



REPUBLIC OF LEBANON

MINISTRY OF FINANCE

*Renewing momentum for regional investment policies in the
MENA region*

The MENA- OECD Investment Program

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**Analysis of existing regional
agreements in the MENA region**

Carol Khouzami - Senior Legal Advisor

Office of the Minister of Finance of Lebanon



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Agreements studied

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**Comparison of main provisions and
identification of weak points**

3

Analysis and recommendations



Agreements under study

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	Unified agreement for the investment of Arab capital in Arab countries	Agreement for the promotion, protection and guarantee of investment among member states of the organization of the Islamic conference	Agreement on the promotion and protection of investment and transfer of capital among Arab countries
Organization	Arab League	Organization of the Islamic Conference	Council of Arab economic Unity
Member countries	<i>22 members</i>	<i>57 members</i>	<i>9 members</i>
Date of adoption	1980	1981	2000 Open to non members
Date of entry into force	June 1981	February 1988	Enforced



Definitions

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Classical provisions	BIT	Arab League	Organization of the Islamic conference	Arab economic Unity
Investment		Large unrestricted definition	Large unrestricted definition	Large unrestricted definition
investor		Restricted to purely Arab capital	No emphasis on fully detained by investors from the CPies.	No emphasis on fully detained by investors from the CPies.



Promotion

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Classical provisions	BIT	Arab League	Organization of the Islamic conference	Arab economic Unity
Promotional measures	<ul style="list-style-type: none"> ✓ various additional optional incentives ✓ Grant of work and sojourn permits 	<ul style="list-style-type: none"> ✓ necessary facilities and incentives + required permits ✓ open up various fields and investment opportunities in line with national economy. ✓ cooperation with the private local sector 	<ul style="list-style-type: none"> ✓ Facilitating procedures ✓ One stop shop 	
Foreign workers	<ul style="list-style-type: none"> ✓ entry, sojourn and departure facilitations ✓  preference order of nationalities in hiring workers 	No nationality condition.	<ul style="list-style-type: none"> ✓ Movement of persons ✓ Free transfer of foreign workers income ✓  no specific provision on the right to hire foreign workers 	



Treatment

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Classical provisions	BIT	Arab League	Organization of the Islamic conference	Arab economic Unity
Non discrimination	Granted		⚠ No general principle	Granted
Fair and equal treatment	⚠ not mentioned	⚠ not mentioned	⚠ not mentioned	⚠ not mentioned
Full protection and security	⚠ not mentioned		'adequate protection and security' ⚠ is 'adequate' less than 'full'?	⚠ not mentioned
National treatment	Granted		⚠ not mentioned as a general treatment	As the minimum treatment
MFNT	⚠ granted grant investor's right to choose the MFNT !		Granted	Granted
Exceptions	Special incentives granted to a specific project. ⚠ no mention of classical exceptions		✓ Special incentives granted to a specific project ✓ Economic or custom union , FTA, eco. organization. + tax agreement	Economic or custom union , FTA, eco. organization. + tax agreement



Expropriation

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Arab League	Organization of the Islamic conference	Arab economic Unity
<p></p> <p>No mention of :</p> <ul style="list-style-type: none">✓ interest in case of late payment,✓ the baseline use for the computation of the compensation	<p></p> <p>No mention of:</p> <ul style="list-style-type: none">✓the baseline to determine the value of the investment and the amount of the compensation✓the payment of interest in case of late payment	<p></p> <p>No mention of:</p> <ul style="list-style-type: none">✓how the compensation is computed✓interest in case of late payment✓an the right to resort to a judicial independent body for revision of the decision of nationalization or the amount of the compensation.



Compensation for damages

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Arab League	Organization of the Islamic conference	Arab economic Unity
<p>In case of non execution of a legal commitment by the host country</p> <p>no provision related to compensation in case of physical damages due to riot or war ...</p>	<p>Compensation for damage due to the public authority</p> <p>No treatment specified.</p> 	<p>Provided for</p>



Free transfer

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Arab League	Organization of the Islamic conference	Arab economic Unity
<p></p> <ul style="list-style-type: none">✓ within the Arab countries.✓ the original capital can be transferred at the end of the investment or after a period of 5 years from its transfer in the country, whichever is shorter.	<p></p> <ul style="list-style-type: none">✓ repatriation of the original capital on the termination of the investment or after 5 years from the date of its transfer whichever is earlier✓ restrictions for exchange control purposes✓ possibility of fixing a maximum percentage of allowed transferable amounts of salaries and wages✓ in case of liquidation or cession, only if to an investor of a CP and subject to the approval of the host state.	<p>Free transfer</p>



