

**DRAFT UNIFIED AGREEMENT FOR THE INVESTMENT OF ARAB CAPITAL IN THE ARAB STATES  
(AMENDED)**

**Preamble:**

The Governments of the States Members of the League of Arab States,

In accordance with the aims of the Pact of the League of Arab States, the Joint Defence and Economic Cooperation Treaty between the States of the Arab League, the principles and objectives set forth in the Agreement on Arab Economic Action and the decisions issued by the Economic Council of the League of Arab States,

Proceeding from the aim of promoting comprehensive Arab economic and social development and Arab economic integration,

Believing that investment dealings between Arab States are an essential part of joint Arab economic and social action, the regulation of which will mobilize production and thus enhance joint development on the basis of reciprocal benefits and Arab interests,

Sharing a conviction that providing a suitable investment climate to stimulate Arab economic resources in the field of joint Arab investment requires simplifying the procedures related to investment in the Arab countries, facilitating the transfer of Arab capital, its use and its protection inside the Arab countries and facilitating the movement of Arab investors between the Arab countries with the objective of contributing to sustainable development, improving the living standards of their citizens and supporting their investors,

Bearing in mind that the provisions of this Agreement constitute a minimum standard to be applied in the treatment of Arab capital and investments that must be adopted by national investment laws in the Arab countries, Have approved this Agreement and its annex, which forms an integral part thereof, declaring their full willingness to implement the same and the spirit thereof and affirming their desire to exert their utmost efforts to achieve its objectives and purposes, and

**Have agreed upon the following:**

**Preliminary Chapter**

**Definitions**

**Article (1)**



For the purposes of this Agreement, the following words and expressions shall have the meanings assigned thereto hereunder; unless the context indicates otherwise:

1. **The Agreement:** The Unified Agreement for the Investment of Arab Capital in the Arab States concluded between the States members of the League of Arab States parties thereto (amended).
2. **The League:** The League of Arab States.
3. **Arab State:** A State member of the League of Arab States.
4. **State Party:** An Arab State in respect of which the Agreement is effective.
5. **Host State:** The State Party which hosts Arab investments within its geographical territory.
6. **Arab capital:** Funds owned by an Arab investor comprising any material and immaterial rights which have a monetary value;
7. **Investment of Arab capital:** The use of Arab capital in an economic or social field in the territory of a State Party other than the State of which the Arab investor is a national, or its transfer to said State with a view to obtaining a return in accordance with the provisions of this Agreement;
8. **Arab investor:** The natural or juridical person who/which owns Arab capital which it invests in the territory of a State Party of which it is not a national, provided that the Arab investor holds directly at least (51%) of the share capital of the relevant juridical person.
9. **The Council:** The Economic and Social Council of the League of Arab States.
10. **Central Authority:** The authority responsible for enforcing this Agreement in the State Party.
11. **The Court:** The Arab Investment Court.
12. **Revenues:** The outputs of investment and all financial amounts generated by the investment and returns thereof, including; but not limited to; profits, interests, capital gains, royalties, fees and compensations.
13. **Territory:** The territory of the host State of the investment and the territorial sea, the exclusive economic zone and the continental shelf on which it exercises its sovereign rights in accordance with the applicable rules of international law.

**Chapter One**  
**General Provisions**





### **Article (2)**

The States Parties to this Agreement shall, within the framework of its provisions, allow free transfer of Arab capital between them and promote and facilitate its investment subject to the legislation and regulations concerning regulated activities and environmental protection. They shall undertake to protect investors, investments and their revenues. Arab capital in the State Party shall benefit from fair and equitable treatment at all times and shall not impose any Performance requirements or barriers to entry which could be harmful to investment or have a negative impact on it or its ownership.

### **Article (3)**

1. The provisions of this Agreement shall constitute a minimum standard to be applied in the treatment of any investment subject thereto.
2. Within the limits of such minimum standard, the provisions of the Agreement shall have priority of application in the event they conflict with the laws and regulations of the States Parties.

