

# **THE EXTENT TO WHICH THE ECONOMIC SITUATION IS CONNECTED BY CHANGES IN LEGAL SYSTEMS AND LEGISLATION IN OMAN: MODELS: THE BASIC LAW OF THE STATE, TRADE LAW AND CORPORATE LAW, COMPETITION PROTECTION AND ANTI-TRUST LAW**

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## **Abstract**

The research objective has discussed any laws, including the Basic Law of the State, Trade Law and Corporate Law, competition Protection, Anti-trust Law, and FDI that connected to the economic situation. The researcher adopted the descriptive analytical approach, as the results revealed that Basic Law of the State, Trade Law and Corporate Law, competition Protection and Anti-trust Law Promotion should be abolished now because they have become ineffective in connection with laws that have become null and wrong. Such as the Corporate Act 4/1974 and the Foreign Capital Investment Act 102/1994, their amendments became useless because of several changes in investment-related legislation, thus agreed upon by several previous studies.

**Keywords:** economic situation, basic law, trade law, and corporate law, FDI

## **1. INTRODUCTION**

National laws to regulate dealings between individuals and official institutions vary from country to country. Therefore, they are important for attracting investment and streamlining the procedures associated with that investment. In brief, effective laws will increase the number of domestic and external investment companies and institutions. On examining these regulations under various districts, the researcher found that some encourage investment in an open way, while others restrict wholesale investment through legislation. Overall, however, most political systems call for economic openness to the world. Therefore, worldwide, countries try to enact new legislation and legal regulations that will allow foreign capital to be invested in them without obstacles. Moreover, the productive ability of certain industries could increase, and new industries could be proven. As a result, transport and other technologies, as well as the relevant administrative systems would advance

accordingly.<sup>1</sup>

International reports on the world's economies are drafted based on key factors, which include political, economic, and social factors. However, what country has not overlooked the influence of the legal factor on its national economy? Nevertheless, Oman's Foreign Capital Investment law 50/2019, art 9 stipulates: 'taking into account the international agreements in force in the Sultanate of Oman related to investment and avoidance of double taxation, the investment project is subject to all applicable laws in the Sultanate of Oman, except for a special provision in this law.'<sup>2</sup> Therefore, in this section, the researcher will highlight the laws that relate to the rights and duties of the investor, because of the contact of the latter on the business sector and overall economy. In particular, the researcher will look at the extent of any correlation between the changing laws and their positive or negative contact on a country's economic situation. Examples will then be presented of countries with close political and historical ties. Also considered will be the importance of other laws that are in some way related to foreign investors. This is based on the findings of recent studies on investment in Oman and the relevant regulations and legislation, whereupon it is recalled that the Foreign Capital Investment Law came about via a general route, which requires the investor to familiarize himself with many other laws, including Trade Law, Company Law, Labour Law, Tax Law, and the laws governing partnership between the public and private sector. The researcher will also attempt to consider other laws of specific relevance to FDI in this article.

However, at the head of all systems and laws that directly or indirectly affect the national economy, is the general system of the state. In the Sultanate of Oman, this is the Basic Statute of the State,<sup>3</sup> which forms the basis of the Omani legal system – corresponding to what is referred to as the Constitution in many other countries.

## 2. STATEMENT OF PROBLEM

Investment is necessary to solve many of the economic problems, including the indebtedness that the Sultanate has been experiencing recently and the low level of savings. From this point of view, the promotion of foreign direct investment has a positive contacts on the expansion of the economic base. This leads to increased productivity and job creation as well as the development of expertise through the transfer of technology to the host country.<sup>4</sup>

Recently, the official statistics and information centre of the government showed that there has been a significant drop in companies subject to foreign investment law in the Sultanate. For example, the volume of companies subject to foreign investment law in 2013 reached 90 companies and in 2014 increased to 308, while in 2016 all these companies withdrew from Oman<sup>5</sup>.

Al-Jabouri<sup>6</sup> outlined the criteria for sovereign credit ratings as provided by Moody's Company. He explained the evaluation based on the application of the criteria of governance, transparency, and accountability, the extent of the state's robustness, and its application to the law.

Bahrain was able to be the first candidate. Numerous investors believe that the country's tax structure is the main motive for investment in Bahrain. It does not impose restrictions, no personal tax on the

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<sup>1</sup> Bin Yatou M and Balkaibat M, 'Study Legal A - Investment Foreign Attract to Catalyst a as Stability Political' [2019] Journal of Law and Humanities

<<https://www.asjp.cerist.dz/en/article/89785#:~:text=%D8%A7%D9%84%D9%85%D9%84%D8%AE%D8%B5%20%3A%20%D9%8A%D9%84%D8%B9%D8%A8%20%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D9%82%D8%B1%D8%A7%D8%B1%20%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%20%D8%AF%D9%88%D8%B1%D8%A7,%D8%B1%D8%A3%D8%B3%20%D9%85%D8%A7%D9%84%20%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D8%AB%D9%85%D8%B1%20%D8%A7%D9%84%D8%A3%D8%AC%D9%86%D8%A8%D9%8A%20%D8%8C%20%D9%88>> [Accessed: 4 August 2022].

<sup>2</sup> Royal Decree No 50/2019 to issue the Foreign Capital Investment Act.

<sup>3</sup> Royal Decree No (101/96) <<https://mjla.gov.om/eng/basicstatute.aspx>>.

<sup>4</sup> S. Hrori (2019). *Legislative Guarantees for Foreign Investments (Comparative Study)*. 1st ed. Alexandria-Egypt: Dar Al fekar Al arabi, 7.

<sup>5</sup> *The Statistical Year Book For The Year 2018* (1st edn, National Center for Statistics and Information 2018)

<[https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/bar\\_Statistical%20Year%20Book%202016%20\\_6f43e0e6-592a-43a1-b1b6-82c32c046aa9.pdf](https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/bar_Statistical%20Year%20Book%202016%20_6f43e0e6-592a-43a1-b1b6-82c32c046aa9.pdf)> accessed 23 October 2018.

