3 Towards modernised legislative frameworks for investment

Regulatory predictability and certainty are essential to create sound and enabling investment environments. In a significant effort to mitigate their reputational risks as investment host states, MENA countries have embarked on a major drive to modernise and strengthen the regulatory corpus framing investment and business activities, and investment legislation has gained central importance in their regulatory reform agendas. This chapter gives an overview of the recent wave of legal amendments and looks at the commonalities and variations in the content and structure of MENA domestic legislative frameworks. It identifies patterns in their reform processes and provides policy considerations to further advance on the regulatory modernisation path.

Summary and policy considerations

Providing strong, clear and predictable guarantees of legal protection for investors is fundamental to reinforce investors' confidence and to mitigate perceived reputational risks as investment host states. Enforcing regulatory reforms to set the conditions for a healthy and sound investment climate is a key priority for the eight MENA economies covered in this report (MENA focus economies), where the business climate has, to varying degrees, suffered from the economic and political turmoil of the past decade. In the aftermath of the Covid-19 global crisis, it will be an essential element of governments' reform agendas for recovery.

Nearly all of the MENA focus economies have, in recent years, undertaken sustained legislative reforms to improve the frameworks governing the protection and facilitation of investment. Investment regulatory reforms that have been initiated or achieved have often been accompanied by a revamping of institutions governing investment, the adoption of aggressive incentives measures, steps to lighten administrative procedures, and a range of other legal amendments affecting the wider business climate. These different aspects are examined here and in subsequent chapters of the report. To achieve more enabling investment frameworks, MENA authorities need to sustain momentum and step up their reform efforts in areas where they are at a standstill.

A longstanding legalistic tradition prevails in the majority of the MENA focus economies, which accordingly have robust legislative foundations. This is reflected in the overall comprehensiveness and high protection standards contained in MENA de jure domestic regimes for investment. Meanwhile, other provisions directly affect the operations of investors, such as the bankruptcy regime, the protection on intellectual property rights, FDI restrictions, the incentives regime, as well as, among others, the Special Economic Zones regime, which matter as much as the core investment legislation itself. The quality of the investment regulatory regime should be considered as a whole and not only by the content of each relevant law.

Revising investment laws has helped countries to build more robust investment regulatory frameworks and signal a pro-investment stance, but it is only one way to create strong and consistent domestic regulatory frameworks. The appetite for reform and the willingness to create business-friendly environments have prompted governments to embark on a fast-paced rhythm of regulatory amendments. In some cases, this may have resulted in legislative hypertrophy. Adopting new laws can also add unnecessary layers of complexity to the overall regulatory environment for investment, which encompasses a wide range of sectoral and thematic laws, decrees, along with international investment treaties.

Ensuring clarity across related pieces of legislation, reducing the time gap between the adoption of new laws and of their implementing regulations, and streamlining and empowering relevant institutions in charge of enforcing investment rules are key to create an enabling business environment and to increase legislative efficiency. While modernising their respective legal frameworks, governments will also ultimately need to fill gaps between the treatment granted to domestic and foreign investors that are not justified by national development strategies, as well as review their restrictions to foreign investment that are not consistent with their stated development objectives.

The challenge is two-fold: MENA governments' policy goal is now to provide the highest standards of protection to investors, and balance the potentially conflicting interests of investors and host states. MENA governments should ensure that private businesses are protected against arbitrary decisions or changes of policies, while at the same time preserving sufficient regulatory space to adopt relevant public policy.

Policy considerations

- Limit the time lapse between the adoption of new legislation and the introduction of implementing regulations. Legislative reform efforts can only reach their full potential if promptly followed by the adoption of executive regulations and adequately implemented by relevant authorities, at all government levels. The institutional ecosystem in charge of implementing investment rules should also be further streamlined and adequately empowered to translate regulatory reforms into concrete improvements to the business climate.
- Avoid short-term fixes and ensure that no unnecessary additional layers of regulation are created when endeavouring to modernise legislative frameworks.
- Improve the overall clarity and intelligibility of national legislative architecture. In most of the eight MENA focus economies, regulatory regimes tend to be scattered over many pieces of legislation. This can create legal overlaps and loopholes, or the perception thereof, which can have a deterrent effect on investors and prevent countries from reaping the potential benefits of investments. Consistency of the various legal instruments applying to investment is a prerequisite to creating a more transparent regulatory framework. Meanwhile, legislation plays a strong role as a signalling device, especially in jurisdictions where non-commercial risks are higher than the average. When perceived by business operators as overly complex, a regulatory environment may therefore also have a significant deterrent effect on the investment environment.
- Address investment legislation reform as part of a wider development policy equation. While legal guarantees need to provide high standards to protect investors' rights, the investment regime's ultimate goal is to nurture a healthy investment climate that supports sustainable and inclusive development processes. High investment protection standards and other public policy measures should be implemented in a balanced manner, and governments should preserve sufficient policy space to introduce such measures while committing to high standards of property right protection.

