to a country, unless the reassurance to the stability of the security and political situation in it, so the investor looking for safety and stability and can not invest in the atmosphere Security and stability are the basis for achieving sustainable development not only in Iraq but in all countries.

2. Nationality is the criterion of distinguishing between national investment and foreign investment. The investor is foreign when he does not hold the nationality of the country. We often find him taking the form of a company. There is more than one criterion adopted by the different comparative legislations,

(A) The legal person shall have the nationality of the State in which the place of effective management of the legal person is situated, namely, the center of issuing

decisions and directives such as the company's board of directors or the venue of the meetings of its public body. According to its laws, there is a nationality standard for most of the shareholders, or what is known as the control standard,

where the legal person has the nationality of most of the partners who share the capital of the company. Into existence

3. The law is the tool that reveals the encouragement that the state pays the investor to work in certain activities and areas of investment, and the advantages and guarantees it provides to improve the investment climate

4- The importance of the legislative stability in relation to the laws related to investment to achieve development and to limit the power of the legislative state to modify the contract or cancel it without prejudice to the individual will. The purpose of this is not to change the contract as it is fixed through the state's undertaking not to apply any new legislation or administrative decision On its contract with investment companies.

5 - The legal system of the host country should include the procedural means that would allow the parties to the investment disputes to end the case of disagreement or dispute between them at the beginning before it develops into a dispute that is brought before the courts.

#### 6. Second: Recommendations.

Given the importance of investment in Iraq and its role in advancing sustainable development, it requires a safe environment to attract foreign investments towards Iraq by increasing the guarantees and privileges granted to the investor as well as financial exemptions, which are considered the most important factors for these investments.

1 - the need for the Iraqi legislator to amend some of the terms used in the Iraqi investment law because it is not previously used in Iraqi legislation, for example, we see the legislator, when defined by the investor in the text of Article (1) Paragraph (j) used the term real person and rights and was more correct The term natural person and legal person is used to preserve the unity of legal terminology in Iraqi legislation.

2- Reducing the routine rings in the process of requesting the investment license, which in turn leads to encourage investors to proceed with the procedures of investment projects, which is reflected positively in the elimination of administrative corruption, which has become weary in the public sector in general.

3 - Spread awareness of the importance of investment in various types and not rely on the public sector, especially in the completion of vital projects, strategic and service to serve the interest of the Iraqi citizen mainly in the light of the financial crisis suffered by the global economy in general by allowing the private sector, whether national or foreign to contribute In the development of the Iraqi economy.

4 - Making efforts of specialists to make the necessary amendments to the

Investment Law and relevant laws to avoid the constraints that accompanied the application and meet the aspirations of investors and maintain public money at the same time.

5. The State can deal with the unemployment suffered by an important segment of the society by expanding investments and obliging investors to use national manpower and its commitment to rehabilitation and training, clearly in the terms of the contract between the two parties and foreign workers in order to provide skills and expertise.

6 - The Iraqi legislator explicit text in the resolution of investment disputes that may be raised in the investment law in force and the establishment of a complete mechanism and clear to resolve those disputes, which reassures the foreign investor in the investment of his funds in Iraq.

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