

CONSTITUTIONAL PRINCIPLES AND REGULATORY FRAMEWORKS FOR PROMOTING AND INCENTIVISING INVESTMENT: A COMPARATIVE STUDY OF THE PROVISIONS OF COMMERCIAL AND CIVIL LAW IN ALIGNMENT WITH OMAN VISION 2040

PRINCÍPIOS CONSTITUCIONAIS E ESTRUTURAS REGULATÓRIAS PARA A PROMOÇÃO E O INCENTIVO AO INVESTIMENTO: UM ESTUDO COMPARATIVO DAS DISPOSIÇÕES DO DIREITO COMERCIAL E CIVIL EM ALINHAMENTO COM A VISÃO DE OMÃ 2040

Article received on: 8/29/2025

Article accepted on: 11/28/2025

Majed Saleh Ahmed Al Adwan*

*Sohar Univeristy, Oman

Orcid: <https://orcid.org/0009-0002-2928-7941>
madwan@su.edu.om

The authors declare that there is no conflict of interest

Abstract

The Sultanate of Oman, like many other countries around the globe, has seen the importance of investment grow substantially over the years. Most countries have constructed constitutional, administrative, and commercial frameworks around investment and its related issues such as public infrastructure, public monies and public mechanism, the protection of private and public assets, and the issuing of limited government contracts and investment authorizations over public assets. This research sought to identify the issues surrounding the area of investment in the Sultanate of Oman, on both a micro and macro level. This research also sought to determine the extent and sufficiency of the Omani legal framework as it pertains to investments and its alignment to the Oman Vision 2040, in order to provide greater insight on the scope of public authority and discretion to enter into investment agreements and the public authority to amend such agreements. This study used a descriptive and comparative analytical approach to assess Omani constitutional and commercial legislation in order to assess the extent to which the legislation provides an adequate and comprehensive legal framework to the investments of a domestic and foreign character. In order to prove our point, which is the aim of obtaining such awards, is that the investment must be confined to a jurisdiction where there is a legal framework that defends the rights of both the contracting party and the state awarding the concession and there are legal provisions that reasonably regulate the aforementioned rights of both parties. Hence this research will address the notion and the essence

Resumo

O Sultanato de Omã, assim como muitos outros países ao redor do mundo, viu a importância do investimento crescer substancialmente ao longo dos anos. A maioria dos países construiu estruturas constitucionais, administrativas e comerciais em torno do investimento e de questões relacionadas, como infraestrutura pública, recursos públicos e mecanismos públicos, proteção de ativos públicos e privados e a emissão de contratos governamentais limitados e autorizações de investimento sobre ativos públicos. Esta pesquisa buscou identificar as questões que envolvem a área de investimento no Sultanato de Omã, tanto em nível micro quanto macro. Esta pesquisa também buscou determinar a extensão e a suficiência da estrutura legal omanita no que diz respeito a investimentos e seu alinhamento com a Visão Omã 2040, a fim de fornecer uma compreensão mais ampla do escopo da autoridade pública e da discricionariedade para celebrar acordos de investimento e da autoridade pública para alterar tais acordos. Este estudo utilizou uma abordagem analítica descritiva e comparativa para avaliar a legislação constitucional e comercial omanita, a fim de verificar em que medida a legislação fornece uma estrutura legal adequada e abrangente para investimentos de caráter nacional e estrangeiro. Para comprovar nosso argumento, que é o objetivo da obtenção de tais concessões, é necessário que o investimento se limite a uma jurisdição com um arcabouço legal que proteja os direitos tanto da parte contratante quanto do Estado que concede a concessão, e que haja disposições legais que regulem de forma adequada os direitos de ambas



of investment both domestic and international, in order to explicate its legal qualification and the applicable legal provisions and the implications of such provisions on the parties. This justification will be accomplished in two principal parts.

Keywords: Foreign Investment. Foreign Investor. Legal Rules Governing the Investment Climate. National Economic Policy for Investment. Administrative Authority Granting Investment.

as partes. Portanto, esta pesquisa abordará a noção e a essência do investimento, tanto nacional quanto internacional, a fim de explicitar sua qualificação jurídica, as disposições legais aplicáveis e as implicações dessas disposições para as partes. Essa justificativa será apresentada em duas partes principais.

Palavras-chave: Investimento Estrangeiro. Investidor Estrangeiro. Normas Legais que Regem o Ambiente de Investimento. Política Econômica Nacional para Investimentos. Autoridade Administrativa que Concede Investimentos.

1 INTRODUCTION

Toward the end of the twentieth century, the world experienced a major development characterized by the discovery and exploitation of oil, resulting in urban and economic development of unprecedented wealth. This wealth resulted in a considerable inflow of foreign and Arab investments, especially in the oil and gas rich Gulf States. To promote foreign direct investments, Gulf States included specific provisions of foreign direct investments in their constitutions and provided legal frameworks which guaranteed enhanced legal protection for foreign investors and reduced their commercial risks.