### **Article (4)**

Conclusions and interpretations derived from the provisions of this Agreement shall be guided by the principles on which it is based and the aims which inspired it, followed by the rules and principles common to the respective legislation of the States members of the League of Arab States and, then, the principles of international trade.

## **Chapter Two**

### **Treatment of Arab Investment and Investors**

### **Article (5)**

1. The Arab investor shall be free to invest within the territory of any State Party in available fields under the laws and regulations of the relevant State Party and within the percentage limits for shared ownership as prescribed in the laws of said State. The investor shall also enjoy the facilities, privileges and guarantees provided for in this Agreement.
2. In the host State, invested Arab capital shall be treated in a manner not less favourable than the capital owned by the citizens of said State or a third State, whichever is more favourable and without discrimination.



3. The Arab investor shall be entitled to opt for any other manner of treatment which is laid down in general provisions in force in the host State under any law, international agreement or other investment agreements. This shall not include any privileged treatment accorded by the State in respect of a specific investment which due to its particular importance to that State.

4. The provisions of this Article shall not apply to the following:

(a) The privileges granted by any contact party to the investors of a third state pursuant to its membership of a free trade area, customs union or common market.

(b) Tax or *zakat* treatment.

(c) Ownership of land and real estate.

#### Article (6)

1. The Arab investor shall be free to transfer the invested capital and its revenues in the territory of any State Party without delay, and subsequently retransfer the same to any State Party without delay following settlement of his outstanding legal obligations arising from the investment project and owed to the host State; without this being subject to any discriminatory banking, administrative or legal restrictions and without the transfer process incurring any taxes or duties<sup>1</sup>. This shall not apply in respect of banking services.

2. Transfers shall be made freely and without delay in the original investment currency or in a convertible currency recognized by the International Monetary Fund (IMF). The transfer shall be made at the prevailing exchange rate on the date of the transfer in the host state.

#### Article (7)

1. The Arab investor may, in the course of its investment, avail himself of all means permitted by the nature of investment which do not conflict with the laws and regulations in force in the host State.

2. The investment shall continue to be treated in accordance with the provisions of this Agreement provided that it fulfils the conditions specified therein.

#### Article (8)



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<sup>1</sup> The People's Democratic Republic of Algeria maintains the following sentence: "and without this resulting in any taxes or duties for the transfer operation mentioned in Article 6(1)."



1. In accordance with the provisions of this Agreement, Invested Arab capital shall not be subject to any special or general measures, whether permanent or temporary, irrespective of their legal form, which wholly or partially affect any of the assets, reserves or revenues of the investor and which lead to confiscation, compulsory seizure, expropriation, nationalization, liquidation, dissolution, the extortion or elimination of secrets regarding intellectual property or other material rights, the forcible prevention or delay of debt settlement or any other measures leading to the sequestration, freezing or administration of assets, or any other action which infringes the right of ownership itself or prejudices the intrinsic authority of the owner in terms of his control and possession of the investment, his right to administer it, his acquisition of the revenues therefrom or the fulfilment of his rights and the discharge of his obligations.

2. It shall, however, be permissible to:

(a) Expropriate for public benefit in accordance with the authority vested in the State or its institutions to perform their functions in carrying out public projects, provided that this is done on a non-discriminatory basis, in accordance with general legal provisions governing expropriation and in return for fair compensation equal to the market value of the investment before making the expropriation decision to seize the property or it being made known to the public, whichever comes first. If it is not possible to verify the market value, compensation shall be set in accordance with generally recognised principles for assessment and on the basis of equitable principles that take into consideration, *inter alia*, the investor's capital, depreciation, cost of replacement and other relevant factors. The amount of compensation referred to in Paragraph (2) of this Article must be determined and made immediately due and payable within a maximum period of one year as of the date the expropriation decision becomes final. If there is a delay in payment, interest shall be calculated on the compensation at the market rate, starting from the end of the set time period and up to the payment date, provided that this period does not exceed three further months. The Arab investor whose investments are affected by expropriation shall be entitled to appeal the expropriation procedures and/or the amount of compensation through legal means.

