

The Legal Effects Of Stock Markets In Activating Investment And Increasing Economic Growth In Iraq In Light Of The Temporary Law For Stock Markets No. (74) Of 2004

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Abstract:

Securities are instruments (stocks and bonds) issued by government or civil bodies represented by bodies or companies, such as insurance companies, or issued by private bodies represented by companies, which give the person who owns them a right with such bodies, and are issued at a fixed value. On the other hand, investment is the capital that is used in the production of goods and services in order to provide them and put them on the market in the present and the future.

The stock market has legal effects that affect investment in Iraq represented by (stocks and bonds), whether local or foreign investment. This market supports economic activity, which in turn activates business and capital, by developing savings, providing liquidity, increasing capital formation, and then increasing economic growth in Iraq. Moreover, the stock market works in the present and the future to evaluate the performance and development of the issuance and trading market, evaluate the performance of each market individually on the basis of some financial indicators, and identify strengths and weaknesses that affect investment and the benefits of solutions and suggestions .

Keywords: stock markets, stocks and bonds, investment, financial system, economic activity.

Introduction:

The stock market plays a significant role in the growth of the various productive sectors, especially the sectors of industry and commerce, as it ultimately affects investment in Iraq through the growth of economic performance.

It is noted in modern economic systems that the stock market represents a vital center as it leads to the accumulation of capital needed to finance economic development plans and to promote the objectives of financial and monetary policies in revitalizing the (public and private) sectors. According to this activity, the stock market is a mirror of the economic systems in Iraq in particular and the countries of the world in general. It is one of the important sources of support for

investment in the various economic sectors that have an abundance of uninvested liquidity. Its vital role is to finance sectors that suffer from a lack of financial liquidity. The higher the rates of economic growth, the higher the investment growth, meaning that the growth of the stock market is a basic requirement for economic development in Iraq.

In Iraq, the temporary Law on Securities Markets No. (74) for the year 2004 was issued. It stated in its preamble: "... , and as an expression of the Governing Council's desire for a significant change to the Iraqi economic system as a necessity to improve the conditions of the Iraqi people, and a determination to improve living conditions, technical skills, opportunities for all Iraqis,

combating unemployment, and its harmful impact on public security..."

Significance of the study:

The importance of the present research lies in the fact that the closer the relationship between the stock market and investment, the more the financial system develops in Iraq, and it becomes more linked to the money market, which leads to the development of economic activity and vice versa.

In this context, stock markets play an important role in the industrial and trade sectors, and thus are one of the important sources of investment support and the provision of cash, as it is a transparent tool that reveals the financial status of every institution, authority or company, whether in the public or private sectors. Moreover, the stock market here plays a very important role by attracting the surplus of unused capital in the national economy, and transforming it from idle money to employed capital and effective in stimulating investment, which in turn contributes to the economic cycle in the state.

Objectives:

The aim of the research is to:

- 1- Explain the concept of stock markets.
- 2- Determine the definition of investment.
- 3- Highlight the legal effects of the stock markets on investing in Iraq.

Problem Statement:

The problem of the research is that the stock market and its role in Iraq still faces many challenges, as a result of its stagnation and lack of development, and its incompatibility with recent developments in global financial markets, in addition to the internal challenges that Iraq suffers from at the present time, especially the unstable security situation, and the destruction of the infrastructure of the Iraqi economy during the war of 2003, and

unemployment. All these factors provoke us to try to answer the following questions:

- 1- How can the stock market in Iraq have a direct impact on investment?
- 2- How to address the gap between the stock market and the volume of funds destined for investment through the stock markets and the volume of funds used for deposit in the Iraqi banking system?

Study Methodology:

In this research, we will follow the descriptive analytical method in order to clarify the phenomena or scientific problems. This is done by describing and analyzing, in a scientific way, the texts of the temporary Iraqi Law for Stock Markets No. (74) for the year 2004, and then arriving at logical explanations that have evidence and proofs that give us the ability to develop specific frameworks for the problem, then present the conclusions and recommendations at the end of the research.

