



UNITED ARAB EMIRATES

NATIONAL INVESTMENT REFORM AGENDAS

MENA-OECD
INVESTMENT
PROGRAMME



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A. BACKGROUND

I. Introduction

1. Facing competition from other regions and growing domestic pressure from a young workforce, a number of Middle East and North African (MENA) countries have recognised the need to implement economic and regulatory reforms to increase private sector participation in their economies. Investment climate reforms remain a key element of the economic restructuring policy undertaken by MENA countries in an effort to transform their economies from public sector dominated to private sector led economies. Since the end of 1990s and beginning of 2000, the pace of economic reform in general - and investment climate in particular - has accelerated as MENA governments have realised the need to attract private sector investment to reduce unemployment.

2. In 2004, countries in the region have invited the OECD to provide input in the process of investment policy reform and hence the MENA-OECD Investment Programme was established. Since then, one of the key objectives pursued by MENA countries, using the Programme as a resource and a platform, is to share good practice of investment policy reform.¹ There have been two major avenues for doing so – regional workshops and activities of the Programme, and country specific activities which have been organised in the framework of National Investment Reform Agendas (NIRAs). Reflecting their reform priorities, the participating MENA countries have started developing NIRAs in 2004 and continued this exercise throughout 2005-2006.

3. The National Investment Reform Agendas (NIRAs) specify investment reform issues being discussed by a specific country with the OECD, along with concrete implementation targets and deadlines. These reform agendas are developed by Country Teams in cooperation with the OECD Secretariat. The objective of the National Investment Reform Agendas is to provide a framework for MENA countries:

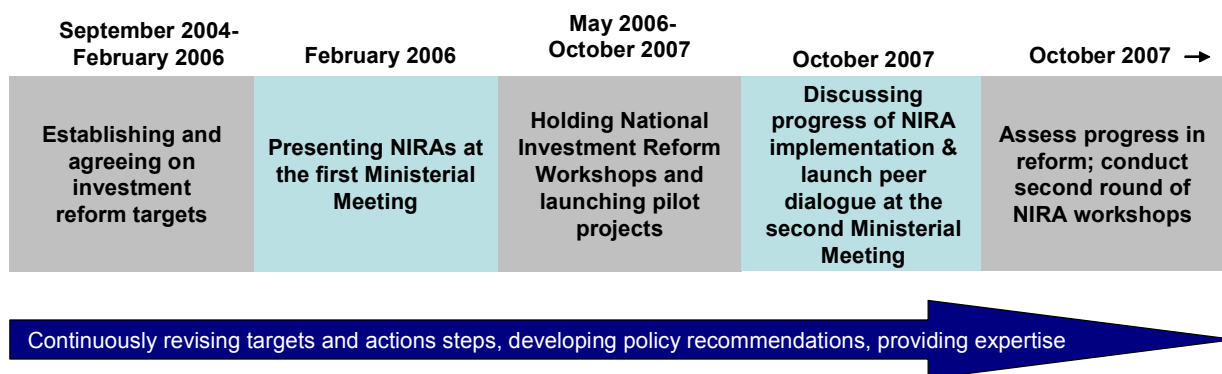
- To focus investment policy reforms on key areas;
- To improve their image as an attractive destination of investors;
- To provide a basis for regional dialogue and exchange of experience amongst MENA countries on investment policy reform and economic diversification;
- To focus international and regional donors' activities on supporting MENA countries to achieve their investment policy reform targets.

¹ In this context, investment policy reform issues are thought of as encompassing areas covered by the five Working Groups of the Programme, ranging from establishing a transparent investment climate to encouraging investment promotion agencies, to providing appropriate tax, financial sector and corporate governance frameworks.

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4. The first official presentation of NIRAs took place on the occasion of the first Ministerial Meeting of the Programme in February 2006 in Jordan, where several countries have presented their NIRA projects and the overall progress of investment climate reform. Following the Ministerial meeting, more countries have joined the effort to establish NIRAs with the Programme, and NIRA workshops have been organised starting in May 2006 to discuss concrete policy areas where OECD expertise and input was sought. Although adopting different formats, adaptable to country circumstances, NIRA workshops have generally focused on 2-4 specific policy issues where OECD and country technical experts have discussed and agreed on follow up actions. Following these discussions, pilot projects such as launching corporate governance codes or investment laws have been agreed upon in coordination with Government counterparts in respective countries. In the course of these projects, the Secretariat provides technical assistance requested by the Country team, and assists in the evaluation of progress of specified targets vis-à-vis the deadlines.

5. The following graphic demonstrates schematically the process followed by the Programme in its work on NIRAs with MENA countries:



6. It is important to highlight that the NIRA process, while aimed at individual country reforms, is indirectly linked with the Programme’s regional element of work. NIRA workshops conducted to date have highlighted several cross-cutting themes which can be integrated into regional activities of the Programme.

II. Current Status of the National Investment Reform Agenda of the U.A.E.

7. The Government of the United Arab Emirates has an active supporter of the Programme since its inception in 2004. The UAE has hosted a number of Working Group meetings in 2005 and has also supported the Programme’s Tax Treaties workshops. The UAE Government has shown great leadership, in particular, by acting as a Chair of the Working Group 2, which works on encouraging investment promotion agencies and business associations to act as driving forces for economic reform. The UAE Government has actively participated in various activities of the Programme and was represented by H.E. Sheikha Lubna Bint Khalid Al Qaisimi, Minister of Economy, at the Ministerial Meeting of the Programme in February 2006. On this occasion, the Minister has made a presentation of the ongoing investment climate reforms in the UAE received by other Ministerial delegations.

8. The UAE Government has established a NIRA under the Programme in 2006 and has organised, in cooperation with the MENA-OECD Investment Programme, a NIRA workshop to review progress of

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investment reform in four concrete areas (refer to the NIRA agenda below) and to facilitate the sharing of experience between local and OECD experts. This workshop was preceded a number of Country Team ² meetings where discussions among representatives of the different emirates took place. On October 4th, 2006, the UAE National Investment Reform Agenda (NIRA) Country Team meeting took place in Abu Dhabi, under the chairmanship of H.E. Sheikha Lubna Bint Khaled Al Qasimi, Minister of Economy of the UAE.

9. The NIRA workshop took place in December 2006 and marked an important milestone since it represented an exercise of coordination between the seven emirates in order to achieve a common policy stance on each of the issues. Another important feature of the workshop was its attendance by representatives of the business community from the emirates who were actively engaged in discussions which took place. The NIRA workshop was chaired jointly by H.E. Sheikha Lubna Bint Khalid Al Qaisimi and the OECD Deputy-Secretary General, Mr. Richard Hecklinger. On the occasion of the workshop, the Minister has announced the new investment law to be implemented in the UAE. The MENA-OECD Investment Programme has already provided expertise to the UAE in this area and will continue to input in the future as the law is drafted.

10. The remainder of this document outlines the structure of the NIRA workshop, including the background materials presented at this meeting. Please note that the content of these documents reflects the policy reforms considered by the UAE government as of December 2006.³

² The Ministry of Economy has been cooperating with the MENA-OECD Investment Programme since 2005, and has initiated the establishment of a Country Team which consists of representatives from several institutions involved in investment climate reforms of the UAE, including the Ministry of Finance and Industry, Abu Dhabi Investment Authority, Dubai Investment Group, the Central Bank and the Securities and Commodities Authority.

³ The actual National Investment Reform Agenda of the UAE has been omitted from this publication as the follow-up actions and their deadlines are being currently discussed by the UAE country team, working in collaboration with the MENA-OECD Investment Programme.



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B. NATIONAL INVESTMENT REFORM WORKSHOP AGENDA

Chairpersons of the meeting:

H.H. Sheikha Lubna Bint Khalid Al Qasimi, Minister of Economy, U.A.E

Mr. Richard Hecklinger, Deputy Secretary-General, OECD

Moderator:

Dr. Rainer Geiger, Director, MENA-OECD Investment Programme

09:00-09:30	Opening Session
	<ul style="list-style-type: none"> ○ H.H. Sheikha Lubna Bint Khalid Al Qasimi, Minister of Economy, U.A.E. ○ Mr. Richard Hecklinger, Deputy Secretary General, OECD ○ Dr. El Sayed Torky, Representative of Programme Chair ,Ministry of Investment, Egypt
9:30-11:30	Session I : Best Practice in Sector Liberalisation
	<p><i>On a federal level, foreign ownership in the UAE is restricted to 49 % in sectors such as tourism, health and other services (with the exception of Free Zones, where 100% ownership is permitted). This session aims to discuss possible advantages and disadvantages of opening up UAE sectors outside the Free Zones to greater foreign ownership. Best practice from the MENA region and OECD countries on sector liberalisation and the benefits which can be derived for the domestic business community will be presented.</i></p>
	<p>Panel I – Foreign investment in the UAE: Trends and Prospects</p> <ul style="list-style-type: none"> • Introductory presentation by the Ministry of Economy highlighting major trends of foreign investment in the UAE’s FEZs as well as describing potential sectors for further liberalisation. <ul style="list-style-type: none"> ○ Mr. Aref Al Farra, Economic Advisor, Ministry of Economy, Abu Dhabi

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	<ul style="list-style-type: none"> ○ Ms. Suzan Saba, Legal Expert, Ministry of Economy, Abu Dhabi • Private Sector Case Study: How can domestic business benefit from foreign direct investment? <ul style="list-style-type: none"> ○ Mr. Yosif Ali, EMKE Group , Abu Dhabi • Country Case Study: Irish success in FDI Attraction <ul style="list-style-type: none"> ○ Mr. Barry Condron, Director, XMI Consult, Ireland
	<p><i>Panel II – Policy Advocacy on the Benefits of FDI</i></p> <p><i>The panel addresses the challenges faced by Ministries and Agencies (IPAs) to communicate the benefits of FDI and investment climate reforms to the broader public.</i></p> <ul style="list-style-type: none"> ○ Mr. Spencer Wilson, Media Relations Officer, Communication Department, OECD ○ Mrs. Niveen Al Shafei, Vice-Chairman, General Authority for Investment and Free Zones, Egypt ○ TBD, Ministry of Finance and Industry, UAE
11:30-11 :45	Coffee Break
11:45-13 :30	Session II : Towards a Unified Investment law
	<p><i>This session seeks to address benefits of combining investment regulation in a unified federal law. Following the conclusions of the previous session, this part of the workshop will address the potential features of a comprehensive Investment Law in the U.A.E.</i></p>
	<p><i>Panel I – Regulation of Access</i></p> <p><i>The session will address the benefits of a unified investment law substituting the current structure of investment regulation in the UAE. Key provisions of such a law could include regulation of access for foreign investors (negative list, screening and approval procedures).</i></p> <ul style="list-style-type: none"> ○ Dr. Alexander Böhmer, Executive Programme Manager, MENA-OECD Investment Programme ○ Mr. Mohammed Omar, Chamber of Commerce and Industry, Abu Dhabi ○ Mr. Hamad Bu'maim, Chamber of Commerce and Industry, Dubai

	<p><i>Panel II – The Effectiveness of Incentives for Investor Attraction</i></p> <p><i>The session will discuss the regulatory and financial incentives for the attraction of high value-added FDI into Emirates, based on similar experiences of other MENA and OECD member countries.</i></p> <ul style="list-style-type: none"> ○ Dr. Nermine Al Shimy, Economic Advisor and Strategic Planning Manager, Jebel Ali Free Economic Zone ○ Mr. Hans Christiansen, Senior Economist, Investment Division, OECD
<p>13:30 - 14:00</p>	<p>Conclusions</p>
<p>14:00 - 15:30</p>	<p>Lunch</p>



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C. SUMMARY OF PROCEEDINGS

21st December, 2006

1. The NIRA workshop was jointly organized by the MENA-OECD Investment Programme and the Ministry of Economy of the UAE on the 21st December 2006. The workshop highlighted the progress on key issues of investment policy reform in the UAE. The workshop featured high level participation by government officials, educational institutions, and private sector participants. The workshop topics were selected by the UAE country team, lead by the Ministry of Economy, and mainly focused on issues of sectoral liberalisation and the establishment of a comprehensive investment law.

2. Each session featured a presentation on the current situation and remaining challenges facing the UAE by officials, followed by commentary and suggestions by OECD, and external experts. Each session was followed by a question and answer period where the private sector was given a chance to challenge the speakers and recommend further measures for investment climate development.

I. Opening

3. The workshop started with a keynote speech of H.H. Sheikha Lubna Bint Khalid Al Qasimi, Minister of Economy of the UAE, who announced that through Prime Ministry decision No. (299/8) for 2006, the Ministry of Economy was granted a Cabinet mandate to draft a comprehensive Foreign Investment Law for the UAE.

4. The Minister highlighted the necessity of constant effort in order to maintain the UAE's foreign direct investment levels, in light of growing regional and international competition. In this context, the Minister acknowledged that a need remains to improve the UAE's ranking in terms of ease of starting and closing a business at both federal and emirate level.

5. Dr. El Sayed Torky, Egyptian representative of the Programme Chair, spoke about the Programme's role in mobilising FDI in the region, and the goals achieved by the Programme's five Working Groups. Dr. Torky also invited the UAE to attend the Programme's second Ministerial meeting in Cairo in the second half of 2007. He also encouraged the UAE private sector to acquaint themselves with the MENA-OECD Investment Programme and to engage more actively in its activities.

II. Foreign Investment in the UAE – Trends and Prospects

6. A representative of the Ministry of Economy gave an introductory presentation outlining major trends in foreign investment in the UAE, and the regulatory framework governing investment in the country, noting the Government's successful diversification plan. The speakers highlighted the need for concerted efforts to improve the regulatory environment, especially outside the Free Zones, and the added benefit of adhering to a single foreign investment law which would regulate guarantees, incentives, and clarify the relevant institutional framework.

7. A best practice country case study of Ireland was presented by Mr. Barry Condrón, a former official of the Irish Investment Promotion Agency. The presentation provided a historical look at Ireland's economic transformation and identified both hard and soft determinants of the transformation, including focus on education and SME development. The presentation recommended that each Emirate adopts a sectoral focus (in coordination with the federal level), as this would attract focused investments and assist less developed Emirates in establishing their niche in the UAE economy.

III. Policy Advocacy on the Benefits of FDI

8. Mr. Spencer Wilson, Media Relations Officer at the OECD, addressed the topic of communicating investment reforms to the general public. The presentation provided the audience with suggestions on how to develop a solid communication strategy. Mr. Wilson demonstrated with daily examples, how a successful message could be delivered and measured in three key areas that should be at the centre of any communication strategy (to educate, inform and exchange).

9. A best practice case study from the MENA region was presented by a representative of the General Authority for Free Zones and Investment (GAFI) of Egypt. In her presentation, Dr. Niveen Al Shafei demonstrated the key role that GAFI plays in the process of formulating investment-related policies in Egypt. Dr. Al Shafei also highlighted the importance of the policy advocacy capacity of investment promotion agencies in order to address un-mobilized domestic and regional surplus liquidity. Through examples such as the Egyptian leasing sector, the presentation demonstrated the key elements necessary for a successful policy advocacy process. In this regard, the importance of government credibility coordination, transparency and focus in the use of donor funding, identifying sectoral Public-Private Partnership, and capacity building were highlighted.

IV. Regulation of Access

10. This session addressed the benefits of having a unified investment law to substitute the current structure of investment regulation in the UAE. Mr. Alexander Böhmer gave a comprehensive overview of necessary components of well-structured investment laws from both MENA and OECD countries.

11. Mr. Böhmer also provided additional information on OECD Instruments and Guidelines, relevant to the current reform process of MENA countries, such as the OECD National Treatment Instrument, Guidelines for Multinational Enterprises, Policy Framework for Investment and others. The topic of regulation of access of FDI as it relates to issuing a negative list, improving transparency in screening and approval procedures, and granting of regulatory incentives in line with international obligations, was also addressed.

12. In the presentations of the Chamber of Commerce and Industry of Dubai, Mr. Hamad Buamim concluded that the current structure of investment regulation in the UAE has led to unequal access to capital, labor and technology, inefficient allocation of resources, and inconsistent local and federal economic policies which confuse investors. As a result, he has called for the Government to proceed with the process of drafting a unified investment law.

13. Concurring with this view, Mr. Mohammed Omar from the Abu Dhabi Chamber suggested that the investment law should encompass clauses dealing with the following issues: clear dispute settlement clauses, establishment of a specialised committee to deal with companies, ensuring that the law gives preference to certain strategic or high value added projects/firms, and the establishment of a one stop shop.

V. The Effectiveness of Incentives for Investor Attraction

14. The session discussed the regulatory and financial incentives for the attraction of high value-added FDI into the Emirates. The success story of the Jebel Ali Free Zone and Economic World Zone was presented by Dr. Nermine El Shimy. The OECD input on the topic was provided by Mr. Hans Christiansen, Senior Economist from the Investment Division who elaborated on the OECD Checklist for Foreign Direct Investment Incentive Policies and presented a stocktaking paper of experiences of MENA countries with investment incentives.



