

CHAPTER 6

THE JORDANIAN POLICY ON INTERNATIONAL INVESTMENT TREATIES IN THE CONTEXT OF INDIRECT EXPROPRIATION AND COMPENSATION

6.1. Introduction

Jordan, like other developing countries, has always sought to attract foreign investment, as Jordan relies on developed countries to fund development projects due to a lack of local funding sources and experience.⁸⁹⁷ Foreign direct investment is regarded as one of the most important factors influencing the country's growth, as it contributes to increased economic productive capabilities, the transfer and localization of modern technology, the creation of new job opportunities, and the improvement of the quality of life. Due to the foregoing, Jordanian legislators have strived to provide an appropriate investment environment to ensure the success of these investments, as well as to provide adequate legal protection and security.⁸⁹⁸ This chapter analyses the development of the domestic Jordanian law on foreign investment protection which took place as early as in the 1950s. The current unified legislation on Jordanian Investment Law 2014 has demonstrated progress toward clarity of the law. However, to understand the general Jordanian approach in dealing with takings and the relevant assessment of compensation, regards have to be made to the domestic acquisition law. This chapter reveals that the existing domestic method in assessing compensation does

⁸⁹⁷ Jordan Strategy Forum (2018) Foreign Direct Investment in Jordan: Should We Care?; Nawafleh, A. (2010). "The Legal Framework for Foreign Direct Investment in the Hashemite Kingdom of Jordan". Journal of World Investment & Trade, 11(1), 109-126.

⁸⁹⁸ Alwan. a. (2020). p251; Enhancing The Legal Framework for Sustainable Investment: Lessons from Jordan. © OECD 2018.

not reflect what is termed as assessment based on the appropriate value of property, as it is heavily dependent on the price stated in the real estate registry record. Recognizing the domestic standard of compensation is necessary to fully understand how it compares to the standard of compensation that Jordan faces under its international obligations relating to expropriation. As will later be explained, the prevailing full compensation standard in most of its international investment treaties marks a stark difference with its domestic standard. This chapter examines the nature of international investment agreements (IIAs) signed by Jordan since the 1960s, focusing on expropriation clauses in terms of coverage and standard of compensation.

6.2. The Development of Jordanian Policy on the Direct Foreign Investments

The Jordanian Constitution provides a clear protection of property from expropriation without compensation. Article 11 of the Jordanian Constitution states, *“No property of any person may be expropriated except for purposes of public utility and in consideration of a just compensation, as may be prescribed by law.”*

The first attempt to regulate foreign investment in Jordan took place in the form of the Law to Encourage Employment of Foreign Capital of 1955 (1955 Law).⁸⁹⁹ This law was the first direct legislative attempt that sought to attract foreign investment and provide it with legal protection in order to create a healthy environment for investment. The 1955 Law contains several articles explaining the concept of foreign capital, the concept of foreign projects, the material and moral elements, approval procedure for

⁸⁹⁹ Jordanian Law to Encourage Employment of Foreign Capital of 1955.

funds entry to Jordan, terms and conditions of registration, employment rules in Jordan, and the types of assistance, facilities, and privileges in Jordan.

In 1967, the Jordanian legislators promulgated the Investment Encouragement Law of 1967,⁹⁰⁰ which sought to regulate investments in Jordan and clarify the relevant concepts thereto. The legislation regulates the establishment of a committee to promote and regulate investment activities of locals involving foreign capital, and aims to create a conducive environment for the investments of the private sector, directing it towards contributing in the implementation of economic development projects, and attracting Arab and foreign citizens to establish, participate and invest in projects in the Kingdom. Further, it provides a set of laws which regulate the privileges, exemptions, and facilities granted to investments and foreign capital, duties and obligations of the government and foreign investors, as well as other issues related to the foreign investment in Jordan.⁹⁰¹ Other relevant legislations are Jordanian Arab Citizens Investment Facilitation Regulation 1986, Jordanian Regulating Arab and Foreign Investments Law 1992, Jordanian Encouragement of Non- Investments Regulation of 1996 (and its amendments until 1999), Jordanian Regulating Non-Jordanian Investments Regulation 2000 (and its amendments until 2020), Jordanian Investment Law 2003, Jordanian Investment Incentives Regulation 2015 (and its amendments until 2019), Jordanian Investment Window Regulation of 2015 (and its amendments until 2019), Jordanian

⁹⁰⁰ Jordanian Investment Promotion Law of 1967 (and its amendments until 2000).

⁹⁰¹ Jordanian Arab Citizens Investment Facilitation Regulation 1986; Jordanian Regulating Arab and Foreign Investments Law 1992; Jordanian Encouragement of Non- Investments regulation of 1996 (and its amendments until 1999); Jordanian Regulating Non-Jordanian Investments Regulation 2000 (and its amendments until 2020); Jordanian Investment Law 2003, Jordanian Investment Law 2014; Jordanian Investment Incentives Regulation 2015 (and its amendments until 2019); Jordanian Investment Window Regulation of 2015 (and its amendments until 2019); Jordanian Investor Grievance Regulation. No. 163 of 2019.

Investor Grievance Regulation. No. 163 of 2019. The primary law as of date that regulates investment in a unified manner is the Jordanian Investment Law 2014.

The term indirect expropriation is not mentioned in any of the Jordanian laws and regulations, as they only appear to mention “expropriation” or “any measures”. It is not tested as to whether the term includes indirect expropriation. Further, no clarification can be found in Jordanian jurisprudence, as well as in the decisions of the Laws Interpretation Bureau of Jordan⁹⁰² concerning the interpretation of legal provisions on indirect expropriation of foreign investment. The Jordanian laws emphasizes the role of the judiciary as the only body that can confiscate any project, seize, freeze or confiscate property.⁹⁰³

The law stipulates the requirement for the public interest and fair compensation to be paid to investor for any expropriation to be permissible.⁹⁰⁴ Jordanian Investment Law of 2003 and 2014 provide similar provisions, to provide fair compensation to be paid to the investor in convertible currency.⁹⁰⁵ Generally, the law stipulates two conditions for expropriation to be legal, namely (a) if it is necessary to be done in the interest of the public; and (b) fair compensation is paid to the investor.

In terms of compensation, Jordanian law applies fair compensation standard to determine the value of compensation for expropriation, with the timeframe for assessing the value of the expropriated investment beginning on the date the confiscator

⁹⁰² It is a governmental body affiliated to the Judicial Council that interprets some articles of the law upon the request of the Prime Minister, and it consists of the President of the Court of Cassation (Chief of the Bureau) and the membership of the two vice-presidents of the Court of Cassation and the Head of the Legislation and Opinion Bureau and a member of the legal affairs of the government body specialized in the law to be interpreted, and it is held at the headquarters of the court of Cassation.

⁹⁰³ Article 9 The Regulating Arab and Foreign Investments Law 1992.

⁹⁰⁴ Article 25 Jordanian Investment Promotion Law of 1995.

