

Investment for Development

INVESTMENT POLICY CO-OPERATION WITH NON-OECD ECONOMIES

Mobilising private investment, both foreign and domestic, is recognised as a priority area for development so that no countries are left behind. But reaping the maximum benefits of investment is not automatic. Policies matter. A key challenge is how to frame investment policies in a way that supports and reinforces economic development. OECD Investment Committee co-operation with non-member economies aims to create the policy environments needed to unleash the full benefits from investment, in terms of economic growth, poverty reduction and sustainable development.

The *Investment for Development* Annual Report brings together in a single publication a record of the OECD Investment Committee's co-operation programmes with non-member economies and their results. The framework guiding these extensive co-operation activities is the *OECD Initiative on Investment for Development*, launched in Johannesburg in 2003. The *Initiative* includes three inter-related projects:

- The development and use of a *Policy Framework for Investment*;
- Building policy capacity based on OECD peer learning methods; and
- Using official development assistance more effectively to support partner countries' efforts to mobilise private investment

This Annual Report documents how the *Initiative* helps to strengthen implementation capacities and best practices among governments. It is organised around three dimensions: global events, regional initiatives and dialogue with individual countries.

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Annual Report 2006



ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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Foreword

The Investment Committee has developed an extensive co-operation programme with non-member economies. The framework guiding this co-operation is the OECD Initiative on Investment for Development, launched in Johannesburg in 2003. The Annual Report reinforces accountability of the Initiative, brings together in a single publication a record of the main achievements and makes available to a wider audience some of the background analytical work developed under the aegis of the OECD Investment Committee within its investment policy work programme with non-member economies over the past year.

The Annual Report was reviewed at the yearly Global Forum on International Investment (Istanbul, 6-7 November 2006) and is published on the responsibility of the Investment Committee. Queries concerning the contents of this publication should be addressed to the Investment Division of the OECD Directorate for Financial and Enterprise Affairs (Jonathan Coppel, Editor, tel: 33-1 45 24 14 47; email: jonathan.coppel@oecd.org; Pamela Duffin, Communications Officer, email: pamela.duffin@oecd.org).

Table of Contents

Preface	7
Chapter 1. OECD Initiative on Investment for Development: Overview of Progress	9
Work on the development of a Policy Framework for Investment was completed.....	10
Shared policy values were put into practice through peer dialogue and capacity building	14
Enhancing the role of ODA in mobilising investment for development.....	15
Expected benefits from investment policy co-operation with non-OECD economies.....	16
<i>Annex 1</i> Opening remarks from the OECD Tokyo Policy Forum on Investing for Development.....	17
Chapter 2. Global Forums on International Investment: Using the Policy Framework for Investment	23
<i>Annex 1.</i> Concluding remarks from the OECD Conference on Investment for Development: Making it Happen	30
<i>Annex 2.</i> Task Force meetings, regional consultations and Global Forum discussions on the Policy Framework for Investment.....	32
Chapter 3. Regional Investment Initiatives: Focussing on Policy Coherence	35
3.1. The MENA-OECD Investment Programme.....	36
<i>Annex 1.</i> Declaration "Attracting Investment to MENA Countries – Common Principles and Good Practice".....	42
3.2. NEPAD-OECD Africa Investment Initiative.....	47
3.3. Investment Compact for South East Europe.....	51
<i>Annex 1.</i> Regional Framework for Investment.....	61
3.4 Emerging Asia	71

Chapter 4. China, India and Russia: Boosting Policy Transparency	73
4.1. China.....	74
<i>Annex 1. Summary of the OECD-China Symposium on China's Policies Towards Cross-Border Mergers and Acquisitions</i>	76
<i>Annex 2. Overview and Recommendations of the 2006 OECD Investment Policy Review of China</i>	79
4.2. Russian Federation.....	81
<i>Annex 1. Overview and Recommendations of the 2006 OECD Investment Policy Review of the Russian Federation</i>	82
4.3. India.....	85
<i>Annex 1. Salient Features of India's Investment Agreements</i>	86
 Chapter 5. Policy Guidance for Donors on Using ODA to Promote Private Investment for Development	115
An Incremental and Inclusive Process	115
Key Policy Messages	116
Future Use of the Policy Guidance for Donors	116
 Statistical Appendix	119
Table 1. OECD Foreign Direct Investment Flows	120
Figure 1. FDI Flows to and from OECD	122
Figure 2. FDI Outflows from OECD to Major non-OECD Host Countries .	123
Figure 3. FDI Inflows to OECD from Selected non-OECD Investors	124
 Boxes	
Box 1.1. The Ten Policy Areas of the Policy Framework for Investment..	12
Box 5.1. Promoting Private Investment for Development: The Role of ODA - Key Messages for Donors	117

Preface

Over recent years the OECD Investment Committee has been significantly intensifying its co-operation programme with non-member economies. The framework guiding this co-operation is the *OECD Initiative on Investment for Development*, launched in Johannesburg in 2003. The *Initiative* represents an overarching strategy for OECD co-operation with the developing world on investment issues, and supports countries' sustained efforts to attract and generate more and better investment. It attaches central importance to creating the policy environments needed to unleash the full benefits from investment, in terms of economic growth, poverty reduction and sustainable development.

The methodology adopted in support of these goals is based on the OECD's long-standing and unique peer learning method and guided by the generally accepted OECD standards and instruments which were when relevant, adapted to the specific regional context. In addition, new tools have been developed in partnership with non-member countries, other OECD committees, business and civil society stakeholders and international organisations with expertise in the field, such as the World Bank.

More specifically, the Investment for Development Initiative involves three closely inter-related projects. These are the development and use of a Policy Framework for Investment - a checklist of policy issues for consideration by any government interested in creating an environment that is attractive to all investors and in enhancing the development benefits of investment to society - the building of policy capacity based on OECD peer learning methods and using official development assistance (ODA) more effectively to support partner countries' efforts to mobilise private investment.

Advancing this agenda is a priority of the Investment Committee, and considerable progress is being made. One of the milestones has been completion of the development of the *Policy Framework for Investment* by a Task Force established under the aegis of the Investment Committee and consisting of some 60 OECD and non-OECD economies in May 2006. The PFI was welcomed by OECD Ministers at their annual meeting in

May 2006, and Ministers called on the OECD to continue to work with non-member governments and other inter-governmental organisations to promote the active use of the PFI. A number of these uses are already being implemented and are discussed in this Report.

Another milestone has been the completion of the OECD *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*, which was developed by the Investment Committee, based on requests by the United Nations and the G8, in a process involving extensive stakeholder consultations. It aims to help companies invest responsibly in countries where governments are unwilling or unable to assume their own responsibilities. About 15 per cent of the world's people live in such areas. The tool was adopted by the OECD Council on 8 June 2006, which, on this occasion, recommended its widest possible dissemination and its active use. Work to ensure these goals is underway and first results, including companies using the Tool for internal audits of their operations in weak governance zones, are encouraging.

The purpose of this Annual Report, which is organised around the Investment Committee's global, regional and country programmes of co-operation, is to offer a full record of these activities and achievements in a single publication, reinforcing accountability. The *Investment for Development Annual Report* also serves to make available to a wider audience some of the background analytical work carried out over the past year in support of implementation of the Investment for Development process.



Manfred Schekulin
Chair, OECD Investment Committee

Chapter 1.

OECD Initiative on Investment for Development: Overview of Progress

The OECD Initiative on Investment for Development supports countries' sustained efforts to attract and generate more and better investment as called for in the Monterrey Consensus. Proposed at the OECD Ministerial in May 2003, the Initiative was launched by the OECD Investment Committee in Johannesburg in November 2003 at the Global Forum on International Investment. This chapter overviews progress under the Initiative made over the past year and some of the expected results over the coming year.

Full details on the activities of the Investment for Development Initiative can be downloaded from the OECD website at: www.oecd.org/daf/investment/pfi.

In 2000, the United Nations Millennium Declaration committed the international community to sparing “no effort to free our fellow men, women and children from the abject and dehumanising conditions of extreme poverty, to which more than a billion of them are currently subjected”. In support of this objective, the 2002 United Nations Monterrey Consensus ascribed critical importance to mobilising private investment, both domestic and foreign, for achieving the development objectives of the Millennium Declaration.

More generally, as investment becomes the major driver of globalisation, sound investment policies around the world are vital to global prosperity and stability, opening new markets to OECD business, and helping less developed countries generate more vigorous and sustained growth, create more jobs and reduce poverty. At the same time, the rise of

major non-OECD economies calls for action to address potential frictions and ensure that all players respect the investment rules of the game and promote high standards of business conduct. Meeting these challenges and putting into action the Monterrey Consensus are the objectives of the *OECD Investment for Development Initiative*.

Specifically, the *OECD Initiative on Investment for Development* is an overarching strategy for furthering OECD co-operation with non-OECD governments. The Initiative supports countries' sustained efforts to attract and generate more and better investment by providing organisation and policy guidance in the context of co-operation and capacity building efforts of the OECD. Proposed at the OECD Ministerial in May 2003, the *Initiative* was launched by the OECD Investment Committee in Johannesburg in November 2003 at the Global Forum on International Investment. It received further strong support at the 2004 Global Forum hosted by India and at the 2005 OECD Ministerial, where Ministers reiterated their support to the *Initiative* and commitment to helping countries build sound investment environments.

The *Initiative* includes three inter-related projects:

- the development and use of a Policy Framework for Investment;
- building policy capacity based on OECD peer learning methods; and
- using ODA more effectively to support partner countries' efforts to mobilise private investment.

The remainder of this chapter offers an overview of progress in each of the Initiative's projects, the results achieved and their future directions.

Work on the development of a Policy Framework for Investment was completed

A central pillar in support of the objective of mobilising private investment for economic development is the Policy Framework for Investment (PFI). In April 2006, the task force established in 2004 to develop the PFI finalised its report, and in May, at the OECD Ministerial meeting, Ministers welcomed the PFI and recognised its importance as a policy tool that will help governments improve investment climates.¹

The PFI is a tool, providing a checklist of issues in ten policy domains for consideration by any government interested in creating an environment that is attractive to all investors and in enhancing the development benefits

1. The text of the PFI can be downloaded from the OECD website at: www.oecd.org/daf/investment/pfi.

of investment to society (see Box 1.1). It promotes transparency and appropriate roles and responsibilities for governments, business and others with a stake in promoting development and poverty reduction, and builds on universally shared values of democratic society and respect for human rights, including property rights. But it is not a volume of ready-made prescriptions, nor is it binding. Rather, its core purpose is to encourage policy makers to ask appropriate questions about their economy, their institutions and their policy settings.



Mr. Taro Aso, Minister of Foreign Affairs of Japan and Mr. Angel Gurría, Secretary-General of the OECD at the OECD Tokyo Policy Forum

The content and structure of the PFI were decided and developed by a task force of government officials from about 60 OECD and non-OECD economies, with the partnership of the World Bank, the United Nations and other international institutions, informed by five regional consultations and a broader public consultation through the OECD website. The expertise of some ten OECD specialised committees was solicited. Business, labour and other civil society contributed their perspectives to the development of the PFI. See annex 1 in Chapter 2 for a list of the task force meetings and regional consultations.

With development of the PFI completed, Ministers at the 2006 OECD Ministerial meeting called on the OECD to continue to work with non-member governments and other inter-governmental organisations to promote the active use of the PFI.

Box 1.1. The ten policy areas of the Policy Framework for Investment

The PFI covers 10 policy areas identified by the task force based on an assessment of the strength of the linkages between each policy field and the investment environment. These are:

Investment policy: The quality of investment policies directly influences the decisions of all investors, be they small or large, domestic or foreign. Transparency, property protection and non-discrimination are investment policy principles that underpin efforts to create a sound investment environment for all.

Investment promotion and facilitation: Investment promotion and facilitation measures, including incentives, can be effective instruments to attract investment provided they aim to correct market failures and are developed in a way that can leverage the strong points of a country's investment environment.

Trade Policy: Policies relating to trade in goods and services can support more and better quality investment by expanding opportunities to reap scale economies and by facilitating integration into global supply chains, boosting productivity and rates of return on investment.

Competition policy: Competition policy favours innovation and contributes to conditions conducive to new investment. Sound competition policy also helps to transmit the wider benefits of investment to society.

Tax Policy: To fulfil their functions, all governments require taxation revenue. However, the level of the tax burden and the design of tax policy, including how it is administered, directly influence business costs and returns on investment. Sound tax policy enables governments to achieve public policy objectives while also supporting a favourable investment environment.

Corporate Governance: The degree to which corporations observe basic principles of sound corporate governance is a determinant of investment decisions, influencing the confidence of investors, the cost of capital, the overall functioning of financial markets and ultimately the development of more sustainable sources of financing.

Policies for promoting responsible business conduct: Public policies promoting recognised concepts and principles for responsible business conduct, such as those recommended in the OECD Guidelines for Multinational Enterprises, help attract investments that contribute to sustainable development. Such policies include: providing an enabling environment which clearly defines respective roles of government and business; promoting dialogue on norms for business conduct; supporting private initiatives for responsible business conduct; and participating in international co-operation in support of responsible business conduct.

Human resource development: Human resource development is a prerequisite needed to identify and to seize investment opportunities, yet many countries under-invest in human resource development due in part to a range of market failures. Policies that develop and maintain a skilled, adaptable and healthy population, and ensure the full and productive deployment of human resources, thus support a favourable investment environment.

Infrastructure and financial sector development: Sound infrastructure development policies ensure scarce resources are channelled to the most promising projects and address bottlenecks limiting private investment. Effective financial sector policies facilitate enterprises and entrepreneurs to realise their investment ideas within a stable environment.

Public governance: Regulatory quality and public sector integrity are two dimensions of public governance that critically matter for the confidence and decisions of all investors and for reaping the development benefits of investment. While there is no single model for good public governance, there are commonly accepted standards of public governance to assist governments in assuming their roles effectively.

The PFI can be used in a variety of ways at all levels of government. Self-evaluation, peer reviews, regional co-operation and multilateral discussions can all benefit from the insights offered in the PFI and can help guide prioritisation of investment policy reforms. It also provides a reference point for international organisations' capacity building programmes for investment promotion agencies, for donors as they assist developing country partners in improving the investment environment and for business, labour and other non-governmental organisations in their dialogue with governments. In this way, the PFI aims to advance the implementation of the United Nations Monterrey Consensus.

A number of these uses are already being implemented and are discussed further below. The OECD, working with non-members, partner organisations, donors and stakeholders, will work to further promote use of the PFI by helping to develop user methodologies, including indicators of progress, and in institutional capacity building for the effective use of the PFI in light of different circumstances and needs. Over the course of the year, the OECD also plans to provide thematic chapters derived from the PFI. These will cover, for instance, the specific issues associated with investment by small- and medium-sized enterprises and the development of linkages with multinationals. In related work, the OECD is developing policy guidance for participation by international investors in infrastructure projects such as roads and airports. The guidance builds upon the PFI, and

complements OECD work on aid-supported infrastructure and poverty reduction.¹

Several of the Global Forums on International Investment have been dedicated to the development work of the PFI (**Chapter 2**). Future Global Forums will now be centred on using the PFI to identify priorities for reforms towards a coherent and transparent set of investment policies and to evaluate progress. Looking further ahead, Investment Global Forums will also be used to review the PFI and its scope with non-member partners and stakeholders in light of experience with its use.

Since the 2006 OECD Ministerial welcomed the PFI, efforts have focussed on explaining the tool and how it can be put into use. The OECD Secretary General devoted his opening remarks to the PFI at the OECD Tokyo Policy Forum held on 20 July 2006, the text of which is reproduced in Annex 1. In September 2006, the Government of Vietnam hosted an APEC-OECD seminar on the PFI, which examined ways to make the best use of the PFI to improve APEC country investment environments (see Chapter 3.4 for details). Vietnam has indicated its interest in testing the PFI through an in-depth self-evaluation of its policies for investment.

Shared policy values were put into practice through peer dialogue and capacity building

Building policy capacity based on OECD peer learning methods is the second pillar of the Investment for Development Initiative. The Investment Committee has developed a number of regional initiatives that aim to promote greater policy transparency and foster a more level playing field. The regional programmes cover the Middle East and North Africa (MENA-OECD Programme), sub-Saharan Africa (NEPAD-OECD Initiative), South East Europe (the Investment Compact) and emerging Asia. See **Chapter 3** for further details on these programmes. The highlights in these programmes over the past year include:

- A MENA ministerial meeting in February 2006 in Jordan. The meeting concluded with a Declaration on “Attracting Investment to MENA Countries – Common Principles and Good Practice”. Ministers also endorsed an ambitious programme for regional dialogue and capacity-building. The Ministers noted the national Investment Reform Agendas developed by MENA countries and encouraged their implementation. (See **Chapter 3.1**)

1. See “Promoting Pro-Poor Growth: Infrastructure” in OECD (2006), *Promoting Pro-Poor Growth: Policy Guidance for Donors*, OECD, Paris.

- Following support at the G8 Gleneagles meeting and the OECD Ministerial Meeting in 2005, a strengthened NEPAD-OECD Africa Investment Initiative has been designed to build on the results achieved thus far. The strengthened Africa initiative follows a sequence of three phases. The first phase is a collective and comparative stocktaking of the current reform efforts in African countries bearing on the investment climate and will form the basis of a Roundtable event towards the end of 2006. (See **Chapter 3.2.**)
- The Investment Compact organised its sixth annual Ministerial Conference on 27 June 2006. Ministers from across South East Europe unanimously adopted a Regional Framework for Investment (RFI). The RFI provides a reference for the elaboration, implementation and evaluation of national policies related to investment in the region. (See **Chapter 3.3.**)

In addition to regional programmes, peer learning and consensual approaches towards the development of “best practice” and building implementation capacity are implemented through country programmes. Country investment policy co-operation programmes have intensified, using the PFI as a template for a thorough and coherent review of investment policies of countries. Over the past year, OECD policy reviews were collaboratively undertaken with China and Russia, and the resulting recommendations made public. (See **Chapter 4** for details.) Efforts to establish closer investment policy cooperation through dialogues with India and South Africa are also underway.

Enhancing the role of ODA in mobilising investment for development

The third part of the *Investment for Development Initiative* draws lessons on the use of official development assistance (ODA) in support of developing countries’ efforts to promote private investment and uses these to develop policy guidance for donors.¹ In 2005, the Investment and Development Assistance Committees presented to the 2005 OECD Ministerial Meeting a joint analytical report developed through discussions, including at the Global Forum for International Investment in India, October 2004 and the NEPAD-OECD Investment Policy Roundtable in Uganda, May 2005, on the use of ODA to mobilise investment for development. (The report was reproduced in the 2005 Investment for Development Annual Report.) The report pointed to the need for donors to be more strategic, better co-ordinated and guided by more systematic learning of what works

1. Further information on this component of the Investment for Development Initiative is available on the OECD website at: www.oecd.org/dac/investment

and does not work to address binding constraints at national and sector levels that are holding back investment.

Over the past year, the policy guidance has been developed within the Development Assistance Committee (DAC) in consultation with a range of stakeholders including the Investment Committee. **Chapter 5** reproduces the key messages from *Promoting Private Investment for Development: The Role of ODA*. This policy guidance for donors, which was welcomed by Ministers at the 2006 OECD Ministerial Meeting, highlights the PFI as a complementary tool for governments to use to improve their investment climate and identify the obstacles that crimp investment.

For its part, the Investment Committee supports efforts to use ODA better to help developing countries build capacity to improve their enabling environment, including to promote understanding and implementation of recognised investment policy standards, such as those reflected in the PFI and embodied in OECD instruments like the OECD Codes of Liberalisation, the National Treatment Instrument and the OECD Guidelines for Multinational Enterprises.

Expected benefits from investment policy co-operation with non-OECD economies

Non-member governments use the results of this co-operation to raise awareness of investment policy issues within administrations, to provide broader public support for policy reform efforts and to improve their regulations and implementing capacities. The expected benefits are:

- more transparent and open policy frameworks for investment, thereby supporting domestic economic growth and opening new markets and a level playing field to OECD business;
- more responsible business conduct by their companies, including as they operate in OECD countries and on third party markets;
- improved understanding and enforcement of international investment agreements and arbitral awards;
- more reliable investment statistics for policy making.

Annex 1

**Opening remarks from the OECD Tokyo Policy Forum
on Investing for Development**

20 July 2006, Tokyo, Japan

**"Making the most of the Policy Framework for Investment"
Opening remarks by Angel Gurría, Secretary-General, OECD**

Minister Aso, Mr. Kuroda, distinguished guests,

It is a pleasure for me to be here today. This is the first event to promote the Policy Framework for Investment since OECD Ministers welcomed the completed work in May. Indeed, it is fitting that the PFI should be launched here in Tokyo – since it is in Tokyo that the idea of an initiative on “Investment for Development” first took shape. And it was Japan who proposed this Initiative at the OECD Ministerial meeting in 2003, where it received widespread and strong support from OECD Ministers. Now, after three years hard work by the OECD Secretariat, our members and other governments, the PFI is ready to be put into action.

The PFI comprises the most comprehensive and systematic approach for improving investment conditions ever developed. It covers ten different policy areas and addresses some 82 questions to governments to help them design and implement policy reform to create a truly attractive, robust and competitive environment for domestic and foreign investment. It is based on principles of the rule of law, transparency, and non-discrimination, in tandem with human rights and public and corporate sector integrity. These are principles that must be championed by any country that wants a strong and functioning economy. These principles also provide the broad basis for international co-operation.

The PFI was developed through an open and inclusive process. All interested governments were invited to participate and some 60 governments engaged in the extensive intergovernmental consultations that underpinned the development of the PFI. Furthermore, representatives from business, labour, civil society, and other international organisations, such as the World Bank and UNCTAD, also played an active role.

I want to spend a few minutes speaking about the two overarching themes that run through the PFI. Firstly, I would note that the PFI is an instrument that seeks the responsible participation by all governments in the global system. This I would call the “universal theme” of the PFI. The other theme I would mention is the “development dimension”. Using these themes to remind ourselves what the PFI was ultimately designed to achieve will be helpful as we put this challenging policy initiative into action.

The PFI’s universal theme

Turning first to what I have characterized as the PFI’s universal theme - the PFI is a statement of good policy for attracting investment. It draws on recognized best practices. It is applicable for all governments whether in industrialized, emerging or developing countries. In particular, the PFI emphasizes the fundamental principles of rule of law, transparency, nondiscrimination, and the protection of property rights.

This message is particularly relevant today given recent developments that suggest that the commitment of some governments to these principles may have become less robust. In Europe there has been some reticence about international mergers or acquisitions in sectors as diverse as steel, banking, energy and even yoghurt. The United States has expressed concern about takeovers of a small oil company and of some of its port facilities. In March of this year Chinese officials began to make warning statements about foreign involvement in their economy. And, we have recently witnessed a resurgence of expropriation in some Latin American countries.