Study outline:

This research is divided into an introduction and three sections. The first section is devoted to the concept of the stock market, the second section includes the definition of investment, while the third section presents the legal effects of stock markets on investment in Iraq. This research concludes with a number of findings and suggestions.

The first section: The concept of stock markets

Stock markets are one of the real resources for financing projects through offering stocks or bonds ⁽¹⁾, or reselling each of these stocks and bonds owned by the project, thus emphasizing the importance of managing cash resources for projects. In addition, stock markets provide sound channels and incomes for individuals, especially small investors. It is also a major tool for promoting economic development in countries. It achieves a number of economic benefits, including the

benefits of possession, ownership, usufruct and the appropriate investment return. It also represents an incentive for companies whose shares are listed in those markets to follow up on changes in their share prices and push them to improve their performance and increase their profitability, which leads to an improvement in the share prices of these companies. In the second section, the importance of stock markets. We will define the stock markets in two sub-sections. The first sub-section is devoted to defining the stock markets, and we explained in the second sub-section the importance of the stock markets.

Definition of stock markets:

First: Definition of stock market in the language:

In language, markets, and its singular form market, denote one's the transaction or the place in which the transaction takes place,⁽¹⁾ and goods are sent to it. It is called so because people go to it.⁽²⁾ Almighty says "And they say, "What is this messenger that eats food and walks in the markets? Why was there not sent down to him an angel so he would be with him a warner?".⁽³⁾"

The word papers in Arabic denotes paper, dirhams or camels and so on,⁽⁴⁾ and the paper was mentioned in the Almighty's saying "So send one of you with this silver coin of yours to the city and let him look to which is the best of food and bring you provision from it and let him be cautious. And let no one be aware of you⁽⁵⁾". And "Wealth and children are [but] adornment of the worldly life. But the enduring good deeds are better to your Lord for reward and better for [one's] hope".⁽⁶⁾ Money is all that an individual or a group owns of belongings, trade, real estate, money,

livestock, or the benefits of notables, and all of that is considered money⁽⁷⁾.

Second – Definition of stock markets in jurisprudence:

A- Securities:

A security is "a financial document that gives its holder the financial right to obtain future cash flows".⁽⁸⁾

And some defined it as: "An instrument or document that gives the holder the right to obtain a predetermined or unspecified return. It also guarantees the right of its owners to redeem the original nominal value of the paper at the end of a certain period, or the right to obtain part of the corresponding financial assets." It has the right in certain circumstances, as well as the right to dispose of the same paper at any time, meaning its ability to be traded by purchase and sale.⁽⁹⁾

b- The stock market:

The stock market is the market whose mission is to deal in financial investment related to securities – stocks and bonds – whether when they are issued or when they are traded⁽¹⁰⁾.

It is clear from this definition that the stock market consists of two parts⁽¹¹⁾: The first is the issue market or the primary market. The second is the trading market or the secondary market⁽¹²⁾. Some jurists defined the stock market as a system whereby sellers and buyers are combined for a type of securities or a specific financial asset. In this case, the financial market carries a narrow concept. The stock market consists of two main markets, the primary market and the secondary market,

so that the degree of importance of the first is no less than the second.⁽¹⁾

Third – Defining the stock market in legislation:

The Iraqi Law on Stock Markets No. (74) of 2004 defines the stock market in the third paragraph of the first section of it as: “It means the Iraqi stock market or any other similar market such as the Commission, and it is consistent with its rules that may be permitted under this law”.⁽²⁾ The Jordanian Securities Law No. (18) of 2017 defines the stock trading market in the fourth paragraph of Article (2) as: “Any organized market or any periodic or continuous use of means of communication that allows the trading of securities and financial assets⁽³⁾”

The Saudi Stock Market Law No. (M/30) for the year 1424 AH defines the stock market in paragraph (a) of Article (20) as: “A market for the trading of securities called (the Saudi Stock Exchange) shall be established in the Kingdom, and its legal capacity shall be a joint stock company, in accordance with the provisions of this system, this market shall be the only body authorized to engage in trading in securities in the Kingdom.⁽⁴⁾

