

South Asia FDI Roundtable

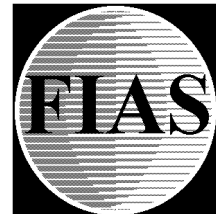
Entry Approvals and
Registration:

The removal of administrative
constraints

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1 Introduction

Objectives

The objective of this case study exercise is to focus on administrative barriers to foreign direct investment (FDI) in South Asia. The particular emphasis is on examining government efforts to create efficient and transparent **business entry and startup procedures in the Maldives and Pakistan**. South Asian countries lag behind other countries in the successful attraction and retention of FDI.

FDI is widely accepted as a vital tool for creating jobs, reducing poverty, increasing a government's tax base, and infusing new technologies and workforce skills.¹ While administrative barriers remain a problem in many countries, governments have begun to recognize the detrimental effect of delays, lack of transparency, and inefficiency in regulating private investment. This case study explores some **recent efforts to improve the administrative regime** for investment in South Asia, highlighting the factors that have contributed to success or a lack thereof. Appendix 1 describes the methodology and data sources used.

With **global FDI inflows decreasing** in 2002 for the first time in a decade, pressure for countries to attract investment – in part through maintaining a business friendly environment and limiting administrative barriers – will only increase. Global FDI inflows in 2001 decreased by 51% over the previous year to US \$734 billion, and outflows decreased in the same period by 55% to US \$621 billion (UNCTAD, 2002). Inflows to developing countries decreased by 14% from 2000, amounting to US \$205 billion (UNCTAD, 2002:1).

Estimates for South Asia suggest that **total FDI decreased** from US \$3.8 billion in 2000 to US \$1.9 billion in 2001, amounting to just 0.009% of the developing world's total in 2001.² Of the eight South Asian countries, only India was ranked among the top 44 countries considered “most favored host economies as a priority location [for FDI] for 2002-2005” by a survey of transnational corporations, and it was so ranked by only 9% of respondents (UNCTAD, 2002: 14).

In an era of global competition for FDI countries that remove administrative barriers and cut “red tape” enhance their competitive advantage. Many countries have taken necessary steps to improve their investment climates at the macro level, for example, by **liberalizing** currency regimes and introducing investment incentives, but often the investment response has been disappointing.

¹ Recent research in South Asia posits that for every 1% of FDI there is a spillover of 5% of domestic investment (Agrawal, 2000).

² International Monetary Fund. 2001 statistics are estimates.

The **problem of excessive bureaucracy is often overlooked** Complex, un-transparent, and time-consuming procedures not only deter new investment – both local and foreign – but also erode the competitiveness of local firms. Taken individually, administrative barriers can seem like mere nuisances. But taken together, they can become overwhelming, adding considerable cost, time, uncertainty and risk to an investment project. All things being equal, investors will locate in countries that make easiest the realizing of profit while complying with regulations.

There have been several attempts to **attach a monetary value to the delays and confusion** that confront investors negotiating an overly bureaucratic system. For example, a recent World Bank research study measured the number of steps an investor must take to start up a firm, the length of time required to complete mandatory market entry procedures, and associated costs, which “are estimated as a share of average GNI per capita of the preceding 3 years, as reported in the World Development Indicators.”³ As indicated in Table 1.1, of the 110 countries ranked by the World Bank the South Asian states reviewed generally fall in the middle the group and behind regional benchmark Southeast Asian states. The top five countries are included for comparative purposes.

³ The World Bank, “Business Entry.”

Table 1.1: International Ranking of Investor Entry Procedures

Country	Overall Rank	Number of Days	Cost (% of GNI per capita)	No. of Entry Procedures
New Zealand	1	2	0.2%	2
Canada	2	2	0.6%	2
United States	3	4	0.6%	5
Australia	4	6	1.8%	2
United Kingdom	5	3	1.1%	5
Hong Kong/China	7	20	3.2%	5
Singapore	10	8	6.1%	7
Thailand	15	45	6.7%	8
Taiwan	21	43	6.3%	8
Bangladesh	32	30	77.5%	7
Malaysia	34	56	26.6%	7
Nepal	36	25	189.1%	8
Sri Lanka	46	73	15.7%	8
Pakistan	49	53	44.4%	10
Vietnam	59	68	36.2%	10
Philippines	64	62	14.5%	14
Indonesia	82	168	15.3%	11
India	86	89	51.7%	11

Source: World Bank

Definition of administrative barriers to investment

Administrative barriers to investment are those factors that frustrate or complicate routine public-private regulatory interaction but do not arise solely from legal or policy issues. While there is a policy and legal dimension to many administrative barriers, such constraints are typically **entrenched in the way government bodies manage systems, coordinate across agency lines, and interact with the public.**

In defining administrative barriers, a useful concept has been developed from ‘**re-engineering government**’ literature of the past decade. Borrowing from a private sector ethos, it is useful for government to view the person it interacts

with – in this case a foreign investor – as the “customer” or “user” of government services. In this way, individual public servants and agencies can begin to reorient themselves toward seeing procedures and systems not only as mechanisms to regulate but also to provide a service for a specific end user and make improvements to “keep the customer satisfied.” In this way, perspective administrative barriers can be assessed from the point of view of the investor rather than that of the government. In so doing, an administrative barrier can have one or more of the following **characteristics**:

- poor access to accurate, clear, and up-to-date process information;
- cumbersome or overly complicated procedures, including unnecessary double checks, excessive steps required for completing a regulatory interaction, and repetitive approval requirements;
- slow processing of applications and unresponsiveness among civil servants in facilitating approval or access to information;
- excessive or unnecessary paperwork requirements; and
- badly allocated costs for permits, licenses, forms, and other approvals.

International experience suggests that several **common factors or causes** underlie the existence of administrative barriers to investment, including:

- poor policy formulation, where administrative systems and laws cannot achieve their stated goals because the procedures required to implement policy are inherently intrusive, excessively complicated, and difficult to administer;
- reasonable policies but persistent problems of unreformed or poorly performing agencies;
- conflicts of law that lead to confusion in the implementation of procedures;
- insufficiently developed legal and regulatory framework that encourages excessive discretionary decision making or individual negotiations;
- inadequate intra-agency coordination and poor multi-agency decision making processes;
- insufficiently trained personnel;
- insufficiently motivated personnel; and

- lack of administrative capacity to implement regulations, such as skills, technology, personnel, or funding.

Component procedures and their relative significance

This study addresses two investor entry issues in each of the Maldives and Pakistan. A comparative perspective is offered by examining similar issues in Jordan and the U.S. state of Maryland.

The issue identified in the **Maldives** case study is related to the goal of the investment promotion agency to maintain a level of transparency and clarity for foreign investors. There are two aspects of this goal:

- **Disseminating accurate process information.** The case discusses the Maldivian Foreign Investment Services Board's (FISB) recent effort to update its basic marketing and procedural information, including its website and handouts to investors.
- Providing surety for investors through **drafting binding investment agreements.** The overall process involves four sub-procedures that FISB has a role in facilitating: FISB approval, FISB Board approval, company registration by the Registrar of Companies within the Ministry of Trade and Industries, and sectoral licensing, if applicable.

The two procedures identified in the **Pakistan** case study are foreign company registration and licensing facilitation:

- As in most countries, **company registration** in Pakistan is a required step for business start-up. As such, procedural problems with the process would not only send a negative early impression of the business regime but also delay investment projects before they begin.
- The Pakistani Board of Investment's (BOI) **facilitation of investors in seeking licensing and sector approvals** is, in many cases, one of the first activities an investor must undertake. Individual line ministries in Pakistan have much more authority than the BOI, which is designed to be a one-stop shop. Accordingly, BOI officials and others advise investors to seek explicit or implicit approval from the relevant licensing authority prior to registering a company and establishing a local bank account with the State Bank of Pakistan.

Criteria for selection

The entry procedures chosen in the Maldives and Pakistan were selected in part because they represent two cases of largely successful administrative reform and two others where more work needs to be done. In considering

strategies for undertaking reforms, it is instructive to learn from both successes and failures. Also, the procedures examined offer a range of institutional responses and options for consideration by all of South Asia's investment promotion agencies (IPAs) in their management of the basic activities of attracting and facilitating inward FDI.

2 Case study: Maldives

Information availability and transparency

The challenge

Incomplete or publicly unavailable legislation and the lack of clear and comprehensive regulatory guidelines add to a sense of **transparency-based risk** for investors. This leaves officials with excessive discretion in approving investments and in setting associated terms and conditions. Investors are less likely to enter a market where the basic rules governing business are ill defined, and when information is lacking. Those that do consider such a country face greatly increased opportunity costs.

Presenting accurate, up-to-date and practical information is vital to the success of investment promotion and facilitation. The lack of a strong legal and procedural regime for investment and an over-reliance on negotiations and **case-by-case judgments** makes the job of an IPA more challenging. While the IPA may wish to promote its country as a destination for FDI, without sufficient procedural and legal clarity it may not be able to answer all of an investor's questions, which can make the agency look incompetent, evasive, or weak. It also creates more work for IPA staff to assure investors that despite a lack of clear criteria and rules investment can be secure and profitable.

The response

As detailed more fully in the Appendix 2, the legal regime governing FDI in the Maldives is underdeveloped. In response to its overall lack of transparency and in its published materials, FISB is taking steps to improve the materials used to promote the country as a destination for FDI:

- The first priority for FISB is to finalize an updated version of its **'standard contract'**, in part because this is the most vital and binding document that governs FDI in the Maldives. Given the gaps in the regime governing foreign investment, both FISB and the Ministry of Tourism have created contracts that determine the rules and conditions under which investors may operate, including the approved business activities, lease terms for land, the royalty payments and fees due to the government, and investment duration.
- The second priority for FISB is to update its **general materials**, beginning with the website.
- The third priority is to then produce **new published materials** once key policy issues are addressed by the government.

Having now had several years experience with foreign investors in particular types of activities, FISB is presently revising its **standard contract documentation** to simplify and standardize it. In the process, specific reference will be made to the relevant legislation administered by other agencies and clauses will be eliminated that are either irrelevant based on experience or appear overly restrictive.⁴

For example, in regard to hiring Maldivians and providing for “conditions of service that are not less favorable than the minimum” elsewhere in the country, FISB is proposing that the contract explicitly refer to the Ministry of Labor as the arbiter of such issues. Similarly, the Environmental Protection and Preservation Act and supporting regulations are now referred to specifically. Requirements that an investor deposit 10% of the share capital in a local bank account prior to commencing operations and finance at least 75% of the project with foreign capital have been deleted from the contract. In regard to the latter, FISB staff have noted that there have been no cases where the 75% minimum has been relevant. The new draft contract will allow for a more flexible contract length instead of the rigidly stated five and ten year durations.

The Bureau has terminated the contract with their previous **website** hosting company, with which it had a contractual dispute, and has launched a new site as of February 2003. Whereas the old website contained outdated information dating back from 1996 and 1997, the new site, www.maldivesinvest.org, contains 2001 economic data and updated policy information. The cost of terminating the old contract and setting up a new one is “minor” for FISB.

Creating **new printed materials**, however, represents a “substantial cost” to FISB. Prior to publishing new documents the strategy is to conduct research on competing organizations’ promotional materials, including New Zealand and Sri Lanka. Key policy issues will also be addressed in the process, including agree in the sectors that the Maldives wants to pursue FDI and aligning its well articulated national development objectives with a realistic program for identifying and attracting appropriate foreign investors. A draft of new materials has been prepared by an outside contractor and is being reviewed and edited by FISB staff.

Analysis

Given the vacuum of detailed procedural information and incomplete (and seemingly restrictive) laws and regulations, the 12-person Foreign Investment Services Bureau has been struggling to provide greater legal surety for would-be foreign investors and project a more welcoming image. In so doing, the Bureau faces an on-going struggle with **staff capacity**, of its dozen

⁴ The need for updated contracts is not limited to the sectors regulated by FISB. MATI and some investors in the tourism sector are also advocating changes in the contracts issued by the Ministry of Tourism to reflect current law and practice.

employees, only two are seasoned professionals. This affects the speed with which the Bureau can implement changes and undertake reform. For example, FISB officials note that the previous website languished not only due to the legal dispute but also from a lack of time and staff to address its deficiencies.

As Box 1 below suggests, in contrast to other sectors of the Maldivian economy the informational regime governing the all important tourism sector in the Maldives is well-developed.

Box 1: Transparency and information availability in tourism

Although not examined in detail for this case study, it is useful to note that the Ministry of Tourism, which directly regulates and registers major tourist enterprises – hotels, resorts, guesthouses, marinas, diving operators, tour boats, and travel agencies – operates in a similar manner to the FISB in its use of contracts. Due to the accorded by the Government to tourism, the Ministry’s procedures, Act, regulations, and bidding documents are some of the most comprehensive and clear in the Maldives. Yet, to truly achieve an open regime for investment, the tourism sector could itself benefit from additional administrative reform and liberalization. A few examples are noted below:

- After winning a bid to develop and operate a resort, an investor must also undergo a separate, albeit simple and relatively quick (one week) licensing procedure.
- Procedures for the mandatory sharing information on occupancy with the Department of Inland Revenue are not written down even though the Maldives Tourism Act (Art. 6) refers to “regulations made by that Department.”
- No formula or criteria for setting land rent or per bed tax is included in the Act or legislation.
- The current Act, dating from 1999, prohibits private limited companies – the preferred form of foreign investment – from extending leases on resorts. Rather, in an attempt to encourage Maldivians to directly benefit from earnings in tourism the legislation requires private limited companies to become public companies with more than 50% ownership by Maldivians.
- Travel agencies and tour boats accommodating fewer than 40 people are closed to FDI, although according to a Ministry of Tourism official, presently regulations are being drafted to allow foreigners to operate “high-end” tour boat operators accommodating 40 or fewer persons. An internationally well-known tourism company has already expressed interest in being the first such business allowed to operate in the Maldives.

