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For consideration in Session 2 of the Roundtable

REGULATORY ENVIRONMENT FOR FOREIGN DIRECT INVESTMENT

Preliminary inventory for selected African countries

Draft overview study prepared by the OECD Secretariat. The document is intended as a background to the discussions about individual countries' regulatory environment for FDI. It could also serve as an evolving working tool future discussion among governments as increasing the level of openness and transparency of regulations towards international investment is considered in NEPAD countries. It attempts to register available information from individual countries and from the IMF, WB, UNCTAD and other established sources as well as to signal knowledge gaps that future dialogue may fill.

1. African countries have become more accommodating toward foreign direct investment (FDI) over the last 10-15 years, as evidenced *inter alia* by changes in their regulatory regimes. The reorientation was set in the context of a more general shift in attitudes toward the private sector, and it reflects an increasing realisation (also found in the Monterrey Consensus) that private international capital flows are likely to be a key source of development finance in the future. The changing stance toward FDI has also given rise to a proliferation of investment promotion agencies, special economic zones and other targeted mechanisms by which African countries aspire to attract foreign investors.

2. However, considerable national differences persist and important hurdles still need to be overcome in most countries. Also, while it is fair to say that in terms of overall statutory FDI regulation African countries are on average not more restrictive than other developing nations, some of the remaining obstacles are both severe and particular to the continent. Prominently among these figures *land ownership*, where most African countries continue to apply restrictions that – whether discriminatory or of a more general nature – act as an important deterrent to foreign investors. Another remaining obstacle is the prevalence of *sectoral restrictions* with the purpose of protecting small businesses and artisan production, which likewise have as an unintended consequence to hold back the creation of a market economy and foreign-local corporate linkages in large segments of African societies.

3. Going beyond the statutory rules, investors in Africa are acutely concerned with the *transparency* of regulation. First, as demonstrated by the "fact finding" exercise below, it can be difficult to find reliable, detailed information about the regulatory regimes of some countries. Second, a number of countries appear to apply a high degree of administrative and/or political discretion to the regulatory process (e.g. the granting of investment licences based on undisclosed or changing criteria) rather than rely on largely rules-based systems. Third, when sovereign governments exert their right to regulate by changing key pieces of legislation, they often do so without engaging in the prior consultations with concerned parties that are commonly considered as an integral part of political and regulatory transparency.

4. Finally, concerns about the *consistency of implementation* are high on the list of investors' concerns about regulation. The issue of regulatory discretion raises important integrity issues in addition to transparency, and there is anecdotal evidence from many countries of even "hard" regulation being applied selectively. Corruption is often cited as a major concern in this respect. So is excessive red tape and slow administrative procedures, which – as for instance documented by the World Bank's Investment Climate Assessments – encourage investors to seek recourse to informal mechanisms.

I. Context of the study

5. The OECD-Africa Investment Roundtable held in the context of the Global Forum on International Investment in Johannesburg, 2003 called for the launch of an Africa Investment Initiative to help establish a conductive investment environment across the continent. A joint statement issued by NEPAD and OECD following this meeting [http://www.oecd.org/dataoecd/2/37/20686317.pdf] identified areas of co-operation, and suggested that this co-operation should take as starting point the formulation of "key policy benchmarks" that could lead to regional roundtables and, as appropriate, policy reforms.

6. In preparation of the joint OECD/NEPAD Investment Policy Roundtable to be held on 25-26 May 2005 in Entebbe, the present paper highlights regulations and practices that discourage FDI in some Sub-Saharan African countries. The countries reviewed in this preliminary version are: Botswana, Ethiopia, Ghana, Kenya, Mauritius, Mozambique, Nigeria, Senegal, South Africa, Tanzania and Uganda. A separate paper developed in the context of OECD's co-operation with Middle East and North African countries provides similar information for North African members of NEPAD [http://www.oecd.org/dataoecd/30/28/32298493.pdf].

7. The paper is entirely based on information that is already in the public domain in the official language (English and French) of the OECD. The information was mostly obtained from IMF,[1] UNCTAD,[2] the World Bank Group,[3] US Department of Commerce,[4] Direction des Relations Economiques Extérieures française (DREE), the International Chamber of Commerce and official government web sites from the countries under review. In other words, it is unlikely that policy makers will find information in the paper that they do not have available in some form elsewhere (and multinational enterprises often acquire similar information via international consultancy companies).

8. The paper serves two distinctive purposes: First, it is intended to act as a tool for dynamic policy discussion by allowing a simple benchmarking of regulatory regimes across the region. Second, it draws attention to the central issue of investment policy transparency by highlighting information that is readily available in the public domain while at the same time pointing to information gaps.

9. The intention is to progress as follows:

- prior to the OECD/NEPAD Investment Policy Roundtable countries are invited to check the accuracy and completeness of the information provided in this preliminary version and communicate their remarks to the OECD and NEPAD Secretariats;
- during the Roundtable, individual country experiences will be discussed on the basis of the paper. This will give the countries concerned, as well as third countries and members of the investment community, the opportunity to provide their inputs;
- following the Roundtable the paper will be broadened to include a larger number of African countries. Interested parties are invited to volunteer;
- the paper will be tabled a second time and finalised at a later event in the context of the Africa Investment Initiative.

II. Overview of regulatory practices toward FDI

10. Tables 1 and 2 below (sometimes jointly referred to as “the matrix”) summarises information collected by the OECD Secretariat on 11 African countries’ regulatory and other practices towards foreign direct investors. They provide an inventory of available public information in the two official languages of the OECD (French and English) which evaluates the various national investment climates against the benchmarks set by the OECD Codes of Liberalisation of Capital Movements and Current Invisible Operations, and the National Treatment instrument (www.oecd.org/daf/investment/instruments).

11. The two tables that make up the matrix address different aspects of discriminatory treatment of foreign direct investors. Table 1 focuses on actual restrictions to FDI, whether in the form of general or specific limits to access, or post-entry limitations on foreign-invested companies’ commercial operations. Table 2 describes other measures, including those that aim at attracting investors by means of subsidisation, and measures to enhance regulatory transparency. Some cells in the matrix are marked “ND”

1. Annual report on exchange arrangements and exchange restrictions, 2004.

2. Country investment policy reviews for Botswana, Ethiopia, Ghana, Mauritius, Tanzania and Uganda.

3. World Bank Foreign Investment Advisory Services, Pilot Investment Climate Assessment for Mozambique and Nigeria.

4. Country Commercial Guides for Botswana, Ethiopia, Ghana, Kenya, Mauritius, Mozambique, Nigeria, Senegal, South Africa, Tanzania and Uganda.

(no data) because the relevant information was not found in the available sources. Where this is the case, authorities in the respective countries may wish to consider making this information more easily available to the general public.

12. A fuller inventory providing detailed information in support of the matrix is provided in Annex 1. The inventory is intrinsically a work in progress that will be, first further completed and/or improved according to governments' feedbacks, and second updated following regulatory changes in the region. Once completed with accurate and up to date information, the inventory should contribute to measure progress on FDI policy transparency and openness in the region, and initiate a political dialogue among Sub-Saharan African countries on best practices to attract FDI and maximise its economic benefits.

i) Restrictions on FDI

a) General restrictions on entry

13. According to the information reviewed for the present paper, African countries have generally simplified their procedures for **entry of FDI** (participation in existing firms and greenfield investment) since the early 1990s. FDI is no longer routinely screened in most countries, and some now apply policies of guaranteeing a transparent registration of projects meeting proper criteria. However, many countries still impose general restrictions on entry, either by prohibiting foreign investment below a certain size, trough minimum capital investment or by requesting prior approval or licensing from which domestic investors are exempted (Table 1).

14. Previous restrictions on **foreign purchase of domestic shares** (in capital markets) have been relaxed in several countries. Without prejudice to restrictions on FDI laws, non-residents are now in principle allowed to own up to 100 per cent of domestic enterprises in all the countries under review, except in Ghana, Kenya and Mauritius where foreign ownership cannot exceed a fixed threshold.

15. Accepting the obligations of the **Article VIII** of the IMF's Article of Agreement compels countries to remove restrictions on payments and transfers for international current transactions, and to adopt multilateral payment system free of restrictions and discriminations.[5] Ethiopia, Nigeria and Mozambique have not yet accepted Article VIII. They continue to avail themselves of the transitional agreements of Article XIV, which allows countries to provisionally keep the restrictions they were imposing before joining the IMF.[6]

16. Most countries have put rules in place guaranteeing investors an unrestricted **remittance** of dividends, profits and liquidation proceeds, on condition that payment of taxes and other liabilities has been made according to local regulations.[7] The exceptions include Ethiopia[8] and Mozambique[9] which request prior authorisation for transfer of funds, and South Africa which reportedly imposes requirements in the case where a South African company is fully owned by non-residents.[10]

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5. IMF Press Release No. 03/122 July 23, 2003.

6. IMF Annual report on exchange arrangements and exchange restrictions, 2004.

7. However, a regular complaint from foreign-owned enterprises is that the latter condition introduces an element of regulatory discretion that in some cases renders the stated commitment to unrestricted remittance irrelevant.

8. Ethiopia Business Development and Service Network (EBDSN), www.bds-ethiopia.net.

9. US Department of Commerce.

10. US Department of Commerce.

Table 1. Regulatory treatment of FDI in African countries: restrictions on investment

	Botswana	Ethiopia	Ghana	Kenya	Mauritius	Mozambique	Nigeria	Senegal	South Africa	Tanzania	Uganda
a) General restrictions on entry											
1. Entry of FDI	X	X	X	X	X	X			X	X	X
2. Foreign purchase of shares			X	X	X						
3. IMF Article VIII status		No				No	No				
4. Liquidation proceeds transfer abroad		X				X			X		
b) Specific restrictions on entry											
5. Sectoral limitations to FDI											
a. financial services		X	X	X	X				X		X
b. other services	X	X	X	X	X	X		X		X	X
c. primary sectors	X	X	X		X		X			X	X
d. manufacturing	X	X	ND				X				
6. Acquisition of real estate for FDI purposes	X	X	X	X	X	X	X			X	X
c) Post-entry restrictions											
7. Exceptions to national treatment of established foreign controlled enterprises											
a. access to local finance									X	X	ND
b. access to subsidies	X			ND		X				ND	X
c. access to privatisation	X	X	X	ND		ND			ND		ND
d. access to public procurement		ND		X		ND			X		ND
e. taxation				X		X			X		
f. discriminatory licensing in public utilities	X	ND	ND	ND	ND	ND		ND	ND	ND	ND
8. Other discriminatory practices											
a. nationality-based restrictions on boards	ND		ND	ND	ND	X		ND		ND	ND
b. discriminatory private practices	ND	ND	ND	ND	ND	ND	ND		ND		X
c. entry of key personnel	ND	X	X	X	X	X	X	X	X	X	X
9. Performance requirements	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes

Note: X = restriction; ND = no data; " " = no restriction.

b) Specific restrictions on entry

17. All countries under review have retained restrictive practices toward some **specific categories** of FDI. They discourage foreign investment in certain sectors either to stimulate local entrepreneurship, to protect sectors deemed to be of strategic interest, or to maintain the monopoly position of state enterprises. As a general rule, the majority of countries tend to discriminate against foreign investors in activities judged to be particularly suited to national or local entrepreneurs; such practices are found in sectors like small-scale manufacturing and mining, some trading activities and proximity services.

18. Foreign participation in **financial services** is restricted and/or subject to more burdensome licensing requirements than applied to domestic investors in six countries. The other countries do not report discriminatory regulation against foreign entrepreneurs wishing to invest in financial activities. More generally, progress has been made in transferring financial services from the public to the private domain. Ethiopia is the only country which still exclusively reserves the provision of financial services for the government and for Ethiopian nationals.

19. To boost local entrepreneurship and self employment, most governments ban or restrict foreign participations in certain kinds of **other services,** especially the ones that do not call for specialised expertise. Examples include barber shops and beauty salons, retail and wholesale trading, radio-television and telecommunication, transportation, bars and restaurants. In the **primary sector** foreign entrepreneurs are in most cases not allowed to invest in small scale mining, in construction companies and in some agricultural activities. Furthermore, regulations also deny national treatment to non-domestic entrepreneurs wishing to invest in the **manufacturing** sector in many countries. One prime example, mirrored in many OECD countries' legislation, is military equipment, but some of the more Africa-specific exceptions include the production of commodities goods such as bread, school furniture and bricks.

20. Most countries reviewed, except South Africa and Senegal, deny national treatment to foreign investors in regard to **real estate purchases**. In these countries (except Mauritius that requires foreign investors to obtain ministerial authorisation – which may or may not be a serious obstacle) land is either officially owned by the state, or has various kinds of ownership status, and its purchase is restricted to nationals. Foreign investors can acquire the right to use land only through leasehold contracts, generally renewable, but not exceeding 99 years in total. In addition, the extensive network of government agencies and traditional communities involved in granting land rights and, in some countries, problems with identifying the true owners of a piece of land, raise the costs, risks and administrative burden on foreign investors.

c) Post entry-restrictions

21. The countries reviewed report relatively few statutory practices favouring domestic companies over existing foreign owned enterprises. On the contrary, it appears from the information reviewed (see also Annex 1) that foreign businesses may enjoy in practice easier access to **local financing** because of their better collateral capabilities, and may obtain official support for projects deemed to be critical for the national development strategy. South Africa is apparently the only country still implementing regulations restricting domestic credit to non-residents, and practices limiting foreigners' access to local funds have also been identified in Tanzania.

