

PART I  
Chapter 5

**Building Investment Policy Capacity:  
The OECD Peer Review Process\***

*The awareness of the economic benefits of private investment, be it of foreign or domestic origin, has rarely been as strong and widely shared across countries as is the case these days. Investment-enhancing policies have consequently moved to the forefront of governments' agendas. Building the necessary capacity to deliver policy reform is, however, often a complex and enduring task. Modern learning theory and more than forty years of experience with the implementation of OECD's investment instruments show that "peer reviews", OECD's most distinctive working method, is a helpful tool for building such policy capacity. The "Policy Framework for Investment" endorsed by the 2006 OECD Ministerial is expected to further enhance the contribution of OECD and other investment policy reviews in improving investment climates. This article highlights the origins, purposes, content and lessons learned from OECD Investment Policy Reviews.*

\* This article was prepared by Marie-France Houde, Senior Economist in the Investment Division, OECD Directorate for Financial and Enterprise Affairs. Part I is based on an internal research paper prepared by Kathryn Gordon, Senior Economist in the Investment Division, OECD Directorate for Financial and Enterprise Affairs. An earlier draft was reviewed by the OECD Investment Committee and served as an input into the discussions at the Investment Roundtable in Entebbe, Uganda, 25-27 May 2005. The views expressed in this paper are those of the authors and are not necessarily those of the OECD or its member countries.

## Executive summary

This article highlights the main features of the OECD investment policy peer reviews (IPRs), and more particularly, what makes them unique as a government-to-government process devoted to building investment policy capacity. It summarises the key lessons learned from forty years of experience with such peer reviews in the context of the implementation under the OECD investment liberalisation instruments and co-operation with non-members. The *Policy Framework for Investment* endorsed by the 2006 OECD Ministerial is expected to further enhance the contribution of OECD and other IPRs in creating better investment climates worldwide.

The awareness of the economic benefits of private investment, be it of foreign or domestic origin, has rarely been as strong and widely shared across countries as is the case these days. Investment-enhancing policies have consequently moved to the forefront of governments' agendas. Building the necessary capacity to deliver policy reform is, however, often a complex and enduring task. The task is made even more complex by the fact that most socio-economic contexts involve a large number of policy communities, institutions and influences involved (formal and informal, government and business, domestic and international), from the diversity of human interactions and economic transactions that take place and from exogenous factors such as technological or structural change, not to mention geography, climate and resource endowments.

The most direct consequence of this is that there are no one-fit-all solutions – the same policy action in two different environments can have two different impacts. Policy-makers need to find their own solutions; but they need not be alone in this undertaking. They may learn from each other by exchanging information and experiences, giving each other advice or assistance and over time develop a “pool of good policy practice” on which they can draw to develop their own policies. International organisations can also help by creating “international communities of investment policy practices” on which policy practitioners can draw to pursue their own reform efforts.

Peer dialogue and review lie at the very heart of the OECD. It is the Organisation's most distinctive for comparing policy experiences, seeking answers to common problems, identifying good practice and co-ordinate domestic and international policies of its members, in a nutshell, fulfilling its mandate.

Peer reviews have also been the single most important tool for promoting the liberalisation of international investment under the framework of the OECD Declaration on International Investment and Multinational Enterprises and the OECD Codes of Liberalisation. They have been a privileged channel of communication and policy dialogue with non-OECD member countries, notably with major world investment players such as China and Russia and the nine countries which have adhered to the Declaration. Forty years of experience have shown that they have been instrumental in helping governments design and implement better and more open investment policies. The lessons learned can be summarised as follows:

- Governments need each other to find their own path in promoting a better investment climate. They need to share experiences and understand good practices. They need friendly advice and an “outsider” critical eye of their “peers” to evaluate or measure progress.
- “Peers” should involve government officials with a substantive role in the investment policy decision-making and implementation process.
- Peer review works best when recognised benchmarks for evaluation and recommendation, such as the ones derived from the OECD investment instruments and related jurisprudence, are available and used.
- Effective investment policy peer review requires a significant engagement on the part of the country reviewed and other actors in the process. OECD experience shows that this entails a thorough inter-agency preparation by the reviewed government and readiness to follow through the review’s recommendations and peer monitoring. While it has costs, it also benefits coherent, whole of government approaches to investment.
- The participation of countries from different regional perspectives and levels of development is an advantage.
- Investment policy reviews should be conceived as a living tool allowing for flexibility in taking up new issues. They can be an input into the collective development of new best practices.
- Publication of the results is desirable. It contributes to transparency and provides support for domestic reform efforts.

In the future, OECD and non-OECD peer reviewers will also be able to draw on the Policy Framework for Investment developed in 2006 by government representatives from some 60 OECD and non-member economies to assist countries better frame and assess the policy challenges they face in improving their investment environments and evaluate their progress.

