THE IMPACT OF THE LEGAL INVESTMENT REGIME IN UGANDA IN ATTRACTING AND FACILITATING FOREIGN DIRECT INVESTMENT (FDI).

BY

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DECLARATION

I Bazibu Emmanuel hereby declare that this research work has not been submitted in any institution for any academic award.

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This dissertation has been submitted with the consent of the supervisor.

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Dedication

I dedicate this research to Mr. and Mrs. Baganzi and the entire family for their selfless and loving commitment and support to my education. Thank you.

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First and foremost I thank Jehovah God the Almighty for the good health and wisdom throughout my studies.

Special thanks go to my dad Baganzi Noel and my mum Janet baganzi for their love care and encouragement coupled with lots of inspiration during my course of study. Special thanks too, go to my uncle zironda Christopher for his love and inspiration. I would also love to thank my brothers and sisters for their emotional and material support.

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ABSTRACT

By bridging the gap between domestic savings and investment and bringing the latest technology and management know-how from developed countries, foreign direct investment (FDI) can play important role in achieving rapid economic growth in the developing Uganda. The fact is that FDI mostly flows towards the developed countries and only a small portion of FDI flows to a limited number of developing countries. Thus, Uganda almost fails to attract a handsome amount of FDI. Using critical analysis of the Ugandan legal investment regime, this paper firstly assesses its ability to facilitate and attract FDI inflow the country and recommends on best available legal and policy incidental to the current dynamic nature of FDI. It is found that countries with more accommodative legal investment regimes enjoy high GDP growth rate and maintain business friendly environment with abundant modern infrastructural facilities, such as internet and can successfully attract FDI and FDI on the other hand, significantly affect economic growth of a country. This paper discusses the legal, business and economic environment for Foreign Direct Investment (FDI) in Uganda. It finds that despite recent improvements the FDI environment is still inadequate to attract high quality, efficiency-seeking, globalizing FDI; and that Uganda is lagging behind in the development of its competitive factors of production. It suggests a way forward - which includes improving the competitiveness of the investment climate; attracting FDI into existing areas of comparative advantage, such as extractive and other natural resource activities; developing regional networks and integration; and accelerating privatization.

ABBREVIATIONS

BIT	Bilateral Investment Treaty
EAC	East African Community
EACDTT	East African Community Double Taxation Treaty
EPZA	Export Processing Zones Authority (Kenya)
GDP ?	
BDS	Business Development Services
DTT	Double Taxation Treaty
FDI	foreign direct investment
IPA	Investment Promotion Agency
IPR	Investment Policy Review
JBIC	Japan Bank for International Cooperation
KIA	Kenya Investment Authority
MTCS	Medium-term Competitive Strategy for the Private Sector (2000-2005)
MoFPED	Ministry of Finance, Planning and Economic Development
MoWLE	Ministry of Water, Land and Environment
NDC	National Development Corporation, Tanzania
PSBS	Public Sector Benchmarking Service, United Kingdom
KRA	Kenya Revenue Authority
PEAP	Poverty Reduction Action Plan (Uganda)
PIRT	Presidential Investors' Round Table
SME	Small and Medium-sized Enterprises
TIC	Tanzania Investment Centre
TNC	Transnational Corporation
UIA	Uganda Investment Authority
ULRC	Uganda Law Reform Commission
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UIA	Uganda investment Authority

GENERAL INTRODUCTION

1.0 Introduction

This introductory part of this proposal forms part of the effort to explore into the investment environment in Uganda and its facilitation of FDI. This however is not a social research but however base its findings on a legal perspective. So this research will delve into the laws available in Uganda and asses how they have facilitated or failed FDI Uganda .In other words this proposal seeks to critique the relevant laws of Uganda as regards facilitation of FDI identifying the failures, bottlenecks and recommend on what is supposed to be done.

1.1 What is FDI?

In an attempt to come with a stimulus for lasting economic growth in most developing countries and more so Uganda as case study, FDI has proved a great factor in dealing with major obstacles such as shortages of financial resources, technology and skills therefore making it a case of significant attention for policy makers in developing countries. Therefore FDI refers to investment made to acquire a lasting management interest (usually at least 10% of voting stock) and acquiring at least 10% of equity share in an enterprise operating in a country other than the home country of the investor. A foreign investor under section 9[1] **as a person who is not citizen of Uganda, a company in which more than 50% of the shares held are of a person who is not a citizen of Uganda and or a partnership in which the majority of the partners are not citizens of Uganda**

[1] Investors code Act cap 92 laws of uganda

1.2 Significance of FDI in Uganda

Statistics indicate that Uganda is keen on attracting FDI. The reasons of this may be summarized as trying to overcome scarcity of resources such as capital, entrepreneurship, access foreign markets, efficient managerial techniques, technological transfer, and innovation and employment creation.

1.3 Background

Uganda in an attempt to accelerate growth and development has been encouraging foreign direct investment through privatization programs and generous incentive packages such as tax holidays and exemptions. However the Ugandan experience shows that to attract FDI, favorable laws, policy and regulation consistency are much more important than such incentive schemes. This concern arises amidst several bottle necks that stifle FDI in Uganda and these deterrents include but not limited to, weak infrastructure, largely uneducated work force, political interference in the private sector and high levels of corruption Electricity and road networks need renovation and expansion. Uganda's electricity only reaches 20% of the population and load shedding all over the country is common. The dilapidated road infrastructure, meanwhile increases the transportation costs and leaves the entire country which is land locked vulnerable to bottle necks and disruptions[2].

However like mentioned earlier this research intends to explore the legal regime and identify the loopholes which dissatisfy intending investors

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[2] 2009 investment statement on Uganda by US State department

1.4 Statement of the problem

This study is to examine the adequacy of the legal regime and Policies in respect to the attraction and facilitation of FDI in Uganda. I am aware that Ugandan laws and regulations are favorable towards investors however they have not been adequate enough to attract FDI since some of them are not compliant with the economic dynamics of the modern world and many of which date back to the days of colonialism. There is a need for example to modernize and speed up the Bankruptcy procedures, strengthen intellectual property rights protection, expand and clarify provisions on mortgages up date commercial contact laws and modernize provisions of e-commerce and electronic signatures.

1.5 Objective of the study

To endeavor a legal critique on the current legal regime and its inadequacy to attract and facilitate FDI

.1.6 Scope of the study

The research focuses on the Ugandan legal regime, that is to say laws that are crucial to attracting FDI in U ganda, so the assessment is to dwell on the commercial laws. However this is not to suggest that there are no other factors that are relevant to attracting FDI. There are factors like the trade policies, trade treaties and agreements that are intertwined in the legal processes

1.7 Hypothesis

The laws of Uganda have inadequately facilitated the attraction of FDI in Uganda. Uganda's low response to the dynamic economic policies like e commerce, slow bankruptcy procedures, weak intellectual property, and laws unnecessary bureaucracy has affected the facilitation of FDI in Uganda. Investment environment, infrastructure, regulatory framework, bureaucratic hurdles and red tape, judicial transparency, and the extent of corruption in Uganda are found insignificant as determinants of FDI or have mixed influence on FDI inflow. It is, however, might be the case that high communication, information and transportation costs, pervasive corruption and poor infrastructural facilities can increase the transaction costs and risks to the foreign investors and thus can affect FDI inflow negatively. Thus, it is reasonable to postulate the following hypothesis:

H1: Countries with better physical infrastructure and business friendly environment, receive more FDI compared to others.

UNCTAD (1998, 2000) emphasizes that some of foreign investors invest to developing countries mainly to serve the host countries' market. Domestic market size and market potentials might be the major determinants in attracting such type of foreign investors. Empirical literature often found the size of the market and the market potentiality, typically proxied by the level of GDP and GDP growth rate, significantly affect FDI inflow (e.g., Nunnenkamp and Spatz, 2002; Bandera and White, 1968; Schmitz and Bieri, 1972; Root and Ahmed, 1979; Torrisi, 1985; Schneider and Frey, 1985; Petrochilas, 1989; Wheeler and Mody, 1992; Jun and Singh, 1996). Thus, it is reasonable to postulate the following hypothesis:

H2: Countries with higher per capita GDP and higher GDP growth rate are more likely to receive larger amount of FDI compared to others.

It is widely recognized that foreign direct investment (FDI) produces economic benefits to the recipient countries by providing capital, foreign exchange, technology, competition and by enhancing access to foreign markets[3] . It is argued that FDI can also enhance domestic investment and innovation[4] . To empirically examine the role of FDI on economic growth, it is reasonable to postulate the following hypothesis:

1.8 Methodology

The research shall comprise of collecting data from primary and secondary Sources of information. The information will both be qualitative and quantitative. This is intended to enable the researcher gather enough information on the subject to be analyzed in this study. The researcher use observation, interviews which will be conducted in focus group people or with individuals (key informants) using questionnaires. Document review in the libraries will include: Kampala International University, Makerere University, Law Development Center, Uganda investment authority, world investment Report.

1.9 Literature Review

A lot of literature has been written about FDI in Uganda for example each year an investment climate statement is made about Uganda. However though it highlights a number of hindrances of FDI, it does not explicitly exhaust the loopholes encompassed in the legal regime, policy inconstancies and regulations of the country.

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[3], Brooks and Sumulong, 2003; World Bank, 1999; Caves, 1974; Crespo and Fontura, 2007; Romer, 1993; UNCTAD, 1991

[4] Brooks and Sumulong, 2003

For example in the matter of **Dura cement limited**[5], the government accepted to pay an investor 30 billion shillings after it had unlawfully terminated contract by cancellation of the lease. So these are the policy inconsistencies that the research seeks to identify.

1.10 CHAPTERISATION

Chapter one of this paper discusses the general introduction FDI and its definition, and further gives an insight of what is to be discussed in the subsequent chapters.

Chapter two on the other hand discusses and defines FDI in detail. It deals with the rationale of attracting FDI and its determinants whereas its impact on the economy.

Chapter three discusses the legal regime of Uganda and specifically the laws that are crucial to FDI, like the commercial laws which are the centre of interest of any investor. It further discusses the trade policies enhanced to encourage FDI.

Chapter four dwells on the loopholes and inadequacies of the legal and policy dispensation which act as a deterrent in the facilitation of FDI.

Chapter five is the final chapter of this report and it is offer recommendations to the current problems that are incidental to FDI because of the inadequacies of the laws and the policy frame work. It will also give a conclusion basing on the findings.

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[5] Daily monitor Nov 9, 2009

Chapter two

FDI IN UGANDA

2.0 Introduction

In the 1990s, Uganda's government embraced a series of major economic reforms that enabled the country to shape a solidly pro investment environment and an era of economic growth. To this, it established the Uganda investment Authority principally guided by the Uganda investment code[6]. Established in 1991, UIA embarked on promoting foreign direct investment.

2.1 Definition of FDI

This is the investment made to acquire a lasting management interest (usually at least 10% of voting stock) and acquiring at least 10% of equity share in an enterprise operating in a country other than the home country of the investor[7]

2.2 Statutory definition of foreign investor

The investment code Act[8]

(1) In this Code, "foreign investor" means, a person who is not a citizen of Uganda; a company, other than a company in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda;

- a partnership in which the majority of partners are not citizens of Uganda.

