

دراسة الطبيعة القانونية لعقد استثمار الطاقة المتجددة في العراق- تحليلية في القوانين الاتحادية وإقليم كردستان

The Legal Nature of the Renewable Energy Investment Contract in Iraq- An Analytical Study in Federal Laws & the Kurdistan Region

Lect. D. Omer Zubair Dhaher

Lect. D. Karwan Dhahir Saber

Department of law, Cihan University-

Birmingham University-UK

Erbil, Kurdistan Region, Iraq

المستخلص

في الوقت الحاضر ، عندما يشهد العالم تدهورا في البيئة بسبب حجم المخاطر لزيادة انبعاثات الكربون ، والاحترار العالمي ، واستدامة الحياة في المستقبل ، والعوامل الضارة التي تسبب انتشار الأوبئة وتدمير الطبيعة ، من بين عوامل الخطر الأخرى ، تعتبر مصادر الطاقة المتجددة واحدة من أهم السلع الاقتصادية والاستراتيجية ووسيلة مهمة لتحقيق التنمية. لذلك ، فإن الاهتمام بمصادر الطاقة المتجددة والاستثمار فيها اليوم هو أحد الاهتمامات الأساسية ، وقد جعله الباحثون حتى تميل السياسات الوطنية والدولية إلى إقامة مشاريع لإنتاج الطاقة المتجددة والاستثمار في مصادرها ، على الرغم من وجود العديد من الدراسات في هذا المجال من حيث التكنولوجيا والاقتصاد ، ما لم يكن ذلك مطلوباً من أجل تقييم الاستثمارات في مصادر الطاقة المتجددة في العراق وإقليم كردستان وقابليتها للعوامل الاقتصادية والبيئية والسياسية والدولية ، يتضمن الموضوع دراسة قانونية. بالإضافة إلى ذلك ، يعد اللجوء إلى هذه الطاقات ضرورة معينة لتحقيق أهداف التنمية ، وتعزيز النمو الاقتصادي ، وتعزيز خدمات الطاقة لخطط التنمية في البلاد في مجموعة متنوعة من المجالات. وفي ضوء كون التنظيم القانوني لهذا النوع من مصادر الطاقة والاستثمار فيها من أهم الركائز في تحسين وتطوير قطاع الطاقة في المستقبل ، فإن هذه العملية تستلزم أيضاً الاعتماد على التنظيم القانوني المناسب من خلال التعلم من تجارب الدول المتقدمة في هذا المجال

الكلمات المفتاحية: الطاقة المتجددة، عقد الاستثمار، الجوانب القانونية.

Abstract

In the present day, when the world is experiencing a decline in the environment due to the size of the risks to increase carbon emissions, global warming, the sustainability of life in the future, and the detrimental factors that cause the spread of epidemics and the destruction of nature, among other risk factors, renewable energy sources are considered one of the most important economic and strategic commodities and an important means to achieve development. Therefore, interest in renewable energy sources and investment in them today is one of the fundamental concerns, and researchers have made it so that national and international policies tend to establish projects for the production of renewable energy and invest in its sources, despite the existence of numerous studies in this field in terms of technology and economics, unless this is required. In order to assess investments in renewable energy sources in Iraq and the Kurdistan Region and their susceptibility to economic, environmental, political, and international factors, the subject involves a legal study. Additionally, turning to such energies is a certain necessity for achieving development objectives, fostering economic growth, and enhancing energy services for the country's development plans in a variety of fields. In light of the fact that the legal regulation of this type of energy source and investing in them is one of the most crucial pillars in improving and developing the energy sector in the future, this process also necessitates reliance on appropriate legal regulation by learning from the experiences of developed countries in this field.

Keywords: Renewable energy, Investment Contract, Legal aspects.

I. INTRODUCTION

livelihoods in formerly prosperous industries like agriculture.⁴

In summary, energy is a linchpin of modern civilization, driving economic growth, shaping geopolitics, and presenting both opportunities and challenges. As societies continue to evolve, the way we produce, consume, and think about energy will remain a central concern for the foreseeable future. Investing in renewable energy sources in Iraq and the Kurdistan Region can be a vital component of good governance. It aligns with principles of transparency, accountability, the rule of law, and sustainable development. As the legal framework for renewable energy continues to evolve, both regions have the potential to not only enhance their energy security but also contribute to the global effort to combat climate change while fostering economic growth and stability. Effective governance will be key to realizing these benefits and ensuring a sustainable energy future.

Research Methodology:

The researcher collects relevant legal texts, laws, or legal documents from both Iraq and the Kurdistan Region. The researcher further gathers pertinent legal texts, statutes, or documents from the Kurdistan Region as well as Iraq. These documents serve as the primary data for the study. The researcher used the original approach in addition to analytical comparative approach when comparing the comparative legal texts of Iraq and Kurdistan in this area in order to analyze and compare the legal texts, clarify the legal aspects and shed light on their components, and ultimately create a vision that helps solve the problem at hand by offering objective and logical solutions. The first step in using an analytical comparative technique is to define the study objective. The researcher may also take into account the historical, cultural, political, and economic conditions in which these laws were created in addition to a superficial comparison. Insights into why specific legal provisions exist in one jurisdiction

Background of the study:

Renewable energy sources have been highlighted as an essential response to the global concerns of energy security and climate change. Iraq and its semi-autonomous Kurdistan Region have acknowledged the need to diversify their energy sources and take advantage of renewable energy's potential. This research examines the legal ramifications of investing in renewable energy sources in Iraq and the Kurdistan Region, with a particular emphasis on how such investments can be an essential part of effective governance.¹ Thus, energy is regarded as one of the most significant economic and strategic commodities in the world and has played a major role in establishing human civilizations throughout history. Man used to exploit a variety of energy sources and made them a characteristic of his era. However, in the modern era, interest in renewable energy sources is no longer a secondary or sub-concern, and national policies are no longer influenced by international, regional, or even local organizations. Risks to the future of the earth and the viability of life therein generally, including global warming, an increase in carbon emissions, greenhouse gases, ozone layer decreasing, and other dangers, do not just pose a threat to a particular region of the world; they also pose a threat to the entire planet due to their grave adverse effects on the viability of life on its surface.² The main causes of these risks are, on the one hand, the world's increased energy consumption as a result of the professionalization of fossil fuels and, on the other hand, the fact that many countries, especially those in the Arab world and the Arab Gulf states, rely on the production of their energy from fossil fuels that are extracted from the ground, represented by oil and gas, at a time when they need more of this fuel to fuel their economies and to meet the rising demand for energy.³ Iraq's overall stability and prosperity are impacted by climate risks: persistent water shortages and rising temperatures are putting increasing strain on essential resources and limiting prospects for

³ Pumphrey, Carolyn Wilson. *The Energy and Security Nexus: A Strategic Dilemma*. Strategic Studies Institute, US Army War College, 2012.

⁴ Unnamed (2023) 'Sustainable Solutions to Combat Climate Change in Iraq' <https://reliefweb.int/report/iraq/sustainable-solutions-combat-climate-change-iraq> > accessed date 1/10/2023

¹ Kadhim, Hanan Abdulameer, Waad Hadi Abd, and Akeel Dakheel Kareem. "The impact of environmental auditing on the environmental dimension of sustainable development (Applied Research on Environmental Governmental Institutions in Iraq)." *Ilkogretim Online* 19.3 (2020): 2801-2812. Date of visit 25/9/2023.

² Edenhofer, Ottmar, et al., eds. *Renewable energy sources and climate change mitigation: Special report of the intergovernmental panel on climate change*. Cambridge University Press, 2011.

- 1.٤. The legal nature of investment in renewable energy sources
- 1.٥. Characteristics of the renewable energy investment contract

Chapter Two

The legal Opportunities for investment in Iraq and Kurdistan Region

- 2.1. The Right to Insurance of the Investment Project
- 2.2. Employing the necessary Manpower for the Project
- 2.3. Right to Allocation of land and Property
- 2.4. Transferring the Profits of and the Interest on his Capital abroad
- 2.5. Transferring his Investment Wholly or Partially to another Investor
- 2.6. Right to opening an account
- 2.7. Right in Maintaining the Secrecies of the project

Chapter One

Overview to investment and energy legislation:

One benefit of the ancient Iraqi society was the enactment of laws, which helped to create the cradle of human civilizations. This was demonstrated by the discovery of the earliest laws, which were written on clay tablets under Mesopotamian civilizations thousands of years ago, and which were notable for their high level of organization, formulation, maturity, and advancement at the time. Furthermore, when these experiences grew through time, they had a significant impact on how Iraqi laws were established as well as the country's economy. Numerous social, economic, political, and industrial spheres served as the catalysts for these encounters.

