MENA-OECD
INVESTMENT
PROGRAMME

New Generation of Foreign Investment Laws:

MENA-OECD Good Practice and the New Iraqi Investment Regime

Iraq Project

Contact:

Alexander Böhmer alexander.boehmer@oecd.org

www.oecd.org/mena/investment

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INTRODUCTION

1. Under international public law, states are sovereign in determining the entry and stay of foreigners including foreign investors. In the global market place, however, countries compete to attract high value-added foreign investment as a key development tool for their economies. In order to effectively make use of their sovereign rights and concurrently attract much needed intra-regional and other foreign investment, a new generation of foreign investment laws[1] are currently emerging in Middle East and North Africa (MENA) countries participating in the MENA-OECD Investment Programme.

2. Qatar (2000), Yemen (2002), Saudi Arabia (2000), Algeria (2001), and Kuwait (2003) have revised their investment laws recently. Egypt has issued a substantial revised law in 2005 and a new Syrian investment law entered into force in 2007. Iraq issued a new federal investment law in the summer of 2006. Morocco, Tunisia, the United Arab Emirates (UAE) and Oman are considering revising their current investment laws. Jordan's revised investment law is pending parliamentary approval, and some countries are considering revising their investment regimes in light of emerging international good practice. Finally, other countries (for example Bahrain) do not regulate foreign investment through a special law, but deal with foreign investment regulation issues as a part of their overall commercial law.

3. Ministers and delegations from 16 MENA countries concluding the first Ministerial meeting of the MENA-OECD Investment Programme in February 2006 have recognised in a Ministerial Declaration "openness to foreign investment and access by investors to facilities necessary for investment and the movement of key personnel for the purpose of investment" as good practice. The Ministerial Declaration equally recognises the principles of "national treatment for established foreign investments, fair and equitable treatment of investment, protection of investors rights and compensation for all categories of expropriation".[2]

4. As a matter of fact, MENA countries' restrictions on foreign ownership of enterprises have been relaxed, as have restrictions on foreign ownership of land and real estate, and on foreign purchases of shares in local stock markets. In many MENA countries, foreigners can participate in the privatisation of state-owned enterprises.

5. Figure 1 demonstrates, however, that for selected MENA countries (Algeria, Egypt, Morocco, Qatar, KSA, Tunisia) the regulatory restrictiveness for Foreign Direct Investment (FDI) in the business services, telecommunications, construction, distribution, finance, tourism, transport and electricity sectors is still above the Organisation for Economic Co-operation and Development (OECD) countries' average and certainly above the OECD countries' minimum. Figure 1 is based on the OECD's FDI Regulatory Restrictiveness Index computed for 29 OECD countries and extended by United Nations Conference on Trade and Development (UNCTAD) to cover six MENA countries. [3]

6. The indicators primarily aim to measure deviations from 'national treatment', i.e. discrimination against foreign investment expressed in laws, regulations, and schedules of international agreements to

[1] For the purpose of this paper, "investment law" refer to cross-sectoral legislation, setting out standards for all foreign investments. Foreign investment can also be regulated by sectoral regulation, concession or privatisation laws, general procurement regulations, company laws or in other commercial laws. These laws and regulations are not treated in the following discussion.

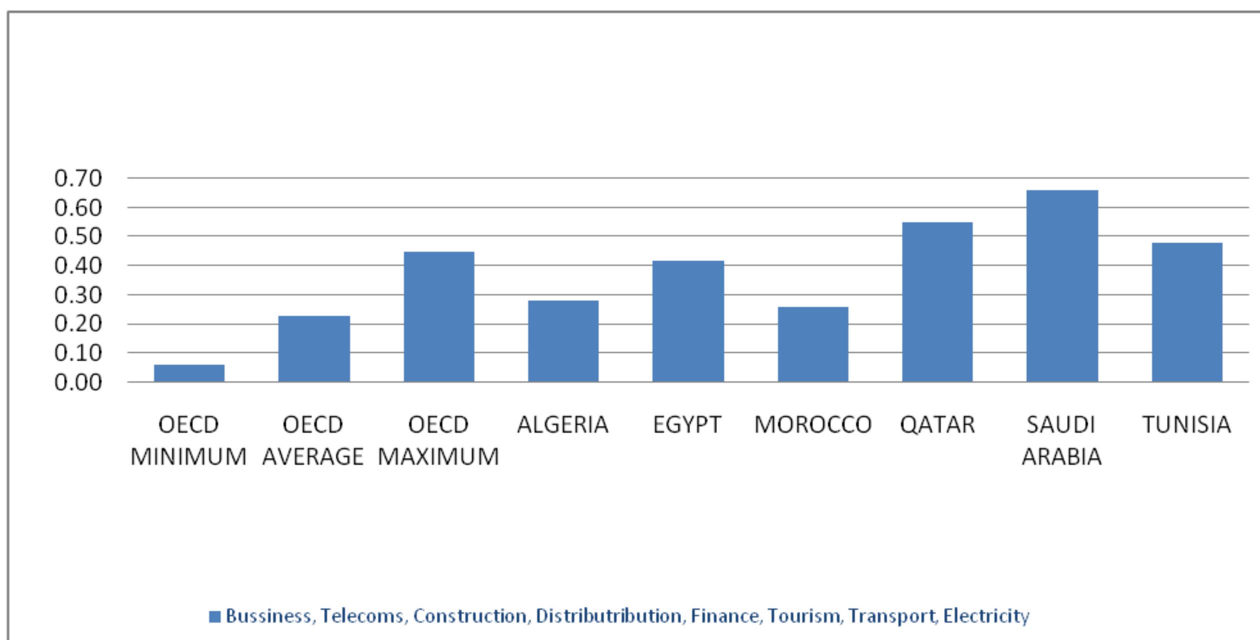
[2] The 2006 Ministerial Declaration "Attracting investment to MENA countries, common principles and good practice", available at http://www.oecd.org/dataoecd/30/35/37520012.pdf.

[3] For more information on the methodology of the Index, see OECD International Investment, Working Paper, Number 2006/4, http://www.oecd.org/dataoecd/4/36/37818075.pdf.

which the country is a party to (for example General Agreement on Trade in Services (GATS), OECD Declaration on International Investment, and OECD Codes on Liberalisation of Capital Movements), rather than to measure the institutional environment and administrative practices in general.

7. The Index scores foreign direct equity investment restrictions, screening and approval procedures and other restrictions including nationality requirements for boards of directors, movement of personnel, domestic content and other performance requirements. Entry restrictions are weighted particularly high and scores are attributed for all sectors mentioned, where 1 equals closed and 0 equals open.

