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TUNISIA

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Foreword

In May 2012, Tunisia became the 44th country to adhere to the OECD Declaration on International Investment and Multinational Enterprises. This adherence bears witness to the determination that Tunisia holds towards strengthening the liberalisation of investment, increasing its integration into the world economy and promoting responsible business conduct

In adhering to the Declaration, Tunisia undertakes to grant national treatment to foreign investors and to promote responsible business conduct. In return, the other adhering countries to the Declaration guarantee that Tunisian investors will receive a fair treatment abroad and encourage their multinational enterprises operating in Tunisia to contribute to economic, social and environmental progress. According to the OECD Guidelines for Multinational Enterprises, *which is an integral part of the Declaration, Tunisia will set up a National Contact Point with the task of promoting the* Guidelines *and related practices, encouraging dialogue at the national level and having a mediation role. As an adhering country, Tunisia will participate in the work of the OECD Investment Committee.*

This publication is based on the report presented to the OECD Investment Committee for the review of Tunisia's application for adherence to the OECD Declaration. This review took place in March 2012 at OECD headquarters in the presence of the Tunisian delegation conducted by Mr. Riadh Bettaïeb, Minister for Investment and International Co-operation. It should be noted that the analysis presented in this report is based on the legal framework in place on the date of publication, mentioning, as far as possible, the proposed reforms announced by the new authorities, notably the revision of the Investment Incentives Code.

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Acronyms and abbreviations

ADB	African Development Bank
AFD	Agence française de développement
ANETI	Agence nationale pour l'emploi et le travail indépendant
ANME	Agence nationale de maîtrise de l'énergie
ANPE	Agence nationale de protection de l'environnement
APIA	Agence de promotion des investissements agricoles
APII	Agence de promotion de l'industrie et de l'innovation
ATIC	Association tunisienne du capital-investissement
BIT	Bilateral Investment Treaty
BTS	Banque tunisienne de solidarité
BVMT	Bourse des valeurs mobilières de Tunis
CAIPE	Centre d'affaires d'intérêt public économique
CDC	Caisse des dépôts et consignations
CDM	Clean Development Mechanism
CEJJ	Centre d'études juridiques et judicaires
CEPEX	Centre de promotion des exportations de la Tunisie
CGTT	Confédération générale des travailleurs tunisiens
CNICM	Commission nationale d'investigation sur les affaires de corruption et de malversation
CNSS	Caisse nationale de sécurité sociale
CPF	Conservation de la propriété foncière
CPO	Consumer Protection Organisation
CSI	Commission supérieure d'investissement
CTGE	Centre tunisien de gouvernance d'entreprise
DGCEE	Direction générale de la concurrence et des enquêtes économiques
DGIE	Direction générale de l'investissement extérieur (MICI)
EU	European Union
FDI	Foreign Direct Investment
FGEE	Fonds de garantie de l'efficacité énergétique
FIPA	Foreign Investment Promotion Agency
FNME	Fonds national de maîtrise de l'énergie
FODEP	Fonds de dépollution
FOPROLOS	Fonds de promotion du logement social

FTA	Free Trade Agreement
GDP	Gross domestic product
GFCF	Gross fixed capital formation
GHG	Greenhouse gases
IACE	Institut arabe des chefs d'entreprises – Arab Institute of Chief Executives
ICSID	International Centre for Settlement of Investment Disputes
ICT	Information and Communication Technologies
ILO	International Labour Office
ILO	International Labour Organization
IMF	International Monetary Fund
INC	Institut national de la consommation
INNORPI	Institut national de la normalisation et de la propriété industrielle
INS	Institut national des statistiques
IPA	Investment Promotion Agency
ITCEQ	Institut tunisien de la compétitivité et des études quantitatives
MASS	Ministry of Social Affairs and Solidarity
MCA	Ministry of Trade and Crafts
MENA	Middle East and North Africa
MF	Ministry of Finance
MICI	Ministry of Investment and International Co-operation
MINT	Ministry of Industry and New Technologies
MPCI	Ministry of Planning and International Co-operation
NCP	National Contact Point
NGO	Non-Governmental Organisation
NSSD	National Strategy for Sustainable Development
OECD	Organisation for Economic Co-operation and Development
ONTT	Office national du tourisme tunisien
OSS	One-stop shop
OTED	Observatoire tunisien de l'environnement et du développement durable
PPP	Public-private partnership
SME	Small and medium-sized enterprises
SONEDE	Société nationale d'exploitation et de distribution des eaux
SOTUGAR	Société tunisienne de garantie
STEG	Société tunisienne de l'électricité et du gaz
TCB	Tunisian Central Bank
TND	Tunisian dinar
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSP	Tunisian Solar Plan

UGTT	Union générale tunisienne du travail
UNCAC	United Nations Convention Against Corruption
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UTICA	Union tunisienne de l'industrie, du commerce et de l'artisanat
UTT	Union des travailleurs tunisiens
VAT	Value Added Tax
WB	World Bank
WEF	World Economic Forum
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Introduction and executive summary

The economic situation and the role of foreign direct investment in Tunisia

The revolution of 14 January 2011 has thrust Tunisia into a new phase of its history. The country is now striving to design and implement a development model that is inclusive, fair and equitable and based on good governance, transparency, citizen participation, regional development, innovation and regional and international integration. Tunisia is beginning its transition with a number of obvious assets. It is an upper-middle-income country, with a fairly sound macroeconomic framework, a relatively well diversified economy and human development indicators that are above the regional average and close to those of OECD countries. Yet Tunisia faces some serious socioeconomic problems, most notably unemployment and regional economic and social disparities, compounded by the dysfunctional elements that characterised the former regime, such as corruption and nepotism.

The country is currently experiencing the economic difficulties inherent to the transition phase, including reduced growth, rising unemployment, a loss of competitiveness as well as a decline in domestic and foreign investment. Despite these difficulties, progress has nevertheless been made since January 2011. With the establishment of a roadmap for political reforms, a Constituent Assembly was elected in October 2011. Its mandate is to draft a new constitution with the intention of holding elections within 18 months: in December 2011 it gave a vote of confidence to the provisional government. Successive governments have also drawn up strategies for economic and social development and initiatives have been launched to improve the business climate. The reform efforts must now be pursued and expanded in order to bolster the confidence of domestic and foreign economic agents and to give hope to Tunisia's unemployed youth. In the end, the challenge is to ensure convergence and coherence between political reforms and the economic and social strategies to be implemented.

Foreign direct investment in Tunisia: Overview

Since 1972, foreign direct investment has benefited from the introduction of an offshore regime, offering incentives to exporting enterprises. This regime was reinforced by the promulgation of the Investment Incentives Code in 1993. This approach has, however, shown its limitations over the last decade, as the favourable treatment accorded the offshore sector has come at the expense of other sectors subject to much heavier restrictions. The authorities have gradually taken steps to overcome this dualism and are currently planning to revise the Investment Incentives Code in order to maximise the impact of investment on local development.

Tunisia's attractiveness for foreign investors has boosted annual FDI flows, particularly since 2005. Over the six-year period from 2005 to 2010, FDI inflows averaged almost USD1.9 billion a year. The number of enterprises with foreign participation operating in Tunisia now stands at more than 3 000, employing nearly 325 000 workers. Manufacturing, particularly textiles and clothing, the electrical and electronic industries and automobile components are the dominant areas of activity, followed by services and tourism. In 2011, foreign investment (FDI and portfolio investment) fell by more than 29%, with an especially steep drop in the tourism sector. Tunisia has made significant efforts, however, to retain foreign enterprises as well as to attract new ones. According to the Foreign Investment Promotion Agency (FIPA) nearly 300 projects (new facilities and expansions) were undertaken in 2011, despite social tensions and the slowdown in the economy sparked by the revolution. The prospects for 2012 are encouraging since FDI grew by almost 20% in the first four months of the year compared to 2011.

Foreign investor participation in privatisation programmes

Tunisia's privatisation programme got under way in the late 1980s. A legal framework was adopted in 1989, with the promulgation of a law restructuring State enterprises. In 2008 the law on the concessions regime supplemented those provisions, in order to reinforce economic efficiency and optimise the management of public funds. As of the end of 2009, 219 enterprises had been privatised, restructured or converted to concessions: 116 were fully privatised, for a total amount of nearly TND 6 billion. Foreign investment in fact accounted for nearly 87% of the total proceeds from privatisation and restructuring. The new government has announced its intention to pursue the programme of restructuring and privatisation in order to boost competition and it will also make greater use of concessions and, more broadly, of public-private partnerships as a way of deriving resources and funding for large-scale projects in the national interest. It is also considering the privatisation of some of the enterprises confiscated after the revolution.

Tunisia's investment regime: Adherence to the National Treatment Instrument

The 1993 Investment Incentives Code applies to both domestic and foreign investors. It has institutionalised an asymmetrical regime between enterprises wholly engaged in export (offshore) and those geared to the domestic market (onshore), under which the former benefits from financial and tax advantages and exemption from approvals. While the country has gradually taken steps to mitigate this dual treatment, efforts continue to be made to strengthen local development and to promote employment, particularly of skilled labour.

The Code guarantees the freedom of investment and non-discriminatory treatment, although there are restrictions on national treatment. Depending on their market orientation (export or domestic) and their sectors of activity, foreign investments are subject to a declaration, a prior authorisation or an approval by the Higher Investment Committee (CSI). CSI approval is required for the acquisition of securities that confer voting rights or for shares in established enterprises, regardless of the sector, as well as for a foreign participation exceeding 50% of the capital. In some service activities, primarily those oriented towards the domestic market, partially exporting enterprises must also have CSI approval for foreign holdings exceeding 50% of the capital. Some sectors such as telecommunications and air transport are subject to these types of restriction in many countries, while it is less common in other fields such as construction and public works.

Some sectors are not governed by the Code and are subject to specific regulations, notably including the banking and financial sector as well as mining and hydrocarbons, yet these regulations do not impose any discrimination against foreign investors. As in many other countries, foreigners are prohibited from acquiring agricultural lands and there are limits on foreign participation in fisheries. On the other hand, the tight restrictions on foreign investors in certain commercial activities represent a contrast to other countries.

With respect to measures notified for transparency, Tunisia does not apply any regulatory discrimination against foreign investors based on public order and essential security considerations. Among other measures, Tunisia imposes the obligation to have personnel of Tunisian nationality in the governance bodies of corporations operating in a limited number of activities, namely credit institutions and those engaged in fishing, the periodical press, commercial activities, including wholesale and retail trade, and some professional services. There are public monopolies in sectors including energy, water, tobacco and alcohol, posts and railways.

Tunisia rates relatively high on the OECD FDI Regulatory Restrictiveness Index.* This is due to the obligation for foreign investors to obtain prior authorisation for the acquisition of securities or shares in established companies or in order to operate in certain service sectors, when their holding exceeds 50: of the capital. While some adhering countries have taken a similar sectoral approach, the number of activities concerned is relatively higher in Tunisia. The countries adhering to the Declaration have encouraged Tunisia to consider lifting restrictions on foreign investment in sectors that are usually open in other countries and when alternative, non-discriminatory measures make it possible to meet the legitimate policy objectives of the public authorities. The new Tunisian authorities are planning to overhaul the Investment Incentives Code and to revise the approval system. This would involve updating the list of activities currently subject to prior approval for foreign investors and eliminating or simplifying certain administrative authorisations, for example while making greater use of general requirements (*cahiers des charges*) that do not discriminate against foreign investors.

Tunisia's adherence to the *OECD Guidelines for Multinational Enterprises*

Establishment of a National Contact Point

With a view to promoting the *Guidelines* of the OECD Declaration on International Investment and Multinational Enterprises and encouraging their use, Tunisia will establish its national contact point within the Ministry of Investment and International Co-operation (MICI). The NCP will have a tripartite structure and will be therefore comprised of representatives of public institutions, a representative of the employers' organisation in addition to a labour union representative. Through the General Directorate of Foreign Investment, the MICI will ensure the dissemination of the *Guidelines*, their implementation in specific instances, and co-ordination of the NCP's work. The government is currently giving consideration as to how to involve non-governmental organisations, many of which are in the process of formation, in the work of the NCP.

General principles for promoting the responsible behaviour of enterprises

There is no comprehensive national policy concerning responsible business conduct in Tunisia. Nevertheless, the government, enterprises and

* With a score of 0.204, Tunisia rated higher (more restrictive) than the average among OECD member countries (0.091) and non-member countries adhering to the Declaration (0.148). It stands 9th in terms of restrictiveness out of 51 countries.

NGOs have taken initiatives to incorporate this concept progressively into regulations and practice. The Tunisian authorities report that laws have been amended to give effect to the principles of the initiative for "Sustainable Development thanks to the Global Compact". The Tunisian Centre for Corporate Governance (*Centre tunisien de gouvernance d'entreprise*, CTGE), created in June 2009 within the Arab Institute of Chief Executives (*Institut arabe des chefs d'entreprises,* IACE), has published a manual of good practices in Tunisian corporate governance. The manual contains a chapter on the social and ethical responsibilities of enterprises. Tunisian firms have joined in national efforts to promote employment and social solidarity – the National Employment Fund, the Social Housing Promotion Fund (FOPROLOS) and national awards – but with modest impact. With the revolution and the new role that civil society now plays, there are growing demands to redefine the rules for Tunisian businesses so as to improve on the level of corporate social responsibility. New institutions have been created (labour unions, employers' associations and NGOs) and initiatives have been launched, such as the revision to the manual of good practices in Tunisian corporate governance published by the CTGE.

Disclosure

Tunisia has adopted several laws to promote transparency in private business activities. The Business Corporations Code (*Code des sociétés commerciales*) of 2000, amended and supplemented on several occasions, recognises the right of partners and shareholders to be informed about the functioning of the company and the right to oversee and supervise the firm's management in order to guard against any abuse. The Code has also instituted mandatory auditing for companies of a certain size. The rules governing audit and financial disclosure have been reinforced and plans for a more comprehensive overhaul are in hand. The Central Bank issued a circular in May 2011 on corporate governance in the financial sector. There are no mechanisms or measures to promote the disclosure of non-financial information, relating for example to social and environmental performance. Consequently, corporations publish such information only on a voluntary basis.

Human rights

Tunisia has ratified the international instruments mentioned in the *Guidelines*, including the Universal Declaration of Human Rights and the key International Labour Organization (ILO) Conventions. The Tunisian Human Rights League, created in 1976, was the first national human rights organisation in the Arab world, but it was unable to fulfil its missions under the old regime. The Committee on Human Rights and Fundamental Freedoms was created in 1991 as an advisory body to assist the President of the Republic in promoting and consolidating human rights in Tunisia. Despite these measures and this institutional framework, however, the human rights situation in Tunisia deteriorated and there were repeated violations of economic, social, cultural, political and civil rights. Since the first weeks following the revolution of 14 January 2011, the transitional authorities have adopted a series of measures and decisions that constitute strong political signals. The Constituent Assembly elected in October 2011 is drafting a new constitution, which will no doubt lay the foundations for guaranteeing fundamental liberties and human rights. To ensure respect for the *OECD Guidelines*, the new government will also need to take steps to guarantee respect for human rights by corporations and to encourage them to play a role and adopt policies in this area.

Employment and professional relations

Tunisia acceded to the ILO in 1956 and has ratified 22 international labour conventions, including the eight so-called core conventions. Labour law is regulated by the Labour Code promulgated in 1966 and labour union law is guaranteed under the 1959 Constitution. Tunisia has a labour union tradition dating back to the beginning of the last century with the founding of the first labour union in the Arab world in 1924. Pursued under the aegis of the National Commission for Social Dialogue, collective bargaining negotiations took place every three years at the instigation of the government. However, according to the ILO, social dialogue under the former regime was restricted, the right to strike was hampered by legal impediments and the main labour union (*Union générale tunisienne du travail* – UGTT) was subjected to restrictions and pressures. The rigidity of the labour market is also cited as an obstacle by economic operators. Since the revolution in January 2011, two new labour unions have emerged, the minimum wage has been increased and the new authorities have announced the creation of new structures within enterprises designed to ensure that workers' rights are respected and to consolidate social dialogue.

Environment

Tunisia has ratified the principal international conventions on environment, essentially those emerging from the Earth Summits of Stockholm in 1972, Rio de Janeiro in 1992 and Johannesburg in 2002. Tunisia's priorities include the fight against pollution, preservation of biodiversity and ecological balance as well as rational management of natural resources. This is highlighted by the place these issues have occupied in the country's successive development plans and in the adoption of various national strategies for sustainable development. The regulatory arsenal for combating pollution extends to water, air, waste, soil, biodiversity and the marine environment. Tunisia has several measures in place for monitoring the environmental performance of enterprises. A key element in Tunisia's antipollution programme, Decree 91-362 of 13 March 1991, as amended in 2005, made it mandatory to conduct an environmental impact study before carrying out any new project. Implementation of the rule was assessed as part of the diagnostic study for preparing an Environment Code and a legal framework for impact studies and strategic environmental assessments. However, businesses maintain an insufficient awareness of environmental issues. A number of measures have been launched in recent months to make the protection of the environment a higher priority, including measures to improve the environmental performance of businesses.

Combating corruption, bribe solicitation and extortion

Tunisia ratified the United Nations Convention against Corruption (UNCAC) in 2008. Internally, corruption is regimented by the Penal Code. The latter includes corruption offences, notably bribery of Tunisian public officials, influence peddling in addition to the act of Tunisian public officials and similar or judges accepting bribes. Despite that legal framework, widespread corruption and nepotism were among the underlying causes of the revolution. In 2011, Transparency International ranked Tunisia 73rd among 183 countries in its Corruption Perceptions Index. The National Commission for Investigating Cases of Corruption and Embezzlement (*Commission nationale d'investigation sur les affaires de corruption et de malversation*, CNICM) was established in February 2011 with the mandate to identify the sources of corruption that took root during the two previous decades and refer cases to the justice system. A Decree Law calling for the creation of a National Anticorruption Authority was adopted in November 2011. It stresses participation of the private sector in combating corruption, in accordance with the *OECD Guidelines*, while making the government responsible for taking the necessary legislative and regulatory measures to discourage and incriminate all forms of corruption in the private sector. It asks the private sector to prepare and apply concrete measures to eliminate practices that encourage the spread of corruption in the public sector and to respect the rules of fair competition among firms of the private sector. The Decree Law also calls for strengthening the principles of transparency and integrity in the governance and management of private sector firms. Information and awareness campaigns targeted at foreign entrepreneurs and investors are planned. Lastly, a Ministry of governance and anticorruption was created after the elections in October 2011. The OECD is co-operating with Tunisia on issues relating to integrity and the fight against corruption.

Consumer interests

The institutional and regulatory framework for consumer protection in Tunisia today consists of several laws and three principal institutions. A 1992 law establishes general rules concerning product safety, fairness in economic transactions, and consumer protection. The National Consumer Protection Council was created in 1992 to oversee and improve the quality of products and provide information and guidance for consumers. The National Consumers Institute (*Institut national de la consommation*, INC) was created in 2008 to help disseminate a consumer culture by providing technical assistance and information. Lastly, the Tunisian Consumer Protection Organisation (*Organisation tunisienne de défense du consommateur*, ODC) is the country's principal consumer protection association. In practice, however, consumer protection policy is weak and the legal and institutional system has been underused, as reflected in the small number of complaints handled. Tunisian consumers are generally unaware of their rights and of the procedures to enforce them.

Policy framework for investment in Tunisia

Investment policy

Since adoption of the first Investment Code in 1969, Tunisia has consolidated its legal and institutional framework governing national investment with the promulgation of a new code in 1993 and the creation of institutions, thereby earning itself a relatively favourable position in international rankings. However, the system instituted by the Code has become complex, with inconclusive results and a lack of visibility for investors. Sixty-four amendments have been made to the Code since 1993 and sectors subject to restrictions are established by decree or under specific legislation. The adhering countries have asked the Tunisian authorities to take full advantage of good practices to strengthen transparency, predictability and access to laws, regulations and procedures. As the User's Toolkit for the OECD Policy Framework for Investment notes, the aim in particular is to set out precise deadlines for decision-making, to apply the "silent consent" rule to approval procedures, to offer investors the possibility of appealing in the event of a refusal, to engage in active discussions with enterprises and other stakeholders before amending laws and regulations, and to use tools for Regulatory Impact Assessments.

Other aspects of Tunisia's investment policy should be noted. The real estate regime presents a number of obstacles, particularly in administrative terms, and imposes restrictions on foreigners. The legal framework governing intellectual property is close to international standards, but falls short in its enforcement, especially with respect to piracy, which needs to be improved.

Efforts have been made to streamline administrative procedures, notably by promoting electronic communications; Tunisia has signed 53 bilateral agreements to promote and protect investment (of which 33 are in force) that guarantee access to international arbitration for foreign investors.

The new authorities have announced measures to improve the investment environment and to regain investor confidence. They have announced plans to revise the legal framework for investment to make it more simple, efficient and transparent. They have also launched a systematic and participatory process for revising tax and customs formalities, and they have instituted the National Commission for State expropriation and confiscation of the assets and property of the former president and his entourage. Lastly, they have announced the opening of negotiations with the European Union, a full and in-depth free-trade agreement, including a chapter on investment protection.

The Tunisian authorities adhere to the Declaration's Instrument on Conflicting Requirements, under which adherents should co-operate with a view of avoiding or minimising the imposition of conflicting requirements on multinational enterprises.

Investment promotion and facilitation

The promotion of investment and economic initiative has been among the priorities of Tunisia's successive four-year development plans. The Agency for Promotion of Industry and Innovation (APII) was established in 1972. It runs a network of one-stop service providers in the country's 24 governorates, designed to expedite matters for investors. The Foreign Investment Promotion Agency (FIPA) was created in 1995, under the Ministry of Investment and International Co-operation. The existing system of investment incentives is complex, costly, and hard to manage. The Code calls for common incentives, incentives for enterprises devoted wholly to export, incentives targeting a particular objective such as regional development or environmental protection, and incentives granted by decree on a case-by-case basis for large-scale projects. Dialogue with investors is now being strengthened, but little attention has been paid to the mechanisms of interaction between local SMEs and foreign investors. The revision of the Investment Incentives Code announced by the new authorities will reflect Tunisia's new priorities, in terms of employment, skills, governance, innovation and public-private partnerships.

The Tunisian authorities agree to commit to the requirements of the Declaration's Instrument on Incentives and Disincentives, which recognises that adherents may be affected by this type of measure and encourages them to make such measures as transparent as possible. To help Tunisia meet these commitments, the adhering countries have invited Tunisia to use the OECD Checklist for Foreign Direct Investment Incentive Policies, which is based on good practices in this area and, in particular, the introduction of a mechanism to evaluate incentive measures through cost-benefit analysis.

The policies aimed at facilitating and encouraging business links between FDI and local enterprises can help the development of SMEs and job creation. The adhering countries have informed the Tunisian authorities that the good practices of adhering countries are described in the OECD PFI User's Toolkit, for example local supplier capacity-building with the help of the public authorities or the private sector and the publication of a database of enterprises to facilitate links between local and foreign enterprises.

Trade policy

Since the 1980s Tunisia has pursued a policy focused on export, and it continues to treat the manufacturing and service sectors (primarily export-oriented) as priorities. Tunisia has long been engaged in a number of integration initiatives with countries of the European Union, the Arab countries (including those of the Arab Maghreb), and African countries. Although it suffered from the global economic crisis of 2008-09, Tunisia has maintained an open trading regime with limited recourse to subsidies and trade protection measures. The new authorities plan to pursue a new strategy towards regional and global integration. This strategy will target trade policy reforms for greater integration of new markets, especially in Africa and North America, and will take better advantage of the trading framework with the European Union, the Arab countries, EFTA and Turkey. The new integration strategy foresees development of the logistics sector as a way of achieving closer integration with international logistics networks and reducing transaction costs related to external trade.

Competition policy

Competition policy in Tunisia is governed by a 1991 law (the first such legislation to be adopted in countries of the Maghreb), which has been amended several times. Three authorities are responsible for competition policy: the Department of Competition and Economic Investigations (DGCEE) of the Ministry of Trade, the Competition Board, and the administrative tribunal. The legal and institutional framework is now solid, having been reinforced over the years. In practice, however, it has been noted that the many derogations from the law, a shortage of technical capacity, inadequate resources and a lack of administrative autonomy have compromised the effectiveness and credibility of the Competition Board. Moreover, monopolies were protected, barriers to market entry were maintained at a high level, and anticompetitive practices remained uncontrolled under the former regime.

The new authorities are seeking to strengthen competition on the domestic market by reducing anticompetitive practices and unfair competition and moving to eliminate barriers to entry and competition in situations of rent-seeking and exclusivity. There are also plans to strengthen the work of the Competition Board (by giving it total independence, allowing direct referrals, and activating the self-initiation permitted by existing laws) as well as the DGCEE, and to develop a culture of competition.

Infrastructure development

The modernisation of infrastructure and the organisation of transport are among the highest priorities of the new authorities. Achievements in terms of transport, electricity, drinking water and new information and communication technologies have been notable, but efforts are still needed to ensure broader territorial coverage, to modernise the networks, and to facilitate business. There are still great needs in infrastructure equipment and progress to date has not succeeded in closing the gaps in terms of access to facilities, which remains uneven across the country. The new authorities have placed a strong emphasis on investment in infrastructure in remote areas of the country. Several sectors to competition and private capital, including energy, telecommunications, transport, and services related to water, waste treatment and sanitation, have been opened to competition and private capital. Some limitations persist, for example in transport, value-added services and facilities, and construction and public works. Recognising the importance of the private sector in infrastructure development, the new authorities created a General Directorate of PPPs with the aim of improving the strategic, regulatory and institutional framework.

Development of the financial sector

The Tunisian authorities have been making efforts to improve access to financing for economic agents. Over the years, the Tunisian financial and banking system has been transformed and several reforms and restructuring measures have been undertaken to optimise the system's contribution to financing and development of the economy. These advances have not however made a significant improvement in the conditions of financing for the Tunisian economy. The Economic and Social Development Strategy 2012-16 points to a number of weaknesses in the financial sector, including banking services that are not attuned to market needs, difficulties in obtaining financing for SMEs and new promoters, and financial exclusion of low-income groups. The authorities are aware of the great efforts that will have to be made to reform the financial sector and improve its contribution to economic and social development. Some steps are currently being taken, such as measures targeting better access to financing for economic agents, better governance and transparency in credit institutions, and independence for the Central Bank of Tunisia.

The investment framework for green growth

Tunisia has not yet developed a green growth strategy or any specific approach to attracting green investments. However, the transitional government and, more recently, the provisional government have recognised the importance of introducing economic policies that take sustainable development considerations into account, as evidenced by a series of initiatives. The Economic and Social Development Strategy 2012-16 contains a "water, energy and green growth plan" that stresses the mobilisation of water resources, regional electric interconnection, extending the gas transportation network, developing renewable energies, and preserving the environment. Another important step was the publication in November 2011 of the provisional version of the National Strategy for Sustainable Development (SNDD) for public consultation. More recently, the Ministry of the Environment initiated a study on the green economy, which should lead to the establishment of a national strategy for a green economy in Tunisia.

One area where Tunisia has made particular efforts to promote the shift toward a greener economy is energy conservation and the promotion of renewable energies. In light of its growing dependence on imports of oil products, Tunisia has been progressively adopting a legislative and regulatory framework for controlling energy use, with passage in 1985 of the first energy savings law, a law on energy conservation in 1990, and a 2004 law introducing mandatory periodic energy audits. Other amendments are now in preparation to adapt the legislative framework to private participation in energy production and to encourage private investment in water management and waste treatment. The government has also introduced a series of incentives to promote investments in energy efficiency and in renewable energies.

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Chapter 1

The economic situation and the role of foreign direct investment in Tunisia

The January 2011 revolution reshaped the political, economic and social landscape of Tunisia. The transitional period has been marked by major political advances, but also economic difficulties and a tense social climate. Despite higher levels of unemployment and deficits, there are a few signs of recovery. After a decline in foreign direct investment of almost 26% in 2011, the Foreign Investment Promotion Agency has observed a 19% increase during the first four months of 2012. Tunisia's potential for attracting investment is today linked to the improved business climate and renewed confidence of investors.

Foreign investment accounts for the lion's share of privatisations (almost 90% of total income from privatisation and restructuring). The new authorities have announced their intention to pursue their programme, to privatise certain enterprises confiscated after the revolution, and to consolidate public-private partnerships.

The revolution of 14 January 2011 has thrust Tunisia into a new phase of its history. It is now striving to design and implement a development model that is inclusive, fair and equitable, and based on the rule of law, good governance, competitiveness and free enterprise. Notwithstanding the country's performance on the economic and social fronts, the development strategy adopted by the former regime was tainted by attacks on personal freedoms, inequality, corruption and nepotism on the part of the deposed president and his entourage. These failures partly explain the socioeconomic discrepancies between regions, the weakness of private investment, and the persistence of high unemployment, particularly among young people and recent graduates.

The country is experiencing the economic difficulties inherent to the post-revolution phase, including the rise of unemployment and deficits, a loss of competitiveness, and a decline in domestic and foreign investment. Despite these difficulties, there has been progress since January 2011.[1] As described throughout this report, a number of initiatives have been launched and they should help to establish a better business climate, in terms of transparency, consultation and governance, and to boost competitiveness and restore the country's attractiveness in foreign direct investment (FDI). The reform efforts, however, will have to be pursued and deepened in order to strengthen the confidence of domestic and foreign economic agents and to give hope to Tunisia's unemployed youth.

Macroeconomic context

Since the revolution, Tunisia has been engaged in a process of democratic transition toward a constitutional State governed by the rule of law. This has had important repercussions on the country's political and socioeconomic landscape, as well as that of the entire Middle East and North Africa region (MENA). The transitional government installed in 2011 has been relatively successful in maintaining social peace and setting the markers for an economic and social strategy, while at the same time taking the needed emergency measures. An important political milestone was reached in October 2011 with the election of a constituent assembly to prepare a new constitution for the country, with a view to holding presidential and legislative elections within 18 months. The assembly voted a law on the provisional organisation of the State, following which it elected a new interim president and passed a vote of confidence in a provisional government formed through a coalition of three parties.[2] The provisional government[3] will run the country until the next elections are held.[4]

This progress on the political front has been made possible thanks not only to a consensus on the stages to democratic transition, but also to an administration that has succeeded in maintaining continuity in government structures and stability in the decision-making process. Important measures were taken since January 2011, such as creation of four commissions[5] in response to demands emerging from the revolution, and the preparation of several emergency plans, in particular for employment and for disadvantaged regions[6]. The transitional government, in office until October 2011, outlined a strategy of economic and social development for the years 2012-16. This strategy, which was presented at the meeting of the Finance Ministers from G8 countries in September 2011, took stock of the situation and proposed several axes for economic and social transitions. It helped to shape the assessment of the provisional government and provided a basis for its new development programme presented to the Constitutive Assembly in April 2012. Drawn up in consultation with experts and key social partners, the Development Strategy for the New Tunisia sets out the country's main economic and social orientations (Box 1.1).

Box 1.1. **The Development Strategy for the New Tunisia and the improved business climate**

The provisional government's new economic and social development programme is based on the consolidation of the political changes and the construction of democratic institutions founded on pluralism, equality, freedom and a participatory approach. The principles underpinning the strategy consist of good governance and transparency in the management of public affairs, regional development and decentralisation, citizen participation, the fair distribution of wealth, modernisation of the economic structure, productivity and innovation, regional and international integration, the leveraging of national capacities and skills, a lasting partnership between the public and private sectors and preservation of the environment.

The government has set itself objects relating to various economic and social aspects and aimed at ensuring an investment-friendly environment by basing its action on structural and economic reforms. The reform plan is divided into two main stages: a stage of economic recovery and renewed confidence among national and foreign economic operators with the boosting of public investment and professional training and employment programmes (in particular the creation of 75 000 jobs, 25 000 of which in the public sector), and a follow-up stage aimed at putting in place solid basis for sustainable, equitable and balanced development.

Box 1.1. **The Development Strategy for the New Tunisia and the improved business climate** *(cont.)*

With regard to developing the business environment and investment climate, the government hopes to establish a solid basis for appropriate legislation and more effective institutions. To this end, it plans to introduce mechanisms and procedures aimed at:

- creating a healthier and more attractive business climate by placing the emphasis on universal values and principles and good practices in terms of the fight against corruption, transparency and good governance;
- developing the national investment regime through rigorous and comprehensive reforms addressing the different aspects of the business environment;
- revising the regulatory framework governing business and investment and business practices to ensure greater simplicity, transparency and efficiency, better-targeted incentives and the development of public-private partnerships;
- streamlining administrative procedures and formalities, improving the quality of administrative services and supporting economic operators; and
- promoting partnerships between Tunisian and foreign enterprises in order to ensure genuine transfers of technology.

Within this framework, the government plans the rapid adoption, in the course of 2012, of a number of legislative and procedural mechanisms, including the following in particular:

- revision of the investment incentives system and other related legislation with a view to regrouping them;
- streamlining real estate procedures relating to investment and revising the procedures for changing the vocation of industrial and tourism-related land in order to reduce delays and to resolve problems relating to expropriation operations; and
- streamlining procedures for the granting of tax and financial incentives.

Other institutional actions are also planned such as:

- creation of an economic experts council reporting the government presidency;
- creation of a national investment body with legal personality and financial autonomy allowing it to co-ordinate with other bodies operating in the investment sector;
- creation of a technical unit tasked with co-ordinating the resolution of problems and obstacles that impede the process of projects.

Source: Ministry of Regional Development and Planning and the Ministry of Investment and International Co-operation.

The transitional government also issued a number of white papers setting forth ideas for future reforms in such areas as regional development, the environment and sustainable development, and internal security policy. By its nature, however, the transitional government was not in a position to make strategic choices or to undertake the profound structural reforms needed to address socioeconomic challenges: that task falls to the provisional government. As it pursues its heavy agenda of constitutional revision, the government faces the challenge of ensuring convergence and coherence between political reforms and economic and social strategies.

Tunisia enters its transition with some undeniable assets. With one of the highest per capita GDPs in Africa, almost USD 9 500 on a purchasing power parity basis in 2011 (IMF, 2012), Tunisia is an upper middle income country with a relatively diversified economy in which services predominate (45% of GDP)[7] and a stable macroeconomic framework. Tunisia has performed better than the regional average against the majority of human development indicators and their scores are close to those of OECD countries (Table 1.1).[8]

Table 1.1. **Human development indicators in Tunisia (2009)**

Indicator	Tunisia	Middle East and North Africa	OECD
Health expenditure, total (% of GDP)	6.2	4.9	12.1
Life expectancy at birth, total (years)	74.5	72.2	79.8
Under-5 mortality rate (per 1 000)[1]	16	31.3	5.6
Public spending on education, total (% of GDP)	6.9	4.8	5.4
School enrolment, primary (% gross)	108.8	101.8	101.7
Youth literacy rate (% of people ages 15-24 years)	96.8[2]	n.a.	99.7
Ratio of girls to boys in primary and secondary education	101	93	99.9
Proportion of seats held by women in national parliaments (%)[1]	27.6[3]	9	24.2

1. 2010 figures.
2. 2008 figures.
3. This figure dropped to 20% in the new constituent assembly appointed following the elections of October 2011.

Source: World Bank (2009), *World Development Indicators* (2009).

Prudent macroeconomic policies combined with structural reforms have enabled Tunisia to maintain relatively high growth rates while preserving a balance on the national accounts. The country recorded an average growth of 5% between 1999 and 2009, with inflation averaging around 3% a year. The budget deficit has never exceeded the 3% of GDP threshold between 1991 and 2010, and the debt stock as a percentage of GDP stood at over 40% in 2010 (Central Bank of Tunisia 2010 and World Bank 2010). The global financial crisis had little impact on the Tunisian economy, primarily on account of its limited exposure to international financial markets, the prompt recovery of exports in 2010 and the stability of emigrant remittances (ILO, 2010). Tunisia therefore has some manoeuvring room as it undertakes its transition. Its macroeconomic framework is very healthy, its debt situation is reasonable,[9] its reserves, although they declined in 2011, are not yet looking to borrow and it can count on the support of multilateral and bilateral donors.

Nevertheless, the country faces some pressing socioeconomic problems, in particular unemployment and regional economic and social disparities. These problems have long been recognised but they have never been the target of decisive reforms, and the few measures taken by the former regime had insufficient impact in terms of competitiveness, job creation and equitable development. The country has been moving with measured steps along the road to reform, demonstrating great prudence, which was further reinforced by the global financial and economic crisis.

The figures for December 2011 from the National Statistics Institute (INS) show that the unemployment rate reached a historic high of 18.9% of the workforce, with more than 700 000 people looking for work, of which 200 000 were young graduates (Box 1.2). These rates are even higher in the governorates of the South, North West and Centre West of the country. Young people and graduates are particularly hard-hit, with a rate of unemployment that is as high as 48% of graduates in some cities[10] The female workforce participation rate is low (24.8% versus 69.5% for men). Women are being particularly affected with the downturn of the economy in this transition period, as the export sector, where activity has languished, employs a large proportion of women (80% of workers in the textile and clothing sector are women). The quality of employment has also deteriorated in recent years, and wage rates are relatively low (ILO, 2011).

In terms of regional disparities, besides differences in rates of unemployment there are significant differences in poverty rates. According to the National Institute of Statistics (INS), the Centre-West and South-West regions are the most disadvantaged, with poverty rates of 12.8% and 5.5% respectively compared with a national average of 3.8% in 2005.[11] Accordingly, the proportion of poor people in the Sidi Bouzid region (Centre-West) is ten times higher than of that in the Monastir region (Centre-East) with rates of 12.8% and 1.2% respectively.[12]

The new authorities are aware that the promotion of regional development targets calls for a better distribution of wealth and the opening up of the country's rural and isolated areas. The transitional government established a Ministry of Regional Development and Planning, which in 2011 conducted a series of surveys and national consultations leading to the publication of a white paper. The main proposals of this document are aimed at strengthening the infrastructure and social, school, health and cultural services and reform of the investment incentives system and of local taxation, together with a new model of regional and local governance. The new Tunisian *Caisse de depôts et consignations* may also have a role to play in the development of the regions, through the funding of public investment and support for public-private partnerships (PPPs).

Box 1.2. **The challenge of unemployment in Tunisia**

The unemployment rate in Tunisia remained above 14% between 1999 and 2009, peaking at 44% among those aged between 15 and 29 years and young graduates. This situation raises questions about the employability of job seekers and the quality and orientation of education. Employment in the informal sector is still high, and the informal economy represents 30% of Tunisia's GDP (IMF, 2011). 46% of young people prefer to work for the public administration which already employs large numbers of people. Rigidities in the labour market and legislation hinder hiring in the private sector. The World Economic Forum's *Global Competitiveness Report 2011* ranked Tunisia 106th in terms of labour market efficiency, out of 142 countries evaluated (WEF, 2011).

With nearly 400 000 students and an average of 70 000 expected to graduate every year to 2016, higher education in Tunisia faces great challenges in terms of the system's quality, its relevance and the degree to which it is adapted to the needs of the economy and society. The Economic and Social Development Strategy 2012-16 contains a national strategy for higher education focused on excellence, quality and employability. It proposes institutional reforms to make the universities independent, to involve the private sector and civil society more closely, and to foster new forms of co-operation between universities and businesses. The strategy also contains measures to strengthen vocational training.[1]

The transitional government launched the AMAL ("Hope") initiative, under which first-time jobseekers of Tunisian nationality with a higher education degree will receive a monthly stipend of TND 200 in addition to medical coverage to support them in active job searching for up to one year.[2] In July 2011 nearly 180,000 job seekers were registered, 68% of them women and 47% of them holding a *diplôme de maîtrise* (master's degree) (Kouki, 2011). A system of "starter job" contracts to introduce young people to working life (*stages d'initiation à la vie professionnelle*, SIVP) has also been introduced, under which the government and the employing firm share the cost of monthly compensation (TND 150 each) for one year. The government is committed to cover the costs of 200 hours of supplementary training and the firm undertakes to hire at least 50% of trainees for a period of three years.[3]

The other employment-related features of the emergency plan put in place by the transitional government are: *i)* direct creation of new salaried jobs (20 000 in the public sector, 20 000 in the private sector, civil society and abroad); *ii)* development of entrepreneurship and microenterprise with support of promoters to ensure that the jobs created are permanent; and *iii)* support for enterprises in difficulty through financial and tax measures to help them preserve existing jobs.

1. A dual objective has been set: "to increase the capacity of the vocational training system by 50% and improve its quality and relevance by creating decentralised regional centres of excellence, consolidating partnership between the training system and business, strengthening work-training and life-long training arrangements and reforming the mechanisms for financing vocational training." Economic and Social Development Strategy 2012-2016.
2. Decree Law 2011-621 of 23 May 2011 amending and supplementing Decree 2009-349 of 9 February 2009 establishing the programmes, conditions and procedures of the National Employment Fund.
3. *www.emploi.gov.tn*.

Source: Economic and Social Development Strategy 2012-16.

The challenges of combating unemployment and achieving balanced and inclusive development are even more complicated to address in the current difficult economic setting affecting Tunisia and also the European Union, the country's main trading partner. In 2011, Tunisia's growth rate contracted (-2.2%). While government forecasts for 2012 predict a growth rate of 3.5%,[13] other analysts are more pessimistic about the deteriorating economic situation in Europe and persisting social unrest in Tunisia.[14] The tourism sector suffered greatly from the revolution: tourism revenues fell by nearly 39% from January to September 2011, causing heavy job losses.[15] FDI flows have dropped by nearly 26% in one year (see below) and the repatriation of profits by foreign enterprises has increased. Subsidies continue to weigh upon the State budget. The decline in national savings and the downgrade of the sovereign debt rating[16] (making external financing difficult) represent a double handicap for the authorities. The public administration has great financial demands, particularly as the transitional government created new public jobs to help relieve pressure on the unemployment rate. While a few signs of recovery became apparent at the beginning of 2012, the economic challenges remain substantial and the social situation remains fraught.

Beyond these emergency measures taken by the transitional government to promote employment and regional development, and which rely primarily on government financing, the long-term strategy should support the growth of entrepreneurship and private investment, both domestic and foreign, of the kind that will generate permanent, higher-skilled jobs and break down the isolation of disadvantaged regions. Foreign direct investment can be an essential element for Tunisia's international competitiveness, and a way of improving employment in both quantitative and qualitative terms. Tunisia should therefore maximise its potential to attract FDI by capitalising on its geographic position, pursuing greater regional and global integration, establishing a transparent and welcoming business climate as well as building upon the country's advantages in terms of infrastructure and manpower.

The role of FDI in Tunisia's development

At the beginning of the 1970s, Tunisia made a shift in its economic development policy and sought to involve foreign partners in its investment efforts. The baggage of import substitution policies from the early 1960s was blocking development of the export sector. To compensate for this obstacle, an offshore regime to encourage foreign direct investment was established in 1972,[17] geared towards low-cost production using unskilled labour. Exports by these offshore enterprises rose swiftly and the textile and clothing sector quickly overtook the oil industry. The share of fuel products in total goods export fell from 54% in 1981 to 16% in 1988. Engineering and electrical component exports also rose steadily.

With the promulgation of the Investment Incentives Code in 1993, strengthening the offshore regime, firms engaged wholly in export were eligible for numerous financial and tax advantages, including a total tax exemption for profits derived from export during the first 10 years. As in other countries such as Malaysia, which pursued a similar dual approach to development, the economy came to be characterised by rapidly growing exports and a protected domestic sector. Production for export was done primarily in enclaves and local value-added consisted essentially of low-cost and unskilled labour.

This approach may have been appropriate in the 1970s, given the country's education level and the preferences granted by Europe, but it began to show its limitations by the beginning of this century, with the emergence of a new, educated and skilled generation of workers in the labour market. Figures from the International Labour Organisation show that a net total of 77 000 new jobs, most of them low-skilled, were created between 2004 and 2007. That figure was well below the level needed to absorb the economically active population, which rose by nearly 190,000 and included many university graduates entering the labour market for the first time. The impact of the special status granted to the offshore sector was therefore modest in terms of job creation and the quality of those jobs. There was little effect on real wages[18] and the system did not induce many indirect jobs by comparison with other forms of FDI that favour subcontracting and business linkages with local SMEs. Lastly, the favourable treatment accorded to the offshore sector in fact came at the expense of the "onshore" sector, and domestic production did not receive comparable growth support from the authorities (ILO, 2011).

The authorities have gradually been taking measures to overcome this dualism. Local and onshore firms have benefited from tariff reductions on imported components and cuts in corporate taxes. At the same time, offshore firms were authorised by the 1993 Code to sell up to 30% of their output of goods and services on the local market: that limit was raised to 50% in 2011. Competitiveness in the onshore sector has been improved over time with the liberalisation of key services such as banking and telecommunications. Further progress in this direction, making the services sector more open to international competition and to foreign investment (see Chapter 2), would boost the competitiveness of the onshore sector and in time would eliminate the distinction between these two sides of the economy, to the benefit of both.

