

# CONSTITUTIONAL AND LEGISLATIVE GUARANTEES OF FOREIGN INVESTMENT IN LIGHT OF JORDANIAN LEGISLATION

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## ABSTRACT

*Constitutional and legislative protection is one of the most powerful forms of protection that the host country pledges to foreign investors to encourage them to invest their capital. This is one of the main reasons for investors to decide where they will invest. This paper examines factors that fall outside commercial transactions and the expectations of investors that harm their investment in the host country, such as expropriation, nationalisation and confiscation. Such risks turn investor away and jeopardise investment. Constitutional and legal guarantees also strengthen the principle of respect for private property, regardless of the nationality of the owner. These interests are not to be affected except by law and the general interest of the host country in exchange for fair compensation. This paper analyses constitutional and legislative texts as the is one of the main reasons guarantees that protect foreign investment in the Hashemite Kingdom of Jordan.*

**Keywords:** Constitutional Guarantees, Legal Guarantees, Foreign Investment, Expropriation, Nationalisation, Confiscation.

## INTRODUCTION

The world is witnessing the heated competition between countries, especially developing ones, to attract foreign capital and invest in economic projects in the industrial, agricultural, tourism and service sectors in order to accelerate development (Karimi, 1990). However, attracting foreign capital as direct investment is no easy matter, because capital owners and multinational companies are not willing to risk their capital in toxic investment environments. They are looking for safe investment environments with the necessary guarantees and incentives to invest their capital and realise profits (Al-Sharqawi, 2019). However, non-commercial factors stand in the way of the flow of foreign capital to the host country. Therefore, the national legislator in many countries, including Jordan, is keen to include the required constitutional and legal protection for the foreign investor. Constitutional and legal guarantees also strengthen the principle of respect for private property, regardless of the nationality of the owner. These are not to affected except by law and the general interest of the host country in exchange for fair compensation (The European Blek Jian, 1967). Therefore, the author discusses in this introduction the concept and definition of investment in general before highlights on the constitutional and legislative guarantees of foreign investment in light of Jordanian legislation which is the topic of research.

Foreign investment is not a new phenomenon that emerged in the 20<sup>th</sup> century. It can be traced to economists in the middle of the nineteenth century under the term ‘the movement of capital’. In the early 19<sup>th</sup> century, it was referred to as ‘the rule of gold’ and called international

investment. In 1930 it was called direct investment. However, investment only developed in the second half of the 20<sup>th</sup> century and has since developed steadily in the 21<sup>st</sup> century (Al-Azzawi, 2015).

Investment is an economic term referring to the use of money to make a profit. It is an economic concept and is related to a number of other economic concepts such as income, consumption, saving and borrowing (Salem and Matar, 1990).

Economists define investment as:

*“An economic process considered by a natural or legal person based on scientific or rational bases or rules under which physical, financial, human, or useful assets are directed toward achieving ongoing economic, social, cultural, or scientific returns with that are valued greater than the value of the capital assets and in safe conditions, without excluding an acceptable risk margin” (Maarouf, 2003).*

In legal terms, the Institute of International Law has defined investment as:

*“The supply of funds, or perhaps the services, for the purpose of financial or political gain, and the investment may consist of moral funds”.*

The committee formed by the International Law Union define investment as:

*“Capital movements from the investing country to the recipient country without direct regulation” (Maarouf, 2003).*

It is defined in Paragraph (d) of Article (1) of Treaty between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan concerning the Encouragement and reciprocal protection of investment as "*investment*" of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:

1. A company;
2. Shares, stock, and other forms of equity participation and bonds, debentures, and other forms of debt interests, in a company;
3. Contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;
4. Tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;
5. Intellectual property, including; copyrights and related rights, industrial property rights, patents, rights in plant varieties, utility models, industrial designs or models, rights in semiconductor layout design, indications of origin, trade secrets, including know-how, confidential business information, trade and service marks, and trade names;
6. Rights conferred pursuant to law, such as licenses and permits; any change in the form of an investment does not affect its character as an investment (Jordan Bilateral Investment Treaty, 2003).

There are several forms of investment. These are divided into national investments and foreign investments, which the author will briefly discuss below.

## **Firstly**

National Investments made by a natural or legal person including citizens of the state in which the investment is made and in accordance with the laws governing investment in the country. For example, in Jordan investments made by natural and moral persons are Jordanian

according to the investment laws in force in the country (Al-Shammari, 1999). The national investments are divided into two parts: public investment, which is the investment of a government body to satisfy public needs, and private investment, which comes as a result of individual initiatives and in order to gain profit and benefit to the individual or company.

