

Iraqi Investment Law, Advantages, Guarantees and Immunities from Punitive Damages

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Abstract

States seek to encourage and transfer modern technologies to contribute to the growth and development of the country and to expand its production and service base, as well as to encourage the local and foreign private sector by providing the necessary facilities for the establishment of investment projects and enhancing competitiveness and human resource development through the issuance of laws and regulations dealing with investment. The laws of states have many award and guarantees for the investor to polarize and attract the country. In contrast, punitive damages are one of the most important means of punish malicious behaviour or intentional or blatant act of civil responsibility, but these compensation may be an obstacle to the realization of investment laws for their economic objectives, which is to attract capital in the case was imposed on the investor, especially that it is very large and unexpected financial penalties. This research attempts to determine the possibility of imposing punitive damages on acts of tort or tort liability for parties subject to investment laws and the availability of immunity or lack of availability to investors in the face of such compensation.

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1. Introduction

Investment, locally or abroad, is the most powerful mean of financing that developing countries seek to attract for economic and social development, given the material, informational and technical possibilities they provide to those societies that are unable to achieve development.

This process requires a wide and active movement to issue laws and simplifying the procedures and strengthening legal and judicial guarantees that include privileges and benefits granted to the investor in order to attract capital and scientific expertise and advanced technology to help build the country that lacks such expertise and competencies, and investment helps to provide job opportunities and reduce the unemployment rate, and leads to improving the quality of the products.

However, those legal guarantees and privileges granted to the investor may sometimes encounter some obstacles that affect the increase of investment opportunities. Punitive measures on the investment project.

This compensation is very large and unexpected fines, which are semi-punitive damages.

They are described as punitive in nature, reckless and reckless, and are deterrent to others in the future.

The question we are dealing with in this paper is “The effect of punitive damages on investment activity in the state, of course, depends on whether the state’s legal system recognizes punitive damages or not.

2. Problem Statement

This paper examines the question of determining the dimensions of the relationship between punitive damages and investment laws and activating economic activity.

The research attempts to answer the question of whether punitive damages stand in the way of achieving the objectives of the Investment Law.

Are punitive damages fines added to state imports?

3. Research Questions

The focus of the study is the effects of the investment sector, both domestic and foreign, in the case of imposing punitive damages for an intentional act of making profits at the expense of the consumer at times, and sometimes a serious mistake due to recklessness or recklessness that causes great harm to others.

Is investment affected negatively in the environment that adopts punitive damages? Do punitive damages have a role in protecting consumers from the unreasonable behaviour of investors seeking profit by all means?

It depends on the extent of the general policy of the state acceptance or rejection of punitive damages, and it depends on the provisions contained in the investment laws and its position on punitive damages.

4. Research Methods

This section attempts to achieve two goals: 1 - Description of the methodology used for the study. 2 - Justification of the methodology chosen for the study.

Other sections include research methodology, methods of data collection and type of research, and analysis of texts and comparative study.

The main purpose of these divisions is to clarify most aspects Search to be useful. (Cohen, Manion, Morrison, 2007)

5. Historical Development of Investment Laws in Iraq

The investment legislation in Iraq has witnessed two different stages, the first stage before 2003, and the second stage after 2003, the year in which Iraq witnessed a change in the political system.

First: The pre-2003 stage:

This stage was characterized by a kind of instability in economic life due to the conditions that Iraq was going through, especially in the eighties of the last century in the years of the Iran-Iraq War and its habitats from the nineties of the period when imposed the economic embargo on Iraq because of The war on the State of Kuwait.

This period in particular has made Iraq an environment unsuitable to bring and attract foreign capital to Iraq in application of the economic embargo imposed by the Security Council (UNSC: 1990). The pre-2003 period was not the appropriate period for the recovery of foreign investment in Iraq.

In terms of legal legislation there was no independent law dealing with the regulation of investment provisions in an integrated manner, which was present is a law related to Arab investments, and laws related to industrial investment of the public and private sectors.

The real birth of the concept of investment came with the issuance of the Iraqi Investment Law No. 13 of 2006, which tried to set a clear line of investment and opens the door wide to foreign capital and local capacities and expertise to build joints of life in Iraq (AIL:1988, AIL:2002, IIL:1991).

Second: the post-2003 stage:

After 2003, two laws were issued in Iraq to regulate investment issues.

The first is the Investment Law issued by the Coalition Provisional Authority, is the authority established by UN Security Council Resolution 1483 (2003) after the change of regime in Iraq, the first authority to be set up to run Iraq.

Its work extended from April 21, 2003 to June 28, 2004, this authority issued order No. 39 of 2003 entitled Foreign Investment Law, which was canceled under the Investment Law in force No. 13 of 2006.