Investment-law making is at the core of countries' business regulatory environment

An investment law is not essential and many advanced economies do not have one, but over 100 developing and emerging economies have adopted this approach as part of their overall legal framework for investment (OECD, 2015[1]). Many have used an investment law, the scope of which varies from one country to another, partly as a signalling device for investors and to promote transparency. An investment law can also be a way for host governments to signal expectations concerning responsible conduct by imposing certain investor obligations. For these reasons, the investment law is often the first point of reference for a potential investor, and MENA governments have expended considerable resources and political capital to periodically revise and update their investment laws.

Investment laws typically contain a set of core, substantive guarantees for the protection of investors' property rights, and detail the mandate of investment agencies, be it merely promotional or also regulatory (Chapter 6). Often, investment laws and their executive regulations also establish the degree of openness to investment and the rules for market entry, include a list of sectors where investors face restrictions (Chapter 4) and set the conditions for receiving fiscal or non-fiscal investment incentives (Chapter 7). More recent investment laws commonly have a chapter dedicated to the settlement of investment-state disputes (Chapter 5).

The scope and purpose of investment laws remains variable, which shows that there is no single formula for building an enabling domestic regulatory environment. Some countries have multiple investment-related laws, while others have adopted a single, comprehensive investment law. MENA economies have largely subscribed to the latter approach and have chosen to have a dedicated investment law, of which they have progressively reinforced the provisions pertaining to the protection of investors' rights.

Jordan and Libya's latest investment law reforms, in 2014 and 2010 respectively, aimed to bring the regimes for domestic and foreign investors under the same umbrella of a unified legislation, thus providing the legal foundations for a non-discriminatory treatment for all established investments, regardless of their nationality. A common feature across MENA jurisdictions is the prominence of unified investment legislation, also called "omnibus investment laws", framing both foreign and domestic investment under the same core provisions, underlined by a general principle of non-discrimination.

In Lebanon and Morocco, the Investment Law does not stipulate the core standards of protection, which feature across a wider range of laws. Lebanon's Investment Promotion law focuses on the mandate and powers of the Investment Promotion Agencies (IPAs) and on the regime for investment incentives, while Morocco's Investment Charter mostly provides for the incentives and tax advantages regime. The more recent Egyptian (2017), Palestinian Authority (2014) and Tunisian (2016) investment laws have a wider scope, more in line with modern global practice. They contain substantive rights, including access to dispute resolution, the institutional mandate of the IPA and the incentives regime. Meanwhile, Libya has adopted a hybrid approach, providing core investment guarantees while focusing on the regime for incentives and advantages given to investors. Lastly, the regime for Economic Zones, which play a prominent role in MENA economies' investment strategies, is governed by the investment legislation in Algeria, Jordan and Lebanon. In Egypt, the regime for economic zones is scattered over several laws, including the investment law (OECD, 2020[2]).

Regardless of its material scope, clear investment legislation is used as a signalling device and can hence help to promote the country as an investment destination. Most MENA governments have faced serious reputational challenges due to the persistent political instability of the past decade. In response, they have engaged in comprehensive investment climate reforms by streamlining their institutional infrastructures (e.g., the revamping of the institutional framework for investment promotion and facilitation in Egypt, Jordan, Morocco, and Tunisia), revising not only the investment legislation *stricto sensu* but also other key legislations such as bankruptcy laws, SME laws and PPP laws (Box 3.1). Most MENA countries have tended to adopt aggressive investment incentives schemes, a trend that is likely to continue in the aftermath of the Covid-19 crisis. Some countries have progressively lifted restrictions to foreign direct investment (FDI) that may not be in line with their stated economic development objectives (e.g. objective of economic diversification) as, for example, was recently done in Algeria.

There is no presumption that one legislative approach is better than others for all economies at all levels of development. Advanced and liberal economies worldwide, like Singapore, or most OECD economies, often do not have a dedicated investment law, and instead regulate investment through a broad legislative framework. For many other jurisdictions however, particularly those where business operations are perceived as overly complex, an investment law can add to transparency and predictability, provided that the content and scope of the investment law is in line with other relevant legislation. In the MENA region, while most economies have a dedicated investment law, some of them, including Lebanon and Morocco, provide investment protection guarantees and regulations in a range of laws.

