

# UNDERSTANDING LEGAL BARRIERS TO FOREIGN INVESTMENT IN AFGHANISTAN: A CASE STUDY IN HERAT INDUSTRIAL ZONE



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## ABSTRACT

Since a century ago, there have been many efforts to attract foreign investment in Afghanistan. These efforts include the codification of laws and policies and the provision of facilities for participation of foreign companies in the Afghan economy through partnership with the government and partnership with private sector in this country. Since 2001, with the support of the market economy system in Afghanistan's constitution and the reform of some governmental institutions, these efforts have been accelerating, hoping that encouraging foreign investors and their presence in the market will improve the economic situation. Unfortunately, these efforts have failed to meet the market expectations and the Afghanistan's government purposes in order to attract foreign investment in Afghanistan. Even in 2014, and after that, the outflow of capital (domestic and foreign) has also been reported from the economy of Afghanistan. Various variables can be considered as an obstacle to the development of foreign investment in Afghanistan, war, corruption, lack of infrastructure, lack of energy, lack of trained workforce and non-accountability of the legal system are in this category. In this research, it was assumed that the existing challenges in different sectors of legal framework of foreign investment in Afghanistan are the main obstacles to the growth of foreign investment in this country. In order to prove the hypothesis, the study was carried out using the experimental research method by referring to the investors and experts in the economic zone of Herat in western Afghanistan. The research results indicate that in some sectors, the legal system needs to be reformed, but in general and by comparing the legal system with other variables, the measure of investors' satisfaction is satisfactory, and regulations are not as the main obstacle to the growth of foreign investment in Afghanistan, thus based on the analysis of data, the existing challenges in the laws and policies is not the main obstacle to the growth of foreign investment in Afghanistan. Therefore, it is necessary for Afghanistan's government to take into account the challenges such as security problems, corruption, lack of infrastructure, lack of energy and lack of trained workforce and take steps to address them.

## 1. INTRODUCTION

Afghanistan has been interested in attracting foreign investment about a century ago, practical and legislative measures have also taken place in various periods in this context, but in practice, as Afghanistan's government and people expected, the foreign investment did not grow. Considering the ongoing civil war and the foreign countries' military intervention, large volumes of external and internal investments have also gone out of the country. Afghanistan's withdrawal from this unfavorable situation requires effective measures to be taken in various economic and social spheres, including attracting foreign investment. Although after the fall of the Taliban, the Afghanistan government, has carried out several activities in the field of foreign investment and economic development, but most of them did not have beneficial results in attracting foreign investors.

Along with other factors, the series of challenges in the Afghanistan legal system have also prevented the growth of foreign investment in this country. The study seeks to understand the legal barriers to the growth of foreign investment in the economic zone of Herat in western Afghanistan. The researcher hopes to identify the rate of investors' satisfaction to the effectiveness of the legal system in this field and identify possible legal barriers. This research is carried out in the economic zone of Herat, Afghanistan by empirical research method. The researcher hopes that can provide some recommendations to develop the Afghanistan legal system in the foreign direct investment area, from the research findings.

## 2. STATEMENT OF PROBLEM

Foreign direct investment plays an important role in the socioeconomic development of countries. All countries, particularly developing ones, strive to attract this type of investment. The global market for attracting foreign investment is very competitive. This competition is especially high among developing countries, given their need for rapid development and a shortage of national resources. In recent decades, an average of 12% of GDP of the countries has been earmarked for economic investment. The amount of foreign investment is one of the main economic indicators of the countries.<sup>1</sup> There is a severe shortage of capital in Afghanistan. Two-digit economic growth in 2012 was an exception, because later it dropped to 2%.<sup>2</sup> This situation places Afghanistan in the ranks of least developed countries, economic development is one of the main keys to sustainable development, stability and social welfare in Afghanistan; according to the characteristics and challenges of Afghanistan's economy we can say that attaining economic development without foreign investment is very hard.

Foreign investment hasn't had a significant place in the Afghanistan's economic growth. Although after the events of September 11, 2001, with the flow of funds from more than 40 developed countries in Afghanistan, it was expected that there would be growth in Afghanistan's economic and social development. For this purpose, from the beginning of forming the new system, the market economy was supported in Article 10 of the Afghanistan's constitution, and several measures were taken by policy-makers and legislators to establish a legally supportive economic structure which can infuse growth in the economic sector and enhance social welfare<sup>3</sup>. Increasing and promoting domestic and foreign investment was considered as an effective factor in the process of economic and social development. The government took up several measures<sup>4</sup>, hoping to be able to develop foreign investment in this country.

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1 Barozi Mafroozlo, Waghif, and Aliraza Soltini and Masoud Mirzaei. "Investigating the Constraints and Internal Barriers of Foreign Investment in Iran (Study of 300 Foreign Investment Under Covering Investment Law)". Quarterly Journal of Economic Policy Research, Year 23th, No. 74. Tehran. Summer 2015. Pages 233-193

2 <http://search.worldbank.org/all?qterm=Afghanistan>

3 Special Inspector for Afghanistan Reconstruction. February 2018. Available at: [www.sigar.mil/pdf](http://www.sigar.mil/pdf)

4 Some of the Government Measures: a) Review of Afghanistan's National Development Strategy; b) Integration of the Afghanistan investment support agency with the Ministry of Commerce and Industry; c) Finalizing the Afghanistan joining procedure to the World Trade Organization; d) Developing guidelines and introducing investment opportunities from relevant institutions and ministries; e) Adjustment of certain laws in the field of regulating trade relations and domestic and foreign investment; f) Organizing seminars and workshops at home and abroad to promote the promotion of investment in Afghanistan; g) Distributing land to investors and creating several

Unfortunately, the Afghanistan government's efforts and actions could not create a suitable environment to develop foreign investment and increase the trade turnover in this period. Even in some cases, and especially after the withdrawal of foreign forces, the outflow of capital from Afghanistan was increased. Various factors, such as the continuance of the civil war, and widespread corruption have had an impact on increase in poverty and lack of development<sup>5</sup>. The legal framework could not fully achieve its objectives, and as a result, the investors' confidence in the legal system could not be raised which in turn failed to attract foreign investors to bring their capital in Afghanistan. In view of this, research is required to understand the legal barriers which deter or slow down foreign investment in Afghanistan, especially in Herat Industrial Zone. In the beginning, there will be the brief look at about the theoretical foundations of foreign investment and related concepts, also the foreign investment's background in Afghanistan will be briefly discussed.

### 3. RESEARCH OBJECTIVES

The study seeks to understand the legal challenges and barriers that foreign investors face to the development of their investment in Afghanistan. To achieve this goal, the following objectives are addressed:

- 1) Investigating and identifying main barriers to foreign investment growth in Afghanistan;
- 2) Investigating and identifying the position of legal barriers, among other challenges in foreign investment in Afghanistan.
- 3) Identifying the legal areas that are most challenging in terms of foreign investment growth.
- 4) Collecting and summarizing the participants' suggestions on improving foreign investment growth in Afghanistan.
- 5) Providing recommendations to legislators and policymakers to reduce the barriers and challenges of foreign investment in Afghanistan.

### 4. REVIEW OF LITERATURE

There are many scientific resources about the foreign investment in different countries around the world. In a doctrinal research method these great resources are very helpful, but in Afghanistan there are not enough empirical or non-empirical studies in the field of foreign direct investment laws and policies. As you know this is an empirical research, and the researcher has to refer to domestic empirical data about the challenges and barriers to the foreign investment development's in Afghanistan especially in the Herat economic zone. In this field and similar subject an independent empirical research has not been done in this country, so researcher will have a short focus on the laws, policies, guidebooks, reports and regulations in the investment area in Afghanistan, also will point to the few academic studies implemented in this field.

#### 4.1. REVIEW OF DOCUMENTS

Some Afghan and international organizations such as Afghanistan's economic ministries, World Bank, the United States Embassy in Kabul, USAID and etc. published guide books, national economic reports that some part of these documents are about investment situation in Afghanistan. The Afghanistan National Development Strategy (ANSF), as a credible government document, has defined the size of its economic development with the participation of the private sector. This document is known as a general guide for ministries and government departments in Afghanistan. On this basis, most state institutions and private sector unions have developed their own plans based on this document.<sup>6</sup> Ministry of Finance of Afghanistan presented its economic prospect at the Tokyo Conference on 2013-2014. At this time the majority of the foreign forces have gone out of Afghanistan and the same time the people

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economic zones; h) Efforts to open alternative transit routes and connect Afghanistan to other countries through the Chabahar Port in the south and the Lajward Road in the north.

<sup>5</sup> Strand, Arne, and Kaja, Borchgrevink, & Kristian Berg Harpviken. "Afghanistan: A Political Economy Analysis" Norwegian Institute of International Affairs 2017. ISSN: 1894-650X. pp: 16-20. Available at: [www.nupi.no](http://www.nupi.no)

<sup>6</sup> Islamic Republic of Afghanistan. Afghanistan National Development Strategy, Kabul 2008. Available at: <http://president.gov.af/fa>

and investors have experienced a disappointing situation in this country. This instrument has indicated support for internal/external private sector in investment part in different field like industry, agriculture, building, mine and so forth. Land grant and providing necessary facilities in industrial towns, long term tax encouragement policies, facility of availing for loans with low interest and rate, reduction of tariffs, dispense annual immigration visa and other encouragement policies has tried to meanwhile encourage internal/external investors to invest in Afghanistan.<sup>7</sup>

Among other instruments, which are prepared by the Afghan government, guidance for investment in Afghanistan is a book that published by Ministry of Commerce and industries in 2014. This instrument has tried to make necessary guidance in developing businesses. This instrument introduces, with details, all subjects related to exports and imports, private investment law, short introduction of norms in the field of economy and commerce of Afghanistan, money transfer, banking and financial affairs, manner of paying tax, rules on appointment, introduction of the institute in investment affairs, the introduction of banks and economy institute.

