Making Reforms Succeed

MOVING FORWARD WITH THE MENA INVESTMENT POLICY AGENDA

OECD

Private Sector Development in the Middle East and North Africa

Making Reforms Succeed

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FOREWORD

The rising importance of the Middle East and North Africa (MENA) region in the global economy is increasingly recognised. The region has witnessed a solid economic growth of approximately 5% a year since 2001, comparing positively to the global growth rate over the same period. During the last several years, the region has also become more integrated into the global economy in terms of trade and investment. Foreign direct investment flows to the region more than quadrupled during 2003-2006, from 14 billion USD to over 58 billion USD, and are predicted to continue to rise.

Equally importantly, the region witnessed a rapid increase of intra-regional investment flows, which are estimated to have amounted to 60 billion USD over 2002-2006. Economic ties connecting MENA countries are strengthening, as the oil-producing countries are investing in countries where capital is more scarce, including Morocco, Tunisia, Egypt and Jordan. These trends, underpinned by increasing liberalisation *of* foreign direct and portfolio investment, point to the importance of structuring and sequencing investment reforms and their communication to the relevant constituencies. The MENA-OECD Investment Programme provides a useful platform for policy dialogue amongst government and the private sector participants supporting MENA partners in their investment climate reform efforts.

Since 2005, the Programme has worked with countries in the MENA region to assess the regulatory environment and identify key challenges in investment policy related areas such as taxation, financial sector development, corporate governance and entrepreneurship, including women's entrepreneurship. The Programme also provides policy advice to MENA governments, leveraging the experience with similar reforms in OECD member countries. The Programme strives to serve as a platform for dialogue amongst MENA and OECD policymakers, and equally, to support the current investment policy reform momentum.

The key principles encompassed in the first and second *Ministerial Declarations* were endorsed by MENA countries' Ministers and participating OECD countries in February 2006 in Jordan and November 2007 in Egypt. These key principles reflect the core elements of ongoing investment policy reforms in the region, including the related activities of the Programme. The Ministerial Declarations, as well as other outputs of the Ministerial Meetings, have been developed by the Steering Group of the Programme, in close consultation with the Business and Industry Advisory Committee to the OECD, the Federation of Arab Businessmen, the Egyptian Businessmen Association, the Arab Business Council, the Union of Mediterranean Confederations of Enterprises as well as other Arab chambers and associations.

This publication, *Making Reforms Succeed: Moving Forward with the MENA Investment Policy Agenda,* provides a broad overview of progress between 2005 - 2007 in investment policy reforms in MENA countries. Specific focus is given to reforms in investment policies and promotion, corporate governance, financial-sector development, and tax policies. This volume is topical, particularly given that a number of countries in the region are attempting to reduce the size of their public sectors, shifting the task of employment creation to the private sector.

ACKNOWLEDGEMENTS

The present publication *Making Reforms Succeed: Moving Forward with the Investment Policy Agenda* is based on the work of the governments and other partners participating in the first phase of the MENA-OECD Investment Programme in its regional roundtables and projects with individual countries in the Middle East and North African countries (2005-2007).[1] The *Ministerial Declarations*, the *Business Statements* and the other instruments agreed upon during the two Ministerial meetings of the Programme, namely the *Declaration on Fostering Women Entrepreneurship in the MENA Region,* have all been developed in close coordination with and input from public and private sector officials from the region and beyond. In particular, the Secretariat would like to acknowledge the important input provided by the members of the Programme's Steering Group.

It would also like to thank the Business and Industry Advisory Committee to the OECD (BIAC), the Association Egyptian Businessmen's Association (EBA), Union of Mediterranean Confederations of Enterprises (UMCE), the Arab Business Council and other business associations, chambers of commerce and representatives of private companies for their constructive input into the development of the *Business Statements* presented to both Ministerial Meetings.

The content of Part II of this publication reflects the discussions between officials and private sector representatives that participated in the various meetings of the Programme in 2005-2007. In relation to this, officials from the 18 Middle East and North African countries and territories who have participated in these discussions are thanked for their input and the useful clarifications on the points covered by the Policy Briefs in this volume. Experts from member countries are thanked for their willingness to share reform experiences, both positive and negative, with their counterparts in the MENA region.

This volume has been compiled and synthesised by the OECD Secretariat for this project, the MENA-OECD Investment Programme. Sections II.2, II.3, II.4, II.5, and II.8 have been prepared by Alexander Böhmer, Sections II.1 and II.II.6 have been developed by Alissa Koldertsova, Chapter II.7 by Ana Cebreiro-Gomez and Steven Clark, and Section II.9 by Elena Miteva. All components of this publication have been prepared under the supervision of Rainer Geiger, Head of the Progamme and Deputy Director in the Directorate for Enterprise and Financial Affairs.

1. Including Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine Authority, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, Yemen.

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Part I

OUTCOMES OF THE MENA-OECD INVESTMENT MINISTERIAL MEETINGS 2006 AND 2007

KEY DOCUMENTS ADOPTED BY MINISTERS

First Ministerial Meeting

ATTRACTING INVESTMENT TO MENA COUNTRIES:
COMMON PRINCIPLES AND GOOD PRACTICE
Jordan
13 - 14 February 2006

Second Ministerial Meeting,

MAKING REFORMS SUCCEED:
MOVING FORWARD WITH THE INVESTMENT POLICY AGENDA
Cairo
27-28 November 2007

1.1 FIRST MINISTERIAL MEETING, ATTRACTING INVESTMENT TO MENA COUNTRIES: COMMON PRINCIPLES AND GOOD PRACTICE

JORDAN, 13 - 14 FEBRUARY 2006

KEY DOCUMENTS ADOPTED BY MINISTERS

I.1.1 MINISTERIAL DECLARATION

Preamble

PARTICIPATING COUNTRIES and territories from the Middle East and North Africa Region (MENA), including Bahrain, the UAE, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Palestine National Authority, Saudi Arabia, Syria, Tunisia and Yemen;

CONVINCED of the urgent need to spur economic growth, development and social progress across countries in the MENA to meet the needs of rapidly growing populations;

AFFIRMING that sustainable development depends fundamentally on mobilizing private capital from inside and outside the region;

RECOGNISING the right of governments to regulate economic activities in their territories and to determine the pace of their economic reform progress;

CONVINCED that broad based economic reform, including in particular improvements to the investment climate, is essential to increase foreign and domestic investment in the region;

CONVINCED also of the need for immediate action based on concrete targets and reasonable timeframes;

BELIEVING that a regional dialogue and integration of national policies across the region will complement and reinforce improved policies at the national level;

TAKING NOTE of the progress achieved under the MENA-OECD Investment Programme as well as the Good Governance for Development Initiative in Arab Countries;

STRESSING the importance of co-ordination of the reform process within national governments;

ACKNOWLEDGING that the OECD, its Member countries and other international organisations can provide valuable support to the efforts of governments in the region to create favourable conditions for increased domestic and foreign investment through the MENA-OECD Investment Programme;

AFFIRMING the importance of close coordination with other international initiatives supporting economic reform in the region;

AWARE of the important contribution that the business community and other elements of civil society can make to these efforts;

REAFFIRMING AND BUILDING on the commitments made by MENA and OECD countries to participate and support the MENA-OECD Investment Programme;

Are in support of the following common principles and good practices:

Common Principles and Good Practices

The Participating Countries recognise that the following common principles and good practices, applied in accordance with national laws and international obligations, contribute to a favourable climate for international, regional and domestic investment:

- Transparency and predictability of national policies, laws, regulations, administrative practices and statistics affecting foreign and domestic investment;
- Encouragement to brief the business community and to discuss planned regulatory changes;
- Provision of sufficient and necessary information on laws and regulations and other guidelines affecting investment including foreign investment;
- Enhancement of the protection of property rights, intellectual property rights, and contractual rights;
- Liberalisation of existing restrictions, if any, to repatriation of capital and of the proceeds of the investments;
- National treatment for established foreign investments; fair and equitable treatment of investment; protection of investors' rights and compensation for all categories of expropriation;
- Openness to foreign investment and access by investors to facilities necessary for investment and the movement of key personnel for the purpose of investment;
- Promotion of business integrity with preventive measures targeting the private and the public sector and strengthening of anti-bribery legislation, enforcement measures and awareness-raising efforts;
- Effective competition policies by providing for clear, transparent and non-discriminatory competition laws and an efficient and independent competition authority;
- Recognition of internationally agreed principles of corporate social responsibility;
- Establishment of investment promotion agencies equipped with sufficient resources as part of an overall investment promotion strategy;
- Encouragement of established business and civil society representatives to act as advocates of investment policy reform;
- Evaluation of current and proposed investment incentives;
- Transparent, stable and fair tax systems as important elements of the investment climate;
- Economic diversification efforts to create the conditions for infrastructure, private sector development, employment creation and the enhancement of human resources within functioning market systems;
- Sustained efforts towards modernisation of financial systems to meet the challenge of employment creation and technological advance by broadening the range of financial services and products that are available and aligning supervisory practices with global standards;
- Development of human resources in order to broaden the skill base for entrepreneurship;
- Development of effective frameworks and policies for entrepreneurship, including the promotion of women's entrepreneurship, and for a thriving small and medium-sized enterprise (SME) sector that contributes to job creation, economic growth and social cohesion;

- Encouragement of efforts by government, private sector and professional bodies to improve corporate governance in all sectors of the economy, in line with internationally agreed best practices.

Implementation

In accordance with the above principles, Participating Countries:

Welcome the work of the five Working Groups of the MENA-OECD Investment Programme and compliment the efforts of experts from governments inside and outside the region, international organisations, business and other elements of civil society who have participated in this work;

Welcome the assistance and support by the business community.

Note the recommendations of the Working Groups in the areas of their respective responsibility which provide guidance for future work and the selection of priorities for the National Investment Reform Agendas;

Welcome the specific investment reform targets which have been announced and encourage governments in the region to continue their efforts to identify and implement in a co-ordinated manner reform targets that can be achieved within the next year;

Continue to support the MENA-OECD Investment Programme and encourage governments from outside the region to continue their support for the Programme and the reform objectives of governments within the region;

Encourage the constructive involvement of business representatives and other elements of civil society in discussions with Governments on the improvement of the investment environment;

Invite international and bilateral initiatives to support economic reform efforts within the region and to coordinate their efforts to improve the prospects for governments in the region to achieve their reform objectives. For this purpose invite other international organisations to meet in early 2006 with the Steering Group of the Programme to decide on closer strategic co-operation.

Request the Working Groups to continue their work to provide for a continuing dialogue within the region, and with participants outside the region, to maximise the benefit to countries within the region from the experiences of others in designing and implementing their National Investment Reform Agendas.

Follow-up

The Participating Countries will meet again in the first half of 2007 at Ministerial level to review progress achieved in implementing this Declaration. They will make use of the Country Economic Teams and the National Investment Reform Agenda to follow up the implementation of this Declaration. The participating countries mandate the Steering Group and the Working Groups to continue their efforts to implement the agreed action plans and output targets.

The Participating Countries call upon the international community, in particular OECD member countries, to provide technical and financial support to help them meet the objectives of this Declaration.

I.1.2 RECOMMENDATIONS OF THE WORKING GROUPS

The following recommendations have been elaborated by the Working Groups of the MENA-OECD Investment Programme. They complement the Ministerial Declaration which has been supported by participating countries at the MENA Investment Ministerial meeting, 13-14 February 2006 in Jordan. The recommendations have been designed to provide guidance for the future activities of the Working Groups and for the selection of priorities in the National Investment Reform Agendas of MENA countries.

- Establish a National Investment Reform Agenda and incorporate it as an integral part of the national economic development strategy
- Transparent and open investment policies

(1) Improving Transparency

- Improve transparency of national policies, laws, regulations and administrative practices affecting foreign and domestic investment;
- Regular briefings of the business community and notification and consultation prior to planned regulatory changes should be provided;
- Provision of sufficient and necessary information on laws and regulations and other guidelines affecting investment including taxation in a user-friendly manner will increase transparency;
- Investor transparency is strengthened by the publication of a list of remaining restrictions to foreign investors;
- Improve FDI statistics to develop expertise in best practices for FDI methodology and to improve the expertise to analyse the FDI data.

(2) Strengthening of investors' rights

- Include effective rights and guarantees for foreign investors into revised investment laws;
- Strengthen protection of property rights, including intellectual property and contractual rights;
- Liberalise existing restrictions to repatriation of capital, establish timely and unrestricted transfers of the proceeds of the investment and guarantee for the repatriation of the capital when the investment is terminated;
- The following principles should be ensured on the domestic policy levels. Such principles are also essential when negotiating international investment agreements:

- National treatment for foreign investors at both the pre and post establishment stage; exceptions should be clearly and precisely formulated and periodically reviewed with a view to phasing them out;
- Fair and equitable treatment of domestic and foreign investments with full protection of property rights including intellectual property;
- High standards of compensation for all types of expropriation;
- Unrestricted access of investors to effective dispute settlement mechanisms including international arbitration.

(3) Simplification of administrative procedures

- Simplify FDI screening and approval procedures. Strengthen procedural rights to investors and issue clear administrative guidelines for the screening authority to increase transparency and predictability;
- Reform administrative barriers for foreign and domestic investors to acquire land for the purpose of an investment;
- Facilitate movement of key personnel and simplify visa regulations in accordance with national security.

(4) Enhancement of business integrity and market efficiency

- Strengthen anti-bribery legislation, enforcement measures and awareness raising efforts;
- Promote business integrity with preventive measures targeting the private and the public sector;
- Promote effective competition policies by providing for clear, transparent and non-discriminatory competition laws and an efficient competition authority;
- Consider internationally agreed principles of corporate social responsibility including the OECD Guidelines for Multinational Enterprises.

- Encouraging investment promotion agencies and business associations for economic reform
  - Establishment of an investment promotion agency equipped with sufficient human and financial resources and adequate political support;
  - The investment promotion agency should be given a mandate to promote the benefits of investment within government and the broader public. It should be consulted by government authorities on any business environment legislations;
  - Streamlining of administrative procedures, the introduction of one-stop shops and image building campaigns should be considered as important elements of an effective investment promotion strategy;
  - Strengthening the policy advocacy functions of independent business associations.
- Providing an efficient tax framework for investment and non-discriminatory tax incentives
  - Transparent, stable and equitable tax systems are an important element of the investment climate;

  - The costs and benefits of current and proposed investment incentives should be assessed and tax policy frameworks reviewed to ensure that they are supportive of investment and economic growth;
  - MENA countries should work towards developing frameworks and capacities to analyse the costs and benefits of existing and proposed incentives;
  - All investment incentives should have "sunset clauses";
  - Establishing a regional MENA tax and incentive policy forum;
  - Investment incentive policies need to be co-ordinated, transparent and designed to maximise efficiency;
  - Timetables for implementation of tax and non-tax expenditure reporting should be developed to enable public reporting of the cost of investment incentives. Where the requisite information is currently unavailable, plans for gathering the required data should begin;
  - Duty free zones and special economic zones, where used, must be carefully designed and the ability of the administering body to effectively monitor incentives should be ensured.
- Promoting policies for financial sector development and enterprise development in support of diversification
  - Focus economic diversification efforts on creating the conditions in which businesses and individuals can make economically intelligent decisions and in which markets can function, rather than on policies to 'pick winners' or other direct interventions in economic decisions;
  - Improve the environment for private investment and innovation, which are the keys to successful economic diversification;
  - Continue and, where necessary, accelerate efforts to privatise state owned enterprises while taking complementary reforms to ensure that privatised businesses are fully exposed to competition and discipline from stock and other financial markets;
  - Foster growth in employment and productivity through co-ordinated reforms in labour and product markets to strengthen competition, improve the environment for innovation, reduce barriers to hiring, improve skills, and improve information;
  - Modernise the financial system to meet the challenge of employment creation and technological advance by broadening the range of financial services and products that are available and aligning supervisory practices with global standards;
  - Deepen markets in fixed income securities. Broaden the investor base for fixed income securities. Utilise available techniques to issue government debt on market terms and to encourage secondary trading;
  - Upgrade market infrastructure, including modernisation of the legal and regulatory environment and fuller integration into the global financial system. Foster a more vibrant institutional investor community. Encourage transparency and disclosure in the corporate sector. Utilise international standards for accounting and audit. Narrow discrepancies between listed and non-listed companies;

- Expand intra-regional co-operation amongst capital markets. Increase cross national listing and trading of investment instruments. Explore possibilities to launch regional trading platforms;
- Improve the potential of the financial system to provide finance to innovative and/or high growth companies;
- Assess the entire framework for entrepreneurship. Assess the need to enact or modify laws that impact the competitiveness of financial intermediaries specialised in providing for equity finance to new companies and/or companies in need of restructuring. Facilitate the operations of foreign private equity and venture capital firms.
- Ensure stable framework conditions to underpin the entrepreneurial business environment. Policy design in areas such as competition, the regulatory framework, the tax system, labour markets, financial markets and bankruptcy laws should ensure that regulation is not unnecessarily or disproportionately burdensome to SMEs in MENA countries.
- Ensure the reduction and simplification of administrative regulations and costs in MENA countries which fall disproportionately on SMEs. Take account of SME views during the regulatory process and establish one-stop shops for regulatory information and transactions.
- Strengthen the factual and analytical basis for policymaking in MENA countries so that policy makers can take decisions in an informed manner based on empirical evidence. To the extent possible, such research and analysis should include gender-disaggregated information.
- Promote equal educational opportunities for girls to enhance economic and entrepreneurial literacy, and for women to foster economic growth. In particular, MENA countries could create women's business centres that can serve as "one-stop-shops" for women who want to create and grow businesses.
- Support the development of financial and business development services for microfinance and SME growth in MENA countries, such as financial training and coaching, targeted in particular to women entrepreneurs.
- Co-operate with international organisations/donors and local financial institutions to establish and implement a direct loan or a loan guarantee programme for growth firms owned by women entrepreneurs.

- Improving Corporate Governance
  - The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities;
  - Improving corporate governance in the MENA requires the implementation of national and regional reforms drawing on the goals developed in the OECD Principles of Corporate Governance. More concretely, MENA corporate governance frameworks should:
    - Protect and facilitate the exercise of shareholders' rights;

- Ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights;
- Recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises;
- Ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company;
- Ensure that boards of directors provide strategic guidance to the company, exercise effective monitoring of management, and are accountable to the company and the shareholders.

– Enforcement of the existing legal and regulatory requirements for corporate governance in the region should be a priority, especially in areas concerning the equitable treatment of shareholders. To this end, the division of responsibilities among supervisory, regulatory and enforcement authorities should be clearly articulated and they should have the authority, integrity and resources to fulfil their duties.

– The development and adoption of national codes of corporate governance, in co-operation between Governments and the private sector, should be considered as an additional important tool to be utilized by companies on a “comply or explain” basis. International organizations are called upon to support these efforts and to facilitate the exchange of experience within the Working Group;

– MENA countries should intensify their efforts to improve the regulation and corporate governance of banks. Furthermore, the role of the banking and financial sector as a vehicle for improved governance in the corporate sector needs to be explored;

– MENA countries should strengthen their respective accounting, auditing professions and professional bodies and ensure the adoption of international standards;

– Governments should intensify their efforts to strengthen the corporate governance of state-owned enterprises, in particular by improving transparency, clearly defining the ownership responsibilities of the sate and by improving the role of the boards in overseeing the strategy, management and internal controls of the enterprises.

– Home-grown efforts in improving corporate governance have been effectively steered by National Corporate Governance Task Forces in some MENA countries. Their experience should be built upon in the rest of the region. The latter can be instrumental also in linking the corporate governance agenda to the investment reform agenda.

I.1.3 JOINT BUSINESS STATEMENT

Preamble

On the occasion of the 1st Ministerial Conference of the MENA-OECD Investment Programme, this statement is presented to Ministers by the MENA-OECD Business Network, comprising the Arab Business Council (ABC), Business and Industry Advisory Committee to the OECD (BIAC), the Investment Task Force, the Union of Chambers and Commodity Exchanges of Turkey (TOBB) and other regional business associations, chambers of commerce and representatives of private companies.

Endorsement

Business endorses the view that far-reaching, broadly based economic reforms are necessary to improve the overall investment climate and to mobilize more private domestic and foreign investment that is fundamental to the sustainable development in the MENA region. Time is of the essence to implement such reforms.

Action Points

Business recommends tangible actions by national governments of the region, international organisations and OECD countries to improve the private investment climate. The following issues which are described in more detail in the annex to this statement should be given priority:

- ensuring openness, transparency, accountability, predictability, and consistency of all policies, laws and regulations impacting on investment;
- developing and implementing investment reform agendas in the MENA region that are flexible enough to suit the different individual country's requirements and that are accompanied by dialogue and co-operation with business and civil societies;
- establishing an attractive and enduring tax framework for investment;
- improving corporate governance practices with a view to increase efficiency and performance of companies and to ensure the respect of shareholders' rights.

Commitment

The MENA-OECD Business Network is committed to

- strengthen the voice of the private sector in the region and the image of the region as a destination for investment;
- engage in an effective policy dialogue with the governments of the region, donor countries and international financial institutions regarding common priorities and the pace of necessary reform;
- support efforts by governments to strengthen their capacity for policy implementation aimed at creating a more favourable investment climate;

- fostering business contacts and partnerships among the Network members from MENA and OECD private sector;
- promoting responsible business conduct that supports sustainable economic development in the region.

Business thanks the Ministers of the MENA countries and the Jordanian Minister for Trade and Industry hosting the Ministerial Conference and thus facilitating participation and partnership.

Dead Sea, Jordan, 13 February 2006

Annex

MENA-OECD Business Network Recommendations for Policies Aimed at Improving the Investment Climate in the Mena Region

I. Transparent, consistent, predictable and open investment policies

1. Open markets and transparent and predictable business environments are vital to securing the confidence investors require to take the risks inherent in capital investment. International provisions on transparency and openness for investment, demonstrating commitment to multilateral disciplines, are not sufficient in themselves to boost investment flows but are necessary conditions for improving the overall investment climate. Transparency, consistency, predictability, and openness should be a cornerstone of national and multilateral efforts aimed at enhancing inward investment flows. All provisions affecting rights of entry and post-investment operations, such as sectors restricted to domestic investors, conditions applying to joint ventures, taxation, etc. should be made publicly available and subject to scrutiny and judicial review.

2. Governments should act at international, national and regional levels to ensure that:

- rules and regulations are consistent as well as accessible and comprehensible for potential investors and the general public;
- timely notice is provided to allow appropriate business input prior to the modification or introduction of rules;
- consultations take place to allow the public to offer their views on new rules for modifications to existing ones;
- the reasons for and aims of new rules or modifications to rules are clearly explained;
- there is clear evidence that public views on changes to rules have been given thorough consideration;
- easily accessible enquiry points exist to provide the public with information on business and investment related issues;
- the new or modified rules are clear and comprehensible, so as to ensure predictability of success and to provide individuals with the information needed to comply with them;
- a reasonable period of time is provided to implement to rules;
- the administration officials in charge of designing and implementing investment rules are well trained, motivated, accountable and perform their duties with integrity.

II. Setting flexible investment reform agendas accompanied by dialogue with business

3. The investment reform agenda in the MENA region should be flexible to accommodate each country's requirements. Proposed reforms should be accompanied by a dialogue with business and civil society. Flexibility and co-operation with business can best be obtained through national investment promotion agencies, which play a crucial role in building networks between economic agents.

4. MENA investment agencies must have a clear mandate to support the creation of an investment friendly regulatory framework and to provide all necessary approvals to a local or foreign investor in a reasonable period of time, including the provision of post-investment services, in order to support existing FDI and effective investor targeting.

5. In some countries of the region, investment agencies can already directly influence the investment policy agenda by drafting legislation, commenting on the regulatory policies, and advising government and legislative bodies. Business supports the Programme's approach on encouraging investment promotion agencies to act as driving forces for reform.

6. Eliminating tariff and non-tariff barriers to trade, opening sectors for private domestic and foreign investment and reducing the high transport cost within the region are important steps to enhance the investment agendas in the MENA region.

III. Providing an attractive tax framework for investment

7. As economic and financial barriers disappear, tax differentials have a greater impact on trade and investment flows. Consequently, tax policy is an important element of a country's policy framework to attract and promote investment.

8. Numerous issues must be considered in the context of a country's tax policy, such as tax administration issues, the tax judiciary system, auditing, the tax procedural code, and direct and indirect taxation. The MENA-OECD Investment Programme is prepared and pleased to continue to assisting countries to improve the effectiveness of tax systems through eliminating tax measures that distort trade and investment flows, preventing double taxation, and countering tax fraud.

9. Business notes that the establishment of a viable tax system and specific fiscal and non-fiscal incentives to attract investment can be an important tool for some MENA countries to attract investment. However, the MENA-OECD Business Network prefers transparent and efficient tax administration and lower rates to incentives. Where tax incentives are applied, in order to be effective they must be non-discriminatory, transparent, proportional, clearly causal or closely linked, non-trade distorting, oriented towards attracting long-term investment, and temporary in relation to offsetting asset or policy gaps..

10. To summarize: the key elements of a tax policy framework that supports investment and sustainable economic growth include:

- Transparent and predictable tax systems;
- Broad tax base with the lowest possible rates;
- No double taxation;

- Transfer pricing law based on the arm's length principle as articulated in the OECD Transfer Pricing Guidelines – governments should follow the letter and the spirit of the Guidelines;
- Timely consultation with the business community on tax matters.

IV. Improving Corporate Governance Practices

11. The essence of corporate governance is to increase growth and performance of companies and to ensure the respect of shareholders' rights. The debate surrounding corporate governance must remain limited to these issues. Other non-business related policies objectives are outside the scope of this debate.

12. The MENA-OECD Business Network urges the MENA-OECD Investment Programme to work on enhancing corporate governance practices in the MENA region. Key players and stakeholders in the region should be brought together with their counterparts from OECD countries, as well as other emerging economies and international institutions for roundtable meetings to exchange experience and engage in policy dialogue to develop common recommendations and pursue implementation of business-related corporate governance reforms.

V. Business commitment

13. Business proposes to enlarge the MENA-OECD Business Network by seeking to include all relevant MENA private sector associations and foreign investor representatives to help strengthen business-government dialogue in the region and improve the investment environment.

The MENA-OECD Business Network will:

- Strengthen the voice of the private sector in the region and the image of the region as a destination for investment;
- Engage in a policy dialogue with the governments of the region, donor countries and international financial institutions regarding common priorities and the pace of necessary reform;
- Foster business contacts partnerships among the Network members from MENA and OECD private sector.

14. MENA-OECD Business Network welcomes the recognition given to the value of regular and prior consultations with the business community regarding policy priorities and economic reform in the proposed 2005 Ministerial Declaration.

15. Business organisations endorsing this statement are resolved to consult again with MENA and OECD governments within the framework of the Steering Group and the five Working Groups.

1.2 SECOND MINISTERIAL MEETING, MAKING REFORMS SUCCEED: MOVING FORWARD WITH THE INVESTMENT POLICY AGENDA

CAIRO, 27-28 NOVEMBER 2007

KEY DOCUMENTS ADOPTED BY MINISTERS

I.2.1 MINISTERIAL DECLARATION

I. Preamble

PARTICIPATING COUNTRIES from the Middle East and North Africa (MENA): Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine National Authority, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates,Yemen

TAKING NOTE of the progress achieved in the attraction of foreign investment to MENA countries and the stimulation of regional and domestic investment for private sector development in MENA countries participating in the MENA-OECD Investment Programme;

CONVINCED of the urgency to continuously foster private sector development, in particular of SMEs, for growth, employment generation, economic diversification, women and youth integration in the economy and social progress across countries in MENA;

AWARE of the potentials benefits in particular of increased intra-regional investment flows stemming from current high liquidity in the resource rich countries;

CONVINCED that continued broad-based economic policy reforms, including in particular improvements in the investment climate, are essential for MENA countries to fully benefit from the investment within and into their economies;

BELIEVING that the dialogue on investment policy and private sector development issues established by countries under the MENA-OECD Investment Programme is effectively complementing and reinforcing policies at the national level;

BELIEVING that the ownership of this dialogue can be strengthened with a view to support existing structures and create ones for economic policy dialogue and peer learning and review;

ACKNOWLEDGING that the OECD, its Member countries and other international organisations are providing valuable support to the efforts of MENA governments to support favourable conditions for increased investment and job creation through private sector development;

AFFIRMING the importance of close coordination and concrete cooperation on a project basis with other international initiatives supporting economic policy and legal environment reform in MENA countries;

AWARE of the important contribution that the business community can make to input into investment climate reforms conducted by governments expressed in the Business Statement presented to Ministers;

REAFFIRMING AND BUILDING on the commitments made by MENA and OECD countries to participate and support the MENA-OECD Investment Programme;

EXPRESSED SUPPORT for the following principles and actions for implementation of investment policy reforms on the occasion of the second MENA-OECD Ministerial Meeting in Cairo, Egypt, on 27-28 November 2007:

II. Progress in investment policy reforms

The Participating Countries are committed to move forward with comprehensive reforms to enhance their business climate and to promote private sector development.They welcomed the business statement adopted by the MENA-OECD Business Forum held on the 27 November. In this context, they:

Investment Policy and Investment Facilitation

1. Encourage efforts by OECD and MENA countries towards further liberalisation, regulatory reform and privatisation of state-owned enterprises in accordance with national development objectives to induce investment and private sector development;
2. Reiterate the importance of transparency and predictability of national investment policies, laws, regulations, and administrative practices affecting foreign and domestic investment; agree on the importance of further improving the investment climate by periodically reviewing laws, regulations and administrative practices;
3. Stress the importance of promoting positive interactions between foreign investment and local enterprise development through measures such as development of skills, local entrepreneurship, industrial clusters and SME access to finance;
4. Encourage business linkages between foreign and domestic investors, including partnerships, supply chain arrangements and other forms of cooperation;
5. Propose a review, in the framework of National Investment Reform Agendas (NIRAs), of remaining restrictions to international and regional investment taking into account international instruments like the OECD Declaration on International Investment and Multinational Enterprises;
6. Encourage the expansion of International Investment Agreements and welcome the proposal to establish a platform among MENA countries providing information and advice on the negotiation and implementation of International Investment Agreements;
7. Call on governments to establish frameworks for effective private sector participation in infrastructure financing by making use of Public-Private-Partnership arrangements;
8. Encourage Investment Promotion Agencies to act as an efficient policy advocate for investment climate reform;

Tax Policy

9. Welcome the **Declaration on Tax Policy Development Supportive of Investment,** promoting in-depth analysis of tax systems and sharing of information through regional ‘roundtable’ discussions of key tax issues, including experiences with different policy approaches to addressing tax impediments to investment;
10. Welcome the establishment in Cairo of a regional programme for training of tax officials on international and domestic tax policy and tax administration issues;
11. Note the progress achieved in evaluating tax incentives and call for continuing efforts for increased transparency and avoidance of inefficient use of tax incentives;

Financial Sector Development

12. Welcome progress achieved in financial market regulation and supervision and call upon the MENA-OECD Investment Programme, in close cooperation with regional and international organisations to provide support to national capital markets authorities and regional initiatives to enhance the efficient functioning of financial markets. They support proposals for new initiatives in capital markets development in the MENA region, and call on Qatar to take a leadership role, in cooperation with the OECD, in implementing proposals under discussion;
13. Note the progress achieved in creating a **MENA-OECD Enterprise Financing Network** to strengthen linkages between financiers, science and technology associations, entrepreneurs, and other actors in the entrepreneurship value chain in order to bridge the financing gap. They call for contributions from both public and private sectors to the functioning of the network;
14. Call for the development of innovative financial frameworks to stimulate private equity and microfinance for the creation and expansion of enterprises;

Entrepreneurship

15. Welcome the application of the **Enterprise Policy Assessment** developed through a joint effort by the OECD, the European Commission, the European Investment Bank and the European Training Foundation in countries of the MENA to benchmark enterprise development policies;
16. Express support for the Declaration on 'Fostering Women's Entrepreneurship in the MENA region'presented by the **Women Business Leaders Forum** and call for its implementation in order to enhance women's participation in MENA economies;
17. Stress the importance of developing entrepreneurship in rural areas;
18. Stress the importance of increased and coordinated efforts for human resource development, in the field of education, vocational training, business skills and management training and specific measures designed to facilitate youth integration into the economy;

Corporate Governance, Business Integrity and Corporate Responsibility

19. Encourage effective support to business in fighting against corruption, improving corporate governance, engaging in responsible business practices; call for a regional dialogue on responsible business conduct, under the auspices of the MENA-OECD Investment Programme and welcome the proposal by Egypt to create a regional centre for responsible business conduct;
20. Welcome the development of national governance codes and the activities of national institutes of directors (eg. in Egypt and Lebanon), and expressed support for the work accomplished by the MENA-OECD Investment Programme in cooperation with the Hawkamah Institute and note the conclusions reached at the annual meeting of Hawkamah (21-22 November 2007), namely on the policy brief on corporate governance of banks;
21. Acknowledge the benefits of sound insolvency systems for the efficient reallocation of resources and encourage ongoing efforts on insolvency systems and other areas of corporate law reform;

Business Climate Development Strategy

22. Call for a systematic evaluation of the progress achieved in the design and implementation of reform and expressed support for the creation of a Business Climate Development Strategy presented by the Steering Group of the Programme on the basis of a joint proposal by the OECD and the World Bank. The implementation of this proposal is expected to increase investment and competitiveness in the MENA region through a comprehensive and collective process that evaluates, designs and implements government policy that deals with the business climate. The policy measurement and support in implementation will fully leverage existing work conducted on the region by the World Bank, OECD and other organisations, and closely involve governments and private sector representatives to ensure national ownership of the reform process and maximum impact;

III. The Way Ahead

In accordance with the above principles, Participating Countries:

- Support the extension of the MENA-OECD Investment Programme until the end of 2010 and welcome the work of the five Working Groups and Task Forces of the MENA-OECD Investment Programme which have met since the February 2006 Ministerial meeting. They complement the efforts of experts from governments inside and outside MENA countries, international organisations, business and of civil society who have participated in this work;
- Welcome the implementation of specific investment reform targets which have been announced at the February 2006 Ministerial meeting and during the plenary sessions of this second Ministerial meeting, and encourage governments in MENA countries to continue their efforts to identify and implement in a co-ordinated manner reform targets that can be achieved within the next year as part of the reform process;
- Encourage the further development of MENA-OECD Enterprise Financing Network as a private sector driven initiative and encourage the constructive involvement of business representatives and other representatives of civil society in discussions with Governments on the improvement of the investment environment including the issue of responsible business conduct;
- Will continue to promote formalised and project oriented co-operation between regional, international organisations and donor agencies to enhance synergies in investment climate reform projects in MENA countries and welcome the partnership arrangement concluded by the OECD with the United Nations Industrial Development Organisation, the Islamic Development Bank, the Gulf Cooperation Council, the Union of Arab Banks, Council of Arab Business Women, the Arab Monetary Fund and the Council of Arab Economic Unity in support of the MENA-OECD Investment Programme;
- Appreciate the work of the regional Centres established with the support of the MENA-OECD Investment Programme, namely the MENA Investment Centre in Bahrain, the Hawkamah Corporate Governance Centre in Dubai and the Tax and Public Management Centre in Cairo, and encourage them to further enhance their efforts; welcome the launch of additional regional initiatives, which could includethe creation of an women entrepreneurship network and a regional centre for responsible business conduct;
- Stress the need for ensuring that economic development and resource allocations benefit the population and for communicating effectively the achievements of national reforms and

regional cooperation to stakeholders, affected constituencies and the public at large in participating countries and mandate the Steering Group to develop a set of specific proposals to that effect;

- Mandate the Steering Group to further strengthen the institutionalisation of the regional dialogue, in cooperation with other programmes and initiatives with a view to enhancing regional ownership.

IV. Follow-up

Ministers agree that the Participating Countries will meet again in 2008/2009 at Ministerial level to review progress achieved in implementing this Declaration. They will make use of the Business Climate Development Strategy to strengthen the Country Economic Teams and the National Investment Reform Agendas to follow up the implementation of this Declaration. Participating Countries mandate the Steering Group to continue their efforts to implement the agreed action plans and output targets.

Ministers call upon OECD countries and MENA countries to continue their support of the Programme, including financial contributions according to their capabilities.

The participating countries expressed their appreciation and thanks to the First Lady of Egypt for the patronage of the Women Business Leader Forum and the Business Day held on the 27 November 2007, to the Prime Minister and the Governement of Egypt for hosting the Ministerial meeting and the Business day, and to the Minister of Investment of Egypt, Dr. Mahmoud Mohieldin for his effective role as the co-chair of MENA-OECD Investment Programme.

List of Documents referred to:

- OECD Declaration on International Investment and Multinational Enterprises
- Declaration on Tax Policy Development Supportive of Investment
- Business Climate Development Strategy
- Declaration on “Fostering Women’s Entrepreneurship in the MENA Region.”
- Business Statement

I.2.2 RECOMMENDATIONS ON TAX POLICY DEVELOPMENT SUPPORTIVE OF INVESTMENT

A Proposal by Participants of the 3rd Meeting of Working Group 3 of the MENA-OECD Investment Programme 19-20 June 2007

Preamble

The following recommendations encourage participating MENA countries to explore key issues and questions concerning their economy, their institutions, and policy settings, in the development of tax policy to encourage investment. The recommendations do not suggest particular tax systems or rules, which must be country-specific. They instead commit countries to take a comprehensive review of their tax system and undertake various assessments when setting policy to remove tax impediments to investment, while at the same time supporting the funding of infrastructure development and other programmes of critical importance to investors.

The recommendations build on the following best practices recognized during a MENA Ministerial meeting held in February 2006, in Jordan:

- The evaluation of costs and benefits of current and proposed investment incentives; and
- Transparent, stable and equitable tax systems, as important elements of the investment climate.

Tax Recommendations

The development of sound tax policies supportive of investment can benefit significantly from the sharing of information, analyses, and experiences amongst tax policy officials. Facilitating dialogue on tax issues is a central aim of the MENA-OECD tax initiative.

1. MENA countries should participate in regional ‘roundtable’ discussions on key domestic and international tax issues.

2. In the design of tax policy supportive of investment, policy makers should establish a target tax burden on business income consistent with their economic development strategy, the ability of the tax administration to collect tax on business, and with their overall fiscal policy goals.

3. Countries should systematically assess the (actual) effective tax burden on business income as a means to inform policy decisions, taking into account not only main statutory provisions, but also tax-planning opportunities and business compliance costs.

4. In cases where tax incentives are introduced to compensate for weak host country conditions and characteristics (e.g. limited market size), the limitations of relying on incentives alone to address investment impediments should be adequately assessed.

5. Rules for the determination of taxable business income should be formulated with reference to a benchmark income tax structure, and with regard to provisions generally found in other countries.

6. Where the provision of tax incentives for investment differs according to specific targeting criteria, such as firm size, sector, industry, location, or ownership structure (or some combination of criteria), policy considerations used to support targeted tax relief should be carefully weighed. Intended and unintended tax-planning opportunities should be identified and effects examined, and tax expenditure accounts should be developed to inform and manage the budget process. The framework for authorizing and managing tax expenditures should be transparent, and sunset clauses should be used to encourage tax incentive evaluation.

7. Tax officials should work with counterparts in other countries to develop their tax treaty network to avoid double taxation, secure treaty-reduced non-resident withholding tax rates, provide investors with greater certainty over tax treatment, and enable exchange of information on tax matters to counter tax avoidance and evasion.

I.2.3. JOINT BUSINESS STATEMENT

Preamble

On the occasion of the 2nd Ministerial Meeting of the MENA-OECD Investment Programme this statement is presented to Ministers by the MENA-OECD Business Network comprising the Business and Industry Advisory Committee to the OECD (BIAC), Egyptian Businessmen's Association (EBA), Union of Mediterranean Confederations of Enterprises (UMCE), the MENA-OECD Enterprise Financing Network, and other business associations, chambers of commerce and representatives of private companies active in the MENA region.

Action Points

Business commends governments on the progress made in investment policy reforms which has been reflected in rising inflows of foreign direct investment. We encourage governments to continue using the MENA-OECD Programme as a platform to discuss potential reforms, to advise regional authorities on reform initiatives and to expand the knowledge base of important factors that support and facilitate increased investment. High oil revenues and a healthy world economy offer a unique opportunity to modernise and diversify the economies of the MENA region which must not be missed. Business in particular:

- Urges governments to measure and benchmark business climate reforms using new tools like the joint OECD/World Bank Business Climate Development Strategy (BCDS) to measure and benchmark progress achieved so far;
- Asks for full partnership of the business community in discussion and implementation of business climate reforms in the region through effective consultation and participation beginning with the early stages of the reform process;
- Encourages measures to strengthen the independence of business organisations in the region through capacity building programmes and sharing of best practice with OECD governments;
- Welcomes new initiatives supporting the exchange of technology, know-how and financing between OECD and MENA economies such as the MENA-OECD Enterprise Financing Network;
- Stresses the need to explore ways of encouraging financial and technical support for human resource development, in particular business skills in the educational programmes of the region;
- Stresses the need for any regulation to be designed and implemented in a timely, predictable, transparent and non-discriminatory way;
- Recognises the importance of making the movement of business people in and out of the MENA region as easy as possible within the context of effective visa regimes; and

- Underlines the need for business and governments to unite in the fight against corruption, improving corporate governance and promoting corporate responsibility.
- Urges governments to commit adequate resources to developing an effective Research & Development base in the region;
- Urges governments to consider support for non-oil producing countries – namely Jordan, Lebanon, Tunisia, Palestine – to further sustainable economic growth.

Commitment

The MENA-OECD Business Network is committed to:

- Supporting governments' efforts to promote investment in the region, particularly in the areas of infrastructure development, manufacturing and technology;
- Encouraging efficient use of combined public and private assets through public-private partnerships:
- Working towards strengthening the positive linkage of foreign direct investment with local economies with a particular emphasis on local job creation;
- Supporting a regional dialogue on corporate responsibility to include voluntary business initiatives aimed addressing societal concerns in areas such as environment, industrial relations, corruption and technology transfer;
- Supporting the implementation of a new generation of corporate governance codes and regulation in the region benefiting from OECD best practice; and
- Supporting capacity building initiatives for independent business associations in the region.

Business thanks the Ministers from MENA countries and the Egyptian Minister for Investment for hosting the Ministerial Conference. We hope that this conference will be a catalyst for further improvements of the business climate in MENA countries that will attract more domestic and foreign investment for the benefit of the economies and societies of the region.

I.2.4. DECLARATION ON FOSTERING WOMEN'S ENTREPRENEURSHIP IN THE MENA REGION

PREAMBLE

Women's entrepreneurships is expanding around the world, both in emerging and developed economies. Women entrepreneurs constitute a growing share of small and medium enterprise (SME) owners and are creating new niches for entrepreneurial activity, but often confront special barriers to business creation and development. Fostering the growth of women's entrepreneurship is an effective strategy to create jobs, catalyse economic development, empower women and foster social cohesion. Women's entrepreneurship, particularly in the Middle East and North Africa (MENA) region, deserves attention in order to access an underutilised resource and increase economic growth.

Starting from a low base, the Arab region has witnessed a faster increase in women's share of economic activity of all other regional of the world between 1990 and 2003 – by 19% as opposed to 3% worldwide.[1] While encouraging women to participate in economic activity and therefore improving the framework for women's entrepreneurship has been one of the most difficult challenges in the MENA region, it is also one to which significant attention is being increasingly paid by Governments of MENA countries. The following Declaration re-affirms the principles instrumental for further elevating the rates of women entrepreneurship and economic participation in the MENA economies.

Ministers, government representatives, women business associations, private sector associations and chambers, as well as other participants of the MENA-OECD Women Business Leaders Forum, held in Cairo Egypt on 27 November 2007,

RECOGNISING:

- That entrepreneurship is a key driver of economic growth and diversification in OECD member and non-member economies;
- That women's entrepreneurship in the MENA region represents an underutilised reservoir for job creation, economic growth and social cohesion;
- That a targeted and integrated support approach is required to accelerate the rate at which women in the MENA region are starting new businesses, growing their enterprises, creating employment, and participating fully in economic development activity.

1 UNDP Arab Human Development Report 2005, *Towards the Rise of Women in the Arab World,* p. 88.

RECALLING:

- The adoption by Ministers of almost 50 OECD member and non-member countries of the *"Bologna Charter on SME Policies"* in June 2000 which emphasised the important contribution of women entrepreneurs to economic development and social cohesion;
- *"The Istanbul Ministerial Declaration on Fostering the Growth of Innovative and Internationally Competitive SMEs"* adopted in June 2004, where Ministers of 73 OECD member and non-member countries/economies noted that women's entrepreneurship is an essential element in the drive to mobilise human resources in order to promote entrepreneurship. The Declaration stressed that: "Promoting women's entrepreneurship through the elimination of barriers to enterprise creation and growth, such as impediments to the right to hold property or to sign contracts, where such impediments exist, and by taking into account at the design stage the impact of SME-related policies on women's entrepreneurship";
- The Declaration by Ministers from the MENA Region and the OECD on *"Attracting Investment to MENA Countries – Common Principles and Good Practice"* of February 2006 which recognised that fostering the growth of women's entrepreneurship is an effective strategy to create jobs, catalyse economic development and diversification, empower women, create a more democratic society and foster social cohesion;

ACKNOWLEDGING:

- The important recent work of the MENA-OECD Initiative on Investment and Governance of Development, including its work on fostering women's entrepreneurship in the MENA Region;
- That an *initial mapping of women's entrepreneurship* in six MENA countries (Egypt, Jordan, Lebanon, Morocco, Tunisia and Saudi Arabia) by the OECD Centre for Entrepreneurship, SMEs & Local Development (CFE) shows that the levels of activity and the area of women's entrepreneurship are still low, although progressing. Some of the main barriers and constraints identified relate to micro finance and commercial credit, as well as the lack of research and data to inform an effective advocacy strategy;
- Significant work of regional and international organisations, notably, the report on the "*Rise of Women in the Arab World"*, produced by the UNDP in collaboration with AGFUND, and the study on "*The Environment for Women's Entrepreneurship in the Middle East and North Africa Region"* authored by the World Bank.

WELCOMING:

- The workshops organised by the OECD Centre for Entrepreneurship, SMEs & Local Development in Istanbul on *"Building Awareness of Women's Entrepreneurship in the MENA Region"* in 2005 and on *"Promoting Women Entrepreneurship in the MENA Region"* in 2006, which have identified the following four key areas for action: Building knowledge and awareness;
- Building advocacy capacity;
- Building women entrepreneurial capacity and skills (including ICT); and,
- Building networks, business partnerships and trade linkages.

REAFFIRMING the need for an institutional framework that will contribute to a business environment that is conducive to entrepreneurship and facilitates entry, growth, transfer of ownership and smooth exit of enterprises**.**

Participants in the Women Business Leaders Forum invite Governments of MENA countries to:

DEVELOP targeted policies to support women's entrepreneurship in the MENA Region, by:

- Fostering greater awareness of the benefits of entrepreneurship among women and placing higher value on the role of women in the economy and society;
- Improving their business start up rates through removing gender-related obstacles to entrepreneurship and facilitating women's access to management and technical training, to support services and access to financing;
- Helping women entrepreneurs to take advantage of opportunities to participate actively in existing networks for business people, or to create their own traditional or virtual networks, at local, national and international levels. New technologies offer opportunities for strengthening and expanding these networks;
- Promoting sustainability and ensuring that women-owned and led businesses participate fully in economic development activity.

They also **invite the OECD and its member Governments as well as other international organisations** to:

- Attach a high priority in their development programmes to promoting women's entrepreneurship and enhancing women's participation in the economy;
- Develop tools to improve information and understanding of the current situation of women's entrepreneurship in the MENA Region and of activities to promote it;
- Provide support to regional and national initiatives by MENA countries to research, training and advocacy activities in this area;
- Assist to develop programmes specifically designed to support women ownership and involvement in micro, small and medium-sized enterprises (SMEs);
- Implement, in co-operation with national and regional associations of women entrepreneurs, the programme on *Training the Trainers for Mentoring Potential & Nascent Women Entrepreneurs in the MENA Region;*
- Facilitate the exchange of best practices between MENA, OECD countries, and other non-member economies on fostering women's entrepreneurship and the growth of women-owned SMEs.

They welcome proposals put forward during the meeting to establish a **Regional Forum for Women's Entrepreneurship** and invite the MENA-OECD Investment Programme to extend its support to the activities of the Forum.

They further recommend that this Declaration is annexed to the Ministerial Declaration and presented to the Ministers for adoption on the 28 November 2007.

I.3. MENA-OECD INVESTMENT PROGRAMME ACHIEVEMENTS AND DIRECTIONS

Making Investment Reforms SUCCEED: Launch of the Second Phase of the MENA-OECD Investment Programme

I. Background

Weak investment flows in early 2000…

At the beginning of 2000, the MENA region lagged behind other regions in attracting investment flows as compared to other emerging country regions. Taken as a whole, the MENA region attracted approximately 0.6% of global FDI inflows between 1998 and 2000.[1] The gap between the income per capita of most Middle East and North African countries and that of advanced industrial nations was wide and had further increased in the 1990s.

But emerging reform momentum…

Facing considerable competition from other regions and growing pressure from a young workforce, a number of governments in the region have identified an urgent need to implement serious economic and regulatory reforms to increase private sector participation in their economies. Investment climate reform has been therefore indentified as a key element of economic restructuring policy, undertaken by MENA countries in an effort to transform their economies from public sector dominated to private sector led economies. The specific policy changes have ranged from FDI liberalisation and administrative simplification to reform of investment and commercial legislation.

MENA Governments requested OECD expertise in 2004

The Organisation for Economic Co-operation and Development (OECD) was invited, alongside its key partners, to provide policy advice on implementing investment policy reform. Following this invitation, the MENA-OECD Initiative on Good Governance and Investment for Development was launched with the participation of 18 countries from the region (Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine National Authority, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates and Yemen). The objective of the MENA-OECD Investment Programme, one of the two pillars of this Initiative, was to provide advice on improving the investment policy climate in the region.

Political support for improvements were expressed at 2006 Ministerial meeting

The first year of the Programme concluded with a Ministerial Meeting and Business Day held on 13-14 February 2006 in Jordan, which was attended by delegations of 16 MENA countries, represented by Ministers or high level officials from the relevant Ministries. The meeting concluded with a Declaration on “Attracting Investment to MENA Countries – Common Principles and Good Practice” which defines a regional framework for both

foreign and domestic investment. Ministers also endorsed an ambitious programme for regional dialogue and capacity-building developed by the five regional Working Groups of the Programme. The Ministers also noted the National Investment Reform Agendas, encompassing reform targets, developed by participating countries and encouraged their implementation.

Meanwhile, a significant rise of investment within and into the region occurred

The changes to the legislative and administrative frameworks of MENA countries have not gone unnoticed by the international investor community. Indeed, FDI in the region increased to US$ 42.6 billion in 2005, compared to US$ 14.1 billion in 2003.[2] The MENA region experienced a further sharp rise of FDI flows up to US$ 58.8 billion in 2006[3], in part due to increased investments in the petrochemicals sector and large privatisation projects. For the fifth year in a row, the MENA region enjoyed a robust pace of economic growth. Real GDP increased by 6.3 percent (estimated) in 2006, up from 4.6 percent during the first four years of the decade. Indeed, the region's growth performance in 2006 was one of its best since the 1970s.[4]

However, unemployment challenges persist

It has been estimated that approximately 100 million additional jobs would have to be created between 2000 and 2020 to employ all additional entrants to the labour market and reduce unemployment.[5] The region's aggregate unemployment rate fell from 14.3 to 10.8 percent of the labour force. The employment rate grew at 4.5 percent per annum from 2000 until 2005, which is the strongest rate of job creation among developing countries.[6]

And the quality of FDI flows need to support sustainable growth

Although investment flows have increased in the MENA region their level, quality and sustainability can still be improved. The focus of investment in the MENA region remains mainly in sectors such as travel and tourism, real estate and hydrocarbons. Regional disparities persist, with some countries such as UAE, Egypt and Algeria taking the lion's share of FDI inflows to the region. Moreover, there is still potential for local investment and greater entrepreneurship in the MENA region. The challenge for governments in the region is to focus on the design and implementation of policies which will have the greatest benefit for investment flows and private sector development in the short to medium terms.

The rise in FDI flows has been in the context of the global increase of such flows in emerging markets – the Economist Intelligence Unit estimates that inflows to emerging markets have increased to 510.7 billion USD by 2006 – which is an increase of 159.2 percent compared to the 197.0 billion USD in 2002.[7]

II. Achievements of the MENA-OECD Investment Programme

Achievements of the Investment Programme in 2005-2007 – MENA I

The Programme has realised a number of achievements through its regional dialogue on investment, as well as capacity-building activities provided to individual countries in the region.

The first phase of the Investment Programme had three main objectives:

1. to take stock of the relevant legal and regulatory framework in the region;

2. to establish time-bound targets to reform investment policies in the participating countries and work towards their implementation;
3. to create regional networks of private sector participants, key organisations, and Ministries and Agencies in the MENA countries.

The Programme has assessed the regulatory environment and key remaining challenges for investment policies

In relation to the first objective, the Programme has taken stock of developments in the **regulatory environment**, including key challenges in areas related to investment policy, investment facilitation, taxation, financial sector development, corporate governance and women's entrepreneurship. This work was synthesised in the thirteen reports issued for the Ministerial meeting held in February 2006. The reports reflected the inputs of the five Working Groups and seven Taskforces under the Programme. Most participating countries developed National Investment Reform Agendas and presented them at this Ministerial Meeting.

National Investment Reforms Agendas have been produced by many MENA countries

Work at the national level focused on the Programme's second objective - establishing time-bound targets for improving the investment environment. MENA governments have developed **National Investment Reform Agendas (NIRAs)** that include concrete measurable targets to be achieved in the short to medium term. The Steering Group reviewed these Reform Agendas at its meetings and has provided overall support to this process.

The targets in the Reform Agendas have subsequently been further refined. The following ten countries have defined their Reform Agendas and appointed national contact points to implement these reforms: Bahrain, Egypt, Jordan, Lebanon, the Palestinian Authority, Oman, United Arab Emirates, Morocco, Tunisia, and Yemen. Other countries are discussing their Reform Agendas, which will be finalised in the coming months. A National Investment Reform Agenda has equally been prepared with the government of Iraq; it contains projects aimed at establishing an independent investment promotion agency and strengthening the legal and institutional framework for investment.

NIRA workshops were held Egypt, Oman, Jordan, Morocco, Lebanon and the United Arab Emirates in 2006/07 to review and support the implementation of reforms in these five countries. These workshops were attended by Ministers and high level participants from Ministries of Investment, Industry, Finance and Economy as well as from investment promotion agencies. The workshops showed measurable progress in several areas and allowed the identification of new targets, as well as follow up of the existing ones. Each NIRA workshop has produced policy briefs that include recommendations and targets for further reforms.

Regional networks were created on key policy issues

The Programme has developed a wide network of government experts in its **5 Working Groups** which met in 3 rounds of meetings since 2005 and established supporting Taskforces. It has also created a substantial network of private sector organisations (i.e. the Arab Business Council, Business and Industry Advisory Committee to the OECD, the Arab Union of Banks, TOBB), among other private sector participants that attend the meetings of the Programme. In addition, the MENA-OECD Business Network organised a Business Day in conjunction with the Ministerial meeting, and presented "Investor of the Year" awards to 24 companies from the MENA region for

their innovation and employment creation.

Support of the private sector for innovation and entrepreneurship was mobilised

To support entrepreneurship in the region, including women's entrepreneurship, and to strengthen activities with the private sector, the Programme launched an initiative – the **MENA-OECD Enterprise Financing Network** – in 2006. This network aims at improving the regulatory conditions for financing entrepreneurship by using the Programme as a forum for dialogue between business and government representatives from the MENA and OECD countries. It has held two meetings and a Steering Board was constituted to guide the network.

And strong regional ownership was underlined by the establishment of regional centers

The opening of **regional centers** in coordination with the Programme has an important role in disseminating best practices and improving the business climate for private sector development. Such centers are also a strong expression of regional ownership. Bahrain has created a regional Centre for Investment and the United Arab Emirates a regional Institute for Corporate Governance (Hawkamah). Egypt has opened a regional Centre for Public Management and Tax Policy, for which an ambitious work programme has been developed. These centers provide a valuable support to the Investment Programme and demonstrate increasing regional ownership of its activities.

Adherence to international investment instruments can increase investor confidence

Several MENA countries are interested in participating in the activities of the OECD Investment Committee and in adhering to the **OECD Declaration on International Investment and Multinational Enterprises**. Egypt has officially adhered to the Declaration in 2007 and Jordan and Morocco have begun the process of adherence. Other countries have stated their interest as well.

And the Programme strengthened cooperation with other international organisations

The Investment Programme has strengthened its cooperation with **regional and international organisations** that are active in the MENA region in order to avoid duplication and increase synergies. There is active cooperation on corporate governance with the International Finance Cooperation's PEP MENA Initiative in the context of Working Group 5. Other joint projects with IFC partners are being explored, including support to One-Stop-Shops and activities to promote entrepreneurship. A workshop on the National Investment Reform Agenda of Jordan was organised jointly with UNIDO, leveraging synergies with UNIDO's investment forum. The Islamic Development Bank has agreed to cooperate with the Programme on business climate policy evaluation. Cooperation with the GCC is strengthening and the Programme will also co-operate with the Arab Monetary Fund in the area of financial market development. Cooperation with the European Commission is increasing and the Commission has received country-specific proposals for cooperation in line with the objectives of the European Neighbourhood policy country action plans. A joint project with the European Commission has been developed to assess enterprise policies in MEDA countries as part of the EU-Mediterranean Partnership.

III. Proposed content of the Investment Programme in 2008-2010, MENA II

While important results have been achieved in the first phase of the Programme….

Important results have been achieved in that the first phase of the Programme from 2005 to 2007 has succeeded in mobilising the investment reform process in participating countries and has managed to build networks for regional cooperation on investment policy issues. It has developed partnerships with international and regional organisations, created political support through a Ministerial Declaration, established a dialogue with the private sector and encouraged regional initiatives. The Programme currently focuses on the implementation of reforms and will carry out a first assessment of results on the occasion of the second Ministerial meeting, 27-28 November 2007, in Cairo.

However, it has become clear that more needs to be done to improve the investment environment in the region, develop the financial sector and create the right conditions for growth, development, employment and increase corporate responsibility. It was therefore proposed to the Council of the OECD to extend the Investment Programme for another three years (2008-2010) in the context of the OECD-MENA Initiative on Governance and Investment for Development (MENA II). The OECD Council decided on 10 May 2007 to extend the Programme.

Existing activities need to be deepened and new ones developed

For MENA II, the Programme will deepen existing activities as contained in the original Programme with the same country coverage which means that all MENA countries will continue to be eligible to participate in all activities. It is understood, however, that some activities will only involve those countries sharing common challenges and which are interested in particular aspects of the Programme. All participating countries will need to engage actively and contribute financially and/or in-kind in order to ensure the success and sustainability of the Programme.

The Programme will continue to focus on the implementation of investment climate reforms with a view to strengthen the frameworks and institutions needed to enhance economic growth, job creation and corporate responsibility. It will emphasise the non-discriminatory participation, in particular of women in all activities organised. All activities will be implemented in close cooperation with the Programme's partner organisations.

A new Business Climate Development Strategy will strengthen the business climate improvements efforts

The second phase of the Programme will start with the implementation of the agreed NIRAs and mobilise support for implementation by bilateral and multilateral development agencies in a more structured way. At a meeting of the Steering Group in Paris on 29 March 2007, the MENA-OECD Investment Programme agreed "to develop a comparative benchmark to evaluate investment policy reform based on the Policy Framework for Investment, the Investment Reform Index, and taking into account the experience with other regional programmes." The request for a more structured approach to prioritising business climate reforms and assisting in

their implementation was formulated by MENA countries during the first phase of the MENA-OECD Investment Programme. The proposal for establishing a Business Climate Development Strategy (BCDS) reflects the comments made by participants of the Steering Group meeting of the Programme held on the 5 September 2007 in Jordan. The proposed initiative presents an integrated approach towards assessing and prioritising business climate reforms in the MENA region.

The BCDS will complement and support ongoing efforts of the MENA-OECD Investment Programme, such as the implementation of the Enterprise Policy Index in MEDA countries. Existing national development strategies of MENA countries and National Investment Reform Agendas will be fully integrated into the BCDS. As with previous work of the MENA-OECD Investment Programme and that of the World Bank (in particular in efforts on the Investment Climate Assessments), the private sector will be actively engaged and general public awareness of this effort will be raised.

Continue the regional peer dialogue process in Working Groups and Task Forces

The implementation of the MENA-OECD Investment Programme will continue to be guided by regional peer dialogue and exchange of experience amongst participating countries, taking into account concerns of business and civil society organisations. Building on the achievements of MENA I, intensified regional capacity-building activities of MENA II will draw on additional instruments to support and facilitate reform design and implementation, including focused peer-to-peer learning activities, regional centres and increased emphasis on monitoring and measuring reform progress.

Continue use of existing organisational structure

The basic organisational and institutional structure of the Initiative will be similar to MENA I. Ministerial meetings will provide political support, Steering Group meetings will provide guidance to the work and Working Groups and thematic task forces will provide the key instruments for regional policy dialogue.

Strengthen Cooperation and private sector input

Cooperation with regional and international partner organisations will be strengthened and synergies developed with the bilateral and multilateral programmes on capacity-building support and technical assistance (e.g. the EU Neighbourhood programmes, UNIDO, World Bank, MIGA/FIAS, IFC PEP MENA and the activities of the Islamic Development Bank, the GCC and other regional funds).

Private sector input into the Initiative will be further developed. The partnership with the Arab Business Council, the involvement of the private sector in the events conducted by the MENA-OECD Investment Programme, and innovative initiatives like the OECD-MENA Enterprise Financing Network will help strengthen private sector support and add momentum to the governance and investment reform process in individual countries. Women's and youth entrepreneurship will be further encouraged.

Expanding regional ownership through support for regional centers

Existing and future regional Centers such as the Hawkamah Center in Dubai or the MENA Investment Center in Bahrain can play an important role in supporting the activities of the programme and disseminating its results.

NOTES

1. UNCTAD (2001), *World Investment Report 2001: Promoting Linkages*, New York/ Geneva, p. 256. Due to different definition of MENA, this figure refers to the 18 countries participating in the MENA-OECD Investment Programme except for Djibouti, and Cyprus, Iran, Sudan and Turkey.

2. UNCTAD (2007), *World Investment Report 2007: Transnational Corporations, Extractive Industries and Development*, p. 251-3; UNCTAD (2006), *World Investment Report 2006: FDI from Developing and Transition Economies: Implications for Development*, p. 299-302.

3. UNCTAD (2007), *World Investment Report 2007: Transnational Corporations, Extractive Industries and Development*, p. 251-3.

4. World Bank (2007), *2007 Economic Developments and Prospects: Job Creation in an Era of High Growth*, p. 102. Due to different definitions of MENA region, these figures include Iran, but exclude the Palestine National Authority. Iraq is not included either; growth rates including Iraq amount to (estimated) 6.2 percent in 2006 and 4.0 percent in 2000-03.

5. World Bank (2003), *Unlocking the Employment Potential in the Middle East and North Africa: Towards a New Social Contract*, p. 171. This figure refers to the 18 participating countries in the OECD-MENA Investment Programme except for Djibouti, and Iran. It is based on an estimated unemployment rate of 15 percent in 2000.

6. World Bank (2007): *Economic Developments and Prospects: Job Creation in an Era of High Growth*, p. 40, 49, 129. These figures refer to a country sample of 12 countries, namely Algeria, Bahrain, Egypt, Iran, Jordan, Kuwait, Morocco, Qatar, Saudi Arabia, Tunisia, United Arab Emirates and the West Bank and Gaza.

7. Economist Intelligence Unit (2007): *World Investment Prospects to 2011: Foreign direct investment and the challenge of political risk*, p. 6.

Part II

MENA-OECD INVESTMENT POLICY OVERVIEWS

II.1. VENTURE CAPITAL DEVELOPMENT IN MENA COUNTRIES TAKING ADVANTAGE OF THE CURRENT OPPORTUNITY

II.1.1 WHY IS PRIVATE EQUITY & VENTURE CAPITAL PROMISING FOR ENTERPRISES IN THE MENA REGION?

National, regional and international competitiveness of an economy is increasingly connected to the presence of an environment supportive of innovation and risk-taking. Innovation is gaining prominence on agendas of governments throughout the world who increasingly appreciate the need to develop knowledge-based economies as a prerequisite to competitiveness and growth. Given this recognition, it should be of little surprise that policy design to support innovation in the private sector has become a hotly debated issue in both OECD and MENA countries alike. A consensus that public policy has a role in facilitating entrepreneurial activity seems to have emerged. Since a key barrier to entrepreneurship is a lack of capital to formalise creative ideas into concrete and realistic business plans, public sector involvement to bridge the financing gap can be useful.

Bridging of the financing gap can of course take various forms. Given the particular confluence of economic trends in the MENA region as well as the state of the financing industry, governments might be well advised to consider supporting private equity (PE) and venture capital (VC) schemes in order to facilitate entrepreneurship, and finally to encourage innovation. As the following Policy Brief argues, this may assist them in diversifying their economies, reducing unemployment, and contributing to the overall prosperity of their economies.

Many economies in the MENA region are currently in the process of privatising state owned assets, opening new sectors for foreign investment, and streamlining corporate taxation requirements. To this end, MENA governments are collaborating with international partners, including the MENA-OECD Investment Programme. By engaging in these reform efforts, MENA governments are unlocking the potential role for PE finance.

This is rapidly being reflected in the growth of the PE industry in the region. According to Zawya PE Monitor, $5.8 billion of private equity funds were raised in MENA between 1994 and 2005, 41% of which were raised in 2005 alone. The rapid growth of the PE industry reflects the potential of this method of finance in the region, in part due to the imperfect match between traditional equity/debt instruments and financing needs of MENA entrepreneurs. The relevance of VC development in the MENA region is particularly underscored by the following opportunities, as well as challenges.

A. Key Challenges

Addressing Unemployment

While it is difficult to speak of general causes of unemployment for MENA as a whole, it would be fair to say that in many countries, the current restructuring of the public sector precludes absorption of the currently unemployed. It is clear that solutions to increase private sector activity are a substantial part of the solution to address the significant unemployment gap in the region. Schemes to foster entrepreneurship can be promising from the standpoint of reducing unemployment in the region and improving its growth prospects. In essence, such schemes would entail equipping new labour

entrants with necessary business skills and linking them with sources of capital. A promising avenue to link entrepreneurs with capital is through VC financing.

In particular, public policy involvement in fostering a VC industry has proven to have positive employment consequences in other regions. Prior European experience certainly substantiates the important role of VC financing in encouraging entrepreneurship and reducing unemployment. For instance, between 1991 and 1995, net employment in European venture capital-backed companies increased by 15% annually, whereas net employment in 500 most profitable non-venture capital-backed European companies increased by 2% annually in the same period. Likewise, in the US, employment by venture capital-backed companies increased by 25% on average every year during the period 1989-1993, while employment by non-venture capital backed Fortune 500 companies dropped by a yearly average of 3% in the same time period.[1]

Limited Economic Diversification

Despite recent successes, economic diversification remains a key issue for almost all MENA economies, as manifested by continued high economic dependence on oil, agriculture, and other primary sectors. Low economic diversification in MENA countries is related to the fact that policy has been weak in fostering the development of strategic, knowledge intensive sectors where world exports are growing most rapidly.

Further development of PE/VC industry seems highly relevant to the diversification efforts of MENA economies. Research indicates that unlike traditional financing methods, VC is much more amenable to higher risk undertakings, particularly in technology intensive industries, which implies that VC development could indirectly assist MENA governments to diversify their economies. Additionally, if a high technology industry was to develop in the MENA region, it might be successful in attracting foreign private equity as well.

Difficulty obtaining financing

Another impetus for supporting VC schemes in the region is highlighted by the fact that financing can be difficult to obtain, particularly for emerging companies. Despite the fact that MENA entrepreneurs' external financing needs may also be lower than those in Europe or the US (generally 500-5000 euros)[2], many MENA businessmen and businesswomen may not be in a position to obtain it.

Access to both debt and equity financing has traditionally been a challenge. On a scale of 1-10, 10 indicating that collateral and bankruptcy laws are better designed to expand access to credit, the MENA region has scored 4.1, ahead only of the Latin America and the Caribbean.[3] In 2005, the figures on banking intermediation also draw attention to the fact that domestic credit to private sector is insufficient. In general, banking intermediation ranges from 49% in Egypt to 73% in Lebanon, but is still substantially lagging when compared to the comparable EU statistic (105% for EU15).[4]

Some regional governments have already reacted to this assessment. Countries such as Morocco, Israel, Jordan, Egypt, Tunisia and Lebanon have introduced public guarantee instruments in cooperation with domestic banking institutions in order to meet borrowing requirements of young firms. These efforts, although commendable, are not sufficient to meet the entrepreneurship financing needs in the region. Furthermore, entrepreneurial start-ups are generally not well-suited to the traditional forms of debt finance since they require funding for a period during which they are not generating revenues to cover expenses.

B. Key Opportunities

Ample Liquidity in the Region

On the positive side, the opportunity for further development of the PE/VC industry is underscored by the presence of substantial liquidity in the region. Over the past three years, the region entered a period of increased financial liquidity unparalleled since the petrodollar boom of the 1970s. This period is likely to last several years, due to a number of factors, including the rise in oil prices, repatriated funds since the end of 2001, and less attractive investment opportunities on global stock markets relative to the technology boom of the mid-1990s.

A conflation of these factors has resulted in an increased the combined backflow and retention of Arab capital in Arab economies, contributing to stock market capitalisation growth rates averaging over 200 percent for the 2002-2004 period, and reaching 400 percent in some countries. In 2005, the Shuaa capital index - an index of 12 Arab bourses - has gained over 91%, in addition to an almost 160% gain between January 2003 and December 2004.[5]

An additional factor which makes MENA especially amenable to VC finance is that the region possesses a number of high net worth individuals. Current estimates suggest that the private wealth of the Gulf alone stands at $1 trillion USD, and the Gulf Investment House estimates this figure to further rise to $1.5 trillion USD by 2007. MENA's high net worth individuals could provide a base for VC finance, thereby acting as a 'substitute' for institutional investors or bank finance, which dominate the VC industry in the US and Europe, respectively.

Foreign Venture Capital Seeking Potential Investments

The presence of high net worth individuals in the region is not the only potential source for private equity funding in the region. A recent Deloitte survey titled "Venture Capital Goes Global" highlighted that PE firms based in Europe and the US are seeking opportunities to invest abroad. In particular, US VC firms are still leading when it comes to global investment, with half of the VC firms expecting to invest abroad by 2010.[6] Moreover, foreign VC firms surveyed by Deloitte demonstrated an interest in investing in VC funds themselves (i.e. funds of funds), which provides an additional opportunity in that foreign VC could be interested in investing in MENA funds. A recent survey by the EMPA also highlights the interest of foreign PE in emerging markets – 64% of its survey's respondents were looking to increase their commitments there over the next 5 years.[7] These findings are especially important for the MENA region since foreign VC can act as a substitute for domestic investment in countries where domestic investors such as institutional investors or business angels are not well established.

Congruency between Islamic Finance and PE

The recent growth of Islamic finance in the region presents an additional opportunity for the development of local PE industry. This is related to the fact that the prohibition of interest is a central tenet of Islamic financing, the two primary alternatives being deferred trading-based debt finance and equity finance. Since risk capital at its base rests on equity participation, it is well suited to Islamic models of finance. Early indicators of the fact that the industry has recognised this congruency can be seen from the success of Bahrain-based *Venture Capital Bank*, launched in 2005. VC Bank is the first Sharia-compliant VC bank in the region, focusing on investment in SMEs and using a rigorous compliance system to ensure Shariah certification for investments. The growth and success of the VC Bank model has proven to be quite remarkable. In March 2006, VCBank has linked up with a well-established American venture capital firm, Global Emerging Markets Group (GEM Group), and the Saudi Arabian General Investment Authority (SAGIA), to establish a $100 million Saudi VC Fund to provide growth capital and late stage venture capital financing for SMEs in Saudi Arabia.

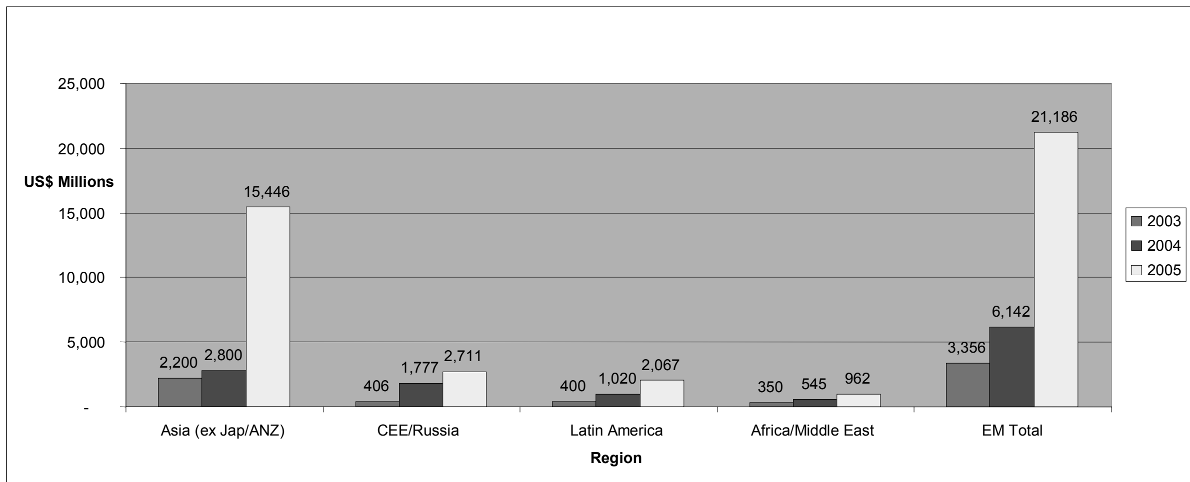
II.1.2 WHAT ARE THE IMPLICATIONS OF GLOBAL TRENDS ON VENTURE CAPITAL DEVELOPMENT IN THE REGION?

The particular opportunity for developing VC finance industry in the MENA region is underscored by increased global PE/VC flows not only in developed economies, but also to developing country regions. In this context, it is important to note that while venture capital activity seems to have increased, it has not risen as rapidly as did private equity activity.

A. Global trends point to an upturn in the PE market

Key publications on PE/VC performance point to a consensus that the PE/VC industry is on the rebound since 2004, following the bust of the high tech bubble. For the first time since 2001, an increase in VC activity is evident in both developed and emerging market economies alike. The Ernst and Young report on global private equity calls the year 2004 a "beginning of a new venture capital cycle". In the United States, Europe and Israel an aggregate of $25.7 billion USD was invested in over 3000 deals.[8] In emerging markets, a substantial increase in private equity investment can be noted as well (Figure 1).

Figure 1. Emerging Markets Private Equity Fundraising, 2003-2005



Source: EMPEA, 2005.

