

Promoting Investment in a Fragile Context

The OECD Iraq Project



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*Promoting Investment in a Fragile Context:
the OECD Iraq Project*

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FOREWORD

In 2007, the Government of Iraq requested OECD support to help identify and support policy reforms through research, policy dialogue, and capacity building. Since then, the OECD Iraq Project has assisted the Iraqi government in a wide range of economic policy initiatives in the areas of infrastructure finance, developing and implementing economic zones, and public procurement. The last phase of the Iraq Project (December 2013 to June 2016), which benefited from funding by the Swedish International Development Cooperation Agency (Sida), focused on improving the investment and business climate in Iraq.

Iraq needs investment to cover reconstruction needs, to reduce its dependency on oil and gas and to build a diversified and more resilient economy. While the country continues to suffer from protracted, high-level internal violence and conflict, it has gone largely unnoticed that the Iraqi government has made significant progress in institutional and legal reform in the areas of investment policy and promotion. The OECD Iraq Project has actively supported a number of initiatives to that end. In the challenging environment of Iraq, it has engaged and brought together a wide range of stakeholders – central and provincial government entities, local and international businesses, and civil society – advising them on policy and making recommendations. It has achieved tangible outcomes through targeted training and capacity-building activities, helping to formulate and implement meaningful policies and legislation.

The present report offers insights into the latest phase of the Iraq Project, which focused on the investment climate. It explains how the Project adapted to Iraq's changing environment and looks at some of the lessons learnt from operating in a fragile context. The report also explores findings in the two main areas of the Project: developing investment promotion and strengthening the investment policy framework. It suggests policy options and makes recommendations for further action in those fields in hopes that they will contribute to an environment that is better and more conducive to investment in Iraq.

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ACRONYMS AND ABBREVIATIONS

BIT	Bilateral investment treaties
BOI	(Kurdish) Board of Investment
CoM	Council of Ministers
CoR	Council of Representatives
CRM	Customer relations management
DAC	Development Assistance Committee
FCS	Fragile and conflict-affected state
FDI	Foreign direct investment
GAFTA	Greater Arab Free Trade Area
GATS	General Agreement on Trade in Services
GCT	General Commission for Taxes
GoI	Government of Iraq
GTAI	Germany Trade and Invest
ICSID	International Convention on the Settlement of Investment Disputes
IIA	International investment agreement
ILO	International Labour Organization
INCAF	International Network on Conflict and Fragility
IPA	Investment promotion agency
IPRs	Intellectual property rights
IAIGC	Inter-Arab Investment Export Guarantee Corporation
IS	Islamic State
KRG	Kurdistan Regional Government
MFN	Most-favoured-nation
MIGA	Multilateral Investment Guarantee Agency
MNE	Multinational enterprise
NIC	National Investment Commission
OECD	Organisation for Economic Co-operation and Development
OIC	Organization of the Islamic Conference
PIC	Provincial Investment Commission
PPD	Public-private dialogue
PWG	Project Working Group
SBA	Standby arrangement
SDGs	Sustainable development goals
SIDA	Swedish International Development Agency

SOE	State-owned enterprise
TIFA	Trade and Investment Framework Agreement
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Aspects of Intellectual Property Rights
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNOCHA	United Nations Office for the Co-ordination of Humanitarian Affairs
WEF	World Economic Forum
WTO	World Trade Organization

EXECUTIVE SUMMARY

Iraq faces enormous political and economic challenges. The war against Islamic State (IS) adds to the woes of a country already divided along ethnic and sectarian lines. Stabilisation and peace-building will require large-scale reconstruction efforts. The country also needs to develop an economic model which reduces oil dependency through economic diversification and a stronger private sector. Iraq's ability to attract and mobilise investment stands at the heart of these issues. Local and foreign direct investment will be needed for reconstruction and economic revitalisation. Investment, especially outside the hydrocarbon sector, can create jobs and new perspectives for growth and development, which will, in turn, will contribute to setting conditions for stability and peace. They can also generate fiscal revenues which, if well managed, can enhance human and physical capital and ultimately support further private investment. What, though, are the chances of fostering investor confidence and building the private sector in a country whose territorial integrity and scope for action is under stress from violent extremist groups, separatist movements, factional strife, and foreign interference?

This report looks at this question from different angles and provides a number of responses. It draws on experience and insights from the OECD Iraq project, which was launched in 2007 and worked to improve the business and investment climate in Iraq between December 2013 and June 2016. The Project has combined **capacity building** and **policy dialogue** activities to improve the Iraqi policies and institutions concerned with private investment and governance of the business environment.

Specifically, the OECD Iraq Project:

- Helped the Government of Iraq develop a more attractive **policy framework for investment**;
- Worked on increasing the **investment promotion** capacity in order to better attract and retain investors;
- Supported the government's efforts to establishing an enabling framework for developing Special Economic Zones; and
- Ensured participation of Iraqi stakeholders in the activities of the **MENA-OECD Competitiveness Programme**.

Some of the **tangible outcomes** of the OECD Iraq Project include:

- The enactment of the **second amendment to the 2006 Investment Law** of Iraq. OECD recommendations were integrated in the final version of the Law. Iraq legal experts also benefited from policy advice and capacity building on various legal issues, such as the **arbitration law** and **bilateral investment agreements**;
- Training of **over 60 NIC and PIC staff members** in developing investment marketing material, handling investor inquiries, presenting material to investors, and preparing investment files to formulate and market investment opportunities in Iraq;

- A **unique and independent platform** for stakeholders from the Government of Iraq, business associations and the private sector to engage in dialogue; and
- Participation of high-level Iraqi policy-makers, government officials, and representatives from the business community and civil society in the regional expert networks of the **MENA-OECD Competitiveness Programme**.

The Project had to react and adapt to the realities of working in a **fragile and conflict-affected environment**. The high levels of violence and insecurity from which Iraq suffers are reflected in tensions and, frequently, a deep sense of mistrust between the various ethnic, religious and political factions of the country. They are also undermining the nascent Iraqi democracy with its often weak institutions. In addition, the invasion of the “Islamic State” and the collapse of oil prices in 2014-15 have dealt a further blow to political and economic stability in Iraq.

The various responses that the Project took to working in a Fragile and Conflict-Affected State (FCS) are described and explained in detail in this report:

Chapter one gives an overview of the political and economic situation in Iraq, a country that has been on the OECD list of **Fragile and Conflict-Affected States (FCS)** for several consecutive years. The chapter also explains the rationale for promoting investment and private sector development in FCS and the risks and opportunities associated with it. It then explains how the OECD Iraq Project adapted to working in Iraq and derives a number of **key lessons learnt** from working in a fragile and conflict-affected context. These include taking a conflict-sensitive and flexible approach, link the Project activities to broader developmental goals, apply frequent consultations, ensure strong project ownership and foster public-private dialogue.

Chapter two deals with **investment promotion and facilitation in Iraq**. It starts by describing Iraq’s system of investment promotion agencies (IPAs) at the central and provincial level and their specific mandate of attracting investment into the non-hydrocarbon sector. Iraq’s specific practice of granting investment licenses is further analysed, as well as the “deal-breaking” issue of land allocation which is identified as a major reason why investment projects in Iraq are delayed or not executed. The chapter ends with specific recommendations to build better policies in several areas of the investment promotion process, including multi-level governance.

Chapter three analyses the **legal framework for investment in Iraq**. It takes stock of the main features and improvements of the amended Investment Law, highlighting its balanced nature, open sectoral approach, and policy toward investment protection and incentives. It then reviews Iraq’s international investment obligations and policy towards bilateral investment treaties. Finally, it highlights the need for consistency with laws, regulations and procedures relevant for doing business in Iraq as they apply to foreign and domestic investors alike. Policy recommendations to further improve the investment climate in Iraq are proposed.

CHAPTER 1: INVESTMENT IN IRAQ, A FRAGILE AND CONFLICT-AFFECTED CONTEXT

Introduction: Implementing the OECD Iraq Project

The OECD Iraq Project started in 2007, when the Government of Iraq (GoI) requested the OECD's support to foster private-sector growth. It has combined capacity-building and policy dialogue activities to improve the GoI's policies and institutions dealing with the business environment, private sector development and related governance matters. The present report focuses exclusively on the fourth phase of the OECD Iraq Project (December 2013-June 2016) funded by the Swedish International Development Co-operation Agency (Sida).¹

In this phase, the Project concentrated on strengthening Iraq's investment policy framework and increasing its investment promotion capacity. It also supported the GoI in establishing an enabling framework for the development of Special Economic Zones, and engaged Iraqi stakeholders in the activities of the MENA-OECD Competitiveness Programme, fostering regional dialogue and sharing of best practices. A whole-of-government approach was taken to engage a wide variety of stakeholders, including the Iraqi National Investment Commission (NIC) and Provincial Investment Commissions (PICs), the Office of the Prime Minister, relevant Iraqi ministries, representatives from the Iraqi and the international business communities, as well as Kurdistan Regional Government's (KRG) Board of Investment.

Throughout the Project period, the country continued to be affected by fragility and conflict. Political and economic risks have even increased during project implementation, as the Iraqi government had to deal with the twin shocks of the Islamic State attacks and the collapse of global oil prices.

The present chapter deals with the challenges of implementing the Iraq Project, and how these were addressed. It first outlines the political and economic factors which make Iraq a fragile and conflict-affected state (FCS). It then describes positive and negative aspects linked to foreign direct investment (FDI) in a FCS and explains why Iraq needs investment, in particular outside the hydrocarbon sector. The chapter then describes how the Project adapted to the fragile context of Iraq, its main outcomes, and five lessons learnt from working in a fragile and conflict-affected environment such as Iraq.

¹ Previous phases of the Project were funded by the United States Department of State.

1. Iraq: political and economic challenges of a fragile and conflict-affected state

Iraq, a FCS for many years, suffers from high levels of political and economic instability

Iraq – with high levels of violence, weak institutions, and high dependency on the oil sector – displays many of the typical characteristics of a FCS. Indeed, Iraq has featured continuously on the OECD’s list of FCS since it was first established in 2007 (Box 1).

Almost 15 years after the fall of Saddam Hussein’s Baathist regime, Iraq remains more than ever beset by internal conflict and transition. Institutions and governance structures are still weak and fragile. The process of stabilising and rebuilding Iraq has been uneven, with repercussions on foreign investment inflows and the business climate in general. Iraq continues to be a state that is highly polarised along ethnic and religious lines and suffers from high levels of conflict.

Box 1. Fragile and conflict-affected states: Definition and characteristics

According to the OECD, there are 50 fragile states and economies, two thirds of which are located in the Middle East and Africa (OECD, 2015a).² Already today, these countries account for 43% of all people living with less than USD 1.25 a day. It is expected that fragile countries will continue to lag behind in reducing poverty and reaching the Sustainable Development Goals (SDGs) by 2030.

Fragility and conflicts are complex phenomena which often have many and divergent root causes and do not easily lend themselves to a clear and conclusive analysis. A working model to assess fragility proposed by the OECD defines fragility as significantly lacking performance in one or more of the following five cluster areas: 1) violence, 2) access to justice, 3) effective, accountable and inclusive institutions, 4) economic inclusion and stability, and 5) capacities to prevent and adapt to social, economic and environmental shocks and disasters (OECD, 2015a).

Research commonly points to a number of political and socio-economic factors that increase the risk of fragility and conflict. Weak institutions and governance are not only a result, but often precede conflict situations. Large unemployment, especially among youth, exacerbates risks.

Fragility and conflicts carry large, sometimes enormous, human and social costs. Fragile states make slower development progress than countries with more robust institutions. Within states, communities that experience the highest levels of violence and instability are least likely to experience improvements in their livelihoods (OECD, 2015a). In addition, conflicts have also adverse economic effects. The IMF estimates that countries that have been in conflict in the past five years have lost an average 2.25% of GDP per year. Conflicts also tend to negatively affect domestic and foreign investment, including in neighbouring countries (IMF, November 2016c). There is a wide agreement that international engagement in FCS requires special and different approaches that factor in the risks and vulnerabilities inherent to such contexts. Members of the OECD’s Development Assistance Committee (DAC) have worked on policy instruments for international engagement in fragile and conflict-affected situations. In 2007, the OECD published its *Principles for Good International Engagement in Fragile States and Situations*. The International Network on Conflict and Fragility (INCAF), a subsidiary body to the DAC, sets standards and principles for engagement in fragile states and discusses effective development financing in fragile contexts.

Fragile contexts also involve heightened and specific risks for private sector engagement, starting with the risk of infringing core principles of responsible business conduct and its reputational and liability consequences. The OECD has developed high standards of responsible business conduct to help governments and their companies cope with this risk (see below).

² Fragile states and economies in the Middle East and North Africa (MENA) are: Egypt, Iraq, Libya, Syrian Arab Republic, West Bank and Gaza Strip, Yemen.

Following the 1990 invasion of Kuwait and the Second Gulf War, the UN imposed sanctions on Iraq. They were lifted at the end of the Third Gulf War in 2003 with the establishment of the Coalition Provisional Authority as the country's interim government. The first general election under the new Iraqi constitution was held in December 2005. It led to the formation of the Permanent Government of Iraq under the Prime Minister Nouri al-Maliki, who was re-elected in 2010.

Key issues in the political debate since 2003 have been the containment of continuously high levels of sectarian violence in large parts of the country and the implementation of the Constitution, particularly with regard to federalism and the status of the semi-autonomous Kurdistan region. The Constitution recognises Iraqi Kurdistan as a federal region with a wide range of executive, legislative and judicial powers. Particularly contested in discussions between the Kurdistan Regional Government (KRG) and the central GoI has been how to calculate the KRG's agreed 17% share of the national budget and the management of oil resources. In 2007, the KRG passed a separate Kurdistan oil and gas law. The KRG also negotiated contracts with international oil companies that the central government disputes. Tensions with the KRG have intensified since it started selling oil without notifying or paying central government in July 2015 and openly considered holding a referendum on independence.

The situation in Iraq worsened in June 2014 when the Islamic State (IS) entered northern Iraq, fuelling existing frictions and challenges. Although IS, which at some point controlled over one-third of the territory of Iraq, seems to have been held in check, the group still controlled large parts of Iraq in June 2016 and had the power to stage offensives and destabilise the country.