The "Report on the analysis of investment trends in Afghanistan: challenges and opportunities" focused on the study and analyses of private investment situations (domestic and foreign) by Afghanistan investment association. Naming the amount of investments during these years; the employment statistics that have been taken and determined the amount of foreign investment by service, productivity and mining are the key issues in the report.<sup>8</sup> The Afghan Ministry of Commerce has introduced opportunities for foreign investors by developing a policy to encourage private investment, providing legal supports, tax and banking facilities to encourage foreign investment. This work can be invoked and used by investors as a commercial-legal guide<sup>9</sup>. The Investment Support Agency released an analytical report on the Afghan Investment Process Motives and Challenges in 2005. This work addresses some of the obstacles facing investment in Afghanistan, including the introduction of some legal problems.<sup>10</sup> The Relationship between Foreign Direct Investment (FDI) and Economic Growth in Afghanistan: An Economic Analysis is the title of one article that focused on the status of foreign investment in Afghanistan but from the economic vision. The researchers used a large number of external resources in the field of foreign direct investment and tried to match this information with the Afghanistan situation.<sup>11</sup>

The study of the factors affecting the flow of foreign investment in Afghanistan is the title of an article by Roohullah Bayat and Mohammad Amin Askari at Imam Khomeini International University of Qazvin Iran. In this paper, researchers investigated six variables as factors affecting the status of foreign investment in Afghanistan. In this study the economic open system has been known, as the first factor that has effective foreign investment growth in Afghanistan, also the security challenges is as the main barrier in front of FDI growth.<sup>12</sup>

In addition, Maximilian Kuhn and Mohammad Javad Jannatifar in "Foreign direct investment mechanisms and review of Iran's buy-back contracts: How far has Iran gone and how far has may it go?" Believe, for Political reasons, Iran's role in global energy politics is consistently declining as three decades of international divisions, coupled with crippling international sanctions, have left Iran unable to capitalize on its vast energy potential, However, once these political issues have been resolved one way or the other, the second, most important issue will remain: the direct investment mechanism for foreign investment into the Iranian energy sector- the buy-back contracts. This article sheds lights on Iranian concision, contracts and other forms of investment, development, analysis, and their legal

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7 Islamic Republic. Afghanistan Ministry of finance, Policy to Encourage Investment in the Transition Period, Kabul 2014. Available at: <http://mof.gov.af/fa>

8. See the website of the Ministry of Commerce and Industry of Afghanistan. <http://moci.gov.af/fa>

9 Islamic Republic of Afghanistan. Ministry of Commerce and Industry, Guidance for Investment in Afghanistan, Kabul 2014. Available at: <http://moci.gov.af/fa>

10 Islamic Republic Afghanistan. Investment Support Agency, Report on the Analysis of Investment Trends in Afghanistan: The Incentives and Challenges, Kabul 2005. Available at: <http://www.aisa.org.af/en/page/services/company-startup-procedure>

11 Kakar, Muska and Nassir Ul Haq Wani; Nexus between Foreign Direct Investment (FDI) and Economic Growth in Afghanistan: An Econometric Analysis. Kardan Journal of Economics and Management Sciences Volume 1. Issue 2. {ISSN NO: 2616-3950} Kabul Afghanistan. April 2018.

12 Roohullah Bayat and Mohammad Amin Askari. "The study of the factors affecting the flow of foreign investment in Afghanistan" Quarterly journal of political studies in the world of Islam (scientific-research), year 4, no. 13, spring 2015. Pages 11-133. Available at: [http://psiw.journals.ikiu.ac.ir/article\\_698.html](http://psiw.journals.ikiu.ac.ir/article_698.html)

bases<sup>13</sup>. Moreover, Selma Kurtishi-Kasrati in her research, "The effects of foreign direct investments for Host Economy"<sup>14</sup>, believes foreign direct investment (FDI) is the fundamental part for an open and successful international economic system and a major mechanism for development. In this circumstance, the paper examines the benefits of FDI as a key component for successful and sustainable economic growth and as a part of a method for social improvement. The aim is to highlight the most important channels through which FDI makes a significant and exceptional impact on the economic development of the host countries. Since the independent research still has not been conducted to identify the challenges facing foreign investment in Afghanistan, especially the identification of legal barriers to foreign investment in a specific economic zone like Herat, researcher hopes to open a window to start scientific research in this area in Afghanistan.

#### 4.2. THE LEGAL DEVELOPMENT OF FOREIGN INVESTMENT IN AFGHANISTAN

The modern investment, legal story in Afghanistan has started since 1865 in a Loya Jirga (Afghans Major Assembly). Over 1880 government supported manufactures and between 1907 and 1919 royal orders provided mixed (domestic and foreign) and foreign investment.<sup>15</sup> Subsequently, some Turkish and German companies participated in the Afghan economy.<sup>16</sup> In the constitution of 1963, it was attempted to maintain the private and government investment. In 1980 private ownership was considered illegitimate and, therefore, the issue of attraction of foreign investment was withdrawn from the government's agenda. The new constitution in 2005 approved the market economy as the economic system of Afghanistan.<sup>17</sup> More than 40 laws have directly or indirectly effect on investment in Afghanistan. They are basically adopted to regulate private investment (internal and external), banking, commercial companies, commercial contracts, commercial documents, bankruptcy and filtration, resolution of commercial disputes, imports and so forth. These legislations include commercial law, private investment law, the law of joint companies and limited responsibility, the law of insolvency companies, cooperatives law, commercial contract law, commercial mediation law, commercial arbitration law, principles of commercial trials law, commercial agencies law, commercial registration of marks law, copyright law, protection from inventor and explorer law, standards law, competition protection law, imports law, low process of petroleum products, insurance law, banking law, labor law, public tax law, regulation of land matters law, procurement law and some other laws.<sup>18</sup>

Afghanistan's private investment law is enacted pursuant to Article (10) of Afghanistan's constitution, for the aims to increase the role of domestic and foreign investment in the economical field of the country. In this law, Legislator anticipated creation of high commission of investment and defined its rights and responsibilities. Although this law has enacted in order to encourage domestic and foreign investment, it has not complied with the expectation of investors, especially foreign investors.

#### 5. RESEARCH QUESTIONS

- 1) Are Legal Challenges the Major Concern of Foreign Investment in Afghanistan?
- 2) What are the main barriers to foreign investment growth in Afghanistan?
- 3) How is the position of legal barriers, among other challenges in foreign investment in Afghanistan?

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13 Maximilian Kuhn Mohammadjavad Jannatifar, Foreign Direct Investment Mechanisms and Review of Iran's Buy-Back Contracts: How Far Has Iran Gone and How Far May It Go? *Journal of World Energy Law and Business*, 2012, Vol 5, No.3.

14 Selma Kurtishi-Kastrati, *The Effects of Foreign Direct Investments for Host Country's Economy*, American University of the Middle East, (2013).

15 Farhang, Mir Mohammad Seddigh. *Afghanistan in Last Five Centuries*, first volume. Erfan. Tehran. 2006. pp 589-838.

16 Ghobar, M.G.M., *Afghanistan Dar Masir-e- Tarikh (Afghanistan along the highway of history)*, Iran. Thran: Ihsan Publishers, 1996.

17 Safari, Reza, 2017, *Study of Factors Influencing Foreign Investment in Afghanistan*, Second Annual Conference of Economics, Management and Accounting, Ahvaz, Shahid Chamran University, Khuzestan Industry, Mine & Trade Organization, [https://www.civilica.com/Paper-EMAC02-EMAC02\\_420.html](https://www.civilica.com/Paper-EMAC02-EMAC02_420.html).

18. Refer to the link below to view the Afghanistan's rules <http://moj.gov.af/content/files/index.htm>

- 4) Which legal areas are most challenging in terms of foreign investment growth?
- 5) What are the participants' suggestions on improving foreign investment growth in Afghanistan?
- 6) What are the main recommendations to legislators and policymakers to reduce the barriers and challenges of foreign investment in Afghanistan?

## **6. HYPOTHESES**

Various variables affect the flow of foreign investment in Afghanistan. Some of these variables are: the security situation, the rate of corruption, the degree of legal certainty, the rate of inflation, the corporate tax rate, the degree of openness of the economy, the share of subsidies and government support, financial guarantees, and economic freedom. The legal framework of foreign direct investment is one important variable on foreign direct investment and economic development growth. Along with other variables, the legal system has played a weak role in attracting foreign investment in Afghanistan. In order to identify the challenges in the legal system, the following hypothesis is explored in this paper:

### **6.1. MAIN HYPOTHESIS**

“The legal framework of foreign direct investment in Afghanistan could not attract substantial foreign investors to bring their capital and expertise in this country”.

### **6.2. ASSUMPTIONS**

Given that our discussion relates to the recognition of legal barriers, part of the above formulation is being explored in this realization. First, the position of legal variables will be recognized among other variables, and after that the various legal factors will be evaluated. The Afghanistan's Private Investment Law, judicial system, land access laws, banking system, business names protection and business model laws, tax and finance system, regulations for obtaining a license, rules for setting up trade contracts and resolving trade disputes; are legal subjects that will be evaluated in this research. To better understand the legal variables in this research, the following assumptions are expressed:

In addition to legal factors, insecurity and civil war, corruption, lack of infrastructure and energy are the main obstacles to the growth of foreign investment in Afghanistan. Relatively, the legal system of Afghanistan can't meet the needs of foreign investors in this country. The Afghanistan's Private Investment Law, in its essence, has great advantages for foreign investors, but the enforcement of law is difficult in this country. The Afghanistan judicial system so far and as necessary has failed to win the confidence of foreign investors. The land access laws in Afghanistan have not been able to fully satisfy foreign investors. The Afghanistan banking system has not provided the necessary facilities for providing financing and money transfer to foreign investors. The names protection and business model laws in some cases have been failing to provide a suitable environment for business competition in Afghanistan. The Afghanistan tax and finance's legal system has provided facilities for attracting foreign investment, but in practice, the goals of the legislature have not been fully fulfilled. The regulations for obtaining a license to invest in Afghanistan provide the necessary facilities for foreign investors. The rules for setting up trade contracts and resolving trade disputes are unfamiliar to most of investors in Afghanistan. At the end there are probably some other legal barriers in front of the foreign investor in Afghanistan.

