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PRE-INVESTMENT PROTECTION IN CONNECTION WITH SHARIAH LAW UNDER INTERNATIONAL INVESTMENT LAW

ПРЕДЫНВЕСТИЦИОННАЯ ЗАЩИТА С УЧЕТОМ НОРМ ШАРИАТА В РАМКАХ
МЕЖДУНАРОДНОГО ИНВЕСТИЦИОННОГО ПРАВА

Abstract. *The territory of an Islamic state is governed by Shariah law. It means every economic operation by national or non-nationals like investment process in an Islamic state's territory have to be considered from the point of view of Shariah law. In this direction, on the one hand, it is important to be informed regarding Shariah law flowing in host Islamic states at pre-investment stage. On the other hand, drawing a precise framework of the position of Sharia in the territory of the Islamic State is considered a type of pre-investment protection. One of these pre-investment protections is investment guides which is published every year by origin or host states to depict the investment environment of the host state. Purpose: In this article, I am going to analyze the investment guides and answer the main question, how much have investment guides paid attention to Sharia law in the host Islamic state? Methods: general scientific methods of theoretical knowledge, as well as general logical methods and research techniques are used in analyzing existing investment guides of Islamic and non-Islamic states. Results: the present article has come to the conclusion that, the Islamic states hosting foreign investments, like many Arab states in the Middle East, have explained the dimensions and effects of Sharia law in the direction of foreign investment process better than the origin states. In addition, the origin states' attention*

Аннотация. *В любом исламском государстве соблюдаются законы шариата. Это означает, что любая экономическая операция, осуществляемая гражданами или иностранцами на территории какого-либо исламского государства, например инвестиционный процесс, должна рассматриваться с точки зрения законов шариата. В этом смысле, с одной стороны, важно знать законы шариата, действующие в принимающих исламских государствах, касательно предынвестиционной стадии. С другой стороны, составление точной структуры функционирования норм шариата на территории любого исламского государства считается одним из видов предынвестиционной защиты. Одним из видов предынвестиционной защиты являются инвестиционные справочники, которые ежегодно публикуются странами происхождения или принимающими странами с целью отображения инвестиционного климата принимающего государства. Цель: проанализировать инвестиционные справочники и ответить на вопрос о том, какое внимание они уделяют шариатскому праву в принимающем исламском государстве. Методы: при анализе существующих инвестиционных справочников исламских и неисламских государств использовались общенаучные методы теоретического познания, а также общие логические методы и исследовательские приемы. Результаты: в статье делается вывод, что исламские государства, принимающие иностранные инвестиции, например многие арабские государства на Ближ-*

to Sharia law depends on the legal system governing the investment host Islamic state.

Keywords: Shariah Law, foreign investment, pre-investment protection, Islamic states

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нем Востоке, объясняют аспекты и влияние законов шариата на процесс иностранных инвестиций лучше, чем государства происхождения. Кроме того, внимание государств происхождения к законам шариата зависит от правовой системы исламского государства, принимающего инвестиции.

Ключевые слова: шариат, иностранные инвестиции, предынвестиционная защита, исламские государства

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INTRODUCTION

The home and host states take important measures to protect foreign investment in the pre-investment stage [1, p. 4]. One of the most important measures is to publish investment and business guides or reports regarding the host state's legal and cultural system. The guides consider all aspects and dimensions regarding foreign investment process and relevant businesses within the host state to clear the way in front of investors. For example, the international investment guide of Australia titled "Foreign Investment in Australia" which was published by Australian government in June 2020 to clarify the way of foreign investors who intent to invest in Australia contain all aspects of foreign investment including Australia's foreign investment policy, Contemporary concerns in foreign investment policy, the trends and drivers of foreign investment in Australia, Outline of Australia's foreign investment framework, Australia's foreign direct investment policy restrictiveness, Foreign investment and national security risks, Multinational tax avoidance, Residential real estate and agriculture, Design of the national interest, Improving certainty and transparency¹.