The changes FISB has made to its procedural and marketing information and in the contract, while not addressing all of the deficiencies of the present system, represent positive moves toward providing greater clarity and **transparency** in the regulation of FDI. However, FISB and the Maldivian

government will need to address more fundamental administrative, legal, and policy issues before transforming the economy into a truly welcoming home for FDI.

At the administrative level the **guidelines that FISB disseminates** do not rule out investments that do not meet the stated criteria and FISB staff do not enforce them in any meaningful way. Yet, the message that these preference criteria convey is that FDI is wanted only in limited circumstances. Similarly, because FISB staff have not developed an effective mechanism to enforce the requirement that foreign investors capitalize 75% of their venture from non-Maldivian sources they do not implement it as a matter of custom and are proposing eliminating this provision from their contracts. Because the current contract states “The amounts payable as royalties for the subsequent years will be negotiated before the end of the ... year of operation,” investors face some up-front uncertainty.

As detailed in Appendix 2, in the laws, contract, and guidelines governing FDI, there are **several warnings of punitive action** that might be taken against an investor or the need for investor compliance with laws or regulations that do not in fact exist. Such clauses, especially when explanatory criteria or regulations are absent, send an unwelcoming message to potential investors.

One of the more significant problem areas that has not yet been addressed by FISB is related to the **payment of royalties**, a proposal for which is required at the startup phase. FISB officials can offer some basic guidelines for the range of a royalty increase based on previous precedent. However, the investor has no way of knowing for sure how much the royalty may increase, and no law or legislation caps the increase at any particular percentage or amount.

Sectors with a history of several investments have developed some criteria, but others do not. As a result, it is the case in the Maldives that similar size firms working in the same sectors pay differing royalty amounts based on the outcome of negotiations. FISB notes that the main bottleneck in creating royalty criteria has been a **lack of expertise and staff time** to conduct a sound financial and revenue analysis on the royalty system.

The present royalty system as administered prohibits investors from making long-term financial and business plans and discourages longer-term investments and planned expansions. The fact that **investors must propose their own royalties** also means that they will have to do extra work to find out what their competitors are paying. In addition to this research, an investor will also need to identify the prevailing wages and benefits for the sector in which it seeks to invest (which is impossible in new business activities) to comply with the contract and law.

All told, the process of managing investment in the Maldives requires additional effort and time than can be expected elsewhere, and it is more likely

that investors **will need to hire local facilitators** to obtain some of this information, thereby raising direct startup costs.

At the **nexus between policy and administration**, the Maldives also lacks clear and exhaustive criteria specifying what activities are closed to foreign investment. In practice, FISB is liberal in encouraging and approving of foreign investors but, as FISB management admits, it is constrained in responding to investors who inquire about the permissibility of investing in new sectors and about what royalty payments are expected. To date, new inquiries must be discussed on a case-by-case basis.

A local lawyer observed that **despite the good intentions of FISB** and other agencies, he is sometimes “embarrassed” by his inability to advise a foreign investor definitively as to whether FDI is even permitted in a certain activity. In such cases the surest way to find out is to proceed with an investment approval application. Applying for approval represents a cost of time and resources for an investor, especially since detailed financial plans are required. Until the Board meets and makes a decision investors will not know if they are wasting their time or not.

At the legal level, more work needs to be done to create good laws and regulations that sensibly regulate the private sector. It is part of the latest National Development Plan **to improve the Maldives legal regime** through completing and improving Acts and supporting legislation. The Foreign Investment Act was revised by the Ministry of Trade and Industries four years ago and is presently under consideration by the Law Commission. The Commission that drafts final versions of laws and ensures that conflicts do not exist among other pieces of legislation. In the four years since its submission to the Law Commission, FISB and the Ministry have considered making additional changes but are hesitant to do so due to concerns about facing a similarly lengthy delay.

To address the deficiencies of the Act, FISB has agreed in principle to seek **technical assistance from FIAS to revise the law** and bring it up to international standards. After a new law has been redrafted by the Law Commission, certified by the Attorney General and Presidency, and then adopted by the *majles*, FISB anticipates making additional changes to its guidelines and materials. Under present circumstances, it is anticipated that this process will take a number of years, in large measure due to the slowness of the Law Commission, which relies largely on part-time lawyers and has a considerable backlog of work before it.

The **cost to FISB** in undertaking these reforms is difficult to measure, as they represent allocating staff time among a number of priorities. Due to a hiring freeze across all Maldivian government agencies, FISB cannot hire new staff. With approval from the Public Services Division under the Presidency the FISB can trade an existing staff member to another agency and then replace

him or her with someone with different skills. The agency has been attempting to upgrade the capacity of its staff, most recently bringing a young lawyer into the agency. The inward transfer of a professional staff member does not represent a significant cost to FISB. The expense of the new website is “minor,” according to FISB management, but reproducing the organization’s main brochure represents a “substantial cost” in relation to the Bureau’s operating budget.

The **cost savings to an investor** from basic improvements in transparency are difficult to measure. They involve shortening an indeterminable amount of time spent on investigating the Maldives’ potential as an investment location. The clearer and more comprehensive investment regulation and guidelines are, however, the less foreign investors will have to rely on local law firms. These charge an estimated average of MRF 600 (US \$47) per hour.

Investment approval

The challenge

Given the inherent risks that confront foreign direct investment, entry procedures can easily discourage investor interest if they are cumbersome, confusing, overly expensive, or lack a clearly defined end point at which a business can begin operations. While information availability and transparency is one important aspect of investor entry, another important consideration is the **speed and predictability** of the basic procedures that confer permission on a foreign investor to operate in a new country.

The response

This case study examines the way foreign investment in the non-tourism sector (which accounts for over 32% of the country’s GDP) in the Maldives is approved, registered, and licensed, paying special attention to mechanisms for cross-agency coordination. All foreign investment in the Maldives must be approved and registered.

FISB has developed internal guidelines regarding the investment approval procedure. It has also set an unofficial agency goal for facilitating the completion of the all major investor entry tasks – investment approval, verification of the contract by the Presidency (and Attorney General, if needed), names search, company registration, and, if applicable, sectoral licensing – within 45 days. Reportedly, this timeframe is regularly achieved. While the overall timeframe is not competitive internationally, the Maldives is to be credited with **setting a timeframe** at all and completing all procedures, including sectoral licensing, which in many countries can be a time-consuming and unpredictable process, within six weeks.

In terms of facilitation, FISB largely relies on the workings of its Foreign Investment Board. **The Board** is made up of relatively senior officials, including ministers, from most of the relevant regulatory agencies. This enables binding decisions to be made as part of the Board's deliberations. At the same time, FISB seems to be able to effectively manage and direct the Board so that meetings can be scheduled to suit the workload of the Bureau. Similarly, FISB is able to present issues of longer-term policy to the Board for consideration, and the decisions reached by the Board seem to have enough weight to matter with other agencies.

The Board's track record is also attributable to some contextual and institutional factors particular to the Maldives. Due in part to the underdeveloped nature of the legal regime, the Maldives does not have to curtail the mandates of a host of other agencies while opening up to FDI. As a result, few agencies issue licenses and permits for business. Few other agencies seem to be involved in **territorial fights** with the Ministry of Trade and Industries over its role as the regulator of foreign enterprise.

Most agencies seem **content to defer to FISB** on matters of approval so long as individual agency regulations and laws are not broken. The Maldives' small size and unitary state model make communication and coordination easier than in a geographically larger and decentralized country with provincial, district, and municipal governments.

Analysis

Administration

Investment approval in the Maldives, while discretionary and of questionable necessity, is a **relatively well-administered process**. FISB's development of the Board approval mechanism and facilitation of sectoral approvals are largely effective from an investor's point of view. The investors interviewed had a fairly high degree of confidence that in most cases the Board approval and resulting contract were binding and enabled a firm to operate under transparent rules and norms. In general, other agencies do not seem to intrude on investment startup and largely take their cues from FISB as to when an investor should have a direct meeting or review sectoral regulations. On most occasions, the Board meeting is an adequate forum for members to understand a project and make a decision about its approval.

The investors interviewed agree that generally **the Board is an effective mechanism** for generating binding and final investment approvals. There are few sectoral or operational licenses and obtaining them after Board approval is not problematic or time-consuming. Additionally, in interviews with officials from three Ministries with the most direct interaction with investors in regard to licensing issues – the Ministries of Tourism, Fisheries, Agriculture, and Marine Resources, and Home Affairs, Housing, and Environment – the importance of the Board's upfront approval was confirmed.

Staff who attended the Board meetings from the Ministry of Home Affairs, Housing, and Environment stated that the Board clearly functions as a vehicle for FISB to seek approval of an investment project, and other agencies do not intrude inappropriately. Officials from the Ministries of Fisheries, Agriculture, and Marine Resources and Home Affairs, Housing, and Environment (both of which are represented on the Foreign Investment Board) suggest that their **direct interaction with foreign investors is limited** and they defer to FISB on whether an investor should meet with technical regulators. As one environment official noted, beyond the Board's review, at which specific environmental criteria can be addressed and a request for a scoping meeting can be articulated, "we try to minimize the intervention from our side."

One-stop shop

Still some investors interviewed expressed **concerns about FISB maintaining its authority as a true one-stop shop**. Although FISB is generally credited with providing good information and facilitation services, the contracts are not immune from differing interpretations and cannot altogether eliminate potential disputes among regulators. For example, some noted that there have been some cases where investors feel that some aspect of their contract with FISB was not honored by other agencies.

This concern is exasperated by the previously noted lack of a fully articulated legal framework for FDI. Without knowing what other regulators may have jurisdiction over a certain business activity or what other agencies' rules and regulations are, the present system is inherently vulnerable to disputes. As one investor noted, while the intentions of regulators – especially in the Ministry of Trade and Industries and Ministry of Tourism – are positive and often the government and the private sector can work out disputes amicably, "**you cannot trust the [FISB-investor] agreement completely.**"

In regard to facilitation, on balance **FISB has successfully maintained its position as the primary interface** with foreign investors. While FISB staff do not know all of the technical details of fishing regulations, for example, FISB staff do know what other agencies need to be consulted depending on the type of investment in question.

The **Maldives' small size minimizes the inconveniences** of going from one agency to the next. The national government is located on one small island, Malé, and many offices of interest to foreign investors are located close to one another. Indeed, from FISB's office space, the Company Registrar is literally within eyesight, the Ministry of Tourism is across the hall, the Ministry of Fisheries, Agriculture, and Marine Resources is down the stairs, and the Ministry of Home Affairs, Housing, and Environment is across the street. As such, FISB staff can escort investors to most of the agencies they may need to visit in a matter of minutes. Further, as of January 2003 the Ministry of Trade

and Industries has installed an electronic document tracker that enables FISB staff to more efficiently monitor the progress of investor applications.

Commitment and transparency

Officials and investors interviewed said that **generally government acts in good faith** with the private sector and sets an encouraging tone with investors. There are very few examples of the government intervening in an investment or revoking a license. The attempts by FISB to create binding contracts with investors in lieu of the investor operating in a well defined legal environment is a positive interim step.

Nevertheless, clearly **greater emphasis on codifying legislation and procedural guidelines** is needed to overcome doubts that may arise when investors consider the available information on FDI in the Maldives.

Some investors have characterized the Government of the Maldives as **improving, but traditionally prone to secrecy**. Businessmen and local lawyers alike complain that government regulators are not always willing to share regulations or guidelines with the public.

3 Case study: Pakistan

The repeal of BOI investment registration

The challenge

An investor's first impression of a country is often formed when completing the basic investment entry procedures. Entry procedures can encourage investors to look elsewhere if they are poorly administered, excessively time-consuming, or unduly expensive. Maintaining comprehensible and streamlined investor start-up procedures, and consequently avoiding unnecessary duplication of effort, are important first steps in attracting FDI. This case discusses **Pakistan's elimination of a superfluous investor entry procedure** in an overall investor startup process that is lengthy by world standards.

The response

As the BOI underwent a **program of reform and restructuring in the 1990s**, the necessity of registering all investment was questioned. The agency was committed to becoming less of a regulator and more of a promoter and facilitator of inward FDI. At the same time, the BOI's relationships with other agencies improved allowing for reliable sharing of data. In 1999, the decision was made to cease requiring investors to register with the BOI (except for branches and liaison offices).

The BOI **continues to register foreign branches and liaison offices**. Branch offices are for overseas foreign companies with a contract to do business in Pakistan on a limited basis. Liaison offices are for companies that want to establish a representative presence in the country. While the BOI's marketing materials suggest that such companies are registered within six to eight weeks, BOI staff state that in reality this registration process takes one to three weeks.

Analysis

Facilitation factors

The BOI's **decision to give up a regulatory function** should be commended. International experience suggests that agencies often resist reducing their mandates out of fear of losing relevance, power, and, in some cases, revenues derived from issuing an approval or certificate. The decision to cease requiring this registration seems to have been made with little resistance. The reform process in this case was straightforward and the decision to cease registering foreign enterprises was **facilitated by four factors**:

- **No significant benefit** was derived from the registration process, so its discontinuation met little resistance. In maintaining its registration requirement, the BOI neither received fees nor vital data that would

otherwise be unavailable. At the same time, it was clear to the BOI that the process offered no real benefit to investors. As deregulation moved forward, investors were no longer required to get BOI approval of projects. The process diverted modest staff resources and conferred limited benefits.