Governments obviously have the right to safeguard national security and other public interests. And governments can have other legitimate concerns, for example where a foreign company proposing a merger is owned by a foreign government or has financial support from a foreign government. Governments are also sensitive when other countries do not reciprocate access to investment as they offer. And sometimes foreign companies – or their home country – have a poor reputation for corporate governance or corporate behaviour.

But we need to be clear – protectionism is not the solution. It poses a serious threat to the health and good functioning of the world economy. Protectionism undermines the many benefits associated with investment, including the efficient allocation of scarce resources, entrepreneurship, healthy competition, innovation, and lower prices and better quality for consumers.

Let me give an example of a sector where we can not afford such protectionism. Energy is a sector where we have seen some resistance to cross-border investment. This is worrying given the crucial role that energy

plays in the global economy and in development. Investment is vital for the energy sector – investment in the search for energy, investment in the extraction of energy, investment in the distribution of energy, and investment in new sources of energy, including alternatives to help fight global warming.

The investments required to meet rising energy demand are immense. Recent estimates by the International Energy Agency put the cumulative investment needs through 2030 at around 16 trillion dollars. This is about 1 per cent of global GDP per annum. Most countries will not be able to meet their own needs without investment by the private sector, including by companies based outside their own borders. In light of these needs, recent protectionist tendencies, if they persist, are very worrisome.

The PFI represents a strong statement by both OECD and non-OECD countries in support of the benefits of open and transparent investment regimes. It promotes rules of the game and responsible participation in the global system that all countries should be able to accept -- in their own self interest and in order to preserve and build the global economy that is the source of so much of the world's new prosperity. The OECD and its members will be using the PFI in discussions about investment policy with major emerging partners, including through APEC.

The PFI's development theme

Turning to the PFI's development theme, the very first sentence of the PFI states that it should (and I quote) "contribute to the prosperity of countries and their citizens and the fight against poverty".

The PFI has this strong development theme because the international community has come to understand that poverty can not be overcome unless we engage the power of private investment. And please remember that poverty is the ultimate systemic threat.

In 2000 the international community agreed the Millennium Development Goals (or MDGs). These include eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality, reducing child mortality, improving maternal health, combating devastating diseases, and ensuring environmental sustainability. In 2002, the world's governments backed up these goals with the Monterrey Consensus, which addressed how to leverage the enormous investments needed to achieve these goals.

The Monterrey Consensus recognized that governments (and international development banks) do not, by themselves, have enough funds, or expertise or initiative to meet the investment requirements for achieving the MDGs. The Monterrey Consensus recognized that more private

investment, both domestic and international, is essential. And it asks governments to undertake the policy reforms needed to encourage more private sector investment. Many people don't fully appreciate the historical significance of this feature of the Monterrey Consensus. Just ten years ago, many people still considered that business and private investment were part of the problem, and not an essential part of the solution!

The PFI has been designed to help governments address the investment challenge laid out for them in the Monterrey Consensus. In fact, the topics covered in the chapters of the PFI are based upon policy areas identified in the Monterrey Consensus.

Of course the PFI is just one of the elements of the global partnership for development called for in the Millennium Development Goals – and just one of many contributions by the OECD. While the PFI is addressed to governments, the *OECD Guidelines for Multinational Enterprises* are directed to businesses and how they conduct themselves when investing abroad.

The PFI is also complemented by the OECD/DAC policy guidance for donors – a sister project to the PFI developed at the OECD – which aims to help countries use their official development assistance more effectively to mobilise private investment for development.

The importance of mobilising investment for development can be seen in a few examples. Consider the problem of providing clean water to the 1 billion people who are estimated to lack access to safe water and 2.6 billion who are without access to basic sanitation. In order to meet the MDGs, annual investment in water supply and sanitation in developing countries needs to be doubled, from the current level of \$15 billion per annum. Another example is electricity. The investment in infrastructure required to provide electricity to the 1.4 billion people who currently live without this essential commodity is approximately \$700 billion.

A major reason for these discrepancies between investment needs and actual investment levels is that less than 10 per cent of the investment in essential infrastructure in developing countries comes from the private sector. In water, private investment in developing countries is even declining! And without sufficient investment in basic infrastructure, investment throughout an economy is discouraged.

The PFI addresses this situation by helping governments establish the conditions that will make it easier for the private sector to play a greater role – and by helping governments to understand what they should do to obtain the best social returns from investment. The extent to which the PFI

contributes to poverty reduction and improving living standards will be one of the ultimate measures of its success.

I hope that with these general observations, first on the universal dimension of the PFI and then on its development dimension, I have been able to convey the idea that the PFI is more than just a technical manual. Investment underpins economic growth at all levels of development, and the PFI has been developed to reflect this.

I wish you a constructive discussion and look forward to hearing your ideas for how we – governments, business, the OECD, and our key partners, such as the Asian Development Bank -- can work together to make the most of the PFI in the years to come.

Thank you.

Chapter 2.

Global Forums on International Investment: Using the *Policy Framework for Investment*

The OECD Global Forums on International Investment (GFII) seek to deepen and extend relations with a large number of non-OECD members and other stake holders by sharing OECD expertise in investment policy, particularly in those domains that require multilateral co-operation and solutions. Making the Investment for Development Initiative operational has been a recurrent theme of several global forums. Global forums over the past three years in Johannesburg, New Delhi and Rio de Janeiro have focussed on the development of the PFI and using aid more effectively, two of the three Investment for Development Initiative work pillars. With the development of the PFI now complete, Global Forums, starting from the 2006 GFII in Istanbul, will focus on using the PFI. This chapter summarises the 2005 and 2006 GFII.

The annual OECD Global Forum on International Investment (GFII) is one of the main OECD Investment Committee programmes aimed at addressing the challenge of framing investment policies in a way that supports and reinforces economic development. Through the GFII, the OECD Investment Committee takes an active role in helping to achieve the Millennium Development Goals (MDG) by sharing its expertise in establishing and organising platforms so that all stakeholders and players can work towards maximising the potential benefits of investment from a development perspective.

The GFII are designed to be open and consensual. This approach prompts the international investment community to come together to exchange views and ideas on emerging issues in a receptive and inclusive context. It also fosters a deep understanding of best practices, which is especially apt for investment policy, since many policy domains bear directly or indirectly on the investment climate.

The inaugural GFII took place in Mexico City in November 2001 and was a precursor for the development of the PFI, by concluding that investment is needed to achieve sustained development and that attracting higher levels of FDI needs to move beyond the traditional policy of liberalising FDI. However, it was not until the 2004 GFII in New Delhi that the GFII was used as the occasion to organise regional consultations on chapters of the PFI as they were being developed.¹

Following strong support at the 2004 GFII, the PFI was again the focus of the 2005 GFII, hosted by the Brazilian Government in Rio de Janeiro in late October. The main issues discussed were newly developed chapters of the PFI, how to strengthen developing country perspectives in the PFI and how to assist countries to implement policies favouring a sound investment environment. Particular attention was given to the factors that make for successful private-public partnerships. (Annex 1 offers a short summary of the discussions and issues covered.)

Taken together, the deliberations at the recent GFII provided feedback to the task force developing the PFI as well as enabling a regional perspective and input. This was an important part of the process in the development of the PFI. (See also Annex 2 for a full list of task force meetings, regional consultations and Global Forum discussions on the PFI.)

Now that the PFI is complete, the GFII, starting with Istanbul in November 2006, will play an important role in promoting the use of the PFI reviewing experience and assessing its policy impact. They will also enable countries that have used the PFI, either individually or in the context of the various regional initiatives outlined in Chapter 3, to share their experiences. This body of policy experience will guide future uses of the PFI as well as inform reviews of the *Framework* and the development of any methodologies aimed at helping governments maximise the development benefits from the PFI.

As noted above, the first GFII session centred on the use of the PFI took place in Istanbul, on 6-7 November 2006. This session featured presentations by three countries at different levels of engagement in PFI-based exercises. Costa Rica, represented by Trade Minister Marco Vinizio Ruis, is in the early planning stages, and the Minister indicated that his main purpose in attending the GFII was to learn more about options for using the PFI from countries that had already started doing so. Egypt, represented by Mr. Ziad Ahmed Bahaa El Din, the Chairman of the General Authority for Investment and Free Zones (GAFI), was one of these countries.

1. An overview of the first five GFII can be downloaded from the OECD website at: <http://www.oecd.org/dataoecd/4/53/36987999.pdf>

Within the context of the on-going process for Egypt's adherence to the OECD Declaration for International Investment and Multinational Enterprises, Egypt began a PFI-based self evaluation in mid-2006 using the chapters on investment, investment promotion and facilitation and trade policy. The results of this first-ever self-evaluation highlighted policy challenges faced by Egypt for improving its investment climate as well as methodological issues that future users of the PFI should be mindful of.

The challenges faced by Egypt that emerged from the self evaluation include a licensing system that continues to burden businesses, dispute settlement mechanisms that operate adequately for large investors but that remain difficult or even out of reach for SMEs, the related challenge of providing adequate financing for SMEs, and further opportunities to encourage internationally competitive investment by reducing various obstacles to trade. The representative from Egypt also indicated that their efforts to establish a "one-stop shop" had not been a panacea.

Methodological lessons learned by Egypt concerned issues of inter-agency co-ordination. Although the representative from Egypt acknowledged that interagency co-operation can be difficult, he also identified this inherent requirement of the PFI process as one of its particular strengths. By requiring a certain amount of interagency cooperation, the PFI can serve to sensitise agencies whose mandate is not specifically aimed at improving the investment climate to their potential impact (either positive or negative).

Another methodological issue raised by Egypt concerned the role of investment promotion agencies (IPAs) in PFI-based work. Investment promotion agencies face an inherent conflict when it comes to providing critical answers to PFI questions. This frank assessment (by the head of Egypt's IPA) of the potential for conflict of interest for IPAs engaged in PFI-based assessments would seem to suggest the need for balancing mechanisms (e.g. the involvement of ministries with broad economic portfolios) when -- as will often be the case -- an IPA is given coordinating responsibility for a PFI self-assessment.

The next presentation, by the Deputy Director of the OECD Directorate for Financial and Enterprise Affairs, was on the Investment Reform Index (IRI), a policy tool developed within the context of the South East Europe Investment Compact initiative (See Chapter 3, section 3 for details). This presentation showcased how the IRI is structured and how it has been used as a metric for evaluating reform efforts. The IRI methodology, which could be applied to future uses of the PFI, encourages structured policy debate between the public and private sectors, and exchanges of good practices between policy experts. The IRI's combination of comparative

scoring, an emphasis on government participation and the provision of concrete guidance on how to apply good practices has created a strong impetus for effective policy reform.

Following this overview of the IRI, Mrs. Cornelia Simion, the Director of Romania's Business Environment Unit, presented Romania's experience with the IRI. In contrast with Egypt's qualitative self-assessment approach, the IRI could be described as a quantitative regional benchmarking approach. The IRI covers many of the same policy areas as the PFI, for which specific indicators have been developed to allow a quantitative assessment of where countries in South East Europe stand with respect to their policy reforms. In this regard, Egypt and Romania highlighted the broad range of implementation options for the PFI depending upon the objectives of the countries involved. Furthermore, despite their very different approaches, both Egypt and Romania indicated strong satisfaction with how their respective initiatives have worked, emphasising one of the underpinning philosophies of the PFI, namely that one size does not fit all.

In short, the PFI self-evaluation session of the Istanbul GFII had two concrete outcomes. First, Costa Rica indicated that it favoured starting with the "Egyptian approach". The underlying objective of a PFI-based self-assessment would be to build on the policy reforms of recent years and to help develop what the Minister referred to as Costa Rica's areas of "real competitiveness" (as opposed to areas of economic activity that have traditionally relied upon tax or other incentives). Second, Egypt indicated its plans to extend its self-assessment to all ten chapters of the PFI. Originally the pilot project in Egypt was intended to cover only the first three chapters. However, in light of Egypt's positive experience during the pilot study, the government decided to extend its self-assessment to the whole PFI.

The second day of the GFII focused on infrastructure and was organised in accordance with the structure of the draft OECD instrument, *Principles for International Investor Participation in Infrastructure*. The draft Principles were introduced to participants by Investment Committee Chair Manfred Schekulin, and comments were invited. The first part of the discussion, recognising that many less successful infrastructure projects in the past have faltered on institutional weaknesses, rather than project design, focused on the link between the investment climate and infrastructure investment. The second part explored the options for establishing a climate of cooperation between investors, authorities and stakeholders to enhance the chances of success in the duration of such long-term contractual relationships. The final part of the discussion focused on the challenge of ensuring responsible business conduct in the infrastructure sector, including in developing countries and countries with weak public and corporate governance.

Participants agreed with the notion that the general investment climate is among the most important prerequisites for the success of privately-invested infrastructure projects. The outcome of projects depends strongly on the quality of the political, economic and regulatory environment in which it takes place. The quality of the legal environment is of paramount importance, for unless the rule of law is firmly established, and regulation consistently enforced, investment is fraught with risk. The fight against corruption – on both the supply and demand side – is considered a *sine qua non* for success.

Several discussants cautioned against a temptation to see private investment in infrastructure as a panacea and argued that the Principles should not be read as an unconditional endorsement of privatisation. The choice between public and private provisioning should ultimately rely on an assessment of which approach serves better the public interest. In a similar vein, civil society representatives opined that the public interest is intrinsically linked with sustainable development and warned that the Principles, while relevant in their own right, could be losing an important dimension by focusing more narrowly on the process of private investor involvement.

Authorities need to ask themselves other important questions at the outset of an infrastructure project. For example, a transfer of infrastructure services to the private domain gives rise to the question: how much subsidisation will be needed, and available, to render services affordable to households. Finally, authorities need to ensure that the involvement of private investors in infrastructure does not lead to a breakdown in budgetary discipline through off-budget financing and failure to account for guarantees and contingent liabilities.

Authorities need also to consider how much risk their private partners shall be expected to undertake, and how to obtain a realistic balance between risks and returns. A difference of perspectives became obvious as private sector representatives, on the one hand, argued that infrastructure projects in the past have faltered because public authorities shifted risks that were essentially political onto their private partners. On the other hand, civil society representatives warned that the Principles can not be seen to indicate that the public sector invariably bears ultimate responsibility and private investors are expected mainly to perform self-justice and due diligence.

Several delegates noted the inevitable “politisation” of infrastructure projects. Private investors are often invited into national infrastructure sectors at a point where basic services are already at risk. A shift to cost-recovery pricing to finance the new capital spending is often seen by existing consumers as a denial of well-earned rights, and authorities have

sometimes felt a necessity to associate themselves with this criticism. A policy of transparency and inclusive dialogue with all stakeholder groups produce the best long-term results.

There was general agreement that successful private involvement in infrastructure is feasible only when both the public and the private participants are willing to enter into a bona fide partnership for a considerable period of time. This gives rise to a number of issues, including: (i) a need for authorities to make policy objectives, as well as the expectations to individual projects, clear; (ii) an output-based project definition in which the general public rather than the public sector is seen as the client; (iii) a need to secure a high degree of transparency in the public-private partnership, including in the context of political change, where all project-relevant data are fully disclosed.

Strong and enforceable contracts are vital to successful projects, but they cannot cover all aspects of a partnership. Renegotiations of contracts are a normal consequence of long-term partnerships, but they should nevertheless be kept to a minimum. The best way of balancing the “sanctity of the contract” with the necessary flexibility may be to include contractual stipulations specifying under what circumstances revisions to the original agreement shall be considered. Political and regulatory changes are a fact of life and need to be accepted as such by infrastructure investors. However, they should they take place in an open and transparent fashion including stakeholder involvement.

The discussion of responsible business conduct (RBC) opened with a presentation of the *OECD Guidelines for Multinational Enterprises* and their relevance to the infrastructure sector. Participants agreed that RBC may be particularly challenging in the case of the large scale – and often environmentally and socially charged – investment projects of the infrastructure sector, particularly in poor countries and countries with weak governance. The possibility of encouraging RBC through financing channels – e.g. as part of project finance or ethical investment vehicles – on the basis of instruments such as the *Equator Principles* was also discussed.

Three particular areas of concern arose during the discussions. In the construction phases, occupational health and safety is of high priority. Construction is one of the relatively few segments of the labour market where serious accidents and injuries remain commonplace. In weak governance zones responsible investors need to consider safety measures that exceed regulatory requirements. Consultations with affected communities, timely measures to protect the environment and a participatory approach to expropriation and resettlement programmes are also seen as very important.

The issue of corrupt and other irregular practices received particular attention. The scale of many infrastructure projects creates an incentive to offer and solicit bribes in the awards phases, and it makes them a potential source of patronage throughout their duration. In addition, allegations that infrastructure operators have brought political pressures to bear on the authorities of some countries to privatise infrastructure assets contrary to the public interest are problematic from a corporate ethics perspective.

Much of the discussion focused on the difficulties with responsible business conduct, and the Guidelines in particular, outside the OECD area. Several participants argued that developing country governments, in addition to strengthening their legal and regulatory frameworks, may need to establish more formal structures for addressing corporate ethics. Some pointed to the “National Contact Points” of OECD countries as a model and, potentially, a vehicle for international cooperation.

Prior to the Global Forum, a Country Roundtable on Turkey took place. Participants discussed which experiences to draw from regarding Turkey’s efforts at structural reform in recent years, including work on the Turkish investment climate. Most of the delegates felt that a successful programme of macroeconomic stabilisation has been at least as important to Turkey’s recent upswing in inward investment as concrete steps toward improving the investment climate. Both a spectacular drop in inflation and a reduction of the general government budget deficit to almost zero have enhanced the predictability of the macroeconomic environment. A concomitant pick-up in economic growth and the rollout of a privatisation programme have attracted investors as well.

There was a shared view at the Turkey Roundtable that recent success should not lead to complacency. Countries and regions develop investment promotion strategies, and establish investment promotion agencies at a rapid pace: the result is a heightened competition for direct investment. This is further compounded by the fact that countries increasingly target “high-value FDI” in prioritised sectors and hence find themselves chasing the same projects as a large number of other nations. The conclusion of this is that small differences between countries’ enabling environments for investment are likely to become increasingly important for the location of international investment projects. Against this background, participants encouraged Turkey to continue its process of structural reform, including in areas such as the commercial code, licensing procedures and fees, corporate governance and access to land.

Annex 1

**Concluding remarks from the OECD Conference on
Investment for Development: Making it Happen**



Hosted by the Government of Brazil, organised by the OECD Investment Committee, in partnership with the World Bank 

**Concluding remarks by OECD Investment Committee
and Brazilian Government Co-chairs¹**

Private investment is essential for growth and job creation; it promotes innovation and sustainable development; and it acts as a driving force for poverty reduction. However, the private sector cannot operate in a vacuum. Governments need to put in place effective policies, creating an environment which attracts investment and maximise its benefits to society.

But how does one design the appropriate policies? And how does one build the public sector capacities to implement them effectively? These were the two challenges addressed by the OECD Conference. Attended by practitioners coming from the five continents, the Conference contributed to the follow-up of the 2002 UN Monterrey Consensus and the 2005 UN World Summit. Each of these events stressed the key role of investment to advance the international development goals and the need for global progress towards best policy practices.

The focus of the discussions was the Policy Framework for Investment, which OECD and non-OECD countries are developing as a comprehensive tool to assist governments in taking informed steps and coherent action across the various policy fields to improve the environment for private

1. Manfred Schekulin, Chair of the OECD Investment Committee, and Hécio Tokeshi, Secretary of Economic Monitoring, Brazil's Ministry of Finance

investment. To inform the discussions, we heard the positive recent Brazilian and other country experiences as case studies.

Participants highlighted the broader benefits, for both domestic and foreign investors, of investment policy transparency, openness and protection. The supporting role of sound host and home country trade and competition policy principles was documented. Participants agreed on the importance for governments and businesses to foster human resource development so as to attract investment that realises the full human capital potential of the host country. International co-operation was also called for, including through the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and continued efforts to promote the OECD Guidelines for Multinational Enterprises.

The OECD-Brazil Roundtable held on Day 1 examined Brazil's recent positive experience and drew lessons from this experience in support of the development of the Policy Framework for Investment. It clearly demonstrated the importance of coherent policies, including towards fostering macroeconomic stability and social cohesion. It also agreed on the merit of balanced policy options for making public-private partnership (PPP) successful for infrastructure development -- another element of the Policy Framework. It was felt that the new Brazilian PPP law, properly implemented, is an example of the effectiveness of policy tools for enhancing investor participation in infrastructure.

Participants identified avenues for making use of the Policy Framework for Investment after its completion at the OECD Ministerial Meeting in May 2006. These include: whole-of-government self evaluations; peer dialogues in the context of regional investment initiatives, with OECD support in partnership with the World Bank and other organisations; using the Framework as an organising principle for aid donors' investment programmes. Participants considered that all these uses would help develop policy building capacity, facilitate a speedier consensus towards good policy practices and help to create more even, more transparent and a more attractive environment for investment. The full record of the Conference's discussions will be published.

The OECD conference was sponsored by the World Bank. This is no coincidence. This partnership marks the involvement of the World Bank and other organisations in the work on the Policy Framework for Investment. It attests to our commitment to join forces in order to make investment for development happen.

Annex 2

Task Force meetings, regional consultations and Global Forum discussions on the Policy Framework for Investment

November 2003–November 2006

- November 2003: Global Forum on International Investment, Johannesburg, South Africa (launch of the Initiative on Investment for Development).
- 17 June 2004: First plenary meeting of the Task Force, OECD Headquarters, Paris.
- 23 September 2004: Exploratory discussion of draft background trade policy chapter in the Working Party of the Trade Committee, OECD Headquarters, Paris.
- 19-21 October 2004: Consultation of the Task Force, Global Forum on International Investment, New Delhi, India (focus on trade and competition chapters).
- 8-9 November 2004: Second discussion of draft background trade policy chapter in the Working Party of the Trade Committee in light of the New Delhi Global Forum consultation, OECD Headquarters, Paris.
- 15-16 February 2005: Discussion of the draft background competition policy chapter in the Competition Committee with non-member participants and in light of the New Delhi Global Forum consultation, OECD Headquarters, Paris.
- 18 February 2005: Exploratory discussion of a draft trade policy checklist in the Working Party of the Trade Committee, OECD Headquarters, Paris.
- 22-23 March 2005: Exploratory discussion of a draft background corporate governance-focussed chapter in the Steering Group on Corporate Governance, OECD Headquarters, Paris.
- 5 April 2005: Final discussion of the draft trade policy checklist in the Working Party of the Trade Committee, OECD Headquarters, Paris.
- 8 April 2005: Second plenary meeting of the Task Force, OECD Headquarters, Paris (discussion of draft trade and competition checklists and exploratory discussion of draft background tax chapter and checklist).
- 31 May 2005: Exploratory discussion of the draft background tax policy chapter in Working Party 2 of the Committee for Fiscal Affairs, OECD Headquarters, Paris.
- 25-26 May 2005: Regional Consultation on the Policy Framework for Investment, Uganda (with NEPAD).
- 13 June 2005: Third plenary meeting of the Task Force, OECD Headquarters, Paris (exploratory discussion of the draft background investment policy, investment promotion and facilitation, and public governance chapters).