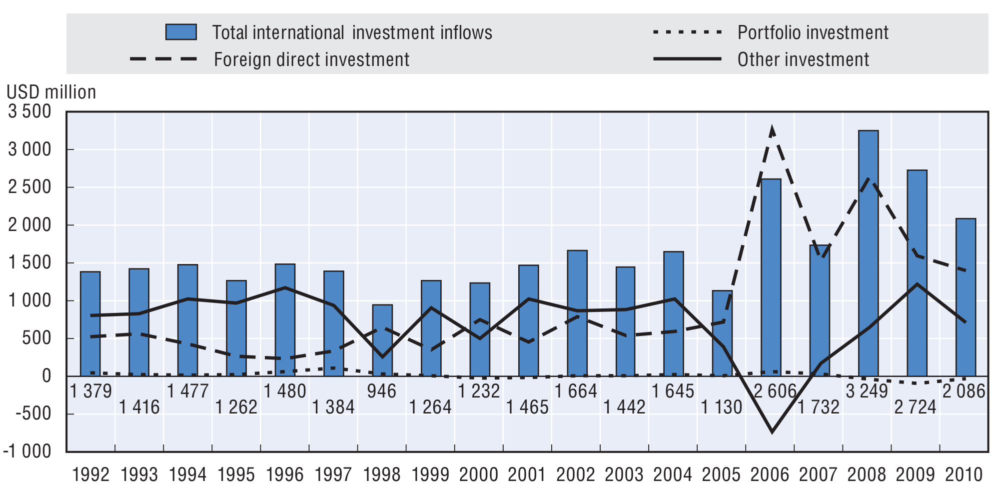
For the past few years the authorities have being planning to revise the 1993 Code. In a 2008 analysis of the Code's impact, the Tunisian Institute for Competitiveness and Quantitative Studies (ITCEQ) highlighted weaknesses in the former dualist development model and proposed consideration of new measures to promote national and international investment by upgrading human resources in Tunisia. ITCEQ recommended a new incentives system that would help to transform the economy by promoting intangible investment and the emergence of a high-tech industry and a knowledge-intensive services sector that would foster high-quality employment. These recommendations were broadly accepted by the transitional government, which re-launched work on revising the Investment Incentives Code, the aim being to maximise the impact of investment on local development and employment. The provisional government has announced that it would adopt the new law in the course of 2012.[19]

FDI trends in Tunisia

Annual flows of FDI (Box 1.3 on FDI statistics for Tunisia) have intensified, particularly since 2005, reaching a peak in 2006 following privatisation of 35% of Tunisie Telecom[20] (Figure 1.1). Over the six-year period 2005-10, FDI inflows averaged USD 1.86 billion a year, compared to 509 million a year over the period 1997-2001, and 405 million a year in 1992-1996. Portfolio investment was relatively sluggish throughout the period 1992-2009, but it recorded a net jump of 200% in 2010 with the recapitalisation of Carthage Cement and the participation of non-residents in the capital of Ennaki-Automobiles.[21] Other forms of investment showed a negative balance for the first time in 2006, as the result of a regression of debt drawdowns along with higher repayments of principal on medium and long-term debt.[22]

Figure 1.1. **International investment inflows in Tunisia**

1992-2010



Source: IMF, *Balance of Payments.*

Box 1.3. **FDI statistics in Tunisia**

Foreign direct investment (FDI) statistics included in this report are derived from several sources, including official statistics of Tunisia, namely the Banque centrale de Tunisie (BCT) and the foreign investment promotion agency (FIPA). There is close co-operation between the two institutions to reconcile FDI data compiled by BCT as part of the balance of payment statistics and more detailed FDI statistics of FIPA. However, a preliminary review of this data indicates a lack of compliance with international standards as set by the OECD and IMF. For example, data on stocks or reinvested profits is not always available and data collection is not always based on surveys of enterprises.

All OECD countries have made efforts over the past decade or so to harmonise their national statistics with the recommendations of the OECD Benchmark Definition of Foreign Direct Investment (BMD) to provide more reliable, more comprehensive and internationally comparable FDI statistics for policy making and for other purposes. OECD and IMF define FDI as a category of investment that reflects the objective of establishing a lasting interest by a resident enterprise in one economy (direct investor) in an enterprise (direct investment enterprise) that is resident in an economy other than that of the direct investor. The lasting interest implies the existence of a long-term relationship between the direct investor and the direct investment enterprise and a significant degree of influence on the management of the enterprise. The numerical threshold of ownership of 10% of the voting power determines the existence of a direct investment relationship between the direct investor and the direct investment enterprise. The population of enterprises to be included in the statistics is determined according to the Framework of Direct Investment Relationships (FDIR). The statistical unit is the enterprise (as opposed to local enterprise group) resident within an economic territory.

OECD recommends that FDI statistics be compiled and disseminated for inward/outward FDI positions (stocks of equity and intercompany debt) as well as for financial flows (of equity, reinvestment of earnings, and intercompany debt) and income flows (for dividends, reinvested earnings and interest on intercompany debt). Data should be based on the methodology referred to as the "directional principle" and be provided for subcomponents by partner country and by industry (according to International Standard Industry Classification (ISIC). Market value should be applied in accordance with the recommendations targeting unlisted companies. For data dissemination, OECD recommends standard presentation distinguishing transactions and positions of resident Special Purpose Entities (SPEs) and proposes a list of supplemental presentations.

Data collection in OECD countries is based primarily on annual (and quarterly) enterprise surveys complemented by other sources such as the International Transactions System (ITRS), administrative sources, press, etc. Data collection is subject to special regulations in all OECD countries which is a necessary element for the safeguard of data confidentiality and to ensure the collection of reliable and complete information from reporting enterprises. The existence of regulations also enables to achieve a good response rate while sanctions are included for non-response.

Box 1.3. **FDI statistics in Tunisia** *(cont.)*

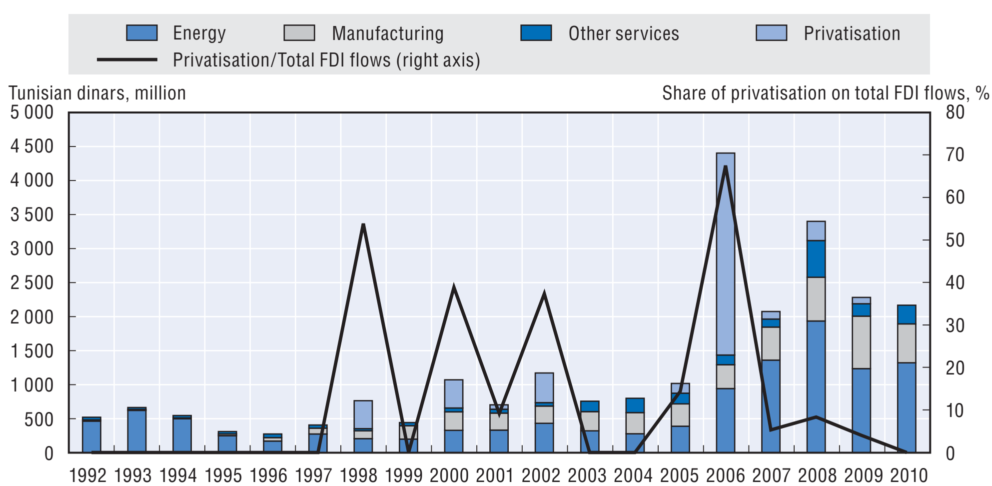
The Tunisian authorities might consider reviewing the country's current FDI statistics in light of OECD statistical standards in view to improve FDI data collection system (implementing a survey system), the coverage and calculation of the data as well as its timely dissemination including revision policies. Such review of Tunisia's FDI statistics would be made on the basis of OECD's evaluation tool "Survey of Implementation of Methodological Standards for Direct Investment" (SIMSDI), which reflects the recommendations of the 4th edition of the Benchmark Definition of FDI. This work would be carried out under the auspices of the Working Group on International Investment Statistics (WGIIS), a subsidiary body of the Investment Committee and responsible for OECD's FDI statistics and the methodology.

FDI in manufacturing has been growing strongly, rising from TND 25 million in 1995 to more than TND 570 million in 2010 (Figure 1.2). Over the years, however, the structure of investment in manufacturing has undergone a radical shift. After a long period of domination by the textile and clothing industry, FDI flows have become broader in scope, diversifying into other sectors with high value-added, in particular electrical and electronic goods and automotive components.

The engineering, electrical and electronic industry share in manufacturing FDI went from 13.8% in 1995 to 25% in 2010, while over the same period the share of textiles and clothing fell from 63.4% to only 7.7%. Yet

Figure 1.2. **FDI inflows and privatisation share**

1992-2010



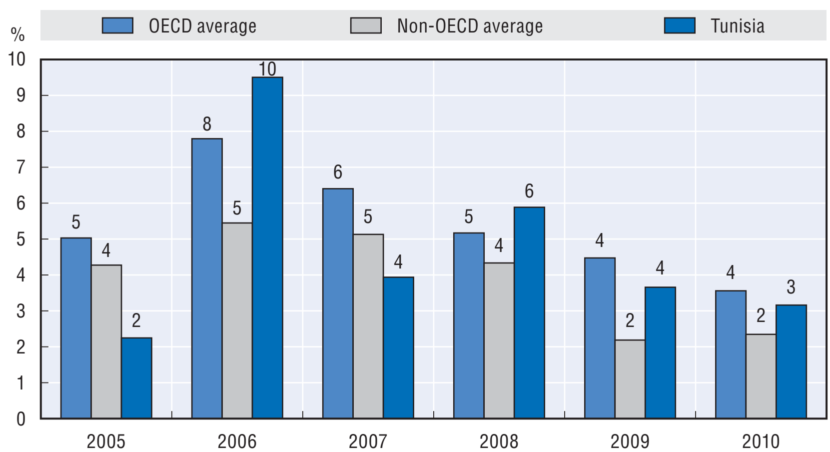
Source: Foreign Investment Promotion Agency (FIPA).

these indicators are only relative: in value terms, FDI in clothing and textiles increased from USD 16.2 million in 1995 to 30.9 million in 2010. The country has therefore been able to maintain a competitive position in this sector despite the dismantling of the Multi-fibre Agreement in 2005.

The ratio of total foreign investment to GDP increased from 2% in 2005 to more than 3% in 2010, rising to 10% in 2006 and 6% in 2008. In the last three years this ratio has exceeded the average for non-OECD countries adhering to the Declaration on International Investment (Figure 1.3).

Figure 1.3. **FDI inflows to Tunisia relative to countries adhering to the OECD Declaration**

Percentage of GDP



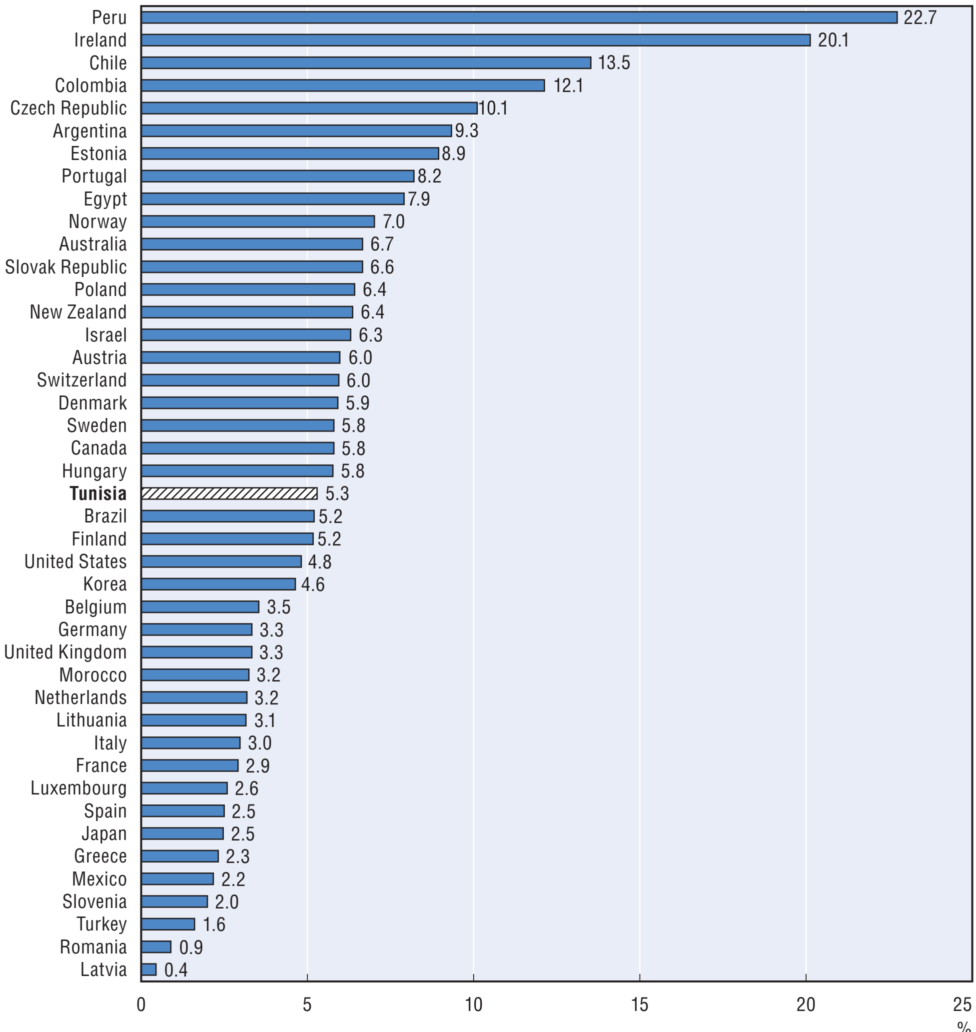
Source: OECD and IMF *FDI Statistics Database*.

In 2010, firms making direct investments in Tunisia turned in a respectable profit performance (calculated on the basis of official statistics) relative to countries adhering to the OECD declaration. With a profit performance of 5.3%, Tunisia stands 22nd among 43 countries (Figure 1.4).

In 2010 the total number of enterprises with foreign participation operating in Tunisia amounted to 3 135 units employing nearly 325 000 workers, compared to 1 500 enterprises and 140 000 workers in 1995. Firms that are entirely export-oriented ("offshore") account for 76% of these enterprises. The annual pace of foreign enterprise creation has been rising steadily, from 31 companies per year during the period 1973-1986 to 134 between 1992 and 1996 and 180 for the period 2002-06, reaching 220 between 2007 and 2010. FDI represents an important share of total investment: in 2010, it accounted for 14% of overall investment and 24.7% of private sector investment (FIPA).

Figure 1.4. **FDI rates of return[1] in countries adhering to the OECD Declaration and in Tunisia (2010)**

Percentage

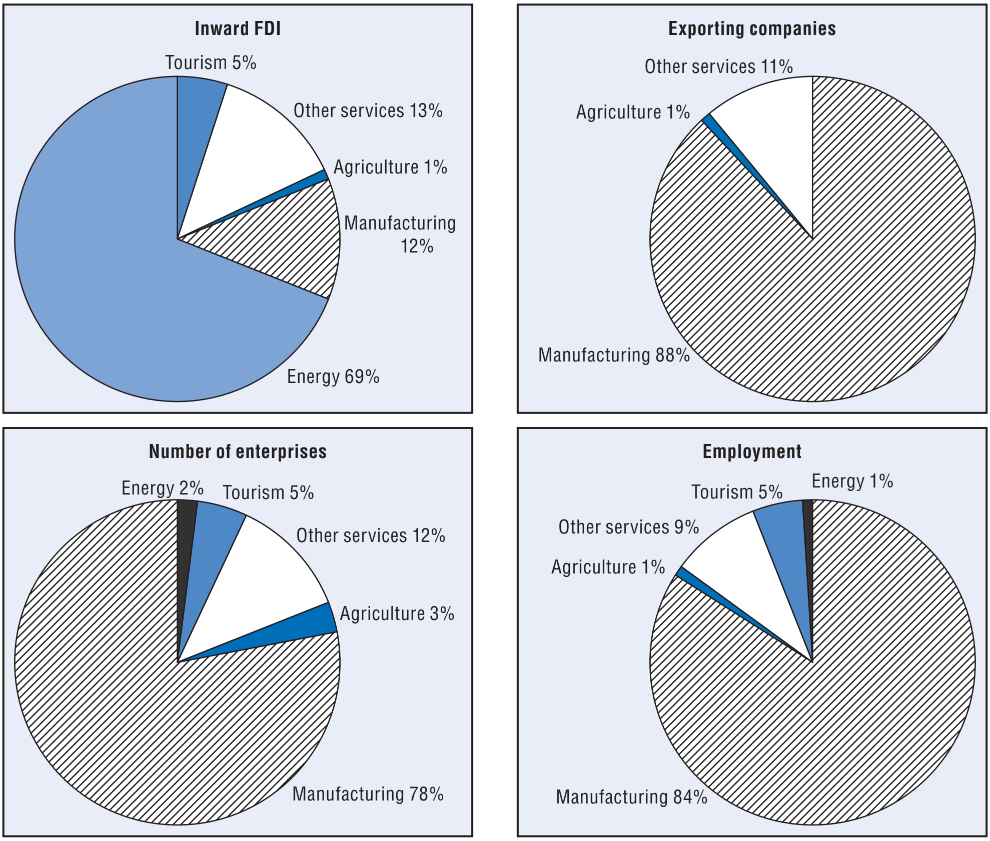


1. The rate of return for inward direct investment is the ratio of equity income (debits for dividends and reinvested earnings) to the stock of inward FDI.

Source: OECD and *IMF FDI Statistics Database*.

The sector distribution of enterprises with foreign participation is dominated by manufacturing, with 2 454 firms. There are 380 firms operating in the services sector, 158 in tourism, 81 in agriculture, and 62 in energy. Figure 1.5 gives an overview of this distribution and of the number of jobs generated per sector. Tunisia is today the biggest South-Mediterranean

Figure 1.5. **Activities of foreign affiliates in Tunisia (2010)**



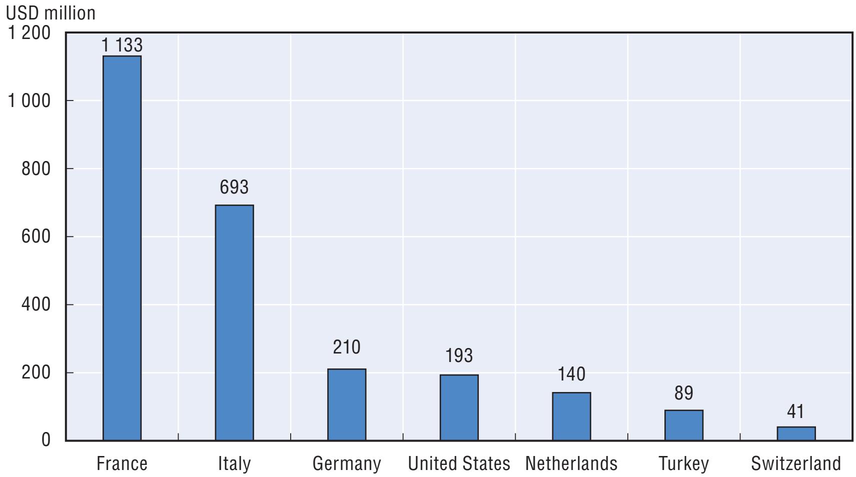
Source: Foreign investment Promotion Agency (FIPA).

industrial exporter to the European Union, thanks to the textiles, engineering, electrical and aeronautics sectors.[23] Foreign enterprises have contributed strongly to this result, accounting for more than 57% of total exports in 2010.[24]

The breakdown by nationality of foreign enterprises established in Tunisia shows a predominance of enterprises from European Union countries. The 2 630 European enterprises established in Tunisia represent 85% of the total number of foreign enterprises in activity and employ over 260 000 workers, or 80% of total employment in foreign enterprises. The rankings show that French firms are in the lead (1 270), followed by Italian (744), German (274) and Belgian (217) firms. There are also 222 firms from Arab countries, 99 from the Americas and 25 from Asia. In terms of the stock of investment, OECD countries are still the largest foreign investors in Tunisia (Figure 1.6).

Figure 1.6. **Investment position of principal OECD partner countries in Tunisia**

Average 2006-10



Source: OECD and *IMF FDI Statistics Database*.

The geographic distribution of foreign enterprises established in Tunisia is concentrated in greater Tunis and in the coastal regions, which are home to 2 700 out of a total of 3 100 enterprises (excluding energy firms). Foreign firms established in the interior, the so-called "regional development zones", account for merely 13% of the total number of firms and the number of jobs created barely exceeds 16% (FIPA, 2010). This imbalance testifies to the isolation and lack of attractiveness of these zones, as well as the lack of impact of the tax and financial incentives offered investors. Exporting enterprises, which must respond rapidly to orders from Europe, seek the proximity of logistics hubs and high-quality infrastructure, which are key assets that are lacking in most of these interior regions.

Recent developments in FDI

According to FIPA, foreign investment (FDI and portfolio investment) fell by 29.2% in 2011 compared to 2010. While FDI declined by 25.7%, portfolio investment recorded a more substantial plunge of almost 60%. 182 foreign enterprises (or 5% of the total), including 64 Italian, 61 French and 10 German firms, chose to suspend their activities in Tunisia, either provisionally or definitively, entailing the loss of nearly 11 000 jobs. In terms of sectoral distribution, the cutbacks occurred mainly in the tourism, manufacturing and energy sectors, which were down by 83.3%, 42.4% and 19% respectively. The Agency for Promotion of Industry and Innovation (APII) also reported a drop of 11.2% in investment intentions in manufacturing in 2011.

Despite these reductions, there were some positive signs in 2011. The creation of 148 new foreign-invested enterprises, 19 of them in the interior, generated nearly 6 200 jobs. Moreover, 150 foreign firms expanded their existing facilities in Tunisia. The services sector performed well, with investment up by 11.5% over the course of 2011. The manufacturing-related services sector recorded a 31% jump in foreign-participation projects declared during the first 11 months of 2011 for potential launch in 2012. Among the 300 new projects carried out (new facilities and expansions), 105 were in the engineering, electrical and electronic industries, followed by textiles and clothing with 90 new projects. The distribution of FDI by country of origin remains unchanged (France 140 projects, Italy 109 and Germany 19). The 27 projects undertaken by Arab countries are essentially oriented to the services sector.

The first months in 2012 have also been encouraging. FDI flows increased by 19.3% during the first four months of 2012 compared to 2011. However, the 2010 level has not yet been reached, with the comparative decline over these months being 2.7%. During the first quarter of 2012, 35 new enterprises and 88 expansion operations created a total of 2 700 new jobs (FIPA).

Tunisia has made significant efforts to retain foreign enterprises operating in its territory, despite the events of 2011 which sparked tensions and a decline in production activities. This was achievable due to relative social peace, a generally prompt recovery of activity, emergency support measures, and the work of government agencies. Despite lingering social tensions, there is potential for reviving investment flows. Reforms to improve the business climate must be pursued and intensified. The provisional government is endeavouring to restore the confidence of local economic agents and foreign investors as well as unleashing a virtuous economic dynamic, in parallel with the ongoing policy reforms. However, a level of disparity still remains between expectations and government initiatives, which explain the continuing social unrest.

Foreign investor participation in privatisation programmes

Tunisia's privatisation programme got under way in the late 1980s. A legal framework was adopted in 1989, with the promulgation of Law No. 89-901 of February 1989 on the restructuring of State enterprises, since amended several times. Law No. 2000-23 of 1 April 2008 on the concessions regime supplemented the earlier provisions, in order to reinforce economic efficiency and optimise the management of public funds. As of the end of 2009, 219 enterprises had been privatised, restructured or converted to concessions: 116 were fully privatised, for a total amount of nearly 6 billion dinars. Foreign investment accounted for nearly 87% of total privatisation and restructuring receipts.[25]

Table 1.2. **Principal takeover and privatisation operations in Tunisia (2005-11)**

Investor	Value of investment (in millions of US dollars)	Nationality of investor
Emirates Integrated Telecommunications Co – EITC; Dubai Investment Group Ltd	2 288	United Arab Emirates
Qatar Telecom QSC – Qtel	1 200	Qatar
OMV AG	866	Austria
Tav Havalimanlari Holding AS	529	Turkey
PA Resources AB	230	Sweden
Groupe Caisse d'Épargne	243	France
France Telecom SA	190	France
Cementos Molins SA	125	Spain
Burgan Bank SAK	120	Kuwait
Groupama SA	115	France

Source: Dealogic (2012).

Law No. 89-9 of 1 February 1989 on public participations, enterprises and establishments, subsequently amended four times to 2001, specified that the restructuring of State enterprises was to be done in accordance with the guidelines in the economic and social development plan and must take into account the nature and stage of development of the sector in which those firms were operating. The law authorised the government to divest itself of all or a portion of State holdings in these enterprises.[26] Current legislation, then, allows all investors to participate in the privatisation process without discrimination as to their nationality.

The forms of restructuring involve primarily the transfer or exchange of shares; the merger, takeover or sale of enterprises; and the sale of any assets that might constitute an independent operating unit.[27] The following procedures must be respected: competitive call for tenders, publicity (essentially in connection with the call for tenders), and evaluation, performed by specialists. The law provides for advantages, in particular tax exemptions, for purchasers, to be decided by the Prime Minister with the advice of the Commission for Adjustment and Restructuring of State Enterprises (CAREPP).

CAREPP was created by the 1989 law. It is responsible for providing an opinion on transactions and then submitting a proposal to the Prime Minister, for decision. The technical privatisation committee (CTP), created in 1997, examines the technical aspects of privatisation cases for submission to CAREPP. Lastly, the General Directorate of Privatisation (DGPV), created in 1996 and reporting since 2002 to the Prime Minister, supervises the privatisation programme and monitors operations.

The concessions regime was instituted in 2008 to delegate management of a public service or government-owned operation to a private entity, in return for remuneration to be charged to users for a specified period of time.

Law No. 2008-23 provides that, with due regard to exchange regulations and legislation, foreigners may import foreign currency to acquire an equity interest in the company created to run the concession. The concessionaire is eligible for incentives and advantages and can transfer the profits from its investments in connection with the concession.[28] This technique is now becoming more important, both in terms of the size of projects and the number and weight of the sectors concerned.

The first restructuring and privatisation operations in the late 1980s concerned enterprises with unstable financial structures, and most were acquired by Tunisian nationals. Foreign investors then began to take a larger share, particularly after the 1994 revision to the 1989 law allowing privatisation by "sale of blocks of shares by tender under general requirements (*cahier des charges*)".[29] These transactions were accompanied by public sales offerings. From then on the privatisation programme gained momentum and increasingly involved larger companies. The share of private investment then rose until, by the end of 2009, it represented nearly 87% of total proceeds from privatisation since 1987: 85% of this amount was in the services sector, primarily telecommunications. Cement factories have also attracted foreign capital. The share of concessions in recorded transactions is rising: at end-2009 it represented 12% of the proceeds, but only five enterprises.

According to the authorities, the proceeds from privatisation go into the Fund for Capital Restructuring of State Enterprises (FREP) and the Motorways Fund. The FREP covers financing needs for rationalising and restructuring State enterprises as well as for enterprises where the capital is wholly or partially held by State enterprises.[30]

An evaluation of the privatisation programme was conducted, covering the period 1986-2004, as part of a technical assistance project for privatisation funded by the European Union. It showed that, generally speaking, the performance of the privatised enterprises improved, but it noted problems flowing from ambiguities in the general requirements (*cahier des charges*), problems with the property ownership status of privatised firms, and tax and social contribution arrears on the part of some enterprises.[31] Despite the complete privatisation of 116 enterprises, the State still has a presence in large swaths of economic activity and it maintains exclusive monopolies in some areas of production, distribution and international trade (Chapter 2).

The Tunisian authorities plan to pursue the programme of restructuring and privatisation in order to boost competition. It will also make greater use of concessions and, more broadly, of public-private partnerships (PPP) as a way of deriving resources and funding for large-scale projects in the national interest. A General Directorate for PPP was established within the Ministry of Finance in October 2011 (Chapter 4).

The authorities also intend to privatise some of the 117 enterprises affected by State confiscation of assets acquired by the former president and his entourage.[32] This would help offset the increase in public spending, which amounts to almost 11% under the new finance law (EIU, April 2012). Given the significant weight of these companies in the Tunisian economy, it will be important to deal quickly, on a case-by-case basis, with these confiscated enterprises, which today are being run by judicial administrators appointed by the State, and to move from a liquidation approach to a privatisation plan that will generate revenues. However, it will not be possible to privatise all these enterprises and the shareholdings acquired by those close to the former regime, particularly in joint ventures involving foreign enterprises, which could also be nationalised.

Notes

1. This report was written between October 2011 and February 2012. It has been updated to take account of developments during the months of March and April 2012.
2. *Ennahdha*, the *Congrès pour la République* (Congress for the Republic) and the *Forum démocratique pour le travail et les libertés* (Democratic Forum for Labour and Liberties) *Ettakatol*.
3. The term "provisional government" will be used in this report to designate the government elected on 23 October 2011 to replace the transitional government that was in office until then.
4. It was announced in April 2012 that presidential and parliamentary elections might be held in March 2013 and at the latest in July 2013. Work on drafting the Constitution has progressed and the Islamist party which has a majority in the Assembly, *Ennahdha*, has said that it wants to maintain the secular status of the Tunisian State.
5. These are the *Commission de réforme politique* (Political Reform Commission, which in March 2011 became the senior body for achieving the objectives of the revolution, policy reform and democratic transition), the *Commission nationale d'investigation sur les affaires de malversation et de corruption* (national fact-finding commission on corruption and misappropriation, which has become the national agency for fighting corruption), the *Commission nationale d'établissement des faits sur les abus durant la révolution* (national fact-finding commission on abuses committed during the revolution), and the *Commission de confiscation des biens mal acquis* (commission for the confiscation of ill-gotten assets).
6. The "rapid response programme" for remote regions was able to mobilise some 2 billion dinars in quick-disbursing funds from Tunisia's principal financing partners, covering a set of local social services in the poorest regions.
7. Ministry of Investment and International Co-operation (2010).
8. United Nations Development Programme (UNDP): the 2011 Human Development Report ranks Tunisia 94th out of 169 countries.

9. In 2010 the ratio of external debt to disposable national income was 36.9% and debt service represented 11.8% of exports (OECD-ADB-UNDP-UNECA, 2011).
10. Ministry of Regional Development.
11. According to a statement by the Minister of Social Affairs in May 2011, this rate is apparently 24.7% (based on international standards setting the poverty threshold at USD 2 per day per inhabitant).
12. Five-yearly survey of household consumption and living standards, National Institute of Statistics (2005).
13. Development Strategy of the New Tunisia, Ministry of Regional Development and Planning, April 2012.
14. Forecasts by the Economic Intelligence Unit in April 2012 predict 2.8%.
15. The tourism sector provided more than a million direct and indirect jobs and more than 12% of foreign currency revenues in 2010. Its collapse in 2011 led to the loss of some 22,000 jobs (Ministry of Tourism, *www.tourisme.gov.tn*).
16. BBB-, BBB- and Baa3 according to Fitch, Standard and Poor's and Moody's respectively.
17. Law 72-38 of 27 April 1972.
18. "Given the low-skill profile of the jobs created and their limited number, real wages have grown modestly. Between 2004 and 2007, real wages grew by a mere 2% annually, which is less than the average annual productivity growth of close to 3% during the same period" (ILO, 2011).
19. Development Strategy of the New Tunisia, Ministry of Regional Development and Planning, April 2012.
20. According to the Foreign Investment Promotion Agency (FIPA), privatisation of Tunisie Telecom accounted for 67.5% of total FDI in 2006.
21. Central Bank of Tunisia (2010), *Annual Report*.
22. In particular, with early repayment and maturing of the Samurai II debenture loan. Central Bank of Tunisia (2007), *Annual Report*.
23. According to Eurostat, Tunisia was the first South MEDA country in terms of industrial exports to the EU in 2010 and the first half of 2011.
24. *Institut national des statistiques* (2011).
25. *www.privatisation.gov.tn*.
26. Article 23 of Law No. 89-9 of 1 February 1989.
27. Article 24 of Law No. 89-9 of 1 February 1989.
28. Article 5 of Law No. 2008-23 of 1 April 2008.
29. Article 33 of Law No. 89-9 of 1 February 1989, as amended by Law No. 94-102 of 1 August 1994.
30. The FREP was created as a special fund of the Treasury by Article 79 of Law No. 85-109 of 31 December 1985 (the Finance Law for 1986), and its field of activity was subsequently broadened by Law No. 89-115 of 30 December 1989 (the 1990 Finance Law).
31. The evaluation covered the period 1986-2004 and was published in 2009: *www.privatisation.gov.tn/www/fr/download/documentation/enquete_entrp_priv_fr.pdf*.

32. Decree Laws No. 2011-13 of 14 March 2011 and No. 2011-47 of 31 March 2011 (supplementing the former) on State confiscation of the assets and movable and immovable properties acquired, after 7 November 1987, by the former president, his spouse, and persons listed in an annex, as well as all persons who obtained funds, properties or rights through their relations with those persons.

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Chapter 2

Tunisia's investment regime and the National Treatment Instrument

The 1993 Investment Incentives Code applies to both national and foreign investors. It has institutionalised an asymmetrical regime between enterprises wholly engaged in exports (offshore) and those geared towards the domestic market (onshore), under which the former benefit from tax exemptions and numerous incentives. The Code guarantees freedom of investment and non-discriminatory treatment, although there are horizontal and sectoral exceptions to national treatment.

Tunisia rates relatively high on the OECD FDI Regulatory Restrictiveness Index because of the obligation for foreign investors to obtain prior authorisation of their acquisition of securities or shares in established companies or in order to operate in service sectors when their holding exceeds 50% of capital. The new authorities have announced a revision of the Investment Incentives Code and a review of the approval and incentives system.

This chapter examines Tunisia's investment regime in light of the National Treatment Instrument, the first element of the OECD Declaration (Box 2.1). The Tunisian framework concerning responsible business conduct, covered by the *OECD Guidelines for Multinational Enterprises* and which isan integral part of the Declaration, is examined in the following chapter. Chapter 4 will focus on various aspects of the broader investment policy framework in Tunisia.

Box 2.1. **The OECD Declaration and Decisions on International Investment and Multinational Enterprises**

The 1976 Declaration and Decisions on International Investment and Multinational Enterprises is a policy commitment, by adhering governments to:

- provide an open and transparent environment for international investment;
- encourage the positive contribution that multinational enterprises can make to economic and social progress.

The Declaration includes four instruments (each underpinned by a decision of the OECD Council on follow-up procedures):

- **The National Treatment Instrument** commits adhering countries to accord to foreign-controlled enterprises operating in their territories, treatment no less favourable than that accorded to domestic enterprises in similar situations.
- **The *Guidelines for Multinational Enterprises*** are recommendations on responsible business conduct, which firms observe on a voluntary basis. Observance of the *Guidelines* is encouraged and supported by a network of National Contact Points in adhering countries.
- **The Instrument on Conflicting Requirements** calls on adhering countries to avoid or minimise conflicting requirements imposed on multinational enterprises by governments of different countries.
- **The Instrument on International Investment Incentives and Disincentives** encourages adhering countries to make such measures as transparent as possible so that their scale and purpose can be easily determined, and it institutes a consultation and review procedure to make co-operation among adhering countries more effective.

All 34 OECD member countries have subscribed to the Declaration, as have nine non-member countries: Argentina (22 April 1997), Brazil (14 November 1997), Colombia (8 December 2011), Egypt (11 July 2007), Latvia (9 January 2004), Lithuania (20 September 2001), Morocco (23 November 2009), Peru (25 July 2008), and Romania (20 April 2005).

"National treatment" is the commitment by a country adhering to the Declaration on International Investment and Multinational Enterprises to treat enterprises operating on its territory, but controlled by the nationals of another country, no less favourably than domestic enterprises in like circumstances. 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 in the OECD to deal with such exceptions. The decision comprises an annex which lists exceptions to national treatment, as notified by each adhering country and accepted by the OECD Council. The exceptions are periodically examined by the Investment Committee. To ensure transparency, countries adhering to the Declaration also undertake to report any measures that, while not representing exceptions to national treatment, have an impact on it. The lists of these exceptions and measures are published in a document that is regularly updated.[1]

National treatment has become a well-established principle among adhering countries. Exceptions are typically limited to certain sectors, such as mining, transport, fisheries, broadcasting and telecommunications. These exceptions are reduced in scope or deleted as a result of unilateral measures by the countries themselves, or as a result of the OECD peer reviews.

Main features of Tunisia's investment regime

The 1993 Investment Incentives Code (the Code) is the main point of reference, both for domestic and for foreign investors, and it guarantees non-discriminatory treatment for direct foreign investments under Tunisian legislation. The Code governs most activities, with the exception of certain sectors such as finance, mining and energy: these are covered by specific legislation, which does not, however, impose any discriminatory conditions on foreign investors. Tunisia does not apply any horizontal restrictions, but many services are subject to prior authorisation when the foreign equity interest exceeds 50% of a company's capital, except in the case of SMEs or when the acquisition is made between foreigners. Other restrictions on foreign participation apply in several sectors where similar limitations can be found in other countries, in particular a prohibition on foreign acquisition of land for agricultural use, and limitations on foreign participation in fisheries, telecommunications and air transport. On the other hand, Tunisia's restrictions on commercial activities, including both wholesale and retail trade, and on construction works are less common in other countries. The requirement of Tunisian nationality for the owners, partners and shareholders of periodicals and magazines that are not strictly scientific, artistic or technical was eliminated in November 2011 by the Decree on freedom of the press, printing and publication.

With respect to measures reported for transparency, Tunisia does not apply any regulatory discrimination against foreign investors on grounds of public order and essential security considerations. Among other measures, Tunisia imposes the obligation to have personnel of Tunisian nationality in the governance bodies of corporations operating in a limited number of activities, in particular credit institutions and those engaged in fishing, wholesale and retail trade, and certain professional services. Public monopolies exist, notably in energy, water, tobacco and alcohol, posts and railways.

Tunisia ranks relatively high on the OECD FDI regulatory restrictiveness index, because of the requirement for foreign investors to obtain prior authorisation if their equity holding would exceed 50% of the capital of companies engaged in service activities in specified sectors. Although some other adhering countries take a similar approach, the number of sectors concerned is relatively higher in Tunisia. The Tunisian authorities are planning to overhaul the Investment Incentives Code and to revise the current approval system. This would involve updating the list of activities currently subject to prior approval for foreign investors, and eliminating certain administrative authorisations while making greater use of specifications (*cahiers des charges*) that do not discriminate against foreign investors (see Chapter 4).

Principle of non-discrimination *vis-à-vis* foreign direct investments

The Investment Incentives Code adopted in December 1993[2] covers virtually all sectors of activity with the exception of finance, mining, energy and domestic commerce, which are regulated by specific provisions. The first Article of the Code enshrines the freedom to invest, both for Tunisians and for foreigners. The Law on economic initiative, adopted in 2007,[3] reaffirms the principle of freedom to invest in its first Article: "economic initiative constitutes a national priority which all economic and social players are bound to uphold as part of the guarantee of the principle of equality of opportunities and on the basis of freedom as a principle and authorisation as an exception."

According to Article 3 of the Code, resident and non-resident enterprises are free to carry out their projects in a number of sectors on the basis of a simple declaration, and they may acquire up to 100% of the capital of projects without prior authorisation, provided they meet the conditions for exercising those activities. On the other hand, certain service activities, other than those devoted solely to export, are subject to approval by the Investment

Commission (*Commission supérieure d'investissement*, CSI)[4] when the foreign equity interest exceeds 50% of capital (see below).

The Code distinguishes between several categories of activities and companies. First, companies engaged solely in export (defined in Articles 10 and 16 of the Code), even if their activities fall within the sectors subject to prior approval in the case of a foreign equity interest exceeding 50% of a company's capital, are exempt from the requirement to obtain prior approval. A company engaged solely in export may not conduct sales or provide services on the local market in excess of 30% of its turnover. The Code provides for a second regime, for "partial exporters", defined in terms of the "wholly exporter" regime. The main objectives of this specific regime, instituted in 1972 and developed by the Code, are to attract foreign investment into industries and operations that have a high potential for export and hence for creating jobs for Tunisians. The service activities subject to CSI approval are those geared to the local market.

The Code also refers to resident and non-resident enterprises. This distinction, which has no impact on reporting, authorisation or approval requirements, concerns the situation of enterprises as it relates to the foreign exchange regime. Under current provisions (Article 14 of the Code), an entrepreneur operating in the context of a corporation under Tunisian law is deemed to be non-resident if the capital of the company is held by non-residents of Tunisian or foreign nationality and has been constituted by the import of convertible currencies amounting to at least 66% of capital. The participation of residents in the capital of these non-resident companies must be effected in accordance with prevailing exchange regulations. Establishments created in Tunisia by legal persons having their corporate headquarters abroad are considered as non-resident for purposes of the exchange regulations. The capitalisation of the headquarters of these establishments must be financed through the import of convertible currencies.

National treatment and most-favoured-nation treatment regarding investment are included in the Association Agreement between Tunisia and the European Union.[5] The Free Trade Agreement signed in December 2004 with the member states of the European Free Trade Association (EFTA: Iceland, Liechtenstein, Norway and Switzerland) provides that the parties shall grant each other full protection and security for investments.[6] The 53 bilateral agreements for the promotion and protection of investments generally guarantee that foreign investors, after establishment, will receive fair, equitable and non-discriminatory treatment, most-favoured-nation treatment, and protection of investor rights in case of expropriation (see Chapter 4). Moreover, investments beyond a certain threshold may benefit from a stability clause in the context of investment contracts signed with the authorities.

Transfer of capital

The acquisition of local enterprises is governed by the foreign exchange Code,[7] which requires that all movements of funds between Tunisia and the outside world must pass through authorised banks or financial intermediaries, with which the enterprises must domicile their operations. According to these regulations, non-resident enterprises and resident enterprises that are owned either wholly or partially by non-residents (*i.e.* subsidiaries and branches) benefit from guaranteed transfer of the real net proceeds from the disposal or liquidation of capital invested through an import of foreign currency, even if those proceeds exceed the capital initially invested. Any other transfer operation is subject to prior authorisation.

In addition, any company constituted in Tunisia under current legislation, where the capital is held partially or wholly by non-residents, is free to decide, according to its form, the distribution of profits, dividends, shares (*tantièmes*) and remuneration under profit sharing arrangements. Transfers of this kind to non-resident beneficiaries may be made freely through an authorised intermediary. The transfer of capital income requires an investment confirmation (*fiche d'investissement*) issued upon entry of the capital into Tunisia, demonstrating the initial investment. This document must be retained, as it will be required in order to benefit from the freedom to re-transfer funds or income from capital. The majority of APPIs signed by Tunisia contain a clause covering free transfer of the investment and its income.

Exceptions to national treatment notified by Tunisia

The exceptions to national treatment in Tunisia, notified under the OECD Declaration's National Treatment Instrument, are based on the Investment Incentives Code of 1993, as supplemented and amended by subsequent Decrees (more than 60 amendments), as well as on Tunisia's notification to the General Agreement on Trade in Services (GATS). However, the list of these exceptions must not be compared with lists of Tunisia's commitments in other fora and relates solely to the specific scope of the OECD Instrument. In particular, this Instrument covers restrictions to access sectors that might contain enterprises already established in other sectors in Tunisia, due to the fact that they are under foreign control.

Tunisia imposes a horizontal restriction applicable to all sectors: the acquisition of Tunisian securities conferring voting rights or shareholdings in firms established in Tunisia is subject to the approval of the Higher

Investment Commission in cases where it is carried out by a resident or non-resident foreign legal person or a non-resident legal person established in Tunisia in which there is a foreign equity holding, and when the overall foreign share of the equity of these companies, in view of the acquisition operations in question, is equal to or exceeds 50% of the capital.[8] This restriction applies on the basis of nationality and of legal persons, and therefore amounts to an exception in terms of national treatment. However, the approval of the Higher Investment Commission is not required in cases of acquisitions between foreigners or an SME[9] covered by the applicable legislation.

Sector-specific measures

Sectors subject to approval by the Investment Commission

Foreign participation exceeding 50% of a company's capital is subject to approval by the Investment Commission (CSI)[10] under ten broad categories of services, with the exception of services that are wholly for export (which are subject to a simple declaration). These ten categories[11] have been notified by Tunisia in the list of exceptions to national treatment. They are:

i) Transport: Ground transport (road transport of merchandise, collective road transport of passengers, rail transport); air transport; maritime transport; transport by pipeline.

ii) Communications: Electronic and telecommunications installations; mail distribution; video-text services; radio and television broadcasting services.

iii) Tourism: Tourism travel agencies.

iv) Education, teaching and vocational training.

v) Cultural production and industries: Restoration and development of archaeological and historic monuments; creation of museums and libraries; social and cultural film projection; music and dance; photography; video recording, recording and development of films; cultural centres; cultural fairs.

vi) Entertainment and activities for youth and children; day nurseries and kindergartens; recreation centres for families and children; youth and child facilities; residential and camping centres; sports training centres; sports medicine centres; physical education centres; organisation of sporting and youth events.

vii) Construction and public works: Design, implementation and monitoring of industrial and civil engineering works, buildings and infrastructure; prospecting and drilling, other than for oil.

viii) Real estate promotion: housing projects; buildings for economic activities.

ix) Computer services: databases and electronic data transmission services.

x) Other services: technological audit and expertise; topographic services; electrification of buildings; construction works (laying of tiles and mosaics, installation of windows and frames, false ceilings, plastering and installation of plaster works, roof sealing); construction companies; security guard services; translation and linguistic services; publishing and advertising; organisation of congresses, seminars, fairs and exhibitions.

Approval procedures

The CSI is chaired by the Prime Minister and comprises the Ministers of the Interior, Investment and International Co-operation, Finance, Economy, Planning and Regional Development, the Secretary-General of Government, the Governor of the Central Bank, and the Minister responsible for the specific case in question. The chairman of the commission may consult any person whose opinion he deems useful, depending on the nature of the question and the file submitted.[12]

To obtain the CSI's approval, the file presented by the applicant must include information on the investor, the cost of the project, capital structure, the financing scheme and its confirmed feasibility, a description of the activity, and a market study. As well, a circular from the Central Bank of Tunisia establishes the list of documents required concerning the shareholding structure and a decision by the Financial Markets Board determines the reporting obligations concerning securities with voting rights. The decision of the CSI must be notified to the applicant within 15 days after the complete file has been submitted.[13] Applicants may appeal decisions of the CSI to the responsible minister to have their case reviewed. According to information provided by the Tunisian authorities, there have been few applications submitted to the CSI: since 2005, the CSI has been processing on average two or three applications per year, with an average approval rate of 50% per year.