## **Secondly**

**Foreign Investments** These investments are carried out by a natural or foreign legal person in cash or in kind, entered into the country hosting the investment through legally approved methods, either for the establishment of an economic project under full or partial control, or in the form of loans or through the subscription of shares and bonds, directly and indirectly. Its types are described below (Al-Shammari, 1999).

### **Foreign Direct Investment**

This type of investment refers to the investor's economic activity of establishing an economic project and whether the ownership of the project (the commercial company) belongs to him fully or he contributes with a national investor in a percentage that ensures control over the project management. The direct investment involves a long-term relationship, in which the investor is required to engage in economic or commercial activity in the host country, to manage his investment project in whole or in part, or to merge with a national company or project (Saleh, (2006).

*“Foreign direct investment (FDI) is a practical approach to achieving several objectives, including reducing unemployment, exploiting natural resources, contributing to increasing GDP, abundant goods for domestic markets, increasing exports, and transferring technology from developed countries with direct investment. The most efficient and sophisticated means of production are transferred to Jordan, because the foreign investor is always looking for the highest return through investments in other countries, and to create the appropriate conditions to facilitate such investment (Al-Froukh, 2019)”*

### **Foreign Indirect Investment**

This type of investment is represented by the investor buying a share in the financial portfolio of a local company without having the right to manage or control the company or investment project or to provide loans (Mouloud, (2003). These loans may be provided by foreign private companies, private financial institutions, capital investors, public loans provided by governments through bilateral or multilateral agreements, or by international financial institutions such as the International Monetary Fund (Mouloud, 2003; Al-Maarouf, 2003).

## **The Challenges Confronting Foreign Investors in Jordan**

There is study, which was based on the distribution of questionnaires to 412 managers and team leaders in the Jordan Investment Authority, this study stressed that investment in Jordan faces many obstacles despite the availability of excellent infrastructure as there are no isolated areas for development. These obstacles are represented by the absence of a vision or strategy for investment, confusion in economic policies, regional crises, high energy prices, bureaucracy, long delays, multiple approvals, multiple references, and restriction on access. Other obstacles include the lack of public-private partnership, asymmetry of laws, legislation and

regulations, preference for personal interest over public reform, internal conflicts within state institutions, extortion of investors, excessive taxes and fees, lack of facilities, favouritism, increased current and capital expenditure due to price inflation (Al-Froukh, 2019).

According to Al-Shoura & Al-Bakri (2013), that investment in Jordan faces many obstacles. Among these obstacles are inefficient or inadequate transport or logistics systems, customs, weak telecommunications networks, financial markets and information technology, and anti-competitive behaviour by key market players or groups that stifle innovation, productivity or market growth (Al-Shoura & Al-Bakri, 2013). Jordan's future faces economic and social challenges which include combating poverty and unemployment. Providing jobs requires revising investment, implementing laws, choosing national cadres dedicated to work and who serve the country and citizens loyally.

According to Al-Froukh's study (2019) identified a set of variables that affect the development of the investment environment in Jordan and help create an appropriate environment (marketing and promotion, economic openness, investment behaviour, human factors, laws Legislation, technological infrastructure) (Al-Froukh, 2019). For Jordan, there is a need to increase the attractiveness of foreign investment due to limited Jordanian resources, and the need to employ international expertise that may have the potential to increase the level of knowledge and awareness within Jordanian markets.

### **Percentage of Affected Foreign Investors in Jordan**

Based on a study prepared by the Jordan Strategies Forum, the results of the fifth round of the Investor Confidence Survey in Jordan, which is issued periodically in cooperation with Name for Strategic Studies and Projects, showed that 21% of the investors believe that the investment environment in Jordan is encouraging, while 77% believe that the investment environment is not encouraging (Jordan Strategies Forum, 2019).

When asked about their view of the economic situation in Jordan, 4.24% of investors said that they believe that the economic situation in Jordan is moving in the right direction while 1.65% thinks that things are going in the wrong direction.

When investors who said things were going wrong were asked about the reasons, 30% attributed this to difficult economic conditions, 25% attributed to higher customs, taxes and interest rates, while 17% said the reason for this was the instability of policies and the complexity of laws and regulations.

In terms of investors' assessment of the economic situation during the past year, the percentage of investors who believe that the economic situation is better in 2018 than the previous year decreased from 13% in May 2018 to 5% in February 2019.

The survey showed an increase of 14% in the percentage of investors who believe that the economic situation in 2018 is worse than in 2017, with 79% instead of 62% in the previous survey.

As for investors' expectations for the economic future in Jordan and their optimism, the Jordan Strategy Forum asked investors about their expectations for the economic situation in Jordan over the next 12 months. Half of the investors thought the situation would worsen.