- 5-6 July 2005: Regional Consultation on the Policy Framework for Investment, Indonesia.
- 20 September 2005: Discussion of the revised background documents on investment policy, investment promotion and facilitation in the Investment Committee, OECD Headquarters, Paris.
- 29-30 September 2005: Discussion of the revised draft background public governance chapter in the Public Governance Committee, OECD Headquarters, Paris.
- 25-27 October 2005: Global Forum on International Investment, Rio de Janeiro, Brazil (focus on bringing together all the chapters of the Policy Framework for Investment and discussing how to start using it for capacity building).
- 14-15 November 2005: APEC-OECD Seminar on “Working Together on Investment for Development”, Korea.
- 13 December 2005: 4th Plenary meeting of the Task Force, OECD Headquarters, Paris.
- January-February 2006: Online consultation of the draft PFI text.
- 20 February 2006: Development Assistance Committee Meeting, Paris (discussion of the draft PFI text in the DAC).
- 1-2 March 2006: 5th Plenary meeting of the Task Force, OECD Headquarters, Paris (finalised and transmitted the PFI to the Investment Committee).
- 20 July 2006: OECD Policy Forum: Making the most of the Policy Framework for Investment, Tokyo.
- 6-7 November 2006: Global Forum on International Investment, Istanbul, Turkey, with investment policy using the PFI as an organising theme of the Forum.

Chapter 3.

Regional Investment Initiatives: Focussing on Policy Coherence

- 3.1. THE MENA-OECD INVESTMENT PROGRAMME
- 3.2. NEPAD-OECD AFRICA INVESTMENT INITIATIVE
- 3.3. INVESTMENT COMPACT FOR SOUTH EAST EUROPE
- 3.4. EMERGING ASIA

The OECD has established in partnership with other players in the domain of investment a series of regional initiatives and programmes that seek to promote and support policy reforms aimed at improving the investment climate and maximising the benefits of private investment for development. The programmes also play an important role in providing capacity-building capabilities for policy makers in these regions. The programmes are result-oriented and recognise the importance of focussing on the coherence of policies for investment.

To date three main initiatives have been launched: the MENA-OECD Investment Programme of the MENA Initiative on Governance and Investment for Development, the NEPAD-OECD Africa Investment Initiative and the Investment Compact for South East Europe. The OECD also has a co-operation programme with Asia on policies for investment.

This chapter summarises how these initiatives and programmes operate, the results achieved so far and future directions.

3.1. The MENA-OECD Investment Programme

The MENA-OECD Investment Programme seeks to mobilise investment as a driving force for growth, stability and prosperity throughout the Middle East and North Africa region. The biggest challenge for MENA countries lies in strengthening the process of change, maintaining, supporting and tracking the progress of policy implementation as well as providing capacity-building assistance. The Investment Programme aims to help upgrade investment policy standards, attract more and better investment and support capacities for policy makers in the MENA region. This report explains how the Investment Programme is organised, reviews the progress made towards a more open investment climate in the MENA region over the past year and outlines the next steps of the Programme.

*Full details on the activities of the MENA Programme can be downloaded from the MENA-OECD Investment website at:
www.oecd.org/mena/investment.*

Programme Overview

The MENA-OECD Investment Programme was established in 2004 at the request of Middle East and North African (MENA) countries to provide advice on implementing investment policy reform. The key objective of the Investment Programme is to mobilise private investment – foreign, regional and domestic – as a driving force for economic growth and employment throughout the region. The Programme seeks to accomplish this objective by offering a forum for results-oriented policy dialogue that brings together MENA and OECD practitioners. It supports MENA governments' efforts to reform and enhance the investment climate by:

- Strengthening country capacity for designing, implementing and monitoring investment policy reforms;
- Creating a network of dialogue between investment policy makers from MENA and OECD countries;

- Creating a favourable environment for employment creation through investment climate improvements;
- Assisting ministries and government agencies to co-operate and co-ordinate their work;
- Reinforcing the impact of development initiatives supported by international, regional and bilateral donors.

The Investment Programme operates through activities on the regional level as well as country dialogue on specific investment reform items. The regional and national dimensions of the Programme are addressed within its unique structure, which includes a Steering Group overseeing the Programme's activities, working groups¹ serving as a forum for discussing regional issues, taskforces² focusing on specific horizontal issues, and country teams working on national investment reform targets. The overall Programme is currently chaired by the Arab Republic of Egypt, represented by His Excellency Dr. Mahmoud Mohieldin, Minister of Investment.

First Phase of the Programme

During its first phase, the key objectives pursued by the Programme were to: 1. develop and document the state of development of the relevant legal and regulatory framework in the region, 2. create regional networks of private sector participants, key organisations, and country Ministries and Agencies, 3. establish time-bound investment reform targets for the countries participating in the Programme. To this end, a round of meetings of the five working groups and 7 task forces took place, and two rounds of Steering Group meetings were conducted.

During the rounds of Working Group meetings in January/February and September 2005, participating MENA countries agreed on a set of key recommendations for improving the domestic environment for private sector investment. The Working Groups received 13 reports³ on topics including

1. The Working Groups of the Programme are: 1. promote transparent and open investment policies; 2. encourage Investment Promotion Agencies and business associations to act as driving forces for economic reform; 3. provide a tax framework for investment and assessing incentives; 4. promote policies for financial sector and enterprise development for economic diversification; 5. improve corporate governance.
2. The topical areas addressed by the taskforces include business integrity, investment treaties, investment statistics, etc.
3. Available at: www.oecd.org/mena/investment.

economic diversification, financial markets development, fostering of business integrity - among others - which have served as a basis for gauging the regional and national dimensions of investment policy reform in the region.

In addition to the Working Groups, seven Task Forces have conducted meetings in 2005 and drafted the recommendations on which the Working Groups agreed. These recommendations are used to focus the expert knowledge on areas of investment reform encompassed in National Investment Reform Agendas (NIRAs), developed by many MENA countries participating in the Programme in 2005.

These Reform Agendas include concrete investment policy reform measures aimed at improving the countries' investment environment. The proposed investment policy reform targets included in each of the Agendas are the result of a process of regional dialogue conducted in the meetings of the Steering Group, the Working Groups and Task Forces of the Programme. Countries have started a peer dialogue on their National Reform Agendas during the two Steering Group meetings held in April and October 2005 in Paris and Istanbul.

The first year of the Programme concluded with a Ministerial Meeting and Business Day on 13-14 February 2006 in Jordan, which was attended by delegations of 16 MENA countries, represented by Ministers or high level representatives from the relevant Ministries. The meeting concluded with a Declaration on "Attracting Investment to MENA Countries – Common Principles and Good Practice" (reproduced in Annex 1). Ministers also endorsed an ambitious programme for regional dialogue and capacity-building developed by the Working Groups. The Ministers noted the National Investment Reform Agendas developed by MENA countries and encouraged their implementation.

The Programme has succeeded in developing a wide network of private sector organisations (e.g. the Arab Business Council, Business and Industry Advisory Committee to the OECD), regional organizations (the Arab Union of Banks, TOBB), as well as other private sector participants who continue to attend the meetings of the Programme. Additionally, the MENA-OECD Business Network organised a Business Day preceding the Ministerial Meeting, as well as awarded 24 companies from the region with an 'Investor of the Year' Award for innovation and employment creation.



Ministerial Meeting of the MENA-OECD Investment Programme in Jordan on 13-14 February 2006

Second Phase of the Programme

In 2006-2007, the MENA-OECD Investment Programme is focussed on execution of regional action plans developed in the first phase as well as implementation of the targets defined within the National Investment Reform Agendas. To date, a number of key accomplishments have resulted from the Programme's activities since the Ministerial Meeting in February. Eleven MENA countries and territories (Bahrain, Egypt, Jordan, Lebanon, Palestinian National Authority, Morocco, Oman, UAE, Tunisia, and Yemen, Iraq) have elaborated their National Investment Reform Agendas and are working on their implementation. Additionally, draft NIRAs have been prepared for Syria, Kuwait, KSA, Qatar, Libya and Algeria and are currently under review by the countries concerned. Work is planned in September to launch the NIRA for Iraq.

To date, NIRA workshops to work on the implementation of priority investment reform targets have been successfully completed in Egypt on May 17th, Oman on June 4th and Jordan, June 19th. These workshops featured high-level participation (including the Ministers level) of officials from

investment promotion agencies and Ministries of Finance and Economy. They have demonstrated measurable progress on several items¹, and have allowed for development of new targets, as well as follow up with existing ones. Further workshops will be conducted in for Morocco, the UAE, Bahrain, Yemen and Iraq.

The NIRA workshops are important not only to monitor individual countries' reform progress, but also to disseminate best practices among regional participants, highlight the reformist forces within each government, and provide visibility to ongoing reforms. To this end, the Programme has liaised with local and international media, resulting in substantial television and newsprint coverage. The resulting visibility is important since it highlights reformist forces within MENA governments, thereby strengthening not only the economic liberalisation efforts, but also the democratization momentum.

In terms of the regional level of activities, the regional element of the Programme aims at working with MENA countries on the implementation of Recommendations developed in the first phase and the principles included in the Ministerial Declaration. In parallel with NIRA workshops, it has been developing MENA Investment Policy Briefs (i.e. venture capital development) containing recommendations for regional policy makers. These Briefs provide an additional basis for specific recommendations put forward to MENA government officials as part of NIRA workshops.

To strengthen its private sector activities and emphasise the need to support entrepreneurship in the region, the Programme has launched a new initiative – the MENA-OECD Enterprise Financing Network. The network aims to improve the regulatory conditions for financing entrepreneurship using the Programme as a forum for exchange of good practice between MENA and OECD business and government representatives.

The Programme has further expanded its relationship with regional partners (Arab Union of Banks, Arab Monetary Union) and international organizations (World Bank, UNIDO). Several projects are currently underway with these partners in an effort to leverage existing programs, instead of building redundant initiatives. Co-operation with the World Bank on a flagship publication and with IFC PEP MENA on corporate governance activities are ongoing. Following the success of the joint event in Jordan, UNIDO agreed to partner in the future on conducting workshops on the

1. For instance, on the corporate governance item for Egypt, an Arabic Corporate Governance Code for State Owned Enterprises (first in the region) has been developed based on OECD guidelines.

Investment Reform Agendas and provide venues for concrete business contacts.

Regional centers to disseminate best practices in areas related to investment reform and improvement of the business climate for the private sector have been created under the Programme and demonstrate significant regional ownership. Bahrain has created a regional Centre for Investment and the UAE has established a regional Institute for Corporate Governance to support the work of the Initiative. Egypt is planning on creating a regional centre for tax policy and administration.

Several MENA countries have shown an interest in participating in activities of the OECD Investment Committee and adhering to the OECD Investment Declaration. Egypt has started a procedure to adhere to the OECD's Declaration. The UAE, Jordan and Morocco have also demonstrated an interest.

Next Steps

To date, the Programme has accomplished a number of important goals, such as highlighting the ongoing reform process in MENA countries, supporting the reformist forces within regional governments, and giving transparency to remaining restrictions to a transparent investment climate. In the coming months, the focus will remain on implementation of National Investment Reform Agendas, where concrete successes can already be witnessed. For instance, the first Corporate Governance Code for State Owned Enterprises in Arabic developed by Egypt has been modelled after the OECD Guidelines on Corporate Governance for State Owned Enterprises, with input by OECD experts.

In parallel with country-specific activities, meetings of the Working Groups and Taskforces will take place toward the end of the year to prepare country representatives for the next Ministerial Meeting. Some of these meetings are planned to address longstanding regional challenges such as investment treaties, while others will concentrate on emerging developments such as the instability of capital markets in the region.¹ These activities, along with the newly introduced detailed methodology for measuring investment reform progress in the five areas of focus of the Investment Programme, are expected to prepare for a positive Ministerial Meeting in the first half of 2007 and lay a foundation for the third cycle of the Programme.

1. A roundtable to discuss this topic was held on 24 July 2006.

Annex 1

Declaration
"Attracting Investment to MENA Countries –
Common Principles and Good Practice"

Ministerial Meeting of the MENA-OECD Investment Programme
in Jordan on 13-14 February 2006

Preamble

PARTICIPATING COUNTRIES from the Middle East and North Africa Region (MENA), including Bahrain, the UAE, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Qatar, Palestine National Authority, Saudi Arabia, Syria, Tunisia and Yemen;

CONVINCED of the urgent need to spur economic growth, development and social progress across countries in the MENA to meet the needs of rapidly growing populations;

AFFIRMING that sustainable development depends fundamentally on mobilizing private capital from inside and outside the region;

RECOGNISING the right of governments to regulate economic activities in their territories and to determine the pace of their economic reform progress;

CONVINCED that broad based economic reform, including in particular improvements to the investment climate, is essential to increase foreign and domestic investment in the region;

CONVINCED also of the need for immediate action based on concrete targets and reasonable timeframes;

BELIEVING that a regional dialogue and integration of national policies across the region will complement and reinforce improved policies at the national level;

TAKING NOTE of the progress achieved under the MENA-OECD Investment Programme as well as the Good Governance for Development Initiative in Arab Countries;

STRESSING the importance of co-ordination of the reform process within national governments;

ACKNOWLEDGING that the OECD, its Member countries and other international organisations can provide valuable support to the efforts of

governments in the region to create favourable conditions for increased domestic and foreign investment through the MENA-OECD Investment Programme;

AFFIRMING the importance of close coordination with other international initiatives supporting economic reform in the region;

AWARE of the important contribution that the business community and other elements of civil society can make to these efforts;

REAFFIRMING AND BUILDING on the commitments made by MENA and OECD countries to participate and support the MENA-OECD Investment Programme;

Are in support of the following common principles and good practices:

Common Principles and Good Practices

The Participating Countries recognise that the following common principles and good practices, applied in accordance with national laws and international obligations, contribute to a favourable climate for international, regional and domestic investment:

- Transparency and predictability of national policies, laws, regulations, administrative practices and statistics affecting foreign and domestic investment;
- Encouragement to brief the business community and to discuss planned regulatory changes;
- Provision of sufficient and necessary information on laws and regulations and other guidelines affecting investment including foreign investment;
- Enhancement of the protection of property rights, intellectual property rights, and contractual rights;
- Liberalisation of existing restrictions, if any, to repatriation of capital and of the proceeds of the investments;
- National treatment for established foreign investments; fair and equitable treatment of investment; protection of investors' rights and compensation for all categories of expropriation;
- Openness to foreign investment and access by investors to facilities necessary for investment and the movement of key personnel for the purpose of investment;

- Promotion of business integrity with preventive measures targeting the private and the public sector and strengthening of anti-bribery legislation, enforcement measures and awareness-raising efforts;
- Effective competition policies by providing for clear, transparent and non-discriminatory competition laws and an efficient and independent competition authority;
- Recognition of internationally agreed principles of corporate social responsibility;
- Establishment of investment promotion agencies equipped with sufficient resources as part of an overall investment promotion strategy;
- Encouragement of established business and civil society representatives to act as advocates of investment policy reform;
- Evaluation of current and proposed investment incentives;
- Transparent, stable and fair tax systems as important elements of the investment climate;
- Economic diversification efforts to create the conditions for infrastructure, private sector development, employment creation and the enhancement of human resources within functioning market systems;
- Sustained efforts towards modernisation of financial systems to meet the challenge of employment creation and technological advance by broadening the range of financial services and products that are available and aligning supervisory practices with global standards;
- Development of human resources in order to broaden the skill base for entrepreneurship;
- Development of effective frameworks and policies for entrepreneurship, including the promotion of women's entrepreneurship, and for a thriving small and medium-sized enterprise (SME) sector that contributes to job creation, economic growth and social cohesion;
- Encouragement of efforts by government, private sector and professional bodies to improve corporate governance in all sectors of the economy, in line with internationally agreed best practices.

Implementation

In accordance with the above principles, Participating Countries:

Welcome the work of the five Working Groups of the MENA-OECD Investment Programme and compliment the efforts of experts from governments inside and outside the region, international organisations, business and other elements of civil society who have participated in this work;

Welcome the assistance and support by the business community.

Note the recommendations of the Working Groups in the areas of their respective responsibility which provide guidance for future work and the selection of priorities for the National Investment Reform Agendas;

Welcome the specific investment reform targets which have been announced and encourage governments in the region to continue their efforts to identify and implement in a co-ordinated manner reform targets that can be achieved within the next year;

Continue to support the MENA-OECD Investment Programme and encourage governments from outside the region to continue their support for the Programme and the reform objectives of governments within the region;

Encourage the constructive involvement of business representatives and other elements of civil society in discussions with Governments on the improvement of the investment environment;

Invite international and bilateral initiatives to support economic reform efforts within the region and to coordinate their efforts to improve the prospects for governments in the region to achieve their reform objectives. For this purpose invite other international organisations to meet in early 2006 with the Steering Group of the Programme to decide on closer strategic co-operation.

Request the Working Groups to continue their work to provide for a continuing dialogue within the region, and with participants outside the region, to maximise the benefit to countries within the region from the experiences of others in designing and implementing their National Investment Reform Agendas.

Follow-up

The Participating Countries will meet again in the first half of 2007 at Ministerial level to review progress achieved in implementing this Declaration. They will make use of the Country Economic Teams and the

National Investment Reform Agenda to follow up the implementation of this Declaration. The participating countries mandate the Steering Group and the Working Groups to continue their efforts to implement the agreed action plans and output targets.

The Participating Countries call upon the international community, in particular OECD member countries, to provide technical and financial support to help them meet the objectives of this Declaration.

3.2. NEPAD-OECD Africa Investment Initiative

The NEPAD-OECD Africa Investment Initiative aims to mobilise private investment for poverty reduction, job creation and sustainable development in Africa, by supporting African countries' own efforts to advance national reform agendas, regional and international policy dialogue, and implementation and monitoring capacity building. The Initiative was an outcome of the Global Forum on International Investment hosted by the South African government in November 2003 and was backed by a public NEPAD-OECD Statement. This section reports on how the Initiative is being strengthened and its future directions.*

The Communiqué on Africa adopted by G8 Heads of State in July 2005 at Gleneagles states that "African countries need to build a much stronger investment climate: we will continue to help them do so, including through the promotion of a stable, efficient and harmonised legal business framework", noting "the improvement of the investment climate through the OECD/NEPAD Investment Initiative".

The Africa Investment Initiative was launched in Johannesburg in November 2003. Following work in 2005 on the roles of government and business in support of responsible business conduct and an assessment of obstacles to inward investment (reported in last year's Annual Report), the Initiative received renewed support from the 2005 OECD Ministerial. Ministers expressed a commitment to increasing OECD investment policy-co-operation programmes with Africa.

* More information about the NEPAD-OECD Africa Investment Initiative is available on the OECD website at www.oecd.org/daf/investment/africa.

The Initiative is thus being strengthened and a Steering Group is to be established to oversee its activities. The Initiative aims to mobilise private investment for poverty reduction, job creation and sustainable development in Africa. In this context, the Initiative has three distinct, yet related objectives. These are:

- To support African government efforts to develop an integrated policy roadmap based on concrete measures for improving the investment climate in African countries;
- To raise the profile and image of Africa as a place in which to invest, to facilitate regional co-operation among African countries and to give an African voice in international dialogue on policies for investment; and
- To strengthen and support African countries' own capacity to design, implement and advance a result-oriented national reform agenda to improve the investment climate.



Uganda's Investment Minister addresses the NEPAD-OECD conference in Entebbe

The strengthened Initiative is an integral part of the OECD Investment for Development programme and it follows a sequence of three phases, each about one year in length. The phases comprise:

- A collective and comparative stocktaking of the current reform efforts in African countries, bearing on specific elements of the investment climate.
- The development of country reform road maps based on in-depth self evaluation and peer dialogue on investment policy action plans.
- Peer monitoring of the implementation of policy reforms action plans.

The strength of the approach lies on it building a process of holistic and coherent reform that is African-owned and driven by “change agents” within the public and private sector. This limits the risk of governments focussing on measures that improve country rankings, based on narrow indicators, but with little improvement in the overall investment climate.

To foster and help ensure a comprehensive approach to reforms bearing on the investment climate, the strengthened Initiative draws extensively on the Policy Framework for Investment (PFI), a tool which provides a checklist of issues in ten policy fields identified in the Monterrey Consensus as critically important for improving the quality of a country’s environment for investment (see Chapters 1 and 2).

Geographic, linguistic, economic and other differences are significant across Africa and achieving balances will be factored in the design of the Initiative. With a view to responding to African countries’ own development needs and strategies, activities will be tailored to sub-regional needs and priorities. At this initial stage it favours a bottom-up approach, with a focus on transparency, openness and effectiveness of African countries’ investment policies.

Looking ahead, each phase of the work will result in two Roundtable events, subject to available resources. These events are not themselves the outcome of the Initiative. Rather they are designed to provide the markers needed to sustain momentum and continuity of the process driving change in Africa’s investment climates and investor perceptions. Accordingly, they will be structured to be result-oriented and process-driven, with the outcomes at each phase of the Initiative aimed at producing impact on policy development and capacity-building within the African region.

The first Roundtable will take place towards the end of 2006. This Roundtable will focus on how to make the most of peer learning methods within the context of the African Peer Review Mechanism (APRM) process. It will also provide an opportunity for African countries to consider the early experiences with APRM and how OECD can support NEPAD efforts in this area.

The work of the Initiative and each of the planned Roundtables will focus only on areas of policy need and where OECD experience, expertise and work methods add maximum value. In carrying out the planned work programme, the Initiative will draw on OECD relationships with other international organisations, including the ADB, World Bank and UN agencies. The comparative strengths of OECD co-operation with non-members on investment include:

- A partnership approach to policy capacity building based on exchange of practical experience among African and OECD governments and peer learning
- The availability of multilaterally-backed investment policy benchmarks which can serve as reference points as African countries develop their own instruments for self evaluations, action plans and implementation
- Mobilisation of other fields of OECD expertise
- Effective access to business feedback and other civil society input

African countries are the main beneficiaries, and NEPAD is the lead partner in the Initiative. The OECD serves as a catalyst in support of the existing regional momentum created by NEPAD, and in areas where the OECD can generate maximum impact. The added value attributed by African partners to co-operation with the OECD is linked to its roles as a catalyst, facilitator and a forum for international policy dialogue for developing and adapting policy tools to an African context. OECD participation also offers African countries a vehicle for policy co-operation with the world's leading investing countries without conditionality. Likewise, OECD countries benefit from the adoption of high investment policy standards regarding transparency, openness and corporate responsibility in African countries.

