



DRAFT AGENDA



**PROJECT ON "IMPROVING THE BUSINESS  
AND INVESTMENT CLIMATE IN IRAQ"**

# **Workshop on international investment treaties, investment disputes and arbitration**

**18-21 April 2016**

Mövenpick Hotel

Beirut, Lebanon

## **Background**

Attracting investment outside the hydrocarbon sector in Iraq is a priority to diversify the economy and to support economic growth. The recent drop in oil prices and the fight against the so-called “Islamic State” have put a heavy strain on government finances, prompting the Government of Iraq (GoI) to intensify its efforts to improve the investment climate to draw more private investors. The GoI has consequently embarked on a series of economic reforms to increase investor confidence in Iraq.

The MENA-OECD Competitiveness Programme (“The Programme”) seeks to improve the GoI’s ability to attract private investment in its “Improving the business and investment climate in Iraq – policy dialogue and capacity-building for key actors” project (the Iraq Project). The Swedish International Development Co-operation Agency (Sida) is providing funding from 1 December 2013 to 30 June 2016.

In recent months, the Programme supported the GoI’s efforts to implement economic reforms. For example, the Programme supported the GoI to amend its Investment Law No. (13) of 2006 by providing recommendations on draft amendments to the law and building capacities of Iraqi legal representatives. The amendment was passed in October 2015 with a number of OECD recommendations integrated.

Iraq is also seeking to modernise its investment law on the bilateral and regional levels. Iraq has also recently signed and ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) in November 2015. As of February 2016, Iraq is signatory to 8 bilateral investment treaties (BITs) and a number of additional agreements are being negotiated. It is therefore timely to conduct this workshop with a focus on the Iraqi arbitration law and bilateral investment treaties.

## **Objectives of the workshop**

The main objectives of the workshop are to build capacities in the Government of Iraq in the areas of International Investment Agreements (IIAs) and arbitration, and to analyse the draft arbitration law of Iraq.

Day 1 and 2 are dedicated to international investment agreements; while Day 3 will focus on dispute prevention, management, and settlement and Day 4 on the draft arbitration law of Iraq.

The latest developments and trends in investment treaty practice will be discussed. Importantly, participants will gain insight into current contours of core substantive provisions of bilateral investment treaties, such as fair and equitable treatment, full protection and security, protection against unlawful expropriation, free transfer of funds, non-discrimination obligations and their enforcement through investment arbitration. Special emphasis will be placed on balancing the state rights to regulate with investor protection, as well as the prevention of disputes and more predictable dispute settlement mechanisms.

## **Participants**

The workshop will gather 10 legal experts from Iraq from the State Consultation Council (Shura), the National Investment Commission (NIC), the General Secretariat of the Council of Ministers (COMSEC), and the Council of Representatives (CoR). Mr Afif Al-Rayis, the Project’s local project liaison in Baghdad, will also contribute to the workshop.

The workshop will be led by Ms Anna Joubin-Bret, Cabinet JOUBIN-BRET (Paris), international investment law expert, as well Mr Hussein Haeri, Partner at Withers LLC, and Mr Jae Sung Lee, Legal Officer of UNCITRAL.

**Monday, 18 April 2016**

**International Investment Treaties**

<b>09:30 – 10:00</b>	<b>Opening remarks and “tour de table”</b>
	<p><i>Welcoming remarks and overview of the OECD’s Iraq project recent activities</i></p> <p><b>Klaus HACHMEIER</b>, Iraq Project Co-ordinator, MEA Division, Global Relations Secretariat, OECD</p> <p><b>Abdullateef Naif ABDULLATEEF</b>, Vice President, State Consultation Council (Shura)</p> <p><i>“Tour de table”</i></p> <p><i>The participants will introduce themselves and present their expectations for the workshop.</i></p>
<b>10:00 – 11:30</b>	<b>Update on Iraq’s legal framework for investment</b>
	<p><i>This session will provide an overview of the latest developments in the legal framework for investment of Iraq, and notably the new amendment to the Investment Law No 13 of 2006. This will include an update on Iraq’s international investment agreements and international obligations.</i></p> <p><b>Rashad KHALAF</b>, Deputy Director General, Legal Department, National Investment Commission</p> <p><b>Zuhair AL-HUSSAINI</b>, Expert, Legal Department, National Investment Commission</p>
<b>11:30 – 12:00</b>	<b>Coffee break</b>
<b>12:00 – 13:30</b>	<b>The international and domestic framework for investment and latest developments in international investment agreements (IIAs)</b>
	<p><i>This session will give an overview of the international and domestic framework for facilitation and protection of investment. It will review the necessary coherence between domestic investment laws and regulations, contracts concluded between the State and foreign investors, international investment agreements as well as international conventions on investment which the State has ratified.</i></p> <p><i>This session will also review the latest global trends and developments in IIAs. As Iraq embarks on negotiating and signing more IIAs, it is important to be aware of the implications thereof for Iraq, including as signatory to regional investment agreements (LAS and OIC).</i></p> <p><b>Anna JOUBIN-BRET</b>, International investment law expert, Cabinet JOUBIN-BRET (Paris)</p>
<b>13:30 – 14:30</b>	<b>Lunch</b>