As for the reasons that led investors to say that the investment environment in Jordan is not encouraging, the most prominent are high prices, taxes and customs with 30%, poor economic conditions 18%, in addition to the cost of operating and labour scarcity 12%, corruption and mediation 5%. As for the volume of trade, 13% of investors said that their trade

volume in 2018 is better than in 2017, 67% said that the volume of trade exchange in 2018 is worse than in 2017, and 18% said that their business dealings remained constant during the two years.

The results of the survey showed that the proportion of investors who expanded their business in Jordan last year decreased from 26% in 2017 to 18% in 2018, and the proportion of investors who reduced their business in Jordan increased from 24% in 2017 to 40% in 2018. While 42% of investors kept their business as is. Looking at these results, 22% of investors in the agricultural sector, and 19% of investors in the industrial sector, 17% of investors in the services sector and 15% of investors in the commercial sector said that they have expanded their business.

To ascertain why 40% of investors scaled back their business in 2018, the Forum asked investors why they had to scale back investors in Jordan who did not consider moving their business abroad. They claimed it was due to a recession with 30%, followed by weak purchasing power 21% and lack of demand 18%.

In addition, the survey conducted by the Forum assessed the factors attracting and expelling investment in Jordan. 67% of investors said they did not consider moving their business outside Jordan. However, the percentage of investors who said they thought of moving their business outside Jordan rose from 24% in May 2018 to 32% in February 2019. As for the reasons that led investors to think about moving their business abroad, the results of the survey revealed that the weakness of the local market and the difficult economic situation was the main reason (22%), and that the environment abroad was more conducive for investment than Jordan (17%).

## **The Constitutional Guarantees of Foreign Investment in Jordanian Legislation**

Constitutional protection is one of the most powerful forms of protection that countries undertake to encourage investors to use their capital. Jordan, like other countries, has adopted the principle of constitutional protection. The Jordanian constitution provides for the protection of private property and the necessity of not expropriating it except for public benefit. Given that there is a package of legislative guarantees contained in investment promotion laws and other related laws, the author will discuss the constitutional guarantees.

### **Expropriation of Public Interest (Acquisition) in Jordanian Legislation**

#### **Definition of Acquisition (Expropriation)**

Article 2 of the Jordanian Acquisition Law No. 12 of 1987 defines expropriation as:

*“The expropriation of property from the owner or the right to dispose of it, or the use of it, or the easement thereof under the provisions of this law”*

Possession in this sense represents the maximum legal decisions that restrict the right of ownership, or part of for the sake of public benefit and for “*just compensation*” paid to the owner. In view of the danger inherent in this legal procedure, national constitutions in most countries of the world have dealt with the subject of constitutional expropriation by providing for the protection of the right of private property and the exception that allows the public authority to dispose of private property for the purpose of establishing development projects or facilities that provide public services (Al-Obeidi, 2009).

The most important international human rights documents and declarations contain provisions to protect the right to private property. Article 17/2 of the Universal Declaration of Human Rights states that “*No one shall be arbitrarily deprived of his property*” (Jordanian Civil Code No. 43 of 1976). Article 25 of the Arab Charter of Human Rights states that:

*“Private property shall be guaranteed to every citizen and, in all cases, the citizen shall not be deprived of all or part of his property arbitrarily or illegally”* (Jordan Strategies Forum, 2019).

Article 4 of Treaty between the United States of America and Jordan concerning the Encouragement and reciprocal protection of investment concerning confiscation and compensation stipulates that:

1. Each Contracting Party shall accord national and most favored nation treatment to covered investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.
2. Each Contracting Party shall accord restitution, or pay compensation in accordance with paragraphs 2 through 4 of Article III, in the event that covered investments suffer losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from: (1) requisitioning of all or part of such investments by the Contracting Party's forces or authorities; (2) destruction of all or part of such investments by the Contracting Party's forces or authorities that was not required by the necessity of the situation. (Jordan Bilateral Investment Treaty, 2003).

In addition to that, Article 5 of the same Treaty also states that

*“Each Contracting Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include: (1) earnings of a national of one Contracting Party earned in the territory of the other Contracting Party in earned in the territory of the other Contracting Party in connection with a covered investment of that national; (2) other forms of income (Jordan Bilateral Investment Treaty, 2003).”*

### **Justifying Expropriation**

Despite the legal protection of property rights, the legislation allows for the expropriation of this right. This exceptional procedure has to be justified.

The term “*public utility*” is the only justification for acquisition; most legislation has passed it, such as a public road, a public facility or other public utility. Article 11 of Jordan’s Constitution states that:

*“No one shall be relieved of a property except for the public interest and in return for fair compensation as defined by law”* (Law and Regulation, 1997).