3.3. Investment Compact for South East Europe

The South East Europe Compact for Reform, Investment, Integrity and Growth (“The Investment Compact”) was launched in 2000. The objectives of the Investment Compact are to improve the climate for business, investment and employment, to attract and encourage private investment, to ensure private sector involvement in the reform process and to instigate and monitor the implementation of policy reform. The Investment Compact is supported by 12 OECD countries and works in close co-operation with a number of multilateral and bilateral organisations operating in South East Europe. This section of the chapter reports on the key outputs and progress made towards achieving the goals of the Investment Compact over the past year.

Full details on the activities of the Investment Compact for South East Europe can be downloaded from the internet at: www.investmentcompact.org.

The Investment Compact for South East Europe is a programme designed to improve the investment climate and encourage private sector development in South East Europe (SEE). Under the Stability Pact for South Eastern Europe (Working Table II on Economic Reconstruction, Development and Co-operation) and the OECD (Directorate for Financial and Enterprise Affairs), the programme has its own institutional structure including a Project Team and an Annual Ministerial Conference. The Investment Compact supports SEE with practical tools to increase investment, growth and employment and support the EU integration process.

Progress and Challenges in Improving the Investment Environment for SEE

After co-ordinated national and international efforts, the overall region of SEE¹ has stabilised and is experiencing a steady annual growth rate of 5%. Major privatisations have taken place in all countries and FDI inflows have steadily increased, topping 11 billion USD in 2005.

The SEE region has made significant progress in designing and implementing reforms, especially in the areas of:

- Investment policy – all SEE countries have implemented reforms to encourage equal treatment of foreign and local investors. For example, Romania adhered to the Declaration on International Investment and Multinational Companies in 2005.
- Investment promotion – Some of the SEE countries defined investment promotion strategies (e.g. Bulgaria) and all of them set up investment promotion agencies. For example, Bulgaria adopted the Law on Investment Promotion and the National Investment Promotion Strategy improving services and information available to investors; and Croatia recently established the Croatian Trade and Investment Promotion Agency (APIU).
- Tax policy – the SEE region is continuing to reduce corporate income taxes and improve tax administration. SEE has some of the lowest corporate income taxes in Europe: Bulgaria – 15%; Romania – 16%; Serbia – 10%; Montenegro – 9%.
- Competition policy – competition policy is progressing through the development of legal and institutional frameworks following EC standards. For example, Romania and Bulgaria harmonized the competition legislation with EU standards; Bosnia and Herzegovina adopted a new competition law modelled on EC law.
- Regulatory Reform – regulatory reform is progressing and has remained a priority for all SEE countries. For example, Moldova successfully implemented the Guillotine Law and has started a second phase of the same project; Bosnia and Herzegovina implemented the Bulldozer Initiative.

1. The countries of South East Europe are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYR of Macedonia, Moldova, Romania, Serbia and Montenegro

Significant steps have also been taken towards achieving a greater regional ownership of the investment reform process:

- Regional Co-Chairmanship of the Investment Compact for South East Europe by Romania in 2003/2004, Bulgaria in 2005/2006 and Serbia in 2006/2007.
- SEE Investment Forum chaired by Romania in 2003/2004 and Bosnia and Herzegovina in 2005/2006.
- SEE Enterprise Forum chaired by Albania in 2005/2006.
- Regional network of Foreign Investor Councils since 2004.
- 2005 Ministerial Conference which took place in an SEE country for the first time (Bulgaria).
- Adoption of the SEE Regional Framework for Investment by SEE countries and UNMIK/Kosovo in June 2006, which outlines policy principles for creating a healthy environment for investment and calls for the creation of a regional investment committee to oversee implementation.

The SEE region, however, has several key challenges facing it in the coming years, especially regarding:

Private investment – the level of private investment in the SEE region, both domestic and foreign, remains insufficient. Policies are needed to promote more greenfield and SME investment.

- EU integration – the process of EU integration is driving reform in SEE countries. The accession of Bulgaria and Romania to the EU will redefine the area and pose new challenges for the countries on the accession path. For example:
 - Once Romania joins the EU, stricter visa agreements will be required between Romania and neighbouring SEE countries (Moldova and Serbia).
 - With accession to the EU, Bulgaria and Romania will no longer be members of the Network of Bilateral Free Trade Agreements.
- Implementation – many SEE countries have ratified key legislation to improve the investment environment. The challenge now is to demonstrate concrete application of the principles that were ratified.
- Competitiveness – the SEE region is facing strong competition from China and other newly industrialised nations.

Key Outputs of the Programme

SEE Regional Framework for Investment

On 27 June 2006, Ministers from across South East Europe unanimously adopted a Regional Framework for Investment (RFI). (The Ministerial Statement and a Joint Business Statement presented to participants at the 5th Ministerial Conference of Ministers from South East Europe are reproduced below.) The event is groundbreaking: SEE is the first region to adopt such a Framework, which provides a reference for the elaboration, implementation and evaluation of national policies related to investment in the region.

Implementation of the RFI will be spearheaded by a newly created SEE Regional Investment Committee composed of senior government officials and private sector representatives from SEE and OECD countries that will undertake peer reviews and develop recommendations to improve policies for investment. The adoption of the Regional Framework for Investment by SEE countries demonstrates that they are now entering a new phase of cooperation. It is also a testimony to the commitment of the region to increase its competitiveness, maximise new investment and further enhance access to European markets.

The sixth annual Ministerial Conference on a Regional Investment Framework was hosted by the Austrian Federal Ministry of Economics and Labour and organised by the co-chairs of the Investment Compact for South East Europe – Austria, Bulgaria and the OECD – as well as the Working Group on Trade Liberalisation and Facilitation within the framework of the Stability Pact for South East Europe. The Ministerial Conference was opened by the Federal Minister of Economics and Labour of Austria, Mr. Martin Bartenstein, Mr. Erhard Busek, Special Co-ordinator of the Stability Pact for South Eastern Europe, Mr. Ruman Ovcharov, Minister of Economy and Energy of Bulgaria and Mr. Richard Hecklinger, Deputy Secretary-General of the OECD. Ministers from South East European countries and business representatives also attended the conference.

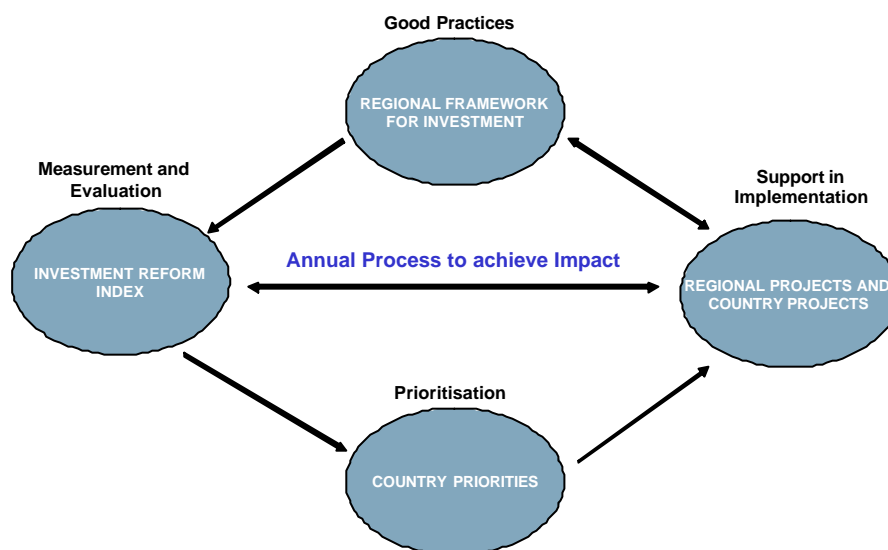
Investment Reform Index

The Ministerial Conference also concentrated on the preliminary results obtained from the Investment Reform Index (IRI), a comparative policy evaluation exercise conducted by the OECD Investment Compact in close collaboration with SEE governments and the private sector over the last 9 months. Final IRI results will be published.

The IRI goes beyond measurement and evaluation of policy reform: As a management and communication tool, the IRI helps governments define

country priorities for reform, mobilise support for implementation of self-defined priorities, and communicate progress to potential and existing investors.

This new tool launched by the OECD Investment Compact is part of a wider collaborative process of continuous annual improvement for SEE countries. Starting from the Policy Framework for Investment (see Chapters 1 and 2) that defines good practices in a range of policy dimensions, the Investment Reform Process incorporates measurement of policy reform, definition of country priorities and coaching in implementation of country priorities with support from the OECD.



Specific Projects to Support Implementation

The Investment Compact activities such as coaching and peer reviews are designed to help SEE countries implement economic reforms. Examples of activities in 2006 include:

- *SEE Enterprise Forum (SME Policy)* - In collaboration with the European Bank for Reconstruction and Development, the European Training Foundation and the European Commission (DG Enterprise), the Investment Compact developed the SME Policy Index. This is a tool to help countries evaluate progress made in enterprise policy, structured around the ten dimensions of the European Charter for Small Businesses.

- *SEE Investment Forum (Investment Policy and Promotion)* - The 2006 Investors of the Year Awards Ceremony aimed to promote awareness of major investment projects in the South East European countries. This Award scheme was designed to illustrate the progress with policy reforms and the improvement of business climate in the SEE region by giving concrete examples of international and domestic investments. This year's Awards had two categories:
 - International Investors of the Year
 - Innovative Domestic Investors of the Year
- *Regional Projects* - The EC-OECD project on “Strengthening Development and Implementation of Investment and Trade Policy in the Western Balkans” resulted in a thorough evaluation of the FDI data systems collection and dissemination in SEE countries, using IMF/OECD methodology and the identification of policy recommendation to improve FDI statistics.
- *Country-Specific Projects* - The Foreign Direct Investment Project in the Republic of Moldova is designed to improve the investment environment in Moldova. The Investment Compact has designed a new FDI strategy for Moldova, which was presented to the Moldovan Government in June 2006.



**STABILITY PACT
WORKING TABLE II**

INVESTMENT COMPACT FOR SOUTH EAST EUROPE

**Ministerial Statement
A REGIONAL FRAMEWORK FOR INVESTMENT
IN SOUTH EAST EUROPE**

On the occasion of the 2006 Ministerial Conference of the South East Europe Compact for Reform, Investment, Integrity and Growth (Investment Compact), held in Vienna on 27 June 2006, the Ministerial Delegations of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania, Serbia, and the United Nations Interim Administration Mission in Kosovo (UNMIK) unanimously adopt the following Statement:

Preamble

- Building on the commitment contained in the Investment Compact and the policy principles and good practices that have emerged through the work of the Investment Compact, as documented in the previous Ministerial Declarations of SEE Ministers;
- Acknowledging the progress achieved in improving the investment environment of SEE but noting that further improvements are necessary;
- Recognising the key importance of international, regional and domestic investment for economic development and social progress in the region;
- Stressing the need for a Regional Framework for Investment, hereinafter referred to as RFI¹, as a policy tool for participants to

1. See Annex 1 for detail of RFI

elaborate, implement and evaluate policies related to the improvement of the investment environment in the SEE region;

- Noting that the OECD Council adopted a global Policy Framework for Investment on 11 May 2006;
- Encouraging continued dialogue between public and private sector institutions in the contribution and promotion of reforms and transparency and other good governance practices, and the contribution of the private sector and non-governmental organisations to the reform process;
- Noting the importance of the EU Enlargement and Stabilisation and Association Process in the region, and that the RFI is fully in compliance with the participants' obligations vis-à-vis the EU accession;
- Calling for enhanced co-operation among the various Stability Pact Initiatives and the strengthening of partnerships between international organisations active in the region in order to support more efficiently efforts towards an improved investment environment;
- Affirming that this co-operation will be based on domestic and regional ownership of the reform process;
- Recognising the need to communicate effectively the progress in the reform process;

Declaration

Participants

1. Recognise that a favourable environment for domestic, regional and international investment depends on the implementation of an integrated program of action, and specifically on the Regional Framework for Investment with the following policy areas:
 - Investment Policy
 - Investment Promotion and Facilitation
 - Tax Policy
 - Anti-corruption and Business Integrity
 - Competition Policy
 - Trade
 - Regulatory Governance
 - Human Capital and Employment
 - Corporate Governance
 - SME Policy

2. Adopt the Regional Framework for Investment (RFI) as described in Annex 1;
3. Endorse the Investment Reform Index (IRI) process, developed by the Investment Compact, to provide a benchmark for comparatively assessing reforms in SEE and define domestic priorities.

Implementation and follow up

In line with the above principles, participants will:

- Establish, by the end of 2006, a South East Europe Investment Committee composed of senior government officials and private sector representatives from SEE participants as well as OECD countries to undertake peer reviews, and develop recommendations to improve policies for investment;
- Maintain the Investment Compact Project Team as the management and support body of the SEE Investment Committee;
- Commit to time-bound targets for reforms and make full use of the review process of policy reform established by the Investment Compact (i.e. the IRI) that provides a benchmark for comparatively assessing the results achieved and defining future priorities for action;
- Empower the SEE economic teams to provide effective policy coordination for the implementation of this framework;
- Strengthen regional networks established under the auspices of the Investment Compact, including the SME Roundtable, the Investment Promotion Roundtable, the Corporate Governance Roundtable, and the regional networks for competition, tax and regulatory reform; and to create task forces to deal with specific issues as appropriate;
- Enhance co-operation and co-ordination with other Stability Pact initiatives including the Trade Working Group, the Initiative for Social Cohesion, electronic South East Europe (eSEE), the Stability Pact Anti-Corruption Initiative and the Infrastructure Steering Group;
- Communicate effectively with provincial and local governments and the public to maintain momentum for reform at all levels;
- Consult with existing private sector networks such as Foreign Investors' Councils, chambers of commerce, BAC and BIAC, as

well as with other appropriate business groups, private sector associations, social partners and civil society organisations to explore the development of investment opportunities, and to provide input in the formulation and implementation of investment policies, laws and regulations;

- Organise periodic meetings with representatives of parliamentary bodies and the judiciary to discuss key issues relating to the development and implementation of reform legislation;
- Continue to meet annually on Ministerial level under the auspices of the Stability Pact or its successor to review progress achieved.

Participants look forward to a first report on the application of this framework and the operation of these institutions in time for the 2007 Ministerial Meeting.

Annex I

Regional Framework for Investment

1. Investment Policy

Implement investment policies based on the following elements:

- Elaborate clear and transparent domestic policies, laws, regulations and administrative practices that do not impose unnecessary burdens;
- Ensure coherence and stability of laws, regulations and administrative practices;
- Apply national treatment to foreign investors at both the pre-and post-establishment stage and ensure that exceptions are clearly formulated and brought to the attention of the Investment Compact;
- Promote an effective services sector, in particular through the removal of remaining obstacles to foreign investment in the areas of financial and professional services;
- Ensure timely and unrestricted transfer of the proceeds of investments;
- Guarantee repatriation of the capital when the investment is partially or fully terminated;
- Provide full protection of property, contractual rights including intellectual property and real estate ownership, as well as high standards on expropriation and compensation;
- Allow access for investors to effective dispute settlement mechanisms including government- ratified and binding instruments such as arbitration;
- Simplify visa, residency, and work permit regulations for key personnel for investment;
- Conclude and ratify international treaties with high standards of promotion and protection of investment and harmonise as far as possible treaty practices within the region;

- Encourage responsible business conduct through:
 - Investment policies that are consistent with sustainable development;
 - Dialogue with social partners on different aspects of investment policy;
 - Promotion of internationally agreed principles of good corporate conduct including the OECD Guidelines for Multinational Enterprises.

2. Investment Promotion and Facilitation

Define and implement an effective strategy of investment promotion that is specific and takes into account best practices, including the OECD Guidelines for Investment Promotion, such as:

- Elaborate government vision and policy on FDI among social partners, civil society and investors;
- Apply investment incentives in a transparent and non-discriminatory manner; undertake systematic reviews of cost/benefits of existing and planned incentives, according to the OECD Checklist on Incentives;
- Establish and/or strengthen Investment Promotion Agencies (IPA) with adequate human and financial resources, whose performance is regularly reviewed;
- Define strategic policy options and set out the corporate strategy and marketing plan for the IPA;
- Involve IPAs in identifying administrative barriers to FDI and establish a programme with clearly assigned responsibilities and target dates to remove such obstacles to investment;
- Set-up mechanisms for regular dialogue between IPAs and investors;
- Provide IPAs an opportunity to express their views on all policy areas related to investment to their governments;
- Encourage IPA involvement in international and regional networks and capacity-building initiatives;
- Facilitate investment and servicing of new and existing investors at all stages of the investment cycle, from start-up to post-investment and new expansion stages;

- Encourage greater integration of foreign business into the economy and the establishment of foreign investment through linkage programmes with SMEs.

3. Tax Policy

Take the following actions in line with the recommendations of the Statement of SEE Finance Ministers of 4-5 December 2003:

- Develop and administer a comprehensive tax strategy, consistent with economic development and investment strategies;
- Develop and maintain transparent, clear and predictable tax laws, regulations and administrative practices and explicit legal basis for all taxes, duties and similar charges; consolidate all income and profit tax laws into a single Code, supplemented by accessible explanatory materials and supporting information;
- Implement a tax system which is equally applicable to foreign and domestic investors;
- Develop a comprehensive tax treaty network to address international double taxation, minimise opportunities for abusive tax avoidance and provide greater certainty of tax treatment (e.g. through dispute settlement mechanisms, such as mutual agreement procedures amongst tax authorities);
- Apply the OECD Guidelines on Transfer Pricing and Thin-capitalisation and other anti-abuse rules to protect the domestic tax base;
- Employ cost/benefit analysis of tax incentives; make the evaluations available to parliamentary committees and the public;
- Implement a tax administration system based on a clear definition of tax payers' rights and responsibilities;
- Implement mechanisms for fast and efficient VAT reimbursement for exporters;
- Establish procedures for co-operation between tax and investment policy makers and investment promotion agencies, and for consultation of the private sector to improve tax policy design, and coherence of tax and investment policies.

4. Anti-Corruption and Business Integrity

Develop effective strategies, legislation and enforcement practices to prevent and punish bribery, corruption and extortion, at the least in line with relevant international conventions and recommendations and the Ministerial Declaration on 10 Joint Measures to Curb Corruption in South East Europe (Stability Pact Anti-Corruption Initiative, May 2005), in particular:

- Develop and apply necessary regulatory and institutional reforms;
- Encourage education and prevention campaigns in all areas of Government and public administration;
- Organise awareness campaigns in order to inform the public on corruption, its implications and their legal rights to act against corruption;
- Develop and implement transparent and straight forward public procurement procedures;
- Introduce and enforce targeted measures to improve transparency and integrity in law enforcement bodies and public administrations, in particular in customs, tax collection, government procurement and administrative practices at provincial and local levels;
- Increase efforts to improve the competence, effectiveness and integrity of the judiciary;
- Evaluate systematically the implementation of anti-corruption measures and make the results public;
- Strengthen regional co-operation, including the use of the Stability Pact Anti-Corruption Initiative to create synergies in the fight against corruption throughout the region.

5. Competition Policy

Promote a competitive market environment, in particular:

- Create and effectively enforce competition legislation which is clear, transparent, non-discriminatory and in line with international best practice;
- Institute independent enforcement agencies with adequate human and financial resources;

- Apply effective sanctions for cartels and other forms of anti-competitive conduct;
- Promote effective communication with the private sector and general public to help enterprises understand and comply with competition law and consultations on proposed changes;
- Develop effective policy advocacy actions through ex ante consultation with Government bodies on draft legislation and policies with impact on competition (e.g. privatisation, trade, regulation of economic activities, economic strategies);
- Expand efforts to ensure the compatibility of privatisation operations with competition principles;
- Promote co-operation among competition agencies on international competition issues, such as cross border cartels and mergers and acquisitions, bearing on the investment environment.

6. Trade

- Implement open trade policies including WTO commitments and free trade agreements, especially the forthcoming Single Free Trade Agreement to be created through the simultaneous enlargement and amendment of the Central Free Trade Agreement (CEFTA);
- Reduce technical barriers to trade and progressive alignment of technical standards and sanitary and phytosanitary standards with EU standards;
- Strengthen accredited inspection institutions that issue internationally recognised quality certificates and support for companies that apply for certification;
- Apply fast and transparent customs administration procedures;
- Develop and implement export promotion programmes consistent with the investment strategy;
- Adopt systematic and regular monitoring and evaluation of the implementation of international trade agreements;
- Commit to regular and systematic consultations with the public and private sector on trade policy.

7. Regulatory Governance

Work toward high standards of regulatory governance:

- Sustain efforts to build a transparent and effective system for regulation, based on a comprehensive, multi-year regulatory reform strategy, incorporating the principles of transparency and accountability;
- Reduce administrative burdens on business, in particular by simplifying licensing and authorisation requirements, shortening delays, redesigning the systems for inspections and auditing by state bodies;
- Consult the private sector and non-government organisations in the regulatory process;
- Implement efficient and speedy complaint and appeals procedures;
- Introduce regulatory impact analysis on a systematic basis to improve draft legislation and government regulations;
- Create a regulatory oversight body at the centre of government with powers of ex-ante appraisal, consultation, advocacy, challenge and monitoring of regulations.

8. Human Capital and Employment

Promote employment and human capital development, in particular:

- Create education and employment policies taking into account market needs and especially focusing on vocational education and lifelong learning;
- Develop policies to encourage firms and governments to invest in employee training programmes;
- Promote private sector involvement in the development and monitoring of governmental human capital development policy;
- Adopt labour market policies which balance social and economic interests, encourage employment and labour mobility;
- Ease transition costs by adopting employment strategies and active labour market measures to help workers move into more productive industries;

- Promote co-operation with the Bucharest Employment Process of the Stability Pact's Initiative for Social Cohesion and implement relative commitments made at the Sofia Meeting of SEE Ministers of Employment in October 2005.

9. Corporate Governance

Implement the recommendations included in the OECD Principles on Corporate Governance and the 2003 SEE White Paper on Corporate Governance. For that purpose:

- Promote sound corporate governance practices in all sectors of the economy and for all categories of enterprises;
- Improve implementation and enforcement by regulatory authorities of rules and regulations relating to corporate governance;
- Review domestic corporate governance system to ensure alignment with OECD Principles of Corporate Governance and publication of the results;
- Develop training and capacity building for all parties and professions involved in corporate governance;
- Improve disclosure and accounting systems, to conform to high quality international standards of accounting and auditing.

10. SME Policy

Take the following actions in line with relevant regional and international recommendations and policy guidelines:

- Support start-ups and micro-enterprises, facilitating their access to basic business services and reducing regulatory compliance costs;
- Enhance and complement access to financial instruments, including access to equity and venture capital;
- Promote training and education for entrepreneurs;
- Improve the quality of regulation, taking into consideration the specific needs and constraints of the small business sector;
- Improve tax policy design and tax policy administration, lowering of tax compliance costs and promotion of the reduction of the informal economy and unfair competition practices based on the systematic evasion of taxes and social contribution.

