

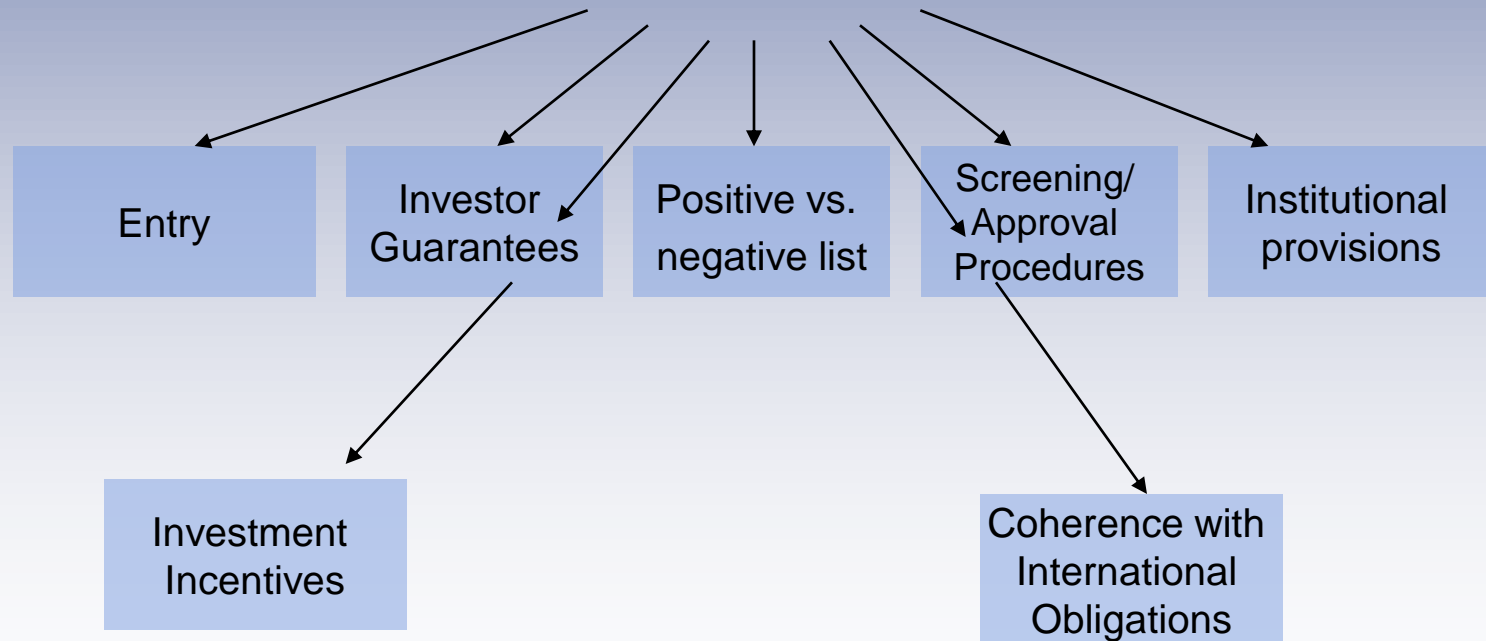
*Implementing the Investment Law
Regional Overview*

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Key Themes of Investment Laws

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Relevant OECD Instruments and Expertise

- Through its experience working with over 70 economies, the OECD has developed the following Instruments and guidelines which are relevant to the current reform process of MENA countries:
 - **OECD National Treatment Instrument**
 - **OECD Guidelines for Multinational Enterprises**
 - **OECD Policy Framework for Investment**
 - **Investment Promotion Guidelines for the MENA region**
 - **OECD Checklist on public sector transparency and the international investor**
 - **OECD Checklist for Investment Incentive**
 - **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**
 - **OECD Tax Model Convention**
 - **OECD Transfer Pricing Guidelines**
 - **OECD Principles of Corporate Governance**
 - **OECD Principles on Governance of State-Owned Enterprises**

Key Chapters in Investment Laws

I. Regulation of Entry

II. Investor guarantees

III. Institutional provisions

IV. Investment incentives

I. Entry: International Framework

- Regulation of entry based on principle:

Under international law every state is sovereign in controlling entry and establishment of foreign entities within its territory.