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D. REGULATORY TREATMENT OF FDI IN THE UAE

BACKGROUND DOCUMENT FOR SESSION I, PANEL I

This document has been developed to provide background information for Session I, panel I the National Investment Reform agenda workshop for the United Arab Emirates. This panel will be addressing best practices in sectoral liberalisation and in particular FDI trends in the UAE. The paper sets out the regulatory framework for Foreign Direct Investment (FDI) in the UAE, highlighting the recent initiatives undertaken by the Government of the UAE in re-assessing the sectoral restrictions to FDI investment in the country.

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I. Overview

1. In recent years, the Government of the U.A.E has pursued a progressive economic agenda, focusing on economic liberalisation and diversification and promoting the role of the private sector. According to a report by the International Monetary Fund (IMF), the recent sustained growth in the UAE is due to its liberal economic policies, especially those focusing on diversification. The World Bank as well highlighted the UAE's success in reducing its dependence on oil, which would enable to mitigate risks of oil price decline.⁴ The Government continues to focus on these issues and the UAE economy is benefiting from these initiatives, becoming less dependent on oil and gas.⁵ Various sectors have already reaped the benefits of diversification, especially the service sector, tourism and real estate, and the re-export industry. The tourism sector, for instance, accounted for 22% of UAE's GDP in 2005.

2. Interest by international investors have also increased in light of the privatization programme pursued by each of the Emirates and also on the federal level. The Abu Dhabi government, for instance, is privatising a number of state-owned companies. This is being handled through the General Holding Company (GHC),⁶ a new body responsible for the sale of stakes in public utilities to the private sector as part of the Emirate's strategy to create public-private partnerships and stimulate local financial markets. The privatisation programme has already had a positive impact on the local stock markets as the newly privatised firms deepen the local capital markets. On the federal level, the UAE has in 2004 ended its monopoly in the telecoms sector.

3. Data on FDI inflows demonstrates an increase in registered a climb in the three years from 2000 to 2004, reversing the trend of the 1990s. In 2004, about US\$9 billion (Dh33 billion) of FDI flowed into the country, and the IMF projected inflows of US\$10.3 billion for 2005.⁷ FDI investment in the UAE has been increasing from other economies in the region – underlining stronger regional economies ties – and from OECD member countries. From 2002 to 2003 for instance, FDI investment from OECD member economies in the UAE has increased by 54%.⁸ The Economist Intelligence Unit ranked the UAE among the top ten emerging market economies, alongside Russia, China and Brazil.⁹ In light of the desire of the Government of the UAE to attract greater and more diversified FDI, attention has been turned to re-assessing the current vertical and horizontal barriers to FDI.

4. The current regulatory and legal framework in UAE favors local over foreign investors, but investment laws and regulations being re-considered so as to render the investment regime more transparent and investor-friendly. At present there is no national treatment for investors in the UAE;

⁴ World Bank, Economic Developments and Prospects for the Middle East and North Africa, 2005.

⁵ According to Central Bank figures, the contribution of the non-oil sector to GDP has increased from 54 per cent in 1990 to 71 per cent in 2004. While the continued upturn in oil prices has affected this ratio in recent years, the actual value of the non-oil sector continues to show impressive growth, and it is clear that the UAE has achieved considerable success in diversifying its sources of income (Source: United Arab Emirates Year Book 2006).

⁶ GHC has taken over the industrial holdings of the General Industries Corporation (Resolution No. 5 for 2004 provided the legal and organisational framework for the take-over).

⁷ Ibid.

⁸ OECD Investment Statistics, 2005. Data correspond to stock of OECD countries' foreign direct investment in the UAE. Statistics for inward/outward FDI flows or stocks in the UAE were not found in other sources such as IMF or UNCTAD. OECD is the only source and data are based on partner country information and not direct reporting from UAE.

⁹ Economist Intelligence Unit, 2006. "World Investment Prospects to 2010: Boom or Backlash?"

foreign ownership of land and stocks is restricted, although steps to open up have been initiated. As an initial step in deregulation of FDI, greater ownership was permitted for GCC nationals, which mirrors the liberalisation path of other Gulf economies.

5. In general, foreign investment in the UAE is subject to legislation that prevents non-nationals owning more than 49% of registered enterprises, even though 100 % ownership by non-nationals is permitted in free zones. Expatriate ownership of real estate, pioneered by Dubai, is now possible in certain circumstances in other emirates, including Abu Dhabi.

6. Specific restrictions on FDI in the UAE economy (outside the free zones) include the following:

- *General restrictions on entry.* At least 51% of companies, other than branches of foreign enterprises, must be held by nationals of the Emirates. GCC nationals are permitted to hold up to 100% of the equity of companies in the industrial, agricultural, fisheries and construction sectors and in the hotel industry.
- *Sectoral restrictions on entry.* Foreigners are effectively excluded from the distribution sector. The Commercial Agencies Law requires that foreign principals distribute their products in the UAE only through exclusive commercial agents that are either UAE nationals or companies wholly owned by UAE nationals.
- *Land ownership.* Until recently, only GCC nationals were permitted to own land in UAE. In May 2002, the Emirate of Dubai announced that it would permit so-called “free hold” real estate ownership for non-GCC nationals by giving permission to three companies to develop and sell freehold properties on government-designated pieces of land. However, because specific laws regarding “freehold” ownership remain to be codified and procedures for title documentation and conveyance remain to be established, potential buyers are unsure whether they will have an absolute “freehold” title. In 2005, the Emirate of Abu Dhabi announced that it would also allow “lease hold” real estate ownership for non-UAE nationals in certain designated areas, although this law has still not been published in the Abu Dhabi Gazette. As of the end of 2005, Abu Dhabi had not yet designated any areas for investment.
- An important impediment reported for Dubai’s “freeholds” is that owners cannot register titles with the Dubai Land Department, a step that allows owners access to the full range of legal protections and transactions that property ownership requires. Inheritance laws present another area of concern to freehold buyers, and current legislation appears ambiguous. Dubai Government has promised to resolve these problems and ambiguities in a new land law.¹⁰
- *Repatriation of investment and profits.* Foreign investors are entitled to remit abroad, in convertible currency, foreign capital invested, including returns, profits and proceeds arising from the liquidation of investment projects.
- *Labour market restrictions:* Other restrictions concern labor market, where a process of ‘Emiratization’ is being pursued, similarly with other GCC economies such as Oman and

¹⁰¹⁰ In 2005, the UAE President issued Law No. 19 dealing with real estate ownership in Abu Dhabi, which includes limited foreign ownership of property. The law states that non-UAE nationals shall have the right to own surface property, but not the land itself in investment areas. Foreigners shall have the right to arrange all their surface properties and to derive benefits from them based on a 50-year surface ownership agreement that can be renewed for the same period subject to the agreement of the two parties (Source: US Department State, ‘UAE Investment Climate’, 2006)

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Bahrain. Existing quotas (5 percent for banks, 2 percent for trading firms) have been enforced only sporadically. However, a renewed interest in this process been signaled by the Ministry's of Labor refusal to process work-permit applications from firms that employ expatriates in administrative roles.¹¹

- *Local agent requirement in government procurement:* The UAE federal Government entities can tender internationally since foreign companies are sometimes the only suppliers of specialized goods or services. In order to bid on government projects, a supplier or contractor must be either a UAE national or a company in which UAE nationals own at least 51% of the capital. Alternatively, a supplier or a contractor the government must have a local agent or distributor. Federal tenders must be accompanied by a bid bond in the form of an unconditional bank guarantee for 5 % of the value of the bid.¹²
- In addition to the restrictions of foreign investors expression in state procurement bids, the UAE also maintains barriers to investment in that foreign business interests must operate in the form of restrictive agency, sponsorship, and distributorship requirements. In order to do business in the UAE outside one of the free zones, a foreign business in most cases must have a UAE national sponsor, agent or distributor. Once chosen, sponsors, agents, or distributors have exclusive rights, and they cannot be replaced without mutual agreement between the two parties.¹³

II. Legal Framework

7. Regulation of the establishment and conduct of business in the UAE is shared at the federal and emirate levels. The legal framework consists in four major laws affecting foreign investment: the Federal Companies Law, the Commercial Agencies Law, the Federal Industry Law, and the Government Tenders Law. Certain aspects of this legislation and especially those of the Federal Companies Law, are perceived by some as a potential obstacles to foreign direct investment in the UAE.

- *The Federal Companies Law* applies to all commercial companies established in the UAE and to branch offices of foreign companies operating in the UAE. Companies established in the UAE are required to have a minimum of 51 % UAE national ownership. However, profits may be apportioned differently. Branch offices of foreign companies are required to have a national agent unless the foreign company has established its office pursuant to an agreement with the federal or an emirate government. All general partnership interest must be owned by UAE nationals. Foreign shareholders may hold up to a 49% interest in limited liability companies.
- *The Commercial Agencies Law* requires that foreign principals distribute their products in the UAE only through exclusive commercial agents that are either UAE nationals or companies wholly owned by UAE nationals. The foreign principal can appoint one agent for the entire UAE or for a particular emirate or group of emirates. The law provides that an agent may be terminated only by mutual agreement of the foreign principal and the local agent, notwithstanding the expiration of the term of the agency agreement.

¹¹ The IMF is guarded about the imposition of quotas for local employment: it worries that this approach might harm competitiveness, and notes that sustainable employment opportunities for nationals are best encouraged through education and training (Source: IIF, UAE Country Report, August 2006).

¹² US State Department, Country Investment Climate Statement, 2006.

¹³ Idem.

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- *The Federal Industry Law* stipulates that industrial projects must have 51% UAE national ownership. The law also requires that projects shall be either managed by a UAE national or have a board of directors with a majority of UAE nationals. Exemptions from the law are provided for projects related to extraction and refining of oil, natural gas, and other raw materials. Additionally, projects with a small capital investment or special projects governed by special laws or agreements are exempt from the industry law.
- *The Government Tenders Law* stipulates that a supplier, contractor, or participant in the tender with respect to federal projects must either be a UAE national or a company in which UAE nationals own at least 51% of the share capital or foreign entities represented by a UAE distributor or agent. Foreign companies wishing to bid for a federal project must, therefore, enter into a joint venture or agency arrangement with a UAE national or company. Federal tenders must accompany a bid bond in the form of an unconditional bank bond guarantee for 5% of the value of the bid. If goods and services are not available locally then UAE federal government entities often tender internationally.

III. Recent progress and the way ahead

8. Notwithstanding the success of UAE's diversification programme and the creation of numerous opportunities for private investment in UAE-based businesses, leading Government officials and finance experts admit that there is still considerable scope for investment growth, both through encouragement of private domestic investment and through further attraction of FDI.

9. At the federal level, most reform initiatives have originated in the Ministry of Economy, who has understood the importance of business climate for UAE's economic diversification and prosperity. An amendment to the Companies Law to allow greater foreign ownership in certain sectors outside the free zones is currently being considered by the Government. One major reform being considered is the lifting of ceiling for foreign ownership from the current 49 % to 75 %.¹⁴ This will be an important step forward for the UAE.

10. The Ministry of Economy is also considering eliminating the "agency law", which give UAE firms monopoly rights to import foreign brands. Officials from the Ministry of Economy announced recently the intention to gradually abolish the agencies structure. The government of the UAE has not yet announced the measures by which it plans to retain control of strategic sectors. For this purpose, it is expected that UAE negotiators will insert these sectors in UAE negative list, in conformity with the WTO rules.¹⁵ Moreover, with regard to the industrial sector and in order to attract the necessary foreign investment for its development, the Abu Dhabi Government is in the process of revising local commercial and investment legislation to ensure that it complies with the requirements of the World Trade Organisation.¹⁶

¹⁴ Speech of the H.H. Sheikha Lubna at the World Economic Forum January 2006 (Source: IIF, UAE Country Report, August 2006).

¹⁵ Statement by Dr. Al Hassan Jouaouine, Advisor on WTO and FTA negotiations in the Ministry of Economy, as reported in Gulf News, 7 December 2006 (www.gulfnews.com/business/Trade)

¹⁶ Significant expansion has been recorded in industry sector, where investment in UAE increased by 44.3% in 2004 (year-on-year rate). Industrial zones and industrial cities are transforming the face of the UAE's manufacturing and industrial base, recording increasing success for a number of projects, such as Abu Dhabi Industrial City, stimulating expansion as soon as initial projects are completed. (Source: UAE YEARBOOK 2006)

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11. Being aware of the restricting effects of some existing measures and at the same time acknowledging the vital role that diversification will continue to play in the UAE's economy, the Government announced that continued efforts will be made to attract foreign direct investment, and there are early indications are that these efforts will continue to bear fruit.

ANNEX I

The following tables give an overview on the framework regulating the FDI inflows in UAE, and in particular Table 1 summarises the measures currently enforced to restrict foreign business in UAE, while table 2 outlines limitations to Market Access and National treatment under UAE’s GATS Schedule.

Table 1. FDI treatment in UAE

<i>All-sector limitations to entry of FDI</i>	
Equity limitations	In the United Arab Emirates, at least 51 per cent of companies, other than branches of foreign companies, must be held by nationals of the UAE. GCC nationals are permitted to hold up to 100% of the equity of companies in the industrial, agricultural, fisheries and construction sectors and in the hotel industry. GCC nationals are also permitted to engage in wholesale or retail trade activities, except in the form of companies, in which case they are subject to the Company Law. In free zones, foreign ownership is permitted up to 100 per cent. <i>Approval requirements:</i> Outside the free zones there are no additional approval procedures. The Free Zone Authority issues different categories of licences to foreign investors.
Limitations on foreign purchase of domestic shares	At least 51 per cent of shares of UAE corporations must be held by UAE nationals or organisations. Companies domiciled in free zones are exempt from this requirement and may be up to 100 per cent foreign owned. Purchases of collective investment securities by GCC residents are exempt from controls. Further non-residents may not acquire more than 20% of the share capital of any national bank.
IMF Article VIII status	The UAE has accepted the obligations of Article VIII.
Liquidation proceeds transfer abroad	The UAE allows repatriation of capital without restriction.
Foreign exchange requirements	No restrictions on foreign currency transactions. Non resident account may be opened by: banks and trade, financial, and industrial companies incorporated outside the UAE that have no local branches; branches of local institutions in foreign countries; embassies and diplomatic agencies. These accounts may also be opened by UAE citizens working abroad and by non-resident foreigners working in the UAE.