١.1 Energy legislations in Iraq and Kurdistan:

Since the beginnings of the Iraqi state's establishment, which can be traced back to the British Mandate, the Organization and Development Law No. 14 of 1929⁵ to support the industrial projects and was amended by Law No(45) of 1930 and Law No(63) of 1936, and the aforementioned Law and its amendments regulated a set of privileges, incentives, and tax and customs exemptions, and continued in force until the forties and fifties, and then was repealed by Law No(43) of 1950 to Encourage Industrial Projects. The Reconstruction Council was established in the early 1950s under Law No (23) of 1950,⁽⁶⁾ to invest the oil revenues in the fields of economic development, and this council presented a set of

but not another can be gained by understanding the background.

In findings the researcher comes to certain findings regarding the similarities and differences between the legal texts in Iraq and the Kurdistan Region based on the comparative analysis. These results may be used to address particular research topics or goals.

Research problems:

Investing in renewable energy sources legally in Iraq and the Kurdistan Region is a complicated and comprehensive research topic. For instance, investigate the legal and regulatory framework that is now in place for investments in renewable energy in Iraq and the Kurdistan Region. Analyze the usefulness of these restrictions in fostering the growth of renewable energy sources. The legal considerations concerning renewable energy projects in Iraq and the Kurdistan Region are well covered by these study issues. The problem of this study is to present a set of questions, through this research, we discuss them and search for solutions, what is the nature legal of investment contract in renewable energy sector in the Kurdistan Region? What are the legislative, administrative and technical shortcomings in this area? What are the legal guarantees of this type of investments?

Research goals:

This study aims to achieve the following points:

- 1- Determining the legal aspects of investment in the renewable energy sector in the Kurdistan Region and Iraq.
- 2- Promote investment in renewable energy sources in order to increase energy production and protect the environment from pollution.
- 3- Encourage the government to pay more attention to this sector and increase investment in it as an important element of good government.

Index of topics:

Chapter One

Overview to investment and energy legislation

- ١.1. Energy legislations in Iraq and Kurdistan
- ١.2. The period after the American war
- 1.٣. Renewable energy sources properties

the Promotion of Industrial Projects, Government Press, Baghdad, 1951, p.19 According to Dr.Azad Shakour Saleh, Investment Promotion Laws and their Applications in the Field of Tourism

(5)- Published in Official Gazette No (928) on 12/29/1930.

(6)- This law has been amended three times, the last of which was Law No(18) of 1957, for more it reviews a set of regulations and laws of 1950, the appendix of Law No(43) of 1950, the Law for

objectives of industrial development, raising the level of project efficiency, and achieving harmony and harmony between the industrial and economic sectors.

In the late nineties, the Industrial Investment Law for the private and mixed sectors No(20)of 1998²¹ was issued. One of the reasons for the enactment of this law is the revival of the development process through the establishment and expansion of advanced projects, operating stalled industrial projects, improving the level of production, and bypassing the multiplicity of decisions, regulations and instructions for investment. The industrial sector, simplifying procedures, creating an appropriate investment climate in the industrial sector and investing in it in the private and mixed sectors, and in the same year, for the purpose of accelerating the process of economic and social development forward by encouraging the attraction of national, Arab and foreign capital, industrial investments and more interest in advanced technology, providing job opportunities and increasing the volume of exports. And foreign exchange resources, and for the management and investment of free zones, the Free Zones Authority Law No (3) of 1998⁽²²⁾ was issued.

In the late 1980s, the Arab Investment Law No (46) of 1988 and its amendments ⁽²³⁾ was issued and continued in force until its repeal by the Arab Investment Law No (62) of 2002⁽²⁴⁾ and the latter was not implemented due to the American war that took place in Iraq and then led to a change in the political situation at the time. As for legislations efforts to pass energy laws in Iraq and the Kurdistan Region, Law of the Atomic Energy Commission No(1) of 1959.⁽²⁵⁾ In order to protect the proper uses of radioactive sources and to ensure that the citizen's health is protected from exposure to dangers, accidents and the environment, the law on protection from

construction activities and works during that period, the Industrial Projects Promotion Law No (43) of 1950 was canceled by the Industrial Projects Promotion Law No (72) of 1955⁽⁷⁾, and the Law for the Construction and Investment of Pure Emir Lands No (43) of 1951⁽⁸⁾ to support and encourage investment projects, and then Law No (79) was abolished of (1958).⁽⁹⁾

In 1958, the Iraqi political system transformed from a monarchy to a republic as a result of a military coup that overthrew the then monarchy. Despite this change, efforts to develop the economy and support industrial projects continued, as did efforts to amend laws that had been passed during the monarchy's rule, such as the law No. (80) of 1961 that designated areas for oil company investment.⁽¹⁰⁾ and Industrial Development Law No (31) of 1961⁽¹¹⁾ and the latter was amended by Law No.(46) of 1961.⁽¹²⁾

In order to investing Arab capital in the industrial development process and in order to use the largest possible capacity of energies and employ them in development projects, Law No (164) of 1964⁽¹³⁾ as well as the law for the nationalization of some companies and establishments No (99) of 1964⁽¹⁴⁾ and in the early 1970s In the 1980s, a set of laws were issued, including: Quarries Investment Law No (139) of 1981,⁽¹⁵⁾ then the Mineral Investment Regulation Law No (9) of 1988,⁽¹⁶⁾ as amended, was repealed. Likewise, the Law on Patents and Industrial Designs and Models No (65) of 1970⁽¹⁷⁾ and the Law for the Development and Organization of Industrial Investment No (22) of 1973⁽¹⁸⁾ remained in force until it was abolished by the Industrial Investment Law for the mixed and private sectors No (115) of 1982 ⁽¹⁹⁾ and this was canceled. The last was the Industrial Investment Law for the private and mixed sectors No (25) of 1991, ⁽²⁰⁾ this law brought important data in achieving the strategic

published in the official number (3920) on 4/3/2002. Law No (58) of 2015 was published in the official Gazette No (4395) on 1/25/2016.

(18)- Published in the Official Gazette No. (2224) on 2/26/1973.

(19)- Published in the official Gazette No. (2916) on 12/20/1982.

(20)- Published in the official Gazette No. (3368) on 8/26/1991. 21 Published in the official Gazette No (3733) on 3/8/1998.

(22)- Published in the official Gazette No. (3722) on May 18, 1998.

)23(- Published in the official Gazette No (3199) on 4/25/1988 amended by Law No (28) of 1989 published in the official Gazette No (3246) on 3/13/1989.

(24)- Published in the official Gazette No (3959) on February 12, 2002 and was repealed by the Iraqi Investment Law No (13) of 2006 and its amendments.

(25)- Published in the Iraqi official Gazette No (110) in 15/1/1959. Amendment and completed by Law No (203) of 1964 published in the official Gazette No (1062) in 13/1/1965.

Investment, House of Legal Books and Diaspora House for Publishing and Software, Egypt, 2013, p 66.

(7)- Published in the Official Gazette No (3636) on 9/6/1955 This law was repealed by the Industrial Development Law No (31) of 1961.

(8)- Published in the official gazette issue (2999) on 17/7/1951.

(9)- Published in the official Gazette No (289) on 16/1/1960

(10)- Published in the official Gazette of No(616) on 12/12/1961

(11)-Published in the official Gazette No (520) on 5/4/1961, according to which Industrial Projects Law No(72) of 1955 and its amendments canceled the regulation of establishing Industrial projects No (18) of 1957.

(12)- Published in the official Gazette No (533) on 25/7/1961.

(13)- Published in the official Gazette No (1031) on 17/11/1964.

(14)- Published in the official Gazette No (975) on 14/7/1964.

(15)- Published in the official Gazette No (2866) on 1/11/1982.

(16)- Published in the official Gazette No (3219) on 9/12/1988 and amended by Law No (13) of 1994 published in the official Gazette No (3528) on 9/19/1994.

