

MENA-OECD INVESTMENT PROGRAMME

INVESTMENT CLIMATE AND REGULATION OF INTERNATIONAL INVESTMENT IN MENA COUNTRIES

Assessment of Available Information, and General Recommendations

- Working Group 1 -

This report has been elaborated by Working Group 1 of the Programme. The report is work in progress and will remain so throughout the duration of the Programme. The data it contains is based on publicly available sources and submissions by MENA governments dated up to 2005. The report will constantly be updated and extended throughout the duration of the Programme.

Contact:

Alexander Böhmer, tel. +33 1 45 24 1912, e-mail: alexander.boehmer@oecd.org or
Kenneth Davies, tel. +33 1 45 24 9124, e-mail: kenneth.davies@oecd.org

TABLE OF CONTENTS

PART 1 - INTRODUCTION..... 3

PART 2 – INVESTMENT CLIMATE IN THE MENA REGION 4

 FDI flows to the region 4

 Recent investment policy developments in MENA countries..... 6

 Transparency and Integrity..... 7

 Horizontal and sectoral restrictions to FDI 11

 Approval procedures for FDI 14

 Foreign exchange regulations, currency restrictions on capital or other transfers 14

 International Investment Agreements 15

 Restrictions on real estate acquisition 16

 Incentives policies..... 17

 Institutional Investment Promotion 17

ANNEX 1 REGULATORY TREATMENT OF FDI IN MENA COUNTRIES¹ 19

ANNEX 2 REGULATORY TREATMENT OF FDI..... 21

 1. All-sector limitations on the entry of foreign direct investment including discriminatory screening and prior approval procedures..... 21

 2. Limitations on foreign purchase of domestic shares (portfolio investment) 30

 3. International Monetary Fund Article VIII status..... 33

 4. Restrictions on transfers abroad of the proceeds of the liquidation of a foreign direct investment 34

 5. Sectoral limitations to establishment of FDI, including reciprocity..... 35

 6. Acquisition of real estate for FDI purposes by foreign investors..... 39

 7. Exceptions to national treatment of foreign-controlled enterprises..... 41

 8. Performance requirements on foreign direct investors..... 45

 9. FDI-targeted tax and other incentives 46

 10/11. Bilateral investment treaties (BITs) (total number of countries and with OECD countries) 49

 12. Bilateral tax treaties with OECD countries 50

 13. Measures to enhance investment policy transparency..... 50

 14. Measures at sub-national level 53

 15. Investment promotion authorities..... 53

ANNEX 3 WTO MEMBERSHIP 54

ANNEX 4 MENA FDI STATISTICS 56

ANNEX 5 COST AND DURATION OF BUSINESS ESTABLISHMENT PROCEDURES IN DEVELOPING WORLD REGIONS 58

ANNEX 6 HORIZONTAL LIMITS TO MARKET ACCESS AND NATIONAL TREATMENT BASED ON GATS SCHEDULES OF COMMITMENTS RELATED TO MODE 3 DELIVERY OF SERVICES OF MENA COUNTRIES¹ 59

ANNEX 7 INVESTMENT INCENTIVES IN MENA COUNTRIES 60

ANNEX 8 MENA MEMBERS OF THE WORLD ASSOCIATION OF INVESTMENT PROMOTION AGENCIES (WAIPA)..... 64

SOURCES AND REFERENCES..... 66

PART 1 - INTRODUCTION

1. This report is intended to discuss measures to improve transparency relating to remaining restrictions on international investment in the countries of the Middle East and North Africa (MENA)¹. It builds on an earlier draft presented to the meeting of the MENA-OECD Investment Programme in Amman in June 2004. Since the meeting, the report has evolved and benefited from contributions from MENA countries and sources from IMF and WB.

2. As a continuous exercise to improve transparency on investment climate in the MENA countries, **the report is a work in progress and will remain so throughout the duration of the Programme**. The data it contains will constantly be updated and extended throughout the three year Programme cycle. The report also serves as a basis for the National Investment Reform Agendas, which are elaborated for countries participating in the Programme. Discussions related to the level of openness and transparency of regulation for investment will remain a key element of the Programme, although the report differs from other activities of the Programme in that it focuses only on restraints to foreign investment (refer to Annex 1 and 2).

3. **MENA governments participating in the Programme are invited to continue to complete the information the report currently contains**. Where the data has been obtained by OECD staff from information provided by various international organisations is out of date, governments are encouraged to verify and to build the necessary capacity to ensure that such updates are provided whenever there is new information to add and/or out-of-date information to remove.

4. Following the incorporation of such inputs, **this inventory can function as a template to be used in the policy dialogue among MENA countries and with OECD countries** to document the progress of the former in providing a business environment conducive to investment, as well as indicate where measures may need to be taken to enhance that environment further.

5. A detailed set of appendices accompanying the report is meant to provide a detailed summary of key statistics related to current investment environment in the participating countries to understand the overall state of affairs in the region, as well as to benchmark the countries within the region. Annex 1 summarises information currently available on inward investment restrictions in MENA countries in matrix form. The same information appears in a more detailed, textual form in Annex 2. Partial inward FDI statistics appear in Annex 4. Annex 5 is a comparative table showing the cost and duration of business establishment procedures in MENA and other regions. Annex 6 gives a comparison of GATS market access and national treatment commitments in MENA countries and other world regions at different stages of development. Annex 7 demonstrates the scope of incentives given to foreign investors in the MENA countries. Finally, Annex 8 provides the contact information of investment promotion agencies operating in each country.

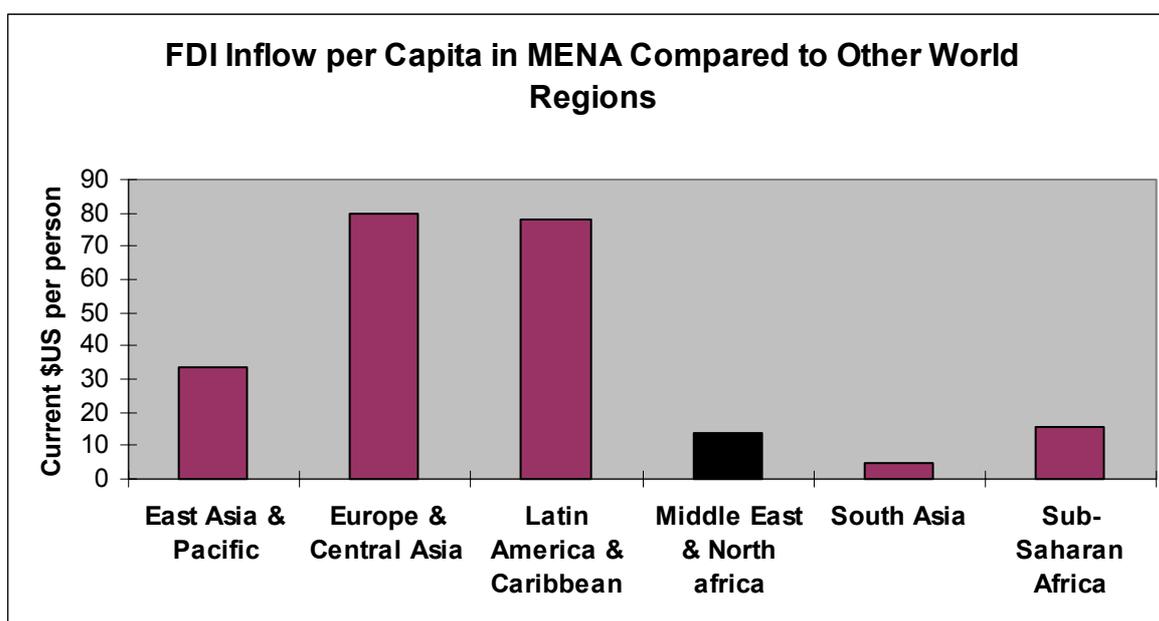
¹. This report covers the countries participating in the MENA-OECD Investment Programme (Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine National Authority, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates and Yemen).

PART 2 – INVESTMENT CLIMATE IN THE MENA REGION

FDI flows to the region

1. Foreign Direct Investment (FDI) to the MENA region has increased in recent years, but not as rapidly as to other developing country regions. In comparison to other world regions, the MENA region attracts a relatively small amount of FDI per capita: smaller amount than all other regions except for South Asia, as indicated in Figure 1 below.

Figure 1: FDI Inflow per Capita for World Regions

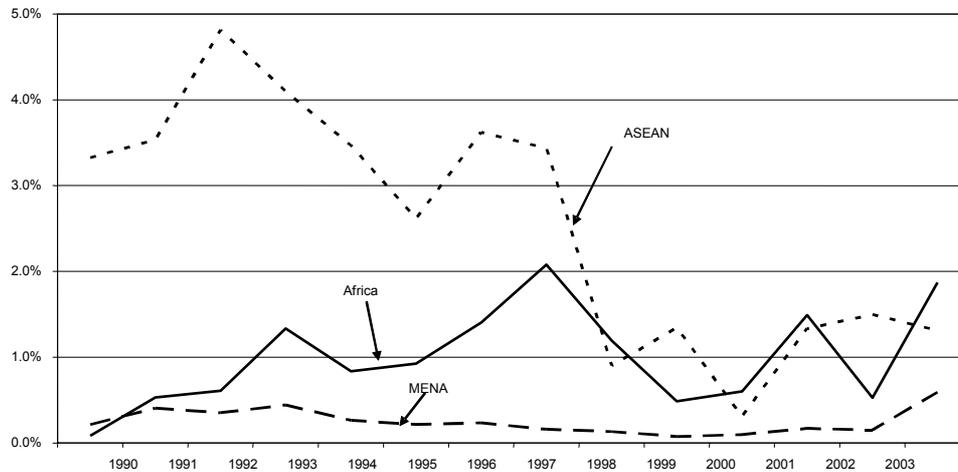


Source: Development Gateway Foundation, Inc, 2005, OECD, 2005.

2. As demonstrated below, the MENA region also receives a disproportionately small percentage of the FDI flows also from the 30 OECD countries compared to other regions.

Figure 2: OECD Outward FDI Flows to Selected non-Members
(As a percent of total OECD outward FDI flows)

MENA– OECD INVESTMENT PROGRAMME



Source: OECD International Direct Investment Database, 2005

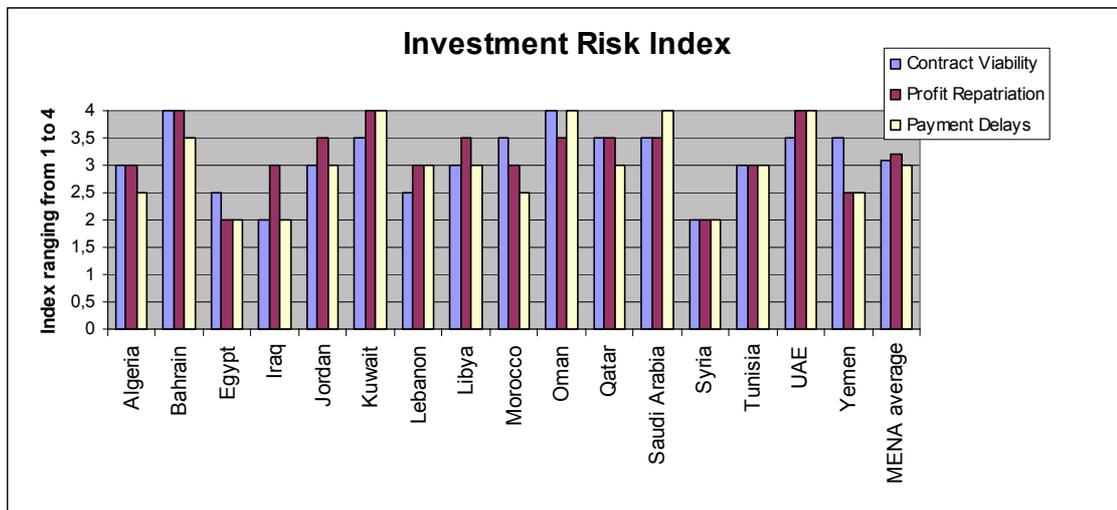
3. Between the years 2001 and 2004, the average FDI inflow to the MENA region amounted to \$128 US per person. However, the amount of FDI received by the MENA region differs widely among the countries in the region as demonstrated in Annex 4, Table A.1. This variation is especially noticeable when the population size is accounted for. The countries with the most significant inward FDI are Bahrain, Qatar and United Arab Emirates. Among the larger countries, inward per capita FDI is appreciably larger in Saudi Arabia and Tunisia than in Syria or Algeria.²

4. The heterogeneity among the MENA countries with reference to FDI inflows can be explained, at least partially by country-specific investment risk environment. The calculated investment risk in each MENA country, with reference to contract viability, profit repatriation, and payment delays, is displayed in figure 3 below. A score of 4 in each of the categories represents very low risk and the lower the score, the higher the investment risk.

² World Bank, *World Development Indicators* Online.

MENA– OECD INVESTMENT PROGRAMME

Figure 3: Investment Environments in the MENA



Countries

Source: The PRS Group Inc., 2005.

Recent investment policy developments in MENA countries

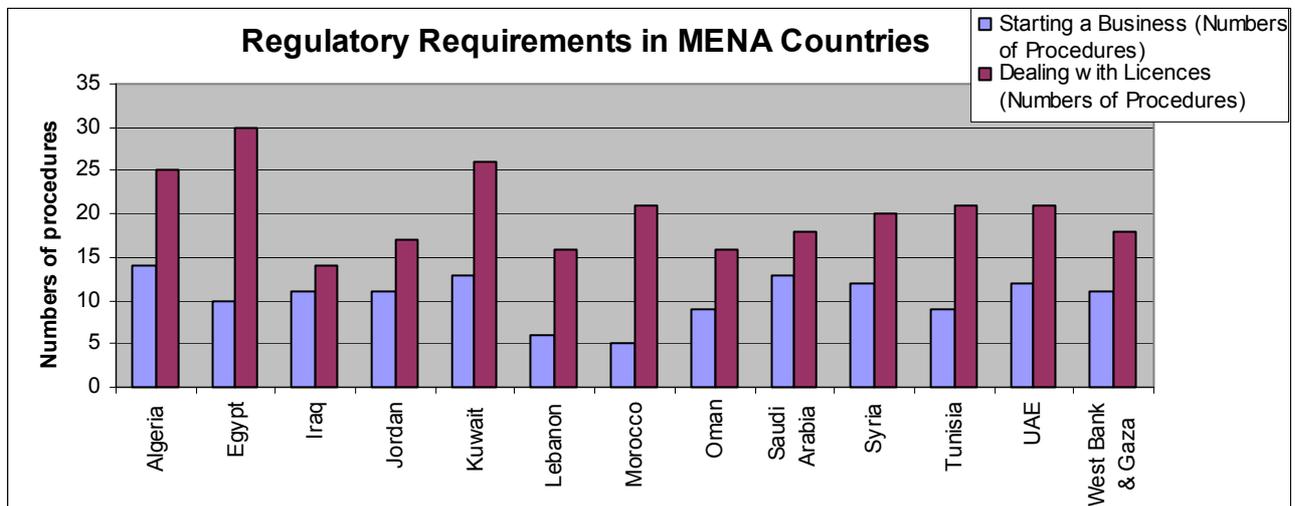
5. The **relatively poor FDI attraction performance** in the MENA region is likely to be the outcome of a number of factors, such as market size, macroeconomic stability, location, labour costs, infrastructure provision or security-related concerns. However, a major contributing factor may well be the *high entry cost resulting from the complex procedures involved in setting up a foreign-owned enterprise* in the MENA countries (refer to Annex 5 for country specific data). One recent study shows that while in terms of the business environment MENA economies have traditionally occupied a middle position in a worldwide ranking, based on progress over the last years, MENA has lost significant ground in reducing impediments to business development.³ Generally, restrictions on investment on nationality grounds rank highly in business surveys on investment environment in the region. In one recent survey on intra-regional investment barriers, potential investors highlighted the following constraints on investment in MENA countries: difficulty in application and enforcement of a legal framework, laws restricting business activities to nationals only, prohibited or restricted foreign ownership of real estate or other assets, government corruption, bureaucratic administration, as well as complex and at times inefficient tax system.⁴

As Figure 4 indicates, the number of procedures for starting a business and dealing with the required licences vary amongst the MENA countries. Nonetheless, a trend can be observed among all the participating MENA nations in that the number of procedures for starting a business are significantly less than that to obtain the relevant operating licences. Being a quantitative measure, this statistic cannot entirely capture potential differences in terms of difficulty, which could exist among countries.

^{3.} The World Bank (2005), Middle East and North Africa, Economic Developments and Prospects.

^{4.} Zarrouk (2003).

Figure 4: Constraints on Starting a Business in the MENA Countries



Source: World Bank, International Finance Corporation, 2005.

One approach to create a more dynamic investment environment is to minimise the time and financial costs associated with establishment of business enterprise.

6. In recent years, MENA countries have **adopted policies aimed at attracting foreign investment** in line with the international tendency to move away from relatively closed and *dirigiste* economic strategies, in part to reap the benefits of increasing globalization of production, consumption and investment. Foreign investment is also seen as essential in helping to diversify some energy-rich MENA economies away from dependence on oil exports, which renders them vulnerable to fluctuations in global energy demand.⁵ In some cases, countries are reversing their economic development strategy after attempting in earlier decades to finance development by investing their trade surpluses abroad. The growing consensus on the importance of FDI for development, through a broad range of macroeconomic indicators, is undeniable, yet difficult to quickly reflect in a country's economic strategy. Compounding the challenge is the fact that all MENA countries now find themselves engaging in a competition for investment capital with other developing regions. The economic resurgence of other major emerging market economies including China, India and countries of Eastern Europe poses a major challenge to the MENA region in terms of competition for investment. This competitive dynamic is hoped to continue stimulating improvements of the investment environment.

Transparency and Integrity

7. Even in the absence of formal market entry restrictions and discrimination against foreign investors, non-transparent regulatory systems may serve as equally efficient hidden barriers to investment. The relevance of this observation to the MENA region has been highlighted in a statement of the OECD business community addressed to the first meeting of the MENA-OECD Investment Programme in Amman in June 2000, which emphasized that:

⁵ See Working Group 4, Output 1 report: *Diversifying MENA Economies to Improve Performance*.

MENA– OECD INVESTMENT PROGRAMME

“Investors seek markets which are stable, transparent and predictable to give them the confidence to take the risks inherent in investing capital. International provisions on transparency for investment, demonstrating commitment to multilateral disciplines, would not and cannot by themselves produce investment flows. They can aim at making positive investment decisions easier, though. Thus, transparency should be a cornerstone of multilateral efforts enhancing investment.”

The statement by the OECD business community is in line with the organization’s focus on developing a transparent business environment not only in the MENA region, but also globally, as documented and concretized in the following set of guidelines.