## 1. Building capacity and the role of “Communities of Policy Practices”

The challenge of building capacity within national authorities to enhance the enabling environment for investment has received considerable attention lately. Among other contexts, it is one of the main underlying themes of the Doha Development Agenda, the Johannesburg Declaration on Sustainable development and the UN Monterrey Consensus. The question is how to achieve it in practice and, in particular, how to achieve it in a multinational setting.

Recent research on the behaviour of policy actors suggests that the “communities of policy practice model” is particularly well suited for building capacity for enabling regulatory environments. The model assigns a critical role to the improvement of human capital in devising better policies. Policy practitioners need to learn from their colleagues at home and abroad to build a sufficient knowledge of policy options applicable to their own environment. This model is preferable essentially due to the complexity of the task of integrating the necessary skills, institutions and societal aspirations that influence investment decisions into policy-making.

### 1.1. Adult learning theory

Sociologists that have studied adult learning in complex, group situations have shown that learning is not based mainly on transmission of abstract knowledge “from the head of someone who knows to the head of someone who does not”.<sup>1</sup> Unlike school-based learning for children, adult learning about complex phenomena cannot rely solely on didactic, authoritarian approaches.<sup>2</sup>

Adult learning is necessarily a collective effort and involves collaboration. It is a process in which the learner comes to understand and share the view of past experiences accumulated by the group – as reflected in the stories of these experiences that the group has developed. In this context, “understanding” means, in particular, that the learner shares the views contained in the descriptions and, perhaps more importantly, can use them in dealing with problems encountered in its own environment. Learning is thus a process in which the learner becomes a member of a group that shares the same “stories” and acquires the ability to use these stories as a guide for action. Such groups have been referred to as “communities of practice”.<sup>3</sup>

Research has also confirmed the importance of establishing a learning community or “communities of practice” in effecting systemic organisational change and transformation.<sup>4</sup> Communities of practice or learning communities may arise on their own or they may be deliberately established by bringing together individuals and groups with diverse knowledge and experience. Their knowledge and experience enables or facilitates better gathering of information,

building and sharing of knowledge and best practices, and engaging in complex problem solving. Some additional findings are summarised below:

- **The nature of the learning process.** While adult learning involves individuals that may be less sensitive to differences in style and setting than younger persons, a few key findings about the nature of the learning process nevertheless offer themselves:
  - ❖ *Adversarial and coercive relationships may undermine learning.* Adversarial and coercive relationships have been found to often undermine effective learning by taking away the responsibility, opportunity and motivation to learn.<sup>5</sup> By contrast, opportunities for learning are usually enhanced when risks can be taken without fear of punishment, there is a climate of trust, and open and honest communication is honoured.<sup>6</sup> Similar arguments have been advanced for explaining why peer learning can help in promoting compliance with international agreements (see Box 5.1).
  - ❖ *Evaluation stimulates learning.* Evaluation promotes learning in a number of ways. First, it assists those whose performance is being evaluated to identify their strengths and weaknesses, understand more clearly their

#### **Box 5.1. Peer learning and compliance with international agreements\***

The role of co-operative or consensus-based approaches in promoting learning has been reinforced by research on ways to improve countries' compliance with international agreements. This research emphasises that there are many different reasons why government actors fail to meet prescribed standards and suggests that co-operation can play an important role in enhancing countries' compliance. At least six different reasons have been articulated for countries' non-compliance with prescribed standards. First, governments and/or units of governments may perceive that the benefits of non-compliance exceed the costs of non-compliance and deliberately chose not to comply. Second, non-compliance may result from a lack of resources. Third, non-compliance may follow from administrative or technological incapacity to implement the standard or policy as planned. Fourth, the standard may not be clear and may be susceptible to more than one meaning. Fifth, the actions taken to meet the standard may be on the "right track" but not yet have achieved their goal. Sixth, non-compliance may result from inadvertence. Often, more than one reason will be responsible for any particular act of non-compliance. Co-operative, learning based approaches are likely to be most useful in tackling the second to sixth reasons for non-compliance.