JOINT BUSINESS STATEMENT

5th Ministerial Conference on A Regional Framework for Investment in South East Europe Investment Compact for South East Europe

Vienna, 26 - 27 June 2006

On the occasion of the 5th Ministerial Conference of Ministers from South East Europe, this Statement is presented to Participants by the Business Advisory Council for South East Europe (BAC SEE) and the Regional Network of Foreign Investor Councils active in South East European Countries, including the Foreign Investor Councils of Albania, Bosnia-Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Moldova, Romania, and Serbia, jointly with the Business and Industry Advisory Committee to the OECD (BIAC).

PREAMBLE

Endorsing the view that policy coherence and continuity are fundamental to sustained economic growth and increased competitiveness in the South East European Region (“the Region”)

Affirming that a predictable and unambiguous legislative, judicial, regulatory and institutional environment is crucial to creating a suitable investment climate;

Welcoming the expressed political commitment of SEE countries to the institutionalisation of regional cooperation and the conclusions of the meetings of the Stability Pact, held in Belgrade on May 30, 2006;

Warmly receiving the Memorandum of Understanding for a single Free Trade Agreement;

Acknowledging the political wisdom demonstrated by all parties involved in the resolution of pending political and constitutional questions;

Urging Governments, the European Commission, donors, International Financial Institutions, Multilateral Development Banks and the broader international community to enhance efforts for regional co-operation, ownership and integration with the European Union (EU);

Calling for tangible actions by all actors involved in the development process,

Business recommends the following priorities for trade and investment facilitation:

RECOMMENDATIONS

1. **Complete basic infrastructure networks.** This should be accomplished through the realisation of projects already identified and accepted by the international community since 1999 (worth cca. five billion US dollars) as well as others that may be necessary. Clear project priorities remain to be identified in the fields of energy, transport, telecommunications, environment, and water management. Procurement processes based on international and European standards and consultations and partnerships between the public and private sector (PPPs) are integral to this process. Governments should recognise the risk that energy production and transmission may become a critical issue within the Region. Measures should be taken to mitigate this risk at both the regional and international levels.
2. **Maximise the benefits of the single Free Trade Agreement.** Governments should elaborate of a pro-active FDI attraction strategy which:
 - a) provides an enabling environment for greenfield investment
 - b) addresses transparency concerns
 - c) reduces time and cost for permits
 - d) works towards the elimination of non tariff barriers to trade (NTBs)
 - e) utilises the available development instruments of the EU and IFIs
 - f) aims to improve the investment image of the region as an integrated market of 55 million consumers, that may also become a major exporter to the East and West
3. **Clarify all regulations and processes governing the land ownership regime.,** This includes completing cadastres and land registers and having clear regulations and procedures regarding:
 - a) changing the use of land
 - b) fee structures for lease of land and facilities
 - c) rights and obligations of municipal authorities
 - d) the disposal of low cost land to enterprises for new greenfield investments;
4. **Enhance the mobility of citizens, students and employees.,** Co-ordinated efforts are needed to:
 - a) facilitate the obtaining of visas to the EU and within the region
 - b) harmonise labour legislation
 - c) facilitate the issuance of work and residency permits
 - d) introduce sufficient flexibility to the labour regime to enhance the competitive advantage of the labour market;

5. **Step up the fight against corruption.** Corruption is an obstacle to doing business in SEE and undermines investment and economic growth. Governments should focus on implementing strong, comprehensive anti-corruption programmes. Special emphasis should be placed on corruption in public procurement, tax administration and customs through the systematic application of the law and monitoring of results.

6. **Build on human capital.** Investment in education and vocational training is greatly needed. Policy should focus on improving managerial and e-skills, competitiveness, and on meeting demand in the labour market. In the public sector, capacity building for the judiciary and public administration is called for. Special emphasis should be placed on introducing and enforcing a code of ethics and fighting corruption.

In addition to these specific reform priorities, Business generally recommends that Government emphasise the implementing existing and future economic reforms, providing appropriate public information regarding reform implementation, and ensuring the transparency of the investment environment.

COMMITMENT

Business is committed to a constructive partnership and dialogue with the Governments of the Region in order to help create a better understanding of practical economic and legal reforms required and support the political leadership and resolve needed for their implementation.

Business is committed to report on progress made in 2006 with the above issues at the 6th Annual Ministerial Conference of the Investment Compact for South East Europe in 2007.

3.4 Emerging Asia

The OECD-Asia Investment Initiative emerged from an exploratory meeting in Shanghai on 6 December 2002, against the background of countries in the region being increasingly concerned about maintaining high levels of foreign direct investment inflows and the implications of China attracting a major share of these inflows.

Co-operation with APEC is part of the Investment Committee's work programme and is one of the main channels through which policy dialogue with Asian economies is conducted. The expected outcome from the Investment Committee's policy dialogue with Asian economies and in partnership with regional bodies is to contribute to an improved investment environment in the region and to retain and maximise benefits of private sector investment for Asian development.

The areas of focus for the co-operation programme on investment for development and how it could be strengthened were discussed at a joint OECD-APEC meeting in November 2005 in Busan, Korea.

The meeting resulted in broad support for more robust and formal cooperation with the OECD in the investment field. The Joint Statement issued by the APEC Ministers of Foreign Affairs and Trade Ministers noted areas where APEC and the OECD could strengthen cooperation on investment, especially within the structure of the Policy Framework for Investment and international investment agreements.¹

In addition to future APEC-OECD co-operation, the discussions focussed on three major themes:

i) *Recent APEC-OECD investment trends and future perspectives.* Speakers highlighted the growing importance of Asian economies as a world investment destination as well as a source of intra-regional financing.

1. http://www.apec.org/apec/leaders_declarations/2005.html and http://www.apec.org/apec/ministerial_statements/annual_ministerial/2005_17th_apec_ministerial.html.

Evidence was also provided on the higher technological and service content of these investment activities. In addition, participants underlined the need for more reliable statistics to measure the impact of these trends.

ii) *Policies capable of attracting investment.* There is an emerging consensus that attractive policies in this area should include a transparent and predictable investment climate, with proper enforcement and respect for property rights, embedded in sound macroeconomic policies and institutions. There was broad support for the whole-of-government approach promoted by the PFI for the improvement of the business environment. The lessons learned from the Asian financial crisis also pointed to the desirability of widely implementing the OECD Corporate Governance Principles across Asia.

iii) *Preferential investment agreements.* The discussion focused on the challenges arising from emerging regional trading blocs as well as the dangers of resilient protectionism instincts and increased business costs, which could be associated with the multiplication of heterogeneous rules. This multiplication called for the elaboration of good practices, taking into account OECD work on investment.

The Busan, Korea meeting was followed by a seminar in Hoi An Vietnam in September 2006 to familiarise APEC investment experts on the PFI and to assist them in identifying how they could make the best use of the PFI to improve their investment climate.

The seminar was divided into three parts. The first part discussed specific chapters of the PFI, the second focused on ways and methodology for making use of the PFI as a non-prescriptive and flexible policy tool and the third was devoted to the business community point of view.

Many participants reiterated that the PFI could provide a basis for stronger APEC-OECD co-operation on investment. It was also recognized that there was a need to move to the implementation stage and develop guidance on how individual economies could make use of the PFI.

The OECD is now developing a methodology for policy assessment based on the PFI. Initial results will be presented at an APEC Investment Experts Group Meeting in early 2007. This will provide a basis to move forward on Vietnam's expressed interest in testing the PFI through an in-depth self-evaluation of its policies for investment, as well as for an APEC Public Private Policy Dialogue on the PFI to be hosted by Australia in Melbourne on 1-2 March 2007.

Chapter 4.

China, India and Russia: Boosting Policy Transparency

An element of the OECD Investment for Development Initiative includes dialogue with the major non-member players in the field of international investment. Three large countries currently involved with the OECD Investment Committee are China, India and the Russian Federation.

The co-operation focuses on promoting transparent and open investment policy and effective implementation, improvement of FDI data quality and maintaining appropriate standards in support of sustainable development.

This chapter outlines the country programmes of co-operation with the People's Republic of China and the Russian Federation. It also summarises the recently established dialogue between the Government of India and the OECD Investment Committee, with information on the salient features of India's Investment Agreements.

4.1. China

Co-operation between the OECD and China began in 1995. The programme focuses on developing a mutually beneficial exchange of experience to promote an open and transparent policy framework for investment in China. A rules-based framework can encourage more and better foreign investment while maximising spill-over to the domestic economy, stimulating economic growth and development.

China has become one of the world's leading destinations for FDI. However, while cross-border M&As are the dominant form of global FDI flows, they remain a relatively small part of FDI flows into China. Improving the regulatory framework for cross-border M&A can be of great benefit to domestic as well as foreign investors in China. Cross-border M&As can play, for example, an important part in the restructuring of state-owned industries, especially in the old industrial heartland in North East China.

Recognising this, the co-operation programme has focussed on the obstacles to cross-border M&As. The 2003 Investment Policy Review concluded that several obstacles needed to be tackled before cross-border M&As could play a full part in China's economic development. It recommended a number of policy options, including the relaxation of formal restrictions on foreign enterprise ownership, the streamlining of investment approval procedures and improvements in the institutional framework such as stronger enforcement of intellectual property rights, greater transparency in the formulation of legislation and a more effective legal system.

In 2005 the OECD conducted a project in co-operation with China to study progress in developing and implementing the regulatory framework for cross-border M&As. This project took the form of a pilot study of the implementation of these policies in North-East China and culminated in an OECD-China Symposium on China's Policies towards Cross-Border M&As in Beijing in December 2005. See Annex 1 for summary of the symposium. China's policy towards cross-border mergers and acquisitions in relation to the revitalisation of the old industrial bases in North-East China was also discussed at a joint seminar between the Ministry of Commerce of the People's Republic of China (MOFCOM) and the OECD at the 9th China

International Fair for Investment and Trade on 8 September 2005 in Xiamen.

The results of the symposium and seminar fed into the 2006 Investment Policy Review, which charts China's recent rapid progress in developing a regulatory framework for cross-border mergers and acquisitions. It examines the challenges that still face the Chinese government in its efforts to encourage inflows of foreign direct investment by this route and draws on the experience of OECD Member countries to offer a range of policy options to address these challenges. Annex 2 summarises the main findings and recommendations.

The future activities of the co-operation programme will include a project with China on OECD Member country and Chinese government approaches to encouraging responsible business conduct. This project responds to China's increasingly apparent need to develop concepts and mechanisms to promote good corporate citizenship in the context of both rapid economic growth in China and increasing investment by Chinese enterprises abroad. It also stems from the need of OECD-based multinational enterprises to be able to compete with Chinese enterprises on a level playing field.

Civil society organisations in China will be invited to participate with the OECD and with the Chinese government in an exchange of views on major areas of responsible business conduct. The objective is to reach a common understanding and to work with existing initiatives to promote stronger and better-informed commitment to good corporate behaviour on the part of all enterprises operating in China and all Chinese enterprises operating abroad. Prominence will be given to the OECD Guidelines for Multinational Enterprises in this dialogue.

Annex 1

Summary of the OECD-China Symposium on China's Policies Towards Cross-Border Mergers and Acquisitions

Background

The OECD-China Symposium on China's Policies Towards Cross-Border Mergers and Acquisitions was held on 8-9 December 2005 in Beijing. The Symposium was the culmination of the Investment Committee's 2005 co-operation programme with China on this topic, taking the North-East China as a pilot project. This work began with a launch conference in Changchun, North-East China, in February 2005 followed by a Secretariat research mission to the three North-East China provincial capitals and Beijing in April. In September the Investment Committee Secretariat organised a joint seminar on the same subject with China's Ministry of Commerce (MOFCOM) at the 9th China International Fair for Investment and Trade in Xiamen.

The Symposium was opened by MOFCOM Director-General Hu Jingyan and OECD Deputy Secretary-General Herwig Schlögl. Lu Lanping, First Secretary of the Foreign Investment Administration of MOFCOM, co-chaired the first and final plenary sessions. The respective OECD co-chairs of these sessions were OECD Investment Committee member Gerry Antioch (Australia) and World Bank Mission Head in China, David Dollar.

Strong participation of Chinese government officials and business communities

The Symposium was attended by some 100 active participants. A total of 31 officials attended from the Chinese government. These included division chief-level officials from the Foreign Investment Administration and senior researchers from the Chinese Academy of International Trade and Economic Co-operation (CAITEC) attached to MOFCOM. In addition, seven officials attended from North-East China (Investment Promotion Bureau of Heilongjiang Province, Commercial Department of Jilin Province and Economic Co-operation Bureau of the Harbin Municipal Government) and from Liaoning Provincial Bureau of Foreign Trade and Economic Co-operation. OECD Member country government representatives were from Australia, Germany, Iceland, Japan, New Zealand, Norway, Spain, Switzerland and the United States. Participating international organisations

included the World Bank, the International Finance Corporation and the EU-China Financial Services Co-operation Project.

OECD-based multinational enterprises included BASF, Baxter Healthcare, Credit Suisse, General Electric, Intel, Mundoro, Peak Capital, Sandoz, Société Générale, Standard Chartered Bank, UPS and Windypoint Capital, together with business representative organisations, including the United States Council for International Business and the United States China Business Council (USCBC). Major Chinese enterprises attending the Symposium included China Aviation Industry Corporation II (AVIC II) and UFIDA Software Engineering. The China Chamber of Commerce and the Institute of Boao Forum for Asia also participated.

Among practitioners engaged in arranging cross-border mergers and acquisitions were Deloitte & Touche, Garvey Schubert Barer, Gide Loyrette Nouel, King & Wood, Shearman & Sterling, Squires, Sanders & Dempsey, and Vinson & Elkins. Chinese investment managers and consultants were represented by Beijing Time-Fortune Investment and Management, Capital, Huizhong Asset Management & Portfolio Service Company and Jade International. Participating Chinese academics invited by the OECD included the director of the Multinational Corporation Research Division of the Chinese Academy of Social Sciences (CASS).

Break-out discussion groups' outcomes

Participants were divided into three break-out discussion groups, covering the main aspects of the regulatory framework for cross-border mergers and acquisitions in China as analysed in the draft background report prepared by the OECD Secretariat. Each group started by electing a moderator and *rapporteur* and finished each discussion by agreeing a summary of proceedings to be reported at the final plenary session. All discussion in the break-out groups was held under Chatham House rules to encourage free exchange of information and ideas.

The first break-out discussion was on Ownership Restrictions and Strategic Sectors. This discussion centred mainly on the catalogues for guidance of foreign invested industries, which divide the Chinese economy into prohibited, restricted, permitted and encouraged sectors for foreign investment approval purposes. It also focused on the lack of transparency of the Chinese government's practice of ruling sectors off-limits to foreign investors when they are deemed "strategic".

The second break-out discussion was on Streamlining the Approval Process for Cross-Border Mergers and Acquisitions. While recognising that the Chinese government has made progress in streamlining these

procedures, delegates suggested ways in which the process could be further simplified. They also proposed measures to provide essential and timely information to foreign investors.

The third break-out discussion was on Strengthening Corporate Transparency and Disclosure for More Effective Due Diligence. The Chinese government has adopted measures to improve corporate governance, including the adoption of a Code drawing on the OECD Principles of Corporate Governance, but observance was considered to remain weak. Delegates proposed practical steps to encourage better corporate governance performance on the part of Chinese enterprises.

Recommendations

Delegates agreed with the draft background report's diagnosis of current obstacles to cross-border M&A in China, adding examples of their own. In addition to supporting the policy recommendations in the report, they made specific policy proposals designed to promote a more open and transparent regulatory framework for cross-border M&As. Some of these proposals are aimed at overcoming potential difficulties faced by the Chinese government in implementing liberalisation measures in this area.

Recommendations fell in five categories:

- further relaxation of foreign ownership restrictions;
- increased regulatory transparency;
- adopting internationally-standard and transparent merger notification procedures;
- further improving corporate governance;
- and fully opening capital markets to foreign investor participation.

Whereas Chinese officials in earlier meetings tended to concentrate on either investment promotion or justification of the existing policy regime, in the Symposium Chinese government representatives acknowledged problems and co-operated with their peers to seek practical solutions. As a result, they are already engaged in working informally with practitioners at the Symposium to develop more open and transparent measures towards facilitating foreign investment.

*Annex 2***Overview and Recommendations of the
2006 OECD Investment Policy Review of China**

China stands to benefit from more open policies towards cross-border M&As. While cross-border M&A has become the predominant form of FDI in the world, it forms a relatively small—though growing—proportion of China's FDI inflows. China's industrial heartland in the North-East has a high concentration of state-owned enterprises (SOEs) in need of restructuring and technological upgrading. Cross-border M&A can play a much larger part in the economic development of the North East, and the rest of China, alongside other forms of FDI.

The 2003 *OECD Investment Policy Review of China: Progress and Reform Challenges* recommended a number of policy options to enable China to attract more and better FDI by developing a more open and transparent rules-based investment environment. These options included further relaxation of remaining foreign ownership restrictions, streamlining of foreign investment project approval procedures, better protection of intellectual property rights and stronger rule of law.

Since 2003 China has adopted some measures of further opening to FDI reflecting policy options recommended in the Review, particularly in the streamlining of project approval procedures. In 2003 China also promulgated landmark legislation on cross-border M&A.

The OECD's preliminary findings on the investment climate in North-East China indicate that a number of obstacles to cross-border M&A persist in the region and in China as a whole. The regulatory framework for cross-border M&A remains fragmentary, over-complex and incomplete. The Chinese government continues to close off so-called "strategic assets" to cross-border M&A without specifying which sectors are defined as strategic, or why. Foreign ownership restrictions persist and are not wholly transparent; a recent revision of the Catalogue for Guidance of Foreign Investment Industries shows no significant liberalisation and additional sectoral restrictions not listed in the catalogues have been announced. Cross-border M&A approval procedures are cumbersome and time-consuming. There is a lack of transparency and disclosure in potential cross-border acquisition targets, reflecting poor corporate governance in Chinese enterprises, rendering effective due diligence difficult or impossible. Chinese methods of valuing a company differ significantly from OECD Member common practice. The largely off-market ownership structure of Chinese listed enterprises and the closure of the A share market to foreign

investors make takeovers difficult. The competition framework within which M&A transactions are conducted is inadequate; there is no competition law providing for formal merger control and current merger review does not conform to international best practices in terms of substantive standards and review procedures.

More open policies towards cross-border M&A can benefit foreign investors; they can also benefit domestic investors, who face many of the same problems. Domestic enterprises often seek merger or acquisition with a foreign partner to obtain new technology, management techniques, markets and debt cancellation. It is as much in their interests to complete the cross-border M&A transaction as it is in the interests of the foreign investor. Restrictions on foreign ownership which limit cross-border M&A can therefore also be a problem for such domestic enterprises. In addition, many generalised institutional obstacles affect all domestic enterprises just as much as foreign-invested enterprises, for example the widespread lack of corporate transparency.

The Chinese authorities are invited to consider a number of policy responses to these challenges, including: further relaxation of foreign ownership restrictions; increased regulatory transparency; adopting internationally-standard and transparent merger notification procedures; further improving corporate governance; and fully opening capital markets to foreign investor participation. These policy responses may be facilitated by initially implementing them on a pilot basis and then spreading them to the rest of the country if and when they prove successful. North-East China may be an appropriate location for such pilot projects if cross-border M&As are considered an important element in the region's industrial revitalisation.

4.2. Russian Federation

The Russian Federation and the Investment Committee have been intensifying investment policy co-operation over the past six years in recognition of the importance of foreign investment policies in Russia's overall reform strategy, the critical role of international investment for economic diversification and modernisation as well as the need for Russia to harmonise its policies with international best practices as a part of the country's integration into the world economy and international system.

The co-operation programme uses the peer review mechanism to assist Russia in assessing the compatibility of its investment policies with OECD standards and eventually preparing its adherence to OECD investment instruments. The OECD Investment Policy Reviews have fostered mutually beneficial dialogue and supported Russia's efforts to liberalise its investment regime.

The main output from the 2005-2006 co-operation programme was the publication in July 2006 of an Investment Policy Review examining developments in Russia's regulatory investment environment since the 2004 OECD Review and focussing on enhancing policy transparency. The annex summarises the main findings and recommendations.

The future activities of the co-operation programme will seek to prompt Russia to foster convergence of its investment policies with OECD best practices and instruments, in particular standards of national treatment and responsible business conduct as embodied in the OECD *Codes of Liberalisation, the Declaration on International Investment and the Guidelines for Multinational Enterprises*. The work should also assess the implementation of the laws on special economic zones and concessions and the forthcoming legislation on strategic sectors. Other areas to be explored are Russia's role as both a destination and source of FDI, in particular in the energy sector, and in the Commonwealth of Independent States (CIS) area and its policies toward responsible business conduct by domestic companies, including Russian companies operating abroad.

Annex 1

Overview and Recommendations of the 2006 OECD Investment Policy Review of the Russian Federation

Published in July 2006, the 2006 Review examines developments in Russia's regulatory investment environment since the 2004 OECD Review¹. The Investment Committee discussed the draft of the Review on 11 April 2005, in the presence of Russia's high level delegation headed by Kirill Androsov, Deputy Minister, Ministry of Economic Development and Trade and Mr. Andrei Kozlov, First Deputy Chairman of the Central Bank. The Review includes an analysis of capital control reform and a survey of Russia's approach to international investment agreements. In assessing these developments and offering options for further improvements, policy transparency and effective implementation have been the focus of this Review.

The Review argues that more international investment is needed to support Russia's economic development and diversification. Since 2003, Russia has attracted increased amounts of foreign direct investment (FDI), which reached record levels in 2004 and 2005. However, the share of FDI in domestic capital formation still remains low by international comparison. In 2005 the manufacturing sector attracted the largest FDI share and the energy sector accounted for one third of inflows, but Russia's service sectors have not yet benefited from significant FDI. Russia's international investment statistics provided by the Central Bank of Russia have been improved in line with OECD standards, but consistency problems between different Russian data sources persist.

Despite progress, the level of restrictions on foreign investment, measured by the regulatory FDI restrictiveness index, remains above the OECD average. Russia's formal barriers on FDI are high in insurance, electricity and transport, whereas some other sectors such as distribution and business services have been opened up. In addition to equity restrictions, foreign investors face impediments in licensing procedures and other business-related regulations concerning for example foreign personnel, often aggravated by corruption and the lack of predictability.

The Review shows that insufficient policy transparency remains a serious obstacle to investment. Based on an OECD business survey carried

1. OECD Investment Policy Review of the Russian Federation: Progress and Reform Challenges, Paris, 2004.

out in 2005, foreign investors acknowledged improvements in information access and administrative simplification in a number of areas, such as foreign exchange regulations, but expressed concerns on non-transparent implementation in other fields, often under regions' competence, including land and property registration and work permits. The business community also finds prior consultation on regulatory changes insufficient. Improved policy transparency would naturally limit opportunities for corruption, which has been identified as a major impediment to investment in a number of other recent business surveys.