Figure 1. Selected MENA Countries FDI Regulatory Restrictiveness by All Sectors (1=closed, 0=open)

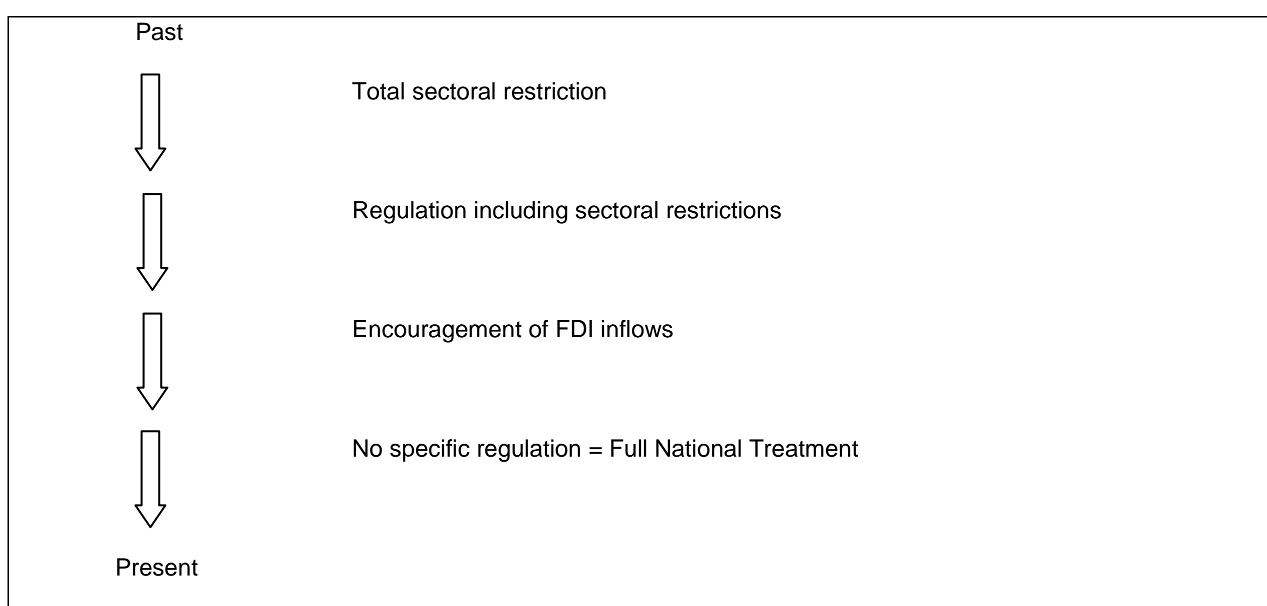


Source: UNCTAD, 2006; OECD FDI Restrictiveness Index, 2007

I. REGULATORY APPROACHES TO FOREIGN DIRECT INVESTMENT

8. Against this background, the new generation of investment laws emerging in MENA countries and in most emerging market economies, demonstrate a tendency to further converge with OECD average standards of liberalisation of investment entry requirements. This does not, of course, imply that restrictions, screening, and approval procedures for foreign investment will be completely abolished. Rather, it means that remaining restrictions to FDI tend to become more transparent and converge towards an international best practice standard.

Exhibit 1 - Regulation of FDI in Investment Laws



Source: MENA-OECD Investment Programme, 2006.

9. Over the past 20 years, most countries followed the shift from an approach which restricted the entry of FDI to an approach which maintains a limited number of sectoral restrictions or has no specific regulation for foreign investors (Exhibit 1).

10. Traditionally, total or comprehensive sectoral restrictions to FDI were used by countries pursuing a policy of economic nationalism. The socialist states of Eastern Europe and the former Union of Soviet Socialist Republics (USSR) were the most prominent examples of this approach. This approach has become obsolete today. On the other end of the spectrum stand economies which have little or no specific entry regulations for FDI and follow a stringent national treatment approach, whereby foreign investors are granted the same treatment as domestic investors in like circumstances.

11. Currently, there are hardly any economies in the world which pursue a policy of total exclusion of FDI. Sectoral exclusions of FDI, on the other hand, are a common characteristic of various jurisdictions. Most states have restrictions in sectors which encompass industries relevant to national security, industries regarded as strategic, culturally significant industries and public utilities. An example is the Exxon-Florio amendment which empowers the United States (US) president to prohibit the takeover of a US firm by a foreign firm where there exists 'credible evidence that the foreign interest exercising control might take

action that threatens to impair national security'[4]. Countries trying to enhance the transparency of their regulatory investment regime tend to publish so-called negative lists which allow the investor easy access to information about remaining horizontal or sectoral restrictions to FDI.

12. Finally, restrictions on foreign ownership in privatized companies in some countries have been following a so-called 'golden share' approach whereby the government retains control over certain matters in recently privatised companies. A golden share is a nominal share which is able to outvote all other shares in certain specified circumstances, often held by a government organization, in a government company undergoing the process of privatisation and transformation into a stock-company. The United Kingdom (UK), France and Germany have used this approach in the past.

13. Following a period of investment entry liberalisation, relatively few OECD member countries maintain general screening and authorisation procedures for FDI. However, sectoral restrictions are maintained for the protection of security and other essential interests. Recently, existing regulatory frameworks for screening and approval procedures have been used more often in OECD countries to regulate investment in infrastructure and energy sectors as well as investment by enterprises controlled by foreign states (often managed by so-called sovereign funds). The debate on the scope of exceptions to the free entry of foreign investment, following concerns of 'national security' or 'strategic industry,' in several OECD countries has re-emerged and led to plans for revisions of foreign investment entry procedures with the aim to potentially tighten requirements.

14. With a view to retain a strong liberalised international investment regime, the OECD's Investment Committee is currently studying this new tendency in its 'Freedom of Investment project'; the G8 meeting in Heiligendamm 2007 concluded the discussion on investment "with a strong commitment to the freedom of open and transparent investment".

Exhibit 2 – G8 Heiligendamm 2007 on Freedom of Investment

"10. We will work together to strengthen open and transparent investment regimes and to fight against tendencies to restrict them. Erecting barriers and supporting protectionism would result in a loss of prosperity. We therefore agree on the central role of free and open markets for the world economy, respecting sustainability concerns, and the need to maintain open markets to facilitate global capital movements. We reaffirm that freedom of investment is a crucial pillar of economic growth, prosperity and employment. We call on all developed countries, major emerging economies and others to critically assess their investment policies, the potential costs incurred from unnecessarily restrictive or arbitrary policies and the economic benefits of open investment regimes.

11. Against this background we remain committed to minimize any national restrictions on foreign investment. Such restrictions should apply to very limited cases which primarily concern national security. The general principles to be followed in such cases are non-discrimination, transparency and predictability. In any case, restrictive measures should not exceed the necessary scope, intensity and duration. Applicable treaties relating to investment remain unaffected. We encourage the OECD to continue its work on these issues, especially by identifying best practices and by further developing general principles. We will work with the OECD and other fora to develop further our common understanding of transparency principles for market-driven cross border investment of both private and state-owned enterprises."

Source: G8 Heiligendamm, Summit Declaration, 7 June 2007, para. 10, 11.

15. The absence of any specific regulatory treatment designed for foreign investment would render investment laws useless. Indeed, some countries in the OECD and in the MENA region made the policy choice to regulate the treatment of foreign investment only in their commercial laws and regulations, either on the basis of full national treatment, or with sectoral and other exceptions. However, many economies striving to attract more high-quality foreign investment, still decide to issue special foreign investment laws, for internal policy reasons, either as a communication tool towards foreign investors, or for other motives.

