

The legal framework of the regulations that apply to the foreign companies in the Kingdom of Saudi Arabia, a comparative study

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Abstract:

It is recognized in the principles of international law that the state is free to determine its nationals, and it can decide the treatment it offers to foreigners, but it is restricted in this by the minimum rules that determine the treatment of foreigners. This applies to legal persons or natural persons alike, as decided by the International Court of Justice in the Barcelona Traxon case, as it said that the state is obligated to grant foreigners the protection of the law and give them some obligations in relation to their treatment.

The Kingdom of Saudi Arabia has worked to make more efforts towards developing its legal systems to attract foreign direct investment, transfer useful technology to it, and benefit from scientific progress to achieve sustainable economic and social development by achieving the goals set in its vision for the year 2030. Therefore, I chose to research the legal status of foreign companies in the Kingdom of Saudi Arabia, as it is the main tool for direct investment in terms of the rights and obligations these companies enjoy in accordance with the Saudi regulations and the protections guaranteed by the system in the event of disputes related to investments in the Kingdom, compared to other regulations.

Keywords: Investment, Companies, Foreigner, Legal, Projects, Saudi Arabia.

Research Problem:

The study examines the role of foreign investment as a driving force for the national economy to improve its ability to interact with the global economy, and not just make profits. Therefore, it must be part of the policy of total financing of the national economy to join the world economy, and hence the focus of this research is the development of the legal status of foreign companies, the mainstay of this foreign direct investment.

Study Questions:

What is the legal status of foreign companies and what is the nationality of the company, what is the scope of application of these rules and what is the legal protection granted to them in the Kingdom of Saudi Arabia and the adequacy of this protection in attracting foreign capital and achieving the objectives of direct investment in the Kingdom?

Objectives of the Study:

the legal status of foreign companies is a delicate issue, due to the existence of a conflict of interest between ambitious foreign investment owned by foreign companies that may be transnational, and this is the prevailing situation, with foreign loyalties and the host country requesting these companies to make maximum use of investment returns and implement projects from Through contracting mechanisms, participation or mutual projects. Therefore, we find that the legal status of foreign companies ranges between narrow and broad, according to the state's urgent need for these investments, and we are discussing this within the framework of the legal system in the Kingdom of Saudi Arabia.

The importance of Studying:

The Kingdom of Saudi Arabia is facing a phase of transformation from the era of dependence on oil as a primary source of the state budget to diversifying sources of income, in light of Vision 2030 in terms of attracting foreign direct investment, transfer of technology and foreign expertise, increasing job opportunities, and ending the problem of unemployment. Therefore, the legal center for foreign companies is limited to direct investment and the legal protection established for it in the Saudi legal system, and to propose some pivotal policies necessary to attract foreign investments while maintaining a fair balance between the interest of the state and the interest of the foreign investor. This is one of the most important reasons for choosing this topic for study.

It has also chosen this topic because, in light of Vision 2030, it is expected to increase the activity of the Kingdom in the coming years to change the investment climate in the Kingdom, in addition to the attractive plans for it, which necessitates contributing to research and legal studies that increase the reassurance of the foreign investor.

Research Methodology:

We will use the comparative approach, which is based on a comparison between the legal system applied in the Kingdom of Saudi Arabia and other countries. The historical approach is based on historical precedents related to the subject. And the inductive approach uses logic, extracting judgments, proposing alternative solutions, criticizing the shortcomings that may exist, and suggesting a reform.

Introduction:

Foreign companies and direct investment

The idea of the company is not newborn today, but it was known in Roman law, as it was known in Islamic jurisprudence. In order not to go into the historical aspects that need an independent study, we suffice to say that the company is a contract whereby two or more people are

obligated to contribute to a profit-oriented project by providing a share of money or work to share the outcome of this project, which is profit or loss. The company's permission is a contract under which two or more persons are obligated to each of them contribute to a profit-oriented project by providing a share of money or work to share the profit or loss arising from the project.

This definition was included in the Saudi Companies Law, and this definition does not differ from what the Civil Code¹ in the various Arab countries has decided on, that the company is a contract whereby two or more persons are obligated to each of them contribute to a financial project, to provide a share of money or work for the division. Any profit or loss that may arise from this project. What distinguishes this assembly or this contract is that it creates a legal personality and that the project work is directed for a common purpose and a common intention independent of the person of the contracting parties or the contracting persons, and this entity is intended to be independent of these partners and has an independent financial liability consisting of shares Partners and legal capacity within the limits of the purpose for which this legal person is². So the purpose of the company is to make a profit, noting that this profit does not necessarily have to be a material profit, but it may be material in the broad sense to include even the economy in reducing expenses or even carrying out advanced research that can be applied in the areas of production³. **Controls for determining nationality for a foreign company:**

i - the exploitation center officer:

The meaning of the exploitation center is the place in which the company carries out its main activity, even if it was not established there. This control requires the company to enjoy the nationality of the country in which its activity is based, even if the company is established abroad and by persons who do not hold the nationality of this country.

If the origin is that the nationality must be based on a serious bond or build on the association

¹ 1 Article 505 of the Egyptian law

² Dr. Ali Kassem, Business and Commercial Companies Law, Arab Renaissance House, Cairo, 2001, p. 10 and beyond.

³ Dr. Atef Muhammad Al-Fiqi, Commercial Companies in Egyptian Law, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 5.

with the state that grants this nationality, then this perspective sees that the center of exploitation is the place where the interests of the company gather, and therefore the state in which the center of exploitation is located in the state with which the project is linked. The company more than others⁴. This is because the state's freedom to grant citizenship is not absolute. It is not permissible for the state to impose its citizenship on a state that it is not affiliated with, i.e. a company that it does not work for and that it has no connection with. Therefore, the exploitation center criterion is a material and tangible criterion that represents a serious and real link between the state and the company operating in it. **Assessment this Criterion:**

This rule provides a real basis for granting citizenship to the company whose exploitation center is located in the country in which it operates, and it can be supported by the stipulation that this activity is the main activity of the company and is characterized by stability and stability⁵. However, this criterion is ineffective for multinational companies with cross-border activities that may have many centers of exploitation, and it is not, however, useful to say that the main exploitation center controller should be applied. On the other hand, the exploitation center maybe just a place to carry out the main activity of the company, but the decision to manage and direct this activity is taken from another place, which is the company's management center.

There are also some companies whose exploitation center is mobile, such as transport companies, road companies, and port companies.

ii- The actual main management center standard:

Many laws have taken that the legal system of legal persons, including companies, associations, institutions, and others, is subject to the law of the state in which these persons have taken their main center of management.

However, if it commences its activity in the state, it is the law of this state that applies to it. This text, which is found in the laws of many Arab countries, indicates that the legislator has linked the nationality of the company to the domicile and headquarters of its main management center. So the main management center as an officer to determine the nationality of the company is based on the idea of domicile:

As the company, as a legal person, has an independent domicile, defined by law in the place where its management center is located as the company's mind, i.e. the place where the company's legal, financial, administrative, and technical affairs are managed, and it is the center of its legal life and its central management resides.

And the management center is the place where the administrative work is carried out⁶, while the main center of the activity is the place where the technical work necessary to carry out the company's activity is carried out. Determining the main management center is by saying that it is the place where the main building for the management of the company is located, where the devices entrusted with the management of the company are concentrated, and from which decisions related to the conduct of its affairs are issued⁷. The administration center must be main and real, not fictitious or illusory. The main management center is fictitious if it is the result of a prior agreement between the partners to include it as a fictitious management center in the company's articles of association. Likewise, if the administration center is modified and replaced with a fictitious one. Noting that individuals are free to choose the location of the center of management, provided that this choice is real and serious and not illusory, intended to evade the provisions of the law in the location of the actual center of management. **iii- Control criterion for determining the nationality of the company:**

⁴ Badr El-Din Abdel Moneim Shawky, Mediator in Private International Law, without a publisher, 1995, Cairo, p. 275.