As part of the planned revision of the Code, the government intends to review the current approval system. From this viewpoint, the Ministry of Planning and International Co-operation, which was replaced in January 2012 by the Ministry of Investment and International Co-operation, and the Ministry of Regional Development and Planning have undertaken the task of identifying all economic activities subject to prior authorisation, either under the Investment Incentives Code or outside the Code, and to establish a list of activities subject to specifications (*cahier des charges*). The first stage has resulted in preparation of a manual on authorisations and specifications, referring to the Classification of Tunisian Activities (*Nomenclature des activités* *tunisiennes*, NAT). This manual will constitute the basis for further work on defining the negative list that will be incorporated into the revised investment Code.

The management unit, created in 2000 to carry out the plan for eliminating administrative authorisations, was ordered by a Decree of 2008 to complete its work by December 2009.[14] The management unit, created within the office of the Prime Minister, has the task of examining legislation governing the approval of specifications, with a view to replacing administrative authorisations. In 2011, an executive order (*arrêté*) Decree of the Minister of Finance[15] was adopted, establishing a participatory process for simplifying tax and customs formalities. The lists of formalities to be maintained, simplified or eliminated will then be submitted to the government for introduction of the appropriate reforms (see Chapter 4).

Mining, energy and hydrocarbons

The Mining Code reserves mineral prospecting, research and exploitation activities to the Tunisian government, in accordance with rules and procedures to be determined by decree in each particular case, or to natural or legal persons of Tunisian or foreign nationality who have the financial resources and the technical capacity to undertake such activities under the best conditions. These provisions apply in the same way to all investors, without distinction as to nationality.[16]

Similarly, the Hydrocarbons Code[17] applies without distinction to national and foreign investors. Production of electricity for export is also authorised for all investors who meet the technical conditions for operating in this sector. Electricity distribution remains, however, a monopoly of the government, via the *Société tunisienne de l'électricité et du gaz* (STEG).

Service companies in the hydrocarbons sector conduct their activities either as residents or as non-residents. Companies under Tunisian law are deemed non-residents when their capital is held by non-resident Tunisians or foreigners and constituted through an import of convertible currencies amounting to at least 66% of capital. Participation by residents in the capital of these companies must comply with the current foreign exchange regulations.

Agricultural and other lands

Ownership of agricultural lands by foreigners is not authorised, but foreigners may hold such lands under long-term, renewable leases. The length of leases for public lands may be up to 40 years; for privately owned lands the length of lease is freely determined between the parties, but it may not be less than three years. Foreigners may invest in operations in the agriculture sector through the rental of agricultural lands. Foreign participation in these rental land operating companies may be as high as 66%.[18] Such investments, however, may in no case lead to foreign ownership of agricultural lands.[19]

Any acquisition of real property by a foreigner is in principle subject to prior authorisation from the governor. On the other hand, acquisitions by foreign investors carrying on an economic activity in the country's industrial and tourist zones are exempt from such authorisation if the lands and built premises are intended exclusively to accommodate economic projects. The purchase, leasing and transfer of lands and premises in industrial zones are exempt from prior authorisation.[20]

Fisheries

The 1994 Law on Fisheries[21] provides that fishing may be conducted in Tunisian waters by fishing units of Tunisian nationality and by foreign fishing units authorised for purposes of research, apprenticeship or extension services. Under the provisions of the 1997 Law,[22] amending that of 1994, legal persons are deemed to be of Tunisian nationality and eligible for authorisation if they meet the following conditions:

- They are constituted in accordance with Tunisian law.
- Their corporate headquarters are in Tunisia.
- More than a third of their capital is held by natural or legal persons of Tunisian nationality and consists of registered shares.
- Their board of directors, governance or oversight body comprises representatives of Tunisian individuals or legal persons in proportion to their shareholding interest in the company.[23]

Moreover, the 1994 Law, as amended in 1999, provides that legal persons fulfilling the conditions stipulated by the law are deemed to have Tunisian nationality if their activity is limited to fishing in the northern zone and on the high seas.[24]

For "fixed fisheries", defined as bodies of water belonging to the public domain on which facilities and equipment are established to permit exploitation for fishing purposes, authorisation may be granted to *i)* individuals of Tunisian nationality, *ii)* public establishments and national companies, *iii)* legal persons whose capital is held entirely by individuals of Tunisian nationality.[25]

Transport

Land, air, maritime and pipeline transport are among the sectors subject to approval by the Investment Commission, when the foreign participation interest exceeds 50% of capital.

According to the 1996 rules setting the conditions for granting an operating license for air freight transport and non-scheduled passenger transport,[26] only natural or legal persons of Tunisian nationality who fulfil the conditions of a set of specifications may obtain an operating license for air freight transport. Participation in these companies by foreign individuals or legal persons is limited to 49% of capital.

Commercial activities, including wholesale and retail trade

The 1961 Decree Law setting the conditions for the exercise of certain commercial activities[27] stipulates that natural and legal persons who do not have Tunisian nationality may not conduct a commercial activity, directly or indirectly, with special authorisation. Foreigners can only obtain a foreign merchant card (*carte de commerçant étranger*)[28] to exercise such activities only under certain conditions. Legal persons have Tunisian nationality if they meet all the following conditions:

- They are constituted in accordance with Tunisian law and have their corporate headquarters in Tunisia.
- Their capital is represented to the extent of at least 50% by registered shares held by Tunisian individuals or legal persons.
- A majority of their board of directors or their governance or oversight body consists of individuals of Tunisian nationality.
- Their chief executive officer (chairman and president) and managers are individuals of Tunisian nationality. For joint stock companies (*sociétés anonymes*), where the functions of board chairman and president (*président du conseil d'administration* and *directeur général*) are separated, the president must have resident status as defined in the foreign exchange regulations.

Companies with their corporate headquarters in Tunisia and in which the government or local government entities have a direct or indirect equity interest are also considered to be of Tunisian nationality.

Telecommunications

As indicated, foreign equity holdings exceeding 50% of capital in electronic installation and telecommunication services are subject to approval by the Investment Commission. The suppliers of telecommunications services must fulfil the following conditions: *i)* if they are individuals, they must be of Tunisian nationality; *ii)* if they are legal persons, they must be constituted in accordance with Tunisian law,[29] and in particular must have their headquarters in Tunisia. By law, 51% of the capital of these companies must be held by Tunisians. The provision of these services also requires authorisation for implementation and operation, issued in light of the country's development needs.

The National Telecommunications Service was converted into a Public Limited Company in Tunisia in 2004, under the trade name "Tunisie Telecom". Despite their conversion into being a limited company, nonetheless, the fact remains that Tunisie Telecom is a public enterprise. In 2006, a 35% stake of Tunisie Telecom was sold to a consortium of investors in Dubai.

According to the Code of Telecommunications (Articles 18 and 20), the State may grant concessions for the installation and operation of public telecommunication networks for public and private companies, specially selected through a process of competitive bidding by way of restricted or open tender, preceded by a short listing. Thus, a second GSM licence was awarded to Tunisiana in 2002, 50% of it kept by Orascom (Egypt) and 50% by Wataniya (Qatar), followed by a third license in 2009 for Orange Tunisia, of which 49% was held by France Telecom and 51% by a Tunisian business.

Banking, insurance and other financial services

The 2001 Law[30] requires approval by the Central Bank of Tunisia for "any acquisition, directly or indirectly, by one or more persons, of shares in the capital of a credit institution that would imply control of that institution, and in all cases, any operation that results in the acquisition of a tenth, a fifth, a third, half or two-thirds of voting rights" (Article 10). Approval is granted by executive order of the Minister of Finance, based on the advice of the Central Bank. The criteria for assessing the quality and suitability of the investor are applied without discrimination to all investors, national or foreign.

Foreign banks conducting business in Tunisia through branches or agencies must be constituted as joint stock companies (*société anonyme*) or, where appropriate, under another legal status accepted upon delivery of the authorisation, provided it is consistent with the legislation of the home country. Foreign banks currently account for 34% of the capital of the banking sector in Tunisia (see Chapter 4).

The exercise of insurance and reinsurance activities in Tunisia is subject to a license delivered by the Ministry of Finance. In order to be licensed, insurance companies must be constituted under Tunisian law, in one of the following forms: *i)* joint stock company (*société anonyme*), *ii)* mutual company (*société à forme mutuelle*), or *iii)* agricultural co-operative (*caisse mutuelle agricole*).[31] Companies' insurance programmes are subject to *ex-ante* and *ex-post* supervision by government. Since 2009, the General Committee on Insurance has been supervising insurance and reinsurance companies as well as professionals of the insurance sector, and monitoring their activities. As in the banking sector, the presence of foreign companies is not subject to any restriction based on the nationality of the investor.[32]

The status of market intermediary company requires that such corporations must: *i)* have Tunisian nationality; *ii)* have as their business purpose the negotiation and market listing of securities and financial products; *iii)* demonstrate that they have the human and material means to pursue their activity; and *iv)* have a minimum paid-in capital set by Decree.[33]

Professional services

Any foreign person seeking to pursue a remunerated professional activity must have a work contract, or certification of exemption from a work contract approved by the Ministry of Employment, and a valid residency permit bearing the mention "*autorisé à occuper un emploi salarié en Tunisie*" ("authorised to take up paid employment in Tunisia").

With respect to consulting and advisory services, since 1998 approval by the Investment Commission for foreign participation exceeding 50% is required only for technological audit and consulting services.

Foreign firms may provide tax advisory services (*conseil fiscal*) on the same conditions as Tunisian nationals, provided that Tunisian professionals enjoy the same opportunities, *de jure* and *de facto*, in their home countries.[34]

In the architecture profession, at least two thirds of a firm's capital must be held by architects and they must be managed by one or more architects. To work as an architect, a person must be of Tunisian nationality, must hold an architecture diploma delivered by the Technological Institute of Architecture, Art and Urban Development or a diploma recognised by the National Ministry of Education and Cultural Affairs, and must be registered with the College of Architects (*Ordre des architectes*). However, authorisation to exercise the architecture profession may be granted on a temporary and provisional basis to foreign architects by the Ministry of Equipment and Housing, under conditions of reciprocity set by diplomatic conventions, and with the approval of the Board of the College of Architects.

Government grants and subsidies

Most government grants and subsidies, including tax advantages, relate to manufacturing for export. These advantages are available equally to resident and non-resident firms. All firms that invest in sectors of activity covered by the Investment Incentives Code receive the same advantages, specifically suspension of consumption duties and VAT, exemption from customs duties, and tax-free status for reinvested profits. The Code provides incentives to encourage regional development, agricultural development, the fight against pollution and protection for the environment, promotion of technology, research and development, and aid investments. Government grants and subsidies are thus awarded without distinction as to nationality of the investor.

Government procurement

For procurement covered by legislation[35] and subject to tendering, the following principles must be observed: equality of candidates, equivalence of opportunities, transparency in procedures, and resort to competition. In practical application of these principles, there is no discrimination between candidates; the public purchaser is independent; clear and detailed procedures are followed at all stages of the procurement process and candidates are given timely information about them; and responses and explanations are provided.

However, preference must be accorded to Tunisian products of equal quality, unless their price exceeds the prices of foreign products by 10%. International calls for tender must include a domestic subcontracting clause, whereby foreign bidders undertake to make maximum use of local suppliers whenever the local industry and firms are capable of fulfilling a portion of the order. When specialised foreign firms are invited to bid in the information and communication technology sector, the specifications must include the obligation to partner with specialised Tunisian firms. When a foreign consulting firm is engaged, the specifications must include the obligation to partner with a Tunisian consulting firm. Tunisia has not signed the WTO Agreement on Government Procurement and, to date, has not indicated any intention to accede.

Measures at the sub-national level

The territorial reorganisation that will emerge from the new Constitution is expected to give more autonomy to the regions and to the local administrative and territorial authorities. It is now planned that only the central government will have the power to take measures that could affect national treatment for foreign firms. Consequently, there are no exceptions to national treatment at the sub-national level in Tunisia.

Measures notified by Tunisia for transparency

Measures based on public order and essential security considerations

Tunisia has not notified any measure based on public order and essential security considerations. For example, the 1969 Law[36] does not contain any specific provisions concerning arms manufacture. The Law gives the government a monopoly over the manufacture and trading of explosives,[37] but allows it to authorise natural and legal persons, including those who are not of Tunisian nationality, to conduct some or all of these operations, under conditions and procedures set by Decree at the recommendation of the Ministry of the Interior, with the advice of the Minister of National Defence.

Other measures reported for transparency

Corporate organisation

According to the Business Corporations Code (*Code des sociétés commerciales*), members of the board of directors are appointed by the general assembly of shareholders with no condition concerning their nationality. There is no quota applied to foreign enterprises when hiring specialised support personnel. Under the Investment Incentives Code, firms engaged wholly in export may recruit up to four senior and middle-level managers of foreign nationality, after so informing the Ministry of Employment.[38] Beyond this limitation, and for categories of firms other than those wholly engaged in export, enterprises must comply with the Labour Code and the programme for recruitment and "*Tunisification*", *i.e.* the policy giving employment priority to nationals. The Ministry of Employment must be duly informed and may set time limits. Since 2005, an exceptional measure has authorised an increase from 4 to 10 in the number of foreign technicians working in export firms in the textile sector in order to facilitate the transfer of technology.

Special provisions relating to management personnel are applied in several sectors. The CEO of a credit institution must be of Tunisian nationality. When the bylaws provide for separation of the functions of the board chairman and president, one of these functions must be performed by a person of Tunisian nationality.[39]

In the case of the periodical press, the Press Code of 1975 (Article 19)[40] provided that owners, partners and shareholders of periodicals of other than a strictly scientific, artistic or technical nature must be Tunisian nationals. This provision was eliminated by the Decree Law of November 2011 on freedom of the press, printing and publishing.[41] With adoption of that Decree Law, Tunisian nationality is required only for the director of the periodical and its chief editor.

In addition to the requirement that they must be constituted under Tunisian law, fishing companies must have their Board of Directors or their governance or oversight body comprised of representatives of Tunisian legal or natural persons proportionate to their shareholding interest in these companies.[42]

For commercial activities, including wholesale and retail trade, natural or legal persons of Tunisian nationality must constitute the majority of members of the Board of Directors or the governance or oversight body. The president and the board chairman must be individuals of Tunisian nationality.

In the case of consulting firms engaged primarily in engineering, the senior manager must be an engineer. While Tunisian nationality is one of the conditions for exercising the engineering profession in Tunisia,[43] the government may in fact authorise foreign engineers to exercise their profession in Tunisia, with the advice of the board of the college of engineers (*Ordre des ingénieurs*).[44]

Exercise of the legal profession by a foreign law firm is not prohibited, but (unless there are provisions to the contrary in international conventions[45]) its lawyers must have had Tunisian nationality for at least five years. Bailiffs (*huissiers de justice*) working for a law firm must have had Tunisian nationality for at least five years.[46] Tunisian nationality is also a condition for providing professional notary services, but the law does not allow notaries to establish themselves as legal persons.

Sectors subject to public/private/mixed monopolies or concessions

Monopolies and concessions must be notified under the OECD Declaration's National Treatment Instrument within transparency measures. Monopolies can take two forms: *i)* a public monopoly, run by the State or managed by local governments, and *ii)* a monopoly exercised under an exclusive license granted to a private operator.

In Tunisia, the following organisations have a monopoly over their respective field of activities:

- *Société tunisienne de l'électricité et du gaz* (STEG)[47] (electricity and gas);
- *Société nationale de distribution et d'exploitation des eaux* (SONEDE)[48] (water service);
- *Régie nationale du tabac et des allumettes*[49] (tobacco products);
- *Régie nationale des alcools*[50] (alcoholic beverages);
- *Office du commerce tunisien*[51] (Tunisian Trade Board: commodity imports);
- *Société tunisienne des industries du raffinage* (STIR) (petroleum refining);
- *Entreprise tunisienne des activités pétrolières* (ETAP) (petroleum imports and exports);
- *Office national des postes*[52] (National Post Office);
- *Office des céréales*[53] (Cereals Board).

The *Société tunisienne des industries de raffinage* (STIR) and the *Entreprise tunisienne des activités pétrolières* (ETAP) are state-owned enterprises that hold exclusive rights to the import and domestic sale of all petroleum products in Tunisia, including crude petroleum, LPG, diesel, jet fuel, fuel oil, bitumen, kerosene, gasoline and natural gas. The STIR has a legal monopoly on the refining of petroleum, as well as of all other fuels, liquid gas and lubricants, for the Tunisian market. It also exports products such as fuel oil and, with ETAP, has a monopoly on domestic sales of petroleum products.

The National Post Office has a monopoly for the handling of mailings of a weight not exceeding 1 kg and for the issuance of postage stamps. The Postal Service's Code[54] sets the conditions for exercising postal activity in order to guarantee public access to basic postal services while maintaining the confidentiality of the mail. The exercise of postal services is subject to prior license by the Minister responsible for the Post Office.

The *Office du commerce tunisien* (OCT) has held a monopoly since its creation in 1962 over the import of basic foodstuffs, including sugar, tea and coffee, as well as certain other products in case of inadequate local output. It engages in wholesale distribution, while retail marketing of these products is in the hands of private operators. The mission of the OCT has changed over time: the import of several products that were formerly part of its commercial monopoly, including black pepper, rice, cocoa and green beans, has been transferred to the private sector.[55] The *Office des céréales* is responsible for ensuring a regular supply of cereals in the country and of maintaining a safety stock and implementing government policy guaranteeing a minimum income for cereals producers. It holds a monopoly over imports of hard wheat, soft wheat and barley, as well as exclusive rights on the local market to purchase hard and soft wheat at intervention prices set by the government. Private dealers may import cereals for the account of the Office.

There are monopolies within the private sector in Tunisia.

Reforms undertaken to liberalise investment restrictions

The authorities have taken a number of important steps to improve the business climate in Tunisia. These have included revisions of the 2000 Business Corporations Code, which has been amended several times as well as an adjustment of the Insurance Code and a thorough overhaul of the Customs Code in 2008. New laws have been promulgated, including the 2008 Concessions Law, the 2005 Law on the security of financial relations, and the 2007 laws on establishment of the digital economy and on economic initiative.

An essential aspect of these reforms is the preparation of a new investment Code to replace the one from 1993. This move responds to the perception among investors that the current Code is excessively complex and the recognition that it has been only partially successful in achieving its objectives, particularly with respect to developing higher value-added activities and creating jobs for graduates. The new Code should reaffirm the principles of freedom of investment for Tunisians and foreigners. The first phase of this work, *i.e.* establishment of basic principles, criteria and priorities, has been completed. The process is currently on hold, pending consolidation of the new structures of government.

Tunisia is also a party to bilateral and regional negotiations aimed at speeding up the process of trade and FDI liberalisation. Under the Association Agreement with the European Union, Tunisia has given commitments, in particular under Chapter II, Article 50 on the promotion and protection of investments, with respect to the establishment of harmonised and simplified procedures and methods of providing information on investment opportunities in accordance with international standards. Tunisia intends to adopt these good practices progressively in its relations with other countries.

International investment incentives and disincentives

The Instrument on Incentives and Disincentives to Investment, which is part of the Declaration on International Investment and Multinational Enterprises, recognises that adherents may be affected by this type of measure and stresses the need to strengthen international co-operation in this area. It first encourages them to make such measures as transparent as possible so that their scale and purpose can be easily determined. The instrument also provides for consultations and review procedures to make co-operation between adherents more effective. Tunisia has declared itself ready and able to fulfil its commitments in this area, in particular by pursuing its efforts to make its support system more transparent and to undertake procedures for evaluating the costs and benefits of existing incentive measures (see Chapter 4).

Conflicting requirements

The Instrument on Conflicting Requirements, which is also an integral part of the OECD Declaration on International Investment and Multinational Enterprises, provides that adherents should co-operate with a view to avoiding or minimising the imposition of conflicting requirements on multinational enterprises. By adopting an approach based on co-operation, adhering countries agree to hold consultations on potential problems and to give due consideration to the interests of other countries in the regulation of their economic affairs. Tunisia, in undertaking to pursue its efforts to make its investment regime more transparent and uniform, considers itself able to fulfil commitments under the instrument on conflicting requirements and is ready to co-operate with other adhering countries in this area.

FDI Regulatory Restrictiveness Index for Tunisia

The OECD Index of FDI Regulatory Restrictiveness seeks to evaluate the restrictive nature of a country's FDI rules (Box 2.2). The index is currently

Box 2.2. **Calculating the FDI Regulatory Restrictiveness Index**

The FDI Regulatory Restrictiveness Index is calculated for 22 sectors, including agriculture, mining, electricity, manufacturing and the principal services (transport, construction, distribution, telecommunications, real estate, financial and professional services).

For each sector, the score is based on the following elements:

- The authorised level of foreign equity holdings (0-100%).
- Screening and discriminatory notification requirements.
- Restrictions on foreign personnel.
- Other restrictions such as on land ownership or business organisation (for example the establishment of branches).

The restrictions are evaluated on a 0-1 scale with "0" corresponding to a completely open sector and "1" to a closed sector. The overall restrictiveness index is a weighted average of the sectoral indices.

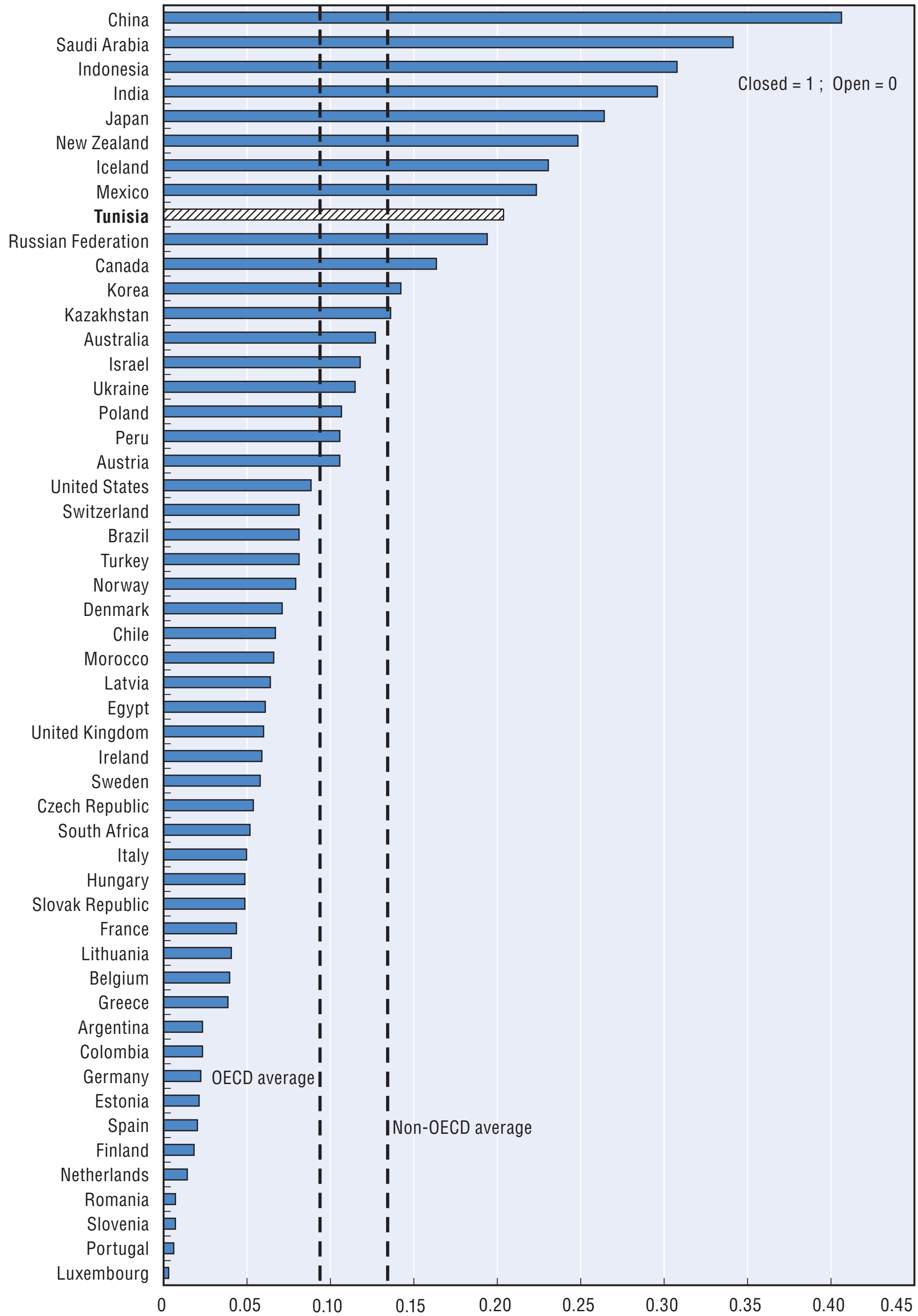
The measures considered are confined to legal or formal restrictions affecting FDI directly, as indicated in the list of exceptions to the National Treatment Instrument provided by the country, as well as by the list of measures notified for transparency, without taking into account their actual enforcement. The restrictive nature of measures, *i.e.* their applicability to foreign investors only, is the central criterion in rating them. State ownership and state monopolies, to the extent that they are not discriminatory against foreigners, are not considered.

For the latest results, see *www.oecd.org/investissement/index* and for a discussion of methodology, see Working Paper on International Investment 2010/3, "OECD's FDI Restrictiveness Index: 2010 update", available at *www.oecd.org/dataoecd/32/19/45563285.pdf*.

available for the 34 member countries of the OECD, the nine countries adhering to the OECD Declaration on International Investment, and a few other countries, including China, Indonesia and Russia. It constitutes a component of the indicators used for the OECD's "Going for Growth" report. It is also used independently to evaluate the restrictiveness of FDI policies of candidates for OECD membership and in the OECD investment policy reviews, including the reviews of new country adherents to the OECD Declaration.

Figure 2.1 shows the results for Tunisia, compared to 51 countries for which the FDI Regulatory Restrictiveness Index is currently available. With a score of 0.214, Tunisia stands higher than the average both among OECD countries (0.091) and among non-members of the OECD (0.148). The country thus ranks ninth in terms of statutory restrictions: among the non-OECD

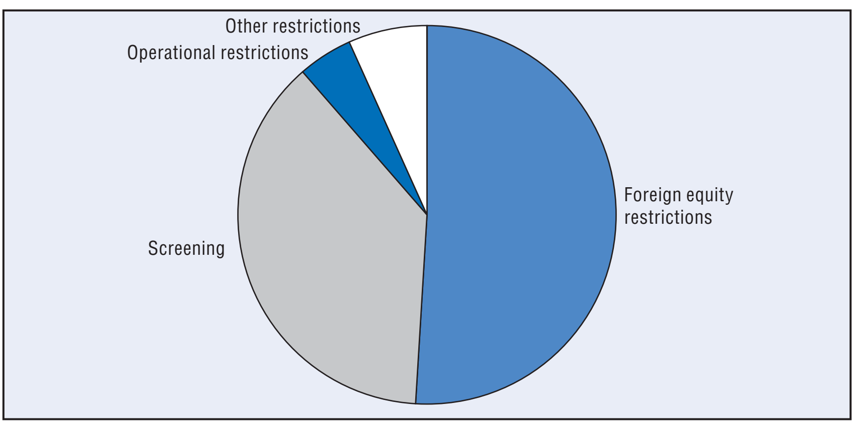
Figure 2.1. **The OECD FDI Regulatory Restrictiveness Index**



countries covered by the classification, only China, India, Indonesia and Saudi Arabia score higher than Tunisia in terms of FDI regulatory restrictiveness. In comparison with Egypt and Morocco, the two countries of the region that have already adhered to the OECD Declaration on International Investment and Multinational Enterprises, Tunisia's FDI regulatory restrictiveness as measured by the index continues to be higher.

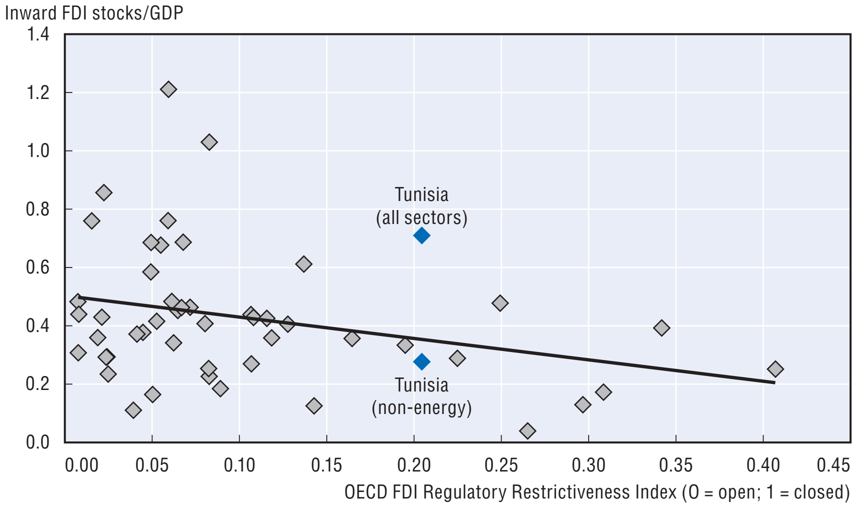
The results for Tunisia reflect essentially its procedures for prior authorisation, required in many sectors for foreign equity holdings in excess of 50% (Figure 2.2). The other restrictions on foreign investment that have been taken into consideration, concern commercial activities, air transport, telecommunications and certain professional services. Among the measures notified by Tunisia for transparency, some are taken into account using the index methodology, in particular the requirement of Tunisian nationality in certain sectors such as financial services, fisheries, periodic press and commercial activities. The results of the index show that the plan for reforming the investment regime should give priority to dealing with the problem of prior authorisation procedures that currently affect a great many activities.

Figure 2.2. **Restrictions by type of measures in Tunisia according to the OECD FDI Index**



Tunisia seems to attract relatively more FDI than one would expect, given the restrictiveness of its investment regime (Figure 2.3). One explanation for this phenomenon lies in the fact that a significant portion of FDI in Tunisia goes into the primary sector, where investors are generally less sensitive to the business climate. In fact, an appreciation of the stock of FDI outside the primary sector suggests that Tunisia's attractiveness falls short of its potential as reflected in the index.

Figure 2.3. **FDI Regulatory Restrictiveness Index and FDI performance**



Source: FDI Statistics from OECD and IMF.

Notes

1. The list of exceptions to national treatment and the list of measures reported for transparency by all adhering countries are available at *www.oecd.org/daf/investissement/nti.*
2. Law No. 93-120 of 27 December 1993 promulgating the Investment Incentives Code as amended by subsequent decrees.
3. Law No. 69-2007 of 27 December 2007 concerning the economic initiative.
4. Article 3 of the Investment Incentives Code and Article 5 of the Decree No. 94-492 of 28 February 1994.
5. Signed in July 1995 and ratified by Law No. 96-49 of 20 June 1996.
6. The Agreement between Tunisia, Switzerland and Liechtenstein came into force on 3 June 2005.
7. Foreign-Exchange and External Trade Code (1976) as amended by Law No. 93-48 of 3 May 1993, Article 1.
8. Article 21bis of Decree No. 77-608 of 27 July 1977 setting out the conditions governing application of Law No. 76-18 of 21 January 1976 recasting and codifying the legislation on exchanges and foreign trade governing relations between Tunisia and foreign countries, as amended by Decrees No. 95-1128 of 8 June 1995 and No. 97-1738 of 3 September 1997 and as amended by subsequent texts.
9. Decree No. 2005-2397 recasting and codifying the legislation on exchanges and foreign trade governing relations between Tunisia and foreign countries, as amended by Decree No. 2006-2321 of 28 August 2006. The latter Decree defines SMEs as enterprises whose net tangible fixed assets do not exceed 4 million dinars and which do not employ more than 300 workers.

10. Articles 3 and 52 of the Investment Incentives Code.
11. Decree No. 94-492 of 28 February 1994 establishing the lists of activities in sectors listed in Articles 1, 2, 3 and 27 of the Investment Code, as amended.
12. Decree No. 93-2542 of 27 December 1993 on the composition, organisation and operations of the Investment Commission established in Article 52 of the Investment Incentives Code.
13. Decree No. 97-1738 of 3 September 1997, Article 21 bis.
14. Decrees No. 2000-1530 of 6 July 2000 and No. 2008-3809 of 11 December 2008.
15. Executive Order of the Minister of Finance No. 97-2011 of 22 November 2011.
16. Law No. 2003-30 of 28 April 2003 promulgating the Mining Code, Article 11.
17. Law No. 99-93 of 17 August 1999, as amended in 2002, 2004 and 2008.
18. Law No. 69-56 of 22 September 1969 on agricultural reform, as amended by Law No. 97-83 of 26 May 1997.
19. Investment Incentives Code, Article 3.
20. Law No. 2005-40 of 11 May 2005, supplementing the decree of 4 June 1957 on real estate transactions.
21. Law No. 94-13 of 31 January 1994 on fisheries, Article 3.
22. Law No. 97-34 of 26 May 1997, Article 25.
23. This last provision is one of the measures notified by Tunisia to ensure transparency.
24. Law No. 94-13 of 31 January 1994 on fisheries, as amended and supplemented by Law No. 97-34 of 26 May 1997, Law No. 99-74 of 26 July 1999, and Law No. 2010-21 of 26 April 2010.
25. *Ibid.*, Article 24.
26. Law No. 59-76 of 19 June 1959, on Air Navigation; Executive Order of the Minister of Transport of 4 May 1996.
27. Decree Law No. 61-14 of 30 August 1961 governing commercial activities, as amended by Law No. 85-84 of 11 August 1985, Article 2.
28. Foreign investors report that this card is rarely granted.
29. Law No. 2001-1 of 15 January 2001 promulgating the Telecommunications Code, as amended by Law No. 2008-1 of 8 January 2008.
30. Law No. 2001-65 of 10 July 2001 on credit institutions.
31. Law No. 92-24 of 9 March 1992 promulgating the Insurance Code, as amended by Law No. 2008-8 of 13 February 2008.
32. For example, in 2008 Groupama SA acquired 35% of the Société tunisienne d'assurances et de réassurances (STAR).
33. Decree No. 99-2478 of 1 November 1999 on the status of stock exchange intermediaries, Article 3.
34. Decree Law No. 61-14 of 30 August 1961 on the licensing of tax consultants, Article 5.

35. Thresholds are set in the legislation: Article 3, Decree No. 2002-3158 of 17 December 2002 on public procurement regulations, as amended and supplemented by decrees No. 2003-1638 of 4 August 2003, No. 2004-2551 of 2 November 2004, No. 2006-2167 of 10 August 2006, No. 2007-1329 of 4 June 2007, No. 2008-561 of 4 March 2008, No. 2008-2471 of 5 July 2008, No. 2008-3505 of 21 November 2008 and No. 2009-3018 of 19 October 2009.
36. Law No. 69-33 of 12 June 1969 regulating the introduction, trade, ownership and bearing of arms.
37. Law No. 96-63 of 15 July 1996 setting conditions for the manufacture, export, import, transport, storage and marketing of explosives used for civil purposes
38. Investment Incentives Code, Article 18.
39. Law No. 2001-65 on credit institutions, Article 27.
40. Law No. 1975-32 of 28 April 1975 promulgating the Press Code.
41. Decree Law No. 2011-115 of 2 November 2011, Article 79.
42. Law No. 94-13 of 31 January 1994 on fisheries, Article 3.
43. Decree Law No. 82-12 of 21 October 1982 establishing the *Ordre des ingénieurs*, Article 1.
44. *Ibid.*, Article 2, paragraph 2.
45. Law No. 89-97 of 7 September 1989 and Decree No. 2011-79 of 20 August 2011 on the organisation of the legal profession.
46. Law No. 95-29 of 13 March 1995 on the organisation of the profession of bailiff.
47. Created by Law No. 62-8 of 3 April 1962.
48. Created by Law No. 68-22 of 2 July 1968.
49. Created by Law No. 64-57 of 28 December 1964.
50. Created by Decree of 20 November 1927.
51. Created by Decree-Law No. 62-6 of 3 April 1962.
52. Created by Decree No. 1305 of 15 June 1998.
53. Created by Decree-Law No. 62-6 d of 3 April 1962, as amended and supplemented by Decree Law No. 70-7 of 26 September 970 and by Law No. 86-67 of 16 July 1986.
54. Law No. 98-38 of 2 June 1998 concerning the Postal Services Code, as supplemented by Law No. 2007-40 of 25 June 2007.
55. Executive Order of 30 April 1989 establishing lists of imported products at fluctuating prices entrusted to the OCT.

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Chapter 3

Tunisia's adherence to the *OECD Guidelines for Multinational Enterprises*

The new government, as well as enterprises and civil society, consider that strengthening business contribution in economic, social and environmental progress is a priority. While Tunisia has adhered to multilateral instruments on which the standards set out in the OECD Guidelines for Multinational Enterprises *are based, their application in certain areas such as human rights, the environment or consumer protection should be improved. In terms of fighting corruption, a national body has been set up and is responsible for designing and implementing a strategy. The creation of new unions, non-governmental organisations and consultation mechanisms allows civil society to be more closely involved in the design of public policies.*

In order to promote the Guidelines *and ensure that they are used, Tunisia will set up a National Contact Point in the Ministry of Investment and International Co-operation.*

The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*), an integral part of the OECD Declaration and Decisions on International Investment and Multinational Enterprises, constitute the most complete set of instruments existing today concerning corporate responsibility. They consist of recommendations regarding all major areas of business ethics directed at firms to ensure that they behave responsibly in the pursuit of their activities in an international context. They comply with the applicable legislation and international standards and are not intended to be used for protectionist purposes. Their main aim is to reduce, through the exercise of due diligence, the adverse impact that multinational enterprises could have on host economies and to enhance the contribution of enterprises to sustainable development. Furthermore, the *Guidelines* are based on an unparalleled implementation mechanism designed to ensure their application and where appropriate, to resolve any cases of non-compliance. Adopted in 1976, the *Guidelines* have been revised several times, most recently in 2011, in response to new challenges (Box 3.1).

Implementation of the *Guidelines* and the effective contribution of firms to economic, environmental and social progress will require governments and firms to work in partnership and to establish mutual trust, consistent with their respective rights and duties. Governments have primary responsibility for establishing a suitable regulatory framework in the areas covered by the *Guidelines*, for developing that framework so as to promote good practices and for providing incentives to firms to comply with this framework.

In addition to the recommendations covered by the 2000 version of the *Guidelines*, which encourages firms to contribute to economic, environmental and social progress, to reinforce local capacities and to promote principles of corporate governance, the updated 2011 version emphasises a number of new questions, related in particular to due diligence and responsible management of the supply chain, the role of the Internet, human rights in light of work at the United Nations, and engagement with stakeholders. In particular, firms are encouraged to exercise risk-based due diligence,[1] that is to say to identify and reduce actual and potential adverse impacts on matters covered by the *Guidelines*. They should avoid adverse impacts that are either caused or contributed to by the enterprise, or that are directly linked to their operations, products or services by a business relationship.[2]

Box 3.1. **2011 Update of the OECD *Guidelines for Multinational Enterprises***

The 43 adhering governments have concluded the work of updating the *Guidelines*, which was launched in May 2010. That work involved intensive consultations with a wide range of stakeholders and partners. Non-adhering G20 countries were invited to participate on an equal footing in the updating exercise. They made important contributions, as did participants in the regional consultations in Asia, Africa, Latin America and the Middle East and North Africa. Adopted on 25 May 2011, the revised *Guidelines* contain a new human rights chapter, a new approach to due diligence and responsible supply chain management, significant amendments to several chapters and reinforced procedural guidance.

The *Guidelines* carry a series of non-binding recommendations in all areas of corporate responsibility:

- Disclosure.
- Human rights.
- Employment and industrial relations.
- Combating bribery, bribe solicitation and extortion.
- Environment.
- Consumer interests.
- Science and technology.
- Competition.
- Taxation.

The *Guidelines* include a specific mechanism for implementation through National Contact Points (NCP), agencies established by governments to help implement the *Guidelines* effectively, to disseminate them and to raise the awareness of all the actors concerned, to handle inquiries in the domestic context, and to support mediation and conciliation procedures in specific instances. The updated *Guidelines* have also instituted a more strict process for complaints and mediation.

Source: OECD, *www.oecd.org/daf/investment/Guidelines*.

This chapter examines the policies instituted in Tunisia for promoting responsible corporate behaviour in certain areas covered by the *Guidelines*: disclosure, human rights, employment and industrial relations, combating corruption, and consumer interests. Environmental policies are discussed briefly in this chapter as they are described more completely in Chapter 5 on investment in support of green growth. Competition policies are considered in Chapter 4 on Tunisia's investment policy framework.

National Contact Point

In accordance with the procedures for implementing the *OECD Guidelines*, adhering countries shall set up National Contact Points to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances, taking account of the procedural guidance. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.

The updating of the *Guidelines* as well as the amendments to the OECD Council decision concerning National Contact Points and the related procedural guidance have strengthened the role of the NCPs, in particular their contribution to resolving problems in implementing the *Guidelines*.

The 2011 version of the procedural guidance is more explicit with respect to institutional arrangements and insists that the NCP should be able to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government. The scope of the NCP's information and promotion activities and the procedures for reporting to the investment committee are largely unchanged. However, the section on implementing the *Guidelines* in "specific instances", *i.e.* in the event of complaints calling for mediation by the NCP, has been amended to include reference to the resolution of issues in certain cases "in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the *Guidelines*". The procedural guidance also specifies the contents of the report drawn up once the parties have manage to reach agreement or a statement when no agreement is reached or when a party is unwilling to participate in the procedures.

Tunisia's National Contact Point

With a view to promoting the *Guidelines* of the OECD Declaration on International Investment and Multinational Enterprises and encouraging their use, Tunisia will establish its national contact point within the Ministry of Investment and International Co-operation (MICI),[3] which has as one of its main missions the promotion of foreign direct investment. The Tunisian authorities have indicated that they will provide the NCP with an appropriate institutional basis in accordance with the procedures and regulations in force.

The authorities are planning to make the NCP a tripartite body comprising representatives of the line ministries and public institutions concerned (in particular the Ministries of Finance, Industry, Employment and Vocational Training, and Environment, and the Centre for Legal and Judicial Studies (*Centre des études juridiques et judiciaires*), of the employers' organisation

(*Union tunisienne de l'industrie, du commerce et de l'artisanat* – UTICA) and of the labour unions (*Union générale tunisienne du travail* – UGTT). Through the General Directorate of Foreign Investment, the MICI will ensure the dissemination of the *Guidelines*, their implementation in specific instances, and the co-ordination of the NCP's work. The government is currently giving consideration as to how to involve non-governmental organisations, many of which are in the process of formation, in the work of the NCP.

General principles for promoting responsible business conduct

There is no comprehensive national policy concerning responsible business behaviour in Tunisia. Nevertheless, the government, enterprises and NGOs have taken initiatives to incorporate this concept progressively into regulations and practice.

The initiative for "Sustainable Development thanks to the Global Compact"[4] was pursued in Tunisia between 2004 and 2009 with a view to promoting corporate social responsibility on the basis of three international instruments: the United Nations Global Compact, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the *OECD Guidelines for Multinational Enterprises*. Its objective was to encourage business and labour to contribute to strengthening sustainable development and the social dimension of globalisation. Efforts included alerting management and labour to the need to integrate corporate social responsibility and adopt good practices in this matter. The Tunisian authorities report that laws have been amended to give effect to the principles of this initiative, in particular the revision of the Personal Status Code, the Nationality Code, the Labour Code, and the Penal Code.

The Tunisian Centre for Corporate Governance (*Centre tunisien de gouvernance d'entreprise*, CTGE)[5] was created in June 2009 within the Arab Institute of Chief Executives (*Institut arabe des chefs d'entreprises,* IACE). It has published a manual of good practices in Tunisian corporate governance, which is applied on a voluntary basis. The manual contains a chapter on the social and ethical responsibilities of enterprises, which declares that "satisfying the demands of shareholders, customers, employees and the environment should be a strategy of any enterprise that cares about its profitability and growth, but also about its global performance, which must rely on three pillars – economic, social and environmental – while developing an organisational culture guided by the values of loyalty, confidentiality and ethics".[6] The CTGE has now revised the manual in consultation with the OECD, among others, and drawing upon the OECD Principles of Corporate Governance. They have announced that the new version will be published in 2012.

Tunisian firms have joined in national efforts to promote employment and social solidarity. The National Employment Fund, created in 1999 and funded primarily by private businesses, has the mandate to promote employment, especially for young graduates. Businesses are also required to pay a tax that goes to the Social Housing Promotion Fund (FOPROLOS), which finances the purchase and promotion of housing for the working and middle classes. As well, Tunisian businesses have encouraged the creation of mutual associations that act as quasi-insurer for their members in case of difficulty. Tunisia has inaugurated several national awards to encourage the adoption of socially responsible corporate policies: one example is the "national prize for social progress" awarded to outstanding social initiatives sponsored by firms operating in Tunisia.[7]

These initiatives, however, have had a limited impact and have not brought about any real change in the implementation of policies for corporate responsibility and governance. They have not been subjected to any evaluation. With the important role that civil society now plays in public debate, there are growing demands to redefine the role of Tunisian businesses in order to make them better and more socially responsible. The emerging role of associations, notably in the areas of human rights, protection of the environment and the rights of consumers, labour unions[8] and employers[9] should serve to channel these demands and integrate them more effectively into future reforms in the various areas covered by the *Guidelines*. The stakeholders interviewed during the OECD mission mentioned in particular the need to establish a legal framework for business foundations in order to develop strategies for responsible corporate conduct within the same group. The provisional government is aware of the importance of responsible behaviour by enterprises and has stated its determination to enhance the role of enterprises in the overall environment as well as their contribution to economic, social and environmental progress.

Disclosure

The chapter on disclosure in the *Guidelines* recommends that enterprises communicate, in a timely manner, precise information regarding all significant aspects of their activities, structure, financial situation, results, shareholders and corporate governance and that they have an audit carried out every year by an independent, competent and qualified auditor. Furthermore, enterprises are encouraged to communicate additional information on social, environmental and risk-related issues, for example declarations of principle; codes of conduct, information on arrangements relating to internal audits, risk management and legal compliance. The chapter also recommends that enterprises apply high-quality standards with regard to the dissemination of accounting, financial and non-financial information.