In the field of comparative law, the subject matter of investments is governed by the provisions of the constitution and the laws of the administration, and by analogy with commercial and civil law, with respect to the provisions of investment law and legal frameworks, with considerable emphasis on the development and formulation of a specific legislative regime in order to regulate and promote national and foreign direct investments, including investment law. As in Oman, most countries have a legal framework consisting of general rules and principles which govern the countries' investments in order to protect the countries' economic benefits and to attain the objectives of the legal system.

Constitutional provisions generally authorize the investment of state assets, and the associated regulatory framework is designed to protect the state's facilities, public assets, and the financial workings of the state, ought to any controversy arise. Like Oman, other countries seek to legislate on protection of investment contracts to ensure economic stability and uninterrupted public service delivery. This requires administrative bodies to

soften the legal administrative boundaries within which they operate, to increase the quality and the good faith of the investment protection contracts.

Legislative systems in the world work towards ensuring balance between the state and the investor. Oman, France, and Egypt are also among the countries which stipulate specific legal requirements to grant investors certain rights, in line with the parameters of international law on foreign investment contracts. On the other hand, a number of countries have placed the public interest of the state in the management of public assets, which are to be kept operational and in a state of uninterrupted functionality, within a framework that makes investment simple and readily accessible.

Building on the foregoing considerations and given the significant impact of investment on the state budget and on the proper, continuous functioning of public services. We deemed it necessary to examine the constitutional principles and regulatory parameters for promoting and incentivising investment, in comparison with the provisions of commercial and civil law, and in accordance with Oman Vision 2040.¹

1.1 Research significance and objectives

This study examines the legislative treatment of instruments of international investment, which the author considers particularly important as investments influence the trajectory of a country's further growth and development. This study will help countries refine their national laws on investment and the contracts made within the territory, in accordance with the norms of international law. This refinement may come in the form of express legislative provisions on investment in the Constitution, or an Investment Law as part of the hierarchy of laws, in recognition of the relevance and primacy of such laws. This study focuses on the legal consequences of integrating provisions on investment within constitutional frameworks, particularly the Basic Law of the State in Oman. The study also focusses on the legal means available under the Constitution to control investment activity with a view to facilitating speedy economic growth, in response to the demands of the contemporary era of economic and technological growth, within the parameters of Oman Vision 2040. In addition, the

¹ See: *Investment in Tunisia: Regulations and Governance (2020)* by Layla Yaakoubi, First Edition, Tunisia, Al-Atrash Complex for Publishing and Distribution of Specialized Books, page 38.

research explores the extent to which Oman's Investment Law aligns with other national investment laws, international investment treaties, and international trade agreements.

1.2 Research problem and questions

Starting from the main issues surrounding investment, this specific study considers the following major question: How do comparative law systems, including Oman, balance economically important contracts such as concession contracts, and investment contracts that are economically important yet have no specific provisions in constitutions? Addressing this main question would entail addressing several sub-questions which investment in a constitutional order would raise. These include but are not limited to the following:

- What are the differences and what legal rules govern the different types and classes of concession contracts and investment contracts?
- In the absence of specific national legislations of an unclear constitutional law, which investment contracts are not considered in the category of contracts that should be given constitutional protection, how much constitutional protection should be given to such contracts?

1.3 Research methodology

This study employs both descriptive and comparative-analytical approaches. The descriptive approach is used to define the concept of investment, explain and clarify its forms and areas, and describe the applicable legal provisions and their relevance to creating a secure investment environment that promotes and encourages investment within the Sultanate of Oman. The analytical method, on the other hand, facilitates the examination of the elements and manifestations of the phenomenon under study, as well as the analysis of relevant legal texts, to determine the correct constitutional and legal characterisation of investment and to assess the effectiveness of current constitutional provisions in addressing investment issues and their adequacy in confronting the challenges and complexities of investment contracts.

To ensure a coherent flow, it was divided into two main sections: the first focuses on the concept and substance of investment, while the second addresses the legal

regulations governing investment. Specifically, the first section explores the definition and scope of investment. The second provides a detailed analysis of the legal and regulatory frameworks governing investment under constitutional, commercial, and civil law.

2 THE CONCEPT AND SUBSTANCE OF INVESTMENT

Due to the low level of governmental support for development projects, both public and private, resulting from the global debt crisis, particularly in developing countries with abundant natural resources but limited technological and administrative expertise to utilise them, the need arose to rely on investment as a primary source of development financing in these countries. This section addresses the legal concept of investment and explains its substance, which will be discussed in the following two subsections.

