

LEGAL PROVISIONS OF THE INVESTMENT CONTRACT IN THE CONSTRUCTION OF OIL REFINERIES

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Abstract: *The contract for private investment in the establishment of refineries for crude oil refining is one of the essential contracts in light of the development taking place in the transformational oil industries. It is considered one of the basic pillars of the countries hosting investment, which prompted most countries to issue legislation to attract investment in the establishment of refineries and organize its procedures. In Iraq, Law No. 64 of the year was issued 2007 amended to give a large space for investing companies in attracting foreign and national investments and in granting the private sector the establishment and ownership of projects for refining and refining crude oil and all procedures emanating from its investment. Therefore, Iraq tended to offer several refineries for investment in several governorates to increase local production capacities, improve quality and achieve flexibility Addressing shortages and bottlenecks in refineries by providing an appropriate legislative environment to regulate this type of investment.*

Keywords: *Legal provisions, investment contract, oil refineries*

INTRODUCTION

Oil wealth is an important source for most of the world's countries, and its importance is evident when it is filtered and converted into derivatives usable through the establishment of refineries to refine crude oil, which requires large funds and multiple technical expertise that may not be available in most developing countries, so countries attract private investment to establish refineries to refine crude oil. Because of the importance of the above subject and its connection to the basis of the industrial and social development of countries, we decided to stand on the law that deals with the issue of investment in the mentioned refinery sector in Iraq, which is (The Private Investment in Crude Oil Refining Law No. 64 of 2007, amended) and some legal aspects related to it, and it is natural that these focus the study on the various legal aspects of the aforementioned investment contract, which is one of the main pillars of the basic manufacturing industry of importance in achieving the economic development of the countries hosting the investment, as countries seek to increase foreign investments through the conclusion of contracts for the establishment of modern refineries in response to the increased demand for oil derivatives and benefit from the most important The natural resources represented by crude oil, and the countries aim in this way to achieve an integrated industry and improve the added value instead of exporting it as a raw material, as well as creating new job opportunities for what this industry needs from multidisciplinary labor and for the purpose of achieving optimal investment, the host countries provide for investment in their legislation on a set of means of protection legal and economic guarantees and The privileges and incentives that encourage the investor and reassure him that the goal of profit will be achieved within the framework of this integrated system of the host country. The amended Law No. 64 of 2007 gave a wide space to the investing companies with the aim of attracting foreign and national investments and giving the private sector the right to establish and own crude oil refinery projects, operate, manage and market their products.

- **THE IMPORTANCE OF THE RESEARCH: THE IMPORTANCE OF THE RESEARCH WAS RELATED TO SEVERAL FACTORS, NAMELY:**

1- Investment in this field is of great importance to the host country. Through it, it can build an integrated oil industry in the country, namely, crude oil refineries, and organize its infrastructure.



2- The critical role played by the field of investment in refineries is to advance the national economy of the host country for investment, as oil is not only a commercial commodity but a strategic and political commodity that enables the investing country to stand strong in international and regional forums.

3- Contracts for this type of activity are considered important contracts that should be carefully drafted and taken into account all legal and contractual aspects, as they may face many legal problems and disputes.

RESEARCH OBJECTIVES: THE RESEARCH OBJECTIVE IS THE FOLLOWING:

1- Define the investment contract for the establishment of crude oil refineries by stating its legal aspects related to its implementation, its legal nature, and the methods of concluding it, as well as the implications of the contract for the host country for investment and investing companies.

2- The experience of investing in the establishment of oil refineries is relatively recent. For example, Iraq has put forward several refineries for investment in some provinces based on the aforementioned law.

Research problem: The problem of the research is about the extent to which the private investment law covers the refining of crude oil for all contractual aspects (as a specialist in the field of investment and the laws regulating investment in comparative legislation to address the texts of the contract for the establishment of refineries to refine crude oil) in terms of concluding the contract and the implications of the contract in addition to defining the legal nature of the contract, the research will address a solution to the problems raised through the following:

- **Study Methodology:** Adopting the analytical method with a topic through research. Analysis of the texts of the Law on Private Investment in the Refining of Iraqi Crude Oil

1- The legal nature of the investment contract.

2- Processes for concluding the investment contract.

3- The consequences of concluding the contract.

4- The legal mechanism for settling disputes of the investment contract for the establishment of refineries to refine crude oil.

THE FIRST TOPIC: THE CONCEPT OF THE INVESTMENT CONTRACT

Each term has its concept, which is the case of the investment contract for the establishment of refineries to refine crude oil by converting it into derivatives that can be consumed. Since the contracts are the result of a consensus of two wills (positive and acceptance), the state resorts to concluding investment contracts whose origins and meaning must be stated, two demands:

THE FIRST REQUIREMENT

DEFINITION OF AN INVESTMENT CONTRACT.

1- In economic jurisprudence: there are several definitions, the most important of which are the following:

(Investment of available funds in various assets to obtain more financial flows in the future, and these flows are compensation that the investor receives instead of using these funds)¹

(Using money in production or using it to increase income, as happens in the acquisition of stocks and bonds)

(The product's employment of capital by directing savings towards uses that lead to the production of goods and services that satisfy the economic needs and welfare of society) 1. Abbas

Aneed Ghanem / Guarantees of Foreign Investment in Law (A Comparative Study) Iraq, Diwaniyah, Dar News for Printing and Publishing, 1st / 2018 / p. 25



2- In legal jurisprudence: there is no comprehensive and comprehensive definition of investment from a legal point of view, and there are many definitions regulating it, and some have defined it as (the company's investment of its money in the formation of portfolios of movable values) and portfolios are meant to collect the investment portfolio that consists of a group of securities.

The Institute of International Law defined it as (the supply of money or services to achieve material or political profit, and the investment can be from certain funds).

3- Legislative definition of investment: The Iraqi legislator included in Investment Law No. 13 of 2006 a definition of investment in Paragraph (٢) of Article One of this law as (the employing of money in any economic activity or project that brings legitimate benefit to the country) either in Investment Law No. 13 of 2006 amended, it did not limit it to the foreigner,

4- but came in general, where paragraph (٤) of Article (1) defined the foreign investor as (the one who does not hold Iraqi nationality in the case of a real person and is registered in a foreign country if he is a legal or real person)²

As for the Iraqi investor, he defined him in paragraph (٤) of Article (1) of the same law as (the one who holds Iraqi nationality in the case of a real person and is registered in Iraq if he is a legal or real person).

5- Definition of crude oil: It was stated in the Iraqi draft oil and gas law that oil is (all hydrocarbons, regardless of specific weight, which are produced from the field in a liquid state at the temperature and pressure in the reservoir, including asphalt, gas and known hydrocarbon liquids).

Definition of crude oil refineries: They are the factories in which crude oil is separated from the various materials it is composed of, and among the most important parts in the factory that are used during crude oil refining and then sort its materials into a large number of consumer oil derivatives, and in any case, it can be The investment contract for the establishment of refineries to refine crude oil is defined as (a contract concluded between the host country for investment or one of its agencies on the one hand and the investor represented by a commercial project (whether it is a national company or a foreign company or a combination) on the other hand based on the transfer of capital to employ it for establishing refineries to refine crude oil and convert it into multiple consumable oil derivatives to achieve economic development for the host country and achieve a profit for the investing company).