Tunisia has adopted several laws to promote transparency in private business activities. The Business Corporations Code (*Code des sociétés commerciales*) of 2000, amended and supplemented on several occasions, recognises the right of personnel to be informed about the functioning of the company and the right to oversee and supervise the firm's management in order to protect against any abuse. The Code has also expanded the auditor's scope of intervention. With the 2005 amendments to the Code, corporations of all kinds must now have their financial statements audited by one or more statutory auditors (depending on the size of the firm). This requirement for review by a statutory auditor[10] now applies not only to joint stock companies, for which audit was already mandatory, but also to all business corporations that meet at least two threshold criteria, defined by decree, concerning the total balance sheet, total profits and number of employees.[11]

The statutory auditors are required to send their reports, under certain conditions (in particular for corporations deemed of "public interest") to the Central Bank of Tunisia and to the Financial Markets Board, for firms that accept savings from the public.[12] Law No. 2007-69 of 27 December 2007 on the economic initiative amended the Business Corporations Code and lowered the percentage of shares (from 10% to 5 and 3%) that an investor in a joint stock corporation must hold in order to demand copies of the financial statements, the balance sheet and the annual report.[13] The release of financial information, and control over its reliability, is also guaranteed by Law No. 94-117 of 14 November 1994 on reorganisation of the financial market. However, Tunisia is one of only two countries in the Middle East and North Africa region (the other being Algeria) with no legislation requiring the disclosure of corporate income statements.[14]

In 2009, the *Institut arabe des chefs d'entreprises* (IACE) published a manual on the annual reports of Tunisian corporations in an effort to improve financial reporting. It seeks to "facilitate the task of preparing the annual report and making it more intelligible so as to improve comparability with past fiscal years and with the publications of other local corporations".[15] It takes into account the regulation of the Financial Market Board (CMF) concerning the acceptance of savings from the public.

Law No. 2005-96 of 18 October 2005 on the security of financial relations made it a crime for a corporate director or any other person to hinder or obstruct the work of the statutory auditor, and instituted the necessary investigation powers. Law No. 2009-16 of 16 March 2009, amending the Business Corporations Code, introduced new prudential rules, in particular the principles of avoiding conflicts of interest and prohibiting corporate managers from obtaining loans or credits in any manner from the corporation they manage, even through an intermediary. The 2005 Law on financial relations also reinforced legal disclosure measures with respect to accounting, by instituting monetary sanctions for any natural or legal person who fails to deposit his accounts with the commercial registrar. In addition, it strengthened financial and accounting control by requiring the statutory auditor to review the interim financial statements during the course of the fiscal year, for companies quoted on the stock exchange.

Beyond the principles mentioned above, state-owned enterprises are subject to control by the public authorities, and in particular by the government comptroller reporting to the Prime Minister and the sectoral oversight authority. They are also required to publish their annual financial statements in the *Official Gazette* (*Journal officiel*).[16]

In May 2011 the Tunisian Central Bank adopted Circular No. 2011-06 setting out rules of sound and prudent management guaranteeing and safeguarding the interests of stakeholders, including shareholdings, creditors, depositors and staff. Besides the organisational aspects regarding the duties of the Board of Directors and its committees, the circular establishes new rules on policies towards recruitment, appointment and remuneration in these establishments, as well as the introduction and updating of a system to disseminate information to shareholders, depositors, market counterparts, regulators and the general public.[17] The provisional government also announced the revision of the current auditing system.

There are no mechanisms or measures to promote the disclosure of non-financial information, relating for example to social and environmental performance. Consequently, corporations publish such information only on a voluntary basis.

Human rights

The new chapter on human rights in the *Guidelines* draws on the framework established by the United Nations on business and human rights and complies with the guiding principles for its implementation. It establishes that, in all countries where they exercise their activities, enterprises must respect human rights, in other words they must exercise due diligence to avoid infringing on the rights of others and to remedy any infringements already made on human rights, *i.e.* they must make plans to remedy any infringements they have made or helped to make, or co-operate in this respect. The due diligence process requires an evaluation to be made of the real and potential impacts on human rights, due account to be taken of the results of the follow-up to those results, and the checking and communication of the measures taken in response to those impacts.

Tunisia has ratified the international instruments mentioned in the *Guidelines*, including the Universal Declaration of Human Rights and the key ILO Conventions. The Tunisian Human Rights League, created in 1976, was the first national human rights organisation in the Arab world, but it has been unable to fulfil its missions and several of its leaders were arrested under the old regime. Tunisia was the first Arab country to prohibit polygamy and to establish equality between men and women by promulgating the Personal Status Code in 1956.

The Committee on Human Rights and Fundamental Freedoms was created in 1991 as an advisory body to assist the President of the Republic in promoting and consolidating human rights in Tunisia.[18] The position of General Co-ordinator of Human Rights was created in July 1992.[19] Reporting to the Minister of Justice and Human Rights, the general co-ordinator has the task of implementing and supervising the different mechanisms for promotion and protection of human rights in the country. Since 1992, Tunisia has also had in place ministerial human rights units within the ministries of justice, the interior and foreign affairs, with a view to reinforcing national mechanisms for protection and promotion of human rights.

Despite these measures and this institutional framework, however, the human rights situation in Tunisia has deteriorated over the last 20 years and there have been repeated violations of economic, social, cultural, political and civil rights. These violations are part of the scenario that led to the recent popular revolt.

Since the first weeks following the revolution of 14 January 2011, the transitional authorities have adopted a series of measures and decisions that constitute strong political signals. They have ratified new conventions on human rights and have withdrawn certain reservations (Box 3.2).

The transitional government has also taken important steps to reinforce human rights' protection. It has promulgated a general amnesty law. It has granted freedom of expression and association, recognising all political parties and guaranteeing that the media can report freely on past and current events. It has created an independent national body to reform the information and communications sector,[20] as well as a high-ranking independent authority for audiovisual communication;[21] it has amended the Press, Printing and Publishing Code;[22] and it has adopted decree laws on the organisation of political parties[23] and associations.[24] It has also established three commissions, dealing respectively with political reforms in the transition to democracy, the establishment of facts concerning human rights violations since 17 December 2010 and investigation of cases of embezzlement and corruption. The government has generalised mechanisms to support the unemployed, such as "solidarity" job contracts (*contrats emploi-solidarité*) and the civilian volunteer

Box 3.2. **International provisions made by the transitional government for the protection of human rights**

- Accession to the International Criminal Court (Decree Law No. 2011-4 of 19 February 2011 on accession to the Rome Statute of the International Criminal Court and the Agreement on the Privileges and Immunities of the Court). Tunisia is thus the first North African country and the fourth member of the League of Arab States to become a party to the Rome statute, following Djibouti, the Comoros and Jordan.
- Ratification of the Convention for the Protection of All Persons from Enforced Disappearance (Decree Law No. 2011-2 of 19 February 2011, approving accession to the Convention).
- Ratification of the Optional Protocol to the International Covenant on Civil and Political Rights (Decree Law No. 2011-13 of 19 February 2011 approving accession to the optional protocol).
- Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Decree Law No. 2011-5 of 19 February 2011 approving accession to the Protocol).
- Signature of headquarters agreements for opening national offices of the United Nations High Commissioner for Human Rights (UNHCR) and the United Nations High Commissioner for Refugees (Decree Laws No. 2011-12 and No. 2011-94 of 29 September 2011).
- Decision of the Council of Ministers, at its meeting of 3 February 2011, to consider withdrawing the reservations entered by Tunisia with respect to the second Optional Protocol to the International Covenant on Civil and Political Rights, concerning abolition of the death penalty; no decree has yet been adopted.
- Adoption of Decree Law No. 2011-103 of 24 October 2011, withdrawing reservations recorded in the Annex to the 1985 law ratifying the International Convention on the Elimination of all Forms of Discrimination against Women.

service programme.[25] As well, the role of human rights defence organisations has been reinforced and numbers are growing.[26]

The transitional government has reaffirmed its determination to respect its international commitments to safeguard democratic values and human rights and to implement provisions to break with the oppressions of the past, by combining the efforts of the government, civil society and the media. The country is engaged in a long-term process of restoring the rule of law, the respect for human rights and equality. This is one of the primary tasks of the new provisional government responsible for drafting the new constitution, which is sure to lay the foundation for guaranteeing human rights and fundamental freedoms. To ensure respect for the *OECD Guidelines*, the government will also need to take steps to guarantee respect for human rights by corporations and to encourage them to play a role and adopt policies in this area.

Employment and industrial relations

Several recommendations in the chapter on employment and professional relations in the *Guidelines* mirror the Declarations by the International Labour Organization (ILO) on multinational enterprises and fundamental principles and rights at work, as well as the ILO's so-called core conventions. Enterprises must respect fundamental labour rights, in particular equality of treatment and freedom from discrimination; the abolition of child and forced labour is mandatory; the right of workers to join labour unions and representative organisations of their choice and to be represented in collective bargaining negotiations. Enterprises must also promote consultation and co-operation between employers and workers, pay the best wages possible, which must be at least sufficient to meet the basic needs of workers and their families, and ensure health and safety at work in their activities. Other recommendations concern the employment of local workers, provision of training, and the mitigation of the adverse impacts on employment of changes in their activities.

Upon independence in 1956, Tunisia joined the ILO and has ratified 22 international labour conventions[27] (see Annex D), including the eight "core" conventions.[28] Several activities have been pursued in co-operation with the International Labour Office in order to reinforce the social security system and employment policy. This co-operation, which is included in the United Nations Development Assistance Framework for Tunisia (UNDAF) for 2007-11, had as its priorities: employment, youth and adolescents, disparities, equality and life quality, and globalisation.

Labour rights in Tunisia are regulated by the Labour Code promulgated in 1966. This Code covers individual labour rights, governing the relations between employer and individual employees, and collective labour rights, covering relations between employers and workers represented by associations, including unions. Trade union rights are guaranteed by Article 8 of the 1959 Constitution. The Child Protection Code, promulgated by Law No. 95-92 of 9 November 1995, explicitly prohibits the economic exploitation of children in all its forms.

There are several governmental agencies responsible for labour relations and the promotion of employment. The Ministry of Social Affairs and Solidarity (MASS) oversees implementation of government policy in the areas of labour, social promotion, labour inspection, medical inspection, and workplace safety. The MASS sees to the promotion of labour-management dialogue within firms, the implementation of collective bargaining, and the consolidation of contract policy. It also works to reinforce social peace by overseeing the fair application of labour legislation and sponsoring conciliation in collective and individual labour conflicts. The National Employment and Labour Agency (ANETI), an independent body created in 1993 under the Ministry of Vocational Training and Employment, is responsible for implementing government policies for the promotion of employment.

When it comes to collective bargaining, Tunisia has a tradition that dates back to the beginning of the last century with the founding of the first trade union in the Arab world in 1924. The *Union générale tunisienne du travail* (UGTT) played a major role in securing the country's independence in 1956. However, in recent decades "trade unions were unable to operate in a free environment – and at best their leadership was used to support and endorse the government's policies" (ILO, 2011). The right to strike is recognised in the Labour Code, but in practice it has been constrained by legal and political obstacles.[29] The creation of trade unions was also hampered by legislation which authorised unions only "for enterprises with at least 40 permanent workers, thus effectively restricting the creation of unions in the private sector, where most SMEs have fewer than 10 employees" (ILO, 2011). Management-labour dialogue was ineffective. Conducted under the aegis of the National Commission for Social Dialogue, it took place every three years, at government initiative, for the collective bargaining of wages. Beyond this mechanism, there was under the old regime no other institution for labour-management dialogue, which was virtually non-existent at the enterprise level (ILO, 2011).

The UGTT played an important role in the revolution of 14 January 2011. Its direct involvement in the social claims and demands that followed the revolution led to signature of an agreement in July 2011 boosting public and private sector wages and salaries. Two new trade union organisations have now entered the scene: the *Confédération générale des travailleurs tunisiens* (CGTT) and the *Union des travailleurs tunisiens* (UTT). However, the dialogue between these three labour union institutions should be strengthened.

Participants told the OECD mission that the minimum wage, today reset at TND 250, was not always applied, and the payment of employers' social contributions was irregular and uneven. The labour market is often mentioned as inefficient and rigid. The 2011 Global Competitiveness Report of the World Economic Forum ranks Tunisia 106th in terms of labour market efficiency out of 142 countries evaluated (a drop of 27 points in one year).

In addition to better enforcement of the rights and guarantees provided in the Labour Code and in international conventions ratified by Tunisia, the transitional government has plans to create new structures and functions within businesses, in order to guarantee respect for workers' rights and to strengthen dialogue between employees and employers. These include the company consultative commission, the staff delegate, union delegates and health and safety committees. Above all, there is a need to strengthen social dialogue with all partners. On this point, the ILO Report on a New Social Contract in Tunisia (ILO, 2012) recommends broadening the membership base of unions, recognising the plurality of unions and removing legal obstacles to their operation, and improving unions' organisational competence by strengthening their credibility, independence and financing (ILO, 2011). Following this report, the government, business associations and trade unions launched preparations for the establishment of a "social pact" before end 2012, with a view to institutionalise dialogue and concerted actions on social issues. The elaboration of this pact will benefit from the expertise and financial support of the ILO.

Environment

The chapter on the environment in the *OECD Guidelines for Multinational Enterprises* recommends that enterprises take due account of the need to protect the environment and public health and safety and, in general to conduct their business in a way that contributes to the broader goal of sustainable development. In particular, enterprises must put in place and implement a system of environmental management, provide information on the impacts that their activities and products may have on the environment, health and safety, and assess and reduce the foreseeable impacts of their activities. Enterprises are also recommended to seek to improve their environmental performance and that of their supply chain, to provide their workers with appropriate teaching and training about issues relating to environmental health and safety, and to contribute to the development of a public policy that is of use to the environment and that is economically efficient.

Tunisia has ratified the principal international conventions on the environment, in particular those emerging from the Earth Summits of Stockholm in 1972, Rio de Janeiro in 1992, and Johannesburg in 2002. Following the 1992 Earth Summit, Tunisia undertook to implement the "Agenda 21" recommendations. Tunisia's priorities include the fight against pollution, preservation of biodiversity and ecological balance, and rational management of natural resources, as evidenced by the place these issues have occupied in the country's successive development plans and in the adoption of various national strategies for sustainable development.[30]

The regulatory arsenal for combating pollution covers water, air, wastes, soil, biodiversity and the marine environment,[31] Tunisia has in place several measures for monitoring the environmental performance of enterprises. A key element in its antipollution programme, Decree No. 91-362 of 13 March 1991, as amended in 2005, made it mandatory to conduct an environmental impact study before carrying out any new project.[32] Implementation of the rule was assessed as part of the diagnostic study for preparing an environment code and a legal framework for impact studies and strategic environmental assessments.

Tunisian businesses have taken some initiatives to raise awareness of environmental issues. A number of firms are members of the "Network of Maghreb Enterprises for the Environment" (*Réseau des entreprises maghrébines pour l'environnement*, REME).[33] In 2011, the Ministry of the Environment published a collection of "best initiatives for sustainable development in Tunisia" in the sectors of agriculture, manufacturing, tourism and transport, with the goal of "encouraging the managers of public and private organisations to commit themselves to sustainability".[34]

Despite these efforts, businesses remain inadequately sensitive to environmental issues. The Tunisian authorities and foreign observers are sceptical as to the effectiveness of environmental legislation for limiting pollution and environmental damage caused by industry.[35]A number of measures have been launched in recent months to raise protection of the environment to a higher level, including measures to improve the environmental performance of businesses (see Chapter 5).

Combating corruption, bribe solicitation and extortion

The chapter on combating corruption, the solicitation of bribes and other forms of extortion in the *OECD Guidelines for Multinational Enterprises* recommends that enterprises do not offer, promise, make or demand illegal payments or other undue advantages with a view to obtaining or keeping a market or any other illicit advantage. This chapter was enlarged in the 2011 revised version to cover the solicitation of bribes, extortion and corruption of third parties such as agents and other intermediaries, representatives, distributors, consortia, contractors and suppliers. The 2011 version also extended the scope of the chapter to the obligations on enterprises to develop and introduce internal checks, codes of conduct, compliance programmes or measures to prevent and detect corruption. The *Guidelines* also recommend that enterprises raise the awareness of their employees regarding their policy and anticorruption measures and encourage them to comply with them, and that they refrain from making illegal offers to candidates to public office, to political parties or to other political organisations.

Tunisia signed the United Nations Convention against Corruption (UNCAC) in March 2004, which it ratified on 23 September 2008 following the entry into force of Law No. 2008-16 of 25 February 2008 on approval of the Convention. It will submit itself to a review under the Mechanism for the Review of Implementation of the UNCAC in 2013. This review will focus on the criminalisation of corruption. The two assessing countries have not yet been designated.

With regard to the national legal framework, Chapter III, Section II "Corruption" of the Tunisian Penal Code groups corruption offences together, notably the active bribery of Tunisian civil servants, also applicable to intermediaries between the briber and the person accepting the bribe (Articles 91 to 93), influence-peddling (Article 87), the passive corruption of Tunisian civil servants or similar officials or judges (Articles 83 to 85 and 87bis to 90). The Tunisian Penal Code does not contain the offence of bribery of foreign officials, despite the fact that it has the status of mandatory offence under the UNCAC. The offences of passive corruption of Tunisian civil servants draws a distinction between bribery towards carrying out or refraining from carrying out an act in relation with the civil service duties (10 years imprisonment and maximum fine equal to twice the amount received or to TND 10 000 – approximately EUR 5 000) and bribery that rewards actions or the failure to take actions the civil servant was supposed to carry out (five years imprisonment and a fine of TND 5 000). This distinction between bribery for actions taken and bribery for actions supposed to be taken was criticised in the evaluations carried out by international organisations, in particular those by the OECD and the UN, because they suggested that one form of bribery was more acceptable than another.

The Tunisian economy has suffered from corruption which has discouraged foreign investment, distorted markets, and fostered anticompetitive behaviour. Transparency International ranked Tunisia 73rd out of 178 countries covered by its Corruption Perceptions Index in 2010. This ranking, while placing Tunisia higher than its North African neighbours, represents a downgrade from 2005, when it stood 43rd. According to a survey of corruption perceptions conducted by the *Centre tunisien de gouvernance d'entreprise* (Tunisian Centre for Corporate Governance), Tunisian citizens regard corruption as the second most important socioeconomic problem, after insecurity and ahead of human rights violations, unemployment and inflation.[36]

After the revolution, the authorities immediately displayed their intention to combat corruption and to remedy the damage that it had caused. The National Commission for Investigating Cases of Corruption and Embezzlement (CNICM) was established by as early as February 2011 with the mandate to dismantle the sources of corruption that took root during the two previous decades.[37] Composed of 46 members, it has mobilised significant resources[38] and has recorded numerous complaints. The examination and decision on whether or not to prosecute offenders remains within the competence of the Tunisian Public Prosecutor's Office. During the presentation of its activities report to the interim President and the press in November 2011, the commission said it had received nearly 10 000 submissions and had examined more than half of them: 320 cases were subsequently referred to the courts and 120 hearings were conducted. The CNICM advised that corruption has affected all sectors, led by the banking sector, real estate, government procurement, telecommunications, information, archaeological sites, and the customs service.[39]

In tandem with these developments, the CNICM has started to reflect on a wholesale reorganisation of the legal and institutional system for combating corruption. At an international conference on corruption and embezzlement held in September 2011,[40] the CNICM set out a number of recommendations and strategic lines of direction for the creation of a more durable system (Box 3.3).

Box 3.3. **Recommendations from the CNICM international conference: "Corruption and embezzlement: what to do?", Hammamet, September 2011**

- Create an independent and permanent structure to combat corruption and embezzlement, with a mandate to prepare and implement policies for combating corruption, co-ordinating the different stakeholders, and supporting the role of the justice system in fighting embezzlement.
- Speed the implementation of an anticorruption system in the context of a coherent, global strategy which places the public interest above private interests.
- Incorporate the United Nations Convention against Corruption into Tunisian law, by introducing the necessary amendments and supplementing incomplete procedures so as to guarantee their proper application, especially for eliminating illegal acts of corruption.
- Reform the justice system and its control, regulation and audit structures and reinforce their autonomy, by equipping them with the necessary material and human resources to improve their performance.
- Pursue the dismantling of networks of corruption and take the steps necessary to protect witnesses, informants, experts and victims.
- Establish a transitional justice mechanism in this area and introduce the issue of fighting corruption into education programmes.

Source: Press extracts (TAP), *www.tunisienumerique.com/la-conference-de-hammamet-recommande-la-creation-dune-structure-de-lutte-contre-la-corruption/75538.*

The presentation of the CNICM report was followed by publication of Decree Law No. 2011-120 of 14 November 2011 on combating corruption. However, a proposed amendment was formulated in March 2012. Article 12 of the Decree Law calls for creation of a National Anticorruption Authority (see Box 3.4). This body is responsible for drawing up a strategy and implementing policies for combating corruption, ensuring co-ordination among the various stakeholders and supporting the role of the justice system.

Box 3.4. **Objectives of the National Anticorruption Authority (*Instance nationale de lutte contre la corruption*)**

- Propose measures relating to anticorruption policies and ensure follow-up for their enforcement in co-operation with stakeholders.
- Define general principles, in co-ordination with the parties concerned, for discouraging corruption and implementing appropriate detection systems.
- Report instances of corruption in the public and private sectors.
- Receive complaints and opinions on cases of corruption, conduct inquiries and refer cases to the appropriate parties, including the courts.
- Issue an opinion on draft legal and regulatory texts concerning the fight against corruption.
- Facilitate communication among the different parties involved in combating corruption and strengthen interaction.
- Compile data and statistics on corruption and create a database for facilitating the authority's work.
- Sensitise society to the risks of corruption through awareness campaigns, seminars and meetings, distribution of publications and manuals, and organisation and management of training programmes.
- Undertake and support research and studies on combating corruption.

Source: Article 13 of Decree Law No. 2011-120 of 14 November 2011 on the fight against corruption.

The project amending Decree Law No. 2011-120 of 14 November was decided upon at a meeting of the Interministerial Council in March 2012. The aim is to define more clearly the prerogatives of the Authority and to propose the creation of a legal unit within the Court of First Instance of Tunis to examine and to investigate cases of financial corruption, and at the same time to provide the Authority with the requisite human and material resources. The President of the new Authority was appointed at the end of March 2012, which should lead to the abolition of the CNICM. The new Authority will have a broader mandate than that of the commission. In contrast to the CNICM, whose principal mission is to investigate cases of corruption and embezzlement and is therefore focused on past events, the work of the new Authority is more general and is geared towards prevention. Under the Decree Law establishing the Authority, the latter has the power to carry out pre-judicial investigations of corruption cases. It has its own legal personality and administrative and financial economy. Its president and members of its prevention and investigation unit are selected from among persons known for their independence, their integrity and their experience in different fields relating to its missions, and they should devote full-time to their functions. The Authority is required to submit an annual report of activities to the President of the Republic and the legislature.

The provisions of the Decree Law also call upon the public authorities and various stakeholders in the fight against corruption to pool their efforts in combating this scourge. The Authority is therefore a structure which must bring together all stakeholders in order to engage a national dialogue and to exchange information and experience for designing a national anticorruption strategy and it will support programmes to equip participants for pursuing their activities. It must make it possible to remedy the isolation of oversight and regulatory bodies and engage all partners. This is reflected in the makeup of the Authority's various bodies. The Council, the supreme body, is composed of representatives of public control, inspection, audit and regulatory agencies, the Council of State, the magistracy, civil society and the communications sector. It is planned that the Council will be supported by a prevention and investigation unit composed of technical experts.

The Decree Law on combating corruption stresses participation by the private sector, while making the government responsible for taking the necessary legislative and regulatory measures to discourage and incriminate all forms of corruption in the private sector.[41] It calls upon the private sector to prepare and apply concrete measures to eliminate practices that encourage the spread of corruption in the public sector and to respect the rules of fair competition in the conduct of economic activities and in commercial relations between firms of the private sector. The Decree Law also calls for a strengthening of the principles of transparency and integrity in the governance and management of private sector firms. Lastly, information and awareness campaigns targeted at foreign entrepreneurs and investors are planned in the context of the Authority's mandates and the various national investment incentive programmes.

The post of Minister for Governance and the Fight against Corruption attached to the Head of Government was created after the elections of October 2011. This Ministry is responsible for overseeing the work of several public bodies (such as the Higher Contracts Commission) and for ensuring the transparency and co-ordination of their activities. It is also tasked with developing an action plan on good governance and ensuring its implementation in co-ordination with the Ministry of Administrative Reform.

The transitional government has therefore made substantial efforts. The framework for the fight against corruption in Tunisia, in both the public and the private sectors, is starting to develop with the creation of two authorities tasked with developing and co-ordinating a national strategy.

Co-operation between Tunisia and the OECD in the fight against corruption has strengthened. The OECD contributed to the CNICM's international conference in Hammamet in September 2012, as well as to the follow-up conference in Tunis in February 2012 on good practices and the lessons learned from the introduction of a national framework for integrity and the prevention of corruption. Tunisia has subsequently signed the OECD Declaration on Propriety, Integrity and Transparency in the Conduct of International Business and Finance. Lastly, in collaboration with OECD experts, Tunisia has launched a scan of integrity as part of its *CleanGovBiz* initiative. This is a self-assessment of economic, legal and administrative frameworks, in consultation with the private sector and civil society. The aim is to help the government to further the fight against corruption and to identify the reforms that need to be carried out as a priority.

Consumer interests

The chapter on consumer interests recommends that enterprises respect the rules for ethical conduct in their business activities, distribution and advertising and take all the necessary measures to ensure quality and reliability in the goods and services that they produce. Enterprises must co-operate fully with the public authorities to prevent and combat misleading business practices and to prevent or reduce threats to public health and safety, or threats to the environment, which might arise from the consumption, use or disposal of their products. The 2011 revised version of the Guideline place particular emphasis on having firms run campaigns to promote consumer education and raise consumer awareness in areas that relate to their business activities, in order to improve consumers' ability to make informed decisions, to better understand the economic, environmental and social impact of their decisions and to support sustainable consumption.

The institutional and regulatory framework for consumer protection in Tunisia today consists of several laws and three principal institutions: Law No. 92-117 of 7 December 1992 provides the basis for consumer protection. It establishes general rules concerning product safety, fairness in economic transactions and consumer protection.

The National Consumer Protection Council was created in 1992 to oversee and improve the quality of products and provide information and guidance for consumers.[42] Chaired by the Minister of Commerce and Craft Industries (*Commerce et Artisanat*), this Council draws half of its 24 members from civil society.[43] The National Consumers Institute (*Institut national de la consommation*, INC) was created in 2008, again under the authority of the Ministry of Commerce,[44] to help disseminate a consumer culture by providing technical assistance to all parties (government, consumers and consumer protection organisations) and providing them with a full range of information, studies and research.

The Tunisian Consumer Protection Organisation (*Organisation tunisienne de défense du consommateur*, ODC) is the country's principal consumer protection association. Created in February 1989 as a non-governmental, socioeconomic organisation, it was recognised as being of "public utility" in 1993.[45] Its objectives are: *i)* to help consumers, to protect and defend their interests at all levels and in all sectors; *ii)* to advise consumers, to inform them about everything affecting their safety and to instil in them the principles of good management; *iii)* to represent consumers at all levels *vis-à-vis* the authorities; and *iv)* to work to ensure that national development policies take account of consumer interests and aspirations.[46] The ODC is invited to participate in various national bodies, councils and commissions concerned with consumer affairs and to provide its opinion on issues of standardisation and the updating of legislation concerning competition and distribution channels.

In practice, however, consumer protection policy is weak and the existing legal and institutional system has been underused, as evidenced by the small number of complaints handled. Tunisian consumers are generally unaware of their rights and of the procedures for enforcing them. Following the revolution, the ODC has introduced measures aimed at boosting its operational capacities and at expanding its mandate by revising its bylaws.

Notes

1. "Due diligence" is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems. *OECD Guidelines for Multinational Enterprises* 2011, Commentary on Chapter II.
2. "The term 'business relationship' includes relationships with business partners, entities in the supply chain and any other non-state or state entities directly linked to its business operations, products or services". *Ibid.*
3. The former Ministry of Planning and International Co-operation became the MICI upon appointment of the provisional government following the elections of October 2011.

4. Tunisia adhered in 2004 to this initiative, which is funded by the Italian Ministry of Foreign Affairs and implemented by the International Labour Organisation (ILO).
5. *www.centregouvernance.com*.
6. Institut arabe des chefs d'entreprises (2009), *Guide de bonnes pratiques de gouvernance des entreprises tunisiennes*.
7. *www.social.tn*.
8. Two new labour unions have been created since the revolution: the *Confédération générale des travailleurs tunisiens* (CGTT) and the Union des travailleurs tunisiens (UTT), alongside the *Union générale tunisienne du travail* (UGTT) established in 2924 (see below).
9. In addition to the *Union tunisienne de l'industrie, du commerce et de l'artisanat* (UTICA) created in 1947, a new employers' organisation was set up in September 2011. This is the *Confédération des entreprises citoyennes de Tunisie* (CONECT), which takes a particular interest in the responsible conduct of enterprises. It founder states that CONECT "strives to establish the values of citizenship in Tunisian enterprises by encouraging them to pay taxes, adopt good governance, comply with environmental standards and endeavour to improve the lot of workers (salaries and productivity" (*www.kapitalis.com/fokus/62-national/5849-tunisie-tarek-cherif-lance-conect-opur-concurrencer-lutica.html*).
10. Statutory auditors are professionals with suitable scientific and professional training (1982 amendment to the commercial code). They are selected either from among the members of the college of accountants of Tunisia (*Ordre des experts comptables de Tunisie*) or from among accounting technicians, depending on the size of the corporation. The statutory auditor is responsible for auditing the annual accounts of joint stock corporations. The audit report is submitted to the shareholders during the annual general assembly. Large corporations (according to the thresholds defined by decree) are subject to the co-audit rule: they must appoint at least two statutory auditors. Larger corporations must institute a permanent audit committee, responsible for monitoring the work of the corporation's oversight bodies and ensuring that the corporation has internal control systems in place.
11. Law No. 2005-65 of 27 July 2005,amending and supplementing the business corporations code, has amended the corporate size criteria.
12. Article 13-4 of the Business Corporations Code.
13. Article 14 of the Law No. 2007-69 of 27 December 2007.
14. International Labour Organization (2011), "Tunisia: a New Social Contract for Fair and Equitable Growth", *Studies on Growth with Equity*.
15. Institut arabe des chefs d'entreprises (2009), *Guide du rapport annuel des entreprises tunisiennes 2009*, Tunis, preamble.
16. The obligations imposed on corporations and state-owned establishments are governed by Law No. 89-9 of 1 February 1989 on government participations and enterprises and its regulatory texts concerning oversight and audit conditions and procedures (Decree No. 2002-2197 of 7 October 2002 on the oversight of state enterprises, approval of their management reports, representation of public participants in their management and deliberative bodies, and their obligations, and Decree No. 87-529 of 1 April 1987 setting the terms and procedures for the audit of state-owned industrial and commercial establishments and corporations wholly owned by the state).

17. *www.apbt.org.tn/upload/reglementation/reglementation744_fr.pdf*.

18. *www.droitsdelhomme.org.tn*.

19. Decree No. 92-1330 of 20 July 1992 – *www.e-justice.tn*.

20. Decree-Law No. 2011-10 of 2 March 2011.

21. Decree-Law No. 2011-116 of 2 November 2011.

22. Decree-Law No. 2011-115 of 2 November 2011.

23. Decree-Law No. 2011-87 of 24 September 2011

24. Decree-Law No. 2011-88 of 24 September 2011.

25. The *contrat emploi-solidarité* allows payment of a monthly allowance of 130 to 250 dinars for up to three years. The volunteer civilian service programme makes it possible for holders of higher education degrees seeking their first job to perform voluntary, part-time work in the "general interest" so as to acquire practical capacities and professional attitudes, and to receive personalised coaching in planning their future career. See *www.emploi.gov.tn*.

26. The local office of Amnesty International has already been able to change its domestic status. Previously, it could only collect complaints; today, it can respond to them by becoming a civil party to proceedings.

27. *www.ilo.org/ilolex/cgi-lex/ratifgroupf.pl?class=g03&country=Tunisie*.

28. *www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_095896.pdf*.

29. For example, one law required that strikes must be authorised by the UGTT, which was de facto controlled by the government (ILO, 2011).

30. The provisional version of the Sustainable Development Strategy for 2012-2016 was published in November 2011 for public consultation (see Chapter 5).

31. *www.environnement.gov.tn/index.php?option=com_content&task=view&id=59&Itemid=75*.

32. *www.anpe.nat.tn/index.php?option=com_content&view=article&id=72%3Ales-etudes-dimpact-sur-lenvironnement-eie&catid=56&Itemid=74&lang=fr*.

33. The REME defines itself as a network for the Maghreb region dedicated to improving regional co-operation among institutions and organisations through networking, making the countries of the Maghreb more competitive by using eco-technologies, standards and products that are respectful of the environment, and contributing to the sustainability and protection of the Maghreb environment. It also seeks to promote the environment as a business opportunity. The REME, which was supported by the GTZ, has recently ceased its activities. *www.reme.info*.

34. *www.environnement.gov.tn/dmdocuments/Dev_Dur/Meilleures_initiatives_DD.pdf*.

35. This is recognised in the provisional version of the National Strategy for Sustainable Development 2012-2016, according to which "most industrial facilities still present various forms of pollution, despite the efforts made [...] water pollution still constitutes a considerable attack on the environment in Tunisia [...] we have yet to see any signs of progress against pollution generated by industrial activity, namely solid industrial wastes". See also EU, European Neighbourhood and Partnership Instrument (Tunisia), Strategy Document 2007-2013 and the national indicative programme 2007-2010 *http://ec.europa.eu/world/enp/pdf/country/enpi_csp_nip_tunisia_fr.pdf*. "Despite the considerable efforts the country has made in environmental protection, the adverse ecological impact of intensified use of

natural resources (water, soils, shoreline) together with economic development remains the major environmental problem in Tunisia. The World Bank estimates the costs of environmental degradation at around 2.1% of GDP". According to studies cited by REME, for example, some 1 000 manufacturing firms are polluting, and 70% of these are ranked as highly polluting, of which 49% are in the agricultural sector, 17% in the chemical industry, and 13% in the textile and clothing sector. Moreover, 65% of polluting enterprises dump their waste water into the environment without any pre-treatment.

36. *www.centregouvernance.com/documents/Indice%20de%20perception%20de%20la%20corruption%20par%20les%20citoyens.pdf*.

37. Decree Law No. 2011-7 of 18 February 2011.

38. The Commission has instituted a hotline and has conducted a televised publicity campaign. It has also organised conferences, notably in co-operation with the OECD (see below).

39. The CNICM is available in Arabic on the Internet at *www.cnicmtunisie.tn*.

40. This international conference was held in Hammamet in September 2011, in co-operation with UNDP, the OECD, the European Union, the African Development Bank and the United Kingdom. The conference established a dialogue between the national bodies concerned and international institutions, as well as between these participants and the general public. Several recommendations emerged from the conference (see Box 3.3) and provided guidance for the work of the CNICM, in particular for creating an independent and permanent anticorruption structure (see Box 3.4).This event was followed by a new conference in Tunis on 13 and 14 February 2012 aimed at acting upon the conclusions of the Hammamet conference and at mobilising all the stakeholders, including civil society and the private sector.

41. The first Article of the Decree Law states clearly that the objective is to combat corruption in the public and private sectors.

42. Law No. 92-117 of 7 December 1992 on consumer protection, Article 15.

43. Decree No. 2004-1108 of 17 May 2004 amending Decree No. 93-1886 of 13 September 1993 on the composition and operating procedures of the National Consumer Protection Council.

44. Law No. 2008-70 of 10 November 2008.

45. Decree No. 93-318 of 8 February 1993. The ODC has been an associate member since 1995 of Consumers International, and it became a full member in 2004, thus gaining representation and voting rights.

46. *www.odc.org.tn*.

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Chapter 4

Tunisia's policy framework for investment

This chapter analyses the investment policy and promotion of Tunisia. The new authorities have announced a number of measures aimed at improving the investment climate, including the revision of the legal framework which had become complex and had yielded fairly inconclusive results, the simplification of procedures, expropriation mechanisms of the old regime's assets, development of PPPs, business linkages between local and foreign enterprises, and more-targeted FDI promotion.

This chapter also analyses other aspects that are impacting upon investment operations, i.e. trade policy and facilitation efforts, competition policy of which effectiveness needs bolstering, and development of infrastructure and the financial sector – two stated priorities of the new Tunisian authorities.

This chapter examines Tunisia's investment policy in light of the OECD Policy Framework for Investment (PFI). It does not address all the policy areas covered by the Framework (see) dealt with in Chapter 3 but focuses on investment policies and investment promotion and facilitation, touching more lightly on four other aspects that affect investment and the investment climate: trade policy, competition, infrastructure development and the financial sector.

Box 4.1. **The OECD Policy Framework for Investment**

The objective of the Framework is to mobilise private investment in support of stable economic growth and sustainable development. The framework was developed within the OECD by the representatives of nearly 60 countries and poses a list of key questions that should be examined by any government seeking to create a favourable investment climate.

The Framework is not prescriptive. On the contrary, it is a flexible instrument that allows countries to evaluate their progress and identify priorities for action in ten policy areas: 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; and public governance. Three principles apply throughout the framework: policy coherence, transparency in policy formulation and implementation of policies, and regular evaluation of the impact of existing and proposed policies.

By encouraging a structured process for formulating and implementing policies at all levels of government, the Framework can be used in various ways, including for self-evaluations, peer reviews, regional co-operation, and multilateral discussions.

Source: OECD, *www.oecd.org/dataoecd/18/6/36806704.pdf*.

Investment policy

The quality of investment policies directly influences the decisions of all investors, be they small or large, domestic or foreign. Transparency, predictability, protection and non-discrimination are investment policy principles that underpin efforts to create a sound and attractive investment environment for all.

Tunisia began its institutional and regulatory efforts in the early 1970s, with the promulgation of the first Investment Code[1] and the law governing the offshore regime,[2] and creation of the Agency for the Promotion of Industry and Innovation (APII). Subsequently, and in recognition of the need to attract more foreign investment, this framework was expanded in the 1990s. A new Investment Incentives Code offering a preferential regime for export activities was adopted in 1993, and the Foreign Investment Promotion Agency (FIPA) was established in 1995.

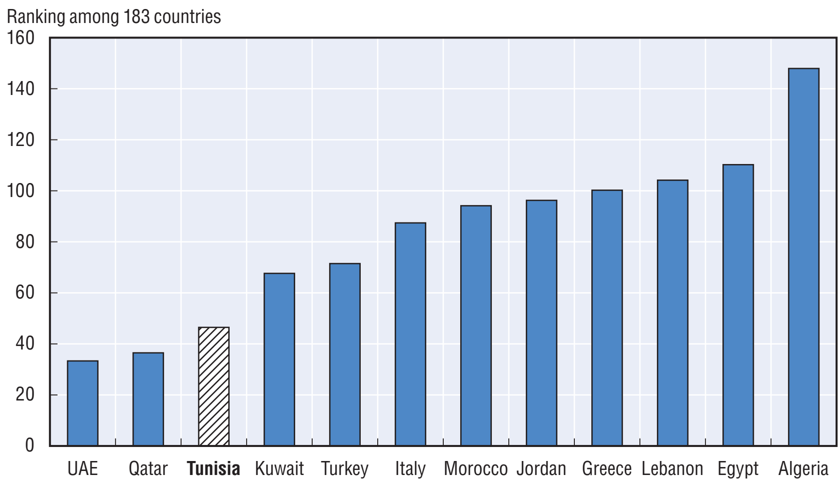
Tunisia thus has in place a legal and institutional framework designed to stimulate foreign investment and, more generally, to create a propitious business climate. It has thus earned for itself a relatively favourable ranking in the *Global Competitiveness Report 2011-2012* of the World Economic Forum (40th) and in the 2012 *Doing Business* report of the World Bank (46th).[3] Figure 4.1 compares Tunisia's performance in the 2012 edition of Doing Business, against selected countries of MENA and the Mediterranean basin. Despite a slight decline, Tunisia still ranks above its North African neighbours and other peer countries in terms of the ease of doing business. Their performance is especially notable in terms of cross-border trade and business creation (Figure 4.2). On the other hand, Tunisia weaknesses are evident when it comes to obtaining credit and registering property.

Nevertheless, the impact of this performance has been limited by problems in a number of areas. The Economic and Social Development Strategy 2012-16, published by the transitional government in September 2011, recognises that "the Tunisian revolution has revealed major gaps and shortcomings in the business environment, particularly when it comes to governance. In effect, despite the scope of existing incentives, private initiative is being hindered and the profitability of investment projects severely compromised by arbitrary practices, corruption, unequal treatment of investors, and disregard of regulations."[4] The new authorities are aware, then, that the lack of economic freedom, entrepreneurship and business governance are impeding the development of investment.

The country is now engaged in a process of in-depth reforms in a number of areas, including the business environment and investment promotion. Efforts to achieve greater transparency and to revise regulations through a participatory process constitute important steps in building confidence and

Figure 4.1. **Tunisia's ranking for ease of doing business**

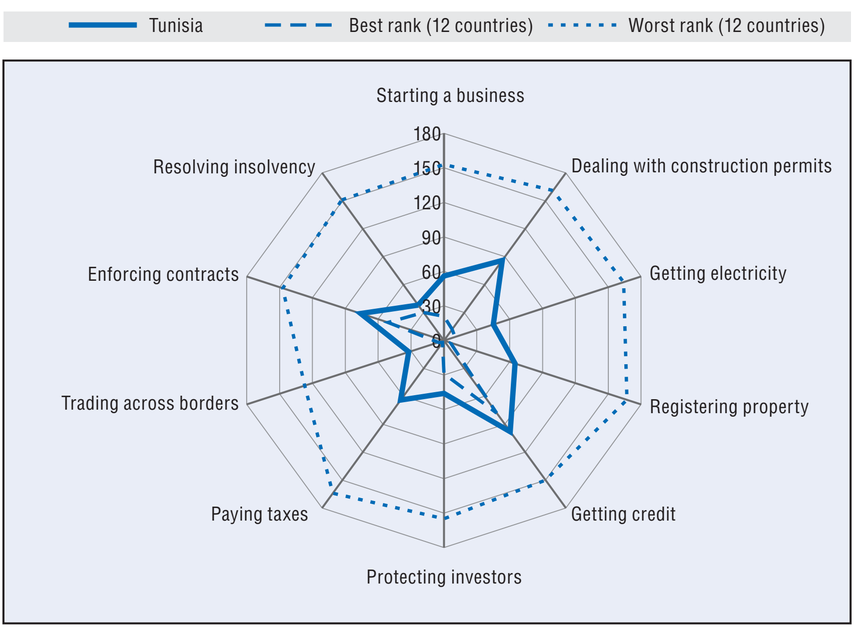
Rankings for 12 of the 183 countries assessed



Source: World Bank (2011), *Doing Business.*

Figure 4.2. **Tunisia's business climate in a regional context**

Ranking by indicator, same selection of 12 countries as in Figure 4.1



Source: World Bank (2011), *Doing Business.*

credibility for the government. There are also plans to revise the Investment Incentives Code, and to undertake other reforms to improve the business climate in Tunisia.

Transparency and accessibility of the legislative and regulatory framework

When laws and regulations are accessible to the public and to economic operators, this provides a guarantee of transparency for investors. Constraints on access to information in Tunisia have in the past generated significant asymmetries and costs for the private sector and for the government as well. The exercise of discretion in disclosing or withholding government information has produced relationships of favouritism and corruption, restricting free competition and the optimal allocation of factors of production. Before the revolution, the authorities maintained strict control over private investments, domestic and foreign alike. The new authorities are today aware of the importance of restraining such practices and a number of steps have been taken in this direction.

The *Official Gazette* (*Journal officiel de la République tunisienne,* JORT) is the official source for all laws and legislation, including those governing investment and it can be consulted via the Internet.[5] Economic agents can also obtain the JORT by regular subscription at a nominal fee. The JORT is published in Arabic, the official language as well as in French. Some texts are available in English. French translations of the JORT were not always available in 2011, because of the circumstances of transition, but the authorities have given assurance that this will shortly be rectified. Regulations and laws are also available at the Internet sites of ministries and government agencies which, as part of the e-government programme, now have up-to-date sites containing the laws and procedures governing their sectors of activity. The Internet sites of the Foreign Investment Promotion Agency (FIPA)[6] and the Agency for Promotion of Industry and Innovation (APII)[7] contain information on the legal and regulatory framework for foreign investment. The texts of financial regulations are available at the website of the Central Bank of Tunisia.[8]

Tunisia has also made international commitments in the realm of transparency. Indeed, the Association Agreement with the European Union, which came into force in 1998, and the Free Trade Agreement with the States of the European Free Trade Association (EFTA – Iceland, Liechtenstein, Norway and Switzerland), in effect since 2005, contain provisions to foster transparency and the exchange of information (particularly in case of implementation problems).

New regulations are sometimes the subject of information seminars and awareness campaigns, in co-operation with representatives of the business community, with a view to explaining their content and scope, as well as their practical aspects.[9] However, Tunisia has no systematic, institutionalised mechanism for communicating new regulations or for commenting on laws and regulations prior to their adoption. Nor is there any systematic field of study for evaluating the impact of regulation on trade or investment, before texts are adopted.

