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للاستشارات القانونية و المحاماة و تنظيم الحسابات
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Investment Promotion and Protection Agreement between the Republic of Iraq and United Arab Emirates
Law No. (16), 2023

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Iraq has ratified Law No. 16 of 2023, approving the 'Investment Promotion and Protection Agreement between the Government of the Republic of Iraq and the Government of the United Arab Emirates,' which was published in the Iraqi Official Gazette, Issue No. 4734, on August 28, 2023. This law is effective from the date of its publication in the Official Gazette.

In order to examine the activities included within the aforementioned investment agreement and the benefits granted to investors therein, our company has conducted a comprehensive study.

Reference to Law No. 16/2023 ratifying the Investment Promotion and Protection Agreement between the Government of the Republic of Iraq and the Government of United Arab Emirates, dated 14 August 2023 "Agreement", published in the Iraqi Official Gazette No. (4734) on 28 August 2023, and based on the study our team conducted to the provisions of this law, the following is noted:

1. The first article included a broad definition of the term "Investment", whether by a natural or legal personality, to include almost all economic activities with the exception of the field of oil and gas extraction and production, as well as regular sales contracts. Noting that the investments listed under article (1) were named a few. Therefore, other unlisted activities could be added.

2. The Agreement included under Article (1/Sixth), the inclusion of activities derived from investment business, including the activities of branches of companies and commercial agencies engaged in the implementation of the investment project, as well as borrowing of money, and purchase foreign currencies for the purposes of imports necessary to implement the investment projects, in addition to marketing of goods and services, selling and transporting raw and manufactured materials, energy, fuel, and means of production. In conclusion, the Agreement included a broad concept of commercial business that had not previously been included in any other Agreement between Iraq and other country.

3. Article (2) of the Agreement included the obligation of its parties (Iraq and Emirates) to encourage investors from both parties to invest in each country, and to facilitate the access of investors from both parties to investment-related activities. In addition, each party shall ensure fair and equitable treatment of the investments of the other contractor party in accordance with national legislation, including protection, security, and non-denial of criminal, civil, or administrative justice and its procedures.

4. Article 2/Seventh allowed the investor to insure the investment project with any insurance company, including insurance companies from outside the country, after obtaining the approval of the host country (the country in which the investment project is located from both parties).

5. Article (4) included an important clause that includes the obligation of the Agreement parties to compensate the investor for the damages incurred in the investment project or investment business that is mentioned in Article (1), including but not limited to, damages incurred as a result of (war, armed conflict, general emergency, civil disobedience or riots), which is essential for investor.

6 Article (5) of the Agreement provided protection of investment from expropriation and nationalization, whether directly or indirectly, except by a final/irrevocable court judgment with immediate and fair compensation, provided that this compensation is calculated on the basis of the fair market value of the investment immediately before the announcement of the expropriation or nationalization decision or when it becomes publicly known. The compensation is determined in accordance with the recognized valuation principles (such as market value). If the market value cannot be easily determined; the compensation shall be determined on fair principles, taking into consideration the deprecation of the invested share capital, returned share capital, the replacement value, and the reputation value. provided that the fair market price shall be expressed in a free convertible currency on the basis of the exchange price existing for that currency at the moment mentioned in paragraph (2) of Article (5). In fact, the Agreement stated in paragraph (5) of the same article that compensation includes even shares, stocks or bonds in which the investor from any of the parties to the Agreement is a shareholder. The same article also included that the investor whose investments were expropriated may choose to resort to the courts to value the investments, meaning that the Agreement left it to the investor to either accept the administrative assessment by the host country or resort to the courts for assessment.

7 Article (6) of the Agreement allows the liberty of money transfer, which includes:
1. Interest and profits, including shares profit and other financial payments.
2. Returns resulting from the disposition of the investor's moral rights.
3. Debt amounts that are paid periodically.
4. The amount resulting from the disposal or liquidation of the investment project, in whole or in part, including capital gains derived from the invested capital itself.
5. The amount of compensation resulting from the application of Clause Two of Article (4) and Clause Three of Article (5).

8 Article (6/Second) of the Agreement stated the right of employees in the investment projects, whether nationals of either party or of other nationalities who are related to the investment project, to freely transfer their salaries, compensations, and benefits to their countries.

9 Article (7) included a substantial principle, which is that if either parties or any of its governmental institutions provides a guarantee related to non-commercial risks regarding the investment implemented by one of its national investors in the territory of the other contracting party and made financial payments to the investor on the basis of that guarantee; the second party (i.e. Iraq or Emirates, as the case may be) acknowledges the subrogation of the first party in the rights of the investor, in whole or in part, in accordance with the provisions of this Agreement.

10 Article (17) of the Agreement stating the term of the Agreement to be Ten (10) years, renewable for another 5 years.

Conclusions

1 The Agreement has expanded the scope of businesses covered by the term “Investment”. Therefore, if an Iraqi businessman intends to reverse investment (return investment through establishment of a company in the United Arab Emirates), it will be included under the term” legal person” defined in this Agreement, as the company established in the United Arab Emirates has the status of an Emirati legal person. Thus, this company, despite the fact that its owner is Iraqi, benefits from the terms of this Agreement. This will be reflected to the rest of the provisions included in the Agreement, in terms of the Iraqi government’s commitment to compensate for the aforementioned unforeseen events that may affect the investment project, even if they reach the level of regular demonstrations (riots).

2 The Agreement also included the obligation to provide immediate compensation for any expropriation or nationalization (directly or indirectly), occasionally, simply the inability of the investor to access the investment project due to a dispute or disagreement with a government partner or a government institution outside the project, such that it places its control directly over the project; the investor has the right to file a lawsuit to obtain immediate and fair compensation, which is considered a major development in protecting the rights of the investor and at the real market value, as the Agreement has established a clear and unambiguous standard for the compensation assessment mechanism in a stable international currency that is convertible.

3 In addition to the freedom to transfer funds, which has expanded the scope of funds allowed to be freely transferred; the Agreement stated the state’s right from both parties to substitute the investor whose rights are paid directly to him by the state, as it has the right to subrogate the investor before the other state. Therefore, this gives an additional guarantee to the investor. In that his country has the right under this Agreement, to settle his rights directly with the investor, then legally subrogate him in front of the other country in claiming rights. This is considered a major development in the guarantees granted to the investor.

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03 September 2023

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