

**THE IMPORTANCE OF LEGAL PROTECTION FOR ATTRACTING FOREIGN
DIRECT INVESTORS: THE CASE OF IRAQ**

By

Jebur Siham Kadhim

THESIS

*Submitted to
KDI School of public policy and management
in partial fulfillment of the requirements
for the degree of*

MASTER OF PUBLIC POLICY

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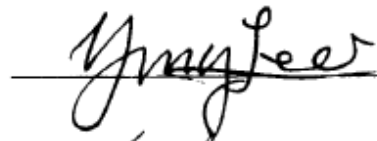
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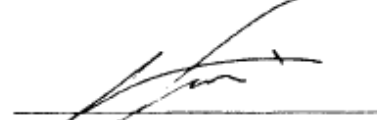
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ABSTRACT

THE IMPORTANCE OF LEGAL PROTECTION FOR ATTRACTING FOREIGN DIRECT INVESTORS: THE CASE OF IRAQ

By

Jebur Siham Kadhim

Foreign direct investment is an important source for economic development. In the Middle East, it has been used to increase the inflows of FDI and greater foreign participation in their economies. However, Iraq has been an outlier within the region, with lower inflows of FDI than any other countries in the Middle East, especially in manufacturing. The inflows of FDI have benefited Egypt and Malaysia. I use the experience of these countries to gain insights as to what the government of Iraq might do to attract greater FDI's.

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I. INTRODUCTION

As is well-known Iraq is strategically located in the Middle East and has a rich cultural history, as well as many natural resources. The war in Iraq has destroyed much of its political, economic and administrative infrastructures. Since then, Iraq has not been able to attract foreign direct investors who would participate in the reconstruction of the national and local economy. The war destroyed the most important constructions and infrastructures such as schools, hospitals, roads and bridges .The war also destroyed the human capital needed for rebuilding, reconstruction and development devastated schools, hospitals, residential areas, hotels, the touristic places, and other infrastructures. Therefore, Iraq needs foreign investment to facilitate the recovery of the damages.

The purpose of this study is to examine why Iraq has not been able to induce desired foreign direct investments and to suggest ways to change the tide. The current level of foreign direct investment in Iraq is absolutely negligible. The reasons for the low foreign investment are weak security, low government commitment and poor management. Furthermore, the unstable political situation increased the risk in the investment environment.¹Regardless, Iraq has taken steps to remedy the dismal situation by passing a series of investment laws and adopted active development strategy. But FDI inflows to Iraq still low.

¹Lisa Mitchell,Pushing the investment frontier in Iraq, BBC news.Page last updated, May 27,2010.
http://news.bbc.co.uk/2/hi/uk_news/8703804.stm

To attract foreign investors, Iraq must provide them with necessary legal protections, appropriate investment environment and climate and dispute resolution mechanisms. There are many ways in which to attract foreign investors: Some authors argue that host countries should ensure and encourage FDI by offering incentive packages. Others suggest that host countries should protect foreign investors against risks. All of the factors above are very important to attract foreign direct investment but they are not enough. There is a most serious issue which they should consider: the issue is about legal protection of foreign investors such as their legal rights when the regime changed or when the law of the country change. The Iraqi government must protect their investments under all circumstances such as a change of the government and laws.

What should the government of Iraq do to attract foreign investors? It is of prime importance that the government enacts laws that provide the details. The Iraqi investment laws are lack clarity and lack specificity. Regarding FDI institutions, the situation is mired with confusion. Iraq has adopted a commission system and accorded them with a wide range of authorities but with complicated administrative procedures. In addition, there are no uniform procedures for applications forms and license forms as a part of the investment process procedures. If Iraq is to increase FDIs it has to do many things, but foremost it has to put the legal system (legal framework) in place as well as safety and security for their investment. If the legal system is weak and confusing, foreign investors will feel uncomfortable to invest in Iraq. Surely, they will search for other opportunities in other countries. Therefore, encouraging and promoting foreign investors by enacting very clear legal rules and regulations and the best implementation is very important to ensure the success of the foreign direct investment. The purpose of this study is to identify the problems and weaknesses of the legal framework for foreign direct investment and look at Egypt and Malaysia's FDI Regime to learn how the Iraqi government might do things differently.

II. ISSUE BACKGROUND

Investment is the tool for driving and pushing of economic development in both developed or developing countries. The investment increasing and raise its efficiency is one of the important foundations that must be relied upon to achieve economic and social development and enhance production and as a result reduce dependence on imports and improve the trade. Moreover, encouraging, promoting foreign investment and eliminating constraints will be necessary to attract foreign investors through appropriate legal environment, efficient legal framework(laws and institutions), transparency in implementing the rules and regulations.

Foreign direct investment concept

Foreign direct investment can be defined as “the investment that requires control or supervision of the project, which takes the form of the establishment of the institution by a foreign investor alone, equal or non –equal participation with the national capital and it may take the form of repurchase of whole or in part of an existing project”.²Foreign direct investment is also defined as “the investment which goes directly to the owning fund of real assets of land (buildings and machines)”.³Foreign direct investment has become a desirable alternative to fund economic development that developing countries seek to attract it. However when investment policy regimes become open, many developing countries and many transitional economies change economic environment and the legal framework radically toward attracting foreign investors.

It is not enough for these countries to enact investment law and wait for the foreign investor’s inflow. There must be a legal regime that provides incentives, guarantees and legal

²Al Ibadi.Mohamed and Al Khldiy. Hammed, fail and successful factors in the foreign investment laws, Iraq,conference paper , 2009,155.

³Ibid., 2009,155.

protection for investors and their investments. The legal rules governing investment should be the result (generation) of country's policy that may be encouraging and welcoming foreign investment.

The investment laws in the world vary from country to country in terms of the degree of success and failure. Some laws have been successful in some of their objectives, such as South Korea and Singapore while other countries have not achieved success. For that there must be some essential ingredient for ensuring success. Investment is the national need which has economic, social, humanitarian and political dimensions imposed by peaceful living requirements among nations, regardless of their developing degree. The need for Iraq is more than that of other countries because of the difficult conditions which are associated with various political visions which interrupted Iraq to follow global developments in addition to the collapse of the existing infrastructure because of the policies results and economic and political isolation that accompanied with.

The legislation in Iraq has witnessed a package of legal and economic legislations related to foreign investment, which encourages investment sometimes and constrained it in other times, which affected negatively foreign investment inflow and that was accompanied by flight of capital owners and experience and low propensity to invest.⁴

That multiple laws prior to 2003, as well as newly issued need deep study and remove the ambiguity and lack. The destruction of economic foundations behooves the new administration in Iraq to entice foreign investors to invest in Iraq profitably, so the foreign investment only would help reconstruct the nation. One important element for the reconstruction is to attract foreign investors. Why? Foreign direct investment is very important for the

⁴ Ibid, 2009,156.

development of the countries and (gain mutual benefit to them). This view is supported by the classical economic theory on foreign investment⁵ which states “The foreign investor usually brings with him technology which is not available in the host state and this leads to the diffusion of technology within the host economy. There is new employment created whereas, without foreign investment such opportunity for employment would have been lost.

The Labor that is so employed will acquire new skills associated with the technology which the foreign investor brings with him. Skills in the management of large projects will also be transferred to local personnel. Infrastructure facilities will be built either by the foreign investor or for the foreign investor by the state. These facilities will be to the general benefit of the economy.”^{6, 7, 8}

Iraqi investment law (2006) defined the investment as “the investment of capital in any economic or service activity or project that result in a legitimate benefit for the country”⁹

Determinants of FDI

There are many factors may effect on the driving of FDI, this study will focus on the attraction factors related to the host state. FDI's framework of the country consists of many legal determinants or elements, national and international. By understanding them, policy makers will lead to facilitate the efficient analyzing of national law. In addition, those

^{5,6} M.Sornarajah, *The international law on foreign investment*, Cambridge University, 1994, 38-39.

⁷ Pritchard Robert, *Economic development, foreign investment and the law*, (Kluwer law international, London – the Hague – Boston, 1996, 4.