<sup>6</sup> M. Al-Jahouri (2019). Oman and credit rating agencies.

return of capital or return of profits, and most importantly no company tax. In addition, the country has been able to attract foreign investment through incentives such as labour subsidies, electricity, and land lease discounts, 100% discount on customs duties for major equipment/raw materials, export credit facilities, and protection of customs duties.<sup>7</sup>

International reports on investment and entrepreneurship have shown Oman's rating is down in the global rankings. For example, the Global Competitiveness Report 2016 revealed the Sultanate's decline in the Global Competitiveness Report 2017/2016 to 66th in the world and seventh in the Arab world, down two points from 2015 and 20 from 2014, reaching 46th in 2014. Moody's<sup>8</sup> downgraded Oman to BA1, a non-investment grade, with a negative outlook. Moody's predicted Oman's fiscal deficit would remain high, ranging from 7 % to 11 % of GDP in the next three years.

Moreover, among the most important indicators that fell in Oman is the index of legal rights, ranked 127, and the index of investor Protection level 108 from 140 countries.<sup>9</sup>

This statistic invites us to consider the reasons for this sharp decline.<sup>10</sup> The reasons may be logistical, economic or legal. This research aims to study the legal aspects that caused this decline, and the development of proposals and solutions to such challenges. Kobeissi.<sup>11-8-2022</sup> said until now, there is no academic research that studied the contact of the legal system on foreign investment in the MENA region.

There are several laws that might have certain adverse contacts that could be worrying for foreign investors. Among others are: (in) The Basic Law of the State; (ii) Trade Law and Corporate Law; (iii) Competition Protection and Anti-trust Law.

### 3. OBJECTIVES

The objectives of this study include:

1. Discovery of a relationship between the legal system and Economic Situation.
2. Assessment of the degree of the relationship between FDI in the Economic Situation and the Omani legal system.
3. Exploration of the most effective legal system for facilitating foreign investment inflow, Thus improving the economic situation.

### 4. LITERATURE REVIEW

The researcher has studied some relevant previous researches. The main references are provided here:

In Mousa Al Azri's (2017) 'Foreign Investment in the Sultanate of Oman: Legal Guarantees and Weaknesses in Providing Investment Protection', the author writes about the protection of foreign investment through the study of the law of foreign capital investment. He argues that we must balance the interests of foreign investors to protect them and seek to resolve international disputes with international guarantees. Nonetheless, we must still take the interests of Oman into consideration while attracting investments, which will then lead to improvements in the local economy. The study recommended that Oman establish a specialized investment council, whose aim is to unify policies and facilitate the business and investment market in the Sultanate. Another recommendation is to establish a local arbitration centre, aimed at facilitating a more effective and expeditious resolution of conflicts. This study was limited to foreign investments and did not address the contact on the local investor and their status in the local economy. This study also did not consider the legal reasons for the decline of the Sultanate of Oman in the international report. Arbitration needs a law and enforcement institution. In October 2018 Decree No. 2018/26 of the Foreign Capital Law.

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<sup>7</sup> N. Kobeissi (2005). Impact of Governance, Legal System and Economic Freedom on Foreign Investment in the MENA Region. *Journal of Comparative International Management* [online] Long Island University, U.S.A. (2005, Vol. 8, No. 1, 20-41). Available at: <http://file:///C:/Users/Toshiba/Downloads/433-Article%20Text-1294-2-10-20080326.pdf>.

<sup>8</sup> The New Arab (2019). Moody's downgrades Oman and expects continued fiscal deficit.

<sup>9</sup> F. Al-Lawati (2019). *Learn about the Sultanate's ranking in the new report on "Global Competitiveness"-Atheer Electronic Newspaper* [online] Atheer Newspaper. Available at: <https://www.atheer.om/archives/234041/> accessed 25 June 2019.

<sup>10</sup> National Centre for Statistics and Information, Sultanate of Oman, *Statistical Year Book 44* (2016).

In the present study, I seek to argue that past research has not addressed the need for new laws and legal policies to support investment and the development of Oman internationally .

Nafen Abdu AL Rahman (2018) analysed international laws and treaties related to foreign investment in the Omani legislative system. He examined both the direct and indirect effects of the Omani legal system on foreign investment. This included the laws used in the free and industrial zones, international and bilateral agreements, and the fight against corruption, administrative delays, incentives, and legal guarantees to preserve his rights for foreign investors. However, there are methods and topics that are left unaddressed. The author did not use the comparison method except in a simple way. The author relied on Arabic laws to interpret Omani laws, with only a few references to other foreign laws, which nonetheless included Arab laws. He did not address the flaws in these laws but only mentioned them. The study does not have empirical analysis and solutions. Consequently, in this study, I will use different data collection investments methods, such as interviews and questionnaires, to arrive at more in-depth results. I will compare Omani and foreign laws.

Legal protection of foreign investment in the Sultanate of Oman (2012) will be used as it is very relevant to this study. The author used an analytical descriptive style, comparing law 102/94, a foreign investment law of Oman, with Arab laws. He studied the extent of difficulties experienced by foreign investors in Oman. He assessed how the investor in Oman will respond to these difficulties and the adequacy of the guarantees in Omani law to tactile these difficulties. In the first part, the author discussed political and legislative difficulties, while in the second part, he proposed remedies for those difficulties. The difficulties of labour law and Romanisation rates are obstacles to investment in the Sultanate. They do not take into consideration the differences to productivity, employment, and allowances. Omani station rates are not linked to education and training and the allowances defined in the law are equal for both hard workers and lazy employees. This study has not included some related laws such as commercial law, which the present study is aiming to discuss and analysis. Moreover, the present study will also examine foreign non-Arab laws to expand the scope of the treatment of Omani laws .