These guides are considered one of the important sources of pre-investment protection in Islamic states; Because Islamic states are

governed based on the Sharia law and these guides can provide comprehensive information about the effects of Sharia on foreign investment process in the host Islamic state. As many Islamic Arab states to attract foreign investors and non-Islamic states for protecting their investors, through these guides, inform the investors that Sharia law is the primary source of laws in the Islamic state and which institutions are responsible for checking the compliance of the investment process with the standards of Sharia law. In this direction, recently the USA published a new guide for Investing in Kuwait titled "2024 Investment Climate Statements: Kuwait". The guide contains all relevant information in connection with international investment process in Kuwait including openness To, and Restrictions On, Foreign Investment, Bilateral Investment and Taxation Treaties, Legal Regime, Industrial Policies, Protection of Property Rights, Financial Sector, State-Owned Enterprises, Responsible Business Conduct, Political and Security Environment, Labor Policies and Practices². In accordance with the guide, Kuwait's legal system is a mix of British common law, French civil law, Islamic legal principles, and Egyptian law³.

However, some investment guides of host Islamic states do not pay attention to Sharia law,

¹ Australian government, foreign investment in Australia [Electronic resource]. URL: <https://www.pc.gov.au/research/completed/foreign-investment/foreign-investment.pdf> (accessed: 05.10.2024).

² USA department of state, 2024 investment climate statements: Kuwait, 2024 [Electronic resource]. URL: <https://www.state.gov/reports/2024-investment-climate-statements/kuwait/> (accessed: 05.10.2024).

³ Ibid.

such as the guidebook for foreign investment in Albania, which was published by the USA to guide its investors, and does not pay any attention to Sharia law⁴; While according to the list of members of the Organization of Islamic Cooperation (OIC), Albania has joined the OIC in 1992⁵.

In line with the answer to the basic question of the current research, i.e. how much have investment guides paid attention to Sharia law in the host Islamic state? The present article contains three basic hypotheses: 1. The foreign investment process in an Islamic state is different from non-Islamic one because Sharia law plays a significant role within the Islamic society. 2. One of the important sources of pre-investment protection in Islamic states is investment guides and reports that clarify the effects of Sharia law on foreign investment. 3. The attention of non-Islamic home state to Sharia law in host Islamic state is based on the impact of Sharia law on foreign investment in the relevant countries. In this regard, the article proceeds in three steps: Part 1 is related to the home non-Islamic states and their investment guides and reports to inform their investors about Shariah law. Part 2 focuses on the role of Host Islamic states to clarify the foreign investors' way in their society. The last part concludes.

HOME NON-ISLAMIC STATES

It is important to note, how much the home non-Islamic states tried or try to inform their Investors, who intend to invest in Islamic states, about Islamic doctrine governing the society⁶. One of the main measures to protect the rights of investors at pre-investment stage is the actions of the home states. In fact, a number of home states provide manual or guide aimed at protecting

4 USA department of state, Foreign investment guide in Albania, 2024 [Electronic resource]. URL: <https://www.state.gov/reports/2024-investment-climate-statements/albania/> (accessed: 05.10.2024).

5 OIC, Member states, 2024 [Electronic resource]. URL: <https://www.oic-oci.org/states/?lan=en> (accessed:05.10.2024).

6 Hesham A.E. Magda, Mark P. McCoy. Islamic Finance Development in the Sultanate of Oman: Barriers and Recommendations [Electronic resource]. URL: <https://www.sciencedirect.com/science/article/pii/S2212567114006339/pdf?md5=9e76f77d20bacc82fdb056d3a0e41c69&pid=1-s2.0-S2212567114006339-main.pdf> (accessed: 06.10.2024).

their national investors who intend to invest abroad⁷. For example, the United Kingdom and the United States of America provide such guides on the investment environment from the perspective of the host state every year. In 2018, the British government released a comprehensive guide that provided investors with valuable insights into the business environment in China, including the risks associated with doing business in China, the process of setting up a company there, transferring Money from China and, more importantly, the legal considerations for doing business in China⁸. Similarly, in 2018, Australia published a comprehensive report on India's investment environment, which looked at political dimensions, India's economic conditions and prominent trade and investment agreements between the two states⁹.

