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Analysis of obstacles and shortages of foreign finance supply in Iran laws

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Abstract

It can play an important role of foreign finance supply which it is famous (Finance) in developing countries such as Iran. The capital needs a secure environment for operation thought the accepting fund should provide a secure and legal base for their confidence. The important point in this concern, it is the security and stability in the economic, political and regulation field in any country industry for absorbing foreign funds. The point of risks and their efficiency on foreign investment and its management is important. In this paper it is analyzed eight methods of foreign supply and its legal situation in Iran.

Keywords: Foreign financial supply, laws, absorbing fund, legal obstacles, Finance, development

1- Introduction

It encounter with different economic tasks as not just developing countries, even the developed countries that their solutions are just by theoretical and empirical methods. One of the newest and the most efficient economic devices, it is foreign investment that far apparent from foreign fund supply it is an important subject for defining future economic growth rate. The most important and efficient solution of development goals in a country, it is the powerful economic construction and active finance bazaar. It is not sufficient because of poverty and lack of savings in most of the developing countries and for doing sub construction projects and because of it most of those countries have to supply their finance from foreign sources and in this concern it shapes growing to foreign funds. The aim of writing this paper is identifying the obstacles in front of foreign investment in developing country such Iran. The requisite of such discussion it is why our country has a little foreign investment.

Different subjects may increase the foreign investment. The most important ones of these subjects it is a legal construction that at least needs to transfer the point to other systems. At the end it was suggested some solutions for putting aside the obstacles in front of foreign investment.

2- Kinds of foreign finance supply

Such the classifications it can point to debiting and indebteding methods which needs conceptual methods. In indebteding method there are direct and indirect methods of investing in foreign direct investment (FDI) the role of transferring extra capital to foreign countries it makes stability for in all over the world. Although undeveloped countries are at risk of international companies, but some countries in this comparing do not apply to FDI methods. They are committed to failure or low economic growth. The foreign investments direct and indirectly are important points and efficient on development.

(It is told by Mohamad kazem Emadzade & colleagues, the Political and Economical Etelaat No.234, Alternative Forms of External Finance”, World Bank Research Observation.pp. 1-234 Classsens, Stijn S., (1993)

3- The concept of foreign investment

The dictionary defines foreign investment such: It is transferring materials from a country (exporting country) to another country (Importing country) according to applying an economic company, beside direct or indirect cooperation and applying this amount in the economic company and it is the difference point of foreign investment from foreign trading. (Riesenfeld,. S.A. (1985) “Foreign Investment”, In Encyclopedia of Public International Law, Vol. 8, p. 246)

In another definition of foreign direct investment it is called the procedure that the origin company controls its properties in accepting country, to reach distribution and other activities. (Rezayi, M. The article of foreign cooperation as implementing act 44 constitution, 2008)

4- Kinds of foreign investment

This kind of investment from the point of sources divided into direct and indirect.

The foreign indirect investment is just gaining profit, and usually it is via buying shares and currency documents via individual investors, insurance companies and financials etc.

The world trade organization defines the foreign investment such: «When an investor in a foreign country (Origin country) buys some properties in another company (Accepting country) in that situation it happens FDI. » (World Trade Organization (1996b) “Annual Report” Vol. 1, Trade and Foreign Direct Investment, WTO, Geneva.)

5- Legal base of foreign investment

It needs to suitable legal bases in spite of political economical bases for foreign investment. The potential investors before any action try searching on its political and economic and legal systems. These studies, in fact, make eight fundamentals of their decision. So for replying this question is there suitable legal bases in Iran for foreign investment? Or not. It is natural it should analyze the current laws which it is efficient on the subject. Because the role of laws and regulations are such important at foreign investment that someone knows the undesirable political situations by a suitable legal system descend and decrease the disputes to the less point.

5-1 The legal of absorbing and foreign investment

It is the legal interaction the point of discussion and the attempts due to the activities encouraging the current of capital and knowledge at international territory. This leads to basically modifications at national making policies in the frame of rules and the legal documents in international territory. In this concern the countries encountering becomes more facilitate about direct foreign investment in countries.

The writings during the last decades, it is about the Importance of foreign direct investment and they all are about growth and economic development of countries. Because they are all lead to increasing countries' investment and it is a device for transferring technology, management and accessibility to foreign selling bazaars.

Due to one the most important rules of international laws or the authority of countries on natural sources: «Any country is legible on foreign investment at its authority regarding to its laws and regulations and regulate them by its rules. And no country has to treat preferable treatment against foreign investment. » (The act 2 of charter 12 Dec 1974, the general assembly of the United nations, told by Leila Zabab)

In spite of international regulations and international brutal boycotts on foreign investment prevention (Ajili, Hadi & Keshavarz Moghadam, The paper of international boycott and its effect on Iran economy development, The magazine

Rahborde Toseye, No.36, 2013) It makes some obstacles in local regulations in front of foreign investment, in the following it is analyzed.