The Government of Iraq remains absorbed with the military campaign against IS and the related humanitarian crisis. The United Nations Office for the Co-ordination of Humanitarian Affairs (UNOCHA) estimates that 10 million people are now in need of humanitarian assistance and that 3.3 million people have been internally displaced since January 2014.³ The growing role of non-regular forces fighting IS – notably Shia militias – risks further destabilising government authority and further stoking the already considerable tensions between the various ethnic and religious groups.

At the same time, the government's decision-making ability remains severely restricted. Due to opposition from parliament, Prime Minister Haider al-Abadi, who took office in September 2014, has made little progress in implementing the far-reaching reforms to downsize the public sector and fight corruption he had announced earlier. And parliamentary sessions continue to be often boycotted by the different political groupings. In March 2016, the PM gave in to popular protests and declared he was forming a new ministerial cabinet of "technocrats". Yet the parliamentary parties could not agree on the new cabinet, and things came to a head in May when a group of protesters broke into the highly fortified Green Zone in the centre of Baghdad and occupied Parliament. The cabinet of technocrats was still not in place in June 2016.

Iraq continues to be affected by weak government, institutions and policy-making capacity. The damaging effect on economic development will persist, keeping the country in a state of fragility.

After wars and sanctions, the Iraqi economy bounced back briefly after 2003

Before the invasion of Kuwait, Iraq was considered one of the most advanced countries in the Arab world. It was classified as an upper-middle income economy and boasted a relatively large middle class, high standards of education and healthcare compared to the rest of the region, well

³ www.unocha.org/iraq, accessed on 23 June 2016.

developed technical capabilities, good infrastructure, and a relatively high per capita income. Its centrally managed economy, however, was heavily dependent on oil revenues. But when, under Saddam Hussein in the late 1980s, the government experimented with privatisation and greater autonomy in some parts of the economy, the process was interrupted by the first Gulf War from 1990 to 1991.

The ensuing destruction and UN-imposed sanctions radically altered the economic scene and foreign investment virtually dried up after 1991. The country's policy focus shifted to addressing the impact of the tight international sanctions regime and the economy came to rely almost exclusively on imports under the Oil for Food Program and humanitarian aid. GDP tumbled, with per capita income slumping from USD 4,083 in the late 1980s to USD 1,184 in 2001. Inflation was rampant, the currency depreciated sharply, and public debt was high.

Sanctions significantly weakened the private sector and strengthened the role of the government as the central administrator of the country's economy, so jeopardising the extensive market-oriented institutional and economic reform introduced in the wake of the US campaign against Iraq in 2003. However, the post-sanctions regime and Iraq's return to the global economic restored strong growth and improved macro-economic performance. The economy grew by more than 150% between 2003 and 2013, posting double-digit growth in most of those years. A major driver behind the growth was Iraq's expanding oil production, which rose from 1.5 million to over 4.5 million barrels per day between 2003 and mid-2016. Inflation fell from a yearly average of 60% in the early 2000s to 2% in the period 2008-11. In 2014, it stood at just 1.5%. Finally, officially recorded unemployment fell from 30% in 2003 to 15% in 2010, before edging up to 17% in 2015.

The Iraqi economy in 2015-2016 hit by the twin shock of IS and lower oil prices

Iraq's economic rebound has been put to a severe twin-test – by the invasion of the self-proclaimed Islamic State (IS) in northern and western Iraq in June 2014 and the steep decline in oil prices, which more than halved in 2015.

The IS offensive and falling oil prices have combined to hit the Iraqi economy hard. Real GDP contracted by 2.1% in 2015, with non-oil economic activity shrinking 8%. The drastic drop in the price of the barrel of crude has weakened the GoI's fiscal position, with the budget deficit widening from 6% of GDP in 2014 to 15% in 2015. Foreign exchange reserves declined by USD 13 billion over a year to USD 54 billion by end 2015 (IMF, 2015). As a result of these factors, the government finds itself grappling with a shortage of liquidity. Payments to civil servants, including members of the Iraqi army, have been repeatedly delayed, in particular in the KRG region.

Iraq is also reported to have accumulated significant arrears in payments to international oil companies. In 2016, the Oil Ministry slashed its oil development budget from an original USD 23 billion to USD 9 billion and has still not honoured its current commitments. Analysts fear that Iraq's plans to increase oil production will be affected, resulting in further shortfalls in the projected government budget.

To help Iraq weather the storm, the IMF agreed to a stand-by arrangement (SBA) in May 2016. Under the terms of the SBA, the IMF – acting in concert with partners that include the so-called “G7” countries⁴ – pledged to lend Iraq USD 5.4 billion, on the condition that it pushes for economic and

⁴ The Group of Seven, or G7, consists of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The G7 also includes the European Union.

financial reform. Iraq also secured a USD 3 billion loan from the Islamic Development Bank to cover budget and liquidity shortfalls in May 2016.

Despite political turmoil and the difficult economic environment, Iraq's long-term economic indicators and outlook remain strong and positive. Real GDP growth is expected to rise to 10.6%, chiefly thanks to a further 20% projected increase in oil production (IMF, 2015).

Significant structural and governance deficits persist, however. Transparency International ranks Iraq 161st out of 167 countries in its Corruption Perception Index. Iraq also has a poor business climate and stood on place 161 out of 189 in the World Bank's Doing Business Index 2016 (a drop of one place over 2015), with low scores in all the indicators analysed.

If Iraq is to build a stronger, more resilient economy, it must improve its business and investment climate and, of particular importance, reduce its dependency on oil revenues. Its capacity to attract private investment will be critical in that respect, as the following section explains.

2. The OECD Iraq Project: adapting to a fragile environment, activities and key outcomes

The Iraq Project focuses on attracting private investment to Iraq

Between December 2013 and June 2016, the OECD worked to improve GoI's ability to attract private investment in sectors other than oil and gas. Even in Iraq's currently fragile context, the Project has strong grounds for focusing on attracting investment. They are Iraq's need to finance reconstruction, diversify the economy and strengthen institutions (Box 2).

If Iraq is to rebuild, it must meet colossal investment needs – over USD 1 trillion by 2022, as stated by the chair of the National Investment Commission (NIC) in 2012 (Lee, 2012). Projections in Iraq's National Development Plan 2013-17 put public and private investment needs at a more modest EUR 305 billion for the five-year period. And those needs can only grow as war and destruction take their toll.

Iraq also has to build a more diversified and resilient economy to reduce its strong dependency on the oil and gas sector which still accounts for 95% of budget revenue and 99% of exports, but only 1% of employment. It is argued that states which rely on an overwhelmingly dominant export sector lag behind in economic development because they fail to build strong institutions that “tax, monitor, regulate, or promote other sectors” (Shafer, 1994, cited in Ross, 1999).

In 2013 Iraq experienced a spurt in inward foreign direct investment (FDI) which hit a record level of over USD 5.1 billion. And although the acuteness of the security crisis in 2014 saw it slip to USD 4.78 billion, FDI in those two years was at its highest since 2007 (UNCTAD, 2015). The steep fall in oil prices restricted further investment in this sector.

Investors are attracted not only by Iraq's oil wealth, but by its increasingly young population, underdeveloped infrastructure and burgeoning consumer market, all of which contribute to a growth potential that is greater than in the rest of the region and other emerging markets. Iraq does not, however, attract the same types of investment and at the same rates as its MENA neighbours (Dunia Frontier,

2013).⁵ Most FDI flows into oil and gas (which includes the petrochemical industry), sectors like telecommunications and construction where the fruit hangs low, and activities that yield fast returns. Opportunities for foreign companies are concentrated mainly in reconstruction, infrastructure and housing development – GoI’s priorities. However, they are also to be found in security, environment, healthcare, agriculture and services. Indeed, Iraq imports large volumes of agricultural goods, machinery and consumer goods, and volumes of trade are steadily increasing (U.S. Department of State, 2015).

Box 2. The role of FDI in fragile and conflict-affected states

It is widely recognized that well channelled foreign direct investments (FDI) can create new sources of wealth, generate jobs, provide access to capital and technology, enhance productivity and support the diversification of national economies.⁶ Quality investment can have spill-over effects on local development and support employment, skills and salaries (e.g. through business linkages with local enterprises). In a post-conflict context, it can also be a valuable source of reconstruction financing, foreign exchange, as well as tax revenues potentially in support of basic social services. Promoting FDI is therefore a key component of any strategy to reduce conflict and build peace.

FCS attract low but rising levels of FDI. Although the actual number of FDI projects in FCSs is very small, the World Bank (2014) shows that, from 2005 to 2012, investment inflows to 25 FCS grew at a compound annual rate of 12% – much higher than the 4.5% rate in the rest of the world. Nevertheless, barriers to investment in FCS are usually greater and more challenging. While security risks are the most forbidding obstacle, higher transaction costs and information asymmetry – as they relate to market-entry, bureaucracy, understanding the regulatory environment – also deter investors, as do perceptions of uncertainty and instability. And in fragile contexts, institutions tend to be weaker and legal investment frameworks less well tried and tested.

While FDI can contribute to stabilisation and economic development, through reconstruction, job creation, services delivery, co-operation and greater generation of revenue, some investors may take advantage of poorly enforced human rights, corrupt practices, and weak environmental protection. They may also cause social damage by profiting from low labour standards and wages.⁷ Indeed, in some circumstances, certain activities and projects might have more pronounced negative effects and worsen an already fragile situation. A number of international norms on responsible business conduct in FCS and other countries exist and could help investors have a more positive impact. One key instrument, the *OECD Guidelines for Multinational Enterprises* (1976, updated in 2011 (OECD, 2011a)), contains recommendations by governments to multinational enterprises (MNEs) on promoting their positive contributions to economic, environmental and social progress.⁸ The *MNE Guidelines* are complemented by the *OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones* (2006) and two sensitive-sector tools: the *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (third edition, OECD, 2016a) and the *Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* (OECD, 2016b).

⁵ Iraq’s 2012 FDI inflows reached USD 75 per capita, compared with USD 222 for Jordan and USD 424 for the Kingdom of Saudi Arabia.

⁶ For a review of literature on potential economic and social benefits of FDI, see: Echandi, Krajcovicova, and Qiang (2015).

⁷ International Dialogue on Peace Building & Statebuilding.

⁸ Other international standards exist that can help business operate responsibly in conflict affected and fragile environments include the *UN Guiding Principles on Business and Human Rights* (UNGPs) (OHCHR, 2011), the *UN Global Compact* (2000, updated in 2004) and the *Guidance on Responsible Business in Conflict-Affected and High-Risk Areas* (UN Global Compact and PRI, 2010), as well as the *IFC Performance Standards on Environmental and Social Sustainability* (2006, updated in 2012 (IFC 2012)).

Activities and outcomes of the OECD Iraq Project

The OECD Iraq Project had to rise to a number of unforeseen challenges that stemmed from political developments in Iraq. The IS offensive in northern Iraq put back the Project's original schedule. The security situation changed the Project's roll-out and the OECD staff could no longer conduct missions to Baghdad. Nonetheless, the Iraq Project continued to support the government, albeit with some obvious adjustments and a more flexible approach. Accordingly, Project activities evolved with the local situation and stakeholder priorities, with some being stepped up and others being scaled down.

Work, for example, continued on increasing the GoI's **investment promotion** capacity to attract and keep investors, particularly in sectors strategic to long-term economic development (Chapter 2). It included carrying out a diagnostic study of Iraq's investment promotion agencies (IPAs) and tailored capacity building in investment marketing, targeting and facilitation. The capacity-building activities were put into practice at an investors' road show that the Project organised in co-operation with the Arab-German Business Forum (Box 3).

Box 3. Supporting investment promotion : from diagnosis and consultation to capacity-building and implementation

To support Iraq's investment promotion agencies (IPAs), the OECD Iraq Project first launched a diagnostic study in January 2015. In parallel, it conducted in-depth consultations with the chair of the National Investment Commission, NIC departments' heads (the Legal, the Marketing and the Economic Research Departments) and the staff of the NIC one-stop shop (OSS). The Project also interviewed the chairs and senior staff of the Provincial Investment Commissions (PICs) from the provinces of Karbala, Basra, Dhi Qar, Diyala, Maysan, Najaf, Wasit, Babylon and Anbar. Representatives of multinational enterprises were also consulted. These interviews greatly informed the diagnostic study and the definition and implementation of subsequent activities.

Drawing on the findings of the diagnostic study, the Project then conducted six training workshops for over 60 NIC and PIC staff members in developing investment marketing material, handling investor inquiries and promoting Iraq to investors with the help of the promotional and marketing material developed. The Project has also, in co-operation with the Commercial Law Development Program of the US Department of Commerce (US-CLDP), worked on developing investment files to formulate and market investment opportunities in Iraq.

The skills acquired during the workshop, as well as the investment promotion material developed by the Project and the Iraqi stakeholders, were tested at the occasion of the annual Arab-German Business Forum during an investor outreach event with businesses and investors. The event was held in co-operation with the Arab-German Chamber of Commerce and Industry (Ghorfa e.V.) in May 2016 in Berlin. NIC and PIC took the opportunity to present Iraq as investment destination with material developed jointly with the OECD. During the event, Iraqi participants had to face and respond to their questions. Not only could the Iraqi participants apply some of the techniques and methods taken from previous OECD training courses, but, and more importantly, they were also directly confronted with the constraints of businesses and investors in Iraq. In addition, NIC and PIC staff attended presentations by other IPAs from the MENA region at the Arab-German Business Forum and used the event for sharing experiences and practices with their regional counterparts.

A second key component of the Project was to support the government's efforts to strengthen the **investment policy framework** building around two pillars: assessment of the legal investment framework and capacity-building activities (Chapter 3). Readjustment to this component in the course of the Project's implementation has been necessary (Box 4).

Box 4. Strengthening the legal investment framework: focus on the revision of the Investment Law, arbitration and investment treaties

The ambitious initial objective of the OECD Iraq Project was to conduct an Investment Policy Review of Iraq based on the OECD *Policy Framework for Investment* (OECD, 2015b). When Iraq's security situation deteriorated even further in June 2014, the Project decided, in consultation with Sida and the other main stakeholders, to reduce the scope of the activities since neither the OECD nor experts could travel to Iraq and it became difficult to conduct the needed consultative process with the beneficiaries. The risk of making no impact and not achieving results in a relatively short period of time was too high.