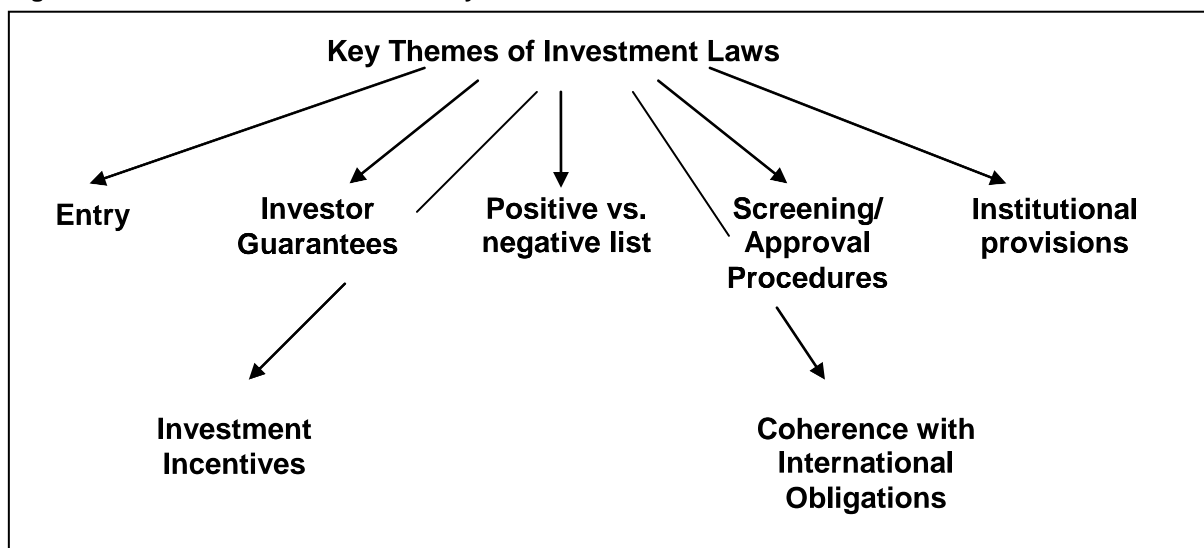
[4] US Omnibus Trade and Competitiveness Act 1988, 28 ILM (1989), p. 460.

16. Investors are looking for transparency and predictability, especially when investing in countries with regulatory traditions different from their own and where there are no fully modernised institutions and enforcement structures. A 'state of the art' investment law can serve investors, domestic or foreign, as one among many others indications that the investment climate in a given country is transparent and predictable with respect to issues like regulation of entry, investor guarantees, incentive systems and procedural and legal recourse issues. Domestic best practice investment laws together with binding international investment instruments such as Bilateral Investment Treaties (BITs), World Trade Organisation (WTO) obligations, investment chapters of Free Trade Agreements (FTAs) and the OECD Declaration on International Investment, can reassure investors that basic standards protecting property rights and administrative treatment are in line with international standards.

17. In this respect, the key themes which are covered in most investment laws encompass:

- entry regulations including, lists of exceptions to national treatment (refer to the negative list approached alluded to earlier);
- screening and approval requirements for foreign investments;
- expropriation/national treatment/free transfer guarantees for investors;
- potentially a chapter on regulatory/fiscal/financial investment incentives; and,
- institutional provisions regarding an investment promotion agency or/and a high level investment commissions (see Exhibit 3).

Figure 1. Exhibit 3 Key Themes of Investment Laws



Source: MENA-OECD Investment Programme, 2006.

18. Many 'new generation' investment laws of MENA countries follow a 'middle ground' approach between restricted entry and national treatment regulation of investment; fully open entry with varying degrees of entry regulation; investment encouragement through incentive systems; and, institutional and procedural arrangements with a view to promote investment.

II. REGULATION OF ENTRY IN MENA COUNTRIES' INVESTMENT LAWS

19. Under international law, every state is sovereign in controlling entry and establishment of foreign entities within its territory. States may exercise this right in different ways as referred to in Exhibit 4. First, there may be restrictions excluding FDI from the whole economy, or from specific sectors and industries. Secondly, FDI may be permitted only after screening and approval procedures have been applied. These procedures may condition investments on the fulfilment of specific performance requirements (e.g. local content and sourcing requirements). They may also serve as selection procedures for the granting of regulatory, financial or fiscal incentives for a foreign investor's project.

20. The Agreement on Investment and Free Movement of Arab Capital among Arab Countries of 1970, reiterates the principle of sovereignty in Article 3, highlighting each signatory 's sovereignty over its resources and its right to determine the procedures, terms and limits that govern Arab investment.[5] Similarly, the Unified Agreement for the Investment of Arab Capital in the Arab States of 1980 controls the rights of entry and establishment[6], as does Article 2 of the Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organisation of the Islamic Conference of 1981[7].

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

22. The two OECD Liberalisation Codes contain an obligation to 'standstill' and 'rollback' any national restriction on the transfers and transactions to which the Codes apply. There is even a positive duty included to grant any authorisation required for the conclusion or execution of the transactions or transfers covered, as well as a duty of non-discrimination in the application of liberalisation measures to investors from other member states.[8] The OECD Code of Liberalisation of Capital Movements was extended in 1984 to include rights of establishment.

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

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[5] UNCTAD, International Investment Instruments: A Compendium, vol.II, 1996, p. 122.

[6] UNCTAD, ibd., Articles 2 and 5, p. 213, 214.

[7] UNCTAD, ibd., p.241.

[8] OECD Codes of Liberalisation of Capital Movements, accessible at www.oecd.org/dataoecd/10/62/4844455.pdf.

Positive List vs. Negative List

24. In order to regulate the entry of FDI, governments can use two distinct regulatory approaches. A 'positive list approach' explicitly states the sectors of the economy which are, in principle, open to foreign investors. The majority of MENA countries rely on a 'positive list' approach in presenting their investment environment to foreign investors.

25. The second regulatory alternative is for a government to list only the sectors which are closed to FDI – the so called 'negative list' approach. Certain MENA countries provide such a 'list of FDI restrictions' outlined in their investment laws or publicly accessible information sources. A list of remaining restrictions to foreign investment gives investors transparent and easily accessible information. This transparent approach is currently followed by Bahrain, Jordan, Qatar, Tunisia and Saudi Arabia, which effectively account for 27% of the 18 Middle Eastern countries participating in the MENA-OECD Investment Programme. With the input of the MENA-OECD Investment Programme, Morocco has also prepared a negative list although it is not included in the current investment framework.

Exhibit 4 – Possible Regulatory Approaches to Entry

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

Option 2: Allow foreign ownership only in specific sectors listed in a 'positive list';

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

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

Option 5: Allow foreign majority ownership, but apply screening and approval procedures based on specific criteria (national interest, economic development etc) to all incoming investment;

Option 6: Combination of 1-5.

Source: MENA-OECD Investment Programme, 2006.

III. SCREENING AND APPROVAL PROCEDURES

26. The regulation of entry for foreign investors relies on the sovereignty to decide on which investment is allowed to enter the country. Entry regulation can also include some form of screening and approval procedures, either horizontally with respect to all investments independent from the sector, or for investment into sectors regarded as sensitive or strategic to an economy. The transparency and predictability of these procedures send a message to potential investors and are therefore important as they create an attractive investment environment.

27. Screening and approval procedures involve case-by-case reviews of potential foreign investment projects by a specialised public authority in the host country - often being the investment promotion agency, a special investment committee, or the Ministry responsible for investment. Compulsory approval procedures are in place only in a small number of OECD member countries, but more common in countries which are not members of the OECD. Traditionally, where such authority in charge of screening and approving is in place, there is a relatively wide discretion to decide whether or not to approve a foreign investment project. The new generation of investment laws try to specify the conditions which are supposed to guide the decision of the authority thereby limiting the discretion of the government agency and increasing its transparency.