2.1 The concept of investment

Concept of Investment

In the Arabic language, investment is derived from the root word “*istathmara*”, meaning “to seek” or “to request investment.” The term is also related to “*Thamar*”, which has several meanings, including the *fruit* produced by a tree, *offspring*, as in the saying “the child is the fruit of the heart²”, and forms of wealth. In technical or economic terminology, investment refers to “the use of funds in production, either directly through the purchase of machinery, equipment, and raw materials, or indirectly through the acquisition of stocks and bonds.³” Accordingly, and based on this definition, investment can be described as a means to achieve a fundamental change in capital within a precisely determined period, whether long-term or short-term, through the actual flow of financial liquidity rather than merely relying on existing balances, to reach the predetermined target.

² See: Alwan, Qasim Nayef. *Investment Management: Theory and Practice* (2012), 2nd ed., Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, p. 29.

³ See: Alwan, Qasim Nayef, *ibid.*, p. 29. The author defines investment in its economic sense, stating that it is “the actual allocation of funds to economic, social, and cultural projects, aimed at achieving the accumulation of new capital while increasing productivity or renewing and replacing old capital.”

From this perspective, the economic concept of investment, according to legal scholars, involves “the transfer of foreign capital from certain countries to another state to contribute to projects that expand economic activity.⁴” It is worth noting that Arab legislations incorporate several definitions of investment, for instance.

The Saudi Investment Law of ⁵1421 explicitly defines investment as “*The use of capital to establish, expand, develop, finance, manage, or partially or fully own an investment project in the Kingdom for economic gain*”. Article 1 also defines both the local and foreign investors. It describes the local investor as “*A natural or legal person of Saudi nationality who engages in investment,*” while the foreign investor is referred to as “*A natural or legal person who engages in investment, and who is not deemed a local investor in accordance with the provisions of this Law.*”⁶ Notably, these two definitions align synergistically with the modernised framework of Saudi Vision 2030. In contrast, the Omani Foreign Capital Investment Law No. 50/2019 adopted the following definition for foreign investment in Article 1, paragraph (f): “*Using direct foreign capital invested to create, expand, develop, finance, manage, or own an investment project.*”

It is noteworthy that Law Decree No. (8) Of 2001, regarding the Organisation of Direct Investment of Foreign Capital, was the first legislation to permit foreign investment and allow full ownership of companies. It was followed by Law No. 116 of 2013 and its subsequent amendments, which also permitted foreign investors to operate in all economic sectors, except those protected by the Constitution. This law also granted foreign investors various advantages, including tax and customs exemptions, land-use rights, and the ability to recruit foreign labour.

In the same context, reference may be made to one of the constitutions of comparative law jurisdictions that addresses investment in state resources, namely the Constitution of the State of Kuwait. Kuwait’s first constitution was issued in 1921 and consisted of only five articles, followed by the second constitution in 1938 and the third in 1961. The constitution currently in force is the fourth constitution, signed by His

⁴ See: Al-Juwayni, Ibrahim Mahmoud, *Explanation of the New Omani Investment Law According to Royal Decree No. 50/2019 (2022)*, Dar Al-Kitab Al-Jami'i, 1st ed., United Arab Emirates, p. 21.

⁵ Article (1) Paragraph (f) of the Saudi Investment Law issued on 5/1/1421 AH.

⁶ Article (1), paragraph (f) of the Omani Foreign Capital Investment Law issued by Royal Decree No. 50/20219 and published in the Official Gazette No. (1300). Paragraph (h) of the same article defines a foreign investor as “any non-Omani natural or legal person who establishes an investment project in the Sultanate.”

Highness the Amir of the State, Commander of the Kuwaiti Army, Sheikh Abdullah III Al-Salem Al-Sabah, on 11 November 1962. It is divided into five parts and contains 183 articles. Article 152 provides that: *“Any concession for the exploitation of a natural resource or a public utility shall be granted only by law and for a limited period. Preliminary procedures shall ensure facilitation of survey and exploration activities, as well as transparency and competition.”*

In the same context, the first Kuwaiti Constitution of 1921 addressed the issue of natural resources through only five articles—similarly, the second Constitution of 1938 and the third Constitution of 1961. The Constitution currently in force is the fourth Constitution, signed by His Highness the Amir of the State and Commander of the Kuwaiti Army, Sheikh Abdullah III Al-Salem Al-Sabah, on 11 November 1962. This Constitution is divided into five parts and comprises 183 articles. Article (152) provides that: *“Any concession for the exploitation of a natural resource or of a public utility shall be granted only by Law and for a determinate period. Preliminary measures shall guarantee the facilitation of exploration and discovery and shall ensure publicity and competition.”*