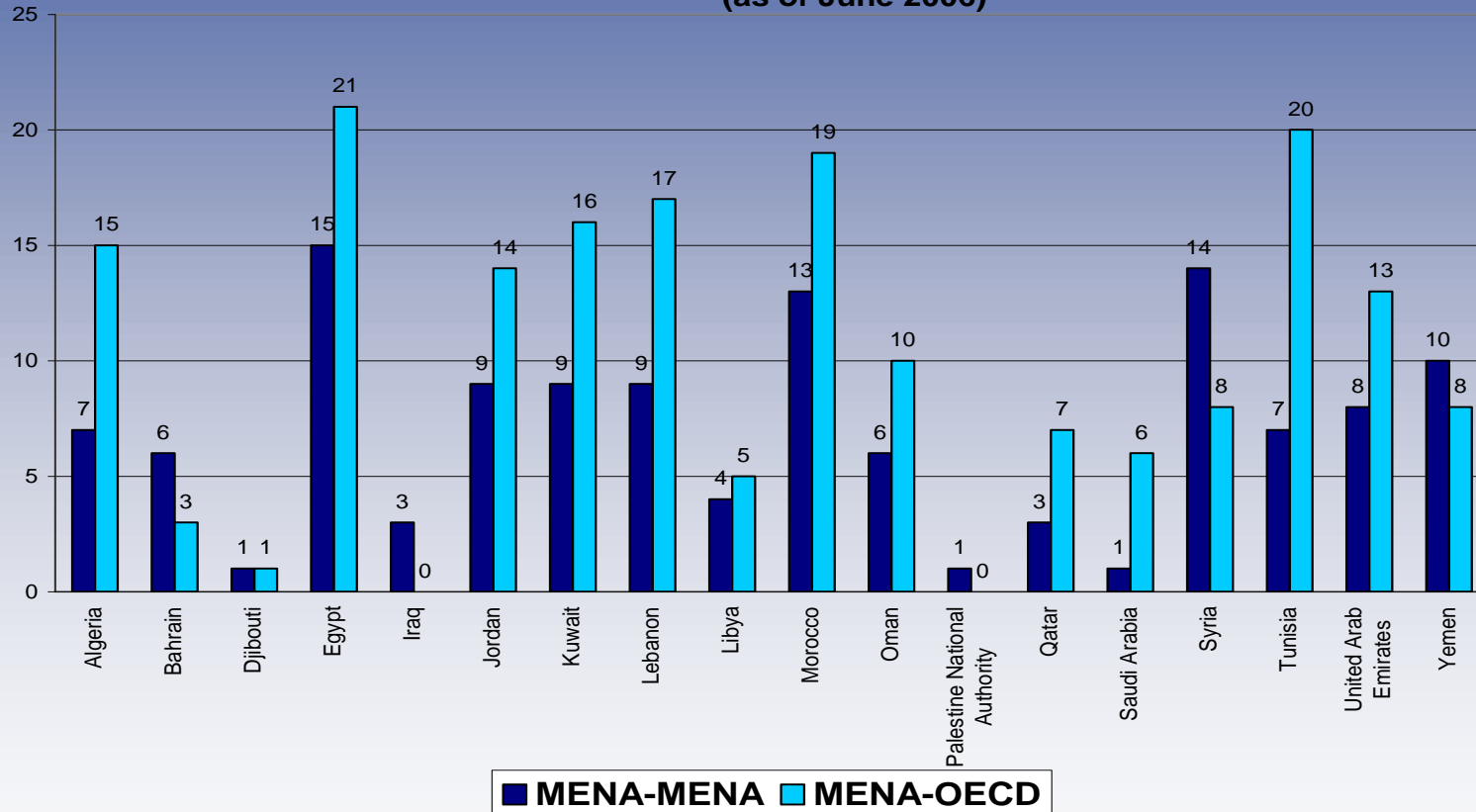
- But: international obligations can restrict this principle
 - WTO
 - BITs
 - Ongoing negotiations (FTA)
 - OECD Instruments (Codes)