⁵ Dr. Ahmed Abdel Karim Salama, a mediator in Saudi private international law, a comparative study, first edition, Arab Renaissance House, 1988, p. 363.

⁶ Dr. Sami Abdel-Baqi Abu Saleh, Commercial Companies, Cairo University Press, 2013, p. 77.

⁷ Dr. Atef Mohamed Elfeki, Commercial Companies in Egyptian Law, Dar Al-Nahda Al-Arabiya, 2007, p. 140. ⁸ Dr. Fouad Abdel Moneim Riad, Nationality, Domicile and Foreigners Center, Dar Al-Nahda Al-Arabiya Library, 1989, p. 272.

This criterion means removing the veil of the nationality of the legal person and reaching the nationality of the real partners who have a major and effective participation in this legal person in the circumstances that require the protection of the interests of the state. As the state may go through war or exceptional circumstances and find itself threatened by those who control a particular company as they are the subjects of a hostile state.

Therefore, the judiciary decided to reveal the real nationality of the companies in the company, even if they legally hold the nationality of the judge's country, according to the standard of the exploitation center or according to the standard of the main management center⁸.

We note that this matter is not limited to the time of wars, but the matter goes beyond it to the current normal circumstances, as foreign multinational companies mock the nationality officer represented in the main management center or the center of exploitation and have become considered as stateless companies, as they have become a state company, any company Almost a country is ruling it. The International Court of Justice has clarified the refusal to rely on the idea of control in determining the nationality of the company, and that international law does not recognize this criterion, and the country to which most of the partners belong may not exercise diplomatic protection for the company, as this right is limited to the country of which the company has its nationality only⁸.

The Saudi legislator opinion:

The Saudi legislator stipulated in Article 94 that the provisions of the Saudi Companies Law shall be applied to foreign companies, except for the provisions relating to incorporation. Has the Saudi legislator taken the criterion of the place of incorporation as an officer for granting citizenship to the company incorporated in the Kingdom? Article 65 of the joint-stock company stipulates:

1- The Ministry issues a decision announcing the establishment of the company, after verifying that all the requirements

stipulated in the system for the establishment of the joint-stock company have been completed, and the decision shall be published on the Ministry's main website.

2- The members of the board of directors must, within fifteen days from the date of issuance of the decision referred to in paragraph 1 of this article, request the registration of the company in the commercial registry, provided that this entry includes the following data:

A- The company's name, purpose, head office and term.

b- The names of the founders, their places of residence, their professions and their nationalities.

C- The type, value and number of shares and the amount of paid-in capital.

D- The number and date of the Ministry's decision authorizing the establishment of the company.

E - The number and date of the Ministry's decision announcing the establishment of the company. Article 66 added that:

“The company is properly incorporated after one month of the Ministry's decision announcing its incorporation and registering it in the commercial registry. After that, the lawsuit does not allow the company to be invalid for any violation of the provisions of the system and the provisions of the company's articles of incorporation and articles of association...” **It is noted from the previous texts:**

A requirement that the company fulfills the incorporation conditions stipulated in the system in order to be a Saudi company.

- There is no restriction regarding the nationality of the shareholders.

Not requiring that the administrative center is in a specific location.

But what is meant by incorporation? It is the completion of all the formal and substantive procedures necessary for the legal existence of

⁸ Dr. Ahmed Ashush, Omar Abu Bakr Yakhshab, Provisions of Nationality and the Status of Foreigners in the Gulf Cooperation Council Countries with

Concern for the Saudi System, I. University Youth Foundation, 1990, p. 387.

the company, including the capital subscription, the signing of the company's contract, and the procedures to ensure its publicity and determine the field of its activity. Article 4 of the Companies Law stipulates that: "With the exception of the joint venture, the company established in accordance with the provisions of the system is considered a

Saudi national, and its head office must be in the Kingdom...."

This is an application of the criterion of the place of incorporation, and to ensure the application of the Saudi law, the legislator stipulated that its main center of management be in the Kingdom. The foreign company is the company that has been properly established abroad and started its business at the place of incorporation, even if it wants to start an activity in the Saudi state, this will be according to the conditions that we will be exposed at the time.

The UAE legislator opinion:

The provisions of this law shall apply to companies that are incorporated in the state, as shall the provisions relating to foreign companies contained in this law that are taken in the state as a center for practicing any activity therein, or a branch or representative office is established there. It should be noted that the UAE legislator has restricted partnership companies and limited partnership companies to nationals only, and stipulated that the majority of shareholders should be by an absolute majority of citizens in joint stock companies. The legislator explicitly stated in Article 9/3 : "Every company established in the state carries its nationality, but this does not necessarily entail the company's enjoyment of rights that are restricted to citizens." Therefore, the legislator declared his intention and considered that the nationality officer is the place in which the company is established, provided that it is understood that the purpose of incorporation is to take all the measures that the law requires it to form the company and publicize it until a ministerial decision is issued approving this incorporation and publishing it in the company's registry. The legislator stipulated in Article 151 that the chairman of the board of directors of the joint-stock company and the majority of the board members be of state nationality. If this percentage decreases, it must be completed within three months, otherwise, the decisions of

the board will be void after the expiration of this period. Article 327 stipulates that foreign companies are subject to the provisions of this law that carry out their activities in the state or take their management center there, except for the provisions relating to the establishment of companies. Foreign companies are registered in the Foreign Companies Register at the Ministry of Economy in accordance with Article 330.

It is noted from the previous texts that:

- 1- The UAE legislator has never relied on the main management center officer.
- 2- He also relied on the place of incorporation officer to deduct the national character.
- 3- The Emirati legislator tends to combine the officer of the place of incorporation and the control officer, as it is keen that most of the shareholders are nationals and most of the members of the board of directors are nationals in companies that are established in the state.

Direct Investment

There are two types of investment: direct investment and indirect investment, and direct investment is intended for the foreign company to establish the factory or branch that you want it to work in the host country and direct financing and defines its work plan, the purpose to be achieved and the duration of this activity. As for indirect investment, it is investing in financial instruments and securities, meaning stocks and bonds, and it depends on price instructions in the stock market. Investment is defined as the use of capital in the production and provision of services and goods, and it is the assets that individuals or companies purchase to obtain income now or in the future. Or in other words, it is the capital used in the production or provision of services or goods, and it may be an indirect investment, such as preferred shares or bonds. The investment aims to provide protection for the capital from the decline in its purchasing power resulting from inflation, because the goal of the investment is to achieve acceptable financial returns, in conjunction with

an increase in the value of capital⁹. Also, the investor, especially the foreign investor or foreign companies, aims to reach the largest value of the current income in order to achieve the largest amount of profits, without any other considerations such as risks, and direct investment aims to achieve protection from taxes, so foreign companies look for markets that offer the largest Special tax advantages, tax havens where the tax rate is low or tax exemptions are provided for a period ranging from ten to fifteen years¹⁰. Foreign direct investment is called direct international investment, which means the international movement of capital to create development. What is important for the topic of our research is to define what is meant by foreign direct investment, not an internal direct investment.

Foreign Direct Investment:

Foreign capital is used by foreign companies in a country other than the country of nationality for the purpose of establishing branches or agencies so that they fully own this project or are limited to participating in it. So, these foreign companies carry out production or service operations outside their national territory. It must be emphasized that globalization and competition between foreign companies have prompted them to search for new markets that are more suitable for their activities, i.e. markets with huge areas, with low production costs due to low prices of raw materials, and an abundance of labor. These companies are looking for raw materials, sources of manufactured or semi-manufactured products, and special services available in the host countries. **Notes that:**

1- Foreign direct investment does not differ in terms of its concept from national direct investment in terms of carrying out a direct economic activity and financing this activity by

the foreign project, in whole or in part, for the purpose of making a profit.