Figure 5 – OECD Investors’ Recommendations on Transparency⁶

<p><i>Governments, at all levels, should take steps to insure that:</i></p> <ul style="list-style-type: none"> • <i>Existing rules and regulations are readily accessible to and understandable by members of the public;</i> • <i>Notice is provided to the public at an early stage of proposals that introduce new rules or change existing rules;</i> • <i>Proposals to change existing rules or to introduce new rules provide sufficient time for the public to submit comments in a pre-determined manner;</i> • <i>The public is provided with an explanation as to the reason(s) why the rules are being changed/introduced and the goals and objectives that are to be met;</i> • <i>The public is invited to submit comments prior to decisions being taken and there is evidence that comments are seriously considered before regulations are finally issued;</i> • <i>Points of enquiry are established to respond to the public for information (single window approach);</i> • <i>The new rules or changes in existing rules are clear and understandable to insure predictability of success and to provide affected individuals with the necessary information to comply and</i> • <i>A reasonable period of time is provided to allow affected persons to prepare for implementation.</i>
--

8. Not only is public sector transparency beneficial to investors, it also fosters economic development through more effective public governance. Enhanced transparency requirements can positively influence public governance and investment attraction at all levels. Such transparency measures could potentially encapsulate:

- Inclusion of economic actors and civil society in the drafting process of regulatory requirements;
- Regulatory impact assessment for all laws and regulations at an early stage in the drafting process;
- Transparent parliamentary legislative procedures;

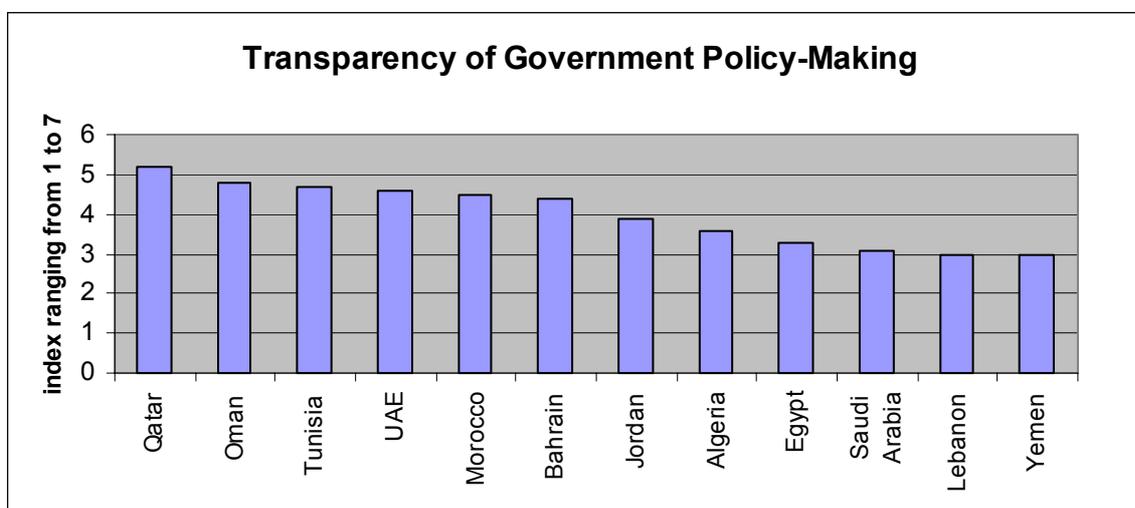
⁶ Based on Business and Industry Advisory Committee (BIAC) Discussion Paper titled “Strengthen the Investment Environment in MENA – Recommended Action from Business” submitted to the OECD-MENA Investment Steering Group Meeting, Amman, Jordan, 28 June. BIAC is currently representing the 35 main business and employer associations from the 30 OECD member countries.

MENA– OECD INVESTMENT PROGRAMME

- Accessible and timely publication of the final laws and regulations;
- Access to information at all stages of the administrative implementation procedures.

Figure 6 portrays the perspective of foreign and domestic enterprises operating in the MENA region regarding the transparency of government policy-making in their countries. The index is displayed in a ranked order, where a score of 7 implies that the business environment is entirely transparent, and conversely a score of 0 implies a complete lack of transparency.

Figure 6 – Perception of Transparency in the MENA Region



Source: World Economic Forum, 2005.

9. Although a number of the MENA countries mentioned in this report have made serious efforts to increase transparency of their foreign investment regimes, **for foreign investors in the region transparency still remains an issue of concern**. Generally, the transparency of foreign investment regimes varies widely among MENA countries. One indication of this being the relative lack of information made available to foreign parties by some of the countries in this report (refer to Annex 1).

10. Therefore, with regard to access by foreign investors to information, lack of transparency constitutes still an additional obstacle to inward investment in MENA countries, which vary widely in the availability of up-to-date, accurate and relevant information. For example, while some countries provide detailed reports in response to a survey on investment restrictions conducted by the IMF⁷ others supply cursory responses devoid of usable content. Similarly, a range of national government websites providing information of use to foreign investors extends from sophisticated sites containing relevant laws and regulations, details of establishment procedures and other useful content (usually in English or French as well as in Arabic) to sites with virtually no relevant information.

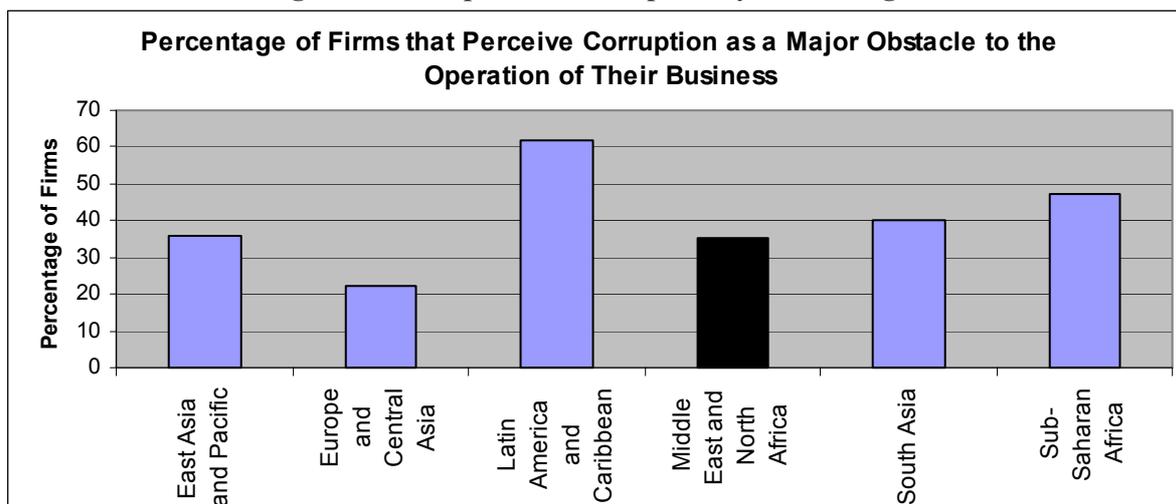
⁷ Cf. IMF (2005), passim.

Recommendation 1: Improve transparency of national policies, laws and regulations and administrative practices affecting foreign and domestic investment.

11. **Business integrity issues** are increasingly regarded as a vital cornerstone of public sector transparency. This view is echoed, among other organisation, by the Arab Business Council’s Task Force on Governance, which had asked its members to “...lobby to have all Arab Governments become signatories to the OECD Convention on Combating Bribery of Foreign Public Officials... [and to]...lobby to have exemplary legislation – perhaps developed together with the OECD and Transparency International - that effectively proscribes and combats corruption adopted by national legislatures in the Arab World.”⁸ Also, major business associations representing investors from the OECD countries highlight that “from a business point of view transparency reduces risks and uncertainties [...as well as] reduces opportunities for bribery and corruption...”⁹

12. Overall the occurrence of corruption as a major or severe obstacle to the operation and growth of their business seems to be for investors in MENA countries comparable to other developing country regions, such as East Asia and the Pacific, as well as South Asia, though slightly less imminent.

Figure 7 –Perception of Corruption by World Region



Source: World Bank, Investment Climate Report.

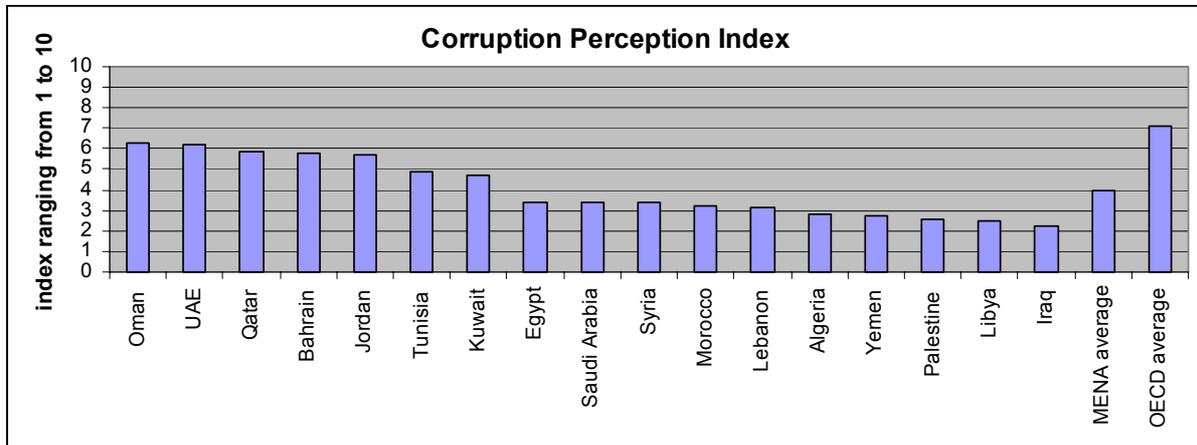
The perception of corruption differs among the MENA countries, as indicated by Figure 8 below (the lower the score, the higher the perception of corruption). While countries, such as Oman and United Arab Emirates are doing considerably better than for example Iraq and Libya, the existence of corruption in each MENA country poses a problem for the overall investment climate in the region. Preventing and curbing the occurrence of bribery has, therefore, been widely acknowledged as an important objective for MENA governments.¹⁰

⁸ ABC, Task Force on Governance, www.weforum.org/pdf/ABC/ABC_Governance_Marrakech.pdf.

⁹ BIAC statement cited in OECD, Public Sector Transparency and the International Investor, 2003, p.8.

¹⁰ Preliminary findings of a report prepared for Working Group 1, Output 3 of the MENA-OECD Investment Programme, p.6.

Figure 8- Perception of Corruption by Country



Source: Transparency International, *Corruption Perception Index*, 2005.

Recommendation 2: Promote business integrity by introducing preventive measures targeting both the private and the public sectors.

Horizontal and sectoral restrictions to FDI

13. Barriers to the establishment and operation of partly or wholly foreign-owned enterprises have been steadily lowered in the MENA countries. Restrictions on foreign ownership of enterprises have been relaxed, as have those on foreign ownership of land and real estate and on foreign purchases of shares on local stock markets. In some MENA countries, foreigners may participate in the privatisation of state-owned enterprises. The willingness of most MENA countries to commit themselves to protecting foreign investments is demonstrated by the increasing number of bilateral investment treaties, signed in recent years as well as protection and guarantee provisions in their investment laws. Nonetheless, it must be noted that certain countries have not yet granted these guarantees to foreign investors in their investment laws.

Box 1- Investor Guarantees in MENA Countries' Investment Laws

Article 14, Algeria: "Foreign individuals and legal entities shall receive the same treatment as Algerian individuals and legal entities, as far as the rights and obligations related to the investment are concerned. Foreign individuals and legal entities shall all be treated the same, subject to the provisions of agreements concluded by Algeria with their countries of origin."

Article 8, 9, 12 Egypt: *Art. 8:* "Companies or establishments shall not be nationalized nor shall their property be confiscated." *Art. 9:* "Administrative guardianship shall not be imposed on companies or establishments, nor shall their property and funds be distained, sized, retained in protective custody, blocked or confiscated." *Art. 12:* "Irrespective of domicile of stakeholders or the percentage of their ownership, companies and entities shall have the right to own building land, vacant and built, as required to exercise and expand their activities."

Section 4, Iraq: "A foreign investor shall be entitled to make foreign investments in Iraq on terms no less favourable than those applicable to an Iraqi investor, unless otherwise provided herein. The amount of

MENA– OECD INVESTMENT PROGRAMME

foreign participation in newly formed or existing business entities in Iraq shall not be limited, unless otherwise expressly provided herein.”

Article, 24b, 25, Jordan: Art. 24b: “... the Non-Jordanian Investor investing in any Project governed by this Law shall be afforded the same treatment as the Jordanian Investor.” *Art. 25:* “It shall not be permissible to expropriate any Project or to subject it to any measure that may lead to expropriation, unless such expropriation is done by way of compulsory purchase for the purposes of public interest, and in return for a just compensation to be paid to the Investor. The compensation paid to a Non-Jordanian Investor in such case shall be in a convertible currency.”

Article 23, Libya: “The project may not be nationalized, dispossessed, seized, expropriated, received, reserved, frozen, or subjected to actions of the same impact except by force of law or court decision and just compensation provided that against an immediate and just compensation provided that such actions are taken indiscriminately; the compensation will be calculated on the basis of the fair market value of the project in the time of action taken. The value of the compensation in convertible currencies may be transferred within a period not exceeding one year and according to the rate of exchange prevailing at the time of transfer.”

Article 7, The Palestinian National Authority: “The Authority prohibits the nationalization of any Investment in Palestine and may not expropriate any investment except by operation of the law.”

Article 11, Saudi Arabia: “Investments related to the foreign investor shall not be confiscated wholly or partially without a court order, moreover, it may not be subject to expropriation wholly or partially except for public interest against an equitable compensation according to Regulations and Directives.”

Recommendation 3: Include effective rights and guarantees for protection foreign investors into revised investment laws.

14. **MENA countries remain generally less open to foreign investment than OECD Member countries.** While foreign investment is welcomed, many sectors remain entirely closed to foreign investment or are subject to limitations on foreign purchases of domestic shares. Effectively, some stock markets in the region are practically closed to foreign participation. Limitations on market access and national treatment related to mode 3 of GATS (the supply of a service through the commercial presence of the foreign supplier in the territory of another WTO member) appear to be extensive in the 10 WTO MENA members by comparison with other world regions (refer to Annex 6).

Figure 10: Attitude toward Foreign Investments in the MENA Region



Source: The World Economic Forum, 2005.

While the rationale for this phenomenon is debatable, it appears that domestic attitude towards and image of foreign investors in the region could stand to be improved. Figure 10 above supports this observation by demonstrating pictorially results from a survey conducted in selected MENA countries on the attitude of local actors towards foreign business presence. The Figure pictorially demonstrates domestic attitude toward foreign investors, whereby 1 corresponds to the statement “rare, limited to minority stakes, and often prohibited in key sectors” and 7 corresponds to “prevalent and encouraged”. As the Figure above highlights, Tunisia, closely followed by Jordan and Morocco, are believed to be more open to foreign ownership than are countries such as Yemen and Algeria.

15. The majority of MENA countries rely on a **positive list** approach in their presentation of the investment environment to foreign investors. While several MENA countries publish lists of sectors which are closed to foreign investment (refer to Table 1), none is understood to operate a system whereby all sectors absent from such a list are automatically fully open to foreign investment. Some countries list explicitly in their investment laws or on Internet homepages information about the sectors which are not open to foreign investors. Typically, sectors not listed are fully or listed with restrictions are open to foreign investment. Greater transparency is necessary at the establishment stage, but it is equally required when the business begins to operate and encounter specific legal issues in so doing. Within the OECD member countries, the National Treatment approach of the OECD Investment Committee obliges adhering countries to notify their exceptions within the OECD framework. Is it advised that the spirit of this treatment be applied for the purposes of boosting transparency within the MENA block as well.

16. Annex 1 summarizes the information available to date on the remaining restrictions to foreign investors. Certain MENA countries provide a ‘**list of FDI restrictions**’ in the manner outlined in their investment laws or publicly accessible information sources. To our knowledge this transparent approach is currently only followed by Bahrain, Jordan, Qatar, Tunisia and Saudi Arabia, which effectively comprises 27% of the 18 participating Middle Eastern Countries.

Recommendation 4: Enhance investor transparency through publication of a list of remaining restrictions to foreign investors.

Approval procedures for FDI

17. Investment screening and approval procedures have been simplified in many MENA countries' investment laws. However, despite these improvements, special screening procedures for foreign investment remain in place in a number of countries for all sectors or for specific sectors. In some countries, the motivation behind the institutionalisation of special procedures for FDI remains an interest in ultimately controlling sources and nature of incoming investment flows. Other countries, including Egypt and Jordan use screening and approval procedures with a different motive: to decide on whether to grant preferential treatment to foreign investors. In general, three scenarios can be detected in the application of FDI screening procedures in the region: in certain countries, all sectors are subject to approval requirements, in others only specific, strategic sectors are subject to such requirements. A third scenario, which manifests itself in countries such as Jordan, Egypt or Bahrain is that additional approval procedures are required (as compared with national treatment) when a company wishes to apply for certain incentives under the applicable investment laws.

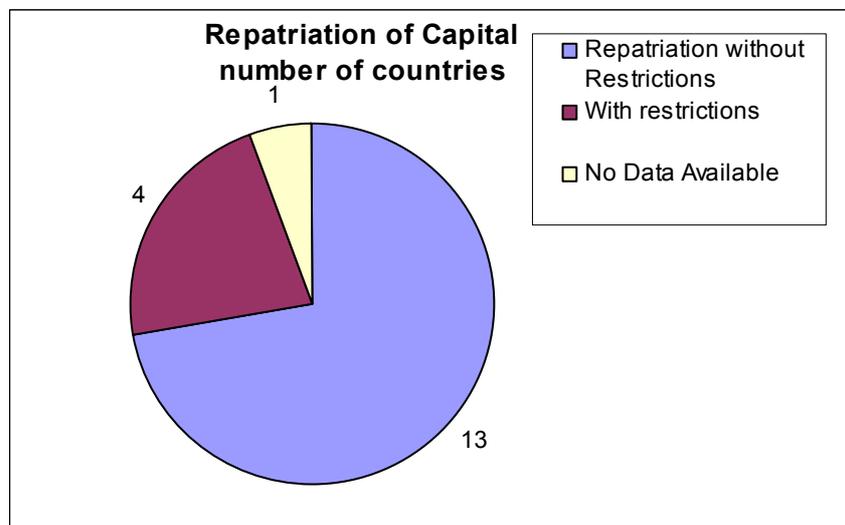
18. While screening of foreign investment is one of the most widely used techniques for controlling the entry and establishment of foreign investors in host states, it can create unnecessary impediments and should be restricted to sensitive sectors. Often, a specialised investment review agency deals with the screening and approval procedure using a process which tends to be highly discretionary, lacking overall transparency and the possibility for an investor to claim effective judicial review. If screening procedures were to remain, MENA countries employing such procedures should consider offering rights of judicial review to investors against decisions by the review agency. A further transparency-enhancing measure would be to issue clear administrative guidelines for the decision-making process so as to increase the predictability of the final decision to the investor. It would be also beneficial both from the perspectives of transparency and simplicity if all investment screening procedures were included in the general investment law or referred to within the body of the latter. This measure would avoid potential situations whereby no prohibitions or restrictions are indicated in the general investment law, yet additional procedures exist within the body of other applicable legislation.

Recommendation 5: Simplify FDI screening and approval procedures. Consider strengthening procedural rights of investors and issue clear administrative guidelines for the screening authority to increase transparency and predictability.

Foreign exchange regulations, currency restrictions on capital or other transfers

19. Recent years have witnessed a substantial liberalisation of foreign exchange regimes, and the MENA countries following this trend to some extent. In particular, all the MENA countries in this study except Egypt and Syria have obtained IMF Article VIII status, indicating that they have removed restrictions on payments and transfers relating to current transactions, including repatriation of profits. Generally, MENA countries vary in the degree to which foreign investors may freely repatriate capital. Several MENA countries also allow unhindered repatriation of capital without restriction. As shown in Table 3, thirteen of the MENA countries (Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Tunisia and United Arab Emirates, Iraq and Libya) report that they allow repatriation of capital without restriction, whilst Algeria, Morocco, Syria and Yemen, operate restrictions of varying depth. No publicly available information with respect to this regulation exists in the Palestinian Authority at the moment.

Table 3: Repatriation of Capital



Source: IMF (2005).

Recommendation 6: Liberalize existing restrictions on repatriation of capital, establish timely and unrestricted transfer of the proceeds of the investment and guarantee the repatriation of the capital when the investment is terminated.