22. On the issue of **subsidies**, countries in the sample mostly provide investment incentives in the form of tax reductions and do not release information on regulations and practices discriminating against foreign investors. Incentives are granted to encourage investment in particular sectors (e.g. export activities are generally exempted from paying duty) or geographic locations. However, some of them (e.g. Botswana and Mozambique) do not offer incentives to small foreign investors and others do not grant incentives to foreigners investing in activities deemed accessible to domestic entrepreneurs (e.g. Uganda).

23. None of the countries under review has signed WTO's Government Procurement Agreement.[11] However, concrete information documenting discriminatory practices against foreign-owned enterprises in tenders for **public procurement** is available for only two of them, namely Kenya and South Africa.

24. With the exception of Kenya, Mozambique and South Africa where domestic-owned companies pay a lower corporate income tax than foreign-owned enterprises, national **tax legislation** does apparently not discriminate against foreign investors in the countries in the sample.

25. Information about **nationally-based restrictions on boards** is scarce in the public domain, and such information as is available is commonly assumed to provide a partial picture. Ethiopia and Nigeria declare that they have no discriminatory practices on their books and, on available evidence, South Africa

11. See www.wto.org.

does not impose any restriction on board composition. On the other hand, Mozambique, national legislation stipulates some sorts of limitation on board participation by foreign individuals.

26. Immigration and other regulation make **the entry of key personnel** difficult throughout the countries under review. The process of getting work permits for foreign employees is both expensive and time-consuming. On top of the immigration regulation, most countries also apply strict rules to the employment of expatriates, and generally allow foreign employees only in proportion to the capital invested. Conversely, some countries (e.g. Ethiopia) encourage immigration of persons with special skills to compensate for a lack of workforce in certain sectors.

27. Seven of the countries under review are recorded as imposing **performance requirements,** as conventionally defined, on foreign-owned enterprises. But, information collected suggests that some of the other countries also implement practices "*encouraging*" various forms of transfers from multinational companies, and/or utilisation of domestic inputs in the production process.

ii) Regulatory practices other than restrictions

d) Practices encouraging FDI

28. The degree to which countries offer **incentives to attract FDI** in addition to what is available to domestic enterprises is mostly hard to establish on the basis of publicly available information. It is not clear from the various sources consulted whether the information is not available or purposely not reported. Five countries do disseminate information about specific incentives to foreign enterprises (Table 2).

29. To increase foreign entrepreneurs' confidence on their commitment to protect their investments all countries in the sample have signed **bilateral investment treaties** (BIT) with a number of OECD member countries. BITs with non-OECD members have also proliferated, mostly between African countries and some of the more advanced economies (and most active outward investors) in the developing world. However, except for Mauritius and Ghana, the countries under review have not been very active in signing bilateral investment treaties with other Sub-Saharan African countries.

30. In addition to the BITs, investors place great emphasis on the presence of **bilateral tax treaties** (BTTs), which provide them with greater certainty about the fiscal implications of cross-border transactions. Apart from South Africa, selected countries have relatively few BTTs with OECD member countries. Mauritius stands out as by far the most active player regarding BTTs with non-OECD countries. Most of its BTTs are signed with other African countries and are formally motivated by a desire to seek greater regional integration. (Readers are, however, reminded that the information provided in this survey exclusively comes from open sources. Certain other sources, such as the International Bureau of Fiscal Documentation, report more BTTs[12] then can be found in the public domain.)

e) Measures to enhance investment policy transparency

31. This subsection is largely based on the information divulged by national investment policy authorities, including investment promotion agencies, on their websites. It appears that the countries under review, with a couple of exception, could do more to diffuse relevant information to foreign investors. On issues as vital to investors as national practices for **notification prior to regulatory changes** and **"silent and consent" authorisation** no information has been found for the large majority of countries. The main

12. International Bureau of Fiscal Documentation, Tax Treaties Database, 2004.

exceptions are Mozambique, which has a formal silent-and-consent mechanism in place, and Uganda, which is in the process of introducing a mechanism for consultations prior to regulatory change.[13]

Table 2. Regulatory practices toward FDI other than restrictions

	Botswana	Ethiopia	Ghana	Kenya	Mauritius	Mozambique	Nigeria	Senegal	South Africa	Tanzania	Uganda
d) Practices encouraging FDI											
10. FDI-targeted tax and other incentives	Yes	Yes	Yes	ND	No	ND	ND	ND	Yes	Yes	ND
11. Number of bilateral investment treaties (of which with OECD members)	10 (4)	20 (8)	25 (7)	5 (4)	33 (8)	12 (5)	13 (8)	18 (8)	31 (18)	16 (10)	16 (7)
12. Number of bilateral tax treaties (of which with OECD members)	4 (2)	2 (1)	3 (3)	10 (8)	31 (8)	2 (1)	12 (9)	10 (4)	41 (23)	9 (6)	7 (5)
e) Enhancing policy transparency											
13. National authorities											
a. publication of regulations	Yes	Yes	Yes	ND	Yes	ND	Yes	Yes	Yes	No	ND
b. notification prior to regulatory changes	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
c. negative lists of restricted sectors	No	Yes	No	No	No	No	Yes	-*	-*	No	No
d. "silent and consent" authorisation	ND	ND	ND	ND	ND	Yes	ND	ND	-**	ND	ND
f) Other measures											
14. Measures at sub-national level	ND	ND	Yes	ND	ND	Yes	Yes	Yes	ND	ND	ND

Note: Yes = practice is applied; "-" = not relevant; ND = no data.
* Does not apply as there are no sectoral restrictions.
** Does not apply as no authorisation is required.

32. Practices for **publication of regulations** vary widely among the sampled countries. A majority of the countries under review publish some material, but few official web sites provide full texts of laws and regulations and the documents are generally difficult to access because they tend to be spread among several web sites and lost between unrelated information. Based on the OECD Secretariat's review of websites, most of them seem to give preference to showcasing success stories and advertising future projects rather than to providing concrete documentation and data for investors.

33. Ethiopia and Nigeria are the only countries to publish an exhaustive **list of sectors in which foreign investment is restricted**. For the other countries no formal lists appear to be in the public domain – though for the purpose of compiling Table 1 the OECD Secretariat has identified sectors in which FDI is restricted based on various other sources of information.

f) Other measures

34. At the **sub-national level**, Ghana, Mozambique, Nigeria and Senegal provide various kinds of incentives, mainly through tax rebates, to investors establishing in rural areas or in less developed part of the country. However, the degree to which these reflect regional policy-making as opposed to the priorities of national priorities is not always clear.

13. UNCTAD – Uganda investment policy review, 2000.

iii) Restrictions in the service sectors: Evidence from GATS schedules

35. Another way of identifying practices and regulations that discourage FDI inflows to the service sectors is to examine the WTO General Agreement on Trade in Services (GATS) schedule of horizontal commitments related to mode 3 provision of services[14] (Table 3). For comparison, a table comparing the schedules of commitments of Sub-Saharan African countries with other regions of the world is provided in Annex 2.

36. The information in Table 3 is not directly comparable with the findings of Table 1. It is limited to the service sector, and only six of the countries under review are signatories to GATS. Moreover, in GATS countries have an incentive to announce commitments that are less permissive than their actual regulatory practices in order to “keep their options open”.

37. At first glance the schedules of commitments contain far less restrictions than the part of the inventory matrix shown in Table 1. For instance, only one of the six countries under review that are members of GATS has reported restrictions on land ownership for investors, whilst the in-depth inventory of their regulations demonstrated that nearly all countries impose some form of restrictions. Conversely, some countries have provisions in their schedules of commitments that are not reflected in actual regulatory restrictions according to the various sources of information the OECD Secretariat has consulted.

Table 3. Horizontal limits to Market Access (MA) and National Treatment (NT) based on GATS schedules of commitments related to mode 3 delivery of services of selected countries

		Botswana		Ghana		Kenya		Mauritius		Nigeria		South Africa	
	Type of measure	Limit on MA	Limit on NT	Limit on MA	Limit on NT	Limit on MA	Limit on NT	Limit on MA	Limit on NT	Limit on MA	Limit on NT	Limit on MA	Limit on NT
1	Authorisation/notification requirements	X				X		X	X				
2	Equity requirements			X									
3	Restrictions on land ownership							X	X				
4	Debt-equity requirements												X
5	Restrictions on remittances		X					X	X				
6	Subsidies												
7	Local employment requirements	X		X		X		X	X	X	X	X	X
8	Foreign exchange requirements												
9	Sectoral limits												
10	Technology transfer requirements												
11	Local content requirements												
12	Unbound												

14. Mode 3 is the supply of a service through the commercial presence of the foreign supplier in the territory of another WTO member.

38. It appears from Table 3 that the most "restrictive" country by far is Mauritius, which imposes limits on both market access and national treatment in the areas of authorisation, land ownership restrictions, remittances (a provision not reflected in actual restrictions, according to Table 1) and local employment.

39. The most common restriction placed on investors according to this measure is the imposition of local employment requirements. Such provisions are in place in all six countries – and in the case of Mauritius, Nigeria and South Africa in the form of an exception from national treatment as well as market access. Apart from this, the most common form of restriction in the service sector is the imposition of authorisation and notification requirements, a fact also reflected in the economy-wide entry restrictions recorded in Table 1.

ANNEX 1

INDIVIDUAL COUNTRY DETAILS

BOTSWANA

1. The government of Botswana has as its stated objective to encourage direct investment, principally by means of macroeconomic stability and non-discrimination. According to a recent investment policy review, both foreign and domestic investors enjoy high standards of treatment and protection.[15] Regulations were found to be generally transparent and consistently implemented, and the review noted that the government effectively encourages competition. Also, between 1999 and 2003 Transparency International consistently ranked Botswana as the African country with the lowest perception of corruption, and among the top 25% of countries worldwide.[16]

2. FDI entry is encouraged and facilitated by the Botswana Export Development and Investment Authority (BEDIA). BEDIA assists foreign as well as domestic investors with purchasing or leasing property; obtaining work and residence permits; and identifying and obtaining all other necessary licences. To diversify the economy away from diamonds, Botswana encourages export-oriented manufacturing industries, tourism and financial services.

3. The main information that can be derived from public sources regarding Botswana's performance in the six areas of investment policy under survey is as follows:

a) General limitations to entry of FDI

1. *Limitation to entry of FDI.* There is no screening for approval of foreign direct investment. Foreigners are allowed to invest in Botswana provided their investments are in line with the criteria set out in the Foreign Investment Code. The Investment Code requires certain minimum amounts of investment by foreign shareholders. If the investment is wholly owned by non-citizens, investors must bring a minimum of USD 100,000. For joint ventures with citizens of Botswana the minimum is USD 75,000 and for enterprises with more than 2 shareholders an additional USD 50,000 is required per extra shareholder

2. *Limitations on foreign purchases of shares*. There are no recorded limitations on foreign purchase of domestic shares on record in Botswana.

3. *IMF Articles VIII status*. Botswana has accepted the obligations of Article VIII of the IMF's Articles of Agreement.[17]

4. *Transfer of profits and the proceeds of liquidation*. There are no restrictions on converting or transferring funds associated with an investment into a freely convertible currency and at

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15. UNCTAD – Investment Policy Review, 2003.

16. www.transparency.org

17. IMF, 2004.

official clearing rate. The liquidation of investments must be reported only for statistical purposes.[18]

b) Specific restrictions on entry

5. *Sectoral limitations to FDI*. While there is no general discrimination against foreign investment in Botswana, to "encourage local empowerment" the government bans FDI from selected business activities, mostly in sectors dominated by small and medium-sized enterprises. At present the licensing requirement preclude foreign participation in the following activities.[19]

   a. <u>Financial services.</u> Foreigners wishing to invest in banks and insurance must obtain a specific licence for prudential purposes. Beyond this, no restrictions on foreign as opposed to domestic investors are on record.

   b. <u>Other services.</u> Foreign investment is prohibited in: hawking and vending, butchery and fresh produce general trading, petrol filling stations, bottle stores (liquor stores), bars other than those related to hotel establishments, chibuku (traditional beer) bars, village type restaurant take-aways including restaurants with licences to sell alcoholic beverages, supermarkets (excluding chain stores and franchise operations), small shops such as clothing boutiques and shoe shops and miscellaneous, mail carriage, purchase of furniture by local authorities and government, procurement of uniforms, to government, local authorities and parastatals.[20]

   c. <u>Primary sectors.</u> Entry to small-scale mining is limited to Botswanan citizens. There are no formal restrictions on larger scale mining projects, commonly thought to be the one that attract foreign investors.[21]

   d. <u>Manufacturing.</u> The law prohibits foreign participation in the manufacturing of school furniture, uniforms, protective clothing, sorghum milling, cement and bricks, and baking of bread.[22]

6. *Acquisition of real estate by foreigners for FDI purposes*. There are 3 categories of land in Botswana: tribal land, state land and freehold land. Freehold land can be used for business purposes. Tribal and state lands can be used for business purposes through leases (and it can in some cases be converted to freehold land). Tribal land is usually allocated for short-term leases or permits (less than 10 years) and may not be used as collateral for a loan. State land can be converted to long-term leasehold or freehold title that can be registered and pledged. No agricultural land can be transferred to non-citizens of Botswana, or companies that are majority foreign-owned, without ministerial approval. Ministerial approval is also required for foreign investors, but not national investors, to enter into arrangements to put tribal land to commercial use.[23]

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18. IMF, 2004.