The Iraqi policy-makers understood the need to attract investment despite the conflict situation in certain provinces. While re-organising investment promotion activities of its IPAs in response to the changing situation, the Iraqi authorities decided to proceed with a revision of the legal framework for investment and to engage in the negotiation of investment treaties with key partners. The aim was to send a signal to the international community that Iraq was willing to offer private local and foreign investors incentives and protection.

The Project readjusted its work to accompany these processes. To support the amendment of the Investment Law, it provided legal analysis, commented on the amended articles, conducted workshops with the legal experts in charge of the drafting, as well as parliamentarians, to build their capacity, exchange experiences from other countries and discuss policy options. The Project also conducted substantive training workshops on bilateral investment treaties (BITs), looking at recent BIT trends and the balanced approach needed. It addressed the current revision of the domestic arbitration regime to facilitate settlement of disputes with investors in co-operation with the United Nations Commission on International Trade Law (UNCITRAL). Through support from the Project, Iraqi policy-makers also engaged in international and regional policy networks updating knowledge on the international investment frameworks and standards and learning from other countries (e.g. participation in OECD Global Forum on International Investment, MENA-OECD Working Group on Investment, Arab League/OECD events on regional investment integration).

During the Project the second amendment of the Investment Law was approved by Parliament in November 2015 and published in the Official Gazette of Iraq in January 2016; Iraq continued negotiating BITs; and Iraq ratified the International Convention on the Settlement of Investment Disputes (ICSID) in 2015 and revised its arbitration law based on international standards.

Some of the **tangible outcomes** of the OECD Iraq Project are:

- **The enactment of the second amendment to the 2006 Investment Law.** At the request of its counterparts from the National Investment Commission (NIC) and the Council of Representatives (CoR), the Project analysed the Investment Law and drew up recommendations for revising it. The Project conducted a workshop with the relevant governmental departments, members of the Economic and Investment Committee from the Parliament, as well as leading private sector representatives from Iraq and OECD countries. The Project formulated a set of recommendations which it submitted to the government. Some were incorporated into the final version of the amendment, which was enacted in November 2015.
- **Enhanced capacity on investment-related legal instruments.** Legal staff from various governmental institutions, as well as Parliamentarians, benefited from capacity-building workshops on the **international investment framework** of Iraq. The workshops focused on the substantive provisions of bilateral investment treaties and, working with the United Nations Commission on International Trade Law (UNCITRAL), on the ongoing revision of the Arbitration Law. The Project carried out awareness-building activities on international arbitration mechanisms, which led to Iraq ratifying the Convention on the Settlement of

Investment Disputes (ICSID) on 17 November 2015 and to substantive adjustments in the Investment Law.

- **New, improved skills in promoting and marketing investment in Iraq and developing material to that end.** Sixty staff members of the National and Provincial Investment Commissions were trained to build their skills on **investment promotion**, develop investment marketing material, handle investor inquiries and better promote Iraq as an investment destination. As a result, the National Investment Commission now has ready-to-use material on investment promotion and marketing (brochures, power point presentations, the “elevator pitch”...). In co-operation with the United States Commercial Law Development Program (US-CLDP) and with the Project’s support, Iraqi stakeholders worked on developing investment files in which they formulated and marketed investment opportunities in Iraq. The newly acquired skills and materials were tested at an investor outreach event in Germany for businesses and investors with a pronounced interest in widening their activities in Iraq.
- **A unique platform for investment policy dialogue and knowledge sharing.** The Project provided a **unique platform** for stakeholders from the GoI, business associations and the private sector to engage in a productive and oriented dialogue between them and with their peers from other countries reinforcing knowledge on the latest economic and investment policies trends. The Sida Senior Programme Manager for Iraq noted during the last Project Working Group session that “a notable level of comfort, connection and joint engagement among Iraqi stakeholders has emerged”.
- **Inclusive regional policy dialogue.** High-level Iraqi politicians, government officials, and representatives from the business community were brought into **regional policy dialogue** through active participation in the MENA-OECD Competitiveness Programme’s regional expert networks.

3. Five key lessons learnt from working in a fragile and conflict-affected state

The experience from working in the challenging environment of Iraq helped the Project to formulate a number of **key lessons learnt** from engaging in a fragile context. Based on the OECD Principles for Good International Engagement in Fragile States and Situations (Box 5), the OECD Iraq Project identified five key lessons learnt.

Box 5. The OECD Principles for Good International Engagement in Fragile States and Situations

These Principles were formally endorsed by ministers and heads of agencies at the OECD Development Assistance Committee’s High-Level Forum in 2007.

1. Take context as the starting point.
2. Do no harm.
3. Focus on state-building as the central objective.
4. Prioritise prevention.
5. Recognise the links between political, security and development objectives.

6. Promote non-discrimination as a basis for inclusive and stable societies.
7. Align with local priorities in different ways in different contexts.
8. Agree on practical co-ordination mechanisms between international actors.
9. Act fast ... but stay engaged long enough to give success a chance.
10. Avoid pockets of exclusion.

a. Do no harm

Challenge: Ensure that the selection and involvement of Iraqi stakeholders in Project activities did not add to or exacerbate existing political tensions in Iraq.

Lesson learnt: During the inception phase, the Project conducted a Conflict Sensitivity Analysis to ensure that it followed the “do no harm” principle – i.e. that it should not add to existing political tensions in Iraq. The separately run Stakeholder Analysis yielded additional information about key project stakeholders, which informed the Conflict Analysis (Box 6). These studies have allowed the Project to involve a wide and balanced representation of stakeholders in its activities and have increased its acceptance, ownership and thus impact.

Understanding local dynamics and sensitivities was facilitated by the Arab-speaking project team. The Project manager had working experience in Iraq and had already established contacts with main stakeholders. The Project also built on earlier action and experience, as the OECD started working in Iraq in 2007 and has been active there since.

Box 6. Addressing conflict sensitivity

During the Project inception phase, the Project conducted a Stakeholder Analysis, incorporated cross-cutting development perspectives, chief among which were poverty reduction, gender mainstreaming and, most importantly, conflict sensitivity.

The **Stakeholder Analysis** entailed first in consulting possible project stakeholders in meetings and through phone calls. The Project then identified groups of stakeholders according to their different roles in achieving the outputs and outcomes defined in the Project.

The **Conflict Sensitivity Analysis** used best practice models.⁹ Understanding the causes and potential drivers of conflict is crucial to successfully design and implement projects in conflict-affected environments. The Project chose to use the Drivers of Conflict and Drivers of Peace framework as an analytical basis to assess how it might affect each driver in the framework. Drivers of conflict – those which heighten sources of tensions – include corruption, weak governance, ethnic frictions, oil dependency and poverty. As for drivers of peace, examples are stronger civil society engagement and greater inclusion of regions and different ethnic and religious groups. Drawing on the analysis, the Project developed methods to ensure that it did no harm. This included strong ownership of the Project by its main beneficiary (the NIC) and, at the same time, ensuring a broad participation of other stakeholders in the regular meetings of the Project Working Group. The Project was particularly careful to involve all relevant government entities in strategic dialogue and the formulation of policy

⁹ Including Sida’s “Conflict Analysis at the Project Level” (Sida, 2006: 23-29) as an analytical structure, the Sida-funded “Strategic Conflict Analysis of Afghanistan” (Swedepeace et al., 2012) and DFID’s “Conducting Conflict Assessments: Guidance Notes” (Goodhand, Vaux, and Walker, 2002) to inform the design.

recommendations. It also enabled Iraqi participation in the meetings of the MENA-OECD Initiative, providing a regional platform for discussing and introducing new economic policy concepts and strategies with the Iraqi stakeholders in a conflict-sensitive way.

The Project also addressed the **cross-cutting development perspectives** of poverty reduction and gender mainstreaming and integrated them into its policy advice. It attached great importance to explaining linkages between development and investment, in particular foreign investment. Designing investment policies with a developmental impact and showing ways of how FDI could drive pro-poor growth were central components of the policy advice provided to Iraqi policy-makers. As for women's empowerment, and considering that only 11% of women aged 15 or older participate in Iraq's labour force, the Project actively involved Iraqi women's organisations in its activities and in the MENA-OECD Women's Business Forum. On the policy level, the Project promoted a number of policies to boost female entrepreneurship by, for example, using economic zones to afford women entrepreneurs business opportunities.

b. Consistent monitoring and flexible approach

Challenge: As political priorities often change fast in fragile environments, only a flexible project approach can respond adequately to stakeholders' demands and bring tailored solutions that produce results, while maintaining donor support. Rigid programming approaches, which cannot exploit opportunities or reallocate resources, are likely to be ineffective. A flexible approach, by contrast, may even go as far as downsizing or discontinuing activities that came up against unforeseen obstacles.

Lesson learnt: The Project conducted bi-annual impact assessments of its activities to determine the suitability of its policy advice provisions and Sida's demands for tangible results. The Project team regularly discussed the assessments with Sida who helped to draw up, when necessary, a more effective implementation approach, which often entailed significantly rebalancing the Project.

The Iraq Project had originally scheduled a six-month inception phase to better define activities. With the Islamic State offensive in June 2014, the Project team and Sida agreed to extend it by another four months, as many of the previously defined external risk factors materialised. The Project responded to the drastically changed security situation by conducting more activities outside Iraq and focusing on action which would produce impact in fragile situations – e.g. capacity-building in investment promotion and facilitation – and would deliver longer-term results, such as the reform of the legal investment framework.

c. Integration of cross-cutting development perspectives

Challenge: In a fragile context, economic policy reform is also likely to affect political, security and development objectives – positively or negatively. Project managers should be aware of how reform feeds into and exerts spillover effects on broader stability and development goals of a fragile country.

Lesson learnt: During the Project's inception period, the Project analysed in detail how its activities related to the cross-cutting development issues of poverty reduction, gender mainstreaming and conflict sensitivity (Box 6) and how they could be addressed in individual activities. To monitor and evaluate how these cross-cutting issues were integrated into its work, the Project defined and set certain targets and milestones. Defining and addressing these cross-cutting development perspectives in all Project activities created awareness and better understanding among stakeholders of how Project activities could contribute to stability and other, broader developmental goals of Iraq. The exercise, which tied the Project's activities to wider political, security and development objectives, proved a highly effective way of placing the Project in the fragile context of Iraq.

d. Frequent consultations and project ownership

Challenge: In a fragile context often characterised by weak institutions, building strong relationships with individual stakeholders, i.e. on the personal level, is as important as building relationships with institutions.

Lesson learnt: During the inception period, the Project built relationships with key stakeholders to gauge their priorities and take stock of what they expected from reform. It successfully ensured strong ownership through the Chairperson of the National Investment Commission (NIC) and the members of the Project Working Group (PWG). The Project particularly trained its efforts on ensuring that the PWG was inclusive and brought together high-level policy-makers (e.g. the Prime Minister's Economic Advisor), representatives from ministries, civil society and the private sector. That inclusive approach, in turn, kept the Project in regular contact with a diverse group of project stakeholders who advised on activities and impact. In sum, the Iraq Project strengthened its impact through strong relationships with key stakeholders and by strengthening their sense of ownership, which translated into confidence, mutual trust, and fruitful communication between stakeholders. All Project staff, including the Project Manager, were fluent in Arabic and had good knowledge of the country, which considerably helped in engaging with the Iraqi stakeholders.

While the Project remained clearly committed to strengthening and building institutions, it had to be acknowledged that in the Iraqi context good and efficient working relationships depend strongly and probably more than in other countries on knowledge of the local conditions and strong social and communication skills.

e. Public-private dialogue

Challenge: Public-private dialogue (PPD) can be a powerful instrument for strengthening the quality of economic policy reforms. PPD is considered particularly important in FCS contexts, as it can improve transparency, quality and effectiveness of public policies and thus help build more resilient systems. The private sector is, in many circumstances, better placed to identify and inform the economic reforms needed and could have a useful policy advocacy role vis-à-vis the government.

Lesson learnt: The Iraq Project sought to build an enabling environment for PPD at the meetings of the Project Working Group (PWG) and in workshops. Engaging non-public Iraqi stakeholders improved results, as it opened new, wider perspectives in discussing policies at the meetings. The Project has also regularly invited representatives of foreign firms that invested in Iraq – mainly big international companies like Shell and Siemens – to participate in the events it organised so as to share their views, constraints and outlooks on investment in Iraq.

CHAPTER 2: INVESTMENT PROMOTION AND FACILITATION IN IRAQ

Introduction: Strengthening investment promotion agencies and overall policy coherence in Iraq

To compete for investment, countries streamline their legal and regulatory structure, offer incentives, conduct reforms to improve their investment climate, and undertake investment promotion and facilitation efforts. Investment promotion means promoting a country or region as place in which to invest. Investment facilitation is about making it easy to invest or expand existing investment. Investment promotion agencies (IPAs) help co-ordinate promotion and facilitation, and may also influence reforms to improve the investment climate – an activity known as “policy advocacy”.

Countries have increasingly established IPAs, both at national and regional levels, to promote and facilitate investment.¹⁰ Although developing good-practice IPAs requires sizeable budgets, benefits can be sizeable, too (Harding and Javorcik, 2011). Ireland is among the most effective FDI performers. Investment earned it EUR 19 billion for FDI promotion expenditure of EUR 163 million (IDA Ireland, 2010). It is fair to say that, overall, there is probably a positive association between good investment promotion and inflows of FDI.

In fragile and conflict-affected states (FCS) such as Iraq, IPAs can play a useful role in attracting investment if their strategy, services and means are adapted to the situation. They need to be innovative, in particular in investment marketing and targeting, focusing on selected markets, sectors and key investors. IPAs can help investors navigate bureaucracy, relieve the information asymmetry and reduce transaction costs. They can also advocate for policies and initiatives to improve the investment climate and investment policy coherence, e.g. play a useful role in raising investors’ awareness on some of the major responsible business conduct challenges they might face.

The present chapter limits itself to a discussion of investment promotion and facilitation in Iraq. It starts with a presentation of Iraq’s IPAs, which operate at the central and provincial levels. It then analyses the investment licence process and the issue of land allocation, which are core activities of Iraq’s IPAs and have both proven to be significant obstacles to investment. It concludes with analysing Iraq’s performance in investment promotion and facilitation and formulates recommendations in five key areas of the investment promotion process.