2- Foreign direct investment differs from national direct investment in that the latter operates in his country, and has the right to choose the fields he desires, and national laws may stipulate limiting some fields to it, such as insurance or banking activities. In contrast, the foreign investor cannot choose the field of investment except according to what is determined by the host country, and the legal mechanism that it specifies for him, such as the investment contract, the partnership contract, public works contracts, or concession contracts¹¹. Foreign companies finance direct investment projects through oil exploration contracts under the production-sharing system, with the foreign partner obtaining a share of up to fifty percent of the output. In fact, the foreign direct investor is attracted by the raw materials found in developing countries and the inability of the local investor to compete with him in doing this work. So, direct investment is doing international economic and commercial exploitation directly by the foreign company without an intermediary. As is the case in the Kingdom of Saudi Arabia, where many companies operate in the field of oil and gas, such as Aramco, and in the fields of road and port construction, and the construction of housing units¹³.

Procedures for establishing foreign companies and their impact on the host country

The procedures for establishing foreign companies differ from one country to another, depending on their need for investment and the doctrine they embrace in dealing with foreigners. Is it the minimum treatment for foreigners or does it give foreigners a privileged treatment that may reach the limit of the most favored country or reach its maximum level of inequality between national and foreign? It is called the principle of national treatment? On the other hand, the foreign company may just set up

⁹ Dr. Jamil Khaled, Fundamentals of International Economics, First Edition, The Hashemite Kingdom of Jordan, Academics for Publishing and Distribution, 2014, pp. 308-309.

¹⁰ Dr. Abdel Karim Baadache, Foreign Direct Investment and its Effects on the Algerian Economy,

during the period from 1996 - 2005, the University of Algiers, 2007 - 2008, pp. 35 - p. 42.

¹¹ Dr. Sami Salama Noman, International Companies and their Impact on Competition, Employment and Appreciation in Developing Countries, Dar Al-Nahda Al-Arabiya, 1, 2008, p. 31. ¹³ Same reference, p. 32.

its liaison office and this office conducts non-commercial activities. In general, the countries obligate foreign companies to enter a regular (registration) in the National Register of Projects and Institutions, the Commercial Register, and the Companies Register, in order to give the company, the authority to deal with third parties. The company also establishes an agency for itself, and this agency does not have a legal personality, as the foreign company is not obligated to submit an annual account for this agency with the Commercial Court. This agency or institution must be registered or registered with procedures that are not company registration procedures, With the obligation of the institution to submit a copy of the legal system of the parent company. As for the more difficult procedures, it is for the foreign company to establish a branch for it that takes one of the legal forms prescribed in the Companies Law. It is noted that the branch company is actually under the control of the parent company located in the foreign country. This control is due to the parent company's possession of many voting rights in the general assembly of the branch company, which makes it able to direct the decisions valued by the general assembly. The procedures for establishing the national branch company do not differ from the foreign company from the procedures for establishing a purely national company. The purpose of the company to be established or formed must be specified, which is intended to specify the various activities that the branch can carry out.

The decision to establish the branch company shall be taken by the competent authorities of the parent company. If the purpose of the branch company is different from that of the parent company, the establishment decision must be taken by the extraordinary general assembly.

Establishment of foreign companies in the Kingdom of Saudi Arabia.

Establishing foreign companies in the Kingdom of Saudi Arabia based on more than one legal source. This is because there is a relevant Companies Law in this regard, as its rules remain the general principles regulating the work of companies in the Kingdom. In addition to that, there is the Saudi Investment Law (the Investment Law), which has the nature of

special rules that restrict the general rules contained in the Companies Law and has priority in application over them.

In addition to the last reference, which is the international consensual law represented in facilitating the investments received from the state party in spending and protecting them (the Kingdom has signed more than twenty-three agreements of this kind). **Article one hundred and ninety-five states that:**

“Foreign companies may not establish branches, agencies, or offices for them inside the Kingdom except after issuing a license for them from the General Authority for Investment and the competent authority to regulate and supervise the type of activity or business practiced by the foreign company inside the Kingdom. Nor may it issue or offer securities for the subscription.

Inside the Kingdom except in accordance with the Capital Market Law. **Article one hundred and sixty-six:**

“The General Investment Authority shall provide the Ministry with a copy of the license issued by it and a certified copy of the company’s articles of incorporation and articles of association.” Article one hundred and seventy-seven:

“It is not permissible for a foreign company licensed to start practicing its activity and business until after it is registered in the commercial register.” **Article one hundred eighty-eight:**

Every branch, agency, or office of a foreign company must print in Arabic on all its papers, documents, and publications an address in the Kingdom, in addition to the full name of the company, its address and head office, and the name of the agent. **Article two hundred:**

A foreign company’s branch, agency, or office inside the Kingdom is considered its domicile regarding its activities and business inside the Kingdom, and all applicable regulations are applied to it.

Article Two Hundred:

“If the presence of the foreign company in the Kingdom is for the purpose of carrying out specific works, its registration and registration in the commercial registry shall be temporary and terminates with the end of those works and their

implementation, and its registration shall be canceled after liquidating its rights and obligations in accordance with the provisions of the system and other applicable regulations.”

We can distinguish between several assumptions of the foreign company as follows:

- 1- The representative or liaison office.
- 2- An institution or agency that carries out a specific and temporary activity.
- 3- A foreign company that establishes a branch for it that takes one of the legal forms in the Companies Law.

i - Establishing a liaison or representation office for the foreign company:

Any foreign company, whatever its legal form, may request: a general partnership - a simple partnership - a joint venture - a joint stock company or a limited liability company.

The law stipulates for the establishment of an agency or representative office that:

- 1- To obtain a license for it from the General Investment Authority.
- 2- Obtaining a license from the competent authority to regulate and supervise the type of activity or business practiced by the foreign company inside the Kingdom.
- 3- It may not issue securities or offer securities for subscription inside the Kingdom, except in accordance with the Capital Market Law.
- 4- Registration of the agency or liaison office in the commercial registry.
- 5- Determining the domicile of the agency or branch within the Kingdom.

- Administrative license from the General Investment Authority:

The licensing decision shall be issued by the General Investment Authority by a decision issued by the Board of Directors of the General Investment Authority. This is for the purpose of establishing a representative office for the foreign company, which is a company that does not hold Saudi Arabian citizenship. The license shall be issued by the authority, and the authority must decide on the investment application

within thirty days from the date it completes the documents required in the regulations. causative. In fact, the idea of establishing a commercial representation office for the foreign company is a flexible idea that enables the foreign company to market its products and provide its services without bearing the burdens of establishing a branch within the Kingdom that takes the form of companies stipulated in the Companies Law. For the foreign company, the liaison or representation office may be a test balloon for the local market and to be compatible with the commercial strategy and market reality. This office does not have a separate personality or legal entity. In all these circumstances, sales and purchase contracts are concluded in the name of the parent company. This form allows the exercise of communication and marketing functions.

The application is submitted to the General Investment Authority from the foreign company, and the General Investment Authority has one of two options:

- 1- Approval of the request within thirty days of its submission, and the decision, in this case, does not require any reasons or justifications.
- 2- The second option: reject the request at any time, provided that the rejection decision is not delayed after thirty days.

The rejection decision shall be justified. The reasons on which the Board of Directors of the General Investment Authority based the rejection of the application must be clarified.

However, if the rejection decision is issued after a period of thirty days, it is considered null. Therefore, the General Authority for Investment must not hesitate to reject the application if it considers that it is not serious. On the other hand, silence for a period of thirty days is considered as consent and acceptance of licensing a foreign company to set up a liaison office or a representation for it in Saudi.