In legal jurisprudence, foreign investment is broadly defined as “the transfer of capital from the investing country to the host country without direct regulation.”⁷ Conversely, economists define investment as ‘the transfer of one of the factors of production across international borders to contribute to economic independence, whether directly or indirectly, to achieve the highest possible distinctive monetary return.’⁸ It should also be emphasised that the concept of investment refers to the set of contracts concluded between the state and a foreign party, rendering it one of the state’s administrative contracts. Although states enter into numerous contracts that do not fall within the category of investment contracts, investment, within practical reality, constitutes a series of activities that form part of the state’s broader economic development plans. It takes the form of a written agreement between the foreign company, which provides technical and financial assistance, and the host state, which commits to

⁷ Another aspect of legal jurisprudence is defined as: - “The direction of a portion of the foreign project’s funds or technological expertise to work in geographical areas outside the borders of its country of origin.” See: - Al-Jubouri, Ammar Muhammad, *Guarantees of Foreign Investment – A Comparative Study*, (2017), Al-Halabi Legal Publications, Beirut, Lebanon, First Edition, pages (15, 16).

⁸ See: Al-Jubouri, Ammar Muhammad, previous reference, page 17.

providing the agreed consideration, whether in monetary or in-kind form. In most cases, the host state is a developing country seeking to attract investment projects to its territory.⁹

Based on the foregoing, investment strategies vary according to the applicable legal systems, whether commercial, civil, or constitutional, and according to the extent to which these systems provide a sound basis for informed investment decision-making. In light of the self-disciplined traits investors usually demonstrate when chasing their goals, this deviation is especially noteworthy.

Therefore, it becomes necessary to address such expectations within coherent legal frameworks capable of regulating any fear, uncertainty, or even opportunistic behaviour that may arise from the investment process.¹⁰

2.2 The substance of investment

Investment is simultaneously a legal and economic concept, possessing a composite nature that encompasses several interrelated elements, beginning with the invested capital, passing through the investing party, and culminating in the project that constitutes the subject of the investment. These elements operate within a protective, regulated legal environment that governs the investment process in its entirety. Accordingly, most legal systems and investment-specific regulations have converged on the view that investment fundamentally rests on the allocation of capital to generate a future economic return.¹¹

The substance of investment is built on several essential pillars: financial, legal, and regulatory. These components collectively form the overarching framework within which the investment project is legally constituted, implemented, and ultimately evaluated for success, profitability, or potential failure, loss, or dissolution. Consequently, the starting and getting done with any investment project relies on a stable legislative field

⁹ Anz, Jalal Hussein, Investment Contracts and the Law Applicable to Them, Journal of the College of Law for Legal and Political Sciences, College of Law, Kirkuk University, Volume (1) Issue (2), Research published in 2012 AD, page 77 and beyond.

¹⁰ Abdul Karim, Yusra. Supervisor: Prof. Dr. Sabiha Hashim, Financial Investment Strategies – A Conceptual Framework (2016), Published Research, Journal of Economic and Administrative Sciences, Volume (22), Issue (88), Page 2.

¹¹ See: Abdullah, Abdul Karim. Investment Guarantees in Arab Countries: A Comparative Legal Study of the Most Important Arab Legislation and International Treaties with Reference to the World Trade Organization and its Role in this Field (2010) First Edition, Second Issue, Dar Al-Thaqafa for Publishing and Distribution, Jordan, page 18 and beyond.

granting actual legislative safety and sufficient safeguard promises, and this leads us to the essence of the investment contracts: are they to be seen as administrative or private contracts? Out of this view, one can say that investment takes place as the parties have a mutual will to establish some legal relationship, to be more precise one would say, to establish an investment contract, albeit their legal standings vis- a -vis one another are quite disparate.

In its essence, the investment undertakings bear in them the essence of the economic development of the host state to which the investment derive. The economic development allows the host state, by virtue of these contracts, to be in a position that is often considered as a commercial one, especially in developing these partnerships with foreign investors.

As such, an investment agreement may be defined as "an agreement formed between the state, on the one hand, and a foreign investor, be it a natural person or a corporation, on the other hand, usually consolidated within a concession agreement, for the purposes of the development and tilization of the state's natural resources."¹²

The foremost purpose of investing either locally or abroad is to assist the economic and social progress of the host state by introducing specialized knowledge and techniques and transferring monetary resources and operational abilities. Because of the enormous advantages that investment offers such as bolstering the state economy compared to other country's economy and alleviating the state's economic and social development. Today's investment is one of the fundamental benefits that most states depend on. Achieving these objectives, however, depends on creating an environment conducive to foreign investment by providing fundamental guarantees and optimal incentives that encourage and attract investment.¹³

The substance of investment is typically shaped by the broader investment climate in which it operates, particularly the availability of production factors on which it relies, as well as the body of laws and economic policies that shape and stimulate investment activity. It is also defined by the actual significance of investment for both the public and private sectors within the legal framework governing public-private partnership contracts. Investment is no longer confined to the oil sector; rather, it now extends to a wide range

¹² See: Fayyad, Muhib Abdul Jabbar, *Investment Dispute Resolution Methods: A Comparative Study* (2023), First Edition, Dar Al Nahda Al Arabiya for Publishing and Distribution, Cairo, Egypt, page 30.