\* See in particular, A. Chayes and A.H. Chayes, *The New Sovereignty. Compliance with International Regulatory Agreements*, Harvard University Press (1995).

roles and duties, as well as ways in which they could perform better. Second, it enables the evaluator to have a clearer idea of the challenges faced by those being evaluated and what they need to be able to perform better. The utility and success of evaluation in promoting learning is generally enhanced when those whose performance is being evaluated are active participants in the process and are encouraged to engage in self-assessment.<sup>7</sup> The kinds of activities that are believed to best promote learning include asking questions, identifying and challenging values, beliefs and assumptions; reflection; dialogue; collecting, analysing and interpreting data; developing plans of action based on what has been learned; and implementation.<sup>8</sup> Among other things, these activities assist in making more clear the motivations and rationales for action, creating the possibility of acting in other ways.<sup>9</sup>

- **The types of information conveyed.** Not all kinds of information are equally well conveyed in a model such as the “communities of policy practice”. For example:
  - ❖ *Abstract knowledge has limitations.* There is also the need to integrate abstract policy advice with knowledge of local conditions. The literature on learning underscores the limitations of abstract knowledge when trying to make even moderately complex decisions or to solve even relatively simple, open ended problems.<sup>10</sup> While such knowledge is certainly useful, it is rarely sufficient. Credit must be given to the knowledge and experiences of those who make and implement policy in the domestic environment.
  - ❖ *Narrative descriptions are useful.* Learning theory has underscored in this context the usefulness of narrative descriptions. The value of narratives is in that they help organise and deal with information.<sup>11</sup> Adults have been found to learn better when their past experiences and personal knowledge is respected and used as a resource for learning, and when they have an opportunity to talk about and share their experiences.<sup>12</sup> Story construction and telling is also valuable because it provides a richer description of problems faced and of how and why various actions were taken. The resulting stories serve as repositories of accumulated information and understanding, which are useful when encountering similar challenges in the future. When one has a clearer understanding of how and why previous decisions were made, what has worked and what has not, and the nature of problems or obstacles faced, it is easier to make new decisions of better quality. For similar reasons, narratives enable the making of more accurate assessments of performance.
- **Continued learning.** Building capacity requires that there be sustained opportunities for learning. Ideally, the learning should continue after the policy intervention is finished. The delivery of best practice policy

recommendations, without more, provides little in the way of learning opportunities. Nor does it promote ownership of the recommendations. To reinforce what is being learned, to best determine its utility, and be able to resolve uncertainties about how the policy advice should be implemented in practice, there should be opportunities to put into practice what has been learned while the learning is occurring. One of the benefits of establishing a community of practice is that it provides a context for sustained interactions between the members of the community, including after the immediate objectives for the establishment of the community have been achieved.

## 1.2. Peer review as a form of adult learning

Peer review mechanisms, as applied by OECD and other international organisations, share several of the features and functions of the “communities of practice” policy capacity mode. They may, in particular, fulfil the roles of:

- *Assembler of policy practitioners.* Peer reviews may bring together policy practitioners that broadly share the same values and objectives and have the authority and/or the expertise to address and correct the problems they are confronted with. The greater is their involvement, the greater is the likelihood that improvements in policy making will eventually materialise.
- *Peer learning and dialogue.* Peer reviews provide a neutral and friendly forum for exchanging information, attitudes and views on policy decisions and their application and for understanding their rationale and motivations. Participants also learn from each other about best policies and practices and how they might be applied in their own policy context. This is also referred to by regulatory economists as competitive benchmarking; the idea being that by judging their own performance relative to other colleagues, policy makers may be able to progress in pursuing their own reforms.
- *Policy advice and policy convergence.* The mutual trust and collegial approach that characterises peer reviews are favourable to an *objective and neutral evaluation* of the performance of a given country by its peers and its general acceptability by the recipient country. This process may lead the peers to offer policy advice and make constructive proposals on the relevant policy dilemmas facing the reviewee. It may also force them to evaluate their own policies. The reviewee, on the other hand, may use the group to test the effectiveness or acceptability of a particular idea, opinion, or point of view. Over time, peer review may encourage policy co-operation and convergence.
- *Information gathering and dissemination.* Peer reviews often entail the collection of information about the policies of the participants and other useful factual information on their particular situation. If this information is made public, it also benefits private actors and the general public. Peer reviews can play an important role in enhancing transparency.

- *Compliance monitoring.* Peer reviews can also be used to enhance progressive compliance with internationally agreed policies, standards, and principles. The soft law nature of peer review may prove better suited to encouraging incremental improvements in policy making than a traditional enforcement mechanism by focusing on achievable goals which take into account a country's policy objectives and its performance in a historical and political context.
- *Technical expertise and assistance.* Peer review may supply expertise in policy-making that is scarce in certain countries. For example, training of government officials can occur informally through the interaction of secretariat staff and government officials during the peer review process.<sup>13</sup>
- *Delivering the message.* This is an extension of the policy advice role. By providing countries with policy recommendations on certain topics, peer reviews may disseminate the prevailing consensus and best practice to governments and policymakers worldwide, and provide international support for reviewed governments' reform efforts.