B. Performance Reflects Global Trends

Reliable statistics on the size and composition of PE industry in the region are difficult to obtain, in part due to the lack of a generally agreed upon definition of what constitutes PE/VC, in part due to a lack of a regional organisation similar to the European Venture Capital Association or the National Venture Capital Association in the US. According to Zawya's PE Monitor, $5.8 billion USD of private equity funds were raised in the MENA region between 1994 and 2005, of which $2.4 billion (41%)

were raised in 2005.[9] The industry grew at an approximately 40 CAGR over the past 5 years, increasing its rate of growth significantly since 2002.[10]

An interesting observation is that equity funds in the region have actually been oversubscribed. This is a significant departure from two or three years ago, when it was rather difficult to raise $100 million for a private equity fund.[11] However, it is important to note that most of the 16 funds that completed their fundraising in 2005 were promoted by established players, including Abraaj Capital, Ithmar Capital and the Global Investment House. Many of these established players are GCC based and are targeting opportunities in North Africa in tourism and real estate sectors.

Another notable trend is that the growth of the PE industry has not been equally distributed, with most investment in the Gulf region and Egypt. Recent analyses suggest that changes are also evident in the destination of funds raised by country and the sectors towards which these funds have flown. Prior to 2005, PE was predominantly focused on the opportunities in Egypt and the Levant. Today, the GCC countries have raised their profile quite substantially, particularly with the evolution of large players such as the GCC Energy Fund with an estimated value of $300 million USD.

In terms of capital raised specifically by VC funds, the increase from 2004 to 2005 was more modest, from $545 million to $962 million, which nonetheless represents a 77% increase.[12] While the growth in PE and VC financing conveys a positive outlook for the region, specific trends are difficult to ascertain due to data availability and fragmentation problems. For instance, while figures on the total VC capital raised are available, reliable figures on the capital invested - a more relevant measure of VC industry development – are not generally available. This observation underscores an overall lack of transparency of the funds operating in the region, which makes an informed assessment of regional trends in PE/VC challenging.

C. MENA PE Industry Is a Growing, But Nascent Industry

The general problem of data availability highlights that the PE industry in the region is still at an early stage of development, despite its recent growth. Unlike its US or European counterparts, MENA countries have yet to develop strong national venture capital markets or PE/VC associations at national and/or regional level. In Europe and the US, venture capital activities have been organised through umbrella organisations at both national and regional levels (The European Venture Capital Association and the National Venture Capital Association, respectively), which has not been the case in MENA until 2006.

Box 1. Gulf Venture Capital Association (GVCA)

The key mission of GVCA is to disseminate VC know-how and best practices in the region. The GVCA will do so through organisation of conferences, industry-focused technology forums, and workshops where members can share experiences. Although the emergence of GVCA represents a positive development for the industry, the extent to which it will be able to involve MENA countries outside the Gulf region in its activities, remains to be seen. The particular challenge with which GVCA will have to grapple is the diversity of financing requirements and the differences in states of development of the VC industries in the region

Source: GVCA, 2006.

MENA countries do not have a strong connection to the Emerging Markets Private Equity Association (EMPEA), which was launched in 2004 to serve the interests of private and venture equity, connecting all developing country regions. A key development in this regard, has been the establishment of the *Gulf Venture Capital Association* (GVCA), formed by a consortium of prominent institutions and professionals from across the Gulf Co-operation Council (GCC) countries "committed to supporting the growth of a strong venture capital and private equity industry within the Arabian Gulf."[13]

Another association promoting the role of financing and raising standards for operation of PE funds in the region is the *Arab Private Equity Association* (APEA). The APEA encourages cooperation between members by encouraging the exchange of information and experience between its members and bringing industry concerns to the attention of government and private investors. The Association also organises training on technical financial and legal aspects of direct investment and venture capital, as well as acts as a representative of the MENA PE industry in global agreements, adherence to which is an important precondition for development of VC. For instance, the APEA has endorsed the *Venture Capital Valuation Guidelines*, launched in 2005 in association with the Association Française des Investisseurs en Capital (AFIC), the British Venture Capital Association (BVCA) and the European Private Equity and Venture Capital Association (EVCA).

II.1.3. POLICY RECOMMENDATIONS TO FOSTER VC DEVELOPMENT IN THE REGION

A. Encourage Investment in Family Owned Enterprises (FOE)

The economic landscape in the region is largely dominated by relatively small family-owned enterprises (FOEs). While specific figures on the contribution of such enterprises to GDP are unavailable, it is known that SMEs in the MENA region account for 99% of companies and 2/3 of jobs, making a significant contribution to national GDP.[14] It is reported that in the GCC bloc alone, 5000 family businesses with assets of $500,000 million USD account for 75% of the private sector.[15] These figures highlight the importance of FOEs to the overall performance of MENA economies. As a result of their large contribution to MENA economies, local governments must take into account the needs of FOEs when formulating economic policy.

In particular, the regulatory framework in MENA must attempt to address numerous challenges specific to these enterprises to allow them to expand and become competitive globally. FOEs in the region are facing a number of challenges, including declining government protection, rapid change in technology, inadequate corporate governance practice, informal management structure and preference of ownership over growth.

Lack of adequate finance is at the top of the list of their challenges. Since few FOE can go public, PE financing may be an appropriate solution for them. Research conducted on FOEs which partnered with private equity houses in Europe demonstrates that 2/3 of those companies outperformed their competition, increased their exposure to new markets by over 60% and recorded an almost 50% increase in employment.[16] VC firms may be interested in buying out FOEs so as to restructure their capital, introduce incentives for management, identify additional acquisitions, and sell them at a substantial profit.

The MENA-OECD Taskforce on Corporate Governance addresses in its work the good practices in this area for SMEs and some codes in the MENA region being currently drafted address enterprises of varying size and ownership structure, not only listed companies (i.e. Morocco). This Taskforce is also currently in the process of preparing policy recommendations on corporate governance of banks, which has an indirect impact on their lending practices.

Recommendation:

> Consider the various institutional models adopted in several MENA countries to encourage VC investment in SMEs (including family owned SMEs).[17]

B. Encourage Listing on Foreign Stock Markets

Developed efficient capital markets are an important precondition for a buoyant VC industry, insofar as public offering is one of the four methods of exit (the other being trade sales, private sales and share purchase). While trade sales are generally much larger than Initial Public Offerings (IPOs) in volume terms, IPOs are important in establishing valuation, for listed and non-listed companies.

Public listing is also seen as the goal of most entrepreneurs and investors in the venture capital cycle. Developed stock markets, and in particular, exchanges that specialise in high growth companies (such as NASDAQ) are not present in the region, despite current record levels of IPOs, especially in the Gulf.

While it is true that the ratio of market capitalisation to GDP of the GCC countries has risen enormously over the past 3 years and is now approaching that of many developed markets, the ratio of traded equity to GDP remains lower than in other emerging markets. MENA markets also have a low weighting in most global emerging market indices, despite the tremendous boom over the last 3 years. Furthermore, stock market fluctuations, which have resulted in a 40% decline of the Dubai Financial Market since the beginning of the year, and 11% decline on a single day in March 2006 alone[18], undermine investor confidence and create additional difficulties for fund managers at the exit stage.

Recommendation:

To the extent that domestic markets may not be able to accommodate listing, facilitation of domestic companies' listing on overseas markets should be considered.

In addition, develop separate listing requirements for second tier stock exchanges to facilitate the listing of smaller enterprises.

Consideration might also be given to cross-listing of securities on the regional stock markets and the creation of a regional trading platform.

C. Substitute the Role of Institutional Investors and Large Banks in VC Development

In Europe and the US, VC funds are financed by large institutional investors and banking institutions, respectively. In the US, institutional investors (pension funds and insurance companies) are key actors, accounting for as much as 40% of VC finance.[19] The ability of these actors to participate actively in VC is related to the fact that they control a large share of national assets and have long term liabilities, which gives them both the necessary liquidity and the ability to absorb risk. In Europe, which predominantly features bank-based financial systems, VC financing originates not from institutional investors, but from the banks themselves. For instance, in Austria, Germany and Italy, as much as 50% of funds raised between 1992 and 2002 came from banks.[20]

Most of the MENA countries possess neither the institutional investors capable of investing in the VC industry, nor the banks interested in being players in this industry. In MENA countries, with the notable exception of Saudi Arabia, Egypt, Jordan, and Morocco, which have pension schemes, institutional savings are very small. However, even in these countries, investment in domestic capital markets by pension funds is rather small. Additionally, in virtually all MENA countries, other forms of institutional savings such as insurance and collective investment schemes represent low shares of financial sector assets. For instance, the contribution of insurance sector to MENA GDP was only 1% in 2005.[21] Thus, institutional investment does not seem to be an available option of VC development in the region.

The corporate sector, on the other hand, can be a supplier of funds. Private companies can create VC subsidiaries that seek projects in sectors related to the business of the parent company. Alternatively, individual wealth in the region - alluded to earlier - may be used as a substitute for bank or institutional investments. After all, in the United States, the main sources of venture capital funds in the early years of the industry were high net worth individuals, foundations, universities and charitable endowments.

Recommendations:

Develop collective schemes to facilitate retail investment in alternative investment instruments.

D. Overcome Barriers to Innovation

Significant progress is possible in an environment featuring a high rate of innovation and a framework that facilitates the transformation of ideas into concrete business plans. While there may not be a lack of interesting business ideas in the region, formalising and commercialising them represents a challenge. To respond to it, authorities have institutionalised programmes such as business incubators to assist entrepreneurs materialise their ideas and raise the level of patentable innovation.

The impact of business incubation in Europe has been highly positive with 90% of start-ups set up inside the incubator still active 3 years later. Furthermore, the 900 business incubators active in Europe have assisted in creating 29000 enterprises annually, a rate which is higher than for enterprises set up outside such incubators.[22] Thus, experience corroborates that supporting incubators can be a cost-effective way in which national or sub-national authorities can facilitate development of entrepreneurship.

Given MENA's unemployment and diversification challenges, this strategy appears to be highly relevant. In particular, MENA governments might consider contributing to the development of incubators. Creating strategic linkages between incubators and VC funds should be facilitated as well, since research shows that business incubation and venture capital linkages are often not optimal.[23] As the Bahrain Business Incubator experience demonstrates, this strategy has a significant payoff.

Box 2. Bahrain Business Incubator Centre

Bahrain Business Incubator Centre (BBIC), financed by the Bahrain Development Bank and implemented by UNIDO, provides capacity building and training to young entrepreneurs seeking to set up their own business, counseling to develop and assess the viability of projects, and assistance with business plan creation. Depending on the viability of the business plan, it also arranges linkages with the Bahrain Development Bank. The BBIC facilitates the formation of joint ventures and/or partnerships and establishment of technology tie-up. The BBIC is owned by the Finance Ministry, Pension Fund Commission (PFC) and the General Organisation for Social Insurance. The Bahraini model has proven successful and UNIDO/ARCEIT is currently being replicated in other locations in Bahrain, as well as Kuwait, Saudi Arabia, Syria, and Lebanon.

Source: Bahrain Business Incubator Centre.

This is not to suggest that the role of risk capital is confined to funding high-tech enterprises. Risk capital finance needs in the region are certainly not limited to innovative sectors, and may also be a useful source of finance for enterprises in other sectors.

Recommendation:

Consider benefits of fostering entrepreneurship through business incubators.

Facilitate linkages between business incubators, research institutions and sources of finance.

E. Create High Tech Regional Clusters

While business incubators can be beneficial, a high rate of innovation *per se* does not translate into economic growth. Experience shows that VC activity tends to be geographically clustered in areas abundant with skilled human capital, universities and research centres, legal and technical services. The geographic concentration is consequential to VC growth insofar as clusters support large scale innovation, thus leading to a large deal flow. Large deal flow is in turn crucial for the sustainability of a VC industry since, as experience demonstrates, a great majority of deals are rejected. As well as supporting knowledge creation and innovation, clusters also facilitate the creation of finance networks specifically targeted towards its capital needs, including the attraction of business angels.

In the MENA region, this clustering has been difficult to achieve to date, for reasons connected to the rate of innovation, intellectual property protection issues, as well as a general lack of confluence of available finance with technical innovation on a scale necessary to motivate venture capital. An important exception to this has been Dubai.

Box 3. Dubai – A Success Story in Clustering

Dubai has emerged as an impressive technology and finance cluster, attracting well-known technology players such as Oracle, Microsoft, Cisco Systems, HP, IBM, and Compaq. The region has been identified as one of the four global technology hot-spots by the International Data Corporation.

The cluster is primarily comprised of the *Dubai Silicon Oasis* (DSO), the *Dubai Internet City* (DIC), and is supported by the *Dubai International Financial Corporation* (DIFC). All the actors have benefited from the geographical proximity.

The DSO, opened by initiative of the Crown Prince of Dubai, is a high-technology park for the microelectronics and the semiconductor industry, where investments are estimated to exceed US$10 billion over a period of 20 years. The DIC provides a knowledge economy ecosystem that is designed to support the business development of Information and Communications Technology (ICT) companies. It is the Middle East's biggest IT infrastructure, built inside a free trade zone and has the largest commercial IP Telephony system in the world. This constellation of high-tech knowledge firms and financial services has proven to be highly successful. It was greatly facilitated by the UAE government who created an environment where foreign companies could enjoy 100% tax-free ownership, 100% repatriation of capital and profits, no currency restrictions, easy registration and licensing, and protection of intellectual property.

Source: *Dubai Silicon Oasis* (DSO), 2006.

Given that technology clusters can generate substantial advantages for national competitiveness, and that VC tends to show better returns when it is channelled to start-ups in existing technology clusters, supporting the creation of such clusters is an important policy priority. For instance, public policy can foster innovation by building science parks or business incubators close to universities and research facilities. Regulators should aim to meet, as much as possible, the criteria for developing a

successful cluster, including provision of capital resources, intellectual capital, entrepreneurial climate, legal regulatory environment, market for technology products and a stable political framework.[24]

Recommendation:

Create an economic climate conducive to the emergence of centres of high technology investment. Focus venture funding on knowledge-based clusters of enterprises, universities, support services based on existing models such as in the U.A.E, Dubai or Qatar or Morocco.

Box 4. Casablanca Technopark

The Casablanca Technopark is also an excellent example of business incubation in the region. The Casablanca Technopark is managed by a private company (the Moroccan Information Technology Company) and supported by InfoDev. This facility provides clients with the latest technologies, along with a set of general services and technical facilities. The Casablanca Technopark is currently hosting 130 companies, most of them are start-ups and SMEs in the ICT sector. Multinational companies, training and R&D centers are also tenants in the technopark. This facility has been renowned for capacity building, especially for the integration of IT to the overall innovation process, monitoring functions of the tenants' progress, the transmission chain of knowledge, and functions related to marketing and networking functions for the tenant companies.

Source: Casablanca Technopark.

F. Address Deficiencies in the Regulatory Environment

Legal and regulatory infrastructure is equally crucial for development of a local PE/VC industry or attraction of foreign equity. The aspects of regulatory environment most relevant to PE firms include transparency, taxation structure, corporate governance framework, intellectual property legislation, as well as commercial legislation.

- **Taxation**. Since venture capitalists depend upon capital gains for their income, the industry tends to advocate for low rates of capital gains taxation. The venture capital industry argues that taxation should occur only at the time of sale and at the capital gains rate, rather than at the rate of ordinary income. Some countries have responded to this demand by providing tax relief for various form of investment in unlisted companies or companies listed on second tier of growth exchanges. Capital gains taxation has also been recently reduced in several European countries. A number of MENA countries have recently introduced reforms to their tax laws, however, it remains to be seen to what extent they are competitive with tax structures prevailing in other emerging markets.

Recommendations:

Assess existing tax and regulatory systems to eliminate unnecessary complexity in tax treatment of capital.

Evaluate targeted tax incentives for venture capital investment. Basic tax provisions should be assessed to ensure that they are not impeding to capital formation.

- **Intellectual Property**. Intellectual property protection is another a key feature of the regulatory environment conductive to VC creation. Intellectual property is integrally connected to value creation in a technology based enterprise and as such, is a critical pre-condition for attracting VC capital. Insofar as the potential investors want to evaluate both the strength of the innovation and the ability of the entrepreneur to motivate commercialisation, the nature of patent and trademark protection is important. In fact, developing strong IP legislation in MENA countries remains a priority. Although country-specific variations remain, regional performance in this regard remains rather weak.

  Recommendation:

  Review the legal framework related to intellectual property protection to ensure sufficient incentives for innovative activities exist.

- **Commercial Legislation**. While legislation which provides incentives for the establishment of enterprises and venture capital funds is crucial for further development of this industry in MENA countries, a legal framework providing for exit of unsuccessful enterprises is equally necessary. In particular, such a framework should specify clear insolvency procedures and standards (including accounting standards) in order to improve the security of financial transactions.

  Recommendation:

  Review commercial legislation to improve the security of financial transactions and to provide financial relief in cases of default and insolvency.

G. Create Conditions for Attracting Foreign Equity

For MENA regulators, attraction of foreign equity is important insofar as international capital can both augment local financing, provide opportunities for domestic venture funds and investors to undertake larger syndicated deals and gain venture investment management experience. The latter is crucial for development of local fund management and related skills - a factor which until recently has been lacking in the region. Attraction of foreign PE is all the more important given the fact that foreign equity and US venture capital firms in particular are looking to expand into emerging markets in the coming years.[25]

Rather than implementing completely inward-oriented programs for development of a self-contained VC industry, MENA governments might want to implement policy reform measures aimed at attracting global equity flows. This implies evaluating a set of regulatory policies relevant for foreign direct investment attraction. Participation in the MENA-OECD Investment Programme can serve as an important signal for the willingness of MENA governments to commit to investment climate reforms.

Recommendations:

Review business regulations and the legal framework with a view to facilitate investment by foreign venture capital firms as part of the MENA-OECD Investment Programme and initiatives of its partners.

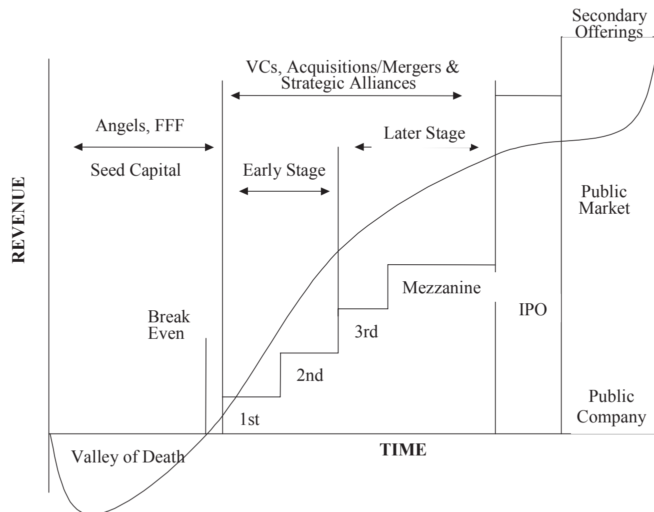
Review FDI regulation to determine whether policies discourage foreign acquisition of domestic companies.

Facilitate creation of alternative investment pooling vehicles, such as funds-of-funds.

H. Close Gaps in the 'Financing Ladder'

Given the fact that lack of financing is typically most prominent at early stages of enterprise development, government measures, either directly through subsidies or indirectly through participation in private sector projects, are crucial at this stage. As the figure below demonstrates, this early stage represents the so-called 'Valley of Death' which is usually bridged by business angel financing, whereas venture capital funds tend to express greater interest a later stage of enterprise development (Figure 3).

Figure 2. Figure 2. Financing Cycle



Source: Cardullo, 1999.

To the extent that this funding deficiency exists, and a potentially innovative enterprise may not reach a point where venture capital funds would traditionally be interested in participating, a role for public policy exists. Consequently, MENA governments may wish to consider providing support in the form of guarantees by lowering the risks involved to the financier at these early stages, keeping in mind the principle of risk-sharing. Additionally, the operation of business angels should be encouraged, primarily via provision of infrastructure support. At the same time, education to increase entrepreneurs' awareness of the different types of financing available to them would also be complementary to the proposed measures.

Recommendations:

Take note of the need to develop a range of appropriate financing mechanisms at all points along the 'financing ladder' and target public schemes to financing gaps (e.g. start-up firms).

Consider creating special public funds through which public sector entities can make equity investments in developing enterprises, keeping in mind the principle of risk-sharing.

Evaluate public equity funds and phase-out when private venture market matures.

CONCLUDING REMARKS

The MENA region could be a hospitable environment for the rise of a venture capital culture given the liquidity currently present in the region and the growth of Islamic financing models conducive to VC development. Nonetheless, the analysis of the PE/VC industry seems to suggest that it is not completely developed relative to its potential given the economic size of the region. Due to a range of structural, administrative and regulatory barriers, securing risk capital for innovative firms in the region remains a challenge, particularly for companies in the high tech sector and at early financing stages.

This is a key trend given that a lack of financing at early stages of an enterprise development has particularly significant consequences for its sustainability and rate of innovation. Risk capital finance needs in the region are, of course, not limited to innovative sectors, and may be a useful source of finance for enterprises in more traditional sectors. Given the damaging impact of the shortage in financing to the development of entrepreneurship and innovation, MENA governments' potential role in this process is to assess any gaps in the financing 'ladder' and address them through appropriate policy responses.

NOTES

1. Eid, 2005.
2. EU, 2006.
3. WB, Doing Business Database, 2005.
4. EU, 2006.
5. Middle East, Issue 364.
6. Deloitte, 2005.
7. EMPA Newsletter, Issue 1, 2006.
8. E&Y, 2005.
9. EFG-Hermes, 2005; Gulf Business, April 4, 2006.
10. EFG-Hermes, 2005.
11. Gulf Business, April 4, 2006.

12. EMPEA, 2005.

13. GVCA, 2006.

14. EU, 2006.

15. MEED, 24-30 March 2006.

16. EU, 2006.

17. Various models have been adopted to provide investment to SMEs in MENA countries ranging from collaboration between business incubators and development banks to providing funds with incentives to invest in local SMEs.

18. MEED. 17-23 March 2006.

19. NVCA, 2005.

20. Thompson, 2006.

21. Union of Arab Banks, 2005.

22. EC, 2002.

23. Callegati, E., Grandi S., and Napier G. (2005).

24. Earnst &Young, 2005.

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II.2. TOWARDS A NEW GENERATION OF FOREIGN INVESTMENT LAWS MENA-OECD GOOD PRACTICE

Introduction

Under international public law, states are sovereign in determining the entry and stay of foreigners including foreign investors. In the global market place, however, countries compete to attract high value-added foreign investment as a key development tool for their economies. In order to make use of their sovereign rights effectively and concurrently attract much needed intra-regional and other foreign investment, a new generation of foreign investment laws are currently emerging in Middle East and North Africa (MENA) countries participating in the MENA-OECD Investment Programme.[1]

Qatar (2000), Yemen (2002), Saudi Arabia (2000), Algeria (2001), and Kuwait (2003) have revised their investment laws recently. Egypt has issued a substantially revised law in 2005 and a new Syrian investment law entered into force in 2007. Iraq issued a new federal investment law in summer 2006. Jordan's revised investment law is pending parliamentary approval. Morocco, Tunisia, the United Arab Emirates (UAE) and Oman are revising their current investment laws, and further countries are considering revising their investment regimes in light of emerging international good practice. Other countries (for example Bahrain) do not regulate foreign investment through a special law, but deal with foreign investment regulation issues as a part of their overall commercial law.

Ministers and delegations from 16 MENA countries have recognised in the Ministerial Declaration concluding the first Ministerial meeting of the MENA-OECD Investment Programme in February 2006 "openness to foreign investment and access by investors to facilities necessary for investment and the movement of key personnel for the purpose of investment" as good practice. The Ministerial Declaration equally recognises the principles of "national treatment for established foreign investments, fair and equitable treatment of investment, protection of investors rights and compensation for all categories of expropriation."[2]

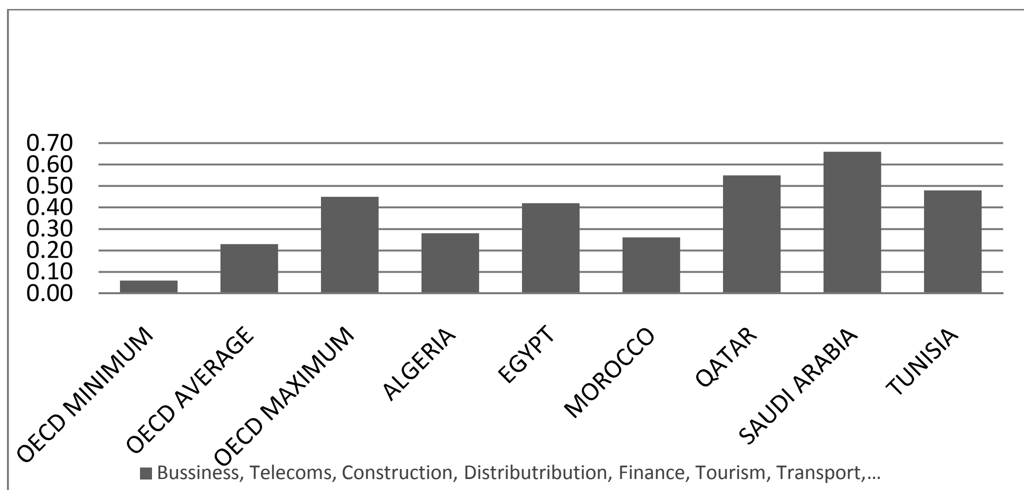
As a matter of fact, MENA countries' restrictions on foreign ownership of enterprises have been relaxed, as have restrictions on foreign ownership of land and real estate, and on foreign purchases of shares in local stock markets. In many MENA countries, foreigners can participate in the privatisation of state-owned enterprises.

Figure 1 demonstrates, however, that for selected MENA countries (Algeria, Egypt, Morocco, Qatar, Saudi Arabia, Tunisia) the regulatory restrictiveness for Foreign Direct Investment (FDI) in the business services, telecommunications, construction, distribution, finance, tourism, transport and electricity sectors is still above the Organisation for Economic Co-operation and Development (OECD) countries' average and clearly above the OECD countries' minimum. Figure 1 is based on the OECD's FDI Regulatory Restrictiveness Index computed for 29 OECD countries and extended by United Nations Conference on Trade and Development (UNCTAD) to cover six MENA countries.[3]

The indicators primarily aim to measure deviations from 'national treatment', i.e. discrimination against foreign investment expressed in laws, regulations, and schedules of international agreements to which the country is a party to (for example General Agreement on Trade in Services (GATS), OECD Declaration on International Investment, and OECD Codes on Liberalisation of Capital Movements), rather than to measure the institutional environment and administrative practices in general.

The Index scores foreign direct equity investment restrictions, screening and approval procedures and other restrictions including nationality requirements for boards of directors, movement of personnel, domestic content and other performance requirements. Entry restrictions are weighted particularly high and scores are attributed for all sectors mentioned, where 1 completely closed and 0 completely open.

Figure 1. Selected MENA Countries FDI Regulatory Restrictiveness by All Sectors (1=closed, 0=open)



Source: UNCTAD, 2006; OECD FDI Restrictiveness Index, 2007.

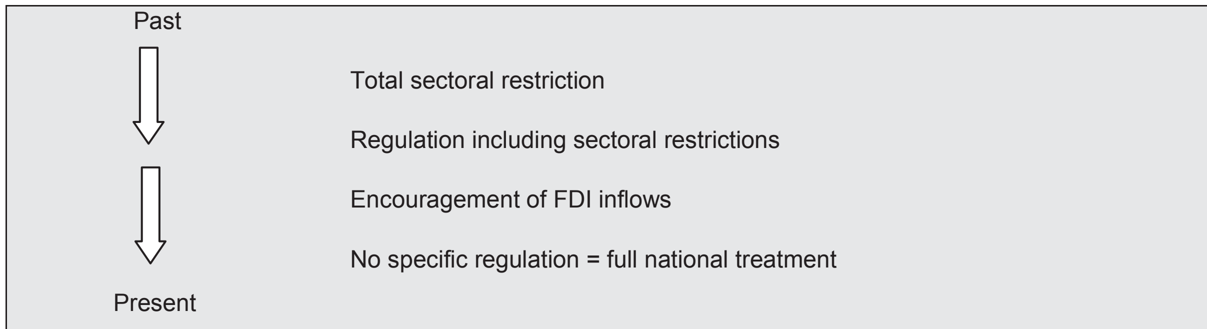
1. Regulatory Approaches to Foreign Direct Investment

Against this background, the new generation of investment laws emerging in MENA countries and in most emerging market economies demonstrate a tendency to further converge with OECD average standards of liberalisation of investment entry requirements. This does not, of course, imply that restrictions, screening, and approval procedures for foreign investment will be completely abolished. Rather, it means that remaining restrictions to FDI tend to become more transparent and converge towards an international best practice standard.

Traditionally, total or comprehensive sectoral restrictions to FDI were used by countries pursuing a policy of economic nationalism. The socialist states of Eastern Europe and the former Union of Soviet Socialist Republics (USSR) were the most prominent examples of this approach. This approach has become obsolete today. On the other end of the spectrum stand economies which have little or no specific entry regulations for FDI and follow a stringent national treatment approach, whereby foreign investors are granted the same treatment as domestic investors in like circumstances.

Over the past 20 years, most countries followed the shift from an approach which severely restricted the entry of FDI to an approach which maintains a limited number of sectoral restrictions or has no specific regulation for foreign investors (Figure 2).

Figure 2. Regulation of FDI in Investment Laws



Source: MENA-OECD Investment Programme, 2006.

Currently, there are hardly any economies in the world which pursue a policy of total exclusion of FDI. Sectoral exclusions of FDI, on the other hand, are a common characteristic of various jurisdictions. Most states have restrictions in sectors which encompass industries relevant to national security, industries regarded as strategic, culturally significant industries and public utilities. An example is the Exxon-Florio amendment which empowers the United States president to prohibit the takeover of a US firm by a foreign firm where there exists 'credible evidence that the foreign interest exercising control might take action that threatens to impair national security.[4]" Countries trying to enhance the transparency of their regulatory investment regime tend to publish so-called negative lists which provide easy access to information about remaining horizontal or sectoral restrictions to FDI to potential investors.

Finally, restrictions on foreign ownership in privatised companies in some countries have been following a so-called 'golden share' approach whereby the government retains control over certain matters in recently privatised companies. A golden share is a nominal share which is able to outvote all other shares in certain specified circumstances, often held by a government organisation, in a government company undergoing the process of privatisation and transformation into a stock-company. The United Kingdom (UK), France and Germany have used this approach in the past.

Following a period of investment entry liberalisation, relatively few OECD member countries maintain general screening and authorisation procedures for FDI. However, sectoral restrictions are maintained for the protection of security and other essential interests. Recently, existing regulatory frameworks for screening and approval procedures have been used more often in OECD countries to regulate investment in infrastructure and energy sectors as well as investment by enterprises controlled by foreign states (often managed by so-called sovereign funds). The debate on the scope of exceptions to the free entry of foreign investment, following concerns of 'national security' or 'strategic industry', in several OECD countries has re-emerged and led to plans for revisions of foreign investment entry procedures with the aim to potentially tighten requirements.

With a view to retain a strong liberalised international investment regime, the OECD's Investment Committee is currently studying this new tendency in its 'Freedom of Investment project'; the G8 meeting in Heiligendamm 2007 concluded the discussion on investment "with a strong commitment to the freedom of open and transparent investment" (Box 1).

The absence of any specific regulatory treatment designed for foreign investment would render investment laws useless. Indeed, some countries in the OECD and in the MENA region made the policy choice to regulate the treatment of foreign investment only in their commercial laws and regulations, either on the basis of full national treatment, or with sectoral and other exceptions.

However, many economies striving to attract more high-quality foreign investment, still decide to issue special foreign investment laws, for example for internal policy reasons or as a communication tool targeted at foreign investors.

Box 1. G8 Heiligendamm 2007 on Freedom of Investment

We will work together to strengthen open and transparent investment regimes and to fight against tendencies to restrict them. Erecting barriers and supporting protectionism would result in a loss of prosperity. We therefore agree on the central role of free and open markets for the world economy, respecting sustainability concerns, and the need to maintain open markets to facilitate global capital movements. We reaffirm that freedom of investment is a crucial pillar of economic growth, prosperity and employment. We call on all developed countries, major emerging economies and others to critically assess their investment policies, the potential costs incurred from unnecessarily restrictive or arbitrary policies and the economic benefits of open investment regimes.

Against this background we remain committed to minimize any national restrictions on foreign investment. Such restrictions should apply to very limited cases which primarily concern national security. The general principles to be followed in such cases are non-discrimination, transparency and predictability. In any case, restrictive measures should not exceed the necessary scope, intensity and duration. Applicable treaties relating to investment remain unaffected. We encourage the OECD to continue its work on these issues, especially by identifying best practices and by further developing general principles. We will work with the OECD and other fora to develop further our common understanding of transparency principles for market-driven cross border investment of both private and state-owned enterprises."

Source: G8 Heiligendamm, Summit Declaration, 7 June 2007, para. 10, 11.

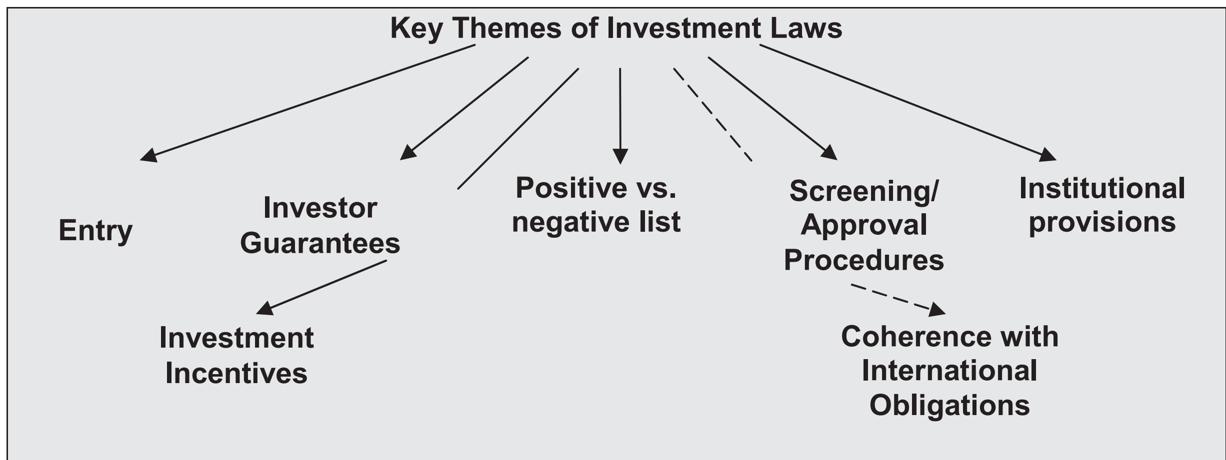
Investors are looking for transparency and predictability, especially when investing in countries where regulatory traditions differ from their own and where there are not fully modernised institutions and enforcement structures. A 'state of the art' investment law can serve both domestic and foreign investors as one indication that the investment climate in a given country is transparent and predictable with respect to issues like regulation of entry, investor guarantees, incentive systems and procedural and legal recourse issues. Domestic best practice investment laws together with binding international investment instruments such as Bilateral Investment Treaties (BITs), World Trade Organisation (WTO) obligations, investment chapters of Free Trade Agreements (FTAs) and the OECD Declaration on International Investment, can reassure investors that basic standards protecting property rights and administrative treatment are in line with international standards.

In this respect, the key themes which are covered in most investment laws encompass:

- entry regulations including lists of exceptions to national treatment (refer to the negative list approached alluded to earlier);
- screening and approval requirements for foreign investment;
- expropriation/national treatment/free transfer guarantees for investors;
- potentially a chapter on regulatory/fiscal/financial investment incentives; and
- institutional provisions regarding an investment promotion agency or/and a high level investment commission (Figure 3).

Many 'new generation' investment laws of MENA countries follow a 'middle ground' approach between: restricted entry and treatment regulation of investment; fully open entry with varying degrees of entry regulation; investment encouragement through incentive systems; and, institutional and procedural arrangements with a view to promote investment.

Figure 3 – Key Themes of Investment Laws



Source: MENA-OECD Investment Programme, 2006.

2. Regulation of Entry in MENA Countries' Investment Laws

Under international law, every state is sovereign in controlling entry and establishment of foreign entities within its territory. States may exercise this right in different ways (Figure 4). First, there may be restrictions excluding FDI from the whole economy or from specific sectors and industries. Second, FDI may be permitted only on condition that screening and approval procedures have been passed. These procedures may condition investments on the fulfilment of specific performance requirements (e.g. local content and sourcing requirements). They may also serve as selection procedures for the granting of regulatory, financial or fiscal incentives for a foreign investor's project.

The Agreement on Investment and Free Movement of Arab Capital among Arab Countries of 1970 reiterates the principle of sovereignty in Article 3, highlighting each signatory's sovereignty over its resources and their right to determine the procedures, terms and limits that govern Arab investment.[5] Similarly, the Unified Agreement for the Investment of Arab Capital in the Arab States of 1980 controls the rights of entry and establishment,[6] as does Article 2 of the Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference of 1981.[7]

The principle that the state is sovereign in controlling entry of FDI into its territory is qualified by international obligations the state has agreed upon. Almost all MENA countries have joined major multilateral agreements covering investment related aspects. As of December 2006, 11 of the 18 MENA countries and territories participating in the MENA-OECD Investment Programme are members of the WTO. As such, they are obliged to implement the obligations of General Agreement on Trade in Services (GATS), Trade-Related Aspects of Intellectual Property Rights (TRIPs) and Trade-Related Investment Measures (TRIMs). The GATS provides, for certain investors, the right of establishment if the member of the GATS makes specific commitments on market access. TRIPs accords national treatment and 'most favoured nation treatment' to foreign firms' intellectual property rights, while TRIMs provide that certain categories of trade related investment measures infringe the principles of the General Agreement on Tariffs and Trade (GATT).

The two OECD Liberalisation Codes contain an obligation to 'standstill' and 'rollback' any national restrictions on the transfers and transactions to which the Codes apply. They even include a

positive duty to grant any authorisation required for the conclusion or execution of the transactions or transfers covered, as well as a duty of non-discrimination in the application of liberalisation measures to investors from other member states.[8] The OECD Code of Liberalisation of Capital Movements was extended in 1984 to include rights of establishment.

Some bilateral investment treaties (BITs) and a growing number of free trade agreements (FTAs) grant national treatment already in the entry phase of an investment and thus limit a state's discretion to regulate entry. Removal of all discrimination in matters of investors' access is required by the US model of BITs, which makes entry into the host state subject to 'national treatment' and 'most favoured nation' treatment principles, qualified by the right of each party to adopt or maintain exceptions falling within one of the activities or matters listed in an annex. Other than in BITs concluded with the US or Canada, and BITs and FTAs concluded by Japan, this "negative list" approach can be found in the North American Free Trade Agreement (NAFTA), the Energy Charter Treaty, and the OECD Codes of Liberalisation. Other multilateral instruments covering investment such as the GATS follow a 'positive list' approach whereby parties indicate which sectors are open to FDI.

Positive List versus Negative List

In order to regulate the entry of FDI, governments can use two distinct regulatory approaches. A 'positive list approach' explicitly states the sectors of the economy which are, in principle, open to foreign investors. The majority of MENA countries rely on a 'positive list' approach in presenting their investment environment to foreign investors.

The regulatory alternative is for a government to list only the sectors which are closed to FDI – the so called 'negative list' approach. Certain MENA countries provide such a 'list of FDI restrictions' outlined in their investment laws or publicly accessible information sources. A list of remaining restrictions to foreign investment gives investors transparent and easily accessible information. This transparent approach is currently followed by Bahrain, Jordan, Qatar, Tunisia and Saudi Arabia, which effectively comprise 27% of the 18 countries participating in the MENA-OECD Investment Programme. With the input of the MENA-OECD Investment Programme, Morocco is has also prepared a negative list, although it is not included in the current investment framework.

Box 2. Possible Regulatory Approaches to Entry

Option 1:	Allow full foreign ownership in all sectors: full national treatment approach;
Option 2:	Allow foreign ownership only in specific sectors listed in a 'positive list';
Option 3:	Allow foreign ownership, but apply general screening and approval procedures to guarantee compliance with a 'negative list';
Option 4:	Allow foreign majority ownership, but apply screening and approval procedures (only) for the granting of incentives/imposition of performance requirements (in line with international obligations);
Option 5:	Allow foreign majority ownership, but apply screening and approval procedures based on specific criteria (national interest, economic development, etc.) to all incoming investment;
Option 6:	Combination of 1-5.

Source: MENA-OECD Investment Programme, 2006.

3. Screening and approval procedures

The regulation of entry for foreign investors can include some form of screening and approval procedures, either horizontally with respect to all investments independent from the sector, or for investment into sectors regarded as sensitive or strategic to an economy. The transparency and predictability of these procedures sends a message to potential investors and is therefore important for creating an attractive investment environment.

Screening and approval procedures involve case-by-case reviews of potential foreign investment projects by a specialised public authority in the host country, often the investment promotion agency, a special investment committee, or the Ministry responsible for investment. Compulsory approval procedures are in place only in a small number of OECD member countries, but more common in countries which are not members of the OECD. Traditionally, where such an authority in charge of screening and approving is in place, there is a relatively wide discretion to decide whether or not to approve a foreign investment project. The new generation of investment laws tries to specify the conditions which are supposed to guide the decision of the authority, thereby limiting the discretion of the government agency and increasing its transparency.

Investment screening and approval procedures have been simplified in many MENA countries' investment laws. However, despite these improvements, special screening procedures for foreign investment remain in place in a number of countries. In some countries, the motivation behind special procedures for FDI is to ultimately control sources and the nature of incoming investment flows. Other countries, including Egypt and Jordan, use screening and approval procedures with a different motive: to decide on whether to grant preferential treatment for foreign investors.

In general, three scenarios can be detected in the application of FDI screening procedures in the region. In certain countries, all sectors are subject to approval requirements, while in others only specific, strategic sectors are subject to such requirements. A third scenario, which is manifested in countries such as Jordan, Egypt or Bahrain, is that additional approval procedures are required (as compared with national treatment) when a company wishes to apply for certain incentives under the applicable investment laws.

While screening of foreign investment is one of the most widely used techniques for controlling the entry and establishment of foreign investors in host states, it can create unnecessary impediments and should be restricted to sensitive sectors. Often, a specialised investment review agency deals with the screening and approval procedure using a process which tends to be highly discretionary, lacking overall transparency and the possibility for an investor to claim effective judicial review. If screening procedures are to remain, MENA countries employing such procedures should consider offering rights of judicial review to investors against decisions by the review agency. A further transparency-enhancing measure could be to issue clear administrative guidelines for the decision-making process to increase the predictability of the final decision taken with regard to the investor. It would also be beneficial from the perspectives of transparency and simplicity if all investment screening procedures for foreign investors were included in the general investment law or referred to within the body of the latter.

A possible good practice approach distilled from OECD and MENA countries' investment laws and regulations is described in Box 3. Such an approach to foreign investment entry regulation foresees a transparent 'negative list' for sectors excluded from foreign investment or sectors for which special screening and approval procedures apply. These screening and approval procedures should be, as much as possible, limited to sensitive or strategic sectors and need to be:

- transparent, i.e. clearly described in the investment law or its implementation regulation;
- predictable, i.e. proceeded in a non-discriminatory fashion; and,
- potentially foreseeing a right for the foreign investor to have the final decision reviewed.

Box 3. Regulation of Entry: Towards a Good-Practice Approach

Negative List Approach

- To increase transparency
- To enhance predictability

Transparent screening and approval procedures

- To assess compliance with negative list
- To screen foreign investment under clearly defined national interest considerations
- To grant regulatory incentives and/or instigate performance requirements in line with international obligations
- To limit the level of administrative discretion with clear administrative guidelines

Right to ask for review of decision of licensing authority by ministry or judiciary body

- To enhance equality of treatment and enhance transparency
- To enforce administrative guidelines limiting discretion

Source: MENA-OECD Investment Programme, 2006.

4. Investor guarantees

The MENA Ministerial Declaration (February 2006) is complemented by a set of recommendations which were elaborated by the MENA-OECD Investment Programme.[9] These refer to emerging standards in domestic investment regulations as well as international investment agreements and encompass the following principles protecting private investors:

- Granting of national treatment to foreign investors at the post-establishment stage;
- The principle that exceptions should be formulated clearly and precisely and reviewed periodically;
- The principle of fair and equitable treatment of domestic and foreign investments enshrined including full protection of property rights including intellectual property;
- Provision of high standards of compensation for direct and indirect expropriation;
- Unrestricted access of investors to effective national and international dispute settlement mechanisms.

The willingness of most MENA countries to commit themselves to protecting foreign investment is demonstrated by the increasing number of BITs signed in recent years, as well as protection and

guarantee provisions in their investment laws. Nonetheless, it must be noted that certain countries have not yet granted these guarantees to foreign investors in their investment laws.

National Treatment

'National treatment' refers to the commitment of a country to treat enterprises operating in its territory which are controlled by the nationals of another country, no less favourably than domestic enterprises in similar circumstances.

For OECD member countries, the National Treatment approach adopted by the OECD Investment Committee obliges adhering countries to notify their exceptions within the framework provided by the OECD Declaration on International Investment and Multinational Enterprises' National Treatment Instrument ('negative list' obligation). The National Treatment instrument consists of two elements:

- A declaration of principle, which forms part of the Declaration on International Investment and Multinational Enterprises; and

- A procedural OECD Council Decision, which obliges adhering countries to notify their exceptions to National Treatment, and establishes follow-up procedures to deal with such exceptions in the OECD.

Egypt as a new adherent to the Declaration (Egypt signed the Declaration in June 2007) is bound by the obligation under the National Treatment Instrument to publish a transparent list of remaining restrictions to FDI.[10] Other countries which have adhered to the OECD Declaration on International Investment and Multinational Enterprises, as well as the related Decisions and Recommendations by the OECD Council, including the National Treatment instrument, are the thirty OECD member countries and nine non-member economies.

The follow-up procedures included in the National Treatment Instrument, designed to encourage a complete application of this concept by adhering countries, are set out in an OECD Council Decision of December 1991. The Decision comprises of an Annex which lists exceptions to National Treatment as notified by each adhering country and accepted by the OECD Council.

The exceptions to National Treatment are periodically examined by the Investment Committee. These examinations result in a decision by the OECD Council, which formulates proposals for action by the country concerned. The results of the examinations are published in the series OECD Reviews of Foreign Direct Investment.

By contrast to the Code which is legally binding, the National Treatment Instrument is not binding, besides the transparency requirement: for adhering countries, national treatment of foreign-controlled enterprises on their territories constitutes a voluntary undertaking. However, it was underpinned in 1988 by a unanimous pledge of all adhering countries to refrain from introducing new exceptions ("*a standstill pledge*").

National Treatment has become a well-established principle among adhering countries. Exceptions are typically limited to certain sectors, notably mining, transport, fisheries, broadcasting and telecommunications. Even then, many exceptions are of a limited nature and are reduced in scope or suppressed as a result of unilateral measures by the countries themselves, or as a result of examinations.

Expropriation

Private investors, especially in long-term projects, are often subject to the risk that future governments of the host country will implement changes in the domestic legislation which could affect negatively their investment. Although the area of large scale nationalisations of foreign owned industries is a story from the past, expropriation of an investment can still occur in many forms. Besides the direct expropriation, government measures not directly targeted at the property of an investor can still affect his property in the form of an indirect expropriation.

The majority of the MENA countries' investment laws include legal guarantees against expropriation. Moreover, international investment agreements concluded by MENA countries (BITs, ICSID subscription) provide for guarantees in the case of expropriation. These agreements tend to preserve the international minimum standard, according to which expropriation is only lawful when it is carried out for a clear public purpose, without discrimination and upon payment of "prompt, adequate and effective compensation".[11]

Free Transfer

Recent years have witnessed a substantial liberalisation of foreign exchange regimes, and the MENA countries have been following this trend. In particular, all MENA countries except for Syria have obtained IMF Article VIII status, indicating that they have removed restrictions on payments and transfers relating to current transactions, including repatriation of profits.

The Recommendations of the MENA-OECD Investment Programme's Working Groups referred to above ask to liberalise "existing restrictions to repatriation of capital, establish timely and unrestricted transfers of the proceeds of the investment and guarantee for the repatriation of the capital when the investment is terminated". Generally, MENA countries vary in the degree to which foreign investors may freely repatriate capital. Thirteen of the MENA countries (Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Tunisia and United Arab Emirates, Iraq and Libya) report that they allow repatriation of capital without restriction. Algeria, Morocco, Syria and Yemen operate restrictions of varying depth.

Transparency

Most MENA countries have made serious efforts to increase the transparency of their foreign investment regimes. However, for foreign investors in the region, transparency still remains an issue of concern. The transparency of foreign investment regimes varies widely among MENA countries. One reason is the relative lack of information made available to foreign parties by some MENA countries. Indeed, while some countries provide detailed reports in response to a survey on investment restrictions conducted by the IMF, others supply only cursory responses. Similarly, the range of national government websites providing information of use to foreign investors extends from sophisticated sites containing relevant laws and regulations, details of establishment procedures and other useful content (usually in English or French as well as in Arabic) to sites with virtually no relevant information.

5. Investment incentives

Following an open door policy towards investors adopted in a number of emerging and developed economies, many countries offer in addition regulatory, fiscal or financial incentives to FDI. One of the pioneers in successfully using incentives has been the Republic of Ireland. Since 1958 already, Ireland has offered fiscal incentives to manufacturers, and currently, the 10% maximum corporate tax rate for manufacturing profits is a major incentive.

Investment laws are one possible source of information on FDI incentives. Fiscal incentives can also be found in the tax codes. However, being the most visible legal communication tool to foreign investors, the investment law should refer in a chapter to the existing incentive regimes. Often, the institutions whose activity is regulated by investment laws, such as investment promotion agencies, are also asked to administer the procedures granting investment incentives.

However, experiences with the use of incentives, in particular fiscal incentives have been mixed. Studies suggest that investors consider tax incentives as a relatively less important motive for choosing a particular location for their investment compared to other motivations as market size and business environment. When administrated by a non-transparent screening and approval procedure, tax incentives can even be discouraging to investment, since they tend to increase uncertainty and therefore project costs. Administrative discretion and transparency are key challenges of managing an incentive regime.

Further, the effectiveness of tax incentives depends on the specific situation in a given economy including the question what immediate competing economies are providing in terms of investment incentives. Assessing benefits and costs of tax incentives on a continued basis is an important requirement for any successful tax incentives regime. OECD good practice discourages the use of special tax incentives to attract FDI, and rather argues in favour of a reduced statutory corporate income tax rate accompanied by a broadened tax base.

Box 4. Tax incentives: Good Practice

- Governments should assess in advance tax incentives targeted to boost investment;
- When introduced, the tax incentives should be evaluated (using cost-benefit tests) on a periodic basis to evaluate their effectiveness;
- In order to enable proper evaluation and assessment, the specific goals of a given tax incentive need to be explicit at the outset;
- "Sunset clauses" calling for the expiry of the tax incentive should be included to provide opportunity to assess whether the incentive should be extended.

Source: MENA-OECD Investment Programme, Tax Incentives for Investment – Experience in MENA countries, 2007.

MENA countries use regulatory, fiscal and financial incentives to attract FDI. They may be granted for FDI in the whole territory or only for investments in special economic zones. Fiscal incentives are either targeted to specific sectors, to specific regions or to specific exports. Most MENA countries offer corporate tax holidays, which range between 2 years (Jordan) and 20 years (Egypt), and can be extended in case of supplementary investments. In Algeria, tax holidays can be indefinite; in Morocco tax holidays for exports are limited to 5 years. Morocco, Tunisia, Lebanon and Jordan offer reduced corporate rates targeted to specific sectors.

Only 3 countries participating in the Programme (Algeria, Qatar and KSA) have currently no Free Economic Zones (FEZs) with special regulatory and fiscal regimes. All other countries offer exemptions from corporate taxation (Kuwait, UAE, Jordan) or reduced corporate tax rates (Egypt and Morocco), exemptions from duties and tariffs (Morocco, Tunisia, UAE) and other tax holidays (Lebanon, Morocco and Yemen) within special FEZs.

6. Institutional issues

Although there is no single model of success when it comes to investment policy and promotion, it has become clear that successful investment promotion requires both an appropriate strategy and a sufficient operational means to support it. It is certainly very important that an efficient and transparent institutional framework is established. In particular, it is crucial to set up a responsible organisation which must not become another layer of bureaucracy, but a real and efficient facilitator in providing advisory services and fulfilling a pro-investment environment advocacy function.

Most countries in the MENA region have created Investment Promotion Agencies (IPAs) with a mandate of one or more of the following functions: (i) image building, (ii) investor servicing and facilitation, (iii) investment generation and targeting, and (iv) policy advocacy. The responsibilities and the structure of the various IPAs vary, depending on the purpose and state of their investment policies, and how much promotion is needed in view of the country's fundamental attractions and requirements for specific types of investment.

Some of MENA IPAs are small and not as effective as they could be. Others function only as a unit within a Ministry. Individual countries have made significant advances in improving their policies and structures, but there needs to be a paradigm shift in the overall approach if substantial progress is to be made.

IPAs with a clearly defined mandate should report at the highest political level (prime minister or senior minister level). This political support will give them the necessary status and credibility with both investors and other government ministries and agencies. In a minority of MENA countries, this is the case. IPAs should be in a position to instigate government policy reform with regard to the overall vision and strategy for the promotion of FDI where necessary, and, in general, should act as champions of FDI. Again, only a limited number of MENA countries follow this approach.

IPAs should act as the medium for ensuring that the government hears the views of foreign investors. In some countries, there are strong groups representing investors, and facilitating the access of such groups to government policy-makers or encouraging new investor groups are actions that IPAs could usefully undertake. An IPA should set up a "one-stop shop" to deal with all of the needs of the incoming investors. This requires political commitment and support, and steps to this end have been made by several MENA countries.

Box 5. Elements of Best Practice in IPAs

"Key elements of the best practice work of IPAs typically include:

(a) Having a good service management system which aims its activity at priority market segments/sectors, spells out the service offered and is clear on the delivery method;

(b) Using customised marketing to target clients and build relationships with them;

(c) Pursuing FDI in all elements of the value chain and in all business functions (e.g. design, purchasing, production, distribution, marketing, customer aftercare and service, research and development);

(d) Rooting FDI in the host country through good linkage with local suppliers, subcontractors, business partners, technical institutes and universities, etc. and through good facilitation in the post-investment phase."

Source: OECD Report: 'Investment Promotion Techniques and the Role of Investment Promotion Agencies', 2002.

Implementing the appropriate legislation and establishing an IPA will not in itself ensure a successful FDI attraction programme. The IPA itself must be a professionally run organisation staffed by individuals who understand the mentality and business strategies of foreign investors and are prepared to go the extra distance in terms of helping investors to become established and run their businesses.

Conclusions

As a communication tool for potential investors, a comprehensive and modernised investment law can offer an advantage for the attraction of high-quality investment. In order to serve this purpose, provisions in the law should reflect emerging MENA regional and international good practice. The policy of granting national treatment to foreign investors with exception of sectors considered sensitive, and not issuing a special investment law, is an alternative a country can chose. The more an economy relies on overall tax and investment climate simplification, the less need there is for a special foreign investment law.

NOTES

1. For the purpose of this paper, "investment law" refers to cross-sectoral legislation, setting out standards for all foreign investment. Foreign investment can also be regulated by sectoral regulation, concession or privatisation laws, general procurement regulations, company laws or in other commercial laws. These laws and regulations are not treated in the following discussion.

2. The 2006 Ministerial Declaration "Attracting investment to MENA countries, common principles and good practice", available at http://www.oecd.org/dataoecd/30/35/37520012.pdf.

3. For more information on the methodology of the Index, see OECD International Investment, Working Paper, Number 2006/4, http://www.oecd.org/dataoecd/4/36/37818075.pdf.

4. US Omnibus Trade and Competitiveness Act 1988, 28 ILM (1989), p. 460.

5. UNCTAD, International Investment Instruments: A Compendium, vol. II, 1996, p. 122.

6. UNCTAD, ibd., Articles 2 and 5, p. 213, 214.

7. UNCTAD, ibd., p.241.

8. OECD Codes of Liberalisation of Capital Movements, accessible at www.oecd.org/dataoecd/10/62/4844455.pdf.

9. Recommendation of the Working Groups of the MENA-OECD Investment Programme presented to the Ministerial Meeting, http://www.oecd.org/dataoecd/30/35/37520012.pdf.

10. http://www.oecd.org/document/48/0,2340,en_2649_34887_1932976_1_1_1_1,00.html

11. See OECD publication on Expropriation, http://www.oecd.org/dataoecd/22/54/33776546.pdf

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Annex 1. REGULATORY TREATMENT OF FDI IN MENA COUNTRIES[1]

'R'=restriction, '**NR**' = no restriction **'NA'**=no publicly available data, **'Y'=yes, 'N'=no**	Algeria	Bahrain	Djibouti	Egypt	Iraq	Jordan	Kuwait	Lebanon	Libya	Morocco	Oman	Palestine	Qatar	Saudi Arabia	Syria	Tunisia	UAE	Yemen
Date of issuing of main investment law	2001	/	1994	1997	2006	2003	2003	2001	1997	1995	1994	NA	2000	2000	1991	1994	NA	2002
Screening and approval procedure for all investment	Y	Y	NA	N	Y	Y	N	N	Y	N	Y	NA	N	Y	Y	N	Y	Y
Screening and approval procedure for some sectors	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	NA	Y	Y	Y	Y	Y	Y
1. All-sector limitations to entry of FDI	R	R	R	R	R	R	R	R	R	R	R	NA	R	R	R	R	R	R
2. Limitations on foreign purchase of domestic shares	R	R	R	R	R	R	R	R	R		R	NA	R	R	R	R	R	R
3. IMF Article VIII status	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	NA	Y	Y	N	Y	Y	Y
4. Liquidation proceeds transfer abroad	R	N	N	N	NA				NA	R	NA	NA	NA	NA	R	NR	NA	R
5. Sectoral limitations to establishment of FDI, incl. reciprocity																		
a. financial services	NA	R	NA	R	R	R	R	R	R	R	NA	NA	R	R	NA	R	NA	R
b. other services	NA	R	R	R		R		NA	R	NA	NA	NA	R	R	NA	R	NA	NA
c. primary sectors	NA	R	NR	R	R	R	R	NA	R	NA	NA	NA	R	R	NA	R	NA	R
d. manufacturing	NA	R	NA	R			NA	NA	R	NA	NA	NA	R	R	NA	NR	NA	R
6. Acquisition of real estate for FDI purposes		R	NA	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

7. Exceptions to national treatment of foreign-controlled enterprises																		
a. access to local finance	NA	NA	NA	NA	NA	NA	NA	R	R	R	R	NA	R	R	R	NA	R	R
b. access to privatisation	R	R	NA	R	NA	NA	R	NA	NA	NA	NA	NA	NA	R	NA	R	NA	NA
c. access to public procurement	NA	R	NA	R	NA	R	NA	NA	NA	NA	NA	NA	NA	R	NA	NA	R	NA
d. discriminatory tax treatment	NA	NA	NA	NA	NA	NA	R	NA	NA	NA	NA	NA	NA	R	R	N	NA	NA
e. entry procedures for key personnel																		
8. Performance requirements for foreign direct investors	**R**	NA		**R**	NA		NA	NA	NA	NA	NA	NA	**R**	**R**	**R**	**R**	NA	NA
9. FDI-targeted tax and other incentives	**Y**	NA	**Y**	**Y**	NA	**Y**	**Y**	**Y**	NA	**Y**	**Y**	NA	**Y**	**Y**	**Y**	**Y**	NA	**Y**
10. Bilateral investment treaties with OECD countries	15	3	1	23	0	14	16	17	5	19	10		7	6	8	16	13	8
11. Bilateral tax treaties (with OECD countries)	12(3)	9(1)	0	13(3)	NA	5(1)	10(3)	17(2)	NA	10(3)	9(2)	NA	3(0)	8(6)	17(1)	11(3)	8(3)	3(0)
12. Measures to enhance policy transparency																		
a. publication of regulations	**N**	**Y**	**N**	**N**	**N**	**Y**	**N**	**N**	**N**	**N**	**N**	**N**	**Y**	**Y**	**N**	**Y**	**N**	**Y**
b. information available on the Internet																		
c. list of sectors with FDI restrictions	**N**	**Y**	**N**	**N**	**N**	**Y**	**N**	**N**	**N**	**N**	**N**	**N**	**Y**	**Y**	**N**	**Y**	**N**	**Y**
13. Measures at sub-national level																		
14. Investment promotion agency (member of WAIPA)	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**N**	**Y**	**Y**	**Y**

Additional information to the entries of this matrix is provided below.

This list does not include the investment chapters of free trade agreements, for example those between United States and Bahrain and Jordan or agreements on the development of trade and investment relations such as those between the United States and Kuwait, Qatar, Saudi Arabia, UAE and Yemen. In each case, the first figure includes all treaties, including those renegotiated with the same country; for the figure in brackets, countries are counted only once.

The information was derived from the most recent sources of treaties and country studies, however as adjustments to the legal framework are constant, some information might have changed since its compilation here.

Since 7e, 12b, and 13 are questions more open to interpretation, no qualification has been made here; instead please refer to the following notes accompanying the table.

Main sources of information: Foreign Investment Laws and Regulations, IMF, World Bank, UNCTAD, United States Commercial Service

<table>
<tr><td colspan="2">.ALGERIA</td></tr>
<tr><td colspan="2">1. All-sector limitations on the entry of FDI including screening and prior approval procedures</td></tr>
<tr><td>General</td><td>Approval and Screening Requirements</td></tr>
<tr><td>In Algeria, foreign direct investment is permitted freely except in certain specified sectors, provided that it conforms to the laws and regulations governing regulated activities and providing that prior declaration is made to the authorities.[1] Before 1990, foreign investment was permitted in oil and gas extraction; since then it has been allowed in most sectors of the economy. In 1993 the government created an investment code that provides for freedom of investing and equal and non-discriminatory treatment for all investors in joint ventures, direct investments and portfolio investment. The investment code guarantees the stability of the laws applied at the time of the initial investment. There is no discrimination against foreign investors.[2] The framework was further modernised by “ordonnance 2001”, which introduced the fundamental principle of freedom of investment, as well as Most Favoured Nation (MFN) and national treatment. Privatisation of key sectors was permitted.[3] In March 2005; the Algerian parliament adopted a new law to further liberalize the hydrocarbons sector. This new law separates the commercial role of Sonatrach, the state-owned hydrocarbons company, from its previous and procurement/ contracting functions. Sonatrach is now required to bid on domestic projects alongside foreign firms; it will no longer be an automatic partner in all projects. In tenders that Sonatrach does not win, the company will retain a right to exercise an option to hold 20-30 percent of the equity of the project, allowing it to become a regular stakeholder with associated responsibilities. The Regulatory Agency for Hydrocarbons (ARH) will monitor compliance by foreign firms with various health, safety, and environmental regulations as well as use of the pipeline transport system. Anew contracting organisation, the National Agency for Contracts (or ALNAFT) will be responsible for building, concluding and supervising contracts with engineering and procurement investors. These reforms will enable Algeria to encourage greater foreign investment in oil and gas, leading to greater production capacity.[4] The Algerian government passed a new law in August 2001 creating the National Investment Development Agency (ANDI), which responsible to facility investments, granting fiscal and parafiscal exemptions conferring investment advantages, and assisting investors to receive special authorisations for unique investments. ANDI has a network of regional offices and has five decentralised centres in Algiers, Blida, Oran, Anaba and Ouergla. The</td><td>Article 3 of the Algerian investment code stipulates that prior to the “investment being made, an investment proposal shall be introduced to the Agency for the promotion, support and follow-up of investments. The Agency has a maximum period of 60 days within which to notify the investor. The investor can appeal to the supervising authority whose decision is not susceptible of judicial review.[8]"</td></tr>
</table>

1. IMF (2006).

2. United States Commercial Service.

3. UNCTAD (2003).

4 U. S Commercial Service (2007)

8 Algeria, legislative decree.

second organisation is the National Investment Council (CNI), which was created to strengthen the legal and regulatory investment framework. The CNI is in charge of defining the investment strategy and its priorities, for approving special investment incentives in each sector, and for giving final authorisation to special investment schemes. The third organisation is the Ministry for Participation and Promotion of Investment. The Minister for Participation and Investment Promotion (MPPI) manages two distinct offices within the Ministry, one for investment policy and the other for the privatisation process. The MPPI is coordinating the on-going privatisation of state-owned companies, organised by sector into groupings managed by "participation management companies" (sociétés de gestion de participation, SGP). The government has refocused its efforts on large-scale privatisation in order to remove itself from supporting loss-making enterprises.[5] Time-consuming procedures characterise the incorporation of foreign companies in Algeria. Despite some improvements, entrepreneurs currently need 120 days[6] on average to complete the procedures required for incorporating a company. This is mainly due to a lack of efficiency of regional one-stop shops, created specifically in order to facilitate and accelerate the incorporation of companies.[7]	
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
Algeria reports unspecified controls on equity purchases by non-residents. Non-residents may invest in bonds or other debt securities in Algeria; transfers abroad of proceeds from these investments are allowed, but they must be affected through an authorised intermediary.[9]	
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment	
In ***Algeria***, the proceeds from disinvestment following the closing or transfer of a business operation are allowed to be transferred abroad through authorised banks and financial intermediaries only up to the verified portion of the foreign investment out of the total liquidated investment.[10] It was reported by UNCTAD in December 2003 that repatriation of profit and dividends by foreign investors was still characterised by legal and practical obstacles. Although the law allows repatriation, this is limited to profits and dividends made through investments in foreign currencies, therefore profits generated through loans accorded by Algerian banks cannot be repatriated. The law does not allow the repatriation of payments arising from "immaterial assets", such as royalties generated by licensing patents or trademarks, which may form a large part of the earnings of companies which rely on exploitation of their intellectual property assets. Even when allowed by law, repatriation of profits is subject to practical obstacles, such as long administrative procedures.	

5 U.S. Commercial Service (2007)

6 Doing Business (2006)

7. UNCTAD (2003).

9. IMF (2006).

10 IMF (2006)

4. Sectoral limitations to establishment of FDI, including reciprocity
The 1990 law opened the banking environment to national and foreign private capital. Banks and financial institutions are required to meet the following: a maximum spread of 10% between their position (short or long) in each currency and the amount of their equity capital, and a maximum spread of 30%between total exposure (short and long positions, whichever is highest) for all foreign currencies and their equity capital.[11] Following the UNCTAD Current Studies on FDI and Development, foreign equity shall not exceed 49% on the communication and transport sectors. Foreign investment in electricity is allowed but the sector continues to be closed (foreign equity shall not exceed 19%).[12]
5. Acquisition of real estate for FDI purposes by foreign investors
Most land in ***Algeria*** is owned by the state, but it is not always clear which national or local authority owns a particular piece of land. Therefore foreign investors have to make enquiries and locate the authority authorised to sell the piece of land they want to buy. According to an assessment by the World Bank, about three years are required to buy a piece of land in Algeria.[13]
6. Exception to national treatment of foreign-controlled enterprises
Following a passed decree in 2001, all public-sector economic activities are in principle open to privatisation in ***Algeria***. However, the privatisation process appears to be characterised by a lack of transparency and wide government discretion.[14] New legislation affects nearly all sectors, including hydrocarbons, mining, power, banking, telecommunications, pharmaceuticals, transportation, and tourism. Foreign participation in joint ventures varies depending on sector. While there are still many bureaucratic hurdles to starting a business in Algeria, the investment code clearly lays out the rule for investors.[15]
7. Performance requirements on foreign direct investors
Information not publicly available

BAHRAIN	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
Bahrain permits 100 per cent foreign ownership of new industrial and services companies that establish representative offices or branches in Bahrain, without requiring local sponsors. Completely foreign-owned companies may be set up for regional distribution services (i.e. involving Bahrain plus a minimum of one other GCC country) and such companies may operate within the domestic market and offshore so long as they are not set up for the exclusive purpose of engaging in commercial sales in Bahrain. GCC nationals are allowed to own up to 100% of the shares of domestic	The establishment of the Bahrain Investors' Centre (BIC) is one of the key strategic projects adopted by Ministry of Industry and Commerce in 2006. The idea behind the initiative is to bring together all the services (by public

11 IMF (2006)

12 UNCTAD (2006)

13. UNCTAD (2003).

14. UNCTAD (2003).

15 U.S. Commercial Service (2007)

<table>
<tr>
<td>enterprises, and non-GCC nationals are allowed to own up to 100% of offshore, closed joint-stock, and limited liability companies and 49% of other companies, with the exception of a few strategic sectors.[16] Joint ventures are permitted with Bahraini companies, but a 100 per cent purchase of an existing company would require Ministry of Commerce approval.[17] Up to 49 per cent foreign ownership is permitted for public joint stock companies incorporated for the duration of a specific project; permission to form such a company must be obtained from the Ministry of Commerce and the Council of Ministers, following which a decree must be issued by the Amir to allow foreign ownership in such a company. The minimum capital stock of such a company is BD 500,000 (approximately US$1.3 million at the current exchange rate).[18] Decree no. 21 for 2001, the Companies Law provides the framework for company incorporation and registration of foreign branches and representative offices in Bahrain.[19]

Direct investment is regulated in accordance with the Commercial Companies Law, BMA regulations, the BSE Law (subject to the field of investment), and the Anti-Money Laundering Law.[20] In addition, Decree no. 24 for 2004 establishes a list of FDI restrictions, which specifically identifies activities which are not permitted for other than Bahrainis or 100% Bahraini owned companies, these are: pilgrimage services; real estate services; car rental; printing and publishing; TV production; labour recruitment and placement; theatres; art exhibitions; transport services; insurance services; government relations services and social activities. Apart from the above, non-GCC nationals are not permitted to engage in trading in the local market (retail/wholesale) other than through a company which is a minimum of 51% owned by Bahrainis.

Non-Bahrainis may incorporate 100% owned companies, as set out in the Companies Law (the exception is public joint stock companies where ownership is restricted to 49%) for any of the allowed activities, or may register a branch or representative office of a company incorporated outside Bahrain. When the activities of such a branch or representative office are to be undertaken on a regional base, there is no sponsorship requirement. No sponsorship is required for locally incorporated companies.</td>
<td>and private organisations) required by an investor. Licensing is based on a single application form that combines the requirement to all ministries involved in the regulation of the activity to be licensed; the process is computerised. All ministries involved have committed to specified deadlines for the completion of the licensing process.[21]</td>
</tr>
</table>

16 IMF (2006).

17. United States Commercial Service.

18 . WTO (2000).

19 Ministry of Industry and Commerce (www.commerce.gov.bh/English/DomesticTrade).

20 IMF (2006).

21 WTO (2007).

2. Limitations on foreign purchase of domestic shares (portfolio investment)
In ***Bahrain***, GCC nationals have since 1999 been allowed to own up to 100 per cent (previously 49 per cent) and non-GCC nationals up to 49 per cent (previously 24 per cent) of the listed shares of a Bahraini joint-stock company. The percentage of ownership by non-GCC nationals may be increased, subject to approval by special resolution from the Minister of Commerce and Industry. Previous conditions requiring foreign individuals to be resident in Bahrain for one year to be eligible to acquire shares in a Bahraini company and to own a maximum of 1 per cent of a company's issued shares were lifted in 1999.[22] Non-GCC nationals may purchase, sell, or own up to 100 per cent of the shares in the Arab Banking Corporation, the Bahrain International Bank, Investcorp Bank, the Bahrain Middle East Bank, Taib Bank, Shamil Islamic Bank and the Arab Insurance Group. Unspecified restrictions are reported on the issuance of bonds or other debt securities. Further non-residents are allowed to own buildings and property only in locations specified in the Council of Ministers Regulation No. 5/2001, which include most of the prestigious and tourist areas. In accordance with Legislative Decree No. 2/2001, commercial, tourism, and industrial companies, as well as banking and financial institutions that are licensed to operate in Bahrain, may own real estate without restriction. [23]
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment
Bahrain has no restrictions on the repatriation of the profits or capital and no exchange controls. There are no restrictions on converting or transferring funds, whether or not associated with an investment.[24] There are no controls on liquidation of direct investment.[25]
4. Sectoral limitations to establishment of FDI, including reciprocity
Foreign ownership (except for GCC nationals) of locally incorporated "onshore" banks in ***Bahrain*** is limited to 49 per cent; up to 100 per cent foreign ownership is permitted for offshore banking units, which may not deal with residents of Bahrain other than the government. There are no preferences for the approval of new entrants, but reciprocity provisions may apply. Foreign-based commercial banks may raise funds from and grant loans to residents and may own and operate branches in Bahrain, for which there are no restrictions on the proportion of foreign equity ownership Insurance companies in Bahrain are largely foreign-owned[26] and deal with a wide range of insurance categories. Direct insurers must take the form of a joint-stock company, in which foreign ownership of up to 49 per cent of total equity is permitted. An indirect insurance company may be in the form of a limited liability company with a maximum of 49 per cent foreign ownership. Offshore companies in all branches of insurance and branches of foreign insurance companies may be 100 per cent foreign owned. The situation in the insurance sector is more liberal than reflected in Bahrain's commitment to the GATS, under which no limitations were placed on market access and national treatment for all offshore insurance and related services but for local insurance services only reinsurance and retrocession services are included in the list of commitments.[27] Foreign investment is also restricted in

22 . WTO (2000).

23. IMF (2006).

24 United States Commercial Service (2007).

25 IMF (2006).

26 . Of the 88 insurance companies in Bahrain, 69 are offshore, all of them foreign-owned, 10 of the remaining 19 companies are also foreign-owned, and 6 of the 9 Bahraini companies have a large percentage of non-Bahraini participation.