Aware of these shortcomings, and facing pressure for freedom of information and greater transparency, the transitional government has taken several measures. It promulgated a Decree Law to promote and institutionalise access to administrative documents of government agencies,[10] consistent with prevailing international practice and standards. This project, known as open data, includes the establishment of a national portal.[11] An official circular has encouraged departments and agencies to adopt and develop information systems. The government has also announced a medium-term plan to prepare a law on freedom of information.[12]

Transparency is today a common topic of debate in Tunisia. Some stakeholders interviewed during the OECD mission mentioned that transparency had improved following the revolution, but there were still obstacles, in particular problems of organisation and lack of means. Others cited such reasons as the sensitivity of information and its possible socioeconomic repercussions in the context of a fragile transition, as well as the scattered location of information.

The Tunisian authorities are encouraged to make use of the good practices of countries adhering to the OECD Declaration on International Investment in order to enhance transparency and predictability, as indicated in Chapter 1 of the *OECD Policy Framework for Investment User's Toolkit*.[13] This chapter recommends, *inter alia*, active consultation with firms and other stakeholders before amending laws and regulations and the use of Regulatory Impact Analysis tools.

Reducing administrative obstacles to investment

The former regime had taken some steps to simplify procedures and eliminate unnecessary administrative burdens for investors: these were often pursued in parallel, and their impact was uneven. The World Bank's report, *Investing across Borders 2010*, shows that a foreign investor seeking to start a business in Tunis will need 19 days and must complete 14 different procedural stages, four of which are specific to foreign investors. This is a cumbersome process compared to regional and global averages.[14]

One of the initiatives taken by the former authorities in 2000 was to create a management unit tasked with eliminating administrative authorisations; its mandate and timetable were revised in 2008.[15] The management unit sought to replace administrative authorisations by a set of general requirements (*cahier des charges*), following a timetable that stretched until December 2009. According to the authorities, in 80% of cases authorisations have been replaced by general requirements[16] defining the conditions and obligations for establishing and running a business, in order to reduce administrative procedures, particularly when launching a new business (OECD-EC, 2008).

Chapters II and III of Law No. 2007-69 of 27 December 2007 on economic initiative are devoted to simplifying administrative procedures. The law indicates that the lists of administrative services provided by government are fixed by decree of the ministries concerned. It specifies that procedures for issuance of the tax identification card, the customs coding and registration numbers for social security and the commercial registry must be completed promptly, provided the required conditions are met. Lastly, the competent administrative units must ensure that firms fulfil the reporting formalities incumbent upon them.[17]

In 2009, the government also adopted a strategy for the development of electronic government, entitled e-strategy 2009-14.[18] This strategy seeks to integrate information and communication technologies (ICT) into administrative work in order to deliver value-added services to users, through: *i)* development of a government web portal; *ii)* development of a services portal; *iii)* standardisation of the government presence on the web; *iv)* an initiative to integrate services; *v)* the launch of a server with administrative forms; and *vi)* preparation of sector e-strategies. According to the *United Nations E-Government Survey 2010*, Tunisia ranks first among African countries in the application of ICTs in government, and ranks 66th worldwide among 192 countries evaluated. This represents a considerable improvement over 2008, when Tunisia ranked 124th.[19]

The transitional government has also taken steps to develop e-government and simplify administrative procedures. It has been working on an action plan to develop the digital economy and has prepared draft legislation on the electronic exchange of legal and administrative data among government agencies and institutions, which has been submitted to the provisional government for adoption.

When it comes to revising and simplifying procedures, the transitional government has adopted the "regulatory guillotine" method. An Executive Order of the Minister of Finance in November 2011,[20] on adoption and implementation of a participatory process for simplifying customs and tax formalities, set out a strategy and a schedule for retaining, simplifying or eliminating 446 formalities (276 relating to customs and 170 to taxation). Reporting to a steering committee chaired by the Ministry of Finance, a technical group is handling the examination and justification of formalities. A business advisory group, comprising tax and customs experts and company representatives, is responsible for commenting on the proposed reforms. Each expert or company is supposed to examine at least five formalities, using a questionnaire available at a restricted-access Internet site. The project has a short timescale the lists of formalities and their reforms had to be submitted to the government by the end of February 2012.

The initiatives taken by the transitional government to reduce administrative obstacles and to ensure transparency (see above) reflect the urgent need to implement reforms that will improve and simplify administrative procedures in order to enhance the business climate in Tunisia. Good practices in adhering countries for investment approval mechanisms include: establishing clear deadlines for taking decisions, the application of the rule "silent consent", and the possibility for investors to appeal negative decisions.

Property rights

Under Article 14 of the Constitution, the right to own property is guaranteed and exercised within the limits stipulated by law. Property title and ownership rights have been registered in Tunisia since 1 July 1885 by the *Conservation de la propriété foncière* (Land Property Registry, CPF),[21] which was created at the same time as the *Tribunal immobilier* ("real estate tribunal") and the *Office de topographie et de cartographie* (Office of Topography and Cartography), with a view to instituting a complete property ownership system in the country. The CPF was placed under the Ministry of State Property and Land Affairs[22] in 1990, and its activities have consequently changed. It is responsible for:

- Issuance of ownership titles and registration of land transactions concerning those titles.
- Informing the public about the status of ownership title and delivering certificates.
- Archiving of documents.
- Drafting of official acts.

Property ownership has seen tangible advances in terms of the registration and updating of land titles and the regularisation of communal lands. Several mechanisms have been introduced to promote property registration and reduce the number of procedures involved in the registration of property titles. These measures have improved Tunisia's ranking *vis-à-vis* the average for OECD countries in terms of the number of procedures involved in property transfer – on average, Tunisia has four procedures and OECD countries have five – according to the World Bank's *Doing Business* report. The Property Ownership Directorate has been considerably strengthened in terms of human resources as well as technical means, with implementation of a computerised system that will improve performance and accuracy. Objectives have been set for covering all regions and bringing services closer to the citizenry, as well as for updating property titles using digital techniques.[23] However, further efforts are needed to reduce processing times (39 days versus an average of 31 days for all OECD countries, and 34 for the MENA region), as well as property registration costs (6.1% of property value versus an average of 4.4% for OECD countries and 5.8% from MENA) (World Bank, 2011). Moreover, property registration is poorly co-ordinated and there is no centralised property information system (World Bank, 2010a). Stakeholders indicated during the OECD mission that the territorial coverage of land registration is incomplete, because of the persistence of customary ownership rights.

As stated in Chapter 2, access to property ownership by a foreigner in Tunisia is subject to prior consent of the governor of the region where the property is located. This provision was eased in 2005, under pressure from mixed chambers of commerce, in a move to attract foreign investors. Law No. 2005-40 of 11 May 2005[24] waived authorisation by the governor for the acquisition or lease of real property (lands and buildings) in industrial or tourist zones, for the pursuit of economic projects. This waiver also covers improved lots acquired for industrial or agricultural use in the context of urban development plans.

Foreigners are prohibited from owning agricultural land.[25] However, foreigners may invest in agricultural operations based on the leasing of land. They are allowed to take out long-term leases, but there is a 66% limit on foreign equity holdings in operating companies.[26]

The Investment Incentives Code (Article 52) provides that the land needed for significant project installations shall be made available to investors at a symbolic cost. Awards of this kind are made with the prior advice of the Investment Commission (*Commission supérieure d'investissement*, CSI) based on criteria relating to a project's importance (in terms of investment volume and job creation) or its specific nature.

There are still some shortcomings in Tunisia's property ownership regime. Legislative provisions are scattered among many texts and time-consuming procedures prevent the owner from exploiting his land and obtaining bank credit.[27] Three tribunals (the real estate tribunal, the administrative tribunal and the judicial tribunal) are involved in settling ownership problems, leading sometimes to contradictory rulings. Surveys and testimonies, which have been carried out since the revolution have revealed some deterioration in the situation of property ownership, and of State property in particular, with the illegal takeover of some lands and political interference in decisions over title and ownership.[28] This has had adverse effects on certain agricultural lands, where farming has ground to a halt. The executive branch has also involved itself at times in questions where changes are, in principle, the prerogative of the legislature: for example, the use of a given agricultural property. Stakeholders consulted by the OECD mission also mentioned the lack of transparency in the process by which governors authorise the acquisition of real property by foreigners and suggested that elimination of this rule would accelerate the real estate market in Tunisia.

The transitional authorities insisted that the land registry was well managed and capable of dealing with the new challenges. However, some difficulties are apparent: for example, land sales can be chaotic when the registration obligation is not respected. The status of certain lands that were expropriated under the old regime continues to pose a challenge for the provisional government appointed in November 2011. The National Commission on Expropriation created by decree laws in March 2011[29] was commissioned with the task of confiscating the assets and holdings of the President and his coterie. Appropriate solutions for each case of expropriation must now be found and implemented.

Intellectual property rights

The protection of intellectual property rights is a key component of a climate propitious to foreign investment. Tunisia has accepted international commitments and has adopted national legislation to respect such rights. As a member of the WTO, it has ratified the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and it has been a member of the World Intellectual Property Organisation (WIPO) since 1975. Tunisia has signed the international conventions mentioned in Annex D. It is currently considering accession to the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.[30]

The free-trade agreements that Tunisia has signed contain provisions on intellectual property and call for adequate, effective and non-discriminatory protection of intellectual property rights, generally with the possibility of consultation in case of enforcement difficulties.[31]

Intellectual property is protected by the provisions of domestic law. Tunisian legislation covers all fields of intellectual property: *i)* industrial property (patents, trademarks and service marks, industrial models and designs, layout designs of integrated circuits); *ii)* new plant varieties; *iii)* appellations of origin and geographic indications; and *iv)* literary and artistic property. Tunisia notified its legislation for the protection of intellectual property rights to the WTO TRIPS Council in November 2001.[32]

The fight against counterfeiting is governed by Tunisian legislation on intellectual property, specifically Law No. 2001-36 of 17 April 2001 on the protection of trademarks. This law was amended by Law No. 2007-50 of 23 July 2007 to reinforce penalties for counterfeiting and to authorise economic control agents and customs officials[33] to inspect for violations of the law and to perform provisional seizure of products suspected of being counterfeit.

The *Conseil national de lutte contre la contrefaçon*[34] (National Counterfeit Control Board) was created by Decree No. 2009-418 of 16 February 2009. It may take civil, penal and administrative proceedings against any person who violates intellectual property rights. The owner of an intellectual property right has a private monopoly on its exploitation, and counterfeiting is punished.[35] In terms of training and awareness-raising, the WIPO and the National Institute for Standardisation and Industrial Property (INNORPI) signed a letter of intent in June 2010 to create a National Training Academy in the field of intellectual property;[36] this project is now underway.

With respect to data keeping on enforcement of legislation for the protection of intellectual property, and counterfeiting in particular, the INNORPI, the Tunisian Copyright Protection Organisation (OTPDA) and the Centre for Legal and Judicial Studies (CEJJ) each has a documentation and information unit dealing with the scope of application of Tunisian legislation for the protection of intellectual property and in particular on lawsuits concerning counterfeit.

The legislation is not thoroughly enforced, however. For example, a study by the Business Software Alliance points to a high rate of software piracy in Tunisia. In 2010, the software piracy rate was estimated at 72%, compared to a global average of 42%[37] Tunisia's ratification of international conventions on intellectual property and measures to bring Tunisian legislation into conformity with international standards must therefore be accompanied by more sustained efforts to ensure stricter enforcement, in particular through campaigns targeting producers and importers of counterfeit goods and action plans to combat piracy.

Contract enforcement system and dispute settlement mechanisms

Investors need an effective and transparent legal system to carry out their contracts and settle trade disputes. According to the World Bank's *Doing Business 2012*, enforcing a contract in Tunisia requires 39 procedures, takes 565 days,[38] and costs 21.8% of the value of the claim,[39] which is above the average for OECD countries and places Tunisia in 76th position worldwide for this indicator. The Economic and Social Development Strategy 2012-16, formulated by the transitional government, noted that the lack of transparency and the slow workings of the justice system, combined with the absence of dialogue, the communication deficit and the inadequacy of information, have been important factors in the deterioration of the business climate in Tunisia.

Contract law in Tunisia is governed primarily by the Code of Obligations and Contracts (COC), the Code of Real Rights (CDR) and the Code of Civil and Commercial Procedure, as amended repeatedly.[40] Jurisdictional organisation embraces a set of jurisdictions, some of which having general competence and others limited competence. Administrative jurisdiction lies with the administrative tribunal[41] and financial jurisdiction with the Court of Accounts,[42] Judicial jurisdictions include the court of annulment (*cassation*), the appeal courts, the trial courts, cantonal judges and the real estate tribunal. These jurisdictions have competence to hear civil and penal disputes between persons residing in Tunisia, regardless of their nationality. Article 40 of the Code of Civil and Commercial Procedure, amended in 1995, calls for creation by decree of special chambers within trial courts to hear commercial cases. They have competence to rule on disputes between merchants, including those concerning intellectual property. Commercial chambers have now been created in 10 courts of first instance across the country.

The commercial chamber is of mixed composition (magistrates and representatives of commerce). Two merchants are appointed, in an advisory capacity. They are selected from a list of merchants proposed by the most representative professional organisation, and must have been registered in the registry of commerce for at least 10 years. Again according to Article 40, "the president of the commercial chamber may charge one of the members with attempting conciliation among the parties, who may at any phase of the proceedings request the chamber to decide the dispute according to the rules of equity". Magistrates who are members of the commercial chamber do not receive any specific training in this area.

Article 67 of the Investment Incentives Code stipulates that the Tunisian tribunals are competent to hear any dispute between a foreign investor and the Tunisian State, but it allows for resort to arbitration if this is covered by a contractual clause or an investment treaty.

The Arbitration Code was adopted in 1993,[43] and adheres closely to the model code of the United Nations Commission on International Trade Law (UNCITRAL). It establishes procedures for both domestic and international arbitration (see below). The Conciliation and Arbitration Centre of Tunis, a private non-profit Tunisian association, was created in 1996, at the initiative of the University of Tunis and the employers' organisation (UTICA), as well as of several chambers of commerce, professional colleges and organisations practising arbitration. It provides arbitration training, hosts an annual international conference, and conducts arbitration under the Tunisian Arbitration Code. Lastly, Tunisia signed the Arab (Amman) Convention on commercial arbitration in 1988.

Expropriation procedures

Whenever a government exercises its legitimate right of expropriation, it is obligated to compensate the owner. This is an important guarantee for any investor. Compensation must be fair and adequate, paid promptly following expropriation on stated public-interest grounds, without discrimination and in accordance with a lawful procedure.

Tunisian legislation on expropriation dates from 1976 and was amended in 2003.[44] The 2003 amendment calls for creation of a "recognition and conciliation commission" for each governorate, presided over by a magistrate, whose principal role is to strive for an agreement among the parties concerned by the expropriation, particularly as to the value of the property to be expropriated.

The legislation offers owners and right-holders the following guarantees:

- Expropriation in the public interest must be pronounced by decree, which must mention the project planned for the property to be expropriated.
- The "commission of recognition and conciliation", created within each governorate, must see to the proper conduct of the expropriation, including determination of the value of the property in question.
- The value of compensation for the expropriated property must be set in accordance with its nature and its effective use, and in comparison with prices prevailing in the same zone.
- Taking of possession by the expropriated authority must be subject to payment or deposit of the compensation.
- If there is agreement on the value of the property, a contract of sale must be made. If the commission cannot reach agreement between the expropriating authority and the owners, the compensation is set judicially. If the disagreement persists, the owner, after the promulgation of the expropriation Decree, has the right to appeal to the courts for the compensation he deems due.
- There is a possibility of retrocession if the property has not been used for the intended project within five years.

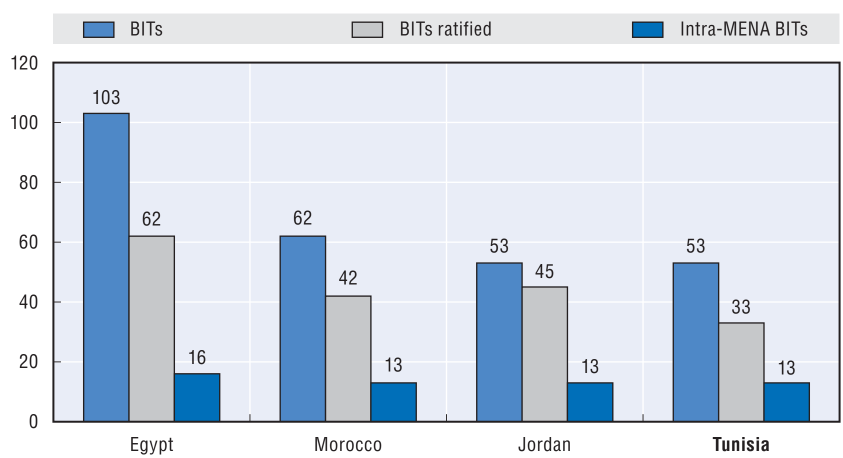
Most of the 53 bilateral agreements for the promotion and protection of investments signed by Tunisia contain provisions on expropriation which, in general, recognise that expropriation must be in the public interest and non-discriminatory and conducted in accordance with due process, with payment of compensation.

Following the events of 14 January 2011, Decree Laws No. 2011-13 of 14 March 2011 and No. 2011-47 of 31 March 2011 (supplementing the former) were published on confiscation by the State of assets and of movable and immovable property acquired after 7 November 1987 by the former president, his spouse and persons cited in an annexed list, as well as all persons who had obtained funds, properties or rights resulting from their relationship with those persons. Judicial administrators were appointed for every enterprise subject to such confiscation. The authorities have notified the confiscation of 117 enterprises and an expropriation commission has been constituted to monitor the cases. According to Tunisian authorities, this expropriation has not affected the rights of creditors to assert claims constituted before 14 January 2011, nor has it affected foreign investors' holdings in mixed enterprises[45] (Box 4.3).

Investment promotion and protection agreements

Tunisia has signed 53 bilateral investment promotion and protection treaties (BITs), including 20 with member countries of the OECD, 4 with non-member countries subscribing to the Declaration (of which there are nine) and 13 with countries of the MENA region (Annex C). An agreement has also been signed with the Arab Maghreb Union (AMU). Tunisia ranks fourth in the MENA region in terms of the number of BITs it has signed, after Egypt (103), Morocco (62) and Kuwait (55) (Figure 4.3). Thirty-three of these agreements are in force.[46]

Figure 4.3. **Regional comparison of signed and ratified bilateral investment promotion and protection treaties**



Source: UNCTAD, Kluwer Law International.

Tunisia's BITs represent a fairly conventional approach and take little account of recent developments in investment law. The available agreements generally contain a broad definition of investment, national and most-favoured-nation treatment, with provisions governing expropriation and free transfer of funds (sometimes with reference to fair and equitable treatment) and provisions on the settlement of investor-State disputes with the possibility of recourse to international arbitration.

To encourage foreign investment and strengthen economic relations with its partners, Tunisia has also concluded double-taxation agreements with 53 countries, including 22 OECD members and 4 AMU countries (Annex D). The provisions of those agreements draw heavily on the OECD model tax conventions and are designed to eliminate or alleviate double taxation of income and capital.

Tunisia has also negotiated an Association Agreement with the European Union, which was signed in 1995 and came into force in 1998. It contains an article on the promotion and protection of investments which calls for the creation of a climate favourable to investment flows, through: "*a)* the establishment of harmonised and simplified procedures, co-investment machinery (especially to link small and medium-sized enterprises) and methods of identifying and providing information on investment opportunities; *b)* the establishment, where appropriate, of a legal framework to promote investment, chiefly through the conclusion by Tunisia and the Member States of investment protection agreements and agreements preventing double taxation" (Article 50). The EU-Tunisia Task Force, which met in September 2011, raised the issue of negotiations of a Deep and Comprehensive Free-Trade Agreement[47] with investment protection provisions. The negotiating mandate was decided in December 2011[48] and the timetable was discussed during the visit of the head of government to European institutions in early February 2012.[49] In April 2012, the Economic Investment Council was established to strengthen co-operation between the EU and Tunisia.

The Free-Trade Agreement with EFTA contains a short chapter on investment, which calls for the creation of stable, favourable and transparent conditions, full protection and security, and fair and equitable treatment (Article 24). Another article is devoted to investment promotion through co-operation mechanisms (Article 25). The Free-Trade Agreement with Turkey came into force in 2005. It contains no provisions on investor protection, referring only to promotion through enhanced co-operation.

In addition to the BIT with the United States (1990), Tunisia signed a Trade and Investment Framework Agreement in 2002, but its provisions are confined to the promotion of investment. In September 2011, the two parties agreed to revive the framework agreement and to hold a meeting of the joint Council in the coming months. The United States also launched an initiative (the MENA Trade and Investment Partnership) aiming to boost trade and investment in North Africa and the Middle East.

At the regional level, Tunisia has adhered to the investment instruments of the League of Arab States, including the Unified Agreement for the Investment of Arab Capital in the Arab States of 1980. That agreement contains detailed provisions on investment protection and promotion and establishes the Arab Investment Court. Tunisia is signatory to the Agreement on Promotion, Protection and Guarantee of Investments among the Member States of the Organisation of the Islamic Conference. Lastly, as noted above, it has signed a BIT with the Arab Maghreb Union (AMU). However, as a reflection of the low level of intra-regional investment and their lack of implementation, these regional agreements are not widely known or used by foreign investors.

The Tunisian authorities are encouraged to improve their practice with regard to investment treaties in order to enhance investor security while at the same time meeting national development targets. Preparations for future negotiations, with the European Union in particular, are proving very important. Another goal should be to bolster regional integration in the realm of investment and to harmonise regional frameworks by reviewing and revitalising regional instruments (such as the Agadir Agreement, instruments relating to investments by the Arab Maghreb Union and the League of Arab States, including the Arab Investment Court).

International arbitration

By Law No. 66-33 of 3 May 1966, Tunisia ratified the International Convention for the Settlement of Investment Disputes between States and Nationals of Other States, and thereby became a member of the International Centre for the Settlement of Investment Disputes (ICSID). The bilateral investment promotion and protection agreements signed by Tunisia contain provisions for the settlement of investor-State disputes, most of which provide for recourse to ICSID arbitration. In 1967, Tunisia also acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, ratified on 10 June 1968.

The Investment Incentives Code authorises resort to arbitration if so provided in an investment contract or treaty. It states that "Tunisian tribunals are competent to hear any dispute between a foreign investor and the Tunisian State, unless there is prior agreement in a contractual clause requiring or allowing one of the parties to resort to arbitration according to *ad hoc* arbitration procedures or the conciliation or arbitration procedures" provided for in a BIT, the ICSID Convention, the Convention establishing the

Inter-Arab Investment Guarantee Corporation, or any other convention ratified by Tunisia.[50]

Tunisia has often indicated its willingness to promote international arbitration. The Tunisian Arbitration Code contains provisions on international arbitration, based on the UNCITRAL model law.[51] It contains provisions on the composition and competence of the arbitral tribunal, the conduct of arbitration proceedings, the award, recourse against the award (which must take the form of an appeal for annulment by the Tunis Court of Appeals) and recognition and enforcement of awards, which can be refused only on stipulated grounds, and in particular if the award is contrary to public order (*ordre public*). According to the Code, arbitration is not applicable "in disputes concerning the State, public administrative establishments and local governments, except for disputes flowing from international economic, commercial or financial relationships" governed by international arbitration.[52] Thus, the Code places no obstacle to arbitration of disputes between a foreign investor and the State, given their international nature. On the other hand, local investors cannot seek arbitration for their commercial disputes with a State enterprise.[53]

According to the *Investing across Borders 2010* report of the International Finance Corporation (IFC), enforcement of an arbitral award rendered in Tunisia requires an average of 47 weeks, compared to an average of 51 weeks for a foreign award: this is twice the world average.

Tunisia has been involved in three disputes, two before the ICSID and one before the Arab Investment Court. In *Ghaith R. Pharaon* v. *République tunisienne*, the two parties reached an amicable settlement. The case of *ABCI Investments N.V. v. République tunisienne* is still pending. In the case submitted to the Arab Investment Court, *Tanmiah v. République tunisienne,* the court ruled in favour of the State (Box 4.2).

Box 4.2. **Investor-state disputes involving Tunisia**

Pharaon *vs.* Tunisia, ICSID, ARB/86/1

This case concerned a tourism complex project and was brought in 1986 before the ICSID by Gaith R. Pharaon, a Saudi investor. Following constitution of an arbitral tribunal by the ICSID Secretariat and delivery of an order on provisional measures, the dispute was finally resolved on an amicable basis between the claimant and the Tunisian State in 1988, under the Washington Convention and the bilateral investment protection and promotion agreement between Tunisia and Saudi Arabia. Arbitration proceedings were therefore terminated, following withdrawal of the complaint.

Box 4.2. **Investor-state disputes involving Tunisia** *(cont.)*

Tanmiah for Management & Marketing Consultancy *vs.* Tunisia, Arab Investment Court, 1/1 Q, IIC 238

The Tanmiah case was the first dispute heard by the Arab Investment Court, 20 years after signature of the treaty establishing this inter-state jurisdiction under the auspices of the League of Arab States. It concerned a dispute between a Saudi investor, Tanmiah for Management and Marketing Consultancy and the Tunisian government, as well as the Organising Committee for the Tunis Mediterranean Games of 2001, a body established by the government. The dispute concerned a concession contract concluded in 1999 between the two parties, and granting the investor, in return for payment of USD 4.5 million, a contract for organising the games, including their audiovisual re-transmission and publicity and related operations. According to the claimant, the committee had committed several contractual violations, and in particular had breached the exclusivity clause *vis-à-vis* its co-contractor. The investor sought reparations for moral and financial damages caused by the alleged contractual violations, in the amount of USD 68 million. In its defence, Tunisia argued that the investor was in default with its payment, and that there was no real investment that might justify compensation for loss. In 2006 the court rejected the claims of the Saudi claimant, after first dismissing the demand of the Tunisian government to be excluded from the case. According to the court, the fact that the organising committee for the games had an independent legal personality did not absolve the Tunisian State from joint responsibility for performance of the contract. On the merits, however, the investor's claim for damages and financial compensation was fully rejected. The court thus concluded that the Tunisian State had not committed any contractual violations, and that in any case the claimant had not for its part made the payments required of it. The court based its decision on a purely factual analysis of the case, without mentioning the underlying law. It may be noted that the president of the court expressed a dissenting opinion, considering on one hand that the applicable law was Tunisian law and, on the other hand, that there had been contractual breaches on the part of both the investor and the government.

ABCI Investments N.V. *vs.* Tunisia, ICSID, ARB/04/12

This case, which is still pending, was registered with ICSID on the 6 April 2004. It concerns the acquisition of shares in a banking institution. While no decision on the merits has been rendered, the tribunal has already issued a procedural order (in 2008) concerning the parties' requests for bank guarantees, as well as a decision on objections to jurisdiction (February 2011).

Source: ICSID and articles in specialised journals. For closer analysis of the Tanmiah case, see Ben Hamida W. (2006), "The First Arab Investment Court Decision", *Journal of World Investment and Trade*, No. 7, Geneva, pp. 699-721.

The measures taken by the transitional government with respect to expropriation and support for enterprises in difficulty or that had suffered damage during the events surrounding the revolution have had no direct impact on foreign investors. The investment contracts concluded by the former regime with foreign investors have not been challenged. Consequently, no arbitration procedure has been opened.[54] There is always the possibility, however, that the change in Tunisia's political context will have consequences in the arbitration field (Box 4.3).

Box 4.3. **Arbitration and the new political context in Tunisia**

According to an article by Walid Ben Hamida, lecturer in law at the Université d'Evry, Val d'Essonne, the changed political context in Tunisia could have repercussions on investment arbitration, under two scenarios: a potential challenge of contracts concluded under the former regime and reprisals against investors who had dealings with the former authorities; and potential demands for reparations for damages (fire, destruction or theft) in the wake of the revolution.

Revolutions and regime changes are often accompanied by reprisals against investors who had dealings with the former regime. Such measures may include denunciation of agreements, confiscation of goods, prohibition on managing the investment, the appointment of new directors, or withdrawal of beneficial use and administration of enterprises. In cases where previous agreements are challenged by a government, private investors may enforce their rights through arbitration procedures stipulated in the applicable investment treaties. Governments may, in their defence, argue that the contracts were awarded illegally or through corruption, which raises problems of proof of illegality, statutory time limits, and continuity of the State, to which the arbitrators will have to respond.

At year-end 2011 the Tunisian government had not challenged or denounced any agreements concluded by the previous regime. In Decree Law No. 2011-13 of 14 March 2011, ordering confiscation of assets and movable and immovable property acquired by the former president, his entourage and all persons having obtained funds, goods or rights resulting from the relationship with these persons, the Tunisian government has taken measures of retaliation against certain investors. Those measures, which have resulted in the confiscation of 117 enterprises, have however involved only individuals of Tunisian nationality.

With respect to damages caused during revolts, the question of compensation for loss arises. The question of damages suffered in the revolution is governed by specific provisions in investment treaties, which provide that the loss of an investment following a revolution may give rise to compensation only to the extent that the State pays compensation to its own nationals or to citizens of third states. Consequently, when it comes to damages suffered during the Tunisian revolution, the State is, at a minimum, obliged to grant a foreign investor equality of treatment with nationals and with the citizens of third states.

Box 4.3. **Arbitration and the new political context in Tunisia** *(cont.)*

Three Decree Laws have been issued by the transitional government on measures in support of investors following the revolution, and they apply equally to national and foreign investors. Decree Law No. 2011-40 of 19 May 2011 on compensation for damages caused by the revolution covers material damage suffered directly by economic undertakings as a result of fire, destruction or theft. The State has undertaken to provide partial compensation to enterprises for damages suffered during the revolution. The procedure to be followed for submitting compensation claims has been established.* The Tunisian State is obligated to accord the same treatment to all investors without discrimination. The government has also adopted two Decree Laws on behalf of victims of the revolution: Decree Law No. 2011-29 of 18 April 2011 on specific measures of support for the continued operation of enterprises exercising a commercial activity, and Decree Law No. 2011-53 of 8 June 2011 on enterprises operating in the tourism area (Box 4.4). These three Decree Laws grant the same treatment to Tunisian and foreign enterprises. Provided they are applied effectively and without discrimination, there can be no grounds for arguing incompatibility with Tunisia's commitments under the investment treaties.

Lastly, the clause concerning security and protection contained in certain BITs concluded by Tunisia could be invoked to claim compensation from the Tunisian State if it were demonstrated that the State had failed in its duty of protection. As of year-end 2011, no such action had been taken along those lines.

* Decree No. 790 of 27 June 2011.

Source: Ben Hamida, W. (2011), "L'arbitrage et le nouveau contexte politique en Tunisie", *Bulletin de l'Association suisse de l'arbitrage*, Volume 29, No. 4.

Investment promotion and facilitation

Investment promotion and facilitation measures, including incentives, can be effective instruments for attracting investment, provided they are designed to enhance a country's investment framework and are co-ordinated and readily accessible. The promotion of investment and economic initiative has been a Tunisian priority in successive four-your development plans. The 1972 law and the subsequent Investment Incentives Code of 1993 instituted an offshore regime, granting significant incentives to firms wholly engaged in export. The 2007 law on economic initiative has updated the Investment Incentives Code and the Commercial Corporations Code and redefined the enterprise promotion policy. At the institutional level, the Agency for Promotion of Industry and Innovation (APII) and the Foreign Investment Promotion Agency (FIPA) were created in 1972 and 1995, respectively.

However, despite the regulatory provisions and the institutional framework in place, investment was held back by the interventionist and centralised character of the old regime, the want of confidence that permeated the business climate, particularly for national investors, and the lack of economic and entrepreneurial freedom. Moreover, foreign investments in Tunisia have had a limited impact in terms of employment and also of regional development (which was an objective of specific provisions in the Investment Incentives Code). Strategic choices geared essentially towards export in addition to a preferential offshore regime have done little to stimulate the local economy through indirect job creation or business partnerships with local SMEs, nor have they favoured the transfer of technology and the employment of more highly skilled personnel.

The changes of early 2011 have given new life to investment promotion policy. The transitional government has taken prompt steps to support and maintain existing investments, national or foreign, which were affected by the events of the revolution and its aftermath (Box 4.4). It has announced a revision of the Investment Code in order to guarantee investors a stable, transparent and predictable environment. It has defined a strategy that recognises the need to attract foreign investments in support of the country's

Box 4.4. **Measures in support of enterprises that suffered damages during the revolution**

Following the revolution of 14 January 2011, the transitional government adopted Decree Law No. 2011-9 of 28 February 2011 on specific measures of support for economic enterprises to continue their activities, and Decree No. 2011-301 of 14 March 2011 established the procedures for its application. This Decree Law covers manufacturing and certain service enterprises that suffered damage as a result of fire, destruction or looting, or that saw their activities significantly reduced or halted, thereby impacting their turnover, their debt, or their customer relations in ways directly linked to the exceptional situation.

Under this legislation, affected enterprises are eligible for the following benefits:

- The State will take responsibility for 50% of the employer contribution to the national social security system, on salaries and wages paid to employees affected by the measure reducing work time by at least eight hours a week because of the slowdown in activity.
- The State will take responsibility for the employer contribution to the national social security system, on salaries and wages paid to employees laid off by enterprises.
- The State will take responsibility for the difference between the lending interest rate and the average money market rate for loans to reschedule overdue maturities and for loans to finance the repair of damages, and it will create a guarantee mechanism for the loans granted.
- Payment of corporate tax for the year 2010 is deferred.

Similar provisions have been adopted for enterprises operating in the tourism sector (Decree Law No. 2011-63 of 8 June 2011).

development and to diversify the destination of foreign investment and partners. These initiatives have been taken up by the provisional government stemming from the October 2011 elections, which has announced that the new investment code would be adopted in 2012.

Investment promotion strategy

The 11 development plans that Tunisia has adopted successively since independence have defined the official strategy for the business climate in general and for investment in particular. These plans have sought to achieve strong and sustainable growth based on boosting the economy's competitiveness, consolidating the macroeconomic situation, cleaning up public finances and instituting structural reforms.[55]

Tunisia's investment promotion policy covers both national and foreign investors and all types of enterprises – large, medium and small. Beyond implementation of the legal framework described above, the investment promotion strategy seeks to promote local development by offering incentives to invest in "zones of encouragement for regional development"[56] and to support priority sectors such as the engineering, electrical and electronic industries, new information and communication technologies, aeronautics, biotechnology, agribusiness, and textiles and clothing.

The development of an economic environment conducive to entrepreneurship is enshrined in the law on economic initiative (Law No. 2007-69 of 27 December 2007). That law is intended to foster the creation and development of enterprises through: *i)* improving the business environment; *ii)* protecting "small" investors; *iii)* facilitating access to finance; *iv)* promoting small enterprises; *v)* encouraging private investment; *vi)* developing exports; and *vii)* furthering regional development.

The Economic and Social Development Strategy 2012-16, adopted by the transitional government in September 2011, sets out the broad lines of an in-depth global integration strategy to boost foreign investment, raise productivity and accelerate the structural transformation of the economy. It also calls for preparation of a new investment code (Box 4.5). The New Tunisia Development Strategy, as presented by the government in May 2012, is based on the same principles, reiterates the revision and re-arrangement of the regulations governing investment and has announced institutional reforms (Box 1.1).

Investment promotion agency

There are several complementary institutions responsible for investment promotion in Tunisia: the Foreign Investment Promotion Agency (FIPA),[57] the Agency for Promotion of Industry in Innovation (APII),[58] the Agricultural

Box 4.5. **Objectives of the new investment code, according to the Economic and Social Development Strategy 2012-16**

The new investment code will be "simple and transparent, it will translate the new priorities of Tunisia and maximise the impact of investment on development. It will favour the knowledge economy, qualified employment, balance among regions, skills creation, innovation, productivity, technological development, risk-taking, public-private partnership and global integration through exports, foreign direct investment, and the establishment of Tunisian enterprises abroad. It will enshrine the principle of freedom of initiative and investment and will eliminate the tax and administrative distortions that now exist due to selective and discretionary rules and practices. It will attract talent, in particular Tunisian talent abroad, and it will foster the emergence of national champions of a critical size that will make them competitive on domestic and foreign markets. Lastly, it will contain specific incentives, such as good governance, skills training, infrastructure, agriculture and artistic and cultural creation, as well as time-bound incentives for emerging sectors and sectors in difficulty."

Source: Economic and Social Development Strategy 2012-16.

Investment Promotion Agency (APIA),[59] the Tunisian National Tourism Office (ONTT) and the Public Economic Interest Business Centres (*centres d'affaires d'intérêt public économique*, CAIPE).

Created in 1972, the APII is tasked with implementing government policy to promote manufacturing and innovation through its regional offices and its network of one-stop shops covering the country's 24 governorates.[60] The APIA and its 24 regional offices promote investment in agriculture, fisheries, related services, and initial transformation activities integrated into agricultural projects. The 24 CAIPEs, established in 2005, operate as a network with the objective of facilitating project implementation and providing services to promoters for launching or developing their projects[61] (Box 4.6).

The promotion of FDI is mainly in the hands of FIPA, a government agency created in 1995 under the Ministry of Investment and International Co-operation (MICI). FIPA is the primary point of contact for foreign investors and is responsible for attracting and supporting them. It conducts promotion and prospecting work in Tunisia and abroad to identify and recruit new investors. Its mandate also covers the operational phase, in co-operation with the Ministry's Directorate General for Foreign Investment (DGIE). FIPA is also tasked with boosting Tunisia's image through communication and promotion campaigns of a general and a sectoral nature, focused on the advantages of a Tunisian location. FIPA co-operates with the sectoral agencies, for example

Box 4.6. Activities of the *Centre d'affaires d'intérêt public économique* (CAIPE)

The CAIPEs offer support for carrying out projects in various economic sectors (manufacturing, services, agriculture, commerce, crafts, light industries and tourism) by providing promoters and investors with the services they need to launch or develop their projects, in particular:

- Information for entrepreneurs, promoters and investors on procedures for creating enterprises, the advantages and incentives for which they may be eligible, potential installation sites, and promising opportunities for investment and partnership.
- Support for promoters at the various stages of start-up and follow-through with their projects, especially in the preparation of feasibility studies and finalisation of the financing plan.
- Availability, for lease or rent by promoters and investors, of offices equipped with means of communication and basic services.
- Seminars for promoters and investors to inform them of the region's comparative advantages.

Source: www.caipe.tunisieindustrie.nat.tn.

APII for industrial projects, APIA for agricultural projects, ONTT (National Tourism Office) for tourism projects, and CPTIC (ICT promotion unit of the Ministry of Information and Communication Technologies) for ICT projects. It acts as co-sponsor with these institutions for promotional events in Tunisia and abroad and for business meetings with foreign and Tunisian investors. It also co-operates with the Tunisia Export Promotion Centre (CEPEX) to run Tunisian stands abroad. FIPA has its headquarters in Tunis, and maintains several representation offices abroad (Paris, Berlin, Madrid, London, Cologne, Brussels and Tokyo).

FIPA has a total staff of 73, including eight officers abroad and its annual budget in 2011 was EUR 4 million. It operates under a five-year programme contract with the responsible ministry. This contract is based on a targeting strategy (country/region/sector) with two aspects: a proactive strategy for sectors with particular international potential[62] and a responsive strategy of training and assistance for other sectors.

The agency has established a performance evaluation system. Its activities are monitored by an intranet system that can be used for the evaluation of promotional work and contacts, the monitoring of projects underway, the management of foreign firms established in Tunisia, the management and monitoring of assistance to foreigners (projects and enterprises), the management of lands and buildings, and the management and evaluation of partnerships. The agency prepares an annual activities report which is validated every three months by its Board of Directors. The annual report is not, however, available on the Internet site. FIPA is certified ISO 9001.

A review of the agency's activities over the period 2007-10 shows that the number of contacts made by FIPA officers through headquarters and offices abroad has averaged 1 180 a year and 30% of these were deemed to be worth pursuing. Most of these contacts (84%) were made through the FIPA offices abroad, the bulk of them at trade fairs: 8% of contacts resulted in a visit to Tunisia arranged by FIPA, for an average of almost 100 visits per year.

According to the IFC's *Global Investment Promotion Benchmarking 2009*, FIPA ranks third among investment promotion agencies in the MENA region, but its performance is rated as only average, like that of nearly all agencies in the region. The report indicates that these agencies still have much room for improvement when it comes to customer relations, the processing of requests, and the quality of follow-up services.

Aware of the need to improve its services, particularly in the new political and economic context, FIPA is planning several measures to enhance its working tools, such as reinforcing its quality management system, refining its internal information system, strengthening its institutional capacities, overhauling its website (expanding its toolbox and the FAQ section), and improving the quality of contacts established by its sectoral staff.

The New Tunisia Development Strategy, which was made public in April 2012, calls for creation of a national investment body to co-ordinate the various institutions operating in this area, and of a technical unit tasked with removing obstacles to investment projects.

Rationalising administrative procedures

The one-stop service provider (*Guichet unique*, GU) of the APII covers the various administrations involved in the formalities of creating enterprises, declaring investment projects, and constituting companies. In its current structure, the GU comprises the following offices:

- "Single point of contact" office (*interlocuteur unique*).
- Investment promotion office.
- Corporate documents registration office.
- Tax control office.
- Office of the court clerk.
- Office of the *Official Gazette*.

- Customs office.
- Office of the Ministry of the Interior.
- Office of the Ministry of Occupational Training and Employment.
- Office of the National Social Security Fund.

The GU has direct responsibility for all approval and registration procedures needed to establish national and foreign enterprises. In February 2006, pursuant to an agreement signed between APII and the Ministry of Finance, the "single contact point" was created within the GU to serve as intermediary for promoters in completing the formalities required to constitute their companies. This office is responsible for completing the formalities required to constitute legal persons, a task that it performs on-site and within 24 hours after receiving and reviewing the file. It also handles the formalities for obtaining a customs identification number.

Under the e-government programme, APII has instituted an online mechanism for constituting companies.[63] Using reliable electronic means consistent with the legislation on electronic information exchanges, it offers the possibility of completing the administrative and legal steps needed to constitute joint stock companies, limited liability companies, and sole proprietorship corporations (*sociétés anonymes, sociétés à responsabilité limitée* and *sociétés unipersonnelles à responsabilité limitée*).

Another tool for facilitating investment formalities and avoiding obstacles was instituted in 2010. Decree No. 2010-771 of 20 April 2010 provides for the establishment of investor service units in nearly all ministries, and a central unit in the office of the Prime Minister. They provide a point of contact for investors to help them deal with difficulties encountered during the implementation of their investment projects. The central unit handles cases that are still unresolved after the ministry unit has exhausted all options to avoid obstacles to investment. These service units are geared primarily to helping small investors, but they only recently came into operation. The Ministry of Investment and International Co-operation also has an assistance unit devoted specifically to foreign investors. In 2011, that unit received more than 140 requests for assistance, most of them concerning administrative or social problems.

Other reforms have dealt with transportation issues, facilitation and strengthening of logistics services for foreign trade, reducing the rates and number of customs tariffs to lighten the burden on businesses and move toward establishing a uniform customs regime for imports, regardless of origin, and customs pre-clearance (see the following section on trade policy).

Efforts to streamline administrative procedures for businesses and investors have not had the anticipated effects, as reflected in Tunisia's ranking in *Doing Business 2012*. In fact, Tunisia dropped 10 ranks in one year and in the latest report stands 56th in terms of enterprise creation. Moreover, the transitional government has moved very quickly on initiatives to reduce administrative obstacles to economic operators and to simplify procedures (see the preceding section on investment policy).

Dialogue with investors

Through the Tunisian Union for Industry, Commerce and Crafts (UTICA) and the chambers of commerce (mixed and Tunisian), the business community is being asked to help improve the regulations governing the investment climate. Those institutions are represented within the national thematic councils that bring together various ministries to discuss priority sectors and fields relating to the investment environment.[64] They are also represented in the Economic and Social Council, which is systematically consulted on any measure or reform of business regulations.

The Ministry of Planning and International Co-operation (MPCI), together with FIPA, arranges regular meetings with foreign enterprises through the mixed chambers of commerce. Representatives of all administrations concerned (customs, finance, trade, industry and communications) also participate in these meetings.

National consultations are held on specific issues relating to the business environment, and technical commissions have been established for this purpose. The results of these surveys and consultations are examined by government and generally lead to regulatory adjustments to meet investors' expectations as far as possible. For example, in 2009 a national dialogue on productivity was organised with the active involvement of the business world. The final report from the dialogue contained around a hundred measures and recommendations for boosting productivity in different economic sectors by disseminating a culture of productivity, strengthening the role of enterprises, enhancing the human factor, and introducing structural and sectoral reforms[65]. The Tunisian Institute for Competitiveness and Quantitative Studies (ITCEQ), an agency of the MICI, conducts periodic surveys of business competitiveness: one of the three chapters of those surveys deals with businesses' assessment of the institutional and regulatory environment governing their activity. For example, the last survey covered a sample of 744 Tunisian and foreign firms.[66]

Nevertheless, the dysfunctional aspects of the old regime, such as corruption, clientelism and interventionism, were such that not all stakeholders concerned were involved in the consultations to stimulate entrepreneurship and investment for the overall benefit of the population. Since the revolution, a number of dialogues have been opened among entrepreneurs and have produced important ideas and proposals. New institutions representing the business world have been created (for example, the Confederation of "Citizen Enterprises" of Tunisia – CONECT). Consultation with government is being gradually instituted. The authorities and the European Commission are also planning to create a mixed board of Tunisian and European entrepreneurs to foster a climate of trust among private investors and allow regular dialogue with the Tunisian authorities for reviving economic activity.[67]

The Tunisian authorities are encouraged to expand dialogue with investors – domestic and foreign, small and large, existing and potential, and representing all sectors beneficial to local development. The results of this dialogue should be passed along to the relevant government structures to ensure that the needs and desires of investors and the private sector in general are better taken into account. In this regard, Chapter 2 of the *OECD Policy Framework for Investment User's Toolkit*, which is based on the good practices of adhering countries, is a useful tool for assessment and implementation of active and fruitful consultation with investors.