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Acquisition of real estate	Restricted. Non resident are only allowed to own real estate according to a new system of 'freehold' properties, first introduced in Dubai and now generalized to the other Emirates (particularly Abu Dhabi, Sharjai, Arjman and Ras Al-Khaimah). Specific conditions are applied in each Emirate.
<i>Sectoral limitations to entry of FDI</i>	
Financial services	<p>Specific provisions are applied to commercial banks and other credit institutions.</p> <p>Authorization for the entry/establishment/operation of foreign financial services suppliers (including banks and insurance companies) and the opening of new branches will be subject to the decision of competent authorities. This applies to all countries, justified by the condition that UAE is a small market and is already saturated. Preferential treatment, on a case-by-case basis, may have to be accorded in order to get mutually advantageous benefits for UAE. Duration is indefinite [Article II (MFN) Exemption in GATS schedule]</p> <p>Profit of foreign banks is subject to a profit tax levied by local authorities at an annual rate of 20%.</p>
Business, construction, communication, transport, tourism and other related services	Generally foreign participation in equity is limited to 49%. For the new UAE offer under GATS schedule, see table 2 (in particular for business services)
Energy services	No restriction
Manufacturing	N/A
<i>Exceptions to national treatment of foreign-controlled enterprises</i>	
Access to local finance	<p>Restrictions exist on lending to foreigners:</p> <ul style="list-style-type: none"> - Banks operating in the UAE are required to maintain special deposits with the UAE CB equal to 30% of their local currency placements with, or loans to, non resident banks when these transactions have a remaining maturity of one year or less. - National banks are not allowed to lend more than 7% of their capital base to one foreign institution. Loans to foreign governments with a first class credit rating and placement in these countries' financial institutions are exempt from such limits. - Non resident may not acquire more than 20% of the share capital of any national bank. For the acquisition of shares of national banks, UAE Company law applies (non resident are allowed to acquire up to 49% of total shares).
Access to public procurement	The UAE does not require that a portion of any government tender be subcontracted to local firms, but there is a 10 per cent price preference for local firms on procurement and tenders. The UAE requires a company to be registered in order to be invited to receive government tender documents. To be registered, a company must have 51 per cent UAE ownership. However, these rules do not apply on major project awards or defence

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	<p>contracts where there is no local company able to provide the goods or services required. Set up in 1990, the UAE's offset programme requires defence contractors with contracts worth more than US\$10 million to establish joint projects that yield profits equivalent to 60 per cent of their contract value within a specified period (usually seven years). There are also reports that indicate that defence contractors can sometimes satisfy their offset obligations through an up-front lump-sum payment directly to the UAE Offsets Group. The projects must be commercially viable joint ventures with local business partners, and are designed to further the UAE objective of diversifying its economy away from oil. To date, more than 30 projects have been launched, including, inter alia, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquiculture enterprise, Berlitz Abu Dhabi, and a freighting equipment production facility.</p>
Discriminatory tax treatment	<p>Profit of foreign banks is subject to a profit tax levied by local authorities at an annual rate of 20%. Foreign nationals or companies with foreign share holdings may be required to pay direct taxes on income derived from work or operations in the UAE, whereas local services suppliers or local UAE companies may not be required to pay similar taxes.</p>
Performance requirements for foreign direct investors	<p>According to the new draft Company law, currently under discussion in the Federal Council, for some specific sectors and sub-sectors participation of foreign capital may be increased to 75%, conditioned on benefits in the form of technology transfer, Research & Development programmes, technical assistance, and educational and training of local human resources.</p>
Bilateral investment treaties (total number of countries)	<p>28 (Austria, Belarus, Belgium, Luxembourg, China, Czech Republic, Egypt, Finland, France, Germany, Italy, Korea, Kuwait, Lebanon, Malaysia, Mongolia, Morocco, Pakistan, Poland, Romania, Sudan, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tunisia, UK, Yemen)</p>
Bilateral investment treaties (with OECD countries)	<p>13</p>
Measures to enhance policy transparency	<p>The Government of the UAE website (www.uae.gov.ae) provides some information useful for investors about the business environment and conditions for foreign investors, but more regular update would be required. It contains also numerous links to ministries but there is no clear indication which of these might be of interest to investors. The Ministry of Economy and Commerce section contains unworkable downloads of some laws, including the Companies Law, and a short list of publications without indication of how to obtain them. The structure of the website is not optimal and appears to contain little relevant information of practical use to foreign investors.</p> <p>According to GATS Schedule of commitments (Additional), all</p>

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	disciplines concerning labour, residency and work permits laws are publicly available (Hard copies of the laws, Web site of the Ministry of Labour and Social Affairs – www.mol.gov.ae - and Guide Book for foreign employees).
a. publication of regulations	Government site www.uae.gov.ae provides some on single Emirates
b. list of sectors with FDI restrictions	NA
Measures at sub-national level	The UAE relaxes direct inward investment restrictions in certain areas [designated as free zones]

Source: IMF Annual Report on Exchange Arrangements and Restrictions, 2006; US State Department Country Investment Statement 2006; UAE Government sources; UNCTAD; WTO GATS Schedule.

Table 2. Limits to market access and national treatment based on gats schedule¹⁷.

Note: the last column includes measures envisaged in UAE Initial Conditional Offer on Services presented in June 2005 and currently under negotiations.

	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NATIONAL TREATMENT	UAE - INITIAL CONDITIONAL OFFER ON SERVICES
<p>-Equity requirements</p> <p>-Land acquisition</p> <p>-Tax treatment</p> <p>-Subsidies</p>	<p>Commercial presence will be through either (i) a representative office or (ii) an incorporation as a company with maximum foreign equity participation of 49% subject to UAE law.</p> <p>Acquisition of land and real estate is not permitted to foreigners or to companies in which foreign nationals have a share holding.</p>	<p>Acquisition of land and real estate is not permitted to foreigners or to companies in which foreign nationals have a share holding.</p> <p>Foreign nationals or companies with foreign share holdings may be required to pay direct taxes on income derived from work or operations in the UAE, whereas local services suppliers or local UAE companies may not be required to pay similar taxes.</p> <p>Government subsidized services may only be extended to UAE nationals.</p>	<p>Commercial presence will be through either: (i) a representative office or a branch with no limitations on the participation of foreign capital (foreign ownership of 100% is granted), provided that such office or branch appoints a UAE "services agent". The obligations of "services agent" shall be confined to rendering services i.e. issuing necessary licenses without requiring a share in the capital or interfering in the management.</p> <p>Free zones: 100% foreign ownership is permitted.</p> <p>According to the new draft Company law, currently under discussion in the Federal Council, for some specific sectors and sub-sectors participation of foreign capital may be increased to 75%. Commercial presence for such sectors and sub-sectors is conditioned on benefits in the form of technology transfer, Research & Development programmes, technical assistance, and educational and training of local human resources.</p> <p>With respect to <u>land acquisition</u>, foreign companies authorized to carry on their activities in UAE</p>

¹⁷ The GATS Schedule of Specific Commitments was signed in April 1996, year of entry of UAE in the WTO.

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			may own land and real estate only to the extent necessary to conduct their activities, in accordance with laws and regulations governing ownership of real estate at the Federal and Emirate levels.
- <i>Presence of natural persons</i>	<p>Unbound, except for measures concerning entry and temporary stay of:</p> <ul style="list-style-type: none"> - Business visitors: entry not more than 90 days; - Intra-corporate transferees (managers, executives and specialists employed abroad for a period of not less than one year prior to the date of application for entry into the UAE and transferred to a branch or affiliate in the UAE): Entry shall be for a period one year subject to renewal for two additional years with a maximum of three years. <p>The number of managers, executives and specialists shall be limited to 50% of the total number of managers, executives and specialists of each service supplier; their stay in the UAE will be subject to UAE labour and immigration laws.</p>		Entry of intra-corporate transferees shall be of three years, renewable for additional periods.
SECTOR SPECIFIC COMMITMENTS (MAIN RESTRICTIONS)	LIMITATIONS ON MARKET ACCESS	LIMITATIONS ON NATIONAL TREATMENT	
BUSINESS SERVICES <i>-Professional services (including Legal Services; Accounting, auditing and book-keeping; Taxation; Architectural; Engineering; Urban planning; Veterinary services)</i> <i>-Computer and related services</i>	No restrictions (except as indicated in the horizontal section)	No restrictions (except as indicated in the horizontal section).	UAE offer envisages a restriction for commercial presence in most business services, limiting participation of foreign capital to 75%. [for <i>legal services</i> this is presented in terms of pre-commitment, that will be implemented only after 31 December 2010] About national treatment in <i>legal services</i> , non-UAE lawyers cannot plead in UAE courts, or act before official

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<p><u>-Research and Development</u></p> <p><u>- Rental and leasing services without operators</u></p> <p><u>-Other Business Services</u> (including Advertising, Convention, Management consulting, and other services)</p>			<p>bodies, or perform notarial functions.</p> <p><u>Rental and leasing services without operators</u> are added in the offer, with a limitation of 75% for foreign capital participation.</p> <p>For <u>other business services</u>, participation of foreign capital is limited to 49% in the offer. (Translation and interpretation services have been also included in this category)</p>
<p>COMMUNICATION SERVICES</p>	<p>No restrictions other than those indicated in the horizontal section.</p>	<p>No restrictions other than those indicated in the horizontal section and in the market access column</p>	<p><u>Postal Services</u> have been added in the offer, with foreign capital participation limited to 49%</p> <p><u>Telecommunication services</u>: specific regulation applies, based on the UAE TELECOM Law and TRA (Telecommunication Regulatory Authority) regulatory framework, according to which, in particular, any network installed in UAE must be operated by a company registered in UAE, the foreign equity of which shall be limited to 49%.</p> <p>About commercial presence, the law envisages a Duopoly until 31 Dec 2015; starting no later than December 2015, the TRA will consider the feasibility of the suppliers additional to the duopoly. The commercial presence is required and subject to 49% foreign equity limitation.</p>

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CONSTRUCTION AND RELATED SERVICES	No restrictions other than those indicated in the horizontal section.	No restrictions other than those indicated in the horizontal section.	Foreign capital participation limited to 49%.
ENVIRONMENTAL SERVICES	No restrictions other than those indicated in the horizontal section.	No restrictions other than those indicated in the horizontal section.	Foreign capital participation limited to 49%.
<p>FINANCIAL SERVICES</p> <p>- <u>Insurance and related services</u> (added in the offer)</p> <p>- <u>Banking and Other Financial Services:</u></p>	<p>Banking and Other Financial Services: Access is unbound except as indicated in the horizontal section. For commercial presence, no limitations are prescribed for establishment of representative offices, and new licences for operating bank branches as well as expansion of activities of existing financial entities are unbound.</p>	<p>No restrictions other than those indicated in the horizontal section and in the market access column</p>	<p><u>Insurance and related services (added in the offer):</u> according to the general conditions applied to this sector, commercial presence is required and subject to the provisions regarding the licensing and registration of foreign companies as contained in the UAE pertinent laws. In particular, within the context of paragraph 2 (a) of the Annex on Financial services, UAE shall not be prevented from taking measures for prudential reasons such as minimum capital requirement; minimum operating funds requirement and approval for business activities. It is also clarified that the absence of any limitation on the ability of a service consumer in UAE to purchase the service in the territory of another member does not signify a commitment to allow a non-resident service supplier to solicit business or to conduct active marketing in the territory of UAE.</p> <p>Specific restrictions for <u>direct insurance services</u> indicate that: a) transparent and non discriminatory Economic Needs Test shall apply to the commercial presence for new and existing foreign insurance companies; b) the establishment of joint ventures with UAE life and non-life insurance companies is not allowed.</p> <p>For other insurance services</p>

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			foreign capital participation limited to 49%. [For cross-border supply of <u>actuarial services</u> , foreign suppliers must also be registered at the UAE Ministry of Economy and Planning]
TOURISM AND RELATED SERVICES	None, except as indicated in the horizontal section	None, except as indicated in the horizontal section	Foreign capital participation limited to 49%.
TRANSPORT SERVICES (added in the new offer)			Foreign equity limited to 49%. For national treatment, restrictions indicated in the horizontal section apply.
ENERGY SERVICES (added in the new offer)			Unbound

Table 3. MFN Exemptions under the General Agreement on Trade in Services (Article II)

<u>All sectors</u>	Preferential treatment for service suppliers of the Gulf Co-operation Council (GCC) countries and the Great Arabian Free Trade Area (GAFTA); this measure applies to all sectors, because of regional arrangement and eventual economic integration in the area of services. Duration is indefinite.
<u>Financial Services</u>	Authorization for the entry/establishment/operation of foreign financial services suppliers (including banks and insurance companies) and the opening of new branches will be subject to the decision of competent authorities. This applies to <i>all countries</i> , justified by the condition that UAE is a small market and is already saturated. Preferential treatment, on a case-by-case basis, may have to be accorded in order to get mutually advantageous benefits for UAE. Duration is indefinite.



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E. POLICY ADVOCACY FUNCTION OF INVESTMENT PROMOTION AGENCIES

BACKGROUND DOCUMENT FOR SESSION I, PANEL II

This paper serve as a background document for Session I, Panel II of the National Investment Reform Workshop. It outlines the role of Investment Promotion Agencies in advocating investment policy reforms.

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I. Introduction

1. Policy advocacy (defined here in its simplest terms as advocating policy change and reform to improve the investment climate and thereby promote new business and investment) is a central function of investment promotion agencies (IPAs). It is undertaken in all market economies not just by IPAs but by diverse public and private sector groups, usually with special interests in the case of the latter. It is an important component of efforts aimed at enhancing the investment climate in a country. Research has shown that 80% of investment promotion agencies (IPAs) worldwide engage in policy advocacy in some form (UNCTAD, 2002) and that policy advocacy relative to other functions of IPAs appears to have the strongest association with FDI inflows (Morisset and Andrews-Johnson, FIAS, 2004).

2. At the same time the policy advocacy function has the lowest budget allocation in agencies, according to the research, although this is partly attributable to the nature of policy advocacy work compared to more expensive marketing and promotion activities. It does however suggest that policy advocacy may need to be considered more carefully and given a higher profile in the strategy and operations of IPAs. Policy advocacy activity may range from being informal and restricted to select issues (e.g. to specific issues such as procedures for registering a company, obtaining work permits or acquiring suitable production space) or may be a regular and structured process that seeks not just to deal with desirable policy change but also anticipate future reform and change (e.g. in people skills or dedicated infrastructure) and convey needs for policy change that will underpin private investment and economic growth.

3. While most IPAs undertake policy advocacy it is clear from general research and case experience (see references section) that there is a big divergence between countries and IPAs in how this function is viewed and conducted. In the context of the **MENA-OECD Investment Programme**¹⁸ the policy advocacy function of IPAs is a key concern addressed by Working Group 2 of the Programme which commissioned a report and asked for workshops to be conducted focusing on how to strengthen the advocacy function of IPAs in the MENA region. This paper¹⁹ is supposed to serve as a first step for the development of regional recommendations and will contribute to an investment climate assessment tool to be endorsed at the next Ministerial meeting of the Programme. It is designed to stimulate consideration and dialogue on the policy advocacy role of IPAs in the MENA region and to present some experiences and ideas on how this role might be enhanced and developed. The assessment tool in the annex can be used by Working Group participants to evaluate how the policy advocacy function of their organisation has evolved and what advancements can be made.

4. In that context it is useful to first briefly look at the role of IPAs, a typology of IPAs and where policy advocacy fits into their activity.

II. Role of IPAs in Policy Advocacy

5. Governments worldwide seek to attract FDI through IPAs. To create employment opportunities and accelerate economic growth in their economies many governments have elected to pursue strategies to attract foreign investment. The number of IPAs has grown fivefold over the past decade and today there are at least 160 national and more than 250 subnational IPAs compared to a handful in previous years (UNCTAD, 2002, World Bank, 2005). Competition for FDI is increasing worldwide and this has promoted

¹⁸ www.oecd.org/mena/investment

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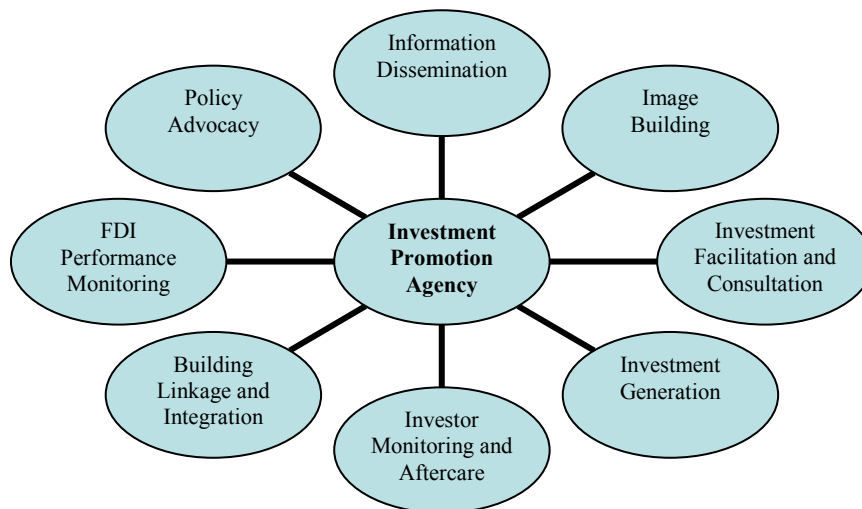
greater innovation in the scope and functions of IPAs including in the area of policy advocacy. However there is no single model of success when it comes to promotion and IPAs. And this applies similarly to policy advocacy by IPAs. In considering the role of IPAs in policy advocacy it is useful to first consider the various roles of IPAs and where policy advocacy fits into IPA functional responsibilities. IPAs differ widely in terms of their functions and activities, legal status, organisation structure, budgets, and their success. In terms of the range of functions and activities undertaken however it is possible to distinguish three broad categories of investment promotion agencies, namely:

- a) Information providers: IPAs that focus on disseminating investment related information and building the image of the country as an attractive investment location (the majority of agencies tend to fall in this category). Building information systems to facilitate investors is an essential ‘building block’ for investment promotion by all IPAs. Evidence exists that IPAs that provide good quality investor information can influence investors’ location choice decisions (MIGA, World Bank, 2006). Some low level of policy advocacy work may be undertaken by this category of IPA but often on an irregular and unstructured way. It should be noted that the scale, resources and skills profile of many IPAs do not permit much more than information provision and basic investor servicing.
- b) Information and selected service providers: IPAs that undertake information provision but additionally generate investments by marketing investment projects to targeted investors, assist investors in dealing with the host country’s administration (e.g. investment facilitation and one stop shops) and assist existing investors in developing or expanding their business operations (investor monitoring and aftercare). Again typically some policy advocacy work is undertaken but in restricted form.
- c) Development partners: IPAs that perform all the above functions and in addition seek improvement of the investment climate in a systematic way through structural policy reforms (using policy advocacy, own research and tools) and build links between foreign investors and domestic companies. While IPAs are typically public institutions with a mandate to work and often negotiate with investors they can equally become real partners to business through their approach, their knowledge and understanding of strategic business issues and their skills in conveying how the features of their locations translate into advantages for specific investors. Such IPAs will often establish and maintain business relations pro-actively with existing and potential investors and have insights on company and sectoral issues that can greatly enhance their investment promotion and policy advocacy role.

