



Investment Protection Under Jordan's Investment Climate Law

Investment policy is growing to be a focal point of interest in Jordan, for both internal and external actors and stakeholders. Such policy revolves primarily around the domestication of certain international law standards and practices. However, International Investment Law (“IIL”) offers peculiar characteristics which transcend the traditional dichotomy of the branches of the law. IIL neither falls under the scope of public law, nor does it fall within the confinements of private law. It also combines aspects stemming from both, international and national legal frameworks. It may apply unilaterally to States, bilaterally or multilaterally. Although certain substantive standards of IIL have become absolute, IIL – in its modern sense – may not be regarded as a singular legislative block; instead, it is a combination of multiple heterogeneous components and relative substantive instruments of legal dispositions; continuously developing from as early as the eighteenth century. Compiled by jurists specialised in international investment law, international public law, and international commercial law, this Article aims to shed light on the domestication of international investment law in Jordan, by breaking down the so-called “absolute” standards of investment protection as adapted in Jordan’s Investment Climate Law No. (21) of 2022 (“Jordanian ICL”).

Jordanian Investment Policy

The Jordanian ICL provides in its Article (3) the objectives of investment policy in the Kingdom which aims to achieve economic and developmental visions that seek to create job opportunities, increase economic growth, improve competitiveness, and enhance the business environment. With that in mind, Jordanian investment policy is based on the following principles:

1. **Equality & National Treatment:** This principle ensures equal rights, privileges, and obligations between Jordanian and foreign investors, and requires the treatment of all investors fairly, equitably, and transparently.
2. **Protection of Investments:** This principle aims to safeguard foreign investments from interference in the activities, rights, and legally recognized interests of the investor or the company in which the investment is made.
3. **Shift from Prior to Post Supervision:** Under this principle, control by the relevant authorities shifts from pre-emptive measures, falling prior to the commencement of the commercial activity, to control subsequent to the admission and establishment of the investment.



4. **Encouragement of Investment:** Stimulating and encouraging investment in entrepreneurial projects, innovation, and research and development projects.
5. **Development of an attractive Investment Environment for SMEs:** Creating a suitable environment for the development of small and medium-sized enterprises.
6. **Digitalization and Automation:** Digitizing and automating all procedures and services provided to investors.
7. **Enhancement of Competition:** Promoting competition, preventing monopolies, and ensuring consumer protection.
8. **Environmental Protection:** Safeguarding the environment, transitioning to a green economy, ensuring public safety and health, and adhering to social standard

To enable such a policy, the ICL attributed fundamental rights to investors, thereby setting a rather large scope of benefits. Article (5) of the Jordanian ICL grants investors various rights:

1. **Investment in the Kingdom:** The right to full ownership or participation in any economic activity, except for those activities restricted by regulations.
2. **Currency Conversion:** The right to legally convert the currency used in the Kingdom into a convertible currency.
3. **Transfer of Convertible Currencies:** The right to transfer convertible currencies within and outside the Kingdom without delay, in accordance with global financial practices and prevailing legislations.
4. **Compensation for Losses:** The right to claim compensation for losses incurred based on the investor's good faith reliance on any decision issued by an official entity or any commitment made by such entity towards the investor, provided that the decision or commitment exceeds the scope of prerogatives conferred to the entity's authority.
5. **Employment of Non-Jordanians:** The right to employ non-Jordanians in administrative and technical positions that require specialized skills, up to 25% of the total number of employees. This percentage can be increased up to 40% if it is not possible to provide Jordanian labour for these positions.
6. **Liquidation or Termination:** The right to liquidate or terminate his/her investment activities.
7. **Other Rights:** Any other rights granted by this law and the applicable legislations.



The added value of this Article is crucial as it places the absolute standards of protection and treatment offered by Jordanian ICL at an equal footing with recognized international standards of such absolute investment protection and treatment.

Absolute Standards of Investment Protection

In the context of international investment law, an absolute standard of protection refers to a set of standalone legal principles and to well-defined, unalterable and non-negotiable guarantees that must be provided to foreign investors, irrespective of specific conditions or the treatment accorded to other investors (both domestic and foreign). The Jordanian ICL comprehensively covers such absolute standards of investment protection, setting clear parameters thereof, so as to mitigate legitimate expectations.