However the following shall be deemed not to be foreign investors,

- a company registered under the Companies Act in which the Government holds a majority of the shares, whether directly or Indirectly,
- a body corporate established in Uganda by law,

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7 Case studies

8 Cap 92 laws of uganda

- an international development agency approved by the authority for the purposes of this section;
- a cooperative society registered under the Cooperative Societies Act;
- a trade union registered under the Trade Unions Act.
- In any other case not expressly provided for in this section, the

Authority shall determine whether or not a person is a foreign investor.

FDI can take the form of either **green field** investment or **merger and acquisition** depending on whether the investment involves mainly newly created assets or just a transfer from local foreign firms. However most investment have taken the form of acquisition of existing assets rather than investment in new assets (green field) mergers and acquisitions are defined as the acquisition of more than, 10% equity share involve in transfer of ownership from domestic to foreign hand and do not create new productive facilities. To this end UIA's executive director attributed the FDI growth in Uganda to, "we have continued to improve as an attractive centre because of our privatization and liberalization policies where government piled out of business leaving the ground for fair players[9].

2.3 Why FDI is encouraged in Uganda

In an effort to accelerate growth and development, Uganda has embarked an attracting and facilitating FDI. To achieve this Uganda investment code[10] of 1991 was encoded and acted as machinery, which created the UIA whose function is to facilitate the procedures for those invested in investing in the economy. Among the primary concerns of UIA is as follow;

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[9] Maggie kigozi
[10] 1921

- To promote investment in Uganda through effective promotional mean
- To initiate and support measures who shall enhance the investment climate in Uganda for both Uganda and non Ugandan investors.
- To grant approvals for the commencement of new business.
- To provide and disseminate up-to-date information on the incentives available t inventory.
- To assist incoming and existing investors by providing support services.
- To recommend to the Government National Policies and Programs designed to promote investment in Uganda.

UIA being established and objectives being set, reason to encourage FDI is created. When a country suffers a resource or savings gap, it will also confront a foreign exchange capital.[11] In macroeconomic terms, when the government expenditure plus private investment exceed government revenue and private saving (a resource gap) this internal imbalance will spill over into external imbalance of imports greater than exports and hence constitute foreign exchange gap. Therefore international financial intermediation is required to fill the foreign exchange gap. However this can be accomplished by loans from multilateral lending agencies and commercial bank or private foreign investment. While former sources of foreign capital are flat or declining, FDI has considerable potential.

[11] Marios Obwona, Detainments of FDI in Uganda pg 2

In this regard, the economic report in Africa by the United Nations Economic Council for Africa recommends that FDI is the key to solving Africa's economic problem and since Uganda is not an exception, it has been keen on attracting FDI and the proponents for are;

(1) FDI is seen as an important source of capital formation particularly when the capital base is low. Capital inflow is seen as a way of creating surplus in capital account of the balance of payments or to make up the deficit on the current account. This can be testified in the period between 1971 to 1979 (Amin's era) which period was marked the "economic war," which resulted in this expulsion of British –Asian, expropriation of the assets and businesses of foreign investors mostly Asians and eventual collapse of industrial and commercial sectors. The investment environment for foreign investors was hostile. However the period between 1986 to 1996 reversed the downward trend in FDI where the investment code 1991 was enacted where Uganda has since experienced an economic growth.

Table 1: Total Investment (local & Foreign in Uganda 1991-95)

	1991	**1992**	**1993**	**1994**	**1995**	**Total**
Licensed projects	12	232	351	571	554	1720
Planned investment (US $)	66	505	628	563	750	2512
Actual Investment (US$m)	25	192	239	214	285	2555

Source: UIA database for July 1991 – Dec 1995

(2) Transfer of technologies is expected because foreign companies will use technology from their home country from developmental perspective, it is more important that technology is diffused with spill-over into the local production process, and that

technology be adopted by local enterprises for an economy to improve on quality, technology upgrading is crucial. Technical inefficiency, in developing countries, can severely hinder this quality of products produced and the ability to cope with new demands.

(3) FDI also leads to employment creation. This has been testified in Uganda by telecommunication companies like MFIs which employ so many people. Another example is the sugar industry like Kakira sugar is operating at a maximum capacity charming out 150,000 tones of processed sugar a year[12]. These statistics indicate that there is labor force behind them. So FDI is source for employment creation.

(4) In encouraging FDI, Uganda also anticipates increased export competitiveness. For example the **floriculture** under agriculture sector gives the most attractive return on investment in agriculture which between 30-40%. However requires expansion and new enterprise and market on absorb on increase in production.[13]

Transfer of management skills to local mangers, takes place when investors set up new plants, and acquires comparator out source to local subcontractors. The transfer of managerial skills includes organizational competence and access to foreign markets.

Encourage /provide an away of goods and services to residents in the recipient country.

[12] Enter Uganda http
[13] Enter ugnda.com UIA

To this end, it should be noted that foreign investment raises productivity and increase is not completely appropriated by the investor, the greater product will be shared with others and some other income groups will benefit greatly, domestic labor will benefit in the form of higher real wages, consumers by way of lower prices and government will receive higher tax revenue.

2.4 Initiatives taken to attract FDI

Uganda in a an effort to improve its economy, has been keen on attacking FDI and hence has become more and more accommodating as evidenced by the changes in its regulatory requires.

Incentives

These are policies to attract internationally mobile investors. These are in form of tax holidays, exceptions on export and import duties, subsidized infrastructures and limits on workers rely. Uganda has for example has improved its regulatory frame work for FDI by opening its economies, permitting profit reputation and providing tax and other incentives.

A move to conclude bilateral investment treaties with countries whose main aim is protection and promotion of FDI. Clarification on the terms render which FDI can enter Uganda has been met.

Uganda has however also relaxed regulations for foreign investors by

Granting investors easier entry.

- Relaxing the ability to borrow locally although it implies a constraint on a county's foreign currency reserves, consider, AYA"s case
- Relaxation of land and using concession ownership.

- By forming new kinds of partnership with the private sector (pubic private partnership on is areas which were previously the responsibility of the government.

The incentives offered by Uganda government in summary are as follows; **Fiscal incentives**

- Tax days
- Subsidies
- Exemptions from import duties.
- Accelerated depreciation allowances
- Investment and reinvestment allowances
- Specific education from gross earning for national income tax purposes
- Deduction from social security contribution
- Reduced tax rates

Illustration of Uganda's fiscal incentive Regime

Uganda's fiscal incentive package provides for generous capital recovery terms, particularly for investors whose projects entail significant investment in plant and machinery and whose investments are medium/long term. The incentives package includes:

Category 1- Initial Allowances

The incentives covered in this category are capital allowances expenses which are deductible once from the Company's Income.

Initial allowances on plant and machinery located in

Kampala. Entebbe, Namanve, Jinja & Njeru	50%
Outside Kampala. Entebbe, Namanve & Jinja area	75%
Start-up costs	25%
Scientific Research expenditure	100%
Training expenditure	100%
Mineral exploration expenditure	100%

Category 2- Deductible Annual Allowances

Depreciable Assets specified in 4 Classes (sixth schedule) under declining balance method

Class I	Computers & Data handling equipment	45%
Class 2	Automobiles, Construction and Earth moving Equipment	35%
Class 3	Buses, Goods Vehicles. Tractors, Trailers, Plant & Machinery for farming, manufacturing and mining	30%
Class 4	Railroad cars, Locomotives, Vessels, Office furniture, fixtures etc.	20%

Category 3 - Other Annual Depreciation Allowances

Industrial Buildings, Hotels & Hospitals	5%
Farming - General farm works (Class 4 assets under sixth Schedule pan 1) declining balance depreciation	20%
Horticulture (Horticultural Plant & Construction of Green houses) Straight line depreciation	20%

Normal depreciation allowances with the addition of a special 50% initial allowance on plant and machinery means that in the crucial early years of a project, the effective corporation tax rate is considerably less than the nominal 30% rate. - The enterprise keeps a high proportion of its cash flow and income for further investment.

In addition to the above, Uganda offers a zero rate of import duty tax on plant and machinery as defined in the sixth schedule Chapters 84-85 of the HS Code as well as a uniform corporate tax rate of 30% which is lower than in most African countries. Provisions exist to allow for assessed losses arising out of company operations including the loss from the investment allowance to be carried forward. Such losses are allowed as a deduction in determining the tax payer's chargeable income in the following year of income. Uganda also has a fully liberalized Foreign exchange regime with no restrictions on the movement of capital in and out of a country.

Uganda has generous incentives too. There is a tax holiday for ten years for exporters of finished consumer and capital goods. The tax payer should export at least 80% of his Products (Price Waterhouse Coopers, 2009). Initial allowances are available for Companies that put a qualifying item of plant and machinery into use for the first time in year of income. If a qualifying asset is placed in service outside specified locations, it is entitled to capital allowances of up to 75% of the cost base of the asset. If it is within the specified areas then it attracts an initial allowance of 50% of the cost base of the Asset. Initial allowances of 20% of the cost base of a building are available for new Industrial buildings brought into service for the first time (Price Waterhouse Coopers, 2009). Other incentives include a 25 percent allowance on start up costs, 100 percent allowance for scientific research expenditure, training expenditure and mineral exploration expenditure. Industrial building allowances and farm works allowances are also available for investments in specific sectors (Price Waterhouse Coopers, 2009). Uganda has DTTs with Denmark, East Africa (Kenya and Tanzania), India, Italy, Mauritius, the Netherlands, Norway, South-Africa and the United Kingdom (PriceWaterhouse Coopers, 2009).

The Ugandan corporate tax rate is the same as the Australian corporate tax rate (30 percent) and lower than the Canadian corporate tax rate plus the provincial tax rate (28 percent plus 14 percent).

In addition to the above, Uganda offers a zero rate of import duty tax on plant and machinery as defined in the sixth schedule Chapters 84-85 of the HS Code as well as a uniform corporate tax rate of 30% which is lower than in most African countries.

Provisions exist to allow for assessed losses arising out of company operations including the loss from the investment allowance to be carried forward. Such losses are allowed as a deduction in determining the tax payer's chargeable income in the following year of income. Uganda also has a fully liberalized Foreign exchange regime with no restrictions on the movement of capital in and out of a country.

Financial incentives

- Grants
- Loan and loan guarantees

Investment treaties

Incentives are only a part of what the government offers to attract foreign investor to the country. Increasingly the county has entered into investment treaties both bilateral investment treaties and multilateral ones.

Bilateral treaties

These contribute to the establishment of favorable investment climate between two countries by providing assurance and quarter's to investors. However to enhance this, the UIA in an effort to promote industrial development, established **UNIDO-UIA promotion Unit,** which was concluded in October 2000, whose objective is to support Uganda's efforts to simulate industrialization aimed at enhancing the competitiveness and sustainability of industrial development and development of local entrepreneurship capacity. Specifically the unit aims to provide technological support to medium and small scale industries in Uganda, to identify joint venture partners for Italian and

Ugandan companies and to enhance direct interaction between Uganda and foreign entrepreneurs and investors.

Bilateral investment treaties are perceived as contributing to the establishment of favorable investment climate since they endeavor that, fair and equitable treatment for foreign investors in terms of applications for investment approval and setting up their businesses

Specific provisions on exportation and non commercial losses and compensation for this save. And dispute on conflict settlement mechanism.

