

Condition of Stable Legislations

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Abstact

Administrative contracts of an international character are characterized by the duration of the implementation of the obligations arising therefrom,

Usually the contractual relationship between the state and the contractor, a long period of time may be up to several years,

Hence the importance of determining the legal status of the two sides of the Nodal League during this long period on the basis of the possibility of amending the national legislation governing this relationship,

It may be easy for a foreign contractor to know his or her legal status when signing a contract,

Making it easier for him to calculate the economic feasibility of his contract activity,

However, these calculations will inevitably be affected by the legal framework governing the work of the contractor.

The situation may be more difficult if the State issues national legislation that differs from that which was in force at the time of the entry into force of the contract,

How can the contractor ensure that any subsequent legislation is not applied to him if he is prejudicial to his

For the Paper in Arabic Language See the Pages (165-209)

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contractual status? In short, this is the idea of "the requirement of legislative stability", and the intended purpose.

Thus, the agreement on this condition is in the status of waiver the State in favor of the contracting party, for a part of sovereignty in the field of legislation,

Through pledge to protect him from submission to the application of any subsequent legislative amendments that may harm his economic status.

Undoubtedly, there are many risks of economic dimension that may affect the profitability of the work in the contracted project, including future risks that depend essentially on the margin of profit deviation referred to in the feasibility study,

As well as commercial risks arising from fluctuations in the subject prices of the investment, financial risks arising from currency risks related to the subject of investment, technical risks in relation to the inefficiency of equipment used in the project, or the need to replace them from time to time else.

The requirement of legislative stability often deals with the content of the contractual obligations of the contract on both parties, and their impact on the interests of each party. This requirement is usually included in the terms of the contract with the foreign contractor, especially in concession contracts, Here, it is often agreed between the parties to the contractual relation, to restrict the right of the State to amend by its unilateral will.

Such a condition may also be met by bilateral or regional international agreements under which a Contracting State is obliged to grant preferential protection to investors of the State or other States through the non-application of subsequent legislation or procedures to contracts concluded with such investors if it were prejudicial to their legal status.

Finally, it is possible that the requirement of legislative stability can be met through the legislation of the national countries themselves through the explicit provision in these laws of the obligation of the State not to modify its legal system on any existing contracts that would damage the financial or economic status of such States.

According to the previous view, the requirement of legislative stability relates to the content of the legislation itself,

As it transmits the administrative contract of an international character to a free contract,

The judiciary has recognized the authority of the parties to the contract to freeze the contract law in terms of time,

Only the provisions of the law which were in force at the conclusion of the contract would apply except those that arose thereafter, which means trying to integrate the provisions of the law into the contract, and turning its rules into contractual terms.

National governments may seek to establish such conditions in order to attract the capital of foreign companies by ensuring that the interests they negotiated in the contract are protected, the so-called "Favorable Investment Climate".

This principle provides for contracting States to regulate the legal framework governing the operation of investment projects on their territory to serve the purposes and objectives of the national policy,

Even if the interests of other national or foreign companies are adversely affected.

The use of the legislative stability clause has been started in the second half of the last century when many countries nationalized many of the commercial enterprises operating on their territories in order to manage economic challenges that affected their economies.

This requirement is intended to protect contracting foreign investment companies from future national legislation that is arbitrary towards these companies, as well as protecting them from national legislation and procedures of a discriminatory nature between national and foreign investors,

Or which are intended to remove the ownership of foreign companies, as well as legislation and procedures aimed at increasing the foreign investor's financial and non-financial commitment.

These conditions usually relate to the financial obligations of the contracting company (for example, the stabilization of the amount of the income tax)

It may also relate to the prohibition of national legislation that nationalizes the activity of these companies,

Recently, the use of the legislative requirement of environmental dimension, under which investment companies require host countries to commit themselves to providing the requirements of any environmental legislative amendment at their own expense, has been made in view of the complex financial and technological requirements that the environment requirements may need.