Box 3.1. The overall legislative framework for investment in MENA economies

As reflected in the *Policy Framework for Investment*, the investment environment is the sum of many different policies, as well as the interaction among them. It cannot be reduced to one specific variable, whether the World Bank's *Doing Business* indicator or the OECD's *FDI Regulatory Restrictiveness Index*. By the same token, the overall legislative framework for investment will depend on a panoply of legislation, often combined in idiosyncratic ways that differ widely across countries. One of the most important laws in many emerging and developing economies is the investment law. It can cover domestic and foreign investors in one law or in separate laws and set the conditions for market access for foreign firms, and offer national treatment for established investors. It can also include the provision of incentives and offer guarantees of protection of the investor's assets. These conditions could be provided in other rules and regulations, but an investment law is nevertheless often used as a signalling device to investors, particularly foreigners, that the economy is open and accommodating to foreign investment. For this reason, an investment law is often the first point of reference for a potential investor.

Incentives may be included in the investment law (e.g. in Lebanon, Egypt) or they may appear in the general tax law, as is considered good practice. Similarly, the rules governing special economic zones are either included in the investment law or in separate decrees or legislation (e.g. Egypt's SEZ Law). The negative list of sectors restricted to foreign investors might be embedded in the investment law itself or may appear in a separate decree, as in Jordan. Market access commitments for a specific set of investors may also be established in international agreements signed by the government.

Other relevant laws for investors include, inter alia, Public-Private Partnership laws, commercial codes, companies acts, which establishes among other things the procedures for registering a business and the rules covering corporate governance, together with securities and accounting laws. Independently of any legislation, corporate practices can also shape entry conditions for both domestic and foreign investors, together with the presence of "golden shares" or residency or nationality requirements for the board of directors. Competition law, or the lack thereof, also determines the potential contestability of markets. Other relevant regulations for potential investors may be contained in sectoral legislation, particularly in financial or natural resource sectors.

The protection of investors' property rights is often included in the investment law, if it exists, but also, and more commonly in the constitution itself. An arbitration law can set out the procedures for settling disputes. In some countries, large investors in important sectors such as mining or infrastructure might sign individual contracts with the state which set out investor rights. To complement and strengthen this protective structure, governments have signed international investment agreements or broader agreements that confer rights on investors from partner countries. Some of them, especially Egypt, have concluded a very high number of IIAs, through which they provided an additional layer of protection and guarantees to a wide range of foreign investors (Chapter 5).

Going beyond this legislative and treaty structure, investors are also concerned about the issue of public governance: how these laws are actually implemented in practice and the general quality of the rule of law and the institutions in the host country. This wider legislative corpus sets out the process for law-making, including public consultations and regulatory impact assessments.

Source: Based on *Policy Framework for Investment* (OECD, 2015[1]).

The overall regulatory environment matters as much as the investment legislation itself

The degree of openness encountered by investors when establishing in a host country, and the conditions they face in their ongoing operations, is only one part of the broader investment environment. The protection of property, contractual rights and other legal guarantees provided to investors, combined with effective enforcement mechanisms and guarantees of access to efficient dispute settlement mechanisms (Chapter 5) are key building blocks of an enabling investment climate, at the core of which is often the investment law. When procedures for establishing investments, operating businesses and enforcing contracts are perceived as cumbersome and lack predictability, investors may restrict their activities or refrain from engaging in the country. Countries with high standards of legislation are hence better armed to position themselves as safe investment destinations and to minimise the adverse reputational effect that can be prompted by political instability.

MENA countries' legal corpus governing investment typically involve several layers of rules and regulations covering many different areas (Box 3.1). The quality of investment laws should not be looked at in isolation from the broader regulatory framework. What matters most is the coherence of the wider legal environment, the application of the rule of law, and the clarity of the wide range of legal instruments that apply in a given jurisdiction.

Unnecessary regulatory obstacles can deter investment and the sectoral diversification of the economy. In some jurisdictions, including Lebanon and the Palestinian Authority, a series of outdated laws and regulations, and the absence of key pieces of legislation, such as competition and intellectual property (IP) laws, also negatively affect the investment climate. Across the region, integrity and anti-corruption legislation are often either missing or incomplete (Chapter 11).