Investment Promotion

A promotion agency is a body set up, whose main purpose is to attract FDI and took after foreign firms once they have set operations. This however endeavors as a one stop for investors to deal with regulatory and administrative requirements and change or modify investor perception of the country by attending and organizing investor fairs and distributing materials. The UIA established an account and management and serve agency whose aim is to;

- Co-ordinate regular consultative meetings with investors
- Maintaining dialogue with private and public sector agencies, to identify strategies that improve private sector performance.
- Involve investors and officials of countries and agencies invests in investment promotion activities
- Discussing with investors new investment opportunities
- Providing valuable information to investors about sources of financing and facilitating the linkage to these services

- Providing advisory services to investors on marketing clear technologies and available trading opportunities
- Working with sister institutions for example UMA, and PSFU to identify training needs for investors and to train investors by sectors in special business skills.

2.5. Determinants of FDI in Uganda

A number of factors influence investors to a country. In Uganda like any sister country, foreign investors are primarily concerned with fundamental factors that is, a stable macroeconomic and political situation together with credibility of policy reforms. A stable and sustainable macroeconomic environment boosts the confidence of private investors. Reductions in debt burden are also critical not only for sustaining both external and fiscal balances but also for engendering confidence to encourage private sector investment[14].

Therefore Uganda being a landlocked country, a country whose infrastructure is weak, largely uneducated work force, political interference in private sector and high levels f corruption and whose road networks need renovation and expansion may really attract less FDI. The underdeveloped banking system which is small, and under diversified handling essential short term commercial transactions. However these problems may not really defeat the attraction of FDI. The market size of Uganda in terms of GDP per capita or size of population and market growth (GDP growth rates in constant prices) are crucial determinants of FDI in Uganda.

[14] Determinants of fdi in Uganda. Marios obwona

The availability of National resources, the quality of the infrastructure and the cost, productivity and skills of labor are relevant. However crucial to this research, for as much as Uganda has been encouraging foreign direct investment through privatization programs and generous incentives packages such as tax holiday, the Uganda experience shows that to attract FDI, favorable laws, policy and regulations consistency are much more important than incentive scheme.

Chapter three

LEGAL REGIME AND POLICY FRAME WORK

3.0Introduction

Over the past decade the government of Uganda has reversed earlier policy and management failures that were so destructive to the economy and investment climate. These developments since 1991 have been rewarded by a significant and very satisfying revival of domestic and foreign investments. This growth however should also be attributed to the liberal legal regime and policy frame work that is in place.

This however is not to suggest that the legal regime and policy frame work has exhaustively tackled the failures of FDI, consequently this chapter seeks to identify and asses the credibility of the current legal regime and policy frame work in facilitating FDI. The chapter will discuss the laws that are only crucial to FDI.[15]

3.1 LEGAL REGIME

CONSITUTION OF UGANDA 1995

This is the supreme law of the land. In this law facilitation of FDI is catered for where under the natural objectives, objectives ix, states that, in order to facilities rapid equitable development the state shall encourages private initiative and self reliance.

Objective xi provides that, state shall stimulate agricultural, industrial, technological and scientific development by adopting appropriate policies and enactment of enabling legislation.

Under Article 250, the constitution allows legal proceeding against the government where Article 250(I) allows a person who has a claim against the government, it may be enforced as a right by proceeding against it for that purpose.

[15] UIA report

Article 250(2) is to the effect that civil proceedings against the government shall be instituted against the Attorney General and all documents required to be served on the government for the purpose or in connection with those proceedings shall be served on the Attorney General.

This however is important because for as much as there are laws governing the transaction (FDI) there is no guarantee that there will be no breach so in this regard investors can institute proceeding against the government. For example in the matter of **Dura cement limited**[16], the government accepted to pay an investor 30 billion shillings after it had unlawfully terminated contract by cancellation of the lease.

Investment code Act. 1991

This Act was enabled to provide a lasting solution for Uganda's investment problems. Prior to this Act Uganda investment climate faced a Turbulent atmosphere with inconsistent policies, dismissal of foreigners (Asians and Britain's)[17] However the investment code Act is responsible for creating this Uganda investment Authority whose main purpose is to identify priority areas for the investors, procedure for procuring investment hence and generally defines who an investor and foreign investors is today UIA, is responsible for economic recovery large FDI, influx in the country, revival of the manufacture, industrial and agricultural industries[18] foreign investors and section 11 allows an investor to procure an investment alliance.

Immigration Department

Foreign investors must get into contact with the Immigration Department under the Ministry of Internal affairs so as to legally enter, stay and do business in Uganda.

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16 Daily monitor Nov 9, 2009
17 Amines Era
18 Namanvre Industrial park

For any foreigner to legally enter and stay in Uganda, he must be in possession of either a special pass or work permit issued by the Immigration Department. The Department of Immigration falls under the Ministry of Foreign Affairs. It is headed by the Commissioner for Immigration. The Immigration Control Board is responsible for the issue of special passes and work permits. The Commissioner for Immigration sits on the UIA Board in order to make the process of Acquisition of work permits by foreign investors easier. Where the applicants for work permits have been recommended by the UIA, the applications process becomes faster and easier. Potential investors typically first come into contact with the Department of Immigration when applying for a special pass. A special pass entitles the holder to stay in Uganda for a period of up to 3 months. Once the investor has obtained an investment license from the UIA an entry (work) permit can then be applied for. The process is usually led by the UIA, which writes a letter of recommendation to the Commissioner for Immigration stating the expected number of expatriate workers and the amount of capital which has already been brought into Uganda.

Immigration legislation

Introduction

Foreign investors come into contact with the Department for Immigration as soon as they enter Uganda. The Department controls and regulates most of the aspects relating to foreigners entering and staying in Uganda. There are various Immigration requirements foreigners should know and comply with. There are also restrictions imposed on foreigners coming to do business in Uganda[19].

Immigration formalities and requirements

Special Pass: Acquiring entry permits and completing immigration formalities can take months to complete. Potential foreign investors, therefore, should first apply for a special pass, which can be granted within a day. The special pass entitles a person to stay in Uganda for a period of up to three months.

Security bonds: Foreigners who need work permits are required to deposit money equivalent to a one way air fare, to their country of origin. For people from Europe this has sometimes meant a deposit of US $1000. Although the deposit is refundable at the expiry of the work permit, the requirement is nevertheless a burden and decincetive which can discourage potential investors. The Danida Private Sector Development Program is proposing to take up this and other forms of security bonds with government.

Application for an entry permit: An investor can apply for an entry (work) permit after receiving an investment license from the Uganda Investment Authority (UIA). The UIA assists investors in obtaining work permits.

Fees for processing of work permits

Class of work permit Category of people to whom granted Amount (In UGSHS) Per year

Class B Foreigners engaged in agriculture	**166, 250**
Class C Foreigners engaged in mining and mineral processing	**237,500**

[19] Danida, a guide to investors in uganda

Class D Self-employed business people	**237,500**
Class E Foreign industrialists	**237,500**
Class F Foreigners engaged in professional services	**166,250**
Class G Foreign employees	**71,250**

Acquisition of work permits/certificate of permanent residence/pass

For a person to enter or reside in Uganda, he will be required to be in possession of a valid entry (work) permit, certificate of permanent residence, or pass. For a foreigner to be issued with an entry permit, certificate of permanent residence or pass, he will be required to produce a passport; a certificate of identity; a convention travel document; or any other valid travel document.

Certificate of permanent residence: Non-citizens can be granted certificates of permanent residence. The certificate entitles a non-citizen to remain in Uganda for the period indicated on the certificate.

Production of permits: A non-Ugandan citizen who resides in Uganda is under an obligation to carry his/her entry permits, certificates of permanent residence or pass at all times.

Restrictions on the employment of non-citizens

Non-citizens who do not posses valid entry permits, certificates of permanent residence or special pass are subject to some restrictions relating to employment in Uganda i.e. they cannot be employed in a parastatal or company or any other private body; they cannot be employed in the public service; they cannot be employed by a private person; and they cannot engage in a private business.

Registration of Non-Ugandans

A non-Uganda citizen must register himself or herself with the immigration officer/registration officer within 90 days of arrival in Uganda. The registration officer can require such a person to produce or give the following: A valid passport or other official document of identity to establish his /her identity and nationality; two passport size photographs of himself/herself; and any other information reasonably required.

Identity cards

A non-Ugandan who resides in Uganda and holds an entry permit, a certificate of permanent residence, a dependent pass, or a pupils or students pass must at all times hold an identity card issued by the Citizenship and Immigration Board.

Restrictions from political and other organizations

A non-Ugandan cannot be a member of the Executive Committee of a trade union or a youth movement in Uganda. Such person cannot also form, arrange or join a political party. He/she cannot unless authorised under any law, vote in any presidential, parliamentary or other election or in a referendum in Uganda.

Classes of entry permits

There are 8 classes of entry permits provided for under the New Act namely: Class A1, A2, B, C, D,E, F and G. The classes of entry (work) permits most relevant to investors and the requirements for their issue are summarized in the table below:

Classes of entry permits

Class of entry (work) permit eligible person Requirements

B Foreigners engaged in the business of agriculture or animal husbandry.

- Permission to acquire an interest in land of an area suitable for the type of agriculture.
- Such sum of money prescribed by the responsible Ministry in respect of any agriculture and animal husbandry.
- Fulfilling obligations imposed by the regulations made under the Act.

C Foreigners engaged in mining and mineral processing.

- Possession or ability to obtain such mining license or license for mineral processing.
- Such sum of money as may be required by the Ministry responsible.

D Private business people/traders.

- Possession or ability to obtain any necessary trading license.
- Such sum of money required by the responsible Ministry.

E Foreign manufacturer/ industrialists.

- Possession or ability to obtain license for such manufacturing.
- Such sum of money as may be prescribed by the Ministry responsible in respect of any particular class of manufacture.

F Foreigners engaged in professional services.

- Possession of professional qualification.
- Possession of sufficient capital or assured income.
- Registration with the relevant professional body.

G Foreign employees.

- Offer and acceptance of employment.

The Companies Act cap 110

Under this companies Act part x, companies incorporated outside Uganda are allowed to establish a place of business in Uganda. section 369, is the effect that a company incorporated outside Uganda can fully separate in Uganda. However section 369(2) a foreign company shall not be deemed to have a place of business in Uganda solely on account of its doing business through an agent in Uganda at the place of business in Uganda. Section 370 provides for the procedure in which a foreign investor can register a place of business in Uganda.

Foreign investors wishing to register and do business in Uganda have to get into contact with the Registry of Companies. This falls under the Ministry of Justice and is headed by the Registrar General. The Registrar General is assisted by a Deputy Registrar General and several Assistant Registrars. There are three kinds of companies, namely: Private Company, Public Company and Foreign Company. Private and Public companies are Limited Liability Companies incorporated in Uganda. Certificates of incorporation which make the business a legal entity are issued by the Registrar General's office. The Registrar General can also register a Foreign Company. The registration process normally takes one day after all the forms have been submitted. Professional firms, partnership and business names can also be registered in the Registry of Companies. Registration of companies and business names can only be undertaken in Kampala where the office of the Registrar General is situated. This is more favorable for foreign investors who have located their business primarily in Kampala.