Despite this chapter’s focus on investment promotion and facilitation, it should be kept in mind that countries need to consider a number of policy dimensions in an integrated manner in order to secure the maximum returns from investment. While it may represent a daunting task for FCS, more coherent investment policy approaches – as encouraged by the OECD *Policy Framework for Investment* (OECD, 2015b) – can improve the overall contribution of investment to development. For example, a comprehensive infrastructure strategy with a clear and predictable legal framework can attract investment in projects which increase welfare and inclusive growth, and enhance SME participation in economic activities; the development of skills and human resource can increase the quality and adaptability of the workforce to new investment projects; a sound and balanced tax policy can be conducive to investment while securing public revenues.

¹⁰ The number of IPAs has grown rapidly since the 1980s. In 2014, the World Association of Investment Promotion Agencies (WAIPA) counted over 170 members from 130 states, compared with 112 in 2002 (UNCTAD, 2004; WAIPA, 2015).

To formulate a coherent investment policy, Iraq needs to address main constraints to businesses and investors. According to a World Bank Enterprise Survey from 2011, more than two thirds of respondents identified electricity supply, political instability and corruption as major or very severe constraints to business in Iraq. Access to finance, practices of informal sector competitors, access to land, “theft, crime and disorder” and tax rates, have been considered as serious obstacles by between 40 and 50% of all respondents. Transportation, business licensing, regulatory uncertainty, water, a qualified workforce, customs and trade regulations, and labour laws (such as social insurance) appear to be less severe constraints to operating in Iraq, according to the survey (World Bank, 2012: 8ff.).

These findings, which are probably still valid today, point to areas where Iraq’s IPAs should advocate reforms. The National Investment Commission should have a stronger policy advocacy role to promote policies related to investment within the government and its institutions (UNCTAD, 2008b). Specific needs and recommended steps related to a stronger policy advocacy role of Iraq’s IPAs are further discussed in section 3 of chapter 3, which calls for a coherent legal framework for doing business and gives recommendations in a number of relevant policy areas.

1. The role of Iraq’s IPAs in promoting and facilitating investment into the non-hydrocarbon sector

Iraq has several IPAs formed under the 2006 Investment Law and consolidated through the amendments in 2009 and 2015. The National Investment Commission (NIC) is in charge of handling large, country-wide projects – defined as strategic (Box 7), while the Provincial Investment Commissions (PICs) focus on local, smaller-scale projects. In the Kurdistan Regional Government (KRG), the Board of Investment (BOI) has similar functions to the NIC.

The NIC and the PICs are tasked with promoting and facilitating all investment outside of the hydrocarbon, banking, and insurance sectors. They are designed to be one-stop shops (OSS). They can provide information, sign contracts, such as construction contracts for major infrastructure projects, and facilitate the business registration process with the Ministry of Trade for foreign and domestic investors. The NIC and the PICs also issue investment licences and undertake marketing activities, e.g. hosting business delegations.

National Investment Commission (NIC)

The NIC is Iraq’s national IPA. Its mandate is to formulate federal policies and strategies towards investment, develop investment plans, regulations, and directives to implement policies, and monitor their implementation. Another of the NIC’s duties is to advise the Council of Ministers (CoM) and related government agencies on priority investments and inform them of measures or means for improving Iraq’s image. The NIC is also responsible for negotiating such international investment agreements as bilateral investment treaties (BITs). For example, in November 2015, the chair of the NIC ratified the 1965 International Convention on the Settlement of Investment Disputes (ICSID Convention) on behalf of the Government of Iraq.

Provincial Investment Commissions (PIC)

The NIC coordinates 15 Provincial Investment Commissions (PICs) in central and southern Iraq which function as regional IPAs. They are independent bodies, responsible of their province. The Investment Law grants the PICs with the power to issue investment licences, to plan projects, to promote the provincial investment environment, and to open branches within their jurisdictions. They

share information with the NIC on priority sectors and activities and work with it to ensure that potential and current investors are able to carry out their investment projects.

Kurdish Board of Investment (BOI)

Investment in the Iraqi Kurdistan Region operates under the Kurdistan Regional Government (KRG) Investment Law of 2006, which applies to non-hydrocarbon projects (hydrocarbon projects falling under the Kurdistan Oil and Gas Law of 2007). The Kurdish Board of Investment (BOI) seeks to provide a favourable investment climate and to regulate and develop investment in the Kurdistan region. The KRG Investment Law allows the BOI to provide selected incentives to companies with a view to develop strategic investment projects. The BOI hence evaluates projects and awards incentives based on projects perceived economic and environmental impacts. When it approves a project, the BOI grants the company an investment licence that may include free land, a ten-year exemption from corporate taxes, and a five-year exemption from customs duties. Between August 2006 and May 2016, the BOI awarded investment licences to 750 projects worth over USD 47 billion in investment.¹¹ However, there is no information as to how many projects have been executed.¹²

The BOI has three branch offices in each of the provinces of Iraqi Kurdistan to support the activities of the BOI locally.

2. The licencing process: a core function of the Iraq's IPAs and a hurdle for investors

Issuing investment licences to foreign and domestic investors – who thus benefit from advantages – is a core activity of the NIC and PICs, as the Investment Act states. While it is possible to invest in Iraq without an investment licence, a company without one is likely to struggle in its dealings with the GoI, which commonly assumes that a licence has been granted. An investment licence typically provides the investor with:

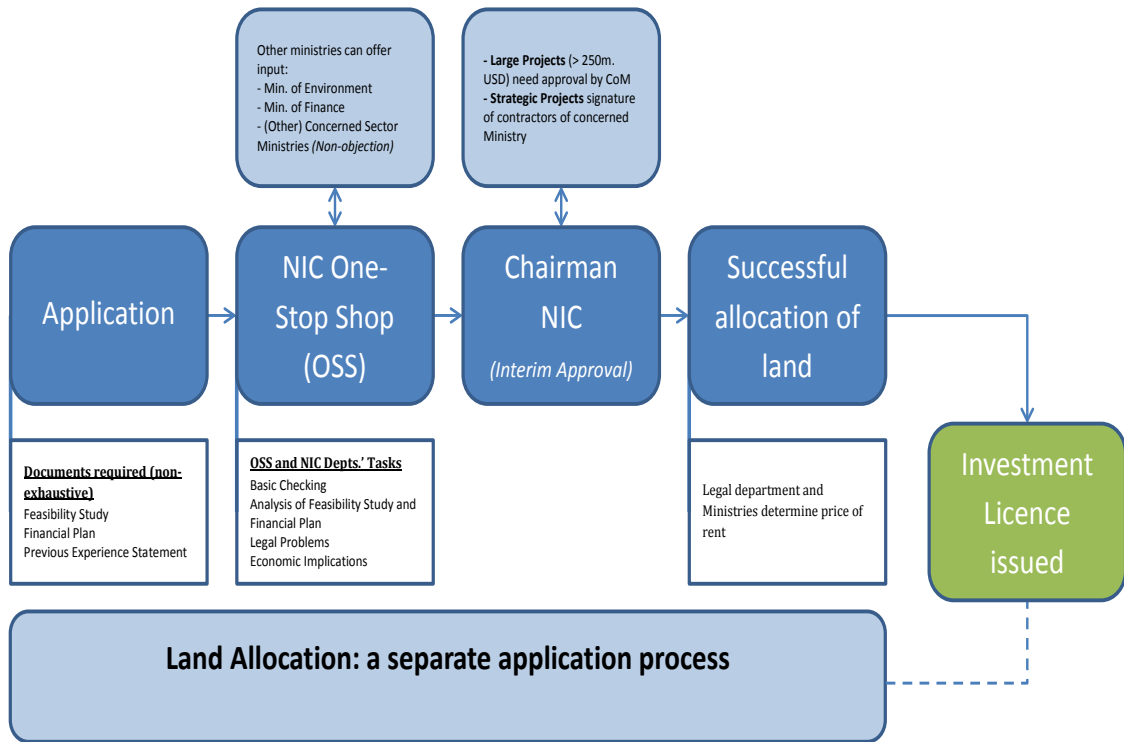
- ten-year tax exemption;
- three-year exemption of import fees for required equipment;
- the right to repatriate investment and profits from investments;
- the right to employ foreign workers;
- the guarantee that the government will not nationalise or confiscate investments; and
- access to international arbitration (Chapter 3).

Applying for an investment licence application differs from the business registration process, which is required for all companies, domestic or foreign, seeking to do business in Iraq. Companies register with the Ministry of Trade, with the NIC merely facilitating the process.

¹¹ www.kurdistaninvestment.org/docs/licensed_projects.pdf (accessed on 23 June 2016).

¹² This report does not further analyse the functioning of the BOI as the OECD Iraq Project did not focus on KRG though the good-practice measures presented can apply.

Investment Licence Application Process



The NIC assesses the investment licence application primarily based on the project's technical feasibility and its funding. There is little focus on the business model and, in particular, the marketing plan. The one-stop shop (OSS) carries out the assessment with inputs, as required, from other NIC departments, in particular the Legal Department (for any adverse legal issues) and the Economic Department (for any perceived adverse impacts on the Iraqi economy). The documents to be submitted with the application include:

- an economic and technical feasibility study;
- a financial plan – foreign investors must also provide a certificate of good standing from a certified bank;
- a statement of previous experience of similar projects;
- a project timetable;
- any further documents which the NIC may require.

Important ministries, such as the Ministry of Finance and the Ministry of Environment, and any ministry directly concerned (for example, the Ministry of Agriculture for an agribusiness project) are informed of the project. Should a ministry object, and if the objection cannot be swiftly and simply resolved, the licence application will be rejected. A statement of non-objection or the absence of response indicates that the ministry raises no objections. In addition, when the project is a large one –

over USD 250 million of capital investment – the Council of Ministers (CoM) must be consulted. Projects deemed strategic must be endorsed by the sectoral ministry concerned.

If the project passes the NIC's assessment and the concerned ministries raise no objections, the project is submitted to the NIC's chairperson for approval. The chair consults the NIC's Legal Department to confirm the absence of legal problems before approving. However, the NIC chairperson's approval is an interim approval. Investment licences, when approved, remain invalid until land has been allocated for the investment project. To that end, the investor must submit a separate application, usually to the ministry which owns the land.

Up to 50% of companies in Iraq have identified access to land as a severe problem.¹³ Statistics on how many investors have sought land from the government, which according to estimates owns 80% to over 95% of land, and how many have done successfully, are not available. The number of investment licences which remain unconfirmed pending land allocation is also unknown. However, it is clear that access to land issues have impacted investment projects. For example, 616 investment projects were delayed in 2013, due to land-related issues in 57% of cases and only 3% due to the investor's reluctance to go ahead with the project (Government of Iraq's Ministry of Planning, 2013a).

Ascertaining land ownership is complex and reliable data are difficult to obtain. Knowing which ministry owns land is a challenge in itself, as investors can access the land registry only through the NIC, the PICs, or other ministries. The Ministry of Finance is the biggest landowner, since it possesses all the land that formerly belonged to Saddam Hussein and his entourage. The City of Baghdad, the National Ministry of Municipalities, the provincial ministries of municipalities, and the Ministry of Agriculture are also large landowners. Matters are compounded by competing claims for land ownership and unclear records.

Under Regulation No.7 of 2010 complementing the Investment Law, the NIC and the PICs do not own or control any land which they can make available to investors. They act only as intermediaries, facilitating land allocation through the one-stop shop (the NIC and each PIC have a one-stop shop). The PICs have, on occasion, sought pragmatic ways of facilitating access to land. The Basra Investment Commission, for example, formerly marketed lands for housing projects which the local municipality had "cleared", i.e. declared available for investment.

The unclear procedures for allocating land are due not only due to bureaucratic confusion but also to the subjective discretion to facilitate invisible payments. The GoI has taken steps to remove this hurdle by forming a Supreme Committee in charge of land allocation and spatial planning. This Committee represents the concerned ministries and the NIC and consists of 20-25 members under the aegis of the Ministry of Planning. Its work has been delayed due to the local circumstances in Iraq. The 2015 Amendment of the Investment Law also seeks to clarify the issue of land allocation and to facilitate access to land for housing and real estate projects (Chapter 3). However, it is too early to assess the impact of this legislative change.

Three areas of licensing and land allocation that call for improvement are:

- Solve the "deal-breaking" issue of **land allocation**. Solving this impasse requires a co-ordinated policy approach with strong political support. In the short term, this would require that land clearly assigned for investment should be allocated to the NIC and PICs. In the

¹³ Interviews conducted in 2015 by the OECD Iraq Project, representatives of multinational companies reported that investment projects can face delays of more than a year due to pending land issues.

medium and long term, Iraq would need to build an accountable and transparent system of land governance, including a functioning land administration system and accurate and easily accessible documentation on land rights and ownership.

- Provide for **business registration process and investment licence granting into the one-stop shop**. The NIC has repeatedly discussed making business registration and the issuing of investment licences services provided by the one-stop shop. Further co-ordination with the Ministry of Trade, which administers the registration process, is necessary.
- **Guidelines** for the requirements of economic and technical feasibility studies and other application materials, including the financial plan, should be available to investors. This would ease the application process and make it more transparent.

3. Building better investment promotion policies in Iraq: five good-practices measures

The OECD Iraq Project has identified five good-practice measures relevant to Iraq's IPAs, drawing on different IPA benchmarks.¹⁴ The NIC and the PICs could use them to measure their performance and make adjustments accordingly.

a. Strategy and planning

An investment promotion strategy supports the country's overall development goals and growth objectives. It ensures that resources dedicated to investment promotion and facilitation secure the maximum amount of investment, but also strengthen its impact on development. A strategy prioritises sectors and markets which offer realistic investment potential. Planning ensures that the development and implementation of the investment strategy are done in a systematic and co-ordinated manner, and that activities and results are clearly and objectively measured and assessed.

Analysis: Iraqi IPA investment promotion efforts are not embedded in a broad investment strategy. Such a strategy would provide policy directions and prioritise sectors and territories by competitive advantage as the economy gradually transforms in the medium and long terms.

Project accomplishments: The Project's diagnostic study of investment promotion in Iraq could serve as the basis for drawing up an investment strategy once the security and political situation improves. It provides policy options and practical advice for enhancing investment in the country. The study built on a series of consultations with representatives from IPAs, ministries and the private sector, and on capacity-building workshops for a targeted group of NIC and PIC staff. The study was a first step in improving dialogue and institutional co-ordination as part of the effort to achieve consensus on a broad investment strategy.