19. UNCTAD – Investment Policy Review, 2003.

20. US Department of Commerce.

21. UNCTAD – Investment Policy Review, 2003.

22. US Department of Commerce.

23. UNCTAD – Investment Policy Review, 2003.

c) Post-entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises*. Little statutory discrimination against foreign investors can, based on available information, be detected.

   a. <u>Access to local finance.</u> Banks may lend to companies owned or controlled by non-residents without specific approval from the authorities.[24]

   b. <u>Access to subsidies.</u> Foreign investors have equal access to investment incentives for medium- and large-scale projects in most economic sectors, and in export-oriented industries. However, they do not have access to a class of incentives aimed at citizen-owned contracting firms and small enterprises, defined as those involving investments of less than USD 15,000.[25]

   c. <u>Access to privatisation.</u> Foreign participation in privatisation process is welcomed. However, the Ministry of Finance and Development Planning has stated that "restrictions may need to be imposed on foreign participation in certain companies for strategic or other reason that will be considered on a case-by-case basis".[26]

   d. <u>Access to public procurement.</u> With the local procurement policy (LPP) the Government of Botswana aims to reserve up to 30 per cent of government supplies procurement to manufacturing firms based in Botswana. To participate to LPP, firms must fulfil set criteria but both foreign and domestic owned firms operating in Botswana are equally eligible.[27]

   e. <u>Taxation.</u> Legislation governing taxation is contained in the Income Tax (Amendment) Act 1995. There is no tax discrimination against foreign-owned enterprises.[28]

   f. <u>Discriminatory licensing in public utilities.</u> Small government building projects, up to USD 25 000, maintenance and minor building works of government properties, road contracts and railway maintenance – fencing, reserve and draining, culvert construction, transport and plant hire, clearing and scrubbing bush, road marking, carting gravel, bridge painting, stock piling of material – are reserved for nationals of Botswana.[29]

8. *Other discriminatory practices.* Judged by available material, Botswana has no policies that discriminate against foreign employees. However, obtaining work and residence permits can in practice be complicated by concerns about excessive immigration from neighbouring countries.[30]

9. *Performance requirements.* Foreign-owned companies are required to make an effort to employ or promote nationals of Botswana to jobs at the middle and senior management

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24. US Department of Commerce.
25. US Department of Commerce.
26. US Department of Commerce.
27. US Department of Commerce.
28. Government web site www.gov.bw.
29. US Department of Commerce.
30. UNCTAD – Investment Policy Review, 2003.

level.[31] The Investment Code further stipulates that foreigners investing in trading, tourist and manufacturing enterprise must commit themselves to employ at least 10 nationals.[32]

d) Practices encouraging FDI

10. *FDI–targeted tax and other incentives.* The International Financial Service Centre (IFSC) guarantees foreign direct investors a 15 per cent corporate tax rate until June 2020. Other benefits include exemption from withholding taxes, and provision of credits for withholding taxes levied in foreign jurisdictions.[33]

11. *Bilateral investment treaties*.[34]

    a. With OECD countries. Botswana has signed bilateral investment treaties with Switzerland (in 1998), Germany (in 2000) and. Belgium / Luxembourg (in 2003).

    b. With non-OECD countries. Botswana has signed bilateral investment treaties with Malaysia (in 1997), China (in 2000), Egypt (in 2003), Ghana (in 2003), Mauritius (in 2003) and Zimbabwe (in 2003).

12. *Bilateral tax treaties*. List of DTTs signed as of January 1st 2003[35]

    a. With OECD countries. The Government of Botswana signed Double Taxation agreements with the United Kingdom (in 1977) and Sweden (in 1992).

    b. With non-OECD countries. The Government of Botswana signed Double Taxation agreements with South Africa (in 1977 and 2003) and Mauritius (in 1995).

e) Measures to enhance investment policy transparency

13. *National authorities*.

    a. Publication of regulation. Botswana government web sites (www.gov.bw and www.discover-botswana.com) provide information on Botswana's various ministries and public bodies, as well as specific information aimed at potential foreign investors. However, concrete regulatory information does not appear to be available online.

    b. Notification prior to regulatory changes. No data.

    c. Negative list of restricted sectors. No data.

    d. "Silent and consent" authorisation. No data.

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31. Botswanan Investor's guide.

32. US Department of Commerce.

33. Botswana official website.

34. UNCTAD, various sources.

35. UNCATD, http://stats.unctad.org/fdi/treaties/dtts/Botswana.htm

f) Other measures

14. *Measures at sub-national level*. No data.

ETHIOPIA

4. Since 1995 Ethiopia has gradually shifted from having a state-controlled economy towards an open and market-oriented one. Successive amendments to the national Investment Code have reduced the number of industries that are closed to foreign investors. FDI is now, in principle, welcome in most sectors. Activities still closed to foreign participation include a number of services, small-scale manufacturing and sectors considered to be of national interest (the latter are reserved for the state).[36] To facilitate private investment, both domestic and foreign, and to provide a one-stop-shop for investors, the government established the Ethiopian Investment Authority (EIA) renamed Ethiopian Investment Commission (EIC) in 2003.

5. The main information that can be derived from public sources regarding Ethiopia's performance in the six areas of investment policy under survey is as follows:

a) General limitations to entry of FDI

1. *Limitations to entry of FDI.* To invest in Ethiopia foreign companies are required to obtain prior approval from EIC,[37] which aims to process requests for approval within 10 working days of submission of the complete set of documents.[38] The Ethiopian investment regime identifies three types of investors, namely domestic investors,[39] wholly foreign-owned enterprises and joint ventures. The legal regime makes a distinction among the different classes with regard to areas of investment and capital requirements for licensing. According to the Investment Code a minimum investment is required, in cash or in kind, from foreign investors who do not commit to reinvest their profit or dividend, or export at least 75% of their production. A wholly foreign-owned company is requested to allocate an initial capital of to USD 100,000 except in consultancy services and publishing, where USD 50,000 is required.[40] For joint venture with domestic entrepreneurs the minimum entry capital is USD 60,000 and USD 25,000 respectively. A further requirement stipulates that Ethiopian partners must hold more than 27% of the equity in a joint-venture.

2. *Limitations on foreign purchases of shares*. Foreign investors may, as a general rule, hold up to 100 per cent of the shares in a business venture.[41]

3. *IMF Articles VIII status.* Ethiopia has not accepted the obligations of Article VIII of the IMF's Articles of Agreement. It continues to avail itself of the transitional arrangements of Article XIV.[42]

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36. UNCTAD, Investment and Innovation Policy Review Ethiopia, 2002.

37. IMF, 2004.

38. The World Bank, Foreign Investment Advisory Services, www.fias.net/investment_climate.html, indicates that a foreign investor will have to wait 32 days on average to register an investment in Ethiopia. In "An Investment Guide to Ethiopia" UNCTAD reports an actual average time of 3 hours 51 minutes for investment licence issuance, and 2h44 for principal business registration for the months November 2003 to January 2004. See UNCTAD-ICC An Investment Guides to Ethiopia, 2004.

39. Domestic private investor category includes foreign nationals who are permanent residents in Ethiopia.

40. Ethiopia business development service network (EBDSN), www.bds-ethiopia.net

41. IMF, 2004.

42. IMF, 2004.

4. *Transfer of profits and the proceeds of liquidation* Capital repatriation and remittance of dividends and interest are guaranteed to foreign investors in Ethiopia.[43]The disposal of assets by liquidating enterprises requires the prior consent of the Inland Revenue Authority. Proceeds from the sale or liquidation of an enterprise are exempt from the capital gains tax and may be remitted abroad in an international convertible currency.[44]

b) Specific restriction on entry

5. *Sectoral limitations to FDI.* In addition to the sectors exclusively reserved for the Government – postal services, except courier services; transmission and supply of electricity; and large domestic air transport – Ethiopia also restricts parts of its economy exclusively to its domestic investors, either nationals or permanent residents.

   a. Financial services. Commercial banking and insurance companies remain exclusively reserved for Ethiopian nationals.[45]

   b. Other services. Sectors reserved for domestic investors include: retail trade and product brokerage; wholesale trade and distribution (excluding fuel and the domestic sale of locally produced goods from FDI plants); importing; exports of raw coffee, oil seeds, pulses, hides and skins, and live sheep, goats and cattle; hotels other than star designated; motels, tearooms, coffee shops, bars, night clubs and restaurants excluding international and specialised restaurants; tour and travel operators; car-hire, taxis and commercial road and water transport; barber and beauty shops; goldsmiths; and non-export tailoring.[46]

   In addition, radio and television broadcasting; small domestic air transport services; and forwarding and shipping agency services, are reserved for national investors.

   c. Primary sectors. Sectors reserved for domestic investors include saw milling and timber making products.[47]

   d. Manufacturing. Sectors reserved for domestic investors include certain kinds of construction and building maintenance companies; tanning hides and skins; grain mills; batteries and the printing sector.[48]

6. *Acquisition of real estate by foreigners for FDI purposes.* The state is the sole owner of land in Ethiopia. There is no right of private ownership; individuals can only acquire the use of it. Peasants are the only people who are entitled for indefinite use of a plot of land, limited to 10 hectares per household, to transfer it to their heirs, and to lease it to third party. Foreign firms may hold land through lease contracts, for a maximum period of 100 years, provided they have received an investment approval and acquired the necessary legal status.[49]

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43. Ethiopia business development service network (EBDSN) at http://www.bds-ethiopia.net

44. UNCTAD, Investment and Innovation Policy Review Ethiopia, 2002.

45. Ethiopia business development service network (EBDSN) at http://www.bds-ethiopia.net

46. Ethiopia business development service network (EBDSN) at http://www.bds-ethiopia.net

47. Ethiopia business development service network (EBDSN) at http://www.bds-ethiopia.net

48. Ethiopia business development service network (EBDSN) at http://www.bds-ethiopia.net

49. UNCTAD-ICC An Investment Guides to Ethiopia, 2004.

c) *Post entry restrictions*

7. *Exceptions to national treatment of established foreign controlled enterprises*. No policies that generally discriminate against foreign-invested companies have been recorded. However, in the privatisation process some tenders are not open to foreign participation.[50]

8. *Other discriminatory practices*.

   a. Nationality-based regulatory restrictions on company board composition. Ethiopia does not restrict employment of non-citizens in key management posts, including those of general manager, financial controller, technical manager, and marketing manager.[51]

   b. Discriminatory private practices permitted under corporate legislation. No data.

   c. Entry of key personnel: granting visas to business people in a transparent and efficient manner. Companies may hire expatriates staff to non-management positions subject to EIC approval. A schedule of replacement by Ethiopians and a training programme for such replacement must, nevertheless, be produced.[52]

9. *Performance requirements.* Ethiopia does not formally impose performance requirements on foreign investors. However, administrative practices reportedly encourage the use of domestic inputs as much as possible.[53]

d) *Practices encouraging FDI*

10. *FDI-targeted tax and other incentives.* These incentives include "100 per cent exemption from customs duties and import taxes on all capital equipment and up to 15 per cent on spare parts; exemption from export taxes (except for coffee); income tax holidays varying from one to five years (depending on the sector and region within Ethiopia); tax deductible R&D expenditure; no taxes on the remittance of capital; the carrying forward of initial operating losses; and investor choice in depreciation models".[54]

11. *Bilateral investment treaties*.[55]

    a. With OECD countries. Ethiopia has signed bilateral investment treaties with Germany (in 1964 and 2004), Italy (in 1994), Switzerland (in 1998), Turkey (in 2000), Denmark (in 2001), Belgium / Luxembourg (in 2003) and the Netherlands (in 2003)

    The Ethiopian Investment Commission[56] furthermore reports, without dating them, BITs with France.

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50. US Department of Commerce.
51. UNCTAD-ICC An Investment Guides to Ethiopia, 2004.
52. UNCTAD-ICC An Investment Guides to Ethiopia, 2004.
53. UNCTAD, Investment and Innovation Policy Review Ethiopia, 2002.
54. UNCTAD-ICC An Investment Guides to Ethiopia, 2004.
55. UNCTAD, various sources.
56. Ethiopia business development service network (EBDSN) at http://www.bds-ethiopia.net

b. With non-OECD countries. Ethiopia has signed bilateral investment treaties with Kuwait (in 1996), China (in 1998), Malaysia (in 1998), Yemen (in 1999), Russia (in 2000), Sudan (in 2000), Tunisia (in 2000), Iran (in 2003), Israel (in 2003), Uganda (in 2003), Mauritius (in 2004), and Libya (in 2004)

The Ethiopian Investment Commission[57] furthermore reports, without dating them, BITs with Israel, Algeria, Tunisia, Russia and Libya.

12. *Bilateral tax treaties.* List of DTTs signed as of January 1st 2003.[58]

a. With OECD countries. Ethiopia has signed bilateral tax treaties with the United Kingdom (in 1977).

In "An Investment Guide to Ethiopia" UNCTAD also reports, without dating them, DTTs with Italy[59]

b. With non-OECD countries. Ethiopia has signed bilateral tax treaties with Algeria (in 2002).

In "An Investment Guide to Ethiopia" UNCTAD also reports, without dating them, DTTs with Kuwait, Romania, Russia, Tunisia and Yemen[60]

e) *Measures to enhance investment policy transparency*

13. *National authorities*.

a. Publication of regulation. The Ethiopia Business Development Service Network (EBDSN) web site, www.bds-ethiopia.net, and the Ethiopian embassy in China web site, www.ethiopiaemb.cn, provide a comprehensive set of information on Ethiopia policies as well as a well detailed investment guide.

b. Notification/consultation prior to planned regulatory changes. No data.

c. Negative lists of restricted sectors. EBDSN web site provides a list of restricted or prohibited sectors to foreign investments.

d. "Silent and consent" approach to authorisation. No data.

f) *Other measures*

14. *Measures at Sub-national level*. No data.

