

**OECD-LEAGUE OF ARAB STATES
TECHNICAL WORKSHOP**

***The amended Arab League Investment Agreement:
Key improvements and ratification process***

7-8 April 2014
League of Arab States Headquarters, Cairo, Egypt

Conclusions

Meeting objective

The League of Arab States (LAS) and the MENA-OECD Investment Programme (the Programme) initiated a co-operation on regional investment integration and co-organised a **technical workshop “The amended Arab League Investment Agreement: key improvements and ratification process”** in partnership with the Swedish International Cooperation Development Agency (Sida). The workshop was held at the LAS Headquarters in Cairo, Egypt, on 7-8 April 2014. Its objectives were to discuss provisions of the 2013 Amendment to the 1980 Arab League Investment Agreement and raise awareness of member States on its potential economic benefits and positive effects on investment with the view to identify shortcomings and implementation needs.

Participation

The workshop brought together 50 participants from 13 countries. Participants were country negotiators of the Amendment and representatives of national investment-related institutions. The workshop was conducted by legal experts, representatives from regional organisations (LAS Economic and Social Council, Arab Parliament, Arab Investment and Export Credit Guarantee Corporation, Arab Investment Court), a private sector representative, as well as experts from the LAS Secretariat and the MENA-OECD Investment Programme.

Opening remarks

- Dr. Mohammed Bn Ibrahim ATTawijirri, Secretary General Assistant, Economic Sector, League of Arab States, stressed that investment and trade are key drivers for the economy and a priority for LAS secretariat. He highlighted the relevance of the workshop and announced the recent ratification of the Amendment by Jordan and the Palestinian Authority.
- H.E. Dr. Abd Elnaser Al-Abasy, Chairman of the Legislative Affairs Committee, Arab Parliament, highlighted the need to discuss the obstacles for a greater integration and to harmonise national legislations.
- Ms. Nicola Ehlermann-Cache, Acting Head, MENA-OECD Investment Programme, recalled that investment is a central theme of the OECD which co-operates with member and non-member countries to develop sound and transparent investment policies, and welcomed the co-operation between the OECD and the LAS.

- Ms. Margareta Davidson-Abdelli, Counsellor, Swedish Embassy in Cairo,¹ reiterated Swedish commitments towards investment and trade which are key determinants for economic growth and for improving the living standard of citizens.
- Dr. Al-Nsour, Director, Arab Economic Integration Department, LAS, elected as the chair of the workshop, highlighted the relevance of the event to present and discuss the Amendment which aims at boosting intra-regional investment flows.

Meeting outcomes

Introductory session

The introductory session focused on the objectives and economic benefits of the amended Arab League Investment Agreement.

The session:

- Observed that countries undertook measures since 2005 to improve their investment climate (e.g. amendments to national investment laws, increased number of free and special economic zones, improvement of investment promotion agencies, negotiation of international investment agreements) but that greater efforts are needed to adopt investment policies that target quality investments and to build a predictable and conducive framework for investors and to foster investment between countries of the region. The limited impact of the 1980 LAS Investment Agreement was recognised. Therefore the amendment is creating a momentum for further discussions, awareness-building and efficient implementation.
- Noted that statistical data was insufficient and not harmonised across the region to provide an accurate overview of intra-regional investment flows and that there is a lack of impact monitoring of existing investments. Available data (as provided by Dhaman) shows that investments are unequally distributed (being mainly concentrated in Saudi Arabia, the United Arab Emirates, Egypt and Lebanon).
- Highlighted that data shortcomings were due to the absence of systematic data collection at national level, insufficient local capacities, lack of communication between competent national and regional institutions, and lack of FDI benchmarking definition applied in the region.
- Underlined the need to co-ordinate efforts and harmonise policies at the regional and national levels, as well as disseminate investment opportunities.
- Highlighted the need to spear efforts for a greater trade and investment zone within the region and to further liberalise trade and encourage investment.
- Observed that the amended Investment Agreement could present a step forward to a greater economic integration and that there is a need to exchange on experiences from other regions (e.g. ASEAN) and welcomed the assistance of the OECD in this regard.

The session opened the floor to participants who:

- Called for improved cooperation between regional (e.g. the Arab Investment and Export Credit Guarantee Corporation) and national investment-related institutions (Central Banks, statistic institutions and investment promotion agencies);
- Welcomed the proposal to undertake a review of the top four countries attracting investment to provide other Arab countries with successful models;
- Stressed that the security dimension is a crucial issue that may affect investment;

¹ The Swedish International Cooperation Development Agency (Sida) is supporting both the MENA-OECD Investment Programme and the LAS Secretariat.

- Highlighted the need to monitor the impact of investment policies and welcomed the assistance of the OECD;
- Called on the OECD to support the competent national institutions with capacity building activities and trainings for data collection.

Session 1

Session 1 focused on the key features and improvements of the amended Investment Agreement.

Participants:

- Observed that investment is a top priority for the LAS Economic and Social Council which was included in the agenda of all last LAS Summits (Riyadh, Sharm El Sheik, Kuwait);
- Agreed that the Amendment improves protection and treatment of Arab investors (i.e. introduction of the fair and equitable treatment, right to freely transfer capital and revenues after fulfillment of legal obligations and in a convertible currency recognised by the IMF, right to a fair compensation in case of expropriation, right to employ professionally skilled labour, expanded investor-State dispute settlement mechanisms);
- Welcomed the strengthened role of the LAS Economic and Social Council which is to establish technical committees to interpret the agreement and clarify concepts that raise concerns for some countries in order to ensure the implementation of the agreement;
- Stressed that there is a need to build awareness on the amended agreement's benefits among the private sector and proposed the Council undertake campaigns to disseminate information on the instrument. In this regard, participants reminded that one of the shortcomings of the 1980 agreement was a lack of awareness of its existence and the lack of implementation.

