



Changes to Investment Law Unveil Potential Property Rights Violations

An Analysis of the Effects of the Investment Law Amendments in Syria on Property and Housing Rights

Insights by: JJ. Anwar Majanni



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THE DAY AFTER
Supporting Democratic Transition In Syria

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The Day After Association (TDA) is a Syrian organization that works to support democratic transition in Syria, and its scope of work is focused on the following areas: Rule of law, transitional justice, security sector reform, electoral system design and Constituent Assembly election, constitutional design, economic reform and social policies.

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Changes to Investment Law Unveil Potential Property Rights Violations

Before the revolution in Syria, real estate ownership was frequently violated through various means, such as unjust appropriation, socialist transformation, and expropriation without fair compensation. Despite constitutional protection for real estate property, the absence of a functioning Constitutional Court and rule of law rendered this ineffective.

During the revolution, the Syrian regime continued to disregard real estate rights, utilizing destructive military tactics to destroy cities and villages. Additionally, measures such as restrictions on real estate rights through security approval and the misuse of anti-terrorism laws were employed to dispossess property from opponents. Nepotism and corruption further fueled the appropriation of properties belonging to opponents and their supporters.

Moreover, real estate laws such as Law No. 10 of 2018, Law No. 23 of 2015, and Law No. 3 of 2018 were used as a tool to expropriate the property of displaced individuals. These laws were flawed in their application or contained defects in the legal texts, ultimately resulting in the unjust expropriation of properties from individuals who were already displaced.

In Syria, current laws and practices put the property of both men and women at risk of being lost, especially for those who are displaced. The Syrian regime has allowed investments from their supporters and allies by granting them facilitations and exemptions, achieved by cancelling the previous investment law (Legislative Decree No. 82007/) and replacing it with a new one (Legislative Decree No. 182021/).

However, the Real Estate Development and Investment Law No. 152008/ has remained an obstacle. This law sets regulations and guarantees for real estate development companies and protection for residents. To overcome this obstacle, the Syrian regime proposed an amendment to the investment law that cancels the real estate development law, thus allowing foreign companies to take over properties owned by Syrian men and women.

To understand the impact of the abolishment of the real estate development law, it is crucial to consider the guarantees it provided for property and housing rights. It is important to examine these rights under the amended investment law.

First - Guarantees of Property and Housing Rights in the Real Estate Development and Investment Law:

The Real Estate Development and Investment Law No. 15 was enacted in 2008 to address the issue of makeshift housing problems. It created the General Authority for Real Estate Development and Investment, which has several objectives outlined in Article Three of the law. These objectives include regulating real estate development work and promoting investment in the field to contribute to the construction and reconstruction process. The law also aims to involve the national private sector and attract foreign investment in real estate development to achieve the following:

- A. Providing the necessary land, buildings, services, and utilities to the housing and construction sector.**
- B. Establishing new integrated residential cities and suburbs as urban communities.**
- C. Improving random housing areas.**
- D. Ensuring affordable housing for people with limited income.**

The Real Estate Development and Investment Law provides controls to real estate development companies that protect property and housing rights while ensuring Syrian ownership and public benefit. To achieve this, the law outlines the following determinants:

1. Guarantees of Property and Housing Rights:

■ Article 20 of the law requires real estate developers working on projects within makeshift housing areas to provide alternative and suitable housing to the occupants of the project area. This housing must be handed over to the administrative authority based on a social survey conducted by the authority to identify the beneficiaries who are entitled to alternative housing or compensation.

■ Article 11 of the law requires the administrative authority to allocate 40% of the resulting residential floor areas as residential divisions for sale to the expropriated real estate owners in the development area. This ensures that property owners can still own their property within the real estate development area based on the approved planning program and contract concluded with the real estate developer.

Overall, this law aims to protect property and housing rights while promoting the public interest in real estate development.