- **Registration was increasingly incompatible** with the agency's evolving role. Discontinuing the process supported the BOI's efforts to transform the organization from a regulatory agency to one focused on its key goals of promoting and facilitating. The BOI could maintain its focus on core objectives while dispensing with an ancillary and unnecessary regulatory function. At the same time, the SECP was undergoing a change effort of its own that would not only fully take away the responsibility of registering firms but also improve the speed, transparency, and user-friendliness of the process.
- **Comprehensive enforcement** of the registration requirement was difficult. Investors were not required by law to register with the BOI and did not receive any benefits from so doing. The BOI realized that they were not getting full compliance with the requirement to register and did not consider it a top priority to expend resources to track down unregistered firms.
- **Other basic registrations** required by national law were conducted in other agencies, so ceasing the BOI registration did not compromise the collection of data. Between the State Bank and the SECP, the data required by the BOI was collected elsewhere and the BOI was able to access this data on a regular basis. As such, investors were not evading the regulatory net by forgoing a registration with the BOI.

Costs and impacts

As described by BOI officials, the reform process for the BOI was relatively **simple and inexpensive**. The decision was made by the Chairman of the BOI and readily accepted by the staff. No explicit costs were detected in undertaking this reform beyond a few coordinating meetings; in essence it was a decision to *cease* an unnecessary and simple regulatory function. The cost savings to the BOI were slight, but included the reduction in material costs associated with producing registration certificates and the and in time by freeing staff from performing this registration procedure.

The change has resulted in a **positive impact** on foreign investors by reducing a few days and two steps in the process of starting up a business. However, according to BOI staff, the overall process of registering a company at the SECP, opening a bank account, and obtaining at least tacit approval from a relevant licensing authority takes an average of one to four weeks depending on the size, complexity, and sector of activity.

FDI facilitation

The challenge

One of the most difficult tasks for governments promoting investment, especially when a policy shift has increased access to the economy by the private sector, is **coordinating the approval of investment** across multiple agencies. Usually an investment promotion agency will be tasked with taking the lead in facilitating and coordinating investment policy and implementation. Yet, this mandate is frequently overlaid on a national and local bureaucracy that has not made a supporting shift either at the procedural or mental level.

Agencies may resist an IPA's efforts to streamline investment approval because they perceive disengaging from direct regulation as a loss of relevance or power. This resistance can be rooted in the commitment of the agency to its mandate, which it may feel uniquely qualified to fulfill. For example, standards and environmental organizations often readily resist efforts to circumscribe inspections and detailed screening procedures. They fear that the desire to please investors may weaken regulatory protection. At the institutional level, in many countries agency prestige and budgetary resources are linked with their perceived relevance and the scope of their activities. Scaling-back approvals can be seen as a threat. Finally, at the individual level some regulators may resist giving up direct regulatory authority because it represents an opportunity for rent seeking.

The response

The role of the BOI to assist investors navigate the Pakistani bureaucracy is understood to begin with initial investor entry requirements, including visas and company registration, as well as later procedures such as acquiring land and obtaining utility services. This case examines **the BOI's mechanisms for coordinating with other agencies on facilitation** of investor approvals. In Pakistan, problems related to agency coordination most frequently arise at the post-startup phase. However, obtaining sectoral licenses, which BOI officials advise be undertaken before the other initial investment entry procedures, can be problematic.

In regard to facilitation beyond information availability (see the agency's website, www.pakboi.gov.pk), which the BOI is fairly good at, the BOI adopt a three-tiered approach as discussed below:

Facilitation Department

The first level of facilitation is carried out by both staff from the BOI's two "wings" – North America/Europe and Asia/Rest of the World – and the Facilitation Department. By request, BOI staff is tasked with arranging appointments with other government ministries and local businesses,

explaining the basic procedural requirements, and contacting other regulatory agencies in support of investors' requests for approvals.

When an investor confronts a problem with another agency and requests the BOI's assistance, the BOI will arrange for an inter-ministerial meeting, most commonly writing a formal letter to the top official of the agency, then follows up with phone calls and other correspondence to arrange for a meeting. The BOI usually allows for two or three months of direct engagement with the ministry in question before seeking other avenues of redress. The staff interviewed did not agree on the degree to which the BOI actively follows up with investors; some suggested that this function is not well done nor consistently attempted.

Cabinet Committee on Investment (CCOI)

The second tier is the Cabinet Committee on Investment (CCOI), which is comprised of senior government Ministers. It "has been formed, headed by the Finance Minister and **tasked exclusively** to deal with matters relating to private sector investment." (BOI Pakistan 2003: 5). One goal in constituting such a committee was to give investment issues great prominence and ensure that top decision-makers would be represented when issues of sectoral and incentives approval were addressed.

In a nod to practicality, the CCOI was formed to address some of the **bureaucratic intransigence and inter-agency squabbles** that have characterized governance in Pakistan in certain periods. The CCOI's Terms of Reference do not shrink from acknowledging that administrative barriers to investment may indeed arise, stating the committee's activities as follows:

- "To consider investment proposals and projects involving relaxation in policies and incentives submitted by the BOI Secretariat.
- To accord approval to the investment proposals/projects in all sectors of the economy requiring consents and clearance of various Ministries and Divisions and resolve issues impeding realization of projects, their implementation and operation.
- To consider and approve the proposals/projects for development and management of Industrial Zones, Free Trade Zones, Free Industrial Zones and Export Oriented Units.
- To deal with the issues facing existing industries/projects in operations and take decisions to resolve them.
- To serve as a 'clearing house' for resolving the issues relating to investment projects and authorize the office of the Board of Investment to issue single permission so as to eliminate the need to seek redress permission of various ministries/Divisions/Departments.

- To consider availability of utilities to be supplied by the concerned departments while examining the investment proposals and give the investors firm indication of their availability or otherwise. On approval of the project the line departments will be bound to supply the facility to the investors within thirty days on receipt of application from them.”⁵

Convening the CCOI takes a minimum of 15 days, BOI staff says. Although it is supposed to have regular meetings every two months since 1998 this schedule has not been adhered to. The BOI calls a meeting at its discretion, usually when there are “a number of cases” to be addressed. Typically the BOI calls a cabinet committee meeting only after attempting to resolve disputes through direct inter-ministerial dialogue over a period of two or three months.

Provincial committees on investment

The third tier of facilitation is represented by Provincial Committees on Investment for Punjab, Sindh, Balochistan, and Northwest Frontier Province. The Terms of Reference for these committees are more or less the same, and all have a clause in them that pledges to facilitate investment akin to the following: “To facilitate the Board of Investment to provide fast track support to the investors **under ‘One Window Service’** for completion of their projects and resolving issues face by the existing projects/companies operating in the province.”⁶

Each committee is comprised of approximately 12 to 20 board members, including Provincial Ministers, representatives of business associations and local firms, and a BOI delegate. These committees **meet on an ad hoc basis** when either the BOI or the provincial chairman feel that such a meeting would be useful. Aside from these committees and a satellite office in Karachi, Pakistan’s commercial center, the BOI does not maintain a presence in the provinces. However, each province has its own IPA.

Analysis

BOI facilitation

As a **facilitator of inward FDI**, the BOI’s record is mixed at best. Its ability to provide information and make introductions is seen to be largely effective. However, at the more profound level of assisting investors resolve disputes with other government agencies, the BOI, while well intentioned, fails to achieve its goal of being a one-stop shop. The BOI is criticized for being insufficiently proactive in its role as a facilitator. It is seen as somewhat disconnected from the business community. As one investor noted, “the BOI

⁵ <http://www.pakboi.gov.pk>

⁶ Terms of Reference, Government of N.W.F.P., art. d.

has not really advertised itself as the one to contact” when a business is facing problems with other regulators.

Rather than rely on the BOI, note several investors, local lawyers or consultants, personal contacts, local business Chambers, and other business interest groups like the Overseas Investors Chamber of Commerce & Industry and the American Business Council are often used as the main vehicles for resolving problems in investor entry and operations. Investors suggest that the BOI lacks sufficient power and assertiveness to effectively compel or agencies to persuade other agencies to quickly, responsively, and consistently issue licenses and other approvals on a day-to-day basis, much less to meaningfully or systematically streamline procedures for investors over the long-term.

This **inability to successfully intervene** on an investor’s behalf is seen in the challenges faced by staff in direct facilitation of investors as well as in the failure of the national and provincial committees to perform as intended. Indeed, BOI staff admit that in many cases, a foreign investor will find a local partner or facilitator to inform them of the procedure for commencing operations and expedite approvals from government agencies.

Some BOI staff suggest that despite the fact that the agency also has a Board chaired by the Prime Minister, **the agency lacks credibility**.⁷ When asked to describe their facilitation role several BOI staff members from different parts of the agency conceded that they presently “feel helpless,” “don’t have sufficient authority now,” or “can’t cut across agencies” to help investors.

As such, the BOI seems to have **ceded some of its core activities to private sector facilitators**. This could pose a dilemma for the agency. If it cannot effectively represent the needs of investors to other government agencies, it risks becoming irrelevant. Indeed, while serving generally effectively as a source of information and an introduction maker for foreign firms, the BOI does not seem to be closely in touch with or vital to the private sector, either foreign or local. The agency does not systematically track contacts with or complaints from investors, and the quality and consistency of follow-on servicing is unclear.

When **directly contacting other ministries**, the BOI does not seem to be able to consistently reach top decision-makers in a timely fashion. Some BOI officials note that the responsiveness of other agencies varies based on both the individual in charge and the bureaucratic structure in place. While personal contacts may help BOI officers in their facilitation role, this results in an unstructured approach that can be unreliable.

At the technical level, the **BOI does not have well-established contacts within sister agencies** who are designated to resolve issues of concern to investors. One exception to this characterization may be in the area of issuing

⁷ Reportedly, the BOI’s Board has not met for almost two years.

work permits. In this case, the BOI hosts periodic meetings with relevant decision-makers from the Ministry of Interior about requests for expatriate investor and worker permits. The BOI reports that the approval timeframe has fallen from an average of six months to three to four weeks.

The BOI's attempts to facilitate inward investment is complicated by several **issues mostly beyond its control**. In Pakistan, line ministries tend to be powerful and territorial. In some cases the BOI does not take issue, particularly when specific technical and concessional systems govern an economic sector, such as private power provision or oil and natural gas exploration and development. But in other cases ministerial dictates frustrate the BOI's ability to prepare investors for how to operate in Pakistan. Within agencies, delegating meaningful control to subordinates, which can expedite decision-making where well-established approval criteria exist, is generally resisted.

The country's federal system delegates significant powers to provincial level governments, and due to geographic and political factors, federal agencies sometimes lack clout and practical influence at the provincial level. Additionally, the BOI faces extra pressure and high expectations in its role as the champion of the private sector because of a legacy of complaints that the Government of Pakistan in previous years has **abrogated contracts** and agreements with the private sector without due process and adequate compensation.

Cabinet Committee

The intention of the CCOI is "to accord approval to the investment proposals / projects in all sectors of the economy requiring consents and clearance of various Ministries and Divisions and resolve issues impeding realization of projects, their implementation and operation." However, evidence suggests that the **committee does not serve as a vehicle to resolve individual and routine investment disputes**. Rather, due in part to the very senior nature of its members, the CCOI seems to serve largely as a policy making body and an intervener only in cases where projects are of great significance. The CCOI's infrequent meetings and the long lead-time required to set a meeting suggests that investors do not address day-to-day issues under its auspices.

BOI staff note that the **stature of the committee** remains a positive asset for the agency as it strives to advocate on behalf on investors. Certainly the committee's existence has raised the prominence of FDI issues generally in Pakistan. At the same time, BOI officials see convening a committee meeting "as a last resort" and prefer to rely on their own resources to resolve disputes on an investor's behalf. While this is an understandable response given the committee members' high profile and non-CCOI workload, it has the effect of extending the resolution of inter-agency disputes by adding a pre-meeting phase where the BOI negotiates with other agencies. The current process also

undermines the committee's role as a binding, problem-solving mechanism for investors.

In 2002, the CCOI met "two or four times" BOI staff stated. As for the **CCOI's diminished functions**, BOI officials cite several exogenous issues that have dampened interest in Pakistan among foreign investors, notably its 1998 nuclear weapons tests and resulting sanctions and suspension of FDI insurance schemes, change of government, on-going military tension with India, and post-September 11, 2001, issues of security and potential anti-Western attacks.

But other factors make the CCOI an ineffective vehicle for resolving investment disputes, notably the fact that its **members are too senior** to serve the needs of the BOI and the investment facilitation function. Rules for delegating to lower officials are not well articulated and reportedly few committee members are willing to delegate to subordinates. In a country as large as Pakistan, getting seven ministers to meet is no doubt challenging.

Finally, **the composition may not be ideal** – for example, it is unclear why the Minister for Health, Population Welfare, Religious Affairs, Zakat & Ushr and Chair of the Privatization Commission would need to consider approval of a foreign apparel factory.

Provincial committees

The **provincial committees** are also staffed with somewhat prominent individuals at the local level, but the problems facing these committees are not necessarily the same in tenor. According to BOI staff, in general these committees have not actively taken a role "to provide fast track support to the investors under 'One Window Service' for completion of their projects and resolving issues face by the existing projects/companies operating in the province."