⁹⁰⁵ Article 13 Jordanian Investment Law of 2003; Article 42 Jordanian Investment Law of 2014.

announces the intention to expropriate the investment.⁹⁰⁶ However, Jordanian laws do not contain any comprehensive explanation on the meaning of fair compensation and methods for determining its value.⁹⁰⁷ Guidance can perhaps be found elsewhere, such as the assessment of compensation in the context of real estate acquisition. Article 178 of the Jordanian Real Estate Ownership Law 2019 provides:

*“No real estate shall be acquisitioned except for a project that is for public benefit and in return for fair compensation and in accordance with the procedures set forth in this chapter.”*⁹⁰⁸

Article 190 of the same law sets out some of the principles which should be taken into account upon determining the value of the fair compensation that results from real estate acquisition. The law considers fair compensation to be the value of the property or similar neighboring properties at the date of the acquisition decision, which is based on real estate registry records.⁹⁰⁹ Applying this assessment, it appears to be very different from the commonly accepted definition of fair compensation, which defines the price as the most likely price that a hypothetical able seller would offer in a free transaction in an open and unrestricted market, where both parties have reasonable knowledge of the relevant facts and neither is under any obligation to buy or sell at the acquisition date.⁹¹⁰

⁹⁰⁶ Article 11 Jordanian Constitution; Article 25 Jordanian Investment Promotion Law of 1995.

⁹⁰⁷ Hassan. H. (2020). *“Fair Compensation for Expropriation for the Public Benefit (A comparative study)”*. Journal of Law and Human Sciences. v 1. p. 77

⁹⁰⁸ Jordanian Real Estate Ownership Law No. 13 of 2019. Article 178.

⁹⁰⁹ Article 190 Jordanian Real Estate Ownership Law 2019.

⁹¹⁰ Al-Henayna, O. Shatnawi, F. (2015). p. 1062; Hayajneh. A. Al-Adwan. A. (2012). *“Fair Compensation for the Legality of Expropriation in Light of the Provisions of the Jordanian Acquisition Law”*. Studies, Sharia and Law Sciences. Vol.39. I. 2. p. 476; Hassan. H. (2020). p. 77. See also discussion on compensation in Chapter 4.

Article 190 of the Real Estate Ownership Law 2019 has been subjected to many criticisms.⁹¹¹ Many questions have been raised, such as: What if there has been no recent real estate transaction or in relation to neighbouring properties? What if there is prior knowledge of the expropriation and the property is sold at a higher or lower price than its actual value? What if a previous selling transaction for the real estate or similar neighbouring properties was conducted at a lower price than the actual price in order to avoid the fees and taxes associated with the transfer of ownership of the property?

It is pertinent to note that the text of Article 190 differs from Article 10 of the previous Jordanian Acquisition Law 1987. The relevant legal provision in the 1987 Acquisition Law as below:

“B. The following principles must be observed in estimating compensation for any real estate acquired under this law, whether the assessment is made by the court or by consent:

*“It is considered fair compensation for the property or for its use, usufruct, or disposal of it, the price or the rent allowance that can be obtained if it was sold openly in the market or was rented from a person willing to buy or rent on the day in which the stipulated advertisement was published in Paragraph (a) of Article (4) of this Law..... The price of the neighboring properties is taken into consideration. The increase or decrease in the value that resulted from the acquisition does not affect the estimate...”*⁹¹²

⁹¹¹ Al-Awwād, in. (2021). “Explanation of the New Real Estate Law”. Sharia and Law Journal. 35, Issue No. 85; Kanakreh, W. (2019). “Highlights of the Real Estate Ownership Law for the Year 2019”. Ammon Agency; Review the technical office on the real estate property law for the year 2019.

⁹¹² Article 10 Jordanian Acquisition Law No (12) of 1987 (Repealed)

The aforementioned article established a better view of fair compensation value based on the price paid by a person willing to buy to a person willing to sell publicly on the date of knowledge of the acquisition, without affecting the property's estimation value by an increase or decrease as a result of the acquisition.⁹¹³ The assessment should also take into account the dealing values made on the same type of property and similar neighbouring properties, which are determined by referring to real estate registry records to identify the most recent selling deal values.⁹¹⁴

As a result, it is not permissible for the compensation to be less than the acquired property's actual value, and the compensation value must be paid immediately once the ownership is transferred and registered in the acquiring party name.⁹¹⁵ Further, the interests that accrue as a result of a delay in payment of the compensation must be paid.⁹¹⁶

Based on the foregoing discussion, it is proposed that the scope of fair compensation under current the Jordanian law of acquisition may be unfavourable in light of the more appropriate mechanism outlined in earlier article 10 of the Acquisition Law 1987. It must also be taken into account that expropriation of foreign investment is not limited to real estate properties, but also includes other aspects of assets of investment. Guidance from the acquisition law of Jordan may only be helpful so far as the covered properties is concerned, and thus perhaps require further deliberation in converting such interests into monetary form for the purpose of compensation.

⁹¹³ Hayajneh. A. Al-Adwan. A. (2012). p. 476

⁹¹⁴ Al-Henayna, O. Shatnawi, F. (2015). p. 1061

⁹¹⁵ Hassan. H. (2020). p. 83.

⁹¹⁶ Hayajneh. A. Al-Adwan. A. (2012). p. 476.

An integral aspect to be determined is to establish a balance between the public interest that the state seeks to achieve and the private interest of the property owner.⁹¹⁷ To that end, there is a need for the state to adopt a clear standard, particularly on the definition of public benefit, which will serve as legal guarantees requiring the government not to perform expropriation until it has exhausted all possible alternatives, before an expropriation action is carried out.

6.3. Indirect Expropriation in the Jordanian Bilateral and Multilateral Investment Treaties

Jordan has signed and entered into various bilateral and multilateral investment agreements with other countries in order to provide a conducive investment environment. Jordan began entering into such agreements as early as 1974 when it signed its first investment agreement with Germany in 1974.⁹¹⁸ This was followed by many successive agreements, which currently stand at more than 70 investment agreements, including more than 60 bilateral investment treaties.⁹¹⁹ Some of these agreements do not address indirect expropriation or regulatory measures that have the same effect, while others mention it but do not specify its meaning, and only a few of these agreements expressly specify indirect expropriation and provide clarification on a number of related issues.

⁹¹⁷ Al-Henayna, O. Shatnawi, F. (2015). P. 1056; Alwkel.H. (2021). P. 162; Christoffersen, J. (2009). pp. 237-238; Khreisha, kh. (2007). “*Judicial Oversight of Acquisition Decisions in Jordanian Law a Comparative Study with French, Egyptian, and Lebanon law*”. Amman Arab University. P. 50.

⁹¹⁸ Jordan-Germany BIT 1974.

⁹¹⁹ UNCTAD Investment Policy Hub. at <https://investmentpolicy.unctad.org/international-investment-agreements/countries/106/jordan> (accessed on 15 February 2022).

The agreements will be examined according to four categories (a) agreements that do not refer to indirect expropriation; (b) agreements that indirectly refer to indirect expropriation (c) agreements that refer directly to indirect expropriation but without explanation on how it should operate; and (d) agreements that properly address the mechanics of indirect expropriation.