⁸ Jean .Yves P. Steyt, *Comparative foreign direct investment law: determinants of legal framework and the level of openness and attractiveness of host economies* (LL.M. Graduate Research Papers Cornell Law School), 2006, 14.

<http://scholarship.law.cornell.edu/cgi/viewcontent.cgi>

However, foreign direct investment is the main way for national development strategy. In addition it is a major tool for international economic relations. FDI brings to host country many advantages such as capital, experience and knowledge. Therefore, competition among countries to attract foreign investors is on the increase.

elements or factors are considered as criteria to determine and estimate the country's level of FDI inflows attraction.

From this measure we can compare the progress of the legal and regulatory framework with that of others. These elements or determinants interact with each other, Therefore, we can define the specific system of a host economy and its generous degree towards FDI in comparison with other countries.¹⁰ Determinants for attracting FDI depend on the countries or states, common determinants shared among Arab countries which are economic factors, social factors, political factors, legislation and judicial factors.

These determinants are relatively similar to other states such as South Korea and China (market size, large population, fast growing economy, government incentive policies, labor cost)^{11,12} Regarding developing countries such Egypt, Jordan, and most Mena countries they share in the main determinants: Economic factors, Political factors, Legal system, Security factors.

The policy of the country should be supported by the country framework (which consists of laws and institutions) towards FDI. The institutions should be established for the laws and regulations enforcement. Foreign investors consider to the degree of confidence that the country provide them with this confidence to ensure their inflow.

⁹ Iraqi investment law, 2006, Article 1.

¹⁰ Ibid., 2006, 14.

¹¹ Wen-Hsien Liu, Determinant so f FDI inflows to China : An Empirical Analysis of Source Country Characteristics ,Department of Economics, National Chung Cheng University, Taipei International Conference on Growth, Trade and Dynamics, 2010, 16.

<http://proj3.sinica.edu.tw/~econ/2010GTD/18/18-1.pdf>

¹² Shaukat Ali and wei Gu , “ determinants of FDI in China” , *Journal of Global Business and Technology*, Volume 1, no. 2(Fall 2005,29.

<http://02be6c1.netsolhost.com/docs/jgbat/v1n2/v1n2p3.pdf>.

Moreover, the framework should give them guarantees that their investments are protected and their right and positions are protected even when the government changes. Such a framework will promote the government's objectives and policies for attracting, facilitating, and safeguarding foreign investment. Therefore, as a decisive element in creating an overall enabling business environment supportive of foreign investors is that an effective regulatory framework for FDI should include clear laws and regulations and the efficient administrative institutions.¹³

Regarding Iraq, when we refer to the rationale for the enactment of the investment law no.13 of 2006, the law was initiated to advance the process of economic and social development and bringing technical expertise and scientific and human resources development and create employment opportunities for Iraqis . This investment, however, whatever its image pretty fair and its motivations and objectives of the service economy and society together, cannot be easily lured even if the availability of legal framework supported by more facilities, privileges and exemptions. The investing companies consider other aspects unseen by politicians. This means that there are constraints which may limit attracting foreign investment to Iraq. Here we would like to refer to some of the most important measures: security, unstable economic environment, financial and administrative corruption, legislation and institutions.

¹³ Xiaolun Sun, How to Promote FDI? The Regulatory and Institutional Environment for Attracting FDI , Prepared by the Foreign Investment Advisory Service for the Capacity Development Workshops and Global Forum on Reinventing Government on Globalization, Role of the State and Enabling Environment, 2002 , 4, 5. <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan006349.pdf>

A. Security

Despite all efforts to restore security in Iraq now, no one would deny that the security conditions still remained very precarious. Venture capitalists say that funky capital could not settle down in an unfavorable environment. Prospective investors escape abroad, especially after some foreign companies-and even local-to snatch some affiliates are killed or threatened. Thus we cannot ignore the poor security conditions.

B. Unstable economic environment

Certainly, insecurity leads to instability of economic environment in Iraq. Economic trends are still unclear and are in the process of establishment. Economic market almost depends on the public sector in previous years in management of the economy and its policies which is led to lack of services, particularly in the area of electric power shortages and projects production collapse moreover of the worsening problem of unemployment and poverty .

C. financial and administrative corruption

These factors are determinants of investment in Iraq to participate effectively in support of the Iraqi economy, not to mention the other no less important threats, for example, the weak capacity of the domestic private sector after capital flight out of Iraq and invested in other countries such as Jordan and Egypt, Syria and elsewhere as well as the late start of Iraq reconstruction.

D. Legislation and institutions

They are very important elements for creating an enabling environment for investment.

This study will focus on Legislation and institutions determinant. Foreign investors interested directly in Iraq, Why? Huge oil reserves, natural and human resources in Iraq are of interest to foreign investors. Equally important are Iraqis strategic location since it has important ports and airports and can prove to be a cost-effective trading and distribution location. All these are the important elements for Potential investors. Indeed rewards are potentially huge.¹⁴

Does Iraq possess ingredient that encourages foreign investment? There is a range of ingredients, including:

1. The nature of the Iraqi market

It can be considered that Iraq has encouraging market to attract foreign investments, including purchasing power of the population and potential growth of the Iraqi economy and market capacity and the import and export market.

2. Workforce

Iraq has unemployed workforce and has the skills and experience to work with foreign companies with low wedge compared with labor inflows from abroad.

3. Access to markets

Access to market and benefit of free trade and trade agreements between Iraq and Arab countries.

¹⁴ Ibid.

4. Energy resources

Iraq is an oil country which means lower production costs and increase profits for companies, whether oil as raw material in industry or in other uses of energy. Despite of the importance of the points mentioned above in foreign investment attracting, they do not have any positive effect because Iraqi has inconvenient environment and more importantly the Iraqi capital took its way outward because of the lack of political, economic and security instability. The collapse of infrastructure, a lack of services and administrative corruption and fear of the future and the weak framework that Iraqi economy suffered .¹⁵

Regarding the framework and legal system (law and investment institutions) I believe that Iraqi investment law no.3 of 2006 (amended 2009) is unclear and needs more necessary details. This conclusion is based on a survey and interviews that I have conducted(see section three).

The investment climate in general include laws, policies, institutions and local structural, economic, political and social characteristics which influence foreign investors trust and convince them to invest in the country rather than other country. The economic factors play an important role in the formation of the investment climate; the most important of these factors are ¹⁶: legislations stability, macro economic policy, relative importance of the public and private sectors in the economic system, availability production elements and relative prices, the size of the domestic market and export capacity.

¹⁵ Iraq Commerce Chamber, foreign investment..Types...Determinants... Economic effective, 2005.
<http://www.baghdadchamber.com/modules.php?name=News&file=article&sid=12586>

Despite Iraq's efforts to improve the investment climate by creating the appropriate conditions to attract foreign investment, there are still many problems and obstacles which Iraq suffered from. One of the most important steps for addressing obstacles facing foreign investment in Iraq is to know these obstacles and constraints accurately to address them individually. These obstacles can be divided into: structural obstacles, legal obstacles, the relationship between the National Investment Commission and investment commissions in the territories and the provinces, economic and financial obstacles, organizational and procedural and administrative obstacles, political and social obstacles.

a. Structural obstacles

Lack of infrastructure (ports, airports, electricity, water, roads and transport and telecommunications). These requirements are very important to the investor, whether Iraqis or foreigners, especially in the areas which are appropriate for investment in trade, agriculture and mining investment.

b. legal obstacles

The regular and appropriate climate is represented by the way that the government's laws, regulations and systems can affect business activities that have a significant impact on operational efficiency, cost and profitability of enterprises and their competitiveness. Regarding Iraq, there is no single law regulating investments which confuses investors because there are more than one legislation related to investment in addition to the different interpretations of these legislations from one official to another and from one day to another .

¹⁶Aiser.Yaseen.2009. Investment Climate in Iraq reality and ambition, Takreet University, economic and Management College, Conference working paper, 276.