57. Ethiopia business development service network (EBDSN) at http://www.bds-ethiopia.net

58. UNCTAD, http://stats.unctad.org/fdi/treaties/dtts/Ethiopia.htm

59. UNCTAD-ICC An Investment Guides to Ethiopia, 2004.

60. UNCTAD-ICC An Investment Guides to Ethiopia, 2004.

GHANA

6. The government of Ghana embarked on a regulatory reform process in 1983, one of the first elements of which was to enshrine judicial independence in the constitution. By the same token, foreign and domestic investors alike gained access to legal recourse.[61] In 1994, a national Investment Code was implemented, which eliminated the need for prior approval of direct investment projects, eased company establishment and provided incentives and guarantees to investors.[62] In the same year the government created the Ghana Investment Promotion Centre (GIPC). The GIPC deals with all aspects of the FDI regulatory framework, except in minerals and mining; oil and gas; and the free zones. FDI consequently soared from a yearly average of USD 19 million during the period 1980-1993 to USD 128 million in 1994-2002, and gross capital formation rose from 10 to 22 per cent of GDP.

7. The main information that can be derived from public sources regarding Ghana's performance in the six areas of investment policy under survey is as follows:

a) General limitations to entry of FDI

1. *Limitations to entry of FDI.* Prior approval of foreign direct investment is not required except in mining, petroleum, and for establishment in free zones.[63] Ghana's Investment Code imposes a minimum capital requirement on direct investors, irrespective of whether they enter the country through mergers and acquisitions or greenfield investment.[64] Generally, the minimum capital requirement is USD 10,000 for joint ventures with Ghanaians and USD 50,000 for enterprises wholly-owned by non-Ghanaians. However, in the case of trading companies the requirement is USD 300,000 regardless of their ownership structure. The minimum capital requirement is not applicable to enterprises set up for export trading, and branch offices.[65]

2. *Limitations on foreign purchase of shares.* Foreign ownership cannot exceed 74 per cent in Ghana. Individual holdings and the combined holdings by non-residents in any one security listed on the Ghana Stock Exchange may not exceed 10 per cent and 74 per cent respectively. This applies to individuals as well as institutional investors.[66]

3. *IMF Articles VIII status.* Ghana has accepted the obligations of Article VIII of the IMF's Articles of Agreement.[67]

4. *Transfer of profits and the proceeds of liquidation.* According to Section 27 of the GIPC Act, foreign investors are guaranteed the right to repatriate (through any authorised dealer bank in convertible currency) dividends, net profits, interest payments, remittance of proceeds, as

61. US Department of Commerce and UNCTAD Investment Policy Review 2003.

62. Direction des Relations Economiques Extérieures française, La réglementation des investissements au Ghana, 2004.

63. The GIPC has streamlined investment registration procedures, but several government departments are still involved in the registration process. FIAS reports that on average it takes 85 days to register an investment in Ghana (www.fias.net/investment_climate.htm).

64. Ghana Investment Promotion Centre, www.gipc.org.gh

65. The same applies to portfolio investment (US Department of Commerce).

66. IMF, 2003.

67. IMF, 2003.

well as transfer of payments in respect of loan servicing where a foreign loan has been obtained, fees and charges in respect of technology transfer agreements registered under the GIPC law.[68]

b) Specific restrictions on entry

5. *Sectoral limitations to FDI.* Mining and petroleum projects require prior approval by the Minerals Commission and the Ministry of Mines and Energy respectively. The access to invest in free-zones is administered by Ghana Free Zones Board. In addition, Ghana still limits or prohibits foreign investment from the following economic sectors.

   a. Financial services. The GIPC law specifies that foreign owned banks must have a minimum capital of Cedi 50 billion[69] of which 60% must be brought into Ghana by the investor in the form of convertible currency.[70] Furthermore, non-Ghanaians cannot own more than 60%[71] of an insurance company.[72]

   b. Other services. The GIPC prohibits foreign investment in the following sectors: operation of beauty saloons and barbershops, minor trading operations in markets, kiosks and petty trading, small scale wholesale and retail sales. The law also requires non-Ghanaian opening a taxi or car hire company to possess a minimum of 10 new vehicles.[73]

   c. Primary sectors. There is compulsory government participation in the minerals and mining sector: By law the Government of Ghana acquires 10% of all interests in mining ventures at no cost to the public purse. Furthermore, under the Minerals and Mining Law non-Ghanaians are barred from engaging in small-scale mining. The ownership share in tuna fishing vessels by non-Ghanaians is also limited by law.[74]

   d. Manufacturing. No data.

6. *Acquisition of real estate for FDI purposes.* Foreigners can access land only through lease contracts of duration up to 50 years, with the possibility of one renewal. In addition, an extensive network of public and civil bodies is involved in granting land rights to non-Ghanaians, which significantly increases costs and delays.[75]

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68. Ghana Investment Promotion Centre, www.gipc.org.gh

69. The market rate as of December 8th 2004 was 1GHC = 0.000112357 USD.

70. IMF, 2004.

71. US Department of Commerce.

72. The permitted shares are not clear from publicly available information. According to UNCTAD's 2003 Investment Policy Review, foreign participation in an insurance company is limited to 40 per cent.

73. US Department of Commerce.

74. The permitted shares are not clear from publicly available information. According to UNCTAD's 2003 Investment Policy Review non-Ghanaians may own a maximum of 50% of the interest in a tuna fishing vessel. According the US Department of Commerce's website the ownership limit is 75%.

75. UNCTAD – investment policy review 2003.

c) Post entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises.* According to publicly available information the Ghanaian authorities pursue no economic or industrial strategies that discriminate against foreign-invested enterprises.[76] Nevertheless a preference of at least 25 per cent is given to domestic investors in the privatisation process.[77]

8. *Other discriminatory practices.* The main "discriminatory practice" affecting foreign-owed enterprises appears to concern the hiring of expatriate staff. The GIPC Act of 1994 limits the number of non-Ghanaians an enterprise can hire according to its initial investment. Enterprises with a paid-up capital between USD 10,000 and USD 100,000 are entitled to employ 1 expatriate; enterprises with a paid-up capital between USD 100,000 and USD 500,000 are entitled to hire 2 foreign persons; and enterprises with a paid-up capital above USD 500,000 have a maximum expatriate quota of four.[78] In trading companies there is a compulsory requirement of employing at least 10 Ghanaians.[79] An application for more extra expatriates can be made, but investors have to justify why foreigners must be employed rather than Ghanaians. Conversely, there are no restrictions on issuing of work and residence permits to free zone investors and employees.[80]

9. *Performance requirements on foreign direct investors.* Ghana does not impose formal performance requirements for establishing, maintaining or expanding a business.[81] However, there are regulations relating to the transfer of technology if the technology is not freely available in Ghana. The transfer of technology is governed by the Technology Transfer Regulations of Ghana.[82]

d) Practices encouraging FDI

10. *FDI-targeted tax and other incentives.* If a foreign investment is deemed to be "critical to Ghana's economic expansion" investors may be offered specific incentives to establish or expand their activities.[83] Moreover, Ghana provides tax rebates of 25% to manufacturing industries establishing in regional capitals other than Accra and Tema, and of 50% to manufacturing industries establishing outside regional capitals.

11. Bilateral investment treaties.[84]

    a. <u>With OECD countries.</u> Ghana has signed bilateral investment treaties with the Netherlands (in 1989), the United Kingdom (in 1989), Switzerland (in 1991), Denmark (in 1992), Germany (in 1995), Italy (in 1998), and France (in 1999).

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76. US Department of Commerce.

77. UNCTAD – investment policy review 2003.

78. Ghana Investment Promotion Centre.

79. IMF, 2004.

80. UNCTAD – investment policy review 2003.

81. UNCTAD – investment policy review 2003.

82. US Department of Commerce.

83. UNCTAD – investment policy review 2003.

84. UNCTAD, various sources.

b. With non-OECD countries. Ghana has signed bilateral investment treaties with Bulgaria (in 1989), China (in 1989), Romania (in 1989), Malaysia (in 1996), Côte d'Ivoire (in 1997), Egypt (in 1998), South Africa (in 1998), Cuba (in 1999), Serbia Montenegro (in 2000), Benin (in 2001), Burkina Faso (in 2001), Guinea (in 2001), Mauritania (in 2001), Mauritius (in 2001) Zambia (in 2001), India (in 2002), Botswana (in 2003) and Zimbabwe (in 2003).

12. *Bilateral tax treaties* List of DTTs signed as of January 1st 2003.[85]

a. With OECD countries. Ghana has signed but not yet ratified bilateral tax treaties with the United Kingdom (in 1947, 1977 and 1993), Denmark (in 1954) and France (in 1993).

b. With non-OECD countries. No data.

e) Measures to enhance investment policy transparency

13. *National authorities*.

a. Publication of regulations. Ghana Investment Promotion Centre, www.gipc.org.gh, web site is well structured and provides information as well as advice on procedures to launch a company in Ghana. Government of Ghana web site, www.ghana.gov.gh, publishes lot off press release from the various ministries and on the business life of the country.

However, no information on: Notification prior to regulatory changes; Negative list of restricted sectors; and "Silent and consent" authorisation could be located.

f) Other measures

14. *Measures at sub-national level*. No data, see d.10

85. UNCTAD, http://stats.unctad.org/fdi/treaties/dtts/Ghana.htm

KENYA

8. Kenya developed an Investment Code in 1994 with the purpose of encouraging private investment, local as well as foreign. The Code lays down the regulations that apply to investment and specifies the various incentives that are available to investors. It furthermore mandates that all new investment projects must obtain the approval of the national Investment Promotion Centre (IPC), which decides on the basis of a number of minimal environmental, health and security requirements. In an effort to fight wide spread official corruption Kenya appointed a senior official in 1999, but the perception remains that the business climate is weighed down by the pervasiveness of corrupt practices.[86]

9. The main information that can be derived from public sources regarding Kenya's performance in the six areas of investment policy under survey is as follows:

a) General restrictions on entry of FDI

1. *Limitations to entry of FDI.* Under the Investment Code, foreign direct investment is governed by the Foreign Investment Protection Act (FIPA). Foreign investors need prior approval from IPC before starting commercial activities, but the process mostly does not rise to the level of a full-blown screening procedure.[87] When registering with the IPC, foreign investors may take advantage of a "one-stop-shop" facility, which speeds up the registration process.[88]

2. *Limitations on foreign purchase of shares.* Foreign companies can buy stocks up to 40 per cent of a listed company's total quoted shares. The limit for foreign individuals is 5 per cent.[89]

3. *IMF Articles VIII status*. Kenya has accepted the obligations of Article VIII of the IMF's Articles of Agreement.[90]

4. *Liquidations proceeds transfer abroad. Transfer of profits and the proceeds of liquidation.* FIPA guarantees foreign direct investors' right to capital repatriation, remittance of dividends and the principal and interest associated with any loan. The right is conditional upon the payment of relevant taxes.[91]

b) Specific restrictions on entry.

5. *Sectoral limitations to FDI.* FDI, and to a lesser extend domestic investment, is restricted mainly in sectors where state corporations still enjoy a dominant market position. Some of the main examples are infrastructure (e.g., power, postal service and ports) and mass media.

86. According to the commonly quoted corruption perception index, Kenya scored around 2 (on a scale from 1 – very corrupt, to 10 – absence of corruption) during 1999-2003. Consequently the country still ranks among the most corruption-plagued nations. (www.transparency.org).

87. US Department of Commerce.

88. The World Bank, Foreign Investment Advisory Services, www.fias.net/investment_climate.html, reports that it takes, on average, 47 days to launch a business in Kenya while the regional average is 67 days.

89. IMF, 2004.

90. IMF, 2004.

91. Kenyan Investment Promotion Centre, www.ipckenya.org

On the basis of available information, the additional sectoral restrictions are limited to the following activities:

a. Financial services. Foreign ownership of insurance company cannot exceed 66 per cent. Foreign brokerage and fund management firms are only allowed to participate in the local capital market through locally incorporate companies, which must have a Kenyan ownership of at least 51 and 30 per cent respectively.[92]

b. Other services. Since 1992 foreign investors have been allowed to increase their participation from 40 to 70 per cent of telecommunication firms.[93]

6. *Acquisition of real estate by foreigners for FDI purposes.* Foreigners wishing to acquire large tract of agricultural land and seashore property must obtain presidential authority.[94]

c) Post entry restrictions

7. *Exceptions to national treatment of foreign-controlled established enterprises.* No economic or industrial strategy that has a discriminatory effect on foreign-owned businesses could be identifiable except in the following areas.

a. Access to public procurement. The Kenyan government reportedly excludes foreign-invested companies from some government tenders.[95]

e. Taxation. Branches of non-resident companies pay higher corporate income tax than resident ones. Resident companies are subject to a tax rate of 30% cent, whereas subsidiaries of non-resident companies pay 37.5%.[96] Companies newly listed on the Nairobi Stock Exchange (NSE) are taxed at 25% for a period of five years following the date of listing.

8. *Other discriminatory practices.* The main policies discriminating against foreign personnel appear to be:

c. Entry of key personnel: granting visas to business people in a transparent and efficient manner. An investment of USD 42,000 is required before work permits for expatriates are granted. Foreign employees are expected to be key senior managers or to have special skills not available locally. It is reportedly becoming increasingly difficult for expatriates to obtain work permits because authorities claim qualified middle and technical staff is available locally. Finally, foreign investors are requested to train nationals for phasing out expatriates.[97]

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92. US Department of Commerce.

93. US Department of State.

94. US Department of State.

95. US Department of State.

96. Kenyan Investment Promotion Centre.

97. US Department of Commerce.

9. *Performance requirements on foreign direct investment*. Foreign investors are required to sign a training agreement with the government to phase out expatriates, but technology transfer and partnership with local entrepreneurs are not compulsory.[98]

d) *Practices encouraging FDI*

10. *FDI-targeted tax and other incentives.* No data.