The regulatory framework is indispensable yet not sufficient to create the right conditions for an enabling business climate. Shortages in institutional capacities, as often encountered at the sub-national level in some of the MENA focus economies, also have a deterrent effect on the implementation of the regulatory framework.

Regional wave of investment law reforms

All eight MENA focus economies have, as shown in Table 3.1, recently accelerated the pace of reform of their domestic legislation toward more enabling frameworks for investment and private sector development. In the virtual absence of regulatory regional integration, unlike in other regional blocks such as in Southeast Asia, each MENA economy has reformed its regulatory framework at its own pace and based on its national policy priorities. There are no legislative standards adopted or agreed upon at the regional level, and achieving greater legal harmonisation across the region is not a priority in the reform agenda of the MENA focus economies. By way of comparison, Southeast Asian countries have progressively brought their domestic legislation in line with common protection standards, drawing on the provisions of ASEAN Comprehensive Investment Agreement (ACIA), so as to maximise the benefits of building a regional entity as an attractive and dynamic investment destination. Attempts to adopt a similar supra-national approach have met little success in the MENA focus economies.

Algeria adopted a new Investment Law in 2016, which repealed most of the provisions of the Ordinance No. 01-03 on the development of investment. Overall, the law brought more legal certainty and marked a significant improvement of the investment regulatory framework, through the removal of a number of regulatory constraints, while maintaining fundamental guarantees for foreign investors and bringing the investment incentives regime under the responsibility of the Ministry of Finance. In June 2020, in a context of the Covid-19 health crisis and falling oil prices, Algeria adopted its Finance Law for 2020. The law enshrines Algeria's reopening to FDI by defining the strategic sectors, restricted to foreign investors, in a relatively limited manner and by repealing the State's right of pre-emption and right of repurchase (see Chapter 3 for further details on liberalisation reforms in the region).

In the past four years, the government of **Egypt** has put strong emphasis on adopting more modern investment legislation and regulations for investment. The 2017 Investment Law, promptly followed by a modernised Companies Law, marked an important milestone in efforts to provide a safer and more consistent regulatory environment for foreign and domestic investment (OECD, 2020). Recent reforms have focused on streamlining business registration processes and GAFI departments in charge of investment entry, incentives and facilitation.

Libya, meanwhile, lifted many FDI restrictions and introduced a number of investors' guarantees through the adoption of its 2010 investment law, which accompanied the creation of a new investment promotion institution, the Privatisation and Investment Board (PIB), in 2009. Along with the adoption of the 2010 Investment Law, a number of business-related laws were introduced, including the 2010 Commercial Code (which was subsequently revised in 2012), and the Registration Law. No major legal reform has been undertaking since then.

The **Palestinian Authority** achieved a major improvement with the adoption in **2014** of an investment legislation which content is closely aligned with global standards It has, since then, focused its reform agenda on other key business regulations, with various degrees of success. The efficiency of its overall regulatory framework remains largely impeded by the persistence of long outdated laws.

Morocco and **Lebanon** have, since the adoption of Morocco's 1995 Investment Charter, and Lebanon's 2001 Investment Promotion Law, focused their respective reform agendas less on the investment legislation *stricto sensu*, which remains less comprehensive than most commonly encountered in the region. They have however been pro-active reformers of the overall business regulatory environment. Morocco, in particular, has revised its Commercial Code, with the introduction of a new regime for private limited companies. The competition regime was also modernised, along with the introduction of revised PPP provisions, and an ongoing plan to revise the bankruptcy legislation.

Last, **Tunisia** has undertaken a comprehensive revamping of its investment legal framework, starting with the 2016 Investment Law, which was adopted after extensive consultations with public and private stakeholders. The reform process complied with transparency and accountability requirements that remain, to this day, unprecedented across MENA countries. It has since then continuously pursued legislative reforms, with successive amendments intended to progressively strengthen investor rights, create a more investor-friendly environment and narrow the policy gap between foreign and domestic investors. The strong impetus for reform might have displayed excessive zeal in the revamping of the institutional framework for investment promotion and facilitation, which is now composed of several bodies which mandates are, in some areas, partly overlapping (see Chapter 5).

MENA countries have generally been active legislative reformers in the past years, with many regulatory revisions still ongoing. Each iteration of investment laws has been designed to address weaknesses in the existing one, although each new version is not always in all areas an improvement over the earlier version. Some highly publicised amendments might have been undertaken to mark a political footprint, in a context of frequent governmental reshuffles, rather than for legal improvement purposes.