¹³ See: Al-Dulaimi, Fares, *Legal Guarantees for Investment Protection in Iraq*, Research published in Volume (33), Issue (3) of the year (2022), *Journal of the College of Knowledge University, Iraq*, page 157.

of projects in agriculture, irrigation, and various forms of industrial investment. Creating a varied economy through the enhancement of all productive and service sectors is the key goal. Investments enhance the quality of services. Investments also assist the host state in providing services at competitive rates and mitigating the detrimental effects of plunging commodity prices. Additionally, it boosts the host state exports. .¹⁴ It is important to note that international capital is adaptable to various legal types depending on the character and extent of the investment. Accordingly, it is categorized as foreign direct investment (FDI), which is defined as, "the establishment of projects that are fully owned by foreign investors, or the purchase of ownership shares that give them the right to control the management of these projects, or grant them management participation rights, or such other rights".¹⁵ Foreign investments can also come in the shape of indirect foreign investments which designate to brief investments specifies to portfolio investments in financial instruments."¹⁶

Consequently, it can be seen that the essence of investment consists of the enormous advantages it brings to the host state. The foreign investment is necessary to the development of the nation as it is the key to the foreign capital influx that facilitates the host state's economic development by adding to the financial resources and liquidities. This foreign capital brings in numerous positive economic spill overs that shorten the time and assist in the timely achievement of the nation's development goals and the completion of the development of the nation's infrastructure. The improvements help to improve the welfare and living standards of the population. Moreover, investment equals to the creation of more opportunities in the labour market and as such, investment is a vital tool in the fight against the unemployment and in the improvement of the welfare of the population as it boosts the overall economic activities of the nation..¹⁷

¹⁴ See: Rashm, Muhammad Hassan, Mahdi Sabah Rahim, and Arslan Mu'ayyad Akram. *Investment Laws in Iraq and their Role in Attracting Foreign Investment* (2019). Published research, Tikrit University, College of Administration and Economics, Tikrit Journal of Administrative and Economic Sciences, Volume (15), Special Issue, page 108.

¹⁵ Al-Jubouri, Ammar Mohammed, Op cit, p. 30 et seq.

¹⁶ Ibid., p. 30 et seq.

¹⁷ See: Al-Hashimi, Muhammad bin Saif. *Foreign Investment: Guarantees and Incentives* (2024). Arab Studies Library for Publishing and Distribution, Sultanate of Oman, p 60 et seq.

3 LEGAL FRAMEWORKS GOVERNING INVESTMENT

The parameters which dictate where, when, and how to invest money in any given country do not come together in a sudden snap. Instead, they manifest themselves slowly and iteratively over time, reflecting the gradual culmination of the political, economic, and social environment in a country. This shows the contained value of intertwining jurisdiction with economies. Consequently, a plethora of policies have come to exist which govern where, when, and how to invest. With such a broad phenomenon, to engage with every document pertaining to the law governing investments is nearly impossible. This is why the focus of this discourse will be to engage, horizontally and vertically with the Constitution, and the commercial and civil law to identify and choose the most pertinent of the legislation associated with investments. It is those statutes which have been of paramount importance to the establishment and the evolution of the domain of law that governs investments.

3.1 Legal regulations governing investment under constitutional, commercial, and civil law

To begin with, one may distinguish the various laws regulating investment, which which interrelate with investment laws, such as public laws with their respective constitutional laws, and private laws with their respective commercial and civil laws, all of which fall under the purview of this study. Each of such branches offers an investment process in its different and successive stages, as the primary investment flows from the creation of an intended investment project, then moves to the practical implementation of the investment, followed by the rendering of judicial decisions, or the investment contract; and finally the investment activity is completed, where all of the investment activities end with the dissolution of the investment.

Although constitutional law is considered to be strict and exacting due to its emphasis on constitutional superveniens and its unique regulations that seek to protect the general welfare, it is also designed to provide a framework to guide investment and the benefits that might be derived therefrom. It is common to find a variety of constitutions containing specific clauses on natural resource and public utility management, and it is common for such clauses to provide that such property cannot be

alienated or exploited save for certain rigid regulatory requirements that seek to protect such property and maintain the equilibrium between the right to exploit the property and the defense of the state. In addition, a number of constitutions seek to foster and facilitate economically productive investment through clauses that provide for the equitable distribution of available public resources, the prohibition of economic concentration, and the imposition of obligations on a par with the state on the investor. It is these constitutional precepts that seek to protect the superveniens of a state and its constitutional economic and social order.