6. The above typology should not be seen as a hierarchy of progression and success. IPAs at all levels can operate efficiently and effectively in promoting investment and undertaking some policy advocacy. The scale and scope of the IPA will however influence their activity in all functions. Where their mandate, strategy and resources allow them to extend the scope of their functions to work closer and in a more comprehensive way with investors (existing and potential) there is obviously the potential for greater effectiveness in promotion and impact on the investment climate. But it should be noted that working in this way is not an automatic process leading to greater success with attracting investment. Like all operational strategies and practices, the science and art of leadership and management in the IPA combined with innovation and good implementation practices will influence outcomes. In general, IPAs in the ‘development partners’ category encompass some of the most successful IPAs worldwide and have established as a consequence their credibility and long-term value to governments and other stakeholders (OECD, 2002). Such IPAs have been in the vanguard in developing policy advocacy in support of efforts to improve the investment climate.

7. Policy advocacy by IPAs should ideally be seen in relation to all other functions and the inter-connectivity of all of these in better investment policies and promotion strategies. Some commentators see IPA functions in terms of four functional categories: image building, investment generation, investor services and policy advocacy (Wells and Wint, 2001). And arguably the range of activities undertaken by IPAs could be classified under these four headings. With the emergence of new IPAs and increased competition for FDI the range of IPA functions conducted nowadays is often wider, instigated by the spread of good management practices and training and technical advisory work of, for example, WAIPA, UNCTAD, MIGA and FIAS in promoting more efficiency and experience sharing. Figure 1²⁰ reflects this wider scope that many IPAs now engage in.

Figure 1: IPA Functions²¹



8. **Policy advocacy** is one of an IPA’s core functions. This is the common theme emerging from research and discussion on the responsibilities and functional scope of IPAs. As indicated above, this activity is often less visible and less recognized than the functions of information provision, image building, and investor services. IPAs are well placed to identify problems in the investment and business environment through their working relationships with international and domestic companies. They may act as the chief advocates for foreign investment and business within the government. They are also frequently a main channel of feedback to government policymakers on the concerns of foreign investors and other businesses striving to achieve international competitiveness. By documenting the benefits of foreign investment to local consumers, workers, enterprises and offices and communicating to branches of government the advantages of less and more efficient regulation of business, IPAs became key players in the investment climate change.

²⁰ The scope of IPAs can of course be wider or narrower than depicted in this chart. It can extend to investment policy (e.g. especially where an IPA is located within a Ministry), privatization, constructing or managing export processing zones, etc. Or it can focus on just some of the functions listed in the chart. Chart 1 illustrates what is increasingly the practice of many IPAs and what is seen as ‘best practice’.

²¹ The functions listed reflect findings and reports from various sources, for example, World Bank/World Development Report, 2005; OECD, 2002; FIAS/Morisset and Andrews-Johnson, 2004.

9. In broad terms policy advocacy has two main dimensions:
- Working in partnership with the public sector: general policy advocacy towards other government ministries, agencies and the broader public about the need for investment climate reforms (this may include all facts and arguments as to how beneficial FDI can be) in general and on specific reform projects (e.g. on planned reforms or impact of reforms conducted already).
 - Working in partnership with the private sector: working with investors (existing and potential) to elicit information on issues that may hinder or obstruct investment. When a (larger) investor actually starts the process: he has to be guided through the regulatory institutions and here on his particular license and his particular incentive payment there is also a policy advocacy dimension that the IPA can cater to with the regulatory or approving authorities to ensure proper implementation by all parties. This is particularly the case of big sensitive projects, such as a construction of a large dam, where there is a need for a public communication strategy on a specific investment project.

10. Morriset and Andrews-Johnson, FIAS (2003) find that IPAs, which spent more time on policy advocacy, were more successful in attracting investors, possibly because of the role of such advocacy in leading to improvements in the investment climate. Measures to promote and facilitate investment (marketing, servicing investors) can be more successful if they take place within the broader context of an overarching strategy for improving the investment environment, which involves mainstreaming investment issues across a broad range of policy areas that affect the investment climate. Concentrating solely on investment incentives has not paid off in a number of countries. (McKinsey, 2003) and equally promotion that ignores measures to improve the investment climate is likely to be less effective.

11. In brief, improving the investment climate is central to effective and successful investment promotion. The predominant message from relevant research and case experience is that IPAs should at all stages of their organizational evolution, seek to focus on this. This requires constructive policy advocacy by IPAs.

III. Towards a Definition of Policy Advocacy

12. The term ‘policy advocacy’ is self explanatory but warrants some elaboration. In contrast to FDI marketing and promotion methods and techniques on facilitating investors, policy advocacy as a function of IPAs is not as widely referred to in research on FDI and IPAs. To some extent it has sometimes been seen as an optional activity that IPAs do as an adjunct to or derivative of their promotion work. But this view underestimates the value and importance of policy advocacy work.

13. Advocacy may be defined as advocating, speaking, writing or making representations in support of a programme, a project, a policy reform or range of reforms. Public policy advocacy is similar in that it entails the use of tools to examine, evaluate and document issues and tactics to influence public sector attitudes in support of a certain change. It also includes research and covers the decision making process starting from policy-making through to implementation. Public policy advocacy is the effort to influence public policy through insights on key issues, experience sharing and various forms of persuasive communication. An effective policy advocacy campaign should ideally be ongoing and on specific policy issues have a well defined vision (what will be the outcome and impact), mission (how the issue might be tackled), and goals (concrete performance steps). IPAs, with their insights from a cross section of investors from different sectors can systematically gather views and assess feedback and measures needed. The presentation of such information can assist progress of policy measures and underpin improvements in the investment climate

14. The World Development Report 2005 describes policy advocacy as identifying issues that inhibit investment and advocating policy changes that might stimulate development. IPAs are seen as acting as champions of reform in lobbying other government agencies to correct observed problems. Morisset and Andrews-Johnson (2004) see policy advocacy as consisting of the activities through which the agency supports initiatives to improve the quality of the investment climate and identify the views of the private sector on that matter. Activities, in their view, include:

- Surveys of the private sector.
- Participation in policy task forces.
- Policy and legal proposals.
- Lobbying.

15. In determining options for promotion this research contends that countries with a bad investment climate should focus on improving this first rather than spending on promotion. In other words focus on improving the investment climate before undertaking expensive promotion. This will have the dual effect of helping to attract investment and enhancing the effectiveness of the impact of the IPA.

16. IPA policy advocacy is becoming increasingly important. While the traditional focus on investment promotion and attracting investment remains, factors such as heightened competition for FDI, the emergence of new sectors and technologies (e.g. biotechnology, nano technology, communications technology) and increasingly an emphasis shifting to the contribution of foreign investors to the overall development of the economy and competitiveness of the local business sector – all of these demand conducive regulation and innovative development policies. Getting the basic investment conditions right, by regularly assessing the investment climate in a changing world and involving all participants in proposed reforms is more important for investment attraction as the competition from new IPAs and emerging economies increases.

17. Another aspect of policy advocacy that should be strongly emphasized is its potential forward looking role in identifying new opportunities (new sectors, new innovation, new technology, new regional development) for a country. In some countries IPAs have not just focused their policy advocacy on hindrances in the investment environment but have instigated new policy initiatives on for example, expert groups on future skill needs, increased linkage between industry and universities and research institutions and enhanced infrastructure (e.g. broadband availability and cost). This type of advocacy can contribute substantially to ensuring ‘early mover’ advantages in competing for FDI and in attracting new investment.

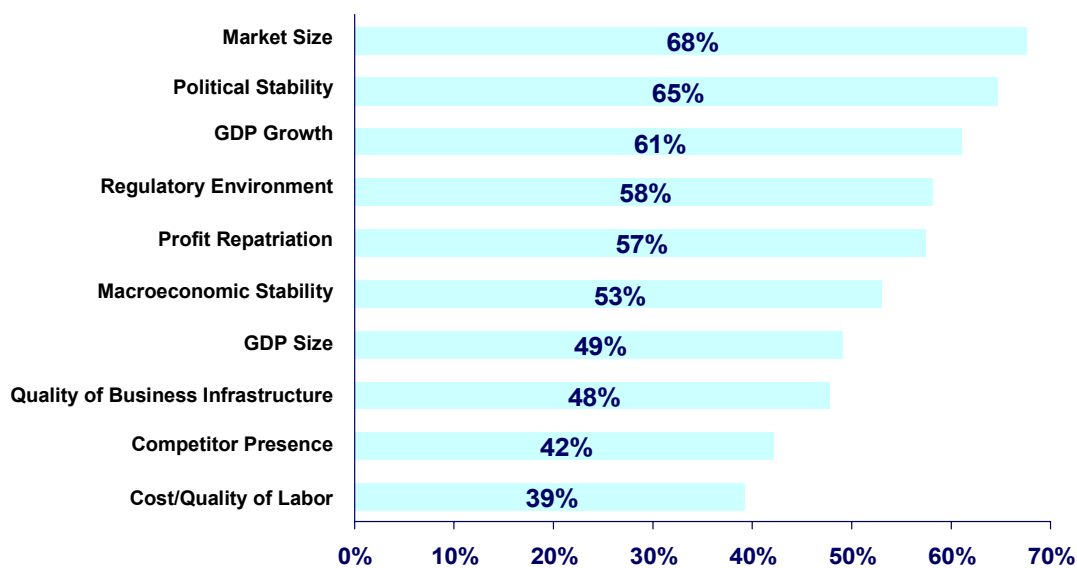
Investment Determinants provide a Guide to Policy Advocacy Themes

18. On what policy issues should IPAs seek to undertake advocacy? In the first instance, clearly the feedback and views of investors, existing and potential, provide a rich database of relevant information to IPAs. A first contact by many investors will often provide a detailed questionnaire on information needed and this source of information from investors on their specific needs will be elaborated as contact develops. Through their frequent contact with investors the typical IPA has a unique perspective therefore on criteria of concern to business (e.g. infrastructure, regulatory procedures, skills availability, etc.) and these criteria can vary widely depending on a range of factors such as the sector, company and scale of investment. These contacts with investors are clearly an impulse for all IPAs to undertake some form of advocacy.

19. Some IPAs may take a ‘supply driven’ approach in contacts with investors, emphasizing what their country can offer, possibly without adequate recognition of investor needs and determinants. This

may not necessarily coincide with what investors seek. A classic mismatch here is an overemphasis on incentives, especially at the early stage of dialogue on investment, rather than an emphasis on strategic business issues that are of prime concern to investors. Figure 2 shows research by the international consultancy firm, AT Kearney, on top determinants of FDI. This research largely reflects the results of similar research from many other sources on this question. What is notable from such research is that the priority issues for most investors all relate to political stability and the investment climate and how this is affected by macro- and microeconomic policies.

Figure 2: Top FDI Determinants (% of Respondents)



Source: ATK FDI Confidence Index

20. Issues such as market size (encompassing subsidiary issues such as market access, customs formalities, transport infrastructure and costs, local competition law, etc.), economic growth rates, and regulatory environment including freedom to transfer profits are all more influential on investors than incentives. This does not mean that incentives are irrelevant but rather that the investment message from countries should focus on ‘investor determinants’ and especially the high priority issues of the investment climate. Addressing issues of concern in these policy areas is complex and demands involvement of many public sector bodies. And this is central to investor facilitation but also policy advocacy by IPAs. IPAs are in a position to identify and interpret private investor needs to public bodies responsible and equally to act as a conduit of information from the public to the private sector.

IV. Investment Climate

21. Virtually all countries that aspire to boost private investment have liberalized their economies to some extent in recent years. More governments are recognizing that their policies and behaviors play a critical role in shaping the investment climate of their societies and are making changes. The investment climate is the set of location-specific factors shaping the opportunities and incentives for firms to invest productively, create jobs and expand. The multi-dimensional nature of the investment climate makes it difficult and complex to assess. In the next paragraph some tools to assist this process are outlined. Governments, through their policies and practice exert strong influence with impact on costs, risks and barriers to competition. The recognition that the overall business and investment climate is fundamental to

increased investment has instigated initiatives to improve the environment worldwide from major countries such as China and India to smaller countries like Estonia and Slovakia as well as in MENA countries. To varying degrees this focus in most countries has sought, inter alia, to:

- Create a more stable macroeconomic environment
- Liberalise controls on foreign exchange transactions
- Undertake regulatory reform
- Free up trade movements
- Rationalize tax structures
- Upgrade investment laws and remove restrictions
- Actively promote foreign investment and exports

22. Despite progress on many fronts the formal investment response in many countries has often been disappointing and significant deterrents often still remain. ‘Progress remains slow and uneven...the gap between policies and implementation can be huge’ with many countries still saddling firms and entrepreneurs with unnecessary costs, creating substantial uncertainty and risk and erecting unjustified barriers to competition (World Development Report, 2005). At the implementation level reform has not happened or has not been adequate to remove obstacles to investors. Firms do not respond to formal policies alone. They make judgments about how these policies will be implemented in practice. And firms, like other stakeholders, will try to influence policies in ways favourable to them.

23. Some countries may have a long history of government intervention and administrative direction in economic decisions and complex overlapping controls beyond those easily identified as constraints on investment. The continuation of overly complex registration procedures for example, combined with lack of institutional capacity, often translates into a situation where mere procedural tasks become magnified to being major hindrances to investment. This can lead to long delays or extraordinary payments with negative impact on investment decisions and the image of a country. This situation points to the need for deeper reform and change in practice by responsible ministries or agencies. In this environment IPAs can play a constructive role by providing feedback and conducting policy advocacy on issues that continue to hinder investment and represent cost burdens to firms.

V. Building the Policy Advocacy Function

24. Policy advocacy can cover a multitude of issues and actions by IPAs. IPA insights on policy issues and needed reforms will arise from:

- Requests from investors for information and advice
- Feedback and case experience from existing investors
- Private sector dialogue with IPA
- Policy task forces or committees
- Comparative international indices that rank countries

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25. Gathering and disseminating information that benchmarks a country's performance or that analyses the costs (or potential loss of new investment) can build better awareness and understanding of the need for reform. It can also help to mobilize support amongst key players for reform. Policy advocacy by IPAs, with their special knowledge and insights from investors, can play a central role here either directly with the IPA or in conjunction with other key public sector actors (e.g. Competition Councils).

26. Global competition is dynamic and changing – other countries and regions are improving their national competitiveness positions. Relative competitiveness is crucial in pursuing the vision in national development plans and meeting global challenges. The MENA IPA work process and activity might usefully be examined to see if it can be better geared to contribute to meeting this objective. Some illustrative methodologies and tools to consider and to give further effect to a new direction on improving the investment climate and competitiveness are briefly outlined in this paper.

VI. Monitoring the investment climate and national competitiveness

27. MENA countries, with some exceptions, compare relatively low with most developed and many developing countries on the international indices that measure policy reform and rank the environment for business and investment with other countries. These indices and international business reports (ease of doing business, global competitiveness, etc.) influence the image of countries as a competitive location for investment and are referred to by investors and business advisors. MENA IPAs should seek action to improve these rankings and take steps to focus on where improvements with greatest impact can be achieved.

28. This can be done by using ‘comparative methodologies’ and international comparative indices on the investment and business environment in their countries in regularly monitoring and measuring the competitiveness and progress versus selected countries. Table 1 provides latest data from three such indices. Apart from the use of some of the indicators underlying such surveys it should be noted that these indices influence the image of countries and this is a further reason for IPAs to monitor them and seek to improve performance.

29. The annual World Bank ‘Doing business’ survey (see centre column in Table 1) looks at the ten key areas of everyday business outlined below, relevant to both international and domestic firms, and using a range of indicators, measures comparative performance in 175 countries:

- Starting a business
- Dealing with licenses
- Employing workers
- Registering property
- Getting credit
- Protecting investors
- Paying taxes
- Trading across borders
- Enforcing contracts
- Closing a business

30. In 2006 from the 14 MENA countries listed in this ‘Doing business’ survey eight countries have fallen in the rankings, two countries have remained at the same level and only four countries have improved their rankings. These results for MENA countries partly reflect the widespread reform being undertaken in many other countries – there is now much greater momentum for reform worldwide. The regular provision of information such as this can be usefully considered and incorporated by IPAs in their policy advocacy work with relevant ministries and agencies.

31. The other indices in Table 1 provide comparative rankings on competitiveness and freedom from business regulation. The World Economic Forum ‘Global Competitiveness Index’ shows the majority of MENA countries listed (7 out of a total of 9) rising in competitiveness.