There is a set up to (15) law and order related to investment:

- Investment law no. 13 of 2006 which allows Iraqi and foreign investment.
- Mineral investment law no. 91 of 1988, as amended, which regulates investment in minerals and natural resources.
- General corporate law no. 22 of 1997 which regulate public corporations in which paragraph (iii) of article (15) allows partnership with Arabic and foreign companies to carry out the work of the same aspect.
- Industrial investment law no. 20 of 1998.
- Industrial and oil filtration law 64of 2007.
- Sale and rental of country's money 32 of 1986 amended. It stated in article (6) (being the sale and rental of immovable country's funds by the joint comities which establish by the Ministers decision or President of the unrelated Ministry or who will be authorized by) and subsequent obstacle procedures of the land allocation for investors because the immovable of the country's funds will be sell and rent under article (9) paragraphs of law through public bidding and what will result from the competition with the investor on the certain land.
- Banking law no94of 2004.
- General free zones commission law no. 3 of 1998.
- Financial investment system no. 5 of 1998.
- A disappearing system no. 9of 1994
- Investment law system no. 2of 2009.

In addition, significant new laws are issued from time to time.

The absent of stability in the legislation governing investment and quickness of issuing legislation without examining the overlap between them and delays in issuing regulations required for the implementation of the existing legislation that will create a lack of investors' confidence. The investors feel uncomfortable about their investments because of frequent and instability of legislative amendments and interpretations.

Bureaucracy gradually shifting to the National investment Commission itself through its relationship with other of Iraqi institutions and Iraqi investment law requirements in relevant sectoral authority approval for investment projects made by taking into account that these private projects will compete with lean existing governmental projects and often funded by Iraqi Ministries.

Lack of clarity in the provisions of the investment law and the absence of regulations to help in clarify the ambiguity, so that despite of investment system no. 2 of 2009, this system was not sufficient to clarify and explain the law completely. There are restrictions imposed on projects, the law allows Iraqi investors ownership to more than 51% and denying non-Iraqi from many privileges.

- c. The relationship between the National Investment Commission and investment commissions the territories and the provinces

Iraqi investment law No. 13 of 2006 allowed the establishment of investment commissions in the territories and the provinces and indicates to their tasks in which they have the authority to grant investment licenses, preparation of Investment planning , they can open branches in areas under their control after consultation with the National Investment Commission to ensure the legal requirements achievement, they have also to prepare investment plans which should not contrary with investment policy, and they should listing of investment opportunities in the areas under their control .

The law has entrusted the responsibility of the national investment policy drawing, regulation preparing and control the application of the rules in the area of investment to the National investment Commission that related to its investment strategy of which has federal nature only and determine the relationship between the National investment Commission and the investment commissions in the territories and provinces, as follows:¹⁶

- Consultation between National Investment Commission and the Investment commissions in territories and provinces on opening branches in the areas under its control to ensure legal conditions achievement.
- Coordination on investment plans and facilities

The investment commissions in provinces do not have moral personality unlike the National Investment Commission. This leads to some results that restrict the work of these commissions first of all the absent of an independent budget since the provinces investment budget within in the provinces budget and this leads to restrict the financial powers of these commissions, which restricted by the province authority (approval authority) to authorized the financial authorities .¹⁷

d. Economic and financial obstacles

There is a set of economic and financial obstacles. The first is the economic instability and lack of clear government trends on investment issues and conflicting economic policies during the previous years of investment commission age undercutting investor confidence .The second is Lack of accurate data and information on the economic situation and investment conditions in some of Iraqi sectors. The third is that the public sector monopoly for many economic activities for a long period of time, making the private sector.

¹⁶Iraqi investment law no13of 2006.

¹⁷ Ibid.

e. Organizational and procedural and administrative obstacles

A multiplicity of ministries overseeing investment and sometimes the conflicts of specialists among them, in other words, the multiplicity of decision-making positions that the investor deal with which put the investor at anxiety and undermine confidence. Moreover the government complex procedures for investment licensing and slow in implementation and continuous delay leading to loss of investors time because of the bureaucracy to achieve legitimate transactions, even one stop shop has become a ring in the chain of routine. In addition to the lack of efficient and well trained staff in investment institutions for completing transactions efficiently and the lack of technical and managerial experience required to manage the project on commercial basis which restrict the projects achievement.

f. A political and social obstacles

Political and security instability in Iraq affect foreign investors. Iraq is also feel uncomfortable towards foreign investors because there is widespread administrative corruption in connection with foreign investors.

Changes in economic policy and in particular the degree of economic openness and economic stability considered as good incentives they create an investment climate to achieve sustainable growth and diversification of sources of income, as opposed to negative incentives that attract flows of speculative Portfolio of financial investments resulting from laws that focus on providing preferential incentives for foreign companies through tax and tariffs only. One of the most important factors that lead to strengthening confidence in the investment climate is the existence of a stable political and legal environment and good macroeconomic management as well as the important role played by production conditions prevailing in the host states, first of those circumstances is the infrastructure and availability of low-cost

skilled labor. The important question is what are the foreign investors concerns? How to ensure foreign direct investors be attractive and protected in Iraq? What's the legal method to protect them? Why legal protection is very important factor in attracting FDI?

Foreign direct investors usually concern about some subjects, they need to have clear information about them before going to invest such as: What will happen if the law or regulation of the country changes? What about contracts made by previous regimes? What will happen if the war occurs again? What will happen if there is no clear investment agreement or contract? Or the conditions of the agreement are not clear? What will happen if there is some dispute about the conditions? What about onerous contracts?

There are some threats that foreign investors consider when rewriting contracts made by the previous regime by new government or when the government could not continue or finds fulfillment of the contract onerous in the light of changed circumstances or previous regime by new government or when the government could not continue or finds fulfillment of the contract onerous in the light of changed circumstances or when the Foreign investors become a target for attack by criminals or strange groups because of law and order crumble situation in the country.¹⁸

If there is a weakness in such area the investors will be uncomfortable to invest so it is very important to cover the lack of such rules to be clear for them and eventually to ensure the success of the foreign direct investment and promote investors by enacting very clear legal rules to ensure the best implementation.

¹⁸ Sornarajah.M, *The international law on foreign investment*, second edition, Cambridge University press, 1994, 77, 83,85.

There is Investment institutional inefficiency in Iraq, it adopts commission system and according to the law these commissions classified as: National investment Commission, territories investment Commission, province's investment Commission.¹⁹

The National Investment Commission is "responsible for establishing the national policy for investment and the rules and regulations in the area of investment and monitoring its implementation and shall specialize in strategically investment projects that are of a federal nature exclusively" .²⁰

It has wide authorities as it mentioned above. Its activities very slow. There is no clear evidence about its success since the coordination between this commission and the territories and provinces commissions is weak. There is no monitoring mechanism on their implementation of the law, the weakness reasons, the problems in implementation and the solution for these problems, the slow and long procedures and the reasons behind them (see finding result). There is one order issued according to the Iraqi investment law by minister's council and there is a regulation to facilitate the implementation of the law, both of them are lack of clear mechanism to guide foreign investors. It seems to be just for domestic investor although the law, the order and the regulation contain that Iraqi and foreign investors subject to the same law.

There is no uniform legal document to be used by all the provinces or regions commissions to facilitate the procedures for the employees who are working in these commissions and the investors when they apply for investment. Therefore, it is very important to find clear and uniform mechanism, legal and financial documents and application forms to be used by all Iraqi provinces and regions. In addition, these documents and applications forms should contain very clear and enough information. By checking four license application form used

¹⁹ Ibid .

²⁰ Ibid .

by four provinces commission it has been noted that there is very limited information and attached with some articles of investment law, the same statements and words (copy and paste). There is not enough instructions about how to prepare such forms because the lack of understanding of the legal rules and procedures that is why there is a complicated administrative procedures that the investors and the employees suffered from while it is very important to uniform clear and enough information in the application forms.

However, it's the national investment duty to uniform such documents and forms since the regions and provinces investment commissions are responsible for "investment planning and granting investment licenses"²¹, but not to design applications forms or documents. This study will mention several critical comments of the Iraqi investment law No. 13 of 2006 (amended). Article (1) of the law above states: "investment: is the investment of capital in any economic or service activity or project that results in a legitimate benefit for the country."²² The definition above is unclear, the definition ignores one of the main elements for the investment, it is the investor who employs the moneys in activities of the investment. The advantage which the investor achieves may be more than the host state advantage.