Article (2) of the Regulations of the French Stock Exchange Operations Commission No. (237) for the year 1992 defines the stock market as: “The totality of transactions related to shares, or financial instruments authorized to be traded on the stock exchange or the futures market⁽⁵⁾”

The importance of stock markets:

First- Securities Markets and their Importance for Individuals:

This importance here belongs to ordinary and professional individuals, as these individuals find an organized way to use their money and

savings, whatever their size. This use brings them a return on average that exceeds what they might get from other forms of investment projects, such as deposits and real estate. At the same time, the stock market becomes a tool to satisfy the desires of the small investor who is unable to establish a project because his capital is small. We used it as a tool to satisfy the big investor by buying the largest number of shares and bonds offered for trading for subscription. The stock market also enables them to obtain liquidity at the right time with the possibility of recovering their money with the least possible loss, more profit and faster time, as dealing in securities is similar to withdrawals and deposits in banks⁽⁶⁾. It is clear from the foregoing that stock markets provide individuals with sound channels and entrances to invest their savings, and they achieve a number of economic benefits represented in the benefits of possession, ownership, usufruct, and investment returns⁽⁷⁾.

Second- Securities Markets and Their Importance for Companies:

This importance for companies plays two roles, direct and indirect:

- A- The direct role: This role is that when investors buy shares of a company,⁽⁸⁾ they are in fact buying future returns. Accordingly, the company, establishment, or institution is given promising investment opportunities that market participants know about through the information sources that are available, so it is allowed to issue more shares and even sell them at high prices to achieve an abundant proceeds for the issuance, and this

means a lower cost of funds, i.e. a lower investment cost. ⁽¹⁾

- B- The indirect role: This role is represented in the investors' willingness to deal in the shares of the company, facility or institution, which is considered a security certificate for the lenders who will not hesitate to provide this facility with the additional funds it needs, at a reasonable interest rate, with easy terms and easy procedures⁽²⁾.

Third- Securities Markets and Their Importance to the National Economy:

Stock markets help in accelerating the development of the national economy by raising the level of production. This is due to the fact that it helps to accumulate savings and direct them towards development and increase investment activities that achieve the highest possible returns. It also provides easy sources of financing on the basis of participation, which encourages increased investment and the benefit of the largest number of local people from the returns.⁽³⁾ On the other hand, the stock market is a suitable container for savings and investment, which eliminates speculation in society, reduces unproductive underwriting, and increases job opportunities, thus reducing unemployment, which is the biggest social and economic problem in modern societies.⁽⁴⁾

After we have finished explaining the importance of commercial stock markets, it should be noted that transactions in bonds for individuals, companies, establishments or bodies to enter the stock market are through authorized intermediaries, and this is what was stipulated in the third paragraph of Section Three of the Securities Markets Law No. (74) for the year 2004:

The restriction of transactions in bonds shall be as follows: A- All transactions in the stock

market shall be restricted to brokers authorized by the market to deal in such transactions. B- The broker or influential person in the business of dealings in bonds that represents the money or balances of customers shall not mediate in any services. It concerns brokering in bonds away from the stock market, regardless of whether those bonds are included in such transactions, which are submitted to commercial dealings in the stock market, unless such bonds are subject to other related regulations of the authority.

The Second Section: Definition of investment

Investment is the most important aspect of achieving material wealth. If the savings of a person or institution are directed correctly, the investment is directing part or all of the money saved in a specific industry or trade with the aim of achieving financial profits, and the investment may be national, and it may be foreign, direct and indirect. We will define investment in two sub-sections. We have devoted the first sub-section to its definition in language and terminology, and we have clarified the definition of investment in international legislation and agreements in the second sub-section.