The National Environment Management Authority (NEMA)

NEMA was established in January 1996 under the **National Environment Statute, 1995.** NEMA is an autonomous entity headed by the Executive Director assisted by the Deputy Executive Director. It has a board, which has government, private sector and non-governmental organization representation. New investors are required to prepare project briefs covering issues such as location of investment, current zoning classification, nature of processes to be utilized and likely environmental impacts. The brief should be submitted to NEMA and to an appropriate lead agency. The brief should be undertaken once the investor has obtained a site in conformity with existing laws, regulations and policies governing such projects and the use of the site proposed for its location. This means that it is more prudent for an investor to go to NEMA before a site has been obtained. This is because NEMA can out rightly prohibit any business activity on some sites so as to protect the environment. Where NEMA has approved the environmental aspects of the project, it can nevertheless establish conditions for monitoring of the project (investment operations). The operator or owner of the project for which environmental conditions have been established for purposes of monitoring should keep records and make annual reports to NEMA.

National environment legislation

Investors in Uganda are required to comply with environmental standards. The **National Environment Statute 1995**, is the principal environmental protection law. **The National Environment Management Authority (NEMA)** was established in January 1996 under the Statute as the principal regulatory agency for environmental matters. An investor needs to contact NEMA for information, advice and guidance relating to environmental matters. NEMA is given wide powers under the Statute in relation to environmental matters.

Environmental Impact Assessments (EIA)

Investors are required to comply with the set established environmental standards. Developers of particular projects are, therefore, required to carry out Environmental Impact Assessments before project implementation. A "**developer**" is a person who is developing (investing in) a project for which an Environmental Impact Assessment is required. "Developer" also includes any person who proposes to undertake a new project or to repair, extend or maintain an existing project for which an Environmental Impact Assessment is required. A number of projects require Environmental Impact Assessments. The Minister is empowered by Statutory Instrument to add any other projects on the list of the projects.

EIAs - essential steps

Compliance with EIA requirements is enforced through the licensing regime. Generally, for projects where a license is required, the licensing authority is prohibited from issuing a license unless the developer has produced a certificate of approval from NEMA. The following steps must be followed before a certificate of approval can be issued by NEMA in respect of projects requiring an EIA.

Project briefs: This is the first stage in the EIA process. A project brief is a summary statement of the likely environmental effects of a project for which an EIA is required. It also includes a project pro posal. The contents of a project brief are detailed in Chapter twelve of the Master Guide. Ten copies of the project brief are required to be submitted to the Executive Director of NEMA, who in turn submits the brief to the lead agency (i.e. the principal sector regulatory agency) to make comments. The lead agency comments are sent back to the Executive Director, NEMA. Upon approval, the executive Director, NEMA then issues a certificate of approval. The developer can then be issued with a license where such license is required. If the Executive Director determines that the project will have significant adverse impacts on the

Environment and the project brief discloses no sufficient mitigation measures to address the anticipated impacts the developer is notified and required to undertake an Environment Impact Study (EIS).

Environmental Impact Studies (EIS):

An EIS is carried out where a project brief has not been approved by the Executive Director. The EIS is conducted to determine the possible environmental adverse impacts of a proposed project and measures to mitigate their effects. A developer is

Required to develop and design terms of reference for the conduct of the EIS. The terms of reference have to be submitted to the Executive Director, NEMA for approval. After the approval of the terms of reference, the developer appoints persons to conduct the study. Their names and qualifications have to be submitted to the Executive Director, NEMA, for approval. NEMA has published EIS Guidelines. The NEMA Guidelines for the conduct of environmental impact assessments in Uganda are set out in Chapter twelve of the Master Guide. The developer in conducting the EIS is required to seek the views of the local community which might be affected by the project.

Environmental Impact Statement: At the completion of an EIS, the developer is required to make an environmental impact statement. The developer must address biological diversity, sustainable use, ecosystem maintenance social considerations, landscape and land use related issues. The statement also has to contain an executive summary stating the main findings and the recommendation of the EIS. Upon receipt of the environmental impact statement, the Executive Director submits a copy of the statement to a lead agency to make comments.

Comments of the general public: The Executive Director then invites the general public to make written comments. The Executive Director, NEMA after considering the environmental impact statement and all the relevant comments, determines whether or not a public hearing is necessary. The Executive Director, NEMA, is required to make a decision on the environmental impact statement basing on the validity of the predictions contained in the statement, any comments made, report on the public hearing, if any, and analysis of the economic and social cultural impacts of the project. The Director can either approve the project, require that the project be re-designed, refer back the project to the developer for further study or reject the project.

The Projects requiring EIAs - Summary of essential steps

· NEMA notice to developer to undertake EIA.

· Development of terms of reference (TOR) for EIS.

· NEMA approval of TOR for EIS.

· Appointment of experts/consultants to conduct EIS.

· Publication of project and meetings with affected local communities.

· Preparation of environmental impact statement.

· Submission of environmental impact statement to NEMA.

· Referral of environmental impact statement to lead agency by NEMA.

· Invitation of comments from the public.

· Public hearing(s) (for controversial projects or projects with trans-boundary impacts).

· Approval/disapproval of the project by NEMA.

· Issue of NEMA Certificate of Approval (for project approvals only.

NEMA in consultation with a lead agency is responsible for carrying out environmental audits of activities that are likely to have a significant impact on the environment. After the completion of project or the commencement of the operations, the developer is required to undertake an initial environmental audit of the project. The developer is also required to take all practical measures to ensure that the predictions in the project brief, or environmental impact statement are complied with. Before a developer carries out an initial environmental audit, he needs to first submit to the Executive Director, NEMA for approval the names and qualifications of persons to carry out the audit. After the initial environmental audit of the project, the Executive Director, NEMA can require a developer to carry out regular environmental audits. Non-compliance with the litigation measures can make the developer liable to criminal and civil prosecution in Courts of Law.

TRADE MARKS ACT Cap 217

This provides for grant, registration and protection of trade marks from infringement, section (1)(L) trade mark means except in relation to certification mark, a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right either as proprietor or as registered user to use the mark whether with or without any indication of the identify of that person and means in relation to certification trade mark, a mark registered or deemed to have been registered as certification mark.

Trademarks are very important to FDI in that they give the investor confidence to trade in trade in his own mark and more importantly in the BIT definition of FDI intellectual property rights are included.

Income Tax ACT Cap 340

This is the Act that is responsible for taxing in Uganda. It is liberal enough towards attaining FDI. It has been cited as liberal towards attracting FDI. it has equated to the tax system corporate tax rate of Austria which is 30%

Corporate tax rates in Uganda	Corporate tax rates
Primary Sector	30
Secondary Sector	30
Tertiary sector	30
Capital gains	
Other	

SOURCE: price water house coopers 2009

Uganda's fiscal incentive package provides for generous capital recovery terms particularly for investor whose projects entail significant investment in plants and machinery and whose investments are medium /long term.

The incentives packages include.

Initial allowances.

The incentives covered here under are capital allowances expenses which are deductibles once from company's income

Initial allowances a plant and machinery incited in

Kampala, Entebbe, Namanve, Jinja, Njeru	50%
Outside Kampala Namanve and Jinja	75%
Start up Costs	25%
Scientific Research	100%
Training Expenditure	100%
Mineral Exploration Expenditure	100%

ii) Deductible Annual allowances.

Deprivable assets specified in four classes (sixth schedule) under declining balance method.

Class 1	Computer and handling equipment	45%
Class 2	Automobiles, construction, and earth moving equipment	35%
Class 3	Buses goods, vehicles,	30%

	tractors, trailers, plant and machinery for farming manufacturing and mining.	
Class 4	Rail road cars, locomotives, vessels, office furniture, furniture etc	20%

Category 3 other Annual Depreciation allowances.

Industrial buildings, hotels and hospitals	5%
Farming general farm works (class 4 assets under sixth schedule part 1) declining balance depreciation	20%
Horticulture , straight line depreciation	20%

Normal depreciation allowances with addition of a special 50% initial allowance in plant and machinery means that in the crucial early years of a project, the effective corporation tax ratio is considerably less than the normal 30% the enterprise keeps a high proportion of its cash flows and income for further investment

Generally, Uganda's tax regime is so generous towards investors, however despite that, Uganda still lags behind in attracting FDI compared to Kenya and Tanzania, presently Uganda suffers more tax and non tax incentives to investors than its regional counter parts as a way to attract FDI. According to world investment report 2008 Uganda attracted the least amount of FDI in 2007.

3.2 ECONOMIC POLICIES

Financial sector reforms were introduced in 1991 with the key objective of laying the foundation for a market-based financial system. Specifically, the reform efforts aimed at addressing weaknesses in key financial institutions. The process of developing basic financial short-term and long-term markets was also instituted. The latter process started with the development of basic markets in short-term, highly liquid and relatively less risky financial instruments such as inter-bank loans and Treasury bills.

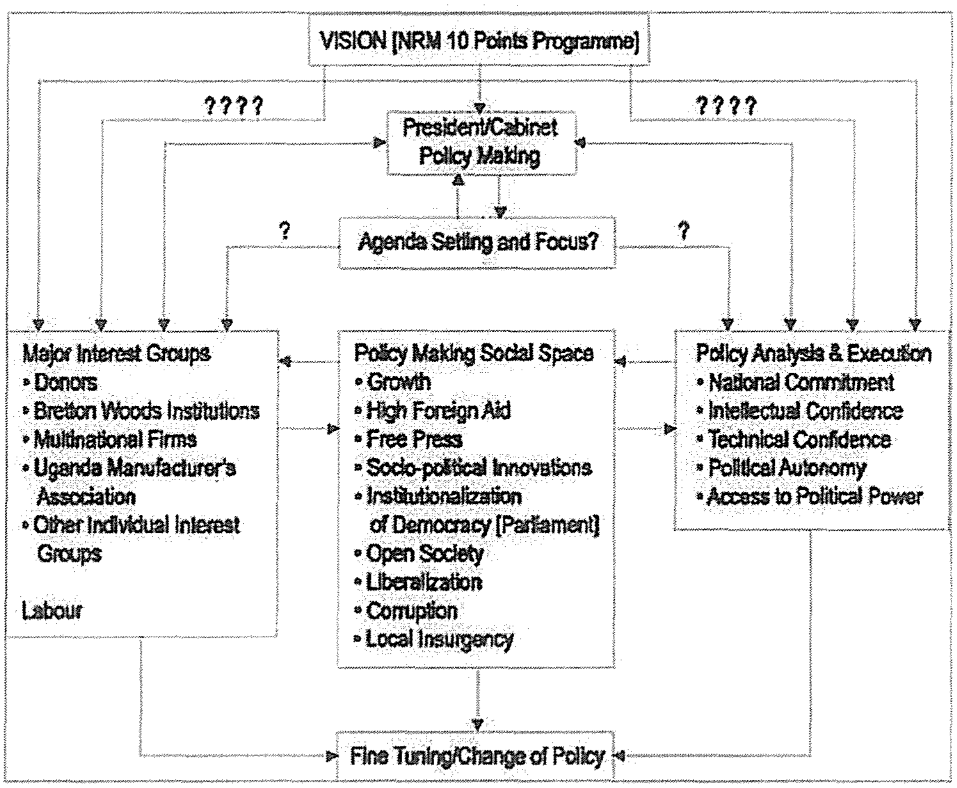
Following the progress recorded in the money market, the process of establishing long-term and private financial instruments was also launched with the establishment of the Capital Markets Authority.

