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**A POLICY FRAMEWORK FOR INVESTMENT:
PUBLIC GOVERNANCE**

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A POLICY FRAMEWORK FOR INVESTMENT: PUBLIC GOVERNANCE

1. Introduction: the relationship between public governance and investment

1. The debate on the links between public governance, investment and development has taken on greater urgency as the interconnectedness of economies intensifies. Investment decisions of citizens and foreigners are directly influenced by their understanding of how public policies and laws are formulated and enforced. Just as there is no single model for good public governance in developed countries, there is no single model with fixed stages of transformation for developing countries. Nevertheless, there are commonly accepted standards of public governance to assist governments in assuming their roles effectively.

2. The challenge is that to accomplish their roles, governments must mobilize co-operation within the administration, between the national government and others levels, and between the public sector and others actors, principally in the private sector and civil society. In OECD and non OECD countries, the means by which government intervenes to guide and promote social and economic development no longer depend on rigid “command and control” mechanisms, but on more flexible and indirect forms of rule-making, guidance, evaluation and persuasion.

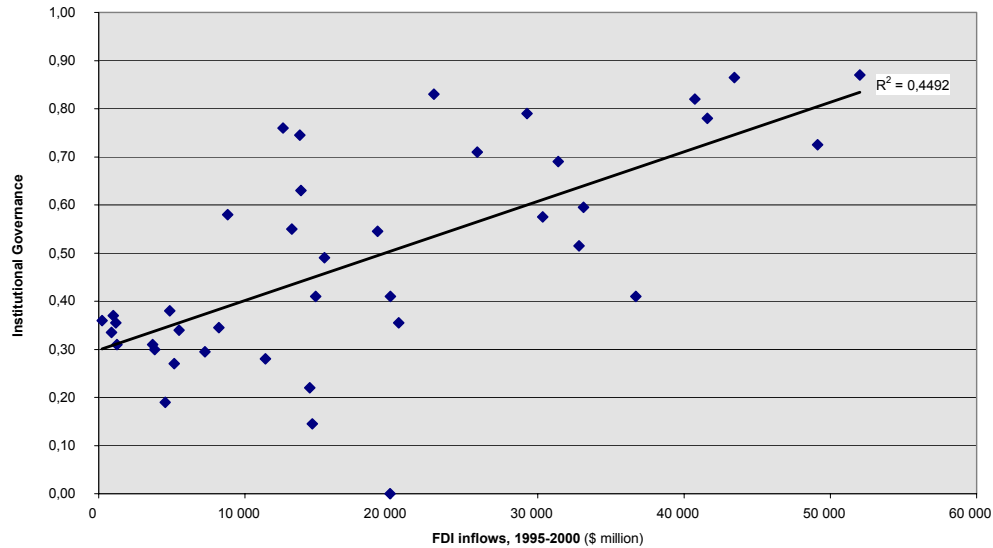
3. A key test of good public governance in the investment context is when the actions of government are credible, i.e. when it can be trusted by investors and stakeholders and be held accountable. This paper addresses two key dimensions of public governance which matter for attracting and maximising the benefits of investment: i) regulatory quality, ii) public sector integrity, including the contribution of international co-operation.

4. Poor public governance poses major risks for investors. Surveys by the OECD, the World Bank and other organisations consistently identify uncertainty about the regulatory actions of policymakers, corruption and weak judicial systems as among most important considerations for investors. Corruption undermines the integrity of governments and business enterprises, by distorting the allocation of public and private resources, making the public administration unreliable, and destroying investor confidence in whole countries. It is therefore essential that governments enact and implement effective anti-bribery legislation, develop an encompassing approach that promotes regulatory quality and integrity within public organisations. Conversely, good public governance has been consistently associated with positive investment performance. OECD work shows a strong positive relationship between the quality of the regulatory framework and foreign investment for instance across a sample of countries (see Figure 1).

5. It is also widely recognised that the rule of law is fundamental to the link between good governance and investment. The issue of property rights figures prominently in the historical literature: access to land, security of tenure, and provision of housing have been cited for the assurance they give that the fruits of initiative will not be confiscated or jeopardized. Protection against arbitrary action is consistent with the legitimacy of legal measures binding on all. Weak implementation and/or enforcement of law, limited knowledge of rights, and a lack of access to affordable legal representation

all compromise rule of law. The question of security is also linked to an acceptably low level of domestic violence and theft, and to the absence of civil war (see Box 1).

Figure 1. The relationship between inward FDI and the quality of governance



Source: OECD (2002) Foreign Direct Investment: Maximising Benefits, Minimising Costs, page 180.

Box 1. Stability and Security

The importance of taking state fragility and conflict into account is underlined by statistics. In 2003, 14 wars, 21 severe crises and 45 crisis situations unfolded around the world. Data on 2004 shows that 2003 was no anomaly: major political violence affected 18 countries. While states move in and out of a dangerous situation, it is estimated that some 40 to 50 countries are considered to be fragile or failing, accounting for about 14% of the world's population but nearly a third of the world's poor and 41% of all child deaths. A focus on helping states to improve the most basic security, justice, economic and service delivery functions is key (see OECD/DAC draft *Ten Principles of Good International Engagement in Fragile States*).

The perception of risk can have nearly as much of a negative impact as the actual level of insecurity. Even where there is investment activity, foreign and domestic firms may incur significant costs to protect their premises, products and personnel; they may also face demands for payment of protection money or "customs" tariffs to militias or organised criminal gangs. Inadvertently, businesses can act in ways that perpetuate this cycle of exploitation, violence and corruption. For the private sector as much as for external donors, more in-depth analysis and awareness of conflict and peace dynamics are essential, whether at the sub-national, national or regional levels. The security and justice systems in developing countries must provide conditions in which people and businesses have confidence in their personal security and investments. (See the DAC Guidelines: *Security System Reform and Governance: Policy and Good Practice* (2004))

Context for reform

6. Public sector reforms compete for attention with other policy objectives. Good public governance is however one of the more complex and arduous agendas for a government because: 1) it takes time, and must be supported consistently; 2) it calls for additional resources, particularly to recruit better-trained professionals and offer them competitive pay; 3) those who benefit from better governance are often scattered throughout the society and are poorly organised to express support, whereas 4) those who stand to lose in the short term are often well-organised and articulate.

7. Issues that have been identified in OECD and other work as impediments to public sector reform include:

- The legacy of institutions and legal systems that are inapt for modern business practices;
- Corruption and inefficiency;
- A lack of well-trained professionals who make a career in public service;
- Inadequate remuneration of public officials;
- Poor offer of public services;
- A ineffective judicial system and enforcement, and delays in access to the courts;
- Information and communication deficiencies.

8. Many countries have learned through experience that successful legal and regulatory reform requires support at the highest political levels, and that responsibility for such reform in particular should be located in a governmental unit at the centre, often attached to the office of the prime minister or president. Comprehensive reform works better than piecemeal reform. These and other aspects of public governance are inter-related: weakness in one aspect compromises the whole; equally, efforts to improve are likely to be mutually reinforcing. But comprehensiveness does not mean that all changes must occur at the same time. A successful reform policy will need a strategy establishing transitional steps. Often, the commitment to change is strongest during and immediately after a crisis. The challenge comes in setting up a process for reform in the absence of a crisis.

9. Much of what needs to get done to set a durable framework for good governance is a matter of domestic policy and institutions, leadership supported by civil society, and of cultural and social norms. There is no single model, nor is there agreement on the steps or sequencing of reform to improve governance. There is, however, a consensus that sequencing does matter, but the specific measures and the pace of progress (including in relation to time-bound targets according to which governments make themselves accountable to achievements) need to be adapted to each country's context. The international community can however help in several respects: 1) international agreements often call for implementation and compliance measures, which in turn shift resources and attention to governance; 2) "soft laws" help set standards and create expectations, and pressures from investors; and 3) capacity-building measures can be strengthened by contributions from inter-governmental organisations, private and other non-governmental organisations, and bilateral co-operation.