Frequent changes also have the disadvantage of creating temporary uncertainty for investors prior to the issuance of implementing regulations. This happened in Egypt in the immediate aftermath of the enactment of the 2015 investment law, for which implementing regulations were adopted with a delay, temporarily leaving businesses in a "wait-and-see" position (OECD, 2020[2]). If not done in a comprehensive and coherent manner, engaging major legal revisions can have short-term counterproductive effects. In Jordan, for example, the successive legal amendments and repeals of previous regulations in the early 2000s created major regulatory loopholes that lasted until the adoption of the unified 2014 Investment Law (OECD, 2018[3]).

In a region where inter-governmental regulatory coordination efforts are nearly absent and in the virtual absence of a regional regulatory integration process, as mentioned above, the pro-active reform agenda of individual countries also reveals the growing regulatory competition among them. While the race towards competitiveness may yield positive results in term of legal quality, it also has a potential for counter-productive regulatory inflation. It may also lead to an unsustainable regulatory race to the bottom, particularly if governments use aggressive incentive strategies as part of their reform agenda. This effect might be reinforced in a post Covid-19 context, in which some countries, such as Egypt, have already responded by expanding tax incentives and holiday schemes (see Chapter 7 on investment incentives). Such regional competitive tension also carries a potential risk of lowering norms on labour rights and environmental standards, especially in Free Zones and Special Economic Zones which often operate in derogation from general laws (see Chapter 10 on Responsible Business Conduct).

Table 3.1. Investment-related legislation in MENA economies

Economy	Recent amendments to the investment legislation	Recent investment-related reforms
Algeria	• 2016 Investment Law on the promotion of investment (*Loi n°2016-09 du 3 juillet 2016 relative à la promotion de l'Investissement*) • 2017 Implementing Decrees of 5 March • 2020 Finance Law revising the negative list of restricted sectors	• 2015 public procurement regulation (*Décret présidentiel n° 15-247 du 16 septembre 2015 portant réglementation des marchés publics et des délégations de service public*)
Egypt	• 1997 Investment Law • 2015 Investment Law and its Executive Regulations • 2017 Investment Law • 2019 Amendment to the 2017 Investment Law	• 2015 Collateral Registry Law and 2016 Executive regulations of the movable collateral law • 2016 Value-added tax (VAT) Law • 2017 Law on Streamlining Industrial Establishments Licensing • 2018 Companies Law • 2018 Bankruptcy Law
Jordan	• Investment Law No. 30 of October 2014 • Regulation on Non-Jordanian Investments No 77 of 2016	• 2018 Revision of the Arbitration Law • 2014 Public-Private Partnership Law
Lebanon	• 2001 Investment Development Law No.360 of 16 August 2001 • Decrees 9311 and 9326 of 21 December 2002	• 2018 PPP law • 2019 Revision of the Commercial Code • 2020 Private Equity Law
Libya	• 2010 Law on the Encouragement of National and Foreign Investment • Executive decrees of 2012 and 2013 on foreign direct investments (Decree 22 of 2013, Decree 207 of 2012, Decree 103 of 2012, Decree 186 of 2012)	• Draft SME Law
Morocco	• 1995 Investment Charter (*Charte de l'Investissement – Loi-cadre No.18-95 de 1995*) → Suspended reform of the 1995 Investment Charter	• 2014 Adoption of Competition Laws • 2017 Reform of the Stock Exchange Law (*Loi 19-14 relative à la Bourse des valeurs de Casablanca, aux sociétés de Bourse ainsi qu'aux conseillers en investissement financier du 25 août 2016 publiée le 31 mars 2017*) • 2016 reform of the Commercial Code - Law on limited liability companies (*Loi n°78-12 modifiant et complétant la loi n°17-95 relative aux sociétés anonymes au Maroc*) • 2014 Law on Public- Private Partnerships • Ongoing reform of foreign exchanges regime, since 2018 • Ongoing reform of the bankruptcy regime