27 . WTO (2000).

trade and retail (a minimum of 51% Bahraini ownership required in the case of investment by non-GCC nationals, and a Bahraini partner is required in the case of investment by other GCC nationals); travel and tourism offices (a Bahraini partner job is required), medical clinics and centres (licensing is confined to Bahraini and GCC nationals (resident in Bahrain), with medical qualifications; and pharmacies (a minimum of 50% ownership by a Bahraini pharmacist is required)[28]. Private investment (foreign or ***Bahraini***) in oil extraction is only permitted under a production-sharing agreement with BAPCO, the state-owned petroleum company.[29]
5. Acquisition of real estate for FDI purposes by foreign investors
Since 1999 GCC nationals have been permitted own land in ***Bahrain***. In January 2001, this right was extended to foreign (GCC and non-GCC) firms. Non-GCC individuals residing in Bahrain are allow to buy and own lands and houses in specifically designated investment areas such as the Seef and Juffair areas. In December 2006, Bahrain legalised 100% foreign ownership of investment properties.[30]
6. Exception to national treatment of foreign-controlled enterprises
Under the privatisation law, the government's commitment to gradually divest of its interests and stakes in certain companies is intended to increase the private sector's competitiveness. The Government actively seeks Bahraini and foreign private investments in large infrastructure projects. Previously, most such activity was funded by development agencies from other Gulf countries (particularly Kuwait, UAE, and Saudi Arabia). Foreign-owned companies are eligible for partial financing from the state-owned Bahraini Development Bank (BDN), if they meet certain criteria such as providing training and employment to a significant number of Bahrainis.[31, 32] A number of companies in the services sector have been privatised over the past ten years. However, some state-owned companies continue to dominate services activities, and still operate under monopoly, or hold exclusive rights, including: Aluminum Bahrain (ALBA) and Bahrain Petroleum Company (BAPCO), which dominate production in aluminum and petroleum respectively; Bahrain National Gas Company (BANAGAS), Ministry of Electricity and Water (MEW), and Bahrain Post (BP).[33]
7. Performance requirements on foreign direct investors
There are no special performance requirements imposed on foreign investors. This is reinforced, for example, by the bilateral investment treaty with the United States, which forbids mandated performance requirement as a condition for the establishment, acquisition, expansion, management, conduct or operation of a covered investment. Foreign and Bahraini-owned companies must meet the same requirements and comply with the same environmental, safety, health, and other labor

28 WTO (2007)

29. United States Commercial Service (2007).

30 United States Commercial Service (2007)

31 United States Commercial Service (2007)

32. United States Commercial Service.

33 WTO (2007)

requirements. Officials at the Ministries of Labor and Commerce and Industry supervise, on a non-discriminatory basis, companies operating in Bahrain. Industries must be set up in officially identified industrial areas. An Environmental Impact Statement (EIS) must be filed by all manufacturing facilities.[34]

DJIBOUTI

1. All-sector limitations on the entry of FDI including screening and prior approval procedures

General	*Approval and Screening Requirements*
Certain sectors, especially public utilities, are state owned and are not open to investors. Regarding expropriation, the Djibouti Investment Code (Law No.58/94/3) specifies that "no partial or total, temporary or permanent expropriation will take place without equitable compensation for the damages suffered". Foreign investors are free to determine their own hiring and firing policy as long as it remains within the structure of the labour code.[35]	There is no screening of investment or other discriminatory mechanisms.[36]

2. Limitations on foreign purchase of domestic shares (portfolio investment)

There are controls on all credit transactions of residents with non-residents in ***Djibouti***, including transactions in the form of guarantees, sureties, and financial backup facilities within the limits established by the banking regulations for the purpose of complying with the prudential standard on customer risk. Djibouti reports no restrictions on capital and money market instruments;[37] however, the country does not appear to have an active capital market.[38]

3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment

There are no controls on liquidation of direct investment.[39]

4. Sectoral limitations to establishment of FDI, including reciprocity

According to the Investment Code, foreigners can, in general, invest in all activities in the Republic of Djibouti and receive national treatment. Nevertheless, maritime and transit activities (for these two activities a foreign investor must have a Djiboutian partner, who must own the majority of

34 United States Commercial Services (2007).

35 U.S. Department of State (2007).

36 WTO (2006).

37. IMF (2006).

38. UNDP (2003).

39 IMF (2006).

the company's capital), fishing and retail trade, telecommunications, electricity, water, regular mail services and salt are reserved for international investors.[40]
5. Acquisition of real estate for FDI purposes by foreign investors
Information not publicly available
6. Exception to national treatment of foreign-controlled enterprises
Information not publicly available
7. Performance requirements on foreign direct investors
panding an FDI project. However, incentives increase with the size of the investment and the number

EGYPT	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
Within the scope of Law 8 of 1997 and Law 3 of 1998, the two key laws governing investment in Egypt, foreign investors may own up to 100 per cent of businesses categorised in a positive list guaranteeing automatic approval (see Sectoral Limitations, below). Law 8 of 1997 is designed to allocate investment to targeted economic sectors and promote decentralisation of industry from the Nile Valley Area. Private and state-owned exporting companies were required to sell at least 75% of their foreign currency earnings to state-owned banks. There are no general controls on inward direct investment in ***Egypt***, but non-bank companies of foreign exchange dealers must be owned entirely by Egyptians.[42] The Investment Guarantees and Incentives Law (Law 8), passed in May 1997, allow investment through joint-ventures, limited liability companies, and partnerships, and govern "inland investments", essentially domestic investment projects, and investment in free zones, which are treated as outside the domestic economy for taxation, customs, and trade purposes.[43] Law 94 of 2005	Under Egypt's law No. 8 on investment incentives and guarantees, passed in 1997, the General Authority For Investment and Free Zones (GAFI) automatically approves any application for projects within 16 sectors listed in the law. Investors can chose to proceed with their project through GAFI if they wish to benefit from its one-stop-function and the incentives laid out in law No. 8. There is, however, no obligation to do so. Nevertheless, GAFI oversees 69 activities, and the investor deals with 71

40 WTO (2006).

41 United States Commercial Service (2007).

42. IMF (2006).

43 WTO (2005)

<table>
<tr><td>amended the Investment Incentives Law and made companies incorporated under the Investment Incentives Law subject to the relatively simpler incorporation provisions of the Companies Law 3 of 1998.[44]

The Income Tax Law enacted in June 2005 eliminated some of the incentives in the Investment Incentive Law, namely all corporate tax exemptions and tax holidays that the latter law had authorised for newly established companies. The WTO noted in its 1999 trade policy review that FDI had been liberalised since its previous report and, with a few exceptions, granted national treatment. The list of sectors where foreign investment was actively discouraged was reduced in 1994 to the Sinai, military equipment and tobacco and replaced in 1998 by a positive list of sectors where investment is encouraged through the Law of Investment Guarantees and Incentives.

As of January 2, 2005, Egypt accepted the obligations of Articles VIII, Sections 2, 3, and 4 of the IMF's articles of Agreement.[45]

On July 2007, Egypt became the 40th country to adhere to the OECD Declaration on International Investment and Multinational enterprises. This Declaration is a way for governments to commit to improving their investment climates, ensuring equal treatment for foreign and domestic investors and encouraging the positive contribution that multinational companies can bring to economic and social progress.[46]

Egypt has been very active in concluding bilateral investment agreements; by February 2007 it had concluded treaties with 110 countries.[47]</td><td>entities under the responsibility of 22 ministries.[48]</td></tr>
<tr><td colspan="2">2. Limitations on foreign purchase of domestic shares (portfolio investment)</td></tr>
<tr><td colspan="2">Trading in securities denominated in foreign currencies must be settled in foreign currencies. The foreign exchange market may be used for transferring proceeds associated with the sale of both Egyptian securities and foreign securities. Further shareholders by residents or non-residents in any bank in Egypt that exceed 10 % of the bank's capital require approval from the CBE Board of Directors.[49]</td></tr>
</table>

44 United States Commercial Service (2007)

45 IMF (2006).

46 Egypt-OECD Investment Policy Reviews (2007)

47 Egypt-OECD Investment Policy Review (2007)

48 Egypt-OECD Investment Policy Review (2007)

49. IMF (2006).

3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment
No controls are applied on liquidation of direct investment.[50] There are no restrictions on repatriation of funds by companies, or rules requiring foreign companies to hold foreign currency accounts.[51]
4. Sectoral limitations to establishment of FDI, including reciprocity
The reforms initiated in 2004 have significantly opened up both the infrastructure and the financial sectors to private investors, both domestic and foreign. With respect to infrastructure, the focus has been on transportation and telecommunications since 1998. Recent transportation initiatives have included new legislation in June 2006 allowing private sector investment in the railway sector for the first time, a memorandum of understanding involving a consortium of international firms for US$30 billion of investment in highway, railroad and seaport projects, and plans underway to more than double the capacity of Cairo International Airport through the construction of a new third terminal, however foreign investment in air transport is allowed up 49% in companies involved in regular international and domestic flights. With respect of maritime transport: foreign investment is only allowed in the form of joint-venture companies in which foreign equity does not exceed 49 % and for supporting services foreign equity should not exceed 75%.[52] With respect to telecommunications, the reform process started in 1998 with the establishment of the government-owned operator, Telecom Egypt. The new telecommunications law (Law 10) was passed in 2003. The government is in the early stages of licensing operators for international gateways and for the provision of international services in Egypt.[53] With respect to construction sector, foreign investment is only allowed in the form of joint-venture companies in which foreign equity shall not exceed 49%. In addition, foreign participation in electrical wiring and other building completion and finishing work is restricted to projects valued at over US$10 Million (Law 104 of 1992). Reform of the financial sector has been another priority sector for the government. The reforms in this sector have been managed by the Banking Unit with the Central Bank of Egypt following with new banking law passed in 2003. The reforms have combined efforts to bring about consolidation in the banking sector with significant privatisation. The financial sector is now approximately divided 50-50 between private and public ownership and approximately 70-30 domestic versus foreign ownership.[54] There are no limitations on foreign ownership. Every natural or legal person owning more than 5% of the issued capital of a bank must notify the Central Bank. No natural or legal person is allowed to own more than 10% of the issued capital of any bank, except with the approval of the CBE's Board of Directors. The Insurance Law allows up to 100% foreign ownership of Egyptian insurance companies. It also allows foreign companies to establish representative offices to advertise and promote life and non-life insurance activities. However, they may not sell their services through

50 IMF (2006)

51 WTO (2005)

52 Egypt-OECD Investment Policy Review (2007)

53 Egypt-OECD Investment Policy Review (2007)

54 Egypt-OECD Investment Policy Review (2007)

representative offices. There are no restrictions on foreign nationals being on the board of directors of insurance companies. All investment in the insurance subsector is subject to an economic needs test.[55]

Commercial agents and importers for resale in ***Egypt*** must be Egyptian nationals.[56] Qualifying investments in Law 8 of 1997 in Egypt which must be approved to benefit from incentives include: tourism (hotels, motels, tourist villages and transport); maritime transport; refrigerated transport of agricultural products and processed food; air transport and related services; housing; real estate development; hospitals and medical centers that offer 10 per cent of their services free of charge; water pumping stations; computer software production; and projects financed by the Social Fund for Development.

5. Acquisition of real estate for FDI purposes by foreign investors

In ***Egypt***, non-Egyptians may not sell property within five years of taking possession. Foreign individual or corporate ownership of agricultural land (defined as traditional agricultural land in the Nile valley, delta and oases) is explicitly prohibited by Law 15 of 1963.[57] Prime Ministerial Decree No. 548 for 2005 removes restrictions on foreign property ownership in a number of tourist and new urban areas, namely the Red Sea, Hurghada, Sidi Abdel-Rahman and Ras-Hekma in Matrouh Governorate. Foreign individuals are still, however, limited to ownership of a maximum of two residences in Egypt. Companies/citizens of Arab countries have customarily received national treatment in this area.[58]

6. Exception to national treatment of foreign-controlled enterprises

Egypt passed a Tenders Law in 1998 which introduced greater transparency in the process of public procurement, although the law does allow price preferences for Egyptian suppliers.[59] Tenders Law 89 of 1998 amended the Tenders and Bidding Law 9 of 1983 governing foreign companies' bids on public tenders. It requires the government to consider both price and best value and to issue an explanation for a bid's refusal. An Egyptian domestic contractor is accorded priority if its bid does not exceed the lowest foreign bid by more than 15 per cent.[60] The WTO has noted that although the Tenders Law is an improvement on previous legislation, it continues to provide considerable discretion to government departments to limit procurement to selected suppliers.[61] But the law was amended in mid-2006, requiring contracting government entities to acknowledge price fluctuations in the first year of the contract or increases or decreases in cost, and to compensate contractors where necessary.[62]

7. Performance requirements on foreign direct investors

In ***Egypt*** Investment Incentives and Guarantees Law 8 of 1997 specifies that assembly industries

55 WTO (2005)

56. United States Commercial Service.

57. United States Commercial Service.

58 United States Commercial Service (2007)

59. WTO (1999).

60. United States Commercial Service.

61. WTO (1999).

62 United States Commercial Service (2007)

must meet a minimum local content requirement of 45 per cent to benefit from customs tariff reductions on imported industrial inputs. The Labour Law of 1981 requires that foreign workers (not counting managers) must account for no more than 10 per cent of the workforce and 20 per cent of the payroll. Foreign employees are further limited to 25 percent of administrative and professional employees and 30 percent of wages paid to these categories of workers.[63]

IRAQ	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
Order Number 39 replaced all previous foreign investment laws. On October 10, 2006 Iraq adopted a new investment law. Under the new legal regime, a foreign investor is in principle entitled to make foreign investments in Iraq on terms no less favorable than those applicable to an Iraqi investor and the amount of foreign participation is not limited. Exceptions are: foreign direct and indirect ownership of the natural resources sector involving primary extraction and initial processing. Further restrictions can apply to banks and insurance companies.	The new Law 2006 mentions that investors must obtain the *project establishment license* from the National Commission On Investment. The Commission shall give its decision within 30 days from the date of the completion of the technical and legal requirements and conditions pursuant to the provisions of this law, with considerations given to guidelines and standers set forth by the Commission.[64]
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
Information not publicly available.	
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment	
On payments for invisible transactions and current transfers, domestic or foreign companies operating in Iraq requesting the transfer of funds abroad must submit proof of the amount of the contract and the percentage that may be converted into foreign exchange.[65]	
4. Sectoral limitations to establishment of FDI, including reciprocity	
Investment in banks and insurance companies shall not be subject to the provisions of the	

63. United States Commercial Service.

64 Iraq Investment Law 2006 (Article 6)

65 IMF (2006).

Investment Law 2006.[66]
5. Acquisition of real estate for FDI purposes by foreign investors
Information not publicly available
6. Exception to national treatment of foreign-controlled enterprises
Information not publicly available
7. Performance requirements on foreign direct investors
The investor must directly or indirectly employ a number of Iraqis, who shall make up no less than about 50% of the total employees in the project, unless the Commission saw otherwise for reasons of the technical specialisation required, or the nature of the activity or the geographical location of the project.

JORDAN	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
In ***Jordan*** there are no general restrictions on foreign ownership of Jordanian companies. A non-Jordanian may not own any of the following projects or businesses in whole or in part: passenger and cargo road transport, including services of taxis, buses and trailers; investigation and security services; and sports clubs, including sports event organisations but excluding fitness and physical health clubs. The Laws JIB Law No. (16) of 1995, JIB Law No. (16) of 1995 and By-Law No. 54 of 2000 contain a list of sectors with restrictions on foreign participation. The Non-Jordanian investor ownership shall not exceed 49% of the capital of any project in the following sectors and activities: a. Scheduled and non-scheduled passenger, freight and mail air transport services. b. Rental services of aircraft with operator. The Council of Ministers may upon the recommendation of the Higher Council for Investment Promotion permit the ownership or participation in big development projects that enjoy special importance for any non-Jordanian investor in higher percentages than	In principle, the screening of projects is done by Ministries and agencies who deal with the registration and licensing of projects. Projects in specific sectors laid out in the Investment Law enjoy exemptions and incentives. For this purpose the Investment Promotion Committee reviews applications submitted by investors and decides on them within a period of thirty days.[68] Neither is there any formal screening or host government selection process for foreign investment.

66 Iraq Investment Law 2006 (Article 24).

68 Article 22 Law No. (16) of 1995 and its amendments for the year 2000, The Investment Promotion Law, Jordan.

<table>
<tr><td>is provided by this regulation and according to the percentage in the council's decision.

N.B. A new draft Investment Law has been developed by the Jordan Investment Board and is in the process of being shared with stakeholders for comments in preparation for eventual submission to Parliament this year.[67]</td><td></td></tr>
<tr><td colspan="2">2. Limitations on foreign purchase of domestic shares (portfolio investment)</td></tr>
<tr><td colspan="2">Jordan reports no restrictions on capital and money market instruments.[69] However, the Amman Stock Exchange (one of the region's largest stock markets, with 42 per cent foreign share ownership) states that companies in the construction contracting, commercial and commercial services and mining sectors are subject to a ceiling of 50 per cent foreign ownership of the paid-up capital.[70] Further non-resident investments are limited to a maximum of 49% ownership or 50% subscription in shares in the following major sectors: commerce and trade services, construction, contracting, and transportation. The amount of investment in any one project must total at least JD 50,000.</td></tr>
<tr><td colspan="2">3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment</td></tr>
<tr><td colspan="2">There are no controls on liquidation of direct investment.[71]</td></tr>
<tr><td colspan="2">4. Sectoral limitations to establishment of FDI, including reciprocity</td></tr>
<tr><td colspan="2">In Jordan, a non-Jordanian investor can own no more than 50 per cent of the capital of any project in: brokerage, excluding financial brokerage and intermediary transactions done by banks, financial companies and financial service companies; monetary exchange transactions, excluding those provided by banks and financial companies; and services of commercial agents and brokers and insurance brokers.

The amount of investment in any one project must total at least JD 50,000.[72]

In Jordan, non-Jordanian investor ownership shall not exceed (50%) of the capital of any project in the following sectors and activities:

purchase of goods and other movable tangibles for purposes of leasing or renting for re-leasing, including machinery and equipment, transport vehicles and other transport equipment, rent a car, aircraft (without operator) and ships, excluding financial leasing services conducted by banks, financial companies and insurance companies.

1. Purchase of goods and other movable tangibles for purposes of selling with profits.</td></tr>
</table>

67 MENA-OECD Investment Programme (2006)

69. IMF (2006).

70. www.ammanstockex.com.

71 IMF (2006)

72 MENA-OECD Investment Programme (2006)

2. Wholesale trade and retailing.
3. Import and export excluding importation up till the Kingdom's border outlets.
4. Distribution of goods and services within the Kingdom including distribution of audiovisual works.
5. Supply services excluding food catering that is not conducted by restaurants, cafes and cafeterias, without prejudice to the provisions of item (12) of paragraph (b) of this Article.

According to By-Law No. 54 for the year 2000, a non-***Jordanian*** may not own any project or business in whole or in part in quarrying for construction sand, stones and crushed rock and debris used for construction purposes.

JIB Law No. (16) of 1995:

1. Non – Jordanian investors are not allowed to participate, wholly or partially in any of the following projects or activities:
2. Passenger and freight road transportation services including taxi, bus and trucks services.
3. Quarries for natural sand, dimension stones, aggregates and construction stones used for construction purposes.
4. Security and investigation services.
5. Sports clubs including organisation of sports events services, excluding health fitness clubs services.

Clearance services, without prejudice to paragraph (D) of Article (3) from this regulation

5. Acquisition of real estate for FDI purposes by foreign investors

Non-Arab foreign nationals are permitted to own or lease property in ***Jordan***, provided that their home country does not discriminate against Jordanians and the property is developed within five years from the date of approval. The Cabinet is the authority on licensing foreign ownership of land and property. Agricultural land is not included in the provisions of this law. However, a foreign company that invests in the agricultural sector in Jordan automatically obtains national treatment with respect to ownership of agricultural land, once registered as a Jordanian company.[73] In general, purchase of land is allowed only if reciprocal agreements exist and Cabinet approval is obtained.[74]

6. Exception to national treatment of foreign-controlled enterprises

In ***Jordan***, foreign investors can bid for government-commissioned research and development programmes that are slated for international or mixed bidders. Otherwise, they have to find a Jordanian partner. This qualification will be dropped once Jordan accedes to the WTO's Government Procurement Agreement (GPA), for which it is currently preparing an entities offer.[75]

73. United States Commercial Service.

74 IMF (2006).

75. United States Commercial Service.

7. Performance requirements on foreign direct investors
In its bilateral investment treaty with the United States, ***Jordan*** is prohibited from imposing performance requirements as a condition for the establishment, acquisition, expansion, management, conduct or operation of an investment covered by the treaty (i.e. by a US entity). The list of prohibited performance requirements is exhaustive and covers domestic content requirements and domestic purchase preferences, the balancing of imports or sales in relation to exports or foreign exchange earnings, requirements to export products or services, technology transfer requirements, and requirements relating to the conduct of research and development in Jordan.[76]

KUWAIT	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
In ***Kuwait***, foreigners are allowed to own up to 100 per cent of Kuwaiti companies, subject to conditions determined by the Council of Ministers.[77] Regulations of the March 2001 Direct Foreign Capital Investment Law allow majority foreign ownership. The ceiling on foreign ownership of shares of non-bank financial institutions was lifted (previously, a ceiling of two-thirds of shares applied).[78] A new Direct Foreign Capital Investment Law (DFCIL) came into effect in November 2003, which effectively establishes a positive list of activities in which foreign-majority ownership and 100% ownership is allowed and which do not require prior approval. The list includes infrastructure projects; investment and exchange companies; insurance; information technology and software; hospitals and pharmaceuticals; air, land and sea freight; tourism, hotels and entertainments; housing projects and urban development. Projects involving oil discovery or oil and gas production are not authorised for foreign ownership. Real estate investment, other than in the context of housing projects and urban development, is restricted to GCC nationals.	Foreign entry into other sectors than the ones listed in the new Direct Foreign Capital Investment Law is conditional upon approval by the Council of Ministers. The Foreign Investment Committee screens the investment applications and makes the necessary recommendations.
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
Kuwait reports unspecified restrictions on capital and money market transactions, including local sale or issue of shares and bonds by non-residents.[79] Since May 1988, GCC citizens have been permitted to purchase stocks on the Kuwaiti Stock Exchange (KSE). Cross trading with the Bahrain Stock Market began on 15 March 1998. The KSE also has similar agreements with Egyptian and Lebanese stock markets. Investors in these countries are now permitted to buy and sell shares listed on	

76 United States Commercial Service.

77. IMF (2006).

78 IMF (2006).

79. IMF (2006).

each other's exchanges through their brokers. In May 1999, an agreement of co-operation was signed between the KSE and the Jordanian Stocks Authority for stock issuing and circulation. This agreement encouraged registration of listed companies in the two bourses, and boosted cooperation and the exchange of expertise.[80] The Indirect Foreign Investment Law passed in August 2000 allows foreigners to own 100 per cent of all listed shareholding companies, except banks, in which foreigners may hold no more than 49 per cent of the shares; foreign investors require central bank approval to own more than five per cent of a Kuwaiti bank.[81]

3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment

Foreign investors can freely repatriate their profits as well as capital without any restrictions. Any compensation paid on account of disinvestment may also be repatriated.[82]

4. Sectoral limitations to establishment of FDI, including reciprocity

Foreigners are limited to 49 per cent ownership of banks in ***Kuwait*** however real estate investment is limited to GCC nationals.[83]

Foreign companies may not invest in ***Kuwait's*** upstream petroleum sector, although they are allowed to invest in petrochemical joint ventures.[84]

5. Acquisition of real estate for FDI purposes by foreign investors

None known.

6. Exception to national treatment of foreign-controlled enterprises

There is no national treatment in FDI law. Articles 43 and 44 of ***Kuwait's*** Law No. 37 of 1964 specify the use of local products when available and prescribe a 10 per cent price advantage for local firms in government tenders.[85]

In ***Kuwait***, foreign-owned firms and the foreign-owned portions of joint ventures are the only businesses subject to corporate income tax, which applies to domestic and offshore income. Corporate tax rates can be as high as 55 per cent of gross profits, but the government has put forward legislation to reduce the maximum rate to 25 per cent. New foreign investors can be exempted from all taxes for up to 10 years under the new Direct Foreign Capital Investment Law. Domestic companies pay no corporate income tax, but those that are registered on the Kuwait Stock Exchange are subject to a 2.5 per cent contribution from their national earnings to the Kuwait Foundation for the Advancement of Science (KFAS) and the National Employment Law levies an additional 2.5 per cent tax to fund a

80. Kuwait Information Office in the United States, www.kuwait-info.org.

81. United States Commercial Service.

82 Kuwait Foreign Investment Law (No. 8/2001)

83. United States Commercial Service.

84. United States Commercial Service.

85. United States Commercial Service.

programme that grants Kuwaitis working in the private sector the same social and family allowances provided to Kuwait's government workers.[86]

7. Performance requirements on foreign direct investors

Further, the Council of Ministers Resolution No. 1006/2 for 2003 provides that a license may be issued to a Kuwaiti Shareholding Company (Closed) in which the share of the foreign investor is 100% of its capital subject to compliance with the following terms and conditions:

The company's capital shall be sufficient to achieve its objects and shall be fully subscribed by the promoters.

The company shall fulfill the procedures, rules and regulations prescribed under the Kuwaiti Commercial Companies Law No. 15/1960.

The company shall engage in the activities indicated in the Resolution of the Council of Ministers No.1006/1 for the year 2003.[87]

LEBANON

1. All-sector limitations on the entry of FDI including screening and prior approval procedures

General	*Approval and Screening Requirements*
The Investment Development Law of August 16, 2001 elaborates the investment environment and the institutional structure of investment promotion in Lebanon. There are no general limitations on foreign ownership of Lebanese companies. However, foreign direct investments in some sectors are subject to specified ceilings and, in some cases, to prior authorisation.	Foreign direct investment in some sectors is subject to prior authorisation. Entrants must seek the approval and licensing of the Investment Development Authority of Lebanon (IDAL) in accordance with the applicable Investment Development Law 360 in order to benefit from the advantages provided by the Law. Setting up a branch or a representative office requires a licence issued by the Ministry of Economy and Trade which will make a decision in a maximum period of seven days.[88]

86. United States Commercial Service.

87 Council of Ministers Resolution No. 1006/2 for 2003

88 IDAL, Investor's Guide to Lebanon, www.idal.com.lb/uploadedfiles/Investment_Guide_EN.pdf. .

2. Limitations on foreign purchase of domestic shares (portfolio investment)
In ***Lebanon***, limits are imposed on the acquisition of shares in companies, depending on the nature of the company. No limitations apply to banks and financial institutions. In terms of purchase of bonds or other debt securities, non-resitdent financial entities must obtain approval from the BDL when purchasing treasury securities or BDL certificates of deposit denominated in pounds, dollars or euros. Funds used to purchase treasury securities or certificates of deposit must originally have been Lebanese pounds that were converted from foreign exchange specifically for this purpose. The acquisition by residents or nonresidents of more than 10 percent of the shares of a collective investment company is subject to BDL approval. Banks and financial institutions are prohibited from extending credit to in pounds to nonresident financial entities. Acquisition by a resident or a non-resident of shares in a bank is subject to prior authorisation of the BDL in specific circumstances.[89]
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment
None known.
4. Sectoral limitations to establishment of FDI, including reciprocity
Since January 7, 2004 the ceiling on foreign ownership of shares of non-bank financial institutions was lifted (previously, a ceiling of two-thirds of shares applied).[90] For the establishment of joint stock companies, there are a number of sectoral exceptions where there are limits on capital owned by foreign direct investors, including in sectors such as real estate, insurance, media companies and banks.
5. Acquisition of real estate for FDI purposes by foreign investors
In ***Lebanon***, all foreigners must obtain a licence from the Council of Ministers to acquire real estate exceeding a certain maximum area; in addition, a ceiling is imposed on the total area that may be acquired in the capital city as well as in various Lebanese districts.[91] The Investment Development Law grants full exemption from land registration fees at the Real Estate Register and from fees needed for annexation, subdivision, mortgage and registration of lease contracts at the Real Estate Register (…) provided that the project is carried out within five years of land registration.
6. Exception to national treatment of foreign-controlled enterprises
None known
7. Performance requirements on foreign direct investors
None specified in the Investment Law or other applicable legislation

89 IMF (2006).

90 IMF (2006).

91. IMF (2006).

LIBYA	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
Foreign investment is important to Libya not so much for the financial flows it brings but for the spill over effects in terms of know-how and access to export markets, among other benefits. Full foreign ownership is permitted, in ventures established in the context of Law No. 5 and approved by the Foreign Investment Board.[92] Foreign Investment Law 5 of 1997 amended in 2003 allows for investment in the following sectors: industry, health, tourism and agriculture, following the positive list approach. The law 5 of 1997, modified by several decrees that followed, encourages investment of foreign capital in the areas that necessitate transfer of technologies, formation of Libyan technical cadre, and regional development. Foreign investment in the tourism sector is regulated by the law 7 of 6 March 2004 and its application decree 139 of 26 august 2004, which are similar to in spirit to Law 5.[93] Furthermore, controls on outward direct investment are also in place. Foreign participation in industrial ventures set up after May 20, 1970, is permitted on a minority basis, but only if it leads to increased production in excess of local requirements, introduction of the latest technology, and cooperation with foreign firms in exporting the surplus production. Additionally, decree number 3 of 3 January 2005 regulates the establishment of a branch of a foreign company in Libya.	All foreign investments require approval by the Libyan Foreign Investment Board. Approval is granted for projects that lead to domestic job creation or training, use of local raw materials, transfers of technology, and inflows of foreign currencies.[94] Licensees for investment of foreign capital are granted by the Board after issue of the decision for approval of the investment by the Secretary.
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
Specific information on limitations on purchase of debt or equity securities in Libya is not publicly available, although there are restrictions on capital and money market instruments for residents.	
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment	
Foreign capital invested in projects deemed to contribute to the economic development of the country may be transferred freely to the country of origin. Capital invested in projects set up in the context of Law No. 5 and approved by the Foreign Investment Board, may also be transferred to the country of origin without restrictions.[95] This Investment law regulates the investment of foreign capital brought in any of the following forms:	

92 Mohamed Ghattour & Co, Certified Public Accountants and Auditors, a cooperating firm of PricewaterhouseCoopers ME, "Doing Business and Investing in Libya.

93 Economic Mission of France, 29 October 2006, *Droit des sociétés et législation des investissements en Libye.*

94 IMF (2006), Libya, Investment Law No.5.

95 IMF (2006)

- Convertible foreign currencies or substitutes thereof in coming by official Banking methods.
- Machinery, equipment, devices, spares parts, and raw materials necessary for the investment project.
- Transport means unavailable locally.
- Intangible rights, such as patents, inventions, licenses, trademarks and commercial names necessary for construction or operation of the investment project.
- The part reinvested from the project profits and revenues.

Investors have the right to re-export his invested capital in the following cases: expiry of the project period, liquidation of the project, sale of the project wholly or partly, elapse of a period not less than (5) five years from the date of issue of permits for investment. They also have the right to transfer back foreign capital in the same manner as it was brought after expiry of six months from the date of entry thereof if difficulties or conditions beyond control of the investor prevent investment thereof, and the net profits and benefits distributed and interests achieved by the project are allowed to be transferred annually abroad.

All proceeds on of exports must be repatriated within three months of shipment.

4. Sectoral limitations to establishment of FDI, including reciprocity

No negative list available.

5. Acquisition of real estate for FDI purposes by foreign investors

As an exception to the effective legislations related to ownership, according to the Investment Law of 1997, the investor has the right to own land based on title of use and to rent it and construct buildings thereon and to own or rent the necessary real estate for construction or operation of the project under the terms and conditions specified in the executive regulations.

6. Exception to national treatment of foreign-controlled enterprises

No national treatment principle in the Investment law.[96]

7. Performance requirements on foreign direct investors

The project is required to achieve all or part of the following:

- To produce commodities for export or contribute to increasing exports thereof or resulting in ending imports of commodities wholly or partly.
- To provide opportunities for employment of Libyan manpower and to train them for gaining technical skills and experiences. The executive regulation shall specify the terms and conditions for employment of national manpower.
- To use modern technology or trade mark or technical experience.
- To provide service for the national economy or contribute to improvement or development thereof.
- To lead to strengthening the ties and integration between existent economic activities and projects or reduction of production costs or contribute to providing materials and operation necessities thereof.
- To utilise or assist in utilising local raw materials.
- To contribute to development of remote economically underdeveloped areas.

[96] Investment Law Number 5 1997.

<table>
<tr><td colspan="2">MOROCCO</td></tr>
<tr><td colspan="2">1. All-sector limitations on the entry of FDI including screening and prior approval procedures</td></tr>
<tr><td>General</td><td>Approval and Screening Requirements</td></tr>
<tr><td>The 1995 Investment Charter outlines a highly liberalised environment for foreign investors. In most sectors foreign investment is permitted.

As of September 1, 2004, funds held by non-resident foreign individuals in term convertible dirham accounts were allowed to be transferred without restriction no later than March 31, 2005.

Morocco has accepted its status under IMF Article VIII on 21 January 1993.

Following Morocco's application to adhere the OECD Declaration on International Investment and Multinationals Enterprises, a negative investment list has been submitted to the OECD in 2007.</td><td>There is no horizontal requirement for prior approval in the Investment Charter.</td></tr>
<tr><td colspan="2">2. Limitations on foreign purchase of domestic shares (portfolio investment)</td></tr>
<tr><td colspan="2">In Morocco, the issuing of capital market securities by non-residents is subject to authorisation. There are no controls on the sale of Moroccan securities by non-residents. Proceeds from such sales may be transferred freely, provided that the relevant purchases are financed by foreign exchange inflows or other comparable means. In other cases, the proceeds must be deposited in a convertible dirham account and may be transferred abroad over a five-year period. The issue of bonds or other debt securities by non-residents in Morocco is prohibited.[97]</td></tr>
<tr><td colspan="2">3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment</td></tr>
<tr><td colspan="2">In Morocco, there are no controls on transfers made directly through the banking system of the proceeds of the liquidation or sale of foreign investment, including capital gains, when such investment is governed by the convertibility arrangement (financing by sale of foreign exchange or other comparable methods). For the liquidation of any investment not falling under this category, the relevant proceeds must be deposited in a convertible time deposit account denominated in dirhams.[98] The holders of this account can sell them to foreign resident or non-resident nationals. Profits and investment incomes can be transferred regardless of the means of financing. The original holders of the term convertible accounts as well as new purchasers including Moroccans residing abroad can use these accounts for any expenditure in dirhams in Morocco without limitation.[99]</td></tr>
<tr><td colspan="2">4. Sectoral limitations to establishment of FDI, including reciprocity</td></tr>
<tr><td colspan="2">Morocco reserves the right under GATS to limit foreign participation in the capital of large banking institutions in cases where the holding could lead to taking over control. Approval to perform as an insurance intermediary is only given, subject to an opinion by the Advisory Committee on</td></tr>
</table>

97. IMF (2006).

98. IMF (2006).

99 MENA-OECD Morocco National Investment Reform Agenda (2006)

Insurance, to natural persons of Moroccan nationality and to legal persons governed by Moroccan law with their headquarters in Morocco and with at least 50 per cent of the capital held by natural persons of Moroccan nationality or legal persons under Moroccan law; the person in charge must be a Moroccan national.[100]

Limitations in the service sector often relate to the terms and conditions on market access and in particular:

- commercial presence and starting a business under Moroccan laws (sectors of maritime fisheries, telecommunications, cinematographic or entertainment production, etc);
- physical presence (the board of directors in the audiovisual sector must include at least a certain number of Moroccan nationals);
- managers and board of directors must hold the Moroccan nationality (the Pedagogic Administration for Private Higher Education);
- limiting foreign capital participation in certain categories of activity (cinematographic or entertainment production) acquisition of a vessel flying the Moroccan flag and a fishing license for this vessel, insurance companies) etc;
- the service sector is also characterised by the obligation to acquire an operating license, an authorisation to practice, an approval, an obligation to achieve a result, etc.[101]

***Provision of professional services (ex: lawyers, doctors, engineers, geometricians, topographers, architects, etc.)*:** these are regulated services whose priority is granted to locals. Market access for foreigners is conditioned by the obligation of residence, qualifications, election of residence near the national professionals and/or the existence of a bilateral agreement authorising nationals from each of the two States to perform their profession within the territory of the other State.

Financial Sector: Morocco reserves the right not to authorize a takeover by a foreign capital of a large Moroccan bank.

- Impossibility for undertakings for collective investment in transferable securities (UCITS) of holding foreign securities in their portfolio.
- Impossibility for Morocco-based branches of foreign banks to operate on the basis of the capital of the parent company.
- To have head office in Morocco in order to perform a commercial presence
- natural persons: to hold the Moroccan nationality
- moral persons (insurance agents or broking companies) must be established in Morocco

At least 49% of moral persons must be held by natural persons of Moroccan nationality or moral persons established according to the Moroccan law with their representatives of Moroccan nationality.

Telecommunication Sector: An installation and operation license for public telecommunication networks hiring the public domain or using a radio-electric frequency spectrum is required commercial presence is required for mobile telephone services and radio-paging.[102]

100. WTO (2003).

101 Negative list of investment restrictions and barriers, Morocco Government (2006)

102 Morocco Government, Negative list of investment restrictions and barriers (2006)

5. Acquisition of real estate for FDI purposes by foreign investors
In ***Morocco***, foreign nationals may purchase real estate, except farmland, with funds from foreign exchange accounts.[103] This acquisitioned should be financed by the sale of foreign exchange on the exchange market or comparable methods with funds from foreign exchange or a convertible dirhams account. Farmland may be leased for a period up to 99 years and permission can also be given for foreigners to buy farmland in order to use it for purposes (e.g. tourism) other than agriculture.[104]
6. Exception to national treatment of foreign-controlled enterprises
Exporting companies are fully exempt from corporate income tax for 5 years and then have a 50 per cent tax reduction on profits from exporting.[105] Enterprises located in the Tangier Free Trade Zone in ***Morocco*** are eligible for exemption from all registration taxes and stamp duty for constitution or augmentation of capital and for land acquisition, are exempt from licence tax for 15 years, are exempt from profits tax for the first 5 years and a reduced tax rate of 8.75 per cent thereafter, and are exempt from VAT on imported goods.[106] It is not clear whether these incentives are available on equal terms to domestic and foreign investors.[107]
7. Performance requirements on foreign direct investors
In ***Morocco***, exporting companies are fully exempt from corporate income tax for 5 years and then have a 50 per cent tax reduction on profits from exporting.[108]

OMAN	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
In Oman foreign ownership is generally limited to 70%, but it may be raised to 100% in certain cases. A non-resident portfolio investor may not hold more than 10% of the shares in an Omani company.[109]	Investment in business firms in ***Oman*** by non-residents requires prior approval by the Ministry of Commerce & Industry.[110] Automatic approval is offered to joint ventures with a majority foreign ownership up to 70%. New entities with more than 70% ownership are subject to the approval of the Minister of Commerce and Industry. In addition, companies establishing a wholly-owned subsidiary in Oman are often required to obtain approval from other ministries, such as the Ministry of Regional Municipalities and Environment.

103. IMF (2006).

104 MENA-OECD Morocco National Investment Reform Agenda (2006)

105. UNCTAD (1999b).

106. United States Commercial Service.

107 MENA-OECD Morocco National investment Reform Agenda (2006)

108. UNCTAD (1999b).

109. IMF (2006).

2. Limitations on foreign purchase of domestic shares (portfolio investment)
A non-resident portfolio investor may not hold more than 10 per cent of the shares in an Omani country. Investment in business firms in Oman by non-residents requires prior approval.[111]
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment
There are no controls on liquidation of direct investment in Oman.[112]
4. Sectoral limitations to establishment of FDI, including reciprocity
For prudential purposes, all locally incorporated banks in Oman must be in the form of public joint-stock companies and must comply with the regulation on shareholding pattern (i.e, up to 15% for an individual or related parties, up to 25% for an incorporated body, and up to 35% for a joint-stock company or a holding company and its related parties.[113]
5. Acquisition of real estate for FDI purposes by foreign investors
Oman reports unspecified controls on the purchase and sale of real estate by non-residents. The ownership of real estate is limited to Omani and GCC citizens. Purchase of real estate by non-residents is not allowed, although some exceptions apply to citizens of GCC countries.[114] The 17th February 2004, decree allows legal entities belonging entirely or with a minimum of 51% of the capital to Omani citizens to purchase real estate.[115]
6. Exception to national treatment of foreign-controlled enterprises
Information not publicly available.
7. Performance requirements on foreign direct investors
Oman states that it does not apply any trade-related investment measures which are inconsistent with the provisions of Article III or Article XI of GATT 1994, nor has it introduced any such measures 180 days or more before the date of its accession to the WTO.

PALESTINIAN AUTHORITY
1. All-sector limitations on the entry of FDI including screening and prior approval procedures
General
The ***Palestinian Authority***, with international assistance, is in the process of reforming the current regulatory framework.
2. Limitations on foreign purchase of domestic shares (portfolio investment)
Information not publicly available

110 Article 1, Foreign Capital Investment Law, Oman, 1994.

111. IMF (2006).

112 IMF (2006)

113 IMF (2006)

114. IMF (2006).

115 Missions économiques, Oman

3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment
Information not publicly available

4. Sectoral limitations to establishment of FDI, including reciprocity
Information not publicly available

5. Acquisition of real estate for FDI purposes by foreign investors
In the ***Palestinian National Authority***, one of the commercial laws currently in place affecting foreign investors is the Acquisition Law in the West Bank, which regulates foreign acquisition and the rental or lease of immovable properties. Foreigners are allowed to own buildings or purchase land only outside the boundaries of the cities, however, exceptions can be made such as in the establishment of an approved investment project. This law classifies foreigners into three categories: • Foreigners who formerly possessed Palestinian or Jordanian passports shall have the right to own properties (not within the boundaries of the cities), sufficient to erect buildings and/or for their agricultural projects. • Foreigners who hold other Arab nationality passports have the right to own property (not within the boundaries of the cities), which suffice for their living and business needs only. • Others.[116]

6. Exception to national treatment of foreign-controlled enterprises
Information not publicly available

7. Performance requirements on foreign direct investors
Information not publicly available

QATAR	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
A major factor in ***Qatar's*** policy to encourage economic diversification has been the abolition of certain restrictions from the investment regime to provide more opportunities for foreign investors. Qatar issued a new Investment Law in 2000 (Law No. 25 of 1990, which restricted all foreign ownership to a maximum of 49% and did not allow foreigners to lease property or invest in privatised public services). This Law allows up to 100 per cent foreign ownership amongst other in services, agriculture, industry, health, education and tourism sectors,[117] though this may be subject to performance requirements. For other sectors, foreign equity is still limited to 49%. Foreign investment is still not allowed in	For up to 49% of foreign ownership, no approval is required. With approval by the Minister of Finance, Economy and Commerce, foreign investors may increase their interest from 49% to 100% of the capital in the fields of agriculture, industry, health, education, tourism and development

116 Palestine Investment Promotion Agency: www.pipa.gov.ps/comercial_law.asp

117. IMF (2006).

<table>
<tr><td>banking, insurance, commercial representation, and purchase of real estate.[118] When the invested foreign capital is wholly owned by a non-Qatari party, it is mandatory to appoint a Qatari services agent. GCC business people are subject to the same provisions of the law that applies to Qatari nationals.[119] Further Qatar has not signed any bilateral trade agreements. However, trade agreements are under consideration with the United States, and with Singapore.[120]</td><td>and exploitation of natural resources, energy and mining, provided such projects are compatible with the development plan in the State of Qatar.</td></tr>
<tr><td colspan="2">2. Limitations on foreign purchase of domestic shares (portfolio investment)</td></tr>
<tr><td colspan="2">The purchase of shares or other securities of a participating nature by nationals of other countries is limited to 25%.[121]</td></tr>
<tr><td colspan="2">3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment</td></tr>
<tr><td colspan="2">There are no controls on liquidation of direct investment.[122] The law No. 13 of 2000 which regulates the investment of foreign capital in economic activities does not explain explicitly what kind of restrictions is imposed on the liquidation and repatriation of the foreign direct investment.</td></tr>
<tr><td colspan="2">4. Sectoral limitations to establishment of FDI, including reciprocity</td></tr>
<tr><td colspan="2">Foreign investors are not allowed to invest in banking, insurance, commercial representation and real estate purchase in Qatar.[123] But the 2000 Investment Law gives foreign investors the right to lease land for setting up enterprises up to 50 years, renewable (subject to government approval) for another 50 years. Under the Law, foreign investment shall not be subject to expropriation unless this is in the “public interest” and in return for appropriate compensation. Foreign investors are free to import and repatriate funds, as well as transfer profits and assets, and exchange money. Investment disputes can be settled through domestic or international commercial arbitration panels.[124]

Qatar has issued an Investment Law (Law No. 25 of 1990, which restricted all foreign-ownership to a maximum of 49% and did not allow foreigners to lease property or invest in privatised public services. Under the 2000 Investment Law, a company can be 100% foreign owned in selected sectors, such as agriculture, industry, tourism, education, health, and natural resources, subject to prior government approval and provided that the company is duly established. Foreign equity is limited to 49% in the remaining sectors; foreign investment is still not allowed in banking, insurance, commercial representation, and purchase of real estate.[125] Law No. 19 for 1995 on industrial regulations allows non-Qatari nationals to invest in the commercial, industrial, agriculture and services</td></tr>
</table>

118 WTO, Trade Policy Review Qatar (2005), Law No. 31/2004 which allows foreign investment in the banking and insurance sectors is still pending approval from the Cabinet.

119. State of Qatar Ministry of Foreign Affairs, http://english.mofa.gov.qa.

120 WTO, Trade Policy Review Qatar (2005).

121 IMF (2006)

122 IMF (2006)

123. State of Qatar Ministry of Foreign Affairs, http://english.mofa.gov.qa.

124 WTO, Trade Policy Report (2005)

125 WTO, Trade Policy Review Qatar (2005).

sectors provided that Qatari nationals hold not less than 51 per cent of the total capital. When the invested foreign capital is wholly owned by a non-Qatari party, it is mandatory to appoint a Qatari services agent. GCC business people are subject to the same provisions of the law that applies to Qatari nationals.[126]
5. Acquisition of real estate for FDI purposes by foreign investors
In ***Qatar***, real estate ownership is limited to GCC nationals.[127] On January 1st, 2006, a new law went into effect giving nationals of other countries (including the GCC) a renewable right of usage of real estate, beginning in 1999.[128]
6. Exception to national treatment of foreign-controlled enterprises
The government of ***Qatar*** has embarked on a privatisation programme designed to encourage and strengthen the Qatari private sector.[129] It is not clear to what extent this programme is open to foreign investors. Article 3 of the Qatar's investment law indicates that after consultation with the competent authorities, the Minister may authorise the foreign companies involved in business contracts in the State to execute these contracts if this would facilitate the performance of public service or utility. Article 16 of the same law indicates that without prejudice to any more severe penalty stipulated in other laws, any foreigner engaging in an economic activity in contravention to this Law, shall be liable to pay a fine of not less than fifty thousand Qatari Riyals and not more than one hundred thousand Qatari Riyals. Furthermore, any Qatari national partaking in such activity shall be subject to the same fine.[130]
7. Performance requirements on foreign direct investors
Information not publicly available.

SAUDI ARABIA	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
Approved foreign investments in ***Saudi Arabia*** enjoy the same privileges as domestic capital. The foreign investment law allows foreign investors to make direct investments in most of the country's economic sectors, with or without local participation. The Foreign Investment Act specifies that such investments may be in	Article 2 of the Saudi Arabian Foreign Investment Acts states that SAGIA, the General Investment Authority has to approve

126. State of Qatar Ministry of Foreign Affairs, http://english.mofa.gov.qa.

127. IMF (2006).

128 IMF (2006)

129. United States Commercial Service.

130 State of Qatar Investment promotion department: http://www.investinqatar.com.qa/

projects owned by a national investor and a foreign investor or may be in projects wholly owned by a foreign investor. The Supreme Economic Council has issued a list of economic sectors that remain off limits to foreign investors (see Sectoral Limitations, below). In addition, Article 5 of the Regulation of Foreign Investment Act stipulates that the amount of capital invested must be not less than SR 25 million (approximately US$6.5 million at the current exchange rate) for agricultural projects, SR 5 million for industrial projects and SR 2 million for other projects. The tax rate on foreign company profits was reduced to 20% generally, and the tax rates were set at 30% and 85% for investments in natural gas and oil/hydrocarbon sectors, respectively.[131]	foreign investment in the Kingdom.

2. Limitations on foreign purchase of domestic shares (portfolio investment)

Holding of shares of listed ***Saudi Arabian*** joint-stock companies is restricted to Saudi Arabian nationals, Saudi Arabian corporations and institutions, and citizens of the GCC. Indirect portfolio investment in shares issued by Saudi Arabian joint-stock companies is allowed for foreign investors through mutual funds managed by Saudi banks. There are no controls on portfolio investment in Saudi Arabian government securities. Non-residents must seek permission of the Minister of Commerce to sell or issue securities within Saudi Arabia.

3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment

There are no controls on liquidation of direct investment.[132] Foreign Investors have the right to reallocate their share as derived from the selling of equity, or from the liquidation surplus or profits generated by the facility, out of the Kingdom or to use by any other legal means, and they are also be entitled to transfer the required amounts to settle any contractual obligations pertaining to the project.[133]

4. Sectoral limitations to establishment of FDI, including reciprocity

The only financial sector on the closed list issued by ***Saudi Arabia's*** Supreme Economic Council is that of insurance services, pending the issuance of a new Insurance Act.[134]

In ***Saudi Arabia***, the Supreme Economic Council closed list includes: catering to military sectors; security and detective services; real estate investment in Mecca and Medina; tourist orientation and guidance services related to Hajj and Umrah; recruitment and employment services including local recruitment offices; real estate brokerage; printing and publishing (except, in some unspecified cases, for pre-printing services, printing presses, drawing and calligraphy, photography, radio and television broadcasting studios, foreign media offices and correspondents, promotion and advertising, public relations, publication, press services, production, selling and renting of computer software, media consultancies and studies and typing and photocopying); distribution services; wholesale and retail

131 IMF (2006)

132 IMF (2006)

133 Saudi Arabian General Investment Authority, www.sagia.gov.sa.

134. Saudi Arabian General Investment Authority, www.sagia.gov.sa.

trade, including medical retail services and private pharmacies; commercial agencies, except for some franchise rights, with foreign ownership not exceeding 49 per cent and the granting of one franchise to each area; audiovisual and media services; telecommunications services (except, in some unspecified cases, for telex services, telegraph services, electronic data interchange, enhanced/value-added facsimile services, including storage, forwarding, and retrieving, Vsat services, fax services, GMPCS services, Internet service provider services, electronic mail, provision of online information and database retrieval and information provision and online retrieval and/or processing, including transaction processing); land and air transport; satellite transmission services; services rendered by midwives, nurses, physiotherapists and paramedics; and blood banks, poison centres and quarantines.

As of April 20, 2004, foreign insurance companies were allowed to own up to 49% of local insurance companies. Also, as of July 30, a basic tax rate of 20% was applied on foreign company profits, with specific tax schemes set up for in natural resource sectors. As of April 13, 2005, Foreign insurance companies were allowed to open branches in the Kingdome, subject to the law on supervision of cooperative insurance companies and to the insurance implementing regulations issued by the SAMA. However these regulations imposed certain restrictions on investments by insurance companies. The 25th February, 2006 SAMA guidelines for the Saudi Arabian branches of foreign insurance companies came into effect, requiring a minimum 50% of investments to be held in Riyal and 20% of their investments in authorised banks and 20% in Saudi Arabian government bonds. These limits were 10% for companies and branches engaged in protection and life insurance.[135]

5. Acquisition of real estate for FDI purposes by foreign investors

In ***Saudi Arabia***, in principle the purchase of real estate is restricted to Saudi Arabian citizens, Saudi Arabian corporations, Saudi Arabian institutions and citizens of the GCC. However, under the foreign investment law, foreign investors are allowed to own real estate, as needed for their business, including housing for their staff. Article 8 of the Foreign Investment Act states that any foreign facility licensed under the Act is entitled to possess the required real estates as might be reasonable for practicing the licensed activity or for the housing of all or some of the staff as per the provisions for non-Saudi nationals' real estate acquisition. Non-residents are also allowed to purchase real estate for conducting real estate business in all cities, except for the holy cities of Mecca and Medina, provided that the investment in the real estate business is not less than SR30 million (US$8 million at the current exchange rate).[136] Further guarantees to foreign investors are provided under the Real Estate Law enacted in 2000, which replaces the former maximum time limit of three years within which a foreign investor could hold property before selling with a minimum time limit of five years, intended to discourage speculation. While non-Saudis may not own land in Mecca or Medina, except as a result of inheritance or endowment by a Saudi institution, they may now lease property in either city for a two-year renewable period.

6. Exception to national treatment of foreign-controlled enterprises

The government of ***Saudi Arabia*** announced a privatisation strategy covering a wide range of services in 2002.[137] One of the goals of privatisation was stated to be increased attraction of foreign investment, indicating a welcoming of foreign participation in the privatisation process. Detailed rules

135 IMF (2006).

136. IMF (2006).

137. United States Commercial Service.

on privatisation stipulate transparent procedures and are available in full on the Supreme Economic Council web site.[138]

Saudi Arabia's government contracts on project implementation and procurement are regulated by several royal decrees that strongly favour GCC nationals. However, most defense contracts are negotiated outside these regulations. Under a 1983 decree, contractors must subcontract 30 per cent of the value of the contract, including support services, to majority-owned Saudi firms. An exemption is granted in instances where no Saudi company can provide goods and services to fulfill the obligation. In addition, Article 1(d) of the tender regulations requires that Saudi individuals and other establishments have preference over all other entities in government dealings. The same regulations also accord preference to "mixed" entities as long as Saudi nationals hold at least 51 per cent of the mixed entities' capital. Article 1(e) gives preference to products of Saudi origin that satisfy the requirements of the procurement, even when the product specifications are inferior to those of a foreign counterpart. Saudi Arabia also gives priority in government purchasing programmes to GCC products. These items receive up to a 10 per cent price preference over non-GCC products in all government contracts contested by foreign contractors.[139]

In ***Saudi Arabia***, only foreign-owned corporations and the foreign-owned portion of joint ventures are subject to corporate income tax, which ranges up to 30 per cent of net profits. Domestic corporate partners are subject to a 2.5 per cent tax on assets. In 2002 the government announced that it was considering plans to levy an income tax on expatriate workers earning more than US$800 per month, with tax rates ranging from 2.5 per cent to 10 per cent.[140]

There are four types of entry visa to ***Saudi Arabia***: investor visas, business visit visas, employment visas and family visit visas. An investor or his/her representative must visit the local Saudi embassy or consulate to apply for a visa; in the United States and some European countries it is possible to obtain a visa by post. Application formalities take 1 day in the case of family visit visas, 1-2 days for investor and business visit visas and three weeks for employment visas; these can be accelerated in emergency cases.[141] Typically, this regulatory procedure is not a very contentious point for foreign investors in the region, however this cannot be concluded with certainly due to a lack of publicly available information on this issue.

7. Performance requirements on foreign direct investors

Under the ***Saudi Arabian*** government's 1969 Labour and Workman Regulations, 75 per cent of a company's work force and 51 per cent of its payroll must be Saudi, unless an exemption has been obtained from the Ministry of Labour and Social Affairs. The percentage is in practice far less in the private sector (more Saudis work in the public sector). In 1996 the government implemented a regulation requiring each company employing over 20 workers to include a minimum of 5 per cent Saudi nationals, increasing by this quota by 5 per cent per year since then. Only joint ventures with at least 51 per cent Gulf Co-operation Council (GCC) ownership interest are permitted to export duty-free to other GCC countries.[142]

138. Supreme Economic Council, www.sec.gov.sa.

139. United States Trade Representative, www.ustr.gov.

140. United States Commercial Service.

141. Saudi Arabian General Investment Authority, www.sagia.gov.sa.

142. United States Commercial Service.

<table>
<tr><td colspan="2">SYRIA</td></tr>
<tr><td colspan="2">1. All-sector limitations on the entry of FDI including screening and prior approval procedures</td></tr>
<tr><td>General</td><td>Approval and Screening Requirements</td></tr>
<tr><td>The Syrian Arab Republic provides special facilities for the investment of funds of immigrants and of nationals of Arab states, including a seven-year tax exemption from all taxes in the tourism and agricultural industries. Projects with minimum fixed assets of LS 10 million, approved by the government, benefit from a number of exemptions from exchange and trade regulations, including exemptions from customs duties on imports of required machinery, equipment, and vehicles. Companies with at least 25% public participation are exempt from all taxes for seven years and private companies are exempt for five years; exemption periods may be extended by an additional two years if the company exports at least 50% of its output. Non-residents may open accounts in convertible foreign currencies in authorised banks for the deposit of funds abroad.[143] The Syrian Arab Republic has investment guarantee agreements with France, Germany, Switzerland, and the United States. Companies licensed under the investment law are allowed to exchange into local currency at the non-commercial rate in neighbouring countries a part of their assets, duly deposited at Syrian banks, to cover basic needs and local liabilities.[144]</td><td>All applications of foreign investors are screened by a government commission, the Supreme Investment Council.[145]</td></tr>
<tr><td colspan="2">2. Limitations on foreign purchase of domestic shares (portfolio investment)</td></tr>
<tr><td colspan="2">Non-residents and foreign nationals may acquire estate only after presenting evidence that they have converted into Syrian pounds the foreign exchange equivalent of the price of the property at an authorised local bank. Proceeds are required to be held in a blocked account and repatriated gradually.[146]</td></tr>
<tr><td colspan="2">3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment</td></tr>
<tr><td colspan="2">Syria imposes relatively heavy restrictions on the repatriation of capital and allows wide scope for official discretion. In accordance with Article 24 of Investment Law No. (10) of 4 May 1991, investors who are either Syrian expatriates, or of Arab or foreign nationality, are allowed after the elapse of 5 years from the investment of the project, to re-transfer abroad the net value of their share in the project in foreign currencies on the basis of the actual value of the project. This rule holds provided that re-transfer of funds does not exceed the capital brought in by them in foreign currencies, and according to executive instructions issued by the council in this regard. External funds may be re-transferred abroad after six months from their entry and in the same way as they were brought in,</td></tr>
</table>

143 IMF (2006).

144 IMF (2006).

145 Investment Law No.10/1991, Syrian Arab Republic.

146 IMF (2006)

should there be any difficulty arising from circumstances beyond the control of the investor. The council, in special cases, may approve the re-transfer abroad of external funds without waiting for the full 5 years. Profits and revenues realised annually by the investment of the external funds may be transferred abroad. The Central Bank of Syria may allow the transfer abroad of the external funds invested in the project, together with the profits and revenues, in the same currencies brought in or in any other transferable currency. Arab and foreign investors can insure their investments in projects approved under this law with the Arab Establishment for Investment Insurance or with any other similar organisation, provided they obtain the approval of competent authorities.[147]

4. Sectoral limitations to establishment of FDI, including reciprocity

Article 3 of the investment law No 10, 1991, indicates that the rules of this law shall be applied to economic and social development projects approved by the council in the following fields: agricultural projects, both vegetation and livestock, including various agricultural products manufacturing projects, industrial projects allowed to both private and joint sectors, transport projects and projects approved by the council to be governed by the rules of this law without mentioning explicitly that some sectors are closed to foreign direct investment.

5. Acquisition of real estate for FDI purposes by foreign investors

Article 2 of the Legislative Decree /8/ of January 27, 2007, gives investors the right to possess and rent lands and real estates required for establishing or expanding investment enterprises, even if the area exceeds the ownership ceiling defined by the effective laws and regulations, provided that they are exclusively used for the enterprise.[148] Non-residents and foreign nationals may acquire real estate only after presenting evidence that they have converted into Syrian pounds the foreign exchange equivalent of the price of the property at an authorised local bank.[149]

6. Exception to national treatment of foreign-controlled enterprises

Information not publicly available.

7. Performance requirements on foreign direct investors

There are no explicit performance requirements mentioned in the law, however to benefit from exemptions (such as those from paying duty on imports of items needed for production), privileges, facilities and guarantees under Law 10/1991, projects in ***Syria*** must be approved by a Higher Council of Investment comprising leading government ministers. Such approval is conditional upon factors that include conformity with the aims of the state development plans; maximum use of local resources; contribution to GNP and employment growth; increasing exports and "rationalising" imports; use of up-to-date machinery and technology.[150]

147 Investment Law, No. 10/1991; Ministry of Economy and Foreign Trade.

148 Legislative Decree /8/ of the 27th of January 2007, Article 2

149 IMF (2006)

150. Ministry of Foreign Economy and Trade, www.syrecon.org.

TUNISIA	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening requirements*
In ***Tunisia***, foreigners may invest freely in most economic sectors. Tunisia has set investment promotion as one of the primary targets of the 10th Economic Development Plan 2002-2006 as well as for the 11th Economic Development Plan. Effective March 14, 2005, the approval of High Investment Commission (HIC) is no longer required for the acquisition by foreign nationals of securities with voting rights or shares in Tunisian companies. Previously, the participation of foreigners required the approval of the HIC if such participation equalled to, or exceeded, 50% of the capital stock.[151]	Approval is required for any acquisition of capital in a bank or other financial institution, and, in all cases, for the acquisition of a proportion of the voting rights equal to or exceeding 10%, as well as any instrument that may result in the transfer of a significant proportion of assets.[152]
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
Stocks may be acquired freely with foreign exchange transferred from abroad by foreign non-residents in companies established in ***Tunisia***. Non-residents may freely sell shares of companies established in Tunisia, however there are controls on all transactions in capital and money market instruments. They may also transfer freely net real proceeds from the sale of shares that were purchased with foreign exchange transferred from abroad for an investment made in accordance with the legislation in force. The purchase by non-resident foreign nationals of debt securities issued by the state or by companies resident in Tunisia is subject to approval with the exception of (1) effective November 8, 2005, treasury bills, to which they may subscribe up to a limit of 10% of the estimated semi-annual amount of issues (previously 5% of each type of issue); and (2) effective December 6, 2005, bonds issued by resident companies listed on the stock exchange or having a score from a rating agency with rating within the limits set by the CBT . Non-residents may freely acquire shares of Tunisian mutual funds with foreign exchange transferred from abroad. However, the approval of the HIC is required if the acquisition raises the foreign ownership to more than 50 per cent of the mutual fund's capital. Non-residents may freely transfer net real proceeds from sales of Tunisian mutual fund shares acquired with foreign exchange transferred from abroad.[153] The amount of foreign exchange proceeds from the account holder's exports and foreign currency loans that could be credited to the account holder's professional accounts in foreign currency was raised to 100% on January 2005. Notably, the requirement of approval of the HIC was lifted with respect to acquisition by foreign nationals of Tunisian securities entailing voting rights or shares of companies established in Tunisia. The requirement of approval was lifted on March 14 with respect to acquisition by foreign nationals of Tunisian securities entailing voting rights or shares of companies established in Tunisia. On August 31, the HIC approval requirement was lifted for the acquisition by resident or non-resident foreign nationals, or by non-resident legal entities established in Tunisia that	

151 IMF (2006).

152 IMF (2006).

153. IMF (2006).

include foreign equity participation of securities entailing voting rights or shares of small or medium-size companies established in Tunisia and operating in a sector open to foreign investment at the time of establishment.
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment
All foreign direct investment carried out legitimately in Tunisia with foreign exchange transferred from aboard is guaranteed the right to repatriate the net proceeds from the sale or liquidation of the invested capital, even if the net proceeds exceed the initial value of the foreign exchange.[154]
4. Sectoral limitations to establishment of FDI, including reciprocity
In ***Tunisia*** non-resident Nationals returning permanently to the country must declare and repatriate their assets or proceeds and revenue from their holdings abroad.[155] In ***Tunisia***, agricultural land cultivation through leasing is possible by public limited companies in which the equity is at least 34 per cent Tunisian-held. The foreign share can reach 66 per cent for companies involved in land cultivation, fish farming, fishing and Tunisian operating companies. The foreign share in some local market-oriented services can reach 50%.[156]
5. Acquisition of real estate for FDI purposes by foreign investors
Real estate purchases by non-residents in ***Tunisia*** require prior approval from the Central Bank of Tunisia (CBT). Authorisation is also required for sales other than those made to a resident and involving real estate that is the subject of a land title.[157] Foreign developers can buy sites or buildings subject to authorisation from regional authorities.[158]
6. Exception to national treatment of foreign-controlled enterprises
Tunisia has operated a privatisation policy since 1987 which has generated substantial revenue from foreign investment.[159]
7. Performance requirements on foreign direct investors
Companies producing at least 80 per cent for the export market receive full tax exemption on reinvested profits and revenues.[160] Labor contracts are freely considered as limited time working contracts. Businessmen can freely hire foreign managers as supervisors (up to 4 per company).

154 IMF (2006)

155 IMF (2006).

156 Invest in Tunisia web site, www.investintunisia.tn.

157. IMF (2006).

158. Invest in Tunisia web site, www.investintunisia.tn.

159. United States Commercial Service.

160. UNCTAD (1999b).

Foreign nationals, who are non-residents before their recruitment, can choose another social security system other than the Tunisian one.[161]

UNITED ARAB EMIRATES	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
In the ***United Arab Emirates***, at least 51 per cent of companies, other than branches of foreign companies, must be held by nationals of the UAE. GCC nationals are permitted to hold (1) up to 75 per cent of the equity of companies in the industrial, agricultural, fisheries and construction sectors; and (2) up to 100 per cent of the equity of companies in the hotel industry. GCC nationals are also permitted to engage in wholesale or retail trade activities, except in the form of companies, in which case they are subject to the Company Law. In free zones, foreign ownership is permitted up to 100 per cent.[162]	The Free Zone Authority issues different categories of licenses to foreign investors.[163]
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
At least 51 per cent of shares of ***UAE*** corporations must be held by UAE nationals or organisations. Companies domiciled in free zones are exempt from this requirement and may be up to 100 per cent foreign owned. Purchases of collective investment securities by GCC residents are exempt from controls. Further non-residents may not acquire more than 20% of the share capital of any national bank.[164]A new law deregulating FDI sectoral restrictions and foreign ownership limitations is being currently considered.	
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment	
The UAE allows repatriation of capital without restriction.	
4. Sectoral limitations to establishment of FDI, including reciprocity	
Generally foreign participation in equity is limited to 49% in the fields of Business, construction, communication, transport, tourism and other related services. Specific provisions are applied to commercial banks and other credit institutions. Authorisation for the entry/establishment/operation of foreign financial services suppliers (including banks and insurance companies) and the opening of new branches are subject to the decision of competent authorities.[165]	

161 Invest in Tunisia web site, www.investintunisia.tn.

162 IMF (2006).

163 See www.ddia.ae/English/default.asp?action=article&ID=70&p=4.

164 IMF (2006)

165 National investment Reform Agenda UAE, OECD

5. Acquisition of real estate for FDI purposes by foreign investors

In the ***UAE***, from 1 July 2002 non-residents may own property in some real estate developments in Dubai. This policy now applies to the other main Emirates, particularly Abu Dhabi, Sharjah, Ajman, and Ras Al-Khaima.[166] Specific conditions are applied in each Emirate.

6. Exception to national treatment of foreign-controlled enterprises

The ***UAE*** does not require that a portion of any government tender be subcontracted to local firms, but there is a 10 per cent price preference for local firms on procurement and tenders. The UAE requires a company to be registered in order to be invited to receive government tender documents. To be registered, a company must have 51 per cent UAE ownership. However, these rules do not apply on major project awards or defence contracts where there is no local company able to provide the goods or services required. Set up in 1990, the UAE's offset programme requires defence contractors with contracts worth more than US$10 million to establish joint projects that yield profits equivalent to 60 per cent of their contract value within a specified period (usually seven years). There are also reports that indicate that defence contractors can sometimes satisfy their offset obligations through an up-front lump-sum payment directly to the UAE Offsets Group. The projects must be commercially viable joint ventures with local business partners, and are designed to further the UAE objective of diversifying its economy away from oil. To date, more than 30 projects have been launched, including, *inter alia*, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquiculture enterprise, Berlitz Abu Dhabi, and a freighting equipment production facility.[167]

7. Performance requirements on foreign direct investors

Information not publicly available

YEMEN

1. All-sector limitations on the entry of FDI including screening and prior approval procedures

General	*Approval requirements*
Article 42 of ***Yemen's*** Investment Law states that non-Yemeni subscription to the capital of an investment company shall not exceed 45% of paid in capital, except where the proportion is increased by decree of the council of Ministers according to "exigencies of the public interest" upon a proposal by the Board of Directors.[168] When established, investment companies shall take any of the legal forms provided for in the Companies Law and the Civil Law, subject to joint stock companies that put up their shares for public subscription or limited stock partnership companies. The founding of a joint stock company putting up its shares for public subscription, or amendment of its statutes, shall be by resolution of the Board of Directors of the Authority as presented by the	Investment projects may be established, expanded or rehabilitated under the provisions of this Law only after registration at the Authority on the basis of an application submitted to it in writing on the form devised for that purpose at the authority. The Authority shall decide acceptance or rejection of the application within (15)

166. IMF (2006).

167. United States Trade Representative, www.ustr.gov.

168. General Investment Authority of Yemen, www.giay.org.

Authority's Executive body in accordance with the provisions of this Law.[169]	days following the date on which the application was presented complete with all documents and information required. The Authority may extend such period for not more than (10) additional days in the case of applications relating to the construction of large- scale projects.[170]
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
Yemen reports controls on capital transactions, however certain instruments such as money market and derivatives are exempt.[171]	
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment	
The liquidation of direct investments in ***Yemen*** is free for approved and registered projects.[172] Article 15 of Yemen's Investment Law states that an investor may transfer abroad foreign currency funds and net profit earned by investment or any of its accrued returns to any transferable currency and that the foreign investors may retransfer abroad invested capital upon liquidation or disposal.[173]	
4. Sectoral limitations to establishment of FDI, including reciprocity	
Yemen's Investment Law specifically excludes banks, exchange bureaus, financial trade, importing, wholesale and retail trade.[174] However, it should be noted that Yemen's financial sector is relatively underdeveloped and currently does not have a robust capital market. ***Yemen's*** Investment Law explicitly excludes the exploration and extraction of oil, gas and minerals, the manufacture of weapons and explosive materials and industries that harm the environment and health, which are governed by special agreements.[175]	
5. Acquisition of real estate for FDI purposes by foreign investors	
Article 7 of **Yemen's** Investment Law guarantees that foreign investors may purchase or lease land and buildings owned by the private sector or the state to be used for the purposes for which the project is registered under the Investment Law.[176]	

169 Investment Law, No. 22 of 2002; Republic of Yemen, General Investment Authority, Promotion Sector.

170 Article 28, Investment Law No.22 of 2002, Republic of Yemen.

171. IMF (2006).

172. IMF (2006).

173. Investment Law of the Republic of Yemen, www.giay.org.

174. Investment Law of the Republic of Yemen, www.giay.org.

175. Investment Law of the Republic of Yemen, www.giay.org.

6. Exception to national treatment of foreign-controlled enterprises
Article 9 of ***Yemen***'s Investment Law states that when making procurement for government or public establishments, a 15 per cent maximum preference in the price of the production of local agricultural and industrial projects shall be accorded over comparable imports, subject to quality being consistent with that of imported products.[177] All projects shall pay to the Authority in return for its administrative and technical services the following: a. Fees at a rate of (three quarters of one per thousand) of the value of exempted fixed assets and exempted production inputs upon registration issuance. b. Annual fees at a rate of (three quarters of one per thousand) of the value of exempted fixed assets intended to be used for the establishment, expansion or rehabilitating of a project which shall be valid throughout the period of tax exemption starting from the date on which a project commence production or a activity.[178]
7. Performance requirements on foreign direct investors
Project shall recruit and train the maximum number of Yemenis possible, and shall present replacement plan of Yemeni cadres substituting the foreign cadres within appropriate period of time and according to the nature of project, and project may recruit non-Yemenis in accordance with the requirements stated in its requirements list and are entitled to obtain work permits and residence visa for such personnel for three-year period renewable upon a recommendation of the authority. The executive regulations shall indicate all matters relating to advertising posts available, the issue and renewal of work and residence permits for foreigners, the procedures and timing to be observed in this regard, renewal fees and fines for delays as well as cases where exemption may be made to them.[179]

176. Investment Law of the Republic of Yemen, www.giay.org.

177. Investment Law of the Republic of Yemen, www.giay.org.

178 Investment Law of the Republic of Yemen, www.giay.org.

179 Investment Law of the Republic of Yemen, www.giay.org.

II.3. INTERNATIONAL INVESTMENT AGREEMENTS CONCLUDED BY MENA COUNTRIES

II.3.1. INTRODUCTION

The recent increase of FDI in the Middle East and North Africa (MENA) region demonstrates the emerging consensus among governments and the private sector in MENA countries that the crucial determinants for enhancing investment, in particular the attraction of FDI, include investment-friendly policies and administrative frameworks alongside the development of local markets and institutions.[1] A pro-business enabling environment is widely seen as a vital prerequisite to attract FDI and to encourage the vitality of the local private sector.

The MENA-OECD Investment Programme provides a forum for policy dialogue and identification of investment reform items as well as a platform for capacity-building.[2] In international scoreboards, many MENA countries are still perceived as carrying a high investment risk.[3] Given this perception, there is a strong argument to promote the establishment of regulatory frameworks which favour the attraction of foreign investment not only through national laws and regulations, but also by entering into binding International Investment Agreements (IIAs).[4]

Examples of such credibility-enhancing instruments abound, not least including the OECD Codes of Liberalisation of Capital Movements, the OECD National Treatment Instrument, Bilateral Investment Treaties (BITs), Free Trade Agreements (FTAs), Regional Integration Agreements (RIAs), and certain specific WTO agreements. The number of BITs, for instance, has increased considerably, not only between OECD and MENA countries, but also amongst MENA countries. Concurrent to the development of FTAs and RIAs containing investment provisions, MENA countries have embarked into a number of regionally-based initiatives. Figure 1 below depicts the number of BITs concluded by MENA with OECD countries as of end 2006.

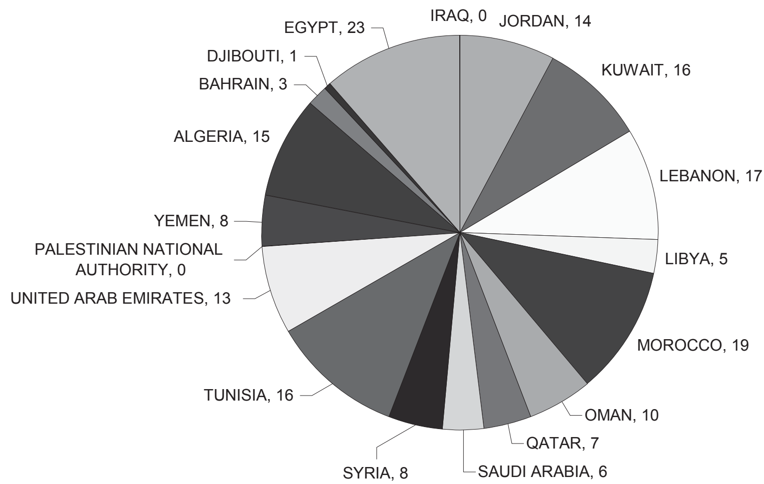
The following inventory of IIAs concluded by MENA countries is intended to inform Working Group 1 on the main issues relevant for MENA negotiators of IIAs by describing:

- Benefits which MENA countries can derive from the conclusion of IIAs;
- Information about the existing agreements and arbitrations involving MENA countries; and
- Information on the content of core provisions of IIAs concluded by MENA countries.

The inventory document has served as a basis for the first and the second meeting of the MENA-OECD Expert Group on International Investment Agreements - held respectively on 27 June 2005 in Rabat and on 12-13 December 2006 in Cairo - and has since been regularly updated.

Figure 1 - Number of BITs concluded by MENA countries with OECD countries

Total 183



Source: UNCTAD/OECD 2006.