2. Ensuring the Role of Administrative Units and Public Utilities Guarantees:

This law aims to ensure that the administrative unit takes on a central role in preparing plans for real estate development areas and overseeing all stages of the real estate developer's work. The real estate developer is required to follow the plan created by the administrative unit, which includes public facilities and buildings, such as administrative centers, police units, fire stations, temples, public monuments, hospitals, clinics, schools, libraries, cultural centers, sports stadiums, and social welfare centers intended for public benefit. Moreover, the law mandates that the ownership of these constructions be transferred from the updated plots to the concerned authorities without any charge. Additionally, the roads, squares, gardens, and public lighting developed by the real estate developer are regarded as public property of the administrative unit.

3. Syrian Ownership Guarantees for Real Estate Development Projects Cancelled:

Furthermore, the law ensures Syrian ownership of real estate development projects through Article 19, which establishes restrictions on real estate development companies. This requires that all shares be owned by citizens of the Syrian Arab Republic, whether natural or legal persons. Although nationals of Arab or foreign countries can participate or contribute to the establishment of companies, their total contributions to the company's capital cannot exceed 49 percent. Furthermore, no natural person may possess more than 5 percent of the company's capital, and no legal person may own more than 40 percent.

Article 20 of the law emphasizes that real estate resulting from the implementation of the real estate development zone should be disposed of following the relevant laws and regulations on the ownership of Arabs and foreigners in Syria. The real estate developer must conclude the operations of disposing of plots, dwellings, or buildings according to the applicable legal principles. Therefore, the law introduces regulations that guarantee Syrian ownership of most of the shares of real estate development companies.

Second – The Investment Law and Its Implications for Amendment:

1- The Syrian Investment Law:

The Investment Law No. 18 of 2021 replaced Legislative Decree No. /8/ of 2007 to attract capital. **The primary objective of the law is to create a competitive investment environment that will expand the production base, increase job opportunities, and raise economic growth rates. Achieving these goals will have a positive impact on comprehensive and sustainable development,** as stated in Article Two of the law.

To facilitate investment, the Investment Law created a higher council for investment headed by the Prime Minister and a public body called the Syrian Investment Commission led by the Minister of Economy. The law offers several facilitations and guarantees to investors, including the requirement for judicial authorization for precautionary seizure and expropriation only for public benefit and in exchange for compensation equivalent to the current price on the date of expropriation.

Additionally, the law offers extensive tax incentives for agricultural projects of up to 100% and for other projects up to 75% for ten years. Non-tax incentives such as import facilitations are also available to investors.

The Investment Law No. 18 of 2021 covers investment in all sectors, but specifically addresses real estate in Articles 25 and 26. **These articles outline the creation of special financial zones, such as development zones, which are designated regions for investment in development or reconstruction in the case of war damage.**

It's important to note that despite these provisions, the Real Estate Development Law No. 15 of 2008 remains in effect and applies to real estate development. Thus, investors, including real estate developers, can benefit from the Investment Law's provisions, but they must also comply with the guarantees and limitations specified by the Real Estate Development Law.

2- Amendment of the Investment Law:

Law No. /2/ was issued on 22 March 2023, amending various articles of the Investment Law, and they are as follows:

■ Article I: Defines key terms and now includes additional definitions:

1. Real Estate Development and Investment Zone: referring to real estate or portions thereof within a designated investment zone subject to the provisions of this law.
2. The entity responsible for the zone is also specified.
3. Real estate developer and investor: is the natural or legal person licensed to practice real estate development and investment in Syria under this law.

■ Article II: Outlines the objective of the law, now includes the clause “to expand the production base and aims to create a competitive investment environment to attract capital and contribute to construction and urban development”.

■ Article III: Covers the scope of application for the law, now includes the following amendments:

1. Real estate development and investment projects
2. Projects licensed under the enforcement of Law No. (15) of 2008 and its amendments
3. Real estate development and investment zones created under Law No. (15) of 2008 and its amendments

■ Article VIII: Clause “B” was added to

1. Establish the “Syrian Investment Commission” as a public body of an administrative nature with legal personality and financial and administrative independence. The Authority will be linked to the Minister and headquartered in Damascus.
2. The new authority will replace the authority established under Legislative Decree No. (9) of 2007 and the authority established under Law No. (15) of 2008, along with their respective rights and obligations.
3. The Authority is also authorized to establish branches or offices in the governorates, which can be cancelled by a decision of the Board of Directors.