In response, the BOI has been considering **opening additional regional offices** but no firm plans are in place; the BOI's Karachi office is reputed to be fairly well respected. It should be noted that the provincial committees generally would not need to facilitate obtaining approvals at the startup phase aside from local and municipal tax registrations. Rather, they are more likely to become involved in relation to land acquisition, site development, and obtaining utility services.⁸

⁸ Private land acquisition in Pakistan is presently plagued by many cases where titles are disputed and ownership rights are difficult to substantiate.

4 Third country comparisons: Maryland (USA) and Jordan

Criteria for selection

The two cases examined – the U.S. state of Maryland and Jordan – are appropriate comparative cases for the Maldives and Pakistan because they have largely solved the **major investor entry problems** facing FISB and the BOI.

- In particular, the **Maryland** Department of Business & Economic Development (MDBED) provides a good example of an IPA that has eschewed regulating investment to focus instead on promoting and facilitating. MDBED is also an excellent model for information dissemination and transparency.
- **Jordan** has faced similar battles in facilitating foreign investment and coordinating administrative procedures across agency lines, and its successes and failures are instructive.

In addition, the **size of the economies** of Maryland and Jordan offer two reasonable comparisons to the South Asian countries. With a GDP of US \$186 billion, the U.S. state of Maryland's economy is smaller than India's, roughly twice the size of that of Bangladesh and Pakistan combined, and almost one third that of the South Asian region as a whole. Jordan, with a GDP of US \$8.8 billion, is a mid-sized economy compared to the South Asian states – larger than Afghanistan, Bhutan, the Maldives, and Nepal, but smaller than Sri Lanka, Bangladesh, Pakistan, and India.

Additionally, the third country case examples demonstrate progress in both **high and low-income economies**. While for 2001 Jordan reports a GNI per capita of US \$1,750,⁹ Maryland is a highly developed economy with median household income at \$53,530,¹⁰ albeit with pockets of rural poverty mostly in the west of the state and in urban Baltimore, the largest city.

Information accessibility and transparency

Maryland began active investment promotion in the late 1980s and today the **Maryland Department of Business and Economic Development** (MDBED) is recognized as one of the best state-level investment promotion agencies.

Benefiting from a deregulated business environment, MDBED does not directly regulate business and as such can focus full time on its promotional

⁹ The World Bank, Country Data Profile.

¹⁰ www.dbed.state.md.us.

and facilitation role. No investment requires prior approval in Maryland and there is no discrimination against foreign firms in the state. The only required registrations for businesses are with the Department of Assessments and Taxation, which handles both company and tax registration, and a public or private workmen's compensation insurer. Both tax and company registration can be completed online within 24 hours.

Website

One of the **keys to its success** is development of an interactive and highly **useful website** (www.dbed.state.md.us) that offers investors a variety of procedural, economic, and marketing information. Investors can download the MDBED's "Guide to Legal Aspects to Doing Business in Maryland," which clearly outlines various essential procedures and regulations as well as incentives and business assistance programs.

Maryland officials note that their explicit intention in preparing materials is to make it as **easy as possible for investors to understand** what the requirements are to startup a firm in the state. To do this, they not only collected all relevant legal requirements and corresponding contact information for state regulatory agencies but also tried to anticipate what questions investors may have and include answers to these questions in the guide. The guide is written in a user-friendly manner and easy to comprehend.

Business procedural guide

The major topics covered in Maryland's **business procedural guide** are:

- Allowable forms of business organization and process to incorporate each
- Foreign business operations in Maryland
- Mergers under Maryland law
- Securities law
- Maryland taxation
- Labor and employment law
- Business assistance and financing programs
- Assistance to agriculture businesses
- Natural resources law
- Environmental law

- Consumer protection law
- Franchise law
- “Business Opportunity” law
- Antitrust law

Internet-accessible databases

The informational services provided by the MDBED goes beyond basic procedural and legal data. The agency has prepared a series of **Internet-accessible databases** – based on conducting sectoral and general research on the type of economic and comparative data that influence investors’ locating decisions – that allow an interested investor to access a wide range of economic, social, and infrastructure data about Maryland and other states. The website allows the investor to compare Maryland and its cities to other states and cities according to several indicators, including the following:

- Population density and median family income
- Number of colleges, universities, and graduates of various levels of education
- The amount of federal government money spent
- Gross state product (GSP) and GSP per capita
- Various types of tax rates (personal income, sales tax, corporate tax, etc.)
- Indicators of the technology and research base
- Average power costs
- Workforce availability by skill level

Providing accurate process information also enhances MDBED’s priority goal of attracting and retaining investment. The less time and money that a would-be investor spends collecting and understanding basic procedural information, the more time promotional officials can focus on trying to sell the investor on the attributes of the state. MDBED staff state that it is important for them to get to the point where they can deliver a tailored presentation and have face-to-face contact with a potential investor. Ensuring that all basic informational requirements are met **before the investor even comes to the state** is important in reaching this goal.

The information collected includes comparisons with states and cities that are natural rivals on a sector-by-sector basis. For example, for biotechnology MDBED has prepared marketing materials comparing the city of Baltimore (where the state biotechnology industry is clustered) to its primary rival – Boston, Massachusetts. These materials include various important **comparative statistics** for the industry (number of existing firms, number of relevant research institutions, top corporate tax rates, amount of federal and state research and development funding, number of qualified workers and students, etc.) as well as features specifically selected to demonstrate what is more favorable about Maryland than Massachusetts.

For example, while exploring a comparison to Boston, an investor might discover that Baltimore has lower urban real estate prices and taxes, a shorter average commute, warmer weather, and less snow. In this way, MDBED's basic information includes data that is intended to make the state look comparatively good as an investment destination. As seen in Box 2, this approach is also generalized and the MDBED website features a number of comparative facts from reputable, neutral sources that highlight Maryland's advantages over other state rivals.

Box 2: MDBED's Use of favorable comparisons

A few examples of MDBED's use of favorable comparisons are included below:

- Maryland ranks first among the states in the percentage of professional and technical workers (23.0%) in the workforce. *Source: U.S. Department of Labor, Bureau of Labor Statistics, data for 2000.*
- Johns Hopkins Hospital ranks first in the U.S. News honor roll of best hospitals in the nation, demonstrating outstanding competence in sixteen specialties. *Source: U.S. News and World Report, July 2002.*
- Maryland ranks fifth among the states for total venture capital investment in 2002, up from tenth in 2001. New Enterprise Associates, a Baltimore based venture firm, was the top ranking venture investor in 2002 for the second year in a row. In addition, the Maryland Department of Business and Economic Development was listed in the top 100 most active venture investors in the country. *Source: National Venture Capital Association.*

Investment facilitation

The **Jordan Investment Board (JIB)** is the country's national investment promotion agency and has a central role in facilitating inward investment, including guiding investors through the basic compulsory startup procedures of company registration, Chamber of Commerce & Industry registration, municipal permitting, and sectoral pre-approval and licensing.

For several years, the JIB has worked to increase its ability to guide investors through the process of starting up and operating a firm. One of its major challenges has been understanding and appropriately representing sectoral and municipal regulations and developing coordination mechanisms to facilitate the quick approval of foreign investors. In previous years, the JIB considered **trying to create a one-stop shop** whereby officers from various regulatory agencies were seconded to the JIB and situated in one room to process all investor approvals. **This idea was rejected** due to its infeasibility and some of the inherent risks associated with such a model.

Instead, the JIB adopted a **two-prong approach**, involving allocating incentives and direct inter-agency facilitation.

Allocating incentives

The JIB identified the critical area of allocating incentives, which involves customs and tax authorities among others, as a priority and established a **mid-level technical committee** to expedite approvals. Although the Prime Minister chairs the JIB's Board of Directors, as far as investors are concerned the critical decision making body at the JIB is this "Investment Promotion Committee" formulated to expedite incentives approvals. As elaborated in Article 21 of Jordan's Investment Promotion Law, the Director General of the JIB chairs a five person Committee, whose members are:

- Director General, Income Tax Department
- Director General, Customs Department
- Representative of the Ministry of Industry and Trade appointed by the Minister
- Representative of the private sector appointed by the Chairman of the Higher Council for Investment Promotion

Having several years of experience in approving of incentives, today the Committee **functions fairly smoothly**. The rules governing what firms qualify for what incentives are written down and clear, making the process of obtaining incentives more automatic and predictable in the past few years. Committee members are all empowered to make binding decisions on behalf of their agencies, but not too senior as to be unconcerned with or unavailable for the committee's routine functions. The JIB is planning to manage the process of allocating duty exemptions electronically in 2003, enabling an investor to see on-line what he or she is entitled to and apply via the Internet.

Despite its success, this example also includes a **cautionary note**. As the novelty and contention of allocating duty exemptions has receded and the approvals have become more routine, some investors have charged that actual group meetings are not always called. Instead, say some investors, committee

members review the requests separately and communicate individually to their colleagues, thereby unnecessarily drawing out the process. As a result, sometimes receiving an approval can take up to four weeks, some businesspeople say.

Direct inter-agency facilitation

The JIB launched a **public relations campaign** designed to make the case for the value of foreign investment and importance of administrative barriers to bureaucrats and the public alike. In this campaign, the support and public statements of both King Hussein and King Abdullah were instrumental in making the reduction of red tape a national priority. Following some success in raising administrative barriers as an issue, the JIB programmed a series of issue specific multi-agency coordination meetings and donor-assisted Process Improvement Workshops to bring together decision-makers from other agencies to develop consensus-based procedures. Private sector representatives and non-governmental technical experts often attended these meetings.

The JIB's strategy recognized that several agencies hesitated in formalizing procedures, committing to quick approval timeframes, and responding to JIB requests for assistance on behalf of investors. Little direct, focused **communication between decision-makers and technical staff** had occurred to explore the roots of such resistance. By soliciting the input of other regulators at the procedural level the JIB hoped to achieve several goals. At its simplest, the JIB hoped to at least better understand the processes in place in other agencies and improve coordination. The JIB's facilitation staff (both case officers and staff responsible for facilitating certain procedures) were intimately involved in these meetings both as a staff training exercise and as preparation for their role in explaining to investors how to complete a given regulatory interaction.

The JIB also initiated a deliberate effort to **cultivate counterparts** in other agencies who would be specifically accountable for foreign investor facilitation within their own agencies. The meetings and workshops helped support the goal of enabling JIB staff to get to know and develop positive working relationships with officials from sister agencies. The ultimate goal of these meetings and workshops was to encourage improvements in procedures, information dissemination, and responsiveness through more intensive process re-engineering exercises. At the end of these meetings, Memoranda of Understanding or other forms of commitment were signed that obligated each participant agency to undertake specific reform actions within a given timeframe.

In the past five years, the Jordan Investment Board has participated in several such efforts. Some of these have been successful, and others have not. One successful example was in the area of company registration, where a Process

Improvement Workshop and **process re-engineering efforts** led to legal, institutional, procedural, and informational dissemination change. The Process Improvement Workshop was used to sensitize various regulators to the needs of creating a more efficient, comprehensible, and quickly completed process. The Workshop resulted in a detailed Action Plan allocating roles and responsibilities for all participants to take specific steps to reform the process. JIB officials note that this change effort was greatly enhanced by the leadership and enthusiasm of the Ministry of Commerce, which was itself interested in improving its services and took over the project after the Workshop and saw it through to conclusion. The Workshop relied on international facilitators and consultants, and a Jordanian consulting firm assisted in the process re-engineering work.

The most visible manifestation of this change is the **creation of single room** staffed with the various officials involved with company registration, allowing for investors to complete all company registration activities in one space. The procedures have similarly been changed, with a new automated application processing system installed, the number of forms being cut by 80%, and according to government officials and an independent investigation the total time was reduced from over two weeks to 30 minutes.¹¹ The Ministry's communication tools have also been improved and a revamped Ministry website explaining the registration procedure in English and Arabic was completed in April 2002.

Streamlining the process governing **general licensing approvals** became a priority for the JIB based on complaints from investors about the lack of criteria governing approval requirements and the sheer number of business activities subject to licensing in Jordan. The JIB attempted to address the over-regulation of licensing agencies. The JIB requested from the government to agree to restrict licensing by all agencies to commercial activities that would have a clear impact on human health, safety, or environmental quality, or in cases where the individuals themselves were deemed to need a license to practice their professions, such as for doctors and lawyers. Recognizing that the agency did not have the resources to program Process Improvement Workshops and conduct process re-engineering exercises with the dozens of licensing departments and agencies individually, it sought instead to draft a model licensing law that would eliminate the many supercilious licenses issued by government and create an administrative structure to reflect the law.

To pave the way for **drafting and adopting such a law**, the JIB engaged international and local legal experts to analyze the legal regime for business licensing and identify bottlenecks. Next, a multi-agency workshop was designed and led by the international expert, attracting approximately 40 representatives from 17 agencies. The workshop presented the principles behind why reducing the number of licenses would have a beneficial on

¹¹ See USAID's Achievement of Market-Friendly Initiatives and Results Program, Microenterprise Draft Report on Phase I.

business activity and eventually government revenue and recommendations regarding specific licenses to abolish. A Law on Licensing was drafted with JIB input to limit the types of licenses that agencies could issue and make the JIB the “gate keeper” of all licenses. Follow-on support was provided to the JIB to assist its efforts to get the law passed.

An Action Plan was created that called for several next steps, including:

- Creating and disseminating a survey to various licensing authorities aimed at having them document licensing procedures and make recommendations for which of their licenses could be eliminated;
- Mapping the individual licensing procedures of the agencies surveyed;
- Identifying a high-level government sponsor for the activity, such as the Economic Consultative Council; and
- Drafting a model licensing law that would limit the types of licenses permissible in Jordan.