There is also research titled “The Role of Foreign Direct Investment in Enhancing the Productivity of Omani Manufacturing Firms” (2017). This thesis’s author focused on the economic side more than the legal side. Where legal aspects appeared, they were presented superficially. Therefore, I will try to take advantage of the economic and political factors and highlight the legal causes that led to the decline of foreign and domestic investment in the last ten years.

There are limits to the Omani references that study the laws of foreign direct investment, and then went to go to some Arab and foreign studies, including:

The study titled “Trade Liberalization and Foreign Direct Investment in Malaysia (2015) focuses on data for the sample from 1970 to 2009. The main objective of this study is to know the main determinants of FDI inflows to Malaysia through the ARDL test limits. However, this study does not use a comparative approach in examining factors with countries that have excelled in investment such as Singapore. In my research, I will compare the factors mentioned in this study with those of the Sultanate of Oman. Then I will analyse the data obtained through the development of the results to improve the economic situation in the Sultanate of Oman.

Mohammed Hassan Ismail researcher for research titled “the legislative guarantees” (2017) provides a comparison of foreign investments in Arab countries. This study on the legal system, specifically the advantages and guarantees granted by the legislator, for the development of the investment sector in Iraq. The study proposes investments to the relevant law of providing an attractive environment for foreign investments, 2006. On the other hand, the study focused on Iraq, the laws other than the law of investment, arbitration, and ownership. My study will be on how to improve most of Omani legislation, laws, and regulations which affect the foreign direct investment. My research will be distinguished by the opinions of experts in various investment entities in the Sultanate, as well as by foreign investors.

## **1. The Basic Law of the State**

States are governed by a set of influential institutions that ensure their permanence. One such institution is the presidency, while others include the executive, legislative, and judicial authorities. These institutions did not come into being by chance, but rather through political and philosophical theories with historical roots. The background to this study revealed the structure of these institutions, with social form and the political framework in the name of the State. This overarching structure of a State is referred to variously in the literature as the ‘Constitution’, ‘Basic Statute of the State’, the

'White Book' or the 'Green Book', as in the case of Libya during the time of former President, Muammar Gaddafi.

However, the economic theory that is adopted in many of the world's Constitutions was birthed on the island of Mauritius,<sup>11</sup> wherein it was predicted that the economy would be linked with the system of the State and the relevant legislation. These predictions were submitted by Nobel Prize Laureate, James Mead<sup>12</sup> in 1961, attracting many local and international researchers to write about the correlation between the economy and its contact on the development of the public law of the State.<sup>13</sup> The role played by the Constitution on the island of Mauritius, and the general concepts of public order, succeeded in characterising the island's economy as a situation that was influenced by the State's general legislation. However, it should be noted that the Constitution of the island of Mauritius is not directly oriented toward its economy. Thus, by identifying this link, Mead made a significant contribution to the concept of 'economic constitutionalism'.<sup>14</sup>

Thus, the present researcher found a close connection between economics and politics, giving rise to the question of whether it is the economy that controls politics, or vice versa. To explain this, the use of political explanations and analysis becomes evident as a means of developing solutions to economic problems. This may be taken as evidence to prove that there is a direct connection between politics and economics. One term that reflects this correlation consists of 'good governance indicators', pointing to political and economic dimensions. These indicators comprise rules, principles, and factors, the application of which will determine how well the State achieves good governance. The most important of these factors are:<sup>15</sup>

1. Human rights
2. Non-discrimination
3. Political stability
- 4 -Transparency and the fight against corruption.

These realistic factors provide some indication of 'good governance' and measure the extent of progress and development in the political and economic reality of any country. Moreover, these indicators will undoubtedly affect the attraction and promotion of foreign investment and its arrival in any country. In the case of Oman, enactment of the Basic Law of the State is considered as an essential step towards establishing democratic rules that will eventually attract investors, according to Miller. Many interested parties are in agreement with Miller and believe that the issuance of the Basic Law of Oman has played a crucial role in the development of Oman's legal system and political life, because the laws issued in the name of the Sultan must be consistent with the Basic Statute of the State. Hence, the Basic Statute of the State has been pivotal to preserving the rule of law in Oman. In contrast, Siegfried points to a lack of clarity over the content of the Basic Law of the State on the public, political, and therefore, economic life of Oman.<sup>16</sup> Meanwhile, the researcher failed to find any information to confirm this trend. In contrast, what the researcher identified as being closest to reality and the literature selected for this study was the content of the Basic Law of the State on the Sultanate of Oman and its overall economy.

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<sup>11</sup> Mauritius is an island country in the Indian Ocean, located off the eastern coast of Africa and constituting one of the Mascarene Islands. Its capital is Port Louis. Bowman LW, 'Mauritius' (*Encyclopædia Britannica*, 2023) <<https://www.britannica.com/place/Mauritius>> [Accessed: 29 November, 2022].

<sup>12</sup> In 1977, economist James Mead was joint winner (with Swedish economist Bertil Ohlin) of the Nobel Memorial Prize in Economic Sciences for a 'Pathbreaking contribution to the theory of international trade and international capital movements'. *Inside Dorset*, 'Notable people' (no date) <<http://www.insidedorset.co.uk/explore-dorset/notable-people/>> [Accessed: 29 November, 2022].

<sup>13</sup> Mahadew R, 'The Constitution, Constitutionalism, and the Economy of Mauritius: An Assessment of Their Interactions Critical to the Relative Economic Success of the Country' (2021) (14 May) *African Journal of Legal Studies* 1.

<sup>14</sup> Supra n1.