11. *Bilateral investment treaties*.[99]

    a. With OECD countries. Kenya has signed bilateral investment treaties with Netherlands (in 1970), Germany (in 1996), Italy (in 1996) and the United Kingdom (in 1999).

    b. With non-OECD countries. Kenya has signed bilateral investment treaties with China (in 2001)

12. *Bilateral tax treaties.* List of BITs signed as of January 1st 2003.[100]

    a. With OECD countries. Kenya has signed bilateral tax treaties with Denmark (in 1972), Norway (in 1972), Sweden (in 1973), the United Kingdom (in 1973), Germany (in 1977), Italy (in 1979 and 1997), Canada (in 1983), and France (in 1996).

    b. With non-OECD countries. Kenya has signed bilateral tax treaties with Zambia (in 1968) and India (1985). In addition Kenya Investment Promotion Centre reports, without dating them, BITs with Tanzania and Uganda, (under the East African Community), COMESA countries, Malawi, and Zambia.

e) *Measures to enhance policy transparency*

13. *National authorities.* Kenyan Investment Promotion Centre web site, www.ipckenya.org, provides a limited set of concrete information. The Kenya government web site, www.kenya.go.ke, is oriented toward public organisation and politics rather than concrete regulations and information of interest to investors.

f) *Other measures.*

14. *Measures at sub-national level.* No data.

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98. US Department of Commerce.

99. UNCTAD, various sources.

100. UNCTAD, http://stats.unctad.org/fdi/treaties/dtts/Kenya.htm

MAURITIUS

10. Mauritius has so far been successful in attracting FDI. With a view to broadening the sectoral appeal to investors, authorities have established various schemes such as the Permanent Residence Scheme (PRS), the Regional Headquarters Scheme (RHS), and the newly established Integrated Resorts Scheme (IRS).[101]

11. Mauritius distinguishes between “onshore”, “offshore” sectors, and “Freeport”. Foreigners need specific permission from the Prime Minister's office before they can own shares in an onshore company, while Mauritians are barred from taking part in offshore activities. To streamline the screening/approval of onshore investment, domestic as well as foreign, an Investment Promotion Act (IPA) was adopted in December 2000, and a Board of Investment (BOI) was established in March 2001. The BOI is responsible for promoting and facilitating investment. It is a one-stop service that aims to ensure that all relevant permits are obtained without excessive delays. IPA stipulates that BOI has four weeks to process an investment application – except for projects requiring an environmental impact assessment or a development permit, where the deadline is eight weeks. Depending on the nature of the project, additional permits and clearances may be required.[102]

12. Offshore business and free-port licenses are approved directly by the Mauritius Offshore and Business Activities Authority (MOBAA) and the Mauritius Freeport Authority (MFA), respectively. It normally takes two weeks from application to approval. Offshore banking licenses are issued by the central bank, which also acts as the regulatory and supervisory body. An application for an offshore banking license is normally processed in three months if all the required information is submitted.

13. The main information that can be derived from public sources regarding Mauritius’s performance in the six areas of investment policy under survey is as follows:

a) General restrictions on entry

1. *Limitations to entry of FDI.* The Mauritian Government requires foreign investors to obtain prior approval from the Prime Minister's Office before starting operation, except when they want to invest in the offshore business centre, the freeport and via the stock exchange.[103] A project is appraised and approved on the following criteria: activity (sectoral preference and consistency with legal frameworks); promoter’s credentials; job creation; size of investment; financial structure; target markets; and perceived viability of the project.[104]

2. *Limitations on foreign purchases of shares.* There are no general restrictions on foreign ownership of listed shares. However, under the Non-citizens (Property Restriction) Act, non-residents need prior authorisation by the prime minister and the minister of internal affairs to buy shares in unlisted companies.[105]

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101. SADC Trade, Industry and Investment Review 2004.

102. Board of Investment: www.boimauritius.com

103. UNCTAD – Investment Policy Review 2001.

104. Board of Investment: www.boimauritius.com

105. IMF, 2004.

3. *IMF Article VIII status.* Mauritius has accepted the obligations of Article VIII of the IMF's Articles of Agreement.[106]

4. *Transfer of profits and the proceeds of liquidation.* No formal restrictions on the repatriation of capital, dividends and interests are on record. However, investors are required to demonstrate the source of funds to be repatriated, and they must have paid all relevant taxes.[107]

b) Specific restrictions on entry

5. *Sectoral limitations to FDI.* The government pursues few policies that actively discriminate against foreign investors. Foreign participation is, however, not particularly encouraged in areas where Mauritius has already established an indigenous industrial base.[108]

   a. <u>Financial services.</u> Resident and non-residents must obtain the central bank's prior approval to purchase more than 15 per cent of a bank's capital.[109]

   b. <u>Other services.</u> The tourism sector is almost exclusively reserved to domestic investors. No foreigners can invest in travel agencies, tour operators, tourist guides, car rental, yacht charters and duty free shops. In the hotel sector, 100% foreign ownership is permitted only for hotels above 100 rooms; in smaller ones the foreign participation is limited to 49%. Foreign participation in restaurant operations is limited to 49%, and only if the foreign investment exceeds USD 400,000.[110]

   c. <u>Primary sectors.</u> Non-citizens cannot purchase more than 15 per cent of listed sugar companies' shares.[111]

6. *Acquisition of real estate for FDI purposes.* The non-citizens Act compels foreign citizens to obtain the Prime Minister's and the Minister of Internal Affairs prior approval to buy property. Additionally, a purchase must be financed by funds transferred from abroad through the banking system.[112]

c) Post entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises.* Available evidence indicates that Mauritius provides national treatment to foreign investors.

8. *Other discriminatory practices.*

   a. <u>Nationality-based regulatory restrictions on company board composition</u>. No data.

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106. IMF, 2004.
107. Board of Investment: www.boimauritius.com
108. US Department of Commerce.
109. IMF, 2004.
110. UNCTAD – Investment Policy Review, 2001.
111. IMF, 2004.
112. IMF, 2004.

b. Discriminatory private practices permitted under corporate legislation. No data.

c. Entry of key personnel: granting visas to business people in a transparent and efficient manner. In the case of key staff, each employee receives an initial work and residence permit for one year and subsequently for revolving three-year periods. For other positions the issuance of work and residence permits to non-citizens is granted if a person meets one of two criteria. The person will introduce either expertise not available in Mauritius (skilled positions) or that such labour is unavailable in Mauritius (semi-skilled positions).[113]

9. *Performance requirements on foreign direct investors.* Resident and non-resident investors receive the same incentives that do not request any performance requirements.[114]

d) Practice encouraging FDI

10. *FDI-targeted tax and other incentives.* Mauritius has various kinds of incentives depending on the sector of activity. None of them discriminate between domestic and foreign investors.[115]

11. *Bilateral investment treaties.*[116]

a. With OECD countries. Mauritius has signed bilateral investment treaties with Germany (1971), France (1973), and The United Kingdom (1986), Portugal (1997), Switzerland (1998) the Czech Republic (1999) and Belgium / Luxembourg (in 2003)/

b. With non-OECD countries. Mauritius has signed bilateral investment treaties with China (1996), Indonesia (1997), Mozambique (1997), Pakistan (1997), India (1998), South Africa (1998), Nepal (1999), Romania (2000), Singapore (2000), Swaziland (2000), Zimbabwe (2000), Benin (2001), Burundi (2001), Cameroon (2001), Chad (2001), Comoros (2001), Ghana (2001), Guinea (2001), Mauritania (2001), Rwanda (in 2001), Senegal (2002), Botswana (in 2003), Egypt (in 2003), Ethiopia (in 2003) and Tanzania (in 2003)

12. *Bilateral tax treaties.* List of DTTs signed as of January 1st 2003.[117]

a. With OECD countries. Mauritius has signed bilateral tax treaties with Denmark (in 1954), Norway (in 1955), Germany (in 1978), France (in 1980), the United Kingdom (in 1981) Italy (in 1990), Sweden (in 1992), and Luxembourg (in 1995). In addition Mauritius Board of Investment[118] reports DTTs with Belgium

b. With non-OECD countries. Mauritius has signed bilateral tax treaties with India (in 1982), Malaysia (in 1992), Zimbabwe (in 1992), China (in 1994), Madagascar (in 1994) ,

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113. UNCTAD – Investment Policy Review, 2001.

114. US Department of Commerce.

115. Government of Mauritius website.

116. UNCTAD, various sources.

117. UNCTAD, http://stats.unctad.org/fdi/treaties/dtts/mauritius.htm.

118. Board of Investment: www.boimauritius.com

Pakistan (in 1994), South Africa (in 1994 and 1996), Swaziland (in 1994), Botswana (in 1994), ,Namibia (in 1995), Russia (in 1995), Singapore (in 1995), Indonesia (in 1996 and 1998), Sri Lanka (in 1996), Kuwait (in 1997), Lesotho (in 1997), Mozambique (in 1997), Thailand (in 1997), Oman (in 1998), Nepal (in 1999), Cyprus (in 2000), Croatia (in 2002, and Senegal (in 2002). In addition Mauritius Board of Investment[119] reports DTTs with Hungary, Libya, and Romania.

e) Measures to enhance investment policy transparency

13. National authorities

a. Publication of regulation. Government of Mauritius official web site (http://ncb.intnet.mu/govt/) and Mauritius Board of Investment web site (http://www.boimauritius.com/) provide updated information for foreign investors, as well as legislative texts. Foreign investors can also download all the necessary forms to register a company from the Board of Investment web site. .

b. Notification/consultation prior to planned regulatory changes. No data.

d. "Silent and consent" approach to authorisation. No data.

f) Measures at sub-national level.

14. Measures at sub-national level. No data.

119. Board of Investment: www.boimauritius.com

MOZAMBIQUE

14. The business environment of Mozambique is weighted down by a strong reliance on formal approvals, registration and licensing.[120] To overcome administrative obstacles foreign investors often hire local consulting firms or engaged in joint venture with local partners, familiar with the regulatory requirements. To facilitate foreign investments in the country the government has established the Centro de Promoçao Investimentos (CPI). However, CPI does not deal with foreign investments below US$50,000.

15. The main information that can be derived from public sources regarding Mozambique's performance in the six areas of investment policy under survey is as follows:

a) General restrictions on entry

1. *Limitations to entry of FDI.* Mozambique has opened up to 100% foreign participation most of its economic sectors.[121] All foreign and domestic investment is subject to an approval process. It must moreover be registered for tax, labour and social security purposes and have obtained an operating license before starting their activity. CPI handles the process for foreign investors

   The provincial governors have authority for investments under USD 100,000, and the Minister of Planning and Finance for investments between USD 100,000 and USD 100 million. The Council of Ministers must review investments over USD 100 million and those involving large tracts of land (5,000 hectares for agriculture, 10,000 hectares for livestock or forestry projects). Investments are deemed approved if relevant ministries, or the Council of Ministers for bigger projects, voice no objections within 10 or 17 working days respectively.[122]

2. *Limitations on foreign purchases of shares.* Mozambiquan legislation does not generally limit foreign ownership of companies. There are no formal restrictions on foreign participation in privatisation, or management control over privatised companies, either. Shares may be traded freely to local or foreign nationals, in accordance with company statutes and current commercial legislation.[123]

3. *IMF Article VIII status.* Mozambique has not accepted the obligations of Article VIII of the IMF's Articles of Agreement. It continues to avail itself of the transitional arrangements of Article XIV.[124]

4. *Transfer of profits and the proceeds of liquidation.* To repatriate capital or profits companies need to present audited accounts and register the transaction through the CPI. A repatriation

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120. Once they are formally registered to begin their activity, foreign firms must then register with the tax department, apply to open a bank account and begin applications for residence, work, and import permits (World Bank, Pilot Investment Climate Assessment, 2003).

121. However, entry is in practice still difficult and time consuming. According to the World Bank, Foreign Investment Advisory Services, www.fias.net/investment_climate.html, it usually takes 153 days for a foreign entrepreneur to obtain the 14 different permits to start its business in Mozambique.

122. US Department of Commerce.

123. UNCTAD – ICC, An Investment Guide, Opportunities and conditions, 2002.

124. IMF, 2004.

certificate is then issued by the central bank. Debt servicing also requires a letter from the central bank indicating bank approval at the time of the loan.[125]

b) Specific restrictions on entry

5. *Sectoral limitations to FDI.* Mozambique does not reserve economic activities exclusively for nationals:

    a. Other services. In some activity the legislation imposes strict criteria to be considered as Mozambiquan, which grant tax advantages. Example construction companies must be majority owned by domestic, individuals or companies, to be considered as Mozambiquan.[126]

6. *Acquisition of real estate for FDI purposes.* According to *article 46* of the country's constitution, "ownership of land is vested in the state … and may not be sold, mortgaged or otherwise encumbered or alienated. As a universal means for the creation of wealth and social well-being, the use and enjoyment of land shall be the right of all Mozambiquan people". Domestic as well as foreign investors may lease land, initially for a period of up to 50 years. The lease may be renewed once, for up to another 50 years, and may not be sold or sublet.[127]

c) Post entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises.* Mozambique discriminates against foreign investors in a few sectors. According to available information, the following exceptions from national treatment are in place

    b. Access to subsidies. The government of Mozambique does not discriminate against foreign investors in this respect. However, as firms must be recorded by CPI to receive investment incentives, and that CPI does not deal with foreign investments under USD 50,000, small foreign investors are de facto ineligible for subsidies.

    e. Taxation. Legislation imposes some conditions for a company to be considered Mozambiquan; which carries tax advantages with it.[128]

8. *Other discriminatory practices*.

    a. Nationality-based regulatory restrictions on company board composition. The labour legislation restricts the number of foreign members of statutory boards (e.g., supervisory and/or management boards) as follows:[129] 60% for the first two years; 40% for the third to fifth years; 20% for the sixth to tenth year; and 10% from the eleventh year onward.

    b. Discriminatory private practices permitted under corporate legislation. No data.