Investment incentives and obstacles

The Instrument on International Investment Incentives and Disincentives is an integral part of the OECD Declaration on International Investment. It encourages adhering states to ensure that incentives as well as disincentives are as transparent as possible, so that their scope and objectives may be easily determined. The *OECD Checklist for Foreign Direct Investment Incentive Policies* is a handy tool for decision-makers in assessing the usefulness and relevance of investment incentives.[68] The *OECD Policy Framework for Investment* also encourages States to evaluate the level of the tax burden they impose on businesses and their use of tax incentives in light of the government's strategy for investment promotion. Incentives should not be a substitute for, but rather a complement to, a favourable and attractive investment policy.

Foreign investors in Tunisia benefit, on an equal footing with domestic investors, from the tax and financial incentives provided by the Investment Incentives Code and its application decrees. The Code provides for common incentives, incentives for enterprises engaged only in export, and incentives targeting a particular objective such as regional development. Incentives may also be granted case-by-case for projects of particular importance.[69]

The common incentives consist of a tax deduction for profits reinvested up to the limit of 35% of net taxable profits, as well as a reduction in customs duties and suspension of VAT and consumption duties on the equipment needed for the investment.

Incentives for wholly-exporting enterprises (the so-called offshore regime) are the following:

- Full exemption of tax on profits from export for the first 10 years, and payment of corporation tax at a reduced rate of 10% thereafter.
- Full exemption on reinvested profits and income.
- Full exemption from duties and taxes on capital goods, including goods transport equipment, raw materials, semi-finished products and services necessary to the activity.
- The right to sell locally up to 30% of manufacturing or agricultural turnover, after payment of the required duties and taxes (this rate was increased to 50% in 2011).[70]

Specific incentives are offered to promote regional development and agricultural development, to combat pollution and protect the environment (see Chapter 5), to promote technology and R&D, innovative firms, SMEs and investments for support facilities in such areas as education, transport, health and culture.

Lastly, additional incentives are granted case-by-case for projects of particular interest to the national economy. These advantages are granted by decree on the advice of the Higher Investment Commission (CSI) chaired by the Prime Minister. Projects that have benefited from these exceptional advantages to date have been confined essentially to industrial projects in the interior of the country that generally create more than 1 000 new jobs per project.

To foster exports, Tunisia has launched two "free zones" for economic activities: these have an advantageous tax and customs regime and are reserved for enterprises engaged wholly in export.[71] They offer a tax exemption for the first 10 years, total exemption from customs charges (VAT and customs duties) for raw materials, merchandise and equipment, and suspension of VAT on local purchases.

Tunisia, then, has a myriad of tax, financial and customs incentives, as well as property-related benefits (in particular, the purchase of land at symbolic cost), which raises questions about their effectiveness and the accomplishment of their objectives. A study conducted in 2008 by the Tunisian Institute for Competitiveness and Quantitative Studies (ITCEQ), part of the Ministry of Investment and International Co-operation, concluded that despite the scope of the incentives awarded for increasing private investment and attracting foreign investment, the results were not very conclusive.[72] The study noted that the incentives system covers many activities and includes numerous derogations and measures that impose a financial burden on the government budget, or represent revenue foregone.

The *OECD Checklist for Foreign Direct Investment Incentives Policies*[73] is a tool to assess the costs and benefits of using incentives to attract FDI; to provide operational criteria for avoiding wasteful effects and to identify the potential pitfalls and risks of excessive reliance on incentive-based strategies. There are several criteria to consider in implementing an effective investment incentives policy. First, there are the criteria of transparency and non-discrimination. In Tunisia, the numerous and overlapping incentives are difficult for investors to understand. Moreover, it has been recognised that the old regime's system of clientelism allowed enterprises to benefit from significant exemptions and incentives. Surveys conducted by the Arab Institute of Chief Executives (*Institut arabe des chefs d'entreprises,* IACE) in 2011 also showed that the lion's share of the advantages was captured by a minority of large firms (Ghali, 2011), to the detriment of smaller firms.

The proportionality criterion is also important. This involves evaluating whether incentives are producing the expected effects in light of their objectives. As shown by the ITCEQ study, the incentives system has not produced impressive results. It is complex and difficult to manage (Ghali, 2011), and the costs to the budget have become steadily higher. Examinations by the Ministry of Finance have shown that:

- Since the promulgation of the Investment Incentives Code in 1993, the cost of State aid has nearly doubled (173%), rising from TND 393 million in 1994 to 678 million in 2003, and representing a cumulative amount of more than TND 5 billion over that time.
- Tax advantages account for the bulk of that aid, at around 80% of the total, compared to 20% for financial advantages.
- The increase in the volume of financial advantages (302%) was swifter than that for tax advantages (153%) over the period 1994-2003.

Lastly, an efficient incentive system should not operate without evaluation mechanisms. In order to ensure that incentives are fulfilling their objectives, *i.e.* attracting more investment, they need to be subjected to both *ex ante* and *ex post* evaluations to determine their effectiveness and their impact on the national budget. Such cost-benefit studies can also improve the transparency and direction of policies. Tunisia has not undertaken any in-depth evaluations of the cost and benefit of tax measures and other incentives, although a few studies and perception surveys have been conducted. These have shown that the system is complex, non-transparent and cumbersome to manage, both for the government and for businesses, and it is virtually inaccessible to small enterprises. The government has since announced its intention to revise the Investment Incentives Code in order to make it simpler and more transparent, and to revise the system of incentives with time limitations for emerging sectors and sectors in difficulty.[74]

In this process, the Tunisian authorities are therefore encouraged to consult the *OECD Checklist for Foreign Direct Investment Incentive Policies*, which recommend that transparency be an inherent principle of an incentive regime in order to ensure clarity, visibility and predictability for investors. Non-discrimination among foreign investors must also be clearly stipulated. The Checklist reiterates the importance of conducting cost-benefit evaluations, at the same time of the old system in order to understand its shortcomings, as well as of the planned regime through *ex ante* evaluations to assess the impact on investment flows. Lastly, the Checklist recommends reliance on good practices of other countries.[75]

Measures in favour of SMEs and FDI-SME linkages

Small and medium-sized enterprises (SMEs) play a preponderant role in the Tunisian economy, and represent 97% of its economic fabric. A situation report on Tunisia's entrepreneurship support policy was conducted jointly by the European Commission and the OECD as part of the review of the Euro-Mediterranean Charter for Enterprise. It found that Tunisia's enterprise policy has harnessed considerable government resources. The country has made notable efforts in such areas as innovation and the delivery of support systems and services to enterprises,[76] but there is still work to be done in terms of regulatory and administrative simplification, access to financing, and entrepreneurship development and training (OECD-EC, 2008).

Building linkages between SMEs and foreign direct investment (FDI) can be an effective way for foreign and local enterprises to support each others' economic performance (OECD, 2009). The Ministry of Industry has launched an SME-FDI linkage programme within the Agency for the Promotion of Industry and Innovation (APII). The programme relies on a series of support activities: *i)* partnership demonstrations with the support of international chambers of commerce present in Tunisia; *ii)* an information service sponsored by the "subcontracting and partnership exchange" of the APII; and *iii)* "open house" events hosted by multinational enterprises present in Tunisia. However, there has been no assessment of the programme and the number of local firms that may have benefited from it is unknown. A more structured approach to business partnerships could be developed as a way of boosting local enterprises and the value chain.

The Tunisian authorities could draw on the good practices of the adhering countries outlined in Chapter 2 of the *OECD Policy Framework for Investment User's Toolkit*. Examples of these include joining forces with government and the private sector to bolster the capacities of local suppliers; a strategy for attracting investment around investment zones and enterprise clusters; and maintenance of a database of enterprises to facilitate contacts between local and foreign businesses.

International and regional investment promotion initiatives

The Tunisian authorities are co-operating with international organisations to develop a mechanism for investment promotion on the basis of best international practice. Tunisia participates actively in the MENA-OECD initiative on governance and investment in support of development and chairs two regional working groups. Tunisia is also co-operating with the United Nations Conference on Trade and Development (UNCTAD), which published a review of its competition policy in 2006.

Tunisia was one of the founding members of the Euro-Mediterranean ANIMA investment network, which brings together some 20 investment promotion agencies in the region. The main purpose of the network is to raise awareness among participating governments of the need for a stable, dynamic, transparent and equitable investment framework. Tunisia has been a member of the World Association of Investment Promotion Agencies (WAIPA) since it was founded in 1995.

Trade policy

Tunisia's share of world trade is relatively modest, with less than 1% of global exports and imports (WTO, 2010). There was a noticeable recovery in exports and imports in 2010, after declines in 2008 and 2009, with a negative balance of TND 6.35 billion (or nearly EUR 3.2 billion) and a trade-to-GDP ratio of 107%.[77] The country's main trading partners are the European Union (74% of exports in 2010), followed by the Arab countries, in particular those of the Maghreb (11%), and India (2%) (WTO, 2010). Manufactures dominate exports, accounting for more than 75% of total exports in 2010. Since the 1980s, the country's policy has focused on exports and continues to treat the sectors of manufacturing and services (especially those geared to export) as priorities, at the price of some imbalance in the output of goods and services for the local market.

The authorities have made trade integration a priority and have deployed efforts to optimise its benefits. The country has intensified its trade diplomacy efforts in recent years, both multilaterally, by participating in the WTO negotiations and bilaterally with its main trading partners, the European Union and the Arab countries. Despite the impact of the global economic crisis, Tunisia has maintained an open trading regime with limited resort to subsidies and trade protection measures. The country's efforts at trade facilitation have produced significant results, as demonstrated by its 32nd ranking (out of 183 economies) in cross-border trade, according to the World Bank's *Doing Business 2012* report. Notwithstanding these positive aspects, however, Tunisia's trade regime is relatively restrictive; with a simple average of MFN duties of 22% and a number of very high tariff rates (57% of tariff lines have rates higher than 15%). The authorities' trade policy margin, as measured by the gap between bound and applied tariffs, is currently 34%, one of the highest in the MENA region and among WTO member countries.

International trade agreements

As a founding member of the WTO since March 1995,[78] Tunisia pursues a trade policy compatible with its multilateral commitments and with the fundamental principles of national treatment and the most-favoured-nation clause. Since joining the WTO, Tunisia has adapted its national legislation to the provisions of various WTO agreements; in particular, it has adopted a law against unfair import practices (dumping and subsidies)[79] and a law on safeguard measures.

Tunisia has long been engaged in a number of integration processes with countries of the European Union, the Arab countries (and in particular those of the Arab Maghreb) and African countries. Since the signature of the first trade agreement with the European Community in 1969, Tunisia has reinforced its commitment with the signature in July 1995 of the Association Agreement, which came into force in 1998. Tunisia also has a Free-Trade Agreement with the European Free Trade Association (EFTA: Switzerland, Norway, Iceland and Liechtenstein), signed on 17 December 2004. At the regional level, Tunisia belongs to the Greater Arab Free-Trade Agreement (GAFTA) and the Agadir Free-Trade Agreement with Egypt, Jordan and Morocco. It has also signed bilateral trade pacts with most countries in the region (see Annex E).

The authorities insist that there is no contradiction or overlap among these different agreements and that it is for the operator to select the most preferential agreement. The Ministry of Trade also reports that trade of goods among Arab countries of GAFTA, is exempt from customs duties by virtue of that agreement.

The Association Agreement between Tunisia and the European Union is of great importance for the country, as members of the EU are its main trading partners. Since January 2008 Tunisia has completed the dismantling of tariffs on manufactured products by virtue of that agreement, and is therefore in full free-trade status with the EU for manufactures. The agreement also contains provisions on standards, safeguard measures, intellectual property rights and dispute settlement procedures. The European Union and Tunisia in autumn 2011 announced their intention to embark on negotiations for a Deep and Comprehensive Free-Trade Agreement with a goal of building a common economic area. Tunisia and the European Union have in this way launched a new phase of their partnership, to extend the field of liberalisation to trade in services, to trade in agricultural, agribusiness and fishery products and to investment protection. There are also plans to resume negotiations to finalise a special partnership that will formulate a new plan of action in realms of mutual interest.[80]

The Economic and Social Development Strategy 2012-16 calls for a new integration strategy. This strategy will target trade policy reforms for greater integration of new markets, especially in Africa and North America, and to take better advantage of the trading framework with the European Union, the Arab countries, EFTA and Turkey. This reform will reduce the costs of foreign trade transactions and will boost the competitiveness of Tunisian products, striving for higher levels of productivity and better adaptation to external market demands. The strategy also mentions Tunisia's intention to conclude new trade agreements, including free-trade agreements with the United States, Japan, Canada and the regional entities of sub-Saharan Africa, as well as sector agreements (air transport, energy, etc.).

Facilitation of cross-border trade

The Tunisian authorities have taken steps to simplify customs procedures and border controls and to improve foreign trade-related services. The new Customs Code, which came into force at the beginning of 2010, was designed to boost the competitiveness of the domestic economy, to reinforce guarantees and to harmonise the various articles with the national legal system.[81] The Code contains a number of provisions to simplify and facilitate customs procedures, including an integrated automatic system for processing external trade formalities that allows the air or sea carrier to deposit the goods manifest with customs even before the arrival of the aircraft or ship. The electronic processing of customs documents and the use of electronic payment instruments for the collection of duties and taxes are among the recent advances that have helped facilitate procedures and simplify customs clearance for certain types of import and export transactions.[82]

The simplified procedures take the form of initial declarations based on estimates. The new Customs Code introduced agreements between customs and economic operators seeking to benefit from simplified procedures and customs clearance within industrial or commercial establishments. Some beneficiaries of the suspension regimes can be exempted from the obligation to post surety for duties and taxes. The Code also contains provisions for modernising and reconstituting the regimes for bonded (*sous douanes*, *i.e.* under Customs surveillance) transformation and the handling of manufacturing wastes.[83]

In 2000, the government launched the *liasse unique* ("single bundle") project, an important initiative intended to simplify foreign trade procedures, ensure their traceability and reduce port delays, for the benefit of exporters and importers. The authorities have created a special company, Tunisia

Box 4.7. The *liasse unique* ("single bundle") project

The "single bundle" project was developed in order to relate all links in the foreign trade chain so as to exchange dematerialised data and thereby ensure that procedures are handled with the required speed. This project makes it possible to standardise information presentation and coding, rationalise information gathering by government agencies, and reduce costs for businesses. Its aims are:

- Simplification, harmonisation, and standardisation of the forms required by the different Tunisian administrations and organisations when completing the administrative formalities related to the passage of goods via the Tunisian logistic platforms.
- Introduction of electronic information exchange among all parties in the commercial, logistic and financial chain involved in import and export operations.
- Standardised communication interface between the different existing and future information systems in order to speed the reciprocal supply of information and to avoid breakdowns in information circuits.
- Dematerialisation of the information exchanges, hence the progressive elimination of paper documents and related characteristics (in terms of proof, authentication and confidentiality).

There are also plans to modernise data processing of sea shipments and to establish computerised links between operators and the various information systems now existing (Customs, Central Bank, commercial banks, National Ports Office, Foreign Trade Department, Directorate of Quality, etc.) or planned (in other public agencies), which will allow for the paperless exchange of information.

Source: Portal of the Prime Minister's Office, Electronic Administration in Tunisia.

TradeNet, to deal more effectively with beneficiaries and to manage the project and its "virtual one-stop window" platform. This platform allows operators (enterprises, forwarding agents and customs brokers, carriers and maritime agents) to process the various import and export formalities electronically.[84] A November 2011 Executive Order established a timetable for the simplification or abolition of 446 formalities, 276 of which involving customs procedures (see previous section on investment policy).

These trade facilitation measures have improved Tunisia's position in international rankings. According to *Doing Business 2012*, the authorities' efforts have reduced export times to 13 days and import times to 17 days, compared with an average of 24 days for imports and 20 days for exports in the MENA region. Tunisia's Logistics Performance Index (LPI), a World Bank indicator reflecting trade facilitation, is above the averages for the MENA region and the upper-middle-income country group, reflecting a climate more conducive to cross-border trade.[85] The 2010 edition of the World Economic Forum's *Enabling Trade Index*, which considers market access, border administration, transport and communication infrastructure and the business environment, placed Tunisia in the lead among African countries, and 38th out of 125 countries.

The new Tunisian authorities are planning to develop the logistics sector, with a view ofbetter integration with international logistics networks and lower transaction costs related to foreign trade. They are also planning a programme to upgrade logistics services and infrastructure through, among other actions, *i)* the development of port infrastructure; *ii)* development of a national integrated network of logistics zones and platforms close to large consumption centres; *iii)* reorganising and optimising merchandise flows by facilitating customs dealings and improving port management; and *iv)* instituting a policy to promote efficient domestic logistics operators.

The launch of a Deep and Comprehensive FreeTrade Agreement with the European Union should allow Tunisia to take better advantage of the trading framework with its leading commercial partner. Adoption of a new integration strategy should also expand access to new markets, especially in Africa and North America, not to mention the bolstering of intra-regional trade and resumption of trade with Libya. One of the main drivers of productivity and competitiveness is the reform of the services sector. The opening of services markets to competition could offset the costs of adjustment resulting from the liberalisation of trade in goods. It could also create additional investment opportunities for the domestic private sector and attract more in the way of non-debt-generating external financing such as FDI and portfolio investment.

Competition policy

The introduction of competition policy in Tunisia was part of the series of economic reforms undertaken in the second half of the 1980s. Today it is governed primarily by Law 91-64 of 29 July 1991 on competition and prices, subsequently amended five times.[86] This law establishes the rules governing free competition and stipulates obligations for producers, merchants, service providers and other intermediaries to this effect. It also seeks to prevent anticompetitive practices, ensure price transparency, eliminate restrictive practices and illegal price increases, and control economic concentration.

Three authorities are responsible for competition policy: *i)* the Ministry of Trade through the Department of Competition and Economic Investigations (DGCEE) and the regional trade directorates; *ii)* the Competition Board;[87] and *iii)* the administrative tribunal.[88]

The DGCEE determines the general lines of policy, prepares regulations and overseas the functioning of the market and of economic investigations. The Competition Board comprises 13 members[89] and *rapporteurs* responsible for investigating cases. It has a dual mission: litigation and consultation. In its litigation role, the Board rules on applications relating to anticompetitive practices, namely cartel arrangements, abuse of dominant position, economic dependency and cases of unfairly low pricing.[90] In its advisory role, the Board must be consulted by the government on draft regulations that would impose specific conditions for the exercise of an economic activity or a profession or would establish restrictions on market access (such as cases of economic concentration subject to prior authorisation). The sector regulatory authorities may seek the Board's opinion on questions concerning competition. In advisory matters, it is the Minister of Trade who makes referrals to the Board. In litigation matters, cases may be referred to the Board by the Minister of Trade, businesses, consumer associations, chambers of commerce and industry and professional and labour organisations.

With respect to the Board's investigative powers, the *rapporteurs* examine the requests assigned to them by the president of the Board. They verify the documentation and they may summon any natural or legal person to furnish all additional elements necessary to the investigation. They may conduct inquiries and investigations on-site. The ordinary courts are competent to judge restrictive and anticompetitive practices that do not affect market structure, but that concern private business relation. Recourse of appeal and annulment against decisions of the Board is to the administrative tribunal, which also hears appeals against decisions of the Minister of Trade concerning concentration or exemptions. Fines are imposed on operators who have committed offences involving anticompetitive practices or practices that impair price transparency. Offenders guilty of illegal price increases or other illegal pricing practices are subject to sanctions that can be either administrative (closure for up to one month) or judicial (imprisonment).

The powers of the Board have been strengthened by successive amendments to the law. In 2005 it was granted financial and administrative independence, in addition to the decision-making autonomy that it enjoyed since its creation, by an amendment that also gave it the power to undertake investigations at its own initiative (*auto-saisine*) and made it mandatory for the Board to be consulted in advance, on all draft regulations affecting competition. Another amendment modified the conditions for notifying concentrations, raising the notification threshold for firms' turnover in the last fiscal year to TND 20 million from the previous 3 million and making the two notification criteria (turnover and market share)[91] alternative and no longer cumulative. Forty-three concentration operations were notified to the Ministry of Trade between 1997 and 2006, but over half these cases involved simple restructurings or did not meet the notification criteria (UNCTAD, 2006). Since then, the situation has changed, which would suggest that the country's economic agents now have a better understanding of the rules.

The workload of the Competition Board has been growing. The number of cases registered rose from 14 in 2001 to 43 in 2005 and then to 105 in 2009.[92] Of the 105 cases registered in 2009, 28 were contentious cases referred to the Board, 6 were self-initiated, and 71 were for consultation. The number of decisions and convictions has also risen and stood at 31 in 2009 (25 concerning referral cases and six concerning self-initiated cases).

It may also be noted that Tunisia is committed not to distort competition in the context of free-trade agreements with its partners, in particular the Association Agreement with the European Union (Title III, Chapter II), the Free-Trade Agreement with EFTA (Article 17), and the FTA with Turkey (Article 25).

Tunisia's competition policy was the subject of a voluntary peer review by UNCTAD in 2006 and a study by the Arab Centre for the Rule of Law and Integrity (ACRLI) published in January 2010.[93] These studies concluded that the legal framework for competition policy was now in place, owing to early adoption and consolidation over the years. In practice, however, it has been noted that the many derogations from the law, a shortage of technical capacity, inadequate resources and a lack of administrative autonomy have compromised the effectiveness and credibility of the Competition Board. Moreover, monopolies were protected, barriers to market entry were maintained at a high level and anticompetitive practices remained uncontrolled under the former regime.

The UNCTAD and ACRLI studies highlighted a number of areas where improvements could be made: these include strengthening and promoting a culture of competition among consumers and in the line ministries, enterprises and universities (through seminars, training programmes, documentation etc.); the need for studies on the status of competition in various sectors in order to pursue liberalisation and promote competition; facilitation of investigations and inquiries; and stricter sanctions (in particular, a gradual increase in fines).

The transitional government plans to strengthen competition on the domestic market by reducing anticompetitive practices and unfair competition and moving to eliminate barriers to entry and competition in situations of rent-seeking and exclusivity. In the latter case, the focus is on the services sector, especially telecommunications, transport, finance, professional services and commerce, including franchises. There are also plans to strengthen the work of the Competition Board (by giving it total independence, allowing direct referrals, and activating the self-initiation permitted by existing laws) as well as the DGCEE and to develop a culture of competition.[94]

Infrastructure development

Investment in infrastructure is an important pillar for achieving Tunisia's development objectives. The modernisation of infrastructure and the organisation of transport are among the highest priorities of the new authorities. Achievements in terms of transport, electricity, drinking water and new information and communication technologies have been notable, but efforts are still needed to ensure broader territorial coverage, to modernise the networks and to facilitate business.

Tunisia today has a road network of 20 000 km, including 360 km of motorways and there are plans to expand the motorway system to 1 200 km by 2016.[95] The 2 167 km railway system carries nearly 2.1 billion tonnes-km of merchandise and almost 40 million passengers every year. There are currently nine international airports in service, offering an airport capacity of nearly 20 million passengers per year. Seven commercial ports receive some 7 600 vessels a year carrying an average of 30 million tonnes of freight.[96] The electrification rate reached 99.4% in 2006 (98.8% in rural areas),[97] and 100% of the urban population has access to drinking water.[98] The Internet connectivity rate for universities, research laboratories and senior secondary schools (*lycées*) was 100% in May 2011.[99]

Tunisia received a favourable ranking in terms of infrastructure quality in the World Economic Forum's *Global Competitiveness Report 2010-11*, but fell down in the rankings the following year. Tunisia placed 30th in 2010, then 43rd in 2011 (of 142 countries assessed). In terms of the quality of railway and electricity supply infrastructure, it earned scores of 38 and 40 respectively in 2011 (WEF, 2010 and 2011). The World Bank's *Doing Business* report confirms Tunisia's standing in access to electricity, placing at 45th out of 183 economies: the number of procedures and the time needed to complete them are lower than in OECD countries, but the costs (as a percentage of income) are much higher.

This decline in the WEF ranking shows that infrastructure equipment remain significant and that progress to date has not yet succeeded in closing the gaps in terms of access to facilities, which remains uneven across the country. For example, 19% of households in mountain and forest communities of the Northwest had no road or drinking water access in 2011.[100]

Given the importance of the regional dimension for achieving more inclusive and balanced development in Tunisia, the Economic and Social Development Strategy 2012-16 formulated by the transitional government places great emphasis on investment in infrastructure in the hinterland. The strategy calls for integrated development programmes for 100 priority *délégations* at the regional level and 100 urban zones and a multiyear investment programme to speed infrastructure development in these regions. It will focus on developing networks, in particular a motorways network, a high-speed telecommunications network and a network of gas pipelines linking all interior regions to the rest of the country. An industrial and technological platform supported by an investment fund is planned in every governorate and "competitiveness centres" (*pôles de compétitivité*) will be established across the territory. Other priorities of this investment plan include strengthening agricultural and irrigation infrastructure as well as providing better environmental protection. Stakeholders also mentioned to the OECD mission the need to develop ports in order to open up interior regions and create channels for marketing their products.

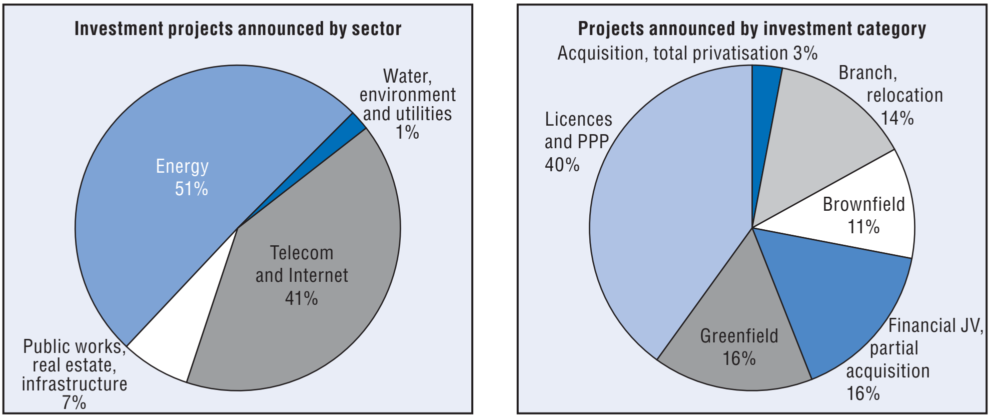
In terms of financing sources, the Tunisian authorities would like to expand the range of financial instruments by creating a Tunisian *Caisse des dépôts et consignations* ("deposits and consignments fund", CDC), with support from the French CDC and the Moroccan *Caisse de dépôts et de gestion*. The purpose of this institution, established by a Decree Law of September 2011 and in the process of becoming operational, is to support public investment efforts, especially in the regions.[101]

Private sector participation in infrastructure

The authorities have opened several sectors to competition and private capital: these include energy, telecommunications, transport and services related to water, such as waste treatment and sanitation (World Bank, 2011b). Foreign direct investment in energy and telecommunications alone totalled EUR 8.4 billion between 2003 and the first half of 2011, with a preponderance of projects involving concessions and public-private partnerships (PPP) (ANIMA, 2011) (Figure 4.4). The mobile telephone market has been liberalised for several years and provides quality service, although its cost is still high (Arab Advisory Group, 2011). A law allowing electric power generation concessions to be granted to private investors was promulgated in 1996, stripping the Société tunisienne de l'électricité et du gaz (STEG) of its monopoly over generation (but not over distribution). Several concessions have been let in this field since 2000: the most important are the construction of two privately-owned combined-cycle power stations, the output of which covers 24% of the country's needs (UNCTAD/DGCEE, 2009).

Unscheduled air freight and passenger transport services have been open to private initiative since 1996, but foreign investment in these companies is still limited to 49% of capital. International air transport is to become part of the Open Sky regime in 2012. (The Open Sky agreement is now under negotiation with the EU and would integrate Tunisia *de facto* into European

Figure 4.4. **Foreign direct investment in infrastructure in Tunisia**



Source: ANIMA/MIPO (cumulative 2003 – mid-2011)

airspace with no route or capacity limits). Urban transport has been open to private initiative since 1989, and four private operators are currently running 38 bus lines in greater Tunis. The port freight-handling market has been opened to competition, although the *Société tunisienne d'acconage et de manutention* (Tunisian Stevedoring and Handling Company, STAM) still dominates the market, handling more than 95% of containers and trailers transiting through Tunisia.[102]

Despite the opening to competition, some limitations persist. In the transport area, telecommunications facilities,[103] value-added telecommunications services[104] and public works, foreign investors are subject to approval by the Investment Commission if the foreign participation exceeds 50% of the company's capital (see Chapter 2 and Annex 1). Foreign investment in telecommunications companies (fixed and mobile) stands currently at 35% in Tunisia Telecom, 49% in Orange and 75% in Tunisiana.

A law on concessions, regulating private sector participation in public infrastructure and equipment projects, was promulgated in 2008[105] (see Chapter 1). Under this law, the legitimate rights of the concessionaire are guaranteed, including the right to deduct the value of buildings constructed before they revert to the public agencies and the right to claim damages for unjustified cancellation of the contract or failure to observe the required legal procedures and time limits. This regime also recognises the right of the concessionaire to exert ongoing supervision over operation of the public service, to be involved in setting prices to the consumer, and to review the contract clauses whenever the economic situation so demands (UNCTAD/DGCEE, 2009). This regime has enabled the launch of several new private investments in infrastructure.

The new authorities are aware of the importance of the private sector in infrastructure development and they cite the need to develop public-private partnership strategies of the kind that will provide adequate financing for large-scale projects in the national interest. A first experiment was undertaken with the establishment of a legal framework for PPP applicable to the ICT sector, with Law No. 2007-1 of 19 February 2007 on the digital economy. As of year-end 2011, 13 PPP undertakings had been signed, covering the areas of ICT (six agreements), intelligent transport (four agreements) and banking (three agreements).[106]

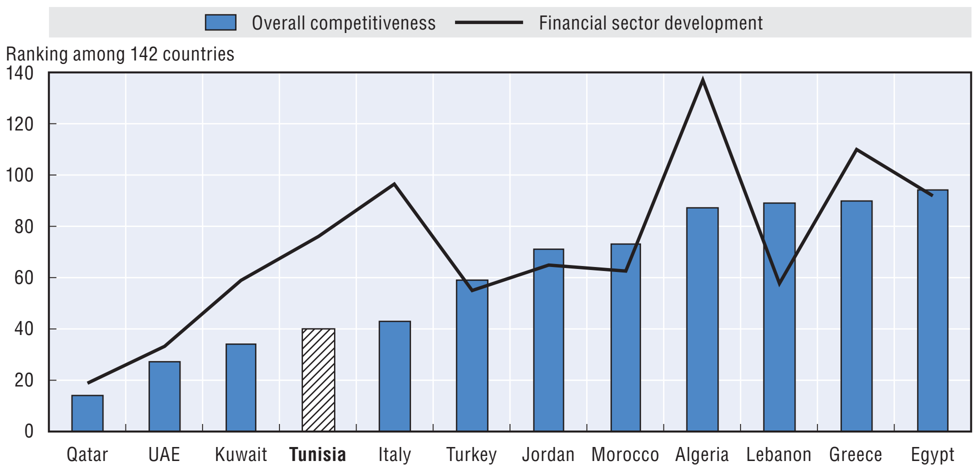
Institutional and regulatory reforms are underway to establish a framework favourable to the emergence of PPPs on a solid and sustainable basis. Thus, the General Directorate of PPPs was created in October 2011 as part of the reorganisation of the Ministry of Finance.[107] This new structure is tasked with: *i)* modernising and adapting national regulations and supervising reforms in this area, planning for long-term needs and developing PPP models, particularly with international co-operation; and *ii)* organising relations between operators and local governments on the basis of clear and strict rules, while seeing that competition requirements are respected. The authorities also plan to provide training for all stakeholders, and to create a public support fund for PPP.

Development of the financial sector

The Tunisian authorities have been making efforts to improve access to financing for economic agents. Over the years, thanks to the banking sector modernisation programme, the Tunisian financial and banking system has been transformed and several reforms and restructuring measures have been undertaken to optimise financing of the economy. The transformation of the sector has involved three stages: *i)* consolidation of the banking system's financial base; *ii)* modernisation and restructuring of the banking sector; and *iii)* improvement of banking services and stricter governance rules. The progress made can be seen in an improvement in the proportion of people having bank accounts, the system's openness to international competition and the integration of new information technologies (generalised use of electronic transactions, remote clearing, e-money, online account management, product diversification, etc.).

These advances have not however made a significant improvement in the conditions of financing for the Tunisian economy. In the World Economic Forum's competitiveness report of 2012, access to finance was identified as a major obstacle facing businesses. Figure 4.5 compares Tunisia's performance with selected countries of MENA and the Mediterranean basin in terms of the overall competitiveness and development of the financial sector. Tunisia

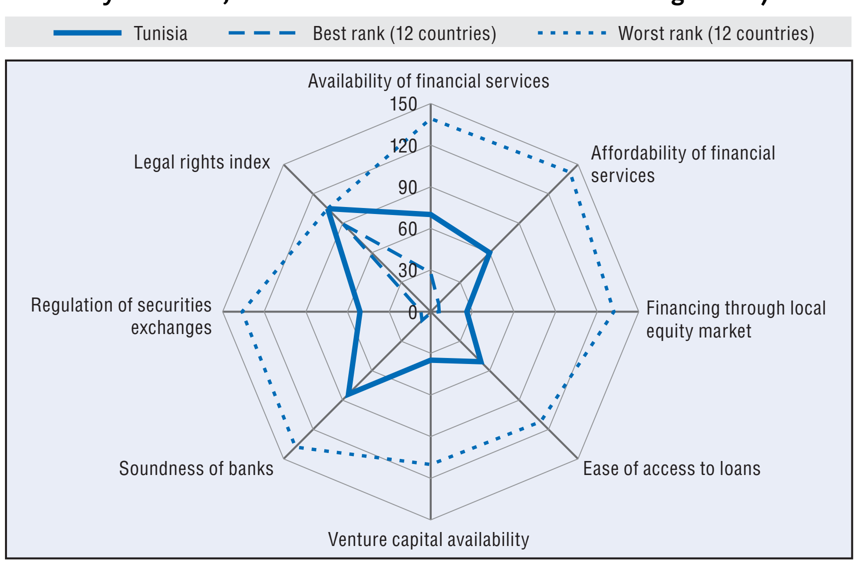
Figure 4.5. **Overall and financial sector competitiveness rankings**
12 countries out of 142 evaluated



Source: World Economic Forum 2012.

currently ranks 40th in terms of overall competitiveness, ahead of its neighbours in North Africa and several other peer countries. Yet Tunisia stands only in 76th position for financial market development. Questions of bank soundness and ease of access to loans represent the weak points in its ranking (Figure 4.6).

Figure 4.6. **Tunisia's financial sector in a regional context (ranking by indicator, same selection of 12 countries as in Figure 4.5)**



Source: World Economic Forum 2012.

Of all the indicators in *Doing Business 2012*, obtaining credit is the biggest weakness for Tunisia (ranking 98th out of 183 economies). Sector surveys and studies conducted between 2006 and 2009 by the Arab Institute of Chief Executives (IACE) and the Tunisian Institute for Competitiveness and Quantitative Studies (ITCEQ) also show that, in terms of business perceptions, there are significant and recurrent problems of access to bank financing, in particular the stiff requirements for collateral (IACE/Centre tunisien des études économiques, 2008). The Economic and Social Development Strategy 2012-16 formulated by the transitional government in mid-2011 points to a number of weaknesses in the financial sector, including banking services that are not attuned to market needs, difficulties in obtaining financing for SMEs and new promoters, and financial exclusion of low-income groups. The strategy also notes the poor quality of services and of bank management and governance, the still-limited role of direct financing via the equity market, and the shortage of participatory financing instruments.

The legal framework

The legal framework includes the legislation, regulations and surveillance needed for the proper functioning of the financial market. According to the 2008 OECD-EC Report on Implementation of the Euro-Mediterranean Charter for Enterprise, the main regulatory improvements needed to deepen the financial services market in Tunisia have to do with collateral requirements, the registration of movable assets and credit information services.

Table 4.1. **Tunisia's performance in terms of getting credit**

Indicator	Tunisia	Middle East and North Africa	OECD
Strength of legal rights index (0-10)	3	3	7
Depth of credit information index (0-6)	5	4	5
Public registry coverage (% of adults)	27.3	8.1	9.5
Private bureau coverage (% of adults)	0	9.3	63.9

Source: World Bank 2012.

Overly-strict guarantee requirements can block access to credit. In Tunisia, guarantee requirements amount to 150 or 200% of the amount of the loan (OECD-DC, 2008). This average conceals even greater discrepancies between large firms and SMEs. The latter have much more difficulty in getting loans, with generally much stricter collateral required. To date, there is no system for registering movable assets in the country and only immovable assets are registered and can be used as collateral.

On the issue of credit information, the law on economic initiative[108] provides that the Central Bank of Tunisia is to manage banking risks and keep records on loans granted to nearly 650 000 enterprises and 1.4 million individuals (World Bank, 2011). That registry covers only 27.3% of the population, and access to such information is still confined to financial institutions.

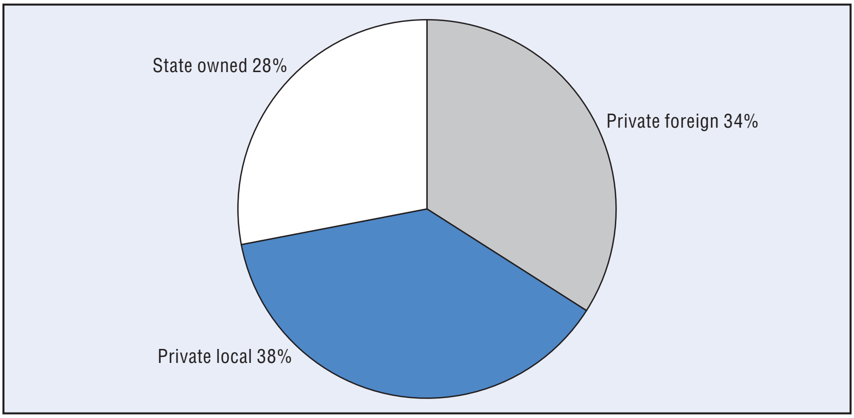
The banking sector

With 70% of total financial assets, the banking sector dominates the Tunisian financial system and remains the primary source of financing for Tunisian enterprises.[109] In 2010, the banking and financing landscape consisted of 21 universal banks (with domestic, foreign and public shareholders), 13 financial institutions (nine leasing companies, two factoring companies and two merchant banks) and eight offshore banks (Central Bank of Tunisia). The sector is still dominated by three State-owned banks that controlled 43% of all bank assets in 2008 (Oxford Business Group, 2010). According to the Ministry of Finance, this trio's share dropped to 39% in 2010, a share that still testifies to the lack of competitive pressure in the banking industry, despite the relatively high number of banks active in the market. A proposal of merger between two State-owned banks – *Banque de l'habitat* (BH) and *Société tunisienne de banque* (STB) was initiated in 2010 but was then put on hold in the wake of the January 2011 revolution.

The ratio of non-performing loans, one of the sector's problems, has continued to decline, falling to 13% in 2010 and they were provisioned on average to the extent of 58.5% (International Monetary Fund, 2010). As to the banking sector's local presence and accessibility, Tunisia stands first in North Africa in terms of banking density, with an average of one bank machine for every 7 900 inhabitants. One citizen in two has a bank account and in 2011 the number of bank accounts rose from 7.8 million in 2005 to over 11 million (Central Bank of Tunisia). Domestic credit to the private sector (as a percentage of GDP) has risen steadily, but has yet to surpass the 75% bar (World Bank, 2011).

Ongoing consolidation of the financial base and improving the competitiveness of Tunisian banks are among the main thrusts of the economic revival programme undertaken by the transitional government and pursued by the provisional government. One of the key measures taken by the Tunisian Central Bank concerns the adoption in May 2011 of regulations for good governance of banks, based on best international practices. The transitional government's Economic and Social Development Strategy 2011-16 also mentioned consolidating the sector by improving the bank density ratio (particularly in the interior), building common platforms for operations,

Figure 4.7. **Nature of capital holdings in universal banks in Tunisia**



Source: Ministry of Finance 2010.

adopting new technologies and strengthening the capacities of State-owned banks with better operating means.

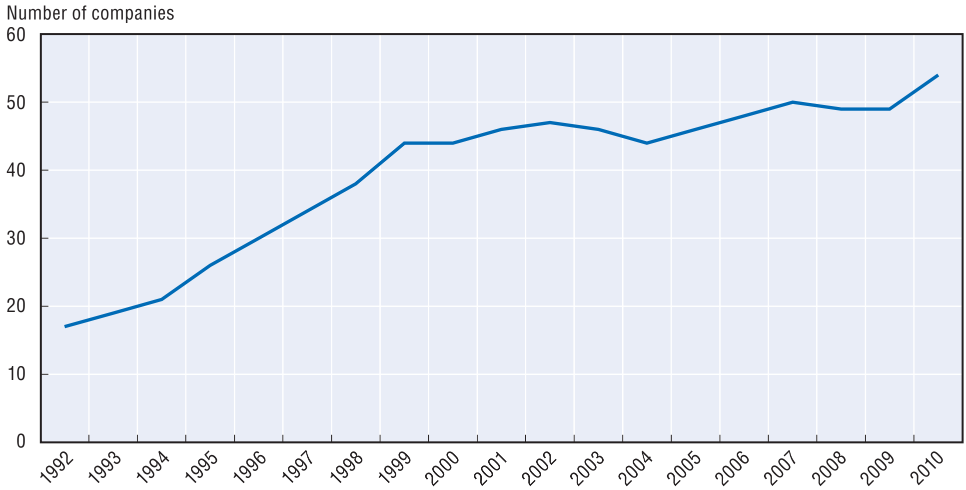
The capital market

The Tunisian financial market, as reorganised in 1994, comprises a Financial Market Board (CMF), a stock exchange (BMVT), and a central depository, STICODEVAM.[110] In 2007, an alternative market was created to deal specifically with SMEs. A number of reforms have sought over time to boost the market, but it remains of insufficient depth. According to the Tunis stock exchange, at the end of 2010, there were 56 enterprises listed on the market (Figure 4.8), most of them in the financial sector, which accounts for 70% of market capitalisation.[111] Total market capitalisation reached 24% of GDP, with an average daily transaction volume of TND 10.7 million (compared with 7.2 in 2009). Foreign investors are allowed to invest on the Tunisian stock exchange: at the end of 2010 they held more than 20% of the market's total capitalisation.

The bond market is developing. Prior to the revolution of 14 January, the authorities were regularly issuing treasury bills and securities. Since then, the principal rating agencies have downgraded Tunisia's sovereign debt.[112] The Tunisian derivatives market, comprising predominantly foreign exchange forwards, interest rate swaps, options and forward rate agreements, has yet to be organised under a central exchange, while transactions are executed on an over-the-counter basis.[113]

The Economic and Social Development Strategy 2012-16 calls for boosting direct finance through greater efforts to stimulate transactions and to make the Tunisian financial market deeper. Concrete plans are now being drawn up

Figure 4.8. **Enterprises listed for trading, 1992-2010 (total number)**



Source: World Bank 2011, *World Development Indicators*.

to encourage issuances and new listings and to revitalise the alternative market for SMEs in promising sectors. The improved functioning of the financial market, in line with international standards and rules, and the adoption of governance rules in corporations that accept deposits from the public are among the main thrusts of these plans. Steps to revitalise the bond market by encouraging private and municipal issues are also programmed.

Alternative financial services

Investment capital (or private equity) and venture capital were introduced in Tunisia in the 1980s through regulations governing "fixed-capital investment companies" (SICAFs). This framework was reinforced in 1993 with the creation of "risk-capital investment companies" (SICARs). The data for 2011 shows that the sector now has more than 40 SICARs, 20 venture capital funds (*fonds communs de placement à risque*, FCPRs), and two start-up funds (*fonds d'amorçage*).[114] Up until the end of 2010, capital investment in Tunisia had financed more than 2 000 enterprises, for a cumulative volume of gross shareholdings exceeding TND 1 billion.[115] The Economic and Social Development Strategy 2012-16 emphasises revitalisation of the risk capital industry in all segments (seed/venture capital, expansion capital, transfer/buyout and turnaround/mezzanine funds), and proposes an amendment to the investment capital Law.[116] That amendment would broaden and diversify the catalogue of investments, it would lighten the tax burden, and it would prolong the term of investments. The first Business Angels association was created in June 2011.

Micro-finance has grown very rapidly in recent years, despite a fairly restrictive legislative and regulatory framework. The creation in 1997 of the Tunisian Solidarity Bank (*Banque tunisienne de solidarité*, BTS) has increased financing for very small, small and medium-sized enterprises and underpinned the activity of micro-finance institutions. By the end of 2010, the BTS had already provided over 500 000 loans for a total amount of TND 460 million (or about EUR 230 million), channelled through 290 microcredit associations, and it was awarded recognition as "African micro-finance bank of the year."[117] In addition to the BTS, a non-governmental organisation, ENDA, is very active in this sector. A recent study by the European Commission estimates the number of potential microcredit clients in Tunisia at around 1.5 million, or three times the number of customers now registered with BTS and ENDA (Destremau, 2009). The Economic and Social Development Strategy 2012-16 gives special importance to this sector. A Decree Law on microfinance was adopted in November 2011 to improve the sector's organisation by creating a new supervisory authority and promoting its development through introduction of new products such as micro-insurance.[118] The new regulations also institute quantitative rules (capital adequacy, liquidity, etc.) and qualitative ones (governance, internal control, combating money laundering etc.).

Since 1984 Tunisia has had a fairly well-developed and growing leasing industry, with an appropriate legislative and regulatory framework. In 2010, the leasing sector increased its contribution to the financing of the economy by 2.7 percentage points, bringing the penetration rate in private gross fixed capital formation to 15.4% (Central Bank of Tunisia, 2010). Despite the retreat in activity at the beginning of 2011, the sector's commitments rose by 5%, reaching TND 1.584 billion in the first half of 2011, compared with 1.507 in December 2010.[119] The country also has a viable factoring industry, which has seen average annual growth of 15% since 2005 and is financed by the major local banks. In 2010, the sector recorded a profit of TND 4 million, but the profitability outlook has been darkened by the events in the first half of 2011, which cut earnings in the sector by almost 16% (Central Bank of Tunisia, 2010).