2. Regulatory quality

10. Regulatory quality refers to regulations that are efficient in terms of cost, effective in terms of having a clear regulatory and policy purpose, transparent and accountable. Regulatory policy is broadly defined as an explicit, dynamic, continuous and consistent “whole-of-government” policy to pursue regulatory quality. An effective regulatory policy that helps to improve the framework for investment is made up of three components that are mutually reinforcing: policies, institutions and tools.

11. Regulatory policies should aim at facilitating the operation of efficient markets. Regulations can create benefits for enterprises by setting market frameworks in which commercial transactions can take place in a pro-competitive and low cost environment. Regulations which are poorly designed or applied can slow business responsiveness, divert resources away from productive investments, hamper entry into markets, reduce job creation and generally discourage entrepreneurship.

12. The advantages of an effective regulatory system are multiple:

- It can help to encourage competition rather than protection;
- It bears down on costs from the accretion of rules over time, removing complexity, red tape, and inconsistencies;
- It encourages new or previously unheard stakeholders into the policy debate, so that policy is better grounded; and
- It promotes timely and necessary change to support economic and social renewal, quickly and at least cost.

13. The way regulatory quality can be built up in practice is affected by values, public policy goals, institutions and legal systems across countries. They have deep roots in historical, cultural and political development, as well as geography. Regulatory policy, tools and institutions must therefore be adapted, and differences acknowledged, as these are integral part of distinctive societies, globalisation notwithstanding. Regulatory policy is not a question of “one size fits all”. The value systems and governance of a country may be reflected and taken forward in regulatory systems and processes, which can be unhelpful for or contribute positively to regulatory quality. Over time, competitive pressures will call attention to differences in regulatory regimes and capacities.

Regulatory policy

Is there a consistent and coherent approach to regulatory reform that sets out principles dealing with regulatory policies? How is regulatory policy co-ordinated in order to ensure consistency and coherence across different levels of government (national, sub-national, local)? Is there a legal basis for government action, thus providing certainty to investors?

14. Regulatory policy is an explicit policy for a dynamic, continuous and consistent “whole of government” approach to pursue regulatory quality. Regulatory policy is about the process by which regulations are drafted, updated, implemented and enforced, set in a broader context of public policy objectives.¹ The evaluation of policy therefore includes not only the social, environmental and economic impact of regulations, but the links between regulatory processes or systems on the one hand, and those outcomes on the other. Nothing contributes more to investor scepticism about regulation than regulatory failures: the impression that rules respond to special interest pressures, and the recognition that rules often do not achieve their objective. Mistakes can be avoided. A forward-looking perspective is therefore important.

15. OECD experience with regulatory reform suggests that government intervention should optimally be based on clear evidence that government action is justified, given the nature of the problem, which has to be correctly defined.² Giving clear evidence of its nature and magnitude, as well as explaining why it has arisen (identifying the incentives of affected entities) is the first step to propose regulations.

16. From an investors’ perspective, regulatory policies should preferably take the form of a statement setting out principles that provide strong guidance and benchmarks for action by officials, and also what the investors can expect from government regarding regulation. Thus domestic and foreign stakeholders would have a statement of government policy for reference, in addition to other obligations that may govern regulatory action.

17. The regulatory environment where citizens and business people operate is composed of complex layers of regulation stemming from sub-national, national and local levels of government. For example, land use and construction are typically handled at county or municipal level, and many administrative procedures such as licenses to open a business are processed at sub-national level. Where the capacity to handle such matters quickly and transparently is lacking, corruption, local anti-competitive measures, and costly delays often follow. Where regulatory powers are shared between levels of government, co-ordination may be an essential element of successful reform. Formal policies or mechanisms for co-ordination within and between governments on regulation and its reform can be set up to maximise the benefits of reforms and reduce internal regulatory barriers to trade and investment.

18. Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorised by

1. Especially important in the context of investment is the extent to which regulatory policy is transparent and mechanisms established to ensure fairness, efficiency, accountability, and credibility. Many of these issues are dealt with in greater detail in the sections 1 and 2, on transparency and protection, of the background document on investment policy [DAF/INV/TF(2005)8/REV1].

2. While at the same time recognising that sound risk management and the principle of precaution may require Governments to take action, even in the absence of “clear evidence”.

higher level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality, and applicable procedures mechanisms.

19. It is often believed that OECD and non-OECD countries live in an age of deregulation. In fact, regulation has moved into many new areas, the complexity of rules has increased, and regulations have been added whenever the state has withdrawn from direct provision of services, to create markets. Attempts to promote regulatory quality, which began with important areas of low-quality regulation, are now undertaken on many fronts simultaneously. But these efforts are hampered by the fragmentation of responsibility for regulation, and by poor coordination when developing regulatory policies, tools and institutions. Change depends crucially on promoting a better regulation culture within government.

Regulatory institutions

What inter-ministerial mechanisms are in place for managing and co-ordinating regulatory reform and integrating competition and market openness considerations for attracting investment? Do the existing institutional capacities ensure consistent and coherent application of principles of quality regulation?

20. Diversity in institutional systems and institutional traditions has an impact in regulatory policy. Nevertheless, during the regulatory process, the need for some form of central mechanism to promote regulatory quality appears to be essential if durable progress is to be made. An oversight body that works as an “engine of reform” can help to focus the interest of investors in support of regulatory quality development. To avoid duplications and contradictions, all appropriate official bodies should be informed and consulted when preparing a new measure or planning a reform.

21. Quality regulation that enhances investment needs a strong involvement and a sense of “ownership” by regulators in charge of their design and implementation. Special interests, close identification with the objectives of outdated regulation, countervailing pressures from different parts of society, and coherence when applying regulations and regimes across multiple areas, are challenges for regulatory institutions.

22. A regulatory quality framework that promotes investment in a transparent and accountable way benefits when responsibility is shared between regulators and a central quality control entity. Budget transparency is an example among others (see Box 2).

Box 2. OECD Best Practices for Budget Transparency

OECD experience suggests that budget transparency is a constituent part of a regulatory environment which provides predictability for informed investment decisions. The Best Practices are designed as a reference tool for Member and non-member countries to use in order to increase the degree of budget transparency in their respective countries. The Best Practices are organised around specific budget reports for presentation purposes only. It is not meant to constitute a formal “standard” for budget transparency since states have different reporting regimes and may have different areas of emphasis for transparency. The Best Practices have been used as a benchmark in country reports on budget transparency.

Source: OECD (2001), *OECD Best Practices for Budget Transparency*, Paris

23. The establishment of a central oversight body, backed by political support with whole-of-government responsibilities, is one of the most visible signs of the integration of regulatory reform into government management systems. Private-sector and civil society forces for reform, such as advisory

bodies or private initiatives, can also be helpful in identifying priorities, proposing specific reforms and providing advocacy for reform in general.

24. A principal role of the oversight body is to review regulations and improvements in regulatory quality. This body should be competent to assess the substantive quality of new regulation and have the capacity to ensure that ministries achieve the goals embodied in the assessment criteria. Regulatory Impact Assessment (RIA) is the most important mechanism for this role. To be effective, the oversight body must be able to question the quality of RIA and regulatory proposals. An oversight body needs the technical capacity to verify the impact analysis and the political power to ensure that its view prevails in most cases.

25. Regulators are also part of the regulatory structure in many countries. They include economic regulators for network industries, or regulators set up to support civil liberties and foster administrative transparency. Regulators have become more significant over the last decade.³ They contribute to improving regulatory quality, transparency, stability and expertise. When such regulators are responsible for making rules or interpreting them, they should operate under the same disciplines as other rule-makers, notably as regards RIA.

Box 3. Independent regulators

In most OECD countries, economic structural reforms, promoted in part by international commitments, have prompted the establishment of independent regulatory agencies and the redesign of existing regulators. These institutions are intended to provide neutral regulatory oversight in liberalized or privatized sectors, and prudential oversight of competitive markets. The design and management of such regulatory agencies constitute an important component of regulatory management. Key issues in this respect include considerations on how to establish institutions that are:

- Competent, accountable and independent;
- At arms length from short-term political interference;
- Capable of resisting capture by interest groups, but still
- Responsive to general political priorities; and
- Have decision-making procedures that take into account the particularities of the area being regulated, while at the same time maintaining transparency and accessibility for all stakeholders.