(b) Take precautionary measures at the order of a competent judicial authority and measures to implement judgements rendered by a competent judicial authority.

#### Article (9)

1. The Arab investor shall be entitled to fair proportionate compensation for damages which it sustains due to any of the following actions by a State Party or any of its public or local authorities or institutions:

(b) Breach of any international obligations or undertakings binding on the host State and arising from this Agreement in favour of the Arab investor, or failing to take the necessary steps to implement the same, whether deliberately or through negligence.



(c) Abstaining from executing an enforceable judicial judgment or arbitration award related directly to the investment.

(d) Causing damage to the Arab investor in any other manner, whether action or omission to act, contrary to the legal provisions in force in the host State.

2. If the Arab investor's investments sustains losses in the territory of the host State as a result of war or a national emergency situation, the host State shall treat the investor in a manner that is not less favourable than that granted to its own investors or to a third party, whichever is more favourable>

3. The amount of compensation shall be fair to the damage sustained by the investor according to the type and amount of damage, and shall be made in a convertible currency in accordance with Paragraph (2) of Article (6).

#### Article (10)

1. Cash compensation shall be given in cases where the investment cannot be restored to its state prior to the occurrence of the damage.

2. Assessments of cash compensation must be made within six months as of the day on which the damage occurred and must be paid within one year as of the date an agreement is reached as to the amount of compensation or the assessment becomes final, failing which the investor shall be entitled to default interest on the unpaid amount as from the day following the expiry of said period at the prevailing bank interest rate in the host State in accordance with Paragraph (2) of Article (6) of this Agreement.

#### Article (11)

Without prejudice to the laws and regulations of the host State, the Arab investor, together with the members of his/her family, shall be entitled to unimpeded entry to, residence in, relocation within and departure from the host state. Restrictions on this right may be imposed only by judicial order. Employees in the field of investment and their families shall enjoy the available facilitations relative to entry, residence and departure.

#### Article (12)

The host state shall assist the Arab investor to secure what his/her investments need of Arab labour and of Arab and foreign experts in accordance with the laws in force in this regard. Where the required professional skills are available, priority in filling the relevant vacancies shall be given to nationals of the





host State. The host State shall exert its utmost efforts to ensure its legislations do not present a hindrance to the development and modernisation of investments therein.

#### **Article (13)**

1. In the various aspects of his/her activity, the Arab investor must, as far as possible, coordinate with the host State and its various institutions and authorities and must observe its laws and regulations.
2. The Arab investor shall bear liability for any breach of the obligations set forth in the preceding paragraph in accordance with the law in force in the host State or the State in which the breach occurs.

### **Chapter Three**

#### **Favourable Treatment**

#### **Article (14)**

The host Party may accord any additional privileges to the Arab investor in excess of the minimum provided for in this Agreement.

### **Chapter Four**

#### **Monitoring the Implementation of the Agreement**

#### **Article (15)**

The Council shall oversee the implementation of the provisions of this Agreement. To this end, it may:

1. Issue, amend and abolish the rules and measures required to monitor the implementation of the provisions of the Agreement.
2. Cooperate with the State Parties to adapt the rules, provisions and procedures relating to investment in states Parties to assist in the implementation of the provisions of the agreement and achievement of its purposes.
4. Collect and coordinate the reports, information, data, legislation, rules and statistics relating to investment, fields of investment, sectors open to investment and the requirements thereof in the States Parties, having first obtained the same from the competent authorities and placed them at the disposal of the owners of Arab capital with a view to encouraging and assisting them to invest in Arab projects.
5. Assist in the establishment of organizations and institutions which will facilitate or promote the achievement of, or supplement, the objectives of the Agreement, including advisory and executive bodies and organizations and systems to raise financial and human resources and direct them to investment in the Arab States in a parallel manner.



