



# The 2013 Amendment to the 1980 Arab League Investment Agreement

## *A step towards improving the region's attractiveness to investors*

*NOTE: This draft brochure responds to a request of the League of Arab States to the MENA-OECD Investment Programme.<sup>1</sup>*

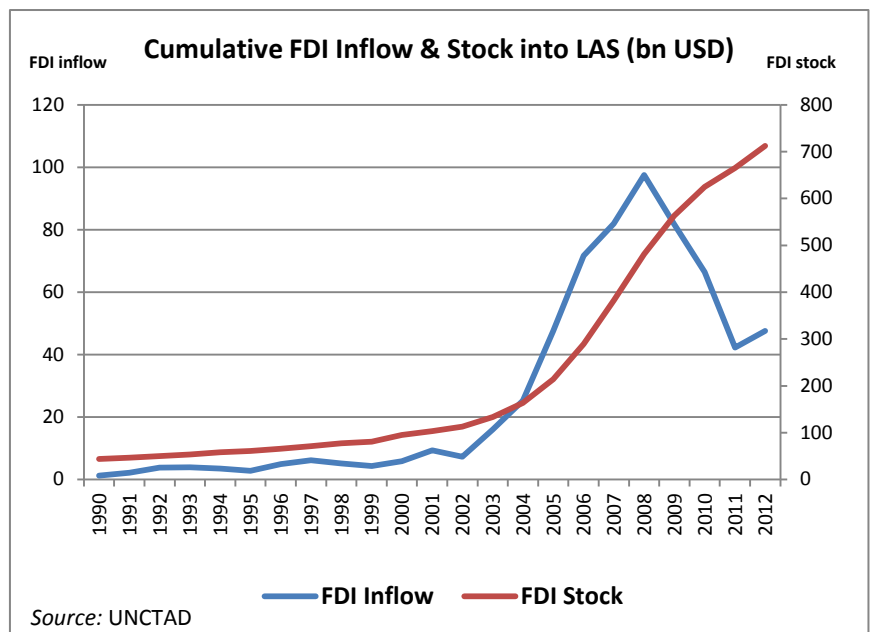
### Stimulating investment within the region

Investment is one of the key drivers of economic growth and job creation. It essentially depends on economic determinants, but not only. **Sound and stable legal frameworks** regulating investment at the national, regional and international levels play an instrumental role in fostering and increasing investment flows, as they contribute to a transparent and predictable business environment for investors.

The 22 member countries of the League of Arab States (LAS)<sup>2</sup> experienced a period of significant growth in foreign direct investment (FDI) inflows between 2002 and 2009. During this period, FDI inflows into LAS economies grew from USD 7.3bn (1.2% of world total) to USD 97.6bn (6.6% of world total). However, with the global economic crisis and the regional instability, FDI inflows have receded since 2008 to USD 47.6bn in 2012 (3.5% of world total).

There is a need to revive investment in the region, and intra-regional investment show significant potential. **Intra-regional investment** can spur economic growth and reduce the region's vulnerability to external shocks; it is also a diversification factor, in terms of sectors and partners. According to the Arab Investment and Export Credit Guarantee Corporation (IAIGC), 25% of accumulated FDI inflows to Arab countries were intra-regional between 2006 and 2011.<sup>3</sup> To achieve a renewed period of investment-led growth, one avenue for LAS member States would be to take a pro-active stance in stimulating intra-regional investment.

In this vein, the January 2013 **Amendment ("the Amendment") to the 1980 Arab League Investment Agreement** ("the



The Amendment aims at contributing to economic cooperation and facilitating coordination of investment relations between Arab States through agreed common denominators. The Amendment reinforces existing **investment protection and treatment standards** (for example, right to a compensation equal to the market value in cases of expropriation and free transfer of funds) while introducing new ones (such as the right to a fair and equitable treatment and the most-favoured nation clause).

To ensure the achievement of its objectives, the Amendment strengthens the role of Arab League institutions to promote harmonised investment policies and disseminate investment-related information. In addition, its effective enforcement is guaranteed by **improved dispute settlement mechanisms**.

<sup>1</sup> The MENA-OECD Investment Programme supports business climate reforms for growth and employment in Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, the Palestinian Authority, Qatar, Saudi Arabia, Tunisia, the United Arab Emirates and Yemen.

<sup>2</sup> The member States of the Arab League are: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria (suspended), Tunisia, the United Arab Emirates and Yemen.

<sup>3</sup> Source: The IAIGC, 2013. Unweighted average according to available data for the following countries: Algeria, Bahrain, Djibouti, Egypt, Jordan, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Syria, Sudan, Tunisia, the United Arab Emirates and Yemen.