- License from the authority supervising the activity:

This depends on the type of activity carried out by the parent company, which may request a representative office for a company engaged in retail or wholesale trade.

The system specified the activities that a foreign investor may not carry out, which are:

Industry Sector:

- 1- Exploration, exploration and production of petroleum resources. Services related to mining do not include internationally classified under numbers 883 and 5115.
- 2- Manufacture of military equipment and devices.
- 3- Manufacture of civil explosives.

- **The services sector:**

- 1- Services of providing catering for the armed forces.
- 2- Investigations and security.
- 3- Insurance services.
- 4- Real estate investment in both Mecca and Medina.
- 5- Tourist guide services related to Hajj and Umrah.
- 6- Serving services and providing workers, including private recruitment and employment offices.
- 7- Real estate brokerage services.
- 8- Printing and publishing services.
- 9- Wholesale and retail medical trade.
- 10- Audio and video services.
- 11- Air and land transport services.

The legislator did not specify the term of the license, and therefore the authority supervising the activity, according to its agricultural, real estate, and industrial nature, determines this period.

- **Issuance of securities:**

The Financial Market Regulation No. M 30 dated 2/6/1424 AH corresponding to 7/31/2003 was established with the aim of regulating and developing the financial market, regulating the issuance of securities, monitoring their trading, and monitoring the work of the bodies licensed

by the Authority for securities business, in addition to protecting citizens and investors from unfair practices or improper.

In fact, the issuance of securities is for companies registered in the Companies Register, as well as companies listed in the stock market, and given that the representation and liaison office has a specific purpose and a specific period, and therefore this office does not issue shares or bonds. Therefore, any issuance of such papers or bonds will not be approved by the Capital Market Authority.

- **Registration in the commercial register:**

The representation office must be registered in the commercial register, and the office may not perform any work or activity to represent the company before registration in the commercial register. If the foreign company violates this, the penalty is the invalidity of this work, provided that it is allowed to correct this invalidity and that is quickly entered in the commercial registry. - **The condition of taking a residence:**

Domicile is the place that a person usually takes as his place of residence and with the intention of permanent residence. For a legal person, it is the place of his main activity. The Companies Law required a foreign company that opens an office in the Kingdom to take it as a domicile, i.e. the seat of its business and activity.

The importance of national:

- The center of the activity that is intended to be carried out, such as advertising for the company's foreign products.

- It is also the address of the foreign office, which is where correspondence and judicial notices are received. The place chosen by the foreign legal person or the foreign company as a headquarters for the representative office is a special domicile for him in the Kingdom of Saudi Arabia regarding this activity¹².

¹² Dr. Abd al-Rasoul Abd al-Ridha Jaber, The Domicile of the Legal Person and the Role of the

Domicile in the Subjects of Private International Law, Babylon University Press, p. 60.

The Researcher Opinion:

The Saudi legislator preferred to open the door to the foreign investor, who can enter through a representative office to market or advertise the company's products, and he can set up an agency without a legal personality or institution, or he can take the form of a national company according to the companies' system. However, I have looked at the list of prohibited activities for the foreign investor and found it to be a very long list to the point where the question remains, what is left for the foreign investor to work on. On the other hand, did the Saudi legislator not equate the foreign investor with the national investor, and then there is no sense in the settlement between the national and the foreigner if the scope of the areas prohibited to the foreigner is expanded and available to the national only.

How to establish a branch of a foreign company in the Kingdom of Saudi Arabia:

The inaccuracy of the wording of Article Ninety-four of the Companies Law by stipulating that foreign companies that conduct their activities and business inside the Kingdom, whether through a branch, an office, an agency, or any other form of the Companies Law, are subject to the Companies Law, except for the provisions relating to the establishment of companies.

This is because this text contradicts the text of Article Three, which states: "The company established in the Kingdom must take one of the following forms:

- A- Solidarity Company.
- b- Simple Partnership Company.
- C- The joint venture.
- D- The joint-stock company.
- E- The limited liability company.
- Subjected to Paragraph 3 (concerning companies in Islamic jurisprudence), every company that does not take the aforementioned forms shall be void, and the persons contracting in its name shall be personally and jointly liable for the obligations arising from this contract.

The fourth article, as evidence that a foreign company establishes a branch in the forms mentioned in the Companies Law, stipulates that:

"With the exception of the joint venture, the company established in accordance with the provisions of the law is considered a Saudi national, and its head office must be in the Kingdom. This nationality does not necessarily entail the company's enjoyment of rights restricted to Saudis." Therefore, a foreign company may establish a branch in the Kingdom of Saudi Arabia, in accordance with one of the forms mentioned in the Saudi Companies Law, except for a joint venture, by obtaining it first. The approval of the General Authority for Investment to establish a branch for this company in accordance with Saudi law, and to register this permission after carrying out the incorporation procedures in the Companies Register.

Requirements for opening a branch of a foreign company: It usually includes the following documents:

- 1- The partners' decision of their desire to invest in the Kingdom, explaining the activity, the location of the branch, the appointment of the general manager and defining his powers, attested by the Saudi Consulate and the Ministry of Foreign Affairs in the home of the parent company.
- 2- A copy of the commercial register of the parent company.
- 3- A copy of the parent company's articles of incorporation, attested by the Saudi Consulate in the company's home country and the Ministry of Foreign Affairs in that country.
- 4- The last balance sheet of the parent company.
- 5- A certificate of financial solvency, indicating the company's ability to invest in proportion to the work plan according to the form prepared by the General Investment Authority.
- 6- Submitting a detailed work plan to implement the project according to the form prepared by the General Investment Authority.

- 7- Financial information for the last three years of the parent company according to the form prepared by the General Investment Authority.
- 8- A copy of the director's passport.
- 9- Obtaining the initial approval from the government agency related to the company's activity to be carried out in the Kingdom.
- 10- A copy of the trade name registration in the Ministry of Trade and Industry.

It is customary for the capital provided in companies with service activities to be within five hundred thousand riyals, and in companies with limited liability, within the range of at least 40 million riyals.

Register Limited Liability Company:

- 1- The company should have an inventive activity and have a valid patent and used it in the establishment's products.
- 2- That the parent company has an export activity for its products in accordance with the technical specifications of the product and the method of production conforming to the approved Saudi, Gulf, or international specifications.
- 3- That the facility has an average rating, and the number of its workers is not less than fifty, with its commitment to employ Saudis in accordance with what was stated in the Kingdom's obligations to the World Trade Organization, which is to specify 25% of foreign workers for companies that establish branches in another country.
- 4- The capital of the establishment shall not be less than 37.5 million Saudi riyals.

It should be noted that if the company takes the form of a joint-stock company, it may not issue securities, shares, or bonds, except upon the availability of legal conditions for this, and the approval of the Capital Market Authority¹³.

- We conclude, then, that the foreign company, under the regulations in force in the Kingdom of Saudi Arabia, may establish:

- 1- A representative or liaison office.
- 2- Agency or institution.
- 3- Its branch holds the nationality of the Kingdom of Saudi Arabia.

Economic Effects of Foreign Companies

The state resorts to encouraging foreign direct investment to exploit its natural resources, obtain advanced technology, or transfer expertise to the national investor through partnership contracts with the foreign investor. Investment Attractive Methods:

- 1- Granting tax exemptions for a long period, as the foreign project is at the beginning of its formation and needs a period of time to enter the production stage.
- 2- Providing lands for free and establishing the infrastructure represented in road networks, communications, modern airports, hotels, and suitable headquarters for foreign companies.
- 3- The principle of national treatment, which means the settlement in the legal transaction between the national investor and the foreign investor, and this principle has been adopted by the Saudi legislator, as Article Six of the Saudi Investment Law stipulates that:

“The project licensed under this system shall enjoy all the advantages, incentives and guarantees enjoyed by the national project according to the regulations and instructions.”
- 4- Facilitating the transfer of any cash in foreign currencies needed by the foreign project, so he may enter whatever cash he wants and transfer his share from selling his share or from the liquidation surplus or profits achieved by the facility abroad or disposing of it by any other legitimate means, and it has the right to fulfill any Other contractual obligations.