The Project also held training courses for senior representatives of NIC and the PICs on developing an investment strategy, principally by using a SWOT analysis¹⁵ to identify competitive advantage and determine priority markets and sectors.

¹⁴ Based on models of IPA Global Best Practice as suggested by the OECD *Policy Framework for Investment* (OECD, 2015b) and the World Bank *Investment Generation Toolkit* (World Bank, 2016b).

¹⁵ SWOT stands for strengths, weaknesses, opportunities, and threats.

Proposed areas of activity: Building on a clear institutional leadership and vision, the NIC and PICs should develop an investment strategy to promote Iraq as an investment destination, in line with other policy areas that influence the overall investment climate. The investment strategy should:

- Describe how the NIC and PICs intend to market Iraq as an investment destination and conduct outreach activities.
- Propose how the NIC and PICs should target specific sectors, investors, markets and projects to ensure a pro-active, driven approach.
- Ensure link and coherence with Iraq’s other economic and investment-related strategies, such as its national development plan and the industrial strategy with a view to multiplying the benefits of investment.
- Contain performance measurement indicators and set promotion targets.
- Propose adequate budget allocations to meet the objectives.
- Adopt communication goals to leverage its impact.

b. Institutional setting

National and regional IPAs should have a clear structure that reflects the national investment strategy and their core functions of: investment facilitation, marketing, and targeting. Effective and transparent coordination mechanisms should determine the working relationship between the different governance levels – the national and the provincial ones.

Analysis: The NIC has some departments that an IPA typically should have – e.g. marketing and research departments. However, it has none devoted to investor targeting, after-care services or specific sector development – all of which can be found in mature IPAs. The assignment of internal responsibilities within departments, as well as precise sector or client coverage, seems undefined and blurred.

Co-ordination between the NIC and the PICs is inefficient. The NIC’s mandate states that it is responsible for investment promotion in Iraq at the national level. Accordingly, it should issue investment licences only for strategic projects, while PICs handle smaller projects at the regional level (Box 7). The Investment Law stipulates that the PICs must consult with the NIC which should verify that the PICs’ licensed investment projects are consistent with the national investment strategy and legal requirements. In practice, however, exchange is not systematic, informal and sporadic. Whether a PIC or the NIC should deal with a licence application is a grey area that is often decided on a case-by-case basis.

Box 7. The issue of which IPAs should promote strategic sectors

The NIC mandate is to deal with large investment projects and those of “strategic significance”, while the PICs focus on smaller projects. In practice, however, their respective roles are often unclear and may depend on which body the investor approaches.

The term “strategic significance” refers to a provision in the 2006 Investment Law which states that the NIC “shall specialise in strategic investment projects of a federal nature exclusively”. It also stipulates that projects exceeding an investment value of USD 250 million must seek the approval of the Council of Ministers (CoM).

Investment Statute No. 2 of 2009 sought to clarify the notion of strategic projects and elaborated on a number of qualifications accordingly.¹⁶ Examples include all infrastructure projects of a value of above USD 50 million, transportation projects worth over USD 30 million, power projects with a capacity greater than 30 MW, and projects related to telecommunications.

Several PICs have criticised the criteria for federal and strategic projects administered by the NIC. Establishing a regular consultation process in which the NIC and the PICs agree on shared responsibilities may help.

Project accomplishments: The Project organised a study tour for senior the NIC and PIC representatives to Germany's national investment agency GTAI (Germany Trade and Invest) to explain and discuss the institutional structure and functioning of a good-practice IPA. The clearly defined system of divided responsibilities of GTAI, Germany's national IPA, and the investment commissions at the German federal level (of the *Bundesländer*), gave Iraq's IPAs insight into good practice.

Proposed areas of activity:

- Strengthen the institutional structure of the NIC with each department's duties and responsibilities clearly defined.
- Set up a formal communication and consultation process between the NIC and the PICs to address issues of multi-level governance, e.g.: ease the licencing process, take joint decisions, engage in planning, and exchange good practices in investment promotion.
- Take a multi-level approach to strengthen vertical (between NIC and PICs) and horizontal (between PICs) co-operation to improve the quality and coherence of the performance of Iraq's IPAs (OECD, 2011b).

¹⁶ Strategic projects under NIC responsibility are defined in the Investment Statute No. 2 of 2009 as:

- Infrastructure projects with capital greater than USD 50 million or equivalent in Iraqi Dinars.
- Common projects between more than one region or province.
- Projects related to the extraction of natural resources, other than limited by Art. 29 of the Investment Law.
- Projects established under an agreement to which the Republic of Iraq is a party.
- Engineering, mineral, petrochemical, pharmaceutical, and manufacturing projects for various types of vehicles where the capital of each project is greater than USD 50 million or its equivalent in Iraqi dinars (IQD).
- Projects relating to the development of archaeological and historical sites.
- Transportation projects such as roads, seaports, airports and railways with capital greater than USD 30 million or its equivalent in IQD.
- Power projects with capacity greater than 30 MW each.
- Projects related to dams, reservoirs, and irrigation greater than 50 million square meters.
- Projects related to telecommunications.
- Any projects with capital greater than USD 1 billion or its equivalent in IQD.
- Any other projects deemed by the cabinet to be of a strategic or federal nature.

c. Investment facilitation

Investment facilitation refers to systems and processes designed to ease procedures for investors to establish or expand their investments. Effective one-stop shops are critical to simplifying complex administrative burdens and cutting down investors' transaction costs. Investment facilitation involves filling the information gap and reducing the number of steps in the decision-making process, which in turn helps to reduce opportunities for corruption.

Analysis: The NIC and the PICs firmly believe their chief responsibility is to issue investment licences which grant certain privileges to investors. The organisational structure of the NIC and the PICs reflects that focus: they have large departments dealing with licences.

The responsiveness of the NIC and PICs to investor enquiries is weak as staff may not have the information or capacity to respond adequately. When contacted by investors by e-mail or telephone, staff frequently respond late or not at all to investor enquiries – as has been witnessed by the Project from interviews with investors. E-mail responses are often impersonal and sent from a generic e-mail with no indication that the enquiry has been assigned to a specific NIC or PIC staff or department member. While the NIC uses a database to track and record investment licence applications, there is nothing similar when it comes to investor enquiries.

Project accomplishments: The Project designed an electronic **CRM** (Customer Relations Management) System with accompanying user manual for the NIC to help it address investor enquiries and identify, record and track both investment projects and investors. It also provided training on recording and tracking projects and best practice methods in handling investor enquiries. The NIC postponed implementation of the CRM system pending the development of new internal project recording systems.

The Project also trained NIC staff to identify key investment information –the types of information generally required by most investors – and provided a template for an investment product database to be used to record such information systematically.

Proposed areas of activity: The NIC and PICs should develop more investor-friendly investment facilitation processes that supply the information required by investors and ease procedures. To that end, the NIC and PICs should no longer focus primarily on the investment licence process. They should also seek to:

- Implement and use the Customer Relationship Management (CRM) system to record and track investment projects and investors.
- Continue to develop, store, and update information likely to be needed by investors, e.g. labour force information, costs of doing business in Iraq, and availability of infrastructure such as transportation networks, internet connectivity, etc.
- Handle enquiries from prospective and existing investors systematically with dedicated and experienced staff.

d. Investment marketing

Investment marketing refers to the effective processes, systems, tools, and materials used to present the country as an attractive investment destination.

Analysis: The NIC has in recent years made significant progress in developing marketing material. The most important tools are:

- The annual *Iraq Investment Map* (NIC, 2015a) contains a list of investment projects proposed by Iraq's provinces and some central government ministries. This Map appears to be an administrative legacy from the previous socialist regime which required public bodies to identify and announce investment projects. Despite valuable information on the Iraqi provinces presented in the Map, the list of pre-defined projects is neither useful nor attractive for foreign investors (listing, e.g. opportunities to acquire a stake in state-owned enterprises which are not running properly).
- The *Investor Guide to Iraq*, first published in 2015 (NIC, 2015b), is a 50-page publication which offers facts and figures about the Iraqi economy and investment in Iraq. It includes information on the economy, the licensing process, the legal framework, and sectors. It also contains practical information for the investor, such as addresses of important ministries and institutions and banks and hotels in Baghdad.

Project accomplishments: The Project provided NIC staff with training and advice on key aspects of investment marketing: how to develop a marketing plan, design and produce marketing materials, and conduct a marketing campaign. To assist the NIC in achieving these objectives, the Project delivered the following support:

- An overview of investment marketing practices, showing multiple examples of global marketing materials, as used by “Best of Class” IPAs in a range of formats –brochures, factsheets, websites, PowerPoint presentations, etc.
- Guidelines on how to use comparative marketing data to demonstrate competitive advantage – e.g. GDP, location, demography, labour availability and costs, etc. The Project also contributed to the *Investor Guide to Iraq* (NIC, 2015b).
- New marketing materials, developed with the NIC, in the form of generic and sector-based presentations and brochures in formats most likely to effectively address investors' interest.
- Investment files on state-owned enterprises (SoEs), developed by the US Commercial Law and Development Programme with the support of the Project, to assist the NIC in structuring propositions to raise investors' interest in SOEs.

Proposed areas of activity: Instead of confining itself to the project-centric approach epitomised in the *Iraq Investment Map*, the NIC should pursue the investor-focused approach taken in the *Investor Guide to Iraq*. The NIC and the PICs should increase their marketing capacity, improve their knowledge of markets and sectors, and develop a structured approach with clear objectives, targets and follow-up activities with investors. Such an approach should:

- Focus on clear marketing messages, develop a recognisable Iraq brand for investment and further develop competitive arguments through brochures, sector-specific presentations, and factsheets containing economic and business-related information.
- Adopt a marketing communication strategy that includes a public relations and media approach.

e. Investment targeting

IPAs should target investors in the sectors and markets that offer the greatest opportunities. Investor outreach campaigns should complement targeting efforts.

Analysis: The NIC and PICs do not actively target investors. They have not developed a targeting strategy based on key sectors, Iraq's comparative advantages or potentially interested investors.

Project accomplishments: The Project ran training courses to raise awareness on investor outreach and targeting. Course topics included: why investor targeting is essential to generate quality FDI and key targeting methods; how to create and use a "pitch book", i.e. a reference document on the questions investors are likely to ask at investment promotion events, one-to-one meetings, and during visits; and how to develop investor business propositions responding to individual investor's stated needs.

The NIC and PICs staff member also benefited from practical investment promotion case studies. Specific guidance was delivered on FDI promotion in times of conflict, and in particular on how to manage and mitigate the negative impact of real and perceived political, security and economic risks.

To give the IPAs a chance to put their knowledge into practice, the Project organised an investor outreach event in Berlin in co-operation with the Arab-German Chamber of Commerce. It gave the 25 NIC and PIC participants an opportunity to meet and interact with potential investors in an overseas context.

Proposed areas of activity: In particular, the NIC and PICs should:

- Identify priority **sectors** or sub-sectors for investment where Iraq has competitive advantages and development objectives, and compare them against competing locations.
- Target the **investors** most likely to invest in fragile and conflict-affected states (FCS) context. Four types of investors could be targeted: (a) **FCS-accustomed investors**, i.e. companies with a proven track record of investing in these countries; (b) **regional investors**, i.e. from neighbouring countries, which have better knowledge of the realities on the ground; (c) **diaspora**, i.e. former or displaced citizens; and (d) **investors with additional and non-financial motives** to invest, including state-owned enterprises, sovereign wealth funds, and socially concerned investment funds (World Bank, 2014).
- Build on "**positive business cases**" outside the traditional sectors, establishing a "bottom line for business" (define minimum requirements for investments and explain how they are met) and leveraging existing foreign investors in order to attract additional investments (WEF, 2016).
- Develop an active **outreach** policy. Action to that end should include regular participation in selected investment events and establishing a presence outside of Iraq (e.g. Dubai, London or New York) to make outreach more effective and follow up on investment leads. Iraq's IPAs should also run an active public relations strategy using direct mailing campaigns, quarterly e-zines and social media like LinkedIn to put in place and sustain a forum for discussing investment in Iraq. Public relations should also incorporate managing investors' visits systemically, i.e. collecting information on prospective investors, determining their needs, supplying the data they require, and providing them with all the contacts they need to make an informed decision.

CHAPTER 3: THE INVESTMENT LEGAL FRAMEWORK OF IRAQ: RECENT REFORMS AND THE WAY FORWARD

Introduction: Challenges and rationale for a conducive investment climate in the Iraq's fragile context

Iraq has a long-standing **legal heritage** and traditions that go back many centuries BCE with laws governing public and private business, contracts and property rights.¹⁷ In spite of a period during which the laws and regulations were used to establish the dominance of a political regime, Iraq today can build on solid foundations a legal framework to create a conducive business and investment climate.

However, the country faces several **challenges**, the most alarming being security, sovereignty and the struggle for control of its war-torn regions. These severe handicaps make it even more necessary to build a solid legal framework which enshrines strong property and contract rights and protection against political risks and, to some extent, offsets the huge security risks that prevail in much of the territory.

There is also a need for a smooth transition from a public-sector dominated economy into a more diversified economy where private investment brings its contribution to economic growth, creation of jobs and access to global value chains. Iraq is now engaged in conducive **investment reforms**. Establishing, financing and insuring projects now benefit from a stronger legal framework which provides guarantees to alleviate security risks and intends to streamline procedures to facilitate investment projects. It is an important initial step which could lead to further impact (even more when the security situation will improve) if accompanied by strong political vision, institutional stability and co-ordination, business-related measures and improved communication.

This chapter will (1) take stock on the main features and improvements of the amended Investment Law, (2) review Iraq's international framework for investment, and (3) highlight the needed consistency with the general business-related framework, constituted by the laws, regulations and procedures relevant for doing business in Iraq and that apply across the board to all investments. Each section advises on future steps to continue improving the investment climate in Iraq.

¹⁷ The Hammurabi Code is one of the first comprehensive legal codifications that dates back to the 18th Century BCE. Claude Hermann Walter Johns, Babylonian Law, The Code of Hammurabi, *Encyclopedia Britannica 11th edition* (1910-1911), available at: www.fordham.edu/halsall/ancient/hamcode.html.