(17)- Published in the official Gazette No(1865) on April 6, 1970, and it was amended by Law No(28) of 1999 published in the official number (3790) on 6/9/1999 and Law No (5) of 2002

of Iraq and the Kurdistan Region in advancement and growth towards a better future. Adopting separate regulations in the area of renewable energy sources is therefore important. They use their earnings and make investments with them in order to accomplish comprehensive development across all industries, including the agricultural, industrial, and commercial ones.

1.2. The period after the American war:

After the end of the American war, Iraq and the Kurdistan Region turned to a new stage, not only at the political level, but also economically and legislatively, so during the period of (Paul Bremmer) Administrator of the Coalition Provisional Authority, many laws changed, and the new Iraqi constitution was approved in 2005 and the Iraqi government and the three legislations, judicial and executive powers were formed, and the Kurdistan Region was constitutionally recognized as a federal region and enjoys its constitutional powers. According to Kurdistan Parliament Resolution No (11) of 1992, federal laws that were approved after 1992 are not applied in the Kurdistan Region except after the enforcement law is issued by the Kurdistan Parliament.

Article 26 of the Iraqi Constitution, which encourages investments in various sectors and emphasizes the necessity of issuing a law in this area, played a pivotal role in shaping Iraq's investment environment. This constitutional provision laid the groundwork for the subsequent enactment of the Iraqi Investment Law No. 13 of 2006.⁽³⁴⁾ and in the same year the Investment Law in the Kurdistan Region No (4) of 2006.⁽³⁵⁾ As a result of the economic and political transformations that took place in Iraq, and in order to support and encourage the private sector for foreign and local companies in the field of crude oil refining to increase local production capacities of oil derivatives and improve quality, the Private Investment Law in Crude Oil Refinement No (64) of 2007 was issued as amended.⁽³⁶⁾

1.4. Renewable energy sources properties:

ionizing radiation No (80) of 1971⁽²⁶⁾ was issued in Iraq, then the law on protection from ionizing radiation No (99) of 1980⁽²⁷⁾ was issued. Law of the National Electricity Authority No (37) of 1962⁽²⁸⁾ then it was repealed by Law of the National Electricity Authority No(42) of 1964⁽²⁹⁾ and the latter was repealed by Law of the Public Electricity Corporation No (159) of 1974.⁽³⁰⁾

More recently, the Iraqi parliament passed the Iraqi Atomic Energy Authority Law No(43) of 2016.⁽³¹⁾ In order to develop the infrastructure for the electricity sectors to keep pace with technological progress and development, provide energy and support investment in this sector, the Ministry of Electricity Law No(53) of 2017⁽³²⁾ was issued. As for the Kurdistan Region, the Law No (11) of 2000⁽³³⁾ was issued to determine the prices of electrical units and their requirements. After providing this succinct historical overview of investment, industrial, and energy laws in Iraq and the Kurdistan Region, it can be stated that no special laws have been issued in these regions to address issues related to renewable energy sources and invest in them as necessary. Legislative efforts in the areas of fossil or traditional energies have also been put on hold, especially in the field of oil and gas, where studies and discussions have been saturated from it.

Energy is one of the necessities of life to meet human needs, increase productive capacity, develop economic and social development in any country, and due to environmental factors and reduce gas emissions to obtain clean energies, countries have tended to legislate special laws in the field of using renewable energy sources or alternative or clean energies and invest in them. Since Iraq and the Kurdistan Region have great abundance and good potential in the use of renewable energy sources whose nature is constantly renewed, it is necessary to take a major step in enacting a special law in this field in order to develop productive capacity and pay more Attention to investment projects in order to achieve sustainable development and maintain cleanliness. Environment and meeting the needs of society, as renewable energies are one of the most important sources of energy and the hope

(32)- Published in the Iraqi official Gazette No (4443) on 17th April 2017.

(33)- Published in the Kurdistan official Gazette No (6) in 11/12/2000.

(34)-Published in the official gazette No (4393) in 4th January 2016.

(35)-Published in the Kurdistan Official Gazette, No (62) in 27th August 2006.

(36)-Published in the Iraqi Official Gazette No(4062) in 18/12/2008 and amended by Law No(10) of 2011 published in the Iraqi Factual Case No(4199) in 7/11/2011 and the distinguished(35) of 2016 published in No(4424) In the Iraqi official Gazette in 14/11/2016.

(26)- Published in the Iraqi official Gazette No. (1999) on May 19 1971.

(27)- Published in the Iraqi official Gazette No (2775) in 26th May 1980 and amended by Law No.(20) of 1981.

(28)- Published in the Iraqi official Gazette No (693) in 7/18/1962.

(29)- Published in the Iraqi official Gazette No (934) in 7/4/1964.

(30)- Published in the Iraqi official Gazette No(2418) in 27/11/1974, and was amended four times, by Law No (77) of 1975 and Law No (54) of 1978 and Law No (118) of 1980 and Law No(44) of 1985.

(31)- Published in the Iraqi official Gazette No (4431) in 31/1/2017.

by being It has the potential to continue and renew, and is available at low costs.

Absolutely, renewable energy sources have become increasingly important in people's lives and can significantly contribute to meeting a substantial portion of their energy needs. They are long-term sources because they are mainly related to natural sources and factors and the energy that is issued by most of them is characterized by persistence and persistence. Thus, using renewable energy helps reduce greenhouse gas emissions and environmental pollution. Individuals who choose renewable energy sources contribute to mitigating climate change and preserving the environment for future generations.

1.5. The legal nature of investment in renewable energy sources:

What is meant is the legal nature of the relationship of its contents to a specific legal system for the purpose of demonstrating the legal rules that govern it, for the legal nature is nothing but a classification process for the relationship and placing it within the framework of one of the legal systems for which the laws have been assigned texts to organize its various aspects, and this process is what is considered a law about it by adaptation. It seems that there is agreement between the jurists and commentators on one aspect of this matter and a difference in another aspect of it, as the jurists and commentators agree that the relationship between the parties to the investment process is not outside the scope of the contract , in other words it is a contractual relationship, but they differ in terms of adapting this The contract, and if this difference in accommodation is due in part to a difference in views about it, the other reasons are due to the diversity of investment contracts, the expansion of its fields and the difference of its parties. Whatever the matter, what is worthy of research and discussion within the framework of our study is the matter that is disputed between these jurists and commentators.

1.6. Characteristics of the renewable energy investment contract:

The contract of investment in renewable energy sources is a consensual contract, in which consent is sufficient to hold it in the beginning, because the formality as a cornerstone for the contract to be concluded is not imposed unless there is an explicit provision to do so the contract.⁽³⁸⁾ In order for mutual consent to arrange its effect

Through the definition of the concept of renewable energy, one can identify a set of characteristics that characterize these energy sources, which are in fact advantages of these sources against many negative aspects of traditional (fossil) energy sources, In general, we will present these characteristics very briefly here, which are:⁽³⁷⁾

- 1- Renewable energy sources are inexhaustible, considering that they are derived from natural forces of a permanent and permanent nature, such as wind, sun, and others, and this characteristic has overshadowed its name renewable resources.
- 2- It aims first at protecting human health and preserving the natural environment.
- 3- Simplicity in the cost of its production, which leads to improvement and facilitation of human life.
- 4- Using it in energy production does not lead to the occurrence of a phenomenon called (global warming), thus reducing the number and severity of natural disasters resulting from global warming, and it also leads to the absence of acid rain that harms agricultural crops and life forms.
- 5- It generates (clean) energy free from harmful waste, thus contributing to reducing the formation and accumulation of harmful waste in all its forms (gaseous, liquid and solid), protecting the pest of living organizations, especially the endangered species, and protecting the groundwater, seas and fish wealth from pollution.
- 6- Contributing to ensuring food security and increasing the productivity of agricultural crops as a result of their disposal of pollutants.
- 7- Energy production from these sources may be accessible to everyone and even remote areas, as solar energy has been used in many of these regions to establish energy production units for each of these regions without the need to connect them to large electrical networks and other costs.