Economy	Recent amendments to the investment legislation	Recent investment-related reforms
Palestinian Authority	• 2014 Amendments to the Law on the Encouragement of Investment of 1998 (*Law No.1 of 1998, amended by Presidential Decree n°2 of 2011 and Presidential Decree n°7 of 2014*)	• Draft SME Law under preparation
Tunisia	• 2016 Investment Law (*Loi n° 2016-71 portant loi de l'Investissement), Décret gouvernemental n°2017-388 relatif à (i) La fixation de la composition du Conseil Supérieur d'Investissement et les modalités de son organisation* ; et (ii) *L'organisation administrative et financière de l'Instance Tunisienne de l'Investissement et du Fonds Tunisien de l'Investissement* • *Décret gouvernemental n°2017-389 relatif aux Incitations financières au profit des investissements réalisés dans le cadre de la loi de l'investissement* • *Décret gouvernemental n°2017-390 relatif à la création d'une unité de gestion par objectif* • 2018 Executive Regulation on investment authorisations and screening (*Décret gouvernemental n° 2018-417 du 11 mai 2018 relatif à la publication de la liste exclusive des activités économiques soumises à autorisation et de la liste des autorisations administratives requises pour la réalisation de projets*)	• 2016 Banking Law (*Loi relative aux banques et aux institutions bancaires N°2016-48 of 15 July 2016*) • 2015 PPP Law (*Loi 2015-49 sur les partenariats publics-privés (PPP) du 27 novembre 2015*), 2016 PPP Decrees • 2015 Competition Law (*Loi n° 2015-36 du 15 septembre 2015, relative à la réorganisation de la concurrence et des prix*) • 2017 Law on fiscal incentives (*Loi n° 2017-8 du 14 février 2017, portant refonte du dispositif des avantages fiscaux*) • 2019 Law on Improving the Investment Climate, amending sections of the 2015 PPP Law (*loi n°2019-47 du 29 mai 2019 sur l'amélioration du climat des investissements*)

While a comprehensive reform of existing legislation can provide an opportunity to revisit certain longstanding policy approaches, such as on incentives or concerning discrimination against foreign investors, the age of legislation is not necessarily a sufficient justification for reform. Morocco's 1995 Investment Charter is the oldest investment law in force in the region. After more than a decade of amendment plans, the government recently decided to leave it unchanged and to focus its reform agenda on sectoral laws, which have as much of an impact on the business climate in their respective fields.

Despite variations in policy approaches, dominant patterns of legal reforms can be identified across the region, and are commonly found in national legislations of economies at similar level of development, such as in Southeast Asia. Recent reforms of investment-related regulations have mostly focused on facilitating investment: streamlining business registration, reinforcing and expanding IPA mandates (e.g. Egypt's 2017 Investment Law, Tunisia's 2016 Investment Law), and on amending the investment incentives regime (Tunisia's 2016 Investment Law, Jordan's 2017 set of Executive Regulations) – although incentives continue to be widespread and are often easy for firms to receive, with broad eligibility requirements (Chapter 7). As for the core standards of protection, which are the historical backbone of investment legislation, they were not substantially changed by the recent wave of legal changes. Core *de jure* property rights were already legally enshrined, either in previous investment regulations, in other legislations or in the Constitution.

Protection of investors' rights in domestic legislation of MENA economies

Investors' treatment in MENA countries is governed by a set of core protection standards that feature both in the investment legislation and in other relevant regulatory instruments. The notion of protection of investors' rights embraces not only the guarantee against unlawful expropriation but also secure land rights, high standards of intellectual property rights, free repatriation of foreign investment, and the enforcement of contractual rights, including through a guarantee of access to dispute settlement mechanisms (Chapter 5).

With a few exceptions, MENA investment legislations provide strong *de jure* standards of protection, generally consistent with internationally recognised practices. Although reiterating standards of protection in the investment law may be a reassuring signal, there is no best approach as to where these core guarantees should be provided. Core protection guarantees are no better addressed in investment laws than in other laws of general application. For example, expropriation provisions can appropriately be addressed in other laws of more general application or even in the Constitution itself.

Lebanon's investment legislation does not contain core standards of protection of investors' rights, which feature in other pieces of legislation. Specifically, the Lebanese legislation does not enshrine guarantees of post-establishment non-discrimination or national treatment, nor of the transfer of funds, expropriation or dispute settlement. These core protection standards also feature in international investment treaties, which provide an additional layer of protection to foreign investors covered by such treaties.

In the absence of protection guarantees in the investment law, the protection against expropriation is provided in the Constitution as well as in international investment agreements. The Lebanese Constitution, along with the Expropriation Law (1991, amended in 2006) govern the regime for expropriation, which can only occur for public interest purposes, and provides for prior market-value compensation. Although there is no explicit mention of non-discrimination, the Law does not refer to the nationality of the owner.

Likewise, Morocco's Investment Charter contains only a few protection provisions, which by no means indicate a lesser degree of protection against unlawful expropriations, which is governed in distinct pieces of legislation. It does however contain a guarantee of free transfer of funds and gives foreign investors the freedom to transfer profits and capital.