## **7. OPERATIONAL DEFINITION**

There are some main variables in the foreign investment field such as security, the legal system, corruption, and bureaucracy, infrastructures, and energy, raw materials, and Professional labor force. In this study relationship between the legal framework of foreign direct investment and foreign direct investment growth is evaluated, so this concept foreign direct investment as a dependent variable, the foreign direct investment's legal framework in Afghanistan as independent variable and the Herat Industrial Zone as population of study will be considered.

## **7.1. FOREIGN DIRECT INVESTMENT**

“Foreign direct investment (FDI) is an investment made by a firm or individual in one country in business interests located in another country. Generally, FDI takes place when an investor establishes foreign business operations or acquires foreign business assets, including establishing ownership or controlling interest in a foreign company. Foreign direct investments are distinguished from portfolio investments in which an investor merely purchases equities of foreign-based companies”<sup>19</sup>. Foreign direct investment has experienced in multiple of ways, such as opening a subsidiary or affiliate in a foreign country, obtaining controlled benefits in an existing foreign company, or merging or joint investing with a foreign company. The concept of foreign direct investment as a dependent variable in this research is considered, which includes all types foreign direct investments in Afghanistan, such as: investing in manufacturing, mining, packaging, banking, Information technology and telecommunications, trade and services.

## **7.2. LEGAL FRAMEWORK OF FOREIGN DIRECT INVESTMENT IN AFGHANISTAN**

The last private investment law in Afghanistan was approved on December 21, 2005, within the framework of 33 articles to encourage and support foreign and domestic private investment in this country. The prohibition of government discriminations in dealing with domestic and foreign investors, fair compensation in the event of confiscation of investor's assets, the introduction of various types of investment companies that can operate in Afghanistan, the private sector ownership types, the right to obtain a license for investment activity, having the bank account and the right to transfer 100% of the income abroad, the right to choose the procedure for disputes. The introduction of centers for resolving international trade disputes and the right to long-term lease of land are the major issues that foreign investment law addresses. Also in the Afghanistan, there are about 40 titles of laws in various areas such as: commercial companies, commercial contracts, transit and transportation, banking, insurance, customs duties and taxes, trade disputes, labor, competition, mines, production, supply of services in various sectors and other domains that somehow have affective on the flow of foreign direct investment, so the legal framework of foreign direct investment is including the Private Investment Law in Afghanistan and all types of laws and policies that they have related or effective in the foreign direct investment area in Afghanistan as independent variable.

## **7.3. HERAT INDUSTRIAL ZONE**

Herat is one historical and economical province in northwestern Afghanistan, also is one of the major investment hubs and industrial pole in this country. The Herat Industrial town was founded in the Gozara District in 2002. The majority of investments and most of the Herat factories are in the Herat Industrial town, and a number of factories are in the other areas around the city of Herat. The purchase and sale of goods and currencies are usually carried out in the central markets of Herat. Herat Industrial Town's products are supplied to most regions of Afghanistan and some neighboring countries. Production and packaging of food, detergents, wires and cables, polyethylene pipes, kitchen utensils and plastic items, household appliances, carpets, non-alcoholic beverages, mineral water, different juices and iron in this industrial town are being produced. In recent years, due to insecurity, lack of government support, and the increase in corruption, about half of the 400 manufacturing plants in the city have been disabled. Of course, over the past two years, 20 new factories have been inaugurated and 60 factories have expanded their field of activity.<sup>20</sup>

## **8. RESEARCH METHODOLOGY**

This research is empirical research that seeks to identify legal barriers to foreign investment development in Afghanistan. Keeping in view the temporal and resource limitations, this empirical study has been done in the Herat Economic Zone, western Afghanistan (HEZ). It is worth noting that all parts of Afghanistan are not economically or

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<sup>19</sup> <https://www.investopedia.com/terms/f/fdi.asp>

<sup>20</sup> The Information was obtained from the Herat Chamber of Commerce and Industry.

not accessible, but the Herat Economic Zone is an area which has favorable environment comparatively for economic development and investment in Afghanistan and researcher can collect data from this area. There are internal investments, foreign and domestic joint investments, and some foreign investments. To understand the legal framework and theoretical foundations of the research subject the legal resources, including laws, policies, guidance, books and formal reports issued by relevant government agencies and international organizations have been investigated initially also some articles about foreign direct investment in Afghanistan and other countries have been studied. According to these studies, a questionnaire has been developed to identify the legal barriers to the growth of the foreign investment. This questionnaire has 13 questions that ten questions have two parts. The first part is a multiple-choice question and the second part is descriptive. For completion of this questionnaire and conducting an interview researcher referred to a number of law and economics experts also to the foreign and domestic investors. The prepared data consists of two parts. The first part is statistical information that is prepared for the responses of participants to multiple choice questions. This information was first tested by the SPSS and Excel software. The second part of the data achieved from the detailed section of the questionnaire or by interview. Also, there are some data which were collected by observation or researcher experiences. The data in this research analyzed based on the research arguments methodology that the researcher applied the inductive research method to better understand the facts.

### **8.1. STATISTICAL POPULATION, SAMPLING METHOD AND SAMPLE SIZE**

In order to obtain scientific results in this study, the impact of laws and policies on the status of foreign direct investment is examined through mixed methods that include both quantitative and qualitative research. The universe of the study are foreign investors, government officials, economists and lawyers relevant to the Herat economic zone. Considering that there are not many foreign investment companies in Herat, and some of them are unwilling to complete the questionnaire or participate in the interview, the researcher has tried to collect data from all available foreign companies, and some experts in the Herat Economic Zone. The experts are some lawyer and economists which have experience in both public and private economic sectors in Afghanistan. To complete the questionnaires, the participants were selected on the basis of a simple probability sampling method. The interviewees have been chosen from among those who are practically engaged in the foreign investment area in Afghanistan or their responsibilities are in the relevant private or public organizations, they were selected by Judgmental sampling. In this study, 19 questionnaires were distributed, and all of them were completed and collected, researcher interviewed with two foreign investors and two senior officials of Herat Chamber of Commerce and Industry. It is worth noting that, each part of the interview will analyze and compare with relevant multiple-choice questions, so there is no a specific section for analysis of the interview data.

### **8.2. DATA COLLECTION METHOD**

The data for the research is collected through different research methods. A part of the information is obtained by observing the status of foreign investment and the researcher's experiences during some years as a legal expert dealing with domestic and foreign investors and traders. Another part of the information was obtained through interviews with stakeholders in investment affairs by semi-structured interview. The basic questions have been structured before started the interview, but interview completed by some open questions.

As previously mentioned, in collecting the data for the research, the questionnaires and interview are the data collection tools. There is one question to understanding the interviewees' knowledge and field of work. Also offered 9 multiple choice questions to understanding the barriers to the foreign direct investment development in Afghanistan, and each question has two parts, there are multi choices to respond in the first part of 9 questions, that the participants chose one of them. The second part is descriptive, so some of the participants mentioned their opinion or experiences in this section. They are including two general questions, and 7 questions in specific legal, economic areas; for example, general variables are included in the 4<sup>th</sup> question, so the legal framework of foreign investment has been compared in this question, and the 5<sup>th</sup> question is about how is the person's judgment about the legal framework of foreign direct investment in Afghanistan. The others multiple choice questions are about various specific legal areas that relate to the foreign investment. Also, at the end of the questionnaire there are two others descriptive questions to understanding the recommendations and advices from interviewees. The

quantitative data that collected by questionnaires, analyzed by SPSS and Excel tools. The data that collected from the interviews are analyzed by quantitative method. At the end of the analysis, we will have a general judgment about the role of the legal framework of foreign direct investment in Afghanistan on the development of foreign investment in this country. The data were collected in the form of hard copy and soft copy and analyzed quantitatively using SPSS and Excel softwares. The explanatory part of the responses was analyzed in an inductive and descriptive manner.

## **9. RESEARCH LIMITATIONS**

Such as other researches, also there are various limitations to completing this study, that will be introduced in the following sections:

### **9.1. LIMITATIONS OF RESEARCH METHOD**

This is empirical research that to implementation it will be used the quantitative research as the main research method. To develop the questionnaire and making the interview questions, it is necessary to refer to the secondary sources that include official documents and scientific works in this area. Access to scientific resources and official documents, the weakness of the research culture, financial and time problems, and some other issues have created limitations to the implementation of this study, that will be discussed the below:

#### **9.1.1. SAMPLE SIZE**

Definition and structure the research on the sample size is not easy in terms of the type and method of research. Laws, regulations, policies, and procedures have been put in place by the legislative and executive institutions of Afghanistan. So, the definition of the theoretical framework is very difficult in the concept of the unit. There are various laws, policies, and regulations that have been made of the foreign investment's legal framework in Afghanistan. Also, there are some economic zones in different places in Afghanistan, that all of them are not available to the researcher, so it is difficult for the researcher to select both parts (literature review and sampling). Despite the challenges, the scholarly studies Afghanistan laws and policies and makes the questionnaire and interview form. Also, considering that access to the Herat economic zone in western Afghanistan is easier for the researcher, and there are enough foreign investors, lawyers and economists, the sampling will be selected from this economic zone.

#### **9.1.2. LIMITATIONS OF AVAILABLE AND VALID INFORMATION**

Unfortunately, scholarly research in Afghanistan has not been considered very important. This area is severely affected by the lack of available and credible academic resources, including on this subject of research. The lack of regular government archives also reduces the access of scholars to official documents. Nonetheless, the researcher is going to do this study and will conduct the validity methods to achieve a credible scientific result.

#### **9.1.3. LACK OF PREVIOUS RESEARCH DATA WITH RELEVANCE TO THIS RESEARCH**

Given that there has not been independent and credible research in Afghanistan. We should not expect the availability of reliable and accessible scientific resources, because scientific institutions have not addressed this issue. However, a few articles have been published by law and economics students, but they are not enough, but there are comparative studies from other countries that can be as patterns for the researcher.

#### **9.1.4. MEASURE USED TO COLLECT THE DATA**

Although it is difficult to measure data in the statistical society like Afghanistan, the researcher hopes that the data collected from the economic zone of Herat in western Afghanistan can be measured scientifically and can be generalizable to all other Afghanistan's areas.

### ***9.1.5. SELF-REPORTED DATA***

The credibility of the information provided by the researcher will be questioned, the researcher has to use validity methods to collect primary data. Sometimes the information provided is researcher may not have academic validity. The researcher also strives to add one article to the scientific journals of the world.