2 Muhammad Hussein Al-Jubouri: Legal Aspects of Investment Contracts (A Comparative Study), Lebanon, Zain Law and Literary Library / 1st / 2019 / p. 22

THE SECOND REQUIREMENT PRIVATE INVESTMENT ASPECTS

Foreign direct investments are often concluded with the host country for investment, either in the form of joint ventures, which is the dominant feature, or through multinational companies, which prefer to unilaterally own and manage the project, as follows: First, the joint venture, which is a foreign investment based on participation with the national capital. The percentage of participation in the capital of the project is determined in view of the internal law of the host country for the investment³. The joint venture in the oil industry occurs when the state or one of its institutions is a party to the contract. The form of a special agreement



issued by law and (the second) takes the form of a commercial company from the companies stipulated in the commercial law in the host country for investment, either through the merger of several companies or the establishment of a new company in which the state contributes according to the participation rate specified in its investment laws and enjoys special privileges and exemptions.

3 Abdel Hafeez, Safwat Ahmed, *The Role of Foreign Investment*, Alexandria - Egypt - University Press / 2006 / p. 41

Second/Multinational companies: Multinational companies are a form of modern companies that have spread all over the world, and the transfer of capital in direct investment contracts has spread in the field of investment in the oil industry, including investment in the establishment of refineries to refine crude oil⁴, and its development and spread came as an aisle. It has become the main source through which these investments flow, especially to developing countries, and has become one of the most dangerous tools in which investment activities are concerned, through its role and the signals it enjoys in the field of international economic relations.

THIRD LEGAL NATURE OF THE INVESTMENT CONTRACT

REQUIREMENT:

Many legal problems were raised in connection with determining the legal nature of the above contract. The reason is due to the disparity in the legal and economic positions between the parties to the oil contracts as well as the fact that the host country provided some concessions and facilities to the contracting companies in its efforts to attract the leading companies in this field, whether national or foreign. If the contracting company was a national company, there was no problem in defining the nature of the contract because it would be subject to the provisions of national law if the directions regarding the contract were the following: First, considering the contract as an administrative contract (an administrative contract is defined as a contract concluded by a public legal person with the intention of running a public utility or organization and showing the administration's intention to comply with the provisions of public law⁵... In order for the contract to be considered administrative, it must meet specific conditions, namely:

- 1- That the administration be a party to it.
- 2- That the contract is related to the public utility's activity
- 3- The administration's use of common law methods

Second: Considering the contract as an international contract: It is necessary to know the criteria that can be relied upon to consider the contract as international, which are:

4 Al-Manaily, Hani Muhammad / *Arbitration Agreement and Petroleum Investment Contracts*, Egypt, Dar Al-Fikr Al-Jamii, I 1, 2011 / p. 335

5 Tamawy, Suleiman Muhammad, *General Foundations of Administrative Contracts*, Egypt, Ain Shams University Press, 1st / 1991, p. 59

A - The legal criterion: Those who hold this view to determine the international character rely on the idea that the contract is considered international just because the foreign character touches on any element of the contractual relationship, and these elements are summarized in the nationality of the investing company, place of residence, place of contract implementation, contract language... etc.

B - The economic criterion: This criterion is represented in its connection with the interests of international trade, as it must include, for example, the import of goods from abroad or the export of national products to a foreign country.

C-Secondary economic criterion (mixed criterion): This criterion combines both the legal criterion



and the economic criterion, i.e., it is not sufficient to determine the internationality of the contract to verify the presence of a foreign element in the contractual bond. so that the mere inclusion of a foreign element does not lead to the contract being considered international, but the contractual process must result in the transfer of funds or services across borders⁶. Third: Considering the contract as a commercial contract / where the commercial contract is defined as (the contract that arranges for one of its parties a commercial obligation, whatever the method of concluding it, whatever the subject of the obligation, and whatever the capacity of the person doing it, a merchant or a non-trader, a legal or natural person, and it is noted that this definition came with a concept It is broad for a commercial contract, as it is considered a commercial contract as soon as a commercial obligation is owed by one of its parties, whether the party is a merchant or a non-trader). More about this source text Source text is required for additional translation information.

6 Sadiq Hashem / International Trade Contracts, Egypt Dar - University Publications without edition / 2007 / p. 63

THE SECOND TOPIC

THE PROCESSES FOR CONCLUDING THE INVESTMENT CONTRACT

For the establishment of refineries to refine crude oil. In order for the administration represented by the public company under the auspices of the government to be able to conclude the above contract, a set of legal processes must be followed to conclude this contract, so three demands will be addressed in this regard: The first requirement is to submit the project for contracting. The second requirement/negotiations leading to the contract. The third requirement is the conclusion of the contract.

THE FIRST REQUIREMENT SUBMITTING THE PROJECT TO A CONTRACT

The host country for investment may offer the project through a public tender, and this is what is done in most Arab countries that sponsor investment, as this is an invitation to contract, and it must be informed of the largest possible number of contractors in the activity subject of the tender, as the subject of the announcement must include the name and number of the tender and the name of the tender. The investment liquidator, where to buy the bags of information about the refineries, the date of the closing of the tender, and the price of the tender documents ... Because of the importance of this announcement, we will summarize the stages of the investment process, which are:

1. The investment opportunity will be published by the National Investment Commission in implementation of Resolution No. 245 of 2019.
 - 2-Subject to the above paragraph, the advertisement shall be published on the website of the contracting party and its advertisement board.
 - 3- The advertisement for international tenders, in addition to what was mentioned in paragraphs (a, b) shall be published in the commercial attachés of the Iraqi embassies abroad and on the United Nations Business Development website.
- After the announcement comes the stage of submitting the bids, which are in separate and closed envelopes and clearly printed with the name of the bidder, his address, the name of the project, and the party to which the offer is submitted. It is written on the cover whether its offer was financial, technical, commercial, or legal, as the financial offer includes the financial report of the investing company for the last three years The creditworthiness, the financial qualifications of the



company, the total investment amounts expected for the establishment of the project and the sources of financing .. The legal offer includes the certificate of incorporation of the Iraqi company or companies in accordance with the provisions of the Iraqi Private Companies Law No. 21 of 1997, as well as foreign companies and an overview of the companies, their experience and ability On the establishment of crude oil refineries, in addition to the fact that the company is not included in the blacklist and that it undertakes to abide by the terms of the contract, As for the technical offer, it includes designing the refineries in an advanced way; determining the timetable for operating the project; determining the type of products that the refinery will produce; and being designed according to the fundamentally approved environmental controls.