<sup>15</sup> Omar Khedirat and Emad Al-Shaddouh, 'Impact of Good Governance Indicators on Foreign Investment Direct in Arab Countries' (2015) 21(March) *Al Manara Journal of Research and Studies* <<http://repository.aabu.edu.jo/jspui/handle/123456789/1266>> [Accessed: 3 August 2022].

<sup>16</sup> Moosa Al Azri, 'Foreign Investment in the Sultanate of Oman: Legal Guarantees and Weaknesses in Providing Investment Protection' [PhD thesis] (University of Leeds 2016), p 91. .

Furthermore, in consideration of the texts of the most recent Basic Law of the State,<sup>17</sup> issued in 1996 to serve as Oman's Constitution, the researcher found in Article 1 that 'the Sultanate of Oman is an independent and fully sovereign Arab-Islamic State, its capital is Muscat', whereas in Article 2 of the Basic Law, it is provided: 'the religion of the Islamic State... Islamic Sharia... is a basic source of legislation, which is positive. Islam is a religion that comprehensively combines religious rules and legal provisions to govern real life, such as the provisions for Civil Transactions. In turn, these rules and provisions will affect a state's economy in various ways and to varying degrees.

In fact, most predominantly Muslim countries derive their legal system from Islamic Sharia, and the Sultanate of Oman is no exception, although there are some Western influence in Oman, embodied in the laws and regulations that govern trade, and 20<sup>th</sup> century developments derived from the so-called 'French School',<sup>18</sup> as adopted in the Egyptian legal system and then transferred to most of the Arab Gulf countries, including Oman. In addition, there are Royal Decrees and Ministerial Decisions that regulate other aspects of life in Oman, guided by the Basic Law of the State. Meanwhile, private international law, which is applied to commercial and financial procedures in Oman, is the third source of legislation. Therefore, the researcher found that the sources of law in Oman are characterised by their interdependence. However, the Omani government has recently made strenuous efforts to develop the necessary legislation to establish an effective system of government and the administration of the justice system.<sup>19</sup>

The provisions of Oman's Basic Law of the State include a special Article on the economic principles regulated by Article 14, which specifies:

- The economic principles of the State are as follows: the State guarantees freedom of economic activity based on social justice, cooperation, and balance between public and private activities, in order to achieve economic and social development, increase production, achieve prosperity for citizens, raise their standard of living, provide them with job opportunities, and eradicate poverty, as prescribed by law.
  - Natural wealth and its resources belong to the State, which is based on their preservation and the enactment of exploitation by provisions of the law.
  - The State encourages investment and works to provide the necessary guarantees and facilities for this investment.
  - Public funds are inviolable and so they shall not be touched, and the State must protect them in the manner prescribed by law.
  - Private property is inviolable. No one is prevented from disposing of his property except within the limits of the law, and no one is deprived of his property except for the public benefit, in the cases specified by the law, and in exchange for fair compensation.
  - Inheritance is a guaranteed right, governed by Islamic law.
  - Public sources of funds are prohibited, and private confiscation is permissible only by a judicial ruling in the cases specified by the law.
  - Taxes and other public costs are based on social justice, and general taxes may not be established, amended, or abolished except by law, and no one is exempted from their performance except in the cases specified by the law.

In contrast, the researcher also found the occurrence of negative intervention by State public policies to enact precise, special, and influential legislation for investment affairs. In some countries, the lack of clarity at the policy level can be a source of hindrance to the economy. For example, governments sometimes require the employment of a certain percentage of nationals in senior management positions of an investment company, or a certain percentage of national products in the collections distributed under foreign investments. Conversely, the governments of host countries may oblige investment companies to bear certain social or economic burdens, like the construction of housing for workers, as a means of overcoming the host country's housing problems. There may also be discriminatory measures imposed, such as demanding taxes or fees from foreign investors, while at

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<sup>17</sup> Royal Decree No 6/2021 issuing the Basic Law of the State.

<sup>18</sup> Moosa Al Azri, 'Foreign Investment in the Sultanate of Oman: Legal Guarantees and Weaknesses in Providing Investment Protection' [PhD thesis] (University of Leeds 2016), p 92.

<sup>19</sup> Supra n1.

the same time exempting national companies from these charges. There may even be the incitement of disorder and unproductiveness among nationals who are employed by a foreign company.<sup>20</sup> These issues are directly avoided by Oman in its modern Foreign Capital Investment Law. Instead, such matters are left in the hands of the Minister of Trade and Industry, on the pretext that a trader must do whatever is in the investor's interests, without burdening him with demands and restrictions that could cause them to flee the Sultanate. In one interview for this study, an investor admitted that he was trying to sell his investment, which was estimated at one million Omani riyals. He would then return to his country, due to pressure from the Ministry of Labour in the implementation of certain Decisions. However, the interviewee was not opposed to the requirements of Oman's Ministry of Labour but rather sought flexibility, in appreciation of the situation following the coronavirus pandemic. He, therefore, suggested a grace period, which would enable him, as a foreign investor, to control his obligations in a way that would not affect his investment.

By comparison, in the relevant literature from Algeria, the researcher found that the principle of freedom of investment had been integrated into economic reforms. Therefore, a set of principles and guarantees has been adopted from internationally agreed rules on investment, becoming more apparent by the beginning of 2001. Among these mechanisms, the researcher identified customs incentives that had been approved by the Algerian legislator for several systems, including the public system, which falls within the Tax Policy administered by the public authorities to activate the investment process.

Conversely, in the face of all the incentives and benefits approved by the legislator for investors under the provisions of the public order, and despite expanding the scope of what is permissible, this measure has not fulfilled its intended purpose of attracting investment as the backbone of development.<sup>21</sup> Thus, the flow of investment into Algeria is still limited and does not reach levels that could yield positive returns through development. It means that Algeria needs to give attention to its Constitution to improve its economic situation, which is clear evidence of the Constitution's contacts on a country's economic situation.