## **9.2. POSSIBLE LIMITATIONS OF THE RESEARCHER**

Like any other research, the investigator feels limitations in front of it in this research, and some of them are included:

### ***9.2.1. IN THE FIELD OF ACCESS TO RESOURCES, ORGANIZATIONS AND INDIVIDUALS***

The lack of resources and standard scientific centers, the widespread corruption and organization's bureaucracy in the context of meeting with important and qualified individuals include the researchers' limitations, which makes it difficult to access sufficient and reliable data. But the researcher will try to solve these issues in light of his experience in Afghanistan.

### ***9.2.2. LACK OF RESEARCH CULTURE***

Undoubtedly, all the scholars in Afghanistan have experienced this problem. Society, private and public institutions do not have a good opinion on the research programs and do not have a good collaboration with the researcher. Official agencies in the government think that their official documents are being used during research. Ordinary people do not really believe in the research results. Therefore, in cases where it is necessary to refer to the relevant authorities for information, we must be sensitive and precise. So, the investigator's behavior should not slow down or discontinue the organizations and people cooperation in the field of investigation.

### ***9.2.3. FINANCIAL LIMITATIONS***

This Ph.D. program is not a scholarship from the governments of Afghanistan or India. The researcher has to complete this research by own money. He believes the great God and his efforts.

### ***9.2.4. TIME LIMITATION***

Investigative work with this volume required a longer period, but the researcher has been trying to use carefully this short time, and in the end, could achieve the scientific result. Consequently, and given the fact that there is no research without limitations and problems. At the end of the work, researcher hopes to have a higher scientific result to Afghanistan academic and economic communities.

## **10. RESEARCH FINDINGS**

In order to achieve the research goals and to find the answer to the research questions, a questionnaire with the following characteristics was made: the first question related to the respondents' level of knowledge and field of work and the second question is to determine the status of the legal system among other variables to develop foreign investment in Afghanistan. The third question is to understand the overall judgment of the participants in relation to the effectiveness of the legal system. Subsequently, the participants' satisfaction with the various laws that are effective in investment will be examined in eight questions. There are two descriptive questions at the end of the questionnaire about other legal obstacles and participants' recommendations and suggestions to develop the laws in the field of foreign investment.

Therefore, each multi-choice section question will be analyzed by using the quantitative research method tools such as Excel and SPSS. The analytical part will be analyzed with respect to the qualitative method. In the end, the final evaluation is going to make by the compare and unified the results of the different sections. All of 19 distributed

questionnaires to the participants have been completed. The participants responded to all multi-choice questions and some of them notice their opinions in the descriptive part, so it shows a high validity of research result.

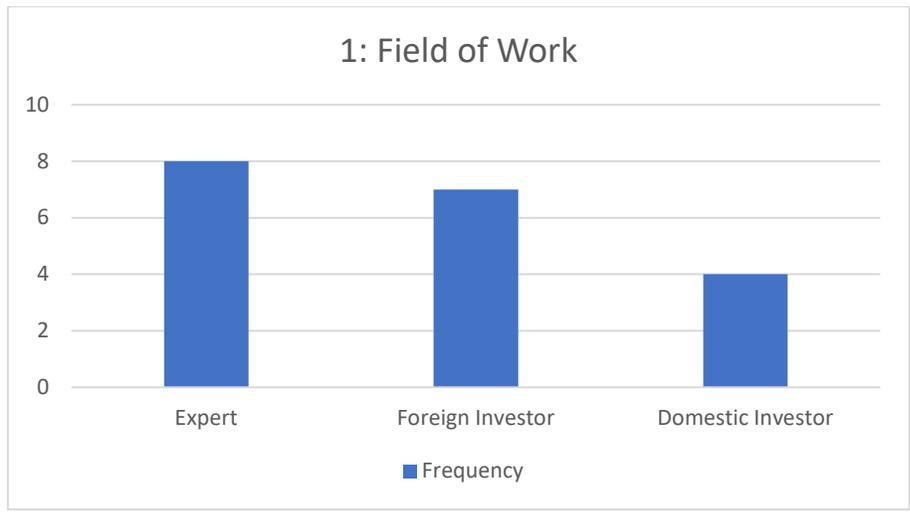
At the beginning of the analyzing, both part (multiple choice and descriptive) of each question will analysis and it result will be expressed. In the second step, an overall assessment of all the information is done and the answers provided are compared. In the final stage, the research hypothesis will be tested that it has been approved or based on the obtained results, has not accepted.

**10.1. DATA ANALYSIS**

This table specifies the numbers, subjects and kinds of questions in the questionnaire:

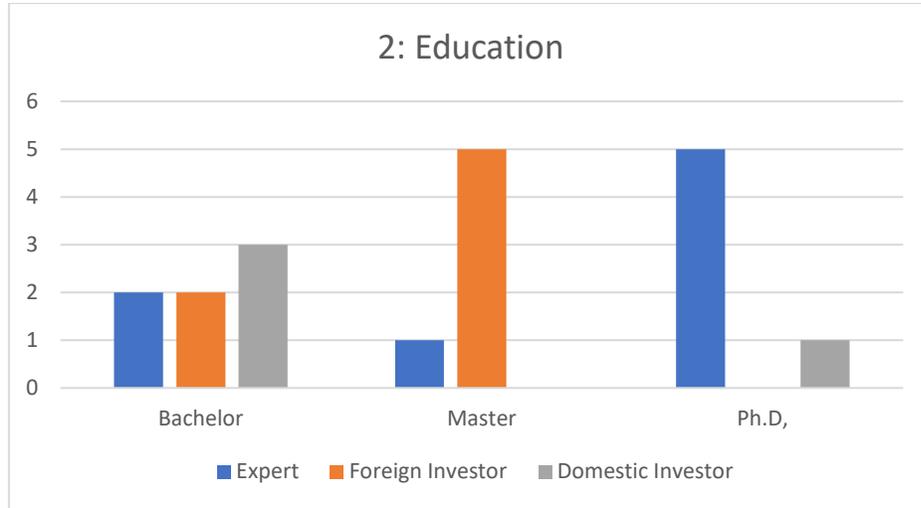
Number	Subjects of Questions	Types
1	Field of Work of Participants	General
	Education Degree of Participants	
2	General Barriers to Foreign Investment in Afghanistan	Multi Choices General
3	General Judgments about the Afghanistan Legal System	
4	Afghanistan Private Investment Law	Multi Choices and Descriptive
5	Afghanistan Judicial System	
6	The Land Access Laws	
7	Banking Legal System	
8	The Rules for Protecting the Name and Business Model	
9	The Tax and Finance, Legal System	
10	Obtaining Business Licenses, Rules	
11	Regulating Contracts and Resolving Business Conflicts	
12	Other Legal Barriers	General Descriptive
13	Specific Suggestions	

The first question has two parts, first part is about the participants’ field of work and the second part is about the participants’ educational level. We will start our analysis from first question:



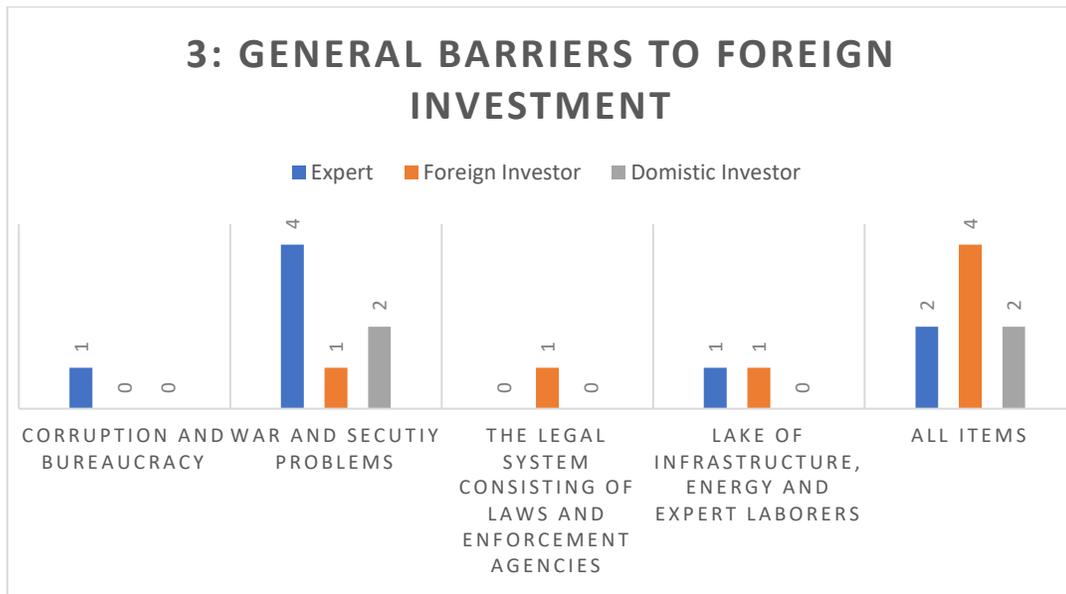
**Figure 1: The Participants' Field of Work**

The table above represents the field of work of the participants. There are about 42% of them of expert, 37% of them are foreign investors and 21% of them are domestic investors. The presence of lawyers, economists, and foreign/domestic investors in this statistical population show the professionalism of the results provided by this research.