1. The legal regime governing investment in Iraq

In a first effort to attract private investment, the **Investment Law No.13** of 2006 was approved by the Parliament in October 2006 and became effective in January 2007. It was then subjected to two amendments. The 2009 amendment was completed with implementing regulations in 2010. The most recent amendment was enacted by the Parliament in November 2015 after a third reading and published in the Official Gazette in January 2016. The Investment Law of Iraq is therefore constituted by Law No.13 of 2006 and its two sets of amendments enacted in 2009 and 2015. The Kurdistan Regional Government (KRG) also has a specific law, the Kurdish Investment Law No.4 of 2006.¹⁸

The OECD Iraq Project analysed and drafted **recommendations** for the second amendment to the 2006 Investment Law. It then conducted a workshop with key stakeholders to discuss the amendment in light of its recommendations. They were submitted to the government and some were incorporated into the final version of the amendment.

The Investment Law of Iraq follows most **patterns** contained in investment laws or codes worldwide and its most recent amendments are in line with good practices. It typically provides guarantees and protection, establishes an institutional framework for investment policy, promotion and facilitation, sets out the conditions for approval and licences, and offers incentive packages. Both amendments sought to streamline procedures (including those granting licences and incentives), strengthen decentralisation, and address specific constraints facing investors in Iraq, particularly land allocation and ownership. They also provide additional tax incentives and give a special place to development of real estate and housing projects.

However, the text lacks **legibility** for investors. The 2006 Investment Law was subject to two amendments which modified specific articles but has not been consolidated. This approach is in line with the domestic legislative tradition, but the result is a text that is difficult to read, not user-friendly and not easily accessible for investors.

Now that the Law has been enacted, there is strong need for **communication** acknowledging an important reform conducted by the Iraqi government despite instability. This report will contribute to the communication efforts to be conducted.

Advice on future action:

- Communicate on the revision of the investment legal framework which constitutes a signal to the international community of the State's openness to foreign investors.
- Translate the consolidated text of the Law into English and other key languages.
- Prepare promotional materials that focus on main features of the Law and highlight its provisions answering to needs or concerns of foreign investors.
- Post the Law, its amendments and other promotional materials on the National Investment Commission website.

¹⁸ This law will not be analysed in the framework of this study.

The Investment Law has two important features

A basic feature: the Law applies to both foreign and domestic investors

The Investment Law provides a legal framework for both foreign and domestic investors, facilitating their investment in Iraq and providing them with the same incentives. The signal is clear: the focus of the Investment Law is on **private investment** rather than exclusively on foreign investment. It responds to Iraq's need to encourage private investment into an economy that has long been predominantly driven and controlled by the public sector directly through the state or through state-owned enterprises. The provision stipulating that investors, whether foreign or domestic, are subject to the same obligations,¹⁹ makes the Law a balanced instrument.

The approach is consistent with international good practices. However, it addresses only partially **foreign investors'** need to see their special status acknowledged and to receive protection and guarantees inherent to their alien character. Because the Law applies on foreign and domestic investors alike, it does not fully address the expectations of foreign investors. Countries that have used a similar approach have dealt with these downsides by completing the single investment statute by a specific chapter in the law (e.g. Chile), a specific law on guarantees to foreign investors (e.g. Turkey) or cross references (e.g. Bulgaria). The approach chosen by Iraq highlights the need, as mentioned above, to prepare materials clarifying the way the Law responds to specific risks and needs inherent to foreign investors.

The sectoral approach

The Investment Law allows both foreign and Iraqi investors to invest in **all economic activities** except, as in many other countries, oil extraction and production, and banking and insurance. The Law has not used the gradual sector-by-sector liberalisation approach. Iraq's decision to focus on all sectors of the economy (with the exception of the above-mentioned sectors) responds to both international good practice and to difficulties inherent to the Iraqi economy that still relies heavily on an exhausted public sector. Similarly, the Law does not contain ownership requirements and foreign investors may own 100% of an investment project as also stipulated in the Companies Law. Iraq has leapfrogged the gradual opening process adopted in other countries and regions. Its Investment Law thus makes it a very **open economy** which is clearly seeking to diversify and become stronger by attracting private investment.

When it comes to **liberalisation**, most countries have gradually shifted from a sector-based to a general approach that allowed investment in all economic sectors. They initially drew up lists of sectors closed to investment – either in their investment legislation or in separate instruments, e.g. Jordan's regulation on foreign investors. With globalisation, however, and the gradual opening-up of economies, the list of reserved and closed sectors has shrunk dramatically in recent decades across all regions. Tunisia and Morocco, for example, have followed the trend in their current revisions of their investment legislations. Iraq has not taken gradual approach – it has liberalised on grand scale.

Singling out the **oil-and-gas** and banking-and-financial sectors is a wide-spread practice, as they come with specific constraints and impacts on the economy of a country. In practice, though, there may be missed opportunities for projects that are linked to major oil and gas exploration – e.g. provision of services, materials and products to the oil industry. It would be relevant to bridge the

¹⁹ Article 10.1: Iraqi or foreign investors shall enjoy all benefits, facilities and guarantees, while they shall be subject to the obligations provided for under this law.

projects eligible under the Investment Law and the oil and gas projects to provide for greater opportunities in a sector that will continue for the years to come to be leading the Iraqi economy.

Most important protection and guarantee provisions are contained in the Law

The Investment Law of 2006 as amended contains most important protections and guarantees for foreign investors. As mentioned, it provides the same guarantees for foreign and domestic investors. The analysis below looks at the Law from the perspective of foreign investors, with their inherent risks and needs.

Protection against expropriation

The Iraqi Constitution (Article 23) prohibits expropriation, unless for public purpose and in return for just compensation. It stipulates that expropriation must be regulated by law, but no specific expropriation legislation has been drafted.²⁰ The Investment Law (Article 12) also stipulates that no investment project may be seized or nationalised, unless a final court ruling states otherwise. Including such a guarantee in the investment framework makes it a stronger for foreign investors as, with access to international arbitration, it may become actionable before an arbitration tribunal.

Repatriation of capital and returns

The Investment Law (Article 11) allows investors to repatriate foreign capital brought into Iraq, as well as any profits earned, pursuant to the instructions of the Central Bank of Iraq, after paying all taxes and debts owed to the government and all other authorities. Two issues arise from this provision vis-à-vis foreign investors. First, as the Law is based on non-discrimination, it does not define the notion of 'foreign capital' (unlike most investment laws), which may give leeway in interpretation. Second, foreign investors claims that tax clearance from the authorities is long and cumbersome, restraining *de facto* effective transfer of funds.

Foreign workers

While Iraqi workers enjoy priority in recruitment and employment, the Investment Law (Article 12) allows investors to employ foreign workers. It also entitles non-Iraqi workers the right of residency in Iraq and the right to transfer their salaries outside Iraq.

Additional rights for foreign investors

Foreign investors are able to trade in shares and other securities listed on the Iraqi Stock Exchange. They are allowed to insure projects with any national or foreign insurance company. They can open accounts in Iraq in local or foreign currencies with Iraqi banks or banks outside of Iraq (Article 11).

The Law offers a careful access to international investment arbitration

One of foreign investors' major concerns is to be able settle their disputes before tribunals other than a domestic court in the host country. Foreign investors particularly favour arbitration, be it

²⁰ The Iraq's Commercial Court, established in 2010, is in charge with resolving expropriation cases. The government also set up in 2003, the Commission for the Resolution of Real Property Disputes (CRRPD) to resolve property disputes arising from the previous regime.

international or domestic. However, States may see international arbitration as an unpredictable, lengthy and costly process.

Under the amended Investment Law, disputes between parties over its application may be adjudicated by international arbitration – a major change from the previous versions of the Law which only allowed recourse to domestic courts. However, the provision for international arbitration is timid and careful. Indeed, before an investor can resort to arbitration, “an arrangement [has] to be concluded between the two parties, pursuant to which arbitration procedures, arbitration entities/parties and the applicable law shall be determined” (Article 27). In other words, a specific investment agreement between the NIC or a PIC and foreign investors including an arbitration provision should be concluded. It is **not a direct consent** to or availability of international arbitration under the Law. It is a possibility, a derogation that is available and that required case-by-case negotiation and inclusion into an investment agreement.

The Investment Law takes a careful approach to arbitration: it strikes a pro-arbitration stance, which reassures foreign investors, but without overcommitting or surrendering too much regulatory leeway. On the one hand, it provides the authorities with **flexibility** through the conclusion of a specific agreement for each project. On the other hand, it limits broad access to arbitration for foreign investors and provides for **discretion** in the negotiation of individual contracts or agreements. A number of countries have taken the same approach as Iraq – either because they seek to move gradually towards full access to arbitration or, on the contrary, because they wish to restrain or control access to arbitration, as this means of dispute settlement is subject to controversies.

Iraq ratified the 1965 International Convention on the Settlement of Investment Disputes (**ICSID**) between States and Nationals of Other States on 17 November 2015, and it entered into force on 17 December 2015 (ICSID, 2015). The move was another positive signal for foreign investors, by giving them access to an international and independent dispute settlement forum. ICSID Convention establishes an arbitral tribunal to resolve an investor-state dispute, and enforcement of ICSID awards is automatic and immediate. In practice, though, Iraq’s ratification of the Convention will have a limited impact at this stage, given the small number of bilateral investment treaties currently in force. It will, though, influence future treaty practice.

The **revision of the Arbitration Law** is also under discussion on the basis of the United Nations Commission on International Trade Law (UNCITRAL) model law. The Project organised a workshop in March 2016 on international investment agreements at the request of Iraqi stakeholders. It actually comprised a session on domestic arbitration and the enforcement of awards with the participation of the UNCITRAL secretariat. Iraq, to all appearances, is moving towards widening the use of arbitration to settle business- and investment-related disputes. Following the adoption of the Arbitration Law, Iraq should consider signing the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

In light of these developments, Iraq needs to have a clear **awareness and understanding** of the implication of the new framework it is setting up to address investment disputes. First, it should adopt a harmonised approach to the conclusion of investment contracts containing arbitration clauses. Second, consistency should be sought between the national legal framework and its international obligations, in particular under bilateral investment treaties which may give unconditional access to international arbitration. Third, Iraq needs to be prepared to deal with investment disputes in case they arise. Indeed investor’s claims against the State raise concerns. International arbitration procedures are technically complex, may be lengthy and costly, and outcomes can be unpredictable and can have a negative reputational impact.

These challenges call for the establishment of a **mechanism to prevent and settle potential investment disputes**. Such a mechanism would help to settle disputes between the state and an investor at an early stage and prevent them from escalating into international arbitration cases and – if they do – to manage them efficiently. There are a number of formal and *ad hoc* policies and practices for preventing disputes – e.g. laws and regulations, early alert mechanisms, institutional arrangements, and training courses. As for Iraq, it should consider, at a later stage, setting up an independent dispute prevention and settlement body in the National Investment Commission. Like an ombudsman, it would counsel foreign investors facing difficulties prevent potential disputes, handle them in case they arise, and act as co-ordinator between ministries dealing with investors.²¹

Advice on future action:

- Finalise the drafting the domestic Arbitration Law (based on UNCITRAL and OECD instruments and recommendations) and ensure its enactment.
- Strengthen recourse to alternatives to arbitration such as mediation and conciliation.
- Consider the establishment of an arbitration centre to hear domestic and international investment disputes, drawing on the experiences of the International Commercial Arbitration Center of Najaf²² and the Cairo Regional Centre for International Commercial Arbitration.²³
- Sign the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- Better define and harmonise investor-state dispute settlement provisions in investment agreements and contracts.
- Put in place a dispute prevention ombudsman-type body within the NIC.
- Raise awareness among the Iraqi judiciary, particularly the Commercial Court, of arbitration and foreign arbitral awards and build their skills and capacities.

Incentives are provided by the Investment Law

Timid move towards access to land

A major **challenge** for foreign investors in Iraq is access and titles to land for investment projects. The prevailing condition of disputed sovereignty over the territory and the security risks add an extra dimension to foreign investors' need to assert their rights to land, not only to obtain compensation for losses in case of strife. Addressing the issue of availability, access and ownership of land is a major non-fiscal and non-financial incentive that is now included in Iraq's investment framework and needs to be further strengthened.

The Iraqi Constitution does not allow foreigners to possess immovable assets, unless permitted by a rule of law. The 2006 version of the Investment Law complied with that fundamental rule. Changes came in 2009 when an amendment gave foreign investors an **exceptional right to own land** in Iraq,

²¹ Several examples could be used to support Iraq in this endeavour. For instance, South Korea has set-up a successful Ombudsman office within its investment promotion agency, to provide impartial assistance in resolving grievances and disputes between investors and the State.

²² www.icacn.org/en/.

²³ <http://cricica.org.eg/>.

but only to develop real estate and housing projects and for a limited period of time, which made land ownership akin to leasing. Indeed, the Law states that the investor shall “sell or rent” the buildings to Iraqi citizens once they have been completed (Article 10.2). Land ownership is thus allowed for a very specific purpose. Subsequent regulations, however, have entitled investors to obtain land for residential housing projects with no initial down payment. Instead, the government is compensated by receiving a certain percentage of units built once the project has been completed.

For non-residential projects, **leasing and renting** is possible. In other words, for the implementation of commercial, industrial, agricultural, service, recreational and other investment projects, leasing and allocation of government land is allowed, but not ownership.²⁴ The terms and duration of these leases vary, depending on the type of project and negotiations between the parties. Leases may not, however, exceed 50 years, with a possible option for renewal.

With regard to industrial projects, there has been a timid move towards granting investors access to land. The 2015 amendment of the Investment Law stipulates that Iraqi investors may acquire the ownership of land belonging to the state and the public sector for industrial projects and that they may form funding and management **partnerships with foreign investors**.

A new concept: the developer

The 2015 amendment to the Investment Law introduced the concept of “developer”. The developer is a person who holds a licence for building **housing** estates and investing in “safe investment zones” with the right to transfer ownership of part of the project to sub-developers.²⁵

This new concept is intended as a response to the need to promote private investment in publicly owned projects and to boost the house-building sector. Another advantage is that it attracts small and medium investors, or sub-developers, who cannot afford an entire construction project. However, it would be useful to clarify the role and the status of the developer, through a special bylaw or regulation, to avoid creating distortions vis-à-vis other investors. In addition, a link with any legislation related to privatisation, industrial development or public-private partnerships (PPPs) should also be ensured as related projects could also benefit from the developer status.