## 2. OECD Investment Policy Reviews: a tool to help attract and maximise the benefits of investment

### 2.1. The context of OECD's Investment Policy Reviews

#### 2.1.1. A catalyst to liberalisation

The origins of OECD Investment Peer Reviews (IPR) go back to the creation of the Organisation itself. In 1961, the OECD Codes of Liberalisation<sup>14</sup> mandated OECD to promote the progressive liberalisation of capital movements and services across national frontiers through a consultation process giving precedence to understanding and persuasion over negotiation. This was done by inviting member countries to notify restrictions standing in the way to free circulation of capital, right to establishment and cross-border financial and other services and to submit themselves to periodic examinations designed to make suitable proposals for the progressive elimination of their restrictions.<sup>15</sup> Peer reviews became the main mechanism for *monitoring* and *compliance* of members obligations under the Codes. They were used as a leverage for *locking in* past liberalisation gains and as well as a vehicle for identifying and encouraging progressive elimination of non-conforming measures under the Codes.<sup>16</sup>

The adoption of the OECD Declaration on International Investment and Multinational Enterprises in 1976 launched an unprecedented effort devoted to the improvement of the investment climate, the encouragement of the positive contribution multinational enterprises can make to economic and social progress and the minimisation and resolution of difficulties which may arise from conflicting requirements imposed on foreign investment and incentives and disincentives. The Declaration asked two major commitments

from OECD countries, namely to accord *national treatment*<sup>17</sup> to foreign-controlled enterprises operating on their territories and to recommend to multinational enterprises operating in for from their territories the observance of the *guidelines* for responsible business conduct annexed to the Declaration. Peer reviews were again chosen as the main tool for promoting the objectives of the Declaration. Indeed, member governments were invited to notify their exceptions to national treatment and submit themselves to periodic reviews of their exceptions.

Following the adoption of new procedures for strengthening the implementation of the National Treatment instrument of Declaration in early 1990s, a new format was introduced for conducting more comprehensive and integrated foreign direct investment policy assessments of OECD countries, and for elaborating more robust policy recommendations to OECD authorities. This format was also used for the examination of the six countries which became members of the Organisation during the 1994-2000 period.

In 2000, two new decisions were taken to enhance the application and influence of the Declaration. The OECD Guidelines were extensively revised to reinforce the economic, social and environmental elements of the sustainable development agenda and new procedures were introduced to ensure their effectiveness. In the same year, the OECD Ministerial Communiqué invited the Organisation to encourage non-members to adhere to the Declaration on International Investment and Multinational Enterprises. Investment policy reviews were again chosen as the basis for determining whether the non-member applicant was “able” and “willing” to live up to the Declaration’s undertakings. All 30 OECD countries (and nine non-member countries – see below) to the Declaration have benefited from the review of their investment policies by their peers.<sup>18</sup> These reviews represent an impressive pool of knowledge and experiences on these countries’ policies and are at the root of important liberalisation steps.

This does not give full justice, however, of all the work accomplished over the years. In addition to “country” reviews, peer reviews have also been conducted horizontally. These “horizontal” reviews have prepared the ground for major updates and extensions of the Code’s obligations, such as that carried out on financial services at the end of the 1980s. Horizontal peer reviews have also been conducted as means of discussing in depth what might be considered “pockets of resistance” to liberalisation, such as those conducted more recently on foreign acquisition and real estate, and foreign direct investment (FDI) in professional services and telecommunications services. They have been an indispensable transparency tool<sup>19</sup> and have led to robust policy recommendations endorsed at the highest level of the Organisation.

### **2.1.2. A privileged avenue of co-operation with non-member partners**

OECD IPRs were originally conducted only among its member countries. However, the political developments of the 1990s, including in Central and Eastern Europe, created an unprecedented demand on the Organisation to share its knowledge and expertise with the rest of the world. In the investment field, the Organisation developed at first technical assistance programmes in the form of investment guides for transition economies, conferences, seminars and internships. It is not until towards the latter part of the decade that investment policy reviews were conducted on non-member countries, namely in connection with Argentina's, Brazil's and Chile's applications for observer status in the OECD Committee on Investment and Multinational Enterprises.

Since the 2000 Ministerial Decision to open up adherence to the Declaration to any non-member willing and able to meet its obligations – peer reviews have become one of the most important outreach activities of the Investment Committee. In addition to the reviews of the six new adherents to the Declaration (Slovenia, Estonia, Latvia, Lithuania, Israel and Romania) flagship peer reviews have been completed with China (2003 and 2006) and Russia (2004 and 2006). The pro-active strategy adopted by the Investment Committee in March 2005 on the participation of non-members in Committee work states its intention to make peer review “an important vehicle for policy dialogue” with non-member countries. In particular, IPRs are expected to play an important role in expanding OECD investment policy co-operation programmes with leading developing countries, Africa (NEPAD), the Middle East and North Africa (MENA), and other regions, as well as in regard to the implementation of the Organisation's recently developed “Policy Framework for Investment”.<sup>20</sup>