The promulgation of this law is subject to the constitutional provision that compels the state to encourage investment. It is also a clear indicator of the transformation of the political view of the state towards domestic and foreign investment as an economic reform program.

Article 26 of the Constitution of Iraq (IC: 2006) states that “the State guarantees the encouragement of investments in the public and private sectors”.

As well as the positive reasons for the investment law, which states that “in order to advance the process of economic and social development and develop and provide technical and practical expertise and development of human resources and create job opportunities for Iraqis to encourage investments and support the process” to establish investment projects in Iraq and expand and develop them at various economic levels and grant concessions and exemptions for the draft laws.

The second law is the law currently in force, the Iraqi Investment Law No. 13 of 2006 (IIL: 2006) this law included many new concepts and principles on the scope of the Iraqi economic axis, especially in the care granted to the investor privileges, guarantees and rights as attracting factors.

6. Modern trends, advantages and guarantees contained in the Iraqi Investment Law

The Iraqi investment law came with new concepts and trends that are broader than those that were available in most of the legislations that preceded it.

The aim of the legislator is to expand the application of the law in addition to working to promote the achievement of the objectives that have been legislated for the law in order to achieve economic development, scientific and social, especially with regard to the definition of the investor or the formation of the National Investment Commission.

6.1 definition of the investor

The Iraqi investment law distinguished between the investor in the case of being an Iraqi or a foreigner.

This means that the law did not make the investment limited to the foreign person only, but gave this description to the Iraqi also whether the investor was a natural or moral person, although the law used the expression of the real person and the moral person.

From this it can be seen that the investor can be an Iraqi with Iraqi citizenship, and this trend is the one that went to the Egyptian law while the Kuwaiti law against it, limiting the investment to the foreigner only.

The definition of the investor in the Iraqi investment law in the first article of it as follows: i. Foreign Investor: A person who does not hold Iraqi nationality in the case of the real person and registered in a foreign country if he is a legal or legal person. J. The Iraqi Investor: He is the holder of Iraqi nationality in the case of the real person and registered in Iraq if he is human rights. It is the same meaning as in the first article of the Egyptian Law (EIL: 2017), and Law Kuwait (LFCK: 8/2001) in the first article which mentioned the definition of foreign investor only. The other important issue here is the exceptions stipulated by the law and are subject to investment in specific areas, namely the extraction and production of oil and gas, the banking sector and insurance companies.

This is a natural issue, an application of the constitutional ban, which kept these sectors in the hands of the state exclusively, which is covered by Article 29 of the Iraqi Investment Law that all areas of investment subject to the provisions of this law except the following: First: investment in the extraction and production of oil and gas. Second: Investment in the banking sector and insurance companies.

6.2 Advantages and guarantees granted to the investor

6.2.1 Financial advantages granted to the investor

The law grants the Iraqi or foreign investor a set of financial advantages to encourage him to invest in Iraq. These financial advantages include:

1. The law grants the investor the right to extract the capital that he has entered into Iraq, in addition to the profit returns based on the provisions of the investment law and the instructions of the Central Bank of Iraq and in a convertible currency. This is a very important financial advantage. Strict to reduce the output of the currency.

2. The law grants another advantage, but the foreign investor only without the Iraqi investor and it consists of two rights, the first is the right to trade in the Iraqi market for securities stocks and bonds listed in it, and the second is the composition of investment portfolios in stocks and bonds.

In addition to the foregoing, there are other financial concessions granted by law to the investor came in the form of exemptions from some of the fees and taxes listed in the law in Chapter V under the title “Exemptions” can be summarized as follows:

A. Exemption from taxes and fees for a specified period in accordance with the law, which is ten years on the conditions are: that the investment project has the license of incorporation, start the period of exemption from the date of commercial operation of the project (article 15st of the Iraqi law).

B. Increase the number of years of exemption from duties and taxes from ten years to fifteen years, but here the condition of the law to achieve this important condition is that the contribution rate of the Iraqi investor in the project 50%, and this advantage for the Iraqi investor without the foreign investor (article 15rd of the Iraqi law).

C. The law also grants other financial exemptions, but these exemptions for the imported assets for the project. The law stipulated two conditions for this exemption. The first condition is that these assets be entered into Iraq within three years from the date of granting the investment license, not from the date of operation of the project.

Disposition of such assets other than for the purposes assigned to them.

D. The other financial advantage came in the form of the right to dispose of the assets, but the law differed between the two types of conduct and arranged provisions on each of them: a – the sale of the exempt or assigned assets to another investor benefiting from the provisions of this law to be used in his project. The investor shall, after notice to the Authority, sell the exempted assets to any person in accordance with the provisions of this Law after payment of the fees and taxes due thereon.