Fiscal incentives

Under the Investment Law, investors in all Iraq’s regions enjoy fiscal incentives (Box 8). Exemptions from tax and customs duties are rather standard in both duration and scope. They do not stand out compared to a number of other developing countries, nor are they tools for aggressively marketing the country – though there is no tool available for assessing and comparing levels of incentives or their impact. A conservative approach, however, has the merit of avoiding a race to the bottom and sustaining fiscal income, while not penalising investment in Iraq. Nevertheless, a **cost-benefit analysis** would help assess the impact of incentives on Iraq’s fiscal balance and attractiveness to investors.

²⁴ Regulation No.7 of 2010 on Sale and Lease of Real Estate and Land Property of the State and Public Sector for Investment Purposes (as amended).

²⁵ The developer has the right to transfer the ownership of part of the investment project after having accomplished 40% of the project to the sub-developer with the approval of the Commission which had granted the licence, and the sub-developer shall not have the right to transfer the ownership of the investment project until after the whole project had been fulfilled (Article 10.2.G).

Box 8. Major fiscal incentives contained in Iraq's amended Investment Law

- Exemption from taxes and fees for a period of 10 years from the date of commencement of commercial operations in accordance with the areas of development defined by the Council of Ministers at the suggestion of the National Commission for Investment based on the degree of economic development and the nature of the investment project.
- Increase of up to 15 years of the exemption period granted by the NIC, if the participation of Iraqi investors increased and if the Iraqi Investor shares in the project was more than 50%.
- Exemption of customs duties for three years on assets imported in projects that obtained an investment licence.
- Additional exemptions from duties and taxes on imports of furnishings for hotels, tourist institutions, hospitals, health institutions, rehabilitation centers and educational and scientific organisations projects, at least once every four years.

Source: Articles 15 and 17 of the Investment Law (Articles 10 and 11 of the 2015 amendment).

Additional incentives

The Investment Law grants some additional incentives, though it is vague on how they are implemented. On **infrastructure**, the Law stipulates that: “Local authorities are committed to deliver infrastructure services to the extent of foreign investment projects. The developer and the investor may agree with the concerned authority to deliver infrastructure services to the project” (Article 10). There is also a provision on reviving and implementing **stalled projects**. As for **access to finance**, the 2015 amendment states that foreign investors in partnership with Iraqis who have completed 25% of their project may benefit from loans and financial facilities from public banks – a provision that hitherto applied to domestic investors only. In return, the Iraqi labour force will be employed proportionately to the size of the loan.

More transparent procedures: a guarantee for investors and the authorities

The 2015 amendment to the Investment Law contains provisions on how the authorities should proceed if investors fail to abide by the terms of an investment licence. This provision is essential in Iraq's current context, where numerous projects are initiated but not carried through. It is important for investors and the authorities to have clear conditions on the **cancellation of investment licences** in order to avoid speculation in licences, investors denied access to investment projects, and disputes over revoked or cancelled investment licences. The detailed procedure spelled out in the Investment Law can thus be considered a good practice, as it averts unnecessary disputes and grievances.

2. Strengthening the investment climate for foreign investors: the international framework for investment

In many countries, the domestic regulatory investment framework is complemented by international obligations stemming from bilateral or multilateral investment agreements. Such agreements typically grant foreign investors an advantageous legal and fiscal situation by establishing host-state obligations vis-à-vis foreign investors, as well as an enforcement mechanism based on

international arbitration. While domestic investment law often covers domestic and foreign investors alike – as in Iraq, international investment agreements (IIAs) formally benefit only foreign investors.²⁶

Iraq is engaging in bilateral investment treaties negotiations

Unlike many countries in the region, Iraq has only concluded a few bilateral investment treaties (BITs). While Iraq has only signed eight BITs, Egypt and Jordan have signed over 100 and 54 BITs respectively, beginning in the 1980's. Today, the Iraqi authorities have decided to engage in the negotiation of BITs in concomitance to the enactment of the new Investment Law. This effort to conclude IIAs is driven by the belief that IIAs offer additional assurances to foreign investors and thus encourage investment, a line of thought that has yet to be conclusively proven. Should the Iraqis pursue this approach, negotiators should be well informed on latest trends in IIAs and properly trained to adequately balance the rights and obligations of the parties and promote more responsible and sustainable investments.²⁷

According to the authorities, by the end of 2014, Iraq has signed **eight BITs** with Armenia, Belarus, France, Germany, Japan, Jordan, Kuwait and Morocco, out of which two are in force. The first BIT was signed in 1964 with Kuwait and was reviewed in 2013. The latest BIT was concluded with Belarus in 2014. The BIT with Japan, signed in 2012, was ratified in February 2014. The BITs with France and Germany were signed in 2010 but not ratified, as conformity issues have been raised in light of EU investment competencies. As for agreements to avoid double taxation, Iraq, through the General Authority for Tax, has signed five double-taxation treaties (DTTs) with Bosnia and Herzegovina, the Czech Republic, Jordan, Oman, and the Council of Arab Economic Unity.

Iraq is also party to two **regional investment agreements**. Iraq ratified the 1981 *Agreement on Promotion, Protection and Guarantee of Investments amongst the Member States of the Organization of the Islamic Conference* (the OIC Investment Agreement), as well as the 1980 *Unified Agreement for the Investment of Arab Capital in the Arab States* (the Arab League Investment Agreement). According to the League of Arab States secretariat, the latter Agreement has been amended in 2013 and Iraq ratified the amendment early 2016. Both these agreements create obligations similar to those contained in BITs, and thus add over 60 bilateral IIA relationships, albeit mainly with countries that are not expected to export large amounts of capital to Iraq.

The **OECD Iraq Project** has been building capacities of Iraqi officials on international investment agreements through a series of workshops. It is recommended that Iraq devises a negotiating strategy which defines key targets and objectives and which ensures that its agreements are

²⁶ Despite the formal limitation to foreign investors, the overwhelming majority of IIAs in force today make it easy for beneficial owners from the host state to benefit from treaty protections by investing through an entity incorporated in a foreign jurisdiction, a practice known as round-tripping.

²⁷ BITs typically provide for non-discrimination in the form of national treatment and most-favoured nation treatment and non-impairment of investors operation in the country. They usually provide for fair and equitable treatment in accordance with customary international law as well as full protection and security, for protection against unlawful expropriation and freedom of transfer of funds including capital and returns. They also typically provide for a right for the foreign investor to access international arbitration in case of a dispute arising with the host State. In recent years, based on a growing jurisprudence, the basic terms of BITs have evolved to provide more clarity to the core concepts of investment protection, to reaffirm the State's right to regulate for public purpose, to reassess certain core provisions such as the ones on investor-State dispute settlement.

balanced and protect Iraq's right to regulate, especially in periods where the country's public policies may evolve.

Iraq also needs to comply with other investment-related international obligations

In addition to bilateral and regional agreements relating only to investment, Iraq also concluded other **economic and trade agreements** that include investment-related provisions and should be considered part of the country's international investment framework.

Iraq concluded a *Trade and Investment Framework Agreement* (TIFA) with the United States in 2005. Entered into force in 2013, this Agreement focuses chiefly on investment promotion and does not provide for investor protection provisions. Iraq also signed in May 2012 a *Partnership and Cooperation Agreement* with the European Union. While covering a large number of co-operation areas, it encourages private sector development through trade and investment and provides for non-discrimination. Ratification is pending, but the provisions on trade and investment apply on a provisional basis (Box 9).

Box 9. The investment provisions of the EU-Iraq Partnership and Cooperation Agreement (2012)

The Agreement has been concluded in 2012 for 10 years (renewable) with the view to enhance political dialogue and cooperation in the field of foreign and security policy but also to "promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable economic development".

The Parties agree on the need to develop the private sector and to "cooperate in order to develop a market economy in Iraq, by enhancing the investment climate, diversifying the economic activity, booking progress with the privatisation program and by improving other conditions for accelerating private sector job creation." Establishing a favourable climate for investments, both domestic and foreign, encompasses providing adequate protection on the basis of non-discrimination, transfer of capital and exchange of information on laws, regulations and administrative practices, but also on investment opportunities. The appointment of a "contact point" to facilitate trade and investment is planned. Further liberalisation, in particular on trade in services, is foreseen "as circumstances allow, including the situation arising from the accession of Iraq to the WTO" under discussion since 2004.

While promoting dialogue and co-operation on security, justice, freedom, social and human development, employment, migration and corruption, the Agreement covers a wide range of business-related issues, such as public procurement, state trading enterprises, intellectual property protection, science and technology, industrial and SME policies co-operation, standards and conformity, co-operation on tax, customs, statistics and specific sectors (agriculture, energy, transport, telecommunications, tourism, financial services). At the institutional level, it establishes a ministerial Cooperation Council which shall meet once a year.

Ratification of the Agreement is still pending, although some of its provisions, including Title II on "Trade and Investment", have applied on a provisional basis since August 2012 (Article 117).

The *Greater Arab Free Trade Area* (GAFTA) and the three customs and free-trade agreements with Jordan, Syria and Iran also deserve mentioning. They relate to trade liberalisation and, although they include trade in services which encompasses some forms of investment, they do not offer substantive investment protection. Iraq is still not a member of the World Trade Organization, but has had an observer status since 2004. Acceding to the WTO would require it to strengthen its investment framework with regard to the liberalisation of operational conditions, particularly through the *Trade-Related-Investment Measures* (TRIMs) and the *General Agreement on Trade in Services* (GATS). It would also benefit from the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs) which would bring its IPR protection up to multilaterally accepted standards, considering that strong, well protected IPRs are important to foreign investors.

Iraq has also joined multilateral conventions relating to investment. Iraq has been a member of the *Convention establishing the Multilateral Investment Guarantee Agency* (MIGA) since 2008 and of the *Inter-Arab Investment Guarantees Corporation* (IAIGC) since 1971. To date however, Iraq has not made full use of its membership. It could strengthen its co-operation with these multilateral and regional agencies to add insurance and other guarantees to major investment projects. In November 2015, Iraq has also ratified the Convention on the Settlement of Investment Disputes (ICSID), so sending a positive signal to international investors. To complement this step, it is recommended that it sign the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Membership in the New York Convention to make arbitral awards enforceable.

The international investment framework needs consistency

To ensure **consistency**, the Investment Law cross references these international investment treaties as follows: “The foreign investor shall enjoy additional privileges in accordance with international agreements signed between Iraq and his country or multilateral international agreements which Iraq has joined” (Article 22). This provision ensures that there is no incoherence between the basic provisions of the Law and the protection and guarantees granted by BITs and other IIAs, and.

Consistency is particularly important when it comes to **international arbitration**, a means to solve disputes between the state and the foreign investor. The new Investment **Law** provides for the possibility to resort to international arbitration but subject to the conclusion of an agreement between the parties. **Contracts** concluded between the State and the investor also include their own provisions on dispute settlement. **BITs** may as well provide for arbitration to settle disputes relating to alleged violation by the State of investment protection standards. It is essential that the scope of dispute settlement provisions offered to foreign investors in each of these three instruments is clearly delineated.

The two regional instruments ratified by Iraq may also raise **concerns** over their possible implications for investor-state disputes. The OIC Investment Agreement is an old generation treaty with vague protection concepts and complex definitions of the investments that it covers. The 2013 Arab League Amended Agreement has modernised the previous version of 1980. Both agreements allow access to investment dispute settlement for foreign investors through various mechanisms. They have provisions for the creation of courts before which covered foreign investors could seek to settle their disputes. However, the Organ for the Settlement of disputes, created by the OIC Agreement was never put in place, while the **Arab Investment Court** has only heard seven cases since early 2003. There has consequently been little or no opportunity to develop case law and build experience in investment dispute settlement. The two agreements do allow access to other international arbitration mechanisms to settle investor-state disputes.²⁸ It is important, therefore, that Iraq fully realises and assesses the implications of being a signatory of agreements, which, unlike the Investment Law, afford unconditional access to international arbitration. What are the costs and benefits of being part of the agreements which create investment courts and give access to international arbitration? Are the OIC

²⁸ The OIC Investment Agreement stipulates that until the Organ for the settlement of disputes is established, disputes that may arise shall be entitled through conciliation or arbitration. In the case *Hesham al-Warraq vs. Indonesia*, the tribunal interpreted the clause as an open offer to arbitration, though contested by the Government of Indonesia. While the 1980 Arab League Investment Agreement did not provide access to international arbitration, the 2013 amendment does. Under this new Agreement, parties may resort to domestic courts, to the Arab Investment Court, or to any other alternative dispute settlement mechanisms, including mediation, conciliation and arbitration (an annex details the procedural issues).

and Arab League agreements consistent with the BITs that Iraq has signed with countries also signatories of the two agreements?²⁹ Indeed, are they consistent with Iraq's treaty policy and its new Investment Law?

Advice on future action:

- Define whether a BIT negotiating strategy is in Iraq's best interest in the current circumstances and, if so, adopt clear objectives and guidelines.
- If it appears advisable to enter into new agreements, prepare a model BIT. It should incorporate the most recent elements of protection, balance rights of investors and of the state in order to regulate for public purpose and, prior to engaging in actual negotiations, assess to what extent Iraq is in a position to impose essential elements of its model BIT.
- Assess membership in regional investment agreements to avoid inconsistency with other agreements, policy and legislation and to prevent treaty shopping through the use of the most-favoured-nation treatment (MFN) provisions.
- Strengthen cooperation with international investment insurance agencies to mitigate country risk and add insurance protection to major investment projects to make them more attractive.
- Sign the New York Convention on arbitral awards and strengthen the domestic framework on arbitration based on the UNCITRAL Model Law.
- Consider reactivating the accession process to the WTO when the situation will allow.

3. The general legal framework for business: aiming for the necessary consistency

While an investment-specific legal framework sends positive signal to foreign investors, national business-related laws and regulations are also critical to attracting and retaining investments. The investment framework and the business general framework combine to contribute to the overall economic climate of a country seeking to draw domestic and foreign enterprises.

The general framework for doing business determines the conditions for companies' establishment and operation in a country. It also provides protection for such fundamental rights such as property rights, contract enforcement and access to justice that are equally important to domestic and foreign investors in their day-to-day operations. The framework may change and evolve with regulations and the strengthening of rules, rights and obligations, as the host country continues to regulate for public purpose and reinforces the rule of law. It is of the utmost importance, therefore, for a country building its investment framework to ensure consistency with the general framework for doing business and that both regimes are strengthened in parallel.

²⁹ Jordan and Kuwait also ratified the 2013 Arab League Investment Agreement and signed a BIT with Iraq.