## **2.2. Contents of an Investment Policy Review**

The content of OECD investment policy reviews has significantly evolved over time, gaining much breadth and depth in the process. One of the most significant changes has been the shift of emphasis from blatant discriminatory measures to the consideration of broader and “behind the border” regulatory impediments to inward direct investment. In this connection, the reviews have increasingly highlighted the fact that regulatory transparency, adequate property rights protection, non-discrimination and other general principles of investment policy are of broader benefit to the business community – both domestic and foreign. Another change has been toward a more in-depth analysis of the beneficial effects of foreign investment to the local economy. The Organisation has, in addition, paid increased attention to the way in which reviewed economies translate internal liberalisation into international commitments, either at the bilateral, regional or multilateral levels.

These changes have aimed to reflect the important policy changes which have taken place in the field. In the last twenty years, formal discriminatory measures have receded across countries, uncovering the importance of regulatory barriers affecting investment generally. The international investment policy community has also gained a better understanding of the interfaces between investment policy and other policy areas and the implications that malfunctioning in these areas may have on the investment climate. The spectacular growth of international investment globally and a better realisation of its positive contribution to sustainable economic development have created a strong demand for identifying remaining obstacles to foreign investment.

In addition, greater attention has been given to making the peer reviews more user friendly to government officials, the business community and other interested parties. This has been achieved by presenting the information in more concise and laymen language. Another important decision has been to publicise the results of the reviews to promote investment policy transparency and enhance the hands of investment policy reformers.

Today's IPRs are divided into three parts. The first part examines the economic dimension of FDI in the reviewed country; the second reviews the regulatory environment, including the degree of openness and receptiveness to FDI; and the third sets out a number of policy recommendations.

### ***2.2.1. Impact of FDI on the reviewed economy***

This first part of the review consists of a general assessment of the country's performance in attracting FDI, direct investment's contribution to the economy and the channels through which this contribution is realised. It aims more precisely to situate the country in the globalisation map, identify its most pressing needs and evaluate future trends. The analysis make use of various indicators such as the importance of FDI inward and outward flows and stocks, country and sectoral composition, percentage to GDP, current account and domestic capital formation. Available data on foreign enterprises assets and employees, their contribution to trade and technology are also exploited. Statistical tables and charts and bibliographical references are also provided.

While the Secretariat relies on its own independent research and data base to prepare the background material for this part of the review, it also often seeks concrete input from government economists and renowned research institutes in the reviewed country. This not only presents the advantage of the work done by local specialists to the attention of investment policy makers in OECD countries, but more importantly, their contribution helps to understand better the economic rationale underpinning the reviewed country's policies towards foreign investment.

### **2.2.2. Informing about and understanding regulations**

The second part involves a thorough review of the country's regulatory framework for FDI and domestic business operations. The approach followed is an integrated and comprehensive analysis of the investment interface of a broad range of public policy areas. Its main objective is to identify the main impediments to inward direct investment.

The basic laws and regulations governing business activity are addressed first. These include in particular those dealing (at all level of government) with company law, authorisation and registration or other administrative requirements, exchange controls, acquisition of real estate, employment, competition policy, intellectual property and corruption. While the analysis may reveal the existence of discrimination, it more often brings to light non-discriminatory impediments to investment in the form of over regulation, implementation or red tape.

This is followed by an analysis of restrictions in key economic sectors such as finance, energy, transport, or telecommunication. These are also the areas where discriminatory measures limiting foreign participation are usually found, although their scope is now much more reduced than in the past. "Market access" barriers in the form of public or private monopolies or concessions have also been traditionally lodged in individual sectors but their importance has also declined in recent years with deregulation and privatisation.

The last part of the regulatory review is devoted to more in-depth analysis of selected issues of particular importance to foreign investors. Privatisation has been a recurrent theme of peer reviews in transition or developing economies. Increased competition for mobile investments has generated great a interest for a cost/benefit analysis of fiscal and non-fiscal incentives. Corporate governance and market integrity issues, such as corruption and administration of justice have also come in the limelight in many countries.

Finally, as a result of the rising number of bilateral investment treaties, regional agreements and double taxation agreements, most recent reviews have paid increased attention to obligations contracted at the bilateral or multilateral levels. This analysis is particularly useful in assessing the extent to which domestic reforms have been locked in the form of international commitments.

### **2.2.3. Evaluation**

The third part contains an evaluation of the general performance of the reviewed country and a number of policy recommendations addressed to the national authorities concerned.