Among the BITs that do not expressly provide for indirect expropriation is Jordan's earliest BIT Jordan-Germany BIT 1974. It provided that investments by nationals or companies of either Contracting Party "*shall not be expropriated in the territory of the other Contracting Party except for the public benefit and against compensation.*"⁹²⁰ There was a weak attempt to include regulatory measures that have the same effect of expropriation in the treaties. Such concepts were still in the developmental stage at the time such agreement was concluded. Subsequently, in 2007 the agreement was amended by adding to the text of the second paragraph of Article 3 that expropriation also includes the management, usage, and investment facilitation.⁹²¹ Some other agreements that do not contain reference to indirect expropriation are Jordan-Malaysian BIT 1994, Jordan-Palestine BIT 2012, Jordan-Tunisia BIT 1995, Jordan-Yemen BIT 1996, Jordan-Egypt BIT 1996, Jordan-Indonesia BIT 1996, Jordan-Morocco BIT 1998 and Jordan-Sudan BIT 2000.

⁹²⁰ Article 3 Jordan-German BIT 1974.

⁹²¹ Jordan-German BIT 2007.

An indirect reference to indirect expropriation can be seen by in the use of terms such as “equivalent to nationalization or expropriation”. It can be observed that agreements of this nature recognise the existence of regulatory procedures which have a similar effect with expropriation that can be compensated. Phrases such as “subjected in any way directly or indirectly to measurements with effects equal to nationalization or expropriation or dislocation” or “take any measure that rises to the level of nationalization or expropriation”,⁹²² suggest that the protection accorded to foreign investors is similarly extended to indirect expropriation.⁹²³ It can also be implied that the wordings of the provisions puts high concentration on the impacts of expropriation, which may lead arbitrators to construe the provision from a sole-effects point of view.⁹²⁴ Examples of BITs of this nature are Jordan-Kuwait BIT 1986, Jordan-Romania, Jordan-Czech BIT1997, Jordan-Spain BIT 1999, Jordan-Bahrain BIT 2000 and Jordan-Bulgaria BIT 2002.⁹²⁵

Most of the bilateral and multilateral agreements that include indirect expropriation are recent agreements that were concluded at the beginning of the 21st century. It is important to note, however, that not all new treaties take this approach. BITs containing direct expropriation clauses prohibits contracting parties to take measures of “expropriation, nationalization or acquisition, direct or indirect” against investments of nationals or companies of the other Contracting Party, unless these

⁹²² Article 10 Jordan-Saudi Arabia BIT 2017.

⁹²³ Article 6 Jordan-Kuwait BIT 2001.

⁹²⁴ *Tecmed S.A. v. Mexico* 2003; *Myers v. Canada* 2000; *Pope & Talbot v. Canada* 2000; *LG&E v. Argentina* 2007; *Starrett Housing Corporation v. Iran* 1987; *Mitchell v. Congo* 2004; *Biloune v Ghana* 1990; Olynyk, S. (2012). p 271; Wagner, J. M. (1999). p. 280; Dolzer, R. (2002). p.79; Mostafa, B. (2008). See previous chapter on sole effect doctrine.

⁹²⁵ See other BITs in Table 1 (Indirect Expropriation in Jordanian International Investment Agreements (IIAs)) of this chapter.

measures are taken in the public interest.⁹²⁶ In studying the texts of the aforementioned provisions, it may be deduced that although these agreements expressly refer to “indirect expropriation and measures that have the same regulatory effect”, there is still an absence of comprehensive regulatory directives on what amounts to indirect expropriation and the mechanism to be applied. The inclusion of the phrase “or any other procedures of the same nature or the same effect,” in addition to the reference to indirect measures of expropriation evidences a clearer recognition of indirect expropriation in the agreements. Among the BITs that adopt this approach are Jordan-Iraq BIT 2013, Jordan-Armenia BIT 2014, Jordan-U.K. BIT 1979, Jordan-Italy BIT 1996, Jordan-Croatia BIT 1999, Jordan-China BIT 2001, Jordan- Singapore BIT 2004 and Jordan-Estonia BIT 2010.

Among the most recent BITs, it is worth noting that a number of them have included indirect expropriation in quite a detailed manner.⁹²⁷ The Jordanian-Kuwait BIT 2001 explicitly mentions that the term expropriation includes “any interrelations or regular measure” which deprives the investor of his investment or substantial interests in it.⁹²⁸ This includes measures with the effect of freezing or restricting investment which can be done indirectly by the imposition of arbitrary taxes, or similar measures with the effect of confiscation.⁹²⁹ It highlights the outcome of such measures that would eventually make investors suffer loss of the economic value of the investment. The

⁹²⁶ Article 4 Jordan-Swiss BIT 1976.

⁹²⁷ Among others are the Islamic Conference Agreement 1981, Jordan- U.S BIT 1997, Jordan-Kuwait BIT 2001, Jordan-India BIT 2006.

⁹²⁸ Article 6 (4) Jordan-Kuwait BIT 2001.

⁹²⁹ *Ibid.*

inclusion of specific provision that elaborates indirect expropriation is prone to describe a wide coverage which focuses how a measure would negatively impact an investment. Similar BITs containing this criteria are Jordan-U.A.E BIT 2009,⁹³⁰ Jordan-Libya BIT 2009,⁹³¹ the Arab Capital Agreement 2013⁹³² and the Islamic Conference Agreement 1981.⁹³³

A number of other BITs of this type, such as the Jordan-India BIT, go into greater detail about indirect expropriation in specific annexures. Among the specific criteria included are “a measure or series of measures taken” that causes the investors to be in a situation that the investment “substantially unproductive and incapable of yielding a return”. The provisions highlight that such an effect is possible to happen even without the transfer of title or outright seizure as in direct expropriation. A fresh approach in such provisions is that they remind the parties and potentially tribunals, of the rigorous assessment needed the measures requires “a case by case, fact based inquiry” that take into account the economic impact of the measure, the extent to which the measures are discriminatory, the degree to which the measure or set of measures interferes with distinct reasonable, investment-backed expectations and the intent the measure is taken. The adverse impact on the economic value of the investment is not to be assessed as a “stand alone” factor, as it by itself does not establish the occurrence of indirect expropriation. It must be evaluated in conjunction with reasonable investment

⁹³⁰ Article (6.5) Jordan-U.A.E. BIT 2009.

⁹³¹ Article 6 Jordan-Libya BIT 2009.

⁹³² Article 8 Arab Capital Agreement 2013.

⁹³³ Article 10(2-A) Islamic Conference Agreement 1981.

expectations, as well as how much such a measure interferes with it. An important criteria is the bona-fide nature of the measure to achieve a genuine public interest and to see “whether there is a reasonable nexus between them and the intention to expropriate”.⁹³⁴ BITs that adopt this approach provides that generally non-discriminatory regulatory actions for the purpose of pursuing public welfare objectives such as health, safety and the environment do not amount to expropriation. In rare cases, after taking into account all factors, only can the arbitral tribunal decides otherwise.⁹³⁵ Other BITs such as Jordan-Canada BIT 2009 provides with detailed description on the necessary measures that will not bar the states from adopting measures that are “to protect human, animal or plant life or health”, “the conservation of living or non-living exhaustible natural resources”, to ensure compliance of the law that is not inconsistent with the agreement and “prudential reasons” related to financial safety of the state, and related to financial institutions.⁹³⁶ In terms of health, safety and environmental measures, it is included in the BIT that it would be inappropriate to encourage the relaxation of such measures. Derogation of such measures for the establishment, acquisition, expansion or retention in its territory of an investment of an investor is discouraged.⁹³⁷ The Jordanian-Japanese BIT also interestingly includes necessary measures to protect public morals or to maintain public order. It states: “*Provided that the public order exception may only be invoked where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society; (i) the prevention of*

⁹³⁴ Article 5 and Annexure-A of Jordan-India BIT 2006.