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125. US Department of Commerce.

126. UNCTAD – ICC, An Investment Guide, Opportunities and conditions, 2002.

127. UNCTAD – ICC, An Investment Guide, Opportunities and conditions, 2002.

128. UNCTAD – ICC, An Investment Guide, Opportunities and conditions, 2002.

129. UNCTAD – ICC, An Investment Guide, Opportunities and conditions, 2002.

c. Entry of key personnel: granting visas to business people in a transparent and efficient manner. Obtaining work permit for expatriate staff is an expensive and time consuming task both for domestic and foreign companies.[130]

9. *Performance requirements on foreign direct investors.* Mozambique's authorities do not impose local content or technological transfer requirements on foreign investors.[131]

d) Practice encouraging FDI

10. *FDI-targeted tax and other incentives.*

11. *Bilateral investment treaties.*[132]

a. With OECD countries. Mozambique has signed bilateral investment treaties with Portugal (in 1996), the United States of America (in 1998), the Netherlands (in 2001), France (in 2002), and Switzerland (in 2002).

b. With non-OECD countries. Mozambique has signed bilateral investment treaties with Mauritius (in 1997), South Africa (in 1997), Algeria (in 1998), Egypt (in 1998), Indonesia (in 1999), China (in 2001) and Cuba (in 2001).

12. *Bilateral tax treaties.* List of BITs signed as of January 1st 2003[133]

a. With OECD countries. Mozambique has signed bilateral tax treaties with Portugal (in 1991).

b. With non-OECD countries. Mozambique has signed bilateral tax treaties with Mauritius (in 1997).

e) Measures to enhance investment policy transparency

13. National authorities.

a. Publication of regulation. The English version of the Centro de Promoção Investimentos web site, www.mozambique.mz/economia/cpi/, was offline during the preparation of the present paper.

b. Notification/consultation prior to planned regulatory changes. No information on "Notification/consultation prior to planned regulatory changes" and on "Negative lists of restricted sectors" could be located.

d. "Silent and consent" approach to authorisation. Investments are deemed approved if relevant ministries, or the Council of Ministers for bigger projects (see above), voice no objections within 10 or 17 working days respectively.

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130. A survey by the World Bank shows that on average it takes 90 days and cost USD 400 to obtain a work permit in Mozambique (World Bank, Pilot Investment Climate Assessment 2003).

131. UNCTAD – ICC, An Investment Guide, Opportunities and conditions, 2002.

132. UNCTAD, various sources.

133. UNCTAD http://stats.unctad.org/fdi/treaties/dtts/mozambique.htm

f) Measures at sub-national level

14. *Measures at sub-national level.* The central region of Mozambique (and the Sofala province in particular) has a reputation for being less business friendly and for imposing heavier bureaucratic burdens than the rest of the country.

NIGERIA

16. Despite national characteristics that would normally attract investors (Nigeria is Africa most populous nation, had a GDP of USD 44 billion in 2003 and is the region's largest oil producer) and a comparatively liberal investment code[134] Nigeria has not yet been able to turn itself into a magnet for FDI. To facilitate and encourage FDI inflows the government has established the Nigerian Investment Promotion Commission (NIPC), which is a "one-stop-shop" where prospective foreign investors can complete all the procedures for business permits and licences. The NIPC provides assistance and guidance for potential investors, and has an advisory role in improving the investment climate.

17. The main information that can be derived from public sources regarding Nigeria's performance in the six areas of investment policy under survey is as follows:

a) General restrictions on entry

1. *Limitations to entry of FDI.* No statutory restrictions on inward FDI are on record. The key piece of legislation governing foreign investment is the Nigerian Investment Promotion Commission Decree of 1995 (NIPCD). The Decree abolished earlier screening processes directed at foreign direct investment.

2. *Limitations on foreign purchase of shares.* As a general rule, NIPCD allows foreign investors to buy up to 100% of the listed shares of any company through the Nigerian stock exchange.

3. *IMF Article VIII status.* Nigeria has not accepted the obligations of Article VIII of the IMF's Articles of Agreement. It continues to avail itself of the transitional arrangements of Article XIV.[135]

4. *Transfer of profits and the proceeds of liquidation.* According to official information, foreign investors are guaranteed unconditional transferability of funds, of dividends and profits (net of taxes), payment in respect of loan servicing, and the remittance of proceeds (net of all taxes) in the event of sale of the enterprise or any interest attributable to the investment in Nigeria.[136]

b) Specific restrictions on entry

5. *Sectoral limitations to FDI.* As mentioned, NIPCD allows 100 per cent foreign ownership of any companies except those operating in the oil industry and in sectors deemed sensitive to national security. The main restricted activities are:

   c. <u>Primary sectors.</u> The Petroleum Act allows only minority foreign participation in the oil and gas sector, through joint venture with the Nigerian National Petroleum Corporation.[137]

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134. Ministère de l'économie, des Finances et de l'industrie, Fiche de synthèse : L'investissement étranger et régime d'investissement au Nigéria, 2002.

135. IMF, 2004.

136. Nigerian Investment Promotion Commission, www.nipc-nigeria.org

137. Nigerian Investment Promotion Commission, www.nipc-nigeria.org

d. Manufacturing. The Nigerian Enterprises promotion Decree No. 7 of 1995, restricts foreign participation from the production of arms and ammunition; and the production of and dealing in narcotic drugs and psychotropic substances.[138]

6. *Acquisition of real estate by foreigners for FDI purposes.* Around 90% of Nigerian land is publicly held, and can in principle be leased by private investors for a maximum of 99 years. However, a customary land allocation system works in parallel to the state system, and investors often end up having to negotiate with 2 or 3 "owners" of a given plot of land.[139]

c) Post entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises.* The NIPCD guarantees national treatment to foreign investors abiding by Nigeria's regulatory regime guiding the establishment of enterprises. There is no publicly available information about regulation specifically targeting foreign investors.

8. *Other discriminatory practices.*

    a. Nationality-based regulatory restrictions on company board composition. Companies in Nigeria are free to appoint directors of their choice.[140]

    b. Discriminatory private practices permitted under corporate legislation. No data.

    c. Entry of key personnel: granting visas to business people in a transparent and efficient manner. Companies wishing to hire foreigners must ask the approval of Comptroller General of Immigration. Moreover, the number of work permits that can be obtained depends on the company's initial investment – e.g. an initial investment of USD 100,000 grants 1 permit to the firm.[141] The cost of obtaining the most common type of expatriate work permit is USD 2,000, and the time needed to obtain it varies from 2 to 3 months.[142]

9. *Performance requirements.* Local content requirements may be applied to manufacturing companies.

d) Practices encouraging FDI.

10. *FDI-targeted tax and other incentives*. No data.

11. *Bilateral investment treaties*.[143]

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138. Nigerian Investment Promotion Commission, www.nipc-nigeria.org

139. It can take anywhere from 6 months to 10 years for the government to approve land transfers, World Bank, Pilot Investment Climate Assessment, 2002.

140. Nigerian Investment Promotion Commission, www.nipc-nigeria.org

141. Nigerian Investment Promotion Commission, www.nipc-nigeria.org

142. World Bank, Pilot Investment Climate Assessment, 2002.

143. UNCTAD, various sources

a. With OECD countries. Nigeria has signed bilateral investment treaties with Frnace (in 1990), the United Kingdom (in 1990), the Netherlands (in 1992), Turkey (in 1996), Korea (in 1998), Germany (in 2000), Switzerland (in 2001), and Sweden (in 2002).

b. With non-OECD countries. Nigeria has signed bilateral investment treaties with Taiwan (in 1994), Romania (in 1998), China (in 1999), Jamaica (in 2002) and Uganda (in 2003).

12. *Bilateral tax treaties* List of DTTs signed as of January 1st 2003.[144]

a. With OECD countries. Nigeria has signed bilateral tax treaties with Denmark (in 1954), Norway (1955), the United Kingdom (in 1987), Belgium (in 1989), Czech Republic (in 1989), Slovak Republic (in 1989), France (in 1990), the Netherlands (in 1991) and Canada (in 1992).

b. With non-OECD countries. Nigeria has signed bilateral tax treaties with Pakistan (in 1989), Romania (in 1992) and Philippines (in 1997).

e) Measures to enhance investment policy transparency.

13. *National authorities*.

a. Publication of regulation. NIPC's web site, www.nipc-nigeria.org, provides regulatory and other information relevant to foreign investors. The government official web site, www.nigeria.gov.ng, also publishes texts of policies and decrees.

b. Notification/consultation prior to planned regulatory changes. No data.

c. Negative lists of restricted sectors. NIPC web site provides information about restricted sectors (see above).

d. "Silent and consent" approach to authorisation. No data.

f) Other measures.

14. *Measures at sub-national level.* The "Industrial Development (Income Tax Relief) Act" of 1971 provides incentives to "pioneer" industries deemed beneficial to Nigeria's development. Under the pioneer status, companies that establish in economically disadvantaged areas, or that invest in priority investment areas (e.g. the natural gas sector) are eligible to a non-renewable tax hiatus of seven years.[145]

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144. UNCATD, http://stats.unctad.org/fdi/treaties/dtts/nigeria.htm

145. US Department of Commerce.

SENEGAL

18. While Senegal is one of Africa's most politically and economically stable countries, it has not yet been particularly successful in attracting foreign investors. The government has made a point of welcoming foreign direct investment and there is no discrimination against business conducted or owned by foreigners. The Senegalese Investment Code provides national treatment to foreign-owned enterprises.

19. However, non-discriminatory regulatory obstacles to private investment still abound.[146] To reduce administrative burdens for foreign investors, the government established the Agency for the Promotion of Investments and Infrastructure (APIX) in 2000. However, APIX applies strict selection criteria that prevent a significant portion of investors, mostly small ones, from using its services.

20. The main information that can be derived from public sources regarding Senegal's performance in the six areas of investment policy under survey is as follows:

a) General restrictions on entry

1. *Limitations to entry of FDI.* The Investor's Code guarantees automatic approval of a project meeting the proper criteria, and APIX commits to scan every investment request within 10 days and to carry out all formal procedures within 20 days.[147]

2. *Limitations on foreign purchases of shares*. No general limitations are on record.

3. *IMF Article VIII status.* Senegal has accepted the obligations of Article VIII of the IMF's Articles of Agreement.[148]

4. *Transfer of profits and the proceeds of liquidation*. No limitations are on record.

b) Specific restrictions on entry

The Government of Senegal states that there are no sectoral limitations to FDI, and that domestic laws enable foreigners to obtain real estate and properties. However, foreign investors cannot detain 100 per cent of the shares of companies working in electricity, telecommunication and water sector.

c) Post entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises.* Senegalese legislation does not discriminate against foreign investment except in the following sectors :

   b. <u>Access to subsidies.</u> Senegal Investment Code defines eligibility for investment incentives exclusively according to the type of activity, investment size and location and not according to the company nationality. To qualify for incentives, an investment must

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146. The US Department of Commerce states that delays to set up a business may last up to 500 days when taking into account procedures to obtain land access.

147. The World Bank, Foreign Investment Advisory Services, www.fias.net/investment_climate.html, reports an average time of 57 days to launch a business in Senegal

148. IMF, 2004.

be of at least CFA 5,000,000 and must create a minimum of three full time jobs for Senegalese citizens.[149]

f. Discriminatory licensing in public utilities. No data.

8. *Other discriminatory practices*

a. Nationality-based regulatory restrictions on company board composition. No data.

b. Discriminatory private practices permitted under corporate legislation. Senegalese legislation prohibits discriminatory practices.

c. Entry of key personnel: business people in a transparent and efficient manner. The hiring of expatriate staff is subject to approval by the Labour Ministry.[150]

9. *Performance requirements on foreign direct investors.* No performance requirements, as commonly defined, are on record. However, to qualify for investment incentives, companies are required to invest at least CFA 5 million and employ at least three Senegalese nationals. Moreover, firms themselves must provide at least 20 per cent of the capital for investments between CFA 5 and 200 millions, and 30 per cent for investments over CFA 200 millions.[151]

d) Practices encouraging FDI.

10. *FDI-targeted tax and other incentives*.

11. *Bilateral investment treaties*.[152]

a. With OECD countries. Senegal signed bilateral investment treaty with Switzerland (1962), Germany (in 1964), Sweden (in 1967), France (in 1974), the Netherlands (in 1979), the United Kingdom (in 1980), the United States (in 1983) and Korea (in 1984).

The US Department of State further reports, without dating them bilateral investment treaties with Denmark, Finland, Spain, Italy, Japan, and Australia.

b. With non-OECD countries. Senegal signed bilateral investment treaty with Romania (in 1980), Tunisia (in 1984) Argentina (in 1993), Taiwan (in 1997), Egypt (in 1998), Qatar (in 1998), South Africa (in 1998), Malaysia (in 1999), Morocco (2001) and Mauritius (in 2002),

12. *Bilateral tax treaties* List of DTTs signed as of January 1st 2003.[153]

a. With OECD countries. Senegal signed bilateral tax treaties with France (in 1974), Belgium (in 1987), Norway (in 1994) and Canada (in 2001).

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149. Senegal Official web site, www.gouv.sn/investir/code_invest.html

150. Senegal Official web site, www.gouv.sn/investir/code_invest.html

151. Senegal Official web site, www.gouv.sn/investir/code_invest.html

152. UNCTAD, various sources.

153. UNCTAD, http://stats.unctad.org/fdi/treaties/dtts/senegal.htm.

b. With non-OECD countries. Senegal signed bilateral tax treaties with Mauritania (in 1971), Tunisia (in 1984), Taiwan (in 1999), Egypt (in 2001), Morocco (in 2001 and 02), and Mauritius (in 2002).