Source: OECD (2004), *OECD Reviews of Regulatory Reform – Germany. Consolidating Economic and Social Renewal*, Paris

26. Strong and effective institutions require expert staff and resources to provide all core functions. Expertise and experience need to be developed and maintained over time so that officials responsible for policy development and institutional design are more aware of and better able to identify what is necessary for high quality regulation that provides a better framework for investment. Synergies among regulatory institutions are crucial for policy coherence and effective coordination.

3. For a recent discussion on the set up of independent regulators see OECD (2005), *Designing Independent and Accountable Authorities for High Quality Regulation*, Working Party on Regulatory Management and Reform, OECD, Paris, also available at: www.oecd.org/dataoecd/15/28/35028836.pdf

Regulatory tools: Regulatory Impact Assessment (RIA)

Are the economic and social impacts of regulations reviewed in a way that they foster investment for development? Is regulatory impact assessment (RIA) used to help avoid unnecessary investment restrictiveness? Is RIA used to help increase transparency, taking into account investors' points of view?

27. Regulatory Impact Assessment (RIA) examines and measures the likely benefits, costs and effects of new or changed regulations. It is a useful regulatory tool that provides decision-makers with valuable empirical data and a comprehensive framework in which they can assess their options and the consequences their decisions may have. A poor understanding of the problems at hand or of the side effects of government action can undermine regulatory efforts and result in regulatory failures. RIA is used to define problems and to ensure that government action is justified and appropriate in economic, social and environmental terms.

28. RIA recognises the need to assess regulations on a case-by-case basis to determine whether they contribute to strategic policy goals. For RIA to achieve concrete results, it must be based on a long-term perspective. It is also crucial that a culture of acceptance and commitment to the process be developed and nurtured in the public and private sectors, and among the general public. Communicating the results of RIA is an essential part of the process of improving regulatory design.

29. The OECD experience reveals that RIA may take various forms depending upon policy agendas of governments or even social and cultural background of countries.⁴ RIA is best understood as one “decision method” among several used to reach regulatory decisions. The methods used by regulators to reach effective and efficient decisions can be classified as follows:

1. Expert – The decision is reached by a trusted expert, either a regulator or an expert, who uses professional judgment to decide what should be done.
2. Consensus – The decision is reached by a group of stakeholders who reach a common position that balances interests of all concerned with the proposed regulation.
3. Political – The decision is reached by political representatives based on consensus view of the issues of importance to the political process.
4. Benchmarking – The decision is based on reliance on an external model, such as international regulation.
5. Empirical – The decision is based on research, fact-finding and analysis that defines the parameters of action according to established objective criteria.

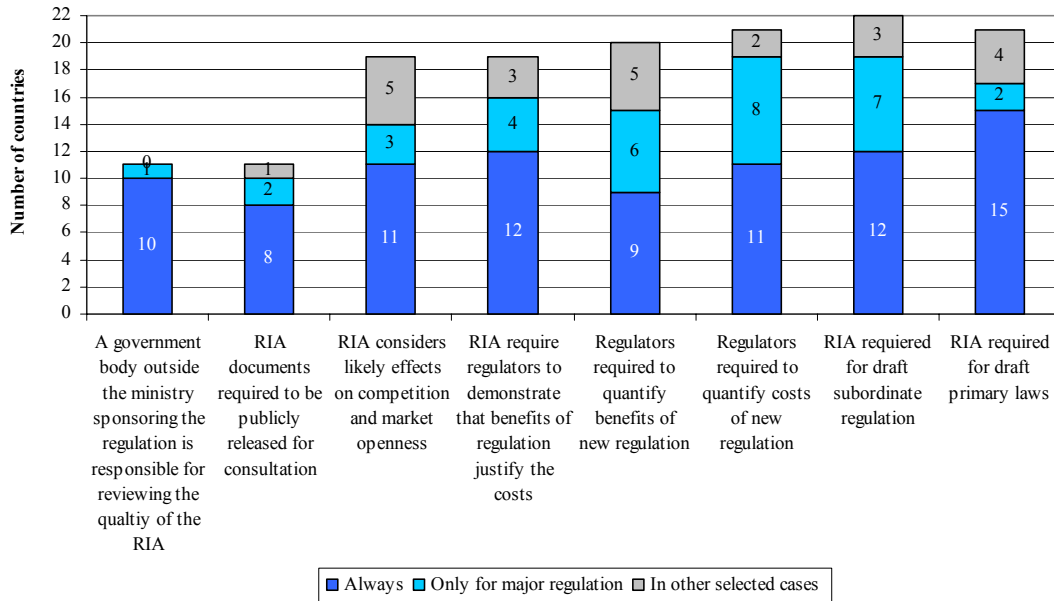
30. A regulatory decision is supported by a mix of these decision methods, differing according to specific characteristics such as national culture, political conditions and administrative style

4. While some countries assess business impacts, others require it for administrative and paperwork burdens. Some countries use full-fledged benefit-cost analysis based on social welfare theories. Environmental impact assessment is used to identify potential impacts of regulations in environmental quality. Other regulators assess how proposed rules affect sub-national governments, or aboriginal groups, or small business or international trade.

31. Many OECD countries rely on RIA to avoid unnecessary investment restrictiveness. Though not expressly conceived or formulated in terms of market openness considerations per se, the RIA process does provide a systematic approach for assessing the impacts of a proposed regulation and helps inform regulatory decision-making. Where appropriate, therefore, investment impacts would normally be assessed in the mix of other factors deemed relevant in a given regulatory scenario. In the absence of a broader requirement to assess the impacts of a proposed regulation on market openness (or indeed an explicit requirement to select a regulatory approach based on market openness considerations), RIA thus emerges as a potentially useful tool for considering investment impacts of various regulations.

32. RIA exposes the merits of decisions and the impacts of actions. For this reason, RIA is closely linked to processes of public consultation. Public involvement in RIA has several significant benefits. The public and especially those affected by regulations, can often provide much of the data that are needed to complete the RIA. Consultation can furnish important information on the feasibility of proposals, on the range of alternatives considered, and on the degree to which affected parties are likely to accept the proposed regulation. RIA can also improve the involvement and accountability of decision-making at ministerial and political levels. It fosters an understanding of the impacts policies will have and demonstrates how government decisions benefit society. By emphasising openness, RIA favours policies that serve the interests of society as a whole, rather than just those of special groups.

Figure 2. Aspects of regulatory impact assessments in OECD countries



33. Designing and applying effective RIA requires special consideration of a number of different issues, the relative importance of which can change depending upon a country's level of development. First, methodological and operational difficulties can easily arise in the decision-making processes of developing countries. Second, in many cases the use of regulatory tools requires a high level of expertise and access to extensive resources and information which may not be immediately available and need to be built up. Finally, common political practices can make better political oversight and more attention to

consultation a challenge. Policy-makers in these countries have to evaluate and assess the weight of the tools they have available, and determine how to best use and combine them to achieve concrete results.

34. RIA provides policy makers with a great deal of invaluable information, but in many cases politicians are hesitant to make use of this tool – perhaps because it can be difficult to take political credit for making decisions that serve wide and diffuse interests rather than focussing on narrower programme interests. Politicians sometimes perceive RIA as a short-term fix to stem regulatory inflation or improve the quality of particularly poor regulations. But the RIA process requires a long-term, consistent investment. The learning curve is steep and cultural change vital. Careful programme and institutional design can avert most of these problems. The experiences of OECD countries suggests that it is wise to start modestly and to increase the scale and scope of RIA incrementally as use of the tool becomes accepted and expertise and experience begin to develop. Even within the OECD, experience with RIA varies significantly.

Consultation mechanisms

What public consultation mechanisms and procedures, including prior notification, have been established and are these open to regulated parties and other stakeholders, non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?⁵

35. Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely inputs from interested national and foreign parties. This should of course include potential domestic and foreign investors as well as affected business, trade unions, civil society, wider interest groups and other levels of government. The way comments from interested parties are handled by government enhances the credibility of the process and the prospects of regulatory compliance by the economic actors.