⁹³⁵ *Ibid*; Annex B.13(1). (b.1) of the Jordan- Canada. BIT 2009.

⁹³⁶ Article 10 Jordan-Canada 2009.

⁹³⁷ *Ibid*. Article 11. See also Annex B.13. 1

*deceptive and fraudulent practices or to deal with the effects of a default on contract; (ii) the protection of the privacy of the individual in relation to the processing and dissemination of personal data and the protection of confidentiality of personal records and accounts; or (iii) safety; or (iv) imposed for the protection of national treasures of artistic, historic or archaeological value”.*⁹³⁸

It is also important to note that several Jordanian BITs take the preambular approach by mentioning health, safety, labor and environment standards that the hosted country seeks to protect. Examples of BITs that contains preambles of this nature is the Jordan-Turkey 2016 and Jordan-USA 1997. This shows that the approach taken is drifting away from the sole effects doctrine towards applying proportionate assessment in determining the indirect expropriation. It is yet to be tested as to whether interpretations could of such treaties could go as far as applying the police power approach, as many of the reasonable regulatory measures that are taken to protect public interest, are excluded from being recognized as indirect expropriation⁹³⁹.

Listed in the table below are the nature of incorporation of indirect expropriation in Jordanian BITs (*Table 1: Indirect Expropriation in Jordanian IIAs*). The table is followed by a pie chart that shows the overall percentage with 42.65% IIAs that stipulates indirect expropriation, 29.41% stipulates for regulatory measures only, 14.7%

⁹³⁸ Article 15 Jordan-Japan BIT 2018; See also Article 20 of the same BIT which includes “labour standards” that the state parties must not derogate from.

⁹³⁹ Viñuales, J. E. (2014). p 329; Mann, H., & Soloway, J. (2002). p8; Gudofsky, J. L. (2000). pp. 243.-287; Aldrich, G. H. (1994). p 609; Friedman, S. (1953). p 19. Refer to previous chapter on police power doctrine.

which stipulate and regulate indirect expropriation, while 13.23% did not stipulate indirect expropriation at all (*Figure 1: Stipulation of indirect expropriation in Jordanian IIAs*).

Table 1: Indirect Expropriation in Jordanian International Investment Agreements (IIAs)

No.	Short title	Date of signature	Status of indirect expropriation in agreement
1	Japan-Jordan BIT 2018	27/11/2018	Stipulation of Indirect Expropriation with Details
2	Jordan-Tajikistan BIT 2017	12/10/2017	Implied Stipulation of Indirect Expropriation
3	Jordan- Saudi Arabia BIT 2017	27/03/2017	Implied Stipulation of Indirect Expropriation
4	Jordan-Turkey BIT 2016	27/03/2016	Stipulation of Indirect Expropriation with Details
5	Armenia-Jordan BIT 2014	29/10/2014	Expressed Stipulation of Indirect Expropriation.
6	Unified Agreement for The Investment of Arab Capital in The Arab States	Amended in January 2013	Stipulation of Indirect Expropriation with Details
7	Jordan- Iraq BIT 2013	25/12/2013	Expressed Stipulation of Indirect Expropriation
8	Jordan- Palestine BIT 2012	04/10/2012	Non- Stipulation of Indirect Expropriation.
9	Estonia-Jordan BIT 2010	10/05/2010	Expressed Stipulation of Indirect Expropriation
10	Cyprus-Jordan BIT 2009	20/12/2009	Expressed Stipulation of Indirect Expropriation
11	Jordan-Tanzania BIT 2009	08/10/2009	Expressed Stipulation of Indirect Expropriation
12	Canada-Jordan BIT 2009	28/06/2009	Stipulation of Indirect Expropriation with Details
13	Jordan- United Arab Emirates BIT 2009	15/04/2009	Stipulation of Indirect Expropriation with Details
14	Jordan- Portugal BIT 2009	17/03/2009	Expressed Stipulation of Indirect Expropriation
15	Jordan- Libya BIT 2009	05/05/2009	Stipulation of Indirect Expropriation with Details
16	Jordan- Qatar BIT 2009	28/01/2009	Expressed Stipulation of Indirect Expropriation.
17	Azerbaijan-Jordan BIT 2008	05/05/2008	Expressed Stipulation of Indirect Expropriation.

18	Jordan- Slovakia BIT 2008	21/02/2008	Implied Stipulation of Indirect Expropriation
19	Germany- Jordan BIT 2007	13/11/2007	Implied Stipulation of Indirect Expropriation
20	Hungary- Jordan BIT 2007	14/06/2007	Implied Stipulation of Indirect Expropriation
21	Jordan- Oman BIT 2007	09/04/2007	Implied Stipulation of Indirect Expropriation
22	Jordan- Russian Federation BIT 2007	13/02/2007	Implied Stipulation of Indirect Expropriation
23	India- Jordan BIT 2006	30/11/2006	Stipulation of Indirect Expropriation with Details
24	Jordan- Kazakhstan BIT 2006	29/11/2006	Expressed Stipulation of Indirect Expropriation.
25	Finland- Jordan BIT 2006	01/11/2006	Expressed Stipulation of Indirect Expropriation.
26	Bosnia and Herzegovina- Jordan BIT 2006	02/07/2006	Expressed Stipulation of Indirect Expropriation.
27	Jordan- Thailand BIT 2005	15/12/2005	Implied Stipulation of Indirect Expropriation
28	Jordan- Ukraine BIT 2005	30/11/2005	Expressed Stipulation of Indirect Expropriation.
29	Greece- Jordan BIT 2005	21/02/2005	Implied Stipulation of Indirect Expropriation
30	Jordan- Qatar BIT 2004	01/12/2004	Expressed Stipulation of Indirect Expropriation.
31	Jordan- Korea, Republic BIT 2004	24/07/2004	Implied Stipulation of Indirect Expropriation
32	Congo Democratic Republic- Jordan BIT 2004	23/06/2004	Expressed Stipulation of Indirect Expropriation.
33	Jordan- Singapore BIT 2004	16/05/2004	Expressed Stipulation of Indirect Expropriation.
34	Belarus- Jordan BIT 2002	20/12/2002	Expressed Stipulation of Indirect Expropriation.
35	Jordan- Lebanon BIT 2002	31/10/2002	Implied Stipulation of Indirect Expropriation
36	Jordan- Lithuania BIT 2002	13/10/2002	Implied Stipulation of Indirect Expropriation
37	Bulgaria- Jordan BIT 2002	07/08/2002	Implied Stipulation of Indirect Expropriation
38	China- Jordan BIT 2001	15/11/2001	Expressed Stipulation of Indirect Expropriation.
39	Jordan- Syrian Arab Republic BIT 2001	08/10/2001	Expressed Stipulation of Indirect Expropriation.
40	Jordan- Kuwait BIT 2001	21/05/2001	Stipulation of Indirect Expropriation with Details