To enhance the scope and efficiency of Uganda's financial infrastructure, the Banking Act of 1969 was repealed, with the Financial Institutions Statute (FIS) replacing it in 1993. Changes in the Act included the removal of interest rate controls, reduction of barriers to entry by private banks and restriction of the direct role of government in administering credit. This framework was supplemented by parallel measures to strengthen the Bank of Uganda's banking supervision, to foster financial discipline through new legislation, regulations and policies, and to improve the efficiency and profitability of financial institutions. The reforms also led to the restructuring and privatization of inefficient financial institutions.

Despite the reforms, Uganda's formal financial sector has undergone a series of upheavals in the recent past, the effects of which are still being felt. Some commercial banks were closed and there was an interruption in the sale of the largest public bank, the Bank of Uganda. These factors, together with a slow response by the Government to unfreeze savings accounts, and accordingly pay depositors of failed banks, contributed in a major way to the decline in the general public's confidence in the country's banking system.

Policy frame work in Uganda

Figure Diagrammatic Schematization of the Current Trade and Industry Policy-Making Process in Uganda



E- Commerce

Electronic commerce or ecommerce is a term for any type of business, or commercial transaction that involves the transfer of information across the Internet. It covers a range of different types of businesses, from consumer based retail sites, through auction or music sites, to business exchanges trading goods and services between corporations. It is currently one of the most important aspects of the Internet to emerge.

Ecommerce allows consumers to electronically exchange goods and services with no barriers of time or distance. Electronic commerce has expanded rapidly over the past five years and is predicted to continue at this rate, or even accelerate. In the near future the boundaries between "conventional" and "electronic" commerce will become increasingly blurred as more and more businesses move sections of their operations onto the Internet.

Business to Business or B2B refers to electronic commerce between businesses rather than between a business and a consumer. B2B businesses often deal with hundreds or even thousands of other businesses, either as customers or suppliers. Carrying out these transactions electronically provides vast competitive advantages over traditional methods. When implemented properly, ecommerce is often faster, cheaper and more convenient than the traditional methods of bartering goods and services.

Electronic transactions have been around for quite some time in the form of Electronic Data Interchange or EDI. EDI requires each supplier and customer to set up a dedicated data link (between them), where ecommerce provides a cost-effective method for companies to set up multiple, ad-hoc links. Electronic commerce has also led to the development of electronic marketplaces where suppliers and potential customers are brought together to conduct mutually beneficial trade. The road to creating a successful online store can be a difficult if unaware of ecommerce principles and what ecommerce is supposed to do for your online business. Researching and understanding the guidelines required to properly implement an e-business plan is a crucial part to becoming successful with online store building.

Internet use in Uganda grew from 0.2 percent to 7.8 percent of the population between 2000 and 2008. Expensive, unreliable bandwidth is the major obstacle to ICT growth. Most of the continent is served by a system of submarine fiber optic cables that bring bandwidth to Africa from the Middle East, Europe and South Asia. Until the arrival of the Seacom cable in July 2009, Eastern Africa was the only part of the continent without access to this system. Plans for a 23-nation East African Submarine Cable System (EASSy) have been repeatedly stalled (though a June 2009 announcement estimates a 2010 completion date. Most Internet service providers (ISPs) in Uganda purchase their bandwidth via satellite, which can be up to five times as expensive as bandwidth delivered via an undersea cable.

The Uganda Communications Commission (UCC) regulates the Internet and advises the government on information and telecommunications policy. Before 1997, all information and telecommunications services were government-owned. The establishment of the UCC provided for the incorporation of Uganda Telecom Limited, a company that took on the role of providing these services, and opened the market to competitors.

All ISPs are privately owned. Licensing is controlled by the UCC, with no limit on the number of licenses that can be issued. ISPs must be registered and incorporated in Uganda and have a documented business plan in order to obtain a license. The .ug domain is administered by Uganda OnLine Ltd, a subsidiary of Computer Frontiers International Uganda. It is unclear why a private company, rather than the UCC, controls domain registration, and there has been some concern over the neutrality of the

.ug registration process. Uganda OnLine has disputed this, but the majority of web sites in Uganda do not use the .ug domain, nor are many Web sites hosted in Uganda due to bandwidth and infrastructure limitations.

The Media Centre also plays a role in monitoring information access. It is in charge of accrediting foreign journalists and has been accused of refusing to accredit those who write critically of the ruling party. Established in 2005 to "cause positive and factual public awareness of government in the media," it falls under the Office of the President and is run by the CEO of Uganda's pro-government newspaper, the New Vision.

The Electronic Media Act of 1996 governs the "communication of any message to the public by means of any electronic apparatus." Broadcasters are prohibited from broadcasting content that controverts public morality, promotes violence or "ethnical youth," distorts facts or creates public insecurity. Though the act was developed with television and radio in mind, its wording suggests that its provisions could be applied to online content as well. However, to date, there have been no Internet-related cases involving the act.

CONCLUSION

As in the past, a welcoming FDI regime remains fundamental to attracting FDI. But today's globalizing investor has a wide choice of developing country locations and desires those that are capable of enforcing competition, providing stable and transparent rules for private business and, over time, improving the quality of their local productive factors. While there have been significant improvements in the policy regime for FDI in most African countries, they have not been significant enough to attract globalizing FDI.

Disappointingly, the region continues to suffer from a poor image as an investment location despite efforts to promote and market the region. Most crucially, the economic disparities between Africa and other developing regions (with the exception of natural resource sector) remain considerable. Infrastructure, human capital, supplier networks, technological capabilities and support institutions are all relatively weak. In some countries they are stagnant and in others they are getting worse.

For Africa, therefore, the way forward is to continue to implement a competitive incentive framework, while simultaneously leveraging its comparative advantage in extractive and natural resource activities, and continuing to improve its supply of skills

CHAPTER FOUR

FINDINGS

4.0. INTRODUCTION

In the 1960s Ugandan government policy was supportive of industrial development and the Uganda industrial Act of 1963 promoted both local and foreign investment. The 1964 investment (promotion) Act provided legal protection for FDI against compulsory acquisition by the state and guaranteed rights to repatriate capital, interest and dividends. In 1970 the government, displeased with British and Asian companies. The Britons and Asians were expelled from the country and foreign assets and business were expropriated. In 1977 the military government tried to revive FDI flow through the 1977 foreign investment decree that exempted the investors from paying import duty and sale taxes from plant and machinery for approved enterprises.

However these were not retroactive exemptions and did not apply to investments under Us dollars 57100. Although the military government was overthrown in 1979, there was little FDI between 1980 and 1985. The government elected in 1986 had prepared a bill to correct the country's negative image but this was not implemented until 1990. The government began undertaking major macro economics reforms starting in 1990 and in 1991 the investment code replaced the earlier decrees and laws and thus established UIA. Despite this major adjustment there is no adequate law in Uganda to meet to meet the dynamic nature of FDI requirements on the global standards. Like seen in chapter one many laws stem back in the colonial times. To this end this chapter seeks to discuss the inadequacies of the laws of Uganda towards facilitating FDI.

PROTECTION OF BIT TREATIES

Foreign investment is always seen as a crucial element for the growth of any national economy. To help proliferate this various standard protections are offered to investors in Bilateral Investment Treaties ('BIT') and Multilateral Investment Treaties ('MIT'). One which is virtually always present is fair and equitable treatment ('FET'). On a very brief examination, it is apparent that Uganda protection has never received a clear and concise definition. This is seen where most investors' contracts are terminated prematurely like in the incident of **Dura cement limited** where the president terminated their contract. And yet as an international investment requirement is that, Either Contracting Party shall extend and ensure fair and equitable treatment in accordance with the principles of International Law to investments made by investors of the other Contracting Party in its territory or in its maritime area, and ensure that the exercise of the right thus recognized shall not be hindered by law or in practice. An example of this France-Uganda BIT (2002). Here, it is stated: Either Contracting Party shall extend fair and equitable treatment in accordance with the principles of International Law to investments made by nationals and companies of the other Contracting Party on its territory or in its maritime area, and shall ensure that the exercise of the right thus recognized shall not be hindered by law or in practice. In particular, though not exclusively, shall be considered as de jure or de facto impediments to fair and equitable treatment any restriction to free movement, purchase and sale of goods and services, as well as any other measures that have a similar effect."[20]

[20] Association for international arbitration (adr.org)

Under the umbrella of this vague term of FET, various components have been identified. They are (1) the need for predictability and consistency of the legal system, (2) legality, (3) protection of legitimate expectation of investors, (4) affording justice and due process, (5) protection against discrimination and arbitrariness, (6) maintaining transparency, (7) the requirement to be reasonable and proportional.

A detailed examination of all seven components is beyond the scope of this paper. However, although briefly, a few important points can be highlighted. In the recent case of EDF v Romania (2009), legitimate expectation of the investor i.e. reasonable reliance on representations made by the host state, was highlighted as one of the most important factors. However, the tribunal stated that this cannot be used in lieu of a stabilization clause to limit a State's sovereign legislative power. The expectation must be judged as being legitimate or otherwise with reference to the time when the investment was made. However, tribunals have, time and again, recognized the need for predictability and consistency of the legal framework applicable to foreign investors as noted in OEPC v. Ecuador (2004). FET could be violated even by domestic agencies due to inconsistent application of domestic legislation. In the same way, a lack of legality with regards to domestic law can amount to a violation of FET, for example, in Pope & Talbot v. Canada (2001) where the tribunal relied on a lack of the local authority's jurisdiction in initiating administrative proceedings. However, factors such as reasonableness and proportionality are not absolute in that they only serve to limit the extent to which the state could interfere with any foreign investment but a balance between the interest of the foreign investor and the host state is ensured due to the proportionality requirement. As the law currently stands, a violation or otherwise of FET can o nly be judged most precisely by considering its individual components. Nevertheless, it is widely agreed that the matter needs much more in-depth analysis before it becomes a 'clear' concept of investment arbitration

4.1. INTELLECTURAL PROPERTY RIGHTS PROTECTION

The state is supposed to enact laws that will protect the property rights of investors. This obligation is enshrined in objective ix, of the constitution which states that in order to facilitate rapid equitable development, this state shall encourage private imitative and self reliance and order to protect this objective xi is to it effect that government will enact enabling realizations. To this end, the Trade Mark Act cap 217 provides for grant, registration and protection of trade mark from infringement. Section 1(l) defines trade mark means, except in relation to certification, mark, a mark used or proposed to be used in relation to goods for the purpose of implicating or so as to indicate a connection in the course of trade between the goods and some person having the right either as a proprietor or as registered uses to use the mark Whether with or without any indication of the identity of that person and means in relation to certification trade mark a mark registered or deemed to have been registered as certification mark.

However, the current law leaves out important aspects of protection of trade marks. The above definition for instance is narrow since it does not provide for service marks which are an important aspect of trade mark protection. And in defining a service mark; It is any word name symbol device or any combination used or intended to be used in commerce to identify and distinguish the services of one provider from services provided by others and indicate the source of service.