<b>14:30 – 15:30</b>	<b>Module 1: Substantive provisions: Definition, admission and establishment</b>
	<p><i>The following sessions will delve into the substantive provisions of IIAs. Reference will be made to the texts of the Iraqi IIAs to allow for critical self-assessment and identification of specific areas for improvement.</i></p> <p><i>A first session will discuss three core definitions in investment instruments: the definition of investment, of investor and of territory. It will review recent trends in limiting the scope of investment agreements and focussing them, moving from broad asset-based definitions to closed-list definitions. It will examine approaches to deny benefits of treaty liberalisation and protection provisions while encouraging productive investments into the economy.</i></p> <p><i>The second session will review various approaches taken to entry and establishment of foreign investors, ranging from admission of investments made in accordance with the laws and regulations of the host State to more liberalisation through a right of establishment granted through pre-establishment National Treatment and Most-Favoured-Nation Treatment</i></p> <p><b>Anna JOUBIN-BRET</b>, International investment law expert, Cabinet JOUBIN-BRET (Paris)</p> <p><i>Participants will have the opportunity to ask questions following the presentation.</i></p>
<b>15:30 – 15:45</b>	<b>Coffee break</b>
<b>15:45 – 17:15</b>	<b>Module 2: Substantive provisions: Non-discrimination</b>
	<p><i>This session will discuss two conventional provisions on non-discrimination: National Treatment (NT) and Most-Favoured-Nation (MFN) Treatment. It will take stock of recent treaty practice on pre-establishment NT and MFN and it will also discuss disciplines on performance requirements.</i></p> <p><b>Anna JOUBIN-BRET</b>, International investment law expert, Cabinet JOUBIN-BRET (Paris)</p> <p><i>Participants will have the opportunity to ask questions following the presentation.</i></p>

**Tuesday, 19 April 2016**  
**International Investment Treaties**

<b>09:00 – 10:30</b>	<b>Module 3: Substantive provisions: Expropriation</b>
	<p><i>In this session, the participants will review the conditions for an expropriation to be lawful under international law as well as the clarification of acts and measures constituting direct and indirect expropriation. It will particularly discuss the provisions relating to non-compensable regulatory takings and the State's right to regulate for public purpose and related exceptions. It will also review methods for calculating compensation.</i></p> <p><b>Anna JOUBIN-BRET</b>, International investment law expert, Cabinet JOUBIN-BRET (Paris)</p> <p><i>Participants will have the opportunity to ask questions following the presentation.</i></p>
<b>10:30 – 11:00</b>	<b>Coffee Break</b>
<b>11:00 – 12:30</b>	<b>Module 4: Substantive provisions: Transfer of funds and other provisions</b>
	<p><i>This session will focus on a recent trend to introduce conditions to the freedom of transfer of capital and current transactions as well as the exceptions that States can invoke when balance of payment difficulties occur and when prudential financial measures need to be taken.</i></p> <p><b>Anna Joubin-Bret</b>, International investment law expert, Cabinet JOUBIN-BRET (Paris)</p> <p><i>Participants will have the opportunity to ask questions following the presentation.</i></p>
<b>12:30 – 13:30</b>	<b>Lunch</b>
<b>13:30 – 15:00</b>	<b>Module 5: Dispute settlement</b>
	<p><i>This session will examine provisions related to dispute settlement in international investment treaties.</i></p> <p><b>Anna Joubin-Bret</b>, International investment law expert, Cabinet JOUBIN-BRET (Paris)</p> <p><i>Participants will have the opportunity to ask questions following the presentation.</i></p>
<b>15:00 – 15:30</b>	<b>Coffee Break</b>
<b>15:30 – 16:45</b>	<b>Module 6: Additional provisions in investment treaties: environment, corporate social responsibility, human rights</b>
	<p><i>This last session will examine provisions encountered in international investment agreements that address the impact of investment on other areas such as the environment, social and labour conditions and human rights. It will propose approaches to protect interests of communities, regions or sectors through exceptions</i></p>

	<p><i>and carve-outs.</i></p> <p><b>Anna JOUBIN-BRET</b>, International investment law expert, Cabinet JOUBIN-BRET (Paris)</p> <p><i>Participants will have the opportunity to ask questions following the presentation.</i></p>
<b>16:45 – 17:00</b>	<b>Conclusion of IIAs sessions</b>