■ Article XIII: was being amended to add several tasks to the Board of Directors of the Syrian Investment Commission. These include:

1. Approving the system for practicing real estate development and investment.
2. Proposing to secure real estate and parts of real estate as private state property located inside and outside the regulatory plans necessary for the creation of real estate development and investment areas.
3. Approving the classification of projects, defining the bases of projects with social dimensions, amending them when necessary.
4. Proposing a list of facilitations and benefits for real estate development and investment projects classified according to the approved procedures manuals.
5. Approving the granting of licenses to real estate development and investment companies and the capacity of a real estate developer, or revoking them in the event of violating the conditions for granting them.

■ Article XX was amended to allow for customs exemptions and facilitate the entry of goods and equipment for real estate development projects.

■ Article XLV is being amended to ensure that all permanent workers in the commission created by Law No. (15) of 2008 are transferred in their same positions to the Ministry of Public Works and Housing and the commission with the same conditions, categories, and wages.

■ Two new articles were added, and include the following:

1. The replacement of the title “The General Authority for Real Estate Development and Investment” with “Syrian Investment Commission,” and the title “Minister of Public Works and Housing” with “Minister of Economy and Foreign Trade” wherever they appear in the Escrow Account Law No. (25) of 2011.
2. Real estate developers and real estate investment and development companies licensed under Law No. (15) of 2008 to reconcile their positions in accordance with the provisions of this law within one year of its enforcement. The Council may extend this period for a similar duration.

■ Finally, a new article was added to state that “Law No. (15) of 2008 and its amendments shall be repealed.”

Third – The impact of amending the investment law on property and housing rights:

It is now clear that the Syrian legislator views real estate development purely as an investment project aimed at attracting capital. As a result, the special law governing real estate development has been canceled, which also cancels all guarantees related to property and housing rights that were previously stipulated in the Real Estate Development Law.

Canceling the real estate development law and subjecting real estate development to the investment law can have the following effects:

1. Changing the objective of real estate development:

The Real Estate Development Law aimed to achieve societal and housing goals, such as addressing random housing areas and securing housing needs for people with limited income. It also preserved housing rights, granting occupants the right to alternative housing and those whose lands were expropriated the right to specialize within the same areas. However, the investment law only aims to attract capital, without considering any other aspects related to the right to housing and ownership.

2. Changing institutional roles:

To align with the objectives of the Real Estate Development Law, the legislator gave specific roles to institutions responsible for housing and construction. For instance, the Public Authority for Real Estate Development and Investment is affiliated with the Ministry of Housing and Construction and includes members such as the Director General of the Public Corporation for Housing, the Director General of Real Estate Interests, the Director of Urban Planning, and two representatives from the private sector in the field of urban development.

The recent amendment made the investment law responsible for real estate development, replacing the General Authority for Real Estate Development and Investment with the Syrian Investment Commission. The former commission was affiliated with the Ministry of Economy and Foreign Trade and headed by the Minister of Commerce, but it did not have any representatives from institutions related to real estate affairs.

3. Elimination of the Administrative Body:

Under the Real Estate Development and Investment Law, the administrative authority was defined as the Public Corporation for Housing or the administrative unit. This unit played a crucial role in approving and monitoring real estate development projects. The real estate developer was bound by a contractual commitment to the administrative authority, which had control over project implementation, the power to cancel licenses granted to developers, and other authorities. The administrative unit was also responsible for establishing organizational and detailed plans for real estate development areas that were binding on developers. In addition, the administrative unit conducted social surveys to determine the occupants who would benefit from alternative housing.

The amendment of the investment law has resulted in the elimination of the roles and guarantees that were previously associated with real estate development work.