THE SECOND REQUIREMENT

PRE-CONTRACT NEGOTIATIONS

For the purpose of preparing the final version of the contract, the stage of holding the negotiation begins, in which one of the parties expresses their mutual desire to enter into the negotiation. Despite the importance of the negotiation stage that paves the way for the contracting process, the Iraqi legislator did not regulate this stage in the civil law, which necessitates a return to the traditional rules in the theory of commitment⁷. In addition to that, it did not regulate the negotiations The groundwork for contracting is in the Investment Law for the Refining of Crude Oil. The principle is that the law does not have a legal effect on these negotiations. Every negotiator is free to break off negotiations at any time he wants without any responsibility. The responsibility here is tortuous and based on error. The party who missed this responsibility in the commercial deal has the right to claim compensation, and compensation is only made for the loss that befalls the aggrieved party without the lost profit in the contractual liability. The contracts, especially the contract in question, are especially complex because they are attached to them as secondary contracts and a group of contracts, including the oil sale contract for crude from the host country to the project company, the land lease contract, the gas contract, and the product purchase contract in the event the host country wants to buy it.

7 Nashmi, Mustafa Khudair, The Legal System of Preliminary Negotiations for Contracting, Master's Thesis, Faculty of Law, Department of Law - Middle East University 2014 / p. 91.

THE THIRD REQUIREMENT

CONTRACTING CONTRACT

Every contract is based on three pillars, namely (consensual, subject, and reason). Consensus is the agreement of the two contracting parties to create a legal effect, which is what is meant by the contract, and the acceptance must be identical to the offer until the contract is concluded. The shop is legitimate, but the reason is the direct purpose intended by the contract, and it must be present, valid, and not contrary to public order and morals. The reason for commitment in the investment contract referred to in the above research is to achieve economic development through building refineries to refine crude oil and provide oil derivatives⁸.

THE THIRD TOPIC

EFFECTS OF A PRIVATE INVESTMENT CONTRACT.

The conclusion of the contract entails the establishment of a legal relationship between its parties under which each party is obligated to carry out the duties and obligations entrusted to him in the fullest manner, The parties to the contract are also obligated to refrain from everything that



is forbidden in return for the rights granted to each of these parties, and the above topic will be divided into two demands as follows:

- **The first requirement: the obligations of the host country for investment**
- **The second requirement: the obligations of the investing company.**

8 Sultan, Anwar, Sources of Obligation in the Jordanian Civil Law, without a publishing house, 1, 2002, p. 133

THE FIRST REQUIREMENT THE OBLIGATIONS OF THE HOST COUNTRY FOR INVESTMENT

There are several obligations under which the host country is committed to the investment, which are as follows:

1- The host country's commitment to the legislative stability condition: This condition is defined as that condition under which the state undertakes not to apply any new legislation or new regulation to the contract it concludes with the foreign company⁹. The contract is only the law in its state at the time of the conclusion of the contract, with the exclusion of all modifications that may occur in the future. This condition, in terms of legal adaptation, is an exception to the general rule according to which the contracting investor is subject to the law of the country in which the investment takes place. Article (13) of the Iraqi Investment Law No. 13 of 2006 stipulates the requirement of legislative stability, as it stipulates that (any amendment of this law does not have a retroactive effect that affects the guarantees and exemptions established under it).

2- Exempting the investing company from taxes and fees: International law recognizes the right of the sovereign state to impose taxes and fees on natural and legal persons residing in its territory and on profits and income stemming from sources within its borders.. In the field of oil investment for oil production and the establishment of refineries, it is known that it requires large amounts of funds and that the capabilities of developing countries may not be able to provide the necessary expertise. The investing agencies, especially foreign ones, are not charitable entities that provide services for free, but rather seek profits to provide development services to countries and for the purpose of attracting, encouraging investment, and transferring modern technology to contribute to achieving development in the host country for investment. The investment laws give preference to the commercial aspects, so they stipulate in their laws guarantees and privileges that may not be modified.

9 Dr. Siraj El-Din Abu Zaid, Control of Petroleum Contracts, Dar Al-Nahda Al-Arabiya - Cairo / 2010 / p. 111.

Most of the oil investment contracts have authorized the investing companies to import all machinery, equipment, and other devices and materials necessary for the implementation of their investment projects and exempt them from all taxes and customs fees. The Iraqi legislator took this into account in Article (18) of the Private Investment Law in the Refining of Iraqi Crude Oil, which stipulates the following: (The project built in accordance with the provisions of this law enjoys all the privileges, exemptions, and guarantees stipulated in Investment Law No. 13 of 2006) and perhaps one of the most important guarantees The legal consideration taken into account by the Iraqi legislator in the investment law is exemption from taxes and fees.

3- Equipping the built refineries with nutritious crude oil: Given the importance of supplying crude oil in the private investment contract in establishing refineries to refine crude oil for the economy, some developing countries are seeking to issue legislation that includes equipping investment refineries built with crude oil at preferential prices to ensure the achievement of a profit margin for these companies through The Iraqi legislator turned to a contract concluded between the host country for investment and the investing company¹⁰, which is what the Iraqi



legislator turned to encourage investment in the field of crude oil refining by supplying the companies investing in crude oil according to a reduction in crude oil prices by 8% of the world price, provided that the discount rate is not less than five dollars and not more than about ten dollars.

4- Allowing the investing company to use the public facilities necessary for the establishment of the project: Most of the oil contracts and agreements allow the investing companies to benefit from the necessary public facilities in order to achieve the optimal investment, and these facilities include transportation, warehouses, and transport by pipelines to the point of delivery. The Iraqi legislator stipulated in the articles (10, 14/first, 10/second, and 13) of the Law of Private Investment in the Refining of Iraqi Crude Oil and its amendments in terms of the use of water, transportation,

10 Rabah Ghassan / International Commercial Contract - Oil Contract Model / Beirut, Lebanon, Al-Halabi Publications, 1st / 2008 / p. 10.

pipes, and ports for the purpose of export in return for a price, and the Iraqi legislator restricted in Article (10/second) the priority in purchasing oil derivatives of the Iraqi Ministry of Oil according to its need for derivatives.

5- Allowing the foreign investor to take out the money for the capital, the profits of the investment project, and the salaries of the workers, as the goal of the foreign investment is to make a profit from the investment project and transfer it abroad, in addition to allowing the transfer of the salaries of foreign experts, workers, and technicians. The investment is the investor's from his project, and the Iraqi legislator has authorized this in Article (11) by stipulating that (the investor shall enjoy the following advantages: the release of the capital he entered and its returns in accordance with the provisions of this law and the instructions of the Central Bank, and in a currency capable of financing after paying all his obligations and debts to the Iraqi government and all other authorities) .

6- Allocating land for the establishment of a crude oil refinery is considered one of the important matters, and some legislation tends to grant private land for the establishment of oil refining refineries for free. Investment in the field of crude oil refining needs vast land to build refineries as these projects need additional facilities such as warehouses and pipelines for the purpose of supplying the refinery with crude oil. The provisions of Article (2) of the Second Amendment to the Private Investment Law in the Refining of Iraqi Crude Oil No. 35 of 2016 stipulate that a suitable plot of land be allocated to the investing company through a lease from the owner for a period not exceeding (50) years, renewable and in exchange for an annual rent agreed upon by the two parties, as an exception to the provisions of Law No. 21 of 2013 on the sale and lease of state funds, as amended.