#### **Article (16)**

1. The Council may, at the request of any State Party, agree to suspend enforcement in that State of any of the provisions of the Agreement and may impose limits of time, place or subject-matter accordingly. The competent authorities within the State must be guided by the observations and recommendations of the Council in order to ensure a return to compliance with the Agreement.

2. The provision of Paragraph (1) of this Article shall not include to privileges and guarantees previously accorded to any Arab investor in the scope of this Agreement.

#### **Article (17)**

The Council may set up committees from amongst its members or their representatives and delegate to them any authorities as it deems fit. It may likewise set up:

1. Technical committees representing the interests of investors, host States and the remaining elements of the investment, for the purpose of considering such matters as may be assigned to them;

2. A technical committee to interpret the provisions of this Agreement.

### **Chapter Five**

#### **Investment Guarantees**

#### **Article (18)**

The Arab investor may insure his/her investment with the Arab Investment and Export Credit Guarantee Corporation or any insurance body deemed fit thereby.

#### **Article (19)**

The General Secretariat of the League of Arab States may reach an agreement with the Arab Investment and Export Credit Guarantee Corporation regarding matters within its jurisdiction for the performance of any of the tasks stipulated in Paragraphs (3) and (4) of Article (15).

#### **Article (20)**





Where a State Party or Arab authority pays a sum for damages sustained by an Arab investor as a result of a guarantee which it accorded to said investor either unilaterally or jointly with the Arab Investment and Export Credit Guarantee Corporation or any other organization or as a result of any insurance arrangements, the payer shall be subrogated for the investor before the host State within the limits of the payment made thereby, provided that the statutory rights of the investor before said State are not thereby exceeded. The rights of the investor before said State shall continue to apply to sums in excess of those paid thereto.

## **Chapter Six**

### **Dispute Settlement**

#### **Article (21)**

The Arab investor may resort to courts in the host State in accordance to the rules of jurisdiction within such State in the case of matters which fall within the jurisdiction of the Court. However, where the Arab investor initiates legal action before one authority, said investor may not initiate legal action before the other.

#### **Article (22)**

Unless otherwise agreed upon by the parties to the dispute, disputes arising between the parties to the investment concerning the application of this agreement shall be settled through the Court in accordance with its Statute, which describes its composition, mandate and procedures.

#### **Article (23)**

If it is not possible to settle the dispute through the means agreed upon by the parties to the investment, the matter shall be referred to the Arab Investment Court.

#### **Article (24)**

Unless otherwise agreed upon between the parties to the dispute, mediation, conciliation and arbitration may be applied in accordance with the rules and procedures set forth in the Annex to the Agreement, which shall be deemed an integral part of this Agreement.



### **Article (25)**

If it is stated in an Arab-international agreement establishing an Arab investment or in any agreement regarding investment within the scope of the Arab League or between its members that an issue or a dispute shall be referred to international arbitration or to international courts, the parties involved may agree to deem said issue or dispute falling within the jurisdiction of the Court.

## **Chapter Seven**

### **Final Provisions**

#### **Article (26)**

1. Within a maximum period of one year of the date on which the Agreement enters into force, each State Party shall assign one central authority within the State the responsibility for facilitating the implementation of the provisions of the Agreement in its territory during the different phases of the investment and shall inform the General Secretariat of the League of Arab States accordingly.
2. The central authority may communicate directly with investors and other authorities regarding all matters within its jurisdiction.

#### **Article (27)**

1. In the event of a currency conversion is required in implementation of the provisions of the Agreement; the conversion shall be made in the currency of the investment or any other convertible currency at the prevailing exchange rate in the State where the conversion is made, in accordance with the provisions of Article (6).
2. The conversion shall be made without delay within the period normally required to complete banking procedures. Where a conversion is delayed for more than three months after the submission date of a request which satisfies the statutory requirements, the investor shall be entitled to receive interest from the host State on the unconverted money as from the expiry date of said period at the prevailing bank interest rate in the host State.