36. Consultation is important to ensure that affected parties understand the nature of new regulations, why it is needed and what is expected of them. Inadequate consultation may result in poor quality regulation and/or uncertainty among businesses and investors about how they will be affected.⁶ This is likely to deter new investment as potential investors seek our opportunities where there is more regulatory certainty and quality.

Administrative simplification and responsiveness

Are administrative burdens measured and quantified? Is there a government program to encourage the reduction of administrative burdens? Are e-government and other information and communication technologies used to promote administrative simplification, quality services, transparency and accountability, and how widely?⁷

37. Administrative simplification is the most commonly used regulatory reform tool. It is aimed at reducing and streamlining government formalities and paperwork – the most visible component of which

5. See also the treatment of public consultation in A Policy Framework for Investment: Investment Policy [DAF/INV/TF(2005)8], especially Box 2.

6. See OECD (2005) *Public Sector Modernisation: Open Government* (OECD Policy Brief).

7. See also A Policy Framework for Investment: Investment Promotion and Facilitation [DAF/INV/TF(2005)7].

is often permits and licences. There is evidence in many countries that the administrative burden imposed on businesses is significant, with small to medium size enterprises particularly affected. It is also important to consider the cumulative effect of all the regulations to which enterprises are subject, not just those that have been introduced recently. Increasingly, governments are making use of information and communication technologies as means of reducing administrative burdens. Enabling administrative simplification has become in many countries a key driver of their e-government programmes.

38. Excessive ‘red tape’ adds to business costs, can impede market entry, reduce incentives to innovate and reduce competitive pressures within the economy. In addition, it creates uncertainty which can disrupt business planning and hinder the ability of businesses to respond quickly to new market opportunities. Ultimately, this discourages new investment, both domestic and international, weakens competitive pressures within the economy and economic performance will suffer.

39. This is not to imply of course that all regulation and administrative measures should be removed. Well designed and implemented government formalities are necessary for the implementation of policy and the attainment of policy goals. An administrative simplification program should focus on poorly designed, implemented or outdated formalities. Reforming these formalities removes a substantial burden from business, and encourages new investment while ensuring that the remaining formalities help, rather than hinder, the government’s policy agenda. Administrative simplification programmes, by providing a framework for transparency and accountability, also contribute to broader goals such as promoting integrity and preventing corruption.

40. Administrative simplification programs can help encourage an evaluation culture within government. These programs focus attention on the need to specify the objectives of regulation clearly and explore both positive and negative impacts on the target group and other groups in society. The use of ex ante tools to evaluate the effects of regulatory measures before they are introduced, and ex post measure to review regulations in place, can help identify administrative burdens, which impact adversely on business and hinder investment and economic progress. An initial focus on administrative simplification can help build a culture that feeds into broader regulatory policy goals and leads to a regulatory environment that is more conducive to attracting new investment.

International co-operation on regulatory reform

41. Better-quality regulation is a key goal of public-sector management reform and is fundamental to the functioning of society and the economy. Most countries now recognise that regulatory quality is crucial to economic performance and to improving the quality of life of their citizens. This has motivated a number of international initiatives.

42. The APEC-OECD Integrated Checklist for Regulatory reform is one such example. The Checklist is a joint effort of OECD and APEC member countries and economies, designed to help countries to self-assess their progress toward regulatory reform. The *Integrated Checklist* translates the general statements found in the already agreed-upon APEC and OECD Principles into concrete, practical terms that can be applied in different contexts. The Checklist is a self-assessment tool that integrates three policy areas – competition, rule-making and market openness – to provide a coherent whole-of-government view. Furthermore, it integrates governance perspectives of transparency, accountability, and performance, key elements that contribute to investment promotion (see Annex 2). Bilateral co-operation through training programmes, seminars and exchange of experts helps to promote regulatory reform and improve the investment promotion and legal structures (see also Box 4 on the evolving treatment of regulatory reform at the OECD).

Box 4. A short history of regulatory reform at the OECD

In March 1995, the OECD established a Recommendation on Improving the Quality of Government Regulation – the first internationally accepted set of principles concerning regulatory quality.⁸

Attempts to improve regulatory quality initially focused on identifying problem areas, advocating specific reforms and scrapping burdensome regulations. But policy makers soon recognised that makeshift approaches to reform were insufficient. The reform agenda of OECD countries began to broaden, to include a range of explicit overarching policies, disciplines and tools. In 1997, the *OECD Report on Regulatory Reform* outlined an action plan with policy recommendations that included seven “Principles of Good Regulation” and a set of ten best practices in the design and implementation of RIA systems.

From 1998 to 2004, the OECD completed 20 country reviews of regulatory reform.⁹ These include more than 1 000 specific policy recommendations and approximately 120 chapters, each focussing on regulatory reforms in selected areas. Taken as a whole, the reviews demonstrate that a well-structured and well-implemented programme of regulatory reform contributes to better economic performance and enhances social welfare. The OECD has taken stock of the progress made in OECD member countries and released the 2005 “OECD Guiding Principles for Regulatory Quality and Performance”, which highlight the dynamic, forward-looking process by which regulatory policies, tools and institutions are adapted for the 21st century.

3. Fostering public sector integrity

43. Fostering a corruption-free environment for investment is essential for private sector development, promotion of foreign investments and sustained economic growth. This requires implementing international anti-corruption and integrity standards in the public service, effectively applying and enforcing them in practice, ensuring compliance through monitoring, and engaging in international co-operation for fighting corruption.

Implementing international anti-corruption and integrity standards

Do legislation and regulations implement international anti-corruption and integrity standards? Do penal, administrative and civil law provisions provide a consistent legislative and regulatory framework for fighting corruption as well as promoting integrity? What standards have been developed to guide public officials’ behaviour?

44. Anti-corruption and integrity standards include both preventive as well as repressive measures. Governments should enact provisions, mostly in criminal law but also in the civil and administrative codes, to prevent and sanction corruption of domestic public officials. Over the last decade, the international community has become aware of increasing economic and political evidence of the detrimental effects of corruption. Since the adoption in 1997 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, an increasing number of governments have strengthened their legal framework for fighting corruption (Box 5).

8. At the time of the Recommendation on Improving the Quality of Government Regulation, only a minority of member countries had formal regulatory policies to ensure that such principles could be systematically implemented. By 2000, 24 of the 30 OECD member countries had adopted regulatory policies. In at least ten of those countries, the policy had been introduced within the previous five years OECD, (2002), *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*, Paris.

9. Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Mexico, Netherlands, Norway, Poland, Spain, Turkey, United Kingdom, United States.

Box 5. International Anti-Corruption Conventions

OECD Convention of Combating Bribery of Foreign Public Officials, 1997: The Convention, along with the revised Recommendation on Combating Bribery in International Business Transactions and the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials, are the core instruments through which OECD and non OECD members of the anti-bribery group co-operate to stop the flow of bribes for the purpose of obtaining or retaining international business. In May 2005, 36 countries were Party to the Convention, which is open to accession.

United Nations Convention against Corruption (UNCAC) which was adopted by the United Nations General Assembly in October 2003, provides a very broad blueprint for anti-corruption systems, including concepts and principles that are relevant for the public sector, for private business and for other actors in national anti-corruption systems.

45. Creating and sustaining good governance arrangements that support high standards of conduct in the public sector is a complex task for governments. They have made substantial efforts to develop an “Ethics Infrastructure” in their domestic administrations, a system of supportive laws, institutions and procedures to promote integrity and prevent corruption. For example, in the 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service (see Box 6), member countries strongly acknowledged that globalisation and the development of international relations, including trade and investment, demand high recognisable integrity standards in the public service. In the last decade, many governments have updated the core values of their public service and modernised expected standards of conduct on the part of public officials, particularly at senior levels, to ensure the predictability and integrity of public decision-making. The approach favoured has been to combine both aspirational standards for public officials as well as control and accountability mechanisms for ensuring compliance in daily behaviour.