International Investment Agreements

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

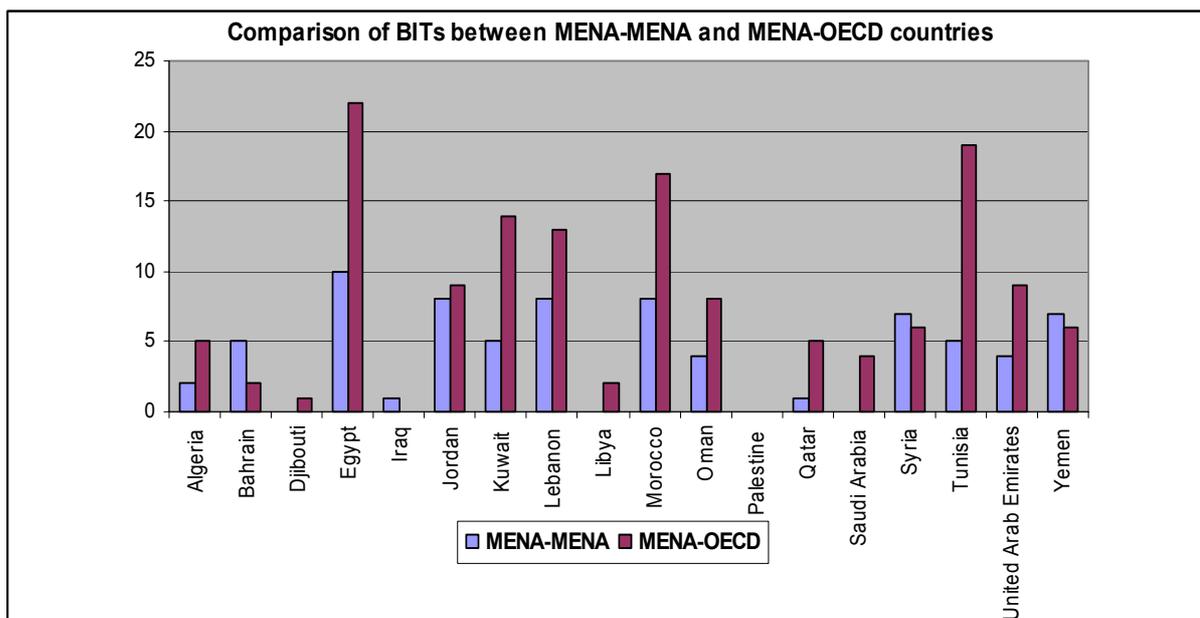
21. Overall, MENA countries participating in the *Investment Programme* have concluded around 409 bilateral investment treaties with OECD countries (see Annex 1). Figure 11 below shows that with the exception of Bahrain, Syria and Yemen, MENA countries have been following the global trend, by concluding an increasing number of Bilateral Investment Treaties (BITs). This certainly underlines the importance that MENA countries increasingly attach to foreign direct investment. The following graph also illustrates that while the number of Bilateral Treaties signed by MENA countries with OECD-member countries rose quite significantly, it did not rise as substantially with respect to bilateral treaties concluded within the region. This phenomenon corresponds to the overall difficulty of trade and commercial relations in the region. Nonetheless, the numbers of MENA BITs signed annually increased from the mid-1990s onwards, peaking at 45 new treaties in 2001.

As highlighted in Figure 11, the number of BITs concluded by MENA countries with OECD countries varies in the MENA region. Egypt, Lebanon, Morocco, Jordan and Tunisia are at the forefront of BITs concluded with OECD countries. Iraq, Libya, Syria and Qatar are examples of countries which have so far chosen to conclude only very few BITs with their counterparts in OECD countries. What counts from the perspective of the investor is that BITs provide high standards and enforceable guarantees.

MENA– OECD INVESTMENT PROGRAMME

22. Figure 11 also shows that Gulf Corporation Council (GCC) countries rely to a lesser extent on BITs with OECD or other MENA countries than Maghreb and Mashrek countries. This possibly reflects the fact that GCC countries are resource rich, giving them a stronger negotiating position vis-à-vis foreign investors and hence less of an incentive to enter into binding agreements.

Figure 11: Bilateral Investment Treaties



Source: OECD 2005, UNCTAD 2004.

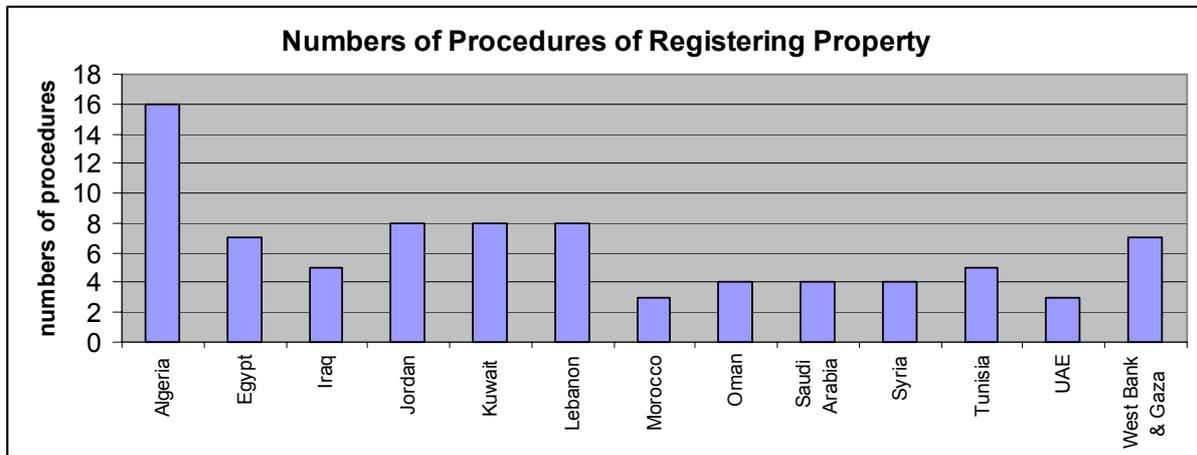
Recommendation 7: On the domestic policy level as well as while negotiating binding international investment agreements the following principles should be ensured:

- National treatment for foreign investors at both the pre- and post-establishment stage; exceptions should be clearly and precisely formulated and periodically reviewed with a view to phasing them out;
- Fair and equitable treatment of domestic and foreign investments with full protection of property rights including intellectual property;
- High standards of compensation for direct and indirect expropriation;
- Unrestricted access of investors to effective national and international dispute settlement mechanisms.

Restrictions on real estate acquisition

23. The ease of acquiring real estate and land is of major importance for attracting investment, both foreign and domestic. In the case of foreign investors, the process is often more circuitous than for local residents. Figure 12 below shows the number of procedures an investor has to go through in order to acquire real estate in each MENA country. As shown, Algeria demands 16 procedures in the acquisition process, while Morocco and the United Arab Emirates demand 3. These types of bureaucratic hurdles can ultimately affect the destination of international capital.

Figure 12: Real Estate Acquisition



Source: World Bank, Doing Business in 2006, Creating Jobs.

Recommendation 8: Reform administrative barriers for foreign and domestic investors to acquire land for investment purposes. Where necessary, it is suggested that countries establish an effective titling program and land registry.

Incentives policies

24. MENA countries use investment incentives to attract FDI (refer to Annex 7). They may be granted the right to investment in the whole territory, or only investments in special economic zones.¹¹ Direct subsidies or income tax incentives can make the host state more attractive to investors. However, especially when it comes to tax incentives, the effectiveness of the incentive regime should be assessed on a regular basis to make sure that the balance between investor attraction and sustainable tax revenues continues to serve the public interest and that tax regime remains internationally competitive.

Recommendation 10: Assess the costs and benefits of current and proposed investment incentives in order to enhance co-ordination, transparency and efficiency of investment incentives on a domestic level, but also considering the regional level.

Institutional Investment Promotion

25. Although there is no single model of success when it comes to investment policy and promotion, it has become clear that successful investment promotion requires both appropriate strategy and a sufficient operational means to support it. Most importantly, the responsible organisation must not become another layer of bureaucracy, but a real and efficient facilitator in providing advisory services and fulfilling a pro-investment environment advocacy function.

26. Most countries in the MENA region have created Investment Promotion Agencies (IPAs) – with a mandate of: (i) image building, (ii) investor servicing and facilitation, (iii) investment generation and targeting, and (iv) policy advocacy (refer to Annex 8). The responsibilities and emphasis on the various

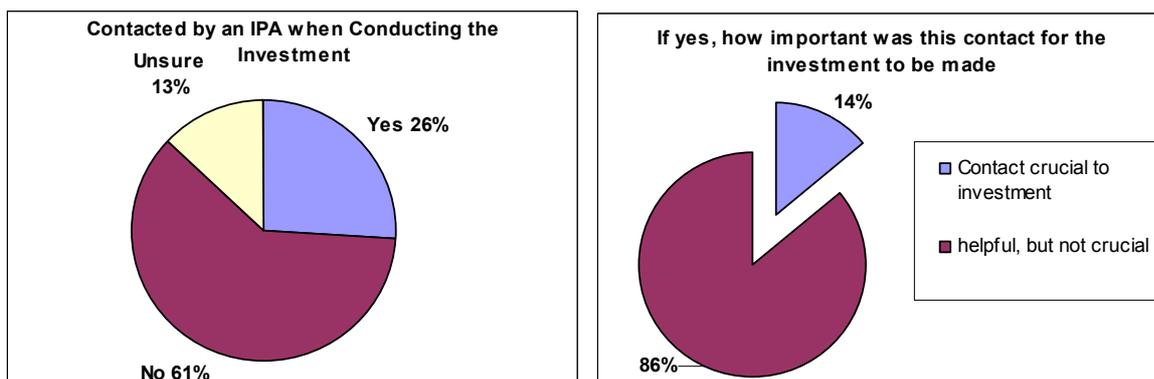
¹¹ See Working Group 2, output 2 report on “Incentives and Free Zones in the MENA Region: a Preliminary Stocktaking”.

MENA– OECD INVESTMENT PROGRAMME

IPAs vary, depending on the purpose and state of their investment policies and how much promotion is needed in view of the country’s fundamental attractions and requirements for specific types of investment. Despite some excellent success stories, the region-wide efforts have not resulted yet in significantly changing the investor perceptions or substantially affecting policy-making. Limitations in resources and policy functions available to the agencies make it difficult to emulate the “best practices” found among the leading IPAs in OECD and other countries.

27. In a survey conducted by the MENA-OECD Investment Programme, companies doing business in the MENA region were asked whether they had been contacted by the host country’s IPA when conducting the investment, and how important this contact had been for the success of the investment. As indicated in Figure 13 below, only 26% of the respondents had been contacted by an IPA. However, for those companies that had been contacted, the majority (86%) regarded the contact with the IPA as helpful and 14% even regarded the contact as crucial to the investment. This information further emphasizes the important role the IPAs can play to increase and improve the investments in their home countries.

Figure 13: Foreign Investors’ Contacts with Host IPAs



Source: MENA-OECD Investment Programme, 2005 Investor Survey, preliminary results.

Recommendation 11: Establish an investment promotion agency, equipped with sufficient resources and adequate political support, as part of a strategic investment promotion strategy.

The IPA should be given a mandate to promote the benefits of investment within government and the broader public, and as such should be consulted by government authorities on legislative proposals affecting the foreign investment.

**ANNEX 1
REGULATORY TREATMENT OF FDI IN MENA COUNTRIES¹**

	Algeria	Bahrain	Djibouti	Egypt	Iraq	Jordan	Kuwait	Lebanon	Libya	Morocco	Oman	Palestine	Qatar	Saudi Arabia	Syria	Tunisia	UAE	Yemen
‘R’=restriction, ‘NA’=no publicly available data, ‘=’ = no restriction ‘Y’=yes, ‘N’=no	R R Y R	R R Y	R R Y		R N NA	R R Y	R R Y	R R Y	R R Y NA	R Y R	R R Y	NA NA NA NA	R R Y	R R Y	R N R		R R Y	R Y R
1. All-sector limitations to entry of FDI	NA	R			R	R	R	R	R	R	NA	NA	R	R	NA		NA	R
2. Limitations on foreign purchase of domestic shares	NA	R			R	R		NA	R	NA	NA	NA	R	R	NA		NA	NA
3. IMF Article VIII status	NA	R			R	R	R	NA	R	NA	NA	NA	R	R	NA		NA	R
4. Liquidation proceeds transfer abroad	NA	R			R	R	R	NA	R	NA	NA	NA	R	R	NA		NA	R
5. Sectoral limitations to establishment of FDI, incl. reciprocity																		
a. financial services																		
b. other services																		
c. primary sectors																		
d. manufacturing																		
6. Acquisition of real estate for FDI purposes																		
7. Exceptions to national treatment of foreign-controlled enterprises																		
a. access to local finance	NA	NA	NA	NA	NA	NA	NA	R	R	R	R	NA	R	R	R		R	R
b. access to privatisation		R	NA		NA	NA	R	NA	NA	NA	NA	NA	NA		NA		NA	NA
c. access to public procurement	NA	R	NA	R	NA	R	NA	NA	NA	NA	NA	NA	NA	R	NA		R	NA
d. discriminatory tax treatment	NA	NA	NA	NA	NA	NA	R	NA	NA	NA	NA	NA	NA	R	R		NA	NA

PROVISIONAL MATRIX SHOWING REGULATORY TREATMENT OF FDI IN MENA COUNTRIES¹
(continued)

	Algeria	Bahrain	Djibouti	Egypt	Iraq	Jordan	Kuwait	Lebanon	Libya	Morocco	Oman	Palestine	Qatar	Saudi Arabia	Syria	Tunisia	UAE	Yemen	
<p>'R'=restriction, 'NA'=no publicly available data, " " = no restriction, 'Y'=yes, 'N'=no</p> <p>e. entry procedures for key personnel</p> <p>8. Performance requirements for foreign direct investors</p> <p>9. FDI-targeted tax and other incentives</p> <p>10. Bilateral investment treaties (total number of countries)</p> <p>11. Bilateral investment treaties (with OECD countries)</p> <p>12. Bilateral tax treaties (with OECD countries)</p> <p>13. Measures to enhance policy transparency</p> <p>a. publication of regulations</p> <p>b. information available on the Internet</p> <p>c. list of sectors with FDI restrictions</p> <p>14. Measures at sub-national level</p> <p>15. Investment promotion agency (member of WAIPA)</p>	R	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	R	R	R	R	NA	NA	
	Y	NA	Y	Y	NA	Y	Y	Y	NA	Y	Y	NA	Y	Y	Y	Y	NA	Y	
	21	11	3	41	2	33	38	37	7	41	18	17	17	10	16	38	22	28	
	18(8)	11(1)	3(1)	78(25)		30(12)	33(12)	36(16)	1(1)	4	17(8)	16(6)	16(6)	8(6)	15(3)	42(20)	19(9)	27(7)	
	12(3)	9(1)	0(0)	13(3)	NA	5(1)	10(3)	17(2)	NA	10(3)	9(2)	NA	3(0)	8(6)	17(1)	11(3)	8(3)	3(0)	
	N	Y	N	N	N	Y	N	N	N	N	N	N	N	Y	Y	N	N	N	N
	N	Y	N	N	N	Y	N	N	N	N	N	N	N	Y	Y	N	N	N	N
	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

Notes:

1. The headings in this matrix correspond to the section headings in Annex 2, which contains explanations of box entries.
2. This list does not include the investment chapters of free trade agreements, for example those between United States and Bahrain and Jordan or agreements on the development of trade and investment relations such as those between the United States and Kuwait, Qatar, Saudi Arabia, UAE and Yemen. In each case, the first figure includes all treaties, including those renegotiated with the same country; for the figure in brackets, countries are counted only once.
3. The information was derived from the most recent sources of treaties and country studies, however as adjustments to the legal framework are constant, some information might have changed since its compilation here.
4. Since 8e, 13b, and 14 are questions more open to interpretation, no qualification has been made here; instead please refer to the following notes accompanying the table for an in-depth explanation.

Main sources of information: IMF, World Bank, UNCTAD, United States Commercial Service.

ANNEX 2

REGULATORY TREATMENT OF FDI

Preliminary country-specific information

This inventory is provisional

The inventory summarised in the above matrix is detailed in this annex. The information in both sections is provisional and will be elaborated in subsequent drafts as submissions from participant countries are received and new material is incorporated. In its present state, the matrix is incomplete due to the fact that relevant information is not available, or is only available after conducting more research than a potential foreign investor is likely to devote to such a task.

Governments of MENA countries are invited to help complete the matrix by providing up-to-date, relevant and complete information. They are also encouraged to build capacity to provide subsequent updates when necessary. Following the incorporation of such inputs, this inventory will document the progress of MENA countries in providing a business environment conducive to investment and indicate where measures may need to be taken to enhance that environment further. For the moment, while the following inventory corresponds to the matrix provided above, not each item is elaborated on, in part due to absence of relevant information, and in part due to the nature of certain criteria in the matrix requiring simply a ‘Y’ or ‘no’ response.

1. All-sector limitations on the entry of foreign direct investment including discriminatory screening and prior approval procedures

While some MENA countries are largely open to foreign investment, others impose a variety of restrictions, including sectoral limitations, foreign ownership ceilings, prior government approval and minimum capital requirements. In a recent survey, potential investors ranked limitation on foreign ownership fourth in a list of investment constraints (see Table 1).¹²

Algeria

General: In *Algeria*, foreign direct investment is permitted freely except in certain specified sectors, provided that it conforms to the laws and regulations governing regulated activities and providing that prior declaration is made to the authorities.¹³ Before 1990, foreign investment was permitted in oil and gas extraction; since then it has been allowed in most sectors of the economy. In 1993 the government created an investment code that provides for freedom of investing and equal and non-discriminatory treatment for all investors in joint ventures, direct investments and portfolio investment. The investment code guarantees the stability of the laws applied at the time of the initial investment. There is no discrimination against foreign investors.¹⁴ The framework was further modernised by “ordonnance 2001”, which introduced the

^{12.} Zarrouk (2003).

^{13.} IMF (2005).

^{14.} United States Commercial Service.

fundamental principle of freedom of investment, as well as Most Favoured Nation (MFN) and national treatment. Privatisation of key sectors was permitted, except for hydrocarbons, where foreign investments are limited to joint ventures with the state-owned public company Sonatrach.¹⁵ The Algerian government passed a new law in August 2001 creating the National Investment Development Agency (ANDI), which is intended to simplify investment procedures and incentives structures. ANDI has five decentralised centres in Algiers, Blida, Oran, Anaba and Ouergla.

Approval requirements: Article 3 of the Algerian investment code stipulates that prior to the “investment being made, an investment proposal shall be introduced to the Agency for the promotion, support and follow-up of investments. The Agency has a maximum period of 60 days within which to notify the investor. The investor can appeal to the supervising authority whose decision is not susceptible of judicial review.”¹⁶

Company incorporation: Time-consuming procedures characterise the incorporation of foreign companies in Algeria. Despite some improvements, entrepreneurs currently need 121 days on average to complete the procedures required for incorporating a company. This is mainly due to a lack of efficiency of regional one-stop shops, created specifically in order to facilitate and accelerate the incorporation of companies¹⁷

Bahrain

General: **Bahrain** permits 100 per cent foreign ownership of new industrial and services companies that establish representative offices or branches in Bahrain, without requiring local sponsors. Completely foreign-owned companies may be set up for regional distribution services (i.e. involving Bahrain plus a minimum of one other GCC country) and such companies may operate within the domestic market and offshore so long as they are not set up for the exclusive purpose of engaging in commercial sales in Bahrain. GCC nationals are allowed to own up to 100% of the shares of domestic enterprises, and non-GCC nationals are allowed to own up to 100% of offshore, closed joint-stock, and limited liability companies and 49% of other companies, with the exception of a few strategic sectors.¹⁸ Joint ventures are permitted with Bahraini companies, but a 100 per cent purchase of an existing company would require Ministry of Commerce approval.¹⁹ Up to 49 per cent foreign ownership is permitted for public joint stock companies incorporated for the duration of a specific project; permission to form such a company must be obtained from the Ministry of Commerce and the Council of Ministers, following which a decree must be issued by the Amir to allow foreign ownership in such a company. The minimum capital stock of such a company is BD 500,000 (approximately US\$1.3 million at the current exchange rate).²⁰ Decree no. 21 for 2001, the Companies Law provides the framework for company incorporation and registration of foreign branches and representative offices in Bahrain²¹.