In April 2019, the United States published guides on the business and investment environment in Albania, in which information related to commercial and legal risks, market barriers and restrictions on foreign investors are included¹⁰. Albania is considered as an Islamic state based on OIC¹¹. However, the USA guides don't refer to the Islamic features of the Albanian society; maybe it is the result of changing legal system from Shariah-based to secular modern one in 20th century. As, Enkeleda Olldash argues "Albania gained its independency through its declaration of independence, becoming the State of Albania on 28 November 1912. During this period, in some parts of the country the rules of the former regime by the Sheriah were used; mainly due to the fact that there was not a national legal framework until 1930. After the

7 Tarcisio Gazzini, Beyond Protection: The Role of the Home State in Modern Foreign Investment Law [Electronic resource]. URL: https://link.springer.com/chapter/10.1007/978-3-030-58916-5_2 (accessed:06.10.2024).

8 A guide for British businesses interested in selling goods and services in China [Electronic resource]. URL: <https://www.gov.uk/guidance/exporting-to-china> (accessed: 30.09.2024).

9 An India Economic Strategy to 2035, Update to the 2018 India Economic Strategy [Electronic resource]. URL: <https://www.dfat.gov.au/geo/india/update-2018-india-economic-strategy> (accessed: 30.09.2024).

10 Investment environment of Albania [Electronic resource]. URL: <https://www.state.gov/countries-areas/albania/> (accessed: 30.09.2024).

11 OIC, member states, 2024 [Electronic resource]. URL: <https://www.oic-oci.org/states/?lan=en> (accessed: 30.09.2024).

proclamation of the Monarchy, the work started on the preparation of different codes, with the crucial one being the Civil Code (on 1 April of 1929). The first Albanian Civil Code entered in force on the 1st of April 1929, approved by a qualified majority of its members. This process was the first step for the Albanian Legislator to compare the secularity of the European legal framework to that of the Ottoman Empire. The most relevant realm of this code was the private law with main scope to approximate with other laws in force, but also adopting to the changing Islamic social life¹².

In a new approach USA refers to Shariah Law through the 2023 investment guide for US citizens who intend to invest in Saudi Arabia, titled “2023 Investment Climate Statements: Saudi Arabia”. This guide makes a good package of information regarding investment process in Saudi Arabia. The table of contents includes Openness To, and Restrictions Upon, Foreign Investment, Bilateral Investment and Taxation Treaties, Legal Regime, Industrial Policies, Protection of Property Rights, Financial Sector, State-Owned Enterprises, Responsible Business Conduct, Corruption, Political and Security Environment, Labor Policies and Practices, U.S. International Development Finance Corporation (DFC), and Other Investment Insurance or Development Finance Programs, Foreign Direct Investment and Foreign Portfolio Investment Statistics. The significant part of this manual is “Legal Regime” which is explaining legal system governing in Saudi Arabia¹³.

In this guide there exist reference to phrases like “Shariah”, Shariah-based judicial system”, “Islamic Law”, Comply with Shariah”. The guide believes that the legal system of Saudi Arabia is originated from Shariah law [2] but at the same time it has the modern commercial and investment laws as well. As, the manual states, “The Saudi legal system is derived from Islamic law, known as *sharia*. Saudi commercial law,

meanwhile, is still developing. In 2016, Saudi Arabia took a significant step in improving its dispute settlement regime with the establishment of the Saudi Center for Commercial Arbitration¹⁴. It is obvious that Shariah law s flowing in all Branches of Government because the Manual states, “the Saudi Ministry of Justice oversees the *sharia*-based judicial system, but most ministries have committees to rule on matters under their jurisdictions. Judicial and regulatory decisions can be appealed. Many disputes that would be handled in a court of law in the United States are handled through intra-ministerial administrative bodies and processes in Saudi Arabia. Generally, the Saudi Board of Grievances has jurisdiction over commercial disputes between the government and private contractors. The Board also reviews all foreign arbitral awards and foreign court decisions to ensure that they comply with *sharia*. This review process can be lengthy, and outcomes are unpredictable¹⁵”.

As I mentioned earlier, there is religious risk in Islamic states and the USA investment Manual indicates it by some brief words; as stated in the last sentence of the previous paragraph, “*This review process can be lengthy, and outcomes are unpredictable*”. These words show there is Shariah Risk for foreign investors here because maybe the foreign investors try to do everything based on Shariah but there are unpredictable outcomes yet. It is not clear, what kind of decision the responsible ministry or governmental branch make.