The first sub-section: Definition of investment in language and terminology

Investment in Arabic is derived from (fruit); the fruit of the tree, and the types of money,⁽⁵⁾ and the Arabic lexicon defines investment as: "the use of money in production, either directly by purchasing machinery and raw materials, or indirectly such as buying shares and bonds", and therefore (investment) comes in the sense of developing money and using it for profit.⁽⁶⁾

The investment was mentioned in the Holy Qur'an in the Almighty's saying: And he had fruit, so he said to his companion while he was

conversing with him, "I am greater than you in wealth and mightier in [numbers of] men".⁽¹⁾ In general, these expressions are the most important meanings of the word (fruit), but the origin in it when it is used abstractly is to carry trees, but to use it on money is a metaphor and not the truth. And in Arabic language it means to seek growth, and to invest money is to seek the fruits of money that is its growth and its offspring.⁽²⁾

Second – Definition of investment in jurisprudence:

Investment has been defined as that increase in the investment capital existing in the community or the increase in the community's productive capacity⁽³⁾

On the economic level, investment means sacrificing consumption at the present time in the hope of obtaining returns in the future⁽⁴⁾, or the value of that part of the economy's production for a period of time, which is in the form of buildings, durable equipment, and a change in inventory⁽⁵⁾, and therefore investment at the aggregate level is considered a type of expenditure on fixed assets that are expected to generate a return over a long period of time.

It is also defined as the use of money in productive projects, and the goal is to achieve a profit to be divided among the partners.⁽⁶⁾

Some jurists defined it as including the monetary capital in the local currency for the national investment and the investment in the local or foreign currency made by the foreign investor.⁽⁷⁾

Investment includes a long-term relationship between the host country and the so-called foreign investor, whether the

foreigner is a natural person or a company, and the purpose of this relationship is to achieve a financial income.⁽⁸⁾

The Second Sub-section: Definition of investment in international legislation and agreements

First - Definition of investment in legislation:

The Iraqi Investment Law No. (13) for the year 2006, amended in paragraph (n) of Article One of it, defined investment as: "the investment of money in any economic activity or project that brings a benefit to the national economy in accordance with the provisions of this law"⁽⁹⁾

The Egyptian Investment Guarantees and Incentives Law No. 72 of 2017 defines investment in the first paragraph of Article One as: "Using money to establish, expand, develop, finance, own or manage an investment project in a way that contributes to achieving comprehensive and sustainable development for the country"⁽¹⁰⁾

Qatari Law No. (1) of 2019 regulating the investment of non-Qatari money in economic activity did not define investment, but the definition of a non-Qatari investor was provided in Article One, saying: "He is a person who invests his money in one of the projects in which direct investment is authorized in accordance with the provisions of this law."⁽¹¹⁾

Second – Definition of investment in international agreements:

The most important international agreements that dealt with the issue of investment are the Washington Convention of 1965, according to which the International Center for the Resolution of International Disputes between

States and Nationals of Other Countries in the Field of Investment was established (c.r.d.i). This treaty dealt with investment, but did not define it, in order to ensure flexibility for this term, as the text expands to include several types of investments. Accordingly, we find that this agreement deliberately left the identification process to the arbitration courts to know it according to the cases presented to them.⁽¹⁾

There is also in this context the definition that came in the agreement establishing the International Investment Guarantee Agency for the year 1985, as this agreement defined investment in the first paragraph of Article (12) and considered that the investment process includes: The participants in the ownership of the specific project and the forms determined by the board of directors of direct investment.⁽²⁾

We can define investment as a contractual relationship between the host country for investment and the investor, and the goal is to achieve economic development for the host country and profit for the investor.

The Third Section: The legal effects of the stock markets on investment in Iraq:

The agreement to deal in securities between the client and the investor may result in the purchase or sale of securities, which takes place between the financial intermediaries⁽³⁾, who are authorized to deal and the client who invests his securities in the stock market, in accordance with the agreement concluded between them. This agreement may result in a breach by one party of its obligations towards the other party. Since investors are considered the mainstay in the stock market, there must be legal rules that they resort to protect them from the risks that they may be exposed to by the financial intermediaries who monopolize the business of trading securities in the market

by law, because they can only buy and sell securities through these brokers licensed by the market. These rules may be general legal that investors resort to protect their interests and obtain their rights. However, these rules may in many cases fail to achieve the desired protection, and do not assist the right holder in obtaining his right and protecting his interests due to the specificity of the legal status of investors and the nature of trading operations for securities in the stock market, which is characterized by speed of implementation.