The Jordanian Civil Code affirmed the provisions of the Constitution. Article 1020 states that this is what are permitted by the Jordanian Civil Code in Article 1020, which states in its second paragraph that:

*“No one shall lose property except for the public interest and in exchange for fair compensation as defined by law”*.

1. No person’s property shall be acquired without cause.
2. No one shall be deprived of property without legitimate cause except for public benefit and in exchange for fair compensation as defined by law.

The Jordanian legislation has not detailed the circumstances of expropriation for cases in which the acquisition may be determined through the identification of projects aimed at achieving public benefit (Jordanian Acquisition Law, 1987), unlike some Arab legislation which has limited such projects. However, although the Jordanian Acquisition Law does not specify this, the principle established by the constitution is that if it is not for the benefit of the public, the acquisition is not valid. It is impermissible for acquisition to take place to achieve the special interests of a certain person or persons, or for arbitrary purposes of depriving the owner of his property, or to punish the owner for owning his property.

The administrative judiciary has the power to assess the legality of the acquisition in view of the purpose of the acquisition. Article 4 (d) of the Jordanian Acquisition Law provides that:

*“The decision of the Council of Ministers-the judge of acquisition-shall be published in the Official Gazette and published in clear evidence that the project for which the property is to be acquired is for the public benefit”.*

The Jordanian Acquisition Law provides a clear definition of the concept of “*public benefit*”, for which only the acquisition was permissible and legitimate, although the legislator stressed that the acquisition should be limited to the public benefit (Jordan Natural Resources Regulation Law, 1968).

The Jordanian administrative judiciary has asserted that the right to property is protected by important constitutional and legal restrictions. The Constitution prohibits the expropriation of private property from the owner except for the public interest and compensation in accordance with the provisions of the law. Article 11 of the Jordanian Constitution of 1952 and its amendments states:

*“No one shall be deprived of property without legitimate cause except for public benefit and in exchange for fair compensation as defined by law”*

The author finds in the Acquisition Law stipulated in Article (3) that:

*“No property shall be acquired except for a project that achieves public benefit and receives fair compensation”.*

Fair compensation as one of the constitutional requirements for the legality of acquisition. The constitution requires that the acquisition be for fair compensation which is an amount of money paid to the person with a view to restoring the physical or moral balance that was disrupted as a result of a harmful act or crime. This concept requires the physical or moral imbalance of the person paying him compensation, which is expressed as harm, and where there is no harm, there is no compensation. The Jordanian Civil Code provides detailed provisions in which the provisions of the general theory of obligations are laid down, and compensation is made the same as civil liability. In determining the concept and criteria of fair compensation, the author believes that the fairness of compensation in the acquisition requires (Al-Hajaneh & Al-Adwan, 2012):

1. The compensation shall be full, meaning that the amount of compensation to be paid to the owner shall in no case be less than the value of the property owned. It is not lawful to compensate the landlord in part for his property as long as the compensation is less than the value of the property.
2. Compensation should be satisfactory to the owner, not only in the estimate of fair compensation on purely economic criteria but also the adoption of additional criteria, including the value of the property in the

market if sold publicly to a person wishing to buy. The reason is that the acquisition is not an optional sale of the property; it is the expropriation of the property from its owner in accordance with a system in which the public authority resorts to the means of public law, in which the freedom and the wishes of individuals are absent.

3. The payment of compensation shall be immediate and shall not be delayed. This requires that the value of the fair compensation be estimated and paid to the owner once the property has been expropriated and registered on behalf of the acquire.

### **Nationalization**

Nationalization is defined as the transfer of ownership of private individuals to the State (Sabour, 1967), or an act that transfers to the State private property in a particular activity under law and public interest for the purpose of exploiting and controlling it for a particular purpose.

There are those who defined it as a procedure to transfer the ownership of private enterprises from natural or legal persons to the people represented by the State in exchange for fair compensation (Al-Bashir & Taha, 2009). Some have argued that nationalization is an act of sovereignty aimed at extracting the project from the capitalistic administration exploited to achieve the interest of the group by transferring the ownership of the private project as a means of production from the private sector to the public sector and thus creating a new legal system for public projects (Al-Bashir & Taha, 2009).

Nationalization aims to the transfer ownership of the project to the State with fair compensation of the owner of the project (Ibrahim, 1998). It differs from confiscation, which means the transfer of ownership of the project to the State free of charge. There is no confiscation with compensation. Confiscation deprives the investor of the fundamental rights to his project (Murad, 1990).

It can be said that nationalization, which is an economic action by the State for economic motives, is akin to the expropriation of public interest (acquisition) because they include the transfer of ownership of certain funds from natural people to the state. Some argue that nationalization is the State exercising its sovereignty and that the compromise between nationalization and the expropriation of ordinary property is contrary to the literal texts of the constitution and its spirit.

