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THE ASSESSMENT OF KURDISTAN REGION'S INVESTMENT LAW AND ITS IMPACTS ON FOREIGN DIRECT INVESTMENT

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ABSTRACT: *The Kurdistan Region's investment Law. No. (6) of 2006 was a great move by the government to attract foreign companies to invest their money in Kurdistan Region. Therefore, the side effects of investment law in Kurdistan is controversial. This study aimed to investigate the impacts of Investment Law on FDI in Kurdistan. It also intended to assess the importance of this law in developing different economic sector of the Region. The qualitative data was collected through face to face interview with experts and law professionals. The findings indicated that the Law becomes an important tool to attract foreign companies in the first place and hundreds of projects has been implemented which was difficult to be done without such laws. However, the study identified negative impacts of this law in the future. The law was found to be very less advantageous for the local populations and the government comparing to investors. The law has provided several incentives to the investors which might even pose national security issue in the future as investors are given loans and lands to make projects. The law has to be revised and amended as the KRG has already passed the first stage of investment and now needs mega projects and more benefits.*

KEYWORDS: Investment Law, FDI, Regulations, Kurdistan Region, Business Law

INTRODUCTION

The Foreign Direct Investment (FDI) has increased its role in the country's economy, revitalizing the copper industry and encouraging the production and export of non-traditional products and services. Foreign investment is defined as the action and effect of integrating capital that is represented in different forms, in a different country to the one that actually comes from and lives the natural or legal persons that benefit from the application of the resources (Borensztein, De Gregorio & Lee1998; Izaguirre, Rangel and Carreón, 2014; Hansen & Rand, 2006).

Despite the fact that investment develops country economy, but has not been used effectively to promote development, creating more job opportunities, and reducing poverty. On the contrary, as Muyoyeta (2010) highlighted it has contributed to the erosion of the rights of people, including the rights to development, food, education, a clean environment and the participation of women in political decision-making. Despite the urgent need to address these issues, the important sectors have also been neglected such as industry and tourism.

Kurdistan Region in the last decades has become a great port for the FDI and many has invested their capital in the region due to its safety and security comparing to other parts of Iraq (Abdullah, 2016; Newton-Small, 2012; Maher, 2013; Gurulkan, 2010; Lenarz, 2013). However, several problems have emerged due to the absent of strong regulatory process as well as the problem with the current investment law. The Kurdistan

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Region's Investment Law No. (4) of 2006 was passed in July 2006 and an Investment Board was created to manage and promote investment in the Kurdistan Region (KRG, 2018). This study aims to investigate the investment law No. (4) of 2006 and its impacts on the FDI and development in Kurdistan Region of Iraq. The study of investment law is of special importance since it can be vital for economic growth and social development in Kurdistan Region (Ibrahim, 2014)

LITERATURE REVIEW

In his thesis Abdullah (2016) discussed the importance of law and government regulation in dealing with investment. On the other hands, Bjorvatn, Kind & Nordas (2012) discussed that FDI is a long term activity in which determined by the laws regulations and the political condition of the host country which requires a serious engagement of the government (Gastanaga, Nugent, & Pashamova, 1998). The guarantee could only be achieved through law enforcement which needs to be friendly with foreign investors to be attracted to invest their capital in the host country.

Also, the government should guarantee their safety and assure that profits are transferable, and abide by the contracts with multinational firms to resolve any dispute that may rises during the investment process, provides better political and social stability (Abdullah, 2016; Bjorvatn, Kind & Nordas, 2012). The authors maintain their argument and argue that public sector should play its role in order to develop by taking some important steps like educating labor force, minimizing tax, supplying public goods.

These activities will probably increase the profitability of the FDI project and gives a hope to the foreign investors to invest their capital. However, as Bjorvatn, Kind and Nordas (2012) indicated otherwise in the absence of good government policy and regulations, the investors will be discouraged (Bjorvatn, Kind & Nordas, 2012, p.112). Foreign investment is undoubtedly one of the main drivers of our economy. However, experts say that for this reason it must be regulated carefully and in a balanced manner (Izaguirre, Rangel & Carreón, 2014).

In fact, as Sauvant (2016) argued promoting such a purpose requires that governments maintain a certain amount of normative space that gives them the right to regulate with respect to legitimate public policy objectives, a right that must be recognized in a special article in the AII. The author highlighted that It also implies the commitment on the part of investors to responsible business conduct. However, that's not all the story, but it is also necessary to clarify the interrelation of the international investment regime with other substantive areas of international law, especially those related to human rights, the environment, labor and commerce, as well as taxes and incentives (Sauvant, 2016). Sometimes the investors breaching international and human right laws and only focus on their profit. Therefore, in the presence of strong law, they will be obliged to maintain public interest and abide by the local and internal laws.

METHODOLOGY

The assessment of the KRG law of investment has been made based on the interview with the people who are specialist and policy makers in the investment filed in Kurdistan

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region. The investment law of KRG was assessed based in the reponds and the secondary data available in KRG Board of Investment. In this study 12 experts have been participating and the qualitative method has been used through face to face interview.

RESULTS AND DISCUSSIONS

This study has realized that the investment law in Kurdistan had a great impact to bring FDI to Kurdistan. Before issuing the law, the investment rate in Kurdistan was very low, but after enacting the law, a great number of foreign investors came to Kurdistan.