THE SECOND REQUIREMENT OBLIGATIONS OF THE INVESTING COMPANY

There are several obligations under which the investing company is committed, which are:

1- commitment of the investing company to the minimum investment. It is necessary to specify the agreed time period for the completion of the investment project and for the investing company to make an actual physical investment in its territory. In fact, the absence of these types of obligations makes the investor freeze his investment project and since the countries seek to achieve economic development and contribute to building the base Through entering into the activity of refining crude oil and contracting with national and foreign companies with the aim of providing oil derivatives by concluding these contracts for the purpose of establishing refineries within a specified period of time, the mentioned principle was confirmed by the arbitration ruling issued in 1990 in the case (Amco) v. The investment contract must include a clause that obliges the investing company to abide by the minimum investment and a timetable for the implementation of the project.



2- Commitment to environmental legislation in the production of clean derivatives: The problem of environmental pollution poses a global danger and concern, and experts around the world are called to reduce this pollution to the environment as a result of the industrial renaissance. Oil residues arising from the establishment of refineries are one of the most polluting sources in the world by throwing pollutants into the air or water, as they are very dangerous to the environment because they contain chemical pollutants harmful to health, such as sulfur compounds, zinc, and mercury, and their access to the human body leads to great damage. For the purpose of avoiding environmental impacts Harmful resulting from investment in the establishment of refineries The law of private investment in the refining of Iraqi crude oil stipulates that the investing company must abide by the environmental laws and regulations and industrial safety (Article 15) of the law.

3- Commitment not to trade in crude oil supplied to the constructed refinery: One of the most prominent obligations stipulated in the Private Investment Law in the liquidation of Iraqi crude oil is the commitment of the investing company not to trade in crude oil supplied by the host country for investment and refined derivatives by government refineries because the purpose of concluding For the state, these contracts are the process of refining crude oil and providing its derivatives. On this basis, the state is obligated to supply the investing company with crude oil at a low price, and it has the preference for purchase. The investor has the right to sell derivatives locally or for export. The investing company and the state (٢/8), first of the Law of Private Investment in the Refining of Iraqi Crude Oil No. 64 of 2007.

4- The commitment of the investing company to employ national workers according to the established ratios Most of the oil contracts obligated the investors to employ national staff at a certain rate. And the Iraqi legislator did well in the private investment law in the refining of crude oil when he obliged the investing company to operate Iraqi national cadres with no less than 75% and gave this commitment A social dimension by eliminating unemployment by providing job opportunities (Article 3 of the Investment Law above).

5- The commitment of the investing company to submit periodic reports to the host country: the oil contracts include texts that oblige the investing company to submit financial and technical reports, which gives the state a kind of control and supervision over the investment project to ensure that the investing company complies with the terms of the contract according to what is agreed upon, and it also includes texts that oblige the company By keeping accounting books in accordance with the accounting standards accepted and applicable in the oil industry in general, as well as the books and records necessary to show the works carried out under the contract, including the quantity of oil received, provided that these books and records are prepared at all appropriate times for examination.

THE FOURTH TOPIC

THE LEGAL MECHANISM FOR SETTLING PRIVATE INVESTMENT CONTRACT DISPUTES

- Disputes in oil investment contracts, including investment in the establishment of refineries to refine crude oil, have a special importance that outweighs investments in other contracts because they are related to the sovereignty of the state in general and judicial sovereignty in particular. Because of the importance of these contracts from the economic, political, and commercial aspects, it is noted that the disputes between the parties to these oil contracts can be settled through non-judicial means, starting with, for example, conciliation, mediation, and negotiations, because this satisfies the contracting parties in most cases. In order to achieve a comprehensive picture of the mechanism for settling private investment contract disputes in the establishment of crude oil refineries, this topic will be divided into two demands:



- The first requirement is an alternative means for settling disputes regarding the investment contract for the establishment of refineries to refine crude oil.

- The second requirement is the judicial means for settling the disputes of the private investment contract in the establishment of refineries to refine crude oil.

**THE FIRST REQUIREMENT
ALTERNATIVE MEANS OF SETTLING DISPUTES ABOUT THE INVESTMENT CONTRACT FOR THE
ESTABLISHMENT OF CRUDE OIL REFINERIES**

Many oil investment contract disputes are settled through friendly means such as mediation, conciliation, and negotiations before resorting to other means because they provide quick, easy, and low-cost solutions and maintain the relationship between the host country for investment and the investing company, and it is known that these means are not binding decisions unless the parties agree. Accordingly, and in light of this, this requirement has been divided into two branches:

Section one: Amicable means for settling disputes regarding the private investment contract in the establishment of crude oil refineries.

Section Two: Settlement of private investment contract disputes in establishing refineries to refine crude oil through arbitration.

FIRST BRANCH :

Amicable means for settling disputes regarding the private investment contract in the construction of crude oil refineries. Several attempts have emerged in recent years for the purpose of making the contractual relationship between the parties to investment contracts characterized by friendliness rather than aggression, which often leads to arbitration or litigation, which are characterized by high costs in terms of expenses.

1-MEDIATION:

Mediation is defined as (the agreement of the parties to resort to another party to help and assist them in removing misunderstandings between them and reaching an agreement that may spare them a lot of effort, time, and exorbitant expenses if they turn to arbitration or the judiciary¹¹) and mediation is the first method for the purpose of finding a consensual solution between the parties to the dispute. It has been commonly used in most international commercial contracts, such as international engineering construction contracts, and statistics indicate that four out of five cases end in settlement. Mediation processes begin with the appointment of a mediator, who must have a number of qualities such as experience in the subject of the dispute and have experience in how to conduct negotiations between the parties to the dispute, bringing points of view and enjoying legal expertise. Mediation can occur at any time during the dispute. If the parties reach a point before litigation or in arbitration where they want settlement and need some assistance, a mediator can be obtained, and mediators are sometimes used in The stage of negotiating a contract ends when the negotiations reach a dead end, which happens when the parties want to complete the contract. The mediator's participation in the negotiations would achieve the results c the following:

- 1: The transfer of views between the two parties leads to an alleviation of the intensity of the antagonism and the reaching of common ground between them.
- 2: The exchange of suggestions between the parties and the statement of each party's position in a simple form helps to understand the trends of each party and reveals the facts that lead to some advantages for the parties.
- 3: Reducing the conflict between the disputing parties by emphasizing the important aspects of the



settlement elements and emphasizing the importance of some other aspects that may exacerbate the dispute.

4: Achieving the conflicting parties' objectives through the development of an integrated settlement project by finding solutions and presenting alternatives¹².

11 Ali, Ghassan Ali, *Foreign Investments and the Role of Arbitration in Resolving Disputes That May Resist*, PhD Thesis, Faculty of Law - Ain Shams University / Egypt / p. 206.