15. UNCTAD (2003).

16. Algeria, legislative decree.

17. UNCTAD (2003).

18. IMF (2005).

19. United States Commercial Service.

20. WTO (2000).

21. Ministry of Industry and Commerce (www.commerce.gov.bh/English/DomesticTrade).

List of FDI restrictions: Direct investment are regulated in accordance with the Commercial Companies Law, BMA regulations, the BSE Law (subject to the field of investment), and the Anti-Money Laundering Law.²² In addition, Decree no. 24 for 2004 establishes a list of FDI restrictions, which specifically identifies activities which are not permitted for other than Bahrainis or 100% Bahraini owned companies, these are:

Pilgrimage services; real estate services; car rental; printing and publishing; TV production; labour recruitment and placement; theatres; art exhibitions; transport services; insurance services; government relations services and social activities. Apart from the above, non-GCC nationals are not permitted to engage in trading in the local market (retail/wholesale) other than through a company which is a minimum of 51% owned by Bahrainis.

Non-Bahrainis may incorporate 100% owned companies, as set out in the Companies Law (the exception is public joint stock companies where ownership is restricted to 49%) for any of the allowed activities, or may register a branch or representative office of a company incorporated outside Bahrain. When the activities of such a branch or representative office are to be undertaken on a regional base, there is no sponsorship requirement. No sponsorship is required for locally incorporated companies.

Approval requirements: The Ministry of Industry and Commerce is the public body charged with the responsibility of registering all commercial activities being carried out in or from Bahrain. Screening of investments (both local and foreign), takes place by the various Ministries in accordance with the type of activity to be undertaken. For around 80% of activities the Ministry of Industry & Commerce is itself responsible for the screening process, which is optimized through parameterized application software. In respect to the remaining 20% of activities, the Ministry of Industry & Commerce acts in a coordination capacity. Companies are required to produce bank guarantees or references to confirm credibility for specialists at MOIC/BIC (and where appropriate, other Ministries) to complete due diligence required before issuing a commercial registration.

Djibouti

General: **Djibouti** has no major law that would discourage foreign investments coming into the country. There is no screening of investment or other discriminatory mechanisms. However, certain sectors, especially public utilities, are state owned and are not open to investors. Djibouti has no foreign exchange restrictions and there are no limitations on converting or transferring funds. Regarding expropriation, the Djibouti Investment Code specifies that “no partial or total, temporary or permanent expropriation will take place without equitable compensation for the damages suffered”. Foreign investors are free to determine their own hiring and firing policy as long as it remains within the structure of the labour code.²³

Egypt

General: There are no general controls on inward direct investment in **Egypt**, but non-bank companies of foreign exchange dealers must be owned entirely by Egyptians.²⁴ Within the scope of Law 8 of 1997 and Law 3 of 1998, the two key laws governing investment in Egypt, foreign investors may own up to 100 per cent of businesses categorised in a positive list guaranteeing automatic approval (see Sectoral Limitations,

²² IMF (2005).

²³ U.S. Department of State.

²⁴ IMF (2005).

below). Law 8 of 1997 is designed to allocate investment to targeted economic sectors and promote decentralisation of industry from the Nile Valley. The WTO noted in its 1999 trade policy review that FDI had been liberalised since its previous report and, with a few exceptions, granted national treatment. The list of sectors where foreign investment was actively discouraged was reduced in 1994 to the Sinai, military equipment and tobacco and replaced in 1998 by a positive list of sectors where investment is encouraged through the Law of Investment Guarantees and Incentives.²⁵ Private and state-owned exporting companies were required to sell at least 75% of their foreign currency earnings to state-owned banks.

Approval requirements: Under Egypt’s law No. 8 of investment incentives and guarantees, passed in 1997, the General Authority For Investment and Free Zones (GAFI) automatically approves any application for projects within 16 sectors listed in the law. Investors can chose to proceed with their project through GAFI if they wish to benefit from its one-stop-function and the incentives laid out in law No. 8. There is, however, no obligation to do so.

Recent Changes: As of January 2, 2005, Egypt accepted the obligations of Articles VIII, Sections 2, 3, and 4 of the IMF’s articles of Agreement.²⁶

Iraq

Old Law: Until the passing of Coalition Provisional Authority Order Number 39 from 19 September 2003, no foreign (defined as non-Arab) participation was allowed in the capital of private sector companies, but citizens of other Arab countries could participate with Iraqis in projects in the industrial, agricultural, and tourism sectors, and participation was actually encouraged by the old Arab Investment Law. The law permitted (1) Iraqi investors to hold up to 49% of an enterprise, provided that their contribution and profits were paid in Iraqi dinars and that the minimum capital of the enterprise is the equivalent of ID 0.5 million; (2) Arab investors to transfer annually up to 100% of the profits distributed to them, but not exceeding 20 % of their paid-in capital; and (3) nationals of Arab countries to bring capital into Iraq in Iraqi currency for industrial and agriculture investments. Arab investors were allowed to transfer capital in a convertible currency through a licensed bank or physical assets that would be used in the enterprises they were planning to establish, provided that used machinery and equipment had at least one-half of their productive life remaining. Further there were investment regulations concerning provisions specific to commercial banks and other credit institutions.²⁷

New Law: Order Number 39 replaced all previous foreign investment laws. Under the new legal regime, a foreign investor is in principle entitled to make foreign investments in Iraq on terms no less favourable than those applicable to an Iraqi investor and the amount of foreign participation is not limited. Exceptions are: foreign direct and indirect ownership of the natural resources sector involving primary extraction and initial processing. Further restrictions can apply to banks and insurance companies.

Approval requirements: The new Order does not mention any special approval or screening procedures.

Jordan

²⁵ WTO (1999).

²⁶ IMF (2005).

²⁷ IMF (2005).

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

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

The Non-Jordanian investor ownership shall not exceed 49% of the capital of any project in the following sectors and activities:

- a. Scheduled and non-scheduled passenger, freight and mail air transport services.
- b. Rental services of aircraft with operator.

Non-Jordanian investment shall not be less than fifty thousand Jordanian Dinars or the equivalence thereof, with the exception of participating in public shareholding companies.

The Council of Ministers may upon the recommendation of the Higher Council for Investment Promotion permit the ownership or participation in big development projects that enjoy special importance for any non-Jordanian investor in higher percentages than is provided by this regulation and according to the percentage in the council's decision.

Approval requirements: In principle, the screening of projects is done by Ministries and agencies who deal with the registration and licensing of projects. Projects in specific sectors laid out in the Investment Law enjoy exemptions and incentives. For this purpose the Investment Promotion Committee reviews applications submitted by investors and decides on them within a period of thirty days.²⁸

Kuwait

General: In **Kuwait**, foreigners are allowed to own up to 100 per cent of Kuwaiti companies, subject to conditions determined by the Council of Ministers.²⁹ Implementing regulations for the March 2001 Direct Foreign Capital Investment Law allow majority foreign ownership. The ceiling on foreign ownership of shares of non-bank financial institutions was lifted (previously, a ceiling of two-thirds of shares applied).³⁰ A new Direct Foreign Capital Investment Law (DFCIL) came into effect in November 2003, which effectively establishes a positive list of activities in which foreign-majority ownership and 100% ownership is allowed and which do not require prior approval. The list includes infrastructure projects;

²⁸ Article 22 Law No. (16) of 1995 and its amendments for the year 2000, The Investment Promotion Law, Jordan.

²⁹ IMF (2005).

³⁰ IMF (2005).

investment and exchange companies; insurance; information technology and software; hospitals and pharmaceuticals; air, land and sea freight; tourism, hotels and entertainments; housing projects and urban development. Projects involving oil discovery or oil and gas production are not authorised for foreign ownership. Real estate investment, other than in the context of housing projects and urban development, is restricted to GCC nationals.

Approval requirements: Foreign entry into other sectors than the ones listed in the new Direct Foreign Capital Investment Law is conditional upon approval by the Council of Ministers. The Foreign Investment Committee screens the investment applications and makes the necessary recommendations.

Lebanon

General: There are no general limitations on foreign ownership of Lebanese companies. However, foreign direct investments in some sectors are subject to specified ceilings and, in some cases, to prior authorisation.

Approval requirements: Entrants must seek the approval and licensing of the Investment Development Authority of Lebanon (IDAL) in accordance with the applicable Investment Development Law 360 in order to benefit from the advantages provided by the Law. Setting up a branch or a representative office requires licence issued by the Ministry of Economy and Trade which will make a decision in a maximum period of seven days.³¹

Recent Changes: Since January 7, 2004 the ceiling on foreign ownership of shares of non-bank financial institutions was lifted (previously, a ceiling of two-thirds of shares applied).³² On February 24 of the same year, banks and financial institutions were prohibited from lending to non-residents, with the exception of purchase of bonds of a certain rating or from certain countries. Furthermore, the exposures of a bank or financial institution to one non-resident economic group and to bonds issued by non-resident institutions were limited to 5% and 25% of its Tier I capital, respectively.³³

Libya

General: In **Libya**, foreign participation in industrial ventures set up after March 20, 1970, is permitted on a minority basis, but only if it leads to increased production in excess of local requirements, introduction of the latest technology, and cooperation with foreign firms in exporting the surplus production. Full foreign ownership is permitted, however, in ventures established in the context of Law No. 5 and approved by the Foreign Investment Board. Libya's imports are generally unrestricted except for specifically banned items. Import licences are required to be obtained. There are no official price controls. Customs clearance procedures require the appointment of a local agent.³⁴

³¹ IDAL, Investor's Guide to Lebanon, www.idal.com.lb/uploadedfiles/Investment_Guide_EN.pdf .

³² IMF (2005).

³³ IMF (2005).

³⁴ Mohamed Ghattour & Co, Certified Public Accountants and Auditors, a cooperating firm of PricewaterhouseCoopers ME, "Doing Business and Investing in Libya.

Approval requirements: All foreign investments require approval by the Libyan Foreign Investment Board. Approval is granted for projects that lead to domestic job creation or training, use of local raw materials, transfers of technology, and inflows of foreign currencies.³⁵

Morocco

General: The 1995 Investment Charter outlines a highly liberalised environment for foreign investors. In most sectors foreign investment is permitted.

Approval requirements: There is no requirement for prior approval in the Investment Charter.

Recent changes: As of September 1, 2004, funds held by non-resident foreign individuals in term convertible dirham accounts were allowed to be transferred without restriction no later than March 31, 2005.

Oman

General: In Oman foreign ownership is generally limited to 70%, but it may be raised to 100% in certain cases. A non-resident portfolio investor may not hold more than 10% of the shares in an Omani company.³⁶

Approval requirements: Investment in business firms in **Oman** by non-residents requires prior approval by the Ministry of Commerce & Industry.³⁷ Automatic approval is offered to joint ventures with a majority foreign ownership up to 70%. New entities with more than 70% ownership are subject to the approval of the Minister of Commerce and Industry. In addition, companies establishing a wholly-owned subsidiary in Oman are often required to obtain approval from other ministries, such as the Ministry of Regional Municipalities and Environment.

Palestine National Authority

General: The **Palestinian Authority**, with international assistance, is in the process of reforming the current regulatory framework.

Qatar

General: A major factor in **Qatar's** policy to encourage economic diversification has been the abolition of certain restrictions from the investment regime to provide more opportunities for foreign investors. Qatar issued a new Investment Law in 2000 (Law No. 25 of 1990, which restricted all foreign ownership to a maximum of 49% and did not allow foreigners to lease property or invest in privatized public services). This Law allows up to 100 per cent foreign ownership amongst other in services, agriculture, industry, health, education and tourism sectors,³⁸ though this may be subject to performance requirements. For other sectors, foreign equity is still limited to 49%. Foreign investment is still not allowed in banking, insurance,

³⁵ IMF (2005), Libya, Investment Law No.5.

³⁶ IMF (2005).

³⁷ Article 1, Foreign Capital Investment Law, Oman, 1994.

³⁸ IMF (2005).

commercial representation, and purchase of real estate.³⁹ When the invested foreign capital is wholly owned by a non-Qatari party, it is mandatory to appoint a Qatari services agent. GCC business people are subject to the same provisions of the law that applies to Qatari nationals.⁴⁰ Further Qatar has not signed any bilateral trade agreements. However, trade agreements are under consideration with the United States, and with Singapore.⁴¹

Approval requirements: Up to 49% of foreign ownership no approval is required. With approval by the Minister of Finance, Economy and Commerce, foreign investors may increase their interest from 49% to 100% of the capital in the fields of agriculture, industry, health, education, tourism and development and exploitation of natural resources, energy and mining, provided such projects are compatible with the development plan in the State of Qatar.

Saudi Arabia

General: Approved foreign investments in **Saudi Arabia** enjoy the same privileges as domestic capital. The foreign investment law allows foreign investors to make direct investments in most of the country's economic sectors, with or without local participation. The Foreign Investment Act specifies that such investments may be in projects owned by a national investor and a foreign investor or may be in projects wholly owned by a foreign investor. The Supreme Economic Council has issued a list of economic sectors that remain off limits to foreign investors (see Sectoral Limitations, below). In addition, Article 5 of the Regulation of Foreign Investment Act stipulates that the amount of capital invested must be not less than SR 25 million (approximately US\$6.5 million at the current exchange rate) for agricultural projects, SR 5 million for industrial projects and SR 2 million for other projects. The tax rate on foreign company profits was reduced to 20% generally, and the tax rates were set at 30% and 85% for investments in natural gas and the natural gas and oil/hydrocarbon sectors, respectively.⁴²

Approval requirements: Article 2 of the Saudi Arabian Foreign Investment Acts states that SAGIA, the General Investment Authority has to approve foreign investment in the Kingdom.

Recent changes: As of April 20, 2004, foreign insurance companies were allowed to own up to 49% of local insurance companies. Also, as of July 30, a basic tax rate of 20% was applied on foreign company profits, with specific tax schemes set up for in natural resource sectors.⁴³

Syria

General: The **Syrian Arab Republic** provides special facilities for the investment of funds of immigrants and of nationals of Arab states, including a seven-year tax exemption from all taxes in the tourism and agricultural industries. Projects with minimum fixed assets of LS 10 million, approved by the government, benefit from a number of exemptions from exchange and trade regulations, including exemptions from customs duties on imports of required machinery, equipment, and vehicles. Companies with at least 25%

³⁹ WTO, Trade Policy Review Qatar (2005), Law No. 31/2004 which allows foreign investment in the banking and insurance sectors is still pending approval from the Cabinet.

⁴⁰ State of Qatar Ministry of Foreign Affairs, <http://english.mofa.gov.qa>.

⁴¹ WTO, Trade Policy Review Qatar (2005).

⁴² IMF (2005).

⁴³ IMF (2005).

public participation are exempt from all taxes for seven years and private companies are exempt for five years; exemption periods may be extended by an additional two years if the company exports at least 50% of its output. Non-residents may open accounts in convertible foreign currencies in authorized banks for the deposit of funds abroad.⁴⁴ The Syrian Arab Republic has investment guarantee agreements with France, Germany, Switzerland, and the United States. Companies licensed under the investment law are allowed to exchange into local currency at the non-commercial rate in neighbouring countries a part of their assets, duly deposited at Syrian banks, to cover basic needs and local liabilities.⁴⁵

Approval requirements: All applications of foreign investors are screened by a government commission, the Supreme Investment Council.⁴⁶

Tunisia

General: In **Tunisia**, foreigners may invest freely in most economic sectors. Tunisia has set investment promotion as one of the primary targets of the 10th Economic Development Plan 2002-2006 as well as for the 11th Economic Development Plan. Effective March 14, 2005, the approval of High Investment Commission (HIC) is no longer required for the acquisition by foreign nationals of securities with voting rights or shares in Tunisian companies. Previously, the participation of foreigners required the approval of the HIC if such participation equalled to, or exceeded, 50% of the capital stock.⁴⁷

Approval requirements: Approval is required for any acquisition of capital in a bank or other financial institution, and, in all cases, for the acquisition of a proportion of the voting rights equal to or exceeding 10%, as well as any instrument that may result in the transfer of a significant proportion of assets.⁴⁸

Recent Changes: The Amount of foreign exchange proceeds from the account holder's exports and foreign currency loans that could be credited to the account holder's professional accounts in foreign currency was raised to 100% on January 2005. Notably, the requirement of approval of the HIC was lifted with respect to acquisition by foreign nationals of Tunisian securities entailing voting rights or shares of companies established in Tunisia. Another reform in January 2004 entailed lifting the restriction on the amount foreign currency loans from non-residents that financial institutions were permitted to contract. Finally, in February, the limit on exporting companies' annual transfers to finance branches, subsidiaries and equity participation was raised up to D 60,000.⁴⁹

United Arab Emirates

General: In the **United Arab Emirates**, at least 51 per cent of companies, other than branches of foreign companies, must be held by nationals of the UAE. GCC nationals are permitted to hold (1) up to 75 per cent of the equity of companies in the industrial, agricultural, fisheries and construction sectors; and (2) up to 100 per cent of the equity of companies in the hotel industry. GCC nationals are also permitted to

⁴⁴ IMF (2005).

⁴⁵ IMF (2005).

⁴⁶ Investment Law No.10/1991, Syrian Arab Republic.

⁴⁷ IMF (2005).

⁴⁸ IMF (2005).

⁴⁹ IMF (2005).

engage in wholesale or retail trade activities, except in the form of companies, in which case they are subject to the Company Law. In free zones, foreign ownership is permitted up to 100 per cent.⁵⁰

Approval requirements: Outside the free zones there are no additional approval procedures, for example, in Dubai. The Free Zone Authority issues different categories of licences to foreign investors.⁵¹

Yemen

General: Article 42 of **Yemen's** Investment Law states that non-Yemeni subscription to the capital of an investment company shall not exceed 45% of paid in capital, except where the proportion is increased by decree of the council of Ministers according to “exigencies of the public interest” upon a proposal by the Board of Directors.⁵² When established, investment companies shall take any of the legal forms provided for in the Companies Law and the Civil Law, subject to joint stock companies that put up their shares for public subscription or limited stock partnership companies. The founding of a joint stock company putting up its shares for public subscription, or amendment of its statutes, shall be by resolution of the Board of Directors of the Authority as presented by the Authority’s Executive body in accordance with the provisions of this Law.⁵³

Approval requirements: Foreign investments require the approval of the General Investment Authority.⁵⁴

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

Algeria reports unspecified controls on equity purchases by non-residents. Non-residents may invest in bonds or other debt securities in Algeria; transfers abroad of proceeds from these investments are allowed, but they must be affected through an authorised intermediary.⁵⁵

In **Bahrain**, GCC nationals have since 1999 been allowed to own up to 100 per cent (previously 49 per cent) and non-GCC nationals up to 49 per cent (previously 24 per cent) of the listed shares of a Bahraini joint-stock company. The percentage of ownership by non-GCC nationals may be increased, subject to approval by special resolution from the Minister of Commerce and Industry. Previous conditions requiring foreign individuals to be resident in Bahrain for one year to be eligible to acquire shares in a Bahraini company and to own a maximum of 1 per cent of a company’s issued shares were lifted in 1999.⁵⁶ Non-GCC nationals may purchase, sell, or own up to 100 per cent of the shares in the Arab Banking Corporation, the Bahrain International Bank, Investcorp Bank, the Bahrain Middle East Bank, Taib Bank, Shamil Islamic Bank and the Arab Insurance Group. Unspecified restrictions are reported on the issuance of bonds or other debt securities. Further non-residents are allowed to own buildings and property only in locations specified in the Council of Ministers Regulation No. 5/2001, which include most of the prestigious and tourist areas. In accordance with Legislative Decree No. 2/2001, commercial, tourism, and

⁵⁰ IMF (2005).