32. When investors make investment decisions they generally filter a long list of potential locations (sometimes up to 100 for major investments) and then determine a short list for more detailed technical assessment, visits and location examination. Indices such as in Table 1 provide source material for initial screening and hence the importance of IPAs focusing on these and understanding the criteria used in analysis and evaluation and in using them in their own policy advocacy efforts. The fundamental importance of the wider investment climate is emphasized by such surveys and indices. Key location factors will vary from sector to sector and company to company but the investment climate is common to all.

Table 4. International Indices and Country Rankings²²

	World Economic Forum Index Ranking 2006 ²³	World Bank 'Ease of Doing Business' Ranking 2007 ²⁴	Economic Freedom Rankings 2006 ²⁵
Algeria	76 ↑	116 ↑	124 ↓
Bahrain	49 ↑	n/a	40 ↓
Djibouti	n/a	161 ↓	n/a
Egypt	63 ↓	165 ↔	80 ↓
Iraq	n/a	145 ↓	n/a
Jordan	52 ↓	78 ↓	48 ↓
Kuwait	44 ↑	46 ↓	24 ↔
Lebanon	n/a	n/a	n/a
Libya	n/a	n/a	57 ↓
Morocco	70 ↑	115 ↑	95 ↔
Oman	n/a	55 ↓	24 ↓
Palestine National Authority	n/a	127 ↔	n/a
Qatar	38 ↑	n/a	n/a
Saudia Arabia	n/a	38 ↓	n/a

²² These rankings guide investors on investment climate comparisons and competitiveness of countries.

²³ World Economic Forum – Global Competitiveness Index, country rankings 2006. The rankings shown are from a total of 125 countries surveyed and with arrow showing the trend in 2006 versus the previous year.

²⁴ World Bank/IFC annual survey on cost and ease of 'Doing business in 2007', rankings of MENA countries shown from total of 175 countries surveyed.

²⁵ Heritage Foundation ranks freedom from government regulation in 130 countries based on 10 factors covering economic performance, government efficiency, business efficiency and infrastructure.

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Syria	n/a	130 ↑	111 ↑
Tunisia	30 ↑	80 ↓	68 ↑
UAE	32 ↑	77 ↓	12 ↓
Yemen	n/a	98 ↑	n/a

Sources: International surveys – refer to footnotes.

. Policy Framework for Investment (OECD)

33. The OECD Policy Framework for Investment is a non-prescriptive tool that provides a checklist of important policy issues for consideration by governments interested in creating an environment that is attractive to all investors and in enhancing the development benefits of investment to society, especially the poor. In this way the framework aims to advance the implementation of the united nations Monterrey consensus, which emphasised the vital role of private investment in effective development strategies. The framework is not a volume of ready-made prescriptions but a flexible tool to frame and evaluate policy challenges that countries face in pursuit of development. The ten chapters draw on good practices from OECD and non-OECD countries (officials from about 60 countries participated in its development) and cover:

- Investment policy
- Investment promotion and facilitation
- Trade policy
- Competition policy
- Tax policy
- Corporate governance
- Policies for promoting responsible business conduct
- Human resource development
- Infrastructure and financial sector development
- Public governance

34. In the Framework over 80 questions are posed and annotative text gives background on issues. This framework provides a valuable tool for IPAs to consider in developing their policy advocacy and in assessing policy reform for consideration.

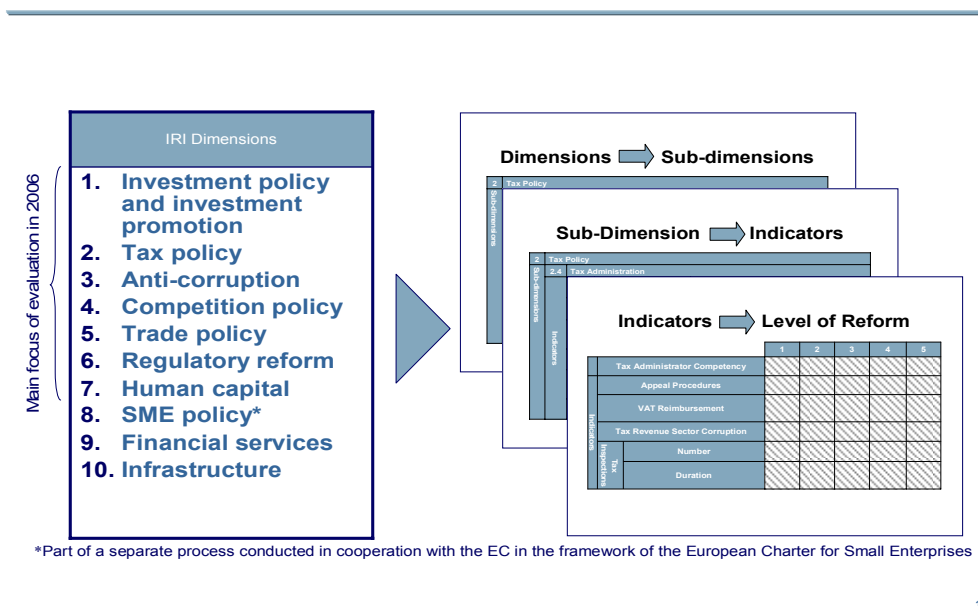
The OECD ‘Investment Reform Index’

35. The Investment Reform Index (IRI)²⁶ has been developed by the OECD to assist the countries of South East Europe in monitoring and driving the progress of reform along 10 key dimensions. The policy dimensions and process of identifying sub-dimensions and indicators are illustrated in Figure 3. Many countries have identified key areas for reform and various international reports over the years have highlighted issues for action. What is often missing in reform efforts is a clear focus on where action is needed and a modus operandi lead by countries themselves to tackle the underlying factors. Policy discussion and policy dialogue may remain too much at a general level without adequate focus on critical sub-dimensions or sub-indicators that may be the root obstacle and cause of lack of progress with reform.

36. By focusing on concrete underlying factors, the IRI seeks to shift obstacles to reform and to communicate clearly to policy makers where the problem lies and where action is needed. Through the use of a rating system, through ‘self analysis’ and through comparison with other countries in the region, individual countries can better track their relative progress with reform. Achieving reform is a positive step in all instances but may not be that significant in competitive if neighbouring or competing countries are moving much faster with similar reforms.

37. The IRI therefore has the advantage of giving insights into this relative progress with reform issues. It is also a capacity building process for policy makers within the country concerned as it is not simply an external evaluation but a process in which policy makers themselves play a lead role. The scope of the IRI can be extended, as required, to draw comparisons with other OECD countries where relevant.

Figure 3: OECD Investment Reform Index



38. The main distinguishing and differentiating factors of the Investment Reform Index (IRI) are:

²⁶ OECD Investment Compact for South East Europe ‘Designing the Future – Making Investment Happen for Employment and Growth in South East Europe’. See also www.investmentcompact.org

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- **Focus on a very specific region/country** where history, culture and geography allow for more relevant benchmarking with competing countries/regions.
- **Tripartite participatory approach** to evaluation and measurement involving government, private sector, and the OECD.
- **Comprehensive evaluation of the investment environment** structured along ten key dimensions (additional dimensions may be added) in line with OECD standards.
- Does not only measure but also provides guidance on how to improve through good practices.
- **“Meta – Index”**, which incorporates existing work already conducted by other organisations (e.g., World Bank’s Doing Business reports).

39. The IRI is a practical tool for policy makers to play a central role in monitoring progress of reform priorities.

Summary Conclusions

40. The above tools are examples to illustrate how policy makers and IPAs in their policy advocacy role can use methodologies that will enhance their work. In some MENA countries significant efforts have been made to examine and progress competitiveness and it is recognised that such methodologies may already be in use. Where they are not in use IPAs could benefit from considering how they might use them in their policy advocacy work. Through the use of such methodologies and tools, MENA countries and IPAs could potentially enhance the structuring and focus of their reform efforts. Dialogue on policy reform would be not just in response to the latest international report issued or discussion on the next priority but on a regular and systematic approach. It would be concentrated on agreed concrete indicators of policy performance, reviewed at regular intervals and show how action and progress are being achieved (or not achieved) with these. Clearly the process and agreement on relevant policy dimensions, sub-dimensions and indicators would need to be fully discussed and agreed in advance. The use of such methodologies has the further advantage of making clear to all participants where discussion needs to focus and communicating to all the relative progress. The introduction of these methodologies demands a process over time and expert guidance.

41. Progress on competitiveness in the range of policy areas should ideally be systemically monitored in comparison to major trading partners and main competitor countries for FDI (‘comparator countries’). A crucial factor for effective dialogue and successful policy reform is for policy makers to initiate their comparative methodologies and practices in examining policy issues, in making comparisons with selected competitor countries and in benchmarking regularly their progress against agreed indicators. Through regular benchmarking and comparison of issues for reform with other countries and with established international data and indices (e.g. OECD, World Bank, UNCTAD, and various investment climate and competitiveness studies and surveys) the process of discussion on policy themes, follow up and instigating action where progress has faltered, can be strengthened.

VII. Conditions for Effective Policy Advocacy by an IPA

42. The attraction of FDI and sustainable development connected with FDI require an active, continuing and committed support of the government and of different groups of actors and stakeholders. Having established the vision for FDI policy within the overall economic development and competitiveness strategies for the country, it is important that an IPA together with the government plays a

proactive role in articulating that policy, promulgating it to all social partners as well as to existing and prospective investors.

43. The process of not just communicating the vision, but also advocating change and reviewing policy performance should ideally be inclusive and objective. The active involvement of investors in that process and in the dialogue on needed policy change will lead to better policy development and implementation. All of this process is at the heart of policy advocacy by the IPA.

44. Key issues that will influence the effectiveness of the IPA efforts in undertaking policy advocacy are the conditions in which the IPA operates, how the IPA views the priority of policy advocacy and the policy advocacy capacity of the IPA. These may be issues that IPAs need to review and strengthen if they are to be more effective. Some questions for IPAs to consider here are:

Box 1. Institutional set up and reporting lines

- Does the IPA report to the prime minister or other senior government figures? If not does it convey its policy advocacy advice to government and how effective is this?
- Are their close and good working relationships with the responsible ministries?
- Is the IPA invited to participate in national policy dialogue and economic planning fora?
- Does the IPA participate in policy committees or task forces dealing with important issues shaping the investment climate (e.g. infrastructure, people and skills development, etc?)
- And doe the IPA submit policy analysis and recommendations on change?
- Does the IPA have special (formal) working relationships with key ministries such as ministry of foreign affairs, ministries dealing with company registration or labour permits?

Box 2. Internal policy advocacy capacity

- Does the IPA have the internal resources to conduct effective policy advocacy (for example the expertise and skills to conduct policy analysis, to interpret business needs and to document and articulate policy proposals; and the mandate and budget to conduct research or engage researchers on specific issues where necessary)?
- Does the IPA have an internal dedicated department or unit that is engaged in such work (or is it conducted by people mainly engaged in marketing and therefore given a lesser priority)?
- Does the IPA board focus on the policy advocacy function and seek to ensure a high concentration on investment climate issues?

Box 3. Communication with key actors

- Is there a regular communication with ministries and senior government people on policy issues?
- Does the IPA have a good and regular working partnership with the ministry responsible?
- How effective is communication with private sector groups (investor associations, chambers, etc.) and are such groups invited in a systematic way to provide insights on the investment climate to the IPA?
- Are international indices or similar tools used to channel discussion with public and private sector representatives?
- Does the IPA link with competitiveness councils or similar bodies where they exist and what is the level of joint working (e.g. on research studies, analysis of specific issues, joint surveys)?

- To what extent does the IPA liaise with universities and seek greater industry/university links?
- To what extent does the IPA foster linkage between international and domestic companies (what concrete steps taken here)?

Box 4. Future opportunities

- Has the IPA engaged in research on new emerging sectors?
- Has the IPA sought to organize a cross ministry/agency approach to specific issues that could help to gain new investment in such sectors (e.g. on intellectual property, on education/skills, on joint research and development initiatives)?

Box 5. Concrete examples of good policy advocacy

- 1 Can the IPA point to initiatives that it has taken and that have lead to policy change?
 - 2 What areas does the IPA see as areas where it can make a contribution to improving the investment climate?
- Is there good awareness of the role the IPA plays in policy advocacy?

45. This brief list of questions is not exhaustive and may be added to by IPAs based on their experience in conducting policy advocacy and communicating on investment climate reform.

VIII. Policy Advocacy in the MENA Region

46. Discussion with social partners and building consensus on national objectives for FDI does not appear to be a feature of the approach by MENA countries. Nor does policy advocacy appear to be a mainstream activity of IPAs. At the same time it is noted that there is a wide divergence in the strategies and operations of IPAs in MENA countries. There is similarly little evidence of a structured approach to the rooting and building of linkage by IPAs in MENA countries or to policy advocacy in this direction.

47. In general the previous paragraphs outline various initiatives and actions that IPAs could undertake to strengthen their strategic approach to FDI and to strengthening their policy advocacy functions in such work. In summary, some areas where IPAs in MENA countries could play a role are:

- Inform decision makers on the need to introduce investor friendly rules and regulations (using for example, the World Bank ‘Doing business in 2007’ data and OECD Policy Framework on Investment as a guide to check comparative status and best practice);
- Assess and put the needs of investors into political and policy systems;

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- Involve investors in policy proposals that affect investment promotion and in the government decision process;
- Create a space for public argument and discussion in issues related to investment;
- Suggest approaches and alternatives to solving investors' problems through their insights from investment projects and links with investors.

48. Some countries have made considerable progress in these areas and their case experience may assist other MENA countries in developing their FDI strategies and especially their policy advocacy for reform and progress. A platform for this exchange of good practice in the region is provided, amongst others, by the MENA-OECD Investment Programme. The MENA-OECD Investment Programme was founded in 2004 to support the emerging policy advocacy function of IPAs and the relevance of an improved investment climate for the attraction of more investment – domestic or foreign. During its initial phase, the key objectives pursued by the Programme were to:

- a) develop and document the state of development of the investment related legal and regulatory framework in the region;
- b) establish time-bound investment reform targets for the countries participating in the Programme and work on their implementation;
- c) create regional networks of private sector participants, key organisations, and country Ministries and Agencies.

49. Meanwhile and in relation to the first objective, the Programme has taken stock of the regulatory environment, recent developments and key challenges in areas related to investment policy, investment facilitation, taxation financial sector development, corporate governance and women entrepreneurship. Work at the national level related to the second objective of the Programme - establishing time-bound investment targets for the improvement of the investment environment.

50. To this end National Investment Reform Agendas (NIRAs) have been elaborated with MENA governments. These Reform Agendas include concrete measurable targets to be achieved within a period of 6 to 12 months. The Steering Group has reviewed and encourage this process at its meetings held in April and October 2005 in Paris and Istanbul and presented to the Ministerial Meeting and Business Day on 13-14 February 2006 in Jordan, which was attended by delegations of 16 MENA countries, represented by Ministers or high level representatives from the relevant Ministries.

51. The meeting concluded with a Declaration on “Attracting Investment to MENA Countries – Common Principles and Good Practice”. Ministers also endorsed an ambitious programme for regional dialogue and capacity-building developed by the Working Groups. The Ministers noted the National Investment Reform Agendas developed by MENA countries and encouraged their implementation.

52. Regarding the third objective, the Programme has succeeded in developing a wide network of private sector organisations (i.e. the Arab Business Council, Business and Industry Advisory Committee to the OECD), regional organisations (the Arab Union of Banks, TOBB), as well as other private sector participants who continue to attend the meetings of the Programme. Additionally, the MENA-OECD Business Network organised a Business Day preceding the Ministerial Meeting, as well as awarded 24 companies from the region with an ‘Investor of the Year’ Award for innovation and employment creation.