The US Department of State further reports, without dating them bilateral tax treaties with Mali and the French-speaking African member states of the UEMOA

e) Measures to enhance investment policy transparency

13. *National authorities*

a. Publication of regulation. Senegal government official web site, www.gouv.sn, provides access to documents and other information of interest to foreign investors.

b. Notification/consultation prior to planned regulatory changes. No data.

c. Negative lists of restricted sectors. There are no restricted sectors in Senegal.

d. “Silent and consent” approach to authorisation. No data.

f) Measures at sub-national level

14. *Measures at sub-national level*.

SOUTH AFRICA

21. For the last 10 years the South African Government has been engaged in improving the investment climate for both domestic and foreign businesses. Measures include reducing import tariffs and subsidies to local firms, eliminating the discriminatory non-resident shareholders tax, removing certain limits on hard currency repatriation, halving the secondary tax on corporate dividends, lowering the corporate tax rate on earning, and allowing foreign investors 100 per cent ownership. In addition, the creation of an International Investment Council was announced in 1999.[154] Remaining restrictions are either sectoral in scope (in which case, applicable to both residents and non-residents) or the consequence of Black Economic Empowerment (BEE) policies.

22. The main information that can be derived from public sources regarding South Africa's performance in the six areas of investment policy under survey is as follows:

a) General restrictions on entry

1. *Limitations to entry of FDI.* Authorities require investors to obtain a business permit, and to register with tax authorities.

2. *Limitations on foreign purchase of shares.* Foreign investors are allowed 100 per cent ownership in South Africa.

3. *IMF Article VIII status.* South Africa has accepted the obligations of Article VIII of the IMF's Articles of Agreement.[155]

4. *Transfer of profits and the proceeds of liquidation.* Capital invested in South Africa, as well as interest and profit can be freely repatriated. However, if a South African company is fully owned by non-residents, there are certain requirements that need to be satisfied before transfer profits abroad is authorised. In the case where the ownership has a South African partner, the non-resident can transfer profits without restrictions.[156]

b) Specific restrictions on entry

5. *Sectoral limitations to FDI.* According to publicly available information the only sectoral restrictions are found in the banking sector where Foreign-owned banks are required to obtain the approval of the Registrar of Banks and Exchange Control if they wish to acquire more than 15 per cent of a bank issued capital.[157]

6. *Acquisition of real estate for FDI purposes.* In general, all foreign and domestic private entities are entitled to own land for business purposes.

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154. US State Department, Country Commercial guide.

155. IMF, 2004.

156. An "affected person" is a company in which 25 per cent or more of the capital assets or earnings may be used for payment to, or for the benefit of, a non-resident, or in which 75 per cent or more of the voting securities, voting power, power of control, capital, assets or earnings are vested in, or controlled by, any non-resident. Normally, the maximum amount an "affected person" may borrow is 50 per cent of the total "effective capital" plus an amount determine by the following formula: domestic participation/foreign participation times 50 per cent. (Source: US Department of Commerce.)

157. IMF, 2003.

c) Post entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises.* Foreign firms are generally eligible for various national investment incentives such as export incentive programmes (tax allowances and trade facilitation). The main remaining sectoral restrictions are:

   a. Access to local finance. The main area in which foreign investors are treated differently from domestic investors concerns local borrowing restrictions imposed by exchange control authorities. No person may provide credit to a non–resident or "affected persons" without exchange control exemption.[158]

   d. Access to public procurement. Foreign firms are allowed to bid for public procurements if they have an agent in South Africa to act on their behalves. However, as part of the Government's policy to encourage local industry, a price preference schedule, based on the percentage of local content in relation to the tendered price is employed to compare tenders.[159]

   e. Taxation. Domestic companies are taxed at a flat rate of 30 per cent, branches and agencies of foreign companies which have their effective management outside South Africa are subject to 35 per cent taxation of their South African-sourced profits.[160]

8. *Other discriminatory practices*.

   a. Nationality-based regulatory restrictions on company board composition. Directors need not be South African residents.

   b. Discriminatory private practices permitted under corporate legislation. No data.

   c. Entry of key personnel: granting visas to business people in a transparent and efficient manner. South Africa's Government approved in May 2002 an Immigration Bill creating more categories of permits for temporary residence. The Act requires employers of foreigners to pay a percentage of wages as a fee to the government.[161]

9. *Performance requirements.* South Africa encourages investments that enhance technological know-how, but does generally not impose performance requirements on foreign companies to establish, or to access to investment incentives. One example of performance requirements is, however, found in the banking sector, where foreign banks are requested to employ a minimum number of local residents.[162]

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158. An affected person is a company in which 25 per cent or more of the capital assets or earnings may be used for payment to, or for the benefit of, a non-resident, or in which 75 per cent or more of the voting securities, voting power, power of control, capital, assets or earnings are vested in, or controlled by, any non-resident. Normally, the maximum amount an "affected person" may borrow is 50 per cent of the total "effective capital" plus an amount determine by the following formula: domestic participation/foreign participation times 50 per cent. US Department of State.

159. US Department of Commerce.

160. South Africa web site, www.southafrica.info

161. US Department of Commerce.

162. US Department of Commerce.

d) *Practices encouraging FDI*

10. *FDI-targeted tax and other incentives.* In addition to incentives available to domestic investors, foreign investors can benefit from the Foreign Investment Grant (FIG), which aims at assisting foreign companies to relocating machinery and equipment from overseas to South Africa. The scheme is available to foreign investors with a shareholding of at least 50 per cent.[163]

11. *Bilateral investment treaties.*[164]

    a. <u>With OECD countries.</u> South Africa signed bilateral investment treaties with the United Kingdom (in 1994), Canada (in 1995), France (in 1995), Germany (in 1995), the Netherlands (in 1995), Switzerland (in 1995), Korea (in 1995), Austria (in 1996), Denmark (in 1996), Italy (in 1997), Belgium / Luxembourg (in 1998), Czech Republic (in 1998), Finland (in 1998), Greece (in 1998), Spain (in 1998), Sweden (in 1998), and Turkey (in 2000).

    b. <u>With non-OECD countries.</u> South Africa signed bilateral investment treaties with Cuba (in 1995), China (in 1997), Iran (in 1997), Mozambique (in 1997), Argentina (in 1998), Chile (in 1998), Egypt (in 1998), Ghana (in 1998), Mauritius (in 1998), Senegal (in 1998), Brunei (in 2000), Uganda (in 2000), and Yemen (in 2002).

12. *Bilateral tax treaties.* List of DTTs signed as of January 1st 2003.[165]

    a. <u>With OECD countries.</u> South Africa signed bilateral tax treaty with the United States (in 1947 and 1997), Sweden (in 1955, 1961 and 1995), Ireland (in 1958 and 1997), Switzerland (in 1967), the United Kingdom (in 1968 and 1978), the Netherlands (in 1971 and 1998), Germany (in 1973 and 1998), France (in 1993), Poland (in 1993), Hungary (in 1994), Belgium (in 1995), Canada (in 1995), Denmark (in 1995), Finland (in 1995), Italy (in 1995), Korea (in 1995), Austria (in 1996), Czech Republic (in 1996), Norway (in 1996), Japan (in 1997), Slovakia (in 1998), Australia (in 1999), and New Zealand (in 2002).

    b. <u>With non-OECD countries.</u> South Africa signed bilateral tax treaty with Zambia (in 1956), Lesotho (in 1959 and 1995), Namibia (in 1959), Tanzania (in 1959), Uganda (in 1959), Zimbabwe (in 1965), Malawi (in 1971), Swaziland (in 1972), Botswana (in 1977), Israel (in 1978), China (in 1980 and 2000), Taiwan (in 1994), Croatia (in 1996), Mauritius (in 1996), Thailand (in 1996), Malta (in 1997), Seychelles (in 1998), and Tunisia (in 1999).

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163. US Department of Commerce.

164. UNCTAD, various sources.

165. UNCTAD, http://stats.unctad.org/fdi/treaties/dtts/south%20africa.htm

e) Measures to enhance investment policy transparency

13. *National authorities*.

a. Publication of regulation. South Africa official web site, www.southafrica.info, and Trade and Investment South Africa web site, www.thedti.gov.za, provide much relevant information, but is arguably difficult and time consuming to access.

b. Notification/consultation prior to planned regulatory changes. No data.

c. Negative lists of restricted sectors. Not relevant, as FDI is not banned or seriously restricted in any sectors

d. "Silent and consent" approach to authorisation. No data

f) Other measures

14. *Measures at sub-national level*. No data.

TANZANIA

23. The policy of the government of Tanzania is to encourage private investment – foreign and domestic alike. In 1997 the National Investment Promotion and Protection Act was replaced by the Tanzania Investment Act, which applies to both domestic and foreign direct investment. According to this new Act, all enterprises, foreign and domestic, wishing to establish in Tanzania must first register with the Business Registration and Licensing Agency (BRELA) of the Ministry of Industries and Trade, and then complete a registration process with Tanzania Investment Centre (TIC), if they want to benefit from the various advantages provided by the Centre. The island of Zanzibar, while subject to federal legislation, pursues distinct investment policies. In Zanzibar all direct investment applications are handled directly by Zanzibar Investment Promotion Agency (ZIPA).

24. The main information that can be derived from public sources regarding Tanzania's performance in the six areas of investment policy under survey is as follows:

a) General restrictions on entry

1. *Limitations to entry of FDI.* Prior to launch a business investors must register with the Business Registration and Licensing Agency (BRELA) of the Ministry of Industries and Trade. The following documents and permits are required to register an investment: Certificate of Incorporation and Memorandum and Articles of Association; Income Tax Clearance Certificate; Residence Permits Class A or B; Proof of Business premises; and an inspection of premises by the Land & Health Officer.[166] The Investment Act does not apply to: investments in mining and oil exploration currently covered under the Petroleum (Exploration and Production) Act, 1980, and the Mining Act 1998; investments in Zanzibar, which are administered under a separate legislation; and investment below USD 300,000 for foreign investor (wholly owned or joint venture) and USD 100,000 for local investor. These minimum levels also apply in Zanzibar.[167]

2. *Limitations on foreign purchases of shares.* There are no limitations on the purchase of domestic shares by non-residents.[168]

3. *IMF Article VIII status.* Tanzania has accepted the obligations of Article VIII of the IMF's Articles of Agreement.[169]

4. *Transfer of profits and the proceeds of liquidation.* One of the benefit of registering with the Tanzania Investment Centre is the unrestricted transferability, through any authorised bank in freely convertible currency, of net profits and proceeds of sale or liquidation, repayment of foreign loans, royalties, fees and charges in respect of technology transfer agreements, and payments of emoluments and other benefits to foreign employees working in Tanzania.[170] But there is no publicly available information on the guaranty of unrestricted transferability for companies that do not meet the criteria to invest through TIC, i.e. a minimum investment of USD 100,000 for foreign investment respectively.

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166. Tanzania investment centre web site http://www.tic.co.tz/

167. Tanzania investment centre web site http://www.tic.co.tz/

168. IMF, 2004.

169. IMF, 2004.

170. Tanzania investment centre web site http://www.tic.co.tz/

b) Specific restrictions on entry

5. *Sectoral limitations to FDI.* Companies operating in the mining and oil, fishing and tourism industry must obtain in addition from the ordinary licences sector specific licences. Otherwise in mainland Tanzania the Investment Act did away with sectoral restrictions on FDI from nearly every economic activity. Conversely Zanzibar continues to restrict foreign participation in various industries.[171]

    a. Other services. In Zanzibar, the investment code excludes FDI from: retail and wholesale trading services; product brokerage; the operation of taxis; barber shops, hairdressing and beauty parlours; butcher shops; and ice-cream manufacture. In the main land, Tanzania regulations discriminate against foreign investors when grating business licence in the travel industry.[172] Moreover, the pricing of business licences does, to a limited extent, discriminate against foreign enterprise :

    The “Class A” business licence costs USD 2,000 for citizens of Tanzania, and for joint ventures where majority owner is a Tanzanian and the company is located in Tanzania. In any other cases the price is USD 5,000. A “Class A” business licence is required for the following sectors : Proprietors, owner drivers and self employed drivers of passenger vehicles used wholly or partly in a tourist agent’s business; tour or safari operators; safari outfitters; motors vehicle, hire enterprises offering tour transport facilities, whether self driven or chauffeur driven; big game fishing outfitters and operators; proprietors of safari, hunting or sight seeing lodges and proprietors of tented camps catering for tourists; travel bureaux or booking offices which (alone or with other business) offer tour or safaris rather than those of an air line which operates international air tours and does not carry on any tourist activities in Tanzania; professional safari photographers

    The “Class B” business licence costs USD 200 for citizens of Tanzania, and for joint ventures where majority owner is a Tanzanian and the Company is in Tanzania, and USD 1,000 in any other Cases. A “Class B” business licence is required for: professional hunters; persons letting out vessels, whether manned or not; proprietors of enterprises offering camps and camping equipment for hire; professional and self employed guides and couriers; any other business of a tourist agent not otherwise classified.

    c. Primary sector. On the mainland foreign investors are excluded from manufacturing hazardous chemicals, armaments and explosives. In addition, Tanzania Petroleum Development Corporation has an option to acquire, on a working interest basis, a participating share, determined by a sliding scale based on the volume of production and ranging from 5 to 20 per cent petroleum exploitation.[173]

6. *Acquisition of real estate for FDI purposes.* According to the 1999 Land Act, the, ownership of land is vested to the Government, and non-Tanzanians are not allowed to own land. Foreign investors can obtain the use of land in three ways 1) Government granted right of occupancy 2) Tanzania Investment Centre 3) Sub-Leases created out of granted right of

171. UNCTAD – Investment Policy Review: The Republic of Tanzania.

172. Tanzania investment centre web site http://www.tic.co.tz/

173. Tanzania investment centre web site http://www.tic.co.tz/

occupancy by the private sector.[174] Rights of occupancy and derivative rights are granted for short and long rights of occupancy, derivates rights and leases cannot exceed 99 years.

c) Post entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises.* Tanzania Investment Code applies to both foreign and local investors without distinction.

   a. Access to local finance. No restrictions are on record. However, payment in domestic currency to a non-resident requires Bank of Tanzania approval.[175]

   b. Access to subsidies. No data

   Zanzibar has its own set of incentives for its Free Economic Zone and Freeport areas.