41	Jordan-Switzerland BIT 2001	25/02/2001	Expressed Stipulation of Indirect Expropriation.
42	Austria- Jordan BIT 2001	23/01/2001	Expressed Stipulation of Indirect Expropriation.
43	Jordan- Sudan BIT 2000	30/03/2000	Non-Stipulation of Indirect Expropriation.
44	Bahrain- Jordan BIT 2000	08/02/2000	Implied Stipulation of Indirect Expropriation
45	Jordan- Spain BIT 1999	20/10/1999	Implied Stipulation of Indirect Expropriation
46	Croatia- Jordan BIT 1999	10/10/1999	Expressed Stipulation of Indirect Expropriation.
47	Jordan- Morocco BIT 1998	16/06/1998	Non-Stipulation of Indirect Expropriation.
48	Jordan- Netherlands BIT 1997	17/11/1997	Expressed Stipulation of Indirect Expropriation.
49	Jordan- Poland BIT 1997	04/10/1997	Expressed Stipulation of Indirect Expropriation.
50	Czech Republic- Jordan BIT 1997	20/09/1997	Implied Stipulation of Indirect Expropriation
51	Jordan- United States of America BIT 1997	02/07/1997	Stipulation of Indirect Expropriation with Details
52	Indonesia- Jordan BIT 1996	12/11/1996	Non-Stipulation of Indirect Expropriation.
53	Algeria- Jordan BIT 1996	01/08/1996	Expressed Stipulation of Indirect Expropriation.
54	Italy- Jordan BIT 1996	21/07/1996	Expressed Stipulation of Indirect Expropriation.
55	Egypt- Jordan BIT 1996	08/05/1996	Non-Stipulation of Indirect Expropriation.
56	Jordan- Yemen BIT 1996	08/05/1996	Non-Stipulation of Indirect Expropriation.
57	Jordan- Tunisia BIT 1995	27/04/1995	Non- Stipulation of Indirect Expropriation.
58	Jordan- Malaysia BIT 1994	02/10/1994	Non- Stipulation of Indirect Expropriation.
59	Energy Charter Treaty. (ECT). 1994	17/12/1994	Implied Stipulation of Indirect Expropriation
60	Jordan- Turkey BIT 1993	02/08/1993	Expressed Stipulation of Indirect Expropriation.
61	Jordan- Romania BIT 1992	02/07/1992	Implied Stipulation of Indirect Expropriation
62	Agreement Establishing Multilateral Investment Guarantee Agency. (MIGA).1988	12/04/1988	Implied Stipulation of Indirect Expropriation

63	Jordan- Kuwait of 1986	18/10/1986	Implied Stipulation of Indirect Expropriation
64	Agreement on Promotion, Protection and Guarantee of Investments Among Member States of the Organization of the Islamic Conference. 1981	07/05/1981	Stipulation of Indirect Expropriation with Details
65	Jordan- United Kingdom BIT 1979	10/10/1979	Expressed Stipulation of Indirect Expropriation.
66	France- Jordan BIT 1978	23/02/1978	Expressed Stipulation of Indirect Expropriation.
67	Jordan- Switzerland BIT 1976	11/11/1976	Expressed Stipulation of Indirect Expropriation.
68	Germany- Jordan BIT 1974	15/07/1974	Non- Stipulation of Indirect Expropriation.

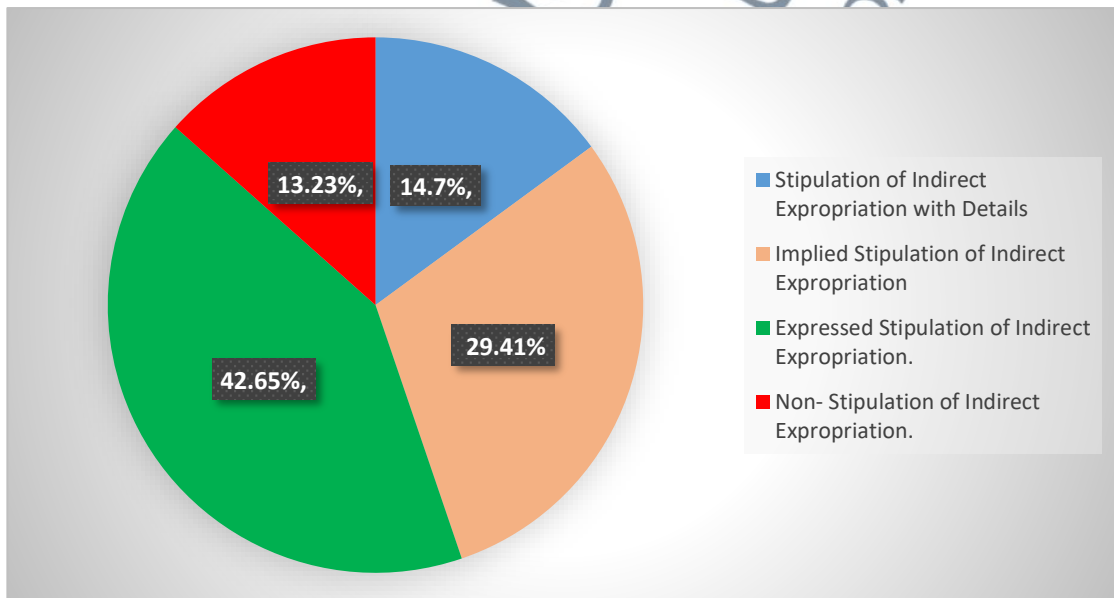


Figure 1: Stipulation of Indirect Expropriation in Jordanian IIAs.

Through the years, the agreements have gradually progressed from the non-inclusion of explicit reference of indirect expropriation to the inclusion of the concept

of indirect expropriation and descriptions of its application. It is submitted that there remains a need to incorporate indirect expropriation in standalone provisions that define or establish a clearer concept of indirect expropriation and the criteria that must be applied when determining it. This is in addition to a clause specifying that if the regulatory measures are taken to preserve public interest, they must be excluded from the purview of indirect expropriation.

6.4. The Compensation for Expropriation in Bilateral and Multilateral Jordanian Investment Treaties

Upon submission of a dispute relating to indirect expropriation to the arbitral tribunal, and after identifying the regulatory procedures that affects the investment as indirect expropriation, the arbitral tribunal shall determine the compensation value that the host country is required to pay to the aggrieved foreign investor. As discussed in the fourth chapter of this thesis, there are several standards for determining the value of compensation, which are full compensation standard, fair compensation standard, and appropriate compensation standard. The compensation value will accordingly differ according to the standard applied by the arbitration tribunal.

Jordan, in regulating the issues of compensation for expropriation in all the BITs and MITs that it has concluded with other countries, appears to have not set a separate standard for indirect expropriation compensation. Instead, it has placed all the forms of expropriation within the same compensation standard. The determination of the compensation standard is not the same in all of these agreements. Full compensation standard, which appears in the stipulation of “immediate, adequate and effective”

payment has been adopted in most Jordanian international investment agreements. In other treaties, standards such as the "fair and appropriate" compensation standard has instead been adopted.