Guarantee and Subrogation

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Arab League	Organization of the Islamic conference	Arab Economic Unity
The Inter-Arab Investment Guarantee Corporation or other entities. Subrogation admitted	Establishes an Islamic Institution for the Guarantee of Investment (The Islamic Corporation for Insurance of Investment and export Credits (ICIEC) was established as an affiliated of the Islamic Development Bank in 1994)	Admitted



Settlement of disputes

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Classical provisions	BIT	Arab League	Organization of the Islamic conference	Arab economic Unity
General remark		deals with both kinds of dispute together. 	deals with both kinds of the dispute together. 	under the investment dispute Agreement of 1974 replaced by the Agreement of 2000
Resorts admitted		The choice to resort to a body should be done in agreement between the two parties to the dispute.  ✓the investor is not granted the exclusive right to choose to which body he wants to resort. ✓Adhering to this agreements is not deemed to be a pre-acceptance of arbitration.	The investor can resort to his national tribunal to complain of a measure taken against him by the host country.	National tribunal, conciliation and arbitration.



Settlement of disputes - Conciliation and national court

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Classical provisions	BIT	Arab League	Organization of the Islamic conference	Arab economic Unity
Conciliation		Conciliation as a preliminary step but not mandatory.	To be agreed among the parties to the dispute. 	<ul style="list-style-type: none"> ✓ Not clear if it is a preliminary step ✓ Upon request of both parties to the dispute
National court		<ul style="list-style-type: none"> ✓ The decision to resort to national court or arbitration will be final ✓ however, in case of contradiction between a decision of a national court and an arbitral decision, the latter prevails 	<ul style="list-style-type: none"> ✓ For dispute between an investor and the host State ✓ The decision to resort to national court or arbitration will be final 	<ul style="list-style-type: none"> ✓ Resorting to national court will deprive the parties to the dispute to resort to conciliation or arbitration



Settlement of disputes – Arbitration

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Arab League	Organization of the Islamic conference	Arab economic Unity
<p>✓ establishes the Arab Investment Dispute settlement Court (enacted in 1984 and based in Cairo)</p> <p>Specificities:</p> <ol style="list-style-type: none">1. Amicus Curiae submission2. Conditions of revision of the decision3. Advisory role <p>✓ Ad'hoc arbitration</p> <ol style="list-style-type: none">1. Decision is final , binding and enforceable	<p>✓ establishment of an organ for the settlement of dispute. Not yet</p> <p>✓ meantime, ad'hoc arbitration</p>	<p>✓ Ad'hoc arbitration</p> <p>✓ condition of revision of the decision</p> <p>✓ conditions of annulations</p>



Settlement of disputes – Applicable law

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Arab League	Organization of the Islamic conference	Arab economic Unity
 Not mentioned	 Not mentioned	mentioned with an order of preference



General comments

Not exhaustive

Confusing
structure and style

Emphasis on the
duties and
obligations of the
investor



Specific comments

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Geographical scope

- ✓ comparing the incomparable
- ✓ only the Arab League covers exclusively the MENA region and yet Iran and Turkey are excluded
- ✓ The Islamic organization has a much broader scope which encompasses countries from Africa and Asia
 - ➔ Which makes any amendment more difficult
- ✓ The AEU is the Agreement with the smaller number of 
However, limited geo scope because of the small number of member in the organization ➔ but open to signature to non-members ➔ potential extension



Specific comments

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National economy

v.

Investor interest

- ✓ clear emphasis on the submission of any investment to the economic policy of the host country
- ✓ no full freedom of movement for capital
- ✓ limited opening of the host country economy
- ✓ this is especially true for the Arab League Agreement that keep the investment in a regional bubble



Specific comments

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DSM

- ✓ Incomplete and confusing provisions
- ✓ deal with both kinds of dispute together without respecting the specificities of each
 - ✓ confused wording and structure
- ✓ lack of important provisions , i.e. applicable law



Final conclusions

Need to update:

- ✓ to clarify the structure
- ✓ to include missing provisions

What is the role of these regional at minima agreements v. the network of 79 intra-MENA BITs?



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Thank you for your attention