

## **Procedures for Requesting Permission to Own Property for Non-Jordanian Foreigners**

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**ABSTRACT:** *In this study, the researcher obtained the procedures for requesting permission to own property for non-Jordanian foreigners, followed by referring to the request for permission to own property for foreigners, as its articles were specified in the Jordanian legislation, especially Article (136) of it The required procedures, on top of which is the request for permission, which is submitted to the competent authorities, and accordingly, the researcher dealt with the position of comparative legislation from foreign ownership of real estate and the authenticity of the registration of real estate sale contracts in the transfer of ownership, and the researcher concluded his study with a set of recommendations and results.*

**KEYWORDS:** procedures, permission own property, non-Jordanian foreigners

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### **INTRODUCTION**

The monarchy went through several stages in its development, as collective ownership of the tribe began, as the members of the tribe shared ownership of the land, its wealth, etc., but the development of civilization from a nomadic civilization to an agricultural civilization resulted in the development of the monarchy from tribal to familial, and the development of the property continued until it became private individual property.<sup>(1)</sup>

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<sup>(1)</sup> Dr. Ali Hadi Al-Obeidi, Explanation of the Civil Code, Rights in Kind, in accordance with the Latest Amendments and the Law of Real Property, Budget

On the other hand, the recognition of the legal personality of an alien has become one of the fundamental principles recognized in the domestic laws of various States, and this principle has even been enshrined in article VI of the Universal Declaration of Human Rights, which stipulates that: "Everyone wherever he may be has the right to be recognized as a legal personality."

This principle was the result of the extension and expansion of international trade relations and the intertwining of international interests, which made it imperative for each State to improve the situation of foreigners in it. In addition to the development of human thought, which no longer disparages foreigners as sons of the globe, and disparaging them would constitute an attack on all humanity.<sup>(1)</sup>

Thus, a State that does not recognize the legal personality of aliens may have its international relations collapsed, imposed international isolation and made its citizens vulnerable to other States denying them the right to recognition of their legal personality, all of which would affect the flourishing of private international relations.

The recognition of the legal personality of the foreigner entitles him to the right to enjoy the rights and to assume obligations, and what interests us in these rights is the extent to which foreigners (non-Jordanians) have the right to own real estate in Jordan? , and this is the subject of our study and research.

The Jordanian legislator recently issued the Real Property Law No. 13 of 2019, 3<sup>(2)</sup> which repealed under Article (223/1) a set of laws that repealed a set of provisions, including in particular those related to the ownership of real estate by non-Jordanians, which were scattered between a set of laws, and regulated them with unified legal

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Study, Further and Revised Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2021, p. 17.

<sup>(1)</sup> Dr. Noor Al-Hajjaya, The Right of Foreigners to Own Real Estate Fully in the State of Qatar, Recognition and Legal Restrictions= Responding to it After Acquisition, Research Published in the Journal of the Symposium for Legal Studies, Qatar University, No. 11, 2016, pp. 73-74.

<sup>(2)</sup> Article I of this Law stipulates that: "This Law shall be called (Real Property Law of 2019) and shall enter into force one hundred and twenty years after the date of its publication in the Official Gazette", and the Law was published in the Official Gazette No. 5573 dated 16/5/2019 on page No. 2792.

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texts in this new law in Chapter VII entitled (Ownership and Rent of Real Estate by Non-Jordanians and Ruling Persons), in Articles (133 to 159) thereof.

### **The problem of study**

The problem with this study lies in a statement to what extent has the Jordanian Real Property Law No. 13 of 2019 been able to respond to the desires of non-Jordanians to own real estate in Jordan? Are there any specific conditions for non-Jordanian ownership of real estate in Jordan? Does it require the fulfillment of the required legal conditions or does it have to be approved by certain parties to request the foreigner's ownership of real estate in Jordan? What are the necessary procedures for non-Jordanian ownership of real estate in Jordan? Is ownership absolute in time and space or are there temporal and spatial constraints that respond to it?

### **Elements of the study problem**

**The elements of the problem of the study revolve around the following questions:**

1. What is the concept of the right of ownership and what are its characteristics?  
What is the concept of non-Jordanian?
2. What is the concept of real estate ownership and what are the ways to acquire it?
3. What are the areas where ownership is not allowed for non-Jordanians at all?
4. Are there non-Jordanian persons who are prohibited from owning property at all?
5. Is the reciprocity requirement required for non-Jordanian Arab or non-Arab ownership of real estate in Jordan?
6. What is the mechanism for submitting an application for permission to own real estate from non-Jordanians and what is the competent authority to accept or reject the application?
7. Is the application for permission to own real estate from non-Jordanians subject to the approval of other security or administrative bodies? Why?
8. Is the decision to refuse to grant the suspension of ownership to non-Jordanians subject to appeal to higher authorities or is it a final final decision? Why?

9. What are the legal restrictions on non-Jordanian ownership of real estate in Jordan?

### **Objectives of the study**

There are a number of objectives that the study seeks to achieve:

1. Know the concept of the right of property and its characteristics and the concept of non-Jordanian.
2. Statement of the concept of real estate ownership and methods of acquisition.
3. A statement of the areas where ownership is not allowed for non-Jordanians at all.
4. Knowing non-Jordanian persons who are prohibited from owning property at all.
5. A statement of judgment requesting a reciprocity clause for non-Jordanian Arab or non-Arab ownership of real estate in Jordan.
6. A statement of the mechanism for submitting an application for permission to own real estate from non-Jordanians and the competent authority to accept or reject the application.
7. A statement that the application for permission to own real estate from non-Jordanians is subject to the approval of other security or administrative bodies.
8. Knowing that the decision to refuse to grant the suspicion of ownership to non-Jordanians is not subject to appeal to higher authorities, i.e. it is a final final decision.
9. Know the legal restrictions that respond to the ownership of real estate by non-Jordanians in Jordan.

### **The importance of the study**

Article (223/1) of which a set of laws has been repealed, especially those related to the ownership of real estate by non-Jordanians, and is regulated by unified legal provisions in this new law in Chapter VII entitled (Ownership and Rent of Non-Jordanians) in Articles (133-159) thereof.

The importance of non-Jordanian ownership of real estate in Jordan also lies in economic terms, i.e. encouraging foreign investment in Jordan, the most important of

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which is the transfer of technology, the increase in exports and the creation of job opportunities for Jordanians.