**Figure 2:** The Participants' Education Level

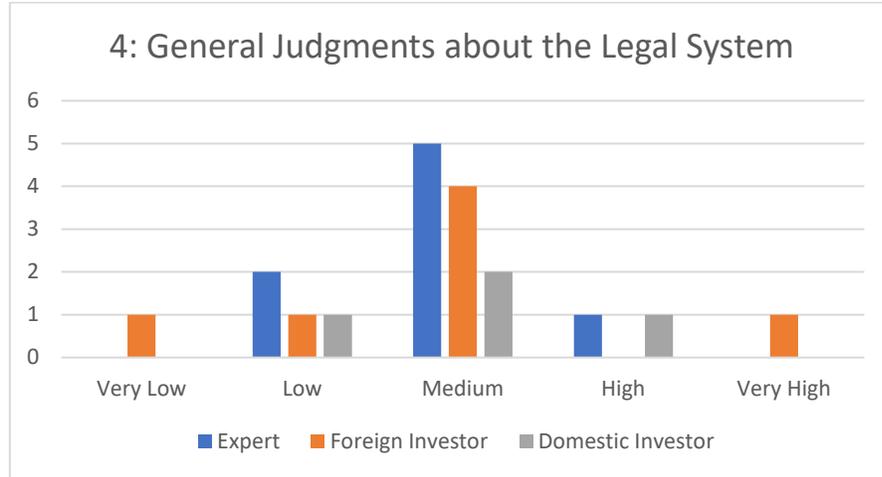
This chart shows the education degree of the participants, including about 37% of bachelors, 31.6% of the masters and 31.6% of Ph.D. The presence of educated people who are not much in Afghanistan is indicated, that the respondents have the necessary knowledge and expertise in the legal and investment systems, as most of Ph.Ds. are from the experts. This issue will increase the confidence of the researcher in the strength of the results of this research.



**Figure 3:** The Status of Legal Barriers Among the Other Challenges

Given that there are many barriers in front of foreign investment in Afghanistan, we asked in the first question how is the position of the legal barrier between the other factors. As observed, 5.3% of the participants have chosen Corruption and bureaucracy. 36.8% of participants have chosen war and security problems. 5.3% of them have chosen a legal system consisting of laws and enforcement agencies. 10.5% of the participants have selected Lack of infrastructure, energy and specialist laborers. However, 47.4% of respondents have selected all items that the also legal issues are among them. It is therefore concluded that legal problems are not the first and foremost obstacle to the growth of foreign investment in Afghanistan, but all variables are considered to be a collection of obstacles in front of foreign investment growth.

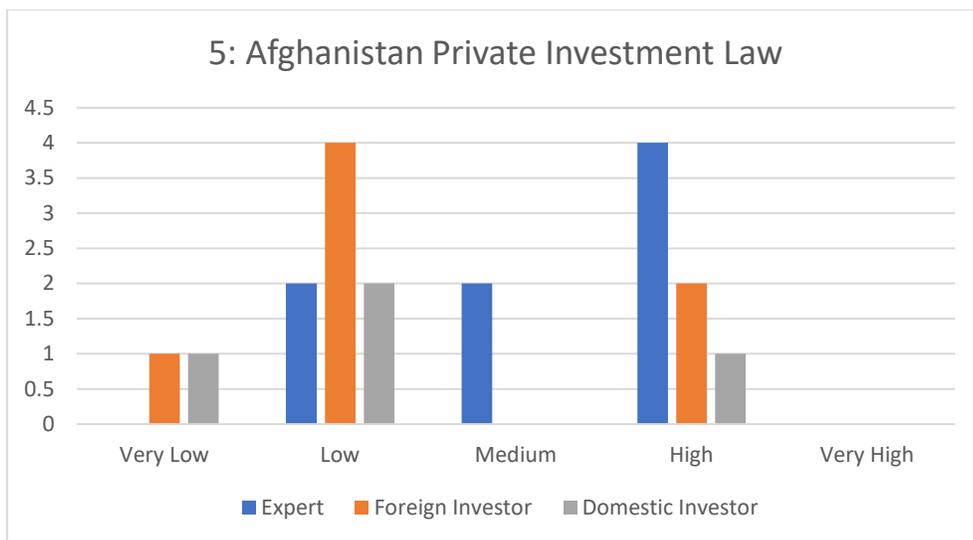
Also, the interviewees believed; among the variables such as the war, the lack of infrastructure, legal system, corruption and the common bureaucracy in government organizations, the problems in the legal system are not the main concern of the foreign investors. But the main obstacle is insecurity and continued war, also lake of infrastructure is more importance of the legal barriers. This shows the confidence of investors and professionals to Afghanistan's foreign investment legal framework.



**Figure 4:** The Overall Judgment about the Legal Framework of FDI in Afghanistan

The second question was designed to get the participants' opinion about the efficiency of the Afghanistan legal system in attracting and expanding foreign investment. In answer to the above question, 50% of the participants have selected the medium option, and 25% of participants believed that the legal system acted low in response to the needs of foreign investors and 6% have selected the very low option. In the meantime, 6% of the participants have chosen the high option. From the set of responses of participants, it follows that the Afghanistan legal system can attain an average level of investor satisfaction for investment in Afghanistan.

Overall, respondents' opinions with the current state of affairs are satisfactory, but most of the interviewees were not happy about the implementation of the laws. Some experts have believed that the contradictions in the legal system, can create a complete lack of confidence in this system. The interviewees also stated that the existence of variables such as war and corruption has caused people and investors to pay less attention to the quality and efficiency of the laws.



**Figure 5:** The Average of Participants' Satisfaction with the Private Investment Law in Afghanistan

With regard to the effectiveness of the Afghan Investment Law, 47.4% of the participants have chosen high option and 10.5% of the participants have chosen the medium option. While 36.8% have chosen low option and only 5.3% have chosen very low option. It is therefore concluded that this law can be relatively satisfactory to investors. Of course, with interviews with experts, most of the participants believed that there are problems and disadvantages in implementing this law, and most of them believed the investment law in Afghanistan is a suitable law, because this law provides a lot of facilities in the fields of obtaining business licenses, the full transfer of capital and interests, resolution of conflicts, types of partnerships, economic freedoms, and so on to the external and internal investors.

The content of private investment law in Afghanistan has partially satisfied the participants. However, for better implementation of this law, recommendations in the field of establishment of a specific entity, the promotion and re-examination of foreign investment laws in light of the economic requirements of the country and the interests of the people and protecting the interests of the investors have been raised.

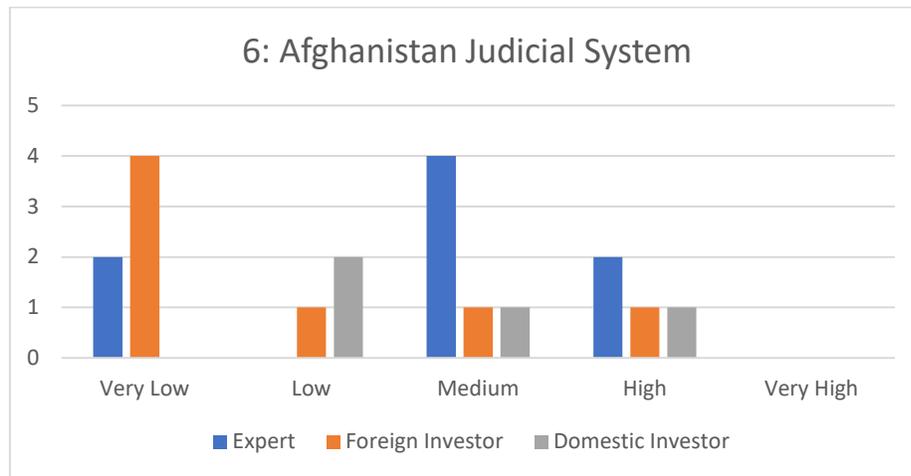


Figure 6: The Average of Participants' Satisfaction about the Afghanistan Judicial System

The correct quality of judicial decisions is a concern that most investors, especially foreign investors, express in their dispute resolution. In order to measure the level of trust of foreign investors in the field of Afghanistan's judicial system, this issue was raised, that, 31.6% of the participations have chosen very low option and 15.8% have chosen the low option. While the other 31.6% have chosen medium option and 21.1% have chosen the high option. These statistics show that the goodwill of investors is not satisfactory with respect to the Afghanistan judicial system. In interviews, the majority of foreign investors did not believe in the efficiency of the judicial system. The country's judicial system is one of the less trusted cases of investors and professionals. Most of interviewees believed reform of the judicial system in recent years has not yet been able to satisfy the beneficiaries, so this section will require to take more effective measures. Although some of them thought the Afghanistan judicial system is going to correct way, and it can achieve the investors' satisfaction as soon as possible.

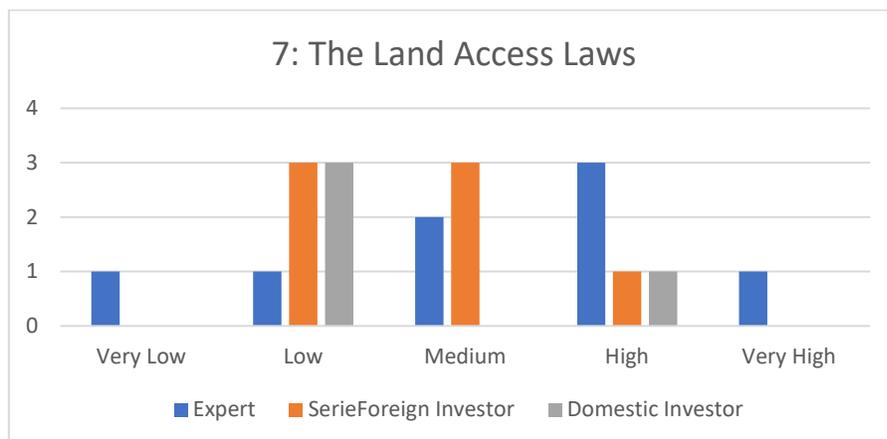
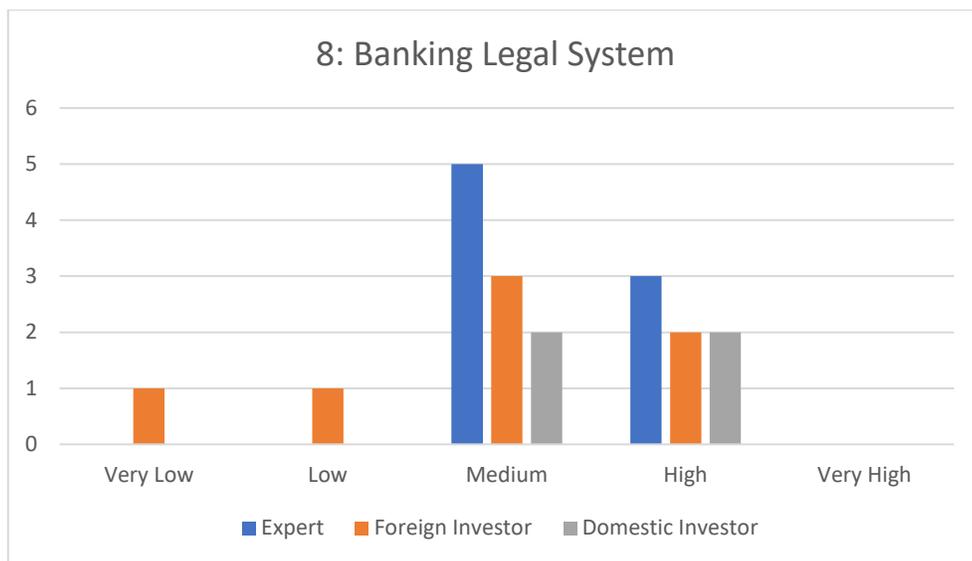