In view of these advantages that are characterized by renewable energies, there is a trend in most countries of the world, in particular the developed countries, aiming to develop a policy of use and benefit from all types of renewable energy sources and their investment, in order to preserve the environment, its cleanliness and human health, in addition to that these resources are distinguished

2019 stipulates (All vehicles are registered in the competent registration departments, except for cars, bicycles and motorcycles whose engine size is less than (40) cm³, and vehicles are excluded by a special law, Article (30) of the Revised Book Law No (33) of 1998 stipulates: At the notary public in the region in which it is located. Second: - Legal actions are not carried out on the machine except by registering it with the competent notary department)

(37)-Muhammad Jaratly, The importance of adopting renewable energy and its role in preserving human health and the environment, a research available at <http://www.green-studies.com>, last visit date ٢٤/٩/202٣.

(38)- Article (508) of the Iraqi Civil Law No (40) of 1951 stipulates that (the sale of real estate shall not take place unless it is registered in the competent department and fulfills the form stipulated by the law) and Article (3) of Traffic Law No (8) of

lieu of the facilities and assistance it provided to the investor, in addition to the financial consideration that the investor gets.

On the other hand, the investment contract in renewable energy sources is one of the contracts binding on both sides, as it parties arranges mutual obligations on both, so that both the investor parties and the host country of the investment become creditor and debtor at the same time ⁽⁴³⁾, so the investor is bound by many obligations, including: Leave, submit the required data and documents, then start the investment activity on time and continue with it, train and qualify national workers, preserve the safety of society and the Environment in the host country, then report the completion of the project and start providing services or actual production, while in return this contract imposes a group Among the obligations of the host country for the investment, including: providing protection, providing facilities and assistance for the success of the investment project, allocating and handing over the project site to the investor, and maintaining the confidentiality of the project's technical and economic information, and given this convergence of obligations, the reason for each party's commitment is the commitment of the other party. The researcher will discuss in detail the rights and obligations of the parties to this contract in Chapter Two under the legal implications of this contract.

Likewise, it considered from technology transfer contracts are complex contracts that contain many simple contracts, such as a sale, lease and contracting contract, and the parties to this contract agree to exchange views in order to find out the true nature of the technology to be transferred and to get acquainted with its technical, knowledge and legal aspects. ⁽⁴⁴⁾

Some argue that a technology transfer contract could be either a licensing agreement that usually refers to a license to use intellectual property rights such as patents, trademarks and copyrights, or it could be a contract for the transfer of information or skills. Technology transfer contracts can be tailored to meet the specific needs and objectives of the parties involved. They can encompass a wide range of technology-related transactions, from sharing research findings and manufacturing processes to licensing patented inventions or granting rights to use proprietary software. These contracts serve as essential tools for facilitating innovation, collaboration, and the dissemination of technology across industries and borders.

(42)-Abdel-Razzaq Al-Sanhouri, Mediator in Explaining the Iraqi Civil Law, Sources of Commitment, Volume One, Third Edition, Egypt, Cairo, 2011, p 134.

(43)- Dr Samir Abdel-Sayed Tanago, Sources of Commitment, Alexandria, Egypt, 2005, p.18.

(44)- Majmudar & Co, Legal and Commercial aspects of technology transfer, International Lawyers, Mumbai, India, P.5, available at <https://www.majmudarindia.com> Last visiting /٢٢/٩ 202٢.

on concluding a valid and enforceable contract, it must be validly issued by the two, that is, to have two parties enjoying the necessary competence for this, ⁽³⁹⁾ and that their consent is of a free will free of defects. ⁽⁴⁰⁾

Usually, mutual consent is achieved in investment contracts in the form of requests submitted by the investor against which the approvals from the authorities overseeing the investment, which end with the issuance of the investment, license from those authorities. Noting that the requirement for the approval of the competent government agencies in the host country for the investment contract does not undermine the consensual quality of the investment contract, because approval is a condition for commencing the investment process and is not a pillar of which the absence of the investment contract is required. ⁽⁴¹⁾

Realistically speaking, the investment contract in renewable energy sources may be worth millions of dollars and is between two parties, one of which is the investor and the other is the host country, and both are professionals. Therefore, it is not imagined that it is verbal consensualism, but rather it must be written and includes details of the contractual terms, but that does not mean that Writing is required for the meeting, but for the purposes of preserving the rights of the parties and developing prior solutions to disputes that may arise between the two parties, in addition to that it is a period of contracts that may last for long periods, so it is not possible to rely on the agreements and the oral terms of the contract and then Rely on memory when there is a disagreement about it, and the negotiations of this contract It may be relatively long in terms of the time it takes, which is punctuated by many preliminary agreements to conclude this contract, which may raise many problems due to its Nature, as well as its regulation of many important issues in this contract, and other reasons that call for the liberation of this contract without The requirement that a formal pillar of the meeting.

It is considered a Netting contracts: Those contracts in which each contractor takes in exchange for what he gave, or those contracts in which there is an exchange between rights and interests, meaning that each party to the contract receives a fee for what he gives to the other party. ⁽⁴²⁾

Therefore, the investment contract in renewable energy sources is considered a contract Netting, whereby the host country takes the investment in return for or in

(39) -Article (93) of Iraqi Civil law provided (every person is eligible for contracting unless the law decides his incompetence or limits it) and as stated in Article (106) of the same law (the age of majority is eighteen years).

(40) - See the Articles (112 to 125) of the Iraqi Civil law regarding the defects of will.

(41) - Dr. Hassan Ali Al-zanon, The General Theory of Obligations, Sources of Obligation- Provisions of Obligation, Baghdad, Fifth Edition, 2013, p.30.

that has the right to ensure its project against any risks in the host country, and it has also given the right to chosen foreign and local insurance companies. Therefore, there must be an insurance contract between the investor and the insurance company.

The subject of an insurance contract must be permissible otherwise the insurance contract is void if the risk insured against him will be removed or it will be achieved in the time of the contract, and one of the parties, at least, should know that. The following conditions are void if it contains the following in "insurance document " ⁽⁴⁶⁾

- 1- The condition that makes falls of the right to insurance because of violation of laws and regulations except the felony and deliberate misdemeanor.
- 2- The condition that causes fall of the right to insurance, because of delay in the declaration of the accident which insured him to the authorities or in submitting the documents if it appears that delay for an acceptable excuse.
- 3- Each printed condition did not justify the apparently, and it was related to the status which leads to a nullity and falling.
- 4- The arbitration condition, if come in the document between public printed conditions, not in the form of a special agreement separate from the general conditions
- 5- Any other arbitrary conditions it turns out its violating was not the impact of the falling an accident that insured him. ⁽⁴⁷⁾

The same situation for the Iraqi investment law has affirmed about the right to insurance of the investor for its investment project, and the attitude of both of legislators is the same in the right to choose the foreign and local insurance company by the investor. Article (1007) of the Iraqi civil law has confirmed on the matters relating to the insurance contract, and special laws will regulate those has not mentioned.

2.2. Second: Employing the necessary Manpower for the Project

Previously definition and the importance of the local and foreign manpower have been shown through our study under the obligations of the investor and without a doubt any investment project needs the manpower whether local or foreign. It includes ordinary workers, technicians, experts, administrators, etc.

that depended to prove the conclusion of the Insurance Contract between the Insurer and the Insured).

(47) -Articles (984,985) of Iraqi Civil Law No (40) of 1951.

Chapter Two

The legal Opportunities for investment in Iraq and the Kurdistan Region

The applicable law in the field of investment in the Kurdistan Region is Law No (4) of 2006, and in Iraq Law No (13) of 2006, which has been amended twice, in 2010 and 2015. Both of Iraqi and Kurdish laws gave the investor a set of legal guarantees in order to facilitate the investment process and attract the foreign capital, and the establishment of infrastructure in the country.

These legal guarantees including allocation Land for the investment project in coordination with the competent authorities which provided in Article (4) in Kurdistan Investment Law No (4) of 2006, and article (fifth, sixth and seventh) granted a set of other guarantees related to financial, tax and customs exemptions, the right to insure the investment project, the right to open bank accounts, whether in the national or foreign currency, and the right to send its capital and interest abroad. In addition to additional exemptions in cases of joint projects between the national investor and the foreign investor.

The main goal of attracting foreign investment is for the development of different sectors and creating a strong infrastructure in the state, especially in developing countries so that the most of the countries give the rights to the investors. These rights are as facilities for the implementation of the investment project, including the right to own property, right to transfer the capital, the right of guarantee, the right to insurance, exemptions from customs, etc.