The difference here is clear by the fact that the law did not require the payment of duties and taxes due in the case of the sale to another investor benefiting from N. investment, and this clever gesture of the law is to encourage and advantage to the investor covered by the provisions of this law (article 24 of the Iraqi law).

E. The law gives the investor another financial advantage related to the investor’s right to insurance on his investment project with an insurance company according to his wishes, whether national or foreign. It is necessary to clarify the important point is that the term insurance company is intended to operate in Iraq under the law regulating the work of insurance companies (IGLPI: 2006).

F. The latest financial advantage is to allow the investor to open accounts in Iraqi or

6.2.2 Administrative features and facilities

Foreign currency or both at one of the banks in Iraq or outside the licensed project.

Most investment laws try to grant the investor many privileges as a means to attract foreign capital and expertise and modern technology.

The Iraqi investment law granted the investor other privileges in addition to administrative privileges can be explained as follows:

A. The law grants the investor the right to retain the land on which the project is built. For a monetary consideration to be determined with the owner, however, the law has further amended this right by expanding its scope to include land allocated to industrial projects belonging to the state and the public sector. It also granted the Iraqi investor exclusively the purchase of land belonging to the private or mixed sector according to a system issued by the Commission. Note that this right has been mentioned in Article 10 of the Iraqi Investment Law but has been amended twice: the first by the issuance of the First Amendment Law (ALIL: 2010), and the second amendment in Law (ALIL: 2015).

B. In addition to the right of ownership, the law grants the investor the right to lease the necessary land for the project duration of the project. The law stipulated that this should not exceed 50 years, taking into account the nature of the project and its feasibility for the national economy.

C. The provisions of paragraphs (a) and (b): The need for mechanisms to achieve and complete these mechanisms established by the law when it provides for the formation of the National Investment Commission and the investment bodies in each governorate in Iraq, as well as the establishment of a single window in the National Investment Commission and regional bodies Before the ministries and members appointed by the provincial and governorate councils, as the case may be and the competent authorities to grant leave and obtain approvals from other parties in accordance with the law (Article I, paragraph B, and also Article I X, paragraph III).

6.2.3 Guarantees granted to the investor

The investor deciding to invest his money is always looking for a safe environment for that money. the investor attempt to avoid a lot of trouble and problems related to political decisions or administrative or financial corruption or administrative complications, and try most investment laws to send reassurances to the investor in an attempt to make the investor is willing to The investment law in Iraq included many of these guarantees, which can be explained as follows:

1. Guarantees relating to employees in the investment project:

The provision of a suitable environment for the life of the functional worker in the investment project is one of the success points of that project.

Therefore, the Investment Law of Iraq included a set of issues related to achieving this point as follows:

A. The law provides for the right of the investor to employ and employ non-Iraqis in the event that it is not possible to use an Iraqi who has the necessary qualifications and is able to carry out the same task in accordance with the regulations issued by the Commission.

B. The Investment Law has granted foreign investors and non-Iraqi investment workers the right to reside in Iraq and facilitate their entry and exit from and to Iraq.

C. The issue of removing foreign currency from any country is governed by central laws and regulations in order to preserve the strength of the national currency.

However, there are facilities provided by the investment law that reduce these restrictions, such that non-Iraqi technical and administrative personnel in the project may transfer their salaries and compensation outside Iraq in accordance with the law after the payment of their obligations and debts to the Iraqi government and all other parties (Article 12/1-2-4 of Iraqi law).

2. Guarantees relating to the project as an independent entity:

Although it depends on future events that have yet to be realized, but the law grants investment projects future guarantees as follows:

- A. The law guarantees to the investor not to confiscate or nationalize the investment project covered by the provisions of this law, in whole or in part, except in accordance with a final judicial ruling.
- B. The other guarantee is a guarantee related to the idea of legislative stability, that is, any amendment to this law does not have any retroactive effect affects the guarantees and exemptions and rights under which the investor.
- C. The last guarantee is that the investor is not deprived of any additional benefits that may be realized in accordance with an international agreement, be it a bilateral agreement between Iraq and the country to which the investor belongs or a multilateral agreement to which Iraq is a party. This point reflects Iraq's compliance with its international obligations (Article 13, and article 22 of Iraqi law).

7. The scope of application of punitive damages in the provisions of the Investment Law

Punitive damages are compensation aimed at punishing the defendant and deterring others from committing the same act in a civil liability case due to fraud, malice, gross violation or intentional intent (John:2002), (Wisconsin:1978).

The Iraqi legal system adopts the principle of full compensation.

Therefore, the idea of punitive damages is not but in reading the texts of the investment law, it is possible to specify the following: The law has established a mechanism for resolving disputes arising between parties subject to the provisions of the Investment Law.