Many Jordanian BITs adopt full compensation standard.⁹⁴⁰ Full compensation standard connotes compensation that includes all the damage that foreign investment has suffered as a result of lawful indirect expropriation, which includes the fair market value of the investment, lost profits, interest, and any other damages.⁹⁴¹ Jordan-Swiss BIT 1976 contains this standard of compensation with “*effective and adequate compensation*”.⁹⁴² It adds that compensation shall amount to the market value of the expropriated investment.⁹⁴³

It should be noted that the provisions related to compensation in some of the agreements concluded by Jordan with other countries are written in two or more languages, in most circumstance in English and Arabic. This may have resulted in a difference in the connotation of the terminologies used. In the Arabic language, compensation must be quick, appropriate and effective (*sarīc, munāsib, fa^{cc}āl*),⁹⁴⁴ while in English, it is stipulated that compensation be prompt, adequate and effective.⁹⁴⁵

⁹⁴⁰ Among BITs taking this approach are Jordan- Swiss BIT 1976; the Jordan- U. K BIT 1979; Islamic Conference Agreement 1981; Jordan-Romania BIT 1992; Energy Charter Treaty (ECT) 1994; Jordan-Malaysia BIT 1994; and Jordan-Tunisia BIT 1995. Refer to Table 2: Compensation Standard in Jordanian International Investment Agreements (IIAs).

⁹⁴¹ Refer to Chapter 4 on full compensation.

⁹⁴² Article 4 of Jordan- Swiss BIT 1976.

⁹⁴³ Article 6 of Jordan- Swiss BIT 2001.

⁹⁴⁴ The equivalent terms are prompt, appropriate and effective. See Arabic texts in Article 3 Jordan- U.S BIT 1997 with a comparison to its English text; see also the Arabic and English texts of Article 11 of the Jordan-Japan BIT 2018. The Arabic text used (immediate, appropriate, and effective), while the text in English used (prompt, adequate and effective).

⁹⁴⁵ Examples can be seen in Jordan-Turkey BIT 1993; Jordan-Indonesia. BIT 1996; Jordan-U. S BIT 1997; Jordan- Croatia BIT 1999.

Although the term “prompt” can be used interchangeably with “immediate”, “appropriate” compensation may not necessarily be the same as “adequate” compensation. In any case, it seems that the intention of Jordan as the host country may not have been to grant full compensation and apply the triple formula (immediate, adequate and effective), but rather to grant only adequate compensation. Consequently, it is necessary to clarify the standard of compensation in the case of indirect expropriation in a more precise manner. Examples of BITS containing full compensation standard are Jordan-Swiss BIT 1976; the Jordan- U.K BIT 1979; Islamic Conference Agreement. 1981; Jordan-Romania BIT 1992; Energy Charter Treaty (ECT) 1994; Jordan-Malaysia BIT 1994; Jordan-Tunisia BIT 1995; and Jordan-Yemen BIT 1996).

The second type of BITS are those which incorporated the fair or just compensation standard⁹⁴⁶. As previously highlighted in Chapter 4, this standard of compensation is based on *“the most probable price hypothetical willing and able buyer would pay to a hypothetical willing and able seller, in a free transaction and an open that unrestricted market, and when both have a reasonable knowledge of the relevant facts, and neither is under an obligation to buy or sell, on the date of taking without including the lost profits”*.⁹⁴⁷

⁹⁴⁶ Among the BITS in this category are Jordan-France BIT 1978; Jordan- Kuwaiti BIT 1986; Jordan-Netherlands. BIT 1997 and Jordan- Bahrain BIT 2000.

⁹⁴⁷ Zhao, S. (2015). p 147; (*CMS v Argentina*. May, 2005.). Para. 402; (*National Grid v. Argentina*. 2008.) para 263; (*Starrett Housing Corporation v. Iran*. 1987.). para.277; Sabah, B, N. J. (2010). p. 764; Marboe, I. (2006). p .731. Marboe defined the Fair market value as: “... The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when

This standard is strongly advocated in developing countries, as it is unconscionable to load an excessive burden on the host country that takes regulatory measures to preserve its public interest and to obligate the host country to pay compensation for the lost profits. It is worth mentioning that the local Jordanian legislation adopts this standard, and thus, such agreements are being exercised in harmony with Jordanian laws.⁹⁴⁸

The Jordanian-French Agreement 1978 is an example of an agreement that has applied the standard of fair compensation. Article 4 states requires the payment “of a fair compensation equal to the real value of the investment” which is assessed as of the day of dispossession.⁹⁴⁹ In another BIT, Article 6 of the Jordanian-Netherlands BIT 1997 specifies that just compensation shall represent “the genuine value of the investments affected”.⁹⁵⁰ Unlike these two treaties, in which the word “fair” or “just” in reference to compensation is used, there are also treaties that do not mention of such terms, rather describe the nature compensation. Article 4 of the Jordanian-Egyptian Agreement 1996 states that:

“...These measures shall be accompanied with allocations for prompt and effective payment of compensation provided that the compensation shall be equal

neither is under an obligation to buy or sell and when both have reasonable knowledge of the relevant facts.”

⁹⁴⁸ Article (42) Jordanian Investment Law; Article (11) of the Jordanian Constitution, Article (178 AND 190) of Jordanian Real Estate Ownership Law.

⁹⁴⁸ Article 4 (2) of Jordan-France BIT 1978.

⁹⁴⁹ Article 4 (2) Jordan- France BIT 1978.

⁹⁵⁰ Other examples of BIT containing the same description are Article 6 Jordan-Netherlands BIT 1997; Article 10 Jordan- Saudi BIT 2017; Article 8 Jordan- Kuwaiti BIT 1986 and Article 4 Jordan-Bahrain BIT 2000.

*to the value of the investment prevailing in the market at the time of expropriation decision announcement...*⁹⁵¹

Another example is article (4) of the Jordanian-Moroccan BIT 1998 which contains similar provision.⁹⁵²

The third type of international investment agreements entered into by Jordan are those which adopt the appropriate compensation standard. The appropriate compensation standard refers to a flexible standard that may range from full compensation payment, including the (fair market value of the investment, profits lost, interest, and any other damages) up to the limit of no compensation payment totally, by taking into account the specific circumstances of each case, and the pertinent laws. This standard is also largely applied in developing countries, as it gives the host country the freedom to take some important and necessary regulatory measures to protect important public interest that cannot be dispensed with.⁹⁵³ The Jordanian-Algeria BIT 1996 is one of the agreements that have adopted the appropriate compensation standard, where article 5.2 states that:

“..... The expropriation measures shall be enclosed, in case these have been taken for the payment of appropriate and actual compensation, whose amount is based on the value of the relevant investments estimated according to the value

⁹⁵¹ Article 4 Jordan-Egypt BIT 1996.

⁹⁵² Article 4 Jordan-Morocco BIT 1998; See also, Article 4 of the Jordan-Sudan BIT 2000; Article 4 Jordan- Palestine BIT 2012.

⁹⁵³ M Sornarajah, (2004. p.480.) (2010. p. 447.); Higgins, R. (1982). p. 277; Mouri, A. (1994). p.365; Ripinsky, S., & Williams, K. (2008). “*Damages in International Investment Law*”. BIICL.p.76; I. Brownlie. (1991), “*Basic Documents in International Law*”. (3rd ed.), Clarendon Press, Oxford 230.

