Investing Across Borders

Global Indicators of FDI Regulations

Global Forum on International Investment, OECD
Dec. 7-8, 2009
Investing Across Borders – Presentation outline

- Project overview
- IAB Indicators
- Implications
Thematic coverage: IAB currently focuses on four areas of FDI regulations

- **Investing across sectors**
  - Sector openness index for 33 sectors (0-100)

- **Starting a foreign business**
  - Procedures (number)
  - Time (days)
  - Ease of establishment index (0-100)

- **Accessing land**
  - Procedures (number)
  - Time (days)
  - Extent of land rights index (0-100)
  - Availability of land information index (0-100)

- **Arbitrating disputes**
  - Rules and process of international commercial arbitration law index (0-100)
  - Ease of enforcement of arbitration awards index (0-100)
  - Extent of investor-state arbitration index (0-100)

Associated indicator:

- **Global Investment Promotion Benchmarking (GIPB)**
  - Indicators on helping prospective foreign investors access country and sector information

Topics under consideration for possible future development (FY11 and beyond):

- Protection against expropriation
- Employment of expatriate workers
- Intellectual property rights (IPR)
- Currency convertibility and repatriation
- Performance requirements
- Others
<table>
<thead>
<tr>
<th>IAB</th>
<th>vs.</th>
<th>Key comparators</th>
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<tr>
<td>FDI-specific focus</td>
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<td>Indicators for domestically owned SMEs</td>
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<td>Objective, fact-based information (laws, regulations, administrative processes)</td>
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<td>Subjective, perception-based information (investor opinions)</td>
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<td>Survey of local lawyers and practitioners</td>
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<td>Survey of governments or in-house expert analysis</td>
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<td>Reform-oriented benchmarking indicators</td>
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<td>Comprehensive qualitative reports</td>
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<td>Annual global survey</td>
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<td>Ad hoc surveys for sub-sets of countries</td>
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Development timeline:

2007
- Initial project design through consultations with UNCTAD/OECD/academics and pilot tests in 5 countries

2008
- Improved project design through three successive pilot tests in a total of 17 countries, resulting in consultations with 300+ FDI experts
- Validated client demand for the project through presentations at:
  - OECD Global Forum on International Investment (Paris)
  - WAIPA/UNCTAD World Investment Forum (Accra)
  - APEC Committee on Trade and Investment (Singapore)
  - FIAS’ Donor Committee (Vienna)
- Endorsement by FIAS’ Supervisory Committee and Expert Consultative Groups (ECGs) formed for each IAB indicator

2009
- Data collection and analysis in 87 countries

2010
- Launch of the IAB report/database in Spring 2010
- Associated research and technical assistance initiatives, and preparations for subsequent years of operation
2009 Country Coverage (87 countries)

- **Sub-Saharan Africa (AFR – 21 countries):**
  - Angola, Burkina Faso, Cameroon, Cote d'Ivoire, Ethiopia, Ghana, Kenya, Liberia, Madagascar, Mali, Mauritius, Mozambique, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Uganda, Zambia

- **East Asia and the Pacific (EAP – 9 countries):**
  - Cambodia, China, Indonesia, Malaysia, Philippines, Papua New Guinea, Solomon Islands, Thailand, Vietnam

- **Europe and Central Asia (ECA – 22 countries):**
  - Albania, Armenia, Azerbaijan, Belarus, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, FYR Macedonia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovakia, Turkey, Ukraine

- **Latin America and the Caribbean (LAC – 14 countries):**
  - Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Peru, Venezuela

- **Middle East and North Africa (MNA – 5 countries):**
  - Egypt, Morocco, Saudi Arabia, Tunisia, Yemen

- **South Asia (SAR - 5 countries):**
  - Afghanistan, Bangladesh, India, Pakistan, Sri Lanka

- **High-income (11 countries):**
  - Austria, Canada, France, Greece, Ireland, Japan, Korea, Singapore, Spain, United Kingdom, USA
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IAB Indicator: Investing across sectors

Focus:
- Restrictions on foreign equity ownership in 33 sub-sectors
- The survey distinguishes between:
  - Opening a new company (Greenfield FDI)
  - M&A
- Survey also examines market access barriers related to licensing and market structure.

Number of measured data points per country: ~400

Sector coverage:
- **Primary sectors**: Mining, oil and gas, agriculture, forestry
- **Manufacturing**: Light manufacturing, manufacturing of food products, pharmaceutical products, publishing.
- **Services**: Telecommunications – fixed and mobile line infrastructure and service provision, electricity generation/transmission/distribution, banking, insurance, transport: rail/air/airport/port, media: TV and newspaper, construction, healthcare, retail, tourism, waste management/recycling.