In Uganda, the case is that for several products including show polish paste, toilet pepper mineral water, several manufacturers are played with problems of counterfeit products making it hard for them to put products on the market particularly those that will be affected by the high influx of counterfeits which prey on the ignorance of most consumers since the products are similar and of products as well as trade market are similar may consumers are confused or can't tell the difference between the genuine and the fake product. And yet the penal code Act sec 377 and 378, prohibits any person from using a trade mark or forget trade mark or counterfeit trademark on any goods which is not product of one of trade mark.

The private sector has suffered from the inadequacy of penalties to fight counterfeits. The offence of counterfeiting products is a misdemeanor which is defined by penal code Act as an offence which is not a felony. In construing this, it means that penalty for commission of a misdemeanor is considerably less than that for felons. For producers or manufacturers of goods, this may not serves as a deterrent for counterfeiting since they invest a lot of money in manufacturing the goods.

Section **379**[21] finds a person selling goods marked with a counterfeit trade mark guilty of misdemeanor similarly a person who forces or counterfeit trade mark a person who sells and deals in goods being forged or counterfeit trade mark of a guilty of a

[21]penal code Act

misdemeanor the above provision of the penal code is important because it covers both manufactures and is important because it covers both manufactures and sellers of counterfeit products the provision is however having in several ways.

- That the offences here in order are handled only as misdemeanor and yet some of them are very high monetary values.

- The provision further places the onus of proof of infringement of rights on the seller; this increases the cost for the seller.

- There is lack of knowledge or information by sellers, they are generally not aware of the differences between the authentic and fake product and therefore need information from the manufactures on the goods that they put on the market.

- The seller as well as manufactures has to do a lot of investigative marketing.

This is actually burdensome for the investors and acts as a deterrent to the inflow of FDI in the country. And yet in the definition of foreign investment, the UNTAD 1999) defined foreign investment for choice 5 categories of assets, immovable and immovable property, compares and interests in accompanies, contract rights, Intellectual property and business consumers, this alone highlights the import of strengthening intellectual property rights. And at present by in the of being signatory to WTO Uganda is bond to fulfill specific obligation which have a bearing on its domestic legislation. This the legal regime with regard to commercial loans is affected and in particular legislation related to trade aspects of intellectual property rights.

4.2. FOREGIN INVESTORS AND ACQUISATION LAND

THE LAND ACT I998

The **Land Act** provides for 4 types of land tenure systems; mailo, customary, freehold and leasehold. Their key features, advantages and disadvantages from the perspective of both local and foreign investors are described below.

Customary land tenure: Key features and disadvantages

Customary tenure is governed by the customs of people in a specific area where a person desires to acquire or has acquired land. Any investor local or foreign acquiring land in a specific area under customary land tenure, has to abide by the rules governing that area as far as acquisition and/or use of land is concerned.

Customary land tenure - Summary

Key features

- Regulated by unwritten law i.e. customary law, customs and practices of local community.
- Predominantly found in rural areas.
- Communal ownership and use of wells, common grazing areas, etc.
- Certain portions of land exclusively owned and used by individuals and households.
- No time limitations on ownership and use of individually owned land.

- Unsurveyed.
- No certificate of title.
- Lower land values.
- Unsuitable for use as loan security.

Short comings

- No certificate of title.
- Verification of ownership can be complex, expensive and result in delays in project Implementation.
- Proposed land use by investor might conflict with customary law and established land use, customs and practices.
- Protracted boarder disputes likely.
- Access roads can be a problem.
- Unlikely to be accepted by banks and other financial institutions as loan security.

Freehold tenure: Key features and short comings

Freehold tenure involves holding of registered land in perpetuity. Freehold tenure is the most secure system of land tenure especially for local investors. Investments can be made on the land for life i.e. no time limits such as those for leases apply. Ownership is easily ascertainable by carrying out a search in the Registry of Land Titles. Freehold tenure offers better security to financial institutions than land held under customary tenure.

The only disadvantage associated with freehold tenure is that only Ugandan citizens can acquire freehold land. Non-citizen investors can only be granted a lease not exceeding 99 years.

Freehold land tenure - Summary

Key features

- Ownership and use of land in perpetuity.
- Evidenced by certificate of title.
- Well demarcated and surveyed land with survey maps and titles deed plans included in the Certificate of title.
- Available to Ugandan citizens only.

Disadvantages

- Non-Ugandan citizens prohibited from acquiring freehold land.

Mailo land tenure: Key features and shortcomings disadvantages

"Mails" refers to the land system under which the Colonial Administration allocated large tracts of land in perpetuity (usually hundreds of square miles of land hence the term "mailo" which in vernacular means "mile") to local chiefs in Buganda to reward them for their support and key role in assisting the Colonial Administration to extend their rule in Buganda and other parts of Uganda. Mailo land is registered and held in perpetuity. Mailo tenure permits separation of ownership of land from the ownership of developments on land made by a "lawful" or "bonafide" occupant. The concept of a "bonafide" or "lawful" occupant is discussed in Chapter one of the Master Guide.

Mailo land tenure - Summary

Key features

- Evidenced by certificate of title.

• Ownership of land in perpetuity.

• Separation of land ownership and developments on land made by "bonafide" or "lawful" occupants.

• Well demarcated and surveyed.

• Available to Ugandan citizens only.

• Exercise of land ownership rights subject to the rights of "bonafide" and "lawful" occupants.

Disadvantages

• Enjoyment and use of land by land owner subject to the rights of "bonafide" and "lawful" occupants.

• Compensation for developments made by "bonafide" and "lawful" occupants an additional cost resulting in protracted and complex negotiations.

• Non Ugandan citizens prohibited from acquiring mailo land.

Leasehold tenure: Key features, advantages and disadvantages

Leasehold tenure is created either by contract or operation of law. The terms and conditions of a lease are set out in the lease agreement by the contracting parties. A direct or indirect specific date of commencement and a termination/expiry of the leasehold period must be stipulated. In return for the occupation and use of the land, the landlord or lessor receives rent or premium from the tenant. Leasehold tenure is the only land tenure available to foreign investors. A foreign investor can (subject to renewal) acquire a leasehold interest in land for not more than 99 years.

Leasehold land tenure - Summary

Key features

- Created by contract or operation of law.
- Grant of exclusive possession and use of land to a tenant for an agreed period.
- Payment of rent or premium by the tenant to the landlord.
- Land use and possession is granted for a limited period i.e. not in perpetuity.

Disadvantages

- Does not confer title in perpetuity.
- Can be terminated before expiry.

Uganda economy being entirely reliant on agriculture, efforts on modernize land policy would take first priority. However section 10 of investment code Act where Section 10(2) provides that no foreign investor shall carry on business of crop production, animal production or acquire or be granted or lease land for this purpose of crop production or animal protection. This however is disastrous for the economy since the nationals who engage in commercial farming have little means to improve and modernize it. So there should be a legislation to liberalize or allow foreign investors into the economy to acquire land.

This kind of problem is being experienced by Madhvani who wanted to acquire land to build a new USD 80m complex in Northern Uganda. Because the land policy is still lacking these is a battle between hand owned by central government and ancestral controlled land. In this instant case (Madhvani) when the president stamped or allowed Madvani to establish the complex the property lease remains mired in a caustic court case brought by locals who accuse madvani of attempting to steal their ancestral land. The Amuru residents who filed the lawsuit against leasing land to Madvani say their ancestors lived on it. Acholi custom says the land should be theirs. The government says the plot was cleared and declared state property in the 1970's, which gives the new district land board the right to title and lease it. This kind of ambiguity scares off the would be investors

The performance of the agricultural sector in recent years has been disappointing, growing at an average of 2.2 percent of the last 8 years, against a population growing at 3.2 percent. The debate now is how to get agriculture growing at a faster rate. Since 2000, the government has been pursuing a multi-sectoral approach to agriculture and rural development contain is the Plan for Modernization of Agriculture (PMA). The ultimate goal of the PMA was to reduce rural poverty by focusing on interventions that would uplift the livelihoods of agricultural households – who are the majority. As such the interventions were by different ministries and agencies. While conceptually appealing, actual implementation proved much more challenging than had been anticipated. Because of the concern was poverty reduction in the formulation of the PMA, it quickly gained the attention and support of international development agencies whose broad missions is poverty reduction. The PMA approach is generalist, with no clear targets at implementation stage. That has caused problems and political leaders want a more focused approach, more targeted than in the PMA. This has caused some tension between government and development partners, with the latter arguing that targeted interventions are not sensitive to poverty reduction. Government has also shifted the language from poverty reduction to wealth creation, yet the latter is not the catch phrase for international development agencies

Restrictions on foreign investments in the agricultural sector

The Investment Code 1991 while providing for a concessions regime to attract both foreign and local investments in Uganda contains 2 main restrictions on foreign investments in the agricultural sector. The restrictions apply to primary agricultural production i.e. crop and animal production as well as acquisition and leasing of land for primary production. These restrictions were introduced prior to the enactment of both the **Constitution of the Republic of Uganda**, 1995 and the **Land Act, 1998**. Both of these laws guarantee the ownership and security of property rights for both local and foreign investors.[22]

There are also restrictions imposed by planning laws and regulations. Land use in Uganda is regulated by the **Town and Country Planning Act**. Land use including changes to existing land use must be in accordance with the approved outline scheme in respect of that area. Where the investor's land does not fall within a planning area, there are no limitations in changing from one land use to another. It is however, essential that before an investor commences any development on land, he first consults with the UIA and the relevant local authority to establish whether or not the area in which he plans to invest is a planning area or whether such local authority is likely to request the **Town and Country Planning Board** to declare the area to be a planning area. **Construction of access roads:** An investor wishing to construct access roads must negotiate agreements with adjoining land owners for permission to construct access roads to his/her land. If the adjoining land owners refuse to grant permission, the investor can

[22] Investing in Uganda A practical guide for Danish investors December 2000

apply to court for permission to construct an access road to a public highway. The application is made to a Magistrate in a prescribed form. The application is accompanied by a sketch plan showing approximately the course and direction of the proposed road access and the present means of access to the public highway.

4.3 Globalization and its effects

Globalization - a worldwide trend towards integration of markets – is changing the Strategies of multinational companies (MNCs) and the way developing countries compete for foreign direct investments (FDI). Faced with increased international competition, MNCs' global strategies seek to maximize their competitiveness by locating facilities in multiple locations around the world. In this 'globalizing' world, attracting FDI increasingly depends on the ability to provide a *favorable FDI regime* and *competitive factors of production*. The former requires a stable, efficient, and service-oriented environment that welcomes investors into most economic activities without discrimination. Modern legal and intellectual property rights, effective competition policies, a strong judiciary and minimum bureaucratic harassment are all important to attract foreign investors. The latter are the ultimate determinants of FDI. Competitive factors of production no longer mean just cheap raw labor and basic infrastructure. Today they require adaptable labor skills, sophisticated supplier networks and flexible institutions. Tax incentives can enhance a country's attractiveness, but, if other factors are unfavorable, they will be insufficient to significantly increase inflows of FDI.

The new paradigm emerged with the 'globalization of production' phenomenon, spurred in the 1980s by improvements in international transportation, the intensification of policy liberalization in both trade and investment flows and the information technology revolution[23]. Falling transport costs and the liberalization of trade and investment policies allows MNCs to move easily in and out of countries thus helping them to adopt integrated regional and global strategies. Policy liberalization reduces the role of trade policy (import protection, export performance clauses) in attracting FDI and minimizes the role of host governments in making investors externalize their intangible technological or marketing assets (selling or licensing them to local firms). Two aspects of policy liberalization have been key in attracting FDI to developing countries, particularly in Africa. They are: allowing foreign participation in privatization and in new infrastructure projects under a variety of contractual and ownership arrangements, and opening domestic capital markets to mergers and acquisition.