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

29. In general, three scenarios can be detected in the application of FDI screening procedures in the region: in certain countries, all sectors are subject to approval requirements, in others only specific, strategic sectors are subject to such requirements. A third scenario, which is manifested in countries such as Jordan, Egypt or Bahrain is where additional approval procedures are required (as compared with national treatment) when a company wishes to apply for certain incentives under the applicable investment laws.

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

31. A possible good practice approach distilled from OECD and MENA countries' investment laws and regulations is described in Exhibit 5. Such an approach to foreign investment entry regulation foresees a transparent 'negative list' for sectors excluded from foreign investment or sectors for which special screening and approval procedures apply. These screening and approval procedures which should be, if possible, limited only to sensitive or strategic sectors, need to be:

- transparent, i.e. clearly described in the investment law or its implementation regulation;
- predictable, i.e. proceeded in a non-discriminatory fashion; and,
- potentially foreseeable for the right of the foreign investor to ministerial l review of the final decision.

Exhibit 5. Regulation of Entry: Towards a Good-Practice Approach

Negative List Approach

- To increase transparency
- To enhance predictability

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 instigate performance requirements in line with international obligations
- To limit the level of administrative discretion with clear administrative guidelines

Right to ask for review of decision of licensing authority by ministry or judiciary body

- To enhance equality of treatment and enhance transparency
- To enforce administrative guidelines limiting discretion

Source: MENA-OECD Investment Programme, 2006.

IV. INVESTOR GUARANTEES

32. The February 2006 MENA Ministerial Declaration is complemented by a set of recommendations which have been elaborated by the MENA-OECD Investment Programme.[9] These refer to emerging standards in domestic investment regulations as well as in international investment agreements and encompass the following principles protecting private investors:

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

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

A. National Treatment

34. 'National treatment' refers to the commitment of a country to treat enterprises operating in its territory which are controlled by the nationals of another country, no less favourably than domestic enterprises in similar circumstances. The National Treatment Instrument addresses the treatment of foreign-controlled enterprises after their establishment.

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

- A declaration of principle, which forms part of the Declaration on International Investment and Multinational Enterprises ; and,
- 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.

36. For example, Egypt as a new adherent to the Declaration (Egypt signed the Declaration in June 2007) is bound by its obligations under the National Treatment Instrument.[10] Other countries which have adhered to the OECD Declaration on International Investment and Multinational Enterprises, as well as to

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

[10] http://www.oecd.org/document/48/0,2340,en_2649_34887_1932976_1_1_1_1,00.html

the related Decisions and Recommendations by the OECD Council, including the National Treatment instrument, are the thirty OECD member countries and nine non-member economies.

37. The follow-up procedures included in National Treatment Instrument, designed to encourage a complete application of this concept by adhering countries, are set out in an OECD Council Decision of December 1991. The Decision comprises of an Annex which lists exceptions to National Treatment as notified by each adhering country and accepted by the OECD Council.

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

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

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

B. Expropriation

41. Private investors, especially in long-term projects, are often subject to the risk that future governments of the host country will implement changes in the domestic legislation which could affect negatively their investment. Although the area of large scale nationalisations of foreign owned industries is a story from the past, expropriation of an investment can still occur in many forms. Besides the direct expropriation, government measures not directly targeted at the property of an investor can still affect his property in the form of an indirect expropriation.

42. 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'.[11]

C. Free Transfer

43. Recent years have witnessed a substantial liberalisation of foreign exchange regimes, and the MENA countries have been following this trend. In particular, all the MENA countries except Syria have obtained IMF Article VIII status, indicating that they have removed restrictions on payments and transfers relating to current transactions, including repatriation of profits.

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

[11] See OECD publication on Expropriation, http://www.oecd.org/dataoecd/22/54/33776546.pdf

D. Transparency

45. Most MENA countries have made serious efforts to increase transparency of their foreign investment regimes, however for foreign investors in the region transparency still remains an issue of concern. The transparency of foreign investment regimes varies widely among MENA countries. One reason of this is the relative lack of information made available to foreign parties by some MENA countries. Indeed, while some countries provide detailed reports in response to a survey on investment restrictions conducted by the IMF, others supply only cursory responses. Similarly, a range of national government websites providing information of use to foreign investors extends from sophisticated sites containing relevant laws and regulations, details of establishment procedures and other useful content (usually in English or French as well as in Arabic) to sites with virtually no relevant information.

V. INVESTMENT INCENTIVES

46. Following an open door policy towards investors adopted in a number of emerging and developed economies, many countries offer in addition regulatory, fiscal or financial incentives to FDI. One of the pioneers of successfully using incentives has been the Republic of Ireland. Already since 1958 Ireland has offered fiscal incentives to manufacturers, and currently, the 10 per cent maximum corporate tax rate for manufacturing profits is a major incentive.

47. Investment laws are a possible source of information on foreign direct incentives. Fiscal incentives can also be found in the tax codes. However, being the most visible legal communication tool to foreign investors, the investment law should refer in a chapter to the existing incentive regimes. Often, the institutions whose activity is regulated by investment laws such as investment promotion agencies are also asked to administer the granting procedures for investment incentives.

48. However, experiences with the use of incentives, namely fiscal incentives have been mixed. Studies suggest that investors consider tax incentives as a relatively less important motive for choosing a particular location for their investment compared to other motivations as market size, business environment. When administrated by a non-transparent screening and approval procedure, tax incentives can even be discouraging to investment since they tend to increase uncertainty and therefore project costs. Administrative discretion and transparency are key challenges of managing such an incentive regime.

49. On the other hand, the effectiveness of tax incentives depends on the specific situation in a given economy including the question what immediate competing economies are providing in terms of investment incentives. Assessing benefits and costs of tax incentives on a continued basis is an important requirement for any successful tax incentives regime. OECD good practice discourages the use of special tax incentives to attract FDI and rather argues in favour of a reduced statutory corporate income tax rate accompanied by a broadened tax base.

Exhibit 6. Tax incentives: Good Practice

- Governments should assess in advance tax incentives targeted to boost investment;
- When introduced, the tax incentives should be evaluated (using cost-benefit tests) on a periodic basis to evaluate their effectiveness;
- In order to enable proper evaluation and assessment, the specific goals of a given tax incentive need to be explicit at the outset;
- “Sunset clauses” calling for the expiry of the tax incentive should be included to provide opportunity to assess whether the incentive should be extended.

Source: MENA-OECD Investment Programme, Tax Incentives for Investment – Experience in MENA countries, 2007.

50. MENA countries use regulatory, fiscal and financial incentives to attract FDI. They may be granted for FDI in the whole territory or only for investments in special economic zones. Fiscal incentives are either targeted to specific sectors or to specific regions or for specific exports. Most MENA countries offer corporate tax holidays which range between 2 years (Jordan) and 20 years (Egypt) and can be extended in case of supplementary investments. In Algeria, tax holidays can be indefinite; in Morocco tax holidays for exports are limited to 5 years. Morocco, Tunisia, Lebanon and Jordan offer reduced corporate rates targeted to specific sectors. Only 3 countries participating in the Programme (Algeria, Qatar and KSA) have currently no Free Economic Zones with special regulatory and fiscal regimes. All other countries offer

exemptions from corporate taxation (Kuwait, UAE, Jordan) or reduced corporate tax rates (Egypt and Morocco), exemptions from duties and tariffs (Morocco, Tunisia, UAE) and other tax holidays (Lebanon, Morocco and Yemen).