Article .2/B of the law Stated: "encourage the Iraqi and foreign private sector to invest in Iraq by providing the necessary incentives to establish the investment projects and reinforces the competitiveness of the projects covered by the provisions of this law in the local and foreign markets".²³ This article needs more details about the kind of incentives, the condition of granting such incentives, and mentions the projects or activities which are subject to

²¹ Ibid.

²² Ibid.

²³ Ibid.

this law like Egyptian guarantees and incentives investment law no. 8 of 1997 article 1, which stated: "The rules of the law govern all companies and institutions whatever the legal system they are subject to, which was established after the date of law validity in any of the fields as follows:

- Land improvement and growing uncultivated and desert or one of them .
- Animal and chicken and fish production
- The industry and the mining .
- The hotels , the motels , the hotel apartments , the touristic towns and the tourists transportation
- The transfer for cooled goods and special refrigerators conserving the agricultural products and the industrial products and the substances Nutritious and stations of the snake charmers and cells of the yields.
- Air transportation and related service in direct way .
- Sea transportation overseas .
- The petroliferous services associated with the operations of the exploration and transfer and connecting of the gas .
- The housing which lease its unities completely empty for the purposes of housing other than administrative .
- The infrastructural of drinking-waters and dismissal and electricity and communications .
- Hospitals and medical and treatment centers which introduce 10% from its capacity free of charge.
- Renting financing .
- Security of the subscription the financial papers .
- Capital dangers .

- Production of programs and computer systems .
- The projects fund by social financier from funds the development .

This article authorized the Ministers Council to add other domains required for the country need.”²⁴There is no any article in the law related to investment documents and its legal conditions. There is no article govern investment contracts and its conditions. There is no clear identifying of investment procedures and limitation of the time for these procedures. There is no article govern emergency situation. There is no article about stopping the investment contract because the war and prices changing. There is no article about sectors that not allowed to invest or allowed to invest. Iraqi investment law doesn't include any rules about investors who is in ““negative lists” – shortlists of sectors in which foreign investment is regulated or prohibited.”^{25, 26}

²⁴ Egyptian law for guarantees and incentives for the investment no. 8 of 1997.

²⁵ World Bank, *Investment law reform*, A hand book for development practitioners 2010, 28.
<https://www.wbginvestmentclimate.org/uploads/Investment-Law-Reform-Handbook.pdf>

²⁶ Investment law of South Korea covers this area and restricted some activities and business “as:

1. Central bank, Postal service pension, individual-business mutual aid, stock and future exchange, other financial market management, clearing house.
2. Administrative, judiciary, Legislative foreign diplomatic missions to Korea, and other international and foreign organizations.
3. ence.
4. Educational organizations (infant school, Research and development of economics, other research and development on liberal arts and social sci primary and secondary educational institutions, special educational institutions).
5. Religious organizations, organizations of industries, Artist, experts, environment movement, politics, labor movement, etc.”

<http://www.helplineaw.com/article/south%20korea/154>.

III. RESEARCH METHOD

Research methodology is a way which leads to discover the objectives of the study. In this section, an explanation of research design, sample selection and methodologies is employed in this study. Data interpretation is included in the analysis part. The research is designed to achieve the objectives of study, quantitative and qualitative methods are used according to the type of data which the study needed to examine the weakness of the legal system and the investment institutions.

A. Research design

In this study, quantitative method is used to get data from different samples which have been selected randomly, therefore survey questionnaire is employed to know the observation about the weakness of Iraqi legal system and investment institutions from four Iraqi provinces. An interview with the assistance of Iraqi commercial attaché in South Korea – Seoul has been done.

B. Sample selection

The officials in six of Iraqi provinces in the North and South of Iraq are sampled. Survey questionnaire was administered and their opinions led to the findings.

C. Data collection

To achieve the purpose of the study and find the effectiveness of the legal system and investment institutions, data collection in this study is used as quantitative and qualitative methods as follows.

Questionnaire survey

To prove the weakness of the legal system and inefficient investment institutions and the effect of such weakness on attracting foreign direct investors to Iraq, the survey questionnaire is conducted (self – administrated and structured) to get data from the provinces investment commissions .the questionnaire distributed as hard copy by visiting the provinces.

Interviews

Three interviews have been done the first one with the assistant of Iraqi commercial attaché in South Korea was done for the same issue to survey questionnaire. The second one with the official in investment commission of Nainawa province and the third one with two officials in investment commission of Kirkuk province.

IV.FINDINGS

The finding about the effect of weakness of the legal system and investment institutions is explored according to the data which collected by survey questionnaire and interview as follows. According the survey, there are 30 officials who have been chosen from six provinces: Babel, Karbala, AL-Najaf, AL-Dewanyaa, Kirkuk, Nainawa. The finding got from survey questions (Table -1-). Nine questions asked according to the (Appendix I)to the investment provinces commissions.

Results of the survey

The questionnaire had 9 questions regarding the legal system as a determinant of attracting foreign direct investment in Iraq. The first item in the questionnaire focused on the number of foreign investors who applied for project. Second item focused on the number of the applications have resulted in formal contract. The third question asks about the amount of each contract. The results of the three questions are shown in (Table 1).From Table 1, the level of FDI is low. While another 6 questions focus on the difficulties and problems in the investment process which the employees and foreign investor's faced. The result found in the first statement (legal confusion) and similar result is also found in the responses toward statement 2 (administrative complication), with significant indications that there is long procedures and rotten .In addition they add some comment as below:

1. political instability
2. There is no unique investment contract form to depend on by the investment provinces.
3. There is laws conflict.
4. Not activate one stop shop

5. Corruption
6. Law enforcement weakness.
7. There is no harmony between investment law and other laws.
8. Centralization the role of investment commissions in the contractual aspects.
9. Lack or not activate Bank facilities and loans.

Table 1 FDI survey result, 2006-2011

Investment commission of province name	Number of investors applied for projects	Number of contracts resulted from these applications	Amount of each contract U.S.\$
Babel	3	1	11,000,000
Karbala	1	1	17,000,000,
Al-Najaf	3	1	24,000,000
Al-Dewaniyaa	/	/	/
Kirkuk			
Nainawa			

Table 2 National investment Commission relatively Data, 2006-20011

Investment commission name	Number of contracts	Amount of each contract U.S. \$
National investment commission	4	65.000.000
		7.750.000
		185.000.000
		120.000.000
Ninewah province		
Diyala province		
Kirkuk province		
Salah Al din province	2	49.200.000
		11.178.333
Baghdad province		
Karbala province		
Babil province	1	121.000.000
AlNajaf province	4	31.19.775
		17.790.000
		121.000.000
		45.750.000
Al Diwania(Qadissya) province	1	247.480.220
Thi-Qar province		
Missan province		
Wasit province		
Al muthana province		
Al Basraa province		

Iraq map: provinces



In the 17th of October face to face interview was conducted with the assistance of commercial attaché in South Korea / Seoul to ask him about his impression about the level investment in Iraq .He replied that there is many investment opportunities that identified by the National Investment Commission in 2009. But the foreign investors are few. He said, "I met many Korean investors (companies) and discussed with them about the possibility of investment in Iraq. They tried to know the law, the conditions. They seem to be happy for that but after that they change their mind because they are not comfortable about Iraq situation." In addition some documents have been provided about the investment opportunities and the names of Korean companies that he met.

An interview was conducted with responsible official in Kirkuk investment commission province who explained that they suffered a lot from the rotten and the complicated procedures. He said that "we need to know why we are here what is our tasks according to the law", and he add Iraq should study its policy very good and then enact investment law in harmony with this policy and this law should be very clear like other countries who succeeded in this aspect. Now the commission work and the ministries work, sometimes they do the tasks of the commission and that is not correct. Regarding to Foreign investors, they are not familiar with Iraqi investment law.