In this effort, however, the JIB was unable to effect significant change. Although some quality diagnostic work was completed and several meetings were convened, to date the intervention’s **impact** on reducing licenses has been negligible, and many of the licenses that were singled out for elimination still exist today. While the JIB undertaking to streamline licensing articulately made the theoretical arguments for deregulation of the private sector and set forth specific proposals, at the implementation stage this intervention was too diffuse and ambitious. Many agencies in Jordan issue licenses. As such, a comprehensive effort to streamline the licensing regime would either require intense interaction with many individual agencies or the imposition of a new regime supported by the top political and economic powers within government.

5 Comparative analysis and conclusion

Comparative analysis

In many ways, the issues described in this case study cast the Maldives and Pakistan as **opposites**. In the Maldives, given that FDI must be approved and the fundamental question of in what activities FDI is allowable is unresolved, startup approval is necessarily of great significance. The relative absence of administrative difficulties at the operational phase in the Maldives also makes the startup phase comparatively important. In Pakistan, while obtaining the basic startup approvals can be time-consuming, compared to more serious operational issues the entry phase does not figure prominently among investor concerns. While Pakistan's regime governing FDI is more transparent and structured than that of the Maldives, in reality foreign investors in both countries can expect a fair amount of negotiation, excessive institutional discretion, and occasional inconsistency in decision-making.

While in both countries policy decisions affect the IPA's ability to administer effective procedures, Pakistan is farther down **the road of liberalization** than its smaller neighbor. Some policy issues, such as maintaining minimum capital requirements and limitations on the percentage that foreign investors can own of a firm, remain deterrents to FDI in Pakistan, but recent liberalization efforts have addressed many of the fundamental questions relating to foreign investment. In the Maldives, however, there is perhaps more hesitation to completely liberalize the regime for FDI and allow just any interested foreign investor to startup a firm. Indeed, the range of permissible or impermissible business activities that foreign investors may undertake in the Maldives – from restaurants to universities – remains unclear and subject to case-by-case discretion. In the debate in the Maldives about the desirability of FDI and the need for pre-screening the country's particular ecological fragility and limited natural resources are factors, as are more mundane concerns about protecting local entrepreneurs from international competition.

As noted previously, **several political factors**, some international in scale, have affected Pakistan's ability to attract FDI and dampened a sense of urgency within the BOI. BOI officials and outside observers have cited several political issues going back almost five years that have lessened interest in Pakistan among foreign investors. Among these are the country's 1998 nuclear weapons tests and resulting sanctions and suspension of FDI insurance schemes. The ascendance of the Musharraf regime and allegations of massive corruption under Prime Minister Nawaz Sharif also raised questions about Pakistan's commitment to the rule of law. On-going military tension with India and clashes across the Line of Control in Kashmir not only represent a distraction for both governments and divert resources from public investments that could encourage local and foreign investment, but also create a sense of

investment risk. Finally, since September 11, 2001, anti-Western and anti-Christian attacks and divided public opinion on Pakistan's relationships with the United States have raised concerns about security for foreign investors.

Institutional factors

At **the institutional level**, FISB and the BOI are facing both **similar and distinct challenges**. In terms of similarities, both IPAs are struggling with staff capacity. FISB's small staff has many important issues to address but has less control over personnel. With 18 senior professionals on staff now, the larger BOI is presently hiring additional officers but still has important vacancies open.

In particular, the BOI is engaged in an internal debate that is common among IPAs – what balance does an IPA need between **individuals with private sector** and government experience. Particularly for IPAs that do not regulate investment but rather promote and facilitate, changing the institutional culture to become more responsive, customer service oriented, and proactive is an important goal. At the same time, all organizations need institutional memory and having good connections and relationships with other civil servants can be important in an IPA's role as facilitator.

Both the BOI and FISB have recognized the need to **develop their organizations** from bureaucratic regulators to more private sector oriented service providers. Pakistan's current senior staff reflects a mix of newly recruited individuals and organizational veterans, but the agency is committed to try to recruit up to ten individuals with private sector experience to serve as investor case officers. Both agencies are somewhat constrained in their ability to hire and fire staff and attract new professionals, but the BOI has demonstrated more flexibility than its Maldivian counterpart and is currently staffing up with individuals with MBA backgrounds. FISB has recently recruited a lawyer on staff.

One of the keys to Maryland's success has been to recruit individuals from the industries in which it wants to promote investment. For example, when actively courting biotechnology companies in the late 1990s, MDBED recruited an individual with an advanced degree in biotechnology and experience working for private companies in the industry. Similarly, officials at the SECP suggest that one of the factors that helped the agency improve services and drastically reduce processing time for company registration was its **recruiting managers with private sector experience**.

Some obvious differences between the BOI and FISB include the quality of **the information they disseminate and in their ability to facilitate investment**. While Pakistan's BOI has relatively good and comprehensive materials available, reportedly it is not particularly effective in helping investors resolve disputes and obtain approvals from other agencies. In the Maldives, despite on-going work to update FISB's promotional and procedural

information, the current materials and website are of lesser quality but by reputation FISB is generally good at working with investors and facilitating the completion of approvals.

At the **structural level**, FISB's Foreign Investment Board is similar to the BOI's Cabinet Committee on Investment, yet the former functions much more effectively. This is due in part to FISB's institutional clout and relevance in managing FDI approvals, the willingness of Maldivian Board members to delegate to subordinates, the degree of consensus among other regulators on the Board's role as a central and binding decision-making body.

In the case of the Pakistan, despite the CCOI's and Provincial Committees' formal and stated responsibilities **the BOI does not seem to effectively manage them as practical facilitation mechanisms**. The problems the BOI faces in facilitating are not only due to organizational inertia or ineffectiveness. Other factors include the size of the country, strong institutional resistance from other government regulators, relatively strong provincial governments, and exogenous factors that have hurt Pakistan's image as a destination for investment and made the work of the committees and the BOI seem less urgent.

Remaining challenges

Turning to the specific reform programs identified in regard to the Maldives and Pakistan, **several outstanding issues** remain to be addressed.

The **Maldives** experience raises several policy questions whose implications directly affect the way investment is administered in the country. So long as it conforms to the same regulatory standards as local businesses, particularly in the area of environment, why approve of FDI at all? If investment approval is deemed necessary, what value is added by FISB's admittedly cursory review of the investor's financial projections?

The main areas where administrative improvements could enhance FISB's investment approval system are related to **two issues: transparency and speed**. As already discussed, an investment promotion agency's ability to facilitate inward FDI is greatly complicated when fundamental questions about what activities foreigners can undertake, under what regulations, and at what cost are not answerable without case-by-case deliberations. Creating greater transparency in the Maldives is not entirely within FISB's control, but given its institutional clout and high-powered Board, it could spearhead the process of making improvements.

Four actions could greatly enhance the **predictability of investment** in the Maldives:

- **Create a negative list for foreign investment.** Keenly aware of the problems of not being able to definitively inform investors what

activities can and cannot be undertaken by foreigners in the Maldives, FISB is considering creating a positive list. This list would be based largely on precedent – noting what types of activities have already been approved for foreigners – and the development plan of the country, which calls for investment in certain activities. Ultimately, however, a more useful response will be to create a definitive negative list that names all activities that are closed to FDI with the understanding that all other foreign projects are welcome so long as they comply with the laws of the Maldives.

- **Draft written criteria for investment approval.** Presently, the Foreign Investment Board is the arbiter of what FDI projects are approved and its decisions, while in part based on previous precedent, are essentially case-by-case reviews of every proposed project. While broad preferential principles have been articulated for foreign investment, such as those that bring in foreign exchange and introduce new technology, specific written criteria for investment approval do not exist. While at present “there is no clear rationale for why one investment is approved and another may not be,” FISB management recognizes that investment approval “should be criteria based.” Additionally, FISB should move toward an automatic approval regime whereby an investor meeting basic and well-articulated criteria can be assured of being allowed to operate in the country.
- **Develop and publicize criteria for establishing and revising royalty payments.** From a purely financial point of view the practice of paying negotiated royalties in lieu of tax may be beneficial to investors. But the lack of guidelines for royalty payments, especially for heretofore-unanticipated types of business, creates uncertainty among investors. It is also an inefficient way to collect government revenue. Creating guidelines would greatly enhance an investor’s ability to plan for the future and ease concerns about sudden increases in royalty taxes.
- **Shut down old website.** While the creation of its new website marks considerable progress in good information dissemination, the fact that the old website is still accessible can cause unwanted confusion among investors looking for information. The old website should be taken off of the Internet.

In regard to **the speed** with which approvals are issued in the Maldives, the 45-day timetable – while commendable for the fact that it exists at all, is routinely achieved, and covers several procedures – could be further shortened. Clearly, if FISB retreated from approving of foreign investment on a case-by-case basis and focused on promotion and facilitation, shortening the approval timeframe would cease to be an issue. While this debate has started within the Maldives, it is not likely that the government will agree to dispense with the FDI approval with any particular dispatch.

In the interim, **eliminating some non-essential steps** could improve FISB's approval timeframe:

- **Eliminate the collection and review of the financial feasibility study.** Unless an investment project is of a concessionary nature where a failure in financing would tie up land that would otherwise be developed or imperil the delivery of public services, requesting detailed financial feasibility studies is unnecessary and intrusive. FISB staff is aware that this detailed financial review may not confer much real value, and the government may wish to cease requiring this information. According to FISB staff, the Bureau is presently considering "whether we should be the one to assess the viability of a commercial venture."
- **Create a more sensitive system for approving of smaller, more routine projects.** It is not clear that all projects need to be scrutinized by FISB's powerful Board. Given FISB's experience with FDI, it is possible that criteria could be developed that would allow for automatic approval by FISB/Ministry of Trade and Industries, thereby avoiding delays experienced in the Board approval process.
- **Set a more responsive timeframe for calling Board meetings.** While the two-day advance notice for a Board meeting is adequate by international standards, FISB should work toward developing a shorter overall timeframe for calling meetings. As noted previously, decreasing the number of projects that require Board approval to begin with would help in this goal.
- **Reduce the names search and company registration to one day.** The Registrar's recent improvements in company registration, arising in part from an increased reliance on the Internet, should be applauded. Given that the technological infrastructure is now in place, the Registrar should set a goal of processing a company registration request within one day.
- **Allow registration fees to be collected by the Registrar in addition to Inland Revenue.** The requirement for an investor to go to the Department of Inland Revenue, pay company registration fees, and return to the Registrar with a receipt is an unnecessary step. Rather, if fees were collected at the Registrar, the investor could avoid visiting two agencies to complete the otherwise fairly simple process of registering a firm.
- **Eliminate contract approval by the Presidency.** It is unclear why the direct approval of individual foreign investment projects by the Presidency should be required. If clear criteria regarding what foreign

investments are developed, this routine approval function, if kept, can be delegated to the Board or FISB.

In Pakistan, three additional changes could be made to deepen the beneficial impacts of the BOI's **retreat from registering foreign firms**, as noted below:

- **Assess the necessity of registering branch companies.** The BOI still registers foreign branch companies, but branches must also register at the SECP, creating a duplicative registration requirement. Seemingly, the BOI registration confers no particular advantage to foreign investors. As such, the BOI could take additional steps to remove administrative barriers to company startup by removing the requirement for branches to also register with the BOI. As with other companies, data on these firms can be gathered from the SECP and State Bank of Pakistan.
- **Shorten the timeframe for registering branch and liaison companies.** The stated timeframe for registering foreign branch and liaison companies is six to eight weeks and BOI officials suggest the process takes one to three weeks (BOI Pakistan, 20003; 31). The submission and informational requirements for a branch are somewhat lengthy, but none of the information requested is of a particularly technical nature and only the BOI is involved in this review. Analyzing the system within the BOI that accounts for this delay in detail is beyond the scope of this report, but certainly the agency could reduce this approval timeframe substantially.
- **Improve data sharing and collection through increased use of information technology.** At present, both the State Bank of Pakistan and the SECP send regular reports on foreign company investment activity to the BOI via fax. This information is then retyped into the desired format by BOI staff for its regular reports to government and the public as well as for promotional materials. The BOI, State Bank, and SECP should consider how to operate shared databases so that BOI staff can access up to date information on demand. Alternatively, these reports could be sent to the BOI via e-mail. In the former case, the system would be improved both in terms of the frequency and timing with which the BOI gathers statistics on FDI and in the level of effort required to use the data, as retyping would be minimized. In the latter scenario, the transmission of data electronically would represent a modest savings in labor.¹²

In regard to Pakistan BOI's **facilitation efforts**, it may be beneficial to explore the following issues:

¹² Based on interviews for this case study with officials from the SECP, it is presently exploring the possibility of sending this data electronically to the BOI should the Board be prepared to receive it in this manner.

- **Develop counterparts in sister agencies.** As suggested by the JIB's experience, a lot can be accomplished when appropriately empowered officials from different agencies work together in some fashion to craft a common procedure. With the BOI ensuring that the outcome of such a multi-agency meeting benefits investors, a variety of types of meetings or workshops can be used to not only sensitize other officials of the need to streamline the regime for FDI but also craft a common, detailed understanding of how a given procedure is to be administered.
- **Reexamine role and efficacy of the CCOI and Provincial Committees.** At present, it seems that neither the CCOI nor the Provincial Committees serve the purpose for which they were intended. Given that there is general resistance within Pakistani bureaucracy to delegating decision-making authority to subordinates, forming committees with lower level officials may not solve the problem. Nonetheless, the BOI needs to either revive its existing committees or develop new decision-making structures to ensure that multi-agency approvals can be issued within a short timeframe.

