



## **An Analysis of the Concept of Investment in International Investment Law With Emphasis on Intellectual Property (A comparative study of the universal approach and Iran)**

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### **Abstract**

In international investment law, the concept of the investor, its criteria, and related conditions have been discussed extensively, but the concept of capital and its consequent legal scope and effects have not been sufficiently explored. Among the usual components of the concept of capital in treaties related to international investment is intellectual property rights. The difference between intellectual property and the traditional concept of property, and its relationship with the evolution of property concepts and ownership rights in related areas of international investment law, have brought about numerous challenges and discussions. Additionally, for over two decades, efforts have been made to consider assets with public origins, such as genetic resources, traditional knowledge, and folklore, as intellectual property. These efforts to change and adjust the criteria of property in intellectual property law, while maintaining traditional instances like author's rights and industrial property rights along with their governing exceptions, such as fair use and personal use, within their traditional framework, have aimed to determine the status of public-origin instances within this classification system.

Since the establishment of the legal branch of international investment law, research on the relationship between intellectual property rights and foreign investment attraction has generally proven a positive and reciprocal relationship between the two. This, along with the flexible approach of countries in concluding investment treaties, has led not only to a broad approach towards the concept of capital concerning intellectual property in many cases but has also paved the way for strengthening, enhancing, and even expanding the scope of protection for intellectual property.

These developments did not occur suddenly and have significant historical origins in treaties related to international investment. Furthermore, these developments have not yet fully reached maturity and certainty, and many disputes are still present in this area. Therefore, to understand, explain, and analyze these developments, this article will sequentially discuss the historical evolution of the concept of foreign capital and the position of intellectual property within it, and analyze the concept of capital in international investment law with an emphasis on its inclusion on intellectual property.



The concept of capital plays a significant role in investment treaties, especially concerning intellectual property rights (IPR). Its scope in international investment law involves protective measures but lacks a uniform historical status. Before and after 1960 mark two key periods in the evolution of capital's inclusion in IPR. Globally, defining "capital" remains challenging due to its varied interpretations in legal doctrines and policies. The ICSID Convention, a major treaty for investment disputes, refrains from defining capital, analyzing it through approaches like "discriminatory," "common characteristics," and "jurisdictional requirements," with the latter being deemed most desirable. Broad interpretations in investment agreements extend IPR protection, influenced by pervasive clauses like the most-favored-nation rule. Consequently, protection levels often surpass international standards, including those of the TRIPS Agreement.

According to the results of the present research, globally, a broad approach regarding the concept of capital and the protection of intellectual property rights in treaties related to international investment prevails, which, based on the pervasive effect of treaties resulting from their protective clauses, especially the most-favored-nation clause, gradually becomes a pervasive rule and even raises conventional protective standards in the concept of capital and intellectual property rights. Therefore, revising the adopted approach of developing countries, especially WTO members, is essential. In Iran, the adopted approach in bilateral investment agreements is adopting a broad approach towards the concept of capital and also the protection of intellectual property rights as capital. However, one should not be extreme in this path, and the status, manner, and scope of protection of capital and intellectual property rights cannot be the same for all countries and in all investment fields, especially concerning countries like Iran that have not even accepted the international obligations of the TRIPS Agreement.

**Keywords:** Concept of Investment, Intellectual Properties, International Investment Law, Global Approach, Iranian Approach.



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