VI. INSTITUTIONAL ISSUES

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

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

53. Some of MENA IPAs are small and not as effective as they could be. Others function only as a unit within a ministry. Individual countries have made significant advances in improving their policies and structures, but there needs to be a paradigm shift in the overall approach if substantial progress is to be made.

54. IPAs with a clearly defined mandate should report at the highest political level (prime minister or senior minister level). This political support will give them the necessary status and credibility with both investors and other government ministries and agencies. In a minority of MENA countries this is the position. IPAs should be in a position to instigate government policy reform with regard to the overall vision and strategy for the promotion of FDI where necessary and in general should act as champions of FDI. Again, only a limited number of MENA countries follow this approach.

55. IPAs should act as the medium for ensuring that the government hears the views of foreign investors. In some countries, there are strong investor representative groups, and facilitating the access of such groups to government policy-makers or encouraging new investor groups are actions that IPAs could usefully undertake. An IPA should set up a "one-stop shop" to deal with all of the needs of the incoming investors. This requires political commitment and support and steps to this end have been made here by several MENA countries.

56. Implementing the appropriate legislation and establishing an IPA will not in itself ensure a successful FDI attraction programme. The IPA itself must be a professionally run organisation staffed by individuals who understand the mentality and business strategies of foreign investors and are prepared to go the extra distance in terms of helping investors to become established and run their businesses.

Exhibit 7 - Elements of Best Practice in IPAs

Key elements of the best practice work of IPAs typically include:

(a) Having a good service management system which aims its activity at priority market segments/sectors, spells out the service offered and is clear on the delivery method;

(b) Using customised marketing to target clients and build relationships with them;

(c) Pursuing FDI in all elements of the value chain and in all business functions (e.g. design, purchasing, production, distribution, marketing, customer aftercare and service, research and development);

(d) Rooting FDI in the host country through good linkage with local suppliers, subcontractors, business partners, technical institutes and universities, etc. and through good facilitation in the post-investment phase."

Source: OECD Report: 'Investment Promotion Techniques and the Role of Investment Promotion Agencies, 2002'.

CONCLUSIONS

57. As a communication tool for potential investors, a comprehensive and modernised investment law can offer an advantage for the attraction of high quality investment. In order to serve this purpose, provisions in the law should reflect emerging MENA regional and international good practice. The policy choice of granting national treatment to foreign investors with exception of sectors considered sensitive and not issuing a special investment law is an alternative a country can choose.

58. Where national treatment is widely offered to foreign investors, there may not be a need for a specific FDI law. The more an economy relies on overall tax and investment climate simplification, the less need there is for a special foreign investment law.

ANNEX I: Regulatory Treatment of FDI in MENA Countries[1]

'R'=restriction, '**NR**' = no restriction **'NA'**=no publicly available data, **'Y'=yes, 'N'=no**	Algeria	Bahrain	Djibouti	Egypt	Iraq	Jordan	Kuwait	Lebanon	Libya	Morocco	Oman	Palestine	Qatar	Saudi Arabia	Syria	Tunisia	UAE	Yemen
Date of issuing of main investment law	2001	/	1994	1997	2006	2003	2003	2001	1997	1995	1994	NA	2000	2000	1991	1994	NA	2002
Screening and approval procedure for all investment	Y	Y	NA	N	Y	Y	N	N	Y	N	Y	NA	N	Y	Y	N	Y	Y
Screening and approval procedure for some sectors	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	NA	Y	Y	Y	Y	Y	Y
1. All-sector limitations to entry of FDI	R	R	R	R	R	R	R	R	R	R	R	NA	R	R	R	R	R	R
2. Limitations on foreign purchase of domestic shares	R	R	R	R	R	R	R	R	R		R	NA	R	R	R	R	R	R
3. IMF Article VIII status	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	NA	Y	Y	N	Y	Y	Y
4. Liquidation proceeds transfer abroad	R	N	N	N	NA				NA	R	NA	NA	NA	NA	R	NR	NA	R
5. Sectoral limitations to establishment of FDI, incl. reciprocity																		
a. financial services	NA	R	NA	R	R	R	R	R	R	R	NA	NA	R	R	NA	R	NA	R
b. other services	NA	R	R	R		R		NA	R	NA	NA	NA	R	R	NA	R	NA	NA
c. primary sectors	NA	R	NR	R	R	R	R	NA	R	NA	NA	NA	R	R	NA	R	NA	R
d. manufacturing	NA	R	NA	R			NA	NA	R	NA	NA	NA	R	R	NA	NR	NA	R
6. Acquisition of real estate for FDI purposes		R	NA	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
7. Exceptions to national treatment of foreign-controlled enterprises																		
a. access to local finance	NA	NA	NA	NA	NA	NA	NA	R	R	R	R	NA	R	R	R	NA	R	R
b. access to privatisation	R	R	NA	R	NA	NA	R	NA	NA	NA	NA	NA	NA	R	NA	R	NA	NA
c. access to public procurement	NA	R	NA	R	NA	R	NA	NA	NA	NA	NA	NA	NA	R	NA	NA	R	NA
d. discriminatory tax treatment	NA	NA	NA	NA	NA	NA	R	NA	NA	NA	NA	NA	NA	R	R	N	NA	NA

PROVISIONAL MATRIX: REGULATORY TREATMENT OF FDI IN MENA COUNTRIES[1] (continued)

The headings in this matrix ccorrespond to the section headings in Annex 2, which contains explanations of box entries.

‘R’=restriction, ‘NA’=no publicly available data, " " = no restriction, ‘Y’=yes, ‘N’=no	Algeria	Bahrain	Djibouti	Egypt	Iraq	Jordan	Kuwait	Lebanon	Libya	Morocco	Oman	Palestine	Qatar	Saudi Arabia	Syria	Tunisia	UAE	Yemen
e. entry procedures for key personnel																		
8. Performance requirements for foreign direct investors	R	NA		R	NA		NA	NA	NA	NA	NA	NA	R	R	R	R	NA	NA
9. FDI-targeted tax and other incentives	Y	NA	Y	Y	NA	Y	Y	Y	NA	Y	Y	NA	Y	Y	Y	Y	NA	Y
10. Bilateral investment treaties with OECD countries	15	3	1	23	0	14	16	17	5	19	10		7	6	8	16	13	8
11. Bilateral tax treaties (with OECD countries)	12(3)	9(1)	0	13 (3)	NA	5(1)	10(3)	17(2)	NA	10(3)	9(2)	NA	3(0)	8(6)	17 (1)	11(3)	8(3)	3(0)
12. Measures to enhance policy transparency																		
a. publication of regulations	N	Y	N	N	N	Y	N	N	N	N	N	N	Y	Y	N	Y	N	Y
b. information available on the Internet																		
c. list of sectors with FDI restrictions	N	Y	N	N	N	Y	N	N	N	N	N	N	Y	Y	N	Y	N	Y
13. Measures at sub-national level																		
14. Investment promotion agency (member of WAIPA)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y

This list does not include the investment chapters of free trade agreements, for example those between United States and Bahrain and Jordan or agreements on the development of trade and investment relations such as those between the United States and Kuwait, Qatar, Saudi Arabia, UAE and Yemen. In each case, the first figure includes all treaties, including those renegotiated with the same country; for the figure in brackets, countries are counted only once.