12 Al-Assad Bashar, *Investment Contracts in Private International Relations - Beirut - Lebanon*, Zain Human Rights Publications, 1st / 2006 / p. 317.

The proposals made by the mediator are not binding on the parties to the dispute, as they are free to accept or reject the proposal submitted by the mediator and also the outcome that the mediation ends with. This is because the mediator's proposals are just recommendations that cannot be imposed and mediation ends with settling the dispute or when the mediation proposals are rejected.

In view of the foregoing, mediation is an effective means for resolving investment contract disputes, but its proposals are not binding unless the two parties agree that they are binding and approved by the judiciary, so the judicial ruling is authoritative and the parties may not reach a solution in mediation, so they resort to conciliation.

2- RECONCILIATION

Conciliation is one of the alternative means for settling commercial disputes away from the courts, and this is done through a neutral and impartial third person. In the third paragraph of Article 1 of the UNCITRAL Typical Law on International Commercial Conciliation of 2002, conciliation was defined as any process, whether referred to as conciliation, mediation, or in other words, it has a similar connotation in which the two parties request another person or persons, as well as another definition defined it as "a means of settling investment disputes whereby the parties to the dispute resort to a neutral body that determines the facts and proposes grounds for settling the dispute." It is worth noting that a distinction can be made regarding conciliation processes between two types of conciliation: private conciliation and institutional conciliation. Private conciliation is organized by the disputing parties in the investment contract themselves without resorting to an institution, while institutional conciliation is organized through one of the centers or institutions specializing in dispute resolution.

3-Negotiations

Negotiation is defined as a mechanism for settling disputes based on direct dialogue between the disputing parties in an effort to resolve the dispute. Negotiations are conducted between the two parties to the dispute for the purpose of reaching an amicable settlement in order to avoid damage to the friendly relationship between the parties. Negotiations are characterized by flexibility, so they play two main roles. The first is a preventive role that prevents the aggravation of the conflict; the second type is therapeutic and is defined by reducing tension between the parties and thus lead to reaching results that lead to the settlement of the conflict. Negotiations may be oral or written, preferably in writing, for ease of proof. As this method is also characterized by flexibility, it is the best means of settling disputes and most investment laws stipulated that investment disputes should be resolved amicably, such as the Jordanian Investment Law No. (30) of 2014, Article (43) which stipulated that investment disputes between government agencies and the investor are settled amicably within a maximum period of six months. Otherwise, the parties to the dispute may resort to the Jordanian courts or settle disputes in accordance with the law of arbitration.

For the foregoing, we see that the Iraqi legislator must take the initiative and regulate these means in the Iraqi investment law to resolve disputes that include a foreign element and for the purpose of keeping pace with the development in legislation on the one hand, and keeping pace



with the development taking place in the field of international trade on the other hand, and the accompanying development in solving The disputes arising from them and what alternative means can be used to resolve disputes, and a large part of the disputes of investment contracts, including the investment contract for the establishment of refineries to refine crude oil under study, are characterized by being of a complex technical nature, and the failure to review them in a timely manner leads to their aggravation. But friendly means, including Conciliation and mediation are two impractical means for the most important reason that their decisions are not binding, the judiciary remains the primary means, and arbitration is the alternative means for settling disputes.

-SECOND BRANCH:

Settlement of investment contract disputes for the establishment of crude oil refineries through arbitration.

Given that the previously mentioned amicable methods are sometimes insufficient to resolve oil disputes because their decisions are not binding, the parties resort to arbitration to resolve disputes that arise between the host country for investment and foreign companies, as arbitration clauses have become familiar in most commercial contracts, and we will address the definition of arbitration, its justifications, and the effects of the arbitration agreement The parties to the investment contract, the types of arbitration and their processes, and the implementation of the arbitration award.

1: Definition of Arbitration: as (the method chosen by the parties to resolve the disputes that arise from the contract by submitting the dispute and deciding it before one or more persons called arbitrators without resorting to the judiciary¹³). It was also defined as (a means of settling an existing or independent dispute, which includes a reluctance to resort to the competent judiciary regarding it and to put it before an individual or individuals entrusted with the task of considering and adjudicating it based on an agreement between the disputants on that), and there are many legal jurisprudence opinions about the definition of arbitration It is clear from the previous definitions that the idea on which arbitration is based is the agreement of the parties to exclude the national judiciary to resolve the disputes that may arise between them under an arbitration agreement, and this agreement may be included in a clause in the contract concluded between the parties when signing the contract, which is called the arbitration clause. A comprehensive definition of arbitration can be set, which is: a procedural guarantee for settling disputes arising from the contract that the parties resort to based on an agreement contained within the terms of the contract before the dispute arose, with the aim of resolving their disputes away from procrastination by a final and binding ruling that cuts off the dispute).

13 Hani Mohamed Kamel Al-Manaily, Arbitration Agreement and Petroleum Investment Contracts / previous source / p 46.

2: THE JUSTIFICATIONS FOR RESORTING TO ARBITRATION OR THE REASONS FOR THE PARTIES'

resorting to arbitration in the contract concluded between them due to provoking contractual disputes can be stated for two reasons: First: The specificity of arbitration in the investment contract for the establishment of refineries to refine crude oil

A: Speed in the processes and oil contracts, including the investment contract for the establishment of crude oil refineries, is characterized as being of high financial value in terms of the invested capital. The obligations in some contracts reach millions of dollars, and their implementation requires long periods. The matter requires speed in resolving the conflict to ensure continuity of implementation, and arbitration provides this advantage because arbitrators usually devote themselves to settling the dispute in one adversary, so arbitration is the best preferred



method for resolving disputes in a short time compared to the judiciary.

B: Confidentiality of arbitration/where arbitration processes are mostly carried out in complete secrecy in order to maintain the confidence on which commercial relations are based and which the parties seek to preserve their various aspects due to the sensitivity of the subject and the care and secrecy required by these contracts, as a great deal of confidentiality must be provided for the documents that As presented by the parties in the arbitration pleadings, the arbitrators are obligated not to disclose financial information related to the investing company.

C: Choosing the Arbitration Court and the Arbitrator/Arbitrator in oil contracts involves significant financial investment. Therefore, the parties to the dispute will be assured that their disputes will be settled by people chosen with their knowledge. The flexibility of arbitration allows choosing one arbitrator or choosing a chairperson for the arbitral tribunal, so the nature of the contracts requires The parties are required to refer the dispute to specialized arbitrators who are qualified for that in terms of having high culture, proficiency in the language, sufficient arbitration experience and practices in the oil industry. Therefore, it is necessary not to rush to set the conditions for selecting the arbitrator in the arbitration agreement until after ensuring that all the required qualifications are met.