The author disagrees with this view that nationalization is an act of sovereignty that is immune to judicial control. Nationalization either derives its legitimacy from the constitution or is usually issued by law, which obliges all parties, including the courts, to apply it. It remains within the purview of judicial supervision. In the case of expropriation, it is regulated by the control of public interest. Once the public interest has been realised, the issue of compensation, which must be fair, shall be brought to the fore, thereby highlighting the role of the judiciary in this issue (Katza, 1972).

Article (13) of the Temporary Investment Law No. (68) For the year 2003 provides adequate protection for the foreign investor when it decides that a project may not be expropriated or subject to procedures that harm it unless it is for public interest provided that the investor is paid fair compensation. This means that Jordanian legislation considers nationalization as a concern from which the investor should be protected. It should not be resorted to except in the public interest with the payment of fair compensation.

Article 3 of Treaty between the United States of America and the Jordan concerning the Encouragement and reciprocal protection of investment regarding nationalization, confiscation and compensation stipulates that:



*"Neither Contracting Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization (expropriation) except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II (3).*

*Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriator action was taken the date of expropriation; and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriator action had become known before the date of expropriation..."*

## **Confiscation**

The Jordanian constitution stipulates is that it is forbidden to confiscate. Investors fear confiscation or seizure of their company or property. Therefore, Article 12 of the Jordanian Constitution stipulates that:

*"No compulsory loans shall be imposed and no movable or immovable property shall be confiscated except by law".*

Confiscation is a punitive measure taken by the public authority in the state, under which all or some of the money belonging to the natural and moral persons is taken as a penalty for their violation of the provisions of the law and without any compensation. The confiscation is considered a supplementary penal penalty guaranteed by the Jordanian Penal Code No. 16 of 1960, where under Article 31 titled the confiscation of illegal objects, where the text of the article reads:

*"It is illegal to confiscate what was manufactured, bought, sold or used unlawfully, even if it was not the property of the accused or did not result in prosecution".*

The position of the Court of Cassation in this regard distinguishes between two types of confiscation as a punishment. It went on to say that in-kind confiscation is an additional penalty and a precautionary measure. In-kind confiscation as an additional penalty is at the judge's discretion. Forfeiture in kind as a precautionary measure is necessary (Law and Regulation, 2007). The text reads:

Law No. 34 of 1999 Amending the Trademarks Law, Article 39 confiscation or destruction of goods by court order, paragraph 4. The court may decide to seize the goods, materials for packaging, wrapping and advertising, plates, seals, and other tools and materials predominately used in affixing the trademark on the goods or which the infringement was made with or stemmed from. The court may order to destroy them or to dispose of them for non-commercial purposes.

Article 39 of the Trademarks Law No. 34 of 1999 and its amendments provide that the confiscation of goods and objects provided for in paragraph 4 thereof shall be regarded as additional penalties and not as precautionary measures. And whether or not the confiscation order is due to the court of the subject, which is outside the control of the Court of Cassation. Similarly, the Patents of Invention Law No. 32 for the Year 1999 states the court may decide to seize the products, implements and materials the predominant use of which was in making the products or which the infringement was committed with. The court may order to destroy them or to dispose of them for non-commercial purposes.

The law also provides; According to Law No. 10 of 2000 on the Protection of Layout-Designs of Integrated Circuits in Article 22

*“The court may order the confiscation of the infringing products and the material and tools mainly used in infringement on the design of these products. The court may also order damaging these products, material and tools and dispose of them for any non-commercial purposes”.*

Copyright and Related Rights Protection Law and Amendments Thereof No. 22 of The Year 1992, Article 47, paragraph C states:

*“The Court may order the confiscation of the work's reproductions or copies taken in and of the materials used in producing and selling same to the extent necessary to compensate the author for the damage incurred by him instead of destroying these reproductions or copies, changing their features or destroying these materials.”*

As for the practical applications of confiscation, Article 3 of Treaty between the United States of America and the Government of Jordan concerning the Encouragement and reciprocal protection of investment includes nationalization, confiscation and compensation stipulates that:

*“Neither Contracting Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization (expropriation) except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II (3).*

*Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriator action was taken (the date of expropriation); and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriators action had become known before the date of expropriation...”*

## **Legal Guarantees for Foreign Investors in the Jordanian Legislation**

### **Equality in Dealing between Foreign and Jordanian Investors**

The equality of dealing between a foreign investor and his national counterpart is one of the main factors that can encourage foreign investors to invest in any country. Accordingly, the Interim Investment Law No. (68) For the year 2003 gave a general description of the investor whether the investor is Jordanian or foreign. Article 2 states that the investor is the natural or legal person who invests in accordance with the provisions of this law.