⁵¹ See www.ddia.ae/English/default.asp?action=article&ID=70&p=4 .

⁵² General Investment Authority of Yemen, www.giay.org.

⁵³ Investment Law, No. 22 of 2002; Republic of Yemen, General Investment Authority, Promotion Sector.

⁵⁴ Article 28, Investment Law No.22 of 2002, Republic of Yemen.

⁵⁵ IMF (2005).

⁵⁶ WTO (2000).

industrial companies, as well as banking and financial institutions that are licensed to operate in Bahrain, may own real estate without restriction.⁵⁷

There are controls on all credit transactions of residents with non-residents in *Djibouti*, including transactions in the form of guarantees, sureties, and financial backup facilities within the limits established by the banking regulations for the purpose of complying with the prudential standard on customer risk. Djibouti reports no restrictions on capital and money market instruments;⁵⁸ however, the country does not appear to have an active capital market.⁵⁹

In *Egypt*, there are no controls under the Foreign Exchange Law and Regulations on the issuing of securities by non-residents. Trading in securities denominated in foreign currencies must be settled in foreign currencies. The foreign exchange market may be used for transferring proceeds associated with the sale of both Egyptian securities and foreign securities. Approval of the Capital Market Authority is required for issuing bonds. Further shareholders by residents or non-residents in any bank in Egypt that exceed 10 % of the bank’s capital require approval from the CBE Board of Directors.⁶⁰

Jordan reports no restrictions on capital and money market instruments.⁶¹ However, the Amman Stock Exchange (one of the region’s largest stock markets, with 42 per cent foreign share ownership) states that companies in the construction contracting, commercial and commercial services and mining sectors are subject to a ceiling of 50 per cent foreign ownership of the paid-up capital.⁶² Further non-resident investments are limited to a maximum of 49% ownership or 50% subscription in shares in the following major sectors: commerce and trade services, construction, contracting, and transportation. The amount of investment in any one project must total at least JD 50,000. Investments in the following sectors are not permitted for non-residents: investigation and security, quarrying and mining, waste removal, sport clubs, and road transportation of goods and passengers.

Kuwait reports unspecified restrictions on capital and money market transactions, including local sale or issue of shares and bonds by non-residents.⁶³ Since May 1988, GCC citizens have been permitted to purchase stocks on the Kuwaiti Stock Exchange (KSE). Cross trading with the Bahrain Stock Market began on 15 March 1998. The KSE also has similar agreements with Egyptian and Lebanese stock markets. Investors in these countries are now permitted to buy and sell shares listed on each other’s exchanges through their brokers. In May 1999, an agreement of co-operation was signed between the KSE and the Jordanian Stocks Authority for stock issuing and circulation. This agreement encouraged registration of listed companies in the two bourses, and boosted cooperation and the exchange of expertise.⁶⁴ The Indirect Foreign Investment Law passed in August 2000 allows foreigners to own 100 per cent of all listed shareholding companies, except banks, in which foreigners may hold no more than 49 per

^{57.} IMF (2005).

^{58.} IMF (2005).

^{59.} UNDP (2003).

^{60.} IMF (2005).

^{61.} IMF (2005).

^{62.} www.ammanstockex.com.

^{63.} IMF (2005).

^{64.} Kuwait Information Office in the United States, www.kuwait-info.org.

cent of the shares; foreign investors require central bank approval to own more than five per cent of a Kuwaiti bank.⁶⁵

In *Lebanon*, non-resident banks, financial institutions and money dealers must obtain approval from the Banque du Liban (BDL) when purchasing treasury securities denominated in Lebanese pounds or certificates of deposit from the BDL. Funds used to purchase treasury securities or certificates of deposit must originally have been Lebanese pounds that were converted from foreign exchange specifically for this purpose. Further since January 7, 2004, the ceiling on foreign ownership of shares of non-bank financial institutions was lifted (previously, a ceiling of two-thirds of shares applied).⁶⁶

In *Morocco*, the issuing of capital market securities by non-residents is subject to authorization. There are no controls on the sale of Moroccan securities by non-residents. Proceeds from such sales may be transferred freely, provided that the relevant purchases are financed by foreign exchange inflows or other comparable means. In other cases, the proceeds must be deposited in a convertible dirham account and may be transferred abroad over a five-year period. The issue of bonds or other debt securities by non-residents in Morocco is prohibited.⁶⁷

Foreign ownership in *Omani* companies is generally limited to 70 per cent, but it may be raised to 100 per cent; this limit is set on a case-by-case basis. A non-resident portfolio investor may not hold more than 10 per cent of the shares in an Omani country. Investment in business firms in Oman by non-residents requires prior approval. Foreign ownership is generally limited to 70%, but it may be raised to 100% in certain cases.⁶⁸

Qatar has issued a new Investment Law (Law No. 25 of 1990, which restricted all foreign-ownership to a maximum of 49% and did not allow foreigners to lease property or invest in privatised public services. Under the 2000 Investment Law, a company can be 100% foreign owned in selected sectors, such as agriculture, industry, tourism, education, health, and natural resources, subject to prior government approval and provided that the company is duly established. Foreign equity is limited to 49% in the remaining sectors; foreign investment is still not allowed in banking, insurance, commercial representation, and purchase of real estate.⁶⁹ Law No. 19 for 1995 on industrial regulations allows non-Qatari nationals to invest in the commercial, industrial, agriculture and services sectors provided that Qatari nationals hold not less than 51 per cent of the total capital. When the invested foreign capital is wholly owned by a non-Qatari party, it is mandatory to appoint a Qatari services agent. GCC business people are subject to the same provisions of the law that applies to Qatari nationals.⁷⁰

Holding of shares of listed *Saudi Arabian* joint-stock companies is restricted to Saudi Arabian nationals, Saudi Arabian corporations and institutions, and citizens of the GCC. Indirect portfolio investment in shares issued by Saudi Arabian joint-stock companies is allowed for foreign investors through mutual funds managed by Saudi banks. There are no controls on portfolio investment in Saudi Arabian

^{65.} United States Commercial Service.

^{66.} IMF (2005).

^{67.} IMF (2005).

^{68.} IMF (2005).

⁶⁹ WTO, Trade Policy Review Qatar (2005).

^{70.} State of Qatar Ministry of Foreign Affairs, <http://english.mofa.gov.qa>.

government securities. Non-residents must seek permission of the Minister of Commerce to sell or issue securities within Saudi Arabia. There are no controls on the repatriation of proceeds from the sale of securities issued by non-residents.⁷¹

There is no market in medium- and long-term government bonds in *Syria*. Bonds are issued on an as-needed basis to government-owned banks to supplement their capital base. The only money-market instruments available in Syria are investment bonds issued by the Popular Credit Bank (PCB) as agent of the government. The bonds, which carry an interest rate of 9 per cent a year, were issued with a 10-year maturity but have a short-term effective holding period as they are redeemable after three to six months. They may be purchased only by non-bank Syrian residents and by the PCB itself.⁷²

Stocks may be acquired freely with foreign exchange transferred from abroad by foreign non-residents in companies established in *Tunisia*. Non-residents may freely sell shares of companies established in Tunisia, however there are controls on all transactions in capital and money market instruments. They may also transfer freely net real proceeds from the sale of shares that were purchased with foreign exchange transferred from abroad for an investment made in accordance with the legislation in force. The purchase by non-resident foreign nationals of debt securities issued by the state or by companies resident in Tunisia is subject to approval. Non-residents may freely acquire shares of Tunisian mutual funds with foreign exchange transferred from abroad. However, the approval of the HIC is required if the acquisition raises the foreign ownership to more than 50 per cent of the mutual fund's capital. Non-residents may freely transfer net real proceeds from sales of Tunisian mutual fund shares acquired with foreign exchange transferred from abroad.⁷³

At least 51 per cent of shares of *UAE* corporations must be held by UAE nationals or organisations. Companies domiciled in free zones are exempt from this requirement and may be up to 100 per cent foreign owned. Purchases of collective investment securities by GCC residents are exempt from controls. Further non-residents may not acquire more than 20% of the share capital of any national bank.⁷⁴

Yemen reports controls on capital transactions, however certain instruments such as money market and derivatives are exempt.⁷⁵

3. International Monetary Fund Article VIII status

All the MENA economies, except for Iraq, the Palestinian National Authority and Syria, have Article VIII status under the IMF Articles of Agreement. This means that they accept the general obligations of IMF members. In particular, they undertake to avoid imposing restrictions on payments and transfers for current international transactions or engaging in any discriminatory currency arrangements or multiple currency practices.⁷⁶

71. IMF (2005).

72. IMF (2005).

73. IMF (2005).

74. IMF (2005)

75. IMF (2005).

76. Articles of Agreement of the International Monetary Fund (www.imf.org/external/pubs/ft/aa/index.htm).

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

Eleven of the MENA countries (*Bahrain, Djibouti, Egypt, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Tunisia* and *United Arab Emirates*) report that they allow repatriation of capital without restriction. *Algeria, Morocco, Syria* and *Yemen*, operate restrictions of varying depth.⁷⁷

In *Algeria*, the proceeds from disinvestment following the closing or transfer of a business operation may be transferred abroad through banks or authorised intermediaries, subject to prior approval.⁷⁸ It was reported by UNCTAD in December 2003 that repatriation of profit and dividends by foreign investors was still characterised by legal and practical obstacles. Although the law allows repatriation, this is limited to profits and dividends made through investments in foreign currencies, therefore profits generated through loans accorded by Algerian banks can not be repatriated. The law does not allow the repatriation of payments arising from “immaterial assets”, such as royalties generated by licensing patents or trade marks, which may form a large part of the earnings of companies which rely on exploitation of their intellectual property assets. Even when allowed by law, repatriation of profits is subject to practical obstacles, such as long administrative procedures. Private companies can purchase only a limited amount of foreign currency each year from the Central Bank.⁷⁹

In *Morocco*, there are no controls on transfers made directly through the banking system of the proceeds of the liquidation or sale of foreign investment, including capital gains, when such investment is governed by the convertibility arrangement (financing by sale of foreign exchange or other comparable methods). For the liquidation of any investment not falling under this category, the relevant proceeds must be deposited in a convertible time deposit account denominated in dirhams.⁸⁰

Syria imposes relatively heavy restrictions on the repatriation of capital and allows wide scope for official discretion. In accordance with Article 24 of Investment Law No. (10) of 4 May 1991, investors who are either Syrian expatriates, or of Arab or foreign nationality, are allowed after the elapse of 5 years from the investment of the project, to re-transfer abroad the net value of their share in the project in foreign currencies on the basis of the actual value of the project. This rule holds provided that re-transfer of funds does not exceed the capital brought in by them in foreign currencies, and according to executive instructions issued by the council in this regard. External funds may be re-transferred abroad after six months from their entry and in the same way as they were brought in, should there be any difficulty arising from circumstances beyond the control of the investor. The council, in special cases, may approve the re-transfer abroad of external funds without waiting for the full 5 years. Profits and revenues realized annually by the investment of the external funds may be transferred abroad. The Central Bank of Syria may allow the transfer abroad of the external funds invested in the project, together with the profits and revenues, in the same currencies brought in or in any other transferable currency. Arab and foreign investors can insure their investments in projects approved under this law with the Arab Establishment for Investment Insurance or with any other similar organization, provided they obtain the approval of competent authorities.⁸¹

⁷⁷. IMF (2005).

⁷⁸. IMF (2005).

⁷⁹. UNCTAD (2003).

⁸⁰. IMF (2005).

⁸¹ Investment Law, No. 10/1991; Ministry of Economy and Foreign Trade.

The liquidation of direct investments in *Yemen* is free for approved and registered projects.⁸² Article 15 of Yemen’s Investment Law states that an investor may transfer abroad foreign currency funds and net profit earned by investment or any of its accrued returns to any transferable currency and that the foreign investors may retransfer abroad invested capital upon liquidation or disposal.⁸³

5. Sectoral limitations to establishment of FDI, including reciprocity

a. *Financial services*

Foreign ownership (except for GCC nationals) of locally incorporated “onshore” banks in *Bahrain* is limited to 49 per cent; up to 100 per cent foreign ownership is permitted for offshore banking units, which may not deal with residents of Bahrain other than the government. There are no preferences for the approval of new entrants, but reciprocity provisions may apply. Foreign-based commercial banks may raise funds from and grant loans to residents and may own and operate branches in Bahrain, for which there are no restrictions on the proportion of foreign equity ownership. Insurance companies in Bahrain are largely foreign-owned⁸⁴ and deal with a wide range of insurance categories. Direct insurers must take the form of a joint-stock company, in which foreign ownership of up to 49 per cent of total equity is permitted. An indirect insurance company may be in the form of a limited liability company with a maximum of 49 per cent foreign ownership. Offshore companies in all branches of insurance and branches of foreign insurance companies may be 100 per cent foreign owned. The situation in the insurance sector is more liberal than reflected in Bahrain’s commitment to the GATS, under which no limitations were placed on market access and national treatment for all offshore insurance and related services but for local insurance services only reinsurance and retrocession services are included in the list of commitments.⁸⁵

Under Law 97 of 1996, the foreign ownership limit for banks in *Egypt* was raised from 49 per cent (of a joint venture) to 100 per cent, resulting in increases in the foreign share of existing joint ventures and the establishment of several wholly-foreign-owned banks in Egypt. Law 156 of 1998 allows 100 per cent foreign equity ownership of insurance companies. An economic needs test is used to determine commercial presence in the banking and insurance sectors in Egypt. This test includes criteria to determine whether the establishment of a new company is necessary and not destabilising for the Egyptian market and whether the company can provide the required service. The test was scheduled to be relaxed for life, health and accident insurance in 2000 and for non-life insurance in 2002; it remains to be determined whether this has happened. It is understood to remain in force for banks.⁸⁶ Venture capital and leasing qualify as investments which may be approved under Law 8 of 1997.

In *Jordan*, a non-Jordanian investor can own (share-hold) no more than 50 per cent of the capital of any project in: brokerage, excluding financial brokerage and intermediary transactions done by banks, financial companies and financial service companies; monetary exchange transactions, excluding those provided by banks and financial companies; and services of commercial agents and brokers and insurance brokers.

⁸². IMF (2005).

⁸³. Investment Law of the Republic of Yemen, www.giay.org.

⁸⁴. Of the 88 insurance companies in Bahrain, 69 are offshore, all of them foreign-owned, 10 of the remaining 19 companies are also foreign-owned, and 6 of the 9 Bahraini companies have a large percentage of non-Bahraini participation.

⁸⁵. WTO (2000).

⁸⁶. WTO (1999).

Foreigners are limited to 49 per cent ownership of banks in *Kuwait*. Insurance is open to foreign investment.⁸⁷ *Morocco* reserves the right under GATS to limit foreign participation in the capital of large banking institutions in cases where the holding could lead to taking over control. Approval to perform as an insurance intermediary is only given, subject to an opinion by the Advisory Committee on Insurance, to natural persons of Moroccan nationality and to legal persons governed by Moroccan law with their headquarters in Morocco and with at least 50 per cent of the capital held by natural persons of Moroccan nationality or legal persons under Moroccan law; the person in charge must be a Moroccan national.⁸⁸

Foreign investors are not allowed to invest in banking, insurance, commercial representation and real estate purchase in *Qatar*.⁸⁹ But the 2000 Investment Law gives foreign investors the right to lease land for setting up enterprises up to 50 years, renewable (subject to government approval) for another 50 years. Under the Law, foreign investment shall not be subject to expropriation unless this is in the “public interest” and in return for appropriate compensation. Foreign investors are free to import and repatriate funds, as well as transfer profits and assets, and exchange money. Investment disputes can be settled through domestic or international commercial arbitration panels.⁹⁰

The only financial sector on the closed list issued by *Saudi Arabia’s* Supreme Economic Council is that of insurance services, pending the issuance of a new Insurance Act.⁹¹

In *Tunisia* non-resident Nationals returning permanently to the country must declare and repatriate their assets or proceeds and revenue from their holdings abroad.⁹²

Yemen’s Investment Law specifically excludes banks and bureaux de change.⁹³ However, it should be noted that Yemen’s financial sector is relatively underdeveloped and currently does not have equity or capital markets.

b. Other services

Commercial agents and importers for resale in *Egypt* must be Egyptian nationals.⁹⁴ Qualifying investments in Law 8 of 1997 in Egypt which may be approved include: tourism (hotels, motels, tourist villages and transport); maritime transport; refrigerated transport of agricultural products and processed food; air transport and related services; housing; real estate development; hospitals and medical centres that offer 10 per cent of their services free of charge; water pumping stations; computer software production; and projects financed by the Social Fund for Development.

87. United States Commercial Service.

88. WTO (2003).

89. State of Qatar Ministry of Foreign Affairs, <http://english.mofa.gov.qa>.

90. WTO, Trade Policy Report (2005)

91. Saudi Arabian General Investment Authority, www.sagia.gov.sa.

92. IMF (2005).

93. Investment Law of the Republic of Yemen, www.giay.org.

94. United States Commercial Service.

MENA– OECD INVESTMENT PROGRAMME

In **Jordan**, a non-Jordanian may not own any of the following projects or businesses in whole or in part: passenger and cargo road transport, including services of taxis, buses and trailers; investigation and security services; and sports clubs, including sports event organisations but excluding fitness and physical health clubs. The Laws JIB Law No. (16) of 1995, JIB Law No. (16) of 1995 and By-Law No. 54 of 2000 contain a list of sectors with restrictions on foreign participation.

In **Kuwait**, real estate investment is limited to GCC nationals.⁹⁵

In **Saudi Arabia**, the Supreme Economic Council closed list includes: catering to military sectors; security and detective services; real estate investment in Mecca and Medina; tourist orientation and guidance services related to Hajj and Umrah; recruitment and employment services including local recruitment offices; real estate brokerage; printing and publishing (except, in some unspecified cases, for pre-printing services, printing presses, drawing and calligraphy, photography, radio and television broadcasting studios, foreign media offices and correspondents, promotion and advertising, public relations, publication, press services, production, selling and renting of computer software, media consultancies and studies and typing and photocopying); distribution services; wholesale and retail trade, including medical retail services and private pharmacies; commercial agencies, except for some franchise rights, with foreign ownership not exceeding 49 per cent and the granting of one franchise to each area; audiovisual and media services; telecommunications services (except, in some unspecified cases, for telex services, telegraph services, electronic data interchange, enhanced/value-added facsimile services, including storage, forwarding, and retrieving, Vsat services, fax services, GMPCS services, Internet service provider services, electronic mail, provision of online information and database retrieval and information provision and online retrieval and/or processing, including transaction processing); land and air transport; satellite transmission services; services rendered by midwives, nurses, physiotherapists and paramedics; and blood banks, poison centres and quarantines.

c. *primary sectors*

Private investment (foreign or **Bahraini**) in oil extraction is only permitted under a production-sharing agreement with BAPCO, the state-owned petroleum company.⁹⁶

Qualifying investments in Law 8 of 1997 in **Egypt** which may be approved include: oil production and related services; land reclamation; fish, poultry and animal production. For oil and gas exploration and development in Egypt, an individual law must be passed for each investment. Companies are initially granted exclusive rights to exploration in a concession. If commercial discoveries are made, a joint venture with the state-owned Egyptian General Petroleum Company (EGPC) is formed, based on a standard production-sharing agreement that is specified in the law for the concession.⁹⁷ The foreign company receives up to 40 per cent of the oil produced.⁹⁸

^{95.} United States Commercial Service.