This section is divided into two sub-sections. We have devoted the first sub-section to the obligations and rights of the broker before the investor client (the company) and explained in the second sub-section the obligations and rights of the investor client (the company) before the broker.

The first sub-section: Obligations and Rights of the Broker in Front of the Investing Client (the Company)

The broker must not perform any services for the investing client related to brokering in bonds outside or away from the stock market unless these bonds are affiliated to one party or subject to another body. This is what was stipulated in Paragraph (3/b) of Section (3) of the Iraqi Securities Markets Law which states: "The broker or the influential person in the business of dealings in bonds that represents the money or balances of customers shall mediate in any services related to brokerage in bonds away from the stock market, regardless of whether those bonds are covered by such transactions and are submitted to commercial dealings in the stock market, unless such bonds are subject to other related regulations of the Authority."⁽⁴⁾

In addition, the broker must disclose to the client investor (the company) before initiating any agreement or understanding of all the required fees, commissions and prices. The stock market may impose rules related to the

maximum commission, price, wage rate and liquidation, in addition to the necessary disclosures approved by the General Authority of the Stock Exchange in Baghdad .⁽¹⁾

Among the rights that the broker enjoys in front of the investor client (the company), which was approved by the Securities Markets Law, is that he has the authority and a temporary license to participate in the process of trading securities in the market in accordance with this law, provided that he abides by the requirements of the additional rules that apply to him and that he continually abide by the other necessary obligations and requirements to perform the transaction process in the market according to any conditions that may arise when dealing .⁽²⁾

The second sub-section: Obligations and rights of the investor client (the company) before the broker

The Iraqi Securities Markets Law regulating dealing in the stock market included special rules to protect securities dealers (investor clients) from financial intermediaries, as they are the weakest party in trading operations due to their lack of experience and knowledge in the processes of concluding and executing deals or operations in the market. Some of these special rules came to protect all investors in the stock market before agreeing with any broker to implement the transaction or operation, while other special rules came to protect the investor client after agreeing with the financial broker to conclude and implement a specific deal or operation in his favor, which may be more appropriate for this type of commercial activity. This helps to promote and encourage dealing in the stock market and the development of this vital aspect of the national economy.⁽³⁾

The commitment of the investor client (the company) through the broker includes that the

stock market offers its bonds for commercial purposes, provided that this client (the company) abides by the existing regulations in the market .⁽⁴⁾

The investor client (company) that has a class of securities accepted in the trading process must comply with certain requirements before the broker in order for these securities to maintain their acceptance in the stock market .⁽⁵⁾

Conclusion:

First: Findings

- 1- The stock market is one of the real resources for financing projects through offering shares or bonds or reselling each of these shares and bonds owned by the project, thus emphasizing the importance of managing cash resources for projects. In addition, stock markets provide sound channels and incomes for individuals, especially small investors.
- 2- Investment is the most important aspect of achieving material wealth if the savings of a person or institution are directed correctly. Investment means directing part or all of the saved money in a specific industry or trade with the aim of achieving financial profits.
- 3- Investors are considered the mainstay in the stock market, and there must be legal rules they can resort to protect them from the risks they may be exposed to by financial intermediaries who monopolize the business of trading securities in the market by law.

Second: Recommendations:

- 1- We call upon the Iraqi legislator to reconsider the provisional Securities Markets Law No. (74) of 2004 in terms of wording and content because it came with a poor linguistic formula that does
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not rise to the enactment of an important law, in addition to making its articles in the form of sections. This form is not unusual in the enactment of Iraqi laws, in addition to exaggerating the large number of paragraphs in the sections, as some sections reached (16) paragraphs, or expediting the issuance of a permanent law for the stock markets in which the mentioned lapses are avoided.

- 2- The stock market should open educational sessions for investors on the subject of securities (bonds), especially since most investors after 2003 have refrained from reviewing and following up on what is going on in the stock market in Baghdad, or at least distributing seasonal bulletins or magazines issued by the market.

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