46. Over the last decades, many governments have developed specific standards of conduct to address conflicts between public officials’ individual private interests and their public duties. Governments originally focussed on traditional sources of influence, such as gifts or hospitality offered to public officials, and personal or family relationships. Due to the increased co-operation between the public and private sectors, many countries have also established in recent years specific standards of conduct for tackling other forms of conflict-of-interest such as business interests (e.g. in the form of partnerships, shareholdings), affiliations with other organisations and post-public employment (See figure 3). In order to address risks to good governance arising from conflicts of interest, the OECD has developed a framework for reviewing and modernising a country’s conflict-of-interest policy with the 2003 Recommendation on the Guidelines for Managing Conflict of Interest in the Public Service, as well as a Toolkit to help public officials put them into practice (See annex 3).

Box 6. 1998 OECD Recommendation on Improving Ethical Conduct in the Public Service

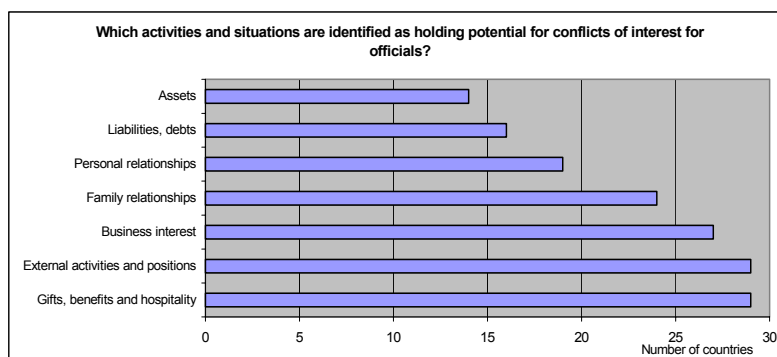
With the 1998 Recommendation on Improving Ethical Conduct in the Public Service, OECD countries committed to take action to ensure well-functioning institutions and systems for promoting ethical conduct in the public service, in particular by:

- Updating legislation and internalisation of core ethical standards, for instance in the form of codes of conduct;
- Political leaders as well as managers demonstrating commitment to ethics and serving as role models;
- Providing incentives for integrity in human resource management (e.g. merit-based recruitment and career promotion, adequate remuneration etc.);
- Enabling prevention (e.g. through increased transparency and disclosure systems), detection and investigation of misconduct (e.g. clear rules and procedures for "whistle blowing");
- Providing guidance to help public officials apply ethical standards in concrete circumstances particularly at the interface of the public and private sectors; and
- Ensuring transparency and accountability in the decision-making process and facilitating scrutiny.

In order to provide a strategic tool to help countries review their mechanisms for promoting public service ethics and better integrate integrity measures within the broader governance environment, a reference checklist -- a set of twelve Principles for Managing Ethics in the Public Service -- was also agreed upon.

Source: OECD Recommendation on Improving Ethical Conduct in the Public Service (1998).

Figure 3. Activities and situations holding potential for conflicts of interest for public officials in OECD countries



Source: OECD (2003), Managing Conflict of Interest in the Public Service. OECD Guidelines and Country Experiences, OECD, Paris.

Application and enforcement of international anti-corruption and integrity standards

47. While the implementation of international anti-corruption and integrity standards is necessary, it is not sufficient for establishing an investment favourable environment. Adequate application in practice and enforcement by all parts of government, including public administrations, is a major, subsequent, challenge. Governments should develop policies and practical steps to help in the application of laws and regulations concerning standards of conduct in the public service including in the areas of detection and whistleblowing. Government action alone, however, is not enough. Complementary and

mutually supportive actions by the business community, trade unions and civil society actors are recognised to be increasingly important.

Do institutions and procedures ensure effective and consistent application and enforcement of laws and regulations on anti-corruption and integrity in the public service? Do internal procedures provide for the detection, investigation and prosecution of public misconduct? Have specific mechanisms been developed to address risk areas for corruption? Is guidance provided to help public officials meet expected standards in daily practice? Does human resources management, in particular in recruitment and career promotion, enhance ethical behaviour?

48. Application and enforcement of laws and regulations on anti-corruption and integrity involves many institutions across the public service. In order to turn specific arrangements into a coherent and efficient system, co-ordination mechanisms have been set up to promote integrity and prevent corruption that may take various forms – such as central government agencies, parliamentary committees or specially created bodies.

49. Furthermore, agency specific guidelines and practical measures (e.g. staff rotation, specific training or briefing etc.) may need to be developed to enforce anti-corruption and integrity standards in parts of the public service that are particularly exposed to corruption. Specific risk areas include law enforcement, public procurement, export credit, development assistance as well as customs and tax administration.

50. Codes of conduct are often developed to provide standards of conduct in a single concise document. These should be made available and adequately communicated to all public officials. Managers should play a role model for other employees in applying ethical standards, their personal example is the most influential way to create an ethical culture in public organisations. Socialisation mechanisms such as training and counselling further raise awareness among employees and help develop their skills for meeting expected integrity standards in daily practice.

51. The public service may establish internal or external communication channels to assist application and enforcement of laws and regulations on anti-corruption and integrity. For instance, public officials may seek advice from their superiors, other persons within the organisation (e.g. ethics officers or legal staff), as well as external organisations (e.g. independent commissions, ombudsman, or ethics offices).

52. Transparent procedures within the administration, such as setting standards for timeliness and requesting reasons for decisions also contribute to creating trust and credible decision-making in the public service. In addition, human resource management policies should provide suitable conditions and incentives for public officials, such as basing recruitment and promotion on merit, providing an adequate remuneration and taking ethical considerations into account in recruitment and performance appraisal.

53. Reporting suspicion of misconduct by public officials can be either required by law and/or facilitated by organisational rules. Whistle blowing, the act of raising concerns about misconduct within an organisation, is a key element of good governance to ensure transparency and accountability. A range of institutions and procedures such as Ombudsman, Inspector General, complaint procedures and help desks or telephone lines could enable public officials and citizens to expose wrongdoing.

54. Detection of violations of anti-corruption and integrity laws and regulations call for actions by many. On the one hand, governments are encouraged to develop a general framework for disciplinary procedures that both allows managers to impose timely administrative actions and guarantees a fair process for public officials. Administrative disciplinary sanctions may be foreseen; they usually range

from warning and reprimand through material penalty to temporary or final dismissal, which is the most severe disciplinary consequence. On the other hand, violations are pursued by the domestic investigative and prosecutorial bodies that ultimately should impose effective, proportionate and dissuasive sanctions.

55. Parties to the OECD Convention hold regular consultations with the private sector, trade unions and civil society to discuss anti-corruption standards and policies. The consultations provide for an opportunity to administrations to learn about the complementary and mutually supportive actions by the business community, trade unions and civil society actors. Increased awareness of the different anti-corruption standards encourages managers to introduce self-regulatory systems aimed at compliance. Many businesses have indeed stepped up their anti-corruption efforts through development of codes of conduct and internal compliance programs. Business also liaises with key players in specific sectors or on a horizontal business federation level to prevent bribery through developing and adopting common standards. Companies with high governance and integrity standards may, due to improved public trust, be in a better position to attract investors.

Role of internal and external reviews

Do review mechanisms exist at domestic level to assess the application and enforcement of anti-corruption legislation? Do the mechanisms ensure that civil society organisations and the media actively support public scrutiny over public officials' behaviour?

56. Solid and independent review is essential to help ensure enforcement of the anti-corruption legislation and regulations. In general, the legislative branch undertakes reviews of public service activities. Other common types of evaluation range from external independent investigation by the Ombudsman or the Inspector General to specific judicial or ethics reviews. Additionally, monitoring compliance may be based on internal controls, widely used to detect individual irregularities and systemic failures and is likely to be accompanied by independent scrutiny. This scrutiny keeps public officials accountable for their actions, ultimately, to the public.

57. Transparency in government operations is considered both as an instrument for ensuring accountability and combating corruption, and for promoting democratic participation by informing and involving citizens. In recent years, citizens' access to official information has significantly improved, in particular with the development of Freedom of Information legislation and the growing use of electronic procedures. Coupled with an increasingly active media and well-organised interest groups, this has led to more vigilant public scrutiny over public officials' behaviours.