In addition, this USA investment guide considers Islamic Riba or interest as well. As it states some words on compensating damages¹⁶. The Kingdom’s record of enforcing judgments issued by courts of other GCC states under the GCC Common Economic Agreement, and of other Arab League states under the Arab League Treaty, is somewhat better than enforcement of judgments from other foreign courts. Monetary judgments are based on the terms of the contract – e.g., if the contract is calculated in U.S. dollars, a judgment may be obtained in U.S. dollars. If unspecified,

12 Enkeleda Olldashi. Codification and Legal Sources in the Albanian Legal System: Comparative Approach to Legal Systems [Electronic resource]. URL: <https://bibliotekanauki.pl/articles/1036947.pdf> (accessed:30.09.2024).

13 USA foreign affairs department, the 2023 investment climate statements: Saudi Arabia, legal system and judicial independence [Electronic resource]. URL: <https://www.state.gov/reports/2023-investment-climate-statements/saudi-arabia/> (accessed: 30.09.2024).

14 Ibid.

15 Ibid.

16 Abu Umar Faruq/ Riba and Islamic banking [Electronic resource]. URL: https://ibtra.com/pdf/journal/v3_n1_article1.pdf (accessed: 06.10.2024).

the judgment is denominated in Saudi riyals. Non-material damages and interest are not included in monetary judgments, based on the *sharia* prohibitions against interest and against indirect, consequential, and speculative damages¹⁷.

The same goes for the 2023 investment guide for Investors in Qatar. The USA has tried to show all aspect of investment process in Qatari Jurisdiction. The guide covers the contents like Openness To, and Restrictions Upon, Foreign Investment, Bilateral Investment and Taxation Treaties, Legal Regime, Transparency of the Regulatory System, International Regulatory Considerations, Legal System and Judicial Independence, Laws and Regulations on Foreign Direct Investment, Competition and Antitrust Laws, Expropriation and Compensation, Dispute Settlement, ICSID Convention and New York Convention, Investor-State Dispute Settlement, International Commercial Arbitration and Foreign Courts, Bankruptcy Regulations, Industrial Policies, Protection of Property Rights, Financial Sector, State-Owned Enterprises, Responsible Business Conduct, Corruption, Political and Security Environment, Labor Policies and Practices, U.S. International Development Finance Corporation (DFC), and Other Investment Insurance or Development Finance Programs, and Foreign Direct Investment Statistics¹⁸.

The guide considers the Shariah aspects of Qatari legal system correctly by words like “Islamic Shariah Law”, “based on Shariah” and “Islamic Bond or Sukuk” [3]. It is stated under the transparency of Qatari regulations which the government of Qatar is transparent about its public finances and debt obligations. Qatar central Bank publishes quarterly banking data, including external government debt, government bonds, treasury bills, and Sukuk (Islamic bonds)¹⁹. Furthermore, the guide

¹⁷ USA foreign affairs department, the 2023 investment climate statements: Saudi Arabia, legal system and judicial independence.

¹⁸ USA foreign affairs department, 2023 Investment Climate Statements: Qatar, legal system [Electronic resource]. URL: <https://www.state.gov/reports/2023-investment-climate-statements/qatar/> (accessed: 30.09.2024).

¹⁹ USA foreign affairs department, 2023 Investment Climate Statements: Qatar, transparency of the legal system [Electronic resource]. URL: <https://www.state.gov/reports/2023-investment-climate-statements/qatar/> (accessed: 30.09.2024).

mentions the Qatar’s judicial system is based on civil and Islamic Sharia laws. Not only the Shariah law is governing on other laws and flowing in Constitution, but also the courts are judging based on Shariah. The manual considers the Shariah law by these words, “Qatari courts adjudicate civil and commercial disputes per civil and Sharia laws”²⁰.

The approach of USA in connection with Shariah law under its investment guides is thinkable. Because as we witness, the approach of UAS in investment guide for investors in Albania is different from what is mentioning in guides regarding Qatar and Saudi Arabia. Therefore, there are two conclusions here. First, the Islamic society is not important in attention to Shariah law under investment manual Guides. Second, the legal system of the host state forces the origin states to think about Shariah law. As in relation with the investment Guides in Albania, it is obvious that the state is Islamic one because it is considered under the member list of Organization of Islamic states; But it is not enough reason for USA to consider the Sharia Law as the dominant law in the society because the main legal system of Albania changed to Secular law in 20th century. On the flip side of the issue, the Investment guides for Qatar and Saudi Arabia consider the Islamic law as dominant law in society because the legal system of the Most Arab countries are based on Islamic law and it is considered in their constitutions.