^{96.} United States Commercial Service.

^{97.} United States Commercial Service.

^{98.} UNCTAD (1999b).

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

JIB Law No. (16) of 1995:

Non – Jordanian investors are not allowed to participate, wholly or partially in any of the following projects or activities:

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

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

Foreign companies may not invest in *Kuwait's* upstream petroleum sector, although they are allowed to invest in petrochemical joint ventures.⁹⁹

In *Saudi Arabia*, the Supreme Economic Council closed list includes projects related to exploration, drilling and production of gas and oil, and also fisheries.

In *Tunisia*, agricultural land cultivation through leasing is possible by public limited companies in which the equity is at least 34 per cent Tunisian-held. The foreign share can reach 66 per cent for companies involved in land cultivation, fish farming and fishing.

Yemen's Investment Law explicitly excludes the exploration and extraction of oil, gas and minerals, which are governed by special agreements.¹⁰⁰

d. Manufacturing

Projects which require prior approval from relevant ministries in *Egypt* in addition to approval from the General Authority for Free Zones and Investment (GAFI) include all military products and tobacco and tobacco products. (Investment in tobacco, whether domestic or foreign, is not encouraged.)¹⁰¹

In *Saudi Arabia*, the Supreme Economic Council closed list includes the production of military equipment and uniforms; the production of explosives for civilian purposes; printing and publishing.

Yemen's Investment Law explicitly excludes the manufacture of weapons and explosive materials and industries that harm the environment and health.¹⁰²

⁹⁹. United States Commercial Service.

¹⁰⁰. Investment Law of the Republic of Yemen, www.giay.org.

¹⁰¹. WTO (1999).

¹⁰². Investment Law of the Republic of Yemen, www.giay.org.

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

Restrictions apply to the acquisition of land and property in MENA countries, including foreign ownership ceilings, licensing, zoning restrictions, discrimination in favour of GCC members, reciprocity arrangements and resale restrictions. The degree and nature of restriction is unclear in some countries. Prohibitions on foreign ownership of real estate are ranked third in a list of investment constraints cited by potential investors in a recent survey (see Box 1).¹⁰³

Most land in *Algeria* is owned by the state, but it is not always clear which national or local authority owns a particular piece of land. Therefore foreign investors have to make enquiries and locate the authority authorised to sell the piece of land they want to buy. According to an assessment by the World Bank, about three years are required to buy a piece of land in Algeria.¹⁰⁴

Since 1999 GCC nationals have been able to own land in *Bahrain*. In January 2001, this right was extended to foreign (GCC and non-GCC) firms. Non-GCC individuals residing in Bahrain are allowed to buy and own lands and houses in specifically designated investment areas such as the Seef and Juffair areas.

In *Egypt*, non-Egyptians may not sell property within five years of taking possession. Foreign individual or corporate ownership of agricultural land (defined as traditional agricultural land in the Nile valley, delta and oases) is explicitly prohibited¹⁰⁵ by Law 15 of 1963.¹⁰⁶ Foreign individuals can own a maximum of two residences, each of an area up to 4,000 square metres, which may not be sold within five years of purchase. Law 143 of 1981 stipulates that Egyptians must have a majority share in any desert land, defined as land beyond two kilometres from the border of a city. This law has priority over the Law of Investment Guarantees and Incentives, so that a joint-venture company formed under the latter wishing to pursue an activity requiring the ownership of desert land would have to have majority Egyptian ownership. Companies and citizens of other Arab countries have customarily received Egyptian national treatment in this area.¹⁰⁷

Non-Arab foreign nationals are permitted to own or lease property in *Jordan*, provided that their home country does not discriminate against Jordanians and the property is developed within five years from the date of approval. The Cabinet is the authority on licensing foreign ownership of land and property. Agricultural land is not included in the provisions of this law. However, a foreign company that invests in the agricultural sector in Jordan automatically obtains national treatment with respect to ownership of agricultural land, once registered as a Jordanian company.¹⁰⁸ In general, purchase of land is allowed only if reciprocal agreements exist and Cabinet approval is obtained.¹⁰⁹

^{103.} Zarrouk (2003).

^{104.} UNCTAD (2003).

^{105.} United States Commercial Service.

^{106.} UNCTAD (1999b).

^{107.} United States Commercial Service.

^{108.} United States Commercial Service.

^{109.} IMF (2005).

In *Lebanon*, all foreigners must obtain a licence from the Council of Ministers to acquire real estate exceeding a certain maximum area; in addition, a ceiling is imposed on the total area that may be acquired in the capital city as well as in various Lebanese districts.¹¹⁰

In *Morocco*, foreign nationals may purchase real estate, except farmland, with funds from foreign exchange accounts.¹¹¹

Oman reports unspecified controls on the purchase and sale of real estate by non-residents. Purchase of real estate by non-residents is not allowed, although some exceptions apply to citizens of GCC countries.¹¹²

In the *Palestinian National Authority*, one of the commercial laws currently in place affecting foreign investors is the Acquisition Law in the West Bank, which regulates foreign acquisition and the rental or lease of immovable properties. Foreigners are allowed to own buildings or purchase land only outside the boundaries of the cities, however, exceptions can be made such as in the establishment of an approved investment project. This law classifies foreigners into three categories:

- Foreigners who formerly possessed Palestinian or Jordanian passports shall have the right to own properties (not within the boundaries of the cities), sufficient to erect buildings and/or for their agricultural projects.
- Foreigners who hold other Arab nationality passports have the right to own property (not within the boundaries of the cities), which suffice for their living and business needs only.
- Others.¹¹³

In *Qatar*, real estate ownership is limited to GCC nationals.¹¹⁴

In *Saudi Arabia*, in principle the purchase of real estate is restricted to Saudi Arabian citizens, Saudi Arabian corporations, Saudi Arabian institutions and citizens of the GCC. However, under the foreign investment law, foreign investors are allowed to own real estate, as needed for their business, including housing for their staff. Article 8 of the Foreign Investment Act states that any foreign facility licensed under the Act is entitled to possess the required real estates as might be reasonable for practicing the licensed activity or for the housing of all or some of the staff as per the provisions for non-Saudi nationals' real estate acquisition. Non-residents are also allowed to purchase real estate for conducting real estate business in all cities, except for the holy cities of Mecca and Medina, provided that the investment in the real estate business is not less than SR30 million (US\$8 million at the current exchange rate).¹¹⁵ Further guarantees to foreign investors are provided under the Real Estate Law enacted in 2000, which replaces the former maximum time limit of three years within which a foreign investor could hold property before selling with a minimum time limit of five years, intended to discourage speculation. While non-Saudis may not own land in Mecca or Medina, except as a result of inheritance or endowment by a Saudi institution, they may now lease property in either city for a two-year renewable period.

^{110.} IMF (2005).

^{111.} IMF (2005).

^{112.} IMF (2005).

^{113.} Palestine Investment Promotion Agency: www.pipa.gov.ps/comercial_law.asp

^{114.} IMF (2005).

^{115.} IMF (2005).

In *Syria*, non-residents and foreign nationals may acquire real estate only after presenting evidence that they have converted into Syrian pounds the foreign exchange equivalent of the price of the property at the authorised local bank.¹¹⁶

Real estate purchases by non-residents in *Tunisia* require prior approval from the Central Bank of Tunisia (CBT). Authorization is also required for sales other than those made to a resident and involving real estate that is the subject of a land title.¹¹⁷ Foreign developers can buy sites or buildings subject to authorisation from regional authorities.¹¹⁸

In the *UAE*, from 1 July 2002 non-residents may own property in some real estate developments in Dubai.¹¹⁹

Article 7 of *Yemen's* Investment Law guarantees that foreign investors may purchase or lease land and buildings owned by the private sector or the state to be used for the purposes for which the project is registered under the Investment Law.¹²⁰

There is a wide variation among MENA countries both in terms of the scope and clarity of sectoral limitations imposed on foreign investment. Some operate a generally open policy, permitting foreign investment in any sector outside a published closed list. Others proclaim that foreign investment is invited in broad sectors of the economy, but suggest or imply that the openness of each sector depends on the nature of the project and on government discretion. The same logic operates with respect to ownership of real estate.

7. Exceptions to national treatment of foreign-controlled enterprises

a. Access to local finance

As can be seen from the table above, it is not clear in all cases from reports by MENA countries to the IMF whether or not restrictions exist on lending to foreign-owned enterprises. From the information reported by countries to the IMF, it appears that at least nine members of the program have some restrictions on access to finance to non-nationals. Equally, information does not appear to be readily available on discriminatory access to government subsidies for investment projects in MENA countries.

b. Access to privatisation

Following a decree in 2001, all public-sector economic activities are in principle open to privatisation in *Algeria*. However, the privatisation process appears to be characterised by a lack of transparency and wide government discretion.¹²¹

^{116.} IMF (2005).

^{117.} IMF (2005).

^{118.} Invest in Tunisia web site, www.investintunisia.tn.

^{119.} IMF (2005).

^{120.} Investment Law of the Republic of Yemen, www.giay.org.

^{121.} UNCTAD (2003).

Privatisations of the parastatals that dominate the *Bahrain* economy are continuing slowly, some of them with foreign participation.¹²²

Privatisation sales to foreign entities are permitted by law in *Egypt*.¹²³

Despite the announcement of successive privatisation initiatives, no privatisation of a government entity has yet occurred in *Kuwait*. Foreign companies have participated in consortia that have successfully bid for public projects.¹²⁴

The government of *Qatar* has embarked on a privatisation programme designed to encourage and strengthen the Qatari private sector.¹²⁵ It is not clear to what extent this programme is open to foreign investors.

The government of *Saudi Arabia* announced a privatisation strategy covering a wide range of services in 2002.¹²⁶ One of the goals of privatisation was stated to be increased attraction of foreign investment, indicating a welcoming of foreign participation in the privatisation process. Detailed rules on privatisation stipulate transparent procedures and are available in full on the Supreme Economic Council web site.¹²⁷

Tunisia has operated a privatisation policy since 1987 which has generated substantial revenue from foreign investment.¹²⁸

c. Access to public procurement

None of the MENA countries is a party to the WTO Agreement on Government Procurement. *Jordan* has observer status on the WTO Committee on Government Procurement and is currently negotiating accession.¹²⁹ Several MENA countries operate preferences for locally-produced goods, but do not appear to discriminate on the basis of ownership.

The Government Tenders law that went into effect in January 2003 outlines standard procedures for government tenders in *Bahrain*. In order to be qualified for a government procurement contract, a company must be registered in Bahrain and have a commercial registration number in the field or activity relevant to the tender. Procurement agencies must give preference to goods produced in Bahrain and in other GCC states, provided that the goods are within 10 per cent of the value of their imported equivalents if produced in Bahrain and within 5 per cent if produced in other GCC member countries. For bids with a value of BD 10,000 (US\$26,470 at the current rate of exchange) or above, a selective tendering procedure

122. United States Commercial Service.

123. United States Commercial Service.

124. United States Commercial Service.

125. United States Commercial Service.

126. United States Commercial Service.

127. Supreme Economic Council, www.sec.gov.sa.

128. United States Commercial Service.

129. WTO, www.wto.org.

is used. Among the criteria that the Central Tenders Committee uses to evaluate bids are the proportion of Bahraini nationals to be employed and the proportion of local materials or products to be supplied.¹³⁰

Egypt passed a Tenders Law in 1998 which introduced greater transparency in the process of public procurement, although the law does allow price preferences for Egyptian suppliers.¹³¹ Tenders Law 89 of 1998 amended the Tenders and Bidding Law 9 of 1983 governing foreign companies' bids on public tenders. It requires the government to consider both price and best value and to issue an explanation for a bid's refusal. An Egyptian domestic contractor is accorded priority if its bid does not exceed the lowest foreign bid by more than 15 per cent.¹³² The WTO has noted that although the Tenders Law is an improvement on previous legislation, it continues to provide considerable discretion to government departments to limit procurement to selected suppliers.¹³³

In *Jordan*, foreign investors can bid for government-commissioned research and development programmes that are slated for international or mixed bidders. Otherwise, they have to find a Jordanian partner. This qualification will be dropped once Jordan accedes to the WTO's Government Procurement Agreement (GPA), for which it is currently preparing an entities offer.¹³⁴

Articles 43 and 44 of *Kuwait's* Law No. 37 of 1964 specify the use of local products when available and prescribe a 10 per cent price advantage for local firms in government tenders.¹³⁵

Saudi Arabia's government contracts on project implementation and procurement are regulated by several royal decrees that strongly favour GCC nationals. However, most defence contracts are negotiated outside these regulations. Under a 1983 decree, contractors must subcontract 30 per cent of the value of the contract, including support services, to majority-owned Saudi firms. An exemption is granted in instances where no Saudi company can provide goods and services to fulfil the obligation. In addition, Article 1(d) of the tender regulations requires that Saudi individuals and other establishments have preference over all other entities in government dealings. The same regulations also accord preference to "mixed" entities as long as Saudi nationals hold at least 51 per cent of the mixed entities' capital. Article 1(e) gives preference to products of Saudi origin that satisfy the requirements of the procurement, even when the product specifications are inferior to those of a foreign counterpart. Saudi Arabia also gives priority in government purchasing programmes to GCC products. These items receive up to a 10 per cent price preference over non-GCC products in all government contracts contested by foreign contractors.¹³⁶

The *UAE* does not require that a portion of any government tender be subcontracted to local firms, but there is a 10 per cent price preference for local firms on procurement and tenders. The UAE requires a company to be registered in order to be invited to receive government tender documents. To be registered, a company must have 51 per cent UAE ownership. However, these rules do not apply on major project awards or defence contracts where there is no local company able to provide the goods or services

^{130.} WTO (2000).

^{131.} WTO (1999).

^{132.} United States Commercial Service.

^{133.} WTO (1999).

^{134.} United States Commercial Service.

^{135.} United States Commercial Service.

^{136.} United States Trade Representative, www.ustr.gov.

required. Set up in 1990, the UAE’s offset programme requires defence contractors with contracts worth more than US\$10 million to establish joint projects that yield profits equivalent to 60 per cent of their contract value within a specified period (usually seven years). There are also reports that indicate that defence contractors can sometimes satisfy their offset obligations through an up-front lump-sum payment directly to the UAE Offsets Group. The projects must be commercially viable joint ventures with local business partners, and are designed to further the UAE objective of diversifying its economy away from oil. To date, more than 30 projects have been launched, including, *inter alia*, a hospital, an imaging and geological information facility, a leasing company, a cooling system manufacturing company, an aquaculture enterprise, Berlitz Abu Dhabi, and a freighting equipment production facility.¹³⁷

Article 9 of *Yemen*’s Investment Law states that when making procurement for government or public establishments, a 15 per cent maximum preference in the price of the production of local agricultural and industrial projects shall be accorded over comparable imports, subject to quality being consistent with that of imported products.¹³⁸

d. Discriminatory tax treatment

In *Kuwait*, foreign-owned firms and the foreign-owned portions of joint ventures are the only businesses subject to corporate income tax, which applies to domestic and offshore income. Corporate tax rates can be as high as 55 per cent of gross profits, but the government has put forward legislation to reduce the maximum rate to 25 per cent. New foreign investors can be exempted from all taxes for up to 10 years under the new Direct Foreign Capital Investment Law. Domestic companies pay no corporate income tax, but those that are registered on the Kuwait Stock Exchange are subject to a 2.5 per cent contribution from their national earnings to the Kuwait Foundation for the Advancement of Science (KFAS) and the National Employment Law levies an additional 2.5 per cent tax to fund a programme that grants Kuwaitis working in the private sector the same social and family allowances provided to Kuwait’s government workers.¹³⁹

In *Saudi Arabia*, only foreign-owned corporations and the foreign-owned portion of joint ventures are subject to corporate income tax, which ranges up to 30 per cent of net profits. Domestic corporate partners are subject to a 2.5 per cent tax on assets. In 2002 the government announced that it was considering plans to levy an income tax on expatriate workers earning more than US\$800 per month, with tax rates ranging from 2.5 per cent to 10 per cent.¹⁴⁰

e. Entry procedures for key personnel

Work visas in *Jordan* are usually authorised for a period of one year, however an investor may qualify for a visa that is renewable after five years.¹⁴¹

There are four types of entry visa to *Saudi Arabia*: investor visas, business visit visas, employment visas and family visit visas. An investor or his/her representative must visit the local Saudi embassy or consulate to apply for a visa; in the United States and some European countries it is possible to obtain a visa by post.

^{137.} United States Trade Representative, www.ustr.gov.

^{138.} Investment Law of the Republic of Yemen, www.giay.org.

^{139.} United States Commercial Service.

^{140.} United States Commercial Service.

^{141.} Jordan Investment Board, www.jib.com.jo/inves-injordan.htm.

Application formalities take 1 day in the case of family visit visas, 1-2 days for investor and business visit visas and three weeks for employment visas; these can be accelerated in emergency cases.¹⁴² Typically, this regulatory procedure is not a very contentious point for foreign investors in the region, however this cannot be concluded with certainty due to a lack of publicly available on this issue.

8. Performance requirements on foreign direct investors

Of the 10 WTO members in this survey (listed in Annex 4), 7 have no notification statement regarding trade-related investment measures (TRIMs) on the WTO web site. *Jordan* notifies the WTO that it does not maintain any measures inconsistent with the TRIMs Agreement. *Oman* states that it does not apply any trade-related investment measures which are inconsistent with the provisions of Article III or Article XI of GATT 1994, nor has it introduced any such measures 180 days or more before the date of its accession to the WTO. In *Djibouti* performance requirements are not a pre-condition for establishing, maintaining or expanding FDI. However, incentives increase with the size of the investment and the number of jobs created.¹⁴³

It is not clear whether *Bahrain* operates performance requirements for foreign investments. In its bilateral investment treaty with the United States, Bahrain is committed not to mandate performance requirements as a condition for the establishment, acquisition, expansion, management, conduct or operation of a covered investment.

In *Egypt* Investment Incentives and Guarantees Law 8 of 1997 specifies that assembly industries must meet a minimum local content requirement of 45 per cent to benefit from customs tariff reductions on imported industrial inputs. The Labour Law of 1981 requires that foreign workers (not counting managers) must account for no more than 10 per cent of the workforce and 20 per cent of the payroll.¹⁴⁴

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

In *Morocco*, exporting companies are fully exempt from corporate income tax for 5 years and then have a 50 per cent tax reduction on profits from exporting.¹⁴⁵

National investment law normally permits foreigners to own no more than 49 per cent of an enterprise in *Qatar*, where such an enterprise must take the form of a joint venture with the Qatari partner owning at least 51 per cent of the equity. However, with ministerial approval, the shareholding of foreign investors in joint ventures can exceed 49 per cent and reach up to 100 per cent of the capital in selected sectors such as agriculture, industry, health, education, tourism, development of natural resources or energy and mining,

^{142.} Saudi Arabian General Investment Authority, www.sagia.gov.sa.

^{143.} United States Commercial Service.

^{144.} United States Commercial Service.