## Objectives of the amended Agreement

- Increase intra-regional investment within Arab countries
- Enhance cooperation between Arab countries by establishing common standards and sharing information on rules and business opportunities
- Reinforce regional economic integration by complementing the Great Arab Free Trade Agreement (GAFTA) and enhance regional market access
- Achieve sustainable development and improve the living standard of Arab citizens (*Preamble*)
- Send a strong signal to the international business community and foreign investors

## The amended Investment Agreement: A more comprehensive agreement

*The below interpretation is based on the analysis of a non-official translation into English of the amended Agreement and should be confirmed by the LAS Secretariat.*

### Which investors may benefit from the amended Arab League Investment Agreement?

Under the amended Agreement, the Arab investor can be either an Arab citizen or an Arab company – whose nationality is determined by reference to capital control – provided that it owns – directly – at least 51% (previously 100%) of the Arab capital that it invests in another Arab country of which it is not a national.

### Which investments are protected?

The amended Agreement protects the investment of Arab capital – defined as the use or transfer of Arab capital in an economic or social field in another Arab State with a view of obtaining a return.

### What it means in practice for Arab investors...

Arab citizens and Arab companies owning directly at least 51% of the Arab capital and carrying out investment projects (for example, projects in the fields of transportation, mining, infrastructure or energy) in another Arab State will benefit from the protections and guarantees provided by the amended Agreement.

### And for foreign investors...

Protected investors under the amended Agreement should now have a minimum share of 51% of the Arab capital (previously 100%), thus allowing joint-ventures with foreign investors to benefit from the Agreement.

## Key dates

**1980:** Signature of the Unified Agreement for the Investment of Arab Capital in the Arab States... (“the Arab League Investment Agreement”).

**1981:** Entry into force of the Arab League Investment Agreement ratified by 20 member States of the LAS, except Algeria and the Comoros.

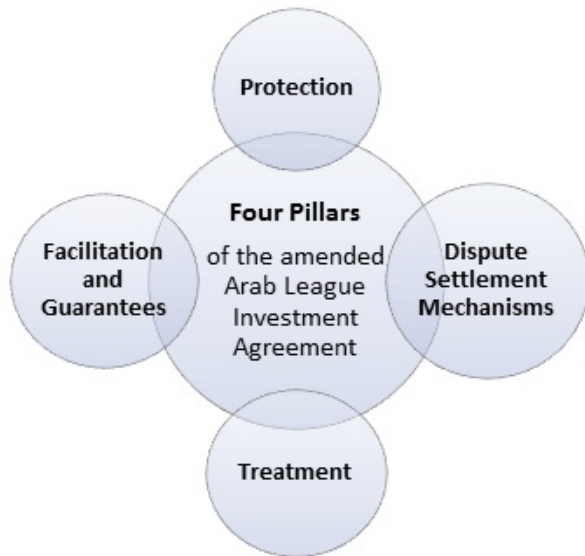
**2012:** Revision of the Agreement by a task force of investment policy-makers from member States parties.

**2013:** Adoption of the Amendment to the Agreement during the January 2013 Riyadh Economic Summit following the decision of the LAS Economic and Social Council at its 6 December 2012 session.

**2014:** Expected ratification by the member States and entry into force of the amended Agreement.

## What's in it for investors?

The amended Agreement covers four pillars:



### Benefits for Arab investors and key improvements:

The Agreement as amended sets investment protection and treatment standards. These standards i) shall have **prevalence** in case of conflict with national laws ii) constitute a **minimum standard of protection and treatment**.

Therefore, the host State cannot restrict investor's protection through its own legislation, further than that is provided in the Agreement. In contrast, the host State may grant any other privileges to Arab investors in addition to those granted by the Agreement.

#### 1. Non-discriminatory treatment of Arab investors and their investments

Arab investors and their investments should not be discriminated while operating businesses in Arab countries. The amended Agreement reinforces this principle of non-discrimination by clarifying the provisions on national treatment and introducing two new principles: the most-favoured nation clause and the prohibition of performance requirements.

##### – **Reinforced national treatment: guarantee of non-discrimination**

The amended Agreement provides that Arab investment shall be treated in a **manner no less favourable than that granted to the citizen of the host State, and without discrimination**.

➤ *For example, investors from an Arab State A investing in an Arab State B will benefit from tax exemptions applicable to investors from State B.*

##### – **Most-favoured-nation treatment (MFN): new standard of treatment**

The Amendment introduces the MFN clause according to which Arab investment shall be treated in a manner no less favourable than that granted to the citizen of a third

State, and without discrimination. Consequently, if a State grants a more preferential treatment to third State's (not party to the Arab League Agreement) investors, it has to give the same advantages to the Arab investor.

➤ *For example, an Arab country party to the Agreement has concluded a bilateral investment treaty (BIT) with a non-Arab country which grants certain advantages to its own investors. With the MFN treatment, these advantages will be extended to other LAS Arab investors.*

In addition, the Amendment entitles Arab investors to opt for any other manner of treatment as provided in the host State legislation, or in any international agreement or other investment-related agreements.

The amended Agreement provides three exceptions to the two above treatments: (i) the benefits given by the State parties to third countries due to their membership to an international trade organisation, a customs union or a common market, (ii) the zakat and tax treatment, and (iii) land and real estate ownership.