II.3.2. BENEFITS OF IIAS FOR THE INVESTMENT PROMOTION STRATEGY OF MENA COUNTRIES

For MENA countries, the question of the impact of IIAs on the attraction of investment is relevant considering that negotiation of IIAs requires resources and implies certain limitations with respect to governmental policies and regulations. Recent research on the benefits of IIAs, particularly BITs, and on their impact on investment flows has resulted in some interesting findings.

As highlighted in Figure 1, the number of IIAs in the form of BITs concluded by MENA countries with OECD countries varies largely among countries in the region. Egypt, Lebanon, Morocco, Jordan, Algeria and Tunisia are at the forefront of BITs concluded with OECD countries. Iraq, Libya, Djibouti and Bahrain are countries which have chosen to conclude only a few BITs with their counterparts in OECD countries. Of course, there are various historical and political reasons for these differing strategies. Nonetheless, the main question today for MENA governments seeking to attract more investment, particularly in the form of FDI, concerns the benefits which can be reasonably expected from IIAs in terms of attracting investment to the region.

The conclusion of IIAs in the forms of BITs, FTAs and RIAs has increased tremendously over the last decade. This seems to demonstrate that governments expect IIAs to positively contribute to enhancing the investment climate and consequently attracting more investment. New research has also emerged as a result of the debate among academics as to the measurable impact of IIAs on FDI flows. Among the issues discussed in this context, the following four main questions need to be considered:

- Do IIAs with standard investment protection provisions achieve their aim of enhancing investor protection?
- Do IIAs have an impact on FDI flows to the host country?
- How do these treaties interact with the level of political risk in the host country?
- Do IIAs have a reform enhancing impact on the regulatory investment environment of the host country?

Both recent research and the substantial rise of international investment disputes have shown that the answer to the first question can be affirmative. For instance, *Salacuse and Sullivan* conclude in a recent study on the effects of BITs that:

> "…after reviewing the nature and scope of BIT provisions, the strength of related enforcement mechanisms, and the actual cases brought against host countries by aggrieved investors, one may conclude that BITs *have achieved their first goal of fostering investment protection* [emphasis added]. While that protection is not absolute …., investors and investments that are covered by a BIT certainly enjoy a higher degree of protection from the political risks of governmental intervention than those that are not.[5]"

IIAs, which possess clear and enforceable rules to protect and facilitate foreign investment, reduce risks which the investor otherwise would have to assume personally, and thus encouraging

investment. From this point of view, the rationale for IIAs themselves being the promise of protection of capital received by the host state, is a valid one.

Concerning the second question as to whether IIAs have a positive impact on FDI flows, the evidence taken from more recent studies shows a positive correlation. Former studies (*Tobin/Rose-Ackermann, Hallward-Driemeier*) have found only a very weak relationship between the conclusion of BITs and FDI. According to these results, BITs only have a positive effect on FDI flows in countries with an already stable business environment. In low and middle income countries that do not possess such an environment, BITs seem to have little or virtually no statistically significant effect on foreign investment and on outside investors' perception of the investment environment.[6] However, other studies have concluded that a significant relationship exists between the level of standards protecting investors enshrined in IIAs and their potential for enhancing FDI flows to the host country. With regard to BITs concluded by the United States, *Salacuse and Sullivan* found that higher protection standards result in greater impact on FDI flows. Most countries which have established BIT programmes continue to pursue opportunities to enter into new treaties.

Support for this result is derived from a very recent publication by *Neumayer and Spess* who, for the first time, found clear evidence of a positive relationship between the conclusion of BITs and FDI inflows. This study, which employed a much larger panel than its predecessors and which covered up to 119 countries (over the period of 1970-2001) found "a positive effect of BITs on FDI inflows that is consistent and robust across various model specifications. The effect is sometimes conditional on institutional quality, but is always positive and statistically significantly different from zero at all levels of institutional quality.[7]"

A practitioner in the area of investment promotion would have difficulties in singling out IIAs as a separate instrument from a country's overall investment promotion strategy. Indeed, it would be difficult to test the causal link between the conclusion of IIAs and enhanced inflow of FDI into a host country. An IIA can only be one element of a more comprehensive national investment promotion strategy, which includes a country's general liberalisation commitments, its administrative environment and governance, investment and export finance and the institutional setting of investment promotion.

If an IIA can only have a complementary function to these other elements of an investment promotion strategy, the question whether the conclusion of an IIA by itself increases investment flows might already be conceptually problematic. This arises from the fact that the question does not take into account the intrinsic link between various instruments of investment promotion. In case of FDI attraction, it may be more relevant to ask whether *the interplay of regulatory, administrative and institutional investment promotion results in higher inflows of FDI.* Even so, IIAs deliver a powerful message regarding a country's commitment to high standards of treatment of FDI. The inter-relationship between IIAs and other instruments of investment promotion can be demonstrated by the example of international finance and guarantee instruments.

One of the core investment financing institutions in the home countries of investors are investment/export finance and guarantee agencies. In OECD countries, the decision of an Investment Guarantee Agency to grant an investment guarantee depends on the character of the investment, on its economic viability and eligibility, and, above all, on sufficient legal protection afforded to the investment in the host country. For this reason, Investment Promotion Agencies and Finance Ministries of OECD countries retain an interest in the continuous improvement of legal protection requirements, and consequently, the protection and coverage of their investors abroad.[8] One way of showing a country's commitment to the treatment of FDI is to conclude IIAs which can have the status

of a condition for financing or guarantee instruments promoting investment in a particular host country.

Equally importantly, Export Credit and Guarantee Agencies monitor the risk environment in countries of destination for their exports. All OECD and some non-OECD member agencies have signed the Arrangement on Officially Supported Export Credits (as of November 2006). Article 22 of the Arrangement, aims at ensuring that Participants to the Arrangement charge premium rates in addition to interest charges which cover the risk of non-repayment of export credits (i.e. credit risk). The article also ensures that the rates are adequate to cover long-term operating costs and losses associated with the provision of export credits. One key element to risk monitoring is a system for assessing country credit risk and the classification of countries into eight country risk categories (with categories ranging from zero to seven). The conclusion of IIAs is an element taken into account in the risk assessment stage.

II.3.3. EXISTING IIAs CONCLUDED BY MENA COUNTRIES

IIAs can take various forms, which can be observed in the MENA region. The investment provisions demonstrated in this region fall under the following categories: FTAs, RIAs, multilateral agreements and BITs. For these different types of IIAs, the key concern is to enhance the freedom of the firm in contesting markets irrespective of the modality used to contest them (i.e. sales, licensing, branches, and subsidiaries), given that FDI and trade have become intrinsically linked to international production. This aim was traditionally pursued by states through the conclusion of BITs. However recently more and more FTAs or RIAs are also containing standard investment promotion and protection provisions.

A. Bilateral Investment Treaties (BITs)

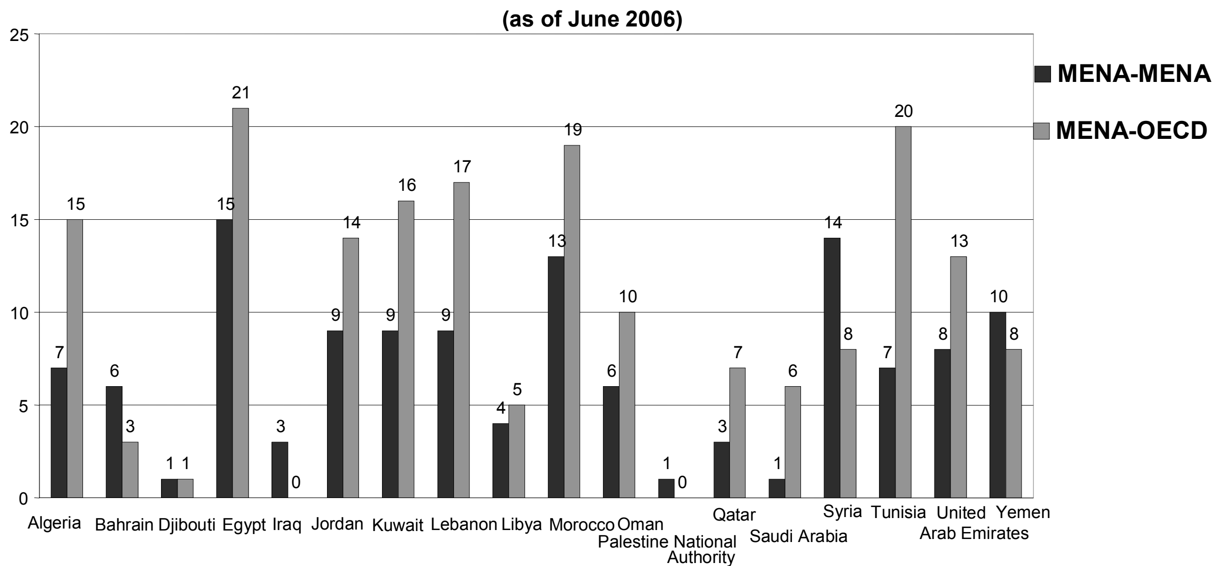
Bilateral Investment Treaties constitute an important pillar of investment protection at the international level. A majority of BITs continue to be signed between OECD and non-OECD countries. The first BITs appeared at the end of the 1950s and took over the function of the old Friendship, Commerce, and Navigation Treaties. By the end of 2005, more than 2,495 such treaties had been concluded, a majority of them after 1990. Not only are they increasing transparency and predictability for foreign investors, but the presence of such a framework for foreign investment can potentially encourage countries to adopt similar standards for domestic investors. Since 1990s, the number of BITs concluded increased substantially, the latest trend being the occurrence of south-south countries BITs (see figure 3 for MENA-MENA BITs).

Figure 2 shows that with the exception of Bahrain, Syria and Yemen (not counting treaties of MENA countries with other non-OECD countries), MENA countries have been following the global trend, with an increasing number of BITs concluded. This trend underscores the increasingly important position of FDI in MENA countries. The numbers of MENA BITs hasincreased from the mid-1990s, peaking at 45 new treaties in 2001. With the exceptions of Syria, Iraq and Yemen, MENA countries finalise more BITs with OECD countries than among themselves (refer to Figure 2). MENA countries participating in the *MENA-OECD Investment Programme* have concluded around 183 bilateral investment treaties with OECD countries. As Figure 2 also shows, Gulf Corporation Council (GCC) countries rely to a lesser extent on BITs with OECD or other MENA countries than Maghreb and Mashrek countries.

B. Free Trade and Regional Integration Agreements

In parallel with the increase in BITs negotiations, there is also an upward trend in the conclusion of Free Trade Agreements and Regional Integration Agreements containing market access for investors, and investment protection and promotion provisions. MENA countries participating in the *MENA-OECD Investment Programme* have concluded around 183 bilateral investment treaties with OECD countries. At the same time, these countries have concluded or were negotiating during 2003-2004 20 bilateral, regional and inter-regional agreements containing FDI provisions with OECD countries.[9] The conclusion of FTAs containing investment protection and promotion provisions traditionally found in BITs follows a general trend towards the consolidation of existing agreements and is supplemented by a drive towards expansion.[10]

Figure 2. Comparison of BITs between MENA-MENA and MENA-OECD countries (as of June 2006)



Source: OECD/UNCTAD 2006.

Initiatives by MENA countries include the Arab Free Trade Area which aims to establish a free trade zone among 18 members of the Arab League by 2008. In the past, there have been serious efforts led by the Arab League to establish regional investment agreements. For instance, the *Agreement on Arab Economic Unity* was signed in 1957,[11] guaranteeing the freedom of movement of capital. Subsequently, in 1970 the *Agreement on Investment and Free Movement of Arab Capital Among Arab Countries* was signed by the Arab States members of the Agreement of Arab Economic Unity. Signatories of the Agreement included Egypt, Iraq, Jordan, Kuwait, Sudan, Syria and Yemen. While this Agreement reiterated the principle of each state's sovereignty over its own resources, it already contained standard non-discrimination, expropriation and free transfer of funds provisions.[12]

The signing of the *Unified Agreement for the Investment of Arab Capital in the Arab States* in 1980, represents, to date, the most comprehensive effort put forth by MENA countries to set up a regional and enforceable investment regime. The Agreement has been ratified by all member States of the League with the exception of Algeria and the Comoros Islands. It established an Arab Investment Court to hear cases brought under the Agreement. On the substantive side, the Agreement commences with a provision in Article 2 permitting "to transfer Arab capital freely [among the State Parties to this Agreement] …and to promote and facilitate its investment according to the economic development plans and programmes within the States Parties and in a manner beneficial to the host State and the investor." The Agreement contains provisions on national treatment, free transfer and expropriation, although subject to exceptions. Article 14 deals with responsibilities of investors.[13]

In order to update the existing agreements and to bring them in line with international developments, the Council of Arab Economic Unity approved, in 2000, the *Agreement on the Encouragement and Protection of Investments and Transfer of Capitals among Arab States* by virtue of decision No. 1125/71 of 7/6/2000.[14] In addition to these agreements, the countries of the GCC are currently negotiating and/or considering FTA negotiations with the EU, India and China. Japan, too, has begun to promote Economic Partnership Agreements which include elements of FTAs based on the premise that they "contribute to the development of Japan's foreign economic relations as well as the attainment of its economic interests as a mechanism to complement the multilateral free trade system centering on the WTO.[15]"

Table 1. FTAs and other regional agreements signed or ratified by MENA countries

Algeria	EU	2002	Association Agreement
	USA	2001	TIFA
Bahrain	USA	2006	FTA
Egypt	EU	2001	Association Agreement
	Turkey	2005	FTA
	EFTA	2007	FTA
Jordan	EU	2002	Association Agreement
	EFTA	2002	FTA
	Singapore	2004	FTA
	USA	2000	FTA
Kuwait	USA	2004	Concerning the Development of Trade and Investment Relations - TIFA
Lebanon	EU	2002	Association Agreement
	EFTA	2007	FTA
Morocco	EU	2000	Association Agreement
	EFTA	1999	FTA
	USA	2004	FTA
Oman	USA	2006	FTA
Palestinian Authority	EFTA	1999	FTA
Qatar	USA	2004	Concerning the Development of trade and Investment Relations - TIFA
Saudi Arabia	USA	2003	Concerning the Development of trade and Investment Relations - TIFA
Syria	EU	2004	Association Agreement
Tunisia	EU	1998	Association Agreement
	EFTA	2006	FTA
Yemen	USA	2004	Concerning the Development of trade and Investment Relations, TIFA
UAE	USA	2004	TIFA
Council of Arab Economic Unity		1970	Agreement on Investment and Free Movement of Arab Capital Among Arab Countries
		2000	- Agreement on the Encouragement and Protection of Investments and Transfer of Capitals among Arab Countries - Agreement on the Settlement of Investment Disputes in Arab Countries
Gulf Cooperation Council	Syria	2005	FTA
League of Arab States		1980	Unified Agreement for the Investment of Arab Capital in the Arab States

Source: MENA-OECD Investment Programme 2006.

More regional agreements are foreseen in the region, including with the United States which has engaged its U.S. Trade Representative (USTR) in intensive negotiations with a number of Arab countries to develop bilateral trade agreements in the hopes that it will materialise into the Middle East Free Trade Area (MEFTA) by 2013.[16] In pursuing this goal, the U.S. administration has announced the following six-step process for MENA countries to join MEFTA: (1) Joining the WTO; (2) possibly participating in the Generalised System of Preferences; (3) trade investment framework agreements (TIFAs); (4) BITs; (5) FTAs; and (6) participating in trade capacity-building. Morocco, Jordan and Bahrain have concluded FTAs with the United States; similar agreements with Oman and the United Arab Emirates are currently being explored.

MENA countries are also strengthening their ties with the European Union by negotiating and implementing the Euro-Mediterranean Partnership Agreements. Tunisia, Morocco, Egypt and Jordan have only recently signed the Agadir Agreement committing them to negotiate an FTA by 2006. Currently the EU is engaged in FTA negotiations with the countries of the GCC. Several countries in the region have concluded FTAs also with the European Free Trade Association (EFTA).[17] Table 1 summarises the existing FTAs with MENA countries.

C. Multilateral Rules (WTO obligations)

Furthermore, almost all MENA countries have joined **major multilateral agreements** covering investment related aspects. As of 30 November 2006, 11 of the 18 MENA countries and territories participating in the *MENA-OECD Investment Programme* had become members of the World Trade Organisation (WTO). As such, the countries are obliged to implement the obligations of General Agreement on Trade in Services (GATS), Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Agreement on Trade-Related Investment Measures (TRIMs). The GATS provides the right of establishment for certain investors if the member of the GATS makes specific commitments on market access. TRIPS accords national treatment and most-favoured-nation treatment (MFN) to foreign firms' intellectual property rights; while TRIMs provides that certain categories of trade-related investment measures offend the principles of the General Agreement on Tariffs and Trade (GATT). Table 2 (below) demonstrates that other five countries in the region currently have observer status in the WTO, thus reducing the number of MENA countries without WTO membership or observer status to two.

All MENA countries have signed the convention establishing the Multilateral Investment Guarantee Agency (MIGA) and can profit from its risk mitigation facilities. In order to be eligible for a guarantee granted by MIGA to an investor in its territory, a country's investment policy must be in accordance with the 1992 World Bank *Guidelines on the Treatment of Foreign Direct Investment*. The operational regulations of MIGA further state that "an investment will be regarded as having adequate legal protection if it is protected under the terms of a bilateral investment treaty between the host country and the home country of the investor.[18]"

Table 2. WTO Membership

	WTO Member (year of accession)	Observer	Not Observer
		(year of accession)	
Algeria		1987	
Bahrain	1995		
Djibouti	1995		
Egypt	1995		
Iraq		2004[1]	
Jordan	2000		
Kuwait	1995		
Lebanon		1999[2]	
Libya		2004 [3]	
Morocco	1995		
Oman	2000		
Palestine National Authority			
Qatar	1996		
Saudi Arabia	2005		
Syria			
Tunisia	1995		
United Arab Emirates	1995		
Yemen		[4]	

Notes

1. On 25 May 2007 WTO began negotiations with Iraq for membership upon Iraq's request for accession submitted September 2004.

2. Lebanon applied for full accession in 1999, and negotiations are currently ongoing. A first report outlining terms of membership for Lebanon has been drafted and agreed upon on 3 May 2007.

3. In July 2004, WTO accepted Libya's application for membership and began negotiations.

4. Yemen's request for accession was circulated on 14 April 2000. The third meeting of WTO Working Party to discuss Yemen's accession took place in July 2006. The checkmark indicates that no date associated with observer status was available on the WTO website.

Main source of information: World Trade Organization website (www.wto.org)

II.3.4. RECENT TRENDS IN IIAS AFFECTING MENA COUNTRIES - CORE PROVISIONS OF INTERNATIONAL INVESTMENT AGREEMENTS

Recent trends in negotiating IIAs, coupled with the increase in international investment arbitration cases over the last years, have resulted in new features of IIAs. These recent features, including the core provisions of IIAs concluded by MENA countries, as well as international arbitrations in which MENA countries have been a counterpart merit discussion. First, new features concerning the core provisions of IIAs treat issues such as indirect expropriation, fair and equitable treatment standards, transparency provisions, labour and environmental standards, as well as investors' responsibilities. These areas are emerging as new issues in the negotiation practice, which MENA negotiators have already confronted or will soon be confronting. Secondly, due to the recent surge in investor-to-state dispute settlement arbitration, MENA negotiators of IIAs should be informed about the relevance of certain core provisions in IIAs for international arbitration cases. Annex 1 provides a list of concluded and ongoing cases which MENA countries are involved in.

Numerous IIAs concluded by MENA countries contain similar core provisions to IIAs concluded outside the region. These provisions cover definitions regarding the scope of the agreement, provisions on the standards of treatment, repatriation of profits, fair and equitable treatment, direct and indirect expropriation, and market access. The following inventory will show which provisions are contained in IIAs involving a MENA country, with an emphasis on those core provisions which have the potential of giving raise to international dispute settlement procedures.

A. Right of Establishment

Under international law, every state is sovereign in controlling entry and establishment of foreign entities within its territory. The Agreement on Investment and Free Movement of Arab Capital among Arab Countries of 1970 reiterates this principle in Article 3, highlighting each signatory's sovereignty over its own resources and its right to determine the procedures, terms, and limits which govern Arab investment.[19] Similarly, the 1980 Unified Agreement for the Investment of Arab Capital in the Arab States controls rights of entry and establishment,[20] as does Article 2 of the Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference of 1981[21].

International investment instruments of the OECD and its member countries tend to follow a different approach. The two OECD Liberalisation Codes contain an obligation to 'standstill' and 'rollback' for any national restrictions upon the transfers and transactions to which the codes apply. The codes even foresee a positive duty to grant the authorisation required for the conclusion or execution of the transactions or transfers covered. Moreover, there is a duty of non-discrimination in the application of liberalisation measures to investors from other member states.[22] The OECD Code of Liberalisation of Capital Movements was extended in 1984 to include rights of establishment.

Removal of all discrimination in matters of admission is required by the U.S. model of BITs, which makes entry into the host state subject to the principles of national treatment and most-favoured-nation treatment, and is qualified by the right of each party to adopt or maintain exceptions

falling within one of the activities or matters listed in an annex. Other than in BITs concluded with the U.S. or Canada, or BITs and FTAs concluded by Japan, this "negative list" approach can only be found in NAFTA, the Energy Charter Treaty, and the OECD Codes of Liberalisation. Other multilateral instruments covering investment such as the GATS follow a "positive list" approach, where parties open particular sectors to FDI.

Box 1. Pre-establishment Obligations

The Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 5: "The Arab investor shall be free to invest within the territory of any State Party in fields which are neither prohibited nor restricted to the citizens of that State and within the percentage limits for shared ownership as prescribed in the law of the State."

OECD Code of Liberalisation of Capital Movements, 1984, Annex A, related to inward direct investment: "The authorities of Members shall not maintain or introduce: Regulations or practices applying to the granting of licenses, concessions, or similar authorisations, including conditions or requirements attaching to such authorisations and affecting the operations of enterprises, that raise special barriers or limitations with respect to non-resident – as compared to resident – investors, and that have the intent or the effect of preventing or significantly impeding inward direct investment by non-residents."

BIT US Model Agreement, 2004, Article 3, para.1 and 2:

"Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory."

"Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments."

BIT French Model Agreement, 2005, Article 4, para. 1 (translation from French):

"Each Contracting Party shall apply on its territory and in its maritime area to the nationals and companies of the other Party, with respect to their investments and activities related to the investments, a treatment not less favorable than that granted to its nationals or companies, or the treatment granted to the nationals or companies of the most favored nation, if the latter is more favorable. In this respect, nationals authorised to work on the territory and in the maritime area of one Contracting Party shall enjoy the material facilities relevant to the exercise of their professional activities….This treatment shall not include the privileges granted by one Contracting Party to nationals or companies of a third party State by virtue of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization….The provisions of this article do not apply to tax matters."

In international dispute settlements, pre-establishment rights have not yet played an extensive role. However, the ability to challenge regulatory measures geared at the pre-establishment stage presents a potentially significant challenge to the host country.

B. Provisions defining the scope of application of the Treaty

All IIAs contain provisions that define the scope of application of the agreement. They do so *ratione materiae, ratione personae, ratione territoriae,* and *ratione temporis.* Already at this stage, the contracting parties make an important decision as to the influence the agreement may have on their economies. In sharp contrast to this, Article 25 of the International Centre for Settlement of Investment Disputes (ICSID) Convention does not define the term 'investment', but leaves it to the parties to agree on whether a business transaction qualifies as an investment.[23]

Asset based vs. direct investment only

IIAs mainly directed at the protection of FDI tend to define investment in a comprehensive manner, covering not only the capital that has crossed borders with a view to the acquisition of control over an enterprise, but also other kinds of enterprise or investor assets.[24] This approach, seeking to protect investment - including portfolio investment - is also referred to as an 'asset based approach'. In the case of BITs, the capital-exporting states traditionally tend to favour broad definitions for assets including physical assets, equity, and non-equity investments. For example, the United States Model Agreement includes not only tangible and intangible property, but also "a claim to money or a claim to performance having economic value."[25] The Mexican Model Treaty reduces the scope of non-equity investment by stating that investment includes "claims to money or to any performance having an economic value except for claims to money that arise solely from commercial contracts for the sale of goods or services."[26] The French Model Treaty gives an inclusive, non-limitative definition of investment, described as "every kind of assets, such as goods, rights and interests of whatever nature, and in particular though not exclusively…", with an ensuing list of subcategories exemplifying investment.

MENA countries' IIAs tend to be based on this broader, asset-based definition of investment. For example, Article 1, 1.1 of the Model Agreement for the Promotion and Protection of investments of Bahrain follows a broad investment definition including "claims to money having a financial value" and 'intellectual property rights.[27]" Similarly, the Model Agreement on the Reciprocal Promotion and Protection of Investments of Morocco includes "claims to money or any other claim under contract having an economic value.[28]" Chapter 10 of the recent FTA between Morocco and the United States provides in its Section C no 'catch all' clause, but lists specifically a number of areas other than direct investment like turnkey and concession contracts or intellectual property rights. The U.S.-Morocco FTA agreement also highlights that "some forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.[29]"

Several ICSID cases have dealt with the question of the definition of investment. The following is a list of prominent cases referencing this question:

- *Alcoa Minerals v. Jamaica* upheld that contribution of capital was one type of investment;[30]
- *Amco Asia* first annulment proceeding established that an international tort and an investment dispute were not mutually exclusive categories;[31]
- *Fedax* recognised that promissory notes issued in certain circumstances qualified as an investment;
- *CSOB* admitted that a loan was in the circumstances of the case an investment;[32]
- *Atlantic Triton* accepted as an investment the conversion of equipment of fishing vessels;[33]
- *Salini v. Morocco* did so in connection with the construction of a highway; and
- *SGS v. Pakistan* included pre-shipment inspection activities and other services within the concept of investment.[34]

Box 2. Definition of 'Investment'

Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 1, para. 5: "Arab capital: assets owned by an Arab citizen comprising any material and immaterial rights which have a cash valuation, including bank deposits and financial investments. Revenues accruing from Arab assets shall be regarded as Arab assets, as shall any joint share to which this definition applies."

OECD Codes on Liberalisation of Capital Movements and of Current Invisible Transactions: 'Investment' defined under 2.1 Operations Covered by the Code of Liberalisation of Capital Movements.[35]

BIT USA/Egypt, 1992, Article 1, para. 1c: "Investment means every kind of asset owned or controlled and includes but is not limited to:

- tangible and intangible property, including rights, such as mortgages, liens and pledges;
- a company or shares, stock, or other interests in a company or interests in assets thereof;
- a claim to money or a claim to performance having economic value, and associated with an investment;
- valid intellectual and industrial rights property, including but not limited to rights with respect copyrights and related patents, trademarks and trade names, industrial designs, trade secrets and know-how, and goodwill".

BIT Jordan/ Lebanon, 2002, Article 1, para. 1: "The term investment means every kind of investment of assets invested in accordance with the laws and regulations of the other contracting party hosting the investment including but not limited to:

- movable and immovable assets and any property rights connected herewith such as mortgages, pledges and guarantees;
- bonds, shares and securities in companies ownership;
- titles and claims to money or right in any obligation to work having financial value;
- intellectual property including rights relating to publication, patents, trademarks, trade names industrial designs, commercial secrets, technical manufacturing processes, know-how and goodwill;
- business privileges granted by law or contract prospecting and discoveries and extraction or exploitation of natural resources, any change in invested funds form shall not have effect in their classification as investment provided that such change shall not contradict the laws and regulations of the contracting party hosting the investment."

FTA USA/Morocco, Article 10, para. 27, Section C, 1985: "Investment means every asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk."

Recent ICSID arbitrations in which MENA countries have been involved have similarly dealt with the definition of 'investment'. For instance, in *Joy Mining Machinery Limited v. Arab Republic of Egypt* (Case No. ARB/03/11),[36] disagreement arose among the parties regarding the technical aspects related to the commissioning and performance tests of equipment. Joy Mining Machinery Limited ("Joy Mining" or the "Claimant"), a company incorporated under the laws of England and Wales, requested for arbitration against the Arab Republic of Egypt. The request invoked the ICSID

arbitration provisions in the United Kingdom-Arab Republic of Egypt Agreement for the Promotion and Protection of Investments, which entered into force on February 24, 1976.

The Tribunal was asked to answer whether bank guarantees can be considered an investment. The ICSID Convention itself does not define the term ‘investment’, but leaves the definition to the consent of the parties, expressed by means of contract, national legislation, bilateral investment treaties, or other arrangements. Nonetheless, the Tribunal ruled that “the fact that the Convention has not defined the term investment does not mean, however, that anything consented to by the parties might qualify as an 'investment' under the Convention. The Convention itself, in resorting to the concept of investment in connection with jurisdiction, establishes a framework to this effect: jurisdiction cannot be based on something different or entirely unrelated. In other words, it means that there is a limit to the freedom with which the parties may define an investment if they wish to engage the jurisdiction of ICSID tribunals.” In this case, the Tribunal concluded that it lacked the jurisdiction to consider the dispute because the claim fell outside both the BIT and the Convention in question.

In contrast to the above case, the Tribunal in *Salini Construttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco* (Case No. ARB/00/4) assumed the existence of an investment. The dispute among the parties concerned the construction of a highway sector. The Tribunal analysed the objections to its jurisdiction, namely one which argued that construction contracts do not qualify as investments under the ICSID Convention. The Tribunal considered the following criterion generally identified by the Convention’s commentators: existence of contribution, certain duration, and risk participation. The commentators also added that the operation should contribute to the development of the host state as stated by the Convention’s preamble. In this specific case, the Tribunal found that the construction contract fulfilled the criteria for investment. With respect to the risk criteria, the Tribunal indicated that a construction project lasting several years, for which total costs cannot be established with certainty in advance, created a risk for the contractor. Thus, the construction operation was qualified as an investment and the disputes that arose directly out of it were within the ICSID's jurisdiction. Given the precedents set by this and other cases, there is generally some indication that Tribunals may provide a relative broad reading to IIA provisions defining ‘investment’. This could imply that host countries could be subject to arbitration on the same grounds.

Investor – natural and corporate persons

The protection offered by BITs is limited to investors who invest in the territory of the host contracting state and who possess a qualifying link with the home contracting state. The issue which can arise here concerns the qualifying links of the person with the State party to the agreements. For instance, the nationality of the person can be doubted. Although not exhaustive, Box 3 below illustrates the legal nuances and differences of interpretation among MENA countries in qualifying the status of an ‘investor’.

In *Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt* (Case No. ARB/02/9), concerning a cotton processing and trading enterprise, the decision on the jurisdiction of the Tribunal was issued in a case brought to the ICSID. The case was brought by five Claimants, two companies and three individuals, under the 1982 Treaty between the United States of America and the Arab Republic of Egypt concerning the Reciprocal Encouragement and Protection of Investments, which entered into force in 1992. The five claimants - all shareholders of National Cotton Company (NCC), a cotton trading and processing company incorporated in Egypt - alleged that Egypt had violated the Treaty by taking a series of measures in the cotton industry affecting their investment. Three of the claimants held Egyptian nationality in addition to their U.S. nationality.

Box 3. Definition of an 'Investor'

BIT Lebanon/Switzerland, 2000, Article 1, para. 1a, b: "The term investor refers with regard to either Contracting Party to be:

-natural persons who, according to the law of that Contracting Party, are considered to be its citizens;

-legal entities, including companies, co-operations, business associations and other organizations, which are established under the law of that Contracting Party, as well as legal entities not established under such law but effectively controlled by nationals or legal entities of that Contracting Party; these criteria also apply to holding and offshore companies."

BIT Jordan/Yemen, 1996, Article 1, para. 3: "The term Investor means:

- any physical person holding nationality or permanent residency of Contracting Party according to the laws and regulations of that Party;

- any legal person established or incorporated under the applicable laws and regulations of a Contracting Party."

FTA Morocco/USA, 2004, Article 10, para. 27: "Investor of a non-Party means, with respect to a Party, an Investor that concretely attempts to make, its making, or has made an investment in the territory of that Party, that is not an investor of either Party;

Investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that concretely attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality."

The Tribunal declared that it does not have jurisdiction over the individual Claimants since Article 25 (2)(a), concerning natural persons, contains a clear and specific rule regarding dual nationals. The other two corporate Claimants were seen on the other hand as constituting jurisdiction of the Tribunal; this was the case considering Article 25 (2)(b) of the Convention concerning juridical persons provides a certain scope for Contracting Parties and investors to agree on how to determine the nationality of a company.

National Treatment/ Most-Favoured-Nation Treatment

The principle of non-discrimination is the cornerstone of IIAs and many multilateral agreements under the umbrella of the WTO. IIAs grant investors national treatment (NT) and most-favoured-nation treatment (MFN). The principle of national treatment requires parties to treat foreign investors no less favourably than their own investors. While this does not imply that parties have an obligation to grant foreign investors more favourable treatment than domestic ones, the obligation concerns not only laws or regulations directed at the operations of a foreign investor, but also laws and regulations which govern any aspect of economic activity such as, *inter alia*, competition law, intellectual property rights, consumer protection, incentives, labour laws, environmental regulations, social policy regulations and, potentially, the deliverance of public services.

According to the MFN principle, once a country has accorded a given treatment to a foreign investor or a foreign investment of a particular state, it cannot grant less favourable treatment to any other investor or investment coming from a different state. Box 4 below illustrates how this general principle manifests itself in the laws of a sample number of MENA countries.

Box 4. National Treatment and Most-Favoured-Nation-Treatment

BIT Bahrain Model Agreement, 2000, Article 3, para. 1, 2: “Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors or any third State.

Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.”

BIT Jordan/Syria, 2001, Article 2, para. 5: “Each Contracting Party shall ensure the provision of fair and just treatment for investors’ investments of the other Contracting Party, which established according to his laws and regulations of investment encouragement, and this treatment shall not be less favourable than those conferred and applied on his citizens or the citizens of any third country”

BIT Lebanon/Spain, 1996, Article VI: “Each Contracting Party shall in its territory accord to investments or returns of investors of the other Contracting Party treatment no less favourable than that which it accords to investments or returns of investors of any third State. Each Contracting Party shall apply, under its own law, no less favourable treatment to the investments of investors of the other Contracting party than granted to its own investors.”

FTA Morocco/USA, 2004, Article 10, para. 4: “Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party, with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in is territory. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments in its territory of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.”

OECD National Treatment Instrument, as revised in 1991: Article 1 Notification: “Members shall notify the Organisation, of all measures constituting exceptions to National Treatment within 60 days of their adoption and of any other measures which have a bearing on National Treatment.[37]" Article 10 Exceptions to the Principle of Non-Discrimination: “Members forming part of a special customs or monetary system may apply to one another, in addition to measures of liberalisation taken in accordance with the provisions of Article 2a), other measures of liberalisation without extending them to other members. Members forming part of such a system shall inform the Organisation of its membership and those of its provision which have a bearing on the Code.”

The basic non-discrimination obligations of NT and MFN are intended to cover both *de jure* and *de facto* discrimination. With regard to the obligation of national treatment, recent dispute settlement Tribunals have not insisted on the higher standard of legal or administrative discrimination, but favoured a more flexible standard of *de facto* discrimination on a case-by-case basis.[38] This may create uncertainty for the host countries as formally non-discriminatory measures may come under scrutiny.

Absolute Standards of Treatment

While relative principles of NT and MFN treatment establish a "ceiling" in that they represent the highest standards of treatment that can be accorded to foreign investors, the classical absolute investment protection standards provide a "floor" in that they grant investors a minimum level of protection. This "floor" includes absolute standards like the principles of fair and equitable treatment, compensation for expropriation, and free transfer of payments. The following sections further elaborate on these concepts.

Fair and equitable standard

Traditionally, fair and equitable standard principles are regarded as being too vague to create real rights for investors; instead they were seen as the guiding principles for the interpretation and application of the whole treaty. However, recent ICSID arbitration has changed this perception.[39] For example, in the dispute of *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt* (Case No. ARB/99/6), the obligation to provide fair and equitable treatment was seen to be infringed upon by the failure to give full notice directly to a ship owner regarding the impending seizure of a ship.

The relative low threshold for invoking the fair and equitable treatment standard in recent arbitration led to clarifications as it did, for example, in the U.S. Model BIT of 2004. Certainly, in MENA countries with regulatory and administrative environments which are less developed than those in OECD countries, there is a potential risk to lose dispute settlement cases against investors on above mentioned grounds. Box 5 contains a sample of fair and equitable treatment standards as enshrined in the BITs between Jordan and Syria, along with an extensive elaboration of the standards within the U.S. BIT Model Agreement.

Box 5. Fair and Equitable Standard

BIT Jordan/Syria, 2001, Article 2, para. 3: "Each of the Contracting Parties shall confer fair and just treatment for investors' investment or the other Contracting Party. In addition management, maintenance, utilize, using, or assigning of the investment, as well companies, and projects in which these investment were completed shall not be subject to any, legally, unjustified special procedures."

BIT USA Model Agreement, 2004, Article 5, Annex A: "Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

- "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
- "full protection and security" requires each Party to provide the level of police protection required under customary international law.

A determination that there has been a breach of another provision of this Treaty, or of a separate international agreement, does not establish that there has been a breach of this Article.

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 5 [Minimum Standard of Treatment] and Annex B [Expropriation] results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 5 [Minimum Standard of Treatment], the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens."

Repatriation of profits

The free transfer of returns is a critical element in the protection of investors, and it must be regarded as a core provision of any IIA. The provision on the free transfer of payments is certainly among the most important ones in BITs concluded by OECD countries.[40] Multilateral agreements tend to allow countries to impose restrictions on transfers in circumstances where a member is confronted with a balance-of-payment crisis.[41] However, it is important to note that such a temporary "balance-of-payment derogation" is absent in most bilateral and regional agreements, with the exception of NAFTA.[42]

Box 6. Free Transfer

The Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 7, para.1: “The Arab investor shall have the freedom to make periodic transfers, both of Arab capital for investment in the territory of any State Party and of the revenues there from, and subsequently to make retransfers to any State Party following settlement of his outstanding obligations without this being subject to any discriminatory banking, administrative or legal restrictions and without the transfer process incurring any taxes or duties. This shall not apply in respect of banking services.”

BIT UK/Egypt, 1975, Article 6: “Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the free transfer of the returns from their investments, subject to the right of each Contracting Party at exceptional financial or economic circumstances to exercise equitably of good faith powers conferred by its laws. In the case of transfer of capital this shall be affected in accordance with the relevant laws of the two Contracting Parties.”

BIT Bahrain Model Agreement, 2000, Article 6: “Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the unrestricted transfer to their investments and returns including proceeds of sale and liquidation of any investment as well as any amounts or payments stated in any provision of this Agreement. Transfer shall be affected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investors and the Contracting Party concerned. Unless otherwise agreed by the investors transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.”

Expropriation

Although the legality of expropriation has been one of the most contentious problems in international law in the past, there is now consensus that an international minimum standard for the treatment of property belonging to aliens has evolved. These standards are enshrined in many IIAs, even though traditionally, many capital-importing countries have been critical of this concept. Within the principle of international minimum standards, expropriation is only lawful where it is carried out for a clear public purpose, without discrimination and upon payment of “prompt adequate and effective compensation.[43]" Regarding “prompt and adequate” compensation for expropriation, the recent **OECD Policy Framework for Investment** makes a number of recommendations and encourages governments to ask the following questions:

- Does the government maintain a policy of timely and adequate compensation for expropriation?
- Have explicit and well-defined limits been established on the ability to expropriate, such as guidelines on what constitutes public interest?
- Which channels exist for reviewing the exercise of this power or for contesting it?

Wherever expropriation takes a direct form, issues of identification do not arise. However, as in some recent cases where the diminution of property rights has been accomplished without dispossession taking place, difficulties may arise."Indirect", "disguised" or "creeping" expropriation may qualify as bringing about "the slow and insidious strangulation of the interests of the foreign investor.[44]" Currently, this is one of the most contentious issues with regard to provisions in IIAs.[45] For instance, prohibiting an investor from importing raw materials which are needed for production can be easily determined as a "measure having equivalent effect" to expropriation (if the investor is not able to substitute the raw materials in question); this instance certainly constitutes public interest if the imported raw material contains substances which are regarded as detrimental to the host country's environment or public health. Box 7 below summarises some of the provisions protecting the rights of investors from expropriation stipulated in a sample of MENA and OECD country Agreements.

Box 7. Expropriation

Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 9, para.1: "According to the provisions of this Agreement, the capital of the Arab investor shall not be subject to any specific or general measures, whether permanent or temporary and irrespective of their legal form , which wholly or partially affect any of the assets, reserves or revenues of the investor and which lead to confiscation, compulsory seizure, dispossession, nationalisation, liquidation, dissolution, the extortion or elimination of ….."

BIT USA Model Agreement, 2004, Article 6, Annex B: "Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization ("expropriation"), except: -for a public purpose; -in a non-discriminatory manner; -on payment of prompt, adequate, and effective compensation. -in accordance with due process of law and Article…

- indirect expropriation:

The second situation addressed by Article 6 [Expropriation and Compensation](1) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

- the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;
- the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and
- the character of the government action.

Except in rare circumstances, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect."

BIT French Model Agreement, 2005, Article 5. (translation from French)

"1.The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection and safety on the territory and in the maritime area of the other Contracting Party.

2. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having the effect of dispossession, direct or indirect, of nationals or companies of the other Contracting Party of their investments on its territory and in its maritime area, except in the public interest and provided that these measures are neither discriminatory nor contrary to a specific commitment.

Any measures of dispossession which might be taken shall give rise to prompt and adequate compensation, the amount of which shall be equal to the real value of the investments concerned and shall be set in accordance with the normal economic situation prevailing prior to any threat of dispossession.

The said compensation, the amounts and conditions of payment, shall be set not later than the date of dispossession. This compensation shall be effectively realizable, shall be paid without delay and shall be freely transferable. Until the date of payment, it shall produce interest calculated at the appropriate market rate of interest.

3. Nationals or companies of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring on the territory or in the maritime areas of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favorable than that granted to its own nationals or companies or to those of the most favored nation."

BIT Jordan/Egypt on the mutual Promotion and Protection of Investment, 1996, Article 4: "Any Contracting Country is not allowed to take expropriation or nationalization measures against the investments of any investor from the other Contracting party, unless the following conditions are fulfilled:

1. The measures are adopted for legal purpose and in accordance with due process of law.

2. The measures are not discriminatory.

3. These measures shall be accompanied with allocations for prompt and effective payment of compensation shall be equal to the value of the investment prevailing in the market at the time of expropriation decision announcement and the compensation shall be transferable in freely convertible currency with the Contracting Party, and in the event that payment of compensation is delayed the investor shall receive interest at a reasonable commercial rate or according to an agreement between the Parties or according to that provisions of the law."

BIT Syria/Jordan 2001, Article 3: "It may not permissible, directly or indirectly, to nationalize, expropriate, freeze of investments of either of the Contracting Parties in the territories of the other contracting Party or the investments of any of its natural or legal persons, as well these investments shall not be subject to procedures have the same effects of nationalization, expropriation, or to limit the disposition of these investment properties and their revenues, except for public interest of this country against an immediate and fair compensation on indiscriminately bases and according to applicable laws and shall permit transference according to Article 4 of this agreement."

FTA Morocco/USA, 2004, Annex 10 b: "The Parties confirm their shared understanding that: Article 10.6.1. is intended to reflect customary international law concerning the obligation of States with respect to expropriation. An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right or property interest in an investment. Article 10.6.1 addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure. The second situation addressed by Article 10.6.1 is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure. The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by- case, fact-based inquiry that considers, among other factors: the economic impact of the government action, although the fact that an action or series of action by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred; the extent to which the government action interferes with distinct, reasonable investment-backed expectations; and -the character of the government action."

The dispute in the case of *Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt* (Case No. ARB/99/6) concerns an alleged expropriation by the government of Egypt of the claimant's (Middle East Cement) interests in a cement distribution enterprise which was located in Egypt, as well as Egypt's alleged failure to ensure the re-exportation of Middle East Cement's assets. Middle East Cement invoked an ICSID arbitration clause contained in an Agreement between Greece and Egypt for the Promotion and Reciprocal Protection of Investments, which entered into force on 6 April 1995. Egypt issued a decree prohibiting import of all types of Portland Cement, which resulted in the halt of the activities of the Middle East Cement branch in Egypt. Middle East Cement claimed damages due to the liquidation of its Egyptian branch (including lost profits), as well as for its difficulties in re-exporting the branch's assets including a floating silo.

The Tribunal stressed that, "when measures are taken by a State the effect of which is to deprive the investor of the use and benefit of his investment even though he may retain nominal ownership of the respective rights being the investment, the measures are often referred to as 'creeping' or 'indirect' expropriation or, as in the BIT, as measures "the effect of which is tantamount to expropriation". As a matter of fact, the investor is deprived by such measures of parts of the value of his investment. The Tribunal concluded that the Respondent breached its obligations under the BIT with Greece particularly by taking measures tantamount to expropriation against the claimant without prompt, adequate and effective compensation (Art. 4 of the BIT).

This case demonstrates that there remains some insecurity about how to approach regulatory expropriation claims. This uncertainty over the scope and reach of the expropriation obligations in IIAs in relation to regulatory measures of the host state is an issue of concern for host countries and must be taken seriously by MENA negotiators.

Transparency

Transparency issues are part of a broader subject dealing with the relationship between national administrations and their citizens, be they domestic or foreign investors. The extent of transparency of rule-making and administrative procedures, as well as the corresponding existence of procedural rights for the investor to claim transparent treatment from the authorities of the host country, are important elements in testing the seriousness of investor-friendly policies in a host country. Therefore, it comes as no surprise that recent IIAs contain transparency obligations dealing with the host country, in addition to home country investment promotion policies and with transparency obligations of the investing entity itself.

Modalities of information disclosure covered by transparency obligations in IIAs include the following: consultation and information exchange; making information publicly available; answering requests for information; notification requirements for specific measures to be communicated to the other party; or setting up a body to fulfil this purpose under the agreement.[46] An example can be seen in the Model BIT for Egypt, where Article 2.3 provides that Contracting Parties may periodically consult on investment opportunities to determine where investments may be most beneficial.[47]

Transparency requirements for corporate entities have been formulated by the 1980 Unified Agreement for the Investment of Arab Capital in the Arab States, which states the following: *"In the various aspects of his activity, the Arab investor must, as far as possible, liaise with the State in which the investment is made and with its various institutions and authorities. He must respect its laws and regulations in a manner consistent with this Agreement...[48]"*

Box 8. OECD Framework for Investment Policy Transparency

The OECD Framework for Investment Policy Transparency aims at assisting both OECD and non-OECD governments to enhance transparency of their investment policy frameworks. The Framework poses fifteen questions:

Question 1: Are the economic benefits of transparency for international investment adequately recognised by public authorities? How is this being achieved?

Question 2: What information pertaining to investment measures is made "readily available", or "available" upon request to foreign investors?

Question 3: What are the legal requirements for making this information "public"? Do these requirements apply to primary and secondary legislation? Do they apply to both the national and sub-national levels? Is this information also made available to foreign investors in their countries of origin?

Question 4: Are exceptions/qualifications to making information available clearly defined and delimited?

Question 5: What are the main vehicles of information on investment measures of interest to foreign investors? What may determine the choice of publication avenues? What efforts are made to simplify the dissemination of this information?

Question 6: Is this information centralised? Is it couched in layman's terms? In English or another language? What is the role of Internet in disseminating essential/relevant information to foreign investors?

Question 7: Have special enquiry points been created? Can investment promotion agencies fulfill this role?

Question 8: How much transparency is achieved via international agreements or by international organisations?

Question 9: Are foreign investors normally notified and consulted in advance of the purpose and nature of regulatory changes of interest to them? What are the main avenues? Are these avenues available to all stakeholders?

Question 10: Are the notice and comment procedures codified? Do they provide for timely opportunities for comment by foreign investors and accountability on how their comments are to be handled?

Question 11: Are exceptions to openness and accessibility to procedures clearly defined and delimited?

Question 12: What are the available means for informing and assisting foreign investors in obtaining the necessary licensing, permits, registration or other formalities? What recourse is made to "silent and consent" clauses or "a posteriori" verification procedures?

Question 13: What are foreign investors' legal rights in regard to administrative decisions?

Question 14: To what extent "one-stop" shops may assist foreign investors fulfill administrative requirements?

Question 15: What efforts are being made to address capacity building bottle-necks?[49]

USA Model BIT, 2004, Article 10, para. 1: *"Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions that pertain to or affect covered investments are promptly published or otherwise made publicly available."*

E. Dispute Settlement

Much of the prominence of IIAs, from the point of view of the international investment community, stems from the possibility that the provisions of the IIAs may eventually be enforced in case of a dispute, not only through classical ways of diplomatic protection by the home state, but also by **investor-to-state dispute settlement** procedures. The Investment Committee of the OECD has conducted significant analytical work on this subject, with an article on the subject appearing in the International Investment Perspectives 2006 entitled *Improving the System of Investor-state Depute Settlement.*

The existence of these procedures constitutes a crucial factor underlying a favourable investment climate in the host country. Procedural dimensions of IIAs are likely to become more relevant in the future for MENA countries. Already, many IIAs involving MENA countries contain provisions on investor-to-state dispute settlement, with a considerable number of investment disputes pending or concluded with MENA countries – if only counting the publicised cases taken to the World Bank's ICSID (refer to Annex 1).

As shown in Annex 2, 13 MENA countries are signatories of the ICSID Convention on the Settlement of Investment Disputes between States and Nationals of other States. Although these provisions had not been used frequently the during the first 30 years of ICSID's existence (35 claims from 1966 to 1995), the subsequent 9 years witnessed a total of 127 claims filed; representing more than a tenfold increase in ICSID activity on an average yearly basis.[50] As of August 2004, there were 79 pending cases before ICSID,[51] the large majority of which were filed pursuant to alleged violations of BITs.

As shown in Annex 1, 15 out of the total concluded ICSID cases involved MENA countries, with 8 cases pending as of October 2007 (this statistic only includes cases made public). Around 60 per cent of the cases filed with ICSID are filed under BITs, the remained under NAFTA and state contracts. The proliferation of BITs since 1966 and the overall increase in flows of foreign direct investment can account for this increase. Moreover, another factor which can account for this proliferation is prominence of international investment law by the legal community. Independent of these reasons, however, the sheer number of claims indicates the importance of investor-state arbitration for investors.

Once ICSID arbitration is pursued, each state party to the ICSID Convention is required to enforce the resulting arbitral award in its territory.[52] This obligation to enforce awards is derived from the 1958 *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* which provides a method to enforce arbitral awards as recognised in accordance with the rules and procedures of the state in which enforcement is sought and is applicable under specified terms and conditions. In total, 14 MENA countries participating in the MENA-OECD Investment Programme are members of the New York Convention (refer to Annex 3).

NOTES

1. Refer to Nabli, Mustapha K., Restarting Arab Economic Reform, in: Augusto Lopez-Claros/Klaus Schwab, The Arab World Competitiveness Report 2005.

2 Refer to Annex 4 for conclusions of the last Taskforce meeting on International Investment Agreements.

3. Refer to Figure 3 below.

4. The term 'IIAs' is used in a broad sense describing legally binding bilateral, regional and multilateral instruments containing exclusively or partially investment protection and promotion provisions.

5. *Jeswald W. Salacuse, Nicholas P. Sullivan*; "Do BITs Really Work?, 46 Harv. Int'l L.J. 67 (2005), p.90.

6. *Jennifer Tobin, Susan Rose-Ackerman*; "Foreign Direct Investment and the Business Environment in Developing Countries: the Impact of BITs", Yale University, 2005 or *Hallward-Driemeier* "not any statistically significant effect", *Hallward-Driemeier, M.* (2003), Do Bilateral Investment Treaties Attract FDI? Only a bit…and they could bite, in: World Bank Policy Research Paper WPS 3121, World Bank, Washington DC.

7. *Eric Neumayer* and *Laura Spess*, Do bilateral investment treaties increase foreign direct investment to developing countries? Revised Version, May 2005, p.4. Accessible at: http://www.lse.ac.uk/collections/geographyAndEnvironment/whosWho/profiles/neumayer/pdf/BITandFDIarticle.pdf.

8. This can have the form of a *sine qua no*, see for the German Investment Guarantee Agency: http://www.agaportal.de/en/dia/deckungspraxis.html, for MIGA: Operational Regulations, para. 3.16, 27 ILM 1227 (1988).

9. UNCTAD, International Investment Agreements: Key Issues, Vol. I, 2004, p.48 et seq.

10. Jo-Ann Crawford and Roberto V. Fiorentino, The Changing Landscape of Regional Trade Agreements, WTO Discussion paper No 8.

11. Members to this agreement were Iraq, Jordan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Morocco, Saudi Arabia, Sudan, Syrian Arab Republic, Tunisia, United Arab Republic, and the Arab Republic of Yemen. Mauritania, the Palestinian Authority and Somalia subsequently also became signatories to the Agreement. (UNCTAD, 1996, vol. III).

12. Articles 3-7 of the Agreement, UNCTAD, 1996, vol.II.

13. UNCTAD, 1996, vol.II.

14. http://www.arabinvestmap.com/default.asp?PageId=4&CurrentLanguage=EngLang&agrID=4 .

15. Para. 1 of Basic Policy towards further promotion of Economic Partnership Agreements (EPAs), approved by the Council of Ministers on the Promotion of Economic Partnership on December 21, 2004, http://www.mofa.go.jp/policy/economy/fta/policy0412.html .

16. For details, *Mary Jane Bolle*, Middle East Free Trade Area: Progress Report, CRS Report for Congress, 2005.

17 . EFTA includes Switzerland, Norway, Iceland and Liechtenstein. See http://secretariat.efta.int/Web/legaldocuments.

18. MIGA Operational Regulations, para.3.16, 27 ILM 1227 (1988).

19. UNCTAD, International Investment Instruments: A Compendium, vol.II, 1996, p. 122.

20. UNCTAD, ibid., Articles 2 and 5, p. 213, 214.

21. UNCTAD, ibid., p.241.

22. OECD Codes of Liberalisation of Capital Movements; http://www.oecd.org/dataoecd/10/62/4844455.pdf.

23. Commentators have indicated that in order to qualify as investment under the ICSID Convention, the project in question should have a certain duration, a regularity of profit and return, an element of risk, a substantial commitment and that it should constitute a significant contribution to the host State's development. See Christoph Schreuer, The ICSID Convention: A Commentary, 2001, Art.25, 119-124.

24. UNCTAD, International Investment Agreements: Key Issues, Vol. I, 2004.

25. US Model BIT Agreement, 2004; Article 1, Section A.

26. See Art. 1 (a) of the Mexican Model Agreement on the Promotion and Reciprocal Protection of Investment.

27. Model Agreement of Bahrain, http://www.ustr.gov/Document_Library/Fact_Sheets/2004/Bahrain_Free_Trade_Agreement_Fact_Sheet.html

28. Model Agreement of Morocco, Article 1, para.1, (iii).

29. FTA Morocco-US, Section C, FN 9, http://www.ustr.gov./index.html

30. Alcoa Minerals of Jamaica, Inc. v. Jamaica (ICSID Case No. ARB/74/2), Decision on Jurisdiction and Competence of July 6, 1975, 4 Yearbook Commercial Arbitration 206 (1979) (excerpts).

31. Amco Asia Corporation and others v. Republic of Indonesia (ICSID Case No. ARB/81/1)

32. Fedax NV v. Venezuela (ICSID Case No. ARB96/3).

33. Atlantic Triton Company Limited v. Guinea (ICSID Case No. ARB 97/7)

34. SGS Société Générale de Surveillance S.A. v. Republic of the Philippines (ICSID Case No. ARB/02/6), available at http://www.worldbank.org/icsid/cases/SGSvPhil-final.pdf.

35. Refer to the OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations, which defines transactions considered as investment. This document is available at http://www.oecd.org/document/63/0,3343,en_2649_201185_1826559_1_1_1_1,00.html.

36. Summaries of cases are taken from the ICSID publication.

37. www.oecd.org/daf/investment/legal-instruments/nti.htm

38. For example *S.D. Myers Inc. v. Canada, 13 November 2000; Marvin Feldman v. Mexico, 16 December 2002.*

39. For details see, Yannaca-Small, Fair and Equitable Treatment Standards in International Investment Law, OECD 2004.

40. US Model Agreement, Art. VII; German Model Agreement, Art. 5, Mexican Model Agreement, Art.5. French Model Agreement, Art. 7.

41. Agreement of the International Monetary Fund, Article 7 c) of the OECD Codes, Articles XI, XI GATS; The Multilateral Agreement on Investment (MAI), Negotiation Text, Article IV, 4.1.

42. NAFTA, Chapter 11.

43. The so-called Hull formula, which appears in a Note from the U.S. Secretary of State, Cordell Hull, see *Ian Brownlie*, Principles of Public International Law, 4th ed., 1990, 532.

44. *Sornarajah*, the International Law on Foreign Investment, 2nd Ed., 2004, 350.

45. For a comprehensive review, see *Yannaca-Small*, Indirect Expropriation and the Right to Regulate in International Investment Law, OECD 2004, http://www.oecd.org/dataoecd/22/54/33776546.pdf.

46. Public Sector Transparency and the International Investor, OECD 2003.

47. UNCTAD, vol.I,II 1996.

48. Unified Agreement for the Investment of Arab Capital in the Arab States, 1980, Article 14, para.1.

49. OECD Public Sector Transparency and the International Investor; 2003.

50. *See* http://www.worldbank.com/icsid/cases/conclude.htm and http://www.worldbank.com/icsid/cases/pending.htm

51. *See* http://www.worldbank.com/icsid/cases/pending.htm

52. Article 54 (1) ICSID: "Each Contracting State shall recognise an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award with its territories as if it were a final judgment of a court in that State."

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Annex 1

ICSID CASES INVOLVING MENA COUNTRIES

I. List of Concluded Cases

1. Holiday Inns S.A. and others v. Morocco (Case No. ARB/72/1)
   Subject Matter: Joint venture to build and operate hotels

2. Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt (Case No. ARB/84/3)
   Subject Matter: Tourism development project

3. Manufacturers Hanover Trust Company v. Arab Republic of Egypt and General Authority for Investment and Free Zones (Case No. ARB/89/1)
   Subject Matter: Bank branch operation

4. Middle East Cement Shipping and Handling Co. S.A. v. Arab Republic of Egypt (Case No. ARB/99/6)
   Subject Matter: Cement distribution enterprise

5. Salini Construttori S.p.A. and Italstrade S.p.A. v. Kingdom of Morocco (Case No. ARB/00/4)
   Subject Matter: Construction of the sector of a highway

6. Impregilo, S.p.A and Rizzani De Eccher S.p.A. v. United Arab Emirates (Case No. ARB/01/1)
   Subject Matter: Construction of a mosque

7. JacobsGibb Limited v. Hashemite Kingdom of Jordan (Case No. ARB/02/12)
   Subject Matter: Waterway construction project

8. Ed. Zueblin AG v. Kingdom of Saudi Arabia (Case No. ARB/03/1)
   Subject Matter: Construction of university facilities

9. Consortium Groupement L.E.S.I.- DIPENTA v. Algeria (Case No. ARB/03/8)
   Subject Matter: Construction of a dam

10. Wena Hotels Limited v. Arab Republic of Egypt (Case No. ARB/98/4)
    Subject Matter: Hotel lease and development agreements

11. Consortium R.F.C.C. v. Kingdom of Morocco (Case No. ARB/00/6)
    Subject Matter: Construction of the section of a highway

12. Champion Trading Company and Ameritrade International, Inc. v. Arab Republic of Egypt (Case No. ARB/02/9)
Subject Matter: Cotton processing and trading enterprise

13. Joy Mining Machinery Limited v. Arab Republic of Egypt (Case No. ARB/03/11)
Subject Matter: Phosphate mining project

14. Salini Construttori S.p.A. and Italstrade S.p.A. v. the Hashemite Kingdom of Jordan (Case No. ARB/02/13)
Subject Matter: Dam construction project

15. Ahmonseto, Inc and others v. Arab Republic of Egypt (Case No. ARB/02/15)
Subject matter: Textile enterprise

II. List of Pending Cases

1. Hussein Nuaman Soufraki v. United Arab Emirates (Case No. ARB/02/7)
Subject Matter: Concession agreement regarding a port

2. ABCI Investments N.V. v. Republic of Tunisia (Case No. ARB/04/12)
Subject Matter: Acquisition of shares

3. LESI, S.p.A. and Astaldi, S.p.A. v. Algeria (Case No. ARB/05/3)
Subject Matter: Construction of a dam

4. Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt (Case No. ARB/04/13)
Subject Matter: Dredging project

5. Waguih Elie George Siag and Clorinda Vecci v. Arab Republic of Egypt (Case No. ARB/05/15)
Subject Matter: Resort development

6. Desert Line Projects LLC v. Republic of Yemen (Case No. ARB/05/17)
Subject Matter: Road construction contract

7. Helnan International Hotels A/S v. Arab Republic of Egypt (Case No. ARB/05/19)
Subject Matter: Hotel lease and development agreements

8. Toto Costruzioni Generali S.p.a. v. Republic of Lebanon (Case No. ARB/07/12)
Subject matter: Highway construction contract

Annex 2

ICSID MEMBERSHIP OF MENA COUNTRIES [1]

Country	ICSID member since *
Algeria	1996
Bahrain	1996
Djibouti	No
Egypt	1972
Iraq	No
Jordan	1972
Kuwait	1979
Lebanon	2003
Libya	No
Morocco	1967
Oman	1995
Palestine National Authority	No
Qatar	No
Saudi Arabia	1980
Syria	2006
Tunisia	1966
United Arab Emirates	1982
Yemen	2004

1.as of May 2007

(*) Note: the dates refer to the entry into force of the Convention on the Settlement of Investment disputes Between States and Nationals of Other States

Source: ICSIS, http://www.worldbank.com/icsid/constate/constate.htm

Annex 3

MENA MEMBERSHIP TO THE 1958 NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

MENA countries	Membership
Algeria	Yes
Bahrain	Yes
Djibouti	Yes
Egypt	Yes
Iraq	No
Jordan	Yes
Kuwait	Yes
Lebanon	Yes
Libya	Yes
Morocco	Yes
Oman	Yes
Qatar	Yes
Saudi Arabia	Yes
Syria	Yes
Tunisia	Yes
United Emirates	Yes
Palestine National Authority	No
Yemen	No

Source:http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status

Annex 4

CONCLUSIONS OF THE TASKFORCE ON INTERNATIONAL INVESTMENT AGREEMENTS

This second meeting of the Expert Group on International Investment Agreements hosted by the Government of Egypt was conducted as part of the activities of Working Group 1, Output 2 of the MENA-OECD Investment Programme on 12-13 December 2006. The meeting was divided into two parts: a regional meeting of the Expert Group and a special session for Egyptian participants.

During the meeting participants agreed on the following points:

I. Regional meeting of the Expert Group

- To elaborate further the Inventory to serve as a background, adding proposals for treaty negotiators on how to draft clauses in IIAs avoiding ambiguity and potential legal challenges.

- To establish an investment treaty platform for the MENA region consisting of:

  - An inventory of treaty practices reflecting BITs, FTAs with investment provisions, as well as regional and multilateral initiatives. The inventory will include access to treaties, model treaties, litigation (awards, judgments) and legal analysis, a manual of building blocks and options for treaty negotiators;

  - An electronic discussion forum providing a facility for exchanging experience and advice on current treaty issues.

- To support the development of a CSR module reflecting standards of responsible conduct of investors (domestic and foreign) within the region in line with relevant international instruments. There are various international initiatives aimed at promoting responsible business conduct, including the OECD Guidelines for Multinational Enterprises and the UN Global Compact. The OECD Guidelines for Multinational Enterprises provide a government-backed voluntary code of responsible business conduct and a recognised reference in international discussion on investment policies and rules.

- It was agreed by participants that the signing of an IIA has to be followed by its ratification in order to make it directly applicable as binding national law. Ratification requirements may differ from country to country, but a speedy ratification procedure is in the best interest of all parties to an IIA.

- The scope and relevance of core provisions of IIAs must be approached in the light of 1) the growing body of jurisprudence arising from tribunals' decisions on investment dispute notably arbitral awards under the ICSID, 2) established treaty interpretation rules; and 3) state practice.

II. Special session for Egyptian participants

Participants agreed on the following points:

- In order to enhance the ratification record of the Arab Republic of Egypt the treaty negotiation strategy needs to be revised. Egypt has signed 107 BITs, 33 % of it are not ratified. With this number of BITs signed, Egypt is 6th world-wide and is the first capital importing country in the list of countries having concluded the most BITs.

- A model agreement can help to clarify basic concepts and provisions for BITs negotiators, but must be accompanied by a comprehensive promotion strategy to identify the right targeted country. The model agreements is not legally binding, however, it can be seen as an administrative guideline limiting the discretion of the negotiator.

- A model agreement is only one necessary step to enhance the ratification record. Of equal importance is the inclusion of all government ministries involved in the process of ratification at an early stage in the negotiations. Early consultations with a broader stakeholder community including parliamentary bodies and private sector are also recommended since it helps gathering political support for the final ratification.

II.4. POLICY ADVOCACY FUNCTION OF INVESTMENT PROMOTION AGENCIES AND BUSINESS ASSOCIATIONS IN THE MENA REGION

II.4.1. INTRODUCTION

Policy advocacy for investment climate reforms[1] should be a central function of **investment promotion agencies (IPAs)**. Policy Advocacy is traditionally undertaken not only by IPAs but by diverse public and private sector groups, including professional business associations. It is an important component of efforts aimed at enhancing the investment climate in a country.

Research has shown that 80% of investment promotion agencies (IPAs) worldwide engage in policy advocacy in some form[2] and that policy advocacy relative to other functions of IPAs appears to have the strongest association with FDI inflows (Morisset and Andrews-Johnson, FIAS, 2004). At the same time, the policy advocacy function has the lowest budget allocation in agencies, although this is partly attributable to the nature of policy advocacy work compared to more expensive marketing and promotion activities. It does, however, suggest that policy advocacy may need to be considered more carefully and given a higher profile in the strategy and operations of IPAs.

Policy advocacy activity may range from informal and restricted to select issues (e.g. procedures for registering a company, obtaining work permits or acquiring suitable production space) or may be a regular and structured process that seeks not just to deal with desirable policy change but also anticipate future reform and change and convey needs for policy change that will underpin private investment and economic growth. While most IPAs undertake policy advocacy, it is clear from general research and case experience that there is a significant divergence between countries and IPAs in how this function is viewed and conducted.

Similarly to IPAs, **business associations** combine service functions (to their members/investors) and policy advocacy function in one organisation. The big difference is that while IPAs are pursuing public interest driven advocacy, business associations serve the interests of their members. This difference should not be overemphasised, though. A business association established at national level, comprising of many sectors and with a substantive membership can claim to come very close to public interest in its policy advocacy function. An IPA, on the other hand, defending the interest of a single investor in a specific project might be not necessarily in the realm of overall public interest. National business associations representing many sectors would tend to put most of their resources into policy advocacy. Sectoral associations would tend to place more emphasis on services for members, though the policy advocacy part can still be substantial.

In the context of the **MENA-OECD Investment Programme,** the policy advocacy function of IPAs and business associations is a key concern addressed by Working Group 2 of the Programme which commissioned a report and asked for workshops to be conducted focusing on how to strengthen the advocacy function of IPAs and Business Associations in the MENA region. This paper is supposed to serve as a first step for the development of regional recommendations and will contribute to an investment climate assessment tool to be endorsed at the next Ministerial meeting of the Programme. It is designed to stimulate consideration and dialogue on the policy advocacy role of IPAs and Business Associations in the MENA region and to present some experiences and ideas on how this role might be enhanced and developed.

In this context, it would be useful to first briefly look at the key determinants of an effective policy advocacy strategy for investment climate reforms, and the respective roles of IPAs and business associations and regional and multilateral cooperation initiatives as policy advocates will be discussed.

II.4.2. DETERMINANTS OF POLICY ADVOCACY

A. Towards a Definition of Policy Advocacy

Advocacy may be defined as advocating, speaking, writing or making representations in support of a programme, a project, a policy reform or range of reforms. Public policy advocacy is similar in that it entails the use of tools to examine, evaluate and document issues and tactics to influence the public sector in support of a certain change. It also includes research and covers the decision making process starting from policy-making through to implementation. Public policy advocacy is an effort to influence public policy through insights on key issues, experience sharing and various forms of persuasive communication. An effective policy advocacy campaign should ideally be ongoing and focus on specific policy issues, have a well defined vision (what will be the outcome and impact), mission (how the issue might be tackled), and goals (concrete performance steps).

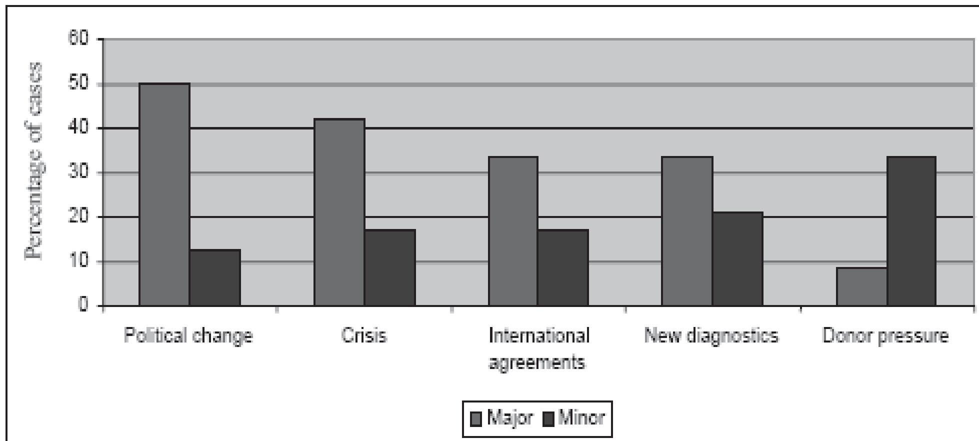
IPAs, with their experience working with cross section of investors from different sectors can systematically gather views and assess feedback and measures needed. The presentation of such information can assist progress of policy measures and underpin improvements in the investment climate. Similarly, Business Associations can provide data gathered from their member that can inform legislators and administrations about obstacles to business growth and measures to overcome them.

The World Development Report 2005 describes policy advocacy as identifying issues that inhibit investment and advocating policy changes that might stimulate development. IPAs and Business Associations can be seen as acting as champions of reform in lobbying legislators and government agencies to correct observed problems.

The main factors supporting investment climate reforms have recently been analysed pointing to the main triggers of investment climate reform described in the Figure below. From this list, IPAs and business associations might be in a position to influence in particular the elaboration of new diagnostics, the conclusion and implementation of international agreements and may be able to use donor pressure on the government for their advantages.

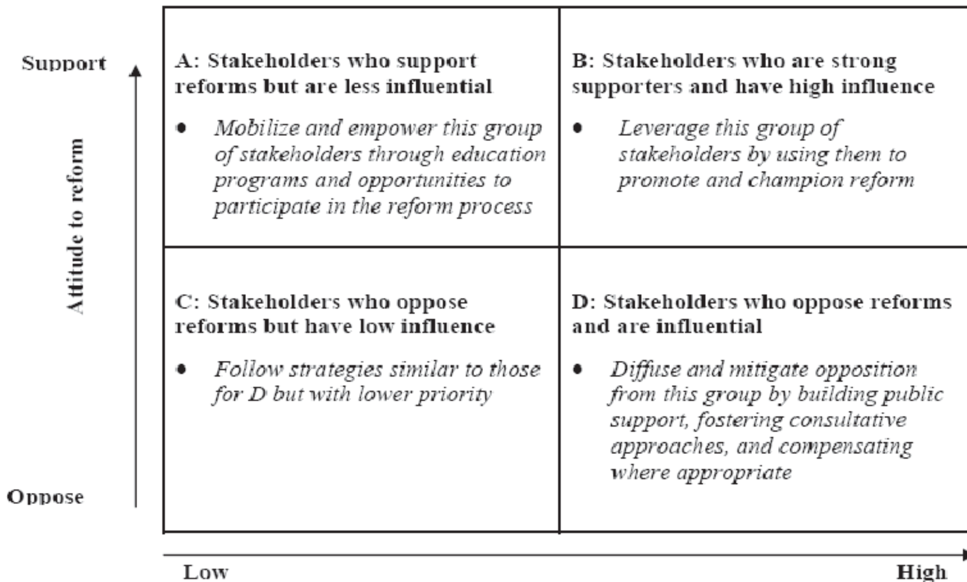
More recent research is particularly concerned with providing advice on how to manage different sets of stakeholders in a policy advocacy process for an improved investment climate. The identification of affected stakeholders and the development of strategies to deal with their concerns are at the core of a successful policy advocacy strategy. It is a prime task for governments, especially if decision making processes are transparent and democratic participation rights strong. IPAs and business associations can help advising government entities in charge of reforms how to best communicate with different stakeholders affected. They might be in a position of influencing these stakeholders themselves. The Figure below shows different groups of stakeholders in an idealised form. This is helpful as communication strategies with these stakeholders will differ according to their influence and level of opposition to reforms. In reality, stakeholders will fall somewhere in between these categories.

Figure 3. The main triggers of investment climate reform



Source: World Bank, 2006.

Figure 4. Figure 2. Strategies for managing different sets of stakeholders



Source: World Bank, 2006.

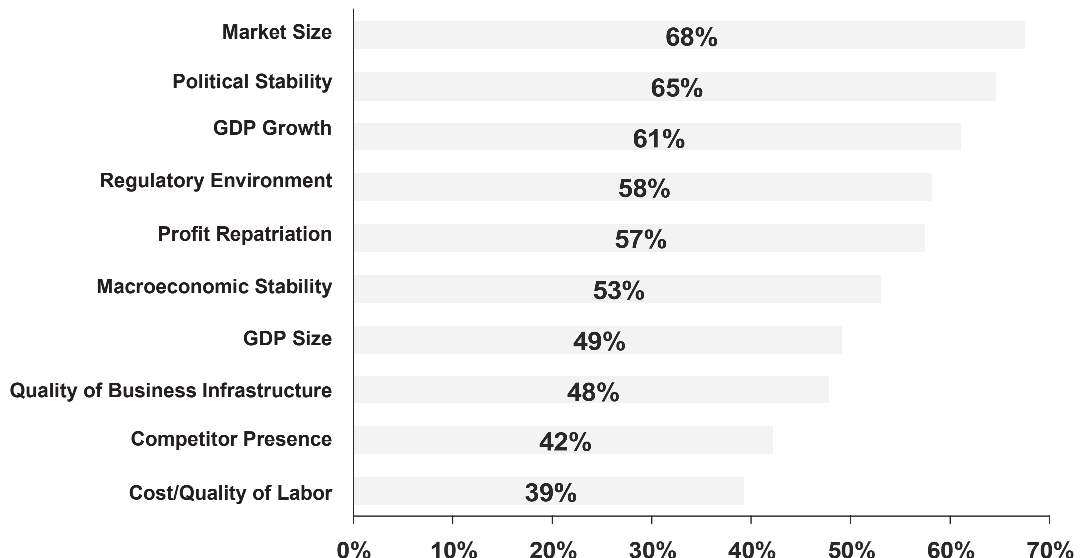
It should be highlighted at this point that while there are some broad conclusions which can derive from the above, there is hardly any 'one-size fits all' model. As a matter of fact, the reform process and therefore also the policy advocacy function which can be provided by IPAs and business associations, differ between democratic and authoritarian governments, between presidential and parliamentary systems and between unitary and federal states. The relevance of stakeholder inclusion and the overall role of public opinion are obviously dependent on level of democratic accountability which a government has to face.