Ensuring compliance through monitoring and international co-operation

Is the Government a signatory of or a Party to international initiative(s) aimed at fighting corruption and improving public sector integrity? What mechanisms are in place to ensure timely and effective implementation of anti-corruption Conventions? Do the mechanisms in question monitor the application in practice and enforcement of the anti-corruption laws implementing the Conventions?

58. Governments have realised that corruption cannot be addressed at the domestic level alone. Only concerted, internationally coordinated action can make a meaningful contribution to eradicating corruption. Governments have consequently adopted a number of international and regional anti-corruption instruments (see Box 4 and Box 6). Although these instruments may have different focuses, they generally aim at ensuring a holistic approach that encompasses preventive measures as well as

repressive provisions to fight domestic and foreign corruption. Moreover, they contain provisions regarding mutual legal assistance, which is a major stumbling block in the fight against corruption.

59. In order to ensure compliance with international anti-corruption standards, it is essential that systematic monitoring be established to ensure effective enforcement of the relevant Conventions. The OECD regularly releases reports on the effectiveness of the enforcement of the laws and regulations in countries for implementing the Convention on Combating the Bribery of Foreign Public Officials in international Business Transactions. Through its ongoing monitoring process and by promoting high standards, the Convention has contributed to levelling the competitive playing field for companies doing trans-border business.

60. Regional initiatives against corruption and in support of public sector integrity serve to help governments establish similar rules and to level the playing field, which in turn is beneficial for the investment climate. This is particularly important in an age of globalisation when the internationalisation of illegal transactions calls for increased international co-operation of governments, notably through the adoption of clear mutual legal assistance provisions and procedures. Through the establishment of similar rules to provide level playing fields, regional initiatives can also serve to highlight instances of non-compliance or non-enforcement and provide avenues for peer review of a government's efforts for improving the public governance framework.

Box 7. International and Regional anti-corruption initiatives

Organization of American States (OAS): Inter-American Convention against corruption, 1996: The Inter-American Convention against Corruption (IACC) is the first international Convention against corruption ever adopted (from 6 March 1997). It has been ratified by 29 countries, and is broader in scope than the European and OECD instruments. The IACC provisions can be broadly classified into three groups: Preventive Measures; Criminal Offences; and Mutual Legal Assistance.

Council of Europe Criminal Law Convention on Corruption, 1999: The Convention is drafted as a binding legal instrument and applies to a broad range of occupations and circumstances. It contains provisions criminalizing a list of specific forms of corruption, and extending to both active and passive forms of corruption, and to both private and public sector cases. The Convention also deals with a range of transnational cases: bribery of foreign public officials and members of foreign public assemblies is expressly included, and offences established pursuant to the private-sector criminalization provisions would generally apply in transnational cases in any State Party where a sufficient portion of the offence to trigger domestic jurisdictional rules had taken place.

Council of Europe Civil Law Convention on Corruption, 1999: This is the first attempt to define common international rules for civil litigation in corruption cases. Where the *Criminal Law Convention* seeks to control corruption by ensuring that offences and punishments are in place, the *Civil Law Convention* requires States Parties to ensure that those affected by corruption can sue the perpetrators civilly, effectively drawing the victims of corruption into the Council's anti-corruption strategy. The Civil Law Convention is narrower than its criminal law counterpart in the scope of the forms of corruption to which it applies, extending only to bribery and similar acts. It came into force in November 2003.

SADC- The Southern African Development Community Protocol on Corruption, 2001: SADC-The Southern African Development Community Protocol on Corruption was adopted by all 14 SADC Heads of States and Governments at the Summit held in Malawi in August 2001. It represents the first anti-corruption treaty in Africa and was ratified by 8 of 14 SADC members States. It promotes the development of anti-corruption mechanisms at national level and the harmonization of anti-corruption legislations in Africa as well as the cooperation between States in the fight against corruption.

African Union Convention on Preventing and Combating Corruption and Related Offences, 2002: African heads of state adopted the African Union Convention on Preventing and Combating Corruption at the Second Ordinary Session of the Assembly of the African Union in July 2003. Its main objectives are to strengthen the laws on corruption by listing offences that should be punishable by domestic legislation; to outline measures to be undertaken to enable the detection and investigation of corruption offences; to indicate mechanisms for the confiscation and forfeiture of the proceeds of corruption and related offences; to organize mutual assistance in

relation to corruption and related offences; and to encourage the education and promotion of public awareness on the evils of corruption.

61. International co-operation in the fight against corruption is an example of the interface of private and public sector integrity where home countries have made a contribution to public sector integrity in host countries by targeting the “supply side” (see Box 7). For example, the OECD Convention of Combating Bribery of Foreign Public Officials in International Business Transactions aims to stop the flow of bribes to public officials in host countries.¹⁰

62. Other intergovernmental organisations such as the United Nations, the World Bank, the Asian Development Bank and the International Monetary Fund have also developed policies aimed at fostering good governance and sanctioning corruption and related malpractices, variously addressing both the “demand” and “supply” sides.

5. Conclusion: Issues for consideration

63. Good public governance is one of the central pillars supporting a healthy investment climate. While recognizing that different countries at different levels of development will have different priorities, both between efforts to improve public governance and other policy objectives, this paper has identified certain issues and questions that policy makers should address with a view to ensuring that the public governance framework does supports a healthy investment climate. These include:

1. Is there a consistent and coherent approach to regulatory reform that sets out principles dealing with regulatory policies? How is regulatory policy co-ordinated in order to ensure consistency and coherence across different levels of government (national, sub-national, local)? Is there a legal basis for government action, thus providing certainty to investors?
2. What inter-ministerial mechanisms are in place for managing and co-ordinating regulatory reform and integrating competition and market openness considerations for attracting investment? Do the existing institutional capacities ensure consistent and coherent application of principles of quality regulation?
3. Are the economic and social impacts of regulations reviewed in a way that they foster investment for development? Is regulatory impact assessment (RIA) used to help avoid unnecessary investment restrictiveness? Is RIA used to help increase transparency, taking into account investors’ points of view?
4. What public consultation mechanisms and procedures, including prior notification, have been established and are these open to regulated parties and other stakeholders, non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?
5. Are administrative burdens measured and quantified? Is there a government program to encourage the reduction of administrative burdens? Are e-government and other information and communication technologies used to promote administrative simplification, quality services, transparency and accountability, and how widely?
6. Do legislation and regulations implement international anti-corruption and integrity standards? Do penal, administrative and civil law provisions provide a consistent legislative and regulatory

10. The OECD Guidelines for Multinational Enterprises, which is part of the broader OECD Declaration on International Investment and Multinational Enterprises, is another such example, given their comprehensive anti-bribery provisions, which apply wherever multinational enterprises may operate.

framework for fighting corruption as well as promoting integrity? What standards have been developed to guide public officials' behaviour?

7. Do institutions and procedures ensure effective and consistent application and enforcement of laws and regulations on anti-corruption and integrity in the public service? Do internal procedures provide for the detection, investigation and prosecution of public misconduct? Have specific mechanisms been developed to address risk areas for corruption? Is guidance provided to help public officials meet expected standards in daily practice? Does human resources management, in particular in recruitment and career promotion, enhance ethical behaviour?
8. Do review mechanisms exist at domestic level to assess the application and enforcement of anti-corruption legislation? Do the mechanisms ensure that civil society organisations and the media actively support public scrutiny over public officials' behaviour?
9. Is the Government a signatory of or a Party to international initiative(s) aimed at fighting corruption and improving public sector integrity? What mechanisms are in place to ensure timely and effective implementation of anti-corruption Conventions? Do the mechanisms in question monitor the application in practice and enforcement of the anti-corruption laws implementing the Conventions?