New laws on Special Economic Zones (SEZ) and Concessions can have a positive impact on investment. Costly investment promotion efforts and targeted investment incentives have not been effective in helping regions attract more foreign investment. The new laws could allow regions to exploit their potential comparative advantages better if they are implemented in a non-discriminatory and transparent manner, with a minimum of market distortions. A regulatory impact assessment of these programmes would be desirable, especially given the past experience with SEZ in Russia.

The forthcoming law on "strategic sectors" will be a test of the government's commitment to transparency. Consistent with best practice under the OECD instruments, the Review recommends that the future law defines narrowly the sectors concerned, limits the scope of restrictions to foreign control over domestic companies based on a strict interpretation of essential security interests, and clarifies the modalities of government review and permission procedures, in particular, by establishing specified time limits for notifications of government decisions to the applicants.

The Review welcomes the abolition of capital controls on 1 July 2006, in advance of the schedule of 1 January 2007 initially foreseen by the 2004 Foreign Exchange Law. Financial market participants have considered the system of capital controls too complex, insufficiently transparent, often ineffective and costly for both foreign and domestic investors. Consistent with the OECD instruments, the orderly removal of capital controls needs to be accompanied by supporting measures, including statistical reporting, appropriate tax control, anti-money laundering and non-discriminatory prudential safeguards. The Review encourages efforts to improve information sharing among the regulatory bodies of financial markets in Russia.

The Review invites continued efforts to enhance investment policy transparency. It welcomes the planned reduction of activities subject to mandatory licensing and the establishment of a Register of regional and municipal legislation. It encourages a speedy adoption of the new law on

access to information submitted by the government in 2005. The Review recommends more effective consultations with interested parties, publishing and reviewing administrative decisions, and using electronic dissemination of investment regulations more extensively. It suggests the application and disclosure of regulatory impact assessments for special investment incentives regimes. The Review also encourages the inclusion of strong transparency disciplines into Russia's future investment agreements.

4.3. India

Investment Committee co-operation with India fosters evidence-based dialogues in support of more transparent and open policies for investment.

Since the OECD-India Investment Roundtable and Global Forum on International Investment held back-to-back in New Delhi in October 2004, India has held several dialogues with the Investment Committee. India was also a participant in the Committee's Task Force which oversaw the development of the *Policy Framework for Investment* (see Chapter 2). India also actively contributed to the 2005 OECD annual Roundtable on Corporate Responsibility devoted to the theme of "The OECD Guidelines and Developing Countries – Building Trust", held in conjunction with the Annual Meeting of the National Contact Points for the OECD Guidelines for Multinational Enterprises.

This has helped to raise the level of awareness and to better understand the motivation for India's policies towards investment. Ongoing co-operation efforts aim to deepen policy dialogue between India and OECD members. One area where background analytical work has been carried out by the Investment Committee secretariat in preparation for a dialogue relates to India's recent approach to investment agreements. Annex 1 is a synthesis paper that draws out the salient features of India's investment agreements.

Annex 1

Salient features of India's investment agreements

Executive Summary

Since the mid-1990s, India has entered into 56 bilateral agreements to “promote and protect” cross-border investment with 18 OECD countries and 38 non-OECD countries mainly from Asia and the Middle East. These agreements are estimated to cover 65 per cent of India’s inward FDI and 40 per cent of its outward FDI.

The Indian Bilateral Investment Promotion and Protection Model Agreement (BIPA Model) offers strong guarantees in the post-establishment phase on fair and equitable treatment, national treatment, expropriation and free transfers as well as direct access to international arbitration. MFN treatment is limited, however, to investors and returns; there are no obligations on performance requirements; and most of the agreements do not include umbrella clauses. Except for provisions on transparency and entry and sojourn of personnel, the Indian Model does not incorporate any of the novel features observed in recent OECD investment agreements.

A brand new type of agreement, the India-Singapore Comprehensive Economic Cooperation Agreement (CECA) has entered into force on 1 August 2005. It is intended as a “template” for India’s integration with countries in the South East region and, presumably, other countries. CECA’s Investment and Trade in Services chapters, in particular, contain significantly expanded obligations from the BIPA Model. Obligations on pre-establishment and performance requirements in the goods sectors, and “GATS Mode 3” market access and liberalisation commitments on services are offered for the first time. Stronger guarantees after establishment of national treatment and traditional investment protection are also given together with a prior consent to investor-to-state arbitration. Special clauses articulate the relationship between the investment and trade-in-services chapters. A separate Annex on expropriation identifies criteria on how to distinguish between compensable and non-compensable regulatory actions on case-by-case basis.

At the same time, CECA omits any obligations on MFN treatment, Fair and Equitable Treatment and Full Protection and Security and does not include any umbrella clauses. There are more extensive public interest safeguards to pursue certain objectives such as health, safety, and environment, the conservation of natural exhaustible resources, public

order, national security or other public goals, in several instances inspired by WTO language. Some additions are directly drawn from NAFTA-like agreements (such as special and information requirements formalities) or the GATS (domestic regulation of services and transparency) or both (balance-of-payments safeguard). The sweeping derogation for measures in the public interest stands alone, however, among investment agreements. Finally, a “fork in the road” is introduced to increase the predictability of the arbitration process.

Overall, CECA shares a fair number of novel features with recent OECD investment agreements, but it also incorporates important new differences.

I. Introduction

Since the launching of its Economic Reforms Programme in the early 1990s, of which foreign investment policy was made a major part, India has entered into 56 bilateral agreements to “promote and protect”, on a reciprocal basis, investment coming into or originating in its territory, generally referred to as “BIPAs”. 46 are in force, 10 more are waiting to be signed and a few more are under negotiation.¹

In a further move to boost its investment relations with strategic economic partners, India has also, on 1 August 2005, entered into a Comprehensive Economic Cooperation Agreement (CECA) with Singapore, which, for the first time, integrates investment provisions into a broad package of trade liberalisation and other economic and facilitation measures. Similar broad agreements are reported to be under active negotiation, with Chile, Sri Lanka and Thailand, as well as with four influential world trading blocs – ASEAN,² BIMST-EC,³ MERCOSUR⁴ and SAFTA.⁵ In addition, exploratory talks or feasibility studies have been initiated with several other partners, including with the United States, the EU, Japan and other “BRICS” countries⁶. Judging from the list of prospective agreements (Appendix 1), no

1. http://finmin.nic.in/the_ministry:dept_eco_affairs/investment_div/invest_index.htm#Background_and_salient_features.

2. The Association of South East Asian Nation.
3. Bangladesh-India-Sri Lanka-Thailand Economic Cooperation.
4. A trading bloc comprised of Brazil, Argentina, Uruguay and Paraguay.
5. The Agreement on South Asian Free Trade Area.
6. Namely Brazil, China, Russia, South Africa.

economic partner seems *a priori* excluded from India's rapidly evolving economic diplomacy.

With the insight resulting from, and the methodology developed for, the recent Investment Committee's stocktaking of OECD investment agreements,¹ the purpose of this Note is to identify the main investment obligations which have been contracted by the Indian government under the framework of its investment agreements, and any new emerging trends or features. In order to give due regard to the chronology of these agreements, the Note will start with a review of Indian BIPAs and then turn to a detailed analysis of the newly born India-Singapore CECA.

II. India's BITs – Which Model?

While essentially drawing on the same source – the 1967 OECD Draft Convention on the Protection of Foreign Property – the early 1990s saw the emergence of two BIT Models, the “European Model” and the “North American Model”. If both models shared the same inspiration, notably as regards a broad “asset-based” definition of investment, basic “protections” relating to expropriation, transfers, and international arbitration, the North American Model introduced a “liberalisation” dimension absent from the OECD Draft Convention by extending its coverage to the pre-establishment phase,² performance requirements and a few other aspects facilitating market entry.⁷

India's BIPAs appear to be primarily based on the “European Model” broadly prevalent at the time India embarked on this process. This emerges clearly from India's communication to the WTO Working Group on the Relationship between Trade and Investment in April 1999 in which it stated:

“Typically, BIPAs try to promote foreign investment through “protection”, that is to say, by assurance to foreign investors that have been admitted in accordance with the host country's policies, laws regulations is guaranteed fair and equitable treatment including national and MFN, full and constant legal security and dispute resolution through international mechanism including for investor to state disputes.”

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1. Summarised in Novel features in OECD countries' recent investment agreements: An Overview, Dec 2005 www.oecd.org/dataoecd/42/9/35823420.pdf
 2. A more detailed description is provided in “Relationships between International Investment Agreements”, OECD Working Papers on International Investment, 2004/1, www.oecd.org/dataoecd/8/43/31784519.pdf.

It should therefore come as no surprise that European countries account for 26 of India's BIPAs – 18 of which are OECD Members (Australia is the only other OECD partner). But the majority of Indian BIPAs (29) have been contracted with developing countries from Asia (16), the Middle East (9), Africa (4) and Latin America (1). That is to say that the South/South dimension predominates over the North/South dimension of these agreements.

Indian BIPAs also play a dual function, that of promoting foreign investment into India, and that of protecting Indian's investments abroad. This can be derived from the FDI statistics published by the Central Bank of India. Indian BIPAs cover over 65 per cent of Indian total FDI inflows (\$4.5 billion) and over 40 per cent of India's FDI outflows (\$2 billion). Mauritius plays a major role at both ends (35 per cent of inflows and 12 per cent of outflows). Russia (20 per cent of outflows) and Middle East and Central Asian oil producers are also significant recipients of Indian outward direct investments. This dual role was also acknowledged in the India's communication to the WTO where it stated that:

“India had pursued a policy of entering into BIPAs with a view to providing predictable investment climate to foreign investment in India as well as to protect Indian investments abroad.”

III. Salient features of India's BIPAs

While the “Indian BIPA Model”¹ shares many of the same features of the “European Model”, there are noticeable differences between agreements, all of which cannot be attributed to India alone; they also take into account the positions of India's negotiating partners. These differences are important because they may come into play in the context of investment disputes.² The following section highlights some of these differences taking a representative sample of India's BIPAs, namely:

India-Australia (1999), India-Belgium-Luxemburg (2001), India-France (1997), India-Korea (1996), India-UK (1994), India-Switzerland (1997) as illustrations of BIPA with OECD countries;

1. The text of the BIPA Model can be found at http://finmin.nic.in/the_ministry/dept_eco_affairs/investment_div/invest_index.htm#Indian%20Model%20Text%20BIPA.
2. According to Article 31 of the Vienna Convention of the Law of the Treaties, “A treaty shall be interpreted in good faith with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose”.

India-Indonesia (1999), India-Thailand (2001), and India-Sri-Lanka (1997) as illustrations of BIPA with developing Southern Asian partners;

India-Oman (1997) as an illustration of a BIPA with an important oil supplier to India; and

India-Ghana (2000) as an illustration of a BIPA with a Sub-Saharan African country.

The following analysis reproduces the BIPA structure typically divided into (a) preambles; (b) definitions; (c) scope of application/ applicable laws; (d) promotion and protection; (e) national treatment and MFN treatment; (f) entry and sojourn of personnel; (g) expropriation and compensation; (h) transfers; (j) exceptions and (f) dispute settlement.¹ In going through this review, the reader should also keep in mind that the BIPAs are relatively short (about 10 pages and 15 articles). They also have a standard duration of ten years and their investment guarantees are valid for fifteen years after their termination.

Preambles

All but two of the preambles reviewed provide a very short description of what the agreements are intended to do. Taking the India-UK BIPA as an example, the main objective of these agreements is to “*create favourable conditions for fostering greater investment*” between the two Parties, “*recognising that the encouragement and reciprocal protection... will be conducive*” to this outcome and “*increase economic prosperity*” in both States.

The Australia-India BIPA is a bit more elaborate. It also states that “*investment relations should be promoted in accordance with the internationally accepted principles of mutual respect for sovereignty, equality, mutual benefit, non-discrimination and mutual confidence*”; that investments into the parties territories “*should be made within the framework of national laws;*” and “*that it is important to pursue the agreement objectives through a clear statement of principles relating to the protection of investments, combined with rules designed to render more effective the application of these principles.*” The Korea-India preamble states that the encouragement and creation of favourable conditions for investment shall be done on the “*basis of equality and mutual benefit*”.

1. The subrogation and final provisions articles follow general BIT practice and need not to be examined here.

In all texts, however, these clarifications do not depart from the main character of the agreements, that of protecting investment after establishment. It is interesting to note that, unlike the OECD Draft Convention,¹ the BIPAs do not appear to generally refer to international law as a basis for strengthening international economic relations.

Definitions

All Indian BIPAs seem to provide an asset-based definition of “investment”. The list of items may differ somewhat from one agreement to the other but the end result is ultimately the same. A particularly comprehensive formulation is found, for example, in the India-Switzerland BIPA (Article 1) which reads:

“The term “investment” shall include every kind of asset and particularly:

- (a) movable and immovable property as well as other property rights such as mortgages, lines or pledges;*
- (b) shares in stocks of a company and any similar forms of participation in a company;*
- (c) rights to money, including bonds and debentures, or any performance under contract having an economic value;*
- (d) protection of intellectual property rights (such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin) as well as know-how and good will in accordance with the relevant laws of the respective Contracting Party;*

1. The preamble article of the OECD draft Convention reads:

“Desirous of strengthening international economic co-operation on a basis of international law and international confidence;

Recognising the importance of promoting the flow of capital for economic activity and development;

Considering the contribution which will be made towards this end by a clear statement of recognised principles relating to the protection of foreign property, combined with rules designed to render more effective the application of these principles within the territories of the Parties to this Convention; and

Desirous that other States will join them in this endeavour by acceding to this Convention;

The States signatory to this Convention HAVE AGREED as follows:”

(e) *business concessions and other rights to conduct economic activities conferred by law or under contract, including concessions to search for and extract oil and other minerals.*"

The inclusion of business concessions conferred by law or under contract, although not unusual in bilateral investment treaties, is particularly interesting because of its relevance to the so called "umbrella clauses" which can elevate contract breaches into breaches of international law. Both the Indian Model and most BIPAs seem to do without such clauses however. In the two observed cases when they do, (e.g. the India-Belgium-Luxembourg and India-Switzerland BIPAs), investor-to-state dispute resolution may be applicable only in the absence of normal local judicial remedies being available. It is also interesting to note that the definition of intellectual property rights is always limited to the rights created by the relevant laws of the contracting parties, an important qualification which seems to have disappeared in most recent OECD investment agreements.

As regards "investors", there seems to be a greater variation in the definitions. Natural persons who qualify as "nationals" and all companies "constituted in accordance with the law of the parties" are entitled to benefit from the agreements. Each party's laws may, of course, define "nationals" and "companies" differently. The India-Switzerland agreement contains a qualification not generally apparent in India's BIPAs to the effect that covered companies must engage in "substantive business".

India's territory is defined to include its territorial waters and the airspace above it and other maritime zones including exclusive economic zones and continental shelf over which India has sovereign rights or jurisdiction in accordance with its laws in force and international law, including the 1982 United Nations Convention on the Law of the Sea.

Although not provided by the BIPA Model, investments made through companies established in a non-party, the so-called "indirect investments", may also benefit from individual agreements. This extension would seem to be reserved to developed partners however.¹ For instance, the BIPAs with Ghana, Indonesia, Thailand or Oman only apply to investors which are "nationals or a company of a Contracting Party.

When indirect investments are included, there are also conditions attached. The Australia-Indian BIPA, provides, for example, that the companies established in third countries must be owned or controlled to the extent of at least 51 per cent of their equity or 51 per cent of their voting rights by persons of one of the parties, with the onus of the proof put on the

1. The India-UK BIPA does not extend to indirect investments however.

investor. This BIPA (Article 2, paragraph 3) also makes it clear that a company in that situation is not entitled to receive the protection of the Agreement if it had already invoked the investment protection of a BIPA with a third party. This provision seems to be directed at avoiding the situation of multiple arbitral proceedings.

The definitions article also usually provides a separate definition of “returns” to which an overriding MFN treatment obligation applies. “Returns” mean “the monetary amounts yielded by an investment such as profit, interest, capital gains, dividends, royalties and fees”.

Scope of application/Applicable laws

While the definition “articles of Indian BIPAs” typically describes the “objects” or “beneficiaries” of the agreements, the *scoping articles* typically delineate the field of application of the contracting parties’ obligations to them. The most recurrent formulations are that the BIPAs “shall apply to all investments “made”, “accepted” or “admitted”¹ in accordance with the host country’s laws and regulations. The later can be extended to “policies” as well.² Although not explicitly stated, the laws and regulations in question seem to cover those adopted at the sub-national level (a non-negligible detail in a federal state like India).

As a general rule, investments made prior to the entry into force of the BIPA are protected at par with investments made afterwards. There may be exceptions however. For example, the India-Ghana Agreement is not applicable to claims or disputes relating to events or actions taken or completed before the entry into force of the agreement even if the effects remain after that date.

The articles pertaining to “Applicable Laws” may also serve to reiterate that “all investments shall be governed by the laws of the parties”. In the Indian Model BIPA, which seems to be closely followed in many instances (India-Ghana, India-Indonesia, India-Oman, India-Thailand and India-UK agreements), this article also contains a national security exception formulated as follows: “*Nothing in the Agreement precludes the host Contracting Party from taking action for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory*

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1. The India-Thailand BIPA (2001) goes on to state that “... and where applicable, specifically approved in writing by the competent authorities concerned of the Contracting Party”.
 2. Article 3 of the India-Australia BIPA (1999) and India-Indonesia BIPA (2001).

basis". In the India-Korea BIPA, the exception is limited to measures taken for the prevention of diseases and pests in animals or plants (the agreement does not seem to contain a national security exception). In other cases, the essential security exception is lodged in a separate article on "*Prohibitions and restrictions article*" (see paragraph 38 below).

Promotion and protection

The standard of treatment to be accorded is generally introduced by an article on the "*promotion and protection of investments*". Then an article on "*National Treatment and MFN treatment*" defines the scope of application of these two obligations and related exceptions. As provided by the BIPA Model, some agreements also incorporate a separate article on the provisions on the *Entry and Sojourn of Personnel*. More recent agreements also seem to follow OECD growing practice of including a special article on *Transparency*.

While the "*Promotion and Protection*" article encourages the parties to create favourable conditions for investors, this is usually also the place holder for stating that admission or establishment shall be made "in accordance with domestic laws". An additional phrase in the Australia-India BIPA, "applicable from time to time", confirms the host country's right to change its laws, regulations, and policies if it so wishes.

The "*fair and equitable standard*" and the "*full and protection standard*" are quite often lodged in this article as well. In the Australia-India BIPA, the word "full" is dropped from the protection and security obligation but it is also stated that the contracting party "shall not impair the management, maintenance, use, enjoyment or disposal of investments".

The France-India Agreement, however, devotes a separate article to the fair and equitable standard, which must be applied in accordance with international principles (Article 4). The article also commits the parties to apply it to "*the transportation of goods or persons directly related to an investment (subject to the provisions of any existing bilateral or international agreements governing international transport of these goods and services)*". A separate paragraph provides that nationals authorised to work in the territory of one party shall not be prevented from enjoying their rights.

National Treatment and Most-Favoured-Nation Treatment

In accordance with the BIPA Model, this article typically extends both standards to investments of investors of the other party generally expressed as "*treatment no less favourable than that accorded to investments of its*

own investors or investors of any third State". Investors (and their returns to investment), on the other hand, are only entitled to MFN treatment.

The construction is a bit different in the case of the India-Australia Agreement. The National treatment obligation is made subject to domestic laws, regulations and policies. The MFN treatment, on the other hand is be given "at all times" to investments, a phrase which would seem to suggest a cross reference to the unconditional character of the GATS MFN provision. In addition, investors shall benefit from MFN treatment as regards the "management, maintenance, use, enjoyment or disposal of investment".

Both the India-Indonesia and India-Thailand agreements link the MFN treatment obligation to the fair and equitable standard. In the India-Indonesia Agreement, the two standards are combined as follows: "Each Contracting Party shall in its territory accord to investors of the other Contracting Party as regards the management, use, enjoyment or disposal of their investments, treatment which is fair and equitable and no less favourable than that which it accords to investors of any third State". The India-Korea Agreement (Article 3) combines, on the other hand, these two standards with the National treatment standards in regard to investments as follows: "Each Party shall... accord ..*"fair and equitable treatment which shall be not less favourable than the treatment accorded to investments of its own investors or to investments of investors of any third State, which ever is more favourable."*

All BIPAs reviewed exclude from the National Treatment and MFN standard (and from the fair and equitable treatment when the standards are combined) the benefit of any treatment, preference or privilege resulting from membership to any existing or future customs unions or similar international agreement, as well as any matter pertaining wholly or mainly to taxation. In most cases these exceptions clauses are included in the National Treatment or MFN articles. In the India-Indonesia Agreement and the India-UK agreement these exceptions apply to all provisions in the Agreement relating to the granting of "no less favourable treatment". In the Indonesia-India Agreement these exceptions extends to "the adoption of an agreement designed to lead to the formation of extension of such union or area within a reasonable length to time".

Entry and Sojourn of Personnel

When such articles are included they typically provide, according to national laws, for the entry and stay of natural persons or persons employed by companies for activities connected with an investment. The India-Australia BIPA also contains a clause which, under the same conditions, permits investors to employ key technical and managerial personnel

regardless of citizenship. In the French-Indian Agreement the parties are committed, under the Admission and Investment promotion article, “to give sympathetic consideration to the requests for temporary entry, work and circulation of nationals of the other party in connection with one of its investments.”

Expropriation and nationalization

All Indian BIPAs confirms India’s sovereign right to expropriate or nationalise the investments of investors of the other contracting party provided that this right is exercised on a non-discriminatory basis, has a public purpose, is duly authorised by law (although this is not always explicitly mentioned, such as in the case of the India-France BIPA) and leads to the payment of compensation. This obligation also covers “*any measure having effect equivalent to expropriation or nationalization*” or to “*direct and indirect*” taking (as in the case of the India-France BIPA).

The standard of compensation is not usually expressed in terms of the “Hull formula” of “*prompt, adequate and effective compensation*” but rather that of “*fair and equitable compensation*” (*indemnité juste et équitable* in the India-France BIPA), paid “*without undue or unreasonable delay*”.¹ A majority of the agreements also seem to base compensation on the “*genuine*” value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier. Interest at a “*fair and equitable rate*” is due until the date of payment. These amounts must also be effectively realizable and be freely transferable. Some recent agreements, such as the India-Australia BIPA, further narrow down these valuation criteria to the “*market value*” of the expropriated or nationalised property, or when this cannot be readily ascertained, to “*generally recognised*” valuation principles. The India-Indonesia BIPA speaks of “*interest rates agreed by both parties until the date of the payment*”.

Interestingly enough, all BIPAs provide a right of review by a judicial or other independent authority of the Party making the expropriation. This Party is also obliged to make every endeavour to ensure that such review is carried out promptly. In the case that the investor owns minority shares in a locally incorporated company, the Party is also obliged to ensure the fair and equitable compensation of such investments.