B. Investment Determinants as a Guide to Policy Advocacy Themes

On what policy issues should IPAs and business associations seek to undertake advocacy? For IPAs, clearly the feedback and views of investors, existing and potential, provide a rich database of relevant information. A first contact with investors will often provide a detailed questionnaire on information needed and this source of information from investors on their specific needs will be elaborated as contact develops. Through its frequent contact with investors, the typical IPA has a unique perspective on criteria of concern to business (e.g. infrastructure, regulatory procedures, skills availability, etc.) and these criteria can vary widely depending on a range of factors such as the sector, company and scale of investment. These contacts with investors are clearly an impulse for all IPAs to undertake some form of advocacy. For business associations, the membership can provide a unique source of information and data. Membership surveys and identification of obstacles for investment and business growth through specialised committees are powerful tools for collecting relevant information.

A particularity with regard to IPAs is that some may take a 'supply driven' approach in contacts with investors, emphasising what their country can offer, possibly without adequate recognition of investor needs and determinants. This may not necessarily coincide with what investors seek. A classic mismatch here is an overemphasis on incentives, especially at the early stage of dialogue on investment, rather than an emphasis on strategic business issues that are of prime concern to investors. Figure 2 shows research by the international consultancy firm, AT Kearney, on top determinants of FDI. This research largely reflects the results of similar research from many other sources on this question. What is notable from such research is that the priority issues for most investors all relate to political stability and the investment climate and how this is affected by macro- and micro-economic policies.

Figure 3. Top FDI Determinants (% of Respondents)



Source: 2004 ATK FDI Confidence Index.

Issues such as market size (encompassing subsidiary issues such as market access, customs formalities, transport infrastructure and costs, local competition law, etc.), economic growth rates, and regulatory environment including freedom to transfer profits are all more influential on investors than incentives. This does not mean that incentives are irrelevant but rather that the investment message from countries should focus on 'investor determinants' and especially the high priority issues of the investment climate. Addressing issues of concern in these policy areas is complex and demands involvement of many public sector bodies. Doing so is central to investor facilitation, but also for policy advocacy by IPAs and business associations. IPAs and business associations are in a position to identify and interpret private investor needs to public bodies, and equally to act as a conduit of information from the public to the private sector.

Virtually all countries that aspire to increase private sector investment have liberalised their economies to some extent in recent years. More and more governments are recognising that their policies and behaviour play a critical role in shaping the investment climate of their societies and are making the required changes. The investment climate is the set of location-specific factors shaping the opportunities and incentives for firms to invest productively, create jobs and expand. The multi-dimensional nature of the investment climate makes it difficult and complex to assess. In the next paragraph, some tools to assist this process are outlined.

Governments, through their policies and practice exert strong influence with impact on costs, risks and barriers to competition. The recognition that the overall business and investment climate is fundamental to increased investment has instigated initiatives to improve the environment worldwide from major countries such as China and India to smaller countries like Estonia and Slovakia as well as in MENA countries. To varying degrees this focus in most countries has sought, inter alia, to:

- Create a more stable macroeconomic environment;
- Liberalise controls on foreign exchange transactions;
- Undertake regulatory reform;
- Free up trade movements;
- Rationalise tax structures;
- Upgrade investment laws and remove restrictions;
- Actively promote foreign investment and exports.

II.4.3. ROLE OF IPAS IN POLICY ADVOCACY

The term 'policy advocacy' is self explanatory but warrants some elaboration. In contrast to FDI marketing and promotion methods and techniques on facilitating investors, policy advocacy as a function of IPAs is not as widely referred to in research on FDI and IPAs. To some extent, it has sometimes been seen as an optional activity that IPAs do as an adjunct to or derivative of their promotion work. But this view underestimates the value and importance of policy advocacy work.

With respect to IPAs, Morisset and Andrews-Johnson (2004) see policy advocacy as consisting of the activities through which the agency supports initiatives to improve the quality of the investment climate and identify the views of the private sector on that matter. Activities, in their view, include:

- Surveys of the private sector;
- Participation in policy task forces;
- Policy and legal proposals;
- Lobbying.

In determining options for promotion, this research contends that countries with a sub-optimal investment climate should focus on improving the latter first rather than spending resources on promotion. In other words, the recommendation is to focus on improving the investment climate before undertaking expensive promotion. This will in fact have the dual effect of helping to attract investment and enhancing the effectiveness of the impact of the IPA.

IPA policy advocacy is becoming increasingly important. While the traditional focus on investment promotion and attracting investment remains, factors such as heightened competition for FDI, the emergence of new sectors and technologies (e.g. biotechnology, nanotechnology, communications technology) and an increasing emphasis on the contribution of foreign investors to the overall development of the economy – all demand conducive regulation and innovative development policies. Getting the basic investment conditions right, by regularly assessing the investment climate in a changing world and involving all participants in proposed reforms is more important for investment attraction as the competition from new IPAs and emerging economies increases.

Another aspect of policy advocacy that should be strongly emphasised is an IPA's potential forward looking role in identifying new opportunities (new sectors, new innovation, new technology, new regional development) for a country. In some countries, IPAs have not just focused their policy advocacy on hindrances in the investment environment, but have instigated new policy initiatives. For example, expert groups on future skill needs, increased linkage between industry and universities and research institutions and enhanced infrastructure (e.g. broadband availability and cost) have been established. This type of advocacy can contribute substantially to ensuring 'early mover' advantages in competing for FDI and in attracting new investment.

A. Main functions of IPAs

Governments worldwide seek to attract FDI through IPAs. To create employment opportunities and accelerate economic growth in their economies, many governments have elected to pursue strategies to attract foreign investment. The number of IPAs has grown fivefold over the past decade and today there are at least 160 national and more than 250 sub-national IPAs compared to a handful in previous years.[3] Competition for FDI is increasing worldwide and this has promoted greater innovation in the scope and functions of IPAs including in the area of policy advocacy. However there is no single model of success when it comes to promotion and IPAs. In considering the role of IPAs in policy advocacy, it is useful to first consider the various roles of IPAs and where policy advocacy fits into IPA functional responsibilities. IPAs differ widely in terms of their functions and activities, legal status, organisation structure, budgets, and their success. In terms of the range of functions and activities undertaken, it is possible to distinguish three broad categories of investment promotion agencies, namely:

Information providers

IPAs that focus on disseminating investment related information and building the image of the country as an attractive investment location (the majority of agencies tend to fall in this category). Building information systems to facilitate investors is an essential 'building block' for investment promotion by all IPAs. Evidence exists that IPAs that provide good quality investor information can influence investors' location choice decisions (MIGA, World Bank, 2006). Some low level of policy advocacy work may be undertaken by this category of IPA but often on an irregular and unstructured way. It should be noted that the scale, resources and skills profile of many IPAs do not permit much more than information provision and basic investor servicing.

Information and selected service providers

IPAs that undertake information provision but additionally generate investments by marketing investment projects to targeted investors, assist investors in dealing with the host country's administration (e.g. investment facilitation and one stop shops) and assist existing investors in developing or expanding their business operations (investor monitoring and aftercare). Again, typically some policy advocacy work is undertaken, but in restricted form.

Development partners

IPAs that perform all the above functions and in addition seek improvement of the investment climate in a systematic way through structural policy reforms (using policy advocacy, own research and tools) and build links between foreign investors and domestic companies. While IPAs are typically public institutions with a mandate to work and often negotiate with investors, they can equally become real partners to business through their approach, their knowledge and understanding of strategic business issues and their skills in conveying how the features of their locations translate into advantages for specific investors. Such IPAs will often establish and maintain business relations proactively with existing and potential investors and have insights on company and sectoral issues that can greatly enhance their investment promotion and policy advocacy role.

The above typology should not be seen as a hierarchy of progression and incremental success. IPAs at all levels can operate efficiently and effectively in promoting investment and undertaking some policy advocacy. The scale and scope of an IPA's competencies and budget will, however, influence their activity in all functions. Where their mandate, strategy and resources allow them to

extend the scope of their functions to work closer and in a more comprehensive way with investors (existing and potential), there is obviously a potential for greater effectiveness in promotion and impact on the investment climate.

It should be noted however, that working in this way is not an automatic process leading to greater success with attracting investment. Like all operational strategies and practices, the science and art of leadership and management in the IPA combined with innovation and good implementation practices will influence outcomes. In general, IPAs in the 'development partners' category encompass some of the most successful IPAs worldwide and as a consequence have established their credibility and long-term value to governments and other stakeholders.[4] Such IPAs have been in the vanguard in developing policy advocacy in support of efforts to improve the investment climate.

Policy advocacy by IPAs should ideally be seen in relation to all other functions and the inter-connectivity of all of these in better investment policies and promotion strategies. Some commentators see IPA functions in terms of four functional categories: image building, investment generation, investor services and policy advocacy (Wells and Wint, 2001). With the emergence of new IPAs and increased competition for FDI, the range of IPA functions conducted nowadays is often wider, instigated by the spread of good management practices and training and technical advisory work of, for example, WAIPA, UNCTAD, MIGA and FIAS in promoting more efficiency and experience sharing.[5] Figure 4 reflects this wider scope that many IPAs now engage in.

Figure 4. IPA Functions[6]

Policy advocacy is one of an IPA's core functions. This is the common theme emerging from research and discussion on the responsibilities and functional scope of IPAs. As indicated above, this activity is often less visible and less recognised than the functions of information provision, image building, and investor services. IPAs are well placed to identify problems in the investment and business environment through their working relationships with international and domestic companies. They may act as the chief advocates for foreign investment and business within the government. They

is also frequently a main channel of feedback to government policymakers on the concerns of foreign investors and other businesses striving to achieve international competitiveness. By documenting the benefits of foreign investment to local consumers, workers, enterprises and offices and communicating to branches of government the advantages of less and more efficient regulation of business, IPAs became key players in the investment climate change.

In broad terms, policy advocacy has two main dimensions:

- Working in partnership with the public sector:

  General policy advocacy towards other government ministries, agencies and the broader public about the need for investment climate reforms (this may include all facts and arguments as to how beneficial FDI can be) in general and on specific reform projects (e.g. on planned reforms or impact of reforms conducted already).

- Working in partnership with the private sector:

  Working with investors (existing and potential) to elicit information on issues that may hinder or obstruct investment. When a (larger) investor actually starts the process he has to be guided through the regulatory institutions and here on his particular license and his particular incentive payment.
  There is also a policy advocacy dimension that the IPA can cater to with the regulatory or approving Ministries and Agencies to ensure proper implementation by all parties. This is particularly the case of large and potentially sensitive projects, such as a construction of a large dam, where there is a need for a public communication strategy on a specific investment project.

Morriset and Andrews-Johnson, FIAS (2003) find that IPAs which spent more time on policy advocacy, were more successful in attracting investors, possibly because of the role of such advocacy in leading to improvements in the investment climate. Measures to promote and facilitate investment (marketing, servicing investors) can be more successful if they take place within the broader context of an overarching strategy for improving the investment environment, which involves mainstreaming investment issues across a broad range of policy areas that affect the investment climate. Concentrating solely on investment incentives has not paid off in a number of countries.[7] Equally, promotion that ignores measures to improve the investment climate is likely to be less effective.

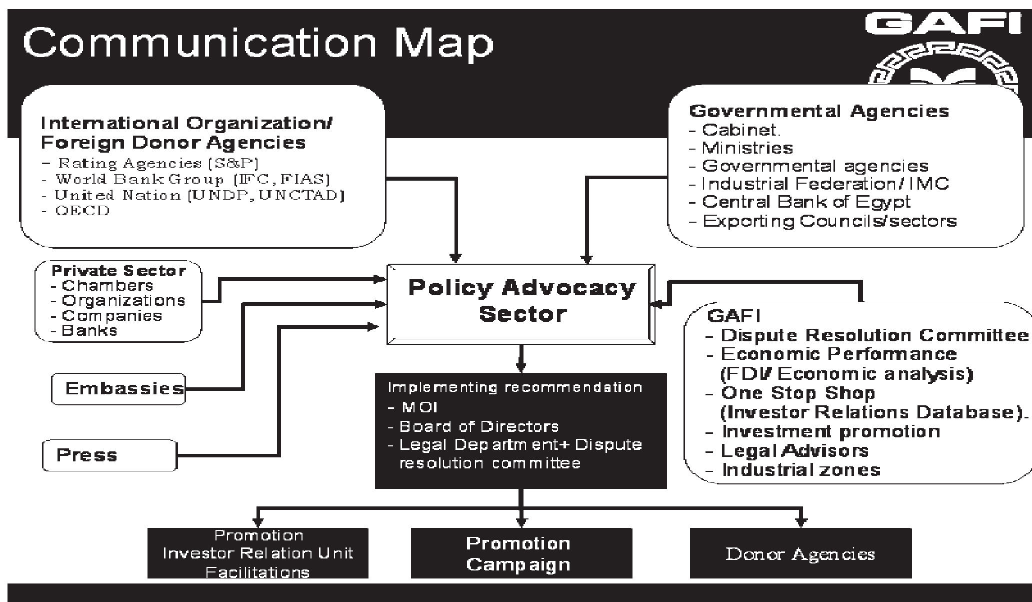
In brief, improving the investment climate is central to effective and successful investment promotion. The predominant message from relevant research and case experience is that IPAs should at all stages of their organisational evolution, seek to focus on this. This requires constructive policy advocacy by IPAs.

B. Other institutions involved in policy advocacy

Apart from business associations, a wide range of institutions can be used to support the policy advocacy functions of IPAs:

- Specialised media reporting on the country's and the region's reform process (Economic Intelligence Unit, Middle East Monitor, AME, others);
- Foreign Embassies, commercial and economic sections;
- Professional service firms
- International organisations
- Foreign donor agencies.

Figure 5. Policy Advocacy 'flow chart'



Source: From GAFI Presentation, Towards an Effective Vehicle for Policy Advocacy, 21 December 2006, OECD NIRA workshop.

C. Building the Policy Advocacy Function

Policy advocacy can cover a multitude of issues and actions by IPAs. IPA insights on policy issues and needed reforms will arise from:

- Requests from investors for information and advice;
- Feedback and case experience from existing investors;
- Private sector dialogue with IPA;
- Policy task forces or committees;
- Comparative international indices that rank countries.

Gathering and disseminating information that benchmarks a country's performance or analyses the costs (or potential loss of new investment) can build better awareness and understanding of the need for reform. It can also help to mobilise support amongst key players for reform. Policy advocacy by a IPA, with its special knowledge and insights from investors, can play a central role here either directly with the IPA or in conjunction with other key public sector actors (e.g. Competition Councils).

Global competition is dynamic and changing – other countries and regions are improving their national competitiveness positions. Relative competitiveness is crucial in pursuing the vision in national development plans and meeting global challenges. The IPAs' work process and activity might usefully be examined to see if it can be better tailored to contribute to meeting this objective. Some illustrative methodologies and tools to consider are briefly outlined in this paper.

D. Internal organisation of policy advocacy

An example of internal organisation of policy advocacy in the Egyptian government involving different governmental entities. As to the process involved 3 steps can be differentiated:

- **Issue identification**

  Often the issue is communicated to the IPA by a leading player from a certain sector. Other sources of information can be surveys conducted by the IPA and information provided by any institution listed under b).

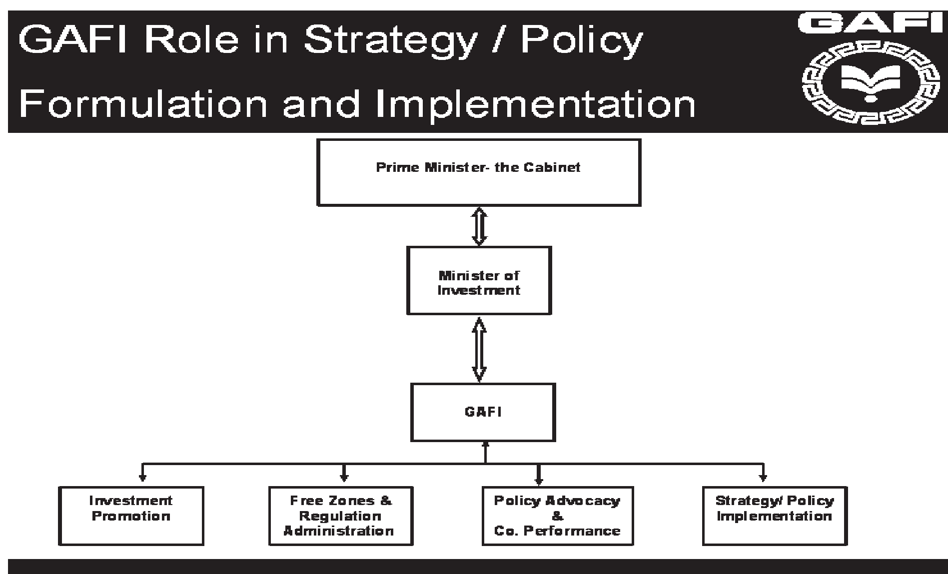
- **Research and data collection**

  Policy advocacy requires the ability to make a sound case to legislators and/or Ministries and agencies involved in the legislative or administrative reform process. For this purpose, the legislative process and political forces impacting on it must be fully understood. Legislative and administrative deadlines must be integrated in the strategy from the beginning. In order to build a strong case, very specialised industry data is often required. The collection of this data can be outsourced, and the IPA staff should concentrate on strategy development and management of the timetable.

- **Process implementation**

  The implementation phase involves many possible scenarios, depending on the kind of strategy chosen for the policy advocacy process. If the strategy involves raising public attention than it would involve media campaigns, high visibility events, etc. The strategy can also be targeted at more inherent deficiencies in the administrative system which prohibit in many countries any open naming and shaming. Efficient networking with the key decision makers is more effective in this case.

Figure 5. Figure 6. Example for Strategy Formulation and Implementation from GAFI



Source: From GAFI presentation, Towards an Effective Vehicle for Policy Advocacy, 21 December 2006, OECD NIRA workshop.

Box 1. Key questions in IPA policy advocacy

Institutional set up and reporting lines

- Does the IPA report to the prime minister or other senior government figures? If not, does it convey its policy advocacy advice to government and how effective is this?
- Is there a close and positive working relationship with the responsible Ministries?
- Is the IPA invited to participate in national policy dialogue and economic planning fora?
- Does the IPA participate in policy committees or task forces dealing with important issues shaping the investment climate (e.g. infrastructure, people and skills development, etc?)
- Does the IPA submit policy analysis and recommendations on change?
- Does the IPA have special (formal) working relationships with key Ministries such as Ministry of Foreign Affairs, Ministries dealing with company registration or labour permits?

Internal Policy Advocacy Capacity

- Does the IPA have internal resources to conduct effective policy advocacy (for example the expertise a to conduct policy analysis, to interpret business needs and to document and articulate policy propos the mandate and budget to conduct research or engage researchers on specific issues where necessa
- Does the IPA have an internal dedicated department or unit that is engaged in such work (or is it cond people mainly engaged in marketing and therefore given a lesser priority)?
- Does the IPA board focus on the policy advocacy function and seek to ensure a high concentr investment climate issues?

Communication with key actors

- Is there a regular communication with Ministries and senior government officials on policy issues?
- Does the IPA have a good and regular working partnership with the Ministry responsible?
- How effective is communication with private sector groups (investor associations, chambers, etc.) such groups invited in a systematic way to provide insights on the investment climate to the IPA?
- Are international indices or similar tools used to channel discussion with public and privat representatives?
- Does the IPA link with competitiveness councils or similar bodies where they exist and what is the joint working (e.g. on research studies, analysis of specific issues, joint surveys)?
- To what extent does the IPA liaise with universities and seek greater industry/university links?
- To what extent does the IPA foster linkages between international and domestic companies (what steps are taken here)?

Future opportunities

- Has the IPA engaged in research on new emerging sectors?
- Has the IPA sought to organize a cross ministry/agency approach to specific issues that could help to investment in such sectors (e.g. on intellectual property, on education/skills, on joint research and dev initiatives)?

Concrete examples of good policy advocacy

- Can the IPA point to initiatives that it has taken and that have lead to policy change?
- What does the IPA see as areas where it can make a contribution to improving the investment climate?
- Is there sufficient awareness of the role the IPA plays in policy advocacy?

Source: MENA-OECD Investment Programme, 2007.

E. Conditions for Effective Policy Advocacy by an IPA

The attraction of FDI and sustainable development connected with FDI require an active, continuing and committed support of the government and of different groups of actors and stakeholders. Having established the vision for FDI policy within the overall economic development and competitiveness strategy for the country, it is important that an IPA together with the government plays a proactive role in articulating that policy, promulgating it to all social partners as well as to existing and prospective investors.

The process of not just communicating the vision, but also advocating change and reviewing policy performance should ideally be inclusive and objective. The active involvement of investors in that process and in the dialogue on needed policy change will lead to better policy development and implementation. All of this process is at the heart of policy advocacy by the IPA.

Key issues that will influence the effectiveness of an IPA's efforts in undertaking policy advocacy are the conditions in which the IPA operates, how an IPA views the priority of policy advocacy and indeed its policy advocacy capacity. These may be issues that IPAs need to review and strengthen if they are to be more effective.

Some questions for IPAs to consider here are outlined in Box 1.This brief list of questions is not exhaustive and may be added to by IPAs based on their experience in conducting policy advocacy and communicating on investment climate reform.

II.4.4. BUSINESS ASSOCIATIONS AND POLICY ADVOCACY

Modern states and their administrations are complex structures which have the difficult task to manage public interest objectives without over regulating business formation and operation. Governments can create obstacles to private sector driven growth and job creation as pointed out by many business and investor surveys conducted in OECD and non-OECD countries. Business associations, be it Chambers of Commerce, sectoral organisations, national organisations or foreign investor councils can play a vital role in providing relevant information about obstacles created by governmental activity to government officials, influencing legislative processes and helping governments to effectively communicate the need for economic policy reforms to affected constituencies.

The independence from the government and from single interests of particular members is a key requirement for an effective and credible policy advocacy process organised by business associations. It should also be highlighted that reform processes and the policy advocacy function which can be conducted by business associations may differ between democratic and authoritarian governments, between presidential and parliamentary systems and between unitary and federal states. Any recommendation must be thus developed with great care and can only be taken as a general guidance which needs to be adopted to the political and economic reality of the individual country.

In principle, business associations play two important roles: first, by creating a functional network, they address common issues and provide various services and facilities for their members, i.e. enterprises that often suffer from a lack of information and resources. Second, they act as agents between private enterprise and the government.

The interests of private business vis-à-vis the government may include alternative policy recommendations and claims for changes and reforms to enhance the investment climate. It can be said that in emerging economies, the second role of the business associations is more important than in developed countries, because unlike the developed countries featuring market economies with necessary rules and institutions, the emerging economies often lack a stable and predictable business environment.

The role of business organisations can be even more relevant in countries where economic activities are conducted mainly by small and medium sized business enterprises, as it occurs in the MENA region. In these countries, the nascent private enterprises often lack adequate resources and capacity to formulate and effectively propagate alternative policies targeting the enhancement of the investment environment. There is also no clear consensus on the advantages of a domestic free market economy neither among the rulers nor the general public.

Enterprises and business associations can fill this gap by assuming a policy advocacy role. For this role to be credible and in order to inform policy makers about existing obstacles and propose measures for reform, the first important task for any business association is the collection of credible information. Membership surveys and research conducted by external resources can provide the necessary basic information about how certain regulations and administrative practices affect negatively business growth and future investments. The better this data is collected, the more compelling will the advocacy case be.

Box 2: Policy Advocacy Step-by-Step Approach

For best results, a step-by-step approach to developing a business advocacy program and include (1) staff research and policy recommendations on issues, (2) committee deliberations, acceptance, and recommendations of staff policy recommendations, and (3) board of directors' deliberations and acceptance of committee policy recommendations, is recommended:

- Establish a public policy committee to analyze legislative and regulatory issues;
- Have the association's staff conduct legal and economic research on key issues;
- Present issue briefs to the committee and then brainstorm various solutions;
- Review hot issues that are being discussed by the politicians and the news media;
- Set priorities by determining which issues can really be influenced by the association;
- Gain membership input on those priorities through surveys and discussion meetings;
- Draft specific policy positions which the public policy committee will approve and recommend to the board of directors.

The board should vote on the recommendations from the public policy committee and take firm stands on the issues. Once adopted by the board, the positions become a public policy agenda. That agenda then serves as the program of work for public policy advocacy efforts for the business association.

Develop a legislative strategy for gaining support for the association's policy positions.

Make sure all persons involved understand and support the strategy. The political process should be clearly defined.

Educate the membership on the need for change and mobilize the grassroots network of the association to gain public support.

Communicate with the membership by sending them newsletters, legislative updates, and legal research papers filled with reasons for the proposed changes.

Hold seminars and workshops to explain the details of the proposal.

Sponsor social events and invite key lawmakers to help convince them of the rightness of the cause.

Ask the membership to educate their own employees, suppliers, customers, families and friends. Remember, democracy is a numbers game – a majority of votes will determine the outcome.

Write letters to elected representatives and explain policy positions, and make direct contact to explain how the position of the association is good for the entire economy and for the people.

Provide testimony before legislative or regulatory bodies on specific pending bills.

Write thank-you letters to all politicians involved in the process, even those who did not vote the right way. There will always be a future issue on which their votes will be needed.

Continually track the proposals passing through the legislative process so that additional follow-up action can be taken if necessary

Source: Center for International Private Enterprise, Business Associations for the 21st Century, 2005.

In the next stage, internal legitimation has to be generated by presenting collected data and a strategy to internal policy committees composed of the key members affected by the policy. The leading figures in such an internal committee can also play an important role in promoting the advocacy case vis-a-vis the government. In fact, practice has shown that the presentation by an affected businessperson can underline the authenticity of the concern.

The strategy will often be developed in the form of a policy paper which will need to be approved by the internal committee in charge of the issue area. After all internal approvals are gathered, the delivery of the information is the key service a Business Association has to perform as an effective policy advocate.

Box 2 provides an overview of the development and implementation of an effective policy advocacy process by a Business Association.

II.4.5. REGIONAL AND MULTILATERAL CO-OPERATION SUPPORTING POLICY ADVOCACY FOR THE MENA REGION

This paper highlighted the various initiatives and actions IPAs and business associations can take to strengthen their strategic approach to FDI and business facilitation and improve their policy advocacy function in such work. In summary, some areas where IPAs and Business Associations in MENA countries could play a role include:

- Informing decision makers on the need to introduce investor and business friendly rules and regulations (using for example, the World Bank 'Doing business in 2007' data and OECD Policy Framework on Investment as a guide to check comparative status and best practice);
- Assessing and put the needs of investors into political and policy systems;
- Involving investors in policy proposals that affect investment promotion and in the government decision process;
- Creating a space for public argument and discussion in issues related to investment;
- Suggesting approaches and alternatives to solving investors' problems through their insights from investment projects and links with investors.

Strong momentum for reform can also derive from regional integration processes and networks of policy dialogue often organised by international organisations. The trend can be mentioned in the MENA region to conclude Free Trade Agreements and Regional Integration Agreements containing market access for investors, investment protection and promotion provisions. MENA countries' own initiatives include the Arab Free Trade Area which aims to establish a free trade zone among 18 members of the Arab League by 2008. In order to update the existing agreements and to bring them in line with international developments, the Council of Arab Economic Unity approved in 2000 the Agreement on the Encouragement and Protection of Investments and Transfer of Capitals among Arab States by virtue of decision No. 1125/71 of 7/6/2000.[8]

Japan started to promote Economic Partnership Agreements which include elements of FTAs based on the premise that they "contribute to the development of Japan's foreign economic relations as well as the attainment of its economic interests as a mechanism to complement the multilateral free trade system centering on the WTO.[9]" More regional agreements are foreseen with the United States where the U.S. Trade Representative (USTR) has engaged in intensive negotiations with a number of Arab countries to develop bilateral trade agreements which it hopes will result in the Middle East Free Trade Area (MEFTA) by 2013.[10]

In pursuing this goal, the US administration announced a six-step process for MENA countries to become part of MEFTA: (1) Joining the WTO; (2) possibly participating in the Generalised System of Preferences; (3) trade investment framework agreements (TIFAs); (4) BITs; (5) FTAs; (6) participating in trade capacity building. Morocco, Jordan and Bahrain have concluded FTAs with the

United States, and similar agreements with Oman and the United Arab Emirates are being explored. MENA countries are also strengthening their ties with the European Union by negotiating and implementing the Euro-Mediterranean Partnership Agreements. Tunisia, Morocco, Egypt and Jordan only recently signed the Agadir Agreement committing them to negotiate an FTA by 2006. Currently the EU is engaged in FTA negotiations with the countries of the GCC.

A. MENA-OECD Investment Programme

Some MENA countries have over the last years made considerable progress in key areas of investment climate reforms and their experiences may assist other MENA countries in developing FDI strategies and especially their policy advocacy for reform and progress. A platform for this exchange of good practice in the region is provided, amongst others, by the MENA-OECD Investment Programme. The MENA-OECD Investment Programme was founded in 2004 to support the emerging policy advocacy function of IPAs and the relevance of an improved investment climate for the attraction of more investment – domestic or foreign. During its initial phase, the key objectives pursued by the Programme were to:

- develop and document the state of development of the investment related legal and regulatory framework in the region;
- establish time-bound investment reform targets for the countries participating in the Programme and work on their implementation;
- create regional networks of private sector participants, key organisations, and country Ministries and Agencies.

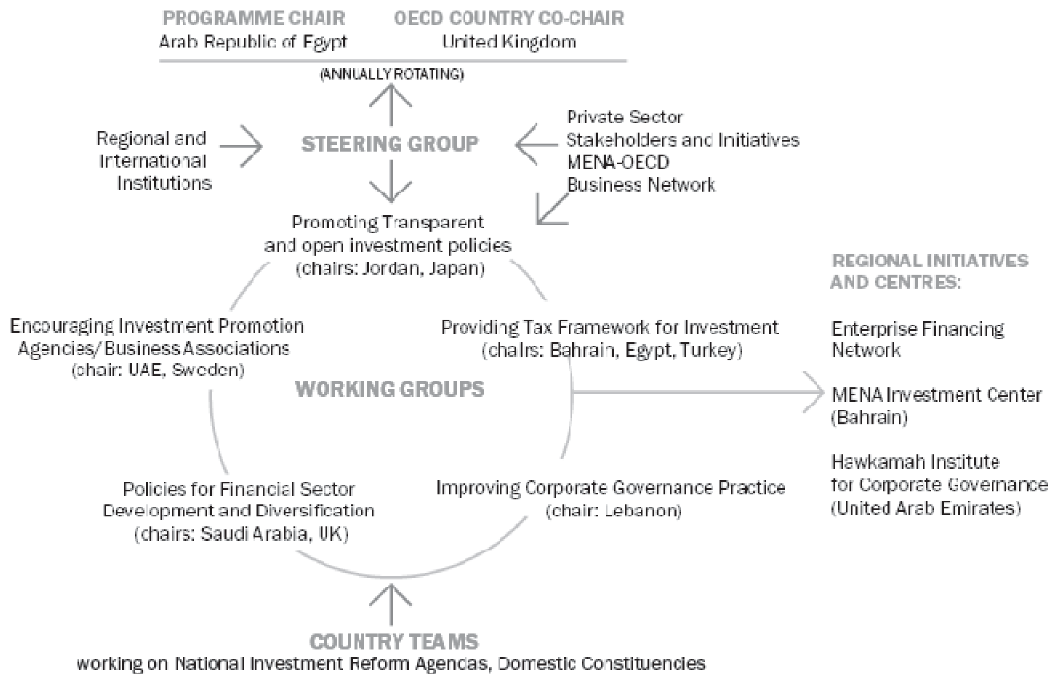
Meanwhile and in relation to the first objective, the Programme has taken stock of the regulatory environment, recent developments and key challenges in areas related to investment policy, investment facilitation, taxation financial sector development, corporate governance and women entrepreneurship. Work at the national level related to the second objective of the Programme - establishing time-bound investment targets for the improvement of the investment environment.

To this end, National Investment Reform Agendas (NIRAs) have been elaborated with MENA governments. These Reform Agendas include concrete measurable targets to be achieved within a period of 6 to 12 months. The Steering Group has reviewed and encouraged this process at its meetings held in April and October 2005 in Paris and Istanbul and presented to the Ministerial Meeting and Business Day on 13-14 February 2006 in Jordan, which was attended by delegations of 16 MENA countries, represented by Ministers or high level representatives from the relevant Ministries. The meeting concluded with a Declaration on "Attracting Investment to MENA Countries – Common Principles and Good Practice". Ministers also endorsed an ambitious programme for regional dialogue and capacity-building developed by the Working Groups. The Ministers noted the National Investment Reform Agendas developed by MENA countries and encouraged their implementation.

With respect to the third objective, the Programme has succeeded in developing a wide network of private sector organisations (i.e. the Arab Business Council, Business and Industry Advisory Committee to the OECD), regional organisations (the Arab Union of Banks, TOBB), as well as other private sector participants who continue to attend the meetings of the Programme. Additionally, the MENA-OECD Business Network organised a Business Day preceding the Ministerial Meeting, as well as awarded 24 companies from the region with an 'Investor of the Year' Award for innovation and employment creation.

Finally, several MENA countries have demonstrated an interest in participating in activities of the OECD Investment Committee and adhering to the OECD Declaration on International Investment. Egypt has become a member and Jordan and Morocco have started a procedure to adhere to the OECD's Declaration on International Investment and Multinational Enterprises.

Figure 7. The Structure of the MENA-OECD Investment Programme



B. Policy Framework for Investment (OECD)

The OECD Policy Framework for Investment is a non-prescriptive tool that provides a checklist of important policy issues for consideration by governments interested in creating an environment that is attractive to all investors and in enhancing the development benefits of investment to society, especially the poor. In this way, the framework aims to advance the implementation of the United Nations Monterrey consensus, which emphasised the vital role of private investment in effective development strategies. The framework is not a volume of ready-made prescriptions but a flexible tool to frame and evaluate policy challenges that countries face in pursuit of development. The ten chapters draw on good practices from OECD and non-OECD countries (officials from about 60 countries participated in its development) and cover:

- Investment policy;
- Investment promotion and facilitation;
- Trade policy;
- Competition policy;
- Tax policy;
- Corporate governance;

- Policies for promoting responsible business conduct;
- Human resource development;
- Infrastructure and financial sector development;
- Public governance.

In the Framework, over 80 questions are posed and annotative text gives background on issues. This framework provides a valuable tool for IPAs and Business Associations to consider in developing their policy advocacy and in assessing policy reform for consideration.

C. The OECD 'Investment Reform Index'

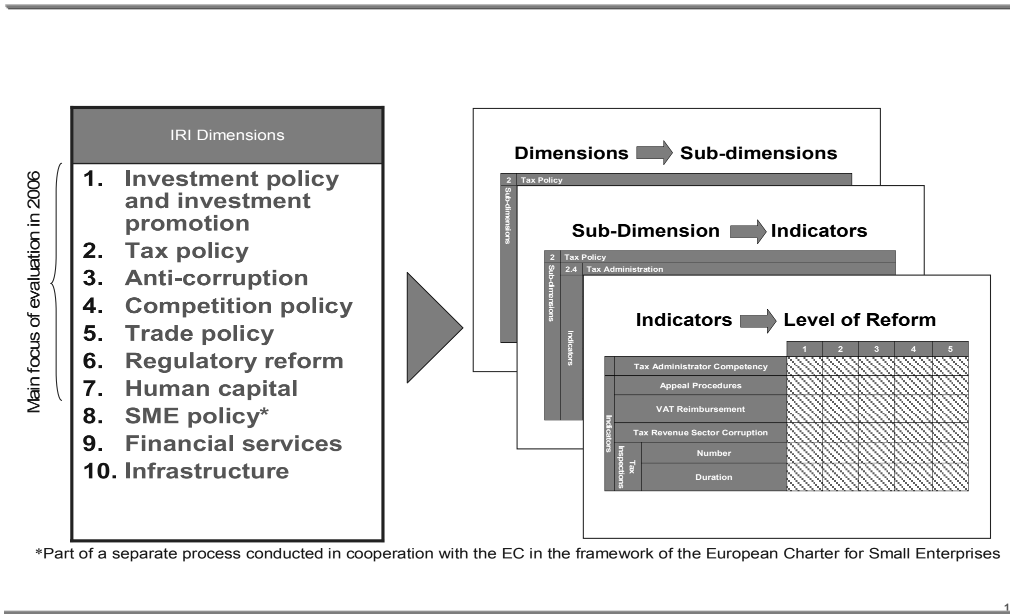
The Investment Reform Index (IRI) has been developed by the OECD to assist the countries of South East Europe in monitoring and driving the progress of reform along 10 key dimensions. [11] The policy dimensions and process of identifying sub-dimensions and indicators are illustrated in Figure 8. Many countries have identified key areas for reform and various international reports over the years have highlighted issues for action. What is often missing in reform efforts is a clear focus on where action is needed and a modus operandi lead by countries themselves to tackle the underlying factors. Policy discussion and policy dialogue may remain too much at a general level without adequate focus on critical sub-dimensions or sub-indicators that may be the root obstacle and cause of lack of progress with reform.

By focusing on concrete underlying factors, the IRI seeks to shift obstacles to reform and to communicate clearly to policy makers where the problem lies and where action is needed. Through the use of a rating system, through 'self analysis' and through comparison with other countries in the region, individual countries can better track their relative progress with reform. Achieving reform is a positive step in all instances but may not be that significant in competitive if neighbouring or competing countries are moving much faster with similar reforms. The IRI therefore has the advantage of giving insights into this relative progress with reform issues. It is also a capacity building process for policy makers within the country concerned as it is not simply an external evaluation but a process in which policy makers themselves play a lead role. The scope of the IRI can be extended, as required, to draw comparisons with other OECD countries where relevant.

The main distinguishing and differentiating factors of the Investment Reform Index (IRI) are:

- **Focus on a very specific region/country** where history, culture and geography allow for more relevant benchmarking with competing countries/regions.
- **Tripartite participatory approach** to evaluation and measurement involving government, private sector, and the OECD.
- **Comprehensive evaluation of the investment environment** structured along ten key dimensions (additional dimensions may be added) in line with OECD standards.
- Does not only measure but also provides guidance on how to improve through good practices.
- **"Meta – Index",** which incorporates existing work already conducted by other organisations (e.g., World Bank's Doing Business reports).

Figure 8. OECD Investment Reform Index



The IRI is a practical tool for policy makers to play a central role in monitoring progress of reform priorities.Based on the IRI, the MENA-OECD Investment Programme will in its second phase develop a **Business Climate Development Strategy (BCDS)** to evaluate the business climate and define priorities for reform implementation in selected countries of the MENA region.

II.4.6. CONCLUSIONS

The above tools are examples to illustrate how policy makers and IPAs - in their policy advocacy role - can use methodologies that will enhance their work. In some MENA countries, significant efforts have been made to examine and improve competitiveness. IPAs could benefit from considering how they might use them in their policy advocacy work. Through the use of such methodologies and tools, MENA countries and their IPAs could potentially enhance the structuring and focus of their reform efforts.

In this context, dialogue on policy reform would not just be in response to the latest international report issued or discussion on the next priority but on a regular and systematic approach. It would be concentrated on agreed concrete indicators of policy performance, reviewed at regular intervals and show how action and progress are being achieved (or not achieved) with these. Clearly the process and agreement on relevant policy dimensions, sub-dimensions and indicators would need to be fully discussed and agreed in advance. The use of such methodologies has the further advantage of making clear to all participants where discussion needs to focus and communicating to all the relative progress. The introduction of these methodologies demands a process over time and expert guidance.

Progress on competitiveness in the range of policy areas should ideally be systemically monitored in comparison to major trading partners and main competitor countries for FDI (‘comparator countries’). A crucial factor for effective dialogue and successful policy reform is for policy makers to use comparative methodologies and practices for examining policy issues, for making comparisons with selected competitor countries and for benchmarking regularly progress against agreed indicators. Through regular benchmarking and comparison of policies, established international data and indices (e.g. OECD, World Bank, UNCTAD, and various investment climate and competitiveness studies and surveys), the process of reform implementation can be strengthened.

NOTES

1. Defined here in its simplest terms as advocating policy change and reform to improve the investment climate and thereby promote new business and investment.

2. UNCTAD, 2002.

3. UNCTAD, 2002, World Bank, 2005.

4. OECD, 2002.

5. The scope of an IPA's activities can of course be wider or narrower than depicted in this chart. It can extend to investment policy (e.g. especially where an IPA is located within a Ministry), and include issues such as privatisation, constructing or managing export processing zones, etc. or it can focus on some of the functions listed in the chart.

6. The functions listed reflect findings and reports from various sources, for example, World Bank/World Development Report, 2005; OECD, 2002; FIAS/Morisset and Andrews-Johnson, 2004.

7. McKinsey, 2003.

8. http://www.arabinvestmap.com/default.asp?PageId=4&CurrentLanguage=EngLang&agrID=4 .

9. Para. 1 of Basic Policy towards further promotion of Economic Partnership Agreements (EPAs), approved by the Council of Ministers on the Promotion of Economic Partnership on December 21 2004, http://www.mofa.go.jp/policy/economy/fta/policy0412.html .

10. For details, *Mary Jane Bolle*, Middle East Free Trade Area: Progress Report, CRS Report for Congress, 2005.

11. OECD Investment Compact for South East Europe 'Designing the Future – Making Investment Happen for Employment and Growth in South East Europe'. See also www.investmentcompact.org

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Annex II.4.1.

INTERNATIONAL INDICES AND COUNTRY RANKINGS THAT GUIDE INVESTORS ON INVESTMENT CLIMATE COMPARISONS AND COMPETITIVENESS OF COUNTRIES

	World Economic Forum Index Ranking 2006[1]	World Bank 'Ease of Doing Business' Ranking 2007[2]	Economic Freedom Rankings 2006[3]
Algeria	76 ↑	116 ↑	124 ↓
Bahrain	49 ↑	n/a	40 ↓
Dijbouti	n/a	161 ↓	n/a
Egypt	63 ↓	165 ↔	80 ↓
Iraq	n/a	145 ↓	n/a
Jordan	52 ↓	78 ↓	48 ↓
Kuwait	44 ↑	46 ↓	24 ↔
Lebanon	n/a	n/a	n/a
Libya	n/a	n/a	57 ↓
Morocco	70 ↑	115 ↑	95 ↔
Oman	n/a	55 ↓	24 ↓
Palestine National Authority	n/a	127 ↔	n/a
Quatar	38 ↑	n/a	n/a
Saudia Arabia	n/a	38 ↓	n/a
Syria	n/a	130 ↑	111 ↑
Tunisia	30 ↑	80 ↓	68 ↑
UAE	32 ↑	77 ↓	12 ↓
Yemen	n/a	98 ↑	n/a

Sources: International surveys – see footnotes.

1. World Economic Forum – Global Competitiveness Index, country rankings 2006. The rankings shown are from a total of 125 countries surveyed and with arrow showing the trend in 2006 versus the previous year.
2. World Bank/IFC annual survey on cost and ease of 'Doing business in 2007', rankings of MENA countries shown from total of 175 countries surveyed.
3. Heritage Foundation ranks freedom from government regulation in 130 countries based on 10 factors covering economic performance, government efficiency, business efficiency and infrastructure.

I.5. ONE-STOP SHOPS FOR BUSINESS FORMATION IN THE MENA REGION

INTRODUCTION

Time consuming and burdensome procedures for establishing a business are often cited as obstacles in business surveys on the investment climate in OECD and non-OECD countries alike. Requirements to acquire licenses for establishment and conduct of a business are used by all governments for a variety of reasons. However, amongst OECD members, data suggests that different countries use it to differing degrees: some administer a few hundred licences, while other, several thousand. There is a strong argument to reduce the burden on business caused by excessive use of licenses since they create barriers to new start-ups, hamper innovation and cause market distortions by creating an incentive to the investor to lobby regulators for anti-competitive practices. Transparency problems seem to be another key challenge faced by business confronted with overly burdensome licensing requirements.

The number of administrative procedures a private investor is facing corresponds to the number of external parties involved in the establishment of a business. The number of days and the official costs associated with each procedure are easy to interpret: the higher those numbers, the more cumbersome and costly the registration process and the less likely it is that many entrepreneurs will register businesses. Informal obstacles (availability of utilities, restrictions to the acquisition of land etc.) may be perceived as further barriers to entry.

In the best of all cases, two procedures are sufficient for a basic business registration: company registration and notification with the tax and social security administration.[1] Indeed it takes two procedures, two days, and less than 1 percent of annual income per capita to register a private limited-liability company in Australia. It costs nothing to do the same in Denmark and almost nothing (about 1 percent of annual income per capita) in Canada, New Zealand, Singapore, Sweden, the United Kingdom and the United States. Obviously, sensitive sectors where additional regulation applies require further licensing.

To bypass or accelerate existing procedures where they are dysfunctional, One-Stop Shops (OSS) are an institutional structure governments often adopt. OSS can be hosted in Investment Promotion Agencies but also as part of line-Ministries dealing with most business relevant licensing requirements or in company registers. Numerous OECD and MENA governments have been introducing reforms to ease the registration procedures for new businesses. According to the 2005 OECD survey on Regulatory Quality Indicators, half of the countries surveyed had a national programme underway to simplify licensing procedures for business. In a number of other countries, permits and authorisations were converted into notification and reductions of documentation requirements were undertaken. Similar reforms are being considered or undertaken in non-OECD member countries as well. Creating OSS for company registration was the most popular reform in 2005-2006 among other policy measures to facilitate business establishment.

An OSS can be defined an office where applicants and others interested in government services can obtain the information necessary to their query in one location. They are also referred to as a “service counter” or a “single window’. OSS in the forms of business establishment facilitation services are offices where businesses can obtain integrated services with as few and accessible points of contact, i.e. identify relevant licenses, provide application forms, contact details and may even have authority to grant the license itself.

II.5. 1. EMERGING BEST PRACTICE OF OSS FOR LEANER BUSINESS REGISTRATION AND LICENSING

Whatever the objectives of an OSS could be, there is a strong argument to reduce the burden on businesses caused by excessive use of licenses since the latter create barriers to new start-ups, hamper innovation and cause market distortions. Lack of transparency seems to be another key challenge faced by businesses confronted with licensing requirements that can be addressed through the creation of a one-stop shop. While this premise currently has a wide global acceptance, significant questions remain as to how an OSS should be designed in terms of the institutional set-up and what process re-engineering that requires.

In principle, an OSS can have two different ambitions. It can serve the purpose of facilitating investors' dealings with all the licensing authorities involved by concentrating licensing authority in the agency itself. Alternatively, its mission can be limited to simply streamlining and coordinating the registration, notification and licensing process with the different ministries and agencies involved. International good practice and emerging practice in the MENA region point to the need to strengthen the function of OSS in the first sense suggested above as real licensing concentration entities.

Much can go wrong here. It has been sufficiently highlighted in recent surveys on OSS, that the concentration of licensing competencies - in particular for the compliance phase - in the OSS can prove unrealistic or simply duplicating responsibilities of line- Ministries with no easing effect for the business client. In the worst case, the OSS becomes only 'one-more-stop' for the investor to deal with. Services of an OSS may also be limited to helping out in the company registration and notification phase. This shows that the introduction of an OSS as such is not a guarantee for any considerable streamlining of startup formalities if within the OSS framework: the different Ministries involved still maintain differing and cumbersome procedures.

A. Using OSS for Company Registration

For ease of reference, three phases can be differentiated for the company formation process. The impact OSS in the MENA region have on streamlining these steps differ. While phase one and two can be more easily streamlined by introducing OSS for business registration, streamlining the phase three needs more serious regulatory reform efforts – a task often overstepping the competencies of an OSS and its hosting agency. The three phases are:

- **Registration:** The actual company registration or incorporation when a legal entity is established. The formal registration act is issued by a Court or as an administrative act.
- **Notification:** The notification of the established new company to different agencies, notably tax administration and social security – labour and employment agencies.
- **Compliance:** In a final phase, all the necessary licenses and permits must be acquired. Compliance with standards especially on environment, health and safety can be a burdensome and long process for a company to go through.

OECD and many MENA governments have been introducing reforms to ease the registration procedures for new businesses. The registration and the notification phase were the first targets, but broader administrative simplification strategies have been launched in a number of countries often directly launched by the Prime Minister's office or by a special Ministry. One approach has been the establishment of OSS as part of the services provided – for example - by Investment Promotion Agencies. These business establishment facilitation services are offices where businesses can obtain integrated services with as few and as easily accessible points of contact, i.e. identify relevant licenses, provide application forms, contact details and may even have authority to grant the license itself.

The approach taken by many OECD countries and increasingly in the region is to adopt a comprehensive reform strategy in the government with highest political support targeting in particular the compliance requirements, i.e. the permits and licenses procedures required for business formation. Licenses can be abolished altogether, they can be combined with similar licenses ("concentration effect of one license") or the whole procedure can be re-engineered. OECD countries have been applying in the past certain basic assessments while re-engineering their licensing policies, which include:[2]

- The use of licenses only where there are clear risks to the public associated with the conduct of the business and apparent information problems for consumers;
- Renewal requirements being adopted only where there is a substantial need to verify continued competence and suitability to undertake the business;
- Qualification requirements being directly and substantively related to the ability to carry out the business without risks to the public;
- Informational and procedural requirements being restricted to the minimum necessary to verify the above.

For the specific case of business start-up registration requirements, a number of recommendations have been developed to streamline all three phases of the business formation phase – registration, notification and compliance. Evolving international good practice which is reflected already in many MENA governments for the specific purpose of business start-up registration is outlined in Box 1.

It is common knowledge that for the business registration process, the most relevant streamlining effect can be achieved if the court registration requirement is dropped. This requirement typically causes the greatest delay and involves the judiciary unnecessarily into an administrative procedure.

For reforming the compliance phase, the concept of temporary licenses needs to be highlighted. This tool is increasingly used internationally for facilitating business operations in sectors not requiring specific care such as most commercial and manufacturing. It is an expression of the risk assessment approach recommended in Box 1. Temporary licenses are meant to encourage the investor to start implementing the project until the permanent license from the competent authority has been issued. The temporary license can have a concentration effect in that it encompasses all licenses required for a specific project. The issues to be tackled involve the question to which degree the investor can derive a legitimate expectation from a temporary license that the authority will grant finally a favourable license and with what qualifications. The possibility of judicial review of the final licensing decision can be an issue of importance for the investor – domestic or international.

Box 1. Good Practice in Business Registration

Business Registration and Notification phase:

Courts are not used for registration, instead administrative personnel is taking care of the formal registration act;

Notaries are used to a lesser extent;

Silent is consent principle applied for general and non-risk registration acts/licenses;

Online registration in a countrywide database is available, instead of using a newspaper publication requirement;

The capital requirement is nominal or zero;

Costs involved are only a fixed registration fee;

Standardised registration forms are used;

Reducing the number of company registration numbers;

Use procedural flowcharts showing step-by-step necessary requirements;

Use e-government tools (maintain an electronic exchange of data amongst agencies).

Good practice business operating licensing (compliance phase):

Use procedural flowcharts;

Consolidate project licenses in a single license when possible;

Introduce a risk-assessment approach focusing higher administrative requirement on sensitive cases;

Use temporary business licenses.

One-Stop-Shops for business formation:

Number of ministries/agencies which are represented in OSS;

Number of ministries/agencies represented in OSS which have direct licensing authority;

Front office and back office function separated.

Source: MENA-OECD Investment Programme, World Bank Doing Business, 2004-07.

Good practice mentioned in Box 1 underlines the key recommendation for establishing an effective OSS which highlights the importance of re-engineering licensing procedures themselves. It is also commonly suggested that the remaining agencies maintain an electronic exchange of data. This way the necessary documents flow within the public system and do not force the investor to go from one authority to the next one.[3]

B. OSS Organisational Issues

In terms of the institutional set-up, an OSS can be hosted in an Investment Promotion Agency in a line-Ministry dealing with business relevant licensing, or can become a part of a Company's Registrar. However, what is important is not which agency or ministry is hosting the OSS, but that this entity has a real policy advocacy function *vis-à-vis* the country's key decision-makers. At least 13 countries in the MENA region have established some kind of OSS as part of their investment promotion efforts, and many of these OSS are often integrated into Investment Promotion Agencies.

Another important institutional feature of OSS is their dependency or conversely, independence from the line Ministries. Its effectiveness also relies on the political will to reform the administrative procedures involved with the licensing process. This underscores the need of a strong policy advocacy function for the IPA. Successful OSS have been often operated by IPAs with strong policy advocacy function, even up to the Prime Minister level. In this sense, the OSS is to be seen as an expression of a government's commitment to investment policy reform for all government ministries and agencies involved in the investment promotion.

One of the key political challenges for the implementation of a successful OSS is the authority of the OSS over representatives of other Ministries/Agencies who are situated in the OSS office. The political relationship between the Ministries and the OSS has much impact on the final institutional design of an OSS. Another political aspect is the principal-agent relation which arises when a Ministry (principal) is represented in the OSS by a representative (agent).

The Ministry represented in the OSS and acting as a principal will almost certainly not transfer all competences for screening and approval procedures to the OSS in an unqualified manner. As a result, the agent located in the OSS is likely not to be completely empowered to take decisions which overstep the competences of the principal. At the same time, the agent can exercise his own discretion while deciding on applications. It reflects good practice, if the agent is empowered by the principal to decide the majority of applications autonomously using a risk assessment approach in the screening stage of the application procedures. The questions which have to be answered in design of any OSS are therefore as follows: does the OSS have authority over the representatives of ministries/agencies, and secondly, are the representatives themselves independent from the institution they represent?

In this context, it is important to differentiate between the roles of the delegates to the OSS and the liaison officers between the OSS and the Ministry. The delegate from a Ministry or an Agency can act as a real licensing authority within the OSS in that he or she has the power to approve any licenses, decrees, procedures, documents and contracts on behalf of his authority. The liaison officer, on the other hand, has only the competence to receive an investor's application, documentation/fees and transfer them to his Ministry/Agency. In this case, the approval procedure itself is still handled by the Ministry or Agency. The key difference between the delegates and the liaison officers rests in the competence transferred to the OSS.

Furthermore, the efficiency of the agent's work is not dependent on his autonomy but on his ability to communicate with the sending institution. Use of electronic data transfers and electronic files can be a key step for improving this communication challenge.

Other realistic expectations as to what can be delegated to an OSS are as crucial for the success of the OSS as the authority exerted by its leadership. This aspect relates to the point mentioned above: the OSS can only be as effective and powerful as the IPA hosting it.

Another issue which has to be tackled in implementing an OSS relates to the need to separate back and front offices. Investors should not be permitted and do not have to circulate in the back office. Limiting points of contact between the business and the government officials increases also the transparency of the transactions undertaken.

Administrative simplification raises points of government coordination beyond the questions concerning the institutional set-up of the OSS, but more generally, linked to the access of all government services (i.e. 'whole of government approach'). Process re-engineering thus needs to play an important role in order to identify possibilities for streamlining procedures and creating a simpler system for business registration and licensing. In re-engineering existing processes, risk-based approaches need to be adopted in order to allow delivering better regulatory outcomes while reducing the costs incurred by the majority of low-risk businesses as unnecessary inspections or data requirements.

Box 2. Main features of successful one-stop shops –
An extract from the OECD Policy Framework for Investment

The main targets of OSS are…

…to quicken and simplify the process of starting a new business.

…to advocate the policy process by conveying the experience of established investors to the government and raising the governmental awareness of over-complexity of regulations.

These targets can be achieved by…

…providing information both specifically on necessary steps to start and expand a business to potential investors and generally on the regulatory and legal framework as well as the investment climate and reform plans of a country.

…providing services to speed up the granting of necessary permits and licenses in a centralised, comprehensive and high-quality way.

Services provided by an OSS include…

…specific assistance with administrative practices necessary to establish a business.

…general attendance of the investment process both before and after the business is registered, for example by arranging visits of established investors, providing advice, arranging matchmaking, assisting during investment negotiations, supporting the financing of the investment, facilitating the recruitment, etc.

…facilitating and mediating in case of conflicts.

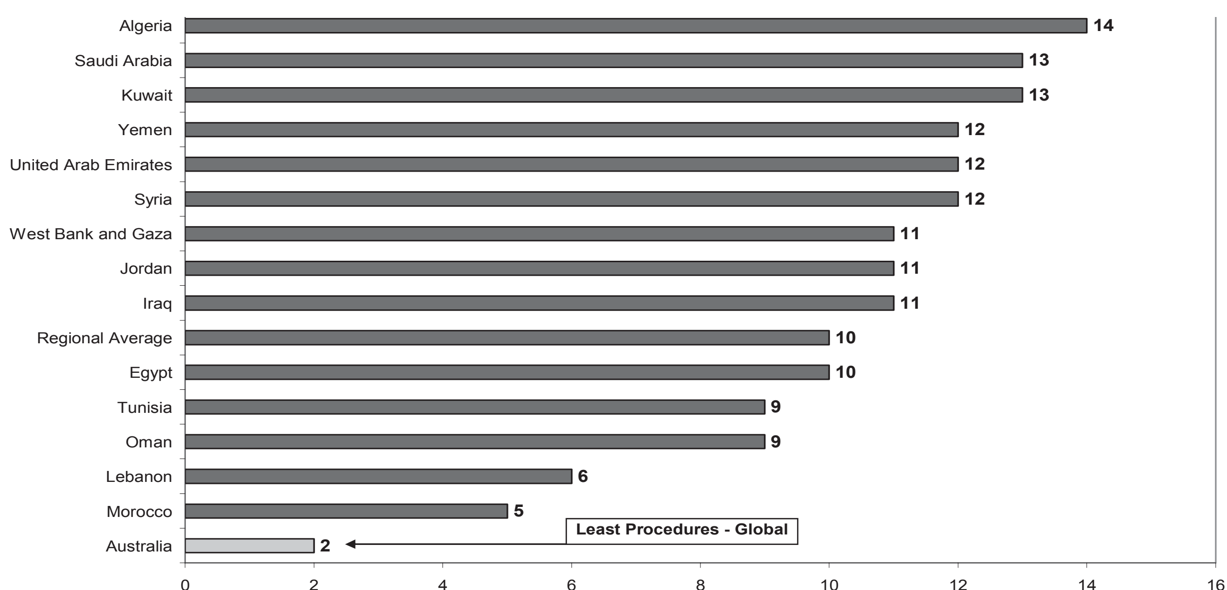
Concerning their competences, the IPAs should consider that ministries and other authorities are often reluctant to transfer their responsibilities to an OSS. Thus, they should cooperate closely and effectively with the relevant authorities instead of trying to internalise all approval and implementation functions.

Source: OECD Policy Framework for Investment: A Review of Good Practices, p. 37 f., 40, 48.

II.5.2. REGIONAL OVERVIEW

The 2007 World Bank Doing Business Report highlights that the procedures involved in establishing a business in the MENA region range from 6 in Morocco to 13 in Saudi Arabia and 14 in Kuwait, therefore portraying a picture of enormous regional disparity. Based on data for limited-liability companies, Figure 1 shows that the regional average for starting a business is 10 procedures with 5 being the best performer and 14 the worst.[4] The OECD average in 2006 was 6 procedures, 10 days and 5.3 % total costs.

Figure 1. Benchmarking Entry Regulation: Procedures to Start a Business

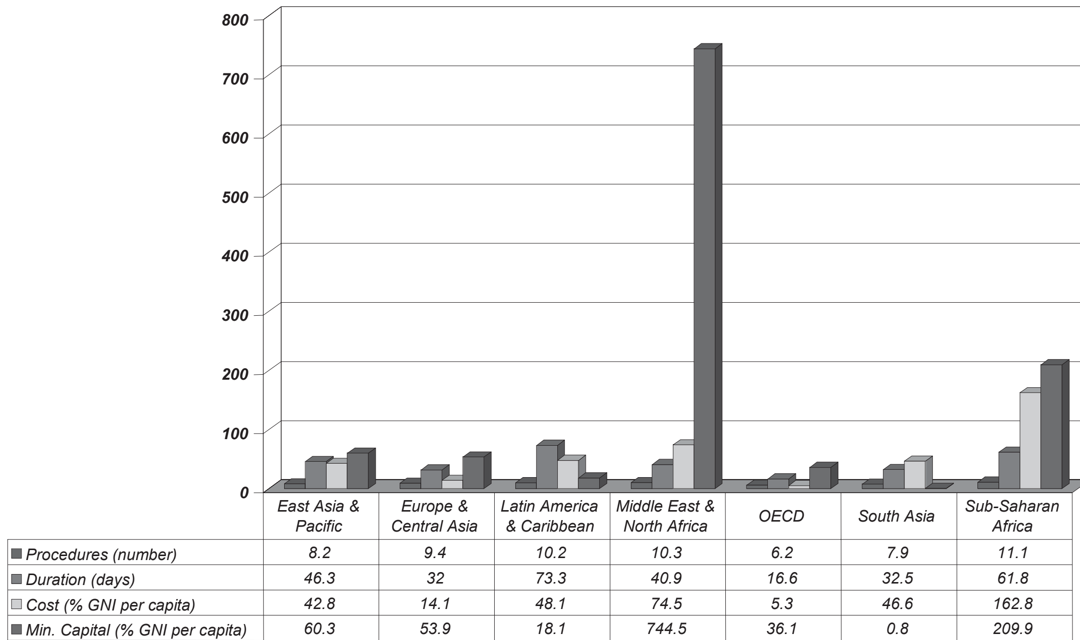


Source: World Bank, 'Doing Business", 2007.

During 2006-2007, further reforms were introduced by MENA countries in the area of enterprise licensing and registration. For instance, Morocco reduced the time needed to obtain new licenses for construction firms by 10 days, by establishing a OSS in Casablanca to provide better communication between the relevant agencies. Syria added an additional step for new companies to enforce publication requirements.

In particular, the MENA region stands out with its high minimum capital requirement. The minimum capital requirement ranges from 280% in West Bank and Gaza to just over 1% in Kuwai.[5] While the overall picture does not distinguish the MENA region notably from other emerging economies region in the world, Figure 2 shows that the high minimum capital requirements are a strong characteristic for the MENA region as against other regions and that they decisively exceed the usual practice.

Figure 2. Starting a Business (By Region)



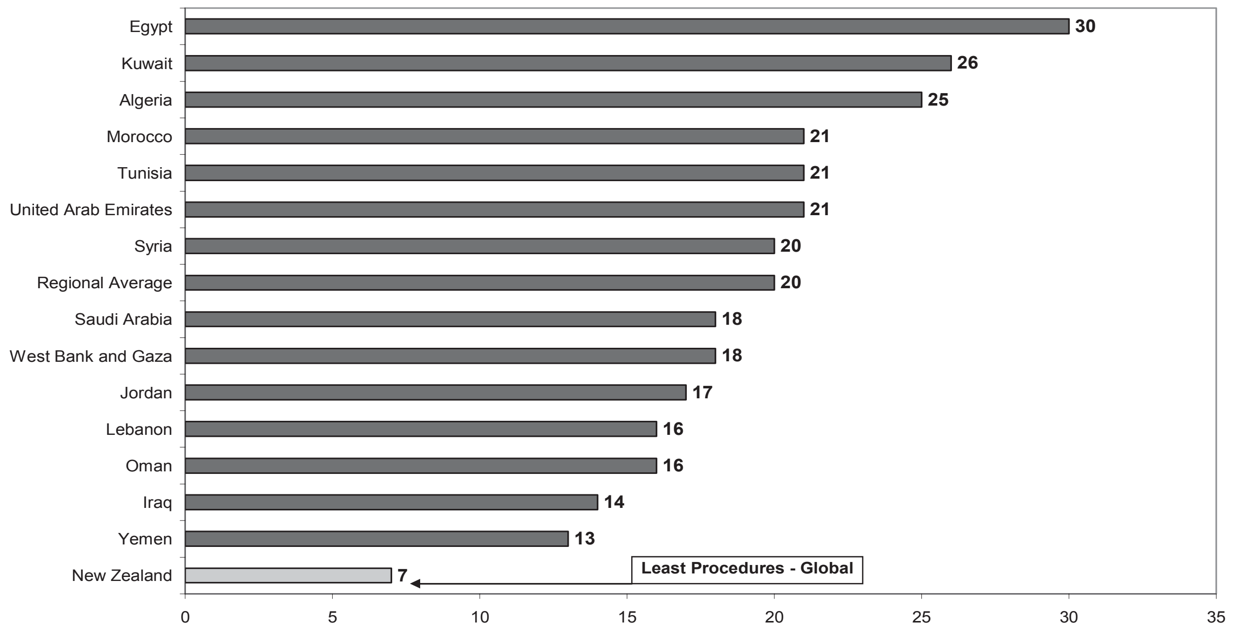
	East Asia & Pacific	Europe & Central Asia	Latin America & Caribbean	Middle East & North Africa	OECD	South Asia	Sub-Saharan Africa
Procedures (number)	8.2	9.4	10.2	10.3	6.2	7.9	11.1
Duration (days)	46.3	32	73.3	40.9	16.6	32.5	61.8
Cost (% GNI per capita)	42.8	14.1	48.1	74.5	5.3	46.6	162.8
Min. Capital (% GNI per capita)	60.3	53.9	18.1	744.5	36.1	0.8	209.9

Source: Doing Business Database, World Bank, 2007.

Business surveys, especially for start-up companies, show the detrimental effect of high minimum capital requirement which is blocked in a bank account during the business entry period and sometimes even until the dissolution of the legal entity. This requirement can block capital at the time when it is most needed, i.e. at the beginning of a business operation, be it for cash flow or collateral purposes. As an alternative to minimum capital requirements, policy concerns with respect to the liquidity of business operations can be better addressed through effective insolvency legislation and procedures. Reform of insolvency procedures and creditor rights remains a key challenge in the MENA region, which is being addressed in the Working Group on Corporate Governance in the MENA region, established under the MENA-OECD Investment Programme.

Figure 3 demonstrates that the regional average to obtain the necessary licenses is approximately 20 procedures. This is reflecting investors' perceptions of the region expressed in surveys that overly burdensome administrative procedures prevail particularly in the compliance phase.[6] The Figure shows very different results for some countries as compared to their scoring in Figure 1 – the registration phase. Clearly, reforming the compliance phase is the more difficult task for any administration. A strong commitment to a targeted reduction in administrative costs and procedures, as well as the designation of one central government agency with direct authority over all ministries responsible for business operating licenses and the involvement of the private sector, were key measures for successful reforms in many countries over the last years.

Figure 3. Procedures to obtain a License



Source: World Bank (2007). "Doing Business'.

Annex I demonstrates that MENA countries are increasingly implementing international good practices on making effective use of one stop shops and implementing other administrative simplification measures. Egypt, Jordan and Saudi Arabia are not using courts for business registration but administrative decisions which are regarded as more efficient. Online registration in a countrywide database is more and more used, as are standardised registration forms.

II.5.3. CASE STUDIES

A. The Egyptian Experience: GAFI and the One-Stop Shop

Company registration in Egypt is done under the Investment Law or the Company Law and is handled by the General Authority for Investment and Free Zones (GAFI) through its OSS. While the procedures and documentary requirements for investors are almost identical under the two laws, differences remain. Registration under the Companies Law requires investors to apply directly to the Companies Department, where an approval does not lead to the automatic application of benefits.

The newly revised investment law (Law 13/2004) eliminated exemptions and tax holidays stipulated in the Investment Incentives and Guarantees Law No. 8 dated from 1997. The exemption cancellations were not applied retroactively. This had already an effect on the number of companies using the two different legal procedures for establishment. While in 2005, 3569 companies were established under the Investment law No.8, 1612 companies under the Company law No.159, the numbers for 2006 were 973 and 924 respectively.[7]

The Egyptian Cabinet approved in 2001 the establishment of an OSS to empower GAFI to be the authority to coordinate and issue the required permits, licenses and approvals from the competent agencies in the government. With decree No. 636/2002 from the Prime Minister, a system of delegate and liaison officers of Ministries and other Authorities was established inside GAFI's OSS.

The OSS in the Cairo gathers representatives from 52 Ministries and government agencies authorised to provide an investor with almost all necessary licenses and approvals required for the establishment of businesses (according to Law No. 8, 1997, and Law No.159, 1981). This includes in-house approval of business licenses. In cases where the approval has to be referred to the responsible parent Ministry, GAFI acts as an intermediary which receives applications and then forwards them to the responsible Ministry or agency. Offices of commercial registry have been also transferred to the OSS.

The key features of the OSS are:

- A unified legal formation system for both establishment processes, under the company law No.8 and the investment law No. 159;
- One authority to establish all companies - GAFI and its branches;
- Businesses/the investor have to deal only with one GAFI representative who then follows up internally with the respective delegates/liaison officers from ministries/authorities;
- All the fees for the various licenses required are paid in one sum only one time through the branch of the Alexandria Bank located in GAFI.

GAFI data on business licensing suggests that in Egypt the number of ministries that participate in business licensing is 22, the number of other governmental and non-governmental entities that participate in business licensing is 78 and the total number of required approvals, licenses and permits is 349. The average number of licenses a business registration project requires range from 12-25 licenses.

Box 3. Phases involved in establishing an enterprise in Egypt

A. In the pre-establishment phase, the investor chooses the sector/activity in which he desires to invest, based on which the process to be followed and approvals to be obtained are determined. GAFI oversees 69 activities, and the investor deals with 71 entities under the responsibility of 22 ministries. The minimum is 8 entities for the investor to deal with, and a maximum of 25 entities, varying according to the activity.

B. Phase of Establishment:

Required procedures to incorporate a company

- An application to establish the company should be submitted on the special form prepared for such purpose.
- Selecting the type of the company [a joint stock company or a limited partnership]
- Obtaining a certificate from the Commercial Register proving that the name of the company is unique and shall not cause confusion.
- Issuing the power of attorney to take the necessary procedures to incorporate the company.
- Preparing a landscape map showing the site of your project in case the project is located in one of the governorates of North or South Sinai.
- Obtaining a certificate from CMA If the capital of the company contains a corporeal share.
- Issuing a bank certificate proving that 10% of the issued capital has been deposited [in the case of joint stock companies] or that the amount of capital is paid in full [in the case of a limited liability company].

Required procedures to register a foreign company's branch

- An application to the head of the investment commercial registration
- A photocopy of the constitutive structure of the head office.
- A copy of the head company resolution to assign a manager for the branch in Egypt.
- A copy of the head company declaration of having no previous branch in Egypt.
- A bank certificate proving transferring an amount of hard currency equal to LE 5000 under the branch name.
- A copy of the possession or lease contract for the place, or the contracting contract approval.
- The approvals of the concerned ministry according to the company's activity and the ministry of supply.
- An Arabic version of said documents should be endorsed by Egyptian Embassy.

C. Phase of preparation towards operation:

- Purchasing the land.
- Obtaining the license for building from the municipalities.
- Purchasing/Importing the equipment.
- Obtaining the license to operate (doc. 453 municipalities): from 1 to 6 months.
- Obtaining the approval from the technical bodies supervising this activity (there are different procedures depending on the activity).

D. Phase of operation:

- Operations kick-off date: 4 weeks.
- Consulting the legal advisor: If YES then go ahead, if NO then go to the Expansions Committee for further steps ending with approval/disapproval.
- Report to be approved by the Chairman of GAFI.
- Notifying the Tax Authority

Source: Ministry of Investment/GAFI, taken from the Investment Policy Review of Egypt, 2007.

There are successes which can be reported following the introduction of an OSS at GAFI. Until the introduction of the OSS, delays in obtaining licenses reached up to one year and investors had to visit an average of 25 Ministry departments to obtain a license. The last Doing Business study of the World Bank still estimated 19 days for a company to start a business in Egypt. According to GAFI, company establishment takes now 3 days maximum in 90-95 % of all cases. This shows that the approach taken – concentrate on facilitating the majority of cases, while leaving more sensitive ones to a more extensive screening procedure – is successful. The remaining challenge will be working on streamlining procedures for the 5-10% sensitive cases.

With respect to the monitoring of established investors, GAFI conducts regular surveys and has established a complaint department for investors. However, as this information is not made public, it is difficult to know to what extent it informs further improvements to the system. That GAFI operates within the Ministry of Investment, along with other agencies that are relevant from an investment perspective, ensures that the agency is consulted and involved in matters having an impact on investment. Furthermore, the Ministry of Investment and the Ministry of Trade and Industry maintain close ties with GAFI which further ensures coherence in policy on investment matters.

GAFI's performance is regularly reviewed and evaluated by its board of directors on the basis of a number of indicators, including the number of new projects registered, the volume of inward FDI flows, the number of jobs created, and exports. The board of directors is comprised of 4 government officials and 7 high-ranking private sector representatives, including currently one representative from a foreign MNE.[8]

A recent investment policy review conducted by the OECD noted that additional steps should be taken to streamline administrative procedures. Although GAFI promises that it will process all the requirements for an application within 72 hours (and assigns an employee to take responsibility for each investor), this system is likely to come under severe strain at times when the number of investment projects increase if the number of different requirements are not reduced. In effect, the administrative burden of making an investment in Egypt largely remains, but has been shifted to some extent from the investor onto GAFI.

A number of limitations still exist which need to be addressed in the next round of improvements:

- An assessment of its effectiveness should now focus on how to improve the interaction with other government ministries and agencies that have or have not yet representatives based in the OSS. The number of representatives from line-ministries in the OSS should be increased and the possibility of concentrating licensing requirements in one single license issued by a single official should be assessed. The number of liaison officers should be reduced by substituting them with fully delegated agent with approval authority.
- Still some projects need a prior approval from other authorities not based in the OSS (tourism, health). Also, companies falling outside the scope of investment law 8 cannot be established in GAFI (financial services firms only with the Capital Market Authority).
- Some conditions for business formation are not covered by the GAFI's competencies. This encompasses issues like utility connections, fire extinguishers, local construction permits, tax cards and some licenses. These elements may still have an important influence on the business formation process and can cause significant delays.
- The communication of the key services offered by the existing OSS to potential investors should be improved and the OSS approach needs to be replicated in GAFI offices outside Cairo. The services need to be rolled out in other parts of the country. The challenge is to

maintain the same level of service than in the Cairo headquarters. Operation manuals can be helpful to achieve this end.

B. The Jordanian Experience: JIB and the One-Stop Shop

Company registration in Jordan is conducted through the one stop shop located in the JIB. As such, courts are not used for business registration. At the OSS, investors are able to register and license their projects within 14 working days. The OSS was a first step on the way of simplifying procedures in Jordan. The OSS combines representatives from the Jordan Investment Board (JIB) as well as from most of the governmental Ministries and Agencies dealing with the registration and licensing of projects. These representatives are the Ministry of Industry and Trade, the Ministry of Interior, the Ministry of Environment, the Ministry of Municipal and Rural Affairs, the Greater Amman Municipality, the Ministry of Labor, the Ministry of Health, the Ministry of Tourism and Antiquities and the Department of Land and Survey. There are also liaison officers at 13 other ministries and agencies, however, only 4 of the Ministries represented in the OSS have direct licensing authority. The Jordan investment board, and consequently the OSS, has strong policy advocacy function, reporting directly to the high levels of the Executive.