I. Fair and Equitable Treatment

Fair and equitable treatment (FET) is a fundamental principle in international investment law that aims to protect foreign investors from unfair and unjust treatment by host States. This standard is commonly included in bilateral investment treaties (BITs) and multilateral investment agreements, serving as a cornerstone for investor protection. The domestication thereof within the Jordanian ICL contributes to the attractiveness of Jordan's public policy towards foreign investments.

A. Key Components of Fair and Equitable Treatment under International Investment Law

- 1. Protection Against Arbitrary and Discriminatory Actions:** FET ensures that the host State does not engage in arbitrary or discriminatory practices against foreign investors. Ergo, the host State must act consistently, transparently, and in a non-discriminatory manner.
- 2. Legal Stability and Predictability:** Investors are entitled to a stable and predictable legal environment. Host States should not make sudden, unjustified changes to laws or regulations that could adversely affect investments.
- 3. Transparency:** Host States must maintain transparency in their regulatory and administrative processes. Investors should have access to relevant information and be informed of any changes that might impact their investments.
- 4. Due Process and Procedural Fairness:** FET includes the right to due process, which would mainly imply that investors should be treated fairly and justly in legal



and administrative proceedings. This would include proper notice, an opportunity to be heard, and access to effective legal remedies.

5. **Good Faith:** Host States must act in good faith, and refrain from engaging in deceiving or acting in bad faith towards investors. Such obligation would include also a treatment based on honesty, fairness, and respect for the legitimate expectations of investors.

B. Domestication of Fair and Equitable Treatment in Jordanian ICL:

1. **Protection Against Expropriation without Compensation:** Article (6) of the Jordanian ICL ensures that foreign investors' property and investments are not unfairly expropriated by the Jordanian authorities without proper compensation. Article (6) further disposes that for expropriation to be lawful, it must meet the following criteria:
 - i. **Public Purpose:** expropriation must be for a legitimate, determined public purpose or interest, such as infrastructure development, public health, national security, or environmental protection.
 - ii. **Non-Discrimination:** expropriation must not be discriminatory. It should not unfairly target specific investors or investments based on nationality or other unfair criteria.
 - iii. **Due Process:** The expropriation must follow due process of law, which includes providing investors with adequate notice, a fair hearing, and access to legal recourse, as provided for in Jordan's Civil Property Law No. (13) of 2019.
 - iv. **Compensation:** The host State must provide prompt, adequate, and effective compensation to the investor. This compensation must be paid in one instalment in Jordanian Dinars, or in a convertible currency; and must be based on the fair market value of the expropriated investment **prior to the decision** of expropriation; and it must include any accrued interest rates as published by the Central Bank.
2. **Protection Against Unreasonable Regulatory Changes:** In addition to the right to claim compensation for losses incurred due to the investor's good faith reliance on any decision issued by the official authority, as provided in Article 5/D of the Jordanian ICL; Article 15 provides for umbrella clauses.¹ If legislative or regulatory

¹ Rudolf Dolzer, Ursula Kriebaum and Christoph Schreuer, *Principles of International Investment Law*, (3rd edn., OUP, 2022) 271: "[a]n umbrella clause is a provision in an investment protection treaty that guarantees



provisions are amended or changed, impacting negatively an investor whose investments in a single project amount to five million Dinars or more, or who has employed two hundred and fifty Jordanians or more, such investor has the right to demand that those provisions not be applied against them for a period of seven years from the date either of these conditions are met.