Therefore, the political stability regulated by the Constitution – the Basic Law of the State, as it is called in Oman – encourages the attraction of foreign investment, which plays an important role in achieving economic development, especially in the developing world. This is so much the case that political stability is like an engine that drives the wheels of national economies to turn faster. These investments have brought important benefits to developing countries, especially through the creation of job opportunities, increased exports, the introduction of technology, skills transfer, and international competencies, and the establishment of long-term industrial capacity in a country. The latter is the result of gaining knowledge and skills and becoming integrated into the global economy.<sup>22</sup>

Before concluding this section, it should be emphasized that a country's general system has a clear contacts on its economy and its ability to attract investment. Thus, a set of points concerning this interconnection is set out in the following summary.<sup>23</sup>

- 1- The process of attracting foreign investment to contribute to economic development requires

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<sup>20</sup> Bin Yatou M and Balkaibat M, 'Study Legal A - Investment Foreign Attract to Catalyst a as Stability Political' [2019] Journal of Law and Humanities

<https://www.asjp.cerist.dz/en/article/89785#:~:text=%D8%A7%D9%84%D9%85%D9%84%D8%AE%D8%B5%20%3A%20%D9%8A%D9%84%D8%B9%D8%A8%20%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D9%82%D8%B1%D8%A7%D8%B1%20%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%20%D8%AF%D9%88%D8%B1%D8%A7,%D8%B1%D8%A3%D8%B3%20%D9%85%D8%A7%D9%84%20%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D8%AB%D9%85%D8%B1%20%D8%A7%D9%84%D8%A3%D8%AC%D9%86%D8%A8%D9%8A%20%D8%8C%20%D9%88> [Accessed: 4 August 2022].

<sup>21</sup> Wahab Abd Al Malik, Shikhyi Khaled and Maifee Musherah, 'About The Privileges Of The Public System Of Investment In Algerian Investment Law' [5 May 2017] Abderrahmane Meera University in Bejaia - Abudaw <http://www.univ-bejaia.dz/xmlui/handle/123456789/497?show=full> accessed 4 August 2022

<sup>22</sup> Wahab Abd Al Malik, Shikhyi Khaled and Maifee Musherah, 'About The Privileges Of The Public System Of Investment In Algerian Investment Law' [5 May 2017] Abderrahmane Meera University in Bejaia - Abudaw <<http://www.univ-bejaia.dz/xmlui/handle/123456789/497?show=full>> accessed 4 August 2022.

<sup>23</sup> Supra n1.

political stability in a State.

2- There must be a serious political will that is open to the outside world and believes in multi-lateralise across all areas. This is democracy.

3- A country wishing to attract foreign investment must carry out the necessary reforms that give a clear impression of its political and security stability.

4- The degree of political stability needs to be enhanced by adopting effective measures to stabilize the democratic system.

5- Competencies need to be engaged in drawing up the right policies and activating the performance of the government and public institutions.

6- State institutions should be strengthened by reinforcing the rule of law and independence of the judiciary.

Another major obstacle to FDI is therefore the lack of political stability. The investor who was interviewed for this study explained that stability is not only concerned with security, but also with the stability of the State's political institutions. In particular, this was evident in the 1990s, when Algeria underwent a period of instability. Constant amendments were made to replace laws and legislative texts, which has not been reassuring for foreign investors regarding the security of their money and property.<sup>24</sup>

Thus, the new leadership in Oman is in the process of assessing the economic situation and attracting and encouraging FDI. The enactment of a system that will be able to mitigate even the remotest risk of political instability is a priority in Omani politics. The current Sultan Haitham bin Tariq has consequently amended the Basic Law of the State to make it more appealing to foreign investors by demonstrating its effectiveness for sustaining political stability. One of the most important of these amendments is the legislation governing the position of the Crown Prince, which was not previously subject to any legislation. It is clearly stated in the text of Article 5<sup>25</sup> of the Basic Law of the State 'that the system of government is a hereditary monarchy in the male descendants of Sultan Turki bin Said bin Sultan...'. This follows sequentially from the previous article, compounding faith in Oman's leadership because of its contact on political stability, and by implication, economic stability. It is intended to encourage FDI into Oman in a way that will guarantee foreign investors stability and security for the future of their investment projects.

## **2. Trade Law and Corporate Law**

There is no doubt that the Sultanate of Oman is witnessing steady and noticeable economic improvement. This is due to the growth and development achieved at all levels during the last decade, which has undoubtedly been the most prolific and productive in the modern history of the Sultanate. Therefore, it is not surprising that the Omani legislator is always interested in the regulation of trade in general and especially of corporate trading companies. This regulation would be formulated according to the best practices and latest international standards, since it was considered pivotal to Oman's legislative policy. The goal was to create a business environment that would be a bulwark for companies as they performed their functions in economic life and remained safe for every investor. This movement ended with the issuance of the new commercial companies' law by Royal Decree No 18/2019,<sup>26</sup> but was preceded by the other GCC countries. Qatar, for example, issued its new Commercial Companies Law No 11 in 2015. In fact, 2015 was a remarkable year in terms of the organisation of commercial companies in the GCC countries, whereby modern laws were issued to govern commercial companies in both Saudi Arabia and the UAE, and the state of Kuwait issued a new Corporate Law in 2016.<sup>27</sup> As for Bahrain, it was sufficient to make amendments to its Companies Law in 2014,<sup>28</sup> without issuing any new legislation.

In particular, the Sultanate of Oman mainly adopts a Capitalist system, with a free economy for public and private life. Therefore, every individual is free to engage in the commercial, economic, industrial, or agricultural activity of their choice, provided that the public order is respected, and it falls under the

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<sup>24</sup> M bin Al-Bar, 'Foreign Direct Investment in Algeria between Attractions and Expulsion Factors' (2019) 4(2) *Journal of Research in Financial and Accounting Sciences*, 81.