Conclusion

Regulators are often put in the uncomfortable position of creating and overseeing procedures based on policies that may not be clear or easy to administer. Resolving questions of policy in a timely manner and with appropriate input from the public, stakeholders, and technical experts is, in some cases, imperative to completely resolve some administrative barriers. However, even in an uncertain policy environment it is often the case that improvements can be made that help the private sector understand and more efficiently comply with existing regulations.

These case studies present several **lessons learned** for creating change in investor entry procedures:

- **Make the argument for FDI and the value of cutting red tape.** Administrative change efforts are most successful when there is a broad consensus not only for FDI but also of the value of delivering efficient, transparent services for investors. In Maryland and other developed economies the arguments for the benefits of investment, including creating jobs and contributing to the tax base, are easy to make. In many countries, however, the benefits of private enterprise and foreign participation in the economy are not foregone conclusions. The JIB experience suggests that a campaign to persuade bureaucrats and the public at large can lay the groundwork for specific interventions designed to remove administrative constraints that deter FDI.

- **Involve the private sector.** Making change in the way government regulates business should always be done with sufficient private sector input. Private sector involvement in setting policy often guarantees that administrative conflicts will be reduced and at the least creates a greater sense of cooperation and goodwill between government and the public. For IPAs in particular, as the Maryland case demonstrates, understanding the needs of the private sector can make public agencies more effective in delivering services and fulfilling their institutional mandate.
- **Inform the investor upfront to avoid recurrent problems.** Maryland and the BOI are both good examples that providing clear and comprehensive procedural and legal information upfront solves a lot of problems later. The less a would-be investor has to focus on administrative concerns, the more he or she can focus on business concerns and be targeted with persuasive marketing information by an IPA. When government agencies amend laws or procedures, they often fail to adequately alert the public as to what the changes are. Particularly where a government has a policy to encourage local investors, who may be unsophisticated in the ways of the modern global economy, providing accurate, comprehensible procedural information can be of enormous benefit.
- **Use the Internet to capture changes in policy, law, and procedure.** As FISB has recognized, the Internet can be an inexpensive repository of information even when policies, laws, and procedures are in flux. Also, in the current era where businesspeople expect to be able to access information faster and more cheaply, maintaining updated government websites and moving toward interactive functionality is important. For IPAs in particular, they can reduce the opportunity costs associated with investment entry by collecting the information relevant for FDI and making it remotely accessible. Out of date websites and materials create a negative first impression that individual staff members will have to overcome in their efforts to promote FDI. MDBED's creative, interactive, and comprehensive website is a good illustration of the potential of such sites to disseminate information, promote a location for investment, and reduce the opportunity cost of investors.
- **Leverage and mobilize political will.** Sufficient time and effort must be devoted to leveraging and mobilizing political will for reform at the initial phases of programming a change intervention. Political will be most effectively marshaled when process re-engineering is aligned with an agency's overall goals, albeit externally mandated – as when the a government is preparing to accede to the World Trade Organization – or internally motivated – as when the Jordanian

Ministry of Industry and Trade strongly backed ideas to improve and streamline services related to company registration.

- **Create appropriate ownership of the reform process.** Procedural change is most effective when implementers have ownership over the change process and resulting solutions. An important part of mobilizing support is ensuring that reforms are designed and introduced collaboratively with implementing officials. While external pressure and advice may convince an agency's management of the existence of problems, the implementation of solutions is most successful with the consensus and guidance of those directly involved. As suggested by Jordan's experience, multi-agency planning meetings and Process Improvement Workshops have proven to be effective mechanisms to build consensus that problems exist and produce realistic Action Plans for implementing change.
- **Implement effective monitoring and on-going support to ensure that change is sustainable.** The experience of Jordan suggests that on-going support, programmed to correspond with a specific timetable for implementing changes called for in an Action Plan agreed to by the implementing parties, is vital to ensuring that change initiatives do not fade away due to lack of direction, attention, and motivation. The mechanism for this monitoring and support can vary, and in Jordan expatriate consultants, local consultants, and business associations have all successfully overseen the implementation of reforms.
- **Target initiatives clearly to be most successful.** While it is tempting to program broad initiatives that may have an impact on many institutions, as the Jordan licensing intervention suggests diffuse projects that do not marshal enough resources in any given place are prone to failure. Initiatives that are very specific and well targeted are likely to achieve a greater degree of success. Technical working groups that can resolve specific issues may not completely clear a country's landscape of administrative barriers, but they can achieve tangible results and also set a precedent for successfully programming administrative change. This requires focusing on specific procedures and agencies for reform and advocating for "quick wins" as well as more fundamental changes.
- **Provide incentives for agencies to cooperate in multi-agency reform processes.** Agency intransigence to participating in a change process may be rooted in several factors, including fears among agency management about losing revenue or relevance and among civil servants that restructuring could lead to job losses. As the Jordan licensing experience demonstrates, without strong reformist leadership within an agency and some clear benefits to making change, general

and infrequent appeals to reduce bureaucracy rarely succeed. If proposed changes do not address fundamental concerns from other participants, such as the loss of revenue from ceasing to regulate, and are not linked to overall agency reforms or capacity building efforts, securing meaningful cooperation and follow-up is difficult. Procedural changes are often best implemented as part of a broader agency process re-engineering and capacity effort by providing context, structure, and institutional support for reducing bureaucracy.

- **Use pilot projects.** Change efforts are often successful if launched as a pilot project that subsequent efforts can model. In some cases re-designing procedures may be best accomplished on a demonstration project basis, especially when facing determined recalcitrance to change. As with the SECP's and Jordanian Ministry of Industry and Trade's overhaul of company registration procedures, a specific example of successful administrative reform can serve as a model for other agencies. The Maldivian Ministry of Tourism's transparent and comprehensible bidding procedure for tourist resorts is also a model for consideration.

Appendix 1: Methodology and data sources

The methodology and data sources for these case studies were largely the same for both the Maldives and Pakistan. The case studies were produced based on an analysis of documents as well as intensive one-on-one interviews. The documents reviewed include official government policy and procedural documents, forms related to FDI entry, legislation governing FDI, and external analyses of the countries' policy and procedural regime for investment.

The public sector interviews focused on the details of individual procedures, descriptions of change efforts and the factors accounting for the progress to date, and the perception of investors' experience with administrative barriers. The private sector interviews focused on personal experience with starting up a company in each country, a description of the startup procedures undertaken, an assessment of the quality of services rendered by relevant agencies, and an overall assessment of the most significant procedural problems facing investors in the Maldives and Pakistan. Information sought from the other stakeholders varied depending on their position, but included an assessment of the degree to which change efforts have been successful and an impression of what constraints the business community faces.

In the **Maldives** interviews were conducted with 13 government officials, 14 businesspeople, facilitators, and business association representatives, and five stakeholders in the international donor and non-governmental organization community. Two Private Sector Focus Groups in Malé were also arranged. The first was with businessmen from the Maldives National Chamber of Commerce and Industry, which is one of the two most active and influential private sector organizations in the country. The second Focus Group, at which FISB staff was present, was comprised of a group of foreign investors and lawyers who routinely work on behalf of foreign investors. In **Pakistan**, lengthy interviews were conducted with ten government officials, ten businesspeople and business association representatives, and five representatives of the international donor and foreign government community with a stake in investment issues. In addition, interviews with one current and one former externally financed advisor to the BOI were illuminating.

It is not the intention of the case study to fully document all of the administrative barriers to investment in the Maldives or offer a definitive view of private sector perceptions. So doing, while quite useful to helping inform government efforts to improve the investment climate, would require a more time-consuming and involved analysis. Rather, this case study is designed to document the significant changes in the way certain administrative procedures have been handled in the Maldives with particular attention to recent efforts to undertake reforms that can help improve the investment climate.

Appendix 2: Maldives investment environment and foreign investment

Due primarily to its physical characteristics, market size, and limited natural resources, for most of the 20th century Maldivians relied on fishing, trading, and largely subsistence based activities. In its modern history, government has dominated the economy, maintaining state owned enterprises that served as importers, trading concerns, utility providers, and the like. Even today an estimated 12.7% of the country's GDP is accounted for by the government, which owns all land on behalf of the people and leased to private sector actors.¹³

With the opening of its first major tourist resort in 1979 and the increasing sophistication of fishing production and export, the Maldives has transformed the economy into a successful foreign exchange earner and developed two significant industries. Today tourism is the Maldives largest industry, accounting for 32.6% of GDP in 2001 and more than 60% of the Maldives' foreign exchange receipts.¹⁴ Over 90% of government tax revenue comes from import duties and tourism-related taxes. Fishing and construction account for 6% and 2.7% of GDP, respectively.¹⁵ According to FISB data, the country's major exports are: canned fish; tuna; frozen and smoked fish; dried tuna; fresh or chilled tuna; fish meal; and apparel. Only 3% of the country's land is considered arable and only 7% is planted with permanent crops (CIA, 2003). Most staple foods, machinery, consumer goods, and equipment must be imported.

In 1989 the Maldivian Government launched a program of economic reform, lifting import quotas and opening some exports to the private sector. In more recent years, the country has encouraged increased foreign investment in certain sectors and drafted a foreign investment law intended to provide safeguards for FDI. With its few natural resources, small domestic market, and shortage of industrially skilled labor, the Maldives has a limited range of options in pursuing economic development activities. Despite efforts to diversify the economy, to date agriculture and manufacturing play only a minor role in the economy.

According to the Registrar of Companies, to date there are approximately 1,500 functioning firms in the Maldives, of which an estimated 7% are foreign owned. On average, an estimated two or three new foreign companies are registered in the Maldives each year. The areas in which foreigners may invest are not definitively defined, but certain activities are, as a matter of custom or

¹³ www.investmaldives.org.

¹⁴ Ibid.

¹⁵ Ibid.

ministerial decision, closed to foreigners, including travel agencies, trading activities, and certain transport services.

Significance of entry approval administrative barriers

In general, entry procedures are very important in the Maldives, as the basic issue of what activities are closed to foreign investment is not entirely clear as yet so seeking the basic approval to operate is vital. Enabling an investor to access clear, comprehensive, and accurate procedural and legal information is a necessary first step. Having reviewed such information and performed the necessary due diligence, a foreign investor who chooses to invest in the Maldives will then undertake the important process of seeking investment approval.

Although a reported 99% of proposed foreign investments are accepted, there are cases where FISB must take a new type of investment to its Board for approval and only after the initial application process and a Board meeting will it be known if foreign investment is allowed. Once receiving permission to operate a business under the terms agreed with the Government, on-going operational issues do not seem to be of major concern to the foreign investment community with a few exceptions. For example, local and foreign investors suggest that securing expatriate work permits, a sensitive issue in the Maldives, can be difficult to negotiate in part because there is no Labor Act nor supporting regulations and the policy is somewhat in flux.¹⁶ Similarly, the criteria for establishing and renewing royalties and rents on government property – the main form of taxation aside from customs duties – are vague and in most cases investors themselves are asked to suggest a royalty payment for consideration by the relevant government authority. While an initial royalty payment for non-tourist enterprises will be agreed to and fixed for a period of three to five years prior to commencing business operations, because the criteria for adjusting royalties are unclear this makes financial planning for companies difficult.

Information availability and transparency

The legal regime governing FDI in the Maldives is underdeveloped. For example, it is common in Maldivian legislation to include phrases such as “Maldivian nationals shall be employed in investments in the Republic of Maldives except in those cases where employment of non-nationals becomes necessary”¹⁷ without reference to other legislation that would detail the procedure for determining necessity. Upon further investigation, one discovers that the Maldives lacks a Labor Act and comprehensive regulations.

¹⁶ An estimated 30% of the country’s workforce of 67,000 are expatriates. Local businessmen suggest that the official rate of unemployment – 2% – is “a fairytale” and doesn’t reflect high rates of general underemployment and unemployment, especially among women and far-flung island populations.

¹⁷ Law No. 25/79, Law on Foreign Investment in the Republic of Maldives, Art. 11.

Termination clauses in Maldivian legislation are also common, but the criteria triggering such an action are not clearly defined nor in writing. For example, “The Ministry of Planning, Human Resources, and Environment has the authority to terminate any project that has any undesirable impact on the environment. A project so terminated shall not receive and compensation.”¹⁸ Other legislation includes clauses stating that permission to operate can be revoked due to concerns of national security, but again more detailed information on what would qualify as a transgression against national security are absent.

Until recently, some of FISB’s promotional materials, including its main promotional brochure and original website, had not been updated since 1997. Since then the emphasis of the agency, Maldivian FDI policy, and the nature of the economy have changed, and this is not reflected accurately in the present materials. For example, the 1997 brochure still in use does not present a clear roadmap for foreign investment in the Maldives. The characteristics of a preferred investment project have been revised, the GDP per capita figure quoted from 1995 is one-fifth of the present figure, the 1994 tourism arrivals are roughly 56% of present arrivals, and some government contact information is no longer accurate. The outdated economic data presents the Maldives in a less favorable light and makes one wonder if the government has ceased promoting FDI and disbanded FISB.