Two other interviews were conducted: the first one with the chair assistance of Nainawa province and the second with manager of one stop shop who explained that in Iraq the people feel that investment commission like a strange entities the coordination with ministries is weak and they still do the commissions duties. There is no enforcement of the law. That is why other institutions still do some of the commission duties and tasks. The law is deficient of many rules and enforcement to ensure its implementation from all the institutions in addition, the one stop shop need to be activate by emphasize its tasks and duties which is very important and prevent the ministries to do their tasks (centralization) of the

commissions by enacting clear articles in the law. Facilitate the procedures of getting the land for the investment needed as well, usually it takes long time moreover there is laws conflict, some article in other laws conflict with the articles of investment law because these laws are old they enacted for a long time while investment law enacted in 2006 and amended in 2010 .

From the data on the tables and the interviews above it has been proved that the level of foreign investment is low because there is weakness in implementation of the rules of the law and that because unclear rules and misunderstanding of conditions which resulted in administrative complications as the officials confirmed in the survey. In addition of the hesitation of foreign investors to invest in Iraq because they are not familiar with the Iraqi investment law, there are many requirements, complicated procedures, rotten, the legal system is not comfortable for them. Moreover, Iraq is ranked 152 in the ease of doing business, 175 in starting business, 111 in dealing with construction permits, 113 in protecting investors, 148 in enforcing contracts out of 181 economies which means low according to World Bank report 2009.²⁷

Therefore I'm arguing among others the dismal record of FDIs is due to the inadequate legal system –law and institutions since the level of investment still low in Iraq although some articles of the law has been amended.

²⁷WorldBank(2008 the international Bank for Reconstruction and development),Doing Business 2009 .country profile of Iraq 2009,2.

V. COMPARATIVE PERSPECTIVE

In this section this study will look at how other countries are managing FDI. In this study I will examine Egypt and Malaysia's FDI legal regime.

Egypt

The investment laws in Egypt can be divided into two legislation periods: Before economic openness period and after economic openness period.

The first phase includes Law no. 156 of 1953 as amended by Law 475 of 1954 and Law no 156 of 1971. The second phase includes: Law no. 43 of 1974 as amended by Act 32 of 1977 and Law no 230 of 1989. Finally investment guaranties and incentives law no. 8 of 1997, which consider as the top of the legislative development in foreign investments treatment in Egypt.²⁸

The legislation related to foreign investment treatment in Egypt passed through several steps marked by distressed sometimes and flexible in other times as imposed by economic and political considerations of the country. This law no.8 of 1997 refers to projects which subject to its scope in order to enjoy the guarantees and privileges. All projects will enjoy guarantees and incentives regardless of their form or the legal system which subject to as long as they do one of the activities referred Therefore, all projects and companies are equally enjoying guarantees and privileges according to the Law no. 8 of 1997.

²⁸Mohammed Ahmad Ghanem ,*The legislations of investment in the pre-and post-economic openness* ,2009.

In terms of the time of the law application, it is limited to projects that arise after the date of the law handled. The law addressed cases for companies and projects that were established before its regarding to retaining enjoy exemptions and guarantees contained in the law or the companies right to retain the privileges and exemptions granted under legislation and agreements prior to the issuance of Law No. 8 of 1997, these companies continues enjoying privileges, guarantees and incentives till the end of the certain period which had been given in the legislation and the agreement that derived from. That means that the companies and enterprises and projects would be subject to the new law in terms of the completion of the periods in which they have an exemption and remain subject with respect to privileges granted to them by the law that arose according to, not to Law No. 8 to Year 1997.

The law authorized reviewing of contracts for companies' establishment and fundamental systems to the General Investment and Free Zones commission. The General Investment and Free Zones Commission issues license for establishing in accordance to the provisions of Law no. 8 of 1997 these companies has legal personality from the date of registration in the commercial register (Article 4) of the Law. Decisions of licenses for establishing the companies will publish with their contracts and their fundamental systems in the newspaper issued by the Commission (Article 11) of the regulations of the investment guarantees and incentives.

The law set in Article (1) the areas that are subject to the scope of its application as mentioned previously and this article allowed the Ministers Council to add other areas according to the country's need. The regulation of the law mentioned above specifies the conditions and limits of the areas referred to. If the activity of the company or enterprise multi-purpose, it is not subject to the guarantees and incentives established in the law no. 8 of 1997 , but the activity which subject to this Article of the law and this is what referred to in article (3) of the law. This article (3) included also that this law does not prevent from enjoying the

best of any privileges or tax exemptions or other incentives and guarantees founded in other legislation or agreements.

Guarantees enjoyed by companies

The law mentioned above identified in articles (8-15) guarantees enjoyed by projects with activity specified in Article (1). These guarantees are as follows:

- 1 -It is not permitted to Nationalize or confiscate of companies and enterprises Article (8).
- 2 -Not allowed to impose receivership on companies and booking facilities or on their money or impounded or frozen or confiscated (Article 9).
- 3 - It is not permissible for any administrative intervention in the pricing of projects products mentioned above or determine its profit (Article 10).
- 4 - It is not permissible to cancel or stop licensing for the use of real estate which utilized to the company or enterprise, all or part, except the case of violation of the license conditions (Article 11/1) decision for license suspension issues by Prime Minister according to the suggestion of the administrative authority ,and the certain person could raise complain of this decision to the administrative Court within (30) days starting from the date of decision announcement or knowing about it (Article 11/2).
- 5 - Companies and enterprises has the right to own land and real estate necessary to conduct its operations and expand it whatever the Nationality of the companies are or place of staying or their ratios participation or contribution to its capital except land and real estate located in areas that determined by a decision of the Ministers Council and that the law should determine the terms and rules of conduct (Article 12 of Law No. 8 of 1997) added by the Law No. 94 Year 2005).

6 - Enterprises may import by itself or through third parties whatever they needs in establishing or expanding it or operate them from production materials and machinery and equipment and spare parts and transport appropriate to the nature of their activity, without the need for registration in the importers register and without prejudice to the provisions of law, regulations and decisions of imports organization (Article 13).

Incentives (tax breaks)

The law under article (16/1) give exemption of tax on the income of commercial and industrial activity and tax profits fund companies, as the case n corporate profits and facilities and assessment partners there for (5) years starting from the first fiscal year following the production or activity starting . (These exemptions canceled under the law No. 91 of 2005 article 3) the companies and enterprises continuous enjoyment of these exemptions till the end of periods specified for these exemptions, despite the issuance of new laws. The companies established in accordance with the new law which did not begin to practice its activities or production until the date of this law should start their activities and procedures to enjoy the exemptions during a maximum period of three years from the effective date of this law (Article3). The exemption should be for (10) years for companies and enterprises established “within the new industrial zones and new urban communities and remote areas to be determined by the decision of the Prime Minister as well as new projects financed by the Fund.”²⁹

Allocation of land projects under Law No. 8 of 1997

Article (28) of the law allowed the allocation of land owned by the state or public legal persons to companies and enterprises established in certain areas by the Ministers Council, based on a suggestion proposal to the concerned Minister, in the areas specified in Article (1)

²⁹ Ibid.

of the law and be allocated this land free of charge and in accordance the regulation and its procedures contained in the Regulations of the law above.³⁰

Disputes settlement

Disputes settlement relating to the implementation of the provisions of Law no. 8 of 1997 according to procedures, as follows:

- 1 - Disputes settlement in the manner agreed by the investor and host country.
- 2- Disputes settlement in accordance with the agreements between Egypt and the investor's state.
- 3 - Disputes settlement in accordance with the terms of the agreement between the two countries and the nationals of other states which acceded to Egypt according to the Law No. 90 of 1971 and in the conditions and terms in which the agreement should apply.
- 4 - Disputes settlement agreement between the parties and in accordance with the rules of arbitration in civil and commercial matters issued by Law No. 27 for the year 1994.
- 5 – Dispute Settlement Arbitration agreement in Cairo Center for International Commercial Arbitration.

There are two types of privileges procedural nature with regarding to disputes settlement:³¹

- 1.The first type special features is to facilitate investment procedures addressed by the articles (47 - 70) of Law No. 13 of 2004, where this articles has been added to Law No. 8 for the year 1997.
2. The second type of privileges related to the means of resolving disputes that arise from investment.