### **Limits of study**

The limits of this study are as follows:

- 1- Spatial Boundaries: This research study works on the study of (provisions of non-Jordanians' ownership of real estate in accordance with the Real Property Law No. 13 of 2019) within the geographical boundaries of the Hashemite Kingdom of Jordan.
2. Time Limits: This study extends from the issuance of the Jordanian Real Property Law No. 13 of 2019 and a publication in the Official Gazette dated 16/5/2019 until the date of completion of the preparation of this study.
3. Limits of legislation and laws: The study is based on Jordanian national legislation, and some comparative legislation where necessary regarding the subject of (provisions of non-Jordanian ownership of real estate according to the Real Property Law).
4. Objective limits: consists in studying the conditions and procedures for non-Jordanians to own real estate in accordance with the Real Property Law, in Jordanian legislation, and studying some of the relevant comparative national laws, Seventh: Study difficulties

The difficulties of this study lie in its relative modernity at the legal and judicial level in Jordan, and even in many Arab countries, the limited resources and the scarcity of judicial applications thereof, in addition to its association with purely civil legal concepts (original rights in kind, property right, real estate).

### **METHODOLOGY**

This study is based on two scientific approaches: - Descriptive approach and analytical approach: by describing jurisprudential theories, legal rulings and judicial applications that relate to the provisions of non-Jordanian ownership of real estate in accordance with the Real Property Law of 2019; then analyzing these opinions, judgments, judicial applications and legal texts contained in the Real Property Law No. 13 of 2019 and the Jordanian Civil Code No. 43 of 2019 and other relevant legislation after collecting and inferring them. This is done by drawing on previous literature, studies, researches, scientific articles, jurisprudence and websites and

describing and analyzing them where appropriate, taking into account the novelty of the subject under study.

Section I: Application for permission to own property for foreigners.

***Preface and partition: -***

With the advent of the administrative legislation on the request for non-Jordanian ownership and the ruling persons of real estate in Jordanian lands and its amendments for the year 2021, its articles, especially article (136) of it, have specified the required procedures, especially the request for permission to be submitted to the competent authorities, and these bodies have absolute authority to examine the request and respond to it, whether by rejection or acceptance, and its decision here is not subject to any appeal or control by another party, However, there are exceptions set for owners of Arab nationalities, most of which were subject to the requirement of reciprocity, while the prohibition of ownership in certain areas, and instructions were set for ownership in economic zones such as the Aqaba region and others, and the requirement of reciprocity here appeared in the different Arab legislation, and even the GCC countries **the GCC countries (the Gulf Cooperation Council )** have developed preferential treatment for citizens belonging to the GCC countries , especially those related to real estate ownership. Here, the section discusses the different procedures mentioned in the legislation on the ownership of foreigners and the requirement of reciprocity through two main requirements as follows:

**The first requirement: the evolution of the transfer of ownership of real estate.**

**The second requirement: the position of comparative legislation on foreign ownership of real estate.**

***The first requirement: Evolution of the transfer of ownership of real estate***

***First: Transfer of ownership of real estate in Islamic law:***

The jurisprudence went on to say that the Islamic International did not know the real estate registration before the Ottomans took over the reins of its leadership because the property was transferred by mutual consent, whether for contractors or for others, but this did not prevent the existence of some special systems such as the system of property and tenancy offices that may have been intended for financial or

administrative purposes to achieve justice in the abscess imposed on them and the system of notaries who were editing the agreements of individuals contracted under the supervision of judges with the aim of confirming, documenting and certifying the agreements of contractors. In light of the calls made by Islamic law to document debts and transactions to preserve the interests of the people and reduce the disputes between them.<sup>4(1)</sup>

Hence, it has been said that the ownership of the sale in Islamic law is transferred under the necessary correct sale without the requirement of arrest or delivery, which relate to the provisions of the guarantee, the risk of loss, the extent to which the buyer may dispose of the sale by selling before the arrest or not, the extent to which the seller may act at the price before the arrest or not, and even from the jurisprudence that has stopped the effectiveness of the wastes received on the leased or encumbered eye on the tenant's or the encumbered creditor's authorization of the mortgaged eye to protect their rights.<sup>5(2)</sup>

Some Muslim judges went further to the need to have the principle of good faith in dealing, putting an integrated theory in the question of resolving the dispute between the first buyer and the second buyer when "he was asked about a woman who sold a piece of land from a man and then violated it and sold it from others. He said to the first, except that the other seller should be arrested, so that he would have to take the oath of what he knew of the purchase of his owner before him, and he does not accept the seller's statement here except that she sold from the other for more than what she sold from the first, so the buyer may take the excess of what he bought from her."<sup>3)</sup>

Hence, the date of conclusion of the contract is the basis for resolving the dispute by preferring the former buyer over the subsequent buyer, but the exception is in the preference of the second buyer if he is the first to possess the property sold in good faith, if he does not know about the contract of the first buyer, but if he is in bad faith and knows, we return to the original and then the preference is for the first buyer

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(1) Al-Mawardi, Al-Basri Al-Shafi'i, The Literature of the Judge, The Investigation of Muhi Hilal Al-Sarhan, Al-Ani Press, Baghdad, 1972, pp. 77 ff.

(2) Ibn Qadi Samara, Mosque of the Two Chapters, 1st Edition, Al-Azhar Press, Cairo, 1300 AH, pp. 92 ff.

(3) Judge Abi al-Mutraf 'Abd al-Rahman ibn Qasim al-Shaabi al-Malqi, Judgments, Achieving Sweet Truthfulness, 1st Edition, Dar al-Gharb al-Islami, Beirut, 1992, p. 201.

despite the possession of the property by the second buyer as a usurper of the first buyer, Some jurisprudence has argued that the increase in price is for the first buyer and not for the seller in the event that the second buyer prefers him to the latter's sense of the property sold in good faith as this value as a howl to the first buyer because of his deprivation of ownership of the sold property as a result of the preference of the second buyer who had previously owned the property sold in good faith and was not aware at the time of purchase of the previous sale of this property to the first buyer and swore an oath to do so.<sup>(1)</sup>

***Second: Transfer of ownership of real estate in the Ottoman Land Law:***

With the advent of the Ottoman Empire, the registration of real estate property received a large share of care, where the Ottoman Land Law was issued in 1274 AH and tired of the issuance of the law on the disposal of immovable property in 1331 AH, and in their issuance the provisions of the disposal of real estate in the Ottoman Luqanin went through two stages: the first stage: the stage of the issuance of the Ottoman Land Law and the second stage of the issuance of the law of disposition,