Falling communication costs allow parent companies to exercise much tighter control over affiliates and to integrate them more closely into their activities. MNCs allocate their activities and functions over host countries in line with their economic assets and competitive position. The rapid pace of technological change implies that host economies have to provide more skill and technology intensive inputs, and institutions and infrastructures that are needed for efficient production. Investors demand tighter intellectual property protection and better enforcement of the relevant laws and rules. A significant part of global FDI is in mergers and acquisitions, rather than in Greenfield activities. This is a better way for global enterprises to acquire the facilities they need

[23] World Bank, 1998, 1999, UNCTAD 1999

(i.e., administration, research, accounting etc.) where and when they need them. In a globalizing world, *trade and investment* tend to become complementary. Countries with open policies attract FDI in export activities, building on existing comparative advantages. Global investors need free trade and free foreign exchange regimes to maximize economies of scale generated by multi-country production centers. In this context, foreign investors are likely to support local policy makers in their efforts to further liberalize the economy as this improves their competitiveness in export markets. By contrast, foreign investors operating in and benefiting from a restrictive trade environment would more likely support a protectionist agenda.

4.4 E commerce

Of the Ugandans who do use the Internet, most go to public cafés, where access costs between 1500 and 6000 Ugandan shillings (USD0.73 to USD2.90) per hour. In-home access is paid for in US dollars and can cost between USD35 for dial-up and USD350 for broadband per month, plus phone charges when applicable. Given that the GDP per capita is approximately USD1100, this effectively prices all but the wealthiest Ugandans out of regular Internet access.

The capital city of Kampala has over a hundred Internet cafés that, for those who can afford them, offer anonymous, if slow and unreliable, browsing. All of the country's ISPs are located in Kampala, and though nearly 20 are registered, more than half of these are inactive. Access outside the capital is limited by poor infrastructure: though most districts have a handful of Internet cafés, these are often closed due to power outages. Less than 5 percent of the country has access to electricity from the national grid, and fuel for generators is often prohibitively expensive.

The National Information and Communication Technology Policy, released in 2003 by the Ministry of Works, Housing and Communications, established ICT development as a government priority. Emphasis is on providing access to basic communications services to all people in Uganda, which it hopes to accomplish by formulating an ICT policy for education that will promote ICT training in schools. A "Big Push Strategy" outlined by the Uganda Investment Authority in the 1998 Investment Policy Review spelled out plans for major government investment in ICT to take place between 2000 and 2005, but most ICT projects are currently supported by donor funding from foreign governments and private institutions.

Uganda's 2009/2010 government budget includes support for expanding current ICT infrastructure, linking most of the country's major towns through 1500 km of optical fiber and providing for connectivity to ease the transition to EASSy, schedule to be completed in June 2010. Though this shows a commitment to ICT, in June 2009 Finance Minister Syda Bbumba banned the importation of used computers. According to the Ministry, the ban will help protect the environment, but members of Uganda's ICT sector fear it will slow the development of ICT in the country.

In 2004, Uganda introduced three bills — the Electronic Signature Bill, Electronic Transactions Bill, and Computer Misuse Bill — collectively designed to regulate online activity, particularly electronic commerce. The bills were still under review as of February 2009. If passed, they will impose penalties of up to seven years in prison and/or UGX3.36 million (approximately USD1600) for those convicted of malicious or unauthorized used of a computer, including using a computer to access or distribute child pornography, with harsher penalties imposed for crimes committed on "protected" computers, defined as those used in connection with matters of national security, criminal law, public infrastructure, banking, or public safety. The Electronic Transactions Bill exempts ISPs from criminal responsibility for disseminating or providing links to illegal or offensive material.

In at least one case of Web site blocking, electoral laws prohibiting the defamation of a candidate and laws against "spreading rumours" and damaging the country's "security and harmony" were cited. Freedom of expression and freedom of the media are theoretically protected by the country's constitution, but Museveni's regime has not hesitated to bring charges of defamation against journalists whom it felt posed a threat. Many journalists practice self-censorship to avoid arrest.

Just prior to the presidential elections in February 2006, the UCC blocked the anti-government Web site RadioKatwe in the only internationally reported case of Internet filtering in Uganda thus far.

In 2007, Uganda's Parliament introduced the Interception of Communications Bill, which would allow phone tapping and other forms of electronic surveillance on people suspected of committing terrorism or crimes against the State without requiring a court order. The bill drew ire from Ugandan lawyers, human rights organizations and citizens, who criticized the bill for subverting the courts and giving power directly to security agents. Some members of Parliament have also come out against the bill, fearing that it may be used to monitor opposition politicians. In May 2009, the bill was altered, giving Uganda's High Court, rather than the security minister, the power to issue the surveillance warrant. The change made the bill more likely to be approved, but some provisions in the bill — such as allowing security agents to intercept and open suspects' mail — directly contradict pre-existing laws that protect privacy, such as the Communications Act of 1997.

Though Uganda has made great technological strides in the past five years, the country still faces a number of challenges in obtaining affordable, reliable Internet bandwidth. This, rather than a formal government-sponsored filtering regime, is the major obstacle to encouraging e commerce and hence affecting attraction of FDI.

4.5 Finance

High interest rates and inadequate access to working capital were seen as major obstacles, in particular for local businesses. Only a minority of companies found that there had been an improvement in this area. Some participants also noted that the financial sector was much too focused on the capital, Kampala, with only one bank offering country-wide services through a large network of affiliates. Another, less frequently mentioned, aspect of what was seen as an under-developed capital market was the lack of financial instruments such as bank guarantees.

4.6 Infrastructure and utilities

There was consensus that Uganda had made great improvements in recent years in the areas of telecommunications and, most recently, in power generation and distribution. In telecommunications, the advent of the mobile phone represented a substantial plus.

In electricity, the incidence of power failures had been substantially reduced. Although entrepreneurs wanted to see further

Progress in these areas, their concerns focused mainly on transport. This included railways, waterways, And road and air traffic. Transport by rail, especially from the seaports in neighboring Kenya, was seen as extremely slow and unreliable. Much the same was true of the administration and facilities in these ports. In land transport, many companies were basically satisfied with the quality of the main roads but identified feeder roads in rural areas as major bottlenecks, affecting agribusiness in particular. Several investors felt that logistical costs were much too high in Uganda

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4.7 Red tape and corruption

Corruption was a frequently mentioned problem. There were complaints not only in relation to the executive (po lice, customs, etc.) but also in relation to the judicial system, which was described a cumbersome and slow-moving. However, investors noted that Uganda fared no worse in this regard than neighboring countries and possibly better. It was also recognized that the Government had made efforts to improve the situation and that the problem was openly discussed. Others Most investors seemed satisfied with the assistance provided by the Uganda Investment Authority. A number of companies noted, however, that the services of the UIA needed to be extended to secure improved coverage of regions beyond the capital. Some companies mentioned illegal imports as a serious problem, which led to unfair competition for local producers. As for intellectual property rights, one firm complained that current laws in Uganda were obsolete and did not provide sufficient protection for new products such as software and videotapes. The restriction against foreigners owning land was mentioned by some as a problem, especially by companies in the agricultural sector, but others found the current legislation, which allowed foreigners to lease land for up to 99 years, quite satisfactory. Other issues mentioned included the absence of small denomination coins (e.g., Ushs 50) which in effect restricted the limited purchasing power of poor consumers even further.[24]

4.7 CONCLUSION

As in the past, a welcoming FDI regime remains fundamental to attracting FDI. But Today's globalizing investor has a wide choice of developing country locations and desires those that are capable of enforcing competition, providing stable and transparent rules for private business and, over time, improving the quality of their local productive factors. While there have been significant improvements in the policy regime for FDI in most African countries, they have not been significant enough to attract globalizing FDI. Disappointingly, Uganda continues to suffer from a poor image as an investment location despite efforts to promote and market the region. Most crucially, the economic Disparities between Uganda and other developing regions (with the exception of natural resource sector) remain considerable. Infrastructure, human capital, supplier networks, technological capabilities and support institutions are all relatively weak. For Uganda, therefore, the way forward is to continue to implement a competitive Incentive framework, while simultaneously leveraging its comparative advantage in Extractive and natural resource activities, and continuing to improve its supply of skills,

[24] Blue book Uganda 2000.

CHAPTER FIVE

5.0 INTRODUCTION

The benefits of FDI, however, do not come automatically to developing countries.

Investors and Ugandan government have different objectives: the former aim to increase their profitability in an international context; the latter aim to foster development in their countries. In a globalizing world, where investors can enter and exit with relative ease, Government policies are more important than in the past. Uganda government should develop policies that are both friendly to investors and that maximize the contribution of FDI to development.

5.1 RECOMMENDATIONS

Marketing investment opportunities: Creating awareness of investment opportunities through the use of existing investors and information communication technologies such as the internet. Experience has shown that over-reliance on IPAs for investment promotion has not been very effective in the African region, so there is the need for a shift of emphasis from IPAs to existing investors. This is also relevant because studies have shown that existing investors play a very important role in attracting new investors to New investment locations. For example, in a recent study of foreign direct investor perceptions conducted by the United Nations Industrial Development Organization (UNIDO) in four African countries—

Ethiopia, Uganda, Nigeria, and Tanzania—existing investors were found to be responsible for roughly 50% of foreign investor awareness of domestic investment opportunities (UNIDO, 2002). There is also the need for African countries to adopt a more targeted investment promotion strategy. In other words, they should identify sectors where they have comparative and competitive advantages and then promote FDI into those sectors. This would make investment promotion less costly and more effective.

Uganda should aspire, in the long run, to join the club of countries attracting significant amounts of high-quality, export-oriented FDI. To achieve this will require upgrading national laws and incentives to best international practices; lowering transactions costs (i.e. the costs related to setting up business, dealing with bureaucracy, paying taxes, exporting and importing, hiring and firing workers etc.); and improving the supply of skills, infrastructures legal and judicial systems and institutions. First priority should go to rationalizing tax rates and incentives. Incentives should be retained only if they are moderate and in line with development objectives.

The country should aim to increase FDI inflows into existing areas of comparative advantage such as *extractive and other natural resource activities* and adopt appropriate policies to maximize their benefits. These sectors provide potentially high rents and do not require fiscal incentives to attract FDI. Rather, foreign investors place a premium on title security (for exploration and exploitation concessions), clear entry rules, guarantees against unreasonable government interference, a transparent fiscal regime, and guidelines on environmental and health standards. However, investment in natural resources sectors brings with it a number of drawbacks. First, mineral, energy and primary product prices have historically fluctuated widely thus exposing the countries to great vulnerability. Second, many natural resources are non-renewable unless very strictly managed. Third, natural resource investment can attract massive inflows of foreign currency that can lead to a continuous appreciation of the local currency. Finally, many MNCs operating in these sectors (e.g. minerals, oil, gas) are capital intensive with standardized processes that require very little adaptation to local labor and technologies, thus generating only modest spontaneous positive spillovers and backward linkages to the local economy.