Second: The adherence of the foreign investing companies to including the arbitration clause in the investment contract for the establishment of refineries to refine crude oil. There are many reasons behind the investment companies resorting to the inclusion of the arbitration clause, the most important of which is the lack of confidence in the national courts in the host country for investment and the non-compliance of these companies to submit to the jurisdiction of a foreign country to regulations and decisions different from the laws prevailing in their countries of origin, as well as their fear of the lack of impartiality of the national judge when deciding the dispute. The investor adheres to the arbitration clause for the purpose of strengthening their negotiating power. The capital of foreign companies is subject to the approval of the host country for investment to accept the arbitration clause. One of these contracts is a private investment contract for the establishment of refineries to refine crude oil.

3: The effect of the arbitration agreement on the parties to the private investment contract in establishing crude oil refineries

First: The concept of the arbitration agreement: the arbitration agreement is the starting point for resorting to arbitration It is the real beginning that shows the determination and intention of the parties to resolve the disputes that arise in the investment contracts. Without this agreement, arbitration cannot take place because the first thing that the judge or arbitrator checks out is that it is achieved. The arbitration agreement specifies the law applicable to it. The invalid or non-existent arbitration agreement does not allow the judge or arbitrator to exercise his jurisdiction in this arbitration. There are many definitions of jurisprudence for the arbitration agreement, as some define it as (that agreement where by the parties undertake to settle the dispute between them or It may arise through arbitration if it is related to the interests of international trade¹⁴, and no matter how many definitions, the arbitration agreement takes three forms, namely: arbitration clause, arbitration parole, and arbitration clause by referral). The arbitration clause is the agreement of the parties involved to submit to arbitration the disputes that may arise between them in the future. As for the arbitration parole, it is the agreement of the parties to the investment relationship in an independent contract to submit to arbitration the disputes that have already arisen between them to be resolved. As for the arbitration clause by reference, here it is necessary to refer the contracting parties in the contract signed between them to a specific document containing the arbitration clause and to consider it an integral part of the contract so that it is considered a referral to it is the basis on which to argue that the arbitration clause exists.

14 Abu Talib, Fouad Muhammad, International Arbitration in Foreign Investment Disputes, Alexandria - Dar al-Fikr al-Jamii / i 1 / 2010 / p. 183.



SECOND: EFFECTS OF THE ARBITRATION AGREEMENT ON THE STATE AS A PARTY TO THE INVESTMENT CONTRACT

The effect of the arbitration agreement on the state as a party to the investment contracts This raises two questions.

The first trend: is the effect of the arbitration agreement on the judicial and executive immunity of the host state for investment. There are two trends for the answer: The first trend: He sees that arbitration has a special character, which is that it finds its basis in the will of the parties, and the state resorts to including the arbitration clause in the contract by its own will It is self-evident to question the extent to which the state adheres to judicial immunity before arbitral tribunals, even though it has accepted in the arbitration agreement the principle of settling disputes that arise between it and one of the parties through arbitration.

The second trend: is believing that the state has the right to uphold judicial immunity despite the existence of the arbitration clause, since the existence of the arbitration clause does not mean the state waives its judicial immunity. We believe that considering the state's acceptance of the arbitration clause in the investment contract for the establishment of crude oil refineries represents the state's waiver of judicial immunity before the national judiciary and saying otherwise means that there is no point in including the arbitration clause. Third, consider the impact of the arbitration agreement on multinational corporations or joint ventures.

The arbitration agreement is stipulated in a contract concluded by a company within a group of companies. The condition obligates the rest according to the idea of the economic unit, and since it is an economic unit, it is a contractual unit through the existence of a group of concluded contracts in which the arbitration agreement was mentioned, so it arranges all contractual obligations within the principle of unity of responsibility streptococcus ;

4: Types of arbitration in a private investment contract in the establishment of refineries to refine crude oil

There are many types of arbitration. Arbitration in terms of will is divided into optional arbitration and compulsory arbitration. Optional arbitration is carried out by the will of the contracting parties in accordance with the principle of the power of will, so that the parties agree to refer what may arise in the future from a dispute to be settled through arbitration. As for compulsory arbitration, it is imposed by it. The legislator requires the litigants to settle some disputes according to their special nature, and the litigants cannot resort to the judiciary to settle those disputes.

The basis of arbitration in the private investment contract for the establishment of refineries to refine crude oil is the free will of the two parties, but the practical reality has proven that the host country for the investment is forced to accept it because of the adherence of foreign companies and their economic strength to their need to conclude the contract to achieve economic development for the financing it provides in investment in the establishment of refineries and providing expertise.

Arbitration may be internal, national, or international. Arbitration is national when it relates to a national dispute with all its elements. The arbitrators are national and their decisions are issued within the state. This type does not raise any difficulty because it is subject to national law. As for international arbitration, it belongs with its elements to more than one country and raises difficulties in due process. application to the arbitration agreement, its processes, and the subject matter of the dispute.

There is a type of arbitration according to the arbitral tribunal. The arbitration may be private, free, or institutional. Free or private arbitration is the one in which the parties to the dispute are responsible for setting dates and appointing, dismissing, or rejecting arbitrators; they also specify the processes required to settle arbitration cases.



As for institutional or statutory arbitration, it is arbitration that takes place through bodies that supervise and manage it. This is either through conducting arbitration within these bodies, or it is sufficient to conduct arbitration processes. If the parties agree to refer the dispute to arbitration according to the rules of one of these institutions, then these rules are applied to the arbitral process.

5: Arbitration processes in the investment contract for the establishment of crude oil refineries

Arbitration processes are considered the backbone upon which arbitration systems are based. These procedures must be taken into consideration for the purpose of making the arbitration process successful and arriving at a recognizable arbitration award, It passes through several stages, which will be briefly mentioned, respectively:

FIRST: STARTING THE ARBITRATION PROCEEDINGS

Arbitration procedures, in its broadest sense, are concerned with the arbitral process from its inception to the issuance of the arbitral award, and thus the end of the arbitrator's task, as the procedures begin with the first step taken by the plaintiff to the person concerned with the arbitration, whether the arbitration is institutional or at liberty., as stipulated in the agreement of the parties, and this request includes a summary of the legal relationship and identifies the subject of the dispute, and the name of the arbitrator appointed by the arbitrator in the arbitration consisting of three arbitrators, asking the respondent against him to nominate the second arbitrator within a certain period, provided that the two parties nominate the third arbitrator and in the event of their disagreement, the rules contained in the contract shall apply¹⁵, but if the arbitration is institutional, the arbitrator submits a request to the arbitration institution including all the data specified by the arbitration rules, including the name and address of the applicant and the respondent, and the name of the arbitrator he appoints or nominates for appointment, if the arbitral tribunal is to be formed From three arbitrators, it is clear that the procedures differ in terms of submitting the application, whether the arbitration is private or institutional.

Arbitration procedures in accordance with the arbitration system of the International Chamber of Commerce start from the date of receipt of the arbitration request by the court's secretariat.

SECOND: THE PARTIES TO THE ARBITRATION

Most of the oil contracts permitted multiple parties to arbitration, but the dispute was related to a number of people who have one interest, so they can jointly participate in appointing one arbitrator, in order to prevent the multiplicity of parties participating in the arbitration itself.

15 Rabah, Ghassan, The International Commercial Contract - previous source / p. 236

Any party can join the arbitration by ratifying the appointment of arbitrators representing the parties to the dispute.