#### **Article (28)**

Papers, documents and certificates issued by the competent authorities in any State Party or by the Council, within its jurisdictions, shall serve as a means of evidence for invoking the rights and establishing the obligations arising from the Agreement. The same shall also establish the civil status, legal status and qualifications of those employed in a project; without being subject to the authentication procedures for foreign documents in the States Parties.





#### **Article (29)**

1. The State Parties to the Unified Agreement for the Investment of Arab Capital in the Arab States shall ratify this amended Agreement in accordance with their internal regulations and shall deposit instruments of ratification with the General Secretariat of the League of Arab State.

2. The Arab States that are not Parties to the Unified Agreement for the Investment of Arab Capital in the Arab States may accede to this amended Agreement, by submitting the instrument of accession to the General Secretariat of the League of Arab States.

3. The General Secretariat of the Arab League shall be responsible for notifying member States that instruments of ratification have been submitted.

#### **Article (30)**

This amended Agreement shall enter into force within three months after the submission of the instruments of ratification by five member States to the Unified Agreement for the Investment of Arab Capital in the Arab States. It shall apply to the Arab States which have ratified or acceded to the amended Agreement one month after the date of the submission of the instruments of ratification or accession to the General Secretariat of the League of Arab States.

#### **Article (31)**

States which are Parties to the amended Agreement may only withdraw therefrom five years after its entry into force in their respect. Withdrawal shall be by virtue of a written notice addressed to the Secretary General of the League of Arab States, and shall only enter into effect one year after the date on which the Secretary General receives said notice.

#### **Article (32)**

The withdrawal of any State Party to the amended Agreement or suspension of any provisions of the Agreement pursuant to article (16) shall not affect the rights and obligations arising from investment and vested in accordance with the provisions of the Agreement.

#### **Article (33)**



Amendments to this Agreement shall be made with the consent of two thirds of the States Parties and shall enter into force with respect to the ratifying States three months after instruments ratifying the amendments have been deposited by at least five States.

## **ANNEX**

### **Mediation, Conciliation and Arbitration**

#### **Article (1)**

##### **Mediation**

1. If both parties agree to settle a dispute through mediation, a mediator shall be chosen by the parties to the dispute and they shall inform the General Secretariat of the Arab League accordingly. The General Secretariat is responsible for following up on the mediation procedures.
2. The parties' agreement shall include a description of the dispute, the demands of the parties, the name of the mediator and the fees thereto. The General Secretariat shall communicate to the mediator a copy of said agreement.
3. The mediator's task shall be restricted to reconciling viewpoints. He/she shall issue his/her report within one month as of the date he/she is notified of his/her mission by the General Secretariat of the League of Arab States.
4. The remaining procedures of conciliation shall apply to mediation.

#### **Article (2)**

##### **Conciliation**

1. Where two parties to a dispute agree to conciliation, the agreement must include a description of the dispute, the demands of the parties thereto, the name of the conciliator they have selected and the fees allocated thereto. The parties to the dispute may ask the Secretary General of the League of Arab States to select a person to assume the task of conciliation between them. The General Secretariat of the League shall provide the conciliator with a copy of the conciliation agreement and ask him/her directly to commence his/her task.
2. The task of the conciliator shall be restricted to achieving a rapprochement between the different points of view, and shall be entitled to put forward proposals ensuring a solution satisfactory to the parties concerned, who must furnish the conciliator with the necessary information and documents to assist him/her in carrying out his/her task. Within three months of being informed of the conciliation task, the conciliator must submit a report to the Council summarizing the dispute, his/her proposals for its settlement and any solutions which have been accepted by the parties concerned. The report must





be communicated within two weeks of its submission to the parties, each of whom shall have the right to express their opinion thereon within two weeks of the date of receipt.

3. The report of the conciliator shall not have any probative force in any court before which the dispute may be brought.