In the first stage: The jurisprudence affirmed that the provisions of the disposal of the land of the king are different from others under the Ottoman Land Law issued on the 17th of Ramadan of the said year, as it regulated the provisions of all types of princely, abandoned and deceased lands, leaving the organization of the land of the king to the provisions of the Islamic Sharia and the Code of Judicial Judgments as shown by article (1) of the law, which presented the types and sections of the land and what Article (2) of the same law decided by saying: Since the rulings and processes that are conducted on the four types of land owned are indicated in the jurisprudential books, this land law does not look for its provisions.<sup>(2)</sup>

The second stage: which is the stage of the issuance of the Law on the Disposal of Immovable Property for the year 1331 AH, the law was issued long after the issuance of the Ottoman Land Law, where all real estate transactions are subject to registration in the registration department (Khaqani Book), and this law applies to all real estate

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<sup>(1)</sup> Hamad Awad Hammad Zabid, Transfer of Real Estate Ownership in Jordanian Law, PhD Thesis, Faculty of Graduate Studies, International Islamic Sciences University, Jordan, 2016, p. 29.

<sup>(2)</sup> Mustafa Majeed, Explanation of the Real Estate Registration Law No. 43 of 1971, Part 1, Al-Irshad Press, Baghdad, 1973, p. 96.



of the type of property, and to any other type of real estate as stipulated in Article (1) of the Law of Disposition, It remained in force in Iraq for a long time until the promulgation of the Iraqi Civil Code in 1951, which repealed the Law on the Disposition of Immovable Assets of 1331 AH, article (1) of the Law stipulates that: "The conduct of all transactions related to the princely and arrested lands shall be limited to the Department of Books of Khaqani, and the disposers shall be given a Khagna bond, and the disposition of immovable property without a bond is prohibited, and no case may be heard in the Sharia or regular courts and any transaction shall be conducted in the departments thereof. The government has the right to land where there is no Khaqani deed in the shops that have been identified and liberated under the new law, and this provision is also carried out in all types of property..".<sup>(1)</sup>

The jurisprudence has concluded that it is clear from this article that it was forbidden to conduct any disposition related to real estate except in the registration departments (taboo) and this text covers all real estate in the Ottoman Empire, whether of the type of miri, waqf, mawat, abandoned or king, and that the registration department is the only body authorized to give the owners of real estate rights proven bonds because of their real estate rights and that none of these real estate rights may be disposed of except by registering them with the competent registration department which The property is located in its department and a document proving this has been issued, and it is also forbidden for the regular and speedy courts and government agencies to hear any claims related to any right over those lands or to conduct any administrative transaction related to the property as long as it is located in the areas where the identification, editing and registration work was carried out in accordance with the Law on the Identification, Liberation and Registration of Immovable Funds issued in 1331 AH.<sup>(2)</sup>

### ***Third: The Jordanian Real Estate Law of 2019 and its amendments until 2021:***

It is called the new Real Property Law in Chapter VII how non-Jordanians and ruling persons own and rent real estate, where Article (133) of it states in its paragraph (a) that a non-Jordanian and a ruling person may own a property in the Kingdom after obtaining permission to do so in accordance with the provisions and purposes set forth

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<sup>(1)</sup> The text of Article (1) of the Law on the Disposition of Immovable Property of 1331 AH.

<sup>(2)</sup> Shakir al-Hanbali, *Mujer of the Provisions of Immovable Land and Funds*, Tawfiq Press, Damascus, 1947, p. 9.

in this chapter, while the second paragraph prohibits them from owning such real estate in the border, archaeological and historical areas. Article (134/c) then states that this matter is subject to prior approval and based on the recommendation of the Minister of Interior, and Article (135) warns that this right is imposed on persons who hold the nationality of a State not recognized by the Kingdom.

Article (136) of the same law clarifies that a non-Jordanian and the ruling person must apply for permission to own a property to the Department in accordance with the procedures specified in instructions issued by the Director for this purpose, and after requesting permission, the Director addresses the concerned authorities to express an opinion on the application, and then submits the request for permission to the competent authority to grant and issue a decision thereon, and these concerned authorities are determined by a decision of the Council and are addressed to express an opinion on the request for ownership of the property in each case of ownership of the property, Article (137) of the same law establishes the absolute authority of the competent authorities to grant or reject permission and their decisions to refuse grants shall not be subject to appeal or control by another party. <sup>(1)</sup>

There are areas of a special nature for which instructions have been established regarding the ownership of immovable property by non-Jordanians and from the instructions issued for the sale and leasing of immovable funds to non-Jordanians and legal persons in the Aqaba Special Economic Zone No. 132 of 2007 Official Gazette No. 4856 dated 16/10/2007, where Article (4) of which stipulates that: The following documents shall be attached to the application for ownership of non-Jordanian natural persons and holders of temporary documents and passports: 12<sup>(2)</sup>

1. A copy of the passport or travel document (valid/valid) of the applicant for ownership.

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<sup>(1)</sup> The text of Article (137) of the new Ownership Law.

<sup>(2)</sup> Article (4) of the Instructions Regarding the Ownership of Immovable Funds by Non-Jordanian Persons and the Instructions for the Sale and Lease of Immovable Funds to Non-Jordanians and Legal Persons in the Aqaba Special Economic Zone No. 132 of 2007 Gazette No. 4856 dated 16/10/2007

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2. A personal detail form about the applicant for ownership, his/her spouse and minor family members.
3. The registration deed of the plot of land to be owned or the letter of allocation to the seller in case the plot is not registered with the Department of Land and Survey.
4. Land plan if the plot is registered with the Department of Land and Survey.
5. A modern organizational site plan.

Article (10) of the same instructions authorizes legal persons to do so provided that it stipulates: <sup>(1)</sup>

- A. A. Any legal person may, in accordance with his registration documents, possess within the Area the immovable property necessary for the exercise of his business in accordance with the following:
  - 1.” With the approval of the Commissioner if the area of the land to be owned does not exceed (10) dunams “.
  2. “With the approval of the President based on the Commissioner's placement if the area of land to be owned exceeds (10) dunams and does not exceed (50) dunams”.
  3. “The Council, upon the recommendation of the President, shall allow the ownership of the immovable property of the persons mentioned in paragraph (a) of this Article if the area of the land to be owned exceeds (50) dunams and does not exceed (100) dunams”.
- B. The text of clause (b) of Article (44) of the Law shall be observed in the event that the land to be owned is registered in the name of the Authority and obtaining the approval of the Council of Ministers if the land area exceeds (100) dunams.