ANNEX 1. OECD INITIATIVE ON INVESTMENT FOR DEVELOPMENT: TOWARDS A POLICY FRAMEWORK FOR INVESTMENT

The Monterrey Consensus

Investment has proven to be a powerful catalyst for innovation, sustainable growth and poverty reduction. Despite positive trends in the past decade, business investment and enterprise development in non-OECD regions continue to fall short of development needs. The Monterrey Consensus identified private capital, including foreign direct investment, as “vital complements to national and international development efforts” and emphasised the need “to create the necessary domestic and international conditions to facilitate direct investment flows”.

The OECD Initiative on Investment for Development

In support of the Monterrey Consensus, the OECD launched the *Initiative on Investment for Development* in 2003 in Johannesburg, South Africa. The *Initiative* includes three closely inter-related projects. These involve: 1) the development of a *Policy Framework for Investment*, described below; 2) drawing lessons on the use of ODA in support of countries’ efforts to mobilise investment for development; and 3) sharing the OECD’s experience with investment policy peer reviews as capacity building mechanisms. The *Initiative on Investment for Development* is inspired by values that underpin the Monterrey Consensus: transparency, accountability and respect for human rights, including the right to development.

The OECD has a long history with peer learning, and consensual approaches towards the development of “best practice” across a wide range of policy areas that are relevant from an investment perspective. As such, the OECD is well placed as a forum for countries to share their experiences, to develop common understanding, and to elaborate policy guidance aimed at enhancing the contribution of domestic and foreign investment to development, as called for in the Monterrey Consensus.

The Policy Framework for Investment

Within the context of the OECD *Initiative on Investment for Development*, and in keeping with OECD Members’ commitment to the effective implementation of the Monterrey Consensus, the OECD Investment Committee and its partners have initiated work on a *Policy Framework for Investment*. The *Framework* is intended as a non-prescriptive checklist of issues for consideration by any interested governments engaged in domestic reform, regional co-operation or international policy dialogue aimed at creating an environment that is attractive to domestic and foreign investors and that enhances the benefits of investment to society. The *Framework* could also serve as a reference point for investment promotion agencies, donors as they assist recipient country partners in improving the investment climate, and businesses, trade unions, and NGOs in their dialogue with governments. The Policy Framework for Investment recognises that the needs of countries at different levels of development call for a flexible and

non-prescriptive approach that provides constructive policy guidance across a range of areas in order to maximise the contribution of investment to development.

While the Policy Framework for Investment is addressed to governments, it is to be seen in the broader context of other converging international initiatives to improve the investment climate, including the OECD Guidelines for Multinational Enterprises.

A partnership process

The *Framework* is being developed by a Task Force through a partnership process involving OECD Member and non-Member governments, in co-operation with civil society and other international organisations. The first plenary meeting of the Task Force took place at the OECD in Paris on 17 June 2004.

A horizontal policy approach

The Task Force agreed that the *Framework* will consist of a comprehensive stocktaking of sources of good policy practice across a range of policy areas that have been identified by international organisations involved in investment and development, and the Monterrey Consensus, as playing an important role when it comes to creating an enabling environment for investment and enterprise development.

The Task Force identified a preliminary list of policy building blocks for the *Framework*: investment policy; investment promotion and facilitation; trade policy; competition policy; tax policy; corporate governance and responsibility, and market integrity; human resource development; infrastructure development; and public governance. In addition to host-country policy action, the contribution of international co-operation, including through regional integration, and home-country policy action will also be addressed.

The work of the Task Force is supported by the Investment Committee and other OECD committees with expertise in the policy areas being considered for inclusion in the *Framework*.

Next steps

The Task Force takes advantage of the OECD Global Forum on International Investment and various regional events organised by the Investment Committee as opportunities to discuss inputs into the *Policy Framework for Investment* in both global and regional contexts. A progress report on the *Initiative on Investment for Development* was made available for the 2005 OECD Ministerial Meeting, with the aim of completing the work of the Task Force in 2006.

ANNEX 2. THE APEC-OECD INTEGRATED CHECKLIST ON REGULATORY REFORM

(Note: the place of the cells has no relation to the order of the rows. That is, questions H4, A4, B4 and C4 are not related)

H. Integrated Policies (Horizontal Dimension)	A. Regulatory Policy	B. Competition Policy	C. Market Openness Policies
H1. To what extent is there an integrated policy for regulatory reform that sets out principles dealing with regulatory, competition and market openness policies?	A1. To what extent are capacities created that ensure consistent and coherent application of principles of quality regulation?	B1. To what extent has a policy been embraced in the jurisdiction that is directed towards promoting efficiency and eliminating or minimising the material competition distorting aspects of all existing and future laws, regulations, administrative practices and other institutional measures (collectively “regulations”) that have an impact upon markets?	C1. To what extent are there mechanisms in regulatory decision-making to foster awareness of trade and investment implications?
H2. How strongly do political leaders and senior officials express support for regulatory reform to both the public and officials, including the explicit fostering of competition and open markets? How is this support translated in practice into reform and how have businesspeople, consumers and other interested groups reacted to these actions and to the reforms in concrete terms?	A2. Are the legal basis and the economic and social impacts of drafts of new regulations reviewed? What performance measurement instruments are being envisaged for reviewing the economic and social impacts of new regulations?	B2. To what extent do the objectives of the competition law and policy include, and only include, promoting and protecting the competitive process and enhancing economic efficiency including consumer surplus?	C2. To what extent does the government promote approaches to regulation and its implementation that are trade-friendly and avoid unnecessary burdens on economic actors?
H3. What are the accountability mechanisms that assure the effective implementation of regulatory, competition and market openness policies?	A3. Are the legal basis and the economic and social impacts of existing regulations reviewed, and if so, what use is made of performance measurement instruments?	B3. To what extent does the Competition Authority or another body have (i) a clear mandate to advocate actively in order to promote competition and efficiency throughout the economy and raise general awareness of the benefits of competition, and (ii) sufficient resources to carry out any advocacy functions included in its mandate?	C3. To what extent are customs and border procedures designed and implemented to provide consistency, predictability, simplicity and transparency so as to avoid unnecessary burdens on the flow of goods? To what extent are migration procedures related to the temporary movement of people to supply services transparent and consistent with the market access offered?

H. Integrated Policies (Horizontal Dimension)	A. Regulatory Policy	B. Competition Policy	C. Market Openness Policies
H4. To what extent do regulation, competition and market openness policies avoid discrimination between like goods, services, or service suppliers in like circumstances, whether foreign or domestic? If elements of discrimination exist, what is their rationale? What consideration has been given to eliminating or minimising them?	A4. To what extent are rules, regulatory institutions, and the regulatory management process itself transparent, clear and predictable to users both inside and outside the government?	B4. To what extent are measures taken to neutralise the advantages accruing to government business activities as a consequence of their public ownership?	C4. To what extent has the government established effective public consultation mechanisms and procedures (including prior notification, as appropriate) and do such mechanisms allow sufficient access for all interested parties, including foreign stakeholders?*
H5. To what extent has regulatory reform, including policies dealing with regulatory quality, competition and market openness, been encouraged and co-ordinated at all levels of government?	A5. Are there effective public consultation mechanisms and procedures including prior notification open to regulated parties and other stakeholders, including non-governmental organisations, the private sector, advisory bodies, accreditation bodies, standards-development organisations and other governments?***	B5. To what extent does the agency responsible for the administration and enforcement of the competition law (the “Competition Authority”) operate autonomously, and to what extent are its human and financial resources sufficient to enable it to do its job?	C5. To what extent are government procurement processes open and transparent to potential suppliers, both domestic and foreign?
H6. Are the policies, laws, regulations, practices, procedures and decision making transparent, consistent, comprehensible and accessible to users both inside and outside government, and to domestic as well as foreign parties? And is effectiveness regularly assessed?	A6. To what extent are clear and transparent methodologies and criteria used to analyse the regulatory impact when developing new regulations and reviewing existing regulations?	B6. If the competition law reserves a role for governmental bodies other than the Competition Authority under the competition law, to what extent is this role transparent, for example, regarding factors taken into account by such decision-maker, and their relative weighting?	C6. Do regulatory requirements discriminate against or otherwise impede foreign investment and foreign ownership or foreign supply of services?*** If elements of discrimination exist, what is their rationale? What consideration has been given to eliminating or minimising them, to ensure equivalent treatment with domestic investors?
H7. Are the reform of regulation, the establishment of appropriate regulatory authorities, and the introduction of competition coherent in timing and sequencing?	A7. How are alternatives to regulation assessed?	B7. To what extent is there a transparent policy and practice that addresses the relationship between the Competition Authority and sectoral regulatory authorities?	C7. To what extent are harmonised international standards being used as the basis for primary and secondary domestic regulation?