The transitional government announced in 2011 the creation of a strategic investment fund, known as the "Generational Fund" or "Ajyal Fund", a "fund of funds" targeted at certain sectors such as tourism, real estate, technology and mass-market retailing. There are also plans for this fund to work with the *Caisse des dépôts et consignations* (see this chapter, section on infrastructure) on PPP projects that need significant financing and synergies, such as large-scale solar energy projects.

Guarantee systems

The guarantee system in Tunisia is managed by SOTUGAR, under an agreement concluded with the Minister of Finance setting the intervention conditions and procedures for the guarantee regime.[120] SOTUGAR is a joint stock corporation owned 37% by the State and 63% by the banks and specialising in managing the system of guarantees for credits to SMEs. As of 31 August 2010, SOTUGAR's outstanding guarantees amounted to more than TND 672 million. SOTUGAR manages export credit guarantees through the Export Credit Guarantee Fund (FGCE), as well as the guarantee of medium-term credits to industrial enterprises and energy service companies through the Energy Efficiency Guaranty Fund (FGEE). Since October 2010, SOTUGAR has also been managing the Cultural Industries Guarantee Fund of Tunisia (FGIC) and the National Guarantee Fund (FNG). The latter guarantees farm credits and credits to small businesses, artisans and associations, as well as credits from the BTS. Outstanding guarantees issued by the FNG amounted to TND 2.5 billion at the end of March 2011 (Ministry of Finance). To date, there is no mutual guarantee association (AGM) in Tunisia.

The Tunisian financial sector has not been spared the problems of governance and corruption that are rife in the country, as indicated by the report of the National Commission to Investigate Corruption (CNICM). The authorities are aware of the extent of the efforts that must be deployed to reform the financial sector and improve its contribution to economic and social development. Measures have already been initiated, such as actions aimed at giving economic agents better access to financing, enhancing the governance and transparency of credit institutions and the independence of the Central Bank of Tunisia. Circular No. 2011-06 of May 2011 on financial governance, which was adopted by the Central Bank, represents a positive step towards restoring faith in the banking sector and bolstering good governance in the financial system in general (see Chapter 3). Central Bank independence, as enshrined in the provisional law organising government powers adopted in December 2011, is also an important step forward in strengthening that institution's supervisory role and its accountability.

As regards access to financing, insofar as the difficulties stem not only from supply, but from the demand for credit as well, the Tunisian authorities should endeavour to strengthen the financial and entrepreneurial culture and education. A special strategy should in fact be formulated to fill the void in this area in the medium term, enlisting the help of universities and other advanced training institutions. The media and national informational campaigns should also strive to raise appropriate questions and to disseminate tools that all Tunisians would be able to use and to understand.

Notes

1. Law No. 69-35 of 26 June 1969.
2. Law No. 72-38 of 27 April 1972.
3. The *Global Competitiveness Report* 2011-2012 ranked Tunisia in 40th position among 142 countries evaluated in terms of competitiveness, confirming its leading position in Africa and the Maghreb, and despite a downgrade of eight positions from the previous year (WEF, 2011). The *Doing Business* 2012 report ranks Tunisia 46th among 183 countries (down by six positions from the previous year's ranking) (World Bank, 2011a).
4. Likewise the 2011 ILO report on a new social contract in Tunisia asserts that "behind Tunisia's favourable rankings in terms of economic competitiveness and business climate is an economy characterised by interventionist economic governance". The report analyses "the constraints facing private enterprises such as lack of economic freedom, opaque corporate governance, corruption, clientelism, underdeveloped financial markets, and lack of entrepreneurship and dynamism." (ILO, 2011).
5. The JORT is available at the Internet site of the Government printing office: *www.iort.gov.tn*.
6. *www.investintunisia.tn*.
7. *www.tunisieindustrie.nat.tn*.
8. *www.bct.gov.tn*.
9. For example, the Centre for Legal and Judicial Studies (CEJJ) of the Ministry of Justice is responsible for disseminating and publicising new laws and regulations. To this end, it organises conferences when there are significant regulatory changes, as it did for the revisions to the Commercial Corporations Code.
10. Decree Law No. 2011-54 of 11 June 2011 amending and supplementing Decree Law No. 2011-41 of 26 May 2011 on access to administrative documents from public agencies.
11. *www.opendata.tn*.
12. Decree Law No. 2011-115 of 2 November 2011 on freedom of the press, printing and publication, and Economic and Social Development Strategy 2012-2016.
13. *www.oecd.org/daf/investissement/pfi*.
14. Regional and global averages are, respectively, 9 and 10 procedures and 19 and 42 days.
15. Decree Law No. 2000-1530 of 6 July 2000 and Decree Law No. 2008-3809 of 11 December 2008.
16. The *cahiers des charges* are available at the portal of the Prime Minister's Office (*www.pm.gov.tn/pm/cahierscharges/listcahierscharges*) in Arabic, and sometimes with French translations.
17. Articles 4, 6 and 9 of Law No. 2007-69 of 27 December 2007.
18. *Programme d'e-administration* at *www.tunisie.gov.tn*.

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19. The *United Nations E-Government Survey* 2010 assesses the degree to which governments use ICTs to make their services accessible to citizens, and also to develop their internal operations.
20. *Arrêté* of the Minister of Finance No. 2011-97 of 22 November 2011.
21. *www.cpf.gov.tn*.
22. Law No. 91-61 of 22 July 1991.
23. *www.cpf.gov.tn*.
24. Supplemented by two circulars from the Prime Minister (Nos. 44 and 17 of 2005).
25. Article 1 of the Decree of 4 June 1957 on property transactions, as amended by Decree Law No. 77-4 of 21 September 1977 and Article 3 of the Investment Incentives Code.
26. Articles 1, 2 and 5 of Law No. 69-56 of 22 September 1969 on agricultural reform, as amended by Law No. 97-33 of 26 May 1997.
27. Panel discussion on the future of the landowning system, June 2011, Ministry of Government Property and Land Affairs, *www.mdeaf.gov.tn*.
28. See for example the report of the National Commission to Investigate Corruption and Misappropriation, published in November 2011, *www.cnicmtunisie.tn*.
29. Decree Laws No. 2011-13 of 14 March 2011 and No. 2011-47 of 31 March 2011 (supplementing the former) on State confiscation of assets and of movable and immovable property acquired after 7 November 1987 by the former president, his spouse and persons cited in an attached list, as well as all persons having obtained funds, assets or rights resulting from their relationship with those persons.
30. A study on possible accession to that convention was conducted jointly by the Tunisian Copyright Protection Organisation (OTPDA) and the Centre for Legal and Judicial Studies (CEJJ) of the Ministry of Justice and was submitted to the Ministry of Culture and Heritage Preservation.
31. Article 39 and Annex 7 of the Association Agreement between Tunisia and the EU (Annex 7 calls on Tunisia to adhere to international conventions), Article 23 of the FTA with EFTA, and Article 28 of the FTA with Turkey.
32. World Trade Organization, TRIPS Council, Summary Note of the Meeting of 27-28 November 2001, IP/C./M./34 (20 December 2001) and A Review of Legislation (introductory statement, questions and responses), IP/Q/TUN/1, IP/Q2/TUN/1, IP/Q3/TUN/1, IP/Q4/TUN/1 (2 June 2004).
33. Such as judicial police officers, economic control agents, physicians, pharmacists and engineers, and customs agents.
34. *www.wipo.int/wipolex/en/details.jsp?id=8215*.
35. Law No. 2007-50 of 23 July 2007 amending and supplementing Law No. 2001-36 of 17 April 2001 on protection of trademarks provides penalties in the form of a fine of TND 10 000 to 50 000 for anyone importing merchandise under a counterfeit trademark. Repeat offences are punishable by imprisonment of one to six months, in addition to the fine, which is doubled, and the owner of the patent may take civil action for material and moral damages.
36. *www.innorpi.tn*.
37. *http://portal.bsa.org/globalpiracy2010/*.

38. Enforcing a contract requires 55 days to file and serve the case, 300 days for trial and judgment, and 210 days to enforce the judgment.

39. The costs are distributed as follows: 13.8% for attorneys' fees, 5% for court costs, and 3% for enforcement costs.

40. The Code of Obligations and Contracts, promulgated in 1906, was amended repeatedly and then completely overhauled by Law No. 2005-87 of 15 August 2005, approving the re-organisation of the provisions of the Code of Obligations and Contracts. The 1965 Code of Real Rights (CDR) has also been through successive amendments, including Law No. 92-46 of 4 May 1992 establishing property title and Law No. 2001-35 of 17 April 2001 on the drafting of acts and conventions for registration of property title. The Code of Civil and Commercial Procedure of 1959 was amended and supplemented by Law No. 95-43 of 2 May 1995 and by Law No. 2002-82 of 3 August 2002, establishing commercial chambers and new legal mechanisms for enforcement.

41. The administrative tribunal has competence to hear cases challenging the administration and *ultra vires* appeals seeking annulment of acts of the central, regional and local administrative authorities, municipal authorities, and public institutions of an administrative nature.

42. The *Cour des Comptes* (court of accounts) has competence to examine the accounts and actions of municipal authorities, public institutions of an industrial and commercial nature, and any agency in which the State, the regions or the communes hold an equity interest.

43. Law No. 93-42 of 26 April 1993.

44. Law No. 76-85 of 11 August 1976 amending legislation on expropriation on grounds of public utility, as amended and supplemented by Law No. 2003-26 of 14 April 2003.

45. Such as the 49% holding of Orange in the capital of Orange Tunisie or the 75% interest of Watanya in the capital of Tunisiana.

46. Tunisia has ratified eight of the 20 agreements that have not entered into force.

47. European Commission Press Release, IP/11/1137, 29 September 2011.

48. European Commission Press Release, IP/11/1545, 14 December 2011.

49. Press Release, MEMO/12/62, 2 February 2012.

50. Article 67 of the Investment Incentives Code.

51. For an analysis of the Arbitration Code, see Ben Hamida W. (2011), and the references in that article.

52. Article 7.5 of the Arbitration Code.

53. "The state and other public entities concerned may resort to arbitration if the contract is of an international nature", Ben Hamida W., 2011.

54. Matters have evolved differently in Egypt. A number of arbitration requests have been filed, with ICSID in particular, by foreign investors against the Egyptian state on the basis of BITs signed by Egypt. These disputes are tied in with court rulings invalidating contracts entered into by the former regime, or with non-compliance with BIT clauses, Egypt having failed to meet its obligations for full protection and security and for fair and equitable treatment.

55. Two objectives of the 11th Development Plan 2007-2011 were to achieve a growth rate of 6.1%, and to increase the private sector share in GDP from 71.9% in 2006 to 75.4% in 2011.

56. Incentives are granted to encourage regional development and to steer investment into manufacturing, crafts and services in priority regions, divided into three groups. *www.investintunisia.tn/site/fr/article.php?id_article=182*.

57. *www.investintunisia.tn/site/fr/article.php?id_article=182*.

58. *www.tunisieindustrie.nat.tn*.

59. *www.apia.com.tn*.

60. The one-stop shops cover the various administrations involved in the formalities of business creation. Those formalities can also be completed online at the virtual one-stop shop via the APII website: *www.tunisieindustrie.nat.tn*.

61. *http://caipe.tunisieindustrie.nat.tn/-Le-Reseau-des-Centres-.html*.

62. Such as aeronautics, engineering, electrical and electronic industries, and ICT.

63. *www.webentcreation.tunisieindustrie.nat.tn*. Law No. 2004-89 of 31 December 2004 on procedures for constituting corporations online, and Decree No. 2005-3189 of 12 December 2005, amending and supplementing Decree No. 2001-1567 of 2 July 2001 on the administrative and financial organisation and operating procedures of the APII.

64. Such as the National Competition Board, the National Export Board, the National Transport Board, the National Tourism Board, and the National Employment Council.

65. *www.dialog-productivite.tn/fr/*.

66. *www.ieq.nat.tn*.

67. Press release, MEMO/12/62, 2 February 2012.

68. *www.oecd.org/dataoecd/45/21/2506900.pdf*.

69. See the Investment Incentives Code (Law No. 93-120 of 27 December 1993), the Tunisian industry portal (*www.tunisieindustrie.nat.tn*) and the FIPA site (*www.investintunisia.tn*).

70. *www.investintunisia.tn/site/fr/article.php?id_article=182*.

71. Bizerte (60 km from Tunis airport) and Zarzis-Jerba (near the airport of Jerba), *www.investintunisia.tn/site/fr/article.php?id_article=182*.

72. Information supplied by the Ministry of Planning and International Co-operation.

73. *www.oecd.org/dataoecd/45/21/2506900.pdf*.

74. The transitional government's 2012-2016 Economic and Social Development Strategy.

75. The ITCEQ study mentioned the experience of Morocco, which since 2005 has been performing *ex post* evaluations of foregone tax revenue.

76. A support programme for service SMEs, within CEPEX, has been successful in boosting exports.

77. *www.commerce.gov.tn/balance_c.htm*.

78. The WTO agreements were integrated into Tunisian domestic law by Law 95-06 of 23 January 1995 ratifying the outcome of the Uruguay Round.

79. In December 2000 Tunisia notified Law 99-9 of 13 February 1999 on protection against unfair import practices and Decree 2000-477 of 21 February 2000 and establishing conditions and procedures for determining unfair import practices.

80. European Commission press releases: IP/11/1137 of 29 September 2011; IP/11/1545 of 14 December 2011 and MEMO/12/62 of 2 February 2012.

81. Law No. 2008-34 of 2 June 2008 promulgating the Customs Code.

82. *www.commerce.gov.tn/balance_c.htm*.

83. Bonded transformation regimes are considered a very important mechanism for manufacturers, as they can import raw materials or semi-finished goods for processing.

84. *www.tradenet.com.tn*.

85. For its Logistics Performance Indicator, Tunisia receives a score of 2.84 on a scale of 1 to 5, with 5 being the best possible score, while the averages for MENA and for upper-middle-income countries are 2.60 and 2.82, respectively. In 2010, Tunisia stood 61st among 155 countries, and second among MENA countries. World Bank (2010), Logistics Performance Index (LPI).

86. The Law of 1991 has been amended and supplemented by Law No. 93-83 of 26 July 1993, Law No. 95-42 of 24 April 1995, Law No. 99-41 of 10 May 1999, Law No. 2003-74 of 11 November 2003, and Law No. 2005-60 of 18 July 2005.

87. Article 9 of Law No. 91-64 of 29 July 1991.

88. Comprising the chambers of first instance, the chambers of appeal, and a plenary assembly for questions of annulment (*cassation*).

89. A president (appointed for a five-year term, renewable once), two vice presidents (an adviser to the administrative tribunal and an adviser to the Court of Accounts), four magistrates, four professional members and two competition experts. Members of the Board are appointed by decree on the proposal of the Minister of Trade (Article 10 of the competition law). The president and two vice presidents are full-time appointments, while the other members sit only in plenary sessions (opinions) or in the chambers (judgment of cases).

90. According to Article 5 of the Competition Law, anticompetitive practices are concerted actions, collusion and express or tacit agreements of anticompetitive purpose or effect, intended to: *i)* obstruct the setting of prices through the free play of supply and demand, *ii)* constrain market access for other enterprises or the free exercise of competition, *iii)* limit or control production, sales, investments or technical progress, or *iv)* allocate markets or sources of supply. The law also prohibits abusive exploitation of a dominant position on the domestic market or a substantial portion of that market, or of a state of economic dependency in which a client or supplier has no alternative solutions for marketing, supply or delivery of service.

91. Concentration was subject to control when the combined share of the companies concerned exceeded 30% of the domestic market for substitutable goods, commodities or services 30%.

92. Report of the Competition Board.

93. *www.arabruleoflaw.org/files/pdf2009/ACRLI-MENACLSReportTunisia-ThematicWorkshop 101209.pdf* (in Arabic only).
94. Economic and Social Development Strategy 2012-2016, presented by the transitional government in September 2011.
95. *Ibid.*
96. *www.investintunisia.tn/site/fr/article.php?id_article=182*.
97. Société tunisienne de l'électricité et du gaz, *www.steg.com.tn*.
98. Figures for 2007, *www.sonede.com.tn*.
99. Agence tunisienne d'Internet, *www.ati.tn*.
100. World Bank, 2011, "Northwest Mountainous and Forestry Areas Development Project".
101. Economic and Social Development Strategy 2012-2016.
102. *www.stam.com.tn*.
103. Decree No. 2006-3314 of 25 December 2006 on telecommunication enterprises and studies.
104. Decree No. 97-501 of 14 March 1997 on value-added services in telecommunications and Decree No. 936 of 13 April 2004 establishing conditions and procedures for granting authorisation for value-added SMS services
105. Law No. 2008-23 of 1 April 2008 on the concessions regime.
106. Ministry of Communication Technologies.
107. Decree No. 2011-2856 of 7 October 2011.
108. Law No. 2007-69 of 27 December 2007.
109. Making Finance Work for Africa (2011), Country Profile.
110. Law No. 94-117 on reorganisation of the financial market, as amended by Law No. 99-92 of 17 August 1999 on revival of the financial market and Law No. 2005-96 of 18 October 2005 on increased security in financial relations.
111. According to the Ministry of Finance, this rate became 59.5% in 2010 following reclassification of PGH holding in the consumer goods sector.
112. Moody's has given Tunisia a Baa3 rating; Fitch and S&P BBB-.
113. Making Finance Work for Africa (2011), Country Profile.
114. Association tunisienne du capital-investissement (ATIC), June 2011.
115. ATIC (2010), Statistiques de l'activité du capital-investissement.
116. The amendment to the regulations governing SICARs and venture capital funds was ratified by Decree-Law No. 2011-99 of 21 October 2011.
117. Making Finance Work for Africa (2011), Country Profile. (Figures updated by the Ministry of Finance for 2010).
118. Decree No. 2011-117 of 5 November 2011.
119. MAC SA (2011), Secteur du *leasing* au premier semestre 2011.
120. Article 24.2 of Law No. 2002-101 of 17 December 2002 concerning the budget law for 2003.

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Chapter 5

Investment framework for green growth

Tunisia has not established a green growth strategy, but the new government has announced its determination to undertake a more sustainable form of economic development. A sustainable development strategy for 2012-16 was made subject to a public inquiry and a study on the green economy is about to be launched, which could help formulate measures to foster green investment. As Tunisia is becoming increasing more dependent on imported fossil fuels, since the 1990s, it has been a pioneer in the region in promoting energy efficiency and more recently in the realm of renewable sources of energy. Measures have been introduced gradually to facilitate the private sector's participation in renewable energy sources and waste management. The government is also committed to reporting on the improvement of the framework for investment in support of green growth and to sharing the experience it has acquired.

As defined by the OECD, green growth implies fostering economic growth and development while ensuring that the natural assets continue to provide the resources and environmental services on which our well-being relies. To do this it must catalyse investment and innovation which will underpin sustained growth and give rise to new economic opportunities (OECD, 2011). Investment for green growth includes, among other things, investment in infrastructure such as water purification and distribution systems, waste management, transportation and housing, renewable energy, energy efficiency and the preservation of natural resources.

A green investment framework is in many respects comparable to a general investment facilitation framework. However, an investment-friendly policy framework will not necessarily contribute to direct investment in activities or operations conducive to green growth. A number of elements must be combined, starting with a strong governmental commitment at both the international and national level to support green growth and to foster private investment that will support achievement of these objectives. Other elements are policies and regulations that will guide investors towards more ecologically-sound investments; policies to encourage more environmentally-responsible corporate behaviour; an institutional capacity to design, implement and monitor policies to foster growth objectives; financial mechanisms for green investment; and policies to support private sector involvement in green infrastructure projects.

This chapter describes Tunisia's investment framework in these areas.[1] It provides an overview of the elements of the policy framework for green investment that Tunisia has instituted and examines in greater depth the private investment measures taken in the field of *energy* (energy efficiency and renewable energies) and private sector participation in *water infrastructure* and *waste management*.

Tunisia's commitment to green growth

Tunisia has not yet developed a green growth strategy or a specific approach to promoting green investment. Investments in this area are essentially government-funded and private initiatives remain very limited. Nevertheless, the new authorities recognise the importance of instituting economic policies that incorporate sustainable development considerations and Tunisia's assets (Box 5.1), as evidenced by a series of initiatives.

Box 5.1. **Environmental profile of Tunisia: Green growth challenges and opportunities**

Tunisia is bordered on the north and east by the Mediterranean Sea, with 1 298 km of coastline. Over 30% of the country's land mass is occupied by the Sahara Desert, the remainder comprised by mountainous regions and fertile plains. The country has a Mediterranean climate in the north and along the east coast, semi-arid in the interior and Saharan in the south. With the relative scarcity of its natural resources, the distribution of its population, the needs in terms of modernising the economy and infrastructure and the constraints imposed by climate change, Tunisia faces some major challenges in ensuring rational management and conservation of natural resources and energy security. The challenges are especially acute when it comes to water resource management (95% of available water is already being exploited), energy conservation (Tunisia is a net importer of energy), soil management and use, natural reserves and parks and waste management.

On the other hand, the country's climate, which is particularly sunny, should be an excellent basis for investing in renewable energies, a potentially important source of employment and exports. Tunisia also has considerable potential for wind energy, as well as other, less abundant green energy resources such as agricultural wastes.

Source: Ministry of the Environment (*www.environnement.gov.tn*).

One concrete step towards a greener approach towards economic development in Tunisia has been taken in the context of the Economic and Social Development Strategy 2012-16 that was presented by the transitional government in September 2011. It contains a "water, energy and green growth plan" that stresses the mobilisation of water resources, regional electric interconnection, extending the gas transportation network, developing renewable energies and preserving the environment. These topics are taken up again in the New Tunisia Development Strategy presented by the provisional government in April 2012, which gives considerable priority to promoting sustainable development and effective management of natural resources. In May 2012, Tunisia also signed the OECD Declaration on Green Growth, reiterating its commitment to sustainable development.

Another important step was the publication in November 2011 of the provisional version of the National Strategy for Sustainable Development (SNDD) for public consultation.[2] The SNDD is based on 10 strategic themes and some of these are important elements of green growth and have the potential to promote green investments. For example, the SNDD calls for rationalising energy consumption and promoting renewable energies; adapting to climate change; and promoting sustainable consumption and production, which is essential in order to increase the demand for products with lower ecological impact. It also refers to sustainable transportation and sustainable management of the coastline, for example through development of a more ecologically-friendly tourism sector.

The government has also decided to launch a study on the green economy. According to the authorities, this study, to be conducted with stakeholder participation, will analyse and identify development opportunities for the green economy, leading to adoption of a national strategy for a green economy. The strategy would include an action plan identifying the respective roles of the State, the private sector and professional organisations in the development of each sector of the green economy, including opportunities for public-private partnerships. It would also include ideas on how civil society and the information sector can help in the transition to the new economy.[3]

The study will analyse the many different expected impacts of the green economy: *economic* (reducing the costs of environmental degradation and over-exploitation of natural resources), *social* (job creation, employability for young graduates and poverty reduction), *technological* (improving firms' innovation capacities and reorienting scientific research), *financial* (government contributions and subsidies, value-added by firms, the local banking sector, bilateral and multilateral co-operation and specialised transfers such as the carbon fund) and *structural*, affecting the productive system (economic diversification, the transition to a service economy, the potential of the digital economy) and consumption in Tunisia. The "green investment" dimension is also part of the approach to overhauling the Investment Code, the objective being to identify and promote new engines of economic growth.

The areas in which Tunisia has made special efforts to foster an orientation towards a greener economy are those concerning energy – energy conservation (*maîtrise de l'énergie*) and the promotion of renewable energies (described in greater detail below in the section on the legislative framework). In fact, Tunisia has been a pioneer among developing countries in terms of energy conservation policies, having adopted the first regulations in 1985 (Climate Investment Funds, 2009). While protecting the environment was not the principal goal of the initiatives taken in these fields, these area are an integral part of green growth and have the potential to generate significant private investment.

Regulatory framework and policies for green investment

When examining their investment options, investors will see a potential risk if the regulatory framework lacks clarity and precision. Investing in infrastructure and new technologies (for reducing the greenhouse gas effect, for example) may lead to significant changes in economic models and require investment decisions that will lock in specific technologies and infrastructure for the long term. A policy and regulatory framework conducive to green investment is thus crucially important to investors. Such a framework would include, for example, the country's position *vis-à-vis* the relevant multilateral environmental agreements, such as the United Nations Framework Convention on Climate Change (UNFCCC), the inclusion of environmental considerations in multilateral and bilateral trade and investment agreements as well as the adoption of national regulations and plans supporting green growth objectives.

Other aspects can make the investment framework more attractive. Clear, transparently and effectively applied regulations concerning green investments, advance notification and consultation on changes to environmental regulations in addition to access to information on investment conditions and the granting of incentives can help reduce risks and investors' concerns. Promotion of more environmentally-responsible conduct by businesses is also essential.

International commitments in favour of green growth objectives

Tunisia has ratified the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.[4] In the context of the 2009 Copenhagen Accord, which Tunisia supported, the country has provided a detailed list of national mitigation actions, which include efforts to develop renewable energies, with energy recovery from solid and liquid wastes, to develop alternative energies and to achieve energy efficiency and rational energy use.[5]

A small but growing number of countries are making reference to environmental protection in their bilateral investment agreements (Gordon, K. Pohl, J., 2011). However, there are no provisions relating to the environment or the promotion of green investment in any of the bilateral investment treaties that Tunisia has signed (see Annex C).

The Association Agreement between the European Union and Tunisia, which came into effect in 1998, contains co-operation clauses between the two parties that seek to promote legal modernisation and harmonisation, economic and trade integration and the competitiveness of Tunisian businesses. In connection with the European Neighbourhood Policy, an action plan that entered into force in 2005 calls for various avenues of co-operation, which include the realms of growth and sustainable development.[6] Co-operation is targeted in particular at *i)* soil and water quality; *ii)* the consequences of development, in particular industrial development (security of installations, wastes); and *iii)* control and prevention of marine pollution. In 2010, the EU-Tunisia partnership was bolstered by a series of programmes aiming, *inter alia*, at sustainable management of water resources in agriculture, development of a sustainable strategy for the environment and energy conservation and institutional support for environmental protection and sustainable development.

National policies and plans to promote green investment

Tunisia went from being a net exporter of petroleum and gas in the 1970s and 1980s to being a net importer of energy by the end of the 1990s. Since 2001, the national energy balance has been in deficit. Domestic sources now cover only about three quarters of the country's energy needs. These import requirements, which are currently met primarily by gas from Algeria, are bound to rise as industrialisation progresses and as urban consumer demand grows. The challenge is still to continue on the path of reducing the economy's energy intensity, finding non-fossil energy sources and reducing energy dependence on imports and fossil fuels.

Considering its growing dependence on imports of oil products, Tunisia has been progressively adopting a legislative and regulatory framework for controlling energy use: the first energy savings law was passed in 1985 and a law on energy conservation in 1990, while in 2004 a law (amended in 2009) introduced mandatory periodic energy audits beyond a certain consumption threshold for establishments in the manufacturing, transportation, tertiary and residential sectors (Box 5.2).[7]

The energy conservation law (which is one of the rare pieces of Tunisian legislation that stress sustainable development as a national priority) was amended in 2009 to allow the production of electricity from renewable energies. It also authorises self-generation of electricity using renewable energies, with the right to sell up to 30% of the power generated to the Tunisian Electricity and Gas Company (STEG) at a price equivalent to the STEG selling price excluding tax. Cogeneration and energy production by households are thus encouraged, circumventing the STEG monopoly. Self-producers are authorised to use the national electric grid to deliver the power they generate to points of consumption, upon payment of a transport duty currently set at TND 0.005 per kWh. The new electricity transport contract allows a group of self-producers to subcontract for the production of electric power.[8] Other amendments are now underway to adapt the legislative framework to private participation in energy production, including the production of renewable energy, for domestic market consumption or for export.

Box 5.2. **Mandatory energy audits**

- Establishments subject to mandatory energy audits are those in the manufacturing sector that have annual energy consumption exceeding 800 TOE (tonnes oil equivalent) and those in the transport, treasury and residential sectors where consumption exceeds 500 TOE.
- The interval between two audits must not exceed five years. The national energy conservation agency (ANME) is responsible for the quality of the audit, which is conducted by a professional auditor selected from a roster kept by the ANME.
- Once the audit report is completed, the establishment must follow an action plan established by agreement with the ANME, in return for current financial and tax incentives. The financial incentives include bonuses for conducting the energy audit and for subsequent investments in energy conservation, substitution of natural gas, use of solar energy (solar water heaters and buildings) and cogeneration.
- The ANME may reject the results of an audit, in which case a second audit must be performed within three months. Failure to perform an audit and failure to obtain prior authorisation before undertaking a high energy-use project are punishable by a fine of TND 20 000 to TND 50 000 (EUR 10 000-25 000).

Source: ANME (*www.anme.nat.tn*), laws and regulations on energy conservation issued by the Ministry of Industry and Technology.

The energy conservation law also provides for a series of measures that will have a potentially important impact on modes of production and consumption, in particular: labelling of electrical equipment, machinery and appliances to indicate their energy consumption; thermal regulation for new buildings; rational use of energy in public lighting; and test-rating of automobile engines. The conditions and procedures of application for these measures are in the course of development and will be issued by decree or circular.

The 2012-16 Economic and Social Development Strategy places emphasis on reducing the energy intensity of the economy and developing new, non-conventional energy sources. It sets the objective of achieving an energy efficiency level of 275 kg oil equivalent for every TND 1 000 of GDP. It also spells out the efforts to be made to strengthen programmes for renewable energy exploitation by boosting their share in overall consumption by a factor of five, through the development of clean energy and energy substitution projects and encouraging cogeneration projects.

For the time being, the most significant investments are being made in wind energy, through STEG and domestic hot water heating. To date, wind generating capacity of 54 MW has been installed and a further 190 MW is in the course of installation and will be in operation in 2012. Private sector involvement is still limited,[9] but ongoing projects will reverse this issue. The Tunisian Solar Plan (PST) is part of this initiative. For the period 2010-16, some 40 projects are planned, to be carried out by private investors, which are primarily foreign (see the table in Box 5.2). The projected investment envelope amounts to EUR 2 billion (of which 1.93 billion is in private investment) and will bring the share of renewable energy in electricity production from the current 1% to 16% in 2016, resulting in energy savings of 22% and a reduction of 1.3 million tonnes of CO_2 per year (Box 5.3).

Box 5.3. **The Tunisian Solar Plan (*Plan solaire tunisien*)**

The Tunisian Solar Plan (PST) is part of the framework of international projects that include the Mediterranean Solar Plan (MSP)[1] and the DESERTEC[2] project and it gives concrete expression to Tunisia's ambition to become an international focal point for the production and export of solar energy.

The PST covers sectors with high investment potential: energy efficiency (including the transport sector, construction and energy-intensive industries) and renewable energies (solar, wind, biomass). The objective of the multi-sector energy efficiency programme is to achieve cumulative energy savings of 100 Mtoe (equivalent to a reduction of 240 Mt CO_2) by 2030. With regard to renewable energies, there are plans to develop electricity generating capacity (including water power and cogeneration and cogeneration) of 1 000 MW in 2016 and 4.7 GW by 2030.

The first field of activity of the PST concerns thermal solar energy, such as water heating for the residential, collective, tertiary and industrial sectors, all involving heavy private participation (see description of the PROSOL programme below) and representing private investment of nearly 400 million dinars. The PST also includes 10 pilot projects on cold technologies, mainly in agribusiness and 10 projects to promote power generation from photovoltaic and thermal solar energy.

The second field is wind energy. The plan includes a project for large-scale electricity consumers (EGCEs) in the private sector to produce their own energy. Another project (also private) will produce wind energy for export.

The third field of the solar plan relates to energy efficiency (construction of positive energy buildings, thermal insulation of residential terraces and energy efficiency in the manufacturing sector).

Investment projects under the Tunisian Solar Plan 2012-16

Nature of project	Number of projects	Public investment (in millions of dinars)	Private investment (in millions of dinars)
Solar	17	546.6	956
Wind	3	540	280
Energy efficiency	7	106	537
Other projects[1]	7	0.2	821

1. Mainly the ELMED project (electrical interconnection between Tunisia and Italy) and private power generation initiatives.

Box 5.3. **The Tunisian Solar Plan (*Plan solaire tunisien*)** *(cont.)*

The programme to promote the use of solar water heaters (PROSOL), which is part of the PST, has been introduced with co-operation from the Italian government and the United Nations Environment Programme (UNEP). The market for solar water heaters (SWH) has been growing strongly in the residential sector, as the technology has matured and financing mechanisms have been put in place. The installed surface area of these solar heaters rose from 12 m^2/1 000 inhabitants in 2004 to 40 m^2/1 000 inhabitants in 2010. In 2010, the stock of solar water heaters was estimated at 490 000 m^2 and the number of installations at 160 000, meaning that around 6% of dwellings were equipped with SWH. The programme has also contributed to job creation (with 42 certified technology suppliers and more than 1 000 system installation firms).

Sources: The goal of the PST is to consolidate development of this market to reach 100 m^2/1000 inhabitants, or 1 million m^2 installed by 2016. Beyond the residential sector, the solar heating promotion programme also seeks to integrate this technology into the tertiary and industrial sectors, in particular agribusiness. The target is 500 industrial installations.

1. *www.developpement-durable.gouv.fr/IMG/spipwwwmedad/pdf/Presentation_Plan_Solaire_Mediterraneen_cle0a6c26.pdf*.
2. *www.desertec.org/global-mission*.

Source: Ministry of Industry and Trade (*www.industrie.gov.tn*), UNEP (*www.unep.org/greeneconomy/SuccessStories/SolarenergyinTunisia/tabid/29871/Default.aspx*), and various Internet sources (Webmanagercentre: *www.webmanagercentre.com/management/article-96298-75-du-plan-solaire-tunisien-sera-realise-par-le-secteur-prive*; Ecolomagtunisie: *www.ecolomagtunisie.com/environnement/economie-verte-une-competitivite-amelioree-grace-aux-technologies-propres.html*; Tunisian Solar Plan: *www.planbleu.org/publications/atelier_energie_tunis/Ayadi_Benaissa_Plan_Solaire_Tunisien.pdf*).

Tunisia has developed an industrial base in the renewable energies field, particularly in the manufacture of thermal solar equipment and photovoltaic components (solar captors). It has also capitalised on its experience of the various areas of rational energy use and renewable energies, promoting in this way the emergence of an industrial and services market, mainly in the context of international partnerships.

An assessment of energy conservation efforts reveals mixed results. An initial report by ANME in 2007 found energy savings of around 10% of national consumption and this moved the authorities to set a reduction target of 20% for the end of 2011. According to the Tunisian authorities, this objective has not been achieved: consumption of primary energy dropped by only 13% in 2011. The record of power production from renewable energies is more uncertain and these currently contribute less than 1% of the energy mix. On the other hand, analysts consider the PROSOL programme (described in Box 5.2), which promotes the installation of solar-powered water heaters, to be a good example of a programme aiming to cut energy consumption, with effective and targeted incentives and appropriate companion measures (Missaoui and Mourtada, 2010).

Policies to promote environmentally responsible business behaviour

Policies to limit the adverse impact of business activities on the environment and, more generally, to promote more responsible behaviour and improve the environmental performance of firms are an integral part of a green economy. Better environmental performance can yield competitive advantages for firms, with regard to the growing demand for "green" products and services, the image that businesses have in the eyes of consumers and potential environmental risks, including the climate change-related risks confronting firms (OECD, 2010). The *OECD Guidelines for Multinational Enterprises* (see Chapter 3), the environment chapter in particular, provide indications of internationally recognised standards of responsible corporate behaviour. As indicated in Chapter 3, Tunisia has some way to go in order to meet these standards.

The drafting of a new Constitution is an opportunity for reflection and discussion about the inclusion of environmental rights (and the right to water, in particular) and for formulating commitments on sustainable development. The government is also revising existing legislation and forming it into a new environment code, planned for adoption in 2013. The programmes of ANME seek to encourage businesses to institute environmental management systems and to bring themselves into conformity with international environmental standards.[10] The provisional government plans to conduct studies on the management of industrial clusters and zones, in which a diagnosis of polluting firms will be programmed. A national plan is expected to be implemented to reduce the dangers of industrial pollution and to reinforce the environmental control and monitoring system, including a compulsory environmental diagnosis for the most polluting industrial firms.

Other features of Tunisia's green investment framework

As described in Chapters 2 and 4, Tunisia applies key principles such as non-discrimination and transparency to investments. These principles apply equally to investments in support of green growth, such as those in renewable energy, for example, and to private participation in infrastructure, for which there is no restriction in the case of majority foreign-financed investors established in Tunisia.

To date, none of the measures taken by Tunisia in support of green growth, including those for promoting energy conservation and renewable energies, have been deemed protectionist or discriminatory against foreign investors.

Institutional capacity to design and implement green investment policies

The multidimensional and cross-sectoral nature of climate change and other environmental concerns requires clear consistency between environmental, sectoral and economic policies relating to investment in priority areas for green growth, as well as consistency among the different levels of government and public agencies. Support for green investment also requires suitable human resources for designing and implementing innovative policies for leveraging private funds.

Since the 1980s, institutions have been created to manage Tunisia's various environmental priorities. The Ministry of the Environment is responsible, in collaboration with other ministries and agencies concerned, for proposing government policy for protecting the environment and nature, for improving the living environment and for regional planning, as well as for implementing those policies.[11] More recently, a study on green growth in Tunisia was launched at the initiative of the Ministry of the Environment (see above).

The *Agence nationale de maîtrise de l'énergie* (National Agency for Energy Conservation, ANME) was created in 1985 to carry out government policy concerning energy conservation through the rational use of energy, the promotion of renewable energies, and energy substitution.[12] Other institutions have been involved in the development of crosscutting policies affecting the environment. The *Agence nationale de protection de l'environnement* (National Environmental Protection Agency, ANPE) was created in 1988 to help prepare and implement the government's overall policy for combating pollution and protecting the environment;[13] it also handles the processing of investment authorisations for all projects relating to combating pollution and protecting the environment. The *Commission du développement durable* (Sustainable Development Commission), active since 1993, serves as co-ordinator among the various national development players, with a view to reconciling economic and social development, preserving natural resources and improving environmental conditions. The *Observatoire tunisien de l'environnement et du développement durable* (Tunisian Observatory of the Environment and Sustainable Development, OTED) is responsible for monitoring sustainable development activities in the country. The Ministry of the Environment's Directorate-General for Sustainable Development oversees the incorporation of environmental concerns into sectoral policies, in co-operation with the European Union, within the Environment Energy Programme (PEE). This unit is planning to promote territorial sustainable development policies through a generalisation of the local Agenda 21 process and the modernisation of geographical information systems on sustainable development. Despite these efforts, there is still limited incorporation of environmental concerns into economic policies.[14]

The Tunisian government is aware that the transition to a greener economy and the design, preparation and implementation of investment policies in support of green growth will require greater co-ordination among the various ministries. This will also demand the development of capacities within the government and the allocation of human and financial resources. There is a need to strengthen involvement by stakeholders, including the business world, trade unions and civil society organisations, in the preparation of policies and legislation. Greater citizen participation in decision-making at all levels and the right to a clean and healthy environment are among the priorities of the new Constitution on which the provisional government is now working. Since the revolution, citizen democracy has been taking shape gradually. For example, the government has instituted public consultations regarding environmental impact studies and is planning to extend this practice to all new programmes and projects. The sustainable development strategy may already be consulted and the green growth study will also include consultations with stakeholders.

Incentives for green investment

Incentives for green investment, in the form of subsidies, bonuses (*primes*), tax exemptions etc., can complement a favourable and attractive investment environment. However, the impacts of such incentives may over time become burdensome or counterproductive. They may also have been granted without taking into account their environmental impact and they may be found to be damaging and inconsistent with green growth objectives (fossil fuel subsidies are an example).

Incentives to promote green investments and improve business environmental performance

Tunisia has instituted mechanisms and instruments to discourage activities that harm the environment and to encourage better environmental performance. Examples of this include the environmental protection tax, the energy conservation tax, and the oil products tax. The Investment Incentives Code of 1993 devotes an entire chapter to combating pollution and protecting the environment. Articles 37 and 38 of the Code provide a number of incentive measures to encourage business efforts in these areas. These incentives have a narrow scope of application, as they are limited to the collection, processing and disposal of household waste.

In addition, the Pollution Cleanup Fund (*Fonds de dépollution*, FODEP), created in 1992,[15] grants subsidies of up to 20% of the amount of investment for clean technology and de-pollution projects such as facilities (collective or individual, public or private) for the treatment of wastewater, atmospheric de-pollution equipment, waste collection, processing and recycling plants, etc. Industrial enterprises may apply, but other activities that are important economically and environmentally, such as tourism, agriculture and services, have until now been excluded.

Subsidies are conditional upon: *i)* approval of the project technical study by ANME; *ii)* the firm's commitment to a timetable, outcomes and monitoring procedures; and *iii)* presentation of an investment and financing plan constituted to at least 30% by the investor's own funds. Firms eligible for FODEP support may also benefit from subsidised bank credit. On the other hand, failure to respect the conditions of the contract negotiated with ANME can lead to the cancellation of FODEP support and immediate repayment of the subsidy. A final share of this fund is now under negotiation with German co-operation institutions, notably KFW (*Kreditanstalt für Wiederaufbau*), but this would be the last time it would be renewed. The system's actual effectiveness, outcomes and benefits relative to its budgetary cost will be assessed as part of the European Union-financed Environment Energy Programme (PEE).

A new line of environmental credit instituted a parallel incentive framework outside FODEP's current coverage area, which enables businesses to rely on a system of preferential financing. The programme, which gets support from the European Union and the French Development Agency (AFD) and brings together a number of banks, has provided three Tunisian banks (*Banque internationale arabe de Tunisie* (BIAT), *Banque de Tunisie* (BT) and *Union bancaire pour le commerce et l'industrie* (UBCI) with a preferential credit line of EUR 40 million (about TND 72 million) to encourage environmental projects. The programme includes the following projects: pollution abatement in the tourism sector; collection and transport of solid and liquid waste; waste recycling; and pollution abatement projects having costs in excess of TND 4 million. The credit line covers the portion of the investment exceeding TND 4 million.

There is no mechanism in place for evaluating systematically the impact or success of the incentives and subsidies for achieving environmental objectives. Neither does Tunisia have any database on investment flows earmarked for "green" activities.[16] However, some data is available. According to the *Réseau des entreprises maghrébines pour l'environnement* (REME), FODEP has contributed to the financing of 450 projects for pollution control, waste collection and recycling, or those using clean technologies. These interventions have benefited from subsidies amounting to TND 274 million, for investments in the order of TND 137 million.[17]

Incentives to promote energy efficiency and renewable energies

As part of its national energy conservation policy, the government has introduced a series of incentives to promote investment in energy efficiency and the renewable energy sector. Amendments to the energy conservation legislation and the decree setting the bonuses relating to these operations entered into force in February 2009. These amendments call for bonuses to promote energy efficiency and the use of renewable energies.[18] To finance these bonuses and incentives, the government has also established the National Energy Conservation Fund (*Fonds national de maîtrise de l'énergie*, FNME), constituted by revenue from three taxes (a tax on initial vehicle registrations, a tax on sales of air conditioners and a tax on the use of incandescent light bulbs to align their prices on those of low-consumption bulbs).[19] That fund is intended to support investments in projects geared to energy efficiency, renewable energies and energy substitution.[20] In addition, ANME has instituted a programme in support of energy conservation (ALME) designed to support the emergence and realisation of energy conservation projects identified by enterprises as a complement to the tools, mechanisms and projects existing in the ANME.[21]

The financing of energy conservation investments benefits from several grants and lines of credit, including *i)* a multilateral line of USD 55 million established by the World Bank for cogeneration firms and projects; *ii)* a grant of USD 8.5 million, also from the World Bank, to finance an energy efficiency project in the industrial sector (PEEI); and *iii)* a grant of EUR 19 million from the European Union in the context of the environment and energy programme, for the purpose of supporting Tunisia's policy for sustainable development and environmental protection in the energy field. This grant involves a boost to the financial resources of the FNME (EUR 16 million), subsidisation of the line of credit from the AFD (EUR 2 million) and technical assistance through studies and training (EUR 875 000).

Another source of investment financing in the realm of renewable energy is the Clean Development Mechanism (CDM), created by the Kyoto Protocol (see Box 5.4). Recognising the importance of this mechanism as an instrument that allows developing countries to access the carbon market, the Tunisian government has taken a series of steps to reduce greenhouse gas emissions and take advantage of the mechanism.

The ANME recently launched a study on instituting an action plan for financing energy conservation, in co-operation with the United Nations Development Programme (UNDP). The principal themes of this study are strengthening national capacities for energy conservation and giving decision-makers the planning and decision-making tools to facilitate the pursuit of national priorities as well as fostering commercial development of promising industries and technologies. The project will also review foreign experience with financing mechanisms and adapt them to the Tunisian context for selected technologies and industries. The action plan will be prepared subsequently for implementing these mechanisms.