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<sup>(1)</sup> Article (10) of the Instructions Regarding the Ownership of Immovable Funds by Non-Jordanian Persons and the Instructions Issued for the Sale and Lease of Immovable Funds to Non-Jordanians and Legal Persons in the Aqaba Special Economic Zone No. 132 of 2007 Official Gazette No. 4856 dated 16/10/2007

C” In the event that the owner of the company or any of his partners does not have Jordanian nationality, the security authorities shall be addressed in this regard and the procedures shall be completed after the approval of these authorities”.

Article (11) of the instructions indicates the documentation required in the application for ownership permission: by stipulating that: The documents described below shall be attached to the application for ownership of the legal persons mentioned in Article (10): <sup>(1)</sup>

1. A copy of the identity documents of both the authorized signatories of the seller and the buyer.
2. Certificate of registration of the company (modern) proving its objectives.
3. The registration deed of the plot to be purchased or the letter of allocation to the seller in case the piece is not registered with the Department of Land and Survey.
4. Land plan if the plot is registered with the Department of Land and Survey.
5. A modern organizational site plan.
6. Certificate of registration of the institution with the Authority in the event that its center is in the region and registered with the Authority.

***Fourth: The principle of reciprocity:***

This principle was not clearly demonstrated before the promulgation of the Economic Boycott Law and the prohibition of dealing with the enemy No. 11 of 1995, which is stated in Article (6) as follows: In addition to what is stated in the Law on the Rental and Sale of Immovable Funds from Foreigners No. 40 of 1953 and the Law on the Disposition of Legal Persons in Immovable Funds No. 61 of 1953, no natural or legal foreign person who does not hold the nationality of one of the Arab countries may be

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<sup>(1)</sup> Text of Article (11) of the Instructions Regarding the Ownership of Immovable Funds by Non-Jordanian Persons and the Instructions Issued for the Sale and Lease of Immovable Funds to Non-Jordanians and Legal Persons in the Aqaba Special Economic Zone No. 132 of 2007 Gazette No. 4856 dated 16/10/2007

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allowed to buy, rent or Owns directly or indirectly any immovable property in the Kingdom unless the following conditions are met:<sup>(1)</sup>

- The legislation or practices of the state or countries where the applicant holds ownership or to rent its nationality should not prohibit the ownership or rental of Jordanians for immovable property and that there are no practical obstacles to the enjoyment of these rights by Jordanians.

- 2- “ The property must be invested in a practical manner within a period of five years from the date of ownership or rental “.
3. “Such ownership, lease or any activity associated with them shall not affect national security”.
- 4 – “To obtain the approval of the Council of Ministers on the recommendation of the Minister of Land Finance”.
- 5- “It is forbidden for foreign legal persons to own immovable property for the purposes of agricultural investment, whether they are registered in the Kingdom or not registered and regardless of the purposes of the legal person”.
6. “ If the person referred to in paragraph A loses any of the conditions contained therein, the property shall be sold or the leave shall be cancelled in accordance with the instructions issued by the Council of Ministers for this purpose”. .....

It is clear from this that the requirement of reciprocity was not required by Law No. 40 of 1953 except for representatives of foreign countries in article (5) thereof. <sup>(2)</sup>

Arab legislation has developed similar provisions, but in Jordanian legislation nationals of Arab countries have been excluded from this, as has the Arab legislator.

***Second Requirement: The position of comparative legislation on foreign ownership of real estate.***

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<sup>(1)</sup> The text of Article (6) of the Economic Boycott Law and the prohibition of dealing with the enemy No. 11 of 1995.

<sup>(2)</sup> Text of Article (5) of Law No. 40 of 1953.

### **A: Transfer of ownership of real estate in the Saudi system:**

The Kingdom of Saudi Arabia adopts Islamic law as the law of the country and the Sharia judiciary as the sole judicial authority,<sup>17 (1)</sup> and the general rule governing the transfer of ownership of the sale in the Islamic Sharia is the immediate transfer of the sale once the contract is concluded, however, it is transferred only by the fulfillment of some matters and procedures independent of the contract itself with the contract remaining consensual, valid and productive of all its effects.<sup>(2)</sup>

The Saudi system follows a different system from all international systems for the registration of dispositions, as it is stained with this task by two government bodies, namely the Sharia courts and notaries, as it did not work in the personal record or the in-kind record, but is based on the possibility of proving ownership by any means that amounts to proving the right of ownership of a particular person.

### **Ownership by citizens and Gulf nationals:**

Where the Basic Law of Governance stipulated many rights for citizens in the Kingdom as stated in Article (17): Property and Capital.... Basic elements in the economic and social entity of the Kingdom, which are special rights that perform a social function in accordance with Islamic legitimacy.<sup>(3)</sup>

While Article (18) recognized the freedom of private property and the inviolability of infringement or removal of it except for what is decided from the interest, and the regulation of those citizens of the Arab Gulf States for real estate in the member states of the Council for the purpose of housing and investment issued by Royal Decree No. M/22 dated 3/4/1432 AH stipulates that: In implementation of the provisions of Article 3 of the Economic Agreement between the GCC States, which stipulates that the natural and legal citizens of the Gulf Council States in any of the Member States

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<sup>(1)</sup> Text of Article (1) of the Basic Law of Governance (Constitution), also Dr. Majid bin Sulaiman Abdullah Al-Khalifa, Procedures of Litigation and Execution: A Comparative Study, King Fahd National Library, Riyadh, 1438, p. 40.

<sup>(2)</sup> Counsellor Mouawad Abdel Tawab, The In-kind Record of Science and Action, Dar al-Fikr al-Arabi, Cairo, Under His Age, p. 19.

<sup>(3)</sup> The Basic Law of Governance in the Kingdom of Saudi Arabia issued by Royal Decree No. A/90 dated 27/8/ 1412 AH.