### **Article (3)**

#### **Arbitration**

1. Where the two parties fail to agree to resort to conciliation, the conciliator proves unable to issue his/her report within the specified period, or the parties do not agree to accept the solutions proposed in said report, the parties may agree to resort to arbitration.

2. Arbitration procedures shall commence by means of a notice sent by the party seeking arbitration to the other party to the dispute. The notice shall set out the nature of the dispute, the decision sought in the dispute and the name of the arbitrator appointed by said party. Within 30 days of receiving said notice, the other party must inform the party seeking arbitration of the name of the arbitrator appointed thereby. Within 30 days of the appointment of the second arbitrator, the two arbitrators shall select a casting arbitrator to serve as the chairperson of the arbitration panel, who shall have a casting vote in the event of opinions being equal.

3. Where the other party fails to appoint an arbitrator or where the two arbitrators fail to agree on the appointment of the casting arbitrator within the time limits specified therefor, the arbitration panel shall consist of one arbitrator or an odd number of arbitrators, one of whom shall have a casting vote. Either party may ask the Secretary General of the League of Arab States to appoint the arbitrators.

4. Parties to the dispute may not change the arbitrator appointed thereby once consideration of the case has begun unless an arbitrator resigns or dies or is unable to work, in which case a substitute shall be appointed in the same manner by which the original arbitrator was appointed. The successor shall have all the authority and undertake all the duties of the original arbitrator.

5. The arbitration panel shall hold its first meeting at the time and place specified by the casting arbitrator. Thereafter, the panel shall determine the time and place of its meetings.

6. The arbitration panel shall rule on all matters related to its jurisdiction and shall determine relevant procedures.

7. The arbitration panel shall provide all parties with a fair opportunity to submit their written and oral statements and shall pass its awards by a majority of votes, stating the grounds for each award. Awards must be signed by at least the majority of the members of the panel and each party shall receive a signed copy thereof.



8. Awards of the arbitration panel rendered in accordance with the provisions of this article shall be final and binding. Both parties must comply with and implement the award as soon as it is rendered; unless the panel specifies a period to implement the same or any part thereof. Arbitration awards shall not be appealable.

9. Awards of the arbitration panel must be rendered within a period not exceeding six months from the date on which the panel first convenes. The Secretary General of the League of Arab States may, upon a substantiated request by the panel, extend said period once only for no more than six months if deemed necessary thereby.

10. The Secretary General of the League of Arab States shall determine the fees of the arbitrators and the remuneration of other persons assigned for activities and procedures related to arbitration. Each party shall be responsible for its own arbitration expenses, and the arbitration panel shall determine which party is to bear the costs of the arbitration process itself or the proportion of the arbitration costs to be shared between both parties, in addition to payment procedures and method.

11. The arbitration award shall be enforced in accordance with Article (37) of the Riyadh Agreement on Judicial Cooperation with respect to States Parties thereto.

12. Where the award of the arbitration panel is not implemented within three months of the date of its issuance, the matter shall be brought before the Arab Investment Court for it to rule on such measures for its implementation as it deems appropriate.

#### **Article (4)**

##### **General Provisions**

1. Recourse to this Annex shall be based on:

(a) The inclusion of a provision in the contracts made between the parties to the investment with the possibility of choosing the following model: "all disputes arising from this contract, its application or in connection therewith, shall be settled in accordance with the Annex to the Unified Agreement for the Investment of Arab Capital in the Arab States (amended) on mediation, conciliation and arbitration".

(b) An agreement subsequent to the dispute.

2. The rules for conciliation and arbitration of the United Nations Commission on International Trade Law (UNCITRAL) shall apply to any matter not provided for in this Annex..

3. The General Secretariat of the League of Arab States (Legal Affairs Section) shall monitor the procedures for the performance of the provisions of this Annex under the supervision of the Economic and Social Council. The League of Arab States shall be deemed the appointing authority referred to in the UNCITRAL rules.