7.1 The legal effect of the investor's violation of the provisions of the Investment Law

The Iraqi Investment Law did not address any financial penalty against the investor in case of violation of the law. The only punishment stipulated by the law is to stop the exemptions and privileges granted to the investment project.

The idea of compensation in general, the law guarantees that others have the right to claim damages.

The law was not successful in formulating the idea of punishment, which should have been addressed in a tougher and more stringent form for the following reasons:

1. The law did not specify a clear concept of the meaning of the violation and give the investment authority the right to decide the violation or not without a legal or judicial guarantee to protect the investor against Arbitrariness of the Investment Authority.
2. Granting the Investment Authority the right to withdraw the investor's license and stop the work of the project is not a successful economic solution.
3. The idea of compensation that the law cited in the application is vague (article 28 of Iraqi law).
4. The law applicable to disputes arising between parties subject to the provisions of the Investment Law: The rule of freedom of the parties to choose the law applicable to disputes arising between them is adopted by the Iraqi law with the exception does not accept the interpretation that the Iraqi law is applicable in the case of the parties did not agree otherwise and in cases that are subject to the provisions of Iraqi law exclusively or Jurisdiction of the Iraqi courts (article 27 of Iraqi law).

The law also guarantees the right to arbitration as a mechanism for resolving disputes in accordance with Iraqi law or any other internationally recognized authority.

The law also provides for the arbitration clause stipulated in the law in commercial disputes exclusively. From the intensive reading of the articles of the Iraqi investment law, it is possible to say that it is impossible to apply the idea of punitive damages for reasons related to the legal system applied in Iraq, because the Iraqi law is based on the principle of full compensation and this principle does not allow the application of punitive compensation.

According to the principle of full compensation, tort law seeks to put the victim in the position he was in before the tort.

This position is generally considered to be the situation where the victim does not suffer any harm at all (Peter: 2001), (UNIDROIT:7: 2010).

The law also decided that Iraqi law is applicable in cases where it is subject to its exclusive provisions, any competition from a foreign law that may include punitive damages may be ruled out, even in the only case that may allow for the application of such compensation. This is a case if the parties to the dispute are non-Iraqis and it is permissible to agree on the law applicable, this application will be outside the limits of the powers of the Iraqi state.

The rule of law is that it is not possible to impose a penalty without a legal text (IPC:1: 1969). the principle that punitive damages is a punishment for a malicious act or deliberate or blatant behavior, and in this sense, cannot impose punitive damages unless the text is clear and explicit and cannot be interpreted and there is no such text.

In the investment law and in other Iraqi legislation.

There remain two issues in this area: the question of the powers of the arbitrator in granting such compensation, and the application of punitive damages in the case of implementation of a foreign judgment in Iraq.

The arbitrator's power to award punitive damages is not even agreed upon in the sponsors of punitive damages, some courts in the United States of America refuse to allow the arbitrator to grant punitive damages on the grounds that they are contrary to the public policy of the state, or that the penalties are limited to the state only, While other courts in their decisions to recognize the authority of the arbitrator in granting punitive damages.

The most famous case in refusing to grant the arbitrator the power to award punitive damages is GARRITY case (GARRITY: 1976), While the case that supports the arbitrator's right to award punitive damage is the most obvious issue DRYWALL (DRYWALL: 2002).

The Iraqi arbitration law grants the court the power to invalidate the arbitration decision in certain cases, including if it violates public order or public morals or violates a rule of arbitration (ICPC:273: 1969).

Since there is no provision for the imposition of punitive damages, the arbitral award that decides such compensation will be revoked.

In this sense, we believe that the enforceability of an award containing punitive damages depends mainly on the national judge's view and interpretation of the location of such damages from public order.

In other words, if the judge considers punitive damages to be contrary to public order, he will decide to reject that decision, and vice versa.

As for the issue of the implementation of the foreign judgment that includes punitive damages, the above opinion relating to the arbitration decision itself applies to the foreign judicial decisions that are required to be implemented in Iraq if the provisions of Article VI of the law of implementation of foreign judgments are available (EFJIL:6: 1928).

8. Conclusions

Investment is a process that in essence carries economic, cultural and social dimensions through which various national economies are absorbed into a global system.

The guarantees and benefits contribute to investment flows and thus achieve the economic development of those countries.

The guarantees and benefits represent the key to security and reassurance to investors by providing the appropriate investment climate and economic resources and thus have a clear role in attracting and attracting investments and provide protection against any legislative, administrative and future action.

But in the case of punitive damages may be penalties for the expulsion of investment abuse without clear controls or standards, despite the need for such compensation to punish and deter others.

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