From this definition, the author finds that anyone who invests under the Temporary Investment Law No. 68 of 2003 benefits from the privileges mentioned in this law, whether this investor is Jordanian or foreign investor.

Granting the Jordanian investor the same privileges granted to the foreign investor is normal because it is unacceptable that foreign investments be given privileges and exemptions exceeding the privileges and exemptions given to national investments. This means putting the national investor in a lower rank than the foreign investor. Article (12) of the Temporary Investment Law No. (68) Of 2003 stipulates that any person other than a Jordanian is entitled to invest in the Kingdom by ownership, participation or contribution in accordance with the terms and conditions determined by virtue of a system issued for this purpose. It determines the investment sectors or their branches for which the non-Jordanian investor is entitled to participate or contribute, as well as the minimum amount of foreign capital that he must employ

for this purpose. Article (12) of the same law stipulates that in cases other than those provided for under Regulation No. (54) of 2000, foreign investors shall be treated as Jordanian investors. In other cases, the provisions of the Investment Law (68) for the year 2003 are the same for Jordanian and non-Jordanian investors. The projects invested by foreigners enjoy the benefits and tax exemptions as stipulated in the Temporary Investment Law and the regulations issued pursuant thereto, if such investment has occurred in any of the exempted sectors, and the assets included in the relevant lists shall also be exempted from duties and taxes. As for the industrial projects which are established in the industrial cities or which move to these cities, they are exempted from income taxes, social services, and building and land taxes, according to the terms and conditions of the periods specified in the activities issued under the Temporary Investment Law No. 68 for the year 2003 in addition to the exemptions prescribed for such projects under other laws.

Article 3 of the Regulation of Non-Jordanian Investments No. 77 of 2016 stipulates that non-Jordanians may own any project in any economic activity in whole or in part or contribute in any proportion without prejudice to considerations of national security, public order, public morals and public health. Article 4 of the same regulation stipulates activities that allow foreigners to own by no more than 50% of their capital. The system added new economic activities that were not in the old system, such as leasing activities and marine health services. Article 5 of the same regulation reduced the percentage of foreign ownership of economic activities to a maximum of 49% for the maintenance of broadcasting and broadcasting equipment, maintenance of means of transport on the roads, purchase of land for the construction of residential apartments and the sale or lease.

The system also abolished the requirement that the amount of investment for non-Jordanian should not be less than 50,000 Jordanian Dinars. The non-Jordanian investor has the right to own or contribute to the project by any amount.

Article 4 of Treaty between the United States of America and the Government of the Jordan concerning the Encouragement and reciprocal protection of investment with respect to equal treatment and tax benefits, stipulated in the second agreement that:

*"Each Contracting Party shall accord national and most favored nation treatment to covered investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.*

*Each Contracting Party shall accord restitution, or pay compensation in accordance with paragraphs 2 through 4 of Article III, in the event that covered investments suffer losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from: (1) requisitioning of all or part of such investments by the Contracting Party's forces or authorities; (2) destruction of all or part of such investments by the Contracting Party's forces or authorities that was not required by the necessity of the situation..."*

### **Settlement of Disputes and Jurisdiction between the Foreign Investor and the Jordanian National Authorities**

The issue of settlement of disputes and courts dealing with disputes between the investor and the official and non-official bodies in the host country is of great importance for investors. They are often afraid that the national courts in the host country are partial and favour national parties. Such concern is justified.

As for the position of the Jordanian legislation on this issue, the Jordanian Investment Promotion Law No. 16 of 1995 and its amendment for the year 2000 stipulated in Article 33 that any dispute over investment between an investor of foreign capital and Jordanian government agencies shall be settled peacefully. In cases where no solution has been reached in (6) months, either party may resort to arbitration or refer the dispute to International Centre for Settlement of Investment Disputes to reach settlement through reconciliation or arbitration and in accordance with the terms of the Convention for the settlement of investment disputes between countries and citizens of other countries signed by the Kingdom. It follows that the Jordanian legislation gave a lot of freedom to the investor in this area. In other words, the investor can avoid presenting the disputes between him and the official and non-official bodies in the region to the courts of the province.

The Temporary Investment Law No. 68 of 2000 did not specify the competent authority to settle disputes between the foreign investor and the Jordanian national authorities (Al-Saeed, 2003). It should be noted here that arbitration, especially in disputes of an international commercial nature, is now more acceptable to foreign investors. There is no longer opposition to arbitration, especially in the field of international commercial arbitration, particularly with respect to the relationship of foreign investors with the host countries (Al-Mirghi, 1996). It is necessary to take advantage of the experience of other countries in this field, as arbitration raises the psychological and administrative obstacles in front of the foreign investor, in addition to the speed of dispute resolution (Khaled, 2000).