Table 5.1. **Green investment incentives in Tunisia**

Object of the incentive	Type of advantage	Beneficiary
Combating pollution Waste collection and processing	Exemption from customs duties and equivalent taxes and suspension of the VAT and consumption duties for imported products that are not similar to locally manufactured products and that are needed to carry out these investments. Suspension of VAT for equipment manufactured locally. Possibility that a bonus may be allocated.	Purchase of equipment needed for investments by enterprises to combat pollution, e.g. waste recycling and landfill operating projects Investments by enterprises specialised in the collection, transformation and processing of wastes and garbage.[1] Import of materials and equipment for garbage collection by companies working for local governments.
Waste collection and processing	Subscription to a firm's start-up capital or to a capital increase may be deducted from income or reinvested profits, up to 50% of the income or net profits subject to income tax. Deduction of internally reinvested profits, up to 50% of net profits subject to corporate tax.	Investments by enterprises specialised in the collection, transformation or processing of household garbage and wastes.[2] Conveyance of household garbage to public dump sites and garbage treatment and destruction.
Waste recycling and reclamation	Exemption from duties and taxes (VAT).	Sales of wastes by wholly-for-export enterprises to recycling and reclamation enterprises
Energy conservation, renewable energies	Reduction of customs duty rates to 10% and suspension of equivalent taxes and VAT.	Raw materials and semi finished products necessary for the manufacture of energy savings equipment or used in the field of renewable energies.[3]
Rational energy use, development of renewable energies, energy substitution	Bonuses (ranging from 20% to 70% of investment cost).	Energy audit and prior consultation (70% bonus), demonstration projects (50%), investments in energy conservation (20-70%); installation of energy conservation equipment in fishing units (40%), installation of automobile engine diagnostic stations (20%), substitution by natural gas in manufacturing and services (20%); as well as various bonuses for the use and production of renewable energies.[4]

1. Article 37 of the Investment Incentives Code.
2. Article 38 of the Code of Investment Incentives.
3. Decree No. 95-44 of 24 April 1995 and Articles 88 and 89 of Law No. 94-127 of 26 December 1994.
4. Decree No. 2009-362 of 9 February 2009.

Source: Ministry of Environment.

Box 5.4. **The Clean Development Mechanism (CDM) in Tunisia**

A number of sector studies have revealed a significant potential for reducing greenhouse gas emissions (GHG). This potential was estimated in 2005 at 12.7 million metric tonnes CO_2 equivalent ($MtCO_2e$) over the period 2006-11 and around 17 $MtCO_2e$ over the period 2012-16. These results have been consolidated by the preparation of a national portfolio of CDM projects in all sectors concerned with a view to maximum mobilisation of the identified potential. The objective is to support national strategies for sustainable development, particularly in the fields of rational waste management and reclamation, reducing atmospheric pollution, energy efficiency and renewable energies, forestations/reforestation, agriculture, and collective and multimodal transport. The national portfolio comprises 139 CDM projects in all sectors concerned, and 74 of them are in the manufacturing and energy sector.

More than 40 CDM projects and programmes of activities are now underway in Tunisia in numerous fields eligible for this mechanism, particularly energy efficiency (cogeneration, distribution of low-energy light bulbs, energy substitution, etc.), renewable energies (wind, solar and biomass), collective urban transportation development and ecologically rational management of wastes.

Since 2006, two large-scale projects for landfill gas recovery and flaring at 10 sites distributed across the country have been registered with the CDM Executive Board. The emissions reductions attributable to these two projects amount to 6 $MtCO_2e$ over an accounting period of 10 years. In July 2011, a CDM activities programme for residential solar water heaters was registered by the CDM Executive Board.

The conditions and procedures for selling the certified emissions reductions of GHG generated by the CDM projects were set by Decree No. 2008-4114 of 30 December 2008. According to Article 2, the sales contracts for certified emissions reductions must be concluded after calling for international tenders. Negotiation with the bidders making the best offers is possible, in line with the characteristics of the project and internationally accepted conditions and procedures.

Source: Ministry of the Environment.

Other incentives

Governments themselves have an important role to play in encouraging the "greening" of production and consumption. According to a recent study,[22] Tunisian legislation on government procurement[23] is not very sensitive to environmental criteria. On the other hand, legislation on energy conservation has served as an incentive for more energy-efficient government purchases. Law No. 2004-72 of 2 August 2004 on energy conservation, amended by Law No. 2009-7 of 9 February 2009, requires new buildings to comply with energy-saving technical specifications.[24] In addition, several circulars have contributed indirectly to integrating certain aspects of sustainable procurement: one example is a circular on monitoring the use of low-energy lighting in public buildings.[25]

The Ministry of the Environment conducted a study for prioritising sustainable government purchasing. The study, published in August 2011, highlights the importance of new modes of sustainable production and consumption as a way of positioning Tunisia on foreign markets and improving the country's overall ranking on the global competitiveness index. It also stresses that sustainable government consumption must become an important lever for developing competitive advantage.[26]

Lastly, the Ministry of the Environment and Sustainable Development introduced in 2007 a "Tunisian eco-label" (*écolabel tunisien*) to encourage clean production and sustainable consumption.[27] That label is awarded to products (goods and services marketed or produced in Tunisia) that demonstrate the highest levels of qualification from the viewpoint of environmental protection and the use of clean technologies. The label is managed by the National Standardisation and Industrial Property Institute (INNOPRI) and the Ministry of the Environment and Sustainable Development provides advisory and coaching services for firms aspiring to the eco-label.

Private sector participation in green infrastructure

As noted in Chapter 4, private participation in infrastructure projects (except in respect of renewable energies) in Tunisia is limited and faces multiple challenges, as in the water sector for example (see Box 5.5). The financial and administrative capacities for assembling, supervising and monitoring PPP projects for green infrastructure are still inadequate. Reforms have been planned to improve the legal framework and strengthen institutional capacities for encouraging public-private partnerships in infrastructure (see Chapter 4).

In the water sector, a first experiment of the BOT (build-operate-transfer) type was conducted for the Tunis-East purification plant. Several other sanitation projects are now being developed with a view to extending the sanitation network as a way of enhancing the living environment in urban and rural areas generally. There will also be an emphasis on improving the quality of sanitation services by upgrading the system and expanding its infrastructure, particularly within greater Tunis. These investments will also raise the quality of treated water, with the goal of boosting the water reuse rate to 50% before the end of 2014 in certain sectors.

In the water sector, the Economic and Social Development Strategy 2012-16 formulated by the transitional government in mid-2011 calls for investments that will accelerate water and soil conservation programmes by 30%. It calls for the launch of projects for connecting reservoirs and transferring their surplus, for improving the profitability of certain hydraulic works and for generalising water saving techniques. The Strategy also plans to accelerate the large dams programme and increase the number of projects to extend irrigation using non-conventional water and seawater desalination.

Box 5.5. **Challenges and opportunities for private investment in the water sector**

The current rate of mobilisation of available water resources is 95%. According to expert opinion, the Tunisian climate will become hotter and drier in the coming decades, with rainfall declining by as much as 10% by 2030. Water conservation is therefore one of the major challenges for the near future. Tunisia has launched water and soil conservation programmes by mobilising available water resources and controlling their exploitation. Several projects of this kind have been carried out: for example, protection of dams and reservoirs, recharging the water table and promoting the use of non-traditional resources such as desalination of seawater and recycling of treated water. The authorities are also making efforts to ensure the maintenance of water infrastructure, to rationalise water use in various sectors, notably agriculture and to develop water-saving applications.

The water sector provides an excellent illustration of the tensions that the authorities may face. The geographic distribution of water resources does not correspond to needs. While delivery infrastructure for drinking water has long been in place, there is no infrastructure for agriculture. In some areas, farmers must use drinking water to meet their irrigation needs. Even without accurate data on the status of the resource, it can be concluded that the availability and the quality of water resources are threatened by overexploitation, pollution and poor distribution among users.

The authorities' current approach relies on the development of new infrastructure for exploiting non-conventional sources, in particular desalination of seawater, through public-private partnerships. This option carries a major cost: the water and sanitation utilities, SONEDE and ONAS, both government-owned, are not financially self-sustaining because of low water tariffs (which the authorities have for many years refused on social grounds to revise). They have traditionally depended on government subsidies for their investment. They cannot even cover their operating and maintenance costs, and their financial deficits are growing.

The social context makes any discussion of tariff increases a very sensitive issue. Population pressure may induce politically inspired investment choices, such as the development of new drinking water delivery infrastructure, rather than broader thinking about how to ensure better management and use of resources (especially in agriculture). Future costs in the sector are likely to increase significantly and raising rates to cover them will be very difficult. It is difficult to imagine, then, that such investments can be made financially sustainable or that the private sector will have much appetite for the investment opportunities that could arise.

Source: Pre-report on application of the OECD checklist for public action on private sector participation in water infrastructure in Tunisia, OECD 2011.

According to a 2004 World Bank study examining private sector participation in infrastructure in Tunisia, private involvement in the seawater desalination area, particularly through BOT projects, is the best option for involving the private sector in drinking-water supply. Beyond mobilising private capital, it has the advantage of enlisting private expertise in what is a new area for the government agency responsible for drinking water management, the *Société nationale d'exploitation et de distribution des eaux* (SONEDE). According to the 2012-16 Strategy, the government is planning to build a seawater desalination plant under a BOT arrangement in Djerba, with a capacity of 50 000 m^3 per day, for a total investment of around TND 70 million. Two other plants are planned in the centre-east region (Zaarat, Sfax and Kerkennah), as well as a brackish water desalination plant in the south (Ben Gerdane), for an investment envelope of TND 180 million.

Another area where Tunisia intends to mobilise private investment is in managing various kinds of waste, by doubling the capacity for treating household and similar garbage and industrial and special wastes. The Tunisian authorities as well as international observers have pointed to poor waste management as being one of the key environmental problems in Tunisia. Private participation is still limited in this field and, according to some studies, the quality of its performance is mixed (World Bank, 2004) (Box 5.6). The New Tunisia Development Strategy presented in April 2012 reiterated that Tunisia will encourage private investment in the form of waste management concessions involving the operation and expansion of controlled dumping sites.

The initiatives described throughout this chapter demonstrate Tunisia's interest – on the part of the government and other stakeholders alike – to move towards greener growth. The experience gained in the realms of renewable energies and energy conservation could serve as a basis for the formulation of "green" investment policies in other areas, including the institution of incentives to private investment. Developing indicators to measure and monitor green investment, both domestic and foreign, could help ensure that such incentives are better targeted and monitored. Overhaul of the Investment Code is also an opportunity to crystallise the authorities' commitment to green growth and to incorporate the private sector's involvement in this effort. Tunisia is encouraged to exchange experience with other adhering countries in order to bolster and improve the environmental performance of Tunisian enterprises and expand the transparency of the environmental impact of their business, while complying with the *Guidelines for Multinational Enterprises*. Lastly, to include environmental protection-related clauses in future bilateral investment treaties and trade agreements would also send strong signals as to the importance that Tunisia attaches to investment in support of green growth.

Box 5.6. **Private participation in waste management**

The government plans to pursue the construction of controlled landfills and transfer centres and related facilities while continuing to close down or rehabilitate unauthorised dumping sites in the *governorates*, as well as providing waste transfer platforms in rural areas and the southern oases. The authorities also plan to reinforce systems for managing recoverable and recyclable wastes and to boost national capacities for treating fixed organic pollutants and pesticides. Private sector participation in the preparation and operation of controlled landfills will be encouraged through a system of concessions and reinforced partnership among municipalities.

Integrated solid waste management is one of the priorities of the sustainable development component of the European Neighbourhood and Partnership Instrument. Areas for action include the organisation of waste industries and greater private sector participation in waste treatment and recycling.* In the context of this co-operation instrument, the European Commission has financed a study on the promotion of private sector participation. The study looked at concessions granted in the area of waste management for the operation of dumping sites and recommended amending the regulations so as to grant 15-year concessions (instead of 5-year concessions, as is currently the case). This change is expected to make concessions more attractive to private investors. The legal provisions governing such concessions are now under review by the competent authorities.

In 2007 the World Bank approved a project for sustainable management of municipal waste, with a budget of EUR 22 million. The chief objectives of this project are to strengthen the institutional and financial frameworks, to develop suitable cost recovery mechanisms, to promote private sector participation, and to reap the emission reduction credits that could be generated by certain projects under the Clean Development Mechanism in Tunisia. The project, which was to run for five years, will be finalised in July 2012. For the ten years 2009-18, 3.2 million tonnes of CO_2 equivalent are expected. Three enterprises have been established in the realm of recovering and recycling biogas from dumping sites, along with two research offices specialised in the engineering of CDM projects.

* Support was provided under the IEVP to bolster capacities, and two pilot projects were undertaken and are already operational in the areas of composting and hotel waste; a third project has been initiated to generate energy from organic waste.

Source: EU (2007) European Neighbourhood and Partnership Instrument (Tunisia), Strategy Paper 2007-13 and Indicative National Programme (*http://ec.europa.eu/world/enp/pdf/country/enpi_csp_nip_tunisia_fr.pdf*); World Bank (date not specified), “Objects Supported by the World Bank in Tunisia”(*http://siteresources.worldbank.org/INTTUNISIAINFRENCH/Resources/ActivitesdelaBanquemondialeNovembre2009FRFINAL.pdf*).

Notes

1. The policies in place for promoting corporate "green" conduct are also discussed in Chapter 3.
2. *www.environnement.gov.tn/index.php?option=com_content&task=view&id=112&Itemid=135*.
3. See also the remarks by the Secretary of State for the Environment during the roundtable on "How to promote the green economy in Tunisia", held in December 2011, *www.investir-en-tunisie.net/index.php?option=com_content&view=article&id=12498*.
4. Tunisia is also a party to more than 30 international environmental agreements in such areas as protection of the marine environment, protection of the ozone layer, and combating desertification (see Annex D). During the 2011 Conference of Parties in Durban (COP 17) Tunisia supported renewal of the Kyoto Protocol.
5. *http://unfccc.int/files/meetings/cop_15/copenhagen_accord/application/pdf/tunisiacphaccord_app2.pdf*.
6. *http://ec.europa.eu/europeaid/where/neighbourhood/country-cooperation/tunisia/tunisia_fr.htm*.
7. Law No. 2009-7 of 9 February 2009, amending and supplementing Law No. 2004-72 of 2 August 2004 on energy conservation.
8. The regulations governing self-generation of green electricity, consisting of Law No. 2004-72 of 2 August 2004 on energy conservation, amended and supplemented by Law No. 2009-7 of 9 February 2009, authorises independent production of electricity using renewable energies by any establishment or group of establishments in the manufacturing, agriculture or tertiary sectors for their own consumption. Decree No. 2009-2773 of 28 September 2009 establishes the conditions for the transportation of electricity produced from renewable energies, and the sale of surpluses to STEG.
9. One lone project for 60 MW, expandable to 120 MW, is at the study stage and could be installed in the Tela region by high energy-consuming firms.
10. *www.anpe.nat.tn*.
11. The Ministry of Environment and Territorial Planning was created in 1991, and its name has changed over the course of the years. *www.environnement.gov.tn/index.php?option=com_content&task=view&id=112&Itemid=135*.
12. ANME, *www.anme.nat.tn*. This is a non-administrative public establishment overseen by the Ministry of Industry and Technology. Its scope of action encompasses initiatives related to energy conservation, including the formulation of the legal and regulatory frameworks of national programmes, conducting prospective and strategic studies, managing and granting tax breaks and financial incentives (including the national energy conservation fund) and preparing and carrying out awareness-building, informational, educational and training actions.
13. ANPE, *www.anpe.nat.tn*.
14. The official Tunisian report in preparation for the United Nations Conference on Sustainable Development (Rio+20) stresses that during the former regime the sectoral approach predominated, to the detriment of an integrated approach (Tunisian Government, 2011). It also emphasises that "Tunisia's institutional framework, as established and implemented for several decades, can no longer adapt to a situation marked by increasingly complex, multidimensional problems that require new management and planning approaches and modalities... Since sectoral, centralized planning modalities predominate in Tunisia and there are no effective coordination and cooperation mechanism and tools, efforts to

mainstream the environment into economic development sectors often face major obstacles and strong resistance." Lastly, the report highlights that there is "virtually no citizen participation in the various decision-making processes".

15. Law No. 92-122 of 29 December 1992 establishing a budget for 1993. The conditions and procedures for its operations were stipulated by Decree No 93-2120 of 25 October 1993, as amended and supplemented by Decree No. 2005-2636 of 24 September 2005.

16. Collecting such data remains difficult for the governments of developed and developing countries alike. The difficulties encountered in defining and measuring green FDI and possible avenues of future research are described in Golub, S., Kauffmann, C. *et al.*, 2011.

17. *www.reme.info*.

18. Law No. 2009-7 of 9 February 2009, amending and supplementing Law No. 2004-72 of 2 August 2004 on energy conservation and Decree No. 2009-2269 of 31 July 2009, amending Decree No. 2004-2144 of 2 September 2004.

19. Decree No. 2009-362 of 9 February 2009 amending and supplementing Decree No. 2005-2234 of 22 August 2005 (incentives via the national energy conservation fund).

20. The rates, amounts and procedures for granting bonuses in respect of investments covered by the Fund are stipulated in Decree No. 2005-2234 of 22 August 2005.

21. *www.anme.nat.tn/sys_files/2009/alme/guide-alme_fr.pdf*.

22. Study published at the UNEP website *www.unep.fr/scp/procurement/pilotcountries/files/TunisiaLR.pdf* without indication of date or authorship. Government procurement accounts for more than 15% of Tunisian GDP and more than 40% of the central government budget (2007 data).

23. Decree No. 2002-3158 of 17 December 2002, subsequently amended several times

24. A joint Executive Order of the Minister of Equipment, Housing and Territorial Planning and the Ministry of Industry, Energy and SMEs, of 23 July 2008, sets minimum technical specifications for energy savings in the construction and expansion of buildings for office or similar use. That order defines the public and private buildings covered by the 2004 Law and stresses the compulsory nature of the technical specifications, which must be included in bidding documents for construction contracts.

25. Circular of the Prime Minister No. 7 of 21 February 2008.

26. Ministry of Agriculture and Environment of Tunisia (Study Conducted by Emna Gana-Oueslati) (2011) "*Etat des lieux pour la mise en place d'un processus d'achats, publics durables*". *www.unep.fr/scp/procurement/pilotcountries/files/TunisiaMRA.pdf*.

27. Decree No. 2007-1355 of 4 June 2007 creating and stipulating the conditions for attributing the "Tunisian ecolabel".

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ANNEX A

*Tunisia's exceptions to national treatment**

A. Exceptions at national level

I. Investment by established foreign-controlled enterprises

Trans-sectoral: The acquisition of equity granting voting rights or of social participation in companies established in Tunisia is subject to approval by the Investment Commission (*Commission supérieure d'investissement*) when it is effected by a foreign legal person established in Tunisia and when the share of foreign participation in the capital of the company is equal or above 50%.

Source: Decree No. 77-608 of 27 July 1977 establishing the conditions for the application of Law No. 76-18 of 21 January 1976, merging and codifying legislation on foreign exchange and commerce governing the relations between Tunisia and foreign countries, modified by Decrees No. 95-1128 of 8 June 1995 and No. 97-1738 of 3 September 1997, article 21 bis.

Services: Activities in the following services, unless they are wholly for export, are subject to approval by the Investment Commission when foreign participation in the enterprises concerned exceeds 50% of their capital:

i) *Transport*: Ground transport (road transport of merchandise, collective road transport of passengers, rail transport); air transport; maritime transport; transport by pipeline.

ii) *Communications*: Electronic and telecommunications installations; mail distribution; video-text services; radio and television broadcasting services.

iii) *Tourism*: Tourism travel agencies.

iv) Education, teaching and vocational training.

v) *Cultural production and industries*: Restoration and development of archaeological and historic monuments; creation of museums and libraries;

* As of 23 May 2012.

social and cultural film projection; music and dance; photography; video recording, recording and development of films; cultural centres; cultural fairs.

vi) *Entertainment and activities for youth and children*: Day nurseries and kindergartens; recreation centres for families and children; youth and child facilities; residential and camping centres; sports training centres; sports medicine centres; physical education centres; organisation of sporting and youth events.

vii) *Public works*: Design, implementation and monitoring of industrial and civil engineering works, buildings and infrastructure; prospecting and drilling other than for oil.

viii) *Real estate promotion*: Housing projects; buildings for economic activities.

ix) *Computer services*: Databases and telematics services.

x) *Other services*: Technological audit and expertise; topographic services; electrification of buildings; construction works (laying of tiles and mosaics, installation of windows and frames, false ceilings, plastering and installation of plaster works, roof sealing); construction companies; security guard services; translation and linguistic services; publishing and advertising; organisation of congresses, seminars, fairs and exhibitions.

Source: Decree No. 94-492 of 28 February 1994 establishing lists of activities in the sectors stipulated by Articles 1, 2, 3 and 27 of the Investment Incentives Code, as amended by subsequent decrees.

Agricultural lands: Ownership of agricultural land by foreigners is not authorised, but foreigners may hold such lands under long-term, renewable leases. Foreign participation in companies operating agricultural land through leasing may be as high as 66%.

Source: Investment Incentives Code of 27 December 1993 as amended by Law No. 2010-85 of 17 December 2010 constituting the Budget Law for 2011 (Article 3); Decree of 4 June 1957 on real estate transactions as amended by Decree Law No. 77-4 of 21 September 1977; Law No. 69-56 of 22 September 1969 as amended by Law No. 97-33 of 26 May 1997.

Maritime fisheries and aquaculture: Fishing may be conducted in Tunisian waters by fishing units of Tunisian nationality and by foreign fishing units authorised for purposes of research, apprenticeship or extension services. Legal persons are deemed to be of Tunisian nationality and eligible for authorisation if they meet the following conditions: *i)* they are constituted in accordance with Tunisian law; *ii)* their corporate headquarters is in Tunisia; *iii)* more than one third of their capital is held by natural or legal persons of Tunisian nationality and consists of registered shares; *iv)* their board of directors, governance or oversight body comprises representatives of Tunisian individuals or legal persons in proportion to their shareholding interest in the company; and *v)* their activity is limited to fishing in the northern zone and on the high seas. For "fixed fisheries", defined as bodies of water belonging to the public domain on which facilities and equipment are established to permit exploitation for fishing purposes, an authorisation may be granted to legal persons whose capital is held entirely by individuals of Tunisian nationality.

Source: Law No. 94-13 of 31 January 1994 on fisheries, as amended and supplemented by Law No. 94-34 of 26 May 1997, Law No. 99-74 of 26 July 1999 and Law No. 2010-21 of 26 April 2010.

Non-scheduled (charter) air transport of freight and of passengers: Participation in such companies by foreign individuals or legal persons is limited to 49% of the capital.

*Sources: Law No. 59-76 of 19 June 1959, on Air Navigation; Executive Order of the Minister of Transport of 4 May 1996 containing general requirements (*cahier des charges*) for the granting of authorisation to operate air freight services.*

Commercial activities, including wholesale and retail trade, and construction: Natural and legal persons who do not have Tunisian nationality may not conduct a commercial activity, directly or indirectly, unless they meet all of the following conditions: *i)* they are constituted in accordance with Tunisian law and have their corporate headquarters in Tunisia; *ii)* their capital is represented to the extent of at least 50% by registered shares held by Tunisian individuals or legal persons; *iii)* a majority of their board of directors or their governance or oversight body consists of individuals of Tunisian nationality; *iv)* their chief executive officer (chairman and president) and managers are individuals of Tunisian nationality.

Source: Decree Law No. 61-14 of 30 August 1961 governing commercial activities, as amended by Law No. 85-84 of 11 August 1985; Decree Law No. 2009-69 of 12 August 2009 on wholesale trade; Decree No. 2009-2617 of 14 September 2009 regulating civilian building construction.

Architecture firms: At least two thirds of an architecture firm's capital must be held by architects. To work as an architect, a person must be of Tunisian nationality and must hold an architecture diploma delivered by the Technological Institute of Architecture.

Source: Law No. 74-46 of 22 May 1974 on organisation of the architecture profession in Tunisia.

Stock exchange intermediaries: Legal persons must be of Tunisian nationality, *i.e.* 50% of the capital must be held by Tunisians.

Source: Decree Law No. 99-2478 of 1 November 1999 on the status of stock exchange intermediaries.

II. Official aids and subsidies

None.

III. Tax obligations

None.

IV. Government purchasing

None.

V. Access to local finance

None.

B. Exceptions by territorial subdivisions

None.

Measures reported for transparency by Tunisia

A. Measures reported for transparency at the level of national government

I. Measures based on public order and essential security considerations

a) Investments by established enterprises under foreign control

None.

II. Other measures reported for transparency

a) Corporate organisation

Credit institutions: The CEO of a credit institution must be of Tunisian nationality. When the bylaws provide for separation of the functions of the board chairman and president, or those of the chairs of the management board and the oversight body, one of these functions must be performed by a person of Tunisian nationality.

Source: Law No. 2001-65 of 10 July 2001 on credit institutions.

Maritime fisheries and aquaculture: Fishing units of Tunisian nationality must have their Board of Directors or their governance or oversight body comprised of representatives of Tunisian legal or natural persons proportionate to their shareholding interest in the company.

Source: Law No. 94-13 of 31 January 1994 on fisheries, as amended by Law No. 94-34 of 26 May 1997, Law No. 99-74 of 26 July 1999 and Law No. 2010-21 of 26 April 2010.

Periodic press: The director of the periodical and the editor-in-chief must be of Tunisian nationality.

Source: Decree Law No. 2011-115 of 2 November 2011, Article 79.

Commercial activities, including wholesale and retail trade, and construction: Natural or legal persons of Tunisian nationality must constitute the majority of members of the Board of Directors or the governance or oversight body. The president and the board chairman must be individuals of Tunisian nationality.

Source: Decree Law No. 61-14 of 30 August 1961 governing certain commercial activities, as amended by Law No. 85-84 of 11 August 1985.

Tax advisory services: Foreign firms may provide tax advisory services (*conseil fiscal*) on the same basis as Tunisian nationals, provided that Tunisian professionals enjoy the same opportunities, *de jure* and *de facto*, in their home countries.

Source: Decree Law No. 61-14 of 30 August 1961 on the licensing of tax consultants, Article 5.

Engineering services: The managing partner of an engineering firm must be an engineer. Tunisian nationality is one of the conditions for exercising the engineering profession in Tunisia.

Source: Decree Law No. 82-12 of 21 October 1982 establishing the Ordre des ingénieurs.

Corporations of bailiffs: Bailiffs (*huissiers de justice*) working in a professional corporation must have had Tunisian nationality for at least five years.

Source: Law No. 95-29 of 13 March 1995 on organisation of the profession of bailiffs.

Law firms: Lawyers constituting a law firm must have had Tunisian nationality for at least five years.

Source: Law No. 89-87 of 7 September 1989 and Decree No. 2011-79 of 20 August 2011 on organisation of the law profession and Law No. 98-65 of 20 July 1998 on professional law firms.

Road transport: The provision of services by foreign individuals or legal persons from, to or within Tunisian territory, as well as their commercial presence, is limited to nationals of countries with which Tunisia has concluded or will conclude an international agreement, or in the context of a partnership agreement.

B. Measures reported for transparency at the level of territorial subdivisions

None.

C. Activities covered by public, private, mixed monopolies or concessions

At the level of national government

I. Public monopolies

- *Entreprise tunisienne des activités pétrolières* (ETAP) (petroleum imports and exports);
- *Société tunisienne des industries du raffinage* (STIR) (petroleum refining);

- *Société tunisienne de l'électricité et du gaz* (STEG) (electricity and gas);
- *Société nationale des chemins de fer tunisiens* (SNCFT) (railways);
- *Société nationale de distribution et d'exploitation des eaux* (water service);
- *Office national des postes* (National Post Office): For the handling of mailings of a weight not exceeding 1 kg and for the issuance of postage stamps;
- *Régie nationale du tabac et des allumettes* (tobacco products and matches);
- *Régie nationale des alcools* (alcoholic beverages);
- *Office du commerce tunisien* (Tunisian Trade Board): Monopoly over the import of basic foodstuffs with fluctuating prices, including sugar, tea and coffee;
- *Office des céréales* (Cereals Board): Monopoly over imports of hard wheat, soft wheat and barley, as well as exclusive rights on the local market to purchase hard and soft wheat.

II. Private monopolies

None.

III. Concessions

None.

ANNEX B

Statistical tables

Table B.1. **Inflows of foreign direct investment to Tunisia**

Millions of US dollars

	Direct international investment	Portfolio Investment	Other investment	Total international investment
2005	723	12	394	1130
2006	3270	65	-729	2606
2007	1532	30	170	1732
2008	2639	-39	649	3249
2009	1595	-89	1217	2724
2010	1401	-26	711	2086
Average 2005-10	1860	-8	402	2255

Source: IMF, *Balance of payments.*

Table B.2. **Composition of FDI in Tunisia**

Millions of US dollars

	Total FDI inflows	Participations	Re-invested profits	Loans
1992	525.8	523.5	n.a.	2.3
1993	561.9	561.9	n.a.	....
1994	432	430.0	n.a.	2.0
1995	264.4	270.7	n.a.	–6.3
1996	238.3	233.2	n.a.	5.1
1997	339.1	342.7	n.a.	–3.6
1998	649.9	648.1	n.a.	1.8
1999	349.8	345.6	n.a.	4.2
2000	752.2	756.6	n.a.	–4.4
2001	451.8	453.1	n.a.	–1.3
2002	790.8	789.0	n.a.	1.8
2003	540.9	540.8	n.a.	0.1
2004	593.6	597.1	n.a.	–3.5
2005	723	726.0	n.a.	–3.0
2006	3 270.2	3271.3	n.a.	–1.1
2007	1 531.9	1542.2	n.a.	–10.3
2008	2 638.5	2 647.2	n.a.	–8.7
2009	1 595.5	1 599.6	n.a.	–4.1
2010	1 400.8	1 405.3	n.a.	–4.5
Average, 2005-10	1 860.0	1 865.3	n.a.	–5.3

Source: IMF, *Balance of payments.*

Table B.3. **FDI inflows and outflows of countries subscribing to the OECD Declaration on International Investment and multinational enterprises and of Tunisia**

2005-2010, as a % of GDP[1]

Reporting country	FDI inflows as a % of GDP						FDI outflows as a % of GDP					
	2005	2006	2007	2008	2009	2010	2005	2006	2007	2008	2009	2010
Argentina*	3	3	2	3	1	2	1	1	1	0	0	0
Australia	–	4	5	4	3	3	–	3	2	3	2	2
Austria[2]	4	2	8	2	2	1	4	4	10	7	3	2
Belgium	9	15	20	38	12	15	9	13	17	44	1	10
Brazil*	2	2	3	3	2	2	0	3	1	1	–	1
Canada	2	5	8	4	2	1	2	3	4	5	3	2
Chile	6	5	8	9	8	7	2	1	2	5	5	4
Colombia*	7	4	4	4	3	2	3.2	0.7	0.4	1.0	1.3	2.3
Czech Republic	9	4	6	3	2	4	–	1	1	2	0	1
Denmark	5	1	4	1	1	–	6	3	7	4	2	1
Égypt*	6	9	9	6	4	3	0.1	0.1	0.5	1.2	0.3	0.5
Estonia	21	11	12	7	10	8	5	7	8	5	8	1
Finland	2	4	5	–	0	3	2	2	3	3	2	4
France	4	3	4	2	1	1	5	5	6	5	4	3
Germany	2	2	2	0	1	1	3	4	5	2	2	3
Greece	0	2	1	1	1	0	1	2	2	1	1	0
Hungary[2]	7	6	4	4	1	1	2	3	3	1	1	1
Iceland	19	23	33	5	1	2	44	33	50	–	19	–
Ireland	–	–	10	–	12	13	7	7	8	7	12	9
Israel[3]	4	11	5	5	2	2	2	11	5	4	1	4
Italy	1	2	2	–	1	0	2	2	4	3	1	2
Japan	0	–	1	1	0	–	1	1	2	3	1	1
Korea	1	0	0	0	0	0	1	1	2	2	2	2
Latvia*	4	8	8	4	0	2	0.8	0.9	1.3	0.7	–	0.1
Lithuania*	4	6	5	4	0	2	1.3	1.0	1.5	0.7	0.6	0.2
Luxembourg[2]	16	75	–	19	42	17	24	17	143	20	14	27
Mexico	3	2	3	2	2	2	1	1	1	0	1	1
Morocco*	3	4	4	3	2	1	0.1	0.7	0.8	0.4	0.5	0.6
Netherlands[2]	6	2	15	1	5	–	19	11	7	8	3	6
New Zealand	1	4	3	4	–	0	–	0	3	–	–	0
Norway	2	2	1	3	4	4	7	6	4	7	6	5
Peru*	3	4	5	5	4	5	–	–	0.1	0.6	0.3	0.1
Poland	3	6	6	3	3	2	1	3	1	1	1	1
Portugal	2	5	1	2	1	1	1	4	2	1	0	–
Romania*	7	9	6	7	3	2	–	0.3	0.2	0.1	–	–
Slovak Republic	5	8	5	5	–	1	0	1	1	1	0	0
Slovenia	2	2	3	4	–	1	2	2	4	3	0	–
Spain	2	2	4	5	1	2	4	8	10	5	1	2
Sweden	3	7	6	8	2	–	7	7	8	6	6	4
Switzerland	–	11	7	3	6	4	14	19	12	9	6	12

Table B.3. **FDI inflows and outflows of countries subscribing to the OECD Declaration on International Investment and multinational enterprises and of Tunisia** *(cont.)*

2005-2010, as a % of GDP[1]

Reporting country	FDI inflows as a % of GDP						FDI outflows as a % of GDP					
	2005	2006	2007	2008	2009	2010	2005	2006	2007	2008	2009	2010
Tunisia	2	10	4	6	4	3	0.0	0.1	0.0	0.1	0.2	0.1
Turkey	2	4	3	3	1	1	0	0	0	0	0	0
United Kingdom	8	6	7	3	3	2	4	3	12	6	2	1
United States	1	2	2	2	1	2	0	2	3	2	2	2

* OECD non-member countries subscribing to the Declaration and Decisions on International Investment and Multinational Enterprises.

1. Percentages are not calculated for negative values.
2. Excluding special purpose entities (SPEs).
3. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD Database on Foreign Direct Investment.

Table B.4. **Stock of inbound FDI of countries subscribing to the OECD Declaration on International Investment and multinational enterprises and of Tunisia**

1995-2010, as % of GDP[1]

Reporting country	Stocks of inbound FDI as a % of GDP					
	1995	2000	2005	2008	2009	2010
Argentina* *	11	24	30	23	26	23
Australia	28	29	32	29	43	41
Austria[2]	9	16	27	36	45	44
Belgium	40	84	127	169	201	193
Brazil*	–	–	20	17	25	23
Canada	21	29	30	29	39	36
Chile	–	61	63	58	75	69
Colombia*	8	11	25	29	32	28
Czech Republic	13	38	49	52	66	68
Denmark	–	46	45	45	50	45
Égypt*	0	0	32	37	35	0
Estonia	–	46	85	72	84	86
Finland	6	20	28	31	35	36
France	12	20	29	34	38	38
Germany	4	25	23	26	29	28
Greece	–	11	12	11	13	11
Hungary[2]	25	48	56	57	76	68
Iceland	2	6	29	55	71	94
Ireland	–	131	81	71	112	121
Israel[3]	6	18	28	31	35	36
Italy	6	11	13	14	17	16
Japan	1	1	2	4	4	4
Korea	–	–	12	10	15	13
Latvia*	12	29	26	24	31	34
Lithuania*	5	22	27	19	26	28
Luxembourg[2]	–	–	161	165	285	241
Mexico	13	15	22	24	32	29
Morocco*	0	0	35	44	47	50
Netherlands[2]	28	63	75	74	83	76
New Zealand	41	53	46	40	55	48
Norway	13	15	27	27	40	37
Peru*	10	21	20	26	27	27
Poland	6	20	30	31	43	43
Portugal	16	27	33	40	49	48
Romania*	1	19	22	24	31	33
Slovak Republic	7	23	49	54	60	58
Slovenia	12	16	20	29	31	31
Spain	18	27	34	37	43	44
Sweden	12	38	47	57	82	76
Switzerland	18	35	46	89	100	106

Table B.4. **Stock of inbound FDI of countries subscribing to the OECD Declaration on International Investment and multinational enterprises and of Tunisia** *(cont.)*

1995-2010, as % of GDP[1]

Reporting country	Stocks of inbound FDI as a % of GDP					
	1995	2000	2005	2008	2009	2010
Tunisia	58	54	52	65	73	71
Turkey	–	7	15	11	23	25
United Kingdom	20	31	37	37	49	55
United States	9	14	15	17	18	18

* OECD non-member countries subscribing to the Declaration and Decisions on International Investment and Multinational Enterprises.

1. Percentages are not calculated for negative values.
2. Excluding special purpose entities (SPEs).
3. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Source: OECD Database on Foreign Direct Investment.

ANNEX C

Bilateral investment agreements concluded by Tunisia

Country	Signature	Entry into force
Albania	30 October 1993	–
Algeria	17 February 2006 (ratified by Tunisia on 7 July 2006)	–
Argentina	17 June 1992	23 January 1995
Austria	1 June 1995	1 January 1997
Belgium – Luxembourg	8 January 1997	18 October 2002
Bulgaria	24 November 2000	15 October 2003
Burkina Faso	7 January 1993	–
Chile	23 October 1998	–
China, People's Republic	21 June 2004 (ratified by Tunisia on 13 April 2006)	–
Congo	4 October 2005 (ratified by Tunisia on 2 May 2006)	–
Côte d'Ivoire	16 May 1995	–
Czech Republic	6 January 1997	8 July 1998
Denmark	28 June 1996	11 April 1997
Egypt	8 December 1989	2 January 1991
Ethiopia	14 December 2000	14 December 2000
Finland	4 October 2001	4 September 2003
France	20 October 1997	10 September 1999
Germany	20 December 1963	6 February 1966
Greece	31 October 1992	21 April 1995
Guinea	18 November 1990	–
Hungary	13 May 2003	–
Indonesia	13 May 1992	12 September 1992
Iran	23 April 2001	27 February 2003
Italy	17 October 1985	24 June 1989
Jordan	27 April 1995	23 November 1995
Kuwait	14 September 1973 (ratified by Tunisia on 14 March 2005)	–

Country	Signature	Entry into force
Lebanon	24 June 1998	4 June 2000
Libya	19 February 2005 (ratified by Tunisia on 3 October 2005)	–
Mali	1 July 1986	–
Malta	26 October 2000	12 May 2002
Mauritania	11 March 1986	–
Morocco	28 January 1994	1 April 1999
Netherlands	11 May 1998	1 August 1999
Niger	5 June 1992	–
Oman	19 October 1991	1 March 1992
Pakistan	18 April 1996	–
Poland	29 March 1993	22 September 1993
Portugal	28 February 2002	10 November 2006
Qatar	28 May 1996 (ratified by Tunisia on 29 July 1996)	–
Romania	16 October 1995	8 August 1997
Senegal	17 May 1984	–
South Africa	28 February 2002 (ratified by Tunisia on 26 April 2005)	–
South Korea	23 May 1975	28 November 1975
Spain	28 May 1991	20 June 1994
Sudan	8 October 2003 (ratified by Tunisia on 26 April 2005)	–
Sweden	15 September 1984	13 May 1985
Switzerland	2 December 1961	19 January 1964
Syria	23 January 2001	12 March 2003
Togo	13 September 1987	–
Turkey	29 May 1991	28 April 1994
United Arab Emirates	10 April 1996	24 February 1997
United Kingdom	14 March 1989	4 January 1990
United States	15 May 1990	7 February 1993
Yemen	8 March 1998	–

Source: FIPA Tunisia.

ANNEX D

Double-taxation treaties concluded by Tunisia

Country	Signature	Entry into force
Algeria	9 February 1985	28 May 1986
AMU (Arab Maghreb Union)	23 July 1990	22 June 1992
Austria	23 June 1977	5 August 1978
Belgium	22 February 1975	16 October 1976
Canada	10 February 1982	4 December 1984
Denmark	5 February 1981	28 May 1981
Egypt	8 December 1989	2 January 1991
Ethiopia	29 August 2001	29 August 2001
France	28 May 1973	1 March 1975
Germany	23 December 1975	19 November 1976
Greece	31 October 1992	22 March 1995
Iran	16 July 2001	16 July 2001
Iraq	25 June 2001	–
Italy	16 May 1979	17 September 1981
Jordan	14 February 1988	1 January 1990
Korea	4 October 1989 27 September 1988	26 December 1990 24 November 1989
Kuwait	18 April 2000	–
Libya	15 May 1978	1 January 1980
Luxembourg	27 March 1996	–
Mali	28 April 2000	28 April 2000
Malta	31 May 2000	–
Morocco	28 August 1974	26 June 1979
Netherlands	16 May 1995	30 November 1995
Norway	31 May 1978	3 January 1980
Poland	30 March 1993	15 November 1993
Senegal	17 May 1984	02 July 1985
South Africa	2 February 1999	–
Spain	12 July 1982	14 February 1987
Sweden	7 May 1981	19 April 1983
Switzerland	10 February 1994	28 April 1995
Turkey	2 October 1986	28 December 1987

Country	Signature	Entry into force
United Arab Emirates	10 April 1996	27 July 1997
United Kingdom	15 December 1982	20 January 1984
USA Additional protocol	17 June 1985	26 December 1990

Source: FIPA Tunisia.

ANNEX E

Trade agreements in force in Tunisia

Signatory party	Date of signature	Date of ratification	Type of agreement
EU27	17 July 1995	20 June 1996	Association agreement
EFTA (Switzerland, Norway, Iceland and Liechtenstein)	17 December 2004	1 June 2005	Free-trade agreement with the European Free Trade Association
Egypt, Jordan and Morocco	25 February 2004	July 2004	Agadir free-trade agreement
18 countries of the League of Arab States	19 February 1997	1 January 1998	Agreement creating the Greater Arab Free Trade Area (GAFTA)
Algeria	9 January 1981	21 March 1981	Free-trade agreement
Libya	14 June 2001	26 November 2001	Free-trade agreement
Morocco	16 March 1999	16 March 1999	Free-trade agreement
Mauritania	25 September 1964	28 February 1986	Free-trade agreement
Egypt	5 March 1998	1 March 1999	Free-trade agreement
Jordan	22 April 1998	2 November 1998	Free-trade agreement
Kuwait	17 June 1988	4 November 1988	Free-trade agreement
Turkey	21 November 2004	1 July 2005	Free-trade agreement

Source: WTO and Ministry of Trade.

ANNEX F

Tunisia's participation in international organisations and ratification of international treaties

a) Member of international organisations

International organisations	Year of accession
International Atomic Energy Agency	1957
World Bank	1957
Islamic Development Bank	1975
International Monetary Fund (IMF)	1957
League of Arab States	1958
African Union	2002
United Nations (UN)	1956
United Nations Educational, Scientific and Cultural Organization (UNESCO)	1967
Food and Agriculture Organization of the United Nations (FAO)	1967
United Nations Industrial Development Organization (UNIDO)	1967
International Labour Organization (ILO)	1956
Organisation internationale de la Francophonie	1970
World Trade Organization (WTO)	1995
World Intellectual Property Organization (WIPO)	1975
Arab Maghreb Union	1989

b) Ratification of international treaties

Treaties	Ratification
Crime and corruption	
United Nations Convention against Corruption (2003)	2008
United Nations Convention against Transnational Organized Crime (2000)	2002
Convention on the Prevention and Punishment of the Crime of Genocide	2008
Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity	2008
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)	1990
International Convention for the Suppression of the Financing of Terrorism (2001)	2003
International Convention for the Suppression of Terrorist Bombings (1997)	2002
Environment	
Stockholm Convention on Persistent Organic Pollutants	2004
Kyoto Protocol to the United Nations Framework Convention on Climate Change	2002
Cartagena Protocol on Biosafety to the Convention on Biological Diversity	2002
Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal	1995
United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	1995
International Convention on Oil Pollution Preparedness, Response and Co-operatio	1995
United Nations Framework Convention on Climate Change	1993
Convention on Biological Diversity	1993
Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa	1992
Vienna Convention for the Protection of the Ozone Layer	1989
Convention for the Protection of the Mediterranean Sea against Pollution and two related Protocols	1977
International Convention for the Prevention of Pollution of the Sea by Oil	1973
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage	1976
International Convention on Civil Liability for Oil Pollution Damage	1976
International Convention for the Prevention of Pollution from Ships	1976
Convention on International Trade in Endangered Species of Wild Fauna and Flora	1974
Human rights	
Universal Declaration of Human Rights (1948)	
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1984)	1988
International Covenant on Economic, Social and Cultural Rights (1966)	1968
International Covenant on Civil and Political Rights (1966)	1968
Convention on the Rights of the Child (1989)	1991
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	1966
Convention on the Political Rights of Women (1952)	1967
Convention on the Rights of Persons with Disabilities	2008
Rome Statute of the International Criminal Court	2011

Treaties	Ratification
International Convention for the Protection of All Persons from Enforced Disappearance	2011
International investment	
Convention on the Settlement of Investment Disputes between States and Nationals of other States (1965)	1966
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)	1967
Unified Agreement for the Investment of Arab Capital in the Arab States (1980)	1980
Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference (1986)	
Convention relative à l'encouragement et à la protection des investissements entre les membres de l'Union du Maghreb arabe (UMA) (1993)	
The Arab (Amman) Convention on Commercial Arbitration	1988
Labour	
Weekly Rest (Industry) Convention, 1921 (No. 14)	15 May 1957
Forced Labour Convention, 1930 (No. 29)	17 December 1962
Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)	14 April 1970
Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)	15 May 1957
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	18 June 1957
Protection of Wages Convention, 1949 (No. 95)	28 May 1958
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	15 May 1957
Equal Remuneration Convention, 1951 (No. 100)	11 October 1968
Abolition of Forced Labour Convention, 1957 (No. 105)	12 January 1959
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)	28 May 1958
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	14 September 1959
Equality of Treatment (Social Security) Convention, 1962 (No. 118)	20 September 1965
Hygiene (Commerce and Offices) Convention, 1964 (No. 120)	14 April 1970
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Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)	03 May 1967
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Minimum Age Convention, 1973 (No. 138)	19 October 1995
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Paris Convention	7 July 1884
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Nairobi Treaty	21 May 1983

Source: Tunisian Government.

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