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shall be treated the same as their nationals without Discrimination or discrimination in areas including the freedom to own real estate....."<sup>(1)</sup>

In general, the requirements for the registration of real property in the Ministry of Justice for citizens and Gulf citizens regarding the emptying of the property include the following: the presence of the parties to the contract with their national identity or their representative with a legal document, the original electronic title deed, the method of payment boiled, the retail document of the property if the emptying of part of the property, , the approval of the Agricultural Development Fund if the property is agricultural, in the event that the requirements and the time period prescribed for the completion of the registration of the property are completed by one day.

### **Ownership of non-citizens:**

We find that the property law in the Kingdom of Saudi Arabia allows non-citizens residing in a regular residence for the purpose of private housing after the approval of the competent authorities (Ministry of Interior), where Article (2) of the Law of Ownership of Real Estate and Investment by Non-Saudis issued by Royal Decree No. (M/15) dated 17/4/1421 AH stipulates the following: " "Non-Saudis with natural status residing in the Kingdom of Saudi Arabia are allowed to own the property for their own residence, after being licensed by the Ministry of Interior."<sup>(2)</sup>

Here, the Saudi authorities imposed a legal restriction that does not allow non-Saudis to acquire the right of ownership, easement or use of real estate located within the boundaries of the cities of Mecca and Medina in any way other than inheritance, except for the acquisition of the right of ownership associated with the endowment of the property owned in accordance with the Sharia rules on a designated Saudi entity and with the approval of the Awqaf Council. "A non-Saudi may not have the right to own or the right to agree or use a property that has entered the boundaries of the cities of Mecca..."<sup>(3)</sup>

The Saudi system allowed the foreign investor to buy buildings or land to erect buildings on them, including residential buildings and invest them by sale or lease,

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<sup>(1)</sup> Law promulgated by Royal Decree No. M/22 dated 3/4/1432H.

<sup>(2)</sup> The text of Article (2) of the Law of Ownership and Investment of Real Estate by Non-Saudis issued by Royal Decree No. (M/15) dated 17/4/1421H.

<sup>(3)</sup> The text of Article (5) of the Law of In-kind Registration of Real Estate issued in 1423 AH.

provided that the cost of the project is not less than thirty million riyals, and the Saudi Council of Ministers may amend the amount and the foreign investor must invest the property for sale or lease For five years of ownership of the property. () recognizes Article (1) of the Law, and Article (3) of the Regulations states that: If the property is land, its construction or exploitation must be completed within four years from the date of its registration in its name, otherwise the state in which the property is located has the right to disposition of the earth with compensation to the King at the same price at the time of its purchase or price when it is sold, with the preservation of his right to complain before the competent authority of the State and the State to extend the said period if it is satisfied with the reasons for the delay of the owner for that period.<sup>(1)</sup>

### ***Second: Monarchy in Egyptian Legislation:***

The Egyptian legislator has also placed restrictions on this under Law No. 230 of 1996, especially Article (2), which sets out the conditions for ownership for foreigners, and one of the restrictions on the ownership of real estate by foreigners, including the obligation to build within a certain period and also the prohibition from disposing under Article (4): which stipulates: A non-Egyptian who has acquired ownership of a space land by applying the provisions of the law must begin to prophesy it within a period not exceeding 5 years following the month of disposition, if this period expires without commencement In the construction works, the duration of the risk described in the following article has been increased by equal to the duration of the delay in the commencement of construction."<sup>(2)</sup>

Article (5) of the same law, which stipulates: "A non-Egyptian who has acquired ownership of a property in accordance with the provisions of this Law may not dispose of it in any way from any of the aspects of the dispositions transferring the property less than five years have elapsed from the date of acquisition of the property, however, the Chairman of the Council of Ministers may, in cases where he appreciates, authorize the disposition of the property before the expiry of this period."<sup>(3)</sup>

### ***- Ownership in Kuwaiti legislation:***

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<sup>(1)</sup> The text of Article (3) of the same Law.

<sup>(2)</sup> Text of Article (4) of Law No. 230 of 1996 of Egypt.

<sup>(3)</sup> The text of Article (5) of the same previous law.



The Kuwaiti Court of Excellence ruled that: The provision in the first paragraph of Article 5 of Decree No. 5 of 1959 of the Real Estate Registration Law as amended by Law No. 5 of 1962 that the right to own real estate in Kuwait is limited to Kuwaitis and includes the right of full ownership, which means prohibiting the ownership of non-Kuwaitis, whether natural or legal, but the graduation of joint stock companies from the circle of this, which may lead to the ownership of non-Kuwaitis by a non-Kuwaiti by a non-Kuwaiti. Mubasher Real Estate and the Assistant Undersecretary of the Ministry of Justice for Real Estate Registration Affairs ordered the circular issued on 6/11/1976 to limit the sale and purchase transactions in the registration and documentation sections of the commercial companies in which some of the partners are non-Kuwaitis and on 7/11/1976 The Council of Ministers issued a decision to stop The ownership of real estate for these companies regardless of the percentage of the foreign party's contribution to it, followed by the issuance of Decree-Law No. 74 of 1979, which stipulated in Article 8 the prohibition of owning real estate on companies whose non-Kuwaiti partners and the mother of companies participate in disposing of the real estate they own during a year,<sup>(1)</sup>

However, the nationals of other Arab countries were exempted under the conditions set by the government for that provided that Kuwaitis have the right to own property in these countries and the wisdom of narrowing the scope of the right to own property is the small wisdom. region of the state, which is feared to leak its ownership into the hands of foreigners.<sup>(2)</sup>

A special law has been issued regulating the provisions relating to the ownership of real estate by non-Kuwaitis, Law No. 74 of 1979, the first article of which limits the right to own property to Kuwaitis, and article 2 of it excludes Arab countries and friendly foreign countries for their embassy, commissioners or consulate, provided that the area is not more than 4,000 m<sup>2</sup>, and excludes from the requirement of the maximum area embassies and consulates that owned an area exceeding this amount before the entry into force of this law. Article (3) authorizes ownership for an Arab who belongs to an Arab country of his nationality provided that this is for his own residence on the condition of reciprocity and the issuance of a decree authorizing it, and with the rest of the other conditions stipulated in the article, including: limiting

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<sup>(1)</sup> Cassation No. 25/83 Session 25/4/1984 Set of Legal Principles No. 2, Part 1, pp. 875-876.