*of investments prevailing in the market on the eve of the day on which the measures were taken or were declared.....*⁹⁵⁴

This standard is in line with the International Treaty Resolution (1803-XVII) of the Permanent Sovereignty over Natural Resources, which states promotes payment of appropriate compensation in accordance with international law.⁹⁵⁵ Such standard also appears in the Charter of Economic Rights and Duties of States (CERDS)⁹⁵⁶ and ILA Seoul Declaration, which also takes into account the legitimate expectations of the parties and all pertinent circumstances.⁹⁵⁷

Table 2 (Compensation Standard in Jordanian IIAs) sets out the compensation standards which are subsumed in the investment treaties entered into by Jordan and other countries. According to the percentage of IIAs, 50.74% of Jordanian International investment agreements adopt the full compensation standard, 26.86% fair compensation, 20.89 % between appropriate and full compensation and 1.49% investment agreements adopt appropriate compensation.

Table 2: Compensation Standard in Jordanian International Investment Agreements (IIAs)

No.	Short title	Date of signature	Compensation standard
1	Japan - Jordan BIT 2018	27/11/2018	Between Appropriate and Full Compensation
2	Jordan-Tajikistan BIT 2017	12/10/2017	Full compensation

⁹⁵⁴ Article 5 (2) Jordan-Algeria BIT 1996.

⁹⁵⁵ Paragraph 4 of the General Assembly Resolution No. 1803 (XVII), adopted on 14 December, 1962, reprinted in 2 I.L.M. (1963) 223; Paragraph 3 of the “General Assembly Resolution 3171 (XXVIII) of 17 December 1973, reprinted in 68 AJ.I.L. (1974) 381.

⁹⁵⁶ Charter of Economic Rights and Duties of States (CERDS), Art 2, para (c). CERDS United Nations General Assembly Resolution 3281 (XXIX).

⁹⁵⁷ Section 5.7 of the International Law Association (ILA). Seoul Declaration, reprinted in 33 N.I.L.R. (1986). p. 326.

3	Jordan- Saudi Arabia BIT 2017	27/03/2017	Fair compensation
4	Jordan-Turkey BIT 2016	27/03/2016	Full compensation
5	Armenia-Jordan BIT 2014	29/10/2014	Full compensation
6	Unified Agreement for The Investment of Arab Capital in The Arab States 2013	amended in January 2013	Fair compensation
7	Jordan- Iraq BIT 2013	25/12/2013	Full compensation
8	Jordan- Palestine BIT 2012	04/10/2012	Fair compensation
9	Estonia-Jordan BIT 2010	10/05/2010	Full compensation
10	Cyprus-Jordan BIT 2009	20/12/2009	Full compensation
11	Jordan-Tanzania BIT 2009	08/10/2009	Full compensation
12	Canada-Jordan BIT 2009	28/06/2009	Full compensation
13	Jordan- United Arab Emirates BIT 2009	15/04/2009	Full compensation
14	Jordan- Portugal BIT 2009	17/03/2009	Full compensation
15	Jordan- Libya BIT 2009	05/05/2009	Full compensation
16	Jordan- Qatar BIT 2009	28/01/2009	Fair compensation
17	Azerbaijan- Jordan BIT 2008	05/05/2008	Full compensation
18	Jordan- Slovakia BIT 2008	21/02/2008	Full compensation
19	Germany- Jordan BIT 2007	13/11/2007	Fair compensation
20	Hungary- Jordan BIT 2007	14/06/2007	Full compensation
21	Jordan- Oman BIT 2007	09/04/2007	Full compensation
22	Jordan- Russian Federation BIT 2007	13/02/2007	Full compensation
23	India- Jordan BIT 2006	30/11/2006	Fair compensation
24	Jordan- Kazakhstan BIT 2006	29/11/2006	Full compensation
25	Finland- Jordan BIT 2006	01/11/2006	Full compensation
26	Bosnia and Herzegovina- Jordan BIT 2006	02/07/2006	Between Appropriate and Full Compensation
27	Jordan- Thailand BIT 2005	15/12/2005	Between Appropriate and Full Compensation
28	Jordan- Ukraine BIT 2005	30/11/2005	Between Appropriate and Full Compensation
29	Greece- Jordan BIT 2005	21/02/2005	Full compensation
30	Jordan- Qatar BIT 2004	01/12/2004	Fair compensation
31	Jordan- Korea, Republic BIT 2004	24/07/2004	Full compensation
32	Congo Democratic Republic- Jordan BIT 2004	23/06/2004	Between Appropriate and Full Compensation
33	Jordan- Singapore BIT 2004	16/05/2004	Full compensation
34	Belarus- Jordan BIT 2002	20/12/2002	Between Appropriate and Full Compensation
35	Jordan- Lebanon BIT 2002	31/10/2002	Fair compensation
36	Jordan- Lithuania BIT 2002	13/10/2002	Between Appropriate and Full Compensation
37	Bulgaria- Jordan BIT 2002	07/08/2002	Full compensation
38	China- Jordan BIT 2001	15/11/2001	Fair compensation
39	Jordan- Syrian Arab Republic BIT 2001	08/10/2001	Fair compensation
40	Jordan- Kuwait BIT 2001	21/05/2001	Full compensation
41	Jordan- Switzerland BIT 2001	25/02/2001	Full compensation
42	Austria- Jordan BIT 2001	23/01/2001	Between Appropriate and Full Compensation

43	Jordan- Sudan BIT 2000	30/03/2000	Fair compensation
44	Bahrain- Jordan BIT 2000	08/02/2000	Fair compensation
45	Jordan- Spain BIT 1999	20/10/1999	Between Appropriate and Full Compensation
46	Croatia- Jordan BIT 1999	10/10/1999	Between Appropriate and Full Compensation
47	Jordan- Morocco BIT 1998	16/06/1998	Fair compensation
48	Jordan- Netherlands BIT 1997	17/11/1997	Fair compensation
49	Jordan- Poland BIT 1997	04/10/1997	Full compensation
50	Czech Republic- Jordan BIT 1997	20/09/1997	Between Appropriate and Full Compensation
51	Jordan- United States of America BIT 1997	02/07/1997	Between Appropriate and Full Compensation
52	Indonesia- Jordan BIT 1996	12/11/1996	Between Appropriate and Full Compensation
53	Algeria- Jordan BIT 1996	01/08/1996	Appropriate compensation
54	Italy- Jordan BIT 1996	21/07/1996	Full compensation
55	Egypt- Jordan BIT 1996	08/05/1996	Fair compensation
56	Jordan- Yemen BIT 1996	08/05/1996	Full compensation
57	Jordan- Tunisia BIT 1995	27/04/1995	Full compensation
58	Jordan- Malaysia BIT 1994	02/10/1994	Full compensation
59	Energy Charter Treaty. (ECT). 1994	17/12/1994	Full compensation
60	Jordan- Turkey BIT 1993	02/08/1993	Between Appropriate and Full Compensation
61	Jordan- Romania BIT 1992	02/07/1992	Full compensation
62	Jordan- Kuwait of 1986	18/10/1986	Fair compensation
63	Agreement on Promotion, Protection and Guarantee of Investments Among Member States of the Organization of the Islamic Conference. 1981	07/05/1981	Full compensation
64	Jordan- United Kingdom BIT 1979	10/10/1979	Full compensation
65	France- Jordan BIT 1978	23/02/1978	Fair compensation
66	Jordan- Switzerland BIT 1976	11/11/1976	Full compensation
67	Germany- Jordan BIT 1974	15/07/1974	Fair compensation