<sup>25</sup> Royal Decree No 6/2021 issuing the Basic Law of the State.

<sup>26</sup> Royal Decree No 18/2019 issuing the Commercial Companies Law.

<sup>27</sup> Law No 1 of 2016 promulgating the Companies Law.

<sup>28</sup> Amendment of the Bahraini Companies Law pursuant to Law No 50 of 2014.



corresponding umbrella of laws. Therefore, the legislator has established key general provisions, the most important of which are Articles 47-51 of the Omani Trade Law, issued by Royal Decree No 55<sup>29</sup> in 1990.<sup>30</sup>

Meanwhile, the details of the new Omani Commercial Companies Law issued by Royal Decree No 18/2019<sup>31</sup> apply to commercial companies with their main offices either located in the Sultanate of Oman or conducting their main activity in the Sultanate. The above law contains Articles that keep pace with the current economic reality and regulate the establishment and operation of various types of companies. These Articles encourage investment by simplifying the procedures for foreign investors and allowing them to establish their companies in the Sultanate under this Law, instead of the Foreign Investment Law, as was previously the case. The provisions of the Law also encourage Omani investment by creating the appropriate environment and providing the necessary protection for Omani investors and commercial companies through legal controls and procedures. For the first time in Oman, as part of giving greater flexibility to the local investment environment, the Law allows the establishment of a new type of company, the 'one-person company'.<sup>32</sup> However, it would appear that this Law was influenced by the need for the Sultanate to improve its economic and investment conditions, thereby facilitating investment procedures.

Meanwhile, the CEO of the Capital Market Authority, Sheikh Abdullah bin Salem Al Salmi, stressed that the new Commercial Companies Law came at a time when the Sultanate is preparing to launch its future Vision 2040. One of the pillars and priorities of vision 2040 is that the private sector should be able to take the initiative and play a role in leading productive processes, contributing effectively to economic development, and creating job opportunities for citizens.<sup>33</sup> From this perspective, the development of the legislative system and the creation of an appropriate investment environment and capabilities are among the priorities of this Vision, which seeks to make the Sultanate attractive to all investors, whether local or foreign.

According to the Companies Law in Oman, commercial companies must take one of the following forms: solidarity, recommendation, share, contribution (public/closed), holding company, limited liability company, and one-person company. While the provisions and Articles of this new Law were put into effect 60 days after its publication in Oman's Official Gazette, the Royal Decree provided for the repeal of the Commercial Companies Law issued by Decree No 4/74.<sup>34</sup>

Furthermore, the Council of Ministers approves the regulations of these companies and the rules and procedures governing their work. The competent authority may register branches of foreign companies and commercial representative offices within the Sultanate, according to the conditions specified in the Law. However, it does not necessarily follow that the company will enjoy the rights that are limited to Omanis under this Law, unless the companies are wholly owned by Omanis. In addition, the Law deals with solidarity, recommendation, and share companies. A solidarity company is one that consists of two or more natural persons, who are jointly liable in all their funds for the company's obligations. On the death of one of these persons, the responsibility is transferred to his or her estate to cover any unfulfilled obligations.<sup>35</sup>

Alternatively, the acting director of the legal department at the Ministry of Commerce, Industry and

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<sup>29</sup> Royal Decree No 55/90 issuing the Trade Law.

<sup>30</sup> Salem Al-Faliti, 'Unfair Competition in Light of Omani Law' (*Spirit of Law Magazine*, 2020), Issue 89, January.

<sup>31</sup> Royal Decree No 18/2019 issuing the Commercial Companies Law.

<sup>32</sup> Amal Rajab, 'The Commercial Companies Law Simplifies Procedures And Encourages Local And Foreign Investment' *omandaily* (2019) <https://www.omandaily.om/Economic/Corporate-Commercial-Law-Simplifies-Procedures> accessed 1 December 2021.

<sup>33</sup> The commercial companies law keeps pace with the Oman Vision 2040

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<https://shabiba.com/article/118665%D9%82%D8%A7%D9%86%D9%88%D9%86%D8%A7%D9%84%D8%B4%D8%B1%D9%83%D8%A7%D8%AA%D8%A7%D9%84%D8%AA%D8%AC%D8%A7%D8%B1%D9%8A%D8%A9%D9%8A%D9%88%D8%A7%D9%83%D8%A8%D8%B1%D8%A4%D9%8A%D8%A9-%D8%B9%D9%85%D8%A7%D9%86-2040>

<sup>34</sup> Sultani Decree No 4/74 to issue the Foreign Trades and Foreign Capital Investment Act.

<sup>35</sup> Amal Rajab, 'The Commercial Companies Law Simplifies Procedures And Encourages Local And Foreign Investment' *Oman daily* (2019) <https://www.omandaily.om/Economic/Corporate-Commercial-Law-Simplifies-Procedures> accessed 1 December 2021.

Investment Promotion has highlighted that the new Commercial Companies Law obligates the competent authorities to develop the principles of governance for commercial companies. The new Law also obliges commercial companies that conduct business according to Islamic Sharia to comply with the provisions of Sharia law in their actions. The acting director adds that it is not permissible for a partner in a trading company, a shareholder, a director, or a company's Board of Directors to contract or agree on his account or the account of one of his relatives up to the second degree. Aside from this, the new Law stipulates that the publication of the decision to convert the company from one form to another shall be within 15 days from the date of its issuance.<sup>36</sup>

More generally, Oman's economic situation and the conditions encountered by the companies that operate on its territories correspond to those of other countries worldwide. Therefore, some benefits can be gained by looking at the experiences of companies in those countries. For example, the researcher will consider the extent of the effects of corporate law and the domestic economy on local companies. Specifically, in Algeria, the Venture Capital Company, a government-funded company, has witnessed an impact on its capital and faced risk in the domestic market. It has therefore received attention from economic theorists and in relation to the theory of contract and obligation. Therefore, the Company has been vulnerable to legal and economic implications that require some consideration.