<sup>(2)</sup> Explanatory Memorandum to the Real Estate Registration Law, p. 33.

this right to the Sunni regulatory areas only, and that the applicant for ownership is a legitimate permanent resident of Kuwait, and that he is an income that allows him to buy the property to be financed. Otherwise, judgments have been issued against him that violate honor and honesty for the duration of his stay, and the area of the property to be acquired shall not exceed 1000 m<sup>2</sup>, nor shall he be the owner of another property in Kuwait. , or his ownership shall be a common share with a Kuwaiti in order to prevent him from trading in common shares that may be disposed of, and to own a sorted property in full before the expiry of the prescribed period and without the need for the approval of the Council of Ministers as the text of Article 5, and the Council of Ministers has been authorized to add other conditions if it deems it necessary and Article 4 deals with cases of ownership by inheritance and is limited to:

**A Arab who owns a property by purchase and then devolves to him another property or part of it by inheritance.**

- (b) An Arab who inherits a property or part of it and you may be the owner of another property.
- (c) A non-Arab to whom a property or part of it is devolved by inheritance, whether he has a property or has not previously owned a property.

The person who owns in this way shall have the option in the first case between one of the two properties and the disposition of the other property within one year from the date of the transfer of ownership to him or the sale of part of it at the request of the government, while in the second case it must be disposed of within the said period or sold forcibly unless a decree is issued exempting him from this disposition, and in the third case must be disposed of as before or forcibly sold from him and the wife is excluded from that if she has a child from the heir on condition Issuing a decree exempting them from disposition.<sup>(1)</sup>

Article (5) stipulates that if the owner disposes of the property that he owns, he is not allowed to own another property other than by inheritance before the lapse of five years from the date of disposition of the first property, unless his ownership is limited to a common share in the first property and he wants to own an entire property or to attribute the ownership of his property to the public benefit and wants to own another.<sup>(2)</sup>

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(1) Abdul Hamid Al-Manshawi, Real Estate Registration and Documentation in Kuwaiti Law, Dar Al-Fikr University, Alexandria, Don Sunnah, p. 34.

(2) Text of Article (5) of Law No. 74 of 1979 of Kuwait.

The regulatory appendages to be added to a property are exempted from the requirement of issuing a decree and the area of the property may therefore exceed 1000 m in accordance with Article (6) of the same Law, and Article (7) stipulates that a new ownership shall not be accepted for those who have previously owned a property and it turns out that they have exploited it in a way other than the way specified in the law.<sup>(1)</sup>

Article (8) prohibits the ownership of real estate on commercial companies in which non-Kuwaiti partners are involved, and obliges these companies to dispose of the real estate they own from the implementation of this law within one year from the date or from the date of transfer of the Kuwaiti partner's share to non-Kuwaiti partners, otherwise they are forcibly sold for them.<sup>(2)</sup>

An exception was made for the joint stock company in which non-Kuwaiti partners are required and it is not one of its purposes to deal in real estate to own the property necessary for its management or to achieve its purposes, provided that a decree is issued granting it this right.<sup>(3)</sup>

Article (9) stipulates that any conduct contrary to the previous provisions shall be null and void shall not be registered and shall be declared null and void upon the request of any person of interest and at the request of the Government, and the court shall rule on its own motion for the purpose of public order.

Article (10) repeals any provision that contravenes this Law without prejudice to the provisions of Law No. 33 of 1975, which provides for the treatment of nationals of the Kingdom of Saudi Arabia, the States of Bahrain and the United Arab Emirates as Kuwaitis in the areas stipulated therein, including the ownership of real estate as well as Law No. 56 of 1979 to treat nationals of the State of Qatar as Kuwaitis, and in implementation of the provisions of Article (8) of the Economic Agreement between the States of the Cooperation Council for the Arab States of the Gulf approved in Kuwait by Law No. 58 of 1982, which It stipulates that the Member

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<sup>(1)</sup> Texts of Articles (6 and 7) of the same Law.

<sup>(2)</sup> The text of Article (8) of the same law.

<sup>(3)</sup> Ahmed Meliji, Real Estate Month and Documentation in Kuwaiti and Comparative Law, Al-Falah Bloc, Kuwait, 2008, p. 64.

States shall agree on the executive rules to ensure that the citizens of the GCC States of any State shall be treated the same as their nationals without distinction in various areas, including freedom of property, inheritance ...." <sup>(1)</sup>

***Third Requirement: Authenticity of Registration of Real Estate Sales Contracts in Transfer of Ownership:***

The jurisprudence went on to say that the contract of sale does not differ from other contracts in terms of its origin and convocation, where it is required to meet the availability and realization of the three well-known pillars, represented by the agreement, the place and the reason, if the contract is consensual, which is the original in the contract of sale, either if the sale is focused on real estate, the contract must be registered in the registration department competent to document these contracts, so that registration is one of the pillars of the conclusion of the contract of sale. <sup>(2)</sup>

**A - The position of the Jordanian Civil Code and the judiciary on registration:**

The jurisprudence stressed that the Jordanian Civil Code regulated the provisions of the sales contract and exposed its pillars, <sup>(3)</sup>and here it is necessary to address the position of the legislator and then the position of the judiciary as follows:

A-The position of the Jordanian legislator: The jurisprudence has stated that contracts for the sale of real estate are formal contracts that are not concluded unless they are registered in the registration department and the formality is represented in the registration of the contract in the registration department, where registration is one of the pillars of the sales contract, which entails when it is possible to transfer the ownership of the property from the seller to the

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<sup>(1)</sup> The text of Article (8) of the Economic Agreement between the States of the Cooperation Council for the Arab States of the Gulf approved in Kuwait by Law No. 58 of 1982.

<sup>(2)</sup> Yassin Mohammed Al-Jubouri, Brief in Explaining the Jordanian Civil Code, Part 3, Contracts Named Explaining the Provisions of the Contract of Sale, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2016, pp. 111 ff.