We have taken a model for the study of the Kingdom of Saudi Arabia for foreign direct investment for several reasons:

- 1- The oil wealth is not renewable, and therefore it is necessary to search for new

¹³ 15 Investment Authority, issuing licenses to foreign companies within five working days.

resources and new minerals and to move towards comprehensive investment in all aspects of economic life, whether in agriculture, industry, housing or mining.

2- The state is facing unfavorable conditions in terms of low oil prices and its military obligations towards combating terrorism in all its forms, and then it finds itself in need of external financing, and therefore it resorts to inviting foreign investors to participate in the development process. 3- We have no doubt, as we have previously explained that the national investor or the national capital is first over others, followed by the Arab capital, as it is the mainstay of development and the first supporter of the state. However, the national investor may tend to migrate outside the country in search of tax havens, easy havens or quick profit projects away from the mother country. Therefore, in view of the weak national direct investment, the state needs a foreign investor to implement infrastructure projects, and to explore for mineral wealth using advanced technological methods.

4- The Kingdom of Saudi Arabia is a member of the World Trade Organization, and it is also a party to the international convention law through bilateral agreements for investment and through the Arab regional law, which requires leaving the door open, with what is called the "open door policy" to Arab and foreign investments, without discrimination. These investments have positive economic aspects and some negative aspects.

Advantages Economic Effects:

1- Achieve economic development:

Foreign companies operating in the Kingdom of Saudi Arabia affect the acceleration of the pace of economic development, as these companies undertake the implementation of infrastructure and subsidiary projects, such as the construction of road and port networks, the construction of nuclear reactors, the search for new sources of energy, and the establishment of transformational factories such as petrochemical plants. Accordingly, it relieves the state from carrying out the construction, financing, and

operation, and then transferring the ownership of the project after that according to the BOT patterns.

2- Creating new job opportunities and eliminating unemployment:

The investment that takes place in establishing new projects, such as those carried out by multinational companies by establishing and establishing branches for them in the Kingdom leads to an increase in the demand for labor on the part of foreign branches that engage in production or service activities, or on the part of national companies that establish links with these branches to supply them. With the production requirements you need.

These companies help to provide job opportunities and increase the growth rate so that it may reach 6% annually, which leads to absorbing the increase in unemployment. The growth rate in the Saudi economy reached more than 5% in the period from 2011-2014, and this was due to the rise in oil prices. The growth rate fell in 2016 to 2.6% as a result of the government's spending cut after the partial lifting of subsidies on gasoline, electricity and water and the start of rationalizing public spending¹⁴. The growth rate increased to 3% after that after adjusting to lower oil prices. On April 25, 2016, the Saudi Cabinet approved the "Saudi Arabia Vision 2030," which was prepared by the Council for Economic and Development Affairs. The vision aims to rebuild production bases, diversify sources of income and benefit from investment tools, the most important of which is the Public Investment Fund (\$1.8 trillion). The vision for foreign investment aims to raise the proportion of foreign direct investment of GDP from 3.8% to the world average of 5.7%. There is also the joint Saudi project between Egypt, Saudi Arabia, and Jordan, which is known as NEOM "The New Future"¹⁵. It is an ambitious project to establish a new style in the northwest of the Kingdom on an area of 26.5 thousand square kilometers, overlooking the Red Sea and the Gulf of Aqaba, and it requires an investment of more than one trillion dollars. International companies contribute to its implementation, led by Siemens and Wolf and Wolff.

¹⁴ Dr. Al-Tijani Al-Tayeb Ibrahim, Saudi Vision 2030, Challenges and Risks.

¹⁵ Saudi NEOM Investment Project.

3- Increasing wages paid to the employees of the branch company:

Foreign companies pay high wages, and this may lead to attracting skilled workers to them or disrupting legitimate competition with national companies. But from an economic perspective, this increase in labor wages helps raise the standard of living of the labor force and activates the movement of production by increasing consumption by this class. It is noticeable that the number of multinational companies has increased so that we are facing more than 63 thousand multinational companies with more than 700 thousand branches in many countries of the world, including the Kingdom of Saudi Arabia.

4- Increasing the state's income from taxes on income:

The state collects taxes on the income generated by these companies, and from the taxes collected from the wages of the employees of these companies.

5- Improving the balance of payments:

The balance of payments is the record that shows the ratio between a country's revenues and expenditures. Accordingly, the Kingdom of Saudi Arabia as an attractive land for foreign direct investment is witnessing an improvement in the balance of payments because foreign companies encourage the direct flow of capital to the host country. Multinational corporations control more than 25% of global output. These companies allocate a large part of their production to export abroad. Therefore, foreign companies are the main employer and the source of wealth. Accordingly, the Kingdom of Saudi Arabia can count on it to bear the employment of part of the national (local) labor, 80% of which work in government departments.

6- Increased productivity:

Foreign companies increase productivity and efficiency in the host country. This results from the use of new technology in the country. This increases legitimate competition, as national companies will try to imitate these technologies. Accordingly, the competition between local

enterprises and multinational companies leads to the improvement of products, the introduction of new technology and the improvement of their products¹⁶.

Foreign companies use the ease of productivity as a basis for export and import other alternatives to continue production. We note that foreign companies produce not only for the local market, but also for export, and this gives residents in the areas of foreign companies' activity great freedom to choose between the offered products as well as services, at a price lower than the price of similar imported products¹⁷. 7- Technology Transfer:

Settling foreign companies in the Kingdom of Saudi Arabia leads to technology transfer. This is because these foreign companies will carry with them their technological secrets, and the legislator has made it easy for them to bring in their equipment and all the technical equipment necessary to carry out their activities. These technologies are new to the host country, and these companies transfer the production method with them, which leads to the training of the local workforce and its learning of new technological methods. As foreign companies cannot bring more than 25% of the labor force for their project and are forced to use local labor. Therefore, it is obliged to train the local workforce to use these machines. On the other hand, national projects will benefit from this new technology. On the other hand, the Kingdom of Saudi Arabia may contract with foreign companies to transfer technology directly through the contract of production in hand, that is, the establishment of the entire factory by the foreign company until the production is given in the hand, or according to the method of the key in the hand, meaning that the foreign company establishes the factory and hand over the key to the public administration after you try it.

8- Linking the country to the global economy:

Foreign companies are the vital and effective factor in the process of globalization, where countries compete to attract foreign direct investment. Examples of these incentives are

¹⁶ Dr. Nisreen Nasr El-Din Hussein, A Global View on Foreign Investment with Application to Egypt,

Mansha'at Al-Maaref House, Alexandria, first edition, 2007, p. 108.

¹⁷ World Bank Development Report, 1999-2000.

free economic zones where goods are manufactured, prepared, and exported without the intervention of local customs authorities. Consequently, these areas become part of the global economy in order to achieve integration between the state and its peers. This will bring in more foreign direct investment, and this is what is required to carry out the economic projects that the state plans to carry out. On the other hand, these companies bring in skilled labor or the best hands working with them, which leads to the transfer of skills to the local workforce that works in the same companies. Also, these companies need complementary industries that may require local companies to do them, which increases integration in production.