8. *Other discriminatory practices.* The Immigration Act assigns the management and administration of expatriate employment to the TIC. Similarly, it is ZIPA that has the responsibility for expatriate employment management in Zanzibar.

   a. Nationality-based regulatory restrictions on company board composition. No data.

   b. Discriminatory private practices permitted under corporate legislation. No data.

   c. Entry of key personnel: granting visas to business people in a transparent and efficient manner. Under the Investment Act every Certificate holder is allowed to employ five foreign experts and may ask TIC for approval to bring in additional expatriate employees.[176] No limits or quotas are applied to the number of expatriate managers and employees allowed to enter Tanzania in the case of mining, natural gas or petroleum projects. However, as in the other sectors, companies have to justify their request to TIC.[177]

9. *Performance requirements on foreign direct investors.* Tanzania Investment Code does not impose performance requirements or any other quantitative or qualitative investment standards on foreign investors.[178]

d) Practice encouraging FDI

10. *FDI-targeted tax and other incentives.* Incentives are delivered through a reduction in, or exclusion from, tax or duty payments to investors in lead and priority sectors with investment above USD 300,000 in the case of foreign investors and above USD 100,000 in the case of local investors. Special investment incentives are also available to domestic and foreigners investing in projects in petroleum exploration and development.

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174. Tanzania investment centre web site http://www.tic.co.tz/

175. IMF, 2004.

176. Tanzania investment centre web site http://www.tic.co.tz/

177. UNCTAD – Investment Policy Review: The Republic of Tanzania.

178. UNCTAD – Investment Policy Review: The Republic of Tanzania.

11. *Bilateral investment treaties.*[179]

a. With OECD countries. Tanzania signed bilateral investment treaty with Germany (in 1965), Switzerland (1965), the Netherlands (2001), Italy (2001), Denmark (in 1999), Sweden (1999), Finland (2001), the United Kingdom (1994), Canada (1995), and Korea (1998).

b. With non-OECD countries. Tanzania signed bilateral investment treaty with South Africa (1959), Zambia (1968), India (1979), Egypt (1997), Mauritius (in 2003) and Zimbabwe (in 2003).

12. *Bilateral tax treaties.* List of DTTs signed as of January 1st 2003.[180]

a. With OECD countries. Tanzania has signed double taxation treaties with Italy (in 1973), Denmark, (in 1976), Finland (in 1976), Norway (in 1976), Sweden (in 1976), Canada (in 1995). In addition Tanzania Invest Centre reports[181] that Tanzania is currently negotiating DTTs with the Republic of Korea.

b. With non-OECD countries. Tanzania has signed double taxation treaties with South Africa (in 1959), Zambia (in 1968), India (in 1979). In addition Tanzania Invest Centre reports[182] DTTs with Kenya, Uganda, and. that Tanzania is currently negotiating with, Zimbabwe, United Arab Emirates, Russia, Seychelles, Mauritius, Egypt, Yugoslavia and Oman

e) Measures to enhance investment policy transparency

13. National authorities

a. Publication of regulation. TIC's web site (http://www.tic.co.tz/) provides details of regulations, but it generally does not publish the texts. In addition, this site does not appear to be frequently updated, since for example, at the date of publication of this paper the latest economic indicators it provides are for the year 1999.

b. Notification/consultation prior to planned regulatory changes. No data.

d. "Silent and consent" approach to authorisation. No data.

f) Other measures

14. *Measures at sub-national level*. No data.

179. UNCTAD, various sources.

180. http://stats.unctad.org/fdi/treaties/dtts/tanzania.htm

181. Tanzania investment centre web site http://www.tic.co.tz/

182. Tanzania investment centre web site http://www.tic.co.tz/

UGANDA

25. The present government of Uganda has made it a top priority to improve its investment environment. The so-called "Big Push" strategy, launched in 2000, has as its stated objective to make Uganda the most attractive destination for FDI in Africa.[183] A key player in this respect is the Uganda Investment Authority (UIA), which was created in 1991 to streamline the legal framework and fight corruption. The latter nevertheless remains a daunting challenge for the government.[184]

26. The national Investment Code requires foreign direct investors to obtain a license, valid for a minimum of 5 years, from UIA prior to establishing a corporate presence in Uganda.[185]

27. The main information that can be derived from public sources regarding Uganda's performance in the six areas of investment policy under survey is:

a) General restrictions on entry

1. *Limitations to entry of FDI.* In addition of a trading license required for any business operating in Uganda, an investment license from the UIA is as mentioned required for all foreign Investors. To obtain a license foreign investor[186] must submit a business plan as well as corporate details including the identity and nationality of its owners.[187] Furthermore, a minimum initial investment of USD 100,000 is needed. (For local investors, the minimum investment requirement is USD 50,000, and they may proceed with their investment without licensing with the UIA).[188]
2. *Limitations on foreign purchases of shares.* The Investment Code allows foreign ownership of shares up to 100 per cent of the value of a company.
3. *IMF Article VIII status.* Uganda has accepted the obligations of Article VIII of the IMF's Articles of Agreement.[189]
4. *Transfer of profits and the proceeds of liquidation.* No restrictions on the repatriation of proceeds are reported.[190]

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183. Uganda Development gateway : www.udg.or.ug

184. In 2003, Transparency International still ranked Uganda among the most corrupt countries in the world.

185. UNCTAD – ICC, Uganda Opportunities and conditions, 2003.

186. A foreign investor is: i) non-citizens of Uganda; ii) any company owned for more than 50 per cent by a non-citizens; and iii) a partnership in which the majority of partners are non-citizens (Uganda Development Gateway: www.udg.or.ug).

187. According to the World Bank (World Bank Foreign Investment Advisory Services, www.fias.net/investment_climate.html it generally takes 36 days to register an Investment in Uganda, UNCTAD (UNCTAD – ICC, Uganda Opportunities and conditions, 2003) reports that, in certain circumstances, the process can take over six months.

188. Uganda Investment Authority, www.ugandainvest.net

189. IMF, 2004.

190. Uganda Investment Authority, www.ugandainvest.net

b) Specific restrictions en entry

5. *Sectoral limitations to FDI.* The UIA reports on its website that all sectors are open to foreign investment, whereas the US Department of State lists limitation in sectors involving national security (plus activities where Ugandan restrictions on the ownership of land are a specific impediment).[191] In addition, secondary licenses are needed in the following sectors: mining; air transport; banking; forestry; fishing; tourism; timber; coffee; insurance; pharmaceuticals and broadcasting; and media. The UIA endeavours to assist investors in obtaining these approvals.

    a. <u>Financial services.</u> The Investment Code requires a larger amount of paid-up capital for foreign-owned banks and insurance companies.[192]

6. *Acquisition of real estate for FDI purposes.* The 1995 Constitution vests the right to land ownership to the citizens of Uganda. Non-citizens may obtain land through leasehold, to up to 99 years or through joint ventures with Ugandans, who must hold the majority stake.[193]

c) Post entry restrictions

7. *Exceptions to national treatment of established foreign controlled enterprises.* The Investment Code does not provide a general assurance of national treatment to foreign investors, except for tax issues where according to Uganda official website, there are no discriminations against foreign investors

    b. <u>Access to subsidies.</u> Non-citizens who invest in any of the following activities will not be entitled to investment incentives: wholesale and retail commerce; personal service sector; public relations business; car hire service and operation of taxis; bakeries, confectioneries and food processing (for the Uganda market only); postal and telecommunication services; and professional services.[194]

8. *Other discriminatory practices*.

    a. <u>Nationality-based regulatory restrictions on company board composition</u>. No data.

    b. <u>Discriminatory private practices permitted under corporate legislation</u>. Again the Investment Code allows for distinctions in the treatment of foreign and domestic investors.

    c. <u>Entry of key personnel: granting visas to business people in a transparent and efficient manner</u>. Work permits for expatriate staff are usually granted to employees of foreign enterprises approved to operate in Uganda provided the applicants are key personnel, or Ugandans are not available, and the investor has demonstrated the need for such employees.[195]

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191. Moreover, UNCTAD argues that the Investment Code may allow for distinctions in the treatment of foreign and domestic investors.

192. UNCTAD – ICC, Uganda Opportunities and conditions, 2003.

193. UNCTAD – ICC, Uganda Opportunities and conditions, 2003.

194. UNCTAD – ICC, Uganda Opportunities and conditions, 2003.

195. UNCTAD – ICC, Uganda Opportunities and conditions, 2003.

9. *Performance requirements.* According to some sources, foreign investors may be made subject, as a condition for obtaining an investment licence, to staff training and localisation, local procurement and environmental requirement to which national investors are not subject.

d) Practices encouraging FDI

10. *FDI-targeted tax and other incentives*. No data.

11. *Bilateral investment treaties*.[196]

   a. <u>With OECD countries.</u> Uganda has signed bilateral investment treaties with Germany (in 1966), the Netherlands (in 1970), Switzerland (in 1971), Italy (in 1997), the United Kingdom (in 1998), Denmark (in 2001), and France (in 2002).

   b. <u>With non-OECD countries.</u> Uganda has signed bilateral investment treaties with Eritrea (in 2000), Egypt (in 1995), South Africa (in 2000), Cuba (in 2002), China (in 2003), Ethiopia (in 2003), Nigeria (in 2003), Peru (in 2003) and Zimbabwe (in 2003).

12. *Bilateral tax treaties.* List of DTTs signed as of January 1st 2003.[197]

   a. <u>With OECD countries.</u> Uganda has signed bilateral tax treaties with The United Kingdom (in 1956 and 1992), Denmark (in 1954 and 2000), Norway (in 1999), the Netherlands (in 2000) and Italy (in 2000).

   b. <u>With non-OECD countries.</u> Uganda has signed bilateral tax treaties with South Africa (in 1959) and Zambia (in 1968).

e) Measures to enhance investment policy transparency.

13. *National authorities*.

   a. <u>Publication of regulation.</u> The Uganda Investment Authority web site, www.ugandainvest.net, contains comprehensive information on the procedure to launch a business in Uganda, but does not provide regulatory texts.

   b. <u>Notification prior to regulatory changes.</u> The National Forum, which is a mechanism for private-and public-sector dialogue, has proposed a mandatory process of notification and consultation with the private sector in relation to changes in regulation which affect business.

   No information on a "Negative lists of restricted sectors" and on "Silent and consent" approach to authorisation appears to be in the public domain.

f) Other measures

14. *Measures at sub-national level*. No data.

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196. UNCTAD, various sources.

197. UNCTAD, http://stats.unctad.org/fdi/treaties/dtts/uganda.htm

ANNEX 2

HORIZONTAL LIMITS TO MARKET ACCESS (MA) AND NATIONAL TREATMENT (NT)
BASED ON GATS SCHEDULES OF COMMITMENTS RELATED TO MODE 3* DELIVERY OF SERVICES

		Developed (15)		Developing (69)		LDC (29)		Selected African countries** (6)	
	Type of measure	Limit on MA	Limit on NT	Limit on MA	Limit on NT	Limit on MA	Limit on NT	Limit on MA	Limit on NT
1	Authorisation/notification requirements	46.67%	20.00%	39.13%	4.35%	17.24%	3.45%	50.00%	16.67%
2	Equity requirements	0.00%	0.00%	24.64%	10.14%	3.45%	0.00%	16.67%	16.67%
3	Restrictions on land ownership	13.33%	53.33%	28.99%	20.29%	10.34%	3.45%	16.67%	16.67%
4	Debt-equity requirements	0.00%	6.67%	0.00%	2.90%	3.45%	3.45%	0.00%	16.67%
5	Restrictions on remittances	0.00%	0.00%	10.14%	13.04%	0.00%	0.00%	16.67%	33.33%
6	Subsidies	0.00%	53.33%	1.45%	4.35%	0.00%	0.00%	0.00%	0.00%
7	Local employment requirements	13.33%	46.67%	13.04%	8.70%	0.00%	0.00%	100.00%	50.00%
8	Foreign exchange requirements	0.00%	0.00%	4.35%	2.90%	0.00%	0.00%	0.00%	0.00%
9	Sectoral limits	20.00%	6.67%	17.39%	2.90%	0.00%	0.00%	0.00%	0.00%
10	Technology transfer requirements	0.00%	0.00%	5.80%	1.45%	0.00%	0.00%	0.00%	0.00%
11	Local content requirements	0.00%	0.00%	2.90%	1.45%	0.00%	0.00%	0.00%	0.00%
12	Unbound	0.00%	0.00%	1.45%	2.90%	3.45%	3.45%	0.00%	0.00%

Note: Adapted from TD/TC/WP(2002)41/FINAL (unclassified)

* “Mode 3” is the supply of a service through the commercial presence of the foreign supplier in the territory of another WTO member.

** Data only available for Botswana, Ghana, Kenya, Mauritius, Nigeria and South Africa.