The Company's framework may be extrapolated in terms of its concept, importance, specificity, legal form, the mechanism of its work, and its reality in the Algerian environment. It shares similarities with the Oman Investment Authority, which sponsors government or semi-governmental companies, whether local or foreign, in which the State holds shares. The assets of the Venture Capital Company are divided into two portfolios: a National Development Portfolio for all assets of local companies, and a Second-Generation Portfolio, consisting of foreign assets with some local assets.<sup>37</sup> The importance of this type of financing in contemporary economies is emphasised, specifically for supporting projects with a creative spirit. Moreover, it is emphasised that the need for a legal framework in which such projects could grow and prosper is equivalent to a seed's need for water and the concept of money. The success of this industry has given a glimmer of hope to advocates of *Fiqh*,<sup>38</sup> which is an approximate generalisation of Islamic finance formulas under the Islamic Anan company in Algeria. Nevertheless, despite, the authorities' initiative to adopt this financing early, the reality has been a weak contact on the economic arena. It has also encountered legal, economic, and cultural obstacles that have prevented its launch, and these have proliferated under the continued dominance of traditional bank financing based on debt.<sup>39</sup>

One thing that is noticeable in the modern Omani Commercial Companies Law No 18/2019<sup>40</sup> is the legislative deficiency regarding the provisions regulating preferred shares. This is to address practical problems in the work of those concerned with the application of the law. The legislator should also add to the conditions for preferred shares that are provided for in Article 46 of the Joint Stock Companies Regulation No 27/202,<sup>41</sup> with regard to the approval of a special body of shareholders whose rights have been curtailed to issue this type of share. The purpose of this is to achieve the principle of equality between company shareholders.<sup>42</sup>

Thus, the science of law has been and continues to be, a basis for the science of economics and its development. For each economic fact, a legal norm has been established that makes it applicable. The regulations and laws that govern a situation are apparent from the outset, in that they establish the legal frameworks to ensure the legitimate activity of companies in their immediate environment,

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<sup>36</sup> <https://www.atheer.om/archives/496097/%D9%82%D8%B1%D9%8A%D8%A8%D9%8B%D8%A7%D8%A8%D8%AF%D8%A1D8%AA%D8%B7%D8%A8%D9%8A%D9%82%D9%82%D8%A7%D9%86%D9%88%D9%86%D8%A7%D9%84%D8%B4%D8%B1%D9%83%D8%A7%D8%AA%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF-2/>

<sup>37</sup> *Alsahwa*, 'Details: The Oman Investment Authority and Its Subsidiaries Review the Performance and Reveal the Business Plan Projects' (2022), 24 April <<https://alsahwa.om/?p=150420>> [Accessed: 7 December, 2022].

<sup>38</sup> A term from Islamic law that means Sharia rulings.

<sup>39</sup> Rafiq Mazahdia and Abdullah Belaidy, 'Venture Capital Company: A Legitimate, Legal and Economic Vision' (2021) 4 Journal of Law and Political Science <<https://www.asjp.cerist.dz/en/article/42447>> [Accessed: 9 October, 2021].

<sup>40</sup> Royal Decree No 18/2019 issuing the Commercial Companies Law.

<sup>41</sup> Resolution No 27/2021 issuing the list of Public Joint Stock Companies.

<sup>42</sup> Alawi Hilal Mohammed Mohammed AH, 'The legal system of preferred shares in companies a study in Omani Corporate Law' (2021) 4(1) Journal of the Faculty of Law (Minya University) 85.

within the host countries, by adjusting their legal and institutional form. These laws and regulations will also determine how companies are created, how they will function, the conditions for their profitability, how they will be liquidated, and how the rights of stakeholders are guaranteed in companies financed by venture capitalists and entrepreneurs. This sensitive task is no less important than the generation of creative ideas or financing and sponsorship through all its investment stages, to become a source of economic wealth and have a positive economic impact.<sup>43</sup>

### **3. Competition Protection and Anti-trust Law**

Good governance indicators are indicators with political and economic dimensions. They contain principles that, when applied, will determine the extent to which the State achieves good governance. Among the most important of these are principles relating to political freedoms and human rights, non-discrimination, political stability, transparency, and the fight against corruption. Good governance indicators are indicators that measure the extent of progress and development in countries undergoing political and economic reform.<sup>44</sup>

Corruption affects all societies, regardless of their development status, but at different levels, depending on the level of human progress within them. In fact, it could be described as a growing problem worldwide, being a consequence of the open market, information economy, and interdependence of interests between international multi-national companies and local enterprises. Out of this come the self-benefits of the ruling elites within a country, which facilitates the spread of corruption in both the political and economic environment.<sup>45</sup>

However, the organs of competition protection and the prevention of monopolistic practices also have an impact on the economic situation of any State, the first effect being to protect the market, thereby encouraging FDI and domestic trade. Competitiveness and non-monopoly lead to lower prices and the quality and provision of the best offers, all in the interests of the consumer. Here, the experience of the US and EU is instructive, especially the German model. The US and European experiences have shown the importance of constantly reviewing laws and principles in line with global changes and developments so that they can be effective in dealing with changes and amendments to the forms of mergers and acquisitions worldwide.