Advisors:
- IFC/WB (DEC), OECD, UNCTAD, International Bar Association, American Bar Association, Georgetown University, etc.
Focus:

- Procedures for establishing a foreign-owned company up to the point of operation.
- The indicator also examines the process of government review of acquisitions in sensitive industries

**Number of measured data points per country:** ~200

**Possible sub-indicators:**

- Procedures (number)
- Time (days)
- Ease of establishment index (0-100)

**Advisors:**

- WB/IFC, Millenium Challenge Corporation, Center for International Private Enterprise, American Bar Association, George Washington University, etc.
IAB Indicator: **Accessing land**

**Focus:**
- Efficiency of leasing state-owned and private land
- Extent of land holding rights
- Quality of land information (cadastre, registries, land information systems, etc.)
- Land ownership restrictions on women and foreign individuals

**Number of measured data points per country: ~320**

**Possible sub-indicators:**
- Procedures (number)
- Time (days)
- Extent of land rights index (0-100)
- Availability of land information index (0-100)

**Advisors:**
- WB/IFC, UNCTAD, Harvard Business School, Millennium Challenge Corporation, The City University of New York, Birkbeck College, etc.
IAB Indicator: *Arbitrating disputes*

**Focus:**
- Legal rules and process for international commercial arbitration
- Ease of enforcement of domestic and foreign arbitration awards
- Framework for arbitrating with the state or a state entity

**Number of measured data points per country:** ~250

**Advisors:**
- WBG: ICSID/MIGA/IFC/WB, OECD, UNCITRAL, Georgetown University, McGill University, International Law Institute, Shearman & Sterling LLP, International Chamber of Commerce, Paul Hastings LLP, Fulbright and Jaworski LLP, Mark Kantor – attorney at law, etc.
Arbitration – 30 second crash course

- Arbitration is a dispute resolution mechanism.
- Compared to litigation, it is often believed to be (a) faster, (b) cheaper, (c) more flexible, and (d) more effective.
- IAB focuses on arbitrating disputes between two commercial private parties (e.g. foreign investor and local supplier), rather than investor-state arbitration.
- IAB includes both ad hoc arbitrations (where arbitration tribunals are appointed directly by the parties) and administered/institutional arbitrations by specialized domestic or foreign organizations.

Example of an arbitration process:

- **Include arbitration clause**: Parties agree to arbitrate any future commercial disputes by including an arbitration clause in their contract (specifying method of arbitration, mandatory and binding nature of this agreement, etc.).

- **Go through arbitration**: If a dispute arises, an arbitration tribunal (appointed by the parties or by an arbitration institution) will conduct proceedings and render a decision (i.e. a final and binding arbitration award).

- **Enforce arbitration award**: The award is enforced by a local court, much like a court judgment. Losing party compensates the winning party.
Summary of IAB results

- No country has the perfect investment regime.
- Countries within the same regions and income groups often perform differently. Regional good practices can often inspire under-performers.
- Small countries tend to have more liberal and open investment policies (to compensate for their small market size?)
- Many countries have adopted good laws and regulations, but perform poorly in terms of their implementation and enforcement.
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So do indicators and rankings make a difference? Evidence lends some support:

- Global Council on Benchmarking Progress in Society (convened by the World Economic Forum) supports increased use of comparative indicators
  - Resolutions: Governments should support use of benchmarks and the Global Council should develop quality standards for benchmarking instruments.

- Doing Business indicators stimulate reforms
  - Since 2004, over 270 reforms have been directly triggered by DB (of which 126 were in 2009)

- Business environment reforms lead to increased investment and economic growth
  - DB-tracked reforms are associated with increase in investment rates (0.5 percentage points) and GDP growth in some economies (0.44 percentage points in low income countries and 0.21% percentage points in well-governed countries)
  - Source: Eifert, Ben (2008); University of California, Berkeley. “Business environment reforms lead increased investment and economic growth.” (draft paper)
**Key stakeholders:**
IAB indicators can help advance objectives of various institutions

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<th>IAB Audience</th>
<th>IAB Uses</th>
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<td><strong>WBG client governments</strong></td>
<td>■ Stimulate greater <strong>demand for reform</strong> through cross-country benchmarking (as demonstrated by DB)</td>
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<td>■ Target, implement and publicize <strong>improvements in investment climates</strong> (i.e. modernized laws, better regulations, more efficient transactions)</td>
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<td>■ Identify and share regional and global <strong>good practices</strong> which help guide IPA policy advocacy priorities</td>
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<td><strong>WBG and its development partners</strong></td>
<td>■ <strong>Guide advisory services</strong> to client governments by identifying specific legal, regulatory and administrative impediments affecting countries’ investment competitiveness</td>
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<td>■ <strong>Analyze regional and global good practices</strong> to better target and design their advisory assistance</td>
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<td>■ <strong>Monitor and evaluate</strong> the impact of investment climate reforms</td>
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<td><strong>Foreign investors and their legal counsels and site location advisors</strong></td>
<td>■ Improve access to easy-to-use, <strong>practical indicators</strong> on the efficiency of investment processes and the quality of investment laws worldwide</td>
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