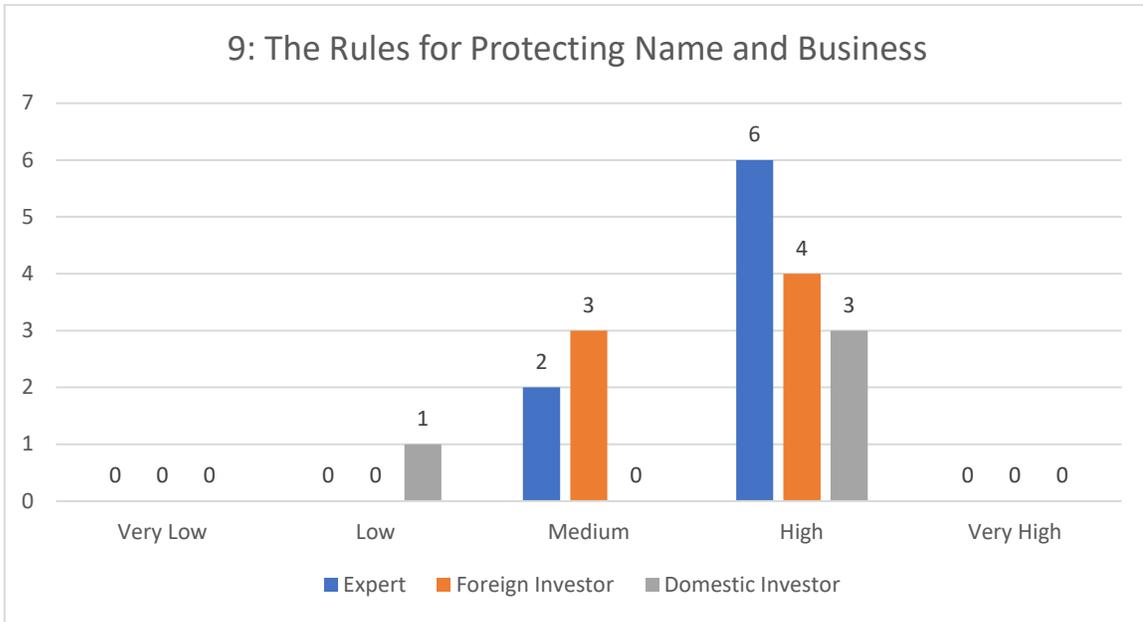
Figure 7: The Average of Participants' Satisfaction about the Land Access Laws in Afghanistan

Under the Afghanistan laws, foreign investors cannot become landowners in Afghanistan. They can lease contracts with the government or people to achieve land for up to 50 years. This has created concerns for foreign investors. Particularly for long term medium-sized investments that in this kind of investment the investors need land for to their invest for an economic reasonable time. Also, under the existing rules, there are some important concerns like, rent president, partnership with an Afghan partner and corruption in the government offices. Therefore, relationship between the rules governing land access and foreign direct investment development is the one main issue that analysis on this part. In answer to this question that “in your opinion, to what extent can land access rules in Afghanistan make investors more access to land?” 5.3% of participants have chosen very low option and 36.8% have chosen low option. At the same time, the 26.3 percent of the participants have chosen medium options. Also, 26.3 percent have chosen high options, and 5.3 percent have chosen very high option. The statistics show that the laws in this area have been able to achieve the satisfaction of investors. In this regard, the majority of interviewees have also complained about the existence of corruption in the distribution of land to investors, as well as the distribution of land to the powerful people and those who are not eligible. Investors are relatively satisfied with the land access laws, but some foreign investors and experts suggest that if the issue of foreign investor ownership of land be acknowledged by the legislators, it can be effective in reducing the concerns of foreign investors. Also, a number of respondents have believed that the corruption and distribution of land to the powerful people are known as reasons of investors’ distrust to law enforcement agencies.



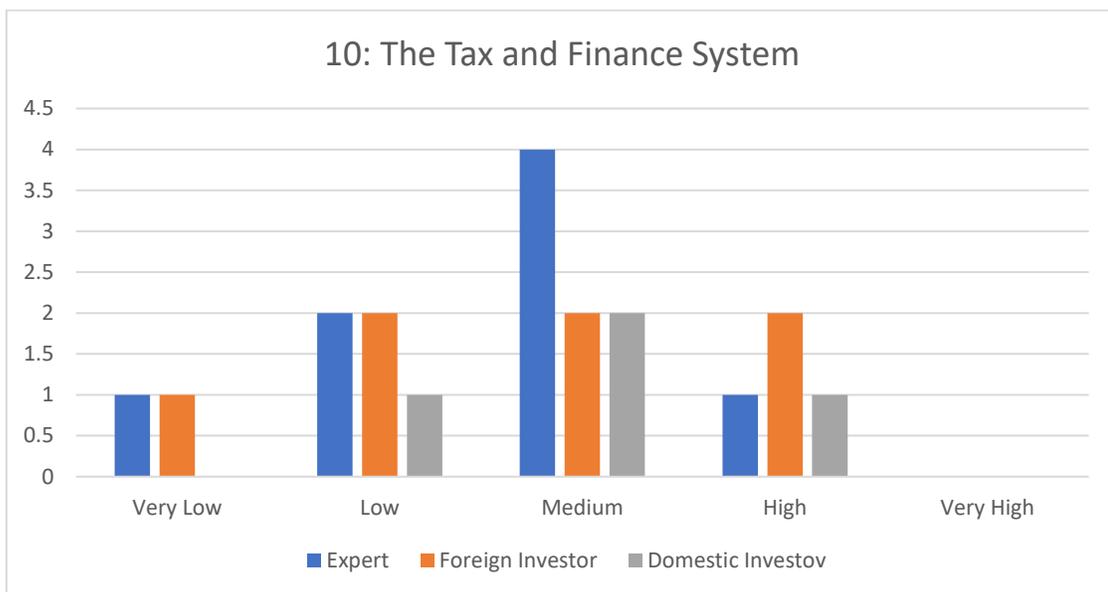
**Figure 8:** The Average of Participants' Satisfaction about the Banking Legal System in Afghanistan

The banking system and the rules governing the functioning of banks are recognized as an essential element of the business and investment industry. A foreign investor has concerns about the transfer of his/her capital, benefits, borrowing, and current accounts, that all of them are related to how banks operate in one country. By answering this question, “How do you think the legal framework of the banking system in Afghanistan can respond to the needs of foreign investors?” 5.3% of the participants have opted for the very low option and 5.3% have chosen the low option. At the same time, 52.6 percent have chosen medium options, and 36.8 percent have chosen very high option. These statistics show the satisfaction of the majority of interviewees with bank rules. But the some of the interviewees believed that the banking system and money transfer were influenced by the traditional currency exchange activities, and the majority of banks had not been able to respond to market demands as it was. Interest rates, high bureaucracy in the borrowing system is also another problem that investors face. The performance of the banking system is approved by investors and experts in the light of existing laws. However, extensive and uncontrolled currency exchange, the slow and complex process of obtaining loans, high-interest rates and absence of the banking support policies, are problems in this field. Also, they have negative effects on the development of the banking system.



**Figure 9:** The Average of Participants' Satisfaction about the Trademark Legal System in Afghanistan

In view of the importance of trademarks in industrial societies, governments have enacted rules in their national law to protect these signs. In the international trade system, legal documents have also been introduced, including Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Afghanistan revises its laws in accordance with the TRIPS Agreement in recent years. This has led the participants to make a positive assessment of the rules for protecting trademarks. Their answer to this question “Is the rules for protecting the name and business model helpful and effective?” are: 5.3% of the participants have chosen the low option but the 26.3% of participants in this study considered the rules for protecting the name and business model as acceptable in the medium, and 68.4% of the participants have chosen high option. The results of the interviews concluded that the laws in this area were standard and managed to satisfy the enthusiasm of investors and businessmen. In the area of the protection of the name and business model, the level of satisfaction of interviewees is high, which indicates the laws in this area are standard. Also, the most of interviewees believed, that the performance of the judicial system is also satisfactory in this regard.



**Figure 10:** The Average of Participants' Satisfaction about the Tax and Finance Legal System in Afghanistan

The structure of the tax system and tariffs have a direct impact on the prosperity of trade and investment growth in countries. With the admission of the market economy and joining Afghanistan to the World Trade Organization, this country is bound to comply with the regulations of the market economy system in the area of customs tariffs. On the other hand, on the basis of encouragement's policies and protect the investment and the content of the private investment law, there are many benefits to investors in Afghanistan. At the same time, it must be admitted that it is not easy for investors to achieve their benefits from the corrupt administration of Afghanistan. Anyway, about efficiency of tax and financial system asked this question "How much the Afghan legal taxation system can bring confidence to foreign investors?" the participants answers are: 10.5% of the participants have chosen the very low option, 26.3% have chosen a low option, 42.1% have chosen medium option and 21.1% have chosen the high option. Which indicates the relative satisfaction of investors with tax and finance laws. Also, the majority of interviewees believed that in practice the tax and finance laws were not being applied in the correct and complete manner, and this has caused problems for investors. The satisfaction of interviewees from the tax and finance systems is modest; private sector proposals for reforming the tax and customs regulations are often accepted by the government. However, a number of interviewees have argued that corruption in the implementing organizations has prevented the investors' trust in the tax legal system.