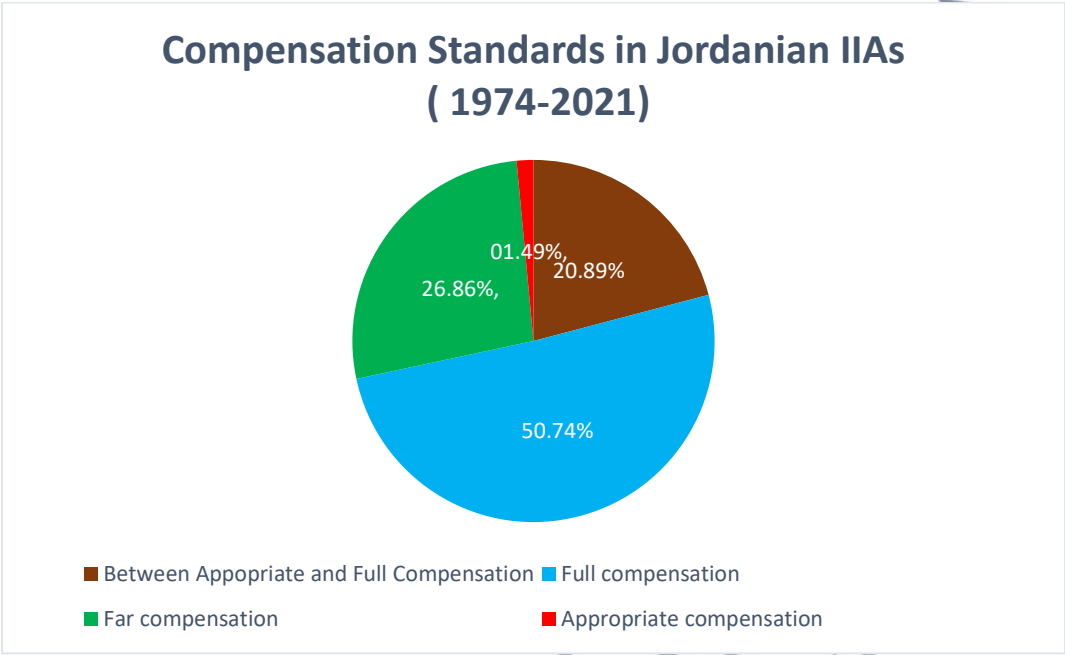


Figure 2: Compensation Standards in Jordanian International Investment Agreements

It can be drawn from the chart that Jordan did not adopt a standard approach for all of its international investment agreements. Although generally the contents of all investment treaties are almost similar in terms of the basic coverage of standard of protection (expropriation, national treatment, fair and equitable treatment), but the differences in wordings may result to different interpretations and burden of compensation to the host states. This requires references to interpretations made in international investment tribunals having similar provisions to get an idea on which direction such clauses are heading. Jordanian experience in international arbitration may not provide a clear picture on this as yet. There are a number of cases that are brought to international tribunals under the International Convention of Settlement of Investment Disputes (ICSID) of which Jordan is a party. Among those cases are *ICRS*

v Jordan,⁹⁵⁸ *ATA Construction v Jordan*,⁹⁵⁹ *Salini v Jordan*,⁹⁶⁰ *Orange v Jordan*,⁹⁶¹ *Trans-Global Petroleum, Inc. v Jordan*⁹⁶², *Ali Alyafei v. Jordan*,⁹⁶³ *Fouad Alghanim & Sons Co. v Jordan*.⁹⁶⁴ Most of these cases were discontinued and reached settlement in pursuant to the ICSID rules and did not contain discussions about expropriation.

6.5. Conclusion

It can be concluded that Jordanian laws do not comprehensively regulate the issue of indirect expropriation of foreign investment and its compensation. There is generally a lack of specific provisions which exclusively define indirect expropriation and the criteria for compensation within bilateral and multilateral investment agreements.

It is also apparent that the existing IIAs contain various standards of coverage of indirect expropriation and compensation. The majority belong to the early generation of IIAs that adopt full compensation. It is predicted that tribunals will construe the compensation approach based on the wordings of the treaties. The vague standards in the IIAs also provide a broad room for interpretation, thus creating a bigger uncertainty. There will be a challenge to incorporate the balance, and to allow deliberation for Jordanian's regulatory need such as for health, security. Designing the futures of

⁹⁵⁸ *International Company for Railway Systems (ICRS) v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/09/13; Jordan-Kuwait BIT 2001.

⁹⁵⁹ *ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan* (ICSID Case No. ARB/08/2 (Jordan-Turkey BIT 1993).

⁹⁶⁰ Cairns, D. J. (2005). Introductory Note to International Centre for Settlement of Investment Disputes (ICSID); *Salini Construttori S.P.A. and Italstrade S.P.A. v. the Hashemite Kingdom of Jordan*, Decision on Jurisdiction ICSID Case No. ARB 02/13, International Legal Materials, 44(3), 569-572.

⁹⁶¹ *Orange SA v. Hashemite Kingdom of Jordan* (ICSID Case No. ARB/15/10); Jordan-France BIT 1978.

⁹⁶² *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan* (ICSID Case No. ARB/07/25) se No. ARB/15/10

⁹⁶³ *Ali Alyafei v. Hashemite Kingdom of Jordan* (ICSID Case No. ARB/15/24)

⁹⁶⁴ *Fouad Alghanim & Sons Co. for General Trading & Contracting, W.L.L. and Fouad Mohammed Thunyan Alghanim v. Hashemite Kingdom of Jordan* (ICSID Case No. ARB/13/38)

Jordanian IIAs is essential to strike the balance at the treaty drafting level for clarification purpose and as an effort to prevent disputes.

The new generations of IIAs such as Jordan-Canada BIT 2009, Jordan-India BIT 2006 and Jordan-Japan BIT 2018 may provide a good reference for future Jordanian BITs. There are emerging criteria that are explicitly incorporated into these treaties that can help shape the legitimate expectations of the investors and provide reasonable room for states to regulate for public interest. In terms of compensation, it is submitted that the best approach would be the appropriate compensation standard award as can be seen in some Jordanian BITs. This will provide some assurance to the investors, that although it may not reach the level of full compensation but it at least provides adequate and proportionate relief for the loss suffered. It is also pertinent for Jordan to ensure that the domestic laws are in line with the international obligations of international investment law for coherence, clarity and a more predictable investment climate.

In view of the above, it is suggested that the time has come for Jordan to have its own BIT model as a guide, or at least to have a structure of preferred contents suited to the country, known as the Jordanian model (BITs). There are some other countries which have adopted this approach such as China, the United States and Australia which have their own their BIT models. Although it may be difficult of a developing country like Jordan to have an upper bargaining power, it could at least set a standard that caters its specific interest. In the context of the subject matter in discussion, the model should include clear articles that clarify the concept of indirect expropriation, the principles that should be applied when determining indirect expropriation, the regulatory procedures that should be excluded from being considered as indirect expropriation, and

the applicable criteria in estimating the value of compensation for indirect expropriation.