The same goes for the investment guides which released by Australian Government. Australian government department of foreign affairs and trade released a guide titled “Business and investment guide to Qatar”. Under this guide, the Islamic and Shariah laws are fully paid attention. Through the text, the words like “Islamic championed”, “Islamic Law”, “Shariah Law”, “Shariah-based” and “Based on Islamic Law” are used. The guide is explaining the legal structure of Qatar under the Market Environment Part. The guide informs the investors which the legal system of Qatar is based on Islamic (sharia) law and there are two main divisions of courts—namely the sharia courts, with jurisdiction over personal matters, and civil courts, with jurisdiction over

²⁰ Ibid.

matters of a civil or criminal nature²¹. In addition, it asks the investors for knowing more about Shariah law refer to the notes in the GCC Market Overview document of this series of Business Guides to the Arab Gulf for further background on the sharia system and its social context²². It is interesting which the Australian government believes that Islamic Calendar also impacts on investment and business in Qatar. As it states, The Islamic calendar has an overarching influence on business activity in Qatar, and the availability of key contacts. Also, as with other Persian Gulf States, investors are strongly recommended to study and observe the Islamic calendar when planning business and investment²³.

Australian government also make the way clear for investors who intend to invest in Kuwait. The investment and business manual released by Council for Australian-Arab relations shows the framework of Investment and business in Kuwait. The guide includes information regarding the Market Environment, legal system structure, customs and regulatory environment, investment environment, Banking and finance and the investment sectors i.e. Transport, Manufacturing industries, Telecoms, Food and beverages, Healthcare. According to the guide, Islamic law or Shariah is the main source of Law in Kuwait and the investors and businessmen must inform about it [4]. As it is stated, the legal system of Kuwait reflects the history and social ethos of the country and Islamic (sharia) law is very important in this country. Also, the council asks the investors and relevant sectors who try to invest in Kuwait to refer to “the notes of Gulf Cooperation Council” about Islamic law and its importance in Arab states²⁴. Islamic Calendar in Kuwait is another significant issue which the council refer to and inform the investors in²⁵.

²¹ Council for Australian Council for Australian-Arab Relations, Business and investment in Qatar [Electronic resource]. URL: <https://www.dfat.gov.au/sites/default/files/business-guide-qatar.pdf> (accessed: 3.09.2024).

²² Ibid.

²³ Ibid.

²⁴ Council for Australian Council for Australian-Arab Relations, Business and investment in Kuwait [Electronic resource]. URL: <https://www.dfat.gov.au/sites/default/files/business-guide-kuwait.pdf> (accessed: 01.10.2024).

²⁵ Ibid.

HOST ISLAMIC STATES

The role of host Islamic states is more significant in clarifying their legal system and culture of their society to attract foreign investors by such transparency. Qatar as an Islamic state in Middle East clarified the way for foreign investors who dream to invest in Qatar. The council of US-Qatar as a governmental branch released the investment and business manual in 2020 titled “an introductory business guide on Qatar”. The guide includes the contents like investment in Qatar, relevant ministries, leading financial and investment organizations in Qatar, employment and labor law in Qatar and business structure in Qatar²⁶. This guide is fully pondering the Islamic roots and regulations in Qatari society. The guide mentioned that, hierarchically, the Shariah is placed at top. As it states, Islam is the official religion in the country, and Sharia is the major legislation in Qatar²⁷. In addition, Qatar enjoys a ministry of Islamic Affair which is called Awqaf in Arabic. The ministry is the responsible branch as a supervisor to analyze the conformity of Investments and businesses with Islam and Shariah law in Qatar. Hence, the guide states that the Ministry of Endowments (Awqaf) and Islamic Affairs apply Islam both as a methodology and ideology. The Ministry focuses on the affairs of Muslims through different means: in the field of Da’wah (call to Allah), in running the mosques, maintaining and refurbishing them, and supervising them for the sake of the wellbeing of the Muslims, for citizens and residents. Furthermore, the Minister of Endowments and Islamic Affairs has overall responsibility for all Endowments and Islamic Affairs issues, including:

- Spreading Islamic culture and education, increasing religious awareness and demonstrating the impact of Islam on the development of human civilization;
- Overseeing the endowments department, the Zakat charity fund, and the building and licensing of mosques;

²⁶ US-Qatar business council, An introductory business guide on Qatar [Electronic resource]. URL: <https://usqbc.org/public/documents/upload/Introductory%20Business%20Guide%20on%20Qatar.pdf> (accessed: 01.10.2024).

²⁷ Ibid.

– Supervising the education of the Holy Quran and overseeing the procedures for Al-Haj pilgrimage²⁸.

It shows that as soon as foreign investor makes a decision to build a mosque in Qatar, he needs to request the relevant licenses from the Islamic Affairs ministry which is responsible for investment process in this direction. Considering “the leading organization” part of the guide, it speaks about some leading investment groups which can help foreign investors in their investment. According to the guide, Qatar invest (QINVEST) is Qatar’s leading investment group with operations across the Middle East, Africa and Europe. It is recognized as one of the most prominent Islamic financing institutions worldwide. QINVEST has built world-class investment and advisory capabilities, with the highest standards of governance and transparency underpinning its client-focused approach. The group’s priority is to deliver high-value propositions, considered solutions and tangible results for its clients and shareholders²⁹. Obviously. This governmental investment group in Qatar can help the investors who try to find domestic partner for pave the way more.

Saudi Arabia as another leading states in hosting foreign investors in Middle East is known the heart of Islam. Recently, this Islamic state not only attract foreign investors by making more opportunities, but also inform them regarding main legal system in peninsula which is based on Islamic law. The recent published investment guide for attracting foreign investment is doing big role to inform the foreigners on Shariah law flowing in all aspects of society. The guide titled “investment guide: kingdom of Saudi Arabia” released in 2023 by government of Saudi Arabia. The guide includes all aspects related to investment in Saudi Arabia i.e. political and legal system, economy, investment incentives, legal framework of foreign investments, type of corporate entities, legal dependent branches, labor and social insurance law and tax provisions³⁰.

28 Ibid.

29 Ibid.

30 Government of Saudi Arabia, Investment guide: kingdom of Saudi Arabia [Electronic resource]. URL: <https://www.roedl.com/en-gb/de/media/publications/investment-guides/documents/investment-guide-saudi-arabia-roedl-partner.pdf> (accessed: 01.10.2024).

The guide speaks about the Shariah and its impacts on all Investment and businesses within the kingdom. In accordance with the guide, The Kingdom of Saudi Arabia (Al Mamlaka Al Arabia Al Saudia) was established as an absolute monarchy in 1932 by its founder Ibn Saud, who united modern-day Saudi Arabia’s four historical regions; It has since been an Arab and Islamic sovereign state. Saudi Arabia is the birthplace of Islam and revered as the land of the two holy mosques. Makkah and Medina are the religious capitals of not only Saudi Arabia but the whole Islamic world³¹. Considering the holiness of Saudi Arabia, all operations including foreign investments have to done in conformity with Islamic society and values.

Although the Islamic law is at the center of regulations in Saudi Arabia, the guide mentions that the current Islamic law in line with new reforms is Moderate one and fits in with the modern Arab world. The present king is known to hold traditional views but being open to social as well as political reforms. In June 2017 King Salman has appointed his son, Mohammed bin Salman as Crown Prince. His plan is to modernize the country. In line with that he has put under way several political reforms such as the Saudi Vision 2030, which aims to lower the country’s dependence on oil and attracting foreign investments on other sectors. As a consequence of the Crown Prince’s mentioning of the return of “moderate Islam” there have been several reforms such as that the male-guardianship system has been weakened, the ban of female drivers has been lifted and the presence of women in the workforce has been increased amongst others³².