Until recently, FISB’s original website (www.investmaldives.com) was similarly outdated. Contrary to current practice, the website (which is still accessible on the internet) includes short contract limitations depending on the amount of investment capital, as noted below:

- Under US \$250,000 – maximum 5 years and renewable. Every renewal is for not more than 5 years.
- US \$250,000 to US\$ 999,999 – minimum 10 years and renewable. Every renewal is for not more than 5 years.
- US \$1 million and up – term and renewal subject to negotiation.

The most up to date economic and social data is from 1996, no forms or procedural information are accessible via the Internet, and although some legislation was listed, none of it was available online. Tests of the “Contact us” function elicited no response. The website was also not designed to allow FISB to interact with clients and interested investors, a functionality that is planned for the new website.

¹⁸ Law No. 4/93, Environmental Protection and Preservation Act of Maldives, Art. 6.

One can obtain more recent forms, guidelines, and sample contracts from FISB in Malé. Specifically, the “Foreign Investment Guidelines” and “Foreign Investment Application Form” outline the specific informational requirements and the process to apply for investment approval. However, here again the official materials project a more restrictive investment environment than exists in reality. The guidelines state that several criteria will be considered when FISB gives “preference” in considering an investment project, including:

- Potential to employ local citizens;
- Degree to which local materials are utilized;
- If the products produced are “locally marketable at competitively prices and result in the reduction of imports of such commodities;”
- Adds to the “economic and social infrastructure of the country;”
- “If the proposed [project] is one that cannot be started by local investors because of: the size of the investment required; and/or lack of technical expertise;” and
- If located on the outer, lesser-developed atolls.

Some information in the guidelines is out of date or not enforced. For example, the guidelines stipulate “The investor/s approved for a certain project is/are required to maintain 10 percent of the approved capital with the local bank agreeable to the Ministry of Trade, Industries, and Labour prior to the commencement of his/her/their investment project. The deposit should grow to 25 percentage of the approved capital within 1 year of operations, or a bank guarantee to cover this difference of 15 percent would suffice.” Yet today, this requirement is no longer enforced and the Ministry of Labour has been separated from the Ministry of Trade and Industry.

Given the gaps in Maldivian legislation, FISB has developed a system of using contracts that specify the terms and conditions under which a foreign investor will operate. While the use of contracts has provided some surety and detail they remain far from perfect, as the contract must conform to the Foreign Investment Act, which is itself vague in some regards and reinforces governmental discretion. For example, the Act stipulates that “The Government of the Republic of Maldives may, without giving any notice or after giving such notice that it deems necessary, suspend an investment before the expiry of the period under the agreement, either where the Foreign Investor indulges in activity detrimental to the security of the country of where such temporary closure is necessary in the opinion of the Government of the Maldives in the interests of national security.”¹⁹ No further clarification is provided, and no regulations exist to offer an investor details about what

¹⁹ Law No. 25/79, Law on Foreign Investment in the Republic of Maldives, Art. 6.

would trigger such an action by the Government. Another provision in the Act (and echoed in promotional materials) states, “If the investment in the Republic of Maldives be such that local raw materials could be used, such items shall be obtained in the process.”²⁰ Guidelines that address questions of pricing, perceived quality, or standards are non-existent. As noted previously, provisions about labor are also included in the Act but corresponding legislation or standards are unavailable.

The current contract in use includes some provisions that are somewhat nebulous. For example, clause 3.1 restates the requirement to “employ Maldivian nationals in all fields of activities of the Licensee. Where, however, it is not possible to employ Maldivian nationals in any position or post, for any valid or good reason, services of foreigners may be engaged with the prior written permission of the Government.” Clause 3.2 of the agreement requires the investor to “grant to all employees favourable terms and conditions of employment, in any event, not less favorable than those existing in the same or similar occupation elsewhere in the Maldives, in conformity with the laws of the Republic of Maldives.” Because no clear rules governing labor issues exist, the investor must do his or her own research without clear legal certainty. Clause 5.2 restates the article in the Foreign Investment Act about suspending a license for national security reasons. Clause 5.9 requires an investor to seek approval “of the Government” if increasing or decreasing the share capital of the investment. In the present contract, the investment period is fixed and not particularly lengthy – “for a period of 10 years and subsequently renewable every 5 years for an additional 10 years on mutually acceptable terms and conditions.”

Investment approval

All non-tourism FDI must be approved in the Maldives by FISB, which is part of the Ministry of Industries and Trade. Following is the procedure for registering foreign investments not classified as tourism:

1) An investor will obtain a six-page application form (at no cost) from FISB and complete the form for approval. The form asks for general information, including about the nature of the investment, contact information for owners of the firm; and foreign ownership amount. Financial information requested includes data on the cost of various inputs (buildings, plant/machinery, vessels, etc.), the ratio of equity financing to long or short-term loan financing, estimated revenue and profit, labor requirements, and the royalty amount the investor proposes paying each year for the first five years. Each principal investor must also furnish details about his or her “profile,” including a “5 line write up on experience in related fields business background etc.,” bank contact information, the investor’s total net worth, annual gross income for the past five years, and net income before tax for the past five years. In addition,

²⁰ Law No. 25/79, Law on Foreign Investment in the Republic of Maldives, Art. 10.

the following documents must be submitted with the complete application form:

- Personal address of each shareholder;
- Personal bank account numbers of each foreign shareholder;
- Bank address of personal bankers;
- Photocopy of passport of each shareholder;
- Company profile and *curriculum vitae* of each shareholder;
- Bank reference;
- Feasibility project report with projected financial statements intended to show all costs and the internal rate of return for five years or until the year of recovering the initial investment, whichever is greater; and
- Letter of authority for a power of attorney, if necessary.

2) The investor can then submit the application in person, via fax, or by mail. Upon arrival FISB will check the application for completeness and if the application is not complete, the investor is informed within one day and asked to furnish additional information. FISB takes an average of two to three days to process an investment application, review the financial statements, approve the application for consideration by the Foreign Investment Board, and prepare a project brief.

3) Once the application is submitted to FISB, a routine security check of the applicants is initiated. The National Police, working with Interpol, conducts this check. The security clearance usually takes one week, FISB officials note, but the processing of the application and scheduling of a Board meeting are done simultaneously, so the week timeframe does not increase the overall time for investment approval.

4) If the application is complete, a meeting of the Foreign Investment Board, which is the decision-making body that establishes the terms and conditions under which an investor may operate in the Maldives, will be called to approve or reject the investment proposal, or request clarifications.

The Foreign Investment Board is comprised of the following government officials:

- Minister of Trade and Industries;
- Minister of Planning and National Development;

- Minister of Tourism;
- Minister of State for Defense and National Security;
- Minister of State for Finance and Treasury;
- Auditor General;
- Director General, FISB;
- Director General, International Affairs, Minister of Foreign Affairs;
- Assistant Director General, Ministry of Atolls Administration;
- Director, Environmental Research, Ministry of Home Affairs, Housing, and Environment;
- Director, Ministry of Fisheries, Agriculture, and Marine Resources; and
- General Atoll Member of Parliament.

Meetings are called when there are multiple applications, a large investment, or if an investment has been pending for an undetermined amount of time. According to FISB officials, the timing of calling a Board meeting is a “judgment call,” but FISB tries to adhere to an overall approval timeframe of 45 days including Board approval, company registration, and preparation and signing of a contract with the investor that authorizes business startup. Once a decision has been made to call a meeting of the Board, it is customary to allow for 48 hours notice before the Board convenes. The Board can make a decision if a quorum of more than 50% of the members are present. Due to instances where coordinating schedules is occasionally difficult, FISB has now introduced a rule whereby a Board member can nominate an alternate to vote at the meeting. In addition, a Board member may bring along staff to assist in reviewing aspects of an investment.

Board members are given the project brief in advance of the Board meeting, and in most cases come to the meeting prepared to ask questions and solicit any information required that is not already included in the FISB application. In an estimated 99% of the cases, according to FISB management, Board members do not require additional information. The Board meetings are generally short and approval is conferred within one day.

5) After the Board approves of an investment, which FISB staff suggests is the overwhelming norm, the investor is notified of the approval and a contract is drawn up that outlines the agreement between the Government of the Maldives and the investor.

6) When the investor signs the contract, the Presidency and, if the investment is in a new sector, the Attorney General, are given copies of the contract for their approval. FISB says that these steps are customary and not required by any particular statute. Reportedly neither the Presidency nor the Attorney General has overturned or amended a contract.

7) Once the contract is approved of by the Presidency and Attorney General, if necessary, FISB informs the investor and instructs him or her to sign the contract and then register the company at the office of the three person Registrar of Companies. At the same time FISB informs relevant agencies of the contract signing, including the Registrar of Companies, the Department of Inland Revenue, Customs, and the relevant sectoral ministry if applicable.

8) With the contract ratified by the government, the investor then proceeds to conduct a names search. As of 2003, investors can now search for available names on the Internet or in a computer at the Ministry, thereby reducing processing time and conflicts over name availability at the time of registering. The names search is routinely completed within one day.

9) Once the appropriate name is selected, the investor will file the appropriate documents to register a corporate entity in the Maldives. Depending on the type of company selected – either a private limited company or a public limited company – the submission requirements will vary.

10) After the company registration documents are filed, the investor is required to go to the Department of Inland Revenue to pay the registration fee, which starts at MRF 1,000 (US \$78) and increases based on the share capital according to the following formula:²¹

- For every MRF 4,000 (US \$314) of additional capital up to MRF 500,000 (US \$39,216), a fee of MRF 10 (US \$0.78) shall be paid.
- For every MRF 4,000 of additional capital between MRF 500,000 and 4 million (US \$313,726), a fee of MRF 4 (US \$0.31) shall be paid.
- For every MRF 4,000 of additional capital between MRF 4 and 8 million (US \$627,451), a fee of MRF 2 (US \$0.16) shall be paid.
- For every MRF 4,000 of additional capital above MRF 8 million, a fee of MRF 1 (US \$0.08) shall be paid.

In addition, a stamp fee of MRF 500 (US \$39) is charged to the investor, as is an annual company fee of MRF 10,000 for public companies and MRF 2,000 (US \$157) for private companies. Inland Revenue issues a receipt for these payments.

²¹ This applies to firms with share capital exceeding MRF 10,000 (US \$784). Although it is not clear in the Companies Law, presumably smaller firms are subject to lesser fees.

11) The investor returns to the Registrar with the receipt and final processing is commenced. Once the appropriate documents are submitted, the Registrar verifies them and issues a certificate of company registration. The Registrar requires an average of two days to complete its processing of documents and issuing a company registration certificate. Including the names search the whole company registration procedures it routinely completed in two to three days.

12) There are few sectoral or operating licenses in the Maldives, but according to FISB obtaining the foreign investment approval acts as a letter of intent and in most cases obtaining a license afterward is straightforward and not problematic.

While this case focuses on non-tourism investment, it is also useful to consider the regime governing the country's largest industry. Box 2.1 briefly describes the regime developed for registering investment in the tourism sector in the Maldives.

Box 2.1: Tourism approval

Due to its relative significance in the economy, tourism investment in the Maldives is administered by the Ministry of Tourism directly, under a somewhat different regime than exists for all other investment. Industry, fishing, trading, aquaculture, and everything else, including industries that may serve the tourism market, such as water taxis and spas, are registered and licensed by the Ministry of Trade and Industries through FISB.

Investment in resorts, which are considered major undertakings and controlled by a national development plan, involves a transparent and sound bidding process. Foreign and local investors are subject to the same rules and conditions under the principle of national treatment. Other activities approved of and licensed by the Ministry of Tourism, such as dive schools, require the submission of a form and professional certificates, details and product certifications on equipment, and other routine information.

The main differences between the ways foreign direct investment is handled in tourism as opposed to other sectors are seen in development limitations of tourist resorts and a bidding procedure for investors wishing to develop and operate an island as a tourist resort. The bidding procedure makes no distinction between local and foreign investors. For other investments in the tourism sector, foreign investors need only to submit an application form, which asks for such information as the names and certifications of instructors, number of different types of equipment, arrangements for emergency medical assistance, and description of the physical facilities along with a Maldivian company registration certificate and proof of a lease. According to Ministry officials, the application process for scuba diving shops, marinas, and tourist vessels takes one week on average, including processing the application form, conducting an inspection, and issuing an operating license.

Tourism development is controlled by a master plan that is designed to factor in market demand for tourist facilities (i.e. bed capacity), local participation in tourism development, and environmental and aesthetic concerns. A private sector group, the Maldives Association of Tourism Industry (MATI), is active in participating in developing policy, collaborating with the Maldives Tourism Board in promoting the country for tourism, and representatives of the association participate in the committee that awards bids.

Appendix 3: Pakistan investment environment and foreign investment

Pakistan has taken gradual steps to liberalize its regime for investment, most recently during the mid-1990s when new sectors of the economy were opened to foreign investment without special approval. Unlike previous years, today the industrial and services sectors are open to investment from abroad without prior approval, although sectoral licenses are required in many instances. In some sectors, foreign investors can now own 100% of an enterprise in Pakistan and also remit profits freely.²²

According to the Government's Investment Policy, 1997, which was further liberalized in 2000, investment into Pakistan can be broadly classified in two categories:

Manufacturing, tourism, housing and construction and information technology sectors

In this category, the following features apply:

Foreign investors are allowed participation on the basis of 100% foreign ownership without any permission of the Government.

No Government sanction is needed for setting up an industry except for the following activities:

- Arms and ammunitions
- High explosives
- Radio active substances
- Security printing, currency and minting

There is no requirement to obtain a No Objection Certificate from provincial or other local governments to set up in any areas, except in areas that are designated as not appropriate for industrial or commercial development.

The establishment of new units for the manufacture of alcohol, except for industrial alcohol, is banned.