³⁰ Ibid

³¹ Ibid.

The Law No. 8 of 1997 included several provisions concerning such disputes. and besides article (7) of Law No. 8 of 1997, which dealt with the ways of solving legal disputes arising from investment between Egypt and the investor (who must be a foreigner in the case of follow agreement with him to resolve the dispute according to the agreements with his state or within the framework of the agreement relating to the disputes settlement arising from investments between the investors state and the nationals of the other state). The Law No. 8 of 1997 started in Chapter IV which was added under Law No. 13 of 2004 in the article (65) on a special way to resolve the disputes.

Where the mentioned article stated that the exception of the provisions of law no. 7 of 2000 in conciliation committees matter in some disputes, the commission will settle the dispute between the investor and any of the administrative institution by establishing committee in the commission headed by a judiciary with consultant degree at least be chosen in accordance with the provisions of Judiciary Law and the membership representative of the Union of the invested activity and a representative of the Commission .The Committee shall proceed settlement activities at the request of the investor and make recommendations in related conflict after a call of disputes parties and hearing their statements and if the disputes parties did not accept the committee's recommendation , this dispute will shown to Ministerial committee Article (66) of this law.

The ministerial committee that the Prime Minister shall issue a decision constituted for its formation specializes to look on the complaints and investors disputes with administrative bodies. The Committee's decisions after the approval of the Ministers Council will be enforceable and binding on the administrative parties without prejudice to the right to go to the judiciary (Article 66)

³²Ibid., 2009.

General Investment commission

There is a public commission with legal personality fellow Economy Minister (article 47) of the Investment Law no. 230 of 1989 it has independent budget and its own resources and the administrative council in charge of its affairs and dominates of its affairs and put public policy which should fellow. The commission has administrative council formed in accordance with presidential direction. It is headed by the Prime Minister or his deputy .It has also an executive body headed and determines treated by the decision of the president of Egypt.

The commission should attract investments to Egypt by offering projects for investment and providing consultation related to these projects and inform the international market for capital of privileges which will enjoyed by capital set when investing in Egypt. The commission should serve foreign capital interested in investing in Egypt and take care of it since coming to invest in Egypt as well as it should prepare lists of areas and activities and projects that capita called to invest.

For the purpose of protecting of investment projects, the law force the commission to put investment developing systems to facilitate ways for security and insurance of different investment risk. The commission allocates land and its own contracts that are necessary for the projects on behalf of the competent authorities. These entities provide the commission with all the maps and data of land available to them to set up projects according to the terms and rules of contract and get all necessary permissions according to the law and regulations for projects establishment, management and operation on behalf of enterprises.³³

³³ Ibid., 2009.

The commission will register invested capital contained currency units that come in cash and register and evaluate the shares and moral rights and review the calendar of invested capital or disposed of it when the filter to re-export it or transfer it. The commission shall approve the transfer net profits abroad after searching for documents of the financial status of the project. The commission check investment applications submitted to it and the director council issue decision to approve or deny the request within (20) days from the date of submission of all required documents.

The commission should mention the cause of refusing decision, and the investor can complain against the decision to the board of directors council of commission within two weeks from the date of notification of the decision (article 52) and the commission has the right of monitoring of investment projects and the signing of some sanctions when necessary. the commission reviewing contracts for establishing projects and their systems and approved in accordance with the provisions of this law (article 52 of the law above) through exposure of investment legislation in Egypt and the level of Egypt's success in attracting foreign investment in the post-economic liberalization resulted in the issuance of these legislations which are the result of state policy and thus we can conclude that the policy which followed by the state and translated in legal rules clearly reflect its desire to attract foreign investment was a strong motivation for the movement of foreign investments inflow to Egypt (table no.3).³⁴

³⁴Ibid. 162.

Table 3 FDI inflows to Egypt, 1997-2005

year	FDI (million U.S.\$)
1997	2282
1998	2890
1999	2893
2000	1691
2001	510
2002	532
2003	700.6
2004	407.2
2005	301.5

Source: "World Bank. World Debt tables, external. Finance for developing countries, VOL.2. A World Bank Book, 1997.

International monetary fund , balance of payments , part 1, country tables, year book, 2004.

WWW.middle- east- online.com.6-8-2005."³⁵

Malaysia

Malaysian government has adopted an effective policy which encouraging investment and supporting industry and trade, Malaysia tried to create a favorable investment climate would help in attracting foreign investment to Malaysia. This policy is flexible and open toward foreign direct investment which participated in Malaysia economic development. Malaysia has gone through difficult periods and suffered the effects of the economic crisis 1997, which has affected all Malaysian economic in general and foreign investment flows to Malaysia in particular. However, the Malaysian government had been able to overcome the negative effects of the economic crisis and tried with all its efforts to develop and support

³⁵bid ., 2009,250.

the economy by promoting foreign direct investment and providing incentives and facilities to encourage them to invest in Malaysia.³⁶

FDI regime

There is no specific law governing foreign investment in Malaysia, however, the economic and trade and industrial policy has been reflected in strong investment regime which has significant impact on creation of appropriate environment and provide guarantees and protection for foreign investors. Foreign investor's equity ownership at first was restricted by export performance condition till 1998, for example, if foreign companies like to invest in Malaysia they should export industries, the more the export they achieve, the high equity ownership they allowed. After that the government allowed 100% foreign equity ownership without this condition because of the country's need to FDI. Later licenses allowed for all manufacturing activities and businesses.

The conditions mentioned above are not contained and governed by rules of law or regulation but there are guidelines which contain all the information related to foreign investment and can easily be changed by the government if necessary. These guidelines include all the names of the institutions and their locations and the mechanism for their work and all the information needed by foreign investors.³⁷

Investment incentives

Malaysian government had offered several incentives and exemptions and privileges to encourage foreign investment flow to Malaysia. This incentives and exemptions are vary according to the nature of the investment projects and then they become granted depending on the activities and production then they become granted in accordance of the importance of

³⁶http://www.iisd.org/pdf/2004/investment_country_report_malaysia.pdf

³⁷ Ibid.

the projects such as high technology industries, strategic projects, research and development according to the industrial plan .

Malaysian government has ensured foreign investors and their investments legal protection against nationalization, expropriation and dispute settlement. In spite of the absence of a specific rules and principles governing foreign investment, Malaysia had dealt with the subject through bilateral investment guarantee agreements or IGAs. These agreements provide investment guarantees. They include rules governing the rights and obligations of the parties.

In addition, the Federal Constitution ensures foreign investments protection against nationalization or expropriation with enough compensation. Malaysia has also bilateral avoidance of Double Taxation Agreements.³⁸

Dispute settlement

Conflicts between local investor and foreign investor or between foreign investors and Malaysian government can be resolved through the investment of disputes agreement that Malaysia has been committed in 1986 according to the law to ensure their rights protection.

Malaysian Investment institutions

The government has established a number of institutions that in charged in foreign investment to organize and facilitate investment and provide the opportunities for them to start their investment projects. Malaysian Industrial Development Authority (MIDA) which is the first institution that the investors should visit. They can get all the information related to investment such as permission procedures, required applications, investment privileges, services and facilities. This institution (MIDA) is under the Ministry of International Trade and Industry and it is concerned with investment promotion as well.³⁹

³⁹Malaysia investment in the service sector, quick refrence,2012.

Malaysia has been successfully attracted foreign direct investment despite of the absence of specific investment law. The important factors behind this succeed are the effective flexible foreign investment regime that supports industry, economy and trade policy which enabled Malaysia to achieve progress after economic crisis. Other factors that encouraged foreign investment flows are political and microeconomic stability and an open and liberal trade policy in addition to skilled human resources and advanced infrastructure.