Regarding commercial law, both types of investors, domestic and foreign, are subjected to a range of legal duties related to the investment project company as to its specific capital and partners, as well as duties relating to the company's financial disclosures. All these obligations are to satisfy the requirements of company law and the law on the protection of competition in the host State of the investment project. Lastly, as for the civil law, the domain of the law on contracts and civil liability, alongside with the protection of acquired rights, is the basic substratum from which ought to be constructed the major legal guarantees regarding the relationship, on one side, the investors and on the other side, the investors' counterparts, be they natural or legal persons. Also, civil law contemplates other different principles relating to investment contracts, for instance, the absence of discordant advantages, the good faith and equilibrium principles of contracts, and the provision of structures for the resolution of disputes arising from the contract of investment, which may include arbitration, which is legally used as the means to fast track the resolution of investment disputes.

Most domestic laws and international treaties aim to establish legal infrastructures to protect investors and their investments. This is done mainly by the host State passing domestic laws that aim to protect foreign investments and the foreign investments that come with them.¹⁸ Investment is defined in legal terms as a business operation within the geographical boundary of the Host State. It is especially important in the case of developing countries which have a lot of natural resources but are also deficient in

¹⁸ In light of these ideas, Article (152) of the Kuwaiti Constitution included a fundamental provision for investing a resource of the State's natural resources or a public facility of the State's public facilities by a law issued by the competent authority to issue it, coupled with a specific time period, to address with this text any problem that may occur as a result of investment. It is an important point for protecting the economic integration of the State of Kuwait and achieving its positive effects and occupying a desired position, similar to the major countries that stipulated in most of their constitutions such an article.

financial resources, technical know how, technology, as well as practical experience, and fundamental managerial skills required for the efficient utilization of these resources.

In order for an investment to be productive and also profitable to the investor and the owner of the investment, and at the same time advance the Host State's and the administrative, social, economic and political, it is necessary to extend legal protection and guarantees. These measures are necessary to defend the interests of those involved and to allow the investment to proceed and be implemented as planned.

Consequently, host states were required to implement investment legislation that could create a pro-investment environment for foreign capital holders by offering legal guarantees that foster investment. These consist of, among others, legislative provisions that offer financial benefits, tax breaks of certain categories, and general provisions, all within a stable and predictable legal environment devoid of legislative inconsistency and regulatory unpredictability. This is one perspective.

From another perspective, host states have the obligation to provide legal mechanisms for the resolution of disputes arising from investment contracts—most notably, arbitration—by specifically providing for it and not leaving such disputes to domestic civil and commercial laws. Arbitration is considered one of the most effective legal mechanisms for resolving disputes arising from investment contracts, to the satisfaction of both contracting parties. On the contrary, the domestic legislation of the host state that governs commercial matters, including franchise contracts and investment contracts, is likely to be more protective of the host state's interests.

As such, establishing stable legal conditions for investment—for establishing transparent, accessible, and uniformly implemented legal frameworks—is a genuine and fundamental condition for successfully achieving foreign investment and the goals that come with it. To this must be added the political stability and security of the State as a natural corollary. The protective measures, both substantive and procedural, that will remain stable legally, are without a doubt, some of the best means for the promotion and attraction of investment.

3.2 The legal frameworks governing investment under the regimes of comparative law jurisdictions

It is well established that most investments in various jurisdictions are subject to stringent legal constraints intended to secure mutual benefits for the parties to investment contracts, preserve the sovereignty of States offering investment projects, and safeguard the public interest arising from the execution of investment projects governed by either international or domestic investment agreements. These constraints generally fall into three categories: legislative and statutory controls, regulatory controls governing the administration of investment contracts, and judicial controls.

With respect to the first category, namely, the legislative and statutory frameworks governing investment contracts, most national legal systems have adopted this approach within their legislative structures. This has been reflected in the enactment of statutory provisions regulating investment activities, whether by authorizing or restricting foreign investments, or by requiring prior approvals from competent authorities responsible for overseeing investment activities in strategic sectors such as renewable energy, minerals, petroleum, and other vital projects that contribute to sustainable development in the host State.

The second category is about the regulatory mechanisms for the supervision of investment contracts, which all Countries of the World adopt. These mechanisms focus primarily on the foreign investor's obligations for financial reporting and the legal obligations on the foreign investor to provide transparency on the benefits that perform or operate the investment project will yield to its beneficiaries, be they nationals or to other investors managing the project and implementing its goals. These mechanisms also involve the outlining of the regulatory frameworks and of the supervisory powers that the concerned authorities have in this case.