For countries wishing to subscribe to the OECD Declaration on International Investment and Multinational Enterprises, the Committee must determine whether the applicant's proposed exceptions to National treatment

“are not incompatible with the overall level of liberalisation expected from adherents to the National Treatment Instrument”. It must also be satisfied that the applicant will undertake the necessary steps to promote effectively the OECD Guidelines for Multinational Enterprises, notably the establishment of a National Contact Point. In addition to the fulfilment of these “legal requirements”, the reviews under the Declaration lead to the formulation of specific recommendations to the country’s national authorities on how to further promote a favourable business climate. These recommendations are approved by the OECD Council, the highest organ of the Organisation. They form part of the Council decision’s to acquiesce the applicant country request to adhere to the Declaration and are expected to be implemented the national authorities concerned. The results of the peer review are finally published by the OECD.

For investment policy reviews conducted outside the framework of the Declaration, as those recently conducted by the Investment Committee on China and Russia as part of its expanding co-operation with influential non-OECD investment players, the diagnosis of the Investment Committee is accompanied by constructive suggestions for enhancing the country’s regulatory and institutional capacity to attract foreign investment. These are adopted by the Investment Committee. The results of the review are published by the OECD.

Finally, it is not unusual for recommendations to be accompanied by an invitation to report progress on their implementation. This has been the case with the investment policy reviews of Israel and Romania. The 2004 Investment Policy Review of the Russian Federation also evaluated the progress made by this country in responding to the recommendations formulated in 2001 on the investment environment and identified further offers options for improving it further during the next cycle of co-operation which is currently underway.

### **2.3. Practical modalities: investigation and review**

Together with the expanded coverage the investment policy reviews and their enhanced concern for investment policy capacity building, the procedures for conducting an investment policy review have also significantly improved. Today’s conduct of a peer review involves three distinct phases, namely: a) the preparatory or investigation stage; b) the examination stage; and c) the dissemination and follow-up stage. It also involves three main protagonists – the reviewed, the OECD peers and the Secretariat. Each of them is called upon to make a “substantive investment” into the conduct of the review, be it in terms of time, human resources or money.

The holding of a peer review can be either “demand driven”, or “instrument-driven” or “Committee driven”. In the first instance, the reviewee makes the request to the Organisation. For instance, a non-member application for adherence to the Declaration must clearly spell out the applicant government’s

willingness to subject itself to a full review of its investment policies by the Investment Committee. Accession requests to the Organisation also require the conduct of an investment policy review of the prospective member. IPRs are also an important element of Investment Committee's co-operation programmes with Africa (NEPAD), the Middle East and North Africa (MENA) and other regions.

In the second instance, the Committee may indeed be required by the OECD instruments to conduct peer reviews on a country-by-country basis or across countries on a particular issue. In the third instance, the Committee takes advantage of peer reviews to engage in a more in-depth policy dialogue with major non-member investment players.

A peer review is formally launched when the Organisation and the reviewed country agree on the practical modalities for conducting the review. This includes the timing of the peer review – which needs to be integrated in the Committee's work programme – and the sharing of the inputs and cost of the examination between the reviewee and the Organisation.

### ***2.3.1. The preparatory/investigation stage***

The objective of this initial stage is the preparation of a background analytical note by the Secretariat for the peer review to be conducted under the aegis of the Investment Committee. The background note is prepared by the Secretariat in close co-operation with the reviewed country authorities.

As a first step, the reviewee's authorities are requested to submit a memorandum providing basic information on their country's regulatory investment regime and other information normally covered by the review (as described in the previous section). In the case of an application for adherence to the Declaration, the applicant is also requested to provide a tentative list of its proposed exceptions to National Treatment instrument and to indicate the government's intentions as regard to the establishment of a National Contact point for the implementation of the Guidelines for Multinational Enterprises.

The memorandum paves the way to a two-to-three day mission by two to three staff members of the Investment Committee to the reviewed country. It involves meetings and interviews with key governmental agencies responsible for various aspects of economic and investment policy as well as other interested parties including business, civil society and academics. The visit is usually organised by the Ministry of Foreign Affairs or the Ministry of the Economy which act as the focal point for the review.

Government officials normally consulted include officials from the Central Bank and Ministry of the Economy for the assessment of general foreign investment trends and their impact on the national economy, central government agencies for the assessment of the investment climate and strategic governmental priorities or ongoing reforms, regulatory agencies and

line departments regarding the administration of specific regulatory requirements, restrictions, or investment incentives and investment promotion agencies. In recent years, the consultations have extended to privatisation agencies, competition policy councils, and independent regulatory agencies as well as judiciary institutions (regarding issues such as corruption and money laundering). The Ministry of Foreign Affairs or the Ministry of the Economy is the interlocutor on international obligations.