The launched OSS provides the following services:

- Registration of projects according to The Companies Law.
- Issuing temporary licensing approvals for the start-up of projects.
- Issuing visas and permanent residency approvals for investors and foreign labor needed for the project.
- Follow up services.

The OSS provides services to projects in the following sectors: Industry, Agriculture, Hotels, Hospitals, Maritime transport, Railways, Leisure and Recreational Compounds, Convention and Exhibition Centers in addition to projects in Pipeline Transportation, and Distribution Services for Water, Gas and Petroleum Derivatives as well as its Exploitation, or any other investment project which has a 50,000 JD non-Jordanian share.

Online registration in a countrywide database is not available yet but the Jordan Investment Board is working on this project, and online registration will be available by the end of 2008. Standardised registration forms and procedural flowcharts showing step by step requirements are used. Concerning business operating licensing, procedural flowcharts are used, project licenses are consolidated in a single agency and risk-assessment approach is utilised.

Costs involved are not one fixed registration fee and the minimum capital requirement for the business registration is 50.000 JD. E-government tools are not used to streamline exchange of data among Ministries and Agencies.

C. The Saudi Experience: SAGIA and the One-Stop Shop

In the Kingdom of Saudi Arabia, courts are used for business registration. Online registration in a countrywide database is already available. Standardised registration forms and procedural flowcharts showing step by step necessary requirements are used. Costs involved are not one fixed registration fee and the minimum capital requirement as a % of income per capita was 94%.[9] E-government tools are already used to streamline exchange of data among Ministries/Agencies.

The One Step Shop was designed to carry out one of SAGIA's main functions: facilitating the provision of services to potential investors. The One Step Shop is SAGIA's "one-stop shop" solution aimed at minimising the number of formal steps associated with investment in the Kingdom. The functions of the launched One-stop shop are licensing investment projects, providing facilities and support services required for investment projects, supplying potential investors with information pertaining to different phases of the investment project, coordinating with other government ministries and organisations.

The One Step Shop's objectives are:

- Providing investors with all information regarding foreign investment regulation, tax systems, and lists of all the available investment activities in the Kingdom, or any excluded foreign investments;
- Helping Investors filling the forms and applications, and completing all necessary papers in order to get the license;
- Informing Saudi and foreign investors about all the required procedures to obtain an investment license;
- Organising symposia and meetings for businesswomen or who are willing to join the investment field.

The OSS combines representatives from most of the governmental agencies dealing with the registration and licensing of projects. 9 Ministries and 4 Departments are represented in the OSS and they have a direct licensing authority. Front office and back office functions are separated. Concerning business operating licensing, procedural flowcharts are used, project licenses are consolidated in a single agency and risk-assessment approach is well introduced.

CONCLUSIONS

The data collected so far allows to conclude that an emerging international consensus shared by more and more countries in the MENA region recommends comprehensive strategies for business formation reform, including the use of OSS. Cutting unnecessary steps from the entry process, such as notary's certification of all incorporation documents or registration with the local Chamber of Commerce, introducing single registration forms, a single company identification number, and silent consent in approving registration forms (a non response implies approval) are measures to streamline the formation of business in the registration and notification phase. The costs involved for the business registration, especially excessive minimum capital requirements, should be reduced to encourage would-be entrepreneurs to invest their capital.

Online registration facilities and the assembly of all delegates from Ministries and Agencies involved with real approval authority in the OSS can help to further streamline business start up. Working on convincing Ministries to further delegate licensing authority to a representative in a one stop shop using a risk assessment based approach will remain a key challenge.

Further use of electronic tools for online applications and e-transfer of data to enhance the communication flow between the OSS and the Ministries/Agencies should be considered. This may also gradually lead to the establishment of a business register, which not only serves the purpose of identifying the defaulting entrepreneurs, but also as a positive business record base. Some countries have turned this vast information data base into a public, fee-based commercial registry that may issue credit ratings, perform analysis and provide business intelligence information, provided it involves legal information and violates no privacy or confidentiality.

For the compliance phase, the concept of temporary licenses can play an important role in unblocking investment projects especially in more sensitive sectors which are stronger regulated. However, rights of the investor and the scope of his legitimate expectations must be clearly defined. Judicial review of final decisions of the licensing authority should be possible.

Finally, the usefulness of OSS particularly in the compliance phase depends largely on the question how many formation cases officials representing other agencies and ministries can directly approve or whether they serve only a windows function collecting information. This difference is closely related to the weight and policy advocacy function of the entity – often investment promotion agency – which is hosting the OSS.

NOTES

1. OECD (2006). “From Red Tape to Smart Tape”.
2. Ibid., p. 75 et seq.
3. World Bank, 2002
4. This includes only registration and notification phase requirements.
5. World Bank, Doing Business, MENA 2007.
6. The data is based on the construction of a warehouse and records all officially needed procedures including utility connections. This gives a very realistic perspective from the point of view of any investor.
7. GAFI, 2006.
8. OECD, Egypt Investment Policy Review, September 2007.
9. Doing Business Report, 2007.

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Annex 1. GOOD PRACTICES IN MENA COUNTRIES

Country	Good practice in business registration											Good practice business operating licensing		
								One-Stop-Shops in investment promotion agency are established						
	Courts are used for business registration	Online registration in a countrywide database is available instead of using a newspaper publication requirement	Costs involved are only one fixed registration fee	Standardised registration forms are used	The capital requirements are nominal or zero	Procedural flowcharts showing step by step necessary requirements are used	E-government tools are used to streamline exchange of data among ministries/agencies	Number of ministries/agencies which are represented in OSS	Number of ministries/agencies represented in OSS which have direct licensing authority	Front office and back office functions are separated	Investment promotion agency has strong policy advocacy function	Procedural flowcharts are used	Project licenses in a single agency consolidated	Risk-assessment approach introduced
Egypt	NO		NO	YES	NO	YES		52		YES	YES	YES	YES	
Jordan	NO	IN PROGRESS END 2008	NO	YES	NO	YES	NO	9	4	YES	YES	YES	YES	YES
Morocco	YES	YES, NOT FOR ALL OSS	NO	YES	NO	YES	YES	6	5	YES	YES	YES	YES	NO
Saudi Arabia	NO	BOTH ARE AVAILABLE	NO	YES	NO	YES	YES	13	13	YES	YES	YES	YES	YES

Source: MENA-OECD Investment Programme, 2007.

Country	Courts used for Business Registration	Costs involved are only one registration fee	Standardised registration forms are used	The capital requirement is nominal or zero
Algeria	YES	NO	YES	NO
Bahrain	NO DATA	NO	NO DATA	NO
Egypt	NO	YES	YES	NO
Iraq	NO DATA	NO	NO DATA	NO
Jordan	NO	NO	YES	NO
Kuwait	NO	NO	YES	NO
Lebanon	NO	NO	YES	NO
Morocco	YES	NO	YES	NO
Oman	NO	NO	YES	NO
Qatar	YES	NO	YES	NO
Saudi Arabia	NO	NO	YES	NO
Syria	YES	NO	NO DATA	NO
Tunisia	YES	NO	YES	NO
UAE	YES	NO	YES	NO
Yemen	NO	NO	YES	NO

Source: MENA-OECD Investment Programme, 2007.

II.6. EFFECTIVE STRATEGIES FOR COMMUNICATING ECONOMIC AND INVESTMENT CLIMATE REFORMS TO THE MENA REGION

INTRODUCTION

A quarter of a century has passed since the modern economic reform movement from state to market control got underway. Since the implementation of significant economic reforms in the 1980-1990s, particularly in Asia, Latin America Eastern Europe and the Middle East region, policy analysts and academics have been debating questions relating to the optimal design of these reforms in terms of their substance, sequencing and modalities of implementation. The proposed answers to these questions gave rise to a vast body of literature on the political economy of reform, which has rapidly expanded over the years, building on initial experience with structural economic reforms.

Following the initial wave of economic restructuring or the so-called '*big picture'* reforms, which were generally macroeconomic in nature, the need for '*second stage'* reforms which would further enhance growth became apparent in many countries. It is generally acknowledged that while first stage reforms, often induced by economic crises, have been difficult to put in place, second stage reforms have in some countries been even more contested by various interest groups. While this observation is based on the experience with numerous developing and developed countries, it clearly depends on the nature of first stage reforms undertaken and the country's economic structure at the outset of the reform process.

In a number of cases, big picture reforms have been politically less contested because they were triggered by events requiring urgent responses such as a financial crisis. Their implementation was made easier by the availability of models of economic reform which were promoted by the international financial institutions, the prescriptions of which were widely accepted at the time. However, the implementation of second stage reforms, which often implies the execution of a detailed reform programmes, such as development of a regulatory regime for privatised enterprises, has been even more challenging – not necessarily in terms of the substance of the proposed reform, but in terms of presenting it to the broader public.

Collective experience demonstrates that second stage reforms may be more difficult to undertake due to the challenges in the political process and potential resistance from stakeholders, thus necessitating a deeper level of analysis (Krueger, 2000). Second stage reforms are often perceived by academic community and practitioners as having less obvious goals, involving multiple actors, and challenging existing interest group constellations. The implementation of second stage reforms often implies the execution of detailed programmes, in some instances therefore encountering significant opposition from the affected constituencies who perceive their interests negatively affected by the reform ambitions of their governments.

The idea that the initial reforms are less contested and that they precede more detailed reform plans which unevenly affect various constituencies is intrinsically linked to the assumption that many economies at the outset were making the transition from state to market orientation, which required the basic opening as a first step (i.e. permitting the floatation of the exchange rate and dismantling capital controls). Alternatively, the first steps in the transition process have in some instances been necessitated by crises, thus also requiring reforms of a more fundamental nature. While many of the Middle East economies followed this reform trajectory, the idea that big bang reforms always precede

more detailed and increasingly contested reform plans - as was in the case of Egypt after the transition from the Nasser period - is not completely generalisable.

Nonetheless, given that the current reforms of the investment climate in MENA countries, ranging from the recent liberalisation of portfolio investment in Saudi Arabia to privatisation in Jordan, to labour market reform in Bahrain, are affecting key vested interests, the need to engage with these interests appears clear. In fact, politicians and government officials in several MENA countries have realised the need to communicate the reform agenda to affected constituencies, as well as to consult with them throughout the reform process. The objective of the present paper is thus to explore how communication of economic – and more specifically investment climate-reforms – can support governments in the MENA region maintain the reform momentum, build coalitions for reform and engage in a better quality public-private dialogue on these important issues.

As such, this background note prepared for the first *Communication of Reforms Seminar* in the Middle East and North Africa region organised by the MENA-OECD Investment Programme, is designed to provide an overview of theoretical and practical arguments on political economy of reform as it relates to the communication of economic reforms. This document was revised taking into account the commentary made by public officials and private sector participants present during the meeting held on June 26, 2007 in Manama, Bahrain.

Existing literature on political economy of reform has contributed to the more theoretical debate on structuring of the economic policy in order to maximise economic performance by considering questions related to the timing and sequencing of economic reform. In treating these questions, the available research indirectly touches on the issue of acceptability of reforms to constituencies such as labour unions, government employees, consumers of government services and other stakeholder groups which may be affected in the course of reform implementation.

It does not, however, address the question of engaging these constituencies in the reform process as a mechanism of sustaining the reform effort, obtaining feedback from constituencies or minimising resistance from opposition groups. The existing materials on communication of reform focus strictly on the communication strategies and tools without necessarily relating them to the substantial questions of economic reform.

Recognising the rather multidirectional nature of research on the topic, governments, researchers and academic intuitions have started to explore the linkages between the question of the design and implementation of economic reforms, *stricto senso,* and increasing their acceptability to the affected stakeholders. The OECD has launched a project on *Engaging Citizens in the Policymaking* which has produced a number of reports, including *Citizens as Partners: Information, Consultation and Public Participation in Policy Making* (2001) and *Open Government: Fostering Dialogue with Civil Society* (2003). The World Bank has also weighed in this debate with the release of publications such as *Public Communication Programs for Privatisation Projects* (2004) and *Reforming the Investment Climate: Lessons for Practitioners* (2006) which also addresses the communication aspect of reform as a key ingredient for its success.

The rationale for embracing communication as part of the reform process is multi-fold. As mentioned, experience with economic reform undertaken over the last 10 years demonstrates that *second stage* reforms may be more contested than initial reforms, thus requiring greater possibilities for stakeholder feedback and negotiation. Since a solid communication strategy can in itself increase the acceptance of a contested reform and thus enhance the credibility of a government, it can enable the latter to sustain the reform momentum. Communication can also assist improving the image of the

government as a credible and trustworthy partner for the private sector. Indeed, if a potentially contestable reform is being introduced without accompanying messages about the rationale for the reform, the government may experience a backlash to its proposals.

Despite the fact that the challenges and constraints facing MENA policymakers are quite diverse, to date, research directly of relevance to MENA policymakers on communication of economic or investment reforms has not been very developed. For instance, in terms of communication tools that can be used in the region, any communication strategy must account for the availability of electronic media to the general public and the capacity of journalists to cover technical subjects such as privatisation or investment liberalisation. Such considerations, along with culture-dependent aspects of communication, highlight the need to look at communication in the MENA region specifically.

Despite the clear need to understand effective communication strategies in the region, communication - as means of dialogue to analyse and resolve concerns with stakeholders – remains relatively under-explored in the MENA region, in part owing to the following factors:

- Emphasis towards external communication (promotion of investment opportunities) as opposed to internal communication to ensure stakeholder support;
- The ability of some governments to initiate reform without private sector or other stakeholder support;
- Lack of institutional capacity to communicate reforms ;
- Possible underestimation of the potential of informal communication to community groups;
- Insufficient institutional memory in private-public sector dialogue;
- Difficulty in identifying the affected groups and addressing them in a coherent fashion given their geographical dispersion, diverging interests, and other factors which may complicate the delivery of a coherent message from the government.

II.6.1. THE POLITICAL ECONOMY OF REFORM

A. Overview of Debates

The literature on the political economy of reform is rather vast, spanning broad issues such as fiscal and monetary policy, trade policy reform, privatisation and regulatory reform, among many others. While this literature was initially addressed to OECD member countries and then Eastern European countries, the latter undergoing economic transition from socialist to market distribution systems, the lessons distilled from it, remain relevant to other regions. In particular, the various case studies reviewing the implementation of broader economic reform packages and specific initiatives in areas such as privatisation, administrative simplification, and fiscal reforms, may be of interest to MENA governments currently undertaking similar initiatives.

To date, the debates on political economy of reform – the core of which will be summarised below – have focused on the questions of reform timing and sequencing, and well as optimal strategies for reform implementation (*gradual* vs. *big bang* approach). As a background to these debates, the question being considered is whether the significant economic and investment reforms undertaken in developing and former socialist economies over the last few years can be explained in terms of interest group dynamics.

Two schools of thought on this issue have emerged, the first giving prominence to the role of coalitions and interest groups for pursuing reform, the second discounting the role of interest groups as a deciding factor. This debate is further complicated by the unresolved question of whether concentrated interest groups triumph in clashes with the general public.

The first school of thought emphasises the role of interest groups such as labour unions and views policy reform as a coalition building process (Olson, 1982 Waterbury, 1989). The approach suggests that the design of the reform process itself affects the political support for the programme. It argues that when the benefits of a given policy reform are concentrated and the costs diffused, the beneficiary group will recognise that its interests are at stake, and will have a strong incentive to mobilise. Likewise, when the costs of a proposed reform are highly concentrated and the benefits diffused, the affected constituency will have an incentive to mobilise against this reform. In contrast, more dispersed groups such as consumers and tax payers that bear the policy cost may either be unaware of such costs or be indifferent to them. In such an analytical framework, interest groups are often conceived as *veto players*. The need to reach out and communicate reforms proposals to them is therefore evident.

One practical approach building on the recognition of the role of interest groups, the *Poverty and Social Impact Analysis,* has been utilised by the World Bank to analyse the distributional impact of policy reforms on the welfare of different social groups, with a particular emphasis on the vulnerable groups. This approach is tailored to understanding the policy impact of reforms and public actions on social outcomes, analysing the intended and unintended consequences of policy interventions, and designing the mitigation strategies for the reform program (PSIA presentation, 2006). This approach is supported by a detailed methodology, which includes templates to analyse reform support and opposition.

The interest groups approach is however, not without criticism. A number of prominent economists have over the years questioned the notion of interest groups as actors with veto power in the economic reform process. Some analysts note that the conception of interest groups as players with veto power able to block reforms is not useful as it does not help to understand the policy process (Krueger, 2000; Haggard, 2000).

One analyst notes that "…on a number of the most important and contested claims, such as the role of interest groups or the political virtues of radical versus gradual reform, there are surprisingly few consistent tests…much more theoretical work to date focuses on the presumed reactions of interest groups and voters, but until we have more systemic information, it is difficult to draw conclusions…" (Haggard, 2000). Looking at the US experience, another observer suggested that "the stunning passage of broad-based reforms in the face of intense clientele opposition suggests that the US political system has a greater capacity to serve diffuse interests than has often been thought" (Patashink, 2003).

Analysts adopting this line of reasoning suggest that in pursuing economic reforms, governments enjoy a degree of autonomy from well-organised interest groups. For them, the question is not whether and under what conditions broad based policy reforms can be adopted, but under what conditions they are politically durable (Patashnik, 2003). Thus, to understand the power of interest group and the need to address specific messages to them in a communication campaign, it is important to look at the background in which such groups operate.

For instance, it has been observed that the most influential interest groups are those that have established continuous and mutually beneficial relationships with a small circle of government officials and lawmakers who control specific areas of public policy. These groups rely on providing unique information and expertise to help decision-makers accomplish their goals. Additionally, it has been noted that at early stages of economic development, business interest groups often cluster in a small number of undifferentiated structures that are sponsored and supervised by government ministries, and only as the private sector grows and diversifies, entrepreneurs begin to prefer more specialised groups that can represent their diverging demands.

In assessing stakeholder influence, the following factors could be considered: their relative power in the country political and economic decision making process, degree of organisation, control of resources, power relations with other stakeholders and importance to the success of reform effort (WB-IFC, 2006). In addition to the relevance and constitution of interest groups, the institutional context, the actors' interests and influence, entitlement patters and distributional impacts cannot be ignored either.

While these debates are ongoing in the literature on political economy, they are practically relevant to the question at hand. If interest groups do not play a key role in promoting and implementing reforms, the question of communication and coalition building may not be as prominent as one might intuitively consider it to be. However, if building successful public-private coalitions is decisive for long-term sustainability of the economic reform process, the question of communication to constituencies emerges to the forefront of the reform agenda.

B. Preparing the Reform - Building Coalitions for Reform from Within

In addition to and before communicating economic reforms externally, policymakers need to address opposition factions within their government, possibly in other Ministries and/or in the legislature, depending on the political configuration and other government dynamics. For a

controversial reform programme in particular, policymakers across the government need to be addressed first since their support might be necessary before the reform proposal can be introduced in the public domain. In many cases, even the mere initiation of reform requires support from other Ministries or legislators.

Table 1. The Public and Government Officials' Arenas of Response and Resistance to Reform

Characteristic of reform	Features of reforms in the public arena requiring political support	Features of reforms in the bureaucratic arena requiring bureaucratic compliance
Dispersal of the costs	Costs have wide impact among the population	Costs focus on government institutions
Dispersal of the benefits	Benefits are focused on government	Benefits are not immediately felt by bureaucracy and only in long term by public
Technical and administrative complexity	Reforms have low administrative content and can be done quickly	Reforms are administratively complex
Level of public participation	Reforms require wide public involvement and are visible	Reforms require limited public involvement and are invisible
Duration and visibility of the reform process	Reforms can be achieved quickly and are visible	Reforms require sustained effort with few immediate visible results

Source: Batley, 2004, adapted from Grindle and Thomas 1991.

The importance of creating coalition for reform within the government is underlined by the fact that economic, and investment climate reform specifically, impacts on a number of Ministries (Economy, Investment, and Finance being the most commonly involved). In the case of privatisation reform for instance, a line Ministry which was formerly managing the public entity will also be affected by the reform and will need to be consulted to avoid the future privatisation process being jeopardised.[1] The importance of convincing various parts of the government of the importance of privatisation is underlined by the experience of Kenya, where the privatisation programme was impacted by claims of the opposition members made in the Parliament that it unjustly enriches the elites (Cabanero-Verdoza and Paul Mitchell, 2002).

The need for early stage internal consultations is also highlighted by the fact that politicians and government officials do not necessarily view reforms in the same manner. Organisations within government and interest groups operating in close collaboration with government are likely to be threatened by change (Bianchi and Kossoudji, 2001). Several empirical studies demonstrate that government officials' preference are difficult to change (Allison, 1972; Blau, 1955; Crozier 1964 etc.) and that they may have superior bargaining power as a result of their control of information and ability to distort it when presenting to politicians for decision-making (Berle and Means, 1932; Douma and Schreuder 1998).[2] For government officials responsible for the investor registration process for instance, proposals of administrative simplification may threaten their entrenched interests and thus encounter opposition.

Of course, not all economic or investment policy reform proposals encounter resistance by factions within the government. One can distinguish reforms that become matters of wide public

mobilisation from those that generate response largely from the bureaucratic arena (Grindle and Thomas, 1991). Reform proposals that mobilise the public versus those that mobilise the government officials usually lie in different spheres. The broader public, in its consumption role, is normally concerned with reforms that impact the general interest (such as cost of essential services in a post-PPP arrangement[3]), whereas government officials are normally preoccupied with measures that could affect the activities under their purview.

Certain factors, summarised in Table 1, must be considered when deciding to what extent communication must be addressed to internal as opposed to external constituencies. In particular, the visibility of reforms and their administrative complexity, whether public support is required for their implementation, and the duration of the implementation process, are the crucial factors for deciding to what extent a reform requires public and/or government support.

C. Deciding on Timing and Sequencing of Reform

The research on the economic transition strategies of socialist countries in Eastern Europe as well as on reforms implemented in Asia and Latin America has weighed in significantly on the question of optimal timing of reform. Two approaches have emerged in this debate, one in favour of the *big bang* strategy (David Lipton, Jeffrey Sachs Andrew Berg, Kevin Murphy, etc.) which implies quick and simultaneous introduction of reforms, the other favouring a *gradualist* approach and emphasising sequencing of reforms (Ronald McKinnon, Peter Murrell, Olivier Blanchard, etc.).

The key argument underlining the first approach is that economic reform measures, such as for instance interest rate liberalisation and relaxation of restrictions on activities of foreign banks, are complementary. A multitude of other arguments have been advanced in favour of the of simultaneous or *big bang* reforms. For instance, Lipton and Sachs suggest that new governments should use *état de grace* (grace period) to implement difficult reforms at the same time. Other proponents for rapid reform argue that it generates political support, particularly when the economic instability is high. Another advantage that has been underlined is that large reforms may have important signalling and credibility benefits.

Noting the success of countries such as China in gradually introducing reforms, other observers have argued that gradualist approaches are more effective and more politically sustainable than the *big bang* approach. Analysts have argued "*the sweet pill* of promising results in early reforms to gain acceptance of the *bitter pill* of later reforms" is necessary to sustain the reform momentum (Dewatripont, Roland 1995). Indeed, in specific circumstances where economic reforms are expected to be contested by different constituencies, it may be necessary to first build alliances based on proved policy successes rather than risk blocking the reform effort. To this end, it has been noted that reformers have often tried to do too much and failed in that reforms were not implemented or that their simultaneous implementation caused policy distortions. Gradualism may also be particularly advantageous when the political acceptance of full and immediate reforms implies cost compensations that are beyond the capacity of the government (Dewatripont, Roland, 1992).

Other analysts taking argument with the position that rapid reform realises additional benefits or that it is easier to implement from the perspective of interest groups, point out that the speed with which reforms have been undertaken may have less to do with political circumstances than with the nature of the area reformed. Haggard, for instance, argues that there is little evidence to support the contention that radical reform is less politically sustainable than gradual reform. "Where adverse political consequences have arisen in transition to market, they appear to result not from overly radical

reform but from continuing deterioration associated with the failure to achieve macroeconomic stability. Nor have the predictions of *reform fatigue* proved valid" (Haggard, 2000).

By undertaking reform in a gradual manner, the allocative efficiency is indeed reached in a longer period than with under the *big bang* strategy, however the financial cost and the risk associated with proposing an extensive reform package are also reduced. Gradualist approaches likewise permit the evaluation of consequences of prior reforms before the implementation of further measures, thus allowing for adjustments to be undertaken if necessary. Finally, referring back to the issue of *credibility* identified earlier, the *gradual approach* permits governments to gain credibility in the eyes of the private sector. For instance, a successful establishment of a one-stop-shop could pave the way for more domestically contested investment climate measures such as land reform or FDI liberalisation.

While this distinction between *big bang* and *gradualist* reform approaches is useful, the strategy selected in reality is never as distinct and is context-dependent. The factors which trigger the reform process also determine whether it will be holistic or sequenced, and what the sequencing will be. Based on case studies of reforms pursued, a number of explanations have been put forward to explain the factors that trigger economic and investment reforms. A number of analysts have suggested that major reforms occur when new reformist governments replace status quo incumbents or when the configuration of existing coalitions is altered. Others have highlighted crises as a central variable to explain the initiation of large-scale reforms. Periods of high growth have also been highlighted as an explanatory variable for introduction of reform packages.

All these explanations are to some extent applicable to the MENA region, depending on the time period being observed. Initial structural, macroeconomic reforms in a number of countries such as Jordan and Egypt have began in response to economic crises and were conducted through Structural Adjustment Programmes. More recent investment climate reforms in resource-rich and resource-poor countries alike can be seen in some cases as a result of coming to power of reform-minded cabinets in Ministries of Economy and Investment and in others, as a result of the success of previous liberalisation measures which have led to periods of high growth.

The United Arab Emirates is an excellent example where investment climate reform can be seen as a product of both a reformist government and a success of previous investment promotion measures, which have paved the way for reform of the investment framework being currently undertaken.[4] It seems rather indisputable also that the current investment climate reform momentum is being supported by a period of economic boom and the realisation on the part of many governments that continuing review of legislation and institutional frameworks would serve to increase investment flows.

While the above explores some of the causes for the reform momentum, the extent to which these approaches shed light on the *political economy of investment reform* is a topic that has so far not been much explored. An important stride in this field has been made by the recent IFC-World Bank study on investment climate reforms which has found that political change, crises and international agreements have been ranked as the main triggers of the investment climate reform (2006). The report also suggested that investment climate reforms are being forced on the agenda as a result of spillovers from more specific policy initiatives such as trade or product market reforms and that reformers have taken advantage of international agreements to build popular support for a broader goal to create a climate for change (ibid, 23).

D. The Communication Process and Tools – Points of Interest for the MENA Region

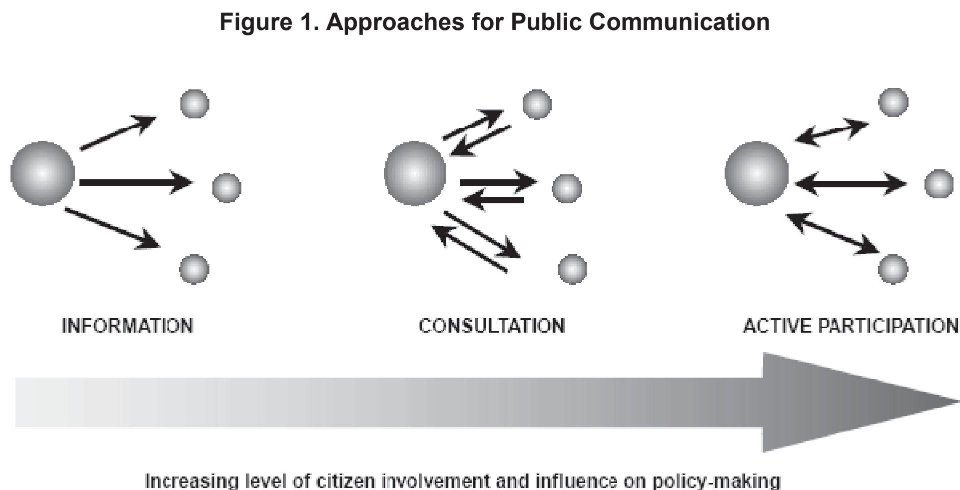
Building on the review of the structuring and implementation of reforms in the face of potential opposition, the following section will examine the communication process and instruments, with a particular emphasis on how communication can be used to gain feedback and enhance reform acceptability.

The Communication Process

For the purposes of this discussion, the communication process is defined as a dialogue aiming to analyse and solve key issues, which is participatory in nature. The objectives of such a process could vary but may include the following: conveying a vision for the country that would be consistent with citizen expectations, obtaining citizen feedback on the reform proposals, improving the process of public-private dialogue and increasing the legitimacy and credibility of reformers. In order to achieve some or all of the above objectives, communication needs to be viewed as part and parcel of government-citizen relations, whereby it serves not only as a mechanism to convey information to the public of the upcoming reforms and their repercussions, but also as a mechanism that can facilitate adoption of new behaviour to help the reforms succeed.

To do so, communication would need to progress from the information phase (demonstrated on the graph below) to the consultation and active participation phases, where the relevant constituents are involved throughout the reform process.

Figure 1. Approaches for Public Communication



Source: Adapted from Health Canada, 2000, reproduced in Citizens as Partners: Information, Consultation and Public Participation in Policy-Making, OECD, 2001.

Viewed this way, communication becomes not an isolated strategy that can be outsourced entirely to public relations and communication specialists, but becomes part of the process of dialogue itself on the proposed reform, which could allow for feedback from constituencies to the government designing and implementing a given reform. If the communication of reform process is approached not as a mechanism of information or consultation, but as one of active participation, it needs to be considered simultaneously with the substantive reform propositions.

The OECD has developed a set of Guiding Principles for successful information, consultation and active participation of citizens in the policy making process, as summarised below.

Box 1. Guiding principles for successful information, consultation and active participation of citizens in policy-making

1. Commitment

Leadership and strong commitment to information, consultation and active participation in policy-making is needed at all levels – from politicians, senior managers and public officials.

2. Rights

Citizens' rights to access information, provide feedback, be consulted and actively participate in policy-making must be firmly grounded in law or policy. Government obligations to respond to citizens when exercising their rights must also be clearly stated. Independent institutions for oversight, or their equivalent, are essential to enforcing these rights.

3. Clarity

Objectives for, and limits to, information, consultation and active participation during policy-making should be well defined from the outset. The respective roles and responsibilities of citizens (in providing input) and government (in making decisions for which they are accountable) must be clear to all.

4. Time

Public consultation and active participation should be undertaken as early in the policy process as possible to allow a greater range of policy solutions to emerge and to raise the chances of successful implementation. Adequate time must be available for consultation and participation to be effective. Information is needed at all stages of the policy cycle.

5. Objectivity

Information provided by government during policy-making should be objective, complete and accessible. All citizens should have equal treatment when exercising their rights of access to information and participation.

6. Resources

Adequate financial, human and technical resources are needed if public information, consultation and active participation in policy-making are to be effective. Government officials must have access to appropriate skills, guidance and training as well as an organisational culture that supports their efforts.

7. Co-ordination

Initiatives to inform, request feedback from and consult citizens should be co-ordinated across government units to enhance knowledge management, ensure policy coherence, avoid duplication and reduce the risk of "consultation fatigue" among citizens and civil society organisations. Co-ordination efforts should not reduce the capacity of government units to ensure innovation and flexibility.

8. Accountability

Governments have an obligation to account for the use they make of citizens' inputs received through feedback, public consultation and active participation. Measures to ensure that the policy-making process is open, transparent and amenable to external scrutiny and review are crucial to increasing government accountability overall.

9. Evaluation

Governments need the tools, information and capacity to evaluate their performance in providing information, conducting consultation and engaging citizens, in order to adapt to new requirements and changing conditions for policy-making.

10. Active citizenship

Governments benefit from active citizens and a dynamic civil society, and can take concrete actions to facilitate access to information and participation, raise awareness, strengthen citizens' civic education and skills, as well as to support capacity-building among civil society organisations.

Source: Citizens as Partners: Information, Consultation and Public Participation in Policy-Making, OECD, 2001.

Indeed, a few OECD member countries are beginning to explore approaches to policymaking based on active participation and some are even introducing legislation in this area. An OECD report on the subject observed that: "active participation represents a new frontier in government citizen relations for all OECD member countries and that "active participation recognises the autonomous capacity of citizens to discus and generate policy options; it requires governments to share in agenda setting and requires commitment from government that policy proposals generated jointly will be taken into account in reaching a final decision" (2001).

In addition, OECD studies and reports demonstrate that a number of its member countries have already established institutional and in some cases even legal frameworks, which facilitate and even oblige governments to engage in public consultations and to furnish the public with information on reform proposals. In particular, several countries have already set up government information services in Ministries to ensure the provision of information to citizens on a proactive basis. In Norway for instance, the Central Government Information Service offers a general inquiry service for citizens via telephone, fax and email, either providing answers directly or forwarding inquiries as appropriate.

Legal and institutional frameworks for consultation are often less extensive than those in place to ensure access to information in OECD member countries. The place held by laws and regulations governing public consultation varies among OECD member countries, from Switzerland where obligatory and consultative referenda are held on a regular basis to Austria where there exists a legal requirement to consult with specific interest groups such as trade unions and professional associations (OECD, 2001). Several OECD member countries also have long-standing consultation arrangements in the form of tripartite forums of government, business and labour (Ireland, Italy, Luxembourg, Poland), and others have established advisory bodies or commissions. Some important reform proposals such as the European Constitution project, has been put to test through referenda and other consultations in EU member countries.

In this context, it is important to note that in OECD member countries, governments and citizens have established a process of dialogue more on in the delivery and consumption of public services – an area that directly affects the general public. However, citizens in OECD member countries are not necessarily involved in the economic policy making process and are also seeking other ways of receiving information on and participating in the policy-making process.

Stages and Important Variables in the Communication Process

In *second stage* reforms, the role of the communication process is often more nuanced since a greater range of actors is normally involved, including the cabinet, legislature, government officials, media, the judiciary, the unions, the private sector, investors, as well as the broader public. The communication process thus has to begin with the stakeholder identification and analysis of their expectations. Given the different background of these constituencies, messages need to be crafted to them in a way that would encourage their acceptance of proposed reforms. In addition, the conglomeration of these groups at the different stages of the reform process depends on the type of reform proposed as well as other factors such as political structure, previous record of implementation of related measures, and dynamics within government and Ministries. As a result, a static inflexible message to a specific interest group may not be optimal either.

Sector characteristics may also affect the communication process as the degree of organisation of interest groups in some sectors is traditionally stronger, depending on the industrial strategy of a particular country and the structure of the labour movement. For instance, it has been noted that social

pressure against change has often been most forceful in the case of proposed reforms in the agricultural sector, both in developing and in developed countries (France, India).

In terms of the broader public, it may naturally be more preoccupied with economic reform measures in 'public goods' sectors such as water and transport and less in other sectors which are not commonly utilised by the general public. Liberalisation of FDI restrictions in sectors that have been traditionally considered strategic or those which have enjoyed public subsidies will likely encounter more resistance by local business associations and other organised groups than reforms in sectors which have not been large contributors to the GDP or those in which companies are already competitive by international standards.

Once a decision to pursue a public relations campaign has been taken, a budget must be decided and assured. Budget will depend largely on the communication model selected (information, consultation or active participation). In any event, the costs of undertaking consultations, opinion surveys and communication campaigns may not be negligible, particularly for reforms which affect broad sets of interest groups. A few useful strategies for reducing such costs can be proposed, including through the use of political symbols already familiar to citizens, and through communication from public watchdogs such as consumer groups (Patashnik, 2003). The extent to which the costs of a communication campaign can be managed also depends on whether the communication function is performed internally or externally, as on the complexity of the reform proposed, and the media tools which will need to be utilised in order to sensibilise the constituencies.

E. The Communication Tools

A public communication program should not be limited simply to media or public relations events, but should make full use of the span of formal and informal communication channels. In selecting communication tools, disaggregating audiences and determining their concerns and interests is important. Governments have an interest in communicating to different groups of citizens, depending on the policy area, industrial sector and stage of policy cycle.

As a first step of the communication programme, a *communication audit* to gather political and social information and to understand public values in relation to the reform's environment is normally conducted. This mechanism provides initial information on stakeholder expectations and analyses the messages that would be appropriate. A communication audit generally includes three stages: a stakeholder assessment, an assessment of institutional framework for communication and opinion research and survey.

A stakeholder assessment implies mapping out the significant stakeholders and understanding their impact on the decision-making process. The second step in the communication audit, an assessment of institutional arrangements for communication, involves the identification of the capacity that is available in the government to carry out a communication programme. The third and final step of an audit is opinion research, where public opinions and concerns regarding the proposed reform need to be systematically gathered and organised (ibid).

The second stage of the communication programme is drafting messages to each of the important interest groups based on the research conducted in the first phase. At this stage, it is important to identify the influential interest groups which must be addressed and determine if different messages are necessary. Interest group identification should ideally account for coalitions within interest groups – even if a specific group may not be able to diverge the reform process, they may do so in coalition with other interest groups.

The following table summarises, although not exhaustively, the communication tools which can be used to address specific constituencies potentially affected by economic and investment climate reforms more specifically.

Table 2. Communication Tools by Interest Group

Interest group	Communication Tools (during the communication audit and later stages)
Trade unions	Joint visits by government and legislations Written reform proposals Reports analysing potential impact of a reform
Business associations, chambers of commerce, Private sector representatives	Roundtable discussions/Consultations Written reform proposals Opinion surveys/focus groups Advocacy training Reports analysing potential impact
Parliamentarian, Legislators, Ministries	Visits by government representatives Intra-governmental consultations
Government employees	Communiqués to be disseminated internally within the Ministries Roundtable discussions
Consumers of services/general public	Online surveys Publication in online and traditional media (newspapers, radio, television) Focus groups Mass mailings Press Conferences Community meetings and informal consultations
Foreign investors	IPA communication tools (investor information packages, newsletters, etc.)
Media representatives	Training programmes Communiqués Press Conferences
Civil society and NGOs	Roundtable discussions/Consultations Press Conferences
Industry associations	Written reform proposals Advocacy training Reports analysing potential impact
Academic and research institutions	Reports analysing potential impact Roundtable discussions

Source: MENA-OECD Investment Programme, 2007.

A practical approach is to use multiple channels of communication frequently enough to lead to desired behaviour change. In this context, the salient point is that the channel of communication must be accessible to the group it is targeted for. In some countries in the MENA region, ICT development and cultural considerations should be taken into account in deciding on the channel(s) for communication. In remote areas, television and radio may not reach constituencies. Print materials may or may be useful depending on the literacy levels. Mass mailings to consumers may not be cost prohibitive. Active contact with all the constituencies may be very difficult to achieve due to the high cost of reaching the rural areas. However, engaging the vulnerable and disenfranchised groups into the economic policy process to the extent possible is imperative given that it is these groups that often feel the burden of reforms, although they might not necessarily be able to input on the substantive proposals.

Communication tools may vary not only depending on the constituency and other factors mentioned above, but also depending on the policy cycle. The following demonstrates the tools that can be used to inform constituencies by stage of policy cycle and objective of communication (to inform, to consult or to solicit active participation).

Table 3. Information, Consultation and Active Participation throughout the Economic Policy Cycle

Stage of policy cycle	Information	Consultation	Active Participation
Design	• White Papers, policy documents • Legislative Programmes • Draft laws and regulations	• Large-scale opinion surveys • Use of discussion groups or citizens' panels • Invitation of comments on draft legislation	• Submission of alternative draft laws or policy proposals • Public dialogue on policy issues and options
Implementation	• New policy or regulations and their provisions	• Use of focus groups to develop secondary legislation	• Partnership with CSOs to disseminate information on compliance with new laws
Evaluation	• Public notice of evaluation exercises and opportunities to participate	• Inclusion of stakeholders in reviews of government evaluation programmes and results	• Independent evaluation conducted by CSOs

Source: Citizens as Partners: Information, Consultation and Public Participation in Policy-Making, OECD, 2001.

If an *information approach* is adopted by a government, messages can be delivered through direct mailing, information centres, telephone services, special events (exhibitions, trade fairs, informal meetings), press releases, press conferences and advertising in the media (TV, radio, print, electronic media), and finally through civil society organisations. Consultations can be conducted either in focus groups or through more formal mechanisms such as through referenda. Active participation can be solicited through submitting reform proposals for pubic debate.

For instance, in Sweden, the *Open Sweden Campaign* is a government initiative to enhance transparency of Swedish public administration and encourage the debate between public institutions and citizens. In Norway, the government is hosting a website where reform proposals are posted for consultation with constituencies.[5] Other specific instruments to seek feedback on policy proposals are at disposal of policymakers, including public opinion polls, surveys, as well as comment and notice periods.

In its previous work with member governments, the OECD has also identified tools for ad hoc public consultation, such as public hearings aiming to gather specific information and feedback on reform proposals. Such hearings may be focused on concrete policy proposals or explore a particular one, be based on presentation by stakeholders, and can be presided by a panel appointed by the government. Focus groups can also be used to allow for the collection of comments and suggestions from targeted groups with a specific interest in a reform proposal. Ad hoc workshops and seminars or citizens panels on government reform can additionally provide an opportunity for government officials to obtain feedback from a range of interest groups (OECD, 2001).

II.6.2. EXAMPLES OF COMMUNICATION INITIATIVES IN THE MENA REGION

In the MENA region, innovative communication methods have emerged, taking into account the cultural background and the traditional means of communication in the communities. For instance, in work on economic reform in Kuwait, it was determined that *diwanias* where people gathered in the evening to engage in political discussions, where an appropriate channel of informal communication. In rural isolated areas where access to electronic media sources, television and radio may not be ideal, community gatherings may represent the main channel of reaching audiences.

However, more formalised and structured communication campaigns have also succeeded in the region. In the following section of the paper, two successful communication campaigns will presented – one focusing on the communication of reforms externally (GAFI in Egypt) and one focusing on promoting privatisation reform internally (Executive Privatisation Commission in Jordan).

These case studies demonstrate the approaches that the governments of Jordan and Egypt have adopted to communicate reforms - in the case of the former, privatisation to key internal constituencies, and in the case of the latter, investment opportunities to external stakeholders. In the MENA region, communication efforts have focused on investment promotion efforts and improving the image of countries as attractive investment destinations for foreign investors. Less attention has been paid to communication of reforms to the local private sector and engaging them in the economic reform process, which is one of the objectives MENA-OECD Investment Programme is trying to attain in its work with the region, notably through the National Investment Reform Agenda workshops.

Box 2. A case study of the Executive Privatisation Commission in Jordan

The World Bank has been assisting Jordanian privatisation since 1995 in collaboration with USAID and other partners. The key challenges facing the process were and remain as follows – the limitations of the Jordanian financial market, public preferences on strategic and foreign ownership and public perceptions of the impact of privatisation on labour and consumer prices. One of the projects supported by the Bank was a study to gauge stakeholders' perception of the Jordanian Privatisation programme. The Centre for Development Communication was engaged as consultant to work with the Jordanian Executive Privatisation Commission (EPC) to conduct a communication audit in which respondents were asked to indicate their agreement or disagreement with the privatisation on the creation of job opportunities, upgrading and improving the quality of services, decreasing the quality of services.

As a result of the opinion research conducted, it was determined that Jordanians are more likely to agree that privatisation contributes positively in terms of job creation, quality of services, and productivity. During this exercise, the disaggregated data by income group, education and professional levels gave greater insight into the target audiences, which allowed for the development of more effective messages. A sensibilisation campaign empowered the EPC to undertake further and more contested transactions. Recently, the programme started to consider projects in social sectors. Ensuring the commitment in sector institutions was one of the cornerstones of the Programme. This included line Ministries and other civil services agencies of the Jordanian government.

The government set up general rules on preserving the rights of employees in all enterprises and in some cases, compensation packages were offered to employees. In some privatisations, employees were not laid off but absorbed in other government organisations. In addition, in the Jordanian privatisation process, a number of innovative communication methods were used. These included the distribution of materials on privatisation and public-private partnerships to the Parliamentarians, whose support was needed to pass the relevant legislation and integrating key messages about privatisation through Friday sermons conducted by local imams. Other mediums that were used to convey the key messages included press articles, informal briefings, documentary for national television, phone-in programmes, a book on privatisation and various leaflets. In addition, the messages were conveyed directly to company management, company employees, parliamentarian, universities, etc.

The Executive Privatisation Commission has also leveraged the examples of other countries' privatisation programmes which have yielded a positive economic impact in order to educate various stakeholder groups on the key implications privatisation. In part as a result of delivering specific messages to the public and convincing it of the need for privatisation, Jordan's privatisation programme is recognised as one of the most successful in the region with 66 transactions completed to date.

Source: World Bank, Public Communication Programmes of Private Projects; Executive Privatisation Commission, 2007.

Box 3. A case study of the General Authority for Investment and Free Zones in Egypt

In 2005, Egypt was into the second year of a radical package of economic reforms designed to place it in a better position to attract foreign direct investment (FDI) which in turn would improve the country's economy and provide vital employment for its citizens. In the past, these reforms and their benefit for potential investors has never been communicated through a structured communications program. Thus, the Government of Egypt tasked an external communication agency with ensuring that the message "Egypt Is Open for Business" would be heard clearly by the international business community.

An international multiphase campaign to communicate to business leaders that Egypt is committed to an ongoing programme was subsequently launched. The first phase began with the identification of the 'Egypt story', developing concise messages, identifying spokespeople and developing press packs. The business champions selected provided credibility to the Egyptian story because they were selected based on market and sector expertise. Possessing detailed sector knowledge, their role was to provide quotes for the media articles, sit on panels and provide input for TV and other advertisiting. Spokespeople were trained to deal with international media, and the infrastructure for an international public relations campaign was put in place. Once these basic elements were arranged, the communications plan was activated across eight key markets (United Kingdom, France, Germany, Italy, Kuwait, Saudi Arabia, UAE, and Egypt).

The campaign has included roundtable meetings in Europe, the Middle East, and Asia organized by local staff of the communication agency all over the world. In addition, GAFI has participated actively in business trade shows and conferences, including the World Economic Forum in Davos, Switzerland. In-bound press trips were also used in order to enable journalists to obtain practical perspective on the business climate in Egypt, where high level interviews were arranged for the journalists and visits to the stock exchange and industrial zones were arranged. Out-bound press tours typically tied to an existing event or a conference were also organised to create opportunities to link up with reporters that have not had an opportunity to come to Egypt. Levels of media coverage of Egypt and its investment potential increased substantially in the first year.

Since then, the message that 'Egypt is open for business' has been communicated successfully to millions of business decision-makers via the business media, as well as through direct communication in the form of roundtable events and mailings. Now in its second year, the communications plan has been extended to include three additional ongoing markets (Turkey, India, and China), with further projects undertaken across the Middle East, the United States and Canada.

Source: MENA-OECD Investment Programme, 2007, Fleishman Hillard, 2007.

CONCLUDING REMARKS

Despite the ongoing debate about the strength of interest groups in economic policymaking process, experience makes it abundantly clear that ensuing support of key stakeholder groups in this process is essential. In a study of senior public service and civil society representatives from 60 developing countries conducted by the World Bank, respondents cited the public's poor understanding of economic reform as a key obstacle to success (Kaufman, 1997). Same conclusions were drawn from studies of specific reform programmes such as Venezuela's privatisation experience in 1980-1990s (Naim, 1993) or Senegal's privatisation reform which was deemed unsuccessful due to the lack of understanding of the concept by key constituencies.

That being acknowledged, the extent of stakeholder consultation and the mechanisms for conducting it vary widely depending on the context. The political structure of governments is a key factor to be considered when structuring a communication campaign. For instance, the federal structure of the UAE would necessitate a very different approach than a reform being centrally planned by a government with a strong power in the executive branch. Likewise, the familiarity with national circumstances beyond the political structure is essential in order to structure the communication campaign where the recipients of the messages will be filtering them through traditional, cultural, religious and other lens.

Despite the increasing recognition of the virtues of communication as part and parcel of the reform implementation process, communication of reforms is not being systematically executed in MENA countries. As highlighted above, in some areas such a privatisation where the subject of reform has stimulated a public debate, the governments have engaged with the wider public in order to explain the objectives and intended outcomes of a given reform.

For instance, the presentation made by the representative of the Jordanian Privatisation Commission during the workshop highlighted that a number of serious challenges faced the EPC prior and during the privatisation process, most notably opposition on ideological grounds and concerns regarding the transparency of the process. The key concerns were related to the transparency of the process, possible tariff increases, and destination of the privatisation proceeds. The key messages communicated by the Commission were that the reform is not imposed by international institutions but a response to the necessary economic restructuring, that compensation to affected stakeholders will be provided and that strategic partners in the privatisation process can provide the technology and other expertise.

On the other hand, the presentation made by the Bahraini representative on the Labour Fund highlighted the challenge that Gulf countries are facing in reducing the unemployment among the native community and provided an example of a project where a fund was established from a 1 percent fee levied on foreign workers' salaries. This reform was contested by both expatriate labour and even some religious authorities. This presentation demonstrated that a very different sort of communication was needed for the local Bahrainis and for expatriates than that in the Jordanian case. Extensive focus groups were conducted, which was seen as an effective approach, given the size of the Bahrain and the ability to reach the key stakeholders in a more direct manner.

An interesting example of strategic communication of an investment reform to the private and public sectors was presented at the workshop by the UAE representative, who explained how the MENA-OECD Investment Programme has stimulated the reform of the investment legislation in the country by bringing together the Minister of Economy, representatives of the governments from the emirates and the private sector. This occasion was used by the Minister to announce, for the first time, the draft law raising foreign ownership ceilings in certain industries to 75 percent and to receive the audience's feedback. This example clearly demonstrated that communication need not employ traditional tools and can encompass groups such as international organisations and other parties, who may be seen as legitimate partners to the reform process.

Nonetheless, in a number of other MENA countries, a more strategic use of communication in some contested areas of the economic reform strategy as a tool for social transformation, behaviour change and consensus building is still at its early stages. In the region, communication is frequently targeted towards external stakeholders and the messages relate to the improvements of the image of the region as a successful investment destination. However, reforms are not always and not consistently presented to internal constituencies who might have feedback on reform proposals.

When internal communication or consultations exercises are undertaken, they are often based on the *information model* described above, not including the mechanisms for *consultation* or *active participation*. As a result, the reform messages are not necessarily segmented by stakeholder group, nor targeted to the interest group being addressed. This is in fact an important point which provides a partial explanation for the internal resistance at times faced by reformist governments in the region.

As a first step, reformers in Cabinets of Economy and Investment across the region might wish to consider the institutional capacity as their disposal to communicate key reforms to the public. Depending on their internal capacity, decisions can be taken on the extent to which external expertise will need to be sourced on in conducting a communication audit for a specific reform programme. The participants of the communication workshop conceded that in their experience, building internal communication capacity was preferable to completely outsourcing this function, agreeing that outsourcing of activities requiring a specific competence may be useful.

The challenge is that capacity to communicate reform must build both on substantive knowledge of the political economy of reform highlighted in the first part of this paper, and on the communication expertise to conduct communication audits, craft messages and evaluate the success of initiated programmes. As highlighted earlier, the technical competencies in these two areas remain often rather distinct, hence the challenge in terms of the institutional organisation.

Even if the institutional capacity for communication exists, the other essential ingredient is the ability of the media channels used to deliver these messages accurately and an in an appropriate format. The formal channels which are most frequently employed to deliver messages include agents which the governments have little control over such as journalists, TV presenters, etc. Their capacity to understand and correctly transmit the information is equally essential since inaccurate reporting, either based on existing biases or lack of capacity to work with technical economic information may negate the entire effort.

In the MENA region, programmes to increase the financial literacy of economic and financial journalists have been launched in a number of countries – this has been an important step not only for educating the media representatives about the key economic challenges but also the broader circles which they address. The World Bank Institute, which has organised training programmes on several

occasions recommends that "engaging in dialogue directly with the media on economic issues through a nationwide training programme can be a key element of a communication programme" (2006, 33).

It is also imperative to acknowledge the limitations of public communication strategies, no matter how well thought out and designed. Policy changes that are widely disapproved by the constituencies and which they have a strong interest to oppose might remain so even after the implementation of a well crafted communications strategy. Consultation and engagement certainly do not equal acceptance, although they might assist in reaching it. If communication is used as what one expert called "a political megaphone allowing leaders to *speak louder* so people *will hear* the reform message" (Cabanero-Verzosa and Paul Mitchell, 2002), the impact may be minimal. A successful communication strategy needs to be one where the key constituencies are provided with a mechanism to relay their feedback, so that a reform proposal can be adjusted or at least so that policymakers are aware of the challenges ahead.

NOTES

1. In the case of telecom privatisation for instance, the Ministry of Telecommunications would be the responsible line Ministry.

2. For an opposite argument refer to Jacobsen, 2005.

3. Reference is being made to a Private-Public Partnership arrangement in which of which the delivery and cost of services could change after the implementation.

4. At the time of the drafting of this paper, the investment legislation proposed by the Ministry of Economy allowing majority ownership in some sectors to foreign investors was being considered.

5. Refer to http://www.regjeringen.no

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II.7. TAX INCENTIVES FOR INVESTMENT: A GLOBAL PERSPECTIVE EXPERIENCES IN MENA AND NON-MENA COUNTRIES

INTRODUCTION

The purpose of the present paper is to analyse the effects of the use of tax incentives on foreign direct investment performance in the Middle East and North Africa (MENA) region, based on a review of international best practice and some empirical evidence. It is hoped that the discussions in Working Group 3 (*Tax Policy for Investment*) of the MENA-OECD Investment Programme will provide a forum for information updating and peer review on this issue. The information on the tax systems of MENA countries still needs to be confirmed by country representatives.

All MENA countries offer direct and/or indirect investment incentives to boost employment, encourage the development of the private sector and improve their competitive position in today's global economy. During the past twenty years, incentives in many respects have become an important policy tool of many MENA governments to increase their share of investment in order to gain the attention of potential investors and to stay competitive with other countries offering incentives. While most international studies have shown that general economic and framework conditions, rather than incentives, are far more important in determining the size and quality of investment flows, incentives can compensate for market failures, are seen as easy to implement, and often seen as effective policy tools for achieving economic and social objectives.

Some MENA countries have multiple laws offering incentives, whose design and administration is the responsibility of separate ministries. Responding to pressure from investors, these ministries in many cases have made existing incentives more generous and increased the number of new incentives. Often these different ministries do not coordinate their work on incentives, with the result that the incentives often overlap, are not entirely consistent, or work at cross-purposes. Many incentives are also readily exploited by investors, as well as by those administering them.

Despite the popularity and widespread use of incentives in the MENA region, there generally have not been systematic reviews of the effectiveness of the various incentives offered, either by individual countries or at a regional level. In many countries, there is an absence of reliable data on actual investments made, direct and indirect benefits to the host economy and the cost of the incentives in terms of direct spending or revenue lost.

This paper is organised in six sections. Section I summarises the main factors that influence investment location decisions. Section II describes the main advantages and disadvantages of tax incentives used through corporate taxation. Main tax incentives used in the MENA region are summarised in Section III. Some empirical evidence on the effectiveness of the use of tax incentives is presented in Section IV, including two cases of successful elimination of tax incentives. Section V discusses other tax features relevant on investment location decisions besides tax incentives. The last section concludes.

II.7.1. FACTORS INFLUENCING FOREIGN DIRECT INVESTMENT

There is a consensus in the literature about the main factors affecting (foreign) investment location decisions.[1] The most important ones are market size and real income levels, skill levels in the host economy, the availability of infrastructure and other resource that facilitates efficient specialisation of production, trade policies, and political and macroeconomic stability of the host country.[2] The relative importance of the different factors varies depending on the type of investment.

Table 1. Factors influencing FDI

Non-tax factors	market size	
	access to raw materials	e.g. natural resources, energy supplies
	availability and cost of skilled labour	
	access to infrastructure	
	transportation costs	
	access to output markets	e.g. high consumer demand in region, low export costs
	political stability	
	macro-economic stability	
	financing costs	
Tax factors	Transparency, simplicity, stability and certainty in the application of the tax law and in tax administration	
	Tax rates	
	Tax incentives	

Source: MENA-OECD Investment Programme, 2007

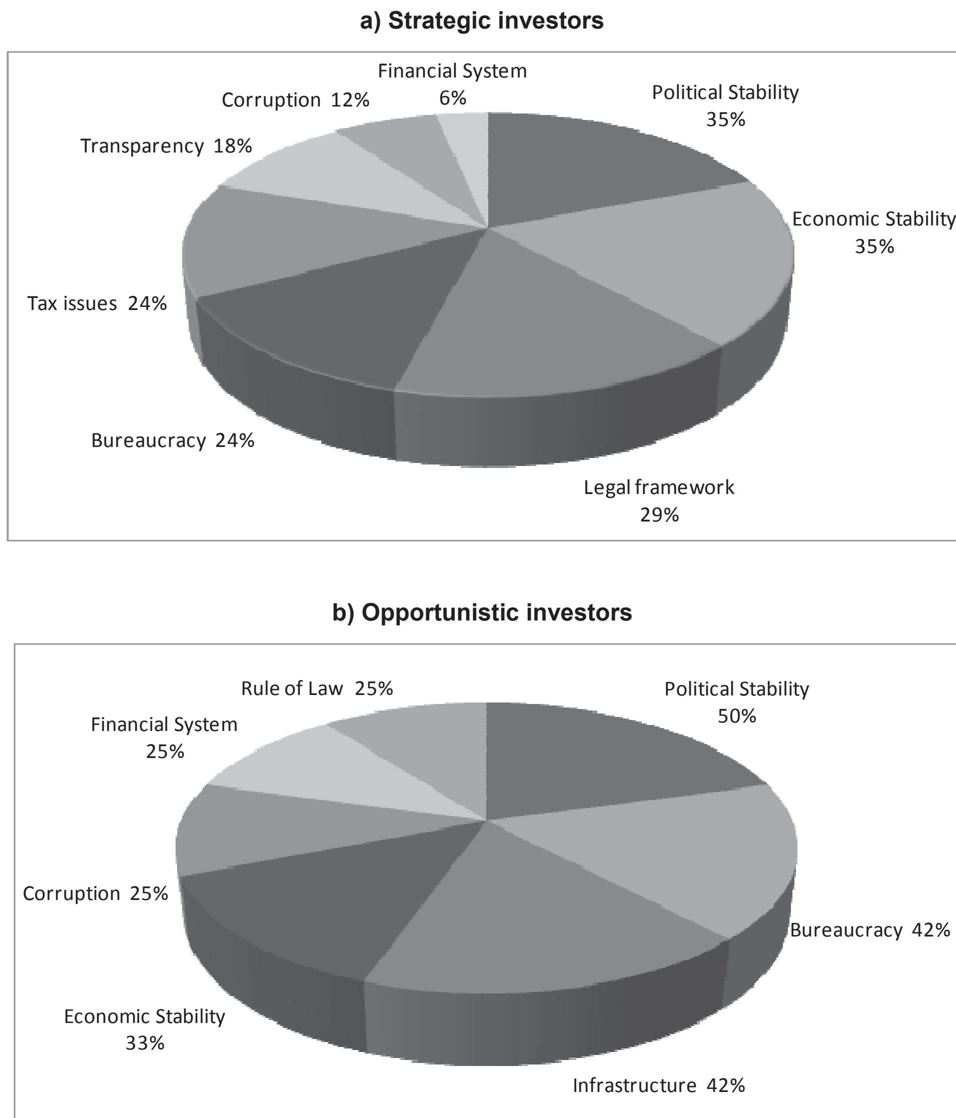
Additionally, the location of foreign direct investment (FDI) may be influenced by various incentives offered by governments to attract multinationals. These incentives include fiscal (or tax) incentives (such as reduced corporate tax rates),[3] financial incentives (such as grants and preferential loans to multinationals), as well as other incentives like market preferences and monopoly rights.

Survey analysis shows that host country taxation and international investment incentives generally play only a limited role in determining the international pattern of FDI (e.g. manufacturing FDI). Factors like market characteristics, relative production costs and resource availability explain most of the cross-country variation in FDI inflows. Transparency, simplicity, stability and certainty in the application of the tax law and in tax administration are often ranked by investors ahead of special tax incentives. Control of government finances is also identified as a key element, which helps provide stability in tax laws and thus greater certainty over tax treatment, as well as greater stability and less risk in the economy overall.

An example illustrating these empirical findings is a recent survey of investors in South East Europe (OECD (2003)). In particular, this survey can give a flavour on how tax systems are perceived by investors. This survey suggested that strategic investors consider tax factors as only one of the obstacles to investment (counting only 24 per cent), instability and unpredictability of the tax system (adding risk) being perceived the key tax impediments. Tax issues were not mentioned in the

responses of the opportunistic investors, indicating that they were not so important in the decision making process (see Figure 1).

Figure 1. Major obstacles to investment



Source: OECD (2003).

Additionally, the same SEE investor survey found that special tax incentives, rather than encouraging FDI, either were not taken into account (were judged to be unimportant), or operated to discourage investment. Tax incentives were discouraging to investment where the provisions were difficult to track, understand or comply with and/or invited corrupt behaviour on the part of tax officials, tending to increase project costs and uncertainty. Particularly discouraging were non-transparent incentive regimes, including those subject to frequent change and involving excessive administrative discretion. Investors exhibited a strong preference for stable and sound tax systems that did not deviate significantly from international norms.

If in general tax incentives are not seen by investors a key factor to attract inbound investment, why are tax incentives chosen by governments to attract investment in general and FDI in particular? There are three simple answers to this question of particular relevance for developing countries:

- Tax incentives are much easier to provide than deficiencies are to correct in, for example, infrastructure or skilled labour;
- Tax incentives do not require an actual expenditure of funds or cash subsidies to investors
- Tax incentives are politically easier to provide than funds.

Best practices recommend that policy makers, in the decision of whether or not to introduce special tax relief mechanisms, address the impediments inhibiting investment and question whether these should be tackled through the tax system, or through structural policy changes in other areas, or both. There are four particular issues that should be considered in this decision process:

- Transparency, simplicity, stability and certainty in the application of the tax law and in tax administration are often ranked by investors ahead of special tax incentives.
- Tax relief may enhance the attractiveness of a potential host country, but experience shows that in many cases the relief provided will be insufficient to offset additional business costs incurred when investing there and, therefore, it does not realistically address the actual need (relevance of tax incentives).
- Where a firm is able to generate profits in a given host country, tax incentives may be successful in attracting additional FDI, and may be viewed as necessary where similar relief is being offered by another (e.g. neighboring) jurisdiction also competing for foreign capital. This raises questions concerning the appropriate design of tax incentive relief (whether the benefits are given to unintended activities and/or are not given in full to target activities) as well as whether foreign direct investors would invest in the region in the absence of special tax incentives.
- Where additional FDI resulting from tax relief can be expected, policy makers should be encouraged to undertake an analysis of the social benefits and costs of tax incentives use (efficiency and effectiveness issues).

Additionally, the empirical literature has found that targeted tax incentives are not generally very effective. However, their effectiveness will depend on the specific country situation. We stress the need for effort by policy makers to assess the likely benefits and cost of incentives, while recognising that policy officials may be confronted with demands for the adoption of investment incentives with insufficient data to assess overall effects, and possibly little leverage to discourage their use even where roughly estimated costs exceed the likely benefits. We also encourage countries to consider a broad-based approach; i.e. a low effective tax rate through low statutory tax rate on broad base.[4]

II.7.2. PROS AND CONS OF MAIN TAX INCENTIVES USED THROUGH CORPORATE INCOME TAX

Table 2 summarises the main advantages and disadvantages (in addition to revenue forgone) of the different tax incentives used in MENA countries.[5] Policy makers are encouraged to consider whether the costs of fiscal and financial incentives, in terms of complexity, neutrality and revenues forgone, more than offset their benefits in terms of attracting investment.

The associated costs of tax incentives can be classified in four main categories:

1. *Forgone revenues*: the losses in tax revenue from tax incentives mainly come from three sources; first, the forgone revenue that otherwise would have been collected from the activities undertaken; second, the forgone revenue from projects that would have been undertaken even if the investor did not receive any tax incentives; and, third, lost revenue from investors and activities that improperly claim incentives (taxpayers abuse) or shift income from related taxable firms to those firms qualifying for favourable tax treatments (tax planning).

2. *Resource allocation (neutrality) costs*: originated when tax incentives create distortions on investment choices among sectors or activities instead of correcting market failures.

3. *Enforcement and compliance costs*: these costs increase with the complexity of the tax system and the system of fiscal incentives (in terms of qualifying and reporting requirements, different schemes). Additionally, there is a problem of perception of lack of fairness when targeted incentives are used, which reduces compliance and, therefore, increases enforcement efforts.

4. *Lack of transparency*: when the rationale for granting tax incentives is based more on discretionary and subjective qualification requirements, instead of automatic and objective requirements, they can originate rent-seeking behaviour and facilitate officials' abuse on the granting process. In particular for developing and emerging economies, it is important to move away from discretionary incentives towards greater reliance on *rules-based* means of attracting FDI - national and international rules that maintain or strengthen environmental and labour standards and create stability, predictability and transparency for policy makers and investors alike.

In general best practices discourage the use of special tax incentives to attract FDI and argues in favour of a reduced statutory corporate income tax rate on a broad tax base (this simpler approach benefits both old and newly acquired capital, avoids many pitfalls associated with other forms of relief while taking tax-planning pressures off the domestic base). However, at the same time, it is recognised that pressures can mount to introduce special incentives in response to "tax competition" amongst competing states, and that policy makers can benefit from a review of design considerations to target assistance and minimise unintended revenue loss.

Table 2. Pros and cons of main tax incentives

Tax measure	Advantages	Disadvantages
Tax holidays	Reduction on tax liabilities	Discriminates btw old and new investment
	Relative low compliance costs Simple to administrate	Deny certain tax deductions (depreciation costs and interest expenses) over the tax holiday period or definitely, tending to offset at least in part any stimulate effect
		Amount of relief depends on starting period of holiday and treatment of losses
		Tax-planning opportunities: shifting capital to new business if incentive targeted to new establishments, routing interests and other deductible payments (interests of loans, convert interest income in dividend income), transfer pricing
Reduction on CIT rate for certain sectors	Attractive for mobile investors (reduces the rate of tax on profits)	Discriminates against other businesses
	Dynamic effect on stimulating economy	Zero or negligible tax rate could result in tax haven status
	Simple to administrate	Revenue forgone can be offset by reduced home country country foreign tax credits
		Reduces the PNV of capital allowances
		Increases the after-cost of debt finance
		Tax-planning opportunities
Exemption of CIT for export companies	Incentives for business that operate internationally	Discriminates against non-export businesses
	Encourages domestic companied in host country to look outward for new markets	Against EU and WTO rules
Accelerated capital (investment) allowances	Deductions on the first year of operation that lower the effective price of acquiring capital- Helps with liquidity constraints	Revenue forgone (the higher the tax rate the higher the allowance)
- Buildings	Facilitates investment in new equipment and machinery	Could result in excessive investment (e.g. unutilised buildings)
- Plant and machinery	Facilitates development of industrial parks	Where deductions must be claimed in the year earned, the treatment of losses is critically important. Deductions provide benefits only if they can be carried forward to offset future tax liabilities.
Investment tax credits	large impact on ETR at lower revenue cost	Discriminates btw old and new investment
	can be targeted to certain types of investment with highest positive spillovers	Larger impact with short-lived assets because can offset a larger % of tax revenues on a given stream of earnings
	Helps with liquidity constraints	Greater administrative burden
		Discriminates against investments with delayed returns if loss carry-forward provisions are inadequate

Tax measure	Advantages	Disadvantages
Location based incentives	Encourages the rejuvenation and development of certain areas socially, culturally, industrially and aesthetically	Revenue forgone
Reduced taxes on dividens and interests paid abroad		Tax-shifting The lower the dividend tax the lower the incentive to reinvest profits
Preferential treatment of long-term capital gains	Encourages investors to retain funds for a long period	
Deductions for qualifying expenses - training expenses - R&D - export marketing expenses	transfer of technology if considered with other measures	
Exemptions from indirect taxes (VAT, import tariffs)	allows taxpayers to avoid contact with tax administration (important if it is complex and corrupt)	Little benefit from VAT exemptions if tax on input is creditable Prone to abuse: easy to divert exempt purchases to unintended recipients
Export processing zones	allows taxpayers to avoid contact with tax administration (important if it is complex and corrupt)	Distorts local decisions Typically substantial leakage of untaxed goods into domestic market, eroding tax base

Source: OECD (2001), United Nations (2000), Fletcher (2002).

When considering the introduction of tax incentives, governments should take into account the following (summarised) best practices on the use and design of tax incentives:

- Governments should assess in advance tax incentives targeted to boost investment;
- If introduced, the tax incentives should be evaluated (using cost-benefit tests) on a periodic basis to gauge whether their effectiveness;
- To enable proper evaluation and assessment, the specific goals of a given tax incentive need to be explicit at the outset;
- "Sunset clauses" calling for the expiry of the incentive should be included to provide opportunity to assess whether the availability of the incentive should be extended or not.

Many OECD and some non-OECD countries (including Morocco in the MENA region from 2006) report tax incentives in their Tax Expenditures Report. This report not only has the objective of allocating efficiently resources (provides information for the comparison of the effectiveness and cost of direct spending and tax expenditure programs), but also of strengthening government finance and contributing significantly to fiscal transparency.

II.7.3. MAIN TAX INCENTIVES OFFERED IN MENA COUNTRIES

From a global perspective, a reduction in the base rate of corporate income tax is the most widely used fiscal incentive. However, the next most widely used tax incentives vary across developed and developing countries. In OECD countries, accelerated depreciation, specific deductions for corporate income-tax purposes, and reductions in other taxes (including state and local) are the next most widely used (in descending order). In contrast, developing countries tend to offer more tax holidays and import-duty exemptions and drawbacks after reduced base income tax rates. Among targeted incentives, those geared to promoting exports have been most effective.

Table 3 summarises the main fiscal incentives offered in the MENA region in 2004 (see Annex 2 for a detailed description of tax incentives by country). In general (in both developed and developing countries) tax incentives are target to attract investment in specific types of activity or geographic areas. The principal targets are: *i)* specific *sectors*, notably in manufacturing, infrastructure, tourism, health and transportation, and in several cases education; *ii)* specific *regions* (geographic locations) which are less developed areas; *iii) exports*.[6]

Most MENA countries offer corporate tax holidays. They range between 2 years (Jordan) and 20 years (Egypt), and in many cases are extendable in case of supplementary investments. In Algeria, where incentives under the new investment code are offered on a case-by-case basis by the approval of the National Investment Council, tax holidays can be indefinite. In Morocco tax holidays for exports are limited only to 5 years. Reduced corporate rates, targeted to specific sectors/locations are also offered in four MENA countries (Jordan, Lebanon, Morocco and Tunisia).

Among the fiscal incentives that are apparently offered by only few countries we can find exemption of foreign staff from income taxes and/or social security contributions in some countries (e.g. Jordan) or an indefinite exemption of reinvested earnings from corporate taxation in Tunisia.

Some countries, as Bahrain and United Arab Emirates, attract FDI to exploit rich natural resources (mainly oil) that are a main source of income. These countries rely less on special preferences like tax holidays and special financing regimes, and have high corporate income tax rates and withholding taxes earned from oil production and exploitation (Bahrain levies 46 per cent of net profits on income of oil companies; United Arab Emirates does not have corporate taxes at federal level. At emirate level oil-producing companies and branches of foreign banks are required to pay tax rates between 0 and 55 per cent).

Export/free zones (FEZs) are also common in the MENA region; only three countries have no FEZs at all (Algeria, Qatar and Saudi Arabia[7]). The fiscal incentives offered to investors in the general economy are available to companies in the FEZs as well. Additionally, governments often offer exemption of corporate taxation (Kuwait, United Arab Emirates and Jordan) or reduced corporate tax rates (Egypt and Morocco), exemption from duties and tariffs (Morocco, Tunisia, United Arab Emirates), and more generous tax holidays (Lebanon, Morocco and Yemen) among other privileges in these zones. The FEZs in the United Arab Emirates are considered most successful so far. Several MENA countries have expressed the intention of trying to emulate the success of the Emirates with FEZs. Arguably, the most advanced plans can be found in Egypt and Jordan. In the case of Jordan,

there is a long-standing tradition for relying on FEZs to encourage investment. Egypt also has a relatively long history of relying on free zones (the oldest ones still in existence were established in 1973), but recent years appear to have brought a change in the overall strategy. No general zones have been established since 1993, and more recently the focus has been on special economic zones and industry zones.[8]

Table 3. Main tax incentives used in the MENA region, 2004

	Tax holidays (years)	Reduced CIT	Exemption CIT for exports	Accelerated depreciation	Location-based incentives	Exemption from indirect taxes/ duties	Export/ free zones
Algeria	10	no	yes	yes	yes	yes	no
Bahrain	-	-	-	-	-	manufacturers	yes
Egypt	5-10-20	for exports	no	yes	yes	in specific zones	yes
Jordan	2-12	sector specific	yes	yes	yes	sector and location specific	yes
Kuwait	10	no	no	no	no	on production items	yes
Lebanon	10	location specific	no	no	yes	sector specific	yes
Morocco	5	exports and sector specific	yes	yes	yes	export and sector specific	yes
Oman	5 + 5	no	no	no	no	some imported goods	yes
Qatar	5 + 5	no	no	no	no	on particular production inputs	no
Saudi Arabia	10	no	no	yes	no	for industrial projects	no
Syria	5	no	no	no	no	on production inputs	yes
Tunisia	10	sector specific	yes	yes	yes	exports only	yes
UAE	-	-	-	-	-	in free zones	yes
Yemen	7	no	no	no	no	on project fixed assets	yes

Source: OECD (2005), Investment climate statements of the US State Department, United Nations (2000), and national investment and tax laws.

II.7.4. SOME EMPIRICAL EVIDENCE ON EFFECTIVENESS OF TAX INCENTIVES

A. Experiences in Other Regions

Evidence shows that tax incentives are generally not sufficient to attract major flows of investment. Mauritius, Costa Rica, Ireland and Malaysia[9] are examples of successful countries attracting investment that offer many advantages to investors other than tax breaks, such as stable economic and political conditions, a well educated labour force, good infrastructure, open trade for exporters, dependable rule of law, and effective investment promotion systems.

Furthermore, experiences such as in Uganda and Indonesia, where tax holidays and selective tax incentives programmes were terminated in favour of a more attractive general tax regime, reinforce the theory that special tax incentives are effective in attracting investment or stimulating economic development.

Two success stories of eliminating tax incentives: Uganda (1997), Indonesia (1984)

Uganda (1997)

A major tax reform took place in Uganda in 1997. This reform included complete elimination of new tax holidays in favour of a rate of 30 per cent on company income, with generous capital allowances for all investors and unlimited loss-carry forward. A zero import duty was also set on a wide range of capital goods. The elimination of selective incentives also greatly simplified investment licensing.