THIRD: THE PLACE OF ARBITRATION

The place of arbitration means the place where the arbitration will take place and in which the final judgment must be issued. The choice of the place of arbitration is of great importance for the arbitration judgment in particular, as some laws expressly stipulate that the arbitration judgment must be issued within the state, where the origin of judicial sovereignty is that the judiciary is in the same the territory of the host country For investment and within its territory for any dispute



arising between individuals belonging to this country or residents of it, or if the dispute is related to an existing money or obligation arising or implemented in the territory of the state, and since arbitration is an exception to the general rules of litigation, choosing the place of arbitration outside the host country for investment is only an exception to the general rule that the dispute must be settled within the territory of the state¹⁶. Among the recent oil agreements in which the parties agreed to determine the seat of arbitration is the agreement of the Petroleum Production Development Program in Jordan between the Ministry of Energy and Mineral Resources in the Hashemite Kingdom of Jordan and Transoro Energy in the Hamza Field area for the year 2015, where Article (5/30) stipulates the following: "It will be The seat of arbitration is London, the United Kingdom. However, the two parties may hold hearings in any suitable place. The researcher believes that oil contracts always require the foreign investor to conduct arbitration outside the territory of the host country and consider the arbitration provisions foreign and arbitration is an international commercial arbitration because it is linked to oil resource development contracts. According to modern economic standards,

Fourth: Issuance of the arbitral award

The arbitration decision means all the decisions issued by the arbitrator that decide definitively on the dispute presented to him, whether they are total rulings adjudicating the subject matter of the dispute as a whole or partial rulings deciding part of it, and whether these decisions are related to the subject matter of the dispute itself, jurisdiction, or an issue related to the procedures that led the arbitrator to the ruling.

16 Allam, Saad, Arbitration System in Petroleum Disputes and its Relationship to State Sovereignty, Amman, Jordan, Wael Publishing and Printing House / 1 / 2017 / p. 84.

6-Implementation of the arbitration ruling issued in the disputes of the private investment contract in the establishment of crude oil refineries

The arbitration decision is the real fruit of arbitration, but this decision will have no legal or practical value, if it remains just written statements that are not enforceable, as its implementation represents the basis of the centerpiece of the arbitration system and determines its effectiveness as a method for settling and settling disputes

First: Implementation of the arbitration award under some national laws

The common method adopted by the Latin and the laws of Arab countries is that a judicial authority gives an executive capacity to the arbitration decision so that it can be enforced against the convict, and the order to implement the arbitral award in this way is what distinguishes it from the judicial ruling issued by the general judiciary in the country. The arbitral award may be executed without being included in the execution order. In view of this, the implementation of the arbitration award under national laws will be presented, and then the position of the New York Convention as one of the important agreements in the implementation of foreign judgments will be presented.

In Iraqi law, the judicial authority that gives enforcement to the arbitration decision is the court competent in the dispute, and it ratifies the arbitration decision at the request of one of the parties.

Article 272).

In accordance with the foregoing, most laws agree that a judicial authority gives an executive capacity to the arbitration decision so that it can be enforced against the convict. Execution order.

Second: in 1958, there was the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The New York Agreement is the first open international agreement, which culminated in the efforts of the International Chamber of Commerce in preparing this agreement in 1958, which entered into force on September 24, 1959. This agreement has become more widespread in the



world due to the accession of many countries to it, and it consists of (16) articles. The agreement takes the criterion of the place where the arbitral award is issued, so the arbitral award must be issued in a country other than the one from which it is required to recognize it. It is clear from the agreement that it includes all judgments issued in disputes, whether the parties involved are natural or legal persons. In the scope of the applicability of this agreement to oil contracts, including the contract under study, some believe that in order for the provisions of this agreement to apply to oil contracts, the parties to the contract must be a public institution and a foreign investor, and thus deviate from the scope of the work of the agreement. Intergovernmental contracts with regard to the recognition and enforcement of the arbitration award, this agreement stipulates in its third article that (each of the contracting States recognizes the authority of the arbitration award and orders its enforcement in accordance with the conditions provided for in the following articles and does not impose more severe conditions for the recognition or enforcement of arbitrators' judgments to which the present Convention applies).

The researcher concludes from the foregoing that the arbitration clause in investment contracts has become an imposition on the host country for investment and not an option, as the transfer of capital to foreign companies is contingent on the approval of the host country for investment to accept the terms of arbitration. In the private investment contract in the establishment of refineries to refine crude oil through agreement on arbitration, it is in several ways, either through the arbitration clause, which is mostly through extrapolation of the texts of the contract, arbitration by referral, or through the arbitration clause, which the researcher recommends to be followed since the clause is concluded after the emergence of the dispute. As for resorting to it by means of the arbitration clause or the arbitration clause by referral, this condition existed before the occurrence of the dispute, and therefore the state is completely ignorant of what the arbitration decision will lead to. It is necessary to clarify the role of the judiciary in settling disputes resulting from the private investment contract in the establishment of refineries to refine crude oil.

The second requirement: judicial means for settling private investment contract disputes.

Disputes can be settled in a private investment contract in the establishment of refineries to refine crude oil, which lies between the host country for investment and the investing company through a judiciary that decides on the dispute through a court ruling. The invested company is mediated by a judiciary that decides on the dispute through a court ruling, and this judiciary can be the judiciary of the host country for foreign investment or an international judiciary that specializes in settling disputes that arise from foreign investments. Accordingly, and to serve this study, the judiciary of the host country for foreign investments and the international judiciary will be addressed because of their direct relationship to the subject of the study and will be addressed through two demands: **Section one: The Role of the National Judiciary in Securing Private Investment Contracts in the Establishment of Crude Oil Refineries**. **Second section focuses on the role of the international judiciary in settling private investment contract disputes in establishing crude oil refineries.**

First branch: The role of the national judiciary in settling private investment contract disputes in the establishment of crude oil refineries

The principle is to resort to the national judiciary in the event of a conflict between the foreign investor and the host country for investment, and the developing countries have succeeded, especially in the treaties they concluded with the developed countries, with the need to submit investment disputes to their national judiciary first before they are referred to international bodies. Although the national judiciary of the host country is the authority originally competent to settle disputes arising from investment contracts.



If most of the oil contracts that were concluded provided for arbitration as a method for settling oil disputes between the investor and the host country for the investment, then why was the dispute occurring within the borders of the host country for the investment. The consideration of it shall be held by the national judiciary and according to the international jurisdiction of the Iraqi courts under the text of Articles 14 and 15 of the Iraqi Civil Code, according to which he may sue according to which the foreign defendant is sued before the Iraqi courts in cases including if the foreigner's presence in Iraq and if the subject of the litigation was also a contract concluded in Iraq or the contract was enforceable in Iraq¹⁷.

17 Jassim Abdul Basit, Judicial Specialist in Iraqi Legislation, Anbar University Journal of Islamic Sciences / Volume (1) / Issue 4 / 2009 / Pg 308.