Greater attention has also been paid in recent years to the views of non-governmental stakeholders. Separate meetings are organised with representatives of the domestic and foreign investment communities, independent research institutes or academics as well as accredited civil society representatives (such as local chapters of Transparency International). Foreign embassies and local representatives of international development banks occasionally consulted as well. These consultations have proven to be particularly helpful in identifying sensitive issues that might eventually surface during the examination itself. All precautions are taken to protect confidential information.

In addition, the Secretariat seizes the opportunity of the visit to “coach the ‘reviewee’” to better prepare for the review. The visit provides the occasion to explain how the examination will be conducted and what would be expected from the reviewed delegation.

### **2.3.2. The peer review**

The Secretariat circulates on its own responsibility its background investigation note to the Investment Committee delegates no later than two weeks before the date of the examination. In the case of an application to adhere to the Declaration, the Secretariat also prepares a draft report to Council for the consideration by the Committee.

Once the date of the policy review is confirmed and the background note is circulated, the Investment Committee *takes over complete ownership and control* of the process. Lead reviewers, normally in the number of three, are chosen by the chair on the basis of their particular knowledge of the policy issues to be addressed during the review and due consideration for regional balance. The review takes place in the OECD as part of the Investment Committee meeting (usually half a day) in the presence of the applicant’s delegation.

At the opening of the meeting, the head of the reviewed delegation (usually a deputy minister or an assistant deputy minister ranking official) is invited to make a short policy statement. The chair then explains how the examination will be conducted and invites the first examiner to start the review. An allocated time is given to each lead examiners and follow-up question periods corresponding to different parts of the investigation report.

The Committee proceeds afterwards with the examination of the draft report to Council containing recommendations or options for further action. After the necessary modifications, the report is transmitted to the Council for a final decision if the review is part of an accession or adherence process. The reviewed party is invited to react to the draft conclusions. Delegations may also formulate separately policy recommendations to the reviewed authorities.

This Committee's input is unquestionably IPRs most valuable contribution to investment policy capacity building. The 39 countries which participate in the review have different economic backgrounds. They bring to bear on the discussion different points of views which reflect their own experiences. The collegial approach constitute a guarantee to the reviewed authorities that they would not be asked to implement policy actions that the peers would not, individually, or collectively be prepared to undertake. They also take full account of the reviewed country policy objectives and constraints. It is not unusual for the reviewed country to report back progress in implementing the Committee's recommendations. IPRs create a partnership of trust which endures a long time after completion of a review.

### **2.3.3. Publication**

Final IPR reports are approved by the Investment Committee and published. This is usually followed by a press release, summarising the main findings of a review for the media. While the publication of the IPR reports puts the reviewed country "on the spot", it also underscores international support for reform efforts, The reviews are also a valuable source of information for, and a basis, of discussion among investors and other civil society stake-holders. Often reviewed countries have translated the reports into domestic language, organised seminars and given a circulation to the public.

## **3. Concluding remarks**

The strengths of the OECD Investment Policy Reviews include, first, the fact that they are run by a group of what has been termed "investment peers". OECD IPRs are conducted by the investment policy-makers themselves. These are the middle to high-ranking officials who are responsible on a day-to-day basis for the elaboration and administration of government's policy toward foreign investment and who usually monitor regulatory matters affecting the investment environment. They negotiate investment treaties, represent their country at international meetings and may even be held accountable for the activities of domestic enterprises abroad. They are "the" government experts on the complex investment policy questions arising in today's globalised world.

Secondly, the “peers” involved in IPRs speak on behalf of the world’s largest investment players. The 30 OECD countries and 9 non-OECD adherents to the Declaration which participate in an IPR account for the bulk of world international investment flows. The views of OECD reviewers are thus truly representative of the views of the countries which play a determinant role in the field of international investment. They bring into the process a wealth of experiences and practices matched so far by no other inter-governmental investment peer learning forum. Some additional features adding credibility to the IPRs are the following:

- *Guidance by recognised policy benchmarks.* OECD IPRs constitute the main implementation tool of the most developed set of multilateral investment rules in existence today – namely the OECD Codes of Liberalisation and the OECD Declaration of International Investment and Multinational Enterprises. The commonly shared values embodied in these instruments not only provide a unique sense of purpose to the reviews but also objective benchmarks for assessing the individual policies and practices of its signatories and monitoring their progress.
- *Comprehensiveness.* OECD IPRs cover all investment regulatory barriers. They seek to understand their motivations, to assess their economic effects and to identify ways to dismantle them taking into account the particular circumstances of the reviewed country, without compromising the achievement of legitimate public goals. Their recommendations benefit both foreign and domestic investment.
- *Fairness and objectivity.* Participants have different economic backgrounds and experiences. The collegial approach of the process constitutes a guarantee that the reviewed authorities would not be asked to undertake policy actions that the peers would not, individually or collectively, be prepared to undertake. OECD IPRs create a partnership of trust which endures a long time after a completion of a peer review.
- *Openness to new “peers”.* OECD IPRs are no longer reserved to OECD member countries. Non-members countries may participate in this process by adhering to the OECD Declaration on International Investment and Multinational Enterprises. Furthermore, IPRs are a central component of the Committee’s proactive strategy towards the participation of non-members in its work. IPRs are expected to play a key role in putting into action the Policy Framework for Investment.
- *Follow-up by the reviewed authorities.* OECD recommendations are addressed to high level government officials in the reviewed country. They culminate a process designed to build consensus among domestic constituencies in the reviewed country and achieve a “whole government” approach to