1. With the use of terms “adequate, effective and paid without undue delay”, the India-Korea BIPA would appear to come the closest to the Hull formula.

A related matter is that of *compensation for losses* incurred owed to war or other armed conflict, a state of national emergency or civil disturbances. In most cases, this issue is treated separately immediately after the expropriation and nationalization article. In some other cases, it precedes it (the India-Korea BIPA) or is made part of it (India-France or India-Thailand BIPA). In these articles or provisions, affected foreign investors are accorded no less favourable treatment, as regards indemnification, compensation or other settlement, as compared to national investors or investors of any third State. Resulting payments shall also be freely transferable. The India-United Kingdom BIPA contains additional language to the effect that the investor shall be accorded restitution or adequate compensation where the armed forces requisition the foreign investor's property or where such property is destroyed by the armed forces in the absence of combat action or the necessity of the situation. But this does not appear to be a generalised practice.

Free transfers

Free transfer is (with expropriation) the other most fundamental protection created by bilateral investment treaties and this protection is given by all India's BIPAs' Repatriation of Investment and Returns Article. This obligation concerns all funds related to a foreign investment, presented as a non-exhaustible list of operations, be it capital, returns, repayment of loans or profits. These transfers are to be permitted in the currency of the original investment or any other convertible currency, at the prevailing market rate of exchange on the date of transfer. Earnings of foreigners working in connection with an authorised investment also benefit from this protection. Nothing may affect the transfer of compensation for losses reviewed above.

Exceptions

The BIPA Model only provides for an "essential security interests" exception (or "circumstances of extreme emergency in accordance with its laws normally and reasonably applied on a non discriminatory basis") in the "Applicable Laws" article (see paragraph 23 above). In some other instances, this exception is lodged in a "Prohibitions and restrictions article" (India-Australia, India-Germany), or "Exceptions" article (India-France) which may also provide for the adoption of measures necessary for "the prevention of diseases and pests". In some cases (the India-Germany BIPA), the qualification "reasonably applied on a non-discriminatory basis" is dropped.

Dispute settlement

As many other bilateral investment treaties, India's BIPAs contain separate articles for the settlement of state-to-state and investor-to-states disputes. The provisions on disputes between the parties are limited to the interpretation or application of the agreement. They privilege amicable solutions although they also set their own arbitral rules should it not prove possible to settle these disputes through friendly consultations and negotiations.

The investor-to-state dispute settlement provisions concern "any" disputes between an investor of one Party and the other Party that "relates to an investment" of the former under the Agreement.

First there is a cooling period (usually six months) where the parties to the dispute are invited to settle their differences amicably. If this does not occur, and subject to mutual agreement, the dispute can be submitted for resolution to the competent judicial or administrative bodies of the host party or to international conciliation under the Conciliation Rules of the United Nations Commission on International Law (UNCITRAL). If there is again no agreement (or conciliation does not result in a settlement agreement), the dispute may be referred to international arbitration.

At that point and provided that the investor provides its consent in writing, the dispute may be submitted to *ICSID* (if the Contracting Party of the investor and the Contracting Party are both Parties to the Convention), the Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings (if both parties agree) or to an ad hoc arbitral tribunal set up in accordance with the UNCITRAL Arbitration Rules. These carefully drafted provisions amount to prior consent to international arbitration.

IV. India-Singapore Comprehensive Economic Agreement (CECA): A new strategic turn?

In its latest *Foreign Trade Policy Statement*,¹ India acknowledged that, to become a major player in world trade, and use it as an effective means of economic growth and national development, it needed to adopt an "all encompassing, comprehensive view of its foreign trade" and, in particular, to ensure that it be not disadvantaged by Free Trade Agreements/Regional Trade Agreements/Preferential Trade Agreements concluded by others. On

1. Foreign Trade Policy 2004-2009 at <http://164.100.9.245/exim/2000/policy/pol05/contents.htm>

1st August 2005, India entered with one of its most dynamic trading partners, Singapore, into the most ambitious and comprehensive economic agreement ever concluded with a foreign country, the India-Singapore Comprehensive Economic Agreement (CECA). This agreement, negotiated in a record time of two years, also constitutes Singapore's first comprehensive bilateral economic agreement with a major developing country and its first agreement with a South Asian country.

CECA is an integrated package of 16 chapters comprising trade in goods, trade in services, investment, movement of natural persons, E-commerce, Intellectual Property Protection, Science and Technology, Education and Media. It is India's first attempt to integrate "BIPA-like" investment disciplines into a preferential trade agreement, and its first attempt to combine trade in goods and services liberalization disciplines in a preferential trade agreement. The main objectives of the Agreement are to "strengthen and enhance the economic, trade and investment cooperation" between the two countries, to establish a transparent, predictable and facilitative investment regime" and "to expand trade and investment". In the Preamble, the two Parties also express their belief that the Agreement "could serve as a template for integration with other countries in the South East region" – and presumably beyond this region as well.

What changes does CECA bring to India's BIPA policy?

As for recent OECD investment agreements, one of the major differences between CECA and BIPAs is the increased focus to investment liberalisation and facilitation as compared to investment protection. This is reflected, *inter alia*, in an expanded and more precise definition of "investment" and "investors", the coverage of the pre-establishment phase, and the undertaking of firm liberalisation commitments and new investment facilitation measures.¹ But as with recent OECD agreements, this move has led to the adoption of wider public interest safeguards or other limitations. CECA also proposes an original "division of labour" between "GATS Mode 3" liberalisation for services, on the one hand, and investment "protection and non-services "liberalisation" disciplines on the other. Overall, CECA's investment provisions are more comprehensive and detailed than those of BIPAs.

1. These new facilitative provisions are contained in Chapter 9 (Movement of Natural Persons), Chapter 10 (E-Commerce), Chapter 13 (Education) and Chapter 14 (Media).

Novelties resulting from the investment chapter

The *Investment* chapter (Chapter 6), is the depository of all CECA investment protection obligations as well as liberalisation obligations for all “goods” sectors.

More precise definitions

While CECA continues to rely on BIPA’s open-ended asset-based definition of “investment”, there are significant improvements. *Intellectual property rights*, in particular, are not confined to rights created under the laws of the parties but to any existing or prospective IPRs. The definition of *business concessions* also explicitly applies to any natural resources (and not only to minerals) and *reinvested returns* are explicitly included in the definition of “investments”. (See Article 6.1-6.3)

With regard to “investors” (Article 6.4-6.6), CECA uses an expanded definition of “enterprises” which comprises “enterprises incorporated, constituted, set up or otherwise duly organised under the law of a Party, including any corporation, company, association, partnership, trust, joint venture, co-operatives or sole proprietorship, irrespective of the nationality of the owner”. The definition excludes however “any legal entity with negligible or nil business operations or with no real and continuous business activities”, a limitation repeated in the Denial of Benefits clause (Article 6.9).¹ Investors may also include “branches” that are specifically permitted in other chapters of the Agreement.

As compared to BIPAs, the definition article also includes, for the first time, a definition for covered “measures” which explicitly includes measures taken (a) by central, regional, or local governments and authorities and (b) any non-governmental bodies in the exercise of powers delegates by central, regional, or local governments or authorities (Article 6.1.7).

Yes to pre-establishment but...

The coverage of pre-establishment phase is one of the most important innovations from BIPAs. Its inclusion is first acknowledged in the definition of “investors”, which includes those “in the process of making or is seeking to make an investment” (Article 6.4). Then the National Treatment article

1. This article reads: “A Party may deny the benefits of this Chapter to an investor that is an enterprise of the other Party where the denying Party establishes that: (a) the enterprise has not substantial business operations in the territory of the other Party; or (b) investors of the denying Party own or control the enterprise.”

(Article 6.3.1) states that “investors” (and their investments) shall be accorded no less favourable treatment that is accorded in like circumstances to national investors “in relation to the establishment, acquisition or expansion of investments”. The treatment to be accorded at the regional or local level is the more favourable treatment to be accorded by that regional level, in like circumstances, to any other investor or investment from the Party of which it forms part. This language is also easily recognizable from NAFTA-based agreements for example.

There are important limitations to this development however. First, the National Treatment obligation only applies to non-service sectors¹ expressly listed in separate annexes. Said differently, the obligation concerning establishment is conditioned by the terms inscribed in the parties schedules. (As it will be shown below, the Trade in Services chapter only covers investment in the form of “commercial presence”.) Furthermore, alleged breaches of this obligation are altogether excluded from the investor-to-state dispute resolution provisions of the Agreement. In a separate understanding,² India undertook, however, to extend to Singapore investor-state dispute settlement to the pre-establishment phase should it move to grant such privilege in another agreement.

In addition, none of the parties is obliged to extend to investors the benefit of any preferential treatment resulting from any arrangement or international agreement relating to taxation (Article 6.3.4). Nor do the obligations apply to subsidies or grants or any conditions attached, irrespective of whether such subsidies or grants are offered exclusively to domestic investors and investments, which is the subject of a horizontal exception under Article 6.2.5.

At the same time, the investment chapter incorporates “bound” liberalisation commitments on establishment for several manufacturing activities³ India’s liberalisation commitments follow a positive listing

1. Liberalisation commitments on the commercial presence of services suppliers are covered by the Trade in Services Chapter – Chapter 7.
2. Exchange of Letters on Compulsory Investor-to-State Dispute Settlement in relation to Pre-Establishment.
3. According to Annex 6.A, they concern food products and beverage, textiles, wearing of apparel; dressing and dyeing of fur; tanning and dressing of leather; manufacture of luggage, handbags, saddlery, harness and footwear; wood and products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials; paper and paper products; publishing, printing and reproduction of recorded media; coke, refined petroleum products and nuclear fuel; chemical and chemical products; rubber and plastic products; other non-metallic mineral products; basic metals; fabricated metals except machinery and equipment; machinery and equipment N.E.C.; office, accounting and computing

approach and Singapore a negative listing one. Both parties have also undertaken to review their commitments or listed exceptions with a view to increasing their liberalisation commitments. (Articles 6.16 and 6.17.)

Stronger guarantees on National Treatment but no MFN treatment obligation

After entry, foreign investors and their investments are entitled to National Treatment in relation to “*management, conduct, operation, liquidation, sale and transfer (or other disposition) of investments*” (Article 6.3.2) There are no other exceptions to national treatment in the non-services sectors at the post -establishment phase except for the tax exemption of Article 6.4.

The Investment chapter does not contain any provisions for Most-Favoured-Nation treatment (and consequently no exception of regional economic integration agreements).

Yes also to stronger investment protections while affirming the right to regulate...

CECA provides the same strong BIPA guarantees on expropriation and free transfers, with some reinforcement or tidying up of the language. For example the *expropriation article* (Article 6.5) adopts the Hull formula and market-based valuation criteria for compensation of expropriated assets. A special annex to this article also identifies criteria for distinguishing between compensable and non-compensable regulatory actions on a case-by-case basis. An improvement in the language is also apparent in the *repatriation article* (Article 6.6) to ensure the free transfer by foreign investors of their capital and their returns from any investments in a freely usable currency at the market rate prevailing in the date of transfer and without undue delay.

At the same time, there appears to be an overriding concern for closing the door on potentially expansive interpretations of other protection provisions and giving more ample room to public interest safeguards whenever needed.

machinery; electrical machinery and apparatus n.e.c.; radio, television and communication equipment and apparatus; medical, precision and optical instruments, watches and clocks; motor vehicles, trailers and semi-trailers; other transport equipment; and development of township, housing, built-up infrastructure and construction development projects.

The most radical change is the omission from the Agreement of the *fair and equitable standard* or the *Full Protection and Security* provision.

A special annex to the expropriation article¹ explicitly shelters “*legitimate non-discriminatory public welfare measures*” (such as related to public health, safety and the environment) taken on a non-discriminatory basis from the expropriation provisions. This is in addition to the clarification in Article 6.10 providing that nothing in the investment chapter shall prevent the adoption of “*measures in the public interest, including measures to meet health, safety and environmental concerns*”.

A *balance-of-payments safeguard* clause (Article 6.7) permits the adoption or maintenance of restrictions on “payments or transfers related to investments” in the event of serious balance of payments and external financial difficulties. This clause largely draws on WTO language,² which requires consistency with IMF obligations.

The other most noticeable changes from BIPAs are the addition of a special provision on land expropriation, the exclusion of compulsory licenses granted in relation to intellectual property rights in accordance with the TRIPs Agreement from the expropriation article, and the limitations to transfers relating to the equitable, non-discriminatory and good faith application of laws regarding, for example, bankruptcy, taxation, securities, criminal or penal offences, enforcement of judicial orders or social security or pension schemes whose origin goes back to NAFTA.

Broader general exceptions

One of the changes emerging from the shift from BITs to RTAs is the increased attention paid to general exceptions as a means to balance the wider scope of the agreements or to ensure consistency with other agreements. These two considerations seem to be present in the choice of CECA horizontal exceptions. The articles on *General exceptions* (Article 6.11) and *Security Exceptions* (Article 6.12) reproduce, to a large extent, GATT Article XX or GATS Article XIV language. The scope of these exceptions is naturally broader than BIPA’s exceptions. They are also some interesting additions. The security interests listed in Article 6.12 include the protection of “critical public infrastructures, including communication, power and water infrastructures”. There are separate understandings on

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1. The language of this Annex reproduces almost textually the Expropriation Annex of the US-Singapore Free Trade Agreement (2003) and the new US Model Bilateral Investment Treaty (2004).
 2. See GATS Article XII on *Restrictions to Safeguard the Balance of Payments*.

*Security Exceptions for Investment and Non-Justiciability of Security Exception*¹. This is in addition to the sweeping exception for measures taken in the public interest already mentioned in paragraph 59.²

A strict application of the “TRIMs Agreement”

In contrast with BIPAs, the investment chapter incorporates a clause on “*Prohibition of Performance Requirements*” (Article 6.23), which simply amounts, however, to a reaffirmation of the commitments to the WTO Agreement on Trade-Related Investment Measures (the “TRIMs Agreement”, as amended from time to time. This article is not excluded from the investment disputes, thus raising the issue of the relationship with the WTO dispute settlement provisions.

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1. Annex 5 on Non-justifiability of Security Exceptions reads:
 - “1. The Parties confirm the following understanding with respect to the interpretation and/or implementation of Chapter 6 on Investment of the India-Singapore Comprehensive Economic Cooperation Agreement (the “Agreement”):
 - (a) in respect of disputes submitted to arbitration pursuant to paragraph “(b) and/or paragraph 3 (c) of Article 6.21 of the Agreement, where the disputing Party asserts as a defence that the measure alleged to be a breach is within the scope of a security exception as set out in Article 6.12 of the Agreement, any decision of the disputing Party taken on such security considerations shall be non-justifiable in that it shall not be open to any arbitral panel to review the merits of any such decision even where the arbitral proceedings concern an assessment of any claim for damages and/or compensation, or an adjudication of any other issues referred to the tribunal.
 - (b) For the avoidance of doubt, paragraph 3(b) and/or paragraph 3(c) of Article 6.21 of the Agreement shall be applicable in proceedings for damages and/or compensation for a breach of a security exception as set out in Article 6.12 of the Agreement.”
 2. Article 6.10 reads: “Nothing in this Chapter shall be construed to prevent:
 - (a) a Party or its regulatory bodies from adopting, maintaining or enforcing any measure, on non-discriminatory basis; or
 - (b) the judicial bodies of a Party from taking any measures;consistent with this Chapter that is in the public interest, including measures to meet health, safety and environmental concerns.”

New obligations on Senior Management and Board of Directors

CECA contains expanded obligations on the entry and sojourn of natural persons but these are lodged in a separate chapter, Chapter 9. According to Article 6.19 of the Investment chapter, an investor may appoint to senior management individuals of its choice, irrespective of nationality considerations. Nationality or residency requirements may be imposed on the majority of the board of directors provided that this does not materially impair the ability of the investors concerned to exercise control over their investments.

Transparency

Article 6.15 requires the parties to publish or otherwise make publicly available laws, regulations and administrative rulings of general application respecting any matter covered by the Agreement and that of promptly responding to any specific enquiry (Article 6.15). In contrast with the Trade in Services chapter, the article does not provide for the creation of special contact points or the inclusion of special provisions on administrative proceedings.

Other substantive provisions

Straightforward from NAFTA, the Investment chapter also includes clauses on *Denial of Benefits* (Article 6.9), *Disclosure of Information* (Article 6.13) and *Special Formalities and Information Requirements* (Article 6.14). In addition, Article 6.19 provides for a non-discriminatory access to courts of justice and administrative tribunals and agencies. Under Article 6.20, India commits itself to consider, on a case-by case basis, requests from Singapore investors for exemptions of customs duties for import of capital goods for the purposes of infrastructure projects in India.

More predictable dispute settlement

Article 6.21 on “*Investment Disputes*” features some of the most important provisions of the investment architecture of the Agreement. Although this article is still relatively very short (less than two pages), it embodies some significant changes to BIPA investor-to-state dispute resolution.

First, the provisions no longer apply to “all disputes relating to an investment” but only to “disputes over an alleged breach of the investment chapter that causes loss or damage to the investor or its investment”. Disputes at the pre-establishment phase are also excluded. Second, while

amicable solutions are still encouraged, article 6.21.4 provides for “prior consent” to conciliation or arbitration under ICSID or UNCITRAL rules. The dispute must be submitted within three years of the alleged breach of an obligation. The investor must also waive the right to initiate or continue any proceedings in other forums (except for interim measures of protection) and the Parties must renounce to give diplomatic protection. At the same time, there are no provision concerning the participation by the other Party, consolidation or open hearings and transparency on the exhaustion of local remedies

Innovations resulting from the Trade in Services Chapter

The Trade in Services chapter of CECA (Chapter 7) closely follows the GATS model. It carves out from the investment chapter all GATS-type liberalization disciplines relating to commercial presence (“Mode 3”). It nevertheless lists the obligations of the investment chapter which apply *mutatis mutandis* to the “supply of service by a service supplier of a Party through commercial presence”. The main differences it introduces in the treatment of investors and their investments as regards the services sectors can be summarised as follows.

Narrower Definitions/Scope of Application

Chapter 7 defines trade in services as consisting of four modes of supply, one which applies to “measures affecting the presence, including commercial presence, of persons of Party for the supply of service in the territory of the other Party” (“Mode 3”). The supplier of a service is defined either as a natural person of a Party or a jurisdictional person constituted or otherwise organised under the law of a Party. It may operate any type of business or professional establishment through the constitution, acquisition or maintenance of a juridical person or the creation or maintenance of a branch or a representative office.

The definition of a service supplier seems to correspond closely to the definition of “investor” in the CECA investment chapter¹ except that there is a “nationality test”^{2,1} for juridical persons supplying audio-visual, education,

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1. The chapter also excludes “shell companies” with negligible or nil business operations or a service supplied in the exercise of governmental authority (Article 7.2.3).
 2. A juridical person is owned by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party.

financial and telecommunications services. The “Singapore Banks” DBS Group Holdings Limited, United Overseas bank Limited and Overseas-Chinese Banking Corporation Limited are also included in the definition of investors.

Even though the definition covers the pre-establishment phase and includes branches or representative offices, the underlying concept of “commercial presence” is, however, significantly narrower than that of the open asset-based definition of “investment” of the Investment chapter.²

Market access and National Treatment are not general obligations

As for the GATS, *Market access* (Article 7.3)³ and *National Treatment* (Article 7.4) are not conceived as general obligations; instead they only apply when sectors are inscribed in the parties’ schedules of commitments. Under the *National Treatment* entry of a scheduled sector, each Party shall accord to every other service supplier treatment no less favourable than that accorded to its own “like services or service suppliers”.

The schedules of India’s and Singapore’s commitments are presented in Annex 7A and 7B of the Agreement. There are also two additional Annexes on Financial Services and Telecommunications (Annexes 7C and D). While these annexes are not analysed in the present Note, they are believed to contain significant investment openings in the financial services⁴ and telecommunications sectors.

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1. A juridical person is controlled by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions.
 2. “Commercial presence means any type of business or professional establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person, or
 - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service.”
 3. Two of the prohibited restrictions under *Market Access* relate more specifically to commercial presence, namely (i) those that limit the type of legal entities (e.g. branches versus subsidiaries) and (ii) those that impose limitations on the level of foreign capital participation (e.g. equity limitations).
 4. For instance, India will allow three major banks – DBS Holdings, Overseas Banking Corporation and United Overseas Bank – to set up wholly-owned subsidiaries in the country. These three banks will be given national treatment on par with Indian banks with regard to branches, places of operation and

The Parties may modify or withdraw any commitment in their schedules at any time after three years from the date of the original commitment, subject to adequate compensatory adjustment (Article 7.8). The Parties also endeavour to review their schedules of specific commitments over time (Article 7.9 on *Progressive Liberalisation*). New services, including new financial services, are not automatically included in the definition but shall be considered for possible incorporation at future reviews.

As for the Investment chapter, the Trade in Service Chapters does not contain any MFN treatment obligation. Article 7.6 provides, nevertheless, that should one of the Party enter in any agreement trade in services giving better treatment to a non-Party, it shall give due consideration by the other Party for extending this treatment under CECA.

Services are entitled however to other investment guarantees

Article 7.24 of the Services-Investment Linkage confirms the Parties' understanding that several articles of the Investment chapter apply, mutatis mutandis, to "measures affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party". This clearly shows the complementary design of the two chapters.

The substantive articles of the Investment chapter captured by this provision are Article 6.4 (Compensation for Losses), Article 6.5 (Expropriation), Article 6.6 (Repatriation), Article 6.8 (Subrogation), Article 6.10 (Measures in the Public Interest), Article 6.14 (Special Formalities and Information Requirements), Article 6.18 (Access to Courts of Justice), Article 6.19 (Senior Management and Board of Directors), Article 6.22 (Other Obligations), Article 2.23 (Prohibition of Performance Requirements).

Article 6.21 on Investment Disputes also applies to the extent that they relate to an "investment" and an "obligation" under the investment chapter.

prudential requirements. In turn, Indian banks already operating in Singapore will get full banking status which means that they will be allowed electronic fund transfer, clearance and use of local ATMs. India has also allowed to foreign investment institutes – Temasek and Singapore Investment Company – to hold a total of 20 per cent stake in any Indian company as against the normal threshold of 10 per cent set by market regulators. CECA is expected to boost flows from foreign investment institutions to India by 300 per cent to \$5 billion and FDI flows to around \$2 billion in the first year of the agreement, according to government officials. (Source: www.ndtv.com/money/showbusinessstory.asp?slug=India-Singapore+CECA+).

These guarantees are given regardless of whether or not services appear in the Parties Schedules of Specific Commitments.

Other GATS-specific differences

The Trade in Services chapter also brings in from the GATS additional obligations absent from the Investment chapter or, in other cases, adjustments to the language of the clauses in the Investment Chapter.