Moreover the laws issued by the Malaysian government, which contributed in creating a favorable investment climate such as the protection of intellectual property and ownership, petroleum Development law of 1974, companies law 1965, the Companies commission law 2001, other laws and regulations of Malaysian administrative regulations. An efficient institutions is also played significant role in attracting FDI by promoting, facilitating their business.⁴⁰

From Egypt and Malaysia experience, it seems that both of them have been succeeded in attracting FDI which has positive effects on economic and industrial sector development as well as addressing the structural imbalances. That success because of the significant role of the government in both countries, whether through the provision of good investment climate and overcoming obstacles to entering foreign investment or through adopting a good economic policy to achieve the maximum benefit of these investments. That successful experience make the question ,can Iraq who has owned natural and human resources more than existing resources in both of Egypt, Malaysia, to achieve such success in attracting foreign direct investment and benefit from it to support the economic and social development process? The answer is possible if the Iraqi government go through steps like the Egyptian government or Malaysian government or better and faster through adopting economic ,social and legal

⁴⁰Ibid

reform program and remove the constraints that prevent economic and social development, as well as that the government should provide all economic and legal conditions and security to create the necessary and appropriate investment climate from which foreign investors can enter the country and compete to ensure. As well as formulating economic policies and adopt flexible investment regime to ensure FDI flows.

From the comparison of Iraq and the cases of Egypt and Malaysia it can be concluded that Iraq needs adequate legal framework (law and institutions) by enacting investment legislations take in account recommendations below:

Protection

Legal framework is needed in Iraq for foreign investment contain clear rules for give protection to both foreign enterprises to enter into joint ventures and partnerships with Iraq and foreign investors, in addition for foreign organizations and individuals who invest in Iraq . Besides the common legal protection for individuals and organizations against nationalization of property, the Constitution clearly provides that the government will not nationalize foreign enterprises which invest in Iraq.

Foreign investment legislation is needed in Iraq to include not only a foreign Investment law (which has been amended) and the order for facilitate its implementation, but as well as comprehensive rules in many areas of foreign economic activity, such as labor, currency and technology transfer. The legislation must make available for three types of investment: business Cooperation (a contractual, non-equity joint venture), Iraqi -foreign joint venture and a wholly foreign-owned enterprise.

In addition investment law should mention all activities that subject to the law like Egyptian investment law.

Treatment Standards

Foreign investors under their foreign investment legislation are usually encouraging Treatment standards. In many compliments the legislation meets the policy goals of investment promotion and recommended international standards for the treatment of foreign investment.

Dispute Settlement

It is very necessary to enact legislation that contains clear mechanism and rules for disputes settlement which may arise about foreign investment in Iraq. This legislation should provide rules of judicial or arbitration, so if the conciliation or the negotiations failed to settle the disputes the judicial or arbitration can be followed. Moreover international arbitration treatment is very important to address foreign investments disputes in Iraq.⁴¹From what mentioned above it could be concluded that International investment agreement (IIAs) is needed in Iraq, why? "Most of the developing countries have entered into one or more international investment agreements (IIAs) which are between states to address various issues related to international investment and regulate such investment, including FDI"⁴²

The rules which (IIAs) establish influence the investor to invest in other country not in his country. It can influence the investor home country and the host country as well. The Promotion and protection of international investment are the focus points of (IIAs) especially FDI, through different agreements may be differed in this admiration, according to the kind and the purpose of the agreement For example:

- (BITs) that main focus are protection, treatment and dispute settlement.

⁴¹ UNCTAD. Virtual institute, IIA international investment agreements, 2008, 191 ,192.

<http://issrb.ru/content/program/Investments.pdf> .

⁴² Ibid., 2008, 191 ,192.

- Regional trade and investment agreements which are in general intend to create more encouraging FDI conditions by addressing entry and operations throughout liberalization of rules.^{43,44}

This study will express bilateral investment treaties (BITs) as one example.

Bilateral investment treaties (BITs)

This type of treaties deals with foreign investment issues such as promotions, protections, admission and treatment. They included provisions which govern issues related to foreign investment.^{45, 46}

What are the common features of BITs? “BITs reveal a convinced model of regularity in their structure and content. Elements frequent to virtually all such treaties are the use of a wide-ranging definition of the phrase “investment”, they contain certain general standards of treatment of foreign investment, such as fair and equitable treatment and full protection and security, and more specific standards of protection regarding expropriation and compensation, transfer of funds, and the protection of foreign investment in case of civil conflict.”⁴⁷

Although these treatments are frequently limited to the treatment of foreign investment after admission, the majority of them provide for national and most-favored-nation treatment as well.⁴⁸

What about the international judgment and international and regional agreements? The importance of the investment does not limit on formed him sharp sources of the financing

⁴³ Ibid.,2006,9.

⁴⁴ Ibid.,2008.191,192.

⁴⁵UNCTAD series on issues in international investment, key terms and concepts in IIAs: A glossary, United Nations, New York and Geneva, 2004. 13.

http://www.sice.oas.org/Glossary/iteit20042_e.pdf

⁴⁶Ibid., 2008, 194.

⁴⁷Ibid., 2008, 194.

⁴⁸ Ibid.2008 ,194.

followed expression for the countries developing yet for size of the uses which become organized on him as transfer technological, an increase of exports local, and abundance opportunities of the local work and the worldwide openness on the markets and consequently economic improvement the status and social in this countries inviting for the investment.⁴⁹

Sight for the nature special for contracts the investment and their multiple parties, disputants between their parties which related to the application or interpretation of their rules or articles which required active and neutral mechanism to settle such disputes. That is why there is multiple methods of dispute settlement such as the negotiations and the arbitration and judicial methods (national judgment) of host state, in addition, there are the international methods such as international judgment and international agreements related to investment disputes.

The international judgment which represented in the international court of justice and permanent arbitration court and Arabian investment court which have constrictions and legal difficulties, regarding to the international court of justice the investor cannot depend unless his state adopted and support him according to the principle of the diplomatic protection. Regarding to the permanent arbitration court the investor cannot depend on unless both his state and the host state are parties of investment agreement. Regarding to Arabian investment court it is specific in the disputes occur between Arab nations or between Arab nations and institutions which following the Arab nations. Therefore, the expansion of the courts authorities is needed to be able to settle the disputes if one of its parties is Arabian and the other is foreign investor.⁵⁰

⁴⁹ Kamran AL- Salihi, Phd in trade law, The role of international judgment and the international and regional agreements in investments dispute resolution, working paper, United Arab Emirates University – college of law, 1209. [http://slconf.uaeu.ac.ae/images/%D9%85%D8%A4%D8%AA%D9%85%D8%B1%2019%20%20%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%AB%D9%85%D8%A7%D8%B1/part%203/\(24\)%20Kamran.pdf](http://slconf.uaeu.ac.ae/images/%D9%85%D8%A4%D8%AA%D9%85%D8%B1%2019%20%20%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%AB%D9%85%D8%A7%D8%B1/part%203/(24)%20Kamran.pdf)

⁵⁰Ibid.,1210

VI. SUMMARY AND CONCLUSION

Iraq is a rich country of natural resources and has strategic location in Middle East. After 2003 war, Iraq suffered from war negative impact on economy, infrastructures. The war destroyed its economy and infrastructures therefore, Iraq need to rebuild them. The only way to achieve this target is to attract foreign investors since they will bring with them capital, technology and skills as a result they will participate in the country's development.

Iraq enacted investment law no. 13 of 2006 (amended in 2009) and tried to attract foreign investment but it has not been able to attract them. It is relatively unsuccessful because there is a weakness legal investment system (law, investment institutions).

Lack of clarity in the law and in efficient investment institutions lead to confusing in investment system and as a result cause in administrative complication. Therefore, foreign investors will feel uncomfortable to invest in Iraq.

In this study I have proved that Iraq relatively unsuccessful in attracting FDI (as clarified in the data).I examined Egypt and Malaysian experience to gain insights as how FDI inflows benefited them and what Iraq should do to attract FDI successfully.

Egypt and Malaysia have strong investment system and efficient investment institutions.

They have appropriate investment environment which represented in political stability, legal protection and guarantees. Their policy to encourage and promote FDI has been reflected in coherence investment regime which play significant role in attracting FDI.

Iraq even has investment law and offer some guarantees to protect foreign investment but there are many obstacles that Iraq should remove in addition its policy has not been reflected in strong and coherence investment regime(law and institution). Therefore Iraq should create appropriate climate to ensure greater FDI flows.