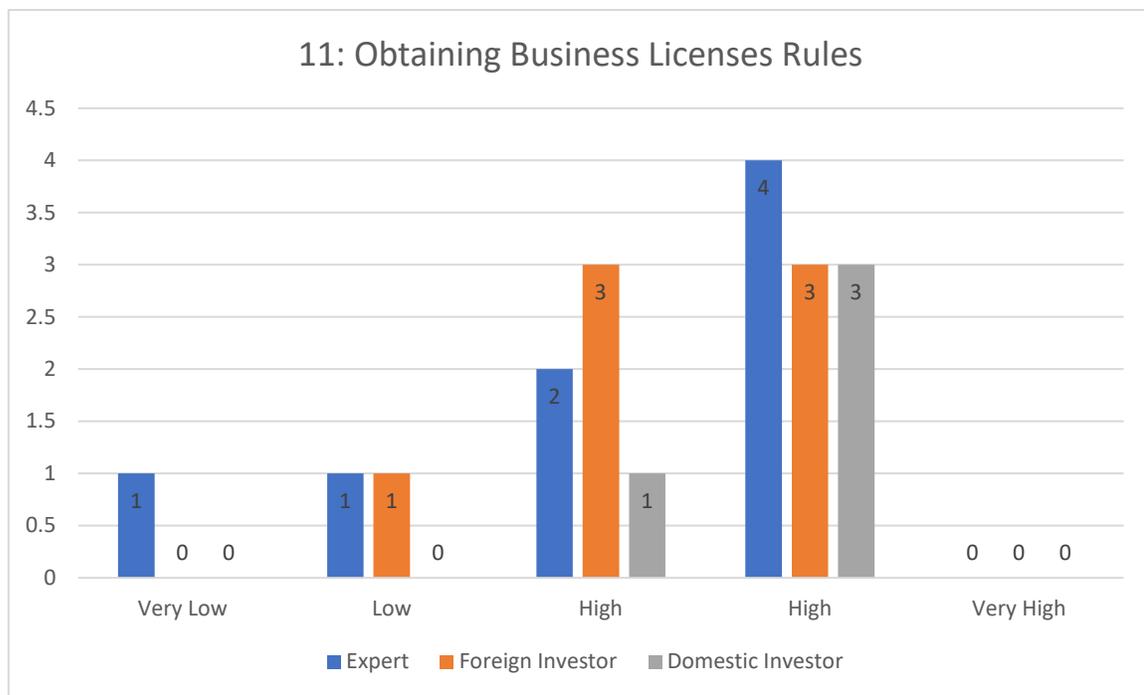
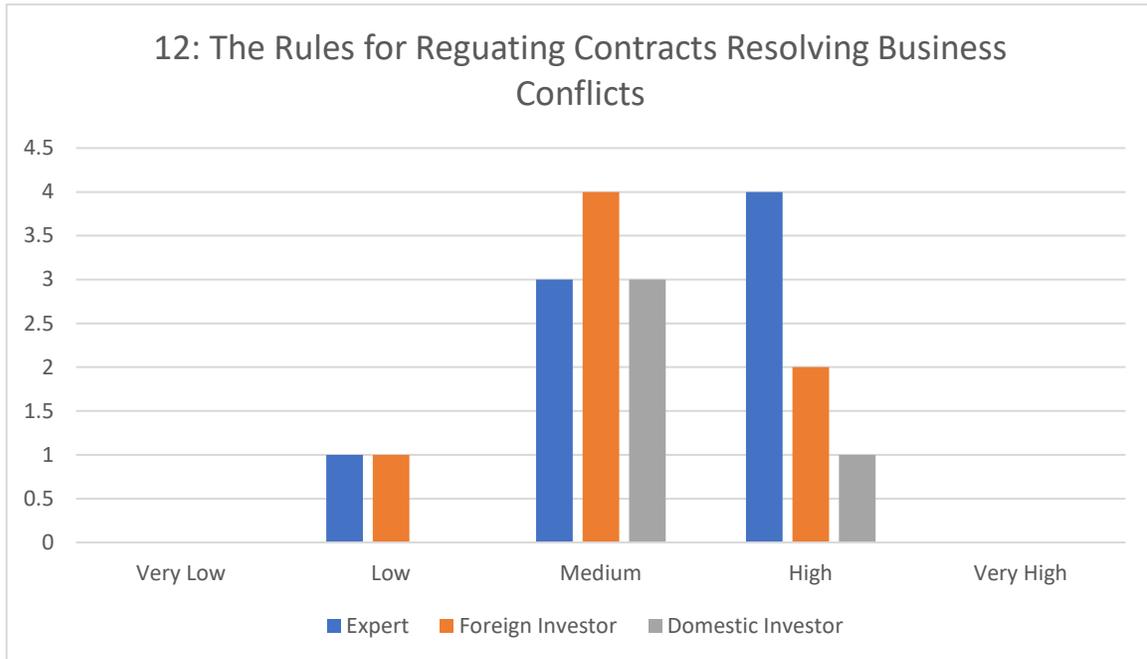


Figure 11: The Average of Participants' Satisfaction About the Obtaining Business Licenses in Afghanistan

The Afghan Investment Support Office was established in September 2003 as an investment license distributor but has now become an active entity in attracting, encouraging and expanding investment and creating industrial parks in Afghanistan, also this office is one part of the Afghanistan ministry of trade and industries. Currently, this office issues the license for domestic and foreign investors in the simplest form to invest in Afghanistan. As a result, Afghanistan ranked 24<sup>th</sup> in the world in the World Bank's report in this area, also World Bank Report Index in 2014 and ranked first in South Asia. This has caused the participants to be satisfied with the process of distributing the license to invest at a high level. In terms of rules for distributing business and investment licenses question was: "How useful and standard are the steps for obtaining business licenses in Afghanistan?" The 68.4% of the participants have chosen the high option and 21.1% of the medium option, which indicates that the majority of investors are satisfied with the laws and the methods of enforcement laws in this area. Approximately 10% of the respondents in this section have chosen low or very low options. Of course, during the interview, a number of interviewees complained about the easy procedure of distribution of the investment license, although from the benefit of this easy procedure only Afghans investor can use. The process of distributing business licenses and

investment in Afghanistan has been a successful experience. This represents a good experience of the private sector and government cooperation in Afghanistan.



**Figure 12:** The Average of Participants' Satisfaction about the Rules for Regulating Contract and Resolving Business Conflicts in Afghanistan

The rules for the regulation of commercial contracts and the laws relating to commercial conflicts can be relatively satisfactory to the beneficiaries. Of course, most interviewees stated that in many cases, contracting and trade conflict solution takes place under the customary system, which this approach in practice causes problems for foreign investors. The laws for contracts and solving business conflicts have been able to satisfy the satisfaction of investors and the private sector. The question in this area was: “In your opinion, how can the rules of regulating contracts and business partnerships meet the needs of foreign investors in Afghanistan?” in the answer 10.5% of the participants have chosen low option, and 52.6% of the participants, have chosen medium option, and 36.7% of them have selected the highest option. These statistics show the participants’ satisfaction with the appropriateness of these rules, but in the interviews, a number of participants have noted that the traditional system of contracts and the conflict resolution through unofficial sources are used in the practice. This approach made very weak the role of the formal legal system in this area. According to some interviewees, the promotion of legal and contractual contracts as well as the resolution of conflicts through the methods in the context of the legal system, also reduce the problems of feigning investors in interacting with their Afghan partners.

In the 12<sup>th</sup> question asked from participants that: “In your opinion are there any other legal barriers in front of foreign investors in Afghanistan?” In the opinions of most of the participants some issues such as the lack of a comprehensive private ownership system, non-standard insurance services, and lack of credible arbitration and mediation centers are other obstacles facing foreign investors in Afghanistan.

In the 13<sup>th</sup> question asked from participants that: What are your specific suggestions on ways to increase foreign investment in Afghanistan? The elimination of barriers to goods transit, government investment in the infrastructure sector, the establishment of a national center for supporting foreign investment, and recognition of different methods of foreign investment, are subjects proposed by the participants.

The other problems that have been reflected by interviewees are the following: Lack of adequate legal support for investment in areas such as: public utilities, infrastructure and mines; failure to enforce insurance policies and the weak role of insurance companies in the Afghanistan market. Lack of stock market law and the rules and regulations of the stock market regulator in Afghanistan. The weakness of the law on the institutionalization of the private property system, especially in the field of foreign investment. Lack of legal rules and regulations on the implementation of compensation during war, and natural disasters.

10.2. A GENERAL INFERENCE

The participants' opinions about the private investment law and the performance of the judicial system in Afghanistan show a medium level of satisfaction, in these areas it is required to review laws and policies and bring more effective reforms in practice. The satisfaction of participants about banking, tax, and land laws have been reflected at the good level, but there are obstacles in the implementation of these laws. The laws in fields of the trademark, issuance of investment licenses, the contracts and the resolution of trade disputes in terms of both the theory and the executive dimension have satisfied the participants to a high level. The performance of Afghanistan government in the field of licensing to the investment sector is a successful experience and can be used as a good pattern in other economic investment areas. It was concluded that the legal framework for foreign investment in Afghanistan could reach the average satisfaction of foreign investors, and this is not the main obstacle to growth of foreign investment in Afghanistan.

In order to strengthen the above inference, the data gathered from participants are summarized in chart 13<sup>th</sup>: As can be seen, about 75% of the participants' opinions about the context of the for foreign investment's legal framework in the overall judgment is positive. also, about the private investment law in Afghanistan more than 47%, in the judicial system more than 53%, in the field of land access regulations more than 58%, in the field of banking laws more than 89% in the area of trademarks around 95%, in the field of tax laws more than 63%, in terms of obtaining investment's license more than 89%, and in the field of regulating contracts and resolving trade disputes more than 89% of their satisfaction has been reflected. With these statistics and considering that in the second question, in which the legal barriers were identified among other challenges, only about 5% of participants, namely, only one person, considered the legal barriers as the main obstacle to the growth of foreign investment in Afghanistan.

Ultimately, it became clear that the potential challenges in the legal framework for foreign investment in Afghanistan could not be seen as a major concern for foreign investors. The bigger challenges are existing in proportion to the structure of the legal system in front of foreign investors in Afghanistan.