The information was derived from the most recent sources of treaties and country studies, however as adjustments to the legal framework are constant, some information might have changed since its compilation here.

Since 8e, 13b, and 14,are questions more open to interpretation, no qualification has been made here; instead please refer to the following notes accompanying the table for an in-depth explanation.

Main sources of information: Foreign Investment Laws and Regulations, IMF, World Bank, UNCTAD, United States Commercial Service.

ANNEX II: Comprehensive overview for Iraq and selected MENA Countries

<table>
<tr><td colspan="2">IRAQ</td></tr>
<tr><td colspan="2">1. All-sector limitations on the entry of FDI including screening and prior approval procedures</td></tr>
<tr><td>General</td><td>Approval and Screening Requirements</td></tr>
<tr><td>Order Number 39 replaced all previous foreign investment laws. On October 10, 2006 Iraq adopted a new investment law. Under the new legal regime, a foreign investor is in principle entitled to make foreign investments in Iraq on terms no less favorable than those applicable to an Iraqi investor and the amount of foreign participation is not limited. Exceptions are: foreign direct and indirect ownership of the natural resources sector involving primary extraction and initial processing. Further restrictions can apply to banks and insurance companies.</td><td>The new Law 2006 mentions that investors must obtain the project establishment license from the National Commission On Investment. The Commission shall give its decision within 30 days from the date of the completion of the technical and legal requirements and conditions pursuant to the provisions of this law, with considerations given to guidelines and standers set forth by the Commission[12].</td></tr>
<tr><td colspan="2">2. Limitations on foreign purchase of domestic shares (portfolio investment)</td></tr>
<tr><td colspan="2">Information not publicly available.</td></tr>
<tr><td colspan="2">3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment</td></tr>
<tr><td colspan="2">On payments for invisible transactions and current transfers, domestic or foreign companies operating in Iraq requesting the transfer of funds abroad must submit proof of the amount of the contract and the percentage that may be converted into foreign exchange[13].</td></tr>
<tr><td colspan="2">4. Sectoral limitations to establishment of FDI, including reciprocity</td></tr>
<tr><td colspan="2">Investment in banks and insurance companies shall not be subject to the provisions of the Investment Law 2006[14].</td></tr>
<tr><td colspan="2">5. Acquisition of real estate for FDI purposes by foreign investors</td></tr>
<tr><td colspan="2">Information not publicly available</td></tr>
<tr><td colspan="2">6. Exception to national treatment of foreign-controlled enterprises</td></tr>
<tr><td colspan="2">Information not publicly available</td></tr>
<tr><td colspan="2">7. Performance requirements on foreign direct investors</td></tr>
<tr><td colspan="2">The investor must directly or indirectly employ a number of Iraqis, who shall make up no less than about 50% of the total employees in the project, unless the Commission saw otherwise for reasons of the technical specialization required, or the nature of the activity or the geographical location of the project.</td></tr>
</table>

[12] Iraq Investment Law 2006 (Article 6)

[13] IMF (2006).

[14] Iraq Investment Law 2006 (Article 24).

JORDAN	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
In ***Jordan*** there are no general restrictions on foreign ownership of Jordanian companies. A non-Jordanian may not own any of the following projects or businesses in whole or in part: passenger and cargo road transport, including services of taxis, buses and trailers; investigation and security services; and sports clubs, including sports event organisations but excluding fitness and physical health clubs. The Laws JIB Law No. (16) of 1995, JIB Law No. (16) of 1995 and By-Law No. 54 of 2000 contain a list of sectors with restrictions on foreign participation. The Non-Jordanian investor ownership shall not exceed 49% of the capital of any project in the following sectors and activities: a. Scheduled and non-scheduled passenger, freight and mail air transport services. b. Rental services of aircraft with operator. The Council of Ministers may upon the recommendation of the Higher Council for Investment Promotion permit the ownership or participation in big development projects that enjoy special importance for any non-Jordanian investor in higher percentages than is provided by this regulation and according to the percentage in the council's decision. N.B. A new draft Investment Law has been developed by the Jordan Investment Board and is in the process of being shared with stakeholders for comments in preparation for eventual submission to Parliament this year[15].	In principle, the screening of projects is done by Ministries and agencies who deal with the registration and licensing of projects. Projects in specific sectors laid out in the Investment Law enjoy exemptions and incentives. For this purpose the Investment Promotion Committee reviews applications submitted by investors and decides on them within a period of thirty days.[16] . Neither is there any formal screening or host government selection process for foreign investment.
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
Jordan reports no restrictions on capital and money market instruments.[17] However, the Amman Stock Exchange (one of the region's largest stock markets, with 42 per cent foreign share ownership) states that companies in the construction contracting, commercial and commercial services and mining sectors are subject to a ceiling of 50 per cent foreign ownership of the paid-up capital.[18] Further non-resident investments are limited to a maximum of 49% ownership or 50% subscription in shares in the following major sectors: commerce and trade services, construction, contracting, and transportation. The amount of investment in any one project must total at least JD 50,000.	
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment	
There are no controls on liquidation of direct investment.[19]	
4. Sectoral limitations to establishment of FDI, including reciprocity	
In ***Jordan***, a non-Jordanian investor can own no more than 50 per cent of the capital of any project in: brokerage, excluding financial brokerage and intermediary transactions done by banks, financial companies and financial service companies; monetary exchange transactions, excluding those provided by banks and financial companies; and services of commercial	

[15] MENA-OECD Investment Programme (2006)

[16] Article 22 Law No. (16) of 1995 and its amendments for the year 2000, The Investment Promotion Law, Jordan.

[17] IMF (2006).

[18] www.ammanstockex.com.

[19] IMF (2006)

agents and brokers and insurance brokers.

The amount of investment in any one project must total at least JD 50,000[20].

In ***Jordan***, non-Jordanian investor ownership shall not exceed (50%) of the capital of any project in the following sectors and activities:

1. purchase of goods and other movable tangibles for purposes of leasing or renting for re-leasing, including machinery and equipment, transport vehicles and other transport equipment, rent a car, aircraft (without operator) and ships, excluding financial leasing services conducted by banks, financial companies and insurance companies.
2. Purchase of goods and other movable tangibles for purposes of selling with profits.
3. Wholesale trade and retailing.
4. Import and export excluding importation up till the Kingdom's border outlets.
5. Distribution of goods and services within the Kingdom including distribution of audiovisual works.
6. Supply services excluding food catering that is not conducted by restaurants, cafes and cafeterias, without prejudice to the provisions of item (12) of paragraph (b) of this Article.

According to By-Law No. 54 for the year 2000, a non-***Jordanian*** may not own any project or business in whole or in part in quarrying for construction sand, stones and crushed rock and debris used for construction purposes.

JIB Law No. (16) of 1995:
Non – Jordanian investors are not allowed to participate, wholly or partially in any of the following projects or activities:

1. Passenger and freight road transportation services including taxi, bus and trucks services.
2. Quarries for natural sand, dimension stones, aggregates and construction stones used for construction purposes.
3. Security and investigation services.
4. Sports clubs including organization of sports events services, excluding health fitness clubs services.