^{145.} UNCTAD (1999b).

on condition that the projects in question are in line with the country's development objectives; give priority to optimizing the utilisation of and add value to local raw materials and local products; are export-oriented; introduce new products; use new technologies; seek to introduce internationally well-known industries or develop domestic human resources. In addition, a specific decree allows full shareholding of foreign investments in sectors such as industry, agriculture, mining, energy, tourism or contracting provided that the investment is geared to develop the industry in question or provide a public utility or service that serves the best interests of the community.¹⁴⁶

Under the *Saudi Arabian* government's 1969 Labour and Workman Regulations, 75 per cent of a company's work force and 51 per cent of its payroll must be Saudi, unless an exemption has been obtained from the Ministry of Labour and Social Affairs. The percentage is in practice far less in the private sector (more Saudis work in the public sector). In 1996 the government implemented a regulation requiring each company employing over 20 workers to include a minimum of 5 per cent Saudi nationals, increasing by this quota by 5 per cent per year since then. Only joint ventures with at least 51 per cent Gulf Co-operation Council (GCC) ownership interest are permitted to export duty-free to other GCC countries.¹⁴⁷

To enjoy exemptions (such as those from paying duty on imports of items needed for production), privileges, facilities and guarantees under Law 10/1991, projects in *Syria* must be approved by a Higher Council of Investment comprising leading government ministers. Such approval is conditional upon factors that include conformity with the aims of the state development plans; maximum use of local resources; contribution to GNP and employment growth; increasing exports and "rationalising" imports; use of up-to-date machinery and technology.¹⁴⁸

In *Tunisia*, foreign investment in a fully-exporting business is permitted up to 100 per cent of the project's equity without prior authorisation. Companies producing at least 80 per cent for the export market receive full tax exemption on reinvested profits and revenues.¹⁴⁹

9. FDI-targeted tax and other incentives

Many MENA countries offer tax and other investment incentives; it is not clear in all cases whether these are available on equal terms to both domestic and foreign investors.

Algeria's investment code grants investors a 3-year exemption from VAT on goods services acquired locally or imported, an exemption from property taxes, a 2-5 year exemption from corporate income taxes, the right to pay 3 per cent customs duty on 30 products for which duties are normally 25-45 per cent, and the right to pay no more than 7 per cent of gross wages as the employer contribution to social security instead of the normal rate of 24.5 per cent.¹⁵⁰ *Algeria's* Investment Code provides incentives according to the size of the investment, geographic location, jobs created, technology transferred, use of local inputs and export orientation. Investors receive maximum advantages if the foreign partner finances more than 30 per cent of the total value of the investment and uses 50 per cent local inputs. Firms exporting 100 per cent of

^{146.} State of Qatar Ministry of Foreign Affairs, <http://english.mofa.gov.qa>.

^{147.} United States Commercial Service.

^{148.} Ministry of Foreign Economy and Trade, www.syrecon.org.

^{149.} UNCTAD (1999b).

^{150.} United States Commercial Service.

production are completely exempt from taxes; those exporting 50 per cent of production receive a 50 per cent exemption from taxes.¹⁵¹

The *Djibouti* tax benefits and incentives fall under two categories detailed in the investment code. Investments larger than \$280,000 that creates a number of permanent jobs are entitled to exemption from license and registration fees, property taxes, taxes on industrial and commercial profits, and taxes on the profit of corporate entities, imported raw materials used in manufacturing are exempted from the internal consumption tax.¹⁵²

Egypt offers incentives in the form of custom duties reductions to promote the establishment and development of industries in the country. It states that these reductions are aimed at facilitating the exploitation of available resources, transfer of technology and remedying the chronic trade balance deficit. The customs duties incentives are voluntary, i.e. left open for enterprises which elect to benefit from such incentives. The Egyptian Investment Law No. 8 of 1997 provides a general tax exemption for 5 years for any project operating in one of the fields covered by the law. Specific incentives of 10 years are granted to projects in particular locations. Tax exemptions of up to 20 years are granted to projects outside the Cairo area. Egypt offers also a lower tax rate for foreign-invested companies engaged in industrial and export activities. Generous incentives are available to projects located in free zones; although free zones are open to any type of investment, priority is assigned to activities promoting exports and to high-tech industries. These incentives appear to be available equally to domestic and foreign-owned companies. Goods produced in free zones and exported are not subject to customs, general sales, or other types of tax.¹⁵³ The Investment Incentives and Guarantees Law 8 of 1997 is designed to allocate investment to targeted economic sectors and promote the decentralisation of industry from the crowded Nile Valley area. The main “incentive” in this law is a positive list of sectors in which projects are granted automatic approval.

In accordance with the Investment Promotion Law of 1995, foreign-invested projects in *Jordan* are exempt from income and social services tax for a period of 10 years starting from the beginning of the project (or production, in the case of a manufacturing project) to varying extents, depending on location (25 per cent exemption in a class A development area, 50 per cent exemption in a class B development area, 75 per cent exemption in a class C development area). An additional exemption of at least 25 per cent is available for up to 4 years if the enterprise is expanded, developed or modernised with the aim of increasing production capacity.¹⁵⁴

Kuwait's new Direct Foreign Capital Investment Law, passed in 2001, authorises tax holidays of up to 10 years for new foreign investors.¹⁵⁵

Lebanon offers exemption from income tax for two years from the date of listing shares on the Beirut stock exchange, provided that the effective negotiable shares are no less than 40 per cent of the capital of the company, in Zones A, B and C. In addition, companies in Zone B enjoy a 50 per cent reduction in income taxes and taxes on project dividends for a period of five years and those in Zone C are exempt from

^{151.} United States Commercial Service.

^{152.} U.S. Department of State.

^{153.} UNCTAD (1999b).

^{154.} Investment Promotion Law No. (16) for 1995, Embassy of Jordan in Washington D.C. web site, www.jordanembassyus.org.

^{155.} United States Commercial Service.

such taxes for ten years. Full exemption from income taxes and taxes on project dividends, together with a range of non-tax incentives, may also be awarded to projects defined by the Investment Development Authority of Lebanon (IDAL) as package deals. Package deal contracts are subject to approval by the Council of Ministers based on a proposal of the prime minister, after being signed by IDAL and the investor.¹⁵⁶

Enterprises located in the Tangier Free Trade Zone in *Morocco* are eligible for exemption from all registration taxes and stamp duty for constitution or augmentation of capital and for land acquisition, are exempt from licence tax for 15 years, are exempt from profits tax for the first 5 years and a reduced tax rate of 8.75 per cent thereafter, and are exempt from VAT on imported goods.¹⁵⁷ It is not clear whether these incentives are available on equal terms to domestic and foreign investors.

Oman offers tax exemptions of 5 years (sometimes renewable) for investment in industrial enterprises which are deemed to contribute to Oman's economy.

Qatar provides a 10-year exemption from income tax effective from the date of project commissioning, though it is not clear whether this incentive applies to domestic as well as foreign investments. It also allows duty-free imports of equipment and machinery required for investment projects and duty-free imports of raw materials and semi-manufactured goods needed for industrial projects which are not available locally.¹⁵⁸

Article 13 of *Syria's* Law 10/1991 provides tax incentives for investments, whether domestic or foreign, that meet strict requirements. Joint-stock companies approved according to the-rules of this law, together with their shares, funds, profits and dividends, are exempted from all taxes levied on income and real estate owned by the companies for seven years right from the date of actual production or investment according to the nature of the project. Projects related to individuals or non-joint-stock companies licensed according to rules of this law, together with their profits and dividends, are exempt from income and real-estate taxes on the buildings owned for realising the project's objectives and tasks, for five years from the date of actual production or investment, according to the nature of the project.¹⁵⁹

Tunisia's Investment Incentives Law of 1994 provides tax relief on reinvested revenues and profits, a limit on VAT to 10 per cent on many imported capital goods and optional depreciation schedules for production equipment. Companies producing at least 80 per cent for export receive full tax exemption on profits for the first 10 years and a 50 per cent reduction in taxes on profits thereafter, together with full tax exemption on reinvested profits and revenue, duty-free import of capital goods with no local equivalent, and full tax and duty exemption on raw materials and semi-finished goods and services necessary for the business.¹⁶⁰

Yemen provides investment incentives in the form of exemption from customs fees and taxes levied on the fixed assets of an investment project and a 7-year tax holiday on profits, renewable for up to 18 years.¹⁶¹

^{156.} IDAL.

^{157.} United States Commercial Service.

^{158.} State of Qatar Ministry of Foreign Affairs, <http://english.mofa.gov.qa>.

^{159.} Ministry of Economy and Foreign Trade, www.syrecon.org.

^{160.} United States Commercial Service.

^{161.} United States Commercial Service.

10/11. Bilateral investment treaties (BITs) (total number of countries and with OECD countries)

Algeria has signed BITs with most industrialised countries. In addition, in July 2001 it signed a Trade and Investment Framework Agreement (TIFA) with the United States, which the United States has suggested may open the way for a BIT, as well as a double taxation agreement (DTA) and a free trade agreement (FTA).¹⁶² Algeria has also signed several multilateral agreements on investment, including the Maghrebian convention encouraging and guaranteeing investment of 23 July 1990.¹⁶³

Bahrain has signed 11 BITs, including a BIT with the United States in 1999 that came into force in 2001.¹⁶⁴ It has also concluded economic and commercial co-operation agreements with Australia, Bangladesh, China, Egypt, France, Greece, India, Iraq, Jordan, Morocco, the Netherlands, Russia, Singapore, South Korea, Syria, Tunisia, Turkey and the United Kingdom.

Djibouti has so far concluded BITs with only three countries, Egypt, Malaysia and Switzerland.

Egypt has become one of the most active MENA countries in investment diplomacy. It has signed 78 BITs, including 53 that were signed in the period 1995-2002.¹⁶⁵ It has also signed 11 regional conventions, mainly with other Arab states.¹⁶⁶ Egypt signed a BIT with the United States in 1986 that came into force in 1992.

Jordan has signed 33 BITs, including one with the US in 1997 which entered into force on 12 June 2003.¹⁶⁷ It also signed a Trade and Investment Framework Agreement (TIFA) in 1999.¹⁶⁸

Kuwait has signed 33 BITs, including 12 with OECD Member countries.

Morocco signed 29 BITs in 1995-2002.¹⁶⁹ An earlier BIT was signed with the United States in 1985 that became effective in 1991.

Oman concluded 17 BITs in 1995-2002.¹⁷⁰

Qatar signed 16 BITs in 1995-2002.¹⁷¹

Syria, which signed 15 BITs in 1995-2002¹⁷² has Investment Guarantee Agreements with France, Germany, Switzerland and the United States.

^{162.} United States Commercial Service.

^{163.} UNCTAD (2003).

^{164.} UNCTAD (2003).

^{165.} UNCTAD (2003).

^{166.} UNCTAD (1999b).

^{167.} United States Department of State, www.state.gov.

^{168.} United States Commercial Service.

^{169.} UNCTAD (2003).

^{170.} UNCTAD (2003).

^{171.} UNCTAD (2003).

Tunisia signed 16 BITs in 1995-2002, including one with the United States signed in 1990 that became effective in 1993.¹⁷³

The *United Arab Emirates* signed 19 BITs in 1995-2002.¹⁷⁴

Yemen signed 27 BITs in 1995-2002.¹⁷⁵

12. Bilateral tax treaties with OECD countries

Algeria has 12 double taxation treaties, including some with key economic partners such as Egypt, France, Italy and Germany.¹⁷⁶

Bahrain has concluded double taxation agreements with Egypt, France, India, Jordan, Malaysia, Morocco, Philippines, Thailand and Tunisia.¹⁷⁷

Djibouti is not on record as having signed a single double-taxation treaty.

Jordan has signed double taxation treaties with France, Romania, Turkey, Tunisia and Malaysia. Treaties with Poland, Egypt and Indonesia have already been signed but are still awaiting completion of legal procedures to enter into force.

13. Measures to enhance investment policy transparency

a. Publication of regulations

The availability and completeness of information regarding economic openness vary widely between MENA countries. One example of this is the listing of information on exchange arrangements and exchange restrictions provided annually to the IMF.¹⁷⁸ Entries in this publication range from predominantly one-word answers to specific questions (i.e. just Y or no), as in the case of Djibouti and Jordan, whose entries in each case take up approximately three sparse pages in the 2003 report, to a collection of long and detailed entries, as in the case of Tunisia, which occupies over eleven pages of dense text. Greater transparency overall could be achieved by the provision of more detailed responses from those MENA countries that currently limit themselves mainly to monosyllabic statements.

b. Information provided by governments for foreign investors on the World Wide Web

Provision of information easily accessible on the Internet varies even more widely between MENA countries. Several countries have navigable and informative sites, some appear to have none. The principle adopted in this survey is that a country's web site aimed at foreign investors should be easy to locate using the most popular search engine, Google, or via Governments on the WWW (www.gksoft.com/govt), a

^{172.} UNCTAD (2003).

^{173.} UNCTAD (2003).

^{174.} UNCTAD (2003).

^{175.} UNCTAD (2003).

^{176.} UNCTAD (2003).

^{177.} United States Commercial Service.

^{178.} IMF (2004).

MENA– OECD INVESTMENT PROGRAMME

widely used and comprehensive classified list of links to governmental institutions on the World Wide Web. For the purposes of this survey, web sites whose URLs are difficult to locate are not considered to provide transparent access to information on a country's investment climate.

The *Saudi Arabia General Investment Authority (SAGIA)* site (www.sagia.gov.sa) is a comprehensive investment promotion resource, which describes the benefits of Saudi Arabia as an investment destination and also provides full information on the investment environment. Summaries of investment laws are hyperlinked to complete texts. The site contains details of Saudi Arabia's privatisation programme, and lists of economic agreements signed by Saudi Arabia, as well as full texts of three bilateral investment treaties. Visitors to the site can download investment licence application forms from it.

The *Invest in Tunisia* site (www.investintunisia.tn) provides full background information on the attractions of Tunisia as an investment destination and also details of the regulatory environment, including summary information on investment legislation and regulations, taxation, labour law, foreign exchange regulations, property law, arbitration procedures and relevant international agreements signed by Tunisia. The Investor's Guide section contains more detailed information on procedures for entering the country, registering and operating an investment project or a company, and covers many other practical matters of use to foreign investors.

Morocco suffers from the same problem of meagre, widely-dispersed data as Algeria. The *Ministry of Economic Affairs* has an *Investment Directorate* web site (in French only) (www.invest.gov.ma) that contains investment legislation and a flow chart showing the procedures for setting up a business in Morocco. The *Ministry of Foreign Affairs and Co-operation* web site (www.maec.gov.ma) maintains a list of bilateral and multilateral agreements signed by Morocco. An investment promotion section buried in the web site of the *Ministry of Industry, Trade and Telecommunications* site (www.mcinet.gov.ma) did not appear to possess much content useful to a potential foreign investor. Web sites of Moroccan embassies and consulates general also lack information of specific use to foreign investors, with the exception of that in *Seoul* (www.moroccoemb.or.kr), which has a simple yet well-organised section on Investing in Morocco.

The *General Investment Authority of Yemen (GIAY)* web site (www.giay.org) contains the full text of Yemen's Investment Law and a long and detailed list of projects for which foreign investment is solicited. There are also some fragmentary updated statistics on foreign investment. However, the background page is devoted to describing Yemen's cultural specificities, not its economic environment. A brochure which may be useful for foreign investors can not be downloaded.

Syria's Ministry of Economy and Foreign Trade site (www.syrecon.org/main_frame.html) includes the text of laws relating to inward investment and detailed regulations governing the Free Zone, as well as lists of foreign economic agreements signed by Syria. However, this information is provided without explanation necessary for an individual unfamiliar with the country's business and economic environment.

The *Ministry of Information of Oman* web site (www.omanet.om) offers a page on foreign investment in its Commerce section. This sets out basic information on Incentives for Investing in Oman, however this information is difficult to navigate since this list also includes general background information and even ownership restrictions. The website also contains Foreign Business and Investment Law; Ownership of Companies in Oman; and the Companies Law for reference purposes.

Egypt's Ministry of Foreign Trade site (www.economy.gov.eg) contains a downloadable report titled *Investing in Egypt 2003*, investment incentives law, and general information on regulation in the private

sector. Overall, the site contains main investment laws and other relevant legal texts both in English and Arabic.

The *Investment Development Authority of Lebanon (IDAL)* web site (www.idal.com.lb) appears to contain a wide range of information useful to investors, including legislation and sector-specific opportunities, but at the time of publication of this report, technical problems rendered most of this information difficult to access. However, it is possible to download from the site a handbook titled *Investor's Guide to Lebanon*, which clearly sets out alternative procedures for company registration; guidance on choosing an appropriate company structure; procedures specific to foreign companies; investment guarantees and protections; basic information on the cost of utilities; and details of investment incentives.

The *Economic Development Board of Bahrain (EDB)* web site (www.bahrainedb.com) contains both a downloadable handbook similar to that provided by IDAL, and also some on-site content, including investment incentives; locational advantages; infrastructure; labour costs, skill levels and conditions of employment; the legal environment; alternative company structures; land ownership; and investment funding. It also includes general background on Bahrain and detailed information on matters of interest to foreign investors such as visa procedures.

Algeria appears to have no web site dedicated solely to foreign investment, but relevant information may be gleaned from the many ministerial and embassy web sites. However, this information is widely dispersed among these sites and therefore difficult and time-consuming to locate. A key source of information for foreign investors is the web site of the *Ministry of Energy and Mining* (www.mem-algeria.org) since the oil and mining sectors absorb a high proportion of foreign investment in Algeria. This site contains a wealth of legal documentation relating to mineral exploration and extraction, plus information on foreign companies operating in Algeria (for example, a detailed map showing mining block allocation) and information on investment opportunities. The *Ministry of Foreign Affairs* web site (www.mae.dz) contains downloadable visa application forms in several languages, but little else. The *Ministry of Industry and Restructuring* site (www.mir-algeria.org) has some material on privatisation, but appears to have no indication of the role of foreign investment in this process. Embassy web sites, for example those in Bonn, Geneva, Lisbon, London, Ottawa, Seoul and Washington DC, and even the sites of Algeria's permanent missions to the United Nations in Geneva and New York, are organised in a manner not optimal to potential users, at times outdated in terms of information they provide, and at times their links appear not to function.

The Investment Laws of 2003 and Investment Promotion Law of 1995 established the *Jordan Investment Board* (www.jordaninvestment.com) as a governmental body enjoying both financial and administrative independence. The website appears to be logically organized, with information how to start one's investment, main investment sectors and opportunities, as well as market access data. Nonetheless, from the technical navigation standpoint improvements can be made to facilitate distribution of information. The *Jordanian Embassy in Washington DC* site (www.jordanembassyus.org) lists Jordan's geographic advantages as a regional base and covers other areas of interest to foreign investors, including: background information on the Jordanian economy; details of various kinds of economic zones; details of economic agreements with the United States and the European Union, including the full text of the US-Jordan Bilateral Investment Treaty; measures to encourage investment; privatisation; and full texts of laws relating to: investment promotion: economic zones; intellectual property rights; labour; customs; privatisation; foreign trade; and company formation.

The web site of the *Ministry of Foreign Affairs of Qatar* (<http://english.mofa.gov.qa>) provides a page on Investment Incentives. While useful, this falls far short of the standards set by countries such as Tunisia and Saudi Arabia in supplying full background and practical information for foreign investors.

The Kuwait Information Office (www.kuwait-info.org/Business_in_Kuwait/investment_climate.html), by contrast, is not designed primarily as a resource for foreign investors. Its role is to explain Kuwait's outward investment strategy. It provides a clear and sophisticated overview of the Kuwait economy, but contains only two paragraphs on foreign investment in Kuwait. Visitors to the site are referred to an email address where they can order The Kuwait Free Trade Zone Investors Guide.

The *Government of United Arab Emirates* site (www.uae.gov.ae) contains numerous links to ministries but there is no clear indication which of these might be of interest to investors. The Ministry of Economy and Commerce section contains unworkable downloads of some laws, including the Companies Law, and a short list of publications without indication of how to obtain them. The structure of the website is not optimal and appears to contain little relevant information of practical use to foreign investors.

Djibouti appears to have no web site for foreign investors. Details of entry procedures are available on a tourism web site and the central bank maintains a site with updated exchange rates.

c. *Lists of sectors with FDI restrictions*

While several MENA countries publish lists of sectors which are closed to foreign investment (Saudi Arabia, Jordan, Bahrain, Qatar, see above), none is understood to operate a system whereby all sectors not on such a list are automatically fully open to foreign investment (refer to discussion on positive list approach in the body of the report).