The framework for doing business in Iraq remains weak

A tool for assessing the general business framework is the World Bank's *Doing Business* project. It provides objective measures of business regulations and their enforcement across 189 economies. It analyses the rules that establish and clarify property rights, minimise the cost of resolving disputes, increase the predictability of economic interactions and provide contractual partners with core protections against abuse.

Iraq's doing business framework is very weak and has worsened in the recent years. Iraq ranks 161st out of 189 countries, which points to serious issues in most indicators (Table 1).

Table 1: Ranking of Iraq in the Ease of Doing Business (out of 189 economies) by topic

Topics	DB 2016 Rank	DB 2015 Rank	Change in Rank
Starting a Business	154	144	↓-10
Dealing with Construction Permits	147	145	↓-2
Getting Electricity	106	102	↓-4
Registering Property	117	116	↓-1
Getting Credit	181	180	↓-1
Protecting Minority Investors	115	114	↓-1
Paying Taxes	59	57	↓-2
Trading Across Borders	178	178	No change
Enforcing Contracts	122	119	↓-3
Resolving Insolvency	189	189	No change

Source: Doing Business database.

Iraq has set up a Committee to reform the business environment with a view improve its position in the World Bank's *Doing Business*. It is a good step which should be embedded into the wider legislative reforms process to bring more consistency to regulations that govern business entry and operations. To build a more enabling framework for doing business, Iraq must substantially upgrade and modernise its currently outdated legal framework to bring up to the standards of international business transactions today.

The business legal framework needs modernisation and more coherence

Once their licence approved under the Investment Law and their business established, foreign and domestic investors must contend with the entire framework for doing business. Investors typically look for the strengthening of the general business operation framework in the fields of company, customs, labour and environmental laws, in tax and finance, in access to justice and the enforcement of contracts.

This section considers some legislative instruments that are particularly relevant to foreign investors – without the aim of being exhaustive. Iraq should contemplate modernising and upgrading them and ensure that they do not overlap with the new Investment Law and are consistent with it and with the international investment-related agreements that it has recently signed, i.e. bilateral and regional investment agreements. It should take care not to create two separate regulatory regimes – one for foreign investors and one for general business.

Investors seeking to establish or expand their operations in Iraq must grapple with numerous legal issues. Of particular relevance are the following:

- **Company ownership and control.** The Companies Law³⁰ provides the legal framework for foreign investors who start a business in Iraq or buy stakes in Iraqi companies. Foreign investors are entitled to own 100% of an Iraqi company's equity. There are restrictions on the nationality of shareholders only in specific sectors (oil and gas, defence, and insurance and banking), where prior approval from the competent government entities is required.
- **Public-private partnerships.** Investors can enter into partnership agreements or joint ventures with state-owned enterprises (SOEs),³¹ provided that their purpose is consistent with the SOE's statutes and the Cabinet gives its approval. This form of partnerships offered by the legal regime is a positive signal showing that Iraq is open to its SOEs benefiting from private sector capital, skills and expertise to develop long-term and vital projects for the economy. In practice however, putting such partnerships in place has proven difficult given the complexity of approval and administrative procedures. A law on public-private partnerships designed to increase the private sector's role in Iraqi economic development is being drafted. It especially targets projects pertaining to infrastructure and the operation and maintenance of public services, as well as activities that create large numbers of jobs for the unemployed and young people entering the labour market. When the law is enacted, the General Companies Act will need to be amended accordingly.
- **Competition.** In January 2010, the Iraqi government approved a set of competition laws,³² designed to ensure fair competition for locally produced goods and services. However, the Competition and Consumer Protection Commissions created by these laws have yet to be established. Without the commissions, investors will have no recourse against unfair business practices such as price-fixing by competitors, bid rigging, or the abuse of dominant position in the market (U.S. Department of States, 2015). The prominent role of SOEs further undermines the competitive landscape.
- **Labour market.** Efficient labour market regulations that are conducive to employment are important for investors. In February 2016, Iraq passed a new Labour Law No. 37 of 2015, which superseded the 1987 Labour Law. Drafted with the assistance of the International Labour Organization (ILO), it contains new provisions governing recruitment procedures and the termination of employment contracts, and aims to bring Iraqi labour regulations into line with current international standards. However, it is difficult to say whether the new Labour Law reform will ease the rigid legal framework left by the previous law enough for foreign employers and expatriates. The Ministry of Labour and Social Affairs is responsible for the implementation of the Law and sets the minimum wage for unskilled workers. In May 2016, Iraq's minimum wage was USD 4.5 per day, one of the lowest in the MENA region.
- **Intellectual property rights.** IPRs are an incentive for research and development, so contribute to productivity gains. Although Iraq signed international IPR-related conventions and issued laws and regulations, its legislation is outdated. The government has drafted a

³⁰ Companies Law No.21 of 1997, amended in 2004, and Regulation No.5 of 1989.

³¹ Article 33.B of the Investment Law, as amended, and Article 15 of the General Companies Act No. 22 of 1997, as amended.

³² The Competition Law, the Law on the Prevention of Monopoly No.14, the Consumer Protection Act No.1 and the Law on the Protection of Iraqi Products No.11.

new IPR bill, but it has not yet been enacted. Iraq should strengthen its intellectual property regime to incite foreign technology holders to invest.

- **Access to finance.** The effectiveness of security and bankruptcy laws is critical to the overall investment climate, as strong creditors' rights and well-designed laws facilitate lending and access to loans, so stimulating private sector development and investment. Despite bankruptcy regulations, the mechanism for resolving insolvency in Iraq remains opaque (ibid.). The administration of collateral is currently governed by multiple laws which have not been revised for a long time. They recognise several basic types of collateral, and allow foreign lenders to take collateral. It would be advisable to unify and modernise the laws to improve access to credit.
- **Tax regime.** Designing a tax regime attractive to investment while sustaining revenue is a challenge. The main source of tax legislation in Iraq is Federal Income Tax Law No. 113 of 1982, as amended in 2003. Corporate income tax is charged at a flat rate of 15%. There are no municipal taxes. The tax authority is the General Commission for Taxes (GCT). The Investment Law requires investors to abide by provisions in Commercial Bookkeeping Regulation No. 2 of 1985 for filing for income tax returns.
- **Access to land.** Land tenure constitutes a major obstacle for investors in Iraq (Chapters 2.2 and 3.1). A number of laws and decrees regulate access to land in Iraq, in addition to the new regime ushered in by the amended Investment Law. Further consistent legislative reforms are needed to facilitate access to land, in particular for industrial projects.
- **Contract enforcement.** "Good enforcement procedures enhance predictability in commercial relationships by assuring investors that their contractual rights will be upheld promptly by local courts" (OECD, 2015b). In November 2010, the Higher Judicial Council established the first Commercial Court of Iraq, a specialised-jurisdiction court that hears business disputes and is open to foreign investors with commercial complaint. It began hearing cases in January 2011. Although it has jurisdiction only over cases involving parties in Baghdad province, it would strengthen contract enforcement if the court was made more efficient and was replicated in other regions when appropriate.
- **Corruption.** Integrity is a crucial determinant in a favourable investment climate. However, corruption is still a serious impediment to doing business in Iraq. The country ranks 161st out of 168 countries in the 2016 Transparency International Corruption Perceptions Index. It ratified the United Nations Convention against Corruption in March 2008, launched a 2010-14 National Anti-Corruption Strategy, and has put in place a Joint Anti-Corruption Council. However, it is far behind in implementing anti-corruption measures and the situation even worsened. Strengthening integrity and transparency help reduce investor risks and promote efficiency in public spending. The existing legal and institutional framework for public procurement in Iraq is yet to be implemented (Box 10). Finally, while the authorities should make fighting corruption a top priority, investors should, for their part, abide by principles of responsible business conduct, e.g. the OECD *Guidelines for Multinational Enterprises* (2011), when they invest in Iraq.

Box 10. Improving the business climate through enhanced integrity in public procurement in Iraq

Because of its strategic nature and the sheer size of financial flows, public procurement is a government activity particularly vulnerable to corruption. In Iraq, it accounts for a large share of economic activity and most non-oil foreign commercial activity is tied, directly or indirectly, to it. Efforts to stamp out corruption in public procurement are thus a key consideration in action to restore trust in government action, lower the cost of doing business and encourage new investment in the country.

The OECD has actively supported the GoI in improving public procurement procedures and anti-corruption practices. It has helped build Iraq's anti-corruption capacity through seminars, training, expert coaching and publications on international investor exposure to integrity standards, including the OECD *Convention on Combating the Bribery of Public Officials in International Business Transactions* and the UN *Convention Against Corruption*. The OECD also conducted a Review of Iraq's Public Procurement Rules and Provisions and developed policy recommendations on further reform of its public procurement system, particularly on improving the basic legislative framework and the mandates and capacities of the different institutions involved. It presented its findings at the "National Round Table Meeting on Improving the Business Climate Through Enhanced Integrity in Public Procurement in Iraq" in 2013. The round table brought together Iraqi government officials, private sector representatives and the OECD to discuss the adverse effects of corruption on Iraq's business environment and the government's measures to reduce and prevent corruption.

Despite its recent efforts to streamline the procurement process in line with the OECD recommendations, the Iraqi government needs to do more against corruption in public procurement, which remains a serious cause of concern for investors.

Iraq's efforts to reform the legal framework governing investment should be acknowledged. They are an encouraging starting point to the prospect of further progress in facilitating investment through enhanced protection, incentives and exemptions, leveraging security risks. Such efforts should be incorporated into wider reform, which should include modernising and reforming the general framework for doing business in order facilitate foreign investment and boost local entrepreneurship.

CONCLUSIONS

The OECD Iraq Project worked on **improving the business and investment climate** in Iraq between December 2013 and June 2016. The Project built on the OECD's long-standing experience in the MENA region and, in particular, in Iraq, where it had supported the Iraqi government on various business-related issues since 2007.

Implementing a project in a **fragile and conflict-affected situation** is challenging. The Project regularly convened numerous stakeholders from different regions and backgrounds, representing various Iraqi institutions, the private sector and civil society. It sought constantly to adapt to the changing political environment and stakeholders' priorities. A number of **key lessons** from engagement in a fragile context emerged. Flexibility is needed to adjust to the evolving local situation and improve impact. Maintaining regular communication and bringing together the right stakeholders in a weak governance context are also essential to leveraging the scope and impact of activities. Ensuring project ownership, adjusting activities to changing priorities in consultation with stakeholders, and enhancing the public-private dialogue were further proofed elements in the efficient implementation of the Project. Above all, engagement in such a context needs to be conflict-sensitive if it is to avoid ease or solve tensions instead of complicating or aggravating them.

Policies to **promote investment** must adapt to fragile contexts, too. In Iraq, the continuing political instability, high transaction costs and information asymmetry undermine predictability and investor confidence. And if it is to meet its reconstruction needs and build a more diversified, resilient economy that is less dependent on the oil sector, Iraq must attract private investment. **Investment promotion agencies** play a central role in drawing investment. They can help to promote feasible investment by better marketing investment opportunities, facilitating investment, and targeting sectors, regions and investors accustomed to work in fragile and conflict-affected situations. Iraq's National Investment Commission (NIC) and its provincial branches, the Provincial Investment Commissions (PICs), are currently working to those ends. The government also needs to single out and remove critical, potentially "deal-breaking", **obstacles to investments**. In Iraq, issuing investment licences and allotting land constitute such hurdles – they delay, and even prevent, investment projects.

Building a **supportive legal investment framework** is also a strong signal to the international community that a country is committed to attracting investment. A fragile country, too, should pursue the reform of its legal framework to nurture an environment that enables investment once conditions improve. Accordingly, Iraq has decided to undertake investment legal reform despite its difficult situation, and the Project has been instrumental in supporting those efforts. The new amendment to the Investment Law, the enhanced openness to FDI regime, possibility to resort to international arbitration, the ratification of the ICSID Convention and a better understanding of the implications of international obligations (like the bilateral investment treaties it has signed) are positive signals to the international community that Iraq is trying to reform its investment climate in spite of such major challenges as its falling oil prices and dwindling budget, insecurity, weak institutional framework, and corruption.

As Iraq looks to the future, it should sustain its efforts to promote investment policy reform, improving its investment promotion capacities and offering investors a sound framework that is conducive to investment. A good investment climate, however, requires a **broader policy reform agenda** which will involve other key areas. Policy makers need to establish a **tax** system that encourages investment while meeting the country's revenue needs. **Trade** policy and practices – which include customs and other trade-related regulatory and administrative procedures – determine

the ease and speed of trade in goods and services and attractiveness to investment. A consistent policy approach to and an enabling, low-risk environment for **infrastructure** development projects help facilitate investment in infrastructure. To promote sustainable, **responsible investment**, governments should formulate and implement legal standards or adhere to international instruments – like the *OECD Guidelines for Multinational Enterprises* (2011). If fragile, post-conflict countries are to attract good investment and see projects implemented, it is particularly important that they strengthen their **public governance** and **anti-corruption** effort, areas in which they often score poorly. Other policy areas, including the promotion of small and medium-sized enterprises, innovation, entrepreneurship, skills development and gender empowerment, also stimulate the investment climate.

In order to successfully attract investors and investments that will support sustainable, inclusive growth and a stronger, more resilient economy, therefore, Iraq will need to take a **whole-of-government approach** to investment and develop a coherent investment policy that goes beyond investment policy and promotion alone.

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MENA OECD COMPETITIVENESS PROGRAMME
PROMOTING INVESTMENT IN A FRAGILE CONTEXT
THE OECD IRAQ PROJECT

Since 2007, the OECD Iraq Project has assisted the Government of Iraq on a wide range of economic policy initiatives and reforms. The last phase of the Iraq Project (December 2013 to June 2016), supported by the Swedish International Development Co-operation Agency (Sida), has focused on improving the investment and business climate.

The Iraqi government has significantly advanced on policy, institutional and legal reforms in the areas of investment policy and promotion. The OECD Iraq Project has actively supported these efforts through policy dialogue and capacity building.

Promoting Investment in a Fragile Context: the OECD Iraq Project provides lessons learnt from operating in the fragile context of Iraq. It presents recent reforms and discusses policy options in the areas of investment policy and promotion, taking into account the security and economic situation of the country with a view to build a more conducive and attractive investment climate supporting sustainable and inclusive growth.



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