

# IMPLEMENTING THE IRAQI INVESTMENT LAW

## ELEMENTS TO CONSIDER

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# THE INVESTMENT LAW 2006

- The 2006 Law on Investment provides a major step to make Iraq an attractive location for Investment. The establishment of the NIC will be an important achievement.
- Relevant policy decisions and legal reforms should complement this effort. The adoption of a high standard Implementing Regulation should be a priority.
- Regional and International good practices provide some elements to be considered.

# Elements to consider

- **Definition of Investment**
  - **Regulation of Entry**
  - **Expropriation**
  - **Dispute Settlement**
  - **Incentives**

# Definition of Investment

- **Broad asset based definition**
- **Definition of Strategic Investment**

**Question:** Which is the current threshold to determine a 'Strategic investment' and what criterias are used besides a quoted amount?

# Regulation of Entry

- **Negative list approach:**

**Question:** Would you agree that the Investment Law follows a negative List approach? Are there other exceptions in other laws or regulations excluding foreign investment sectors from the Iraqi economy?

- **Screening and approval of foreign investment**

**Question:** It remains unclear whether all investment projects have to be granted a license from the NIC.

# Expropriation

- **Indirect expropriation**

**Question:** Do you agree that the foreign investor would be better protected if the Iraqi Legislation would provide a guarantee against indirect expropriation? Would it be possible to add such a provision in the implementing regulation?

- **Compensation provision**

**Question:** Do you see any objection to granting immediate, and adequate compensation to *foreign* investors in the event of an expropriation of private property by government authorities? Is there a provision to this respect in any other Iraqi law or regulation?

- **Public interest**

**Question:** Would it be useful to enact a public interest test for *foreign* investors in the implementation regulation as it is stated for Iraqi nationals in the Iraqi Constitution?

# Dispute Settlement

- **International Arbitration**

**Questions:** Is Article 27 to be read granting foreign investors the possibility to resort to international arbitration to resolve their disputes with the NIC or other Iraqi government agencies?

If this is not the case, would such a reference be of value added to include in the implementing regulation?

- **Enforcement**

**Question:** Would the Iraqi Government consider becoming a party to the New York, and the ICSID Conventions? Is there any further provision in the Iraqi legislation that guarantees the application of foreign arbitral award within the Iraqi jurisdiction?

# Privileges and Incentives

- Economic Rationale for Incentives
- MENA good practice guidelines

Transparency, Evaluation, sunset clauses, periodic review.

**Question:** Does a project have to be located in a pre-determined development area to benefit from exemptions? Have development areas already been selected? On which criteria?