Also, the Iraqi Investment Law No. (13) of 2006 stipulates that all disputes arising from the application of this law shall be subject to the jurisdiction of Iraqi law and the jurisdiction of the Iraqi judiciary. It is permissible to agree with the investor to resort to commercial or national arbitration according to an agreement concluded between the two parties in which the arbitration procedures and its destination are determined. And the applicable law, as the Iraqi legislator in the law of private investment in the liquidation of Iraqi crude oil, made the investor enjoy all the guarantees, privileges, and exemptions that Iraqi law enjoyed. Since the principle of resolving investment disputes is through resorting to the host country's national courts for investment in accordance with its sovereignty and jurisdiction over everything involved under its territory, whether it is people or money, if resorting to the national courts in the original does not raise any problems for the foreign investor, and in accordance with this development, Recent trends have taken place in the comparative legislation between nationals and foreigners with regard to the possibility of resorting to the national judiciary, and the right of a foreigner to resort to the national judiciary has become among the minimum standards for the treatment of foreigners established in accordance with international custom. Also, the difference in the legal status of the parties to the conflict represented by the host country, which enjoys full sovereignty over its territory, while the second party is a natural or legal person of private law, may lead to the difficulty of achieving full equality between them before the national judiciary in the host country for investment.

SECOND BRANCH:

THE ROLE OF THE INTERNATIONAL JUDICIARY IN SETTLING PRIVATE INVESTMENT CONTRACT DISPUTES IN ESTABLISHING CRUDE OIL REFINERIES

The means of internal judicial settlement in some countries may not inspire confidence for foreign investing companies due to the lack of an effective legal system to meet the requirements of contemporary investment contractual relations that are related to economic development and a desire to develop standards that govern the rights and obligations of the private foreign investor in line with the contemporary trend in solving international problems. As a result, efforts have been made to broaden the existing international judicial means and determine the extent to which a natural or legal foreign investor can use them.

The International Court of Justice is one of the main organs mentioned in Article (7/1) of the Charter of the United Nations, and its importance is highlighted within the organs, as stipulated in Article (92). It is the main judicial instrument of the United Nations.

Accordingly, the foreign investor, as a person of private law, shall not sue the host country for his investment before this court, as he is not entitled to appear directly before it, as he does not have international personality. Political and economic factors played a major role in the emergence of



diplomatic protection, especially with the progress of the industrial revolution and the availability of the major industrialized countries with more than their need for capital, which does not find a way to invest it within these countries, which requires its export to other countries, especially the Arab oil-exporting countries that seek economic growth and social stability.

The nationality bond is the modern criterion recognized by positive international law to determine the affiliation or affiliation of an individual to a particular country. The international judiciary has defined nationality, which can be deduced from the judgment of the International Court of Justice issued on April 16, 1955 regarding the *Notprum* case, as a legal relationship based on its foundation. On a social bond and a true solidarity in existence, interests and feelings are coupled with the exchange of rights and duties between a person and the state, and since investment in the field of crude oil refineries is an international contract that is not limited to the borders of the host country for investment and is not limited to the natural investor¹⁸. The Arab Investment Court was established under the Unified Agreement for the Investment of Arab Capital under the chapter on settling disputes. Article 28 of the agreement stipulates the establishment of a judicial structure specialized in settling investment disputes. It was ratified by the Eleventh Arab Summit Conference, which was held in Amman, in the Hashemite Kingdom of Jordan. A temporary body specialized in settling disputes arising from the application of the provisions of this agreement.

18 Al-Mursi, Khaled Sayed Mahmoud, *Diplomatic Protection for Citizens Abroad*, Egypt, Alexandria, Al-Wafa Legal Library / 1st floor, 2021.

After concluding the study on the subject of the legal system for the investment contract in the establishment of refineries to refine crude oil, a number of conclusions and recommendations were reached, which are summarized as follows:

CONCLUSIONS:

1- Countries, taking into account their economic conditions, have entered the field of international trade, although this essential element in the legal personality of the state is the element of sovereignty, as investment considerations in the field of establishing crude oil refineries and achieving economic development require huge sums and technical expertise that may not be available in these countries and countries resort to To set guarantees, privileges and incentives for the participation of the foreign and national private sector and to attract them to invest in the field of refining crude oil.

2- The Iraqi legislator in the Private Investment Law in the Refining of Crude Oil did not regulate the negotiations, despite their importance in determining the essential matters that pave the way for contracting and arriving at effective practical formulas that define rights and duties that can be agreed upon and distance the two parties from any future dispute that may be raised.

3- The legislative stability condition is a valid condition and helps to attract foreign investments, and there is nothing to prevent the state from complying with this condition as long as it does not conflict with the public interest and the legal system and does not entail prejudice to it except for the right to compensation for the foreign investor.

4- The Iraqi legislator did not address the problem of the lands extending from the point of delivery to the investing company in the event of a problem on the part of the land owners.



5- Refining crude oil is one of the most polluting industries for the environment, which prompted most countries to close them and establish new refineries in accordance with environmental standards and legislation.

6- The joint venture, which takes the form of a joint-stock company, is the best method for establishing oil refineries.

7- The different implications of concluding the contract, whether the countries are producing crude oil or not, in terms of supplying the investing company with crude oil at a preferential price.

8- The Iraqi legislator did not explicitly provide for alternative means of settling disputes, despite their importance.

RECOMMENDATIONS

1- Expressing the necessary attention in the aforementioned law and its instructions for its importance in attracting various investments to developing countries through which they can advance their oil industry.

2- Organizing the negotiations that pave the way for the contracting process and issuing instructions regulating the aforementioned purpose because of their great importance in organizing integrated contracts that result in the sale of oil, machinery and equipment and the transfer of equipment worth billions of dollars across borders.

3- Not to require a certificate of incorporation from the combined companies except after referral, as it is considered an obstacle to investment in the form of joint ventures that take the form of a joint stock company.

4- Addressing the problem of lands owned by others in the investment law, which may permeate the pipeline route in order to avoid the obstacles that may face the investor in the process of laying the pipeline to equip the constructed refineries.

5- The inclusion of a renegotiation clause in this contract because it is one of the long-term contracts and relates to an important commodity related to the economic aspect of the country, and political and economic changes may occur during implementation that necessitate reviewing the oil contract.

6- Determining the quality of the labor required according to certain competencies and ratios, as the mentioned process needs skills to avoid the problems that the investor may stick to.

7- Defining clearly the type of penalties that are imposed on the investing company when it violates its obligations that stipulate not to trade in crude oil for the purpose of refining it, nor in oil derivatives produced from government refineries in order to avoid problems that may arise when implementing the contract and to be a deterrent not to tamper with these companies with the economic capabilities of the state.

8- Recourse to arbitration in the investment contract for the establishment of crude oil refineries should be through an arbitration clause and not through an arbitration clause or arbitration by referral.



9- Organizing amicable means to resolve disputes in the Iraqi investment law, and the dispute that may arise with the foreign investor is settled amicably as much as possible.

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