The main effects of this tax reform were (comparing averages of three years before and after 1997): an increase of one percentage point in the ratio of investment to GDP, 70 per cent increase in foreign investment inflows, and a one percent of GDP increase in tax revenue.

It is worth it to note that despite these positive effects, business appealed once again for tax incentives in 1998, when asked what the government could do to improve the business environment.

Indonesia (1984)

In 1984 an ambitious tax reform took place in Indonesia whose main aims were reducing administrative costs, and economic distortions, increasing equity and reduce evasion and corruption. The company tax rate was reduced from 45 per cent to 35 per cent and selective tax incentives were totally eliminated; including tax holidays, preferential rates, special investment allowances and selective accelerated depreciation.

Despite the strong fear that foreign investors would shun Indonesia in favour of countries like Malaysia and Singapore, the number of FDI projects dipped in 1884 but then climbed rapidly for the rest of the decade. Additionally, in value terms, FDI fell from a plateau achieved the previous two years, but then soared to new heights after 1987.

Once again, despite these positive effects, pressure to restore tax incentives has been persistent, and in 1994 (several exemptions) and 1996 (discretionary tax holidays, although dropped in 2000 in favour of a new tax allowance and accelerated depreciation) some incentives were reintroduced.

B. Experience in the MENA Region

This section presents some evidence for the MENA region on the effectiveness of tax incentives in four MENA countries as well as on the non-clear link between taxation and FDI attraction.

Moroccan Tax Expenditure Report

Many OECD and some non-OECD countries report tax incentives in their Tax Expenditures Report. Although there is not an internationally consistent format for these reports (regarding definition and measurement of tax expenditures, coverage, presentation and usage of tax expenditure accounts), they provide very useful information on the effectiveness and cost of tax expenditure programs. Morocco has been the first MENA country that has elaborated a Tax Expenditure Report, which has been integrated in the documents for the government's budget process from 2006.

The macroeconomic evaluation of the effectiveness of tax expenditures shows a positive effect on private investment for the first year of application of incentives, a positive (but decelerated) effect during the second year and negative effect after the third year. At the time that this report was written complete information on the evaluation framework was not available; this makes difficult to explain the possible causes of these trends. However, it is not the first study that finds a reduction in the effectiveness of tax incentives over time (see section 6.2.4).

New Egyptian Income Tax Law

A new income tax law (Law No. 91 of 2005) came into force in Egypt on 10 June 2005.[10] Its main aim was to simplify the tax system, improve vertical and horizontal equity and remove tax obstacles to investment and growth. This law lowered the maximum corporate income tax rate from 40 per cent to 20 per cent and abolished the totality of the income tax exemptions provided in the investment guarantees and incentives law No. 8 of 1997 for establishments incorporated after entry into force of the law.[11] It also unified the corporate tax rates across industries and simplified tax procedures.

Although it still premature to evaluate the impact of the abolishment of the tax incentives on FDI performance, available FDI data for the first six months of the fiscal year 2005-2006 (provided by the Egyptian Ministry of Finance) suggest that FDI flows almost double in absolute value compared to last year.

Tunisia (FIAS)

In 2002, the Foreign Investment Advisory Service (FIAS) of the World Bank conducted a study on the promotion of private investment in Tunisia. In particular, the study analysed the role of the fiscal system, including the fiscal and financial incentives, on the private investment trends. Between 1996 and 2001, private investment in Tunisia was increase by 10 per cent in average, which was higher than in other countries in the region, and places Tunisia at the same level than countries as Ireland.

This study recommends the abolition of exonerations, despite of finding a determinant role of the fiscal and financial incentives on the development and growth of private investment, particularly in the

export sector. The main argument is that the costs derived form the incentives system in terms of complexity, neutrality and revenues forgone exceeds their benefits. Tunisian tax system is not simple (with complex different tax rates and bases and large list of incentive regimes) and creates distortions. By calculating effective tax rates across sectors and assets, the study identifies 3 main sources of distortions: 1) in the access to incentives (small and medium enterprises versus multinationals), 2) among types of assets used by the enterprises, and 3) among sectors.

Additionally the study finds that these distortions, jointly with the duplication of instruments to reduce corporate taxation (e.g. credits to reinvestment and accelerated depreciation) and the lack of coherence between the multiple systems of incentives and other aspects of economic policy (e.g. high level of tariffs) have implied a reduction of the effectiveness of the incentives by 35 per cent between 1996 and 2001. By reducing the corporate tax rate from 35 to 15 per cent and broadening the base by eliminating tax incentives, the tax system will be simplified at the same time that many of the above distortions will be eliminated without losing tax revenues (given the broadening of the tax base).

Jordan (Institute for International Business, University of Toronto)

A report from the Institute for International Business of the University of Toronto in Canada,[12] found that the investment incentive programme in Jordan is too complicated (e.g. there are at least 11 differentiated income tax treatments of business activities) and inefficient. They found evidence that besides the long history of investment incentives, Jordan has not succeeded on attracting significant capital investment in areas favoured by the government, and instead these discretionary measures have simply eroded the base for tax revenues.

Additionally, calculating marginal effective tax rates for different sectors, they show that investment incentives in Jordan are creating tax distortions against Jordan’s services sector, which undermines efforts to modernise the economy.

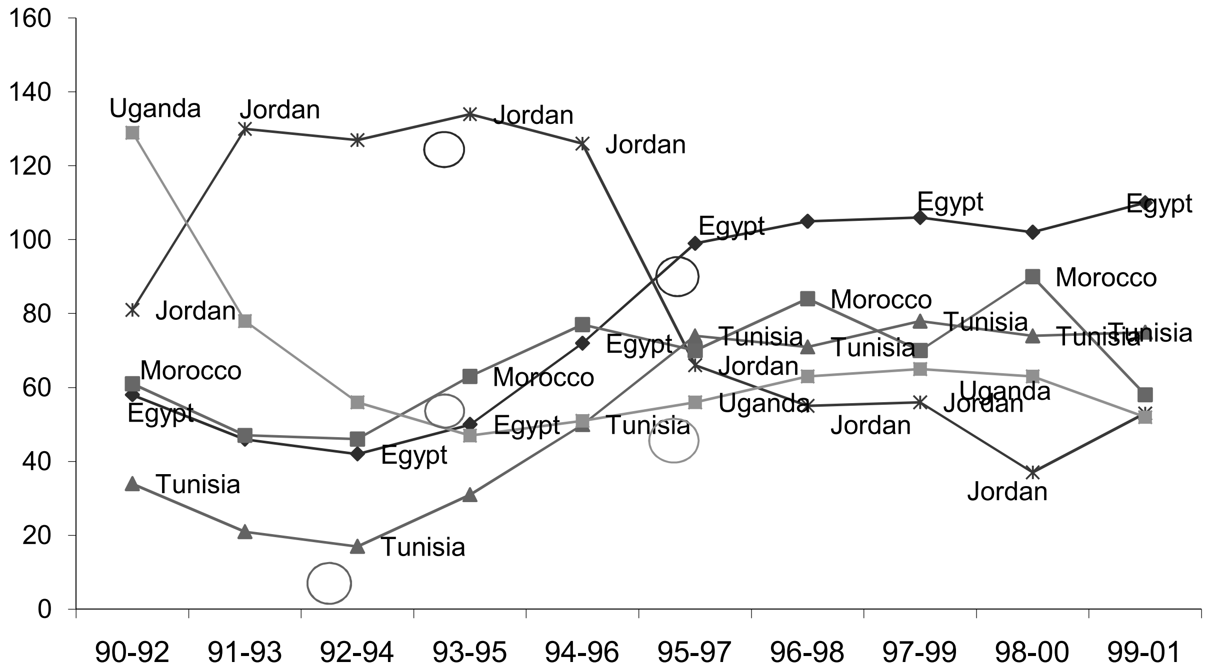
To conclude, the study recommends a comprehensive tax reform, which should include eliminating Jordan’s tax incentives, arguing that it will eliminate tax distortions, remove unnecessary administrative and compliance costs and improve government’s capacity to generate revenue.

C. Tax Incentives Reforms and FDI Performance Index

The FDI performance (rank) index (measured as the ratio of the share of global FDI inflows to the share of global GDP)[13] may be used to consider whether special tax incentives systematically positively impact FDI. Figure 2 shows the trend of the FDI Performance Index for four MENA countries (Egypt, Jordan, Morocco and Tunisia) that introduced tax relief measures between 1994 and 1997 and for Uganda, which complete eliminated new tax holidays in favour of a rate of 30 per cent on company income in 1997 (year of introduction/abolition marked as circles in Figure 2).[14]

FDI performance trends in Figure 2 seem to indicate that while the FDI performance index is not decreasing after tax incentives are introduced (except in the case of Jordan), a steady or increasing trend is also observed when tax incentives are eliminated (Uganda). Only in the case of Tunisia, the Index is rapidly increasing after the reform. However, the Inward FDI Performance Index ranks countries by the FDI they receive relative to their economic size; therefore, many other factors besides the tax system (tax rates and incentives) influence the index results. In order to have a global picture and be able to explain the results, it will be necessary to complete the information provided in Figure 2 with information on political and economic stability; information on trends of tax revenues will be also useful.

Figure 2. FDI Performance Index



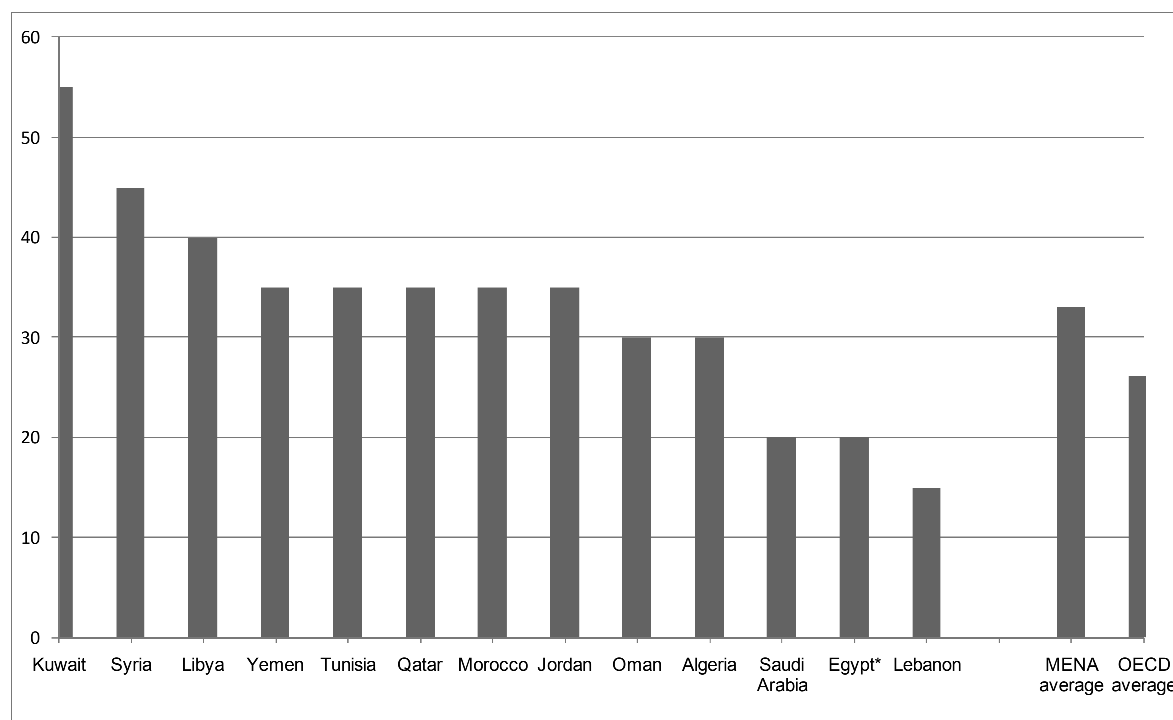
Source: Own elaboration using FDI Performance Index from World Investment Report 2006 UNCTAD.

II.7.5. OVERVIEW OF THE TAX SYSTEMS IN THE MENA REGION AS POTENTIAL HOST COUNTRIES FOR INVESTMENT

Often one of the main justifications for the introduction special incentives is "tax competition" amongst competing countries. While the experience of some OECD officials is that host country tax comparisons by investors often stop at the statutory tax rate (headline rate), others take the view that other main tax provisions are also routinely factored into effective tax rate comparisons and should be given policy attention (OECD, 2007). Almost all the corporate tax reforms in the OECD area of the last two decades can be characterized as (headline) rate reducing and base broadening reforms. Top statutory corporate income tax rates for OECD countries in the 1980s were rarely less than 45 per cent. In 2006, the OECD average rate was below 30 per cent and an increasing number of countries have rates below 25 per cent. Within the MENA region, Egypt has joined this international trend of lowering corporate tax rates and broadening tax base with its last income tax reform implemented from July 2005.

Figure 3 show the basic statutory corporate rate in a selection of MENA countries in 2005. The average basic statutory corporate tax rates in the MENA region in 2005 was 33.1 per cent, a high rate compared to the OECD average (26.1 per cent) in the same period.

Figure 3. Top Statutory Corporate Tax Rate, 2005



* Egypt corporate tax rate was changed from 40% to 20% from July 2005.

Source: OECD Tax Database, OECD (2005).

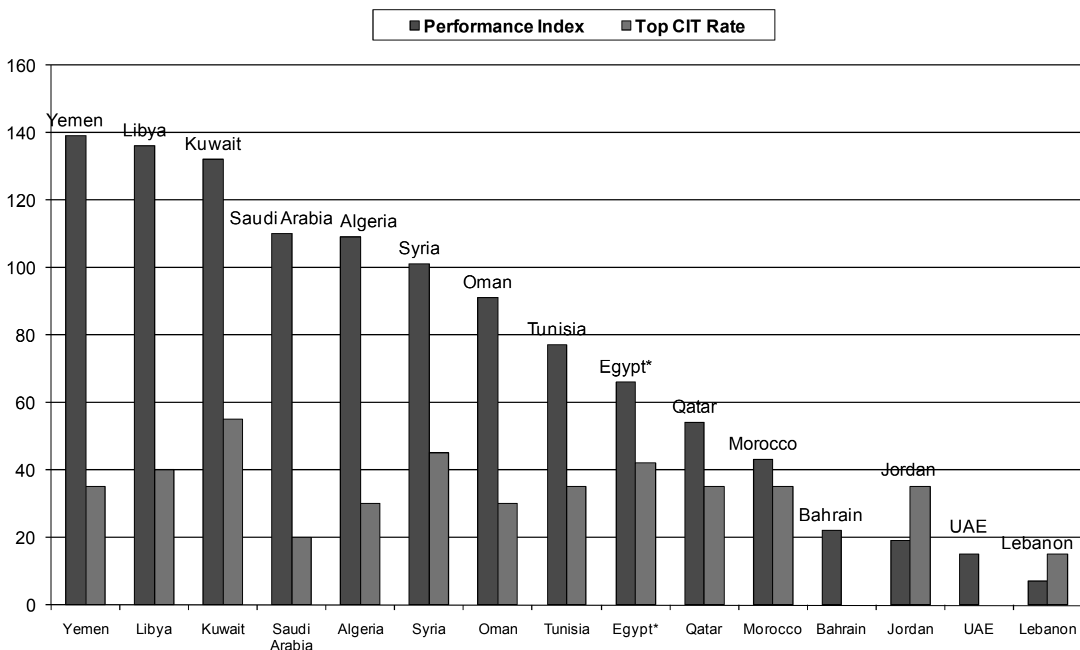
Nevertheless, there are still some cases when tax comparisons among competing locations may not occur and tax burden may be irrelevant to investment decisions. The prevalence of location-specific profits – that is, may require investment (i.e. a physical presence) in a specific location, is one of such cases. In principle, the tax burden on location-specific profit may be increased up to the point where economic profit is exhausted without discouraging investment. Thus, where an economy offers an abundant set of location-specific profits, policy makers may understandably resist pressures to adjust to a relatively low tax burden, to avoid tax revenue losses and windfall gains to investors and/or foreign treasuries. Reducing the effective host country tax rate to levels observed in certain competing countries, while possibly attracting capital in elastic supply, would give up tax revenues without impacting inelastic investment demand. Examples of location-specific profits are profits in the case of privatizations (time specific profits as well), the extraction of natural resources, and the provision of restaurant, hotel and certain other services.

A. Headlines Tax Rates and FDI Performance Index

A comparison between a country's tax burden and a measure of its FDI performance may be also used to consider the link between taxation and investment attraction. Figure 4 compares the statutory corporate tax rate to an inbound FDI performance (rank) index in MENA countries. This figure suggests that certain countries with a relatively high inbound FDI index have a low statutory rate (e.g. Yemen, Libya, Kuwait) while certain other countries with a relatively low corporate statutory rate do not have a relatively high inbound FDI index (e.g. Lebanon, Oman, Tunisia).

Similar results emerge when considering average effective and statutory tax rates in OECD countries. Additionally, countries with high tax to GDP ratio have high ranking on the FDI performance index. For example, Denmark has one of the highest tax to GDP ratio (48.8, after Sweden with 50.4) and ranks first among the OECD countries (Sweden ranks 21). These results suggest a no clear link between tax burden and investment location decisions.

Figure 4. Statutory Corporate Tax Rate and Inbound FDI Performance Index, 2005



Source: OECD (2005), FDI Performance Index from World Investment Report 2006 UNCTAD, Investment climate statements of the US State Department, and National countries investment and tax laws.

B. Other Features to Consider in the Design of a Tax System Supportive for Investment

Host country corporate tax rates and tax incentives are not the only important features in the tax system when considering total tax burden and, therefore, FDI attraction. Withholding taxes (on dividends, interests and royalties) anti-avoidance rules and complexity of the tax system in the host country as well as the treatment of foreign source income in the home country, can play an important role in investment decisions and effectiveness of tax incentives schemes. This section reviews some of these tax rules in MENA countries and compares them with those in OECD countries.

Where a broad objective is to encourage investment while at the same time raise a certain share of tax revenue, avoidance is seen as something that undermines the ability of the system to deliver these objectives. Provisions providing for a partial or full profit tax exemption can open up transfer pricing opportunities to artificially shift taxable income of business entities in the host country that do not qualify for special tax relief to entities that do. Given the growing use of tax planning techniques, more and more OECD countries have in place thin capitalisation rules, transfer pricing rules, and general anti-avoidance provisions to counter tax planning to protect the tax base. This was not the case in MENA countries in 2005. An exemption is Egypt, which has introduced some transfer pricing and thin capitalisation rules in its last income reform in July 2005.

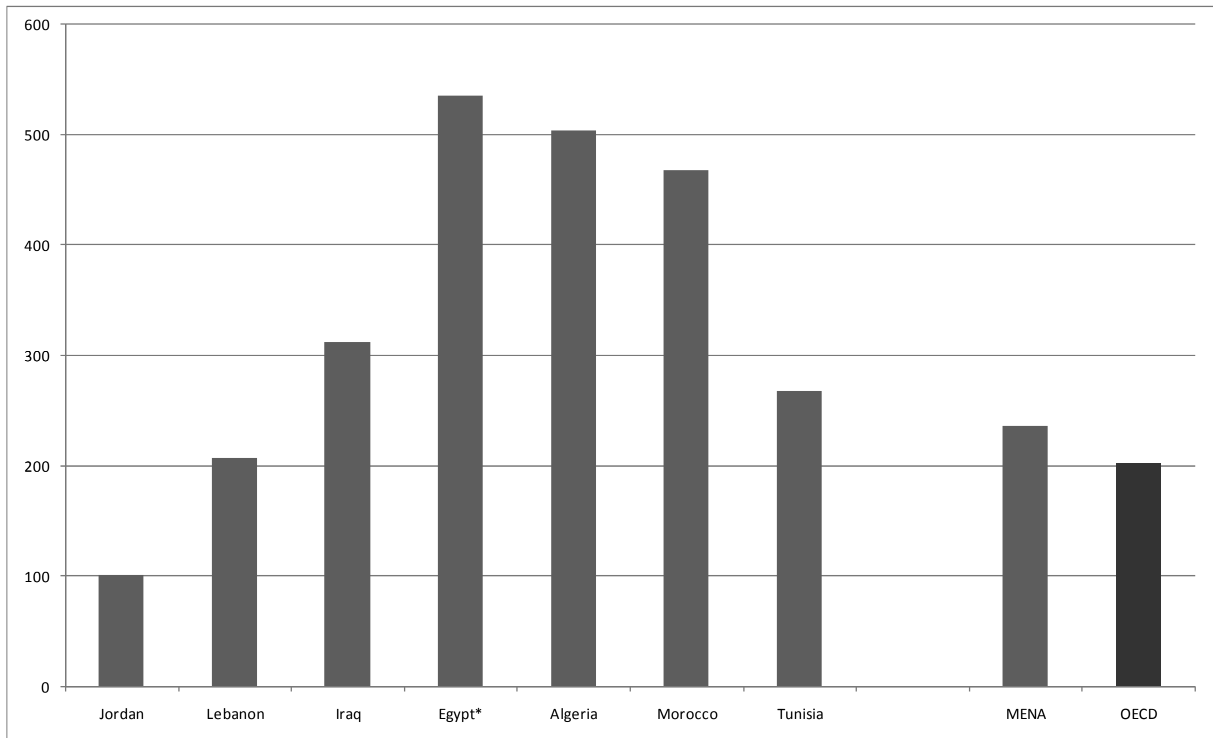
Table 4. Overview of Tax Characteristics Affecting FDI in MENA Countries as Host Countries

		Non-resident withholding tax						
Country	Top CIT Rate	dividends	interests	royalties	Capital Cost Write offs	Loss carry forward (years)	Transfer pricing rules	Thin capitalisation rules
Algeria	30	15	10	20?	acc	yes		
Bahrain	-	-	-	-	-	-	no	no
Egypt	42	-	32	32	acc	5	no	no
Jordan	35	-	10	10	acc	indefinitely	no	no
Kuwait	55	-	-	-			yes	no
Lebanon	15	10	10	7.5			no	no
Libya	40							
Morocco	35	10	20	10	acc	4		yes
Oman	30							
Qatar	35						no	no
Saudi Arabia	20	5	-	5-20	acc		no	no
Syria	45							
Tunisia	35	-		15	acc	4		
UAE	-	-	-	-	acc	indefinitely	no	no
Yemen	35	-	-			4	no	no

Source: OECD (2005), Investment climate statements of the US State Department, United Nations (2000), and national investment and tax laws.

While statutory provisions are clearly important, policy markers are also encouraged to consider difficult to measure compliance costs associated with the level of transparency, complexity and stability when assessing the total tax burden linked to the tax system. There is not an international measure of compliance costs. However, the measure of compliance costs calculated by *Doing Business* (World Bank) can be used as a simple proxy. According to this measure, Figure 5 shows that compliance costs in six selected MENA countries (Algeria, Egypt, Jordan, Lebanon, Morocco and Tunisia)[15] were relatively high compared to those in OECD countries in 2005. Business in these MENA countries in 2005 spent 34 hours more in average complying with tax requirements than in OECD countries.

Figure 5. Compliance Time (Hours), 2005



* Egypt corporate tax rate was changed from 40% to 20% from July 2005.
Source: Doing business, World Bank, 2005.

Finally, in order to assess the likely effects of host country tax incentives, it is necessary to look beyond the host country tax rules and consider the treatment of foreign source (host country) income in the home country of foreign direct investors. Addressing tax-interaction effects is important as tax consequences in the home country can reduce or even offset the impact of a given host country incentive. Indeed, tax rules of several countries can factor into the analysis, for example where financing comes via an offshore affiliate or holding company. In this context, tax treaties and mutual agreement procedures are also often identified by investors as key to certainty and stability in the treatment of cross-border investment.

CONCLUSIONS

MENA countries (as well as some OECD and other non-OECD countries) offer a wide range of fiscal and financial incentives to promote specific policies, attracting foreign direct investment (FDI) being one of them. While financial incentives – generally more used among OECD countries – tend to offer governments greater administrative flexibility than fiscal incentives, non-OECD governments tend more than OECD governments to lack the resources necessary to pay for direct financial incentives, and to be much easier to provide than correct deficiencies (e.g. in the legal system).

In general best practices discourage the use of special tax incentives to attract FDI and argues in favour of a reduced statutory corporate income tax rate on a broad tax base (this simpler approach benefits both old and newly acquired capital, avoids many pitfalls associated with other forms of relief while taking tax-planning pressures off the domestic base). However, at the same time, it is recognised that pressures can mount to introduce special incentives in response to "tax competition" amongst competing states, and that policy makers can benefit from a review of design considerations to target assistance and minimise unintended revenue loss.

It is also recognised that the elimination and/or redesign of tax incentive systems already in place represents a challenge for policy makers. Business leaders will always keep their pressure to maintain, restore and even increase tax incentives, even when their ineffectiveness has been demonstrated. Nevertheless, it is an effort worth it to try in order to simplify the country tax system, eliminate tax distortions, remove unnecessary administrative and compliance costs, increase transparency and improve government's capacity to generate revenue. This effort will help to improve the framework conditions and market characteristics of the host country for attracting investment. It should be, however, pointed out that tax relief tied to prior investment generally should be respected to not undermine policy credibility and avoid weakening the ability of government to influence investment behaviour in the future.

Countries should consider elaborating a tax expenditure report. This report not only provides information on the effectiveness and cost of tax incentives, but also helps to strengthen government finance and contribute significantly to fiscal transparency.

NOTES

1. See for example Dunning (1993), Globerman and Shapiro (1999), and Shapiro and Globerman (2001).

2. Some of the MENA countries offer a quite good physical investment climate (e.g. modern roads, ports and electricity grids), a reasonably well-educated labour force, and have at least taken steps toward raising administrative and regulatory efficiency. However, more remains to be done, and investors are much stronger attracted to some economies than to others.

3. Fiscal incentives are defined as those special exclusions, exemptions, deductions or credits that provide special credits a preferential tax treatment or deferral of tax liability. Tax incentives for foreign direct investment (FDI), are often structured through income tax systems, providing relief from corporate-level taxes on income from capital (e.g., tax holidays, reduced corporate tax rates, special corporate tax deductions, allowances and credits), and in some cases providing relief from personal income tax (e.g., imputation relief, preferential tax treatment for expatriates). They can also take the form of reduced import tariffs or customs duties.

4. The Irish tax system has been shown to be a positive component of the success story of Ireland in attracting foreign direct investment. The corporate tax system in Ireland is based on a low tax rate applicable to all income, with accelerated depreciation, losses carry-forward allowed indefinitely and no tax holidays. However, a combination of factors in addition to the Irish efficient tax system has played a role in attracting FDI: its access to the large European market, investment in education and its ability as an English speaking country.

5. See Annex 1 for a brief definition of the different tax incentives.

6. Tax incentives targeted to exports are mainly used in developing countries.

7. However, Saudi Arabia has been pursuing a strategy of establishing industrial parks that have certain common traits with FEZs.

8. The category of free zones (FEZs) covers the ground from free ports to export processing zones – FEZs that are generally accessible to investors, but do not go as far as offering a tailored regulatory environment. Special economic zones (SEZ) are basically ring-fenced customs-free areas with a regulatory environment of their own. They are mostly backed by a piece of legislation establishing a governing council for each individual SEZ and mandating it to enact rules that shall apply to investors within the zone. Industry zones (IZ) are basically free zones, but targeted at specific sectors or economic activities. IZ may restrict the access of companies in non-priority sectors, and their infrastructure is mostly tailored according to their sectoral targets.

9. Technical Report SADC Region.

10. The Egyptian fiscal year starts in July.

11. The new law stipulates that companies and firms established under the old Investment Guarantee and Incentives Law but which have not commenced operation or production until the effective date of the new law (10 July 2005), are required to start operation or production within three years from the effective date of the new law.

12. This report had the primary objective of assisting Jordan's Minister of Industry and trade and Minister of Finance in the creation of a new programme of investment incentives that can be used as the basis for regulations to support The Investment Law.

13. This paper uses the Inward FDI Performance Index calculated by UNCTAD: United Nations Conference on Trade and Development. This index ranks countries by the FDI they receive relative to their economic size. It is the ratio of a country's share in global FDI inflows to its share in global GDP. The Performance Index is shown for three-year periods to offset annual fluctuations in the data.

14. The circles in this graph show the year of introduction of main tax incentives: 1997 for Egypt, 1995 for Morocco and Jordan, and 1994 for Tunisia. Confirmation on this information is still pending from country representatives.

15. *Doing Business* measures compliance costs as time to prepare, file and pay – or withhold – three major types of taxes: the corporate income tax, value added or sales tax and labor taxes, including payroll taxes and social security contributions for a medium-size company.

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Annex II.7.1.

DEFINITION OF MAIN FISCAL INCENTIVES

Tax Holidays

Under a tax holiday, qualifying "newly-established firms" are not required to pay corporate income tax for a specified time period *(e.g.,* 5 years), with the goal of encouraging investment. A variant is to provide that a firm does not pay tax until it has recovered its up-front capital costs (payout). Targeting rules are required to define "newly-established firm", qualifying activities/sectors, and the starting period of the tax holiday.

Reduced corporate income tax (CIT) rates

As it own name indicates, it is a reduced (statutory) corporate income tax rate on qualifying income to particular types of activity (e.g. manufacturing), locations or regions. The rate reduction may be broad-based, applicable to all domestic and foreign source income, or it may be targeted at income from specific activities, or from specific sources (e.g., foreign source income), or at income earned by non-resident investors alone (forms of "ring-fencing"), or some combination of these.

Exemption of CIT for export companies

Export companies are not required to pay corporate income.

Accelerated capital allowances

Special deductions against (*i.e.,* reducing) taxable income earned as a fixed percentage of qualifying investment expenditures for which firms are allowed to write-off capital costs over a shorter time period than dictated by the capital's useful economic life (true economic depreciation), which generally corresponds to the accounting basis for depreciating capital costs. While this treatment does not alter the total amount of capital cost to be depreciated, it increases the present value of the claims by shifting them forward, closer to the time of the investment. The present value of claims is obviously the greatest where the full cost of the capital asset can be deducted in the year the expenditure is made.

Investment tax credits

Special deductions against corporate income tax otherwise payable earned as a fixed percentage of qualifying investment expenditures. Since tax credits provide an offset against taxes otherwise payable, rather than a deduction against the tax base (thereby removing the dependency of the value of a tax credit claim on the income tax rate).

Location based incentives

Tax reliefs for investments located in particular areas or regions within the country.

Reduced taxes on dividends and interest

Reduction or the elimination of non-resident withholding tax on dividend or interest income, and the extension in full or in part of integration relief (*i.e.,* in respect of corporate-level tax on distributed income) in systems that provide imputation or dividend tax credit relief to domestic shareholders.

Preferential treatment of long-term capital gains

Preferential tax treatment for appreciation in value of capital (assets) held by enterprises if the capital (or assets) is held over a fixed period of time. Long-term capital gains (capital retained for longer than a minimum period) are usually taxed at half the rate of short term capital gains with the intention of encouraging investors to retain funds for longer periods.

Deduction for qualifying expenses

Full deduction of certain qualifying expenses (for example, training expenses, R&D expenses, export or marketing expenses) to encourage certain types of investors' behaviour.

Exemptions from indirect taxes

Exemption from customs duties and/or import taxes, VAT or sale taxes.

Free zones and special economic zones

Countries use two types of special "zones" to attract investment: (i) duty-free zones, enjoying exemption from customs duties (and usually from VAT); and (ii) special economic zones, in which investors enjoy other tax privileges not granted in other parts of the host country. In practice, the distinction between the two types of zones is not always so clear. Investors in duty-free zones often receive other tax privileges (especially in export processing zones) and special economic zones sometimes enjoy customs privileges.

Annex II.7.2.

TAX INCENTIVES: COUNTRY DETAILS

ASIT Advisory Studies No 16, United nations, 2000
All incentives repealed with new tax law 2005 (June)

Egypt

Regional Incentives	Law No. 8 adopts a geographically and activity based investment incentive structure. The following tax incentives are granted to inland projects under the law: - A basic five-year tax holiday is awarded for priority sectors in the Old Valley, including:infrastructure, manufacturing venture capital projects, financial leasing, software, tourism, livestock, fish and poultry, refrigerated transportation services for agricultural produce, foodstuffs, marine transportation, oil sector support services, hospital and medical centres offering 10 per cent of their overall capacity free of charge, and aviation projects. There is a 10-year tax holiday for projects in new industrial zones, urban communities, and remote areas and those implemented through the Social Fund for Development. Projects in the New Valley are entitled to a tax holiday of 20 years. - Imported capital assets, construction materials, and components required to establish an approved project are subject to import duty at a low flat rate of 5 per cent of the cost, insurance and freight value. Approved projects are eligible for paying duty on a deferred basis or by instalments. Under Law No. 59, a company that locates in a new town and whose activities are confined to that location is eligible for the following tax incentives: - Profits are exempt from corporate income tax for 10 years, starting from the first fiscal year following the year in which production commenced. Furthermore, under Law No. 8, the profits of projects established in the New Valley are exempt from corporate income tax for 20 years; - Imported machinery and equipment and construction materials required to establish factories or similar premises are subject to import duty at the low flat rate of 5 per cent; - Returns on bonds, finance deeds and income from similar securities issued for public subscription are exempt from tax on revenue of movable capital; - A percentage of the paid-up capital to be determined in accordance with Central Bank rules shall be exempt from tax on

Egypt

Sectorial Incentives	- A number of other tax incentives are available apart from those granted under Law No. 8 and Law No. 59. For example, * New industrial (manufacturing) companies with more than 50 employees are exempt from corporate income tax for five years, starting from the first fiscal year following the commencement of production; * Enterprises in the hotel ownership and management business are exempt from corporate income tax and all other taxes for five years, starting from the commencement of activities. Local authorities may not levy any taxes or duties on such enterprises without the approval of the Ministry of Tourism; * Companies formed in 1981 or thereafter to reclaim and cultivate barren land are exempt from corporate income tax for the first 10 years after the land becomes productive; * Cattle- and poultry-raising companies and fisheries incorporated after 1978 are exempt from corporate income tax for five years, starting from the commencement of business; * Bookkeeping companies are exempt from corporate income tax without any time limit; * Tourism projects, and their extensions, that are located in a remote area are exempt from corporate income tax for 10 years, starting from the commencement of activities.
Export Incentives and free trade zones	The following tax incentives are available to free zone projects under Law No. 8: - No tax is levied on free zone projects or on dividends paid out of the profits of such projects. This exemption has no tim limit. Such projects are subject to a 1 per cent annual duty on the added value of goods entering or leaving the zone for the account of the project (excluding transit goods). A project whose main activities do not involve the entry or departure of goods from the zone is subject instead to a 1 per cent fee on the its annual turnover. - No customs duties are levied on goods entering free zones from abroad or from other free zones, including capital

Egypt

Statutory tax rate	Corporation tax rates depend on the type of income: - Foreign dividend, interest or royalty income is taxed at 32 per cent. - Profits from export and industrial operations of companies is taxed at 32 per cent. - The income of oil exploration and production companies is taxed at the rate of 40.55 per cent. - All other companies are taxed at 40 per cent. - In addition, a development duty is charged at a rate of 2 per cent on taxable income in excess of 18,000 Egyptian pounds. - No withholding tax is charged on dividends. - Interest and royalties are subject to a withholding tax of 32 per cent. Under domestic law there is no withholding tax rate on interest on savings and deposit accounts in banks and post offices, and on interest on public sector bonds and debentures.
Other tax incentives	Foreign experts' salaries are exempt form income tax if their stay in Egypt is for less than one year.
Legislation	Law No. 8 of 1997 on Investment Guarantees and Incentives

Jordan

Regional Incentives	The country is divided into three development areas: Zones A, B, and C. Investments in Zone C, the least developed areas of Jordan, receive the highest level of exemptions. - Exemptions from income and social services taxes of up to ten years for projects approved by the Investment Promotion Committee (which includes senior officials from the Ministry of Industry and Trade, Income Tax Department, Customs Department, the private sector, and the Director General of the Jordan Investment Board), in accordance with the designated zone scheme: 25 percent in zone A, 50 percent in zone B and 75 percent in zone C. An additional year of these tax exemptions is granted to projects each time they undergo expansion, modernization, or development resulting in a 25 percent increase in their production capacity for a maximum of four years. - Capital goods are exempt from duties and taxes if delivered within three years from the date of the investment promotion committee's approval. The committee may extend the three-year period if necessary. - Imported spare parts related to a specific project are exempt from duties and taxes, provided that their value does not exceed 15 percent of the value of fixed assets requiring spare parts. They should be imported within ten years from the production date. - Capital goods used for expansion and modernization of a project are exempt from duties and taxes, provided they result in at least a 25 percent increase in production capacity. - Increases in the value of imported capital goods are exempt from duties and taxes if the increases result from higher freight charges or changes in the exchange rate.
Sectorial Incentives	- Foreign and domestic investment laws grant specific incentives to industry, agriculture, hotels, hospitals, maritime and rail transportation. Leisure and recreation projects, convention and exhibition centers, transportation and distribution of water, gas, and oil/oil derivatives using pipelines were added to this list. The laws also allow the cabinet flexibility in offering investment incentives to other sectors. - All agricultural, maritime transport, and railway investments are classified as Zone C, irrespective of location. Hotel and tourism-related projects set up along the Dead Sea coastal area, leisure and recreational compounds, and convention and exhibition centers receive Zone A designations. Qualifying industrial zones (QIZS) are Zoned according to their geographical location, unless they apply for an exemption. The three-zone classification scheme does not apply to nature reserves and environmental protection areas, which are granted special consideration. - Hotel and hospital projects receive exemptions from duties and taxes on furniture and supply purchases, which are required for modernization and renewal once every seven years. - In addition to the Investment Promotion Law, additional exemptions are granted to investments within industrial estates designated as Special Industrial Zones.

Jordan

Sectorial Incentives (cont)	- Industrial projects are granted exemptions on income and social services taxes for a two-year period. Established industrial facilities that relocate to an industrial estate also receive this benefit. - Industrial projects are granted property tax exemptions throughout their lifetime. - Industrial projects are granted partial or full exemptions from most municipality and planning fees
Export Incentives and free trade zones	- The Zarqa Free Zone is Jordan's major free zone area. Other areas include the Sahab Industrial Estate Free Zone, Queen Alia International Airport Free Zone, and the Gateway Qualifying Industrial Zone. - In May 2001, the government converted the Aqaba port and surrounding area into a special economic zone (SEZ) with streamlined bureaucracy, lower taxes, and facilitated customs handling. - Both Jordanian and foreign investors are permitted to invest in trade, services, and industrial projects in free zones. Industrial projects must fulfill one of the following conditions: * New industries which depend on advanced technology; * Industries requiring raw material and/or locally manufactured parts that are locally available; * Industries that complement domestic industries; * Industries that enhance labor skills and promote technical know-how; * Industries providing consumer goods, and that contribute to reducing market dependency on imported goods. - Investors in the designated free zones are granted: * Profits are exempt from income and social services taxes for a period of twelve years, with the exception of profits generated from storage services that involve goods released to the domestic market. * Salaries and allowances payable TO non-Jordanian employees are exempt from income and social services taxes. * Goods imported to and/or exported from free zones are exempt from import taxes and customs duties, with the exception of goods released to the domestic market. * Industrial goods manufactured in free zones enjoy partial customs duties exemption once released to the domestic market, depending on the proportion of the value of local inputs and locally incurred production costs. * Construction projects are exempt from licensing fees and urban property taxes. * Free transfer of capital invested in free zones, including profits. - Net profits generated from most export revenues are fully exempt from income tax. Exceptions include fertilizer, phosphate and potash exports, in addition to exports governed by specific trade protocols and foreign debt repayment schemes. Under the WTO, the exemption is extended until the end of 2005 and is expected to be extended again, on annual bases, until the end of 2007.

Jordan	
Export Incentives and free trade zones (cont)	- Foreign inputs used in the production of exports are exempt from custom duties and all additional import fees on a reimbursable or drawback basis. - In addition, Qualifying Industrial Zone investments may be eligible for further incentives and exemptions. For example, at the end of 2004 the government was considering lowering banks' guarantees and guest workers' work fees in all QIZ factories. Studies had commenced to examine means to ease and speed up the transport of QIZ production input and output materials.
Statutory tax rate	The corporate tax rate is: - 15% for companies in the following sectors: hospitals, hotels, mining, industry, construction and transportation. - 35% for companies in the sectors of banks and finance. - 25% for companies in the sectors of insurance, exchange, trade, telecommunications, services and other.
Other tax incentives	
Legislation	Investment Promotion Law (2003, temporal) The government is revamping the investment promotion system in Jordan. It is re-examining investment incentives, and is considering the consolidation of all investment promotion activities under a new "Jordanian Agency for Economic Development (JAED)". These developments will likely lead to expanded investment opportunities in Jordan for foreign investors.

Lebanon

Regional Incentives	- The Investment Law divides Lebanon into three investment zones located outside Beirut, with different incentives provided in each zone (Zone A -coastal area-, B-center- and C-north and south-). The law encourages investments in the fields of technology, information, telecommunications and media, tourism, industry and agriculture. Incentives include: * facilitating issuance of permits for foreign labour * allowing introduction of tailor-made incentives through package deals (for large investments projects), including tax holidays up to 10 years and reductions in construction and work permit fees; * exempting companies that list 40 percent of their shares on the Beirut Stock Exchange from income tax for two years. - Investors who seek to benefit from facilities in the issuance of work permits under "package deals" must hire two Lebanese for every foreigner and register them at the National Social Security Fund. - In areas designated as "industrial zones", 75 per cent of a company's tax liabilities may be exempted. In order to take advantage of this regulation, investments should consist of capital expenditures designed to increase the company's staff and other employees. - Industrial investments in rural areas benefit from tax exemptions of six or ten years, depending on specific criteria (Law No. 27 dated 7/19/80, Law No. 282 dated 12/30/93, and Decree No. 127 dated 9/16/83). - Exemptions are also available for investment in south Lebanon, Nabatiyah and the Biqa' (Decree No.3361 dated 7/7/00): * new industrial establishments manufacturing new products will benefit from a 10-year income tax exemption * Factories currently based on the coast that relocate to rural areas or areas in south Lebanon, Nabatiyah and the Biqa' benefit from a six-year income tax exemption.
Sectorial Incentives	- Farms (provided they do not display farm products in sales outlets or sell products after processing), shipping and transport companies (subject to certain restrictions) are exempted from income tax. - Real estate development companies are granted income tax exemptions of 50 percent on profits derived from the construction or subdivision of buildings into housing units and sale to third parties. - Machinery, equipment, spare parts and building material imported for the setting up of new industrial firms, and equipment and raw material imported for the agricultural sector are subject to only 2 per cent customs duty. - Imported hotel equipment is exempt from certain duties provided that the operating period is for at lest 10 years. Imported buses for tourism agencies are also exempt from customs duties.

Lebanon

Export Incentives and free trade zones	Lebanon has two free zones in operation, the Beirut port and the Tripoli port. - Offshore companies are exempt from income tax. Dividends distributed by offshore companies are exempt from capital gains tax. - Companies established in free trade zones are exempt from customs duties and are not subject to corporate taxes for 10 years. In addition, foreign employees employed in them are exempt from personal income tax.They are not required to register their employees with the Social Security Service if they provide equal or better benefits.
Statutory tax rate	- Corporate tax rate is 15 per cent. Although tax rates are generally low, companies are subject to other changes that are relatively high. For example, normal security contributions are set at 38.5 per cent. - Capital gains resulting from the disposal of fixed assets or investments are taxed at a rate of 10 per cent. Distribution of profits, payment of interests and directors' fees are subject to a 10 per cent withholding tax.
Other tax incentives	- Companies using operating profits to finance certain capital investment are allowed income tax exemption up to 50 per cent for a period of up to four years, provided that such exemption does not exceed the original investment made. - Holding companies are exempt from income tax and capital gains tax. - SOLIDERE (a Lebanese company established in 1994 for the development and reconstruction of Beirut Central District) is exempt from tax on profits during a period of 10 years. Dividends paid to shareholders, as well as capital gains arising from the exchange of shares, are also exempt from tax for 10 years. - The Government reduces to five percent the tax on dividends for: (a) companies listed on the Beirut Stock Exchange (BSE); (b) companies that open up 20 percent of their capital to Arab companies listed on their country stock exchange or foreign companies listed on the stock exchange of OECD countries; and (c) companies that issue GDRs (Global Depository Receipts) amounting to a minimum 20 percent of their shares listed on the BSE. - Domestic and foreign investors can benefit from five to seven percent interest rate subsidies from the Central Bank of Lebanon (CBL) for loans (up to a ceiling of approximately $10 million) provided by banks, financial institutions and leasing companies to industrial, agricultural, tourism, and information technology establishments.
Legislation	Source: ASIT Advisory Studies No 16, United nations, 2000 Investment Law

Morocco

Regional Incentives	Companies set up in the Western Sahara region are exempt from income tax.
Sectorial Incentives	- Agriculture is exempt from income tax until 2010. - There are practically no restrictions on the sectors in which foreigners can invest, except in agriculture. - Incentives are offered to develop certain priority sectors such as banking, manufacture, real estate and trade. They include reduced import duties, exemption from an import tax levy, exemption from patent tax during the first five years of operation, reduced rates on registration rights, exemption from urban tax for the first five years of operation and exemption from VAT for equipment, material and tools. - Tourism Sector is also offered: exemption from corporate tax for the first five years and taxed at 50 per cent of the regular rate for the next five years; reduced rate on registration rights (1%) and stamp duty (5%); reduced VAT rate (10%); provisions for patent and urban tax; and reduced tax rate on patent tax (25%). - Education sector is also offered an exemption from corporate tax for the first five years and taxed at 50 per cent of the regular rate for the next five years and exemption from VAT for equipment and scientific material, investment on construction and interest on students loans. - Other incentives available include exemption from National Solidarity Contribution, exemption from tax for creating an annual investment reserve. - Machinery and equipment are allowed depreciation on a sliding scale. Losses many be carried forward for a period of four years. - Exemption from Capital gains tax if reinvesting during the next 3 years on equipment or buildings reserved for professional use (kept for 5 years). - Exemption from VAT is accorded for equipment.
Export Incentives and free trade zones	- Firms engaged in export are exempt from corporate tax for the first five years and taxed at 50 per cent of the regular rate for the next five years. - Goods for export, international transport operations and their related services provisions are exempted from VAT. - The free trade zone in Tangiers is open to both Moroccan and foreign companies. Goods may be imported duty free to the zone. The companies are exempt from other taxes as well. The only requirement is that all local workers be paid directly in foreign hard currency, which they are obliged to convert to local currency at the Moroccan banks operating in the zone.

Morocco

Statutory tax rate	- The corporate tax rate is 35 per cent. Companies subject to corporate tax must pay a levy, called the National Solidarity Contribution (PSN), at the rate of 10 per cent of the corporate tax. - When corporate tax is exempt, PSN is 25 per cent of the presumed corporate tax. - A business tax or patent is levied on individuals and Enterprises carrying out business in Morocco. the tax is based on the rental value of business premises and on a fixed amount based on the size and nature of the business. - Domestic corporations (irrespective of the extent of foreign ownership, a corporation incorporated in Morocco is considered to be a domestic corporation) are also subject to a minimum tax regardless of whether they make profits or losses. This tax is based on turnover and income (e.g. from interest, subsidies or bonuses) and is levied at the rate of 5 per cent of income. However, companies are exempt from paying this turnover tax during the first three years of operation. - Dividends paid to non-resident shareholders are subject to 15 per cent withholding tax while those paid to corporate shareholders from taxable entities incorporated in Morocco are not taxable. This does not apply to foreign investment income. - Interest paid to residents is taxed at 36 per cent. Interest paid to non-residents is subject to a 10 per cent withholding tax. - Royalties and management fees paid to residents are taxed at 36 per cent, while those paid to non-residents are subject to a 10 per cent withholding tax.
Other tax incentives	- Special incentives are available for companies installing environmental protection equipment using renewable energy sources and otherwise complying with environmental protection laws. - If the value of a foreign investment is more than 200 million dirham, investors can sign a special investment contract with Morocco that brings additional negotiated incentives.
Legislation	- Investment Charter (Law No. 18/95) of 1995; - Corporate Tax Law (1996).

Tunisia

Regional Incentives	Incentives are available to promote investment in designated regional investment zones in economically depressed areas These zones are subdivided into two categories, the "Encouragement Zone" and the "Priority Zone", in which investors may benefit from a direct subsidy of 15% and 25% of the investment value. Many of the fiscal incentives available to offshore companies may also be made available to them. In addition, the State may assume the employers' contribution to the social security schemeand undertake certain infrastructure expenses in support of the investment.
Sectorial Incentives	Incentives are available to promote investment in the following sectors: health, education, training, transportation, environmental protection, waste treatment, and research and development in technological fields.
Export Incentives and free trade zones	- Tunisia has two free trade zones, one in the north at Bizerte, and the other in the south at Zarzis. The land is state owned, but the zones are each managed by a private company. Companies setting up in the free trade zones, now officially known as "Parcs d'Activites Economiques" are exempt from most taxes and customs duties and benefit from special tax rates. - Companies producing at least 80 percent for the export market receive: full tax exemption on profits for the first ten years 50 percent reduction in taxes on profits thereafter; full tax exemption on reinvested taxes on profits thereafter; full tax exemption on reinvested profits and revenue; duty-free import of capital goods with no local equivalents; and full tax and duty exemption on raw no local equivalents; and full tax and duty exemption on raw materials and semi-finished goods and services necessary for the business. - Exporting resident companies are exempted from any tax, except taxes relative to vehicles of tourism, maintenance and national insurance contributions. - Fully-exporting companies are exempted from registration dues.
Statutory tax rate	The regular rate is 35%. However, a rate of 10% applies to some companies exercising a craft, agricultural activity, fishing or armament of fishing boats or to cooperatives of services or consumption. Whatever the taxable net result is, the company is subjected to a legal minimum of 0.5% of the turnover, with a ceiling of 2,000 TND.

Tunisia

Other tax incentives	Large investments that have high job creation potential may, under certain conditions to be determined by the High Commission on Investment, benefit from the use of state-owned land for a symbolic Tunisian dinar (less than one state-owned land for a symbolic Tunisian dinar (less than one U.S. dollar). Investors who purchase companies in financial difficulty may also benefit from certain clauses of the Investment Code; these advantages are determined on a case-by-case basis. For foreign investors: - tax relief on reinvested revenues and profits; - VAT limitation to 10 percent on many imported capital goods; and - optional depreciation schedules for production equipment.
Legislation	Investment Code Law No. 93-120, December 1993 1994 Investment Incentive Law

Yemen

Regional Incentives	In November 2004, the government announced the creation of three industrial zones in Aden, Hodaida and al-Mukallah th will concentrate on manufacturing and infrastructure
Sectorial Incentives	
Export Incentives and free trade zones	- An industrial and warehousing estate called Aden district park (ADP) was launched in November 2002, which includes th Container Terminal and the Aden Free Zone. This zone promotes light industry, repackaging and storage/distri operations. Future plans include development of heavy industry and more extensive tourist facilities in the grea - Free zone incentives include 100 percent foreign ownership, no personal income taxes for non-Yemenis, and a corporat holiday for 15 years (renewable for 10 additional years) 100 percent repatriation of capital and profits, no currency restrict and no restrictions on or sponsoring required, for the employment of foreign staff.
Statutory tax rate	Corporate tax is levied at a unified rate of 35% Subject to verification by the tax authority, losses may be carried forward for four years; they may not be carrie Capital gains arising form the sales of assests are liable to corporation tax. There is not withholding tax on dividends or income paid to non-residents.
Other tax incentives	Exemption from customs fees Exemption from taxes levied on fixed assets of the project; Tax holiday on profits for a period of seven years, renewable for up to 18 years maximum Right to purchase or rent land and buildings;
Legislation	2002 Investment Law

II.8. REGULATORY FRAMEWORKS FOR SUCCESSFUL PPPS IN MENA COUNTRIES

EMERGING GOOD PRACTICE

INTRODUCTION

Effective regulatory frameworks for public-private partnerships (PPPs) in infrastructure development have become an important comparative advantage for countries' ability to attract international investors in infrastructure services. According to estimates MENA governments plan to spend around USD 100 billion by 2015 only in the water sector.[1] Given these estimates, regulators will have to use available resources including technical and material implementation capacity and private investment prepared to engage in long term risks in the most efficient way. This provides a strong argument for the provision of a transparent and predictable regulatory environment to make PPPs work without wasting resources. Experience from OECD and non-OECD countries laid out in the 2006 OECD Policy Framework for Investment and the 2007 OECD Principles for Private Sector Participation in Infrastructure underscores the fact that private investors' interest in PPP projects requires not only clear guidance on financial arrangements of a potential project, but also a reliable political, administrative, and regulatory framework to be in place.

Building capacity for appropriate laws, regulations, and regulatory authorities managing complex concessions, remains a key challenge to successful PPPs in many OECD and MENA countries. Budgetary restraints and guidelines governing PPPs can be prohibitive, technical skills can be scarce and a significant time investment might be needed to build up these skills. Political buy-in on the highest level, specific regulatory frameworks allowing for sufficient flexibility, as well as transparent and predictable procedures must be complemented by institutional negotiation and implementation capacities on both the public and the private sides.

Given the mixed experiences with PPP models in other regions, MENA region faces the challenge to translate the concept into sustainable projects guaranteeing not only their economic viability but also their political support. Effective communication of the benefits of PPPs as well as general privatisation and market openness strategies to the public remains the number one challenge for many MENA governments.

Having realistic expectations about what the private sector can deliver remains an important lesson learned from problematic PPP projects in other regions. On the other hand, experience shows that for large infrastructure projects, the private party offers often better performance to build on time and within budget and also with superior quality specification. Rigorous feasibility studies, modern principles of planning and performance based management can help to modernise government services through integrated approaches of public-private service delivery. Private involvement in infrastructure provision can have a direct positive impact on service delivery to citizens. In addition, the ability of the private partner to manage some of the risks helps shielding the government from some of the pitfalls which can result from larger scale infrastructure projects.

In line with general privatisation strategies, these arguments have convinced countries in the MENA region to use one of the many forms of PPPs as tools for the financing of new infrastructure projects. Compared to full scale privatisation, PPPs can have the advantage that the government retains some control over sectors regarded as sensitive or of strategic interest, at the same time benefiting from the knowhow and capital of investors, especially foreign investors.

Given this development, the MENA-OECD Initiative in both, its Investment as well as in its Governance pillars, has worked in the issue of PPPs in the MENA region culminating in a common regional conference in November 2006 in Istanbul where representatives of governments from the Middle East and North Africa region participated actively alongside private sector representatives and other organisations working in this important area. A capacity building workshop on legal, financial and risk management aspects of Private-Public Partnerships (PPP) was organised by the MENA-OECD Investment Programme following a request by the Jordanian Executive Privatisation Commission (EPC) on September 2007. Future activities will concentrate on assessing existing frameworks of MENA countries using the 2007 "OECD Principles for Private Sector Participation in Infrastructure" for providing support form improvement of the regulatory and institutional design for efficient PPPs.

II.8.1. REGULATORY FRAMEWORKS FOR PPP

INTERNATIONAL GOOD PRACTICE

The 2007 OECD Principles for Private Sector Participation in Infrastructure ask governments engaging in any form of PPPs to establish "a sound enabling environment for infrastructure investment, which implies high standards of public and corporate governance, transparency and the rule of law, including protection of property and contractual rights." The regulatory enabling environment for PPPs is relevant on an international level, a national level, potentially on the level of municipalities and finally encompasses the contractual arrangements of the specific project, namely the PPP/Concession agreement. For the project level, but also for the national regulatory approaches to PPPs, the regulator has to decide what degree of control over infrastructure assets the public sector should retain and determine which organisational model would be most efficient for the project in question.

A. Public-Private Partnerships - Basic Concepts

The transition from a traditional procurement model to a more 'hands-off' PPP model describes a continuum from full control by the public authority over the concessionaire to low control. Service contracts, management contracts, lease, build-operate-transfer models, concessions and full privatisation differ as to the degree of control by the public and private parties. As Table 1 shows PPP models also differ as to asset ownership, operation and maintenance obligations, major sponsors, commercial risk allocation and, most notably, in respect to project duration. The long-term duration of many PPP projects provides the number one argument for the need of a sound regulatory and institutional framework.

Only two of these categories, namely the various forms of BOT, BOO, BOOT, BTO and any operations involving a temporary control and/or investment commitment (concessions) involve complex public-private arrangements. In a narrower sense these are the models most PPP related literature is referring to with the term 'PPP'.

These PPPs are in many cases financed following project financing models where the long-term debt financing is raised based on lending against the cash flow generated by the project alone. PPPs are a major growth area in project finance, but it should be noted that although most complex PPPs are financed following project financing principles, PPPs do not necessarily involve project finance. PPPs may not involve any major long-term capital expenditure in cases where they relate only to the private sector taking on a service that had previously been provided by the public sector based on a simple service contract. In MENA large project finance deals are helping the region to retain capital. With debt capital of USD 33 billion raised in the first half of 2006 alone, the IIF is estimating the MENA project finance market to be the largest in the world.[2]

Contentious issues which tend to come up in operating PPPs include the degree of control exercised by the public sector over the private concessionaire, which involves issues like minimum standards for service delivery and the corresponding approval rights, or contract termination rights. While the contracting authority will insist on as many controlling rights as possible in the

PPP/concession agreement, the private concessionaire will want to grant lesser rights and retain the ability to come up with flexible solutions if problems arise. The PPP/Concession agreement has to find the right balance without stipulating too much so that the agreement still can be adopted later on, for example to allow other private sponsors to step into the agreement to avoid project failure. The strongest right the public authority has in a Concession agreement is its termination right which follows namely in civil law systems from the public/private nature of the concession agreement.

Table 1. Different Forms of PPPs

Option	Asset ownership	Operation/ maintenance	Capital investment	Commercial risk	Duration (years)	Public Control (1 high, 3 low)
Service contract	Public	Public/ private	Public	Public	1–2	1
Management contract	Public	Private	Public	Public	3–5	1
Lease	Public	Private	Public	Shared	8–15	1
Build-operate-transfer	Private (bulk services)	Private	Private	Private	20–30	2
Concession	Public	Private	Private	Private	25–30	2
Privatisation	Private	Private	Private	Private	Indefinite	3

Source: MENA-OECD Investment Programme, 2007.

B. Regulatory Levels

As a general rule, a sound regulatory environment for PPPs needs to cover all aspects of regulatory clarity, simplification and the regulatory and administrative capacity to enforce laws, regulations and contracts. Emphasis should be given not only to horizontal PPP/Concession/Privatisation legislation or sectoral regulations, but also to the general legal environment including issues like tax or government procurement laws.

For policy makers, it is important to distinguish between different levels of regulation since on each level there can be a direct impact on the investor's perception of the transparency and predictability of a country's PPP framework.

International Level –Protection for the International Investor/State Aid/Procurement

The first question a policy maker responsible for regulation of PPPs may ask himself is whether his country is a party to key international investment instruments like bilateral investment treaties, the OECD Declaration on International Investment or Agreements of the WTO (GATS, TRIMS, GPA, TRIPS). Adherence to these instruments can be of importance for attracting investors to the kind of long term engagements which form the basis for successful PPPs implemented through complex project finance arrangements.

On an international level, bilateral investment treaties, international investment instruments and membership in international agreements and organisations provide a first test of a country's willingness to protect the international investor. The table in Annex II provides an overview of membership of MENA countries in the World Bank's dispute settlement procedure, ICSID, and in the 1958 New York Convention on the enforcement of arbitral awards.

Bilateral Investment Treaties – Dispute Settlement

Bilateral investment treaties are a common tool both among OECD and MENA countries and among MENA countries. Investor-to-state dispute settlement provisions can be found in most bilateral investment treaties. These provisions cater to the concern of international investors in large infrastructure projects that local courts will favour the local public partner. Secondly, even if dispute settlement is internationalised, there remains the concern that the local judiciary will not enforce the decision. A country's ratification of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is therefore an important signal to the international investor community.

A recent OECD Study *International Investor Participation in Infrastructure* analysed international dispute settlement (mainly ICSID cases) which were dealing with issues of tariff adjustment, breach of specific contractual stipulations, final payments and breach of service agreements. Five projects proceeded on the basis of concession agreements, six on the basis of construction contracts and seven involved privatisation agreements. The study showed that out of 28 cases of international dispute arbitrations and settlement agreements, a majority had parties' consent contained in BITs. Out of 28 cases, 4 cases ended with settlement agreements, 10 are pending and 15 cases reached final decisions out of which 7 tribunals rejected the claims, but 8 awarded pecuniary damages to the investor.

State Guarantees, EU Directives, WTO Agreements

A potential conflict is arising from the need for governments to provide state guarantees for certain project finance based PPPs. This follows from international or regional agreements restricting the use of state guarantees and qualifying them as unlawful subsidies. Many non-OECD countries will need to attract lenders and sponsors by providing financial comfort, e.g. state guarantees, predetermined tariffs, tax incentives and loans, all potentially regarded as public subsidy by arrangements as the WTO Anti-subsidy Agreement, EU state aid regulations, or the OECD Consensus.[3] PPPs which are benefiting from these kinds of sovereign guarantees may face the risk that the guarantee provided may have to be withdrawn in the longer term.

For procurement provisions which are usually found in PPP/Concession Laws, specific procurement laws or sectoral regulations, the relevant international framework is provided by the WTO Agreement on Government Procurement. The Agreement provides a basis for national procurement regulation, though only for limited sectors including construction, environmental services, computer services and value-added telecommunications services. For procurements inside the EU's common market conducted through PPPs/Concession, EU Directives regulate public procurement of supplies and works within the single market. According to these Directives in specific sectors public tendering is mandatory over a certain threshold.

C. National Level PPP Regulation – Horizontal or Sectoral Approaches?

The second question a policy maker needs to ask relates to the soundness of the general legal framework, including the question of what services are provided exclusively by the public sector and whether, and to what extent international investors should participate in projects in the infrastructure sector in the first place. Furthermore, a decision whether to use horizontal legislation with single PPP unit or sectoral legislation with sectoral PPP regulatory authorities needs to be taken.

General Legal Framework and Openness of the Economy

Laws and regulations that prohibit or restrict the private ownership and operation of public services and/or foreign investment in infrastructure sectors are the most obvious general regulatory obstacles for PPPs. The trend in the new generation investment laws in OECD, non-OECD and also MENA countries has been to liberalise infrastructure sectors, opening them to foreign investors. Privatisation strategies have also limited the occurrences of public monopolies in these sectors. However, discussions on "strategic industries" remain on the agenda even in relatively open OECD economies and point towards a potential 'revival' of stronger screening and approval requirements for FDI for certain sectors.

As to the general legal framework which also applies to investment using PPP models, predictability and transparency of laws, regulations, administrative and judiciary practices are of key relevance for private investors. Even the best contracts and project finance arrangements amount to little in an environment where those agreements cannot be adequately enforced. It is for this reason that a lack of legal clarity has been behind many widely-publicised cases of governments challenging existing contracts or dismantling regulatory setups.

This is in particular true for international investors who are often the only source of project financing on a larger scale. In short, "better laws" mean legislation that clarifies private investors and governments rights and obligations in PPP projects. Box 1 provides an overview of questions an international investor will ask regarding the soundness of the general legal framework.

Box 1. Questions of an International Investor in PPP Infrastructure Projects

- Does the law permit the private provision of infrastructure services?
- Are foreigners legally entitled to hold concessions?
- Are there limits to the foreign operation or ownership of public utilities or services?
- Are foreigners excluded from certain sectors or are there other forms of discrimination against foreigners such as preferences given to domestic bidders?
- Are foreigners permitted to own land and exercise all related ownership rights?
- Are government rights to expropriate limited in scope and subject to judicial review?
- In case, property rights are affected by government action, are investors compensated, and what standards apply to compensation?
- Do labor and immigration laws present an environment conducive to operation of the project, does the law mandate the use of local employees?
- Are there restrictions on the use of foreign managers, what are the visa requirements for foreign personnel?
- Does the law require environmental impact studies, environmental permits, or licenses?
- If project revenues are in local currency, does the concessionaire have the ability to exchange local currency into foreign currency and how will the rate be determined?
- Can project revenues be transferred offshore or repatriated to the country where the ownership of the project company is domiciled?

Source: World Bank, Toolkit, p.32, Straus, 2007, MENA-OECD Investment Programme.

Horizontal PPP/Concession Laws – Common Law and Civil Law System

The third decision policy makers have to make concerning the regulatory framework for PPPs is what regulatory approach is useful and best fitting to the country's legal tradition and immediate needs. Whatever approach is chosen, the following issues need to be addressed:

- Definition of infrastructure sectors are open to private participation,
- Definition of agencies responsible for approving private projects or contracts;
- Issues regarding tariff adjustment;
- Rules regarding contract amendment and termination;
- Competitive bidding and other procurement related provisions;
- Availability of dispute settlement, namely international arbitration;
- Other issues not treated by general law, but relevant for private participation in infrastructure.

The more fundamental decision in selecting an appropriate regulatory approach will vary strongly depending on whether the legal framework is a common law system or a civil law system. Under common law systems, concession agreements are regarded as ordinary contractual arrangements not necessarily meriting a specific regulatory basis. Empowering legislation for concessions is thus not a legal necessity. Civil law jurisdictions ascertain a specific nature of concession agreements as public contracts requiring a specific legal basis. Thus, general and explicit sectoral concession or PPP laws can be found more frequently in these jurisdictions.

For example, under common law systems, the need for an extensive PPP/Concession law is less obvious given that concession agreements are regarded as simple private contractual relationships. In the UK and Australia, PPPs have been successfully implemented with very little PPP law. Furthermore, in common law countries, a private party to a government contract has no recourse against the government if the government breaches the contract. The only remedy is that the contracting agency permits law suits explicitly within the concession agreement, or the host government permits the same by explicit regulation.

Civil law systems tend to qualify concession agreements as special agreements with a public character. A legislative basis for transfer of infrastructure assets to the private sector is therefore required. This approach can also have an impact on the powers of the parties to amend the agreement. For example, the French Civil Law system defines concession agreements upon the doctrine of "contrat administratif", thereby treating the parties to a "contrat administratif" unequally and enabling the government to unilaterally amend its provisions. The idea of a 'subordination relationship' between the public and the private party in a "public contract" ("öffentlich-rechtlicher Vertrag") can lead to similar consequences under German law.

The ability of the public sector to grant concessions is in many jurisdictions the most critical uncertainty faced by lenders and investors and they may argue that this uncertainty is best removed by a horizontal PPP/Concession/Privatisation law independent from the legal tradition of a country. A supporting argument would be that it is far more difficult to change a law than administrative guidelines.

This viewpoint often heard from investors has to be balanced with the interest of the government which may find that general legislation in form of a PPP/Concession law is not suitable to address all the particular requirements of different sectors. Even in countries that have adopted general legislation

addressing cross-sectoral issues, it has been found that supplementary sector specific legislation allows the legislator to formulate rules that take into account the market structure in each sector. Generally, it seems to be advisable to avoid overly rigid or excessively detailed legislative provisions dealing with contractual aspects of the implementation of PPPs, be it in horizontal, cross-sectoral or in sector specific legislation.

Another regulatory technique countries are using entails establishing only the basic principles in general PPP/Privatisation/Concession or Procurement laws, leaving it to implementation regulations to set forth more detailed rules to implement the general provisions thereby using a sectoral scope. From a regulator's point of view, the fact that regulations are easier to be adapted to a changing environment or conditions in a specific sector is an incentive to use this approach. However, for the very same reason, private investors may find implementation of regulations issued by administrative bodies and not needing parliamentary approval less predictable.

Other reported difficulties in using PPP/Concession laws encompass the need to identify the legislation applicable to the award of a concession in a procurement process in a particular sector against the background of potentially unclear boundaries between the general concession law and sector specific laws or unclear boundaries between the concession and the public procurement law.[4]

Sectoral Regulations and Independent Sector Regulatory Authorities

OECD countries' experience shows that countries with a common law tradition tend to use sectoral approaches for the regulation of PPPs. In these countries, regulators create independent sector regulatory authorities with the authority to grant concessions to project companies. For example, the United States has no central PPP unit on the federal level. Federal legislation providing authority to establish PPPs is enacted on an agency-by-agency basis so that procedures differ from sector to sector.

Private project sponsors would certainly regard as suboptimal a situation in which there is neither a horizontal nor a sectoral regulation but a single agency empowered to grant concession using wide discretionary powers. A recent publication lists the following measures as possibilities to reduce these particular regulatory risks[5]:

- Limiting regulatory discretion and the frequency of decisions;
- Minimising re-set dates in the terms of the concession contract;
- Ensure political independence of the regulator;
- Long regulatory tenure at least for key staff in regulatory authority;
- Change of law guarantees.

Procurement Laws

For a project company in a PPP, procurement laws and regulations provide an important pillar of the regulatory framework. Procurement related provisions can be found in horizontal PPP/Concession/Procurement laws or sectoral laws and regulations. A competitive public procurement process is required by law in many countries where either public funding is being provided or services are being provided to the public. Procurement procedures are also required if project finance funding or guarantees are provided by multilateral development banks, such as the World Bank. The UNCITRAL Model Law on Procurement of Goods, Construction and Services provides a good reference board for how to promote competition among suppliers and contractors, the provision of fair and equitable treatment of all suppliers and contractors and transparency in the overall procurement procedures. Best practice for modern transparent procurement systems are described in Box 2.

Box 2. Good Practice for Transparent Procurement Procedures

- Clear tendering rules and processes outlining the timetable, set award criteria etc
- Transparency in terms of the award process
- Output rather than input specifications as this facilitates innovation in design, construction and operation which also allows for greater cost savings
- Balanced award criteria to strike a balance between lowest cost and the quality and expertise of the bidders
- All participants and potential participants should be aware of the applicable rules of procedures
- The discretion of procurement officers in achieving the goals of the procurement process should be structures and subject to formal rules
- Compliance with the applicable rules should be verifiable
- Mechanisms should exist for scrutinizing decisions to ensure compliance with legal norms

Source: OECD, Bribery in Public Procurement, 2007 and DEPFA Bank, 2007.

Other principles key to a modern procurement framework include the right to appeal against a procurement decision to an independent judiciary body, as well as an independent monitoring authority/auditor to investigate PPP procurement practices and help ruling out any conflict of interest in the dealings of the contracting authority.

In addition, the OECD Principles highlight (annotation to Principle 15): “Based on the experiences with infrastructure concessions over the last two decades, an emerging consensus is that the likelihood of a successful tendering process is enhanced when relatively simple award criteria are applied. Complex criteria make it virtually impossible to discern what bid is ‘best’ and lay the tendering process open to manipulation and illicit practices. As a general rule, the competitive advantages of private sector participants are best mobilised in the public interest when award criteria focus directly on the quantity and quality of services, and their price, to be provided to end-users. This encourages individual companies to propose innovative and efficient solutions.”

An issue raised in Central European countries regarding the procurement regulations relates to the fact that PPP projects often need to be performed in segments and public procurement legislation may jeopardise the project company or the contactors’ right to participate in the execution of each such segment.[6] To avoid such conflicts, government should strive to review relevant legislation as part of its preparatory work to embark on PPP projects.

D. Contractual Arrangements for Individual Projects

The contractual relationship between public and private parties in a PPP constitutes the final level of legal relationships impacting on the success or failure of a PPP. The core contractual arrangement is the concession agreement between the Contracting Authority and the Project Company/Sponsor. The public sector entity with whom the Concession agreement is signed may be a national or regional government, a municipality, a state agency, a state-owned company, or a special-purpose entity set up by the state to grant the concession. In the complex project financing based PPP structure shown in Figure 1 many legal documents are required which need to spell out as detailed as the possible risk allocation and the project specifications.

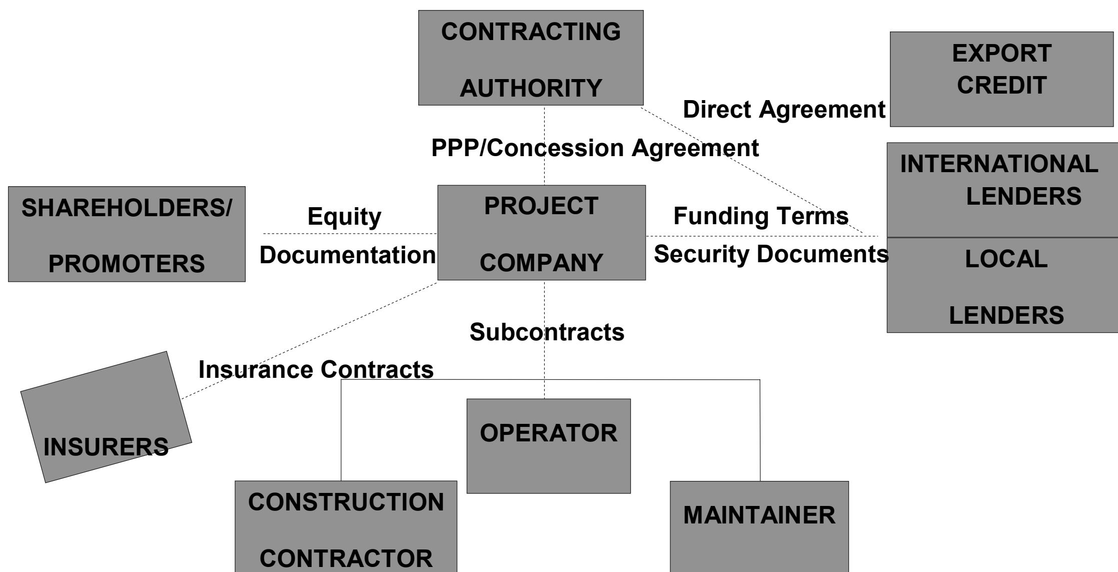
Principle 16 of the OECD Principles for Private Sector Participation in Infrastructure spells out that "the formal agreement between authorities and private sector participants should be specified in terms of verifiable infrastructure services to be provided to the public on the basis of output or performance based specifications. It should contain provisions regarding responsibilities and risk allocation in the case of unforeseen events."

The ancillary contracts cover other relationships, amongst them the construction contract, the operation and maintenance contracts, government support agreement, insurance agreement direct agreements which link the lenders to the project contracts and other such matters.

Parties involved in a typical OECD country PPP involving a Concession agreement and based on a project financing model, include the following (terminology interchangeable):

- Contracting Authority;
- Sponsor/Project Company/Special Purpose Vehicle;
- Shareholder/Equity Investors/Promoters;
- International and local lenders/Debt Financiers;
- International and national public and private insurers (including Export/Investment Credit Agencies of investor's home country);
- Operators and Construction Contractors and Maintainers.

Figure 1. Parties involved in a complex PPP structure



Source: MENA-OECD Investment Programme, 2007.

Standardised Contracts

To improve efficiency in the contractual setup, governments can standardise contracts. This promotes common understanding of the main risks, allows consistency of approach and pricing across

a range of similar projects and reduces the time and costs of negotiation. In the UK, the Government decided to standardize PFI contracts: SoPC4 and now all PPPs must be SoPC4 compliant.

