

Investment Law in the Kurdistan region of Iraq

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A number of encouraging facts such as the young population, stable security situation, plentiful natural resources, investment opportunities, banking regulations, universities, and airports make the northern gateway to Iraq, the Kurdistan Region, one of the fastest growing economies in the world. From a legal and practical perspective, the Investment Law in the Kurdistan Region of Iraq No. 4 of 2006 (the "Investment Law") is the key motive behind the rapid development in this area.

The aim of this article is to outline the main aspects of the Investment Law, with a particular emphasis on the attractive incentives offered to foreign investors.

Treatment of the Foreign Investor

Foreign investors and capital are treated on an equal footing with national investors and capital. As Iraqi law does not allow for foreigners to own land in Iraq, the Investment Law creates a significant privilege at Article 3 by granting total ownership of project lands for foreign investors, though they may not own land containing oil, gas or mineral resources.

Exemptions for Foreign Investors

The following is a list of exemptions granted to foreign investors under the Investment Law:

1. The project shall be exempted from all non-customs taxes and duties for a period of 10 years from the production commencement date or offer of services.
2. Vehicles, instruments, equipment and imported machines for the project shall be exempted of taxes, duties, and import license requirements, provided they are imported through the border crossings of the region within two years from the date of the approval granted by the Chairman of the Investment Board in the Region (the "Board"), and are used exclusively for the purposes of the project.
3. Spare parts imported for the project shall be exempted from taxes and duties provided their value is not more than 15% of the project costs.
4. Machinery and equipment needed for the expansion, development, or modernization of the project shall be exempted from taxes and duties as well.
5. 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.
6. The investor may, in accordance with the provisions of the Investment Law, import all that is needed for the project, including machinery and equipment. These imports shall be exempted of all customs duties provided they enter through the border crossings of the region and are used exclusively for the purposes of the project.
7. The Board may, for the requirement of the public interest in the region, grant additional incentives and facilities to investment projects that are licensed under the provisions of this law and that enjoy one of

the following two characteristics in accordance with the rules set by the board for this purpose:

- Projects that are established in the less developed areas of the region.
- Joint projects by national and foreign investors.

8. The Board may grant service investment projects that are established in accordance with the provisions of the Investment Law (according to their nature, especially hotels, hospitals, tourist cities, universities and schools) additional exemption of duties on their purchases of furniture, furnishings and other items for the purposes of modernization and renewal once every three years, provided they are imported into the region and used exclusively in the project within one year from the issuance of the approval of the list of purchases and their quantities by the Chairman of the Board.

Legal Guarantees for the Foreign Investors

The Investment Law provides the following legal guarantees for foreign investors:

1. Investors may insure their investment project with any foreign or national insurance company that they consider suitable. This includes insuring all aspects of the investor's operations.
2. Investors 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.
3. Investors are allowed to transfer the profits of, and the interest on, their capital abroad in accordance with the provisions of the Investment Law.
4. Non-Iraqi employees in the project and those dealing with them outside of the region shall have the right to transfer their dues and wages abroad in accordance with existing laws.
5. Investors may return 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.
6. Investors may transfer their investment wholly or partially to another foreign investor or national investor or concede the project to a partner with the approval of the Board. The new investor replaces the previous investor in the rights and obligations evolving from the project.
7. Investors may open, in the interest of the licensed project and in accordance with the provisions of the Investment Law, bank accounts in national or foreign currency, or both, with banks inside and outside the region.
8. Taking into consideration the existing laws concerning the boards of directors of shareholding companies, projects that are registered in accordance with the provisions of the Investment Law shall be considered private sector projects, irrespective of the legal form or nature of the funds participating in it.
9. Investors shall enjoy the right to maintain the secrecy of technical and economic information pertaining to their project, as well as investment enterprises in accordance with the provisions of the existing laws, rules and regulations in the region. Whoever discloses any information that is in their possession by virtue of their post relating to the investment enterprise and the technical, economic, or financial aspects of the project under the Investment Law, may be subject to punishment.

Supremacy of Kurdistan Region Laws and Dispute Resolution

According to the Investment Law, investment disputes shall be settled in accordance with the contractual terms agreed to by the parties. If there is no clause in it for this purpose, the dispute will be settled cordially. In the event that cordial settlement is impossible, the two sides may resort to arbitration, the provisions of which are stated in existing laws in the region or in accordance with the provisions for the settlement of dispute that exist in any of the international or bilateral agreements to which Iraq is a signatory.

However, investors need to be aware that the laws of the Kurdistan Region have supremacy over the federal Iraqi laws and the international or bilateral agreements to which Iraq is a signatory, save for a limited number of matters detailed at Article 110 of the Iraqi Constitution (such as foreign policy and citizenship). Article 115 of the Federal Iraqi Constitution states that 'All powers not stipulated in the

exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute'. Therefore the provision of the Investment Law in Kurdistan Region shall be applicable, and it is considered best practice to state that 'Kurdistan Region Laws' are the applicable laws rather than 'Iraqi Laws'.

Conclusion

After decades of wars, economic sanctions, and devastation, Iraq, including the Kurdistan Region, needs a positive climate which supports this stage of the rebuilding process and which will benefit all aspects of Iraqi life. The Investment Law in the Kurdistan Region was issued with the view to creating such a climate, one that promotes investment, removes any legal obstacles and permits the investment of national and foreign capital collectively or individually in investment projects in a manner that contributes to the economic development process.