Egypt's domestic legal framework grants *de jure* property rights protections to investors that are consistent with high, modern standards of protection. The protection of investors' rights is recognised at the constitutional and legislative levels, and, notwithstanding the application of bilateral investment treaty provisions, the same legal protections and available incentives are granted to foreign and domestic investors.

The Egyptian Investment Law provides the full spectrum of investment guarantees and protection standards that are required to provide a safe *de jure* regime for investors. It contains a provision granting fair and equitable treatment to both foreign and Egyptian investors, and a guarantee that the invested capital cannot be subject to any coercive or discriminatory measures. It also provides protections against nationalisation and expropriation and guarantees against sequestration and seizures, as well as the confiscation and freezing of property, except under court order. The state can only expropriate property for "public utility", with fair compensation and in a prompt manner. The law stipulates this value "shall equal the fair economic value of the expropriated property on the day preceding the expropriation decision date". These provisions are completed by the 1990 law on expropriation of real estate for public interest, amended in 2018, which specifies the compensation rules. "Public utility" is not defined in the Investment Law or in the Law on expropriation of real estate for public interest.

Meanwhile, Algeria's investment law provides guarantees of fair and equitable compensation for expropriation; fair and equitable treatment to foreign investments and of free transfers of funds. It contains a provision on the intangibility of law, stating that future revisions to the investment legislation will not apply to projects undertaken in the framework of the legislation in force at the time of the investment, unless the investor expressly requests it. The expropriation provision is succinct: while it grants fair and equitable compensation, it does not specify the criteria for expropriation, nor the procedures of compensation. This matter is left to international treaties when applicable, thus providing a more protective treatment to foreign investors covered by such treaties. As for the settlement of investment disputes, the 2016 law gives competence to domestic courts, notwithstanding the applicability of international investment treaties or agreements with an arbitration clause.

Jordan's investment law provides for investors' guarantees of protection, with no detailed provisions on the procedural guarantees. The law provides for a standard of national treatment, a principle of equal treatment, guarantees against expropriation, transfer of capital and profits rights, including currency convertibility and profit repatriation rights. An important provision introduced by the Law relates to dispute settlement. While the interim Investment Law of 2003 did not contain dispute settlement provisions per se and only referred to international conventions, the new Law gives foreign investors access to arbitration in the event of a conflict between a foreign capital investor and the Jordanian governmental authorities.

The 2014 Palestinian Investment law provides a comprehensive set of protection standards. It grants a principle of non-discrimination of investors, except in exceptional cases for a public purpose with due process of law, and fair compensation. It also contains a guarantee that investments cannot be nationalised, confiscated or expropriated except for public purposes in which case a compensation of the fair market value must be paid, as well as a general principle of free transfer of funds.

Likewise, Tunisia's core investment legislation provides a comprehensive set of standards of protection, in line with what is commonly seen as best practice. It provides a guarantee of fair and equitable compensation for expropriation, free transfer of funds abroad, and of non-discrimination.

Annex 3.A compares the provisions of each country's core investment legislation and looks at whether countries have adopted a positive or a negative list approach to the entry of foreign investment. The availability of arbitration, as well as adherence to international investment treaties, are also included.

While this chapter focuses on the domestic legal framework, the interplay between domestic legislation and international investment treaties, which play a major role in protecting foreign investments, should not be overlooked (Chapter 5). Their purpose and scope vary in many regards, and the content of some increasingly controversial treaty provisions, such as fair and equitable treatment (FET) and most-favoured nation treatment (MFN), is not meant to be replicated at legislative level. Moreover, while the main goal of investment treaties is to provide a high level of protection guarantees to foreign investors, the scope of investment laws is much wider.

More room for reform through the gradual incorporation of investor obligations

The incorporation of legal investor obligations to preserve the environment and other public policy objectives is a growing trend in global investment-law making. While the increasing awareness of the need to promote and implement responsible business conduct is mirrored in national strategies that go well beyond the legislative framework (Chapter 10), investment laws have a strong potential role to play in introducing obligations binding upon investors. This evolution in rule-making is reflected in the domestic laws of some developing and advanced economies, which increasingly contain provisions to ensure that investors bind themselves to responsible business conduct. This practice aims to strike a better balance between guarantees offered to investors and obligations that investors must respect in order to be eligible for these guarantees and for incentives. With a few exceptions, MENA economies have not yet clearly embarked on this path (Table 3.2). Their investment legislation generally does not contain obligations binding upon investors, except through the required conditions to benefit from incentives and advantages. Measures taken by MENA governments to guarantee minimum standards for domestic workers and to promote gender diversity are most often reflected in other types of regulations, such as Codes of Corporate Governance and Labour Laws, as in the case of many OECD countries. Jordan and Morocco, for example, have adopted corporate governance codes that mention gender diversity on boards (OECD/ILO/CAWTAR, 2020[4]).