Competitive Dialogue

The competitive dialogue procedure is a procurement technique based on EU Public Sector Procurement Directive (2004/18/EC) whereby the contracting authority works with bidders to develop technical and commercial solutions. In complex contracts where a contracting authority is not objectively able to define the technical means for satisfying its needs and objectives to specify the legal or financial set up, this new form of working with the private sector can be used by governments. The UK has incorporated the EU Directive and applies in its procurement process the competitive dialogue for PFI projects before issuing the final tender.

Step in Rights and Termination Rights

For PPPs which are being project financed, lenders will require 'step in' rights which will allow them to take over the project or substitute the concessionaire to prevent a termination of the concession. Contracting authorities have to be flexible enough to allow this special form of re-negotiating the underlying concession agreement or ancillary direct agreements with the lenders.

Termination clauses will be contained typically in concession agreements. Grounds of termination can be found on the public or on the private side. Typical reasons for the CA to terminate a concession include the insolvency of the concessionaire, abandonment of the project, material breach of contract, expropriation of essential assets, renouncement of licences, change of law and force majeure. In these cases, payment obligations on the public side following termination are the key issue which is best addressed in the concession agreement in some details. At fault can also be the concessionaire and here the question whether at least the lenders should be granted some compensation can be highly controversial. A better solution is recourse to 'step in' rights giving lenders and equity sponsors to a project the chance to turn the project around.

Re-negotiation

The long duration of PPP projects based on concessions and various forms of BOT models can make it necessary to re-negotiate the PPP/Concession agreement. Since not all project conditions are foreseeable when entering into a long-term PPP/concession agreement, re-negotiation should be considered an advantage for both parties. If re-negotiations are to be avoided by all means, excessively detailed arrangements providing for every eventuality can result.

Re-negotiations should be conducted by the parties in good faith and provisions of the agreement should specify under what circumstances shall revisions be considered. Re-negotiation have to be distinguished from re-financing arrangements whereby after the project has been successfully put in place the project company tries to amend the financial arrangement with senior debt providers in order to lower costs of debt. Such bonuses should be shared by the public and the private partner.

Dispute Resolution

Dispute resolution mechanisms in concession agreements have to be well thought through. Regarding the applicable law and court system as pointed out before in particular the foreign sponsor, equity investor or lender will often have an interest in avoiding the local legal system and prefer international arbitration instead. Local legal systems have often been regarded as not living up to

international standards or simply not known enough to the investor and his advisers. Governments, on the other hand, with strongly push for the use of domestic laws and court systems.

In any case, if minor adjustments to the agreement are required, expert determination can be a sufficient form of dispute resolution. If differences about the interpretation and application of the agreement's provisions or more comprehensive modifications are sought, provisions on litigation or arbitration have to be foreseen in the concession agreement. Given the often highly technical and complex questions at stake, practitioners point to the need for empowering a panel using expert determination as a form of alternative dispute resolution before more formalised means of legal proceedings are sought after.

E. Internationally Recognised Best-Practice Guidelines

Many international organisations as well as private sector firms are offering sets of guidelines or principles on PPP framework conditions including recommendations on regulatory frameworks or even concrete drafting proposals for PPP/Concession/Procurement laws. Box 3 outlines some of them.

Box 3. Internationally recognised Good-Practice Guidelines

- OECD Principles for Private Sector Participation in Infrastructure, 2007
- OECD Best Practices for Budget Transparency, 2001
- OECD DAC Guiding Principles for Guidelines Guiding Principles on Using Infrastructure to Reduce Poverty
- OECD Basic Elements of a Law on Concession Agreements, 1999-2000
- Green Paper EU Commission on Public Private Partnerships, 2007; EU Commission 2003 Guidelines for Successful Public-Private Partnerships
- UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects, 2003
- UNCITRAL Model Law on Public Procurement, 1994 and Legislative Guide on Privately Financed Infrastructure Projects, 2000
- United Nations Economic Commission for Europe, A Guide to Promoting Good Governance in Public Private Partnerships, August 2007
- UNIDO Guidelines for Infrastructure Development through Build-Operate-Transfer (BOT) Projects, 1996
- World Bank, Privatisation Toolkits
- The Public-Private Infrastructure Advisory Facility (PPIAF) Toolkits
- EBRD Core Principles for a Modern Concession Law, 2005
- Public-Private Partnerships for Water Supply and Sanitation, Swiss Re/SECO, 2005

Source: MENA-OECD Investment Programme, 2007.

II.8.2. REGULATORY FRAMEWORKS IN MENA

The MENA region is starting to fully embrace private involvement in formerly state-owned enterprises or for the provision of infrastructure services in the wider sense. The countries of the region have become more and more open to privately provided infrastructure. According to the World Bank PPI Database covering data from 13 MENA countries from 1990 until 2005, more than USD 40 billion has been invested in 99 public private infrastructure projects in the telecommunication, energy, transport and water sectors both by private companies and the public parties. In essence, the same challenges that are driving MENA governments to adopt general measures to improve their business climate – high population growth, need for substantial expansion and modernisation in the coming years, and high unemployment – are also generating pressures on MENA governments to privatise their infrastructure using PPP models or full privatisation. However, there has been a certain reluctance to involve the private sector deeply in sensitive sectors with strategic importance, most notably the water sector, where privatisation or PPP measures have been undertaken only very cautiously.

A. Regulatory Approaches in MENA

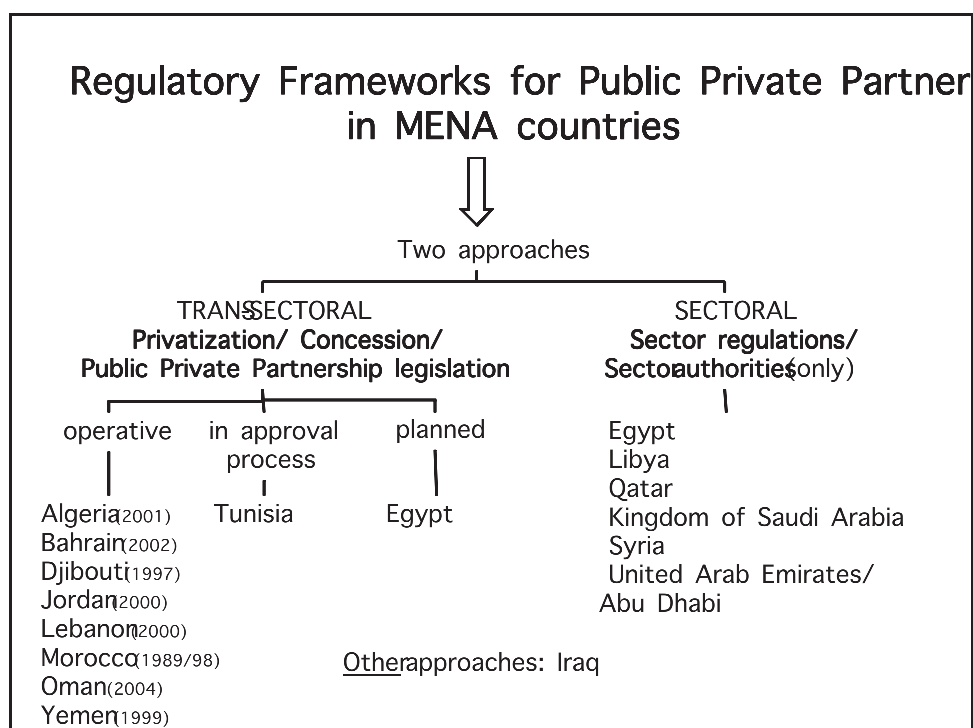
As Figure 2 shows, two different types of regulatory frameworks for Public Private Partnership projects are applied in MENA countries. Following a more civil law inspired approach, MENA countries in particular in the Maghreb, tend to adopt cross-sectoral (i.e. horizontal) privatisation/PPP/concession laws and regulations. MENA countries more prone to common law traditions, in particular in the Gulf countries, tend to adopt sectoral regulations and the corresponding authorities are often granted considerable discretion.

Horizontal Privatisation/PPP/Concession laws have been implemented during the last 10 years in Algeria, Bahrain, Djibouti, Jordan, Lebanon, Morocco, Oman and Yemen. The Tunisian general concession law is currently subject to the procedures of approbation. Egypt is considering issuing a PPP law in the near future.

Except for the **Tunisian** concession law, the word "privatisation" is usually included in the title of the cross-sectoral laws. Yet, most of them refer both to privatisation in the narrower sense and to public- private-partnership initiatives.

- For example, Article 2 of the **Djibouti** Privatisation Law explicitly refers to concession or lease contracts as possible modes of privatisation.
- The **Jordanian** Privatisation Law lists transfer of the management of enterprises from the public sector to the private sector, build-own-transfer, build-transfer-operate, build-own-operate and build-own-operate-transfer as well as licensing (Art. 4), thus including all methods usually used in PPP initiatives.
- Likewise, the **Omani** Privatisation law specifies "granting the private sector the right of building, ownership and management, or concession rights, or building permit, management or leasing of Privatisation projects" (Art. 3).

Figure 2. Regulatory Frameworks for Public Private Partnerships in MENA countries



Source: MENA-OECD Investment Programme, 2007.

In many cases, PPP related initiatives and projects had already been conducted before special legislation was adopted. For example, a privatisation program for public firms was launched in Algeria in 1995 and started to be implemented in 1998, before the Law on privatisation was adopted in 2001. Similarly, the Omani privatisation law is based on the experience of the Fifth Five Year Plan (1996-2000) and was adopted after a company in the telecommunications sector was privatised in 2002 by sectoral regulation (Telecom Regulatory Act, passed under Royal Decree No. 30/2002).[7]

The general laws on privatisation usually either refer to an explicit list of sectors and companies to be privatised or implemented using a PPP model, or place the responsibility for defining these sectors on specific public institutions.

- For example, the Article 4 of the **Bahraini** Privatisation Decree refers to "the service and manufacture sectors, and in particular the tourism sector, communications sector, transport, electricity and water, the ports and airport service, oil and gas sector, postal service and any other service and production sectors."
- In **Djibouti**, a list of companies to be privatised is annexed to the general Privatisation Law. In addition, a specific decree regulates the Privatisation of four large state-owned companies.[8] Similarly, a list of companies in which the government holds shares or owns completely is annexed to the **Moroccan** Privatisation law.
- The **Jordan** privatisation law is in principle applicable to all sectors. The Privatisation Council has the task to specify "the public institutions or public-sector enterprises it decides to be privatised, or restructured in preparation for privatisation, and [to adopt] the appropriate implementation method to achieve this purpose.[9]" Likewise, in **Oman** the Ministerial Committee for Privatisation is responsible for determining the sectors and

projects intended to be privatised. They have to be approved of by the Council of Ministers. Similarly, a state council is charged of determining the privatisation strategy and approving the privatisation programmes and policies in **Algeria**.

- In **Lebanon**, both a general privatisation law and sectoral laws apply. The Privatisation Law (Law 228/ 2000) sets up the general privatisation framework, including the establishment of the Higher Council of Privatisation in charge of initiating, planning, implementing and supervising the country's privatisation programs and operations. The law requires that specific laws are adopted for each sector where a privatisation transaction is envisioned. So far, additional laws have been enacted for the telecommunications sector (Law 431/ 2002, see below) and for the electricity sector (Law 462/ 2002).[10]
- Though **Egypt** does not yet have a comprehensive privatisation law (in planning), it also pursues a cross-sectoral approach. Egypt has supplemented its privatisation programme by structural reforms within an overall strategy to enhance the private sector participation in the county's economy and social development. The Public Private Partnership Central Unit was established within the Ministry of Finance in 2006 and cooperates closely both with the Ministry of Planning and the Ministry of Investments.

Alternatively, some countries enforce special **sectoral regulations** for specific PPP/Privatization projects:

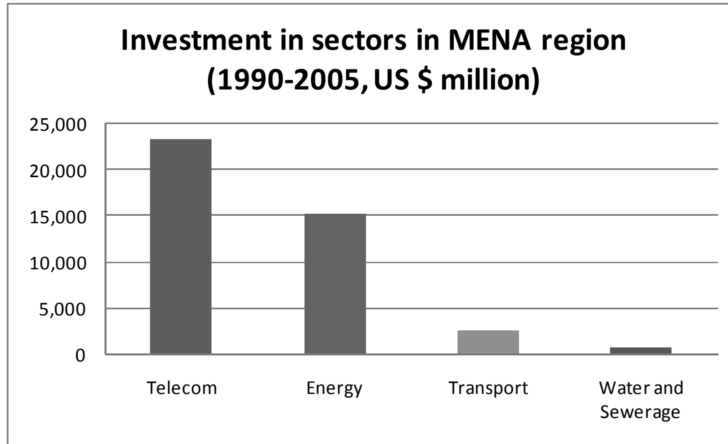
- For example, **Lebanon** and **Syria** have conducted privatisation programmes constrained to the telecommunications sector. They privatised their mobile telephone services using build-operate-transfer contracts.
- The **Libyan** general framework for privatisation was established in 2000.[11] So far, there have been privatisation initiatives in several sectors using sector-specific regulations, as for the banking sector, health sector, transportation and telecommunications sector.
- **Qatar** implemented and plans to implement privatisation measures in the water and electricity sector using specific legislation.[12] The Qatar General Electricity and Water Corporation (KAHRAMAA) is responsible for laying out regulations in the water sector.[13] Qatar intends to set up a holding company for privatisation on a PPP basis.[14]
- In the same manner, the **Emirate of Abu Dhabi** privatised the water, wastewater and electricity sector. The Regulation and Supervision Bureau for the Water, Wastewater and Electricity Sector in the Emirate of Abu Dhabi is responsible for regulating these sectors there.
- **Saudi Arabia**'s privatisation strategy is formulated by the Supreme Economic Council (SEC) established in 1999 which is responsible for determining the sectors to be privatised, supervising the privatisation program and monitoring its implementation (Decision of the council of Ministers No. 257 on 04/02/01).[15] Saudi Arabia's new privatisation strategy was approved by the SEC on 05/06/2002. Both the Saudi water and telecommunications sector were privatised through the framework of sectoral legislation. For this purpose, the Communications and Information Technology Commission (CITC) and the Saudi Electricity Regulatory Authority were established in 2001.

In **Iraq**, privatisation provisions are included in the Foreign Investment Law.[16] As this law refers both to private and state-owned enterprises which are treated alike and open to private foreign direct investment, any public companies can be privatised.

B. Examples of Successful PPP Regulations in the Telecommunications and Water Sector

Concerning the actual implementation of privatisation and PPP strategies and regulations, Figure 3 provides a general overview of experiences in the MENA countries. It shows the number of infrastructure projects realised with private participation in the telecommunication, energy, transport as well as water and sewerage sectors during the period between 1990 and 2005. The graph is based on the PPI Database published by the World Bank. (The country sample of the database does not include projects in Bahrain, Kuwait, Qatar, Saudi Arabia and the United Arab Emirates.)

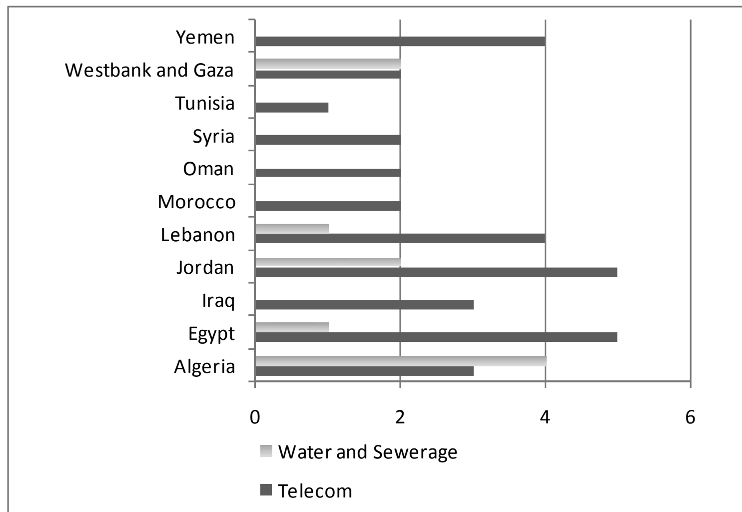
Figure 3. Number Of Projects In Sectors In MENA Region (1990-2005)



Source: World Bank, PPI Database

Two interesting sectors are the telecommunications sector and the water and sewerage sector, the former being the sector with the largest amount of private participation and the latter being a sector where much investment is needed in MENA countries. Figure 4 gives an idea of how many projects in the telecom and water sector were realised within the above mentioned period in eleven countries included in the World Bank PFI database (Djibouti and Libya are included as well, but no projects in the water or telecom sector were realised within the period).

Figure 4. Number Of Projects In Telecom And Water Sectors in a Sample of MENA Countries (1990-2005)



Source: World Bank, PPI Database, 2007.

Telecommunications Sector

With more than USD 23 billion invested by the public and private between 1990 and 2005,[17] most MENA countries have some experience with PPP or licensing in the telecommunications sector. Usually, a special regulatory authority was established in the countries with the responsibility of licensing the private service providers.

Algeria: The Algerian government adopted a reform agenda in 2000 which aimed at introducing competition in the telecommunications sector and bringing this sector to international standards. The *Ministère de la Poste et des Nouvelles Technologies de l'Information et de la Communication* was charged with enforcing the reform agenda. Thus, between 2001 and 2003, the *Autorité de Régulation de la Poste et des Télécommunications*, the national landline operating company *Algérie Telecom*, the successor of *Algérie Telecom Mobile* called *Mobilis* and post operating company *Algérie Poste* were created. Due to these measures, there are meanwhile two private mobile telecommunications operating companies, *Orascom Telecom Algérie* since 2001 and *Wataniya Telecom Algérie* since 2004. In addition, Orascom Telecom Holding in partnership with Telecom Egypt was assigned a license for landline telecommunication service in 2005.[18]

Bahrain: In 2002, the Telecommunications Law was issued, establishing the Bahraini Telecommunications Regulatory Authority (TRA) and timetabling the opening of the telecommunications market. In 2003, a second mobile telephone license has been assigned to MTC Vodafone Bahrain (the first license being held by the Bahrain Telecommunications Company). In July the following year, the national fixed service was opened towards competition. Meanwhile, the TRA has assigned eight fixed telephone network licenses.[19]

Egypt: The Telecom Master Plan was formulated by the Ministry of Communication and Information Technology in 2001. Two years later, the Telecommunications Regulatory Act (Law No. 10/ 2001) was adopted. Thus, the National Telecommunications Regulatory Authority (NTRA), responsible for administering the telecommunications sector, enhancing competition and protecting user rights, was established. Currently, there are two private mobile telephone service providers, Etisalat and Vodafone as well as three 3rd generation mobile telephone service providers, Etisalat, Vodafone and Mobinil. Telecom Egypt, the traditional provider, is still in charge of fixed telephone network services although it was partially privatised in 2005 (raising USD 0.9 billion).[20]

Lebanon: In Lebanon, through the Telecommunications Law (Law 431/ 2002) the telecom sector was liberalised. An independent regulatory authority, the Telecommunications Regulatory Authority was established in 2007, responsible for liberalizing the telecommunications sector, adopting regulations, granting licences as well as enforcing competition within the sector. The Authority's Strategic Plan covers three objectives, liberalization of mobile communication and liberalization of broadband as well as liberalization of international services by issuing new gateway licences. Since 2004, FAL-DETECTO (grid Alpha) and MTC Touch have held the licences for the mobile business on a build-operate-transfer (BOT) basis.[21]

Morocco: In February 1998, the *Agence Nationale de Réglementation des Télécommunications* was established due to Law No. 24-96 which re-organised the Moroccan post and telecommunications sector. The agency is in particular responsible for issuing licenses and supervising competition in the telecommunications sector. Meanwhile, there are two mobile telephone service providers in Morocco: in addition to the historical provider *Maroc Télécom*, a license has been assigned to *Médi Télécom* in 1999. Furthermore, five licenses GMPCS (global Mobile Personal Communications Systems), three licenses of mobile telephone service Vsat and three licenses 3RP have been assigned to various companies.[22]

Qatar: The Qatar Public Telecommunication has been transformed into a joint stock company called Qatar Telecom (Q-TEL) within the first phase of a privatisation program prepared in collaboration with the World Bank. 45% of the shares of Q-TEL were offered for sale to private investors, including foreign investors, which is considered a first measure to attract foreign capital to Qatari projects.[23]

Saudi Arabia: In 2001, the Telecommunications Act was passed. The Communications and Information Technologies Commission (CITC) was established by a Council of Ministers Decision the same year as the regulatory body for the privatisation of the telecommunications sector.[24] It is charged with providing for a fair, clear and transparent regulatory environment, promoting competition, safeguarding public interest and stakeholder rights as well as enabling universal availability of ICT services and increasing ICT awareness and usage to enhance national efficiency and productivity. The mobile telephone market has been partially liberalised since the last quarter of 2004 and the fixed telephone market is planned to be liberalised by 2008.[25] Meanwhile, licences have been assigned to two mobile telephone service providers, two 3rd generation mobile telephone service providers as well as four prepaid card recharging service providers.[26]

Syria: Fixed line network as well as backbone internet is provided for by a public monopoly, the Syrian Telecommunications Establishment (STE), in Syria. Two private service providers are responsible for mobile telecommunication, Syriatel and Spacetel. They operate on a BOT (Built-Operate-Transfer) basis for seven years. Yet, prices are still fixed by the STE.[27]

United Arab Emirates: In the UAE, the federal Telecom Law was issued through Decree No. 3 of 2003. By this law and an Executive Order by the Supreme Committee for the Supervision of the Telecommunications Sector, the Telecommunications Regulatory Authority (TRA) was established. This authority is in charge of gradually introducing competition into the telecommunications sector, setting up a suitable framework to maintain competition and encouraging national and international investment in the sector. So far, two licences have been assigned, one to Etisalat (Emirates Telecommunications Corporation) and one to DU (Emirates Integrated Telecommunications Company).[28]

Water/Wastewater Sector

Studies show that the amount of available renewable water per person in Middle East and North African (MENA) countries is one-fifth of what it is in the rest of the world. 80% of MENA countries fall below the international water scarcity threshold of 1,000 cubic meters (m^3) per person per year. In addition, water coverage is limited. Potable water network coverage reaches an average of 75% of the population in MENA countries. However, many MENA countries have some of the highest consumption rates per capita in the world. Consumption per person in the United Arab Emirates (UAE), for example, is among the highest in the world, standing at around 570 liters per person a day, more than three times the world average. Thus, it is not surprising that MENA countries have been much more cautious in approaching PPP in this sensitive sector. Nevertheless, there are several examples of successful PPP regulations in this sector as well.

Egypt: In Egypt, there have been various public-private-partnership projects within the water sector during the last years. The Ministry of Water Resources and Irrigation is responsible for supervising these measures. For example, due to a canal built within the Toshka Development Project new arable land has been gained. Likewise, the West Delta Water Conservation and Irrigation Rehabilitation Project aims at extending irrigation to new lands along the western borders of the Nile Delta.[29]

Jordan: The Government of Jordan started a privatisation program in 1997 to orient Jordan's economy towards private sector participation. The Water Authority of Jordan (WAJ), a sub-authority of the Ministry of Water and Irrigation established in 1983, concluded a four-year management contract with a consortium led by a French Company in 1999 for the water and wastewater related services in the Amman Governorate.[30]

Oman: In addition to the privatisation law, the Royal Decree No. 78/ 2004 regulated and privatised the electricity and the related water sector. Within the privatisation process, the processes of generation, transmission and distribution were separated, with three companies for electricity generation and water desalination, three companies for distribution and supply and one company for power transmission and control stations. The Oman Power and Water Procurement Company (PWP) will be temporarily owned by the government. An independent authority to regulate the sector was also established.[31]

Saudi Arabia: The Ministry of Water and Electricity (MOWE) was established under the Council of Ministers' resolution No. 125 dated 17/07/2001. Amongst other issues, it is in charge of supervising, managing and regulating the water sector as well as setting up the necessary mechanisms for the private sector to invest in the water sector. Pursuant to Council of Ministers' Resolution No. 219 issued on 11/11/2002, the water sector was one of the sectors identified for privatisation by the Kingdom. The SEC resolution 5/23 in 2002 regulates the private sector participation in saline water desalination and power projects on build-own-operate basis (e.g. Shuaibah, Shuqaia, Raz Azzour and Jubail). By 2008, the Saline Water Conversion Corporation, the authority for desalinated water supply, is planned to be privatised as well.[32]

Tunisia: Due to the scarcity of water in Tunisia, water management is among the priorities of the Tunisian government. The main part of the Tunisian water sector is managed by two independent government agencies, the *Société Nationale d'Exploitation et de Distribution des Eaux (SONEDE)* and the *Office National de l'Assainissement (ONAS)*. Yet, private sector participation has been introduced in sanitation recently. In 2004, Law No. 70 was issued, permitting build-own-transfer (BOT) operations in the sewerage sector. Several wastewater treatment plants (e.g. Tataouine, Tozeur, Nefta, Bizerte, Menzel-Bourguiba) and a part of the sewerage networks and pumping stations are operated by private companies.[33]

United Arab Emirates (Abu Dhabi): In the Emirate of Abu Dhabi, the Water and Electricity Sector are governed by Law No. 2 of 1998, the wastewater sector by Law No. 17 of 2005. The Regulation and Supervision Bureau for the Water, Wastewater and Electricity Sector in the Emirate of Abu Dhabi, established by Law No. 2 of 1998, has the exclusive authority of regulating the water and electricity sector. It issues licences for activities in the water, wastewater and electricity sector, publishes information relating to standards of performance by licensed operators, promotes competition in the sector and is in charge of protecting the interests of consumers regarding conditions and price of supply.[34] The Abu Dhabi Water and Electricity Authority (ADWEA), likewise established by Law No. 2 of 1998, is responsible for the regulatory framework and all matters relating to privatisation of the water and electricity sector as well as for the production, transmission and distribution of potable water and electricity in Abu Dhabi. Meanwhile, five independent power and water producers have been introduced. The Market is characterised by a single buyer, the Abu Dhabi Water and Electricity Company (ADWEC).[35]

CONCLUSIONS

The evolving regulatory frameworks for successful PPPs in the MENA region are converging towards global standards and trends. The different legal traditions of common law or civil law based systems have a strong impact on the choice made by countries following either horizontal or sectoral regulatory approaches.

The private investor in his role as project sponsor, equity or debt investor has an interest in limiting discretionary powers of regulatory authorities or line ministries. Investors benefit from a predictable regulatory environment which enshrines basic principles and rights in parliamentary legislation rather than mere implementing regulation potentially subject to changes by newly incoming administrations. Sector specific regulation should complement additional predictability for the investor, at the same time providing sufficient flexibility for the regulator to react to changing political circumstances. Finding the right balance is the key challenge for regulators and depends also on the general perception and risk rating of a country by the international and domestic community of investors.

For successful conclusion and implementation of PPP arrangements, it is helpful if the government defines a clear and well established policy in form of an explicit government PPP/Privatisation strategy supported at the highest political levels. Secondly, adherence to international instruments and membership in key organisations can provide an indication for a transparent and predictable regulatory framework. Thirdly, from an investor’s point of view the national regulatory regime should entail elements as the faireness of the selection process in the procurement of the concession, the good faith behavior of the contracting authority during the implementation of the concession and the possibility to potentially recover some losses if the project fails.

These requirements have to be balanced with the right of a government to regulate according to changing economic or political circumstances. Governments also profit from clearly crafted laws and regulations underlying the concession agreement and in the agreement itself from clear apportioning of risks, procedural fairness while awarding the concession and specific and performance based provisions regarding the project implementation. The option for re-negotiation benefits both parties, the private and the public, if unforeseeable circumstances arise disruptive to the overall balance of rights and obligations in the Concession agreement.

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Annex II.8.1.

MENA MEMBERSHIP TO THE 1958 NEW YORK CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

MENA countries	Membership
Algeria	Yes
Bahrain	Yes
Djibouti	Yes
Egypt	Yes
Iraq	No
Jordan	Yes
Kuwait	Yes
Lebanon	Yes
Libya	Yes
Morocco	Yes
Oman	Yes
Qatar	Yes
Saudi Arabia	Yes
Syria	Yes
Tunisia	Yes
United Emirates	No
Palestine National Authority	No
Yemen	No

Annex II.8.2.

ICSID MEMBERSHIP OF MENA COUNTRIES

Country	ICSID member since
Algeria	1996
Bahrain	1996
Djibouti	No
Egypt	1972
Iraq	no
Jordan	1972
Kuwait	1979
Lebanon	2003
Libya	no
Morocco	1967
Oman	1995
Palestine National Authority	no
Qatar	no
Saudi Arabia	1980
Syria	no*
Tunisia	1966
United Arab Emirates	1982
Yemen	2004

* Signed on May 25, 2005, but the convention has not entered into force.

Annex II.8.3.

MENA WORKSHOP ON PUBLIC-PRIVATE PARTNERSHIPS FOR INFRASTRUCTURE FINANCING

Summary Conclusions
Istanbul, 8 November 2006

The workshop was co-organised by the Investment and Governance Pillars of the MENA Initiative on Governance and Investment for Development. The event featured high level participation and contributions from private sector and government officials on the evolving scenario of PPPs for infrastructure financing in the MENA region. More than 65 delegates from the public and private sector, academia, international organisations, consultancy firms and OECD Ambassadors attended the meeting.

The workshop provided a useful forum for MENA participants from both public and private sector to discuss how the region can benefit from PPP arrangements to develop infrastructure, using them as a tool for the delivery of public services benefiting from private sector financing, know-how and efficiency gains.

As background material of the meeting, the 'Draft OECD Principles for International Investor Participation in Infrastructure' developed by the OECD's Investment Committee and the '2005 OECD Guiding Principles for Regulatory Quality and Performance' developed by the OECD Regulatory Policy Division and adopted by the OECD Council were tabled. These documents show that Public-Private Partnership arrangements for infrastructure financing increasingly emerge as a key vehicle for public sector reform, strengthen the role of the private sector in the economy, and improve the investment climate.

In their presentations, participants from the MENA region highlighted a number of prominent projects and their implementation challenges. Presentations from Egypt, Jordan, Morocco and Turkey pointed out that countries in the region are 'catching up' with the rest of the world with regards to the use of PPPs for infrastructure development.

Other presentations underscored that the water sector is of particular interest for PPP development, since a number of countries in the region are facing significant challenges in satisfying the growing demand for water. In Egypt, in particular, several domestic factors underscore the potential success of PPP schemes in the water sector. These factors include, among others, the possibility to implement large scale projects in partnership with the private sector, high interest by large national and international investors, familiarity of local investors with cost recovery mechanisms; and finally, the encouragement of these arrangements by the donor community. Overall, MENA governments plan to spend around USD 100 billion by 2015 to meet this growing demand. This figure suggests that PPP mechanisms will be required to support the future development of this sector, noting that a holistic reform approach will be required to implement such arrangements. Case

studies based on experiences in Abu Dhabi, Saudi Arabia and Oman showed that MENA governments need to review their institutional setting, focusing on involvement in policy-making and on planning effective employee transition when restructuring and creating new institutions. These experiences have shown that PPP initiatives in general, and in particular in the water sector, should be driven by clear objectives and monitored by a set of evolving key performance indicators. Furthermore, a careful management of tariff changes and their impact on the privatisation process by governments is necessary. A common view among participants was that MENA countries should explore different PPP approaches and tailor them to the specific needs and maturity of the water sector and local environment.

Going beyond country specific projects, the workshop revealed that given the mixed experiences with the PPP arrangements in other regions of the world, the challenge remains to translate the concept into sustainable projects and guarantee not only their economic viability but also their political support. Therefore, sharing of experience between MENA and OECD member countries on the most efficient design and use of PPPs can offer valuable guidance and lessons learned for future PPP development in the region.

The panels in the workshop provided such a forum for sharing of experience. In particular, discussions during the workshop focused on managing public and private interests and establishing a transparent and efficient procurement process. Diversity among countries in setting up PPP management units (centralised or differentiated by sectors) was also highlighted. Views from public authorities (e.g. the French experience) on how to integrate the private interest when providing public services were presented, and participants from the private sector expressed their concerns and interests to participate in the development of infrastructure projects. Lessons learnt from the South African experience on establishing a PPP unit inside the administration showed that governments need technical and human resources as well as legal frameworks to understand the costs, risks and advantages of setting up PPPs. The OECD presented the Principles for International Investor Participation in Infrastructure and the public sector's view, and in particular the budget implications on PPPs.

Another observation emphasised during the workshop was that a holistic approach is required to effectively tackle all regulatory and political issues involved in successful use of PPPs. The design of such an approach was a key issue discussed during the panel dealing with PPP designs and establishment of effective legal and contractual frameworks. Discussion highlighted the importance of adequate investment climate, political buy-in on the highest level, specific regulatory frameworks allowing for sufficient flexibility, as well as the importance of anti-bribery policies and transparent procedures. Negotiation and implementation capacities on both public and private sides and adequate risk sharing were also addressed in this panel. There was agreement that successful PPPs require: a) a strong investment environment based on transparent and predictable regulatory frameworks; b) a policy framework which addresses anti-bribery issues and sets specific PPP oriented regulatory guidelines; c) an *ex ante* assessment to examine if a particular PPP arrangement is consistent with specific public policy objectives (achieving value for money, etc).

Another issue that was noted as potentially problematic is risk sharing between public and private sectors, which brought forward the debate on optimal risk allocation schemes. As a general best practice, it was agreed that risks more closely related to the project (such as construction risk, performance risk, demand risk) should be allocated to private investors, political risk specific to the project should be allocated to public sector, while other risks (currency, etc.) should be shared. Participants from different countries focused attention on risk allocation in the procurement phase,

discussing issues such as the importance of choosing providers based on price and quality, ways to maximise competitiveness, unconditional bid options.

The last session of the workshop explored PPP financing arrangements, A key component when developing successful PPP infrastructure projects. Experience from different countries has proved that investors demonstrate an interest in PPP projects only when there is a clear guidance on financial arrangements of a potential project, in addition to a reliable government/administrative/legislative framework. Financial arrangements must include a sustainable debt coverage and Debt Equity Ratio, where equity should be provided by private sector investors (e.g. large private equity investors or retail investors through funds) whereas debt is provided by commercial banks (local and foreign) through Project Financing operations as well as International Financial Institutions. A significant remark is that currently the potentially available capital is abundant - both debt and equity - for PPP projects which are well defined and structured. In particular, the MENA region is attracting an increasing interest among investors and intermediaries from Europe and the US, which is relevant to bring know-how and build up networks in the region. Moreover, investor's innovative power is important to define a price for different types of projects, both from a debt and an equity perspective.

'PPP Infrastructure Funds' were also highlighted as increasingly useful tools to attract money from long term investors (such as pension funds, banks, foundations). PPP funds in OECD countries (such as Italy, France, Spain, Portugal, Greece and the UK) have benefited both private investors and the public sector as they stress rigorous analysis of economic and financial feasibility of projects in the long term. With regard to public sector participation, financing can take different forms:

- publicly funded development finance institutions can partner with private sector;
- the public sector itself can play the role as an asset owner with private investors participating with low capital and investment risk through service or management contracts;
- the public sector can participate through guarantees and insurance, to mitigate investment risk,
- through tax or concession incentives, the public sector can encourage packaging of investment in infrastructure.

Finally, the role of international financing institutions (IFI) in PPP projects was highlighted as these institutions tend to bring credibility, enhance environmental and social assessment, and help bring other sources of funding (commercial sources, equity). IFIs' role is even more crucial in the MENA region, where a major development impact can be achieved through the IFI's potential role as a pioneer of a specific technology, etc. A particularly relevant experience has been presented by the Islamic Development Bank, which has structured project finance transactions combining Islamic Financing and Conventional Financing (i.e. IDB participation in the first PPP in hydro-sector in Pakistan). This structure is also specific to most MENA countries.

The workshop gave OECD and MENA countries an opportunity to share experiences in the establishment of PPP projects for infrastructure financing, and to discuss the various ways to integrate public and private interests for effective and successful PPP projects.

Major outcomes of the workshop include:

- Participants confirmed their commitment and support to the OECD - Middle East and North Africa Initiative on Governance and Investment for Development and emphasised the benefits of a regional policy dialogue on the use of PPPs for infrastructure financing.

- Participants confirmed the need to learn more about effective legal and regulatory frameworks as well as financing arrangements to develop successful PPPs for infrastructure in the MENA region.
- The meeting facilitated contacts between professionals involved in the design and financing of PPPs in OECD and countries in the MENA region. It provided a unique opportunity to discuss, learn and share experiences related to PPPs for infrastructure financing.

The concluding remarks of the workshop highlighted the key role of PPPs for infrastructure development for economic growth in the MENA region, noting however the potential for both success and failures. Sharing of best practices is therefore a crucial point for MENA countries and the workshop provided a first step in establishing a process of peer dialogue and learning amongst MENA countries and their OECD counterparts.

As a follow-up to this event, a number of measures have been agreed upon amongst participants, including:

- publishing panelist contributions on the OECD website (www.oecd.org/mena);
- developing an inventory of regulatory frameworks for PPP infrastructure projects for the use of MENA countries;
- sharing a set of guidelines on good practice of implementation of PPPs in OECD countries and developing specific guidelines for the MENA region;
- applying guidelines to the water sector as a pilot project (and priority for the OECD);
- integrating PPP framework assessments into the National Investment Reform Agendas and Country Action Plans of MENA countries (respectively under the Investment and the Governance pillar of MENA-OECD Initiative).

II.9. BUILDING SOUND INSOLVENCY SYSTEMS IN THE MENA REGION

INTRODUCTION

The OECD, in co-operation with the Hawkamah Institute of Corporate Governance, INSOL International[1] and the World Bank, organized a meeting on *Building Sound Insolvency Systems in the MENA Region.* The meeting was co-hosted by the General Authority for Investment and Free Zones and the Egyptian Institute of Directors in Cairo (Egypt) on 21 May 2007.

The meeting brought together approximately 80 officials, members of the judiciary, private sector practitioners, insolvency experts and academics from Egypt, Jordan, Lebanon, Spain, United Arab Emirates, India, United States and United Kingdom. Representatives of the Centre for International Private Enterprise, the European Union and the US Agency for International Development participated as well.

The purpose of the meeting was to learn about the legal and institutional framework of MENA insolvency systems; introduce international guidance and emerging insolvency issues, which have triggered international debates in recent years; identify areas of interest for a regional dialogue on insolvency in the region.

Some of the important issues discussed at the meeting can be summarised as follows:

- Efforts are needed to build more sophisticated insolvency laws in the MENA region and the institutional capacity required for their implementation. There are important international reference points, such as the World Bank *Principles for Effective Insolvency and Creditor Rights Systems* and the UNCITRAL *Legislative Guide on Insolvency,* which could be of assistance to MENA jurisdictions, interested in strengthening their insolvency systems in line with recognized standards.
- There is no "one size fits all" insolvency model fitting all countries. Insolvency systems will embody different policy choices on risk allocation, and should take into account the strengths and limitations of the institutional infrastructure, the level of economic development and the existing social traditions.
- Insolvency reforms will not get off the ground unless policy makers acknowledge the benefits of sound insolvency systems for the efficient reallocation of resources. In contrast, the absence of a well-functioning insolvency regime may precipitate capital flight, and destroy value in the corporate and financial sector, frustrate creditors and discourage domestic and international investors.
- Notwithstanding the importance of country-specific approaches, there are certain core features of effective insolvency systems. One of them is the need for balancing the interests of debtors and creditors. Given the existing limitations of MENA insolvency systems, there is a case to be made for empowering the creditors. Conversely, in order to encourage entrepreneurial behaviour, there is a need to reduce the stigma of insolvency and make it possible for debtors to restart business on a clean slate after a failure.

- Comprehensive insolvency reforms in the MENA should encompass rescue and restructuring proceedings, which are largely lacking in their current frameworks. Otherwise, MENA economies will continue to bear considerable insolvency related costs.
- Furthermore, formal and informal (out-of-court) mechanisms should complement each other. Effective formal mechanisms have a disciplining effect for debtors and creditors. Well-developed informal mechanisms are needed as courts are unlikely to have adequate capacity to deal with all insolvency cases.
- Court systems in particular are at the heart of the insolvency infrastructure. Their independence and integrity, expertise and quality of service should be improved in order for them to fulfil their role.
- The court systems in the MENA countries would be severely strained if asked to actively conduct complex bankruptcy and re-organisation proceedings. While there is a need for judicial supervision of such proceedings, the burden of courts would be more manageable if the negotiation and settlement rights of creditors and their representatives are further developed.
- To this end, it is important to focus on facilitating the emergence of qualified professionals, who could act as trustees or advisors to enterprises undergoing re-organisation. A clear set of rules regarding licensing, duties, responsibilities and ethics need to govern the insolvency professionals.

A summary of the discussions in the meeting is provided in the following sections.

II.9.1. THE INTERNATIONAL PERSPECTIVE

In 2006, the ***World Bank***, in co-operation with the United Nations Commission on International Trade Law (UNCITRAL), issued a document, setting out a unified *Insolvency and Creditor Rights Standard*. The document integrates the World Bank *Principles for Effective Insolvency and Creditor Rights (ICR) Systems* and the *Recommendations* of the UNCITRAL Legislative Guide on Insolvency. Participants were acquainted with the main lessons from the World Bank experience underlining that many countries have had to struggle with antiquated and inefficient insolvency legislation in the last decades. Initiatives included the development of reorganisation proceedings for distressed enterprises, measures to strengthen enforcement proceedings, and reforms to address ineffective courts and weak regulatory systems. Many countries are acquainted with the World Bank *Principles*, have benefited from the dialogue and technical assistance developed within the World Bank insolvency initiative and have requested to be evaluated in the framework of the Bank's ICR ROSC process[2].

INSOL International provided an overview of its work and achievements in encouraging greater international co-operation and communication among the insolvency profession worldwide. Publications and initiatives in specific areas of common interest and cutting edge issues, such as directors' liabilities and employee entitlements in insolvency, cross-border issues, deposit insurance, etc. were introduced to participants. Most importantly, it was concluded that insolvency proceedings will function effectively only if they are addressed as a system composed of laws, institutions, enforcement and regulatory mechanisms. The effectiveness of the system would depend on the competence and integrity of all involved, from the legislator to the judges and practitioners.

The ***OECD*** focused on its experience with the development and implementation of insolvency reforms in Asia and the lessons of relevance to the MENA region. It was stressed that the global consensus on the existing international guidelines on insolvency as a reference for national reform efforts should not prevent countries from focusing on their adaptation to national circumstances. In doing this, policy makers should address important political, social and insolvency specific concerns. The latter include a set of issues, such as rule of law, clear decision on the role of the market and the role of the state in the economy, addressing social concerns and improvement of social safety nets in parallel to insolvency reforms. Probably the most compelling lesson from a decade of Asian insolvency reforms indicates that implementation and institution building are equally important as lawmaking. This is especially important in MENA jurisdictions, in which insolvency frameworks have previously attracted little attention and in which there is an increasing pressure for rapid economic development and job creation.

Hawkamah underlined the link between insolvency, corporate governance and access to capital. Indeed, companies with a good corporate governance record reduce the risks of lenders and are often able to borrow more and on more favourable terms than their competitors with a poor governance record. The complexity and importance of designing sound and effective insolvency systems in the region implies a need for information exchange and a regional dialogue on common challenges and approaches that work. Hawkamah expressed its readiness to support regional co-operation on insolvency together with its partner organisations.

II.9.2. LEGAL FRAMEWORKS OF INSOLVENCY IN THE MENA REGION

The discussions in the session revealed that there is a considerable scope for adjustment and modernization of the legal frameworks of insolvency in the MENA region. Egypt and Jordan have undertaken concrete steps in this respect, with the support from United States institutions for both countries. Throughout the discussions, examples and solutions proposed in the US, UK and emerging economies frameworks were referred to. Given the similarities with European commercial law, it would be beneficial to also involve non-US experts in further reform efforts to be put in place in the MENA region.

It appeared that MENA economies bear a considerable insolvency related costs as rescue procedures are either inexistent or underdeveloped. Against the background of examples from the MENA, participants felt that there is an urgent need to address this issue. In light of the important role of courts overall, including in realizing security interest, a first step would be to empower MENA creditors. Better access to information for creditors and greater accountability on debt recovery could constitute important first steps in this respect. Meanwhile, introduction of incentives to companies to restructure, as well as improved enforcement of security contracts could bring about tangible results in the medium term, before launching broad-based reform measures.

A recent review of the ***Egyptian*** experience led to the establishment of a National Law Commission, with the mandate to assess commercial statutes, regulations and legal acts, against a set of criteria, such as predictability, coherence, equity and compliance with international guidelines. A special section of the Commission looks into the insolvency legislation with the objective to formulate specific recommendations. A set of problem areas have already been identified. The low rates of debt recovery and the weak underlying mechanisms have led to an antagonism between creditors and debtors. Not surprisingly, a "punitive culture toward debtors" has emerged, stigmatizing them as criminals and resulting in the suspension of some of their civil rights. Such an attitude has been fuelled as well by the emergence of so called "debt millionaires", following weak credit policies and "related lending" by banks. The concept of reorganization exists under the current legislation but is reportedly applied in only 1-2 per cent of the cases, thus preventing viable enterprises from the possibility to survive in situations of distress. A serious technical impediment to the framework enabling a greater number of enterprises to restructure in a timely fashion is the bankruptcy test or "cessation of payments" which, if proved before the court, triggers bankruptcy.

The presentation on ***Lebanon*** exhibited numerous similarities with the Egyptian framework, especially with respect to the bankruptcy test, and the existence of outdated provisions on reconciliation. Lengthy insolvency proceedings and delays in judges' decisions represent additional obstacles to the cases (300 decisions on average) filed every year. Additional concerns were expressed with respect to the court discussions and final decisions, which are made available only to those who attend the hearings. The lack of transparency is, moreover, coupled with the impossibility to appeal final decisions. Under such circumstances, it was argued that priority should be attached to the amendment of the reconciliation chapters of the existing legislation, including through the development of out-of-court provisions, which would ideally benefit from the input of the banking sector.

In the case of ***Jordan***, a public-private sector initiative is currently aiming to assess the existing insolvency legislation and propose amendments, including the potential unification of all existing provisions in a single law. The priority of claims, which is at the disadvantage of secured creditors, has been one of the most difficult and controversial issues under discussion. In most developed systems, secured creditors have priority over all other claimants, including court costs, the trustee remuneration and holders of other administrative claims. This approach ensures predictable proceedings for secured creditors and is a prerequisite for both, greater access to capital for companies and lending opportunities of banks.

At a more general level, the Jordanian company law provides only a framework for liquidation and as in the case of Lebanon and Egypt, the need for developing a framework for rescue and restructuring proceedings has been acknowledged by all parties involved in the assessment of the insolvency legislation. The Companies Control Department of the Ministry of Industry and Trade attempts to play a pro-active role in promoting corporate restructuring. It has developed a mediation procedure, bringing creditors and debtors together for reconciliation. Experience has not been very satisfactory until now, because of the banks' reticence to co-operate and provide companies with an opportunity to restructure. Most often companies end up in court for liquidation, a process which can take between 3-16 years.

The ***UK*** and ***US*** legal frameworks generated a lot of questions. Rescuing business, a central objective common for the development of both systems and a burning issue for MENA countries, was one of the reasons behind the numerous questions in the general discussions. Both the UK and US frameworks recognize that it is usually preferable for all stakeholders, including creditors, to restructure an insolvent company into a viable business. The frameworks designed to deal with corporate rescue in both countries attempt to address concerns of equity, effectiveness and speed, enabling greater numbers of companies to survive when they get into financial difficulties. When it is not possible to save a business, the procedures in place aim at getting the best possible treatment of secured and unsecured creditors.

The different solutions offered by these countries – the UK relying more on professional autonomy and discretion and the US retaining greater confidence in debtor management – showed the importance of crafting national approaches to insolvency reforms with due regard to national circumstances. The US Chapter 11 of the Bankruptcy Code, providing a framework for court supervised restructuring, is comprehensive and relies on a well functioning judicial system. It enables early protection by allowing companies to file voluntarily for Chapter 11 proceeding, without having to show that they are insolvent and by preventing secured and unsecured creditors (thanks to the "automatic stay") from enforcing their claims. "Debtor in possession" powers permit incumbent managers to continue running the company and their "super – priority" enables them to borrow funds during the restructuring.

The UK alternatives, such as the company voluntary arrangements and the administration illustrate a shift towards what is often referred to as a "rescue culture". Voluntary arrangements rely on an agreement between the directors of an insolvent company and its creditors, allowing the company to repay all or some of its debts from future earnings. Although the court does not play an active role in this process, the agreement signed by all parties needs to be filed in court. Administration does not require petitioning the court either, as administrators can be appointed by creditors, debtors or their directors. The court can, however, be involved by creditors. The role of the administrator is to act in the interests of all creditors, to attempt to rescue the company as a going concern or if this is impossible, to maximize the recovery for all creditors.

The UK is also famous for its "London Approach", derived from guidelines issued by the Bank of England. This is a flexible voluntary arrangement for financial institutions with objective of rescuing companies facing difficulties. Based on the availability of sufficient information, under this approach banks are encouraged to take a supportive attitude to their debtors in order to maximize value for creditors and avoid unnecessary liquidations. In this respect, a reference to the ***Indian*** experience with out-of-court proceedings underlined the critical role of co-operation among banks. A Secretariat, including representatives of all banks, supports informal reorganizations, which are based on voluntary creditor-debtor agreements, negotiated within specified deadlines. Unlike formal mechanisms, informal restructuring has been successful and especially so in steel, fertilizers and other sectors of the Indian economy.

One of the main risks of informal proceedings is the lack of co-operation among creditors, which could lead to a failure of a restructuring plan. Some countries have decided to provide additional incentives for creditors to co-operate and not to petition for bankruptcy, by making security rights avoidable. This can be done under the so called "pre-packaged" or "expedited" proceedings, which allow the approval of rehabilitation plans without unanimous endorsement by creditors. The ***Argentinian*** example was referred to, as it allows any work-out with a majority of creditors signing the restructuring plan, to petition the court to open a short proceeding. Under such circumstances, other creditors have the right to challenge the plan only for fraud. Once approved by the court, the plan binds all creditors, including those who did not sign it. If the plan fails, the company goes to liquidation but secured claims created under the plan are no longer avoidable. Such plans reduce the risk of hold-outs and provide incentives to creditors to join the work-out.

Participants discussed the similarities with the **conciliation** proceedings, existing under the Egyptian and Lebanese laws and asked about options for making them more effective. In this respect, it was noted that the recent amendments to the French framework for conciliation go in the direction of Chapter 11 by providing incumbent management with a greater role. The new rules allow the chief executive officer to initiate a procedure before as well as after cessation of payments. They also make possible the infusion of "fresh money" intended to support the restructuring and reinforce the anticipation of financial difficulties by introducing a new procedure for stay, triggered by the debtor.

It was also noted that **insolvency of financial institutions** poses specific problems for regulators, however, this has not led to the emergence of a general agreement on the need for a separate insolvency framework. Thus, in Germany, France and the UK, insolvency of financial institutions is governed by the law addressing general insolvency, while in the US, there is a separate law, as well as a set of institutions dealing with financial institution insolvency. In either case, it was noted that the key difference in handling distress in the financial sector is the role that the regulator (supervisor) is required to play.

II.9.3. INSTITUTIONAL FRAMEWORKS OF INSOLVENCY IN THE MENA REGION

Insolvency laws are dependent on the institutional capacity required for their implementation. The discussions of the institutional frameworks of insolvency in the MENA region focused on Egypt, Jordan and the UAE, with references made to the experience of US, UK and Asian jurisdictions.

In ***Jordan***, there are no specialised courts, nor specialised judges for insolvency cases. The performance for judges is subject to general standards for performance evaluation irrespective of the nature of the cases that they had been responsible for. The Ministry of Justice and the Judicial council organise specialised courses, some of which focus on insolvency, but there is no systematic effort in this respect. It is also observed that there is no *strictu sensu* insolvency profession, composed of lawyers, accountants and other experts, focusing predominantly on liquidation and re-organisation. Moreover, the role of insolvency professionals is limited with lawyers involved in the proceedings to the extent that they represent the parties, object or appeal on their behalf, while other experts are required to provide asset valuations or audits. The current legislation provides greater powers to liquidators who are in charge of keeping the records pertaining to the liquidation proceeding, verifying creditor claims, and ensuring the execution of court decisions.

The discussion of ***Egypt*** focused on the process of the revision of the existing institutional framework of insolvency, falling under the responsibility of the National Law Commission. The Commission comprises representatives of all stakeholders from the public and private sector, to carry out consultations and prepare a report with recommendations by the end of June. The Commission participates in training programmes for judges, including through co-operative initiatives and the organisation of visits abroad. There is a broad agreement among the members of the Commission on the need for greater knowledge and continuous learning opportunities for the judiciary.

In the ***UAE***, the implementation of the law is very closely linked to the judicial capacity, as insolvency cases are highly dependent on courts as well. Bankruptcy cases are a rare occurrence ranging from one-two cases per judge per year at most. It is noteworthy that only twelve cases were filed in Dubai courts in 2006. Bankruptcy cases are often protracted and thus not seen as an efficient means for creditors to seek recovery. Moreover, creditors face various procedural impediments to the enforcement of their rights and especially with regard to realising collateral. Conversely, companies are discouraged by the proceedings, as they lack protection allowing them to restructure on a going-concern basis. Insolvency professionals are licensed following multiple sets of criteria, which may benefit from streamlining.

Significant changes have taken place within ***Bahrain's*** judicial system in recent years. As per a presentation submitted for this meeting, the independence of the judiciary was introduced in 2002 by virtue of the Amiri Decree, which also provides a framework for the appointment, mandate, promotion, and impeachment of judges. The Decree establishes the High Judicial Council supervising the court system. As in the UAE, the number of insolvency cases per year is low, which would indicate that the number of judges and experts in the country specialising in insolvency issues is negligible. However, discussions are currently underway on the establishment of financial courts, specific measures aiming to improve the functioning of the court system, as well as greater access to

alternative dispute settlement mechanisms, which may have a positive impact on the institutional framework for insolvency cases as well.

The ***US*** and ***UK*** presentations underlined the importance of the institutional framework of insolvency in order to address distress in an orderly fashion. They pointed in particular to factors such as the number and competence of judges, their accessibility and their capacity to provide solutions in the short term, before the involvement of creditors and other experts (or in support of their initiatives), as critical in terms of effectiveness. The UK Insolvency Service (Department of Trade and Industry) and the US Office of Trustees (Department of Justice) encompass the regulation of private sector insolvency administrators and the oversight of insolvencies administered by the latter. Private sector bodies for accountants and lawyers can also regulate and monitor the insolvency profession, as well as provide training to their membership. Importantly, ***INSOL international*** stated their readiness to continue implementing training programmes and exchange experiences with interested organisations, building on their long-standing experience, supported by their members, and especially by the so called Group of 36 firms.

The general discussions focused *inter alia* on what was referred to as "early warning systems" for insolvency. Company reporting and disclosure practices, active credit management, as well as monitoring by professionals constitute important elements enabling timely restructuring ahead of major failures. In this respect, it is key to address as well a broader set of issues, such as corporate governance, financial discipline imposed on corporations and enforced within the financial sector itself, including through mechanisms preventing fraud and wrong-doing.

II.9.4. FUTURE WORK

Throughout the discussions, participants expressed their interest in establishing a regional dialogue, as a mere comparison of the MENA region with Europe or US is of limited value. It was felt that there are considerable opportunities for assistance, mutual support and learning with other countries from the region, which could add value in making MENA insolvency laws more efficient and more deliverable.

Participants stressed that it is imperative to engage policy makers if a regional insolvency initiative is to emerge as a follow-up to this event. In addition, all future endeavours should attempt to integrate the work completed by international organisations. Initial stock-taking should serve as the basis for structuring future work on insolvency in the region, to ensure that conclusions and recommendations would work in the prevailing MENA environment.

NOTES

1. INSOL International is the international organization of insolvency practitioners.

2. A country's observance of standards and codes, in twelve different areas, is assessed, at the request of a member country, by the IMF and/or World Bank. The results of these assessments are summarized in a Report on the Observance of Standards and Codes (ROSC). The World Bank evaluates insolvency and creditor rights (ICR) regimes under the ROSC program.

AGENDAS

Annex A

MENA Investment Ministerial Meeting 2006

King Hussein Bin Talal Convention Center

Dead Sea, Jordan, February 2006

Annex B

MENA-OECD Investment Programme Business Day

Preceding the 2006 MENA Ministerial Meeting

Annex C

Second MENA Ministerial Meeting on Investment

"Making Reforms Succeed: Moving Forward with the Investment Policy Agenda"

November 2007, Cairo, Egypt 309

Annex D

First MENA–OECD Women Business Leaders Forum

November 2007, Cairo, Egypt

Annex A

MENA INVESTMENT MINISTERIAL MEETING 2006

King Hussein Bin Talal Convention Center
Dead Sea, Jordan
13 - 14 February 2006

Under the Patronage of His Majesty King Abdullah II Bin Al Hussein

The Government of Jordan, Chair of the Steering Group of the Investment Programme, have convened a MENA Investment Ministerial Meeting on 13 - 14 February 2006 to review progress in implementing policy measures to improve the investment climate and to provide further guidance.

- The Ministerial Meeting will be invited to adopt a Declaration on principles and good practices for attracting investment to the MENA region.
- The Investment Ministers present National Investment Reform Agendas for their countries together with a plan for implementation.
- Ministers are also invited to endorse a programme for regional dialogue and capacity building, based on recommendations developed by the Working Groups of the Investment Programme.
- The Ministerial Meeting will include Panels focusing on investment promotion, tax framework, financial sector development and corporate governance.
- The Ministerial Meeting will be preceded by a Business Forum in the morning of 13 February 2006.

MONDAY 13 FEBRUARY 2006 - BUSINESS FORUM

9:00 - 10:30	**Business Statement** Presentation and Discussion
10:45 - 12:30	Panel on Enterprise Development in the MENA region
12:30 - 14:30	Lunch hosted in honour of the participating delegations

MONDAY 13 FEBRUARY 2006 - OPENING MINISTERIAL MEETING

14:30 - 15:00	**Opening Statement** by H.E Mr. Sharif Ali Zu'bi, Minister of Industry and Trade, Jordan; Chair of the MENA - OECD Investment Programme **Opening Statement** by the Hon. Donald J. Johnston, Secretary General, Organisation for Economic Co-operation and Development
15:00 - 18:00	**Ministerial Panels on Implementing Reforms**

Panel 1: Promoting Investment – Enhancing the Image of the Region

Panel 2: Tax Framework for Investment – Proposals for Implementation

Panel 3: Diversification and Job Creation – The Role of Financial Markets in Supporting Entrepreneurship

Panel 4: Improving Corporate Governance - The Way Ahead

19:00 **Investor of the Year Award**
Dinner hosted in honour of the participating delegations

TUESDAY 14 FEBRUARY 2006 - MINISTERIAL MEETING CONTINUED

9:00 - 9:30 **Address of His Majesty King Abdullah II Bin Al Hussein**
King of the Hashemite Kingdom of Jordan

Address of the Hon. Donald J. Johnston, Secretary General, Organisation for Economic Co-operation and Development

Address of H.E Mr. Ian Pearson, Minister for Trade and Investment and foreign Affairs United Kingdom, Co-Chair of Mena - OECD Investment Programme

Address by H.E Abdul Rahman Al-Attiyah, Secretary General, Gulf Cooperation Council

Statements by Representative of the Business Sector

PRESS BREAK

10:00 - 12:00 **Implementation of National Investment Reform Agendas**
Presentations by Ministers of MENA Countries

12:00 - 13:00 **Adoption of the Ministerial declaration:**
Attracting Investment to MENA Countries - Common Principles and Good Practice

CLOSING STATEMENTS

13:00 - 13:30 Press Conference

13:00 - 15:00 Lunch hosted in honour of the participating delegations

Annex B

MENA-OECD INVESTMENT PROGRAMME
BUSINESS DAY
PRECEDING THE 2006 MENA MINISTERIAL MEETING

Organised by
MENA-OECD Investment Programme

Hosted by
Jordan Investment Board

Dead Sea, Jordan
13 February 2006

MONDAY, 13 FEBRUARY 2006

09:00 – 09:30 Welcoming Remarks and Presentation of the MENA-OECD Investment Programme

- **Mr. Omar Maani,** Arab Business Council
- **Mr. Gary Campkin**, MENA Task Force Chair, BIAC

Introduction of the Programme's objectives/successes/future milestones

- **Dr. Maen Nsour**, Chief Executive Officer, Jordan Investment Board
- **Mr. Graham Minter**, UK Steering Group Co-Chair

09:30 - 10:30 Business Environment in MENA Countries – Adoption of the Business Statement

Introductory Remarks and Moderation by **Mr. Gary Campkin**, Business and Industry Advisory Committee, CIB and **Mr. Omar Maani,** Representative of Arab Business Council

- **Dr. Guven Sak**, TOBB
- **Mr. Haider Murad**, Dr. Hatem Halawani. Chairmen, Jordan Chamber of Commerce, Amman
- **Dr. Fouad Shaker**, Secretary General, Arab Union of Banks
- **Dr. Fouad Zmokhol,** General Secretary, Lebanese Businessmen Association (RDCL)
- **H.E. Hamdi Tabaa,** Chairman of the Arab Businessmen Union, Chairman of the Jordanian Businessmen Association
- **Mr. Mohammad Smadi**, Chief Executive, Arab-British Chamber of Commerce
- **Mme. Catherine Minard**, International Director, MEDEF
- **Mr. Charles Kovacs,** US Council for International Business/BIAC

10:45 –12:30 Panel on Enterprise Development in the MENA region

- **Mr. Robert Ayan**, Partner, Minah Ventures
- **Dr. Adnan Soufi,** Professor of Business Administration at King Abdul Aziz University; Advisor to the Chairman and CEO, Saudi Economic and Development Company (SEDCO)

- **Mr. Charles Kovacs,** USCIB, Business Angel
- **Dr. Fouad Zmokhol,** General Secretary, Lebanese Businessmen Association (RDCL)
- **Mr. Thomas Gibian**, CEO, EMP Africa
- **Mr. Habib Ghawi**, Founding member Young Arab Leaders (YAL), Arab Business Angels
- **Mme. Jamila Mernissi Bouayad,** President, Association Itqane
- **Ms. Ragjdha Kurdi,** International Women's Forum, Jordan Chapter President Hayat Pharmaceuticals

14:30 – 18:00 OPENING OF THE MINISTERIAL AND FOUR PANELS

19:00 - 20:00 Reception and Inaugural Award Ceremonies

The **2006 Investor of the Year Award** will be inaugurated to select investors nominated by a team of experts.

- Opening Statement by
  - **Dr. Maen Nsour,** Chief Executive Officer, Jordan Investment Board
  - **Mr. Rainer Geiger,** Deputy Director, OECD
- Introduction and Presentation of Selected Companies
- Acceptance Speeches for Investor of the Year Awards
- Closing Remarks - Appreciation and Acknowledgement of Participants

20:00 Ministerial Dinner with Business Representatives

TUESDAY, 14 FEBRUARY 2006

09:00 Ministerial Meeting continued

The Ministers will jointly approve a Declaration on Attracting Investment to MENA countries, as well as National Investment Reform Agendas tailored to achieve the goals set out in the Declaration.

Contact Information

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Annex C

AGENDA OF THE SECOND MENA MINISTERIAL MEETING ON INVESTMENT
"Making Reforms Succeed: Moving Forward with the Investment Policy Agenda"
28 November 2007
Cairo, Egypt

Under the auspices and with participation of H.E. Dr. Ahmed Nazif – Prime Minister of Egypt

Organised by the MENA–OECD Investment Programme

In cooperation with the Ministry of Investment of the Arab Republic of Egypt

9:30 – 10:15	**Inauguration Session**
	• **H.E. Dr. Mahmoud Mohieldin** – Minister of Investment, Egypt • **H.E. Lord Digby Jones of Birmingham** –Minister of State at the FCO and Department for Business, Enterprise and Regulatory Reform, United Kingdom • **H.E. Mr. Amre Moussa**, Secretary-General, League of Arab States • **Mr. Angel Gurría** – Secretary-General, OECD • **H.E. Dr. Ahmed Nazif** – Prime Minister, Egypt *Press Break*
Making Reforms Succeed	
10:20 – 10:30	• Address by **Mr. Kandeh Yumkella** – Director-General, United Nations Industrial Development Organization (UNIDO)
10:30 – 11:30	**Panel I: Tax Strategies for Investment**
	Moderator: • **H.E. Dr. Youssef Boutros Ghali** – Minister of Finance, Egypt Panelists: • **H.E. Mr. Jihad Azour** – Minister of Finance, Lebanon • **H.E. Mr. Mohamed Alhowej** – Secretary of the General Peoples Committee of Finance, Libya • **H.E. Dr. Klaus Ebermann** – Ambassador, European Commission Delegation to Egypt • **Mr. Mohamed Bouchareb** - Head of Division of Studies and Communication, Ministry of Finance, Morocco • **Mr. Ashraf Al Arabi** – Deputy Minister of Finance for Tax Policy, Egypt • **Dr. Ahmed Shawki** – Managing Partner, Mazars Moustafa Shawki • **Mr. Richard Stern** – Program Coordinator, Business Taxation, FIAS, World Bank *Open Discussion*

<table>
<tr><td>11:45 – 13:15</td><td>Panel II: Investment Policy Reforms – Putting Strategy into Action</td></tr>
<tr><td></td><td>Presentation of Women and Business Statement</td></tr>
<tr><td></td><td>Moderation:
• H.E. Sheikha Lubna bint Khaled Al Qasimi – Minister of Economy, United Arab Emirates
Introduction
• H.E. Mr. Mehmet Şimşek – Minister of State, Under Secretariat of Treasury, Turkey
Panelists:
• H.E. Mr. Abdelhamid Temmar – Minister of Industry and Investment Promotion, Algeria
• H.E. Mr. Rachid Mohamed Rachid – Minister of Trade and Industry, Egypt
• H.E. Mr. Salim Khazaaleh – Minister of Industry and Commerce, Jordan
• H.E. Mr. Mohammad Kamal Hassouneh – Minister of National Economy, Palestinian National Authority
• H.E. Dr. Yahya Al-Mutawakel - Minister of Trade and Industry, Yemen
• H.E. Mr. Abdelhamid Triki – State Secretary, Ministry of Development and International Cooperation, Tunisia
• H.E. Mr. Ali Al-Baghli - Undersecretary, Head of Kuwait Foreign Investment Bureau
• Mr. Monkid Mestassi – Secretary-General, Ministry of Economic and General Affairs, Morocco
• Ambassador Dr. Dhafer A. Alumran - Director of Bilateral Relations, Ministry of Foreign Affairs, Bahrain
• Mr. Ahmed Mohamed Lokman - Director General, Arab Labor Organization
Discussants:
• Ms. Elizabeth L. Dibble – Principal Deputy Assistant Secretary, Department of State, United States of America
• Ms. Thelma Askey – Deputy Secretary-General, OECD
• Dr. Mustapha Nabli – Chief Economist MENA Region, World Bank
Open Discussion</td></tr>
<tr><td>14:45 – 15:45</td><td>Panel III: Financial Sector Development</td></tr>
<tr><td></td><td>Moderator:
• Mr. Phillip Thorpe – Chairman, Qatar Financial Center Regulatory Authority

Panelists:
• Mr. Atef Ibrahim – Deputy Governor for International Investments, Central Bank of Egypt
• Mr. Daniel Ottolenghi – Associate Director & Chief Development Economist, European Investment Bank
• Dr. Fouad Shaker – Secretary-General, Union of Arab Banks
• Mr. Maged Shawky – Chairman, Cairo and Alexandria Stock Exchange, Egypt
Open Discussion</td></tr>
</table>

16:00 – 17:00	**Panel IV: Promoting Corporate Governance and Responsible Business Conduct**
	Moderator: • **Dr. Rainer Geiger** – Director, MENA-OECD Investment Programme, OECD Panelists: • **Dr. Ziad Bahaa-El Din** – Chairman, Board of Trustees, General Authority for Investment & Free Zones, Egypt • **Mr. Abdesslam Aboudrar** – President of Corporate Governance Commission, Morocco • **Dr. Ashraf Gamal El Din** – Executive Director of the Egyptian Institute of Directors • **Mr. Jassim Al Ajmi** –President, Bahrain Transparency Society • **Mr. Graham Baxter** - Director, Responsible Business Solutions, International Business Leaders Forum *Open Discussion*
17:00	**The Way Forward: Presentation and Adoption of the Ministerial Declaration**
	• **H.E. Dr. Mahmoud Mohieldin** – Minister of Investment, Egypt • **Mr. Angel Gurría** – Secretary General, OECD
17:30	**Press Conference**

Annex D.

AGENDA OF THE FIRST MENA–OECD WOMEN BUSINESS LEADERS FORUM
27 November 2007
Conrad Hotel, Cairo

Under the Kind Patronage of H.E. Ms. Suzanne Mubarak – First Lady of Egypt

Organised by the MENA–OECD Investment Programme

In cooperation with the Ministry of Investment of the Arab Republic of Egypt

<table>
<tr><td>9:30 – 10:00</td><td>Inauguration Session</td></tr>
<tr><td></td><td>• Ms. Françoise Foning – President, World Association of Women Entrepreneurs
• H.E. Ms. Emma Bonino – Minister for International Trade & European Affairs, Italy
• Mr. Angel Gurría – Secretary-General, OECD
• H.E. Dr. Mahmoud Mohieldin – Minister of Investment, Egypt</td></tr>
<tr><td colspan="2">Women Business Leaders Forum</td></tr>
<tr><td>10:00 – 11:00</td><td>Panel I: Experience in Enhancing Women’s Role in the Economy</td></tr>
<tr><td></td><td><u>Moderator:</u>
• H.E. Ms. Emma Bonino – Minister for International Trade & European Affairs, Italy

<u>Panelists:</u>
• Dr. Farkhanda Hassan – Secretary-General, National Council for Women, Egypt
• H.E. Dr. Sheikha Hissah Al-Sabah – President, Council of Arab Business Women
• H.R.H. Princess Lolowah Al-Faisal – Vice Chair of Board of Trustees and General Supervisor, Effat College in Jeddah, Kingdom of Saudi Arabia
• Ms. Randa Fouad, President, Arab Media Forum for Environment and Development
• Ms. Monia Skhiri – Secretary-General, Union of Mediterranean Confederation of Enterprises

Open Discussion</td></tr>
<tr><td>11:15 – 12:00</td><td>Panel II: Encouraging Women as Entrepreneurs –Lessons from Experience and Recommendations</td></tr>
<tr><td></td><td><u>Moderator:</u>
• H.E. Ms. Emma Bonino – Minister for International Trade & European Affairs, Italy

<u>Panelists:</u>
• Ms. Bouthayna Iraqui Houssaini– President, Association des Femmes Chefs d’Entreprises du Maroc</td></tr>
</table>

	• **Ms. Meltem Kurtsan –** President, Turkish Women Association • **Ms. Sahar El Salab** – Vice Chairman and Managing Director, Commercial International Bank, Egypt • **Ms. Nashwa Taher** – Board Member, Al Taher Group, Saudi Arabia; Member, Jeddah Chamber of Commerce • **Ms. Wijdan Al Saket Al Talhouni** – President, Jordan Forum for Business & Professional Women • **Ms. Afnan Rashid Al-Zayani** – Board Member and Head of Businesswomen's Committee at Bahrain Chamber of Commerce and Industry *Open Discussion*
12:00 – 12:15	**Presentation and Adoption of the Declaration on *"Fostering Women's Entrepreneurship in the MENA Region"***
	• **Ms. Marie-Florence Estimé –** Deputy Director, Centre for Entrepreneurship, SMEs and Local Development, OECD • **Dr. Amany Asfour** – President, Egyptian Businesswomen Association
Business Forum	
14:00 – 15:30	**Panel I: Leveraging the Benefits of Investment and Effective Reform Communication**
	Moderator: • **Mr. Graham Minter** – Co-chair, MENA-OECD Investment Program, United Kingdom **Panelists:** • **Dr. Ahmed Goueli** – Secretary-General, Council of Arab Economic Unity • **Mr. Mohamed Agrebi**– Counselor of Public Services, Ministry of Industry and SMEs, Tunisia • **Mr. Salah Al Attar** – President, General Investment Authority, Yemen • **Mr. Abd Arrahman M. Algamudi**, Secretary-General, Libyan Foreign Investment Board, Libya • **Mr. Nabil Itani** – Chairman, Investment Development Authority, Lebanon • **Dr. Mustafa Al Kafri** – Director General, Supreme Investment Council, Syria • **Mr. Mithat Kulur** - Chief, Investment Promotion Unit and Deputy to the Director, Investment and Technology Promotion Branch, UNIDO • **Mr. Stefano Mazzitelli** – Managing Director, Telecom Italia Sparkle, Italy • **Dr. Maen Nsour** – Chairman of the Jordan Investment Board, Jordan • **Dr. John Sullivan** – Executive Director, Center for International Private Enterprise • **Mr. Galal El Zorba –** Chairman, Egyptian Federation of Industries *Open Discussion and Presentation of 'Young Leaders Speak Out'*
15:45 – 17:00	**Panel II: Investment Climate Improvements in MENA – Presentation and Adoption of Business Statement**
	Moderators: • **Mr. Hamdi Al Tabbaa** – Chairman of the Federation of Arab Businessmen • **Mr. Gary Campkin** – Confederation of British Industry, OECD Business & Industry Advisory Committee (BIAC) **Panelists:** • **Mr. Jacques Jean Sarraf** – President, Union of Mediterranean Confederations of Enterprises

	• **Mr. Thomas Bata** – Chairman, Bata Company, Business & Industry Advisory Committee (BIAC) • **Dr. Abdallah Dahlan** – Representative, Council of Saudi Chambers • **Mr. Adel Gazarin** – Vice Chairman, Federation of Arab Businessmen • **Mr. Khaled El Mikati –** Chairman, Egyptian Junior Businessmen Association • **Mr. Thamer El Sheikhly** – Chairman, Iraqi Businessmen Association • **Mr. Michal Stieber,** Head of AfterCare Service Department, CzechInvest *Open Discussion and Adoption of Business Statement*
17:30	**Presentation of the MENA 500 Companies Publication**

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Private Sector Development in the Middle East and North Africa

Making Reforms Succeed

MOVING FORWARD WITH THE MENA INVESTMENT POLICY AGENDA

The sustained growth of the Middle East and North Africa (MENA) region since 2000 has attracted the attention of global investors, policy makers, academics and other observers of the region. In order to ensure that this economic performance continues and is shared throughout the MENA countries, governments in the region decided to launch a peer dialogue focused on investment policy reform in co-operation with OECD members. As a result, the MENA-OECD Investment Programme was created.

This publication highlights key outcomes of the work of the MENA-OECD Investment Programme from 2005-2007, including reforms achieved to date in investment policies and promotion, corporate governance, financial-sector development, and tax policies. It also contains information on the Programme's activities, highlighting business-climate developments in MENA countries. For additional information on the activities and publications of the MENA-OECD Investment Programme, please visit: ***www.oecd.org/mena/investment***. For any questions concerning this work, please contact the MENA-OECD Investment Programme at: ***mena.investment@oecd.org***.

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