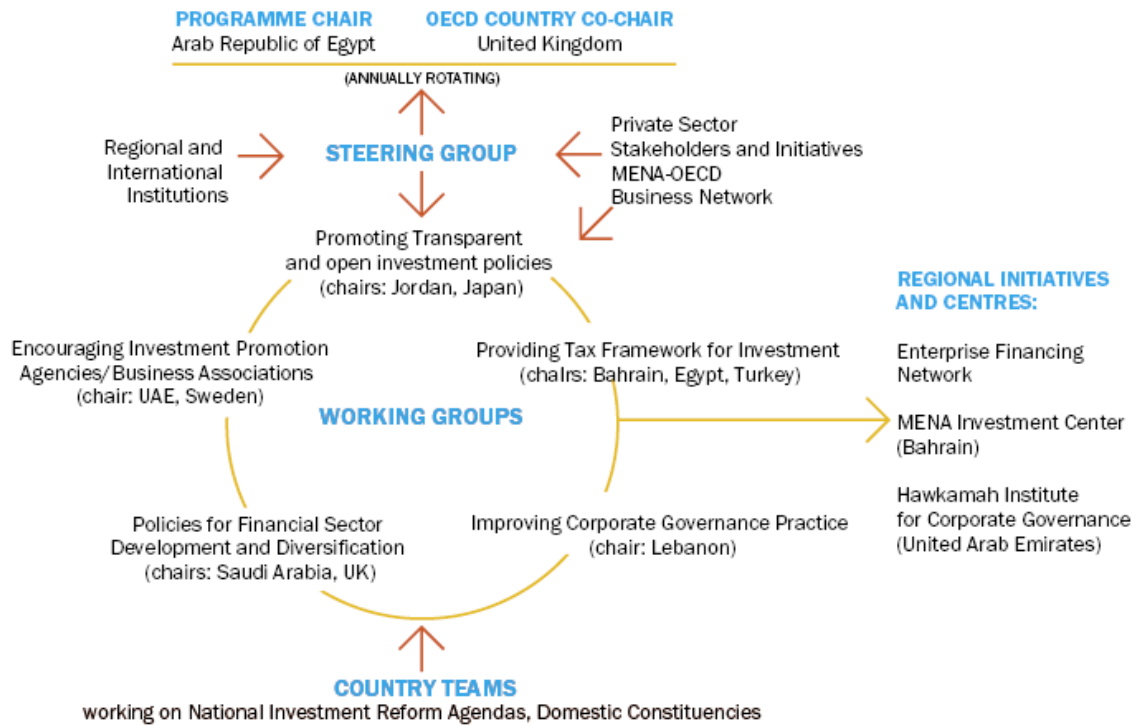


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53. Finally, several MENA countries have demonstrated an interest in participating in activities of the OECD Investment Committee and adhering to the OECD Declaration on International Investment. Egypt and Jordan have started a procedure to adhere to the OECD's Declaration, and interest has been expressed by Morocco and the UAE.

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Figure 4 – MENA-OECD Investment Programme



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On communicating reform:

Adam Smith's website: Building Support for Privatization

Practical guidelines on developing a communications strategy as part of a privatization program. It stresses the importance of empathizing with an audience and offers instructions on getting the most out of polling, the media, and broadcast advertising. The ASI Web site also contains samples of the use of multimedia as part of a privatization strategy. http://www.adamsmithinternational.com/services_eur_cpa.html

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ANNEX I - CASE EXPERIENCES

Brief case experiences of policy advocacy by IPAs or with the support of IPAs are outlined in this section. They do not describe the full level of such advocacy but illustrate in succinct form how some countries/regions and IPAs have pursued this function and thereby improved the investment climate for investors.

CzechInvest

Launched as a small marketing office in 1993, CzechInvest has evolved into a development agency and a world leading IPA that was awarded the 'Best IPA in EU Accession Countries' and other awards in 2003-2003 (Corporate Location and Strategic Direct investor magazines). CzechInvest was central to building a product package that improved the country's competitiveness for FDI, and how that package was designed to address the Czech Republic's longer term economic development goals. The initial challenge of changing the public perception of foreign investment and winning the government's trust and gaining its support for the IPA formed part of CzechInvest's public advocacy. Illustrative examples of the policy advocacy role adopted by CzechInvest are:

Regional links: CzechInvest's regional programme is viewed as a distinct competitive advantage in investment promotion. The agency established a special section to establish good links with key regions and developed a training and qualifications programme for regional and municipal authorities, which lacked understanding about FDI and its potential impact on local communities. The launch of this certification programme was seen as a 'milestone in a long advocacy process' initiated by CzechInvest to actively involve reluctant Czech communities in promotion for FDI.

Monitoring the business environment: The IPA incorporated an advanced level of external communication and systematic networking into its day-to-day operations. CzechInvest acted as an intermediary between public and private sectors, monitoring investor needs within the context of the government's objectives. Through feedback from investors and industry associations submits reports on the business and investment environment to the responsible ministry, which in turn takes the report to the government. Through this advocacy mechanism and the establishment of a working group of key institutions, according to the IPA, problems such as the issuance of visas for expatriates, were streamlined and resolved.

Source: MIGA/World Bank: 'Competing for FDI', 2005, A MIGA-FIAS Research Project.

South East Europe Regional Network of Foreign Investor Councils

S.E. Europe consists of 9 countries and a population of approx. 60 million people. With the demise of the former Yugoslavia and transition of all countries in the region from central planning to market economies the region sought to build FDI. Initially levels of USD 1-2 billion about a decade ago FDI has now grown more than ten-fold. To assist the process of advocacy for policy reform and change the private sector in the region established 'Foreign Investor Councils' in each country, with the support of IPAs and international institutions. Representing over 550,000 employed workers, about USD 20 billion capital invested and over 450 multinational companies (of which more than half were present in more than one country) these councils became a highly credible discussion partner with governments on crucial policy reform and provided valuable feedback and data on policy issues. Examples of the **cross regional issues** that they highlighted and which referred not just to international investment, were:

- Adopt simplified and enabling land, real estate, construction registration, regulation and legislation
- Adopt simplified company registration
- Establish and/or implement guarantee funds, financial support, and incentives for SMEs
- Improve the legal framework for SMEs
- Establish competition and regulatory independent authorities
- Improve the legal framework for competition and public and private governance
- Adopt and implement legislation on conflicts of interest in public positions
- Introduce and implement transparent procedures, reduce discretionary powers of administrations and strengthen powers and means of anticorruption agencies

Through regular dialogue with governments, through published 'white books' outlining their assessment of reforms undertaken and still needed these councils with the partnership of IPAs and other bodies have played a significant policy advocacy role in the region.

Source: The Regional Network of Foreign Investor Councils in South East Europe – White Book 2004

FIPA, Tunisia

A MIGA – FIAS, World Bank research report has highlighted FIPA Tunisia as a good example of an IPA shaping its organisation to promote increased market access. Tunisia has been seeking FDI since the 1970s and has achieved substantial progress. Based on their customer service strategy FIPA has created formal channels for addressing the problems of installed investors:

“The agency brings together investors with public agencies at annual meetings that explore and document specific investors' issues. The minutes of these annual meetings are forwarded to the attention of the minister of development and International Cooperation, who in turn send them to the prime minister's office. If the issues require action to revise policies, they are presented in inter-ministerial meetings for discussion and resolution. In addition, a record from the database of problems maintained by FIPA's Follow-up and Assistance division is also passed on to the minister's attention, which then follows the same process toward resolution of the recorded problem. This process has delivered positive results to date, including recent presidential decisions to simplify port procedures, and to reduce international telecommunications rates charged by the National Telecommunications Agency”

This case experience elaborates how FIPA has effectively used its strong customer focus to contribute to its policy advocacy function. Their knowledge of the strategies of client companies, industry trends and the factors investors consider when evaluating locations assisted their policy advocacy on change and reform and ultimately their

results in boosting FDI.

Source : Source: MIGA/World Bank: 'Competing for FDI', 2005, A MIGA-FIAS Research Project.



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ANNEX II - IPA POLICY ADVOCACY – DRAFT TOOL FOR MENA IPA SURVEY

	Level 1	Level 2	Level 3	Level 4	Level 5	Country Position
<p>1. Establishment of an Investment Promotion Agency (IPA) and determination of its objectives, legislative and governance structures aiming to strengthen IPA's policy advocacy role</p>	<p>An IPA is envisaged by government FDI policy, but without a clear legal basis and powers to carry out its mandate</p>	<p>Sufficient resources and independent budget are provided to the IPA to meet the objectives. But its competences are not independent from Ministry</p>	<p>IPA is operational, with responsibilities on <i>policy advocacy</i> function; number of staff and structure to perform this role are defined but budget is still limited and staffing incomplete and not appropriate to perform this role</p>	<p>IPA performs its policy advocacy role, in addition to staff and structure, IPA's institutional structure is clearly defined by rules on reporting to the supervisory board, chairman and chief executive</p>	<p>IPA is actively driving reforms in investment climate. Targets and measures of outputs and programme performance to meet Government objectives are defined to regularly evaluate FDI benefits and impact on specific reform projects</p>	

Note: according to what is widely viewed as best practice, the institutional structure appropriate for IPA to exert policy advocacy function would envisage: a senior cabinet economics minister (or the prime minister) directly responsible for the activities and performance of the IPA; the Agency's chairman should report directly to him, in order to play an active role as policy advocate. It is recommendable also that an independent chairman is appointed to be the key communications channel between the supervisory board and the responsible minister.

Steps to follow for assessment:

1.1	Establish an IPA with a clear legal structure and powers to carry out policy advocacy function.	
1.2	Ensure that the mandate of the agency is clear, transparent and modifiable only by government decision. To be effective, the agency needs to be empowered and resourced so that it can compete internationally for investment.	
1.3	Appoint a senior cabinet minister (or the prime minister) to be directly responsible for the activities and performance of the IPA.	
1.4	Provide sufficient resources and budget to meet the objectives.	
1.5	Define rules on roles, authority, responsibilities, appointment procedures, budgeting process on the reporting of the IPA supervisory board, chairman and chief executive.	
1.6	Appoint the supervisory board, including significant private sector and key stakeholder representation, and the chief executive.	
1.7	Appoint an independent chairman as the key communications channel between the supervisory board and the responsible minister.	
1.8	Clearly state the responsibilities, powers, budgetary and reporting procedures of the agency, the limits on capital and operating expenditure, and appropriate auditing procedures, specifically with regard to the policy advocacy.	
1.9	Set clear targets and measures of outputs and programme performance to meet Government objectives to evaluate FDI benefits and impact on specific reform projects. Such evaluation then serves as a basis for reform efforts in the investment climate.	

	Level 1	Level 2	Level 3	Level 4	Level 5	Country Position
2. Role of IPA in establishing Government policy on foreign direct investment and in enhancing its benefits for local economy	There is no comprehensive and formulated government policy on FDI	An FDI policy is established and its vision and aims in terms of national economic and social development are publicised (role played by IPA through its policy advocacy function)	IPA provides the means to guarantee that FDI policy is enacted in the national legislation and is consistent with other government policies	IPA conducts a periodical assessment of the economic impact of FDI	Assessment is used to instigate policy change and, where necessary, improve performance or deal with a changing environment	
Steps to follow for assessment:						
2.1	Publicise the vision and aims of FDI policy in terms of national economic and social development.					
2.2	Set the necessary links and structure to play a role in enacting legislation on FDI policy, treatment of FDI, new institutions and other policy areas that impact on FDI.					
2.3	Ensure consistency of other government policies (e.g. legal and administrative procedures, labour regulations) with agreed FDI strategy so that efforts to attract FDI are not undermined or obstructed by conflicting laws and regulations.					
2.4	Provide a link to ensure involvement of foreign investors in policy dialogue at all stages in the development of new policies.					
2.5	Ensure that foreign investment policy has a regional dimension, establishing communication with other IPAs in the region (appropriate steps are taken to ensure that as many regions as possible benefit from FDI - e.g. infrastructure and skills training/development).					
2.6	Periodically assess the economic impact of FDI and instigate policy change, where necessary, to improve performance or deal with a changing environment.					

	Level 1	Level 2	Level 3	Level 4	Level 5	Country Position
3. Articulation and advocacy of the national policy on FDI to create a better awareness and consensus on the aims of policy	Government undertakes communication strategies to publicise planned FDI policy and expected results as well as the methodology to monitor and review performance	Communication takes place also with civil society and with domestic and international media in order to explain FDI policy and government support for it	Government participates actively and publicly in supporting the work of the Investment Promotion Agency, working in close partnership with it to announce and publicise new FDI projects	The conduct of reviews of FDI policy by Government is open for inputs from all relevant groups in society	Reviews are made available to the wider public	
Steps to follow for assessment:						
3.1	Undertake wide communication and publicity on planned FDI policy and expected results as well as on the methodology to monitor and review performance.					
3.2	Take a proactive role in communicating with civil society and with domestic and international media in order to explain FDI policy and government support for it.					
3.3	Ensure that new FDI projects are properly announced and publicised (this is a key part of the work of an Investment Promotion Agency and requires close partnership between government and IPA to achieve best results).					
3.4	Actively and publicly participate in supporting the work of the IPA – this is a key task for government.					
3.5	Ensure that local industry or regional partners are fully aware of the opportunities for business links and co-operation with foreign investors.					

3.6	Consult with social partners and foreign investor representative groups in reviewing, amending or introducing new FDI policies to improve performance.					
3.7	Ensure that the conduct of performance reviews allows for inputs from all relevant groups in society and that such reviews are made available to the wider public.					
4. Establishment of partnerships and effective cooperation between the IPA and other organisations in each location	Level 1 IPA did not consider to get engaged in any partnership	Level 2 Models for partnerships have been determined but not relevant for IPA's policy advocacy objectives	Level 3 Relevant partnerships have been identified but no effective management is carried out	Level 4 Solid foundation for an effective management of relevant partnerships has been set but no regular evaluation aiming to instigate investment climate reforms	Level 5 IPA conducts regular monitoring and complete evaluation at the conclusion of the partnership to examine its contribution in performing its policy advocacy function	Country Position

Note: Partnership can be defined as a joint working arrangement with public or private sector agencies to develop or deliver components of the investment promotion program.

Steps to follow for assessment:

4.1	Determine types of partnership needed, making sure that those the IPA engaged in produce results for investors more effectively than the agency can achieve on its own to be an efficient policy advocate. <i>[Note: partnership types can be identified according to IPA's objectives, normally categorized in three general ways: product development, marketing, and client services].</i>	
4.2	Identify partners who can add value to the particular set of activities to be undertaken and bring resources to bear.	
4.3	Manage the partnership effectively, i.e. taking into account potential partner's motivations, intended contribution, role as leader or participant, and time commitment; these factors must be fully considered to set a solid foundation for an effective partnership.	
4.4	Evaluate the partnership periodically, and at least once within the first six months to ensure an effective launch. Regular monitoring and a complete evaluation by the IPA at the conclusion of the partnership are the most important ways to improve success over time.	
4.5	Examine IPA's strategic goals in terms of instigating investment reforms and determine where partnerships could effectively contribute to the success of those goals. While reviewing subsequent modules, careful consideration is required for those activities where partners would prove useful, in order to design how such relationships might best be structured.	

F. DRAFTING A NEW GENERATION OF INVESTMENT LAWS: MENA-OECD GOOD PRACTICE

BACKGROUND DOCUMENT FOR SESSION II, PANEL I

The following paper provides an overview about emerging good practices in investment rule-making in the MENA region, building on OECD member countries' practices. The paper is supposed to provide background information for the revision of existing investment laws and regulations. It reflects the key elements of 'new generation' investment laws. The background documents referred to in the footnotes of this paper are all available from the OECD's homepage.

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I. Introduction

1. A new generation of Investment Laws is currently emerging in MENA countries participating in the MENA-OECD Investment Programme. Morocco and Tunisia are considering a revision of their current investment laws and Egypt has just issued a substantial revised law in 2005. Jordan’s revised investment law is pending parliamentary approval and Syria’s investment law of 1991 is being re-evaluated. Iraq has issued a new federal investment law in summer of 2006 and other countries re considering revisions of their investment regime in light of emerging international good practice.

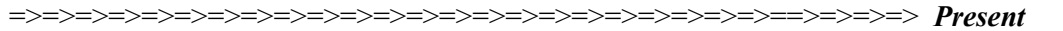
2. This surge in revised investment laws follows a trend which over the last decades steadily lowered barriers to the establishment and operation of partly or wholly foreign-owned enterprises in the MENA countries. Restrictions on foreign ownership of enterprises have been relaxed, as have those on foreign ownership of land and real estate and on foreign purchases of shares on local stock markets. In many MENA countries, foreigners can participate in the privatisation of state-owned enterprises.

3. The new generation of investment laws which is the expression of this trend have one element in common: they follow the shift from an approach restricting the entry of foreign direct investment to an approach which regulates the entry of foreign investment into relative open economies or which postulates no specific regulation for foreign investors at all (Box 1).

4. Concurring with this trend, ministers and delegations from 16 MENA countries participating in the MENA-OECD Investment Programme have recognised in a Ministerial Declaration concluding the first Ministerial meeting of the Programme in February 2006 as common principles and good practice ‘openness to foreign investment and access by investors to facilities necessary for investment and the movement of key personnel for the purpose of investment’. The Ministerial Declaration equally recognises the principles of ‘national treatment for established foreign investments, fair and equitable treatment of investment, protection of investors’ rights and compensation for all categories of expropriation’.²⁷

5. Traditionally total or comprehensive sectoral exclusions of FDI were used by countries pursuing a policy of economic nationalism. The socialist states of Eastern Europe and the former USSR were the most prominent examples of this approach. This approach has become obsolete today.