Article 9 of Treaty between the United States of America and the Government of Jordan concerning the Encouragement and reciprocal protection of investment in the Settlement of Disputes stipulates that:

*"For purposes of this Treaty, an investment dispute is a dispute between a Contracting Party and a national or company of the other Contracting Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment. In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation..."*

In addition to that, Article 10 of the same Convention provides that:

*"Any dispute between the Contracting Parties concerning the interpretation or application of the Treaty, that is not resolved through consultations or other diplomatic channels, shall be submitted upon the request of either Contracting Party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Contracting Parties to the contrary, the UNCITRAL Arbitration Rules shall govern, except to the extent these rules are; (1) modified by the Contracting Parties; (2) modified by the arbitrators unless either Contracting Party objects to the proposed modification..."*

In regard to the settlement of legal disputes or jurisdiction between the foreign investor and the Jordanian national authorities, the author sees the need to determine or establishment competent authority to settle disputes between foreign investors and Jordanian national authorities.

### **The Disposal of the Invested Money, the Investment Project and the Remittances**

The investor usually aims to maintain his capital and increase it by achieving profits as well as aspiring to the freedom to dispose of his money in the form that is believed to help him in

achieving profits. The author finds that investment legislation in different countries usually ensures this to investors. In accordance with Article 30 of the Jordan Investment Promotion Law No. 16 of 1995, amended in 2000, the non-Jordanian investor is entitled to take out the foreign capital he has entered into the Kingdom for investment in accordance with the provisions of this law or the proceeds obtained from his investment of the proceeds and profits and the proceeds of the liquidation of his investment or sale of his project or share or shares without delay and in a convertible currency. Article 31 of the same law stipulates that non-Jordanian technical and administrative personnel in any project may transfer their salaries and compensation outside the Kingdom in accordance with the applicable legislation. Article 18 of the Jordanian Temporary Investment Law No. 68 of 2003 supported the right of the non-Jordanian investor to take out his capital which he entered into the Kingdom. Article 19 of the above investment law reiterated the right of Jordanian and Jordanian technical workers to transfer their salaries and compensation outside the Kingdom. Article 15 of the Temporary Investment Law gave the investor the right to transfer the ownership of the project to another investor, after the investment incentives is informed of the transfer in advance, and the reasons for this are explained. The project can continue after the transition process to take advantage of the exemptions and facilities granted to the project under the previous owner, provided that the new investor continues to work on the project. This, of course, makes it easier for the former owner of the project that if one day he wishes to transfer his project to another investor for any reason he will find someone who accepts the transfer of ownership of this project because the second owner is an extension of the first owner and that the second owner will benefit from the privileges granted to the first owner. The investment law also allowed the investor, after the approval of the Investment Incentives Committee, to re-export the fixed assets in the project and are covered by the exemption outside Jordan. If two or more exempt projects are merged into one project after the approval of the Investment Incentives Committee, the new project shall also be exempted.

The Temporary Investment Law also granted privileges to non-Jordanian investors in order to encourage them to invest in Jordan. Article 18 states that the non-Jordanian investor is entitled to take his capital outside Jordan. They are also entitled to transfer the proceeds and profits derived from this project outside of Jordan. Such a transfer shall be in a convertible currency. They have the right to liquidate the project or sell it or sell its share or shares in this project, provided that it has fulfilled the obligations or debts incurred by the State or against third parties.

Article 4 of Treaty between the United States of America and the Government of Jordan concerning the Encouragement and reciprocal protection of investment in respect of remittances stipulates that:

*"Each Contracting Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory."*

### **It is not Permissible to Suspend or Revoke the License of Projects**

Of the legislative facilities important to the foreign investor is the ease of administrative procedures necessary to obtain the necessary license or the declaration of the concerned party. For the purpose of removing administrative obstacles for investors in Jordan, Article 21 of the Temporary Investment Law stipulates that no official body may restrict the performance of any project by requiring that it obtain a sector license unless the request for such license is based on the requirements of public order, public morals, health, the purpose of protecting the

environment or national security, or protecting the national economy. Such a ban should not preclude the entry of investment projects into Jordan and should not adversely affect the movement of the economic market. It is considered a negative impact on market movement, for example, putting a ceiling on the licenses granted to these projects or putting an end to their production in which these projects are required to obtain leave. The legislator has established controls for the application of such licenses, namely:

1. The authorised body that has the right to issue such licenses shall be determined exclusively and clearly.
2. The authority is to issue this license, the procedures for obtaining it, the required documents and the time required for issuing it.
3. The period of issuance of the license shall not exceed one month from the date of submission of the application if the application is accompanied by all necessary documents and complies with its legal requirements.