These rights are regulated by the law in any state binding and shall not be violated. This principle has confirmed by an international treaties and conventions. Therefore, in this chapter we discuss the opportunities and facilities of investing in Iraq and Kurdistan region as following:

2.1. First: The Right to Insurance of the Investment Project

Insurance: It is a contract committed by it that the insurer assures to the insured or the beneficiary a sum of money or income or any other financial compensation in case of an accident against the insurer in exchange for premiums or any other financial payment performed by the insurer to the insured. ⁽⁴⁵⁾

The Iraqi law considered that insurance is a contract between two parts i.e. the insurer and insured and defines the rights and obligations of the parties. The Kurdistan Investment Law confirmed on this right for the investor

(45) - Article (983/1) of Iraqi Civil Law No(40) of 1951.

(46) - Article (2/Twelfth) of Insurance Regulatory Law No(10) of 2005 has defined the insurance document: ((The document

achieving the investment activity; it is as well considered to be one of the most important elements of the investment process.

It is not in doubt that the Social and Economic developments, in addition to the establishing of the infrastructure are the main goals of the Lands Allocation for the investors in Iraqi Kurdistan Regional law. Therefore, it deals with this matter under chapter one, section four which defines the procedures and the competent authorities of this.

The searcher determine the procedures for the allocation of land to the investor in the Iraqi Kurdistan investment law as follows:

1-The first Step is to identify the land that the board coordinates with the ministries and departments concerned to determine the sites that are allocated for the investment projects in every governorate. It is known that the board of investment cannot decide alone regarding determining and the allocation process of land because the process is in coordination with the competent ministries and authorities for studying all aspects of the project.

2-Their title deeds will be marked that these sites are allocated for the board's purposes; this stage will be after consultation and coordination with the competent authorities related to the project.⁽⁴⁸⁾

3-The concerned entities will coordinate with the board in determining and allocating the lands needed for the project inside and outside the basic city design by rent or long term lease at encouraging prices in accordance with the rules set by the board except to the provisions of the "Law of Sale and Rental of State Property"⁽⁴⁹⁾ enforced in the region.⁽⁵⁰⁾

4- The lands that are allocated for investment projects will be marked as frozen in the concerned real estate departments. The marking shall not be removed except with the written approval of the board after the investor has fulfilled all his obligations.⁽⁵¹⁾

5- Specifying the lands that are necessary for the investment projects are to be established in accordance with the provisions of Investment law in Kurdistan Region within the limits of the area are set in light of the objectives of the project and its actual needs in accordance with special rules which are set by the board as an exception from the existing provisions in this concern.⁽⁵²⁾

6- In the case of changing the project's site, it is subjected to the same bases and rules for allocating the site of the project at the first time.⁽⁵³⁾

(50)- Article (4/Second) of Iraqi Kurdistan Investment Law No (4) of 2006.

(51)- Ibid, Article (4/Fourth).

(52)-Article (4/Seventh) of Iraqi Kurdistan Investment Law No(4) of 2006.

(53)- Ibid, Article (4/Eighth).

The Kurdistan Investment Law gave this right to the investor in the article (7/second) to use the local and foreign manpower with priority to the local manpower.

The Iraqi investment law confirmed on this right too but not absolutely because it has determined in the case of local manpower not to do the required job or, in other words, it does not have the qualifications accordance with the regulations issued by the Commission. The investor may return to the foreign manpower.

Clearly, both laws tried to achieve the national interest, because each of them gave priority to local manpower. But Iraqi law is more organized than Kurdistan Law because of putting the condition in case it is not possible to employ an Iraqi with the required qualifications and capable of performing the same task in accordance with guidelines issued by the Commission. While only the Kurdistan Investment Law mentions giving priority to local manpower without determining required standards.

The Kurdish legislator did not distinguish between the case of using foreign manpower by a local investor and foreign investor because the situation is different in the case of the local investor returning to the use of foreign manpower which leads to non-interest in the local manpower. Hence, the primary objective of the employment of local manpower is the removal of unemployment. As well as raise an economic level otherwise, it leads to increase rather than diminish and. Therefore, the legislator has to distinguish between these two cases for being a reason to treat the unemployment and restrict the using of foreign manpower by the required conditions as the Iraqi legislator did.

Lastly, we must say; it is difficult for an investor to use the local manpower in all the aspects of the investment project because each investor in his project has need of a group of experts, advisers and administrators which are due to the presence of full confidence with the staff that operates with him. It's hard to leave them, but an investor can give the opportunities to the local manpower in some other aspects which are dependable on the ability, qualification and required skills.

2.3. Third: Right to allocation of Land and property

One of the other most important elements of the investment process that the investor needs to achieve as a part of his investment aims is an allocation of land. It means the allocation of lands to investors in the particular place and according to the legal procedures as defined in the Investment Law or any relating laws used in

(48)- Article (4/First) of Iraqi Kurdistan Investment Law No.(4) of 2006 .

(49)- Law of Sale and Rental of State Property No(21) of 2013, It has issued by Iraqi Parliament in 12th Aug 2013 and published in Iraqi official Gazette No (4286) in 19th Aug 2013, P.15-35 .

Law of Renting reclaimed Agriculture lands No (79) of 1985.

C- Industrial Investment Law No (20) of 1998, regarding retaining of the investor for a part of the land that was allocated to him according to its provisions.

D- The second paragraph of the resolution of the Revolution Command Council (dissolved) No (850) in 5/7/1979 has been amended by the resolution No (940) on 21/12/1987.

E- Resolutions of the Revolution Command Council, (dissolved) No.(581) on 05/05/1981, (1187) on 09/18/1982, (222) on 02/26/1977 and (165) on 1/1/1994.⁵⁷

Through the presentation of the Articles, we can compare between Iraqi and Kurdistan Investment Law in the following points:

1- Both the laws have confirmed on the allocation of land in coordination with the concerned authorities to study the whole aspects of the project and the participation of the relevant authorities in the process.

2- Organizing of the allowance system for Investment Projects in the Iraqi Investment Law regarding the real estates that are allocated to the Investor, with allowance for Residential Projects, that are located in the basic design, and all other non-residential Projects, without Allowance for Residential Projects, that are located abroad of basic design, that required the value of land does not count within housing unit value that is sold to the citizens. While Iraqi Kurdistan Investment Law has provided, the concerned entities in coordination with the board determine and allocate the lands needed for the project inside and outside the basic city design by rent or long term lease at encouraging prices according to the rules set by the Investment Board. It has also provided, the Supreme Investment Council which may upon the recommendation of the board acquire ownership of the lands allocated for strategic projects at an encouraging price proposed by the board or without a price, taking into consideration the nature and importance of the project and the requirements of public interest upon acquiring the ownership, as well the Investment Board has the powers to own state property free of charge and to own state lands loaded with disposal rights after charging off the disposal rights by compensating their owners fairly and suitably in accordance with the existing laws, rules and regulations in this concern.

3- Finally both have also agreed that procedures of the allocation of lands must exclude the provisions of Law of Sale and Rental of State Property No. (21) of 2013 as well

7- The Concerned entities in coordination with the board shall provide the public services, including: water, electricity, sewage, public roads, telecommunications and others to the precincts of the project, provided that the necessary funds for this purpose are allocated in the budget.⁽⁵⁴⁾

Regarding the Iraqi Investment Law, it had provided for the allocation of land through Article (9/Sixth),⁽⁵⁵⁾ in consideration of one of the objectives of the Investment Commission in order to encourage investment process. But this article has been amended by Article (6) of the Second Amendment Law No (50) of 2015 which has determined the procedures of allocation of lands, where it provides:

Facilitating and obtaining of the real estate for the establishment of investment projects will be determined by the Commission in coordination with the concerned authorities as follows:

1- With Allowance for Residential Projects, that is located in the basic design.

2- Without Allowance for Residential Projects, that is located abroad of basic design on condition that the value of land does not count within housing unit value that is sold to the citizens.

3- With Allowance for all other non-residential Projects.

It also regulated a body of the other procedures of allocation of lands in Second Amendment Law which are as follows:

1-The ministries and departments that are not associated with the Ministry and Municipalities in the Governorate must provide a good real estate to establish the investment projects and informing the National Investment Commission about its numbers, spaces, Yields, type and uses through the preparation of map that will be updated annually.