Presently, no MENA country appears to operate a system of automatic authorisation of investment projects after a fixed period has elapsed following application for registration. Presently, *Egypt* allows automatic approval of 100 per cent foreign-owned investments, but only within a positive list.

14. Measures at sub-national level

Some MENA countries implement policies that target foreign investment to specific locations. This is affected in various ways. Some countries relax direct inward investment restrictions in such areas, for example, 100 per cent foreign ownership of enterprises is available in designated free zones in the *United Arab Emirates*. Similarly, in *Egypt*, the Aqaba Special Economic Zone is attracting international companies into the area, the result of which has been expansion of the leisure and tourism sector. Others, usually in addition to such a relaxation of investment restrictions, relax indirect restrictions, such as that on land and property acquisition. For instance, non-GCC resident individuals in *Bahrain* may only buy and own land in specifically designated investment areas.

15. Investment promotion authorities

Except for Syria, all of the MENA countries in this inventory have established at least one investment promotion authority (IPA) that is registered with the World Association of Investment Promotion Authorities (WAIPA). Jordan, Kuwait and Saudi Arabia have two IPAs each, UAE has three. All of these have web sites hyperlinked from the WAIPA web site.

MENA– OECD INVESTMENT PROGRAMME

Note: Although the following aspects of regulatory treatment were not discussed in this section, Programme participants are asked to submit information on the following items due to the lack of publicly accessible information in this regard:

1. Exceptions to national treatment of established foreign controlled enterprises, more specifically access to subsidies and discriminatory licensing of public utilities;
2. Nationality based restrictions on board composition;
3. Entry procedures for key personnel;
4. Authorization for renewal of investment (i.e. automatic authorization or ‘silence and consent’);
5. System for public notification and consultation prior to planning changes in legislation and regulation
6. Discriminatory licensing practices (if any) in public utilities sector.

Additionally, more detailed information is welcome on 7c. access foreign controlled enterprises’ access to public procurement and 7b. access to privatisation, item 14. measures (to encourage investment) at the sub-national level.

ANNEX 3

WTO MEMBERSHIP

	WTO Member (year of accession)	Observer (year of accession)	Not Observer
Algeria		1987	
Bahrain	1995		
Djibouti	1995		
Egypt	1995		
Iraq		2004 ¹	
Jordan	2000		
Kuwait	1995		
Lebanon		1999 ²	

MENA– OECD INVESTMENT PROGRAMME

Libya		✓ ³	
Morocco	1995		
Oman	2000		
Palestine National Authority			✓
Qatar	1996		
Saudi Arabia		✓ ⁴	
Syria			✓
Tunisia	1995		
United Arab Emirates	1995		
Yemen		✓ ⁵	

Notes:

1. On 30 September 2004 a request for accession under Article XII was received by the Director-General of the WTO.
2. Currently in the process of applying for full accession.
3. As of June 2004 ,Libya is in the process of applying for full WTO accession. The checkmark indicates that no date associated with observer status was available on the WTO website.
4. WTO General Council formally concluded on 11 November 2005 negotiations with Saudi Arabia on the terms of the country's membership to the WTO.
5. Yemen's request for accession was circulated on 14 April 2000.

Main source of information: World Trade Organization website (www.wto.org)

ANNEX 4

MENA FDI STATISTICS

Table A.1: Foreign Direct Investment Received by MENA Countries (\$ US million dollars)

FDI inflow million of \$US)	2001	2002	2003	2004	Average FDI inflow 2001-2004 (millions of \$US)	FDI inflow per capita \$US ¹
Algeria	1196	1065	634	882	944	29
Bahrain	80	217	517	865	420	575
Djibouti	3	4	11	33	13	18
Egypt	510	647	237	1253	662	10
Iraq	6	2	5	300	78	3
Jordan	120	64	424	620	307	57
Kuwait	147	7	67	20	60	24
Lebanon	249	257	358	288	288	63
Libya	133	145	143	131	138	24
Morocco	2825	481	2314	853	1618	53
Oman	390	26	528	18	241	89
Qatar	296	624	625	679	556	869
Saudi Arabia	504	453	778	1867	901	39
Syria	947	1030	1084	1206	1067	60
Tunisia	486	821	584	639	633	63
United Arab Emirates	1184	1307	30	840	840	195
Yemen	136	102	6	21	66	3

Note:

1. Computed as average FDI inflow in the same timeperiod divided by population figure as of 2004.

Main Sources: World Bank, World Development Indicators Online, CIA, the World Fact Book, 2005, OECD, 2005.

MENA– OECD INVESTMENT PROGRAMME

Table A.2 Gross FDI Inflows (as a percentage of GDP)

Country	1980	1985	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Algeria	0.9	0.0	0.0	0.1	..	..	..	..	..	..	..	..	..
Bahrain	13.6	2.8	9.2	14.6	19.5	13.9	7.3	10.2	38.6	10.7	14.9	9.8	11.6
Djibouti	..	..	..	..	0.5	0.3	0.3	0.6	..	..	..	..	..
Egypt	2.4	3.4	1.7	0.9	1.1	1.0	2.5	1.1	0.9	1.3	1.4	1.2	1.3
Jordan	0.9	0.5	1.7	0.6	0.8	1.5	0.4	0.6	0.8	4.9	3.9	2.0	9.4
Kuwait	1.4	0.3	1.3	1.7	6.1	2.8	6.1	3.9	6.9	3.4	7.7	0.4	0.9
Morocco	0.5	0.2	0.6	1.2	1.6	1.9	1.9	1.1	1.1	3.3	1.0	2.5	1.5
Oman	1.6	1.6	1.4	1.3	0.9	1.3	0.7	0.4	0.4	0.4	0.7	0.1	0.4
Saudi Arabia	2.0	0.6	1.8	0.1	0.1	1.2	0.3	1.5	0.7	1.8	2.9	0.5	1.0
Syria	0.0	0.0	0.0	0.0	0.0	0.8	2.5	0.9	0.6	0.6	0.5	1.7	1.5
Tunisia	2.9	1.4	0.6	1.0	3.4	3.8	2.8	1.6	1.2	1.9	3.3	1.7	3.9

Source: World Bank, *World Development Indicators Online*

Table A.3 Net FDI inflows into developing regions, 1995-2003 \$US billion

	1995	1996	1997	1998	1999	2000	2001	2002	2003 ¹
East Asia and the Pacific	50.8	58.6	62.1	57.7	50.0	44.2	48.2	54.8	56.8
Europe and Central Asia	17.4	16.4	22.6	26.2	28.4	29.3	31.8	32.9	26.2
Latin America	30.5	44.3	66.7	73.8	88	77	69.9	44.7	36.6
Middle East and North Africa	-0.7	0.6	6.3	7.4	2.9	2.4	5.8	2.7	2.0
South Asia	2.9	3.5	4.9	3.5	3.1	3.4	5.0	4.2	5.1
Sub-Saharan Africa	4.3	4.2	8.4	6.9	9.3	5.8	14.3	7.8	8.5
TOTAL	105.2	127.6	171	175.5	181.7	162.1	175	147.1	135.2

Note:

1. The 2003 figures presented are estimates based on the data provided in the following publication.

Source: The World Bank, *Global Development Finance: Harnessing Cyclical Gains for Development*, 2004.

ANNEX 5

COST AND DURATION OF BUSINESS ESTABLISHMENT PROCEDURES
IN DEVELOPING WORLD REGIONS

Region or Economy	Number of Procedures	Duration (days)	Cost (% GNI per capita)	Min. Capital (% of GNI per capita)
East Asia & Pacific	8.2	52.6	42.9	109.2
Europe & Central Asia	9.7	36.5	13.5	49.1
Latin Amer & Caribbean	11.4	63.0	56.2	24.1
Middle East & North Africa	10.1	45.5	64.2	859.3
OECD: High income	6.5	19.5	6.8	41.0
South Asia	7.9	35.3	39.7	0.8
Sub-Saharan Africa	11.0	63.8	215.3	297.2
Country	Number of Procedures	Duration (days)	Cost (% GNI per capita)	Min. Capital (% of GNI per capita)
Algeria	14	26	25.3	55.1
Egypt	10	34	104.9	739.8
Jordan	11	36	45.9	1,011.6
Kuwait	13	35	2.2	133.8
Lebanon	6	46	110.6	68.5
Morocco	5	11	12.0	700.3
Oman	9	34	4.8	97.3
Saudi Arabia	13	64	68.5	1,236.9
Syria	12	47	34.5	5,111.9
Tunisia	9	14	10.0	29.8
United Arab Emirates	12	54	44.3	416.9
Yemen	12	63	240.2	2,703.2
<i>Source: World Bank, International Finance Corporation, Doing Business Website.</i>				

ANNEX 6

HORIZONTAL LIMITS TO MARKET ACCESS AND NATIONAL TREATMENT BASED ON GATS SCHEDULES OF COMMITMENTS RELATED TO MODE 3 DELIVERY OF SERVICES OF MENA COUNTRIES¹

	Type of measure	Developed (15)		Developing (69)		LDC (29)		MENA (8)	
		Limits on MA	Limits on NT	Limits on MA	Limits on NT	Limits on MA	Limits on NT	Limits on MA	Limits on NT
1	Authorisation/notification requirements	7	3	27	3	5	1	6	5
2	Equity requirements	0	0	17	7	1	0	6	6
3	Restrictions on land ownership	2	8	20	14	3	1	1	8
4	Debt-equity requirements	0	1	0	2	1	1	1	0
5	Restrictions on remittances	0	0	7	9	0	0	0	1
6	Subsidies	0	8	1	3	0	0	0	1
7	Local employment requirements	2	7	9	6	0	0	2	1
8	Foreign exchange requirements	0	0	3	2	0	0	3	0
9	Sectoral limits	3	1	12	2	0	0	4	1
10	Technology transfer requirements	0	0	4	1	0	0	3	0
11	Local content requirements	0	0	2	1	0	0	2	0
12	Unbound	0	0	1	2	1	1	0	0
	Total	14	28	103	52	11	4	28	23

Notes:

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

2. Adapted from TD/TC/WP (2002)41/FINAL (unclassified).

ANNEX 7

INVESTMENT INCENTIVES IN MENA COUNTRIES

Country	Type of incentives			Observations
	Regulatory	Fiscal	Financial	
Algeria		<p>Exemption from corporate and personal income tax, and from property tax.</p> <p>Temporarily reduced customs duty and VAT on items related to the investment.</p>	<p>The state may in some cases finance necessary infrastructure works.</p>	<p>Most incentives are only available under the “special scheme” for projects offering particular benefits to the Algerian economy.</p>
Bahrain	<p>Foreign-invested companies” are exempted from minimum capital requirements, and permitted to hold their board meetings abroad</p>	<p>Manufacturers are exempt from import duties on machinery and input goods.</p>		
Egypt	<p>Guarantees against nationalisation, expropriation and price controls exist.</p>	<p>Corporate tax holidays from 5 to 20 years¹.</p> <p>Exemptions equal to paid-in capital of publicly listed companies.</p> <p>Exemption for reinvestment of profits from sales of capital assets.</p> <p>Reduced import duty on equipment needed to carry out the investment.</p>		
Jordan		<p>Corporate tax holidays from 2 to 12 years.</p> <p>Reductions in</p>		<p>Additional incentives are available to industrial investment projects.</p>

		<p>income and social services taxes for a period up to 10 years.</p> <p>No duty and taxes on imported inputs and capital goods.</p>		
Kuwait	Enhanced access to employ foreign nationals.	Exemption from income and other taxes for a period up to 10 years.	Land and certain kinds of infrastructure may be allocated for investment projects.	The fiscal incentives largely apply to foreign investors; Kuwaiti and GCC companies pay no income tax.
Lebanon	<p>Easier access to work permits for foreign employees.</p> <p>An exemption of joint-stock companies from legal provisions regarding board compositions.</p>	<p>Exemption from corporate income taxes and dividend taxes for up to 10 years.</p> <p>Lower custom fees and duties.</p> <p>A reduction or wavering of permit and registration fees.</p>		The access to work permits is conditional upon two thirds of the project's payroll being Lebanese nationals.
Morocco	Exemption from formalities for land acquisition (and a reduction in fees).	<p>Reductions in corporate income tax, particularly for exporters, for 5 years. Reduced rates for the next 10 years.</p> <p>20% investment allowance and capital gains exclusion from 25% to 100%.</p> <p>Reduced import dues and VAT on equipment.</p> <p>Exemptions from urban tax for 5 years.</p>		
Oman		Corporate tax holiday for 5 years, renewable for another 5 years.	Soft loans from the national development bank.	The soft loans are conditional upon Omani ownership of least 51% of the project and a local

		Exemptions from customs duties on machinery and equipment.		employment of at least 35% of total staff.
Qatar	Flexible immigration and nationality rules. A wavering of import quotas.	Corporate tax holiday for 5 years, renewable for another 5 years. Exemptions from customs duties on machinery and equipment. Exemption from export duties.	Preferential rates on energy consumption and land rental. Concessionary financing from the national development bank.	
Saudi Arabia		Corporate tax holiday of up to 10 years. ² Exemption from customs duties on machinery and equipment, and on input goods not locally available, for industrial projects.	For industrial projects an attractive package of low land, electricity and water rates, and subsidised accommodation is offered.	Foreigners have access to incentives provided the share of Saudi capital in a given project is at least 25%.
Syria	Preferential capital accounts regulation of foreign investors.	Corporate tax holiday up to 5 years, extendable to 7 years in the case of exporters and companies with a government stake. Duty free imports of machinery and equipment.		
Tunisia		Corporate tax holiday for 10 years. Reduced tax rates thereafter. Tax exemption on reinvested earnings. Tax and duty exemption on imported capital and input goods.	Projects with a “high job creation potential” may benefit from the use of state-owned land at symbolic prices.	These are the most generous incentives, which apply to “offshore companies” with at least 66% foreign-owned equity, exporting at least 80% of their production.
United				Generally, no

Arab Emirates				incentives are offered outside the FEZs.
Yemen		Corporate tax holiday for 7 years, extendable to 16 years. Exemption from real estate taxes, and from tax and customs fees on project fixed assets.		

Notes:

1. Mostly 5-10 years. 20 years' tax holidays are available to investors in certain depressed regions.
2. Repealed in 2004, but existing beneficiaries are grandfathered.

Information derived from Working Group 2, output 2 report titled "Incentives and Free Zones in the MENA Region: a Preliminary Stocktaking".

ANNEX 8

MENA MEMBERS OF THE WORLD ASSOCIATION OF INVESTMENT PROMOTION AGENCIES (WAIPA)

Algeria

Agence Nationale de Developpement des Investissements (ANDI) www.andi.dz

Bahrain

Economic Development Board (EDB) www.bahrainedb.com

Djibouti

Agence Nationale pour la Promotion des Investissements (ANPI) <http://www.djiboutinvest.dj/>

Egypt

General Authority for Investment (GAFI) www.gafinet.org

Iraq

Kurdistan Board of Promoting Investment (KBPI) www.kinvest.org

Jordan

Aqaba Special Economic Zone Authority www.aqabazone.com

Jordan Investment Board (JIB) www.jordaninvestment.com

Kuwait

Inter Arab Investment Guarantee Corporation (IAIGC) www.iaigc.org

Kuwait Foreign Investment Bureau (KFIB) www.kfib.com

Lebanon

Investment Development Authority of Lebanon (IDAL) www.idal.com.lb

Libya

Libyan Foreign Investment Board (LFIB) www.investinlibya.com

Morocco

Ministère des Finances et des Investissements Extérieurs www.invest-in-morocco.gov.ma

Oman

Omani Centre for Investment Promotion & Export Development (OCIPED) www.ociped.com

Palestine National Authority

Palestine Investment Promotion Agency (PIPA) www.pipa.gov.ps

Qatar

Investment Promotion Department www.mec.gov.qa

Saudi Arabia

Saudi Arabia General Investment Authority SAGIA www.sagia.gov.sa

Royal Commission for Jubail and Yanbu www.rcjy.gov.sa

Tunisia

Foreign Investment Promotion Agency (FIPA) www.investintunisia.com

United Arab Emirates

Dubai Development and Investment Authority (DDIA) www.ddia.ae

Dubai Airport Free Zone Authority (DAFZA) www.dafza.gov.ae

United Arab Emirates Ras Al Khaimah Free Trade Zone Authority www.rakftz.com

Yemen

General Investment Authority (GIA) www.giay.org

SOURCES AND REFERENCES

- Development Gateway Foundation (2005) <http://www.developmentgateway.org/DataStatistics>
- European Union web site, <http://europa.eu.int>.
- International Monetary Fund (IMF) (2005), *Annual Report on Exchange Arrangements and Exchange Restrictions 2004*, International Monetary Fund, Washington DC.
- Investment Development Authority of Lebanon (IDAL) (undated), *Investor's Guide to Lebanon*.
- OECD (2003), *Framework for Investment Policy Transparency*.
- OECD (2005) *International Direct Investment Database*.
- The PRS Group Inc., *International Country Risk Guide*, Volume XXVI, Number 3, March 2005.
- Transparency International (2005), *Corruption Perception Index Online*
<http://www.transparency.org/cpi/2005/cpi2005.sources.en.html>
- United Nations Conference on Trade and Development (UNCTAD) (1999a), *Examen de la Politique de l'Investissement: Algérie*; (Version préliminaire), United Nations, Geneva.
- United Nations Conference on Trade and Development (UNCTAD) (1999b), *Investment Policy Review: Egypt*, United Nations, Geneva.
- United Nations Conference on Trade and Development (UNCTAD) (2003), *Investment Policy Review: Algeria, Executive Summary* (Advanced draft), United Nations, Geneva.
- United Nations Conference on Trade and Development (UNCTAD) (2004) *World Investment Report*
- United Nations Development Programme (UNDP) (2003), *African Stock Markets Handbook*.
- United States Commercial Service (2004), *Country Commercial Guides*.
- U.S. Department of State (2005), *Investment Climate Statements*.
- Office of the United States Trade Representative (USTR) (www.ustr.gov).
- World Bank (1994), *The Democratic and Popular Republic of Algeria Country Economic Memorandum: The Transition to a Market Economy*, The World Bank, Washington DC.
- World Bank (2003a), *Better Governance for Development in the Middle East and North Africa: Enhancing Inclusiveness and Accountability*, MENA Development Report, The World Bank, Washington DC.

World Bank (2003b), *Trade, Investment, and Development in the Middle East and North Africa: Engaging with the World*, MENA Development Report, The World Bank, Washington DC.

World Bank, *World Development Indicators* online <http://devdata.worldbank.org/dataonline/>

World Bank, International Finance Corporation, (2005), *Doing Business in 2006, Creating Jobs*

World Bank, International Finance Corporation, *Doing business Website* <http://www.doingbusiness.org/>

World Economic Forum (WEF) (2003), *The Global Competitiveness Report 2003*, World Economic Forum, Geneva.

World Economic Forum (WEF) (2005), *The Arab World Competitiveness Report 2005*, World Economic Forum, Geneva.

World Trade Organisation (WTO) (2000), *Bahrain Trade Policy Review*.

World Trade Organisation (WTO) (1999), *Egypt Trade Policy Review*.

World Trade Organisation (WTO) (2003), *Morocco Trade Policy Review*.

World Trade Organisation (WTO) (2005), *Qatar Trade Policy Review*.

Zarrouk, J. (2003), *A Survey of Barriers to Trade and Investment in Arab Countries*, in Galal, A. and Hoekman, B., eds., *Arab Economic Integration: Between Hope and Reality*, Egyptian Center for Economic Studies, Brookings Institution, Washington D.C.