investment. These recommendations are normally implemented. Progress reports and subsequent peer reviews allow for monitoring of results and mid-course adjustments where needed.

- *Publication of main findings.* OECD IPRs are published by the Organisation. Publication reinforces the hands of policy reformers and provides a basis for discussion among investors and other civil society stake-holders. They provide a valuable and objective source of information on the reviewed country.

OECD investment policy reviews have shown a great capacity to adapt to the needs of the “peers” and “open up” to new ones in recognition of the growing complexities of the global economy and the development aspirations of the developing world. They have become the Investment Committee’s most prominent outreach tools. In the future, IPRs are expected to play an important role in the promotion and implementation, with due regard to national circumstances and needs, of the *Policy Framework for Investment* which has recently elaborated by the Investment Committee in partnership with non-OECD countries and the support of the World Bank and other organisations.<sup>21</sup>

## Notes

1. Brown, John Seely and Paul Duguid (1991), “Organisational Learning and Communities of Practice: Toward a Unified View of Working, Learning and Innovation”, *Organisational Science*. Special Issue on Organisational Learning, Vol. 2, No. 1, p. 47.
2. T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002).
3. Lave, Jean and Etienne Wenger (1999), *Situated Learning: Legitimate Peripheral Participation*. Cambridge University Press, Cambridge.
4. See, for example, T.A. Kochan and M. Useem, “Achieving Systemic Organizational Change”, in T.A. Kochan and M. Useem (eds.) (1992), *Transforming Organizations*, Oxford University Press.
5. See also T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002), pp. 24-25, 40, 52.
6. H. Preskill and R.T. Torres, “The role of evaluative enquiry in Creating Learning Organizations”, in M. Easterby-Smith, L. Araujo and J. Burgoyne, *Organizational learning and the learning organisation*, Sage Publications (1999), p. 94.
7. H. Preskill and R.T. Torres, “The Role of Evaluative Enquiry in Creating Learning Organizations”, in M. Easterby-Smith, J. Burgoyne and L. Araujo (eds.), *Organizational Learning and the Learning Organization*, Sage Publications (1999).
8. *Ibid.* at 92, 94.
9. *Idem.*

10. See, for example, T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002), p. iv, highlighting that learning should not be inert, but should be “tied to building the capacity to act for improvement”.
11. T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002), citing to J. Bruner and H. Amsterdam, *Minding the Law*, Cambridge: Harvard University Press (2000).
12. T. Morrison, *Actionable Learning. A Handbook for Capacity Building Through Case Based Learning*, Asian Development Bank Institute (2002), p. 25.
13. Chayes, A. and A. Chayes (1995), *The New Sovereignty: Compliance with International Regulatory Agreements*, Harvard University Press, Cambridge, MA, p. 198.
14. See OECD Codes of Liberalisation of Capital Movements and of Current Invisible Operations, User’s Guide, OECD, 2003.
15. Article 12 of the Code of Liberalisation of Capital Movements and Code of Invisible Operations.
16. See *Forty Years’ Experience with the OECD Code of Liberalisation of Capital Movements*, OECD, 2002.
17. The National Treatment instrument defines national treatment as 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.
18. Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Slovenia and Romania.
19. A major update of the lists of exceptions notified under the NTI has been completed in December 2004 is part of a broader effort by the Investment Committee to promote transparency in international investment policy. See [www.oecd.org/dataoecd/32/21/1954854.pdf](http://www.oecd.org/dataoecd/32/21/1954854.pdf).
20. The OECD Council adopted on 11 May 2006, the Policy Framework for Investment with the aim of assisting governments to mobilise private investment to support broadly based economic growth and sustainable development, [www.oecd.org/daf/investment/development](http://www.oecd.org/daf/investment/development).
21. The core objective of the *Policy Framework for Investment* is to encourage policy-makers to ask appropriate questions about their economy, their institutions and their policy settings in order to identify their priorities, to develop an effective set of policies and to evaluate progress. See OECD work on investment for development [www.oecd.org/daf/investment/development](http://www.oecd.org/daf/investment/development).