2- In the case of non-implementation, as mentioned in paragraph (a) within (60) days from the date of the request of the National Commission for Investment, the Ministries Council may transfer ownership of land to the Commission without the allowance and the Commission shall be allocated for investment projects.⁽⁵⁶⁾

3- In case of the allocation of lands, Iraqi Investment Law has provided observance of those real estates that have been excluded from the provisions of the laws and resolutions as mentioned in the following:

A- Law of Sale and Rental of State Property No (21) of 2013.

B- Law of Renting reform agricultural land for companies and individuals No (35) of 1983, Law of Re-organizing agricultural Property No (42) of 1987, and

(56)- Article (7/Fourth, A,B) of Second Amended Law No (50) of 2015 .

(57)- Article (7/Fifth) Second Amended Law No (50) of 2015.

(54)- Ibid, Article (4/Ninth).

(55)-Facilitating the allocation of the needed lands and renting them out for establishing projects for a sum to be determined by the Commission in coordination with the concerned authorities.

3- It should not be close to the Iraqi border of at least (30) thirty kilometers.

4- The real property should not be an agricultural land or "sultan's domain" ⁽⁶⁰⁾ of any kind or including delegated land with a free way to move for any reason.⁽⁶¹⁾

Even with these restrictions, There are laws granting the right to property to foreigners, including both the Iraqi and Kurdistan Investment Laws but there are also exceptions in the Kurdistan Investment Law. It has not given this right Fully. For example, the investor cannot own those lands contain oil, gas, or any precious or heavy mineral resources as provided in the article (19):(It is impermissible for the investor to own the lands that contain oil, gas or any precious or heavy mineral resources).⁽⁶²⁾

The Kurdish legislator considered those lands within the strategy areas but does not refer to it directly in the investment law. The Kurdistan Investment Law has regulated this right to the investor who has provided.(In addition to what is enjoyed by the Foreign Investor including the right to own and lease the lands and the productive vehicles in accordance with the provisions of this Law, he has the right to purchase or lease in the interest of his Investment Project housing plots and non-productive vehicles that are required by the Project with the approval of the board in accordance with the rules set by the board for this purpose).⁽⁶³⁾ Through this article we understand that the Kurdistan investment law granted this right to investor under the following situations:

1- The process of ownership must be by the investment law. According to the Kurdistan investment law, the process of ownership of land allocated to the project is the authority of the Supreme Investment Council in Kurdistan at the suggestion of ownership board depending on the nature of the project and its importance and public interest in ownership.⁽⁶⁴⁾ It also is that the Investment Board has the authority to lands ownership under the laws, regulations and instructions. Article (4/Fifth) has confirmed this right to it.⁽⁶⁵⁾

2- The purpose of ownership must be for requirements of the Investment project.

3- The approval and availability conditions of investment board.

4- Observance of exceptions provisions of the law on the sale and lease of state property enforced in the region.

(63)- Ibid, Article (4/tenth) .

(64)- Ibid, Article (4/Third) .

(65)- Iraqi Kurdistan Investment Law (Fifth : The board may- toward the achievement of its aims have the powers to own state property free of charge and to own state lands loaded with disposal rights after charging off the disposal rights by compensating their owners fairly and suitably according to the existing laws, rules and regulations in this concern).

as the other laws and decisions that are mentioned previously according to Iraqi Investment Law.

Regarding to Right to property the Iraqi Civil law has defined the Property as following: (It is a full property which owner has an absolute disposal in kind, benefits and exploitation. It benefits from the fruits of benefits, and it disposes of all permitted actions on its property).⁽⁵⁸⁾

Through this definition, it shows this right has the following characteristics:

1- This Right is the inclusive right; it empowers the owner of utilization, exploitation and disposal at the same time.

2- The Preclusive Right: It means this right is only for the owner without the other; no one can share his property and intervene in his ownership.

3- A permanent Right, it will stay with the survival of goods.

As a part of the promotion of foreign investment requirements and the decided right of investor under the laws, the investor has the right of ownership for the success of the investment project including movable and real properties. The Iraqi legislator regulates right to property for foreign in either movable or real properties. However, there is a constitutional restriction on this right which has confirmed it in the constitution of Iraq (Every Iraqi shall have the right to own property anywhere in Iraq. No others may possess immovable assets, except as exempted by law).⁽⁵⁹⁾

Iraqi constitution has prevented this right for the investor but not absolutely where it has put the term of (except as exempted by law) in the mentioned article. It means there are exceptions, and laws will regulate these exceptions. Therefore, if we review some legislation, we can say some of them are this right, and others are not. For example, the Law of Foreign Property Ownership in Iraq has determined the situations that the foreign has the right to property.

The foreign should not own property in Iraq for any reason in the reasons for owning property, and he cannot participate in the public sale, without the approval of the Interior Minister and the availability of the following conditions:

1- It should have a previous residency least seven years.

2- Non-existence of an administrative and military preventive.

(58)- Article (1048) of Iraqi Civil Law No(40) of 1951.

(59)- Article (23/Third/A) of Iraqi Constitution of 2005.

(60)- Sultans Domain:(Those lands have owned by the state in that time, and named Sultan because of the sultans for ottoman empire which have governed Iraq).

(61)- Article (4), Law of Foreign Property Ownership In Iraq No.(38) of 1961, It has issued in 31/5/ 1961 .

(62)- Article (19) of Iraqi Kurdistan Investment Law No.(4) of 2006 .

2.4. Fourth: Transferring the Profits and the Interest of his Capital to abroad

The main goal of the investment process is that the investor wants yields, benefits and increase in his capital in the host country. The foreign investor will not benefit from getting yields if he is not able to transfer it abroad by available currency. Due to exposure to the transfer risks or inability risk to transfer currency and when the transferring currency risk is an obstacle to the effusion of the foreign capital. The host countries granted commercial, and cash facilities to encourage and attract foreign capital and within these facilities give the right to the foreign investor in the transfer their capital according to conditions and determined rates.⁽⁶⁷⁾

For this purpose, the investor in each law looks for his right to transfer its capital to his country as a natural right to him, as usual, the foreign investors tried through the investment activity in the host country to get yields. They care about what they achieved and transfer to his country or reinvest in another country,⁽⁶⁸⁾ "A study conducted in France showed that the most important reason of the French investors' concerns before making a decision to invest their money is to look for political risks and the rules of transfer of profits. The Arab investment and export credit guarantee corporation also conducted a study and focused on the investment climate in the Arabic countries and its development area. It has shown that the freedom of the transfer of profits abroad is an important element and effects in the investment climate in the Arabic countries"⁽⁶⁹⁾

Therefore, that most of the laws have given this right to the Investor for attracting and development of investment. The Kurdistan Investment Law has granted this right to the investor in the article (7/Third), "the reason for granting this right is to encourage and to give privilege to the investor" Financial resources resulting from the investment activities of the investor that he can transfer abroad include:

- 1- The stock yields and profits accrued from investment activities and quotas profits.
- 2- The yields from the sale of its investments or part of it, or the disposition yields, or an apart of it by another way.
- 3- An accrued benefits and rewards for property rights, administration fees, and received wages under the contract.
- 4- Transfers which are decided and approved by the Ministry of Finance.

(67)- Wasn Mekdad Abdullah Shaheen, Management Obligations in the Oil Investment Contracts, College of Law, Mosul University, 2006, P.292-293.

(68)- Dr Susie Adly Nashid, The Phenomenon of International Tax evasion and its impact on the Economies of Developing Countries, First edition, Lebanon, 2008, P 189.

(69)- Dr. Fawzi Atwi, Public Finance, Beirut, 2003, P.456-457.

5- The foreign investor has the right to ownership of full capital of any project in the Kurdistan region under the Kurdistan investment law.

The Kurdish legislator has not given only the right to ownership; it has granted other rights according to the law i.e. the right to buy and lease of necessary land for the establishment, expansion and development of investment and project by the regulations set by the Investment Board for this purpose. Iraqi investment law has regulated the right to property for foreign Investor through both of amendments because it did not organize before but after changes and developments to encourage and promote the investment process it has given this right to the foreign investor. Through Article (7/second)⁽⁶⁶⁾ the Iraqi legislator has selected the purpose or areas, procedures and the conditions of ownership process.