I. Entry: WTO “investment architecture”

- GATS – General Agreement on Trade in Services
- TRIMs – Agreement on Trade-Related Investment Measures
- TRIPs – Agreement on Trade-Related Aspects of Intellectual Property
- GPA – Agreement on Government Procurement
- ASCM – Agreement on Subsidies and Countervailing Measures

I. Entry: Bilateral Investment Treaties

Figure 3 Comparison of BITs between MENA-MENA and MENA-OECD countries (as of June 2006)



I. Entry: Investment screening and approval procedures

- 1. Control procedures** for general monitoring only (monitoring approach, national treatment)
- 2. Screening and approval procedures** controlling certain criteria:
 - Negative list
 - Ownership restrictions
 - National Security
 - Broader national interest (economic benefits etc.)
- 3. Screening to impose** performance requirements/grant incentives

I. Entry: Possible regulation of access of FDI

1. Issue Negative List

- Transparency
- Predictability

2. Install transparent screening and approval procedure

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

3. Provide foreign investor with the right to ask for review of decision of Licensing authority by Ministry

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

II. Investor Guarantees: Ministerial Declaration

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

II. Investor Guarantees: National Treatment/MFN

- *National Treatment provisions in some investment laws of MENA countries and part of the standard provisions in IIAs signed*
- *With respect to OECD member countries, the National Treatment approach of the OECD Investment Committee obliges adhering countries to notify their exceptions to NT within the framework provided by the OECD Declaration on International Investment and Multinational Enterprises.*

II. Investor Guarantees: OECD National Treatment Instrument

The National Treatment instrument consists of two elements:

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

Content: National treatment of foreign-controlled enterprises after establishment

II. Investor Guarantees: Expropriation

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

II. Investor Guarantees: Free Transfer

- Generally, MENA countries vary in the degree to which foreign investors may freely repatriate capital. Several MENA countries also allow unhindered repatriation of capital without restriction.
- Thirteen of the MENA countries (Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Tunisia and United Arab Emirates, Iraq and Libya) report that they allow repatriation of capital without restriction.
- Algeria, Morocco, Syria and Yemen, operate restrictions of varying depth.

III. Institutional provisions

- Regulation of Competent Screening and Approval Authority on Federal level
- Regulation of possible review instance for decisions of the Authority
- Division of competences with Investment Promotion Agencies in Emirates
- Other institutional issues

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For information about the MENA-OECD Programme and its Activities, please refer to:

www.oecd.org/mena/investment

Value added of OECD's expertise for MENA countries

- The OECD is a unique forum where the governments 30 economies work together to address the economic, social and governance challenges of globalisation. The OECD also shares its expertise and exchanges views with more than 70 other countries – the MENA-OECD Investment Programme is a key part of this work.
- The OECD can offer its partners in the Arab world a range of advantages:
 - The Organisation is one of the world's largest and most reliable sources of comparable statistical, economic and social data. A Task Force on FDI statistic is part of the MENA-OECD Investment Programme.
 - The Organisation provides analysis and advice on investment, technological innovation, entrepreneurship, administrative reform including tax, corporate governance and financial markets development. The 5 Working Group of the MENA-OECD Investment Programme cover these issues and provide a setting where governments can compare policy experiences, identify good practice.
 - The OECD is a forum where peer pressure can act as a powerful incentive to improve policy and which produces internationally-agreed instruments, decisions and recommendations. The key OECD instruments and guidelines can support concrete reform efforts