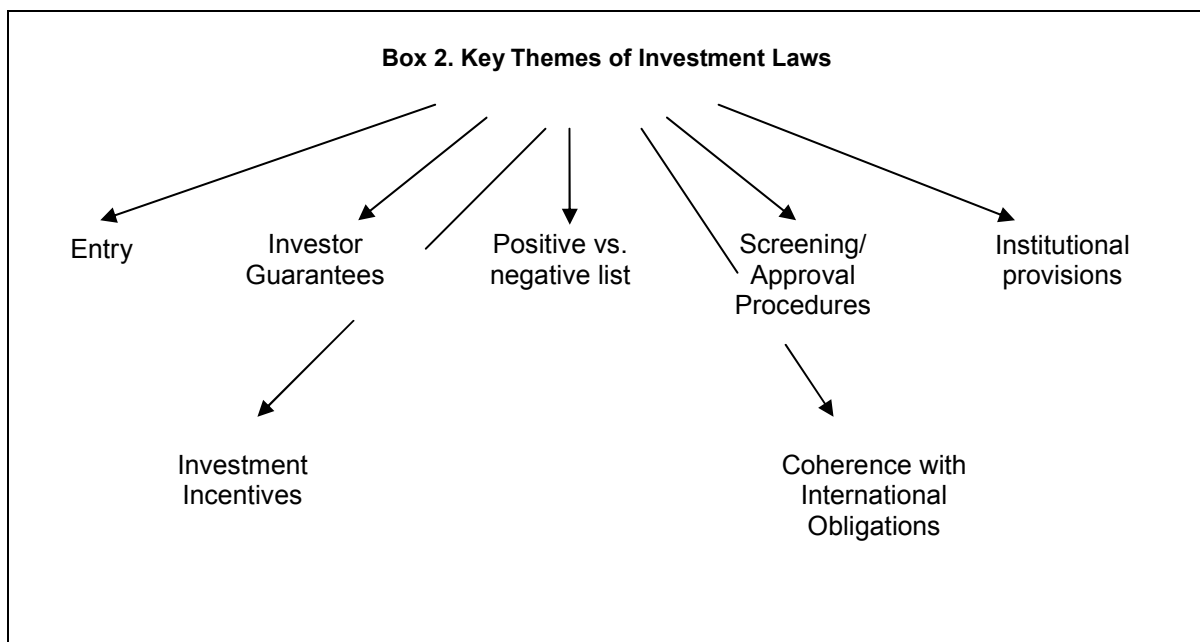
6. On the other end of the scale stand economies which have no or little specific entry regulations for FDI at all and follow a stringent national treatment approach whereby foreign investors are granted the same treatment as domestic investors throughout the economy.

Box 1. Regulation of FDI in Investment Laws	
<i>Past</i>	<i>Present</i>
	
<i>Restriction – Regulation – Encouragement – No specific regulation=Full National Treatment</i>	

Source: MENA-OECD Investment Programme, 2006.

²⁷ 2006 Ministerial Declaration – Attracting investment to MENA countries, common principles and good practice, <http://www.oecd.org/dataoecd/30/35/37520012.pdf>.

7. Provocatively, one could argue that the best investment law is not to have any investment law in the first place or only one which applies equally to foreign and domestic investors. But for many economies striving to attract more high-quality foreign investment, this approach is highly academic. Investors are looking for transparency and predictability especially when investing in countries with historical and regulatory traditions different from their own. A state of the art investment law can serve investors, domestic or foreign, as one – out of many others – indications that the investment climate in a given country is transparent and predictable with respect to regulation of entry, investor guarantees, incentive systems and procedural and legal recourse issues. Key themes covered by the new generation of investment laws are referred to in Box 2.



Source: MENA-OECD Investment Programme, 2006.

8. It comes then as no surprise that many ‘new generation’ investment laws of countries in the MENA region follow a middle ground approach encompassing varying degrees of entry regulation, investment encouragement through incentive systems, and institutional and procedural arrangements with a view to promote investment. As a matter of fact, even some OECD countries use screening and approval requirements and some others are currently considering reintroducing or tightening of existing regulations. The OECD’s Investment Committee is currently studying these new tendencies in its ‘Freedom of Investment project’.

II. Regulation of Entry

9. Under international law, every state is sovereign in controlling entry and establishment of foreign entities within its territory. States may exercise this right in different ways as referred to in Box 3. First, there may be restrictions excluding FDI from the whole economy or from specific sectors or industries. Secondly, FDI may be permitted only after screening and approval procedures have been applied. These procedures may condition investments on the fulfilment of specific performance requirements (e.g. local content and sourcing requirements). They may also serve as selection procedures for the granting of regulatory, financial or fiscal incentives for a foreign investor’s project.

10. The Agreement on Investment and Free Movement of Arab Capital among Arab Countries of 1970 reiterates the principle of sovereignty in Article 3, highlighting each signatory’s sovereignty over its

own resources and its right to determine the procedures, terms and limits that govern Arab investment.²⁸ Similarly, the Unified Agreement for the Investment of Arab Capital in the Arab States of 1980 controls rights of entry and establishment²⁹, as does Article 2 of the Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference of 1981³⁰.

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

12. The two OECD Liberalisation Codes contain an obligation to 'standstill' and 'rollback' regarding any national restrictions on the transfers and transactions to which the Codes apply. There is even a positive duty included to grant any authorisation required for the conclusion or execution of the transactions or transfers covered, as well as a duty of non-discrimination in the application of liberalisation measures to investors from other member states.³¹ The OECD Code of Liberalisation of Capital Movements was extended in 1984 to include rights of establishment.

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

14. Currently, there are hardly any economies in the world which pursue a policy of total exclusion of FDI. Sectoral exclusions of FDI, on the other hand, are a common characteristic of various jurisdictions. Most states have restrictions in sectors which encompass industries relevant to national security, industries regarded as strategic, culturally significant industries and public utilities. Examples are the Exon-Florio amendment which empowers the US President to prohibit the takeover of a US firm by a foreign firm where there exists 'credible evidence that the foreign interest exercising control might take action that threatens to impair national security'³². Countries trying to enhance the transparency of their regulatory investment regime tend to publish so-called negative lists which allow the investor easy access to information about remaining horizontal or sectoral restrictions to FDI.

²⁸ UNCTAD, *International Investment Instruments: A Compendium*, vol.II, 1996, p. 122.

²⁹ UNCTAD, *ibid.*, Articles 2 and 5, p. 213, 214.

³⁰ UNCTAD, *ibid.*, p.241.

³¹ OECD Codes of Liberalisation of Capital Movements; <http://www.oecd.org/dataoecd/10/62/4844455.pdf>.

³² US Omnibus Trade and Competitiveness Act 1988, 28 ILM (1989), p. 460.

15. Finally, restrictions on foreign ownership in privatized companies in some countries have been following a ‘golden share’ approach whereby the government retains control over certain matters in recently privatised companies by way of the so-called golden share. The UK and Germany have been using this approach in the past.

Box 3. Possible Regulatory Approaches to Entry

Option 1: Allow foreign majority ownership in all sectors ~ full national treatment approach;

Option 2: Allow foreign majority ownership only in specific sectors listed in a ‘positive list’;

Option 3: Allow foreign majority ownership, but apply general screening and approval procedures to guarantee compliance with negative list;

Option 4: Allow foreign majority ownership, but apply screening and approval procedures for the granting of incentives/imposition of performance requirements (in line with international obligations);

Option 5: Allow foreign majority ownership, but apply screening and approval procedures based on clearly defined qualitative criteria (national interest, economic development etc);

Option 6: Combination of 1-5.

Source: MENA-OECD Investment Programme, 2006.

16. Remaining general restrictions on the entry of FDI in the UAE comprise the following: at least 51% of companies, other than branches of foreign enterprises, must be held by nationals of the Emirates. GCC nationals are permitted to hold (1) up to 75% of the equity of companies in the industrial, agricultural, fisheries and construction sectors; and (2) up to 100% of the equity of companies in the hotel industry. 100 % ownership by non-nationals is permitted in free zones and expatriate ownership of real estate, pioneered in Dubai, is now possible under certain circumstances, in other emirates, including Abu Dhabi.

17. Sectoral restrictions on entry continue to exist in the UAE. Foreigners are effectively excluded from the distribution sector. The Commercial Agencies Law requires that foreign principals distribute their products in the UAE only through exclusive commercial agents that are either UAE nationals or companies wholly owned by UAE nationals.

18. Free Economic Zones offer exceptions from general restrictions: 100% foreign ownership is permitted as is access to land through long-term renewable leases. Fiscal incentives. Complete exemption from taxes, customs and commercial levies. Financial incentives. Low land rates. *Quasi-incentives*. Access to ports and a large and well-educated labour force.

III. Screening and approval procedures

19. The second expression of the state’s regulatory sovereignty to determine the entry of FDI into its jurisdiction can be found in screening and approval procedures which tend to be regulated in the new generation of investment laws. This involves case-by-case review of foreign investment projects by a specialised public authority in the host country - often the investment promotion agency, a special investment committee or the Ministry in charge. Compulsory approval procedures are in place only in a small number of OECD member countries, but more common in countries not members of the OECD. Traditionally, the authority in charge of screening and approving has a relatively wide discretion in its decision to approve a foreign investment project. The new generation of investment laws tries to specify the conditions which are supposed to guide the decision of the authority.

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

- a) in certain countries, all sectors are subject to approval requirements;
- b) in others only specific, strategic sectors are subject to such requirements;
- c) a third scenario, which manifests itself in countries such as Jordan, Egypt or Bahrain is that additional approval procedures are only required (as compared with national treatment) when a company wishes to apply for certain incentives under the applicable investment laws.

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

22. A possible good-practice approach distilled from OECD and MENA countries' investment laws and regulations as described in Box 4 combines a transparent negative list approach with predictable screening and approval procedures, including a right to judicial review.

Box 4. Regulation of Entry: Towards a Good-Practice Approach

1. Negative List Approach

- Transparency
- Predictability

2. Transparent screening and approval procedure

- To assess compliance with negative list
- (To screen foreign investment under clearly defined national interest considerations)
- (To grant regulatory incentives and/or performance requirements in line with international obligations)

3. Right to ask for review of decision of licensing authority by Ministry or judiciary body

- Transparency
- Equality of treatment (possible MFN obligations from BITs/WTO framework)
- Administrative guideline limiting discretion

Source: MENA-OECD Investment Programme, 2006.

IV. Investor guarantees

23. The February 2006 MENA Ministerial Declaration is complemented by a set of recommendations which have been elaborated by the MENA-OECD Investment Programme.³³ These refer to emerging standards in domestic investment regulations as well as in international investment agreements and encompass the following principles protecting private investors:

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

24. The willingness of most MENA countries to commit themselves to protecting foreign investment is demonstrated by the increasing number of bilateral investment treaties, signed in recent years as well as protection and guarantee provisions in their investment laws. Nonetheless, it must be noted that certain countries have not yet granted these guarantees to foreign investors in their investment laws.

³³ Recommendation of the Working Groups of the MENA-OECD Investment Programme presented to the Ministerial Meeting, <http://www.oecd.org/dataoecd/30/35/37520012.pdf>.

V. National treatment

25. First, this refers to the provision of national treatment in the new generation of investment laws. "National Treatment" is the commitment by a country to treat enterprises operating on its territory, but controlled by the nationals of another country, no less favourably than domestic enterprises in like situations.

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

- A declaration of principle, which forms part of the Declaration on International Investment and Multinational Enterprises ;
- A procedural OECD Council Decision, which obliges adhering countries to notify their exceptions to National Treatment, and establishes follow-up procedures to deal with such exceptions in the OECD.

27. The National Treatment Instrument addresses the treatment of foreign-controlled enterprises after establishment. In this respect it differs from the Code of Liberalisation of Capital Movements, which seeks, *i.a.* a non-discriminatory right of establishment of foreign-controlled enterprises.

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

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

30. Countries which have adhered to the Declaration on International Investment and Multinational Enterprises, as well as the related Decisions and Recommendations by the OECD Council, including the National Treatment instrument, are the thirty OECD member countries and nine non-member economies.

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

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

VI. Expropriation

33. Private Investors, especially in long-term infrastructure projects, are often subject to the risk that future governments of the host country implement changes in the domestic legislation which could affect

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

VII. Free transfer

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

VIII. Investment incentives

35. Following an open door policy towards investors in addition to the absence of onerous administrative measures for the approval of FDI and the general absence of ownership, control or performance requirements as a condition of entry, many states offer regulatory, fiscal or financial incentives to FDI. One of the pioneers of successfully using incentives has been the Republic of Ireland. Already since 1958 the Republic has offered fiscal incentives to manufacturers, and currently the major incentive consists of a 10 per cent maximum corporate tax rate for manufacturing profits.

36. MENA countries use investment incentives to attract FDI. They may be granted for FDI in the whole territory, or only for investments in special economic zones. Direct subsidies or income tax incentives can make the host state more attractive to investors. However, especially when it comes to tax incentives, the effectiveness of the incentive regime should be assessed on a regular basis to make sure that the balance between investor attraction and sustainable tax revenues continues to serve the public interest and that tax regime remains internationally competitive.

IX. Institutional issues

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

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

39. In the UAE, a federal regulation of the institutional setup of investment promotion could require:

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- the establishment of the competent screening and approval authority on the federal level;
- the establishment of a review instance for decisions of the authority affecting investors;
- the division of competences between the investment promotion authorities on a federal level and in the Emirates.

X. Conclusions

40. A comprehensive ‘state of the art’ investment law carries considerable advantages for the attraction of high quality investment and more and more countries are revising their investment regimes with a view to bring them in line with international standards. The summary of good practice in MENA and OECD countries in Annex I and the evaluation tool in Annex II can serve as a vehicle for identifying good practice of investment regulation as well as the necessary implementation steps.



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ANNEX I

The following table outlines the good practices meant to create a transparent investment environment in the MENA and OECD countries. This table outlined key legislative aspects of investment regime, including investor guarantees, positive vs. negative list, approval approach, access to land, etc. This document presents the key elements of a “new generation” of laws on investment. The OECD documents referred to in this table are accessible through the OECD website (www.oecd.org).

Item	Description	Good practice MENA/OECD
1. Investor Guarantees	<p>Emerging standards in domestic investment regulations as well as in international investment agreements³⁴ refer to the following principles protecting private investors:</p> <p>a) Granting of national treatment for foreign investors at both the pre- and post-establishment stage;</p> <p>b) The principle that exceptions should be clearly and precisely formulated and periodically reviewed with a view to phasing them out;</p> <p>c) The principle of fair and equitable treatment³⁵ of domestic and foreign investments enshrined including full protection of property rights including intellectual property;</p> <p>d) Provision of high standards of compensation for direct and indirect expropriation;</p> <p>e) Unrestricted access of investors to effective national and international dispute settlement mechanisms.</p>	
a) National Treatment	Over the last decades, barriers to the establishment and operation of partly or wholly foreign-owned enterprises have been steadily lowered in the MENA countries. Restrictions on foreign ownership of enterprises have been relaxed, as have those on foreign ownership of	In Jordan, the Investment Promotion Law No. 16 of 1995 states in <i>Article, 24b</i> : “... the Non-Jordanian Investor investing in any Project governed by this Law shall be afforded the same

³⁴ Inventory on MENA International Investment Agreements, <http://www.oecd.org/dataoecd/57/0/36086680.pdf>

³⁵ <http://www.oecd.org/dataoecd/22/53/33776498.pdf>

	<p>land and real estate and on foreign purchases of shares on local stock markets. In some MENA countries, foreigners may participate in the privatisation of state-owned enterprises. The willingness of most MENA countries to commit themselves to protecting foreign investments is demonstrated by the increasing number of bilateral investment treaties, signed in recent years as well as protection and guarantee provisions in their investment laws. Nonetheless, it must be noted that certain countries have not yet granted these guarantees to foreign investors in their investment laws.</p>	<p>treatment as the Jordanian Investor.” <i>Art. 25</i>: “It shall not be permissible to expropriate any Project or to subject it to any measure that may lead to expropriation, unless such expropriation is done by way of compulsory purchase for the purposes of public interest, and in return for a just compensation to be paid to the Investor. The compensation paid to a Non-Jordanian Investor in such case shall be in a convertible currency.”</p> <p>With respect to OECD member countries, the National Treatment approach of the OECD Investment Committee obliges adhering countries to notify their exceptions within the framework provided by the OECD Declaration on International Investment and Multinational Enterprises. Is it advised that the spirit of this treatment be applied for the purposes of enhancing transparency within the MENA region.</p> <p><i>See OECD Declaration’s National Treatment Instrument</i>³⁶</p>
<p>b) Expropriation</p>	<p>The majority of the MENA countries’ investment laws include legal guarantees against expropriation. Moreover, international investment agreements concluded by MENA countries (BITs, ICSID subscription) provide for guarantees in the case of expropriation. These agreements tend to preserve the international</p>	<p>- According to the Jordanian Promotion Law 16/1995 “It shall not be permissible to expropriate any Project or to subject it to any measure that may lead to expropriation, unless such expropriation is done by way of</p>