We can determine the areas which the Investor has the right to property according to Iraqi Investment Law:

1- Residential projects belonging to the State and Public Sector:

It is doubtless that Iraqi legislator intends the development of the residential sector which is one of the important aspects of the state that wants to develop it by investment process. In as much of importance, this area has given the right to buy also from foreign investor those lands belonging to the private or mixed sector by the commission system.

2- Industrial Projects belonging to the State and Public Sector:

Developing industrial area is crucial for generating employment and income opportunities. It also contributes to enhancing the quality. There are clear indications that industrial area has a significant global impact on economic development. From this point of view, the Iraqi legislator considers it as another aspect of the right to ownership for the foreign investor.

Through our study, we understood that both of the laws have precision dealt with this matter and considered the right to property to be important in order to encourage the investment process. Moreover, development in all aspects as the state needs to invest and without it, the investor can not benefit from necessary facilities for the success of the Investment Project. Especially the projects that require a large space.

In our view, there are not risks in this case because the property will be for the state at the end and the investor will get benefits through its selling to another party especially if that party is host country or any citizen of it and the investment goal will be achieved at the same time.

(66)- Iraqi Investment Law No (13) of 2006 did not include the Right to Property to the foreign Investor, but it has added in Article (2/Second/A) of First Amendment Law No (2) of 2010 which has issued in 4/1/2010 and published in the Official Gazette No (4143) in 8/2/2010, and also in the Second Amendment Law No (50) of 2016 in Article (7/Second) which has issued in 27/10/2015 and published in the Official Gazette No (4393) in 4/1/2016 .

percentage of the completion of the investment project, the investor must complete the project and then he can transfer the project to another investor, whether national or foreign investor.⁽⁷³⁾

The Kurdish legislator was successful in putting this restriction on the first investor and after that it has right to transfer the property of the investment project to other investors otherwise in our view it will lead to harmful implications including:

- 1- Investment project becomes a commodity bought and sold to investors.
- 2- It leads to the delay of the completion of the investment project.
- 3- It leads to neglect by investors in the completion of the project.
- 4- It leads to the deployment of corruption.

2.6. Sixth: Right to opening an account:

The opening account has defined as "A contract between the bank and the customer where the bank is committed to allocating certain accounting by its Passbook. The customer deals with it and proves its transactions which are required by Bank.⁽⁷⁴⁾ It is a bilateral legal act, an agreement between the one who demands to open the account and the bank. This agreement considers of the deposit of cash amount in the bank even though it is a simple quantity.⁽⁷⁵⁾

Through the definitions, we can say this process is an agreement between the party who wants to open an account and the second party which permanently is a bank, and this agreement shall be subject to general rules of bank accounts in addition to the special rules according to the kinds of accounts. General rules are those rules that followed by the banks but also there are the exceptions to the general rules according to the types of accounts which are called special rules. These public and private rules that regulated by the law in each country, and the procedures are different from one country to another.

The Kurdistan investment law has regulated this case; it has provided: (The investor may open in the interest of his licensed project by the provisions of this law, bank accounts in the National or Foreign currency or both with Banks inside and abroad).⁽⁷⁶⁾ In this article, it is found that a Kurdish legislator gave the freedom to the investor to open his account in Kurdistan or elsewhere, and he is also free to open the account through national or foreign currency, and finally, it must be by the provisions of this law.

5- The practice of any other authority which is permitted by law.

This means giving full freedom to the Investor in transferring his money. This right is not only for the investor it is also for the foreign manpower which has right to transfer its entitlements, benefits and wages as provided by the article (7/Fourth) in Kurdistan Investment Law. This right is not only limited to the foreign investor but to all who are involved in the investment project.

The Iraqi investment law affirmed on this right in Article (11/First) but the situation is different from the Kurdistan law, where the Kurdistan investment law provided this right without any conditions, " it means the Iraqi Investment Law restricted this right "⁽⁷⁰⁾

2.5 Fifth: Transferring his Investment Wholly or Partially to another Investor

After giving the right to property of the investor by both the Iraqi and Kurdistan Investment Law, it is necessary to say that "the right to Property which leads to creating other rights is the right to dispose of "⁽⁷¹⁾ The right to dispose of intended two types of actions which are:

The First is "Physical Action" which has contained in the material called the "Physical dispose of". The Second is "Legal Action" which has contained on the right to owner called the "Legal dispose of".⁽⁷²⁾ The Kurdish legislator organized right to dispose of the investor in Article (7/Sixth) where the investor has the right in transferring his investment project wholly or partially to another foreign or national Investor or concede the Project to his Partner but it needs an approval of the investment board.

As for the second investor, whether National or Foreign will subject to the same procedures and he has the same rights and obligations which the first investor has. The Iraqi investment law has restricted transferring the investment project to the second investor. Which are provided in the article (10/Second/G) of the Second Amendment of the Iraqi Investment Law No.(50) of 2015 that the first Investor or the developer, if wants to transfer the property of the investment project to another investor, must complete 40% of the investment project and with an approval of the authority which granted the license of the project. Moreover, The Second Investor or the developer can not transfer the property of the investment project to another until the completion of the full project. While the Kurdistan investment law does not specify a certain

(73)- Instructions No.(1) of 2007 (Fifth Paragraph), It has issued by the Supreme Investment Council in Kurdistan Region .

(74)- Fadia Ahmed Matar, Joint Banking Account, Master's Thesis submitted to the Faculty of Law, University of the Middle East, 2013-2014, P.11 .

(75)- Faeq Mahmoud Shammah, Bank Account, A comparative Legal Study, Amman, First edition, 2009, P 301.

(76)- Article (7/Seventh) of Iraqi Kurdistan Investment Law No.(4) of 2006.

(70)- Dr.Ahmad Sharaf Al-Din, The Methods to Remove the Legal obstacles to Investment, Cairo, 1993, P 45.

(71)- Dr. Qusay Salman, Rights in Rem, Cihan University publications, Erbil, First edition, 2014, P 18.

(72)- Dr. Ali Hadi Al-Obeidi, A brief explanation of the Civil Law, Rights in Rem, First edition, Amman,1999, P 22.

the technical and economic information related to his investment project and protection of his initiative according to the provisions of law in the Kurdistan Region. It also provided for the sanctions of the disclosure for these secrets according to the law, when it provides (Whoever discloses any information that is in his possession by virtue of his post and deals with the investment enterprise and technical, economic or financial aspects of the project under the law is punishable). Concerning the Iraqi investment law, it did not provide for this guarantee to the investor. In our view, this should not be an excuse for the investor to submitting the necessary information or any required procedures according to law and required annual reports to the investment board, whether in the period of the obtaining a license for the investment project or after this period.

Conclusion

Through the conclusion of the research, we present important results and recommendations as follows

Results:

- Renewable energy sources have indeed gained prominence in the global economy, and their utilization is intricately linked to economic growth and sustainability. The relationship between energy consumption and economic growth is a fundamental aspect of modern economies. A number of factors, including their low cost and their connection to environmental issues like pollution, climate change, and global warming, have led to an increase in the rate of investment in renewable energy sources recently. In addition to these reasons, legal considerations are crucial in regulating investment in these renewable energy sources because many nations have particular legal systems in this area, including energetic legislation systems, despite the lack of a distinct law in this area in Iraq and the Kurdistan Region.
- In order to support energy projects, attract foreign as well as local investors to invest their capital, and create the best infrastructure and a bright future for energy production in accordance with societal requirements, the existence of a specific law requiring investment in renewable energy sources is one of the crucial issues that the legislature must consider in the future.
- Indeed, the research suggests that there is substantial room for investment in renewable energy. Renewable energy sources have gained

The same situation is with the Iraqi Investment Law that has provided under Chapter Three in light of investor guarantees in article (11/Fifth):

(Opening accounts in Iraqi or Foreign Currency or both at a bank inside or aboard Iraq for the licensed project).

To that, it may be said that both legislatures are in a position where they can guarantee an investor's ability to open an account and allow them complete discretion over whether to open their account with a national or international bank and in their own currency. However, the Kurdistan Investment Law has determined this law to the opening account procedures in this phrase in the article (7/Seventh) "accordance with the provisions of this law" but did not specify those procedures as the Iraqi legislator did. They perhaps leave the regulating procedures to the general rules which are followed by the banks, if there was not an exception to the general rules.