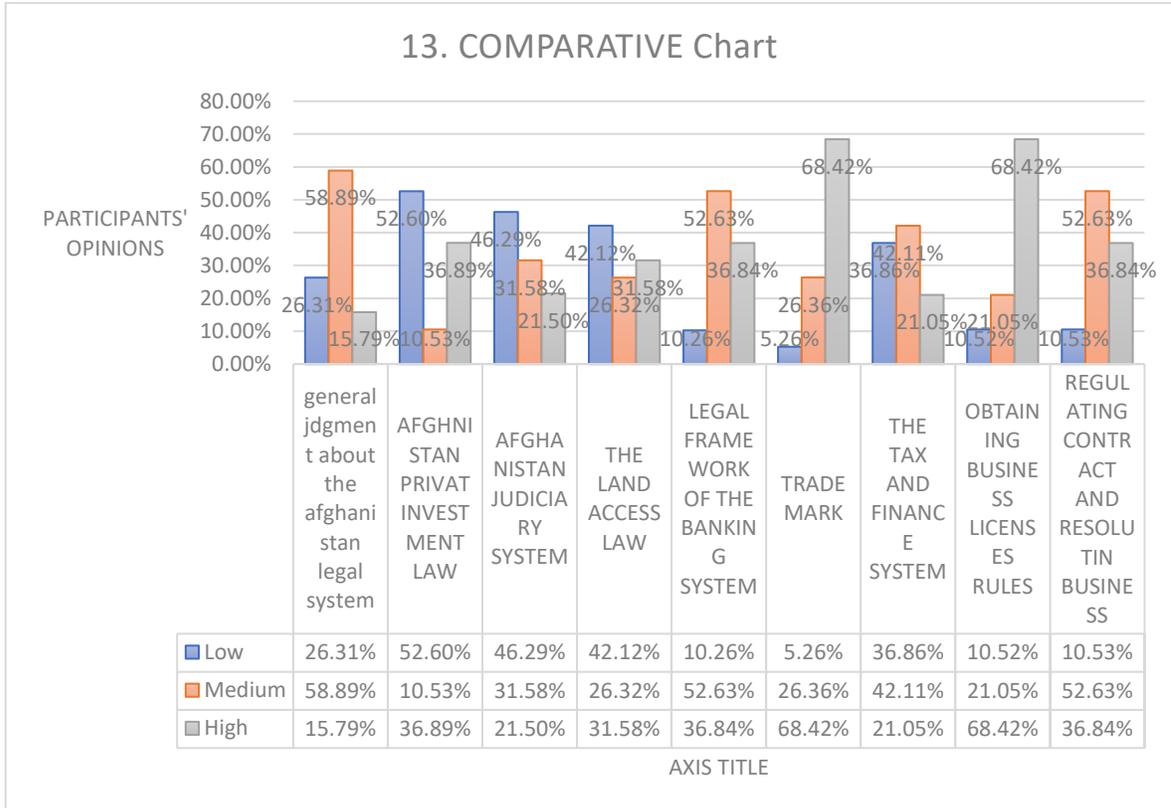


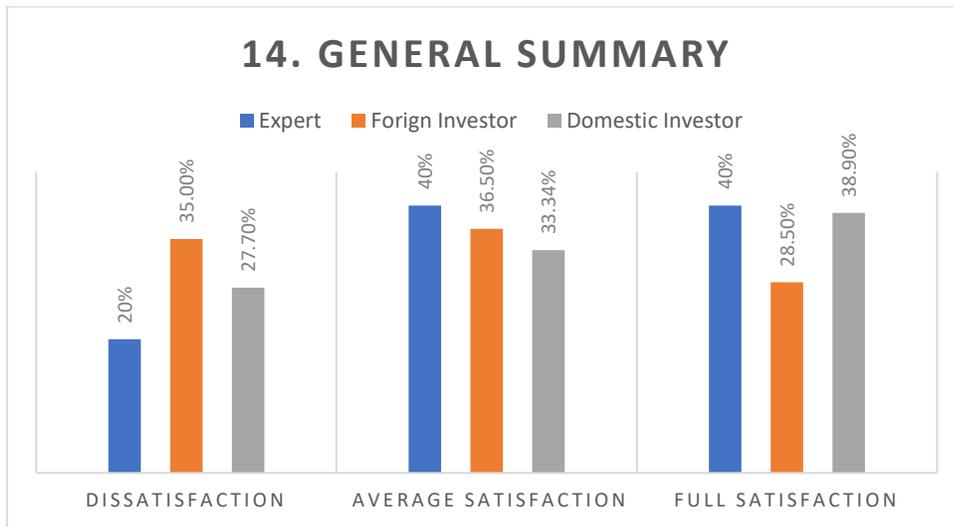
Figure 13: An Overview of Participants' Judgments about Different Areas of the FDI Legal Framework in Afghanistan

### 10.3. HYPOTHESIS TESTING

According to the literature of review, it has been thought that legal challenges in the field of foreign investment in Afghanistan are as one of the main obstacles to the growth of foreign investment in this country, so based on these studies, the following hypothesis was raised:

“The legal framework of foreign direct investment in Afghanistan could not attract substantial foreign investors to bring their capital and expertise in this country”.

In general result 80% of the experts by choosing medium, high and very high options showed their satisfaction from the legal framework of foreign investment in Afghanistan, and only 20% have chosen low and very low options. 65% of the foreign investors by choosing medium, high and very high options showed their satisfaction from the legal framework of foreign investment in Afghanistan, although 35% of them have chosen low and very low options. Also 72.24% of the domestic investors by choosing medium, high and very high options showed their satisfaction from the legal framework of foreign investment in Afghanistan, but 27.70% have chosen low or very low options.



**Figure 14:** General Summary of the Participants' Satisfaction From the FDI Legal Framework in Afghanistan

As the result, after the collecting and analysis data, my hypothesis not generally supported by data, and therefore the hypothesis in this research is not fully confirmed. Although the above statistics determined that the legal obstacles are not the main concern of foreign investors to bring their capitals and expert in Afghanistan, but there are some problems in some areas that researcher will point in the conclusion and recommendations sections to them.

## 11. CONCLUSION AND RECOMMENDATIONS

Given the above, it can be concluded that generally Afghanistan's laws in the field of economics and investment, on average, can attract investors' confidence. However, the enforcement of laws on the one hand and the provision of a sustainable and beneficial foreign investment, on the other hand, requires that Afghanistan's government and the responsible authorities in private sector take more effective actions. The conclusion and recommendations from this research are presented in three axes:

### 11.1. CONCLUSIONS AND RECOMMENDATIONS IN THE FIELD OF LEGISLATION

- The Private investment law, laws in the areas of taxation and customs tariffs, banking, insurance, mines and private property based on the economic requirements of the country and the interests of the people and investors should be reviewed.
- The stock market law must be formulated, and should the stock market in Afghanistan start its activities.

- In order to protect private property in the area of modern infrastructure and investment, should be approved specific law.
- It is required that an entity or independent agency gets established to promote and develop foreign investment, based on the law, and socioeconomic conditions of Afghanistan.
- Restrictions and oversight of money exchanges. Traders are encouraged to resolve conflicts through formal and legal authorities.
- A policy to support and encourage foreign investment, especially in the areas of public services, transportation, infrastructure, and mines, should be developed and implemented.
- In order to provide better opportunities for the investors the Afghanistan government should sign bilateral and multilateral agreements with the countries of the region and also update the domestic law in this area.
- The benefits of joining Afghanistan to the World Trade Organization can be documented and incorporated into the legal system in Afghanistan. This approach assures the legal security of domestic and foreign investors.

## **11.2. RESULTS AND RECOMMENDATIONS TO EXECUTIVE ORGANIZATIONS**

Given that the majority of interviewees consider basic problems in law enforcement, most of them believed main barriers do not exist in the content and the text of the law, but they are in the law enforcement agencies

- The authorities will pursue the fight against corruption in the relevant departments in earnest. Bureaucracy and corruption cannot be a factor in attracting foreign investors.
- The activities of tax authorities and customs tariff agencies should be more monitored and investigated. This approach can increase the government revenues on one side, and on the other hand, can increase the foreign investors' confidence in the Afghanistan tax system;
- In the process of land distribution to investors, should be more care taken and, if it is possible must be reviewed the previous performance in industrial settlements, especially the Herat Industrial Zone.
- Public and private agencies that are active in the provision of services to foreign investors will increase the capacity of their employees to provide services to foreign customers;
- Avoiding the government from the multiplicity of service departments in a single issue, such as foreign investment, can provide facilities for the beneficiaries. The establishment of an Office for Promotion and Protection of Foreign Investments with qualifications and specific tasks is suggested here.
- The field of training native human resources in different fields must be considered by Ministry of Higher education and Ministry of Labor so that investors are not concerned about how to provide the necessary human resources.

## **11.3. RECOMMENDATIONS FOR OTHER ORGANIZATIONS**

War and security problems are known as a negative factor affecting the growth of foreign investment in Afghanistan, in this regard we need to focus on the following issues:

- Focus on creating and developing infrastructure and increasing access to energy;
- Judicial reforms should be vigorously pursued in order to increase the confidence of foreign investors and other beneficiaries in this system;
- The Government of Afghanistan should eliminate the plurality of anti-corruption institutions and by creating a strong national anti-corruption organization, increase the people and investors' confidence in Afghanistan government agencies.

## **11.4. SUGGESTIONS TO MORE RESEARCHES**

- Considering that this research has generally addressed the issues and cannot clearly underline the existing challenges and opportunities in the legal framework for foreign investment in Afghanistan, it is suggested that more empirical research be conducted in the below areas to identify clearly the law's

challenges and opportunities: Private investment law, the court's procedure, the effectiveness of insurance, banking, land and tax laws.

- Given that the research hypothesis was not fully supported and the participants referred to the impact of other variables, further research is recommended in the following areas: Providing security, prioritizing infrastructure, ways to reduce corruption and labor force training.

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## CONFLICT OF INTEREST

The author have declared that no competing interests exist.

## ACKNOWLEDGMENT

None.

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