4. Syrian Ownership Guarantees for Real Estate Development Projects Cancelled:

The requirement for Syrian ownership in real estate development projects, as well as the ownership limits for non-Syrians, have been cancelled. Before the amendment, the Real Estate Development and Investment Law dictated that Syrian ownership was mandatory and non-Syrians were not allowed to own more than 49% of shares in real estate companies. Additionally, the law stipulated that natural persons could only own up to 5% and legal persons could own a maximum of 40%. However, the amended investment law now subjects real estate development projects to the same criteria as other investment types, which do not necessitate Syrian ownership.

5. Revocation of Guarantees for Property and Housing Rights:

Under the Real Estate Development and Investment Law, real estate developers were obligated to provide alternative housing for all occupants of the development area and allocate 40% of floor area for sale to the owners of expropriated land. These obligations were mutually agreed upon in the contract between the administrative unit and the developer. However, with the implementation of the amended investment law, these guarantees no longer exist for real estate development areas.

6. Transforming Restrictions into Facilitations:

The Real Estate Development and Investment Law aimed to address housing issues and prioritize social and housing needs by securing cheap housing for people with limited incomes, meaning that it set social and housing priorities. It also requires developers to establish public facilities and buildings for the benefit of the administrative unit free of charge.

However, the amended investment law has a primary focus on attracting capital and does not consider these factors. As a result, the restrictions and obligations previously placed on real estate developers have been replaced by tax, customs, and other facilitations.

Conclusion:

Although the Real Estate Development and Investment Law had some drawbacks, it did safeguard certain property and housing rights. However, its application in the absence of a significant portion of Syrian citizens from their homes could lead to the loss of these rights.

Subjecting real estate development to the amended investment law poses a more significant danger as it eliminates these protections and allows foreign capital to undertake real estate development work without proper regulations. In the Syrian context, this could provide opportunities for the regime's internal and external networks to profit at the expense of the rights of Syrian citizens, further contributing to demographic change.

Despite prior discussions about property laws, particularly Law No. 10 of 2018, which led to violations of property and housing rights, the most hazardous threat to these rights is subjecting real estate development to the amended investment law.



Appendix

Investment Law Comparison (Old vs. New)

The table below outlines the changes made to Investment Law No. (18) by Law No. (2) issued on March 22, 2023.

Article No.	The text is according to Law 18 of 2021	The text is according to Law 2 of 2023
1	<p>New Definitions:</p>	<p>The following new definitions were added:</p> <p>Real Estate Development and Investment Zone: Refers to real estate or parts of real estate included in the decision to create a real estate development and investment zone, whether built or not, and subject to the provisions of this law.</p> <p>Entity responsible for the real estate development and investment zone: Refers to the entity named in the decision to create the real estate development and investment zone.</p> <p>Real Estate Developer and Investor: Refers to a natural or legal person, Syrian or non-Syrian, who is licensed to practice real estate development and investment in the Syrian Arab Republic in accordance with the provisions of this law.</p>
2	<p>The objective of this law is to establish a competitive investment environment that can attract capital, leverage diverse expertise and specializations, and expand the production base to increase job opportunities and boost economic growth rates. This will have a positive impact on increasing national income and achieving comprehensive and sustainable development.</p>	<p>The objective of this law is to enhance the competitive investment environment to attract capital, contribute to the process of construction and urban development, and expand and diversify the production base with the aim of increasing job opportunities and raising economic growth rates, which will positively reflect on increasing national income and lead to comprehensive and sustainable development.</p>
3	<p>Scope of Application:</p>	<p>The scope of the law's provisions have been added and now include the following:</p> <p>a) Real estate development and investment projects.</p> <p>b) Projects licensed under the enforcement of Law No. 15 of 2008 and its amendments</p> <p>c) Real estate development and investment zones created under the enforcement of Law No. 15 of 2008 and its amendments</p>
8	<p>Syrian Investment Commission:</p>	<p>Clause (b) was added:</p> <p>The commission established under the provisions of this law replaces the authority established under Legislative Decree No. (9) of 2007 and the authority created under Law No. (15) of 2008, with their respective rights and obligations.</p>