And in relation to the third category, that is, the judicial control, most Countries of the World are of the view that there are certain basic judicial values that have to be incorporated in the governance and execution of the investment projects and which include the rule of law and equality such that the investor is guaranteed the right to invoke these rule(s) before the administrative tribunals as a matter of right for claims or grievances to be heard in the case the host State takes unlawful actions. Such protections

also include the administrative tribunals and their special chambers which should be called upon in the disputes between the investor and the State.

Considering the above, an exploration of the nature of the legal restrictions on investments must first deal with the nature of the specific types of investment contracts and the specific investment contract types and their relationships with other types of contracts. As a result, the specific legal rules must be thoroughly examined and interpreted. It is accepted, and is a truth universally acknowledged, that the Host States have certain Powers in their investment Contract/s, which, in relation to the other party/ies to the contract, have greater Powers in the Legislative, Executive and even Judicial (powers) concerning the disputes that arise. On the other hand, the investor will have to ascertain which legal rules of the Host state provide him with sufficient legal claim and due legal protection of his rights from being adversely affected and, when the need arises, due to the preservation of the reasonableness of the contract to be recreated when the situations during the execution of the investment project, which require some intervention, justify the need to restore the contract to its original position.

In this regard, reference must be made to Article 25(2) of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention), which defines the foreign investor as follows: “The term ‘national of another Contracting State means: “any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration...”¹⁹It should also be noted that, as a matter of sovereignty, the host state of the investment contracts enjoys immunity from the investor's courts. The investor, their state, and its laws do not have the authority to subject the host state to their courts and rules, and consequently, to enforce judgments against their investment. Therefore, such contracts are subject to international commercial arbitration, which does not constitute a waiver of the sovereignty of the state involved.²⁰

¹⁹ Article (2/2) of the Washington Convention (Convention on the Settlement of Investment Disputes between States or Nationals of Other States) concluded on March 18, 1965.

²⁰ International arbitration centers have been established in major countries, such as the ICSID in Washington State, USA, the ICC in Paris, France, and the Cairo Regional Centre for International Commercial Arbitration. These are discussed in detail in: Nassima, Dabdabi, and Wahiba, Ben Kouider, International Commercial Arbitration in the Field of Investment, published research, Dr. Yahia Fares University, Medea, Faculty of Law and Political Science, Department of Law, 2018/2019, page 26 et seq.

4 CONCLUSION

This study aimed to investigate the existing constitutional foundations and controls for encouraging and stimulating investment in its current state under the national constitution. The legal deficiencies therein, to find a special constitutional legal adaptation for it, similar to other concession contracts mentioned in the constitutional systems of most countries of the world, and to propose new regulatory clauses that govern the concept of investment, so that we make it a constitutional and commercial legal status that achieves its theoretical objectives on the one hand, and the desired practical objectives on the other hand. This study concluded with a set of results and proposals:

5 RESULTS

The ease with which potential investors can forge and sign investment deals can be negatively impacted by the abundance of natural resources and the complex legal restraints that accompany them, more specifically, the framework that contains little to no elaboration on the workings and objectives of investment regulation within the constitution, as investment regulation is treated as a secondary economic policy of the constitution. Consequently, the great reliance on the constitution as a framework to guide the objectives of a ‘destination for investment’ country on the one hand, and to provide comfort to the investor on the other hand, is arguably one of the most important pillars, by way of guaranteeing the investor protection for the interests of the investor in the form of adequate investment laws that treat investment regulation, in and of itself, as a sufficiently important policy of the State that is a necessary and fundamental pillar of State policy, with a system of laws that provide a framework of protections to ensure the principle of mutuality of benefits in the investment.

More importantly, within the scope of its legal definition or in its manifestation in practice through the execution of investment activities, it can be agreed that the essence of it is an economic activity of an entrepreneurial character, directed towards the advancement of a critical sector of the economy. On that basis, even though it is held that there is adequate scope for the activity to be classified as the entrepreneurial character of the economic sector, there is, in fact, a draft constitution that is bereft of any adequate

portrayal of the substance of structure in order to elevate the degree of its significance and the extent to which the significance is portrayed.

6 RECOMMENDATIONS

The study's legislative and judicial analyses have shown how current constitutional provisions do not sufficiently answer questions about investment, and thus the constitution should contain provisions that answer these questions. Thus, we suggest the investment provisions be added to the Constitution, as these provisions will, in due course, remove the legal and doctrinal uncertainty about investment, thereby enhancing the legislative framework. This objective can be achieved primarily through the inclusion of separate investment provisions in the constitutions of these jurisdictions. These constitutions should confer the right to obtain necessary economic information and the legal information that would enable the investment to be made within the framework of a constitutionally regulated investment law. Such provisions would provide a foundation for both parties to the investment, as well as a clear and stable basis for a sound and well-regulated conduct of the investment. To improve the legal framework, such a constitution should contain a separate and distinct provision that is designed to foster a balanced investment climate around sound legal norms and guarantees an equitable response to both foreign and domestic investors in the discretion afforded to them in the investment contracts.