<sup>(3)</sup> Articles (465: 556) of the Jordanian Civil Code.

buyer, and therefore contracts for the sale of real estate are contracts that are concluded only after observing the formalities provided for by law.<sup>(1)</sup>

While another aspect of the jurisprudence considers that the reason for the transfer of ownership is the contract, but this contract does not have a legal existence except by completing the registration procedure and it does not agree with the Court of Cassation in what it said by saying: "The sale of the property creates in the seller's possession an obligation to transfer ownership in the competent department and that the seller must perform the necessary work to implement this obligation and that what results from the failure to carry out these acts is the dissolution of the binding force of the contract", This is because the sale of real estate outside the competent department is considered a void contract, and the invalidity does not entail an obligation to transfer the property, and the term termination of the contract is not valid when the contract is void and therefore the contract of the contract is invalid. The sale of real estate is a formal contract concluded only by registration, where the ownership transfers from the date of registration.<sup>(2)</sup>

Indeed, another aspect of the jurisprudence considers that: "Whoever does not consider registration as a pillar of the contract for the sale of real estate on the basis of other provisions other than what is stipulated in article (1148) of the Civil Code, as it appears in articles (475, 90, 497) and article 485/1 of the Civil Code stipulates that the ownership of the sale shall pass as soon as the sale is completed to any buyer unless the law or agreement stipulates otherwise", Article (90) of the same law stipulates that the contract shall be concluded as soon as the offer is linked to the acceptance, taking into account the specific conditions established by law above that for the conclusion of the contract", and article 497 by saying: "The delivery shall be made by virtue of the registration of the sale in the name of the buyer when the legislative texts suspend the transfer of ownership on the official registration.

- **The position of the judiciary:** Part of the jurisprudence has decided that the Jordanian judiciary has trends, including the direction before the issuance of the Civil Code and the trend after the issuance of the Civil Code, this view went that all contracts of sale, exchange, release and division in real estate that were settled before the issuance of the Civil Code are void contracts based on the text of Article (16/3) of

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<sup>(1)</sup> Muhammad Yusuf al-Zoghbi, The Strength of Real Estate Sales Registration in the Jordanian Land Registry, pp. 159 ff.

<sup>(2)</sup> Al-Obeidi, Brief Commentary on the Jordanian Civil Code, pp. 80, et seq.

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the Settlement Law and Article (3) of the Law on the Disposition of Immovable Funds, However, after the issuance of the law, the order remained the same, as the Court of Cassation recognized the invalidity of contracts for the sale of real estate outside the registration department based on the text of Article (1148) of the Civil Code in some of the decisions it issued.<sup>(1)</sup>

All decisions of the Court of Cassation, whether before or after the issuance of the Civil Code, are confirmed and nullify contracts for the sale of real estate outside the registration department based on the text of Article (16) of the land. The Settlement Law and the text of Article (3) of the Disposal of Immovable Property Law.<sup>(2)</sup>

However, there are many decisions of the Court of Cassation related to what is stated in Article (16) of the Settlement Law,<sup>44(3)</sup> which is what most of the jurisprudence has said,<sup>45(4)</sup> Where it stated in the court's decision: "A legal contract of sale on the lands where the settlement was made and the apartments is required that the contract or promise to sell the apartment be registered with the relevant registration department in accordance with the text of Article (105, 1148) of the Civil Code, Article (16) of the Settlement Law Land and Water and Article (2) of the Disposal of Immovable Property Law...."<sup>(5)</sup>

Not only the Jordanian legislation and the rulings of the judiciary, but we find Arab legislation and judicial rulings, including what is stated in the Kuwaiti and Egyptian courts, and in this context the Court of Excellence Al-Kutiyah ruled that: It is planned that the provisions of Decree No. 95/5 of the Real Estate Registration Law did not change the nature of the sales contract in terms of it is a contract of consent that is concluded in the affirmative and acceptance and its effects resulted as soon as the will

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<sup>(1)</sup> Assaf, Legal Functions of the Money Register, p. 180.

<sup>(2)</sup> Decisions of the Court of Cassation No. (507/1966) dated 12/2/1967, Decision No. (199/1967) dated 29/6/1967, and Decision No. (228/1972) dated 24/8/ 1972, and Resolution No. (374/1975) dated 1/1/1976, Adalah Center Publications.

<sup>(3)</sup> Discrimination of Rights No. (3920/2013) dated 18/5/2014, Adalah Center Publications.

<sup>(4)</sup> Fouad Saleh Al-Daradka, The Pledge to Transfer Real Estate: A Fiqh and Judicial Study of the Jordanian and Iraqi Civil Codes, Journal of Kuwaiti Rights, Kuwait, 2005, p. 30.

<sup>(5)</sup> Discrimination of Rights No. (22/2015) dated 29/4/2015, Adalah Center Publications.

of the parties agreed and that all that the law introduced from the change in the provisions of the sale is that The transfer of ownership, after it was a necessary consequence of the correct sale as soon as it was held, became relaxed until after registration.<sup>(1)</sup>

The Court also ruled that the promulgation of Law No. 5/1959 on real estate registration and the conduct of the Court's jurisprudence did not change the nature of the sales contracts conveying the original real estate rights in kind and the right of ownership, since after the application of this law of the consensual contracts of consent that are legally concluded by convergence of answer and acceptance, and all that the law has brought about in them is that the transfer of those rights after it was a necessary result of the correct contract has become lax until after registration. As for the other provisions of the contract and the obligations of the parties thereto, it remains unchanged in it, the seller remains obliged under the contract to transfer ownership of the property to the buyer ...."<sup>(2)</sup>

The general rule of action in the Egyptian Civil Code is that the contract of sale is a contract of transfer of ownership and rights in general so that it can be said that: The contract is not considered a sale unless it is a carrier of property: This is what Article (418) of the Egyptian Civil Code said, where it defines a sale as a contract to which the seller is obliged to transfer to the buyer the ownership of something, This particular characteristic distinguishes the contract of sale from other contracts in that it is a contract of transfer of ownership, which is the complete consequence of the contract that the seller has to execute, and the legislator has singled out real estate by a special provision that it is not permissible to transfer it except by registration, where the seller is obliged to register the contract of sale of the property until its ownership passes to the buyer and without this registration the ownership will not be transferred and this is what is stated in the text of Article (934), Where the transfer of Qa'ar was restricted to the completion of the provisions set forth in the law regulating the real estate month, Therefore, the Egyptian Civil Code has settled by adopting the principle of consensuality of contracts so that the contract is suspended by mutual consent without the need for a certain authority, where the congruence of the two wills is sufficient to create the contract, but in real estate it is fully arranged and is not

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<sup>(1)</sup> Appeal against Discrimination No. 30/83, Civil Session 19/3/1984.