Factors such as housing take the line share of the investment projects, but projects has been licensed in all other sectors regardless their numbers. This study identified the number of licensed projects by foreign firms is less than local companies. Through analyzing it could be said that national investment dominated investment projects while foreign direct investment and joint venture are both comprises about 20% of the projects, while local investment is 79.93%. Therefore, its normal that in most countries local investment is higher than foreign direct investment as they are given better opportunity and capable of competing foreign companies.

Participant A. in this study enlightened the Investment Law (No. 4 of 2006) in the positive way and believes that the law has effectively contributed in attracting significant foreign investment to the Kurdistan Region, in various sectors, including housing and related sector, services and other sectors. For example, the allocation of land to investors was a positive side of the law in the first stage. Moreover, Participant B who is also a lawyer and legal representative of 3 foreign companies maintained that the Investment Law has facilitated the process of bringing foreign companies to Kurdistan as the law does not impose any tax on those companies for a period of 10 years. According to the aforementioned law in Article 1, Section Seven, in the project part, “any economic business or investment projects established by the natural or corporate person on the land allocated for it and with a national or foreign capital that conforms to the provisions.” Successively, this act ensures that foreign companies directly become the owner of the land as they complete the projects. These incentives have persuaded foreign investors to invest their capital in the region.

Participant C on the other hands asserted that the main factor for coming the great numbers of foreign investors and companies to Kurdistan is due to Investment Law that facilitates their operation. In fact, he maintained that the investment law does not impose any kinds of tax on the investor for ten years of working after the completion of their projects. Also, the investor is able to send back the income of the project to his own country. In addition to that, the KRG gives the land to the investor for a very cheap price and all the services of the project is provided by the KRG for instance, electricity, water, roads, schools etc. In Kurdistan Law of Investment, Article (Three) specifies that “the foreign investor and capital shall be treated as the national investor and capital. The foreign investor shall have the right to own the entire capital of any project that he establishes in the region under this law.”

This law ensured the right of foreign investors as they are treated similar to the local investors. Also, they can own the entire capital while maybe these facilities are not

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guaranteed in the investment laws of other countries. Besides, the law has given the right to the foreign firms to bring their expertise, workers from other countries. Article (Seven) Section two denoted that “the investor may employ the necessary local and foreign manpower for the project, while giving priority to local manpower in accordance with the existing laws in the region.”

Participant D asserted that the Investment Law in Kurdistan led to bring a great number of foreign and companies in order to invest in the region due to the facilities and incentives given in the law in relation to tax, land ownership, and waving tax for ten years. Article (5), Section One of the investment Law, No (4) for 2006 highlights that “the project shall be exempted of all non-customs taxes and duties for a period of 10 years as of the date on which the project begins offering its services or as of the day of actual production.” Thus will lowers the cost of the investment projects and attract them to bring in their capital as they can make more profit. Similar to section one, Article (Five), Section No. Two portrays that “the vehicles, machinery, equipment and imported machines for the project shall be exempted of taxes and duties and the condition to obtain import license, provided they are imported through the border crossings of the region within two years from the date of the approval of their lists by the chairman of the board and are used exclusively for the purposes of the project. Otherwise, it will not be included in these exemptions and the investor will be compelled to pay the tax and will be penalized by paying double the sum of the due tax.” In the same article but section Five, the issue of raw materials somehow solved in which some investors sees as an obstacle on their investment.

The law has been written in the way where the country situation has been taken into account as many investors afraid to invest in a country in which lack of technologies, skilled workers as well as means of production as it increases the cost of the projects and minimizes their profit. Nonetheless, the Law supported foreign companies to import their raw materials without paying customs for the period of five years. According to section No.5, “the raw materials needed for production shall be exempted of customs duties for a period of five years, provided the types and quantities of these materials are determined by the board, while giving priority to the use of locally available raw materials that are suitable for the investment project in quantity and quality.” So, investors can import any necessary material that doesn’t increase the cost of their projects.

In Article (Seven), Section three “the foreign investor shall be allowed to transfer the profits of and the interest on his capital abroad in accordance with the provisions of this law. In Section Five “The foreign investor may return his capital abroad upon the liquidation or disposal of the project as long as this does not contradict with the provisions of existing customs and tax laws and procedures.” Obviously, so many countries have limited investors to take out their capital, but the KRG Investment Law allows them to do so. Therefore, maybe this facilitation is because of the political situation as well as security environment of the region that was capable of attracting more investors to the region. Even though, the Kurdistan Region is lack of banking system, and investors somehow cannot trust the political situation of the country, but the provision has become an alternative to ensure their capital protection.

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CONCLUSION

Facilities and guarantees in the investment law in the Kurdistan Region (No. 4) of 2006, as well as in other laws related to investment different branches, have effectively contributed in attracting significant foreign investment to the KR in various sectors, including housing and related sector, the oil sector, the services sector, and other sectors. For instance, providing lands to investors for the acquisition, set forth in the above-mentioned law, as well as the launch of their hands for the disposal of their profits and their capital freely within the region or outside it, and to exempt their projects and accessories from taxes for a period of ten years, gave them a guarantee, but enough tranquility, to speed up and compete with each other, in order to building more and more investment projects in the region, and the advent of the big oil companies to the region only tangible evidence of the positive role of investment laws.

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