2.7. Seventh: Right in Maintaining the Secrecies of the project:

Over the time and the due to current changes there are different ideas among the investors in the world trade today, leading to the creation of competition between them to achieve more benefits and yields as an important goal of the investment project. To be as innovative as possible to prosper in the business environment and to keep the permanent success the investor must continue with the developments and acquisition of useful information which is crucial to creating and provide new and improved goods, ideas, services and information about technology. These all make investor's product unique and ensure the success of the investment project then the following steps by any investor lead to give it the first position in the competition among investors. Indeed, this information is related to intangible assets and falls under the category of intellectual capital and considers investor secrets and. Therefore, the investor has full right to the protection of this technical and economic information relating to his investment project. If we go back to the basis of the definition of trade secrets, it is defined as: (Information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value, actual or potential from not being known to or readily ascertainable by appropriate means by other persons who might obtain economic value from its disclosure or use).⁽⁷⁷⁾ For the importance of these aspects, many investment laws have given the right to protect information relating to the investment project for the investor and regulated by law. One of them is the Kurdistan Investment Law, which has been provided in the article (7/Ninth) that the investor has the right to keep

the United States promulgated in the effort to provide legal framework to better protect trade secrets for U.S. companies operating in multiple states .

(77)- Uniform Trade Secrets Act 1979 and amended in1985, Drafted by the National Conference of Commissioners, Approved by the American Bar Association Baltimore, Maryland,11th February 1986 , It was a uniform act of

- **Education and Awareness:** Launch public awareness campaigns to educate citizens, businesses, and communities about the benefits and feasibility of renewable energy adoption.

References:

1. Abdel-Razzaq Al-Sanhouri, Mediator in Explaining the Iraqi Civil Law, Sources of Commitment, Volume One, Third Edition, Egypt, Cairo, 2011.
2. Abdel-Razzaq Al-Sanhouri, Mediator in Explaining the Iraqi Civil Law, Sources of Commitment, Volume One, Third Edition, Egypt, Cairo, 2011.
3. Ahmad Sharaf Al-Din, The Methods to Remove the Legal obstacles to Investment, Cairo, 1993
4. Ali Hadi Al-Obeidi, A brief explanation of the Civil Law, Rights in Rem, First edition, Amman, 1999.
5. Ali Hadi Al-Obeidi, A brief explanation of the Civil Law, Rights in Rem, First edition, Amman, 1999.
6. Azad Shakour Saleh, Investment Promotion Laws and their Applications in the Field of Tourism Investment, House of Legal Books and Diaspora House for Publishing and Software, Egypt, 2013.
7. Azad Shakour Saleh, Investment Promotion Laws and their Applications in the Field of Tourism Investment, House of Legal Books and Diaspora House for Publishing and Software, Egypt, 2013.
8. Azad Shakour Saleh, Investment Promotion Laws and their Applications in the Field of Tourism Investment, House of Legal Books and Diaspora House for Publishing and Software, Egypt, 2013.
9. Edenhofer, Ottmar, et al., eds. Renewable energy sources and climate change mitigation: Special report of the intergovernmental panel on climate change. Cambridge University Press, 2011.
10. Fadia Ahmed Matar, Joint Banking Account, Master's Thesis submitted to the Faculty of Law, University of the Middle East, 2013-2014.
11. Fadia Ahmed Matar, Joint Banking Account, Master's Thesis submitted to the Faculty of Law, University of the Middle East, 2013-2014.
12. Faeq Mahmoud Shammah, Bank Account, A comparative Legal Study, Amman, First edition, 2009.
13. Faeq Mahmoud Shammah, Bank Account, A comparative Legal Study, Amman, First edition, 2009.
14. Fawzi Atwi, Public Finance, Beirut, 2003.
15. Hassan Ali Al-Thanon, The General Theory of Obligations, Sources of Obligation - Provisions of Obligation, Baghdad, Fifth Edition, 2013.
16. Hassan Ali Al-zanon, The General Theory of Obligations, Sources of Obligation- Provisions of Obligation, Baghdad, Fifth Edition, 2013.
17. Instruction No (1) of 2007, that issued by the Supreme Investment Council in Kurdistan Region.
18. Iraqi Civil Law No (40) of 1951.
19. Iraqi Constitution of 2005.

prominence due to their environmental benefits, energy security advantages, and economic potential. Governments around the world recognize the importance of advancing this sector, and they often do so through a combination of public and private investment.

- Renewable energy sources have a profound impact on individuals' lives, offering economic, environmental, and personal benefits. As technology continues to advance and awareness of the importance of sustainability grows, more individuals are likely to embrace renewable energy solutions to meet their energy requirements while contributing to a cleaner and more sustainable future.

Recommend

The searcher strongly recommends the adoption of policies and legislation that promote the widespread use of renewable energy sources in Iraq and KRG. Since embracing renewable energy is not just a matter of environmental responsibility but also a strategic choice that can have profound economic, social, and environmental benefits.

• **Enact Legislation Supporting Renewable Energy:**

Urge policymakers to prioritize the development and enactment of legislation that provides a clear and supportive framework for renewable energy adoption. Such legislation should include:

- **Renewable Energy Targets:** Set ambitious renewable energy targets to ensure a substantial portion of the energy mix comes from clean sources by a specific date.
- **Incentives and Subsidies:** Introduce financial incentives, tax credits, and subsidies to make renewable energy technologies more accessible and affordable to businesses and individuals.
- **Grid Integration:** Develop regulations that facilitate the integration of renewable energy into existing energy grids, ensuring a smooth transition and grid stability.
- **Investment Promotion:** Create mechanisms to attract private and public investments in renewable energy projects, promoting economic growth and job creation.
- **Research and Development:** Allocate resources for research and development in renewable energy technologies to foster innovation and increase efficiency.

20. Iraqi Investment Law No (13) of 2006 Amended
21. Kadhim, Hanan Abdulameer, Waad Hadi Abd, and Akeel Dakheel Kareem. "The impact of environmental auditing on the environmental dimension of sustainable development (Applied Research on" Environmental Governmental Institutions in Iraq)." *Ilkogretim Online* 19.3 (2020): 2801-2812.
22. Kurdistan Investment Law No (4) of 2006.
23. Majmudar & Co, Legal and Commercial aspects of technology transfer, International Lawyers, Mumbai, India, P.5, available at <https://www.majmudarindia.com> Last visiting 2th August 2020.
24. Muhammad Jaratly, The importance of adopting renewable energy and its role in preserving human health and the environment, a research available at <http://www.green-studies.com>,
25. Muhammad Jaratly, The importance of adopting renewable energy and its role in preserving human health and the environment, a research available at <http://www.green-studies.com>,
26. Pumphrey, Carolyn Wilson. *The Energy and Security Nexus: A Strategic Dilemma*. Strategic Studies Institute, US Army War College, 2012.
27. Qusay Salman, *Rights in Rem*, Cihan University publications, Erbil, First edition, 2014.
28. Samir Abdel-Sayed Tanago, *Sources of Commitment*, Alexandria, Egypt, 2005.
29. Samir Abdel-Sayed Tanago, *Sources of Commitment*, Alexandria, Egypt, 2005.
30. Sultans Domain:((Those lands have owned by the state in that time, and named Sultan because of the sultans for ottoman empire which have governed Iraq)).
31. Susie Adly Nashid, *The Phenomenon of International Tax evasion and its impact on the Economies of Developing Countries*, First edition, Lebanon, 2008.
32. Susie Adly Nashid, *The Phenomenon of International Tax evasion and its impact on the Economies of Developing Countries*, First edition, Lebanon, 2008.
33. Uniform Trade Secrets Act 1979 and amended in 1985, Drafted by the National Conference of Commissioners, Approved by the American Bar Association Baltimore, Maryland, 11th February 1986 , It was a uniform act of the United States promulgated in the effort to provide legal framework to better protect trade secrets for U.S. companies operating in multiple states .
34. Unnamed (2023) 'Sustainable Solutions to Combat Climate Change in Iraq' <https://reliefweb.int/report/iraq/sustainable-solutions-combat-climate-change-iraq> > accessed date 1/10/2023.
35. Wasn Mekdad Abdullah Shaheen, *Management Obligations in the Oil Investment Contracts*, College of Law, Mosul University, 2006.