<sup>(2)</sup> Appeal against Discrimination No. 16/94, Civil, Session 7/11/1994, and Appeal No. 730 in Year 82, Session 5/1/1981.

considered a transfer of ownership until after registration, and the real estate registration does not apply retroactively, whether for others or for contractors, and the Egyptian Court of Cassation has ruled that: The original - and what happened to the judiciary of this court - that the registration does not have an effect except from the date of registration of the contract or The provision that would create a title or any other right in kind on a real estate or a property or a property and does not extend the effect to the past and does not invoke this that Law No. 114 of 1946 on the real estate month authorized articles (15 and 17) of which the registration of newspapers claiming the validity of contracting for real estate rights in kind and arranged for me to indicate the operative part of the judgment issued in them on the sidelines of the registration of their newspapers to attribute their effect to the date of registration of the newspaper of the lawsuit because the determination of that wealth on the way of exception to protect the owners of the Those lawsuits before those who have rights over the same property sold after the registration of the lawsuit newspaper and an exception that does not require expansion or analogy to it.

Hence, the researcher believes that the jurisprudence and the judiciary did not address the law of the management of state property and the law of registration of immovable property that was not registered despite the age of the two laws and relied on the civil law and the law of settlement of land and water only, so their opinion had to come that the contract of sale of the property requires the corner of form on all real estate without exception so that if this element is created the sale is considered null and void does not arrange any rights for the parties but leads to the return of the situation to what It was before the contract.

### **-Legal Effect of Registering the Contract for the Sale of Authorized Real Estate:**

The lands that have been delegated to individuals under the Law on the Administration of State Property have special provisions, where when the property is issued in the name of an owner, the Land Registration Department issues a registration deed to its owner to prove his ownership of the property, but a sign is placed on the real estate newspaper confirming that the owner is prevented from disposing of the property for ten years in accordance with Article (15) of the Law on the Administration of State Property prohibits the person from selling the land that has been delegated to him, donated or exchanged for another property within a period of ten years and calculates the beginning of the property The period from the date of registration of the land in his name in the Land Registration Department, after which the person to whom any



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of the state property has been delegated may sell, donate or exchange it for another property.

- 1- Land that was dismantled before the amendment of the provisions of the Law on the Administration of State Property under Law No. 25 of 1986.
- 2- Land that will be delegated to the housing associations of employees when transferring ownership of the housing on which it has been established to its members.
- 3 - Land allocated for public benefit when cancelled or delegated to the machines that fall within their lands.

The land delegated when sold in execution of the debt and the debt was in favor of an official lending institution.

Sale, gift, exchange and exit between assets and branches up to the third degree, between spouses, between brothers and sisters, between partners in the authorized plot, land delegated to an official university when selling part of it to any party for the purpose of establishing investment projects on it, provided that the Council of Ministers approves it.

However, this sale after ten years must have taken place in the Registration Department in accordance with the text of Article (16/3), which stipulates: In the places where the settlement has been made, the sale, exchange, excretion and sharing in the land or water shall not be considered valid unless the transaction took place in the Registration Department, hence the law limited the registration of the sale to the properties that have been settled and does not include the real estate that has been delegated under the Department of State Property. This was confirmed by the Court of Distinction considering that the law on the disposition of immovable property does not apply to these contracts by saying: If the dispute revolves around the The validity of the license of state property, i.e. immovable property registered in the name of the treasury and delegated under a delegation transaction and not resulting from settlement work, the law applicable to them is the state property management law and the state property licensing and lease system and those articles (3), (4) the disposition law does not apply to state property Fixed assets are on lien against it because the said articles prevent regular and Sharia courts from hearing cases in real estate whose registration bonds have been issued in accordance with the provisions of the

Settlement Law and not under an authorization under the State Property Management Law.<sup>(1)</sup>

## **CONCLUSION.**

The study concluded with a number of results, the most important of which were:

- 1- The right of an alien to own property is an inherent and fundamental right of him as a human being, because it is linked to his right to life and survival, and this is what has been established by bilateral, regional and international treaties, the Universal Charter of Human Rights and Islamic jurisprudence.
- 2- The multiplicity of legal texts and their dispersion related to the real estate operations concluded by the foreigner to own the property, as well as the competence of the Ministry of Interior (the governor) in granting licenses and various administrative decisions for the foreigner's ownership of real estate. The legislation also fails to control foreign ownership of real estate intended for personal or family use, whether it is built up land or constructible spaces.
- 3- , the right of the State to preserve its economic and social entity empowered it to intervene to regulate and restrict this right, mainly because of the State's sovereignty over its territory.
- 4- The position of the Jordanian legislator agrees with the position of the Arab legislation regarding the prohibition of non-citizens' ownership of real estate as a general principle, and ownership has been licensed according to specific conditions and controls for this type of real estate.
- 5 - Allowing the foreigner to own real estate in the territory of the State in two independent capacities, the first as an ordinary foreigner wishing to own real estate for the purpose of residence for the purpose of housing and shelter, or practicing the profession
- 6- As a foreign investor, he needs incentives and guarantees to bring his investment capital with the intention of making a profitable profit, and that is only to allow him to own land and real estate or use them for the purpose of establishing his investment. The project, governed and regulated by the Egyptian Investment Guarantees and Incentives Law No. 8 of 1997

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<sup>(1)</sup> Referred to in, Assaf, Legal Functions of the Money Register, op. cit., p. 132.

## Recommendations

- 1- The study recommended that the legislator should expedite the issuance of a new law regulating the ownership by foreigners of built real estate, space land and agricultural land.
- 2- The study also recommends the need to establish a basic principle of foreign investment, which is to allow investment in exchange for technology, meaning that the foreign investor - the foreign company - who wants to establish an investment project allows him to do so in exchange for the provision of advanced technology.
- 3- The need to ease and reduce restrictions on Arab investors wishing to own property in Jordanian law and Arab laws under discussion, and that it is a simplification of procedures and easing the restrictions of ownership conditions .
- 4- The laws on the ownership of land and real estate in Jordan should be amended, with the ownership of the Minister of Finance instead of the Council of Ministers being limited to taking the opinion of the security authorities.
- 5- The need for the intervention of the competent government authorities to issue the law on foreign ownership of real estate, provided that its codification takes into account the use of the available and current legal texts, especially in the field of investment, openness to comparative Arab legislation, benefit from jurisprudence and jurisprudential opinions on the subject, and maintain administrative licensing and official documentation.
- 6- The laws on the ownership of land and real estate in Jordan should be amended, with the ownership of the Minister of Finance instead of the Council of Ministers being limited to taking the opinion of the security authorities.

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