3. **Protection Against Denial of Justice:** The Jordanian ICL has provided multiple substantive protection standards for investors in the instance a dispute arises.
 - i. **Amicable Dispute Resolution:** Article (7/B) of the Jordanian ICL disposes that the Ministry of Investment shall be responsible for, among other responsibilities, the provision of supportive services for investors, including post-investment service; the facilitation of procedures, overcoming obstacles, and removing barriers for investors to initiate and sustain their economic activities; and reviewing complaints submitted by investors to verify the integrity of the procedures taken or decisions issued by the official entity and working on addressing them in accordance with applicable regulations. Investors, therefore, have at their disposal the option of resorting to the Ministry of Investment prior to commencing contentious proceedings, thereby cutting costs and ensuring continuous operations.
 - ii. **International Arbitration:** Although Jordan has ratified the ICSID Convention of 1966 in 1972, Article (45) of the ICL provides that disputes arising from investment contracts between an official entity and an investor may be settled through arbitration, in accordance with the rules agreed upon by the parties. In the instance the parties had not previously agreed to arbitration, the investor enjoys the choice to apply any of the following rules:
 - a. The Jordanian Arbitration Law;
 - b. The Rules of arbitration of the United Nations Commission on International Trade Law (UNCITRAL); or
 - c. The Rules of arbitration of the International Chamber of Commerce (ICC).Moreover, if an arbitral award is issued by a foreign or international arbitration body under the provisions of Article (45), it shall be executed according to the law

the observance of obligations assumed by the host State vis-à-vis the investor [...] they bring contractual and other commitments under the treaty's protective umbrella."



for the enforcement of foreign judgments and relevant conventions applicable in the Kingdom.

II. Full Protection & Security

Full Protection and Security (FPS) is a principle in international investment law that obligates host States to provide a certain standard of protection and security to foreign investments. This standard is often included in BITs and multilateral investment agreements, as well as within Jordanian legislation.

A. Key Aspects of Full Protection and Security under International Investment Law

- 1. Physical Security:** The most straightforward interpretation of FPS is the duty of the host State to protect foreign investments from physical harm. This obligation includes safeguarding investments against threats such as violence, vandalism, and other forms of physical damage. For example, if a foreign-owned factory is attacked during a riot, the host State has a responsibility to take reasonable measures to protect it.
- 2. Legal Security:** FPS also extends to legal security, which means protecting investments from adverse actions through the host State's legal and administrative systems. This requirement includes ensuring that investors have access to effective legal recourse and that their legal rights are respected and upheld.
- 3. Due Diligence Obligation:** The host State is required to exercise due diligence in preventing harm to foreign investments. This obligation requires the host State to take proactive steps to prevent foreseeable risks and responding appropriately when threats arise. The standard is usually not one of absolute liability but rather one of taking reasonable measures to provide protection.
- 4. Non-Physical Harm:** Although primarily associated with physical security, FPS can also cover protection against non-physical harm, such as unfair regulatory actions or other government measures that significantly disrupt or impact an investment.

B. Application in Jordan's Investment Climate Law:



Jordanian ICL does not explicitly mention FPS. However, it can be imported from international substantive standards of protection as stipulated for in Jordan's BIT language.² For instance, Article 5 of the Jordanian-Japanese BIT of 2018 stipulates that:

“Each Contracting Party shall in its Area accord to investments of investors of the other Contracting Party treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.”

To draw matter from customary international law, FPS generally confers the following standards of protection:

- 1. Protection against Civil Unrest or Conflict:** If an investment is damaged due to civil unrest, armed conflict, or similar situations, and the host State failed to take reasonable steps to prevent such damage, it may be seen as a breach of FPS.
- 2. Protection against Failure to Provide Legal Protection:** If a host State's legal system fails to protect an investor's rights, such as through denial of justice, arbitrary actions, or lack of access to effective legal remedies, this could constitute a violation of FPS.
- 3. Protection against Regulatory and Administrative Actions:** If the host State takes actions that unfairly harm the investment, such as expropriation without compensation, discriminatory regulations, or other forms of unjust administrative behavior, it could be argued that the host State has not provided full protection and security.

Conclusion

Jordanian Investment Climate Law provides a robust framework for investment protection, aligning with international standards and practices. By ensuring fair and equitable treatment and full protection and security to investors, Jordan aims to create a conducive environment for investment, fostering economic growth and development. While it remains to be seen how the newly introduced standards will be applicable before national and international legal fora, Jordan's investment policy presents its own intricacies, the navigation of which requires strong legal understanding and expertise.

² See further Agreement on The Reciprocal Promotion and Protection of Investments (Jordan-Estonia) (Adopted 10/05/2010, entered into force 06/06/2011) Article 3: “1. Each Contracting Party shall extend in its territory full protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments. 2. Investments or returns of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment in accordance with international law.”