Clearance services, without prejudice to paragraph (D) of Article (3) from this regulation

5. Acquisition of real estate for FDI purposes by foreign investors

Non-Arab foreign nationals are permitted to own or lease property in ***Jordan***, provided that their home country does not discriminate against Jordanians and the property is developed within five years from the date of approval. The Cabinet is the authority on licensing foreign ownership of land and property. Agricultural land is not included in the provisions of this law. However, a foreign company that invests in the agricultural sector in Jordan automatically obtains national treatment with respect to ownership of agricultural land, once registered as a Jordanian company.[21] In general, purchase of land is allowed only if reciprocal agreements exist and Cabinet approval is obtained.[22]

6. Exception to national treatment of foreign-controlled enterprises

In ***Jordan***, foreign investors can bid for government-commissioned research and development programmes that are slated for international or mixed bidders. Otherwise, they have to find a Jordanian partner. This qualification will be dropped once Jordan accedes to the WTO's Government Procurement Agreement (GPA), for which it is currently preparing an entities offer.[23]

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20 MENA-OECD Investment Programme (2006)

21. United States Commercial Service.

22 IMF (2006).

23. United States Commercial Service.

7. Performance requirements on foreign direct investors
In its bilateral investment treaty with the United States, ***Jordan*** is prohibited from imposing performance requirements as a condition for the establishment, acquisition, expansion, management, conduct or operation of an investment covered by the treaty (i.e. by a US entity). The list of prohibited performance requirements is exhaustive and covers domestic content requirements and domestic purchase preferences, the balancing of imports or sales in relation to exports or foreign exchange earnings, requirements to export products or services, technology transfer requirements, and requirements relating to the conduct of research and development in Jordan[24].

EGYPT	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
Within the scope of Law 8 of 1997 and Law 3 of 1998, the two key laws governing investment in Egypt, foreign investors may own up to 100 per cent of businesses categorized in a positive list guaranteeing automatic approval (see Sectoral Limitations, below). Law 8 of 1997 is designed to allocate investment to targeted economic sectors and promote decentralization of industry from the Nile Valley Area. Private and state-owned exporting companies were required to sell at least 75% of their foreign currency earnings to state-owned banks. There are no general controls on inward direct investment in ***Egypt***, but non-bank companies of foreign exchange dealers must be owned entirely by Egyptians.[25] The Investment Guarantees and Incentives Law (Law 8), passed in May 1997, allow investment through joint-ventures, limited liability companies, and partnerships, and govern "inland investments", essentially domestic investment projects, and investment in free zones, which are treated as outside the domestic economy for taxation, customs, and trade purposes[26]. Law 94 of 2005 amended the Investment Incentives Law and made companies incorporated under the Investment Incentives Law subject to the relatively simpler incorporation provisions of the Companies Law 3 of 1998[27]. The Income Tax Law enacted in June 2005 eliminated some of the incentives in the Investment Incentive Law, namely all corporate tax exemptions and tax holidays that the latter law had authorized for newly established companies. The WTO noted in its 1999 trade policy review that FDI had been liberalized since its previous report and, with a few exceptions, granted national treatment. The list of sectors where foreign investment was actively discouraged was reduced in 1994 to the Sinai, military equipment and tobacco and replaced in 1998 by a positive list of sectors where investment is encouraged through the Law of	Under Egypt's law No. 8 on investment incentives and guarantees, passed in 1997, the General Authority For Investment and Free Zones (GAFI) automatically approves any application for projects within 16 sectors listed in the law. Investors can chose to proceed with their project through GAFI if they wish to benefit from its one-stop-function and the incentives laid out in law No. 8. There is, however, no obligation to do so. Nevertheless, GAFI oversees 69 activities, and the investor deals with 71 entities under the responsibility of 22 ministries[31].

[24] United States Commercial Service.

[25]. IMF (2006).

[26] WTO (2005)

[27] United States Commercial Service (2007)

Investment Guarantees and Incentives. As of January 2, 2005, Egypt accepted the obligations of Articles VIII, Sections 2, 3, and 4 of the IMF's articles of Agreement.[28] On July 2007, Egypt became the 40th country to adhere to the OECD Declaration on International Investment and Multinational enterprises. This Declaration is a way for governments to commit to improving their investment climates, ensuring equal treatment for foreign and domestic investors and encouraging the positive contribution that multinational companies can bring to economic and social progress[29]. Egypt has been very active in concluding bilateral investment agreements; by February 2007 it had concluded treaties with 110 countries[30].	

2. Limitations on foreign purchase of domestic shares (portfolio investment)

Trading in securities denominated in foreign currencies must be settled in foreign currencies. The foreign exchange market may be used for transferring proceeds associated with the sale of both Egyptian securities and foreign securities. Further shareholders by residents or non-residents in any bank in Egypt that exceed 10 % of the bank's capital require approval from the CBE Board of Directors. [32]

3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment

No controls are applied on liquidation of direct investment[33]. There are no restrictions on repatriation of funds by companies, or rules requiring foreign companies to hold foreign currency accounts[34].

4. Sectoral limitations to establishment of FDI, including reciprocity

The reforms initiated in 2004 have significantly opened up both the infrastructure and the financial sectors to private investors, both domestic and foreign.

With respect to infrastructure, the focus has been on transportation and telecommunications since 1998. Recent transportation initiatives have included new legislation in June 2006 allowing private sector investment in the railway sector for the first time, a memorandum of understanding involving a consortium of international firms for US$30 billion of investment in highway, railroad and seaport projects, and plans underway to more than double the capacity of Cairo International Airport through the construction of a new third terminal, however foreign investment in air transport is allowed up 49% in companies involved in regular international and domestic flights. . With respect of maritime transport: foreign investment is only allowed in the form of joint-venture companies in which foreign equity does not exceed 49 % and for supporting services foreign equity should not exceed 75%[35].

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31 Egypt-OECD Investment Policy Review (2007)

28 IMF (2006).

29 Egypt-OECD Investment Policy Reviews (2007)

30 Egypt-OECD Investment Policy Review (2007)

32. IMF (2006).

33 IMF (2006)

34 WTO (2005)

35 Egypt-OECD Investment Policy Review (2007)

With respect to telecommunications, the reform process started in 1998 with the establishment of the government-owned operator, Telecom Egypt. The new telecommunications law (Law 10) was passed in 2003. The government is in the early stages of licensing operators for international gateways and for the provision of international services in Egypt[36].

With respect to construction sector, foreign investment is only allowed in the form of joint-venture companies in which foreign equity shall not exceed 49%. In addition, foreign participation in electrical wiring and other building completion and finishing work is restricted to projects valued at over US$10 Million (Law 104 of 1992).

Reform of the financial sector has been another priority sector for the government. The reforms in this sector have been managed by the Banking Unit with the Central Bank of Egypt following with new banking law passed in 2003. The reforms have combined efforts to bring about consolidation in the banking sector with significant privatization. The financial sector is now approximately divided 50-50 between private and public ownership and approximately 70-30 domestic versus foreign ownership[37]. There are no limitations on foreign ownership. Every natural or legal person owning more than 5% of the issued capital of a bank must notify the Central Bank. No natural or legal person is allowed to own more than 10% of the issued capital of any bank, except with the approval of the CBE's Board of Directors. The Insurance Law allows up to 100% foreign ownership of Egyptian insurance companies. It also allows foreign companies to establish representative offices to advertise and promote life and non-life insurance activities. However, they may not sell their services through representative offices. There are no restrictions on foreign nationals being on the board of directors of insurance companies. All investment in the insurance subsector is subject to an economic needs test.[38]

Commercial agents and importers for resale in ***Egypt*** must be Egyptian nationals.[39] Qualifying investments in Law 8 of 1997 in Egypt which must be approved to benefit from incentives include: tourism (hotels, motels, tourist villages and transport); maritime transport; refrigerated transport of agricultural products and processed food; air transport and related services; housing; real estate development; hospitals and medical centers that offer 10 per cent of their services free of charge; water pumping stations; computer software production; and projects financed by the Social Fund for Development.

