Global Forum on International Investment

Encouraging Modern Governance and Transparency for Investment: Why and How?

17- 18 November 2003
Johannesburg, South Africa
Hosted by the Government of South Africa

Issues for Discussion

I. Background

The OECD Global Forum on International Investment in Johannesburg will discuss how good public governance in general and transparency in particular can help countries to improve the business environment, attract investment and maximise the benefits it brings to host societies. It will also mark the launch of the *OECD Strategy on Investment for Development,* designed to provide a platform for a structured and inclusive debate among OECD's investment policy community, non-Member governments, business, the social partners and civil society. A centrepiece of this process will be the Framework for Investment Policy Dialogue, which identifies the main issues for investment policy makers and the specific policy approaches that are available to deal with them.

Transparency for investment is identified as one of the main issues in the Framework. In consequence, the outcome of the discussions at the Global Forum, including a possible Co-chairs' Statement on what participants consider to be the "main building blocks of modern governance and transparency affecting investment", will be conveyed to the OECD's Committee on International Investment and Multinational Enterprises as an input into the Investment for Development process, and as appropriate it may be shared with other regional or international investment forums.

To maximise the relevance of the discussions in this broader context, it will be useful if certain pertinent issues be addressed by the speakers and discussants. The purpose of the present paper is to raise a number of general questions about transparency and investment on which participants are invited to reflect and prepare positions based on their national experiences.

The paper further includes a questionnaire, asking more pointed questions on the basis of the key transparency issues. It is optional for participants whether or not to fill out the questionnaire and returning it to the OECD Secretariat. However, many will find it in their interest to do so: by providing a detailed and comprehensive overview of their country/company/organisation's experiences they gain a direct access to influence the direction of the Co-chairs' Statement and the OECD's Investment for Development agenda more generally.

II. Key issues

Transparency for investment falls in two general categories. Investors are interested in the availability of information about laws and regulations directly related to individual investment projects, and in the larger issue of gaining sufficient clarity about the general regulatory environment in which they will be operating.

a) Transparency for investment: overarching issues

Benefits of transparency: The benefit of transparency to investors is obvious. However, transparency also generates a range of societal benefits in the implementing nation. These include the economic stimulus from attracting investment, the fact that corporate activities have more beneficial effects when taking place in a transparent environment, and demonstration effects from investment transparency that have can act as a force for improvement throughout society.

Transparency at what price: It must also be recognised that operating on an internationally high level of transparency can be costly, especially for countries at a low level of economic development. It has therefore been argued that the balancing of costs against benefits may lead to a different outcome in developing countries than in more developed ones. However, in the context of attracting international investors, developing countries are in competition with more “mature” economies, and investors assess their performance against these economies’ regulatory frameworks.

Transparency as part of a governance agenda: Achieving transparency is almost impossible in the absence of a political commitment to certain minimum standards of public governance. Some of the main obstacles to enhancing transparency in practice are:

- *Corruption and other illicit practices:* Corrupt practices are among the main enemies of transparency, for a system based on the buying and selling of influence can by definition not be transparent.

- *Vested interest and administrative inertia:* Branches of public administration as well as incumbent enterprises sometimes have an interest in maintaining a low degree of transparency. This will generally be the case where a system of decision-making, whether corrupt or not, is based on informal contacts between public officials and businesses.

b) Obtaining and enhancing transparency

What information to divulge: Insofar as information comes at a zero or limited cost, investors and other members of the public will generally seek as much of it as possible. However, governments have to decide how best to apply scarce resources to raising transparency. They need to assess the informational needs of investors in order of importance and vigorously pursue those areas that are deemed essential for the investment decision. Sectoral and geographic differences need to be taken into account.

Choosing the appropriate channels: From an investor’s viewpoint, an ideal world is one where all relevant information is available through one channel in a language understood throughout his company. Governments have responded by establishing ‘one-stop shops’ or, more commonly, charge investment promotion agencies with the role of intermediary between investors and national regulatory authorities. While this can indeed be helpful in enhancing transparency, it needs to be balanced against the risk of investment promoters developing into yet another layer of bureaucracy. An increased reliance on e-government is an interesting alley for enhancing transparency vis-à-vis more sophisticated members of the public.

Transparency as a process: Transparency is not just about divulging information at any point in time. International and domestic investors need to be notified and consulted prior to regulatory changes of interest to them. To be transparent and conducive to investor confidence, the system of public governance needs to provide enterprises (and other members of the country) with timely opportunities to consult with policy makers and government bodies, which are held accountable for the handling of their comments.

c) *Practical obstacles and technical assistance*

Resource constraints: Even where there is widespread support for enhancing public sector transparency, a number of practical problems normally present themselves. Funding may be a problem, and even where this is not the case hiring civil servants that are experienced in the ways of international business and/or used to dealing top company executives has turned out to be a problem for many developing countries.

Outside assistance: International organisation and bilateral donor agencies are already involved in providing technical assistance to transparency-enhancing programmes in developing countries. Staff is being trained, revisions of relevant national law is being assisted by foreign expertise and programmes at boosting administrative efficiency are being supported. More could be done. The outcome of the Global Forum on International Investment will help send a signal to the international community regarding the priorities for further efforts in this area.

QUESTIONNAIRE:

PUBLIC SECTOR TRANSPARENCY FOR INVESTMENT

Question 1: Do you agree that public sector transparency is essential to a healthy relationship between government and investors? If not, please specify what alternative governance arrangements you find could take the place of transparency.

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Question 2: In the experience of your country/company/organisation, in what areas of public administration is a lack of transparency most detrimental to investment? (e.g. pre-qualification, non-discrimination, property rights, repatriation of profits, taxation) Why?

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Question 3: In the experience of your country/company/organisation, what should be the main vehicles for making information available to investors? (e.g. official gazettes, brochures available on request, investment promotion agencies, internet sites) Why?

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Question 4: In which areas of policy-making and regulatory change is it particularly important to keep investors informed prior to changes? Why?

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Question 5: In the experience of your country/company/organisation, what are the most appropriate ways of involving investors in discussions with policy makers? (e.g. bilateral contacts with authorities, roundtables, professional associations) Why?

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Question 6: In the experience of your country/company/organisation, what are the most serious constraints on public administrations' ability to enhance transparency? (e.g. corruption, vested interests, lack of political support, insufficient funding, lack of qualified manpower)

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Question 7: Are there established administrative procedures for making new regulations on investment, and explicit programmes aimed at reducing administrative burdens on, and barriers to, investment? If so, can you briefly list them?

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Question 8: What do you consider as the top priority areas for further international technical assistance to improve transparency, and public governance more generally, in developing countries? Why?
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Question 9: In what ways do you think the OECD can provide policy advice and assistance to your government/organisation on improving transparency, and modern public governance for investment?
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Question 10: Any additional comments/suggestions you wish to make on this matter?
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You are kindly asked to return the questionnaire by e-mail or fax to:
kaveri.bopiah-liverani@oecd.org
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Please note that, while the OECD Secretariat will be grateful for responses even after the Global Forum on International Investment on 17-18 November. However, in order for your reply to be taken into account for the preparation of the Co-chairs' Statement at the Global Forum it will have to be reach the Secretariat no later than 12 November 2003.