In this study I concluded that Iraq has a weak legal system (framework) which consists of law and investment institutions. The data and interviews have indicated to this result clearly. Iraq need to attract FDI since it is very important for the country's development and reconstruction. Moreover, foreign investors help in rebuild the country's economy and infrastructures since they bring with them not just capital but also technology and experience which the country need. From the experience of both Egypt and Malaysia I concluded that the reasons behind their successful in attracting FDI are the open and liberty trade and industry policy which encouraging and promoting FDI..In addition they have adopted coherence investment regime which represented in legal guaranteed and protection for foreign investors and their investments moreover, efficient investment institutions which are promoting, and facilitate foreign investment.

To ensure foreign investors flows, Iraq should create appropriate climate by adopting coherence investment system and enacting clear rules governing foreign investment. Investment institutions efficiency is very importunate since they should promote and facilitate starting business. Therefore, Iraq should develop investments institutions. Iraq should also ensure foreign investors rights and protect them and their investments either through rules of law or committing in bilateral agreement and investment disputes settlement.

SUGESTIONS

- 1- It necessary to uniform all forms or applications put in their consideration the nature of the investment projects or activities to ensure that all the provinces investment commissions using the same pattern.
- 2- Facilitate the legal and administrative procedures and requirements and shortage the time the time for that by stating certain period for archive all the procedures.
- 3- Coordinate with the legal institutions in all the ministers to remove the conflict with other laws especially articles relating to the ownership of the lands for investment.
- 4- Activate one stop shop and prevent other institution to do the investment commissions duties .
- 5- The law should state clear definition of the investments and its scope, elements of investments and the definition of each element.
- 6- The national investment commission should strongly coordinate with other commissions and evaluate their performance and analysis the weakness and try to put their performance in the right way.
- 7- The investment commission should prepare guideline and completed information package and provide them to foreign investors to check them before applying for investment.

APPENDIX

APPENDIX

SURVEY

.....Province investment commission
.....هيئة الاستثمار لمحافظة

Greetings: My name is Siham Kadhim Jebur, and I'm a graduate student at the KDI School of Public Policy and Management in South Korea – Seoul. I'm conducting survey on Foreign Direct Investment experience in Iraq as a part of my thesis research for master degree. I'd appreciate it very much if you would take a few minutes to fill out the questions below.
Please be assured that your response will remain absolutely confidential.

(Please send it to the email below).

تحياتي : إنني الطالبة "سهام كاظم جبر" ، طالبة دراسات عليا في معهد كي دي أي للسياسة العامة والإدارة في كوريا الجنوبية / سيئول . أنا أقوم بإجراء مسح على تجربة "الاستثمار الأجنبي المباشر" في العراق كجزء من أطروحة بحثي لنيل درجة الماجستير .

أنا أقدر وأؤمن كثيرا اذا منحتني بضع دقائق من وقتك لإجابة الأسئلة الواردة أدناه علما ان هوية المجيب سوف تعامل بسرية تامة.

(الرجاء إرسالها إلى البريد الإلكتروني أدناه).

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Question1. From 2006 to 2011, how many foreign investors have applied for projects in your province?

Number.....

(السؤال 1. من عام 2006 إلى عام 2011، كم بلغ عدد المستثمرين الأجانب المتقدمين للاستثمار للمشاريع في محافظتكم؟ العدد.....).

Question2. How many of these applications, have resulted in formal contracts?

Number.....

(السؤال رقم 2. عدد طلبات الاستثمار التي نتجت عنها عقود رسمية؟ العدد).

Question3. What was the amount of each contract in \$?Please list them all.

(السؤال 3. ما هو مبلغ كل عقد من العقود بالدولار الأمريكي؟ رجاءا أدرج جميع العقود).

1. ...\$.....
2. ...\$.....
3. ...\$.....
4. ...\$.....
5. ...\$.....
6. ...\$.....
7. ...\$.....
8. ...\$.....
9. ...\$.....
10.\$.....

Question4. The difficulties or problems have you experienced in the negotiation process with these investors? Please check all that applies:

- Legal confusion (uncertainty, lack of clarity).
- Administrative complications.
- Too many requirements'.

السؤال رقم 4. الصعوبات أو المشاكل التي شهدتها من خلال خبرتك في العمل في عملية التفاوض أو التعاقد مع هؤلاء المستثمرين؟ الرجاء التحقق من كل ما ينطبق وتأشيريه وفي حالة انطباقها جميعا اشرها جميعا :-

- الخلط أو اللبس القانوني (عدم التأكد) ونقصه به عدم التأكد من مفهوم القواعد القانونية سواء لقانون الاستثمار أو نظام أو تعليمات خاصة بالاستثمار مما يصعب تطبيقها لعدم القدرة على تفسيرها بالشكل الذي يسهل تطبيقها دون التخوف من المسائلة القانونية) ،عدم الوضوح (ونقصه به عدم وضوح أحكام القانون أو قلة التفاصيل الضرورية).

- تعقيدات إدارية (ونقصه بها التردد أو التأخير في الإجراءات الإدارية والقانونية نتيجة عدم وجود آلية ووضوح قانوني سواء للإجراءات أو تطبيق الأحكام بحيث يتسبب في تخوف الموظف وتردده في التطبيق) .

- المتطلبات الكثيرة (ونقصه بها كثرة المتطلبات الإدارية أو القانونية أو الشروط غير الجوهرية التي تسبب عرقلة الإجراءات وتدمر المستثمرين منها) .

Question5. What difficulties in your view did the foreign investors seem to have in their negotiation with your province?

- Legal confusion (uncertainty, lack of clarity)
- Administrative complications.

(السؤال 5. ما هي الصعوبات التي يبدو من وجهة نظركم أن المستثمرين الأجانب يتذمرون منها في مرحلة التعاقد في محافظتكم ؟

- الخلط أو اللبس القانوني (عدم التأكد ، الافتقار إلى الوضوح)
- تعقيدات إدارية

Question6. Which of the following issues was the chief concern to the foreign investors?

- Legal confusion (uncertainty, lack of clarity)
- Administrative complications.
- No Legal protection for the investors' and their investment.
- Fear that their legal rights may be affected by a change of government policy, investment law or other changes.

(السؤال رقم 6. أي من الأمور التالية كان العنصر الأساسي لقلق المستثمرين الأجانب؟

- الخلط القانوني (عدم التأكد ، الافتقار إلى الوضوح)
- تعقيدات إدارية.

-عدم توفر الحماية القانونية للمستثمرين واستثماراتهم.

- يخشى المستثمرون أن حقوقهم القانونية قد تتأثر بتغيير سياسة الحكومة، قانون الاستثمار، أو المتغيرات الأخرى .

If there are any other comments, please add here:

إذا كانت هناك أي تعليقات أو إضافات أخرى، الرجاء الإضافة هنا :

Question7. Although taxes incentives which has been offered by Iraqi investment law no.13 of 2006 (amended), but the level of foreign direct investment flow still law.

a- agree

b- disagree

السؤال 7- على الرغم من الحوافز الضريبية التي قدمت بموجب قانون الاستثمار العراقي إلا إن مستوى تدفق الاستثمار الأجنبي لا يزال منخفضاً .

غير موافق

موافق

Question8. Has Iraqi investment law succeeded in attracting foreign direct investment as it was expected? If the answer is no, please indicate to the reasons.

a- yes

b- No

السؤال 8- هل نجح قانون الاستثمار العراقي في جذب الاستثمار الأجنبي كما كان متوقع ؟ إذا كانت الإجابة كلا رجاءاً اذكر الأسباب .

The reasons:

Question9. Iraqi investment law needs some amendments. If you agree please indicate to the articles.

a- Agree b- Disagree

السؤال 9- قانون الاستثمار العراقي بحاجة إلى بعض التعديلات . إذا كنت تؤيد الرأي رجاءا اشر إلى المواد التي بحاجة للتعديل

1-

2-

3-

4-

5-

Name of your province:

E-mail address:

Office telephone number:

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