Negative aspects of foreign projects or companies: i - Increasing the demand for foreign currency:

Foreign companies transfer their net profits abroad, and they also need foreign currencies to finance the import of machines, equipment, and production factors. It has been proven with certainty that international companies cultivate habits in various countries of the world that achieve their economic interests and do not pay attention to any other considerations in order to achieve their economic interest, so they do not look at humanitarian or environmental considerations or at the economic stability or economic growth of the host country, what they only care about is capital profit. Therefore, it transfers its capital and profits to the mother country, despite the host country's great need for these funds¹⁸. It has been statistically proven that the outflow of capital from the host countries far exceeded the inflow of capital into them¹⁹. This is because foreign companies achieve more than 50% of global output and help in the movement of international exchange. Therefore, the monetary authorities in the Kingdom of Saudi Arabia must monitor the remittances of these companies and set controls for them to prevent the bleeding of hard foreign currencies that the

national economy needs. ii- Exclusion of less skilled workers from the labor market:

If foreign companies lead to reducing the unemployment problem, by using skilled labor in the host country, in the foreign company's activity sector, there is a negative impact of excluding less skilled labor from the labor market, especially with the advancement of transportation, carrying and packaging technology. Therefore, we find the host country beneficiary, but at the same time a victim of the production policy of the foreign company²⁰.

Noting that the foreign company has a negative impact on employment and employment in the country of origin, by transferring jobs and businesses from the country of origin, i.e. the country in which the parent company is located, to the Kingdom of Saudi Arabia. We can suggest, that the Ministry of Labor should have the role of training middle or unskilled workers to suit the new labor market in foreign companies, thus limiting the negative impact resulting from bringing foreign companies to invest in the various economic sectors in the Saudi territory and the maritime region, except for the sectors restricted to nationals.

- Introducing new consumer values and patterns:

Foreign companies enter a change in consumption patterns based on looking forward to what is new and acquiring it, which reduces the chances of national saving. For example, fast food companies that promote their meals among young people who accept these meals voraciously, and were able to change the food pattern among young people in this way used high cost. - The control of the working class:

The economic effects of international companies appear on the employment scale, as they lead to:

i- Creating a working class of workers from these companies with high incomes.

¹⁸ Dr. Ahmed Gouda Ahmed Eid Al-Azab, International Companies as a Framework for Foreign Investment, under publication in the Legal Journal, Faculty of Law, Cairo University, May issue 2019, p29.

¹⁹ Nasreen Nasr El-Din Hussein, A Global View on Foreign Investment with Application to Egypt,

Mansha'at Almaaref House, Alexandria First Edition, 2007, p. 108.

²⁰ Report of the United Nations Economic and Social Council in 1977 on the social situation in the world, p. 203. ²³ Dr. Sami Salameh Noman, International Companies and their Impact on Competition, Employment and Exports in Developing Countries, aforementioned reference, p. 257.

Therefore, although we referred to this effect as a positive effect, it has a negative impact, as there is a class division within society.

ii- On the other hand, foreign companies encourage brain drain from developing countries to industrialized countries. This is considered human bleeding in the host country, which generates loss in the host country, at a time when this country needs the efforts of its children to build its own development. Studies indicate that these foreign companies are heading to intensive direct investment in the developed countries, at a rate of up to 65% of the volume of their investments, while only 35% are directed to developing countries, and of these countries is the Kingdom of Saudi Arabia²³. The remedy, in our opinion, is to place restrictions on the migration of national and Arab minds abroad and to give them incentives to work within the framework of their national environment, as is the case for "Vision 2030" or the "NEOM" project. This is because these foreign companies view borders with disdain, or it can be said that they see the world without borders. iii- Control of existing labor:

Foreign companies have a tremendous ability to compete, as these foreign companies dominate the local market at the expense of local companies by taking advantage of modern technology and the capabilities of this company for advertising and distribution, and it also seeks to evaluate vertical links with local projects and companies²¹.

If it is correct to say that this encourages competition between national companies and foreign companies, however, this leads to foreign companies controlling the labor base and contributing to already existing productive projects instead of creating newly trained cadres. In addition, these companies may appoint foreign managers and executives at the administrative leadership level in the subsidiary companies, as is the case in the Kingdom of Saudi Arabia, where foreigners occupy the highest positions in oil companies. As for the Saudis themselves, they do not obtain any senior management position in the foreign company unless they are owners of shares or shares in

these companies. iv- Competition with national projects:

The competition between national projects and national companies is not in favor of national companies due to the difference in technological expertise, as well as the abundance of information available to these companies, which may reduce the productivity of national companies. This effect may be increased by the fact that foreign companies are working to consolidate their relations with other foreign companies and entrust them to other foreign companies, such as advertising services, insurance, legal and accounting institutions. This leads to the inability of national companies to compete, which exhausts and weakens national capabilities. But this effect may be reduced by the fact that foreign companies are working to increase productivity, and reduce the monopoly control of national companies. In addition, foreign companies may cooperate with national companies in industries that complement their activities, taking advantage of the low wages of labor in these companies. In addition, national companies are motivated by the defense of their survival and continuity in the market, developing their production and administrative structures to be able to face competition. v- Economic instability:

In fact, foreign companies look at the world without borders, and it is almost homeless in the sense that the bond of nationality for them is a paper bond, which means little to them but a mere set of facilities and privileges. These companies, as one of the writers, says, "They are not tied to any country." It is not obligated to feel allegiance to any other country, and this creates economic instability for workers and for the state that made it the headquarters of its activities. If it finds that the laws have changed and that it can obtain this production at a lower cost in another country, it has no objection to abandoning the high-cost place that the ultimate goal of these companies is to search for the cheapest price and the lowest cost.

Comparison between the legal framework of foreign companies in the Kingdom of Saudi

²¹ Dr.Nisreen Nasr El-Din Hussein, A global view on foreign investment, previous reference, p. 117.

Arabia and the law of the United Arab Emirates

The United Arab Emirates is considered one of the leading countries in the field of direct investment, as it leads to a successful experience in the transition from the oil era and the move towards a free economy capable of global competition.

1- The principle of national treatment.

2- The most extensive investment.

3- The freedom of the foreign investor in financing.

4- The right of ownership. 5- Legislative stability.

- The principle of national treatment:

The UAE Investment Law took the Union into the national treatment that a foreign direct investor enjoys, just like the national investor, and thus the foreign investor enjoys all the rights that a national investor has. It has all the advantages that a national investor has, whether he is a natural or legal person.

Emphasis on this principle came in Article 8 of the UAE Investment Law, which states that: "1- Foreign investment companies licensed under the provisions of this Decree-Law shall be treated as national companies within the limits permitted by the legislation in force in the country and the international agreements to which the State is a party.

We have already seen that Saudi Arabia takes the same principle.

It should be noted that:

The principle of national treatment is not the best guarantee for a foreign investor.

1- It is preferable to specify the preferential treatment for the foreign investor, which may exceed the limits of the national treatment.

2- The principle of national treatment is subject to the supervision of international legitimacy, by international law.

This means that the state is bound by an international obligation that this treatment shall not be less than the prescribed fair and equal treatment for aliens in international law²². We conclude, then, that many countries adopt the principle of national treatment or the principle of the most favored nation, considering that this is one of the objectives guarantees that attract investment. It should be noted that this guarantee provides psychological reassurance to the investor, noting that it turns into an international commitment if there is a multilateral international agreement to be decided by or bilaterally, such as tens of hundreds of these agreements signed between the countries of the north and south.

- The most extensive investment.

Article 7 of Federal Decree-Law No. 19 of 2018 Concerning Foreign Direct Investment stipulates that:

"1- It is permissible to direct foreign investment in accordance with the provisions of this DecreeLaw in all sectors and activities in the country, as determined by the Council of Ministers, as an exception to the provisions of the companies' laws and federal laws in the country, while adhering to the provision of Clause 3 of this Article.

2- Excluded from Clause (1) of this Article is the negative list in which the sectors and activities are subject to the legislation regulating them in the State, which is as follows:

A- Exploration, exploration and production of petroleum resources. b- Investigations, security, military sectors, manufacture of weapons and explosives, equipment, devices and military clothing.