Additionally, we hope the legislative power, with the scope of interpreting, constructing, modifying, and articulating legally sanctioned responses to new problems, will, for the judiciary and investment-related bodies, address foreign and domestic investments in new Constitutions and in sufficiently detailed and concrete terms. In this regard, we call legislators of all States to encode a principle of harmonisation in regard to constitutional provisions addressing investments and the effective investment legislation. Such harmonisation is imperative to sustain investment and guarantee the safe and effective exercise of investment of all types of natural resources.

REFERENCES

1. Al-Dulaimi, Fares. *Legal Guarantees for Investment Protection in Iraq*, Published Research, Vol. 33, No. 3 (2022), Journal of Al-Ma'aref University College, Iraq.
2. Al-Hashimi, Mohammed bin Saif. *Foreign Investment: Guarantees and Incentives* (2024), Arab Studies Library for Publishing and Distribution, Sultanate of Oman.
3. Al-Juwayni, Ibrahim Mahmoud. *Explanation of the New Omani Investment Law in Accordance with Royal Decree No. 50/2019* (2022), Dar Al-Kitab Al-Jami'i, First Edition, United Arab Emirates.
4. Al-Jubouri, Ammar Mohammed. *Foreign Investment Guarantees – A Comparative Study* (2017), Al-Halabi Legal Publications, Beirut, Lebanon, First Edition.
5. Alwan, Qasim Naif. *Investment Management: Between Theory and Practice* (2012), Second Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan.
6. Abdul Karim, Yusra. Supervisor: Prof. Dr Sabiha Hashim. *Financial Investment Strategies – A Conceptual Framework* (2016), Published Research, Journal of Economic and Administrative Sciences, Vol. 22, No. 88.
7. Abdullah, Abdullah Abdul Karim. *Investment Guarantees in Arab States: A Comparative Legal Study of Key Arab Legislations and International Treaties, with Reference to the WTO and Its Role in This Field* (2010), First Edition, Second Printing, Dar Al-Thaqafa for Publishing and Distribution, Jordan.
8. Anz, Jalal Hussein. *Investment Contracts and the Applicable Law*, Journal of the College of Law for Legal and Political Sciences, College of Law, University of Kirkuk, Vol. 1, No. 2 (Published 2012).
9. Layla Al-Yaacoubi. *Investment in Tunisia: Provisions and Governance* (2020), First Edition, Al-Atrash Group for Publishing and Distribution, Tunisia.
10. Fayyad, Muheeb Abdul Jabbar. *Means of Settling Investment Disputes: A Comparative Study* (2023), First Edition, Dar Al-Nahda Al-Arabiya for Publishing and Distribution, Cairo, Egypt.
11. Rashm, Mohammed Hassan; Mahdi Sabah Rahim; and Arslan Muaid Akram. *Investment Laws in Iraq and Their Role in Attracting Foreign Investment* (2019), Published Research, Tikrit University, College of Administration and Economics, *Tikrit Journal of Administrative and Economic Sciences*, Vol. 15, Special Issue.

II. Laws

1. Basic Law of the State of Oman issued pursuant to Royal Decree No. 6/2021.
2. Investment and Commercial Court Law, issued pursuant to Royal Decree No. 35/2025.
3. Kuwaiti Investment Law No. 8 of 2001.
4. Kuwaiti Investment Law No. 116 of 2013 and its amendments.
5. Constitution of the State of Kuwait (1962).
6. Saudi Investment Law, issued on 5/1/1421 AH.
7. Omani Foreign Capital Investment Law, issued pursuant to Royal Decree No. 50/2019, published in the Official Gazette, No. 1300.
8. Washington Convention (Convention on the Settlement of Investment Disputes Between States and Nationals of Other States), concluded on 18 March 1965.

Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

How to cite this article (APA)

Adwan, M. S. A. A. (2026). CONSTITUTIONAL PRINCIPLES AND REGULATORY FRAMEWORKS FOR PROMOTING AND INCENTIVISING INVESTMENT: A COMPARATIVE STUDY OF THE PROVISIONS OF COMMERCIAL AND CIVIL LAW IN ALIGNMENT WITH OMAN VISION 2040. *Veredas Do Direito*, 23(1), e234138. <https://doi.org/10.18623/rvd.v23.n1.4138>