Diversification of the economy: Several African countries rely on the export of a few primary commodities for foreign exchange earnings. This exposes them to significant terms of trade shocks. Diversification of the economy will enable them to cushion the effects of these shocks and reduce country risk. The reduction in country risk will increase the attractiveness of the economy to FDI in the secondary and tertiary sectors.

Trade liberalization: Openness to trade will signal commitment to outward-looking, market-oriented policies and enhance trading opportunities thereby attracting foreign investors' intent on taking advantage of the new trading opportunities.

Privatization: The privatization of inefficient state-owned enterprises will boost foreign investment. African countries have now recognized that the privatization of public corporations is necessary to reduce government fiscal deficits and several countries have instituted privatization programs. However, progress in the privatization of enterprises has been slow in several countries because of domestic political Pressure by powerful interest groups that are against the process.

International actions involve improving market access and assistance in investment promotion as well as in capacity building and infrastructure development.

Improved market access: through the elimination of trade barriers and unfair subsidies on agricultural goods exported by African countries will enhance trading opportunities in the region and create an incentive for foreign investors to invest in the region. Recent evidence indicates that about 40% of the costs of trade barriers to developing countries are due to restrictions imposed by developed countries.

Many large local and foreign businesses in Uganda are forced to import many of their inputs as these are often not available domestically at an adequate level of quality. In this respect, Uganda suffers from a relatively common problem in developing countries: that of a 'missing middle'. This situation is characterized by the existence of a few large (often foreign) corporations on the one hand and a very large informal sector with limited capacities on the other.

A business linkages project in which large companies, both foreign and local, would commit them to establishing supplier relationships with local businesses, especially SMEs, can help alleviate the problem. Participating firms could combine their efforts to support the creation and expansion of SMEs through various linkage options, such as seeding, outsourcing and sub-contracting. These activities could take place throughout their value chains in either forward (i.e., distribution) or backward (i.e., sourcing) linkages.

The benefits of such a project include: (1) a more dynamic and competitive local private sector (especially SMEs); (2) improved micro-economic environment conducive to the establishment of further linkages; (3) more and better linkages between transnational corporations (TNCs) and SMEs; (4) more quality jobs created and preserved; (5) deeper rooting of TNCs in the local economy; (6) increased capacity to attract foreign direct investment; and (7) a broader and more diversified tax base for the Government. TNC-SME business linkages can be one of the fastest and most effective ways of upgrading domestic enterprises, facilitating the transfer of technology, knowledge and skills, improving business and management practices and facilitating access to finance and markets.

However which incentive framework works best to attract FDI? UNCTAD (1997) found that the success of Latin American countries in attracting FDI was attributed to the following: (i) liberalizing investment (including the granting of de facto national treatment to foreign investors, the elimination or reduction of restrictions on profit remittance and other financial flows and the opening of sectors previously closed to FDI); (ii) establishing investor promotion agencies to stimulate foreign direct investment; (iii) entering into bilateral investment treaties with developed countries and among themselves; and (iv) implementation of new sub regional arrangements to deal with FDI. Designing an efficient framework for investment that attracts FDI without losing considerable revenue is a difficult exercise. Textbook analysis shows that it should meet the criteria of efficiency (minimizing its impact on resource allocation); equity (similar taxpayers should be treated equally); and simplicity. The effectiveness of incentives depends on the type of investor, the degree of competition for the investment, and the response of other countries to changes in their competitors' incentive scheme. Start up firms prefers cash grants or other incentives that reduce initial expenses; firms with larger investments in fixed assets may prefer depreciation allowance. Tax holidays, an instrument used frequently by African countries, are attractive to the so-called foot-loose industries that utilize rapidly depreciating capital. But they are not useful for attracting investments that may not show profits in the initial years. They reduce the appeal of debt financing of capital investment by removing the benefits of interest deductibility. This funding bias is accentuated if dividends of tax-exempt firms are also exempt fr om personal income tax. Tax exemptions tend to benefit investments with a short-term time horizon. Longer-term projects that generate profits beyond the tax holiday period do not benefit, unless firms are permitted to accrue and defer asset depreciation deductions beyond the tax holiday period. Accelerated depreciation allowances and investment expenditure allowances encourage longer term investment and probably cost the government less than tax holidays. However, they discriminate in favor of machinery and capital and, if inflation is high, they are an inducement for companies to borrow rather than use equity.

New determinants of FDI

In a globalizing environment, many of the traditional determinants of FDI such as Political and macroeconomic stability, availability of natural resources and a large and growing market remain important. However, there are new FDI determinants

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A favorable FDI environment. This essentially means a transparent and non discriminatory regulatory environment, effective competition policies and an efficient judicial system. Low and stable tax rates are also important. Fiscal incentives may increase the attractiveness of a country but cannot substitute for the lack of a healthy

FDI environment. Promotion activities may also help attract FDI but only when the basic framework is in place, including equal treatment of foreign and local investors and fast dispute settlement mechanisms.

. **Low transaction and business costs**. These cover investment, labor and trade regulations, entry and exit rules, location and environment regulations, and tax and legal systems. They depend not so much on the rules but on the way rules are implemented in practice and on the skills of the bureaucracy in dealing with the Investors, as well as on the legal and judicial system.

. **Supplier networks and clusters**. Countries with dynamic local firms have an advantage in that they can attract better 'quality' FDI that subcontracts services and components of their production process to local firms

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Support institutions and technical services. *E*ssential infrastructure facilities include effective quality assurance and testing bodies, metrology and calibration services, contract research and technical extension help for SMEs.

Human capital Low-cost, unskilled labor is becoming less important. There is a greater demand for qualified human capital with diverse modern skills that can cope with emerging technologies. Equally important are labor market flexibility including the use of expatriate personnel.

Low cost infrastructure, in particular an efficient communications system as well as transportation links within and outside the country are essential to make a country attractive.

REGIONAL APPROACH

The IMF wants Uganda to harmonize incentives it offers investors with those of other East African Community member-states. The position is contained in the Fund's country report for Uganda, Kenya and Tanzania. It recommends that a partner state should consult others before giving investors any incentive. This is not yet the official position of the IMF, but will be debated and may be considered by the Executive Board, the decision making of the Fund.[25]

If adopted, Uganda with the poorest infrastructure in the region, will find itself offering the same incentives as Kenya and Tanzania. This, analysts say, may effectively erode Uganda's only competitive edge.

Despite its generosity towards investors, Uganda still lags behind in attracting FDI compared to Kenya and Tanzania. Presently, Uganda offers more tax and non-tax incentives to investors than its regional counterparts as a way to attract investors. According to the World Investment Report 2008, Uganda attracted the least amount of

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Foreign Direct Investments in 2008[26]. In a year that the country held the Commonwealth Heads of Government Meeting, which was expected to spur investments in construction, the amount of FDI to Uganda declined to $360 million in 2007 down from $400 million the previous year.

Kenya outperformed its competitors when it realized a huge increase of FDI inflows. Investment inflows to East Africa's biggest economy shot up to $728 million in 2007 up from $51 million the year before. Kenya received more FDI due to large privatization sales in its telecommunications industry and investments in railways, according to the report. Tanzania received $600 million in FDI in 2007, higher than the $522 million received in 2006. The report points out that much of the FDI in Tanzania was directed towards the country's several natural resource exploitation projects. Such a stark difference in FDI inflows could have prompted the IMF team to suggest a harmonized incentive structure for the region.

However, a coordinated approach to providing investment incentives should become a priority in the EAC. To facilitate closer regional economic integration and to avoid the damaging uncoordinated contest to attract foreign investors, the EAC members should seek a closer coordination of investment and tax policies and the creation of an EAC-wide legal framework for foreign investment[27]

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[26] The World Investment Report 2008

[27] The IMF report, which based its recommendation on research carried out in late 2006.

Considering differences in infrastructure development among the three countries, Uganda may find it hard to compete on a level field with the other two—both with a coastline, better transport and utility services.

At the moment, the fight for foreign investors is being fought along the lines of who offers longer tax breaks and cheaper assets such as land. For example, while no East African country beats Uganda when it comes to dishing out free land to foreign investors, Kenya has a good tax structure that favors investors dealing in housing estates. Also, Kenya is considering endorsing a financial bailout package, worth more than $200 million, to write off debts for six sugar companies, and improve their competitiveness in the region.

The IMF paper points out that the EAC countries should "discuss and coordinate their investment incentives policy, and that rules guiding the provision of incentives would be agreed upon. If a country feels that its incentives are insufficient, instead of acting unilaterally, it would be better to raise the issue with its EAC partners."

The IMF report appears to be uneasy about import and export trade-related incentives that Uganda and Tanzania have handed investors, saying the countries were foregoing revenue that would otherwise be used to fund poverty eradication programs.

The release of the IMF report follows a July 2008 letter[28], to the Fund in which he said that Parliament had approved tax incentives to qualified investors. In the same letter, Suruma said he had set aside Shs60 billion for this purpose. Suruma said that only

[28] by Dr. Ezra Suruma, the Minister of Finance,

companies that exported more than 80% of their production would benefit from this incentive.

The call to harmonize tax incentives also comes on the back of growing pressure by Uganda's private sector on government to create Export Processing Zones (EPZs). Kenya and Tanzania have EPZs, areas where exporters enjoy tax breaks and other incentives.

John Ssempebwa, the Head of Trade at the Private Sector Foundation, said that "the IMF recommendation is welcome. But Uganda should first speed up the opening of the Export Processing Zones to compete favorably with the other states."

Harmonizing incentive structure in the region, could throw the country's budding private sector at the deep end of the competition with Kenya's bigger economy. That is a situation Uganda has avoided for years.

Maggie Kigozi, the Executive Director Uganda Investment Authority, had reservations about taking further steps in harmonizing the incentives in the EAC bloc. "At the moment, tax policies in the region are almost the same," she said. The corporate tax is one of the taxes that have been harmonized across the region. Although, there are stark differences on the taxes charged on petroleum and beverages, with Uganda said to have higher rates than its counterparts. But Kigozi argued that what Uganda needs is to "work on the road from Mombasa to Kampala

Uganda, unlike Kenya and Tanzania is landlocked. The country also has a poor transport network and low levels of energy. These barriers continue to undermine

Uganda's prospects of attracting businesses unless government gives the investors a good reason to set up shop here.

But the IMF warns that "Increased competition over FDI (Foreign Direct Investment) and growing pressure to provide tax holidays and other investment incentives to attract investors could result in a "race-to-bottom" that would eventually hurt all three EAC members. Left unchecked, the contest could result in revenue loss, especially in Tanzania and Uganda, threaten the objective of improving revenue collection."

In his letter of intent – a report card outlining the country's progress of adhering to policies set out by the IMF – Suruma said that revenue losses from the Shs60 billion incentives to exporters are expected to be very modest (not exceeding 0.1 percent of Gross Domestic Product.

Facilitate the process of accessing land for investors.

The value of land and its economic potential is often jeopardized by the insecurity of property rights. This situation typically arises out of three reasons: (1) inappropriate or unclear legislation; (2) non-existent or ambiguous land records; and (3) the inability to enforce existing land rights. With the passage of the Land Act (1998) and the regulations to implement the Act contained in the Land Sector Strategic Plan (2002), the Government of Uganda has attempted to address the first of these issues and shown a willingness to address the other two.