**Wednesday, 20 April 2016**

**Investment Dispute Management, and Settlement**

<b>09:00 – 10:30</b>	<b>Introductory session: Dispute settlement in practice</b>
	<p><i>While there are three basic grounds for disputes arising between foreign investors and the host State of the investment through an investment contract, national law of the host state, and an international treaty, this session will primarily focus on the ones arising from an international treaty. The session will discuss standards and provisions that typically attract contract disputes under the protection of an international investment treaty. They will also discuss the involvement of various entities and agencies within the State. There will be a particular focus on investment treaty arbitrations in the Middle East as relating to particular investment treaty standards.</i></p> <p><b>Hussein HAERI</b>, Partner, International Arbitration, Withers LLP</p>
<b>10:30 – 11:00</b>	<b>Coffee Break</b>
<b>11:00 – 12:30</b>	<b>Module 1: Dispute management in practice: Management and proceedings</b>
	<p><i>This session will review available fora for dispute settlement. It will discuss factors affecting the selection of a forum for the settlement of investment disputes and review the main differences between the following arbitration rules: ICSID, UNCITRAL, ICC, SCC and domestic arbitration.</i></p> <p><i>It will highlight certain differences between ICSID and non-ICSID (mostly UNCITRAL) investment arbitrations. It will also address procedural issues such as parallel proceedings. The session will further deal with jurisdictional issues and arguments that can be taken by host States in investment treaty and ICSID arbitrations.</i></p> <p><b>Hussein HAERI</b>, Partner, International Arbitration, Withers LLP</p>
<b>12:30 – 13:30</b>	<b>Lunch</b>
<b>13:30 – 15:00</b>	<b>Module 2: ICSID Case Studies – practical examples</b>
	<p><i>Iraq has recently signed and ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) in November 2015. This session will present case studies and practical examples to familiarise participants with ICSID and issues related to jurisdiction, enforcement of awards, etc.</i></p> <p><b>Hussein HAERI</b>, Partner, International Arbitration, Withers LLP</p>
<b>15:00 – 15:30</b>	<b>Coffee Break</b>

<b>15:30 – 16:45</b>	<b>Module 2: ICSID Case Studies – practical examples (continued)</b>
	<p><i>Iraq has recently signed and ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) in November 2015. This session will present case studies and practical examples to familiarise participants with ICSID and issues related to jurisdiction, enforcement of awards, etc.</i></p> <p><b>Hussein HAERI</b>, Partner, International Arbitration, Withers LLP</p>
<b>16:45 – 17:00</b>	<b>Closing session</b>

**Thursday, 21 April 2016**  
**Legislative Framework for Arbitration in Iraq**

<b>09:00 – 10:15</b>	<b>Introductory session</b>
	<p><i>This session will introduce the current developments in formulating the legislative framework for arbitration in Iraq.</i></p> <p><i>It will also introduce UNCITRAL and its work, particularly in the field of dispute resolution. Representatives of UNCITRAL will present their work, including the current work being undertaken by its Working Group on Arbitration and Conciliation.</i></p> <p><b>Abdullateef Naif ABDULLATEEF</b>, Vice President, State Consultation Council (Shura)</p> <p><b>Jae Sung LEE</b>, Legal Officer, International Trade Law Division, Office of Legal Affairs, United Nations</p>
<b>10:15 – 10:30</b>	<b>Coffee Break</b>
<b>10:30 – 12:30</b>	<b>Module 1: An analysis of the Iraqi Arbitration Law in relation to the UNCITRAL Model Law on International Commercial Arbitration</b>
	<p><i>This interactive session will allow participants and experts to analyse the draft Iraqi arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration.</i></p> <p><b>Jae Sung LEE</b>, Legal Officer, International Trade Law Division, Office of Legal Affairs, United Nations</p>
<b>12:30 – 13:30</b>	<b>Lunch</b>
<b>13:30 – 15:00</b>	<b>Module 2: An analysis of the Iraqi Arbitration Law in relation to the UNCITRAL Model Law on International Commercial Arbitration (cont'd)</b>
	<p><i>This interactive session will allow participants and experts to analyse the draft Iraqi arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration.</i></p> <p><b>Jae Sung LEE</b>, Legal Officer, International Trade Law Division, Office of Legal Affairs, United Nations</p>
<b>15:00 – 15:30</b>	<b>Coffee Break</b>
<b>15:30 – 16:30</b>	<b>Module 3: UNCITRAL Standards on Transparency in Treaty-based Investor-State Arbitration &amp; the UNCITRAL Notes on Organizing Arbitral Proceedings</b>
	<p><i>This session will introduce the UNCITRAL standards on transparency for investment arbitration. It will also focus on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), to which Iraq is not a party. The Guide to the NYC will also be presented as a tool to better</i></p>

	<p><i>understand the Convention along with some case law on the Convention.</i></p> <p><b>Jae Sung LEE</b>, Legal Officer, International Trade Law Division, Office of Legal Affairs, United Nations</p>
<b>16:30 – 17:00</b>	<b>Conclusion and Next Steps</b>
	<p><b>Klaus HACHMEIER</b>, Iraq Project Co-ordinator, MEA Division, Global Relations Secretariat, OECD</p> <p><b>Abdullateef Naif ABDULLATEEF</b>, Vice President, State Consultation Council (Shura)</p>