In the event of a decision not to be accepted or rejected during the month, the applicant, while retaining the right to litigation, may ask the Minister of Industry and Trade to present the matter to the Council of Ministers for the appropriate decision in this regard.

It should be noted here that in the case of rejection of the request for a license by the competent official authority, it must be written in writing and include the reasons for rejection. The applicant shall be notified within seven days from the date of issue. The applicant shall be entitled to appeal the decision of refusal to the High Court of Justice within 60 days from the date of notification of refusal in accordance with the established rules.

### **The Freedom of Foreign Companies to Select their Employees without Restriction**

The Temporary Investment Law does not require projects that invest in Jordan to employ a certain percentage of the Jordanian labour force for the total number of workers in the project (Khalil, 2005; El-Ahwani, 1996). Article 7 of The Convention on Mutual Protection and Investment Promotion held between Jordan and the United States of America regarding the establishment of foreigners stipulates 1. (a) Subject to its laws relating to the entry, sojourn and employment of aliens, each Contracting Party shall permit to enter and to remain in its territory nationals of the other Contracting Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources.

### **CONCLUSION**

In summary, the constitutional and legal guarantees of foreign investment is not a kind of mental tourism practised by researchers in the field of investment, but rather a practical necessity, and a legislative desire to dispel investors' fears about their money. The Constitutional and Legal Protection Report, which guarantees constitutional and legal guarantees, with the aim of attracting capital, especially foreign, requires balancing the interests of the individual investor or the company and the interests of the State to inject capital into it. This legal protection is important for the investor to preserve his property and money from nationalization and confiscation, etc. Our review of the constitutional and legal guarantees for foreign investments in Jordanian legislation reached the following results:

1. The Jordanian Constitution guarantees controls that keep the acquisition within its legal framework by requiring that the acquisition be for the public benefit and receive fair compensation. However, it failed to define what was meant by public benefit and did not set specific criteria for this concept.
2. The law of acquisition is based on purely economic indicators, most notably the market value of the property. Any other considerations that affect the value of the property other than the price criterion that the owner obtains if the property is publicly sold on the date of acquisition by a willing buyer.
3. The absence of explicit provisions restricting foreign investment projects in Jordanian regulations and laws issued with a view to preserving the environment and solving the problem of pollution of the environment.
4. Failure to specify a competent authority to settle disputes between the foreign investor and the Jordanian national authorities.
5. The absence of a special system to determine and control the mechanism for the removal of project funds or the salaries of non-Jordanians working outside Jordan may harm the national economy.
6. The absence of explicit provision for projects that invest in Jordan to use a certain percentage of the Jordanian labour force, such as 30% of the total workers in the project, which contributes to solving part of the unemployment problem Jordan suffers.
7. Investment laws lack a statement of cases in which the foreign investment license is revoked if the investor violates the conditions under which the license was granted.

## RECOMMENDATIONS

### **In Light of the Results and Analysis, the Study Recommends the Following**

1. A constitutional review should be made of the Jordanian Acquisition Law, specifically Article 11 thereof, to ensure that it conforms to Article 11 of the Jordanian Constitution.
2. Determining cases where expropriation is for the exclusive benefit of the public, or a criterion for the consideration of the project for which the acquisition is to be considered a public good to assess the constitutionality of the acquisition in respect of the requirement that the acquisition must be for the public good.
3. To establish fair rules and criteria for the assessment of fair compensation taking into account the various factual and objective considerations, and not only the economic rules and standards contained in the Acquisition Act.
4. The necessity of restricting investment projects in Jordan to the regulations and laws issued with a view to preserving the environment, because the problem of pollution of the environment is one of the problems that concern civilised countries.
5. The need to determine the competent authority to settle disputes between foreign investors and Jordanian national authorities.
6. Giving the foreign investor the freedom to make money without conditions which may harm the national economy. Hence, there is need to include restrictions that preserve the interest of the national economy.
7. The need to establish a special system that defines and controls the mechanism of project funds, or the salaries of non-Jordanians working outside Jordan, in a manner that preserves the national economy.
8. The need to develop an explicit text that requires projects that invest in Jordan to use a certain percentage of the Jordanian workforce, such as 30% of the total workers in the project and this will contribute to solving part of the unemployment plaguing Jordan.
9. The legislation on foreign investment should include an explicit stipulation that investment projects benefiting from exemption from taxes and duties should be allowed to import, under the "inspection condition", what they need to establish, operate or expand production requirements, materials, equipment and spare parts suitable for the nature of their activity.
10. The need to stipulate the cases in which the foreign investment license is cancelled, such as the investor violates the conditions on which the license was granted.

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