5-1-1 Limitations of act 139 constitution laws

It was made limitations due to act 139 of constitution laws regarding to local and governmental properties, and they are known main obstacles in front of foreign contracts and investments.

Due to mentioned act: «calmness of disputes regarding to public and governmental properties or transferring in any motioned fields is depending on minister's council admission and should inform to the council. In the cases the side of the dispute is a foreigner or in very important cases, it should prove by the council. The important cases are defined by laws. »

There are many interpretations about this act (: Imam, Pages, 308-332) this point is following the new interpretation from the authorized institutions and no modification, this obstacle is in front of foreign companies which their side is government or local parts and the mentioned act should operate about them. But anyway, as it was mentioned about the company's substitute of companies in act 30 of trade laws, they are known Iranian company and they have the same rights as local company but anyway it is depending on ministers' council and parliament admission. In addition to about the solutions of contract disputes between foreign countries (As a legal personality), the parliament admission is necessary.

This point indicates necessary that it make necessary to refer deutes regarding to local properties and it has been declared different interpretations in this concern specifically the side of the dispute be Iran national oil company and there is no conflict with act 139 constitution laws. Because by the investigations from legal parts, it is gained that the charter of 1975 of Oil Company made this possibility «authorizes about peace and defining the jury in company conflict and disputes» it is possible for management council and necessary.

(The magazine of legal researches, No.35-36, P.316, told by Dr. Mostafa Zeine din)

In addition to state operation for adjusting international contracts, specifically some acts of these contracts regarding to transferring to prior referee it need not the council permission. Line 11 «The admission of foreign investment», the principles over the contracts, civil cooperation and mutual sealing» which they concern contract, on possibility Iran makes eth local courts judgment and defining or making them as arbitration for the mentioned contents.» The contrary concept of this means as the Iranian courts were not able judgment even the foreign courts could be selected as reference, in addition in this method eth arbitration method was defined precisely, that it is clear as eth mentioned systems refer to arbitration about the foreigner side, it had better the council support the state about future contracts of government. Because on other situations Iranian institutes encounter difficulties on contracting foreign countries. Our other method concerning to act 139 of constitution laws at the conflicts of the state and foreign countries, it is forwarded to ministers council admission and the council. Regarding to the act 139 it gained that immerge the arbitration act is banned in the contracts generally. Because this act clarified referring to arbitration, on the situations foreigner, it should admitted by council, so as there is no conflict giving the admission from council is non-sense but on condition of conflict and dispute, the council admission in addition to ministers council is deniable.(Eskini, Rabiya,(1992), points of international trading laws, Daneshamouz Publication, first version, Pages 156&160)

It can be suggested due to act 139 of constitution laws for evading this fault, it should be shaped on a position on contracting it emerges an act which permit applying arbitration without council admission. The comprehensive cause of this suggestion it is international custom and procedure at international dealings specifically- the investment contracts and loans- it can not force the foreigner admit the constitution act, and the arbitration point which foreigners know important, put silent on conflict time.

4-4 Prohibition of foreigner's possession on no transferable properties by foreign investors

One of the obstacles in front of foreigners' investment it is prohibition of foreigners' possession in Iran that now we analyze its legal points: After the admission of foreigners' investment, from the points important for investors, they are the subjects such: they are transferring profit and fund out of the country, possession deprivation and the subject of solving disputes.

A- About the first affair, it means transferring profit and fund it can be told, one of the interest accepting foreign investment can give foreign investors, it is the possibility of transferring fund and profit to out of accepting country. Though there is in most of the documents concerning to foreign investments such public mutual or regional it was permitted to transferring fund or profit out of the accepting country.

Regarding to the second point, although prohibition of possession of foreign investors, but it was decreased a lot and both of the groups confirm by international laws' views, prohibition of possession and nationalize the foreign properties they are obvious rights of countries because the base of such right is from known international laws, such nation's right on defining their destination.

("Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2003-2004)". I.C.J Reports, 2004, Advisory Cases, 2003, p. 118. Available at: <http://www.cij-icj-org>.)

Lots of lawyers know this principle as the ordering international laws, such the principles were insisted at general assembly charters and some other parts of the United Nations, specifically in paragraph one of act 2 «The charter of economic charter of duties and rights of countries». (Mirabasi, Seyed Bagher, «Nationalizing at international laws», The legal magazine of law faculty of Tehran University, No.28, Oct, 1992, P.144)

The only dispute in this concern it is the method of damage evaluation. In exporting countries formula, the compensation (fast, sufficient fair) was declared and the formula of accepted developing countries, it is (fair compensation) or (suitable) or (fair).

(Hashemi, Abbas, "International Oil Companies Contractual Rights under oil agreements, Overview of the leading international decisions", Workshop of experts from OPEC members states on upstream petroleum Contracts, Margarita Island, Venezuela, 23-24 Nov, 2004.)

It needs mentioning foreign investment break the accepting countries' laws and restraining their properties, it does not need any compensation. (Zabah, Leila, The article of legal obstacles for investment in gas and oil part).