Islamic moderate rules are flowing in all sectors of society because the main source of Islam i.e. Quran is Constitution of Kingdom. In general, Saudi Arabia has no legislative body. The full power lies with the king as he combines legislative, executive and judicial functions and royal decrees form the basis of the country’s legislation. As King, Prime Minister and President of the Council of Ministers the King must comply with Sharia law and the Quran, which is regarded as the country’s

31 Ibid.

32 Ibid.

constitution. The Quran however is subject to interpretation, which is conducted by the religious body – the Ulama (a body of interpreters of Islamic law). In this regard it is of utmost importance to notice that due to the recent political reforms, the influence and power of the religious police has been restricted. Nonetheless, the Sharia remains the primary source of law and the Quran is regarded as the country's constitution³³.

The labor law in connection with the Investment and business is also governed by Shariah in Kingdom. Majority of Manual and guides don't speak about Labor law but it is new approach here which the guide is referring to labor law in connection with investment in Saudi Arabia. According to the guide, the investors have to know that the labour law stipulates a maximum of 48 working hours per week on maximum 6 working days per week. In Saudi Arabia the working days are, in contrast to western regulations, from Sunday to Thursday where the weekend is on Fridays - the religious holiday – and Saturdays. Furthermore, Islamic religious and cultural events have an impact on working hours in Saudi Arabia. For instance, during Ramadan – the Holy Month – working hours for Muslim employees are reduced from 8 to 6 working hours per day; any additionally worked hours are to be considered as overtime, which have to be paid at a rate of 150 percent of the regular payment agreed upon. Moreover, the Saudi Labour Law specifies 21 days of paid annual leave; after having worked for an employer for more than 5 consecutive years paid annual leave increases to 30 days [5]. Muslim employees have the right within an employment relationship to 10 – max 15 days of holidays to go for Haj, the Muslim pilgrimage, one of the five pillars of Islam. Prerequisite is however, that the employee is employed for a consecutive of two years with the employee³⁴. Considering the Ramadan and Muslim Pilgrimage and special leaves for Muslims in Saudi Arabian Labor law, now it is clear that why the Australian and USA investment guides inform their investors and businessmen about Important of Islamic calendar.

³³ Government of Saudi Arabia, Investment guide: kingdom of Saudi Arabia.

³⁴ Ibid.

There is a wide connection between in all aspects of Islamic doctrine in foreign investment process in Kingdom. For instances, the connection between labor insurance and Islamic finance which the foreign investors have to pay special attention to it. Based on the guide the differentiation made between national and foreign employees is most apparent concerning the health insurance system. In general, subscribing to health insurance is contradictory with Islamic doctrine that are of high importance in Saudi Arabia. The reason is the following: The insurance company takes money from the insured person for an unforeseen future event. Financing of the insurance happens through an agreed upon contribution payment, that in its wider definition underlies the so-called Riba – an interest ban in Islam³⁵. As a consequence of that reason, the health insurance system was until recently relatively unpopular. A need for further state revenues in the health care sector led to a gradual introduction of a health insurance system that until further notice is only available for foreign employees³⁶.

The judiciary system of the Kingdom is based on the Shariah law [6]. In general, Contrary to other Islamic characterised countries, in which the Sharia is an important legal source within their respective constitutions but in line with progressing secularisation does not enjoy high significance, the Saudi Arabian legal framework still underlies the guidance of Sharia Law and identifies Islam as the original source of law, even though in recent years and with view on 2030, a clear rupture from the conservative structures is notable. It cannot be referred to international private law, where one clause within a contract that agreed upon choosing a foreign legal framework would be inadmissible. However, the Sharia Law mainly regulates criminal and family law and only in exceptional cases, such as liability for liabilities, deals with commercial and corporate legal complexes. Therefore, companies are sometimes affected by these Shariah-based regulations. Since the

³⁵ Abu Umar Faruq, Riba and Islamic banking [Electronic resource]. URL: https://ibtra.com/pdf/journal/v3_n1_article1.pdf (accessed: 06.10.2024).

³⁶ Government of Saudi Arabia, Investment guide: kingdom of Saudi Arabia.

comprehensive reform of the judicial system in Saudi Arabia, there are five different Sharia Courts: Besides the general courts, that are responsible for all disputes that are not falling under the jurisdiction of specialised courts, there are criminal courts, personal courts and labour courts. Furthermore, since June 2020 special commercial courts have been added to this shariah court category. Their jurisdiction relates to all commercial disputes and shall guarantee a consistent judicial treatment of these kind of disputes within the national territory of Saudi Arabia³⁷.