³⁶ http://www.oecd.org/document/48/0,2340,en_2649_34887_1932976_1_1_1_1,00.html

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	<p>minimum standard, according to which expropriation is only lawful when it is carried out for a clear public purpose, without discrimination and upon payment of ‘prompt, adequate and effective compensation’.</p>	<p>compulsory purchase for the purposes of public interest, and in return for a prompt adequate and effective compensation”.</p> <p><i>- See OECD publication on Expropriation³⁷</i></p>
<p>c) Free Transfer</p>	<p>Generally, MENA countries vary in the degree to which foreign investors may freely repatriate capital. Several MENA countries also allow unhindered repatriation of capital without restriction. Thirteen of the MENA countries (Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Tunisia and United Arab Emirates, Iraq and Libya) report that they allow repatriation of capital without restriction, whilst Algeria, Morocco, Syria and Yemen, operate restrictions of varying depth. No publicly available information with respect to this regulation exists in the Palestinian Authority at the moment.</p>	
<p>d) MFN / IIA – most favoured treatment</p>	<p>MFN treatment clauses are found in most international investment agreements. While MFN is a standard of treatment which has been linked by some to the principle of the equality of States, officially an MFN obligation exists only when a treaty clause creates it. In the absence of a treaty obligation (or for that matter, an MFN obligation under national law), nations retain the possibility of discriminating between foreign nations in their economic affairs.</p> <p>In general, most investment laws in MENA countries do not contain an MFN clause, but those who are members of WTO are bound to this rule under their commitment to WTO agreement</p> <p>(currently this concerns 9 countries: Bahrain, Egypt, Kuwait, Mauritania, Morocco, Qatar, Tunisia, Turkey, UAE)</p>	

³⁷ <http://www.oecd.org/dataoecd/22/54/33776546.pdf>

<p>e) Fair and equitable treatment/ dispute settlement</p>	<p>Private Investors especially in long-term infrastructure projects are often subject to the risk that future governments of the host country implement changes in the domestic legislation which could affect negatively the investment made.</p> <p>Best practices to guarantee investors against such a risk: a) provide fair and equitable standard; b) introducing an international arbitration clause in bilateral investment agreements and in investment laws; c) introducing a stabilisation clause in the projects specific investment agreement.</p> <p>For many MENA countries the issue of interpretation and disputes between investors and governments falls under international law (see point <i>b</i> above) as they are members of the International Centre for Settlement of Investment Disputes in the World Bank.</p>	<p>In the MENA region most countries have signed the ICSID Convention for international settlement of investment disputes (Algeria, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Syria, Tunisia, UAE, Yemen)</p>

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		<p>- see <i>OECD Publication on fair and equitable treatment standards</i>³⁸</p> <p>- see <i>OECD Publications on Dispute Settlement</i>³⁹</p>
<p>2. Positive List vs. Negative List</p>	<p>The majority of MENA countries rely on a ‘positive list’ approach in presentation of their investment environment to foreign investors in that they list the sectors which are open to foreign investment. Certain MENA countries provide a ‘list of FDI restrictions’ outlined in their investment laws or publicly accessible information sources. A list of remaining restrictions to foreign investment gives investors transparent and easily accessible information. To our knowledge this transparent approach is currently followed by Bahrain, Jordan, Qatar, Tunisia and Saudi Arabia, which effectively comprises 27% of the 18 Middle Eastern countries participating in the MENA-OECD Investment Programme.</p>	
<p>3. Investment Screening and Approval Procedures</p>	<p>Investment screening and approval procedures have been simplified in many MENA countries’ investment laws. However, despite these improvements, special screening procedures for foreign investment remain in place in a number of countries for all sectors or for specific sectors. In some countries, the motivation behind special procedures for FDI is to ultimately control sources and nature of incoming investment flows. Other countries, including Egypt and Jordan use screening and approval procedures with a different motive: to decide on whether to grant preferential treatment to foreign investors. In general, three scenarios can be detected in the application of FDI screening procedures in the region: in certain countries, all sectors are subject to approval requirements, in others only specific, strategic sectors are subject to such requirements. A third scenario, which manifests itself in countries such as Jordan, Egypt or Bahrain is that additional approval procedures are required (as</p>	

³⁸ <http://www.oecd.org/dataoecd/22/53/33776498.pdf>

³⁹ <http://www.oecd.org/dataoecd/3/59/36052284.pdf>; <http://www.oecd.org/dataoecd/25/3/34786913.pdf>

	<p>compared with national treatment) when a company wishes to apply for certain incentives under the applicable investment laws.</p> <p>While screening of foreign investment is one of the most widely used techniques for controlling the entry and establishment of foreign investors in host states, it can create unnecessary impediments and should be restricted to sensitive sectors. Often, a specialised investment review agency deals with the screening and approval procedure using a process which tends to be highly discretionary, lacking overall transparency and the possibility for an investor to claim effective judicial review. If screening procedures were to remain, MENA countries employing such procedures should consider offering rights of judicial review to investors against decisions by the review agency. A further transparency-enhancing measure would be to issue clear administrative guidelines for the decision-making process so as to increase the predictability of the final decision to the investor. It would be also beneficial both from the perspectives of transparency and simplicity if all investment screening procedures for foreign investors were included in the general investment law or referred to within the body of the latter.</p>	
<p>4.Foreign Exchange Regulations</p>	<p>Recent years have witnessed a substantial liberalisation of foreign exchange regimes, and the MENA countries have been following this trend. In particular, all the MENA countries except Syria have obtained IMF Article VIII status, indicating that they have removed restrictions on payments and transfers relating to current transactions, including repatriation of profits. Generally, MENA countries vary in the degree to which foreign investors may freely repatriate capital. Thirteen of the MENA countries amongst them Jordan (Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Tunisia and United Arab Emirates, Iraq and Libya) report that they allow repatriation of capital without restriction, whilst Algeria, Morocco, Syria and Yemen, operate restrictions of varying depth.</p>	

<p>5. Access to Land</p>	<p>The ease of acquiring real estate and land is of major importance for attracting investment, both foreign and domestic. For foreign investors, the process is, however, often more circuitous than for local residents. Number of procedures an investor has to go through in order to acquire real estate vary in each MENA country; for instance Jordan requires 8, Algeria 16 procedures in the acquisition process, while Morocco and the United Arab Emirates require 3. These types of bureaucratic hurdles can ultimately affect the destination of international capital.</p>	
<p>6. Transparency and access to information</p>	<p>Most MENA countries have made serious efforts to increase transparency of their foreign investment regimes, however for foreign investors in the region transparency still remains an issue of concern. The transparency of foreign investment regimes varies widely among MENA countries. One reason of this is the relative lack of information made available to foreign parties by some MENA countries. Indeed, while some countries provide detailed reports in response to a survey on investment restrictions conducted by the IMF, others supply cursory responses devoid of usable content. Similarly, a range of national government websites providing information of use to foreign investors extends from sophisticated sites containing relevant laws and regulations, details of establishment procedures and other useful content (usually in English or French as well as in Arabic) to sites with virtually no relevant information.</p>	<p><i>- see OECD Framework for Investment Policy Transparency⁴⁰</i></p>
<p>7. Institutional setup – Investment Promotion Agencies</p>	<p>Although there is no single model of success when it comes to investment policy and promotion, it has become clear that successful investment promotion requires both appropriate strategy and a sufficient operational means to support it. It is certainly very important then that an efficient and transparent institutional framework is set up. In particular, it is essential to set up a responsible organisation which must not</p>	<p><i>See MENA-OECD Programme Investment Promotion Guidelines for the MENA region⁴¹</i></p>

⁴⁰ <http://www.oecd.org/dataoecd/36/42/18546790.pdf>

⁴¹ <http://www.oecd.org/dataoecd/56/62/36086726.pdf>

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	<p>become another layer of bureaucracy, but a real and efficient facilitator in providing advisory services and fulfilling a pro-investment environment advocacy function.</p> <p>Most countries in the MENA region have created Investment Promotion Agencies (IPAs) – with a mandate of: (i) image building, (ii) investor servicing and facilitation, (iii) investment generation and targeting, and (iv) policy advocacy. The responsibilities and emphasis on the various IPAs vary, depending on the purpose and state of their investment policies and how much promotion is needed in view of the country’s fundamental attractions and requirements for specific types of investment.</p>	
<p>8. Incentive system</p>	<p>MENA countries use investment incentives to attract FDI. They may be granted the right to investment in the whole territory, or only investments in special economic zones. Direct subsidies or income tax incentives can make the host state more attractive to investors. However, especially when it comes to tax incentives, the effectiveness of the incentive regime should be assessed on a regular basis to make sure that the balance between investor attraction and sustainable tax revenues continues to serve the public interest and that tax regime remains internationally competitive.</p>	<p>- <i>See OECD Checklist FDI Incentives</i>⁴²</p> <p>- <i>See MENA-OECD Investment Programme Recommendations (attached)</i></p>

⁴² <http://www.oecd.org/dataoecd/45/21/2506900.pdf>

G. INCENTIVES AND FREE ZONES IN THE UAE

BACKGROUND DOCUMENT FOR SESSION II PANEL II

This document provides an update and expansion of material concerning the United Arab Emirates, which was initially presented as part of the document “Incentives and Free Zones in the MENA Region: A Preliminary Stocktaking”. It is based on additional reporting by the Emirates authorities. Following the meeting on 21 December the two documents will be merged and used as a basis for further work.

I. General Investment Climate

1. Restrictions on foreign direct investment in the UAE economy (outside the zones) include the following:

- *General restrictions on entry.* At least 51% of companies, other than branches of foreign enterprises, must be held by nationals of the Emirates. GCC nationals are permitted to hold (1) up to 100% of the equity of companies in the industrial, agricultural, fisheries and construction sectors and in the hotel industry.
- *Sectoral restrictions on entry.* Foreigners are effectively excluded from the distribution sector. The Commercial Agencies Law requires that foreign principals distribute their products in the UAE only through exclusive commercial agents that are either UAE nationals or companies wholly owned by UAE nationals.
- *Land ownership.* Until recently, only GCC nationals were permitted to own land in UAE. In May 2002, the Emirate of Dubai announced that it would permit so-called “free hold” real estate ownership for non-GCC nationals by giving permission to three companies to develop and sell freehold properties on government-designated pieces of land.
- *Repatriation of investment and profits.* Foreign investors are entitled to remit abroad, in convertible currency, foreign capital invested, including returns, profits and proceeds arising from the liquidation of investment projects.

2. Elements of the tax regime applying to foreigners or foreign-owned enterprises in the UAE economy:

- *Corporate income tax rates.* The federal government has not promulgated any tax laws. Most of the individual emirates have issued corporate tax decrees, but they are mostly limited to the hydrocarbons sector and to branches of foreign banks, which are taxed at fixed rates.
- *Personal income tax rates.* There is no taxation of personal income.

II. Investment incentives in the overall economy

3. Outside the zones, few incentives are generally offered. Reduced registration and licence fees are sometimes provided according to the needs of each individual Emirate. Also, the ability to purchase property as freehold in certain favoured projects in Dubai – and promises that foreign owners of such property would be granted residence permits as long as they remained in possession of title – might qualify as a regulatory incentive aimed at attracting foreign investment.

III. Zones and their main characteristics

4. The UAE has become an important destination for investment and this is largely due to the country’s FEZs. Quoting from a recent study, they have “transformed the economic scenario of the

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Emirates and brought about tremendous change in the industrial scene of this nation”.⁴³ The country’s zones are presently host to more than 3,000 companies.⁴⁴

Table1. Main characteristics of FEZs in the UAE

	Number and type of zones	Total area (hectares)	Number of enterprises	Observations
United Arab Emirates	9 FZs; 7 IZs	FZs: 12,950; IZs: 1,235 ^(a)	3,978 ^(a)	Several of the industry zones occupy space inside the larger free zone areas.

Source: United Arab Emirates Yearbook 2006.

5. The pioneer in this respect – and by far the largest and most well-known zone – is Jebel Ali Free Zone (JAFZ), which was started in Dubai in 1985. The free zone concept was at the time a novel concept in the Gulf region. Twenty years later, UAE has essentially based its foreign investment strategy on the zones. Sixteen free zones and industry zones are in operation, and several more are under preparation. The success of JAFZ has been such that its operating company is now selling know-how to, or otherwise involved in the development of, several of the other zones mentioned in this paper.

6. An interesting recent development is the proliferation of industry zones – essentially intended as centres of innovation – that have been established in Dubai since 2000. One example is the TECOM (Technology, Electronic Commerce and Media) free zone. TECOM offers a modern multimedia infrastructure; it houses both Internet City and Media City, two subdivisions which cater to the IT and media sectors. Another example is the Health Care City, specialising in medical products.

Table 2. FEZs in UAE

Name	Type	Estab-lished	Size (ha.)	Main economic activities	Number of companies	Total employ-ment	Cumula-tive investment (bn. USD)
Jebel Ali	Free Zone	1985	10000	Trade activities, processing, manufacturing, packaging and assembly activities, storage	2,200	ND	ND
Dubai Airport	Free Zone	1996	1200	Manufacturing, processing and assembly activities, trade activities and	300	ND	ND

⁴³ SIMEST (2004). (The translation is that of the author)

⁴⁴ United Arab Emirates Yearbook 2006.

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				selected services			
Fujairah	Free Zone	1987	150	Storage, manufacturing, processing, assembly and packaging activities, trade activities	220	ND	ND
Hamriyah	Free Zone	1995	1200	Manufacturing, processing, packaging, assembly and trade activities, selected services	269	ND	ND
Ajman	Free Zone	1996	100	Trade activities, processing, manufacturing, packaging and assembly activities, selected services	700	ND	ND
Ras Al Khaiman	Free Zone	2000	188	Storage, manufacturing, packaging, processing and assembly activities, consulting and services activities, trade activities	289	ND	ND
Dubai Internet City	Industry Zone	2000	400	Business from Web based, Back Office, Consultancy, IT Support, Software development, sales and marketing	ND	ND	ND
Dubai Media City	Industry Zone	2001	30	Business from broadcasting, production, advertising, public relations, recruitment, music, publishing, marketing, consultancy, Web-casting/New Media, post-production, research	ND	ND	ND
Dubai Gold and Diamonds Park	Industry Zone	2001	4,75	Gold and diamond trading, designing, manufacturing and crafting of gold and diamond jewellery	ND	ND	ND
Dubai Customs & Automobile Free Zones	Industry Zone	2000	800	Trading in cars	ND	ND	ND
Ahmed Bin Rashid Free Zone - Umm	Free Zone	1988	11,8	Manufacturing, trading and consultancy	ND	ND	ND

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Al Quwain							
Sharjah Airport International Free Zone	Free Zone	1995	100	Trade activities, processing, manufacturing, packaging and assembly activities, selected services	ND	ND	ND
Dubai Development & Investment Authority	Free zone	2002	ND	Selected services	ND	ND	ND
Dubai Metals & Commodities Centre	Industry Zone	2002	ND	Gold, diamond and commodities trading	ND	ND	ND
Knowledge City	Industry Zone	2003	ND	Education, Training and Research activities	ND	ND	ND
Dubai Health Care City	Industry Zone	2003	ND	Healthcare services	ND	ND	ND

Source: United Arab Emirates Yearbook 2006.

IV. Incentives and quasi-incentives in the Zones

7. The zones' attractiveness to foreign investors largely hinges on the fact that they provide a permissive regulatory environment. Offering "classic" inducements to investors, such as tax breaks and subsidised infrastructure, would in itself be unlikely to have much effect in the low-taxing and generally modern economies of UAE. However, the opportunity to get around the country's strict rules on foreign control on corporate entities and land has made investors flock to the FEZs. Some of the main incentives can be thus summarised:

- *Regulatory incentives.* 100% foreign ownership and unrestricted access to the zones. Access to land through long-term renewable leases. Reduced registration and license fees are also provided based on the needs of individual Emirates.
- *Fiscal incentives.* Complete exemption from taxes, customs and commercial levies.
- *Financial incentives.* Low land rates.
- *Quasi-incentives.* Access to ports and a large and well-educated labour force.

Table 3. Incentives offered in FEZs in the UAE

	Type of incentives:			Observations
	Regulatory	Fiscal	Financial	
United Arab Emirates	100% foreign ownership of companies possible. Access to land, long-term renewable	Complete exemption from taxes, customs and commercial levies.	Low land rates.	

	leases.			
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Source: United Arab Emirates Yearbook 2006.