Investment laws could however be used as a channel to encourage women's access and participation on corporate boards and in senior management positions. There is a strong case for promoting gender equality through investment regulatory reforms: FDI has the potential to improve gender balance in corporate leadership. In general, the share of foreign firms with female top managers, and the share of women in managerial positions in foreign firms, are significantly higher than in domestic firms, including in some MENA countries (see Chapter 2 on FDI trends and development benefits). These practices of foreign firms may be imitated by domestic firms (OECD, 2019[5]).

Egypt has started instilling provisions aiming at striking a balance between investors' rights and obligations. The 2017 Investment Law introduced provisions on corporate social responsibility (CSR), stated in very broad terms, with no specific requirements binding on investors. In its article 2, the Law prohibits discrimination in investment, including on the basis of gender, and encourages small investors. GAFI, Egypt's IPA, has also opened a special window at the Investors Services Centre where women investors can obtain all necessary information and complete all necessary paperwork at a one-stop-shop. Meanwhile, Morocco has set up a fully operational body to implement investors' CSR obligations (Chapter 9). Compared to other regions, MENA countries' attempts to impose development-related obligations upon investors remain incipient.

The incorporation of such provisions into the core investment legislation could be envisaged as a way to strike a better balance between investors' rights and obligations, and bring their legislation closer to international standards for responsible business conduct, such as those contained in the OECD *Guidelines for Multinational Enterprises.* As further developed in Chapter 10, the Guidelines are the most-widely recognised global policy instrument for promoting and enabling RBC. They are part of the OECD Declaration on International Investment and Multinational Enterprises (the Declaration), a policy commitment to provide an open and transparent investment environment and to encourage the positive contribution businesses can make to economic and social progress. Among the eight MENA focus countries, Egypt, Jordan, Morocco and Tunisia have adhered to these policy instruments.

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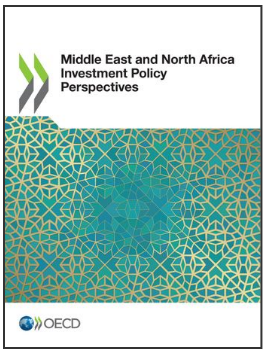
Annex 3.A. MENA economies' investment frameworks

Annex Table 3.A.1. Comparative table of MENA economies' investment frameworks

	Investment law covering domestic and foreign investments	Recent amendments of the investment legislation	Provisions on distributional effects of investment : environmental impact, sustainable development, gender, etc.	Non-discrimination at post-establishment stage enshrined in domestic legislation	Negative list approach of FDI restrictions	Protection against expropriation	Guarantee of free transfer of funds provided by law	Possible recourse to investment arbitration provided by law	Adherence to international conventions on arbitration (ICSID Convention, & New York Convention)	International Investment treaties
Algeria	✓	✓	No	✓	Unclear – under revision				Yes	✓
Egypt	✓	✓	Yes, general considerations	✓		Yes	✓	✓	Yes	✓
Jordan	✓	✓	No	✓	✓	Yes	✓	✓	Yes	✓
Lebanon	✓		No	✓		Yes, not specific to investors		✓	Yes	✓
Libya	✓		No	✓		Yes			Not a member State of ICSID; has not adhered to the NY Convention	✓
Morocco	✓		Not in the Investment Charter, but active NCP	✓		Yes, not specific to investors	✓	✓	Yes	✓
Palestinian Authority	✓		Yes, through the criteria for granting incentives	✓		Yes	✓		Not a member of ICSID; Adhered to NY Convention in 2015	✓
Tunisia	✓	✓	✓	✓	*Unclear*	Yes	✓	Yes	Yes	✓

Source: Authors' compilation

Notes: National Contact Points (NCP) are government agencies in charge of promoting the OECD Guidelines for Multinational Enterprises and related due diligence guidance, and of handling cases (referred to as "specific instances") as a non-judicial grievance mechanism. Adhering governments have an obligation to establish an NCP to further the effectiveness of the Guidelines (Chapter 9).



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