Participants engaged in active discussions where they addressed concerns and in particular:

- Pointed out the lack of clarity of certain concepts (e.g. definition of Arab investor, Arab investment and Arab capital) and issued some reservations concerning certain provisions (e.g. free transfer of capital and revenues and the convertibility rule, the jurisdiction of the Arab Investment Court); called for the establishment of technical committees shortly to clarify these provisions; and called upon the assistance of the OECD;
- Expressed concerns concerning the interactions between the agreement and the national investment laws and called for reinforcing capacity of national investment authorities to ensure the implementation of the amended agreement;
- Proposed that governments further disseminate of potential investment opportunities within and across countries.

Session 2

Session 2 focused on the institutional mechanisms for implementation.

Participants:

- Highlighted the leading and instrumental role of the Arab Parliament to accelerate and encourage the ratification of the Amendment and to encourage Arab States to harmonise their national laws to ensure consistency with the new instrument;
- Highlighted the role and responsibilities of the LAS Economic and Social Council in implementing, supervising and interpreting the amended agreement and in promoting harmonised national investment policies across the region. In particular, participants recalled the need for building awareness of investors on the instrument through information campaigns and for establishing the needed implementation mechanisms;

- Discussed the non-political risk guarantee mechanisms available to investors; highlighted the need to build awareness of investors on the non-political risk guarantees and mechanisms that are currently available; emphasized the role of the Arab Investment and Export Credit Guarantee Corporation (AIECGC) in guaranteeing investors against non-commercial risks – considered as a major risk for investors in some Arab countries (e.g. risk related to expropriation of investment or confiscation of the revenues while transferring the capital) – and in avoiding any political impact on investment;
- Discussed the jurisdiction of the Arab Investment Court (AIC) (competent to hear disputes arising between member countries and between Arab investors and member countries; recognised improvements introduced in the statutes of the AIC that have been revised along with the agreement – but which are not yet in force – (right to appeal (not only petition), requirement for higher qualification for appointed judges, recognition and enforcement of judgments)
- Discussed the shortcomings of the Court (e.g. no mechanism to handle urgent cases and unclear mechanism to challenge judgments, rules related to the AIC contained in two instruments (the amended agreement and the statutes of the Court) and proposed to transfer all court-related articles from the agreement to the Court's statutes;
- Pointed out the lack of awareness of investors of the existence of the AIC (only one judgment issued in 2004) and questioned the relevance of the existence of the Court as investors seek to settle their disputes through other mechanisms (i.e. arbitration); suggested that the Cairo Regional Centre for International Commercial Arbitration (the CRCICA) could examine claims based on the amended Investment Agreement.

Session 3

Session 3 focused on the private sector's perceptions and on the interactions between the amended agreement, other regional and bilateral investment agreements and the national investment legal frameworks.

Participants:

- Highlighted the need to involve the private sector in the negotiations and decision-making process and that its views on some issues (e.g. the definition of Arab investor and provisions related to compensation in case of expropriation) should have been gathered while revising the agreement;
- Noted that most Arab countries signed many investment-related agreements at the regional/sub-regional levels. However, though these agreements seek to strengthen the economic integration, this has not been yet translated into reality;
- Observed that Arab countries present a large network of bilateral investment treaties (BITs) (representing 26% of the total BITs existing worldwide with 60% of the total BITs in force) and a good regional coverage;
- Welcomed the OECD study on *Strengthening regional investment integration in the MENA region: review and analysis of international and regional investment agreements*.
- Observed that Arab countries present a rather complex system of multi-layered and multi-faced investment rules at the international, regional and national levels and that the multiplicity of treaty layers may lead to complexity, incoherence, gaps and overlaps;
- Noted that the amended agreement provides for a prevalence rule in case of conflict with national laws but remains silent in case of conflict with other applicable treaties (leading to the application of international law principles to deal with interactions issues);
- Highlighted that the agreement guarantees a minimum level of protection for investors and that it does not prevent States to undertake measures or sign bilateral treaties providing for more favourable rules;

- Underlined that the amended Investment Agreement could add to the complexity of the current investment agreement regime in the region but could also provide an opportunity for member States to rationalise and consolidate their investment agreements network and harmonise their national investment laws;
- Pointed out that some issues are not enough tackled in the amended agreement (e.g. intellectual property rights).

Concluding remarks

- Dr. Al Nosur thanked and informed the participants that a follow-up regional conference will take place in December 2014 to sensitise and disseminate information on the Amendment and its positive effects on investment among LAS member States, relevant regional and international stakeholders and private sector representatives.
- Ms. Nicola Ehlermann-Cache recalled the role of the OECD in analysing investment policies, disseminating experiences and best practices, benchmarking and monitoring investment reforms, and promoting regional dialogues. She welcomed the excellent co-operation with the Arab League and looks forward to defining the next steps, including the December conference.
- Ms. Margareta Davidson-Abdelli thanked the participants and the organisers of the meeting which allowed participants to discuss the amended Investment Agreement which could present an opportunity to enhance the region's attractiveness for investors. She reiterated the value added of building a stronger regional integration and that Sweden encourages this process.