The tourism, housing and construction sectors have now been given industry status. The import of equipment in these sectors is subject to custom duty of

²² While remitting profits can be done without restrictions, a company must establish a local bank account and investors note that there are some issues to be aware of related to the calculation of the exchange rate.

10% while a depreciation allowance is allowed at 75%. There is no minimum capital requirement and foreign equity can be up to 100%.

Service, infrastructure, social, and agriculture sectors

Since December 2000 investment in the service sector has been opened up to FDI. There is no longer a requirement for foreign concerns to register with BOI to participate in these sectors. In the services sector, the following conditions apply:

- The amount of foreign equity investment in the company project shall be at least US \$300,000.
- Foreign investors are allowed to hold 100% of the equity but the repatriation of profits is restricted to a maximum of 60% of total equity or profits.
- Pakistani investors must acquire a minimum 40% share of the equity of companies in these sectors within five years including through the sale of shares in the stock exchange.

In the infrastructure sector, which includes the development of industrial zones and telecommunications facilities, the following conditions apply:

- The amount of foreign equity investment in the company/project shall be at least US \$300,000.
- 100% foreign equity may be repatriated.

In the social sector, which includes education, technical and vocational training, human resource development activities, hospitals, and medical and diagnostic services, the following stipulations apply:

- The amount of foreign equity investment in the company/project must be at least US \$300,000.
- 100% foreign equity may be repatriated.

The agriculture sector includes several types of activities, including: land development; reclamation of barren land, desert, and hilly areas for agricultural purposes; reclamation of waterfront areas and creeks; farming; food processing; modernization and development of irrigation facilities and water management; forestry; horticulture; dairies; and animal husbandry. In this sector the following stipulations and conditions apply:

- Any agricultural entity can import agricultural machinery at concessional rates of customs duty.

- The amount of foreign equity investment in the company/project shall be at least US \$500,000.
- A Pakistani company or individuals must own a minimum of 40% of the equity.
- There is no limit on the amount of land owned by registered agricultural companies. However, the income of these companies is taxable.
- Foreign investment proposals are processed by the BOI in consultation with the respective Provincial Governments.
- Land for agriculture purpose can be obtained on a leasehold basis initially up to 30 years and extendable for a period of 20 additional years.
- A foreign company that invests in the agricultural sector is not allowed to transfer land to any other foreign company, unless specifically permitted by the Federal and the concerned Provincial Government.

Information Technology has been given priority by the Government of Pakistan, which announced an IT Policy and Action Plan in August 2000. Several IT related incentives have been announced by the government, including:

- Encouragement of banks to undertake equity participation in software projects by setting up venture capital funds.
- Waiver of duties and taxes on the import of hardware.
- Matching grants for research and development in universities in engineering colleges.
- To encourage Internet growth, unnecessary regulations are to be abolished and reliable broadband Internet access is being encouraged.
- Changes in rules to allow technology companies to be listed on Pakistani stock exchanges.
- Incentives formerly allocated only to selected sectors of the IT industry are now extended to the entire industry.
- The removal of anomalies in the tax deduction at the source for bandwidth purchased by Internet service providers and other telecommunication services providers.

- Internet Bandwidth rates have been reduced. From March 2001 the rates will be \$3,000 p.m. megabit per second and will be applicable to all the ISPs.
- To improve the quality of IT standards skill examinations will be conducted and only those passing the examination will be recognized as IT graduates. Efforts are also underway to set up National IT Education Review Board to standardize the syllabus taught in IT education centers and universities. Content development is also planned with the introduction of a three hour-long daily transmission on IT education on Pakistan Television.

Despite recent successes, further deregulation could still enhance Pakistan as a destination for FDI. For example, as seen in Table 3.1 Pakistan maintains minimum capital requirements for foreign investment in the agriculture, infrastructure, and service sectors while other countries with more liberal regimes and greater inflows of FDI, including Eastern Europe's most successful transitional economies, do not. Of those countries listed in table A.1 that do maintain minimum capital requirements, only Saudi Arabia, which largely limits foreign investment to heavy industrial or oil-related activities, requires a higher minimum capital requirement.

Table 3.1: Comparative FDI Entry Requirements

Country	FDI approval requirement	Minimum investment threshold
Chile	No	Investor signs a statement that he will maintain enough capital to run the business
Czech Republic	No	No
European Union	No	No
Hungary	No	No
Jordan	No	US \$70,621
Maldives	Yes	No
Pakistan	No (except branches & liaison offices)	US \$300,000
Poland	No	No
Saudi Arabia	Yes	US \$530,000-\$6.7 million, depending on sector
Turkey	Yes	US \$50,000

Despite liberalization of repatriation of profits and investment approval, at the procedural and administrative level problems may arise. The Pakistani federal system vests significant autonomy to the provinces so not only do investors need to negotiate the regulations and procedures of a number of national level organizations, but also to comply with provincial and district level requirements. In broad terms, investors complain that too many government agencies have direct regulatory responsibility for business. Investors and other stakeholders also note that the government's record of policy consistency and adherence to agreements is poor, and there are several cases where specific incentives granted to an investor or contractual agreements between the government have been changed.

Significance of entry approval administrative barriers

While they do contribute to an investor's sense of investment risk in Pakistan, entry approvals are not the most significant administrative barriers investors face. Rather, investors consistently highlighted tax payment, customs clearance, acquiring land, and obtaining utility services among the most significant procedural barriers to investment. Tax payment was highlighted because of the Central Board of Revenue is seen to be highly intrusive, inconsistent in the assessment of tax, overly bureaucratic in the filing process, overly aggressive and discretionary in audits, and, some charge, prone to corruption. Customs procedures are said to be improving but disputes often arise in relation to valuation and duty exemption issues, slowing the

importation of inputs. Land acquisition was noted to be difficult because of unclear titles, especially in less developed areas, and provincial level government inefficiency and unresponsiveness (although some provinces are rumored to be better than others). Finally, utility provision was singled out because of unreliability and poor service, the unavailability of fully serviced plots, even in provincial industrial estates, slow response times for hook-ups, and poor pricing structures for greenfield investments that result in high hook-up costs.

The repeal of BOI investment registration

Aside from obtaining the necessary entry visa, there are three major investor entry procedures in Pakistan. These are:

- **Registering a company**, which includes filing documents to incorporate, conducting a names search, and registering with the Security and Exchange Commission of Pakistan (SECP) in Islamabad or through several regional branch offices. Depending on the type of company being registered, SECP officials say that this process takes one to three days. The cost ranges from R 5,000 (US \$89) to R 10 million (US \$ 178,571) depending on the amount of capital.²³ Some in the business community said that they had heard that performance was improving from previous years when company registration could take “from four days to four months” depending on personal connections and the capacity and motivation of the individual SECP officers involved.
- **Opening a local bank account** with the approval of the central bank, the State Bank of Pakistan, and receiving a Procedural Realization Certificate. Investors must go to Karachi to interface with the State Bank for this procedure. The establishment of a bank account is considered an entry procedure in Pakistan because investors must deposit the specified minimum capital requirement into a local bank (US \$300,000 for non-industrial FDI activities) and must have an account established before any profits can be remitted abroad. This process takes one to four weeks, BOI officials state.
- **Obtaining a sectoral license**, if required. In practice this process, while not legally mandated to be done prior to company registration and establishing a bank account, is often begun prior to commencing other procedures because if a sectoral license is not forthcoming, an investor will have wasted time and money completing the other two steps. In practice, BOI and other government officials suggest that investor first should obtain the sectoral license, or at least initiate the process and attain a level of comfort in being approved. While the

²³ At the time of writing, the Pakistani Rupee was worth US \$0.0178 and US \$1 equaled 56 Rupees.

timeframe for receiving a sectoral license varies based on the business activity and complexity of the individual project, BOI officials suggest that on average an investor should allow three months to receive his or her licensing approval.

From 1997 to 1999 investors were required to register with the BOI as well. According to BOI officials, the procedure was somewhat informal and prompted by an administrative decision and not according to any legal statute. Investors would report their proposed investment activity, indicating the sector, minimum capital required, and corporate location. After registering, investors would then proceed to the SECP to incorporate, conduct a names search, and register as a company. There was no fee associated with this registration procedure and the staff that performed registration had additional tasks as well. BOI staff did not have records or a clear recollection of the time involved, but estimated that the process did not take more than “a few days.”

Registering with the Board of Investment was a procedure that conferred little value to investors and represents an extra two steps and a few days to in the overall process. The registration process was introduced in 1997 primarily as a means of recording information on basic investment activity. This was done mostly because the BOI’s successor organization, the Investment Promotion Bureau, used to have the role of approving of investments based on the restrictive nature of the investment regime in Pakistan. When the Board of Investment was reconstituted in place of the Investment Promotion Bureau, the BOI at first took on the Bureau’s activities and responsibilities while assessing what it’s new role should be in the more liberalized environment. With deregulation and liberalization, the statutory need for this approval was removed and the BOI was moving to reorganize into an agency that focused more on promotion and facilitation versus regulation and monitoring.

According to BOI officials, after requiring this registration for two years, it became apparent that the procedure conferred no real value. This registration was duplicative of mandatory registration with the State Bank of Pakistan, the Security and Exchange Commission of Pakistan, and, in most cases, another government agency that would license the investment at the sectoral level. While the BOI did want data on investors for primarily promotional purposes, it decided that this data could be easily requested from the State Bank and SECP. Today, the data collected from the State Bank and the SECP is used to inform the BOI’s promotional materials. This material is collected by the BOI on roughly a monthly basis via fax from the State Bank and SECP and analyzed by members of the Policy and Planning Unit of the BOI.

FDI facilitation

In Pakistan, the BOI is well aware of the daunting task of harmonizing the agendas of the many government agencies that have a role in regulating the private sector. Indeed, even in its promotional materials the Board espouses a

vision to facilitate investment, including “a dismantling of the bureaucratic culture” (BOI Pakistan, 2001: 1) and turning the corner through “investment impediments being removed.”(BOI Pakistan, 2001: 3). It describes its facilitation role as follows:

*If investors have **problems**²⁴ arising out of a federal government agency’s interpretation of a law or regulation, a senior BOI executive can take the issue up with concerned agency. If satisfactory progress is not made, the matter can be referred to the Governing Body of BOI, whose President is the Chief Executive of Pakistan, or the Cabinet Committee on Investment. (BOI Pakistan, 2001:11)*

As well, its services are to be tailored for “domestic and foreign investment” according to official policy documents. (BOI Pakistan, 2001: 1)

The BOI’s primary and senior-level facilitation mechanism, the CCOI, is comprised of the following government officials:

- Minister for Finance, Revenue, Economic Affairs, Planning & Development, and Statistics, Chairman
- Minister for Commerce, Industries and Production
- Minister for Food, Agriculture and Livestock
- Minister for Health, Population Welfare, Religious Affairs, Zakat & Ushr
- Minister for Petroleum & Natural Resources
- Minister for Communications
- Minister for Water & Power
- Chairman Privatization Commission
- Deputy Chairman, Planning Commission
- Chairman, Board of Investment
- Secretary General, Finance Division

²⁴ Original emphasis.

The BOI sees its facilitating role as comprised of two primary sets of activities. The first is information dissemination and the second is assisting investors in their application for various approvals. In regard to the first, the BOI has prepared a new investment brochure with useful policy, procedural, and legal information and collected some of the forms required from other agencies. Its website (www.pakboi.gov.pk) includes a great deal of up-to-date procedural information, complete laws, submission requirements for basic procedures, forms that can be downloaded, and links to other agency websites. As a whole, these materials explain the sectors open to foreign investment, conditions and incentives specific to each sector, procedures for some of the most important actions an investor must undertake, and tax and tariff information. Although not exhaustive, the BOI's website and business guide notes that for the following business activities "prior approval... is required before incorporation" (BOI Pakistan, 2003: 29)

- Banking Company – Ministry of Finance and State Bank of Pakistan
- Insurance Company – Ministry of Commerce
- Investment Finance Company – Ministry of Finance and State Bank of Pakistan
- Leasing Company – Securities and Exchange Commission of Pakistan
- Venture Capital Company – Securities and Exchange Commission of Pakistan
- Asset Management Company – Securities and Exchange Commission of Pakistan
- Arms and Ammunition – Ministry of Industries/Board of Investment
- Security Printing, Currency and Mint – Ministry of Industries/Board of Investment
- High Explosives – Ministry of Industries/Board of Investment
- Radio Active Substances – Ministry of Industries/Board of Investment

A line ministry, such as the Ministry of Food, Agriculture & Livestock or Ministry of Labour, Manpower & Overseas Pakistanis, will regulate other business activities. According to BOI officials, the time and difficulty required to obtain a sectoral license varies depending on the complexity and size of the investment project. On average, though, BOI staff estimate that it takes three months to obtain a sectoral license. The more quickly completed procedures of securing State Bank of Pakistan approval to open a bank account and registering a company can be done simultaneously.

As described in the main body of the case, the second level of the BOI's facilitation efforts are related to staff efforts to engage other regulators and committees designed to facilitate investment licensing and approval decisions. It should be noted that the investors and stakeholders interviewed generally judged the most serious problems in Pakistan to arise after the initial investor entry procedures were completed. Depending on the business activity, however, sectoral licensing remains a potential bottleneck for investors in the startup phase. Operational problems in Pakistan are said to be particularly acute in relation to obtaining utility services, acquiring land, paying taxes and handling audits by the Central Board of Revenue, and receiving duty reductions from customs authorities.

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