C- Banking and finance devices, payment systems and cash handling.

D- Insurance services.

E- Hajj and Umrah services, labor and servant services, and staff recruitment. f- Water

²² Dr. Abdullah Abdul Karim Abdullah, Investment Guarantees in the Arab Countries, House of Culture, Publishing and Distribution, Amman, 2010, p. 194.

and electricity services. g- Services related to the field of fisheries.

H- Postal services, telecommunications services, audio and video services. i- Land and air transport services.

j- Printing and publishing services.

K- Services of commercial agents.

L - Medical retail trade such as private pharmacies.

M- Poison centers, blood banks and health quarantines.

By a decision of the Council of Ministers, any sectors and activities may be added to the negative list specified in this item, or any of them may be deleted. We have already seen that the Kingdom of Saudi Arabia, like the UAE, does not adopt the policy extensive investment.

View of the need for foreign direct investment, there is no harm in allowing it, while giving the first and last word to the Investment Committee in the UAE, which grants the license to the foreign project. Therefore, each of the two countries was keener to avoid foreign investment dominating the strategic sectors, and we see the need to encourage national investment and give preference to the Arab investor.

- Freedom of the foreign investor in financing:

Article 8 of the UAE Investment Law stipulates that:

Considering the provisions of the legislation in force in the country, the foreign investment company may make financial transfers outside the country for the proceeds of the foreign direct investment project, including: a- net annual profits.

b- Funds obtained from settling disputes related to the foreign direct investment project. - **Legal stability:**

Legal stability means the commitment of the host country for investment not to amend the legislation in which the investment took place from its formation until its termination or liquidation. Therefore, this indicates the state's commitment not to amend and change the legal and regulatory texts that govern the existing investments, unless it is in the interest of the investor in the event of amending or repealing the legislation²³. In fact, the Emirati legislator, as well as the Saudi legislator, did not tie his hand to a text that necessitated the confirmation of legislation at a specific moment. However, we note that the legislator in both countries:

It does not tend to the speed of change in legislation, and that there is legislative and organizational stability. On the other hand, such conditions may be included in mineral extraction contracts, infrastructure contracts, and power generation contracts, as they are long-term contracts²⁴. However, although this guarantee is not provided for, foreign companies enjoy national treatment, and therefore, if the amendment includes any distinction or discrimination between the national and the foreigner, they have the right to claim compensation and oblige the state to do so. It reduces this possibility, that is, the possibility of legislative amendments, the growth of democratic transformation in both the Kingdom of Saudi Arabia and the United Arab Emirates, and the presence of stable institutions for the client of making legislation. We add to that, the link of major investments with the guarantees stipulated in the umbrella agreements or the agreements for the protection of foreign investments. The UAE law also mentioned Article 17 of it, which states that: "1- The foreign direct investment project existing before the provisions of this decree came into effect shall retain all the advantages assigned to it, in accordance with the legislation, agreements and contracts derived from it, during the period specified in those legislations. or agreements or

²³ Khair El-Din Saadi, Kamal Mingnah, Investment Guarantees in Algerian Law, Master Thesis, Mohamed Boudiaf University in Msila, Faculty of Law and Political Sciences, Algeria, 2016-2017, p. 20 and beyond.

²⁴ Dr. Hamed Abdel Qader, The Legislative Consistency Condition in International Administrative Contracts, A Comparative Study between Oil and Gas Contracts and Foreign Investment Contracts, Dar Al-Nahda Al-Arabiya, Cairo, 2018, p. 9 - p. 12.

contracts. Thus, the Emirati legislator has given the foreign company a choice between the advantages established in accordance with the legislation in which it was established, those projects that were established before the entry into force of this law, or the privileges and guarantees provided by the new law. This is considered an application of the principle of legal stability.

By comparison, we can make the following observations:

1- Both legislations adopt the principle of national treatment of foreign investment. And that this is explained within the framework of international law, with no less than the internationally accepted treatment, that is, the fair and distinct treatment.

2- Both laws were keen to keep the field of wealth on which the national economy counts, especially oil and gas and mineral extraction fields outside the positive list, and the UAE law was more flexible if it permitted the Investment Committee to deviate from the negative list and make an exception from it.

The researcher believes that this is a benign approach, as self-reliance is a benign approach, but we need the foreign investor, and then his contribution must be limited to limited-term franchise or boot contracts, with our call to give absolute priority to Arab capital.

3- Legislative stability must be granted to the foreign investor in the period in which the investment is formed, in relation to the investment and tax regulatory legislation, without prejudice to national sovereignty in the legislation.

4- Right of ownership: Through comparison: we find here an agreement between the Saudi investment system, which was more flexible than the UAE system, which suspended the ownership of the foreign investment project by 100% on what was decided by the Investment Committee, which is the equivalent of the General Authority for Investment in the Saudi system, while he did not object The Saudi legislator from the beginning of the full ownership of the project by the foreign investor,

noting the supervisory role of the General Investment Authority, which can refuse to license it, if it assesses any damages that may result from its sole ownership.

The law agrees to ban foreign ownership of the real estate, except for what was necessary for the establishment of the investment project.

5- The freedom of financing and transfer of project assets and net profits, as well as freedom of financing, including borrowing from internal financial institutions, was more clearly in the Saudi investment system.

Legal protection for foreign companies in the Saudi system

The law of the Kingdom of Saudi Arabia “the investment system” laid down a set of rules that represent an advanced legal system that lays the foundations that ensure the flow of the largest possible amount of foreign investments to achieve economic and social growth. The Saudi system can be classified in light of the guarantees and protection it contains for the foreign investor, as being part of a group of laws of an encouraging nature for foreign investment²⁵. As the legislator, as we have previously explained, gave the foreign company the right of national treatment, the right of free financing, a list of the many areas of activities in which it operates, legislative stability, and the right of ownership that amounts to 100% ownership of the investment project, that is, full foreign ownership.

Article Eleven of the Investment Law stipulates that:

“It is not permissible to confiscate the investments of the foreign investor in whole or in part except by a court ruling, and it is not permissible to expropriate them except in the public interest in return

for a fair compensation in accordance with the regulations and instructions.” Article Thirteen added that:

²⁵ Prof. Samir Ibrahim Hatem, Legal Protection of Foreign Investment, Tikrit University Journal of Legal Sciences, Q7, No. 27, September 2015, p. 191.

“Without prejudice to the agreements to which the Kingdom of Saudi Arabia is a party:

1- Disputes that arise between the government and the foreign investor in relation to his investments licensed under this system shall be settled amicably as much as possible. If this is not possible, the dispute shall be resolved according to the regulations.

2- Disputes that arise between the foreign investor and his Saudi partners in relation to his investments licensed under this system shall be settled amicably as much as possible. If this is not possible, the dispute shall be resolved according to the regulations. Therefore, it is clear that the previous texts included objective and procedural protection against non-commercial risks facing foreign investor.

- **Objective protection against non-commercial risks:**

Non-commercial risks mean risks arising from economic and political instability in the country, as the foreign investor can face commercial risks by himself, given that these risks result from the seriousness of his activity and the extent of his success in his project and his choice of the field in which he can achieve rewarding results. But if the host country resents its welcome to foreign investment and turns its back on it and decides to nationalize the project or cancel the contract with it without legitimate justifications, confiscation of its assets, and expropriation of its movable, real or intangible funds as rights over intellectual property, then these risks are political risks, and risks that are not calculated in contrast to the risks commercial.

The idea of political risk:

In fact, foreign direct investment is an important factor for financing and implementing economic development, despite the necessity of caution and vigilance in dealing with it, but in the end, it is a necessary antidote to achieving economic development²⁶.