In the first category are Article 7.16 on *Payments and Transfers* for current transactions associated with scheduled commitments, and Articles 7.10 and Article 7.11 on *Domestic Regulation* and *Recognition*, which contain useful provisions on the handling of administrative proceedings and the harmonization of professional qualification standards. Article 7.12 also provides assurances that *monopolies and exclusive service suppliers* will not act in a manner inconsistent with the Parties' commitments. Articles 7.13 on *Business Practices*, Article 7.14 on *Safeguard Measures* and Article 7.15 on *Subsidies* contain useful clarifications on how these issues should be handled in a bilateral context. Article 7.20 on *Government Procurement* clarifies that the articles on Market Access and National Treatment do not apply to the procurement of services by governmental agencies (Article 7.20).

In addition, chapter 7 has its own version of the *Balance of Payments Safeguard*, *General Exceptions* (Article 7.21), *Security Exceptions* (Article 7.22), *Transparency* (Article 7.18), *Disclosure of Information* (Article 7.19) and *Denial of Benefits* (Article 7.23) clauses. The *BOP derogation* concerns obligations contracted under Market Access, National Treatment and transfers but the conditions are essentially the same that those of the Investment Chapter. The *General Exceptions* article contains a special clarification on public order¹ and tax derogations. The *Security Exceptions* article contains an additional reference to the supply of services carried out directly or indirectly for the purpose of provisioning a military establishment. The *Disclosure of Information* article is identical. The *Denial of Benefits* clause excludes the supply of a service through commercial presence "owned or controlled by a non-Party". There are also two additional obligations on *Transparency* coming from the GATS, namely the obligation to publish international agreements pertaining to or affecting trade in services to which a Party is a signatory and the establishment of enquiry points to answer questions from the public.

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1. "The public order exception may be invoked by a Party, including its legislative, governmental, regulatory or judicial bodies, only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society."

Appendix 1. India's International Investment Agreements

Partner country	Date of ratification/enforcement/signature
<i>Category 1 (Bilateral Investment and Promotion Agreements BIPAs)</i>	
Argentina	12 August 2002
Australia	4 May 2000
Austria	1 March 2001
Belarus	23 November 2003
Belgium	8 January 2001
Bulgaria	23 September 1999
Chinese Taipei	25 January 2005
Croatia	12 January 2002
Cyprus	12 January 2004
Czech Republic	6 February 1998
Denmark	28 August 1996
Egypt	22 November 2000
Finland	9 April 2003
France	17 May 2000
Germany	13 July 1998
Indonesia	22 January 2004
Israel	18 February 1997
Italy	26 March 1998
Kazakhstan	26 July 2001
Kuwait	28 June 2003
Kyrgyz Republic	12 May 2000
Lao PDR	5 January 2003
Malaysia	12 April 1997
Mauritius	20 June 2000
Mongolia	29 April 2002
Morocco	22 February 2001
Netherlands	1 December 1996

Partner country	Date of ratification/enforcement/signature
Oman	13 October 2000
Philippines	29 January 2001
Poland	31 December 2002
Portugal	19 July 2002
Qatar	15 December 1999
Romania	9 December 1999
Russian Federation	5 August 1996
South Korea	7 May 1996
Spain	16 October 1996
Sri Lanka	13 February 1998
Sweden	1 April 2001
Switzerland	16 February 2000
Tajikistan	14 November 2003
Thailand	13 July 2001
Ukraine	12 August 2003
United Kingdom	6 January 1995
Uzbekistan	28 July 2000
Vietnam	1 December 1999
Yemen	10 February 2004
<i>Category 2 (Trade Agreements with investment content)</i>	
India-Singapore Comprehensive Economic Cooperation Agreement	1 August 2005
South Asia Free Trade Agreement (SAFTA) (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) (superseding the South Asia Preferential Trade Agreement of 1993)	2004

Partner country	Date of ratification/enforcement/signature
Category 3 (BIPAs not ratified or under negotiation)	
Armenia	Signed 2003
Djibouti	Signed 2003
Ghana	Signed 23 January 2000
Hungary	Signed 2003
Saudi Arabia	Signed 2006
Serbia Montenegro	Signed 2003
Sudan	Signed 2003
Turkey	Signed 1998
Turkmenistan	Signed 1995
Zimbabwe	Signed 1999
Category 4 (TAs not ratified or under negotiationAs)	
ASEAN (Association of South East Asian Nations) - India Framework Agreement on Comprehensive Economic Cooperation, 2003, ongoing	
BIMSTEC (Bangladesh, Bhutan, India, Myanmar, Sri Lanka, Thailand and Nepal)-India Free Trade Agreement, 2004, ongoing	
Chile-India Framework Agreement to Promote Economic Cooperation, 2005, ongoing	
Mercosur (Argentina, Brazil, Paraguay and Uruguay)-India Preferential Trade Agreement (PTA), 2004	
Sri-Lanka-India Comprehensive Economic Cooperation Partnership Agreement, ongoing	
South Asian Free Trade Area (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka, 2007	
India-Thailand Framework Agreement for Establishing an FTA, 2003 ongoing. (Early Harvest Scheme on Trade, 2004)	

Partner country	Date of ratification/enforcement/signature
<i>Category 5 (BIPAs–Exploratory)</i>	
<i>Category 6 (Trade Agreements exploratory)</i>	
<p>Australia (Joint Study on a FTA/Comprehensive Economic Partnership)</p> <p>COMESA (Common Market for Eastern and Southern Africa)-India Framework Cooperation Agreement (2004)</p> <p>China-India Joint Study Group on Feasibility of a FTA, 2005</p> <p>Egypt-India Preferential Trade Agreement (PTA), 2001</p> <p>EU-India Partnership Joint Action Plan (2005)</p> <p>Gulf Cooperation Council (GCC) (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates), India Framework Agreement, 2004</p> <p>IBSA (Trilateral Commission between Brazil, India and South Africa)</p> <p>Israel (Joint Study on Feasibility of a FTA/CECA), 2001</p> <p>Japan (Joint Study on a FTA/ Comprehensive Economic Partnership)</p> <p>Malaysia-India Comprehensive Economic Partnership including FTA</p> <p>Mauritius (Joint Study Group on a Comprehensive Economic Partnership)</p> <p>Pakistan (Joint Study on Comprehensive Economic Partnership)</p> <p>Russia (Joint Study Group on Comprehensive Economic Partnership)</p> <p>SACU (Southern African Customs Union, Botswana, Lesotho, Namibia, South Africa and Swaziland) – PTA</p>	

4. CHINA, INDIA AND RUSSIA: BOOSTING POLICY TRANSPARENCY

Partner country	Date of ratification/enforcement/signature
South Korea (Joint Study on Comprehensive Economic Partnership) India-Thailand Framework Agreement for Establishing an FTA, 2004. Early Harvest Scheme 2003 US-India Trade Policy Forum (2005) MOU with 8 West African countries (Burkina Faso, Chad, Equatorial Guinea, Ghana, Guinea Bissau, Ivory Coast, Mali and Senegal) for economic, commercial and economic cooperation, 2004	

Source: OECD Investment Division and India Ministry of Finance.

Chapter 5.

Policy Guidance for Donors on Using ODA to Promote Private Investment for Development

The objective of *Promoting Private Investment for Development: The Role of ODA* is to help DAC members use their official development assistance more effectively to promote private investment for development. As in other domains, investment-enhancing ODA should be based on general guidance on improving the design, delivery and effectiveness of development co-operation, including that set out in the ‘Paris Declaration on Aid Effectiveness’. This Declaration stresses the mutual accountability of both donor countries and developing country partners for achieving development results. It is therefore crucial that governments, in both donor and developing countries, enhance the coherence of their policies that affect the volume of investment and its development impact. To help governments improve their investment climate, developing and other countries can refer to the *Policy Framework for Investment* (see Chapters 1 and 2).

An incremental and inclusive process

Preparation of this policy guidance for donors occurred in two phases:

- The first, analytical phase, carried out jointly by the Development Assistance and Investment Committees, resulted in the production of an initial set of *Policy Lessons on the Role of ODA in Mobilising Private Investment*. These were presented to the 2005 OECD Ministerial Council Meeting.
- *Promoting Private Investment for Development: The Role of ODA*, prepared by the DAC, builds on the Policy Lessons as well as recent work within the DAC on promoting pro-poor growth, including in relation to the key areas of agriculture, infrastructure and private

sector development, and on capacity development.¹ Preparation of the policy guidance benefited from inputs from the DAC and the Investment Committee. The World Bank, BIAC and TUAC also provided comments. The policy guidance was approved by the DAC at its meeting on 15 March 2006 and welcomed by Ministers at the 2006 OECD Ministerial Council Meeting.

Key policy messages

Vigorous and sustained economic growth, fuelled by investment and entrepreneurship, is needed for the private sector to create more jobs and increase incomes of the poor. In turn, this will generate the revenues that governments need to expand access to health, education and infrastructure services and so help improve productivity. But in many developing countries, investment rates are too low, productivity gains are insufficient, incentives for innovation are inadequate, returns on investment are not sufficiently predictable, and not enough secure, safe and adequately paid jobs are being created in the formal economy. Developing countries and their donor partners consequently need to do much more to address the market failures and structural impediments that are holding back productive investment (both domestic and foreign), and to do it better, for longer periods and in a more strategic way. Developing countries can help foster an investment climate that enables the private sector to flourish and fulfil its role as the main engine of growth. To do so, they can pursue macroeconomic stability, improve the functioning of market-regulating institutions and strengthen procedures for contract enforcement and dispute settlement. Developing country governments can also improve the coherence of their policies in a range of areas - such as trade, tax, competition and investment promotion - that affect the volume of investment and its development impact.

Box 5.1 presents key messages for donors from *Promoting Private Investment for Development: The Role of ODA*.

Future use of the policy guidance for donors

Promoting Private Investment for Development: The Role of ODA should help staff in development agencies, both in headquarters and the

1 For further information on DAC work on promoting pro-poor growth visit www.oecd.org/dac/poverty and on capacity development visit www.oecd.org/dac/governance.

field, to pursue a more strategic and co-ordinated approach to designing and delivering investment-enhancing ODA. This policy guidance for donors will also serve as a point of reference during the periodic peer reviews of DAC members' development co-operation policies and programmes.

Work on implementation of *Promoting Private Investment for Development: The Role of ODA* and an exchange and assessment of experiences among donors, partner countries and the private sector with using ODA to promote private investment is part of the DAC's Programme of Work and Budget for 2007-2008.

**Box 5.1. Promoting Private Investment for Development:
The Role of ODA - Key Messages for Donors**

A review of past practices by donors with using ODA to mobilise private investment highlights that:

- i) Donors are supporting a vast range of activities – at the macroeconomic, enabling environment and enterprise levels – that affect investment. They spend around 20% of their aid on these. But little evaluative material on the impact of interventions on promoting investment is available.
- ii) Insufficient attention has been given to enterprise and supply-side capacity development, and to promoting the institutional and policy reforms that lie at the heart of efforts to promote private sector development.
- iii) Donors have focussed too much on assisting specific types of firms (e.g. certain sizes, activities or sectors). Experience has shown this can lead to market distortions and poor sustainability.

To help developing countries mobilise more productive investment, and improve the effectiveness of interventions that support this objective, development agencies need to:

- i) Be more strategic, and their interventions need to be harmonised and guided by more systematic learning of lessons.
- ii) Focus on helping to lower the costs of investment, reduce risks, improve competition and develop human and institutional capacities in developing countries.
- iii) Give high priority to economic infrastructure investment and financial market development, as key areas for promoting investment in the near term.
- iv) Pay greater attention to the determinants of domestic investment, both formal and informal, and to strengthening the capacities of local firms to respond to new investment opportunities and to expand business relationships with foreign investors.
- v) Enhance the contribution of investment to pro-poor growth (i.e. increase the impact of growth on poverty reduction) by making labour, land and

- other markets work better for the poor, tackling constraints to women's entrepreneurship, reducing barriers to formalisation, promoting environmental sustainability, expanding access to knowledge and technology and unleashing the economic potential in rural areas .
- vi) Encourage entrepreneurship and innovation by supporting education and vocational training, research and development activities and technology transfers.
 - vii) Promote responsible business practices in such areas as labour relations, the environment and anticorruption.
 - viii) Build on analyses of country and sector-specific constraints, at national and local levels, to private sector development and encourage publication and public debate about the results. Help build up the capacities of developing countries to carry out such assessments.
 - ix) Seek out reliable, representative and accountable domestic partners who can drive reform programmes and help catalyse change.
 - x) Use market-based approaches to supporting firms. Targeted assistance should avoid distortions and firms receiving direct support should be selected based on their expected capacity to innovate, create jobs and provide services at local market conditions.
 - xi) Promote structured and inclusive public-private dialogue, at national and local levels, so as to bring micro and small entrepreneurs and informal firms and workers into consultation and decision-making processes. This will help to build demand for reform and for investments that will improve the investment climate.
 - xii) Evaluate the cumulative impact of their interventions on promoting investment and share examples of successful and unsuccessful practices.

Reforming the investment climate requires political will, drive and leadership to take on entrenched interests and inertia. Development agencies need to stay the course and support "change agents" within the public and private sectors and civil society.

Development agencies also need to change the way they do business. They need to have access, individually or collectively, to an appropriate range of aid instruments. Their internal systems should not work against staff pursuing longer-term and riskier interventions. Staff working on the range of subjects relevant for mobilising investment should be well co-ordinated. More of the goods and services that development agencies procure can be sourced on competitive terms in developing countries, to support local private sector development. Finally, public sector partners in developing countries can be encouraged to engage more with the private sector, such as through public-private partnerships.

Statistical Appendix

Table 1. OECD Foreign Direct Investment Flows
USD million

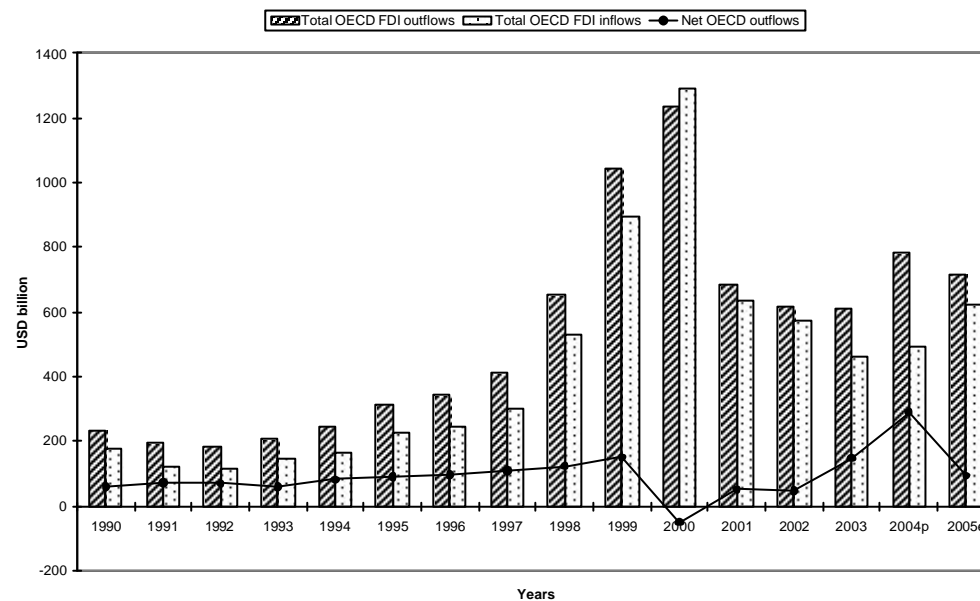
	<i>OECD outflows to:</i>				<i>OECD inflows from:</i>				
	1990	1995	2000	2004	1990	1995	2000	2004	
Major non-OECD countries									
China	408.8	7504.3	5271.3	5661.6	-11.7	0.0	21.4	321.4	Gibraltar
Russian Federation	-	671.3	1683.4	1719.9	24.6	140.7	397.4	-252.0	Brazil*
				14766.					
Singapore	2436.0	3256.1	3851.3	9	325.7	831.6	8705.3	4978.9	Singapore
Brazil*	2069.5	8586.2	22892.1	9067.6	-3.3	10.1	-37.8	-0.8	Philippines
Ghana	1.2	-2.9	-8.8	9.1	-25.7	-13.5	-76.9	-34.4	Panama
South Africa	-56.6	1559.1	2935.6	3566.0	1.2	0.6	-12.8	37.9	Malta
Chile*	644.1	1705.0	1502.7	3564.6	27.4	143.8	692.5	-301.9	Venezuela
Kazakhstan	-	19.1	67.3	80.6	38.9	2395.1	3669.1	-947.1	Bermuda
India	119.5	989.9	987.7	1176.3	105.0	84.9	24.1	428.5	Cyprus
									United Arab
HongKong	2133.8	3888.8	1664.4	7263.9	4.0	124.0	108.2	178.3	Emirates
Thailand	1672.5	2848.4	3120.6	2721.1	61.9	277.7	908.7	1707.0	South Africa
Chinese Taipei	827.2	1426.4	3618.8	1935.8	1.0	0.0	-0.1	0.0	Qatar
		10239.							
Maghreb countries	9.1	8	690.2	556.9	17.4	14.0	1039.7	83.0	Israel*
Panama	-3.6	159.6	351.9	-90.5	-36.0	-0.1	9.2	-16.2	Chile*
Malaysia	1282.1	1752.6	2277.2	426.1	-44.4	-46.7	-265.8	157.0	Bahamas
Romania*	0.6	244.2	570.0	914.7	36.3	5711.6	26.3	48.7	Andorra
Malta	17.3	7.0	13.4	53.2	4.2	173.1	101.6	69.2	India

	OECD outflows to:				OECD inflows from:				
	1990	1995	2000	2004	1990	1995	2000	2004	
Memo items: Total OECD Investments to and from									
<i>Non-OECD countries</i>	47358	72503	129647	116227	21259	18450	56479	56695	<i>Non-OECD countries</i>
			110060		15259	20524	121661	29826	
<i>OECD countries</i>	211721	300256	6	338009	7	0	5	2	<i>OECD countries</i>
			123488		17472	22369	129954	45203	
<i>Total</i>	259079	372796	3	683397	1	0	9	2	<i>Total</i>

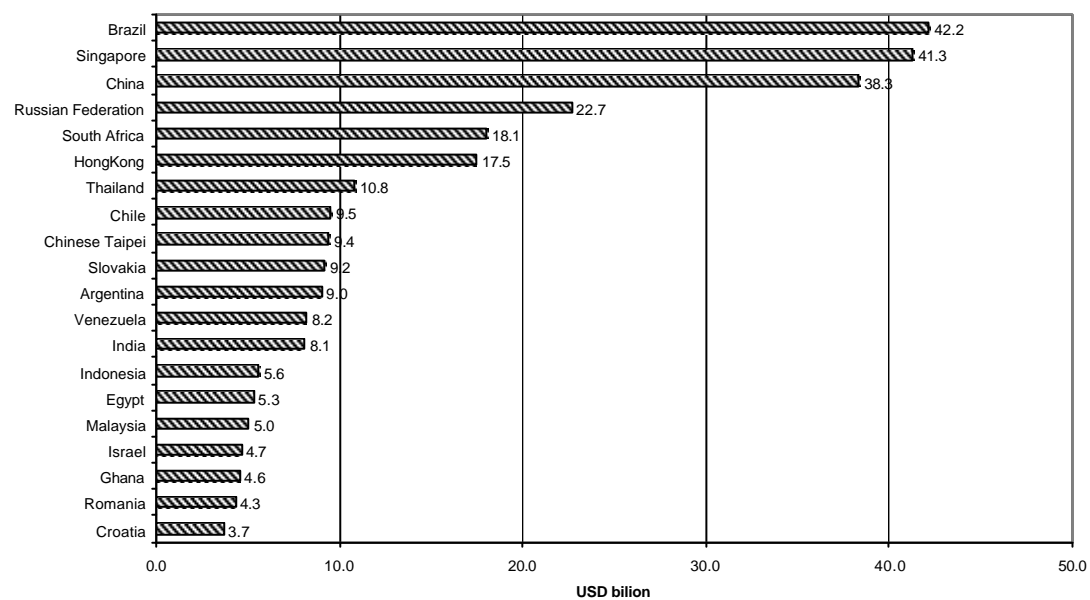
* Non-OECD countries adhering to the OECD Declaration on International Investment.

Source: OECD International direct investment database.

Figure 1. FDI Flows to and from OECD



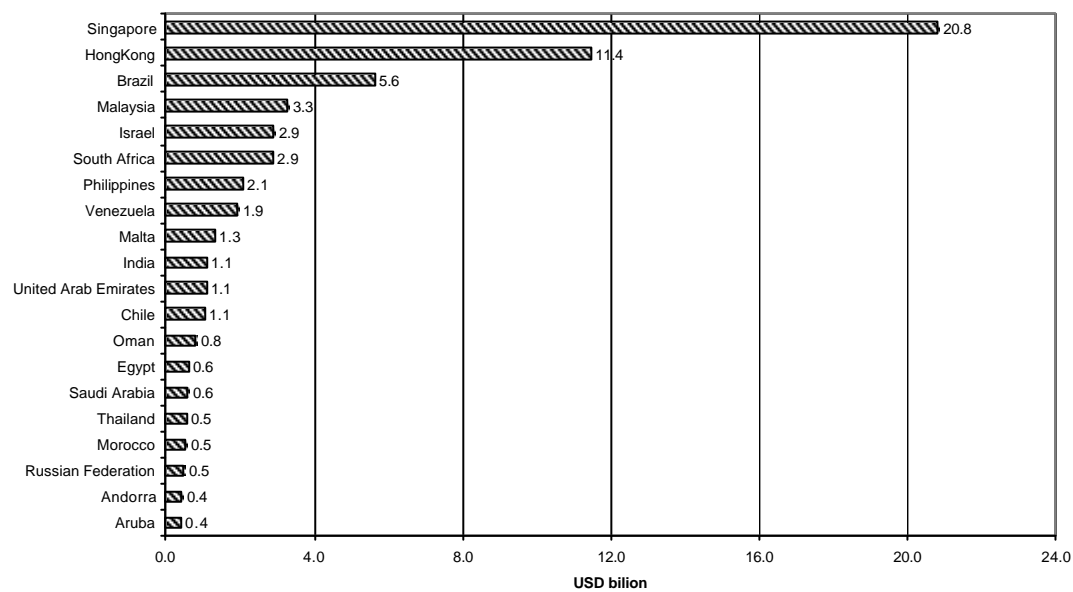
Notes: Data are converted to US dollars using average exchange rates; e: estimate; p: provisional.
 Source: OECD International direct investment database.

Figure 2. FDI outflows from OECD to major non-OECD host countries 2000-2004 (cumulative)

Notes: Data are converted to US dollars using average exchange rates.

Source: OECD International direct investment database.

Figure 3. FDI inflows to OECD from selected non-OECD investors 2000-2004 (cumulative)



Notes: Data are converted to US dollars using average exchange rates.
 Source: OECD International direct investment database.