However, competition is not a static variable – a short-term competitive situation will not necessarily last into the long term. Therefore, it is important to understand competition protection and anti-trust agencies. Moreover, it is important that competition protection bodies are perceived as stimulating investment organisms, which seek to create a general climate that will foster stability. In addition, the authority should be shifted from simply expressing an opinion, towards approval or rejection based on laws, principles, and criteria with the aim of stimulating investment. The UAE ranks highest in the Arab world for targeting mergers and acquisitions, followed by Jordan and the Arab Republic of Egypt in equal second place, while the Kingdom of Saudi Arabia and Kuwait are ranked third. To a lesser extent, mergers and acquisitions are also targeted by Morocco, Oman, and Bahrain.<sup>46</sup>

Studies in this area have confirmed that merger and acquisition waves are accompanied by economic, legal, and technological shocks. The first wave of mergers in the US took place from 1897-1904, whereupon anti-trust laws and laws against monopolistic practices were issued. The lifting of several restrictions and regulations in the 1980s then gave rise to another wave of mergers and acquisitions. Although some sources confirm that shocks of various kinds are not the sole factors at play in such waves; liquidity must also be available, in order to undertake the necessary tasks to improve a State's

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<sup>43</sup> Rafiq Mazahdia and Abdullah Belaidy, 'Venture Capital Company: A Legitimate, Legal and Economic Vision' (2021) 4 *Journal of Law and Political Science* <<https://www.asjp.cerist.dz/en/article/42447>> [Accessed: 9 October, 2021].

<sup>44</sup> Omar Khedirat and Emad Al-Shaddouh, 'Impact of Good Governance Indicators on Foreign Investment Direct in Arab Countries' (2015) 21(March) *Al Manara Journal of Research and Studies* <<http://repository.aabu.edu.jo/jspui/handle/123456789/1266>> [Accessed: 3 August 2022].

<sup>45</sup> Omar Khedirat and Emad Al-Shaddouh, 'Impact of Good Governance Indicators on Foreign Investment Direct in Arab Countries' (2015) 21(March) *Al Manara Journal of Research and Studies* <<http://repository.aabu.edu.jo/jspui/handle/123456789/1266>> [Accessed: 3 August 2022].

<sup>46</sup> Yasmin Mahmoud Fouad, Fouad Y, 'Control of Mergers and Acquisitions in the Competition Protection Act and Assess Their Impact on the Market and Investment Climate' (2018) 19 *Journal of Economics and Political Science* (Cairo University).

economic situation.<sup>47</sup>

Mergers and acquisitions in the US have been characterised by the merger of shareholders and the purchase of banks. It is notable that America has chosen to both stimulate and regulate mergers and acquisitions and facilitate the accompanying procedures for citizens by issuing a set of important laws, principles, and standards. These have since been applied in many countries around the globe. The most prominent of these laws are described below.<sup>48</sup>

A. With the growing fear of increasing monopoly operations in the US at the end of the 19<sup>th</sup> century, US Congress passed the Sherman Antitrust Act 1890<sup>49</sup> to criminalise all monopoly agreements or monopoly attempts.

B. Out of the above Act, US Congress established a legislative framework and approved regulatory standards to protect competition and prevent monopolisation in the event of mergers and acquisitions. The implementing agencies that work to protect competition and prevent monopoly are:

- 1- The Federal Trade Commission (FTC).
- 2- The Department of Justice Antitrust Unit (DOJ).

In this section on competition protection and anti-trust law, the importance of this law has been demonstrated. It encourages investors to participate in the construction of national economies and the advancement of local populations. Therefore, it is crucial for the legislator to take this into account and draft robust laws in the face of rampant corruption in most Arab and other developing countries.

## **5. CONCLUSION**

In conclusion, after reviewing the previous laws in this article, a result may be identified, proving the direct contact of national laws and legislative and political decisions on foreign investor. In the case of Oman, this contact has had the effect of stimulating the economy and the Omani investment market. Therefore, it is necessary for Omani legislators and State decision-makers to understand this, especially in the economic and investment sphere, so as to avoid the loss of FDI. Loss of FDI has been found to have a positive relationship with many economic problems. However, some specialists have praised Oman's modern local laws, claiming that the problem does not lie with these laws but rather with the proportionate implementation mechanism.<sup>50</sup> That said, the researcher believes that it is important to consider the legal framework of the economy. This is not only achieved by studying all laws that are relevant to the investment project itself, but also those that touch upon the investor's life. For example, there is the matter of career opportunities for jobseekers, and staff training to equip them with the latest technology skills. In this way, modern technology will be transferred to the Sultanate, and it will be able to keep pace with the qualitative leap in commercial and industrial projects that are taking place elsewhere in the world.

## **6. FINDINGS**

- 1) The Sultanate of Oman has adopted a capitalist system (free economy) as its main economic approach to public and private life. Accordingly, the Omani trade law provides everyone with the freedom to engage in any economic, industrial, commercial, or agricultural activity, as desired, provided that public order and the relevant laws are respected.
- 2) The laws that have been studied have proved to be both influential on and influenced by the economic situation of the countries concerned, with either a negative or positive effect on FDI.
- 3) The preliminary results of the public-private partnership laws in Oman and other developing countries reveal that political support, the distribution of legal and financial risks, joint authority and responsibility, effective communication channels, and conflict resolution are decisive factors that contribute to the success or failure of the mechanism of cooperation between parties in public-private partnership projects.

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<sup>47</sup> Supra n1.

<sup>48</sup> Yasmin Mahmoud Fouad, Fouad Y, 'Control of Mergers and Acquisitions in the Competition Protection Act and Assess Their Impact on the Market and Investment Climate' (2018) 19 Journal of Economics and Political Science (Cairo University).

<sup>49</sup> Sherman Antitrust Act 1890.

<sup>50</sup> E Thabit, Interview with The Amman Commercial Arbitration Center on Foreign Direct Investment in Amman [Personal interview], 12 July 2021

4) Guarantees and benefits are the keys to the safety and security of investors, and can be achieved by providing the appropriate investment environment and the required economic resources. These will play a prominent role in attracting investment, while also providing protection from any legislative, administrative, or future action that the State may take, or the termination of the investment if this amends the investment rules.

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