5. Acquisition of real estate for FDI purposes by foreign investors

In ***Egypt***, non-Egyptians may not sell property within five years of taking possession. Foreign individual or corporate ownership of agricultural land (defined as traditional agricultural land in the Nile valley, delta and oases) is explicitly prohibited by Law 15 of 1963[40]. Prime Ministerial Decree No. 548 for 2005 removes restrictions on foreign property ownership in a number of tourist and new urban areas, namely the Red Sea, Hurghada, Sidi Abdel-Rahman and Ras-Hekma in Matrouh Governorate. Foreign individuals are still, however, limited to ownership of a maximum of two residences in Egypt. Companies/citizens of Arab countries have customarily received national treatment in this area[41].

6. Exception to national treatment of foreign-controlled enterprises

Egypt passed a Tenders Law in 1998 which introduced greater transparency in the process of public procurement, although the law does allow price preferences for Egyptian suppliers.[42] Tenders Law 89 of 1998 amended the Tenders and Bidding Law 9 of 1983 governing foreign companies' bids on public tenders. It requires the government to consider both price and best value and to issue an explanation for a bid's refusal. An Egyptian domestic contractor is accorded priority if its bid does not exceed the lowest foreign bid by more than 15 per cent.[43] The WTO has noted that although the Tenders Law is an improvement on previous legislation, it continues to provide considerable discretion to government

[36] Egypt-OECD Investment Policy Review (2007)

[37] Egypt-OECD Investment Policy Review (2007)

[38] WTO (2005)

[39.] United States Commercial Service.

[40.] United States Commercial Service.

[41] United States Commercial Service (2007)

[42.] WTO (1999).

[43.] United States Commercial Service.

departments to limit procurement to selected suppliers.[44] But the law was amended in mid-2006, requiring contracting government entities to acknowledge price fluctuations in the first year of the contract or increases or decreases in cost, and to compensate contractors where necessary[45].
7. Performance requirements on foreign direct investors
In ***Egypt*** Investment Incentives and Guarantees Law 8 of 1997 specifies that assembly industries must meet a minimum local content requirement of 45 per cent to benefit from customs tariff reductions on imported industrial inputs. The Labour Law of 1981 requires that foreign workers (not counting managers) must account for no more than 10 per cent of the workforce and 20 per cent of the payroll. Foreign employees are further limited to 25 percent of administrative and professional employees and 30 percent of wages paid to these categories of workers[46].

44. WTO (1999).

45 United States Commercial Service (2007)

46. United States Commercial Service.

SYRIA	
1. All-sector limitations on the entry of FDI including screening and prior approval procedures	
General	*Approval and Screening Requirements*
The ***Syrian Arab Republic*** provides special facilities for the investment of funds of immigrants and of nationals of Arab states, including a seven-year tax exemption from all taxes in the tourism and agricultural industries. Projects with minimum fixed assets of LS 10 million, approved by the government, benefit from a number of exemptions from exchange and trade regulations, including exemptions from customs duties on imports of required machinery, equipment, and vehicles. Companies with at least 25% public participation are exempt from all taxes for seven years and private companies are exempt for five years; exemption periods may be extended by an additional two years if the company exports at least 50% of its output. Non-residents may open accounts in convertible foreign currencies in authorized banks for the deposit of funds abroad.[47] The Syrian Arab Republic has investment guarantee agreements with France, Germany, Switzerland, and the United States. Companies licensed under the investment law are allowed to exchange into local currency at the non-commercial rate in neighbouring countries a part of their assets, duly deposited at Syrian banks, to cover basic needs and local liabilities.[48]	All applications of foreign investors are screened by a government commission, the Supreme Investment Council.[49]
2. Limitations on foreign purchase of domestic shares (portfolio investment)	
Non-residents and foreign nationals may acquire estate only after presenting evidence that they have converted into Syrian pounds the foreign exchange equivalent of the price of the property at an authorized local bank. Proceeds are required to be held in a blocked account and repatriated gradually.[50]	
3. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment	
Syria imposes relatively heavy restrictions on the repatriation of capital and allows wide scope for official discretion. In accordance with Article 24 of Investment Law No. (10) of 4 May 1991, investors who are either Syrian expatriates, or of Arab or foreign nationality, are allowed after the elapse of 5 years from the investment of the project, to re-transfer abroad the net value of their share in the project in foreign currencies on the basis of the actual value of the project. This rule holds provided that re-transfer of funds does not exceed the capital brought in by them in foreign currencies, and according to executive instructions issued by the council in this regard. External funds may be re-transferred abroad after six months from their entry and in the same way as they were brought in, should there be any difficulty arising from circumstances beyond the control of the investor. The council, in special cases, may approve the re-transfer abroad of external funds without waiting for the full 5 years. Profits and revenues realized annually by the investment of the external funds may be transferred abroad. The Central Bank of Syria may allow the transfer abroad of the external funds invested in the project, together with the profits and revenues, in the same currencies brought in or in any other transferable currency. Arab and foreign investors can insure their investments in projects approved under this law with the Arab Establishment for Investment Insurance or with any other similar organization, provided they obtain the approval of competent authorities.[51]	
4. Sectoral limitations to establishment of FDI, including reciprocity	

47 IMF (2006).

48 IMF (2006).

49 Investment Law No.10/1991, Syrian Arab Republic.

50 IMF (2006)

51 Investment Law, No. 10/1991; Ministry of Economy and Foreign Trade.

Article 3 of the investment law No 10, 1991, indicates that the rules of this law shall be applied to economic and social development projects approved by the council in the following fields: agricultural projects, both vegetation and livestock, including various agricultural products manufacturing projects, industrial projects allowed to both private and joint sectors, transport projects and projects approved by the council to be governed by the rules of this law without mentioning explicitly that some sectors are closed to foreign direct investment.
5. Acquisition of real estate for FDI purposes by foreign investors
Article 2 of the Legislative Decree /8/ of January 27. 2007, gives investors the right to possess and rent lands and real estates required for establishing or expanding investment enterprises, even if the area exceeds the ownership ceiling defined by the effective laws and regulations, provided that they are exclusively used for the enterprise.[52] Non-residents and foreign nationals may acquire real estate only after presenting evidence that they have converted into Syrian pounds the foreign exchange equivalent of the price of the property at an authorized local bank.[53]
6. Exception to national treatment of foreign-controlled enterprises
Information not publicly available.
7. Performance requirements on foreign direct investors
There are no explicit performance requirements mentioned in the law, however to benefit from exemptions (such as those from paying duty on imports of items needed for production), privileges, facilities and guarantees under Law 10/1991, projects in ***Syria*** must be approved by a Higher Council of Investment comprising leading government ministers. Such approval is conditional upon factors that include conformity with the aims of the state development plans; maximum use of local resources; contribution to GNP and employment growth; increasing exports and "rationalising" imports; use of up-to-date machinery and technology.[54]

52 Legislative Decree /8/ of the 27th of January 2007, Article 2

53 IMF (2006)

54. Ministry of Foreign Economy and Trade, www.syrecon.org.

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