Article No.	The text is according to Law 18 of 2021	The text is according to Law 2 of 2023
12	<p>Formation of the Board of Directors of the Syrian Investment Commission:</p>	<p>The Board of Directors of the Syrian Investment Commission now includes the following members:</p> <ul style="list-style-type: none"> ■ A representative of the Ministry of Public Works and Housing ■ A representative of the Regional Planning Commission ■ A representative of the Central Bank of Syria.
13	<p>Functions of the Board of Directors of the Syrian Investment Commission:</p>	<p>The following tasks were added:</p> <p>Q- Approving the system for practicing real estate development and investment.</p> <p>R- Proposing measures to secure real estate, including parts of real estate that are privately owned by the state, both inside and outside regulatory plans, that are necessary for the creation of real estate development and investment areas.</p> <p>S- Approving the classification of projects, defining the criteria for projects with social dimensions, and making necessary amendments.</p> <p>T- Proposing a list of facilities and benefits for real estate development and investment projects, classified according to approved procedures manuals.</p> <p>U- Approving the issuance of licenses to real estate development and investment companies and determining the capacity of a real estate developer, or revoking them in case of violating the conditions for granting them.</p>

Article No.	The text is according to Law 18 of 2021	The text is according to Law 2 of 2023
20	<p>Customs Incentives:</p>	<p>The following incentives were added:</p> <p>The Syrian Investment Authority provides customs incentives for real estate development and investment projects. The following incentives have been added:</p> <p>C- 1- Imports of building materials, completion equipment, and non-tourist means of transport necessary for implementing these projects are exempted from all customs and financial fees, provided that the value of imports does not exceed:</p> <ul style="list-style-type: none"> ■ 50% of the estimated investment costs for priority projects. ■ 40% of the estimated investment costs for projects with social dimensions. ■ 30% of the estimated investment costs for special services area projects. <p>2- Real estate development and investment projects that have obtained an investment license can benefit from temporary entry for machinery, devices, supplies, equipment, and work vehicles needed for project implementation. However, they must be used exclusively for project purposes and in compliance with the applicable laws and regulations.</p> <p>D- Imports of transport means used exclusively for the transportation of goods and passengers are exempted from all customs and financial fees, provided that they are for the project purposes only.</p>
26	<p>A- The Syrian Investment Authority defines special financial zones as follows: Private Ownership Zone: An investment zone requested by an investor for private ownership, in which various financial activities.</p>	<p>A- The Syrian Investment Authority defines special financial zones as follows: Private Ownership Zone: An investment zone requested by an investor for private ownership, in which various financial activities, including real estate development and investment, can be carried out.</p>
45	<p>B- The Commission's employees' situation:</p>	<p>The following was added:</p> <p>All permanent workers in the Commission created by Law No. (15) of 2008 are considered to be transferred to the Ministry of Public Works and Housing and the Authority with their same conditions, categories, and wages. They maintain their job history eligible for promotion, while delegated, temporary, seasonal, and casual workers continue with their current conditions according to the laws and regulations in force. The Prime Minister distributes them between the Ministry and the Authority based on the proposal of the Ministers of Public Works and Housing, Economy, and Foreign Trade.</p>

Addendums:

Article 10 - In the Escrow Account Law No. (25) of 2011, the phrase “Syrian Investment Commission” replaces the phrase “General Commission for Real Estate Development and Investment,” and the phrase “Minister of Economy and Foreign Trade” replaces the phrase “Minister of Public Works and Housing” wherever they appear.

Article 11 - The real estate developer and licensed real estate development and investment companies must reconcile their statuses in accordance with the provisions of this law within one year from its entry into force. The Council may extend this period for a similar period.

Article 12 - The current and investment appropriations of the Public Authority for Real Estate Development and Investment are transferred to the Authority from the state’s general budget for the year 2023. The total undisbursed appropriations are considered appropriations for the Authority's budget.

Article 13 - The executive instructions of this law shall be issued by a decision of the Council.

Article 14 - Law No. (15) of 2008 and its amendments shall be repealed.

Article 15 - This law shall be published in the Official Gazette.

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