Moreover, the investors must know that the Shariah law has impacts on prosecution, advocacy system and enforcing the foreign judgments as well³⁸. In other words, Due to the authoritative influence of the Sharia Law, prosecution and the enforcement of one's own claims are regularly complicated and time consuming. Consequently, for a successful conflict resolution, a comprehensive evaluation of the desired goals is necessary ahead of a judicial proceeding and if the circumstances allow an attempt to settle the dispute out of court. Such an attempt to settle disputes out of court usually results in a rapid and fair resolution of disputes, so that the alleged disadvantages of the prosecution are largely compensated³⁹. In general, it is not compulsory to hire a lawyer during judicial proceedings, however, due to the local specifications and especially due to the influence of Sharia Law it is advisable to get in touch with a Saudi registered lawyer. Occasionally, foreign judgements might be partially recognised in Saudi Arabia and can therefore be enforced. The enforcement departments of the general courts are responsible for the recognition and enforcement of foreign judgements. Prerequisite for recognition is apart from being respectfully congruent with Sharia Law, also the guarantee of reciprocity⁴⁰. It is obvious that the investment process in Islamic states is the field of Islam

and Sharia Law (whether moderate or traditional one) which are governing in all dimension of foreign investment process from license request to dispute settlement.

CONCLUSION

One of the pre-investment protection measures is the publication of investment guides and reports by the host state itself or the home government. These guides play a very significant role in relation to foreign investment in an Islamic state. In this regard, non-Muslim states or those with a secular system inform their investors that in line with the investment process in an Islamic state, Sharia law is hierarchically placed at the top of the society's laws, and therefore, in accordance with the Shariah Law, the entire foreign investment process are evaluated by the society and the host state. As the US investment guide to investing in Saudi Arabia has noted. Moreover, the Islamic state which hosts foreign investment also publishes guides in order to make the situation more transparent. In this regard, the host Islamic state pays attention to the effects of Sharia law in the foreign investment process and business relations. The remarkable thing about these guides is that the approach of non-Islamic states is different from the approach of Islamic ones regarding Sharia law.

On the one hand, non-Islamic or secular states follow two approaches in relation with the publication of investment guides. First, non-Islamic states, under these guides, mostly pay attention to Sharia law in an Islamic state hosting investment in a very general way; This general view may cause confusion for their investors. Of course, the investors need to know, if Sharia laws are placed at the top of the society's laws in the host Islamic state, what effects it will have on the foreign investment process. Unfortunately, the majority of guides issued by non-Islamic governments do not pay attention to the level of the effects of Sharia law on foreign investment and its dimensions. Second, some guides issued by non-Islamic countries as a guide for investors in Islamic states do not consider the Sharia law and Islamic society in the host state. This approach is only of interest to a non-Islamic state once the host Islamic country has a Muslim

³⁷ Government of Saudi Arabia, Investment guide: kingdom of Saudi Arabia.

³⁸ Ali Khan, *Advocacy under Islam and Common law*, 2008, university of San Diego [Electronic resource]. URL: <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=2752&context=sdlr> (accessed: 06.10.2024).

³⁹ Government of Saudi Arabia, Investment guide: kingdom of Saudi Arabia.

⁴⁰ Ibid.

majority society, but its legal system is a secular one. As there is such an approach regarding the state of Albania.

On the other hand, the Islamic states which host foreign investors, very comprehensively address the dimensions of the effects of Sharia law on the foreign investment process. In other words, the approach of Islamic states, like the Arab countries of the Middle East, is a comprehensive approach. The guides published by the host Islamic states have clearly clarified that Shariah law is at the top of the laws governing the society, how much does Sharia law affect the investment process, What

institutions in the host country are responsible for checking the compliance of the investment process with Sharia law, what aspects and principles of Shariah law should foreign investors pay attention to, and finally, from which institutions should foreign investors obtain the necessary permits to link their investments with Shariah law. Undoubtedly, this approach is a clear and excellent one and can solve the ambiguity of foreign investors regarding Shariah law. Therefore, it is necessary for non-Islamic states to adopt such an approach in order to publish new versions of investment guides for Islamic states.

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