The most severe thing that leads to the flight of the foreign investor is the political risk, which is the change in the policy of the government or political bodies or even, the change in the policy of the entire society. These political changes

take the form of the spread of bribery, the weakening of the protection of the right of property by confiscation, expropriation, nationalization, the abolition of illegally prohibited licenses, and economic instability. These fluctuations and political risks are unexpected, and they affect the company's assets, as they reduce the profits of the project or lead to its demise. Among the political risks are rebellion, war, violence, political turmoil, revolution, terrorism, attacks by opposition groups, and extremists. As well as bribery and harmful acts against foreign companies. The Saudi system has provided protection for the foreign investor at the full risk of expropriation or confiscation, and permitted expropriation for the public benefit, as well as expropriation by a court ruling.

- **Procedural protection**

The Saudi legislator also gave substantive protection to the foreign investor who returned and decided for him procedural protection. This procedural protection is represented in:

Facilitating the foreign investor's right to obtain his right through his right to sue and his right to litigation, whether before the state's judiciary or before arbitration bodies, arbitration of special cases, or regular arbitration.

A- Right to litigate:

The right of the foreign investor to sue starts from the moment he decides to appeal against the decision of the General Authority for Investment. He has the right to appeal against this decision, magistrate, i.e. before the same authority within thirty days, if its decision is rejected.

If it is rejected for the second time, then this decision may be appealed before the court. It is noted that the foreigner has the right to file a case before the Saudi courts, similar to the national, whether or not, in the application of the principle of national treatment, noting that the UAE legislator has reduced the period for issuing the decision to five days, and the appeal against the rejection decision is before the same authority

²⁶ Qureshi Mohamed Raouf, Investment Guarantee from Commercial Risks in Algerian Legislation,

Mohamed Khebifer University 2015-2016, p. 11 and beyond.

within fifteen days. He may directly challenge the refusal decision issued within ten days of its submission, or if the decision on it is delayed for ten days. In this case, the direct judicial appeal may be made within thirty days before the competent court from the date of his notification of the refusal or the lapse of this period, as the case may be. However, we note that the Saudi legislator considered that the thirty-day period has passed without an acceptance of the request.

On the other hand, the UAE legislator urged the investment committee's decision in accordance with Article 11/2, which states: "The decision of the competent authority to reject the grievance submitted to it regarding the approval of a foreign direct investment project that is not included in the positive list shall be final and not subject to any appeal."²⁷ **The researcher's opinion:**

All administrative decisions must be subject to appeal and may not be immunized to guarantee the right to litigation, and it is for the court alone to decide whether or not the decision is legal. That is why we call upon the UAE legislator to remove this strange text from the investment law, as it does not encourage attracting investment. We would like the Saudi legislator to follow the example of the UAE legislator is giving a state of urgency to investment cases and disputes before all levels of litigation. Noting that judges are independent, and there is no authority over them in their judgments other than the provisions of Islamic Sharia and the regulations in force, and no one has the right to interfere in the judiciary. It should be noted that the body competent to hear cases of foreign investors is the Board of Grievances (administrative judiciary) if the dispute is about a contract with the public administration or an appeal against the decision of the General Investment Authority or an appeal against any administrative decision before the competent administrative court. We add that the period for appealing the administrative decision before the Board of Grievances is sixty days from the date of knowledge of the decision. We have no doubt that this period is not voluntary and does not require negligence on the part of the legislator, as the UAE legislator did, although we recommend considering investment issues of an urgent nature, as the Emirati legislator did.

Collective agreements to protect foreign investments:

The Organization for Economic Cooperation and Development drafted an agreement on the protection of foreign funds in 1967, but this agreement was not opened for signature and therefore did not see the light of day. The United Nations established a code of conduct for multinational companies to oblige them to contribute to the economic development of the countries in which they operate in 1980. In the nineties, the General Agreement on Trade and Services of the World Trade Organization was concluded, which established a mechanism to protect investments in the services sector, and it obligated the member states of the organization to treat foreign investment with national treatment. The Uruguay Accords emphasized the freedom and protection of investment, and in 1987 the member states of ASEAN signed an agreement to protect and encourage investment. The industrialized countries also signed the Energy Charter Treaty, which guarantees the protection of foreign investment.

In 1999, the United Nations Commission on Trade and Development drafted an agreement on investment protection, but it failed due to the conflict between developed and developing countries. Thus, the attempts of countries to date to set up a collective agreement to protect investment have failed, while the number of bilateral agreements until this year has exceeded three thousand. At the multi-international level, the Organization of the Conference of Islamic Countries signed an agreement to encourage, protect and guarantee investment among member states (2001 AD) and it gave protection in accordance with the decision in the Saudi system.

In addition, the Arab countries initiated the signing of an agreement to encourage investments and the transfer of capital between the Arab countries in the year 2000, which gave wide protection to the Arab investor against any prejudice to his property, such as nationalization, expropriation, confiscation, seizure, forced pricing or setting a fee, the freedom to finance all of that. Despite this, we see the lack of Arab investments.²⁸

²⁷ 30 Article one of the judicial system.

²⁸ 31 Previous reference, P 8 Same reference.

Conclusion

In reality, it is difficult to conclude a topic in the stage of continuous and successive development, which is the legal status of foreign companies, and with our belief that the future and practical applications will add to the legal system many provisions to bring it to more maturity.

Nevertheless, we make the following observations and recommendations:

First - the foreign company:

The study revealed that the Saudi and Emirati legislators take the criterion of the place of incorporation with the bidding for the Saudi legislator with the stipulation that the center of management is in the Kingdom of Saudi Arabia. We have noted the need to add to this criterion the place of incorporation and the main, actual, and serious management center in order to avoid fraud. On the other hand, the legislator permitted that the foreign company is the full owner of the investment project, and therefore we see the need to return to the control officer in this case, and to consider this company as foreign in all respects, as loyalty, in this case, is to the mother company and the country of nationality of the mother company, with the exception of Implementation of the Saudi law as it governs the investment activity that takes place in the Saudi territory.

Second - Incorporation of the foreign company in the Kingdom of Saudi Arabia:

Foreign companies are located in the Kingdom of Saudi Arabia through:

- The presence of a representative office whose mission is as a contracting agency or contract agent for marketing the company's products, and it does not have any independent legal entity that is merely affiliated with the foreign company located abroad. The same applies to the division or institution that supervises the implementation of some contracts of the foreign company, and it does not have a legal personality independent of the parent company. The branch company: where the foreign investor may establish a commercial company in any of the forms mentioned in the

Companies Law, even if it is in the form of a one-person company, as the study showed that the Kingdom adopts the principle of national

treatment and the foreign investor is the same as the national investor.

Recommendations:

First - Determining the criterion of the nationality of the foreign company to be the place of incorporation and the main management center, taking into account that the company is foreign in all respects if it is wholly owned by foreigners, in order to avoid fraud by using the national character.

Second - Facilitating the licensing procedures for foreign companies by reducing the period to a week, if the application completed with the papers has not been decided upon, which must be limited to a statement of the sources of investment and the field in which to work, it is considered acceptable.

Third - The study recommends activating the agreement concluded in 2000 to give priority to national investment and Arab investment by giving preferential advantages to this investment, knowing that this is not considered discrimination or discrimination against foreign investment. Fourth - The study recommends stating that national treatment includes fair and equal treatment, not less than what is prescribed in international law.

Fifth - It must be clarified that the legislative amendments do not affect the acquired rights and that the amendment does not apply to the past, that is, it does not have a retroactive effect in relation to the investment formed before it, and does not cancel any privileges or rights acquired by foreign companies.

Sixth - The study recommends the need to use the tax exemption as an incentive for foreign projects and companies that serve the national economy, such as giving the General Investment Authority to lower the tax for infrastructure projects or heavy industries to zero tax during the stage of establishing factories and until it enters the production stage where the tax can reach 10% of the net profits.

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