* This Question could be further integrated, in particular with elements of Question H6 and Question A5.

** This Question could be further integrated for instance moving it to the Horizontal section and merging it with Question C4.

*** This Question could be further integrated, in particular with elements of Question H4.

H. Integrated Policies (Horizontal Dimension)	A. Regulatory Policy	B. Competition Policy	C. Market Openness Policies
H8. To what extent are there effective inter-ministerial mechanisms for managing and co-ordinating regulatory reform and integrating competition and market openness considerations into regulatory management systems?	A8. To what extent have measures been taken to assure compliance with and enforcement of regulations?	B8. To what extent does the competition law contain provisions to deter effectively and prevent hard-core cartel conduct, abuses of dominant position or unlawful monopolistic conduct, and contain provisions to address effectively anti-competitive mergers? To what extent does the broader competition policy strive to ensure that this type of conduct is not facilitated by government regulation?	C8. To what extent are measures implemented in other countries accepted as being equivalent to domestic measures?
H9. Do the authorities responsible for the quality of regulation and the openness of markets to foreign firms, and the competition authorities have adequate human and technical resources, to fulfil their responsibilities in a timely manner?		B9. To what extent does the competition law apply broadly to all activities in the economy, including both goods and services, as well as to both public and private activities, except for those excluded?	C9. To what extent are procedures to assure conformity developed in a transparent manner and with due consideration as to whether they are effective, feasible and implemented in ways that avoid creating unnecessary barriers to the free flow of goods or provision of services?
H10. Are there training and capacity building programmes for rule-makers and regulators to ensure that they are aware of high quality regulatory, competition and market openness considerations?		B10. To what extent does the competition law provide for effective investigative powers and sanctions to detect, investigate, punish and deter anti-competitive behaviour?	
H11. Does the legal framework have in place or strive to establish credible mechanisms to ensure the fundamental due process rights of persons subject to the law, in particular concerning the appeal system?		B11. To what extent do firms and individuals have access to (i) the Competition Authority to become apprised of the case against them and to make their views known, and (ii) to the relevant court(s) or tribunal(s) to appeal decisions of the Competition Authority or seek compensation for damages suffered as a result of conduct contrary to the domestic competition law?	
		B12. In the absence of a competition law, to what extent is there an effective framework or mechanism for deterring and addressing private anti-competitive conduct?	

ANNEX 3. IDENTIFYING AND MANAGING CONFLICT OF INTEREST

The OECD Guidelines on Managing Conflict of Interest set four core principles for public officials to follow in dealing with conflict-of-interest situations in order to maintain trust in public institutions: serving the public interest; supporting transparency; promoting individual responsibility; and creating an organisational culture that does not tolerate conflict of interest.

Serving the public interest

Public officials should make decisions and provide advice without regard for personal gain. The religious, professional, party-political, ethnic, family, or other personal preferences of the decision-maker should not affect the integrity of official decision-making. At the same time, public officials should dispose of, or restrict the operation of, private financial interests, personal relationships or affiliations that could compromise official decisions they are involved in. Where this is not feasible – an official can hardly be expected to abandon her relationship with her husband or children in the interests of her job – a public official should abstain from involvement in official decisions that could be compromised by private interests.

Public officials should also avoid taking improper advantage in their private lives from ‘inside information’ obtained in the course of official duties that is not available to the public. So public officials should not engage in a private financial transaction which involves the use of confidential information obtained at work. In addition, public officials must not misuse their position and government resources for private gain, such as awarding a contract to a firm in the hope of obtaining a job with that firm on leaving public office.

Supporting transparency and scrutiny

The Guidelines state that public officials and public organisations are expected to act in a way that will bear the closest public scrutiny. Public officials should disclose any private interests and affiliations that could compromise the disinterested performance of public duties when taking up office and afterwards if circumstances change, to enable adequate control and management of the situation.

Public organisations and officials should also ensure consistency and openness in resolving or managing conflict-of-interest situations, for example by providing up-to-date information about the organisation’s policy, rules and administrative procedures regarding conflict of interest, or by encouraging discussion on how specific situations have been handled in the past and are expected to be handled in the future. Organisations should also promote scrutiny of their management of such situations, perhaps by involving employees in reviews of existing conflict-of-interest policy or consulting them on future preventive measures.

Promoting individual responsibility and personal example

Public officials, particularly public office holders and senior managers, should act at all times in a manner that demonstrates integrity and thus serves as an example to other officials and the public. When dealing with individual cases, senior officials and managers should balance the interests of the organisation, the individual and the public. Public officials should also accept responsibility for arranging their private affairs so as to prevent conflicts of interest, and for identifying and resolving conflicts in

favour of the public interest when a conflict does arise. So an official could sell a relevant financial interest, or declare an interest in a particular issue and withdraw from the decision-making process.

Creating an organisational culture that does not tolerate conflict of interest

The Guidelines also call on public organisations to create an organisational culture that does not tolerate conflict of interest. This can be done in a number of ways, such as raising awareness by publishing the conflict-of-interest policy, giving regular reminders, developing learning tools to help employees apply and integrate the policy and by providing concrete advice when need arises. Organisational practices should encourage public officials to disclose and discuss real, apparent or potential conflict-of-interest cases, and provide reasonable measures to protect them from retaliation. Public organisations should also create and sustain a culture of open communication and dialogue to promote integrity, while providing guidance and training to promote understanding.

The Guidelines provide the following key policy recommendations on how to identify, prevent, manage and resolve conflict-of-interest situations.

Key Recommendations for Managing Conflict of Interest

1. Identify relevant conflict-of-interest situations

- Provide a clear and realistic description of what circumstances and relationships can lead to a conflict-of-interest situation.
- Ensure that the conflict-of-interest policy is supported by organisational strategies and practices to help identify concrete conflict-of-interest situations at the workplace.

2. Establish procedures to identify, manage and resolve conflict-of-interest situations

- Ensure that public officials know what is required of them in identifying and declaring conflict-of-interest situations.
- Set clear rules on what is expected of public officials in dealing with conflict-of-interest situations, so that both managers and employees can achieve appropriate resolution and management.

3. Demonstrate leadership commitment

- Managers and leaders in the public service should take responsibility for the effective application of conflict-of-interest policy, by establishing a consistent decision-making process, taking decisions based on this model in individual cases, monitoring and evaluating the effectiveness of the policy and, where necessary, enhancing or modifying the policy to make it more effective.

4. Create a partnership with employees

- Ensure wide publication, awareness and understanding of the conflict-of-interest policy through training and counselling.
- Review 'at-risk' areas for potential conflict-of-interest situations.
- Identify preventive measures that deal with emergent conflict-of-interest situations.
- Develop and sustain an open organisational culture where measures dealing with conflict-of-interest matters can be freely raised and discussed.

5. Enforce the conflict-of-interest policy

- Provide procedures for establishing a conflict-of-interest offence, and consequences for non-compliance, including disciplinary sanctions.
- Develop monitoring mechanisms to detect breaches of policy and take into account any gain or benefit that resulted.
- Co-ordinate prevention and enforcement measures and integrate them into a coherent institutional framework.
- Provide a mechanism for recognising and rewarding exemplary behaviour related to consistent demonstrated compliance with the conflict-of-interest policy.

6. Initiate a new partnership with the business and non-profit sectors

- Involve the business and non-profit sectors in elaborating and implementing the conflict-of-interest policy for public officials.
- Anticipate potential conflict-of-interest situations when public organisations involve persons representing businesses and the non-profit sector through boards or advisory bodies.
- Include safeguards against potential conflict-of-interest situations by making other organisations aware of the potential consequences of non-compliance and reviewing together high-risk areas.

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