##### – **Prohibition of performance requirements: new guarantee against discrimination**

In line with the WTO Agreement on Trade-Related Investment Measures (TRIMs), the Amendment recognises the right to investors to freely operate their investment. Arab States should not impose any conditions on the investment, such as minimum local contents requirements, export requirement or trade balancing requirement.

#### 2. Minimum standards of protection for Arab investments

The amended Agreement provides the following standards of protection to the Arab investor and its investment: fair and equitable treatment, free transfer of capital and its revenues, and the conditions to prevent unlawful expropriation.

##### – **Fair and equitable treatment (FET): new standard of protection**

The Amendment provides that Arab capital in the State party shall benefit from FET at all times. It protects Arab investors from arbitrary and discriminatory measures and requires, *inter alia*, the host State's administrative and judicial bodies to ensure due process.

##### – **Free transfer of capital and revenues in a convertible currency**

Freedom to transfer funds is crucial for either businesses or companies. Under the amended Agreement, except in banking services, investors are free to transfer the investment-related capital revenues without discrimination, taxes nor time constraints, provided fulfilment of outstanding legal is a step toward greater LAS countries' integration.

obligations arising from the investment *vis-à-vis* the host State.

The Amendment also introduces the right to transfer capital in a currency that can be converted and recognised by the IMF. In case of a delay of more than three months in the monetary conversion, the host State shall pay to the investor an interest rate equal to the prevailing bank interest rate in the host State.

#### – *Conditions for a lawful expropriation*

The amended Agreement protects investors against unlawful expropriation. Expropriation or nationalisation - **directly or indirectly** - may take place **only under four conditions**: 1) for public purpose, 2) on a non-discriminatory basis, 3) in accordance with the legal provisions governing the seizure of property, and 4) be subject to a fair compensation.

The Amendment introduces new rules to determine the **fair compensation**. It should be determined within six months and be equal to the market value of the investment before the seizure. The Amendment also provides that the payment should be made within one year from the decision of seizure and that in case of delay, a market rate interest will apply.

#### – *Right to a fair compensation in case of damage caused by the host State*

The Arab investor shall be entitled to compensation for damages if the host State i) breaches any international obligations; ii) prevents the execution of an enforceable legal judgement connected to the investment; iii) causes damage to the Arab investor in any other manner. The amount of the compensation shall be fair to the damage suffered by the investor and paid within six months as of the date of the damage.

## What Facilitations for Investors?

### *Towards a more consistent and predictable investment framework*

#### – **At the institutional level**

The amended Agreement reinforces the role of the LAS Economic and Social Council which will facilitate and promote the achievements of the Agreement's objectives through dissemination of investment-related information and establishment of specific bodies.

The State Parties shall also establish a one-stop shop to facilitate the implementation of the Agreement's provisions during the different phases of the investment.

#### – **At the operational level**

The amended Agreement promotes free entry, residence and departure of the Arab investor and his family, as well as of its key personnel. It facilitates employment of Arab and foreign professionally skilled labour, though national preference should be granted when required professional skills are available. Despite this limitation, this provision

The amended Agreement also abolishes the obligation to authenticate or certify legal documents in order for them to be considered as valid by the member State in which they are presented ("legalisation procedure").

## What Guarantees for Investors?

### – *Guarantees to protect Arab investment against non-commercial risk*

To insure Arab investment against non-commercial risk, the amended Agreement provides the use of investment financing and guarantee mechanisms through the Inter-Arab Investment Guarantee Corporation (AIECGC) and other investment insurance schemes.

### The four missions of the LAS Economic and Social Council

**Implementation through harmonised investment policies:** incentives and cooperation with State Parties to adapt their rules and procedures to the provisions of the amended Agreement;

**Dissemination of investment-related information:** on rules, regulations, policies and procedures to promote intra-regional investments;

**Promotion:** establishment of bodies responsible for promoting the objectives of the amended Agreement;

**Interpretation:** creation of a Technical Committee to interpret the amended Agreement.

## What settlement mechanisms in case of investor-State dispute?

In case of dispute, parties may resort to domestic courts or to the Arab Investment Court (AIC).<sup>4</sup> Parties may also agree on any other alternative dispute settlement mechanisms *i.e.* mediation, conciliation, but also arbitration. In this latter case, they may agree to submit their disputes to the auspices of any arbitration institutions (*e.g.* International Centre for Settlement of International Disputes (ICSID), International Chamber of Commerce (ICC)). If parties do not agree on the rules governing their alternative dispute settlement mechanism, it will be governed by the UNCITRAL Rules.

## What are the next steps?



Member States are invited to ratify the amended Agreement which requires the fulfilment of national approval procedures and the deposit of instruments with the LAS Secretary General. The amended Agreement will enter into force three months after the ratification by five member States.

---

<sup>4</sup> *Its Status has been revised along with the Agreement.*