4-4-1 The agreements of encouraging and supporting foreign investment at arbitration

The act 19 of foreign investment at solution of international disputes between the states and investors, but demanding possession needs some requisites.

Due to act 9 of the documents of applying of fields and local sources at free trading- industrial free zones of Islamic republic of Iran not only it is not legal and even the selling and transferring companies or a part of it concerning foreigners) is prohibited. Though during the regulations of foreign countries in Iran they can act as a local company and also it can not possession the transferable properties in free economic zones.

4-4-2 The ownership of no transferable possessions by foreign investors

Does the act of foreigner investors know any extra part regarding to the act of foreigners' ownership prohibition for absorbing their funds, or not?

The line 2 of the foreigner's investment laws defines such: «The act of prohibition foreigners ownership has been still working admitted 1931/5/30. The ownership of any field to any amount is prohibited for foreigner investor.

It needs mentioning sub complex 2 of investment, at sub complex 1 of act 3 investment laws, it was clear at 1945, which it was defined: «The act of prohibition foreigners ownership has been still working admitted 1931/5/30. The ownership of any field to any amount is prohibited for foreigner investor. Though it defines the foreign investment needs to interpretation of other acts and in fact they are transferred to other regulations. There are some faults in this concern which we try introducing them.

First: In regulating the act 2 of mentioned rule it was not followed the rules and this affair lead to adding a sub complex, which it is not without relation to other parts of act. In the other words, it can not be admitted a foreign investor own the non transferable properties according to the mentioned laws, and this lead to confusion.

By considering the dialogues of Islamic council it was cleared, the review of the act on its admission time, by this introduction, by the faults regarding to the investment document and the tendency of ammeters, such as these faults and the presence of world extremist so the foreign investment running in our country it needs the admission of the supervisory council on its regulation. (The formal journal, No.166021, P.8)

The note following the act of investment and the property does not concern foreigners. Although it seems there is no need for the following needs because as there is not any new regulation about foreigner possession, without any doubt the act admitted in 1931. In addition, not only such note about the foreigner's possession could not solve the problems, it causes taking distance of admission foreign investment. It is an insisting on foreign investment, and they obstacle investment In Iran.

Second: It is what on note 2 makes the point more important, it is by admission 1931 under no condition the possession of foreigners and no mentioning and it is unrelated to foreign investment because this act is just about transferring the agricultural fields to foreigners. In other words, just the ruler wanted that it ban the possession of foreigners about agricultural fields. In that situation may very less of foreigners need to pose the agricultural fields, and the act of 1931 solve the problem.

As it was mentioned in this concern the possession of foreigners, admitted 1939 about foreigner's prosperities, and it seems more acceptable. In which the admission of such point seems difficult and a close relation to the laws, depending on the position of habitation or doing industry and selling or buying in Iran via foreigners it defined that there is no concern to the act of foreigner's possession so the admission of such point it does not seem acceptable, far apparent of it no admission would be review after 18 years.

The act of foreigners' possession was admitted by present Minister's sign, but it is not clear the admission can permit following which laws? As it was predicted making a minister as administer of admission an act according to act 138 constitution laws, it seems there is no doubt about its credit. In addition to it it was added to the admission No. 8930 dated 1954 and relatively accepted. More important, it was pointed at not 7 of act 2 «The review of act 1,2,3, the act of some omissions of registration» and also this admission confirmed by the parliament. (The legal magazine, No.22, Pages 255-256)

But under any condition, there are possibilities of the act source (Ibid, P.256-258) but regarding to the doubts it van not reach to the defined point about it. Although as it was declared, it can not be the foreigner's possession can be the source of this act and nevertheless it is not clear why pointed to it.

5. Conclusion

There are different subject can increase the foreign investment, the most important subject it is the legal construction that it

has the less transferring objectives to the laws and regulations. Now the act of absorbing foreign funds can not be reliable in front country needs. Though the revision in the regulations it seems necessary to omit the obstacles in front of foreign investment.

As generalizing the foreign investment it should follow a stable method, because it leads to decreasing applying the rules which has no relation. Referring to some regulations specifically about the taxes and baking affairs are predictable. Whenever the act of foreign investment act they were defined comprehensively, it can expect that it is a general act. With this concern in addition to foreign investment, it can be more absorbing foreign funds, and with glance to constitutional laws, the five-year development agenda, budget rules, the act of encouraging and supporting foreign investment and it pointed to foreign investment.

At the end there are some suggestions as followings:

- 1- It should compile the admissions, entering the people and registering foreign funds clearly.
- 2- It should clarify legal situations and facilities for entering funds. The most important point in admitting the foreign funds it is financial facilities to investors, the country which is looking for absorbing foreign funds and by this affair it can make the bases for foreign investment and decrease the risks for foreign investment so in this way it makes more bases to bring funds to its country. These interests can be such the taxes, decreasing the customs in its country.

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